UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket No. 50-391-OL
TENNESSEE VALLEY AUTHORITY	)	
	)	
(Watts Bar Nuclear Plant Unit 2)	)	
	)	September 20, 2011

TENNESSEE VALLEY AUTHORITY'S SURREPLY TO THE REPLY OF SOUTHERN ALLIANCE FOR CLEAN ENERGY

Pursuant to the Atomic Safety and Licensing Board's September 20, 2011 Order,[1] Tennessee Valley Authority ("TVA") hereby files this surreply to "Southern Alliance for Clean Energy's [SACE's] Reply to Oppositions to Admission of New Contention" ("Reply") and SACE's associated Reply Memorandum filed on September 13, 2011.[2]

As SACE readily acknowledges, the core premise of its proposed New Contention is that the NRC's Japan Task Force Report contains "new and significant information" within the meaning of the National Environmental Policy Act ("NEPA") and the NRC's 10 C.F.R. Part 51 regulations.[3] Now claiming that its New Contention is one of "omission," SACE alleges that TVA and the NRC Staff have not addressed new and significant information purportedly

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1 Licensing Board Order (Granting TVA's Request to File a Surreply) (Sept. 20, 2011) (unpublished).

2 *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) ("Reply Memorandum").

3 *See* Reply Memorandum at 8 ("The central thrust of the contention is that the Task Force Report constitutes 'significant new information' under NEPA and the NEPA Documents need to be supplemented accordingly."); *id.* at 12 ("The contentions, however, are based upon the new and significant information contained in the Task Force Report.").

contained in the Task Force Report.[4] It further suggests that the Commission's recent ruling in CLI-11-05[5] supports its position and the admission of the New Contention.[6]

That is not so. CLI-11-05 commands precisely the opposite result—denial of the New Contention as inadmissible under 10 C.F.R. § 2.309(f)(2). In CLI-11-05, the Commission held that the Task Force Report does *not* contain new and significant information that would trigger the need for an immediate generic NEPA review by the NRC *or* supplementing final environmental impact statements ("EISs") prepared in connection with individual licensing proceedings. The Commission's Order is clear on this point:

> To merit this additional [NEPA] review, information must be both "new" and "significant," and it must bear on the proposed action or its impacts. As we have explained, "[t]he new information must present 'a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.'" *That is not the case here, given the current state of information available to us*.[7]

SACE attempts to avoid the clear import of CLI-11-05 by arguing that the Commission and its Staff have shirked their NEPA obligations to consider whether the Task Force Report constitutes new and significant information that must be considered in individual reactor licensing decisions.[8] But that argument is incorrect for at least two reasons. First, as noted above, the Commission explicitly rejected any notion that the Japan Task Force Report, in and of

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4 *See id.* at 5-6, 8; *see also* Reply at 2.

5 *See Union Elec. Co.* (Callaway Plant, Unit 2), CLI-11-05, 74 NRC __, slip op. (Sept. 9, 2011).

6 *See* Reply Memorandum at 2 (stating that CLI-11-05 "contains language that bears on the timeliness and admissibility of the contentions").

7 CLI-11-05, slip op. at 31 (*quoting and citing Hydro Res., Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999); *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 373 (1989); *Sierra Club v. Froehlke*, 816 F.2d 205, 210 (5th Cir. 1987)) (emphasis added).

8 *See* Reply Memorandum at 4.

itself, contains new and significant information that is relevant to any generic or site-specific analysis of environmental impacts under NEPA and 10 C.F.R. Part 51.[9]

Second, the Commission stated unequivocally that any request to undertake a supplemental NEPA review in response to the events at Fukushima is "premature."[10] Notwithstanding the issuance of the Task Force Report and its associated recommendations, the NRC continues to evaluate the Fukushima accident and its implications for U.S. nuclear facilities. As the Commission put it, "the full picture of what happened at Fukushima is still far from clear" and, as such, any related NEPA duty "does not accrue now."[11]

Accordingly, for the reasons set forth above and in TVA's September 6, 2011 Answer,[12] the Task Force Report does not contain "new and significant" information that might necessitate supplemental NEPA review by TVA or the NRC Staff as part of this proceeding. CLI-11-05, an Order of the Commission that is binding on this Board, further corroborates this critical point and compels denial of the New Contention as inadmissible.

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[9] CLI-11-05, slip op. at 30-31.

[10] *Id.* at 30.

[11] *Id; see also id.* at 30-31 ("If, however, new and significant information comes to light that requires consideration as part of the ongoing preparation of application-specific NEPA documents, the agency will assess the significance of that information, as appropriate.").

[12] *See* Tennessee Valley Authority's Answer in Opposition to Proposed Contention Regarding Fukushima Task Force Report (Sept. 6, 2011).

Respectfully submitted,

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COUNSEL FOR TVA

Dated in Washington, D.C.
this 20th day of September 2011

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that, on September 20, 2011, a copy of "Tennessee Valley Authority's 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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