

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**RAS 6717**

**DOCKETED 08/12/03**

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket Nos. 50-390-CivP; 50-327-CivP
TENNESSEE VALLEY AUTHORITY	)	50-328-CivP; 50-259-CivP
(Watts Bar Nuclear Plant, Unit 1	)	50-260-CivP; 50-296-CivP
Sequoyah Nuclear Plant, Units 1 & 2	)	50-260-CivP; 50-296-CivP
Browns Ferry Nuclear Plant, Units 1,2 &3)	)	
	)	ASLBP No. 01-791-01-CivP
	)	
	)	EA 99-234

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NRC STAFF'S RESPONSE TO NUCLEAR ENERGY INSTITUTE'S  
MOTION FOR LEAVE TO FILE AN ANSWER IN SUPPORT OF COMMISSION REVIEW OF  
INITIAL DECISION IN LBP-03-10

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Angela B. Coggins  
Counsel for NRC Staff

August 12, 2003

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COMMISSION REVIEW OF INITIAL DECISION IN LBP-03-10

INTRODUCTION

Pursuant to the 10 C.F.R. § 2.730(c) of the Commission's regulations, the Staff now responds to "Request of the Nuclear Energy Institute For Leave to File an Answer in Support of Commission Review of Initial Decision in LBP-03-10" (hereinafter "NEI Motion"). As more fully explained below, although the Nuclear Energy Institute's ("NEI") Motion cannot be granted, Staff has previously stated it does not object to Commission review in this instance.

BACKGROUND

On February 7, 2000, the NRC Staff ("Staff") issued to the Tennessee Valley Authority ("TVA") a Notice of Violation and Proposed Imposition of Civil Penalty ("NOV") in the amount of \$110,000. The NOV was premised upon TVA's non-selection of Mr. Gary Fiser, a former TVA employee, to a competitive position due, in part, to Mr. Fiser's having engaged in "protected activity," as proscribed by 10 C.F.R. § 50.7. Following TVA's continued denial of the violation, on May 4, 2001, the Staff issued an Order Imposing Civil Monetary Penalty. 66 Fed. Reg. 27,166

(May 16, 2001). On June 1, 2001, TVA requested a hearing on the enforcement order and on June 28, 2001, the Board granted TVA's hearing request. Evidentiary hearing sessions were held in Chattanooga, Tennessee on April 23-26 and 30, 2002; May 1-3, and 6-9, 2002; June 11-14, and 17-20, 2002; and in Rockville, Maryland on September 9-13, 2002. The evidentiary record was closed on October 24, 2002. On June 26, 2003, in the Board's Initial Decision, the majority of the Board found in favor of the Staff that a violation of 10 C.F.R. § 50.7 occurred and sustained the penalty, in part. See *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 & 2; Browns Ferry Nuclear Plant, Units 1, 2 & 3), LBP-03-10, 57 NRC \_\_\_, slip op. at 2. On July 16, 2003, TVA petitioned for Commission review of the Board's Initial Decision in LBP-03-10 pursuant to 10 C.F.R. § 2.786(b). See "Tennessee Valley Authority's Petition for Review of Initial Decision in LBP-03-10" (hereinafter "TVA's Petition") filed July 17, 2003. The Staff responded to TVA's Petition noting that while the Staff believes the Board's findings are clearly supported by the evidence and precedents before it, the Staff did not object to Commission review. See "NRC Staff's Response to Tennessee Valley Authority's Petition for Review of Initial Decision in LBP-03-10" filed July 25, 2003. Subsequently, on July 28, 2003, the Nuclear Energy Institute filed both a request for leave to file an answer in support of TVA's Petition for Review and its Answer in support of TVA's Petition. The Staff now responds to NEI's Motion.

### ARGUMENT

In its Motion for leave to file an answer in support of TVA's Petition, NEI avers that while it was not a party in the proceeding before the Licensing Board, it participated as amicus curiae in support of TVA's challenge to the proposed enforcement action and attendant civil penalty, and thus requests to file an answer supporting TVA's Petition. See TVA Motion at 2. While the Staff has previously noted that it does not object to Commission review of LBP-03-10, the Commission's rules contemplate amicus curiae briefs only after the Commission grants a petition for review, and do not provide for amicus briefs supporting or opposing petitions for review. See 10 C.F.R.

§ 2.715(d); *see also Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-7, 45 NRC 437,438-439 (1997). Accordingly, while the Staff does not object to Commission review of LBP-03-10, the Commission's rules do not support NEI's Motion for leave to file an answer to TVA's Petition. Therefore, NEI's Motion should be denied and its Answer, filed simultaneously, should not be further considered.

The Staff additionally notes that, should the Commission grant review of LBP-03-10 and invite NEI to participate as amicus curiae, NEI's previous participation in this proceeding has been limited to legal interpretation only and it has not participated in the development of any factual material. See LBP-03-10, 57 NRC \_\_\_, slip op. at 9. Consequently, the Staff submits that any future participation by NEI should also be limited accordingly.

#### CONCLUSION

For the foregoing reasons, the Staff, as previously indicated, would not object to Commission review of LBP-03-10. However, the Staff submits that Commission rules do not allow for NEI's Motion for leave to file an answer in support of TVA's Petition and therefore, NEI's Motion should be denied and NEI's Answer, filed simultaneously, should not be further considered.

Respectfully submitted,

**/RA/**

Angela B. Coggins  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 12th day of August, 2003

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	)	ASLBP No. 01-791-01-CivP
	)	
	)	EA 99-234

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

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Name of Party:	NRC Staff

Respectfully submitted,

**/RA/**

Angela B. Coggins  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 12<sup>th</sup> day of August, 2003

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO NUCLEAR ENERGY INSTITUTE'S MOTION FOR LEAVE TO FILE AN ANSWER IN SUPPORT OF COMMISSION REVIEW OF INITIAL DECISION IN LBP-03-10" and "NOTICE OF APPEARANCE" of Angela B. Coggins in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (\*), or by electronic mail as indicated by a double asterisk (\*\*) on this 12th day of August, 2003.

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