

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
TENNESSEE VALLEY AUTHORITY)
)
(Sequoyah Nuclear Plant, Units 1 & 2;)
Watts Bar Nuclear Plant, Unit 1))

Docket Nos. 50-327
50-328
50-390

RESPONSE OF TENNESSEE VALLEY AUTHORITY TO
WE THE PEOPLE'S AMENDED REQUEST FOR A HEARING
AND PETITION TO INTERVENE AND MOTION TO STRIKE

I. Introduction

Pursuant to the schedule established in the Licensing Board's Memorandum and Order of February 7, 2002,¹ and in accordance with 10 C.F.R. §§ 2.714(a)(1)(i), 2.714(c), and 2.730, Tennessee Valley Authority ("TVA") hereby responds to the amended request for hearing and petition to intervene filed by We The People, Inc., Tennessee ("WTP" or "Petitioner").² The Licensing Board's Scheduling Order provided that, pursuant to 10 C.F.R. § 2.714(a)(3), Petitioner could amend its intervention petition "to address any shortcomings, or other matters, in [its] initial petition by filing an amended petition no later than February 21, 2002." Scheduling Order, at 2. As discussed below, the Amended Petition was not served on TVA in a

¹ *Tennessee Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), "Memorandum and Order," ASLBP No. 02-796-01-OLA, __ NRC __ (slip op., Feb. 7, 2002) ("Scheduling Order").

² "We The People's Amended Petition For Request For A Hearing and Petition To Intervene" (Feb. 21, 2002) ("Amended Petition").

timely manner, consistent with the Licensing Board's directives in paragraphs 5 and 7.e of its Scheduling Order. *Id.*, at 3, 5. Therefore, TVA hereby moves to strike WTP's Amended Petition.

Apart from this deficiency, WTP has failed to redress the shortcomings in its initial petition and to demonstrate standing to intervene in this proceeding. Petitioner has yet to identify an interest in this proceeding with the requisite nexus to the proposed license amendments at issue. Thus, even if not stricken, the Amended Petition must be denied pursuant to 10 C.F.R. § 2.714.

II. Discussion

In the interest of efficiency, TVA hereby incorporates by reference the detailed discussions of the requested license amendments at issue and the Nuclear Regulatory Commission's ("NRC" or "Commission") standing requirements, as presented in the "Background" section of its earlier answers³ to Petitioner's initial requests to intervene.⁴ As explained below, the Amended Petition was not served in a timely manner as prescribed by the Licensing Board's Scheduling Order. Furthermore, the Amended Petition continues to lack the necessary explanation of how issuance of the proposed license amendments will cause any member of WTP to suffer any distinct and palpable offsite radiological harm.

³ See "Tennessee Valley Authority's Answer to Request for a Hearing and Petition to Intervene of We The People, Inc., Tennessee" (Jan. 29, 2002). TVA filed two identically-titled Answers – one on the Sequoyah Nuclear Plant Docket (Docket Nos. 50-327-LA, 50-328-LA) and the other on the Watts Bar Nuclear Plant Docket (Docket No. 50-390-LA).

⁴ "In the Matter of Tennessee Valley Authority License Amendment request for production of weapons grade tritium Watts Bar Nuclear Power Plant, Spring City, Tennessee" (Jan. 16, 2002); "Tennessee Valley Authority Request for license amendment to produce weapons grade tritium Sequoyah Nuclear Plant, Soddy Daisy, Tennessee," (Jan. 16, 2002).

A. Petitioner's Amended Request Should Be Summarily Rejected as Being Untimely and Not In Accord With the Service Requirements Set Forth In the Licensing Board's Scheduling Order

Pursuant to Paragraph 2 of the Licensing Board's Scheduling Order, each Petitioner was given an opportunity to amend its intervention petition to address any shortcomings in its initial petition, by filing an amended petition no later than February 21, 2002. Scheduling Order, at 2. Paragraph 5 of the Scheduling Order, entitled "Service of all Filings," directs that pleadings shall be served "on Members of the Licensing Board and the other participants" on the date due by e-mail or fax, with conforming copies by first-class mail. Scheduling Order, at 3. Paragraph 7.e of the Scheduling Order, entitled "Timely Service," further directs that "[t]o be timely, any pleading or other submission served on the Members of the Licensing Board by hand delivery, facsimile transmission, or e-mail must be received by them no later than 11:59 p.m. Eastern Standard Time or, as applicable, Eastern Daylight Time, on the date due." *Id.*, at 5. Thus, the Amended Petition was due to be served on all participants and the Licensing Board, via e-mail or fax, no later than 11:59 p.m. Eastern Standard Time on February 21, 2002.

WTP's Amended Petition is dated February 21, 2001. Contrary to the Scheduling Order, however, WTP served its Amended Petition on TVA via regular, first-class mail. Thus, TVA did not receive the Amended Petition until February 26, 2002. Petitioner apparently made no effort to avail itself of e-mail, facsimile transmission, overnight mail, or hand delivery — as mandated by the Licensing Board. Since TVA's response date was set as February 28, 2002, WTP's failure to adhere to the Licensing Board's directive significantly impacted TVA.

While the Amended Petition is itself devoid of any showing of good cause for its failure to follow instructions, in her Notice of Appearance Ms. Harris — Director of WTP —

indicated that her organization does "not have the computer capacity to receive more than one (1) page on E-mail" and possesses a "fax machine that will only hold twelve (12) pages until such time as those pages are removed. . . ." ⁵ The assertion of limitations on her facsimile capability appears to be inapplicable and unpersuasive. Here, she needed to send (not receive) a fax less than 12 pages in length. If her machine could not do that, then it was incumbent upon her to find alternative means rather than simply to ignore the Scheduling Order. At a minimum, the document could have been sent by overnight mail from the Post Office for more prompt delivery.

Petitioner has not complied with the service requirements established in the Scheduling Order and has shown no good reason for its failure to do so. As the Commission has stated, "parties to a proceeding . . . are expected to adhere to the time frames specified in the . . . scheduling orders in the proceeding." *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998). On this basis, TVA moves to strike WTP's Amended Petition pursuant to 10 C.F.R. §§ 2.714(a)(1)(i) and 2.730.

B. Petitioner Has Again Failed to Establish Standing to Intervene

As before, there are two routes by which an organization can demonstrate standing in an NRC proceeding. First, it can assert injury to organizational interests and demonstrate that such interests are protected by the Atomic Energy Act. *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528-30 (1991). The Amended Petition adds nothing to the record to demonstrate that WTP — as an organization — has standing to intervene.

Where, as here, an organization apparently bases standing on the interests of the individuals it represents, the petition must demonstrate the standing of those individuals. *See,*

⁵ "Notice of Appearance for We The People, Inc., Tennessee," (Feb. 14, 2002).

e.g., *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-87-7, 25 NRC 116, 118 (1987).⁶ WTP continues to assert representational standing based on the interests of two individuals: Mr. Carroll and Ms. Harris. As explained below, the purported interests of these individuals are inadequate to support WTP's organizational standing in this particular license amendment matter.

1. *Petitioner's Asserted Interests Are Not Causally Linked to the Proposed License Amendment*

As discussed in TVA's prior response, the fact that Mr. Carroll and Ms. Harris live within 50 miles of Sequoyah Nuclear Plant ("SQN") and Watts Bar Nuclear Plant ("WBN"), respectively, is insufficient to confer representational standing on WTP. The so-called geographic "proximity presumption" — alone — does not apply in a license amendment proceeding such as this. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989). Rather, WTP must demonstrate the means by which the proposed amendments could lead to offsite radiological consequences injurious to its members or their property. *Id.* It has still failed to do so in its Amended Petition. In this regard, TVA disagrees with the conclusion of the NRC Staff.⁷ The Staff seems to agree that no "proximity presumption" applies in this case, but also has not established that there is any potential for offsite consequences as a result of the LARs that could cause offsite injuries such as those asserted by WTP.

The license amendment requests ("LARs") contain no significant hazards determinations ("NSHDs"), in which TVA concludes, *inter alia*, that the LARs:

⁶ The legal standards governing standing are discussed at length in TVA's January 29, 2002, Answers to WTP's Petitions to Intervene.

⁷ "NRC Staff's Answer to Requests for Hearing and Leave to Intervene Filed by We The People Inc. Tennessee," (Feb. 4, 2002) at 7-8.

- do not involve a significant increase in the probability or consequences of an accident previously evaluated;
- do not create the possibility of a new or different kind of accident from any accident previously evaluated; and
- do not involve a significant reduction in a margin of safety.

SQLN LAR at E1-24 - 37; WBN LAR at E1-20 - 32. Furthermore, as explained in TVA's original Answers, other than insertion and removal of the tritium-producing burnable absorber rods ("TPBARs"), the LARs would not result in any significant change to plant operations. With respect to the potential for offsite radiological consequences associated with the LARs, the NSHDs conclude that "[t]he impacts of TPBARs on the radiological consequences for all evaluated events are very small, and they remain within 10 CFR 100 regulatory limits. The additional offsite doses due to tritium are small with respect to LOCA source terms and are well within regulatory limits." SQLN LAR at E1-29; WBN LAR at E1-24.

We The People has not demonstrated how the proposed amendments could lead to offsite consequences injurious to Mr. Carroll's or Ms. Harris' purported interests. *See, e.g., Allied-Gen. Nuclear Serv.* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-26, 15 NRC 742, 744 (1982). Instead, WTP continues to voice unspecified concern about "the increased likelihood of an accident with the increased activity surrounding the manufacture of such a highly toxic item as tritium (TPBARs)" (Amended Petition, at 2) or about a "tritium spill" (Amended Petition, at 3). But WTP does not demonstrate how the activities that would actually be authorized by the LARs at issue will increase the likelihood of a purported accident or a "tritium spill." Absent such a nexus, WTP has not demonstrated that

issuance of the amendment will (in conjunction with the unspecified accident scenario) result in any increased offsite radiological consequences that would adversely affect the property interests,⁸ family visits, or recreational activities described in the Amended Petition. The fact is, the plants will continue to operate whether or not the proposed amendments are granted, and the Petitioner's general concerns (*i.e.*, fears) about plant operation will not be relieved by denying the amendment.

In summary, the Amended Petition is rife with conjecture about the possibility of an accident, but devoid of the necessary "plausible chain of causation" connecting the licensing action to the alleged injuries. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 192 (1999). As in its original Petition, WTP has done nothing more than continue to voice broad assertions of potential injuries which do not demonstrate the requisite injury-in-fact. *See International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117 (1998) (a petitioner must show an injury that is "distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical"), *citing Steel Co. v. Citizens for a Better Env't.*, 523 U.S. 83 (1998). Consequently, Petitioner cannot base its standing on the geographic proximity of Mr. Carroll and Ms. Harris to SQN and WBN.

2. *Petitioner May Not Rely on Aspects Which Are Outside the Scope of This Proceeding to Establish Standing*

In addition to the deficiencies described above, Petitioner has not identified "general potential effects of the licensing action or areas of concern" that are within the scope of this proceeding. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power

⁸ WTP cannot base its representational standing on assertions of diminished property value without showing radiological harm. *See International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 NRC 259, 265 (1998).

Station), LBP-90-6, 31 NRC 85, 89 (1990). In this regard, Ms. Harris claims to be "affected by the transportation of TPBARs to Savannah River for tritium extraction." Amended Petition, at 2. Transportation of TPBARs to Savannah River, however, does not fall within the scope of the LARs at issue. It is the sole responsibility of the United States Department of Energy ("DOE") and is not at issue in this proceeding.⁹

Similarly, Petitioner's claim that issuance of the LARs will increase the "likelihood of a terrorist attack on SQN and WBN as military targets" cannot serve as a basis for standing in this proceeding. Amended Petition, at 3. At best, this assertion constitutes a challenge to the design basis security threat for the facilities. Such a challenge is impermissible in individual licensing proceedings, such as this, as it takes issue not with the proposed amendments, but rather with the substantive content of existing NRC regulations in 10 C.F.R. § 50.13 and 10 C.F.R. Part 73. Thus, the issue is not properly raised here. See 10 C.F.R. § 2.758(a); *Siegel v. Atomic Energy Comm'n*, 400 F.2d 778, 783-84 (D.C. Cir. 1968); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 151 (2001). Moreover, there is no basis on which to assume that the risk of security incidents changes as a result of the LARs, or that any relief could be granted in this hearing.¹⁰

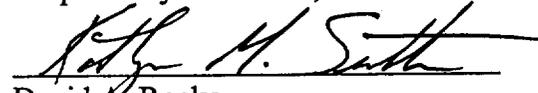
⁹ The TVA LARs encompass only irradiation services and packaging of the TPBARs in containers provided by DOE for pick-up by DOE at the WBN and SQN sites. This is established by interagency agreement between TVA and DOE. "Interagency Agreement No. DE-AI02-00DP00315 Between the United States Department of Energy and the Tennessee Valley Authority for Irradiation Services," § 6, Statement of Work (Jan. 1, 2000).

¹⁰ Even as a security issue, the Petitioner's real disagreement is with the decision to produce tritium in civilian reactors. However, this choice has been made by Congress in the Defense Authorization Act of 2000 (*National Defense Authorization Act for Fiscal Year 2000*, Pub.L.No. 106-65, § 3134, 113 Stat. 512, 927 (1999)) and by DOE.

III. Conclusion

For the foregoing reasons, Petitioner's amended petition to intervene in this proceeding should be denied.

Respectfully submitted,



David A. Repka
Kathryn M. Sutton
WINSTON & STRAWN
1400 L Street, NW
Washington, D.C. 20005-3502
(202) 371-5700

Edward J. Vigluicci
Harriet A. Cooper
TENNESSEE VALLEY AUTHORITY
400 West Summit Hill Drive
Knoxville, TN 37902-1499
(865) 632-7317

Counsel for Tennessee Valley Authority

Dated in Washington, D.C.
this 28th day of February, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
TENNESSEE VALLEY AUTHORITY) Docket Nos. 50-327
(Sequoyah Nuclear Plant, Units 1 & 2;) 50-328
Watts Bar Nuclear Plant, Unit 1) 50-390

CERTIFICATE OF SERVICE

I hereby certify that copies of " RESPONSE OF TENNESSEE VALLEY AUTHORITY TO WE THE PEOPLE'S AMENDED REQUEST FOR A HEARING AND PETITION TO INTERVENE AND MOTION TO STRIKE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 28th day of February, 2002. Additional e-mail service has been made this same day as shown below. Additional e-mail service has been made this same day as shown below. For the party marked by an asterisk (*) additional service has been made by overnight delivery due to lack of either e-mail or facsimile.

Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Thomas S. Moore, Chairman
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(e-mail: tsm2@nrc.gov)

Office of the Secretary
Attn: Rulemakings and Adjudications Staff
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(e-mail: HEARINGDOCKET@nrc.gov)
(original + two copies)

Dr. Peter S. Lam
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(e-mail: psl@nrc.gov)

Office of Commission Appellate Adjudication
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Thomas S. Elleman
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(e-mail: elleman@eos.ncsu.edu)

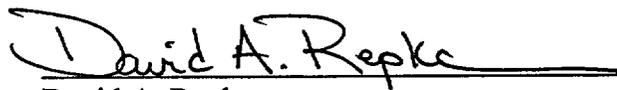
Adjudicatory File
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Steven R. Hom, Esq.
Office of the General Counsel
Mail Stop: O-15D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(e-mail: srh@nrc.gov)

Donald J. Moniak
Blue Ridge Environmental Defense League
P. O. Box 3487
Aiken, SC 29802
(e-mail: donmoniak@earthlink.net)

Ann Pickel Harris *
We The People, Inc. Tennessee
341 Swing Loop Road
Rockwood, TN 37854

Jeannine Honicker
704 Camellia Dr.
LaGrange, GA 30240
(e-mail: djhonicker@msn.com)


David A. Repka
Counsel for Tennessee Valley Authority