UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of **Docket No. 52-039-COL**

Bell Bend Nuclear Power Plant

Combined Construction and License Application

PETITIONERS GENE STILP, PRO SE, AND TAXPAYERS AND RATEPAYERS UNITED (TRU)'S REPLY BRIEF TO ANSWERS OF APPLICANT AND NRC STAFF

Pursuant to 10 C.F.R. section 2.309 Petitioners, Gene Stilp, pro se and Taxpayers and Ratepayers United (TRU) file this reply brief to the Answer to Petition to Intervene submitted by the Applicant and the N.R.C. Staff.

Standing of Mr. Stilp and Taxpayers and Ratepayers United (TRU)

In their reply brief Applicant and NRC Staff discussed the Standing of Mr. Stilp and Taxpayers and Ratepayers United. The Staff objected to Mr. Stilp's standing but agreed with the standing for Taxpayers and Ratepayers United (TRU). The Applicant objected to the standing of both Mr. Stilp and

the organization. In order to help clarify and satisfy the Applicant and the NRC Staff as to the standing of Mr. Stilp, Mr. Stilp submitted a "Motion for Permission to File a Supplemental Declaration of Standing with the Supplemental Declaration as an attachment." This supplemental addresses frequency, closeness of bond, business interests, property ownership, travel patterns, amount of time spent overnight, the family and friends connected with Mr. Stilp during his many and frequent visits. The Staff and the Applicant were concerned that Mr. Stilp did not spend enough time with in the fifty mile radius of the proposed radioactive nuclear plant. That Motion and declaration can be viewed among the pleadings for 6-26-09 in this case. No reference number is currently available from the EIE at my location.

CONTENTION TWO: Response of Petitioners

.On May 18, 2009, Petitioners submitted Contention Two in their filing to intervene in the Bell Bend case. 52-039 COL. Contention Two stated: "PPL's application to construct and operate the radioactive nuclear power plant know as the Bell Bend Nuclear Power Plant violates the National Environmental Policy Act (NEPA) by failing to clearly address the serious environmental, health and safety impacts of the radioactive nuclear waste

that it will generate in the absence of licensed low level radioactive nuclear waste disposal facilities or capability to isolate the radioactive waste from the environment. The utility's self generated and prejudiced environmental report on the radioactive nuclear power plant know as Bell Bend (ER) does not address the environmental, health, safety, security, environmental justice or economic consequences that will result from the lack of a permanent disposal facility."

Applicant and NRC Staff argue that there can be no dispute of fact because in their opinion the application discusses the plan for the handling of low level waste at the site of Bell Bend.

Petitioners and the Applicant cite the same sections of the Applicant's ER at page 31and get different answers as to the adequacy of applicant's response to the long term storage of low level radioactive nuclear waste

A major factual disagreement exists and a major legal disagreement exists on the deficiency in the Applicants filing. The Applicant has omitted a complete long term storage plan for the storage of low level radioactive nuclear waste for the expected life of the proposed radioactive nuclear power plant

The ASLB decision in the Calvert Cliffs case, Memorandum and Order, Docket No. 52-016-COL, ASLBP No. 09-874-02-COL-BD01, March 24, 2009, applies directly to the Bell Bend proceeding.

In that case, the ASLB admitted a narrowed contention that removed the petitioners' section of the original contention that challenged Table S-3.

The narrowed contention is as follows: "The ER for CCNPP-3 [Calvert Cliffs 3] is deficient in discussing it plans for management of Class B and C wastes. In light of the current lack of a licensed off-site disposal facility, and the uncertainty of whether a new disposal facility will become available during the license term, the ER must either describe how Applicant will store Class B and C waste on site and the environmental consequences of extended on-site storage. Or show that the Applicant will be able to avoid the need for extended on-site storage by transferring its Class B and C wastes to another facility licensed for the storage of LLRW."

In that case the ER did not deal with the complete on-site long term storage. The ER provided no plan for the complete handling on-site of the low level radioactive nuclear waste if that was what was called for. The ASLB said at page 74. "A plan for the long-term storage of LLRW must provide for more than "several years" volume of solid waste. It must demonstrate that

Applicant will be able to store on-site the volume of LLRW that will be generated during the license term." Several years is not defined. It could be five. It could be ten. It could be twenty.

The Applicant and the NRC staff in the present case rely on the applicant's general assertion that the applicant will build storage capacity as stated in one paragraph in section 3.5.4.3 of the application.

Petitioners in the present case assert that the minimal information offered by the applicant as to the long term plan for low level radioactive waste storage is not enough to meet the long term requirement and that the ER does not explain what it will do to protect to the environmental and public health consequences of extended long term storage. That is omitted by the Applicant.

The Petitioners have satisfied the requirements of 10 C.F.R. Part 51.

The ER does not contain the needed facts to provide for a complete and comprehensive understanding of the health effects of the extended on site storage of radioactive nuclear B and C class low level waste. Considering that the Applicant says at Section 3.8.1 that the Applicant considers an operating life of 60 years for the European Pressurized Reactor, the ER must contain the facts and figures for the period of the suggested operating life or

at least the 40 years of the license that is being applied for storage of Class B and C radioactive nuclear waste at the proposed Bell Bend radioactive nuclear waste plant.

The Applicant notes at page 31 of its Reply that there is a paragraph at Section 3.5.4.3 of the Applicant's ER that they say addresses the problem if no off site storage is available. However, that paragraph and the ones that the NRC Staff cites surrounding that paragraph do not state anywhere that the solution offered is for the complete, long term life of the license as Petitioner asserts that it must. No words are used to that effect

So we have a dispute of the fact and we have a dispute of what the law requires.

The Applicant submits the above referenced paragraph to cover forty to sixty years of low level radioactive nuclear waste. A 100 word paragraph does not cover the forty or sixty year plan where human lives are at stake.

Petitioners assert that this contention fits the standards for admissibility under 10 C.F.R. Section 2.309(f)(1). Both the recent Memorandum and Order in Calvert Cliffs 3, ASLBP No. 09-874-02 COL (March 24, 2009), p. 67 et seq. and North Anna, LBP -08-15, 68 NRC at _ (slip op. at 21-22) accepted similar contentions.

Applicant and the NRC staff also do not accept Petitioner, Gene Stilp's, background in low level nuclear waste policy as adequate for this case.

In his declaration, Mr. Stilp stated his background in points 2 to 5 as listed below:

2. From 1987 to 1994 I was a staff member of the Pennsylvania State legislature. In 1987 the Commonwealth of Pennsylvania under the direction of the Federal mandate for a low level radioactive waste site had to pass legislation for the establishment of a low level radioactive waste facility in one of the states belonging to the Appalachian Compact. At that time I personally worked on the legislation for the House of Representatives Majority Committee on Conservation. From 1988 to 1994, I was the representative of the Majority Chairman of the Pennsylvania House Conservation Committee to the statewide Pennsylvania Environmental Quality Board composed of the heads of each executive department in Pennsylvania and each legislative caucus. The regulations that enabled Act 12 of 1988, The Low Level Nuclear Waste Siting Act were developed while I was a representative to the Pennsylvania Environmental Quality Board when the State was developing regulations for the disposal of low level radioactive waste.

3. I am an expert in the policy issues surrounding low level radioactive waste disposal in Pennsylvania, including history of the related facilities, siting of new facilities, and the development of criteria for LLRW disposal.

4. I am familiar with the statements in the Bell Bend Environmental Report regarding the applicant's plans for storage and disposal of LLRW.

5. I prepared Contention two which challenges the adequacy of the Bell Bend Environmental Report to address low level radioactive waste storage. As stated in the contention, it is my expert opinion that the Bell Bend site is likely to become a long-term storage facility for LLRW because of the lack of any reasonable prospect that a disposal facility will become available at any time in the foreseeable future.

Contrary to the statements of the Applicant, in number five of the above declaration, I plainly stated that I prepared Contention Two. All of Contention Two is my opinion and cited support for Contention Two.

I submit that the declaration and Contention Two on low level nuclear waste, clearly supports my submission as an expert in the area of low level radioactive nuclear waste policy as applied to Pennsylvania, the compact of which Pennsylvania is a part and any policy that is associated with low level radioactive waste in Pennsylvania. from the Federal standpoint.

CONTENTION FIVE: RESPONSE OF PETITIONERS

On May 18, [2009] in a "Petition to Intervene in the Radioactive Bell Bend Nuclear Power Plant Combined Construction and License Application by Gene Stilp and Taxpayers and Ratepayers United (TRU)," Gene Stilp for himself and for Taxpayers and Ratepayers United Association listed Contention Five as a contention which should be admitted for hearing before the Atomic Safety and Licensing Board.

Contention Five from that document stated that, "the Petitioners (Stilp and TRU) contend that the decommissioning funding assurance in the Application is not enough and that the Applicant (PPL) must pass an immediate financial test to assure adequate funding. If the proposed radioactive nuclear plant and all the radioactive parts are to be cleaned and decontaminated of all radioactivity and decommissioned at the end of a forty

year license or at the end of sixty years as PPL depicts as the possible life of this plant to be, the Interveners contend that the amount of money that PPL says it is required to assure sufficient funds for decommissioning of this radioactive plant will not be enough and that the Applicant (PPL) must show that the method of assurance is financially possible now."

In the discussion that followed the Petitioners pointed out that PPL is already committed to decommissioning of its other radioactive nuclear plants at Susquehanna 1 and Susquehanna 2 and that the funding for that decommissioning and decontamination and the funding for the decommissioning of Bell Bend is guaranteed by the parent company method
The Petitioners say that the Atomic Safety and Licensing Board are able to take judicial notice of the financial losses in the financial markets and that that these losses have an impact of decommissioning assurance.
The Petitioners assert that a financial test is relevant now and that the Application for a radioactive power plant at Bell Bend is deficient without the appropriate financial test.
The staff of the NRC and PPL disagree, of course, and say that no test is appropriate now and take the absurd position that the license can be granted,

the plant built and fuel loading imminent before the financial test is appropriate.

It is obvious that a question of fact and law exists with the Application with parties on both sides and the ASLB in the middle.

The ASLB very recently came up against this very question in the Calvert Cliffs case, Memorandum and Order, Docket No. 52-016-COL, ASLBP No. 09-874-02-COL-BD01, March 24, 2009.

The ASLB in that case accepted the relevant portion of the Petitioners contention on decommissioning by saying at page 38 that "The Board finds that this contention has raised a legitimate issue of law regarding the proper timing for Applicant to submit the financial tests for parent company guarantees. If the financial tests are required at the application stage, then this contention has proposed a clearly admissible contention of omission. If financial tests are not required until after the license has been issued, then this contention may not be admitted."

The ASLB continued on page 38 by stating, "Contention #2 is admitted in part. The Board is of the opinion that is in the best interests of the management of this proceeding that this issue be segregated from the other contentions and immediately briefed. Accordingly, Joint Petitioners, Applicant and the NRC staff are to file briefs that include, but need not be

limited to any established relevant NRC review process, Commission intentions regarding timing of financial tests, and existing regulations supporting either option. If the Board determines that this issue can be decided through regulatory interpretation or examination of NRC case law, we will rule on this contention. However, if the Board determines that the regulations are ambiguous and that this is ultimately an NRC policy issue, we will refer this contention to the Commission."

In the interests of the sensible and timely management of the present Bell Bend radioactive nuclear plant Application case, 52-039, the parties applying for Intervener status in this Petition, Gene Stilp and Taxpayers and Ratepayers United Association, wishes to see the ASLB panel in this case made aware of the briefs filed in the Calvert Cliffs case for the benefit of the ASLB panel in this present case. Therefore, the briefs and reply briefs are attached to this filing as exhibits 1 thru 6.

The present Petitioner, with the permission of the counsel in the Calvert Cliffs case, aggress with and presents the argument on this contention which is similar to the decommissioning contention in the Calvert Cliffs case and notes that that argument directly applies to the radioactive power plant at Bell Bend application.

In order to directly address the NRC staffs' Answer and PPL Answer to the Petition to Intervene, and their Answers' main concern that no issue of law or fact has been presented and that the Contention 5 is an impermissible challenge to the NRC rules, a review of the history of the regulations and guidance documents is in order and laid out carefully by the filings in the Calvert Cliffs case.

NRC decommissioning funding requirements for this Application are found at 50.33(k)(1) and 50.75 of Part 50 regulations. Section 50.33(k)(1) requires that Applications for combined licenses must include "information in the form of a report… indicating how reasonable assurance will be provided that funds will be available to decommission a facility." Requirements for such a funding report are at 50.75(b). There are four requirements. One, the report must state the amount of decommissioning funding that will be set aside. Two, the applicant must certify "that financial assurance for decommissioning will be provided no later than 30 days after the Commission publishes notice in the Federal Register" of the scheduled date on which the applicant/licensee is to begin loading fuel into the facility. 10 C.F.R. section 50.75(b)(1). Three. The report must provide for annual adjustment of the amount. 10 C.F.R. section 50.75(b)(2). Four. The report

must show that the financial assurance will be provided in one of three ways: (1) prepayment, (2) sinking fund, or (3) a surety or other form of guarantee. 10 C.F.R. 50.75 (b) (3). PPL chose to rely on a parent company guarantee so it must satisfy the financial test in 10 C.F.R. Part 30 Appendix A. 10 C.F.R. section 50.75(e)(1)(iii)(C). That means that PPL must pass a test laid out in Appendix C, 10 C.F.R. section 50.75 (e)(1)(iii)(C).

The plain language and the regulatory context of NRC regulations show that combined applications must provide sufficient information in their applications to demonstrate reasonable assurance of adequate decommissioning funding, including the financial test required by the 10 C.F.R. section50.75 (e)(1)(iii)(B).

The 2007 rulemaking did not change the requirements for a reasonable assurance finding in 10 C.F.R. sections 50.33(k)(1) and 50.75 (a). The new rule reiterated the same language. 72 Federal Register at 49,491, 49,503. Nor did the Part 52 Rulemaking change the requirement of 10 C.F. R. that decommissioning funding must be assured by one of the methods listed. It also did not alter section 50.75 (e)(1)(iii)(B), which precludes an applicant from relying on a parent company guarantee unless it meets the financial test referred to above in Appendix C.

PPL does not include basic information that should be required in a test in a parent guarantee situation as exists at Bell Bend. What does the N.R.C. staff base its decisions on with hardly any financial information forthcoming from the applicant? The "will also be structured" and "shall be" submitted by PPL statements at page, 1-12 of Bell Bend's Application, are not a present test They are saying that they will pass some future test. Not good enough. The Application must say how it will be provided. Where's the beef?

Petitioners look to the Atomic Energy Act, Section 189(a) which means that a hearing "must encompass all the material factors bearing on the licensing decision." Union of Concerned Scientists v NRC, 735 F.2d 1437, 1443 (D.C.Cir. 1984).

Making the determination of whether reasonable assurance, that decommissioning funds will be available, has been provided by PPL is a material factor in this proceeding and may be challenged in a hearing. It makes no sense to hold up the requirements for reasonable assurance of financial ability until right before the fuel is loaded. You do not issue a license before the driver is tested. Petitioners should not be prevented from being able to raise material issues as to whether PPL has provided

reasonable assurance that the decommissioning funds will be available. What are they trying to hide from investors and the government? This licensing board has a viable contention of omission before it that must be adjudicated before any license can be issued.

CERTIFICATE OF SERVICE

I hereby certify that on this day, June 26, 2009, that I posted a "REPLY BRIEF OF GENE STILP, PRO SE AND TAXPAYERS AND RATEPAYERS UNITED (TRU) TO ANSWERS OF APPLICANT AND STAFF" in the above captioned matter. To the best of my knowledge the following have been served electronically on the NRC Electronic Information Exchange as well as other in 52-039.

David Repka
Winston & Strawn LLP
1700 K Street, N.W.
Wash., D.C. 20006

Susan Vrahorestis
Counsel for NRC Staff
Mail Stop 0-15 D21
Wash., D.C. 20555-001

Signed electronically,

Gene Stilp, pro se
c/o 275 Poplar Street
Wilkes-Barre, Pa 18702

717-829-5600