

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of Tennessee Valley Authority Bellefonte Nuclear Power Plant Units 1 and 2 Construction Permits CPPR-122 and CPPR-123

Docket Nos. 50-438 and 50-439

ASLBP No. 10-896-01-CP-BD01

January 25, 2010

**JOINT PETITIONERS' ANSWER TO TENNESSEE VALLEY AUTHORITY'S
MOTION TO STRIKE SUPPLEMENTAL BASIS FOR CONTENTION 6**

Pursuant to 10 CFR § 2.323 and the Atomic Safety and Licensing Board's January 15, 2010 Memorandum and Order, Blue Ridge Environmental Defense League, its chapter Bellefonte Efficiency and Sustainability Team and the Southern Alliance for Clean Energy ("Joint Petitioners") hereby file their answer in opposition to the Tennessee Valley Authority ("TVA") January 14th motion to strike.

TVA's motion states that Joint Petitioners Supplemental Basis is deficient for two reasons: 1) it does not seek leave of the Board to file; and 2) it contains "superficial assertions of compliance with late-filing criteria under 10 CFR § 2.309(f)(2)(i)-(iii).

Joint Petitioners filing is not defective for the following reasons: 1) Joint Petitioners have already sought leave to intervene and the matter is extant; 2) Petitioners respectfully acknowledge the Commission's May 20th Order that contentions be held in abeyance. However, the stated intent of the order was to resolve the threshold authority issue before "taking action" on further questions. The May 20th Order states, "The Commission may refer Petitioners' remaining contentions to the Atomic Safety and

Licensing Board Panel at a future date.” At that time, NRC Staff and TVA were ordered not to file respective answers to the Intervention Petition, but the Commission placed no constraint upon the Joint Petitioners; 3) As we have argued previously, “the filing of the Supplemental Basis was far from an attempt to add or alter the issues at play in the proceeding, nor to make new legal argument. In effect, it was nothing more than a notice of supplemental authority, which can generally be offered at any time;”¹ and 4) The supplemental filing satisfied the requirements of 10 C.F.R. § 2.309(f)(2) *prima facie*: the supplemental information is based on a recent incident, the incident further supports Contention 6, TVA’s letter to NRC was not available to Petitioners until December 10th, and the supplemental brief was filed within 30 days. Thus, Joint Petitioners complied with the three part test for materiality, availability and timeliness.

Therefore, we oppose TVA’s motion to dismiss and request that Joint Petitioner’s supplemental basis for Contention 6 be made a part of this proceeding.

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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¹ Petitioners’ Opposition to Tennessee Valley Authority’s Motion to Strike Petitioners Supplemental Basis for proposed Contention 5, July 27, 2009

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CERTIFICATE OF SERVICE

I hereby certify that copies of the Joint Petitioners' Answer to Tennessee Valley Authority's Motion to Strike Supplemental Basis for Contention 6 were served this day on the following persons via Electronic Information Exchange.

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Signed this day in Glendale Springs, NC

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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