

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)	Docket Nos. 52-025-COL & 52-026-COL
SOUTHERN NUCLEAR OPERATING CO.)	ASLBP No. 10-903-01-COL-BD02
Vogtle Electric Generating Plant)	
Units 3 and 4)	November 15, 2010
_____)	

RESPONSE TO SNC AND STAFF
MOTIONS TO STRIKE ADDITIONAL AUTHORITIES

NOW COME the Joint Intervenors with a response to SNC's motion to strike and the NRC's comments on the additional authorities submitted by the Joint Intervenors in support of the new contention. The new contention, SAFETY-2, addresses the flaws in the proposed containment structure for the Vogtle nuclear plant in which throughwall cracks and holes would vent radioactive materials into the environment during accidents. The Joint Intervenors submitted the three additional authorities after reviewing the transcript of the October 19, 2010 hearing of the ASLB.

Each of the additional authorities is directly relevant to the contention and was submitted to clear up points that were muddled at the oral argument either by counsel or one of the members of the ASLB. All three of the additional authorities go directly to the Joint Intervenors showing that the issue raised in the contention is an "exceptionally grave issue" as presented in the Joint Intervenors' Reply to SNC and NRC Staff Answers, September 22, 2010, and at the oral argument. The additional authorities directly support the "good cause" necessary to raise new or late-filed contentions.

The first of the authorities, NRC Information Notice No. 2010-12, "Containment Lining Corrosion," June 18, 2010, was referenced by Counsel for the Joint Intervenors at the oral argument and demonstrates that even the NRC staff had not realized the gravity of the problem and its widespread prevalence throughout the industry until some time after the filing of the new contention. The issue of the flawed containment for the AP-1000 reactors was brought to the Advisory Committee on Reactor Safeguards (ACRS) as soon as the Mr. Gundersen became aware of the significant impacts on public health and safety from this increasingly likely scenario. Only subsequent to the

investigation by Mr. Gundersen of the specific analysis of the Vogtle program has the NRC staff begun the process of putting together the pieces of the "puzzle." Only subsequent to the ASLB hearing has the NRC staff issued notices and alerts about additional reactors that have the same throughwall holes and cracks, as the recently discovered holes in the containment at the Turkey Point 3 reactor have been reported. The Information Notice, even without the inclusion of the hole in the containment at Turkey Point 3, is a clear demonstration that coating practices and inspection regimens have so far not eliminated the problem.

Subsequent to the oral argument before the ASLB, the ACRS received presentations from NRC staff on several occasions of throughwall breaches of containment linings. The transcript of the October 8, 2010 ACRS meeting, page 97, Mr. Paul Klein of the NRC's Nuclear Regulatory Research (NRR), stated that, "Licensees perform visual exams according to section 11 of the code, but, unfortunately, when you have NDE-initiated corrosion, those inspections really don't detect liner corrosion until you have perforated the wall, which is not a good situation."¹ Contrary to the position of the NRC staff in its comments on the additional authorities, the transcript is clear and Mr. Klein was not referring to just "OD-initiated corrosion," but "NDE-initiated corrosion." The NRC staff cannot arbitrarily rewrite the ACRS transcript to suit its own argument before the ASLB.

OD-initiated corrosion refers to corrosion from the outside surface, i.e., the outside diameter, of the containment vessel, and in the context of Mr. Klein's comments, NDE refers to all corrosion detectable by non-destructive evaluation, including corrosion originating in both the outside diameter and the inside diameter, whether it can easily be inspected or not. It should be noted that in its comments on the additional authority, the NRC staff agrees with one of the basic premises of the SAFETY-2 contention; problems with accessibility compound problems of detection of the throughwall holes and cracks associated with corrosion.

The third additional authority is a specific citation to NUREG-1793, the Final Safety Evaluation Report Related to the Certification of the AP1000 Standard Design. Specifically, Chapter 15 of the FSER, "Transient and Accident Analysis," in Section 15.3.6, "Radiological Consequences of LOCAs." This clears up an inexact statement by Judge Trikourous, a technical member of the ASLB panel, concerning a definition of an "intact containment."

The FSER is directly relevant to the new contention in that the design leak rate is considerably lower for an intact containment than in the scenario presented by Mr. Gundersen. The leak rate from a throughwall hole or crack in the Vogtle containment is approximately 25 times greater than the design leak rate. Equally important, and highly relevant to the new contention, is that while the assumed containment leak in the FSER

¹ www.nrc.gov/reading-rm/doc-collections/acrs/agenda/2010/

is directed into filtered spaces, the radiation described in the contention is directed unfiltered into the environment. The FSER definition goes directly to the exceptionally grave nature of the issue raised in the new contention and provides good cause why the ASLB must hear the matter.

Respectfully submitted, this the 15th day of November 2010.

 /signed (electronically)/
John D. Runkle
Attorney at Law
P.O. Box 3793
Chapel Hill, NC 27515
919-942-06000
jrunkle@pricecreek.com

Sara.Kirkwood@nrc.gov;
patrick.moulding@nrc.gov; sap1@nrc.gov
jsg1@nrc.gov;Carol.Lazar@nrc.gov;
jessica.bielecki@nrc.gov;
stephanie.liaw@nrc.gov

OGC Mail Center: Members of this office
have received a copy of this filing by EIE
service.

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

Moanica M. Caston, Esq.
Southern Nuclear Operating Company, Inc.
40 Inverness Center Parkway
P.O. Box 1295, Bin B-022
Birmingham, AL 35201-1295
E-mail: mcaston@southernco.com

Kathryn M. Sutton, Esq.
Steven P. Frantz, Esq.
Paul M. Bessette, Esq.
Mary Freeze, Legal Secretary
Angela M. Perry, Legal Secretary
Morgan, Lewis & Bockius, LLP
Co-Counsel for Southern Nuclear Operating
Co., Inc.
1111 Pennsylvania Ave., NW
Washington, DC 20004
E-mail: ksutton@morganlewis.com
sfrantz@morganlewis.com
pbessette@morganlewis.com
mfreeze@morganlewis.com
angela.perry@morganlewis.com

Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
Lawrence Sanders, Esq.
E-mail: lsande3@emory.edu

Mindy Goldstein
E-mail: magolds@emory.edu

Kenneth C. Hairston, Esq.
M. Stanford Blanton, Esq.
Peter D. LeJeune, Esq.
Chad Pilcher, Esq.
Millicent Ronnlund
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, Alabama 35203-2014
E-mail: kchairston@balch.com;
sblanton@balch.com;
plejeune@balch.com;
cpilcher@balch.com;
mronnlund@balch.com

C. Grady Moore, III, Esq.
Balch & Bingham, LLP
1901 6TH Avenue, Suite 2600
Birmingham, AL 35203
Leslie Garrett Allen, Esq.
E-mail: gmoore@balch.com
E-mail: lgallen@balch.com

Robert B. Haemer, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1122
E-mail: robert.haemer@pillsburylaw.com

James B. Dougherty, Esq.
709 3rd Street, SW
Washington, DC 20024
E-mail: jimdougherty@aol.com

David Kyler
Center For A Sustainable Coast
Mailing address: 221 Mallery St. Suite B,
St. Simons Island, GA 31522
Phone: 912-638-3612
Email: susdev@gate.net

Bobbie Paul
Georgia Women's Action for New
Directions, Inc.
Mailing address: 250 Georgia Ave. SE,
Ste. 202, Atlanta, GA 30312
Phone: 404-524-5999
Fax: 404-524-7593
Email: bobbie@wand.org

Barton Z. Cowan, Esq.
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
E-mail: teribart61@aol.com

This is the 15th day of November 2010.

/signed (electronically) by/
John D. Runkle
Attorney at Law
P.O. Box 3793
Chapel Hill, NC 27515
919-942-0600
jrunkle@pricecreek.com