

No. 15-1427

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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SOUTHERN ALLIANCE FOR CLEAN ENERGY,

Petitioner

v.

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

Respondents.

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**TENNESSEE VALLEY AUTHORITY'S MOTION FOR LEAVE TO  
INTERVENE AND RULE 26.1 DISCLOSURE**

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December 18, 2015

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**RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

The Tennessee Valley Authority (TVA) is an executive branch corporate agency and instrumentality of the United States created by and existing pursuant to the Tennessee Valley Authority Act of 1933, 16 U.S.C. § 831 et seq. No publicly held company has any ownership interest in TVA.

*s/Sherry A. Quirk*

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General Counsel for Tennessee Valley  
Authority

TVA respectfully moves for leave to intervene in the above-captioned proceeding in support of Respondents, Nuclear Regulatory Commission (NRC or Commission) and the United States, pursuant to Rules 15(d) and 27 of the Federal Rules of Appellate Procedure and Circuit Rule 15(b) of this Court. Petitioner, the Southern Alliance for Clean Energy (SACE), challenges the NRC's issuance of Facility Operating License No. NPF-96 and the accompanying Record of Decision, dated October 22, 2015, the NRC Commission's Memorandum and Order, CLI-15-19 (Sept. 24, 2015) upholding a licensing board's decision not to reopen the record and admit a new contention for administrative litigation, and the Commission's Memorandum and Order, CLI-15-15 (June 9, 2015) denying a series of petitions relating to the 2014 Continued Storage Rule (Pet. at 1-2). As the licensee, TVA participated in the administrative proceeding before the NRC, and, as the beneficiary of NRC's challenged licensing action, TVA will be directly affected by the result in this proceeding. TVA is therefore the proper party to be granted intervenor status.

### **ARGUMENT**

Federal Rule of Appellate Procedure 15(d) provides that “[u]nless a statute provides another method, a person who wants to intervene in a proceeding . . . must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties . . . within 30 days after the petition for review is filed [which] must

contain a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. 15(d); *see also* D.C. Cir. Rule 15(b) (“A motion to intervene in a case before this court concerning direct review of an agency action will be deemed a motion to intervene in all cases before the court involving the same agency action or order, including later filed cases, unless the moving party specifically states otherwise, and an order granting such motion has the effect of granting intervention in all such cases.”).

In considering motions to intervene in an appeal of an agency order, appellate courts look to the standards governing intervention in the district court under Federal Rule of Civil Procedure 24, as well as to the statutory design of the Act in question. *See Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997); *see also Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517-18 (7th Cir. 2004) (citing *Int’l Union, United Auto. Workers Local 283 v. Scofield*, 382 U.S. 205, 217 n.10 (1965)); *Texas v. U.S. Dep’t of Energy*, 754 F.2d 550, 551 (5th Cir. 1985). This Circuit requires a party requesting intervenor status to demonstrate its Article III standing. *Jones v. Prince George’s Cnty., Md.*, 348 F.3d 1014, 1017 (D.C. Cir. 2003); *City of Cleveland v. NRC*, 17 F.3d 1515, 1517 (D.C. Cir. 1994) (per curiam). If a prospective intervenor has demonstrated a cognizable injury sufficient to establish Article III standing, then it has also demonstrated the required interest under Rule 24(a)(2). *Jones*, 348 F.3d at 1018-19. TVA has

standing to intervene in the case and is authorized by statute to intervene. *See* 28 U.S.C. § 2348. In addition, TVA meets each of Rule 24's requirements.

**I. TVA has standing to participate in this proceeding as an intervenor.**

To establish standing under Article III, a prospective intervenor must show (1) injury-in-fact, (2) causation, and (3) redressability. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 733 (D.C. Cir. 2003).

TVA is an agency of the federal government whose statutory mission includes providing electricity at the lowest feasible rates to the people of the Tennessee Valley. 16 U.S.C. §§ 831, 831i, 831j; *U.S. ex rel. TVA v. Welch*, 327 U.S. 546, 553 (1946). To meet this mandate, TVA generates electricity from a variety of different plants and technologies, including nuclear generation. TVA has expended substantial time and money constructing Watts Bar Unit 2 and applying and obtaining the operating license for the plant. Furthermore, TVA requires the electric power to be generated by Watts Bar Unit 2 to serve its customers, and this Court's disposition of the Petition for Review will affect TVA's operation of the plant if the NRC's licensing decision were set aside or suspended. *See Carstens v. NRC*, 742 F.2d 1546, 1555 (D.C. Cir. 1984) (recognizing nuclear utility that received operating license for two nuclear reactors as intervenor in petition for review proceeding brought by environmental group

and citizen, challenging NRC's issuance of licenses to that nuclear utility), *cert. denied*, 471 U.S. 1136 (1985).

Because TVA's operations are funded solely through rates, the cost of any delay in operating the plant will be borne by TVA's ratepayers. A decision affirming the NRC's orders and denying Petitioner's request for relief will prevent these losses from occurring. Accordingly, TVA has standing to participate as an intervenor in this action because it benefits from the NRC's orders and would suffer an injury-in-fact if the Court granted the relief Petitioner seeks.

## II. TVA is Authorized by Statute to Intervene

Section 2348 of the United States Code permits TVA to intervene as of right:

[A]ny party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is . . . enjoined, set aside, or suspended, ***may appear as parties thereto of their own motion and as of right***, and be represented by counsel in any proceeding to review the order. Communities, associations, corporations, firms, and individuals, ***whose interests are affected by the order of the agency, may intervene in any proceeding to review the order.***

(Emphasis added.) TVA, as the applicant for and now holder of the operating license for Watts Bar Unit 2, was the party in interest in the proceeding before the NRC in which CLI-15-15, CLI-15-19, and the resulting operating license were issued. As described in Section I above, TVA would be directly affected if the operating license were enjoined, set aside, or suspended.

### **III. TVA Satisfies the Requirements of Rule 24.**

Under Federal Rule of Civil Procedure 24(a), intervention should be allowed if (1) the intervenor's motion is timely; (2) the intervenor has an interest relating to the property or transaction which is the subject of the action; (3) disposition of the action may impair or impede the intervenor's ability to protect that interest as a practical matter; and (4) existing parties to the lawsuit may not be able to adequately represent the intervenor's interests. *City of Cleveland*, 17 F.3d at 1516-17. TVA satisfies each of these factors.

#### **A. TVA's motion is timely.**

TVA's motion to intervene is timely under Rule 24 because it is being filed within thirty days of November 20, 2015, when the Petition for Review was filed.

#### **B. TVA has an interest relating to the subject matter of the petition and Petitioner's requested relief will impair TVA's ability to protect that interest.**

As described above, TVA has demonstrated a cognizable injury sufficient for Article III standing; thus, it has also demonstrated sufficient interest to support intervention under Rule 24(a)(2). *See, e.g., Jones*, 348 F.3d at 1017; *Fund for Animals*, 322 F.3d at 735 (finding the second intervention factor was "readily dispatched" for the same reasons Mongolia had standing: the relevant "property" was Mongolia's sheep and the relevant "transaction" was the Fish and Wildlife Service's decision to permit importation of those sheep); *Military Toxics Project v. EPA*, 146 F.3d 948, 953-54 (D.C. Cir. 1998); *Mova Pharm. Corp. v. Shalala*,

140 F.3d 1060, 1076 (D.C. Cir. 1998) (“[Intervenor] need not show anything more than that it has standing to sue in order to demonstrate the existence of a legally protected interest for purposes of Rule 24(a)”).

**C. TVA’s interests are not adequately represented by the other parties to the petition.**

“The Supreme Court has held that [the adequate representation] ‘requirement of the rule is satisfied if the applicant shows that representation of his interest “may be” inadequate; and the burden of making that showing should be treated as minimal.’” *Fund for Animals*, 322 F.3d at 735 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). This Court has “often concluded that governmental entities [defending their regulations or laws] do not adequately represent the interests of aspiring intervenors.” *Id.* at 736-37 (citing *Natural Res. Def. Council v. Costle*, 561 F.2d 904, 912-13 (D.C. Cir. 1977) and *Smuck v. Hobson*, 408 F.2d 175, 181 (D.C. Cir. 1969)); *Dimond v. District of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986) (recognizing that insurer had “more narrow and ‘parochial’ financial interest” in defending District of Columbia’s no fault law such that its interests were not adequately represented by the District of Columbia and was permitted to intervene as of right).

Here, TVA’s interests are certainly aligned with the Commission’s interest in defending issuance of the operating license. The Commission’s expansive mandate is to regulate the use of atomic energy “so as to promote world peace,



improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise.” 42 U.S.C. § 2011(b). TVA’s statutory mission is similar, but more narrowly focused on fostering the economic development of the *Tennessee Valley*, including providing electricity at the lowest feasible rates to the people of the Valley. 16 U.S.C. §§ 831, 831i, 831j; *Welch*, 327 U.S. at 553. TVA is operationally and financially responsible for the licensing, construction, and operation of the nuclear unit. As a participant in this case, TVA can provide factual details of the injury that would result from setting aside the operating license, and TVA is uniquely positioned to represent its own interest in the licensing of Watts Bar Unit 2.

### CONCLUSION

For the foregoing reasons and the authorities cited, TVA respectfully requests that its motion to intervene be granted.

Respectfully submitted,

*s/Sherry A. Quirk*

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**CERTIFICATE OF SERVICE**

I certify that the foregoing document was filed electronically through the Court's ECF system on December 18, 2015. Notice of this filing will be sent by operation of the Court's ECF system to:

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