

March 10, 2015

**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)	)	
	)	

**SOUTHERN ALLIANCE FOR CLEAN ENERGY’S REPLY  
TO OPPOSITIONS TO MOTION  
FOR LEAVE TO FILE A NEW CONTENTION CONCERNING TVA’S  
FAILURE TO COMPLY WITH 10 C.F.R. § 50.34(b)(4)**

**I. INTRODUCTION**

On February 5, 2015, Southern Alliance for Clean Energy (“SACE”) submitted a Motion for Leave to File a New Contention Concerning TVA’s Failure to Comply With 10 C.F.R. § 50.34(b)(4) (“SACE Motion”). SACE contends that information submitted by the Tennessee Valley Authority (“TVA”) to the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) about the ability of safety systems and components (“SSCs”) at the proposed Watts Bar Unit 2 nuclear reactor (“WBN2”) to withstand predicted earthquake conditions is “pertinent” to the NRC’s operating license review under 10 C.F.R. § 50.34(b)(4) because it may result in NRC-imposed changes to the WBN2 operating license as a condition of issuance. Therefore TVA should have submitted the information to the NRC as part of its operating license application.

TVA and the NRC both oppose SACE’s Motion, on the grounds that SACE’s contention is inadmissible and untimely. Tennessee Valley Authority’s Answer Opposing Southern Alliance for Clean Energy’s Motion for Leave to File a New Contention (Mar. 3, 2015) (“TVA’s Response”); NRC Staff’s Answer to Southern Alliance for Clean Energy’s Motion for Leave to File a New Contention (Mar. 3, 2015) (“NRC Staff’s Response”). As discussed below, however,

TVA's own Response establishes the admissibility of SACE's contention of omission. And TVA's and the Staff's arguments regarding the timeliness of the contention have no support in the record. Accordingly, the contention should be admitted for a hearing.<sup>1</sup>

## **II. DISCUSSION**

On December 30, 2014, as part of its post-Fukushima safety review, TVA submitted to NRC its Expedited Seismic Evaluation Process Report for Watts Bar Nuclear Plant (ML14365A072) ("ESEP Report"). The ESEP Report purports to show that critical safety equipment and systems can perform their functions despite the fact that the earthquake risk to WBN2 is now greater than the reactor was originally designed to withstand. TVA submitted the information to the NRC outside of the operating licensing proceeding for WBN2, and therefore did not amend its Final Safety Analysis Report ("FSAR") to include the ESEP information.

In its contention, SACE asserts that TVA's FSAR for WBN2 fails to satisfy 10 C.F.R. § 50.34(b)(4), because the information in the ESEP Report constitutes "pertinent information developed since the submittal of the preliminary safety analysis report" that relates to the "design and performance of structures, systems and components ["SSCs"]." Therefore TVA should submit the information in the ESEP Report as part of its FSAR.

### **A. SACE's Contention is Admissible.**

TVA argues that SACE's contention is not within the scope of the WBN2 operating license proceeding, material to the outcome of the proceeding, or adequately supported. TVA Response at 12-18. *See also* NRC Staff Response at 7-14. But TVA undermines all of these arguments by conceding that one purpose of the ESEP Report is "to determine whether there will

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<sup>1</sup> In support of its contention, SACE also filed a Motion to Reopen the Record. As provided by 10 C.F.R. § 2.323(c), SACE does not reply to TVA's and the Staff's oppositions to that motion.

be any impact to the FSAR.” TVA Response at 14. TVA’s concession that the FSAR may need to be modified with respect to equipment listed in the ESEP establishes as a matter of law that the information in the ESEP Report is “pertinent information” under 10 C.F.R. § 50.34(b)(4) and therefore the contention raises a material issue. Contrary to the Staff’s argument at pages 9-10, SACE does not need to provide its own checklist and explanation of what constitutes “pertinent information” because SACE relies on TVA’s own determination that the information is pertinent to the contents of the FSAR.

Moreover, SACE does not need to dispute TVA’s assertion that the information in the ESEP Report does not compel changes to the FSAR, or establish that the FSAR *will* need to be changed (TVA Response at 14); because TVA has conceded that the information *may* result in changes to the FSAR. *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 442 (2011) (in judging the admissibility of a contention of omission, the Licensing Board should not reach the merits of the omission). Under the NRC’s regulations for admissibility of contentions, SACE has the right to seek completion of TVA’s operating license application with respect to relevant safety information, regardless of whether TVA thinks the information is significant or whether the Staff ultimately requires TVA to change the FSAR. *Id.*<sup>2</sup>

Nevertheless, TVA and the NRC Staff argue that SACE’s contention is inadmissible because the Commission has decided that none of the information presented as part of the post-Fukushima seismic review will be considered in the operating license proceeding for WBN2.

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<sup>2</sup> Nor must SACE justify the requirements of 10 C.F.R. § 50.34(b)(4) in this proceeding. TVA Response at 15. The regulations were justified when they were promulgated.

TVA Response at 14 (citing letter from William M. Dean to Diane Curran (Nov. 21, 2014)); NRC Staff Response at 10-11 (citing 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)) (ML072060688) (“SRM-SECY-07-0096”). According to TVA, any changes to the FSAR will be made after WBN2 has received an operating license. TVA Response at 14.

Nothing in Mr. Dean’s letter or SRM-SECY-07-0096, however, waives the requirement of 10 C.F.R. § 50.34(b)(4) that TVA’s operating license application must include “any pertinent information developed since the submittal of the preliminary safety analysis report” regarding “the design and performance of structures, systems, and components” that were described in the preliminary safety analysis report submitted by TVA during the construction permit proceeding for WBN2.<sup>3</sup> The NRC may not render 10 C.F.R. § 50.34(b)(4) inapplicable in a letter; instead, it must issue a regulatory exemption or waiver. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 327 (1989) (observing that an exemption must be issued in order for a licensee to avoid compliance with an NRC regulation).<sup>4</sup>

The Staff also argues that if the NRC has not shut down Watts Bar Unit 1 as a result of its Fukushima review, then the information in the ESEP Report “is also not currently safety significant with respect to WBN2.” NRC Staff Response at 11. In making this argument, the Staff confuses the standard for allowing continued operation of an already-licensed reactor with

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<sup>3</sup> SRM-SECY-07-0096 was also issued several years before the Fukushima accident, and thus could not have anticipated these circumstances.

<sup>4</sup> Contrary to TVA’s suggestion at page 15, SACE is not required to justify the requirements of NRC regulations in order to gain admission of a contention asserting that TVA has not satisfied those regulations. The regulations were justified when they were promulgated.

the standard for approving the issuance of an operating license. As discussed in SACE's Motion, the NRC's standard for whether to shut down a reactor is whether it poses an "imminent hazard" to public health and safety. *Id.* at 5 (citing *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-6, 43 NRC 123, 128 (1996)). The NRC exercises considerable discretion in making that determination, including judging the safety significance of regulatory violations. *Id.* In contrast, the NRC must evaluate the WBN2 operating license application against the "adequate protection" standard, assessing the application against all of the agency's relevant standards. The fact that NRC may exercise its enforcement discretion to allow the operation of WBN1 does not mean that it also has the discretion to overlook TVA's failure to complete its operating license application for WBN2 with relevant information.

**B. SACE's Contention is Timely.**

In the statement of basis for its contention, SACE asserted that the information in the ESEP Report is "materially different than previously available information because it is not in TVA's FSAR." SACE Motion at 7. TVA argues that SACE has failed to show the information in the ESEP Report is, in fact, materially different from the FSAR. TVA Response at 13. By its own terms, however, the ESEP Report contains materially different information because (1) it addresses a "higher seismic hazard" than the design basis for the FSAR and (2) it presents "an interim evaluation and actions taken or planned" by TVA to address that increased hazard. Cover Letter from J.W. Shea to NRC re: Tennessee Valley Authority's Watts Bar Nuclear Plant Expedited Seismic Evaluation Process Report (CEUS Sites) Response to NRC's 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 1 (Dec. 30, 2014).

TVA also argues that SACE has failed to show the ESEP Report is materially different from the Seismic Hazard and Screening Report that TVA submitted in March of 2014 as part of its post-Fukushima review. TVA Response at 13 and n.15. TVA's argument is unsupported by the record. While TVA's Seismic Hazard and Screening Report summarizes some of the conclusions of the ESEP Report, it focuses on an analysis of ground motion, and does not contain the information presented in the ESEP Report about specific SSCs or TVA's reasons for thinking those SSCs will survive an earthquake as severe as now predicted for the WBN2 site. See Seismic Hazard and Screening Report for Watts Bar Nuclear Plant at E4-31 – E4-33 (Enclosure 4 to Letter from J.W. Shea to NRC re: Tennessee Valley Authority's Seismic Hazard and Screening Report (CEUS sites), Response to NRC's 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 1 (March 31, 2014)).<sup>5</sup> Thus, TVA's argument that

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<sup>5</sup> The ESEP Program's focus on reactor SSCs *in addition to* ground motion is also evident from the NRC Staff's letter to the Nuclear Energy Institute ("NEI") about the establishment of the ESEP program:

*The Expedited Seismic Evaluation Process focuses on the equipment needed to maintain or restore reactor and containment cooling during the initial phase of a severe external event causing an extended loss of all alternating current power as identified in Order EA-12-049, "Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond Design-Basis External Events." In response to the Order, NEI developed NEI12-06, "Diverse and Flexible Coping Strategies (FLEX) Implementation Guide. The Expedited Seismic Evaluation Process identifies a subset of FLEX Phase 1 equipment for evaluation and potential modification. This subset of FLEX equipment is installed core and containment cooling equipment and connection points needed during an extended station blackout event.*

*In particular, the guidance describes a methodology for the evaluation of the seismic capacity of the equipment identified in the Expedited Seismic Evaluation Process. If the seismic capacity of the equipment is inadequate relative to the reevaluated seismic demand, then the guidance provides equipment modification criteria. These*

SACE previously had access to the information relied on by SACE in its contention is not supported by the record.

### III. CONCLUSION

For the reasons stated above, TVA's and the NRC Staff's arguments in opposition to SACE's contention lack merit and the contention should be admitted.

Respectfully submitted,

*[Electronically signed by]*

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modifications will provide additional assurance regarding maintenance of core and containment cooling during beyond-design-basis seismic events. In accordance with the guidance, licensees will submit the results of the evaluations, including required equipment modifications and their implementation schedule, in an Expedited Seismic Evaluation Process report for review by the NRC staff. The letter states that CEUS licensees will submit the reports resulting from the Expedited Seismic Evaluation Process by December 2014 and complete non-outage-related Expedited Seismic Evaluation Process equipment modifications by December 2016. Similarly, the letter states that the western United States (WUS) licensees will submit Expedited Seismic Evaluation Process reports by January 2016 and complete non-outage-related Expedited Seismic Evaluation Process equipment modifications by June 2018.

Letter from Eric J. Leeds, NRC to Joseph E. Pollock, NEI re: 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 at 3 (May 7, 2013) (ML13106A331) (footnotes omitted, emphasis added).

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**CERTIFICATE OF SERVICE**

I certify that on March 10, 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 MOTION FOR LEAVE TO FILE 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*

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