

November 6, 2017

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 No. 52-047-ESP
	)	
(Clinch River Nuclear Site)	)	

NRC STAFF ANSWER TO INTERVENORS' MOTION  
TO ESTABLISH A SCHEDULE FOR FILING OF NEW OR AMENDED CONTENTIONS

I. INTRODUCTION

The NRC staff (Staff) hereby responds to Southern Alliance for Clean Energy's and Tennessee Environmental Council's (Intervenors) October 26, 2017, "Partially Unopposed Motion to Establish a Schedule for Filing New or Amended Contentions Regarding Emergency Planning-Related Portions of TVA's Early Site Permit Application and Exemption Request" (Motion) pursuant to 10 C.F.R. § 2.323(c). Intervenors request the Atomic Safety and Licensing Board (Board) establish a deadline of November 20, 2017, for Intervenors to file new and amended contentions relating to the emergency planning issues raised in Contention 1 of their initial petition. Although the Staff does not oppose the Intervenors' proposal to establish November 20, 2017 as the date for new or amended contentions based on new emergency planning information, the Staff wishes to clarify the record regarding certain statements made in the Motion.

II. BACKGROUND

On May 12, 2016, the Tennessee Valley Authority (TVA), pursuant to the Atomic Energy Act of 1954, as amended (AEA), and the Commission's regulations in 10 C.F.R. Part 52,

submitted an application for an early site permit (ESP) for the Clinch River Nuclear Site in Oak Ridge, Tennessee.<sup>1</sup> The application is based on a plant parameter envelope that was developed based on four light-water small modular reactors (SMRs) currently under development in the United States.<sup>2</sup> Notably, “TVA has not made a decision to submit a combined license [COL] application or go forward with construction of a new plant.”<sup>3</sup> In its ER, TVA states that “[t]he proposed federal action is the NRC issuance, under the provisions of 10 CFR Part 52, of an ESP to TVA approving the CRN Site as a suitable site for future demonstration of the construction and operation of two or more SMRs.”<sup>4</sup>

As 10 C.F.R. § 52.17(c) permits, TVA included in its application major features of emergency plans.<sup>5</sup> The application also includes exemption requests related to the methodology used to size the emergency planning zone (EPZ).<sup>6</sup> The application provides that once an SMR design is chosen at the COL application stage, TVA must show that the design meets the emergency planning criteria established at the ESP stage “in order for the applicable Emergency Plan and EPZ to apply.”<sup>7</sup>

During the course of its review, the Staff issued a request for additional information (RAI) to TVA regarding emergency planning on May 12, 2017.<sup>8</sup> On August 24, 2017, TVA submitted its response to the RAI.<sup>9</sup> On September 11, 2017, the RAI response was made publicly available on ADAMS following a routine review by the NRC’s Document Processing Center.

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<sup>1</sup> See Letter CNL-16-081 dated May 12, 2016, from J.W. Shea, TVA, to Document Control Desk, NRC, Subject: Application for Early Site Permit for Clinch River Nuclear Site (Letter CNL-16-081) (ADAMS Accession No. ML16139A752).

<sup>2</sup> Clinch River Nuclear Site, Early Site Permit Application, Rev. 0 (Application), Part 2, Site Safety Analysis Report (SSAR), Chapter 2 at 2.0-1 (ADAMS Accession No. ML16144A037).

<sup>3</sup> Letter CNL-16-081 at 2.

<sup>4</sup> Section 1.1 “The Proposed Action” of ER, Rev. 0, at 1-1 (ADAMS Accession No. ML16144A085).

<sup>5</sup> See Application, Part 2, SSAR, Chapter 13 at 13-2 (ADAMS Accession No. ML16144A071).

<sup>6</sup> See Application, Part 6, Exemptions and Departures (ADAMS Accession No. ML16144A151).

<sup>7</sup> *Id.*

<sup>8</sup> E-mail from Mallecia Sutton to Raymond Schiele and Archana Manoharan, Request for Additional Information, Number 7, eRAI-8885 (July 28, 2017) (ADAMS Accession No. ML17209A401).

<sup>9</sup> Response to Request for Additional Information Related to Emergency Planning Exemption Requests in Support of Early Site Permit Application for Clinch River Nuclear Site (Aug. 24, 2017) (ADAMS Accession No. ML17237A175).

On June 12, 2017, Joint Intervenors timely filed a joint petition including three proposed contentions, through which they sought to intervene in this proceeding.<sup>10</sup> They proposed three contentions, which related to: (1) TVA's application for an exemption from the NRC emergency planning requirements with respect to establishing a ten-mile emergency planning zone, (2) TVA's failure to address the environmental impacts of accidents involving ignition of spent fuel in the spent fuel storage pools at the proposed facility, and (3) TVA's inclusion of energy alternatives in its Environmental Report.<sup>11</sup> On July 7, 2017, TVA and the Staff separately filed answers opposing the Joint Intervenors' petition.<sup>12</sup>

On October 10, 2017, the Board issued an order (Order) that: admitted SACE and TEC as parties to this proceeding; rejected Contention 1, finding that it was not within the scope of this proceeding and that it failed to raise a material factual dispute with the application, contrary to 10 C.F.R. § 2.309(f)(1)(iii) and (vi); and, admitted Contentions 2 and 3.<sup>13</sup> On October 26, 2017, Joint Intervenors filed their Motion.

### III. DISCUSSION

Intervenors request the Board find "that they have good cause under 10 C.F.R. § 2.309(c)(1)(i)-(iii)" to set a due date of November 20, 2017 for new or amended contentions based on new emergency planning information provided in TVA's August 24, 2017, RAI response, which became publicly available on September 11, 2017.<sup>14</sup> The Staff does not object

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<sup>10</sup> See Petition to Intervene and Request For Hearing by Southern Alliance for Clean Energy and Tennessee Environmental Council, (Petition) (June 12, 2017).

<sup>11</sup> Petition at 1-2, 5-24.

<sup>12</sup> See TVA Answer Opposing Petitions for Intervention and Requests For Hearing by Southern Alliance for Clean Energy and Tennessee Environmental Council and the Blue Ridge Environmental Defense League (July 7, 2017). See *also* NRC Staff Answer to Southern Alliance for Clean Energy and Tennessee Environmental Council's Petition to Intervene and Request for Hearing (Answer) (July 7, 2017). See Southern Alliance for Clean Energy's and Tennessee Environmental Council's Reply to Opposition to Petition to Intervene and Request for Hearing (July 21, 2017).

<sup>13</sup> See Tennessee Valley Authority (Clinch River Nuclear Site Early Site Permit Application), LBP-17-08, 85 NRC \_\_, \_\_ (October 10, 2017) (Order) (Order at 1, 33-34).

<sup>14</sup> Motion at 7.

to the Board finding good cause to grant Intervenors' proposed filing schedule, given the unavailability of the Intervenors' expert witness.

Although the Staff does not oppose Intervenors' proposed schedule, the Staff objects to statements the Intervenors made in their Motion. The Staff requests the Board consider the following clarifications for the record.

The Intervenors appear to misunderstand the review and release process for documents submitted to the NRC. The NRC receives a large quantity of documents that must be processed for release by the Document Processing Center. The process for reviewing and releasing information to the public is outlined in Management Directive 3.4 and ultimately ensures that the proper information is made publicly available.<sup>15</sup> While documents received from external parties should generally be made available to the public within 5 working days after they are added to the NRC's document management system—Agencywide Documents Access and Management System (ADAMS)—for action by the Document Processing Center to release them to the public, various factors may delay public release (e.g., backlogs and resource shortages).

The Intervenors state in their Motion: “[d]espite the lengthy questions about the subject of TVA’s exemption request and whether the request concerned only methodology, neither TVA nor the Staff mentioned TVA’s August 24 RAI Response...” at oral argument.<sup>16</sup> TVA’s RAI response was made publicly available on ADAMS following a routine releasability review by the NRC’s Document Processing Center. Staff in the Office of New Reactors did request an expedited review and release of the document, but the Document Processing Center was unable to accommodate this request, and the necessary review process and public release was completed on September 11, 2017. The Staff acted in good faith to ensure the RAI response

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<sup>15</sup> Management Directive 3.4, “Release of Information to the Public,” at 13-15 (ADAMS Accession No. ML080310417) (Feb. 6, 2009).

<sup>16</sup> Motion at 6.

was timely released; there was certainly no intention to delay or conceal public release of the document.

Staff counsel also did not seek to elide the RAI response at oral argument. The Staff's review of the RAI response is still in its early stages. At the time of oral argument, Staff counsel merely raising the existence of the RAI response when there had been little Staff assessment of it would not have advanced the discussion on Contention 1. The purpose of the oral argument was, in part, to discuss the parties positions on Contention 1, and Contention 1 was not based on the July 28 RAI or the August 24 RAI response. It was, therefore, not pertinent to raise the RAI response at oral argument. The appropriate avenue to take issue with the RAI response—insofar as it may be a revision of the application—is the new and amended contention process, as the Intervenor address pursuing in their Motion.<sup>17</sup>

TVA's RAI response nearly mirrors the ESP application language considered by the Board and reflected in the Order addressing Contention 1, which notes that: “[i]f the dose consequences of the selected technology exceed the [EPA PAG] ... a new Emergency Plan will be included in the [COL] for NRC review.”<sup>18</sup> Nothing about the RAI response alters important Staff positions related to Contention 1. The NRC has the regulatory authority to evaluate the proposed exemptions, and the Commission directed the Staff to use existing exemption processes to adapt EPZs for SMRs if the related parallel rulemaking is not first completed.<sup>19</sup> Additionally, the evaluation process for an application based on a PPE is well-established. It includes consideration of a set of parameters not specific to a particular reactor design; issues of whether the design characteristics of a specific reactor design are bounded by the PPE

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<sup>17</sup> As the Commission has stated, “[t]he purpose and scope of a licensing proceeding is to allow interested persons the right to challenge the sufficiency of the application. The NRC has not, and will not, litigate claims about the adequacy of the Staff's safety review in licensing adjudications.” *Amergen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), et al., CLI-08-23, 68 NRC 461, 476 (2008).

<sup>18</sup> Order at 20 quoting ESP Application at SSAR, Rev. 0 at 13.3-13.

<sup>19</sup> Staff Requirements – SECY-15-0077 – Options for Emergency Preparedness for Small Modular Reactors and Other New Technologies at 1, (August 4, 2015) (ADAMS Accession No. ML15216A492).

design parameters established at the ESP stage may be raised by Intervenors during a COL proceeding in accordance with 10 C.F.R. § 52.39(c)(1)(i).

Intervenors also cite a portion of a press interview in their discussion of TVA's RAI response.<sup>20</sup> Press reports are not an appropriate direct source of information for the Staff's review, but may prompt questions about the application that the Staff determines provide the basis for an RAI. The Staff will review TVA's application documents that are submitted on the official docket. As Staff counsel stated at the oral argument on September 12, 2017, Staff may require additional information from TVA in order to complete its review. In the event that RAI responses supplement the application, Intervenors have an ongoing obligation to review newly released information in order to meet the timeliness requirements for new and amended contentions in 10 C.F.R. § 2.309(c).

#### IV. CONCLUSION

For the above reasons, while the Staff does not oppose the Intervenors' proposal that the due date for new or amended contentions based on TVA's August 24, 2017 emergency planning RAI response be set for November 20, 2017 due to the unavailability of their expert witness, the Staff objects to statements the Intervenors made in support of their motion,. The Staff, therefore, requests the Board consider the clarifications of the record provided in the foregoing discussion.

Respectfully submitted,

**/Signed (electronically) by/**

Kevin C. Roach  
Counsel for the NRC Staff

Dated at Jersey City, New Jersey  
this 6<sup>th</sup> day of November, 2017

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<sup>20</sup> Motion at 4-5.

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In the Matter of

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Tennessee Valley Authority

Docket No. 52-047-ESP

(Clinch River Nuclear Site)

CERTIFICATE OF SERVICE

I hereby certify that the NRC STAFF ANSWER TO INTERVENORS' MOTION TO ESTABLISH A SCHEDULE FOR FILING OF NEW OR AMENDED CONTENTIONS has been filed through the E-Filing system this 6th day of November 2017.

**/Signed (electronically) by/**

Kevin C. Roach  
Counsel for NRC Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop O-15 D21  
Washington, DC 20555-0001  
(201) 521-2078  
Kevin.Roach@nrc.gov