

**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)	ASLBP No. 08-864-02-COL-BD01
Units 3 and 4)	January 2, 2009
_____)	

**JOINT PETITIONERS' REPLY TO ANSWERS OF NRC STAFF AND TVA
REGARDING REQUEST TO TIMELY AMEND CONTENTION NEPA-N**

The Blue Ridge Environmental Defense League, its chapter Bellefonte Efficiency and Sustainability Team and the Southern Alliance for Clean Energy (“Joint Petitioners”) hereby reply to the answers of NRC Staff and the Tennessee Valley Authority to the Petitioners’ request to amend Contention NEPA-N.

Background

On December 15, 2008, Joint Petitions submitted a Request for Leave to Timely Amend Contention NEPA-N (“Request”). In response, NRC Staff filed on December 23rd (“NRC Answer”) and TVA filed on December 24th (“TVA Answer”).

Discussion

First, Joint Petitioners submitted their request to amend Contention NEPA-N in accordance with 10 CFR § 2.309(f)(2). In accordance with the relevant section, Petitioners stated that the amended contention was timely because it was submitted

within 30 days of the letter from TVA to the Atomic Safety and Licensing Board (ASLB).¹ The letter of November 13th was not previously available. Further, as stated in Joint Petitioners request, TVA's updated cost estimates, although different than those provided in the ER, remain inaccurate and therefore provide no basis for the assertion that alternatives are not cost-effective. Thus, Joint Petitioners complied with the three part test for availability, materiality and timeliness.

Second, Joint Petitioners had no need to address the eight factors listed in 10 CFR § 2.309(c) because the Request was filed in a timely fashion; i.e., it is not a late filed contention.

Third, Joint Petitioners had no need to address the requirements of 10 CFR § 2.309(f)(1) because the Request was not a request for hearing or petition for leave to intervene. In fact, Joint Petitioners have already been granted leave to intervene. As such, Joint Petitioners are now rightly Joint Intervenors.

Moreover, the citation of *Private Fuel Storage, LLC* by NRC Staff does not apply to amended contentions. NRC Answer at 3. In fact, in the cited case, the Commission ruled in favor of the intervenor by admitting a late-filed contention.²

¹ November 13, 2008 Letter from Stephen J. Burdick, counsel for TVA, to G. Paul Bollwerk, III, et al., re: "Board Notification of Update to Environmental Report Cost Information" (ML083181253) (November 5, 2008, Revision).

² The relevant passage states: "The NRC regulations require that an admissible contention consist of: (1) a specific statement of the issue to be raised or controverted; (2) a brief explanation of the bases for the contention; (3) a concise statement of the alleged facts or expert opinion supporting the contention on which the petitioner intends to rely in proving the contention at any hearing; and (4) sufficient information to show that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.714(b)(2). Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 248-49 (1996); Georgia Tech Research Reactor, 42 NRC at 117-18. A failure to comply with any of these requirements is grounds for dismissing the contention. Arizona Pub. Serv. Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-156 (1991)." See Independent Spent Fuel Storage Installation, CLI-99-10, 49 NRC 318, 325 (1999)

The Joint Petitioners' Request is not procedurally defective. TVA states, "The sources relied upon in the Request and the accompanying Makhijani Declaration are more than 30 days older than the Request." TVA Answer at 3. The revised cost estimates were dated November 5th, but that document was not provided to the parties until November 13, 2008.

In its Answer, TVA states, "In response to the contention, TVA submitted the November 5 Letter, which provides a planned revision of the ER cost information." TVA Answer at 2. Indeed, the Applicant's cost information is a moving target. In the interest of simple fairness, the contention request should be admitted to provide a full and complete hearing on all the cost data which has been or may yet be proffered by TVA in the past, at present and in the future.

Even if the Request were to be considered "late-filed," the principle factor in such matters is good cause related to the timing of the request. The triggering event for the Joint Intervenors in this matter was the Letter from TVA to ASLB notifying the parties of the Applicant's revised cost estimates. *Id.* In a ruling on *Private Fuel Storage LLC*, the Atomic Safety and Licensing Board found good cause for admitting the late-filed contention under the now-obsolete 10 CFR § 2.714(a)(1) by balancing the five late-filing factors in support of admission. *See* LBP-01-37 December 13, 2001.³

³ The Atomic Safety and Licensing Board ruled: "In this instance, concerning the first and most significant section 2.714(a)(1) factor --good cause for late-filing -- the State has established that this element rests on the admissibility side of the balance, at least with respect to the State's concerns regarding a September 11-type terrorist airliner attack. Good cause exists for such a filing, both as to the "trigger" and "timing" portions of this factor...Accordingly, we conclude that a balancing of the five late-filing factors in section 2.714(a)(1) supports admission of contention...." *Private Fuel Storage LLC*, ASLBP No. 97-732-02-ISFSI, LBP-01-37, December 13, 2001. It is well to note that the Board ultimately rejected the contention as an impermissible challenge to regulatory requirements, but referred to the Commission for adjudication.

Conclusion

Joint Petitioners have submitted a valid, admissible amended contention. TVA's cost estimates for the proposed nuclear plants at Bellefonte and practical energy alternatives do not provide basis for TVA's assertion that alternatives are not cost-effective. For the foregoing reasons, Joint Petitioners' Amended Contention NEPA-N should be admitted.

This Reply is filed more than ten days after the Answers filed by NRC Staff and TVA. The reason for this is that severe wind storms on December 31st caused an extended electric power failure at the offices of the Blue Ridge Environmental Defense League in Glendale Springs, North Carolina. We immediately contacted counsel for TVA and the NRC. TVA counsel Steven Franz said they would have no objection to our filing by today. We left a message for NRC counsel Jody Martin. In his reply via telephone today, he stated the NRC would have no objection to our filing today.

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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January 2, 2009

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CERTIFICATE OF SERVICE

I hereby certify that copies of the JOINT PETITIONERS' REPLY
TO ANSWERS OF NRC STAFF AND TVA REGARDING
REQUEST TO TIMELY AMEND CONTENTION NEPA-N
were served this day on the following persons via Electronic Information Exchange.

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January 2, 2009