**December 30, 2020**

**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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| In the Matter of | ) | |
| | ) | |
| | ) | Docket Nos. EA-20-006, EA-20-007 |
| Tennessee Valley Authority | ) | |
| Chattanooga, Tennessee | ) | |
| | ) | |

**Erin Henderson's Reply to NRC Staff Answer to Erin Henderson's Request for Hearing or in the Alternative Discretionary Intervention**

## I. Introduction

Pursuant to 10 C.F.R. § 2.309(i)(2), Erin Henderson hereby submits this Reply to the NRC Staff Answer to Erin Henderson's Request for Hearing or in the Alternative Discretionary Intervention ("Staff Answer") filed on December 23, 2020.[1] Contrary to the Staff's assertions, the Board should grant Ms. Henderson's Hearing Request. Ms. Henderson is adversely affected by the Order and has requested a hearing on the Order pursuant to 10 C.F.R. § 2.202(a)(3). In addition, Ms. Henderson otherwise has standing in this proceeding under 10 C.F.R. § 2.309(d) because she has demonstrated a concrete injury of reputational harm and ongoing chilling effects as a result of the Staff's Order,[2] which are within the "zone of interests" applicable here. Ms. Henderson also has proffered two admissible contentions under 10 C.F.R. § 2.309(f), which the Staff did not

[1] NRC Staff Answer to Erin Henderson's Request for Hearing (Dec. 23, 2020) (ADAMS Accession No. ML20358A146) ("Staff Answer").

[2] TVA Order for Civil Penalty (Oct. 29, 2020) (ADAMS Accession No. ML20297A544) ("Order"); Appendix to the TVA Order (Oct. 29, 2020) (ADAMS Accession No. ML20297A552) ("Order Appendix").

contest.[3] Further, even if the Board finds that Ms. Henderson lacks standing, as explained in her Hearing Request,[4] and further below, the Board should grant her alternative request for discretionary intervention.

## II. Ms. Henderson Is Adversely Affected by the Order and Otherwise Has Standing

As explained in Ms. Henderson's Hearing Request,[5] Ms. Henderson is adversely affected by the Order because she is suffering both a reputational injury and a chilling effect from the Order sufficient to satisfy 10 C.F.R. § 2.202(a)(3). In addition, as also explained by Ms. Henderson in her Hearing Request,[6] most (but not all) NRC case law holds that a third party seeking a hearing on an enforcement order under 10 C.F.R. § 2.202 must also meet the standing and admissible contention requirements under 10 C.F.R. § 2.309. Thus, Ms. Henderson's Hearing Request also demonstrated how she meets the § 2.309 requirements.

The Staff, however, primarily argues that Ms. Henderson's Hearing Request should be denied because she does not have standing under 10 C.F.R. § 2.309(d). According to the Staff, the reputational harm and ongoing chilling effect she will experience if the Order is sustained are not redressable injuries-in-fact within the zone of interests of the Atomic Energy Act (the "AEA").[7] The Staff is incorrect.

### A. The Harm to Ms. Henderson's Reputation Is an Injury-in-Fact and also Is Within the Applicable Zone of Interests

Ms. Henderson has demonstrated that the Order's effect on her reputation is a distinct and palpable injury, contrary to the Staff's claims. The Staff alleges that Ms. Henderson merely "cites

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[3] *See* Staff Answer at 12 n.48. Issues which are inadequately briefed may be waived. *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 2), ALAB-926, 31 NRC 1, 10, 12 (1990).

[4] Erin Henderson's Request for a Hearing on the NRC Staff's October 29 Order at 5 (Nov. 30, 2020) (ADAMS Accession No. ML20335A576) (hereinafter "Hearing Request").

[5] Hearing Request at 5-10.

[6] Hearing Request at 3-4 & n.9.

[7] Staff Answer at 4-7.

to newspaper articles."[8] However, the Staff does not, nor could it, dispute that repeated articles in widely circulated newspapers can significantly damage a person's professional reputation and prospects of future employment. Prospective employers, for example, can easily perform electronic searches as part of employee background checks that would reveal these articles. In addition, Ms. Henderson cites to the Staff's own press release.[9] The press release alone could be sufficient to raise a cognizable reputational injury. As the D.C. Circuit has observed, "[c]ase law is clear that where reputational injury derives directly from an unexpired and unretracted government action, that injury satisfies the requirements of Article III standing to challenge that action."[10]

In any case, there is no requirement for Ms. Henderson to provide additional evidence of harm. Commission precedent has found it "quite plain" that injury to reputation is an injury-in-fact for the purposes of standing even where further harm has yet to occur.[11] In addition, the D.C. Circuit has stated that, "[w]hen performing that inherently imprecise task of predicting or speculating about causal effects [in standing analysis], common sense can be a useful tool."[12] Here, it is quite plain and makes common sense to conclude that widely-reported violations of NRC requirements have harmed Ms. Henderson's professional reputation, and that subsequent effects to her future employment prospects are likely. A ruling setting aside the aspects of the

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[8] Staff Answer at 5.

[9] Hearing Request at 5.

[10] *Foretich v. U.S.*, 351 F.3d 1198, 1213 (D.C. Cir. 2003); *see also Pearl River Union Free Sch. Dist. v. Duncan*, 56 F. Supp. 3d 339, 365 (S.D.N.Y. 2014) (finding plaintiff had standing based on reputational harm caused by the Department of Education Office of Civil Rights publishing a "Letter of Findings" on an investigation, which was then covered in several local newspapers).

[11] *Virginia Electric and Power Company* (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 105 (1976) (finding it "quite plain" that petitioner's reputational injury was an injury-in-fact for standing purposes even where it only "may be injured" if the facility were placed into operation).

[12] *Carpenters Indus. Council v. Zinke*, 854 F.3d 1, 6 (D.C. Cir. 2017) (Kavanaugh, J.); *see also Nat. Res. Def. Council v. Nat'l Highway Traffic Safety Admin*., 894 F.3d 95, 104-05 (2d Cir. 2018) (relying on the defendant agency's "own pronouncements," as well as "[c]ommon sense and basic economics," to find standing (internal quotation marks omitted)).

Order that pertain to Ms. Henderson's conduct will go a long way towards undoing the obvious reputational harm inflicted to date and its future effects. For these reasons, as Ms. Henderson stated in her Hearing Request, her injury is sufficient to satisfy the requirements of 10 C.F.R. § 2.202(a)(3) that she is "adversely affected" by the Order and that her harm is an injury-in-fact for standing purposes.[13]

The Staff argues that Ms. Henderson's Hearing Request should be denied because the harm to her reputation is beyond the AEA's zone of interests.[14] As an initial matter, the regulation on which the Order is based—10 C.F.R. § 50.7—is grounded not only in the AEA, but also in the Energy Reorganization Act of 1974 (the "ERA").[15] As the Commission explained in its 2004 *Watts Bar* decision, "[t]he Commission invoked both the AEA and the ERA as authority when promulgating section 50.7."[16] As further explained in *Watts Bar*, the ERA established "the right to defend against a whistleblower discrimination charge."[17] Here, the Staff has alleged that Ms. Henderson's act of filing a complaint was itself an "adverse action" under 50.7.[18] Therefore, the ERA provides Ms. Henderson with an independent basis for standing in this proceeding—her right to defend against the charges that have caused her reputational harm—without invoking the zone of interests test that has been applied at times where the underlying violation is related only to the AEA.

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[13] Hearing Request at 3.

[14] Staff Answer at 5.

[15] "The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act." 10 C.F.R. § 50.7.

[16] *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1), CLI-04-24, 60 NRC 160, 185 (2004).

[17] *Watts Bar*, CLI-04-24, 60 NRC at 192. The Commission explained that it was providing the same right to defend against a discrimination charge in NRC enforcement proceedings as exists under the ERA in Department of Labor proceedings. *Id.*

[18] Order Appendix at 2, 3.

However, even if Ms. Henderson is required to demonstrate that her reputational harm falls with the AEA's zone of interest as the Staff claims, she meets that test. The Commission clearly believes that an individual's reputation should directly affect his or her ability to find employment in the nuclear industry. In fact, the desire to tarnish a wrongdoer's reputation in the nuclear industry was precisely one of the Commission's stated purposes when it amended its rules in 1991 to permit enforcement orders to be issued to unlicensed persons.[19] The Commission explicitly stated that a purpose of the rule change was to address circumstances present prior to the rule change where "the wrongdoer [could] seek other employment in the same field at another NRC or Agreement State-licensed facility, often without knowledge of the NRC or knowledge by the new employer of the employee's prior conduct."[20] Although the present case concerns TVA's alleged violations of 10 C.F.R. § 50.7, and not an order to an unlicensed individual (the subject of the 1991 rulemaking), these statements regarding the need to alert the nuclear industry to an individual's past violations of NRC requirements demonstrates that the Commission views an individual's professional reputation as falling within the AEA's public health and safety zone of interests that the Commission is required to protect.

In addition, the Supreme Court has traditionally construed the zone-of-interest test liberally, stating that it is "not meant to be especially demanding."[21] The Court merely looks for "some indication' that the petitioner's interest is arguably among those interests protected by the relevant statute."[22] Ms. Henderson has satisfied this "not … especially demanding" standard.

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[19] Revisions to Procedures to Issue Orders: Deliberate Misconduct by Unlicensed Persons 56 FED. REG. 40,664, 40,665 (Aug. 15, 1991).

[20] *Id.*

[21] *Clarke v. Securities Industry Ass'n*, 479 U.S. 388, 399 (1987).

[22] *See Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 10 (1998) (citing *Nat'l Credit Union Admin. v. First Nat. Bank & Tr. Co.*, 522 U.S. 479, 494 n.7 (1998)).

The Staff, however, cites two NRC cases suggesting that reputational injury is outside the AEA's zone of interests.[23] But these cases are not analogous to Ms. Henderson's. In the two cases cited by the Staff, the reputational injury alleged was incidental to a third-party dispute and not the direct result of an agency enforcement action. In contrast, the reputational injury to Ms. Henderson is a direct result of the NRC Staff's enforcement actions. In addition, neither case relates to a violation of 10 C.F.R. § 50.7.

The Staff cites *Palisades*, where local unions sought to intervene in a license transfer proceeding to protect their interests against a potential reorganization.[24] The unions speculated that a reorganization created a safety risk at the Pilgrim nuclear plant, which, if such a risk were to result in an accident, would constitute a reputational injury to its members' interests.[25] But in that case, the alleged reputational harm arose from a potential dispute between the licensee and the unions, not from the Staff's actions. *Palisades* is therefore irrelevant here, where the Staff's enforcement action is the direct cause of the reputational harm to Ms. Henderson.

Similarly, the Staff cites *North Anna*,[26] a licensing proceeding for the North Anna nuclear facility. But that case does not help the Staff's position. In *North Anna*, a utility's contractor-supplier sought to intervene in a licensing proceeding, alleging it could suffer reputational injury if an accident occurred as a result of re-work the utility conducted on welding previously performed by the contractor.[27] The Board in that case ruled the contractor's interest in protecting its business reputation did not fall within the zone of interests of the AEA, though it later permitted

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[23] Staff Answer at 5 n.24.

[24] Staff Answer at 5 n.24 *(citing Entergy Nuclear Operations, Inc., and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 256 (2008)).

[25] *Palisades*, CLI-08-19, 68 NRC at 265-66.

[26] Staff Answer at 5 n.24 (*citing Virginia Electric and Power Company* (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 100-01 (1976)).

[27] *North Anna*, ALAB-342, 4 NRC at 100-01, 105.

the contractor's discretionary intervention.[28] In any event, the reputational harm alleged in *North Anna* arose from a dispute between a licensee and its contractor, not the Staff's enforcement actions, as is the case here.

For these reasons, the harm to Ms. Henderson's reputation from the TVA Order is direct and palpable, sufficiently an injury-in-fact, and otherwise within the AEA's zone of interests.

### B. The Chilling Effect of the Order Is a Cognizable Injury Clearly Within the Scope of the AEA

The Staff also claims that the Order's chilling effect to Ms. Henderson does not demonstrate her standing for two reasons: (1) Ms. Henderson has allegedly failed to cite case law holding that a chilling effect is a sufficiently concrete injury to support standing;[29] and (2) the chilling effect asserted by Ms. Henderson is outside the AEA's zone of interests because "[t]he AEA does not extend the Commission's jurisdiction to general workplace civility concerns."[30] The Staff is wrong on both counts.

The case law cited in Ms. Henderson's Hearing Request holds that chilling effect is a cognizable injury demonstrating standing, particularly when coupled with harm to one's reputation. As the Sixth Circuit held in the *Parsons* case (cited on page 5 of Ms. Henderson's Hearing Request): "[s]pecifically, where claims of a chilling effect are accompanied by concrete allegations of reputational harm, the plaintiff has shown injury in fact."[31] Similarly, in *Meese v. Keene* (cited on page 5 of Ms. Henderson's Hearing Request), the Supreme Court found the plaintiff had standing because he alleged more than a mere chilling effect by also alleging

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[28] *Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631, 633-34 (1976).

[29] Staff Answer at 5-6.

[30] Staff Answer at 6-7.

[31] *Parsons v. U.S. Dep't of Justice*, 801 F.3d 701, 711 (6th Cir. 2015) (citing *Meese v. Keene*, 481 U.S. 465, 473-75 (1987)).

reputational injury—precisely what Ms. Henderson alleges here.[32] Like the plaintiff in *Meese* who was chilled from showing certain films for fear of future reputational harm, Ms. Henderson is similarly chilled from raising concerns within the nuclear industry for fear of future harm to her reputation.[33]

As Ms. Henderson stated in her Pre-decisional Enforcement Conference, she has learned from this enforcement matter that she "should not have raised a valid and substantiated complaint of harassment."[34] The Staff's Order labels her as a person who files complaints as a "pretext" for retaliation, and as a manager who engages in deliberate misconduct in violation of NRC requirements.[35] And, like the plaintiffs in *Parsons* who were stigmatized as a result of government action, Ms. Henderson has similarly already suffered the impacts of stigmatization from filing her complaint—public embarrassment and impacts on potential future employment opportunities—that are sufficient for her to fear raising concerns in the future.[36] Courts have found a chilling effect is a concrete injury sufficient to support standing in analogous circumstances where plaintiffs' past experience of arrest or prosecution results in them being chilled from exercising their rights.[37] The Order's chilling effect, particularly when combined with the reputational harm Ms. Henderson has already suffered and is likely to suffer in the future if she raises concerns, is sufficient to support Ms. Henderson's standing in this proceeding.

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[32] *Meese*, 481 U.S. at 473-74.

[33] *Id.*

[34] Transcript of Pre-decisional Enforcement Conference Re Erin Henderson, No. IA-20-009 at 94 (June 23, 2020).

[35] Order Appendix at 2, 4.

[36] *Parsons*, 801 F.3d 701 at 712 (finding "[s]tigmatization also constitutes an injury in fact for standing purposes").

[37] *See, e.g.*, *United Food & Commercial Workers Int'l Union, AFL-CIO, CLC v. IBP, Inc.*, 857 F.2d 422, 427 (8th Cir. 1988) ("Contrary to defendants' argument, we believe such past experience is relevant to determining the existence of a present threatened injury."); *Wilson v. Stocker*, 819 F.2d 943, 946 (10th Cir. 1987) (finding the plaintiff suffered "not only the threat of future prosecution, but an ongoing injury resulting from the statute's chilling effect on his desire to exercise his First Amendment rights").

The Staff next claims that the Order's chilling effect on Ms. Henderson is outside the AEA's zone of interests because "[t]he AEA does not extend the Commission's jurisdiction to general workplace civility concerns."[38] The AEA's zone of interests is not so narrow as the Staff suggests for multiple reasons.

First, if the Staff's assertion is true, then the Staff should not have issued Violations 1 and 3 (and the aspects of the Order related to those Violations) in the first instance. Here, the Staff issued Violations 1 and 3 to TVA based on Ms. Henderson's action of filing a harassment Complaint, and escalated the Violations to Severity Level II in part because of Ms. Henderson's alleged deliberate misconduct. According to the NRC's Enforcement Manual, Severity Level II violations "[u]sually involve actions with actual or high potential to have serious consequences on public health and safety or the common defense and security."[39] The Staff cannot have it both ways, claiming on the one hand that allegedly serious violations of NRC requirements occurred when Ms. Henderson filed her Complaint, while claiming on the other hand that these issues are beyond the jurisdiction of the AEA for purposes of establishing standing.[40]

Second, the Staff is incorrect that in asserting that Ms. Henderson's Complaint was "by its own terms, not based on nuclear safety concerns," and thus "her claimed harm of being chilled from filing future such complaints likewise necessarily falls outside the zone of interests protected by the AEA."[41] Notwithstanding the Staff's continued mischaracterizations of Ms. Henderson's Complaint, the Complaint explicitly connects the disrespectful work environment Ms. Henderson

[38] Staff Answer at 6-7.

[39] Nuclear Regulatory Commission Enforcement Manual at 23 (Oct. 2019) (ADAMS Accession No. ML19274C228).

[40] Staff Answer at 7 ("The AEA does not extend the Commission's jurisdiction to general workplace civility concerns.").

[41] Staff Answer at 6-7.

was suffering to an adverse impact on her ability to carry out her nuclear safety-related job functions.

Ms. Henderson's Complaint alleged egregious and longstanding acts of unprofessional and disrespectful workplace behavior as evidenced in the Complaint's opening paragraph, where Ms. Henderson plainly alleged that certain persons were "complicit in workplace bullying and creating a hostile work environment for [her]"; that "over the course of multiple years, this behavior has been both repetitive and pervasive"; and that "[i]ndividuals have either directly or indirectly acted in attempt to intimidate and undermine [Ms. Henderson] in [her] role as a senior regulatory leader."[42] Further, the Staff continues to ignore the paragraph on page 8 of her Complaint where Ms. Henderson's clearly states that she believed she was being "targeted" for having raised a previous concern in April 2016, and as a result, individuals were working to create a hostile work environment for her.[43]

When she filed her Complaint, Ms. Henderson was TVA's Director of Corporate Nuclear Licensing, with oversight functions for all three of TVA's operating nuclear facilities, including the Sequoyah plant, where the main perpetrator of the disrespectful conduct towards Ms. Henderson (and a subject of Ms. Henderson's April 2016 concern) served as the Sequoyah Site Licensing Manager. Her Complaint states in the second paragraph that the disrespectful workplace behavior Ms. Henderson suffered "resulted in [her] fear to address or challenge individual or site performance due to the potential repercussions" and her "having to limit [her] interactions with one [TVA nuclear] site in particular and/or not being able to performance manage individuals within [her] own organization"; and that [she] perceive[d] that [her] ability to fully

[42] Staff Answer Exhibit 10 at 1.
[43] *Id.* at 8.

perform the responsibilities outlined in [her] job description has been impacted."[44] In short, the Staff's claim that Ms. Henderson's Complaint had no basis in nuclear safety does not withstand the barest of scrutiny.

Finally, notwithstanding her past concerns, Ms. Henderson is chilled from raising any concern in the future—nuclear or otherwise—because of the stigma attached to her by this Order's allegation that she files formal complaints as a pretext for gathering evidence to retaliate against others.[45]

For these reasons, the ongoing chilling effect Ms. Henderson will experience as a result of this Order is a cognizable harm within the zone of interests contemplated by the AEA.

## III. In the Alternative, Ms. Henderson Is Entitled to Discretionary Intervention

The Staff opposes Ms. Henderson's discretionary intervention, claiming she will not contribute to a sound record, that she has no financial interest in the proceeding, and that her interests are already adequately represented.[46] The Staff is wrong again.

Ms. Henderson's case for discretionary intervention is clear. Ms. Henderson's actions alone are the bases for TVA's Violations 1 and 3. Her alleged deliberate misconduct—a violation based on the perpetrator's intent and *mens rea*—is the escalating factor for those violations. There's no disputing that Ms. Henderson's "participation may reasonably be expected to assist in developing a sound record," which is the factor given the greatest weight when evaluating a discretionary intervention request.[47] The Staff's response to this is to claim that "Ms. Henderson is likely to be called as a fact witness in this matter."[48] But if the possibility that an individual

[44] Staff Answer Exhibit 10 at 1.

[45] Order Appendix at 2, 4.

[46] Staff Answer 8-11.

[47] *Andrew Siemaszko*, CLI-06-16, 63 NRC 708, 722 n.47 (2006) (recognizing the petitioner's ability to contribute to the record is "foremost in importance" in deciding whether to allow discretionary intervention).

[48] Staff Answer at 9.

might be a witness in a proceeding were sufficient to overcome this factor, then there would be no point to allowing discretionary intervention in the first place—anyone could be called as a witness.

Indeed, Boards have permitted discretionary intervention where intervenors' contributions were limited to "construction quality or control problems which may exist" because a union member-intervenor was a construction worker, or "problems attendant to transportation in that area" because a union member lived in the same area and could opine on evacuation routes for emergency planning.[49] These are issues that likely could have been addressed by witness testimony, but discretionary intervention was nevertheless granted.

Further still, the Staff's Answer says it is "likely" that Ms. Henderson will be called as a fact witness. As the Staff itself therefore acknowledges, there is no guarantee that Ms. Henderson will be called to appear as a fact witness and have a chance to contribute her unique first-hand knowledge to this proceeding. Her admission to the proceeding would provide such a guarantee.

The Staff also claims that Ms. Henderson has not shown or demonstrated a property or financial interest in the proceeding, or how those interests would be affected by the decision in the proceeding.[50] But as discussed throughout Ms. Henderson's Hearing Request and this reply, that is obviously not true. The Order and its underlying Violations harm Ms. Henderson's reputation and chill her from raising concerns in the future. A decision reversing the Violations and rescinding the Order will address her harms.

In sum, Ms. Henderson satisfies the factors that weigh in favor of discretionary intervention.

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[49] *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 88 (1979).

[50] Staff Answer at 10.

The factors that weigh against granting discretionary intervention are not present here. The Staff claims that Ms. Henderson's interests in this proceeding are "already fully protected by TVA's hearing request."[51] But, as past Boards have recognized, one party cannot be relied upon to protect the rights of another even where their interests are similar, finding that parties "cannot be expected to pursue all issues with the same diligence as an intervenor would pursue its own issue,"[52] and that even where other parties may develop the evidentiary record, an intervenor's interest may "not be fully represented by existing parties."[53] In *Ohio Edison Co.*, for example, a licensing board permitted discretionary intervention even where the parties had "interest similar to those [the intervenor was] trying to protect."[54] For these same reasons, Ms. Henderson should be permitted to protect her own interests.

The Staff correctly notes that Ms. Henderson and TVA share the same counsel, appearing to suggest that would assure Ms. Henderson's interests are protected even if she is not a party to the proceeding. This suggestion is obviously mistaken. If Ms. Henderson is not admitted to the proceeding, neither she nor her counsel will be able to ensure *her* interests are fully protected in *TVA's* proceeding. Nor would it be proper for TVA's counsel to attempt to do so.

Finally, the Staff claims that Ms. Henderson's formal participation would broaden or delay the proceeding.[55] Again, the Staff is incorrect. First, the standard is whether Ms. Henderson's participation would *inappropriately* broaden or delay the proceeding.[56] The Staff nowhere asserts

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[51] Staff Answer at 10.

[52] *Cincinnati Gas and Electric Co.* (William H. Zimmer Nuclear Station), LBP-79-22, 10 NRC 213, 215 (1979).

[53] *North Anna*, ALAB-342, 4 NRC at 109.

[54] *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 250-51 (1991), *appeal denied* CLI-92-11, 36 NRC 47 (1992), *petition for review denied City of Cleveland v. NRC*, 68 F.3d 1361 (D.C. Cir. 1995).

[55] Staff Answer at 9.

[56] 10 C.F.R. § 2.309(e)(2)(iii) ("The extent to which the requestor's/petitioner's participation will *inappropriately* broaden the issues or delay the proceeding" (emphasis added)).

that any of the alleged potential for broadening or delaying the proceeding would be inappropriate, thus the Staff has failed to show that this factor weighs against Ms. Henderson's discretionary intervention.

Further, Ms. Henderson's participation as a party would not broaden any aspect of this proceeding—the Order, its Appendix, and its underlying Violations are the matters in dispute, no more and no less.

In addition, the Staff's claim that Ms. Henderson's participation will delay the proceeding falls short. The Staff claims that, if admitted as a party, Ms. Henderson might "put on her own witnesses, cross-examine witnesses, engage in discovery, file motions, etc.," all of which, according to the Staff, will lengthen the proceeding.[57] Again, the Staff does not explain how any of these activities would be inappropriate, as required by the rule. And while it is possible that Ms. Henderson's participation as a party may include engaging in discovery and filing motions, such acts would be done in accordance with any schedule agreed to by the parties and the Board. In addition, Ms. Henderson might call her own witnesses, or cross-examine other witnesses, at hearing, but those acts would be well within the confines of the hearing schedule issued by the Board, and any delay would be minimal—perhaps hours—and hardly inappropriate.

The remaining concern raised by the Staff—a settlement involving TVA but not including Ms. Henderson[58]—is pure speculation, and as such is far outweighed by the factors weighing heavily in favor of Ms. Henderson's discretionary intervention.

[57] Staff Answer at 11-12.

[58] Staff Answer at 12.

## IV. Conclusion

For the foregoing reasons, the Board should grant Ms. Henderson's request for a hearing in this proceeding or, in the alternative, grant her request for discretionary intervention.

Respectfully submitted,

*/s Electronically signed by Anne R. Leidich/*

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Dated: December 30, 2020

Counsel for Erin Henderson

**December 30, 2020**

**UNITED STATES OF AMERICA**
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Erin Henderson's Reply to NRC Staff Answer to Erin Henderson's Request for Hearing or in the Alternative Discretionary Intervention has been served through the E-Filing system in the above-captioned proceeding this 30th day of December, 2020.

*/s Electronically signed by Anne R. Leidich/*

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