

**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 BRIEF IN RESPONSE TO THE BOARD’S
JANUARY 22, 2016 ORDER REQUESTING BRIEFS ON ABANDONMENT**

I. INTRODUCTION

On January 22, 2016, the Board issued an Order in the captioned matter directing Tennessee Valley Authority (“TVA”), the NRC Staff, and the Intervenors (collectively, “the Parties”) in this proceeding to submit briefs on two questions relating to TVA’s combined license (“COL”) application for Bellefonte Nuclear Power Plant, Units 3 and 4. *See* Licensing Board Memorandum and Order (Requesting Party Briefs on Issue of “Abandonment”) (Jan. 22, 2016) (unpublished) (Order). Specifically, the Board directed the Parties to address these issues:

- (1) Do current circumstances regarding TVA planning concerning proposed Bellefonte Units 3 and 4, as outlined in TVA’s 2015 Integrated Resource Plan (IRP), [reference omitted], constitute actual or constructive abandonment of TVA’s pending COL application?
. . . .
- (2) Assuming TVA withdrew its pending COL application in the near term and later submitted another COL application for proposed Units 3 and/or 4 consistent with the general timeline outlined in the alternative sensitivity analysis in the 2015 IRP, . . . what resource impacts (including financial and scheduling) would accrue to TVA and the staff from that withdrawal and subsequent submission, as compared to the resource impacts that would accrue to TVA and the staff under the same timeline if the current application remains docketed, but with staff review suspended pending a TVA request to re-institute staff review.

Order at 1–2.

As discussed below, TVA has requested unconditional withdrawal of its COL application. Therefore, the Board need not consider—and this brief does not address—the question of whether TVA’s 2015 Integrated Resource Plan (IRP) amounts to actual or constructive abandonment or the relative resource impacts of re-submission or re-institution.

II. BACKGROUND

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 Staff had placed the COL 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.

On February 12, 2016, TVA filed its motion to withdraw the license application.

III. ARGUMENT

The Atomic Safety and Licensing Appeal Board (“Appeal Board”) has held that NRC’s adjudicatory tribunals have the “inherent authority . . . to dismiss those matters placed before them which have been mooted by supervening developments.” *Puerto Rico Elec. Power Auth.* (North Coast Nuclear Plant, Unit 1), ALAB-605, 12 NRC 153, 154 (1980) (quoting an unpublished ALAB order dated June 4, 1980). The agency’s tribunals have exercised this authority sparingly in the intervening years. *See Safety Light Corp.* (Bloomsburg, Pennsylvania Site), LBP-05-06, 61 NRC 185 (2005) (granting parties’ joint request to terminate as moot an enforcement proceeding in which the NRC Staff had unconditionally withdrawn an enforcement order); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-93-20, 38 NRC 83 (1993) (dismissing as moot a license amendment proceeding in which the application had withdrawn its application prior to publication of a Notice of Hearing in the *Federal Register*).

By submitting its motion to withdraw the application, TVA has evinced its intention to terminate the BLN 3 & 4 COL application. That being the case, the question of whether the conclusions of the TVA 2015 IRP amount to actual or constructive abandonment is moot. Further, because TVA has expressly determined that resubmission of a new application is preferable, the question of the relative resource impacts is likewise moot.

IV. CONCLUSION

By requesting to withdraw the application, TVA has expressly abandoned it. Thus, the questions of whether the Integrated Resource Plan—or any other document—constitutes “constructive” abandonment and the comparative resource impacts need not be answered.

Respectfully submitted,

/signed (electronically) by Christopher C. Chandler/

February 12, 2016

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CERTIFICATE OF SERVICE

I certify that, on February 12, 2016, a copy of “Tennessee Valley Authority’s Brief in Response to the Board’s January 22, 2016 Order Requesting Briefs on Abandonment” was served electronically through the E-Filing system on the participants in the above-captioned proceeding.

/signed electronically by/
Christopher C. Chandler