

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD PANEL

BEFORE THE LICENSING BOARD

In the Matter of)	
)	Docket Nos. 52-014, 52-015
Tennessee Valley Authority)	
)	ASLBP No. 08-864-02-COL-BD01
Bellefonte Nuclear Power Plant)	
Units 3 and 4)	July 25, 2008

**MOTION TO ADMIT ALL PORTIONS OF PETITIONERS' REPLY
BY THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE,
ITS CHAPTER BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM AND
THE SOUTHERN ALLIANCE FOR CLEAN ENERGY**

In accordance with 10 CFR § 2.323(a), the Blue Ridge Environmental Defense League, its chapter Bellefonte Efficiency and Sustainability Team and the South Alliance for Clean Energy (“Petitioners”) hereby file this motion to admit all portions of our reply to NRC staff and the Tennessee Valley Authority filed July 8, 2008.

Background

On June 6, 2008, Petitioners filed their petition to intervene in the matter captioned above. On June 26, 2008, pursuant to an ASLBP order, Petitioners filed a Supplemental Petition. On July 1, 2008, the staff of the Nuclear Regulatory Commission (“NRC Staff”) and the Tennessee Valley Authority (“TVA”) filed their respective answers to the Petition. On July 8, 2008, Petitioners filed a reply to the NRC Staff’s and

TVA's answers ("Reply"). On July 11, 2008 TVA filed an "Applicant's Motion to Strike Portions of Petitioners' Reply," ("Motion to Strike") and on July 15, 2008 NRC Staff filed a "Response to Applicant's Motion to Strike Portions of Petitioners' Reply" which supports TVA's position.

Discussion

TVA's Motion to Strike asserts, "Petitioners' Reply contains extensive new arguments, references, and attachments not contained in their Petition." Motion to Strike at 2. However, as discussed below, the errors identified by TVA were excusable errors.

Indeed, some of the Petitioners' affidavits from expert witnesses were filed late. For this we apologize. Nevertheless, the inclusion of affidavits of expert witnesses in the Reply instead of the Petition was not a serious error. These omissions were corrected as soon as they were brought to our attention.

Petitioners' Reply does not raise new arguments; it emphasizes issues raised in the Petition. Information provided in Petitioners' Reply was a *bona fide* response to rebuttals made by TVA and NRC Staff. The contentions of the June 6th Petition state the overall arguments to be raised. Rules of procedure for prehearing conferences¹ permit

¹ 10 CFR § 2.329 (c) Other matters for consideration. As appropriate for the particular proceeding, a prehearing conference may be held to consider such matters as:

- (1) Simplification, clarification, and specification of the issues;
- (2) The necessity or desirability of amending the pleadings;
- (3) Obtaining stipulations and admissions of fact and the contents and authenticity of documents to avoid unnecessary proof, and advance rulings from the presiding officer on the admissibility of evidence;
- (4) The appropriateness and timing of summary disposition motions under subparts G and L of this part, including appropriate limitations on the page length of motions and responses thereto;
- (5) The control and scheduling of discovery, including orders affecting disclosures and discovery under the discovery provisions in subpart G of this part.
- (6) Identification of witnesses and documents, and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence, including the establishment of reasonable limits on the time allowed for presenting direct and, where permitted, cross-examination evidence;

contentions, motions and other pertinent matters to be simplified, clarified and specified. They allow authentication of documents. They allow identification of expert witnesses and documents. They allow the disposition of pending motions. 10 CFR § 2.329 Plainly, the extant matter has not reached the prehearing phase; the Petitioners' intervention is at an early stage. Precisely because the proceeding is at an early stage, Petitioners believe that it would be premature to strike portions of their Reply.

As required by 10 CFR § 2.309, the June 6th Petition was based on expert opinions.² The expertise of Dr. Shawn Young, Dr. Ross McCluney and Ms. Diane D'Arrigo was the basis for contentions NEPA-B, NEPA-D and MISC-F, respectively. Although Dr. Young was not identified as the expert in the Petition of June 6th, Contention NEPA-B included numerous references and citations provided by him. This pattern was also followed by McCluney and D'Arrigo.

Petitioners hope that the substance of our contentions, our Reply and the TVA's and NRC Staff's answers and all motions will be given a full opportunity for hearing by the ASLBP. As *pro se* litigants, Petitioners have worked hard to bring important issues before the Commission. To strike cogent arguments which have a bearing on the proposed license decision because of procedural errors would not be respectful of the

(7) The disposition of pending motions;
(8) Settlement and the use of special procedures to assist in resolving any issues in the proceeding;
(9) The need to adopt special procedures for managing potentially difficult or protracted proceedings that may involve particularly complex issues, including the establishment of separate hearings with respect to any particular issue in the proceeding;...

² Contentions must set forth *inter alia* "a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue...." 10 CFR § 2.309 (f).

many hours of work by the people who contributed to the Petitioners' intervention request.

Pursuant to 10 CFR § 2.323(b), efforts to resolve the issues detailed above have been unsuccessful. Petitioners' were contacted by counsel for TVA before the Motion to Strike was filed and we are at impasse.

Conclusion

As discussed above, the mistakes made by Petitioners were excusable errors. The Petitioners' Reply corrected these omissions. Therefore, Petitioners hereby move to have all information submitted in this matter considered by the Commission in its decisions regarding the Bellefonte construction and operation license.

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.

Louis A. Zeller
Blue Ridge Environmental Defense League
PO Box 88
Glendale Springs, NC 28629
(336) 982-2691 (336) 977-0852
BREDL@skybest.com

July 25, 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of the July 25, 2008 MOTION TO ADMIT ALL PORTIONS OF PETITIONERS' REPLY BY THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, ITS CHAPTER BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM AND THE SOUTHERN ALLIANCE FOR CLEAN ENERGY was served this day on the following persons via Electronic Information Exchange.

US Nuclear Regulatory Commission
Office of the Secretary
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
(E-mail: hearingdocket@nrc.gov)

Administrative Judge
Dr. Anthony J. Baratta
Atomic Safety and Licensing Board Panel
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(Email: ajb5@nrc.gov)

Office of Commission Appellate
Adjudication
Mail Stop: O-16C1
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: ocaamail@nrc.gov)

Administrative Judge
Dr. William W. Sager
Atomic Safety and Licensing Board Panel
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(Email: wws1@nrc.gov)

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(Email: gpb@nrc.gov)

Erica LaPlante, Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
US Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: eal1@nrc.gov)

US Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15 D21
Washington, DC 20555-0001
Kathryn Winsberg, Esq.
(E-mail: klw@nrc.gov)
Patrick A. Moulding, Esq.
E-mail: pam3@nrc.gov
Ann P. Hodgdon, Esq.
(E-mail: aph@nrc.gov)
Joseph Gilman, Paralegal
(E-mail: jsg1@nrc.gov)
OGC Mail Center
(E-mail: OGCMailCenter@nrc.gov)

Bellefonte Efficiency & Sustainability Team
Louise Gorenflo
185 Hood Drive
Crossville, TN 28555
(E-mail: lgorenflo@gmail.com)

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Steven P. Frantz, Esq.
(E-mail: sfrantz@morganlewis.com)
Stephen J. Burdick, Esq.
(E-mail: sburdick@morganlewis.com)
Mauri Lemoncelli, Esq.
(E-mail: mlemoncelli@morganlewis.com)
Alvin H. Gutterman, Esq.
(E-mail: agutterman@morganlewis.com)
Jonathan M. Rund, Esq.
(E-mail: jrund@morganlewis.com)

Tennessee Valley Authority
400 West Summit Hill Dr., WT 6A-K
Knoxville, TN 37902
Edward J. Viglucci, Esq.
E-mail: ejviglucci@tva.gov
Scott A. Vance, Esq.
(E-mail: savance@tva.gov)

Pillsbury, Winthrop Shaw Pittman, LLP
2300 N Street, NW
Washington, DC 20037
R. Budd Haemer, Esq.
(E-mail: Robert.Haemer@pillsburylaw.com)
Maria D. Webb, Senior Energy Legal Analyst
(E-mail: maria.webb@pillsburylaw.com)

North Carolina Waste Awareness and
Reduction Network
PO Box 2793
Chapel Hill, NC 27515
John D. Runkle, Esq.
(E-mail: jrunkle@pricecreek.com)

Southern Alliance for Clean Energy
428 Bull Street, Suite 201
Savannah, Georgia 31401
Sara Barczak, Dir
(E-mail: sara@cleanenergy.org)

Signed this day in Glendale Springs, NC



Louis A. Zeller
Blue Ridge Environmental Defense League
PO Box 88 Glendale Springs, NC 28629
(336) 982-2691 (336) 977-0852
(E-mail: BREDL@skybest.com)

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