

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. 10-903-01-COL-BD02

October 6, 2010

MEMORANDUM AND ORDER

(Additional Matters Regarding Initial Prehearing Conference/Oral Argument)

In accord with the Licensing Board's September 29, 2010 issuance, an initial prehearing conference/oral argument in this proceeding is scheduled for the following date, time, and locations:

Date: Tuesday, October 19, 2010

Starting Time: 9:00 a.m. Eastern Time (ET)

Locations: Atomic Safety and Licensing Board Panel Hearing Room  
Room T-3B45  
Third Floor, Two White Flint North Building  
11545 Rockville Pike  
Rockville, Maryland

and

245 Peachtree Center Ave.,  
Suite 1200 (Reception Area)  
Atlanta, Georgia

The Board will preside over this prehearing conference from the Panel's Rockville, Maryland hearing room. The Board also anticipates that counsel for applicant Southern Nuclear

Operating Company (SNC), Joint Intervenors,<sup>1</sup> and the NRC staff will participate from the Panel's Rockville facility. To accommodate any members of the public in the vicinity of the two new proposed Vogtle Electric Generating Plant facilities who might wish to observe the proceeding, the prehearing conference also will be available for viewing only (via videoconference) from a conference room in the agency's Region II office in Atlanta.<sup>2</sup> Anyone wishing to attend at the Rockville or Atlanta locations is reminded that they should arrive in sufficient time to allow for security screening and should bring a government-issued picture identification card (i.e., a driver's license).

The allocation of time for arguments by legal counsel in connection with Joint Intervenors' August 12, 2010 request (as revised) to admit new contention SAFETY-2 is as follows:<sup>3</sup>

Joint Intervenors -- 60 minutes (includes rebuttal)

SNC and NRC staff -- 60 minutes (total for both participants)

In their arguments, the participants should be prepared to address all the issues -- both procedural (i.e., Joint Intervenors' motion for leave to file a reply out of time; Joint Intervenors' standing; compliance with requirements governing nontimely/new contentions under 10 C.F.R. § 2.309(c)(1), (f)(2), and record reopening under section 2.326) and substantive (i.e., compliance with section 2.309(f)(1) contention admission standards) -- that have been raised

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<sup>1</sup> Joint Intervenors include the Blue Ridge Environmental Defense League (BREDL), the Center for a Sustainable Coast (CSC), and Georgia Women's Action for New Directions (Georgia WAND).

<sup>2</sup> Members of the public wishing to observe the prehearing conference from NRC's Region II office in Atlanta should report to the twelfth floor reception area, after which they will be escorted to the viewing area (Executive Conference Room, R2-1486-32p).

<sup>3</sup> Prior to beginning their arguments, counsel for Joint Intervenors and for SNC and the staff should be prepared to advise the Board about how they wish to divide their respective time allocations.

relative to the admissibility of contention SAFETY-2. In particular, the Board requests that the parties be prepared to provide their views on the following items:

1. Relative to Joint Intervenors' September 22, 2010 motion for leave to file their reply pleading out of time, the import (if any) of the Commission's recent decision in Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 and 2), CLI-10-26, 72 NRC \_\_, \_\_ (slip op. at 1-4) (Sept. 29, 2010) .
2. Relative to the showings necessary to support Joint Petitioners' request to admit a new contention, the import (if any) of the Commission's recent decisions in PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC \_\_, \_\_ (slip op. at 6-8) (Jan. 7, 2010); South Carolina Electric and Gas Co. and South Carolina Public Service Authority (Also Referred to as Santee Cooper) (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC \_\_, \_\_ (slip op. at 7) (Jan. 7, 2010); and U.S. Army Installation Command (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC \_\_, \_\_ (slip op. at 12) (Aug. 12, 2010).
3. Relative to the reopening standards of 10 C.F.R. § 2.326:
  - (a) the applicability (if any) of those standards to Joint Intervenors August 12, 2010 request to admit a new contention in light of the Commission's decision in Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 124-25 (2009); and
  - (b) whether a discretionary Board determination that an issue is "exceptionally grave" under section 2.326 is sufficient to supplant/fulfill the timeliness requirements associated with section 2.309(c)(1), (f)(2).

4. Relative to Joint Intervenors' assertion that the timeliness of their petition depends "on the publication on July 13, 2010, of new information in the transcript of the [Advisory Committee on Reactor Safeguards] meeting and the subsequent specific analysis of the program flaws demonstrated in the Gundersen Declaration," Joint Intervenors' Reply to SNC and NRC Staff Answers (Sept. 22, 2010) at 9 [hereinafter Joint Intervenors Reply], the import (if any) of the Commission's decision in Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC \_\_, \_\_-\_\_ (slip op. at 13-18) (Sept. 30, 2010).
5. Relative to the support provided by Mr. Gundersen for contention SAFETY-2, see Proposed New Contention by Joint Intervenors Regarding the Inadequacy of Applicant's Containment/Coating Inspection Program (Aug. 12, 2010) exh. 1, at 4-8 (Declaration of Arnold Gundersen Supporting [BREDL's] New Contention Regarding [Advanced Passive (AP)]1000 Containment Integrity on the Vogtle Nuclear Power Plant Units 3 and 4 (Aug. 13, 2010)) [hereinafter New Contention Petition], whether current plant data regarding containment failures is applicable to the AP1000 reactor design given the potential differences in design between a current generation containment liner and the AP1000 containment, e.g., shell thickness, materials, and coatings.
6. Relative to the SNC assertion that the containment coating/inspection matter raised by contention SAFETY-2 "challenges issues that either will be resolved in the AP1000 [design certification decision] proceeding, or that challenge existing NRC regulations and guidance," [SNC] Answer to Proposed New Contention by Certain Former Joint Intervenors (Aug. 23, 2010) at 11 [hereinafter SNC Answer],

as contrasted with Joint Intervenors' claim that "[i]nspection and maintenance procedures are clearly within the province of the license application," Joint Intervenors Reply at 11:

(a) whether the proposed contention is a challenge to the AP1000 certified design, or a challenge to the SNC combined license application (COLA); and  
(b) if the Board should find contention SAFETY-2 to be admissible, consistent with the Commission guidance in Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 322-23 (2009), whether the contention should be held in abeyance pending the outcome of the ongoing AP1000 design certification revision rulemaking process.

7. Relative to the "postulated fission product release" asserted by Joint Intervenors to be the basis for noncompliance with 10 C.F.R. § 52.157, see New Contention Petition at 5, whether the regulatory basis that would be the underpinning for such an analysis supports such a release.

8. Relative to the SNC statement that "[w]hat Movants have asserted is, at its core, a long-term maintenance issue that does not pose any immediate threat of harm," SNC Answer at 10:

(a) whether the AP1000 design must be flawed to warrant more inspections or the use of different/additional inspection methodologies under chapter 6 of the final safety analysis report portion (Part 2) of SNC's Vogtle COLA;

(b) whether an inspections, tests, analyses, and acceptance criteria (ITAAC) provision or a license condition would be appropriate to address an identified deficiency associated with an applicant's containment inspection program; and

(c) whether there are other avenues by which Joint Intervenors could raise the technical issue outlined in contention SAFETY-2 if the contention is not admitted.

Absent some other agreement among the participants, the Board anticipates that argument will be presented by only one counsel for each participant.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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G. Paul Bollwerk, III  
CHAIRMAN

Rockville, Maryland

October 6, 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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)  
SOUTHERN NUCLEAR OPERATING COMPANY ) Docket Nos. 52-025 and 52-026-COL  
) ASLBP No. 10-903-01-COL-BD02  
(Vogtle) )  
)  
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (ADDITIONAL MATTERS REGARDING INITIAL PREHEARING CONFERENCE/ORAL ARGUMENT) have been served upon the following persons by Electronic Information Exchange.

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Docket Nos. 52-025 and 52-026-COL  
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DOCKET NOS. 52-025 AND 52-026-COL  
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Dated at Rockville, Maryland  
this 6<sup>th</sup> day of October 2010

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