

September 3, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
Tennessee Valley Authority)
Completion and Operation License) Docket No. 50-391OL
Watts Bar Nuclear Plant Unit 2)
_____)

**PETITIONERS' MOTION FOR LEAVE TO AMEND
CONTENTION 7 REGARDING TVA AQUATIC STUDY**

Pursuant to 10 C.F.R. § 2.309(f)(2), Petitioners, Southern Alliance for Clean Energy (“SACE”), Sierra Club, Blue Ridge Environmental Defense League (“BREDL”), Tennessee Environmental Council (“TEC”), and We the People, Inc. (“WTP”)¹ hereby move the Atomic Safety and Licensing Board (“ASLB”) for leave to amend the basis for their Contention 7, regarding the aquatic impacts of the Tennessee Valley Authority’s (“TVA’s”) application to complete construction and operate the proposed Watts Bar 2 nuclear power plant (“WBN2”).

Petitioners seek leave to amend the contention in order to address a 1998 TVA study, “Aquatic Environmental Conditions in the Vicinity of Watts Bar Nuclear Plant During Two Years of Operation, 1996-97” (June 1998) (“Aquatic Study”). While TVA failed to cite the Aquatic Study in the discussion of WBN2’s impacts to aquatic ecology in TVA’s 1998 Final Supplemental Environmental Impact Statement (“FSEIS”), TVA now relies on the Aquatic Study to argue that Contention 7 is inadmissible. Tennessee Valley Authority’s Answer Opposing the Southern Alliance for Clean Energy, et al. Petition to Intervene and Request for Hearing at 80, 84, 85, 88 (August 7, 2009).

¹ Petitioners’ motion to admit the Sierra Club, BREDL, TEC, and WTP as late-filed intervenors is pending with the Board.

Therefore, Petitioners seek leave to address the relevance of the Aquatic Study to Contention 7 in the attached Petitioners' Amended Contention 7 in Response to TVA Aquatic Study (September 3, 2009) and supporting Second Declaration of Shawn Paul Young, Ph.D. (September 2, 2009).

Petitioners satisfy the three-part test for late amendment of a contention in 10 C.F.R. § 2.309(f)(2)(i)-(iii). First, the information upon which the amended contention is based was "not previously available" (10 C.F.R. § 2.309(f)(2)(i)) in the sense that the FSEIS gave no indication that the TVA relied on the Aquatic Study to evaluate the environmental impacts of WBN2 on aquatic organisms. While the FSEIS' list of reference documents includes the Aquatic Study under the abbreviated title "TVA 1998b" (FSEIS at 123), no citation to "TVA 1998b" appears in the FSEIS' discussion of impacts to aquatic ecology at pages 54-55; nor are any of the Aquatic Study's conclusions about impacts to aquatic ecology mentioned in the FSEIS.² Therefore Petitioners and their expert, Dr. Shawn Paul Young, had no reason to believe that TVA had relied on the Aquatic Study for its evaluation of WBN2's impacts to aquatic organisms. *See* Second Declaration of Shawn Paul Young, Ph.D., par. I.A.2 (September 2, 2009), attached to Petitioners' Amended Contention 7 in Response to Aquatic Study (September 3, 2009). Accordingly, although during the preparation of Contention 7 Petitioners had requested TVA to produce several other reference documents listed in the FSEIS, they did not ask TVA for a copy of the Aquatic Study.

Second, the information upon which the amended contention is based is

² The only references to the Aquatic Study that can be found in the FSEIS consist of a statement about the performance of the diffuser at Watts Bar nuclear power plant Unit 1 ("WBN1") (FSEIS at 35) and a statement that the State of Tennessee has established a sanctuary for the protection of mussels. FSEIS at 57.

“materially different than information previously available” (10 C.F.R. § 2.309(f)(2)(ii)) in two key respects. First, the Aquatic Study contains information about actual measurements of entrainment of aquatic organisms, which is not presented in the FSEIS. *See* Young Second Declaration, par. 1. Second, the Aquatic Study presents information about a significant deterioration of mussel health in the area of WBN2 since operation of WBN1 began. Young Second Declaration, pars. 2 and 3. This issue is not discussed in the FSEIS.

Third, the amended contention has been “submitted in a timely fashion based on the availability of the subsequent information.” 10 C.F.R. § 2.309(f)(2)(iii). Petitioners have submitted their amended Contention 7 within thirty days of learning from TVA’s Answer that TVA had conducted entrainment monitoring in 1996 and 1997. TVA’s Answer at 85 n.431. Thirty days is now well-established as a presumptively reasonable time period for amending contentions based on new information.

In conformance with 10 C.F.R. § 2.323(b), and as discussed in the attached Certification of Counsel, counsel for Petitioners contacted counsel for TVA and the NRC Staff in a sincere attempt to resolve the issues raised by this motion. Counsel for both parties stated that they would not take a position on this motion until they had an opportunity to review it.

Respectfully submitted,

Electronically signed by

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**CERTIFICATION BY COUNSEL
PURSUANT TO 10 C.F.R. § 2.323(b)**

Pursuant to 10 C.F.R. § 2.323(b), I certify that on September 1, 2008, I contacted counsel for TVA and the NRC Staff in a sincere attempt to resolve the issues raised by this motion. Counsel for both parties said they would not take a position on the motion until they had an opportunity to review it.

Electronically signed by

Diane Curran

September 3, 2008