

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	
Southern Nuclear Operating Company)	Docket Nos. 52-025-COL and 52-026-COL
)	
(COL Application for Vogtle Electric)	February 22, 2012
Generating Plant, Units 3 and 4))	
)	

**SOUTHERN NUCLEAR OPERATING COMPANY’S
MOTION TO STRIKE OR, IN THE ALTERNATIVE,
REQUEST FOR PAGE LIMIT EXTENSION**

In accordance with 10 C.F.R. §§ 2.342 and 2.323, Southern Nuclear Operating Company (“SNC”) moves to strike “Petitioners’ Motion to Stay the Effectiveness of the Combined License for Vogtle Electric Generating Plant Units 3 and 4 Pending Judicial Review” (“Motion to Stay”), filed on February 17, 2012.¹ Specifically, Petitioners request that the Nuclear Regulatory Commission (“Commission”) stay the effectiveness of CLI-12-02 and issuance of the Vogtle Units 3 and 4 combined license (“COL”). As explained below, the Motion to Stay should be struck for its failure to meet the Commission requirements for a motion to stay, including the page limits. In the alternative, SNC requests that the NRC permit SNC the same number of pages for its response to the Motion to Stay, in order to afford SNC a fair opportunity to respond.²

¹ The Motion to Stay was filed by Southern Alliance for Clean Energy, Blue Ridge Environmental Defense League, Center for a Sustainable Coast, Georgia Women’s Action for New Directions (collectively, “Petitioners”).

² Counsel for SNC certify that they have consulted with counsel for Petitioners and NRC Staff in accordance with 10 C.F.R. § 2.323(b). Counsel was unable to resolve the issues raised by this motion, but neither Petitioners nor Staff object to the requested page limit extension.

I. Motion to Strike Petitioners' Motion to Stay

NRC regulations provide clear directives for requesting “a stay of the effectiveness of the decision or action pending filing of and a decision on a petition for review” in 10 C.F.R. § 2.342. Here, Petitioners request “a stay of the effectiveness” of “a decision ... of a presiding officer [the Commission],” pending its petition for review of same at the D.C. Circuit Court of Appeals.³ As such, the Motion to Stay must meet the requirements of § 2.342.

Section 2.342(b) clearly states that a motion to stay “may be no longer than ten (10) pages, exclusive of affidavits.” Furthermore, two other NRC regulations, contemplating requests for a stay in other circumstances, both also require that a motion to stay be no longer than 10 pages.⁴ Petitioners filed a 20-page Motion to Stay without citing any NRC procedural regulation or authority that authorizes their Motion to Stay to exceed 10 pages. Even if Petitioners were attempting to file the stay under some other NRC regulation or precedent (which Petitioners did not explain in their Motion to Stay), there is no reasonable basis for Petitioners to believe that their Motion to Stay would be exempt from the NRC’s page limitations.

Because Petitioners greatly exceeded the 10-page limitation on motions to stay, without either requesting a page extension or explaining the regulatory basis for their failure to comply with § 2.342(b), the Motion to Stay should be struck in its entirety.⁵

³ See 10 C.F.R. § 2.342. SNC notes that Petitioners were not a party to the uncontested portion of the Vogtle COL proceeding and, therefore, are generally not authorized to request a motion to stay the order in the uncontested proceeding. SNC will address this issue in its answer to the Motion to Stay.

⁴ See 10 C.F.R. §§ 2.1213, 2.1327. In addition, the prehearing order in the contested portion of the COL proceeding, which applied to Petitioners, limited motions to 10 pages in length. See *Southern Nuclear Operating Co.* (Vogtle Elec. Generating Plant, Units 3 and 3), Docket Nos. 52-025-COL and 52-026-COL (Dec. 2, 2008) (Initial Prehearing Order), at p. 5.

⁵ *Carolina Power & Light Co.*, (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 394 (2001) (“We expect parties in Commission proceedings to abide by our current page-limit rules, and if they cannot, to file a motion to enlarge the number of pages permitted. In the future, the Commission may exercise its authority to deal more harshly with attempts to circumvent page-limit or other procedural rules.”); see also *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-08, 33

II. Alternative Request for Page Limit Extension

Pursuant to 10 C.F.R. § 2.342(d), requests for a stay and answers thereto are intended to be subject to the same 10-page limit. As noted above, Petitioners' Motion to Stay is 20 pages long. Therefore, in the event that the Commission determines not to strike the Motion to Stay for failure to abide by the 10-page limit, SNC respectfully requests that the page limit applicable to its answer be extended to 20 pages, exclusive of affidavits. SNC will be unduly burdened in preparing its answer without having an equivalent page allowance to analyze the issues raised by Petitioners.

III. Conclusion

SNC respectfully requests that the NRC strike the Motion to Stay for failure to comply with NRC filing requirements. In the alternative, SNC requests that the page limit applicable to its answer to the Motion to Stay be extended to 20 pages.

Respectfully submitted,

Signed (electronically) by M. Stanford Blanton

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NRC 461, n.2 (1991) (noting that the question of whether a stay request exceeding the 10-page limit should be struck was "correctly raised"); *Houston Lighting & Power Co.* (South Texas Project, Units 1 and 2), ALAB-799, 21 NRC 360, n.14 (1985) (noting that a 118-page brief was previously rejected because it "greatly exceeded" the applicable 90-page limit).

COUNSEL FOR
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Dated this 22nd day of February, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that copies of SOUTHERN NUCLEAR OPERATING COMPANY'S MOTION TO STRIKE OR, IN THE ALTERNATIVE, REQUEST FOR PAGE LIMIT EXTENSION in the above-captioned proceeding have been served by electronic mail as shown below, this 22nd day of February, 2012, and/or by e-submittal.

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