

April 7, 2020

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)
)
SOUTHERN NUCLEAR OPERATING)
COMPANY, INC.) Docket No. 52-025-ITAAC
)
(Vogtle Electric Generating Plant, Unit 3))
)

**LICENSEES’ ANSWER OPPOSING NUCLEAR WATCH SOUTH’S
MOTION FOR EXTENSION OF FILING DEADLINE AND
REQUEST FOR EXPEDITED CONSIDERATION**

Nuclear Watch South (“Petitioner”) has filed a motion (“Motion”)¹ requesting an open-ended extension of time to file a hearing request on Vogtle Unit 3’s conformance to the acceptance criteria in its combined license—based on the general social impacts from the COVID-19 pandemic and Petitioner’s mistaken belief that “there is no urgency for this proceeding.” (Motion at 4). The Motion comes in response to the notice of intended operation (“Notice”) published in the Federal Register on February 12, 2020,² which established April 13, 2020 as the deadline for submitting hearing requests regarding conformance to ITAAC acceptance criteria at Vogtle Unit 3. Pursuant to the Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request (“Additional Procedures

¹ Nuclear Watch South’s Request for Extension of Filing Deadline and Request for Expedited Consideration, Docket No. 52-025-ITAAC (April 3, 2020) (“Motion”).

² Vogtle Electric Generating Plant, Unit 3; Hearing Opportunity Associated with Inspections, Tests, Analyses, and Acceptance Criteria, 85 Fed. Reg. 8030 (Feb. 12, 2020).

Order”)³ and the SECY Order issued April 6, 2020,⁴ Southern Nuclear Operating Company, Inc., on behalf of the licensed owners, Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia, (collectively, “Licensees”) hereby answer and oppose the Motion. While the Licensees do not contest that the COVID-19 pandemic has affected many aspects of daily life, Petitioner has not shown the requisite good cause for any extension to the filing deadline, much less an indefinite extension until 60 days after the “official lifting of the national COVID-19 emergency.” (Motion at 1). If granted, such an extension would jeopardize the Commission’s statutory obligation to render a timely decision on any contentions challenging Vogtle Unit 3 ITAAC conformance. Petitioner’s Motion should therefore be denied.

I. Vogtle Construction Continues

At the outset, it bears correcting Petitioner’s apparent misunderstanding of the current status of the Vogtle project. While the Licensees have taken precautions to protect public health and worker safety and will continue to take appropriate measures if circumstances change, Vogtle has not suspended construction or licensing activities as a result of COVID-19 or shelter-in-place orders issued by the Georgia Governor’s Office. Consistent with U.S. Department of Homeland Security guidance (referenced in the latest Georgia order),⁵ Vogtle has been treated as exempt from the general closure and access restrictions applicable to non-essential businesses. Also contrary to Petitioner’s representations in its Motion, Southern Company’s 8k filing to the

³ Vogtle Electric Generating Plant, Unit 3; Hearing Opportunity Associated with Inspections, Tests, Analyses and Acceptance Criteria, Attachment 1: Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request, 85 Fed. Reg. 8030 (Feb. 12, 2020) (“Additional Procedures Order”).

⁴ SECY Order, Response to Nuclear Watch South Extension Request (Apr. 6, 2020).

⁵ See U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, “Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response” (Mar. 28, 2020) (available at https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf) (“CISA Guidelines”), *referenced by* State of Georgia Executive Order 04.02.20.01, Executive Order to Ensure a Safe & Healthy Georgia (Apr. 2, 2020).

Securities and Exchange Commission of April 1, 2020 does not state that the project will be delayed and certainly does not change the anticipated fuel load date for Unit 3.

Accordingly, the Licensees continue to work toward the November 2020 Unit 3 fuel load date submitted in their January 2020 notice to the NRC.⁶ Similarly, NRC continues to fulfill all of the same regulatory functions for Vogtle Unit 3 that it has since the project's inception. Contrary to Petitioner's belief that "[t]his licensing proceeding is clearly not a priority," (Motion at 2), Licensees' ITAAC closure and NRC's review of the same are ongoing, and the 10 CFR 52.103(g) finding and timely resolution of any contentions regarding ITAAC closure remain among the most critical and time-sensitive regulatory milestones for the Vogtle project, the Licensees, and NRC.

Consistent with the Vogtle license and Commission regulations, the Licensees will continue to keep the NRC informed of the measures it is taking to protect worker and public safety in light of COVID-19, as well as any impacts to construction or regulatory timelines that might ultimately result from these measures. In the meantime, work continues, and it is inappropriate to preempt the Licensees' existing schedule and risk-informed decisionmaking, or the NRC's statutory deadlines and procedural framework, by granting Petitioner's request for an indefinite pause to the submission and disposition of ITAAC closure contentions.

II. Petitioner Does Not Satisfy the Good Cause Standard

The merits of Petitioner's Motion fare no better than its starting premise under the standard applicable to motions for extension of time in ITAAC proceedings.

Under the NRC's general procedures, requests for extensions of time are subject to a rigorous "good cause" standard. *See* 10 CFR 2.307(a). In this context, extensions should only be

⁶ Letter from Southern Nuclear Operating Company, Docket No. 52-025, Schedule Date for Initial Loading of Fuel (Jan. 13, 2020) (ADAMS Accession No. ML20013F991).

granted when warranted by unavoidable and extreme circumstances, and even then only to the extent necessary to overcome the unavoidable delay.⁷ This standard is applied even more stringently in the context of ITAAC hearings, in light of the Commission’s statutory obligation to render a prompt decision on any ITAAC hearing request by the later of the date that is 180 days after publication of the notice of intended operation or the anticipated fuel load date. 42 USC 2239a.(1)(B)(v). Accordingly, the Additional Procedures Order and general ITAAC hearing procedures on which it is based explain that “‘good cause’ will be interpreted strictly,”⁸ and “[t]he ITAAC hearing schedule does not allow for any delay unless such delay is absolutely necessary.”⁹

Petitioner asserts several bases for its extension request, which individually and collectively fail to meet the heightened “good cause” standard.

First, Petitioner cites the “unprecedented and untested” ITAAC hearing procedures “established” by the Notice as a basis for granting an extension from the deadline for filing an initial petition that would become subject to those procedures. (Motion at 3). While Petitioner is correct that Vogtle Unit 3 is the first Part 52 unit to go through the ITAAC hearing process, the applicable procedures implement Congressional directives from the Energy Policy Act of 1992 and were developed by the Commission and available for public consumption long before the Additional Procedures Order was issued along with the Notice. The NRC circulated draft ITAAC hearing procedures (which themselves are iterations on existing NRC procedures in 10 CFR Part

⁷ See *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), 2001 WL 760021 at 3; *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 1), LBP-86-14, 23 N.R.C. 553, 560 (May 19, 1986); *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), 1997 WL 687737 at 3 (Oct. 17, 1997).

⁸ Additional Procedures Order, Section II.D, 85 Fed. Reg. at 8039.

⁹ Final Procedures for Conducting Hearings on Conformance With Acceptance Criteria in Combined Licenses, 81 Fed. Reg. 43266, 43271 (July 1, 2016) (“Final ITAAC Procedures”).

2), for public comment in April 2014.¹⁰ Following extensive comments and public meetings, the NRC published revised final procedures in July 2016 with an explanation of the statutory bases for the strict deadlines and admissibility criteria and detailed responses to all comments received.¹¹ The Additional Procedures Order attached to the Notice simply applies the 2016 procedures to the Vogtle Unit 3 ITAAC hearing proceedings—the substance of which has been available for Petitioner to understand and prepare for long before February 2020. In any event, the applicable hearing procedures have nothing to do with the COVID-19 pandemic or Petitioner’s ability to timely file its initial petition. Accordingly, the longstanding existence of “a rigorous process with very stringent requirements to become party” (Motion at 3) does not justify any extension, much less the indefinite one requested by Petitioner.

Second, Petitioner cites the “thousands of pages of supporting documents” and the need for “significant document review” as another cause for extension. (Motion at 3, 4). However, the underlying information and ITAAC closure activities subject to challenge by Petitioner have been provided by Licensees and made available (electronically) to the public on a rolling basis beginning years before the Notice.

Pursuant to 10 CFR 52.99(c)(1), Licensees have submitted over 120 ITAAC closure notifications (“ICNs”) during Unit 3 construction, beginning in early 2013. Each ICN describes how Licensees satisfied the applicable acceptance criteria. All ICNs are available on ADAMS and accompanied by a Federal Register notice following NRC Staff’s verification that Licensees adequately closed the ITAAC. In addition to closure notices, Licensees have submitted uncompleted ITAAC notifications (“UINs”) for every Unit 3 ITAAC that has not been closed to

¹⁰ Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses are Met, 79 Fed. Reg. 21958 (April 18, 2014).

¹¹ Final ITAAC Procedures, 81 Fed. Reg. 43266.

date. UINs describe the methodology Licensees will use to satisfy the acceptance criteria—all of the information necessary for Petitioner to mount a challenge at this stage.¹² NRC even aggregates all of the individual filings into a routinely updated ITAAC summary report available at NRC’s Vogtle Unit 3 webpage.¹³ In other words, while the Notice opened the hearing opportunity, the underlying information and ITAAC closure activities Petitioner necessarily would have to evaluate to mount a hearing request has long been available and readily accessible to Petitioner—a point highlighted by the ITAAC hearing procedures published by NRC in 2016.¹⁴

Moreover, Petitioner had nearly a month of advanced notice that a Notice itself was forthcoming. On January 13, 2020, Licensees submitted a notice of Unit 3’s scheduled fuel load date¹⁵ and the notice of uncompleted ITAAC required by 10 CFR 52.99(c)(3)¹⁶ to support publication of NRC’s notice of intended operations 285 days prior to the scheduled fuel load date—a date NRC hit by publishing the Notice on February 12, 2020.

Notwithstanding the ample notice afforded by the statutory scheme and Licensees’ submittals, Petitioner now seeks an indefinite extension based on the volume and complexity of the underlying information—a factor that is, again, completely unrelated to the COVID-19 pandemic. Even under the ordinary “good cause” standard, extensions are appropriately denied

¹² See Final ITAAC Procedures, 81 Fed. Reg. at 43267.

¹³ See ITAAC Review Status Report (available at <https://www.nrc.gov/reactors/new-reactors/new-licensing-files/vog3-icensr.pdf>).

¹⁴ Final ITAAC Procedures, 81 Fed. Reg. at 43270.

¹⁵ Letter from Southern Nuclear Operating Company, Docket No. 52-025, Schedule Date for Initial Loading of Fuel (Jan. 13, 2020) (ADAMS Accession No. ML20013F991).

¹⁶ Letter from Southern Nuclear Operating Company, Docket No. 52-025, Notice of Uncompleted ITAAC 315-days Prior to Initial Fuel Load (Jan. 13, 2020) (ADAMS Accession No. ML20013F132).

where the requesting party had ample time to review material that could form the basis of a contention.¹⁷

Finally, Petitioner cites widespread social and workplace changes brought about by the pandemic as justification for an indefinite pause. While Licensees do not dispute that the COVID-19 response has changed many things about the way all of us work for the time being, these measures do not warrant a wholesale suspension of process and progress. None of the general impacts cited by Petitioner justify an indefinite cessation of critical regulatory filings for the first gigawatt of new nuclear generation in decades. The only specific impact Petitioner describes that directly affects its ability to timely file a contention is its inability to work side-by-side with its expert witness as a result of social distancing practices and shelter-in-place orders recently put into effect. Those impacts are tempered by the long lead time afforded by the ITAAC closure framework and multitude of advance filings and publications by Licensees and NRC Staff described above, plus the time Petitioner had with its expert following the Notice and before social and governmental restrictions were put in place.

Petitioner cites “extreme global social constraints” that were imposed two weeks after the Notice. (Motion at 1). Appreciating that the pandemic has had worldwide impacts, Petitioner is based in Atlanta, Georgia and all of its board members live in Georgia (according to its website). The President issued a national emergency on March 13, 2020.¹⁸ The U.S. Department of Homeland Security issued guidance for critical infrastructure during the pandemic on March

¹⁷ See *Combustion Engineering* (Windsor Site), 2002 WL 1009297 at n.1 (May 10, 2002); *Boston Edison Co.* (Pilgrim Nuclear Power Station), 4 A.E.C. 641, 642 (May 20, 1971).

¹⁸ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020) (available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>).

19.¹⁹ The Mayor of Atlanta issued a shelter in place order for the City of Atlanta on March 23.²⁰ And Governor Brian Kemp issued a shelter in place order for the State of Georgia on April 2.²¹ Absent a specific connection to earlier international measures taken in response to the virus, which Petitioner has not provided, it would appear that Petitioner had a month or more from the date of the Notice when it would have been able to work with its expert in person—even accepting *arguendo* Petitioner’s suggestion that face-to-face interaction is the only way for it to work with its expert. What’s more, notwithstanding Petitioner’s reliance on unspecified international virus response efforts that allegedly impacted Petitioner beginning two weeks after the Notice (i.e., February 26), Petitioner waited *over a month* (fifty days into the notice period and ten days before the deadline) to file the Motion—making the Notice fatally late under the applicable motion deadline.²² Even using the President’s declaration of a national emergency on March 13 or the Atlanta Mayor’s shelter in place order on March 23 as the applicable triggering event, Petitioner’s motion is inexcusably late.²³

Accepting that virus response efforts eventually affected Petitioner’s and its expert’s ability to work together in person, the realities of the modern workplace allow work to continue remotely, social distancing notwithstanding. All of the information needed by Petitioner and its

¹⁹ CISA Guidelines, note 5 above.

²⁰ City of Atlanta Executive Order Number 2020-21 (Mar. 23, 2020) (available at <https://www.atlantaga.gov/Home/ShowDocument?id=45510>).

²¹ State of Georgia Executive Order 04.02.20.01, Executive Order to Ensure a Safe & Healthy Georgia (Apr. 2, 2020).

²² The general timeliness standard in 10 CFR 2.323(a)(2) requires parties to file a motion within ten days of the events giving rise to the motion; however, recognizing the importance of prompt action in adhering to statutory ITAAC deadlines, the ITAAC hearing procedures imposed by the Additional Procedures Order shortens the ordinary period to seven days. Additional Procedures Order, Section II.C, 85 Fed. Reg. at 8039.

²³ Petitioner also requests that the Commission retroactively extend the deadline for requesting SGI and SUNSI access, which ran on February 24, 2020. Retroactive extension requests are disfavored by the Commission. *TVA (Bellefonte Nuclear Plant, Units 1 and 2)*, CLI-10-26, 72 N.R.C. 474, 477 (2010). Even accepting Petitioner’s view that it was impacted by COVID-19 two weeks after the Notice, the SUNSI and SGI deadline had already run at that point, and Petitioner offers no other basis to satisfy the “good cause” standard to justify a retroactive extension of the SUNSI and SGI deadline.

expert is available electronically. Petitioner has not explained or provided any factual support for its argument that it is incapable of working with its expert via electronic, telephonic, or other means. The Commission’s own response to the pandemic recognizes that its critical work must, and can, continue, even if done remotely for the time being.²⁴ In short, even accounting for the disruption caused by COVID-19, Petitioner has not shown why it is entirely unable to correspond with its expert to evaluate and submit information electronically for the entire duration of the pandemic.

For all of the foregoing reasons, the Motion does not satisfy the heightened “good cause” standard applicable in ITAAC hearing procedures to justify *any* extension, much less the indefinite suspension Petitioner seeks.

III. The Motion Contravenes the Atomic Energy Act

As noted above, the ordinary standard for granting relief from deadlines is applied even more strictly in ITAAC hearing proceedings because the schedule for public involvement in the ITAAC process, and the resolution of challenges based on ITAAC, are statutory requirements. The very deadline the Petitioner seeks to change—that contentions should be submitted within 60 days of the Commission’s notice of intended operation—is set forth in section 189a.(1)(B)(i) of the Atomic Energy Act (“AEA”). 42 USC 2239a.(1)(B)(i). Similarly, the requirement that “[t]he Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice [of intended operations] or the anticipated date for initial loading of fuel into the reactor, whichever is later” is compelled by section 189a.(1)(B)(v) of the AEA.²⁵ 42 USC 2239a.(1)(B)(v).

²⁴ See <https://www.nrc.gov/reading-rm/doc-collections/faq/coronavirus.html>.

²⁵ While not relevant to the Commission’s disposition of the Motion, NRC of course retains the authority to adjust its schedules for the resolution of ITAAC admitted contentions on account of the unprecedented conditions imposed by the COVID-19 pandemic, or by unanticipated delays in project execution, so long as the statutory mandate “to

Certainly, NRC’s rules for late-filed contentions accommodate public involvement where, for example, new information relevant to a contention is materially different from that that was available during the statutorily prescribed period for asserting contentions. *See* 10 CFR 2.309(c). Moreover, Licensees recognize that the statutory mandate to render a decision within the later of 180 days or the anticipated fuel load date is qualified by “to the maximum extent possible.” However, for all of the reasons set forth above, the measures required by the pandemic do not render it impossible for NRC to comply with the statutory requirements, unprecedented conditions notwithstanding. Petitioner fails to acknowledge the AEA’s prescribed schedule or make any arguments relevant to NRC’s statutory obligation to timely resolve ITAAC contentions, instead simply requesting an indefinite extension that, as explained above, does not meet the good cause standard. Even ignoring the other flaws in the Motion, the indefinite nature of Petitioner’s request is wholly inconsistent with the AEA’s mandate and provides sufficient independent grounds for, and in fact compels, denial of the Motion.

the maximum possible extent” to render a decision on challenges by the “anticipated date for loading fuel into the reactor” is met.

For the reasons set forth above, the Commission should deny Petitioner's Motion.

Respectfully submitted,

/signed electronically by Alan D. Lovett/

M. Stanford Blanton
Peter D. LeJeune
Alan D. Lovett
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, AL 35203-2015
Telephone: 205-226-3417
 205-226-8774
 204-226-8769
Email: sblanton@balch.com
 plejeune@balch.com
 alovett@balch.com

Counsel for Southern Nuclear Operating Company

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COMPANY, INC.)	
)	Docket No. 52-025-ITAAC
(Vogtle Electric Generating Plant, Unit 3))	
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensees' Answer Opposing Nuclear Watch South's Motion for Extension of Filing Deadline and Request for Expedited Consideration has been served through the E-Filing system on the participants in the above-captioned proceeding this 7th day of April 2020.

/signed electronically by /
Alan D. Lovett