

**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 12, 2009
_____)	

**JOINT INTERVENORS' RESPONSE TO TVA's
JANUARY 6th BOARD NOTIFICATION**

In accordance with the Atomic Safety and Licensing Board (“ASLB”) Panel’s Order of January 6, 2009, the Blue Ridge Environmental Defense League, its chapter Bellefonte Efficiency and Sustainability Team and the Southern Alliance for Clean Energy (“Joint Intervenors”) hereby respond to the Tennessee Valley Authority’s (“TVA’s”) Board Notification of January 6, 2009. TVA is incorrect in arguing that the issues raised by a petition in the Victoria County, Texas combined license application proceeding¹ should not be addressed in this case. Further, the ASLB should grant the relief requested by Joint Intervenors and hold TVA’s Bellefonte license application in abeyance pending completion of the design certification ruling for the AP 1000 design upon which it relies. If the ASLB decides it does not have the authority to decide the issues it should refer them to the Commission.

¹ Exelon Nuclear Texas Holdings, LLC (Victoria County Station, Units 1 and 2), Docket Nos. 52-031-COL and 52-032-COL

Background

On November 18, 2008 Joint Intervenors filed Intervenors' Request ("Request"), asking the Board to consider arguments made by a prospective intervenor in the Victoria license application which challenged the validity of a 2007 policy statement and a 2008 decision in the Shearon Harris case (CLI-08-15) which permit the simultaneous conduct of combined license (COLA) proceedings and design certification rulemakings. On January 6, 2009, TVA submitted a Board Notification stating that the Joint Intervenors' request is moot because the Commission will take no action on the Victoria County petition. TVA attached the NRC Secretary's December 30, 2008 letter regarding the Victoria County petition.

Discussion

The Secretary's Letter of December 30th regarding the Victoria County COLA does not render the Joint Intervenors' November 18th Request moot. In support of its argument for mootness, TVA's Notice of January 6th cites the following: "[T]he Commission has explained, in an adjudicatory context, that there is no basis to hold in abeyance a notice of hearing pending completion of the design certification rulemaking for the referenced design."² (emphasis added) However, the Commission's decision in this matter refers to a case in which a petitioner requested the proceeding be held in abeyance *before* a notice of hearing had been published. The Commission's decision turned on the fact that staff docketing decisions are outside the scope of adjudicatory proceedings. Therefore, it is incorrect for TVA to state that the Intervenors' Request has

² TVA January 6 letter to ASLB quoting NRC Secretary's December 30th letter re: Exelon Nuclear Texas Holdings, LLC (Victoria County Station, Units 1 and 2), Docket Nos. 52-031-COL and 52-032-COL

no basis. First, the action brought by the petitioner in the Victoria County Station case was taken before the Commission had issued a notice of opportunity for a hearing; in the Bellefonte case, a hearing notice has already been issued. Second, in the Victoria County Station case, the applicant has withdrawn its reactor design; at Bellefonte, TVA continues to base its application on the AP-1000 reactor. Third, the Commission's letter of December 30th is inconclusive. The suspension by the NRC Staff of its review of the Victoria County Station license application holds open the door to further action predicated on the prospective publication of a hearing notice.

Further, while the Secretary may have had the authority to deny the Victoria petition because no docketing decision had been issued, the Secretary did not have authority to rule on the merits of the same issues in this case because a hearing notice has already issued. Only the Commissioners can decide whether the 2007 policy statement or CLI-08-15 are valid under the law.

Finally, to the extent that the Secretary's December 30th decision relied on CLI-08-15, it failed to respond to the arguments made by the petitioners in the Victoria County Station case regarding the invalidity of CLI-08-15. Instead, it applied CLI-08-15 without providing any analysis. Joint Intervenors seek reconsideration of CLI-08-15 because the decision relies on a policy statement that has been demonstrated to be invalid and inconsistent with the NRC's Part 52 regulations.

Conclusion

As stated above, the Joint Intervenors' Request is not moot. Therefore it should be ruled on. While the ASLB may not have authority to decide the legality of the 2007

policy statement or CLI-08-15, it should not dismiss Joint Intervenors request, but should instead refer it to the Commissioners.

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 12, 2009

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CERTIFICATE OF SERVICE

I hereby certify that copies of the JOINT INTERVENORS' RESPONSE TO TVA's JANUARY 6th BOARD NOTIFICATION were served this day on the following persons via Electronic Information Exchange.

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Signed this day in Glendale Springs, NC



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