

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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

**TENNESSEE VALLEY AUTHORITY’S MOTION TO  
WITHDRAW COL APPLICATION WITHOUT PREJUDICE**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. §§ 2.107(a) and 2.323(c), the Tennessee Valley Authority (“TVA”) respectfully moves to withdraw its pending combined license (“COL”) application for two units at the Bellefonte site located in Jackson County, Alabama. TVA requests the Atomic Safety and Licensing Board (“Board”) to dismiss the application without prejudice and unconditionally and to terminate this proceeding.

TVA submitted its COL application for Bellefonte 3 and 4 in 2007. *See Tennessee Valley Authority*, (Bellefonte Nuclear Power Plant, Units 3 & 4), LBP-08-16, 68 NRC 361, 374 (2008). Several groups petitioned the Board to intervene pursuant to the February 8, 2008 Hearing Notice published in the Federal Register. Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for Bellefonte Units 3 and 4, 73 Fed. Reg. 7611 (Feb. 8, 2008). The Board granted standing to Blue Ridge Environmental Defense League, Inc. (“BREDL”) and Southern Alliance for Clean Energy, Inc. (“SACE”), and two contentions—one related to aquatic impacts and another to construction costs—were ultimately admitted for

litigation. *See Bellefonte*, LBP-08-16, 68 NRC at 428, *rev'd in part, Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 & 4), CLI-09-3, 69 NRC 68, 78 (2009).

In addition to the two admitted contentions, BREDL and SACE have sought admission of other contentions related to the waste confidence and continued storage rules. These contentions were also rejected. *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC 221, 242 (2015); *Tennessee Valley Auth.* (Bellefonte Nuclear Power Plant Units 3 and 4), Memorandum and Order (Dismissing Contention) (Sep. 15, 2014) (unpublished).

In January 2012, TVA notified the ASLB that the NRC had placed the combined license application in “suspended” status indefinitely at TVA's request, and TVA requested that the ASLB hold the proceeding in abeyance. Because the review of the application is suspended, there has not yet been a draft environmental impact statement issued and there is no target date for doing so.

Accordingly, TVA asks the board to dismiss the application without prejudice or condition and to terminate this proceeding. TVA has consulted with the NRC Staff and Intervenors pursuant to 10 CFR § 2.323(b). The NRC, SACE, and BREDL indicated that they would not oppose the motion.

## **II. LEGAL STANDARDS GOVERNING WITHDRAWAL**

NRC's rules of practice expressly contemplate application withdrawal: “Withdrawal of an application after the issuance of a Notice of Hearing shall be on such terms as the presiding officer may prescribe.” 10 CFR § 2.107(a). *See also Dairyland Power Coop.* (LaCrosse Boiling Water Reactor), LBP-88-15, 27 NRC 576, 581 (1988). Moreover, any such terms imposed “must bear a rational relationship to the conduct and legal harm at which they are aimed.” *Philadelphia Elec. Co.* (Fulton Generating Station, Units 1 & 2), ALAB-657, 14 NRC 967, 974

(1981); *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2, & 3), LBP-82-81, 16 NRC 1128, 1134 (1982) (citing *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 603, 604 (5<sup>th</sup> Cir. 1976)).

Notwithstanding the authority of the Board to impose terms on withdrawal, the general rule is that dismissal should be without prejudice. *See Perkins*, LBP-82-81, 16 NRC at 1134. Dismissal with prejudice requires some showing of harm to a party or to the public interest and requires careful consideration of the circumstances. The possibility of future litigation or of a subsequent application does not establish the harm needed to dismiss an application with prejudice. *See Puerto Rico Elec. Power Auth.* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1132, 1135 (1981); *Fulton*, ALAB-657, 14 NRC at 978–9; *Perkins*, LBP-82-81, 16 NRC at 1135.

Withdrawal of a license application also moots an adjudicatory proceeding. *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-00-9, 51 NRC 293, 294 (2000).

### **III. THE BOARD SHOULD DISMISS THE APPLICATION WITHOUT PREJUDICE OR CONDITION**

As discussed, the general rule favors dismissal of an application without prejudice. In this proceeding, the Board has not conducted an evidentiary hearing or issued an initial decision on the admitted contentions. The withdrawal is based solely on TVA's projected plans for new generating capacity and is not based on any pending finding in this proceeding. TVA has no plans to pursue a new COL application at this site for the foreseeable future, and the pendency of the instant application has not resulted in any harm that would justify the imposition of conditions or terms on TVA's withdrawal of the application.

#### IV. CONCLUSION

The Board should grant TVA's motion to withdraw the application without prejudice or conditions. Doing so would moot this adjudicatory proceeding.

Respectfully submitted,

/signed (electronically) by Christopher C. Chandler/

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**CERTIFICATE OF SERVICE**

I certify that, on February 12, 2016, a copy of “Tennessee Valley Authority’s Motion to Withdraw COL Application Without Prejudice” was served electronically through the E-Filing system on the participants in the above-captioned proceeding.

/signed electronically by/  
Christopher C. Chandler