

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY

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

Docket Nos. 50-438 and 50-439

December 11, 2019

**PETITION FOR INTERVENTION AND REQUEST FOR HEARING BY
THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE AND ITS
CHAPTER BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM**

Pursuant to 10 C.F.R. § 2.309 and a notice published by the Nuclear Regulatory Commission (“NRC” or “Commission”) at 84 Fed. Reg. 64355 (November 21, 2019), the Blue Ridge Environmental Defense League with its chapter Bellefonte Efficiency and Sustainability Team (“BREDL”) hereby petition for leave to intervene and request a hearing in the above-captioned matter. This petition sets forth with particularity the contentions we seek to raise. As demonstrated below, BREDL and BEST (“Petitioners”) have representational standing, through their members, to make this request.

I. INTRODUCTION

Background

On December 12, 1974, the Commission issued construction permits CPPR-122 and CPPR-123 (“CPs”) for Bellefonte (“BLN”) Units 1 and 2 to the Tennessee Valley

Authority (“TVA”).¹ On April 6, 2006, TVA submitted a request to withdraw the CPs for BLN Units 1 and 2 and on September 14, 2006, pursuant to the request, the NRC withdrew the CPs for BLN Units 1 and 2. On August 26, 2008, TVA submitted a request to reinstate the CPs for BLN Units 1 and 2. On March 9, 2009, the NRC issued an order granting re-instatement of Construction Permits for Bellefonte Units 1 and 2. On March 13, 2009 the NRC published a notice to request a hearing on re-instatement of CPs for Bellefonte Units 1 and 2. 74 Fed. Reg. 10969. In 2011, NRC extended the construction date for Unit 1 to October 1, 2020. In 2014, TVA requested an extension of the completion date for Unit 2. On March 31, 2017, TVA informed NRC of the planned sale of Bellefonte Units 1 and 2 to Nuclear Development, LLC. On November 13, 2018, Nuclear Development, LLC, submitted an application to NRC requesting an Order Approving Construction Permit Transfers and Conforming Administrative Construction Permit Amendments (“Order”). In their application, ND requests completion dates of October 1, 2029 for Unit 1 and October 1, 2030 for Unit 2.

Description of the Proceeding

As noticed in the Federal Register at 84 Fed. Reg. 64355 (November 21, 2019) this proceeding is concerned with the pending decision by the NRC to transfer the construction permits for Bellefonte Units 1 and 2 from Tennessee Valley Authority (“TVA”) to a private firm, Nuclear Development, LLC (“ND”), for the purpose of completing construction and operating a facility generating electric power.

¹ Docket Nos. 50-438 and 50-439

Overview of the Contentions Raised in this Petition

A CP is an authorization from the NRC to construct a nuclear power plant at a specific site. The CP must comply with provisions of the Atomic Energy Act, the National Environmental Policy Act and NRC's regulations. Petitioners wish to intervene in this proceeding because: 1) The operation of two nuclear reactors would endanger over a million people in three states living within 50 miles of the plant, 2) The risk presented by the completion of aged and obsolete atomic power reactors is unnecessary and wholly out of proportion to any possible benefit, 3) The transfer of the construction permits lacks the consent of TVA, and 4) The transferee lacks effective basis for fulfilling the requirements of construction.

Standing

Pursuant to 10 CFR § 2.309, a request for hearing or petition for leave to intervene must address 1) the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding, 2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and 3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

Other standing requirements are found in NRC case law. As summarized by the Atomic Safety and Licensing Board ("ASLB"), these standing requirements are as follows:

In determining whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has traditionally applied judicial concepts of standing. *See Metropolitan Edison Co.* (Three Mile Island Nuclear station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983) (citing *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976)). Contemporaneous judicial standards for standing require a petitioner to demonstrate that (1) it has suffered or will suffer a distinct and

palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury can be fairly traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plants), LBP-99-25, 50 NRC 25, 29 (1999). An organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm to its organizational interests, or in a representational capacity by demonstrating harm to its members. *See Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 271 (1998). To intervene in a representational capacity, an organization must show not only that at least one of its members would fulfill the standing requirements, but also that he or she has authorized the organization to represent his or her interests. *See Private Fuel Storage, L.L.C.* (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 168, *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998).

Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 426 (2002)

Standing to participate in this proceeding is demonstrated by the declarations of the following members of the Blue Ridge Environmental Defense League and the Bellefonte Efficiency and Sustainability Team who live within 50 miles of the proposed site and who have authorized Petitioners to represent their interests in this proceeding.

For BREDL and BEST:

1. Sandra Kurtz, Chattanooga, Tennessee
2. Garry L. Morgan, Scottsboro, Alabama

As demonstrated by the attached declarations, the Petitioners' members live near the proposed site. Thus, they have presumptive standing by virtue of their proximity to the two new nuclear plants that may be constructed on the site. *Diablo Canyon, supra*, 56 NRC at 426-427, citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146, *aff'd*, CLI-01-17, 54 NRC 3 (2001) In *Diablo Canyon*, the Licensing Board noted that petitioners who live within 50 miles of a proposed nuclear power plant are presumed to have standing in reactor construction

permit and operating license cases, because there is an “obvious potential for offsite consequences” within that distance. *Id.* Here, the transfer of the permit would allow Nuclear Development, LLC to proceed with its stated purpose of construction of two reactors on the Bellefonte site near Scottsboro, Alabama. Thus, the same standing concepts apply.

The Petitioners’ members seek to protect their lives and health by opposing the transfer of the construction permits from TVA to Nuclear Development by the U.S. Nuclear Regulatory Commission.

Further, *locus standi* is based on three requirements: injury, causation and redressability. Petitioners hereby request to be made a party to the proceeding because (1) Construction and subsequent operation of nuclear reactors at Bellefonte would present a tangible and particular harm to the health and well-being of our members living near the site, (2) The NRC has indicated its willingness to transfer the CPs, the granting of which would directly affect our members, and (3) The Commission is the sole agency with the power to approve, to modify, to suspend, to revoke or to transfer a permit to construct a commercial nuclear power plant.

II. APPLICABLE LEGAL STANDARDS

Standards of Admissibility

Proffered contentions must put “other parties in the proceeding on notice of the petitioners’ specific grievances” in order to “give [] them a good idea of the claims they will be either supporting or opposing.” *Matter of Duke Energy Corp.*, 49 NRC 328,333 (NRC Apr. 15, 1999) (Oconee Nuclear Station, Units 1, 2 and 3). Accordingly, in order

to ensure “a clearer and more focused record for decision,” 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004), an admissible contention will provide (1) a specific statement of the legal or factual issue proposed; (2) a brief explanation of its basis; (3) a demonstration that the issue is within the scope of the proceeding; (4) a demonstration that the issue is material to the findings the NRC must make to support the action involved in the proceeding; (5) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioners’ position and upon which the Petitioner intends to rely at hearing; and (6) sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes or, when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. *See* 10 C.F.R. § 2.309(f).

The contention rule is not a “fortress to deny intervention.” *See Matter of Duke Energy Corp.* (Oconee Nuclear Power Plant), 49 NRC at 335 (*quoting Philadelphia Elec. Co.* (Peach Bottom Atomic Power Sta., Units 2 and 3), 8 AEC 13, 20-21 (1974), *rev'd in part*, CLI-74-32, 8 AEC 217 (1974), *rev'd in part*, *York Committee for a Safe Environment v. N.R.C.*, 527 F.2d 812 (D.C. Cir. 1975)). Indeed, “[t]he Commission and its Boards regularly continue to admit for litigation and hearing contentions that are material and supported by reasonably specific factual and legal allegations.” *Duke Energy*, 49 NRC at 333. Nor have revisions materially changed the admissibility standard for contentions. *Matter of PPL Susquehanna, LLC*, 65 NRC 281, 303 (March 22, 2007). Although an intervenor cannot use discovery or cross-examination as a “fishing

expedition” in hopes of turning up supporting facts, there is also no requirement that the substantive case be made at the contention stage. *Matter of Entergy Nuclear Generation Co. et al.* (Pilgrim Nuclear Power Station), 50-293-LR (ASLB Oct. 16, 2006), 2006 WL 4801142 at (NRC) 85 (*quoting Oconee*, 49 NRC at 342)). Further, “A contention may be plausible enough to meet the admission standards even if it is ultimately denied on the merits.” *Matter of Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee), 50-271-LR, 2006 NRC Lexis 201, 28 (ASLB Sept. 22, 2006).

III. CONTENTIONS

Contention 1. The Bellefonte Construction Permits Are Void

The Construction Permits sought by ND are legally defective and void. Nothing in the Atomic Energy Act authorized the Commission to reinstate a CP which, as in this case, had been withdrawn by the applicant and terminated by the NRC.

The two CPs at issue here were terminated by the NRC in 2006. On April 6, 2006, TVA submitted a request to withdraw the CPs for BLN Units 1 and 2 and on September 14, 2006, pursuant to the request, the NRC withdrew the CPs for both Bellefonte Units 1 and 2. Although on August 26, 2008, TVA submitted a request to reinstate the CPs for BLN Units 1 and 2,² the NRC had no authority to restore the legal vitality of a CP.

Moreover, Construction Permits are not perpetual. Even if the NRC had not granted TVA’s request for withdrawal of the CPs and terminated them, the CPs would

² Ashok S. Bhatnagar, Senior Vice President Nuclear Generation Development and Construction, TVA to Eric J. Leeds, US Nuclear Regulatory Commission, Re: Tennessee Valley Authority (TVA)—Bellefonte Nuclear Plant Units 1 and 2—Request to Reinstate Construction Permits CPPR-122 (Unit 1) and CPPR-123 (Unit 2), August 26, 2008

have expired automatically as a matter of law. Section 185(a) of the Atomic Energy Act, provides, in pertinent part:

The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date.

CPs issued under Part 50, are required by Section 185(a) of the Atomic Energy Act of 1954, as amended, and 10 C.F.R. § 50.55(a) to state a latest date for completion of construction. Presently, the construction date for Bellefonte Unit 1 is October 1, 2020. For reasons presented *infra*, the construction of the plant cannot be done within the next 9½ months.

While the Commission's Policy Statement on Deferred Plants, 52 Fed. Reg. 38,077 (Oct. 14, 1987) provides a means by which the two Bellefonte CPs could have had, in principle, their completion dates deferred, the NRC has not took the steps prescribed by this policy in order to make such a deferral.

Petitioners submit that when, as here, the requirements of the Policy Statement on Deferred Plants, have not been met, the NRC is authorized only to "grant" new CPs pursuant to sec. 189(a)(1)(A) of the Act. Because the Commission did not invoke this authority when reinstating the CPs, its action was illegal.

Contention 2. Failure to Adhere to Quality Assurance Requirements Places Public at Risk if Permits are Transferred and Construction is Completed.

Requirements for quality assurance have suffered breaches caused by the on-again-off-again construction history of Bellefonte Units 1 and 2. Records that never existed cannot be recovered. The NRC's Policy Statement on deferred plants states:

As described in the Policy Statement, the NRC requirements for verification of construction status, retention and protection of records, and maintenance and preservation of equipment and materials are applied through: 10 C.F.R. § 50.54(a), "Conditions of licenses," and 10 C.F.R. § 50.55(f), "Conditions of Construction Permits," which require that a quality assurance program be implemented; and 10 C.F.R. Part 50 Appendix B, which requires that all activities performed to establish, maintain, and verify the quality of plant construction be addressed in the licensee's quality assurance program. [52 Fed. Reg. at 38,078] Further, 10 C.F.R. Part 50 Appendices A and B require that certain quality records be retained for the life of the plant. In addition, 10 C.F.R. § 50.55(e) requires reporting of deficiencies in design, construction, quality assurance, etc.; 10 C.F.R. § 50.71 requires the maintenance of records; and 10 C.F.R. Part 21 requires reporting of defects and noncompliance. [52 Fed. Reg. at 38,078] The Policy Statement notes that implementation of the quality assurance program will be examined periodically to determine licensee compliance with commitments and overall effectiveness.³

(Bracketed FR citations in original added.) In this case, to ensure safety of the public the virtual cannibalization and replacement processes which occurred at Bellefonte 1 and 2 would need to be documented in a comprehensive QA program listed in the license transfer. Instead, according to the record, what occurred was the loss of continuity in the required Quality Assurance documentation and programs.⁴ Pursuant to the provisions of 10 CFR § 50.34, every applicant for a construction permit is required to include in its preliminary safety analysis report a description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the structures, systems, and components of the facility. Without the required QA documentation—diagrams and photographs indicating parts removed, current protection of systems, diagrams and

³ *Current NRC Staff Views on Applying the Deferred Plant Policy Statement to Part 52 Plants*, "Maintenance, Preservation, and Documentation of Equipment (Policy Statement § III.A.3)," This document describes current U.S. Nuclear Regulatory Commission (NRC) staff views on how provisions in the Policy Statement on Deferred Plants, 52 Fed. Reg. 38,077 (October 14, 1987) (Policy Statement, accessed 12/9/19 at <https://www.nrc.gov/docs/ML1806/ML18065B257.pdf>

⁴ Declaration of Arnold Gundersen, May 6, 2009, Docket Nos. 50-438 and 50-438 at 3, "Finally, on Page 3 of his review of TVA's application for reinstatement of its construction permit, Joseph Williams, NRC Senior Project Manager1 said that TVA has not continued to implement Federal requirements, nor were their activities conducted in accordance with NRC-approved programs and were not subject to NRC inspection." <https://www.cleanenergy.org/wp-content/uploads/BLN12DeclarationGundersen050609.pdf>

photographs of cannibalized structures and damage, action plans, scope of work, listing of all components and systems replaced—the construction permits cannot transferred because the Commission cannot be provided with assurance that the nuclear facility meets the requirements. Federal requirements state:

Sufficient records shall be maintained to furnish evidence of activities affecting quality. The records shall include at least the following: Operating logs and the results of reviews, inspections, tests, audits, monitoring of work performance, and materials analyses. The records shall also include closely-related data such as qualifications of personnel, procedures, and equipment. Inspection and test records shall, as a minimum, identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. Records shall be identifiable and retrievable. Consistent with applicable regulatory requirements, the applicant shall establish requirements concerning record retention, such as duration, location, and assigned responsibility.

See CFR 10, Appendix B to Part 50, Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants, XVII, Quality Assurance Records.

Contention 3. Failure of Applicant to Secure Possession of Bellefonte

According to the August 28, 2019 Response to Request for Supplemental Information filed by ND⁵, the Applicant has initiated legal action against TVA for breach of contract in US District Court for the Northern District of Alabama, Case no. 5:18-CV-01983-LCB. Trial date is set for May 2020. At issue: ND has failed to get the Bellefonte CP's transferred from TVA within the agreed closing period. In its November 13, 2018 request for permit transfer, ND states:

As noted by TVA in its March 31, 2017 letter, Nuclear Development was the successful bidder in an auction for the plant conducted by TVA in November of 2016. Under the terms of the Purchase and Sale Agreement as amended, (enclosed with the Application as Attachment 1), Nuclear Development plans to purchase from TVA the Bellefonte Purchased Assets, including certain real

⁵ ML19298A194

property, material equipment, machinery, tools, other tangible property, books and records (including permitting, quality assurance, maintenance and other records related to design, construction or operation of the Units), certain agreements and obligations, and subject to all applicable law, all permits, and authorizations, including the Permits that are the subject of this Application. As amended, the current agreement with TVA would require closing of the asset transfer by November 30, 2018. However, the parties may agree to a further extension.⁶

And they may not. The filing of a breach of contract suit indicates further delays before resolution of the dispute. The application submitted by ND states, *inter alia*:

1. Purchase and Sale.

(e) To the extent feasible and permitted by applicable law, all permits, licenses or authorizations issued or required by Governmental Authorities or third parties in connection with the operation of the Site and listed on Schedule 1(e) (the Permits); provided, however, that with regard to the transfer of the two permits issued to TVA by the NRC to construct two B&W pressurized water nuclear reactors, this Section 1(e) shall not require TVA to certify that Buyer is qualified and fit to complete construction of and operate those reactors and, if Buyer informs TVA that it does not seek transfer of these NRC permits, TVA shall take whatever action is necessary to terminate those permits. Further, if, an applicable Governmental Authority has not accepted or otherwise allowed the transfer permit, license or authorization pursuant to this Section 1(e) by Closing, TVA's obligations under this Section 1(e) shall cease.

Termination; Wavier

(iii) By TVA, if there has been a violation or breach by Buyer of any covenant, agreement, representation or warranty contained in this Agreement and such violation or breach (A) is not cured by Buyer within thirty (30) days following notification by TVA, and (B) such failure, violation or breach has not been waived by TVA in writing;

Under 10 CFR § 50.80, an “order or judgement of a court of competent jurisdiction attesting to the person’s right...to possession of the facility” could be required by the Commission, but TVA retains the right to end the contract.

⁶ Nuclear Development LLC, “Letter of Application for Order Approving Construction Permit Transfers and Conforming Administrative Construction Permit Amendments,” November 13, 2018, page 2, William R. McCollum, Jr., CEO and CNO

Contention 4. Failure of Applicant to Obtain Consent for Permit Transfer

Pursuant to 10 CFR § 50.80(b)(iv)(2), a statement of purpose for the transfer must be included in the application to the Commission. To secure approval of permit transfer, the Commission may require the applicant to obtain in writing the consent of the current permit holder. However, in the extant case, NA has received a negative response from TVA, the opposite of consent, from the Authority's Regional Energy Resource Council (RERC). At the Council's meeting of December 18, 2018, Joe Hoagland, the Council's Designated Federal Officer (DFO) stated: "TVA terminated the contract for sale of Bellefonte nuclear units based on failure on the part of the purchaser to meet contract terms."⁷ The Regional Energy Resource Council, whose members comprise of regional government, customers, academia and advocacy groups, provides guidance on how TVA manages its energy resources against competing objectives and values.

In November 2016 TVA announced the sale of its Bellefonte site's 1,400 acre property to Nuclear Development for a purchase price of \$111 million. The bidding process was competitive. ND promised ancillary investments of \$25 million for economic development. The company had two years to close on the sale.

The RERC Officer's statement in December 2018 effectively closed the door. Under 10 CFR § 50.80(b)(1)(i), an application for permit transfer must include the "identity and technical and financial qualifications of the proposed transferee," the same as it would for a new permit.

⁷ Tennessee Valley Authority Regional Energy Resource Council, December 18, 2018, Meeting Minutes, Item 3, page 3, DFO Update, accessed 12/10/19 at https://www.tva.gov/file_source/TVA/Site%20Content/About%20TVA/Our%20Public%20Advisory%20Councils/Regional%20Energy%20Resource%20Council/pdf/rerc_minutes-december_18_2018.pdf

The NRC lacks a sound basis for approving ND's request for an Order transferring the Bellefonte CPs. The NRC's predetermination appears to be wrong, that, in accord with 10 CFR § 2.1315, "No contrary determination has been made with respect to this specific license amendment application." *See* 84 Fed. Reg. 64356. Herein is a genuine dispute for which only the Commission can provide relief.

IV. CONCLUSION

The Blue Ridge Environmental Defense League and the Bellefonte Efficiency and Sustainability Team oppose transfer of the Bellefonte Construction Permits from TVA to ND and recommend that the Commission deny the transfer.

We have been involved in the Commission's licensing and permit processes at Bellefonte since 2008. Our opposition to the transfer of the construction permits to ND should not be taken as approval for TVA to construct and operate nuclear power plants at Bellefonte. Construction a power plant designed in 1974 would be a dangerous anachronism in the 21st Century. Rather, we believe that TVA should scrap its antique reactor design and rededicate the site to clean, renewable energy, which would provide jobs, economic growth and electric power.

Nuclear is expensive:

Perhaps the most difficult to overcome in nuclear is simply economics. Nuclear power plants have become notorious for high construction costs—as many projects throughout the world have resulted in construction costs that doubled or tripled the original estimate, followed by frequent and expensive repairs.⁸

⁸ Pearce, Joshua 2012. Limitations of Nuclear Energy as a Sustainable Energy Source. Sustainability Journal. Department of Materials Science & Engineering and Department of Electrical & Computer Engineering, Michigan Technological University

It is not economically sound for anyone to build a nuclear Bellefonte—ND or TVA—while more efficient and cost effective forms of energy are available. TVA’s 2010 Annual Report to the Securities and Exchange Commission,⁹ stated that Bellefonte project would have required significant new debt load or rate hikes to TVA customers.

Blue Ridge Environmental Defense League and Bellefonte Efficiency and Sustainability Team are on record that Bellefonte should not be a nuclear facility. It is not economically or environmentally sound to construct Bellefonte when more efficient and cost effective forms of energy are available.

Two Declarations of Standing are filed with this petition.

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
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December 11, 2019

⁹ Federal Register Notice, Tennessee Valley Authority, Notice of Intent, Supplemental Environmental Impact Statement for a Single Nuclear Unit at the Bellefonte Site, August 10, 2009 (Volume 74, Number 152), Page 40000-40003. At <http://edocket.access.gpo.gov/2009/E9-19045.htm>

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CERTIFICATE OF SERVICE

I hereby certify that the

**PETITION FOR INTERVENTION AND REQUEST FOR HEARING BY
THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE AND ITS
CHAPTER BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM
AND TWO DECLARATIONS OF STANDING**

have been filed through the Electronic Information Exchange system
this 11th day of December, 2019.



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