

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 Plant Units 1 and 2)

Docket Nos. 50-438-CP and 50-439-CP

ASLBP No. 10-896-01-CP-BD01

January 15, 2010

MEMORANDUM AND ORDER
(Initial Prehearing Order)

In the above-captioned proceeding, at issue is an August 26, 2008 request by the Tennessee Valley Authority (TVA) that the Nuclear Regulatory Commission (NRC) reinstate the 10 C.F.R. Part 50 construction permits (CP) for two pressurized water reactors TVA had been in the process of building at its Bellefonte site near Scottsboro, Alabama. According to this TVA request, although the CPs for Units 1 and 2 (which TVA held for more than three decades) were withdrawn by the agency at TVA's request in September 2006, TVA now wishes to have both CPs reinstated so that TVA will be in a position to complete construction of the units and seek operating authority if TVA determines that construction and operation of the units has become a viable option. See Letter from Ashok S. Bhatnager, Senior Vice President, TVA, to NRC Document Control Desk at 1 (Aug. 26, 2008) (ADAMS Accession No. ML082410087).

Responding to a March 9, 2009 agency hearing opportunity notice, see In the Matter of Tennessee Valley Authority (Bellefonte Nuclear Plant Units 1 and 2), 74 Fed. Reg. 10,969 (Mar. 13, 2009), by a jointly-filed hearing petition dated May 8, 2009, the Blue Ridge

Environmental Defense League and its Bellefonte Efficiency and Sustainability Team chapter (BREDL/BEST) and the Southern Alliance for Clean Energy (SACE), hereinafter referred to as Joint Petitioners, submitted nine contentions challenging the validity of the TVA CP reinstatement request. In a May 20, 2009 order, the Commission indicated that it would consider, in the first instance, the admissibility of the first two of Joint Petitioners contentions, which raised the potentially dispositive issue of the agency's statutory authority to reinstate the TVA CPs, while suspending further participant briefing regarding the other seven contentions. See Commission Order (May 20, 2009) at 1 (unpublished). Thereafter, in a January 7, 2010 memorandum and order, the Commission (by a vote of 2-1) concluded that the agency did possess the authority to reinstate the TVA CPs and referred the petition to the Chief Administrative Judge for appointment of a licensing board to (1) determine whether Joint Petitioners have standing and any admissible contentions among their remaining seven issue statements; and (2) conduct any hearing regarding the petition. See CLI-10-6, 71 NRC __, __ (slip op. at 19) (Jan. 7, 2010). The Chief Administrative Judge thereafter appointed this Licensing Board to rule on the standing and contention admissibility matters and preside at any hearing.¹

Relative to the conduct of this proceeding, the following directives shall apply:

¹ Although it has the same administrative judges as members, this Board is a separate entity from the licensing board conducting the 10 C.F.R. Part 52 combined license (COL) proceeding for proposed Bellefonte Units 3 and 4. Absent some other directive from the boards, filings intended for the COL proceeding regarding proposed Units 3 and 4 must be directed separately to that board and those agency dockets (Docket Nos. 52-104-COL and 52-015-COL), while filings for this CP-related proceeding regarding proposed Units 1 and 2 should be directed to this Board and the agency dockets associated with this proceeding (Docket Nos. 50-438-CP and 50-439-CP).

I. BRIEFING SCHEDULE

Pursuant to the Board's authority under 10 C.F.R. § 2.309(h), TVA and NRC staff answers to Joint Petitioners May 8, 2009 petition, as well as any responses to Joint Petitioners supplemental basis filings of July 7, 2009, and January 11, 2010,² shall be filed on or before Friday, January 29, 2010. Thereafter, Joint Petitioners reply to the TVA and staff answers shall be filed on or before Friday, February 5, 2010.

II. ADMINISTRATIVE MATTERS

A. Notice of Appearance

If they have not already done so, on or before Friday, January 22, 2010, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b). In each notice of appearance, besides providing a business address and telephone number, an attorney or representative should provide a facsimile number and an internet e-mail address. Counsel or representatives who have already submitted a notice of appearance that does not provide facsimile or e-mail information should file a supplemental statement with that information on or before that same date.

B. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including signature page) absent

² If Joint Petitioners wish to file a response to the January 14, 2010 TVA motion to strike their January 11, 2010 supplemental basis pleading, they should do so on or before Monday, January 24, 2010.

preapproval of the presiding officer.³ A request for presiding officer preapproval to exceed this page limitation shall be submitted in writing no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

In accordance with the agency's rules of practice, except in instances involving a motion to file a new/amended contention, see 10 C.F.R. § 2.309(c), (f)(2), leave must be sought to file a reply to a response to a motion. Compare 10 C.F.R. § 2.323(c) with id. § 2.309(h)(2). A request for presiding officer preapproval to file a reply shall be submitted in writing no less than three business days prior to the time the reply will be filed.⁴ A request to file a reply must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

³ Any responses/replies to Joint Petitioners hearing request are not subject to this page limitation. However, any subsequent motion for admission of a new or amended contention under section 2.309(c), (f)(2) and responses/replies thereto are subject to this page limitation. In an instance when more than one new or amended contention is being filed in connection with information that is asserted to provide the basis for a motion to admit new or amended contentions, see infra n.5, because the page limit applies regardless of the number of contentions involved, in lieu of filing multiple separate motions of ten pages seeking the admission of each individual contention, it would be preferable to seek leave of the Board to exceed the page limit. If granted, this would permit the participant to file one timely motion that deals with all the contentions being proffered relative to a particular triggering event.

⁴ Although the agency's rules of practice regarding motions practice do not provide for reply pleadings, the Board will presume that for a reply to be timely, it would have to be filed within seven days of the date of service of the response it is intended to address. See 10 C.F.R. § 2.309(h)(2).

C. Motions for Extension of Time

A motion for extension of time in these proceedings shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought.⁵ A motion for extension of time must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate appropriate cause that supports permitting the extension.

D. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be filed and served on the presiding officer, the Office of the Secretary, and counsel for the other participants in the particular proceeding on the next business day after the filing of the request.

E. Attachments/Enclosures to Filings and Evidentiary Exhibits

If a participant files a pleading or other submission that has additional documents appended to it, these items shall be referred to as attachments or enclosures (not exhibits) and a separate alpha or numeric designation shall be given to each appended document (e.g., Attachment A, Enclosure 1), either on the first page of the appended document or on a cover/divider sheet in front of the appended document. Attachments or enclosures to a motion and any related responsive pleadings are not subject to the page limitation set forth in

⁵ In accordance with 10 C.F.R. § 2.323(a), unless some other time is specified in the agency's rules of practice or by the Board, motions generally are due within ten days after the occurrence or circumstance from which the motion arises, with any response to that motion due within ten days of service of the motion. The Board notes, however, relative to motions seeking the admission of new/amended contentions, see 10 C.F.R. § 2.309(c), (f)(2), that to be considered timely such motions should be filed within thirty days of the date upon which the information that is the basis of the motion becomes available to the petitioner/intervenor, with any response to such a motion due within fourteen days of service of the motion, and any reply to a response due within seven days of service of the response.

section II.B.1 above, but shall be submitted via the E-Filing system as part of a single electronic file that consists of the pleading or other submission, the certificate of service, and all the attachments or enclosures associated with the pleading or submission. In accordance with the agency's E-Filing guidance (at page 14), multiple electronic files should be used for pleadings or submissions with attachments or enclosures only if the filing exceeds fifteen megabytes in size. See <http://www.nrc.gov/site-help/e-submittals/guide-electronic-sub-r5.pdf> (access link for Guidance for Electronic Submissions to the NRC (rev. 5 June 25, 2009)).

The label "exhibit" shall be reserved for use as a designation for those items that are submitted, whether by pre-filing or at the time of an evidentiary hearing, as potential materials a participant will seek to have identified for inclusion in the evidentiary record of the proceeding. Exhibits (and prefiled written testimony) shall be submitted via the agency's E-Filing system as separate electronic files. See 10 C.F.R. § 2.304(g).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III
CHAIRMAN

Rockville, Maryland

January 15, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(Bellefonte Nuclear Power Plant -)
Units 1 and 2))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (INITIAL PREHEARING ORDER) have been served upon the following persons by the Electronic Information Exchange (EIE) with additional service by email on persons marked with*.

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

Dated at Rockville, Maryland
this 15th day of January 2010.