November 20, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SOUTHERN NUCLEAR OPERATING CO.	)	Docket No. 52-025-COL
	)	52-026-COL
(Vogtle Electric Generating Plant, Units 3 & 4)	)	

NRC STAFF'S ANSWER TO PETITION
TO INTERVENE AND ADMIT NEW CONTENTION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h) and the Atomic Safety and Licensing Board (Board) Order dated November 3, 2009,[1] the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby responds to the "Petition of Vince Drescher, Kenneth Ward, John C. Horn, Jr., William S. Bashlor and James Eddie Partain to Intervene and Admit New Contention," dated October 30, 2009 ("JPI Petition"). For the reasons stated below, the petition should be denied.

BACKGROUND

This proceeding concerns the application filed by Southern Nuclear Operating Company ("Southern" or "Applicant") and several co-applicants for a combined license (COL) for Vogtle Electric Generating Plant Units 3 and 4. *See* Southern Nuclear Operating Company; Acceptance for Docketing of an Application for Combined License for Vogtle Electric Generating Plant Units 3 and 4, 73 Fed. Reg. 33,118 (June 11, 2008). On September 16, 2008, the NRC published a notice of hearing on the Application. *See* Southern Nuclear Operating Company;

[1] *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 & 4), ML093070695 (Nov. 3, 2009) (unpublished order).

Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for Vogtle Electric Generating Plants Units 3 and 4, 73 Fed. Reg. 53,446 (Sept. 16, 2008). Per that notice, intervention petitions were to be filed by November 17, 2008, and a petition to intervene was filed jointly by several organizations on November 17, 2008. *See* Petition for Intervention (Nov. 17, 2008).[2] On March 5, 2009, the Board granted the petition and admitted one contention, designated as Safety-1. *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 & 4), LBP-09-03, 69 NRC 139 (2009). On October 30, 2009, a new petition was filed on behalf of five individuals ("Joint Petitioning Individuals," "JPI") seeking to intervene in the COL proceeding.[3] The JPI Petition seeks admission of a single contention, designated as NEPA-1.

The Vogtle COL application references an early site permit (ESP) for the Vogtle site. Following Southern's submission of the ESP application in August 2006, the Staff performed a safety and environmental review, and an evidentiary hearing subsequently was held in March 2009 on contested and uncontested issues regarding the application. In the contested portion of the ESP hearing, the Licensing Board in that proceeding ruled on three contentions raised by intervenors challenging the Staff's Final Environmental Impact Statement (FEIS) for the ESP, finding that with respect to the issues raised in those contentions, the ESP FEIS complied with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA). *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-07, 69 NRC __

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[2] These organizations are 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.

[3] On November 2, the JPI re-submitted the petition. The JPI represented that, other than the inclusion of a certification pursuant to 10 C.F.R. § 2.323(b), the petition was identical to that submitted on October 30. *See* Letter from Barry S. Neuman to Administrative Judges (Nov. 2, 2009).

(June 22, 2009). In the uncontested portion of the hearing, the Licensing Board resolved all remaining safety and environmental issues, and authorized the Staff to issue the ESP (and an accompanying Limited Work Authorization, or LWA). *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-19, 70 NRC __ (Aug. 17, 2009). The ESP and LWA were issued on August 26, 2009. 74 Fed. Reg. 44,879 (Aug. 31, 2009).

DISCUSSION

I. Legal Standards for Intervention Petitions

The standards governing petitions to intervene in NRC adjudicatory proceedings are set forth in 10 C.F.R. § 2.309 of the Commission's regulations. That section includes the standards governing petitions filed after the initial deadline for filing (*i.e.,* "late-filed petitions"). Pursuant to the general requirements defined in 10 C.F.R. § 2.309(a), a petition must establish standing and at least one admissible contention in order to be granted. Other relevant provisions in § 2.309 include (1) 10 C.F.R. § 2.309(d), concerning requirements for standing, (2) 10 C.F.R. § 2.309(c), concerning nontimely filings, (3) 10 C.F.R. § 2.309(f)(2), concerning new and timely contentions, and (4) § 2.309(f)(1), establishing the general admissibility requirements for contentions.

It is well established that any petition filed after the initial filing deadline must address the nontimely filing factors of § 2.309(c)(1).[4] *See* § 2.309(c)(2); *Fla. Power & Light Co.* (Calvert

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[4] As stated therein, nontimely contentions "will not be entertained absent a determination by the…presiding officer…that the…contentions should be admitted based upon a balancing of the following factors to the extent that they apply to the particular nontimely filing":

(i) Good cause, if any, for the failure to file on time;
(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
(iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;

(continued. . .)

Cliffs Nuclear Power Plant, Units 1 and 2, et al.), CLI-06-21, 64 NRC 30, 33-34 (2006); *see also Amergen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260-61 (2009). In addition, all contentions, including those that are timely filed, must comply with the general admissibility requirements in § 2.309(f)(1). *Oyster Creek*, CLI-09-7, 69 NRC at 261. Briefly, these requirements state that to be admissible, a contention must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted…;
> (ii) Provide a brief explanation of the basis for the contention;
> (iii) Demonstrate that the issue raised … is within the scope of the proceeding;
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; [and]
> (vi) . . .[P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law,

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(. . .continued)

> (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
> (vi) The extent to which the requestor's/ petitioner's interests will be represented by existing parties;
> (vii) The extent to which the requestor's/ petitioner's participation will broaden the issues or delay the proceeding; and
> (viii) The extent to which the requestor's/ petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. § 2.309(c)(1).

Pursuant to 10 C.F.R. § 2.309(c)(2), each of the factors in § 2.309(c)(1) is required to be addressed in the requestor's nontimely filing. The first factor, whether good cause exists for the failure to file on time, is entitled to the most weight. *See, e.g., State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993). Where no showing of good cause for the lateness is tendered, "petitioner's demonstration on the other factors must be particularly strong." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 73 (1992) (*quoting Duke Power Co.* (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460, 462 (1977)).

> the identification of each failure and the supporting reasons for the petitioner's belief[.]

10 C.F.R. § 2.309(f)(1)(i)-(vi). These requirements are discussed in more detail in the Staff's answer to the COL intervention petition filed on November 17, 2008, as well as in the Board's subsequent ruling on contention admissibility. NRC Staff Answer to "Petition for Intervention" at 6-9 (Dec. 12, 2008); *Vogtle COL*, LBP-09-03, 69 NRC at 152-54. Failure to comply with any of these general admissibility requirements is grounds for dismissal of the contention. Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (2004); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

A. Standing

Under the general standing requirements set forth in 10 C.F.R. § 2.309(d)(1), a request for hearing or petition for leave to intervene must state:

> (i) The name, address and telephone number of the requestor or petitioner;
> (ii) The nature of the requestor's/petitioner's right under the [Atomic Energy Act of 1954, as amended (AEA),] to be made a party to the proceeding;
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1). As the Commission has observed, "[a]t the heart of the standing inquiry is whether the petitioner has 'alleged such a personal stake in the outcome of the controversy' as to demonstrate that a concrete adverseness exists which will sharpen the presentation of issues." *Sequoyah Fuels Corp. and Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994) (citing *Duke Power Co. v. Carolina Envtl. Study Group, Inc*., 438 U.S. 59, 72 (1978), and quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). In order to demonstrate the requisite "personal stake," the petitioner must:

> (1) allege an "injury in fact" that is
> (2) "fairly traceable to the challenged action" and

(3) is "likely" to be "redressed by a favorable decision."

Sequoyah Fuels, CLI-94-12, 40 NRC at 71-72 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and internal quotations omitted) (citing *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)).

In reactor licensing proceedings, Commission case law has established a "proximity presumption," whereby an individual may satisfy standing requirements by demonstrating that his or her residence or activities are within a 50-mile radius of the subject plant. *See Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC __ (slip op. at 4-5) (Oct. 13, 2009). The Commission has concluded that individuals residing within the 50-mile radius "'face a realistic threat of harm' if a release from the facility of radioactive material were to occur," and therefore are not required to make individual showings of injury, causation, and redressability. *Id*. at 4-7; *see also Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) ("*St. Lucie*"); *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150 (2001). Licensing boards have consistently applied the proximity presumption in reactor licensing proceedings, granting standing to individuals residing within the 50-mile radius. *See, e.g., Virginia Elec. & Power Co., d/b/a/ Dominion Virginia Power and Old Dominion Elec. Coop.* (COL for North Anna Unit 3), LBP-08-15, 68 NRC 294, 304 (2008) ("*North Anna*").

If individuals in reactor licensing proceedings do not qualify for proximity-based standing due to the location of their residence, they may instead seek to satisfy standing requirements by demonstrating that they have frequent contacts within that 50-mile radius. *See PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 296 (2007). The Commission has recognized proximity standing on this basis "where a petitioner '*frequently* engages in *substantial* business and related activities in the vicinity of the

facility,' engages in 'normal, *everyday* activities' in the vicinity, has '*regular*' and '*frequent* contacts' in an area near a licensed facility, or otherwise has visits of a 'length' and 'nature' showing 'an ongoing connection and presence.'" *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65 NRC 519, 523-24 (2007) (internal citations omitted; emphasis added in original). "Conversely, the agency has denied proximity-based standing where contact has been limited to '*mere occasional trips* to areas located close to reactors.'" *Id.* at 524 (citing *Tennessee Valley Auth.* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 26 (2002) (emphasis added in original)). Where a petitioner shows neither residence nor frequent contacts within the "zone of harm" to which the proximity presumption applies, the petitioner must demonstrate standing under the traditional three-factor test described above. *See PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 14-15 (2007).

B. Late-Filed Contentions

As discussed above, the standards governing the admissibility of contentions proposed in late-filed petitions are set forth in the Commission's regulations. Such late-filed contentions must meet the requirements of 10 C.F.R. § 2.309(f)(2). Under this provision, a contention filed after the initial filing period may be filed with leave if it meets all of the following requirements:

> (i) The information upon which the amended or new contention is based was not previously available;
> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

Id. A contention that does not qualify for admission as a new contention under § 2.309(f)(2) may still be admitted if it meets the provisions governing admission of nontimely contentions, set

forth in 10 C.F.R. § 2.309(c)(1).[5] As noted above, a petitioner must address those provisions in its nontimely petition. § 2.309(c)(2). Moreover, as explained above, any contention must still meet the general admissibility requirements of § 2.309(f)(1).

II. Analysis

As set forth below, of the five petitioners, only Kenneth Ward has demonstrated standing. Furthermore, the JPI Petition does not satisfy the Commission's criteria governing nontimely intervention petitions and contentions, and the JPI's proposed contention does not meet the general admissibility requirements of § 2.309(f)(1). In particular, the JPI Petition fails to show that the information on which its contention is based is new and why the JPI's claims could not have been timely raised in this COL proceeding or, even earlier, in the Vogtle ESP proceeding. Moreover, even if the information identified in the JPI Petition were new, the JPI do not demonstrate that it is significant relative to the environmental matters that were considered and resolved in the ESP proceeding.

A. Standing

As discussed above, the Commission has generally found in construction permit and reactor licensing proceedings that persons who reside or frequent the area within a 50-mile radius of the facility have standing to intervene. *Calvert Cliffs*, CLI-09-20, 70 NRC __ (slip op. at 4-5, 7). Based on the home addresses stated in the affidavits of each of the five JPI petitioners, only Kenneth Ward appears to live within 50 miles of the Vogtle site. As Mr. Ward's residence appears to be approximately 30 miles from the plant, the Staff does not challenge his standing to intervene pursuant to the proximity presumption. Conversely, Mr. Drescher, Mr. Bashlor, Mr.

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[5] *Amergen Energy Co.* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 234 n.7 (2006); *see also Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 572-75 (2006).

Horn, and Mr. Partain each appear to live more than 50 miles from the proposed site for the new Vogtle units.[6] Accordingly, they have not established standing due to residential proximity under the test recited in the *St. Lucie* decision.

Nor have these four petitioners established standing to participate in this proceeding based on their recreational activities on the Savannah River. *See* JPI Petition at 3. The declarations attached to the petition state that each of these four petitioners engages in fishing at locations along the Savannah River.[7] *See* Declaration of Vince Drescher (Oct. 26, 2009); Declaration of William S. Bashlor (Oct. 30, 2009); Declaration of John C. Horn, Jr. (Oct. 27, 2009); Declaration of James Eddie Partain (Oct. 26, 2009). The Staff therefore examined the declarations to determine whether these individuals have identified sufficient "frequent contacts" within the 50-mile radius sufficient to confer proximity-based standing like that provided by actual residence within the affected area. *See Big Rock Point ISFSI*, CLI-07-21, 65 NRC at 523-24; *Sequoyah*, LBP-02-14, 56 NRC at 26.

Each of these four petitioners refers to fishing "regularly" on "the Savannah River," and to having engaged in fishing over a period of several years.[8] However, none of the declarations

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[6] From the Staff's examination of regional maps (using Google Maps' distance calculator), the residences of Mr. Drescher, Mr. Bashlor, Mr. Horn, and Mr. Partain appear to be at approximately 75, 53, 80, and 63 miles from the plant site, respectively.

[7] The declaration of Mr. Ward refers to boating and water skiing as well as fishing. However, as explained above, the Staff agrees that Mr. Ward has standing under the proximity presumption due to his residence. The other four declarations refer only to fishing interests.

[8] The four declarations all refer to "regularly" engaging in recreational fishing downstream of the Vogtle site.

- "For many years I have enjoyed fishing year-round in the Savannah River. I fish regularly in vicinity of Savannah, and I also fish much further upstream around Blue Springs, near where Route 301 crosses the river." (Drescher Declaration at 1.)

- "For at least the past 25 or 30 years, I have fished regularly on the Savannah River, at (continued. . .)

specifies what is meant by "regularly." In particular, none of the declarations states how frequently (or for how long) the petitioner's activities bring him within the 50-mile radius that is relevant to establishing standing under the proximity presumption. While each of these four petitioners mentions fishing along the Savannah River, each refers not only to fishing in the vicinity of Blue Springs or Clyo, which appear to be within 50 miles of the proposed facility, but also to areas further downstream near the city of Savannah or the Atlantic coast, locations which appear to be 80 miles or more from the plant site.[9] While it appears that some of these four petitioners' fishing activities do occur within 50 miles of the plant, the absence of any description concerning the frequency of such activities in the vicinity of the plant is insufficient to show the frequent contacts that would convey standing as analyzed under the Commission's proximity presumption.[10] With respect to the "extent, frequency, and duration" of a petitioner's

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numerous locations, at Blue Springs and downstream from there to about 15 miles north of Savannah." (Bashlor Declaration at 1.)

- "For at least the past 40 years, I have fished regularly on the Savannah River, from Clyo south to the Savannah area." (Horn Declaration at 1.)

- "I fish regularly on the Savannah River, including from Blue Springs (which is located south of where route 301 crosses the river and downstream of the Vogtle power plant), and locations further downstream all the way down the Savannah River to the coast. I have been fishing on the Savannah River for more than 35 years." (Partain Declaration at 1.)

[9] The declarations do not state how far the Blue Springs and Clyo fishing sites are from the Vogtle facility. However, from the Staff's examination of regional maps (using Google Maps' distance calculator), they appear to be approximately 35 and 50 miles from the plant site, respectively. The same regional maps indicate that the city of Savannah is approximately 80 miles from the facility, while the Savannah River's meeting with the Atlantic coast is 90 miles or more from the Vogtle site. Mr. Drescher states that he fishes "around Blue Springs, near where Route 301 crosses the river." Although Route 301 crosses the river about 20 miles downstream of the Vogtle site, Blue Springs appears to be approximately 35 miles from the plant site, as noted above; accordingly, it is unclear from Mr. Drescher's declaration how far from the Vogtle facility his fishing activities occur.

[10] One Licensing Board ruled that an individual's claim of ownership of improved farmland 10 to 15 miles from the facility site and occasional visits to this farm was insufficient to establish an interest that (continued. . .)

contacts within the zone of a plant site, as well as the "locations of the towns and landmarks cited" for those contacts, "[i]t is the burden of the petitioner to clearly state these facts in a petition to intervene." *See PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC __ (slip op. at 15) (Aug. 10, 2009).

Because the petitioners have not demonstrated either residence or sufficient "frequent contacts" within 50 miles to have standing under the proximity presumption, they must demonstrate that they satisfy a traditional standing analysis. *See Susquehanna*, LBP-07-10, 66 NRC at 14-15. The petitioners assert that this test is met, claiming that their recreational interests "stand to be directly injured if the potential impacts of proposed Units 3 and 4 on the Savannah River – impacts to water quality, water quantity/flow and the river's fish and other natural resources – are adversely affected[.]" JPI Petition at 3.

However, while the petitioners have expressed a general interest in fishing along the Savannah River at points downstream of the Vogtle site, none of the petitioners has specified in his declaration in what way the proposed action would adversely affect his recreational fishing – namely, what "injury in fact" to his own fishing activities has been identified that would be "fairly traceable" to the construction or operation of the proposed reactors.[11] The declarations do not explain how impacts attributable to the Vogtle COL application would adversely affect their recreational fishing interests, either in the Savannah River generally or in the downstream areas

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could be affected, and that the individual did not have standing to intervene. *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336-68 (1979) ("*WPPSS*"). These four petitioners claim to engage in fishing activities more than 20 miles from the proposed facility, and unlike the petitioner in *WPPSS*, they do not assert any specific property interest.

[11] The declarations do not specify how operations of the Vogtle reactors would produce adverse impacts to water quality, flow, or fish in a way that would constitute an injury in fact to that petitioner.

that petitioners mention. Accordingly, these petitioners have not met the traditional test for standing. That is, they have not alleged an "injury in fact" that is "fairly traceable to the challenged action" and is "likely" to be "redressed by a favorable decision." *Sequoyah Fuels,* CLI-94-12, 40 NRC at 71-72. Accordingly, Mr. Drescher, Mr. Horn, Mr. Bashlor, and Mr. Partain have not demonstrated that they have standing to intervene in this proceeding. See *Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), LBP-09-04, 69 NRC 170, 177-178 (2009) (citing *Carolina Power & Light Co*. (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 66 NRC 41, 52 (2007).[12]

In summary, the Staff does not object to the standing of Mr. Ward but asserts that Mr. Drescher, Mr. Horn, Mr. Bashlor, and Mr. Partain have not demonstrated the necessary standing.

B. Petition's Showing Under Late-Filing Criteria of § 2.309(c)

The JPI Petition appears to assume that it has made a sufficient showing of timeliness solely by complying with the Board's initial prehearing order to submit new or amended contentions within 30 days of the new information's availability. JPI Petition at 6, 9-10 (citing Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4), ML083370608 (Dec. 2, 2008) (unpublished order, slip op. at 6 n.6)). However, such a showing is applicable only to one of the three requirements of § 2.309(f)(2) – addressing whether the associated contention has been submitted in a timely fashion based on the availability of the

[12] Petitioners to intervene in NRC proceedings who represent or are members of an organization may also assert standing on theories of organizational or representational standing. However, the JPI have not claimed that they are seeking to intervene as an organization or as members of an organization. Accordingly, the Staff has not discussed standing under these theories.

information that is the alleged basis for the contention (§ 2.309(f)(2)(iii)). As noted above, any petition filed after the initial filing deadline (here, that deadline was November 17, 2008, and the JPI have filed their petition almost a year after that deadline) must address the nontimely filing factors in § 2.309(c)(1). *See* § 2.309(c)(2).

While the JPI Petition claims to address those factors, the discussion constitutes little more than listing the factors and asserting that they are met. *See* JPI Petition at 10. As such, it provides minimal explanation of how the balancing of those criteria supports granting the petition. Most importantly, as discussed further below with respect to the proposed contention (*see infra* at II.C), the JPI Petition does not identify good cause for its nontimely filing with respect to how the claims underpinning its contention – the likelihood of future drought conditions and the "minimum in-stream flow levels that are necessary to protect the river" – are new and could not have been raised previously. § 2.309(c)(1)(i). Significantly, this factor, whether good cause exists for the failure to file on time, is entitled to the most weight. *See, e.g., State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC at 296. The JPI have failed to demonstrate why their claims could not have been raised by the initial filing deadline in the COL proceeding. Indeed, as explained in more detail below, the information actually relied on by the JPI was apparently available even earlier, before (or during) the ESP proceeding. Nor do the JPI provide any other basis for good cause for the nontimely filing.

Given the absence of good cause for the late filing, the JPI's showing with respect to other § 2.309(c)(1) factors is not compelling. The factors in § 2.309(c)(1)(ii) and (iii) concern the nature of the petitioners' rights under the AEA to be a party and of the petitioners' interest in the proceeding. As noted above, four of the five petitioners have not demonstrated that they meet the Commission's requirements for standing, including how they have an interest that is adversely affected by the proposed action. Similarly, with respect to § 2.309(c)(1)(v), the JPI appear to have other means to protect their interests. The JPI Petition relies heavily on the

alleged significance of a recently proposed temporary deviation from the Savannah River Basin Drought Contingency Plan established by the U.S. Army Corps of Engineers, Savannah District ("USACE" or "Corps"). The JPI apparently view publication of that proposal as the grounds for filing their contention in this proceeding. However, the Corps document specifically solicits public comments and indicates that the comments are used in part to determine the need for a public hearing on the Corps's proposed action. *See* JPI Petition, Attch. A at 4. Thus, another means available to the JPI to protect their asserted interests is to provide comments to the Corps regarding the Corps proposal, with the possibility that a public hearing will be held by the Corps.

Likewise, with respect to § 2.309(c)(1)(vii), the JPI Petition does not acknowledge that granting the intervention petition would necessarily broaden the issues for litigation (as the only currently-admitted contention concerns a safety issue). Finally, the JPI Petition also does not explain in what way the participation of JPI would assist in the development of a sound record, pursuant to § 2.309(c)(1)(viii). In sum, particularly given the absence of good cause for the nontimely filing, the factor entitled to the most weight, the JPI have failed to demonstrate why the required balancing of the § 2.309(c)(1) factors weighs in favor of granting the petition.

C. Late-Filed Contention Criteria Under § 2.309(f)(2)

In addition to failing to demonstrate a favorable balancing of the factors set forth in § 2.309(c)(1), the JPI have not submitted a timely and admissible contention. As discussed below, the JPI have not demonstrated that their proposed contention meets the § 2.309(f)(2) criteria for nontimely contentions or the general admissibility requirements of § 2.309(f)(1).

The JPI Petition proposes an environmental contention, NEPA-1, as follows:

> The potentially significant adverse impacts of Vogtle Units 3 and 4 on the Savannah River have not been fully or adequately evaluated in light of the proposal of the United States Army Corps of Engineers ("USACE") to reduce discharges from the Thurmond Dam to 3100 cubic feet per second ("cfs"), and as low as 2,600 cfs, from mid-September through mid-

> February in any future years when necessary to avoid Level 4 drought conditions in the Thurmond Reservoir. The cumulative impacts of such flow restrictions (and the assumed potentially recurrent Level 3 drought conditions that underly the USACE's proposal), combined with the proposed Vogtle Plant expansion, constitutes significant new information not considered in the ESP FEIS, and could reduce river flows to levels that would adversely affect the river.

JPI Petition at 3-4. The JPI assert that their contention is timely because it is based on the recent publication by the Corps of a temporary deviation from its Savannah River Basin Drought Contingency Plan. *Id.* at 6, 8-10. The Contingency Plan (including any temporary deviations) prescribes how, at times when the river basin experiences drought conditions, the Corps determines appropriate water releases from impoundments on the Savannah River, including the Thurmond Dam upstream of the Vogtle site. *See id.* Attch. C, at 9.

The Staff acknowledges that the JPI Petition was filed within 30 days of the public availability of that Corps document. However, as explained below, the JPI fail to demonstrate that the information they cite in support of their petition, including the Corps document, is both new and materially different from the information that was previously available in this COL proceeding. § 2.309(f)(2)(i), (ii). For similar reasons, the JPI also fail to demonstrate that the information they cite is "materially different than information previously available" before (and during) the ESP proceeding. Their petition is thus nontimely on the additional basis that the JPI could have raised the same challenges in the ESP proceeding but did not do so. Accordingly, the JPI do not demonstrate that the contention is timely under the provisions of § 2.309(f)(2).

Based on the JPI Petition and the accompanying Declaration of Paula L. Feldman, P.E. (Oct. 29, 2009) ("Feldman Declaration"), it is apparent that NEPA-1 is based not on "new" information in the Corps proposal but on the JPI's dissatisfaction with the resolution of certain issues in the ESP proceeding. The JPI assert that 1) future drought conditions are more likely than was assumed by the Staff in the ESP environmental review and 2) the ESP analysis did not account for "minimum in-stream flow levels that are necessary to protect the river." JPI

Petition at 4, 7-9; Feldman Declaration at 3-5, 6-7. Yet the documents cited specifically as support for these two premises were apparently available before (and during) the ESP proceeding. For example, the sources Ms. Feldman cites concerning climate change patterns date from 2003 and 2007, even before the ESP Final Environmental Impact Statement (FEIS) was issued and well before the deadline for filing contentions in this COL proceeding.[13] These concerns were also specifically analyzed at the ESP stage. For example, in the mandatory hearing, the Board considered the evidence supporting the Staff's analysis of the potential severity of future drought conditions, including the Staff's analysis of impacts under low-flow conditions, and found the analysis to be conservative and reasonable. *Vogtle ESP*, LBP-09-19 at ¶¶ 4.17-21, 4.32. Accordingly, the JPI have not shown that their concerns are based on "new" information, much less that it is "materially different" from what was previously available in this COL proceeding.

Similarly, Ms. Feldman criticizes the findings in the ESP proceeding relating to the FEIS analysis of impacts under low-flow conditions, and she alludes to "7Q10" flows from data at the Jackson gauge upstream of the Vogtle site as the level of flow that is "required…to protect the Savannah River and its resources." Feldman Declaration at 6, 7. However, in the ESP proceeding, the Staff explained in detail its selection of Savannah River low-flow values for analysis. The Board's decisions upheld the appropriateness of considering a low-flow value of 3800 cfs, noting that such flows remained representative of flows at the Vogtle site even when releases from the Dam were lowered to 3100 cfs for several months. *See Vogtle ESP*,

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[13] *See* Feldman Declaration at footnotes 3-5. The Staff notes that the URL cited in footnote 2 of the Feldman Declaration does not link to a specific article, but rather to the current "News" webpage for CBS Atlanta. Accordingly, the Staff could not determine what the contents of the webpage were at the time Ms. Feldman accessed the site.

LBP-09-19 at ¶¶ 4.17-19, 4.32; *Vogtle ESP*, LBP-09-07 at ¶¶ 4.47 & n.14; 4.93.[14] In doing so, the Board also acknowledged the flow data available from the Waynesboro gauge at the Vogtle site (i.e., closer to the site than the Jackson gauge) as support for the conservatism of the low-flow values analyzed by the Staff. *See Vogtle ESP*, LBP-09-07 at ¶¶ 4.47 & n.14; 4.93; *Vogtle ESP*, LBP-09-19 at ¶¶ 4.17-19.[15] Moreover, the Board's decision also acknowledged (as emphasized by the Staff) that, under low-flow conditions, State environmental officials would retain the authority to order Plant Vogtle water withdrawal rates to be reduced or curtailed entirely to protect aquatic resources. *See Vogtle ESP*, LBP-09-07 at ¶ 4.47 (and exhibits cited therein). Thus, the JPI's claims regarding either the future likelihood of drought conditions due to climate change, or the existence of a necessary "minimum in-stream flow level" in certain portions of the Savannah River, are not "new," nor are they materially different from information previously available to the JPI during this COL proceeding. Furthermore, these same claims could have been raised by the JPI as part of the ESP proceeding but were not, and thus cannot be considered "new" in this COL proceeding.

More importantly with regard to the petition's nontimeliness, the JPI Petition makes no showing that the JPI's two central assertions are supported by the Corps proposal, which is the allegedly "significant new information" that the JPI identify. Feldman Declaration at 3. As stated in the Corps document itself, the temporary deviation plan will only be implemented "if

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[14] *See also Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Evidentiary Hearing (Contested Proceeding), NRC Staff Testimony, Post Tr. 743 at 65-66; *id.* Exhibits SNC000016, SNC000053, SNCR00054.

[15] *See also Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Evidentiary Hearing (Contested Proceeding), Exhibits SNC000016, SNC000053, SNCR00054; NRC000026, NRC000041. In the FEIS and its testimony in the ESP proceeding, the Staff described data measurements obtained from the Jackson gauge, noting that the gauge was taken out of service in 2002. *See id.* at NRC Staff Testimony, Post Tr. 743 at 65; FEIS at E-45.

conditions warrant the reduction." JPI Petition, Attch. B.[16] Thus, contrary to the JPI's implication, the Corps document by its own terms does not reflect new information regarding the likelihood or intensity of future drought conditions, or new information about what minimum water levels are necessary at particular locations for "protection of the river." With respect to these topics, the JPI thus do not explain how they rely on information that was "not previously available," § 2.309(f)(2)(i), nor how the Corps document is "materially different than information previously available." § 2.309(f)(2)(ii).

The Corps document specifically acknowledges that the Savannah District is aware of the potential increase in water withdrawals associated with the proposed Vogtle expansion. The Corps states that "the present drought is expected to end before that plant could become operational. Therefore, that additional use would not occur within the timeframe that is under consideration in this EA." JPI Petition, Attch. C at 78. A document provided in support of a contention is subject to scrutiny both for what it shows and for what it does not show. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996); *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). The JPI Petition purports to rely on the Corps proposal as new information regarding the likelihood of future drought conditions and of future decreased water levels in the Savannah River, and the cumulative impacts of such

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[16] The Corps EA makes clear that implementation of lower releases is a temporary adjustment to the existing protocol, rather than a particular judgment on the likelihood or severity of future drought conditions: "The proposed action consists of reducing discharges from J. Strom Thurmond Dam from 3,600 to 3,100 [cfs] during the fall/winter (mid-September through mid-February) *when the Corps' reservoirs on the Savannah River are in Level 3 drought conditions*. The action would retain the major components of the 1989 Savannah River Basin Drought Contingency Plan (SRBDCP) and adjust one feature (discharge during fall/winter) for the duration of the present drought." JPI Petition, Attch. C at 6 (emphasis added). *See also id.* Attch. C at 6 ("*When Level 3 drought conditions exist*, the minimum daily average release at Thurmond Dam would be adjusted…"), 11 ("This EA was developed so that the District would be prepared to conserve water in the reservoirs again in the fall/winter *should the system again reach Level 3 conditions*.") (emphasis added).

occurrences with the operation of the new Vogtle units. Yet the referenced Corps document asserts that the present drought is expected to have ended by the time the new units would be operational, that the proposed temporary deviation does not extend to that time period, and that in any event no adverse environmental impact is anticipated from implementation of the temporary deviation plan (should that implementation even become necessary).[17] Thus the Corps document contradicts the key propositions for which the JPI cite it.[18]

In short, the JPI rely on the Corps document to assert their contention's timeliness, but the proposed basis for NEPA-1 rests instead on the JPI's claims regarding the likelihood of future droughts and the existence of "minimum necessary flows," assertions which are not supported (and indeed some are contradicted) by the Corps proposal. As such, the JPI are impermissibly seeking to use the issuance of the Corps contingency plan as an opportunity to raise disputes with the ESP environmental review that are not based on new information or information that was not previously available in this COL proceeding. Indeed, the alleged basis for the contention is not materially different from the information that was available to the JPI during the ESP proceeding and thus could have been raised even at that time. And as discussed further below (*see infra*, II.D), even if the information in the Corps EA were new, the JPI Petition fails to identify why it would be significant in light of the analyses and conclusions

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[17] The JPI also state that the Corps proposal contemplates lowering releases from Thurmond Dam to 2600 cfs under certain conditions; however, the document indicates that the Corps analyzed that approach as an alternative but declined to recommend it. JPI Petition at 4, 7; Feldman Declaration at 3-4, 7, 8; JPI Petition Attch. C at 6, 8, 39-45, 79.

[18] In fact, portions of the Petition appear to depend on asserting deficiencies in the Corps analysis in the Corps's Environmental Assessment (EA), the adequacy of which is outside the scope of this proceeding. *See, e.g.*, Petition at 7; Feldman Declaration at ¶¶ 17 ("[T]he EA assumes incorrectly that the Flow Reduction Plan will never be implemented while Units 3 and 4 are operational."), 18 ("These [thermal] impacts have not been addressed in the Corps' EA."), 20 ("Again, the EA does not model these potential cumulative impacts…").

previously upheld in the ESP proceeding. Accordingly, the JPI have not demonstrated that the information on which the late-filed contention is based is actually new, much less that it is materially different from what was previously available.

D. Contention Admissibility Criteria Under § 2.309(f)(1)

The considerations discussed above also demonstrate why the contention fails to meet the general admissibility requirements of § 2.309(f)(1). Because the Vogtle COL references an ESP, with respect to environmental impacts that were resolved at the ESP stage the COL applicant is only required to address "new and significant" information in its application. *See* 10 C.F.R. § 51.50(c)(1)(iii). As such, the environmental issues resolved in the ESP have finality and are not subject to challenge in the COL proceeding unless "new and significant" information has been identified. *See* 10 C.F.R. § 52.39(c). As explained above (section II.C, *supra*), the information relied on by the JPI was available before or during the ESP proceeding, and they simply failed to raise the substance of their contention at that time. However, even if the information they rely on in their petition were "new," the JPI fail to demonstrate why it is "new and significant" relative to the environmental matters resolved in the ESP. *See* 10 C.F.R. § 52.39(c)(1)(v).

Fundamentally, the JPI Petition attacks data, analyses, and Staff conclusions that were specifically examined and upheld in the ESP proceeding, and it belatedly asserts that the JPI disagree with those ESP-stage conclusions. Because the JPI Petition misconstrues the basis on which the relevant environmental issues were resolved in the ESP proceeding, and misstates the bases for the Corps proposal, it fails to demonstrate that the issues raised by contention NEPA-1 constitute "significant new information." 10 C.F.R. § 52.39(c)(1)(v). Accordingly, it fails to demonstrate that the contention raises an issue material to the findings the Staff must make regarding the COL application, and fails to identify a genuine dispute with the applicant on a material issue of law or fact. *See* § 2.309(f)(1)(iv), (vi).

In the environmental review for the ESP proceeding, the Staff evaluated the environmental impacts associated with construction and operation of two new reactors at the Vogtle site. The Staff reached conclusions regarding the impacts to water use, water quality, and aquatic resources. *See, e.g.*, FEIS at §§ 5.3.2, 5.3.3, 5.4.2, 7.3, 7.5. The Staff considered a range of flows in the Savannah River in evaluating what these impacts would be, from normal flows to low-flow conditions. *Id.* Members of the public had the opportunity to petition for leave to intervene in the ESP proceeding and challenge the Staff's impact conclusions, including the associated analyses regarding climate change, drought conditions, and selection of flows. The JPI did not seek leave to intervene in the ESP proceeding.

Accordingly, the ESP FEIS was subject to challenge concerning water use impacts. Indeed, one of the admitted contentions litigated in that proceeding dealt specifically with the Staff's analysis of impacts to aquatic resources, including the appropriateness of the Savannah River flows selected for analysis. *See, e.g.*, *Vogtle ESP*, LBP-09-07 at § IV.A.4.b. The Board specifically considered challenges raised by the ESP intervenors that the values selected for "low-flow conditions" at the site were insufficiently conservative. *Id.* The FEIS was also the subject of scrutiny by the Board in the uncontested portion of the hearing. In the FEIS and at the ESP hearing, the Staff discussed the Corps Drought Contingency Plan and the relationship between releases from the Thurmond Dam and flows at the Vogtle site.[19] FEIS at §§ 5.3.2, 7.3.1; *Vogtle ESP*, LBP-09-19 at ¶¶ 4.16-4.21, 4.31-4.34. The Staff explained its decision to consider a range of flows in its NEPA analysis, including low-flow values of 3800 cfs and very-low-flow values of 3000 and 2000 cfs at the Vogtle site. *See, e.g.*, FEIS at §§ 5.3.2, 7.3.1;

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[19] The Corps EA cited by the JPI is a temporary deviation that the Corps would follow if necessary when implementing the Drought Contingency Plan. JPI Petition, Attch. C, at 11.

Vogtle ESP, LBP-09-19 at ¶¶ 4.21, 4.32. The Staff also considered the likelihood of future drought conditions, including recent studies and analyses regarding climate change, and concluded that the flow levels selected were appropriately conservative. *See, e.g.*, FEIS at § 5.3.2, E-51; *Vogtle ESP*, LBP-09-19 at ¶¶ 4.19, 4.32, 4.34; *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Evidentiary Hearing (Contested Proceeding), NRC Staff Testimony, Post Tr. 743 at 68-70.

Among other issues, in its testimony concerning the admitted ESP contentions, the Staff described the relationship between releases at the Thurmond Dam and flows at the Vogtle site (drawing on data from the Waynesboro gauge at the site). *See, e.g.*, *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Evidentiary Hearing (Contested Proceeding), NRC Staff Testimony, Post Tr. 743 at 61-66. That testimony highlighted that flows were consistently higher at the Vogtle site than the releases at the Thurmond Dam, and that they rarely dropped below 3800 cfs even when releases from Thurmond Dam were as low as 3100 cfs, the same "temporary deviation" release level proposed in the Corps document now being cited in the JPI Petition. *Id.*; *Vogtle ESP*, LBP-09-07 at ¶¶ 4.43-4.44, 4.47; *see also Vogtle ESP*, LBP-09-19 at ¶ 4.18.

Accordingly, the Staff concluded that 3800 cfs was an appropriately conservative basis for its NEPA analysis, a conclusion upheld by the Board in the ESP proceeding. FEIS at §§ 5.3.2, 7.3.1; *Vogtle ESP*, LBP-09-07 at ¶¶ 4.44, 4.47; *Vogtle ESP*, LBP-09-19 at ¶ 4.32. Furthermore, in the FEIS and at the hearing (in part in response to public comments concerning the then-record drought), the Staff explained what impacts would be if water levels at the site (i.e., at the Waynesboro gauge) reached very-low flows as low as 3000 and 2000 cfs, and concluded that impacts would still be SMALL. FEIS at §§ 5.3.2, 7.3.1; *Vogtle ESP*, LBP-09-07 at ¶¶ 4.44, 4.47. The Board noted, however, that the record supported the Staff's determination that such flows at the site would be extremely unlikely and would not alter the conclusion of

SMALL impacts, not only because those flows would not occur unless releases from the Thurmond Dam were well below those contemplated under the Corps Drought Contingency Plan, but also because under low-flow conditions State environmental officials would retain the authority to restrict water withdrawals to protect environmental resources. *See Vogtle ESP*, LBP-09-07 at ¶ 4.47 (and exhibits cited therein).

In short, in the ESP FEIS and in the ESP evidentiary hearing, the Staff explained how it determined what flow levels in the Savannah River were appropriate as the basis for its analysis of impacts under NEPA, and justified the conclusion that direct, indirect, and cumulative impacts of the proposed action would be SMALL. In both the contested and uncontested portions of the proceeding, the Board found these conclusions to be adequately supported by the record.

As described above, the JPI's criticism of the Staff's selection of flows for analysis at the Vogtle site does not identify any change to the bases of the Staff's NEPA analysis, which was subject to challenge, reviewed, and found to be adequate in the ESP proceeding. The JPI allege that the recent Corps proposal constitutes new and significant information, but that document does not state that anticipated flows at the Vogtle site will be any lower than those conservatively considered in the ESP proceeding. Nor does that document assert that future droughts are more likely to occur than previously thought, or will increase in severity. Also, consistent with the Staff's view stated in the ESP proceeding concerning the ability of State authorities to restrict water withdrawals during low-flow conditions, the Corps EA reiterates that even if the releases of 3100 cfs are implemented, the Corps would restore the flows to higher levels "at any time" during the target time period at the request of State environmental officials. *Compare Vogtle ESP*, LBP-09-07 at ¶ 4.47 *with* JPI Petition, Attch. C at 6, 45.

Accordingly, the JPI Petition does not demonstrate that the contention is based on new and significant information, and thus does not demonstrate that the contention concerns an issue material to the findings the Staff must make in the COL proceeding. Rather, as explained

above, the JPI Petition seeks belatedly to contest the data and conclusions in the ESP FEIS.[20] Accordingly, the contention fails to meet § 2.309(f)(1)(iv).

As explained above, the JPI fail to show that the information they present concerning the likelihood of climate change or the severity of future drought conditions is new. But in any event, the JPI Petition also fails to specify why this information, even if new, would actually affect the Staff's conclusions in the ESP FEIS and why it would therefore be significant. In the ESP proceeding, as the Licensing Board concluded, the Staff explained how its consideration of data from the Waynesboro gauge confirmed the conservatism of its selection of low flows for analysis through comparison with releases at the Thurmond Dam.[21] *See, e.g.*, *Vogtle ESP*, LBP-09-07 at ¶ 4.47; *Vogtle ESP*, LBP-09-19 at ¶ 4.32. The JPI Petition does not specify how any cumulative impacts associated with the Corps's proposed temporary deviation (even if it is in fact implemented) would be different from those analyzed by the Staff, much less specify in what way that difference would be significant.[22] Simply asserting that a general matter ought to be considered does not provide the basis for an admissible contention. *See Sacramento Mun.*

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[20] *See, e.g.*, Feldman Declaration at 6 ("These statements [in the Board's First Partial Initial Decision and the ESP FEIS], however, do not provide any basis to conclude that the surface water impacts of the proposed Vogtle expansion…would be SMALL."); 7 ("Historical data from the closer gage more accurately determines potential impacts of the Vogtle plant.").

[21] For example, the JPI Petition fails to explain why the Staff decision to base its ESP analysis of impacts during low-flow conditions on 3800 cfs, a value lower than what JPI assert is the 7Q10 at the Jackson gauge (4070 cfs), is therefore nonconservative. Without having explained why information regarding these flows is actually both new and significant, the JPI's assertion amounts to a complaint that using the same information as the Staff did in the ESP, the JPI might have reached a different conclusion regarding impacts at various flow levels. As described in section II.C, *supra*, such a challenge to the ESP is nontimely.

[22] *See, e.g.*, Feldman Declaration at 5 ("The cumulative impacts…could be significant."); 8 ("The potential cumulative impacts…could extend far downstream, potentially to Savannah Harbor."); 10 ("Additional reductions in flows, such as those that would result from Vogtle Units 3 and 4, may have even greater negative impacts on these water supply intakes and their customers.")

Util. Dist. (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 246 (1993). Petitioners are required to identify "sufficiently detailed grievances to allow the adjudicator to conclude that genuine disputes exist justifying a commitment of adjudicatory resources to resolve them." *N. Atl. Energy Servs. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999). In the ESP review, the Staff concluded that cumulative impacts to water use and water quality would be SMALL. FEIS at §§ 7.3.1, 7.3.2. The Corps proposal identified by the JPI Petition concludes that there will be no adverse impact from its temporary deviation plan. The JPI Petition provides no support for a claim that water flows at the Vogtle site would be any lower than those already analyzed in the ESP environmental review, much less that any associated impact would be greater than SMALL.

To be admissible, the contention must identify a genuine dispute with the COL application. § 2.309(f)(1)(iv). Here, what the JPI seek to raise in their contention is not a genuine dispute with the COL application, but rather a belated attempt to reconsider the ESP FEIS. Because these issues were resolved in the ESP referenced by this COL application, such a nontimely challenge is not permitted by the regulations. § 52.39(c). As explained above, the JPI Petition fails to explain in what way the Corps proposal constitutes new and significant information that would change the basis for any specific conclusion in the ESP review or in the COL application. Accordingly, the contention identifies no genuine dispute on a material issue of law or fact, and thus fails to meet § 2.309(f)(1)(vi).

CONCLUSION

For the above reasons, the Staff submits that, although one of the petitioners has demonstrated standing, the petitioners have not proffered an admissible contention, and thus the JPI Petition should be denied.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)
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Dated at Rockville, Maryland
this 20th day of November, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SOUTHERN NUCLEAR OPERATING CO.	)	Docket No. 52-025-COL
	)	52-026-COL
(Vogtle Electric Generating Plant, Units 3 & 4)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC Staff's Answer to Petition to Intervene and Admit New Contention" have been served upon the following persons by Electronic Information Exchange this 20th day of November, 2009:

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