

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD PANEL  
BEFORE THE LICENSING BOARD**

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In the Matter of	)	
Tennessee Valley Authority	)	Docket Nos. 52-014, 52-015
Bellefonte Nuclear Power Plant	)	ASLBP No. 08-864-02-COL-BD01
Units 3 and 4	)	October 2, 2008
_____	)	

**INTERVENORS' REPLY TO TVA AND NRC STAFF ANSWERS  
REGARDING LATE-FILED CONTENTION NEPA-R**

Pursuant to 10 CFR § 2.309(h), the Blue Ridge Environmental Defense League with its chapter Bellefonte Efficiency and Sustainability Team and the Southern Alliance for Clean Energy hereby submit their Reply to the answers of the Tennessee Valley Authority and the Nuclear Regulatory Commission Staff to proposed Contention NEPA-R, formerly designated Contention 20 ("NEPA-R").

**Background**

On August 26, 2008, the Tennessee Valley Authority submitted to the Nuclear Regulatory Commission a request to reinstate construction permits CPPR-122 and CPPR-123 for Bellefonte Nuclear Plant Units 1 and 2 ("TVA Request"). On September 11, 2008 Intervenor's submitted "Petitioners' Late Filed Contention Regarding Tennessee Valley Authority's Failure to Comply with the National Environmental Policy Act," originally

cast as Contention 20 and, pursuant to ASLB order, redesignated NEPA-R (“NEPA-R”).

The contention states:

**CONTENTION NEPA-R: FAILURE OF TVA TO COMPLY WITH THE  
NATIONAL ENVIRONMENTAL POLICY ACT**

TVA’s application for a combined construction and operation license for the Bellefonte site fails to include the potential public safety and environmental impacts of two additional nuclear reactors designated Units 1 and 2. TVA’s August 26<sup>th</sup> letter<sup>1</sup> requesting reinstatement of NRC construction permits for Units 1 and 2 is an improper attempt to circumvent the requirements of the National Environmental Policy Act.

**Discussion**

The answers of TVA (“TVA Answer”) and NRC Staff (“NRC Answer”) filed September 25<sup>th</sup> do not object to the showing made by Intervenors’ pursuant to 10 CFR § 2.309(c) regarding non-timely filings. Rather, they center on the requirements of 10 CFR § 2.309(f)(1) and (f)(2) regarding the admissibility of proffered contentions. Intervenors’ reply will confine itself to addressing the latter requirements.

**10 CFR § 2.309(f)(2)**

NRC argues that Intervenors did not directly address requirements in 10 CFR § 2.309(f)(2). NRC Answer at 6. On the contrary, Contention NEPA-R is based in part on documents available at the time the petition was filed; i.e., the Bellefonte COLA

Environmental Report. The Intervenors’ late-filed contention states, “The COLA ER

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<sup>1</sup> Ashok S. Bhatnagar, Senior Vice President Nuclear Generation Development and Construction, TVA to Eric J. Leeds, US Nuclear Regulatory Commission, Re: Tennessee Valley Authority (TVA)—Bellefonte Nuclear Plant Units 1 and 2—Request to Reinstate Construction Permits CPPR-122 (Unit 1) and CPPR-123 (Unit 2), August 26, 2008

does not contain any discussion of environmental impact or options regarding Bellefonte Units 1 and 2, therefore it is fatally deficient.” NEPA-R at 3. The subsequent two-page discussion of the late-filed contention details these omissions in the Bellefonte Environmental Report. NRC admits that intervenors “could not have timely filed Proposed Contention NEPA-R, for it responds to TVA’s August 26, 2008 request for reinstatement of the CPs for Units 1 and 2.” In other words, the information upon which the contention is based was not previously available. The date of filing for NEPA-R was September 11, 2008, sixteen days after the TVA’s reinstatement request letter to the Commission. The subheading “NON-TIMELY FILING” enumerates and addresses the eight factors listed in 10 CFR § 2.309(c). NEPA-R at 10 through 13.

10 CFR § 2.309(f)(1)

Next, NRC Staff argue that the proposed Contention NEPA-R fails to satisfy the requirements of 10 CFR § 2.309(f)(1) because completion of Units 1 and 2 is speculative. NRC Answer at 7. However, the proposal to construct Bellefonte Units 1 and 2 could hardly be less speculative. NRC Staff do not dispute that an application to construct and operate the units was submitted by TVA in 1973. NEPA-R at 9. In fact, Units 1 and 2 are 90% and 58% complete, respectively. Intervenor cite TVA’s reinstatement request, federal regulations and case law regarding segmentation and cumulative impacts to show that action on Units 1 and 2 is reasonably foreseeable and, therefore, that the impacts must be addressed in the environmental documents for Units 3 and 4. Moreover, NRC cites TVA’s letter of August 26<sup>th</sup> which states the reinstatement of Units 1 and 2 is “establish[ing], *with a relative degree of certainty*, the regulatory framework and

licensing basis that would be used...” NRC Answer at 8 (emphasis added). Relative certainty for TVA is also relative certainty for the Commission.

TVA’s Answer states that proposed Contention NEPA-R presents no litigable issue; specifically, that Intervenors need to show that a contention is within the scope of the proceeding and that there is a genuine dispute with regard to a material issue. TVA Answer at 2. Intervenors have done so. The principal opposition argument raised in TVA’s answer is that the applicant has not actually proposed to “complete” Units 1 and 2. The rationales offered include that this is a “unique licensing undertaking” and that “TVA will best be able to determine the regulatory framework and licensing basis...after a determination of whether the previously-applicable construction permits can be reinstated.” TVA Answer at 3. First, in this context a “unique licensing undertaking” has no practical meaning; every Commission license is unique. Second, what is best for TVA in this proceeding is no more important than what is best for the NRC, for intervenors or, most important, for the general public.

The Applicant’s principal argument depends on a slender reed; i.e., an assertion that TVA does not really plan to move ahead with Units 1 and 2. In support of its position, TVA cites the *McGuire* decision.<sup>2</sup> However, that case centered on whether a

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<sup>2</sup> Duke Energy Corporation, CLI-02-14, 55 NRC 278 (2002) This decision interprets admissibility in light of post-1976 *Kleppe v. Sierra Club* (427 U.S. 390) case law. The Commission held:

Our collective reading of the post-*Kleppe* rulings suggests, as the Board indicated, that to bring NEPA into play, a possible future action must at least constitute a "proposal" pending before the agency (*i.e.*, ripeness), and must be in some way interrelated with the action which the agency is actively considering (*i.e.*, nexus). The United States Court of Appeals for the District of Columbia Circuit said as much in *National Wildlife Federation v. FERC*:  
*see footnote continued page 5 →*

license renewal could be linked to a license amendment to use a new type of fuel; the Commission held that an NRC licensing proceeding is not an occasion for far-reaching speculation. The instant case differs in significant ways. Bellefonte Units 1 and 2 not only have a license, construction began decades ago. The ripeness of TVA's proposal is in an advanced stage. It can no longer be construed a "future action" as contemplated in *McGuire*.<sup>3</sup>

Further, a determination of cumulative impacts depends on whether there is interdependence. As stated in proposed Contention NEPA-R, interdependent, shared-in-common structures, systems and components—water intake and discharge facilities, transmission switchyards and cooling towers—are facts on the ground at the Bellefonte site.

TVA's position on segmentation incorrectly claims NEPA-R lacks basis in law and in fact. TVA Answer at 7. Independent utility of Bellefonte Units 1-2 and Units 3-4 is not possible because both structures would utilize, for example, cooling towers and river intake structures and would draw from the same body of water. The granting of a COL for Units 3 and 4 without any consideration of Units 1 and 2 may foreclose options at Units 3 and 4 which would later be difficult or impossible for the Commission to implement.

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*"Kleppe . . . clearly establishes that an EIS need not delve into the possible effects of a hypothetical project, but need only focus on the impact of the particular proposal at issue and other pending or recently approved proposals that might be connected to or act cumulatively with the proposal at issue."* 912 F.2d 1471, 1478 (D.C. Cir. 1990 (emphasis in the original).

<sup>3</sup> It is fair to point out that, the holding in *McGuire* notwithstanding, Duke Energy did subsequently apply for and receive a license amendment to test the new fuel. In other words, the intervenors' contention was not at all speculative.

## CONCLUSION

TVA's request to reinstate raises the issues of omission of cumulative impacts and segmentation of NEPA, both of which are prohibited by law. As demonstrated above, this contention satisfies the balance of the Nuclear Regulatory Commission's criteria for late-filed contentions; therefore, Intervenors respectfully request that Contention NEPA-R be admitted.

Respectfully submitted,

A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

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October 2, 2008

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the INTERVERORS' REPLY TO TVA AND NRC STAFF ANSWERS REGARDING LATE-FILED CONTENTION NEPA-R were served this day on the following persons via Electronic Information Exchange.

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