

August 14, 2009

**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
)	
(Watts Bar Unit 2))	
_____)	

**MOTION TO PERMIT LATE ADDITION OF CO-PETITIONERS
TO SOUTHERN ALLIANCE FOR CLEAN ENERGY'S PETITION TO INTERVENE
AND ADMIT THEM AS INTERVENORS**

On July 13, 2009, the Southern Alliance for Clean Energy ("SACE), Sierra Club, Blue Mountain Environmental Defense League ("BREDL"), Tennessee Environmental Council ("TEC"), and We the People, Inc. ("WTP") (collectively "Petitioners") submitted a Petition to Intervene and Request for Hearing regarding the Tennessee Valley Authority's ("TVA's") application for an operating license for the Watts Bar Unit 2 nuclear power plant ("WBN2"). The Petition to Intervene itself was timely under a June 24, 2009, Order by the Secretary of the Commission which had granted SACE a two-week extension of the original June 30, 2009, deadline. However, because only SACE sought the extension, the Secretary's Order applied only to SACE. Therefore participation in the petition by BREDL, TEC, and WTP (collectively "Co-Petitioners") was arguably untimely under 10 C.F.R. § 2.309(b). Petitioners now seek to ensure that if the Petition to Intervene is granted, all five petitioners will be admitted as intervenors.

Accordingly, pursuant to 10 C.F.R. § 2.309(c) and 10 C.F.R. § 2.323(a), Petitioners respectfully request the Atomic Safety and Licensing Board (“ASLB”) to permit Co-Petitioners to join in SACE’s Petition to Intervene and admit them as late-filed intervenors. As discussed below, the Co-Petitioners satisfy each of the factors listed in 10 C.F.R. § 2.309(c) for the granting of untimely petitions to intervene.

First, as to the requirement for a showing of “good cause . . . for the failure to file on time,” 10 C.F.R. § 2.309(c)(i), Co-Petitioners assert that their failure to file a petition to intervene by the June 30, 2009, deadline posted in the Federal Register was justified, for all the reasons stated in SACE’s June 16, 2009, motion to the Secretary for an extension of the deadline (*ie.*, that the hearing notice, the NRC’s website for the WBN2 licensing proceeding, and the NRC’s collection of WBN 2-related documents on ADAMS each contained significant deficiencies that required SACE and its Co-Petitioners additional time to review and respond to; and that two of the expert consultants relied on by SACE and its Co-Petitioners for support of their contentions had scheduling conflicts). By granting SACE’s motion, the Secretary implicitly approved these reasons as adequate to justify the Co-Petitioners’ failure to meet the June 30, 2009 deadline for petitions to intervene.

Co-Petitioners did not join SACE in seeking a two-week extension of the June 30 deadline, because at that time they had not yet decided to join SACE in the Petition to Intervene. Subsequently, when the Co-Petitioners decided to join SACE in petitioning to intervene, counsel should have requested the Secretary to expand the scope of her June 24, 2009, Order to include the Co-Petitioners; however, due to the significant pressures of preparing the Petition to Intervene, counsel overlooked this requirement. As discussed below, counsel’s administrative

error has had no effect on the length or breadth of this proceeding, and therefore Co-Petitioners should not be penalized for it.

Second, as to the requirements for showing the “nature of the requestor’s/petitioner’s right under the [Atomic Energy] Act to be made a party to the proceeding;” the “nature and extent of the requestor’s/petitioner’s property, financial or other interest in the proceeding;” and the “possible effect of any order that may be entered in the proceeding on the requestor’s/petitioner’s interest,” 10 C.F.R. § 2.309(c)(ii)-(iv), Co-Petitioners re-assert each of the reasons given in the Petition to Intervene as to why these groups have standing to participate in the proceeding. Petition to Intervene at 4-5. Co-Petitioners note that neither the Staff nor TVA opposed representational standing of any of the Co-Petitioners. Staff Answer at 10-12; TVA Answer at 8.

Third, as to the “availability of other means whereby the requestor’s/petitioner’s interest will be protected,” 10 C.F.R. § 2.309(c)(v), Co-Petitioners will have no other means of protecting their interests if they are not permitted to intervene because the filing of admissible contentions is the only method under NRC regulations whereby an intervenor may participate in a licensing proceeding. *See generally* 10 C.F.R. § 2.309.

Fourth, as to the “extent to which the requestor’s/petitioner’s interests will be represented by existing parties,” 10 C.F.R. § 2.309(c)(vi), SACE is the only intervenor presently admitted in this proceeding. If the Co-Petitioners are not admitted, and if for any reason SACE is later forced to withdraw from this proceeding, no other parties will be left in this proceeding to represent the interests of the Co-Petitioners.

Fifth, as to the “extent to which the requestor’s/petitioner’s participation will broaden the issues or delay the proceeding,” 10 C.F.R. § 2.309(c)(vii), because Co-Petitioners seek only to

join a Petition to Intervene that has already been submitted, their participation cannot be expected to have any effect on the breadth or length of the proceeding.

Sixth, as to the “extent to which the requestor’s/petitioner’s participation may reasonably be expected to assist in developing a sound record,” 10 C.F.R. § 2.309(c)(viii), Co-Petitioners have demonstrated their ability to assist in developing a sound record by co-sponsoring four contentions that are supported by expert declarations; and by submitting other contentions that are supported by both factual and legal bases. Co-Petitioners plan to coordinate with SACE on the development of testimony and legal briefs regarding their admitted contentions. In this respect, Co-Petitioners, which are environmental and civic groups in the vicinity of the Watts Bar Unit 2 nuclear power plant, expect to contribute their knowledge of local environmental and economic conditions to the development of the Petitioners’ case on Contentions 4 (Inadequate Discussion of Need for Power and Energy Alternatives) and 7 (Inadequate Consideration of Aquatic Impacts).

For these reasons, Co-Petitioners request that the ASLB to permit Co-Petitioners to join in SACE’s Petition to Intervene and admit them as late-filed intervenors.

Respectfully submitted,

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