

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–389; NRC–2015–0235]

Florida Power & Light Company; St. Lucie Plant, Unit No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Director's decision under 10 CFR 2.206; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued a director's decision with regard to a petition dated March 10, 2014, as supplemented, filed by the Southern Alliance for Clean Energy (SACE, the petitioner), requesting that the NRC take action with regard to St. Lucie Plant, Unit No. 2 (SL–2). The petitioner's requests and the director's decision are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2015–0235 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2015–0235. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: Carol.Gallagher@nrc.gov.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued director's decision DD–16–02 (ADAMS Accession No. ML16167A086) on a petition filed by the petitioner on March

10, 2014 (ADAMS Accession No. ML14071A431), as supplemented.¹

The petitioner requested a hearing on what the petitioner characterized as a *de facto* license amendment for the replacement of the steam generators (SGs) in 2007 at SL–2, under § 50.59 of title 10 of the *Code of Federal Regulations* (10 CFR), "Changes, tests and experiments." SACE requested that the NRC revoke the *de facto* license amendment and stay the restart of SL–2 from the March 3, 2014, refueling outage pending resolution of the hearing request. As the basis for this request, the petitioner stated that Florida Power & Light Company (the licensee) misapplied 10 CFR 50.59 and that the SG replacement should have required a license amendment. The petitioner also expressed concerns (1) related to the inspection of the replacement SGs and (2) regarding the effects of the extended power uprate (EPU) on SG tube inservice inspection and flow-induced effects on the SG internals.

The Commission, by a memorandum and order (GLI–14–04) dated April 1, 2014 (ADAMS Accession No. ML14091B118), denied SACE's request to stay the restart of SL–2 from the March 3, 2014, refueling outage. Subsequently, by a memorandum and order (GLI–14–11) dated December 19, 2014 (ADAMS Accession No. ML14353A114), the Commission denied SACE's hearing request, concluded that the NRC did not issue the licensee a *de facto* license amendment, and referred SACE's safety concerns regarding the replacement SGs at SL–2 to the NRC's Executive Director for Operations for disposition under 10 CFR 2.206, "Requests for action under this subpart." Therefore, the staff treated these concerns in SACE's hearing request as a petition for enforcement action pursuant to 10 CFR 2.206. On February 24, 2015, (ADAMS Accession No. ML15057A221) and August 5, 2015 (ADAMS Accession No. ML15217A443), SACE informed the NRC staff by telephone that it had decided not to request a meeting with the NRC's Petition Review Board with regard to its 10 CFR 2.206 petition.

By letter dated September 28, 2015 (ADAMS Accession No. ML15205A313), the NRC acknowledged receipt of SACE's 10 CFR 2.206 petition and notified SACE of the NRC's acceptance of a portion of the petition (*i.e.*, one of SACE's safety concerns) for review in the 10 CFR 2.206 process. The portion

of the petition that the NRC accepted for review under the 10 CFR 2.206 process addresses the licensee's application of 10 CFR 50.59 with respect to the change in a methodology for evaluating SGs, as described in the updated final safety analysis report (UFSAR). The letter also stated that the NRC staff was evaluating whether the licensee properly applied 10 CFR 50.59 when it changed the structural analysis codes as described in the UFSAR.

The staff's September 28, 2015, letter explained why the NRC did not accept the remaining portion of the petition for review under the 10 CFR 2.206 process. This portion of the petition raised safety concerns related to (1) inspection of the replacement SGs and (2) the effects of the EPU on SG tube inservice inspection and flow-induced effects on the SG internals. These concerns met the criteria for rejection in NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," dated October 25, 2000 (ADAMS Accession No. ML041770328), because the concerns had already been reviewed, evaluated, and resolved by the NRC staff.

By letters to the petitioner and licensee dated May 24, 2016 (ADAMS Accession Nos. ML16055A311 and ML16055A330, respectively), the NRC issued the proposed director's decision (ADAMS Accession No. ML16055A284) for comment. The petitioner and the licensee were asked to provide comments within 15 days on any part of the proposed director's decision that was considered to be erroneous or any issues in the petition that were not addressed. The NRC staff did not receive any comments on the proposed director's decision.

The Director of the Office of Nuclear Reactor Regulation has denied the petitioner's requested enforcement actions against the licensee. The reasons for this decision are explained in director's decision DD–16–02 pursuant to 10 CFR 2.206 of the Commission's regulations.

The NRC will file a copy of the director's decision with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Rockville, Maryland, this 8th day of July 2016.

¹ Supplements (ADAMS Accession Nos. ML14115A457, ML14115A458, ML14125A514, ML14128A557, ML14143A412, ML14147A523, ML14310A811, and ML14337A792).

For the Nuclear Regulatory Commission.
William M. Dean,
*Director, Office of Nuclear Reactor
 Regulation.*

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78276; File No. SR-CBOE-
 2016-041]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

July 11, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 28, 2016, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective July 1, 2016. Specifically, the Exchange proposes to adopt a program that offers a monthly subsidy to Trading Permit Holders (“TPHs”) with executing agent operations³ during the Extended Trading Hours (“ETH”) trading session.

To participate in the ETH Executing Agent Subsidy Program, a TPH must be a designated ETH executing agent. To become a designated ETH executing agent, a TPH must submit a form to the Exchange.⁴ The TPH must include on or with the form information demonstrating it maintains an ETH executing agent operation: (1) Physically staffed throughout each entire ETH trading session⁵ and (2) willing to accept and execute orders on behalf of customers, including customers for which the agent does not hold accounts. The designation will be effective the first business day of the following calendar month, subject to the Exchange’s confirmation the TPH’s ETH executing agent operations satisfies [sic] these two conditions, and will remain in effect until the Exchange receives an email from the TPH terminating its designation or the Exchange determines the TPH’s ETH executing agent operation no longer satisfies these two conditions.

A designated ETH executing agent will be eligible to receive a \$5,000 monthly subsidy if it executes at least 1,000 contracts on behalf of customers (including public and broker-dealer customers) during ETH in a calendar month (which is an average of 50 contracts per ETH trading session, assuming a 20-trading day month). Within two business days following the end of a calendar month, in order to receive the subsidy for that month, the designated ETH executing agent must

³ An executing agent operation is one that accepts orders from customers (who may be public or broker-dealer customers, and including customers for which the agent does not hold accounts) and submits the orders for execution (either directly to the Exchange or through another TPH).

⁴ The ETH Executing Agent Subsidy Registration Form may be submitted to Registration@cboe.com. A TPH must submit the form to the Exchange no later than 3:00 p.m. on the second to last business day of a calendar month to be designated an ETH executing agent under the program, and thus eligible for the subsidy, beginning the following calendar month.

⁵ This generally means the TPH has persons available during all hours of the ETH trading session to take orders (such as by telephone) from customers.

submit to the Exchange (in a form and manner determined by the Exchange) documentation and other evidence it executed at least 1,000 contracts on behalf of customers during ETH that month.

The Exchange believes this program will incentivize TPHs to conduct executing agent operations during ETH to increase customer accessibility to the ETH trading session. The purpose of the subsidy is to help TPHs offset the costs that accompany this type of operation during ETH, including costs related to staffing and clearing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the ETH Executing Agent Subsidy Program is reasonable because it incentivizes TPHs to conduct executing agent operations willing to accept orders from all customers during ETH to increase customer accessibility to the ETH trading session, which removes impediments to and perfects the mechanism of a free and open market and a national market system. By encouraging TPHs to conduct this type

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

⁹ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.