



April 9, 2014

NRC FOIA/PA Officer
U.S. Nuclear Regulatory Commission
Mailstop T-5 F09
Washington, DC 20555-0001
FOIA.resource@nrc.gov

FOIA/PA REQUEST
Case No.: 2014-0208
Date Rec'd: 4/10/14
Specialist: Stevens
Related Case: _____

SUBJECT: *Freedom of Information Act Request*

Dear NRC FOIA/PA Officer:

On behalf of the Southern Alliance for Clean Energy (“SACE”), and pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., I am writing to request you to release Chapter 5 of the Updated Final Safety Analysis Report (“UFSAR”) for the St. Lucie Unit 2 reactor, Docket No. 50-389, as submitted by Florida Power & Light Co. (“FPL”) to the U.S. Nuclear Regulatory Commission (“NRC”) on June 26, 2008. In addition, please include the cover letter. Chapters 1 through 7 of the St. Lucie Unit 2 UFSAR are located in the non-public portion of the NRC’s ADAMS document collection, and are catalogued as follows:

Accession Number ML082060040
Document Date 6/26/2008 12:00:00AM
Document Type Letter
Updated Final Safety Analysis Report (UFSAR)
Title St. Lucie Unit 2 - Updated Final Safety Analysis Report, Amendment No. 18,
Introduction Through Chapter 7.
Estimated Page Count 1193
Official Record? Yes
Availability Non-Publicly Available
Document Sensitivity Non-Sensitive

See Attachment 1. Chapter 5 of the 2008 UFSAR for St. Lucie Unit 2 discusses the reactor coolant system, including the steam generators. In 2007, FPL made significant design changes to the Unit 2 steam generators without obtaining a license amendment. These design changes were summarily described by FPL in a “50.59 Summary” that FPL submitted to the NRC on June 26, 2008, and which was posted on ADAMS.¹ The cover letter to the 50.59 Summary referred to the UFSAR, which FPL had submitted to the NRC the same day. The 2008 UFSAR was given an Accession Number, ML082060040, but was not posted on ADAMS.

¹ See St. Lucie Unit 2, Docket No. 50-389, Changes, Tests, and Experiments Made as Allowed by 10 C.F.R. 50.59 for the Period of June 12, 2006 through April 4, 2008 at 8 (attached to letter from Gordon L. Johnston, FPL, to NRC re: St. Lucie Unit 2 Docket No. 50-389 Report of 10 CFR 50.59 Plant Changes (June 26, 2008) (ML081840111)).



In order to better understand the design changes that FPL had made to the Unit 2 steam generators, SACE requested a copy of Chapter 5 of the Unit 2 UFSAR from the NRC's Public Document Room ("PDR") in early March of 2014. The PDR identified the document's Accession Number on March 6, 2014 (*see* Attachment 1), and informed counsel for SACE that the NRC Staff would review it to determine what portions could be publicly released without the need for a FOIA request. *See* Attachment 2. On April 2, 2014, the PDR sent SACE the most recent (2012) UFSAR for St. Lucie Unit 2, but not the 2008 UFSAR. Counsel for SACE immediately clarified and reiterated her request for the 2008 UFSAR. *See* Attachment 3. However, she has not received the document, nor has she been told how long it would take to produce the document. Therefore, SACE is submitting this FOIA request.

As discussed below, SACE urgently needs the requested document in order to participate effectively in a proceeding that is now underway before the Commission regarding the question of whether the NRC Staff effectively amended the St. Lucie Unit 2 operating license to permit operation of the reactor with substantially re-designed steam generators, in violation of the Atomic Energy Act and 10 C.F.R. § 50.59. A copy of SACE's Hearing Request Regarding *De Facto* Amendment of St. Lucie Unit 2 Operating License (March 10, 2014) is attached to this FOIA request as Attachment 4. The Commission has ordered FPL and the NRC Staff to respond to SACE's Hearing Request by April 28, 2014, and has given SACE an opportunity to reply by May 5. *See* Attachment 5. SACE seeks a copy of Chapter 5 of the UFSAR before April 28, in order to have as complete as possible an understanding of the nature of the Unit 2 steam generator design changes before replying to the responses of FPL and the NRC Staff.

SACE respectfully submits that review of Chapter 5 for public disclosure should not be time-consuming, because the NRC Staff already has reviewed the 2012 UFSAR and determined that it could be released in its entirety. Presumably, the 2012 UFSAR encompasses all the changes in the 2008 UFSAR, with the only difference being the identification of information that was added or removed in 2008 versus 2012.

Request for Expedited Review

Pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 10 C.F.R. § 9.25(e), SACE requests expedited processing of this FOIA request because it has a "compelling need" for the information. SACE meets the two-pronged standard for demonstrating a compelling need for the information because it is "primarily engaged in disseminating information" and because the requested information is "urgently needed . . . in order to inform the public concerning actual or alleged Federal Government activity." 10 C.F.R. § 9.25(e)(1)(ii).

First, SACE is a non-profit organization primarily engaged in information dissemination, public education and advocacy on environmental issues. As a non-profit, non-partisan environmental advocacy organization operating throughout the Southeast, SACE has a long history of conducting public education on environmental issues. Founded in 1985, SACE has a mission of educating the public and promoting the use of clean energy in order to protect the quality of life in the Southeast and to preserve its natural resources. SACE intends to use the requested information to educate the public about the NRC's processes for licensing and regulating St.

Lucie Unit 2 and other reactors, including the process for deciding whether or not to require licensees to obtain license amendments before substantially changing the design of their safety equipment. SACE has requested a hearing on the question of whether the NRC Staff effectively amended the St. Lucie operating license to allow operation of St. Lucie Unit 2 with substantially re-designed steam generators. In addition to educating the public through its participation in the NRC hearing process, SACE will disseminate the disclosed information to the public through its website, media campaign, education, programs, and community events.

SACE also urgently needs the requested information because timely release of Chapter 5 of the UFSAR is essential to SACE's effective participation in the hearing it has requested before the NRC. As discussed above, SACE's hearing request regarding the NRC Staff's *de facto* amendment of the Unit 2 operating license is now pending before the Commissioners, and responses to the hearing request by FPL and the NRC Staff are due April 28. In order to participate effectively in the proceeding, SACE seeks a more complete understanding of the design changes made by FPL to the Unit 2 steam generators so that it can make an informed reply to FPL and the Staff. As also discussed above, the NRC technical Staff has already reviewed the 2012 UFSAR and disclosed it in its entirety, and therefore it should be possible to comply with this urgent request in a short period of time.

Finally, it is SACE's understanding that the NRC refrains from posting UFSARs on ADAMS out of an abundance of caution rather than because it believes they are exempt from disclosure under FOIA. In SECY-04-191, for instance, the NRC stated that:

Information related to the general workings of a nuclear power plant such as the descriptions usually provided in licensing documents (e.g., updated final safety analysis reports, license renewal applications) are released since similar information (at the level useful to a potential adversary) is available in open source literature such as text books and internet sites.

Memorandum to the Commissioners from Luis A. Reyes re: Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors from Public Disclosure (Oct. 19, 2004).² If a member of the public requests a chapter of a UFSAR for a legitimate purpose, it is releasable. In this context, it is worth noting that the NRC did not withhold any portion of the 2012 UFSAR that was released on April 2.

Request for Waiver of Fees

SACE hereby requests that all fees in connection with this FOIA request be waived in accordance with 10 C.F.R. §§ 9.39(a) and 9.41(c). As provided in § 9.41(c), the NRC must:

waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 9.23(b), it can

² The Commissioners cited the guidance in SECY-04-191 with approval in *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 453 (2010).



determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

SACE satisfies the NRC's criteria for a fee waiver in the following respects:

a. The requested disclosures concern the operations and activities of the Federal Government because they seek information in the UFSAR regarding the nature of design changes to the St. Lucie Unit 2 steam generators that FPL made in 2007. The NRC has permitted FPL to operate St. Lucie Unit 2 with these replacement steam generators, despite the fact that FPL has removed or altered significant safety components, and despite the fact that the steam generators are exhibiting an unusual degree of wear. SACE seeks the UFSAR for two purposes: (1) to determine the exact nature of the changes to the steam generator design, and (2) to determine the degree to which FPL notified the NRC Staff of the design changes.

b. The disclosure of the requested documents will significantly contribute to the public's understanding of the operations and activities of the NRC with respect to nuclear regulatory matters. As discussed above, SACE seeks Chapter 5 of the 2008 UFSAR for Unit 2 in order to confirm the exact nature of design changes made by FPL to the steam generators, and also to determine the degree to which the NRC Staff was made aware of those design changes. SACE will share this information publicly in three ways. First, SACE has requested a hearing before the NRC regarding the NRC Staff's *de facto* amendment of the St. Lucie Unit 2 operating license to allow FPL to operate the reactor with a significantly changed steam generator design. SACE seeks the requested information in order to participate more effectively in the public hearing it has requested. In addition, to the extent the requested information is discussed in pleadings submitted by SACE and other parties in any hearing that is held, it will be widely available to the public because the pleadings will be placed in the NRC's electronic hearing docket and posted on ADAMS. Second, SACE will post its pleadings on the organization's website, www.cleancenergy.org. Finally, the information yielded by this FOIA request and presented in any NRC hearing that is held is likely to be covered by the press in Florida, which has previously reported on the problems experienced by St. Lucie Unit 2's re-designed steam generators.

Whether or not the NRC holds a hearing on the *de facto* amendment of the Unit 2 steam generators, SACE intends to conduct public education regarding the information yielded by this FOIA request, consistent with its long history of public environmental education as discussed above.

c. The requested materials will not be used for SACE's commercial use or gain. SACE is a non-profit organization whose sole purposes in requesting the documents are to promote the safe operation of St. Lucie Unit 2 and to educate itself, its members, and the



general public regarding the safety, legal, and economic issues raised by the NRC Staff's *de facto* approval of the operation of the re-designed St. Lucie Unit 2 steam generators.

Accordingly, we request that you waive all fees for locating and duplicating the requested records. If, however, a waiver is not granted, then please advise me of the amount of any proposed search, review, and reproduction charges before those activities are carried out.

Thank you very much for your attention to this matter. We look forward to receiving Chapter 5 of the 2008 UFSAR for St. Lucie Unit 2 promptly. In the meantime, please call me if you have any questions regarding this request.

Sincerely,

/s/

Diane Curran

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Counsel to SACE