

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARDS

Before Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. Gary S. Arnold
Dr. William H. Reed

In the Matters of

PPL BELL BEND, L.L.C.
(Bell Bend Nuclear Power Plant)

LUMINANT GENERATION COMPANY LLC
(Comanche Peak Nuclear Power Plant, Units 3
and 4)

ENERGY NORTHWEST
(Columbia Generating Station)

SOUTHERN NUCLEAR OPERATING CO.
(Vogtle Electric Generating Plants, Units 3 and
4)

DUKE ENERGY CAROLINAS, LLC
(William States Lee III Nuclear Station, Units 1
and 2)

Docket No. 52-039-COL
ASLBP No. 11-914-02-COL-BD01

Docket Nos. 52-034-COL & 52-035-COL
ASLBP No. 11-914-02-COL-BD01

Docket No. 50-397-LR
ASLBP No. 11-912-03-LR-BD01

Docket Nos. 52-025-COL & 52-026-COL
ASLBP Nos. 11-914-02-COL-BD01 & 11-
913-01-COL-BD01

Docket Nos. 52-018-COL & 52-019 COL
ASLBP No. 11-913-01-COL-BD01

October 18, 2011

MEMORANDUM AND ORDER

(Denying Motions To Reopen Closed Proceedings and
Intervention Petition / Hearing Request as Premature)

I. INTRODUCTION

Before these three identically constituted Licensing Boards are (1) motions filed by individuals and organizations seeking to revive a total of four now-closed adjudicatory proceedings and (2) an intervention petition and hearing request (hereafter petition) in a not previously established proceeding. The purpose of both the motions and the petition is to put before the Boards a new and essentially identical contention for their consideration.

The four closed adjudicatory proceedings involved applications for combined construction permits and operating licenses (COLs) for the following nuclear power facilities:

Bell Bend Nuclear Power Plant (Bell Bend) to be located in Luzerne County, Pennsylvania;¹

Comanche Peak Nuclear Power Plant, Units 3 and 4 (Comanche Peak), to be located in Somervell County, Texas;²

Vogtle Electric Generating Plants, Units 3 and 4 (Vogtle), to be located in Burke County, Georgia;³ and

¹ Bell Bend Nuclear Power Plant Combined License Application Part 4: Technical Specifications and Bases at 1-19 (Rev. 2) (Feb. 2010) (ADAMS Accession No. ML101890281). Movant Gene Stilp moved to reopen the Bell Bend proceeding for consideration of the common contention on August 10, 2011. Motion To Reopen the Record and Admit Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident (Aug. 10, 2011); Contention Regarding NEPA Requirement To Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 10, 2011) [hereinafter Bell Bend Contention]. Mr. Stilp filed a corrected motion to reopen on August 17, 2011. Corrected Motion To Reopen the Record and Admit Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident (Aug. 17, 2011).

² Comanche Peak Nuclear Power Company Units 3 and 4 COL Application Part 1 Administrative and Financial Information at 9 (Rev. 2) (June 2011) (ADAMS Accession No. ML11186A867). Movants Lon Burman, Sustainable Energy and Economic Development (SEED) Coalition, Public Citizen, and True Cost of Nukes, Notice of Appearance for Robert V. Eye (Apr. 7, 2009), jointly filed the common contention on August 11, 2011, Contention Regarding NEPA Requirement To Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011), and moved to reopen the Comanche Peak proceeding on September 15, 2011. Motion To Reopen the Record and Admit Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident (Sept. 15, 2011).

³ Southern Nuclear Operating Company Vogtle Electric Generating Plant, Units 3 & 4 COL Application at 1-16 (Rev. 4) (June 2011) (ADAMS Accession No. ML11180A098). Two motions to reopen the Vogtle proceeding for consideration of the common contention were filed. First, Blue Ridge Environmental Defense League (BREDL) filed the reopening motion and common contention on August 11, 2011. Motion To Reopen the Record and Admit Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident (Aug. 11, 2011) [hereinafter Blue Ridge Vogtle Motion]; Contention Regarding NEPA Requirement To Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011) [hereinafter Blue Ridge Vogtle Contention]. Second, Center for a Sustainable Coast, Georgia Women's Action for New Directions f/k/a Atlanta Women's Action for New Directions, and Southern Alliance for Clean Energy (collectively, CSC Intervenors) filed the common contention on August 11, 2011 and the reopening motion on August 12, 2011. Motion To Reopen the Record and Admit Contentions To Address the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident (Aug. 12,

William States Lee III Nuclear Station (Lee) to be located in Cherokee County, South Carolina.⁴

Each of these adjudicatory proceedings was terminated without an evidentiary hearing being held.

For its part, the petition is addressed to the application for a renewal of the operating license possessed by the Columbia Generating Station, located on the Department of Energy's Hanford Reservation in Benton County, Washington.⁵ Because no hearing requests were submitted in response to the notice of opportunity published in the Federal Register,⁶ no adjudicatory proceeding was established in the wake of that notice. Thus, in the case of Columbia Station, an intervention petition and request for hearing were required in order to advance the common contention.

The endeavor now to reopen four closed proceedings and to give birth to yet a fifth has its roots in a single event and, indeed, with regard to each, an essentially identical case is presented in support of the requested relief. That event was the severe and consequential damage to the Fukushima Dai-Ichi Nuclear Power Station in Japan brought about by a

2011); Contention Regarding NEPA Requirement To Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011).

⁴ Combined License Application Part 1 General and Financial Information William States Lee III Nuclear Station Units 1 and 2 at 1.0-5 (Rev. 3) (Dec. 2010) (ADAMS Accession No. ML110030639). BREDL moved to admit the common contention in the William States Lee proceeding on August 11, 2011. Motion To Admit New Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident (Aug. 11, 2011); Contention Regarding NEPA Requirement To Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011) [hereinafter William States Lee Contention].

⁵ License Renewal Application Columbia Generating Station at 1.2-1 (Jan. 2010) (ADAMS Accession No. ML100250658). Petitioner Northwest Environmental Advocates petitioned to intervene in the Columbia Station license renewal application process on August 22, 2011. Petition for Hearing and Leave To Intervene in Operating License Renewal for Energy Northwest's Columbia Generating Station (Aug. 22, 2011) [hereinafter Columbia Station Petition].

⁶ 75 Fed. Reg. 11,572 (Mar. 11, 2010).

magnitude 9.0 earthquake and an ensuing tsunami that occurred on March 11, 2011. Following that event, this agency immediately embarked upon a course designed to determine the implications of that disaster in terms of the safety of reactors located in the United States.

In that regard, at the Commission's direction, the NRC Staff established a Task Force.⁷ Its assigned task was "to review [NRC] processes and regulations to determine, among other things, whether the agency should make additional improvements to our regulatory system."⁸ The Task Force was instructed to "submit for [Commission] consideration recommendations for technical and policy direction."⁹

On July 12, 2011, the Task Force issued its near-term report, containing a substantial number of recommendations for improving the safety of both new and operating reactors.¹⁰ At the same time, its authors stated that the "continued operation and continued licensing activities do not pose an imminent risk to public health and safety."¹¹

As will shortly be seen, it was the issuance of this report, and more particularly the recommendations set forth in it, that triggered the motions and petition in hand. In addition, very similar contentions founded upon the Task Force report has been simultaneously placed before a number of other licensing boards in currently active proceedings.¹²

⁷ Commission Memorandum, "NRC Actions Following the Events in Japan" at 1 (Mar. 21, 2011) (ADAMS Accession No. ML110800456) [hereinafter Tasking Memorandum].

⁸ Union Electric Co. d/b/a Ameren Missouri (Callaway Plant, Unit 2), CLI-11-05, 74 NRC __, __ (slip op. at 4) (Sept. 9, 2011).

⁹ Id. (citing Tasking Memorandum).

¹⁰ Dr. Charles Miller et al., Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term Task Force Review of Insights from the Fukushima Dai-Ichi Accident (July 12, 2011) (ADAMS Accession No. ML111861807) [hereinafter Near-Term Task Force Report].

¹¹ Id. at vii.

¹² For example, the common contention has also been filed in Tennessee Valley Authority (Watts Bar Unit 2), Docket No. 50-391-OL. Contention Regarding NEPA Requirement To Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011) at 4 (ADAMS Accession No. ML11223A291).

The motions and petition are opposed by the various utility applicants and the NRC Staff on a variety of grounds, including an insistence that the filings are untimely and do not meet the standards imposed by the Commission's Rules of Practice with regard to reopening closed records and contention admissibility.¹³ For the reasons set forth in greater detail below, we need not address those standards here. This is because, giving effect to a September 9 Commission issuance (CLI-11-05),¹⁴ it is apparent to us that, far from being untimely, the motions and petition are, in fact, premature and must be denied on that basis without regard to any other considerations. The Columbia Station petitioner and the movants in two of the closed adjudicatory proceedings address CLI-11-05 in their reply memoranda.¹⁵ The movants in all four closed adjudicatory proceedings, as well as the Columbia Station petitioner, will, of course, be free to seek the relief currently denied them at such time as the concern underlying their current contention becomes ripe for consideration in an adjudicatory context.

¹³ For example, these arguments are raised by the applicant and NRC Staff in the Vogtle proceeding. NRC Staff Answer to Petitioners' Motion To Admit New Contention Regarding the Safety and Environmental Implications of the NRC Task Force Report on the Fukushima Dai-ichi Accident (Sept. 6, 2011) at 1; Southern Nuclear Operating Company's Answer in Opposition to Motions To Reopen the Record and Request To Admit New Contentions (Aug. 22, 2011) at 3, 6, 24.

¹⁴ Callaway, CLI-11-05, 74 NRC ___.

¹⁵ In the Vogtle proceeding, CLI-11-05 is addressed in BREDL's reply memorandum, Reply Memorandum Regarding Timeliness and Admissibility of New Contentions Seeking Consideration of Environmental Implications of Fukushima Task Force Report in Individual Reactor Licensing Proceedings (Sept. 18, 2011) at 1, and in the CSC Intervenors' reply memorandum, Reply Memorandum Regarding Timeliness and Admissibility of New Contentions Seeking Consideration of Environmental Implications of Fukushima Task Force Report in Individual Reactor Licensing Proceedings (Sept. 13, 2011) at 1. BREDL also addresses CLI-11-05 in the reply memorandum it submitted in the William States Lee proceeding. Reply Memorandum Regarding Timeliness and Admissibility of New Contentions Seeking Consideration of Environmental Implications of Fukushima Task Force Report in Individual Reactor Licensing Proceedings (Sept. 19, 2011) at 1. In the Columbia Station proceeding, CLI-11-05 is addressed in Northwest Environmental Advocates' reply memorandum. Reply Memorandum Regarding Timeliness and Admissibility of New Contentions Seeking Consideration of Environmental Implications of Fukushima Task Force Report in Individual Reactor Licensing Proceedings (Sept. 22, 2011) at 1.

Given the commonality of the relief sought by the motions and petition, for the purpose of the ensuing discussion we are focusing upon the motion to reopen the Vogtle COL proceeding submitted by the Blue Ridge Environmental Defense League (BREDL).¹⁶ Our conclusions relating to its prematurity have equal application to all of the other filings before us.

II. THE VOGTLE CONTENTION

BREDL filed its motion to reopen the Vogtle proceeding on August 11, 2011, the same date upon which most of the other motions to reopen and the petition to intervene were filed. Its purpose in seeking reopening is to have considered the following new contention that, as previously noted, is common to all of the other motions and the petition before the Board:

The EIS [(environmental impact statement)] for Vogtle fails to satisfy the requirements of NEPA because it does not address the new and significant environmental implications of the findings and recommendations raised by the NRC's Fukushima Task Force Report, including seismic-flood and environmental justice issues. As required by 10 C.F.R. § 51.92(a)(2) and 40 C.F.R. § 1502.9(c), these implications must be addressed in a supplemental Draft EIS.¹⁷

As BREDL emphasizes, the contention is founded on its claim that the EIS prepared by the NRC Staff for this facility "fails to address the extraordinary environmental and safety

¹⁶ Blue Ridge Vogtle Motion; Blue Ridge Vogtle Contention.

¹⁷ Blue Ridge Vogtle Contention at 4. The other five proposed new contentions are distinct in two respects, neither of which is of any significance for present purposes. First, BREDL's contention in the Vogtle proceeding is the only contention that contains the words "including seismic-flood and environmental justice issues." Id. Second, the proposed new contentions for the Bell Bend, Columbia Station, and William States Lee facilities each challenge the facility's ER, Bell Bend Contention at 4; Columbia Station Petition at 20; William States Lee Contention at 5, because an EIS had not issued by the time the proposed new contentions were filed. See Application Review Schedule for the Combined License Application for Bell Bend Nuclear Power Plant, <http://www.nrc.gov/reactors/new-reactors/col/bell-bend/review-schedule.html> (last visited Oct. 12, 2011); Columbia Generating Station - License Renewal Application, <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/columbia.html> (last visited Oct. 12, 2011); Letter from David B. Matthews, Director, Division of New Reactor Licensing, Office of New Reactors, to Bryan J. Dolan, Vice President, Nuclear Plant Development, Duke Energy Carolinas, LLC (Jan. 11, 2011) tbl. 1 (ADAMS Accession No. ML103370325). The Bell Bend, Columbia Station, and William States Lee proposed new contentions also refer to "NEPA and the NRC regulations" instead of "10 C.F.R. § 51.92(a)(2) and 40 C.F.R. § 1502.9(c)." Bell Bend Contention at 4; Columbia Station Petition at 20; William States Lee Contention at 5.

implications of the findings and recommendations” of the Task Force report¹⁸ and rests upon “information contained within the Task Force [r]eport.”¹⁹

Turning to the specific assertions undergirding the contention, BREDL would have it that the Task Force report’s “implication” is “that compliance with current NRC safety requirements does not adequately protect public health and safety from severe accidents and their environmental effects.”²⁰ It characterizes the Task Force report as “recommending the NRC strengthen its regulatory scheme for protecting public health and safety by increasing the scope of accidents that fall within the ‘design basis’ and are therefore subject to mandatory safety regulation.”²¹ In that regard, BREDL maintains that the Task Force recommended that “severe accident mitigation alternatives (‘SAMAs’) [be] imposed as mandatory measures.”²² It further asserts that the Task Force “also recommended that the NRC undertake new safety investigations and impose design changes, equipment upgrades, and improvements to emergency planning and operating procedures.”²³ BREDL additionally points out that “[t]he Task Force recommended that licensees reevaluate the seismic and flooding hazards at their sites and if necessary update the design basis and [structures, systems, and components] important to safety to protect against updated hazards.”²⁴

According to BREDL, the Task Force’s recommendations also include

¹⁸ Blue Ridge Vogtle Motion at 1.

¹⁹ Id. at 4.

²⁰ Id. at 5-6.

²¹ Blue Ridge Vogtle Contention at 2 (citing Near-Term Task Force Report at 20-21).

²² Blue Ridge Vogtle Motion at 5; accord Blue Ridge Vogtle Contention at 5-6 (“[T]he Task Force recommended that the NRC incorporate severe accidents into the ‘design basis’ and subject it to mandatory safety regulations.”).

²³ Blue Ridge Vogtle Contention at 6 (citing Near-Term Task Force Report at 73-75).

²⁴ Id. at 15 (citing Near-Term Task Force Report at 30).

strengthening [station blackout] mitigation capability at all operating and new reactors for design-basis and beyond-design-basis external events, . . . requiring reliable hardened vent designs in [boiling water reactor] facilities with Mark I and Mark II containments . . . , enhancing spent fuel pool makeup capability and instrumentation for the spent fuel pool . . . and strengthening and integrating onsite emergency response capabilities such as [emergency operating procedures], [severe accident management guidelines], and [extensive damage mitigation guidelines].²⁵

BREDL argues that admission of the proposed new contention “constitutes the only way of ensuring that the environmental implications of the Task Force recommendations are taken into account in the licensing decision for Vogtle” because “the NRC Commissioners have postponed taking action on the Task Force’s recommendations.”²⁶

BREDL represents that “[t]he Task Force urges that some of its recommendations,” including proposed new measures for prolonged station blackout mitigation and for spent fuel pool makeup capability and instrumentation, should be considered before COL licensing decisions are made.²⁷ BREDL concludes that NEPA requires the NRC to “address the Task Force’s findings and recommendations as they pertain to Vogtle” before making a licensing decision.²⁸

Still further, BREDL asserts that the Task Force report’s “conclusions and recommendations” are “‘new and significant information’ whose environmental implications must be considered” before the NRC makes decisions on the application.²⁹ BREDL would have it that “the information is ‘new’ because it stems directly from the Fukushima accident,” which it concedes occurred five months before it filed the proposed new contentions.³⁰ In BREDL’s

²⁵ Id. at 16-17 (citing Near-Term Task Force Report §§ 4.2.1, 4.2.2, 4.2.4, 4.2.5).

²⁶ Id. at 3.

²⁷ Id. at 17.

²⁸ Id. at 18.

²⁹ Id. at 10.

³⁰ Id.

view, the Task Force report's conclusions and recommendations are "'significant' because [they] raises an extraordinary level of concern" about how the plant "impacts public health and safety."³¹

For factual support of its assertions, BREDL "relies on the Task Force [r]eport itself" and proffers a declaration by Dr. Arjun Makhijani as expert support.³² According to BREDL, Dr. Makhijani's declaration "confirms the environmental significance of the Task Force's findings and recommendations with respect to the environmental analyses for all pending nuclear licensing cases and design certification applications."³³ BREDL assigns to Dr. Makhijani the belief that the "costs may be significant" if severe accident mitigation measures are imposed as mandatory measures.³⁴

In addition, BREDL supplies the declaration of Dr. Ross McCluney.³⁵ It asserts that "Dr. McCluney is a highly qualified expert in seismic-flooding issues raised in the Task Force [r]eport."³⁶ BREDL attributes to Dr. McCluney the opinion that "seismic seiches – standing waves on rivers, reservoirs and lakes caused by disturbances from tectonic activity and earthquakes – may occur at great distances from the epicenter of the initiating seismic event."³⁷

³¹ Id. (citing 40 C.F.R. § 1508.27(b)(2)).

³² Blue Ridge Vogtle Motion at 6.

³³ Blue Ridge Vogtle Contention at 20.

³⁴ Id. at 12.

³⁵ Id., Att., Declaration of Dr. Ross McCluney Regarding Environmental and Safety Issues at Nuclear Power Plants Based on Events at Fukushima and the Findings of the NRC Interim Task Force (Aug. 11, 2011) [hereinafter McCluney Declaration]. The only other proceeding in which Dr. McCluney's declaration was supplied in support of the common contention was William States Lee. William States Lee Contention, Att., Declaration of Dr. Ross McCluney Regarding Environmental and Safety Issues at Nuclear Power Plants Based on Events at Fukushima and the Findings of the NRC Interim Task Force (Aug. 11, 2011).

³⁶ Blue Ridge Vogtle Motion at 6.

³⁷ Blue Ridge Vogtle Contention at 14 (citing McCluney Declaration).

BREDL states that Dr. McCluney's declaration "confirms the need for a hard look at the impact of seismic seiches" on the plant and "that structures, systems and components be designed to withstand the effects of such natural phenomena."³⁸

BREDL also supplies the declaration of Rev. Charles N. Utley³⁹ as "a highly qualified expert in environmental justice."⁴⁰ BREDL would have it that Rev. Utley's declaration "confirms the need for NRC to implement the Interim Task Force recommendations on emergency preparedness and public education and to comply with Executive Order 12898."⁴¹ BREDL maintains that "[s]ubsequent to the Vogtle COLA and ESP-FEIS, a nuclear power siting study was published which suggests that there is 'reactor-related environmental injustice' at Plant Vogtle."⁴²

III. ANALYSIS

As seen from the foregoing, the generic contention put forth by BREDL et al. is not founded on the March 11, 2011 Fukushima event per se. (Indeed, had it been, there might well be a serious question regarding the timeliness of the August 11 filing of the motion to reopen.) Instead, in terms, the bedrock of the motion is the July 12 Task Force report on the event which was released precisely 30 days before BREDL's submission to us.

Specifically, we are asked to reopen the proceeding for the purpose of admitting a contention that would have it that the findings and recommendations contained in the Task

³⁸ Id. at 20.

³⁹ Id., Att., Declaration of Rev. Charles N. Utley Regarding Environmental Justice and Emergency Response Issues at Plant Vogtle Electric Generating Plant [sic] Based on Events at Fukushima and the Findings of the NRC Interim Task Force (Aug. 11, 2011) [hereinafter Utley Declaration]. Rev. Utley's declaration was not filed in connection with any other motion to reopen or with the petition to intervene.

⁴⁰ Blue Ridge Vogtle Motion at 6.

⁴¹ Blue Ridge Vogtle Contention at 20.

⁴² Id. at 15 (citing Utley Declaration).

Force report have “new and significant environmental implications” that must be addressed in a supplemental draft environmental impact statement. On first examination of that assertion, we found ourselves in considerable doubt as to how such weight and effect could attach to a mere report that had neither received the endorsement of the Commission nor, more importantly, led to some concrete affirmative action being taken in light of its content. On September 9, however, that doubt received dispositive reinforcement in CLI-11-05, supra.⁴³

CLI-11-05 was issued in response to a series of petitions seeking, with regard to a large number of nuclear power facilities including the five now before us, the suspension of adjudicatory, licensing, and rulemaking activities and other relief in light of the Fukushima event.⁴⁴ Included among the requested other relief was the agency’s conduct of “a separate generic NEPA analysis regarding whether the Fukushima events constitute ‘new and sufficient information’ under NEPA that must be analyzed as part of the environmental review for new reactor and license renewal decisions.”⁴⁵

In addressing the various requests for relief, and ultimately denying all of possible relevance to the consideration of the matter now at hand, the Commission referred extensively to actions that it had taken upon the July 19 formal presentation of the Task Force report.

Among other things, the Commission had directed the

review and assessment, with stakeholder input, of the Task Force recommendations; provision of a draft charter for assessing the Task Force recommendations and conducting the agency’s longer-term review; preparation of a notation vote paper that identifies recommended short-term actions; preparation of a notation vote paper that sets recommended priorities for the Task Force recommendations; and formal review of the Task Force recommendations by the Advisory Committee on Reactor Safeguards.⁴⁶

⁴³ Callaway, CLI-11-05, 74 NRC __.

⁴⁴ Id. at __ (slip op. at 1-3).

⁴⁵ Id. at __ (slip op. at 30).

⁴⁶ Id. at __ (slip op. at 6).

At a later point in its decision, once again alluding to the Task Force recommendations “for short-term and long-term agency action,” the Commission stressed that its consideration of those recommendations and the “efforts [the Commission] directed the Staff to undertake based on [them] may result in actions including the issuance of regulatory and policy direction.”⁴⁷ In this connection, the Commission observed that, as the Task Force report reflected, “the mechanisms and consequences of the events at Fukushima are not yet fully understood.”⁴⁸

It was against this background that the Commission reached the petitioners’ request that a generic NEPA analysis be performed. Its answer was both brief and emphatic:

This request is premature. Although the Task Force completed its review and provided its recommendations to us, the agency continues to evaluate the accident and its implications for U.S. facilities and the full picture of what happened at Fukushima is still far from clear. In short, we do not know today the full implications of the Japan events for U.S. facilities. Therefore, any generic NEPA duty – if one were appropriate at all – does not accrue now.⁴⁹

Significantly, the Commission went on to acknowledge that “new and significant information” might come to light that “requires consideration as part of the ongoing preparation of application-specific NEPA documents.”⁵⁰ Should that occur, “the agency will assess the significance of that information, as appropriate.”⁵¹ Pointing, however, to the regulation setting forth the circumstances in which the Staff must prepare supplemental review documents, the Commission cited its holding to the effect that “[t]he new information must present a seriously different picture of the environmental impact of the proposed project from what was previously

⁴⁷ Id. at __ (slip op. at 28-29) (citing Staff Requirements Memorandum SECY-11-0093, Near-Term Report and Recommendations for Agency Actions Following the Events in Japan (Aug. 19, 2011) (ADAMS Accession No. ML112310021)).

⁴⁸ Id. at __ (slip op. at 29).

⁴⁹ Id. at __ (slip op. at 30).

⁵⁰ Id.

⁵¹ Id. at __ (slip op. at 30-31).

envisioned.”⁵² In the Commission’s view, “[t]hat is not the case here, given the current state of information available to us.”⁵³

It is difficult to fathom how the Commission could have stated more precisely and definitively that it remains much too early in the process of assessing the Fukushima event in the context of the operation of reactors in the United States to allow any informed conclusion regarding the possible safety or environmental implications of that event regarding such operation. Of still greater importance given BREDL’s entire reliance on the findings and recommendations of the Task Force, the Commission stressed with equal force and clarity that, while under active study, none of those findings and recommendations has been accepted. Thus, they scarcely have been given the effect that, according to BREDL et al., gives rise to the environmental implications that undergird the contention that is sought to be admitted.

Turning to the matter before us, we think the Commission’s disposition of the NEPA review issue presented to it, and the rationale assigned for that disposition, is plainly controlling here. We can perceive no possible basis upon which, in opposition to the conclusion of prematurity reached by the Commission, we might conclude that the contention presented to us is ripe for adjudication. Once again, that contention necessarily assumes the Commission’s acceptance and implementation of Task Force findings and recommendations that might or might not be adopted in whole or part after the NRC Staff has completed the actions directed by the Commission upon receipt of that report.

It is worthy of note that neither BREDL nor any of the other sponsors of the contention have pointed to any unique characteristics of the site of the particular reactor that might make the content of the Task Force report of greater environmental significance to that reactor than to

⁵² Id. at ___ (slip op. at 31) (quoting Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999)).

⁵³ Id.

United States reactors in general.⁵⁴ That consideration provides still further foundation for our reliance on the Commission's determination that a call for a generic NEPA review was premature.

Our conclusion that the contention is premature in the Vogtle proceeding, and thus as well in the four other proceedings in which it is presented, leaves open the question as to what might be an event that would trigger an assertion of the need for further NEPA review. Manifestly, the sponsors of the contention now held premature have a decided interest in the answer to that question. Indeed, it might well be that the motions to reopen and petition for intervention before us were filed simply out of an understandable abundance of caution in recognition of the fact that endeavors to reopen closed records or to open new proceedings at a late date are often greeted, as was the case here, with the claim that the endeavor comes too late.

Unfortunately, we are unable to provide guidance on that score. It is simply not possible to forecast at this writing when there might be some development associated with the Fukushima event that might give rise to a supportable contention respecting a need for further NEPA review either on a generic basis or in the context of one or more individual reactors. Nor is there room for speculation today regarding what that development might be.

In short, while perhaps of cold comfort to the sponsors of the contention now held to be premature, we can do no more than did the Commission itself in CLI-11-05 in its

⁵⁴ The only possible exception in this regard is BREDL's environmental justice claims. E.g., Blue Ridge Vogtle Contention at 4. Although BREDL seeks to tie those claims to the Task Force report, see, e.g., Blue Ridge Vogtle Motion at 7-8, it seems apparent from the supporting declaration of Rev. Utley that those claims are footed in (1) longstanding generic concerns about the agency's implementation of environmental justice and its policy on potassium iodide distribution, Utley Declaration at 2-6; and (2) a 2009 siting study, id. at 4; see also Blue Ridge Vogtle Contention at 15-16, concerns about which could have been raised at a much earlier junction in the proceeding, e.g., relative to the staff's September 2010 draft supplemental environmental impact statement for the Vogtle COL. Office of New Reactors, Draft Supplemental Environmental Impact Statement for Combined Licenses (COLs) for Vogtle Electric Generating Plant Units 3 and 4, NUREG-1947 (Sept. 2010) (ADAMS Accession No. ML102370278).

acknowledgment that, with the passage of time, “new and significant information [might come] to light that requires consideration as part of the ongoing preparation of application-specific NEPA documents.”⁵⁵ At this juncture, as the Commission emphasized, “the full picture of what happened at Fukushima is still far from clear” with the consequence that “we do not know today the full implications of the Japan events for U.S. facilities.”⁵⁶

IV. CONCLUSION

For the reasons stated above, the motions to reopen the now-closed COL proceedings for the following nuclear power facilities:

Bell Bend Nuclear Power Plant;

Comanche Peak Nuclear Power Plant, Units 2 and 3;

Vogtle Electric Generating Plants, Units 3 and 4; and

William States Lee III Nuclear Station, Units 1 and 2

⁵⁵ Id. at ___ (slip op. at 30).

⁵⁶ Id.

together with the intervention petition with regard to the application for a renewal of the operating license of

Columbia Generating Station

are hereby denied as premature.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD⁵⁷

/RA/

Alan S. Rosenthal, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

/RA/

Dr. William H. Reed
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 18, 2011

⁵⁷ Copies of this order were sent this date by the agency's E-Filing system to counsel and representatives for PPL Bell Bend, L.L.C.; Gene Stilp; Energy Northwest; Northwest Environmental Advocates; Luminant Generation Company, LLC; Lon Burman, Sustainable Energy and Economic Development (SEED) Coalition, Public Citizen, and True Cost of Nukes; Southern Nuclear Operating Co.; Blue Ridge Environmental Defense League; Center for a Sustainable Coast, Georgia Women's Action for New Directions f/k/a Atlanta Women's Action for New Directions, and Southern Alliance for Clean Energy; Duke Energy Carolinas, LLC; and the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
ENERGY NORTHWEST) DOCKET NO. 50-397-LR
(Columbia Generating Station))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensing Board **MEMORANDUM AND ORDER (Denying Motions to Reopen Closed Proceedings and Intervention Petition / Hearing Request as Premature) (LBP-11-27)**, dated October 18, 2011, have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission.
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ENERGY NORTHWEST (Columbia Generating Station) – 50-397-LR
**MEMORANDUM AND ORDER (Denying Motions to Reopen Closed Proceedings
and Intervention Petition / Hearing Request as Premature) (LBP-11-27)**

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[Original signed by Linda D. Lewis]_____
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 18th day of October, 2011