

April 2, 2008

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

In the Matter of)	
)	
Tennessee Valley Authority)	Docket Nos. 52-014, 52-015
)	
Bellefonte Nuclear Power Plant)	
Units 3 and 4)	
)	

**SUPPLEMENTAL MOTION TO SUSPEND HEARING NOTICE
OR, IN THE ALTERNATIVE,
REQUEST FOR AN EXTENSION OF TIME
TO SUBMIT HEARING REQUEST AND CONTENTIONS
AND
REQUEST FOR EXPEDITED CONSIDERATION**

INTRODUCTION

Bellefonte Efficiency and Sustainability Team (“BEST”), a chapter of the Blue Ridge Environmental Defense League (“BREDL”)¹, hereby supplements BEST’s February 29, 2008, request to the Secretary of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) to immediately suspend the notice of hearing in the above-captioned matter.² In the alternative, we request an extension of 60 days after TVA

¹ Since February 28, 2008 BEST has been a *bona fide* chapter of the Blue Ridge Environmental Defense League, Inc. and, as such, enjoys a common incorporation, non-profit status and governance with BREDL and its many chapters.

² BEST requested suspension of the hearing notice in a letter from Louise Gorenflo to Dave B. Matthews, Director of the NRC’s Division of New Reactor Licensing. In an

submits seismological and hydrological information requested by the NRC Staff, as discussed below.

This supplemental motion is based on a recently released NRC document which shows that TVA's combined operating license ("COL") application is not "complete," as required by 10 C.F.R. § 2.101(a)(3), and therefore the NRC's decision to docket the application was premature. Letter from Thomas A. Bergman, NRC, to Ashok S. Bhatnagar, Tennessee Valley Authority ("TVA") (March 25, 2008) ("Bergman Letter").³ The Bergman Letter also shows that completion of TVA's application will be delayed by at least two months, thus delaying the NRC Staff's review. Under the circumstances, to proceed with a hearing while TVA completes its application would result in piecemeal NRC Staff review and litigation, which is disfavored by the NRC.

In addition, it has come to BEST's attention that the hearing notice (73 Fed. Reg. 7611 (February 8, 2008)) is defective with respect to a key licensing issue that is raised in the Bergman letter: the seismic design of the proposed nuclear plants. The hearing notice itself provides no information whatsoever regarding the certified AP1000 design and proposed AP1000 design revisions on which TVA relies, and both the COL application and the NRC's website contain information that is incomplete and misleading with respect to Westinghouse Electric Corporation's ("Westinghouse's") proposed revisions to the AP1000 design.

order dated March 5, 2008, the Secretary of the Commission issued an order stating that the letter would be treated as a motion under 10 C.F.R. § 2.323.

³ The Bergman letter was placed on the Agency-wide Document Management System ("ADAMS") on March 28, 2008 (ADAMS Accession No. ML080720558).

For these reasons, BEST renews its request to suspend the hearing notice for the Bellefonte licensing proceeding. In the alternative, BEST requests an extension of 60 days to prepare its hearing request.

FACTUAL BACKGROUND

On February 15, 2008, the NRC Staff issued a Request for Additional Information (“RAI”) asking TVA to update its seismic analysis, which relies on data that is over twenty years old. Letter from Joseph M. Sebrosky, NRC, to Ashok S. Bhatnagar, TVA, re: Request for Additional Information – Tennessee Valley Authority Combined License Application for Bellefonte Units 3 and 4) (February 15, 2008) (ADAMS Accession No. ML080450502). The letter also warned that receipt of the requested information after March 20, 2008 “may delay the completion of the staff’s safety evaluation report.” *Id.*

On March 14, 2008, TVA apparently sent the NRC Staff a letter stating that it did not intend to submit “critical portions” of the seismic information requested by the Staff until May 14, 2008. Bergman Letter at 1. (The March 14 TVA letter is not available on the NRC’s “new reactors” website or ADAMS, but is paraphrased in the Bergman Letter.) According to the Bergman Letter, “[t]his date is approximately two months later than what the staff assumed in developing the February 15, 2008, schedule.” *Id.* at 1.

The Bergman Letter also states that as a result of a February 2008 inspection in which the NRC Staff cited TVA for three violations with respect to its quality assurance (“QA”) program for hydrology⁴, TVA has developed a “revised plan for the hydrology

⁴ See letter from Patrick L. Hiland, NRC, to Ashok S. Bhatnagar, TVA, re: Bellefonte Combined License Application – Nuclear Regulatory Commission Inspection of the Implementation of the Quality Assurance Program Governing the Simulated Open

review.” *Id.* According to the Bergman Letter, TVA requested a “working visit” in late June of 2008 to discuss its hydrology code, which would delay the Staff’s completion of its hydrology review by six weeks. *Id.* at 2.

DISCUSSION

A. The Bergman Letter Shows That TVA’s Application is Incomplete in Significant Respect.

The Bergman Letter states that “[a]ny delay in the hydrology review or seismology review” caused by TVA’s delay in updating its application “will have an impact on the overall Bellefonte safety review schedule, which is the reference COL for the AP 1000 design.” *Id.* at 2. Presumably, this is because information that should be in TVA’s COL application is not merely inadequate, but missing from the application. The Bergman Letter also makes clear that the seismic and hydrological analyses, which will be addressed in Chapter 2 of the Staff’s Safety Evaluation Report (“SER”) are fundamental elements TVA’s COL application, with a “potential impact” on other portions of the SER. *Id.*

Given that the incompleteness of TVA’s application is significant enough to delay the Staff’s entire safety review, it is now clear that the application does not satisfy the requirement for completeness of 10 C.F.R. § 2.101(a)(3). Therefore the NRC should suspend the hearing notice.

B. The NRC Should Suspend the Hearing Notice to Avoid Imposing Unfair Litigation Burdens on BEST, Including the Obligation to

Channel Hydraulics Model – Inspection Report Numbers 05200014/2008-001 and 05200015/2008-001 and Notice of Violation (March 19, 2008) (“Inspection Report 2008-01”) (ADAMS Accession No. ML0807030531). Inspection Report 2008-01 was not posted on ADAMS until March 28, 2008.

Engage in Piecemeal Litigation.

Now that the Staff has stated that is unable to go forward with a key portion of its safety and environmental review, it would be fundamentally unfair for the NRC to require BEST and other interested citizens and organizations to go ahead with their own review of the application and preparation of contentions. *See Draft Statement of Policy on Conduct of New Reactor Licensing Proceedings*, 72 Fed. Reg. 32,139, 32,141 (June 11, 2007) (citing the Commission's commitment to a "fair hearing process"). The work of reviewing TVA's COL application is time-consuming and expensive, and may be useless if TVA substantially changes its application when it submits additional information in mid-May. In addition, BEST is unable to prioritize the use of its limited resources to evaluate TVA's application if it does not have a good sense of what the application actually consists of. For instance, BEST should not be required to expend scarce resources challenging TVA's outdated seismic design for the proposed nuclear plant, when it appears that TVA is likely to change the application in mid-May. Finally, to proceed with a review of part of TVA's application when a significant portion is incomplete would result in piecemeal litigation, which is disfavored by the Commission. 72 Fed. Reg. at 32,141.

C. The Hearing Notice is Defective.

The March 25 Bergman Letter and the February 15 RAI highlight deficiencies in the seismic design for the proposed nuclear plants, causing BEST to seek additional information about the ways in which Westinghouse plans to update its seismic information for the generic AP1000 design. BEST also sought to review proposed

changes to the generic design because the February 15 RAI refers to “generic aspects” of the RAI and states that “TVA may decide to address this issue consistent with the generic response.” *Id.* at 1. However, the hearing notice for the proposed plants does not provide the necessary information regarding proposed changes to the seismic design. In fact, the hearing notice makes no mention at all of the AP1000 design, let alone does it explain how to obtain proposed amendments to the design.

TVA’s COL application also fails to identify specific updates to the AP1000 application. According to the cover letter, the application:

incorporates by reference Appendix D to 10 CFR 52 and the Westinghouse Electric Corporation’s application for amendment to portions of the Design Control Document (DCD) Revision 16 (submitted May 26, 2007), including Westinghouse Technical Report, APP-GW-GLR-134, “AP1000 DCD Impacts to Support COLA Standardization” (submitted October 26, 2007).

Letter from Ashok S. Bhatnagar, TVA, to R. William Borchardt, NRC, re: Application for Combined License for Bellefonte Units 3 and 5 (October 30, 2007).⁵ But Westinghouse’s specific requests for amendments to its design certification are not listed in the cover letter.

The NRC’s website is even less helpful, because it directs the reader to seek information where it cannot be found. According to the webpage entitled “AP1000 Design Certification Amendment,” in a joint letter submitted on March 8, 2006, NuStart Energy Development, L.L.C. (“NuStart”) and Westinghouse stated that:

they would be submitting the AP1000 technical reports to the NRC for review during the preapplication phase for the Bellefonte COL application. These reports will provide the following:

⁵ The letter is posted on the NRC’s website at <http://www.nrc.gov/reactors/new-licensing/col/bellefonte.html#appDocuments>.

1. Information needed to close all or part of specific generically applicable COL items in the AP1000 certified standard design
2. standard design changes that are a result of the AP1000 detailed design efforts
3. Specific standard design information in areas or for topics where the AP1000 DCD focused on design process/methodology and Design Acceptance Criteria (DAC)
4. deferral of COL information items to as-built requirements (e.g., inspections, test analyses, and acceptance criteria (ITAAC))

<http://www.nrc.gov/reactors/new-licensing/design-cert/amended-ap1000.html>.

According to the webpage, these design changes include “a revision to the seismic analysis to allow an AP1000 to be constructed on site with rock and soil conditions other than the hard rock conditions certified in the AP1000 DCR.” *Id.* But the webpage does not provide any citation to an updated seismic analysis.

The webpage also states that “[a]s of February 2008, Westinghouse had submitted 122 technical reports for staff review . . . as part of the Bellefonte COL preapplication phase.” But an “advanced” search of Docket No. 052-014 on the ADAMS system for documents submitted by Westinghouse between March 8, 2006 and February 28, 2008 yields only 14 documents, none of which constitutes a seismic analysis.

Thus, there is no information – either in the hearing notice, the COL application, or the NRC’s website – identifying the proposed amendments to the AP1000 design on which TVA relies for its COL application. Given the importance of the seismic design to the proposed plant’s safety and the obviously outdated nature of TVA’s seismic analysis, it is essential for the hearing notice to identify – or at least point to – the specific proposed changes for the AP1000 design certification, including the seismic design and all other aspects of the design.

CONCLUSION

For the foregoing reasons, the Secretary should suspend the hearing notice. In the alternative, the Secretary should grant an extension of the deadline for submitting hearing requests until 60 days after TVA has submitted the information requested in the March 25 Bergman letter.

Finally, because hearing requests are now due in less than a week, on April 8, 2008, BEST requests the Secretary to give this supplemental motion expedited consideration.

Respectfully submitted,



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April 2, 2008

Certificate of Counsel

I certify that on April 1, 2008, I contacted counsel for TVA, who told me that TVA intends to oppose this motion. On April 2, I also contacted counsel for the NRC Staff who indicated they would oppose this motion.

_____/signed electronically by Louis A. Zeller/_____
April 2, 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of the April 2, 2008 SUPPLEMENTAL MOTION TO SUSPEND HEARING NOTICE OR, IN THE ALTERNATIVE, REQUEST FOR AN EXTENSION OF TIME TO SUBMIT HEARING REQUEST AND CONTENTIONS AND REQUEST FOR EXPEDITED CONSIDERATION was served on the following persons via Electronic Information Exchange this 2nd day of April, 2008. Further, I certify that a NOTICE OF APPEARANCE FOR LOUIS A. ZELLER was filed in like manner to the parties on April 1, 2008:

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