



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 1, 2010

Mr. Ashok S. Bhatnagar
Senior Vice President
Nuclear Generation Development
and Construction
Tennessee Valley Authority
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

SUBJECT: WATTS BAR NUCLEAR PLANT, UNIT 2 – REVISED NOTICE OF RECEIPT OF
UPDATE ANTITRUST INFORMATION AND OPPORTUNITY FOR PUBLIC
COMMENT (TAC NO. ME0853)

Dear Mr. Bhatnagar:

In a letter dated June 24, 2010, the U.S. Nuclear Regulatory Commission (NRC) informed you that it was forwarding a "Notice of Receipt of Updated Antitrust Information and Opportunity for Public Comment," to the Office of the Federal Register for publication. However, during the processing of the notice, several changes were required, including the address for submission of comments. The enclosed notice has been revised and has been forwarded to the Office of the Federal Register for publication.

This notice relates to your updated application for an operating license (OL) dated March 4, 2009, for Watts Bar Nuclear Plant, Unit 2. By letter dated May 13, 2010, you submitted updated antitrust information in conjunction with this updated OL application. The antitrust information will assist the NRC staff in determining whether there have been any significant changes since the completion of the original antitrust review.

If you have any questions, please contact me at 301-415-1457.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick D. Milano".

Patrick D. Milano, Senior Project Manager
Watts Bar Special Projects Branch
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-391

Enclosure:
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UNITED STATES NUCLEAR REGULATORY COMMISSIONTENNESSEE VALLEY AUTHORITYDOCKET NO. 50-391NOTICE OF RECEIPT OF UPDATED ANTITRUST INFORMATIONAND OPPORTUNITY FOR PUBLIC COMMENT[NRC-2008-0369]

By letter dated May 13, 2010, the Tennessee Valley Authority (TVA) submitted antitrust information in conjunction with its updated application for an operating license (OL) for a second pressurized-water reactor, Watts Bar Nuclear Plant (Watts Bar), Unit 2, located in Rhea County, Tennessee, approximately 50 miles northeast of Chattanooga, Tennessee. The information submitted to the U.S. Nuclear Regulatory Commission (NRC) will assist the staff in determining whether there have been any significant changes since the completion of the antitrust review conducted for Watts Bar in 1979. This *Federal Register* notice acknowledges receipt of the updated antitrust information, notifies the public of the availability of this information, seeks public comment on this information, and describes the procedures the NRC staff will use to evaluate the information.

On January 23, 1973, the NRC granted TVA's application for construction permits for Watts Bar, Units 1 and 2. On June 30, 1976, TVA filed an application for OLs for Watts Bar, Unit 1 and 2. The NRC issued an OL authorizing full-power operation of Watts Bar, Unit 1, in 1996. However, TVA did not complete construction of Unit 2, and construction was deferred. Since that time, the NRC has granted extensions of the time period for completing construction of Unit 2 under its construction permit. On March 4, 2009, TVA updated its application for an OL for Watts Bar, Unit 2. The receipt of the updated application was noticed in the *Federal*

Register on May 1, 2009 (74 FR 20350). The OL application is currently pending review before the NRC.

At the time the NRC issued the construction permit for Watts Bar, Unit 2, Section 105c of the Atomic Energy Act (AEA) of 1954, as amended, required the NRC to conduct an antitrust review on all applications for a license to construct or operate a production or utilization facility [42 U.S.C. § 2135(c)]. Thus, the NRC conducted an antitrust review in conjunction with the review of the application for a construction permit for Watts Bar, Unit 2 (37 FR 27646). In 2005, Congress determined that the NRC need not conduct antitrust reviews for applications filed after August 8, 2005 [42 U.S.C. § 2135(c)(9)]. Congress did so because “other Government agencies more specialized in financial matters have demonstrated oversight and authority sufficient to discern and address potential anticompetitive behavior of nuclear energy producers” (70 FR 61885). However, because TVA filed its original OL application for Watts Bar Unit 2 before 2005, under the AEA, the NRC must complete an antitrust review on this application.

Under Section 105(c)(2) of the AEA, the NRC will undertake an in-depth antitrust review on applications for an OL only when the NRC determines that “significant changes in the licensee’s activities or proposed activities have occurred subsequent” to the previous antitrust review on the construction permit [42 U.S.C. § 2135(c)(2)]. The Commission has interpreted this requirement to mean that the NRC must find “the situation as changed has negative antitrust implications” before it will conduct an in-depth antitrust review. See *South Carolina Electric and Gas Company and South Carolina Public Service Authority* (Virgil C. Summer Nuclear Station, Unit 1), CLI-80-28, 11 NRC 817, 835 (1980). Thus, the threshold question before the NRC is whether significant changes have occurred in TVA’s activities, from an antitrust perspective, since the NRC previously conducted its antitrust review on the application to construct Watts Bar, Unit 2.

The data submitted by TVA on May 13, 2010, contained information for review, based on NRC Regulatory Guide 9.3, "Information Needed by the AEC Regulatory Staff in Connection with its Antitrust Review of Operating License Applications for Nuclear Power Plants." This information updated previous submissions to the NRC that supported the significant changes review the agency conducted on TVA for Watts Bar, Unit 1. The NRC completed this evaluation on August 15, 1991. Although the evaluation addressed TVA's OL application for Watts Bar, Unit 1, the analysis itself focused on TVA's economic activities. Thus, a separate significant changes analyses for Watts Bar, Unit 2, for that time period would be largely identical to the analysis already conducted for Unit 1. Therefore, the NRC staff sees no reason to conduct such a repetitive significant changes analysis. Instead, in conducting its significant changes analysis for Watts Bar, Unit 2, the NRC will rely on the analysis of TVA's economic activities conducted for Watts Bar, Unit 1, for the time period between the issuance of the construction permit and August 15, 1991. In addition, for the time period from August 15, 1991, to the present, the NRC will conduct a new significant changes analysis for Watts Bar, Unit 2.

For further details pertinent to the matters under consideration, see the application for the facility OL dated June 30, 1975, as supplemented on September 27, 1976, and as updated on March 4, 2009, and the updated antitrust information dated May 13, 2010, which are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O-1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS,

contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession numbers for the OL application cover letter and supplement cover letter are ML073400595 and ML073381112, respectively. The ADAMS accession number for the update to the application is ML090700378. The ADAMS accession number for the antitrust information is ML101400185. To search for other related documents in ADAMS using the Watts Bar Nuclear Plant Unit 2 OL application docket number, 50-391, enter the term "05000391" in the "Docket Number" field when using either the Web-based search (advanced search) engine or the ADAMS find tool in Citrix.

Within 30 days from the date of this *Federal Register* notice, members of the public may send written comments with respect to significant changes related to antitrust matters that occurred since completion of the previous antitrust review to: Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mailstop: TWB-05B01, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555-0001, or by fax to RADB at (301) 492-3446, and should cite the publication date and page number of this *Federal Register* notice. Electronic comments may also be submitted to <http://www.regulations.gov>, and should be sent no later than 30 days from the date of this *Federal Register* notice to be considered in the review process. Comments will be available electronically and accessible through ADAMS at <http://adamswebsearch.nrc.gov/dologin.htm>.

Because these comments will not be edited to remove any identifying or contact information, the NRC cautions the commenter against including any information that he/she does not want to be publicly disclosed. The NRC requests that any person soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore,

they should not include any information in their comments that they do not want publicly disclosed.

The NRC will consider such comments submitted and forward those comments, as well as the information submitted by TVA, to the United States Attorney General. Upon reviewing this information, the United States Attorney General will provide the NRC with an opinion on whether there have been significant changes related to antitrust matters in TVA's activities.

Upon completion of the staff's review of significant changes, and after considering any opinion from the United States Attorney General and comments submitted by the public, the Director of the Office of Nuclear Reactor Regulation (NRR), as authorized by the Commission, may issue an initial finding as to whether there have been "significant changes" under Section 105c(2) of the AEA. A copy of this finding will be published in the *Federal Register* and will be sent to the Washington, D.C. public document room and to those persons providing comments or information in response to this notice. The NRC will also make that initial finding available in ADAMS.

If the initial finding concludes that there have not been any significant changes, a request for reevaluation of the finding may be submitted within 30 days of the date of that *Federal Register* notice. The results of that reevaluation, if requested, will also be published in the *Federal Register*, and copies will be sent to the Washington, D.C. public document room. The reevaluation will also be available on the NRC's public website through ADAMS. If that determination also finds no significant changes, it will become the final NRC decision after 30 days unless the Commission exercises sua sponte review.

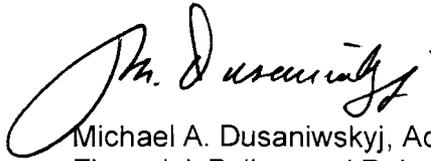
If the Director of NRR concludes that significant changes have occurred since the completion of the antitrust review that the NRC previously conducted, the NRC will begin the

procedures necessary to conduct an in-depth antitrust review, as required by Section 105c of the AEA.

Information about the proposed action and the antitrust review process may be obtained from Mr. Aaron Szabo at 301-415-1985 or by e-mail to Aaron.Szabo@nrc.gov.

Dated at Rockville, Maryland this 1st day of July 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink, appearing to read "M. Dusaniwskyj". The signature is written in a cursive style with a large, looping initial "M".

Michael A. Dusaniwskyj, Acting Chief
Financial, Policy, and Rulemaking Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

July 1, 2010

Mr. Ashok S. Bhatnagar
Senior Vice President
Nuclear Generation Development
and Construction
Tennessee Valley Authority
6A Lookout Place
1101 Market Street
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/RA/

Patrick D. Milano, Senior Project Manager
Watts Bar Special Projects Branch
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

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| OFFICE | NRR/LPWB/PM | NRR/LPWB/LA | NRR/PFAB/(A)BC | OGC | NRR/LPWB/BC |
| NAME | PMilano | BClayton | MDusaniwskyj | EWilliamson (nlo) | SCampbell |
| DATE | 07/01/10 | 07/01/10 | 07/01/10 | 06/24/10 | 07/01/10 |

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