

No. 10-1057

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

**CENTER FOR A SUSTAINABLE COAST, SAVANNAH RIVERKEEPER,
SOUTHERN ALLIANCE FOR CLEAN ENERGY, GEORGIA WOMEN'S
ACTION FOR NEW DIRECTIONS, and BLUE RIDGE
ENVIRONMENTAL DEFENSE LEAGUE,**

Petitioners,

v.

**NUCLEAR REGULATORY COMMISSION and
UNITED STATES OF AMERICA,
Respondents.**

On Petition for Review of an Order of the Nuclear Regulatory Commission

**MOTION FOR LEAVE TO INTERVENE
BY SOUTHERN NUCLEAR OPERATING COMPANY, GEORGIA
POWER COMPANY, OGLETHORPE POWER CORPORATION,
MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA, AND
THE CITY OF DALTON, GEORGIA**

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March 30, 2010

**MOTION FOR LEAVE TO INTERVENE
BY SOUTHERN NUCLEAR OPERATING COMPANY, GEORGIA
POWER COMPANY, OGLETHORPE POWER CORPORATION,
MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA,
AND THE CITY OF DALTON, GEORGIA**

In accordance with 28 U.S.C. § 2348, Federal Rule of Appellate Procedure 15(d), and District of Columbia Circuit Rule 15(b), Southern Nuclear Operating Company, Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (collectively, “SNC”), as the holders of the Early Site Permit and Limited Work Authorization issued by the Nuclear Regulatory Commission (“NRC”) that are challenged in the Petition for Review, hereby file this Motion for Leave to Intervene in this proceeding. This Court previously granted SNC’s motion to intervene in the related proceeding, No. 09-1262. The parties do not oppose this Motion to Intervene. SNC submits the following in support of this Motion:

1. Southern Nuclear Operating Company, a wholly owned subsidiary of The Southern Company, applied for an Early Site Permit (“ESP”) and Limited Work Authorization (“LWA”) on behalf of itself and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (collectively, the “Owners”) with respect to two proposed additional nuclear reactors to be located on the site of the Alvin W. Vogtle Electric Generating Plant. SNC’s application was submitted in accordance with Part 52 of

title 10 of the Code of Federal Regulations and SNC fully participated in the proceedings before the NRC pursuant to 10 C.F.R. §§ 52.15-.24. SNC has also applied for a Combined License to construct and operate the proposed additional units pursuant to 10 C.F.R. Part 52 and section 185(b) of the Atomic Energy Act (42 U.S.C § 2235(b)). SNC's application for a Combined License incorporates the ESP for the Vogtle site by reference in accordance with the regulations of the NRC.

2. On October 23, 2009, Center for a Sustainable Coast, et al. ("CSC") petitioned this Court for review of seven orders of the NRC relating to the Vogtle ESP. The petition was docketed as *Center for a Sustainable Coast, et al. v. Nuclear Regulatory Commission, et al.*, No. 09-1262 (D.C. Cir.). SNC moved to intervene in that proceeding. No party opposed. On December 11, 2009, the Clerk of this Court entered an order granting SNC's motion to intervene in No. 09-1262.

3. The NRC and SNC filed motions to dismiss CSC's petition in No. 09-1262, on the grounds, among others, that CSC's petition for administrative review by the Commission was still pending. On January 7, 2010, the Commission denied CSC's petition for administrative review. CSC filed this second petition for judicial review of the same seven orders for which it sought judicial review in No. 09-1262, plus the Commission's January 7, 2010 order denying administrative review.

4. D.C. Circuit Rule 15(b) provides in pertinent part:

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 this 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.

SNC did not state that its intervention in No. 09-1262 would not apply to later-filed cases involving the same agency orders. Accordingly, the order granting intervention in No. 09-1262 has the effect of granting intervention in this case that involves the same seven previous orders and the latest order of the Commission denying administrative review and dated January 7, 2010.

5. In any event, SNC has Article III standing to intervene in this proceeding as it did in No. 09-1262. SNC has invested substantial sums of time and money in applying for and obtaining the ESP and LWA and has a direct stake in this Petition for Review proceeding. The Owners own the site that is the subject of the ESP and LWA and have contracted for the construction of the proposed units thereon. The Owners have made a substantial investment in preparing to begin the site preparation work and studies that are authorized and required by the ESP and LWA. This Court's disposition of the Petition for Review will affect SNC's activities under the LWA and its application for the Combined License if the ESP and LWA are set aside or suspended. *See Carstens v. Nuclear Regulatory*

Comm'n, 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); *see also Franchise Tax Bd. v. Alcan Aluminium*, 493 U.S. 331, 336 (1990) (holding that an impact on return on investment was sufficient to confer Article III standing).

6. The statutory design allows SNC to intervene in this proceeding as it did in No. 09-1262. Section 2348 of title 28 United States Code permits SNC to intervene as of right:

The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not 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.

(Emphases added.)

SNC was the party in interest in the proceedings before the NRC in which the ESP and LWA were issued to SNC. SNC would be directly affected if the NRC's order issuing the ESP and LWA were set aside. Further, the City of Dalton, Georgia is a community, Southern Nuclear Operating Company, Georgia Power Company, and Oglethorpe Power Corporation are corporations, and the

Municipal Electric Authority of Georgia is a firm whose interests are affected by the NRC's order issuing the ESP and LWA as they will engage in site preparation and own the site which will be prepared pursuant to the ESP and LWA at issue in this Petition for Review proceeding.

7. As in No. 09-1262, SNC claims an interest in the ESP and LWA that are the subject of this action, and SNC is so situated that this Court's disposition of the Petition for Review may, as a practical matter, impair or impede SNC's ability to protect its interest because this Court's decision on the legality of the ESP and LWA process is a necessary step in allowing SNC to complete site preparation and to obtain a Combined License. *Cf. City of Cleveland v. Nuclear Regulatory Comm'n*, 17 F.3d 1515, 1517 (D.C. Cir. 1994) (applying Rule 24(a)(2), Fed. R. Civ. P., to appellate intervention under 28 U.S.C. § 2348).

8. Absent intervention in this proceeding, SNC's interests will not be adequately represented. SNC's interests as operator and owner of the site and the proposed new nuclear reactors that are the subject of the ESP and LWA are different from the NRC's interest as a regulator and CSC's interest as concerned citizens. SNC is responsible for the licensing, funding, and successful completion of the new nuclear units. *See United States v. American Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980) (allowing intervention where parties would not adequately represent intervenor's interests).

9. As in No. 09-1262, intervention would not prejudice either the NRC or Petitioners in this proceeding as they are familiar with the issues that SNC litigated before the NRC, which include the same issues raised in the Petition for Review (*see* Pet. 3), it is early in this appellate proceeding, no briefs have been filed, and SNC will abide by the same briefing schedule that this Court sets for the parties. *See Montship Lines, Ltd. v. Federal Mar. Bd.*, 295 F.2d 147 (D.C. Cir. 1961) (allowing intervention in proceedings to review board's order where intervention would not complicate litigation).

WHEREFORE, the premises considered, SNC respectfully requests that this Court grant this Motion for Leave to Intervene and allow Southern Nuclear Operating Company, Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia to participate in this proceeding as intervenors.

Respectfully Submitted,

/s/ M. Stanford Blanton

M. Stanford Blanton
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Southern Nuclear Operating Company,
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Electric Authority of Georgia, and the
City of Dalton, Georgia

Dated: March 30, 2010

Center for a Sustainable Coast, et al. v. Nuclear Regulatory Commission, et al.
No. 10-1057

ADDENDUM

to

**MOTION FOR LEAVE TO INTERVENE
BY SOUTHERN NUCLEAR OPERATING COMPANY, GEORGIA
POWER COMPANY, OGLETHORPE POWER CORPORATION,
MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA, AND
THE CITY OF DALTON, GEORGIA**

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to District of Columbia Circuit Rules 27(a)(4) and 28(a)(1), the undersigned counsel for Southern Nuclear Operating Company, Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia certifies as follows:

(A) Parties

(1) Parties before the Nuclear Regulatory Commission:

- (a) Applicants: Southern Nuclear Operating Company, Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia.
- (b) Intervenors: Center for a Sustainable Coast, Savannah Riverkeeper, Southern Alliance for Clean Energy, Georgia Women's Action for New Directions, and Blue Ridge Environmental Defense League.

(2) Parties Before This Court:

- (a) Petitioners: Center for a Sustainable Coast, Savannah Riverkeeper, Southern Alliance for Clean Energy, Georgia Women's Action for New Directions, and Blue Ridge Environmental Defense League.
- (b) Respondents: The Nuclear Regulatory Commission and the United States of America.
- (c) Intervenors: Southern Nuclear Operating Company, Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia.

(B) Rulings Under Review:

- (1) Early Site Permit No. ESP-004, (Aug. 26, 2009).
- (2) *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-03, 65 NRC 237 (2007) (Board Memorandum and Order Ruling on Standing and Contentions).

- (3) *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-08-2, 67 NRC 54 (2008) (Board Memorandum and Order Ruling on Dispositive Motion and Associated Motion to Strike Regarding Environmental Contention 1.2).
 - (4) *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), (unpublished order) (Jan. 26, 2009) (Board Memorandum and Order Ruling on In Limine Motions).
 - (5) *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), (unpublished order) (Feb. 23, 2009) (Board Memorandum and Order Ruling on In Limine Motions).
 - (6) *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-07, __ NRC __, slip op., (June 22, 2009) (First Partial Initial Decision).
 - (7) *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-19, __ NRC __, slip op., (Aug. 17, 2009) (Second and Final Partial Initial Decision).
 - (8) *S. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), CLI-10-05, __ NRC __, slip op., (Jan. 7, 2010) (Memorandum and Order Denying Petition for Review).
- (C) Related Cases: *Center for a Sustainable Coast, et al. v. Nuclear Regulatory Commission, et al.*, No. 09-1262 (D.C. Cir.) (pending).

/s/ M. Stanford Blanton
M. Stanford Blanton

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and District of Columbia Circuit Rule 26.1, the undersigned counsel for Southern Nuclear Operating Company, Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia discloses as follows:

1. Southern Nuclear Operating Company, Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia propose to intervene in this proceeding.
2. Southern Nuclear Operating Company is the licensed operator of the Alvin W. Vogtle Electric Generating Plant located near Augusta, Georgia. Southern Nuclear Operating Company operates Plant Vogtle on behalf of the owners of the plant: Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia.
3. One hundred percent of the common stock of Southern Nuclear Operating Company and Georgia Power Company is owned by The Southern Company, a registered public utility holding company and a publicly-held corporation.
4. Georgia Power Company is a regulated public utility that provides electric power to customers in Georgia.
5. Oglethorpe Power Corporation is a power supply cooperative that provides electricity to 38 electric membership corporations which, collectively, provide electricity to customers in Georgia. The electric membership corporations are not-for-profit electric cooperatives owned by the actual customers to whom they supply electricity. There is no public company with a ten percent or greater ownership interest in Oglethorpe Power Corporation.
6. The Municipal Electric Authority of Georgia is a public power entity authorized by the State of Georgia that generates and transmits electrical power to its 49 local government members in Georgia. There is no public company with a ten percent or greater ownership interest in the Municipal Electric Authority of Georgia.

7. The City of Dalton, Georgia is a municipality -- a governmental entity. There is no public company with a ten percent or greater ownership interest in City of Dalton, Georgia.

/s/ M. Stanford Blanton

M. Stanford Blanton

CERTIFICATE OF SERVICE

I hereby certify that, on March 30, 2010, a copy of the foregoing "MOTION FOR LEAVE TO INTERVENE BY SOUTHERN NUCLEAR OPERATING COMPANY, GEORGIA POWER COMPANY, OGLETHORPE POWER CORPORATION, MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA, AND THE CITY OF DALTON, GEORGIA" and the attached addendum was filed electronically. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ M. Stanford Blanton
M. Stanford Blanton