

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 ANSWER TO JOINT INTERVENORS' NEW CONTENTION NEPA-S

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1) and the Licensing Board's Memorandum and Order (Prehearing Conference and Status of General Schedule), November 10, 2008, the Staff of the Nuclear Regulatory Commission (NRC staff) hereby answers "Joint Intervenors' New Contention NEPA-S" (Motion) filed on March 9, 2009 by the Blue Ridge Environmental Defense League (BREDL), its chapter Bellefonte Efficiency and Sustainability Team (BEST) and the Southern Alliance for Clean Energy (SACE) (collectively, Joint Intervenors). For the reasons set forth below, the NRC Staff opposes the admission of Joint Intervenors' proposed Contention NEPA-S.

BACKGROUND

On October 30, 2007, the Tennessee Valley Authority (TVA, the Applicant) filed with the NRC an application for a combined license (COL) for Bellefonte Units 3 and 4. See Tennessee Valley Authority; Notice of Receipt and Availability of Application for a Combined License, 72 Fed. Reg. 66,200 (Nov. 27, 2007).

On February 8, 2008, the NRC published a notice of hearing on the Application, which provided members of the public sixty days from the date of publication to file a petition for leave to intervene in this proceeding. See Tennessee Valley Authority; Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for Bellefonte Units 3

and 4, 73 Fed. Reg. 7611 (Feb. 8, 2008). On April 7, 2008, the Commission issued an Order granting a 60-day extension for interested persons to file a petition to intervene. See *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), unpublished order (April 7, 2008). In response to the Notice of Hearing, on June 6, 2008, Petitioners submitted their “Petition to Intervene and Request for Hearing” (Petition). On July 1, 2008, the NRC staff filed an answer to the Intervention.Petition. The Licensing Board held a prehearing conference regarding the admissibility of the proposed contentions on July 30, 2008, in Scottsboro, Alabama.

On September 12, 2008, the Licensing Board issued a Memorandum and Order, admitting BREDL and SACE, but not BEST, as joint intervenors, and thus a party to this proceeding See *Tennessee Valley Authority* (Bellefonte Units 3 and 4), LBP-08-16, 67 NRC \_\_\_, (Sept. 12, 2008), Joint Intervenors filed the instant “Joint Intervenors’ New Contention NEPA-S” on March 9, 2009.

On November 10, 2008, the Board issued a Memorandum and Order (Prehearing Conference and Status of General Schedule), specifying, as relevant here, that any response to a motion to admit a new contention is due fourteen days from the filing of the motion. *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), unpublished order (Nov. 10, 2008) (ML083150879) (Slip op. at 3). Pursuant to the Board’s Order of November 10, 2008, the NRC staff is responding to Joint Intervenors’ proposed new contention.

## DISCUSSION

### A. Legal Standards for Admission of Late-Filed Contentions

Under Commission regulations, a late-filed contention may be admitted only upon the presiding officer’s determination, *inter alia*, that the contention should be admitted after balancing the eight factors listed in 10 C.F.R. § 2.309(c), all of which must be addressed in the

petitioner's filing.<sup>1</sup> Petitioners seeking the admission of a late-filed contention bear the burden of showing that a balancing of these factors weighs in favor of admittance. *See Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 347 (1998) (noting that the Commission has summarily dismissed petitioners who failed to address the factors for a late-filed petition). The first factor, whether good cause exists for the failure to file on time, is entitled to the most weight. *State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 83 NRC 289, 296 (1993). Where no showing of good cause for lateness is tendered, a petitioner's demonstration on the other factors must be particularly strong. *Texas Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 73 (1992) (quoting *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2, & 3), ALAB-431, 6 NRC 460, 462 (1977)). The fifth and sixth factors, the availability of other means to protect the petitioner's interest, and the ability of other parties to represent the petitioner's interest, are less important than the other factors, and are therefore entitled to less weight. *See id.* at 74.

The Commission's regulations additionally provide that a proposed late-filed contention may be filed only with leave of the presiding officer, and must 1) be based upon new information that was not previously available, 2) show that the new information is materially different than what was previously available, and 3) show that the contention was filed timely once the new

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<sup>1</sup> Section § 2.309(c) requires a balancing of the following factors for late-filed contentions:

- (i) Good cause, if any, for the failure to file on time;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
- (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
- (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
- (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
- (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
- (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

information became available. 10 C.F.R. § 2.309(f)(2). A petitioner must also show that the late-filed contention meets the substantive contention admissibility requirements of 10 C.F.R. § 2.309(f)(1)(i)-(vi). See *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355, 362-363 (1993).<sup>2</sup>

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10 C.F.R. § 2.309(c)

<sup>2</sup> 10 C.F.R. § 2.309(f)(1) requires a proposed contention to:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;
- (vi) In a proceeding other than one under 10 CFR 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief; and
- (vii) In a proceeding under 10 CFR 52.103(b), the information must be sufficient, and include supporting information showing, *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety. This information must include the specific portion of the report required by 10 CFR 52.99(c) which the requestor believes is inaccurate, incorrect, and/or incomplete (i.e., fails to contain the necessary information required by § 52.99(c)). If the requestor identifies a specific portion of the § 52.99(c) report as incomplete and the requestor contends that the incomplete portion prevents the requestor from making the necessary *prima facie* showing, then the requestor must explain why this deficiency prevents the requestor from making the *prima facie* showing.

10 C.F.R. § 2.309(f)(1)(i)-(vii).

Failure to comply with any of the contention requirements may be grounds for dismissing a contention. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).<sup>3</sup>

B. Joint Intervenors' Proposed New Contention NEPA-S

Joint Intervenors' late-filed proposed contention reads:

CONTENTION NEPA-S:

Neither the Proposed Waste Confidence Decision nor the Proposed Spent Fuel Storage Rule satisfies the requirements of NEPA or the Atomic Energy Act ("AEA"). Therefore they fail to provide adequate support for the Applicant's Environmental Report or for an Environmental Impact Statement in this particular licensing case. The deficiencies in the Waste Confidence Rule also fatally undermine the adequacy of the NRC's findings in Table S-3 of 10 C.F.R. § 51.51 to satisfy NEPA. Unless and until the NRC remedies the deficiencies in the Waste Confidence Rule, Table S-3, and the Proposed Spent Fuel Storage Rule, the NRC has no lawful basis to issue a license for the proposed Bellefonte nuclear power plant.

Motion at 4.

In proposed Contention NEPA-S, Joint Intervenors assert that the Commission has no lawful basis to issue a COL for Bellefonte because the NRC's proposed Waste Confidence Decision, 73 Fed. Reg. 59551 (Oct. 9, 2008) ("Waste Confidence") and the proposed rule, Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation, 73 Fed. Reg. 59547 (Oct. 9, 2008) ("Temporary Storage") do not provide a lawful basis for issuance of the license. Motion at 4. Joint Intervenors state that they do not seek to litigate their proposed Contention NEPA-S in this individual proceeding, but that the Board should admit the contention and hold it in abeyance in order to avoid the necessity of a premature judicial appeal if the case concludes before the NRC has completed the rulemaking proceeding. Motion at 3.

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<sup>3</sup> While revised relatively recently (see Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182 (Jan. 14, 2004)), § 2.309 incorporates the NRC's long-standing late-filed contention requirements. Compare 10 C.F.R. § 2.309(c) and (f)(2) with 10 C.F.R. § 2.714(a)(1)(i)-(v) and (b)(2) (2004).

C. Staff Analysis of the Proposed New Contention

Proposed Contention NEPA-S is inadmissible as it does not satisfy the late-filed contention requirements of 10 C.F.R. § 2.309(c)(2) and 10 C.F.R. § 2.309(f)(2). Further, even if proposed Contention NEPA-S satisfied the late-filed contention requirements of 10 C.F.R. § 2.309(c) & (f)(2), it would still be inadmissible, as it challenges ongoing, general rulemakings and existing rules, is outside the scope of this proceeding, fails to provide a concise statement of the alleged facts or expert opinions that support the Joint Petitioners' position on the issue, and likewise fails to show that a genuine dispute exists with respect to the application on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1).

1. The Proposed Contention Does Not Satisfy Late-Filed Contention Requirements.

Proposed Contention NEPA-S does not satisfy the NRC's late-filed contention requirements and is, thus, inadmissible. Under 10 C.F.R. § 2.309(c)(2), a requester or petitioner is required to "address the factors in paragraphs (c)(1)(i) through (c)(1)(viii) of this section in its nontimely filing." Joint Intervenors recite each of the § 2.309(f)(2) criteria and corresponding reasons that those criteria run in their favor. Motion at 10. They do not, however, address § 2.309(c). Accordingly, the contention does not comply with the Commission's late-filed contention rules.

As to the requirements of § 2.309(c)(1), Joint Intervenors have not shown good cause as required by § 2.309(c)(1)(i). They assert good cause in that they claim that their contention is based on information that was not previously available, They also claim that the contention is based on comments that they submitted on February 6, 2009, regarding the NRC's proposed Waste Confidence Decision Update, 73 Fed. Reg. 59, 551 (October 9, 2008). Motion at 1, 10. Joint Intervenors go on to state that their proposed contention aims to place before the ASLB the same concerns they raised in their February 6, 2009, comments on the proposed rule. Motion at 3. Most importantly, Joint Intervenors claim that proposed Contention NEPA-S responds to the October 9, 2008 proposed rule, and that it is based on the National

Environmental Policy Act of 1969, as amended (NEPA: Title 42, *United States Code* (42 USC) § 4321, et seq.), the Atomic Energy Act of 1954, as amended (AEA; 42 USC § 2011, et seq.), and Table S-3 to 10 C.F.R. § 51.51. However, no new information is referenced or relied on in the proposed contention.

Joint Intervenors claim that their own February 6, 2009, comments constitute new information in that the information on which the contention is based, *i.e.*, the legal and technical analyses of the Proposed Confidence Decision and the Proposed Temporary Storage rule, was not available until February 6, 2009, when the comments were finalized, presented to them for concurrence, and submitted to the NRC. Motion at 10. Their characterization of their comments as “new information” is inconsistent with Commission precedent on new information.

In a recent case, the Commission, in denying an appeal from the denial of a late-filed contention, stated that “[the Petitioner] did not justify its untimely attempt to raise these new issues. To show good cause, a petitioner must show that the information on which the new contention is based was not *reasonably available to the public*, not merely that the *petitioner* recently found out about it . . . [The Petitioner has] failed to demonstrate good cause, as the information it relied upon was available earlier, and is not new information merely because [the Petitioner] was not aware of it earlier.” *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3) CLI-09-05, 68 NRC \_\_ (March 5, 2009) (slip op. at 15) (Emphasis in original).

Here, the proposed contention by its own terms is based on the NRC’s October 9, 2008, Notice of Proposed Rulemaking. Joint Intervenors offer no reason as to why they delayed in offering their proposed Contention NEPA-S for more than six months until March 9, 2009. This delay exceeds the thirty days specified in the Board’s Order of November 10, 2008, for the filing of proposed late-filed contentions.

None of the information contained either in the Joint Intervenors’ February 6, 2009, comments on the proposed rule or the proposed contention is alleged to be based on information that was not previously publicly available. Instead, Joint Intervenors claim that

proposed NEPA-S is based on analyses performed for them that were not available prior to the day they filed their comments. However, Joint Intervenors do not claim that these analyses are themselves based upon information that was not previously publicly available, nor do they address how these analyses otherwise constitute new information.

Therefore, Joint Intervenors have not shown good cause as required by 10 C.F.R. § 2.309(c)(1)(i). Thus, the most important of the late-filed contention factors in § 2.309(c) balancing weighs against consideration of the contention. As discussed below, for similar reasons, Joint Intervenors also fail to satisfy the late-filed contention requirements of 10 C.F.R. § 2.309(f)(2)(i) and (ii).

Joint Intervenors do not address the other factors in 10 CFR § 2.309(c). These factors are less relevant here where Joint Intervenors already have party status.<sup>4</sup>

Joint Intervenors have not satisfied 10 C.F.R. § 2.309(c), as a balancing of its factors does not weigh in favor of the contention. Therefore, proposed NEPA-S is inadmissible.

NEPA-S is also inadmissible because it does not satisfy 10 CFR § 2.309(f)(2). As discussed above concerning § 2.309(c)(1)(i)'s good cause requirement, proposed NEPA-S is not based on information that was not previously available (as required by 10 CFR §2.309(f)(2)(i)), Joint Intervenors have not alleged that either the proposed contention or their February 6, 2009, comments are based on any information that was not publicly available following the Commission's October 9, 2008 notice of proposed rulemaking.

Proposed NEPA-S is not based on information that is materially different from information previously available. Joint Intervenors allege that they satisfy this requirement because none of the information presented in this contention has previously been integrated into a single document that presents a comprehensive and integrated analysis of the Waste Confidence Rule and the related Table S-3 and Proposed Temporary Storage Rule. Motion at

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<sup>4</sup> BEST, a chapter of BREDL, was denied intervention in the Licensing Board's Memorandum and Order of September 12, 2008 (LBP-08-16) and thus is not an intervenor as an entity separate from BREDL.

10. This, they say, is because the NRC has not offered an opportunity to comment on the Waste Confidence Rule or its Finding of No Significant Impact regarding temporary spent fuel storage in approximately ten years. *Id.* Nothing in the above description explains how the previously publicly available information now constitutes new information. Therefore, Joint Intervenors have not satisfied 10 CFR § 2.309(f)(2)(ii), and proposed NEPA-S is inadmissible for that reason.

Lastly, 10 C.F.R. § 2.309(f)(2)(iii) requires that all information in a late-filed contention be submitted in a timely fashion based upon the availability of new information. Joint Intervenors have identified no new information as the basis of the proposed contention. Thus, they have not satisfied this requirement. The Licensing Board in a Memorandum and Order (Prehearing Conference and Status of General Schedule), November 10, 2008, stated its requirement that “to be considered timely, any motion to admit a new contention... must be filed within thirty days of the event that provides the triggering basis for submitting a new or amended contention.” Order at 3. Although Joint Intervenors’ motion was filed within 30 days of their filing of the comments that they now wish to use as the basis of a new contention, that “event” would not qualify as the sort of trigger that may give rise to a new contention.

As discussed, proposed Contention NEPA-S does not satisfy the requirements of 10 C.F.R. § 2.309(f)(2)(i), (ii) or (iii), and is inadmissible. There is no mention in their motion that Joint Intervenors sought leave of the Licensing Board prior to submitting their motion as required by 10 C.F.R. § 2.309(f)(2). That failure, too, weighs against the admission of proposed NEPA-S.

2. The Proposed Contention is Inadmissible Because it Challenges Ongoing, General Rulemakings and Existing Rules.

The Commission has stated that “[i]t has long been agency policy that Licensing Boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.” *Duke Energy Corp.* (Oconee

Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC at 345 (quoting *Potomac Elec. Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974)) (alteration in original). In *Oconee*, the Commission also stated that “a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations or to express generalized grievances about NRC policies.” *Id.* at 334. Here, Joint Intervenors make an argument challenging ongoing, general rulemaking proceedings. They even acknowledge that their contention raises generic issues. Motion at 3. Thus, if Joint Intervenors wish to take issue with the Commission’s Waste Confidence and Temporary Storage positions, the proper venue is the rulemaking process, not the adjudicatory process. See 10 C.F.R. § 2.335; see also *Oconee*, CLI-99-11, 49 NRC at 345.

In addition, Joint Intervenors note that on February 6, 2009, they submitted comments to the Commission on the proposed Waste Confidence and Temporary Storage rules. Motion at 1, 7-8,10. If Joint Intervenors wish to make additional comments concerning the Commission’s proposed rules, the proper forum for such comments is through the rulemaking process and not in this licensing proceeding. See 10 CFR § 2.335. This Licensing Board rejected a similar contention, NEPA-L, in which Petitioners (now, except for BEST, Joint Intervenors) attacked the adequacy of the Waste Confidence Rule. The Board held the contention inadmissible, as not within the scope of the proceeding and as an impermissible challenge to Commission regulatory requirements. *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 and 4) LBP-08-16, 69 NRC \_\_ (Sept. 12, 2008) (Slip op. at 60-62).

Pursuant to § 2.335, an NRC regulation may not be attacked in an adjudicatory proceeding unless the petitioner meets the following standards for a waiver of, or exception to, the regulation:

The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted. The petition must be accompanied by an affidavit that identifies the specific aspect or aspects of the

subject matter of the proceeding as to which the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted. The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested.

§ 2.335(b). In explaining these standards in the *Millstone* license renewal proceeding, the Commission held, among other things, that a waiver or exception could only be appropriate if the alleged special circumstances were “‘unique’ to the facility rather than ‘common to a large class of facilities.’” *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560 (2005) (quoting *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-88-10, 28 NRC 573, 597 (1988), *reconsid'n denied*, CLI-89-3, 29 NRC 234 & CLI-89-7, 29 NRC 395 (1989)) (internal footnote omitted). Here, Joint Intervenors do not address the § 2.335 standards, and the issue they raise is not unique to the Bellefonte COL application but, instead, represents a generic attack on the current regulations. Proposed Contention NEPA-S, therefore, must be rejected.

Joint Intervenors also state that they do not seek to litigate this contention in this proceeding, but request that “the contention should be admitted and held in y Storage rules abeyance in order to avoid the necessity of a premature judicial appeal.” Motion at 3. Joint Intervenors’ suggestion that the contention should be held in abeyance does not make it admissible.

3. Contention NEPA-S is Inadmissible as it is Outside the Scope of This Proceeding.

Joint Intervenors’ proposed Contention NEPA-S “seeks to enforce the requirement of the National Environmental Policy Act (“NEPA”) that generic determinations under NEPA must be applied to individual licensing decisions and must be adequate to justify those individual decisions.” Motion at 2. Joint Intervenors request that the Commission finalize the Waste Confidence and Temporary Storage rules so that these rules will be applied to the Bellefonte COL licensing decision. *Id.* at 3. Essentially, by claiming that NEPA requires the Commission to wait for these rules to be finalized before issuing a Bellefonte COL licensing decision, Joint

Intervenors take issue with an ongoing, general rulemaking. Licensing boards have repeatedly stated that the adjudicatory process is not the proper forum in which to attack the rulemaking process. See 10 CFR § 2.335; see also *Pub. Serv. Co. of New Hampshire*, (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982) (citing *Peach Bottom*, ALAB-216, 8 AEC at 20-21).

Joint Intervenors cite little case law to support their argument that generic determinations under NEPA must be applied to individual licensing decisions. However, they do cite *Baltimore Gas and Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87 (1983). Motion at 2-3. Contrary to what Joint Intervenors argue, this case does not stand for the proposition that the NRC would violate NEPA if it issued a licensing decision on the Bellefonte COL prior to issuance of final Waste Confidence and Temporary Storage rules. The Court's decision states that

[a]s *Vermont Yankee* made clear, NEPA does not require agencies to adopt any particular internal decisionmaking structure. Here, the agency has chosen to evaluate generically the environmental impact of the fuel cycle and inform individual licensing boards, through the Table S-3 rule, of its evaluation. The generic method chosen by the agency is clearly an appropriate method of conducting the hard look required by NEPA.

*Id.* at 100-101. Thus, the contention is outside the scope of the immediate proceeding and is therefore inadmissible. See 10 CFR § 2.309(f)(1)(iii). In any event, 10 C.F.R. § 2.335 precludes admission of proposed Contention NEPA-S, just as it precluded admission of NEPA-L.

4. Proposed Contention NEPA-S is Inadmissible as it Fails to Provide a Concise Statement of Alleged Facts or Expert Opinions Which Support Joint Intervenors' Position on the Issue and Fails to Provide Sufficient Information to Show That a Genuine Dispute Exists With Respect to the Application; It Thus Fails to Meet the Requirements of 10 C.F.R. § 2.309(f)(1).

Joint Intervenors claim that proposed Contention NEPA-S is based in part on expert opinions of "Dr. Arjun Makhijani, President of the Institute for Energy and Environmental Research ("IEER")" and "Dr. Gordon R. Thompson, Executive Director of the Institute for Resource and Security Studies ("IRSS")." Motion at 8. However, Joint Intervenors do not rely

upon these expert opinions to dispute any specific aspect of the Bellefonte COL application. Nor do Joint Intervenors state how these expert opinions support their assertions that the Waste Confidence and Temporary Storage rules are inadequate. *Id.* at 7. Joint Intervenors merely cite the existence of these expert declarations, but fail to show how these expert opinions form the basis for their argument. For instance, page 10 of the Motion states, “[I]n support of this contention, the Joint Intervenors rely on the facts, expert opinion, and documentary resources set forth in the attached IEER Comments and Thompson Report. The IEER Comments and Thompson Report contain sufficient information to show that the Joint Intervenors have a genuine dispute with the Applicant and with the NRC.” *Id.* at 9. However, NEPA-S does not provide a concise statement of the alleged facts or expert opinions that support Joint Intervenors’ position on the issue. *Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 216 (1976). Nor does Proposed Contention NEPA-S provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Thus, proposed Contention NEPA-S is inadmissible as it fails to satisfy the requirement of 10 CFR § 2.309(f)(1)(v)&(vi).

CONCLUSION

In view of the foregoing, the Licensing Board should deny Joint Intervenors' Motion and should not admit the proffered contention because of its failure to satisfy the Commission's requirements concerning late-filed contentions.

Respectfully submitted,

**/signed (electronically) by/**

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of )  
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TENNESSEE VALLEY AUTHORITY ) Docket Nos. 52-014 and 52-015  
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Bellefonte Nuclear Power Plant )  
(Units 3 and 4) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF ANSWER TO JOINT INTERVENORS' NEW CONTENTION NEPA-S has been served upon the following persons by Electronic Information Exchange and electronic mail this 23rd day of March, 2009:

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