

May 6, 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-OL
)
(Watts Bar Unit 2))

NRC STAFF'S ANSWER TO TENNESSEE VALLEY
AUTHORITY'S MOTION TO DISMISS SOUTHERN
ALLIANCE FOR CLEAN ENERGY'S CONTENTION 1 AS MOOT

INTRODUCTION

On April 19, 2010, Tennessee Valley Authority ("TVA") filed a motion before the Atomic Safety and Licensing Board ("Board") to dismiss admitted Contention 1 on mootness grounds. Motion to Dismiss Southern Alliance for Clean Energy's Contention 1 as Moot (April 19, 2010) ("Motion"). On May 6, 2010, Intervenor Southern Alliance for Clean Energy ("SACE") filed a letter with the Board stating that SACE does not intend to oppose the Motion and considers Contention 1 to be resolved. Letter from Diane Curran to the Board (May 6, 2010). The NRC Staff supports the motion for the reasons discussed below.

BACKGROUND

On May 1, 2009, the NRC published a Notice of Opportunity for Hearing on the operating license ("OL") application of TVA for the Watts Bar Nuclear Plant Unit 2.¹ On July 13, 2009, SACE along with several other entities, filed a single combined petition to intervene and

¹ *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). Requests for a hearing and petitions to intervene were due by June 30, 2009. *Id.* at 20351. Upon request, the Commission extended SACE's filing deadline without comment to July 14, 2009. Order (June 24, 2009) (unpublished).

hearing request ("Petition") for the operating license application of Watts Bar Unit 2.

On November 19, 2009, the Board granted party status only to SACE² and admitted two environmental contentions, including Contention 1, which alleges that TVA's Final Supplemental Environmental Impact Statement ("FSEIS") for the Completion and Operation of Watts Bar Nuclear Plant Unit 2³ failed to list and discuss the status of compliance with applicable permits, approvals, and environmental quality standards, as required by 10 C.F.R. § 51.45(d).⁴ In admitting Contention 1 as a "contention of omission," the Board held that "only the allegation regarding the additional, unspecified and unlisted permits supports the admission of this contention." *Watts Bar*, LBP-09-26, 72 NRC at ___ (slip op. at 19, 21). On April 9, 2010, in response to a Staff Request for Additional Information ("RAI"),⁵ TVA provided Table G-5, "Federal, State, and Local Authorizations," which lists and describes "[a]ll federal, state, and local authorizations, consultations, and environmental permits needed for operation of Unit 2 and the status of each." RAI Response at E1-6; Table G-5. Following its submission of the requested information, TVA filed the instant Motion, seeking dismissal of Contention 1 on the grounds that it has been mooted by TVA's April 9, 2010 RAI Response. Motion at 5.

² The Board determined that the remaining parties had not adequately justified their late filing. See *Tennessee Valley Authority* (Watts Bar Unit 2), LBP-09-26, 70 NRC ___ (Nov. 19, 2009) (slip op. at 2-3), *aff'd*, CLI-10-12, 72 NRC ___ (March 26, 2010)(slip op.).

³ Final Supplemental Environmental Impact Statement, Completion and Operation of Watts Bar Nuclear Plant Unit 2, Rhea County, Tenn. (June 2007) (Agency-wide Documents Access and Management Systems ("ADAMS") Accession No. ML080510469).

⁴ *Watts Bar*, LPB-09-26, 70 NRC ___, slip op. at 15-21, *aff'd on other grounds*, CLI-10-12, 71 NRC ___ (Mar. 26, 2010)(slip op.); Petition at 6-8.

⁵ NRC Staff Watts Bar 2 RAI, at 8 (Dec. 3, 2009) (ML093290073) (requesting "a list of all authorizations, consultations, and environmental permits and approvals needed for operation of Watts Bar Nuclear Plant Unit 2 and provide a status for each item").

DISCUSSION

I. Legal Standard

A contention alleging that required information has been omitted from an application for an operating license must be modified or dismissed as moot where the information in question is provided in response to a Staff RAI. See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 382-383 (2002).

II. Discussion

The Board admitted Contention 1 as a “contention of omission,” *Watts Bar*, LBP-09-26, 70 NRC at ___ (slip op. at 21), to the limited extent that SACE alleged that TVA’s application did not include “unspecified permits that should have been listed and discussed by TVA” in the application, pursuant to 10 C.F.R. § 51.45(d). *Id.* at 19. With respect to two documents enumerated in its contention (i.e., the Interagency Agreement and National Pollutant Discharge Elimination System (“NPDES”) permit), the Board held that SACE had not alleged facts sufficient to raise a genuine dispute warranting admission of its contention. However, citing TVA’s FSEIS, the Board admitted SACE’s contention because TVA “concedes that there are other applicable permits and approvals but does not identify them or discuss the current compliance status.” *Id.* at 21.

In its Motion, TVA states that in response to the Staff’s December 3, 2009 RAI, TVA has now supplied “all federal, state, and local authorizations, consultations, and environmental permits needed for operation of Unit 2 and the status of each.” Motion at 3 (quotations omitted). To the extent that TVA’s response ameliorates the cited omissions in its original FSEIS, see *Watts Bar*, LBP-09-26, 70 NRC at ___ (slip op. at 19), the Staff supports TVA’s request that Contention 1 be dismissed as moot. See *McGuire/Catawba*, CLI-02-28, 56 NRC at 382-383.

CONCLUSION

In conclusion, the Staff supports dismissal of Contention 1 on the grounds that it is rendered moot by TVA's submittal of additional information.

Respectfully submitted,

/Signed (electronically) by/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO TENNESSEE VALLEY AUTHORITY'S MOTION TO DISMISS SOUTHERN ALLIANCE FOR CLEAN ENERGY'S CONTENTION 1 AS MOOT," dated May 6, 2010, have been served upon the following by the Electronic Information Exchange, this 6th day of May 2010:

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