

November 5, 2010

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 and 4))

NRC STAFF'S ANSWER TO PETITIONERS' "ADDITIONAL AUTHORITIES"

On October 31, 2010, Petitioners¹ filed a document entitled "Additional Authorities (In Support of Oral Argument)," by which they apparently seek to supplement their responses to questions posed by the Licensing Board (Board) at oral argument held on October 19, 2010. See Additional Authorities (In Support of Oral Argument) ("Additional Authorities"). That argument concerned the proposed contention submitted by Petitioners on August 12, 2010. See Proposed New Contention by Joint Intervenors Regarding the Inadequacy of Applicant's Containment/Coating Inspection Program (Aug. 12, 2010) ("Petition"). On November 1, 2010, the Board issued an Order, directing that any response to Petitioners' submission should be filed on or before November 8, 2010. See Memorandum and Order (Schedule for Responses to Joint Intervenors' "Additional Authorities" and Notice of Need for More Time), at 1. As discussed below, because NRC's regulations do not provide for such a supplemental filing, the Board should decline to consider it.

DISCUSSION

Petitioners fail to cite any regulatory authority that authorizes them to supplement their proposed contention at this time and, indeed, there is no such authority for their filing. Their filing is not styled as a motion, although if Petitioners intend this list of observations as support

¹ Petitioners 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).

for their contention it would seem to compel a motion with supporting argument and a prayer for relief. In any event, were it to be construed as a motion, Petitioners did not contact Staff counsel prior to filing, as is required for filing motions under 10 C.F.R. § 2.323(b). Nor does 10 C.F.R. § 2.309(h)(3) allow for “other written answers or replies” to be entertained outside of a petition for leave to intervene, an answer to such petition, and a reply to any such answer. 10 C.F.R. § 2.309(h)(3). Furthermore, to the extent Petitioners seek to amend their contention, they do not attempt to address the standards of § 2.309(c) for untimely filings. There is, thus, no regulatory basis for Petitioners’ filing.

In sum, the Staff opposes the Petitioners’ filing on procedural grounds and thus does not believe that the stated “authorities” should be considered in the determination of the proposed contention’s admissibility. Nevertheless, in the interest of clarity, the Staff notes that there are some inaccuracies regarding the second and third “authorities” identified.²

² Regarding the second of the three “authorities” referenced, Petitioners have quoted a portion of the transcript from a meeting of the Advisory Committee on Reactor Safeguards (ACRS) on October 8, 2010 (Transcript) that was incorrectly transcribed. See Additional Authorities at 1. At the ACRS meeting, Mr. Klein was referring to “OD-initiated corrosion,” not “NDE-initiated corrosion.” See Transcript at 97. This was clear from the context provided in the previous paragraph of Mr. Klein’s presentation and to Staff from the Office of New Reactors who attended the meeting. OD-initiated corrosion refers to corrosion from the outside surface (Outside Diameter) of the vessel. Mr. Klein’s comments about OD-initiated corrosion are not applicable to the proposed new Vogtle units, since the AP1000 containment vessel is free-standing (not a liner) and can be inspected from the outside to detect OD-initiated corrosion. Mr. Klein was discussing containment designs where the outside surface of the steel liner is inaccessible because it is in contact with the concrete containment.

As to the third issue identified in the filing, Petitioners have mischaracterized the assumptions used by Westinghouse and assessed by the Staff in evaluating the release from the primary containment for the AP1000 design – the release from the primary containment is not directed into filtered areas. All the primary containment leakage is assumed to be released into the annulus and no filtration or other mitigation or holdup of fission products is assumed to occur within the annulus for the design basis accident (DBA) dose analyses which show compliance with 10 C.F.R. § 52.47(a)(2). Furthermore, the release from the containment and how it is modeled in the DBA dose analyses has not changed from Revision 15 to Revision 17 of the AP1000 DCD. Additionally, the Staff is unclear as to what Petitioners are referring with regard to the “leak rate described in the proposed contention [that] is at least 25 times this magnitude.” See Additional Authorities at 2.

Finally, it does not appear to the Staff that the first of the three “authorities” referenced represents new information that is materially different from that previously raised in the Petition.

CONCLUSION

For the reasons above, the Board should decline to consider Petitioners' filing.

Respectfully submitted,

/Signed (electronically) by/

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
Southern Nuclear Operating Co.) Docket Nos. 52-025 and 52-026
)
(Vogtle Electric Generating Plant,)
Units 3 and 4))

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC Staff's Answer to Petitioners' "Additional Authorities" have been served upon the following persons by Electronic Information Exchange this 8th day of November, 2010:

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Dated at Rockville, Maryland
this 5th day of November, 2010