

July 15, 2008

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 “APPLICANT’S MOTION
TO STRIKE PORTIONS OF PETITIONERS’ REPLY”

Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission (“NRC staff”) hereby responds to the “Applicant’s Motion to Strike Portions of Petitioners’ Reply” filed on July 11, 2008, by the Applicant (Tennessee Valley Authority, “TVA”) (“Motion”).¹ The Motion seeks to strike portions of the “Reply of The Blue Ridge Environmental Defense [sic] League, Its Chapter Bellefonte Efficiency and Sustainability Team and the Southern Alliance For Clean Energy to the NRC Staff Answer to Petition for Intervention and the Applicant’s Answer Opposing Petition To Intervene, Both Dated July 1, 2008.” (July 8, 2008) (“Reply”). For the reasons explained below, the NRC staff supports the Motion to the extent that the Motion requests that the Licensing Board exclude from its consideration those arguments, supporting references, and attachments (including expert affidavits) that Petitioners have raised for the first time in the Reply.

¹ “Petitioners” herein refers to the Blue Ridge Environmental Defense League, Bellefonte Efficiency and Sustainability Team, and the Southern Alliance for Clean Energy, who collectively submitted a petition to intervene in this proceeding.

In the Motion, the Applicant argues that the Reply improperly includes new arguments, references, and attachments. The Commission has emphasized that a reply cannot expand the scope of the arguments set forth in the original hearing request. *Nuclear Mgmt. Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727,732 (2006).

The Staff agrees with the Applicant that the items identified on pages 4-6 of the Motion constitute new arguments, references and attachments that should have been raised in the original petition and may not be raised in a reply. See *La. Energy Services, LP* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004) ("LES"). Thus, the NRC staff agrees with the Applicant that the new material is improperly raised and cannot be used to support the admissibility of the proposed contentions.

In light of the Commission's aforementioned holdings, the Licensing Board may consider it appropriate to formally strike the new arguments and material from the record (see *Entergy Nuclear Vt. Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 182, 198-199 (2006)), or simply to exclude them from consideration in ruling on the Petition (see *LES, LBP-04-14, 60 NRC 40, 63-64* (2004)). The NRC staff submits that either approach would be consistent with the purpose of the Motion, which is to identify for the Licensing Board those arguments, references, and attachments that are beyond the permissible scope of a reply.

Respectfully submitted,

Executed in Accord with 10 CFR § 2.304(d)

Ann P. Hodgdon
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-1587
Ann.Hodgdon@nrc.gov

Dated at Rockville, Maryland
this 15th day of July, 2008

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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF RESPONSE TO “APPLICANT’S MOTION TO STRIKE PORTIONS OF PETITIONERS’ REPLY” have been served upon the following persons by Electronic Information Exchange this 15th day of July, 2008:

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: gpb@nrc.gov)

Office of the Secretary
ATTN: Docketing and Service
Mail Stop 0-16C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: HEARINGDOCKET@nrc.gov)

Administrative Judge
Dr. Anthony J. Baratta
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: ajb5@nrc.gov)

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: ocaamail@nrc.gov)

Administrative Judge
Dr. William W. Sager
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: wws1@nrc.gov)

Erica LaPlante
Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: eal1@nrc.gov)

Louis A. Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629
(E-mail: BREDL@skybest.com)

Sara Barczak
Southern Alliance for Clean Energy
428 Bull Street
Savannah, GA 31401
(E-mail: sara@cleanenergy.org)

Edward J. Vigluicci, Esq.
Scott A. Vance, Esq.
Tennessee Valley Authority
400 W. Summit Hill Dr., WT 6A-K
Knoxville, TN 37902
(E-mail: ejvigluicci@tva.gov
savance@tva.gov)

Steven P. Frantz, Esq.
Stephen J. Burdick, Esq.
Mauri T. Lemoncelli, Esq.
Jonathan M. Rund, Esq.
Alan H. Gutterman, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(E-mail: sfrantz@morganlewis.com
sburdick@morganlewis.com
mlemoncelli@morganlewis.com
jrund@morganlewis.com
agutterman@morganlewis.com)

Louise Gorenflo
Bellefonte Efficiency & Sustainability Team
185 Hood Drive
Crossville, TN 38555
(E-mail: lgorenflo@gmail.com)

/signed (electronically) by/

Ann P. Hodgdon
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-1587
Ann.Hodgdon@nrc.gov