



ADJUDICATORY ISSUE

February 4, 1983 (NEGATIVE CONSENT)

SECY-83-54

COMMISSION LEVEL
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For: The Commissioners

From: Sheldon L. Trubatch
Acting Assistant General Counsel

Subject: REVIEW OF ALAB-711
(IN THE MATTER OF TENNESSEE
VALLEY AUTHORITY)

Facility: Browns Ferry Nuclear Plant,
Units 1, 2 and 3

Purpose: To advise the Commission of an Appeal
Board decision [which, in our opinion,

EX-5

Review
Time Expires: March 2, 1983

Petition
For Review: None

Discussion: In ALAB-711, the Appeal Board approved a stipulation between the applicant (TVA) and several prospective intervenors. The intervenors agreed to withdraw their petitions to intervene in this license amendment proceeding in exchange for TVA's promise to notify them of its intent to apply for NRC permission to incinerate low-level waste at the site. [In our view,

EX-5

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5

FOIA- 92-436

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PDR FOIA
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CONTACT:
Juan L. Rodriguez, OGC
634-1465

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EX-5

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This proceeding concerns TVA's application to amend the facilities' operating licenses for the purpose of obtaining permission to store, onsite for a period of five years, low-level radioactive waste generated in the course of normal operation. Prospective intervenors' petition to intervene in the proceeding was denied by a Licensing Board. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units Nos. 1, 2 and 3), LBP-81-39, 14 NRC 828 (1982). On Appeal, a divided Appeal Board reversed and remanded the Licensing Board decision with instructions to defer consideration of the contentions until after the NRC staff issued its environmental assessment. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units Nos. 1, 2 and 3), ALAB-664, 15 NRC 1 (1982). The Commission subsequently vacated that decision and remanded to the Appeal Board for reconsideration in light of new information. CLI-82-26, 10 NRC ____, (September 15, 1982).

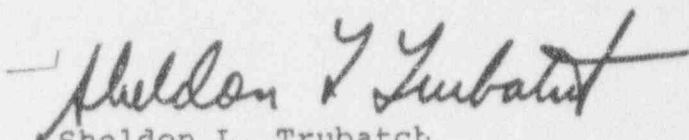
On January 21, 1983, while the Appeal Board was reconsidering its decision, the parties submitted a stipulation providing for the settlement of the case. In essence, prospective intervenors agreed to withdraw their petitions to intervene in exchange for TVA's promise that until December 31, 1987, it will notify them "within 10 days of submission, of any application in which TVA requests from the NRC permission to build, operate or modify a system to incinerate low-level wastes (LLRW) in the states of Alabama, Mississippi or Tennessee."

The Appeal Board examined the prospective intervenors' motion to withdraw and the accompanying stipulation. Finding no ground for denial, it approved the stipulation and granted the motion to withdraw.

In OGC's view

EX.5

EX.5



Sheldon L. Trubatch
Acting Assistant General
Counsel

Attachments:

1. ALAB-711
2. Motion to Withdraw
3. Stipulation

SECY NOTE: In the absence of instructions to the contrary,
SECY will notify OGC on Friday, February 18, 1983
that the Commission, by negative consent, assents
to the action proposed in this paper.

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ATTACHMENT 1

JAN 21 1983

Release

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD

'83 JAN 21 P3:10

Administrative Judges:

Stephen F. Eilperin, Chairman
Dr. John H. Buck
Gary J. Edles

ADMINISTRATIVE SERVICE
BRANCH

_____)
In the Matter of)
_____)
TENNESSEE VALLEY AUTHORITY)
_____)
(Browns Ferry Nuclear Plant,)
Units 1, 2 and 3))
_____)

Docket Nos. 50-259 OL
50-260 OL
50-296 OL

Robert B. Pyle, Chattanooga, Tennessee, for
petitioners David R. Currott, et al.

Herbert S. Sanger, Jr., Knoxville, Tennessee, for the
applicant, Tennessee Valley Authority.

Richard J. Rawson for the Nuclear Regulatory
Commission staff.

DECISION

January 21, 1983

(ALAB-711)

This proceeding involves an application by the
Tennessee Valley Authority (TVA) for a license amendment to
authorize the storage for five years of low-level radio-
active waste at the Browns Ferry Nuclear Plant. The
proceeding is before us on remand from the Commission so

that we could reconsider our decision in ALAB-664¹ in light of new information that TVA should have, but did not, serve upon us earlier. See CLI-82-26, 16 NRC ___ (Sept. 15, 1982).² See also ALAB-677, 15 NRC 1387 (1982).

Before undertaking reconsideration, we issued an order requiring further submittals to clarify the nature of TVA's low-level radioactive waste storage application, the present status of TVA's onsite and offsite storage capacity, and TVA's future plans with regard to seeking authorization to incinerate such waste. This last issue, in particular, we thought might be critical to whether petitioners remain desirous of intervening in this proceeding. We also called upon petitioners to advise us whether TVA's responses have rendered their concerns moot, or whether they still plan to pursue intervention. If their answer was the latter, they were to file a statement of their general concerns and comment on the NRC staff's environmental impact appraisal of TVA's application. Order of September 20, 1982 (unpublished).

¹15 NRC 1 (1982).

²ALAB-664 reversed and remanded a Licensing Board decision denying petitioners' intervention petitions and requests for hearing, and directed the Board to rule on the petitions after its receipt of the NRC staff's environmental assessment of TVA's license amendment application. See 15 NRC at 12.

TVA's response advised that (1) it currently ships all of its wastes to offsite disposal sites and will continue to do so as long as such space is available, (2) it is only seeking five-year storage authority, and (3) the progress of the southeastern States toward enacting an Interstate Low-Level Radioactive Waste Management Compact might alleviate future storage problems so that use of the onsite storage modules TVA had constructed could be limited to emergency situations. See Statement of John W. Hutton (Oct. 1, 1982) at 2-3, 5, 8. TVA also noted, however, that at some time in the future it would probably propose some system of volume reduction for Browns Ferry low-level waste. While TVA had made no decision in that regard, volume reduction appeared to it to be economically advantageous whether the waste was to be stored temporarily onsite or immediately shipped offsite. Id. at 7-9.

The NRC staff also submitted useful information to us including a copy of the Commission's Policy Statement on Low-Level Waste Volume Reduction. See NRC Staff Response (Oct. 8, 1982), Attachment 5; 46 Fed. Reg. 51100 (Oct. 16, 1981). That policy makes clear that "[t]reatment or disposal of licensed material by incineration requires [specific] Commission approval" -- approval that TVA does not seek in this proceeding.

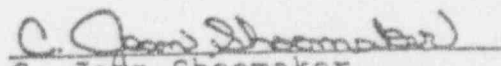
The TVA and NRC staff responses led to settlement negotiations among the parties. The ensuing agreement,

together with petitioners' motion to withdraw their petitions have been submitted to us for our approval. In essence, the settlement provides that until December 31, 1987 TVA will notify certain named persons "within 10 days of submission, of any application in which TVA requests from the Nuclear Regulatory Commission permission to build, operate or modify a system to incinerate low-level radioactive wastes (LLRW) in the States of Alabama, Mississippi or Tennessee." Petitioners, for their part, agree to withdraw their intervention petitions and request that this proceeding be dismissed. The NRC staff has no objection to the withdrawal of the petitions or to dismissal of the proceeding, and joins in the stipulation to that extent. Stipulation (Jan. 18, 1983).

We have examined the petitioners' motion to withdraw and the accompanying stipulation. Finding no ground for denial, the stipulation is approved and petitioners' motion to withdraw their petitions is granted.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

ATTACHMENT 2

ATTACHMENT 3

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Release

Before the Atomic Safety and Licensing Appeal Board

DOCKETED

'83 JAN 21 11:36

In the Matter of)	Docket Nos. 50-259 OLA
)	50-260 OLA
TENNESSEE VALLEY AUTHORITY)	50-296 OLA
)	(Low-Level Radioactive
(Browns Ferry Nuclear Plant,)	Waste Storage Facility)
Units 1, 2, and 3)	

S T I P U L A T I O N

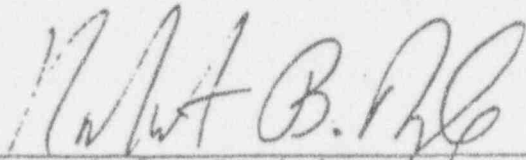
Petitioners and Applicant, Tennessee Valley Authority, agree through their respective counsel as follows:

1. Until December 31, 1987, the Tennessee Valley Authority will notify the persons listed in Exhibit A to this Stipulation within 10 days of submission, of any application in which TVA requests from the Nuclear Regulatory Commission permission to build, operate or modify a system to incinerate low-level radioactive wastes (LLRW) in the States of Alabama, Mississippi or Tennessee.

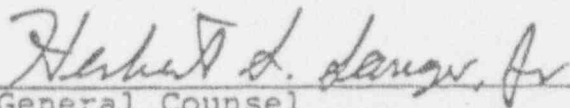
2. Petitioners, by January 19, 1983, will withdraw their petitions as supplemented and amended, and ask the Appeal Board to dismiss the captioned proceeding, and not to use further administrative or other legal process to oppose TVA's 5-year LLRW storage license amendment request which is the subject matter of this proceeding. Persons desiring to change the address listed in Exhibit A to this Stipulation should notify the Office of General Counsel, Tennessee Valley Authority,

400 West Summit Hill E 11B 33, Knoxville, Tennessee 37902.

Counsel for the Nuclear Regulatory Commission staff joins in this Stipulation only insofar as the NRC staff has no objection to Petitioners' withdrawal of their petition or the dismissal of this proceeding.


Counsel for Petitioners

1/12/83
Date


General Counsel
Tennessee Valley Authority

1/14/83
Date


Counsel for NRC Staff

1/18/83
Date

Persons to be notified in the event of an application to build, modify or operate a system to incinerate low-level radioactive waste (LLRW) in the States of Tennessee, Alabama or Mississippi.

Mr. Richard L. Freeman
429 Calhoun Drive
Florence, Alabama 35630

Mr. John Martin
Route 1, Box 949
Sheffield, Alabama 35660

Mr. Robert W. Beck
P. O. Box K
Florence, Alabama 35631

Ms. Uvonna J. Curott
1201 Ingleside
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Ms. Nancy Muse
205 Edgewood Drive
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Mr. Gregory Robert Brough
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Mr. Michael D. Pierson
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Mr. David Ely
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

DOCKETED
JAN 21 1983

In the Matter of
TENNESSEE VALLEY AUTHORITY
(Browns Ferry Nuclear Plant,
Unit Nos. 1, 2 and 3)

*83 JAN 21 A11:36
Docket Nos. 50-259, 50-260 and
50-296
(License amendment to permit
storage of low level radioactive
waste)

CERTIFICATE OF SERVICE

I hereby certify that copies of "MOTION" and "STIPULATION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 18th day of January, 1983:

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Administrative Judge
Fisheries Research Institute
University of Washington
Seattle, Washington 98195

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Atomic Safety and Licensing Appeal Board
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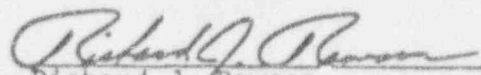
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