

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Dr. Anthony J. Baratta
Dr. William W. Sager

In the Matter of

TENNESSEE VALLEY AUTHORITY

(Bellefonte Nuclear Power Plant Units 3 and 4)

Docket Nos. 52-014-COL and 52-015-COL

ASLBP No. 08-864-02-COL-BD01

January 16, 2009

MEMORANDUM AND ORDER
(Ruling on Joint Intervenors Request
Regarding Design Certification)

On November 18, 2008, the Blue Ridge Environmental Defense League (BREDL) and the Southern Alliance for Clean Energy (SACE) (collectively Joint Intervenors) filed a request with the Licensing Board asking that we “consider the legal and factual issues regarding the pending design certification rulemaking for the Westinghouse AP-1000 reactors and its impact on the extant proceeding.” [Joint Intervenors] Request (Nov. 18, 2008) at 1 [hereinafter Joint Intervenors Request]. Both applicant Tennessee Valley Authority (TVA) and the NRC staff have filed responses objecting to this request. See Applicant’s Answer to Intervenor’s Request (Nov. 26, 2008); NRC Staff Response to Intervenor’s Request (Nov. 26, 2008). For the reasons set forth below, we are unable to grant Joint Intervenors request.

Joint Intervenors request appears to concern what it perceives as the lack of a final design certification for the Westinghouse AP1000 reactor given the pendency before the agency of revisions 16 and 17, see Letter from Robert Sisk, Manager, Licensing and Customer Interface, Regulatory Affairs and Standardization, Westinghouse Electric Co., to U.S. Nuclear

Regulatory Commission (Sept. 22, 2008) (ADAMS Accession No. ML083230166), to the revision 15 version of the AP1000 design certified by the Commission in January 2006, see AP1000 Design Certification, 71 Fed. Reg. 4464 (Jan. 27, 2006), in concert with “a Nuclear Regulatory Commission policy statement which permits a parallel rulemaking process, separating reactor design issues from construction and operation questions,” Joint Intervenors Request at 2 & n.1 (footnote omitted) (citing Conduct of New Reactor Licensing Proceedings, Final Policy Statement, 72 Fed. Reg. 20,963 (April 17, 2008)). In that regard, they indicate they share the concerns expressed in a November 3, 2008 petition, which was filed relative to the pending, staff-docketed combined operating license application of Exelon Generation for its proposed two-unit Victoria County Station facility, asserting that the Commission’s April 2008 policy statement violates section 189a of the Atomic Energy Act of 1954, 42 U.S.C. § 2239a, and 10 C.F.R. Part 52. See id. & n. 2 (citing Texans for a Sound Energy Policy’s [(TSEP)] Petition to Hold Docketing Decision and/or Hearing Notice for Victoria Combined License Application in Abeyance Pending Completion of Rulemaking on Design Certification Application for Economically Simplified Boiling Water Reactor (Nov. 3, 2008)).

Section 2.323(b) of title 10 of the Code of Federal Regulations requires that a motion before a presiding officer “state with particularity the grounds and the relief sought.” If it were Joint Intervenors intent to seek the admission of a new contention regarding the impact of the pending AP1000 design certification revisions or reconsideration of some aspect of our prior decision regarding the admission of their previously proffered contentions, there are mechanisms available, of which they clearly are aware, by which they could have sought such relief. See 10 C.F.R. §§ 2.309(c)(1), (f)(2), 2.323(e); see also [Joint Intervenors] Late-Filed Contention Regarding [TVA] Failure to Comply with the National Environmental Policy Act (Nov. 18, 2008); [Joint Intervenors] Answer Opposing TVA’s Motion for Reconsideration

(Nov. 24, 2008). They have failed, however, to invoke any of those mechanisms. Moreover, as TVA noted in a recent filing, see Letter from Stephen J. Burdick, TVA Co-Counsel, to the Licensing Board at 1 (Jan. 6, 2008); see also NRC Staff's Response to [TVA] Board Notification (Jan. 12, 2009) at 1, their reliance upon the Victoria County Station petition is unavailing. In that instance, the Commission denied the relief sought, indicating that the petitioner should seek to proffer contentions regarding the application, see Letter from Andrew L. Bates, Acting Secretary of the Commission, to Diane Curran and James Blackburn, Jr., Counsel to TSEP (Dec. 30, 2008) at 1-2, a step Joint Intervenors have failed to take.¹

¹ Joint Intervenors also ask that the Board refer their request to the Commission. See Joint Intervenors' Response to TVA's January 6th Board Notification (Jan. 12, 2009) at 1. Given the Commission's direction to the Victoria County petitioner, i.e., to file appropriate contentions, we see no basis for referring Joint Intervenors request, which includes no contentions, to the Commission.

Having failed to invoke any mechanism by which this Board could consider their concern and grant the relief sought, we must deny Joint Intervenors November 18, 2008 request.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

/RA/

Anthony J. Baratta
ADMINISTRATIVE JUDGE

/RA by E. Roy Hawkens for:/

William W. Sager
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 16, 2009

² Copies of this memorandum and order were sent this date by Internet e-mail transmission and the agency's E-Filing system to the counsel/representatives for (1) applicant TVA; (2) Joint Intervenors; and (3) the staff.

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NUCLEAR REGULATORY COMMISSION

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(Bellefonte Nuclear Power Plant -)
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON JOINT INTERVENORS REQUEST REGARDING DESIGN CERTIFICATION) have been served upon the following persons by the Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001

G. Paul Bollwerk, III, Chair
Administrative Judge
E-mail: gpb@nrc.gov

Dr. Anthony J. Baratta
Administrative Judge
E-mail: ajb5@nrc.gov

Dr. William W. Sager
Administrative Judge
E-mail: wws1@nrc.gov

Erica LaPlante, Law Clerk
E-mail: eal1@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16C1
Washington, DC 20555-0001

OCAA Mail Center
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15D21
Washington, DC 20555-0001

Kathryn L. Winsberg, Esq.
E-mail: klw@nrc.gov
Adam Gendelman, Esq.
E-mail: asq3@nrc.gov
Ann P. Hodgdon, Esq.
E-mail: aph@nrc.gov
Jody C. Martin, Esq.
E-mail: jcm5@nrc.gov
Patrick A. Moulding, Esq.
E-mail: pam3@nrc.gov
Joseph Gilman, Paralegal
E-mail: jsg1@nrc.gov
OGC Mail Center
E-mail: OGCMailCenter@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16C1
Washington, DC 20555-0001

Hearing Docket
E-mail: hearingdocket@nrc.gov

Docket Nos. 52-014-COL and 52-015-COL
LB MEMORANDUM AND ORDER (RULING ON JOINT INTERVENORS
REQUEST REGARDING DESIGN CERTIFICATION)

Morgan, Lewis & Bockius, LLP
Counsel for Tennessee Valley Authority
1111 Pennsylvania Ave., N.W.
Washington, DC 20004

Tennessee Valley Authority
Office of the General Counsel
400 W. Summit Hill Drive, WT 6A-K
Knoxville, TN 37902

Steven P. Frantz, Esq.
E-mail: sfrantz@morganlewis.com
Stephen J. Burdick, Esq.
E-mail: sburdick@morganlewis.com
Mauri Lemoncelli, Esq.
E-mail: mlemoncelli@morganlewis.com
Alvin H. Gutterman, Esq.
E-mail: agutterman@morganlewis.com
Jonathan M. Rund
E-mail: jrund@morganlewis.com

Edward J. Viglucci, Esq.
E-mail: ejviglucci@tva.gov
Scott A. Vance, Esq.
E-mail: savance@tva.gov

Pillsbury, Winthrop Shaw Pittman, LLP
2300 N. Street, NW
Washington, DC 20037

Eckert Seamans Cherin & Mellott, LLC
Counsel for Westinghouse Electric Company
600 Grant Street, 44th Floor
Pittsburg, PA 15219

R. Budd Haemer, Esq.
E-mail: robert.haemer@pillsburylaw.com
Maria D. Webb, Senior Energy Legal Analyst
E-mail: maria.webb@pillsburylaw.com

Barton Z. Cowan, Esq.
E-mail: teribart61@aol.com

Bellefonte Efficiency & Sustainability Team
185 Hood Drive
Crossville TN 38555

Blue Ridge Environmental Defense League,
Inc. (BREDL)
P.O. Box 88
Glendale Springs, NC 28629

Louise Gorenflo
E-mail: lgorenflo@gmail.com

Louis A. Zeller, Administrator and
Science Director
E-Mail: bredl@skybest.com

Docket Nos. 52-014-COL and 52-015-COL
LB MEMORANDUM AND ORDER (RULING ON JOINT INTERVENORS
REQUEST REGARDING DESIGN CERTIFICATION)

Southern Alliance for Clean Energy (SACE)
428 Bull Street, Suite 201
Savannah, GA 31401

Sara Barczak, Director
E-mail: sara@cleanenergy.org

North Carolina Waste Awareness
and Reduction Network
P.O. Box 2793
Chapel Hill, North Carolina 27515

John D. Runkle, Esq.
E-mail: jrunkle@pricecreek.com

[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 16th day of January 2009