

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.

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May 6-9, 2011

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**CERTIFICATE REGARDING CONSULTATION**

I certify that on May 6, 2011, I contacted counsel for the applicant and the NRC Staff in an attempt to resolve the concerns raised by this motion via email. Counsel for the applicant did not respond. Counsel for the NRC Staff said that the Staff would oppose the motion unless it demonstrated compelling circumstances.

\_\_\_\_\_/Electronically signed by/\_\_\_\_\_

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May 9, 2011

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing PETITIONERS' MOTION FOR MODIFICATION OF THE COMMISSION'S APRIL 19, 2011, ORDER TO PERMIT A CONSOLIDATED REPLY have been served upon the following persons by Electronic Information Exchange.

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This 9<sup>th</sup> day of May 2011.

FOR THE FRIENDS OF THE EARTH  
AND SOUTH CAROLINA CHAPTER OF THE SIERRA CLUB

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