

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF ANSWER OPPOSING THE SOUTHERN ALLIANCE FOR
CLEAN ENERGY PETITION FOR REVIEW OF BOARD DECISION LBP-15-14

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.341(b)(3), the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) files this answer opposing the Southern Alliance for Clean Energy (SACE) Petition for Review¹ of the Atomic Safety and Licensing Board (Board) Memorandum and Order LBP-15-14.² LBP-15-14 dealt with a Motion to Reopen and a Motion to File a New Contention filed by SACE on February 6, 2015.³ These motions asserted that the final safety analysis report (FSAR) submitted to the NRC by the Tennessee Valley Authority (TVA) as part of its application for an operating license for Watts Bar Nuclear Plant (WBN) Unit 2 (WBN2) is deficient under 10 C.F.R. § 50.34(b)(4) because it does not include the information separately provided to the NRC in TVA's December 30, 2014 expedited seismic evaluation process (ESEP) report for WBN (the

¹ See Southern Alliance for Clean Energy's Petition for Review of LBP-15-14 Denying Admission of a New Contention Concerning TVA's Failure to Comply with 10 C.F.R. § 50.34(b)(4) (May 18, 2015) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15138A452) (Petition for Review).

² See *Tennessee Valley Auth.* (Watts Bar Unit 2), LBP-15-14, 81 NRC __ (Apr. 22, 2015) (slip op.).

³ *Id.* at 1. See Southern Alliance for Clean Energy's Motion for Leave to File a New Contention Concerning TVA's Failure to Comply with 10 C.F.R. § 50.34(b)(4) (dated Feb. 5, 2015, filed via the NRC's E-Filing System Feb. 6, 2015) (Motion to File a New Contention) (available at ADAMS Accession No. ML15037A318 as a single document along with Southern Alliance for Clean Energy's Motion to Reopen the Record (Motion to Reopen), Declaration of Sandra L. Kurtz, Declaration of Jeannie V. McKinney, Declaration of Victoria Anne Murchie, and Declaration of Diane Curran In Support of Southern Alliance for Clean Energy's Motion To Reopen the Record (Curran Declaration)).

WBN ESEP Report).⁴ The WBN ESEP Report, in turn, was submitted to the NRC by TVA in response to the NRC's 10 C.F.R. § 50.54(f) request for information issued to all U.S. nuclear power reactor licensees and holders of construction permits following the accident at the Fukushima Dai-ichi nuclear power plant in Japan.⁵ LBP-15-14 disposed of these arguments by holding that, because SACE had failed to satisfy the Commission's stringent reopening requirements at 10 C.F.R. § 2.326, SACE's Motion to Reopen the closed record in the WBN2 operating license adjudicatory proceeding must be denied and, consequently, its Motion to File a New Contention need not be reached.⁶

In its Petition for Review, SACE claims that the Commission should review LBP-15-14 because "it raises important issues of law and policy."⁷ However, as explained below, none of SACE's arguments in support of this assertion demonstrate the existence of an important issue of law and policy or point to an error of law or abuse of discretion in LBP-15-14. Therefore, and since the Commission generally gives substantial deference to Board threshold determinations such as determinations on motions to reopen and contention admissibility,⁸ the Commission should deny SACE's Petition for Review.

BACKGROUND

On January 23, 1973, pursuant to an initial Atomic Safety and Licensing Board decision,⁹ the Atomic Energy Commission (AEC) issued to TVA construction permits CPPR-91 and CPPR-

⁴ See *Watts Bar*, LBP-15-14, 81 NRC at ___ (slip op. at 3-4).

⁵ See Letter from the NRC to All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status, Request for Information Pursuant to Title 10 of the *Code of Federal Regulations* 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3, of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (Mar. 12, 2012) (ADAMS Accession No. ML12053A340) (The Fukushima 50.54(f) Letter).

⁶ *Watts Bar*, LBP-15-14, 81 NRC at ___ (slip op. at 1, 7).

⁷ Petition for Review at 1.

⁸ See, e.g., *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 710 (2012).

⁹ See *Tennessee Valley Auth.* (Watts Bar Nuclear Plant, Units 1 and 2), LBP-72-35, 5 AEC 230 (1972). The Board found, in part, that the design of the engineered safety features and the

92 for the construction of WBN Units 1 and 2, respectively.¹⁰ By application dated September 27, 1976, TVA then applied for operating licenses for WBN Units 1 and 2.¹¹ The operating license for WBN Unit 1 was issued on February 7, 1996,¹² however, the WBN2 operating license application was deferred. In 2009, TVA re-commenced its efforts to obtain an operating license for WBN2 by providing the NRC with an update to its WBN2 operating license application, and, in accordance with Commission direction,¹³ the Staff provided a second opportunity to request a hearing on this application.¹⁴ In response, SACE requested, and was granted, a hearing.¹⁵ Ultimately, however, all of the issues raised by SACE were resolved prior to the hearing¹⁶ and, on September 9, 2014, the Board terminated the WBN2 operating license adjudicatory proceeding.¹⁷

consequences of postulated accidents had been analyzed by TVA and evaluated by the Staff, and that seismic matters had been properly addressed. *Id.* at 231-232.

¹⁰ See Letter from R.C. DeYoung, Assistant Director for Pressurized Water Reactors, AEC to TVA (Jan. 23, 1973) (ADAMS Accession No. ML020780293).

¹¹ See Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2); Receipt of Application for Facility Operating Licenses; Consideration of Issuance of Facility Operating Licenses and Opportunity for Hearing, 41 Fed. Reg. 56,244, 56,244-45 (Dec. 27, 1976).

¹² See Watts Bar Nuclear Plant, Unit 1, Tennessee Valley Authority; Notice of Issuance of Facility Operating License, 61 Fed. Reg. 5587, 5587 (Feb. 13, 1996).

¹³ Staff Requirements Memorandum (SRM) SECY-07-0096, *Possible Reactivation of Construction and Licensing Activities for the Watts Bar Nuclear Plant Unit 2* (July 25, 2007) (ADAMS Accession No. ML072060688). This Commission direction also directed the Staff to use the current licensing basis for WBN Unit 1 as the reference basis for the review and licensing of WBN2 and that the Staff should encourage TVA to adopt updated standards for WBN2 where it would not “significantly detract from design and operational consistency between Units 1 and 2.” *Id.*

¹⁴ See Tennessee Valley Authority; Notice of Receipt of Update to Application for Facility Operating License and Notice of Opportunity for Hearing for the Watts Bar Nuclear Plant, Unit 2 and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation, 74 Fed. Reg. 20,350, 20,351 (May 1, 2009).

¹⁵ See *Tennessee Valley Auth.* (Watts Bar Nuclear Plant, Unit 2), LBP-09-26, 70 NRC 939, 946 (2009).

¹⁶ See NRC Staff’s Answer to Southern Alliance for Clean Energy’s Motion to Reopen the Record, at 3-4 (Feb. 18, 2015) (ADAMS Accession No. ML15049A365) (explaining that, although two SACE contentions were admitted, one was resolved by the Board granting TVA’s unopposed motion to dismiss it as moot and the other was resolved by the Board granting SACE’s unopposed motion to withdraw it).

¹⁷ See *Tennessee Valley Auth.* (Watts Bar Nuclear Plant, Unit 2), LBP-14-13, 80 NRC 142, 143 (2014).

After the termination of this adjudicatory proceeding, on February 6, 2015, SACE filed its Motion to Reopen and Motion to File a New Contention arguing that the WBN2 FSAR, included as part of the WBN2 operating license application, is deficient under 10 C.F.R. § 50.34(b)(4) because it does not include the information in the December 30, 2014 WBN ESEP Report provided separately by TVA to the NRC.¹⁸

I. The WBN ESEP Report

The WBN ESEP Report submitted by TVA to the NRC on December 30, 2014, is a product of the NRC's on-going response to the accident at the Fukushima Dai-ichi nuclear power plant in Japan. Specifically, as a result of its Near-Term Task Force (NTTF) review of this accident, the NRC, among other things, issued a request for information pursuant to 10 C.F.R. § 50.54(f) to all U.S. nuclear power reactor licensees and holders of construction permits in active or deferred status, including TVA for WBN (the Fukushima 50.54(f) Letter).¹⁹ As related to the NTTF's recommendation 2.1, the Fukushima 50.54(f) Letter directed its addressees to reevaluate the seismic hazards at their sites by developing a risk-informed performance-based ground motion response spectrum (GMRS) for the site and comparing it to the facility's safe shutdown earthquake (SSE) at that site.²⁰ This reevaluation was to be submitted to the NRC as part of a seismic hazard report.²¹ If the seismic hazard report were to find that the facility's SSE was greater than or equal to the GMRS at all frequencies between 1 and 10 hertz (Hz) and at the peak ground acceleration (PGA) anchor point, then the addressee could terminate its reevaluation.²² If not, then the addressee would be required to (1)

¹⁸ See *Watts Bar Unit 2*, LBP-15-14, 81 NRC at ___ (slip op. at 3-4).

¹⁹ See the Fukushima 50.54(f) Letter at 1. All of the documents related to the seismic reevaluations directed by the NRC in response to the Fukushima accident can be found on the NRC public website, "Seismic Reevaluations" (May 13, 2015), *available at* <http://www.nrc.gov/reactors/operating/ops-experience/japan-dashboard/seismic-reevaluations.html>.

²⁰ The Fukushima 50.54(f) Letter at Enclosure 1, p. 1, 5.

²¹ *Id.* at Enclosure 1, Attachment 1, p. 1-2.

²² *Id.* at Enclosure 1, Attachment 1, p. 2.

commence either a seismic probabilistic risk assessment (SPRA) or a seismic margin assessment (SMA) and (2) submit to the NRC an “interim evaluation and actions taken or planned to address the higher seismic hazard relative to the design basis, as appropriate, prior to completion of the [SPRA or SMA].”²³ The NRC stated that, based upon this information, it will “determine whether additional regulatory actions are necessary (e.g., update the design basis and [systems, structures, and components (SSCs)] important to safety) to protect against the updated hazards.”²⁴ In the meantime, the NRC will continue its review and issuance of licenses and “for the licenses that the NRC issues before completing its [NTTF] review, any new Fukushima-driven requirements can be imposed later, if necessary to protect the public health and safety.”²⁵

On March 31, 2014, TVA submitted to the NRC its seismic hazard report for WBN.²⁶ TVA stated that this report was consistent with the guidance provided in EPRI Report 1025287,²⁷ which had been endorsed by the NRC.²⁸ The report detailed TVA’s development of a GMRS for WBN.²⁹ The report then compared this GMRS to the WBN SSE and stated that, “[i]n the 1 to 10 Hz part of the response spectrum, the GMRS exceeds the SSE.”³⁰

²³ *Id.* at Enclosure 1, p. 6-7.

²⁴ *Id.* at Enclosure 1, p. 1.

²⁵ *Union Elec. Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, 74 NRC 141, 161, 166 (2011).

²⁶ See Letter from J. W. Shea, Vice President, Nuclear Licensing, TVA, to NRC, Tennessee Valley Authority’s Seismic Hazard and Screening Report (CEUS Sites), Response to NRC Request for Information Pursuant to 10 CFR 50.54(f) Regarding Recommendation 2.1 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident, at Enclosure 4 (Mar. 31, 2014, made publicly-available on Apr. 17, 2014) (ADAMS Accession No. ML14098A478) (WBN Seismic Hazard Report).

²⁷ See EPRI, Report 1025287, *Seismic Evaluation Guidance, Screening, Prioritization and Implementation Details (SPID) for the Resolution of Fukushima Near-Term Task Force Recommendation 2.1: Seismic* (Nov. 2012) (ADAMS Accession No. ML12333A170) (EPRI 1025287).

²⁸ See Electric Power Research Institute; Seismic Evaluation Guidance, 78 Fed. Reg. 13,097 (Feb. 26, 2013); Letter from NRC to Joseph E. Pollock, Executive Director, Nuclear Energy Institute, Endorsement of Electric Power Research Institute Final Draft Report 1025287, “Seismic Evaluation Guidance” (Feb. 15, 2013) (ADAMS Accession No. ML12319A074).

²⁹ WBN Seismic Hazard Report at E4-6.

³⁰ *Id.* at E4-31.

Consequently, on December 30, 2014, TVA submitted to the NRC an interim evaluation of this higher seismic hazard.³¹ TVA stated that this evaluation was consistent with the guidance provided in EPRI Report 3002000704,³² which had been endorsed by the NRC,³³ and which provided for responding to the NRC's request for interim evaluations through an "Expedited Seismic Evaluation Process" or ESEP.³⁴ Through the use of this process, the WBN ESEP Report concluded that there currently is seismic margin for the protection of WBN from core damage following beyond design basis seismic events without plant modifications despite the facts that the GMRS exceeds the SSE and that a more detailed SPRA or SMA is not yet completed.³⁵

II. The Procedural History of LBP-15-14

In its Motion to File a New Contention, SACE argued that the WBN2 FSAR is deficient under 10 C.F.R. § 50.34(b)(4) because it does not include the information provided in the WBN ESEP Report.³⁶ Under the Commission's two-step construction permit and operating license process in 10 C.F.R. Part 50, each application for a construction permit is required to include a preliminary safety analysis report (PSAR) and each application for an operating license is required to include an FSAR. The Commission's regulations at 10 C.F.R. § 50.34(a) list the

³¹ See Letter from J. W. Shea, Vice President, Nuclear Licensing, TVA, to NRC, Tennessee Valley Authority's Watts Bar Nuclear Plant Expedited Seismic Evaluation Process Report (CEUS Sites) Response to NRC Request for Information Pursuant to 10 CFR 50.54(f) Regarding Recommendation 2.1 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident, at Enclosure (Dec. 30, 2014) (ADAMS Accession No. ML14365A072) (WBN ESEP Report).

³² See EPRI, Draft Report 3002000704, *Seismic Evaluation Guidance: Augmented Approach for the Resolution of Fukushima Near-Term Task Force Recommendation 2.1 – Seismic* (April, 2013) (ADAMS Accession No. ML13102A142) (EPRI 3002000704).

³³ See Letter from NRC to Joseph E. Pollock, Executive Director, Nuclear Energy Institute, Electric Power Research Institute Final Draft Report XXXXXX, "Seismic Evaluation Guidance: Augmented Approach for the Resolution of Fukushima Near-Term Task Force Recommendation 2.1: Seismic," as an Acceptable Alternative to the March 12, 2012, Information Request for Seismic Reevaluations (May 7, 2013) (ADAMS Accession No. ML13106A331).

³⁴ EPRI 3002000704 at 1-1.

³⁵ WBN ESEP Report at Enclosure, p.22-24.

³⁶ Motion to File a New Contention at 1.

minimum information required to be included in a PSAR. The Commission's regulations at 10 C.F.R. § 50.34(b) describe the information required to be included in an FSAR, including the requirement of 10 C.F.R. § 50.34(b)(4) for "[a] final analysis and evaluation of the design and performance of structures, systems, and components" with the objective of assessing the risk to public health and safety resulting from operation of the facility and "taking into account any pertinent information developed since the submittal of the [PSAR]." Based on this regulatory provision, SACE asserted in its Motion to File a New Contention that the WBN ESEP Report constitutes "pertinent" information as to whether the design and performance of WBN2 structures, systems, and components satisfies the Commission's requirements for issuing an operating license at 10 C.F.R. § 50.57 and, therefore, according to 10 C.F.R. § 50.34(b)(4), should be included in the WBN2 FSAR.³⁷

Recognizing that the WBN2 operating license adjudicatory proceeding had previously been terminated, SACE filed a motion to reopen and a supporting affidavit along with its Motion to File a New Contention.³⁸ In its Motion to Reopen, SACE asserted that the contention proffered in its Motion to File a New Contention regarding the sufficiency of the WBN2 FSAR satisfies the Commission's reopening requirements at 10 C.F.R. § 2.326.³⁹ First, SACE stated that, pursuant to 10 C.F.R. § 2.326(a)(1), its filing was timely because it was "filed within thirty days of the posting on ADAMS of the [WBN ESEP Report]."⁴⁰ Second, SACE stated that, pursuant to 10 C.F.R. § 2.326(a)(2), its filing addressed a significant safety issue because it asserts that, if the information in the WBN ESEP Report were not included in the WBN2 FSAR, then there would be no assurance of a "sound basis" for the WBN2 technical specifications.⁴¹ Third, SACE stated that, pursuant to 10 C.F.R. § 2.326(a)(3), its filing demonstrated that a

³⁷ *Id.* at 1-2.

³⁸ See Motion to Reopen; Curran Declaration.

³⁹ Motion to Reopen at 1.

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at 2-3.

materially different result would have been likely had its newly-proffered contention been considered initially. Specifically, SACE asserted that, if the information in the WBN ESEP Report was duplicated in the WBN2 FSAR, then “the NRC may require that more information be submitted, and/or that TVA make changes to the SSCs to ensure their safe operation” and, “[t]hus, members of the public will have the benefit of a more thorough and adequate NRC licensing review of the WBN2 FSAR against NRC safety standards.”⁴² Finally, SACE stated that the affidavit of its counsel, Ms. Curran, that was attached to its Motion to Reopen satisfies the requirements of 10 C.F.R. § 2.326(b) because it “set[s] forth the factual and/or technical bases for [SACE’s] claim that the criteria of [10 C.F.R. §] 2.326(a) have been satisfied.”⁴³ The Curran Declaration, in turn, states that, “[t]he factual statements in SACE’s [Motion to Reopen] and [Motion to File a New Contention] are, to [the] best of my knowledge, true and correct representations of statements made by TVA and the NRC Staff in correspondence and reports.”⁴⁴

The Staff and TVA opposed SACE’s Motion to Reopen arguing that, contrary to 10 C.F.R. § 2.326, it (1) was untimely, (2) did not demonstrate that it addressed a significant safety issue, (3) did not demonstrate that a materially different result would have been likely had the information in the WBN ESEP Report been included in the WBN2 FSAR, and (4) was not accompanied by an affidavit of a competent expert providing the factual and technical bases for each of the requirements of 10 C.F.R. § 2.326(a).⁴⁵ The Staff contended, *inter alia*, that SACE’s arguments could not amount to a significant safety issue or demonstrate a materially different

⁴² *Id.* at 4.

⁴³ *Id.* at 5.

⁴⁴ Curran Declaration.

⁴⁵ See NRC Staff’s Answer to Southern Alliance for Clean Energy’s Motion to Reopen the Record; Tennessee Valley Authority’s Answer Opposing Southern Alliance for Clean Energy’s Motion to Reopen the Record (Feb. 17, 2015) (ADAMS Accession No. ML15048A061).

result because these arguments relied entirely on the factual statements made by TVA.⁴⁶ However, TVA had used these same factual statements to conclude that there was no significant safety issue at WBN⁴⁷ and SACE did not explain why its complete reliance on these facts would not necessitate the same conclusion. The Staff and TVA also opposed SACE's Motion to File a New Contention arguing that, contrary to 10 C.F.R. § 2.309(c) and 10 C.F.R. § 2.309(f)(1), it was untimely, outside the scope of the proceeding, not material to the findings that the NRC must make regarding the WBN2 operating license application, not supported by alleged facts or expert opinions, and did not raise a genuine issue of material fact or law.⁴⁸ However, the Staff noted that, should the Board deny SACE's Motion to Reopen, it need not separately address SACE's Motion to File a New Contention.⁴⁹

III. The Board Decision in LBP-15-14

In LBP-15-14, the Board denied SACE's Motion to Reopen for three, independent reasons. First, contrary to the Commission's reopening requirements at 10 C.F.R. § 2.326(a)(2), SACE did not demonstrate how the location of the information provided in the WBN ESEP Report, that is, either as a response to the Fukushima 50.54(f) Letter or in the WBN2 FSAR, presents a significant safety or environmental issue.⁵⁰ This is because the WBN ESEP Report purported to demonstrate that there is no significant safety issue with respect to WBN⁵¹ and, since SACE conceded that its proffered contention relies entirely on the WBN

⁴⁶ See NRC Staff's Answer to Southern Alliance for Clean Energy's Motion to Reopen the Record at 16-17 (quoting Motion to File a New Contention at 6 ("This contention relies entirely on factual statements made by TVA.")).

⁴⁷ See WBN ESEP Report at Enclosure, p. 22-24.

⁴⁸ See NRC Staff's Answer to Southern Alliance for Clean Energy's Motion for Leave to File a New Contention at 1 (Mar. 3, 2015) (ADAMS Accession No. ML15062A114); Tennessee Valley Authority's Answer Opposing Southern Alliance for Clean Energy's Motion for Leave to File a New Contention at 1-2 (Mar. 3, 2015) (ADAMS Accession No. ML15062A378).

⁴⁹ NRC Staff's Answer to Southern Alliance for Clean Energy's Motion for Leave to File a New Contention at 6-7.

⁵⁰ *Watts Bar Unit 2*, LBP-15-14, 81 NRC at __ (slip op. at 6).

⁵¹ WBN ESEP Report at Enclosure, p. 6 ("The intent of the ESEP is to perform an interim action in response to the NRC's [Fukushima] 50.54(f) letter to demonstrate Seismic Margin through a review of a

ESEP Report itself,⁵² SACE had not provided the Board with grounds on which to reach a different conclusion.⁵³ Second, contrary to 10 C.F.R. § 2.326(a)(3), SACE did not demonstrate how the location of the information in the WBN ESEP Report would cause a materially different result in the WBN2 operating license adjudicatory proceeding.⁵⁴ SACE postulated that, upon reviewing the WBN ESEP Report information as part of the WBN2 FSAR as opposed to as part of the response to the Fukushima 50.54(f) Letter, the NRC “may” require that more information be submitted and/or that TVA make unspecified changes to the facility.⁵⁵ However, the Board found that this was “rank speculation” with “no factual support.”⁵⁶ Third, contrary to 10 C.F.R. § 2.326(b), the Curran Declaration did not support the existence of a significant safety or environmental issue.⁵⁷ The Board found that, “[e]ven assuming for the sake of argument” that Ms. Curran possessed appropriate qualifications and expertise, her declaration provided “no support for the proposition that duplicating in the [WBN2] FSAR information that is already in the [WBN] ESEP Report . . . will somehow identify significant safety issues.”⁵⁸ Instead, the Curran Declaration also relied on the WBN ESEP Report, which had found that there was no significant safety issue, and yet, like the Motion to Reopen, Ms. Curran made no effort “to demonstrate how the [WBN] ESEP Report presents any underlying facts that might support a different conclusion.”⁵⁹ Consequently, the Board denied SACE’s Motion to Reopen and did not address

subset of the plant equipment that can be relied upon to protect the Reactor Core following beyond design basis seismic events.”). See also Petition for Review at 3 (stating that the ESEP Report “purports to show that WBN2 can operate safely despite the fact that the seismic risk to WBN2 is now known to be greater than the safe shutdown earthquake to which the reactor was designed.”).

⁵² See Motion to File a New Contention at 6 (“This contention relies entirely on factual statements made by TVA.”).

⁵³ *Watts Bar Unit 2*, LBP-15-14, 81 NRC at __ (slip op. at 6).

⁵⁴ *Id.*

⁵⁵ See *id.* at 6-7.

⁵⁶ *Id.*

⁵⁷ *Id.* at 7.

⁵⁸ *Id.*

⁵⁹ *Id.*

the sufficiency of SACE's Motion to File a New Contention.⁶⁰ The Board further concluded that, "[t]his adjudicatory proceeding remains terminated."⁶¹

DISCUSSION

I. Legal Standards

A. Petitions for Review

Pursuant to 10 C.F.R. § 2.341(b)(4), a petition for review may be granted in the discretion of the Commission, giving due weight to the existence of a "substantial question" with respect to the following considerations:

- (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial and important question of law, policy, or discretion has been raised;
- (iv) The conduct of the proceeding involved a prejudicial procedural error; or
- (v) Any other consideration which the Commission may deem to be in the public interest.

Regarding petitions for review of Board determinations on threshold matters such as standing, contention admissibility, and motions to reopen, the Commission gives Boards "substantial deference" and regularly affirms their determinations on these matters where the petitioner "points to no error of law or abuse of discretion which might serve as grounds for reversal of the Board's decision."⁶² Consequently, an appeal of a threshold determination that does not point to

⁶⁰ *Watts Bar Unit 2*, LBP-15-14, 81 NRC at __ (slip op. at 1, 7).

⁶¹ *Id.* at 8 (emphasis omitted).

⁶² *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006); *Private Fuel Storage, L.L.C.* (Private Fuel Storage Facility), CLI-00-21, 52 NRC 261, 265 (2000). See *Pilgrim*, CLI-12-15, 75 NRC at 710, 713-14 (finding that a petition for review did not point to an error or abuse warranting review of a Board decision that a proffered contention did not satisfy the Commission contention admissibility standards and was untimely and did not meet the criteria for reopening the evidentiary record).

an error of law or abuse of discretion by the Board but simply restates the contention with additional support will not meet the requirements for a valid appeal.⁶³ Similarly, an appeal that sets forth a series of general grievances fundamentally going to the correctness of a Board decision is insufficient.⁶⁴

On appeal, the Commission is not obligated to rule on every discrete point adjudicated below, so long as it is able to render a decision on other grounds that effectively dispose of the appeal.⁶⁵ Moreover, an issue raised for the first time on appeal will ordinarily not be entertained⁶⁶ and the disinclination to entertain an issue raised for the first time on appeal is particularly strong where the issue and factual averments underlying it could have been, but were not, timely put before the Board.⁶⁷

B. Motions to Reopen

After a Board has closed the record in an adjudicatory proceeding, in order to have a newly-proffered contention admitted, the proponent of the contention bears the burden of satisfying the Commission's reopening requirements at 10 C.F.R. § 2.326 in addition to the Commission's contention admissibility requirements at 10 C.F.R. § 2.309(f)(1) and late-filing requirements at 10 C.F.R. § 2.309(c).⁶⁸ Pursuant to 10 C.F.R. § 2.326(a), a motion to reopen a closed record will not be granted unless the following criteria are satisfied:

⁶³ *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 503-05 (2007).

⁶⁴ *Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 337 (2011) (finding that a petition for review of a Board's denial of a motion to reopen was insufficient).

⁶⁵ See *Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-669, 15 NRC 453, 466 n.25 (1982) (citing *Consumers Power Co.* (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 329 n.32 (1981)).

⁶⁶ *PFS*, CLI-00-21, 52 NRC at 264 (2000).

⁶⁷ *Puerto Rico Elec. Power Auth.* (North Coast Nuclear Power Plant, Unit 1), ALAB-648, 14 NRC 34, 37-38 (1981).

⁶⁸ See *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 NRC 491, 498 (2012); *Virginia Elec. & Power Co. D/B/A Dominion Virginia Power & Old Dominion Elec. Coop.* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 699-700 (2012) ("The courts of appeals have repeatedly approved our practice of closing the hearing record after

- (1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
- (2) The motion must address a significant safety or environmental issue; and
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

Additionally, pursuant to 10 C.F.R. § 2.326(b), a motion to reopen must be accompanied by one or more affidavits that “set forth the factual and/or technical bases for the [petitioner’s] claim” that the three criteria of 10 C.F.R. § 2.326(a) have been satisfied. These affidavits must be given by “competent individuals” and must address each of the criteria separately with “a specific explanation of why it has been met.”⁶⁹

The 10 C.F.R. § 2.326 requirements for reopening a closed record place a “deliberately heavy” burden on the petitioner because the Commission considers such an action to be “an extraordinary action.”⁷⁰ This “high standard” and its requirement to raise “serious issues” is justified because an “unfettered ability to file a late contention may significantly undermine the efficiency of a proceeding even if the contention is based on newly discovered information.”⁷¹ Therefore, the Commission has stated, in response to a petition for review of a Board’s denial of a motion to reopen, that, “[a]t the threshold contention admission stage, the burden for providing support for a contention is on the petitioner [a]nd the *added* ‘burden of satisfying the reopening requirements’ is, deliberately, ‘a heavy one.’”⁷² This deliberately heavy burden cannot be

resolution of the last ‘live’ contention, and of holding new contentions to the higher ‘reopening’ standard.”).

⁶⁹ 10 C.F.R. § 2.326(b).

⁷⁰ *Vermont Yankee*, CLI-11-2, 73 NRC at 337-38 (quoting *Oyster Creek*, CLI-08-28, 68 NRC at 674 (2008); Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19,538 (May 30, 1986) (Final rule)).

⁷¹ *North Anna*, CLI-12-14, 75 NRC at 700 (quoting *Massachusetts v. NRC*, 924 F.2d 311, 334 (D.C. Cir. 1990)).

⁷² *Pilgrim*, CLI-12-15, 75 NRC at 714 (emphasis in original) (quoting *Oyster Creek*, CLI-09-7, 69 NRC at 287).

satisfied by bare assertions and speculation by the petitioner.⁷³ On the contrary, to justify reopening the record, the petitioner's "moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition."⁷⁴

II. The Commission Should Deny the Petition for Review Because SACE's Arguments Do Not Demonstrate the Existence of an Important Question of Law and Policy or Point to an Error of Law or Abuse of Discretion in LBP-15-14

The Commission's regulations at 10 C.F.R. § 2.341(b)(4) provide that the Commission may grant a petition for review in its discretion giving due weight to the existence of a substantial question with respect to any of five listed considerations. Additionally, Commission case law indicates that, regarding petitions for review of Board decisions on threshold matters such as motions to reopen, the dispositive question is whether the petition points to an error of law or abuse of discretion;⁷⁵ otherwise, such Board decisions are accorded "substantial deference."⁷⁶

The only one of the five 10 C.F.R. § 2.341(b)(4) considerations that SACE's Petition for Review addresses is the alleged existence of important questions of law and policy.⁷⁷ Specifically, SACE argues that the important issues of law and policy raised by LBP-15-14 are (1) that the Board should have used more lenient requirements when it determined to deny SACE's Motion to Reopen and not address SACE's Motion to File a New Contention instead of the Commission's reopening requirements at 10 C.F.R. § 2.326,⁷⁸ (2) that, even under the Commission's reopening requirements at 10 C.F.R. § 2.326, the Board should have found that SACE had demonstrated the existence of a significant safety issue and that a materially different result would have been likely such that SACE's Motion to Reopen should have be

⁷³ *Id.*

⁷⁴ *Vermont Yankee*, CLI-11-2, 73 NRC at 346 (quoting *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005)) (internal quotations omitted).

⁷⁵ See *Pilgrim*, CLI-12-15, 75 NRC at 710, 713-14.

⁷⁶ See *Oyster Creek*, CLI-06-24, 64 NRC at 121.

⁷⁷ See Petition for Review at 1.

⁷⁸ *Id.* at 6-7.

granted,⁷⁹ (3) that the Atomic Energy Act of 1954, as amended (AEA), and the Commission's regulations require the NRC to consider the information in the WBN ESEP Report before issuing an operating license for WBN2,⁸⁰ and (4) that Commission policy requires resolving the safety issues raised by the NRC's review of the accident at the Fukushima Dai-ichi nuclear power plant in Japan before issuing an operating license for WBN2.⁸¹ However, as explained below, none of these arguments demonstrate the existence of an important question of law and policy or point to an error of law or abuse of discretion in LBP-15-14. Therefore, the Commission should defer to LBP-15-14 and deny SACE's Petition for Review.

A. SACE's Argument that the Board Should Not Have Used the Commission's Reopening Requirements at 10 C.F.R. § 2.326 to Evaluate SACE's Motion to Reopen is Without Merit

In its Petition for Review, SACE repeats the contention proffered in its Motion to File a New Contention that the information in the WBN ESEP Report is pertinent information developed since the submittal of the WBN2 preliminary safety analysis report and that, therefore, according to 10 C.F.R. § 50.34(b)(4), it must be included in the WBN2 FSAR.⁸² SACE also recounts why the Board found in LBP-15-14 that SACE's Motion to Reopen accompanying its Motion to File a New Contention had not satisfied the Commission's stringent reopening requirements at 10 C.F.R. § 2.326.⁸³ However, instead of attempting to explain why the Board's denial of its Motion to Reopen for failure to satisfy the Commission's reopening requirements was an error of law or abuse of discretion, SACE faults the Board for allegedly applying the Commission's reopening requirements to the separate question of whether its proffered contention was admissible.⁸⁴ SACE states that such an alleged action would

⁷⁹ *Id.* at 7-8.

⁸⁰ *Id.* at 8.

⁸¹ *Id.* at 8-9.

⁸² Petition for Review at 4-5.

⁸³ *Id.* at 5-6.

⁸⁴ *Id.* at 6.

“impose[] a burden that was greater than what the law required for the contention submitted by SACE.”⁸⁵ SACE argues that, “[i]n order to justify reopening the record to admit its contention” it should have instead been required only to show “that the information was ‘pertinent’ under 10 C.F.R. § 50.34(b), that the Staff’s operating license review was important and more rigorous and timely than the Staff’s post-Fukushima review process, and that it could result in changes to TVA’s operating license application.”⁸⁶ SACE states that to hold otherwise would “erroneously shift[] the burden of proof from TVA to SACE,” which would “not only [be] absurd but unlawful.”⁸⁷

With this argument, SACE is essentially petitioning the Commission to admit its proffered contention without requiring SACE to address the otherwise applicable threshold requirements for reopening at 10 C.F.R. § 2.326. This argument does not support the granting of SACE’s Petition for Review because SACE’s faulting the Board for applying applicable Commission requirements to its Motion to Reopen is not akin to pointing out an error of law or abuse of discretion and SACE’s asking the Commission to ignore these requirements is not akin to demonstrating the existence of an important question of law and policy.

First, contrary to SACE’s argument, the Board was correct to apply the Commission’s reopening requirements to SACE’s Motion to Reopen because the WBN2 operating license adjudicatory proceeding had been terminated prior to SACE’s filing.⁸⁸ As the Commission has stated, it considers reopening the record for any reason to be an extraordinary action and therefore imposes the deliberately heavy burden of having to satisfy its reopening requirements at 10 C.F.R. § 2.326 upon any petitioner seeking to do so.⁸⁹ Thus, whereas SACE states that it shouldn’t have had to have borne the burden of showing a “significant safety issue,”⁹⁰ it was

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 7.

⁸⁸ See *Watts Bar Unit 2*, LBP-14-13, 80 NRC at 143.

⁸⁹ *Vermont Yankee*, CLI-11-2, 73 NRC at 337-38.

⁹⁰ Petition for Review at 6.

required to do exactly this by 10 C.F.R. § 2.326(a)(2) and, whereas SACE states that it shouldn't have had to have borne the burden of showing a "materially different result,"⁹¹ it was required to do exactly this by 10 C.F.R. § 2.326(a)(3). As a result, SACE's argument that the Board imposed a burden on SACE greater than that required by law by applying the reopening requirements of 10 C.F.R. § 2.326 to SACE's Motion to Reopen is without merit.

Second, by advocating for a more lenient standard than that required by the Commission's reopening requirements, SACE is not raising an important question of law and policy. Instead, SACE is essentially disputing the Commission's established practice of holding new contentions to a higher standard after the closing of the adjudicatory record. However, this practice has already been repeatedly approved by the courts of appeals.⁹² For these reasons, SACE's argument regarding the requirements and burdens applied by the Board does not warrant Commission review of LBP-15-14.

B. SACE's Argument that the Board Misapplied the Commission's Reopening Requirements at 10 C.F.R. § 2.326 When it Denied SACE's Motion to Reopen is Without Merit

SACE also argues that the Commission should review LBP-15-14 because the Board should have found that SACE's Motion to Reopen satisfied the requirements of 10 C.F.R. § 2.326(a)(2)-(3) to demonstrate a significant safety issue and to demonstrate that a materially different result would have been likely had SACE's newly-proffered contention been considered initially.⁹³ Specifically, SACE argues that the Board "erroneously ignored" its claim of a "significant and material" difference between the Commission reviewing the WBN ESEP Report as part of its Fukushima response, which would allegedly be done against an "imminent risk" standard, and the Commission reviewing the WBN ESEP Report as part of its WBN2 operating

⁹¹ *Id.*

⁹² *North Anna*, CLI-12-14, 75 NRC at 699-700 (citing *New Jersey Env'tl. Fed'n v. NRC*, 645 F.3d 220, 232-33 (3d Cir. 2011)); *State of Ohio v. NRC*, 814 F.2d 258, 262-64 (6th Cir. 1987); *Oystershell Alliance v. NRC*, 800 F.2d 1201, 1207-08 (D.C. Cir. 1986).

⁹³ See Petition for Review at 7-8.

license application review, which would be done against a “reasonable assurance” standard.⁹⁴ However, the Board did not, in fact, ignore this argument. On the contrary, in LBP-15-14, the Board repeated these SACE arguments that “the information in the [WBN] ESEP Report might be reviewed by the NRC under a less stringent safety standard”⁹⁵ and that, if the information were before the NRC as part of the WBN2 FSAR in addition to as part of the response to the Fukushima 50.54(f) Letter, the NRC “may require that more information be submitted and/or that TVA make unspecified changes to the facility and that members of the public will have the benefit of a more thorough and adequate NRC licensing review.”⁹⁶ The Board then evaluated these arguments against the Commission’s reopening requirements and held that they could not satisfy these requirements because SACE had not provided any factual support for the benefits that it had speculated would result from the requested duplication of the WBN ESEP Report information in the WBN2 FSAR.⁹⁷ As a result, there is no merit to SACE’s claim in its Petition for Review that the Board did not address its arguments.

On appeal, SACE also newly attempts to satisfy the Commission’s reopening requirements by asserting that duplicating the WBN ESEP Report information in the WBN2 FSAR would result in a “more systematical and detailed” review and, thus, “ensure safety over a 40-year license term.”⁹⁸ However, as with its earlier pleadings before the Board, SACE offers nothing more than this bare conclusory assertion to support its argument. Such support, though, is insufficient to satisfy the Commission’s stringent reopening requirements.⁹⁹

⁹⁴ *Id.* at 7.

⁹⁵ *Watts Bar*, LBP-15-14, 81 NRC at __ (slip op. at 4).

⁹⁶ *Id.* at 6-7 (internal quotations omitted).

⁹⁷ *Id.* at 7.

⁹⁸ Petition for Review at 7.

⁹⁹ See *Vermont Yankee*, CLI-11-2, 73 NRC at 346 (stating that, to justify reopening the record, a petitioner’s “moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition.”).

Therefore, for these reasons, SACE's Petition for Review has not shown that the Board made an error of law or abused its discretion and, thus, it should be denied.

C. SACE's Argument that the AEA and the Commission's Regulations Require the NRC to Consider the Information in the WBN ESEP Report Before Issuing an Operating License for WBN2 Does Not Constitute an Important Question of Law or Policy

In addition to arguing that the Board was wrong for not admitting its contention, SACE asserts that the contention itself constitutes an important question of law or policy and, thus, should be reached by the Commission regardless of SACE's failure to satisfy the Commission's reopening requirements. Specifically, SACE argues that its contention raises the important legal and policy question of whether the NRC must consider the information in the WBN ESEP Report before issuing TVA an operating license for WBN2.¹⁰⁰ This argument does not warrant Commission review because it is based on the unsupported assumption that the NRC will not consider the information in the WBN ESEP Report as part of its determination on the WBN2 operating license application since that information was not included in the WBN2 FSAR.¹⁰¹

SACE claims that, in order for the NRC to make the required 10 C.F.R. § 50.57 finding for issuing a WBN2 operating license that there is reasonable assurance that the activities authorized by the license can be conducted without endangering the health and safety of the public, the information in the WBN ESEP Report must be included in the WBN2 FSAR or else that information will not be reviewed by the NRC before issuing a WBN2 operating license.¹⁰² SACE only bases its assumption that the NRC will not consider the information in the WBN ESEP Report as part of its review of the WBN2 operating license application on a letter to

¹⁰⁰ Petition for Review at 8.

¹⁰¹ See *id.* (asserting that the Staff has decided "to review the [WBN ESEP Report] information outside the scope of [the WBN2] operating license proceeding").

¹⁰² *Id.* at 5, 7-8.

SACE's counsel from the Director of the NRC's Office of Nuclear Reactor Regulation (NRR).¹⁰³

This letter, though, is actually contrary to SACE's argument because it states that "[t]he NRC will not issue an operating license for [WBN2] until there is a reasonable assurance that the licensee can operate the facility safely and meet all applicable requirements."¹⁰⁴ Additionally, although the letter acknowledges that the issuance of a WBN2 operating license does not have to be deferred until after the completion of the NRC's review of the Fukushima accident, it does indicate that Fukushima-related information received before the NRC makes its decision on the WBN2 operating license application will be considered.¹⁰⁵ Therefore, SACE's argument that the NRC will not consider the information in the WBN ESEP Report before issuing a WBN2 operating license is unsupported.¹⁰⁶

Furthermore, as recognized by the Board, the information in the WBN ESEP Report is already in the possession of the Staff even though it was not included in the WBN2 FSAR.¹⁰⁷ The Staff, in turn, has stated that it will only issue a WBN2 operating license "provided [that] the requisite findings are made"¹⁰⁸ and the Commission has directed the Staff to only issue a WBN2 operating license "if the Director of NRR determines that the applicable findings may be made . .

¹⁰³ See Petition for Review at Attachment; Letter from William M. Dean, Director, Office of Nuclear Reactor Regulation, NRC, to Diane Curran (Nov. 21, 2014) (ADAMS Accession No. ML14267A466).

¹⁰⁴ *Id.* at 1.

¹⁰⁵ See *id.* at 2 (stating that TVA is scheduled to submit its flooding hazard reevaluation in response to the Fukushima 50.54(f) Letter before the NRC expects to make its decision on the WBN2 operating license application and, thus, if the reevaluated flooding hazard is higher than the design basis, "TVA will be required to provide [its] plans for implementing compensatory measures.").

¹⁰⁶ SACE's argument should also be disregarded to the extent that it assumes that the Staff will not follow its regulations. This is because government agencies and their employees are presumed to properly discharge their official duties absent clear evidence to the contrary, see *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926), and because the letter relied upon by SACE does not provide this required clear evidence.

¹⁰⁷ *Watts Bar*, LBP-15-14, 81 NRC at __ (slip op. at 6).

¹⁰⁸ SECY-15-0068, *Watts Bar Nuclear Plant, Unit 2—Review Status and Authority of the Director of the Office of Nuclear Reactor Regulation for Operating License Issuance*, at 6 (May 4, 2015) (ADAMS Accession No. ML15040A188).

. .¹⁰⁹ Consequently, SACE's unsupported concern with the NRC issuing a WBN2 operating license without considering the information in the WBN ESEP Report is not an important question of law or policy warranting Commission review of LBP-15-14.¹¹⁰

D. SACE's Argument that Commission Policy Requires Resolving the Safety Issues Raised by the NRC's Review of the Fukushima Accident Before Issuing an Operating License for WBN2 is Without Merit

Finally, SACE argues that, as a matter of policy, the Commission should review LBP-15-14 because it is "inconsistent with the [NTTF] recommendation that safety issues raised by post-Fukushima investigations should be resolved before the NRC makes an operating license decision for WBN2."¹¹¹ However, the Commission has, in fact, already addressed this policy question of whether it must complete its Fukushima review and follow-up actions before issuing licenses. Specifically, after the Fukushima accident, various petitioners asserted that the NRC was acting inconsistent with the AEA and the National Environmental Policy Act of 1969, as amended, by continuing to issue licenses and planning to apply any lessons-learned from its Fukushima review retrospectively.¹¹² The Commission disagreed stating, in part, that "nothing learned to date requires immediate cessation of our review of license applications" and that "for the licenses that the NRC issues before completing its review, any new Fukushima-driven requirements can be imposed later, if necessary to protect the public health and safety."¹¹³ Moreover, the Commission found that the continued safety of the WBN Unit 1 licensing basis is

¹⁰⁹ SRM SECY-15-0068, *Watts Bar Nuclear Plant, Unit 2—Review Status and Authority of the Director of the Office of Nuclear Reactor Regulation for Operating License Issuance* (May 26, 2015) (ADAMS Accession No. ML15146A213).

¹¹⁰ SACE's argument is also not persuasive because it essentially restates SACE's contention and the Commission generally does not entertain petitions for review that simply restate a contention. *Shieldalloy*, CLI-07-20, 65 NRC at 503-05. Additionally, like the Board, the Commission does not have to reach SACE's contention because SACE has not demonstrated how the Board's decision denying its prerequisite Motion to Reopen was improper.

¹¹¹ Petition for Review at 8 (emphasis omitted).

¹¹² *Callaway*, CLI-11-05, 74 at 159.

¹¹³ *Id.* at 161, 166.

not in question,¹¹⁴ which licensing basis the Commission had previously directed the Staff to employ as “the reference basis for the review and licensing of [WBN2].”¹¹⁵ Therefore, SACE’s argument that a decision on the WBN2 operating license application should be deferred until after the completion of the NRC’s review of, and response to, the Fukushima accident has already been addressed by the Commission and does not now warrant Commission review of LBP-15-14.

E. The Petition for Review Does Not Contest the Board’s Denial of SACE’s Motion to Reopen for Failure to Satisfy 10 C.F.R. § 2.326(b)

In LBP-15-14, the Board explained that a motion to reopen must satisfy all three of the criteria of 10 C.F.R. § 2.326(a), as well as the requirements of 10 C.F.R. § 2.326(b), in order to be granted.¹¹⁶ The Board held that SACE’s Motion to Reopen did not satisfy two of the 10 C.F.R. § 2.326(a) criteria or the requirements of 10 C.F.R. § 2.326(b).¹¹⁷ Therefore, for these three, independent reasons, the Board denied SACE’s Motion to Reopen.¹¹⁸

In its Petition for Review, SACE does not dispute the Board’s ruling that SACE had failed to provide a sufficient affidavit demonstrating the existence of a significant safety or environmental issue as is required by 10 C.F.R. § 2.326(b).¹¹⁹ For this reason alone, SACE’s Petition for Review is fatally defective. The Commission is not obligated to rule on every discrete point adjudicated below, so long as it is able to render a decision on other grounds that

¹¹⁴ See *id.* at 161 (“[N]othing we have learned to date puts the continued safety of our currently operating regulated facilities, including reactors and spent fuel pools, into question.”).

¹¹⁵ SRM-SECY-07-0096. SACE states that the Commission “should revisit” this direction because it “should not trump the serious safety concerns raised by the [NTTF] and confirmed by TVA’s post-Fukushima investigations.” Petition for Review at 9, n.5. Since this request to change SRM SECY-07-0096 is raised for the first time on appeal, the Commission should not entertain it. *PFS*, CLI-00-21, 52 NRC at 264.

¹¹⁶ *Watts Bar*, LBP-15-14, 81 NRC at __ (slip op. at 6).

¹¹⁷ *Id.* at 6-7.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 7.

effectively dispose of the appeal.¹²⁰ Accordingly, in the alternative, the Commission should deny SACE's Petition for Review because it does not dispute the Board finding that SACE's Motion to Reopen had failed to satisfy 10 C.F.R. § 2.326(b) and, thus, could not be granted.

CONCLUSION

For the reasons stated above, the Commission should deny SACE's Petition for Review of the Atomic Safety and Licensing Board Memorandum and Order LBP-15-14.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 12th day of June, 2015

¹²⁰ See *McGuire*, ALAB-669, 15 NRC at 466 n.25 (citing *Big Rock Point*, ALAB-636, 13 NRC at 329 n.32).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF ANSWER OPPOSING THE SOUTHERN ALLIANCE FOR CLEAN ENERGY PETITION FOR REVIEW OF BOARD DECISION LBP-15-14," dated June 12, 2015, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 12th day of June, 2015.

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 12th day of June, 2015