

## **ENCLOSURE 3**

**Correspondence with Native American Tribes Regarding the Cultural Resources  
Consultation Associated with the Proposed Clinch River SMR Project**



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902

May 10, 2016

Eric Oosahwee-Voss  
Tribal Preservation Officer  
United Keetoowah Band of Cherokee Indians in Oklahoma  
Post Office Box 1245  
Tahlequah, Oklahoma 74465

**TENNESSEE VALLEY AUTHORITY (TVA), AMENDMENT TO THE 2015 PROGRAMMATIC AGREEMENT, CLINCH RIVER SMALL MODULAR REACTORS PROJECT, ROANE COUNTY, TENNESSEE**

Dear Mr. Oosahwee-Voss:

In August 2015, TVA executed a programmatic agreement (PA) for the management of historic properties affected by TVA's proposed Clinch River Small Modular Reactor (SMR) project in Roane County, Tennessee. Recently, TVA has identified several items that need correction:

1. The PA's duration, as defined in Section VII.A, does not cover SMR construction. As currently defined in the PA, the Undertaking includes only a permitting action (the Early Site Permit Application, or ESPA) and a licensing action (the Combined License Application, or COLA). It is TVA's intent that the PA's stipulations concerning post-review discoveries be in effect during SMR construction, but this would not be the case as the PA is currently worded.
2. The PA erroneously lists two tribes (the Eastern Band of Cherokee Indians and the United Keetoowah Band of Cherokee Indians in Oklahoma) as concurring parties, WHEREAS in fact only one tribe asked to be included as a concurring party.
3. The ninth "WHEREAS" clause incorrectly states that DOE land that was exempted from a recent archaeological survey consisted of "circa 101 acres"; the correct figure is 14.6 acres.

In addition to these issues, there are a number of drafting issues that TVA has identified in the executed PA that would benefit from clarification:

- The following terms are not clearly defined in the PA and could have ambiguous meaning: project, project plans, undertaking, Signatories, SMR construction.
- The term "Invited Signatory" is used even though there is no invited signatory.
- There is redundancy between Section VII.B (Termination) and Section VII.D (Amendment).

In order to resolve these issues and to make sure that the PA will remain an effective and internally consistent document, TVA proposes to amend the PA to correct these problems. TVA proposes to replace the existing text in pages 1-9 and page 12 with the revised text in an Amended and Restated PA. TVA proposes the following changes be included in the Amended and Restated PA:

Section: VII.A. Duration

Existing text:

This PA will be in effect for the duration of the Undertaking (i.e., until the Construction and Operating License has been approved by the NRC or the Undertaking has been terminated).

Proposed new text:

This PA will be in effect until construction of the SMR project is complete, or the Undertaking is otherwise terminated.

Section: First three WHEREAS clauses

Existing text:

WHEREAS, the Tennessee Valley Authority (TVA) proposes to apply for an Early Site Permit from the Nuclear Regulatory Commission (NRC) for the eventual construction of two or more small modular nuclear reactors ("Undertaking") within the Clinch River Small Modular Reactor (SMR) project area bordering Watts Bar Reservoir in Roane County, Tennessee (Appendix A); and

WHEREAS, upon NRC approval of the Early Site Permit TVA will apply for a Combined License for the proposed SMR facility; and

WHEREAS, TVA considers these two related actions - the Early Site Permit Application (ESPA) and the eventual Combined License Application (COLA) - as two sequential parts of a single, complex Undertaking, as "undertaking" is defined at 36 CFR § 800.16(y); and

Proposed new text:

WHEREAS, the Tennessee Valley Authority (TVA) proposes to apply for an Early Site Permit from the Nuclear Regulatory Commission (NRC), which would approve the Clinch River Small Modular Reactor (SMR) project area bordering Watts Bar Reservoir in Roane County, Tennessee (Appendix A) as a site suitable for construction and operation of a nuclear power facility; and

WHEREAS, subsequent to initiation of NRC review of the Early Site Permit, TVA may apply for a Combined License for the proposed Clinch River SMR facility, which would authorize TVA to construct and operate the proposed facility; and

WHEREAS, subject to future decisions, TVA may propose to construct and operate two or more SMRs at the Clinch River Nuclear Site; and

WHEREAS, TVA considers these related actions—the Early Site Permit Application (ESPA), the Combined License Application (COLA), and construction of two or more SMRs - as sequential parts of a single, complex undertaking (Undertaking), as "undertaking" is defined at 36 CFR § 800.16(y); and

\*(This proposed change adds an additional WHEREAS clause)

Section: Ninth WHEREAS clause

Existing text:

WHEREAS, TVA has conducted four archaeological surveys, including all parts of the APE (Appendix B), with the exceptions of circa 101 acres of DOE land in the northwestern part of the APE that was included in a recent DOE archaeological survey (Reed et al. 2011, Appendix E), and a circa 5-acre area consisting of an existing off-ramp from State Highway 58 (Pace 1995; Appendix F); and the surveys have identified 59 archaeological properties within that APE; and

Proposed new text:

WHEREAS, TVA has conducted four archaeological surveys, including all parts of the APE (Appendix B), with the exceptions of circa 14.6 acres of DOE land in the northwestern part of the APE that was included in a recent DOE archaeological survey (Reed et al. 2011, Appendix E), and a circa 5-acre area consisting of an existing off-ramp from State Highway 58 (Pace 1995; Appendix F); and the surveys have identified 59 archaeological properties within the APE; and

Section: Seventeenth WHEREAS clause

Existing text:

WHEREAS, *(to be enumerated upon conclusion of consultation)* tribes have agreed to participate in the development of this PA and sign the PA as concurring parties; and

Proposed new text:

WHEREAS, the United Keetoowah Band of Cherokee Indians in Oklahoma has agreed to participate in the development of this PA and sign the PA as a concurring party ("Concurring Party"); and

Section: End of Preamble

Existing text: (none)

Proposed change: Addition of two new WHEREAS clauses after the last of the existing WHEREAS clauses, as follows:

WHEREAS, TVA, the TN SHPO, and the Concurring Party executed the Programmatic Agreement, dated as of September 17, 2015 ("First Programmatic Agreement"); and

WHEREAS, TVA, the TN SHPO, and the Concurring Party are entering into the PA to amend and restate the First Programmatic Agreement in its entirety;

Section: VII.B. Termination

Existing text:

If any Signatory to this PA determines that the terms cannot be, or are not being, carried out, that party shall immediately consult with the other signatories to seek amendments of the agreement. If the agreement is not amended within thirty (30) days of the initiation of such consultation (or another time period agreed to by all signatories), any Signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the Undertaking, TVA must either (a) execute a different PA, or (b) request, take into account, and respond to the comments of the Advisory Council under 36 CFR § 800.7. TVA shall notify TNSHPO as to the course of action it will pursue.

If TVA permanently cancels the Undertaking, all signatories will be notified, and this PA will be terminated.

Proposed new text:

If TVA or the TN SHPO determines that the terms of the PA cannot be, or are not being, carried out, the party making that determination shall immediately consult with the other party to seek amendments of the PA. If the PA is not amended within thirty (30) days of the initiation of such consultation (or another time period agreed to by all signatories), TVA or the TN SHPO may terminate the PA upon written notification to the other party. If the PA is so terminated, TVA shall ensure that historic properties within the APE for the Undertaking are protected from adverse effects of the Clinch River SMR project in accordance with Section 106 of the NHPA until such time that TVA may enter into a new PA or request the comments of the Council pursuant to 36 CFR § 800.7(a).

If TVA permanently cancels the Undertaking, TN SHPO and the Concurring Party will be notified and this PA will be terminated.

Section: VII.D. Amendment

Existing text:

If a Signatory to this PA determines that the terms of the PA cannot be or are not being carried out, the Signatories shall consult to seek a resolution of the issue. If, after due consultation, the issue is not resolved by amending the PA, then any Signatory may terminate the agreement after giving the other Signatories fifteen (15) days' notice. If the agreement is so terminated, TVA shall ensure that historic properties within the APE for the Undertaking are protected from adverse project effects in accordance with Section 106 of the NHPA until such time that TVA may enter into a new PA with the Signatories or request the comments of the Council pursuant to 36 CFR § 800.7(a).

Proposed change:

Strike this section, as it duplicates the language of VII.B Termination.

Section: Concurring Parties signature page

Existing text: (Lists both the Eastern Band of Cherokee Indians and the United Keetoowah Band of Cherokee Indians in Oklahoma)

Proposed change: Strike the signature line for the Eastern Band of Cherokee Indians.

In addition to the above changes, TVA proposes to make the following changes to terms used throughout the PA, in order to add clarity and reduce the chances of ambiguity:

Eric Oosahwee-Voss  
Page Five  
July 13, 2016

TERM	PROPOSED CHANGE
"undertaking" (when referring to TVA's proposed Clinch River SMR project)	"Undertaking"
"the Signatories"	"TVA and TN SHPO"
"Invited Signatory"	Strike this term
"federally-recognized Indian tribes"	"the Concurring Party"
"project"	"Clinch River SMR project"
"mitigation"	"mitigation measures"

Some additional, minor changes are also proposed, such as spelling out "Historic American Building Survey" and "Historic American Engineering Record" in Section III.B.3 (where the existing PA simply uses "HABS" and "HAER", respectively), so that someone reading the document would understand what those acronyms stand for.

Enclosed is a copy of the Amended and Restated PA with TVA's signature page signed by Wilbourne C. Markham, Jr. (Director, Environmental Permitting and Compliance and Federal Preservation Officer) and five blank signature pages for Mr. Patrick McIntyre. We respectfully ask that you review these proposed PA Amendments and either provide comments or sign and return all five signature pages within 30 days of receipt. Once the Amended and Restated PA has been executed, TVA will provide you with a complete copy including original signatures on all signature pages.

Please sign and return all five signature pages to us for dissemination. If you have any questions or comments, please contact me at (865)632-6461 or by email at [pbezzell@tva.gov](mailto:pbezzell@tva.gov).

Sincerely,

Patricia Bernard Ezzell  
Senior Program Manager  
Tribal Relations and Corporate Historian  
Communications  
WT 7D-K

**From:** Wells, Edward William III  
**To:** Ezzell, Patricia Bernard  
**Cc:** Cole, Stephen C; Yarnell, W Richard  
**Subject:** FW: TVA CLINCH RIVER SMALL MODULAR REACTORS PROJECT, PHASE I ARCHAEOLOGICAL SURVEY, ROANE COUNTY, TENNESSEE (LATITUDE 35.916944, LONGITUDE -84.391389)  
**Date:** Wednesday, May 13, 2015 9:30:01 AM

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For your records.

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**From:** Emman Spain [mailto:ESpain@mcn-nsn.gov]  
**Sent:** Tuesday, May 12, 2015 9:55 AM  
**To:** Wells, Edward William III  
**Subject:** RE: TVA CLINCH RIVER SMALL MODULAR REACTORS PROJECT, PHASE I ARCHAEOLOGICAL SURVEY, ROANE COUNTY, TENNESSEE (LATITUDE 35.916944, LONGITUDE -84.391389)

**TVA External Message. Please use caution when opening.**

Mr. Wells,

The Muscogee (Creek) Nation has received TVA's notice of TVA Clinch River Small Modular Reactors Project and the Phase I Archaeological Survey in Roane County, Tennessee. The Muscogee Nation is unaware of any culturally significant sites within the project areas. Further, we concur with the determination that site 40RE233 is eligible for listing on the National Register of Historic Places and will be avoided. Thank you.

Emman Spain, THPO  
Cultural Preservation Office  
Muscogee (Creek) Nation  
P. O. Box 580  
Okmulgee, OK 74447  
[espain@mcn-nsn.gov](mailto:espain@mcn-nsn.gov)  
(918) 732-7678

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**From:** Wells, Edward William III [mailto:[ewwells@tva.gov](mailto:ewwells@tva.gov)]  
**Sent:** Thursday, April 02, 2015 4:34 PM  
**To:** 'rallen@cherokee.org'; 'Tyler B. Howe ([tylehowe@nc-chokeee.com](mailto:tylehowe@nc-chokeee.com))'; 'Miranda Panther ([mirapant@nc-chokeee.com](mailto:mirapant@nc-chokeee.com))'; 'ukbthpo-larue@yahoo.com' ([ukbthpo-larue@yahoo.com](mailto:ukbthpo-larue@yahoo.com)); Emman Spain; Johnnie Jacobs; 'celestine.bryant@atribe.org'; 'slandsberry@alabama-quassarte.org'; 'kara.gann@kialegetribe.net'; 'chascoleman75@yahoo.com'; 'Joseph Blanchard' ([joseph.blanchard@astribe.com](mailto:joseph.blanchard@astribe.com)); 'Robin Dushane ([RDushane@estoo.net](mailto:RDushane@estoo.net))' ([RDushane@estoo.net](mailto:RDushane@estoo.net)); 'Dee Gardner ([dgardner@estoo.net](mailto:dgardner@estoo.net))' ([dgardner@estoo.net](mailto:dgardner@estoo.net)); 'kjumper\_shaneetribe@hotmail.com'  
**Cc:** "Russell Townsend ([RussellT@nc-chokeee.com](mailto:RussellT@nc-chokeee.com))" ([RussellT@nc-chokeee.com](mailto:RussellT@nc-chokeee.com)); Jeff Fife; Odette Freeman; David Proctor; Tim Thompson; Johnnie Wesley; LeeAnne Wendt; 'Kim Jumper ([kim.jumper@shawnee-tribe.com](mailto:kim.jumper@shawnee-tribe.com))' ([kim.jumper@shawnee-tribe.com](mailto:kim.jumper@shawnee-tribe.com)); 'cecil.wilson@astribe.com' ([cecil.wilson@astribe.com](mailto:cecil.wilson@astribe.com))'  
**Subject:** TVA CLINCH RIVER SMALL MODULAR REACTORS PROJECT, PHASE I ARCHAEOLOGICAL SURVEY, ROANE COUNTY, TENNESSEE (LATITUDE 35.916944, LONGITUDE -84.391389)

Good Afternoon,

I'm sending this email message on the behalf of Pat Ezzell and hope it finds you well. By

this email, I am transmitting the attached letter regarding TVA's potential infrastructure changes in two additional areas to facilitate construction of up to six small modular nuclear generating reactors at the former Clinch River Breeder Reactor Site in Roane County, Tennessee. TVA has enlarged the APE for archaeology. This area comprises approximately 138 acres of land, most of which is owned by the Department of Energy. All other areas of the APE have been surveyed previously and were included in our previous consultation. The survey identified no previously unrecorded archaeological sites. The survey identified one isolated find and one non-site locale. TVA determined that the isolated find, non-site locale, and previously identified sites 40RE135 and 40RE202 are ineligible for listing in the NRHP. TVA finds that no archaeological deposits associated with 40RE139 are located in the APE. Based on currently available information, TVA cannot fully evaluate the NRHP eligibility of site 40RE138. TVA's current plans for the project do not include any actions that would affect the previously identified sites 40RE138 or 40RE233. As plans are developed in future, TVA will consult further with your office. TVA is providing notification of these eligibility determinations and is seeking your comments regarding this undertaking and any properties that may be of religious and cultural significance and may be eligible for listing in the National Register of Historic Places.

The referenced report is attached.

As always, please do not hesitate to contact Pat Ezzell or me (while Pat's away) if you have any questions. Please respond by May 02, 2015, if you have any comments on the proposed undertaking.

Pat should be back in the office next week.

Thank you.

Sincerely,

Ted Wells

Edward "Ted" Wells  
Archaeologist  
Biological and Cultural Compliance  
Office: 865-632-2259  
Email: [ewwells@tva.gov](mailto:ewwells@tva.gov)



## Dudley, Cynthia S

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**From:** Ezzell, Patricia Bernard  
**Sent:** Tuesday, July 21, 2015 3:42 PM  
**To:** Tyler B. Howe (tylehowe@nc-chokeee.com); ukbthpo-larue@yahoo.com  
**Cc:** Miranda Panther (mirapant@nc-chokeee.com); Russell Townsend (RussellT@nc-chokeee.com)  
**Subject:** TVA, DRAFT PROGRAMMATIC AGREEMENT, CLINCH RIVER SMALL MODULAR REACTORS PROJECT, ROANE COUNTY, TENNESSEE  
**Attachments:** Clinch River SMR Draft PA THPO 20150721.pdf; Clinch River SMR PA for Phased Compliance\_final draft 20150720.pdf

Good Afternoon,  
I hope this email finds you well. By this message, I am transmitting the attached letter regarding TVA's development of a draft Programmatic Agreement (PA) for the Clinch River Small Modular Reactors project located in Roane County, Tennessee.

The draft PA is attached.

As always, please do not hesitate to contact me if you have any questions. Please respond with your comments no later than August 21, 2015.

Thank you!

Sincerely,

Pat

Pat Bernard Ezzell  
Senior Program Manager  
Tribal Relations and Corporate History  
Tennessee Valley Authority  
400 W. Summit Hill Drive  
460 WT 7D-K  
Knoxville, Tennessee 37902  
Office Phone: (865) 632-6461  
Cell phone: 865-304-9251  
E-mail: [pbezzell@tva.gov](mailto:pbezzell@tva.gov)



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902

July 21, 2015

To Those Listed:

**TENNESSEE VALLEY AUTHORITY (TVA), DRAFT PROGRAMMATIC AGREEMENT, CLINCH RIVER SMALL MODULAR REACTORS PROJECT, ROANE COUNTY, TENNESSEE**

TVA initiated consultation with your office on August 26, 2011 regarding the above-named project, a proposal to develop two or more small modular nuclear generating reactors (SMRs) at the former Clinch River Breeder Reactor Site in Roane County, Tennessee (and seek a Combined License from the United States Nuclear Regulatory Commission for the project). This year, we have continued that consultation in letters regarding an additional archaeological survey (letter dated April 2, 2015). In our letter of August 26, 2011, we proposed developing a Programmatic Agreement (PA) with the Tennessee State Historic Preservation Officer (TNSHPO) and other consulting parties to document the terms and conditions to resolve potential adverse effects of the undertaking.

TVA has determined, in consultation with the TNSHPO, that the area of potential effects (APE) for archaeological resources consists of an approximately 1300-acre area bounded on the west, south, and east by Watts Bar Reservoir (between Clinch River miles 14.05 and 19.0), and on the northeast by land owned by the U.S. Department of Energy (DOE). Recently, however, TVA proposed utilization of the State Highway 58 off ramp onto Bear Creek Road during the construction phase of the undertaking. Consequently, TVA has modified the APE to include this ca. 5-acre area, resulting in an APE that encompasses approximately 1,305 acres. Within this APE, TVA proposes to clear a ca. 456-acre area of vegetation as part of the site preparation work. The APE for historic architectural resources consists of the area within a one-half mile radius of the proposed land clearing, and that would have a visual line of sight to the project.

TVA has conducted four archaeological surveys including all parts of the APE with two exceptions: (1) some DOE land in the north part of the APE that was included in a recent DOE archaeological survey, during which eligible site 40RE233 was identified; and (2) the ca. 5-acre off-ramp from State Highway 58, which was included in a 1995 archaeological survey carried out by Duvall and Associates for the Tennessee Department of Transportation, and which has been disturbed by road construction. A total of 59 archaeological sites have been identified within the APE. Our offices have agreed that 16 of these sites are potentially eligible for the NRHP, and that one site determined by the Department of Energy (DOE) to be eligible for the NRHP is located in the undertaking's APE.

TVA considers this undertaking to be a type that accords with the meaning of the term "complex project" cited in 36 CFR § 800.14(b)(3) because it will involve multiple phases carried out by multiple groups within TVA as well as more than one outside entity, and so planning and project

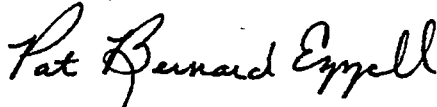
To Those Listed  
Page Two  
July 21, 2015

development will be complex. Because planning may not be finalized for some months or years, TVA is unable to fully apply the criteria of adverse effect to the identified historic properties at this time, and will not be able to do so prior to seeking the Early Site Permit from the U.S. Nuclear Regulatory Commission. However, we anticipate that the construction and operation phases of the undertaking may result in adverse effects to one or more of these historic properties. Therefore, TVA proposes to develop a PA under 36 CFR § 800.14(b)(3) to govern the management of historic properties within the undertaking's APE.

TVA has prepared the enclosed draft PA regarding the management of historic properties that may be affected by the undertaking. You indicated that you would like to participate in this PA. By this letter, we ask that you provide comments on this draft PA no later than August 21, 2015. Upon mutual agreement by TVA and the TNSHPO, we plan to notify the Advisory Council on Historic Preservation and invite it to participate in this consultation pursuant to § 800.14(b)(3) and § 800.6(a)(1).

Please let me know if you still are interested in participating in this PA as concurring parties and if you have any comments.

Sincerely,



Patricia Bernard Ezzell  
Senior Program Manager  
Native American Tribal Relations and Corporate Historian  
Public Relations and Corporate Information  
Communications  
WT460 7D-K

SCC:CSD:PBE  
Enclosures

IDENTICAL LETTER MAILED TO THE FOLLOWING ON JULY 21, 2015:

Mr. Tyler Howe  
Historic Preservation Specialist  
Eastern Band of Cherokee Indians  
Post Office Box 45  
Cherokee, North Carolina 28719

cc: Mr. Russell Townsend  
Tribal Historic Preservation Office  
Eastern Band of Cherokee Indians  
Post Office Box 455  
Cherokee, North Carolina 28719

Ms. Miranda Panther  
NAGPRA Coordinator  
Eastern Band of Cherokee Indians  
Post Office Box 455  
Cherokee, North Carolina 28719

Mrs. Lisa C. LaRue-Baker  
Acting Tribal Historic Preservation Officer  
United Keetoowah Band  
of Cherokee Indians in Oklahoma  
Post Office Box 746  
Tahlequah, Oklahoma 74464

**PROGAMMATIC AGREEMENT**  
**BETWEEN THE TENNESSEE VALLEY AUTHORITY**  
**AND THE**  
**TENNESSEE STATE HISTORIC PRESERVATION OFFICE**  
**REGARDING THE MANAGEMENT OF HISTORIC PROPERTIES AFFECTED BY**  
**THE CLINCH RIVER SMR PROJECT**

WHEREAS, the Tennessee Valley Authority (TVA) proposes to apply for an Early Site Permit from the Nuclear Regulatory Commission (NRC) for the eventual construction of two or more small modular nuclear reactors ("Undertaking") within the Clinch River Small Modular Reactor (SMR) project area bordering Watts Bar Reservoir in Roane County, Tennessee (Appendix A); and

WHEREAS, upon NRC approval of the Early Site Permit TVA will apply for a Combined License for the proposed SMR facility; and

WHEREAS, TVA considers these two related actions—the Early Site Permit Application (ESPA) and the eventual Combined License Application (COLA)—as two sequential parts of a single, complex Undertaking, as "undertaking" is defined at 36 CFR § 800.16(y); and

WHEREAS, this Undertaking has the potential to affect historic properties as defined at 36 CFR § 800.16(l); and

WHEREAS, TVA, in consultation with the Tennessee State Historic Preservation Officer (TN SHPO) and pursuant to 36 CFR § 800.4(a)(1), has determined the area of potential effects (APE) for this proposed federal undertaking, for archaeological resources, to be an approximately 1305-acre area bounded on the west, south, and east by Watts Bar Reservoir (between Clinch River miles 14.05 and 19.0); and on the northeast by land owned by the Department of Energy (DOE) (Appendix B); and

WHEREAS, TVA has consulted with TN SHPO regarding this undertaking, in accordance with 36 CFR Part 800, regulations of the Advisory Council on Historic Preservation ("Council") implementing Section 106 of the National Historic Preservation Act (NHPA); and,

WHEREAS, TVA has consulted on a government-to-government basis regarding this undertaking with the Eastern Band of Cherokee Indians, Cherokee Nation, Chickasaw Nation, Alabama Quassarte Tribal Town, Muscogee (Creek) Nation, Alabama-Coushatta Tribe of Texas, Thlopthlocco Tribal Town, Seminole Nation of Oklahoma, Eastern Shawnee Tribe of Oklahoma, Absentee Shawnee Tribe of Oklahoma, Kialegee Tribal Town, United Keetoowah Band of Cherokee Indians in Oklahoma, Seminole Tribe of Florida, Shawnee Tribe, and Poarch Band of Creek Indians; and

WHEREAS, TVA has conducted four archaeological surveys, including all parts of the APE (Appendix B), with the exceptions of ca. 101 acres of DOE land in the northwestern

part of the APE that was included in a recent DOE archaeological survey (Reed et al. 2011, Appendix E), and a ca. 5-acre area consisting of an existing off-ramp from State Highway 58 (Pace 1995; Appendix F); and the surveys have identified 59 archaeological properties within that APE; and

WHEREAS, TVA has determined that the APE for historic architectural resources consists of a one-half mile radius surrounding the area in which vegetation clearing would take place in preparation for the construction phase of the undertaking (Appendix B); and

WHEREAS, TVA, after conducting a historic architectural survey within a portion of the architectural APE and conducting its own desktop and field study of the remaining portion, has found that no historic architectural resources that are included or eligible for inclusion in the National Register of Historic Places (NRHP) are located within this APE, and TN SHPO has concurred with this finding; and

WHEREAS, TVA, in consultation with the TN SHPO and Native American tribes, has determined that 16 archaeological properties within the APE (40RE104, 40RE105, 40RE106, 40RE107, 40RE108, 40RE124, 40RE128, 40RE138, 40RE140, 40RE165, 40RE166, 40RE167, 40RE549, 40RE595, 40RE600, and 40RE601) are potentially eligible for inclusion in the NRHP (Appendix C); and

WHEREAS, archaeological site 40RE233 (Happy Valley Workers' Camp), which is located on Department of Energy (DOE) land within the APE, was investigated by the DOE in 2011 (Reed et al. 2011) and was recommended eligible for inclusion in the NRHP, and TVA agrees with that recommendation; and

WHEREAS, planning for the proposed Undertaking is currently ongoing and finalization may not occur for several months or years; and

WHEREAS, the Undertaking has the potential to adversely affect an unknown number of the 16 potentially eligible properties and eligible site 40RE233, but as yet the scales and precise locations of the various parts of the Undertaking are incompletely known; and

WHEREAS, TVA elects to fulfill its obligations under Section 106 of the NHPA for the undertaking through execution and implementation of this Programmatic Agreement (PA), as provided for in 36 CFR § 800.14(b)(3)); and

WHEREAS, *(to be enumerated upon conclusion of consultation)* tribes have agreed to participate in the development of this PA and sign the PA as concurring parties; and

WHEREAS, TVA will provide the public an opportunity to express their views on this undertaking by means of various notices and public meetings;

NOW THEREFORE, pursuant to 36 CFR § 800.14(b), TVA shall take into account the effects of this undertaking on historic properties in accordance with the following stipulations.

## STIPULATIONS

TVA shall ensure that the following stipulations are implemented:

### I. PHASED IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

#### A. IDENTIFICATION

As TVA develops the details of the Undertaking, TVA will consider further the possible effects of the Undertaking on eligible and potentially eligible properties within the APE. The APE will remain as shown in Appendix B unless TVA determines, in consultation with the TN SHPO, that final project plans warrant revising the APE in order to better delineate the area in which there is potential for effects on historic properties. Should the APE be revised by TVA in consultation with TN SHPO, TVA shall take any additional steps necessary to identify historic properties within the revised APE, and this may include one or more additional Phase I identification surveys. Said surveys shall be carried out in a manner consistent with the Secretary of the Interior's *Standards and Guidelines for Identification* (48 FR 44720-23) and the Tennessee Historic Commission, Review and Compliance Section, *Reporting Standards: Archaeological and Architectural Resource Identification Studies (Survey Reports)*. TVA shall submit draft and final Survey Reports to TN SHPO and the Signatories for comment within a thirty (30) day period, pursuant to 36 CFR § 800.4(d).

If project plans include activities that would disturb soils or sediments to depths greater than the maximum depth investigated previously during the archaeological surveys of the APE (approximately 80 cm or 31 in), in areas with potential for deeply buried cultural deposits, the APE will be enlarged in the vertical dimension, within areas with potential for deeply buried deposits (see Appendix D), to include deposits not previously investigated that could be affected by the Undertaking. Such testing will be carried out in the manner described in the preceding paragraph.

#### B. EVALUATION

1. TVA shall evaluate the NRHP eligibility of any cultural resources within the APE that TVA and TN SHPO have agreed are "potentially eligible" or of "undetermined" NRHP eligibility, and that would be adversely affected by the Undertaking, pursuant to 36 CFR § 800.4(c). The terms "potentially eligible" and "of undetermined eligibility" are equivalent for purposes of this PA.
2. TVA, in consultation with TN SHPO and federally-recognized tribes, shall conduct investigations to evaluate the significance of the following two (2) types of cultural resources, pursuant to § 800.4(c)(1):
  - a) Archaeological sites which are of undetermined NRHP eligibility and would be adversely affected by the Undertaking; and
  - b) Above-ground historic resources which have not been previously evaluated or require further evaluation in order to determine their eligibility for listing on the NRHP and would be adversely affected by the Undertaking.

3. The investigation stipulated by part I.B.2, above, shall consist of conducting a Phase II evaluation study in a manner consistent with the Secretary of the Interior's *Standards and Guidelines for Identification* (48 FR 44720-23) and the Tennessee Historic Commission, Review and Compliance Section, *Reporting Standards: Archaeological and Architectural Resource Identification Studies (Survey Reports)*. A scope of work will be developed in consultation prior to the implementation of the investigation, and will specify the procedures to be used in determining the eligibility of the property pursuant to 36 CFR § 800.4(c). TVA shall submit draft and final reports, which shall contain a recommendation on the property's eligibility for listing on the NRHP, to TN SHPO and federally-recognized Indian tribes for comment within a thirty (30) day period.
4. Upon completion of the Phase II evaluation study of an undetermined property, if TVA and TN SHPO agree that the property meets NRHP criteria, the property shall be considered eligible for inclusion in the NRHP. Should a dispute arise on the eligibility of an identified property, TVA will consult with TN SHPO to resolve the objection. If TVA and the SHPO do not agree, or if the Advisory Council on Historic Preservation (Council) or the Secretary of the Interior (Secretary) so request, TVA shall obtain a determination of eligibility from the Secretary of Interior pursuant to 36 CFR § 63. If an Indian tribe that attaches religious or cultural significance to an identified property does not agree, it may ask the Council, pursuant to 36 CFR § 800.4(c)(2), to request the TVA Federal Preservation Officer to obtain a determination of eligibility from the Secretary of Interior.

#### C. RESULTS OF IDENTIFICATION AND EVALUATION

If, after carrying out the steps in Section I.B (above), TVA has found (in consultation with TN SHPO and federally-recognized Indian tribes) that the property in question is not eligible for the NRHP, then TVA shall notify the Signatories and make the documentation available for public inspection pursuant to 36 CFR § 800.4(d)(1).

If, after carrying out the steps in Section I.B (above) and finding (in consultation with TN SHPO and federally-recognized Indian tribes) that the property in question is eligible for inclusion in the NRHP, TVA shall continue to seek ways to avoid adverse effects to the historic property, as outlined below in Section II of this PA.



## **II. AVOIDANCE**

TVA, in consultation with the Signatories, shall seek ways to avoid adverse effects to properties determined eligible for inclusion in the NRHP whenever economically prudent and technically feasible. To the extent practicable, the following measures shall be taken by TVA to avoid adverse effects to historic properties:

- A. Avoid locating any project elements within the identified boundaries of NRHP-eligible historic properties.
- B. Mark or delineate sensitive archaeological areas located within the APE on the plans to be used in construction. Any special conditions placed on such areas for construction will be detailed on these plans.
- C. Avoid locating any TL structure, substation, building, or infrastructure within the viewshed of any NRHP-eligible historic architectural resource.

## **III. RESOLUTION OF ADVERSE EFFECTS TO HISTORIC PROPERTIES**

If, after carrying out the steps in Sections I and II, TVA finds that the undertaking would result in an adverse effect to an historic property, and has determined in consultation with the Signatories that avoidance of the historic property in the APE is not possible, then TVA shall notify the Council pursuant to 36 CFR § 800.6(a)(1), providing the documentation specified in § 800.11(e), and shall invite the Council to participate. TVA shall treat that historic property in the manner outlined below.

### **A. MINIMIZATION**

TVA will consult with the Signatories in order to seek a course of action that will minimize any adverse project-related effects to historic properties, if any such course is realistically possible.

### **B. MITIGATION**

- 1. If avoidance and minimization alternatives have been determined by TVA, in consultation with the Signatories, not to be technically feasible or economically prudent, TVA will notify the Council pursuant to 36 CFR § 800.6(a)(1), and will develop treatment measures for mitigation of adverse effect(s) to historic properties. TVA shall consult with the Signatories to reach agreement on appropriate treatment measures.
- 2. In the case of an NRHP-eligible archaeological site, mitigation shall consist of data recovery. TVA will develop a Data Recovery Plan written by a qualified professional archaeologist that meets the standards set forth in *Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines*. Upon concurrence by the Signatories, TVA will distribute the Data Recovery Plan to all Signatories. The Data Recovery Plan shall be developed consistent with the applicable provisions in 36 CFR §§ 800.5 and 800.16, the standards set forth in *Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines*, and the standards set forth in the Tennessee SHPO Standards and Guidelines for Archaeological Resource

Management Studies (March 2009 revision). The Data Recovery Plan shall specify, at a minimum:

- a) the property, properties, or portions of properties where data recovery is to be carried out;
  - b) any property, properties, or portions of properties that will be destroyed without data recovery;
  - c) the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
  - d) the field and laboratory methods to be used, with an explanation of their relevance to the research questions;
  - e) the methods to be used in analysis, data management, and dissemination of data;
  - f) a schedule for the implementation of the above parts of the Plan;
  - g) the curation facility selected by TVA in consultation with the TN SHPO; and the procedures for curation of the recovered materials and records consistent with the curation standards prescribed in 36 CFR Part 79 except for items specified under Stipulation V.B below (human remains);
  - h) procedures (outlined below in Section V of this PA) for the treatment of any human remains discovered within the APE as a consequence of the implementation of the Data Recovery Plan;
  - i) proposed methods for involving the interested public in data recovery and for disseminating results of the work to the interested public; and
  - j) a proposed schedule for the submission of progress reports to the TN SHPO.
3. In the event of potential for impacts to historic architectural properties (historic district, site, building, structure, or object), mitigation would be developed in consultation with the Signatories. Such measures could include any of the following (as well as any other measures that TVA and TN SHPO (and the Council, if the Council has decided to participate), agree TVA should implement):
- a) Vegetation screening
  - b) HABS- or HAER-equivalent documentation
  - c) Preparation of a Tennessee Historical and Architectural Resource form
  - d) National Register of Historic Places nomination

- e) Interpretive panels presenting summary historical information about the resource in a location accessible for public viewing.
- f) Presentation of a historical research paper at a public meeting or professional conference.

#### **IV. POST REVIEW DISCOVERIES**

TVA shall ensure that previously unidentified archaeological sites located within the Undertaking's APE that are inadvertently discovered during the implementation of the Undertaking will be subject to the following compliance measures:

- A. Sites will be protected and stabilized to prevent any further disturbance until the Signatories make an informed NRHP eligibility determination.
- B. Any additional compliance steps necessary to fulfill TVA's obligations under Section 106 and the terms of this PA will be completed.
- C. Ground-disturbing work will stop within a 50-foot radius of the discovery until steps IV.A and B have been completed in consultation with TN SHPO.

#### **V. TREATMENT OF HUMAN REMAINS**

If human remains are identified within the APE as a consequence of the implementation of the Undertaking or any treatment plans developed through implementation of this PA, TVA shall:

- A. ensure that the treatment of any human remains discovered within the APE complies with all state and federal laws concerning archaeological sites and treatment of human remains;
- B. immediately cease all ground-disturbing activities within a three (3) meter (ca. 10-ft) radius of the burial;
- C. notify the Roane County Coroner and the Tennessee State Archaeologist within twenty-four (24) hours;
- D. notify the Signatories and potentially culturally affiliated federally-recognized tribal governments within seventy-two (72) hours and invite them to comment on any plans developed to treat the human remains; and
- E. ensure that the remains are treated in a manner consistent with the Council's *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (2007), and will be conducted in accordance with the applicable provisions of Tennessee Code Annotated (T.C.A.) 46-4-101 et seq. (*Termination of Use of Land as a Cemetery*); T.C.A. 11-6-116, (*Excavation of Areas Containing Native American Indian Remains*); T.C.A. 11-6-119 (*Reburial of Human Remains or Native American Burial Objects following Discovery or Confiscation*), and Tennessee Rules and Regulations Chapter 0400-9-1 (*Native American Indian Cemetery Removal and Reburial*).

#### **VI. REPORTS**

TVA shall ensure that all cultural resources investigations undertaken for compliance with this PA are recorded in formal written reports that meet the Secretary of Interior's Standards and Guidelines for Identification (48 FR 44720-23) and the Tennessee Historic Commission, Review and Compliance Section, *Reporting*

*Standards: Archaeological and Architectural Resource Identification Studies (Survey Reports).* The TN SHPO and other consulting parties shall be afforded thirty (30) days to review and comment on any archaeological reports submitted as compliance with this agreement.

TVA shall distribute copies of all final reports and Plans to the Signatories. Throughout the duration of this PA, Signatories shall have 30 days to review and comment on all cultural resource survey reports concerning identification of historic properties or evaluation of identified properties, and proposed plans provided by TVA. Comments received by TVA from the Signatories shall be taken into consideration in preparing final documents.

## **VII. ADMINISTRATIVE CONDITIONS**

### **A. DURATION**

This PA will be in effect for the duration of the Undertaking (i.e., until the Construction and Operating License has been approved by the NRC or the Undertaking has been terminated).

### **B. TERMINATION**

If any Signatory to this PA determines that the terms cannot be or are not being carried out, that party shall immediately consult with the other signatories to seek amendments of the agreement. If the agreement is not amended within thirty (30) days of the initiation of such consultation (or another time period agreed to by all signatories), any Signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the Undertaking, TVA must either (a) execute a different PA, or (b) request, take into account, and respond to the comments of the Advisory Council under 36 CFR § 800.7. TVA shall notify TNSHPO as to the course of action it will pursue.

If TVA permanently cancels the Undertaking, all signatories will be notified and this PA will be terminated.

### **C. DISPUTE RESOLUTION**

Should a Signatory or Invited Signatory object within thirty (30) days after receipt of any plans, specifications, contracts, or other documents provided for review pursuant to this Agreement, TVA shall consult with the objecting party to resolve the dispute. If TVA determines that the objection cannot be resolved, TVA, or the objecting party, may seek guidance from the Council pursuant to 36 CFR § 800.2(b)(2). TVA will take any Council comment provided in response to such a request into account in resolving any such dispute. The Signatories are responsible for carrying out all actions under this PA that are not the subject of the dispute.

### **D. AMENDMENT**

If a Signatory to this PA determines that the terms of the PA cannot be or are not being carried out, the Signatories shall consult to seek a resolution of the issue.

If, after due consultation, the issue is not resolved by amending the PA, then any Signatory may terminate the agreement after giving the other Signatories fifteen (15) days' notice. If the agreement is so terminated, TVA shall ensure that historic properties within the APE for the Undertaking are protected from adverse project effects in accordance with Section 106 of the NHPA until such time that TVA may enter into a new PA with the Signatories or request the comments of the Council pursuant to 36 CFR § 800.7(a).

**EXECUTION** of this Programmatic Agreement by the Tennessee Valley Authority and the Tennessee State Historic Preservation Officer, the filing of this Agreement with the Advisory Council on Historic Preservation (Council), and the implementation of the terms of the Agreement evidence that TVA has, in accordance with Section 106 of the National Historic Preservation Act, taken into account the effects of this Undertaking on Historic Properties and afforded the Council an opportunity to comment.

INTERNAL COPIES:

Jack Brellenthin, BR 4A-C  
Michelle Cagley, KFP 1T-KST  
Geraldine Gallman, WT 7D-K  
Amy Henry, WT11D-K  
Ruth Horton, WT11D-K  
Susan Jacks, WT11C-K  
Clint Jones, WT11C-K  
Paul Pearman, BR 4A-C  
Jeff Perry, LP 5A-C  
Richard Yarnell, WT11D-K  
EDMS, WT CA-K

**From:** Ezzell, Patricia Bernard  
**To:** Dudley, Cynthia S; Yarnell, W Richard; Cole, Stephen C; Jones, Clinton E  
**Subject:** Fw: TVA, DRAFT PROGRAMMATIC AGREEMENT, CLINCH RIVER SMALL MODULAR REACTORS PROJECT, ROANE COUNTY, TENNESSEE  
**Date:** Wednesday, July 29, 2015 5:27:03 PM

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Hello,

Here are the comments on the. PA from the UKB. Thanks!--Pat

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: Lisa LaRue-Baker - UKB THPO <ukbthpo-larue@yahoo.com>

Sent: Wednesday, July 29, 2015 11:58 AM

To: Ezzell, Patricia Bernard

Reply To: ukbthpo-larue@yahoo.com

Cc: ebird@unitedkeetoowahband.org

Subject: Re: TVA, DRAFT PROGRAMMATIC AGREEMENT, CLINCH RIVER SMALL MODULAR REACTORS PROJECT, ROANE COUNTY, TENNESSEE

TVA External Message. Please use caution when opening.

Looks good to me!!

Lisa C. Baker  
Acting THPO  
United Keetoowah Band of Cherokee Indians in Oklahoma  
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On Tue, 7/21/15, Ezzell, Patricia Bernard <pbezzell@tva.gov> wrote:

Subject: TVA, DRAFT PROGRAMMATIC AGREEMENT, CLINCH RIVER SMALL MODULAR REACTORS PROJECT, ROANE COUNTY, TENNESSEE

To: "Tyler B. Howe (tylehowe@nc-chokeee.com)" <tylehowe@nc-chokeee.com>, "ukbthpo-larue@yahoo.com" <ukbthpo-larue@yahoo.com>

Cc: "Miranda Panther (mirapant@nc-chokeee.com)" <mirapant@nc-chokeee.com>, "Russell Townsend (RussellT@nc-chokeee.com)" <RussellT@nc-chokeee.com>

Date: Tuesday, July 21, 2015, 2:42 PM

Good Afternoon,  
I hope this email finds you well. By this message, I am transmitting the attached letter regarding TVA's development of a draft Programmatic Agreement (PA) for the Clinch River Small Modular Reactors project located in Roane County, Tennessee.

The draft PA is attached.

As always, please do not hesitate to contact me if you have any questions. Please respond with your comments no later than August 21, 2015.

Thank you!

Sincerely,

Pat

Pat Bernard Ezzell  
Senior Program Manager

Tribal Relations and  
Corporate History

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