

December 6, 2007

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Nicholas G. Trikouros
Dr. James Jackson

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In the Matter of)	Docket No. 52-011-ESP
Southern Nuclear Operating Company)	ASLB No. 07-850-01-ESP-BD01
(Early Site Permit for Vogtle ESP Site))	
)	

INTERVENORS' ANSWER IN RESPONSE TO SNC AND NRC STAFF MOTIONS TO STRIKE PORTIONS OF INTERVENORS' ANSWER TO MOTION FOR SUMMARY DISPOSITION OF EC 1.2

Intervenors submit this response in opposition to both Southern Nuclear Operating Company (“SNC”) and the Nuclear Regulatory Commission Staff’s (“Staff”) motions to strike collectively. SNC and Staff moved separately to strike portions of Intervenors’ Answer to the Motion for Summary Disposition (“Intervenors’ Answer”) and supporting affidavits. The Staff moved to strike portions of the Intervenors’ Answer on November 21, 2007, and SNC moved to strike portions identified by NRC and additional portions of Intervenors’ Answer on November 23, 2007.

I. BACKGROUND

SNC and the Staff claim that Intervenors’ Answer “attempts to expand the scope of the admitted contention by raising several new challenges to the [DEIS].” Staff Motion to Strike

Portions of Joint Intervenors' Answer to Opposing Summary Disposition of EC 1.2 ("Staff Motion") at 3; SNC Motion to Strike Portions of Intervenors' Answer to Motion for Summary Disposition of EC 1.2 ("SNC Motion") at 1. Both motions claim that the DEIS cured any alleged defects identified in Environmental Contention 1.2 ("EC 1.2") and Intervenors failed to file a timely motion to amend. As a result, they argue, portions of the Intervenors' Answer should be stricken because they raise new arguments that should have been raised in a new or amended contention. Staff Motion at 4; SNC Motion at 2-3.

The DEIS does not cure any of the defects in the Environmental Report ("ER") and Intervenors, therefore, were not required to amend EC 1.2. When no new claims are raised, a contention challenging an ER is also a challenge to the subsequent DEIS. *Duke Energy Corp.*, CLI-02-08, 56 N.R.C. 373, 382 (2002). Intervenors' Answer does not raise any new issues or seek to challenge the adequacy of previously-omitted information. *See Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-07-13, 66 NRC ___, ___ (Oct. 30, 2007) (Slip Op. at 16); *Private Fuel Storage, LLC*, LBP-01-23, 54 N.R.C. 163 (2001); *Duke Cogema Stone & Weber*, (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-04-9, 59 N.R.C. 286 (2004). Nor does Intervenors' Answer attempt to revive contentions that the Board had already rejected. *See Amergen Energy Co.* (Oyster Creek Nuclear Generating Station), No. 50-0219-LR, Slip Op. at 5-6 (LBP June 19, 2007)(unpublished order). With limited exceptions, there is no significant new or different information presented in the DEIS, and the DEIS, just like the ER, suffers from the same fundamental flaws that underlie EC 1.2.

The DEIS, like the ER, concludes that impacts to aquatic resources will be small and do not warrant mitigation. *Compare* DEIS § 7.5 *with* ER §§ 5.3, 10.1.3; Petition to Intervene at 8.

As in the ER, this conclusion is based on a general description of Savannah River aquatic resources rather than site-specific and species-specific data. *Compare* DEIS § 2.7.2.1 with ER §2.4.2. Like the ER, the DEIS relies heavily on research conducted at the Savannah River Site, particularly the Academy of Natural Sciences reports. *Id.* The DEIS continues the ER’s methodology of using the percentage of flow being withdrawn or discharged to extrapolate impacts on aquatic species. *Compare* DEIS § 5.4.2.2 with ER §§ 5.3.1.2; *compare* DEIS § 7.5 with ER §10.5.2. The DEIS continues to rely on the 1985 EIS for Plant Vogtle Units 1 and 2, and its assumption of a uniform drift community. *Id.* The DEIS is still missing an analysis of “how are those species [in the Savannah River] going to interact with the proposed plant at the flows they are likely to see throughout the course of the year.” Transcript of Oral Argument at 26, *In re Southern Nuclear Operating Co.* No. 07-850-01 (ASLB Feb. 13, 2007).

Intervenors’ Answer does nothing more than respond to the arguments presented in SNC’s Motion for Summary Adjudication and the Staff’s Motion in support. Under the NRC Rules of Procedure, the party opposing summary disposition may “respond in writing to new facts and arguments presented in any statement filed in support of the motion.” 10 C.F.R. § 2.710(a); 2.1205(c). Thus, while it is certainly true that “the contention must stand on the bases as admitted,” an opposing party has a right to respond to new facts and arguments presented in support of summary disposition. SNC and the Staff are incorrect that Intervenors must present their arguments opposing summary disposition in a motion to amend EC 1.2. Instead, Intervenors stand by EC 1.2 as admitted. To the extent that EC 1.2 is a contention of omission, the missing information is still omitted from the DEIS. To the extent it is a contention challenging the adequacy of the ER, the DEIS is still inadequate for the same reasons identified in EC 1.2.

II. DISCUSSION

The SNC Motion is the broader of the two motions at issue here. SNC alleges that Intervenor's Answer attempts to raise five new claims or contentions that are not within the scope of EC 1.2 as admitted. In addition, SNC argues that the Affidavit of Barry Sulkin impermissibly expands the scope of EC 1.2 and should be stricken in its entirety. The Staff Motion raises only a subset of the issues in the SNC Motion: it seeks to strike references in Intervenor's Answer and affidavits to Drought Level 4 flows. The Staff Motion raises arguments that are not also in the SNC Motion. Thus Intervenor's Answer is structured to respond to each of the claims presented in the SNC motion. The arguments raised by the Staff must fail for the same reasons.

A. Intervenor's Answer Does Not Raise Five New Claims for the First Time.

SNC alleges that Intervenor's Answer raises five new claims, addressed in turn below:

1. **SNC Motion:** *The Answer now criticizes the use and the contents of the Academy of Natural Sciences reports. Neither the admitted contention, nor the basis for the contention, makes any reference to these reports, much less contends any fault with those reports.*

Both Staff and SNC rely upon the Academy of Natural Science Reports in support of SNC's Motion for Summary Disposition. *See* Staff Answer to SNC Motion for Summary Disposition of EC 1.2 at 5; Joint Affidavit of Christopher B. Cook and Rebekah H. Krieg ¶ 6; SNC Motion for Summary Disposition of EC 1.2 at 16, 20, 21, 24. As a result, it is irrelevant that "neither the admitted contention, nor the basis for the contention, makes any reference to these reports." SNC Motion at 2. Intervenor's Answer addresses the Academy reports because SNC and the Staff specifically discuss them in support of summary disposition. *See* 10 C.F.R. § 2.710(a). In addition, EC 1.2 challenges the almost-exclusive use of studies, including the

Academy reports, without accompanying site specific data. Thus, SNC is incorrect that the use and contents of the Academy reports are outside the scope of the admitted contention.

Contrary to SNC's claim, Intervenors' petition to intervene challenged the "selective use of long-term studies at the Savannah River Site ("SRS") that collected data in the vicinity of Plant Vogtle" instead of conducting field studies at the actual locations of the proposed intake and discharge structures. Petition to Intervene at 8. Rather than conducting field studies and collecting data at the Plant Vogtle site, the ER relied almost exclusively on studies of SRS, particularly the Academy of Natural Sciences reports. Intervenors did not claim that the reports themselves are faulty, but rather that the ER's reliance on them exclusively, in lieu of collected site-specific information, is inadequate. As Dr. Young explains in his second affidavit, "The ANSP studies provide some useful data, but do not by themselves support a conclusion that the addition of two new units will have only small impacts on aquatic resources." November 13, 2007 Affidavit of Dr. Shawn Young ("Second Young Affidavit") at ¶ 17.

Clearly, EC 1.2 challenges both the omission of site-specific data, as well as the adequacy of studies that the ER relies upon. As the Board recognized in its ruling on standing and contentions:

[T]he crux of [Intervenors'] concern . . . is that the SNC ER suffers from a fundamental deficiency in that its analysis of the impacts and effects of the proposed ESP on the aquatic environment in the area of the Plant Vogtle site is based on information that is inadequate to establish the requisite environmental baseline.

Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), LBP-07-03, 65 NRC 236, 255-257 (2007).

Although the Board ultimately rejected Intervenors' proposed contention EC 1.1 challenging the ER's analysis of the environmental baseline, it acknowledged that "a NEPA

analysis relating to aquatic impacts must, as a practical matter, have a baseline from which to operate.” *Id.* As a result, the Board recognized that “aspects of this contention may come into play relative to EC1.2 same question.” *Id.* Thus, in admitting EC 1.2, the Board explicitly noted “that litigation regarding its merits may involve the question of the adequacy of the baseline information provided by SNC relative to the portion of the Savannah River that encompasses the project area associated with the intake/discharge structures for both the existing and proposed Vogtle facilities.” *Id.* at 259.

The admitted contention and its supporting bases do not specifically refer to the Academy of Natural Science reports; however, the adequacy of these reports, without additional field data, to establish baseline conditions is absolutely within the scope of the contention. Thus, this case is precisely the opposite of that presented in *Amergen Energy Co.* (Oyster Creek Nuclear Generating Station), Slip Op. at 5-6. In *Amergen Energy*, the Board rejected Intervenors’ efforts to restate in an answer to a motion for summary disposition a contention that the Board had previously rejected for admission. *Id.* In contrast, here the Board’s order admitting EC 1.2 specifically includes the issue of baseline conditions from rejected contention EC 1.1. All of the material that SNC and Staff seek to strike pertains to the baseline that the Board recognized was necessarily within the scope of EC 1.2.

2. **SNC Motion:** *Intervenors’ Answer criticizes, for the first time, the number of site visits relied on in the DEIS and the reference to screen basket cleanings.*

Intervenor’s Answer properly responded to both SNC’s Motion for Summary Disposition and the Staff’s Answer supporting the motion. EC 1.2 challenges the ER’s use of anecdotal information concerning the performance of the existing intake and discharge structures, rather than empirical observations. The ER did not discuss the Staff’s observations during the site visit, or the frequency of cleaning the screens and emptying the baskets. Instead, the ER concluded

that “twenty years of operating experience suggests that Savannah River fish populations have not been adversely affected by operation of the existing” cooling system. ER § 5.3.3. The petition for intervention specifically challenged the use of anecdotal qualitative description rather than site specific quantitative analysis in the evaluation of cumulative impacts of the proposed units in combination with the existing units. Petition to Intervene at 12-13. *See also* First Young Affidavit at ¶¶ 6, 9.

The DEIS continues the inadequate evaluation of entrainment and impingement associated with the existing intake structure. The DEIS acknowledges that impingement and entrainment studies have not been conducted at the existing intake structure for Units 1 and 2. DEIS at 5-25 – 5-26. As with the ER, the DEIS relies on anecdotal accounts of the impacts of the existing intake:

A site visit to the VEGP Units 1 and 2 on March 8, 2007 included an investigation of the VEGP intake and involved an examination of the traveling screens, the screen wash system, the debris trough that collects and channels debris washed from the screens and the collection debris basket as documented in a trip report (NRC 2007c). Southern staff indicated that the screen wash collection basket had been cleaned about 2-3 times each of the past two years and no fish were seen.

DEIS at 5-26.

Both Staff and SNC point to the discussion of the NRC site visit in the DEIS in support of summary disposition. *See* Joint Affidavit of Christopher B. Cook and Rebekah H. Krieg ¶¶ 6, 16; SNC’s Motion for Summary Disposition of EC 1.2 at 7-8. As a result, Intervenor’s Answer addresses these arguments. 10 C.F.R. § 2.710(a). In their answer, Intervenor responded directly to the SNC and Staff assertion that the DEIS cures the defects identified in EC 1.2; yet, SNC inexplicably claims that Intervenor goes beyond the scope of the admitted contention by responding to these claims. Intervenor’s Answer was a reasonable response to new information

and arguments submitted by Staff and SNC in support of summary disposition, and also within the scope of the original contention.

3. **SNC Motion:** *Intervenors allege for the first time that the DEIS errs in its conclusions on larval fish mobility. Answer at 13-14. Again, the basis for Intervenors' contention did not assert such an error, and it may not be raised for the first time now.*

Intervenors' Answer discussed larval fish mobility as an essential component of life history, thus this discussion is within the original contention that cumulative impacts of the cooling system to aquatic resources such as fish morbidity was not addressed.

The contention challenges the use of general descriptions of aquatic resources and estimates of impacts in lieu of data collection and analysis:

The ER does not estimate the level of mortality from impingement and entrainment in the new intake structure. As discussed above, the ER does not quantify or describe systematically the species composition and habitat in the vicinity of the intake and cooling structures. As a result, the ER fails to analyze the nature and extent of impacts on aquatic species expected from the new reactors.

Petition to Intervene at 10.

Dr. Young's first affidavit discusses potential impacts of Plant Vogtle's Units 3 and 4 on larval fish because they could be especially vulnerable at this life history stage. First Young Affidavit at ¶¶ 11, 12, 17. Dr. Young notes that "the ER contains no data for seasonal or total entrainment losses by species *or by life history stage.*" *Id.* ¶ 10 (emphasis added). Dr. Young explains further:

The Savannah River fish assemblage utilizes several life history strategies to survive the inherent temporal and spatial heterogeneity of riverine habitats. Also, dispersal mechanisms also vary from species to species and also across life history stages of each species. Differences in physiology make some species more susceptible to entrainment than others. Some examples are (a) adhesive versus buoyant eggs; (b) immobile larvae versus highly mobile larvae; and, (c) resident fish with small home ranges (that may avoid VEGP) versus migratory

fish that ultimately must pass VEGP during vulnerable early life history stages on their journey down the Savannah River to the Atlantic Ocean.

Id. at ¶ 12. Similarly, Dr. Young faults the ER’s “vague summary of some fish species and life histories, rather than a comprehensive discussion of all species likely to inhabit this reach of the Savannah River at different times of year” and selective discussion of “only those species and their life stages that have a lower probability of entrainments and neglect those with high susceptibility.” *Id.* at ¶ 16. *See also Id.* at ¶ 17 (No discussion or assessment of larval and juvenile American shad); ¶ 18 (Thermal tolerance varies from species to species, and across life history stages of individual species); ¶ 20 (high water temperature kills the early life history stages of several highly-valued fish found near VEGP).

In admitting EC 1.2, the Board found that the First Young Affidavit “provides sufficient factual support for the admission of this contention.” *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), 65 NRC at 258. Dr. Young concluded that “it is not possible to determine the level of impacts” without “actual field study of the existing intake” and opined that “SNC should undertake seasonal field studies to determine species composition, distribution, and vulnerability to entrainment.” First Young Affidavit at ¶ 10.

Thus, SNC is incorrect that EC 1.2 does not encompass vulnerability of larval fish to impacts from the proposed intake and discharge structures, as well as their ability to avoid such impacts. EC 1.2 challenges the adequacy of the ER’s (now DEIS’s) analysis of direct, indirect, and cumulative impacts of the proposed intake and discharge structures on aquatic species. Also, in supporting summary disposition, the Staff relies upon the ability of larval fish to avoid impacts to justify the conclusions in the DEIS. *See Joint Affidavit of Christopher B. Cook and Rebekah H. Krieg* ¶¶ 15-18. Thus, not only is this issue within the scope of EC 1.2, but Intervenors’ Answer is a direct response to the claims in the Staff affidavit. Second Young Affidavit at ¶¶ 9-

11. Again, because SNC specifically raised the issue of larval fish ability to swim away from potential danger, Intervenors response to SNC's motion for summary disposition on this issue is allowed and also within the scope of the original contention.

4. **SNC Motion:** *Intervenors allege for the first time that the method of estimating Savannah River flow from releases at the Thurmond Dam, is unsatisfactory and that data from a previously unmentioned gage should be used. Answer at 15-16. This new assertion is made in the context of a new contention that drought flows were not considered. Not only is this assertion new, it conflicts directly with previous assertions which were made the basis for Intervenors' contention.*

Once again, SNC and the Staff are incorrect that impact to aquatic species under low-flow conditions is beyond the scope of the admitted contention. Intervenors are not asserting a new contention that drought flows were not considered. SNC's Motion to Strike at 3. Instead, EC 1.2 challenges the failure to consider direct, indirect, and cumulative impacts of the proposed intake and discharge systems, which vary with different river flows.

Both the Staff and SNC rely on the assumptions regarding minimum releases from Thurmond Dam and Savannah River flows in support of summary disposition. *See* NRC's Answer to Motion for Summary Disposition at 7-10; SNC's Motion for Summary Disposition at 19, 22; Joint Affidavit of Christopher B. Cook and Rebekah H. Krieg ¶¶ 8, 9, 11, 15-17. In particular, the Staff concedes for the first time that the DEIS does not disclose and analyze the combined maximum rate of withdrawals. Joint Affidavit of Christopher B. Cook and Rebekah H. Krieg ¶ 15. The Staff now acknowledges that the combined rate of withdrawal will exceed the five percent threshold of significance identified in the DEIS. *Id.* Intervenors' Answer responds directly to this new information and arguments presented by the Staff in support of summary disposition. *See* 10 C.F.R. § 2.710(a).

From the outset, Intervenors asserted that the ER does not assess "habitat conditions and *flow/habitat relationships* in the project area." Petition to Intervene at 6 (emphasis added).

Similarly, Intervenor's petition alleges that it is not possible to evaluate the impacts of the cooling system "without detailed, site specific information about species abundance and flow/habitat relationships." *Id.* at 9. In the DEIS, the Staff adopts a different method of estimating Savannah River flows than that employed in the ER; however, this does not cure the defect identified in EC 1.2.. Like the ER, the DEIS does not include detailed, site-specific data concerning habitat abundance and utilization across the range of likely flow conditions. Both the ER and DEIS utilize unsupported assumptions regarding minimum Savannah River flows, which in turn understate the potential environmental impacts of the proposed additional units.

Dr. Young's declaration in support of EC 1.2 shows that the contention relates to the methodology employed in the ER, which is continued in the DEIS without change. *See* First Young Affidavit at ¶¶ 12-15. Both the ER and DEIS assume a uniformly distributed drift community that is entrained in proportion to the volume of total Savannah River flow being withdrawn. Dr. Young criticizes both the assumption of uniform drift and of "a minimum guaranteed river flow of 5,800 cfs instead of the 7Q10 flow of 3,800 cfs." *Id.* at ¶ 12.

Dr. Young describes how minimum flows relate to potential impacts on aquatic species from both entrainment and thermal discharge. As he explains, "entrainment rates will vary depending on the river flow" with "the maximum level of entrainment occur[ing] during low flow periods." *Id.* Thus, Dr. Young opines that "low water levels confine organisms to smaller habitat concentrating the number of organisms per unit of area in the vicinity of the intake structures," which "increases the vulnerability to entrainment." *Id.* Likewise, "the ER does not calculate normal and worst case scenarios *based upon species composition in the river channel at different flows.*" *Id.* (emphasis added). Similarly, "reduced flow places more of the drift community at danger of thermal impacts due to river channel confinement." *Id.* at ¶ 18.

Thus, both the Staff and SNC are mistaken in their assertion that Intervenor's Answer is beyond the scope of admitted EC 1.2. The contention is not limited merely to the ER's failure to calculate maximum withdrawal rates, as suggested by SNC and the Staff. *See* SNC Motion to Strike at 3; Staff Motion to Strike at 3. Nor was Dr. Young solely concerned with the ER's failure to use the 7Q10 flow to analyze entrainment and thermal discharge impacts. *Id.* Instead, Intervenor's challenge the ER's method of using percentage of minimum flow withdrawn or discharged as a proxy for measuring impacts, which remains unchanged in the DEIS. The method employed to estimate minimum Savannah River flows is central to this challenge. The DEIS adopts a different method of estimating minimum flows, but the fundamental flaws identified in EC 1.2 remain.

Moreover, Intervenor's Answer directly responds to new information and arguments presented by the Staff and SNC in support of summary disposition. *See* 10 C.F.R. § 2.710(a). Both the Staff and SNC rely on the assumptions regarding minimum releases from Thurmond Dam and Savannah River flows in support of summary disposition. *See* NRC's Answer to Motion for Summary Disposition at 7-10; SNC's Motion for Summary Disposition at 19, 22; Joint Affidavit of Christopher B. Cook and Rebekah H. Krieg ¶¶ 8, 9, 11, 15-17. In particular, the Staff concedes for the first time that the DEIS does not disclose and analyze the combined maximum rate of withdrawals. Joint Affidavit of Christopher B. Cook and Rebekah H. Krieg ¶ 15. The Staff now acknowledges that the combined rate of withdrawal will exceed the five percent threshold of significance identified in the DEIS. *Id.* Intervenor's Answer responds directly to new information and arguments presented in support of summary disposition, and thus falls within the scope of the admitted contention.

5. **SNC Motion:** *Intervenors contend, again for the first time, that the DEIS did not address cumulative impacts because it did not consider various external third party (including future) water withdrawals.*

EC 1.2 challenges the failure “to identify and consider direct, indirect, and cumulative” impacts. *Southern Nuclear Operating Co.* 65 NRC at 258. “Cumulative impacts” are defined as the “incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. NRC regulations implementing NEPA require both the ER and DEIS to include an analysis of cumulative impacts. *See* 10 C.F.R. §§ 51.45(c), 51.71. SNC and Staff both dismiss any cumulative impacts to aquatic resources in their Motions for Summary Disposition. *See* Staff Answer to Motion for Summary Disposition at 16-17; SNC’s Motion for Summary Disposition at 14, 20.

In support of EC 1.2, Dr. Young describes the current state of fishery resources in the Savannah River: “Many fish populations in the middle Savannah River are greatly reduced from their historical numbers. The declines cited by fisheries experts are due to the incremental impacts from dams, urbanization, industrialization, and nuclear power facilities, including the operation of the Vogtle Plant (Marcy et al. 2005).” First Young Affidavit at ¶7. Dr. Young opines that the proposed additional units “will increase the stress that the Savannah River ecosystem is already experiencing.” *Id.* at ¶8. Thus, the scope of EC 1.2 is not limited to the cumulative impacts of the two proposed units in combination with the two existing units. Instead, cumulative impacts must be evaluated in the context of the existing baseline conditions of the Savannah River, which include past, present, and reasonably foreseeable future actions of third parties, and Intervenor’s Answer is within the original scope of the contention.

Intervenors' expert, Barry Sulkin, explains in his affidavit that Savannah River flow from Thurmond Dam is not necessarily equivalent to that at Plant Vogtle because of natural accretion, withdrawals and discharges. Affidavit of Barry W. Sulkin at ¶¶ 11-13. EC 1.2 includes cumulative impacts of third party water withdrawals to the extent that they are reasonably foreseeable. Mr. Sulkin also explains that the problem with using the Thurmond Dam discharge instead of a downstream gage nearer to Plant Vogtle is that it does not capture all of the natural and human induced changes in flow occurring in the 70 miles between Thurmond Dam and Plant Vogtle. *Id.* The context of Mr. Sulkin's discussion of third party impacts is in response to the Staff and SNC claims in support of summary disposition that the DEIS addresses low flow impacts. *See* Staff's Answer to Motion for Summary Disposition at 7-8; SNC's Motion for Summary Disposition at 19. Low flow conditions are within the scope of EC 1.2 as originally admitted, and Intervenor's Answer is permissible.

B. The Affidavit of Barry Sulkin Should Not be Stricken.

SNC also moves that the entire Affidavit of Barry Sulkin be stricken. Intervenors rely on the Sulkin affidavit to address new information and arguments presented for the first time in the Staff's support of summary disposition. Therefore, the Sulkin affidavit does not impermissibly seek to expand the scope of EC 1.2.

In admitting EC 1.2, the Board relied on the First Young Affidavit. *See* ASLB Memorandum and Order: Ruling on Standing and Contentions, March 12, 2007 at 17-18. In his original first affidavit, Dr. Young identified a problem with the statement of maximum withdrawal in the ER that was not corrected in the DEIS. First Young Affidavit at ¶¶ 12-15, 18. The Staff now acknowledges that Dr. Young was correct about the true maximum withdrawal. Staff's Answer to Motion for Summary Disposition at 12-13. Dr. Young was concerned with

withdrawals and discharges under low-flow conditions, and discussed 7Q10 flows and the “worst case scenario” in the affidavit. However, as SNC notes in its brief, NEPA does not require a worst case scenario analysis. SNC’s Motion for Summary Disposition at 19. Also, Dr. Young holds a Ph.D. in biology, not hydrology.

In response to the new analysis presented in the Staff affidavit supporting summary disposition, Intervenors retained Barry W. Sulkin, an expert in hydrology. As discussed in Mr. Sulkin’s Affidavit, the problem of low-flow conditions identified in EC 1.2 is not addressed in the DEIS. Affidavit of Barry W. Sulkin at ¶¶ 7, 10-24. The analysis has changed from a discussion of 7Q10 in the ER to a discussion of the Corps’ Drought Protection Plan in the DEIS. However, the DEIS still relies on the percentage of total flow being withdrawn or discharged as the measure of potential impacts on aquatic species. Affidavit of Barry W. Sulkin at ¶¶ 15, 16, 18-22. Thus, by underestimating low flows, SNC errs in assuming that Plant Vogtle will have negligible cumulative impacts on aquatic resources. These erroneous assumptions, and suspect conclusions, are within the original contention of Intervenor’s Answer.

III. CONCLUSION

For the preceding reasons, the SNC Motion and Staff Motion should be denied and Intervenors’ Answer to the Motion for Summary Disposition should be admitted in full without any of the language stricken.

Respectfully submitted this 6th day of December, 2007,

[Signed by L. Sanders]

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
SOUTHERN NUCLEAR OPERATING) Docket No. 52-011-ESP
COMPANY)
)
(Early Site Permit for the Vogtle ESP Site))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INTERVENORS' ANSWER IN RESPONSE TO SNC AND NRC STAFF MOTIONS TO STRIKE PORTIONS OF INTERVENORS' ANSWER TO MOTION FOR SUMMARY DISPOSITION OF EC 1.2** have been served upon the following persons by Electronic Information Exchange and/or electronic mail.

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Dated this 6th day of December, 2007

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