

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)	December 9, 2010
_____)	

NOTICE OF APPEAL, REQUEST FOR ORAL ARGUMENT AND
BRIEF SUPPORTING NOTICE OF APPEAL BY JOINT INTERVENORS

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NOTICE OF APPEAL

Pursuant to 10 C.F.R. § 2.311, now comes the Blue Ridge Environmental Defense League, Georgia Women's Action for New Directions and the Center for a Sustainable Coast ("Joint Intervenors") by and through the undersigned counsel, with a notice of appeal from decisions taken by the Atomic Safety and Licensing Board ("ASLB") in this matter:

ASLB, Memorandum and Order, LBP-10-21 (November 30, 2010).

REQUEST FOR ORAL ARGUMENT

Pursuant to 10 C.F.R. § 2.343, the Joint Intervenors request the opportunity to be heard by the full Commission on the merits of this appeal.

BRIEF IN SUPPORT OF NOTICE OF APPEAL

This brief supports the above notice of appeal. The legal arguments in this brief are substantially supported in the other filings made by the Joint Intervenors in this docket and adopted by reference herein:

Petition for Intervention and Request for Hearing (November 17, 2008) and subsequent filing concerning the Petition and admitted Contention SAFETY-1

Proposed New Contention by Joint Intervenors Regarding the Inadequacy of Applicant's Containment/Coating Inspection Program (Corrected August 13, 2010) and supporting Affidavit of Mr. Gundersen and exhibits

Joint Intervenors' Reply to SNC and NRC Staff Answers (September 22, 2010) Additional Authorities (October 31, 2010)

Response to SNC And Staff Motions to Strike Additional Authorities (November 15, 2010)

Any consideration by the Commission must be made in context of the previous filings with due consideration of the legal and factual arguments made in those filings.

STATEMENT OF THE CASE

This proceeding concerns the combined operating license application ("COLA") for the proposed Vogtle Electric Generating Plant Units 3 and 4 ("Vogtle"), filed pursuant to 10 C.F.R. Part 52, Subpart C by the Southern Nuclear Operating Company ("SNC") on March 28, 2008. The COLA incorporates by reference 10 C.F.R. Part 52, Appendix D which includes the Westinghouse AP1000 pressurized water reactor Design Control Document ("DCD") Revision 16.¹

¹ The AP1000 DCD remains subject to an ongoing NRC rulemaking under Docket No. 52-006. The DCD Rev. 16 is available at www.nrc.gov/reactors/new-licensing/col/Vogtle.html#refDocuments. The current DCD is Revision 17 which has not been adopted by SNC for Vogtle.

On November 17, 2008, the Joint Intervenors submitted their Petition, raising a number of contentions on the inadequacies in the COLA and the flawed design of the Vogtle reactors. One of the contentions was admitted by the ASLB. The contention, designated SAFETY-1, questioned SNC's lack of a plan to deal with low-level radioactive waste generated by the proposed Vogtle reactors. This contention was subsequently dismissed on summary disposition by the ASLB. Memorandum and Order, LBP-10-8 (May 19, 2010).

On August 13, 2010, the Joint Intervenors proposed a new contention, designated SAFETY-2, regarding the inadequacy of applicant's containment/coating inspection program. The proposed contention was supported by Affidavit of Mr. Gundersen, a nuclear engineer with experience in inspection programs, and exhibits, including a report Mr. Gundersen had conducted on the flaws in the AP1000 reactor design. After answers by the SNC and NRC Staff, the Joint Intervenors filed their reply on September 22, 2010, and the matter was heard by the ASLB on October 19, 2010. The Joint Intervenors filed additional authorities in support of the oral argument on October 31, 2010, and responded to SNC and NRC Staff motions to strike the additional authorities on November 15, 2010.

On November 30, 2010, the ASLB issued a Memorandum and Order, LBP 10-21, denying the admission of the new contention.

LEGAL ARGUMENT

I. The ASLB order does not comply with the purpose of the Atomic Energy Act to protect public health and safety, and the purpose of the National Environmental Policy Act to address environmental impacts.

As detailed in Joint Intervenors' s Proposed New Contention and their other filings, the SNC's COLA fails to comply with both the provisions of the Atomic Energy Act ("AEA"), 42 U.S.C. §2011 *et seq.*, that protect health and safety, and the provisions of the National Environmental Protection Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, that address the environmental impacts of operating the proposed Vogtle reactors.

One of the AEA's primary mandates is to prohibit the Commission from issuing a license to operate a nuclear power plant if it would be "inimical to the common defense and security or to the health and safety of the public." 42 U.S.C. §2133(d). Public safety is "the first, last, and a permanent consideration in any decision on the issuance of a construction permit or a license to operate a nuclear facility." *Petition for Emergency and Remedial Action*, 7 NRC at 404, citing *Power Reactor Development Corp. v. International Union of Electrical Radio and Machine Workers*, 367 U.S. 396, 402 (1961). 10 C.F.R. § 50.34(a)(4) provides that a construction permit application for a nuclear power plant must include:

a preliminary analysis and evaluation of the design and performance of structures, systems, and components of the facility with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents.

The NRC relies in large part on the "adequacy of structures, systems and components"

to prevent and mitigate the accidental release of radioactive materials and other dangers to public health and safety, and the environment.

In the present instance, the Joint Petitioners have alleged, and proved by the Affidavit and engineering report of Mr. Gundersen, that the “structures, systems and components” of the reactors proposed for the Vogtle Plant are not adequate to prevent the accidental release of radioactive materials. In fact the releases of radioactive material directly from the environment from a throughwall hole or crack in the Vogtle containment vented into the atmosphere through a chimney effect is approximately 25 times greater than the design leak rate.² Equally important, and highly relevant to the new contention, is that while the assumed containment leak is directed into filtered spaces, the radiation described in the contention is directed unfiltered into the environment.

While the AEA sets minimum standards for safe and secure operation of nuclear facilities, NEPA requires the Commission to consider and attempt to avoid or mitigate significant adverse environmental impacts of licensing those facilities. NEPA goes beyond the AEA by requiring the consideration of alternatives for reducing or avoiding adverse environmental impacts of NRC licensing actions. 10 C.F.R. § 51.71(d). NRC regulations for implementation of the AEA provide that a nuclear power plant must be designed against accidents that are “anticipated during the life of the facility.” These are both the low-frequency but credible events referred to as design-basis accidents

² 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."

(“DBAs”), and accidents that are more complex and less likely than design basis accidents, the “severe accidents,” i.e., “those involving multiple failures of equipment or function and, therefore, whose likelihood is generally lower than design-basis accidents but whose consequences may be higher.”³ The applicant for a license must present its full analysis and evaluation of the adequacy of the proposed plant to protect the public health and safety from all releases and accidents. In its COLA, SNC cannot ignore the scenario for release of radioactive material into the environment as postulated in the new contention, SAFETY-2.

The fundamental goal of the licensing process is to analyze and evaluate the ability of the plant to operate in compliance with safety rules, and protect against “anticipated” accidents and design basis accidents, and the “reasonably foreseeable” impacts which have “catastrophic consequences, even if their probability of occurrence is low.” 40 C.F.R. § 1502.22(b)(1). In licensing hearings, the Commission has required that the EIS address the probability of severe accidents and how to prevent them if at all possible, or mitigate them if they cannot be prevented. See, e.g., *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 387 (2001).

Because of a fundamentally flawed design in the COLA compounded by Vogtle-specific inadequate procedures for inspection and coating, it is clear that the proposed reactors cannot operate safely, and protect public health and the environment, under the scenario offered by the Joint Intervenors.

³ “Policy Statement on Severe Accidents Regarding Future Designs and Existing Plants,” 50 F.R. 32,138, 32,139 (August 8, 1985).

II. The ASLB erred in determining that the new contention raised by Joint Intervenors was inadmissible.

The purpose of the licensing proceeding is to make certain that public safety is protected. As noted above, public safety is “the first, last, and a permanent consideration in any decision on the issuance of a construction permit or a license to operate a nuclear facility.” Contentions play a vital role in agency licensing adjudications by framing the issues for consideration. See *Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2)*, LBP-81-25, 14 NRC 241,243 (1981). The new Contention SAFETY-2 is clearly framed and brings to the ASLB an exceptionally grave issue that has significant ramifications for public health and safety. It is important to note that even though the ASLB dismissed the contention on procedural grounds, the ASLB found in essence the proposed contention had merit as it pointed directly to flaws in the COLA concerning the Vogtle inspection program and monitoring of maintenance. Memorandum and Order, page 39, footnote 28.

Contention admissibility is governed by 10 C.F.R. § 2.309(f)(1), stating that a contention is required to:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on

which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

In its Petition and subsequent filings, Joint Intervenors fully comply with these requirements by presenting the factual and legal support for Contention SAFETY-2, pointing to specific flaws.

While the rule on admissibility of contentions is "strict by design," relevant case law clearly holds that this restriction is not so strict that a contention cannot or should not be admitted. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349 (2001). A variety of contentions have been admitted by ASLBs at a number of the latest rounds of petitions on the adequacies of COLAs. See for example, *Tennessee Valley Authority*, (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC ____ (slip op.) (September 12, 2008).

As demonstrated by the in new Contention SAFETY-2, and supported by the specific analysis by Mr. Gundersen the Vogtle Containment/Coating Inspection Program is flawed. If so, the matter meets the standards for admissibility of contentions in COL proceedings. Inspection and maintenance procedures are clearly within the province of the license application; "[e]very applicant for a combined license under Part 52 of this chapter is required by the provisions of § 52.79 of this chapter to include in its final

safety analysis report a description of the quality assurance applied to the design, and to be applied to the fabrication, construction, and testing of the structures, systems, and components of the facility and to the managerial and administrative controls to be used to assure safe operation." See Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants."

The criteria for admitting new contentions pursuant to 10 CFR § 2.309 and a motion to reopen pursuant to 10 CFR § 2.326 contain many of the same criteria, and the principal considerations of both are the timeliness of the new information or analysis, the significance of the issue raised in the new contention and the severity of the public safety impact if the issue is not addressed on the merits.⁴ These criteria

⁴ 10 CFR § 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.
* * * * *

(c) Nontimely filings. (1) Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition and contentions that the request and/or petition should be granted and/or the contentions should be admitted based upon a balancing of the following factors to the extent that they apply to the particular nontimely filing:

- (i) Good cause, if any, for the failure to file on time;
 - (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
 - (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
 - (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
 - (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
 - (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
 - (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
 - (viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.
- * * * * *

10 CFR § 2.309 (f)(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in

may be summarized whether good cause exists to admit the contention. The initial reliance by the ASLB on *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-09-05, 69 NRC 115 (2009), sets an unduly high standard for reopening a proceeding. In that matter the petitioners ought to introduce new contentions after the ASLB had denied their initial petition and all of their contentions, in contrast the present proceeding in which a previous contention had been admitted.

Although a presiding officer must assess all criteria in determining whether to admit a late-filed contention, all the factors need not be given equal weight. In this connection, considerable importance generally has been attributed to factor one - "good cause" for late filing - in that a failure to meet this factor enhances considerably the burden of justifying the other factors. See *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 397 (1983); *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2). LBP-82-91, 16 NRC 1364, 1367

the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that--
(i) The information upon which the amended or new contention is based was not previously available;
(ii) The information upon which the amended or new contention is based is materially different than information previously available; and
(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

* * * * *

10 CFR § 2.326 Motions to reopen.

(a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:

- (1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
- (2) The motion must address a significant safety or environmental issue; and
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

(b) The motion must be accompanied by affidavits that for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

(1982); see also *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit 2), ALAB-420, 6 NRC 8, 22 (1977) (when good cause is demonstrated, other factors are given less weight). The most significant of the late-filed contention criteria is the first - "[g]ood cause, if any, for failure to file on time." 10 C.F.R. § 2.309(c)(ii). See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-20, 53 NRC 565, 570 (2001).

As to the timeliness of the contention and the timeliness of reopening of the proceeding, no one could have known what the opinion of the expert ACRS members would be prior to their meeting of June 25, 2010 regarding the issues of corrosion, coatings, inspection and maintenance issues initially raised in generic terms by Mr. Gundersen. After a careful examination of the transcript of the ACRS meeting, Mr. Gundersen then analyzed the specific ramifications of the containment/coating inspection program as it related to the application for the Vogtle Plant. The timeliness of Contention SAFETY-2 hinges on the publication on July 13, 2010, of new information in the transcript of the ACRS meeting and the subsequent specific analysis of the program flaws demonstrated in the Gundersen Affidavit that provides the basis for Contention SAFETY-2.⁵

⁵ The tension between the ASLB's adjudicatory mission and the technical and investigative nature of the ACRS may lead to licensing issues regarding the AP1000 reactor to be removed from public review. It is impossible for intervenors to assess the compliance of COLA with safety rules without a complete, certified and reviewed design at the licensing stage. Licenses should not be issued until issues with the design have been safely resolved. The present example of the AP1000 nuclear reactor containment is illustrative. ACRS Chairman Ray stated, "[T]hat will be taken up as part of the COL. So if you don't see it being discussed in the context of the DCD, it's because it's there and not any other place." ACRS Chairman Ray's statement was unequivocal and pointed to the availability of the only means by which the Joint Intervenor's interest would be protected. See 2.309(c)(v). The ASLB characterized this statement as "irrelevant." Memorandum and Order, page 24.

At page 25 of the Memorandum and Order, the ASLB erroneously concludes there is nothing in the Gundersen affidavit or the documentary material provided to as “evidentiary” information that would suggest Joint Intervenors’ alleged concern regarding the AP1000 design has any particular significance for the proposed Vogtle units that would merit resolution in this adjudicatory proceeding.

The Joint Intervenors disagree; the Gundersen Affidavit and supporting exhibits clearly demonstrate that the scenario of radioactive material directly released into the environment is exceptionally grave in nature, and could have a devastating impact on public health and safety. This is the exact sort of substantive contention that must be resolved by an evidentiary hearing on the merits.

As demonstrated in the Gundersen Affidavit and its exhibits, the new contention concerning the flaws in the Vogtle containment/coating inspection program could not have take place without preliminary analysis by Mr. Gundersen on containment flaws in the AP1000 reactors, the discussion of the issue with the members of the ACRS and the subsequent specific analysis of the Vogtle program, the cumulative putting together the pieces of the "puzzle." NRC Information Notice No. 2010-12, "Containment Lining Corrosion," June 18, 2010, 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 ACRS as soon as the Mr. Gundersen became aware of the significant impacts on public health and safety from this increasingly likely scenario.

The ASLB arbitrarily decided that the latest date a litigable issue existed was when the initial report was conducted by Mr. Gundersen regarding the AP1000

containment. Memorandum and Order, page 24, footnote 14. Again, the ASLB would hold Mr. Gundersen (and the Joint Intervenors) prescient on what the ACRS's position would be on the issue, what the NRC would report in its June 2010 Information Notice and on what the specific deficiencies would be at the Vogtle Plant without having conducted an analysis. As a result, the ASLB concluded that procedural matters, such as the arguable "when-intervenors-reasonably-should-have-realized something" test, outweighs all other factors, including the availability of other means to protect the interests of Joint Intervenors in presenting a specific, identifiable safety problem of an exceptionally grave nature.

The ASLB ignores the reasoned analysis in the Gundersen Affidavit and rules that the proposed contention SAFETY-2 amounts to no more than an improper challenge to the AP1000 standard design and NRC inspection-related regulations as well as a redundant affirmation of established maintenance methodology.

Memorandum and Order, page 33. The issue, as it specifically relates to the proposed Vogtle reactors, is made clear in Mr. Gundersen's affidavit. The issues that are specific to the COL for the Vogtle Plant are that the field application of protective coatings is problematic; the contractor for the Vogtle Plant has a record of ignoring problems with field application of protective coatings; the visual inspections at Vogtle will not be frequent enough or adequate enough to assure complete coverage; the COL application does not state whether Vogtle will seek exemptions from the American Society of Mechanical Engineers ("ASME") for limited exams in hard to access areas; and Vogtle's interpretation of the ASME code requirements.

Further, the finding of good cause regarding an assessment of whether an issue

is new information may be based upon a constellation of factors. Generally a "good cause" finding based on "new information" can be resolved by a straightforward inquiry into when the information at issue was available to the petitioner. In some instances, however, the answer to the "good cause" factor may involve more than looking at the dates on the various documents submitted by the petitioners. Instead, the inquiry turns on a more complex determination about when, as a cumulative matter, the separate pieces of the new information "puzzle" were sufficiently in place to make the particular concerns espoused reasonably apparent. See *Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit I)*, ALAB-868, 25 NRC 912, 926 (1987).

The new contention also meets the requirements of §2.326(b) in that Mr. Gundersen is an expert "in the disciplines appropriate to the issues raised" for both the contention itself and the §2.326(a) requirements. See *Curriculum Vitae*, Exhibit 2 to the Gundersen Affidavit. In contrast, the ASLB appeared to dismiss the new contention based on the experience of the members rather than on reports and studies already conducted, and certainly not on expert testimony in an evidentiary hearing. The uncontroverted facts, and resulting conclusions, in the Gundersen Affidavit provide the fundamental support for the new contention. The Gundersen Affidavit also sets "forth the factual and/or technical bases" for the contention, and specifically for the showing of reopening a proceeding, demonstrates, among other issues, that the flaws in the Vogtle Containment/Coating Inspection Programs will have a significant impact on public health and safety. Among his other conclusions, Mr. Gundersen warns that:

The Vogtle AP1000 nuclear plant design is directly and significantly impacted by the nuclear industry's experience of through wall cracks, liner failures and through-wall rust holes. Gundersen Affidavit, ¶29.

Neither the NRC nor the applicant SNC have evaluated the likelihood of a through-wall containment leak at Vogtle that could lead to greater-than-design-basis isotopic leakage in the event of an accident. Gundersen Affidavit, ¶34. The ASLB certainly did not evaluate the exceptionally grave contention before them in any meaningful way.

The standard under the 10 C.F.R. §2.326(a) to reopen a proceeding is slightly different in that although the motion must be timely, "an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented." §2.326(a)(1). The significance and weight of the grave issue presented in the contention and accompanying Gundersen Affidavit demonstrate overwhelmingly the need for the ASLB to consider the new contention. The exceptionally grave issue presented in the Gundersen Affidavit also addresses the other two requirements for reopening a proceeding; the proposed contention "addresses a significant safety or environmental issue" under §2.326(a)(2), and "a materially different result would be or would have been likely had the newly proffered evidence been considered initially" under §2.326(a)(3). Given that the accident scenario described in the Gundersen Affidavit shows a strong possibility of an extraordinary release of radiation if there is a failure of the Vogtle Containment/Coating Inspection Program, this is an exceptionally grave and significant safety and environmental issue. If the opinions of the ACRS, as well as the Vogtle site-specific analysis performed by Mr. Gundersen, had been available earlier, the ASLB would have in all likelihood have had hearings on the merits and concluded that the COL should not be granted.

Under the regulatory requirements as described above, and centered on the protection of public safety, each of the contentions discussed below is admissible.

CONCLUSION

For the reasons given above, and as supported by the filings Joint Intervenors have made in this proceeding, the Memorandum and Order, LBP-10-21, should be reversed. Because of the considerable and substantial errors in law, arbitrary and capricious determinations, and reliance on matters outside the record, the review by the Commission should be a *de novo* review on the entire record before it.

In light of the arguments given above and the exceptionally grave nature of the issue raised, Joint Intervenors should be granted its request for oral argument before the Commission.

Respectfully submitted this the 9th day of December 2010.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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_____)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing ADDITIONAL AUTHORITIES (In Support of Oral Argument) on behalf of the Joint Intervenors have been served upon the following persons by Electronic Information Exchange:

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