

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of )  
 ) Docket No. 52-047-ESP  
Tennessee Valley Authority )  
 )  
Clinch River, Early Site Permit )  
 )

**TENNESSEE VALLEY AUTHORITY’S MOTION TO  
DISMISS CONTENTION 2 AS MOOT**

**I. INTRODUCTION**

Pursuant to 10 CFR § 2.323(a), the Tennessee Valley Authority (“TVA”) hereby moves to dismiss as moot Contention 2 submitted by the Southern Alliance for Clean Energy (“SACE”) and the Tennessee Environmental Council (“TEC”) (collectively, the “Intervenors”), which asserts that TVA’s Environmental Report failed to consider the potential environmental impacts of spent fuel pool fires.<sup>1</sup> As admitted by the Atomic Safety and Licensing Board (“Board”), Contention 2 asserts:

The Environmental Report fails to satisfy [the National Environmental Policy Act] because it does not address the consequences of a fire in the spent fuel storage pool, nor does it demonstrate that a pool fire is remote and speculative.<sup>2</sup>

The Board identified Contention 2 as “strictly a contention of omission.”<sup>3</sup>

TVA moves to dismiss Contention 2 as moot because the Draft Environmental Impact

---

<sup>1</sup> Southern Alliance for Clean Energy and Tennessee Environmental Council Petition to Intervene and Request for Hearing at 5–24 (June 12, 2017) (“Petition”).

<sup>2</sup> *Tennessee Valley Authority* (Clinch River Early Site Permit), LBP-17-08, 86 NRC 138, 160 (2017) (internal citation omitted).

<sup>3</sup> *Id.* at 160.

Statement<sup>4</sup> (“DEIS”) issued in this proceeding by the NRC in April of 2018 includes a discussion of the potential environmental impacts of spent fuel pool fires.<sup>5</sup>

## II. BACKGROUND

On May 12, 2016, TVA applied to the Nuclear Regulatory Commission (“NRC”) under 10 C.F.R. Part 52, Subpart A for an early site permit (“ESP”) for the Clinch River Nuclear (“CRN”) Site. The CRN Site is located in Roane County, Tennessee. The NRC published notice in the Federal Register on April 4, 2017 that the NRC Staff would review the application and that interested persons could file a request for hearing or petition to intervene.<sup>6</sup>

On June 12, 2017, Intervenors filed the Petition, raising three contentions challenging various aspects of the ESP application. In LBP-17-08, the Board found that Intervenors had standing to participate in this proceeding and admitted for hearing Intervenors’ proposed Contentions 2 and 3.<sup>7</sup> On May 3, 2018, in response to TVA’s Petition for Review, the Commission affirmed the admission of Contention 2 and reversed the admission of Contention 3.<sup>8</sup>

On April 26, 2018, the NRC notified the public that it had completed its DEIS for the CRN Site.<sup>9</sup> The DEIS contains a substantive discussion of the potential environmental impacts of spent fuel pool fires at the CRN Site.

---

<sup>4</sup> Environmental Impact Statement for an Early Site Permit (ESP) at the Clinch River Nuclear Site” (Draft Report for Comment), NUREG-2226, vols. 1 and 2 (Apr. 2018) (ML18100A220 and ML18100A223) (“DEIS”).

<sup>5</sup> *Id.* at vol. 1, § 5.11.2.5, “Spent Fuel Pool Accidents,” pp. 5–85 to 5–87.

<sup>6</sup> Tennessee Valley Authority; Clinch River Nuclear Site Early Site Permit Application and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information, 82 Fed. Reg. 16,436, 16,437–38 (Apr. 4, 2017).

<sup>7</sup> LBP-17-08, 86 NRC at 147–49.

<sup>8</sup> Memorandum and Order, CLI-18-05, \_\_\_ N.R.C. \_\_\_, slip op. (May 3, 2018).

<sup>9</sup> Early Site Permit Application: Tennessee Valley Authority; Clinch River Nuclear Site, 83 Fed. Reg. 18,354 (April 26, 2018).

### III. ARGUMENT

#### A. **When an Alleged Omission that Served as the Basis for a Contention is Cured, the Contention is Rendered Moot**

The Commission has consistently held that “[w]here a contention is ‘superseded by the subsequent issuance of licensing-related documents’...the contention must be disposed of or modified.”<sup>10</sup> Where “a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft EIS, the contention is moot.”<sup>11</sup> As explained below, publication of the DEIS has rendered Contention 2 moot. The Board, therefore, should dismiss the Contention.

#### B. **Contention 2 Is Moot**

The Board identified Contention 2 as “strictly a contention of omission”<sup>12</sup> related to missing information concerning the potential environmental impacts of spent fuel pool fires. In Section 5.11.2.5 of the DEIS, the NRC Staff analyzes spent fuel pool accidents, including spent fuel pool fires. After an exhaustive review of information related to spent fuel pool accidents, including spent fuel pool fires, the DEIS states:

Based on this information, the staff expects the risks from spent fuel pool accidents for a design bounded by the PPE would be lower than the risks of a spent fuel pool severe accident for a large LWR. The already remote risk of spent fuel pool fires for large LWRs, as described in the 1996 version of NUREG-1437 (NRC 1996-TN288) and confirmed in the 2013 version (NRC 2013-TN2654), would be more remote for the SMRs considered in developing the PPE based on the best available information about those SMR designs because (1) the spent fuel pools are assumed to be located underground, (2) the fuel transfer would be

---

<sup>10</sup> *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382 (2002) (citing *Duke Power Co.*, (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1050 (1983)).

<sup>11</sup> *McGuire*, 56 NRC at 383 (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-26, 54 NRC 199, 207-09 (2001); LBP-01-23, 54 NRC 163, 171-72 (2001); LBP-02-2, 55 NRC 20, 29-30 (2002)); see also *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 (2006); *Entergy Nuclear Vermont Yankee* (Vermont Yankee Nuclear Power Station), LBP-05-24, 62 NRC 429, 431-32 (2005).

<sup>12</sup> LBP-17-08, 86 NRC 138, 160.

expedited because the pool would be significantly smaller than that of a large LWR and therefore the number of spent fuel assemblies in the pool would be much lower; and (3) implementation of the NRC orders improves the safety of the spent fuel pools and provides mitigating strategies for preventing spent fuel pool fires. Therefore, because the impact from spent fuel pool fires is considered SMALL for large LWRs, it is also SMALL for the SMRs considered for the CRN Site.<sup>13</sup>

Thus, the omission raised in Contention 2 regarding the potential impacts of spent fuel pool fires has been cured by the DEIS, rendering Contention 2 moot.

#### **IV. CONCLUSION**

For the foregoing reasons, TVA respectfully requests that the Board dismiss Contention 2 as moot.

#### **V. CERTIFICATION REGARDING CONSULTATION**

In accordance with 10 C.F.R. §2.323(b), counsel for TVA contacted the other parties in this proceeding regarding the issue raise in this Motion. The NRC Staff agrees that Contention 2 is moot. The Intervenors support TVA's Motion, provided that the Board defers ruling on the Motion until it has ruled on the admissibility of the contentions that Intervenors submitted in this proceeding on May 21, 2018.

---

<sup>13</sup> DEIS, vol. 1, § 5.11.2.5, "Spent Fuel Pool Accidents," pp. 5-85 to 5-87.

Respectfully submitted,

*/signed electronically by Anne R. Leidich/*

Michael G. Lepre, Esq.

Anne R. Leidich, Esq.

Pillsbury Winthrop Shaw Pittman LLP

1200 Seventeenth Street, N.W.

Washington, D.C. 20036

202-663-8000

E-mail: [michael.lepre@pillsburylaw.com](mailto:michael.lepre@pillsburylaw.com)

E-mail: [anne.leidich@pillsburylaw.com](mailto:anne.leidich@pillsburylaw.com)

Blake J. Nelson, Esq.

Ryan Dreke, Esq.

Christopher C. Chandler, Esq.

Office of the General Counsel

Tennessee Valley Authority

400 W. Summit Hill Drive, WT 6A-K

Knoxville, TN 37902

Telephone: (865) 632-4288 Fax: 865-632-6147

E-mail: [bjnelson@tva.gov](mailto:bjnelson@tva.gov)

E-mail: [rcdreke@tva.gov](mailto:rcdreke@tva.gov)

E-mail: [ccchandler0@tva.gov](mailto:ccchandler0@tva.gov)

*Counsel for TVA*

June 11, 2018

