

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman  
Dr. Anthony J. Baratta  
Dr. William W. Sager

In the Matter of

TENNESSEE VALLEY AUTHORITY

(Bellefonte Nuclear Power Plant Units 3 and 4)

Docket Nos. 52-014-COL and 52-015-COL

ASLBP No. 08-864-02-COL-BD01

September 15, 2014

MEMORANDUM AND ORDER  
(Dismissing Contention)

In this proceeding in which applicant Tennessee Valley Authority (TVA) seeks a 10 C.F.R. Part 52 combined license to construct and operate two new units at its existing Bellefonte site, pending before the Licensing Board is a contention submitted by Joint Intervenors<sup>1</sup> on July 9, 2012, claiming the TVA environmental report (ER) fails to comply with the requirements of the National Environmental Policy Act (NEPA). Specifically, Joint Intervenors' pending issue statement asserts that the TVA ER must include a discussion of the environmental impacts of spent fuel pool (SFP) leakage, SFP fires, and the lack of a spent fuel repository, as required by the decision of the United States Court of Appeals for the District of Columbia Circuit in New York v. NRC, 681 F.3d 471 (D.C. Cir. 2012). See Intervenors' Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Bellefonte (July 9, 2012) at 4.

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<sup>1</sup> Joint Intervenors are the Blue Ridge Environmental Defense League (BREDL) and the Southern Alliance for Clean Energy.

By order dated August 7, 2012, ruling on the status of similar contentions filed in various power reactor licensing proceedings, the Commission directed the licensing boards presiding over the cases in which such contentions were pending, including this Board, to hold those contentions in abeyance pending further Commission order, which would be issued in conjunction with a then to-be-determined agency response to the District of Columbia Circuit's ruling. See CLI-12-16, 76 NRC 63, 68–69 (2012). Subsequently, the Commission decided to act with regard to the issues raised by the District of Columbia Circuit's ruling by instituting a rulemaking to revise the agency's generic determination on the environmental impacts of continued storage of spent nuclear fuel (SNF) found in 10 C.F.R. § 51.23. See Memorandum to R. W. Borchardt, Nuclear Regulatory Commission (NRC) Executive Director for Operations (EDO), from Rochelle C. Bovol, NRC Acting Secretary, Subject: Staff Requirements – SECY-13-0061 – Proposed Rule: Waste Confidence – Continued Storage of [SNF] (RIN 3150-AJ20) at 1–2 (Aug. 5, 2013) (ADAMS Accession No. ML13217A358). As a consequence, on September 13, 2013, the NRC published a proposed rule and a draft generic environmental impact statement (GEIS), NUREG-2157, intended to provide a regulatory basis for the rulemaking changes being proposed. See Waste Confidence — Continued Storage of [SNF], 78 Fed. Reg. 56,776 (Sept. 13, 2013); Draft Waste Confidence [GEIS], 78 id. 56,621 (Sept. 13, 2013).

After receiving public comment on both the proposed rule and the draft GEIS, on August 26, 2014, the Commission adopted a final rule that (1) revises its generic determination regarding the environmental impacts of the continued storage of SNF beyond a reactor's licensed life for operation and prior to ultimate disposal; and (2) concludes that the GEIS, NUREG-2157, generically determines the environmental impacts of continued storage of SNF

beyond the licensed life for operation of a reactor.<sup>2</sup> Moreover, contemporaneous with its approval of the final rule on the impacts of continued storage, the Commission entered an order applicable to the various reactor licensing proceedings, including this one, in which a contention was pending that challenged the adequacy of an applicant's ER or the staff's environmental document based on the District of Columbia Circuit's New York v. NRC ruling. In its order, after reviewing the background regarding the continued storage rule that we have synopsized above, the Commission directed "the Atomic Safety and Licensing Boards to reject the contentions pending before them, consistent with our decision today." CLI-14-08, 80 NRC \_\_, \_\_ (slip op. at 10) (Aug. 26, 2014) (footnote omitted).

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<sup>2</sup> See Memorandum to Mark A. Satorius, NRC EDO, from Annette L. Vietti-Cook, NRC Secretary, Subject: Staff Requirements – Affirmation Session, 10:00 a.m., Tues., Aug. 26, 2014, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance) at 2 (Aug. 26, 2014) (ADAMS Accession No. ML14237A092); see also Memorandum for the Commissioners from Mark A. Satorius, Subject: Final Rule: Continued Storage of SNF (RIN 3150-AJ20), SECY-14-0072 (July 21, 2014) encls. 1–2 (draft Final Rule, Continued Storage of [SNF], and Office of Nuclear Material Safety and Safeguards, NRC, [GEIS] for Continued Storage of [SNF], NUREG-2157 (Aug. 2014)) (ADAMS Accession No. ML14177A482 (package)).

Thus, acting in accord with that Commission direction, we conclude Joint Intervenor's July 9, 2012 contention is inadmissible and their request for leave to file that contention is denied.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

/RA/

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G. Paul Bollwerk, III, Chairman  
ADMINISTRATIVE JUDGE

/RA/

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Anthony J. Baratta  
ADMINISTRATIVE JUDGE

/RA/

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William W. Sager  
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 15, 2014

UNITED STATES OF AMERICA  
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Units 3 and 4)	)	
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Dismissing Contention)** have been served upon the following persons by the Electronic Information Exchange.

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