

November 15, 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 APPLICANT'S MOTION TO STRIKE AND NOTICE OF
ADDITIONAL AUTHORITY

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"). Pursuant to the Board's Order of November 1, 2010,² the Staff filed an Answer to Petitioners' submission on November 5, 2010, opposing the filing on procedural grounds. See NRC Staff's Answer to Petitioners' "Additional Authorities." On November 8, 2010, Southern Nuclear Operating Company (Applicant) filed a Motion to Strike the Petitioners' filing, as well as a notice of an additional authority.³ On November 9, 2010, the Board issued an Order, setting a schedule for

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).

² See *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), at 1 (LBP Nov. 1, 2011) (unpublished order) (Schedule for Responses to Joint Intervenors' "Additional Authorities" and Notice of Need for More Time).

³ See Southern Nuclear Operating Company's Motion to Strike the Filing Entitled "Additional Authorities," or, in the Alternative, Southern Nuclear Operating Company's Response to Movants' Filing Entitled "Additional Authorities" and Notice of Supplemental Authority (Nov. 8, 2010) ("Motion").

responses to the Motion.⁴ As discussed below, although the Staff agrees with the arguments in Section II of the Motion and agrees with Section I of the Motion to the extent that it asserts that the Petitioners' filing is not provided for by NRC regulations, the Staff does not support the Motion.

DISCUSSION

The Applicant noted in its Motion that the NRC Staff did not "agree to the motion." See Motion at 2. The Staff did not support the Motion because the Board's November 1 Order already provided for responses to Petitioners' filing. As the Board thereby provided sufficient opportunity for the other parties to address both procedural and substantive concerns with the Additional Authorities, the Staff did not support the further delay in this proceeding that would be occasioned by additional responsive filings. However, the Staff agrees with the Applicant's legal and technical assertions in Section II of the Motion except to the extent that it moves to have material stricken from the record. Consistent with the Staff's answer dated November 5, 2010, the Staff also agrees with Section I of the Motion to the extent that it asserts that the Petitioners' filing is not provided for by NRC regulations. Nevertheless, the Staff does not support the Motion on procedural grounds, as the Board may decline to consider the Petitioners' filing without also striking it from the record.

⁴ See *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), at 2 (LBP Nov. 9, 2011) (unpublished order) (Schedule for Responses to Motion to Strike and/or Notice of Additional Authority).

CONCLUSION

In sum, while the Staff agrees with some of the Applicant's arguments in the Motion, it does not agree that a Motion to Strike is necessary. Accordingly, the Staff does not support the Motion.

Respectfully submitted,

/Signed (electronically) by/
Stephanie N. Liaw
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-2472
Stephanie.Liaw@nrc.gov

UNITED STATES OF AMERICA
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 15th day of November, 2010:

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Paul.Bollwerk@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail:OCAAmail@nrc.gov

Administrative Judge
James F. Jackson
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: James.Jackson@nrc.gov

Office of the Secretary
ATTN: Docketing and Service
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: HEARINGDOCKET@nrc.gov

Administrative Judge
Nicholas G. Trikouros
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Nicholas.Trikouros@nrc.gov

John D. Runkle, Esq.
P.O. Box 3793
Chapel Hill, NC 27515
Email: jrunkle@pricecreek.com

Kathryn M. Sutton, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave, N.W.
Washington, DC 20004
E-mail: ksutton@morganlewis.com

Peter D. LeJeune, Esq.
M. Stanford Blanton, Esq.
Balch & Bingham LLP
1710 6th Avenue North
Birmingham, AL 35203
E-mail: plejeune@balch.com
sblanton@balch.com

Louis A. Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629
Email: bredl@skybest.com

Respectfully submitted,

/Signed (electronically) by/
Stephanie N. Liaw
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-2472
Stephanie.Liaw@nrc.gov

Dated at Rockville, Maryland
this 15th day of November, 2010