

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 Nuclear Plant, Unit 2)	)	
	)	

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NRC STAFF'S ANSWER TO SOUTHERN ALLIANCE FOR  
CLEAN ENERGY'S MOTION FOR LEAVE TO FILE A NEW CONTENTION

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INTRODUCTION

The U.S. Nuclear Regulatory Commission (NRC) staff (Staff) files this answer opposing the motion by the Southern Alliance for Clean Energy (SACE) for leave to file a new contention (Motion to File a New Contention).<sup>1</sup> The Atomic Safety and Licensing Board (Board) should deny the motion because SACE's proposed new contention does not satisfy the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). Specifically, the proposed new contention is not material to the findings that the NRC must make to support the action involved in this proceeding and it is not supported by alleged facts or expert opinions. Additionally, SACE has not met the good cause requirement of 10 C.F.R. § 2.309(c)(1) for new contentions filed after the deadline because the information upon which its motion is based was previously available.

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<sup>1</sup> Southern Alliance for Clean Energy's Motion for Leave to File a New Contention Concerning TVA's Failure to Comply with 10 C.F.R. § 50.34(b)(4) (dated Feb. 5, 2015, filed via the NRC's E-Filing System Feb. 6, 2015) (available at Agencywide Documents Access and Management System (ADAMS) Accession No. ML15037A318 as a single document along with Southern Alliance for Clean Energy's Motion to Reopen the Record, Declaration of Sandra L. Kurtz, Declaration of Jeannie V. McKinney, Declaration of Victoria Anne Murchie, and Declaration of Diane Curran).

The Staff is filing its answer to the Motion to File a New Contention within the time period of 10 C.F.R. § 2.309(i)(1) based on the motion's February 6, 2015 service on the parties. See Memorandum and Order (Granting Unopposed Motion to Permit Correction of Filing) (Feb. 26, 2015) (ADAMS Accession No. ML15057A238). The Staff previously filed a response to SACE's Motion to Reopen on February 18, 2015. See NRC Staff's Answer to Southern Alliance for Clean Energy's Motion to Reopen the Record (Feb. 18, 2015) (ADAMS Accession No. ML15049A365).

## BACKGROUND

This proceeding concerns an application by the Tennessee Valley Authority (TVA) for an operating license (OL) under 10 C.F.R. Part 50 for the Watts Bar Nuclear Plant (WBN) Unit 2 (WBN2). In response to an opportunity to request a hearing on the WBN2 OL application,<sup>2</sup> SACE requested a hearing on seven proposed contentions<sup>3</sup> and was granted a hearing on two of these contentions.<sup>4</sup> Ultimately, all of SACE's proposed and admitted contentions were disposed of and the WBN2 proceeding was terminated on September 9, 2014,<sup>5</sup>

On February 5, 2015, SACE filed a motion to reopen the record in this proceeding (Motion to Reopen).<sup>6</sup> On February 6, 2015, SACE filed a corrected version of this filing, which

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<sup>2</sup> See Tennessee Valley Authority; 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 to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation, 74 Fed. Reg. 20,350, 20,351 (May 1, 2009) (setting the deadline for hearing requests at 60 days after the date of publication of this notice).

<sup>3</sup> Petition to Intervene and Request for Hearing (July 13, 2009) (ADAMS Accession No. ML091950686). The seven proposed contentions were: (1) "Failure to List and Discuss Compliance With Required Federal Permits, Approvals and Regulations"; (2) "Inadequate SAMA Uncertainty Analysis"; (3) "Inadequate Consideration of Severe Accident Mitigation Alternatives With Respect to AC Backup for Diesel Generators"; (4) "Inadequate Discussion of Need for Power and Energy Alternatives"; (5) "Inadequate Basis for Confidence in Availability of Spent Fuel Repository and Safe Means of Interim Spent Fuel Storage"; (6) "TVA's EIS Fails To Satisfy The Requirements Of NEPA Because It Does Not Contain An Adequate Analysis Of The Environmental Effects Of The Impact Of A Large, Commercial Aircraft Into The Watts Bar Nuclear Plant"; and (7) "Inadequate Consideration of Aquatic Impacts." *Id.* at 6-36. None of these proposed contentions have to do with seismic issues.

<sup>4</sup> *Tennessee Valley Auth.* (Watts Bar Nuclear Plant, Unit 2), LBP-09-26, 70 NRC 939, 946 (2009) (admitting the request for hearing with respect to SACE along with proposed contentions 1 and 7). The Board found that SACE had established standing based, in part, on the Declaration of Standing of Sandra Kurtz (June 16, 2009). *Id.* at 947 n.16. The Declaration of Standing of Sandra Kurtz (June 16, 2009) is substantively similar to the Declaration of Sandra L. Kurtz (Feb. 4, 2015) provided with SACE's Motion to File a New Contention; therefore, the Staff does not contest SACE's standing in this instance.

<sup>5</sup> See *Tennessee Valley Auth.* (Watts Bar Unit 2), LBP-14-13, 80 NRC \_\_\_, \_\_\_ (Sept. 9, 2014) (slip op. at 2).

<sup>6</sup> See Southern Alliance for Clean Energy's Motion to Reopen the Record (Feb. 5, 2015).

included, for the first time, SACE's Motion to File a New Contention.<sup>7</sup> SACE's Motion to File a New Contention proffers the following proposed new contention:

TVA's Final Safety Analysis Report (FSAR) for WBN2 is deficient under 10 C.F.R. § 50.34(b)(4) because it does not include the information provided in TVA's Dec. 30, 2014 Expedited Seismic Evaluation Process ("ESEP") Report for Watts Bar Nuclear Plant (ML14365A072).<sup>[8]</sup> Section 50.34(b)(4) requires an FSAR to provide information about the "design and performance of structures, systems and components ["SSCs"]," taking into account "any pertinent information developed since the submittal of the preliminary safety analysis report."<sup>[9]</sup> The purpose of the information is to allow an assessment of "the risk to public health and safety resulting from operation of the facility." 10 C.F.R. § 50.34(a).<sup>10</sup> The information developed by TVA and presented in the ESEP Report is "pertinent" to the NRC's review of whether the

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<sup>7</sup> See Southern Alliance for Clean Energy's Unopposed Motion to Permit Correction of Filing, at 1 (Feb. 6, 2015) (ADAMS Accession No. ML15037A549).

<sup>8</sup> Letter from J. W. Shea, Vice President, Nuclear Licensing, TVA, to NRC, Tennessee Valley Authority's Watts Bar Nuclear Plant Expedited Seismic Evaluation Process Report (CEUS Sites) Response to NRC Request for Information Pursuant to 10 CFR 50.54(f) Regarding Recommendation 2.1 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident, at Enclosure (Dec. 30, 2014, made publicly-available on Jan. 6, 2015) (ADAMS Accession No. ML14365A072) (ESEP Report).

<sup>9</sup> In full, 10 C.F.R. § 50.34(b)(4) states:

A final analysis and evaluation of the design and performance of structures, systems, and components with the objective stated in paragraph (a)(4) of this section and taking into account any pertinent information developed since the submittal of the preliminary safety analysis report. Analysis and evaluation of ECCS cooling performance following postulated loss-of-coolant accidents shall be performed in accordance with the requirements of § 50.46 for facilities for which a license to operate may be issued after December 28, 1974.

<sup>10</sup> In full, 10 C.F.R. § 50.34(a)(4) states:

A preliminary analysis and evaluation of the design and performance of structures, systems, and components of the facility with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of ECCS cooling performance and the need for high point vents following postulated loss-of-coolant accidents must be performed in accordance with the requirements of §§ 50.46 and 50.46a of this part for facilities for which construction permits may be issued after December 28, 1974.

design and performance of SSCs meets the “reasonable assurance” standard in NRC regulations and the Atomic Energy Act, as set forth by 10 C.F.R. §§ 50.57(a)(2), (a)(3), and (a)(6).<sup>[11]</sup>

Motion to File a New Contention at 1-2. In essence, SACE asserts that the WBN Expedited Seismic Evaluation Process (ESEP) Report contains information pertinent to the NRC’s review of the risk to public health and safety and to the question of whether there is reasonable assurance that WBN2 will operate safely and that, therefore, pursuant to 10 C.F.R.

§ 50.34(b)(4) and 10 C.F.R. § 50.57(a), this information must be included in the WBN2 FSAR.<sup>12</sup>

In particular, the information that SACE points to is that information in the ESEP Report

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<sup>11</sup> In full, 10 C.F.R. § 50.57(a) states:

Pursuant to § 50.56, an operating license may be issued by the Commission, up to the full term authorized by § 50.51, upon finding that:

(1) Construction of the facility has been substantially completed, in conformity with the construction permit and the application as amended, the provisions of the Act, and the rules and regulations of the Commission; and

(2) The facility will operate in conformity with the application as amended, the provisions of the Act, and the rules and regulations of the Commission; and

(3) There is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations in this chapter; and

(4) The applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations in this chapter. However, no finding of financial qualification is necessary for an electric utility applicant for an operating license for a utilization facility of the type described in § 50.21(b) or § 50.22.

(5) The applicable provisions of part 140 of this chapter have been satisfied; and

(6) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.

<sup>12</sup> Motion to File a New Contention at 1-2, 4.

allegedly revealing “[t]he fact that the seismic risk to WBN2 is now known to be greater than the safe shutdown earthquake (SSE) to which the reactor was designed.”<sup>13</sup>

On February 17, 2015 and February 18, 2015, TVA and the Staff filed answers opposing SACE’s Motion to Reopen, respectively.<sup>14</sup> The Staff’s Answer to SACE’s Motion to Reopen contained a complete explanation of the background information relevant to (1) the WBN2 OL application, (2) the NRC’s response to the Fukushima Dai-ichi accident, including its issuance of a request for information pursuant to 10 C.F.R. § 50.54(f) to all U.S. nuclear power reactor licensees and holders of construction permits in active or deferred status, such as TVA for WBN (the Fukushima 50.54(f) Letter),<sup>15</sup> and (3) TVA’s March 31, 2014 Seismic Hazard Report<sup>16</sup> and December 30, 2014 Expedited Seismic Evaluation Process (ESEP) Report that were submitted to the NRC in response to the Fukushima 50.54(f) Letter.<sup>17</sup> This background will not be repeated here. However, significant to SACE’s Motion to File a New Contention are the facts (1) that the WBN Seismic Hazard Report and the WBN ESEP Report are part of the NRC’s ongoing review of the Fukushima accident, (2) that the WBN Seismic Hazard Report was

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<sup>13</sup> *Id.* at 2. See also Motion to Reopen at 4 (stating that the ESEP Report contains information “regarding the ability of SSCs to withstand a better-understood and more-severe earthquake risk than TVA designed WBN2 to withstand when the reactor was built.”).

<sup>14</sup> Tennessee Valley Authority’s Answer Opposing Southern Alliance for Clean Energy’s Motion to Reopen the Record (Feb. 17, 2015) (ADAMS Accession No. ML15048A061); NRC Staff’s Answer to Southern Alliance for Clean Energy’s Motion to Reopen the Record (Feb. 18, 2015) (ADAMS Accession No. ML15049A365).

<sup>15</sup> Letter from the NRC to All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status, Request for Information Pursuant to Title 10 of the *Code of Federal Regulations* 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3, of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (Mar. 12, 2012) (ADAMS Accession No. ML12053A340) (The Fukushima 50.54(f) Letter).

<sup>16</sup> See Letter from J. W. Shea, Vice President, Nuclear Licensing, TVA, to NRC, Tennessee Valley Authority’s Seismic Hazard and Screening Report (CEUS Sites), Response to NRC Request for Information Pursuant to 10 CFR 50.54(f) Regarding Recommendation 2.1 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident, at Enclosure 4 (Mar. 31, 2014, made publicly-available on Apr. 17, 2014) (ADAMS Accession No. ML14098A478) (WBN Seismic Hazard Report).

<sup>17</sup> See NRC Staff’s Answer to Southern Alliance for Clean Energy’s Motion to Reopen the Record, at 2-8.

publicly available before the WBN ESEP Report (*i.e.*, April 17, 2014 versus January 6, 2015), and (3) that the WBN Seismic Hazard Report states, as is subsequently repeated in the WBN ESEP Report, that the reevaluated ground motion response spectrum (GMRS) at the WBN site exceeds the WBN safe shutdown earthquake (SSE).<sup>18</sup> Therefore, in its answer to SACE's Motion to Reopen, the Staff argued that the earlier WBN Seismic Hazard Report provided "the exact information regarding 'a better-understood and more-severe earthquake risk than TVA designed WBN2 to withstand when the reactor was built' that SACE claims that the WBN2 FSAR is lacking" and, thus, that the Motion to Reopen is untimely.<sup>19</sup> Also, the Staff argued that the WBN ESEP Report is part of the NRC's ongoing Fukushima review and, thus, is not material to the WBN2 OL proceeding.<sup>20</sup>

### DISCUSSION

Since the WBN2 proceeding was terminated on September 9, 2014,<sup>21</sup> SACE's Motion to File a New Contention is predicated on the Board granting SACE's Motion to Reopen. However, as explained by the Staff in its answer to SACE's Motion to Reopen, SACE does not carry its heavy burden of satisfying the Commission's strict reopening requirements.<sup>22</sup> Thus,

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<sup>18</sup> Compare WBN Seismic Hazard Report at E4-31 ("In the 1 to 10 Hz part of the response spectrum" and "[f]or the range above 10 Hz, the GMRS exceeds the SSE.") with ESEP Report at 13 ("Figure 4-2 compares the GMRS to the SSE and illustrates that the GMRS exceeds the SSE in the frequency range above 4.5 Hertz (Hz)."). The ESEP Report even refers to the WBN Seismic Hazard Report as having previously provided this information. See ESEP Report at 23 ("As identified in the WBNP Seismic Hazard and GMRS submittal, WBNP screens in for a risk evaluation.").

<sup>19</sup> NRC Staff's Answer to Southern Alliance for Clean Energy's Motion to Reopen the Record at 11 (quoting Motion to Reopen at 4).

<sup>20</sup> *Id.* at 16.

<sup>21</sup> See *Watts Bar*, LBP-14-13, 80 NRC at \_\_\_ (slip op. at 2).

<sup>22</sup> See, e.g., *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005), quoting *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523-24 (1973) ("[A] party seeking to reopen a closed record to raise a new matter faces an elevated burden to lay a proper foundation for its claim [and] Commission practice holds that the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention [such that] . . . 'the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition.'").



because the Board should deny SACE's Motion to Reopen, it need not separately address whether SACE's subsequent Motion to File a New Contention satisfies the applicable Commission requirements.

However, if the Board were to grant SACE's Motion to Reopen, then it must address whether SACE's Motion to File a New Contention satisfies the 10 C.F.R. § 2.309(c) requirements for new contentions filed after the deadline in 10 C.F.R. § 2.309(b). See 10 C.F.R. § 2.326(d). These requirements include both the "good cause" requirement of 10 C.F.R. § 2.309(c)(1) and the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). See 10 C.F.R. § 2.309(c)(1), (3)-(4).<sup>23</sup> As explained below, though, SACE's Motion to File a New Contention does not satisfy either of these requirements and, therefore, it should be denied as inadmissible.

I. SACE's Motion Should be Denied Because it Does Not Satisfy the Contention Admissibility Requirements of 10 C.F.R. § 2.309(f)(1)

SACE argues that the WBN2 OL application is inadequate because it doesn't contain the information found in the WBN ESEP Report.<sup>24</sup> Specifically, SACE makes a legal argument based on 10 C.F.R. § 50.34(b)(4) and 10 C.F.R. § 50.57(a). Section 50.34(b)(4) states that FSARs are supposed to "tak[e] into account any pertinent information developed since the submittal of the of the preliminary safety analysis report [(PSAR)]." SACE asserts that, per 10 C.F.R. § 50.34(a), "pertinent information" is that information required to make an assessment of the risk to public health and safety resulting from the operation of the facility.<sup>25</sup> Then SACE points to 10 C.F.R. § 50.57(a), which provides the findings that are required before the

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<sup>23</sup> See also *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 124 (2009) ("The appropriate mechanism . . . to raise a new issue where . . . the record of the proceeding had closed . . . [is] to address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing.").

<sup>24</sup> Motion to File a New Contention at 1-2.

<sup>25</sup> *Id.*

Commission may issue an OL including a finding of “reasonable assurance” that the activities authorized by the OL can be conducted without endangering the health and safety of the public.<sup>26</sup> Based on these regulations, SACE concludes that the information in the WBN ESEP Report is “pertinent” to the NRC’s required “reasonable assurance” finding.<sup>27</sup> However, beyond this conclusory assertion, SACE does not explain either how the information in the WBN ESEP Report is material to the findings that the NRC must make to issue an OL for WBN2 or how the alleged link between the WBN ESEP Report and the reasonable assurance of the WBN2 OL application is supported by facts or expert opinions. Therefore, SACE’s proposed new contention does not satisfy either 10 C.F.R. § 2.309(f)(1)(iv) or 10 C.F.R. § 2.309(f)(1)(v) and should be denied.<sup>28</sup>

A. SACE’s Motion Should be Denied Because it Does Not Satisfy  
10 C.F.R. § 2.309(f)(1)(iv)

SACE’s proposed new contention is inadmissible under 10 C.F.R. § 2.309(f)(1)(iv) because SACE does not demonstrate that it is material to the findings that the NRC must make in support of the action involved in this proceeding. As a procedural matter, beyond simply stating that the information in the WBN ESEP Report is pertinent to the NRC’s reasonable assurance standard, SACE does not provide any specific reason for why this information should be included in the WBN2 FSAR. Missing from SACE’s Motion to File a New Contention is any citation to any specific portion of the WBN2 FSAR, and any challenge to the geologic, seismic, and geotechnical information therein. Instead, on its face, the WBN FSAR appears to be

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<sup>26</sup> See 10 C.F.R. § 50.57(a)(3).

<sup>27</sup> Motion to File a New Contention at 1-2.

<sup>28</sup> See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999) (stating that a failure to comply with any one of the contention admissibility requirements is grounds for dismissing a contention).

consistent with the applicable NRC guidance<sup>29</sup> in that FSAR Section 2.5 addresses “Geology, Seismology, and Geotechnical Engineering Summary of Foundation Conditions,” FSAR Section 3.2.1 addresses “Seismic Classifications,” FSAR Section 3.7 addresses “Seismic Design,” FSAR Section 3.8 addresses “Design of Category I Structures,” and FSAR Section 3.10 addresses “Seismic Design of Category I Instrumentation and Electrical Equipment.”<sup>30</sup>

The regulatory basis of SACE's proposed new contention is 10 C.F.R. § 50.34(b)(4), which requires TVA to take into account any pertinent information developed since the submittal of the PSAR. But SACE fails to give any further explanation of how the claimed omission of the information provided in the WBN ESEP Report materially affects the ability of the NRC to take final agency action on the WBN2 OL application. While SACE broadly asserts that the information presented in the WBN ESEP Report is “pertinent” to the NRC's review,<sup>31</sup> SACE does not pinpoint exactly what information from the ESEP Report must be summarized in the FSAR to satisfy SACE's interpretation of 10 C.F.R. § 50.34(b)(4), let alone how not summarizing the ESEP Report in the FSAR materially affects the NRC's findings regarding licensing.<sup>32</sup> The Commission's regulation at 10 C.F.R. § 50.34(b)(4) does not provide a checklist of what must be present in an FSAR, accordingly SACE cannot simply assert that information is missing without further explanation.

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<sup>29</sup> See Regulatory Guide 1.70, Rev. 3, Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants, LWR Edition (Nov. 1978) (ADAMS Accession No. ML011340072) (providing guidance regarding a standard format for PSARs and FSARs that is acceptable to the Staff in which seismic issues are discussed in sections 2.5, 3.2.1, 3.7, 3.8, and 3.10).

<sup>30</sup> See, e.g., FSAR Amendment 110, Table of Contents (ADAMS Accession No. ML13255A262).

<sup>31</sup> Motion to File a New Contention at 1-2.

<sup>32</sup> Although the sufficiency of TVA's application can be a proper target of contentions, the sufficiency of the Staff's safety review of the application is not a proper target of contentions in NRC adjudications. See *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 493 n.56 (2010) (“The contention . . . inappropriately focused on the Staffs [sic] review of the application rather than upon the errors and omissions of the application itself. Such challenges are not permitted in our adjudications. See, e.g., *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 123 n.39 (2009); Final Rule: ‘Changes to Adjudicatory Process,’ 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).”).

As a substantive matter, also missing from SACE's proposed new contention is any meaningful explanation of how the claimed omission of the information in the WBN ESEP Report from the FSAR relates to a safety-significant issue (*i.e.*, one that is material to the NRC's licensing decision). In fact, despite SACE's conclusory statements to the contrary, the information in the WBN ESEP Report that the GMRS at the WBN site exceeds the WBN SSE is not material to the 10 C.F.R. § 50.57(a) safety findings that the Commission must make in order to issue the WBN2 OL. This is because the WBN ESEP Report is part of the NRC's ongoing review of the Fukushima accident.<sup>33</sup> The Staff and the Commission have made clear that currently operating U.S. nuclear power plants are safe despite this ongoing review, that licensing may proceed despite this ongoing review, and that the NRC has the authority to later impose the lessons-learned from this ongoing review on all applicants for and holders of NRC licenses once the review is concluded. For instance, in the Fukushima 50.54(f) Letter, the Staff stated that, once it has collected all of the necessary information it "will determine whether additional regulatory actions are necessary (e.g., update the design basis and SSCs important to safety) to protect against the updated hazards."<sup>34</sup> Additionally, after the Fukushima accident, various petitioners asserted that the NRC was acting inconsistent with the Atomic Energy Act and the National Environmental Policy Act by continuing to issue licenses and planning to apply any lessons-learned from its Fukushima review retrospectively.<sup>35</sup> The Commission disagreed stating, in part, that "for the licenses that the NRC issues before completing its review, any new Fukushima-driven requirements can be imposed later, if necessary to protect the public health

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<sup>33</sup> See, e.g., ESEP Report at 6 ("The intent of the ESEP is to perform an interim action in response to the NRC's 50.54(f) letter to demonstrate Seismic Margin through a review of a subset of the plant equipment that can be relied upon to protect the Reactor Core following beyond design basis seismic events.").

<sup>34</sup> The Fukushima 50.54(f) Letter at Enclosure 1, p.1.

<sup>35</sup> *Union Elec. Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, 74 NRC 141, 159 (2011).

and safety.”<sup>36</sup> Therefore, since it is part of the NRC’s ongoing review of the Fukushima accident, the WBN ESEP Report is not material to the safety findings that the Commission must make now regarding the WBN2 OL application, even though the WBN ESEP Report may eventually affect the imposition of future requirements on WBN2 following the completion of the Fukushima review.

Moreover, the fact that documents related to the NRC’s ongoing Fukushima review are not currently material to licensing proceedings is doubly true for the WBN2 OL application proceeding because of the unique status of WBN2 as the second reactor at an existing dual unit facility. Because of this status, the Commission directed the Staff to “employ[] the current licensing basis for [WBN Unit 1 (WBN1)] as the reference basis for the review and licensing of [WBN2].”<sup>37</sup> With respect to WBN1, and all other operating U.S. nuclear power plants, the Commission has stated that, although as a result of its review of the Fukushima accident it may, in the future, determine that regulatory or procedural changes are warranted, nothing learned to date puts the continued safety of these plants into question.<sup>38</sup> Thus, the NRC’s ongoing Fukushima review is not yet material to WBN1, which remains safe to operate. Logically then, if WBN1 is safe to operate despite the GMRS at the WBN site exceeding the WBN SSE, then this information is also not currently safety significant with respect to WBN2, which shares the same licensing basis as WBN1.

Ultimately, SACE has not demonstrated that the seismic information in the WBN ESEP Report is material to the safety findings that the Commission must make related to the WBN2 OL application. On the contrary, the Commission’s position with respect to the ongoing

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<sup>36</sup> *Id.* at 166.

<sup>37</sup> Staff Requirements Memorandum (SRM) SECY-07-0096, *Possible Reactivation of Construction and Licensing Activities for the Watts Bar Nuclear Plant Unit 2* (July 25, 2007) (ADAMS Accession No. ML072060688).

<sup>38</sup> *Callaway Plant*, CLI-11-05, 74 NRC at 161.

Fukushima review process demonstrates that the WBN ESEP Report is not yet material to the licensing of WBN2, that the WBN2 licensing should proceed despite the existence of the WBN ESEP Report, and that any final findings of the ongoing Fukushima review will be imposed on WBN2 whether it is, at that time, still at the application stage or is an operating reactor.

B. SACE's Motion Should be Denied Because it Does Not Satisfy  
10 C.F.R. § 2.309(f)(1)(v)

SACE's proposed new contention is inadmissible under 10 C.F.R. § 2.309(f)(1)(v) because it does not provide a concise statement of the alleged facts or expert opinions which support SACE's position. Instead, SACE attempts to satisfy 10 C.F.R. § 2.309(f)(1)(v) by stating that it "relies entirely on the factual statements made by TVA."<sup>39</sup> The Declaration of Diane Curran, which is attached to SACE's Motion to File a New Contention but not referenced in the motion, also states that the "factual statements in SACE's . . . Motion for Leave to File a New Contention" are based solely on the "statements made by TVA and the NRC Staff in correspondence and reports."<sup>40</sup> However, this reliance purely on the factual statements in the WBN ESEP Report does not amount to "facts or expert opinions which support [SACE's] position"<sup>41</sup> because the ESEP Report, by its own terms, *does not* support SACE's position that the information in the ESEP Report represents a risk to the public health and safety. On the contrary, the ESEP Report explicitly reaches the opposite conclusion and states that there are "no necessary planned modifications" and that there are "no additional actions to be performed as a result of the ESEP [Report]."<sup>42</sup> SACE does not provide any facts or expert opinions to dispute this conclusion, but instead actually relies on all of the information used by TVA in reaching this conclusion. Therefore, although SACE sets forth the argument that the WBN

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<sup>39</sup> Motion to File a New Contention at 6.

<sup>40</sup> Declaration of Diane Curran.

<sup>41</sup> 10 C.F.R. § 2.309(f)(1)(v).

<sup>42</sup> ESEP Report at 23-24.

ESEP Report represents a risk to the public health and safety, it does not provide support for this argument and, as a result, its proposed new contention is inadmissible.

II. SACE's Motion Should be Denied Because it Does Not Satisfy the Good Cause Requirement of 10 C.F.R. § 2.309(c)(1)

Motions for leave to file new contentions filed after the filing deadline will not be entertained absent a determination by the presiding officer that the participant has demonstrated good cause by showing that:

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

10 C.F.R. § 2.309(c)(1).

The basis for SACE's proposed new contention is that the WBN2 OL application is inadequate because TVA allegedly omits from the WBN2 FSAR information that is in the WBN ESEP Report.<sup>43</sup> In order to satisfy the timing requirements of 10 C.F.R. § 2.309(c)(1), SACE must demonstrate that it couldn't have raised this argument earlier than its February 6, 2015 filing of its Motion to File a New Contention.<sup>44</sup> However, SACE fails to make this demonstration because the information that SACE points to in the WBN ESEP Report is neither new nor materially different from information that was previously available to SACE. Specifically, SACE argues that the ESEP Report allegedly reveals "the fact that the seismic risk to WBN2 is now

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<sup>43</sup> See Motion to File a New Contention at 5 (stating that the proposed contention "challenges the adequacy of TVA's FSAR to comply with NRC safety regulations.").

<sup>44</sup> See *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 NRC 491, 498 (2012) (indicating that the dispositive question regarding whether the information on which a new contention is based was previously available or whether it is materially different from what was previously available, and whether it has been submitted in a timely fashion based on the information's availability is "whether the contention could have been raised earlier").

known to be greater than the [SSE] to which the reactor was designed.”<sup>45</sup> However, this same information that the reevaluated GMRS at the WBN site exceeds the WBN SSE was included in the WBN Seismic Hazard Report,<sup>46</sup> which was publicly-available on April 17, 2014, or almost ten months before the February 6, 2015 filing of SACE’s motion. Therefore, SACE’s Motion to File a New Contention could have been raised earlier and, consequently, it does not satisfy the timeliness requirements of 10 C.F.R. § 2.309(c)(1) and should be denied.<sup>47</sup>

### CONCLUSION

SACE’s Motion to File a New Contention does not satisfy both the requirements of 10 C.F.R. § 2.309(c)(1) and the requirements of 10 C.F.R. § 2.309(f)(1); therefore, it is inadmissible.

Respectfully submitted,

**/Signed (electronically) by/**

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<sup>45</sup> Motion to File a New Contention at 2.

<sup>46</sup> *Compare* WBN Seismic Hazard Report at E4-31 (“In the 1 to 10 Hz part of the response spectrum” and “[f]or the range above 10 Hz, the GMRS exceeds the SSE.”) *with* ESEP Report at 13 (“Figure 4-2 compares the GMRS to the SSE and illustrates that the GMRS exceeds the SSE in the frequency range above 4.5 Hertz (Hz).”). The ESEP Report even refers to the WBN Seismic Hazard Report as having previously provided this information. *See* ESEP Report at 23 (“As identified in the WBNP Seismic Hazard and GMRS submittal, WBNP screens in for a risk evaluation.”).

<sup>47</sup> Additionally, SACE does not actually argue that its Motion to File a New Contention is timely based on the public availability of the WBN ESEP Report, but, instead, erroneously bases its timeliness argument on the public availability of the “Continued Storage Rule.” Motion to File a New Contention at 6-7. Therefore, by its own terms, SACE’s argument cannot satisfy 10 C.F.R. § 2.309(c)(1). Finally, even if the information that SACE points to in the ESEP Report were new and materially different information, SACE’s Motion to File a New Contention would still not satisfy 10 C.F.R. § 2.309(c)(1)(iii) because it was filed and served on the parties for the first time on February 6, 2015, which is more than 30 days after the public availability of the ESEP Report.



**Executed in Accord with 10 CFR 2.304(d)**

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Dated at Rockville, Maryland  
this 3rd day of March, 2015

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 Nuclear Plant, Unit 2)	)	
	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO SOUTHERN ALLIANCE FOR CLEAN ENERGY'S MOTION FOR LEAVE TO FILE A NEW CONTENTION," dated March 3, 2015, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 3rd day of March, 2015.

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 3rd day of March, 2015