

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

In the Matter of)	Docket No. 52-011-ESP
)	
Southern Nuclear Operating Company)	ASLBP No. 07-850-01-ESP-BD01
)	
(Early Site Permit for Vogtle ESP Site))	January 14, 2009

**SOUTHERN NUCLEAR OPERATING COMPANY’S
MOTION IN LIMINE TO STRIKE
TESTIMONY AND EXHIBITS FILED BY JOINT INTERVENORS**

Pursuant to 10 CFR § 2.323 and the Atomic Safety and Licensing Board’s (“Board”) October 24, 2008, Order¹, Applicant, Southern Nuclear Operating Company (“SNC”) submits this motion in limine to exclude from evidence certain references in Joint Intervenors’ Direct Testimony and Exhibits concerning Environmental Contentions 1.2, 1.3, and 6.0 (“EC 1.2,” “EC 1.3,” and “EC 6.0”).

Pursuant to 10 CFR § 2.323(b), counsel for SNC has consulted with counsel for the Joint Intervenors and the NRC Staff regarding this motion. Counsel for Joint Intervenors and NRC Staff do not oppose SNC’s motion regarding evidence presented by the Joint Intervenors relative to EC 1.3 and EC 6.0, and agree that such evidence may be excluded from the record of this proceeding. As to the evidence sought to be excluded in EC 1.2, the NRC Staff agrees that such evidence may be excluded from the record, but Joint Intervenors opposed SNC’s motion concerning such evidence and does not agree that it should be excluded from the record.

¹ Memorandum and Order (Revised General Schedule) (October 24, 2008).

EC 1.2 (Impacts to Aquatic Species)

The pre-filed testimony of Mr. Barry W. Sulkin at questions 24, 25, 27, 28 and 29 discusses matters outside the scope of contention EC 1.2. Specifically, these questions and responses concern withdrawals from the Savannah River by other water users. The Board, in its Order of January 15, 2008, ruled that the issue of impacts of withdrawals by other water users is not within the scope of EC 1.2 as admitted.² Similar discussions are included in Mr. Sulkin's declaration, Exhibit JTI000031 (Paragraphs 11, 12, 22, 23, and 24), and are also outside the scope of contention EC 1.2. In addition, Exhibit JTI000003 (Paragraph 28), and Exhibit JTI000005 (Paragraph 17), Dr. Young's affidavit and declaration, respectively, contain similar references and discussions.

Accordingly, the references to water withdrawals by other users in the pre-filed testimony of Mr. Sulkin on pages 13-17 (last sentence of A24, A25 (phrase "due to increasing municipal withdrawals"), A27, A28, and A29), Exhibit JTI000031 (Paragraphs 11, 12, 22, 23, and 24), Exhibit JTI000005 (Paragraph 17), and Exhibit JTI000003 (Paragraph 28) should be excluded from the record.

EC 1.3 (Dry Cooling)

The pre-filed testimony of Mr. William Powers and Exhibit JTI000035, which is a copy of Mr. Powers' affidavit submitted in opposition to SNC's Motion for Summary Disposition as to EC 1.3, reference a hybrid wet-dry cooling system proposed for use at the North Anna plant in Virginia (*See* Mr. Powers' testimony at pages 6 (A18) and 11 (A34 and A35); Exhibit JTI000035

² *See* Memorandum and Order (Ruling on Dispositive Motion and Associated Motions to Strike Regarding Environmental Contention 1.2), at 26 and n.17 (January 15, 2008).

at Paragraphs 9 and 20.). The Board, in its Order of January 15, 2008, ruled that such evidence “is precluded as outside the scope of [Contention EC 1.3] as admitted.”³

No basis for the references to a hybrid wet/dry system is offered or described in Joint Intervenors’ evidence other than that offered in response to the references described by the Board in its Order of January 15, 2008. In fact, Exhibit JTI000035, Mr. Powers’ affidavit, is the same affidavit offered by Joint Intervenors in opposition to SNC’s Motion for Summary Disposition. In addition, Mr. Sulkin’s affidavit, JTI000031 (Paragraph 26) contains a similar reference to hybrid wet/dry cooling.

Accordingly, the references to a hybrid wet/dry cooling system included on pages 6 (last sentence of A18), 9 (A27), and 11 (A34 and A35) of Mr. Powers’ testimony, in paragraph 26 of Exhibit JTI000031, and in paragraphs 9 and 20 of Exhibit JTI000035 should be precluded as described in the Board’s January 15, 2008 Order.

EC 6.0 (Cumulative Impacts from Corps’ Dredging)

The pre-filed testimony of Mr. Donald F. Hayes includes a discussion regarding the impacts of barge traffic separate and apart from any impacts from dredging. (*See* Mr. Hayes’ testimony at A16.). Additionally, the pre-filed testimony of Dr. Shawn Young references “navigation-induced” impacts beyond those associated with dredging. (*See* Dr. Young’s testimony at A32.). These references are beyond the scope of EC 6.0 as admitted, which identifies only the impacts of dredging, not the impacts of navigation traffic. *See* Board’s October 24, 2008 Memorandum and Order (Ruling on Motion to Admit New Contention) at Appendix A (“(FEIS) Fails To Provide Adequate Discussion Of Impacts Associated With Dredging The Savannah River Federal Navigation Channel”). The admission of an exhibit

³ Memorandum and Order (Ruling on Dispositive Motion and Associated Motions to Strike and to Supplement the Record Regarding Environmental Contention 1.3), at 19-20 (January 15, 2008).

identified solely in support of these discussions, and which relates principally to impacts from navigation, rather than dredging, should also be limited to the extent it addresses the impacts of dredging- Exhibit JTI000030.

In addition, the Board held that challenges to the Staff's analysis of impacts associated with the barge slip and intake canal are beyond the scope of EC 6.0. *See* Board's October 24, 2008 Memorandum and Order at 9-10. As a result, the references to such impacts should be excluded from Exhibit JTI000041.

Accordingly, the references to impacts from navigation traffic apart from dredging in the testimony of Mr. Hayes, pages 7-8 (A16), the testimony of Dr. Young, page 15 (second paragraph of A32), and portions of Exhibit JTI000030 that do not relate to dredging, and also the barge slip and intake canal references in parts (ii) and (iii) of Paragraph 7, Paragraph 8, and the first sentence of Paragraph 9 of Exhibit JTI000039 should be excluded from the record.

Respectfully submitted,

(Original signed by M. Stanford Blanton)

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CERTIFICATE OF SERVICE

I hereby certify that copies of SOUTHERN NUCLEAR OPERATING COMPANY'S MOTION IN LIMINE TO STRIKE TESTIMONY AND EXHIBITS FILED BY JOINT INTERVENORS in the above captioned proceeding have been served by electronic mail as shown below and/or by e-submittal this 14th day of January, 2009.

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* And upon any other persons designated on the official service list compiled by the Nuclear Regulatory Commission in this proceeding.

(Original signed by M. Stanford Blanton)

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