

November 26, 2014

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	
Florida Power & Light Company)	Docket No. 50-389
)	
(St. Lucie Plant, Unit 2))	

**FLORIDA POWER & LIGHT COMPANY’S ANSWER OPPOSING SOUTHERN
ALLIANCE FOR CLEAN ENERGY’S SECOND MOTION FOR LEAVE TO AMEND
HEARING REQUEST**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1),¹ Florida Power & Light Company (“FPL”) hereby submits this answer (“Answer”) opposing the Southern Alliance for Clean Energy’s (“SACE”) November 6, 2014 Motion for Leave to Amend Hearing Request with Second Supplemental Declaration of Arnold Gundersen (“Motion”).² The Nuclear Regulatory Commission (“Commission” or “NRC”) should deny SACE’s Motion because: (1) the underlying Hearing Request had no procedural basis; (2) the Motion is untimely; (3) the information presented in the Motion and Second Supplemental Gundersen Declaration fail to provide any new information material to the Commission’s consideration of SACE’s original Hearing Request;³ and (4) the safety concerns reiterated in the Second Supplemental Gundersen Declaration fail to raise a genuine dispute with St. Lucie Unit 2’s licensing basis because they are nothing more than speculative and unsupported conclusions.

¹ FPL is submitting this Answer under Section 2.309(i)(1) because SACE cites Section 2.309(c) as the procedural basis for its pleading.

² Along with the Motion, SACE also submitted a second supplemental declaration. *See* Second Supplemental Declaration of Arnold Gundersen (Nov. 6, 2014) (“Second Supplemental Gundersen Declaration”).

³ Southern Alliance for Clean Energy’s Hearing Request Regarding De Facto License Amendment of St. Lucie Unit 2 Operating License (Mar. 10, 2014) (“Hearing Request”).

II. BACKGROUND

On March 10, 2014, SACE filed its original Hearing Request.⁴ The Hearing Request proffered two Contentions claiming that FPL's installation of replacement steam generators ("RSGs") at St. Lucie Unit 2 in 2007 constituted a *de facto* license amendment. On April 25, 2014, before the parties filed answers to SACE's original Hearing Request, SACE filed a motion to amend its Hearing Request.⁵ On April 28, 2014, FPL and the NRC Staff filed answers opposing SACE's original Hearing Request.⁶ SACE replied to those answers on May 5, 2014.⁷ On May 20, 2014, FPL and the NRC Staff filed answers opposing SACE's motion to amend its Hearing Request.⁸ On November 6, 2014, SACE filed the Motion and Second Supplemental Declaration at issue here.

III. THE COMMISSION SHOULD DENY SACE'S MOTION

A. The Underlying Hearing Request Has No Procedural Basis

As FPL has explained in previous pleadings, the Commission should reject SACE's underlying Hearing Request because there is no ongoing proceeding in which SACE has

⁴ On that same date, SACE filed a Motion to Stay Restart of St. Lucie Unit 2 Pending Conclusion of Hearing Regarding *De Facto* Amendment of Operating License and Request for Expedited Consideration (Mar. 10, 2014), which the Commission denied on April 1, 2014. See *Florida Power & Light Co.* (St. Lucie Plant, Unit 2), CLI-14-04, 79 N.R.C. __ (Apr. 1, 2014) (slip op.).

⁵ Southern Alliance for Clean Energy's Motion for Leave to Amend Hearing Request Regarding *De Facto* Amendment of St. Lucie Unit 2 Operating License (Apr. 25, 2014); Southern Alliance for Clean Energy's Amended Hearing Request Regarding *De Facto* Amendment of St. Lucie Unit 2 Operating License (Apr. 25, 2014); Supplemental Declaration of Arnold Gundersen (Apr. 25, 2014).

⁶ Florida Power & Light Company's Answer Opposing Southern Alliance for Clean Energy's Hearing Request Regarding *De Facto* License Amendment of St. Lucie Unit 2 Operating License (Apr. 28, 2014) ("FPL's April 28 Answer"); NRC Staff Answer to Southern Alliance for Clean Energy's Hearing Request Regarding *De Facto* Amendment of St. Lucie Unit 2 Operating License (Apr. 28, 2014). On April 28, 2014, the Nuclear Energy Institute filed a motion for leave to file an *amicus curiae* brief.

⁷ Southern Alliance for Clean Energy's Reply to Oppositions to SACE's Hearing Request Regarding *De Facto* License Amendment of St. Lucie Unit 2 Operating License (May 5, 2014) ("SACE Reply").

⁸ Florida Power & Light Company's Answer Opposing Southern Alliance for Clean Energy's Motion for Leave to Amend Hearing Request (May 20, 2014); NRC Staff Answer to Southern Alliance for Clean Energy's Motion for Leave to Amend Hearing Request Regarding *De Facto* Amendment of St. Lucie Unit 2 Operating License (May 20, 2014).

standing to intervene. *See* FPL's April 28 Answer at 6-12. Since the Hearing Request itself has no procedural basis, the Commission should deny SACE's Motion to amend that Request.

B. SACE Fails to Satisfy the 10 C.F.R. § 2.309(c) Criteria

SACE filed its Motion pursuant to Section 2.309(c), which provides that amended contentions, like late-filed hearing requests, "will not be entertained" unless the following criteria have been met:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(c)(1). Failure to meet any one of these criteria is sufficient to deny SACE's Motion. SACE fails to satisfy Section 2.309(c)(1)(i) and (ii).

SACE's Motion does not satisfy Section 2.309(c)(1)(i). Mr. Gundersen's Second Supplemental Declaration purports to present new information regarding the results of FPL's March 2014 eddy current inspection of steam generator tubes at St. Lucie Unit 2, citing FPL's recent correspondence with the NRC Staff concerning that inspection.⁹ *See* Second Supplemental Gundersen Declaration at ¶¶ 4-5, 10-17. However, the fundamental results of the March 2014 inspection were previously provided in FPL's April 28 Answer and supporting Declaration.¹⁰ As such, SACE previously had an opportunity to discuss this information in its Reply filed on May 5, 2014. It is therefore immaterial that these inspection results were subsequently incorporated in a report to the NRC Staff.

⁹ Letter to U.S. NRC from Eric Katzman, Licensing Manager, St. Lucie Plant, L-2014-291 (Sept. 18, 2014) (ADAMS Accession No. ML14279A237) ("September 18 Letter").

¹⁰ *See* FPL's April 28 Answer at 29; Declaration of Mr. Rudy Gil in Support of FPL's Answer Opposing SACE's Request for Hearing (Apr. 28, 2014), Attachment 2 to FPL's April 28 Answer ("Gil Declaration"), at ¶ 25.

SACE's Motion also fails to satisfy Section 2.309(c)(1)(ii) because the information at issue in FPL's September 18 Letter is not materially different from other previously available information regarding the March 2014 inspection. In his Declaration, Mr. Rudy Gil outlined and assessed the March 2014 St. Lucie Unit 2 inspection results, which indicated that steam generator tube wear has been consistent with expectations and continues to be manageable, and that the number of tubes requiring plugging has decreased relative to prior outages. Gil Declaration at ¶ 25. Mr. Gundersen similarly notes that "the rate of steam generator degradation at St. Lucie Unit 2 between 20120 [sic] and 2014 has decreased from the rate observed in previous inspections." Second Supplemental Gundersen Declaration at ¶ 5. Although Mr. Gundersen posits different conclusions from those of FPL regarding the implications of these inspection results, his analysis is not based on information materially different from the overall inspection results that FPL previously identified in Mr. Gil's Declaration. SACE acknowledges that "the opinions Mr. Gundersen expressed in his March 9, 2014 declarations [sic] have not changed" based on the September 18 Letter. Motion at 2. Therefore, the Motion and accompanying Declaration are not based on information materially different from that previously available. Nor, as SACE concedes, does such information materially alter the Gundersen Declaration on which its Hearing Request is based.

For these reasons, the Commission should deny SACE's Motion as untimely.

IV. SACE'S CONTENTIONS REMAIN INADMISSIBLE

Even if the Commission were to find that the Motion is timely, SACE's original contentions, as included in its Hearing Request and supplemented by the information set forth in the Motion and Second Supplemental Gundersen Declaration, remain inadmissible because they: (1) are outside of the scope of any proceeding; (2) do not raise any material issues; and (3) fail to

raise any genuine dispute of material fact. *See* 10 C.F.R. § 2.309(f)(1)(iii), (iv) and (vi); FPL's April 28 Answer at 17-21, 24. Nothing in the Motion or Second Supplemental Gundersen Declaration changes these conclusions.

SACE's reliance on the September 18 Letter to assert safety concerns with the St. Lucie Unit 2 RSGs rests upon speculative and unsupported conclusions. SACE therefore fails to raise a genuine dispute with St. Lucie Unit 2's licensing basis. *See* 10 C.F.R. § 2.309(f)(1)(vi). Mr. Gundersen's assumptions regarding both the cause and effect of RSG tube wear (*see* Second Supplemental Gundersen Declaration at ¶ 16) are purely speculative and are belied by the fact that tube wear observed at St. Lucie Unit 2 is consistent with the NRC-endorsed performance criteria applicable to steam generators. SACE may not use its Hearing Request as a means to collaterally attack NRC requirements or policies. *See* 10 C.F.R. § 2.335(a); *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999).

V. CONCLUSION

For the reasons discussed above, FPL respectfully requests that the Commission deny SACE's Motion.

Respectfully submitted,

/Signed electronically by John H. O'Neill, Jr./

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Florida Power & Light Company's Answer Opposing Southern Alliance for Clean Energy's Second Motion for Leave to Amend Hearing Request was provided to the NRC's Electronic Information Exchange for service on those individuals on the service list in this proceeding as of this 26th day of November 2014.

/Signed electronically by Stephen L. Markus/
