

April 22, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of)	
Tennessee Valley Authority)	Docket Nos. 50-327-LR
(Sequoyah Nuclear Plant, Units 1 and 2))	50-328-LR
)	

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE’S
MOTION TO REOPEN THE RECORD OF LICENSE RENEWAL
PROCEEDING FOR SEQUOYAH NUCLEAR POWER PLANT UNITS 1 AND 2**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.326, Blue Ridge Environmental Defense League (öBREDLö) hereby moves to reopen the record in this proceeding to admit a new contention challenging the legal adequacy of Supplement 53 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Sequoyah Nuclear Plant, Units 1 and 2 (NUREG-1437) (March 2015) (öSequoyah Units 1 and 2 FSEISö) to comply with the National Environmental Policy Act (öNEPAö). *See* the attached BREDLø Hearing Request and Petition to Intervene in License Renewal Proceeding for Sequoyah Units 1 and 2 (April 22, 2015) (öHearing Request/Petition to Interveneö). BREDL contends that under NEPA, the Sequoyah Units 1 and 2 FSEIS does not provide the NRC with an adequate legal basis for relicensing Sequoyah Units 1 and 2 because it relies for its evaluation of the environmental impacts of spent fuel storage and disposal on the Continued Storage of Spent Nuclear Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014) (öContinued Spent Fuel Storage Ruleö)) and the Generic Environmental Impact Statement

for Continued Storage of Spent Nuclear Fuel (NUREG-2157, September 2014) (‘‘Continued Spent Fuel Storage GEIS’’).¹

As discussed in BREDL’s Hearing Request/Petition to Intervene, while BREDL seeks admission of its contention, BREDL does not seek to litigate the substantive content of its contention in an adjudicatory hearing. Instead, BREDL has already raised its concerns about the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS in comments on draft versions of those documents, and the NRC has already either rejected or disregarded BREDL’s comments in the final versions of the Rule and GEIS. BREDL also has appealed the final versions to the U.S. Court of Appeals for the District of Columbia Circuit. *See Beyond Nuclear et al. v. NRC*, Docket No. 14-1216 (filed Oct. 29, 2014).² The sole purpose of BREDL’s Contention is to lodge a formal challenge to the NRC’s reliance, in the Sequoyah Units 1 and 2 FSEIS, on the legally deficient Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS for purposes of relicensing Sequoyah Units 1 and 2. This motion is necessary because the hearing record is closed.

Several overlapping factors, set forth in three regulations, govern motions to reopen and admit new contentions. This motion and the accompanying contention satisfy each of these factors. *See* 10 C.F.R. §§ 2.309(c), 2.309(f), and 2.326.

II. JURISDICTION

Until issuance of its initial final decision, a Licensing Board has jurisdiction to reopen a proceeding. *See* 10 C.F.R. §§ 2.318(a), 2.713(a), 2.319(m), and 2.341; *Metro. Edison Co. (Three*

¹ The NRC issued the Continued Spent Fuel Storage Rule and GEIS on remand from the U.S. Court of Appeals in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (‘‘*New York I*’’).

² *Beyond Nuclear et al. v. NRC* was consolidated with four other cases and is now captioned *New York v. NRC*, Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (‘‘*New York II*’’).

Mile Island Nuclear Station, Unit 1), ALAB-699, 16 NRC 1324, 1326, 1327 (1982). After that, jurisdiction lies with the Commission. Therefore, BREDL has filed this motion before the Secretary of the Commission.

III. THIS MOTION SATISFIES THE STANDARDS FOR REOPENING A CLOSED HEARING RECORD SET FORTH IN 10 C.F.R. § 2.326(a).

10 C.F.R. § 2.236(a) provides three criteria which must be satisfied for this motion to be granted:

- (1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
- (2) The motion must address a significant safety or environmental issue; and
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

Id. This motion and the accompanying contention satisfy all three criteria, as discussed below.

A. This Motion is Timely.

Pursuant to 10 C.F.R. § 2.326, motions to re-open the record must be "timely." The NRC judges timeliness of motions to reopen the record by the same standards as for contentions. 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2012).³ This motion to reopen and the attached contention are timely because they do not depend at all on past information. Instead, they are "placeholders" that depend on an event that will occur in the future: the U.S. Court of Appeals' decision in *New York II*. BREDL's contention seeks the denial (or revocation) of a license renewal permit for

³ NRC regulations 10 C.F.R. § 2.309(c) and § 2.309(f)(2) call for a showing that:

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

Sequoyah Units 1 and 2 in the event that the Court of Appeals reverses the Continued Spent Fuel Storage Rule and/or GEIS. Because the NRC may renew the operating license for Sequoyah Units 1 and 2 before the Court reaches a decision in *New York II*, this contention must be filed now to ensure that the Court's decision in *New York II* will be applied to the NRC's license renewal decision for Sequoyah Units 1 and 2.

In addition, BREDL notes that it is filing the contention and motion within 30 days of the NRC's notice of issuance of the FSEIS on March 27, 2015 (80 Fed. Reg. 16,463 (March 27, 2015)).

B. This Motion and the Accompanying Contention Address a Significant Environmental Issue.

This motion and the accompanying contention raise the significant environmental issue that the Sequoyah Units 1 and 2 FSEIS is not supported by an adequate analysis of the environmental impacts of spent fuel storage and disposal. In *New York I*, the D.C. Circuit Court of Appeals vacated the analysis referenced by the Sequoyah Units 1 and 2 FSEIS for its insufficiency to satisfy NEPA with respect to the risk of pool fires, spent fuel pool leaks, and long-term impacts of spent fuel storage. While the NRC has now issued a new analysis of these impacts (through the Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS), that analysis is also seriously deficient to satisfy NEPA. *See* Hearing Request/Petition to Intervene, Section IV.A.

C. This Motion and the Accompanying Contention Would Likely Produce a Materially Different Result in this Proceeding.

The purpose of BREDL's contention is to ensure that in the reasonably likely event that the U.S. Court of Appeals grants BREDL's petition for review of the Continued Spent Fuel Storage Rule and GEIS and vacates them for failure to comply with NEPA, the NRC will

withdraw the Sequoyah Units 1 and 2 FSEIS as a basis for licensing Sequoyah Units 1 and 2, and therefore reject or revoke a license renewal permit for Sequoyah Units 1 and 2. Thus, admission of this contention would likely produce a materially different result in this proceeding.

IV. THIS MOTION SATISFIES THE STANDARDS FOR REOPENING A CLOSED HEARING RECORD SET FORTH IN 10 C.F.R. § 2.326(b).

10 C.F.R. § 2.326(b) requires that a motion to reopen the record must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of Section 2.326(a) have been satisfied. BREDL has not submitted affidavits, because the bases for this motion are purely legal: As discussed in BREDL's contention, the sole purpose of BREDL's contention is and therefore of this motion is to ensure that any court decision resulting from BREDL's appeal of the generic Continued Spent Fuel Storage Rule and GEIS will also be applied to the individual Sequoyah Units 1 and 2 license renewal proceeding, which relies on the Continued Spent Fuel Storage Rule and GEIS.

V. THIS MOTION AND THE ACCOMPANYING CONTENTION SATISFY THE STANDARDS FOR CONTENTIONS FILED AFTER THE DEADLINE SET FORTH IN 10 C.F.R. §§ 2.326(d) AND 2.309(c).

10 C.F.R. § 2.326(d) provides that "[a] motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the § 2.309(c) requirements for new or amended contentions filed after the deadline in § 2.309(b)."⁴ As discussed above in Section III.A, this motion and BREDL's placeholder contention are timely because they are based on information that does not yet exist: the U.S. Court of Appeals' decision in *New York II*. If the U.S. Court of Appeals reverses the Continued Spent Fuel Storage Rule and GEIS, then the filing of this contention will have ensured that the Sequoyah Units 1 and 2 license renewal

⁴ See note 3 above for the requirements of 10 C.F.R. § 2.309(c).

decision is also reversed, because the Sequoyah Units 1 and 2 FSEIS relies on the Continued Spent Fuel Storage Rule and GEIS.

VI. CONSULTATION CERTIFICATION PURSUANT TO 10 C.F.R. § 2.323(B)

Undersigned representative Louis Zeller certifies that on April 22, 2015, he contacted counsel for Tennessee Valley Authority and the NRC staff in an unsuccessful attempt to obtain their consent to this motion.

VII. CONCLUSION

For the foregoing reasons, BREDL's Motion to Reopen the Record should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Louis A. Zeller", followed by a horizontal line.

Signed (electronically) by:

Louis A. Zeller

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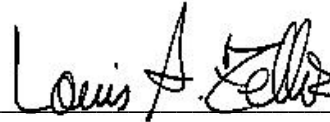
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CERTIFICATE OF SERVICE

I hereby certify that the **BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S MOTION TO REOPEN THE RECORD OF LICENSE RENEWAL PROCEEDING FOR SEQUOYAH NUCLEAR POWER PLANT UNITS 1 AND 2** has been filed through the Electronic Information Exchange system this 22nd day of April, 2015.



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