



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 13, 2018

Terry Clouthier
Thlopthlocco Tribal Town
Tribal Historic Preservation Office
P.O. Box 188
Okemah, OK 74859

SUBJECT: RESPONSE TO COMMENTS FROM THE THLOPTHLOCCO TRIBAL TOWN ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR AN EARLY SITE PERMIT AT THE CLINCH RIVER NUCLEAR SITE IN ROANE COUNTY, TENNESSEE (THPO FILE NUMBER 2018-67)

Dear Mr. Clouthier:

Thank you for your comments dated July 13, 2018, regarding the U.S. Nuclear Regulatory Commission's (NRC's) draft environmental impact statement (EIS) for an Early Site Permit (ESP) at the Clinch River Nuclear (CRN) Site in Oak Ridge, Roane County, Tennessee. On October 10, 2018, NRC staff met with you via teleconference to better understand and discuss the Thlopthlocco Tribal Town's comments and concerns. The purpose of this letter is to formally respond to your letter dated July 13, 2018, and to document the NRC's National Historic Preservation (NHPA) Section 106 consultation for the ESP. The NRC is coordinating its Section 106 review for the ESP through the National Environmental Policy Act (NEPA) process per 36 CFR 800.8(c). The staff will document the results of its consultations with the Thlopthlocco Tribal Town in the final EIS for the purposes of the administrative record.

As discussed during the October 10, 2018 teleconference, the NRC's undertaking is to issue an ESP, which would result in the approval of a site as suitable for future development of two or more small modular reactors (SMRs) with the characteristics presented in the application. The issuance of an ESP does not authorize construction and operation of a nuclear power plant. Should TVA choose to proceed with their proposed project, they would need to apply for, and receive, a separate authorization (such as a combined license) from the NRC in order to construct and operate a nuclear power plant at the CRN Site. This authorization would constitute a separate NRC undertaking and would require the NRC to prepare a supplemental EIS and complete a separate NHPA Section 106 review and consultation.

In addition to being an applicant for an ESP before the NRC, TVA is a Federal land managing agency having its own obligations under the NHPA. TVA's undertaking is to construct and operate two or more SMRs, and it has initiated its own NHPA Section 106 review and consultation. Between 2011 and 2015, TVA conducted five historic and cultural resource investigations as part of its NHPA Section 106 compliance responsibilities for its proposed project. These investigations resulted in an updated inventory of archaeological and architectural resources located within the onsite direct- and indirect-effects areas of potential effect (APE).

Between 2015 and 2016, TVA developed and executed a programmatic agreement (PA) in consultation with the Tennessee Historical Commission and American Indian Tribes (Tribes) to address how TVA would comply with the ongoing NHPA Section 106 requirements associated with its undertaking. The PA includes stipulations that address the inadvertent discovery of historic and cultural resources and the potential for deeply buried deposits. In addition to its separate review and consultation under Section 106 of the NHPA, TVA is also obligated to complete a NEPA analysis independent of the one conducted by the NRC.

During the October 10th teleconference, NRC staff clarified the scope of the NRC's limited authority and explained the NRC's basis for concluding that the issuance of the ESP would result in no effect to historic properties for NRC-authorized activities. The NRC's authority is limited to activities having a nexus to radiological health and safety and/or common defense and security. Pursuant to 10 CFR 50.10 and 10 CFR 51.4, NRC authorization is required for those actions defined as "construction" activities. Because an ESP does not authorize construction or operation of a nuclear reactor, these activities would be evaluated by the NRC as part of a future action, such as a combined construction and operating license, should TVA choose to move forward with its proposed project. Activities associated with building a plant that do not require NRC authorization are termed "preconstruction." Preconstruction activities include clearing and grading, excavating, erection of support buildings and transmission lines, and other associated activities. These activities may occur without NRC authorization before the NRC is engaged in a future licensing action for the CRN Site. Although preconstruction activities are outside the NRC's regulatory authority, nearly all of them are within the regulatory authority of local, State, or other Federal agencies.

Despite the limited scope of NRC's regulatory authority, the EIS includes an evaluation of impacts from both foreseeable construction and preconstruction activities because the NRC is cooperating with the Army Corps of Engineers on the EIS. Section 4.6 of the EIS discusses two NHPA Section 106 findings and two NEPA findings. One set of NHPA and NEPA findings covers the combined impacts of preconstruction and construction activities that are reasonably foreseeable at the CRN Site. The other set of NHPA and NEPA findings covers only those effects associated with NRC-authorized construction related activities. The NRC provided its NEPA finding that the combined impacts of preconstruction activities and NRC-authorized construction would be MODERATE to LARGE, primarily due to the ground disturbing impacts associated with preconstruction activities. The EIS also includes a discussion of NRC's separate NHPA finding that the impacts of the action, including preconstruction activities, have the potential for adverse effects to historic properties. In the EIS discussion of only NRC-regulated activities (construction), the NRC provides an NHPA finding of no effect to historic properties and a NEPA impact finding of SMALL because the impacts are primarily associated with preconstruction activities and would be subject to TVA's PA prior to any construction. As stated in Section 4.6.3 of the EIS, while preconstruction impacts are not within NRC's regulatory authority, NRC staff reviewed TVA's NHPA Section 106 compliance activities associated with preconstruction activities, including the PA. In its PA, TVA concluded that its undertaking to construct and operate two or more SMRs has the potential to adversely affect an unknown number of the 16 potentially NRHP-eligible properties and 1 NRHP-eligible site (40RE233) and has executed the PA to address its ongoing NHPA Section 106 responsibilities because more specific plans have not been finalized.

The NRC also discusses the impacts associated with preconstruction activities and other reasonably foreseeable impacts from a cumulative perspective in Section 7.5 of the EIS. The NEPA finding discussed therein associated with the cumulative impacts evaluation is

MODERATE to LARGE to account for the combined impact of the reasonably foreseeable preconstruction and construction activities associated with TVA's proposed project.

During the October 10th teleconference, we also discussed your concerns regarding the number of historic properties and potential cultural resources that may be adversely affected at the CRN Site as compared to those on alternative sites Redstone Arsenal, and Oak Ridge Reservation (ORR) Sites 2 and 8. As discussed, NRC forwarded these concerns to TVA for its consideration as part of its ongoing NHPA Section 106 consultation and future NEPA analysis.

During the October 10th teleconference, the staff described NRC's NEPA process for evaluating alternative sites and clarified that site selection is based on determining whether there is any obviously superior alternative to the site proposed. Impacts to historic and cultural resources is only one factor considered by the staff in its comparison of the sites. The impacts to other resources, such as groundwater use and ecological resources, also played a role in comparing the sites. All three alternative sites that were compared to the proposed CRN Site appeared to be licensable and capable of meeting the proposed project objective of siting and operating two or more SMRs. The review team concluded in the EIS that TVA employed a process that could reasonably be expected to identify sites among the best available in the region and that none of the alternative sites was environmentally preferable to the proposed site. Because none of the alternative sites was environmentally preferable, none is obviously superior.

While there are more recorded historic and cultural resource sites located on the proposed CRN Site than on the alternative sites, it is still unknown, particularly at the ESP stage, how many will be impacted if TVA proceeds with its undertaking. For the alternative sites considered in the EIS, the NRC's analysis of impacts to historic and cultural resources typically relies on available (reconnaissance-level) information rather than on collection of new data or field studies. Therefore, there are greater unknowns for the three alternative sites. Due to these uncertainties, a conservative conclusion of MODERATE TO LARGE impact was provided for each alternative site and for the proposed site.

As discussed during the October 10th teleconference, the NRC appreciates your comment regarding the requirement in 36 CFR 800.5 to involve American Indian Tribes who attach cultural or religious significance to historic properties in the resolution of adverse effects. NRC staff agrees with this comment and has modified Sections 2.7, 4.6, and 5.6 of the final EIS accordingly. In addition, the NRC understands your comment that the Thlopthlocco Tribal Town attaches cultural and religious significance not only to traditional cultural properties (TCPs), but also to pre-contact and post-contact archaeological sites. The NRC has modified Section 2.7, 4.6, and 5.6 of the FEIS to capture this statement.

As discussed during the teleconference, should TVA choose to move forward with this project, these concerns would apply to TVA's NHPA Section 106 considerations as well as NRC's potential future review of a combined license application that references the proposed ESP for the CRN Site. The NRC has documented at a high-level the Thlopthlocco Tribal Town's NHPA Section 106 and NEPA comments in the final EIS, for the purposes of retaining NRC's NHPA Section 106 administrative record.

If you have any questions concerning the NRC staff's environmental review of this ESP application, please contact Ms. Tamsen Dozier, NRC Environmental Project Manager for the CRN ESP project, at (301) 415-2272 or by e-mail at Tamsen.Dozier@nrc.gov, or in her absence, please contact Ms. Jennifer Davis at 301-415-3835 or by e-mail at Jennifer.Davis@nrc.gov.

Sincerely,

/RA/

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Office of New Reactors

Docket No.: 52-047

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NRO-002

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