

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

)
In the Matter of)
)
) Docket Nos. 52-025-COL &
Southern Nuclear Operating Company, Inc.) 52-026-COL
)
)
Combined License for Vogtle Electric)
Generating Plant Units 3 and 4) March 2, 2012
_____)

**PETITIONERS' RESPONSE TO SOUTHERN NUCLEAR OPERATING CO.'S
MOTION TO STRIKE**

INTRODUCTION

Petitioners, the Southern Alliance for Clean Energy, Blue Ridge Environmental Defense League, Center for a Sustainable Coast, and Georgia Women's Action for New Directions, hereby respond to Southern Nuclear Operating Company's ("Southern's") Motion to Strike or, in the Alternative, Request for Page Limit Extension (Feb. 22, 2012) (the "Motion"). To the extent that it has not already been granted, the Motion should be denied.

BACKGROUND

On February 16, 2012, Petitioners filed a Motion to Stay the Effectiveness of the Combined License for Vogtle Electric Generating Plant Units 3 and 4 Pending Judicial Review ("Stay Motion"). By motion dated February 22, 2012, Southern requests the Nuclear Regulatory Commission ("NRC" or "Commission") to strike Petitioners' Stay Motion on the ground that it does not comply with the ten-page limit for stay motions in 10 CFR § 2.342. In the alternative, Southern seeks an extension of the page limit to twenty pages for Southern's response. The NRC Staff filed a response supporting Southern's request for an extension of the

page limit, but asserted that 10 C.F.R. § 2.342 does not apply. NRC Staff Answer to SNC Motion (Feb. 23, 2012).

In an order dated February 24, 2012, the Commission granted Southern's request for a page limit extension and said that it "will address Southern's motion to strike in a separate decision." *Id.* at 2. Thus, the question raised by Southern's motion to strike Petitioners' Stay Motion remains unresolved.

DISCUSSION

The Commission should deny Southern's request to strike Petitioners' Stay Motion for failure to comply with 10 C.F.R. § 2.342(b) because § 2.342(b) -- by its own terms -- applies only to motions by parties to adjudicatory proceedings to stay the effect of Atomic Safety and Licensing Board ("ASLB") decisions. *Shieldalloy Metallurgical Corp.* (Decommissioning of the Newfield, New Jersey Site), CLI-10-08, 71 NRC 142, 147 (2010). *See also Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-11, 37 NRC 251 (1993). Petitioners, however, are asking the Commission to stay the effect of its own decision pursuant to Section 10(d) of the Administrative Procedure Act ("APA"), 5 U.S.C. § 740(d). Regulations regarding ASLB decisions are simply inapplicable.

The NRC's regulations contain no provision for motions staying the effectiveness of the Commission's final decisions, and thus they set forth no page limit. Nor is there any page limit in Section 10(d) of the APA for such motions. Therefore Southern has no legal basis for its Motion.¹

¹ Petitioners recognize that the Commission may view their request for relief as a motion to hold CLI-12-02 in abeyance. *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-8, 33 NRC 461, 468 (1991). If that is the case, Petitioners respectfully request the Commission to use the appropriate terminology to give them the relief they seek: an order

CONCLUSION

For the foregoing reasons, Southern's Motion to Strike Petitioners' Stay Motion should be denied.

Respectfully submitted,

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suspending Southern's authority to continue construction activities at the Vogtle Units 3 and 4 site pending judicial review.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **PETITIONERS' RESPONSE TO SOUTHERN NUCLEAR OPERATING CO.'S MOTION TO STRIKE** were served upon the following persons by Electronic Information Exchange and/or electronic mail.

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