

February 12, 2016

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, 52-015  
)  
(Bellefonte Nuclear Power Plant, Units 3 and 4) )

NRC STAFF RESPONSE TO BOARD ORDER  
REQUESTING BRIEFING

INTRODUCTION

The Nuclear Regulatory Commission staff (“Staff”) hereby responds to the Atomic Safety and Licensing Board (“Board”) order dated January 22, 2016 (“Order”).<sup>1</sup> In the Order, the Board asked the Staff and the applicant, Tennessee Valley Authority (“TVA” or “Applicant”), to address whether current circumstances constitute actual or constructive abandonment of the pending Bellefonte Units 3 and 4 Combined License Application (“Application”).<sup>2</sup> The Board also asked the Staff and the Applicant to describe the resource impacts that would be involved, relative to the status quo, if the Application were to be withdrawn and resubmitted.<sup>3</sup> For the reasons set forth herein, TVA’s continued interactions with the Nuclear Regulatory Commission (“NRC”) regarding the Application, including its activities associated with this adjudicatory proceeding, do not demonstrate actual or constructive abandonment of the Application.<sup>4</sup> With respect to the

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<sup>1</sup> *Tennessee Valley Authority* (Bellefonte Units 3 and 4), Memorandum and Order (Requesting Party Briefs on Issue of “Abandonment”) at 2 (unpublished) (Jan. 22, 2016) (ADAMS Accession No. ML16022A105) (Order).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Earlier today, TVA filed an unopposed motion to withdraw the Application unconditionally and without prejudice. Recognizing that the Board has not had an opportunity to rule on TVA’s motion, the Staff

Board's inquiry into resource impacts, the Staff resources involved in the withdrawal and subsequent resubmittal of the Application would be notably greater than the resources expended in maintaining the current status of the application.

### BACKGROUND

On October 30, 2007, TVA submitted its Application for combined licenses to construct and operate Bellefonte Units 3 and 4, two Westinghouse advanced passive pressurized boiling water reactors.<sup>5</sup> On January 18, 2008, the Staff accepted the Application for review and published notice of its docketing in the *Federal Register* on January 25, 2008.<sup>6</sup> On September 12, 2008, in response to a petition to intervene, the Board found that the Blue Ridge Environmental Defense League and the Southern Alliance for Clean Energy (collectively, "Joint Intervenor") had standing and presented at least one admissible contention.<sup>7</sup> Two contentions remain admitted, following the dismissal of two of the originally admitted contentions.<sup>8</sup>

In May of 2009, TVA informed the Staff that it was evaluating the economic viability of completing Units 1 and 2 at the Bellefonte site (pursuant to previously issued construction permits) and would halt progress on the Application for Units 3 and 4 until a determination regarding the future of Units 1 and 2 was made.<sup>9</sup> In response to this development, the Staff

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observes that the withdrawal of the application would render it unnecessary to address the questions on which the Board has sought briefing, because an applicant's voluntary withdrawal of its application is separate from the question of abandonment. See Tennessee Valley Authority's Motion to Withdraw COL Application without Prejudice (Feb. 12, 2016). Accordingly, the pending motion to withdraw the application does not alter the conclusion, explained herein, that circumstances to date have not entailed abandonment of the application.

<sup>5</sup> See Notice of Receipt and Availability of Application for a Combined License, 72 Fed. Reg. 66,200 (Nov. 27, 2007).

<sup>6</sup> See Acceptance for Docketing of an Application for Combined License for Bellefonte Units 3 and 4, 73 Fed. Reg. 4923 (Jan. 25, 2008).

<sup>7</sup> See *Tennessee Valley Authority* (Bellefonte Units 3 and 4), LBP-08-16, 68 NRC 361, 428 (2008) *rev'd in part*, CLI-09-03, 69 NRC 68 (2009) (reversing referred rulings on contention admissibility).

<sup>8</sup> *Bellefonte*, CLI-09-3, 69 NRC at 70.

<sup>9</sup> Letter from Gregory P. Hatchett, Branch Chief, Environmental Projects Branch 1, Division of Site and Environmental Reviews, Office of New Reactors, to Ashok S. Bhatnagar, Senior Vice President, Nuclear Generation Development and Construction, Tennessee Valley Authority, "Change in Schedule of Bellefonte Nuclear Plant, Units 3 and 4 Combined License Application Draft Environmental Impact Statement," (July 21, 2009) (ADAMS Accession No. ML091870303).

determined that it would not issue the draft environmental impact statement for Units 3 and 4 until TVA reached a decision regarding the completion of Units 1 and 2.<sup>10</sup> In November of 2010, at the request of TVA, the Staff officially placed the review of the Bellefonte Units 3 and 4 Application on suspended status.<sup>11</sup>

On January 19, 2016, in response to the Board's order of January 4, 2016, requesting additional status information about the potential for a settlement of the adjudicatory proceeding, the Joint Intervenors asserted that "it would not be lawful, under any circumstances, for the [Board] to terminate this adjudication while TVA's combined license application is pending before the NRC" but that "the appropriate remedy in these circumstances is withdrawal or dismissal of the [Application] for abandonment."<sup>12</sup> On January 22, 2016, the Board issued its Order requesting that the Staff and the Applicant address the following questions:

- (1) Do current circumstances regarding TVA planning concerning proposed Bellefonte Units 3 and 4, as outlined in TVA's 2015 Integrated Resource Plan (IRP) . . . 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[?]<sup>13</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> See Letter from David B. Matthews, Director, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, to Gordon Ardent, General Manager, New Generation Licensing, Nuclear Generation Development and Construction, Tennessee Valley Authority, "Tennessee Valley Authority Request for Deferring Review of Bellefonte Units 3 and 4 Combined License Application Review," (Nov. 24, 2010) (ADAMS Accession No. ML102930207); see also Letter from Gordon Ardent, General Manager, New Generation Licensing, Nuclear Generation Development and Construction, Tennessee Valley Authority, to NRC, Document Control Desk, "Tennessee Valley Authority (TVA) – Bellefonte Units 3 and 4 Combined License Application (COLA) Review," (Sept. 29, 2010) (ADAMS Accession No. ML102740476).

<sup>12</sup> Joint Intervenors' Separate Statement Regarding Additional Status Information at 1 (Jan. 19, 2016) (ADAMS Accession No. ML16019A439) (Joint Intervenors' Statement).

<sup>13</sup> Order at 2. Because the Staff is not in a position to speculate as to the amount of resources that would be expended by TVA in these scenarios, the Staff's response to the Board's second question will be limited to the resources expended by the Staff.

## DISCUSSION

The Joint Intervenors assert that the Application should be dismissed by the Board on grounds of abandonment. However, this assertion places undue reliance on a single NRC case (*North Coast*), one that is both limited in its applicability and is, at any rate, fully consistent with the Staff's approach to date in maintaining the suspended status of the Application. In any event, the circumstances presented in this proceeding do not constitute actual or constructive abandonment of the Application.

Furthermore, regarding the Board's request for information concerning resource impacts, the Staff resource implications associated with maintaining the suspended status of the Application are minimal in comparison to the resources that would be expended by the Staff in the withdrawal and subsequent resubmission of the Application.

1. The circumstances surrounding the Bellefonte Units 3 and 4 Application do not demonstrate actual or constructive abandonment

The Joint Intervenors assert that it would be appropriate for the Board to dismiss the Bellefonte Units 3 and 4 Application for abandonment, and they suggest that a 1980 decision in the *North Coast* proceeding provides authority for doing so.<sup>14</sup> However, as discussed below, that case's narrow focus, as well as its subsequent history, does not support the Joint Intervenors' position. To the contrary, the present status of the Application remains consistent with that decision, and in any event, the Applicant's continued engagement with the NRC regarding its Application does not demonstrate actual or constructive abandonment.

In the *North Coast* decision cited by the Joint Intervenors, the Atomic Safety and Licensing Appeal Board ("Appeal Board") overturned an Atomic Safety and Licensing Board ("*North Coast* Board") decision after that Board held that "it lacked the authority to dismiss or deny a construction permit application pending before it even if it should clearly appear that the

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<sup>14</sup> See Joint Intervenors' Statement at 1-2 (citing *Puerto Rico Electric Power Authority* (North Coast Nuclear Plant Unit 1), ALAB-605, 12 NRC 153 (1980)).

applicant had abandoned any intention to build the facility in question.”<sup>15</sup> The Appeal Board concluded that even though no regulatory process exists for “dismissing (or denying) a construction permit application on the ground that the applicant has clearly abandoned its purpose to build the facility in question,” there is no “limitation upon the inherent authority of adjudicatory tribunals to dismiss those matters placed before them which have been mooted by supervening developments.”<sup>16</sup> However, the Appeal Board did not elaborate on the appropriate application of the Board's “inherent authority” to the facts of the *North Coast* application, nor did it explicitly define circumstances that would constitute abandonment in general.<sup>17</sup> Rather, the determination of whether the applicant had indeed abandoned the construction permit in *North Coast* was remanded back to the *North Coast* Board for consideration.<sup>18</sup> The applicant subsequently withdrew the construction permit application voluntarily; thus, the question of whether the application should be deemed abandoned was never decided.<sup>19</sup> Accordingly, the case itself does not establish a threshold for deeming an application abandoned, nor does caselaw referencing the proposition presented in *North Coast* further define abandonment or apply the “inherent authority” referenced by the Appeal Board for dismissing an application on abandonment grounds.<sup>20</sup> In sum, based on the procedural history of *North Coast* and its limited

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<sup>15</sup> *North Coast*, ALAB-605, 12 NRC at 154.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 155.

<sup>18</sup> *Id.*

<sup>19</sup> *Puerto Rico Elec. Power Authority* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1128 (1981).

<sup>20</sup> See *Washington Pub. Power Supply Sys.* (WPPSS Nuclear Project No. 1), LBP-84-9, 19 NRC 497, 505 (1984) (recognizing *North Coast* for the proposition that “[a] finding . . . of abandonment might permit us to dismiss Applicant’s application as being moot,” but not defining abandonment because the intervenors did not present an “allegation that Applicant has actually decided to abandon the plant”); see also *Rochester Gas & Elec. Corp.* (Sterling Power Project, Nuclear Unit No. 1), ALAB 596, 11 NRC 867, 869 (1980) (noting that *North Coast* “recently considered . . . the extent of the authority of such a board to order an involuntary dismissal of a construction permit application on the ground that the applicant has clearly (but without saying so) abandoned its purpose to build the facility in question” but concluding that the board was “not here confronted with the question”). Examination of other federal agency caselaw regarding abandonment is also unilluminating for the present NRC-specific circumstances.

analysis of abandonment, the case provides minimal guidance concerning the Board's inquiry about the circumstances in Bellefonte.

Nevertheless, to the extent *North Coast* does provide limited insights into what considerations might suggest abandonment of an application, as discussed further below those factors are not apparent from the circumstances to date in Bellefonte. Although *North Coast* fails to provide a framework for determining abandonment, the Appeal Board decision provides some clues as to what abandonment might entail.<sup>21</sup> In particular, the language the Appeal Board chose to describe the very narrow issue before it suggests that a determination of abandonment would involve consideration of the applicant's "intention."<sup>22</sup> The decision also acknowledges a lack of settled criteria for the determination and implies that the determination would be fact-dependent, as it left the *North Coast* Board to decide what would be necessary to "reach an informed judgment on the abandonment question."<sup>23</sup>

In addition, *North Coast* suggests that abandonment cases might encompass "matters . . . which have been mooted by supervening developments," suggesting that abandonment would be informed by new circumstances that have rendered a proceeding moot.<sup>24</sup> Namely, the Appeal Board described the "inherent authority" of the Board in this context of abandonment as a disposition that would be "[a] dismissal for mootness."<sup>25</sup> Similarly, in an 1984 Board decision concerning a different facility, *North Coast* was referenced for the proposition that "[a] finding . . . of abandonment might permit . . . dismiss[a] [of an] Applicant's application as being moot."<sup>26</sup>

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<sup>21</sup> See *North Coast*, ALAB-605, 12 NRC at 154-55.

<sup>22</sup> See *id.* at 154 (discussing the Board's authority to dismiss an application "if it should clearly appear that the applicant had abandoned any intention to build the facility in question").

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 155. The *North Coast* Appeal Board's characterization of this "inherent authority" has been applied in subsequent cases discussing mootness. See *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-93-20, 38 NRC 83, 85 (1993) (holding that after withdrawal of an application, "adjudicatory tribunals" and not the NRC staff "have 'inherent authority . . . to dismiss those [adjudicatory] matters placed before them which have been mooted by supervening developments'"); see also *Safety Light Corp.* (Bloomsburg, Pennsylvania Site), LBP-05-06, 61 NRC 185, 185 (2005) (dismissing enforcement proceeding as moot after challenged suspension was withdrawn).

<sup>26</sup> *WPPSS*, LBP-84-9, 19 NRC at 505.

Although the NRC is not bound by the mootness doctrine followed in federal jurisprudence, the “agency’s adjudicatory tribunals have generally adhered to the principle.”<sup>27</sup> In one formulation of the doctrine, “a case will be moot when the issues are no longer “live,” or the parties lack a cognizable interest in the outcome.”<sup>28</sup> Put another way, if the relief sought would “make a difference to the legal interests of the parties” the case is not moot.<sup>29</sup>

In contrast to the factors alluded to in those cases as potential indicia of abandonment, TVA’s continued interactions with the NRC regarding the Application confirm that it has maintained its interest in the legal proceedings and its continuing deliberations regarding its business plans have not rendered the Application moot. Unlike situations where further litigation concerning an NRC application has been determined to be moot,<sup>30</sup> here the Applicant has reiterated its intentions and interest in the outcome of this proceeding, as evident through its interactions with the Board and with the Staff. Most notably, although the review of the Application has been suspended for several years, in its representations to the Board and Staff, TVA has continuously stated its intention to maintain its Application for Bellefonte Units 3 and 4 as it continues to determine its business plans.<sup>31</sup> Furthermore, the Applicant remains an active

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<sup>27</sup> *Advanced Med. Sys., Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-8, 37 NRC 181, 185 (Mar. 30, 1993) *rev. denied, remanded by Advanced Med. Sys., Inc. v. U.S. Nuclear Regulatory Comm’n*, 30 F.3d 133 (6th Cir. 1994) (“A case is moot when there is no reasonable expectation that the matter will recur and that interim relief or intervening events have eradicated the effects of the allegedly unlawful action”) (*citing County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)).

<sup>28</sup> *Texas Utilities Elec. Co., et al.* (Comanche Peak Steam Elec. Station, Unit 2), CLI-93-10, 37 NRC 192, 200 (1993).

<sup>29</sup> *Id.*

<sup>30</sup> See *Niagra Mohawk* (Nine Mile Point, Units 1 and 2), CLI-00-09, 51 NRC 293, 293 (2000) (holding that the withdrawal of application for license transfer moots adjudicatory proceeding on the proposed transfer); see also *Kerr-Mcgee Chem. Corp.* (W. Chicago Rare Earths Facility), CLI-96-2, 43 NRC 13, 14 (1996) (finding challenge to on-site storage application moot after applicant contracted to move waste offsite and “all [parties] agree[d] that . . . [the applicant] no longer intends to pursue on-site disposal”); see also *David W. Held* (Senior Reactor Operator License for Beaver Valley Nuclear Power Station, Unit 1), CLI-88-05, 28 NRC 73, 73 (1988) (reversing Atomic Safety and Licensing Board’s determination of mootness in an operator license hearing where operator’s employer expressed interest in operators with dual licenses despite the inability of those operators to use both licenses at the same time).

<sup>31</sup> See Update on the Status of Bellefonte Nuclear Plant Units 3 and 4 Combined License Application at 2 (Jan. 6, 2012) (ADAMS Accession No. ML12006A181) (“the continued pursuit of a combined license for BLN 3&4 remained consistent with TVA’s overall strategy of pursuing a diverse generation portfolio that relies heavily on cleaner generation sources, including nuclear power, to meet future demand”); see also Transcript of Teleconference on Tennessee Valley Authority, Bellefonte Nuclear Plant Units 3 & 4 at 325-

participant in the current adjudicatory proceeding. For example, pursuant to the requirements of 10 C.F.R. § 2.336 for mandatory hearing file updates and discovery disclosures, TVA has continued to submit the required disclosures.<sup>32</sup> TVA similarly continues to submit and actively participate in the formulation of status reports requested by the Board.<sup>33</sup> Throughout the time of the suspended review, the Applicant has also defended its Application in response to a number of petitions and requests to admit additional contentions.<sup>34</sup> Likewise, in regard to its interactions

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26 (Dec. 4, 2015) (ADAMS Accession No. ML15342A471) (“TVA has chosen at this time to continue to leave the [Bellefonte Units] 3 and 4 in suspension as an option without making a decision at this time whether to actually terminate that application or continue with it”). As noted previously, *see supra* n.4, although TVA has today filed a motion to withdraw the application, that development does not alter the conclusion that circumstances to date have not entailed abandonment of the application.

<sup>32</sup> See 10 C.F.R. § 2.336. The Board amended the schedule of these requirements in April of 2012 and again in December of 2015 to minimize required filing. *See Tennessee Valley Authority* (Bellefonte Units 3 and 4) Memorandum and Order (Revising Schedule for Mandatory Disclosure/Hearing File Updates) at 1 (Apr. 20, 2012) (unpublished) (ADAMS Accession No. ML12111A116); *see also Tennessee Valley Authority* (Bellefonte Units 3 and 4) Memorandum and Order (Revising Schedule for Mandatory Disclosure/Hearing File Updates) at 1 (Dec. 11, 2015) (unpublished) (ADAMS Accession No. ML15345A204).

<sup>33</sup> TVA’s Response to April 21, 2011 Atomic Safety and Licensing Board Order Requesting TVA Status Report (May 6, 2011) (ADAMS Accession No. ML111260331); Report on the Status of Bellefonte Nuclear Plant Units 3 & 4 Combined License Application Following TVA’s Decision to Complete Bellefonte Nuclear Plant Unit 1 (Sept. 2, 2011) (ADAMS Accession No. ML11245A171); Update on the Status of Bellefonte Nuclear Plant Units 3 and 4 Combined License Application (Jan. 6, 2012) (ADAMS Accession No. ML12006A181); Joint Status Report (Sept. 23, 2015) (ADAMS Accession No. ML15266A528); Updated Joint Status Report (Nov. 2, 2015) (ADAMS Accession No. ML15306A264); Joint Response to Board Request for Additional Status Information (Jan. 19, 2016) (ADAMS Accession No. ML16019A214).

<sup>34</sup> *See Tennessee Valley Authority’s Answer in Opposition to Emergency Petition to Suspend Licensing Proceedings* (May 2, 2011) (ADAMS Accessions No. ML111220194); *Tennessee Valley Authority’s Answer Opposing Petitioner’s Motion to Permit a Consolidated Reply* (May 16, 2011) (ADAMS Accession No. ML111360291); *Tennessee Valley Authority’s Answer in Opposition to Proposed Contention Regarding Fukushima Task Force Report* (Aug. 25, 2011) (ADAMS Accession No. ML11237A091); *Tennessee Valley Authority’s Motion to Strike Intervenors and Reply to Answers to the Fukushima Task Force Report Contention* (Sept. 22, 2011) (ADAMS Accession No. ML111220194); *Tennessee Valley Authority’s Answer Opposing Petition to Suspend Final Licensing Decisions Pending Completion of Remanded Waste Confidence Proceedings* (June 25, 2012) (ADAMS Accession No. ML12177A145); *Tennessee Valley Authority’s Answer Opposing New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Bellefonte Units 3 & 4* (Aug. 3, 2012) (ADAMS Accession No. ML12216A164); *Tennessee Valley Authority’s Answer Opposing Petition to Suspend Reactor Licensing Decisions and Reactor Re-licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures* (Mar. 21, 2014) (ADAMS Accession No. ML14080A415); *Tennessee Valley Authority’s Answer Opposing Petition to Suspend Final Decisions in all Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings and Motion for Leave to File New Contention* (Oct. 31, 2014) (ADAMS Accession No. ML14304A762); *Tennessee Valley Authority’s Answer to Motion to Reopen the Record for Sequoyah Nuclear Power Plant and Motion to Reopen the Record for Bellefonte Nuclear Power Plant* (Oct. 31, 2014) (ADAMS Accession No. ML14304A717).

with the Staff concerning the suspended review, the Applicant has addressed regulatory requirements required to maintain the Application.<sup>35</sup> In sum, TVA's activity in this proceeding and interactions with the Staff, Board, and parties have demonstrated its intention to preserve the Application (albeit in its currently suspended state of review) as well as an ongoing legal interest in the proceeding.

For similar reasons, the information presented in the IRP does not indicate actual or constructive abandonment. The Applicant's continued involvement with the Staff and the Board, summarized above, is consistent with the recommendations presented in TVA's IRP. As the Board mentions in footnote 2 of its August 25, 2015, order requesting a joint status report from the parties, the IRP projects that through 2033 TVA will have no need for new baseload plants.<sup>36</sup> However, the IRP also acknowledges that even though "[n]ew nuclear additions result in higher overall system costs than the reference plan" they "would deliver value beyond the study window" ultimately concluding that "nuclear additions may prove more valuable in future IRPs given their long lives and the possible expiration of some of our existing nuclear licenses that may occur just beyond the study window."<sup>37</sup> In sum, TVA's IRP reflects that notwithstanding the suspended review of the Application, the Applicant has continued to actively evaluate its options

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<sup>35</sup> See, e.g., Tennessee Valley Authority, Combined License Application for Bellefonte Units 3 and 4 Exemption from the Requirements to Submit an Update to the Departures Report Submitted With a Combined License Application, 78 Fed. Reg. 79503, 79503-05 (Dec. 30, 2013). The staff maintains the authority to make decisions regarding the status of the Bellefonte application and will continue to use its Commission delegated discretion in determining the appropriate administrative management of the application. See *U.S. Dep't of Energy* (High Level Waste Repository: Pre-Application Matters), CLI-08-20, 68 NRC 272, 274-75 (2008); see also *Virginia Elec. & Power Co. d/h/a Dominion Virginia Power & Old Dominion Elec. Coop.* (North Anna Power Station, Unit 3), LBP-10-17, 72 NRC 501, 512-13 (2010) ("[b]oards do not direct the staff in [the] performance of [its] administrative functions") (quoting *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516 (1980)).

<sup>36</sup> See Tennessee Valley Authority (Bellefonte Units 3 and 4) Memorandum and Order (Request for Joint Status Report) at 2-3 (August 25, 2015) (unpublished) (ADAMS Accession No. ML15237A213); see also Tennessee Valley Authority, 2015 Integrated Resource Plan at 94 (2015), available at [https://tva.gov/file\\_source/TVA/Site%20Content/Environment/Environmental%20Stewardship/IRP/Documents/2015\\_irp.pdf](https://tva.gov/file_source/TVA/Site%20Content/Environment/Environmental%20Stewardship/IRP/Documents/2015_irp.pdf) (IRP).

<sup>37</sup> IRP at 108, 110. Further, acknowledging recommendations as dependent on projections of market considerations and other factors, the IRP also notes that "[r]enewable selection is highly dependent on gas price assumptions, load, and unit cost and characteristics" and that "[n]atural gas pricing remains a key sensitivity for all resource selections." *Id.* at 110.

with respect to the Bellefonte project, including the possibility of resuming review of the Application.

For all of these reasons, the current circumstances do not support a finding of actual or constructive abandonment of the Application.

2. Staff resources involved in maintaining the Application on the docket are minimal relative to the anticipated resource expenditures if the Application were withdrawn and resubmitted.

The annual Staff resources currently expended to maintain the Application on the docket in suspended status are minimal.<sup>38</sup> As permitted by regulation, the Applicant has requested and received exemptions<sup>39</sup> from annual updates otherwise required for applications under active review,<sup>40</sup> accordingly reducing Staff expenditures in the maintenance of the Application. Nevertheless, as part of its annual resource planning, the Staff continues to determine priorities and allocate resources accordingly.

Based on the Staff's experience, if the Application were withdrawn, the resources involved in processing the withdrawal of the Application would be minimal. Were an application for Units 3 and 4 to be subsequently resubmitted, however, more significant Staff resources would likely be expended. Upon resubmission of the Application, the Staff would follow its current procedures for pre-application interactions, including an assessment of pre-application readiness. After submission, the Staff would conduct a 60 day acceptance review to ensure technical sufficiency and completeness of the Application. The Staff anticipates that the review of the resubmitted application might well require resource expenditures similar to those entailed for a completely new application. While some resource savings could be anticipated based on the Staff's review of the earlier submission, the extent of such resource savings is difficult to

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<sup>38</sup> The Staff is not able to speculate about the point at which these minimal annual resources will accumulate to produce a more significant expenditure.

<sup>39</sup> See e.g. 78 Fed. Reg. at 79503-05.

<sup>40</sup> See 10 C.F.R. Part 52, Appendix D, Paragraph X.B.2 and X.B.3.b.

estimate (and would likely be unknown prior to the resubmittal of the Application), because such resource savings would depend significantly on both the passage of time and the extent of changes that may be made to the Application before resubmission (for example, to reflect new information about the site or proposed design or to address changes in applicable safety or environmental requirements).

### CONCLUSION

For the reasons described above, the present circumstances do not demonstrate actual or constructive abandonment of the Application. Accordingly, the Joint Intervenors' assertion that the Application is abandoned lacks legal and factual support, and the Board should decline the Joint Intervenors' requested remedy.

Respectfully submitted,

**/Signed (electronically) by/**  
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Dated at Rockville, Maryland  
this 12<sup>th</sup> day of February, 2016

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that the "NRC STAFF RESPONSE TO BOARD ORDER REQUESTING BRIEFING" has been filed through the E-Filing system this 12<sup>th</sup> day of February, 2016.

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 12<sup>th</sup> day of February, 2016