

## ClinchRiverESPHFNPEm Resource

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**From:** Diane Curran <dcurran@harmoncurran.com>  
**Sent:** Thursday, May 24, 2018 1:54 PM  
**To:** Hove, Ann; Nelson, Blake Jon; Wright, Megan; Dreke, Ryan Christopher; Chandler, Christopher C; Mikula, Olivia  
**Cc:** Vrahoretis, Susan; Martin, Jody; Ezell, Julie  
**Subject:** [External\_Sender] RE: RE: RE: Consultation pursuant to 10 C.F.R. 2.323 -- TVA SMR ESP case

Ann,  
Your proposed approach seems fine to me, thanks. I will wait for your response to our new contentions, respond that we agree Contention 2 is moot, and we can all wait for board ruling.  
Diane

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**From:** Hove, Ann [mailto:Ann.Hove@nrc.gov]  
**Sent:** Tuesday, May 22, 2018 6:07 PM  
**To:** Diane Curran ; Nelson, Blake Jon ; Wright, Megan ; Dreke, Ryan Christopher ; Chandler, Christopher C ; Mikula, Olivia  
**Cc:** Vrahoretis, Susan ; Martin, Jody ; Ezell, Julie  
**Subject:** RE: RE: RE: Consultation pursuant to 10 C.F.R. 2.323 -- TVA SMR ESP case

Ms. Curran,

We agree with you that Contention 2 is moot. When are you planning to ask the Board to withdraw it?

If you do not move to withdraw Contention 2 before the deadline for dispositive motions, we plan to address mootness of Contention 2 in our answer brief in response to your motion requesting admission of Contentions 4 and 5. We anticipate that the Board would address such a motion concurrently along with contention admissibility. Would you agree that the Board could resolve all of these issues concurrently?

Ann

**Ann N. Hove**  
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**Subject:** [External\_Sender] RE: RE: Consultation pursuant to 10 C.F.R. 2.323 -- TVA SMR ESP case

Dear counsel,

Now that the Intervenor has filed their new contentions, I am turning my attention to the issue of what to do with previously-admitted Contention 2, which has been mooted by issuance of the Draft EIS with its spent fuel pool accident analysis. I want to let you know that Intervenor would agree to voluntary dismissal of Contention 2 if we can ALSO agree to ask the ASLB to defer dismissing the contention until after ruling on the admissibility of the new contentions filed yesterday.

Thanks,  
Diane

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**From:** Hove, Ann [<mailto:Ann.Hove@nrc.gov>]  
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**Subject:** RE: RE: Consultation pursuant to 10 C.F.R. 2.323 -- TVA SMR ESP case

Dear Ms. Curran,

Thank you for consulting with us and for providing us with the bases you propose for amending Contention 2 and submitting a new Contention 4. Considering the bases you have provided in your emails to us, we would oppose admission of these contentions and reserve the right to respond to them. Given the bases you've provided for your proposed revision to Contention 2, we may, as part of our answer to your new contentions, submit a motion to dismiss Contention 2 as moot. We recognize that we agreed not to consult on or file dispositive motions before May 29 to allow you time to prepare new or amended contentions. We respect that agreement and will contact you on May 29 to consult on the dispositive motion specifically, unless you are prepared to take a position now on whether you would support or oppose such a motion.

We are happy to discuss any of these issues with you further.

Best,  
Ann Hove

**Ann N. Hove**

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**Sent:** Thursday, May 17, 2018 12:12 PM

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**Subject:** [External\_Sender] RE: Consultation pursuant to 10 C.F.R. 2.323 -- TVA SMR ESP case

Dear counsel,

Thanks to Blake for responding to my previous request for TVA's position on Intervenor's proposed Amended Contention 2 and new Contention 4. I want to let you know that Contention 4 has expanded into a more detailed set of related claims. Below is the gist of the contention --

The Draft EIS violates NEPA and NRC implementing regulations by presenting impermissible discussions of the economic and technical benefits of the proposed SMR, including need for power and alternative energy sources. These discussions are primarily found in Chapter 1.

The Draft EIS' discussion of the economic and technical benefits of the proposed SMR violates NEPA and its implementing regulations in five significant and related respects:

- a) Because TVA elected, pursuant to 10 C.F.R. § 51.50(b)(2), not to address need for power and alternative energy sources in its Environmental Report, 10 C.F.R. § 51.75(b) prohibits the NRC Staff from discussing these topics in the Draft EIS. The Draft EIS violates that prohibition.
- b) The Draft EIS violates NEPA's requirement for NRC's independence from TVA in 10 C.F.R. § 51.70(b), which provides that "[t]he NRC staff will independently evaluate and be responsible for the reliability of all information used in the draft environmental impact statement." As stated in the Draft EIS, the Staff has postponed its independent inquiry into the need for the power to be generated by the proposed SMR and energy alternatives to the proposed SMR until the combined license ("COL") stage. Draft EIS at 1-4, 9-2. Yet, the Draft EIS presents, without question or criticism, extensive assertions by TVA regarding the comparative benefits of the proposed SMR as an energy alternative, and further claims that the Draft EIS is "informed" by them. *Id.* at 1-9 – 1-10.

Given the Staff's assertion that the Draft EIS does *not* contain an analysis of energy alternatives, it is reasonable to infer that the statements in the Draft EIS regarding energy alternative and the need for the proposed SMR have not been independently verified by the NRC Staff. In fact, some of these statements are demonstrably incorrect. Given the lack of an independent staff analysis of TVA's claims, and given the errors in TVA's claims, these assertions should not be permitted in the final EIS.

- c) By incorporating and relying on unverified TVA statements regarding the comparative benefits of the proposed SMR, the Draft EIS misleads the public into thinking the information is correct and may be relied on, thereby impermissibly "skewing the public's evaluation of [the] project." *Hughes River Watershed Conservancy v. Agriculture Dept.*, 81 F.3d 437, 446 (4th Cir. 1996).
- d) The Draft EIS violates NEPA's public participation requirements by making unsupported, unverified, and demonstrably inaccurate factual claims that are not subject to challenge in this proceeding. 10 C.F.R. § 52.21.
- e) The assertions in Section 1.3 regarding the need for and benefits of the SMRs as an energy alternative are irrelevant to the stated purpose and need for the NRC proposed action.

Please let me know if this additional information would change your position, Blake. And NRC Staff counsel, please get back to me about both contentions.

Thanks,

Diane

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**Sent Date:** 5/24/2018 1:53:45 PM  
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