

June 22, 2018

**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)	)	
_____	)	

**INTERVENORS’ REPLY TO RESPONSES IN OPPOSITION TO  
MOTION FOR LEAVE TO FILE  
CONTENTION 4 (INADEQUATE DISCUSSION OF  
ENVIRONMENTAL IMPACTS OF SPENT FUEL POOL FIRES)  
AND CONTENTION 5 (IMPERMISSIBLE DISCUSSION OF ENERGY  
ALTERNATIVES AND NEED FOR THE PROPOSED SMR)**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. §§ 2.309(i)(2) and the Atomic Safety and Licensing Board’s Order (Granting Unopposed Motion to Establish Fixed Reply Deadline) (June 13, 2018), Intervenor Southern Alliance for Clean Energy and Tennessee Environmental Council hereby reply to oppositions by Tennessee Valley Authority (“TVA”) and the U.S. Nuclear Regulatory Commission (“NRC”) Staff to Intervenor’s Motion for Leave to File Contention 4 (Inadequate Discussion of Environmental Impacts of Spent Fuel Pool Fires) and Contention 5 (Impermissible Discussion of Energy Alternatives and Need for the Proposed SMR) (May 21, 2018) (“Intervenor’s Motion”). Tennessee Valley Authority’s Answer Opposing Intervenor’s Motion for Leave to File Contention 4 and Contention 5 (June 15, 2018) (“TVA Answer”) and NRC

Staff Motion to Dismiss Contention 2 as Moot and Answer to Intervenor's Motion for Leave to file Contention 4 and Contention 5 (June 11, 108) ("NRC Staff Answer").<sup>1</sup>

TVA's and the Staff's arguments in opposition to the admission of the contentions are without merit, and therefore the contentions should be admitted.

## **II. CONTENTION 4 (INADEQUATE DISCUSSION OF THE ENVIRONMENTAL IMPACTS OF POOL FIRES) IS ADMISSIBLE.**

Contention 4 states:

The Draft EIS is inadequate to satisfy the National Environmental Policy Act ("NEPA") because its conclusion that environmental impacts of a spent fuel pool accident are small is based on non-conservative or otherwise invalid assumptions that are based on the design characteristics of a light water reactor ("LWR") and compliance by TVA with all current emergency planning requirements.

First, the NRC Staff makes assumptions about patterns of fuel usage and storage at LWRs that differ significantly from the characteristics of at least one SMR design included in the proposed "plant parameter envelope" ("PPE") on which the Staff's environmental analysis is based. The Draft EIS fails to analyze those key differences. Second, the NRC Staff makes assumptions in the Draft EIS about the PPE with respect to the quantity of fuel stored in the pool that are neither conservative nor bounding for at least one of the SMR designs that comprise the PPE. Finally, the Draft EIS's environmental analysis is based on the non-conservative assumption that the ten-mile emergency planning zone ("EPZ") around the proposed SMR will be evacuated, when in fact the NRC currently is considering a request by TVA to relax that requirement. Accordingly, the Draft EIS fails to support its assertion that the risk profile for spent fuel pool fires at an LWR is bounding for the proposed SMR.

Intervenor's Motion at 3.

Contention 4 raises a dispute about the accuracy of the Draft EIS's assertion that "the risks from spent fuel pool accidents for a design bounded by the PPE [plant parameter envelope] would be lower than the risks of a spent fuel pool severe accident for a large LWR [light water reactor]." Intervenor's Motion at 6 (quoting Draft EIS at 5-87). In the contention, Intervenor

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<sup>1</sup> Intervenor previously responded to the portion of the Staff's pleading seeking to dismiss Contention 2 in Intervenor's Response to Motions to Dismiss Contention 2 as Moot (June 12, 2018).

present evidence that (a) the PPE does *not* bound all of the SMR designs relied on in the Draft EIS, particularly the NuScale design; and (b) the NuScale design has characteristics that differ significantly from the design of a large LWR. Intervenor's Motion at 7-11.

Neither TVA nor the NRC Staff disputes the accuracy of Intervenor's assertions and supporting evidence.<sup>2</sup> Instead, they argue that the characteristics of the NuScale design, and the question of whether those characteristics fall within the PPE, are immaterial and outside the scope of the proceeding. TVA Answer at 12-13, NRC Staff Answer at 12. As stated by the Staff:

Intervenor's claim that the Staff's analysis does not meet NEPA requirements rests on the Intervenor's assumption that the PPE must bound all aspects of the NuScale design. However, neither NEPA nor the NRC regulations require such a result, and the NRC need not make such a finding in order to grant an ESP.

NRC Staff Answer at 12. But the Staff misinterprets the NRC's requirements for a PPE.

Intervenor respectfully submit that to the extent information about specific SMR designs is available, both NEPA and NRC's Part 52 regulations require the applicant and the Staff to ensure that the PPE does, in fact, encompass those design features. Otherwise, the PPE could not reliably serve its function of serving as a "surrogate" for specific designs that ensures the conservatism of any analyses that rely on the PPE. *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-06-28, 64 NRC 460, 468 (2006) ("The PPE values serve as a set of parameters that are intended to bound the impacts of a reactor or reactors that might be deployed at the site."). For example, if a PPE does not, in fact, embrace the characteristics of the designs that are included in the PPE, it would have little value for purposes of determining the environmental impacts of accidents.

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<sup>2</sup> While TVA does assert that Intervenor's assertions are not adequately supported (*see* discussion at 9, *infra*), TVA does not contest their veracity.

Here, the Draft EIS unequivocally represents that that the PPE for TVA’s ESP application “encompasses” four different SMR designs, including NuScale. *Id.* at 1-3. And based on this assertion, the Draft EIS unequivocally represents that the severe accident impacts of the proposed SMR are less than the impacts of a large LWR. *Id.* at 5-87. Therefore, the dispute raised by Contention 4 with the reliability of these unequivocal assertions is relevant and material to the outcome of this proceeding.

The Staff is correct (NRC Staff Answer at 13) that NRC’s Part 52 regulations do not bind a *COL applicant* to any specific design that may have been included in the scope of the PPE at the ESP stage. But this is an ESP proceeding, not a COL proceeding. If and when TVA does apply for a COL, it will have to choose a specific SMR design; and it may choose an entirely different design than one of the four designs identified in the Draft EIS as encompassed by the scope of the PPE.<sup>3</sup> At that point, the NRC would have to revisit the question of site suitability against the new design:

As the NRC completes its review of the first early site permit applications and prepares for the submittal of the first combined license application, it is focusing on the interaction among the early site permit, design certification, and combined license processes. The NRC believes that its review of a combined license application that references an early site permit will involve a comparison *to ensure that the actual characteristics of the design chosen by the combined license applicant fall within the design parameters specified in the early site permit.*

72 Fed. Reg. 49,352, 49,370 (Aug. 28, 2007) (emphasis added). The fact that TVA does not have to choose a specific design until the COL phase has no bearing, however, on the question posed here: whether a PPE that claims to encompass a specific design for purposes of an environmental analysis should be held to NEPA’s standard of veracity and reliability.

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<sup>3</sup> Those designs are: the BWXT mPower™ SMR (Generation mPower LLC), Holtec SMR-160 (Holtec SMR, LLC), NuScale SMR (NuScale Power, LLC), and Westinghouse SMR (Westinghouse Electric, LLC). Draft EIS at 2-1.

Along the same lines, the Staff cites *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-04-19, 50 NRC 277, 295 (2004), *aff'd*, CLI-05-4, 61 NRC 10 (2005) for the proposition that Intervenor may not seek a spent fuel pool accident analysis for a “specific design” and instead must accept a “surrogate” PPE. NRC Staff Answer at 13. But Intervenor does not dispute the role of the PPE as a surrogate for a specific design in an ESP proceeding. What Intervenor disputes is the accuracy and reliability of the Draft EIS’s assertion that the PPE for the TVA SMR -- as a surrogate -- “encompasses” the specific NuScale design (as well as three other SMR designs) and thereby provides a reliable basis for the Staff’s environmental analysis.

Both the Staff and TVA also argue that the NuScale design is still “inchoate,” capable of being captured only in a passing “snapshot;” and therefore it is unreasonable for Intervenor to cite NuScale design features in Contention 4. NRC Staff at 12 and n.48 (citing *Luminant Generation Co., L.L.C.* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-12-7, 75 NRC 379, 391-92 (2012)). *See also* TVA Answer at 15. But the Draft EIS contains no such caveat. Instead, the Draft EIS states, without qualification, that the PPE “encompasses” the NuScale design and others. *Id.* at 1-3. The word “encompass” is a commonly used word whose primary definition is “[t]o form a circle or ring around; surround.” *American Heritage Dictionary* (Houghton Mifflin Co. 2000). There is nothing ambiguous about what it means. And nothing in NEPA or NRC’s Part 52 regulations allows the NRC Staff to knowingly present, as correct and reliable, information it knows to be false or incomplete regarding what is encompassed by the PPE for the TVA ESP.<sup>4</sup>

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<sup>4</sup> To be consistent with the assertions now being made by TVA and the Staff in their Answers, the Draft EIS’s statement that “the PPE values encompass four light water reactors under development in the United States at the time of the preparation of the [Environmental Report]”

The NRC argues that it was acceptable to rely on the features of the PPE as submitted by TVA. NRC Staff Answer at 15. But NEPA does not allow the Staff to unquestioningly accept TVA's assertions about the PPE, without determining whether TVA has submitted complete or accurate information. To the contrary, 10 C.F.R. § 51.70(b) requires the Staff to "independently evaluate and be responsible for the reliability of all information used in the draft environmental impact statement." As demonstrated in Contention 5, the information was not "speculative" as asserted by TVA (TVA Answer at 21) but was documented and verifiable.<sup>5</sup> Thus, contrary to the arguments by TVA and the Staff, the information presented by Intervenors about refueling frequency, quantity of fuel in the pool, and spent fuel pool capacity of the NuScale design shows (a) the existence of a material dispute about the elements of the PPE and (b) that the Staff failed to conduct its own independent inquiry to verify TVA's assertions, in violation of NEPA.

TVA argues that Intervenors mischaracterize the Draft EIS by asserting that the Draft EIS relies on a "reference" LWR. TVA Answer at 19-20. According to TVA, the "reference LWR" is

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should be changed to: "the PPE values were chosen arbitrarily because the four light water reactor designs on which they are based are incomplete or not complete; and therefore the PPE may or may not encompass those four light water reactor designs." *See* Draft EIS at 1-3.

Correspondingly, the Draft EIS's statement that "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" should be changed to: "the risks from spent fuel pool accidents for a design bounded by the PPE are lower than the risks of a spent fuel pool severe accident for a large LWR, but this conclusion is not necessarily applicable to any SMR that may be built at the Clinch River site, because the PPE is based on arbitrary values that are not necessarily conservative for any actual SMR design." *See* Draft EIS at 5-87.

<sup>5</sup> The NRC Staff had plenty of reason and opportunity to inquire further into the extent to which the NuScale design was both developed and consistent with the PPE, given that TVA relied directly on the NuScale design in applying for an exemption to the NRC's emergency planning requirements. *See* letter from J.W. Shea, TVA to NRC re: Response to Request for Additional Information Related to Emergency Planning Exemption Requests in Support of Early Site Permit Application for Clinch River Nuclear Site, Enclosure 1 at 1 (Aug. 24, 2017) (ML17237A175) (citing "the availability of substantially more detailed technical information on accident progression and source term for this design than for the other designs considered in the formation of the PPE.")

“not central to the NRC Staff’s analysis and it has no special importance in the DEIS.” *Id.* at 20.

And TVA accuses the Intervenors of an “apparent effort to manufacture a conflict between the NuScale design . . . and the NRC Staff’s analysis, where none otherwise exists.” *Id.* But Contention 4 quite clearly demonstrates a conflict between the NuScale design and the characteristics of the reference LWR which is the subject of the Spent Fuel Study relied on in the Draft EIS. As stated in the contention:

The Staff bases its environmental analysis on the assumption that TVA will refuel each SMR at a frequency of two years. Draft EIS at 5-86. Two years is also the refueling cycle for the reference LWR studied in the Spent Fuel Pool Study. *Id.* at D-32. But the NuScale design – which the NRC Staff claims is encompassed by the Draft EIS’ environmental analysis – is distinctly different from the reference LWR with respect to its reactor design and refueling pattern. While the reference LWR in the Spent Fuel Study was assumed to discharge 296 fuel assemblies to a pool of 30,055 assemblies every two years, the NuScale design calls for twelve separate reactors that would discharge fuel to a single pool. Although each reactor will be on a two-year refueling schedule, refueling of all twelve reactors will be “staggered,” *i.e.*, fuel will be discharged to the fuel every two months rather than every two years.<sup>5</sup> In contrast to an LWR pool, in which the hottest fuel is present only once every two years, the hottest fuel will be added to the SMR pool every two months. This pool loading pattern will result in different probabilities of zirconium fire ignition over an operating cycle than those used in NUREG-2161 and other past NRC studies to estimate public health and environmental impacts of pool fires at large LWRs. The Draft EIS completely fails to address the risk implications of this significant design difference from the large LWRs analyzed in previous NRC studies.

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<sup>5</sup>As stated by NuScale in a 2012 article in Nuclear Technology:

The 12-module NuScale plant uses an in-line refueling approach in which each module is refueled once every 2 years. Refueling is performed remotely using underwater flange stud tensioning/detensioning tools. That is, refueling operations would occur in a staggered manner at roughly 2-month intervals.

José N. Reyes, NuScale Plant Safety in Response to Extreme Events, Nuclear Technology Vol. 178 at 1 (May 2012).  
[http://www.nuscalepower.com/images/our\\_technology/nuscale-safety-nucl-tech-may12-pre.pdf](http://www.nuscalepower.com/images/our_technology/nuscale-safety-nucl-tech-may12-pre.pdf) (last visited May 21, 2018).

Intervenors have documented a relevant technical disparity between the NuScale design and one of the Draft EIS's central reference documents serving as a source of its assumptions. Thus the Intervenors' dispute with TVA is documented, not manufactured as alleged by TVA.

The NRC Staff also argues that Contention 4 is incorrect in asserting that the Draft EIS fails to account for spent fuel pool fire impacts in an Emergency Planning Zone ("EPZ") reduced to two miles or the site boundary, as proposed by TVA. According to the Staff, it "did consider impacts of spent fuel pool fires at the two-mile and site boundary EPZ distances." NRC Staff Answer at 16 (citing Draft EIS at 5-86 - 5-87.) But the Staff fails to quote any language in the Draft EIS confirming this claim, nor can any be found. Thus, the question of whether the Staff analyzed the environmental impacts of pool fires at the two-mile EPZ or site boundary EPZ constitutes an admissible factual dispute between the parties.<sup>6</sup>

The NRC Staff further contends that if, at the COL stage, the PPE is found not to encompass the design chosen by TVA, "then the environmental matters may be litigated at the combined license stage under the provisions of 10 C.F.R. § 52.39." NRC Staff Answer at 16. Aside from the fact that this future possibility does not excuse the current misrepresentations in the Draft EIS, the Staff's argument with respect to the COL phase is disingenuous. As the Staff well knows, the EIS for the ESP is the foundational document for the COL proceeding as well: only a "supplement" will be required at the COL stage. 10 C.F.R. § 51.75(c)(1). The supplement "must be prepared in accordance with § 51.92(e)," which in turn requires incorporation of the EIS by reference into the supplement. Environmental impacts need only be addressed if they were "not resolved in the early site permit proceeding." Given that the Draft EIS treats the

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<sup>6</sup> The Staff also argues that through Contention 4, the Intervenors seek to "relitigate" issues related to the EPZ that the ASLB "resolved in LBP-17-8." NRC Staff Answer at 18. But Contention 4 is a NEPA contention, not a safety contention related to NRC's emergency planning regulations. Thus, the NRC's charge is baseless.

impacts of spent fuel pool fires as resolved, it is highly unlikely that the Staff would agree to re-open the issue at the COL stage.<sup>7</sup>

TVA also claims that Contention 5 is not adequately supported by expert opinion, because Dr. Lyman's declaration is "conclusory." TVA Answer at 24. As discussed in Dr. Lyman's declaration, the factual information he relies on and his expert opinions are stated in the body of Contention 5. Contrary to TVA's suggestion, *USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 472 (2006) does not prohibit Dr. Lyman from presenting his views in the contention and attesting in his declaration that the contention is based on his expert opinion and knowledge.

Furthermore, TVA is not correct in asserting that Contention 5 lacks sufficient "technical analysis" for its claims. TVA Answer at 26. For instance, TVA accuses Intervenor and Dr. Lyman of making a "mere reference" to a "few documents," "without setting forth an explanation of [their] significance," with respect to the role played by ruthenium, an overlooked factor in the NRC's spent fuel pool risk analysis. But the contention actually does explain the role of ruthenium in causing significant environmental impacts in the form of human fatalities:

In addition to affecting the speed at which an accident occurs, decay time also affects the number of early fatalities that may occur in a spent fuel pool accident. As stated in NUREG-1738, "[a]pproximately 85 percent of all the ruthenium in the pool is in the last core off-loaded since the ruthenium-106 half-life is about 1 year." NUREG-1738, Figure 3.7-1 and Figure ES-1, show that ruthenium-related fatalities are highest during the months directly following shutdown, *i.e.*, when the fuel in the pool is hottest.

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<sup>7</sup> TVA's argument that Contention 4 is not "timely" is utterly without merit. TVA Answer at 15-18. TVA claims the contention could have been filed earlier because the characteristics of the PPE and the NuScale design on which Intervenor rely for Contention 4 were known at the Environmental Report stage. *Id.* But TVA ignores the salient fact that Contention 4 challenges the spent fuel pool accident analysis for TVA's ESP application, not the PPE *per se*. Nor does Contention 4 attempt to revive Intervenor's earlier challenge of TVA's emergency plan under NRC's safety regulations. TVA Answer at 18. Contention 4 is based in NEPA, and thereby presents an entirely new claim that could not have been brought earlier. As the Staff notes, Contention 4 is indeed timely filed. NRC Staff Answer at 8.

Intervenors' Motion at 8-9. The contention further states that:

NUREG-1738 showed that differences in accident consequences could be significant between evacuated and non-evacuated EPZs, depending on how soon after reactor shutdown the accident occurs. *See* Table 3.7-1, which shows that for a high ruthenium pool accident occurring within 30 days after discharge of fuel, evacuation of the EPZ could reduce the number of early fatalities from 192 to seven. This difference is significant and warrants examination in the Draft EIS, just as the NRC Staff did for reactor accidents. *See* note 2 above.

*Id.* at 11. Therefore, TVA's argument that the technical basis for the contention is unexplained and unsupported is simply unfounded. Also without merit is TVA's argument that Intervenors should have demonstrated "how these facts would change the NRC Staff's analysis in the DEIS." TVA Answer at 25. It would be unfair to expect Dr. Lyman to re-do the Staff's environmental analysis and show how it should result if the correct assumptions are used. That is the job of the NRC. It is sufficient for Dr. Lyman to identify the discrepancies and explain that they could have a significant bearing on the outcome of the environmental analysis.

### **III. CONTENTION 5 (IMPERMISSIBLE DISCUSSION OF ENERGY ALTERNATIVES AND NEED FOR THE PROPOSED SMR) IS ADMISSIBLE.**

Contention 5 states:

The Draft EIS violates NEPA and NRC implementing regulations 10 C.F.R. §§ 51.75(b), 51.20(b), 51.104, and 52.21, by impermissibly incorporating and claiming to be "informed by" assertions by TVA regarding the economic, technical, and other benefits of the proposed SMR, including need for power and alternative energy sources. *See* Section 1.3 at 1-9 – 1-10. The Draft EIS also violates these NEPA regulations by presenting the "no-action" alternative as foregoing benefits (including the asserted benefits of operating the SMRs) rather than avoiding environmental impacts. *Id.* at xxxiii, 1-12, 9-2.

Because TVA elected not to address the need for power and energy alternatives in its Environmental Report, CLI-18-05, slip op. at 15, discussion of the benefits associated with *building and operating* the SMR is prohibited from the Draft EIS by Section 51.57(b). By the same token, the Draft EIS's inclusion of construction and operation-related benefits in its "Purpose and Need" statement (Draft EIS at 1-9 – 1-10) goes far beyond the siting related benefits that are may be listed under 10 C.F.R. § 51.75(b) and the Commission's supporting rationale. Final Rule: Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,430 (Aug. 28, 2007).

In addition, by incorporating TVA's assertions regarding the construction and operation-related benefits of the proposed SMR, at the same time as it claims *not* to have evaluated the need for power and energy alternatives, the NRC Staff raises a strong inference that it has included TVA's information in the Draft EIS without conducting its own independent evaluation, in violation of 10 C.F.R. § 51.70.

Finally, Intervenors contend that the Draft EIS's assertions regarding the need for the proposed SMR and the benefits of the proposed SMR in relation to other energy alternatives are not supported, adequately analyzed, or valid. Yet, Intervenors are prohibited by 10 C.F.R. § 52.21 from challenging the assertions as a result of TVA's and the NRC Staff's formal claims not to have addressed them in the Draft EIS. Intervenors respectfully submit that the NRC would violate NEPA's public participation requirements by including and claiming to rely on technical information in the Draft EIS, without permitting interested members of the public an opportunity to challenge the reliability of that information in a hearing. 10 C.F.R. §51.104.

Intervenors' Motion at 12-13 (emphasis in original).

TVA and the Staff argue that admission of Contention 5 is barred by the Commission's decision in *Tennessee Valley Authority* (Clinch River Nuclear Site Early Site Permit Application) CLI-18-05, \_\_ NRC \_\_ (May 3, 2018) ("CLI-18-05"). TVA Answer at 26, NRC Staff Answer at 26-28. In CLI-18-05, the Commission held that statements by TVA in the "Purpose and Need" section of its Environmental Report did not amount to a formal discussion of need for the SMR or alternative energy sources, because "[t]he determining factor is TVA's statements, in the Environmental Report, that it has chosen to defer a discussion of need for power and energy alternatives until the combined license application, which it is permitted to do under 10 C.F.R. § 51.50(b)(2)." *Id.*, slip op. at 15. TVA and the Staff claim there is nothing different about the Draft EIS, which also discusses needs for power and energy alternatives in the Purpose and Need section of the Draft EIS; and therefore Contention 5 should be rejected. TVA Answer at 26, NRC Staff Answer at 26, 28. The Staff also argues that for these reasons, the contention is not timely. NRC Staff Answer at 28-29.

There are significant differences, however, between the circumstances addressed in CLI-18-05 and the circumstances addressed by Contention 5. First, there are legal differences: while CLI-18-05 concerned the application of 10 C.F.R. § 51.50(b)(2) to TVA’s Environmental Report, Contention 5 concerns the application of 10 C.F.R. § 51.75(b) to the Draft EIS. Contention 5 also charges violations of two other NEPA regulations not at issue in CLI-18-05: 10 C.F.R. §§ 51.70 and 51.104.

Regulations 10 C.F.R. §§ 51.75(b), 51.70 and 51.104 apply to the Draft EIS in ways that are different from the application of 10 C.F.R. § 51.50(b)(2) to TVA’s Environmental Report. While 10 C.F.R. § 51.50(b)(2) is elective, 10 C.F.R. § 51.75(b) is prohibitive. The NRC Staff “*must not* include an assessment of the economic, technical, or other benefits (for example, need for power) and costs of the proposed action or an evaluation of alternative energy sources” if the applicant elected not to address those issues. (emphasis added). This prohibition was reinforced by the Commission in the preamble to the 2007 amendments to 10 C.F.R. Part 52. *See* Motion at 16 (quoting Final rule: Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,430 (Aug. 28, 2007)).

The NRC Staff argues that the mere discussion of energy alternatives and need for power in the Draft EIS does not rise to the level of an “assessment” and therefore is not prohibited by 10 C.F.R. § 51.75(b). However, by saying its view of the Draft EIS’ purpose was “informed” by TVA’s description of the benefits of building and operating an SMR on the Clinch River site – and without questioning TVA’s one-sided and inflated claims -- the NRC Staff implicitly had assessed those claims and found them acceptable. Accordingly, when members of the public read other assertions in the Draft EIS about the “benefits intended by the ESP process” (*i.e.*, Draft EIS at 1-12) it would be eminently reasonable to infer that “the benefits intended by the ESP process”

include the benefits listed among the purposes and needs of the project. Such an inference, coloring the meaning of the EIS and tilting it towards support of the ESP based on the supposed benefits of building and operating the project, is exactly what the NRC intended to avoid by promulgating 10 C.F.R. § 51.75(b).

In addition, CLI-18-05 did not address the question of whether the NRC Staff may incorporate into an EIS information that it has not evaluated independently, as required by 10 C.F.R. § 51.70. This regulation requires that the NRC Staff “will independently evaluate and be responsible for the reliability of all information used in the draft environmental impact statement.” Given the NRC Staff’s claim in Section 9.2 of the Draft EIS that it did not address energy alternatives or need for power in the Draft EIS, it may reasonably be inferred that the Staff did not attempt to independently verify the assertions by TVA that it incorporated verbatim into the Purpose and Need section of the Draft EIS.

Finally, a major difference between the circumstances of CLI-18-05 and Contention 5 is that an Environmental Report essentially serves as a first draft of the EIS to be prepared by the government. It has little or no other utility. An EIS, in comparison, is a government-sponsored document that will be issued to other federal agencies, state agencies, and the public. Because the government stands by the reliability of the information and conclusions in its EISs, they are often used as references for a broad array of decisions. To casually include information that has not been independently verified for its reliability and completeness by the NRC would violate both NRC regulations and NEPA’s fundamental purpose of informing the public about environmental issues. And further, to protect the inclusion of that information in Draft EIS from challenge in this proceeding would violate the public participation requirements of 10 C.F.R. § 51.104.

#### IV. CONCLUSION

For the foregoing reasons, TVA's and the NRC Staff's arguments are without merit and therefore Intervenors' Contentions 4 and 5 should be admitted to this proceeding.

Respectfully submitted,

          /signed electronically by/

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June 22, 2018