

July 21, 2017

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
Tennessee Valley Authority) Docket No. 52-047-ESP
)
(Clinch River Nuclear Site))
_____)

**SOUTHERN ALLIANCE FOR CLEAN ENERGY’S AND TENNESSEE
ENVIRONMENTAL COUNCIL’S REPLY TO OPPOSITIONS TO PETITION TO
INTERVENE AND REQUEST FOR HEARING**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309 and the Secretary’s Order of June 2, 2017, Petitioners Southern Alliance for Clean Energy (“SACE”) and Tennessee Environmental Council (“TEC”) hereby reply to oppositions by Tennessee Valley Authority (“TVA”) and the U.S. Nuclear Regulatory Commission (“NRC”) Staff to Petitioners’ hearing request and petition to intervene. Tennessee Valley Authority’s Answer Opposing Petitions for Intervention, etc. (July 7, 2017) (“TVA Opp.”); NRC Staff’s Answer to Southern Alliance for Clean Energy and Tennessee Environmental Council’s Petition to Intervene and Request for Hearing (July 7, 2017) (“NRC Staff Opp.”). Neither TVA nor the NRC Staff objects to Petitioners’ standing, but both parties oppose admission of all three of the Petitioners’ contentions. As discussed below, their arguments against the admissibility of the contentions have no merit, and therefore the contentions should be admitted for a hearing.

II. DISCUSSION

A. Contention 1: Inadequate Emergency Plan

Contention 1 asserts that the Emergency Plan in TVA's ESP application is inadequate to satisfy 10 C.F.R. §52.17(b)(2) because the size of the proposed plume exposure Emergency Planning Zone ("EPZ") is less than the minimum ten-mile radius required by 10 C.F.R. §50.47(c)(2) for most nuclear power reactors. Petition to Intervene and Request for Hearing at 5-9 (June 12, 2017) ("Hearing Request"). While TVA claims to qualify for an exemption from 10 C.F.R. §50.47(c)(2) "due to the decreased potential consequences associated with such a facility" (ESP Application, Part 6 at 1), Petitioners contend that TVA has not demonstrated that it satisfies the NRC Staff's criterion for such an exemption with respect to the potential for a spent fuel storage pool fire: that the applicant must demonstrate that the time between uncovering of spent fuel and initiation of a zirconium fire in the spent fuel storage pool is ten hours or more. Preliminary Draft, Regulatory Improvements for Power Reactors Transitioning to Decommissioning at A-1 (RIN # 3150-AJ59, NRC Docket # NRC-2015-0070, 2015) ("Draft Guidance for Decommissioning Reactors") (NRC ADAMS Accession No. ML16309A332).

TVA and the NRC Staff both oppose admission of the contention, but their arguments are without merit.

1. TVA's arguments against admission of Contention 1 are without merit.

TVA asserts that Contention 1 is inadmissible because it "misunderstands TVA's exemption request." TVA Opp. at 10. According to TVA, it is "requesting to use an alternative methodology for determining the appropriate size of an emergency planning zone ("EPZ").¹ *Id.*

¹ *Id.* See also *id.* at 16-17 (asserting that the "actual" exemption request is "to use the [U.S. Environmental Protection Agency's ("EPA's") Protective Action Guideline] PAG dose criteria

TVA states that “the current emergency planning regulations assume a large, light-water reactor, and the technology for which this ESP is sought is not a large light-water reactor, but SMRs [small modular reactors], which the Commission has recognized have very different characteristics.” *Id.* at 13. TVA also asserts that its exemption request is consistent with a rulemaking currently underway at NRC, in which the NRC Staff is considering smaller EPZs for SMRs (including a site boundary EPZ and two-mile radius EPZ), based on factors such as their smaller size and lower probability of severe accidents. *Id.* at 11-12. TVA contends that it is seeking the exemption because the rulemaking has not been completed and because the Commission has directed the Staff to “be prepared to adapt an approach to emergency planning zones for SMRs under existing exemption processes, in parallel with its rulemaking efforts.” *Id.* at 12-13 and n.67 (citing SRM-SECY-15-0077, Memorandum from Annette L. Vietti-Cook to Mark A. Satorius re: Staff Requirements – SECY-15-0077 -- Options for Emergency Preparedness for Small Modular Reactors and Other New Technologies (Aug. 4, 2015) (ADAMS Accession No. ML15216A492)).

Contrary to TVA’s argument, Petitioners have not misunderstood either NRC’s emergency planning regulations or TVA’s exemption application. The regulations clearly require an EPZ with a radius of “about” ten miles, to be modified only by factors related to “local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries.” The regulations do *not* say that an EPZ of *any* size is allowed as long as a certain methodology is applied to determine the size of the EPZ. While Section 50.47(c) allows case-by-case determinations of EPZ size for “gas-cooled nuclear reactors and for reactors with an authorized

with exemptions from emergency planning based on whether a site boundary EPZ or a 2-mile radius EPZ would be applicable based on the PAG criteria.”).

power level less than 250 MW thermal,” TVA’s proposed SMR does not qualify for either exception. In addition, the asserted difference between large light water reactors (“LWRs”) and SMRs does not necessarily apply to the spent fuel pool of an SMR.

Nor can there be any doubt that TVA’s exemption request seeks a significant reduction in the size of the EPZ, from the area within a ten-mile radius to either the area within the site boundary or at most a two-mile radius. *See* Hearing Request at 6 (citing ESP Part 6, ESP Part 5A (presenting an emergency plan with an EPZ that conforms to the site boundary), and ESP Part 5B (presenting an emergency plan with an EPZ that has a two-mile radius.)) Thus, TVA’s claim that Petitioners have misunderstood the regulations and TVA’s exemption request is utterly without merit.

TVA does not explain how the pendency of the NRC rulemaking regarding emergency planning for SMRs renders Contention 1 inadmissible, nor is such a conclusion supportable. While the Commission directed the Staff to set up a process for consideration of exemption applications in SRM-SECY-15-0077, it did not say such applications must be granted, or even establish guidance for reviewing them. In fact, unless and until the rulemaking is completed, the Commission would have no lawful basis for making any generic rulings that SMRs should be exempted from any emergency planning regulations. Therefore Contention 1 appropriately disputes TVA’s assertion that it satisfies the NRC’s standard for issuing an exemption from 10 C.F.R. § 50.47(c)(2) “due to the decreased potential consequences associated with [the proposed] facility.” Hearing Request at 5 (citing ESP Application, Part 6 at 1). As Contention 1 also explicitly asserts, TVA has failed to demonstrate “decreased potential consequences” with

respect to spent fuel pool fires. *Id.* at 8. Therefore, TVA fails to meet the test for an exemption as articulated by TVA itself.²

TVA argues that Petitioners' contention is premature, because it calls for an analysis of design-related information that cannot be conducted until the design phase, *i.e.*, the combined license ("COL") proceeding. TVA Opp. at 15. TVA also contends that "Contention 1 ignores that applicants for an ESP may use a design parameter approach, rather than requiring a specific design." *Id.* (citing 10 C.F.R. § 52.24(b)). According to TVA, "at this stage," Contention 1 "violates 10 C.F.R. § 2.335(a) by seeking to require TVA to provide a specific design, rather than design parameters."

By making this argument, TVA only confirms Petitioners' assertion in Contention 1 that the exemption application is premature. *See* Hearing Request at 8. Contention 1 charges that TVA has failed to provide information necessary to support TVA's claim that an exemption should be granted based on "decreased potential consequences" of an accident at the proposed SMR, because it has not addressed the potential consequences of a pool fire. If TVA is currently unable to support its claim with all relevant information, then TVA should not currently seek an exemption. Unless and until TVA withdraws its exemption application, the contention should be admitted because it presents a litigable dispute regarding the question of whether the exemption should be granted.

TVA therefore errs in arguing that Contention 1 is outside the scope of this proceeding and that Contention 1 otherwise fails to satisfy the NRC's standards for admissibility of contentions.

² If TVA could demonstrate "decreased potential consequences" of an accident, it would satisfy 10 C.F.R. § 50.12(a)(2)(ii)'s criterion that "[a]pplication of the regulation in the particular circumstances . . . is not necessary to achieve the underlying purpose of the rule."

2. NRC Staff's arguments against admission of Contention 1 are without merit.

The NRC Staff opposes admission of Contention 1 on the ground that “Contention 1 does not identify any specific areas in which the application fails to address the criteria for specific exemptions found in 10 C.F.R. §§ 50.12 and 52.7, or any other substantive legal requirements.” NRC Staff Opp. at 12. As discussed above at pages 4-5, however, Petitioners explicitly dispute TVA’s claim that it satisfies the NRC’s exemption standard because of the “decreased potential consequences” of reactor accidents. TVA’s claim clearly relates to 10 C.F.R. § 50.12(a)(2)(ii), which requires a demonstration that “[a]pplication of the regulation in the particular circumstances . . . is not necessary to achieve the underlying purpose of the rule.”

The Staff contends that the Draft Decommissioning Guidance may not be the subject of a contention because it is not a regulation. NRC Staff Opp. at 20. But the Staff concedes that in previous cases, it has applied the Draft Decommissioning Guidance’s substantive criterion of a greater-than-ten-hour period for initiation of a spent fuel pool accident as a condition for granting exemptions from emergency planning requirements at decommissioning reactors. NRC Staff Opp. at 20 (citing NSIR/DPR-ISG-02, Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants (May 11, 2015) (ADAMS Accession No. ML14106A057)).³ NRC guidance for licensing decisions is entitled to “special weight” if it is “consistent with the regulations and at least implicitly endorsed by the Commission.” *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 290

³ As the Staff points out, in evaluating exemption requests it relies on Staff Guidance Document NSIR/DPR-ISG-02, which incorporates the same substantive criterion as the Draft Decommissioning Guidance Document. NRC Staff Opp. at 20.

(1988) (citing *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819. 22 NRC 681, 709-10, 711 and n.40 (1985)). The greater-than-ten-hour criterion in the Draft Decommissioning Guidance and NSIR/DPR-ISG-02 has been applied by the Staff in all of the exemption proceedings cited in Petitioners' Hearing Request at page 5 n.1, and the Commission also has approved it.⁴ Thus, although the Draft Decommissioning Guidance and NSIR/DPR-ISG-02 are not incorporated into a regulation, their greater-than-ten-hour criterion is treated by the NRC as the equivalent of a licensing standard, and therefore may be relied on by Petitioners in their contention.⁵

Nevertheless, the Staff contends that the regulatory contexts of decommissioning reactors and ESPs "are not obviously analogous," and contends that Petitioners have failed to justify application of the criterion to TVA's exemption application. *Id.* The Staff is incorrect and misunderstands the fundamental point of the Petitioners' contention. Petitioners cite the greater-

⁴ See, e.g., Memorandum from Joseph D. Anderson to Robert J. Lewis, re: Approval of Interim Staff Guidance, ISG-NSIR/DPR-02, "Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants" (May 11, 2015) (NRC ADAMS Accession No. ML15028A418) (citing Memorandum from Annette L. Vietti-Cook to Mark A. Satorius re: Staff Requirements – SECY-14-0066 – Request by Dominion Energy Kewaunee, Inc. for Exemptions from Certain Emergency Planning Requirements (Aug. 7, 2014); Memorandum from Annette L. Vietti-Cook to Mark A. Satorius re: Staff Requirements – SECY-14-0118 – Request by Duke Energy Florida, Inc. for Exemptions from Certain Emergency Planning Requirements (Dec. 30, 2014)).

In the SECY papers proposing these exemptions, the Staff thoroughly briefed the Commission regarding the substantive criterion of a greater-than-ten-hour period for initiation of a spent fuel pool accident as a condition for granting the exemptions. See, e.g., SECY-14-0066, Memorandum from Mark A. Satorius to the Commissioners re: Request by Dominion Energy Kewaunee, Inc. for Exemptions from Certain Emergency Planning Requirements (June 27, 2014).

The SRM-SECY papers and SECY papers cited in this footnote can be found on the NRC's website in its "Document Collections," under "Commission."

⁵ The NRC staff also claims that the associated time-to-ignition criterion is not the sole criterion for evaluating exemption requests -- but the staff has applied it as a *necessary* condition, in each of the cases cited in Contention 1. See Hearing Request at 5 n.1.

than-ten-hours criterion because it clearly demonstrates that the potential for spent nuclear fuel pool accidents must be considered in determining whether the requirement for a 10-mile EPZ can or cannot be relaxed. TVA's exemption application, by focusing only on the potential for a reduced reactor accident source term, disregards this.

There is nothing about an SMR that renders irrelevant the greater-than-ten-hours criterion in the Draft Decommissioning Guidance and NSIR/DPR-ISG-02. As discussed in the basis statement of Contention 1, periodically throughout the operating cycle, operating nuclear reactors have a shorter time between uncovering of fuel and ignition of a fire than decommissioning reactors because the reactor is still discharging hot fuel. Hearing Request at 7. Further, at an operating SMR with multiple units (such as the NuScale SMR design), unloading of hot fuel into the pools could happen even more frequently. *Id.* If anything, application of the criterion plays an even greater role in assuring the protection of public health and safety for an operating SMR than for a decommissioning reactor.⁶

Accordingly, Contention 1 is within the scope of this proceeding, raises a material dispute with TVA, is supported by an adequate factual and legal basis. Therefore, it should be admitted.

B. Contention 2: Failure to Address Consequences of Spent Fuel Pool Fires

Contention 2 asserts that TVA's Environmental Report fails to satisfy the National Environmental Policy Act ("NEPA") because it does not address the consequences of a fire in

⁶ The Staff also makes the circular argument that the Draft Decommissioning Guidance is not applicable to an operating SMR or other reactor because emergency plans will be required for the reactor. NRC Staff Opp. at 20. The Staff overlooks the fact that the entire purpose of the exemption application is to *avoid* the requirement to have emergency plans for most of the ten-mile radius around the proposed reactors.

the spent fuel storage pool, nor does it demonstrate that a pool fire is remote and speculative. Hearing Request at 9-10.

1. TVA's arguments against admission of Contention 2 are without merit.

TVA argues that Contention 2 is “outside the scope of the proceeding” and “does not raise a material issue” because it implicates design issues that need not be discussed until the COL stage. TVA Opp. at 20-21 (citing 10 C.F.R. § 50.150(a)(3)). But Section 50.150(a)(3) is a safety regulation that requires an analysis of commercial aircraft impacts on the reactor and the spent fuel pools. It is not a NEPA regulation, and therefore it has no bearing on the question of whether the Environmental Report must include an analysis of the consequences of pool fires.

TVA next argues that Contention 2 is inadmissible because Petitioners fail to “assert that spent fuel accidents are not bounded by the design basis analysis of the severe accident analysis included in the ESP application.” TVA Opp. at 21. But TVA misses the point of Contention 2, which is that the Environmental Report is faulty because it fails to provide any accident analysis at all regarding pool fires. The Environmental Report gives no indication that TVA gave the slightest consideration to the risk or consequences of pool fires. The sole subject matter of Chapter 7 consists of “accidents with substantial damage to the *reactor core* and degradation of *containment systems*.” Environmental Report at 7.2-1 (emphasis added). *See also id.* at 7.2-2 – 7.2-3 (providing the list of reactor accident sequences evaluated in Chapter 7, which are limited to reactor containment failure or bypass). Under NEPA, it is TVA's job, in the first instance, to show that spent fuel pool fires are bounded by the severe accident analysis in the Environmental Report. And TVA has utterly failed to offer any such analysis.

Finally, TVA argues that by stating that the impacts of pool fires are “comparable” to the impacts of reactor accidents, the 1996 and 2013 revisions to the Generic Environmental Impact

Statement for License Renewal of Nuclear Power Plants (NUREG-1437, the “License Renewal GEIS”) “demonstrate[] that the environmental impacts from a spent fuel accidents are already encompassed by an analysis of other full-power reactor accidents.” TVA Opp. at 22. But the License Renewal GEIS does not address any aspect of SMR operation, and the NRC has made no determination that the spent fuel pool accident analysis it contains is also applicable to SMRs, whose spent fuel pools are designed differently from LWR spent fuel pools.⁷ Thus, although the License Renewal GEIS may be relied on for the general proposition that pool fires are on a comparable scale as reactor accidents, nothing in it suggests that the NRC has determined that the environmental impacts of a pool fire at an SMR are *encompassed* by the impacts of a reactor accident.

2. The NRC Staff’s arguments against admission of Contention 2 are without merit.

The NRC Staff argues that Contention 2 is inadmissible because the information Petitioners allege is missing from the Environmental Report “is present in it.” NRC Staff Opp. at 22.

According to the Staff, TVA’s Environmental Report includes “appropriate references” to the License Renewal GEIS, which in turn, discusses “the remote likelihood of spent fuel pool fires.”

Id. But the Environmental Report does not cite the License Renewal GEIS with respect to the risk or consequences of pool fires. Instead, it cites the License Renewal GEIS with respect to an entirely different set of subjects:

- Uranium mining and milling

⁷ In the Environmental Report, for instance, TVA claims “SMR design features” include “spent fuel pool cooling without the need for active heat removal.” Environmental Report at 9.3-2 (cited in Hearing Request at 10). In contrast, an LWR’s spent fuel pool cooling system depends on pumps and is part of the reactor’s auxiliary cooling system, an active system. *See* License Renewal GEIS at 3-17 – 3-18; Recommendations for Enhancing Reactor Safety in the 21st Century, Near-Term Evaluation of the Need for Agency Actions Following the Events in Japan at 32 (2011) (NRC Accession No.ML111861806).

- Conversion to uranium hexafluoride
- Enrichment of uranium-235
- Fabrication of reactor fuel
- Reprocessing of irradiated fuel
- Transportation and management of radioactive wastes
- Disposal of the spent fuel

Environmental Report at 5.7-1. The mere mention of the License Renewal GEIS for a completely different purpose cannot substitute for a discussion of whether and how the License Renewal GEIS addresses the risk and consequences of a spent fuel pool fire at the proposed Clinch River SMR.

The NRC Staff also argues that the License Renewal GEIS establishes that pool fires are “remote and speculative,” and therefore they need not be considered in any environmental analysis. But the Staff provides no citation to either revision of the License Renewal GEIS for that assertion, nor can one be found. Indeed, the Staff ignores Appendix E to the 2013 License Renewal GEIS, which provides an analysis of the environmental impacts of spent fuel pool fires. The conclusion to Appendix E shows the NRC considers spent fuel pool fires to be unlikely, but it contains no assertion or even suggestion that they are remote and speculative:

In summary, it is concluded that the environmental impacts from accidents at SFPs . . . can be comparable to those from reactor accidents at full power . . . Subsequent analyses performed, and mitigative measures employed since 2001, have further lowered the risk of this class of accidents. In addition, even the conservative estimates from NUREG-1738 are much less than the impacts from full power reactor accidents as estimated in the 1996 GEIS. Therefore, the environmental impacts stated in the 1996 GEIS bound the impact from SFP accidents.

Id. at E-39. And the Staff completely ignores the D.C. Circuit’s decision in *State of New York v. NRC*, 681 F.3d 471, 483 (D.C. Cir. 2013), in which the Court required NRC to evaluate the consequences of spent fuel pool fires for the very reason that NRC had not ruled them out as remote and speculative.

Accordingly, the Staff has completely failed to support its opposition to the admission of

Contention 2.

C. Contention 3: Impermissible Discussion of Energy Alternatives and Technical Advantages

Contention 3 asserts that TVA's ESP application violates NEPA and NRC implementing regulations because it contains impermissible language comparing the proposed SMR to other energy alternatives and discussing the economic and technical advantages of the facility. Hearing Request at 11-13. Petitioners contend the ESP's comparison of the SMR to other energy alternatives is impermissible because TVA has explicitly invoked 10 C.F.R. §51.50(b)(2), which excuses TVA from discussing the economic, technical, or other benefits of the proposed facility such as meeting a need for power; and which also effectively precludes Petitioners from raising those issues in contentions. Under the circumstances, Petitioners argue that any language comparing the proposed SMR to other energy alternatives, or purporting to justify the need for the SMR, should be stricken from the Environmental Report; and that such language should also not be included in the Environmental Impact Statement ("EIS") to be prepared by the NRC Staff.

Id.

Both the NRC Staff and TVA oppose admission of Contention 3. The Staff agrees with Petitioners on two points – first, that TVA elected not to address energy alternatives at the ESP stage; and second, that the Staff is therefore precluded from addressing energy alternatives in the EIS for the ESP. NRC Staff Opp. at 31 (citing 10 C.F.R. § 51.75(b)). But the Staff argues that there is no regulation that renders "impermissible" TVA's assertions regarding energy alternatives in the Environmental Report, and therefore Petitioners have not presented an admissible issue. *Id.* at 28. *See also id.* at 28 ("Petitioners advance a claim that is neither a regulatory requirement for an ESP application nor a finding the NRC must make in order to

reach a decision on the issuance of the ESP”); TVA Opp. at 26 (faulting Petitioners for failing to “reference a statute or regulation that actually prohibits such statements.”).

The Staff is correct that 10 C.F.R. § 51.50(a) does not explicitly prohibit an applicant’s Environmental Report from including an energy alternatives discussion if the applicant has elected not to include it. The Staff is also correct that 10 C.F.R. § 51.75(b) *does* prohibit the Staff from including an energy alternatives analysis in the EIS, given that TVA elected not to provide such an analysis at the ESP stage. NRC Staff Opp. at 31. Petitioners respectfully submit that in order to be timely, NRC regulations *required* them to challenge the Environmental Report’s discussion of energy alternatives at this juncture, because there is no doubt that such a discussion ultimately will be unlawful if it appears in the EIS. Furthermore, the Staff’s Opposition gives no indication that the Staff actually plans to exclude the type of language Petitioners contend is impermissible.

1. Contention 3 is admissible because it is based on information currently available to Petitioners about a violation of NRC NEPA regulations.

Contention 3 complies with NRC regulation 10 C.F.R. § 2.309(f)(2), which requires that contentions “must be based on documents available at the time the petition is to be filed, such as . . . the environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner.” With respect to NEPA issues, the regulation explicitly requires that contentions must be “based on the applicant’s environmental report.” *See also Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 NRC 1041 (1983) (holding that Petitioners have an “ironclad” obligation to raise issues in licensing hearings as soon as the information becomes available to them.) In the case of environmental contentions, the purpose of this requirement is to resolve environmental issues at the earliest possible time, even before the government prepares

an EIS. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049, 1053 (1983). Here, Contention 3 is based on information presented in TVA's Environmental Report, which is indisputably beyond the scope of the Environmental Report as defined by TVA, prohibited from litigation in this proceeding, and prohibited from inclusion in the EIS. Petitioners were required by 10 C.F.R. § 2.309(f)(2) to raise the dispute with TVA as soon as the information became available in the Environmental Report.

2. The NRC Staff's Opposition supports the admissibility of Contention 3 by denying that the language objected to by Petitioners relates to energy alternatives.

While the NRC Staff concedes that it will be precluded from discussing energy alternatives in the EIS, the Staff takes the position that TVA itself "has not addressed energy alternatives." NRC Opp. at 28. Although TVA's Environmental Report contains pages upon pages describing the purported advantages of SMRs over other energy sources,⁸ the Staff simply denies that these discussions involve energy alternatives.⁹ Thus, while the NRC Staff claims it is a "regulatory presumption" that the EIS will comply with 10 C.F.R. § 51.75(b) by excluding any discussion of energy alternatives (NRC Staff Opp. at 31 and n.143), it does not appear the Staff considers the contested content of the Environmental Report to constitute prohibited information.

⁸ As stated in the basis of Contention 3, for instance, Chapter 1 of the Environmental Report is "brimming with claims that SMR technology is preferable to other energy technology on a host of issues, including safety, security, reliability, carbon reduction, water use, and economies of scale." Hearing Request at 16-18. Similarly, in Chapter 9, TVA's discussion of the "no action" alternative, TVA laments that all of these asserted advantages of SMRs would be lost if TVA did not receive an ESP. *Id.* at 18. In Chapter 7, TVA also compares SMRs favorably to other reactors with respect to accident risks. And in Chapter 9, TVA once again introduces impermissible energy alternative considerations by describing the disadvantages of the "no-action alternative" as the lack of the supposed benefits of SMR technology, as well as the failure to create "new jobs" or to realize the "technological and financial benefits to the local, community Tennessee Valley, and the nation that would result from the construction of the first-of-its-kind SMRs." *Id.*

⁹ TVA similarly characterizes these extensive discussions of SMR's advantages over other energy alternatives as mere "positive statements." TVA Opp. at 26.

By denying that the Environmental Report discusses energy alternatives, the Staff demonstrates the existence of a material factual and legal dispute regarding whether it will comply with 10 C.F.R. § 51.75(b) by excluding the prohibited information from the EIS.

Accordingly, neither the NRC Staff nor TVA has demonstrated that Contention 3 is inadmissible.

III. CONCLUSION

For the foregoing reasons, Petitioners' contentions should be admitted and Petitioners should be admitted as parties to this proceeding.

Respectfully submitted,

 /signed electronically by/

Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1725 DeSales Street N.W., Suite 500
Washington, D.C. 20036
240-393-9285
dcurran@harmoncurran.com

July 21, 2017

CERTIFICATE OF SERVICE

I certify that on July 21, I posted copies of the foregoing SOUTHERN ALLIANCE FOR CLEAN ENERGY'S AND TENNESSEE ENVIRONMENTAL COUNCIL'S REPLY TO OPPOSITIONS TO PETITION TO INTERVENE AND REQUEST FOR HEARING on the NRC's Electronic Information Exchange System.

 /signed electronically by/

Diane Curran

Harmon, Curran, Spielberg, & Eisenberg, L.L.P.

1725 DeSales Street N.W., Suite 500

Washington, D.C. 20036

240-393-9285

dcurran@harmoncurran.com