

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

ORIGINAL

_____)
SOUTHERN ALLIANCE FOR)
CLEAN ENERGY,)
))
Petitioner,)
))
v.)
))
UNITED STATES NUCLEAR)
REGULATORY COMMISSION)
COMMISSION and the UNITED)
STATES OF AMERICA,)
))
Respondents,)
_____)

Case No. _____
15-1427

PETITION FOR REVIEW

Pursuant to 42 U.S.C. § 2239, 28 U.S.C. § 2344, 5 U.S.C. § 702, Fed. R. App. P. 15(a), and D.C. Cir. Rule 15(a), and through undersigned counsel, Southern Alliance for Clean Energy (“SACE”) hereby petitions this Court for review of the following decisions of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”):

- Notice of Issuance of Facility Operating License No. NPF-96, Watts Bar Nuclear Plant Unit 2 (Oct. 22, 2015) (Attachment 1);
- Record of Decision, U.S. Nuclear Regulatory Commission, Docket No. 50-391, Operating License Application for Watts Bar Nuclear Plant, Unit 2 (Oct. 22, 2015) (Attachment 2);

- *Tennessee Valley Authority* (Watts Bar Unit 2), Memorandum and Order CLI-15-19 (Sept. 24, 2015) (Attachment 3);
- *Duke Energy Carolinas, L.L.C.*, (William States Lee III Nuclear Station, Units 1 and 2), *et al.*, CLI-15-15, 81 NRC 803 (2015) (Attachment 4).

Petitioner contends that by issuing an operating license for Watts Bar Unit 2, in reliance on the Continued Storage of Spent Nuclear Fuel Final Rule, 70 Fed. Reg. 56,238 (Sept. 19, 2014) (“Rule”) and the supporting Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, 70 Fed. Reg. 56,263 (Sept. 19, 2014) (“GEIS”), the NRC violated the National Environmental Policy Act and this Court’s decision in *State of New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (“*State of New York I*”). The Rule and GEIS are now on appeal to this Court in *State of New York v. NRC*, Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (“*State of New York II*”).

Accordingly, Petitioner asks this Court to review, reverse, and vacate the NRC’s licensing decision for Watts Bar Unit 2; and grant any other remedies that may be appropriate.

Petitioner has filed this Petition for Review in order to ensure that any decision by this Court in *State of New York II* will be implemented in the licensing decision for Watts Bar Unit 2. Petitioner does not seek to brief any issues in this appeal. Instead, Petitioner has filed the attached Motion to Hold in Abeyance,

asking the Court to defer resolution of this appeal until the Court issues a decision in *State of New York II*.

This filing is timely because it is made within the 60-day period established by the Hobbs Act, 28 U.S.C. § 2344, for bringing a petition for judicial review.

Venue is appropriate in the D.C. Circuit pursuant to 28 U.S.C. § 2343.

Respectfully submitted,



Diane Curran

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Counsel for Petitioner

November 20, 2015



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

October 22, 2015

Mr. Joseph W. Shea
Vice President, Nuclear Licensing
Tennessee Valley Authority
1101 Market Street, LP 3D-C
Chattanooga, TN 37402-2801

SUBJECT: ISSUANCE OF FACILITY OPERATING LICENSE NO. NPF-96, WATTS BAR
NUCLEAR PLANT UNIT 2

Dear Mr. Shea:

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Facility Operating License No. NPF-96 (enclosure 1), with the Technical Specifications (Appendix A), and the Environmental Protection Plan (Appendix B), for Watts Bar Nuclear Plant (WBN), Unit 2.

The final safety analysis report, which is part of TVA's application for an operating license, includes information that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components and of the facility as a whole.

The technical basis for the license is included in the "Safety Evaluation Report Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2" (NUREG-0847), and its supplements. In supplements 1 through 20 the NRC staff concluded that WBN Unit 1 met all applicable regulations and regulatory guidance. In Supplement 21 the NRC staff reported on the WBN, Unit 2 items to be resolved which were outstanding at the time that TVA deferred construction of WBN, Unit 2. In supplements 22 through 29 the staff documented its evaluation and closure of open items in response to TVA's application for a license to operate WBN Unit 2. As stated in Supplement 29 (Agencywide Documents Access and Management System Accession No. ML15282A051), the NRC staff has concluded that the requirements of Title 10 of the *Code of Federal Regulations* (CFR) 50.57 have been met such that an operating license may be issued for WBN, Unit 2.

The NRC staff's detailed written statement required by section 102(2)(C) of the National Environmental Policy Act is given in NUREG-0498, "Final Environmental Statement Related to the Operation of Watts Bar Nuclear Plant, Unit 2," Supplement 2 dated May 2013, which supplemented the 1978 final environmental statement related to the operating license application for WBN Units 1 and 2.

Enclosure 2 is a copy of the related *Federal Register* notice, the original of which has been sent to the Office of the Federal Register for publication.

J. Shea

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Two copies of Amendment No. 6 to indemnity agreement No. 8-88 are included as enclosure 3. Please countersign both copies and return one signed copy to this office.

Sincerely,



Anne T. Boland, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-391

Enclosures:

1. Facility Operating License No. NPF-96
2. *Federal Register* Notice
3. Amendment No. 6 to Indemnity Agreement No. 8-88

cc: Listserv

Enclosure 1

Watts Bar Nuclear Plant Unit 2 Operating License



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

TENNESSEE VALLEY AUTHORITY

DOCKET NO. 50-391

WATTS BAR NUCLEAR PLANT, UNIT 2

FACILITY OPERATING LICENSE

License No. NPF-96

1. The Nuclear Regulatory Commission (the Commission or the NRC) has found that:
 - A. The application for an operating license filed by the Tennessee Valley Authority (TVA, the licensee) complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
 - B. Construction of the Watts Bar Nuclear Plant, Unit 2 (the facility) has been substantially completed in conformity with Construction Permit No. CPPR-92 and the application, as amended, the provisions of the Act and the rules and regulations of the Commission;
 - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission;
 - D. There is reasonable assurance (i) that the activities authorized by this 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 Commission's regulations set forth in 10 CFR Chapter I;
 - E. TVA is technically qualified to engage in the activities authorized by this license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
 - F. TVA has satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements;"
 - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;
 - H. After weighing the environmental, economic, technical and other benefits of the facility against environmental and other costs and considering available alternatives, the issuance of this Facility Operating License No. NPF-96, subject to the conditions for protection of the environment set forth in the Environmental

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Protection Plan attached as Appendix B, is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied; and

- I. The receipt, possession, and use of source, byproduct and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40, and 70.
2. Based on the foregoing findings regarding this facility, Facility Operating License No. NPF-96 is hereby issued to TVA to read as follows:
 - A. This license applies to the Watts Bar Nuclear Plant, Unit 2, a pressurized water reactor and associated equipment (the facility) owned by TVA. The facility is located on the west bank of the Chickamauga Lake on TVA's site in Rhea County, Tennessee, and is described in TVA's Final Safety Analysis Report, as supplemented and amended up to Amendment No. 114 and in the Final Environmental Statement, Watts Bar Nuclear Plant Units 1 and 2, as supplemented and amended;
 - B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses TVA:
 - (1) Pursuant to Section 103 of the Act and 10 CFR Part 50, to possess, use, and operate the facility at the designated location in Rhea County, Tennessee, in accordance with the procedures and limitations set forth in this license;
 - (2) Pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time, special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, and as described in the Final Safety Analysis Report, as supplemented and amended;
 - (3) Pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use at any time, any byproduct, source and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
 - (4) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use in amounts as required, any byproduct, source, or special nuclear material without restriction to chemical or physical form, for sample analysis, instrument calibration, or other activity associated with radioactive apparatus or components; and
 - (5) Pursuant to the Act and 10 CFR Parts 30 and 70, to possess but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

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- C. The license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act, and to the rules, regulations, and orders of the Commission now or hereafter in effect, and is subject to the additional conditions specified or incorporated below.
- (1) Maximum Power Level

TVA is authorized to operate the facility at reactor core power levels not in excess of 3411 megawatts thermal.
 - (2) Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in Appendix A, and the Environmental Protection Plan contained in Appendix B, both of which are attached hereto, are hereby incorporated into this license. TVA shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.
 - (3) TVA shall implement permanent modifications to prevent overtopping of the embankments of the Fort Loudon Dam due to the Probable Maximum Flood by February 1, 2017.
 - (4) PAD4TCD may be used to establish core operating limits for Cycle 1 only. PAD4TCD may not be used to establish core operating limits for subsequent reload cycles.
 - (5) By December 31, 2017, the licensee shall report to the NRC that the actions to resolve the issues identified in Bulletin 2012-01, "Design Vulnerability in Electrical Power System," have been implemented.
 - (6) The licensee shall maintain in effect the provisions of the physical security plan, security personnel training and qualification plan, and safeguards contingency plan, and all amendments made pursuant to the authority of 10 CFR 50.90 and 50.54(p).
 - (7) TVA shall fully implement and maintain in effect all provisions of the Commission approved cyber security plan (CSP), including changes made pursuant to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The TVA approved CSP was discussed in NUREG-0847, Supplement 28.
 - (8) TVA shall implement and maintain in effect all provisions of the approved fire protection program as described in the Fire Protection Report for the facility, as described in NUREG-0847, Supplement 29, subject to the following provision:

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TVA may make changes to the approved fire protection program without prior approval of the Commission, only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

- (9) By May 31, 2018, TVA shall report that a listing organization acceptable to the NRC (as the Authority Having Jurisdiction) has determined that the fire detection monitoring panel in the main control room either meets the appropriate designated standards or has been tested and found suitable for the specified purpose.
 - (10) TVA will verify for each core reload that the actions taken if $F_{\alpha}^W(Z)$ is not within limits will assure that the limits on core power peaking $F_{\alpha}(Z)$ remain below the initial total peaking factor assumed in the accident analyses.
- D. The licensee shall have and maintain financial protection of such types and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.
- E. This license is effective as of the date of issuance and shall expire at midnight on October 21, 2055.

FOR THE NUCLEAR REGULATORY COMMISSION



William M. Dean, Director
Office of Nuclear Reactor Regulation

- Appendices:
- 1. Appendix A-
Technical Specifications
 - 2. Appendix B-
Environmental Protection Plan

Date of Issuance: October 22, 2015



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

RECORD OF DECISION
U.S. NUCLEAR REGULATORY COMMISSION
DOCKET NO. 50-391
OPERATING LICENSE APPLICATION FOR
WATTS BAR NUCLEAR PLANT, UNIT 2

October 22, 2015

BACKGROUND:

The Watts Bar Nuclear Plant (WBN or Watts Bar) is owned by the Tennessee Valley Authority (TVA) and is located in southeastern Tennessee, approximately 50 miles (80 kilometers) northeast of Chattanooga. The facility consists of two Westinghouse-designed four-loop pressurized-water reactors within ice condenser containments.

TVA received a construction permit for both units in 1973. In June 1982, the U.S. Nuclear Regulatory Commission (NRC) staff issued safety evaluation report (SER), NUREG-0847, "Safety Evaluation Report Related to the Operation of Watts Bar Nuclear Plant Units 1 and 2," on TVA's application for licenses to operate WBN Units 1 and 2. In SER Supplements (SSERs) 1 through 20, the NRC staff concluded that WBN Unit 1, met all applicable regulations and regulatory guidance, and on February 7, 1996, the NRC issued an operating license (OL) to WBN Unit 1. TVA did not complete WBN Unit 2. Accordingly, the NRC did not make a final approval or denial of the request for an operating license for WBN, Unit 2.

On March 4, 2009, TVA submitted an updated application in support of its request for an OL for WBN Unit 2, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090700378). Section 103 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) authorizes the NRC to issue operating licenses for utilization facilities. The NRC published a notice of receipt of the update to the application and the opportunity for hearing in the *Federal Register* on May 1, 2009 (74 FR 20350). The proposed action was issuance of a 40-year facility OL for WBN Unit 2.

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321), directs that an environmental impact statement (EIS) be prepared for major Federal actions that significantly affect the quality of the human environment. The NRC's regulations implementing NEPA list a full power operating license for a nuclear power reactor as an action that requires an EIS (10 CFR 51.20(b)(2)). In 1978, the NRC issued a final environmental statement related to the OL for WBN Units 1 and 2 (NUREG-0498, "Final Environmental Statement Related to Operation of Watts Bar Nuclear Plant Units Nos. 1 and 2," (December 1978, 1978 FES-OL, the final environmental statement (FES) is an EIS equivalent). Because TVA did not operate WBN Unit 2 as scheduled and there was new information relevant to environmental concerns, the NRC's regulations in 10 CFR 51.92, "Supplement to the Final Environmental Impact Statement," required the NRC staff to prepare a supplement to the 1978 FES-OL. Therefore, the NRC staff prepared NUREG-0498, Supplement 2 which was published in May 2013 (ADAMS Accession No. ML13144A092). This supplement updates NUREG-0498,

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Supplement 1, which was published in April 1995 (ADAMS Accession No. ML081430592). The purpose of NUREG-0498, Supplement 2, was to determine if there were substantial changes in the proposed action relevant to environmental concerns or if significant new circumstances or information existed related to environmental concerns that bore on the proposed action or its impacts.

Pursuant to 10 CFR 51.102 and 51.103, the NRC staff has prepared this concise public record of decision (ROD) to accompany its action on the WBN Unit 2 OL application. This ROD incorporates by reference the material contained in the NUREG-0498, Supplement 2, in accordance with 10 CFR 51.103(c).

DECISION:

The NRC makes the decision to grant or deny an OL based on whether the applicant has demonstrated that the environmental and safety requirements in the agency's regulations can be met during the period of operation. The results of the NRC's safety review of the WBN Unit 2 OL application are documented in the SER and SSERs 1 through 29. By letter dated February 12, 2015, the Advisory Committee on Reactor Safeguards (ACRS) notified the Commission of the ACRS's conclusions and recommendations (ADAMS Accession No. ML15039A005) which were:

1. There is reasonable assurance that WBN 2 can operate as the second unit of the dual-unit Watts Bar Nuclear Plant without undue risk to the health and safety of the public. The OL for WBN 2 should be approved following completion of remaining staff inspections and closure of remaining open items.
2. The integration of WBN 2 as the second unit in a dual-unit plant which has operated as a single unit for almost 20 years requires specific, detailed planning to ensure against creating challenges to WBN 1 operation. Our review indicates that this planning has been done and necessary preparations for WBN 2 operation have been made.
3. Adequate recirculation core cooling will be assured following a Loss of Coolant Accident, taking debris effects into account, provided high levels of containment cleanliness are maintained.
4. We strongly endorse the development of a methodology for Probabilistic Flooding Hazard Analysis. This is important for future use consistent with risk-informed, performance-based approaches to natural hazard assessment.

This ROD and the NUREG-0498, Supplement 2, which is incorporated by reference herein, document the NRC staff's decision for the environmental review that the adverse environmental impacts of the proposed action (i.e., issuance of an OL for WBN Unit 2) are not great enough to deny the option of issuing the OL.

Under its OL, TVA will be able to operate WBN Unit 2 for 40 years from the issuance of the license.

NEED FOR POWER:

Section 8.0 of NUREG-0498, Supplement 2 discusses the consideration of new information on the need for power. The current rule governing environmental review at the operating license

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stage (10 CFR 51.95) states that, unless otherwise determined by the Commission, a final environmental statement (FES) supplement on the operation of a nuclear power plant will not include a discussion of need for power. For Watts Bar Nuclear (WBN) Unit 2, the Commission in its Memorandum and Order (CLI-10-29, ADAMS Accession No. ML103340280) stated its expectation that the NRC staff would take the requisite 'hard look' at new information on the need for power, and authorized the NRC staff to supplement the FES if they concluded that there was new and significant information on the need for power. The Commission indicated that new and significant information would be information that would likely alter the cost-benefit balance of issuing the operating license for WBN Unit 2. After taking the requisite hard look, the NRC staff concludes that the new information on need for power is not significant information because it does not alter the cost-benefit balance of issuing the WBN Unit 2 operating license.

NRC EVALUATION OF ALTERNATIVES:

Section 7.0 of NUREG-0498, Supplement 2 discusses consideration of new information on the environmental impacts of alternatives. The current rule governing environmental review at the operating license stage (10 CFR 51.95) states that, unless otherwise determined by the Commission, a FES supplement on the operation of a nuclear power plant will not include a discussion of alternative energy sources, or of alternative sites. For WBN Unit 2, the Commission stated its expectation that the staff would take the requisite 'hard look' at new information on alternative sources of energy and authorized the NRC staff to supplement the FES if the NRC staff concluded that there was new and significant information on alternative sources of energy. The Commission indicated that new and significant information would be information that would likely tip the cost-benefit balance against issuance of the operating license for WBN Unit 2. While the Commission recognized that technologies might change, the Commission stated that it was unlikely that such changes would tip the NEPA cost-benefit balance against issuance of the operating license.

After taking the requisite hard look, the NRC staff concludes that the new information on alternative energy sources is not significant because it does not tip the cost-benefit balance against issuance of the WBN Unit 2 operating license. Although energy alternatives have changed in terms of performance and viability since TVA submitted its WBN Unit 2 construction permit EIS in 1972, the NRC staff's hard look at energy alternatives did not identify any new and significant information related to energy alternatives. The NRC staff did not identify a viable alternative that was clearly and substantially environmentally superior to operation of WBN Unit 2 (i.e., an alternative that would tip the cost-benefit balance).

CONTINUED STORAGE OF SPENT NUCLEAR FUEL:

Section 4.10.1, "Radiological Wastes," of NUREG-0498, Supplement 2, references the analysis for the onsite storage of spent fuel and the offsite radiological impacts resulting from spent fuel and high-level waste disposal for the period after the reactors have been permanently shut down. Section 4.10.1 further indicates that these two issues relied on the Commission's Waste Confidence Decision and Rule (10 CFR 51.23), which were vacated in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012). Therefore, NUREG-0498, Supplement 2 did not have an analysis of or make an impact determination on the environmental impacts associated with the onsite storage of spent nuclear fuel for the period after the licensed life for operation of a reactor and the offsite impacts of spent nuclear fuel and high-level waste disposal, including possible

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disposal in a deep geologic repository. Instead, NUREG-0498, Supplement 2 stated that it would rely on the revised 10 CFR 51.23 and its supporting EIS to provide the NEPA analyses of the waste confidence-related (i.e., continued storage) human health and environmental issues. On August 26, 2014, the Commission approved a revised rule at 10 CFR 51.23 and associated "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel" (NUREG-2157, ADAMS Accession Nos. ML14196A105 and ML14196A107). Subsequently, on September 19, 2014, the NRC published the revised rule (79 FR 56238) and NUREG-2157 (79 FR 56263). The revised rule adopts the generic impact determinations made in NUREG-2157 and codifies the NRC's generic determinations regarding the environmental impacts of continued storage of spent nuclear fuel beyond a reactor's OL (i.e., those impacts that could occur as a result of the storage of spent nuclear fuel at away-from-reactor or at-reactor sites after a reactor's licensed life for operation and until a permanent repository becomes available). As directed by 10 CFR 51.23(b), the impacts assessed in NUREG-2157 regarding continued storage are deemed incorporated into NUREG-0498, Supplement 2.

In CLI-14-08 (ADAMS Accession No. ML14238A242), the Commission held that the revised 10 CFR 51.23 and associated NUREG-2157 cure the deficiencies identified by the court in *New York* and stated that the rule satisfies the NRC's NEPA obligations with respect to continued storage for initial, renewed, and amended licenses for reactors. Therefore, NUREG-0498, Supplement 2, which by rule now incorporates the impact determinations in NUREG-2157 regarding continued storage, contains an analysis of the generic issues of "Onsite storage of spent nuclear fuel" and "Offsite radiological impacts of spent nuclear fuel and high-level waste disposal" that satisfies NEPA. To account for these impact determinations, the NRC staff analyzed whether the revised rule at 10 CFR 51.23 and the associated NUREG-2157 presented new and significant information such that a supplement to NUREG-0498, Supplement 2, was required.

As detailed in an NRC staff evaluation (ADAMS Accession No. ML15259A417), NUREG-2157 and the revised rule do not constitute new and significant information because they do not present a "seriously different picture" of the environmental impacts of the proposed action (i.e., issuance of an OL) as compared to the impacts analysis presented in NUREG-0498, Supplement 2. As discussed above, NUREG-0498, Supplement 2 did not evaluate or make an impact determination on the impacts of continued storage of spent fuel beyond the licensed life for reactor operations. Instead, NUREG-0498, Supplement 2 stated that it would rely on the revised 10 CFR 51.23 and its supporting Generic EIS (i.e., NUREG-2157) to provide the necessary NEPA analyses of the waste-confidence-related human health and environmental issues. By virtue of revised 10 CFR 51.23, NUREG-0498, Supplement 2 now incorporates the impact determinations in NUREG-2157 regarding continued storage such that there is a complete analysis of the environmental impacts associated with spent fuel storage beyond the licensed life for reactor operations and before disposal in a geologic repository. The NRC staff also considered whether the revised rule and NUREG-2157 had altered the NRC staff's recommendation in NUREG-0498, Supplement 2, that the adverse environmental impacts of the proposed action are not great enough to deny the option of issuing an OL for WBN Unit 2.

As described in an NRC staff evaluation (ADAMS Accession No. ML15259A417), NUREG-2157 analyzes continued storage of spent fuel at away-from-reactor and at-reactor sites during three timeframes: the short-term timeframe (60 years beyond the licensed life of a reactor), the long-term timeframe (an additional 100 years after the short-term timeframe), and an indefinite timeframe. The analysis in NUREG-2157 supports the conclusion that the most likely impacts

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of continued storage are those discussed for at-reactor storage. For continued at-reactor storage, impacts in the short-term timeframe would be SMALL. Over the longer timeframes, impacts to certain resource areas would be a range (i.e., for historic and cultural resources during both the long-term and indefinite timeframes the range is SMALL to LARGE and for nonradioactive waste during the indefinite timeframe the range is SMALL to MODERATE). In NUREG-2157, the NRC stated that disposal of the spent fuel before the end of the short-term timeframe is most likely. There are inherent uncertainties in determining impacts for the long-term and indefinite timeframes, and, with respect to some resource areas, those uncertainties could result in impacts that, although less likely, could be larger than those that are to be expected at most sites and have therefore been presented as ranges rather than as a single impact level. Those uncertainties exist, however, regardless of whether the impacts are analyzed generically or site-specifically. As a result, these impact ranges provide correspondingly more limited insights to the decisionmaker in the overall picture of the environmental impacts from the proposed action (i.e., issuance of an OL).

The NRC staff concluded that when weighed against the array of other uranium fuel cycle impacts presented in NUREG-0498, Supplement 2, and the more-likely impacts of continued storage during the short-term timeframe in NUREG-2157, which are SMALL, the uncertainties associated with the impact ranges for the long-term and indefinite timeframes also do not present a seriously different picture of the direct, indirect, and cumulative environmental impacts compared to the NRC staff's analysis of the impacts from issuance of an OL for WBN Unit 2 attributable to the uranium fuel cycle and waste management (which includes the impacts associated with spent fuel storage).

The NRC staff therefore concludes that the revised rule and the impact determinations related to continued storage in NUREG-2157 do not alter the NRC staff's recommendation in NUREG-0498, Supplement 2 that the adverse environmental impacts of the proposed action are not great enough to deny the option of issuing an OL for WBN Unit 2.

MITIGATION MEASURES:

The NRC has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected. The NRC staff did not identify a viable alternative that was clearly and substantially environmentally superior to operation of WBN Unit 2 (i.e., an alternative that would tip the cost-benefit balance). While the NRC is not requiring any mitigation measures for operation of WBN Unit 2, required National Pollutant Discharge Elimination System (NPDES) permits issued pursuant to the Federal Water Pollution Control Act (also known as the Clean Water Act) (33 U.S.C. 1251 et seq.) do impose effluent limitations and monitoring requirements, as well as best management practices, to ensure that the impacts to water quality and aquatic life are minimal during the operation of WBN Unit 2. The NRC is not imposing any license conditions in connection with mitigation measures. Additionally, the NRC is not requiring any new environmental monitoring programs outside what is required for the NPDES permits.

DETERMINATION:

Based on the independent review, analysis, and evaluation contained in NUREG-0498, Supplement 2; careful consideration of all the identified social, economic, and environmental factors; input received from other agencies, organizations, and the public; and the factors and

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mitigation measures outlined above, the NRC has determined that the standards for issuance of an OL, as described in 10 CFR 50.50, have been met and that the requirements of Section 102 of NEPA have been satisfied.

APPROVED BY:

/RA/

William M. Dean, Director
Office of Nuclear Reactor Regulation

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ADAMS Accession No. ML15257A130***via email**

OFFICE	DORL/LPWB/PM*	DORL/LPWB/LA	DLR/RERB/BC	DORL/LPWB/BC
NAME	JPoole	BClayton	DWrona	JQuichocho
DATE	9/15/2015	9/15/2015	9/17/2015	10/08/2015
OFFICE	QTE*	DORL/D	OGC*	NRR/D
NAME	JDougherty	ABoland	CKanatas	WDean
DATE	10/09/2015	10/09/2015	10/07/2015	10/22/2015

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Stephen G. Burns, Chairman
Kristine L. Svinicki
William C. Ostendorff
Jeff Baran

In the Matter of
TENNESSEE VALLEY AUTHORITY
(Watts Bar Unit 2)

Docket No. 50-391-OL

CLI-15-19

MEMORANDUM AND ORDER

Southern Alliance for Clean Energy (SACE) has filed a petition for review of LBP-15-14, in which the Atomic Safety and Licensing Board denied SACE's motion to reopen the record in this proceeding on the Tennessee Valley Authority's (TVA's) application for an operating license for Watts Bar Unit 2.¹ For the reasons set forth below, we deny the petition for review.

I. BACKGROUND

SACE's motion to reopen the record cites the March 12, 2012, request for information to all power reactor licensees and holders of construction permits in active or deferred status, issued by the Staff pursuant to 10 C.F.R. § 50.54(f). The request for information was issued in response to the agency's evaluation of events leading to the Fukushima Dai-ichi accident of

¹ *Southern Alliance for Clean Energy's Petition for Review of LBP-15-14 Denying Admission of a New Contention Concerning TVA's Failure to Comply with 10 C.F.R. § 50.34(b)(4)* (May 18, 2015) (SACE Petition for Review); see LBP-15-14, 81 NRC __ (Apr. 22, 2015) (slip op.).

March 2011.² Regarding seismic and flooding hazards,³ the request for information described a two-phased approach for hazard evaluation: the Staff first requested that licensees submit to the Staff reevaluations of seismic and flooding hazards at their sites. The letter then stated that the Staff would implement the second phase by determining the need for additional regulatory actions based on the information submitted.⁴

TVA submitted its seismic hazard reevaluation and screening for Watts Bar Nuclear Plant on March 31, 2014.⁵ Based on this submission, the Staff determined that Watts Bar Units 1 and 2 would require additional seismic risk evaluation.⁶ In response, TVA submitted an Expedited Seismic Evaluation Process Report for Watts Bar on December 30, 2014, concluding that no modifications or additional regulatory commitments were necessary.⁷

² Leeds, Eric J., Director, Office of Nuclear Reactor Regulation and Johnson, Michael R., Director, Office of New Reactors, letter to All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status (Mar. 12, 2012) (ADAMS accession no. ML12053A340) (Request for Information).

³ See "Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami," Commission Paper SECY-12-0025 (Feb. 17, 2012) (ML12039A111); Staff Requirements—SECY-12-0025—Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami (Mar. 9, 2012) (ML120690347); see also Staff Requirements—SECY-11-0137—Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned (Dec. 15, 2011) (ML113490055) (SRM-SECY-11-0137).

⁴ Request for Information at 4-5.

⁵ Tennessee Valley Authority, "Tennessee Valley Authority's Seismic Hazard and Screening Report (CEUS Site), 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," (Mar. 31, 2014) (ML14098A478) (TVA Seismic Hazard Report).

⁶ Leeds, Eric J., Director, Office of Nuclear Reactor Regulation, letter to All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status (May 9, 2014), at 5 (ML14111A147) (Leeds Letter). Watts Bar and several other plants were "screened in" and directed to complete further seismic evaluations based on a higher re-evaluated seismic hazard.

⁷ Tennessee Valley Authority, "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

The Board had terminated this adjudicatory proceeding on September 9, 2014, following resolution of the last contested issue.⁸ On February 5, 2015, SACE filed motions to reopen the record and for leave to file a new contention based on the information contained in TVA's Expedited Seismic Report.⁹ TVA and the NRC Staff opposed both motions.¹⁰ In its proposed new contention, SACE asserted that "TVA's Final Safety Analysis Report ... is deficient under 10 C.F.R. § 50.34(b)(4) because it does not include the information provided in TVA's [December] 30, 2014 Expedited Seismic Evaluation Process ... Report for Watts Bar Nuclear Plant."¹¹

Review of Insights from the Fukushima Dai-ichi Accident," (Dec. 30, 2014) (ML14365A072) (Expedited Seismic Report).

⁸ LBP-14-13, 80 NRC 142 (2014). We have authorized the Director of the Office of Nuclear Reactor Regulation (NRR) to issue the full-power operating license for Watts Bar 2 if the Director of NRR determines "that the applicable findings may be made and that the proceeding is uncontested." Staff Requirements—SECY-15-0068—Watts Bar Nuclear Plant, Unit 2—Review Status and Authority of the Director of the Office of Nuclear Reactor Regulation for Operating License Issuance (May 26, 2015) (ML15146A213). The Staff's work regarding these findings is ongoing.

⁹ *Southern Alliance for Clean Energy's Motion to Reopen the Record* (Feb. 5, 2015; corrected Feb. 6, 2015) (Motion to Reopen); *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)* (Feb. 5, 2015; corrected Feb. 6, 2015) (Motion for Leave to File New Contention).

¹⁰ *NRC Staff's Answer to Southern Alliance for Clean Energy's Motion for Leave to File a New Contention* (Mar. 3, 2015) (Staff's Answer Opposing SACE's Motion for New Contention); *Tennessee Valley Authority's Answer Opposing Southern Alliance for Clean Energy's Motion for Leave to File a New Contention* (Mar. 3, 2015) (TVA's Answer Opposing SACE's Motion for New Contention); *NRC Staff's Answer to Southern Alliance for Clean Energy's Motion to Reopen the Record* (Feb. 18, 2015) (Staff's Answer Opposing SACE's Motion to Reopen); *Tennessee Valley Authority's Answer Opposing Southern Alliance for Clean Energy's Motion to Reopen the Record* (Feb. 17, 2015) (TVA's Answer Opposing SACE's Motion to Reopen).

¹¹ Motion for Leave to File a New Contention at 1.

The Board denied SACE's motion to reopen the record, finding that SACE did not satisfy the requirements for reopening set forth in our rules of practice.¹² SACE has now petitioned for our review of the Board's decision. The NRC Staff and TVA oppose SACE's petition.¹³

II. DISCUSSION

A. Standard of Review

We will grant a petition for review at our discretion, giving due weight to the existence of a substantial question with respect to one or more of the following considerations:

- (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial and important question of law, policy, or discretion has been raised;
- (iv) The conduct of the proceeding involved a prejudicial procedural error; or
- (v) Any other consideration which we may deem to be in the public interest.¹⁴

SACE argues that the Board's decision raises "important issues of law and policy."¹⁵

As discussed below, we find that SACE has not raised a substantial question that merits review. SACE has not identified any error in the Board's application of our reopening standards to its motion to reopen the record.

¹² LBP-15-14, 81 NRC at ___ (slip op. at 7). In so holding, the Board declined to address the merits of SACE's motion for leave to file a new contention. *Id.*

¹³ *NRC Staff Answer Opposing the Southern Alliance for Clean Energy Petition for Review of Board Decision LBP-15-14* (June 12, 2015) (Staff's Opposition to SACE Petition); *Tennessee Valley Authority's Answer Opposing Southern Alliance for Clean Energy's Petition for Review of LBP-15-14* (June 12, 2015) (TVA's Opposition to SACE Petition).

¹⁴ 10 C.F.R. § 2.341(b)(4).

¹⁵ SACE Petition for Review at 1. Although SACE does not specify the subsection on which it bases its request for review, we presume it intended to rely upon section 2.341(b)(4)(iii).

B. Reopening Standards

Motions to reopen the record in our adjudicatory proceedings are governed by 10 C.F.R.

§ 2.326, which states the following:

- (a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:
 - (1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
 - (2) The motion must address a significant safety or environmental issue; and
 - (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.
- (b) The motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards of this subpart. Each of the criteria must be separately addressed, with a specific explanation of why it has been met. When multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

Our case law interpreting section 2.326 makes clear that the regulations place an intentionally heavy burden on parties seeking to reopen the record.¹⁶ The rule reflects the importance of finality in adjudicatory proceedings.¹⁷ As we have noted, “the burden of satisfying the reopening

¹⁶ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012) (citing *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 287 (2009)).

¹⁷ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 n.18 (2005) (citing *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 554-55 (1978)).

requirements is a heavy one,” and it rests with the party moving to reopen.¹⁸ To this end, “a motion to reopen will not be granted unless the movant satisfies all three of the criteria listed in 10 C.F.R. § 2.326(a) and [the motion] is accompanied by an affidavit that satisfies 10 C.F.R. § 2.326(b).”¹⁹ We have previously explained that “[w]e consider reopening the record for any reason to be ‘an ‘extraordinary’ action.”²⁰ Courts of appeal have consistently upheld our reopening standards, noting that “[a]gencies are permitted to impose requirements or thresholds for parties seeking to reopen a closed record”²¹ and acknowledging that these criteria may be “exacting.”²²

C. Analysis

In examining whether SACE’s motion to reopen the record satisfied the requirements of section 2.326, the Board found that SACE’s motion to reopen was timely filed.²³ But the Board determined that SACE had not fulfilled the remaining requirements of section 2.326(a) because it neither addressed a significant safety or environmental issue nor demonstrated the likelihood

¹⁸ *Oyster Creek*, CLI-09-7, 69 NRC at 287 (citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-10, 32 NRC 218, 221 (1990); *Louisiana Power & Light Co.* (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC 1, 5 (1986)).

¹⁹ *Id.*

²⁰ *Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 337-38 (2011) (citing Final Rule, Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19,538 (May 30, 1986)).

²¹ *Mass. v. U.S. Nuclear Regulatory Comm’n*, 708 F.3d 63, 75, n.18 (1st Cir. 2013) (citing *Vt. Yankee*, 435 U.S. at 554-55 (1978)); see also *N.J. Env’tl. Fed’n v. U.S. Nuclear Regulatory Comm’n*, 645 F.3d 220, 233 (3d Cir. 2011) (“We have upheld the motion to reopen standard and deferred to the NRC’s application of its rules, so long as it is reasonable.”); *Oystershell Alliance v. U.S. Nuclear Regulatory Comm’n*, 800 F.2d 1201, 1207 (D.C. Cir. 1986) (“In examining petitioners’ plea to reopen the record, we rely on the same court-sanctioned test applied by the Commission”).

²² *N.J. Env’tl. Fed’n*, 645 F.3d at 234.

²³ LBP-15-14, 81 NRC at ___ (slip op. at 6 n.30); see 10 C.F.R. § 2.326(a)(1).

of a materially different result upon consideration of its proposed new contention.²⁴ Additionally, the Board found that the affidavit that SACE submitted with its motion to reopen the record did not meet the requirements set forth in section 2.326(b).²⁵ As discussed below, SACE has not raised a substantial question with respect to the Board's ruling.

SACE does not argue that the Board erroneously applied the reopening standards to its motion in its petition for review. Instead, SACE focuses its argument on the reopening standards themselves, asserting that "the Board imposed a burden that was greater than what the law required for the contention submitted by SACE."²⁶ SACE argues that the Board should have required it to demonstrate only that the information was pertinent, but it does not explain why it believes the reopening standards are inapplicable to its motion.²⁷ SACE also argues that by requiring it to meet the reopening standards, the Board "erroneously shifted the burden of proof from TVA to SACE."²⁸ But the moving party properly bears the burden of meeting the reopening standards.²⁹

In requiring SACE to meet the reopening standards set forth in section 2.326, the Board complied with our rules of practice and procedure. Section 2.335(a) of our regulations prohibits

²⁴ LBP-15-14, 81 NRC at __ (slip op. at 6).

²⁵ *Id.* at __ (slip op. at 7). SACE has not challenged the Board's determination that its affidavit does not comply with section 2.326(b). Because a party must meet all of the section 2.326 requirements to reopen the record, the motion to reopen could have been deemed insufficient for this reason alone.

²⁶ SACE Petition for Review at 6.

²⁷ *Id.* at 5.

²⁸ *Id.* at 7.

²⁹ TVA retains the burden of proof on the question whether the license should be issued, pursuant to 10 C.F.R. § 2.325. See *Oyster Creek*, CLI-09-7, 69 NRC at 269 (citing *Louisiana Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1093 (1983)).

challenges to our rules and regulations in the context of adjudicatory proceedings.³⁰ By arguing that it should have been allowed to meet a lesser standard when moving to reopen the record, SACE impermissibly challenges the reopening standard.

SACE also argues that the Board disregarded its concerns about the Staff's review of TVA's responses to the request for information regarding seismic hazards post-Fukushima. SACE expresses concern that the Staff, in reviewing these responses, will apply an "imminent risk standard," which SACE believes will result in a less rigorous review of the information than would be performed if review of the report were conducted as part of the Staff's review of the Watts Bar 2 operating license application.³¹ In support of this assertion, SACE cites a letter from William M. Dean, Director, Office of Nuclear Reactor Regulation, to SACE's counsel.³² SACE seems to infer from Mr. Dean's letter that "imminent risk" is a standard against which the Staff evaluates updated seismic hazard information from licensees. But taken in context, the phrase "imminent risk" reflects the NRC's determination that, post-Fukushima, continued operation of U.S. nuclear plants and continued licensing activities pose no imminent risk to public health and safety.³³ The letter does not indicate that the Staff would apply an "imminent

³⁰ Section 2.335 permits parties to petition for a waiver or exception from this prohibition. But SACE has not petitioned for a waiver or exception.

³¹ SACE Petition for Review at 7.

³² *Id.* (citing Dean, William M., Director, Office of Nuclear Reactor Regulation, NRC, letter to Ms. Diane Curran, c/o Southern Alliance for Clean Energy (Nov. 21, 2014) (ML14267A466) (Dean Letter) ("However, the NRC also concluded that continued plant operation and licensing activities, including the review of the Watts Bar Unit 2 operating license application, can continue because these actions do not pose an imminent risk to public health and safety."). The Dean Letter was prepared in response to concerns expressed by SACE (similar to those raised in its motion to reopen) to then-Chairman Allison Macfarlane.

³³ See *Union Electric Co. (Callaway Plant, Unit 2)*, CLI-11-5, 74 NRC 141, 161 (2011) ("[N]othing we have learned to date [with respect to the Fukushima accident] puts the continued safety of our currently operating regulated facilities ... into question. Similarly, nothing learned to date requires immediate cessation of our review of license applications or proposed reactor designs.").

risk standard” in assessing the seismic hazard information itself. Indeed, the Staff has stated that it will make a “final determination regarding the *adequacy* of any plant’s calculated hazard [.] will continue its review of the submitted seismic hazard reevaluations,”³⁴ and “will determine if safe operation requires additional regulatory action.”³⁵

In its holding on this point, the Board focused on the fact that SACE does not demonstrate the likelihood of a materially different result if the Staff evaluates the Expedited Seismic Report in the context of post-Fukushima actions versus the licensing process.³⁶ It concluded that the benefits of including information found in the Expedited Seismic Report in the Final Safety Analysis Report were speculative and lacked factual support.³⁷ On appeal, SACE does not claim any error in the Board’s analysis of whether SACE had demonstrated that consideration of its proposed contention would likely lead to a materially different result. Therefore, we find that SACE does not raise a substantial question meriting review.

Finally, SACE asserts that the Board’s decision raises the overarching legal and policy question of whether it is permissible for the Staff to issue the Watts Bar 2 operating license before completing its assessment of TVA’s Expedited Seismic Report.³⁸ We have explicitly addressed this point and allow the Staff to issue operating licenses—provided all requisite findings are made—before it completes post-Fukushima regulatory activities.³⁹ Further, we

³⁴ Leeds Letter at 6 (emphasis added).

³⁵ Dean Letter at 2.

³⁶ LBP-15-14, 81 NRC at ___ (slip op. at 6).

³⁷ *Id.* at ___ (slip op. at 6-7).

³⁸ SACE Petition for Review at 8.

³⁹ *Callaway*, CLI-11-5, 74 NRC at 166 (“Even for the licenses that the NRC issues before completing its review [of hazards like those that damaged the reactors at the Fukushima site], any new Fukushima-driven requirements can be imposed later, if necessary, to protect the

have noted that in general, “[w]e consider suspension of licensing proceedings a ‘drastic’ action that is not warranted absent ‘immediate threats to public health and safety,’ or other compelling reason.”⁴⁰ Specifically in the context of the NRC’s post-Fukushima activities, we observed that “nothing learned to date requires immediate cessation of our review of license applications”⁴¹ SACE has not articulated a reason to revisit these determinations. In sum, SACE does not articulate a substantial question for review. We therefore deny the petition for review.⁴²

Our denial of SACE’s petition for review does not suggest that we take lightly the ongoing review of seismic issues at the Watts Bar site. The Staff is addressing post-Fukushima regulatory seismic activities for all reactor licensees and applicants, including TVA, through a process that we have approved.⁴³ We are confident that the Staff will fully address seismic safety requirements for Watts Bar 2 as part of that review. SACE, and indeed any member of the public, will have the opportunity for additional participation if the Watts Bar 2 licensing basis is updated by amendment after the Staff issues the operating license.⁴⁴

public health and safety.”) (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 383-84 (2001)).

⁴⁰ *Id.* at 158 (quoting *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 484 (2008)).

⁴¹ *Id.* at 161.

⁴² SACE also requests that we reconsider our direction to the Staff to use the Watts Bar Unit 1 design basis “as the reference basis for the review and licensing of [Watts Bar] Unit 2.” Staff Requirements—SECY-07-0096—Possible Reactivation of Construction and Licensing Activities for the Watts Bar Nuclear Plant Unit 2 (July 25, 2007) (ML072060688); see SACE Petition for Review at 9 n.5. We decline to take this action. “[E]xternal entities [are not] entitled to seek revisions to a Commission direction to the NRC Staff contained in an SRM.” *U.S. Department of Energy* (High-Level Waste Repository), CLI-14-1, 79 NRC 1, 3-4 (2014).

⁴³ See SRM-SECY-11-0137; Staff Requirements—SECY-11-0124—Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report (Oct. 18, 2011) (ML112911571); Dean Letter at 1.

⁴⁴ See Dean Letter at 2 (“If the licensing basis is updated by amendment after the Watts Bar 2 operating license is issued as a result of the NRC’s assessment of seismic ... hazard reevaluations, the public will have an opportunity to comment and request a hearing.”)

III. CONCLUSION

For the foregoing reasons, we *deny* the petition for review.

IT IS SO ORDERED.

For the Commission

NRC SEAL

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of September, 2015.

Cite as 81 NRC 803 (2015)

CLI-15-15

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Stephen G. Burns, Chairman
Kristine L. Svinicki
William C. Ostendorff
Jeff Baran

In the Matter of

DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2)	Docket Nos. 52-018-COL 52-019-COL
FIRSTENERGY NUCLEAR OPERATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1)	Docket No. 50-346-LR
LUMINANT GENERATION COMPANY LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4)	Docket Nos. 52-034-COL 52-035-COL
NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project, Units 3 and 4)	Docket Nos. 52-012-COL 52-013-COL
PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2)	Docket Nos. 52-029-COL 52-030-COL

STP NUCLEAR OPERATING
COMPANY
(South Texas Project, Units 1
and 2)

Docket Nos. 50-498-LR
50-499-LR

TENNESSEE VALLEY AUTHORITY
(Sequoyah Nuclear Plant, Units 1
and 2)

Docket Nos. 50-327-LR
50-328-LR

TENNESSEE VALLEY AUTHORITY
(Watts Bar Nuclear Plant,
Unit 2)

Docket No. 50-391-OL

VIRGINIA ELECTRIC AND
POWER COMPANY d/b/a
DOMINION VIRGINIA
POWER and OLD DOMINION
ELECTRIC COOPERATIVE
(North Anna Nuclear Power
Station, Unit 3)

Docket No. 52-017-COL

June 9, 2015

MEMORANDUM AND ORDER

Several environmental organizations (collectively, Petitioners) have moved to reopen the captioned proceedings and request that we allow them to lodge “placeholder” contentions that challenge the 2014 Continued Storage Rule and associated Generic Environmental Impact Statement for Continued Storage.¹ As Petitioners acknowledge, these filings are substantively identical to the motions and proposed contentions recently filed in the *Callaway* license renewal proceeding and the *Fermi* combined license proceeding.² For the reasons set forth in our

¹ See, e.g., Blue Ridge Environmental Defense League’s Hearing Request and Petition to Intervene in Combined License Proceeding for W.S. Lee Nuclear Power Plant (filed Apr. 22, 2015) (Petition); Declaration of Charles L. Moss Jr. (filed Apr. 22, 2015); Blue Ridge Environmental Defense League’s Motion to Reopen the Record of Combined License Proceeding for W.S. Lee Nuclear Power Plant (filed Apr. 22, 2015). All of the pleadings related to Petitioners’ requests are listed in an Appendix to this Order.

² See Petition at 1 n.1; Missouri [Coalition] for the Environment’s Hearing Request and Petition to Intervene in License Renewal Proceeding for Callaway Nuclear Power Plant (Dec. 8, 2014); Missouri (Continued)

decisions denying the requests in the *Callaway* and *Fermi* matters, we likewise deny these petitions and motions.³
IT IS SO ORDERED.

For the Commission

ANNETTE L. VIETTI-COOK
Secretary of the Commission

Dated at Rockville, Maryland,
this 9th day of June 2015.

[Coalition] for the Environment’s Motion to Reopen the Record of License Renewal Proceeding for Callaway Unit 1 Nuclear Power Plant (Dec. 8, 2014); Beyond Nuclear’s Hearing Request and Petition to Intervene in Combined License Proceeding for Fermi Unit 3 Nuclear Power Plant (Feb. 12, 2015) (Petition); Beyond Nuclear’s Motion to Reopen the Record of Combined License Proceeding for Fermi Unit 3 Nuclear Power Plant (Feb. 12, 2015).

³ See *Union Electric Co.* (Callaway Plant, Unit 1), CLI-15-11, 81 NRC 546 (2015); *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC 551 (2015).

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ORIGINAL


_____)
SOUTHERN ALLIANCE FOR)
CLEAN ENERGY,)
))
Petitioner,)
))
v.)
))
UNITED STATES NUCLEAR)
REGULATORY COMMISSION)
COMMISSION and the UNITED)
STATES OF AMERICA,)
))
Respondents,)
_____)

Case No. 15-1427

PETITIONER’S RULE 26.1 DISCLOSURE

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. Rule 16.1, Petitioner Southern Alliance for Clean Energy (“SACE”) states that it is a nonprofit environmental advocacy organization that has no parent companies. No publicly held companies have a ten percent or greater ownership interest in SACE.

Respectfully submitted,


Diane Curran

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Counsel for Petitioner

November 20, 2015

ORIGINAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SOUTHERN ALLIANCE FOR
CLEAN ENERGY,

Petitioner,

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION
COMMISSION and the UNITED
STATES OF AMERICA,

Respondents,

15-1427

Case No. _____

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to D.C. Circuit Rules 15(c)(3) and 28(a)(1), counsel for Petitioner Southern Alliance for Clean Energy (“SACE”) certifies as follows:

1. Parties, Intervenors, and Amici Curiae.

Petitioner is Southern Alliance for Clean Energy. Respondents are the United States Nuclear Regulatory Commission (“NRC”) and the United States of America. Currently, there are no other parties to the case.

2. Rulings Under Review

Petitioner seeks review of the following NRC decisions related to the issuance of an operating license for the Watts Bar Nuclear Power Plant, Unit 2:

- Notice of Issuance of Facility Operating License No. NPF-96, Watts Bar Nuclear Plant Unit 2 (Oct. 22, 2015);
- Record of Decision, U.S. Nuclear Regulatory Commission, Docket No. 50-391, Operating License Application for Watts Bar Nuclear Plant, Unit 2 (Oct. 22, 2015);
- *Tennessee Valley Authority* (Watts Bar Unit 2), Memorandum and Order CLI-15-19 (Sept. 24, 2015) ; and
- *Duke Energy Carolinas, L.L.C.*, (William States Lee III Nuclear Station, Units 1 and 2), *et al.*, CLI-15-15, 81 NRC 803 (2015).

3. Related Cases

This case is related to *State of New York v. NRC*, 681 F.3d 471 (D C. Cir. 2012) (“*State of New York I*”) and *State of New York v. NRC*, Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (filed Oct. 29, 2014) (“*State of New York II*”), in the respects that (a) SACE was a party to *State of New York I* and is a party to *State of New York II* and (b) both this case and *State of New York II* concern the same facts and legal issues under the National Environmental Policy Act (“NEPA”), the Administrative Procedure Act and *State of New York I*. In *State of New York II*, the petitioners (including SACE) seek review of the NRC’s Continued Storage of Spent Nuclear Fuel Rule, 70 Fed. Reg. 56,238 (Sept. 19, 2014) (“Rule”) and the NRC’s Generic Environmental Impact Statement for the

Continued Storage of Spent Nuclear Fuel, 70 Fed. Reg. 56,263 (Sept. 19, 2014) (“GEIS”). The NRC issued the Rule and GEIS on remand from this Court’s decision in *State of New York I*.

In this case, SACE contends that the NRC violated NEPA by basing its environmental analysis for the licensing of Watts Bar Unit 2 on the Rule and GEIS now on appeal to this Court in *State of New York II*. The Court’s ruling in *State of New York II* will resolve all of this issues raised in this petition for review, and therefore SACE has moved the Court to hold this case in abeyance pending the Court’s ruling in *State of New York II*.

This case is also related to the following similar appeals of final decisions in individual reactor licensing proceedings, which have been held in abeyance pending the resolution of *State of New York II*:

- *Missouri Coalition for the Environment v. United States Nuclear Regulatory Commission and the United States of America*, D.C. Cir. No. 15-1114 (filed Apr. 23, 2015; motion to hold in abeyance granted May 22, 2015);
- *Beyond Nuclear vs. United States Nuclear Regulatory Commission and the United States of America*, D.C. Cir. No. 15-1173 (filed June 19, 2015; motion to hold in abeyance granted Oct. 5, 2015); and
- *Blue Ridge Environmental Defense League v. United States Nuclear Regulatory Commission and the United States of America*, No. 15-1258

(filed Aug. 6, 2015; motion to hold in abeyance granted Aug. 7, 2015 and consolidated with *Blue Ridge Environmental Defense League v. United States Nuclear Regulatory Commission and the United States of America*, No. 15-1259 (filed Aug. 6, 2015); *Blue Ridge Environmental Defense League v. United States Nuclear Regulatory Commission and the United States of America*, No. 15-1260 (filed Aug. 6, 2015); *Nuclear Information and Resource Service v. United States Nuclear Regulatory Commission and the United States of America*, No. 15-1261 (filed Aug. 6, 2015); *Sustainable Energy and Economic Development Coalition v. United States Nuclear Regulatory Commission and the United States of America*, No. 15-1262 (filed Aug. 6, 2015); and *Beyond Nuclear v. United States Nuclear Regulatory Commission and the United States of America*, D.C. Cir. No. 15-1263 (filed Aug. 6, 2015)).

In all of the above-cited cases, the Petitioners seek to ensure that any decision rendered by the Court in *State of New York II* is applied in individual reactor licensing cases. They do not seek to conduct duplicative litigation, on review of individual reactor licensing decisions, of the issues raised in *State of New York II*.

Respectfully submitted,



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Counsel for Petitioner

November 20, 2015

ORIGINAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SOUTHERN ALLIANCE FOR
CLEAN ENERGY,

Petitioner,

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION
COMMISSION and the UNITED
STATES OF AMERICA,

Respondents,

Case No. 15-1427

CERTIFICATE OF SERVICE

I, Diane Curran, certify that between November 20 and 23, 2015, I served the foregoing Petition for Review; Rule 26.1 Disclosure Statement; and Rule 28(a)(1) Certificate as to Parties, Rulings, and Related Cases on the following by first-class mail:

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¹ Pursuant to 28 U.S.C. § 2344, the Attorney General's copies were served by first-class registered mail with a request for a return receipt.

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Respectfully submitted,



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