

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

<p>In the Matter of Tennessee Valley Authority Sequoyah Nuclear Plant Units 1 and 2 Docket Nos. 50-327 and 50-328 License Nos. DPR-77 and DPR-79 NRC-2013-0037</p>
--

July 30, 2013

PETITION FOR INTERLOCUTORY REVIEW
BY THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE
AND CHAPTER BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM,
AND MOTHERS AGAINST TENNESSEE RIVER RADIATION

I. Notice of Appeal

The Blue Ridge Environmental Defense League, with its chapter Bellefonte Efficiency and Sustainability Team and its project Mothers Against Tennessee River Radiation (öBREDL or öPetitionerö)¹, respectfully request the Commission to take interlocutory review of the Atomic Safety and Licensing Board's Memorandum and Order LBP-13-08 issued on July 5, 2013 (öOrderö). Pursuant to 10 CFR § 2.311, the Petitioner respectfully requests that the Commission review the Order and, upon review, grant BREDL's request for a hearing and petition to intervene in the Tennessee Valley Authority's Sequoyah Nuclear Plant (öSQNö) License Renewal.

II. Supporting Brief

Background

On May 6, 2013, BREDL filed a petition to intervene and request for hearing in the SQN license renewal application pursuant to the Federal Register Notice published on

¹ Although the ASLB found that the Blue Ridge Environmental Defense League had established standing, it did not recognize that its chapters are a legal and fiscal unit with BREDL. For this reason and without presenting further argument, Petitioner prefers to style its petition to include BEST and MATRR.

March 5, 2013.² In its May 6th filing, BREDL stated the the nature of the Petitioner's right under the Atomic Energy Act to be made a party to the proceeding, the Petitioner's property or other interest in the proceeding, and the possible effect of any decision that may be issued in the proceeding on the Petitioner's interest. Nineteen individuals residing in Tennessee, Georgia and Alabama submitted declarations of standing. The Petitioner set forth with particularity the specific contentions it sought to raise.

On May 10, 2013, Chief Administrative Judge E. Roy Hawkins of the Atomic Safety and Licensing Board Panel established a three-judge board (ASLB) to preside over the TVA's license renewal of Sequoyah Nuclear Plant Units 1 and 2, pursuant to delegation by the Commission dated December 29, 1972, 10 CFR § 2.104, 2.105, 2.300, 2.309, 2.313, 2.318 and 2.321. ASLBP No. 13-927-01-LR-BD01.

On July 5, 2013 the ASLB found *inter alia* that: 1) BREDL had demonstrated standing to intervene in the proceeding; 2) Contentions A, C, D, E, F-1, F-2, F-3, and the safety-related portion of Contention B were inadmissible and 3) the environmental-related portion of Contention B was held in abeyance, without being admitted or denied, pending further order of the Commission. Further, the ASLB's Order specified that it neither granted nor denied BREDL's hearing request, and failed to select a hearing procedure. LBP-13-08 at 42.

Discussion

By its action the ASLB has abdicated its responsibility to rule on BREDL's May 6th petition which was properly put before it. The Order, unless reversed or modified by the Commission, will prevent the Petitioner from knowing how to proceed in its intervention in the SQN license renewal and deny its right to due process.

² Fed. Reg. Vol. 78 No. 43, Tuesday, March 5, 2013, pp. 14362614365

Clearly, the law provides the public with the opportunity to request a formal adjudicatory hearing if that party would be adversely affected by a nuclear power plant license renewal. License renewal safety issues proceed under 10 CFR Part 54 and environmental issues under Part 51. In short, the licensee must evaluate the technical aspects of a 60-year old plant and describe how it will manage these effects. The safety questions for license renewal are: 1) Does the current regulatory process ensure that the licensing basis of the plant maintains an acceptable level of safety? and 2) Will the original plant licensing basis be maintained during the renewal term? Based on its reading of the SQN License Renewal Application (öLRAö), associated documents and the expertise of its members and consultants, Petitioner believes that the LRA does not provide continued assurance that the Current Licensing Basis (öCLBö) will maintain an acceptable level of safety for an additional 20 years of operation.

We will not recapitulate Petitioner's contentions here as they are a matter of record. However, we herein put before the Commission a few shortcomings of the Order which, if allowed to stand, prevents full consideration of the merits of Petitioner's arguments.

Petitioner's Contention F-1 cites the Sandia National Laboratories Report entitled, *Analyses Of Containment Structures With Corrosion Damage*.³ Under 10 CFR 2.309(f)(1)(vi), a petition to intervene must öprovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application...or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the

³ *Analyses Of Containment Structures With Corrosion Damage*, Jeffery L. Cherry, Sandia National Laboratories, SAND96-0004C

petitioner's belief. The ASLB avers that BREDL "mischaracterized" the Sandia Report. LBP-13-08 at 32. The exposition of a genuine dispute is the bar which petitioners must meet. The ASLB rejected Petitioner's argument because, it said, Sandia "merely discusses theoretical potential for localized corrosion in the inaccessible region behind the ice condensers." To summarily dismiss as theoretical a material issue of fact developed by a national laboratory, supported by an expert affidavit and presented by a petitioner seeking to have it litigated in a hearing is antithetical to the law which requires only that petitioners present information which indicates that a genuine dispute exists.

Petitioner's Contention F-2 centers on TVA's license renewal application which states, "The reactor containment is designed to adequately retain these fission products under the most severe accident conditions."⁴ What does "adequately retain" mean in this context? Are radioactive pollutants contained tolerably, passably, or just bearably? The ASLB states that the Petitioner misapprehends or mischaracterizes TVA's Environmental Report and concludes: "TVA is not claiming that Sequoyah's containment is completely leak-proof under severe accident conditions." LBP-13-08 at 35-36. It is a stunning admission. This not-completely-leak-proof standard is the thrust of the argument in Contention F-2. The ASLB incorrectly ruled it inadmissible.

Contention B centers on the U.S. Court of Appeals for the District of Columbia Circuit order vacating 10 CFR § 51.23, the NRC's Waste Confidence Rule.⁵ In the Commission's Approach for Addressing Policy Issues Resulting from Court Decision to Vacate Waste Confidence Decision and Rule, Chairman Macfarlane states "We stated that we would not issue final licenses until we appropriately addressed the court's

⁴ TVA 2011p, Section 1.2.2.2, *Sequoyah Nuclear Plant Applicant's Environmental Report Operating License Renewal Stage* <http://pbadupws.nrc.gov/docs/ML1302/ML13024A007.pdf>

⁵ *State of New York v. Nuclear Reg. Comm.*, No. 11-1045, June 8, 2012

remand. COMSECY-12-0016. The Court specified that "a generic analysis must be forward looking and have enough breadth to support the Commission's [licensing] conclusions." *Id.* at 20. Admitting Contention B and holding it in abeyance would afford the Petitioner a clear, unambiguous procedure for ultimate resolution of this matter.

The ASLB's principal functions are to meet NRC's obligation to afford the public the opportunity to challenge proposed licensing actions and conduct public hearings regarding certain types of facilities. Atomic Energy Act Section 189(a) and 193. NRC regulations state that "Upon a determination that a request for hearing/petition to intervene should be granted and a hearing held, the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request/petition will determine and identify the specific hearing procedures to be used for the proceeding...." 10 CFR § 2.310. Moreover, a hearing in the vicinity of the Sequoyah Nuclear Plant would allow those most directly affected to see and hear the evidence and the argument.

It is well within NRC policy:

[C]onsistent with the AEA's intent that decisions regarding licensing the use or possession of nuclear materials be made in public hearings in which the voices of those most directly affected may be heard and considered, it is NRC policy that important aspects of Licensing Board hearings be held as near as practicable to the location of the proposed nuclear facility or material at issue. What this means in practice is that early in the proceeding oral argument concerning a petitioner's standing and the legal adequacy of its petition to intervene likely will be held in the vicinity of the proposed project, with the Licensing Board returning to that area when it conducts the evidentiary hearing on the merits of the admitted contested issues.⁶

Finally, in COMSECY-12-0016 the Commission Chairman states, "We value openness in part because we are accountable to the people we serve....[O]penness ensures that the NRC has the information it needs to make the best decisions. Effective

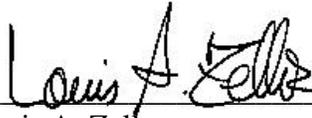
⁶ ASLBP Responsibilities, <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/aslbp-respons.html>

regulation requires openness because it enables NRC to tap the deep reservoir of knowledge held by members of the public.ö

Conclusion

BREDL respectfully requests that the Commission accept the LBP-13-08 Order for interlocutory review. The rights of the petitioner and the affected public would be better protected with an open, transparent process; i.e., granting the request for a hearing and petition to intervene. Nearly one million people live within 50 miles of the Sequoyah Nuclear Plant. Without the Commission's intercession in this matter, they would be abandoned to the vicissitudes of *in camera* proceedings and telephone conference calls.

Respectfully submitted,



Louis A. Zeller
Blue Ridge Environmental Defense League
PO Box 88
Glendale Springs, NC 28629
(336) 982-2691
E-mail: BREDL@skybest.com

July 30, 2013
Date

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of
Tennessee Valley Authority
Sequoyah Nuclear Plant Units 1 and 2
License Nos. DPR-77 and DPR-79

Docket Nos. 50-327 and 50-328

CERTIFICATE OF SERVICE

I hereby certify that copies of the July 30, 2013
PETITION FOR INTERLOCUTORY REVIEW
BY THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE
AND CHAPTER BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM,
AND MOTHERS AGAINST TENNESSEE RIVER RADIATION
was served on the parties to this proceeding via Electronic Information Exchange
this 30th day of July, 2013

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001

OGC Mail Center: Members of this office have
received a copy of this filing by EIE service.

ATTN: Docketing and Service
Mail Stop 0-16C1
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: hearingdocket@nrc.gov)

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Signed in Glendale Springs this day July 30, 2013



Louis A. Zeller
Blue Ridge Environmental Defense League
PO Box 88
Glendale Springs, NC 28629
(336) 982-2691
E-mail: BREDL@skybest.com