UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
TENNESSEE VALLEY AUTHORITY	)	Docket Nos. 50-438/50-439-CP
	)	
(Bellefonte Nuclear Power Plant Units 1 and 2)	)	

NRC STAFF'S BRIEF IN SUPPORT OF NRC AUTHORITY TO REINSTATE CONSTRUCTION PERMIT NUMBERS CPPR-122 AND CPPR-123

Andrea' Z. Jones
David E. Roth
Jeremy M. Suttenberg
Counsel for NRC Staff

June 3, 2009

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INTRODUCTION

Pursuant to the Commission's May 20, 2009 order, the staff of the Nuclear Regulatory Commission ("NRC" or "Staff") responds to the threshold question of whether the NRC has the statutory authority to reinstate the Tennessee Valley Authority (TVA)'s withdrawn construction permits (CPs). Because the Commission can reasonably interpret its authority under § 185 of the Atomic Energy Act (AEA) of 1954, and the AEA does not prohibit reinstatement of construction permits, the NRC possesses the requisite authority to reinstate TVA's CPs for Units 1 and 2.

STATEMENT OF THE CASE

On December 24, 1974, the U.S. Atomic Energy Commission issued CP Nos. CPPR-122 and CPPR-123 to TVA. These CPs authorized construction of the Bellefonte Nuclear Plant (BLN) Units 1 and 2 at TVA's site in Jackson County, Alabama. *See* Public Legacy Library[1] (PLL) Accession Nos. 066333 and 066334.

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[1] The Legacy Library contains archives of NRC documents and can be accessed in the NRC's Public Document Room (PDR) in person at NRC Headquarters, One White Flint, First Floor at F21 or by phoning 301-415-3548.

Over the years, there were extensions of the construction completion dates in these permits. The most recent one was issued on March 4, 2003, when the NRC issued an order amending CP Nos. CPPR-122 and CPPR-123. *See* Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 and 2); Order, 68 Fed. Reg. 11415 (March 10, 2003). Specifically, this Order extended the latest date for completion of construction to October 1, 2011 for BLN Unit 1, and October 1, 2014 for BLN Unit 2.

On April 6, 2006, TVA submitted a request to withdraw the CPs, and the NRC approved this request on September 14, 2006. *See* Letter from Glenn W. Morris to NRC, ADAMS[2] Accession No. ML061000538. The reasons provided in TVA's request to withdraw was primarily a reduction in forecasted load growth. *See* Letter from Glenn W. Morris to James E. Dyer dated December 15, 2005, ADAMS Accession No. ML060120054. At the time of TVA's request to withdraw and the agency's subsequent approval, construction of Units 1 and 2 were estimated at 88 percent and 58 percent completed, respectively, and the NRC had no enforcement actions pending for forfeiture of the CPs. *See* Letter from Glenn W. Morris to NRC dated June 29, 2006, ADAMS Accession No. ML061840287. Then, in a letter dated August 26, 2008, as supplemented on September 25, 2008 and November 24, 2008, TVA requested that the withdrawn CPs be reinstated. *See* Letter from Ashok S. Bhatnagar to Eric J. Leeds (hereinafter August application), ADAMS Accession No. ML082410087. In this letter, TVA asserted that "a change in the power generation economics" was the primary motivator for seeking reinstatement. *Id.* at 5.

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[2] The Agencywide Documents Access and Management System (ADAMS) is the NRC information system that can be accessed via the NRC public website located at http://www.nrc.gov/reading-rm/adams.html.

On December 12, 2008, the NRC staff submitted to the Commission a request to "obtain Commission authorization for the recommendation to go forward with the review" on TVA's reinstatement request. COMSECY-08-0041, "Staff Recommendation Related to Reinstatement of the Construction Permits for Bellefonte Nuclear Plant Units 1 and 2" (Dec. 12, 2008). The Commission provided the NRC staff with authorization to reinstate the CPs to a terminated plant status on February 18, 2009, in SRM-COMSECY-08-0041. *See* ADAMS Accession No. ML090490838.

The NRC staff subsequently prepared an environmental assessment on March 3, 2009 and determined that reinstating the CPs will not have a significant impact on the environment. *See* Tennessee Valley Authority; Bellefonte Nuclear Plant Units 1 and 2, Environmental Assessment and Finding of No Significant Impact, 74 Fed. Reg. 9308 (Mar. 3, 2009). On March 9, 2009, the NRC issued an order that reinstated CPPR-122 and CPPR-123, and placed both facilities in a "terminated plant status" under Section III.B of the Commission's Policy Statement on Deferred Plants. *See* Tennessee Valley Authority (Bellefonte Nuclear Plant Units 1 and 2) Order, 74 Fed. Reg. 10969 (Mar. 13, 2009). Attached to the Order was the NRC staff safety evaluation report documenting the basis for reinstatement of the CPs. The March 13, 2009 Federal Register notice also provided that interested parties may request a hearing. *Id.*

On May 8, 2009, the Blue Ridge Environmental Defense League ("BREDL"), its chapter Bellefonte Efficiency and Sustainability Team ("BEST"), and the Southern Alliance for Clean Energy ("SACE") ("collectively, Petitioners") filed a petition to request a hearing ("Petition") challenging the reinstatement of TVA's CPs. With respect to the threshold issue of authority, the Petitioners specifically argued, *inter alia*, that the Commission did not have the legal authority to reinstate the withdrawn CPs. Petition at 12 (Contention 1). The Petitioners further

argued that the provisions of the AEA were not followed when reinstating the CPs because the NRC did not hold a mandatory hearing and prepare an environmental impact statement (EIS). Petition at 13 (Contention 2).

On May 20, 2009, the Commission issued an order holding Petitioners' contentions 3 through 9 in abeyance until the threshold issue of authority raised in contentions 1 and 2 was addressed by all participants. Specifically, the Commission requested briefs "addressing the question whether the NRC possesses the statutory authority to reinstate the withdrawn construction permits." *See Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 1 and 2), 69 NRC __, (May 20, 2009)(slip op. at 1).

QUESTION PRESENTED

Does the NRC possess the statutory authority to reinstate TVA's withdrawn construction permits?

ARGUMENT

I. The NRC Has The Legal Authority To Reinstate A Withdrawn Construction Permit

While Petitioners' raise a valid threshold issue to be addressed, the NRC has strong legal authority to support its reinstatement of TVA's CPs. The basis of the reinstatement is clearly a reasonable interpretation of the Commission's authority under § 185 of the AEA. Although Petitioners contend that the Commission lacks the requisite statutory authority, they do not cite to any legal authority that expressly prohibits the Commission from reinstating TVA's withdrawn CPs.

A review of the applicable statutory provisions, NRC regulations and Commission and judicial precedent reveals that the NRC is not legally prohibited from reinstating a withdrawn CP for two reasons. First, neither the AEA nor NRC regulations prohibit reinstatement of previously

withdrawn CPs. Second, prior D.C. Circuit Court and Commission decisions establish that CPs are not automatically forfeited unless the Commission takes an affirmative act of forfeiture for cause. Application of the principles articulated by those decisions to the relevant facts in this proceeding leads to the same reasonable interpretation that the NRC has authority to reinstate TVA's voluntarily withdrawn CPs. The basis for such an interpretation follows.

A. Neither the Atomic Energy Act nor NRC Regulations Prohibit Reinstatement of a Withdrawn Construction Permit

The NRC's authority to issue the original CPs to TVA was based on § 103 of the AEA. *See* 42 U.S.C. § 2133 (authorizing the Commission to issue licenses for utilization and production facilities for industrial or commercial purposes). As further set forth in the AEA, TVA's CPs are subject to Chapter 16 of the AEA and subject to such conditions as the Commission may establish to effectuate the purposes and provisions of the AEA. *Id.* Chapter 16, in turn, specifies that:

> The construction permit shall state the earliest and latest dates for the completion of the construction or modification. *Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited*, unless upon good case shown, the Commission extends the completion date,

§185a, 42 U.S.C. § 2235 (emphasis added). Therefore, upon a finding of good cause, the NRC has the authority to extend the completion date associated with construction permits. Likewise, the Commission's rule, 10 C.F.R. § 50.55[3], uses similar language and does not constrain the

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[3] 10 C.F.R. § 50.55 provides:

(a) The construction permit shall state the earliest and latest dates for completion of the construction or modification.

(b) If the proposed construction or modification of the facility is not completed by the latest (continued. . .)

Commission's authority to extend the completion date of a CP.

In implementing its statutory objectives under the AEA, the Commission is entitled to broad deference when determining the scope or limits of statutory language. *See, e.g., Siegel v. Atomic Energy Commission*, 400 F.2d 778, 783 (D.C. Cir. 1968) (noting that the AEA created "a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives. *See Power Reactor Development Co. v. International Union of Electrical, etc., Workers*, 367 U.S. 396, 81 S.Ct. 1529, 6 L.Ed.2d 924 (1961)"). This language demonstrates that the AEA is subject to reasonable interpretation by the Commission. Although the Commission has not specifically addressed its authority to reinstate a withdrawn CP under the AEA, by analogy its authority to reinstate an expired CP was examined in *Citizens Assoc. for Sound Energy v. NRC*, 821 F.2d 725 (D.C. Cir. 1987), *affirming Texas Utilities Electric Co.* (Comanche Peak), CLI-86-4, 23 NRC 113 (1986).

B. The *Citizens* and *Comanche Peak* Decisions Support the NRC's Authority to Reinstate TVA's Withdrawn Construction Permit Because the NRC Did Not Make an Affirmative Decision Forfeiting TVA's Construction Permit for Cause

1. *Citizens* and *Comanche Peak* Decisions

In *Comanche Peak,* the Commission was faced with a permittee that failed to request an extension for its CP and, instead, allowed it to lapse. *Comanche Peak*, CLI-86-4, 23 NRC 113

(. . .continued)

completion date, the construction permit shall expire and all rights are forfeited. However, upon good cause shown, the Commission will extend the completion date for a reasonable period of time. The Commission will recognize, among other things, developmental problems attributable to the experimental nature of the facility or fire, flood, explosion, strike, sabotage, domestic violence, enemy action, an act of the elements, and other acts beyond the control of the permit holder, as a basis for extending the completion date.

(1986). In that case, the construction permittee failed to file a timely application for extension of the permit, and, therefore, an intervenor argued that a new CP proceeding was required prior to recommencing construction. *Id.* at 117. The Commission disagreed with the intervenor and determined that a failure to file a timely application for extension of a permit under 10 C.F.R. § 2.109 did not cause a forfeiture of the permit – even though the permit, by its own terms, had expired. *Id.* at 120. The Commission further held that a new construction permit proceeding was not required. *Id.* In this regard, the Commission found that § 185 of the AEA, which states that a construction permit "shall expire, and all rights thereunder [shall] be forfeited," did not preclude extension of a CP even if construction is not completed by the stated construction completion date because the expiration of the CP did not automatically affect a forfeiture. *Id.* Although the Commission stated that it was merely "considering TUEC's application for extension of the latest completion date", the Commission's determination that there was no automatic forfeiture of the CP effectively reinstated the expired CP.

In the absence of a specific statutory provision defining forfeiture of rights, the Commission, in the *Comanche Peak* case, primarily relied upon § 185a's legislative history and the cases interpreting an analogous provision in the Communications Act of 1934. The Commission identified that § 185a was based upon the need to allocate scarce resources (*e.g.*, publicly owned nuclear fuel) among competing utilities. *Id.* at 117-18 ("[A]t the time the Atomic Energy Act was passed, the allocation of scarce fuel was of major concern[.]"). The Commission then observed that the policy rationale behind § 185a of the AEA, when the provision in the AEA was created, no longer existed because uranium mining had since been privatized. *Id.* at 117-18 ("It thus appears that though the requirement that construction permits include termination dates remained in the statute, the policy reasons underlying that

requirement had ceased to exist.").

The Commission also noted that the language in § 185a was modeled on a parallel provision of the Communications Act of 1934, § 319(b). *Id.* at 117.[4] The case law interpreting § 319(b), which concerned issuance of radio station construction permits by the Federal Communications Commission (FCC), established that untimely submittal of an application for renewal did not lead to an automatic forfeiture of the permit under the Communications Act, that "actual forfeiture" may occur "either by abandonment of the permit by the original permittee or by adverse – and valid – administrative action by the Federal Communications Commission". *Id.* at 119. *Mass Communications, Inc. v. FCC*, 266 F.2d 681 (D.C. Cir. 1959). The Commission cited favorably to this case in concluding that the forfeiture provision in § 185a needed to be triggered by an affirmative agency action.

Significantly, after the Commission effectively reinstated the expired CPs in *Comanche Peak*, the decision was upheld by the D.C. Circuit Court in *Citizens Assoc. for Sound Energy v. NRC*, 821 F.2d 725 (D.C. Cir. 1987). The court essentially adopted the Commission's analysis, stating: "we believe that the Commission reasonably employed this Court's earlier analysis of § 319(b) of the Communications Act to aid in the interpretation of Section 185 of the AEA, and to determine that Section 185 did not impose automatic forfeiture." *Id.* at 731.

The D.C. Circuit Court has addressed a similar set of facts in reviewing an FCC order. *Baker v. FCC*, 834 F.2d 181 (D.C. Cir. 1987). In *Baker*, Land O'Lakes Broadcasting

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[4] *Compare* 42 U.S.C. § 2235 *with* 47 U.S.C. § 319(b) ("Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee.").

Corporation was issued a CP for a new AM station on 1510 kHz. *Id.* at 182. The company, however, soon desired the more commercially viable 1030 kHz, and thus sent a letter to the FCC saying:

> In light of current economic conditions, it no longer appears feasible to construct a [suitable facility] on a relatively undesired frequency[.] . . . Therefore, applicant has decided not to request any additional extensions of its construction permit. Rather, the permit will be allowed to expire *and/or surrendered for cancellation*, and the applicant desires to pursue its request for facilities on the 1040 khz (sic), *as an applicant for a new construction permit.*

Id. (emphasis added).

Notably, the D.C. Circuit Court addressed the possibility that abandonment of the permit by the applicant should be viewed, by itself, as amounting to forfeiture. The court explained:

> It is beyond dispute that, under settled precedent, Land O'Lakes construction permit for the 1510 kHz allocation continued to have legal efficacy, *notwithstanding the applicant's attempted abandonment of the permit.* Curious though it may be, under settled law (at least as FCC regulations currently stand) *a construction permit continues unabated until the Commission itself declares the permit forfeited.* . . . Here, of course, no such order of forfeiture was ever entered.

Id. at 185 (emphasis added). Though it was not the main issue, it is significant that the D.C. Circuit Court did not treat Land O'Lakes letter to the FCC as terminating the CP even though the letter expressly stated that the permit should be "surrendered for cancellation." Indeed, the D.C. Circuit Court explained in *Citizens*: "We believe that the Commission reasonably employed this court's earlier analysis of § 319(b) of the Communications Act to aid in the interpretation of Section 185 of the AEA[.]" *Citizens*, 821 F. 2d at 243. Given the similarities between the relevant sections of the Communications Act and the AEA, this FCC case demonstrates support for the view that the Commission has the legal authority to reinstate a

withdrawn CP. In the case of TVA's withdrawn CPs, even if the act of withdrawing or terminating the CPs is considered a valid administrative action, it does not constitute an adverse action by the agency because the action was not a forfeiture taken for cause.

2. A Reasonable Extension of *Citizens* and *Comanche Peak* Supports Reinstatement Because the NRC Has Not Forfeited TVA's CPs for Cause

Comanche Peak and *Citizens* support NRC's authority to reinstate the CPs because the NRC's act of approving TVA's withdrawal of the CPs did not necessarily effect the actual forfeiture of those permits in that the action was not taken for "cause". Here, the agency did not terminate the CPs, for example, based on a conclusion that TVA had violated the terms of its permits or the Commission's regulations, or that forfeiture of the permits was required for public health and safety reasons – nor had TVA allowed its CPs to expire prior to its request to withdraw them. Similarly, the NRC did not revoke, as a matter of enforcement, the permits under Section 186 of the AEA or any applicable Commission regulations. Rather, the agency's approval of TVA's withdrawal of the CPs was premised on the fact that the licensee had voluntarily requested that action.

Although there has not been a Commission decision applying *Comanche Peak* to withdrawn CPs, some precedent for this situation exists in other Federal case law, in which a licensee sought extension of suspended permits. These cases appear to focus on whether the governing statute explicitly provides for reinstatement of revoked or forfeited permits or licenses; if (as is the case here) no such provision was made by statute, the courts have considered whether the agency's action on the reinstatement request constituted an abuse of discretion. For example, in *Channel 16 of Rhode Island, Inc. v. FCC*, 440 F. 2d 266 (D.C. Cir. 1971), the D.C. Circuit reversed and remanded a decision by the FCC to reject a request for extension of a UHF television station's construction permit. There, the licensee had suspended

operations due to a lack of television receivers for its UHF signals and the existence of two competing VHF stations which rendered its operations unprofitable. *Id.* at 267. The court observed that § 319 (b) provides that construction permits must show "the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee." *Id.* at 272. Further, the FCC's rules, in 47 C.F.R. § 1.534(a), provided that applications for an extension of time "shall be granted upon a specific and detailed showing that the failure to complete was due to other matters sufficient to justify the extension." *Id.* at 273. In view of this broad authority conferred upon the FCC to avoid forfeiture of a license, the court found that the agency's denial of the request for extension was arbitrary, capricious, without rational basis and constituted an abuse of discretion, where there was a legitimate reason for the licensee's delay and no other station had sought to use this channel frequency in 15 years. *Id.* at 266.

Similarly, the FCC exercised its discretion in considering whether to grant or deny a request for reinstatement of forfeited permits. In *W230BH(FX) (Montauk, NY, Facility ID No. 139393)*, 2008 FCC LEXIS 7424 (Oct. 17, 2008), the FCC granted an application for reinstatement of a broadcast license which had been forfeited through non-use, finding that the applicant had diligently sought to obtain the required building permit and was prevented from constructing due to forces beyond its control, that it "would be unduly harsh to penalize" the applicant where it had sought to act in a safety-conscious manner – and that Section 312 (g) of the Communications Act, 47 U.S.C. § 312(g) (which provides that a broadcast license will expire for failure to transmit broadcast signals for any consecutive 12-month period), explicitly

allows the Commission the discretion to "extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any reason to promote equality and fairness." *Id.* at 7-8.

Under the approach in the cases discussed above, the NRC is clearly within the scope of its discretion to consider all of the circumstances presented by TVA's request for reinstatement, including but not limited to, the reasons for request for withdrawal of the CPs, the reasons for reinstatement of the CPs, the largely completed construction at the time TVA halted construction, and that the CPs were not forfeited for cause. The Commission's consideration of such matters is consistent with the "good cause" standard enunciated in Section 185a of the AEA and 10 C.F.R. § 50.55(b). Put another way, if the Commission properly relied on *Mass Communications* in *Comanche Peak* for the proposition that expired CPs are not automatically forfeited, thereby allowing for reinstatement of expired CPs, then the NRC's exercise of its broad interpretative authority of the AEA can support reinstatement of TVA's withdrawn CPs that had not expired.

II. The Commission Already Granted Construction Permits

Petitioners argue that the NRC is only authorized to grant new CPs pursuant to § 189(a)(1)(A) of the AEA, and that the NRC's failure to invoke that authority when reinstating the CPs made the Commission's action illegal. Petition at 13 (Contention 1). Petitioners further argue that "granting" the CPs is the only fair and legally accurate description of the reinstatement, thus the Commission must prepare an EIS and hold a public hearing. Petition at 13-14 (Contention 2).

The Staff respectfully submits that, while the Petitioners' understanding of how the AEA would apply to a new CP request is generally correct, those requirements do not apply

necessarily in the context of the NRC's decision to reinstate the CPs for the existing, largely-complete Bellefonte Units 1 and 2. Moreover, the CPs have already been "granted" to TVA and the action in question is about reinstating the granted CPs.

A. The Construction Permits Are Not New

The NRC did not grant two new CPs for two incomplete constructed plants, but reinstated the existing CPs, which allow TVA to complete construction - but does not authorize operation - of the two existing units. Unlike a decision to grant a new CP that would authorize construction of a new unit, there is no intent by the NRC to authorize TVA to construct two new plants. The reinstated permits are the same permits as existed prior to withdrawal, and were not amended through the reinstatement. *See* CPPR-122 & CPPR-123, ADAMS Accession No. ML090680334. They retain the same construction expiration dates they had prior to withdrawal. The permit conditions are the same, and the CPs embody the same duties and limitations that existed before TVA's withdrawal request. *Id.*

B. The Units Already Exist and Have Been Largely Completed

The units and their construction permits are not new. At the time that TVA elected to defer construction, Units 1 and 2 were estimated at 88 and 58 percent complete, respectively. *See* ADAMS Accession No. ML061840287. By sharp contrast, an applicant for a new CP provides a paper-only plan to build a unit whose construction is 0 percent complete.[5] The NRC's regulations forbid an applicant for a new CP from most construction activities. *See* 10 C.F.R. § 50.10 (c).

The Bellefonte construction permit application and PSAR were docketed June 21, 1973.

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[5] *See* 10 C.F.R. § 50.10(a) (requires "preliminary safety analysis report" ("PSAR") by applicant).

Approximately one year later, the AEC completed initial review and published its 267-page safety evaluation report (*See* ADAMS Accession No. ML091280571), (CP-SER) documenting its evaluation. The CP-SER clearly contemplated that review of the as-built structures would be done at the subsequent operating license stage, and was not part of the consideration for issuance of a CP. In the CP-SER, the AEC wrote:

> The review and evaluation of the proposed design of the facility reported herein is only the first stage of a continuing review by the Regulatory staff of the design, construction and operating features of the Bellefonte plant. Construction will be accomplished under the surveillance of the Regulatory staff.

CP-SER at 1-2.

Bellefonte Nuclear Units 1 and 2 are well past being preliminary design. The request for TVA is not for approval of a preliminary unrealized facility. TVA has already substantially exercised the authorization provided it by the Commission through the CPs to build and posses the plants over the course of the past three decades.

C. The Commission's Rules on Granting New CPs are Inapplicable

Contrary to Petitioners' claim, some of the regulations for new construction permits are inapplicable for the existing Units 1 and 2. The future-looking licensing review standards for issuance of a new construction permit simply do not apply to the existing Bellefonte plants. For instance, 10 C.F.R. § 50.34(a)(3)(iii) requires, for new construction permit, submission of a PSAR to show the "general arrangement, and approximate dimensions" of the plant sufficient to provide reasonable assurance that the final design will be adequate and safe. Bellefonte is beyond the "general" and "approximate" planning, and has been largely built.

When a plant has progressed through sufficient construction such that it is no longer preliminary, the NRC's regulations require submission of a final safety analysis report ("FSAR")

to enable the Commission to determine if an operating license can be issued. *See* 10 C.F.R. § 50.34(b). TVA has already passed this milestone. In 1978, TVA submitted, and the NRC accepted for review, the Bellefonte Units 1 and 2 FSAR submitted in request of an operating license.[6] Thus, the NRC is beyond its review of an initially planned plant described in the preliminary report. Instead, upon receipt of the updated operating license request, if TVA chooses to submit one, the Commission will apply the standards not of a new construction permit, but of an operating license. *See* 10 C.F.R. § 50.57(a) (1).

CONCLUSION

Based on the foregoing discussion on relevant statutory authority, and Commission and judicial precedent, the Staff submits that the NRC possesses the requisite authority to reinstate TVA's CPs.

Signed (electronically) by

Andrea' Z. Jones
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15D21
Washington, DC 20555-0001
(301) 415-2246
Andrea.Jones@nrc.gov

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[6] *See* 43 Fed. Reg. 30628, (July 17, 1978), Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 And 2), Receipt of Application for Facility Operating Licenses; Availability of Applicant's Environmental Report; and Consideration of Issuance of Facility Operating Licenses and Opportunity for Hearing.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S BRIEF IN SUPPORT OF NRC AUTHORITY TO REINSTATE CONSTRUCTION PERMIT NUMBERS CPPR-122 AND CPPR-123", dated June 3, 2009, have been served upon the following by the Electronic Information Exchange, this 3rd day of June, 2009:

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

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16G4
Washington, DC 20555-0001
E-mail: OCAAMAIL.resource@nrc.gov

Kathryn M. Sutton, Esq.
Lawrence J. Chandler, Esq.
Mary Freeze, Esq.
Sharon J. Wisely, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
E-mail: ksutton@morganlewis.com
E-mail: lchandler@morganlewis.com
E-mail: mfreeze@morganlewis.com
E-mail: swisley@morganlewis.com

Office of the Secretary
Attn: Rulemaking and Adjudications Staff
Mail Stop: O-16G4
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Hearing.Docket@nrc.gov

Maureen Dunn, Esq.
Scott Vance, Esq.
Edward Vigluicci, Esq.
Tennessee Valley Authority
400 West Summit Hill Drive, WT 6A-K
Knoxville, TN 37902
E-mail: mhdunn@tva.gov
E-mail: savance@tva.gov
E-mail: ejvigluicci@tva.gov

Louis A. Zeller
Representative of Blue Ridge Environmental Defense League (BREDL) and Bellefonte Efficiency and Sustainability Team (BEST)
P.O. Box 88
Glendale Springs, NC 28629
E-mail: BREDL@skybest.com

Sara Barczak[7]
Southern Alliance for Clean Energy
428 Bull Street
Savannah, GA 31401
(912) 201-0354
E-mail: sara@cleanenergy.org

Signed (electronically) by

Andrea' Z. Jones
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15D21
Washington, DC 20555-0001
(301) 415-2246
Andrea.Jones@nrc.gov

[7] Sara Barczak and SACE do not have a Notice of Appearance before the Commission, and are also not listed on the NRC's Service List in the Electronic Information Exchange, therefore a courtesy copy is being sent via e-mail.