UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

BEFORE THE LICENSING BOARD

In the Matter of	
Tennessee Valley Authority	Docket Nos. 52-014, 52-015
Bellefonte Nuclear Power Plant Units 3 and 4	ASLBP No. 08-864-02-COL-BD01
	July 18, 2008

RESPONSE OF THE BLUE RIDGE ENVIRONMENTAL DEFSENSE LEAGUE, ITS CHAPTER BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM AND THE SOUTHERN ALLIANCE FOR CLEAN ENERGY TO THE LICENSING BOARD'S JULY 9TH REQUEST FOR ADDITIONAL BRIEFING CONCERNING TIMELINESS OF INTERVENTION PETITION

Introduction

In accordance with the Atomic Safety and Licensing Board Panel's Memorandum and Order of July 9, 2008 permitting Joint Petitioners to reply to the NRC Staff's filing of July 14 regarding the timeliness of intervention petition, the Blue Ridge Environmental Defense League ("BREDL"), its chapter Bellefonte Efficiency and Sustainability Team ("BEST") and the Southern Alliance for Clean Energy ("SACE") (hereinafter "Joint Petitioners") hereby file their response.

Background

Notice of hearing and opportunity to petition for leave to intervene in the Tennessee Valley Authority's combined construction and operation license for Bellefonte

Units 3 and 4 was first published in 73 Fed. Reg. 7611 (February 8, 2008). On February 29, 2008, the Bellefonte Efficiency and Sustainability Team and the Blue Ridge Environmental Defense League submitted a motion to suspend the notice of hearing. BEST and BREDL submitted a supplemental motion to suspend the hearing notice or request an extension of the deadline to submit petitions for leave to intervene on April 2nd. On April 7, 2008 the Commission issued an order granting a 60-day extension for interested persons to file a petition for leave to intervene in the proceeding, thereby setting a new deadline of June 6, 2008. 73 Fed. Reg. 19904 (April 11, 2008). BREDL, BEST and SACE filed a petition for leave to intervene and a request for hearing on June 6, 2008 and, pursuant to the ASLBP's Initial Prehearing Order of June 18th, filed a Supplement to the Petition on June 26th. TVA and NRC Staff filed their respective replies on July 1st and Joint Petitioners replied on July 8, 2008. In response to the ASLBP's Memorandum and Order of July 9th, the NRC Staff stated its position on the intervention petition's timeliness on July 14th. ("NRC Staff Response")

Discussion

The NRC Staff Response submitted July 14th cites 10 CFR § 2.302(d)[1] in support of their opinion on timeliness. On the contrary, Joint Petitioners believe that this regulation supports a finding of timeliness in two ways: First, the "last act" of electronic submission by the filer is to click on "Submit Document" at the NRC Electronic

[1] 10 CFR § 2.302 Filing of documents. (d) 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; (2) By first-class mail as of the time of deposit in the mail;

Information Exchange Adjudicatory Docket Submission Form web page.[2] Joint Petitioner's representative did perform the *last act* before the deadline. As Joint Petitioners have detailed in previous filings and following, the NRC EIE was unprepared to receive the documents submitted by Joint Petitioners on June 6th. Second, paragraph 2 of 10 CFR § 2.302(d) stipulates that a filing is considered complete at the "time of deposit in the mail." The first-class mail rule is analogous to the electronic system in that the paper filer is not held responsible for the limitations of the U.S. Postal Service.

In addition to regulatory language, the record in this matter clearly shows that NRC Rulemakings & Adjudications staff stated the petition was timely. Further, Rulemakings & Adjudications corrected an error made by the Secretary of the Commission regarding the date of the intervention petition in her cover memorandum forwarding the Petition to the ASLBP Chief Administrative Judge.[3] The NRC Staff Response cites the Rulemakings & Adjudications memorandum of June 16, 2008 which concludes "The actual date of the petition is June 6, 2008."[4]

Finally, the electronic mail correspondence between Joint Petitioner's representative and the Commission illustrates EIE's technical problems the solution to which eluded NRC staff and IT specialists for days. As Joint Petitioners stated in our June 26th Supplement to Petition, the technical problem was not resolved until BREDL broke the document into 7 MB packets. The initial electronic receipt message from the

[2] https://eie.nrc.gov/cgi-bin/eieone.exe?f=retrieve&docid=000
[3] NRC Staff Response to Licensing Board's Request for Additional Briefing Concerning Timeliness of Intervention Petition, footnote 5, July 14, 2008. This footnote cites a Memorandum from the Assistant for Rulemakings & Adjudications to the Bellefonte Proceeding Service List dated June 16, 2008.
[4] Memorandum from the Assistant for Rulemakings & Adjudications to the Bellefonte Proceeding Service List dated June 16, 2008

Office of the Secretary states, "The file(s) associated with this submission comprise 10351 KB." Attachment A to this response contains five exchanges, numbered to aid in the chronology, which detail the resolution of the problems. Attachment B is a copy of telephone notes taken by Louis Zeller in a discussion with Emile Julian on June 10, 2008 which shows the attempts to solve the EIE technical problems and which states the date of posting as June 6th.

Conclusion

The NRC Staff Response incorrectly disputes the intervention petition's timeliness. As demonstrated above, technical problems with the Commissions electronic docketing system impeded the posting of documents. Joint Petitioners submitted the intervention petition on June 6, 2008 and performed due diligence by cooperating with NRC staff to rectify the consequent problems. Joint Petitioners submit that the intervention petition is timely on the basis of the record and on the basis of the law.

Respectfully submitted,

Louis A. Zeller
Blue Ridge Environmental Defense League
PO Box 88
Glendale Springs, NC 28629
(336) 982-2691 (336) 977-0852
BREDL@skybest.com

July 18, 2008

(1)

----- Original Message -----
From: "bredl" <bredl@skybest.com>
To: <hearingdocket@nrc.gov>
Sent: Saturday, June 07, 2008 12:42 AM
Subject: Re: EIE document available: Petition and request for hearing

To: NRC
From: Louis Zeller

I filed a petition to intervene tonight which seemed to take a long time to be delivered. I hit the send button before 12:00 midnight but it shows arrive 7 minutes later. I did get finally this confirmation notice, thank you. A subsequest submittal of additional declarations is taking even longer. The normal signature screen appears but it does not respond to a mouse click as it normally does. I've never had any problems with your efile system before and I like it very much. I just want to be sure my petition was received on time. Thank you.

----- Original Message -----
From: <hearingdocket@nrc.gov>
To: <hearingdocket@nrc.gov>; <aslbp_hlw_adjudication@nrc.gov>; <OCAAMAIL@NRC.GOV>; <bredl@skybest.com>; <bredl@skybest.com>; <klw@nrc.gov>; <maria.webb@pillsburylaw.com>; <ejvigluicci@tva.gov>; <savance@tva.gov>; <mcs4@nrc.gov>; <tpr@nrc.gov>; <cmp@nrc.gov>; <OCAAMAIL@nrc.gov>; <esn@nrc.gov>; <pam3@nrc.gov>; <linda.lewis@nrc.gov>; <mlemoncelli@morganlewis.com>; <elj@nrc.gov>; <aph@nrc.gov>; <hearingdocket@nrc.gov>; <robert.haemer@pillsburylaw.com>; <nsg@nrc.gov>; <lgorenflo@gmail.com>; <jsg1@nrc.gov>; <rll@nrc.gov>; <mfreeze@morganlewis.com>; <sfrantz@morganlewis.com>; <mhdunn@tva.gov>; <hacooper@tva.gov>; <sburdick@morganlewis.com>; <seb2@nrc.gov>; <sara@cleanenergy.org>
Sent: Saturday, June 07, 2008 12:07 AM
Subject: EIE document available: Petition and request for hearing

MESSAGE FROM THE OFFICE OF THE SECRETARY, NUCLEAR REGULATORY COMMISSION

Re: NRC Hearing Docket Bellefonte Units 3 and 4 52-014 and 015-COL

The Office of the Secretary has received a document entitled

'Petition and request for hearing'

that was submitted by Louis A Zeller who is affiliated with Blue Ridge Environmental Defense League.

It is intended for inclusion in the referenced docket. It was submitted through the NRC's Electronic Information Exchange (EIE) system and arrived on 06/07/2008 00:07:28.

The file(s) associated with this submission comprise 10351 KB

As a hearing participant you are entitled to view and/or retrieve this document by visiting the following web link:

https://eie.nrc.gov/cgi-bin/eieone.exe?f=retrieve&docid=793

The document will remain available through this link for 14 days after which it will be removed from the EIE system. Not later than 3 days from the date of this message the document will also be available through NRC's Electronic Hearing Docket (EHD) web sites, under the above referenced Hearing Docket. The web links for these site are:

For non-protective order file (POF)documents related to the High Level Waste Hearing:
http://hlwehd.nrc.gov/public_hlw-ehd

For non-POF documents related to Reactors, Materials and other hearings:
http://ehd.nrc.gov/ehd_proceeding

For POF documents associated with any hearing, please utilize the web address provided by the Office of the Secretary to those authorized to access POF materials in that proceeding.

Receipt of this message constitutes completion of service of this filing.

(2)

----- Original Message -----
From: bredl
To: Emile Julian
Sent: Tuesday, June 10, 2008 10:33 AM
Subject: Re: 2 BREDL submissions

Mr. Julian,

Thank you for providing additional instructions for the submission of our petition. I completed the requested changes and submitted the document to you late last night. However, I am uncertain the resubmitted document was received by you. Today I received no acknowlegment. I have just now again submitted the petition to you as instructed. There may still be a problem because, after a delay, I received the following message (below). I was connected to the Internet, there could be no typing error because I keep the EIE web address as a "favorite." I cannot rule out website problems. Please let me know if you have received either last night's ot this morning's submission. Thank you, I appreciate your help in working this out.

Sincerely,

Louis Zeller
Blue Ridge Environmental Defense League
BREDL@skybest.com
(336) 982-2691 office
(336) 977-0852 cell

Internet Explorer cannot display the webpage

Most likely causes:

- You are not connected to the Internet.
- The website is encountering problems.
- There might be a typing error in the address.

What you can try:

Diagnose Connection Problems

More information

----- Original Message -----
From: Emile Julian
To: bredl@skybest.com
Cc: Hearing Docket ; ASLBP_HLW_Adjudication Resource ; OCAAMAIL Resource ; bredl@skybest.com ; bredl@skybest.com ; Kathryn Winsberg ; maria.webb@pillsburylaw.com ; ejvigluicci@tva.gov ; savance@tva.gov ; Maxwell Smith ; Tom Ryan ; Christine Pierpoint ; OCAAMAIL Resource ; Evangeline Ngbea ; Patrick Moulding ; Linda Lewis ; mlemoncelli@morganlewis.com ; Emile Julian ; Ann Hodgdon ; Hearing Docket ;

robert.haemer@pillsburylaw.com ; Nancy Greathead ; lgorenflo@gmail.com ; Joseph Gilman ; Rebecca Giitter ; mfreeze@morganlewis.com ; sfrantz@morganlewis.com ; mhdunn@tva.gov ; hacooper@tva.gov ; sburdick@morganlewis.com ; Sara Brock ; sara@cleanenergy.org ; Kenny Nguyen
Sent: Monday, June 09, 2008 11:52 AM
Subject: FW: 2 BREDL submissions

Mr. Zeller,

The Office of the Secretary has received your petition to intervene in the Bellefonte proceeding. However, the NRC document experts (please see attached e-mails) have advised that the majority of the petition is unacceptable for inclusion in the NRC ADAMS record system. We will consider the time of submission of the petition for docketing purposes, but docketing cannot take place until we have received a replacement petition. Kindly resubmit the petition as one document scanned from the paper copies of all documents submitted separately. In scanning please follow the NRC document guidance to which you were directed when we issued you a digital certificate. At a minimum, the resolution should be set to 300 dpi (or 300 ppi) and each page as part of the PDF rendering process should be OCRed to produce hidden but searchable text. The rendered petition in PDF form should be submitted via our e-filing system.

Please note a few additional items. The signature page of the Certificate of Service is missing. Please include it in your resubmission. Also, please select the public availability option and not the protective order option on the submission form when sending your replacement. Your submission is considered a public document, and the software used in the submission process will generate a service list. By selecting the public availability option you will not have to check off names on the service list as done with the submission you provided. Once we receive you resubmission, we will continue with its processing and inclusion in the Electronic Hearing Docket folder for the proceeding.

Emile L. Julian
Assistant for Rulemakings
And Adjudications
Office of the Secretary, NRC
301-415-1966

From: Kenny Nguyen
Sent: Monday, June 09, 2008 10:34 AM
To: Tom Ryan; Emile Julian; Rebecca Giitter
Cc: Adetutu Canty; Susan Hicks; Michael Collins
Subject: RE: 2 BREDL submissions

Tom,

RAS 793 contains jpeg images scanned at 100dpi, PDFs scanned at 150dpi and are not text searchable. The PDFs generated from native apps. do not have fonts embeded.

As for RAS 794, most, if not all PDFs were scanned at 72dpi and are not text searchable.

Thanks,
Kenny Nguyen
IT Specialist/Project Officer
301-415-2046

From: Tom Ryan
Sent: Saturday, June 07, 2008 9:25 AM
To: Emile Julian; Rebecca Giitter
Cc: Adetutu Canty; Susan Hicks; Kenny Nguyen
Subject: 2 BREDL submissions

Emile and Rebecca, Two EIE submissions came in early Sat, 7 Jun directed to the Bellefonte hearing. They are RAS #'s 793 and 794.

Both are incorrectly marked as 'non-publicly available' submissions even though 1) they are clearly intended as public submissions and 2) all names on the service lists have been checked.

Both submissions contain multiple attachments and, in the case of the second submission there are 42 or 43 attachments each of which will clearly fail to meet Agncy pre-flight standards. It also appears some of those in the first submission are deficient as well.

Susie and Grace, it may make sense to hold these two for a bit on Monday until you get some specific direction from SECY on how to handle them.

Thanks.

(3)

----- Original Message -----
From: bredl
To: Linda Lewis
Cc: Rebecca Giitter ; Emile Julian ; Hearing Docket
Sent: Friday, June 20, 2008 4:20 PM
Subject: Re: Question regarding re-submission of BREDL documents

To: Linda Lewis, Emile Julian et al
From: Louis Zeller
Re: Questions...

As promised, today I sent to you a newly concatenated part 3 of the multiple declarations which had been sent previously as a single document. Today's document was only 10.49 megabytes in size (well under your 15 MB limit) but, according to the instant reply, I believe this may still be too large for your system. Therefore, I will break it down into 6 documents; this would make them Parts 3, 4, 5, 6, 7 & 8 of our petition.

Thank you.

----- Original Message -----
From: Linda Lewis
To: BREDL@skybest.com
Cc: Rebecca Giitter ; Emile Julian ; Hearing Docket
Sent: Monday, June 16, 2008 3:37 PM
Subject: Question regarding re-submission of BREDL documents

Mr. Zeller,

Please refer to my email of 6/12/08 (copy below).

We have not received a response regarding submission of the remaining documents. We would like to have all information available as soon as possible. Could you please let us know if you intend to submit them, as one document in pdf format (as discussed with Emile Julian).

Thank you.

- -

Mr. Zeller,

This is a follow-up to voice message I just left for you.

We received two re-submissions, sent at 7:35pm and 7:45pm yesterday evening:
(part 1) BREDL's Petition and Certificate of Service and,
(part 2) Notice of Appearance/Barczak, Exhibit A/Trovato, CV/Makijani, and Declaration/Makhijani.

Not yet received are the multiple Declarations that were included in your original submission. Therefore the re-submission is incomplete. Will you be submitting the additional documents?

Linda Lewis
Rulemakings and Adjudication Staff
Office of the Secretary
301-415-1675

(4)

----- Original Message -----
From: bredl
To: Linda Lewis
Cc: rebecca.glitter@nrc.gov ; Emile Julian ; Hearing Docket
Sent: Friday, June 20, 2008 5:51 PM
Subject: Re: Question regarding re-submission of BREDL documents...part 2

To: Linda Lewis, Emile Julian et al
From: Louis Zeller
Re: Questions...part 2

I have now sent to you Petition parts 3, 4, 5, 6 & 7 for Docket No. 52-014 and 52-015-COL for Bellefonte Units 3 and 4.

By dividing the declarations of standing into 5 parts (not 6), they varied in size from 6.17 MB to 6.78 MB, based on my PDF program. The NRC notice of document submission success said that the files associated ranged in size from 7235 to 8157 KB, FYI.

Again, thank you all.

----- Original Message -----
From: bredl
To: Linda Lewis
Cc: Rebecca Giitter ; Emile Julian ; Hearing Docket
Sent: Friday, June 20, 2008 4:20 PM
Subject: Re: Question regarding re-submission of BREDL documents

To: Linda Lewis, Emile Julian et al
From: Louis Zeller
Re: Questions...

As promised, today I sent to you a newly concatenated part 3 of the multiple declarations which had been sent previously as a single document. Today's document was only 10.49 megabytes in size (well under your 15 MB limit) but, according to the instant reply, I believe this may still be too large for your system. Therefore, I will break it down into 6 documents; this would make them Parts 3, 4, 5, 6, 7 & 8 of our petition.

Thank you.

----- Original Message -----
From: Linda Lewis
To: BREDL@skybest.com
Cc: Rebecca Giitter ; Emile Julian ; Hearing Docket
Sent: Monday, June 16, 2008 3:37 PM
Subject: Question regarding re-submission of BREDL documents

Mr. Zeller,

Please refer to my email of 6/12/08 (copy below).

We have not received a response regarding submission of the remaining documents. We would like to have all information available as soon as possible. Could you please let us know if you intend to submit them, as one document in pdf format (as discussed with Emile Julian).

Thank you.

- -

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(part 2) Notice of Appearance/Barczak, Exhibit A/Trovato, CV/Makijani, and Declaration/Makhijani.

Not yet received are the multiple Declarations that were included in your original submission. Therefore the re-submission is incomplete. Will you be submitting the additional documents?

Linda Lewis
Rulemakings and Adjudication Staff
Office of the Secretary
301-415-1675

(5)

----- Original Message -----
From: Linda Lewis
To: BREDL@skybest.com
Cc: Rebecca Giitter ; Emile Julian ; Hearing Docket
Sent: Monday, June 23, 2008 5:30 PM
Subject: Re-submission of BREDL documents

Mr. Zeller,

We have received and accepted your 5-part re-submission of the Declarations. Thank you for taking care of the final part of your filing. They have been processed and along with the Petition and previous supporting documents, added as a package, #ML081750640.

- -

Mr. Zeller,

Please refer to my email of 6/12/08 (copy below).

We have not received a response regarding submission of the remaining documents. We would like to have all information available as soon as possible. Could you please let us know if you intend to submit them, as one document in pdf format (as discussed with Emile Julian).

Thank you.

- -

Mr. Zeller,

This is a follow-up to voice message I just left for you.

We received two re-submissions, sent at 7:35pm and 7:45pm yesterday evening:
(part 1) BREDL's Petition and Certificate of Service and,
(part 2) Notice of Appearance/Barczak, Exhibit A/Trovato, CV/Makijani, and Declaration/Makhijani.

Not yet received are the multiple Declarations that were included in your original submission. Therefore the re-submission is incomplete. Will you be submitting the additional documents?

Linda Lewis
Rulemakings and Adjudication Staff
Office of the Secretary
301-415-1675

6/10

Emile Julian

each submission - Signature
"URL"

change end # web address

If used favorite? - problem.
✓ not problem. used html

file < 50 MB?
✓ 38.84 MB

Selection?
✓ OK

Doc Title AGAIN ✓
"resb.petition" same result!

(OK) Upon posted it on sixth.
They: Reviewing what did submit
+ may forward to ASLB

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

BEFORE THE LICENSING BOARD

In the Matter of	)	
	)	Docket Nos. 52-014, 52-015
Tennessee Valley Authority	)	
	)	ASLBP No. 08-864-02-COL-BD01
Bellefonte Nuclear Power Plant Units 3 and 4	)	July 18, 2008

CERTIFICATE OF SERVICE

I hereby certify that copies of the July 18, 2008 RESPONSE OF THE BLUE RIDGE ENVIRONMENTAL DEFSENSE LEAGUE, ITS CHAPTER BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM AND THE SOUTHERN ALLIANCE FOR CLEAN ENERGY TO THE LICENSING BOARD'S JULY 9TH REQUEST FOR ADDITIONAL BRIEFING CONCERNING TIMELINESS OF INTERVENTION PETITION was served this day on the following persons via Electronic Information Exchange.

US Nuclear Regulatory Commission
Office of the Secretary
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
(E-mail: hearingdocket@nrc.gov)

Office of Commission Appellate Adjudication
Mail Stop: O-16C1
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: ocaamail@nrc.gov)

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(Email: gpb@nrc.gov)

Administrative Judge
Dr. Anthony J. Baratta
Atomic Safety and Licensing Board Panel
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(Email: ajb5@nrc.gov)

Administrative Judge
Dr. William W. Sager
Atomic Safety and Licensing Board Panel
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(Email: wws1@nrc.gov)

Erica LaPlante, Law Clerk
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Mail Stop T-3F23
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: eal1@nrc.gov)

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(E-mail: jrund@morganlewis.com)

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Reduction Network
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John D. Runkle, Esq.
(E-mail: jrunkle@pricecreek.com)

Southern Alliance for Clean Energy
428 Bull Street, Suite 201
Savannah, Georgia 31401
Sara Barczak, Dir
(E-mail: sara@cleanenergy.org)

Signed this day in Glendale Springs, NC

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

July 18, 2008