Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission ("NRC staff") hereby responds to the “Applicant’s Motion to Strike Portions of Petitioners’ Reply” filed on July 11, 2008, by the Applicant (Tennessee Valley Authority, “TVA”) ("Motion"). The Motion seeks to strike portions of the “Reply of The Blue Ridge Environmental Defense [sic] League, Its Chapter Bellefonte Efficiency and Sustainability Team and the Southern Alliance For Clean Energy to the NRC Staff Answer to Petition for Intervention and the Applicant’s Answer Opposing Petition To Intervene, Both Dated July 1, 2008.” (July 8, 2008) ("Reply"). For the reasons explained below, the NRC staff supports the Motion to the extent that the Motion requests that the Licensing Board exclude from its consideration those arguments, supporting references, and attachments (including expert affidavits) that Petitioners have raised for the first time in the Reply.

1 “Petitioners” herein refers to the Blue Ridge Environmental Defense League, Bellefonte Efficiency and Sustainability Team, and the Southern Alliance for Clean Energy, who collectively submitted a petition to intervene in this proceeding.
In the Motion, the Applicant argues that the Reply improperly includes new arguments, references, and attachments. The Commission has emphasized that a reply cannot expand the scope of the arguments set forth in the original hearing request. *Nuclear Mgmnt. Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727,732 (2006).

The Staff agrees with the Applicant that the items identified on pages 4-6 of the Motion constitute new arguments, references and attachments that should have been raised in the original petition and may not be raised in a reply. See *La. Energy Services, LP* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004) (“LES”). Thus, the NRC staff agrees with the Applicant that the new material is improperly raised and cannot be used to support the admissibility of the proposed contentions.

In light of the Commission’s aforementioned holdings, the Licensing Board may consider it appropriate to formally strike the new arguments and material from the record (see *Entergy Nuclear Vt. Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 182, 198-199 (2006)), or simply to exclude them from consideration in ruling on the Petition (see LES, LBP-04-14, 60 NRC 40, 63-64 (2004)). The NRC staff submits that either approach would be consistent with the purpose of the Motion, which is to identify for the Licensing Board those arguments, references, and attachments that are beyond the permissible scope of a reply.

Respectfully submitted,

**Executed in Accord with 10 CFR § 2.304(d)**

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Dated at Rockville, Maryland  
this 15th day of July, 2008
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )
) Docket Nos. 52-014 and 52-015
TENNESSEE VALLEY AUTHORITY )
Bellefonte Nuclear Power Plant )
Units 3 and 4 )

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF RESPONSE TO “APPLICANT’S MOTION TO STRIKE PORTIONS OF PETITIONERS’ REPLY” have been served upon the following persons by Electronic Information Exchange this 15th day of July, 2008:

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