

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION**

In the Matter of)

TENNESSEE VALLEY AUTHORITY)

(Bellefonte Units 3 and 4))

Docket Nos. 52-014 and 52-015

April 4, 2008

**APPLICANT’S ANSWER TO SUPPLEMENTAL MOTION
TO SUSPEND HEARING NOTICE**

I. INTRODUCTION

On April 2, 2008, Bellefonte Efficiency and Sustainability Team (BEST) filed a “Supplemental Motion to Suspend Hearing Notice or, in the Alternative, Request for an Extension of Time to Submit Hearing Request and Contentions and Request for Expedited Consideration” (Supplemental Motion). Tennessee Valley Authority (TVA), the applicant for the combined licenses (COLs) for Bellefonte Units 3 and 4, hereby files this Answer in opposition to the Supplemental Motion.

II. BACKGROUND

This is the second request filed by BEST to suspend the Notice of Hearing on the Bellefonte COL application. On February 29, 2008, BEST filed a letter with David B. Matthews of the NRC staff (Initial Motion), requesting that the NRC suspend the Notice of Hearing based, in part, on the allegation that the application is incomplete, as evidenced by the staff’s intent to issue requests for additional information (RAIs).¹ The Commission treated the letter as a

¹ See Initial Motion at 1.

Motion.² TVA and the NRC staff each filed answers in opposition to the Initial Motion.³ On March 28, 2008, the Commission issued an Order which effectively denied the Initial Motion (March 28 Order).

On April 2, 2008, BEST filed its Supplemental Motion, again based upon the arguments that the NRC staff has issued RAIs related to the Bellefonte COL application and that the application is incomplete for docketing under 10 C.F.R. § 2.101.⁴ This is essentially the same argument that the Commission rejected when it issued its March 28 Order. Remarkably, the Supplemental Motion does not mention the Commission's rejection of the Initial Motion. Furthermore, the Supplemental Motion provides no basis for the Commission to modify its March 28 Order or to reach a different result.

For the reasons discussed below, the Supplemental Motion is procedurally defective and legally baseless, and therefore should be denied. Because the Supplemental Motion is essentially based upon the same grounds as the Initial Motion, this Answer cites extensively to TVA's Answer to Initial Motion rather than repeating in detail the arguments contained therein.

² Order (March 5, 2008) (unpublished).

³ See Applicant's Answer to BEST's Letter Requesting Suspension of Proceeding (March 12, 2008) (TVA's Answer to Initial Motion); *see also* NRC Staff's Response to the Request to Suspend the Hearing Notice Regarding the Application for a Combined License for Bellefonte Nuclear Power Plant Units 3 and 4 (March 13, 2008) (NRC's Response to Initial Motion).

⁴ Supplemental Motion at 2-4.

III. THE SUPPLEMENTAL MOTION IS PROCEDURALLY DEFECTIVE

The Supplemental Motion should be denied because it is procedurally defective.

First, as explained in TVA's Answer to Initial Motion, at 3-4, BEST is not a party to this proceeding and has not demonstrated any likelihood of becoming a party. Since only parties may file motions under 10 C.F.R. § 2.323, BEST has no right to file the Supplemental Motion.

Second, the Supplemental Motion, in essence, is a motion for reconsideration of the Commission's March 28 Order. However, BEST has not identified any error in the March 28 Order, or any other basis for the Commission to reconsider its Order, pursuant to 10 C.F.R.

§ 2.323(e). In particular, BEST has not shown the "existence of a clear and material error in a decision, which could not have reasonably been anticipated," as required by Section 2.323(e).

Third, as a basis for the Supplemental Motion, BEST relies upon NRC's RAIs related to hydrology and seismology. However, NRC's initial request for information was contained in NRC's letter dated January 18, 2008, which docketed the application for the Bellefonte COLs.⁵ The NRC's letter was issued 75 days prior to the Supplemental Motion. Therefore, the Supplemental Motion is untimely, because it was not filed within the ten day period specified in 10 C.F.R. § 2.323(a). Likewise, to the extent that BEST impugns the level and type of information provided in the NRC's Hearing Notice, which was issued almost 60 days prior to the Supplemental Motion, the Supplemental Motion is untimely.⁶

Finally, the NRC staff has found the Bellefonte application to be sufficiently complete for docketing. Furthermore, in its response to the Initial Motion, the NRC staff reiterated that the Bellefonte COL application is sufficiently complete for docketing, despite the areas presenting a

⁵ See Letter from D. Matthews (NRC) to A. Bhatnagar (TVA), "Acceptance Review for Combined License for Bellefonte Units 3 and 4 Application" (Jan. 18, 2008) encl. (Schedule Issues for the Combined License Review), *available at* ADAMS Accession No. ML080140230.

⁶ See Tennessee Valley Authority; Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for Bellefonte Units 3 and 4, 73 Fed. Reg. 7611 (Feb. 8, 2008).

challenge to the NRC staff's review schedule.⁷ BEST's argument to the contrary constitutes an impermissible collateral attack on the staff's docketing decision, as explained in TVA's Answer to Initial Motion, at 4-5.

For the reasons discussed above, the Commission should deny the Supplemental Motion on procedural grounds.

IV. THE SUPPLEMENTAL MOTION IS LEGALLY BASELESS

As explained in TVA's Answer to Initial Motion, at 5-6, suspension of a proceeding is a drastic action. BEST has not provided the necessary legal or factual basis for such an action in this proceeding. In particular, BEST has not identified any immediate threat to public health and safety sufficient to justify a suspension.

In support of its request that the Notice of Hearing be withdrawn or that an extension of time be granted for filing petitions to intervene, BEST refers to the NRC's RAIs related to hydrology and seismology and argues that the Bellefonte application is incomplete.⁸ However, as discussed at length in TVA's Answer to Initial Motion, at 7-10, the Commission has long held that it will not suspend a proceeding based upon the existence of RAIs.⁹ This fact was recognized by the Commission in its recent March 28 Order rejecting BEST's Initial Motion, which held that RAIs are a "normal part of the review process and do not provide a basis either for extending the deadline for submission of contentions or for suspending or withdrawing the Notice of Hearing."¹⁰

⁷ See NRC Response to Initial Motion at 8.

⁸ Supplemental Motion at 2-4. BEST also notes that, in response to an NRC Notice of Violation, TVA has developed a revised plan for the hydrology review, which will delay the NRC's review. However, this provides no more basis for the Supplemental Motion than do the RAIs.

⁹ See *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 349 (1998).

¹⁰ March 28 Order at 1-2.

BEST also refers to the delay in NRC's review schedule as a basis for suspension of the proceeding or an extension of time.¹¹ However, the Commission has also held that the focus of licensing proceedings is the license application, not the staff's review.¹² Therefore, the status of NRC's review is not a sufficient ground for suspension of the proceeding or an extension of time to file a petition to intervene.

BEST further argues that it should not be required to file contentions now, because the TVA's seismic design is purportedly outdated and is likely to change.¹³ However, neither TVA nor the NRC staff has stated that the seismic design is outdated or is likely to change, nor has BEST provided any basis for that allegation. In fact, the NRC staff has only requested that TVA provide additional information to support the seismic hazard analysis specified in the Bellefonte application.¹⁴ In any event, as discussed in TVA's Answer to Initial Motion, at 10, a possibility that the application may be amended is not a sufficient basis for suspending the Notice of Hearing or extending the time for submitting petitions to intervene.

BEST argues that the Notice of Hearing is defective because it provides no information regarding the certified AP1000 design that is referenced in the Bellefonte COL application.¹⁵ It also argues that the NRC's website contains incomplete and misleading information related to the proposed amendment to the AP1000 design.¹⁶ However, the acceptability of the revisions to the AP1000 design is the subject of a design certification amendment proceeding, and issues

¹¹ Supplemental Motion at 4-5.

¹² See *Calvert Cliffs*, 48 NRC at 350.

¹³ Supplemental Motion at 5.

¹⁴ See Letter from J. Sebrosky (NRC) to A. Bhatnagar (TVA), "Request for Additional Information – Tennessee Valley Authority Combined License Application for Bellefonte Units 3 and 4" (Feb. 15, 2008), *available at* ADAMS Accession No. ML080450502 (Sebrosky Letter).

¹⁵ Supplemental Motion at 2.

¹⁶ *Id.*

related to the amendment will be resolved by rulemaking in accordance with 10 C.F.R. § 52.63. Therefore, BEST's arguments related to the AP1000 design are not material to its Supplemental Motion to suspend this proceeding.

Furthermore, NRC's RAIs do not pertain to the adequacy of the seismic design of the AP1000. Instead, they pertain to the characterizations of the seismic hazard in southeastern United States and the seismic hazards analysis for Bellefonte.¹⁷ BEST has completely mischaracterized the RAIs, and the RAIs for the Bellefonte COLs are irrelevant to the AP1000 certification amendment.¹⁸

Finally, BEST argues that the Bellefonte COL application "fails to identify specific updates to the AP1000 application"¹⁹ However, in the same paragraph, BEST quotes from the cover letter to the application, which refers to Westinghouse Technical Report, APP-GW-GLR-134 (TR-134).²⁰ TR-134 specifically identifies the changes that Westinghouse is planning to make in Revision 16 to the AP1000 Design Control Document (DCD). Furthermore, contrary to BEST's assertions regarding the unavailability of documents,²¹ TR-134 is in ADAMS.²² Therefore, BEST's arguments are not only legally immaterial, but also are factually incorrect.

¹⁷ See Sebrosky Letter encl. (Requests for Additional Information Regarding the Tennessee Valley Authority Bellefonte Units 3 and 4 Combined License Application).

¹⁸ The Supplemental Motion, at 6, refers to the "generic aspects" of the RAIs. However, BEST has misinterpreted that phrase. "Generic aspects" does not refer to the standard AP1000 design; instead, it refers to generic issues related to the characterization of the seismic hazard in the southeastern United States. See Sebrosky Letter at 1; see also Memorandum from R. Subbaratnam (NRC) to W. Reckley (NRC), "Forthcoming Meeting With Industry - Seismic Site Response Analysis - Workshop on Seismic Issues (Feb. 7, 2008), available at ADAMS Accession No. ML080380235.

¹⁹ Supplemental Motion at 6.

²⁰ *Id.* (citing Letter from A. Bhatnagar (TVA) to W. Borchardt (NRC), "Application for Combined License for Bellefonte Units 3 and 4" (Oct. 30, 2007), available at ADAMS Accession No. ML073110527).

²¹ *Id.* at 7.

²² Westinghouse Technical Report, APP-GW-GLR-134, "AP1000 DCD Impacts to Support COLA Standardization" (Oct. 26, 2007), available at ADAMS Accession No. ML073120423.

V. CONCLUSIONS

As set forth above, the Supplemental Motion fails to satisfy a number of procedural and legal requirements. Additionally, the arguments made by BEST do not provide a sufficient basis for withdrawal of the Notice of Hearing or an extension of time. In essence, BEST is requesting the Commission to violate its own rules and to ignore its recently issued Order denying BEST's Initial Motion. Accordingly, the Supplemental Motion should be denied.

Respectfully submitted,

Signed (electronically) by

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Dated at Washington, D.C.
this 4th day of April 2008

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2008 a copy of "Applicant's Answer to Supplemental Motion to Suspend Hearing Notice" was filed electronically with the Electronic Information Exchange. On this date, the service list included the following recipients:

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