

May 6-9, 2011

UNITED STATES OF AMERICA  
U.S. NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

In the Matter of

Amerenue (Callaway Plant Unit 2)	)	Docket No. 52-037-COL
AP1000 Design Certification Amendment 10 CFR Part 52	)	NRC-2010-0131 RIN 3150-A18
Calvert Cliffs 3 Nuclear Project, L.L.C. (Calvert Cliffs Nuclear Power Plant, Unit 3)	)	Docket No. 52-016-COL
Detroit Edison Co. (Fermi Nuclear Power Plant, Unit 3)	)	Docket No. 52-033-COL
Duke Energy Carolinas, L.L.C. (William States Lee III Nuclear Station, Units 1 and 2)	)	Docket Nos. 52-018 and 52-019
Energy Northwest (Columbia Generating Station)	)	Docket No. 50-397-LR
Entergy Nuclear Generation Co. And Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station)	)	Docket No. 50-293-LR
Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Station, Units 2 and 3)	)	Docket Nos. 50-247-LR and 50-286-LR
ESBWR Design Certification Amendment 10 CFR Part 52	)	NRC-2010-0135 RIN-3150-AI85
FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1)	)	Docket No. 50-346-LR
Florida Power & Light Co. (Turkey Point Units 6 and 7)	)	Docket Nos. 52-040-COL and 52-041-COL

Luminant Generation, Co., L.L.C. (Comanche Peak Nuclear Power Plant, Units 3 and 4)	) ) ) )	Docket Nos. 52-034-COL and 52-035-COL
Nextera Energy Seabrook, L.L.C. (Seabrook Station, Unit 1)	) ) )	Docket No. 50-443-LR
Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)	) ) ) )	Docket Nos. 50-275-LR and 50-323-LR
PPL Bell Bend, L.L.C. (Bell Bend Nuclear Power Plant)	) ) )	Docket No. 52-039-COL
Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3)	) ) ) )	Docket Nos. 52-022-COL and 52-023-COL
Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2)	) ) ) )	Docket Nos. 52-029-COL and 52-030-COL
South Carolina Electric and Gas Co. And South Carolina Public Service Authority (Also Referred to as Santee Cooper) (Virgil C. Summer Nuclear Station, Units 1 and 2)	) ) ) ) ) )	Docket Nos. 52-027-COL and 52-028-COL
Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4)	) ) ) )	Docket Nos. 52-025-COL and 52-026-COL
South Texas Project Nuclear Operating Co. (South Texas Project, Units 3 and 4)	) ) ) )	Docket Nos. 52-012-COL and 52-013-COL
Tennessee Valley Authority (Bellefonte Nuclear Power Plant, Units 1 and 2)	) ) ) )	Docket Nos. 50-438-CP and 50-439-CP
Tennessee Valley Authority (Bellefonte Nuclear Power Plant, Units 3 and 4)	) ) ) )	Docket Nos. 52-014-COL and 52-015-COL

Tennessee Valley Authority	)	Docket No. 50-0391-OL
(Watts Bar Unit 2)	)	
	)	
Virginia Electric and Power Co.	)	
d/b/a/ Dominion Virginia Power and	)	Docket No. 52-017-COL
Old Dominion Electric Cooperative	)	
(North Anna Unit 3)	)	

**PETITIONERS’ MOTION FOR MODIFICATION OF THE COMMISSION’S  
APRIL 19, 2011, ORDER TO PERMIT A CONSOLIDATED REPLY**

**I. INTRODUCTION**

Petitioners respectfully request the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) to modify its April 19, 2011, Order setting forth a schedule for further briefing on Petitioners’ Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station (April 14-18, 2011, corrected April 18, 2011) (“Emergency Petition”), for the purpose of allowing Petitioners to file a single consolidated reply to the twenty responses that have been filed in opposition to the Emergency Petition. As discussed below, satisfy the NRC’s standard for allowing a reply because this case involves compelling circumstances. 10 C.F.R. § 2.323(c).

**I. FACTUAL BACKGROUND**

Between April 14, 2011, and April 18, 2011, Petitioners submitted to the Commission an Emergency Petition requesting that the Commission exercise its supervisory jurisdiction to suspend all pending decisions regarding the issuance of construction permits, new reactor licenses, combined construction permit and operating licenses, early site permits, license renewals, and standardized design certification rulemakings for nuclear reactors, to suspend licensing decisions on those applications while it evaluated new and significant information regarding the safety and

environmental implications of the ongoing catastrophic radiological accident at the Fukushima Daiichi Nuclear Power Station, Units 1-6 (“Fukushima”), in Okuma, Japan. On April 19, 2011, Petitioners submitted an amended and corrected version of the Emergency Petition, along with a supporting declaration by Dr. Arjun Makhijani.

On April 19, 2011, the Commission issued an Order acknowledging its receipt of both the original and corrected petitions and set a deadline of May 2, 2011, for responses and amicus briefs. The Order did not provide for a reply.

Approximately twenty separate responses have been filed in opposition to the Emergency Petition, including briefs from the NRC Staff, the Nuclear Energy Institute, and license applicants in nineteen separate proceedings.<sup>1</sup>

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<sup>1</sup> In addition to the NRC Staff and NEI, the following new reactor license applicants and license renewal applicants submitted Responses in opposition to the Emergency Petition: Calvert Cliffs 2 Nuclear Project, L.L.C. and Unistar Nuclear Operating Services, L.L.C. (Docket No. 52-016); the Detroit Edison Co. (Docket No. 52-033); Duke Energy Carolinas, L.L.C. (Docket Nos. 52-018 and 52-019); Energy Northwest (Docket No. 50-397); Entergy Nuclear Generation co. and Entergy Nuclear Operations, Inc. (Docket No. 50-203); Entergy Nuclear Operations, Inc. (Docket Nos. 50-247 and 50-286); FirstEnergy Nuclear Operating Co. (Docket No. 50-346); Florida Power & Light Co. (Docket Nos. 52-040 and 52-041); Luminant Generation Co. (Docket Nos. 52-034 and 52-035); NextEra Energy Seabrook, L.L.C. (Docket No. 50-443); Nuclear Innovation North America L.L.C. (Docket Nos. 52-012 and 52-013); Pacific Gas & Electric Co. (Docket Nos. 50-275 and 50-323); PPL Bell Bend, L.L.C. (Docket No. 52-039); Progress Energy Carolinas, Inc. (Docket Nos. 52-022 and 52-023); Progress Energy Florida, Inc. (Docket Nos. 52-029 and 52-030); South Carolina Electric and Gas Co. and South Carolina Public Service Authority (a.k.a. Santee Cooper) (Docket Nos. 52-027 and 52-028); Southern Nuclear Operating Co. (Docket Nos. 52-025 and 52-026); Tennessee Valley Authority (Docket Nos. 50-391, 52-014 and 52-015); and Dominion Virginia Power, et al. (Docket No. 52-017).

The Commonwealth of Massachusetts (Docket No. 50-293) also filed a Response in support of Petitioners.

### **III. DISCUSSION**

Petitioners respectfully submit that there are two important respects in which this case presents compelling circumstances warranting the granting of leave to reply to the Responses filed in opposition to their Emergency Petition under 10 C.F.R. § 2.323(c).

First, the occurrence of the Fukushima accident, as the first severe radiological accident involving reactors and spent fuel pools with designs used in the U.S., raises unprecedented technical and legal issues for which there is very little precedent in NRC jurisprudence. The accident also raises unprecedented safety and environmental concerns for members of the public who are neighbors of proposed or existing reactors, and who seek to exercise their rights under the Atomic Energy Act (“AEA”) and the National Environmental Policy Act (“NEPA”) to ensure that the lessons of the Fukushima accident are adequately considered in all prospective licensing decisions. It is therefore appropriate to allow a thorough debate regarding the regulatory significance of the Fukushima accident under the AEA and NEPA and what procedural measures must be imposed to protect the public’s right to participate in a meaningful way in the consideration of Fukushima-related issues licensing decisions.

Second, Petitioners could not have anticipated that many of the Responses would mischaracterize the nature of their Emergency Petition or misinterpret the governing law. For example, virtually all of the Responses mischaracterize Petitioners’ Emergency Petition to suspend licensing decisions as a “motion” to suspend licensing “proceedings.” They then rely on that mischaracterization to contend that the Petition is subject to a host of procedural regulations which are simply irrelevant, and with which Petitioners did not

comply. Because the Commission's acceptance of their mischaracterization would result in the dismissal of the Petition, the Commission should consider their Reply.

Petitioners also could not have anticipated the numerous technical arguments that the Responses have made in challenging the validity of Dr. Makhijani's supporting declaration regarding the new and significant information demonstrated by the Fukushima accident, or that the Responses would fail to provide expert support for their technical arguments.

Finally, the Petitioners could not have anticipated the numerous ways in which the opponents misinterpret NEPA's requirement for consideration of new and significant information in NRC licensing decisions. They ascribe to the NRC a level of discretion that simply does not exist in the statute. They also fail to recognize that to the limited extent that NEPA does give agencies discretion to avoid public participation on some issues, the AEA nevertheless requires the NRC to allow the public to participate. Given that to date, the Commission has provided no guidance regarding how it will apply NEPA to the lessons of the Fukushima accident, Petitioners believe it is extremely important to have a thorough discussion of NEPA that provides for their reply.

Pursuant to 10 C.F.R. 2.323, the undersigned have conferred with other parties to this proceeding. All parties consulted stated that they would oppose this motion, except for the Commonwealth of Massachusetts. Separate certificates of counsel are being submitted in each separate proceeding.

#### **IV. CONCLUSION**

For the foregoing reasons, Petitioners' Motion should be granted.

*Signed (electronically) by:*

Diane Curran

Harmon, Curran, Spielberg & Eisenberg, L.L.P.

1726 M Street N.W. Suite 600

Washington, D.C. 20036

202-328-3500

Fax: 202-328-6918

E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

*Counsel to San Luis Obispo Mothers for Peace in Diablo Canyon License Renewal Proceeding*

*Counsel to Southern Alliance for Clean Energy in Watts Bar Unit 2 Operating License Proceeding*

*Signed (electronically) by:*

Nina Bell

Northwest Environmental Advocates

P.O. Box 12187

Portland, OR 97212-0187

503-295-0490

E-mail: [nbell@advocates-nwea.org](mailto:nbell@advocates-nwea.org)

*Duly authorized representative of Northwest Environmental Advocates in Columbia Generating Station license renewal proceeding*

*Signed (electronically) by:*

Sara Barczak

Southern Alliance for Clean Energy

428 Bull Street

Savannah, GA 31401

912-201-0354

E-mail: [sara@cleanenergy.org](mailto:sara@cleanenergy.org)

*Duly authorized representative of Southern Alliance for Clean Energy in Bellefonte Units 3 and 4 COL proceeding*

*Signed (electronically) by:*

Cara L. Campbell

Ecology Party of Florida

641 SW 6 Avenue

E-mail: [levynuke@ecologyparty.org](mailto:levynuke@ecologyparty.org)

Fort Lauderdale, FL 33315

*Duly authorized representative of Ecology Party of Florida*

*Signed (electronically) by:*

Tom Clements

Friends of the Earth

1112 Florence Street

Columbia, SC 29201

803-834-3084

E-mail: [tomclements329@cs.com](mailto:tomclements329@cs.com)

*Duly authorized representative of Friends of the Earth and South Carolina Chapter of Sierra Club in COL proceeding for V.C. Summer*

*Signed (electronically) by:*

Robert V. Eye, KS Sup. Ct. No. 10689

Kauffman & Eye

112 SW 6<sup>th</sup> Ave., Suite 202

Topeka, KS 66603

785-234-4040

E-mail: [bob@kauffmaneye.com](mailto:bob@kauffmaneye.com)

*Counsel for Public Citizen and SEED Coalition in Comanche Peak COL proceeding and South Texas COL proceeding*

*Signed (electronically) by:*

William C. Garner

Nabors, Giblin & Nickerson, P.A.

1500 Mahan Drive Suite 200

Tallahassee, FL 32308

850-224-4070

Fax: 850-224-4073

E-mail: [bgarner@nglaw.com](mailto:bgarner@nglaw.com)

*Counsel to Village of Pinecrest, Florida in Turkey Point COL proceeding*

*Signed (electronically) by:*

Mindy Goldstein

Turner Environmental Law Clinic

1301 Clifton Road

Atlanta, GA 30322

404-727-3432

Fax: 404-7272-7853

Email: [magolds@emory.edu](mailto:magolds@emory.edu)

*Counsel to Center for a Sustainable Coast, Georgia Women's Action for New Directions, Savannah Riverkeeper, and the Southern Alliance for Clean Energy in Vogtle Units 3 and 4 COL proceeding.*

*Counsel to Dan Kipnis, Mark Oncavage, National Parks Conservation Association, and the Southern Alliance for Clean Energy in Turkey Point Units 6 and 7 COL proceeding.*

*Signed (electronically) by:*

Manna Jo Greene, Environmental Director

Hudson River Sloop Clearwater, Inc.

724 Wolcott Ave

Beacon, NY 12508

845-265-8080 (ext. 7113)

*Duly authorized representative for Hudson River Sloop Clearwater in Indian Point license renewal proceeding*

*Signed (electronically) by:*

Paul Gunter  
Beyond Nuclear  
6930 Carroll Ave., Suite 400  
Takoma Park, MD 20912  
202-546-4996

E-mail: [paul@beyondnuclear.org](mailto:paul@beyondnuclear.org)

*Duly authorized representative of Beyond Nuclear in Calvert Cliffs COL proceeding, Davis-Besse license renewal proceeding, and Seabrook license renewal proceeding*

*Signed (electronically) by:*

Kevin Kamps  
Beyond Nuclear  
6930 Carroll Ave., Suite 400  
Takoma Park, MD 20912  
202-546-4996

E-mail: [paul@beyondnuclear.org](mailto:paul@beyondnuclear.org)

*Duly authorized representative of Beyond Nuclear in Davis-Besse license renewal proceeding*

*Signed (electronically) by:*

Mary Lampert  
Pilgrim Watch  
148 Washington Street  
Duxbury, MA 02332

*Duly authorized representative of Pilgrim Watch in Pilgrim License Renewal Proceeding*

*Signed (electronically) by:*

Terry J. Lodge  
316 North Michigan St., Suite 520  
Toledo, OH 43604-5627  
419-255-7552

E-mail: [tjlodge50@yahoo.com](mailto:tjlodge50@yahoo.com)

*Attorney for Citizens Environment Alliance of Southwestern Ontario, Don't Waste Michigan, and the Green Party of Ohio in Davis-Besse Nuclear Power Station Unit 1 license renewal proceeding.*

*Counsel to Keith Gunter, Michael J. Keegan, Edward McArdle, Leonard Mandeville, Frank Mantei, Marcee Meyers, Henry Newnan, Sierra Club (Michigan Chapter), George Steinman, Shirley Steinman, Harold L. Stokes, and Marilyn R. Timmer in the Fermi COL proceeding.*

*Signed (electronically) by:*

Michael Mariotte, Executive Director  
Nuclear Information and Resource Service  
6930 Carroll Ave., Suite 340  
Takoma Park, MD 20912  
301-270-6477

E-mail: [nirsnet@nirs.org](mailto:nirsnet@nirs.org)

*Duly authorized representative of NIRS in Calvert Cliffs COL proceeding*

*Signed (electronically) by:*

Mary Olson  
NIRS Southeast  
P.O. Box 7586  
Asheville, NC 28802  
828-252-8409

E-mail: [maryo@nirs.org](mailto:maryo@nirs.org)

*Duly authorized representative of Nuclear Information and Resource Service in Levy COL proceeding*

*Signed (electronically) by:*

Henry B. Robertson  
Great Rivers Environmental Law Center  
705 Olive Street, Suite 614  
St. Louis, MO 63101-2208  
314-231-4181

E-mail: [hrobertson@greatriverslaw.org](mailto:hrobertson@greatriverslaw.org)

*Counsel to Missouri Coalition for the Environment and Missourians for Safe Energy in Callaway COL proceeding*

*Signed (electronically) by:*

John D. Runkle  
P.O. Box 3793  
Chapel Hill, NC 27515-3793  
919-942-0600

E-mail: [junkle@pricecreek.com](mailto:junkle@pricecreek.com)

*Counsel to NC Waste Awareness and Reduction Network in Shearon Harris 2 and 3 COL proceeding*

*Counsel to AP1000 Oversight Group in AP1000 Rulemaking Proceeding*

*Counsel to Blue Ridge Environmental Defense League in Vogtle 3 and 4 COL proceeding*

*Counsel to Blue Ridge Environmental Defense League and People's Alliance for Clean Energy in North Anna 3 COL proceeding*

*Signed (electronically) by:*

Raymond Shadis

Friends of the Coast/New England Coalition

Post Office Box 98

Edgecomb, Maine 04556

207-882-7801

E-mail: [shadis@prexar.com](mailto:shadis@prexar.com)

*Duly authorized representative of Friends of the Coast and New England Coalition in Seabrook license renewal proceeding*

*Signed (electronically) by:*

Gene Stilp

1550 Fishing Creek Valley Road

Harrisburg, PA 17112

717-829-5600

E-mail: [genestilp@comcast.net](mailto:genestilp@comcast.net)

*Pro se petitioner in Bell Bend COL proceeding*

*Signed (electronically) by:*

Jason Totoiu

Everglades Law Center

P.O. Box 2693

Winter Haven, FL 33883

561-568-6740

E-mail: [Jason@evergladeslaw.org](mailto:Jason@evergladeslaw.org)

*Counsel to Dan Kipnis, Mark Oncavage, National Parks Conservation Association, and the Southern Alliance for Clean Energy in Turkey Point Units 6 and 7 COL proceeding.*

*Signed (electronically) by:*

Barry White

Citizens Allied for Safe Energy

1001 SW 129 Terr.

Miami, FL 33176

305-251-1960

E-mail: [btwamia@bellsouth.net](mailto:btwamia@bellsouth.net)

*Duly authorized representative of Citizens Allied for Safe Energy in Turkey Point COL proceeding*

*Signed (electronically) by:*

Louis A. Zeller

Blue Ridge Environmental Defense League

P.O. Box 88

Glendale Springs, NC 28629

336-982-2691

E-mail: [BREDL@skybest.com](mailto:BREDL@skybest.com)

*Duly authorized representative of Blue Ridge Environmental Defense League and Bellefonte Efficiency and Sustainability Team in COL Proceeding for Bellefonte Units 3 and 4.*

*Duly authorized representative of Blue Ridge Environmental Defense League and People's Alliance for Clean Energy in North Anna COL proceeding*

*Duly authorized representative of Blue Ridge Environmental Defense League in W.S. Lee COL proceeding*

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