

# Blue Ridge Environmental Defense League

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December 20, 2013

Commission Secretary  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attention Rulemaking & Adjudication Staff  
[Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov)

**RE: Docket No. NRC-2012-0246**  
**Environmental Impact Statement for Waste Confidence Rule**  
**10 CFR §51.23**

Dear Secretary:

On behalf of the Blue Ridge Environmental Defense League, I submit the following comments on nuclear waste storage at power plant sites, the waste confidence draft generic environmental impact statement and the draft rule. These remarks will supplement our written comments of January 2, 2013, November 4, 2013 and those submitted on our behalf today by Diane Curran, Esq.

The Nuclear Regulatory Commission has published a proposed rule with the following changes<sup>1</sup>

- The title of 10 CFR 51.23 would be revised to "Environmental impacts of storage of spent nuclear fuel beyond the licensed life for operation of a reactor."
- Paragraph (a) of 10 CFR 51.23 would be revised to provide the Commission's generic determination on continued storage of spent nuclear fuel. The proposed amendments would state that the Commission has concluded that the analysis in NUREG-02157, "Waste Confidence Generic Environmental Impact Statement" (DGEIS) generically supports the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor and supports the Commission's determinations that it is feasible to safely store spent nuclear fuel beyond the licensed life for operation of a reactor and to have a mined geologic repository within 60 years following the licensed life for operation of a reactor.
- Paragraph (b) of 10 CFR 51.23 would be revised to clarify that license renewals for an ISFSI are included in the scope of the generic determination.
- Conforming changes would be made to 10 CFR 51.61, 51.80(b), and 51.97(a) to clarify that ISFSI license renewals are included in the scope of the generic determination.
- The "Offsite radiological impacts of spent nuclear fuel and high-level waste disposal" issue would be reclassified as a Category 1 impact in Table B-1 of appendix B of 10 CFR part 51, "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants," and the finding column entry would be revised to address continued storage.
- The finding column entry for the "Onsite storage of spent nuclear fuel issue" in Table B-1 appendix B of subpart A of 10 CFR part 51 would be revised to include the period of continued storage beyond the licensed life for operation of a reactor.

<sup>1</sup> Proposed Rule, Waste Confidence-Continued Storage of Spent Nuclear Fuel, 78 FR 56776, September 13, 2013.

On June 8, 2012, the U.S. Court of Appeals for the District of Columbia Circuit issued an order vacating the U.S. Nuclear Regulatory Commission's Waste Confidence Decision Update.<sup>2</sup> Both rules were remanded to the NRC and remain in suspension until at least September 2014. These rules provided part of the licensing basis regarding the safety and environmental impacts of irradiated reactor fuel storage and disposal for every reactor in the nation.

There is no doubt that the environmental impacts of irradiated fuel storage must be addressed in all NRC reactor licensing decisions. The courts have held that the waste confidence decision (WCD) is a predicate to every licensing decision.<sup>3</sup> On June 8, 2012, the DC Circuit Court held that:

The WCD makes generic findings that have a preclusive effect in all future licensing decisions; it is a pre-determined stage of each licensing decision.<sup>4</sup>

And further,

It is not only reasonably foreseeable but eminently clear that the WCD will be used to enable licensing decisions based on its findings. The Commission and the intervenors contend that the site-specific factors that differ from plant to plant can be challenged at the time of a specific plant's licensing, but the WCD nonetheless renders uncontestable general conclusions about the environmental effects of plant licensure that will apply in every licensing decision. *See* 10 C.F.R. § 51.23(b).<sup>5</sup>

For over a decade, the Blue Ridge Environmental Defense League and its chapters have opposed nuclear reactors in part because there was no place for the high-level nuclear waste produced by them to go. That is the reason why on February 10, 2011 we joined with others to bring the original action against the waste confidence rule, 10 CFR § 51.23. The rule presumed that waste stored at the nation's nuclear power plants would go to a waste dump someday. Our lawsuit said that the end of DOE's pursuit of a dump in Nevada invalidated this presumption. The court agreed.

Blue Ridge Environmental Defense League has referenced the Waste Confidence Rule in several of our legal interventions in nuclear power plant licenses during the last six years: Bellefonte, North Anna, William States Lee, Vogtle, Sequoyah cases which raised safety and/or environmental concerns regarding management of irradiated nuclear reactor fuel, dubbed spent fuel by the industry. Specifically, we brought the following interventions:

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<sup>2</sup> *State of New York v. Nuclear Reg. Comm.*, No. 11-1045, June 8, 2012, DC Circuit vacating WCD 75 Fed. Reg. 81037 (Dec. 23, 2010). Further, the Court vacated the Temporary Storage Rule 75 Fed Reg. 81,032 (Dec. 23, 2010).

<sup>3</sup> *Id.* at 8

<sup>4</sup> *Id.* at 8

<sup>5</sup> *Id.* at 9

**Blue Ridge Environmental Defense League Waste Confidence Contentions**

Date	Docket/s	Type	Applicant	Reactor/s	Site
December 11, 2006	52-011	ESP	Southern Nuclear Operating Company, Inc	Plant Vogtle Units 3 and 4	Waynesboro, Georgia
May 9, 2008	52-017	COL	Dominion Virginia Power	North Anna Unit 3	Mineral, Virginia
June 6, 2008	52-014 52-015	COL	Tennessee Valley Authority	Bellefonte Nuclear Power Plant, Units 3 and 4	Hollywood, Alabama
June 27, 2008	52-018 52-019	COL	Duke Energy Carolinas	William States Lee III Units 1 and 2	Gaffney, South Carolina
May 6, 2013	50-327 50-328	LR	Tennessee Valley Authority	Sequoyah	Soddy-Daisy, Tennessee

Attached in abbreviated form are the relevant actions and contentions which we have brought. At the five sites above, general and specific issues were raised. Until the DC Circuit ruled, four of them were deemed inadmissible by their respective Atomic Safety and Licensing Board three-judge panels. The fifth, filed after the vacatur, has been held in abeyance but not admitted. This represents a virtual stone wall of refusal regarding the long-term storage of high-level nuclear waste at these plants. The draft GEIS and rule now under review would return us to the *status quo ante*. This is unacceptable to us, and contravenes both the letter and the meaning of the *New York v. NRC*.

The Court's order was quite clear, stating that irradiated reactor fuel "will seemingly be stored on site at nuclear plants on a permanent basis" unless and until the federal government established a permanent repository.<sup>6</sup> The Court rejected the NRC's arguments against the vacatur, stating, "Overall, we cannot defer to the Commission's conclusions regarding temporary storage because the Commission did not conduct a sufficient analysis of the environmental risks." The Court specified that "a generic analysis must be forward looking and have enough breadth to support the Commission's [licensing] conclusions. Furthermore, as NEPA requires, the Commission must conduct a true EA regarding the extension of temporary storage."<sup>7</sup>

A solution to the long-term disposal of highly radioactive "spent" nuclear fuel may still lie decades in the future. There was a period of twenty years— from 1982 to 2002— from the passage of the Nuclear Waste Policy Act to the US Department of Energy's recommendation of Yucca Mountain as a suitable site for repository development; this finding was itself overturned in 2010. The Gordian Knot presented by nuclear power plants which must be unraveled by the NRC involves the management of an intractable waste problem with long-term public health and

<sup>6</sup> *Id.*, *New York v. NRC* at 13

<sup>7</sup> *Id.* *New York v. NRC* at 20

environmental justice impacts.

In light of the foregoing, the Commission must develop an environmental impact statement and a rule which truly encompasses on-site and beyond-60 year high-level radioactive waste storage at every reactor site in the nation. However, as detailed in our comments filed today and previously, we maintain that the NRC has not done what the Court ordered in its remand.

Respectfully,

A handwritten signature in black ink, appearing to read "Louis A. Zeller", is written over a horizontal line. The signature is cursive and stylized.

Louis A. Zeller, Executive Director

Attachments

December 11, 2006

UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION  
 BEFORE THE SECRETARY

In the Matter of	)	
	)	
Southern Nuclear Operating Company, Inc.	)	Docket No. 52-011
	)	
Early Site Permit for Plant Vogtle ESP Site	)	
	)	

PETITION FOR INTERVENTION

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309, 10 C.F.R. § 52.21, and a notice published by the Nuclear Regulatory Commission (õNRCö or õCommissionö) at 71 Fed. Reg. 60,195 (October 12, 2006), Petitioners Center for a Sustainable Coast, Savannah Riverkeeper, Southern Alliance for Clean Energy (õSACEö), Atlanta Womenø Action for New Directions (õWANDö), and Blue Ridge Environmental Defense League (õBREDL), hereby submit their contentions regarding Southern Nuclear Operating Company, Inc. (õSNCö) application for an Early Site Permit (õESPö).

Contention 3 : Failure to Evaluate Whether and in What Time Frame Spent Fuel Generated by Proposed Reactors Can Be Safely Disposed Of

The ER for the Vogtle ESP is deficient because it fails to discuss the environmental implications of the substantial likelihood that spent fuel generated by the new reactors will have to be stored at the Vogtle site for more than 30 years after the reactors cease to operate, and perhaps indefinitely. The Waste Confidence Decision<sup>8</sup> does not support SNCø failure to address this issue in the ER, because it has been outdated by changed circumstances and new and significant information. As required NEPA, the NRC may not permit construction or operation of the new Vogtle reactors unless and until it has taken into account these changed circumstances and new and significant information. 10 C.F.R. § 51.92. *See also Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989).

<sup>8</sup> Waste Confidence Review, 55 Fed. Reg. 38,474, 38,504 (September 18, 1990), as amended by Waste Confidence Decision Review: Status, 64 Fed. Reg. 68,005 (December 6, 1999).

May 9, 2008

UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION  
 BEFORE THE SECRETARY

_____	)	
In the Matter of	)	
Dominion Virginia Power	)	
North Anna Unit 3	)	Docket Nos. 52-017
Combined License	)	
_____	)	

PETITION FOR INTERVENTION AND REQUEST FOR HEARING  
 BY THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE  
CONTENTION SEVEN: Failure to Evaluate Whether and in What Time Frame Spent  
 Fuel Generated by Unit 3 Can Be Safely Disposed Of

The Environmental Report for the Dominion COLA is deficient because it fails to discuss the environmental implications of the lack of options for permanent disposal of the irradiated (*i.e.*, spent) fuel that will be generated by the proposed reactors if built and operated. Nor has the NRC made an assessment on which DVP can rely regarding the degree of assurance now available that radioactive waste generated by the proposed reactors can be safely disposed of [and] when such disposal or off-site storage will be available. Final Waste Confidence Decision, 49 Fed. Reg. 34,658 (August 31, 1984), citing *State of Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979). Accordingly, the ER fails to provide a sufficient discussion of the environmental impacts of the proposed new nuclear reactors.

The ER for the proposed new reactors does not contain any discussion of the environmental implications of the lack of options for permanent disposal of the irradiated fuel to be generated by North Anna site. Therefore, it is fatally deficient. *State of Minnesota v. NRC*, 602 F.2d at 416-17.

June 6, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY

_____	)	
In the Matter of	)	
Tennessee Valley Authority	)	
Bellefonte Nuclear Power Plant	)	Docket Nos. 52-014 and 52-015
Units 3 and 4	)	
Combined License	)	
_____	)	

PETITION FOR INTERVENTION AND REQUEST FOR HEARING  
BY THE BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM,  
THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE  
AND THE SOUTHERN ALLIANCE FOR CLEAN ENERGY

CONTENTION FOURTEEN: Waste Confidence High Level Nuclear Waste from  
Irradiated Fuel

A: Failure to Evaluate Whether and in What Time Frame Spent Fuel Generated by  
Bellefonte Units 3 and 4 Can Be Safely Disposed Of

Contention

The Environmental Report for the TVA COLA is deficient because it fails to discuss the environmental implications of the lack of options for permanent disposal of the irradiated (*i.e.*, spent) fuel that will be generated by the proposed reactors if built and operated. Nor has the NRC made an assessment on which TVA can rely regarding the degree of assurance now available that radioactive waste generated by the proposed reactors can be safely disposed of [and] when such disposal or off-site storage will be available. Final Waste Confidence Decision, 49 Fed. Reg. 34,658 (August 31, 1984), citing *State of Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979). Accordingly, the ER fails to provide a sufficient discussion of the environmental impacts of the proposed new nuclear reactors.

June 27, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY

_____	)	
In the Matter of	)	
Duke Energy Carolinas	)	
Combined License Application	)	Dockets No. 52-018, 52-019
For William States Lee III Units 1 and 2	)	
	)	
_____	)	

PETITION FOR INTERVENTION AND REQUEST FOR HEARING  
BY THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

CONTENTION TEN:

Contention A: Failure to Evaluate Whether and in What Time Frame Spent Fuel  
Generated by WS Lee Units 1 and 2 Can Be Safely Disposed Of

The ER for the proposed new reactors does not contain any discussion of the environmental implications of the lack of options for permanent disposal of the irradiated fuel to be generated by the WS Lee site. Therefore, it is fatally deficient. *State of Minnesota v. NRC*, 602 F.2d at 416-17.

Contention B. Even if the Waste Confidence Decision Applies to This Proceeding, It Should be Reconsidered.

Even if the Waste Confidence Decision applies to this proceeding, it should be reconsidered, in light of significant and pertinent unexpected events that raise substantial doubt about its continuing validity, *i.e.*, the increased threat of terrorist attacks against U.S. facilities.



May 6, 2013

<p>In the Matter of  Tennessee Valley Authority  Sequoyah Nuclear Plant Units 1 and 2  Docket Nos. 50-327 and 50-328  License Nos. DPR-77 and DPR-79  NRC-2013-0037</p>
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PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING  
BY THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE,  
BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM, AND  
MOTHERS AGAINST TENNESSEE RIVER RADIATION

Contention B: NRC Cannot Grant the Sequoyah License Renewal Without Conducting a Thorough Analysis of the Risks of the Long-term Storage of Irradiated Nuclear Fuel Generated by Sequoyah Units 1 and 2.

TVA's LRA does not provide continued assurance that the current licensing basis will maintain an acceptable level of safety for an additional 20 years of operation, which it must under 10 CFR 54. Regarding long-term waste storage, TVA's Environmental Report (ER) states:

NRC-evaluated decommissioning options include immediate decontamination and dismantlement and safe storage of the stabilized and defueled facility for a period of time, followed by additional decontamination and dismantlement. Regardless of the option chosen, decommissioning must be completed within the 60-year period following permanent cessation of operations and permanent removal of fuel.

SQN ER, Decommissioning, Section 7.2.2, page 7-2. But the NRC can no longer provide a legally sound basis for a licensing decision at SQN. Further, SQN's ER does not contain any discussion of the environmental implications of the lack of options for permanent disposal of the irradiated fuel to be generated by the Sequoyah Nuclear Plant. Therefore, it is fatally deficient. *State of Minnesota v. NRC*, 602 F.2d at 416-17.