

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

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

In the Matter of )  
Southern Nuclear Operating Company, Inc. ) Docket Nos. 52-025 and 52-026  
Vogtle Electric Generating Plant, ) ASLBP No. 09-873-01-COL-BD01  
Units 3 and 4 ) February 24, 2008  
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**PETITIONERS' STATEMENT OF POSITION**

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Pursuant to Memoranda and Orders dated February 18, 2009<sup>1</sup> and February 19, 2009,<sup>2</sup> Atlanta Women's Action for New Directions, Blue Ridge Environmental Defense League, Center for a Sustainable Coast, Savannah Riverkeeper and Southern Alliance for Clean Energy (collectively, "Petitioners") hereby submit this Statement of Position regarding (1) the impact, if any, of the Nuclear Regulatory Commission's (the "NRC")

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<sup>1</sup> *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4, COL), unpublished order, (Feb. 18, 2009) (ADAMS Accession No. ML090490655).

<sup>2</sup> *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4, COL), unpublished order, (Feb. 19, 2009) (ADAMS Accession No. ML 090500823).

recent ruling in the Bellefonte COL proceeding<sup>3</sup> on the admissibility of SAFETY-1 in this proceeding; and (2) the impact, if any, of a licensing board's recent ruling in the Summer COL proceeding<sup>4</sup> and the NRC's recent ruling in the Fermi COL proceeding<sup>5</sup> on the admissibility of MISC-1 and MISC-2 in this proceeding. For the reasons set forth below, Petitioners assert that these rulings do not compel this Atomic Safety and Licensing Board (the "Board") to reject any contentions in this proceeding. Accordingly, Petitioners continue to maintain that SAFETY-1, MISC-1 and MISC-2 should be admitted.

**SAFETY-1 is Admissible.**

SAFETY-1 asserts that the combined license application (the "COLA") of Southern Nuclear Operating Co. ("SNC") is incomplete because it fails to consider how SNC will comply with NRC regulations governing storage and disposal of low level radioactive waste ("LLRW") in the event off-site waste disposal facilities remain unavailable when Vogtle Units 3 and 4 begin operations. This contention is based on application-specific deficiencies, including the inadequate discussion in the Final Safety and Analysis Report (the "FSAR") of LLRW management plans.<sup>6</sup> In the Bellefonte ruling, the NRC repeatedly acknowledges the application-specific nature of all LLRW contentions. In fact, the NRC relies on this reasoning to both distinguish the Bellefonte

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<sup>3</sup> See *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 and 4), CLI-09-3, 69 NRC \_\_ (Feb. 17, 2009) (ADAMS Accession No. ML090480541) ("Bellefonte").

<sup>4</sup> See *South Carolina Electric & Gas Company and South Carolina Public Service Authority (Also Referred to as Santee Cooper)* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC \_\_ (Feb. 18, 2009) (ADAMS Accession No. ML090490756) ("Summer").

<sup>5</sup> See *Detroit Edison Co.* (Fermi Unit 3), CLI-09-4, 69 NRC \_\_ (Feb. 17, 2009) (ADAMS Accession No. ML090480542) ("Fermi").

<sup>6</sup> See, e.g. *Petition for Intervention* (Vogtle Electric Generating Plant, Units 3 and 4, COL) (Nov. 17, 2008) ("Petition for Intervention") at 16.

contention from a similar contention admitted in the North Anna COL proceeding,<sup>7</sup> and to decline to adopt a uniformly applicable “low-level waste confidence” rule.<sup>8</sup> Thus, the Bellefonte decision advises against its own application to SAFETY-1 in this proceeding – LLRW issues are application-specific, and contentions must be assessed on a case-by-case basis.

In addition, the facts in this proceeding can be distinguished from the Bellefonte proceeding in three important ways.

1. First, in the Bellefonte decision, the NRC rejects the LLRW contention because “[t]he *only* regulatory ground on which Intervenors based Contention FSAR-D was Part 61 of our regulations.”<sup>9</sup> That is simply not the case in this proceeding. While Petitioners do reference Part 61 in their Petition for Intervention,<sup>10</sup> they also reference Part 20, Part 30 and Part 52 regulations.<sup>11</sup> Thus, SAFETY-1 is adequately supported by applicable regulations.

2. Second, in the Bellefonte decision, the NRC distinguishes the North Anna decision to admit a similar contention, based in part because the North Anna facility had

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<sup>7</sup> Bellefonte at note 24 (“Nor is it at all clear that the bases for the *North Anna* Board’s ruling (on which the *Bellefonte* Board relied) are universally applicable to the *Bellefonte* case. For instance, the *North Anna* Board relied on language in both the applicant’s Final Safety Analysis Report and its Design Control Document – two documents that are *application-specific (rather than generic)* in nature. *North Anna*, 68 NRC at \_\_ (slip op. at 28-29).”(emphasis added).

<sup>8</sup> Bellefonte at 11 (“The questions of safety and environmental impacts of onsite low-level waste *storage* are, in our view, largely site- and design-specific, and appropriately decided in an individual licensing proceeding.”)

<sup>9</sup> Bellefonte at 5.

<sup>10</sup> Petition for Intervention at note 16.

<sup>11</sup> See Petitioners’ Reply to SNC Answer Opposing Petition to Intervene and NRC Staff Answer to Petition for Intervention (Vogle Electric Generating Plant, Units 3 and 4, COL) (Dec. 23, 2008) (“Petitioners’ Reply”) at 10 and note 30.

As additional support, Petitioners also rely on guidance in NUREG-1437 and NUREG-0800. See Petitioners’ Reply at 11-12.

very limited LLRW storage capacity. “North Anna’s radwaste building contains sufficient storage space for a six-month volume of packed waste, while Bellefonte’s designed storage capacity is sufficient to store two years’ worth of Class-B and -C radwaste.”<sup>12</sup> Like North Anna, in this proceeding, the reactors have sufficient storage for only a six-month volume.<sup>13</sup> Accordingly, the application-specific facts surrounding SAFETY-1 are more similar to those in North Anna (where the LLRW contention was admitted) than in Bellefonte.

3. Third, in the Bellefonte decision, the NRC further distinguishes the North Anna decision to admit a similar contention, based in part because the applicant acknowledges additional LLRW storage may be required. Thus, “the *North Anna* Board points specifically to the applicant’s acknowledgment that, absent an off-site low-level radioactive waste land disposal facility, the applicant may need to construct additional waste storage capacity, develop an overall site waste management plan, or both. TVA [the applicant in Bellefonte], by contrast, made no such acknowledgement.”<sup>14</sup> Like the applicant in North Anna, SNC also acknowledges that additional LLRW storage may be necessary.<sup>15</sup> However, as explained in Petitioners’ Reply, SNC goes no farther than this naked acknowledgement, and fails to set forth definitive waste storage plans.<sup>16</sup>

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<sup>12</sup> Bellefonte at note 24 (internal quotations and cites omitted).

<sup>13</sup> See FSAR at Section 11.4.6.3 (“Storage space for six-month’s volume of packaged waste is provided in the radwaste building.”) While this section goes on to provide that “should disposal facilities not be available, the planned VEGP Units 1 and 2 Low Level Radwaste Storage Facility will be available to provide storage for VEGP Units 3 and 4,” Petitioners contend that such a cursory reference to currently non-existent storage is insufficient. As explained in Petitioners’ Reply, NRC guidance and regulations require an applicant to actually consider how it will store LLRW – not merely to pay lip-service to the requirement. Accordingly, Petitioners assert that the FSAR in this proceeding, just like the FSAR in the *North Anna* proceeding, truly provides for only six-month storage.

<sup>14</sup> Bellefonte at note 24 (internal quotations and cites omitted).

<sup>15</sup> FSAR 11.4.6.3.

For each of these reasons, the NRC's recent decision in Bellefonte should not compel this Board to reject SAFETY-1. If anything, the Bellefonte decision supports its admission.

**MISC-1 and MISC-2 are Admissible.**

MISC-1 and MISC-2 assert that the COLA is incomplete because many of the major safety components and procedures of Units 3 and 4 have either been completely omitted from the application or are conditional. Because of this deficiency, Petitioners cannot conduct a meaningful technical and safety review. As has been noted by all parties in this proceeding, such a contention is not unique. While the licensing board in the Summer proceeding recently rejected a similar contention,<sup>17</sup> this decision should not be treated as binding on the Board. NRC precedent governs against rejection of a contention simply because a similar contention has been rejected.<sup>18</sup> In fact, while several licensing boards have rejected contentions similar to MISC-1 and MISC-2, the licensing board in Shearon Harris chose to admit such a contention.<sup>19</sup> As Petitioners explained in the Petition to Intervene and Petitioners' Reply, MISC-1 and MISC-2 raise legitimate issues that should be admitted, and then "dismissed as moot only if and when SNC can

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<sup>16</sup> See Petitioners' Reply at 11-12. Instead of actually planning the required LLRW storage, SNC simply refers to waste storage facilities that are being considered in connection with the Vogtle Units 1 and 2 license renewal (FSAR 11.4-2).

<sup>17</sup> Summer at 8-13.

<sup>18</sup> See generally, *Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site)*, CLI-95-16, 42 NRC 221, 225 (1995) ("The Licensing Board performs the important task of judging factual and legal disputes between parties.")

<sup>19</sup> See *Progress Energy Carolinas, Inc.* (Combined License Application for Shearon Harris Nuclear Power Plant, Units 2 & 3), LBP-08-21, 68 NRC \_\_ (Oct. 30, 2008).

demonstrate” that the deficiencies in the COLA have been resolved.<sup>20</sup> Accordingly, Petitioners respectfully submit that the Board follow the precedent set forth in Shearon Harris, instead of that set forth in Summer, and admit MISC-1 and MISC-2.

Furthermore, the NRC’s recent ruling in the Fermi proceeding, if anything, promotes admission of these contentions. The NRC in Fermi notes that licensing boards should “hold any contentions on the design filed in the COLA adjudication in abeyance, pending the results of the rulemaking proceeding on the design certification,” rather than suspending the proceeding until completion of the design certification proceeding.<sup>21</sup> Petitioners are not requesting that the COL proceeding be suspended. To the contrary, and in complete accord with the NRC’s decision, the Petitioners are only requesting that MISC-1 and MISC-2 be admitted and held in abeyance.<sup>22</sup>

### **Conclusion**

For the foregoing reasons, Petitioners continue to maintain that SAFETY-1, MISC-1 and MISC-2 are admissible. Such conclusion is in no way negated by the Bellefonte, Summer or Fermi decisions.

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<sup>20</sup> See e.g., Petitioners’ Reply at 3-4.

<sup>21</sup> Fermi at 6.

<sup>22</sup> Petitioners’ Reply at 3-4.

Respectfully submitted this 24<sup>th</sup> day of February, 2009.

/signed (electronically by)/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **PETITIONERS' STATEMENT OF POSITION** were served upon the following persons by Electronic Information Exchange and/or electronic mail.

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