

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD PANEL  
BEFORE THE LICENSING BOARD**

_____	)	
In the Matter of	)	
	)	Docket Nos. 52-014, 52-015
Tennessee Valley Authority	)	
	)	ASLBP No. 08-864-02-COL-BD01
Bellefonte Nuclear Power Plant	)	
Units 3 and 4	)	October 3, 2011
_____	)	

**INTERVENORS' REPLY TO TVA MOTION TO STRIKE**

Pursuant to 10 C.F.R. § 2.323, the Blue Ridge Environmental Defense League and Southern Alliance for Clean Energy (øIntervenorsö) hereby reply to the Motion to Strike<sup>1</sup> filed by Tennessee Valley Authority (øTVAö). Two issues raised by TVA are addressed herein: 1) Timeliness and 2) Scope.

Timeliness

The IntervenorsøReply<sup>2</sup> in question was indeed filed on September 19, 2011. However, there is good cause for allowing the Reply. First, Intervenor filing was clearly submitted as being late. The Certificate of Service reflected this in red lettering across the title. Second, the Intervenor had no knowledge that the VeriSign electronic signature was no longer valid until after business hours on September 13, 2011. This was not a lack of diligence on the part of the Intervenor; in fact, the computer used to file the Reply

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<sup>1</sup> øTennessee Valley Authorityø Motion to Strike IntervenorsøReply to Answers to the Fukushima Task Force Report Contention,ö dated September 22, 2011, hereinafter øMotion to Strikeö

<sup>2</sup> øIntervenorsøMemorandum in Reply to Oppositions to Admission of New Contention,ö dated September 13, 2011 and filed September 19, 2011, hereinafter øIntervenorsøReplyö).

indicated that the Intervenor's signature was valid. The only explanation for this may be that because the Intervenor had recently installed a new computer and transferred the electronic signature along with other files, it was invalidated. Third, Intervenor contacted the NRC the next day, September 14, and steps were initiated to install a new certificate. Intervenor sent an email<sup>3</sup> reflecting this to the NRC Secretary, Office of General Counsel, and Appellate Adjudication. During the next two days, the NRC technical staff did succeed in getting a new certificate installed for the Intervenor, but not before late in the afternoon on Friday, September 16. The Reply was filed the next business day, Monday, September 19. Fourth, during this whole episode, the *pro se* legal representative for the Intervenor was taking care of his wife who has recently been diagnosed with lung cancer. This care included chemotherapy, requiring him to take frequent trips to the hospital and

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<sup>3</sup> **From:** bredl  
**Sent:** Wednesday, September 14, 2011 3:39 PM  
**To:** hearing.docket@nrc.gov  
**Cc:** NRC Appellate Adjudication ; NRC Office of the Secretary ; NRC OGC ; NRC Secretary  
**Subject:** Urgent Request for new digital ID

TO: NRC Hearing Docket  
FROM: Louis A. Zeller  
RE: Digital ID  
DATE: September 14, 2011  
CC: Appellate Adjudication, Office of the Secretary, OGC

I write to request a new digital ID certificate. I learned of the failure of my existing account yesterday, September 13th, when I attempted without success to file documents in the following dockets: 52-018, 52-019, 52-025, 52-026, 52-017, 52-014 and 52-015. My digital ID has not expired; all indications from my desktop show my VeriSign ID to be working properly. However, I called the help desk today and learned that my recent installation of a new computer may be the cause of the failure. I am working to correct this today. Please contact me as soon as possible.

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Founded in 1984, [BREDL also has offices in Roanoke, Virginia; Graham and Raleigh, North Carolina; and Augusta, Georgia.](#)

pharmacy in a town 25 miles from home. Legally blind, his wife has requires assistance with many daily tasks, and the side effects of chemotherapy disrupted sleep patterns and meal preparation for both persons. NRC rules of procedure have no provision for *pro se* intervenors, even those who have no family obligations. NRC's practices and procedures most often find the NRC Staff taking positions against intervenors, and *pro se* intervenors are no exception. In fact, TVA's Motion to Strike is supported by the NRC staff. The legal maxim here is *Impossibilium nulla obligatio est*. The law compels no man to impossible things. Intervenors filed in accord with the Board's direction, albeit in an untimely fashion, contacted NRC as soon as possible, and served the parties.

Finally, TVA's decision making process for Bellefonte Units 3 and 4 is presently uncertain:

Because the extent of information regarding the Japan event and the physical conditions at the Fukushima-Daiichi plant continues to evolve, delaying a complete understanding of post-incident conditions, TVA staff cannot predict with certainty at this time when it will request the TVA Board to make a final decision regarding any future nuclear generation expansion at the Bellefonte site. Because TVA does not know the outcome of these ongoing assessments, it also cannot predict how these assessments may impact this decision.

See TVA's Response to April 21, 2011 Atomic Safety and Licensing Board Order Requesting TVA Status Report at 4. Therefore, the timing of the Intervenors' reply in this matter can have no effect on delaying the extant proceeding.

### Scope

The Intervenors' Reply did not broaden the scope of the contentions. Intervenors did reply to TVA and NRC Staff answers in opposition to the contentions.

TVA has taken an overly narrow view of the Intervenors' Contention of August 11 and Reply. Regarding the Bellefonte FSAR and seismic seiches, TVA's asserts: "This

information is not appropriate for a Reply. The proposed contention, the TVA Reply, and the Staff Reply do not reference 10 C.F.R. § 100.23(c), and so it cannot form the basis for the proposed contention at the Reply stage.ö TVA Motion to Strike at 6. However, Intervenor's Contention did cite 10 CFR Part 100:

In addition to environmental considerations, there are additional safety requirements which the NRC will need to address. General Design Criteria 2 requires *inter alia* that structures, systems and components be designed to withstand the effects of natural phenomena such as floods, tsunamis, and seiches and still perform their safety functions. Appendix A of 10 CFR Part 100, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," was established to provide detailed criteria to evaluate the suitability of proposed sites.

Intervenor's Contention at 17. Intervenor's were here addressing the very factors which TVA and the NRC must satisfy with regard to natural phenomena. Intervenor's Reply states:

"[E]ach applicant shall investigate all geologic and seismic factors (for example, volcanic activity) that may affect the design and operation of the proposed nuclear power plant irrespective of whether such factors are explicitly included in this section." 10 CFR 100.23(c) (emphasis added)

Intervenor's Reply at 2. There is no daylight between these two statements. Moreover, the facts of the matter are stark. The Bellefonte FSAR states flatly, "There are no known documented surge or seiche occurrences on the Tennessee River." However, the USGS report cited in Dr. McCluney's declaration has a list of seiches caused by earthquake activity on the Tennessee River.

As stated above, Intervenor's have filed this action *pro se*. In such cases, there is a differential which this Board may apply: "An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims." *Forshey v. Principi*, 284 F.3d 1335, 1354-55 (Fed. Cir. 2002). In such administrative

law situations involving *pro se* representatives, the courts have repeatedly used a more liberal, less demanding standard in the interest of fairness.

Conclusion

Intervenors oppose TVA's Motion to Strike and respectfully request that the contentions be admitted by the Board so that a hearing can be held. Submitted on behalf of the Intervenors: Blue Ridge Environmental Defense League with its chapter Bellefonte Efficiency and Sustainability Team and the Southern Alliance for Clean Energy.

Respectfully,

A handwritten signature in black ink, reading "Louis A. Zeller", followed by a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the  
**INTERVENORS' REPLY TO TVA MOTION TO STRIKE**  
were served this day October 3, 2011 on the following persons  
via Electronic Information Exchange.

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Dr. Anthony J. Baratta  
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Dr. William W. Sager  
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Signed this day in Glendale Springs, NC

A handwritten signature in black ink, appearing to read "Louis A. Zeller", followed by a horizontal line.

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