

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Southern Nuclear Operating Company

**(COL Application for Vogtle Electric
Generating Plant, Units 3 and 4)**

)
)
) **Docket Nos. 52-025-COL and 52-026-COL**

)
) **September 29, 2010**
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)

**SOUTHERN NUCLEAR OPERATING COMPANY’S
RESPONSE TO JOINT INTERVENORS’ MOTION FOR LEAVE TO FILE OUT OF
TIME**

Pursuant to the Atomic Safety and Licensing Board’s (“Board”) Order of September 23, 2010,¹ Southern Nuclear Operating Company (“SNC”) hereby files this Response to Joint Intervenor’s² Motion for Leave to File Out of Time. SNC has, in the past, worked with intervenors and as a matter of course does not oppose motions to file out of time.³ However, in the instant case Joint Intervenor’s have displayed a casual attitude towards prosecuting their claim and have failed to adequately explain the reason(s) for their delay in submitting their Reply to the Answers filed on September 10, 2010 by NRC Staff and on August 23, 2010 by SNC. Joint Intervenor’s failure to adhere to the Board’s scheduling requirements threatens to delay this proceeding.

¹ Memorandum and Order (Scheduling Regarding Joint Intervenor’s Reply-Related Filings), Docket Nos. 52-025-COL and 52-026-COL (Sept. 23, 2010), at 1.

² Joint Intervenor’s include the Blue Ridge Environmental Defense League (“BREDL”), the Center for a Sustainable Coast (“CSC”), and Georgia Women’s Action for New Directions (“GWA”).

³ See, e.g., Order (Granting Time Extension Motion), Docket Nos. 52-025-COL and 52-026-COL (Nov. 5, 2009) (noting no opposition to extension); Order (Granting in Part Motion for Time Extension to File Reply Pleading), Docket No. 52-011-ESP (Jan. 16, 2007) (noting SNC had no opposition to the extension); Intervenor’s Unopposed Motion to Extend Time for Filing a Reply to Petitioner’s Response to Motion to Dismiss Petition for Review, D.C. Circuit Docket No. 52-011-ESP (Dec. 15, 2009).

Although SNC understands that Joint Intervenors' former counsel filed a notice of withdrawal on the same day their Reply to the Answers of SNC and the NRC Staff were due, Joint Intervenors have provided no evidence or explanation regarding the reason their former counsel withdrew, notwithstanding that that counsel had previously indicated his availability for oral argument to be held the week after his withdrawal.⁴ No request for an extension of time in accordance with the Board's Scheduling Order⁵ was made. Nor was any explanation for the failure to file given by the Joint Intervenors until the Board's law clerk contacted one of Joint Intervenors' representatives on Monday, September 13, 2010.

While SNC has no information regarding the reason for the withdrawal of Joint Intervenors' former counsel, SNC notes that the affidavits submitted with Joint Intervenors' Reply, purporting to support Joint Intervneors' claim of standing, are each dated more than a week after the Reply was originally due, suggesting that Joint Intervenors had not provided any information to their former counsel to support this critical issue by the time the Reply was due.

In an Order issued today, the Commission noted that "motions [for an extension of time] filed after the applicable deadline will be 'summarily denied' in the absence of 'extraordinary circumstances.'"⁶ Applicant believes that Joint Intervenors should be required to demonstrate that they supported their former counsel's need for information upon which to base his Reply in

⁴ Joint Report to the Board Regarding Party Availability for Initial Prehearing Conference/Oral Argument, Docket Nos. 52-025-COL and 52-026-COL (Sept. 1, 2010), at 1.

⁵ See Memorandum and Order (Initial Prehearing Order), Docket Nos. 52-025-COL and 52-026-COL (Dec. 2, 2008), at 6 ("A motion for extension of time in these proceedings shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought."); 10 C.F.R. § 2.307(a) ("Except as otherwise provided by law, the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time, may be extended or shortened either by the Commission or the presiding officer for good cause...").

⁶ *In re Tenn. Valley Auth.* (Bellefonte Nuclear Plant, Units 1 and 2), CLI-10-26, Docket Nos. 50-438-CP & 50-439-CP (Sept. 29, 2010), at 3-4 & n.18 ("Petitioners' counsel was aware both of the Board's likely issuance of a decision in early April and of his two other cited obligations well in advance of the appeal deadline in the case now before us, so he could have filed with us a timely motion for extension of time based upon them. He did not.") (citations omitted).

order for his withdrawal to justify a filing out of time. Absent such a showing, Joint Intervenor's motion for leave to file out of time should be denied.

Respectfully submitted,

Signed (electronically) by M. Stanford Blanton

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Dated this 29th day of September, 2010.

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NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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Generating Plant, Units 3 and 4))	

CERTIFICATE OF SERVICE

I hereby certify that copies of SOUTHERN NUCLEAR OPERATING COMPANY'S OPPOSITION TO JOINT INTERVENORS' MOTION FOR LEAVE TO FILE OUT OF TIME in the above-captioned proceeding have been served by electronic mail as shown below, this 29th day of September, 2010, and/or by e-submittal.

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*And upon any other persons designated on the official service list compiled by the Nuclear
Regulatory Commission in this proceeding.

(Original signed by M. Stanford Blanton)

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Dated this 29th day of September, 2010.