

NRC PUBLIC DOCUMENT REPORT

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of)		
)		
TENNESSEE VALLEY AUTHORITY)	Docket Nos.	STN 50-518
)		STN 50-519
(Hartsville Nuclear Plants)		STN 50-520
Units 1A, 2A, 1B, and 2B))		STN 50-521

INTERVENORS' REPLY BRIEF

By Order dated February 2, 1979, the Appeal Board has granted Intervenors leave to file a reply brief to the briefs of the Applicant and the NRC Staff. This relates to the appeal by the Intervenors from the decision of the Licensing Board dated October 31, 1978, granting TVA's motion for summary disposition on the location of the discharge diffuser.

The only issue raised by TVA and the Staff, which we feel was not discussed in our brief dated December 18, 1978, is the issue of whether the decision of the Appeal Board, ALAB-463, 7 NRC 341, dated March 17, 1978 (hereafter ALAB-463) foreclosed any further consideration of impacts from operation of the plant. Both TVA and the Staff take the position that the only issue which was

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This 20 day of
February, 1978


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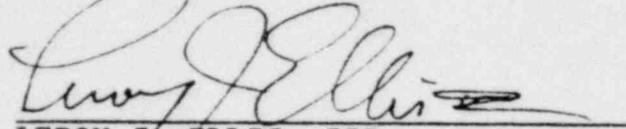
CERTIFICATE OF SERVICE

I hereby certify that I have served the original and twenty conformed copies of the following documents on the Nuclear Regulatory Commission by depositing them in the United States mail, postage prepaid and addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Chief, Docketing and Service Section:

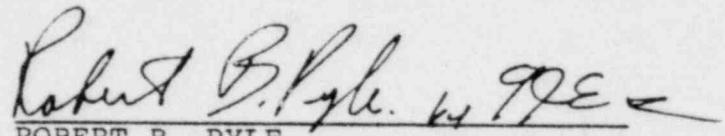
REPLY BRIEF

and that I have served a copy of each of the above documents upon the persons listed below by depositing it in the United States mail, postage prepaid and addressed:

Respectfully submitted,



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February 20, 1979

which it reversed the Licensing Board, namely making that determination before the Department of the Interior had rendered its opinion and that opinion had been considered by the Commission.

In ALAB-463, the Appeal Board went on to state that the Commission would make the final decision on the upstream location after the Interior Department renders its opinion. Slip Opinion at 44. The Appeal Board then further clarified its position in its discussion of the downstream location (no longer in issue) and stated that "... with respect to the downstream location, Interior's approval of it having been obtained, is whether sedimentation from construction at that location would jeopardize the continued existence of the species." Slip Opinion at 45.

Thus, on this legal issue, we think it clear that operation impacts on the endangered species was an open issue before the Licensing Board and that the Licensing Board was correct in addressing it. Whether the record supports the position of the Intervenor on the merits of their request for the imposition of minimum standards for protection of the species during construction, is a separate issue, and we believe that all of the parties have addressed this issue and that nothing would be gained by further discussion in a reply brief.

before the Licensing Board as a result of the action taken in ALAB-463, was the results of sedimentation during construction of the diffuser. Thus at page 8 of its brief, TVA states:

"The Appeal Board then found that determination of the effects of sedimentation, which would result from diffuser construction at the upstream location, must await consultation with DOI (7 NRC at 363-64)."

At pages 6 and 7 of its brief, the Staff states:

"The only adverse environmental impact of any kind not finally resolved by this Board was the impact of sedimentation from dredging during construction (7 NRC at 363. ... Thus, the only other issue left open by ALAB-463 is the stated requirement that TVA consult with the Department of Interior and obtain its opinion with respect to the upstream location. (7 NRC at 363-4)."

We do not so read this Board's decision in ALAB-463. The basis for the Appeal Board's reversal of the Licensing Board was the failure to obtain and consider the opinion of the Department of the Interior before giving approval to the upstream location of the discharge diffuser. While the Staff's extensive quotation from ALAB-463 at pages 361-362, is correct, we interpret this excerpt and the other discussion of impacts from plant operation in part II C of ALAB-463, as referring to the downstream location. If the Appeal Board had intended to foreclose further consideration of impacts from operation of the plant, using the upstream location, it would have fallen into the same error for