

June 22, 2015

**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)	)	
	)	

**SOUTHERN ALLIANCE FOR CLEAN ENERGY’S  
REPLY TO OPPOSITIONS TO 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)**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. § 2.341(b)(3), Southern Alliance for Clean Energy (“SACE”) hereby replies to oppositions by the Tennessee Valley Authority (“TVA”) and the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) Staff to SACE’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) (“Petition”). Tennessee Valley Authority’s Answer Opposing Southern Alliance for Clean Energy’s Petition for Review of LBP-15-14 (June 12, 2015) (“TVA Answer”); NRC Staff Answer Opposing Southern Alliance for Clean Energy Petition for Review of Board Decision LBP-15-14 (June 12, 2015) (“NRC Staff Answer”). Their arguments are without merit and therefore the Commission should grant review.

**II. ARGUMENT**

In opposing SACE’s Petition, TVA and the NRC Staff misconstrue both SACE’s Petition and the NRC’s standard for reopening the record of the Watts Bar Unit 2 (“WBN2”) operating license proceeding as applied to SACE’s Motion to Reopen the Record and contention. Contrary to their arguments, SACE does not seek a more “lenient” interpretation of 10 C.F.R § 2.326 than is generally applied by the Commission. NRC Staff Answer at 14. What SACE seeks is an

application of the standard that is appropriate to the relief sought by SACE's contention. The goal of SACE's contention is to ensure that information concededly relevant to the NRC Staff's operating license review of nuclear plant safety equipment is actually reviewed in the WBN2 operating license proceeding, instead of shunted off to a parallel non-licensing proceeding where none of the procedural protections afforded by the Atomic Energy Act and NRC regulations for operating license reviews will be applied. These Atomic Energy Act and NRC regulations-based protections include the following:

- Exercise of the NRC Staff's expertise in reviewing TVA's operating license application, under the "reasonable assurance" standard for the review of an operating license application. 10 C.F.R. 50.57. The reasonable assurance standard is stronger than the standard applied by the NRC Staff in the parallel proceeding, *i.e.*, whether operation of WBN2 would pose an "imminent hazard." *See* letter from William M. Dean to Diane Curran (Nov. 21, 2014); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-6, 43 NRC 123, 128 (1996).
- Placement of the burden of proving the safety of operating WBN2 for 40 years on TVA rather than giving the NRC a burden of showing that WBN2 should not be allowed to operate, as is the case in the parallel non-licensing proceeding.
- Assurance that the NRC technical staff will review relevant information about the adequacy of safety equipment to withstand reasonably foreseeable earthquakes *before* WBN2 is licensed to operate for 40 years, rather than at some unknown post-licensing date that will be established at the NRC Staff's discretion.

SACE respectfully submits that in refusing to reopen the record of the operating license hearing for WBN2, the Atomic Safety and Licensing Board (“ASLB”) clearly erred by holding that 10 C.F.R. § 2.326 required SACE to show deficiencies in the information submitted by TVA to the NRC in the parallel non-licensing proceeding. SACE is entitled to seek enforcement of NRC regulations requiring TVA to submit relevant information necessary to a complete operating license review, without having to show deficiencies in the information withheld by TVA. To require otherwise would deprive SACE of its right under the Atomic Energy Act to rely on the government’s comprehensive review of WBN2’s operating license application against NRC safety standards and would impose on SACE the burden of doing the government’s job. It should be sufficient for SACE to assert that the information submitted by TVA in the parallel proceeding is pertinent to a significant safety issue in the WBN2 operating license review: whether WBN2 can operate safely despite the fact that the seismic risk to WBN2 is now known to be greater than the safe shutdown earthquake (SSE) to which the reactor was designed. To impose a greater burden on SACE is not justifiable under 10 C.F.R. 2.326 in the context of SACE’s contention and motion to re-open the record. The Board’s error constitutes a significant legal and policy issue that should be addressed by the Commission.

### III. CONCLUSION

By misinterpreting 10 C.F.R. § 2.326 in a way that undermines Atomic Energy Act-based procedures designed to ensure and protect the rigor of operating license reviews, the ASLB's decision in LBP-15-14 raises important issues of law and policy that should be reviewed by the Commission.

Respectfully submitted,

*[Electronically signed by]*

Diane Curran

Harmon, Curran, Spielberg & Eisenberg, L.L.P.

1726 M Street N.W. Suite 600

Washington, D.C. 20036

202-328-3500

Fax: 202-328-6918

E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

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**CERTIFICATE OF SERVICE**

I certify that on June 22, 2015, on behalf of Southern Alliance for Clean Energy, I posted on the NRC's Electronic Information Exchange SOUTHERN ALLIANCE FOR CLEAN ENERGY'S REPLY TO OPPOSITIONS TO 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). It is my understanding that as a result, the NRC Commissioners, Atomic Safety and Licensing Board, and parties to this proceeding were served.

Respectfully submitted,

*Electronically signed by*

Diane Curran

Harmon, Curran, Spielberg & Eisenberg, L.L.P.

1726 M Street N.W. Suite 600

Washington, D.C. 20036

202-328-3500

Fax: 202-328-6918

E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)