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VIA E-FILING

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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Nicholas G. Trikouros
Administrative Judge
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Dr. James Jackson
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

In the Matter of
Southern Nuclear Operating Co.
(Early Site Permit for Vogtle ESP Site)
Docket No. 52-011-ESP

Re: Request to Implement Alternative Schedule or to Hold a Pre-Hearing Conference to Discuss the General Schedule

Dear Judges Bollwerk, Trikouros, and Jackson:

As you are aware, by filing dated September 22, 2008, Joint Intervenors¹ moved to admit a new contention into the Vogle ESP proceeding. Pursuant to the Atomic Safety and Licensing Board's (the "Board") Revised Scheduling Order dated July 14, 2008 (the "Revised Scheduling Order"), Intervenors' submission of this motion should have triggered an alternative general schedule in lieu of the existing schedule that calls for an evidentiary hearing during the week of January 12, 2009. *See Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), Memorandum and Order (Revised*

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 Environmental Defense League.

General Schedule), (July 14, 2008)(unpublished). However, in its subsequent Memorandum and Order dated September 24, 2008 (the “Scheduling Guidance Order”), the Board stated that “if the single new contention EC 6 is not admitted, there is no reason for the Board to implement the alternative portion of the general schedule associated with litigating new/amended environmental contentions ...” *See Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Memorandum and Order (Scheduling Guidance and Information Request Relating to Motion to Admit New Contention), (September 24, 2008) at 1. Joint Intervenors respectfully request the Board to reconsider this determination and implement the alternative schedule as initially contemplated. In the alternative, Joint Intervenors request a pre-hearing conference with the Board to discuss the general schedule.

The Board’s unexpected change to the general schedule is unduly burdensome and prejudicial to Joint Intervenors’ interests. The Revised Scheduling Order contemplates a sequence of pre-hearing events whereby preliminary matters are resolved prior to the parties’ preparation for the evidentiary hearing.² Specifically, the schedule provides an opportunity for the parties to file (a) motions to admit new/amended contentions and (b) motions for summary disposition *prior to the parties’ submission of hearing-related items* (initial position statements, pre-filed direct testimony, in limine motions, etc.). Revised Scheduling Order at 2-4. In contrast, going forward with the existing schedule requires the parties to litigate motions to admit new contentions and summary disposition while simultaneously preparing prehearing submissions.

While the Scheduling Guidance Order states that Board will provide a new revised general schedule if proposed contention EC 6 is admitted, this does not relieve the current burden on the Joint Intervenors. Scheduling Guidance Order at footnote 2. Currently, Joint Intervenors are researching, drafting, or otherwise preparing for, the following items related to the Plant Vogtle expansion:

1. Reply to Staff and SNC Answers to Motion to Admit New Contention;
2. Motion(s) for Summary Disposition of Admitted Contentions EC 1.2 and EC 1.3³; and

² Notably, a contingent schedule has been a feature of every preceding scheduling order issued by the Board. *See Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Memorandum and Order (Revised General Schedule), (July 3, 2008); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Memorandum and Order (Revised General Schedule), (March 13, 2008); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Memorandum and Order (Revised General Schedule), (February 1, 2008); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Memorandum and Order (Prehearing Conference and Initial Scheduling Order), (May 7, 2007). In each instance, the contingent schedule afforded the parties an opportunity to fully resolve preliminary matters (including those matters arising from the submission of new contentions) prior to requiring them to prepare for the evidentiary hearing.

³ In the event new contentions were submitted, the Revised Scheduling Order provided the parties an additional opportunity to resolve contested matters in a summary fashion before moving to hearing preparation. Joint Intervenors have not yet determined whether the FEIS is so fatally flawed that they are entitled to judgment as a matter of law. If they make such a determination, Joint Intervenors intend to utilize this additional opportunity and file a motion for summary disposition of one or both of the admitted contentions. Moreover, both the Staff and applicant may similarly determine that the admitted contentions

3. Initial Hearing Statements and Prefiled Direct Testimony.⁴

In light of the ongoing Vogtle COL and Georgia PSC proceedings, in addition to the Vogtle ESP proceeding, the sudden change in the general schedule is prejudicial to the Joint Intervenors. Because the current schedule requires Joint Intervenors to simultaneously prepare initial hearing statements and prefiled testimony for the existing contentions, as well as draft a reply brief for the new contention motion—a burden that all previous hearing schedules sought to avoid—Joint Intervenors respectfully request the Board implement the alternative schedule originally contemplated by the Board in the Revised Scheduling Order. Alternatively, Joint Intervenors request that the Board schedule a prehearing conference to discuss scheduling matters.

Counsel for Joint Intervenors has contacted NRC staff counsel and counsel for SNC regarding this request. Counsel for SNC stated that SNC opposed reverting to the schedule provided in the Revised General Schedule. Counsel for the NRC staff indicated that they took no position with regard to the schedule.

Thank you, in advance, for your consideration of this request.

Respectfully submitted,

/signed electronically by/

Lawrence D. Sanders

Counsel for Joint Intervenors

are subject to resolution in a summary proceeding. However, the Scheduling Guidance Order eliminates this opportunity to file such a motion.

⁴ In addition, Joint Intervenors are also preparing for: (a) Petition for Leave to Intervene in the Combined Operating License Proceeding for Plant Vogtle Units 3 and 4; and (b) Georgia Public Service Commission Hearing on Georgia Power Company's Application for the Certification of Units 3 and 4 at Plant Vogtle and Updated Integrated Resource Plan (*See* <http://www.psc.state.ga.us/>, docket number 27800). The Public Service Commission Hearing and the Board hearing in the Vogtle ESP proceeding are now both scheduled to occur on January 12 – 14, 2008, which presents Joint Intervenors with an irreconcilable scheduling conflict.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SOUTHERN NUCLEAR OPERATING) Docket No. 52-011-ESP
COMPANY)
)
(Early Site Permit for the Vogtle ESP Site))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing JOINT INTERVENORS' REQUEST TO IMPLEMENT ALTERNATIVE SCHEDULE OR TO HOLD A PRE-HEARING CONFERENCE TO DISCUSS THE GENERAL SCHEDULE 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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