



In this order, we address SACE's motion to stay and set a schedule for further briefing with respect to its hearing request.

## I. BACKGROUND

SACE's hearing request and motion to stay arise from the replacement of two steam generators at St. Lucie Unit 2 in 2007. FPL replaced the steam generators pursuant to the provisions of 10 C.F.R. § 50.59, which allow licensees to make changes to a facility if certain criteria are satisfied.<sup>4</sup> FPL's evaluation under that regulation concluded that a license amendment was not required for the steam generator replacement.<sup>5</sup> The NRC Staff's review of the steam generator replacement, including the 10 C.F.R. § 50.59 evaluation conducted by FPL, identified no findings of significance.<sup>6</sup>

In February 2011, FPL requested a license amendment to permit operation of St. Lucie Unit

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*and Request for Expedited Consideration* (Mar. 20, 2014) (Staff Answer); *Answer of Florida Power & Light Company Opposing SACE Motion to Stay Restart of St. Lucie Unit 2* (Mar. 20, 2014) (FPL Answer).

<sup>4</sup> Section 50.59 sets forth the circumstances under which a licensee may make changes to the facility as described in its Updated Final Safety Analysis Report (UFSAR), make changes in the procedures described in the UFSAR, and conduct tests or experiments not otherwise described in the UFSAR, without obtaining a license amendment under 10 C.F.R. § 50.90. See 10 C.F.R. § 50.59(c)(1).

<sup>5</sup> See FPL Answer at 3 & Att. 1, *Declaration of Mr. William A. Cross in Support of FPL's Answer Opposing SACE Motion to Stay Restart* (Mar. 20, 2014), ¶¶ 4-9; Johnston, Gordon L, Site Vice President, St. Lucie Plant, letter to NRC, L-2008-148 (June 26, 2008), at 8 (ADAMS accession no. ML081840111).

<sup>6</sup> See Staff Answer at 2; St. Lucie Nuclear Plant – NRC Integrated Inspection Report 05000335/2007005, 05000389/2007005, § 4OA5.3 "Unit 2 Steam Generator Replacement Inspection (IP 50001)" (Feb. 1, 2008) at 27-33 (ML080350408); *Affidavit of Omar R. López-Santiago Concerning SACE's Claims Regarding Staff's Steam Generator Inservice Inspection* (Mar. 20, 2014), ¶¶ 10-12 (Staff Affidavit).

2 at an extended power uprate with the replacement steam generators.<sup>7</sup> FPL's amendment request evaluated steam generator performance relative to the proposed uprate.<sup>8</sup> The Commission published a notice of the license amendment request and an opportunity to request a hearing.<sup>9</sup> No hearing requests or petitions to intervene were submitted.<sup>10</sup> The Staff's approval of the amendment in September 2012 incorporated requirements into FPL's license on the use, inspection, and reporting of inspection results for the steam generators at the higher power.<sup>11</sup>

FPL shut down St. Lucie Unit 2 for a scheduled refueling outage on March 3, 2014. Existing license requirements require FPL to inspect and verify steam generator tube integrity in accordance with its Steam Generator Program during the outage and to submit the inspection results to the NRC.<sup>12</sup> The Staff was scheduled to conduct a baseline inspection, a portion of which covers the steam generators, during the outage.<sup>13</sup>

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<sup>7</sup> Anderson, R.L., Site Vice President, St. Lucie Plant, letter L-2011-021 to NRC (Feb.25, 2011), at 1 (ML110730116). The complete license amendment request is available in ADAMS Package ML110730268. Some portions are proprietary and thus not publicly available.

<sup>8</sup> Attachment 5 to Letter L-2011-021, St. Lucie Unit 2 EPU Licensing Report, § 2.2.2.5 "Steam Generators and Supports," at 2.2.2-57 to 2.2.2-108 (ML110730299).

<sup>9</sup> Florida Power & Light Company, St. Lucie Plant, Unit 2 License Amendment Request; Opportunity To Request a Hearing and To Petition for Leave To Intervene, and Commission Order Imposing Procedures for Document Access, 76 Fed. Reg. 54,503 (Sept. 1, 2011).

<sup>10</sup> Staff Answer at 3.

<sup>11</sup> See Biweekly Notice: Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 77 Fed. Reg. 63,343, 63,354-55 (Oct. 16, 2012).

<sup>12</sup> Staff Answer at 4; Docket No. 50-389, St. Lucie Plant, Unit No. 2, Renewed Facility Operating License No. NPF-16 with Technical Specifications (TS); TS 6.8.4.I.1.a, at 6-15e; TS 6.9.1.2, at 6-20f (ML052800077). FPL informed the NRC that the current refueling outage (RFO21) inspection includes, among other steam generator inspections, a 100% bobbin probe examination. Katzman, Eric S., FPL, letter to NRC Document Control Desk (Nov. 26, 2013), Att. at 4 (response to request for additional information regarding steam generator tube inspection) (ML13338A582).

<sup>13</sup> López-Santiago, O.R., NRC, letter to M. Nazar, Executive Vice President and Chief Nuclear (continued . . .)

SACE seeks a hearing on the ground that the NRC should have required a license amendment to permit the 2007 steam generator replacement and, in not doing so, has implicitly and improperly granted a *de facto* license amendment.<sup>14</sup> SACE seeks a stay of the restart of St. Lucie Unit 2 until after: (1) a 100% inspection of the steam generator tubes by FPL and publication of the results; (2) publication of the results of the inservice inspection the Staff is conducting during the outage; and (3) completion of the adjudicatory proceeding SACE requests.<sup>15</sup>

## II. DISCUSSION

We first address the procedural posture of SACE's motion to stay. SACE filed its motion to stay pursuant to 10 C.F.R. § 2.342. This regulation, however, applies only to decisions or actions of a presiding officer or licensing board in a proceeding to which the movant is a party pending the filing and resolution of a petition for review.<sup>16</sup> Here, SACE has neither been admitted as a party to an adjudication relating to St. Lucie nor identified any adjudicatory decision or action that it seeks to have us stay. For that reason alone, we find SACE's motion is procedurally improper.

Even were we to exercise discretion to stay an agency action while the hearing request is pending, SACE has failed to identify any agency action or decision relating to the restart of St. Lucie Unit 2 that it would have us suspend. To the contrary, the thrust of SACE's complaint is that

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Officer, FPL, St. Lucie Nuclear Plant, Unit 2 – Notification of Inspection and Request for Information (Feb. 24, 2014), at 1 (ML14056A110); Staff Answer at 4; Staff Affidavit ¶ 13. Inspections such as this are conducted pursuant to NRC Inspection Procedure 71111.08. Staff Affidavit ¶ 13. See *generally* NRC Inspection Procedure 71111.08, "Inservice Inspection Activities" (Jan. 1, 2012) (ML11262A023). The inspection findings will be documented in an inspection report, consistent with the Staff's usual process. And as stated by Mr. López-Santiago, any violations associated with inspection findings are addressed in accordance with the NRC's Enforcement Policy and Enforcement Manual and the NRC's Significance Determination Process. Staff Affidavit ¶ 14.

<sup>14</sup> SACE Motion to Stay at 4- 5.

<sup>15</sup> *Id.* at 1- 2.

<sup>16</sup> See 10 C.F.R. § 2.342(a); *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 158 (2011).

the NRC has not taken sufficient regulatory actions to ensure that St. Lucie is operated safely with the replacement steam generators.<sup>17</sup>

Although we need not, and do not, reach the traditional considerations for granting or denying a stay, we consider as a discretionary matter the question of irreparable injury and observe that SACE has not demonstrated that it will be irreparably harmed unless its motion is granted. As observed by the Staff and FPL, SACE's concerns are connected to the 2007 replacement of the plant's steam generators; the plant, however, has been in operation since that time.<sup>18</sup> SACE asserts that denying the stay motion will allow "a dangerous nuclear reactor to operate" absent the "basic safety analysis that is necessary to ensure it will not pose an undue risk to public health and safety."<sup>19</sup> But SACE has not shown that plant restart will, in and of itself, result in irreparable harm. As we have previously held, "Merely raising the specter of a nuclear accident' does not demonstrate irreparable harm."<sup>20</sup>

We therefore deny the motion to stay restart. Our denial of SACE's motion does not address the question whether SACE is entitled to seek a hearing in this matter. FPL and the Staff therefore may file answers to SACE's hearing request by April 28, 2014. SACE may file a reply within 7 days of service of the answers.

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<sup>17</sup> SACE Motion to Stay at 6 ("SACE's Contention 2 asserts that changes made by FPL to steam generator design for Unit 2 fail to comply with NRC safety regulations or the NRC's reasonable assurance standard for protecting public health and safety . . .").

<sup>18</sup> See Staff Answer at 9; FPL Answer at 8-9.

<sup>19</sup> SACE Motion to Stay at 7.

<sup>20</sup> *Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 237 (2008).

**III. CONCLUSION**

For the reasons discussed above, we deny SACE's stay motion.

IT IS SO ORDERED.

For the Commission

**[NRC Seal]**

***/RA/***

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 1<sup>st</sup> day of April, 2014.