

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	
	)	
TENNESSEE VALLEY AUTHORITY	)	Docket No. 50-391-OL
	)	
(Watts Bar Nuclear Plant Unit 2)	)	September 16, 2011
	)	

**TENNESSEE VALLEY AUTHORITY’S REQUEST TO FILE A SURREPLY  
TO THE REPLY OF SOUTHERN ALLIANCE FOR CLEAN ENERGY**

In accordance with Section H.3 of the Atomic Safety and Licensing Board’s May 26, 2010 Scheduling Order,<sup>1</sup> Tennessee Valley Authority (“TVA”) hereby requests leave to file a surreply to “Southern Alliance for Clean Energy’s [SACE’s] Reply to Oppositions to Admission of New Contention” and SACE’s associated Reply Memorandum filed on September 13, 2011.<sup>2</sup> In support of this request, TVA respectfully states as follows:

1. On August 11, 2011, SACE filed a Motion to admit a proposed New Contention in this proceeding purportedly based on new and significant information presented by the NRC in its report, “Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-term Task Force Review of Insights from the Fukushima Dai-ichi Accident” (July 12, 2011) (the “Task Force Report”).<sup>3</sup>

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<sup>1</sup> Licensing Board Scheduling Order at 7 (May 26, 2010) (unpublished).

<sup>2</sup> See Reply Memorandum Regarding Timeliness and Admissibility of New Contentions Seeking Consideration of Environmental Implications of Fukushima Task Force Report in Individual Reactor Licensing Proceedings (Sept. 13, 2011).

<sup>3</sup> See Motion to Admit New Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident (Aug. 11, 2011) (“Motion”); Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011) (“New Contention”).

2. On September 6, 2011, TVA and the NRC Staff each filed Answers opposing the admission of the New Contention on the grounds that it does not meet the NRC's contention timeliness and admissibility criteria in 10 C.F.R. § 2.309.<sup>4</sup>

3. Three days later, on September 9, 2011, the Commission issued a Memorandum and Order (CLI-11-05), in which it ruled on a series of petitions filed in numerous proceedings to suspend adjudicatory, licensing, and rulemaking activities, and requesting additional related relief, in light of the March 2011 events at Fukushima.<sup>5</sup> CLI-11-05 indicates that SACE's April 2011 Emergency Petition to suspend all pending reactor licensing decisions and related rulemaking decisions was among the many filings underlying the Commission's ruling.<sup>6</sup>

4. Shortly thereafter, on September 13, 2011, SACE filed its Reply and Reply Memorandum in response to the Answers of TVA and the NRC Staff. In the Reply and Reply Memorandum, SACE discusses the "relevance" and "effect" of CLI-11-05 with respect to its New Contention, suggesting that it supports admission of the contention.<sup>7</sup>

5. Unlike SACE, TVA did not have an opportunity to address the implications of CLI-11-05 relative to the admissibility of the New Contention. Relevant here, a portion of the Commission's decision addresses claims that the Fukushima events—as discussed in the Task Force Report—constitute "new and significant information" under NEPA that must be analyzed as part of the environmental review for new reactor and license renewal decisions.<sup>8</sup> Accordingly, TVA submits that its inability to address the import of CLI-11-05 in its Answer, due solely to the timing

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<sup>4</sup> See "Tennessee Valley Authority's Answer in Opposition to Proposed Contention Regarding Fukushima Task Force Report" (Sept. 6, 2011); NRC Staff's Answer to Motion and Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (Sept. 6, 2011).

<sup>5</sup> See *Union Elec. Co. d/b/a/ Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, 74 NRC \_\_\_, slip op. (Sept. 9, 2011).

<sup>6</sup> See *id.*, Appendix at 4.

<sup>7</sup> Reply at 1-2; Reply Memorandum at 1-4.

<sup>8</sup> See CLI-11-05, slip op. at 30-31.

of that decision, constitutes good cause for the filing of a brief surreply to address the relevance of CLI-11-05 to the proposed New Contention. Indeed, the Reply recognizes as much, stating that the “SACE would not object to a response by the applicant and the Staff to their arguments regarding the relevance of CLI-11-05 to their contention.”<sup>9</sup>

6. In accordance with 10 C.F.R. § 2.323(b), Counsel for TVA has contacted Counsel for SACE and Counsel for the NRC Staff. They stated that they do not oppose TVA’s Motion for Leave to file a limited surreply.

WHEREFORE, TVA respectfully requests that the Board grant its Motion for Leave to file a brief surreply to SACE’s Reply and Reply Memorandum on or before Tuesday, August 20, 2011.

Respectfully submitted,

*Signed (electronically) by Paul M. Bessette*

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COUNSEL FOR TVA

Dated in Washington, D.C.  
this 16th day of September 2011

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<sup>9</sup> Reply at 2 n.2 (“Because the applicant and the NRC Staff have not had an opportunity to address the effect of CLI-11-05 on the timeliness and admissibility of SACE’s contention, SACE would not object to a response by the applicant and the Staff to their arguments regarding the relevance of CLI-11-05 to their contention.”).

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**CERTIFICATE OF SERVICE**

I hereby certify that, on September 16, 2011, a copy of “Tennessee Valley Authority’s Request to File a Surreply to the Reply of Southern Alliance for Clean Energy” was served by the Electronic Information Exchange on the following recipients:

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