UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	Docket Nos. 50-327-LR
	)	50-328-LR
TENNESSEE VALLEY AUTHORITY	)	
	)	ASLBP No. 13-927-01-LR-BD01
(Sequoyah Nuclear Plant, Units 1 and 2)	)	
	)	
In the Matter of	)	Docket Nos. 52-014-COL
	)	52-015-COL
TENNESSEE VALLEY AUTHORITY	)	
(Bellefonte Nuclear Power Plant, Units 3 and 4)	)	
	)	
In the Matter of	)	Docket No. 50-391-OL
	)	
TENNESSEE VALLEY AUTHORITY	)	
(Watts Bar, Unit 2)	)	

TENNESSEE VALLEY AUTHORITY'S ANSWER OPPOSING PETITION TO SUSPEND FINAL DECISIONS IN ALL PENDING REACTOR LICENSING PROCEEDINGS PENDING ISSUANCE OF WASTE CONFIDENCE SAFETY FINDINGS AND MOTIONS FOR LEAVE TO FILE NEW CONTENTION

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c) and the U.S. Nuclear Regulatory Commission's ("NRC" or "Commission") order dated October 7, 2014,[1] Tennessee Valley Authority ("TVA" or "Applicant") respectfully submits its answer to the "Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings," which the Southern Alliance for Clean Energy ("SACE") filed in the Watts Bar Unit 2 operating license proceeding, and the Blue Ridge Environmental Defense League ("BREDL") filed in the Sequoyah Units 1 and 2 license renewal proceeding and the Bellefonte Units 3 and 4

[1] *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), *et al*., CLI-14-09, ___ N.R.C. ___ (Oct. 7, 2014).

combined license proceeding, on September 29, 2014 (collectively, "Petition"); and Petitioners' Motions to Admit New Contention[2] filed in the above-captioned proceedings. The Petitions are identical in all material respects, alleging that the Commission must make "predictive safety findings" regarding the safety of permanent spent nuclear fuel disposal in a repository. TVA respectfully submits that the Petition and the Motions to Admit New Contention should be denied because (1) there is no requirement under the Atomic Energy Act of 1954, as amended ("AEA") to make "predictive safety findings" regarding the safety of permanent spent nuclear fuel disposal in a repository; (2) the proffered contention is not admissible; (3) the Petition is an impermissible attack on a Commission rule; (4) the Petition is untimely; and (5) the Petition does not meet the requirements to suspend licensing decisions. Moreover, the Generic Environmental Impact Statement for the Continued Storage of Spent Nuclear Fuel (2014) ("Continued Storage GEIS"), NUREG-2157, contains exactly the same sort of findings previously made in prior waste confidence decisions.

II. BACKGROUND

A. Status of the Above-Captioned Proceedings

1. Watts Bar Unit 2 Proceeding under 10 C.F.R. Part 50

In July 2009, SACE, the Tennessee Environmental Council, the Sierra Club, We the People, and BREDL filed a request for a hearing and petition to intervene in the NRC administrative process reviewing TVA's application for an operating license for Watts Bar Unit 2.

[2] Essentially identical motions for leave to file a new contention were filed in each of the three above-captioned proceedings: Southern Alliance for Clean Energy's Motion for Leave to File a New Contention Concerning the Absence of Required Waste Confidence Safety Findings, dated September 29, 2014; Intervenor's Motion for Leave to File a New Contention Regarding the Absence of Required Waste Confidence Safety Findings in the Re-Licensing Proceeding at Sequoyah Nuclear Power Plant, dated September 29, 2014; Intervenor's Motion for Leave to File a New Contention Regarding the Absence of Required Waste Confidence Safety Findings in the Licensing Proceeding at Bellefonte Nuclear Power Plant, dated September 29, 2014 (collectively, "Motions to Admit New Contention").

In November 2009, the Atomic Safety and Licensing Board ("ASLB") granted SACE's request for hearing, admitted two of SACE's seven contentions, and denied the request for hearing submitted on behalf of the other four petitioners. The ASLB subsequently dismissed one contention.

In July 2012, SACE petitioned for the admission of a new, late-filed contention regarding waste confidence. That contention was held in abeyance pursuant to the Commission's order in *Calvert Cliffs Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), *et al.* CLI-12-16, 76 N.R.C. 63 (2012). In July 2013, SACE filed a motion to withdraw its only other contention. The ASLB granted the motion. On August 23, 2014, the Commission ordered the proposed contention regarding waste confidence to be rejected by the ASLB. *Calvert Cliffs Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), *et al*, CLI-14-08, __ N.R.C. __ (Aug. 26, 2014) ("*Calvert Cliffs II*"). On September 9, 2014, the ASLB issued an order rejecting the contention and terminating the proceeding. *Tennessee Valley Authority* (Watts Bar Unit 2), LBP-14-13, __ N.R.C. __ (Sep. 9, 2012).

TVA is, therefore, in a unique position with respect to the possible impact of further delays in these proceedings. The Watts Bar Unit 2 operating license adjudicatory proceeding has been terminated, leaving only the satisfaction of *technical* licensing requirements prior to obtaining an operating license. Watts Bar Unit 2 is currently anticipated to be ready to load fuel during 2015.

2. Sequoyah License Renewal Proceeding under 10 C.F.R. Part 54

In the license renewal proceeding for Sequoyah Nuclear Plant Units 1 and 2, three petitioners, including BREDL, petitioned for leave to intervene and requested a hearing on eight proposed contentions. The ASLB issued an order granting standing only to BREDL, denying seven of the contentions and holding the consideration of the admissibility of the

"environmental-related portion" of one contention related to waste confidence in abeyance based on the Commission's direction in *Calvert Cliffs*. *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), LBP-13-08, 78 NRC 1 (2013). Both the applicant and BREDL appealed the Board's ruling. The Commission issued a decision dismissing both appeals as not yet ripe, but stating that the Commission "will provide further direction regarding pending waste confidence contentions concurrent with issuance of the final rule." *Sequoyah*, CLI-14-03, ___ N.R.C. ___, slip op. at 8-9.

On August 23, 2014, the Commission ordered the contention to be rejected by the ASLB. *Calvert Cliffs II*. On September 30, 2014, the ASLB issued an order rejecting the proposed waste confidence contention, but not terminating the proceeding (the Petition and other motions had been filed in the proceeding). *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), Memorandum and Order (Dismissing Environmental Waste Confidence Contention) (Sep. 30, 2014)(unpublished).

3. Bellefonte License Proceeding under 10 C.F.R. Part 52

In June 2008, Bellefonte Efficiency and Sustainability Team ("BEST"), BREDL, and SACE submitted a joint petition for intervention and a request for a hearing. The ASLB denied standing to BEST and admitted four of the 20 contentions submitted by BREDL and SACE. The NRC reversed the ASLB's decision to admit two of the four contentions, leaving only two contentions to be litigated in a future hearing. In January 2012, TVA notified the ASLB that the NRC had placed the combined license application in "suspended" status indefinitely at TVA's request, and TVA requested that the ASLB hold the proceeding in abeyance. Because the review of the application is suspended, there has not yet been a draft environmental impact statement issued and there is no target date for doing so.

In July 2012, BREDL petitioned for the admission of another new, late-filed contention stemming from the D.C. Circuit's order vacating the waste confidence decision. Consideration of the admissibility of that contention was held in abeyance pursuant to the Commission's *Calvert Cliffs* order. The proposed contention was subsequently rejected by the ASLB, pursuant to the *Calvert Cliffs II* order. *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 and 4), Memorandum and Order (Dismissing Contention) (Sep. 15, 2014)(unpublished).

B. Background to the Continued Storage Rule

In *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), the U.S. Court of Appeals for the District of Columbia Circuit found that the NRC had violated the National Environmental Policy Act ("NEPA") in issuing its 2010 update to the Commission's Waste Confidence Decision ("WCD") and accompanying Temporary Storage Rule ("TSR").[3] The court vacated both the WCD and the TSR, and remanded the case for further proceedings consistent with the court's opinion. In particular, the court struck down the WCD's "Finding 2" (reasonable assurance exists that sufficient geologic repository capacity will be available for disposal of high-level waste and spent nuclear fuel "when necessary") and "Finding 4" (reasonable assurance exists that, if necessary, spent fuel can be stored safely without significant environmental impacts beyond a reactor's licensed life for operation, in a combination of storage in its spent fuel pool and either an onsite or offsite dry cask storage system).

In response to the court's decision, numerous organizations, including Petitioners, filed substantively identical petitions in numerous pending dockets, among other things, seeking the

[3] Final Rule, Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation, 75 Fed. Reg. 81,032 (Dec. 23, 2010); Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010) ("2010 WCD Update").

suspension of licensing decisions.[4] On August 7, 2012, the Commission issued an order holding that it would not issue licenses dependent upon the WCD or the TSR until the court's remand was appropriately addressed, and holding contentions filed regarding waste confidence in various NRC proceedings in abeyance. *Calvert Cliffs*, CLI-12-16, 76 NRC 63 (2012).

The Commission determined to proceed through rulemaking and initiated an extensive review of the environmental impacts and technical feasibility of continued storage of spent fuel in SRM–COMSECY–12–0016.[5] The Commission directed the NRC to develop a generic environmental impact statement ("GEIS") to support an updated waste confidence decision and rule. The resulting Continued Storage GEIS considers three possible continued storage timeframes: (1) short-term storage of no more than 60 years after the end of a reactor's licensed life for operations; (2) long-term storage of no more than 160 years after the end of a reactor's licensed life for operations; and (3) indefinite storage at a reactor site or at an away-from-reactor independent spent fuel storage installation ("ISFSI").[6]

On September 19, 2014, the Commission published the Continued Storage Rule[7] and the Continued Storage GEIS.[8] On September 29, 2014, the Petitioners filed the Petition and motions to admit a new contention and re-open the record in the above-captioned proceedings.

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[4] Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings (June 18, 2012).

[5] Memorandum from A.L. Vietti-Cook to R.W. Borchardt, dated September 6, 2012, regarding "Staff Requirements—COMSECY– 12-0016—Approach for Addressing Policy Issues Resulting from Court Decision to Vacate Waste Confidence Decision and Rule." SRM–COMSECY–12–0016, Washington, D.C. (Accession No. ML12250A032).

[6] The NRC undertook a considerable effort in developing the Continued Storage GEIS, publishing a Notice of Intent to prepare an environmental impact statement ("EIS") (Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation, 77 Fed. Reg. 65,137 (Oct. 25, 2012)) and received approximately 700 pieces of comment correspondence. The NRC hosted numerous public meetings, receiving nearly 500 oral comments and received over 33,000 written submittals regarding the Continued Storage GEIS. Continued Storage GEIS at 1-11 to 1-12.

[7] Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,238 (Sept. 19, 2014) ("Continued Storage Rule").

The Petition deals exclusively with Finding 1 and Finding 2 under the TSR: (1) the issue of the technical feasibility of a geologic repository and (2) the availability of a repository. Under the TSR, the technical feasibility of a geologic repository was addressed in Finding 1. The same finding is addressed in Section B.2.1 of the Continued Storage GEIS. In the statement of considerations accompanying the Continued Storage Rule, the Commission summarized the findings in the Continued Storage GEIS regarding the technical feasibility of a geologic repository as follows:

> As discussed in Section B.2.1, the consensus within the scientific and technical community engaged in nuclear waste management is that safe geologic disposal is achievable with currently available technology. Currently, 25 countries, including the United States, are considering disposal of spent or reprocessed nuclear fuel in deep geologic repositories.
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> As noted in Section B.2.1 of the GEIS, ongoing research in both the United States and other countries supports a conclusion that geological disposal remains technically feasible and that acceptable sites can be identified. After decades of research into various geological media, no insurmountable technical or scientific problem has emerged to challenge the conclusion that safe disposal of spent fuel and high-level radioactive waste can be achieved in a mined geologic repository. Over the past two decades, significant progress has been made in the scientific understanding and technological development needed for geologic disposal.
>
> As discussed in Section B.2.1, activities of European countries, experience in reviewing the DOE's Yucca Mountain license application, and DOE defense-related activities at the Waste Isolation Pilot Plant all support the technical feasibility of a deep geologic repository. Based on national and international research, proposals, and experience with geological disposal, the NRC concludes that a geologic repository continues to be technically feasible.

79 Fed. Reg. at 56,251.

The availability of a repository was addressed in the TSR in Finding 2 and is now addressed in Section B.2.2 of the Continued Storage GEIS. In the statement of considerations

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[8] Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,263 (Sept. 19, 2014).

accompanying the Continued Storage Rule, the Commission summarized the finding regarding the availability of a repository as follows:

> Progress in development of repositories internationally provides useful experience in building confidence that the most likely scenario is that a repository can and will be developed in the United States in the short-term timeframe. Based on the examination of a number of international programs and DOE's current plans, the NRC continues to believe that 25 to 35 years is a reasonable period for repository development (i.e., candidate site selection and characterization, final site selection, licensing review, and initial construction for acceptance of waste). A discussion of international repository programs and DOE's current plans can be found in Section B.2.2 of the GEIS.
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> As discussed in Section B.2.2 of the GEIS, the time DOE will need to develop a repository site will depend upon a variety of factors, including Congressional action and funding. Public acceptance will also influence the time it will take to implement geologic disposal. As stated in its "Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste" (ADAMS Accession No. ML13011A138), DOE's current plans predict that a repository will be available by 2048. Although the NRC believes that 25–35 years is a reasonable timeframe for repository development, the NRC acknowledges that there is sufficient uncertainty in this estimate that the possibility that more time will be needed cannot be ruled out.
> International and domestic experience have made it clear that technical knowledge and experience alone are not sufficient to bring about the broad social and political acceptance needed to construct a repository. The time needed to develop a societal and political consensus for a repository could add to the time to site and license a repository or overlap it to some degree. Given this uncertainty, the GEIS evaluates a range of scenarios for the timeframe of the development of a repository, including indefinite storage. As discussed in Section B.2.2, the NRC believes that the United States will open a repository within the shortterm time frame of sixty years, but, to account for all possibilities, has included a second, longer time frame as well as the scenario in which a repository never becomes available. The analysis of the long-term and indefinite timeframes does not constitute an endorsement of an extended timeframe for onsite storage of spent fuel.

Id.

The statement of considerations for the Continued Storage Rule also addresses the arguments raised in the Petition, noting that "the NRC specifically sought public comment on [the safety of continued storage of spent fuel] and decided not to address the continued safe

storage of spent fuel in the rule text itself." *Id.* at 56,252. "Appendix B of the GEIS discusses the feasibility of safe storage of spent fuel." *Id.* The Commission further explained that:

> After considering the comments, the NRC has decided not to make a policy statement about safe storage in the rule text. The generic conclusion that spent fuel can be stored safely beyond the operating life of a power reactor has been a component of all past Waste Confidence proceedings. However, this continued storage rulemaking proceeding is markedly different from past proceedings. Unlike earlier proceedings, the NRC has prepared a GEIS that analyzes the impacts of continued storage of spent fuel. The GEIS fulfills the NRC's NEPA obligations and provides a regulatory basis for the rule rather than addressing the agency's responsibilities to protect public health and safety under the Atomic Energy Act (AEA), of 1954 as amended. Further, Appendix B of the GEIS discusses the technical feasibility of continued safe storage. It is important to note that, in adopting revised 10 CFR 51.23 and publishing the GEIS, the NRC is not making a safety determination under the AEA to allow for the continued storage of spent fuel. AEA safety determinations associated with licensing of these activities are contained in the appropriate regulatory provision addressing licensing requirements and in the specific licenses for facilities. Further, there is not any legal requirement for the NRC to codify a generic safety conclusion in the rule text. By not including a safety policy statement in the rule text, the NRC does not imply that spent fuel cannot be stored safely. To the contrary, the analysis documented in the GEIS is predicated on the ability to store spent fuel safely over the short-term, longterm, and indefinite timeframes. This understanding is based upon the technical feasibility analysis in Appendix B of the GEIS and the NRC's decades-long experience with spent fuel storage and development of regulatory requirements for licensing of storage facilities that are focused on safe operation of such facilities, which have provided substantial technical knowledge about storage of spent fuel. Further, spent fuel is currently being stored safely at reactor and storage sites across the country, which supports the NRC's conclusion that it is feasible for spent fuel to be stored safely for the timeframes considered in the GEIS. Appendix B of the GEIS and Section II.C of this notice contain a discussion of the technical feasibility and regulatory framework that supports continued safe storage.

Id. at 56,254-55.

III. DISCUSSION

Petitioners assert that the "the NRC fails to satisfy the AEA's mandate to protect public health and safety from the risks posed by irradiated reactor fuel" (Petition at 1-2), because the Continued Storage Rule and the Continued Storage Rule GEIS "fail to include Waste Confidence safety findings regarding spent fuel disposal." Petition at 1. This assertion is wrong because the

AEA does not require any findings with respect to the safety of the storage of spent fuel in a repository for the licensing of nuclear power plants and the NRC has never made such findings under its prior waste confidence decisions.

A. The Petition Misunderstands AEA's Requirements, Prior Waste Confidence Decisions, and Applicable Case Law

The Petition argues: "As explained in the accompanying Contention, the NRC lacks a lawful basis under the [AEA] to issue operating licenses or license renewals until it makes valid findings of confidence or reasonable assurance that the hundreds of tons of highly radioactive spent fuel that will be generated during any reactor's license term can be safely disposed of in a repository." Petition at 2; *see also* Petition at 7-9. There is no statutory or other basis for Petitioners' assertions.

1. The AEA Does Not Require the Commission to Make Findings "of Confidence or Reasonable Assurance that the Hundreds of Tons of Highly Radioactive Spent Fuel that Will be Generated During any Reactor's License Term Can be Safely Disposed of in a Repository."

Petitioners argue that the "plain language" of the AEA requires the NRC to "provide reasonable assurance that the spent fuel generated by a reactor will not pose an unreasonable risk to public health and safety *i.e.*, that its radioactivity can be safely contained *as long as it exists*." Motions to Admit New Contention at 5 (emphasis added). Petitioners argue, in effect, that the Commission, when licensing any activity, has to make "findings" regarding the ultimate disposal of spent nuclear fuel in a repository before it can issue a license. *See* Motions to Admit New Contention at 7, n.24. However, Petitioner's interpretation is contrary to the AEA's language and longstanding precedent.[9]

[9] Petitioners' further assertion that "the NRC is both authorized and required to deny the issuance of a license if the use of reactor fuel would create a permanent and uncontainable public health hazard" (Motions to Admit New Contention at 6) is a bald assertion without any support in Petitioners' filings in these proceedings.

a. The AEA Does Not Require Safety Findings Regarding a Repository in These Licensing Proceedings

Petitioners repeatedly assert that the Commission has to make "safety findings" regarding a repository under the AEA before the Commission can issue any licenses for any activities. However, Petitioners provide no citation to the AEA that contains any such requirements because no such requirement exists. The Commission's longstanding position is that no such requirement exists:

> Section 103d of the Act provides that no license for a production or utilization facility may be issued if, in the opinion of the Commission, the issuance of the license would be inimical to the health and safety of the public. It seems clear, however, that the statutory findings required by section 103 apply specifically to the "proposed activities" and "activities under such licenses." (42 U.S.C. 2133). These activities include some interim storage activities for spent fuel. They do not include the permanent disposal of high-level wastes though wastes are, in fact, generated by operation of the reactor.

Natural Resources Defense Council, Denial of Petition for Rulemaking, 42 Fed. Reg. 34,931, 34.931 (Jul. 5, 1977).

The Second Circuit Court of Appeals also rejected Petitioners' argument in *Natural Resources Defense Council v. U.S. Nuclear Regulatory Commission*, 582 F.2d 166 (2d. Cir. 1978), holding:

> [I]f there were any doubt over the intent of Congress (1) not to require NRC to make the definitive determination requested by NRDC and (2) not to require a moratorium on nuclear power reactor licensing pending an affirmative determination, we are persuaded that the matter was laid to rest by enactment of the Energy Reorganization Act of 1974, Pub.L. No. 93-438, 88 Stat. 1233. 42 U.S.C. §§ 5801 *et seq*. Therein, Congress expressly recognized and impliedly approved NRC's regulatory scheme and practice under which the safety of interim storage of high-level radioactive wastes at commercial nuclear power reactor sites has been determined separately from the safety of Government-owned permanent storage facilities which have not, as yet, been established.

582 F.2d at 175 (footnote omitted). Indeed, Section 103 as a whole, including Section 103d, clearly addresses proposed activities. *See, e.g.*, Sections 103.b,[10] 103.c,[11] and 103.d.[12] Petitioners provide no basis for overturning the Commission's longstanding interpretation of the AEA or for calling into question the Commission's and the federal courts' longstanding interpretation of the legislative history of the AEA.

b. Petitioners Try to Conflate Prior Waste Confidence Findings with Other Findings Made in Individual Licensing Proceedings under the AEA

Petitioners argue that the Commission's reference to safety findings in individual proceedings indicates that safety findings regarding storage in a repository must be made. Motions to Admit New Contention at 7, n.24. However, the language that the Petitioners cite regarding safety findings in "individual proceedings" refers to the determinations that the Commission must make in individual licensing proceedings pursuant to Section 185.b of the AEA. Under the AEA, after a mandatory hearing, the Commission:

> shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is *reasonable assurance* that the facility will be constructed and will operate in conformity with the *license, the provisions of this Act, and the Commission's rules and regulations*. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide *reasonable assurance that the facility has been constructed and will be operated in conformity with the license*, the provisions of this Act, and the Commission's rules and regulations.

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[10] "The Commission shall issue such licenses . . . (1) whose *proposed activities* will serve a useful purpose . . . ; and (3) who agree to make available to the Commission such technical information and data *concerning activities under such licenses* as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public." AEA, Section 103.a (emphases added).

[11] "Each such license shall be issued for a specified period, as determined by the Commission, depending on *the type of activity* to be licensed . . . ." AEA, Section 103.c (emphasis added).

[12] "No license under this section may be given to any person *for activities* which . . . ." AEA, Section 103.d (emphasis added).

AEA, Section 185.b (emphases added).

Petitioners ignore that NRC regulations in 10 C.F.R. Parts 50, 52, and 72, which apply to the construction and operation of reactor spent fuel pools and ISFSIs, establish safety requirements for those facilities. As the Supreme Court noted, the AEA "clearly contemplates that the Commission shall by regulation set forth what the public safety requires as a prerequisite to the issuance of any license or permit under the Act." *Power Reactor Development Co. v. Industrial Union*, 367 U.S. 396 (1961). Indeed, the reasonable assurance safety determinations under Section 185.b of the AEA (and under Section 103.d) expressly refer to the Commission's regulations as a basis for making such determinations. In any licensing proceeding, the NRC has to determine that the licensed activity will not endanger public health when the license is issued. It does so based on the fact that the facilities will remain under license, even after the end of the facility's period of operation, and that the facilities will be required to meet the safety standards established in the Commission's regulations in 10 CFR Part 50 or 52 for reactors and their spent fuel pools, and 10 CFR Part 72 for ISFSIs.

The Commission's regulations address, for example, the safe storage of spent fuel at a reactor after the period of operation. *See, e.g.*, 10 CFR 50.5(bb) and 10 CFR Part 50, Appendix A, Criterion 61 (requiring that spent fuel storage systems be designed to assure adequate safety under normal and postulated accident conditions). Likewise, ISFSI renewal applications are subject to all applicable regulatory requirements to justify safe operation during the requested license term. License and Certificate of Compliance Terms, 76 Fed. Reg. 8872, 8879-80 (Feb. 16, 2011).

The Commission has long held that compliance with the Commission's regulations is a basis for finding reasonable assurance in licensing proceedings. *See, e.g., AmerGen Energy Co.,*

LLC (Oyster Creek Nuclear Generating Station), LBP-07-17, 66 NRC 327, 340 (2007), *aff'd*, CLI-09-07, 69 NRC 235, 263 (2009). Federal courts have likewise held that compliance with the Commission's regulations satisfies the reasonable assurance and "not inimical" requirements of the AEA, absent an indication or showing on a case-by-case basis to the contrary. *See, e.g.*, *Citizens for Safe Power, Inc. v. Nuclear Regulatory Commission*, 524 F.2d 1291, 1299-1300 (D.C. Cir. 1975). Petitioners have not alleged any basis as to why this longstanding interpretation is wrong or any inadequacy in the Commission's regulations that would not meet the reasonable assurance and "not inimical" requirements of the AEA in these proceedings, nor have Petitioners alleged any safety issue with respect to the facilities being licensed in these proceedings.

2. The NRC Did Not Interpret the "AEA to require Waste Confidence Findings for Reactor Licensing"

Petitioners assert that the "the NRC consistently interpreted the AEA to require Waste Confidence safety findings." Motions to Admit New Contention at 7. Likewise, Petitioners assert that the Continued Storage Rule is inadequate because statements concerning the technical feasibility of the disposal of radioactive waste and spent fuel in a geologic repository are not in the Continued Storage Rule, whereas the NRC has included such language in prior waste confidence decisions. Petition at 7-9. As discussed above, there is no requirement under the AEA or longstanding precedent to require determinations about a repository in licensing proceedings. Moreover, contrary to the Petitioners' assertions, the Commission has never held that it had to make determinations regarding waste confidence in a rule pursuant to the AEA. Indeed, the Commission explicitly rejected exactly that argument in approving the Continued Storage Rule. SECY-14-0072 at 3 (regarding "whether statements regarding continued safe

storage should be included in the rule language . . . ."); Commission Voting Record – Final Rule: Continued Storage of Spent Nuclear Fuel (RIN 3150-AJ20) (Aug. 26, 2014).

a. The Commission Is Not Required to Include Waste Confidence Findings in a Regulation

In the Commission's decision to deny the NRDC petition for rulemaking, the Commission did not make any findings in the form of a regulation or state that any such findings were required by the AEA. 42 Fed. Reg. at 34,931. In response to the NRDC petition, the Commission stated that:

> The Commission has confidence, given the on-going federal programs, that the problem of permanent disposal will be solved. This confidence was supported by the Congress when it passed major legislation dividing the Atomic Energy Commission into separate agencies and provided for NRC licensing of ERDA waste management facilities. At that time, it did not order a moratorium on reactor licensing and did not require that the Commission make specific findings with regard to high-level waste disposal in reactor licensing proceedings.

42 Fed. Reg. at 34,931. The Commission promulgated no regulations regarding its "confidence" and made no findings under the AEA. Rather its determination was merely published as part of the Commission's denial of the petition for rulemaking. The Commission made an "implicit finding" regarding waste confidence:

> The scope of the Commission's safety findings is well known to Congress, as is the extent of the development of systems for high-level radioactive waste disposal. Congress has permitted continued licensing of reactors and the Commission has been given broad discretion in developing criteria for licensees. Such conduct constitutes implicit ratification of the Commission's handling of the high-level waste disposal question.

Id. at 34,932. This determination, which was also characterized by the Second Circuit Court of Appeals as only an "implicit finding" (*NRDC*, 582 F.2d at 169, 170), was upheld as sufficient. *Id*. at 174-75. Neither the Commission nor the Second Circuit Court of Appeals held that a finding of any sort was required by the AEA. Thus, the Commission's choice to later include generic findings in the text of the rule, and its current choice to include much broader findings in

the current Continued Storage GEIS, but not in a regulation, are not requirements of the AEA, but committed to sound agency discretion.

b. Waste Confidence Findings Have Been Used by the Commission as Part of the Commission's NEPA Review, Not as an AEA Requirement

The Commission's history of waste confidence has always been part of the NRC's NEPA review of licensing actions, not part of the NRC's AEA review. The first Waste Confidence Decision issued by the NRC[13] described the scope of the rulemaking in terms of the environmental aspects of spent fuel storage:

> The Commission believes that from the very beginning of this proceeding, participants were on notice that environmental aspects of spent fuel storage were under consideration. The notice initiating this proceeding stated, in pertinent part:
>
> > If the Commission finds reasonable assurance that safe, off-site disposal for radioactive wastes from licensed facilities will be available prior to expiration of the facilities' licenses, it will promulgate a final rule providing that the *environmental and safety implications of continued on-site storage after the termination of licenses* need not be considered individual licensing proceedings. In the event the Commission determines that on-site storage after license expiration may be necessary or appropriate, it will issue a proposed rule providing *how that question will be addressed*.
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> > * * * * *
> >
> > Based on the material received in this proceeding and on any other relevant information properly available to it, the Commission will publish a proposed or final rule in the Federal Register. Any such final rule will be effective thirty days after publication.
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> 44 FR 61372, 61273-61374 (1979). (Emphasis supplied).

49 Fed. Reg. at 34,666 (emphasis in original). In the Continued Storage Rule and the Continued Storage GEIS, the Commission has undertaken to address the environmental implications of continued on-site storage (as well as in a geologic repository). The Commission has already

[13] Waste Confidence Decision, 49 Fed. Reg. 34,658 (Aug. 31, 1984) ("WCD").

addressed the *safety* aspects of on-site storage of spent nuclear fuel, as discussed *supra*, in 10 CFR Parts 50, 52, and 72, which apply to the construction and operation of reactor spent fuel pools and ISFSIs, and establish safety requirements for those facilities. The Commission has likewise established safety regulations for any AEA findings regarding a geologic repository under 10 C.F.R. Part 60. Any AEA required findings with respect to safety regarding storage of spent nuclear fuel in a geologic repository will be made with respect to the licensing of such a repository, not in licensing decisions related to other, independent facilities.

3. The Continued Storage Rule is Consistent with Courts' Interpretation of the AEA

Petitioners argue that two court decisions have "upheld the AEA's requirement for Waste Confidence safety findings." Motions to Admit New Contention at 9. However, these cases do not support Petitioners' assertion. As discussed in Section III.A.1.a, *supra*, *NRDC* involves the same issue as the current Petition—whether the Commission has to make determinations regarding a repository as part of a nuclear power reactor licensing decision—and the Second Circuit Court of Appeals clearly held that the AEA does not impose any such requirement. 582 F.2d at 175.

In *Minnesota v. U.S. Nuclear Regulatory Commission*, 602 F.2d 412 (1979), the District of Columbia Circuit Court of Appeals addressed two decisions granting expanded on-site spent nuclear fuel storage at reactor sites. In that proceeding, the petitioners argued that:

> Prior to the issuance of a license amendment permitting expansion of on-site storage capacity, the NRC must make a determination of probability that the wastes to be generated by the plants can be safely handled and disposed of. If no "off-site" solution (either an ultimate solution to the problem of waste disposal, or some interim solution involving storage facilities off the reactor site), is projected as probably available, the NRC must take into account the safety and environmental implications of maintaining the reactor site as a nuclear waste disposal site after the expiration of the license term.

Id. at 416. The District of Columbia Circuit Court of Appeals remanded the proceeding to the NRC to consider the issue raised by petitioners:

> whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-09, the expiration of the plants' operating licenses, *and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates.*

Minnesota, 602 F.2d at 418 (emphasis added). The claims in *Minnesota* were related to onsite storage of spent fuel beyond the term of the plant's operating license. The Commission has already established regulations for ISFSIs under 10 C.F.R. Part 72 that provide for safety determinations regarding continued storage of spent fuel in ISFSIs onsite. *See* 76 Fed. Reg. at 8879-80.

Minnesota does not address the storage of spent fuel in a repository, as that question was not before the Court. 602 F.2d at 419 ("The court confines its action at this time to rejection of certain contentions by petitioners, notably the claim of need for an adjudicatory proceeding.") The Court's holding relates only to whether the Commission could address spent fuel storage in a rulemaking or an adjudicatory proceeding, holding that the Commission may generically address such issues through rulemaking. *Id*. The decision does not impose any requirements on the Commission with respect to waste confidence findings.[14]

[14] The Court hypothesized regarding how the Commission could generically proceed with analyzing the environmental implications of spent nuclear fuel storage by determining whether there is reasonable assurance (1) that an off-site storage solution will be available by the expiration of the plants' operating licenses; or (2) that the fuel can be stored safely at the sites beyond those dates. 619 F.2d at 418. The Commission has accomplished exactly that in the Continued Storage Rule and Continued Storage GEIS. The Continued Storage GEIS considers three possible continued storage timeframes: (1) short-term storage of no more than 60 years after the end of a reactor's licensed life for operations; (2) long-term storage of no more than 160 years after the end of a reactor's licensed life for operations; and (3) indefinite storage at a reactor site or at an away-from-reactor ISFSI. The Continued Storage GEIS indefinite storage scenario assumes that disposal in a repository never becomes available. Continued Storage GEIS, Chapter 4 (at-reactor), Chapter 5 (away-from-reactor). The Continued Storage GEIS addresses both options discussed in *Minnesota*—storage of spent nuclear fuel in a repository and indefinite continued storage of spent nuclear fuel at the site—as well as indefinite storage in an away-from-reactor ISFSI.

B. The Motions to Admit New Contention Must Be Denied

As discussed in Section III.A *supra*, the Commission is not required to make determinations regarding the storage of spent fuel in a repository in these proceedings. The Motions to Admit New Contentions are based on this faulty premise. Moreover, the proffered contention does not meet the requirements that the Commission has imposed for the admission of contentions.

1. The Proffered Contention is Inadmissible as an Attack on the Commission's Regulations

The contention filed by Petitioners is an impermissible attack on the Continued Storage Rule rulemaking. Petitioners assert that the "the NRC fails to satisfy the AEA's mandate to protect public health and safety from the risks posed by irradiated reactor fuel" (Petition at 1-2), because the Continued Storage Rule and the Continued Storage Rule GEIS "fail to include Waste Confidence safety findings regarding spent fuel disposal." Petition at 1. Under the Commission's regulations, there can be no challenge of any kind to a Commission regulation by discovery, proof, argument, or other means except in accordance with 10 C.F.R. § 2.335. The Petition provides no basis under 10 C.F.R. § 2.335 to challenge the Continued Storage Rule in these proceedings. Petitioners, therefore, cannot litigate the adequacy of the Continued Storage Rule in these proceedings. *See Tennessee Valley Authority (Bellefonte Nuclear Power Plant, Units 3 & 4),* CLI-09-3, 69 NRC 68, 75 (2009); *American Nuclear Corp*. (Revision of Orders to Modify Source Materials Licenses), CLI-86-23, 24 NRC 704, 709-710 (1986). Moreover, the Commission recently expressly held that there cannot be litigation of generic impact determinations resulting from the Continued Storage Rule in these proceedings:

> Because these generic impact determinations have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual proceedings.

Calvert Cliffs II, CLI-14-08, slip. op. at 9 (footnote omitted).

In addition, Petitioners' specific arguments were raised in the rulemaking proceeding and rejected by the Commission. *See, e.g.*, GEIS, Appendix D at D-28 to D-32. The Commission's regulations bar the contention (10 C.F.R. § 2.335(a)), and Petitioners, therefore, cannot litigate the adequacy of the Commission's Continued Storage Rule in these proceedings. *See Bellefonte*, CLI-09-3, 69 NRC at 75.

2. The Motions to Admit New Contention are Untimely

The ASLBs in these proceedings have established by order that new, late-filed contentions must be filed within thirty days of the events giving rise to the new, late-filed contention.[15] Petitioners argue, in their Motions to Admit New Contention, that the Motions to Admit New Contention are timely because (1) the contention is based on the Continued Storage Rule, which was published in the *Federal Register* on September 19, 2014; (2) "the information in the Continued Storage Rule is materially different than previously available information because the Continued Storage Rule does not include the safety findings that were included in all the prior versions of the Waste Confidence Decision and on which the NRC previously relied for licensing of reactors;" and (3) it was "submitted within 30 days of September 19, 2014, the date the NRC issued the Continued Storage Rule and GEIS." Motions to Admit New Contention at 16. Each of these arguments is premised on the publication date of the Continued Storage Rule and Continued Storage GEIS being the triggering date for the filing a motion.

Petitioners claim, in their respective motions to admit a new contention, that Petitioners could not have known that the Continued Storage Rule would not include what Petitioners refer

[15] *See, e.g.*, *Tennessee Valley Authority* (Watts Bar Unit 2), Scheduling Order, slip. op. at 5 (unpublished) (May 26, 2010).

to as "safety findings" before the issuance of the Continued Storage Rule. Motions to Admit New Contention at 17. However, the Motions for New Contention are based on the District of Columbia Circuit Court of Appeals vacating the 2010 WCD Update, which occurred on June 8, 2012. Petitioners should have filed the Motions to Admit New Contention within thirty days of that date.[16] Instead, Petitioners delayed raising the issue for two years in order to wait to see what the Commission would ultimately do in response to the remand in *New York*. At the time the decision in *New York* was issued, the Commission expressly indicated that it had not determined a course of action. *Calvert Cliffs*, CLI-12-16, 76 NRC at 66 ("Because of the recent court ruling striking down our current waste confidence provisions, we are now considering all available options for resolving the waste confidence issue, which could include generic or site-specific NRC actions, or some combination of both. We have not yet determined a course of action."). Petitioners had no basis to wait for over two years to see what the Commission would do regarding what Petitioners refer to as "safety findings" before filing the Motions to Admit New Contention. Accordingly, the Motions to Admit New Contention are not timely.

3. Petitioners' Motions to Admit New Contention Are Inadmissible

Any new contention must satisfy the standards for admissibility in 10 C.F.R. § 2.309(f)(1); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 N.R.C. 355, 362-63 (1993). That rule requires that an admissible contention:

(i) Provide a specific statement of the issue of law or fact to be raised or

[16] In fact, Petitioners did file a *Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Completion of Remanded Waste Confidence Proceedings* (June 18, 2012), within ten days of the decision in *New York* raising other issues and should have raised the alleged "safety finding" issue at that time. Had they done so, the Commission could have addressed that issue at the same time it dealt with the issues raised in the June 18, 2012 petition. Petitioners sitting on the alleged "safety finding" issue serves only to try to further delay these proceedings. Moreover, SACE filed a motion to admit a new, late-filed contention in the Watts Bar Unit 2 proceeding and BREDL filed a motion to admit a new, late-filed contention in the Bellefonte Units 3 and 4 proceeding within 30-days of the order vacating the 2010 WCD Update.

controverted;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(1)(i)-(vi).

"These requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements." *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006) (footnotes omitted). "If any one . . . is not met, a contention must be rejected." *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) (citation omitted).

a. The Motions to Admit New Contention Are Not Within the Scope of this Proceeding

Petitioners assert that the "the NRC fails to satisfy the AEA's mandate to protect public health and safety from the risks posed by irradiated reactor fuel" (Petition at 1-2), because the Continued Storage Rule and the Continued Storage Rule GEIS "fail to include Waste Confidence safety findings regarding spent fuel disposal." Petition at 1. This argument is not only wrong as

a matter of law because there is no such requirement under the AEA, as discussed *supra*, but is barred from litigation in these proceedings by the Commission's regulations because it is an attack on the Commission's Continued Storage Rule. *See* 10 C.F.R. § 2.335(a).

As discussed in Sections III.A.1 and III.A.2, *supra*, the AEA, federal court decisions on point, and the Commission's regulations and prior decisions make clear that the availability of a repository is not part of these licensing proceedings.

b. Petitioners' Motions to Admit New Contention Fail to Demonstrate that the Issue Raised in the Contention is Material to the Findings that the NRC Must Make to Support the Action

As discussed in Sections III.A.1, III.A.2, and III.A.3 *supra*, the contention is not material to the findings the NRC must make to support the actions involved in these proceedings. Findings with respect to a repository for spent nuclear fuel are not within the scope of a reactor licensing or re-licensing proceeding. *See, e.g.*, 42 Fed. Reg. at 34.931; *Northern States Power Company* (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 51 (1978); *see also NRDC*, 582 F.2d at 175.

C. The Petition Is an Impermissible Challenge to the Continued Storage Rule

Petitioners assert that the "the NRC fails to satisfy the AEA's mandate to protect public health and safety from the risks posed by irradiated reactor fuel" (Petition at 1-2), because the Continued Storage Rule and the Continued Storage Rule GEIS "fail to include Waste Confidence safety findings regarding spent fuel disposal." Petition at 1. As discussed in Section III.B.1 *supra*, this issue is barred from litigation in these proceedings by the Commission's regulations because it is an attack on the Commission's Continued Storage Rule. *See* 10 C.F.R. § 2.335(a).

Moreover, the Petition addresses Finding 1 and Finding 2 under the 2010 WCD Update: (1) the technical feasibility of a geologic repository and (2) the availability of a repository. Petition at 7. However, these findings are made by the Commission in Appendix B of the

Continued Storage Rule GEIS. Section B.2.1 of the Continued Storage GEIS addresses the technical feasibility of a geologic repository and concludes that "that a geologic repository continues to be technically feasible." Continued Storage GEIS at B-1 to B-5. Likewise, under Section B.2.2 of Appendix B of the Continued Storage GEIS, the Commission addresses the availability of a repository, concluding "a reasonable period of time for the development of a repository is approximately 25 to 35 years." Continued Storage GEIS at B-5 to B-9. Petitioners do not controvert these findings.

There has been no change in the generic conclusion that spent fuel can be stored safely; those conclusions are contained in the Continued Storage Rule GEIS:

> In regard to Issue 2, whether the statements regarding continued safe storage should be included in the rule language, the NRC staff recommends that the rule language not address safety. The generic conclusion that spent fuel can be stored safely beyond the operating life of a power reactor has been a component of all past Waste Confidence proceedings and remains part of this proceeding. There is not, however, any legal requirement for the NRC to codify this generic safety conclusion in the rule text. The NRC staff has retained the discussion of the technical feasibility and regulatory framework that supports continued safe storage in Appendix B of the GEIS and a brief discussion on the safety of continued storage is included in the *Federal Register* notice.

Id. The Commission adopted this view in approving the omission of "the generic conclusion that spent fuel can be stored safely beyond the operating life of a power reactor" from the text of the Continued Storage Rule. Commission Voting Record – Final Rule: Continued Storage of Spent Nuclear Fuel (RIN 3150-AJ20) (Aug. 26, 2014). Appendix B of the Continued Storage GEIS makes the following findings with respect to continued storage and repository availability:

> This appendix evaluates the technical feasibility of continued storage and repository availability, including national and international experience with storage and disposal of spent fuel. Based on the information and experience presented in this appendix, the NRC concludes that (1) a geologic repository is technically feasible; (2) the time period needed to develop a repository is approximately 25 to 35 years; (3) continued safe storage of spent fuel in spent fuel pools for the short-term timeframe is technically feasible; and (4) continued safe

> storage of spent fuel in dry casks for the timeframes considered in the GEIS is technically feasible.

Continued Storage GEIS, Appendix B at B-32. These findings are more expansive than the findings contained in the 2010 WCD Update and prior waste confidence decisions, as the findings, among other things, cover indefinite continued on-site storage of spent fuel, regardless of repository availability. Appendix B of the GEIS makes essentially the same and additional, broader generic conclusions regarding safe continued storage of spent fuel that prior waste confidence decisions made, with more extensive technical data and experiential evidence. Petitioners do not controvert any aspect of the GEIS findings.

D. The Petition Is Untimely

Petitions to the Commission to suspend proceedings are treated as motions under 10 C.F.R. § 2.323. *Oyster Creek*, CLI-08-23, 68 N.R.C. at 476 (2008); *Pacific Gas & Electric Co*. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 N.R.C. 230, 237 (2002). While the Commission's rules require that motions be addressed to the Presiding Officer when a proceeding is pending, the Commission has previously indicated that suspension motions such as this are best addressed to the Commission. *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), *et al.*, CLI-11-05, 74 N.R.C. 141, 158 (2011); *Oyster Creek*, CLI-08-23, 68 N.R.C. at 476; *Diablo Canyon*, CLI-02-23, 56 N.R.C. at 237.

Section 2.323 requires motions to be made no later than 10 days after the occurrence or circumstance from which the motion arises. 10 C.F.R. § 2.323(a). Petitioners provide no argument in the Petition for why the Petition is timely. As discussed in Section III.B.2 *supra*, Petitioners' arguments regarding timeliness contained in their Motions to Admit New Contention, are not valid. The facts giving rise to the present Petition occurred when the 2010 WCD Update was vacated on June 8, 2012. Petitioners should have filed the Petition within ten days of that

date, just as they filed their June 18, 2010 petition (and motions to admit new, late-filed contentions). Instead, Petitioners waited for over two years before filing the Petition. Accordingly, the Petition is not timely.

E. The Petition Does Not Provide a Legal or Factual Basis for the Drastic Relief Sought in Suspending These Proceedings

The Petitioners argue that "the NRC lacks a lawful basis under the [AEA] to issue operating licenses or license renewals until it makes valid findings of confidence or reasonable assurance that the hundreds of tons of highly radioactive spent fuel that will be generated during any reactor's license term can be safely disposed of in a repository." Petition at 2. In determining whether suspension is appropriate, the Commission uses the three criteria articulated in the *Private Fuel Storage* proceeding:[17] (1) whether moving forward will jeopardize the public health and safety; (2) whether continuing the review process will provide an obstacle to fair and efficient decision-making; and (3) whether going forward will prevent appropriate implementation of any pertinent rule or policy changes that might emerge from the NRC's ongoing evaluation. *See Callaway*, CLI-11-05, 74 N.R.C. at 158-59.

The Petition asserts that the Commission has to undertake *another* rulemaking proceeding and *another* environmental impact statement *or* address the "same issues in individual reactor licensing proceedings." Petition at 9. As discussed *infra*, the Petition provides no legal or factual support that would warrant the drastic action of suspending the licensing

[17] *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage), CLI-01-26, 54 N.R.C. 376 (2001).

proceedings,[18] particularly where the Petition concedes that any findings Petitioners claims are "necessary" can be made in those proceedings.[19]

1. The Petition Does Not Establish that an Immediate Threat to Public Health and Safety Exists

The Commission has repeatedly held, "Suspending a proceeding is a 'drastic action' that we will not take 'absent immediate threats to public, health and safety, or other compelling reason.'" *Fermi Unit 3*, CLI-14-07, __ N.R.C. at __, slip op. at 8 (footnote omitted); *see also Callaway*, CLI-11-05, 74 N.R.C. at 158 (citations omitted); *Oyster Creek*, CLI-08-23, 68 N.R.C. at 484; *Vermont*, CLI-00-20, 52 N.R.C. at 173-74. Petitioners have not demonstrated that moving forward with reactor licensing proceedings will jeopardize the public health and safety.

The Commission has rejected requests to stay the decisions in licensing proceedings following the events of Fukushima Daiichi, the Three Mile Island ("TMI") accident, and the terrorist attacks of September 11, 2001. *See Callaway*, CLI-11-05, 74 N.R.C. at 152-57; *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-27, 54 N.R.C. at 390; *Private Fuel Storage*, CLI-01-26, 54 N.R.C. at 381-82. The Commission held in those cases that "nothing we have learned to date puts the continued safety of our currently operating regulated facilities, including reactors and spent fuel pools, into question. Similarly, nothing learned to date requires immediate cessation of our review of license applications or proposed reactor designs." *Callaway*, 74 N.R.C. at 161.

The present Petition provides no argument as to any immediate threat to public health and safety; it is predicated solely on an erroneous legal argument. Moreover, nothing in the Petition

[18] The Motions to Admit New Contention also do not provide any basis.

[19] Moreover, the Petition is procedurally improper because it requests a suspension of these proceedings, but Petitioners have not filed any petition for rulemaking with the Commission. Under 10 C.F.R. § 2.802(d), a request to suspend a licensing proceeding requires a petition for rulemaking.

contains a specific link between the relief requested and the particulars of any of the above-referenced proceedings. The Commission also noted in *Callaway* that the lack of such a link makes suspension of licensing decisions inappropriate. *Callaway*, CLI-11-05, 74 N.R.C. at 161.

2. Moving Forward with the Proceedings Would Not Prove to Be an Obstacle to Fair and Efficient Decisionmaking

Petitioners fail to explain how moving forward with these proceedings would be an obstacle to fair and efficient decisionmaking.[20] The Commission has long held that it has a commitment to the efficient and expeditious processing of applications. *See, e.g.*, *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 N.R.C. 18, 24 (1998). The Commission has held that there is a "substantial public interest in efficient and expeditious administrative proceedings." *Duke Energy Corp.* (Oconee Nuclear Station Units 1, 2 & 3), CLI-99-11, 49 N.R.C. 328, 339 (1999). The Commission has likewise held that it has a responsibility to go forward with pending proceedings. *Private Fuel Storage*, CLI-01-26, 54 N.R.C. at 381.

> During the time when the NRC is pursuing its top-to-bottom reassessment of its regulations and policies on terrorism, the agency must also continue to meet its statutory responsibilities for licensing and regulation of all nuclear facilities and materials in a timely and efficient manner. *See Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (1998). Permitting unnecessary delays would contravene the Commission's fundamental duties to the general public, as well as to applicants and licensees. *The Commission's objectives are to provide a fair hearing process, to avoid unnecessary delays in the NRC's review and hearing processes, and to produce an informed adjudicatory record that supports agency decision making on matters related to the NRC's responsibilities for protecting public health and safety, the common defense and security, and the environment. Id. at 19. Consistent with this policy, the Commission has a history of not delaying adjudications to await extrinsic actions, absent special needs of efficiency or fairness. See Private Fuel Storage*, CLI-01-26, 54 NRC at 381-83 and references cited therein; *McGuire & Catawba*, CLI-01-27, 54 NRC at 390-91.

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[20] The Petition concedes that any allegedly necessary findings can be made in these individual proceedings and, therefore, there is no basis to suspend the final licensing decision in these proceedings; rather , the proceedings should in fact be allowed to proceed so that such findings *could* be amde. *See* Petition at 3, 8, and 9. However, as discussed *infra*, Petitioners arguments are premised on an erroneous understanding of applicable law and there is no requirement to make the findings Petitioners claim need to be made.

Duke Cogema Stone & Wesbster (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 N.R.C. at 400 (emphasis added) (footnote omitted). *See also McGuire/Catawba*, CLI-01-27, 54 N.R.C. at 391 ("This general reluctance [to suspend proceedings] is firmly grounded in our longstanding commitment to efficient and expeditious decisionmaking . . . ."). TVA would be uniquely harmed by any additional unnecessary delay in these proceedings as the Watts Bar Unit 2 proceeding has been terminated and TVA anticipates that Watts Bar Unit 2 will be ready to load fuel in 2015.

3. Moving Forward with the Proceedings Will Not Hamper Implementation of Any Potential Rule or Policy Changes

In considering whether moving forward with proceedings would prevent appropriate implementation of any rule or policy changes that might emerge from its ongoing evaluation of an event, the Commission has held:

> *[E]very license* the Commission issues is subject to the possibility of additional requirements. The Commission can modify license requirements by rule, regulation, or order; and changes can be applicable to both applicants and licensees. Thus, as in *Private Fuel Storage*, "holding up these proceedings is not necessary to ensure that the public will realize the full benefit of our ongoing regulatory review. . . ."

Diablo Canyon, CLI-02-23, 56 N.R.C. at 240 (emphasis in original) (footnote omitted). That reasoning applies equally in this proceeding. If the Commission were to determine at some future date that some additional safety determination were required with regard to continued spent fuel storage, going forward with these proceedings would not impede the Commission's implementation of any such a determination.

IV. CONCLUSION

For the foregoing reasons, the Petition and the Motions to Admit New Contention should be denied.

Respectfully submitted,

/signed (electronically) by Scott A. Vance/
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Counsel for TVA

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	Docket Nos. 50-327-LR
	)	50-328-LR
TENNESSEE VALLEY AUTHORITY	)	
	)	ASLBP No. 13-927-01-LR-BD01
(Sequoyah Nuclear Plant, Units 1 and 2)	)	
	)	
In the Matter of	)	Docket Nos. 52-014-COL
	)	52-015-COL
TENNESSEE VALLEY AUTHORITY	)	
(Bellefonte Nuclear Power Plant, Units 3 and 4)	)	
	)	
In the Matter of	)	Docket No. 50-391-OL
	)	
TENNESSEE VALLEY AUTHORITY	)	
(Watts Bar, Unit 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Tennessee Valley Authority's Answer Opposing Petition to Suspend Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings and Motions for Leave to File New Contention, has been served through the E-Filing system on the participants in the above-captioned proceedings, this 31st day of October, 2014.

/signed electronically by/
Blake J. Nelson