

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
TENNESSEE VALLEY AUTHORITY) Docket Nos. 52-014 and 52-015
)
Bellefonte Nuclear Power Plant)
(Units 3 and 4))

NRC STAFF RESPONSE TO LICENSING BOARD'S REQUEST FOR
ADDITIONAL BRIEFING CONCERNING TIMELINESS OF INTERVENTION PETITION

In its Memorandum and Order of July 9, 2008, the Atomic Safety and Licensing Board (“Licensing Board”) requested the views of the staff of the U.S. Nuclear Regulatory Commission (“NRC staff”) concerning the timeliness of the filing of the intervention petition (“Petition”) submitted in this proceeding by the Blue Ridge Environmental Defense League, Bellefonte Efficiency and Sustainability Team, and the Southern Alliance for Clean Energy (“Petitioners”).¹ As discussed below, the Staff’s view is that the Petition was not timely filed.

The NRC staff agrees that the applicable Commission regulations render the petition untimely. Pursuant to 10 C.F.R. § 2.306(c), “[t]o be considered timely, a document must be served: . . . By 11:59 p.m. Eastern Time for a document served by the E-Filing system.”^{2,3} As correctly noted by the Applicant (Tennessee Valley Authority, “TVA”), the notifications issued by

¹ See *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 and 4), Memorandum and Order (Initial Prehearing Conference Schedule; Schedule for Additional Briefing Regarding Timeliness Issue; Opportunity for Written Limited Appearance Statements), slip op. (July 9, 2008), at 2.

² The Statement of Considerations for the NRC’s E-Filing Rule mentions that the 11:59 p.m. deadline was specifically stated in the final rule because it “is necessary to accommodate overnight maintenance periods when the E-Filing system will be inoperable.” Use of Electronic Submissions in Agency Hearings [Final Rule], 72 Fed. Reg. 49,139, 49,149 (Aug. 28, 2007).

³ NRC regulations also state that “Filing is considered complete: (1) By electronic transmission when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically[.]” 10 C.F.R. § 2.302(d)(1).

the NRC's Electronic Information Exchange ("EIE") indicate that the Petition was filed in two parts, both of which arrived at the EIE on June 7, 2008, the first part at 00:07:28 and the second at 00:55:40. See Applicant's Answer Opposing Petition to Intervene (July 1, 2008) at 3 n.7.

Under the Commission's Order extending the time period for submitting petitions to intervene, petitions were to be filed no later than June 6, 2008. Notice of Extension of Time for Petition for Leave to Intervene on a Combined License Application for Bellefonte Units 3 and 4, 73 Fed. Reg. 19,904 (Apr. 11, 2008). The notices from the EIE do not demonstrate that filing of the document in its entirety occurred on June 6th.^{4,5}

As discussed, the Staff's view is that the Petition was not timely filed.

Respectfully submitted,

/signed (electronically) by/

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Dated at Rockville, Maryland
this 14th day of July, 2008

⁴ The NRC staff also notes that the Notice of Hearing in this proceeding stated that "To be timely, filing must be submitted no later than 11:59 p.m. Eastern Standard Time on the due date." 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, 7612 (Feb. 8, 2008). In June of 2008, U.S. daylight savings time was in effect, meaning that 12:59 a.m. EDT on June 7 would be equivalent to 11:59 p.m. Eastern Standard Time on June 6. Nevertheless, NRC regulations specify 11:59 p.m. "Eastern Time" as the time by which a document must be served. 10 C.F.R. § 2.306(c).

⁵ On June 12, 2008, Annette L. Vietti-Cook, Secretary of the Commission, forwarded the Petition to E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel. The cover memorandum stated that the Petition had been filed on June 9, 2008. On June 16, 2008, Emile L. Julian, Assistant for Rulemakings & Adjudications, in a memorandum to the Bellefonte Proceeding Service List, corrected the date of June 9, 2008, to June 6, 2008, noting that the "actual date" of the Petition was June 6, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC Staff Response dated July 14, 2008 have been served upon the following persons by Electronic Information Exchange this 14th day of July, 2008:

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