

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY

In the Matter of)	
)	
PPL Bell Bend, L.L.C.)	Docket Nos. 50-039-COL
)	
(Bell Bend Nuclear Power Plant))	

**MOTION TO REOPEN THE RECORD AND ADMIT CONTENTION REGARDING
THE SAFETY AND ENVIRONMENTAL IMPLICATIONS OF
THE NUCLEAR REGULATORY COMMISSION TASK FORCE REPORT ON
THE FUKUSHIMA DAI-ICHI ACCIDENT**

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.309 and 2.326, Gene Stilp, *pro se* Petitioner (“Petitioner”) hereby move to reopen the record in this proceeding to admit a new contention challenging the adequacy of the “Bell Bend Nuclear Power Plant Combined License Application Environmental Report, Revision 2” (February 12, 2010) (the “ER”) on the basis that it fails to address the extraordinary environmental and safety implications of the findings and recommendations raised by the Nuclear Regulatory Commission’s Fukushima Task Force (the “Task Force”) in its report, “Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights From the Fukushima Dai-ichi Accident” (July 12, 2011) (“Task Force Report”). Petitioner respectfully submits that reopening the record and admitting the new contention is necessary to ensure that the Nuclear Regulatory Commission (“NRC” or the “Commission”) fulfills its non-discretionary duty under the National Environmental Policy Act (“NEPA”) to consider the new and significant information set forth in the Task Force Report before it issues a Combined License (“COL”) for Bell Bend.

This Motion is supported by the Declaration by Dr. Arjun Makhijani (August 8, 2011) (the “Makhijani Declaration”), which is attached and incorporated by reference herein. The Motion is also supported by a Certificate Required by 10 C.F.R. § 2.323(b).

II. BACKGROUND

In 2009 Petitioner filed five contentions in the Bell Bend COLA proceedings. Contentions were denied. Standing was granted. On April 14, 2011 Petitioner filed an emergency petition in response to the ongoing nuclear disaster at the Japanese power plant in northern Japan.

III. DISCUSSION

Until a COL has been issued, the Commission retains jurisdiction to reopen the record for consideration of a new contention. Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 24 (2006). Nineteen overlapping factors, set forth in three regulations, govern motions to reopen and admit new contentions. *See* 10 C.F.R. §§ 2.309(c), 2.309(f), and 2.326; *see also* Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), __ NRC __ at Attachment A (Oct. 28, 2010). This Motion and the accompanying new contention satisfy each of these factors.

In addition to satisfying the requirements for a Motion to Reopen, to be admitted for hearing, a new contention must also satisfy the six general requirements set forth in 10 C.F.R. § 2.309(f)(1), and the timeliness requirements set forth in either 10 C.F.R. § 2.309(f)(2) (governing timely contentions) or 10 C.F.R. § 2.309(c) (governing non-timely contentions). As provided in the accompanying contention, each of the requirements set forth in 10 C.F.R. § 2.309(f)(1) is satisfied. Furthermore, Petitioner maintains that this Motion and accompanying contention are timely, and the requirements of 10 C.F.R. § 2.309(f)(2) are also satisfied. In the event the

Commission determines that this Motion and the accompanying contention are not timely, however, Petitioner also maintains that the requirements of 10 C.F.R. § 2.309(c) are satisfied.

A. This Motion Satisfies the Standards For Reopening a Closed Hearing Record Set Forth in 10 C.F.R. § 2.326.

Pursuant to 10 C.F.R. § 2.326, a motion to reopen a closed record must be timely, address a significant environmental issue, demonstrate that a materially different result would have been likely had the newly proffered evidence been considered initially, and be accompanied by an expert declaration. This Motion satisfies the requirements of 10 C.F.R. § 2.326.

1. The Motion is Timely.

The NRC has adopted a three-part standard for assessing timeliness. *See* 10 C.F.R. § 2.309(f)(2). The Motion and accompanying contention are timely.

The information upon which the Motion and accompanying contention are based was not previously available.

The availability of material information “is a significant factor in a Board’s determination of whether a motion based on such information is timely filed.” Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), LBP-85-19, 21 NRC 1707, 1723 (1985) (internal citations omitted). This Motion and the accompanying contention are based upon information contained within the Task Force Report, which was not released until July 12, 2011. Before issuance of the Task Force Report, the information material to the contention was simply unavailable.

The information upon which the Motion and accompanying contention are based is materially different than information previously available.

Only five months ago, a nuclear accident occurred at the Fukushima Dai-ichi Nuclear Power Plant. In the wake of the accident, the Task Force was established and instructed by the NRC to provide:

A systematic and methodical review of [NRC] processes and regulations to determine whether the agency should make additional improvements to its regulatory system and to make recommendations to the Commission for its policy direction, in light of the accident at the Fukushima Dai-ichi Nuclear Power Plant.

Task Force Report at vii. In response to that directive, the Task Force made twelve “overarching” recommendations to “strengthen the regulatory framework for protection against natural disasters, mitigation and emergency preparedness, and to improve the effectiveness of NRC’s programs.”

Id. at viii. In these recommendations the Task Force, for the first time since the Three Mile Island accident occurred in 1979, fundamentally questioned the adequacy of the current level of safety provided by the NRC’s program for nuclear reactor regulation.

In the EIS, the Commission assumed that compliance with existing NRC safety regulations was sufficient to ensure that the environmental impacts of accidents were acceptable. The information in the Task Force Report refutes this assumption and is materially different from the information upon which the EIS was based. *See* attached Makhijani Declaration.

The Motion and accompanying contention are timely based on the availability of the new information.

Petitioner has submitted this Motion and accompanying contention in a timely fashion. The NRC customarily recognizes as timely contentions that are submitted within thirty (30) days of the occurrence of the triggering event. Shaw Areva MOX Services, Inc. (Mixed Oxide Fuel Fabrication Facility), LBP-08-10, 67 NRC 460, 493 (2008). The Task Force Report, upon which the contention is based, was published on July 12, 2001. Because they were filed within thirty (30) days of publication of the Task Force Report, this Motion and accompanying contention are timely.

2 . The Motion Addresses a Significant Environmental Issue.

As stated in the Petitioner's contention and in the attached Makhijani Declaration at pars. 7-9, the environmental issues raised in this contention are significant and indeed they are exceptionally grave because the Task Force Report questions the adequacy of the NRC's current regulatory program to protect public health and safety and makes major recommendations for upgrades to the program.

3 . The Motion Demonstrates That a Materially Different Result Would Be Likely Had the Newly Proffered Evidence Been Considered Initially.

As discussed in pars. 10-25 of the attached Makhijani Declaration, a materially different result would be likely had the NRC considered the new and significant information set forth in Task Force Report in its environmental analysis for the Bell Bend COL. In particular, if severe accident mitigation alternatives ("SAMAs") were imposed as mandatory measures – as recommended by the Task Force – the outcome of the EIS could be affected in two major respects. First, the environmental analysis would have to consider the implication of the Task Force Review that compliance with current NRC safety requirements does not adequately protect public health and safety from severe accidents and their environmental effects. Second, for reactors that are unable to comply with new mandatory requirements, it could result in the denial of licenses. Third, the cost of adopting mandatory measures necessary to significantly improve the safety of currently operating reactors and proposed new reactors is likely to be significant.

4 . The Makhijani Declaration Fully Supports and Sets Forth the Factual Bases for This Motion.

As required by 10 C.F.R. § 2.326(b), this Motion is supported by a declaration that sets forth the factual and technical bases for Petitioner's claims that the criteria of 10 C.F.R. § 2.326(a) have been satisfied. *See* Makhijani Declaration. As demonstrated in his declaration, Dr. Makhijani is a highly qualified expert who is familiar with the Task Force Report. Moreover, the

information in the Makhijani Declaration meets the NRC's standard for admissibility of evidence because it is relevant, material, reliable, and not repetitious. 10 C.F.R. § 2.337(a). Additionally, the Motion relies on the Task Force Report itself, which was prepared by highly qualified members of the NRC staff. *See* William Magwood, Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following the Events in Japan, p. 5, lines 9-13 (May 12, 2011) (“[We] brought our A-team to this task. You know, this agency has the best expertise in nuclear safety in the world, bar none. And we’ve brought our best and brightest to this work . . .”).

B. The New Contention Satisfies the Standards For Non-Timely Contentions Set Forth in 10 C.F.R. § 2.309(c).

A motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions set forth in 10 C.F.R. § 2.309(c). 10 C.F.R. § 2.326(d). Under § 2.309(c), determination on any “nontimely” filing of a contention must be based on a balancing of eight factors, the most important of which is “good cause, if any, for the failure to file on time.” Crow Butte Res., Inc. (North Trend Expansion Project), LBP-08-6, 67 NRC 241 (2008). As set forth below, each of the factors favors admission of the accompanying contention.

1. Good Cause.

Good cause for the late filing is the first, and most important element of 10 C.F.R. § 2.309(c)(1). Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-00-02, 51 NRC 77, 79 (2000). Newly arising information has long been recognized as providing the requisite “good cause.” *See* Consumers Power Co. (Midland Plant, Units 1 & 2), LBP-82-63, 16 NRC 571, 577 (1982), *citing* Indiana & Michigan Elec. Co. (Donald C. Cook Nuclear Plant, Units 1 & 2), CLI-72-75, 5 AEC 13, 14 (1972). Thus, the NRC has previously found good cause

where (1) a contention is based on new information and, therefore, could not have been presented earlier, and (2) the intervenor acted promptly after learning of the new information. Texas Utils. Elec. Co. (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 69-73 (1992).

As noted above, the information on which this Motion and accompanying contention are based is taken from the Task Force Report, which was issued on July 12, 2011 and analyzes NRC processes and regulations in light of the Fukushima accident, an event that occurred a mere five months ago. This Motion and accompanying contention are being submitted less than thirty (30) days after issuance of the Task Force Report.

Accordingly, the Petitioner has good cause to submit this Motion and the accompanying contention now.

2. Nature of the Petitioner's Right to be A Party to the Proceeding.

Petitioner has a right to participate in this proceeding because he has standing and has submitted an admissible contention. *See* 10 C.F.R. § 2.309, 42 U.S.C. § 2339(a)(1).

3. Nature of Petitioner's Interest in the Proceeding.

Petitioner seeks to protect their members' health, safety, and lives, as well as the health and safety of the general public and the environment by ensuring that the NRC fulfills its non-discretionary duty under NEPA to consider the new and significant information set forth in the Task Force Report before it issues a COL for Bell Bend. Moreover, as the Petitioner lives within fifty (50) miles of the Bell Bend Nuclear Power Plant, Petitioner has an interest in this proceeding because of the "obvious potential for offsite consequences" to those members' health and safety. Diablo Canyon, 56 NRC at 426-27, citing Florida Power & Light Co. (Turkey Point

Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146, *aff'd*, CLI-01-17, 54 NRC 3 (2001).

4. Possible Effect of an Order on Petitioner's Interest in the Proceeding.

As noted above, Petitioner's interest in a safe, clean, and healthful environment would be served by the issuance of an order requiring the NRC to fulfill its non-discretionary duty under NEPA to consider new and significant information before making a licensing decision. *See Silva v. Romney*, 473 F.2d at 292. Compliance with NEPA ensures that environmental issues are given full consideration in "the ongoing programs and actions of the Federal Government." *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 371 n. 14 (1989).

5. Availability of Other Means to Protect the Intervenors' Interests.

With regard to this factor, the question is not whether other parties may protect Petitioner's interests, but rather whether there are other means by which Petitioner may protect his own interests. *Long Island Lighting Co.* (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-292, 2 NRC 631 (1975). Quite simply, no other means exist. Only through this hearing does Petition have a right that is judicially enforceable to seek compliance by NRC with NEPA before the COL for Bell Bend is issued, permitting these new reactors to operate and impose severe accident risks on the individuals represented by Petitioner.

6. Extent the Petitioner's Interests are Represented by Other Parties.

No other party can represent Petitioner's interests in protecting his health, safety, and environment. Indeed, there are no parties currently admitted in the contested proceeding. As such, Petitioner's interests cannot be represented by any other party.

7. Extent That Participation Will Broaden the Issues.

While Petitioner's participation may broaden or delay the proceeding, this factor may not be relied upon to deny this Motion or exclude the contention because the NRC has a non-discretionary duty under NEPA to consider new and significant information that arises before it makes its licensing decision. Marsh, 490 U.S. at 373-4. Moreover, any resulting delay from granting Petitioner's participation in this proceeding would not prohibit certain construction activities. **PPL Corporation and its subsidiaries are still involved in the necessary prerequisites to construction of the Bell Bend nuclear facility and are still proceeding.**

8 . Extent to which Petitioner Will Assist in the Development of a Sound Record.

Petitioner will assist in the development of a sound record, as their contention is supported by the expert opinion of a highly qualified expert, Dr. Arjun Makhijani. *See* Makhijani Declaration; *see also* Pacific Gas & Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-01, 67 NRC 1, 6 (2008) (finding that, when assisted by experienced counsel and experts, participation of a petitioner may be reasonably expected to contribute to the development of a sound record). Furthermore, as a matter of law, NEPA requires consideration of the new and significant information set forth in the Task Force Report. *See* 10 C.F.R. § 51.92(a)(2). A sound record cannot be developed without such consideration.

A. The New Contention Satisfies the Standards For Admission of Timely Contentions Set Forth in 10 C.F.R. § 2.309 (f)(2).

As discussed in Section III.A.1 above, the NRC has adopted a three-part standard for assessing timeliness. *See* 10 C.F.R. § 2.309(f)(2). The Motion and accompanying contention satisfy each of these standards.

B. The New Contention Satisfies the Standards For Admission of a New Contention Set Forth in 10 C.F.R. § 2.309(f)(1).

As discussed in the accompanying contention, the standards for admission of a contention set forth in 10 C.F.R. § 2.309(f)(1) are satisfied.

I. **CONCLUSION**

For the foregoing reasons, this Motion should be granted and the accompanying contention admitted.

Respectfully submitted this 10th day of August 2011.

Signed (electronically) by:
Gene Stilp
1550 Fishing Creek Valley Road
Harrisburg, PA 17112
717-829-5600
E-mail: genestilp@comcast.net
Pro se petitioner in Bell Bend COL proceeding

CERTIFICATE REQUIRED BY 10 C.F.R. § 2.323(b)

I certify that on August 10th, 2011, I contacted counsel for the applicant and the NRC Staff in an attempt to obtain their consent to this motion. They stated that information would have to be left on an answering device. I also certify that I sent an email to dmkoch@pplweb.com in an effort to ask opposing counsel for consent to file.

Electronically signed by

Signed (electronically) by:
Gene Stilp
1550 Fishing Creek Valley Road
Harrisburg, PA 17112
717-829-5600
E-mail: genestilp@comcast.net
Pro se petitioner in Bell Bend COL proceeding