UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	**Docket Nos. 52-025-COL and 52-26-COL**
Southern Nuclear Operating Company	)	**March 14, 2009**
(Vogtle Electric Generating Plant, Units 3 & 4)	)	

SOUTHERN NUCLEAR OPERATING COMPANY'S BRIEF IN SUPPORT OF APPEAL OF LBP-09-03

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.311(c), Southern Nuclear Operating Company ("SNC") hereby appeals the decision of the Atomic Safety Licensing Board's ("ASLB" or "Board") in *Southern Nuclear Operating Co*. (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-03, 69 NRC___ (slip op.) (March 5, 2009) ("LBP-09-03").[1] In LBP-09-03, the Board admitted one contention (SAFETY-1) raised by the Atlanta Women's Action for New Directions, the Blue Ridge Environmental Defense League, the Center for Sustainable Cost, the Savannah Riverkeeper, and the Southern Alliance for Clean Energy (collectively, "Petitioners") and granted their *Petition for Intervention and Request for Hearing*.[2]

As admitted in LBP-09-03, SAFETY-1 contends:

[1] SNC does not appeal the Board's conclusion that Petitioners have standing and agrees that the Board properly rejected Petitioners' contentions MISC-1 and MISC-2. Reversal of the admission of Safety-1 would require the Petition to be wholly denied. This appeal is therefore filed pursuant to 10 C.F.R § 2.311(c).

[2] Petition for Intervention and Request for Hearing (Vogtle Electric Generating Plant, Units 3 and 4) (November 17, 2008) ("Petition").

> SNC's COLA is incomplete because the FSAR fails to provide any detail as to how SNC will comply with NRC regulations governing storage and disposal of LLRW in the event an off-site waste disposal facility remains unavailable when VEGP Units 3 and 4 begin operations.[3]

The admission of SAFETY-1 was directly contrary to the Commission's recent decision in *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-03, 69 NRC __ (slip op.) (February 17, 2009)("Bellefonte") and was contrary to 10 C.F.R. § 2.309(f)(1)(iv) and (vi) because the contention does not assert an omission of information required by law or material to the findings the Commission must make in this proceeding.

II. BACKGROUND

On March 28, 2008, SNC submitted an application to the NRC for a Combined License for Alvin W. Vogtle Electric Generating Plant Units 3 and 4 ("COLA").[4] The NRC published a Notice of Hearing and Opportunity to Petition for Leave to Intervene in the *Federal Register* on September 16, 2008.[5] On November 17, 2008, the Petitioners filed the Petition in the above captioned dockets. The Petition asserted three contentions: 1) MISC-1 which alleged the COLA is incomplete because it references Revision 16 of the AP1000 Design Control Document ("DCD"); 2) MISC-2 which alleged the COLA is incomplete because it currently does not reference Revision 17 of the AP1000 DCD; and 3) SAFETY-1, which alleged the COLA is

[3] LBP-09-03, slip op. at Appendix A.

[4] *See* Notice of Receipt and Availability of Application for a Combined License, 73 Fed. Reg. 24,616 (May 5, 2008).

[5] *See* Southern Nuclear Operating Company, *et al*.; Notice of Hearing and Opportunity To Petition for Leave To Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for the Vogtle Electric Generating Plant Units 3 and 4, 73 Fed. Reg. 53,446 (September 16, 2008) ("Hearing Notice").

incomplete because it does not provide details regarding the disposal or storage of Low-Level Radioactive Waste ("LLRW") in the event an off-site waste disposal facility remains unavailable when VEGP Units 3 and 4 begin operations."[6] On December 12, 2008, the NRC Staff ("Staff") and SNC filed responses in opposition to the Petition.[7] On December 23, 2009, Petitioners replied to Staff and SNC Answers.[8] On January 28, 2009, the Board heard arguments regarding the admissibility of Petitioners' three contentions.[9]

By Memoranda and Orders dated February 18, 2009 and February 19, 2009,[10] the Board requested submission of statements of position addressing the impact of the Commission's decisions in the *Bellefonte* and the *Fermi* COLA proceedings[11] and the ASLB's decision in the *Summer* COLA proceeding[12] on the admissibility of contentions in the Vogtle COL proceeding.

On March 5, 2009, the Board issued its ruling on the Petition.[13] After granting the Petitioners' standing to participate in the proceeding, the Board denied the two design related contentions (MISC-1 and MISC-2), and referred them to the Commission for consideration in

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[6] *See* Petition at 7.

[7] *See* Southern Nuclear Operating Company's Answer Opposing Petition to Intervene (December 12, 2008) ("SNC Answer"); NRC Staff Answer to "Petition for Intervention" (December 12, 2008) ("Staff Answer").

[8] *See* Petitioners' Reply to SNC Answer Opposing Petition to Intervene and NRC Staff Answer to Petition for Intervention (December 23, 2008) ("Reply").

[9] *See* Transcript of Vogtle Atomic Safety and Licensing Board Initial Prehearing Conference at 1-113 (January 28, 2009) ("Tr.").

[10] *See* Licensing Board Memorandum and Order (Requests for Position and Notice of Need for More Time)(February 18, 2009); Licensing Board Memorandum and Order (Amended Opportunity to Provide Statements of Position)(February 19, 2009).

[11] *See Bellefonte,* CLI-09-03; *Detroit Edison Co.* (Fermi Unit 3), CLI 09-04, 69 NRC __ (slip op.) (February 17, 2009) ("*Fermi*"). The Board requested briefing on *Bellefonte* as to its relevance to SAFETY-1 and on *Fermi* as to MISC-1 and MISC-2.

[12] *South Carolina Electric & Gas Company* (Summer Nuclear Station, Units 2 and 3), LPB-09-02, 69 NRC __ (slip op.) (February 18, 2009) ("*Summer*"). The Board requested briefing on *Summer* relative to MISC-1 and MISC-2.

[13] *See* LBP-09-03.

connection with the appeals of similar contentions.[14] The Board admitted the LLRW contention, SAFETY-1, on the grounds that 10 C.F.R. §52.79(a)(3) includes a requirement to describe in a COLA how the applicant "intends to handle LLRW in the absence of an off-site disposal facility" and that a provision in the Vogtle COLA's Final Safety Analysis Report ("FSAR") for additional LLRW storage in the Vogtle 1 and 2 Radwaste Storage facility contained insufficient detail.[15] SNC appeals the admission of SAFETY-1 pursuant to 10 C.F.R. § 2.311, on the ground that SAFETY-1 does not satisfy the requirements of 10 C.F.R. § 2.309(f)(1) and therefore the Petition should have been wholly denied.

III. LEGAL STANDARDS AND SUMMARY OF ARGUMENT

The Commission's rules on the admission of contentions are "strict by design," and any petition to intervene that does not assert at least one contention that satisfies each of the requirements of 10 C.F.R. § 2.309(f)(1)(i)(iv) must be denied.[16] The admission of a contention is appealable pursuant to 10 C.F.R § 2.311, where the rejection of the contention would have resulted in the denial of the petition to intervene.[17] On appeal of the admission of a contention, the Commission's standard of review is whether the Board committed an error of law or an abuse of discretion.[18]

The admission of SAFETY-1 is directly contrary to the Commission's February 17, 2009 decision in the *Bellefonte* COLA proceeding rejecting an almost identical contention. The

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[14] *See id.* at 2.

[15] *See id.* at 25-26.

[16] *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-1, 55 NRC 1 (2002) ("Millstone"). *See also Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP site), CLI-05-29, 62 NRC 801, 808 (2005) (citing *Millstone*, CLI-01-24, 54 NRC at 358).

[17] *See* 10 CFR § 2.311.

[18] *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC ___ (slip op. at 4) (August 13, 2008).

Petition contended that "SNC's COLA is incomplete because the FSAR fails to consider how SNC will comply with NRC regulations governing storage and disposal of LLRW in the event an off-site waste disposal facility remains unavailable when VEGP Units 3 and 4 begin operations."[19] Framed as a contention of omission, the Petition did not cite any NRC regulation or evidence as a basis for a requirement that a COLA include the allegedly omitted information regarding contingent, extended LLRW storage.[20] In LBP-09-03, the Board held that SAFETY-1 asserted a material omission from the COLA of information required by10 C.F.R. § 52.79(a)(3).

The admission of SAFETY-1 is contrary to 10 C.F.R. § 2.309(f)(1) because: (1) The Commission's decision in *Bellefonte*, reversing the admission of a similar contention in the Bellefonte COLA proceeding, is directly applicable to SAFETY-1 in this COLA proceeding because the design of Vogtle 3 and 4 LLRW storage facilities is identical to the design of the Bellefonte LLRW storage facilities and the same grounds for the rejection of the contention in *Bellefonte* apply in this case; (2) Petitioners have not cited, and indeed there is no, regulatory requirement that a COLA application specify how the applicant will accommodate expansions of on-site storage capacity based on future contingencies regarding access to disposal sites; and (3) Notwithstanding the absence of a regulatory requirement, the Vogtle COLA sets forth a site-specific plan for dealing with the contingent unavailability of a disposal site for Class B and C LLRW.

For these reasons, SAFETY-1 should have been rejected as inadmissible and, as the other two contentions were properly rejected, the Petitioners' Petition should have been wholly denied.

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[19] Petition at 14.

[20] Although the Petition makes a passing reference to 10 C.F.R. Part 61 in a footnote, *see* Petition at 15, n. 16, and quotes a provision of the Vogtle FSAR the recites the regulatory bases for the Vogtle Process Control Plan, *see* Petition at 15, the Petition provides no explanation regarding how either of these references support the contention that necessary information regarding LLRW storage has been omitted from the COLA.

1. The Commission's Decision in *Bellefonte* Compels Reversal of the Board's Admission of SAFETY-1.

In *Bellefonte,*[21] the Commission considered the admission of a contention that alleged, *inter alia,* that the Bellefonte COLA failed to offer a "viable plan for how to dispose of" Classes B and C low-level radioactive waste and that "[i]f perpetual or extended on-site storage of these wastes is contemplated, this option is not addressed in the COL application."[22] The contention did not cite any regulatory authority for the propositions cited above other than a reference to a potential need to license the Bellefonte site as an LLRW disposal facility under 10 C.F.R. Part 61. The *Bellefonte* Board admitted the contention on both safety and environmental grounds, holding that the contention was "adequately supported and established a genuine material dispute to warrant further inquiry into…whether the TVA FSAR…failed to include the necessary information concerning TVA plans for on-site management of Class B and C waste."[23] The *Bellefonte* Board referred the decision to the Commission with a suggestion that the Commission consider a "low-level radioactive waste confidence" rulemaking.[24]

The Commission *sua sponte* reversed the Board's admission of the contention in *Bellefonte*, holding that the contention did not satisfy the requirements of 10 C.F.R. § 2.309(f)(1) and that the reliance on the admission of a similar contention in the *North Anna*[25] COLA proceeding did not eliminate the requirement to follow contention admissibility requirements. In

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[21] *See Bellefonte*, CLI-09-03, slip op. at 5-7.

[22] *Petition for Intervention and Request for Hearing by the Bellefonte Efficiency and Sustainability Team, the Blue Ridge Environmental Defense League and the Southern Alliance for Clean Energy* at 65-66 (June 6, 2008) ("*Bellefonte* Petition").

[23] *Tennessee Valley Authority*, (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC ___ (Sept. 12, 2008)(slip op. 58-59).

[24] See *id.* at 59-60.

[25] *See Dominion Virginia Power & Old Dominion Electric Cooperative* (North Anna Unit 3), LBP-08-15 (slip op. at 23-30) (August 15, 2008).

the portion of the Commission's order in *Bellefonte* declining to engage in rulemaking on the issue, the Commission noted that "questions of the safety and environmental impacts of low-level radioactive waste *storage* are, in our view, largely site- and design- specific …."[26] Accordingly, the Commission analyzed the contention in *Bellefonte* in light of the LLRW storage features of the Commission-certified AP1000 design referenced in the Bellefonte COLA, versus the uncertified ESBWR design referenced in North Anna's COLA.

SAFETY-1 paraphrases the contention that was the subject of the Commission's Order in *Bellefonte*, citing no regulatory authority for its position other than repeating the sentence from the *Bellefonte* Petition regarding the potential need to license the site as a disposal facility under Part 61.[27] The Petition, like the *Bellefonte* Petition, also makes an unsupported assertion regarding the alleged omission of a plan for extended storage of LLRW at the Vogtle site.[28]

LPB-09-03 admitted SAFETY-1, holding that "[w]hile 10 C.F.R. § 52.79(a)(3) *does not explicitly speak to the long-term storage of LLRW*… the question of how SNC intends to handle LLRW in the absence of an offsite disposal facility is material to the findings the agency must make."[29] Accordingly, notwithstanding the absence of NRC regulations or guidance expressly requiring the inclusion of plans for such contingent, future expansions of LLRW storage capacity in a COLA, and the fact that the designs referenced in the Bellefonte and Vogtle COLAs are identical, LBP-09-03 admitted the contention as a contention of omission.[30]

The Board's admission of an essentially identical contention in *Vogtle* to that the Commission rejected in *Bellefonte* must be analyzed first in view of the Commission's

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[26] *Bellefonte*, CLI-09-03, slip op. at 11 (emphasis in the original).

[27] *See id.* at 5.

[28] *Compare* Petition at 16, *with Bellefonte* Petition at 66.

[29] LPB-09-03, slip op. at 24-25 (emphasis supplied).

[30] *See id*. at 22.

admonition that the question of LLRW storage is a design-specific issue.[31] LBP-09-03 overlooks the fact that the Bellefonte and Vogtle COLAs reference the same Westinghouse AP1000 design and thus that the COLAs are identical with respect to LLRW storage capacity.

As an initial matter, to the extent that LPB-09-03 is based on the premise that the contention in *Bellefonte* did not allege the omission of provisions for long-term storage of LLRW from the Bellefonte COLA,[32] that assumption is mistaken. The *Bellefonte* Petition expressly challenges the omission of a plan for "perpetual or extended on-site storage" of LLRW.[33] Neither Petition cited any regulatory basis for their assertion that contingencies for extended LLRW storage must be described in the COLA. Accordingly, there is no basis to distinguish SAFETY-1 from the *Bellefonte* contention because of a difference in scope. The contentions are effectively identical.

Similarly, the designs of the Bellefonte and Vogtle facilities relative to LLRW storage and handling are identical. The AP1000 Design Control Document ("DCD") provides for the design of the LLRW handling and storage facilities for both Bellefonte and Vogtle.[34] As noted by the Commission in *Bellefonte*, the AP1000 design referenced in the Bellefonte COLA has "designed storage capacity . . . sufficient to store two years' worth of Class –B and –C radwaste."[35] In fact, the AP1000 DCD provides that the AP1000 packaged waste storage room

[31] *See Bellefonte*, CLI-09-03, slip op. at 11.

[32] *See* LPB-09-03, slip op. at 23. ("Unlike the contention in the Bellefonte proceeding, which focused entirely on the regulations governing waste disposal, *see id.* at __ (slip op. at 5), contention SAFETY-1 concerns 'how SNC will comply with NRC regulations concerning storage and disposal of LLRW.'")

[33] *Bellefonte* Petition at 66.

[34] *See* AP1000 DCD 11.4.2.1.

[35] *See Bellefonte*, CLI-09-03, slip op. at 7, n. 24.

is capable of providing "storage for more than two years at the expected rate of generation and more than a year at the maximum rate of generation."[36]

The same LLRW storage and handling provisions of the AP1000 DCD relied upon in *Bellefonte* are applicable to Vogtle 3 and 4 as well.[37] Given NRC's approval of the design of the AP1000 LLRW storage and handling facilities in the AP1000 design certification rulemaking, a challenge to the adequacy of the AP1000 LLRW storage and handling capacity is barred by the finality of 10 C.F.R. Part 52, Appendix D.[38] 10 C.F.R § 52.63(a)(1), provides that the standard design has finality absent a Commission rulemaking on the basis of one of the enumerated reasons set forth in subparagraphs (i) through (vii) of the rule. Obviously, no such rulemaking has occurred here.[39] Accordingly, LBP-09-03 not only fails to give any weight to the fact that Bellefonte and Vogtle COLAs reference identical AP1000 designs, it reopens the adequacy of certified storage and handling facility provisions of the AP1000 certified design. Thus, to the extent that the question of the completeness of the LLRW storage provisions of the Vogtle COLA is design-specific issue, there is no basis to distinguish the Vogtle COLA from the Bellefonte COLA and the Commission's decision in *Bellefonte* compels reversal of LBP-09-03 to the extent it admits SAFETY-1.

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[36] *See* AP1000 DCD section 11.4.2.1.

[37] *See id*; *see also* slip op. at 7, n. 24.

[38] The NRC Staff position is that the minimum storage space required by the NRC's Standard Review Plan, NUREG- 0800, is six months. *See* Tr. at 93. While the Vogtle FSAR Section 11.4.6.3, providing for the use of the VEGP 1 and 2 storage facility as a contingency in the event a disposal site is unavailable, states that six months of LLRW storage space will be available at VEGP Units 3 and 4, the six month figure is taken from another AP1000 DCD reference, equally applicable to Bellefonte, that refers to "at least 6 months" worth of storage capacity for *packaged wastes*. *See* AP1000 DCD at section 11.4.1.3. LLRW can be stored prior to packaging in two spent resin storage tanks in the AP1000 Auxiliary Building and in the Radwaste Building, effectively giving the AP1000, and hence both Bellefonte and VEGP 3 and 4, significantly more than six months of storage capacity of LLRW. *See* AP1000 DCD at section 11.4.2.1.

[39] Although Westinghouse has submitted proposed revisions to the AP1000 those revisions do not address the LLRW storage capacity of the AP1000 design and do not affect the finality of those provisions of the AP1000 DCD.

2. There is no NRC Regulatory Requirement to provide for "Extended Storage" of LLRW in a COLA.

As noted above, in LBP-09-03, the Board acknowledges that no regulatory requirement expressly states that the COLA must address extended onsite storage of LLRW. Indeed, neither the Petition nor LBP-09-03 describe exactly what "extended storage" means in terms of storage capacity or duration, so that a COLA applicant could be afforded a fair opportunity to comply with the requirement if it existed.

The Board based the admission of SAFETY-1 on its conclusion that 10 C.F.R. § 52.79(a)(3) includes a requirement to describe in the COLA "how SNC intends to handle LLRW in the absence of an off-site disposal facility."[40] 10 C.F.R. § 52.79(a)(3) provides only that a FSAR for a facility must contain information regarding:

> (3) The kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20 of this chapter.

The conclusion that 10 C.F.R. § 52.79(a)(3) includes a requirement to provide for speculative, contingent expansions of LLRW storage is an erroneous interpretation of the regulation.

Neither LBP-09-03 nor the Petition cites any Commission decision or NRC guidance that suggests that 10 C.F.R. § 52.79(a)(3), which was not even referenced by the Petitioners in the Petition,[41] requires a COLA to include information about contingent future expansions of storage capacity. Such a requirement would in fact be inconsistent with Commission guidance

[40] LBP-09-03, slip op. at 24-25.

[41] Although the Board notes in LBP-09-03 that Petitioners cited 10 C.F.R. § 52.79(a)(3) in their Reply, Petitioners cannot cure a deficiency in the Petition in a reply. *See Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004) ("What our rules do not allow is using reply briefs to provide, for the first time, the necessary threshold support for contentions; such a practice would effectively bypass and eviscerate our rules governing timely filing, contention amendment, and submission of late-filed contentions.").

emphasizing the benefits of flexibility on the part of licensees in responding to lack of access to LLRW disposal facilities.[42]

As the Commission noted in *Bellefonte*, all but eight of the nation's 65 nuclear power plant sites (those that are located in the Atlantic Compact states of Connecticut, New Jersey, and South Carolina) are in the same position as Bellefonte and Vogtle relative to the current lack of access to a disposal facility for Class B and Class C waste.[43] The NRC has not imposed any regulatory requirement on those facilities to expand LLRW storage capacity in any particular amount or duration.

In rejecting the suggestion for a rulemaking in *Bellefonte,* the Commission noted that it has acknowledged that "the future availability of disposal capacity for low-level waste remains highly uncertain," but that the Commission considered "rulemaking to address long-term storage unnecessary, because the current regulatory framework continues to provide an adequate basis for regulation of stored radioactive material, including low-level waste."[44] Importantly, the Commission did not cite 10 C.F.R. 52.79(a)(3) as the basis for its conclusion that existing regulations are adequate to address long-term storage. Instead, it cited SECY-06-0193, which emphasized that Generic Letter 81-38 and subsequent guidance permitting the expansion of LLRW storage capacity under 10 C.F.R. § 50.59 were adequate and expressly declined to impose new long-term storage requirements on licensees.[45] Similarly, NRC Regulatory Issue Summary

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[42] *See e.g.,* NRC Regulatory Issue Summary 2008-32, "Interim Low Level Radioactive Waste Storage at Reactor Sites" (December 30, 2008); NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants" (March. 2007); SECY-06-0193, "Annual Review of the Need for Rulemaking and/or Regulatory Guidance on Low-Level Radioactive Waste Storage" (September 6, 2006); Generic Letter 81-38, "Storage of Low-Level Radioactive Wastes of Power Reactor Sites" (November 10, 1981).

[43] *See generally Bellefonte*, CLI-09-03, slip op. at 10, n. 38.

[44] *Bellefonte*, CLI-09-03, slip op. at 10 & 12.

[45] SECY-06-0193, at 1-2.

2008-32 recently reaffirmed that licensed facilities are not required to pursue an amendment to their licenses in order to expand their on-site storage.[46]

A requirement that an applicant commit in a COLA to expansions of storage capacity or other measures that may or may not be necessary several years distant would run contrary to the NRC guidance cited above. The interpretation of 10 C.F.R. § 52.79(a)(3) in LBP-09-03 is contrary to NRC's guidance and policy and does not form an adequate basis for the admission of SAFETY-1. Absent a regulatory basis for a contention of omission, the contention fails to satisfy the materiality requirement of 10 C.F.R § 2.309(f)(1)(iv) and (vi). LPB-09-03 should be reversed. [47]

3. The Vogtle COLA makes Site-specific Provision for Extended Storage of LLRW at Vogtle Units One and Two.

As noted above, in *Bellefonte*, the Commission observed that whether a LLRW contention was "properly framed and supported" so as to satisfy the requirements of 10 C.F.R. § 2.309(f)(1) could also be a site-specific, or application-specific question.[48] Such application- and site-specific considerations also compel reversal of the admission of SAFETY-1 in this proceeding.

Notwithstanding the absence of an express regulatory requirement to do so, the FSAR for the Vogtle COLA acknowledges the current uncertainty regarding access to LLRW disposal facilities and makes express provision to accommodate these uncertainties. As the Petition itself

[46] RIS 2008-32, at 5.

[47] Licensing Boards relying on the existence of a regulatory requirement as the basis to admit a contention limit their reliance to requirements enumerated in or reasonably interpreted from a regulation. *See, e.g.*, *In re Connecticut Yankee Atomic Power Co*. (Haddam Neck Plant), LBP-01-21, 54 NRC 33, 55-56 (2001), *reconsideration denied by* LBP-01-25, 54 NRC 177 (2001), *review denied by* CLI-01-25, 54 NRC 368 (2001) (noting in its discussion of whether a contention created an additional regulatory requirement that "adding requirements not part of a rule -- as reasonably interpreted -- is unarguably inappropriate and unjustified"); *see also* 10 C.F.R. § 2.309(f)(vi).

[48] *Bellefonte*, CLI-09-03, slip op. at 11 & 11, n. 42.

concedes, section 11.4.6.3 of the Vogtle 3 and 4 FSAR states expressly 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."[49] Thus, unlike both the Bellefonte and North Anna COLAs, the Vogtle COLA makes provision for storage of LLRW in the event that a licensed disposal facility is not available when needed.[50]

LPB-09-03 rejects FSAR section 11.4.6.3 as a sufficient description of Vogtle 3 and 4's long term storage plans. Without citation of any regulatory authority governing the extent of the detail it concludes is required by 10 C.F.R. § 52.79(a)(3), LBP-09-03 concludes that SNC's plan to utilize storage facility for Vogtle Units 1 and 2 lacks sufficient detail:

> [SNC's] single sentence in the FSAR referring to the "planned VEGP Units 1 and 2 and Low Level Radwaste Storage Facility," without more, would not seem to provide the level of detail necessary to determine whether SNC's plan for handling LLRW from proposed Vogtle Units 3 and 4 in the absence of an offsite facility would comply with 10 C.F.R Part 20 limits.[51]

As noted above, the Vogtle 1 and 2 storage capacity is being expanded pursuant to 10 C.F.R. § 50.59 and is subject to the same regulations and guidance that the Commission has determined are adequate to ensure the safe storage of radioactive materials. LLRW handling at Vogtle 3 and 4 is subject to those same regulatory requirements. Given that no NRC regulation or guidance expressly requires any discussion of long-term storage, much less that any such discussion provides any particular level of detail, the summary rejection of the FSAR provision, fails to satisfy the materiality requirements of 10 C.F.R § 2.309(f)(1)(iv) and (vi).

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[49] The Vogtle 1 and 2 storage capacity is being expanded pursuant to 10 C.F.R. § 50.59. There is no request to expand that facility on this docket. *See* Tr. at 98.

[50] Tr. at 94.

[51] LBP-09-03, slip op. at 26.

IV. CONCLUSION

For the reasons stated above, SAFETY-1 should be rejected and the Petition should be wholly denied.

Respectfully submitted,

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Dated this 14th day of March, 2009

CERTIFICATE OF SERVICE

I hereby certify that copies of SOUTHERN NUCLEAR OPERATING COMPANY'S BRIEF IN SUPPORT OF APPEAL in the above captioned proceeding have been served by electronic mail as shown below, this 14th day of March, 2009, and/or by e-submittal.

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