

March 10, 2010

**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))	
)	

**SOUTHERN ALLIANCE FOR CLEAN ENERGY’S MOTION FOR LEAVE TO AMEND
PETITION FOR WAIVER OF 10 C.F.R. §§ 51.53(b) AND 51.95(b)**

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.323(a) and (b) and 2.319, Southern Alliance for Clean Energy (“SACE”) hereby moves for leave to amend its Petition for Waiver of 10 C.F.R. §§ 51.53(b) and 51.95(b) With Respect to Admission of Contentions Regarding Need for Power and Consideration of Alternative Energy Sources (February 4, 2010) (“Waiver Petition”). SACE seeks to amend its Waiver Petition by adding a request for waiver of 10 C.F.R. § 51.106(c) in addition to §§ 51.53(b) and 51.95(b). SACE respectfully submits that the regulation should be included in the waiver petition because it is closely related to §§ 51.53(b) and 51.95(b) and because by its plain terms, it would operate to defeat the petition unless it is waived.

As required by 10 C.F.R. § 2.323(a), this motion is filed within ten days of the event from which the motion arises: the filing of Tennessee Valley Authority’s (“TVA’s”) response to SACE’s Waiver Petition, in which TVA opposed the Waiver Petition on the ground, *inter alia*, that SACE had not asked for a waiver of 10 C.F.R. § 51.106(c). The motion is also accompanied by a certificate of counsel as required by 10 C.F.R. § 2.323(b), *see* page 4.

DISCUSSION

SACE's Waiver Petition requests a waiver of 10 C.F.R. §§ 51.53(b) and 51.95(b). Section 51.53(b) excuses an operating license applicant from addressing need for power and energy alternative issues in its application, and § 51.95(b) directs the NRC Staff not to address need for power and energy alternative issues in its environmental impact statement ("EIS").¹ Until it was pointed out by TVA, SACE was unaware of an additional regulation, § 51.106(c), which forbids the Atomic Safety and Licensing Board ("ASLB") from admitting contentions raising issues of need for power or alternative energy sources.

SACE respectfully submits that its failure to cite § 51.106(c) in the first instance is excusable because § 51.106(c) appears to be superfluous and redundant of §§ 51.53(b) and 51.95(b): even without § 51.106(c), §§ 51.53(b) and 51.95(b) already render it impossible to establish, for purposes of satisfying 10 C.F.R. § 2.309(f)(1)(iii) and (iv)'s requirements for admission of contentions, that need for power and alternative energy issues are within the scope of an operating license proceeding or material to its outcome. The redundancy of § 51.106(c) is illustrated by the fact that although §§ 51.53(c) and 51.95(c) excuse license renewal applications and EISs from discussing spent fuel storage, NRC regulations contain no provision, comparable

¹ With respect to operating license applications, 10 C.F.R. § 51.53(b) provides that:

No discussion of need for power, or of alternative energy sources, or of alternative sites for the facility, or of any aspect of spent fuel for the facility within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b) is required . . .

With respect to supplemental EISs for operating licenses, 10 C.F.R. § 51.95(b) provides that unless otherwise determined by the Commission, the EIS:

will not include a discussion of need for power, or of alternative energy sources, or of alternative sites for the facility, or of any aspect of spent fuel for the nuclear power plant within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b) . . .

to § 51.106(c), which would forbid ASLBs from admitting contentions related to spent fuel storage to license renewal proceedings. Yet, it is well-established that contentions challenging the environmental impacts of spent fuel storage are not admissible in license renewal proceedings. *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 21-23 (2001).

In addition, the requested amendment of the Waiver Petition will not delay or complicate the disposition of the Waiver Petition. Because Section § 51.106(c) is based on the same rationale as §§ 51.53(b) and 51.95(b), amending the Petition will not require any further briefing on the issue of whether SACE has satisfied the standard for a waiver petition. *See* Final Rule, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments, 49 Fed. Reg. 9,352, 9,365 (March 12, 1984); Final Rule, Need for Power and Alternative Energy Issues in Operating License Proceedings, 47 Fed. Reg. 12,940, 12,942-43 (March 26, 1982).

CONCLUSION

Despite its apparent redundancy of 10 C.F.R. §§ 51.53(b) and 51.95(b), 10 C.F.R. § 51.106(c) would, by its plain terms, defeat any otherwise meritorious petition for waiver of §§ 51.53(b) and 51.95(b) unless it also is waived. Therefore, the ASLB should grant SACE's motion to amend its Waiver Petition by adding a request for waiver of § 51.106(c).

Respectfully submitted,

Electronically signed by

Diane Curran

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March 10, 2010

CERTIFICATE OF COUNSEL REQUIRED BY 10 C.F.R. § 2.323(b)

I certify that on March 9, 2010, I contacted counsel for TVA and the NRC Staff in an attempt to resolve the concerns raised by this motion. Counsel for TVA said that TVA would not consent to the motion. Counsel for the NRC Staff said that the Staff would not take a position at this time.

Electronically signed by

Diane Curran

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CERTIFICATE OF SERVICE

I certify that on March 10, 2010, I posted on the NRC’s Electronic Information Exchange System copies of the foregoing SACE’s Motion for Leave to Amend Petition for Waiver of 10 C.F.R. §§ 51.53(b) and 51.95(b) It is my understanding that as a result, the following parties were served:

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(signed electronically by)
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