

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)	
)	Docket Nos. 52-025 and 52-026
Southern Nuclear Operating Company, Inc.)	
)	ASLBP No. 09-873-01-COL-BD01
Vogtle Electric Generating Plant,)	
Units 3 and 4)	October 23, 2009
_____)	

JOINT INTERVENORS' MOTION TO AMEND CONTENTION SAFETY-1

I. INTRODUCTION

In accordance with 10 C.F.R. §§ 2.309 and 52.85, 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, "Joint Intervenors") move to amend contention SAFETY-1 based on the adequacy of Part 3 (environmental report) ("ER") of Southern Nuclear Operating Company's ("SNC") Vogtle Electric Generating Plant ("VEGP") Units 3 & 4 combined operating license application ("COLA") as supplemented by SNC VEGP Units 3 and 4 COLA Response to Request for Additional Information Letter No. 039 ("SNC's Response to RAI 39").¹ As demonstrated below, this amended contention should be admitted because it is based on information not previously available to Joint Intervenors, the information now available purports to be materially different than information previously available, and this motion is being submitted in a timely fashion.

¹ This document can be found on the ADAMS system at accession number [ML092680023](#).

II. BACKGROUND

On March 28, 2008, SNC submitted a COLA to construct and operate Units 3 and 4 at the VEGP site. In response to this application, Joint Intervenors filed a petition for intervention on November 17, 2008, seeking to admit three contentions. By order dated March 5, 2009, the Atomic Safety and Licensing Board (the “Board”) admitted contention SAFETY-1; the Nuclear Regulatory Commission (the “NRC”) affirmed admission of SAFETY-1 on July 31, 2009. As admitted, SAFETY-1 contends that

SNC’s COLA is incomplete because the [Final Safety Analysis Report (“FSAR”)] fails to provide any detail as to how SNC will comply with NRC regulations governing 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.²

Then, on August 24, 2009, the NRC staff sent SNC a request for additional information regarding the subject matter of SAFETY-1 (“RAI 39”).³ Specifically, the NRC staff requested that SNC “submit the details of any proposed onsite storage facility to the NRC . . . [and] provide any arrangements for offsite storage for low-level waste or submit plans for onsite storage.”⁴ By letter dated September 23, 2009, SNC responded to RAI 39. This response included discussion regarding SNC’s intention to revise the COLA FSAR.⁵

III. PROPOSED AMENDED CONTENTION SAFETY-1

Reflecting the additional information provided in SNC’s Response to RAI 39, Joint Intervenors propose to amend SAFETY-1 to read as follows:

SNC’s COLA is incomplete because the FSAR fails to provide adequate detail as to how SNC will comply with NRC regulations governing storage of LLRW in

² Board Memorandum and Order (Ruling on Standing and Contention Admissibility) (Mar. 5, 2009) (“Order admitting contention SAFETY-1”) at Appendix A.

³ Request for Additional Information Letter No. 039 Related to SRP Section 11.04 for the Vogtle Electric Generating Plant, Units 3 and 4 Combined License Application (Aug. 24, 2009). This document can be found on the ADAMS system at [ML092600698](#).

⁴ SNC’s Response to RAI 39 at 4, quoting RAI 39.

⁵ Id.

the event an off-site waste disposal facility remains unavailable when VEGP Units 3 and 4 begin operations.

IV. COMPLIANCE WITH 10 C.F.R. § 2.309

Amended contentions must satisfy the requirements of both 10 C.F.R. § 2.309(f)(1), concerning contentions in general, and 10 C.F.R. § 2.309(f)(2), concerning amendments. The proposed amended SAFETY-1 satisfies these requirements.

Compliance with 10 C.F.R. § 2.309(f)(1)

SAFETY-1, as amended, complies with the provisions of 10 C.F.R. § 2.309(f)(1).

10 C.F.R. §§ 2.309(f)(1)(i) and (iii) – As discussed below, Joint Intervenors continue to maintain that the FSAR is legally insufficient. Although claiming to provide new information, the FSAR proposed revisions set forth in SNC’s Response to RAI 39 fail to adopt an “actual plan for longer-term LLRW storage.”⁶ Thus, the amended contention remains a challenge to the legal sufficiency of the FSAR (and the COLA), and it is properly within the scope of this proceeding.⁷

10 C.F.R. § 2.309(f)(1)(ii) – The amended contention is based on the FSAR’s failure to satisfy “NRC regulations governing storage.”⁸ The new information in SNC’s Response to RAI 39 simply does not provide the detail and analysis necessary to demonstrate how SNC will comply with 10 C.F.R. Parts 20 and 52.⁹

Indeed, while the NRC staff requested that SNC “submit *the details* of any proposed onsite storage facility,”¹⁰ SNC’s proposed FSAR revisions provide little more than generalizations and blanket assurances regarding regulatory compliance.¹¹ SNC’s Response to

⁶ See Order admitting contention SAFETY-1 at 27.

⁷ See *id.* at 22.

⁸ See Order admitting contention SAFETY-1 at 22-23.

⁹ See *id.*

¹⁰ SNC’s Response to RAI 39 at 4, quoting RAI 39.

¹¹ See *id.* at 4-7.

RAI 39 begins with a cursory statement about its desire to ship LLRW offsite.¹² Just pages before, however, SNC conceded that it does not “currently have agreements for acceptance of Class B and C low-level waste at an offsite facility.”¹³ As a result of this inability to point to a contractual agreement, SNC proposes to revise the FSAR to provide “a plant-specific contingency plan for expansion of on-site LLRW storage capacity.”¹⁴ Instead, the FSAR revisions provide little more than a conceptual framework for initial discussions on onsite storage facility design.¹⁵ As this Board discussed while admitting contention SAFETY-1, there must be much more than a “concept” to demonstrate that onsite storage will comply with 10 C.F.R. Parts 20 and 52.¹⁶

Specifically, the proposed FSAR revisions set forth in SNC’s Response to RAI 39 are insufficient for the following reasons:

- The revisions contain only bare assurances that the design of the storage facility will comply with NRC guidance documents.¹⁷ A design plan is not provided.¹⁸
- The revisions fail to set forth the site of the storage facility. Instead, SNC states without justification, analysis, or proof that “the storage facility will be sited such that it could be sized to accommodate storage over the life of the plant and designed to accommodate future expansion,”¹⁹ “the location of the storage pad would meet dose

¹² Id. at 4-5.

¹³ Id. at 2.

¹⁴ Id. at 4.

¹⁵ See id. at 4-7.

¹⁶ See Order admitting contention SAFETY-1 at 25-27.

¹⁷ SNC’s Response to RAI at 5.

¹⁸ Id. at 5-7. In addition, the proposed revisions to the FSAR do not contain detailed information regarding building materials and high integrity containers, both of which are necessary to determine exposure rates and dosages.

¹⁹ Id. at 5. See also Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC, Memorandum and Order (Ruling on Joint Petitioners’ Standing and Contentions) (Mar. 23, 2009), Docket No. 52-016-COL, ASLBP No. 09-874-02-COL-BD01, at 75, which can be found on the Adams system at [ML090830626](#). (information must be sufficient to “demonstrate that Applicant will be able to [provide storage or disposal for the] volume of LLRW that will be generated during the license term.” Internal citations omitted.) The information

rate criteria,”²⁰ and “the storage pad location would avoid natural or engineered surface drainage and be located at an elevation with regard to the site’s design bases flood level.”²¹

- The revisions wholly omit a discussion of the health impacts on SNC employees from the additional LLRW storage.²²

Because of the dangerous nature of LLRW, 10 C.F.R. Parts 20 and 52 demand sufficient detail in order for the NRC staff and Joint Intervenors to evaluate whether precautionary measures are as safe as possible. SNC’s Response to RAI 39 and the proposed FSAR revisions located therein are a thinly-veiled attempt to circumvent these requirements by providing unsubstantiated assurances that one of several choices regarding LLRW storage will conform to NRC requirements. This does nothing more than pay lip service to important regulations designed to ensure safety. The lack of detailed analysis cannot be excused.

10 C.F.R. § 2.309(f)(1)(iv) – Joint Intervenors continue to assert that lack of meaningful discussion of LLRW storage or disposal impedes SNC’s ability to address compliance with 10 C.F.R. Part 20 in accordance with 10 C.F.R. § 52.79(a).²³ Thus, the contention is material to findings the NRC must make to support licensing.²⁴

10 C.F.R. § 2.309(f)(1)(v) – The lack of information in the COLA, together with the inadequacy of the proposed FSAR revisions set forth in SNC’s Response to RAI 39, support the contention as amended. As discussed above, SNC’s proposed revisions are inadequate in many

provided by SNC, however, is nothing more than a naked assertion – without any attempt at demonstration – that storage space will be sufficient.

²⁰ Id.

²¹ Id. at 6.

²² See generally id.

²³ See Order admitting contention SAFETY-1 at 24-25.

²⁴ Id. See also NRC Memorandum and Order (July 31, 2009) at 8 n.26. (providing that when the NRC staff issues an RAI, the subject of that RAI is presumptively material).

ways, including, but not limited to, failing to specify a design plan, failing to provide adequate siting information, and failing to consider the impacts of storage of LLRW on SNC employees.

10 C.F.R. § 2.309(f)(1)(vi) – A genuine dispute exists as to whether SNC has provided adequate information upon which the NRC staff can base a decision regarding the safety of LLRW storage at the VEGP site.²⁵

Compliance with 10 C.F.R. § 2.309(f)(2)

SAFETY-1, as amended, complies with the provisions of 10 C.F.R. 2.309(f)(2).

10 C.F.R. § 2.309(f)(2)(i) - This amendment is based on information that was released by SNC on September 23, 2009 through SNC's Response to RAI 39. Prior to this date, SNC's discussion of planned disposal or storage of Class B and C waste had been omitted from the FSAR.

10 C.F.R. § 2.309(f)(2)(ii) - SNC's Response to RAI 39 and the FSAR revisions contained therein purport to discuss SNC's options for onsite storage or offsite disposal of LLRW. While Joint Intervenors maintain that this discussion is inadequate, it nonetheless contains information materially different from that provided in the original FSAR.

10 C.F.R. § 2.309(f)(2)(iii) - As the information became available September 23, 2009, Joint Intervenors' request to amend is timely.

CONCLUSION

For the foregoing reasons, Joint Intervenors respectfully request that the Board grant its motion to amend contention SAFETY-1.

²⁵ See section 10 C.F.R. § 2.309(f)(1)(ii) above for a list of missing or inadequate information that should be contained in 11.4.6.3 of the FSAR.

Respectfully submitted this 23rd day of October, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **JOINT INTERVENORS' MOTION TO AMEND CONTENTION SAFETY-1** were served upon the following persons by Electronic Information Exchange and/or electronic mail.

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