

UNITED STATES OF AMERICA
BEFORE THE NUCLEAR REGULATORY COMMISSION

_____)	
In the Matter of:)	
<i>Florida Power & Light Co.</i>)	Docket No. 50-389
St. Lucie Plant, Unit 2)	May 8, 2014
_____)	

**SOUTHERN ALLIANCE FOR CLEAN ENERGY'S
RESPONSE TO NUCLEAR ENERGY INSTITUTE'S
MOTION FOR LEAVE TO FILE AMICUS BRIEF**

On April 28, 2014, the Nuclear Energy Institute (“NEI”) filed a motion for leave to file an *Amicus Curiae* brief in this proceeding. Nuclear Energy Institute Motion for Leave to File *Amicus Curiae* Brief (“Motion”). NEI states that it seeks leave to file an *amicus* brief for the purpose of addressing the generic implications of SACE’s Hearing Request Regarding De Facto Amendment of St. Lucie Unit 2 Operating License (March 10, 2014) (“Hearing Request”) with respect to “the efficiency and stability of the NRC regulatory process.” A copy of the brief, *Amicus Curiae* Brief of the Nuclear Energy Institute in Response to Southern Alliance for Clean Energy Hearing Request, is attached to NEI’s motion. The Southern Alliance for Clean Energy (“SACE”) hereby responds that it does not oppose the motion if SACE is given a reasonable opportunity to respond, or until May 23, 2014.

FACTUAL BACKGROUND

On March 10, 2014, SACE submitted its Hearing Request and a request for a stay of restart of St. Lucie (which was then shut down for refueling and inservice inspections) until completion of a hearing on SACE’s two contentions. These contentions challenged the lawfulness of the NRC Staff’s *de facto* amendment of FPL’s operating license for St. Lucie Unit 2 to allow operation with substantially re-designed steam generators.

On April 1, 2014, the Commission issued CLI-14-04, denying SACE's stay motion and setting a deadline of April 28, 2014 for responses to SACE's Hearing Request by Florida Power & Light Co. ("FPL") and the U.S. Nuclear Regulatory Commission ("NRC") Staff.

On April 28, in response to SACE's Hearing Request, FPL filed a thirty-page brief and two expert declarations with attachments. The Staff filed a thirty-seven page brief and one expert declaration. The same day, NEI filed its motion for leave to submit an *amicus* brief and the attached eleven-page brief. NEI's *amicus* brief has some overlap with FPL's and the Staff's briefs, but also raises general legal and policy arguments not made in either FPL's or the Staff's brief, including broad claims about the negative effect that a ruling for SACE would have on the NRC's regulatory processes.¹

DISCUSSION

The Commission has no regulations allowing *amicus* briefs, although it has previously allowed the filing of *amicus* briefs in other cases. SACE agrees that this case raises significant regulatory issues and does not object to NEI's limited request to address the generic and policy issues raised by SACE's hearing request, as long as SACE is given a fair opportunity to evaluate and respond to the varied and sometimes sweeping arguments made by NEI in its brief. In order to provide a reasonable and fair opportunity to evaluate and respond to these arguments, SACE respectfully requests that it be given until May 23 to file a responsive brief.

While SACE was not obligated to consult opposing counsel regarding this response to NEI's motion under 10 C.F.R. § 2.323, SACE did consult opposing counsel regarding its

¹ For instance, NEI argues that granting SACE's hearing request would "increase regulatory uncertainty and frustrate the NRC's ability to effectively and efficiently monitor licensees and enforce regulations by potentially subjecting every compliance review to a hearing opportunity." NEI *Amicus Brief* at 9.

proposal to respond to NEI's *amicus* brief by May 23. Counsel for FPL and the NRC Staff took the position that SACE should have responded to NEI by May 5, 2014, the deadline for SACE's reply to FPL's and the Staff's oppositions to SACE's Hearing Request. Counsel for NEI stated that NEI would not object if SACE responds to NEI's *amicus* brief within the next week, *i.e.*, by May 15, 2014.

SACE respectfully submits that the requested response time of fifteen days from today or until May 23 is reasonable, for the following reasons:

1. NEI filed its motion and brief very late in the first stage of this proceeding, without justification and to the potential prejudice of SACE. NEI had notice of SACE's Hearing Request as of March 10, and also had notice of the Commission's schedule for responses to SACE's Hearing Request as of April 1. Yet NEI chose to wait to file its motion until April 28, the due date for responses by FPL and the NRC Staff to SACE's Hearing Request and the start date of SACE's very limited seven-day opportunity to reply to oppositions to its Hearing Request.

2. CLI-14-01 gave SACE only seven days to reply to oppositions by FPL and the Staff, and did not set a schedule for SACE's reply to briefs by any other parties.

3. Allowing SACE's counsel fifteen days to respond to NEI is reasonable and necessary, given the lack of notice that this obligation would arise. Before April 28, SACE's counsel had no reason to think she might have to set aside time to respond to an *amicus* brief in this proceeding, in addition to preparing SACE's Reply to FPL and the Staff and in addition to preparing pleadings in other cases to which she had previously made commitments (including preparation and filing on May 7 of a brief in reply to oppositions to a Petition for Review in the MOX operating license proceeding).

4. It is not reasonable to expect SACE to have been able to respond to the broad legal and policy issues raised by NEI during the seven day period for replying to oppositions by FPL and the Staff, or even within seven days from today.

5. NRC regulations do not provide for *amicus* briefs. Therefore it is reasonable for the Commission to delay the time for responding to an *amicus* brief until after the motion to file an *amicus* brief has been granted, or until after the ten-day period for responding to such a motion has expired and no opposition is made.

6. In any event, if measured from April 28, the period of time sought by SACE is not any longer than the twenty-five days allowed by 10 C.F.R. § 2.341 for responses to petitions for review. SACE respectfully submit that the legal and policy-based nature of NEI's brief makes it similar to a petition for review.

CONCLUSION

For the reasons discussed above, SACE does not object to NEI's motion if SACE is given a reasonable opportunity to respond to NEI's *amicus* brief, or until May 23, 2014.

Respectfully submitted,

(Electronically signed by)

Diane Curran

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CERTIFICATE OF SERVICE

I certify that on May 8, 2014, I served copies of the foregoing Southern Alliance for Clean Energy's Response to Nuclear Energy Institute's Motion for Leave to File Amicus Brief on the parties to this proceeding by posting it on the NRC's Electronic Information Exchange.

(Electronically signed by)
Diane Curran