

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	Docket Nos. 50-327-LR
TENNESSEE VALLEY AUTHORITY)	50-328-LR
(Sequoyah Nuclear Plant, Units 1 and 2))	

**TENNESSEE VALLEY AUTHORITY’S ANSWER OPPOSING
BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE’S HEARING REQUEST
AND PETITION TO INTERVENE AND MOTION TO
REOPEN THE RECORD AND ADMIT A NEW CONTENTION**

Pursuant to 10 C.F.R. §§ 2.309(i) and 2.323(c), the Tennessee Valley Authority (“TVA”) respectfully submits its answer in opposition to “Blue Ridge Environmental Defense League’s Motion to Reopen the Record of License Renewal Proceeding for Sequoyah Nuclear Power Plant Units 1 and 2” (“Motion to Reopen”) and “Blue Ridge Environmental Defense League’s Hearing Request and Petition to Intervene in License Renewal Proceeding for Sequoyah Units 1 And 2” (“Hearing Request”), filed April 21, 2015.

In its Motion to Reopen, the Blue Ridge Environmental Defense League (“BREDL”) requests to reopen the record in the Sequoyah Nuclear Plant, Units 1 and 2 (“SQN”) license renewal proceeding for the purpose of admitting a new, late-filed contention. Motion to Reopen at 1. BREDL claims that Supplement 53 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Sequoyah Nuclear Plant, Units 1 and 2 (NUREG-1437) (“SQN FSEIS”) does not provide an adequate legal basis for issuing the operating license because “it relies for its evaluation of the environmental impacts of spent fuel storage and disposal on the Continued Storage of Spent Nuclear Fuel Rule and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel

[("GEIS")." *Id.* (citations omitted). In its Hearing Request, BREDL seeks to admit a "placeholder" contention, challenging the adequacy of the Continued Storage Rule and GEIS; BREDL states that it does not intend to litigate the contention and expects that the contention "will be denied because the subject matter of the contention is generic." Hearing Request at 1-2.

For the reasons set forth below, BREDL has not satisfied the Commission's strict standards for reopening the adjudicatory record in this proceeding. Contrary to the requirements of 10 C.F.R. § 2.326, BREDL's Motion to Reopen does not raise a significant safety or environmental issue, and fails to demonstrate that the issues raised by BREDL would be likely to result in a materially different outcome in the proceeding. BREDL also fails to include a supporting affidavit, as required by § 2.326(b). Finally, the Motion to Reopen is untimely because it fails to satisfy the timeliness requirements for new, late-filed contentions in 10 C.F.R. § 2.309(c). Accordingly, the Motion to Reopen should be denied.

The proposed contention also fails to meet the standards required by the Commission's regulations. It is outside the scope of this proceeding, lacks sufficient factual or expert support, and does not demonstrate that a genuine dispute exists with the applicant on a material issue of fact or law. In addition, the proposed contention is an impermissible challenge to the application of a Commission regulation under 10 C.F.R. § 2.335. Because BREDL has failed to proffer an admissible contention as required by 10 C.F.R. § 2.309(f), the Hearing Request likewise should be denied.

ARGUMENT

I. Background

This is BREDL's second attempt in this proceeding to continue litigating the

Continued Storage Rule.¹ On March 5, 2013, TVA applied to the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) to renew TVA’s licenses to operate two nuclear power reactors located at TVA’s Sequoyah Nuclear Plant (Sequoyah).² On May 6, 2013, BREDL challenged TVA’s license renewal application.³ On July 5, 2013, the Atomic Safety and Licensing Board ruled that BREDL had standing and had filed one potentially admissible contention, referred to as the “Waste Confidence Contention.” LBP-13-8, 78 NRC 1, 5 (2013).

On August 26, 2014, when the Commission voted to approve the Continued Storage Rule and GEIS, it also directed the Atomic Safety and Licensing Boards to reject the Waste Confidence contentions pending before them. *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), et al., CLI-14-08, 80 NRC 71, 79 (Aug. 26, 2014).

Before the ASLB denied the Waste Confidence Contention, BREDL filed a petition with the Commission to suspend final decisions in all pending reactor licensing proceedings pending issuance of waste confidence safety findings.⁴ On September 30, 2014, the ASLB issued an order rejecting the proposed Waste Confidence Contention, but not terminating the proceeding.⁵ On February 26, 2015, the Commission issued an order denying BREDL’s

¹ The Commission rejected BREDL’s earlier petition. *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3) *et al.*, CLI-15-4, 81 NRC ____ (Feb. 26, 2015) (slip op.) (rejecting petition to suspend final licensing decisions and admit a new contention regarding continued spent fuel storage).

² Tennessee Valley Authority; Notice of Acceptance for Docketing of Application and Notice of Opportunity for Hearing Regarding Renewal of Sequoyah Nuclear Plant, Units 1 and 2, Facility Operating License Nos. DPR-77, DPR-79 for an Additional 20-Year Period, 78 Fed. Reg. 14,362, 14,363 (Mar. 5, 2013).

³ Petition for Leave to Intervene and Request for Hearing by the Blue Ridge Environmental Defense League, Bellefonte Efficiency and Sustainability Team, and Mothers Against Tennessee River Radiation (May 6, 2012).

⁴ Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings (Sep. 9, 2014).

⁵ LBP-13-08, 78 NRC 1, 5-6 (2013); Licensing Board Order (Dismissing Environmental Waste Confidence Contention) (Sept. 30, 2014) at 1 (unpublished).

petition,⁶ and the ASLB terminated the proceeding on March 3, 2015.⁷

The Commission has recently rejected two motions to reopen and contentions that are virtually identical to BREDL's Motion to Reopen and proposed new contention.⁸ In doing so, the Commission concluded that the proposed contentions impermissibly challenged an NRC regulation and failed to demonstrate a genuine dispute with the applicant, the motions to reopen did not raise a significant environmental issue and had not demonstrated that a materially different result would be likely if the contention had been considered initially, and a placeholder contention is not necessary to ensure that the challenges to the Continued Storage Rule and GEIS are considered.⁹

II. Applicable Legal Standards

A. Legal Standards Governing Reopening the Record

Given the need for finality in the hearing process, the Commission considers reopening the record for any reason to be an "extraordinary" action. *Entergy Nuclear Vt. Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vt. Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 338 (2011) (citation omitted). The Commission therefore imposes "a 'deliberately heavy' burden upon an intervenor who seeks to supplement the evidentiary record after it has been closed" *Id.* at 338 (quoting *AmerGen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 674 (2008)). The Commission "likewise frown[s] on intervenors seeking to introduce a new contention later than the deadline established by [NRC] regulations, and [] accordingly hold[s] them to a higher standard for the

⁶ CLI-15-4 81 NRC ____.

⁷ LBP-15-7, 81 NRC ____ (Mar. 3, 2015) (slip op.).

⁸ The recently rejected contentions were also "placeholder" contentions and were substantially similar to BREDL's proposed contention; the statement of the contention in this proceeding is virtually identical to each of the recently rejected contentions. *Union Electric Co.* (Callaway Nuclear Power Plant, Unit 1), CLI-15-11, 81 NRC ____ (Apr. 23, 2015) (slip op.); *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC ____ (Apr. 23, 2015) (slip op.).

⁹ *Callaway*, CLI-15-11, slip op. at 4-6; *Fermi*, CLI-15-12, slip op. at 4-5.

admission of such contentions.” *Id.*

To meet this burden, 10 C.F.R. § 2.326(a) requires a party to show that its motion (1) was timely filed, (2) concerns a significant safety issue or environmental matter, and (3) demonstrates that a materially different result would be, or would have been likely, had the newly proffered evidence been considered initially. Further, under NRC rules, “[t]he motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant’s claim that the criteria of paragraph (a) of this section have been satisfied.” 10 C.F.R. § 2.326(b); *see also Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-12-15, 75 NRC 704, 713 (2012).

Under Section 2.326, the petitioner bears the burden to demonstrate that the motion should be granted. *See Oyster Creek*, CLI-08-28, 68 NRC at 674. “All of the factors in [10 C.F.R. §] 2.326 must be met in order for a motion to reopen to be granted.” *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-12-3, 75 NRC 132, 143 (2012). “Bare assertions and speculation . . . do not supply the requisite support.” *Id.* (citing *Oyster Creek*, CLI-08-28, 68 NRC at 674).

B. Legal Standards Governing Non-Timely Contentions

A motion to reopen that relates to a contention not previously in controversy, as is the case here, must also satisfy the standards governing non-timely contentions in 10 C.F.R. § 2.309(c). 10 C.F.R. § 2.326(d); *Pilgrim*, CLI-12-3, 75 NRC at 140. Pursuant to the Hearing Notice¹⁰ and 10 C.F.R. § 2.309(b)(3), the deadline for timely petitions to intervene in this proceeding expired nearly two years ago. BREDL, therefore, bears the burden of successfully addressing the “stringent” non-timely criteria. A new or amended contention “will not be

¹⁰ Tennessee Valley Authority; Notice of Acceptance for Docketing of Application and Notice of Opportunity for Hearing Regarding Renewal of Sequoyah Nuclear Plant, Units 1 and 2, Facility Operating License Nos. DPR-77, DPR-79 for an Additional 20-Year Period, 78 Fed. Reg. 14,362 (Mar. 5, 2013).

entertained absent a determination by the presiding officer” that the moving party has demonstrated good cause. 10 C.F.R. § 2.309(c) (emphasis added). In order to demonstrate good cause, the moving party must meet each of the requirements of 10 C.F.R. § 2.309(c)(1)(i)–(iii).¹¹ See also *Powertech USA, Inc.* (Dewey–Burdock in Situ Uranium Recovery Facility), LBP-13-9, 78 NRC ____ (July 22, 2013) (slip op. at 9); *Southern California Edison Co.* (San Onofre Nuclear Generation Station, Units 2 and 3), LBP-12-25, 76 NRC 540, 543 n.13 (2012).

C. Legal Standards Governing Contention Admissibility

A new contention must meet the admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1)(i)–(vi).¹² The Commission has repeatedly held that its rules on contention admissibility are “strict.” *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-08, 75 NRC 393, 416 (2012); see also *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002) (characterizing the contention admissibility rules as “strict by design”). “The initial burden of showing whether the contention meets our admissibility standards” lies with the petitioner. *Progress Energy Carolinas, Inc.* (Shearon Harris, Units 2 and 3), CLI-09-08, 69 NRC 317, 325 (2009).

¹¹ The petitioner must demonstrate: (i) The information upon which the filing is based was not previously available; (ii) The information upon which the filing is based is materially different from information previously available; and (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information. 10 C.F.R. § 2.309(c)(i)–(iii).

¹² Specifically, each contention must (i) provide a specific statement of the legal or factual issue sought to be raised; (ii) provide a brief explanation of the basis for the contention; (iii) demonstrate that the issue raised is within the scope of the proceeding; (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner’s position and upon which the petitioner intends to rely; and (vi) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(i)–(vi).

Challenges to Commission rules and regulations are not permitted in adjudicatory proceedings, except in very limited circumstances. *See* 10 C.F.R. § 2.335(a); *see also Exelon Generation Company, LLC* (Limerick Generating Station), CLI-12-19, 76 NRC 377, 380 (2012).

III. BREDL’s Motion to Reopen Fails to Satisfy the Requirements for Reopening the Record

A. The Motion to Reopen Is Not Supported by an Affidavit

BREDL’s Motion to Reopen should be denied because it is not supported by an affidavit as required by § 2.326(b). BREDL, by its own admission, “has not submitted affidavits,” asserting that it has not submitted affidavits because, “the bases for this motion are purely legal.” *Id.* Motion to Reopen at 5. BREDL does not cite any legal authority supporting its failure to comply with the affidavit requirement. The regulation, on its face, contains no exemptions. The purpose of the affidavit is to support “the factual and/or technical bases for the movant’s claim that the criteria of [2.326(a)] have been satisfied,” and BREDL’s claim that its bases for the Motion to Reopen are “legal” does not negate this requirement. Moreover, BREDL’s claims – that the Continued Storage Rule and the GEIS are inadequate – necessarily entail factual and/or technical bases, none of which are presented by BREDL. “Litigants seeking to reopen a record must ‘comply fully with [section] 2.326(b).’” *Pilgrim*, CLI-12-3, 75 NRC at 145 n.86 (quoting *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 222 (2011)) (emphasis added). Thus, BREDL has failed to provide a mandatory affidavit and the Motion to Reopen should be denied on this basis alone. *See, e.g., Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 76 (1992).

B. The Motion is Untimely

BREDL states that “the motion to reopen and the attached contention are timely

because they do not depend at all on past information.” Motion to Reopen at 3. BREDL also contradictorily states that the Motion to Reopen is timely because BREDL “is filing the contention and motion within 30 days of the NRC’s notice of issuance of the [SQN] FSEIS on March 27, 2015” Motion to Reopen at 4 (citation omitted). Neither argument makes the Motion to Reopen timely. The proposed new contention argues that the SQN FSEIS is inadequate because it relies on the Continued Storage Rule and the Continued Storage GEIS. See Hearing Request at 6. The Continued Storage Rule, which by operation of law incorporates the GEIS into existing NRC NEPA documents such as the SQN FSEIS, was published in the *Federal Register* more than seven months ago.¹³ The Motion to Reopen should, therefore, be denied as untimely. See *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 271–72 (2009) (“There simply would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements and add new contentions at their convenience . . .”).

C. The Motion Does Not Concern a Significant Issue

BREDL fails to satisfy its heavy burden to demonstrate that its Motion to Reopen concerns a significant safety or environmental issue, as required by 10 C.F.R. § 2.326(a)(2). BREDL claims that the SQN FSEIS is “not supported by an adequate analysis of the environmental impacts of spent fuel storage and disposal,” because it believes the Continued Storage Rule and GEIS are inadequate. Motion to Reopen at 4. BREDL does not provide any support for its claim of significance, and fails to identify how the FSEIS is “seriously deficient.” *Id.* BREDL’s assertion is, at best, mere speculation, which the Commission has held is insufficient to raise a significant safety or environmental issue. See *Oyster Creek*, CLI-09-7, 69

¹³ See “Continued Storage of Spent Nuclear Fuel,” 79 Fed. Reg. 56238 (Sept. 19, 2014). The text of the rule has been public for even longer. See Staff Requirements—SECY-14-0072—Final Rule, Continued Storage of Spent Nuclear Fuel (RIN 3150-AJ20) (Aug. 26, 2014) (ML14237A092).

NRC at 287.

Furthermore, as discussed below in Section V, the proposed contention is not admissible. As the Commission ruled in *Callaway* on a similar contention and motion to reopen, “[b]ecause [the petitioner] has not submitted an admissible contention, it necessarily has not satisfied our reopening standards because it has not raised a significant environmental issue. . . .” *Callaway*, CLI-15-11, slip op. at 4 n.17.

D. BREDL’s Motion Fails to Show that a Materially Different Result Would Be Likely

Contrary to the 10 C.F.R. § 2.326(a)(3) requirement, BREDL does not demonstrate that a materially different result in the outcome of this proceeding would be likely if the proffered evidence were considered. Rather, BREDL speculates that it is “reasonably likely” that a series of speculative future events, each contingent on the last, would likely produce a different result here. Motion to Reopen at 4.

To meet the reopening standards, the movant must “demonstrate a likelihood of *prevailing*.” *Pilgrim*, CLI-12-15, 75 NRC at 719 (emphasis in original). “The evidence must be sufficiently compelling to suggest a likelihood of materially affecting the ultimate results in the proceeding.” *Pilgrim*, CLI-12-10, 75 NRC at 499. BREDL’s unsupported and speculative claims do not demonstrate likelihood and fails to meet the moving party’s heavy burden to reopen the record. *See Oyster Creek*, CLI-09-7, 69 NRC at 290–91.

As TVA discusses in Section V, *infra*, the proposed contention is not admissible, in part because it challenges the adequacy of a Commission rule despite the regulation prohibiting such challenges. *See* 10 C.F.R. § 2.335(a). Because the proposed contention itself is facially defective, and BREDL cannot show that a materially different result would be or would have been likely here, the Motion to Reopen should be denied. *See Callaway*, CLI-15-11, slip op. at 4

n.17 (“Because [the petitioner] has not submitted an admissible contention, it necessarily has not satisfied our reopening standards because it . . . has not demonstrated that a materially different result would be likely if the contention had been considered initially.”).

IV. BREDL’s Motion to Reopen Does Not Satisfy the Requirements for a Non-Timely Contention

BREDL’s Motion to Reopen also fails to satisfy the requirements of 2.309(c) for non-timely contentions. BREDL repeats its contradictory claims that the Motion to Reopen is timely because motion and accompanying contention “does not depend at all on past information” and that BREDL “is filing the contention and motion within 30 days of the NRC’s notice of issuance of the FSEIS on March 27, 2015” Hearing Request at 8-9 (citation omitted). BREDL makes no argument with respect to how these contradictory statements support that the Request for Hearing is timely, because the proposed contention is not timely. As discussed in Section III.B, *supra*, the contention is based on BREDL’s desire to continue to litigate the Continued Storage Rule, which has been publicly available for many months. BREDL has failed to address, much less satisfy, the requirements of §§ 2.326(d) and 2.309(c). The Motion to Reopen, therefore, should be denied.

V. BREDL Has Not Proffered an Admissible Contention

BREDL states in its Hearing Request that the “sole purpose” of this contention is to challenge the adequacy of the Continued Storage Rule and GEIS and that the contention is generic. *See* Hearing Request at 2. Indeed, BREDL alleges only generic inadequacies with respect to the Continued Storage Rule and GEIS, and does not raise any issue that is specific to the SQN FSEIS. *Id.* at 7–8. BREDL admits that it has not followed the Commission’s regulations in trying to litigate a generic issue in this proceeding and anticipates that the Hearing Request will be denied. *Id.* at 2 n.3.

In denying a virtually identical contention, the Commission held in *Callaway* that “the proposed contention is not admissible under our rules of practice because it impermissibly challenges an agency regulation and is therefore outside the scope of this individual licensing proceeding.” *Callaway*, CLI-15-11, slip op. at 4; *see also Fermi*, CLI-15-12, slip op. at 4 (“a contention that challenges an agency regulation does not raise an issue appropriately within the scope of this individual licensing proceeding and is not admissible absent a waiver”).

Additionally, BREDL’s proposed contention does not satisfy the Commission’s requirements for admissibility in Section 2.309(f). Because the contention is “generic,” it cannot be within the scope of the proceeding or raise a genuine dispute on a material issue of fact or law. *See Callaway*, CLI-15-11, slip op. at 4; *see also Fermi*, CLI-15-12, slip op. at 4. Moreover, BREDL addresses the individual admissibility requirements with no support or analysis for each assertion that the requirement has been met. *See Hearing Request* at 7–9. BREDL refers to its “[c]omments and attachments” submitted to the NRC for the Continued Storage GEIS, but provides no elaboration of how those relate to the proposed contention. *See Hearing Request* at 7, 9. The Commission has made it clear that “a petitioner may not simply incorporate massive documents by reference as the basis for or a statement of his contentions.” *Public Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240–41 (1989).

Because BREDL has failed to satisfy any of the requirements for contention admissibility, and it must satisfy all of them, the proposed contention is not admissible and the Hearing Request must be denied.

CONCLUSION

For the reasons set forth above, BREDL's Motion to Reopen and Hearing Request should be denied.

Respectfully submitted,

/signed (electronically) by Scott A. Vance/

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CERTIFICATE OF SERVICE

I certify that, on May 4, 2015, a copy of “Tennessee Valley Authority’s Answer Opposing Blue Ridge Environmental Defense League’s Hearing Request and Petition to Intervene and Motion to Reopen the Record and Admit a New Contention” was served electronically through the E-Filing system on the participants in the above-captioned proceeding.

/signed electronically by/
Blake J. Nelson