

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	Docket No. 50-391-OL
Tennessee Valley Authority)	
)	ASLBP No. 07-893-01-OL-BD01
(Watts Bar Unit 2))	

NRC STAFF'S BRIEF IN OPPOSITION TO SIERRA CLUB, BLUE RIDGE ENVIRONMENTAL
DEFENSE LEAGUE, TENNESSEE ENVIRONMENTAL COUNCIL,
AND WE THE PEOPLE, INC.'S APPEAL OF LBP-09-26

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.311(b), the staff of the Nuclear Regulatory Commission ("Staff") hereby files its brief in opposition to Sierra Club, Blue Ridge Environmental Defense League, Tennessee Environmental Council, and We the People, Inc.'s ("Co-Petitioners") appeal¹ from the decision of the Atomic Safety and Licensing Board ("Board"), LBP-09-26², dated November 19, 2009, which, *inter alia*, denied Co-Petitioners' Motion to Permit Late Addition of Co-Petitioners ("Motion for Late Addition")³ to SACE's Petition to Intervene and did

¹ "Notice of Appeal of LBP-26-09 by Sierra Club, Blue Mountain [sic - should be 'Ridge'] Environmental Defense League, Tennessee Environmental Council [, Inc.], and We the People, Inc. [of the United States]"(ADAMS Accession No. ML093370796); "Brief On Appeal Of LBP-26-09 By Sierra Club, Blue Mountain Environmental Defense League, Tennessee Environmental Council, And We The People, Inc." (Dec. 3, 2009) (ADAMS Accession No. ML093370797) ("Appeal").

The Staff notes that the notice of appeal and accompanying brief correctly names Sierra Club, but incorrectly refers to "Blue *Mountain*" instead of "Blue *Ridge*," and incompletely names the other two petitioners. As explained in the "NRC Staff's Answer to Petition to Intervene and Request for Hearing" (Aug. 7, 2009) (ADAMS Accession No. ML092190919) ("Original Staff Answer"), Co-Petitioners are registered with various states under these names: Sierra Club; Blue Ridge Environmental Defense League; Tennessee Environmental Council, Inc.; and We the People, Inc. of the United States. See Original Staff Answer at 10-12.

² *Tennessee Valley Authority* (Watts Bar Unit 2), LBP-09-26, 70 NRC ___, (Nov. 19, 2009)(slip op.)(“Order”)

³ Petitioners' Motion to Permit Late Addition of Co-Petitioners to Southern Alliance for Clean Energy's Petition to Intervene and Admit Them as Intervenors (Aug. 14, 2009)(ADAMS Accession No. ML092260787).

not extend to them party status in this proceeding. As discussed below, the Board properly balanced and weighed the factors in 10 C.F.R. § 2.309(c) governing the appropriate treatment of untimely filings, and was correct in its decision that, on the whole, the factors weighed against permitting the late addition of Co-Petitioners. Accordingly, the Commission should uphold the Board's Order denying Co-Petitioners' Motion for Late Addition.

STATEMENT OF THE CASE

This proceeding involves the operating license application for Watts Bar Unit 2, a partially-complete facility located near Spring City, Tennessee. On May 1, 2009, the U.S. Nuclear Regulatory Commission ("NRC") published a Notice of Opportunity for Hearing on the operating license application of Tennessee Valley Authority ("TVA") for the Watts Bar Nuclear Plant, Unit 2.⁴ Pursuant to that Notice, requests for a hearing and petitions to intervene were due by June 30, 2009. See 74 Fed. Reg. at 20351. Upon request from the Southern Alliance for Clear Energy ("SACE"), the Secretary of the Commission extended SACE's filing deadline to July 14, 2009. Order (June 24, 2009) (unpublished)(ADAMS Accession No. ML091750643). No other potential petitioners had requested an extension of the June 30, 2009 filing deadline.

On July 13, 2009, SACE, joined by Co-Petitioners, filed a single combined petition alleging seven contentions.⁵ TVA and the Staff filed Answers that addressed the Petition and also noted that the Co-Petitioners were simply late petitioners who had not met the requirements for late-filing.⁶ On August 14, 2009, SACE and the Co-Petitioners filed a Reply to

⁴ Tennessee Valley Authority [TVA]; Notice of Receipt of Update to Application for Facility Operating License and Notice of Opportunity for Hearing for the Watts Bar Nuclear Plant, Unit 2 and Order Imposing Procedures for Access, 74 Fed. Reg. 20,350 (May 1, 2009) ("Notice").

⁵ Petition to Intervene and Request for Hearing (July 13, 2009)(ADAMS Accession No. ML091950686)("Petition").

⁶ [TVA]'s Answer Opposing the [SACE] et al., Petition to Intervene and Request for Hearing (Aug. 7, 2009)(ADAMS Accession No. ML092190926) ; NRC Staff's Answer to Petition to Intervene and Request for Hearing (Aug. 7, 2009)(ADAMS Accession No. ML092190919).

TVA's and the Staff's Answers addressing the Petition.⁷ On the same date, SACE and the Co-Petitioners filed its Motion for Late Addition. On August 28, 2009, TVA and the Staff each filed responses in opposition to Co-Petitioners' Motion for Late Addition.⁸

Thereafter, on November 19, 2009, the Board issued LBP-09-26, that granted the Petition with respect to SACE, but denied Co-Petitioners' Motion for Late Addition because their request "was not filed within the applicable deadline" and they had "not submitted adequate justification to allow consideration of a non-timely Petition to Intervene." Order at 2. The Board admitted two of SACE's contentions (SACE Contentions 1 and 7) and therefore granted SACE's request for a hearing. However, the Board denied Co-Petitioners party status for this proceeding. Order at 3.

STATEMENT OF THE ISSUE

Co-Petitioners appeal the denial of their Motion for Late Addition, alleging that the Board abused its discretion in its interpretation of the "good cause" standard of 10 C.F.R. § 2.309(c)(1)(i) and by giving undue weight to the other factors of 10 C.F.R. § 2.309(c)(1)(ii)-(viii). See Appeal at 1. The issue presented is whether the Board committed an error of law or abuse of discretion when it denied Co-Petitioners' Motion for Late Addition to be admitted as a party in this proceeding.

LEGAL STANDARDS

A. Legal Standard for Review of a Board Order Denying a Petition to Intervene

Under 10 C.F.R. § 2.311(a), an order of the presiding officer may be appealed to the Commission with respect to a request for hearing, a petition to intervene, or access to

⁷ Petitioners' Reply to NRC Staff's and [TVA]'s Answers to Petition to Intervene and Request for Hearing (Aug. 14, 2009)(ADAMS Accession No. ML092260788).

⁸ Tennessee Valley Authority's Answer Opposing the Motion to Permit Late Addition of Co-Petitioners to [SACE]'s Petition to Intervene and Admit Them as Intervenors (Aug. 21, 2009)(ADAMS Accession No. ML092330329); NRC Staff's Response in Opposition to Motion to Permit Late Addition of Co-Petitioners (Aug. 21, 2009)(ADAMS Accession No. ML092331023).

information. Pursuant to 10 C.F.R. § 2.311(c), an order denying a petition to intervene and request for hearing is appealable on the question of whether the request should have been granted.

The legal standards applicable to the Commission's review of the Board's rulings are set forth in Commission adjudicatory decisions. These decisions establish that the Commission will give substantial deference to the Boards' determinations on threshold issues and will regularly affirm Board decisions on issues of admissibility where the appeal fails to point to an error of law or abuse of discretion. See *AmerGen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006) (citing *USEC Inc. (American Centrifuge Plant)*, CLI-06-09, 63 NRC 433, 439 n.32 (2006)).

B. Legal Standards for Late-Filed Petitions to Intervene

The standards for late-filed petitions to intervene are essentially an adaptation of the late-filed contention factors. Accordingly, the standards governing the admissibility of contentions filed after the initial deadline for filing (*i.e.*, "late-filed contentions") are applicable.

Under 10 C.F.R. § 2.309(f)(2), a contention may be filed after the initial 60-day deadline if the petitioner shows that:

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2).

Otherwise, petitions and contentions may be admissible under 10 C.F.R. § 2.309(c)(1).

This rule contemplates a balancing of the following factors:

- (i) Good cause, if any, for the failure to file on time;

- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
- (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
- (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
- (vi) The extent to which the requestor's/ petitioner's interests will be represented by existing parties;
- (vii) The extent to which the requestor's/ petitioner's participation will broaden the issues or delay the proceeding; and
- (viii) 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)(1); *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-07, 69 NRC __, __ (Apr. 1, 2009)(slip op. at 31); *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 234 n.7 (2006).

Of the 10 C.F.R. § 2.309(c)(1)(i)-(viii) factors, the Commission has held that “good cause” for filing late is the most important. *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 6 (2008). As an example of "good cause," where a petitioner alleges new information is the basis of late filing, the "petitioner must show that the information on which the new contention is based was not reasonably available to the public, not merely that the petitioner recently found out about it." *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit No. 3), CLI-09-05, 69 NRC 115, 126 (2009).

As the Commission has recognized, the requirements governing late-filed contentions and untimely filings, set forth in 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2), “are stringent.” *Oyster Creek*, CLI-09-07, 69 NRC at __ (slip op at 31). Further, each of the factors set forth in the

regulations is required to be addressed in a requestor's non-timely filing. *Id.* at 31-32. Indeed, under NRC case law, a petitioner's failure to address the late-filing criteria in 10 C.F.R. § 2.309(c) or 10 C.F.R. § 2.309(f)(2) "is reason enough" to reject the proposed new contention. *Millstone*, CLI-09-05, 69 NRC at 126 (2009).

ARGUMENT

As discussed below, the Staff submits that the Board's ruling was correct and consistent with established Commission practices and 10 C.F.R. § 2.309(c)(1).

A. The Board Correctly Interpreted and Applied the Good Cause Factor

Co-Petitioners have a duty to follow applicable NRC regulations when filing; if they learned of new information after the initial filing, they could then file new contentions in accordance with the rules; *Cf. Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 164 (1993) (noting that the test for "good cause" is "when the information became available and when Co-Petitioners reasonably should have become aware of that information."); *North Atlantic Energy Services Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 223 (1999) (noting that "failure to read carefully the governing procedural regulations" does not constitute "good cause for accepting its late-filed petition.").

The Co-Petitioners argue that the Board's consideration of good cause under 10 C.F.R. § 2.309(c)(1)(i) was an abuse of discretion, a clear error of judgment, and illogical. Appeal at 6. With respect to the good cause factor, the Board precisely found:

While SACE presented a credible case for an extension of time, its co-petitioners did not demonstrate good cause for failing to file their Request for Hearing or a Motion for an Extension of Time within the established deadline. [Co-]Petitioners candidly state that they did not join SACE in seeking an extension because at the time the extension was requested they had not yet decided whether to join SACE in the Petition to Intervene. Such indecision does not constitute good cause for failure to file a timely petition. Further, having failed to demonstrate good cause for the late filing, the Board does not find that the other Section 2.309(c)(1) factors are so compelling that we should entertain their non-timely Petition.

Order at 8 (footnote omitted).

Co-Petitioners are correct in pointing out that “good cause” for filing late is the most important of the 10 C.F.R. § 2.309(c)(1)(i)-(viii) factors. *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 6 (2008) (“The first factor — whether good cause exists to excuse the late-filing of the contention — is the most important factor.”). The Commission has explained that the “good cause” inquiry is fact-sensitive. See *Private Fuel Storage LLC* (Independent Spent Fuel Storage Installation), CLI-00-02, 51 NRC 77, 80 (2000) (“At bottom, such cases turn on fact-specific questions of “good cause” for lateness[.]”). The facts presented by Co-Petitioners before the Board in this proceeding in support of their assertions fall short in demonstrating good cause. Co-Petitioners' candid admission of indecision to join another potential petitioner is simply not good cause; they fail to cite any authority that the Board committed reversible error.

Co-Petitioners argue that the factors cited by SACE in obtaining an extension to the filing time - an alleged failure to identify relevant documents - delayed Co-Petitioners' *decision* whether to join SACE's petition to intervene. Appeal at 6-7. However, this argument does not hold up to scrutiny. Unlike SACE, none of the Co-Petitioners contacted the Staff⁹ to request assistance in identifying or locating any document. Thus, Co-Petitioners have not identified any allegedly-missing document either that, once revealed, permitted them to make their decisions to join SACE. Further along this line, Co-Petitioners have not alleged that newly-available information was the basis for their late filing. Indeed, since admitted Contention 1 is based on an omission of information (Order at 21) regarding the status of permits, Co-Petitioners could have proffered this contention in accordance with the hearing notice, and any later identified information could have been used for a late filing.

⁹ The Staff is also unaware of any document requests or other contact from Co-Petitioners to TVA in advance of the established filing date.

Although SACE cites to the reasons proffered by SACE for late filing (Appeal at 6), the Co-Petitioners acknowledge that when SACE filed its extension request, co-petitioners *had not decided if they were going to intervene*. *Id.* They now state that the failure to seek an extension later, after a decision was reached, was an “oversight” by counsel. Appeal at 6 n.1. And as explained in their Motion, “when the Co-Petitioners decided to join SACE in the Petition to Intervene, counsel should have requested the Secretary to expand the scope of her June 24, 2009, Order . . . however, due to the significant pressures of preparing the Petition to Intervene, counsel overlooked this requirement.” Motion for Late Addition at 2. But NRC precedent demonstrates that competing professional obligations do not constitute good cause. In *Duke Power Company*, the Appeal Board flatly rejected the notion that other responsibilities satisfy the good cause factor. *Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3)*, ALAB-440, 6 NRC 642, 644 (1977) (“Although we are told that at that time domestic and other responsibilities occupied her full attention, and thus precluded her pursuit of then available information pertaining to the facility, that scarcely can be taken to constitute an adequate reason for permitting her to enter the proceeding[.]”) Citing to *Duke Power*, a Board panel later explained, “[t]o the extent this reason may be deemed to reflect a preoccupation with other matters . . . it is also clear that it cannot serve as “good cause” for tardiness.” *Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Station)*, LBP-80-14, 11 NRC 570, 572 (1980). This is sound policy. Otherwise, as the Appeal Board has said, there would be “free license to make the timing of an intervention petition a matter wholly dictated by personal convenience.” *Puget Sound Power & Light Co. (Skagit Nuclear Power Project, Units 1 and 2)*, ALAB-552, 10 NRC 1, 6 (1979).

Lastly, the Co-Petitioners argue that the Board’s reasoning is unfair. Appeal at 7. The Co-Petitioners cite to *Houston Power and Light* to support their fairness argument. *Id.* But that case merely states that “the key policy consideration for barring late intervenors is one of fairness.” *Houston Lighting and Power Co. (South Texas Project, Units 1 and 2)*, ALAB-549, 9

NRC 644, 648 (1979). The Co-Petitioners do not, however, cite to any cases that support their view that the Board acted unfairly in ruling that indecision does not constitute "good cause". Nor do the Co-Petitioners cite to any cases distinguishing NRC precedent that states preoccupation with other matters does not satisfy the good cause prong. Ultimately, fairness dictates that the Co-Petitioners are treated in the same manner as other interested potential parties. Indeed, the Co-Petitioners offer no reason why SACE should have been required to submit an extension request prior to filing their petition, but the Co-Petitioners should be under no such requirement when filing theirs. The Board fairly considered the Co-Petitioners' motion for late intervention. The Board correctly applied the good cause factors. The Board did not act unfairly towards the Co-Petitioners.

Therefore, the Board correctly ruled that Co-Petitioners have not established "good cause" for their untimely filing.

B. Extent Others Represent Co-Petitioners Interest Factor

Co-Petitioners allege that the Board was irrational in assigning weight to the factor in 10 C.F.R. § 2.309(c)(1)(vi) (extent to which other parties represent Petitioners' interests). Appeal at 7-8. Regarding to the extent of others representing Co-Petitioners' interests, the Board ruled:

Co-Petitioners state that SACE could withdraw from this proceeding and, if it did so, there would be no existing party to protect co-petitioners interests (Section 2.309(c)(1)(vi)). While the withdrawal of SACE from this proceeding is a possibility, the abandonment of its status in this proceeding, after taking the effort to request an extension of time and then filing a professional, and well-supported Petition to Intervene, is far too speculative to carry much weight in the Board's decision.

Order at 8-9 (footnote omitted).

Co-Petitioners argue that the Board lacked a reasonable basis to state that the withdrawal of SACE was only speculative. Appeal at 8. However, Co-Petitioners provide no facts or information to show that SACE intends to withdraw or will be forced to withdraw due to a "lack of resources" (Appeal at 8). Indeed, Co-Petitioners apparently believe SACE is fully

capable of representing Co-Petitioners' interest resolving admitted Contentions 1 and 7, and is not about to withdraw for reasons unrelated to the resolution of those contentions, as evidenced by Co-Petitioners' intention to designate SACE as lead on the admitted contentions. See Appeal at 9 n.2 (stating that Co-Petitioners intend to designate SACE as lead pursuant to 10 C.F.R. § 2.309(f)(3)¹⁰).

Thus, given the lack of any meaningful indication of SACE's intended withdrawal, the Board acted rationally and reasonably in assigning little weight to Co-Petitioners speculation of SACE's possible withdrawal. Co-Petitioners' intent to invest in SACE authority to represent Co-Petitioners demonstrates that Co-Petitioners believe they can continue to rely on SACE to represent their interests.

C. Assistance in Developing a Sound Record Factor

Co-Petitioners argue that the Board incorrectly applied the factor in § 2.309(c)(1)(viii) concerning the ability of the Co-Petitioners to assist in developing a sound record. See Appeal at 8-9. On that factor, the Board stated:

Co-Petitioners also argue that they would be able to assist in developing a sound record (Section 2.309(c)[(1)](viii)) by coordinating with SACE on the development of testimony and legal briefs by contributing their knowledge of local environmental and economic conditions to the development of Petitioners' case. They do not, however, explain how their knowledge of these facts is superior to, or even different from, that of SACE or why, if they are not admitted as parties, they could not, nevertheless, provide such services to SACE.

Order at 9 (footnote omitted).

¹⁰ 10 C.F.R. 2.309(f)(3) states in part "If two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners *shall jointly designate* a representative who shall have the authority to act for the requestors/petitioners with respect to that contention." (emphasis added). The Staff notes that the Appeal was not joined by SACE, and no previous joint filing was submitted by SACE and the Petitioners that addressed 10 C.F.R. § 2.309(f)(3). Thus the joint designation requirement of 10 C.F.R. § 2.309(f)(3) remains unsatisfied.

The Board correctly considered the § 2.309(c)(1)(viii) factor and did not commit error. Commission case law establishes both the importance of the factor of development of a sound record in the evaluation of late-filed contentions and the necessity of the moving party to demonstrate that it has special expertise on the subjects which it seeks to raise. *Commonwealth Edison Co.* (Braidwood Nuclear Power Plant Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 246 (1986). In *Braidwood*, the Commission found that the assigned licensing board had erred in finding that the sound-record factor weighed in favor of the intervenors. *Braidwood*, CLI-86-8, 23 NRC at 247. In making this finding, the Commission explicitly noted that, even after being urged by the licensing board to provide specifics as to witnesses to be called and topics to be pursued, the intervenors failed to do so. *Id.*

Similarly, in their Motion for Late Addition to the Board and in their Appeal, the Co-Petitioners do not attempt to address the area the Board found lacking,¹¹ in that Co-Petitioners do not attempt to distinguish their knowledge from SACE. See Appeal at 8. Co-Petitioners provide no facts to show that Co-Petitioners are more qualified than SACE to pursue admitted contentions 1 (regarding permits) and 7 (regarding aquatic effects). Furthermore, Co-Petitioners provide no additional experts or support for the admitted contentions. More telling, Co-Petitioners do not want to act as the authority for any contention, as they intend to designate SACE as lead. Appeal at 9 n.2.

Finally, Co-Petitioners assert that the Board incorrectly disregarded the fact that Co-Petitioners are "located" in the vicinity of Watts Bar and thus have "special knowledge of

¹¹ When combined with the initial failure of Co-Petitioners to file within the time designated in the hearing notice, and to request from the Secretary an extension in the time to file initial contentions, and to address the factors that the Board found deficient, there appears to be a pattern of Co-Petitioners failing to demonstrate sufficient involvement and proper filings. There have been no statements from the members of the groups comprising Co-Petitioners reflecting that their members have authorized SACE to represent their interests in this proceeding. Further, no Notice of Appearance has been filed on behalf of Co-Petitioners, and even after the Board mentioned the issue (Order at 6-7), Co-Petitioners have not cured the deficiency in this appeal to the Commission.

economic and environmental issues."¹² Appeal at 8 (*citing* Motion for Late Addition at 4). However, the basis for the argument – Motion for Late Addition at 4 -- provides no support for this vague assertion. Co-Petitioners asserted that they would contribute to the record for Contention 4 (Need for Power)¹³ and Contention 7 (Aquatic Impacts). Motion for Late Addition at 4. Nonetheless, Co-Petitioners' Motion for Late Addition did not describe any specific information or ability possessed by Co-Petitioners that would assist with developing a record for either Contention 4 or 7. *See id.* Co-Petitioners did not claim they would contribute to the other proffered contentions, including the admitted Contention 1 (Status of Permits). *See id.* Thus, given the lack of information supplied by the Co-Petitioners to the Board, the Board was correct in its finding that the factor of 2.309(c)(1)(viii) did not favor the Co-Petitioners. *See* Order at 9.

¹² The proffered aquatics expert relied upon by Co-Petitioners is Dr. Shawn Paul Young from Moscow, Idaho. Thus, it is unclear why Co-Petitioners now imply that their location gives them special knowledge, when their expert is located clear across the country.

¹³ Contention 4 (Need for Power) was not admitted by the Board (Order at 43-44), and this decision was not appealed by any party.

CONCLUSION

The Boards ruling on the Co-Petitioners Motion for belated admission was correct and in conformance with Commission practice and rules. Thus, the Commission should not disturb the ruling, and Sierra Club, Blue Ridge Environmental Defense League, Tennessee Environmental Council, and We the People, Inc. should not be allowed to join as parties in the proceeding.

Signed (electronically) by

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**/Executed in accord with
10 C.F.R. § 2.304(d)/**

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Dated at Rockville, Maryland
this 14th day of December 2009.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) Docket Nos. 50-391-OL
)
Tennessee Valley Authority) ASLBP No. 07-893-01-OL-BD01
)
(Watts Bar Unit 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S BRIEF IN OPPOSITION TO SIERRA CLUB, BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE, TENNESSEE ENVIRONMENTAL COUNCIL, AND WE THE PEOPLE, INC.'s APPEAL OF LBP-09-26" in the above-captioned proceeding have been served on the following persons by the Electronic Information Exchange ("EIE") this 14th day of December, 2009.

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