

June 16, 2009

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY**

In the Matter of)

Tennessee Valley Authority)

(Watts Bar Unit 2))

Docket No. 50-391

**SOUTHERN ALLIANCE FOR CLEAN ENERGY'S
REQUEST FOR EXTENSION OF TIME TO SUBMIT HEARING
REQUEST/PETITION TO INTERVENE**

INTRODUCTION

Southern Alliance for Clean Energy (“SACE”) hereby requests the Secretary of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) to grant a two-week extension of time to submit a hearing request and petition to intervene in the NRC’s licensing proceeding regarding Tennessee Valley Authority’s (“TVA’s”) application to operate the Watts Bar Unit 2 nuclear power plant.¹ SACE also requests the Secretary to take all necessary steps to ensure correction of significant deficiencies in the information provided on the NRC’s webpage and in the NRC’s Agencywide Documents Access and Management System (“ADAMS”) regarding licensing documents relevant to the Watts Bar 2 operating license proceeding.

The requested relief is necessary in order to compensate for significant defects in the hearing notice, the NRC’s webpage for the Watts Bar Unit 2 licensing proceeding,

¹ The notice of opportunity to request a hearing was published on May 1, 2009, at 74 Fed. Reg. 20,350.

and the NRC's collection of Watts Bar Unit 2-related documents on its Agencywide Documents Access and Management System ("ADAMS").² In addition, SACE requests the additional time because two of its experts consultants, Drs. Arjun Makhijani and Shawn Young, who are assisting SACE with the preparation of contentions, have scheduling conflicts that would render compliance with the June 30 deadline extremely difficult.

TVA does not oppose this motion, but the NRC Staff stated that it would not take a position until after reviewing the motion. *See* Certificate of Counsel at page 6 below.

DISCUSSION

SACE bases its request for an extension on the following grounds:

1. The Commission has a longstanding policy to hold hearings that are "fair" and produce an "informed adjudicatory record." *Statement of Policy and Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19 (1998). Where the environmental decision-making process in an NRC licensing proceeding depends on a history of previously issued environmental decisions, it would be fundamentally unfair and would undermine the development of an informed record for the agency to issue a hearing notice that fails to identify or provide access to the key environmental documents that constitute the background and underpinning to the proposed decision. It would be even more unfair and destructive to the development of an adequate record to inaccurately

² Because of the significant omissions and misleading statements in the hearing notice, SACE originally intended to ask the Secretary to withdraw and re-publish the hearing notice. In light of the fact that counsel for TVA and the Staff have offered to provide licensing documents that are not available on ADAMS, however, SACE has decided to instead request an extension of the deadline for its hearing request/petition to intervene.

claim those documents can be located by going to a certain NRC web address or the NRC's ADAMS document collection. Yet, that is what the NRC has done in this case. As a result, SACE and its counsel and experts have had to spend an inordinate amount of time trying to piece together the record of environmental decisions that underly TVA's license application and to obtain relevant documents.

2. The only environmental decision-making documents identified in the hearing notice are the TVA's 2008 Supplemental EIS for Watts Bar Unit 2 and the TVA's 2009 Supplemental EIS for Severe Accident Management Alternatives. 74 Fed. Reg. at 20,350. Despite the fact that those documents constitute mere "supplements" to environmental decision-making documents dating back to 1972, the hearing notice makes no attempt to identify those other environmental documents.

3. In two separate locations, the hearing notice directs the reader to the NRC's website at <http://www.nrc.gov/reactors/plant-specific-items/watts-bar.html> for information about TVA's license application. 74 Fed. Reg. at 20,351, 20,352. But the webpage completely fails to identify the environmental decision-making documents for Watts Bar. Under none of the four categories of information listed on the website (History, Meeting Summaries, Key Correspondence, and Related Documents and Other Resources) is it possible to find a web link, ADAMS Accession Number, or identifying information for any of the numerous environmental documents that have been issued by TVA and the NRC since 1975.

4. Under the heading "Correspondence," Counsel for Intervenors happened to find a letter that provides limited information about the history of environmental

decision-making with respect to Watts Bar Unit 2: a letter from TVA to the NRC dated March 4, 2009 (ADAMS Accession No. ML090700378) (“TVA Update Letter”). The letter shows that TVA and the NRC issued numerous EISs or supplements over the years for Watts Bar Units 1 and/or Unit 2, starting with TVA in 1972, NRC in 1978, NRC in 1995 (Supplemental EIS), and NRC in 2008 (Supplemental EIS). Despite the fact that the 1995 EIS is one of the more recent environmental decision-making documents for Watts Bar, however, it was not publicly available on ADAMS. Only the 1972, 1978, and 2008 EISs are posted on ADAMS. The only way to obtain the 1995 Supplemental EIS from the NRC was to have it reproduced at a prohibitive cost.³

5. While the TVA Update Letter gives some information about the history of the environmental decision-making process for Watts Bar, it is both incomplete and too general to allow accurate identification of all relevant documents. For instance, the letter does not identify draft versions of any of the EISs. In addition, some documents are referred to in such general terms that it is not possible to identify them. For instance, at page 3 the letter states that: “In 1994, NRC requested TVA provide updated environmental information in accordance with 10 CFR 51.92 to determine if it was necessary to issue a supplement to the 1978 NRC FES-OL.” It also states that TVA provided information, which was then relied on by the NRC in the 1995 Supplemental

³ SACE contacted the NRC’s Public Document Room (“PDR”) to request a paper or scanned copy of the NRC’s 1995 FEIS Supplement, and was told that the 366-page document could be copied for 35 cents a page, for a total cost of \$128. SACE also asked how much it would cost to scan the document and reproduce it as a “.pdf” file so that it could be e-mailed to SACE’s experts, and was told that it would cost 45 cents a page, at a total cost of \$165. SACE subsequently obtained an electronic copy from TVA’s counsel.

EIS. But the letter does not provide any identifying information for the information submitted by TVA to the NRC.

Similarly, the TVA's Update Letter refers to an "independent review" conducted by TVA regarding the NRC's 1995 EIS Supplement, including a "new analysis of the need for additional power;" and a decision by TVA to adopt the NRC's FEIS Supplement. Despite the obvious relevance of these documents to the proposed licensing of Watts Bar Unit 2, no identifying information is given for these documents.

6. As incomplete as it is, the TVA's Update Letter is the only document of which SACE is aware that purports to identify environmental decision-making documents that are relevant to the licensing of Watts Bar Unit 2. To our knowledge, the NRC has not confirmed the accuracy of the letter or filled in the gaps with identifying information.

7. In discussing this motion with counsel for TVA and the NRC Staff, they offered to cooperate with SACE by providing access to documents identified by SACE. While their offers have been extremely helpful, counsel for SACE is nevertheless required to review the available correspondence and attempt to piece together enough of an environmental decision-making record to identify the documents that should be requested. Counsel for SACE is still engaged in that effort. In short, counsel for SACE is now completing the preparatory work for the hearing notice that should have been finished by the NRC before the notice was issued.

8. In addition to the difficulty that SACE has had in obtaining documents needed for the preparation of contentions, two of SACE's expert consultants, Drs. Shawn Young

and Arjun Makhijani, have conflicting obligations in June that make it very difficult to meet a June 30 deadline. Dr. Young has a long-scheduled family visit and a medical appointment to which he must travel, and Dr. Makhijani must prepare for and lead a four-day technical workshop and meet two deadlines for the production of technical reports.

CONCLUSION

For the foregoing reasons, SACE requests the Secretary to grant a two-week extension of time to request a hearing in this proceeding, or until July 14, 2009. In addition, SACE requests the Secretary to ensure that the NRC's website and ADAMS document collection are corrected to accurately identify and provide access to environmental decision-making documents that are relevant to this proceeding.

Respectfully submitted

/s/

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Certificate of Counsel

I certify that on June 11, 2009, I contacted counsel for TVA, who told me that TVA would not oppose this motion. On June 15, 2009, I spoke with NRC Staff counsel David Roth, who stated that the NRC Staff intended to defer taking a position until it had reviewed this motion.

/s/

Diane Curran

June 16, 2009

CERTIFICATE OF SERVICE

I certify that on June 12, 2009, I posted copies of the foregoing SOUTHERN ALLIANCE FOR CLEAN ENERGY'S REQUEST FOR EXTENSION OF TIME TO SUBMIT HEARING REQUEST/PETITION TO INTERVENE on the NRC's Electronic Information Exchange System. It is my understanding that as a result, the following parties were served:

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/s/

Diane Curran