

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of) Docket No. 52-011-ESP
)
SOUTHERN NUCLEAR OPERATING) ASLBP No. 07-850-01-ESP-BD01
COMPANY)
)
(Early Site Permit for the Vogtle ESP Site)) September 29, 2008

JOINT INTERVENORS' UNOPPOSED MOTION TO FILE "MOTION TO ADMIT NEW
CONTENTION" OUT-OF-TIME

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.323(a) and 2.2104, the Joint Intervenors¹ hereby request that the Atomic Safety and Licensing Board ("Board") accept the Joint Intervenors' after-the-fact motion to file their Motion to Admit New Contention out-of-time.

DISCUSSION

Joint Intervenors were required to file their motion to admit new or amended contentions on or before September 22, 2008. Joint Intervenors' motion was served via e-mail at 8:57 a.m. on September 23, 2008, and served via the Nuclear Regulatory Commission's E-Filing system at 4:08 p.m. on September 23, 2008. Joint Intervenors request after-the-fact leave to file their motion one day late for the following reasons.

As mentioned, Joint Intervenors served and filed their motion on September 23, 2008, one day after the filing deadline. Counsel for Joint Intervenors experienced technical difficulties which prevented timely filing via the Commission's e-filing system on September 22. Pursuant to the Board's Memorandum and Order of January 24, 2008 (Procedures to Address Problems

¹ Joint Intervenors include the Center for a Sustainable Coast, Savannah Riverkeeper, Southern Alliance for Clean Energy, Atlanta Women's Action for New Directions, and Blue Ridge Defense League.

Submitting and Serving Documents Via E-Filing) (unpublished), Joint Intervenors attempted service via e-mail before expiration of the filing deadline. Unfortunately, the attempt at e-mail service also encountered technical difficulties that prevented affective service before the filing deadline. After correcting the problems and accomplishing service, Joint Intervenors submitted a letter to the Board on September 24, 2008 explaining the circumstances, as required by the Board's January 24, 2008 Memorandum.

On September 24, 2008, the Board issued a Memorandum and Order (Scheduling Guidance and Information Request Relating to Motion to Admit New Contention) (unpublished) relating to the hearing schedule in light of Joint Intervenors' motion to admit a new contention. While the September 24 Memorandum does not address the timeliness of the motion, it implies that the Board will consider the proposed new contention on the merits. Neither the NRC staff nor the applicant has objected to Joint Intervenors' method of service. As a result, Joint Intervenors believe the timeliness of the filing and service is now moot; however, Joint Intervenors submit this motion in an abundance of caution because they did not accomplish service before the filing deadline, as specified in the Board's January 24, 2008 Memorandum and Order.

The circumstances surrounding Intervenors' failure to file and serve their motion are described in detail in the September 24 letter to the Board. Briefly, the letter describes computer system upgrades that compromised Joint Intervenors' Counsel's Digital ID and Security Certificate and prevented delivery of the motion via e-mail. As discussed in the September 24 letter, counsel for Joint Intervenors made several good faith attempts to serve the motion before the filing deadline, but was ultimately unsuccessful. The motion was successfully served on the parties before the opening of business on the day following the filing deadline. Joint Intervenors

are unaware of any prejudice to the parties or delays to the proceeding resulting from the failure to serve the motion by the deadline. In accordance with 10 C.F.R. § 2.323(b), counsel for Joint Intervenors has contacted counsel for the staff of the Nuclear Regulatory Commission (the “NRC”) and the Southern Nuclear Operating Company concerning this request. Neither counsel opposed Joint Intervenors request for relief from the E-filing requirements to the extent the failure to file and serve the motion in a timely manner was due to Joint Intervenor's inability to file or serve the motion electronically; however, counsel for Southern stated that it intended to challenge the new contention for failure to raise the contention in a timely manner. Further, NRC staff counsel indicated that they were considering grounds to challenge the proposed new contention, other than the timeliness of filing and service. Joint Intervenors agree that this motion only seeks after-the-fact leave to file the underlying motion out-of-time, and has no bearing on the merits of Joint Intervenors’ motion to admit a new contention.

CONCLUSION

For the reasons discussed above, Joint Intervenors respectfully request that the Board grant its unopposed after-the-fact motion to file out-of-time and, accordingly, that it accept Joint Intervenors’ Motion to Admit New Contention one day late.

Respectfully submitted,

/signed (electronically) by/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing JOINT INTERVENORS' UNOPPOSED MOTION TO FILE "MOTION TO ADMIT NEW CONTENTION" OUT-OF-TIME were served upon the following persons by Electronic Information Exchange and/or electronic mail.

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/signed electronically by/

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