



## I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(2), Beyond Nuclear, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, SEED Coalition, and Southern Alliance for Clean Energy (hereinafter “Petitioners”) hereby reply to oppositions by the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) staff to Petitioners’ motions for leave to file their placeholder contentions.<sup>1</sup> Petitioners’

---

<sup>1</sup> See NRC Staff Answer to Beyond Nuclear’s Motion to Reopen the Record and Petition to Intervene in License Renewal Proceeding for Davis-Besse Nuclear Power Plant (May 1, 2015); NRC Staff Answer to Blue Ridge Environmental Defense League’s Motion to Reopen the Record and Petition to Intervene (May 1, 2015) (North Anna Unit 3 COL proceeding); NRC Staff Answer to Blue Ridge Environmental Defense League’s Motion to Reopen the Record and Petition to Intervene in the License Renewal Proceeding for Sequoyah Nuclear Power Plant (May 4, 2015); NRC Staff Answer to Blue Ridge Environmental Defense League’s Motion to Reopen the Record and Petition to Intervene (Apr. 29, 2015) (William States Lee III COL proceeding); NRC Staff Answer to Nuclear Information and Resource Service’s Motion to Reopen the Record and Petition to Intervene (Apr. 29, 2015) (Levy County COL proceeding); NRC Staff Answer to SEED Coalition’s Motion to Reopen the Record and Petition to Intervene (May 4, 2015) (Comanche Peak COL proceeding); NRC Staff Answer to SEED Coalition’s Motion to Reopen the Record and Petition to Intervene (May 4, 2015) (South Texas Project Units 3 and 4 COL proceeding); NRC Staff Answer to SEED Coalition’s Motion to Reopen the Record and Petition to Intervene in License Renewal Proceeding for South Texas Units 1 and 2 (May 1, 2015); NRC Staff Answer to Southern Alliance for Clean Energy’s Motion to Reopen the Record and Petition to Intervene in the Operating License Proceeding for Watts Bar Unit 2 (May 1, 2015).

*See also* FirstEnergy Nuclear Operating Company Response Opposing Motion to Reopen and “Placeholder” Contention Regarding Continued Storage Rule (May 4, 2015) (Davis-Besse License Renewal Proceeding; Luminant Response Opposing Motion to Reopen and “Placeholder” Contention Regarding Continued Storage Rule (May 4, 2015) (Comanche Peak COL); Nuclear Innovation North America LLC Response Opposing Motion to Reopen and “Placeholder” Contention Regarding Continued Storage Rule (May 4, 2015) (South Texas Units 3 and 4 COL) (“NINA Response”); STP Nuclear Operating Company Response Opposing Motion to Reopen and “Placeholder” Contention Regarding Continued Storage Rule (May 4, 2015) (South Texas Units 1 and 2 license renewal); 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 (May 6, 2015); Tennessee Valley Authority’s Answer Opposing Southern Alliance for Clean Energy’s Motion to Reopen

placeholder contentions assert that to issue or renew reactor licenses in the above captioned proceedings would not satisfy the National Environmental Policy Act (“NEPA”) to the extent that they rely on the Continued Storage of Spent Nuclear Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014) (“Continued Spent Fuel Storage Rule”)) and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157, September 2014) (“Continued Spent Fuel Storage GEIS”). The sole purpose of the contentions is to ensure that in the event the U.S. Court of Appeals for the D.C. Circuit overturns the Continued Spent Fuel Storage Rule and/or Continued Spent Fuel Storage GEIS in *New York et al. v. NRC*, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (filed October 31, 2014), the Court’s decision will be applied to overturn reactor licensing and license renewal decisions that rely on the Continued Storage Rule and GEIS, including those licensing and license renewal decisions made by the Commission during the pendency of *New York et al. v. NRC*.

In *Union Elec. Co. (Callaway Nuclear Power Plant, Unit 1)*, CLI-15-11, 81 NRC \_\_\_ (Apr. 23, 2015) (“CLI-15-11”), the Commission ruled that a contention substantially similar to Petitioners’ contentions was inadmissible because “it impermissibly challenges an agency regulation and is therefore outside the scope of this individual licensing proceeding.” *Id.*, slip op. at 4. Petitioners acknowledge that this ruling is likely dispositive of the admissibility of the contentions at issue here.

CLI-15-11, however, did not address the issue of timeliness, which is disputed for most of the contentions. Therefore, Petitioners will respond to timeliness arguments in

---

the Record and Admit a New Contention (May 1, 2015) (Watts Bar Unit 2 operating license).

this reply.<sup>2</sup>

## II. DISCUSSION

In most cases, the applicants and NRC Staff argue that Petitioners' contentions are untimely because they were not filed within thirty days of the promulgation of the Continued Spent Fuel Storage Rule and GEIS.<sup>3</sup> In making this argument, they ignore the fact that Petitioners' contentions are "placeholders" that depend on a future event: the potential reversal by the U.S. Court of Appeals of the Continued Spent Fuel Storage Rule and GEIS.<sup>4</sup> The contention will not be admissible unless and until that event comes to pass. Therefore, it is nonsensical to measure the timeliness of Petitioners' placeholder contentions against a past event that is, by itself, insufficient to trigger the admissibility of these contentions. The only event against which the timeliness of Petitioners' placeholder contentions can logically be measured is the future and potential event of the Court's reversal of the Continued Spent Fuel Storage Rule and GEIS.

Some parties argue that there is no precedent for a placeholder contention that seeks to litigate future events. *See, e.g.*, NINA Response at 11. But they fail to acknowledge that filing these placeholder contentions is the only means available to Petitioners to ensure that if the U.S. Court of Appeals reverses the Continued Spent Fuel Storage Rule and/or the GEIS in *New York et al. v. NRC*, that decision will be applied to reactor

---

<sup>2</sup> As provided by 10 C.F.R. § 2.323(c), Petitioners do not respond to the portions of applicants' and the Staff's responses that oppose Petitioners' motions to reopen the record.

<sup>3</sup> *See, e.g.*, NRC Staff Answer to Nuclear Information and Resource Service's Motion to Reopen the Record and Petition to Intervene (Levy COL) at 12; NINA Response at 10.

<sup>4</sup> Nor, by the same token, should the timeliness of the contention be measured from the date of Petitioners' filing of the lawsuit. *See* NINA Response at 11. Only a decision by the Court reversing the Rule and GEIS would provide sufficient grounds for admission of a contention.

licensing and license renewal decisions that were made while the lawsuit was pending. The NRC would not entertain such contentions *after* reactor licenses have been issued or renewed. While the Commission found in CLI-15-11 that it was not necessary to *admit* a placeholder contention to the Callaway license renewal proceeding in order to protect a Petitioner's interest in applying the *New York et al. v. NRC* decision to Callaway, it did not disagree with the Petitioner's claim that it was necessary for Petitioners to *file* their placeholder contention before the NRC renewed the Callaway license. The same holds true for the contentions at issue here.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should rule that Petitioner's contentions were timely filed.

Respectfully submitted,

*Signed (electronically) by:*

Diane Curran  
Harmon, Curran, Spielberg & Eisenberg, L.L.P.  
1726 M Street N.W. Suite 600  
Washington, D.C. 20036  
202-328-3500  
E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

*Counsel for Southern Alliance for Clean Energy in Watts Bar Unit 2 Operating License Proceeding, counsel for Nuclear Information and Resource Service in Levy County Units 1 & 2 COL proceeding*

*Signed (electronically) by:*

Robert V. Eye  
Robert V. Eye Law Office, L.L.C.  
123 SE 6th Ave., Suite 200  
Topeka, KS 66603  
785-234-4040  
E-mail: [bob@kauffmaneye.com](mailto:bob@kauffmaneye.com)

*Counsel for SEED Coalition in Comanche Peak Units 3 & 4 COL proceeding, South Texas Units 3 & 4 COL proceeding, and South Texas Units 1 & 2 license renewal proceeding*

*Signed (electronically) by:*

Terry J. Lodge

316 North Michigan St., Suite 520

Toledo, OH 43604-5627

419-255-7552

E-mail: [tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)

*Attorney for Beyond Nuclear in the Davis-Besse license renewal proceeding*

*Signed (electronically) by:*

Louis A. Zeller

Blue Ridge Environmental Defense League

PO Box 88

Glendale Springs, NC 28629

(336) 982-2691 (336) 977-0852

[BREDL@skybest.com](mailto:BREDL@skybest.com)

*Representative of Blue Ridge Environmental Defense League in North Anna 3 COL proceeding, Sequoyah license renewal proceeding, and in William S. Lee COL proceeding*

May 6-8, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of )  
Nuclear Innovation ) Docket Nos. 52-012-COL,  
North America, LLC ) 52-013-COL  
(South Texas Project Units 3 and 4) )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that on May 7<sup>th</sup>, 2015, a copy of the foregoing “Reply to Oppositions by Applicants and NRC Staff to Motions to Admit New Contentions” was served by the Electronic Information Exchange.

*Signed (electronically) by:*

/s/ Robert V. Eye  
Robert V. Eye Law Office, L.L.C.  
123 SE 6th Ave., Suite 200  
Topeka, KS 66603  
785-234-4040  
E-mail: bob@kauffmaneye.com