

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

LBP-11-37

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 Power Plant Units 3 and 4)

Docket Nos. 52-014-COL and 52-015-COL

ASLBP No. 08-864-02-COL-BD01

November 30, 2011

MEMORANDUM AND ORDER  
(Ruling on Request to Admit New Contention)

This proceeding concerns the request of applicant Tennessee Valley Authority (TVA) for the issuance of 10 C.F.R. Part 52 combined licenses (COLs) that would authorize the construction and operation of two new Advanced Passive (AP)1000 design reactors, designated as Units 3 and 4, at TVA's existing Bellefonte Nuclear Power Plant (BNPP) site. Pending before the Licensing Board is an August 11, 2011 motion by Joint Intervenors<sup>1</sup> seeking the admission of a new contention. That issue statement seeks to challenge the adequacy of the environmental report (ER) portion of the TVA application because that report fails to address the purported environmental implications of the findings and recommendations put forth by the Nuclear Regulatory Commission's (NRC) Fukushima Near-Term Task Force (Task Force) in its July 11, 2011 report, "Recommendations for Enhancing Reactor Safety in the 21st Century" (ADAMS Accession No. ML111861807). Both applicant TVA and the NRC staff oppose the

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<sup>1</sup> Joint Intervenors are the Blue Ridge Environmental Defense League (BREDL) and the Southern Alliance for Clean Energy (SACE).

contention's admission on a variety of grounds, including a lack of timeliness under 10 C.F.R. § 2.309(c)(1), (f)(2), and its failure to meet the contention admissibility standards of section 2.309(f)(1).

For the reasons set forth below, we find this contention inadmissible.

## I. BACKGROUND

Although this proceeding is more than three years old, it has a procedural history that can be recounted quickly. Responding to the NRC's February 2008 Federal Register notice that offered the opportunity to request a hearing regarding TVA's October 2007 COL application for proposed Units 3 and 4, in a June 2008 petition Joint Intervenors sought to establish their standing to intervene and the admissibility of twenty-four contentions raising various safety and environmental challenges to the TVA application. See LBP-08-16, 68 NRC 361, 373-75 (2008). In a September 2008 decision, the Board found that Joint Intervenors had established their standing and had proffered one admissible safety contention (FSAR-D) and three admissible environmental contentions (NEPA-B, NEPA-G, and NEPA-N), which the Commission on review reduced to two litigable environmental issue statements (NEPA-B and NEPA-N).<sup>2</sup> See id. at 428-29, rev'g referred rulings on contention admissibility, CLI-09-03, 69 NRC 68 (2009), and declining to review referred ruling on contention inadmissibility, CLI-09-21, 70 NRC 927 (2009). Thereafter, Joint Intervenors unsuccessfully sought to admit two additional environmental contentions, as well as to amend one of the admitted environmental contentions. See Licensing Board Memorandum and Order (Ruling on Request to Admit New Contention) (Apr. 29, 2009) at 14 (unpublished) (NEPA-S) [hereinafter New Contention Ruling]; Licensing Board Memorandum

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<sup>2</sup> As part of its ruling, the Board also found that one named intervenor, BREDL's Bellefonte Efficiency and Sustainability Team chapter, had failed to establish its standing. See LBP-08-16, 68 NRC at 428.

and Order (Ruling on Request to Amend Contention NEPA-N) (Jan. 26, 2009) at 8 (unpublished); Licensing Board Memorandum and Order (Ruling on Request to Admit New Contention) (Oct. 14, 2008) at 13 (unpublished) (NEPA-R).

Although mandatory discovery document disclosure efforts by the parties regarding the admitted contentions have continued up to this time, see, e.g., Letter from Scott A. Vance, TVA Counsel, to Louis A. Zeller, BREDL Representative, Sara Barczak, SACE Representative, & Ann P. Hodgdon, NRC Staff Counsel (Nov. 18, 2011), since approximately July 2009 this proceeding has been on hold due to a series of developments concerning applicant TVA's plans for proceeding with the COL application for Units 3 and 4, see Licensing Board Memorandum and Order (Staff Review Schedule Status Update) (Sept. 18, 2009) at 1-2 (unpublished). Most recently, in a September 2011 status report TVA informed the Board that at an August 2011 meeting the TVA board of directors authorized the completion of partially-constructed Bellefonte Unit 1, which has a 10 C.F.R. Part 50 construction permit, after the planned initial fuel loading at Watts Bar Unit 2, which currently is the subject of a Part 50 operating license (OL) proceeding. Further, in this same status report TVA stated that its recently updated Integrated Resource Plan outlining TVA's preferred path for meeting power system demand over the next twenty years projects (1) the addition of Bellefonte Unit 1 in the 2018 to 2020 time frame; and (2) the possible addition of Unit 2, the other unfinished unit on the Bellefonte site, in the 2020 to 2022 time frame. As a consequence, the TVA status report indicated that TVA has undertaken an analysis, which should be completed by the end of 2011, of whether to maintain the current COL application for Units 3 and 4. Further, according to the TVA report, pending completion of that analysis and a final decision regarding the current COL application, TVA has requested that the staff continue to defer indefinitely its COL application review, consistent with a previous TVA/NRC staff agreement to place the application in a suspended status. Moreover, the TVA

report indicated that if TVA decides to pursue COLs for Units 3 and 4, up to two years would be required to amend its pending COL application to account for the changes to the BNPP site-specific design and the evaluation of cumulative impacts of all of the Bellefonte units. See Report on the Status of Bellefonte Nuclear Plant Units 3 & 4 [COL] Application Following TVA's Decision to Complete Bellefonte Nuclear Plant Unit 1 (Sept. 2, 2011) at 2-4.

Notwithstanding the essentially suspended status of this proceeding, in response to the July 11, 2011 report of the Commission-appointed Task Force making recommendations for additional improvements to the agency's regulatory system in light of the March 2011 post-earthquake and tsunami events at Fukushima I,<sup>3</sup> on August 11, 2011, Joint Intervenors submitted a motion, with an accompanying contention, seeking the admission of a new issue statement regarding the implications of the Task Force report for this proceeding. See Motion to Admit New Contention Regarding the Safety and Environmental Implications of the [NRC] Task Force Report on the Fukushima Dai-ichi Accident (Aug. 11, 2011) at 1 [hereinafter Motion to Admit New Contention]; Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011) at 4-5

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<sup>3</sup> A detailed exegesis regarding the Task Force and its report, as well as the Commission's responses to the report and an April 2011 BREDL/SACE-supported petition to suspend the issuance of new or renewed licenses for nuclear power plants in the United States (including the requested COLs for Bellefonte Units 3 and 4) until information from the Fukushima accident became clearer and lessons learned could be identified and understood, can be found in the decisions of several of the boards presiding over the various Part 52 COL and Part 54 license renewal proceedings addressing the admissibility of similar versions of a Fukushima accident-related contention before those boards. See PPL Bell Bend, L.L.C. (Bell Bend Nuclear Power Plant), LBP-11-27, 74 NRC \_\_, \_\_-\_\_ (slip op. at 3-4) (Oct. 18, 2011), motion to reinstate contention denied, Luminant Generation Co. LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), LBP-11-36, 74 NRC \_\_ (Nov. 30, 2011); NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), LBP-11-28, 74 NRC \_\_, \_\_-\_\_ (slip op. at 2-4) (Oct. 19, 2011); Pac. Gas & Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC \_\_, \_\_-\_\_ (slip op. at 2-5) (Nov. 18, 2011); Florida Power & Light Co. (Turkey Point Units 6 and 7), LBP-11-33, 74 NRC \_\_, \_\_-\_\_ (slip op. at 2-4) (Nov. 21, 2011); FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-34, 74 NRC \_\_, \_\_-\_\_ (slip op. at 4) (Nov. 23, 2011).

[hereinafter Contention NEPA-T]. On August 25 and September 6, 2011, respectively, TVA and the staff opposed the admission of the contention as untimely under 10 C.F.R. § 2.309(c)(1), (f)(2), and as failing to meet the contention admissibility standards of 10 C.F.R. § 2.309(f)(1). See [TVA] Answer in Opposition to Proposed Contention Regarding Fukushima Task Force Report (Aug. 25, 2011) at 2 [hereinafter TVA Answer]; NRC Staff Answer to Joint Intervenors' Motion to Admit New Contention Regarding the Safety and Environmental Implications of the NRC Task Force Report on the Fukushima Dai-ichi Accident (Sept. 6, 2011) at 1 [hereinafter Staff Answer]. Joint Intervenors filed a reply to the TVA and staff answers on September 13, 2011. See Intervenors' Memorandum in Reply to Oppositions to Admission of New Contention (Sept. 13, 2011) at 1 [hereinafter Joint Intervenors Reply].

## II. ANALYSIS

Because this is an ongoing proceeding in which Joint Intervenors' hearing request has been granted and there are two environmental contentions pending for merits resolution, Joint Intervenors must satisfy two sets of requirements to gain the admission of their newly proffered contention. The first relates to "timeliness" under 10 C.F.R. § 2.309(f)(2) or section 2.309(c)(1). The second concerns section 2.309(f)(1) that governs contention admissibility. We have described all of these standards previously. See LBP-08-16, 68 NRC at 383-86 (contention admission standards); New Contention Ruling at 5, 9 (timeliness standards).

The new contention put forth by Joint Intervenors, which we designate as contention NEPA-T in line with our earlier procedural directive, see Licensing Board Memorandum and Order (Initial Prehearing Order) (June 18, 2008) at 2 (unpublished), provides as follows:

The ER for Bellefonte Units 3 & 4 fails to satisfy the requirements of NEPA because it does not address the new and significant environmental implications of the findings and recommendations raised by the NRC's Fukushima Task Force Report. As required

by NEPA and the NRC regulations, these implications must be addressed in the ER.

Contention NEPA-T at 4-5. This language is materially the same as that used for contentions filed on August 11 in a number of other reactor licensing proceedings, including the Part 52 COL Bell Bend, Comanche Peak, Fermi, Lee, Levy, South Texas, and Vogtle proceedings; the Watts Bar Part 50 OL proceeding; and the Seabrook, Davis-Besse, Diablo Canyon, Columbia, and Indian Point Part 54 operating license renewal proceedings.<sup>4</sup> As was noted by the licensing board in the Seabrook license renewal application (LRA) proceeding relative to the contention before it, the contention was

based on the fact that, after the events at Japan's Fukushima Dai-ichi site that caused extensive damage in March 2011, the Commission (among other steps taken in response) directed NRC staff to establish a Near-Term Task Force to review the agency's processes and regulations. The Near-Term Task Force was instructed to determine "whether the agency should make additional improvements to its regulatory system and to make recommendations to the Commission for its policy direction." Rather than addressing the underlying facts regarding the accident in Japan and their possible implications concerning the Seabrook LRA, the proffered contention concerns the recommendations of the Near-Term Task Force – which interveners claim will require a "massive" re-evaluation and revision of the NRC's fundamental regulatory scheme.

Seabrook, LBP-11-28, 74 NRC at \_\_ (slip. op. at 3) (footnotes omitted). Further, the Seabrook board observed:

The Near-Term Task Force completed its work and issued its report, for the Commission's consideration, on July 12, 2011. The Commission has determined that any changes it decides to

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<sup>4</sup> See, e.g., Bell Bend, LBP-11-27, 74 NRC at \_\_ (slip op. at 6); Seabrook, LBP-11-28, 74 NRC at \_\_ (slip op. at 2-3); Diablo Canyon, LBP-11-32, 74 NRC at \_\_ (slip op. at 8); Turkey Point, LBP-11-33, 74 NRC at \_\_ (slip op. at 4); Davis-Besse, LBP-11-34, 74 NRC at \_\_ (slip op. at 7); Detroit Edison Co. (Fermi Nuclear Power Plant, Unit 3), Docket No. 52-033-COL, Memorandum and Order (Denying as Moot Intervenors' Motion to Admit Contention 17 and Motion to Supplement the Basis of Contention 17) (Nov. 23, 2011) at 3-4 (unpublished).

adopt as a result of the Near-Term Task Force recommendations “will be implemented through our normal regulatory processes.” The Commission has also emphasized that “[o]ur understanding of the details of the failure modes at the Fukushima Daiichi site continues to evolve, and we continue to learn more about the extent of the damage at the site.”

Id. at 3-4 (footnotes omitted). Finally, as is the case relative to the contention before us, see Contention NEPA-T, unnumbered attach. 2 (Declaration of Dr. Arjun Makhijani Regarding Safety and Environmental Significance of NRC Task Force Report Regarding Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (Aug. 8, 2011)), the Seabrook board recounted:

In support of their proffered contention, Interveners submit the Declaration of Dr. Arjun Makhijani, who is troubled by the implications of the Near-Term Task Force Report. He believes “substantial revisions to the very framework of NRC regulations are needed to adequately protect public health and the environment.” He is “concerned that over the past three decades or more, the NRC has not conducted the type of review of the adequacy of its safety regulations that is necessary to update its requirements so as to ensure that NRC safety requirements will provide the minimum level of protection required by the Atomic Energy Act.” And he considers “the current inadequacies in the NRC’s program for regulation of basic reactor safety to be extraordinarily grave problems.”

Seabrook, LBP-11-28, 74 NRC at \_\_ (slip op. at 4) (footnotes omitted). And as was the case with the contention in the Seabrook license renewal proceeding, see id., there is no mention of Bellefonte in Dr. Makhijani’s affidavit filed in support of Joint Interveners contention NEPA-T or any attempt to relate his concerns specifically to the Bellefonte Units 3 and 4 COL proceeding.

There is, however, one difference with respect to the contention proffered in this proceeding to the degree it is supported by an additional affidavit of Dr. Ross McCluney. See Contention NEPA-T, unnumbered attach. 1 (Declaration of Dr. Ross McCluney Regarding Environmental and Safety Issues at Power Plants Based on Events at Fukushima and the Findings of the NRC Interim Task Force (Aug. 11, 2011)). In support of Joint Interveners’ claim

of TVA ER deficiencies associated with the Task Force report, in his affidavit Dr. McCluney expresses his concerns about the possibility that an earthquake such as the one that struck Japan in March 2011, even with an epicenter at some distance from the Bellefonte facility, might cause a seismic seiche, or river wave, along the Tennessee River that borders the BNNP site. Further, according to Dr. McCluney, the karst formations (i.e., limestone cavern topography) near the Bellefonte facility are the type of subsurface formations that require additional scrutiny as relevant seismic hazards because of the general instability of such formations. See id. at 2-4. These concerns, he maintains, are in line with the Task Force report's recommendations that, among other things, licensees be directed to re-evaluate the site seismic and flooding hazards of their current site against existing NRC regulatory requirements, and conduct seismic and flooding walkdowns to identify and address plant-specific vulnerabilities and verify the adequacy of existing monitoring and maintenance features. See id. at 4-5.

In arguments that generally mirror those made in the other licensing cases cited above in which such a contention has been proffered,<sup>5</sup> Joint Intervenors assert that contention NEPA-T complies with the threshold "timeliness" provisions of both sections 2.309(f)(2) and (c)(1) so as to be subject to consideration as admissible under section 2.309(f)(1). See Motion to Admit New Contention at 2-8. They also maintain that the contention fully complies with the contention admissibility requirements of section 2.309(f)(1). See id. at 7; see also Contention NEPA-T at 4-22. In their answers, both applicant TVA and the staff declare the contention to be inadmissible under the timing and substantive admissibility standards of section 2.309(c)(1), (f)(1)-(2). See TVA Answer at 7-27; Staff Answer at 5-18. In their reply

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<sup>5</sup> See, e.g., Bell Bend, LBP-11-27, 74 NRC at \_\_ (slip op. at 7-9); Seabrook, LBP-11-28, 74 NRC at \_\_ (slip op. at 4); Diablo Canyon, LBP-11-32, 74 NRC at \_\_ (slip op. at 8-9); Turkey Point, LBP-11-33, 74 NRC at \_\_ (slip op. at 4-5); Davis-Besse, LBP-11-34, 74 NRC at \_\_ (slip op. at 6-8); Fermi Memorandum and Order at 2-4.



pleading, which is the subject of a TVA motion to strike as untimely, see [TVA] Motion to Strike Intervenor's Reply to Answers to the Fukushima Task Force Report Contention (Sept. 22, 2011) at 1, in addition to proffering arguments in support of their contention's timeliness and substantive admissibility that were made in the Diablo Canyon, Watts Bar, Vogtle, and Turkey Point proceedings, see Joint Intervenor's Reply at 1-2 & n.1; see also id. unnumbered attach. 1, Joint Intervenor's maintain that the Tennessee River seiche-related basis of their contention is admissible, being both timely and substantively adequate. Their principal support for this assertion is Dr. McCluney's affidavit and the information contained therein, including a referenced 1968 United States Geological Survey (USGS) report that provides a list of seiches on the Tennessee River caused by activity relative to the March 1964 Alaska earthquake. See id. at 2-4.

In rejecting the Task Force report-related contentions before them that are, for all practical purposes, identical to contention NEPA-T that is before us, other licensing boards have identified two principal deficiencies.<sup>6</sup> One is the fact that the Commission's recent disposition of a petition to suspend the issuance of new or renewed licenses for nuclear power plants in the United States (including the requested COLs for Bellefonte Units 3 and 4), see Union Elec. Co. d/b/a Ameren Missouri (Callaway Plant, Unit 2), CLI-11-05, 74 NRC \_\_ (Sept. 9, 2011); see also supra note 3, essentially renders premature the claim for relief in the similarly-situated licensing proceeding contentions. In its decision on those petitions, the boards note, the Commission

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<sup>6</sup> At least one board has identified what it perceived as several other deficiencies relating to the Task Force-related contention before it, including a failure to follow the precept of section 2.323(b) to contact the other parties to resolve the issue presented by the contention prior to its submission; a failure to show the contention is within the scope of the proceeding or is material to the findings NRC must make to support the requested licensing action in accord with section 2.309(f)(1)(iii)-(iv); and a failure to reference any specific portion of the application at issue as required by section 2.309(f)(1)(vi). See Davis-Besse, LBP-11-34, 74 NRC at \_\_ (slip op. at 13-14).

indicated that whether any new regulatory requirements will arise out of the Task Force report, and when the applicability/impact of those requirements in individual licensing adjudications will be appropriate for consideration, is a matter for future determination. As a consequence, given that the Fukushima contentions before them are based on the same information that was before the Commission (principally the affidavit by Dr. Makhijani that was presented in support of the various contentions, including contention NEPA-T here), in light of the Commission's disposition of the petition, the licensing boards have determined that the issue statements before them were filed prematurely and/or failed to establish the requisite genuine dispute on a material issue of law or fact so as to fulfill the section 2.309(f)(1)(vi) contention admissibility requirement.<sup>7</sup> See Bell Bend, LBP-11-27, 74 NRC at \_\_ (slip op. at 10-15); Seabrook, LBP-11-28, 74 NRC at \_\_ (slip op. at 5-9); Diablo Canyon, LBP-11-32, 74 NRC at \_\_ (slip op. at 18-19); Turkey Point, LBP-11-33, 74 NRC at \_\_ (slip op. at 8).

The other deficiency identified by the boards relates to the claim in the contentions before them that the Task Force report evidences a shortcoming in the applicant's ER that must be corrected. This is insufficient to frame a litigable issue, the boards have maintained,

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<sup>7</sup> Several of those licensing boards also have found that the subsequent Commission issuance of an October 18, 2011 staff requirements memorandum (SRM) regarding the Task Force report, see Memorandum from Annette L. Vietti-Cook, Secretary, to R.W. Borchardt, Executive Director for Operations, Staff Requirements – SECY-11-0124 – Recommended Actions to Be Taken Without Delay from the Near-Term Task Force Report (Oct. 18, 2011) (ADAMS Accession No. ML112911571), likewise is insufficient to establish the admissibility of issue statements like contention NEPA-T. Although noting that the SRM does direct the staff to take steps to suggest possible regulatory and policy changes and appropriate implementing mechanisms, such as rulemakings, orders, section 50.54 letters, or generic letters, the boards nonetheless have concluded that because the SRM does not define or impose any new requirements arising from the events at Fukushima, it likewise fails to establish a genuine dispute on a material issue of law or fact under section 2.309(f)(1)(vi). See Diablo Canyon, LBP-11-32, 74 NRC at \_\_ (slip op. at 19); Turkey Point, LBP-11-33, 74 NRC at \_\_ (slip op. at 9-10); Davis-Besse, LBP-11-34, 74 NRC at \_\_ (slip op. at 15-17); see also Comanche Peak, LBP-11-36, 74 NRC at \_\_ (slip op. at 6). For their part, Joint Intervenors have not attempted, by means of a contention supplement or any other procedural device, to interpose the issuance of this SRM as a basis for the admissibility of contention NEPA-T.

because there is no agency regulatory requirement that an applicant needs to update or otherwise supplement an ER subsequent to the time that the staff finds that report acceptable for review as part of a license application. According to the boards, absent some voluntary action on the part of the applicant to amend its ER, an intervenor wishing to raise some new or revised post-ER environmental concern must await the issuance of the staff's draft environmental impact statement (DEIS).<sup>8</sup> See Diablo Canyon, LBP-11-32, 74 NRC at \_\_ (slip op. at 12-18); Turkey Point, LBP-11-33, 74 NRC at \_\_ (slip op. at 6-7); Davis-Besse, LBP-11-34, 74 NRC at \_\_ (slip op. at 15).

We find either of these grounds -- the premature nature of the contention given the Commission's decision in CLI-11-05 and the contention's inappropriate reliance on the need to amend/supplement the ER -- as compelling reasons for concluding that contention NEPA-T before us is inadmissible in this COL proceeding.

Further, we conclude that the additional support Joint Intervenors seek to provide for the contention in the form of Dr. McCluney's affidavit likewise is unavailing because, at a minimum, that information causes the contention to run afoul of the timeliness requirements of

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<sup>8</sup> In fact, in the Fermi COL proceeding in which a DEIS has been issued, this is exactly the procedural path to which the licensing board has guided the intervenors. See Fermi Memorandum and Order at 5-7.

We also note that, although it may not be an issue in this COL proceeding given the schedule described earlier in which a staff DEIS is not likely to be generated for several years, see supra pp. 3-4, unanswered by any of the licensing board decisions up to this point is the question of what will happen if Commission regulatory or policy directives arising from the Fukushima accident will not be ready to be promulgated until sometime after the completion of a licensing proceeding and any associated adjudicatory hearing. Presumably, if it acts favorably on the applications, the Commission will provide further guidance on this matter to the parties and the licensing boards in COL proceedings in the context of any upcoming decisions on the Vogtle and Summer COL applications. See Callaway, CLI-11-05, 74 NRC at \_\_-\_\_ (slip op. at 11-16) (describing Commission responses to requests for suspension of reactor licensing reviews and associated adjudications in the wake of the Three Mile Island (TMI) accident and the September 11, 2001 terrorist attacks, including the TMI Action Plan denoting how to litigate TMI-related issues in pending OL proceedings).

section 2.309(c)(1), (f)(2). There is nothing material provided in Dr. McCluney's affidavit in support of the contention that could not have been introduced at the outset of this proceeding in June 2008 as the basis for an environmental or safety contention regarding the impact on the BNPP site of possible Tennessee River seiches. Certainly, the 1968 USGS report regarding seiches relied upon by Dr. McCluney was available at that time. Additionally, in their hearing petition, Joint Intervenors in contention FSAR-B identified concerns about the karstic nature of the area around the BNPP site and the adequacy of the seismic analysis for the facility, which the Board found not to be an admissible issue. See LBP-08-16, 68 NRC at 390-94. Consequently, in the absence of some future change in the Commission's requirements or policies relating to facility seismic analysis that might provide the all-important "good cause" under section 2.309(c)(1) or the "new information" mandated by section 2.309(f)(2), as a basis for contention NEPA-T the information in Dr. McCluney's affidavit is no more than a belated attempt to introduce a matter that could have been identified for litigation in June 2008. See Bell Bend, LBP-11-27, 74 NRC at \_\_ n.54 (slip op. at 14 n.54) (BREDL attempt to tie NEPA environmental justice claim to Task Force report is improper effort to interpose concerns that could have been raised at the outset of the Vogtle COL proceeding).

### III. CONCLUSION

For the reasons set forth above, we find that Joint Intervenors' new contention NEPA-T is inadmissible for litigation in this proceeding in that it fails to (1) meet the timeliness standards

of 10 C.F.R. § 2.309(c)(1), (f)(2); and (2) does not present a genuine dispute on a material issue of law or fact as require by section 2.309(f)(1)(vi).<sup>9</sup>

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For the foregoing reasons, it is this thirtieth day of November 2011, ORDERED, that the request of Joint Intervenors in their August 11, 2011 submission for the admission of new contention NEPA-T is denied.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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G. Paul Bollwerk, III  
CHAIRMAN

*/RA/*

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Anthony J. Baratta  
ADMINISTRATIVE JUDGE

*/RA/*

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William W. Sager  
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 30, 2011

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<sup>9</sup> Our conclusion regarding the inadmissibility of contention NEPA-T would be the same with or without the information in Joint Intervenors' reply pleading, which essentially renders moot the TVA motion to strike that reply.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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TENNESSEE VALLEY AUTHORITY ) Docket Nos. 52-014-COL and 52-015-COL  
 )  
(Bellefonte Nuclear Power Plant - )  
Units 3 and 4) )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (RULING ON REQUEST TO ADMIT NEW CONTENTION) (LBP-11-37) have been served upon the following persons by the Electronic Information Exchange.

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 (LBP-11-37)

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MEMORANDUM AND ORDER (RULING ON REQUEST TO ADMIT NEW CONTENTION)  
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