



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

August 7, 2002

Mr. Herbert N. Berkow  
Director, Project Directorate II  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2739

Dear Mr. Berkow:

The purpose of this letter is to propose that NRC adopt TVA's Final Supplemental Environmental Impact Statement (SEIS) for Operating License Renewal of the Browns Ferry Nuclear Plant (BFN). TVA discussed this proposal in a meeting with you and other members of NRC's staff in Rockville, Maryland, on July 24, 2002, in connection with BFN license renewal. We believe that NRC's adoption of the SEIS will avoid the duplication of work, resources, and the attendant costs associated with the preparation of a separate agency Environmental Impact Statement (EIS). While we understand that the federal actions each agency proposes to take are not the same, i.e., TVA deciding whether to seek renewed operating licenses and NRC deciding whether to issue renewed operating licenses, the very same environmental impacts associated with 20 years of extended BFN operation must be addressed by both agencies.

As a federal agency, TVA is subject to the requirements of the National Environmental Policy Act of 1969 (NEPA). As you know, the original Environmental Statement (or EIS in more current NEPA parlance) for the construction and operation of BFN was prepared by TVA in 1972 with the Atomic Energy Commission participating as a cooperating agency. The Commission concluded on August 28, 1972, that the statement was adequate to support the proposed license to operate the plant.

The original BFN Construction and Operation EIS and the current BFN Operating License Renewal SEIS were prepared under NEPA, the regulations published by the Council on Environmental Quality (CEQ) (40 CFR §§ 1500-1508), and TVA's regulations implementing NEPA. CEQ's regulations emphasize agency cooperation early in the NEPA process in order to reduce paperwork, eliminate duplication, and reduce delays; and thereby enhance the efficiency of the NEPA process. See 40 CFR §§ 1500.4, 1500.5, and 1501.6. Accordingly, these regulations expressly provide that federal agencies may adopt appropriate environmental documents prepared by another agency and may also combine NEPA documents to reduce duplication and paperwork. See 40 CFR §§ 1506.3 and 1506.4. Moreover, CEQ recently issued guidance that exhorts federal agencies to actively participate as

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cooperating agencies in other agencies' NEPA processes. See Memorandum for the Heads of Federal Agencies, *Cooperating Agencies in Implementing the Procedural Requirements of NEPA* (January 30, 2002).

In comments provided to TVA on the Draft SEIS, the U.S. Environmental Protection Agency (EPA) noted that NRC did not participate as a cooperating agency. EPA noted that NRC typically prepares EISs for nonfederal commercial nuclear plants, and that if NRC were a cooperating agency, its adoption of the EIS would be streamlined. While it is not possible for NRC to join as a cooperating agency in the preparation of the SEIS at this late date, TVA believes that NRC's adoption of the SEIS would serve to streamline the NEPA process. Such an action would integrate environmental reviews, save paperwork and staff/contractor resources, and eliminate considerable unnecessary expense. In addition to gaining efficiencies, NRC's adoption of the SEIS would provide an opportunity to expedite the review of the BFN license renewal application in accordance with the presidential directive issued under Executive Order (EO) 13212, "Actions to Expedite Energy-Related Projects," issued on May 18, 2001. This EO is intended to improve the internal management of the federal government and requires federal agencies to expedite their review of permits for energy-related projects.

The BFN Operating License Renewal SEIS was prepared to provide the public with a full assessment of the environmental impacts associated with extended plant operation. A Notice of Intent to prepare the SEIS was published in the February 15, 2001, *Federal Register*. A public scoping meeting was held on March 6, 2001, in Decatur, Alabama, close to BFN. Comments and suggestions received at that meeting and during the scoping period were used to identify the scope of the Draft SEIS. A Notice of Availability of the Draft SEIS was published in the December 14, 2001, *Federal Register*. A second public meeting was then held on January 17, 2002, also in Decatur, to provide the public the opportunity to comment on and ask questions about the Draft SEIS. The public comment period ran from December 14, 2001 to January 30, 2002. Comments received from the public were considered in completing the Final SEIS.

In accordance with standard NEPA practice, TVA also coordinated an intergovernmental review of the SEIS, sending information to and soliciting the views of numerous government agencies and offices within the state of Alabama and the federal government. The federal intergovernmental review included the Fish and Wildlife Service, Army Corps of Engineers, Department of the Interior, EPA, as well as NRC (Headquarters and Region II).

On March 26, 2002, TVA mailed copies of the Final SEIS to interested members of the public and various governmental offices, agencies, and officials. An electronic version of the document was also made available (and remains so) on TVA's website ([www.tva.gov](http://www.tva.gov)). To ensure the highest degree of public notice and participation in the NEPA process, TVA provided an additional 30-day comment period on the Final SEIS. TVA addressed the comments provided within this period in its Record of Decision which was published in the June 18, 2002, *Federal Register*.

We believe that every opportunity has and is being used to involve and inform the public about the environmental impacts associated with BFN license renewal. TVA is very much aware of the need to maintain public confidence and participation in the NEPA process. In our response to EPA's comment about NRC's participation, we noted NRC's past position that cooperation with a licensee could be viewed as potentially biasing the review process. We recognize NRC's right to prepare an independent EIS given its regulatory jurisdiction. However, as a federal agency with long-standing NEPA obligations and expertise in conducting environmental reviews, it is TVA's strong belief that the BFN Operating License Renewal SEIS provides a complete, objective analysis of the environmental consequences associated with extended plant operation. The fact that our agencies' NEPA obligations are interconnected cannot be ignored given the close link between TVA's SEIS and NRC's Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants, NUREG-1437, where TVA's SEIS specifically references, in whole or in part, the applicable material covered in the GEIS. Ultimately, however, we believe that CEQ's regulations speak to overcoming any potential for perceived bias in the review process. Under 40 CFR § 1506.3(a), an agency adopting another agency's EIS may only do so after independently verifying the adequacy of the document. In the instance at hand where NRC has not participated as a cooperating agency in the preparation of the SEIS, NRC would be required to recirculate the SEIS as a final statement. See 40 CFR § 1506.3(b). This recirculation could also be used to afford the public another opportunity to submit comments on the BFN license renewal project.

TVA is also concerned about potential confusion among the public should the NRC conduct a separate, follow-up review of the very same environmental impacts associated with BFN's extended operation. We also believe that the potential exists for the public to view a duplicate effort as an example of bureaucratic excess, the cost of which it must ultimately bear.

Given the above, TVA intends to include the SEIS for Operating License Renewal of BFN, by reference, as part of the BFN license renewal application pursuant to 10 CFR §§ 54.23 and 51.53(c). In considering the SEIS, we propose that NRC perform an independent review of its adequacy in accordance with 40 CFR § 1506.3(a). Any questions can be handled through the normal request for additional information (RAI) process between our agencies. Upon full review, the NRC may, as appropriate, adopt the SEIS after recirculating it as a final statement (i.e., as a final BFN-specific supplement to the GEIS) in accordance with 40 CFR § 1506.3(b). Under CEQ's regulations, an agency must wait 30 days after publishing the Notice of Availability in the *Federal Register* before making its decision. See 40 CFR § 1506.10(b)(2). An agency may request comments on a final statement before a decision is finally made. See 40 CFR § 1503.1(b). Comments received during this waiting period could be addressed in a manner NRC deems most appropriate, including as a part of the final license renewal decision published in the *Federal Register*.

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For all of the above reasons, we believe that clear legal and policy bases exist for NRC to adopt TVA's SEIS for Operating License Renewal of BFN. If you have any questions or would like to discuss this matter further, please do not hesitate to call me at (423) 751-2508.

Sincerely,

  
Mark J. Burzynski  
Manager  
Nuclear Licensing

cc: U.S. Nuclear Regulatory Commission  
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