UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman
Dr. Gary S. Arnold
Dr. Sue H. Abreu

In the Matter of	Docket No. 52-047-ESP
TENNESSEE VALLEY AUTHORITY	ASLBP No. 17-954-01-ESP-BD01
(Clinch River Nuclear Site Early Site Permit Application)	November 9, 2017

MEMORANDUM AND ORDER
(Granting Intervenors' Motion for Leave to File Motion for Partial Reconsideration, and Denying Motion for Partial Reconsideration)

Before the Board are two related motions by Southern Alliance for Clean Energy (SACE) and Tennessee Environmental Council (TEC) (collectively, Intervenors). Together, they seek partial reconsideration of the Board's decision in LBP-17-08.[1] We grant Intervenors' motion for leave to file their motion for reconsideration, but deny the motion for reconsideration itself.

I. Background

This proceeding concerns the Tennessee Valley Authority's (TVA's) early site permit (ESP) application for two or more small modular reactors at the Clinch River Nuclear Site near Oak Ridge, Tennessee. On October 10, 2017, the Board issued LBP-17-08, in which, among other things, we declined to admit Intervenors' proffered Contention 1.[2] Specifically, the Board found that Intervenors misconstrued TVA's emergency planning zone exemption request. As a

[1] Tenn. Valley Auth. (Clinch River Nuclear Site Early Site Permit Application), LBP-17-08, 85 NRC __ , __ (slip op. at 34) (Oct. 10, 2017).

[2] See Clinch River, LBP-17-08, 85 NRC at __–__ (slip op. at 15–23).

result, Intervenors failed to address or challenge the methodology TVA proposes to use to determine the size of Clinch River's emergency planning zone.[3]

On October 20, 2017, Intervenors timely filed (1) a motion for leave to file a motion for partial reconsideration,[4] and (2) a motion for partial reconsideration.[5] Intervenors allege error in the Board's decision to reject Intervenor's proffered Contention 1. Citing TVA's response to a recent NRC staff request for additional information (TVA's RAI Response),[6] Intervenors claim that TVA is seeking NRC approval for not only a methodology but also for the results of applying that methodology to justify a reduced emergency planning zone size.[7] Intervenors fear that the application of the methodology to TVA's combined license (COL) application will be "merely confirmatory,"[8] and that they will be unable to challenge the outcome of the NRC staff's review at the COL stage.[9]

Both TVA and the NRC Staff oppose Intervenors' motions.[10]

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[3] Id.

[4] Intervenors' Motion for Leave to File Motion for Partial Reconsideration of LBP-17-08 (Oct. 20, 2017) [hereinafter Intervenors' Motion for Leave].

[5] Intervenors' Motion for Partial Reconsideration of LBP-17-08 (Oct. 20, 2017) [hereinafter Intervenors' Motion for Partial Reconsideration].

[6] Intervenors' Motion for Leave, attach. 1, Letter CNL-17-01 from J.W. Shea, TVA Vice President, Nuclear Regulatory Affairs & Support Services, to Document Control Desk, U.S. NRC (Aug. 24, 2017) (ADAMS Accession No. ML17237A175) [hereinafter TVA's RAI Response].

[7] See Intervenors' Motion for Partial Reconsideration at 5–10.

[8] Id. at 7.

[9] Id. at 5.

[10] [TVA's] Response Opposing Intervenors' Motion for Leave to File a Motion for Partial Reconsideration of LBP-17-08 (Oct. 27, 2017) [hereinafter TVA's Response Opposing Intervenors' Motion for Leave]; [TVA's] Response Opposing Intervenors' Motion for Partial Reconsideration of LBP-17-08 (Oct. 27, 2017) [hereinafter TVA's Response Opposing Intervenors' Motion for Partial Reconsideration]; NRC Staff's Answer in Opposition to [SACE] and [TEC] Joint Motion for Leave to File and Motion for Partial Reconsideration of LBP-17-08 (Oct. 30, 2017) [hereinafter NRC Staff's Answer].

II. Analysis

Our regulations at 10 C.F.R. § 2.323(e) provide that motions for reconsideration are granted "upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have been reasonably been anticipated, that renders the decision invalid."[11] Such motions are intended to "bring[ ] decisive new information to our attention or demonstrate[ ] a fundamental [Board] misunderstanding of a key point."[12] They are not meant to advance a "new thesis."[13] In promulgating the "compelling circumstances" standard in 2004, the Commission sought to elevate the standard for reconsideration beyond merely reexamination of arguments or facts that might have been misunderstood or overlooked. Rather, the Commission directed that reconsideration should be "an extraordinary action" to be granted "only where manifest injustice would occur" otherwise, and only if "the claim could not have been raised earlier."[14]

In addition to the very high bar required for a Board's reconsideration of a decision, motions for reconsideration "may not be filed except upon leave of the presiding officer."[15] The Board is not aware of any standard that applies to whether a party should be allowed even to submit a motion for reconsideration. As a procedural matter, we grant Intervenors' motion for leave to file their motion for reconsideration.

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[11] 10 C.F.R. § 2.323(e).

[12] La. Energy Servs. (Nat'l Enrichment Fac.), CLI-04-35, 60 NRC 619, 622 (2004).

[13] La. Energy Servs. (Claiborne Enrichment Center), CLI-97-2, 45 NRC 3, 4 (1997) (citing Cent. Elec. Power Coop. (Virgil C. Summer Nuclear Station, Unit 1), CLI-81-26, 14 NRC 787, 790 (1981)).

[14] 69 Fed. Reg. 2182, 2207 (Jan 14, 2004).

[15] 10 C.F.R. § 2.323(e).

Although we consider Intervenors' motion for reconsideration, ultimately we deny it. Intervenors have not shown any error in our decision not to admit Contention 1, much less demonstrated "compelling circumstances" meriting reconsideration.

First, because motions for reconsideration may be granted only if "the claim could not have been raised earlier,"[16] Intervenors' arguments that the Board erred in "overlook[ing] key language"[17] in Chapter 13 of TVA's Site Safety Analysis Report must be rejected. As the NRC Staff points out, at multiple junctures, the record contains references to TVA's proposed methodology for sizing emergency planning zones in Section 13.3 of its Site Safety Analysis Report.[18] Intervenors' opportunity to make a timely case against the Section 13.3 methodology has elapsed, and in LBP-17-08, we determined that their proffered Contention 1 failed to challenge the methodology under our contention admissibility standards.[19] However, as we stated in our decision[20] and as discussed below, Intervenors' concern about TVA's emergency plan may be proffered at the COL stage.

Second, TVA's RAI Response, submitted by Intervenors in support of their motion for reconsideration, does not amount to "decisive new information"[21] warranting the Board's reconsideration. In particular, Intervenors are concerned about the following statement in TVA's RAI Response: "If the selected [small modular reactor] design cannot meet the[ ] criteria [outlined in Section 13.3], then the [Clinch River Nuclear] Site Emergency Plan will need to be

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[16] 69 Fed. Reg. at 2207.

[17] Intervenors' Motion for Partial Reconsideration at 6.

[18] NRC Staff's Answer at 4–5.

[19] Clinch River, LBP-17-08, 85 NRC at __–__ (slip op. at 9).

[20] Id. at __ (slip op. at 21).

[21] La. Energy Servs., CLI-04-35, 60 NRC at 622.

revised accordingly and submitted with the COL [application]."[22] Intervenors read this to mean TVA is applying its requested methodology to a "surrogate plant" encompassing the parameters of four small modular reactor designs serving as a basis for analysis in the ESP application, and that TVA is determining the size of the emergency planning zone at the ESP stage rather than the COL stage.[23]

We disagree. While TVA's RAI Response does include an analysis in which TVA applies the Section 13.3 methodology to the NuScale small modular reactor design, this analysis is provided as an example and not as a design-specific analysis. TVA further states that "[b]ecause the purpose of the analysis is to demonstrate that a vendor technology contemplated by the [plant parameter envelope] can meet . . . 13.3 acceptance criteria, it was performed for a specific technology and not the surrogate plant."[24] Elsewhere in its RAI Response, TVA states that it will conduct a new, design-specific analysis at the COL stage using the Section 13.3 methodology.[25] We see nothing in Intervenors' newly-discovered document that would render our earlier decision "invalid."[26]

Finally, Intervenors' concern about a prejudicial result at the COL stage is unfounded and does not meet the "manifest injustice"[27] standard for reconsideration. Intervenors claim that at the COL stage, they are "likely to find themselves precluded from challenging any of the assertions on which TVA has relied in this proceeding to justify the reduced-size [emergency

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[22] Intervenors' Motion for Leave at 5 (quoting TVA's RAI Response at E-1-2).

[23] Id. at 3–4.

[24] TVA's RAI Response at E1-7.

[25] See TVA's Response Opposing Intervenors' Motion for Partial Reconsideration at 7 (citing TVA RAI Response at E1-2, E1-11).

[26] 10 C.F.R § 2.323(e).

[27] 69 Fed. Reg. at 2207.

planning zones]."[28] But the COL application will provide for the first time the design-specific analysis used to determine the size of the emergency planning zone. As both TVA and the NRC Staff acknowledge,[29] and as the Board stated in LBP-17-08, Intervenors will still be able to "request and obtain a hearing if they have adequate support for their concern" regarding application of the methodology at the COL stage.[30] Therefore, even if it were incorrect, our decision in LBP-17-08 regarding Contention 1 would not impose "manifest injustice," and does not meet the Commission's stringent standard for reconsideration.

[28] Intervenors' Motion for Partial Reconsideration at 9.

[29] TVA's Response Opposing Intervenors Motion for Partial Reconsideration at 9 ("Intervenors would have the opportunity to contest any such analysis in the COL proceeding."); NRC Staff's Answer at 9 ("Intervenors will still have an opportunity at the COL stage to 'request and obtain a hearing if they have adequate support for their concern.'"(quoting Clinch River, LBP-17-08, 85 NRC at __–__ (slip op. at 22))).

[30] Clinch River, LBP-17-08, 85 NRC at __–__ (slip op. at 22).

III. Conclusion

Intervenors' motion for leave to file a motion for partial reconsideration is granted. Intervenors' motion for partial reconsideration is denied.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

/RA/

Dr. Sue H. Abreu
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 9, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
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TENNESSEE VALLEY AUTHORITY	)	Docket No. 52-047-ESP
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Granting Intervenors' Motion for Leave to File Motion for Partial Reconsideration, and Denying Motion for Partial Reconsideration)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Herald M. Speiser]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 9th day of November, 2017