

December 17, 2002

Mr. Mark J. Burzynski, Manager
Nuclear Licensing
Tennessee Valley Authority
4X Blue Ridge
1101 Market Street
Chattanooga, TN 37402-2801

Dear Mr. Burzynski:

In your letter dated August 7, 2002, you proposed that the Nuclear Regulatory Commission (NRC) adopt the Tennessee Valley Authority's (TVA's) Final Supplemental Environmental Impact Statement (FSEIS) for the long-term plans for the Browns Ferry Nuclear Plant (BFN) when the NRC considers license renewal of some or all three BFN units. The NRC staff has determined that it will prepare its own environmental impact statement (EIS) in accordance with 10 CFR Part 51. The decision is based largely on the long-standing Commission policy in dealing with TVA applications that the NRC staff conduct the full process of interdisciplinary study, cost-benefit analysis, and weighing of alternatives prescribed by the National Environmental Policy Act (NEPA).

On June 15, 1973, the NRC's predecessor, the Atomic Energy Commission (AEC), entered into an agreement with TVA (letter from L.M. Muntzing, AEC, to L. Seeber, TVA, countersigned by L. Seeber on July 3, 1973) to ensure that the AEC would fulfill its NEPA responsibilities. The AEC and the TVA agreed that (1) the TVA would submit an environmental (impact) statement (ES) concurrent with its application, (2) the ES would be treated as an Environmental Report (ER) and judged for its adequacy in accordance with the appropriate Commission regulations and regulatory guidance, and (3) the AEC would prepare an independent ES. This practice evolved from the 1971 agreement between the TVA and the AEC (June 30, 1971, letter from H.L. Price, AEC, to J.E. Watson, TVA) that allowed the AEC to act as a cooperating agency on TVA environmental statements. In the original licensing proceeding for BFN, the differing roles of and decisions to be made by a regulatory agency versus an entrepreneurial agency were identified; this led to the 1973 agreement to ensure that both agencies would fulfill their separate NEPA responsibilities. You have not identified a special circumstance in today's regulatory situation that was not present at the time the AEC and the TVA entered into the 1973 agreement. The NRC staff believes that preservation of NRC's independence is a more compelling argument than it was in 1973 when the AEC's mission was broader.

Two specific points that you made in your letter warrant a direct response as well. In your letter, you indicated that the TVA supports the Council on Environmental Quality recommendation that the adoption of its FSEIS by the NRC could reduce attendant cost associated with the duplication of work and allocation of resources needed to prepare separate documents. You stated that adoption of the TVA FSEIS by the NRC is inherently efficient and consistent with NEPA goals since it would avoid the preparation of two nearly identical documents that examine "the very same environmental impacts associated with 20 years of

extended BFN operation." The NRC staff does not agree that adoption of TVA's BFN FSEIS would necessarily be more efficient. TVA's BFN FSEIS does not segregate the action(s) involving extended operation for some or all of the units from other actions that may be contemplated by the TVA; i.e., refurbishment, power uprates, or restart of Unit 1. Consequently, the adoption process would require an extensive review of issues that are not normally within the purview of license renewal as prescribed by 10 CFR 51.53. Adoption, as you proposed, would be a departure from the existing license renewal review process and could adversely perturb the schedule that has become well-established for the environmental review.

Additionally, you stated that the TVA is concerned with "potential confusion among the public should the NRC conduct a separate, follow-up review on the very same environmental impacts associated with BFN's extended operation." Public participation in the NEPA review adds to the openness of the regulatory process, provides the opportunity for meaningful public interaction and involvement, and enhances public confidence in the NRC regulatory process. In our view, increasing public confidence in the regulatory process outweighs TVA's assertion that NRC's independent regulatory activities may confuse the public. NRC's credibility is inextricably linked to the public view that NRC decisions are objective. Every effort will be made to make clear the purposes of the NRC review to dispel any potential confusion, but changing established practices for the TVA may create a perception that the NRC is affording special treatment to a particular applicant and that the NRC is neglecting its regulatory responsibilities.

For the reasons stated above, the staff has determined that adoption of the BFN FSEIS for the license renewal action(s) is not an appropriate option for the NRC. If you have any other questions or would like to meet to discuss this further, then you may contact John Tappert at (301) 415-2236 or Gregory Suber at (301) 451-1124.

Sincerely,

/RA/

Pao-Tsin Kuo, Program Director
License Renewal and Environmental Impacts
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Docket Nos: 50-259, 50-260, and 50-296

cc: See next page

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*See original concurrence

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M. Burzynski
Tennessee Valley Authority

BROWNS FERRY NUCLEAR PLANT

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