

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

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

In the Matter of

SOUTHERN NUCLEAR OPERATING CO.

(Vogtle Electric Generating Plant, Units 3 and 4)

Docket Nos. 52-025-COL and 52-026-COL

ASLBP No. 09-873-01-COL-BD01

August 17, 2010

MEMORANDUM

(Referring Request to Admit New Contention to the Commission)

In this proceeding regarding the request of applicant Southern Nuclear Operating Company (SNC) for a 10 C.F.R. Part 52 combined license (COL) authorizing the construction and operation of two new Advanced Passive (AP) 1000 reactors at its existing Vogtle Electric Generating Plant (VEGP) site, three groups¹ -- the Blue Ridge Environmental Defense League (BREDL), the Center for a Sustainable Coast (CSC), and Georgia Women's Action for New Directions for Clean Energy (GWA)² -- have submitted a request for the admission of a new contention challenging the adequacy of SNC's containment/coating inspection program for the proposed reactor units. BREDL/CSC/GWA have directed their August 12, 2010 contention

¹ Two of the groups that formed the Joint Intervenors in the contested portion of the Vogtle COL proceeding before the Licensing Board -- Savannah Riverkeeper and Southern Alliance for Clean Energy -- are not named as sponsors of the new contention.

² Although there is nothing in the August 12 request describing GWA, given its name, GWA appears to be a successor organization to the Atlanta Women's Action for New Directions organization that was admitted as one of the joint intervenors in the contested COL proceeding. See LBP-09-3, 69 NRC 139, 150 (2009), aff'd on other grounds, CLI-09-16, 70 NRC __ (July 31, 2009).

admission request to the three members of the Licensing Board that previously was assigned to conduct the contested portion of the Vogtle COL proceeding.³

As BREDL/CSC/GWA note in their filing, however, on May 19, 2010, that Licensing Board granted summary disposition in favor of applicant SNC regarding the only admitted contention in the contested portion of this COL proceeding. See Proposed New Contention by Joint Intervenors Regarding the Inadequacy of Applicant's Containment/Coating Inspections Program (Aug. 12, 2010) at 2. No petition for review was filed requesting that the Commission examine that Board action, nor (as far as the members of the Vogtle COL Board are aware) has the Commission taken sua sponte review of that decision. See 10 C.F.R. § 2.341(a)(2), (b)(1). As a consequence, the contested portion of the Vogtle COL proceeding has been terminated before that Licensing Board.⁴

With that termination, the Board previously constituted to conduct the contested portion of the proceeding regarding the SNC COL application for VEGP Units 3 and 4 now lacks jurisdiction to consider the validity of any nontimely/late-filed hearing petitions and/or new/amended contentions that might be submitted relative to the COL application (or any associated NRC staff safety or environmental determinations). Jurisdiction over the BREDL/CSC/GWA request appears to lie, instead, with the Commission. See Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-4, 63 NRC 32, 35-36 (2006) (although Licensing Board that dismissed case no longer has

³ A corrected version of the BREDL/CSC/GWA new contention admission request was submitted on August 13, 2010.

⁴ As the Licensing Board noted in its summary disposition ruling, a mandatory/uncontested hearing must still be conducted in this proceeding, see LBP-10-8, 71 NRC __, __ n.13 (slip op. at 18 n.13) (May 19, 2010), which the Commission has indicated it will preside over itself, see Licensing Board Memorandum and Order (Notice of Hearing), 74 Fed. Reg. 47,826, 47,826 n.1 (Sept. 17, 2009).

jurisdiction to consider motion to reopen proceeding, until license issues Commission retains jurisdiction to reopen closed case). As a consequence, the August 12 joint request of BREDL/CSC/GWA for the admission of a new contention is being referred to the Commission for appropriate action, including possible referral to the Atomic Safety and Licensing Board Panel's Chief Administrative Judge for the appointment of a Licensing Board to consider the BREDL/CSC/GWA request.⁵

Moreover, in the somewhat unusual circumstances that now apply in this proceeding, the Commission may wish to provide guidance to the presiding officer and the participants regarding the application of 10 C.F.R. § 2.309(a), (c) to the BREDL/CSC/GWA request.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III
CHAIRMAN

Rockville, Maryland

August 17, 2010

⁵ Although the agency rules governing responses to new or nontimely/late-filed intervention petitions (and any accompanying contentions) provide 25 days for the filing of an answer, see 10 C.F.R. § 2.309(h), and the Vogtle COL Licensing Board provided that responses to new/amended contentions in the contested proceeding could be submitted within 14 days, see Licensing Board Memorandum and Order (Initial Prehearing Order) (Dec. 2, 2008) at 6 n.6 (unpublished), absent some other directive from the Commission, in the current circumstances any participant filing an answer to the BREDL/CSC/GWA request would do well to comply with (or seek an extension of) the ten-day time period that governs responses to motions generally, see 10 C.F.R. § 2.323(c).

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)
(Vogtle))
)
(Combined Operating License))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM (REFERRING REQUEST TO ADMIT NEW CONTENTION TO THE COMMISSION) have been served upon the following persons by Electronic Information Exchange.

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Docket No. 52-025 and 52-026-COL
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 TO THE COMMISSION)

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Docket No. 52-025 and 52-026-COL
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[Original signed by Nancy Greathead]
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Dated at Rockville, Maryland
this 17th day of August 2010