October 2, 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'S RESPONSE TO THE APPLICANT'S MOTION FOR CLARIFICATION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the NRC staff ("Staff") responds to the Tennessee Valley Authority's ("Applicant") Motion for Clarification ("Motion"). For the reasons discussed below, the Staff agrees that clarification is needed regarding the scope of two of the admitted contentions.

BACKGROUND

On September 12, 2008, the Atomic Safety and Licensing Board ("Board") issued a Memorandum and Order, admitting the Blue Ridge Environmental Defense League ("BREDL") and the Southern Alliance for Clean Energy ("SACE") as Joint Intervenors and admitting four contentions. *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4) LBP-08-16, 67 NRC __ (slip op.) ("Order"). On September 22, 2008, the Applicant filed its Motion seeking clarification on the scope of two of the admitted contentions, Contentions NEPA-B and NEPA-N.

DISCUSSION

The Staff agrees that there is uncertainty regarding the scope of the admitted contentions. Thus, the Staff supports the Applicant's request that the Board clarify the scope of Contentions NEPA-B and NEPA-N.

I. Contention NEPA-B

As noted by the Applicant, the Board only admitted subparts (3) and (5) of Contention NEPA-B. Motion at 1; Order at 40. As admitted, the text of Contention NEPA-B reads:

> The ER does not adequately address the adverse impacts of operating two additional nuclear reactors on the fishery and aquatic resources of the Guntersville Reservoir and the vicinity of Bellefonte Nuclear Plant. In particular, the ER does not provide adequate data to sufficiently address the condition of resident potamodromous fish and freshwater mussels in the vicinity of the proposed intake point, Town Creek, and Guntersville Reservoir and the cumulative impacts on the aquatic resources in these areas from operation of the proposed new intake.

Order at Appendix A. The second sentence of this contention appears to limit the contention to only the intake structure. The Staff agrees with the Applicant that there are several other statements in the Order that support this interpretation. Motion at 2. However, subpart (3) of Contention NEPA-B never specifically mentions intake structures. Instead, it states that the Applicant's Environmental Report ("ER") "fails to assess the impacts of Bellefonte facility operations on aquatic resources in the area given the thirty-percent plus decline in local species since 1994 identified in the ER." Order at 37. This statement raises some confusion as to whether this portion of the contention applies to discharge as well as to the intake structure.

Subpart (3) appears to be rewritten as the first sentence of the admitted contention. The second sentence of Contention NEPA-B seems to narrow the scope of the first sentence to the "impacts on the aquatic resources in these area from operation of the proposed new intake." The Staff believes that this sentence properly narrows the entire contention to impacts associated with the intake.

II. Contention NEPA-N

Contention NEPA-N states:

> TVA's cost comparison is inadequate to satisfy the National Environmental Policy Act ("NEPA") or NRC regulations at 10 C.F.R. § 51.45(c) because it fails to provide reasonably up-to-date and accurate information regarding the estimated electrical generation costs of the proposed new nuclear power plant.

Order at Appendix A. The Staff agrees that there is some uncertainty whether Contention NEPA-N is limited solely to the cost-benefit analysis in Section 10.4 of the ER, or whether it also includes the cost component of the alternatives analysis in Section 9.2.3.3 of the ER. As the Motion points out, the language of the contention never directly mentions alternatives. Motion at 3. However, page 68 of the Order does specifically note that the "potential to affect the cost component of the alternatives analysis . . . outlined in ER section 9.2.3.3, is sufficient to demonstrate the potential materiality of that claim." Order at 68-69. Further, Contention NEPA-N cites 10 C.F.R. § 51.45(c), which, in part, requires "consideration of the economic, technical and other benefits and costs of the proposed action and its alternatives." Thus, it appears the Board intended NEPA-N to pertain both to the cost-benefit analysis in Section 10.4 of the ER and to the alternatives discussion in Section 9.2.3.3 of the ER.

As the Motion points out, however, the ultimate conclusion of Section 9.2.3.3 of the ER is that "neither a coal-fired, nor natural gas-fired plant, nor a combination of alternatives would be *environmentally preferable* to the proposed project." Motion at 3-4; ER at 9.2-38 (emphasis added). The conclusion in Section 9.2.3.3 of the ER further states that the combination of alternatives is "not economically preferable to the proposed project," but Contention NEPA-N does not challenge the basic conclusion of Section 9.2.3.3 that the proposed action is environmentally preferable. Consequently, the cost component of the alternatives analysis in Section 9.2.3.3 does not appear to be material to this proceeding.

CONCLUSION

For the foregoing reasons, the Staff supports the Applicant's Motion to provide clarification on the scope of contentions NEPA-B and NEPA-N.

Respectfully submitted,

/signed (electronically) by/
Jody C. Martin
Counsel for NRC Staff

Dated at Rockville, Maryland
this 2nd day of October, 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC Staff Response to "Applicant's Motion for Clarification," dated October 2, 2008, have been served upon the following persons by Electronic Information Exchange this 2nd day of October, 2008:

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