UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-10-08

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

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

In the Matter of	Docket Nos. 52-025-COL and 52-026-COL
SOUTHERN NUCLEAR OPERATING CO.	ASLBP No. 09-873-01-COL-BD01
(Vogtle Electric Generating Plant, Units 3 and 4)	May 19, 2010

MEMORANDUM AND ORDER
(Ruling on Dispositive Motion Regarding Contention SAFETY-1)

Before the Licensing Board in this 10 C.F.R. Part 52 proceeding regarding the application of Southern Nuclear Operating Company (SNC) for a combined license (COL) for two new AP1000 units on its existing Vogtle Electric Generating Plant (VEGP) site is an SNC motion requesting summary disposition in its favor on the Joint Intervenors[1] sole remaining admitted issue statement, amended contention SAFETY-1. This contention concerns SNC's discussion of its plans for storage of the low-level radioactive waste (LLRW) associated with proposed Units 3 and 4. The Nuclear Regulatory Commission (NRC) staff supports SNC's dispositive motion, while Joint Intervenors oppose the request. Additionally, SNC has filed a motion to exclude portions of Joint Intervenors' response or, alternatively, to file a reply, which Joint Intervenors oppose.

[1] Joint Intervenors include the Center for a Sustainable Coast, Savannah Riverkeeper, Southern Alliance for Clean Energy, Atlanta Women's Action for New Directions, and Blue Ridge Environmental Defense League (BREDL).

For the reasons set forth below, finding that no material factual dispute has been interposed by any party in connection with contention SAFETY-1, we conclude as a matter of law that the LLRW plan outlined in SNC's final safety evaluation report (FSAR) is in accord with the applicable regulatory provision, 10 C.F.R. § 52.79(a)(3). We thus grant the SNC summary disposition motion and enter judgment in its favor regarding contention SAFETY-1, thereby resolving all the contested issues in this proceeding.

I. BACKGROUND

In response to a September 16, 2008 notice of hearing and opportunity to petition for leave to intervene regarding the Vogtle Units 3 and 4 COL application, see [SNC], 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 [VEGP] Units 3 and 4, 73 Fed. Reg. 53,446 (Sept. 16, 2008), Joint Intervenors filed a petition to intervene in which they posited three contentions, including SAFETY-1.

Framed in response to the recent closure of the Barnwell, South Carolina LLRW disposal facility to materials coming from, among others, the two existing and the two proposed VEGP reactor units, SAFETY-1 alleged, in pertinent part, that SNC's FSAR submitted as part of its COL application (COLA) was incomplete because it did not discuss SNC's plans for LLRW storage "in the event an off-site waste disposal facility remains unavailable when VEGP Units 3 and 4 begin operations." Petition for Intervention (Nov. 17, 2008) at 7. The Board admitted the contention as follows:

> CONTENTION: SNC's COLA is incomplete because the FSAR fails to provide any detail as to how SNC will comply with NRC regulations governing storage of LLRW in the event an off-site

> waste disposal facility remains unavailable when VEGP Units 3 and 4 begin operations.

LBP-09-3, 69 NRC 139, 169 (2009), aff'd, CLI-09-16, 70 NRC __ (slip op.) (July 31, 2009).

On the basis of a September 23, 2009 letter from SNC responding to an August 24, 2009 staff request for additional information (RAI) concerning LLRW storage, see Letter from Charles R. Pierce, AP1000 Licensing Manager, SNC, to U.S. NRC Document Control Desk, encl. (Sept. 23, 2009) (ADAMS Accession No. ML092680023) [hereinafter SNC RAI Response Enclosure]; Letter from Donald Habib, Project Manager, NRC, to Joseph A. (Buzz) Miller, Executive Vice President, SNC, encl. (Aug. 24, 2009) (ADAMS Accession No. ML092600698),[2] Joint Intervenors filed a motion to amend their contention, see Joint Intervenors' Motion to Amend Contention SAFETY-1 (Oct. 23, 2009) at 2-3. The Board granted Joint Intervenors' motion and, based on the information provided by Joint Intervenors in support of their motion, revised contention SAFETY-1 as follows:

> CONTENTION: 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 the event an off-site waste disposal facility remains unavailable when VEGP Units 3 and 4 begin operations in that it does not contain the following information:
>
> A. A design plan for the LLRW storage facility for the two new proposed units based on more than assurances that the facility design will comply with NRC requirements, which must include information regarding building materials and high-integrity containers so as to permit a determination regarding exposure rates and dosages;

[2] In its RAI response, SNC indicated that it would revise its FSAR section 11.4 to incorporate new language concerning its long-term LLRW storage and disposal plans. See SNC RAI Response Enclosure at 3, 5-7. SNC subsequently amended its FSAR to include that language. See [SNC], [COLA], Part 2, [FSAR] at 11.4-1, 11.4-3 to -6 (rev. 2 Dec. 2009) (ADAMS Accession No. ML093570429) [hereinafter FSAR].

B. A specific designation of where on the VEGP site the storage facility will be located; and

C. A discussion of the health impacts on SNC employees from the additional LLRW storage associated with the two new proposed units.

Licensing Board Memorandum and Order (Ruling on Motion to Amend Contention) (Jan. 8, 2010) app. A (unpublished). In that order, the Board also indicated that it now viewed contention SAFETY-1 as amended to be a legal contention and that it considered the appropriate procedure for resolving the contention to be the filing of summary disposition motions. See id. at 8-9.

In accordance with the dispositive motion schedule established for contention SAFETY-1 in the Board's January 8 order, see id. at 10, on January 29, 2010, SNC filed a motion, accompanied by a statement of material facts purportedly not at issue, requesting that summary disposition be entered in its favor in connection with contention SAFETY-1. See [SNC] Motion for Summary Disposition of Contention SAFETY-1 (Jan. 29, 2010) [hereinafter SNC Dispositive Motion]; [SNC] Statement of Undisputed Facts in Support of Motion for Summary Disposition of Contention SAFETY-1 (Jan. 29, 2010) [hereinafter SNC Statement of Undisputed Facts]. On February 12, 2010, after a weather-related delay, the staff filed a response in support of the SNC dispositive motion. See NRC Staff Answer in Support of [SNC] Motion for Summary Disposition of Contention SAFETY-1 (Feb. 12, 2010) [hereinafter Staff Answer].[3] Thereafter, on February 16, the Board issued an order acknowledging the timeliness of the staff response under 10 C.F.R. § 2.306 and setting a new deadline of March 4 for Joint Intervenors' response

[3] Pursuant to the schedule set out in the Board's January 8 order, responses in support of dispositive motions were due February 8, 2010. Because federal offices in the Washington, D.C. area were closed on February 8-11 due to inclement weather, the staff filed its response on February 12. See Staff Answer at 1 n.2.

to the dispositive motion. See Licensing Board Memorandum and Order (Schedule for Joint Intervenors' Response to Dispositive Motion) (Feb. 16, 2010) (unpublished). Accordingly, on March 4, 2010, Joint Intervenors filed their response opposing SNC's dispositive motion along with a supporting statement of material facts purportedly in dispute. See Joint Intervenors' Response to Motion for Summary Disposition of Contention SAFETY-1 (Mar. 4, 2010) [hereinafter Joint Intervenors Answer]; Joint Intervenors' Statement of Disputed Facts in Response to SNC's Motion for Summary Disposition of Contention SAFETY-1 (Mar. 4, 2010) [hereinafter Joint Intervenors Statement of Disputed Facts].

Subsequently, on March 15, SNC submitted a motion requesting that the Board exclude portions of Joint Intervenors' answer to SNC's dispositive motion. See [SNC] Motion to Exclude Portions of Joint Intervenors' Response to Motion for Summary Disposition of Contention SAFETY-1 or, in the Alternative, for Leave to Reply (Mar. 15, 2010) [hereinafter SNC Motion to Exclude]. In support of its motion to exclude, SNC contends that Joint Intervenors sought improperly to amend the scope of their admitted contention in two respects: first, by introducing arguments that SNC's onsite storage plan "materially deviates from applicable regulations and guidance" and that onsite storage in general is not an adequate mechanism for handling LLRW; and second, by attacking the validity of SNC's offsite storage options as support for a new assertion that "'the Board should assume that LLRW will have to be stored onsite.'" SNC Motion to Exclude at 8-10 (quoting Joint Intervenors Answer at 10). Accordingly, SNC asserts that the Board should exclude from its consideration those portions of Joint Intervenors' answer and statement of disputed facts, as well as the associated citations to the expert declaration provided in support of their summary disposition response, that address these topics in connection with SNC's dispositive motion. See id. attach. A. Alternatively, SNC requests that it be given an opportunity, pursuant to 10 C.F.R. § 2.323(c), to file a reply to Joint Intervenors'

answer. See id. at 2, 10. In accord with a March 16 Board order, see Licensing Board Order (Schedule for Responses to Motion to Exclude or for Leave to Reply; Request for Notice Regarding Issuance of Advanced Safety Evaluation Report Chapter) (Mar. 16, 2010) (unpublished), on March 25, 2010, Joint Intervenors and the staff filed responses opposing SNC's motion to exclude. See Joint Intervenors' Response to [SNC] Motion to Exclude Portions of Joint Intervenors' Response to Motion for Summary Disposition of Contention SAFETY-1 or, in the Alternative, for Leave to Reply (Mar. 25, 2010); NRC Staff Answer to [SNC] Motion to Exclude or in the Alternative for Leave to Reply (Mar. 25, 2010).

II. ANALYSIS

A. Summary Disposition Standards

For proceedings such as this one conducted pursuant to the 10 C.F.R. Part 2, Subpart L "informal" hearing procedures, see LBP-09-3, 69 NRC at 165, summary disposition motions are to be resolved in accord with the same standards for dispositive motions that are utilized for "formal" hearings as set forth in 10 C.F.R. Part 2, Subpart G. See 10 C.F.R. § 2.1205(c). Under Subpart G, 10 C.F.R. § 2.710 provides that summary disposition may be entered with respect to "all or any part of the matters involved in the proceeding" if the motion, along with any appropriate supporting materials (including affidavits, discovery responses, and documents), shows that there is "no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." Id. § 2.710(a), (d)(2).

The party proffering the motion bears the burden of making the requisite showing by providing "a separate, short, and concise statement of the material facts as to which the moving

party contends that there is no genuine issue to be heard."[4] Id. § 2.710(a). A party opposing the motion must counter any adequately supported material facts provided by the movant with its own "separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard," with the recognition that, to the degree the responsive statement fails to contravene any adequately supported material facts proffered by the movant, the movant's facts "will be considered to be admitted." Id.

B. Analysis of Summary Disposition Motion

1. SNC Position

SNC asserts that, as a matter of law, it is not required to include in its FSAR the design, location, and employee health impact information at issue in contention SAFETY-1. According to SNC, only 10 C.F.R. § 52.79, not 10 C.F.R. Part 20, governs the content of this aspect of its FSAR, see SNC Dispositive Motion at 4-5, with section 52.79(a)(3) being the particular focus for the FSAR discussion of LLRW storage, see id. at 7. SNC further asserts that section 52.79(a)(3) requires only a discussion of "the 'means' for controlling and limiting radioactive effluents and radiation exposures" within Part 20 limits rather than detailed design information. This, according to SNC, is in contrast to section 52.79(a)(4) that requires "information such as 'principal design criteria,' 'design bases,' and 'information relative to materials of construction, arrangement, and dimensions, sufficient to provide reasonable

[4] Citing the differences between the language in section 2.710(a) and section 2.1205(a), there has been a past instance in which a summary disposition movant in a Subpart L proceeding declined to provide a statement of material facts not in dispute in support of its motion. See AmerGen Energy Co., LLC (License Renewal for Oyster Creek Nuclear Generating Station), Licensing Board Memorandum and Order (Denying AmerGen's Motion for Summary Disposition), Docket No. 50-0219-LR (June 19, 2007) at 10 n.12 (unpublished). Notwithstanding the Commission's statement that section 2.1205 is intended to provide a "simplified procedure for summary disposition in informal proceedings," Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2228 (Jan. 14, 2004), we fail to see how not providing such a statement (and the corresponding statement of disputed material facts from the responding

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assurance that the design will conform to the design bases with adequate margin for safety.'" Id. at 8-9 (quoting 10 C.F.R. § 52.79(a)(3), (4)).

In that regard, SNC argues that the more stringent requirements of section 52.79(a)(4) "are triggered only when temporary LLRW storage is a component of the facility to be constructed under the COL" and are not implicated if, as is the case for proposed Vogtle Units 3 and 4, the additional onsite LLRW storage facility is a contingency plan. Id. at 9. Additionally, SNC cites as relevant to its assertions the regulatory guidance from NUREG-0800, the staff's standard review plan for reviewing a reactor applicant's SAR, and Regulation Information Summary (RIS) 2008-32, which provides staff guidance to operating reactors on LLRW disposal in the wake of the Barnwell closure. According to SNC, as these documents instruct nuclear plant licensees that "on-site storage should only be utilized if off-site options are unavailable" and that they may use the procedures in 10 C.F.R. §§ 50.59 or 50.90 to expand on-site LLRW storage facilities, they are further evidence that COL applicants are not required to describe "at a construction-level of detail" onsite LLRW storage facilities that are merely contingent. Id. at 10-13 (citing NRC, Standard Review Plan for the Review of [SARs] for Nuclear Power Plants, NUREG-0800, at app. 11.4-A (rev. 3 Mar. 2007) (ADAMS Accession No. ML0707103970) [hereinafter NUREG-0800]; Office of Nuclear Reactor Regulation, NRC, NRC [RIS] 2008-32, Interim [LLRW] Storage at Reactor Sites at 3-4 (Dec. 30, 2008) (ADAMS Accession No. ML082190768) [hereinafter RIS 2008-32]).

Finally, in further support of its dispositive motion, SNC submits sixteen purported undisputed material factual statements regarding the contents of its FSAR generally discussing LLRW storage and disposal, potential offsite storage and disposal options, and the contents of its FSAR specifically describing its contingent onsite storage plan. See SNC Statement of

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party) makes the summary disposition process simpler.

Undisputed Facts. In this regard, SNC asserts that it has three offsite disposal options for LLRW from Units 3 and 4: (1) the EnergySolutions, Inc. facility near Clive, Utah, which is licensed by the State of Utah to accept Class A LLRW for disposal; (2) the Waste Control Specialists, Inc. facility near Andrews, Texas, which currently has pending with the Texas LLRW Disposal Compact Commission (TDCC) a request for authorization to accept Class A, B, and C LLRW for disposal from entities in states outside the Texas-Vermont compact that it expects to be acted upon in 2010; and (3) the Studsvik, Inc. facility near Erwin, Tennessee, which (a) is licensed by the State of Tennessee to accept Class A, B, and C waste, (b) under its Tennessee license can take title to transferred LLRW, and (c) offers a service to the nuclear industry whereby Studsvik accepts (and takes title to) Class B and C LLRW, processes such waste, and then transports the waste to the WCS Andrews, Texas facility for storage until a permanent disposal option becomes available. See id. at 4-5; id. exh. A. at 1-2 (Affidavit of Steven Jameson (Jan. 29, 2010). Further, relative to onsite storage, referencing the provisions of its FSAR section 11.4.6.3, SNC declares that although the radwaste building associated with Units 3 and 4 will hold only six-months' volume of packaged LLRW, onsite LLRW storage capacity can be expanded via an outside storage pad constructed in accord with NUREG-0800, app. 11.4-A. According to SNC, such additional onsite storage can be provided utilizing suitable containers that will not decay over time, sited such that the onsite facility can be sized to accommodate storage of Class B and C waste (which will be subject to minimization/volume reduction measures), and designed to accommodate future expansion as needed, with capacity added in phases based on the availability of offsite treatment, storage, and disposal facilities. See id. at 5-7.

2. Staff Position

Although not taking a position on whether SNC has actually satisfied the requirements of 10 C.F.R. § 52.79 with regard to its FSAR discussion of LLRW, the staff nonetheless concurs with SNC's legal arguments regarding the requirements of section 52.79(a)(3) and (a)(4). See Staff Answer at 5. Accordingly, the staff argues that the information listed in contention SAFETY-1 is not required in a COL application and that SNC's summary disposition motion should therefore be granted. See id. at 6-9.

3. Joint Intervenors Position

For their part, Joint Intervenors emphasize language in 10 C.F.R. § 52.79(a) requiring an FSAR to describe "'the facility as a whole . . . at a level of information sufficient to enable the Commission to reach a final conclusion'" on safety matters relevant to the issuance of a COL. Joint Intervenors Answer at 4-5 (quoting 10 C.F.R. § 52.79(a) (emphasis in original)). Joint Intervenors argue that this language is intended to "apply to all parts of the plant that have a bearing on its safe operation" and therefore includes any onsite LLRW storage. Id. at 5. Joint Intervenors also assert that compliance with 10 C.F.R. § 52.79(a)(3) requires "a description of means [that] must show how the intended goal will be accomplished, and not be a mere commitment to accomplish it." Id. Additionally, Joint Intervenors recite the Commission's statement in its July 2009 ruling reviewing the admissibility of contention SAFETY-1 that 10 C.F.R. § 52.79(a)(3) requires information "'tied to the COL applicant's particular plans for compliance through design, operational organization, and procedures,'" as well as reference RIS 2008-32 and section 11.4 of NUREG-0800 as evidence that the Commission intended the design, location, and health and safety impacts of a LLRW storage facility to be included in a COL applicant's FSAR. Id. at 6-9 (quoting CLI-09-16, 70 NRC at __ (slip op. at 6) (emphasis in original)).

Finally, Joint Intervenors dispute SNC's statement of facts with regard to the availability of the WCS and Studsvik offsite storage and disposal options for Class B and C LLRW and, accordingly, argue that the Board should assume that SNC's onsite LLRW storage facility will be necessary rather than contingent. See id. at 9-10. According to Joint Intervenors, although the WCS facility has a valid license to store and process LLRW, it may be unable to accept Plant Vogtle waste because of duration restrictions and radioactivity limitations that would lead to a lack of storage space at WCS for the waste from facilities in the various states, such as Georgia, that now lack affiliation with a compact having access to an operational disposal site. Moreover, while the WCS facility has a license to dispose of LLRW, there are (1) conditions imposed by the Texas Commission on Environmental Quality (TCEQ) that must be fulfilled before it can begin commercial LLRW disposal; and (2) a limitation on accepting waste from outside the Texas-Vermont compact, although Joint Intervenors note that permitting waste importation from outside the compact is under consideration in a current rulemaking (35 Tex. Reg. 1028 (Feb. 12, 2010)). Joint Intervenors note further that the WCS license and the facility's funding source are being challenged in the Texas state courts. And with regard to the Studsvik facility, Joint Intervenors declare that a one-year limitation in the Studsvik storage contract on Studsvik's retention of any accepted waste makes this an implausible long-term waste storage option. See Joint Intervenors Statement of Disputed Facts at 7-9; Joint Declaration of Arjun Makhijani and Diane D'Arrigo in Support of Intervenors' Opposition to Motion for Summary Disposition of Contention SAFETY-1, at unnumbered pp. 2-4 (Mar. 4, 2010) [hereinafter Makhijani/D'Arrigo Declaration]. Joint Intervenors also dispute SNC statements regarding the composition and volume of the LLRW that will be generated by Units 3 and 4 as well as the efficacy of outdoor pads as a safe storage method. See Joint Intervenors Statement of Disputed Fact at 4, 6; Makhijani/D'Arrigo Declaration at unnumbered pp. 5-6.

4. Board Ruling

After reviewing the information provided by the parties in their summary disposition-related filings, we conclude that the legal question of whether the items listed in contention SAFETY-1 are required in SNC's FSAR for Vogtle Units 3 and 4 depends on (1) which provision of 10 C.F.R. § 52.79(a), i.e., paragraph 3 or paragraph 4, governs the contingent LLRW storage facility; and (2) what level of detail is required by the relevant provision.[5]

On the matter of the controlling provision of section 52.79(a), we agree with SNC's and the staff's position that paragraph (a)(4), which might well require the type of design features that Joint Intervenors seek by way of contention SAFETY-1, governs only those structures that are "a component of the facility to be constructed under the COL." SNC Dispositive Motion at 9; see Staff Answer at 6. As contention SAFETY-1 by its own terms appears to concede, however, a Vogtle Units 3 and 4 long-term onsite LLRW storage facility only would be needed "in the event an off-site waste disposal facility remains unavailable when VEGP Units 3 and 4 begin operations." On that score, the information Joint Intervenors provide regarding offsite disposal options at best suggests that SNC might not have an offsite option when needed following the beginning of facility operation.[6] This is not, however, the same as showing that SNC must build an additional long-term onsite storage facility under the auspices of its COL to

[5] As SNC points out, although 10 C.F.R. Part 20 "'establish[es] standards for protection against ionizing radiation,'" it does not define the required contents of an FSAR and therefore does not guide the resolution of contention SAFETY-1. SNC Dispositive Motion at 5 (quoting 10 C.F.R. § 20.1001(a)).

[6] For example, the Joint Intervenors disputed facts statement asserts that WCS, one of the offsite options SNC discussed in support of its motion, "may be unable to accept waste from Plant Vogtle in the future," Joint Intervenors Statement of Disputed Facts at 6 (emphasis added), and the accompanying supporting expert declaration states that WCS currently has a LLRW storage license renewal application under TCEQ review and that the license is still in

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manage LLRW generated by proposed Vogtle Units 3 and 4 because it is certain offsite storage or disposal will be unavailable when needed after facility operations begin. That facility thus is not one that must be constructed under the COL. Certainly, such an interpretation is consistent with the longstanding agency recognition of the availability of the mechanisms under 10 C.F.R. §§ 50.59 or 50.90 for obtaining authorization to construct additional onsite LLRW storage facilities. See RIS 2008-32, at 2-4. We thus conclude that SNC's contingent long-term onsite LLRW storage facility, and the contents of SNC's FSAR with regard to that facility, are not governed by section 52.79(a)(4) as a part of the reactor facilities to be constructed under the requested COLs for Units 3 and 4.

As a consequence, the requisite content of SNC's FSAR discussion of long-term LLRW storage depends on the application of 10 C.F.R. § 52.79(a)(3) and what is meant by its requirement to provide information on the "means for controlling and limiting radioactive effluents and radiation exposures." We find nothing in the rule or the cited Commission statements regarding LLRW that indicate section 52.79(a)(3) requires the detailed design, location, and health impacts information outlined in amended contention SAFETY-1. Unlike section 52.79(a)(4), section 52.79(a)(3) does not list "principal design criteria," "design bases," or "[i]nformation relative to materials of construction, arrangement, and dimensions" as items that must be discussed in the FSAR. Compare 10 C.F.R. § 52.79(a)(3) with id. § 52.79(a)(4)(i)-(iii). Nor does the Commission's language in CLI-09-16 indicate that "means" includes actual design, location, or health impacts information. Rather, the Commission seems merely to have been stating that the information required under section 52.79(a)(3) is tied to the applicant's "particular plans for compliance through," but not necessarily the details of, "design,

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effect during the review period, see Makhijani/D'Arrigo Declaration at unnumbered p. 3.

operational organization, and procedures" associated with any contingent long-term LLRW facility. CLI-09-16, 70 NRC at __ (slip op. at 6).

We also do not agree with Joint Intervenors' argument that NUREG-0800, Appendix A "implies that the location of the onsite LLRW storage facility is an integral part of the facility design" and so establishes that the "means" required by section 52.79(a)(3) include such a design-related element. Joint Intervenors Answer at 8-9. We see this as a variation on Joint Intervenors' assertion that, regardless of the contingent nature of any long-term onsite LLRW storage facility, such a storage site nonetheless should be treated as part of the COL facility and thus be described in accordance with the detailed requirements of section 52.79(a)(4). As we discussed above, because any Units 3 and 4 long-term LLRW facility is merely contingent at this stage, we conclude that section 52.79(a)(4) does not govern its description in SNC's FSAR.

We therefore find no requirement in section 52.79(a)(3) for SNC's FSAR to include, as contention SAFETY-1 maintains, details regarding "building materials and high-integrity containers," exact location, or health impacts on employees for the Vogtle Units 3 and 4 contingent onsite long-term LLRW storage facility.[7] Thus, we conclude that, as a matter of law, SNC's FSAR need not include the details listed in contention SAFETY-1.

We would add as well that, in reaching these determinations regarding the requirements associated with section 52.79(a), we find that there is no dispute as to any material fact with

[7] Because contention SAFETY-1 focuses on the safety rather than environmental-related aspects of the SNC application, it is not apparent the issue we resolve in this ruling has any particular implications for the contention challenging the environmental impacts of long-term onsite LLRW storage admitted and pending in the Levy County COL proceeding. See Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 & 2), LBP-09-10, 70 NRC __, __ (slip op. at 75) (July 8, 2009) (admitting LLRW storage-related safety and environmental contentions); Levy County, Licensing Board Order (Approving Settlement and Dismissal of Contention 8) (Apr. 21, 2010) (dismissing safety-related LLRW storage contention of omission as settled) (unpublished).

respect to contention SAFETY-1. In their response, Joint Intervenors largely dispute SNC's statements regarding offsite disposal and storage options for Class B and C LLRW, specifically the WCS facility in Texas and the Studsvik, Inc., waste processing facility in Tennessee. See Joint Intervenors Statement of Disputed Facts at 6, 7-9. This challenge centers on how likely those offsite facilities will be to accept LLRW from Vogtle Units 3 and 4. Even assuming there is some probability, even a high probability, that SNC could not send LLRW from Vogtle Units 3 and 4 to either of those sites, as Joint Intervenors' own submissions indicate, see supra note 6, the possibility, albeit contingent, of offsite storage and disposal nonetheless remains so as not to bring any FSAR discussion of a long-term LLRW facility for Units 3 and 4 under section 52.79(a)(4) rather than section 52.79(a)(3).[8] Additionally, although Joint Intervenors challenge SNC's stated volumes of wet and dry Class B and C waste, see Joint Intervenors Statement of Disputed Facts at 4, and question whether the LLRW facility described in the AP1000 design certification document (DCD) can accommodate an extended period of delay in the availability of offsite disposal or storage options, see id. at 5-6, neither of these points affects whether SNC should have included further detail concerning its contingent onsite long-term LLRW storage facility in its FSAR.[9] Finally, Joint Intervenors challenge SNC's characterization

[8] In support of their disputed facts statement, Joint Intervernors' expert declaration also indicates that it is speculative whether disposal of out-of-state waste would be permitted at the WCS facility given the estimated disposal requirements of compact members Texas and Vermont. See Makhijani/D'Arrigo Declaration at unnumbered p. 4. This assertion, however, fails to account for the TDCC's ongoing rulemaking under which out-of-compact entities could be permitted to import LLRW for disposal at the WCS site. See id. at unnumbered p. 2. By the same token, given SNC's reliance on the WSC facility as a LLRW disposal planning option, a subsequent action by the TDCC that did not permit out-of-compact entities to import LLRW for disposal at the WSC site could provide the basis for a new contention in this proceeding. See 10 C.F.R. § 2.309(c).

[9] This dispute concerning waste volumes also relates to the accuracy of information that SNC did include in its FSAR, which Joint Intervenors did not challenge in either their original or amended contention SAFETY-1, a circumstance that differentiates this case from the recent

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of the adequacy or level of detail in its revised FSAR, see id. at 3-4, 10-12, but these disputes do not concern material matters of fact in this context.[10] Thus, we find that no material factual dispute exists relative to contention SAFETY-1 that would preclude the entry of summary disposition in favor of SNC.[11]

III. CONCLUSION

Joint Intervenors' amended contention SAFETY-1 posits several different alleged deficiencies in applicant SNC's FSAR plan for addressing the storage of LLRW from proposed Vogtle Units 3 and 4 in light of the closure of the LLRW repository at Barnwell, South Carolina. For the reasons set forth above, however, we find these purported failures to provide detailed information regarding design, location, and worker health impacts do not identify a deficiency under 10 C.F.R. § 52.79(a)(3), the agency's regulatory provision governing the FSAR LLRW information that is required to be provided in the SNC COL application.[12] Given this

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Licensing Board decision in the North Anna COL proceeding, in which an amended contention challenging an applicant's FSAR LLRW storage plan was admitted based on intervenor BREDL's adequately supported challenge to the plan's provisions regarding waste volume reduction. See Virginia Elec. & Power Co. (Combined License Application for North Anna Unit 3), LBP-09-27, 70 NRC __, ___ (slip op. at 34) (Nov. 25, 2009), reconsideration denied, Licensing Board Order (Denying Motion for Reconsideration of LBP-09-27) (Mar. 22, 2010) (unpublished).

[10] Both Joint Intervenors and the staff also note that SNC misstated the issuance date of the Vogtle Units 3 and 4 early site permit (ESP). See Joint Intervenors Statement of Disputed Facts at 2; Staff Answer at 9. However, that error does not raise a dispute on a material fact related to the required content of SNC's FSAR with regard to its LLRW storage plans.

[11] Because we find nothing in Joint Intervenors' disputed facts statement that creates a material factual dispute, we need not give further consideration to the SNC motion to exclude portions of Joint Intervenors' response or, alternatively, to file a reply.

[12] Given the current situation with the closure of the Barnwell facility to LLRW from states outside the Atlantic Compact, our ruling in this instance should not be interpreted as in any way relieving COL applicants that lack access to Barnwell or the LLRW disposal facility in Hanford,

(continued…)

determination regarding the application of section 52.79(a)(3), along with our determination that there are no material factual disputes associated with the SNC motion that would prevent the entry of summary disposition, we conclude that summary disposition regarding contention SAFETY-1 should be entered in favor of SNC. Further, because there are no additional contentions pending before the Board in this COL proceeding, with this ruling the contested portion of this proceeding is concluded.

For the foregoing reasons, it is this nineteenth day of May 2010, ORDERED, that

1. The January 29, 2010 motion for summary disposition of applicant SNC with respect to Joint Intervenors' contention SAFETY-1 is granted and judgment is entered in SNC's favor with respect to contention SAFETY-1.

Washington, of the need in their safety analysis report and/or environmental report to outline adequately their plans for long-term LLRW onsite and offsite storage and disposal.

2. As this memorandum and order concludes the contested portion of this COL proceeding in that no admitted contentions remain for litigation,[13] in accord with 10 C.F.R. § 2.341(b)(1), any petition for review shall be filed within fifteen (15) days after this issuance is served.

THE ATOMIC SAFETY
AND LICENSING BOARD

_____***/RA/***_____
G. Paul Bollwerk, III
Administrative Judge

_____***/RA/***_____
Nicholas G. Trikouros
Administrative Judge

_____***/RA/***_____
James F. Jackson
Administrative Judge

Rockville, Maryland

May 19, 2010

[13] A mandatory/uncontested hearing must, of course, still be conducted in this proceeding. See 73 Fed. Reg. at 53,446-47. Additionally, a hearing opportunity notice currently is outstanding in this proceeding relative to a pending SNC supplement to its COLA by which SNC requests a limited work authorization to engage in selected construction activities as defined by 10 C.F.R. § 50.10. See [SNC], et al.: Supplementary Notice of Hearing and Opportunity to Petition for Leave to Intervene on a [COLA] for the [VEGP] Units 3 and 4, 75 Fed. Reg. 23,306 (May 3, 2010).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
SOUTHERN NUCLEAR OPERATING COMPANY	)	Docket No. 52-025-COL and 52-026-COL
	)	
(Vogtle)	)	
	)	
(Combined Operating License)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (RULING ON DISPOSITIVE MOTION REGARDING CONTENTION SAFETY-1) (LBP-10-08) have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 19th day of May 2010