

# Blue Ridge Environmental Defense League

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February 11, 2016

Joe Ritch, Chair  
Tennessee Valley Authority Board of Directors  
1101 Market Street  
Chattanooga, Tennessee

Dear Mr. Ritch and Members of the Board:

Today, on behalf of the Blue Ridge Environmental Defense League and our chapter Bellefonte Efficiency and Sustainability Team/Mothers Against Tennessee River Radiation, we propose to members of the Tennessee Valley Authority Board of Directors the following: That you direct TVA to withdraw its Combined License Application for Bellefonte 3 and 4 nuclear reactors. We believe that this is the most prudent course of action for the Authority, its customers and the general public.

## Background

On June 6, 2008, the Blue Ridge Environmental Defense League petitioned for leave to intervene in the Nuclear Regulatory Commission license process for construction and operation of two Westinghouse AP1000 nuclear reactors, designated Units 3 and 4, at the Bellefonte Nuclear Power Plant.<sup>1</sup> Our petition was filed in response to the application for a combined license filed pursuant to 10 CFR Part 52 Subpart C by the Tennessee Valley Authority on October 30, 2007. In October 2010, TVA asked the US Nuclear Regulatory Commission to defer its review of the applications at the Bellefonte site, later granted by the NRC.

In August of last year, the Atomic Safety and Licensing Board for Bellefonte stated that the license application "has seen little case-specific activity over the past three years"<sup>2</sup> and issued an order requiring the parties to discuss how the case should proceed including possible settlement. Subsequently, representatives of the TVA informed us that the agency was evaluating its plans for the Bellefonte Nuclear Power Plant Units 3 and 4, but did not intend to withdraw the combined license application. Nevertheless, the parties agreed to enter into settlement discussions to consider a variety of approaches for terminating the extant adjudicatory proceeding.

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<sup>1</sup> Petition was filed by the Joint Interveners Blue Ridge Environmental Defense League, its chapter Bellefonte Efficiency and Sustainability Team and the Southern Alliance for Clean Energy pursuant to 10 C.F.R. § 2.309, 10 C.F.R. § 52.21 and a notice published by the Nuclear Regulatory Commission at 73 Fed. Reg. 7611 (February 8, 2008)

<sup>2</sup> Atomic Safety and Licensing Board Memorandum and Order, Request for Joint Status Report (August 25, 2015)

### TVA Should Withdraw Its Application

The options posited by NRC Staff were and remain unacceptable to us. During the settlement discussions, on October 23, 2015 the NRC Staff posed three potential approaches: 1) Clean Slate, 2) Preserve Parties' Standing and Admitted Contentions, and 3) Preserve Parties' Standing and Assess Mootness of Admitted Contentions. Settlement on the terms offered would have placed the Joint Interveners in an untenable position; for example, instead of the certainty of public notice required under the Atomic Energy Act, we would have to depend on NRC Staff to use its best efforts to post a future notice of leave to intervene if and when the licensing procedure were to be reactivated. This is a fatal flaw which cannot be rectified because dissolution of the Atomic Safety Licensing Board, which would be the result of settlement, would effectively end the Interveners' adjudicatory pathway. The nexus of the problem is TVA's prolonged timeline for nuclear plants.

As you know, as revealed in TVA's 2015 Integrated Resource Plan, the time frame for possible action by TVA on the Bellefonte license application is exceedingly long. The Atomic Safety and Licensing Board itself noted:

The recently-completed 2015 IRP suggests that renewed licensing activity relative to BNPP Units 1-4 now is anticipated to occur, if at all, in the mid-2020's or beyond.<sup>3</sup>

The footnote continues:

In the July 2015 final version of the IRP, TVA indicated that because it intends to rely on additional natural gas generation, energy efficiency, and renewable power to meet future demand, through 2033 there is no immediate need for new baseload plants after Watts Bar Unit 2 comes online and power uprates are completed by 2023 at the Browns Ferry nuclear facility. Further, the alternative sensitivity analysis utilized by TVA in the IRP to show the impact of forcing in new nuclear baseload capacity is premised on the completion of (1) the partially constructed Bellefonte Units 1 and 2 in the 2026 to 2028 time frame; (2) an AP 1000 reactor (the proposed certified design for Bellefonte Units 3 and 4) in 2028; and (3) a small modular reactor in 2028.<sup>4</sup> [citations omitted]

The federal rules for withdrawal of a nuclear power plant license application at 10 CFR § 2.107 state:

The Commission may permit an applicant to withdraw an application prior to the issuance of a notice of hearing on such terms and conditions as it may prescribe, or

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<sup>3</sup> Request for Joint Status Report at 2

<sup>4</sup> *Id.* f.n. 2

may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice. If the application is withdrawn prior to issuance of a notice of hearing, the Commission shall dismiss the proceeding. Withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.

Under this rule, it is clearly the responsibility of the TVA Board of Directors to direct the withdrawal of its license application at Bellefonte. Your options are two: either withdraw the license application and end the ongoing bleeding of funds for an ill-starred project launched in 1974, or continue the unresolved and wasteful *status quo* for a few more decades.

### Settlement Without License Withdrawal Would Be Unfair and Illegal

It would not be lawful, under any circumstances, for the Nuclear Regulatory Commission's Atomic Safety and Licensing Board to terminate the license proceeding for Bellefonte 3 and 4 without TVA's withdrawal of the combined license application still pending before the NRC. Under Section 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a), the NRC must grant a hearing to any party who demonstrates an interest in a construction permit or operating license proceeding. We have done this. The ASLB has established Joint Intervenors<sup>5</sup> as interested parties by approving our standing, admitting two of our contentions, and admitting us as parties to this proceeding. See *State of Alaska Dept. of Transportation and Public Facilities*, CLI-04-26, 60 NRC 399, 405 (2004).

As long as TVA's license application for Bellefonte reactor units 3 & 4 remains pending before the Atomic Safety and Licensing Board, the Atomic Energy Act does not permit termination of the hearing already granted to Joint Intervenors. Only if TVA withdraws its license application, or if the ASLB dismisses the COLA for abandonment as permitted by *Puerto Rico Electric Power Authority* (North Coast Nuclear Plant Unit 1), ALAB-605, 12 NRC 153 (1980), may the adjudicatory proceeding be terminated. The appropriate, cost-effective and legal remedy open to you is withdrawal of the license application by TVA.

### Conclusion

The Tennessee Valley Authority is wasting tens of millions of dollars annually propping up its twice abandoned Bellefonte plant. Truly, it is a zombie reactor. It is time to face the facts. Today, members of our chapter Bellefonte Efficiency and Sustainability Team/Mothers Against Tennessee River Radiation are presenting a fiscal analysis revealing fractured accounting and the

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<sup>5</sup> Joint interveners are Blue Ridge Environmental Defense League, its chapter Bellefonte Efficiency and Sustainability Team and the Southern Alliance for Clean Energy

staggering debt load which nuclear power has saddled onto TVA, further evidence favoring withdrawal of the license application at Bellefonte.

Thank you for your attention to our concerns.

Respectfully,

A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

Louis A. Zeller, Executive Director  
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