

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD PANEL**

**BEFORE THE LICENSING BOARD**

In the Matter of	)	
Tennessee Valley Authority	)	Docket Nos. 52-014, 52-015
Bellefonte Nuclear Power Plant	)	ASLBP No. 08-864-02-COL-BD01
Units 3 and 4	)	July 18, 2008

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**RESPONSE OF THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE,  
ITS CHAPTER BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM AND  
THE SOUTHERN ALLIANCE FOR CLEAN ENERGY  
TO THE LICENSING BOARD’S JULY 9<sup>TH</sup> REQUEST FOR ADDITIONAL  
BRIEFING CONCERNING TIMELINESS OF INTERVENTION PETITION**

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**Introduction**

In accordance with the Atomic Safety and Licensing Board Panel’s Memorandum and Order of July 9, 2008 permitting Joint Petitioners to reply to the NRC Staff’s filing of July 14 regarding the timeliness of intervention petition, the Blue Ridge Environmental Defense League (“BREDL”), its chapter Bellefonte Efficiency and Sustainability Team (“BEST”) and the Southern Alliance for Clean Energy (“SACE”) (hereinafter “Joint Petitioners”) hereby file their response.

**Background**

Notice of hearing and opportunity to petition for leave to intervene in the Tennessee Valley Authority’s combined construction and operation license for Bellefonte

Units 3 and 4 was first published in 73 Fed. Reg. 7611 (February 8, 2008). On February 29, 2008, the Bellefonte Efficiency and Sustainability Team and the Blue Ridge Environmental Defense League submitted a motion to suspend the notice of hearing. BEST and BREDL submitted a supplemental motion to suspend the hearing notice or request an extension of the deadline to submit petitions for leave to intervene on April 2<sup>nd</sup>. On April 7, 2008 the Commission issued an order granting a 60-day extension for interested persons to file a petition for leave to intervene in the proceeding, thereby setting a new deadline of June 6, 2008. 73 Fed. Reg. 19904 (April 11, 2008). BREDL, BEST and SACE filed a petition for leave to intervene and a request for hearing on June 6, 2008 and, pursuant to the ASLBP's Initial Prehearing Order of June 18<sup>th</sup>, filed a Supplement to the Petition on June 26<sup>th</sup>. TVA and NRC Staff filed their respective replies on July 1<sup>st</sup> and Joint Petitioners replied on July 8, 2008. In response to the ASLBP's Memorandum and Order of July 9<sup>th</sup>, the NRC Staff stated its position on the intervention petition's timeliness on July 14<sup>th</sup>. ("NRC Staff Response")

### **Discussion**

The NRC Staff Response submitted July 14<sup>th</sup> cites 10 CFR § 2.302(d)<sup>1</sup> in support of their opinion on timeliness. On the contrary, Joint Petitioners believe that this regulation supports a finding of timeliness in two ways: First, the "last act" of electronic submission by the filer is to click on "Submit Document" at the NRC Electronic

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<sup>1</sup> 10 CFR § 2.302 Filing of documents. (d) Filing is considered complete: (1) By electronic transmission when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically; (2) By first-class mail as of the time of deposit in the mail;

Information Exchange Adjudicatory Docket Submission Form web page.<sup>2</sup> Joint Petitioner's representative did perform the *last act* before the deadline. As Joint Petitioners have detailed in previous filings and following, the NRC EIE was unprepared to receive the documents submitted by Joint Petitioners on June 6<sup>th</sup>. Second, paragraph 2 of 10 CFR § 2.302(d) stipulates that a filing is considered complete at the "time of deposit in the mail." The first-class mail rule is analogous to the electronic system in that the paper filer is not held responsible for the limitations of the U.S. Postal Service.

In addition to regulatory language, the record in this matter clearly shows that NRC Rulemakings & Adjudications staff stated the petition was timely. Further, Rulemakings & Adjudications corrected an error made by the Secretary of the Commission regarding the date of the intervention petition in her cover memorandum forwarding the Petition to the ASLBP Chief Administrative Judge.<sup>3</sup> The NRC Staff Response cites the Rulemakings & Adjudications memorandum of June 16, 2008 which concludes "The actual date of the petition is June 6, 2008."<sup>4</sup>

Finally, the electronic mail correspondence between Joint Petitioner's representative and the Commission illustrates EIE's technical problems the solution to which eluded NRC staff and IT specialists for days. As Joint Petitioners stated in our June 26<sup>th</sup> Supplement to Petition, the technical problem was not resolved until BREDL broke the document into 7 MB packets. The initial electronic receipt message from the

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<sup>2</sup> <https://eie.nrc.gov/cgi-bin/eieone.exe?f=retrieve&docid=000>

<sup>3</sup> NRC Staff Response to Licensing Board's Request for Additional Briefing Concerning Timeliness of Intervention Petition, footnote 5, July 14, 2008. This footnote cites a Memorandum from the Assistant for Rulemakings & Adjudications to the Bellefonte Proceeding Service List dated June 16, 2008.

<sup>4</sup> Memorandum from the Assistant for Rulemakings & Adjudications to the Bellefonte Proceeding Service List dated June 16, 2008

Office of the Secretary states, “The file(s) associated with this submission comprise 10351 KB.” Attachment A to this response contains five exchanges, numbered to aid in the chronology, which detail the resolution of the problems. Attachment B is a copy of telephone notes taken by Louis Zeller in a discussion with Emile Julian on June 10, 2008 which shows the attempts to solve the EIE technical problems and which states the date of posting as June 6<sup>th</sup>.

**Conclusion**

The NRC Staff Response incorrectly disputes the intervention petition’s timeliness. As demonstrated above, technical problems with the Commissions electronic docketing system impeded the posting of documents. Joint Petitioners submitted the intervention petition on June 6, 2008 and performed due diligence by cooperating with NRC staff to rectify the consequent problems. Joint Petitioners submit that the intervention petition is timely on the basis of the record and on the basis of the law.

Respectfully submitted,

A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

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