UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	**Docket Nos. 52-025-COL and 52-026-COL**
Southern Nuclear Operating Company	)	
	)	
(COL Application for Vogtle Electric Generating Plant, Units 3 and 4)	)	**August 22, 2011**

SOUTHERN NUCLEAR OPERATING COMPANY'S
ANSWER IN OPPOSITION TO MOTIONS TO REOPEN THE RECORD AND
REQUEST TO ADMIT NEW CONTENTIONS

In accordance with 10 C.F.R. § 2.323(c), Southern Nuclear Operating Company ("SNC") submits this Answer In Opposition To Motions To Reopen The Record And Request To Admit New Contentions ("Answer"). On August 11, 2011, nearly 15 months after the contested portion of the Vogtle Units 3 and 4 proceeding was terminated, the Blue Ridge Environmental Defense League ("BREDL") filed a "Motion to Reopen The Record And Admit Contention Regarding The Safety And Environmental Implications Of The Nuclear Regulatory Commission Task Force Report On The Fukushima Dai-ichi Accident" ("BREDL Motion") along with a "Contention Regarding NEPA Requirement To Address Safety And Environmental Implications Of The Fukushima Task Force Report" ("BREDL Contention Filing"), which contained three proposed contentions. Also on August 11, 2011, Center for a Sustainable Coast, Georgia Women's Action for New Directions f/k/a Atlanta Women's Action for New Directions, and

Southern Alliance for Clean Energy ("CSC Movants")[1] filed a "Motion To Reopen The Record And Admit Contention To Address The Safety And Environmental Implications Of The Nuclear Regulatory Commission Task Force Report On The Fukushima Dai-ichi Accident" ("CSC Motion") along with a "Contention Regarding NEPA Requirement To Address Safety And Environmental Implications Of The Fukushima Task Force Report" ("CSC Contention Filing"), which contained one proposed contention.[2]

BREDL and the CSC Movants filed substantially the same motion to reopen the record,[3] and filed substantially the same contention alleging that NRC's Fukushima Task Force Report[4] constituted new and significant information necessitating review under the National Environmental Policy Act ("NEPA"). This contention, referred to herein as "Proposed NEPA-1," mischaracterizes the Task Force Report and amounts to nothing more than a broadside challenge to existing NRC licensing requirements and other regulations. BREDL and the CSC Movants do not demonstrate that Proposed NEPA-1 raises a significant environmental issue or that a materially different result would be or would have been likely had the Task Force Report been considered initially, as required by 10 C.F.R. § 2.326(a)(2) and (a)(3). Additionally,

[1] The original "Joint Intervenors" in the Vogtle Units 3 and 4 contested proceeding were Atlanta Women's Action for New Directions, BREDL, the Center for Sustainable Coast, the Savannah Riverkeeper, and the Southern Alliance for Clean Energy. Movants no longer include Savannah Riverkeeper, and BREDL is filing independently of the other Movants. Additionally, the Atlanta Women's Action for New Directions is now the Georgia Women's Action for New Directions. As used herein, "Movants" refers to BREDL and the CSC Movants collectively.

[2] SNC is filing this Answer simultaneously before the both the Commission and the ASLB because, at the time of filing, SNC has not received notice that an ASLB has been appointed to consider the Motions and/or Contention Filings, although the August 18, 2011 Order from the Secretary referred the BREDL Motion and BREDL Contention Filing to the Chief Administrative Judge of the ASLB Panel. SNC respectfully requests that any ASLB constituted in the future to consider all or part of the issues raised in the August 11, 2011 BREDL and/or CSC filings consider this Answer as if it were filed before that ASLB. SNC notes that Section II.C, regarding CSC's Rulemaking Petition, will remain properly before the Commission after an ASLB is appointed.

[3] BREDL's version of its statement of contention contains two additional issues to Proposed NEPA-1, "seismic-flood and environmental justice issues." As described below, these issues are not linked to the Task Force Report, and so are answered separately, in Section II.B.2 of this Answer.

[4] "Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights From the Fukushima Dai-ichi Accident" (July 12, 2011) ("Task Force Report").

BREDL fails to even address the § 2.326 reopening requirements for its two other proposed contentions, which are both blatantly untimely under § 2.326(a)(1). Accordingly, the BREDL and CSC Motions fail to meet the requirements for reopening the record.

Additionally, CSC Movants attach a request for rulemaking and request that NRC suspend the Vogtle Units 3 and 4 COLA proceeding while it considers the rulemaking and while it considers Proposed NEPA-1 ("CSC Petition to Suspend").[5] Because the CSC Rulemaking Petition is not properly filed on this docket, SNC does not address the merits of it. However, SNC notes that, as a threshold matter, the Petition fails to meet the applicable regulatory requirements in 10 C.F.R. §§ 2.802 or 2.335. With respect to CSC's request to suspend the Vogtle Units 3 and 4 COLA proceeding, Movants fail to address any of the Commission's standards for suspending proceedings pending rulemakings.[6]

I. PROCEDURAL HISTORY

On November 17, 2008, BREDL and CSC Movants (plus one entity that is not involved in the August 11, 2011 filings)[7] filed a petition to intervene and request to admit several contentions in the Vogtle COLA proceeding. On March 5, 2009, the Original COLA ASLB[8] granted the petition to intervene and admitted one contention, designated Safety-1.[9] On May 19, 2010, the Original COLA ASLB granted SNC's motion for summary disposition as to amended

[5] Rulemaking Petition To Rescind Prohibition Against Consideration Of Environmental Impacts Of Severe Reactor And Spent Fuel Pool Accidents And Request To Suspend Licensing Decision, Rulemaking Docket No. ___; Docket Nos. 52-025-COL and 52-026-COL (Aug. 11, 2011).

[6] SNC adopts and incorporates by reference its Answer To Emergency Petition To Suspend All Pending Reactor Licensing Decisions And Related Rulemaking Decisions Pending Investigation Of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident, Docket Nos. 52-025-COL and 52-026-COL (May 2, 2011).

[7] *See* note 1, *supra.*

[8] As will be explained below, there have been two separate ASLBs, made up of the same members, involved in this licensing matter. The "Original COLA ASLB" refers to the ASLB that ceased to exist after the COLA proceeding was first terminated.

[9] *So. Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-3, 69 NRC 139 (2009), *review denied* CLI-09-16, 70 NRC 33, 34 (2009).

Safety-1,[10] and closed the contested portion of the COLA proceeding.[11] The Appellants did not seek review of that Order and the Commission declined to review the order *sua sponte*. Accordingly, the May 19, 2010 Order on Amended Safety-1 terminated the contested portion of the COLA proceeding.[12]

Two and a half months later, BREDL and CSC Movants (except for Southern Alliance for Clean Energy) submitted a Motion to Admit Safety-2 to the Original COLA ASLB for the Vogtle COLA proceeding.[13] Because the Original COLA ASLB had ceased to exist after the contested proceeding terminated, the Motion was referred to the Commission. The Commission in turn forwarded the Motion to the Chief Administrative Judge of the ASLB Panel; the Chief Administrative Judge appointed the Second COLA ASLB to preside over the admission of, and any subsequent litigation regarding Safety-2.[14] The Second COLA ASLB denied the motion to admit Safety-2 on the grounds that it failed to satisfy the criteria for reopening a closed record under 10 C.F.R. § 2.326.[15] On December 9, 2010, BREDL and CSC Movants (except for Southern Alliance for Clean Energy) filed a notice of appeal to the Commission of the Order on Safety-2 and its supporting brief, pursuant to 10 C.F.R. § 2.311, and a request for oral argument pursuant to 10 C.F.R. § 2.343. On December 20, 2010, SNC and NRC Staff filed briefs in opposition to the appeal, which remains pending before the Commission.

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[10] Safety-1 was amended by the Original COLA ASLB on January 8, 2010. *See* Memorandum and Order (Ruling on Motion to Amend Contention) (Jan. 8, 2010), 10-11 (unpublished).

[11] *So. Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-08, 71 NRC __, slip op. at 17-18 ("Order on Amended Safety-1").

[12] *So. Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-21, ___ NRC ___, slip op. at 4 (Nov. 30, 2010) ("Order on Safety-2").

[13] Proposed New Contention by Joint Intervenors Regarding the Inadequacy of Applicant's Containment/Coating Inspection Program, Docket Nos. 52-025-COL and 52-026-COL (Aug. 12, 2010) ("Motion to Admit Safety-2").

[14] *See* [SNC], Establishment of Atomic Safety and Licensing Board, 75 Fed. Reg. 53,985 (Sept. 2, 2010).

[15] Order on Safety-2, at 2.

On April 14, 2011, BREDL, CSC Movants, and several other entities submitted a Petition to the NRC seeking to suspend all pending licensing proceedings and licensing decisions before the NRC in response to the March 2011 events at the Fukushima Dai-ichi nuclear power plant in Japan. The Petition was filed in the Vogtle Units 3 and 4 COLA docket without filing either a contention or a motion to reopen the record.[16] SNC and the NRC Staff filed in opposition to the Petition on May 2, 2011, and several other applicants opposed the Petition in their respective dockets. The Commission has not issued any ruling on the Petition. BREDL and the CSC Movants then filed Proposed NEPA-1 on August 11, 2011.

II. ARGUMENT

A. The Motions to Reopen Should Be Denied

The Commission believes it is "self-evident" that "a motion to reopen is an 'extraordinary action,' and that a heavy burden is put on proponents."[17] The Commission has further recognized that "[t]he standards for reopening are strict and demanding."[18] A motion to reopen the record will not be granted unless the "demanding requirements in 10 C.F.R. § 2.326 are satisfied."[19] Thus, Movants' Motions to Reopen must (1) be timely or present "an exceptionally grave issue;" (2) "address a significant safety or environmental issue;" (3) "demonstrate that a materially different result would be or would have been likely had the newly

[16] "Emergency Petition to Suspend all Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident," Docket Nos. 52-037-COL, *et al*. (Apr. 14-18, 2011) (filed in Docket Nos. 52-025-COL and 52-026-COL on Apr. 14, 2011) ("Emergency Petition"), as amended on Apr. 18, 2011.

[17] *Criteria for Reopening Records in Formal Licensing Proceedings*, 51 Fed. Reg. 19,535, 19,538 (May 30, 1986); *Amergen Energy Co*. (License Renewal for Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 668-69 (2008).

[18] *Amergen Energy Co*. (License Renewal for Oyster Creek Nuclear Generating Station), LBP-08-12, 68 NRC 5, 15 (2008), *review denied* CLI-08-28, 68 NRC 658.

[19] *Amergen Energy Co, LLC* (Oyster Creek), LBP-08-12, 68 NRC at 9.

proffered evidence been considered initially;"[20] and, (4) because the Movants raise a "contention not previously in controversy among the parties," satisfy the requirements for nontimely contentions set forth in § 2.309(c).[21] Neither Motion to Reopen meets these demanding requirements; therefore, the Motions to Reopen must be denied.

1. The Motions to Reopen are Untimely and Therefore Do Not Meet the Requirements of 10 C.F.R. § 2.326(a)(1).

Movants have failed to demonstrate that the Motions to Reopen are timely. To be considered timely under § 2.326(a)(1), a motion to reopen generally must be filed within 30 days of the availability of "new" information.[22] Movants claim that their Motions to Reopen are timely because they are "based on information contained within the Task Force Report" and "they were filed within thirty (30) days of publication of the Task Force Report."[23] However, the information upon which the Movants base their motions is not new. Rather, the central precipitating events that underlie the Motions to Reopen and Proposed NEPA-1 are the March 11, 2011, events in Japan, as evidenced by Makhijani Declaration:

> [T]the Task Force Review provides *further support* for my opinions *that the Fukushima accident presents new and significant information* regarding the risks to public health and safety and the environment posed by the operation of nuclear reactors and that the integration of this new information into the NRC's licensing process could affect the outcome of safety and environmental analyses for reactor licensing … decisions ….[24]

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[20] 10 C.F.R. § 2.326(a). In addition, under § 2.326(b), Movants are required to address each of the criteria of § 2.326(a) with affidavits accompanying the motion.

[21] 10 C.F.R. § 2.326(d).

[22] *See* Order on Safety-2, at 24. Generally, in order to be timely under § 2.309(c)(1) and/or § 2.309(f)(2)(iii), Boards have determined that the contention should be submitted within 30 days of the new information. *See also, e.g., Entergy Nuclear Vt. Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 574 (2006); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-28, 52 NRC 226, 231 (2000).

[23] CSC Motion, at 4-5; BREDL Motion, at 4-5.

[24] Declaration Of Dr. Arjun Makhijani Regarding Safety And Environmental Significance Of NRC Task Force Report Regarding Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident (Aug. 8, 2011) ("Makhijani Declaration"), at ¶ 6 (emphasis added).

Movants have seized upon the Task Force Report, but do not point to a single new, factual finding from the Task Force Report that changes the Vogtle Units 3 and 4 Final Supplemental Environmental Impact Statement's ("FSEIS") analysis under the existing regulatory regime. The Commission recently rejected a similar "bootstrapping" effort to create timeliness in upholding denial of a motion to reopen the adjudicatory record for *Vermont Yankee*.[25] In *Vermont Yankee*, the petitioner argued that a proposed late-filed contention was timely, in part, because it was based on information in an NRC Inspection Report. In finding that the contention was not timely, the Commission pointed out that if the allegation of deficiency in the application was true when the contention was filed, it was equally true when the application was filed, and that the discussion of these matters in a more recent NRC inspection report "does not inform the issue of timeliness."[26]

Accordingly, even if Movants' Motions to Reopen are considered timely, they could only be timely with respect to the *recommendations* of the Task Force Report and not to the information upon which the Task Force Report is based. However, as demonstrated below, even the recommendations in the Task Force Report do not support reopening the record under the remaining § 2.326 factors.

2. The Motions to Reopen Do Not Raise a Significant Safety or Environmental Issue and Therefore Do Not Meet the Requirements of 10 C.F.R. § 2.326(a)(2).

In addition to failing to meet the timeliness requirement in § 2.326(a)(1), Movants fail to raise a significant safety or environmental issue as required by § 2.326(a)(2). Instead, Movants' sole justification for their statements that the Motions address a significant environmental issue

[25] *See Entergy Nuclear Vt. Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-02, __ NRC ___, slip op. at 13 (Mar. 10, 2011).

[26] *Id.*, slip op. at 9.

is that "the Task Force Report questions the adequacy of the NRC's current regulatory program to protect public health and safety and makes major recommendations for upgrades to the program."[27] Movants attempt to support this conclusion by mischaracterizing the Task Force Report. To the contrary, Movants have not demonstrated that the Task Force Report raises a significant environmental issue. Instead, Movants confuse "significant" with being newsworthy or a matter of public interest.

Movants seek to reopen the record to introduce proposed NEPA-1, which is a contention based on the Staff's environmental analysis under NEPA. Accordingly, to satisfy § 2.326(a)(2), Movants must explain or demonstrate how the Task Force's recommendations are "significant" **in the context of the Staff's environmental analysis**.[28] Because Movants' contention is one arising under NEPA, the only way Movants can demonstrate that the environmental issue raised is "significant," is to show that the recommendations of the Task Force would constitute "new and significant circumstances or information," sufficient to warrant supplementation of the EIS, in accordance with 10 C.F.R. § 51.92. Movants have not and cannot make this showing and, therefore, fail to meet the requirements of § 2.326(a)(2). Instead, Movants misstate the Task Force's recommendations and ignore clear, unequivocal statements that the Task Force Report contains. The chart below gives examples, comparing statements made by BREDL and the CSC Movants citing the Task Force Report and actual quotations from the Report, to illustrate the degree of misrepresentation present in their filings.

[27] CSC Motion, at 5; *see also* BREDL Motion, at 5.

[28] *See Amergen Energy Co*. (Oyster Creek), LBP-08-12, 68 NRC at 18-19.

Movant Assertion[29]	**Actual Task Force Report Statement**
"The Task Force Report **questions the adequacy** of the NRC's current regulatory program to protect public health and safety ...." *CSC Motion, at 5; BREDL Motion, at 5.* There is an implication from the Task Force Report "that **compliance with current NRC safety requirements does not adequately protect public health and safety from severe accidents** and their environmental effects." *CSC Motion, at 6; BREDL Motion, at 5-6.*	"[T]he Task Force concludes that the current regulatory approach and regulatory requirements **continue to serve as a basis for the reasonable assurance of adequate protection of public health and safety** until the actions set forth below have been implemented." *Task Force Report, at 73.* "[I]n light of the **low likelihood of an event beyond the design basis of a U.S. nuclear power plant and the current mitigation capabilities at those facilities**, the Task Force concludes that continued operation and continued licensing activities **do not pose an imminent risk to the public health and safety**." *Task Force Report, at 18.*
"The Task Force's findings and recommendations are directly relevant to environmental concerns and have a bearing on the proposed action and its impacts as they **point to the need for a reevaluation of the seismic and flooding hazards at the Plant Vogtle site**, a "hard look" at the environmental consequences such hazards could pose, and an examination of what, if any, design measures could be implemented (i.e. through NEPA's requisite "alternatives" analysis) to ensure that the public is adequately protected from these risks." *CSC Contention Filing, at 15; see BREDL Contention Filing, at 15.*	"The Task Force concludes that **all of the current early site permits already meet the requirements of detailed recommendation 2.1, relating to the design-basis seismic and flooding analysis**, and all of the current COL and design certification applicants **are addressing them adequately** in the context of the updated state-of-the-art and regulatory guidance used by the staff in its reviews." *Task Force Report, at 71.*

[29] Emphasis added throughout table.

To the extent that the contentions suggest that the Task Force Report contains significant information relative to the probability of beyond design basis accidents, and that that information is significant to an analysis in the EIS, the contention ignores the fact that the Task Force Report endorses both the probabilistic risk assessments ("PRAs") required by 10 C.F.R. Part 52 and the NRC's severe accident requirements applicable to the AP1000 design. The Task Force Report recognized the requirement that COL applicants develop and maintain PRAs[30] and acknowledged that "[t]he Commission has clearly established such defense-in-depth severe accident requirements for new reactors (in 10 CFR 52.47(23), 10 CFR 52.79(38), and each design certification rule), thus bringing unity and completeness to the defense-in-depth concept."[31] Accordingly, the Task Force Report does not include any information that would call into question the probability of beyond design basis accidents relied upon in the Vogtle 3 and 4 EIS.[32]

In sum, the Task Force Report by its own words (1) does *not* recommend delaying new reactor licensing while the Commission considers its recommendations; (2) does *not* state that regulations applicable to new reactors are inadequate to assure adequate protection of the public health and safety; (3) *does* state that the current regulatory regime provides reasonable assurance of adequate protection of public health and safety; (4) *does* state that the AP1000 DCD amendment rulemaking should proceed without delay; and (5) *does* state that current COLAs

[30] Task Force Report, at 19; *see also* 10 C.F.R. § 52.79(a)(46).

[31] *Id.* at 20.

[32] In fact, the NRC Staff issued both the FSER for the Vogtle Units 3 and 4 COLA and the FSER for Revision 19 of the AP1000 design certification amendment in August 2011, nearly five months after the events in Japan and weeks after the Task Force Report was released. The FSER for the AP1000 design certification amendment approved its PRA and severe accident mitigation measures. *See* FSER Related to Certification of the AP1000 Standard Plant Design, NUREG-1793 (Supp. 2) at §§ 1.14 and 19.1.5.8.

adequately address seismic and flooding analysis.[33] Movants' cursory statement that the environmental issues raised by Proposed NEPA-1 are automatically significant is not supported by the Task Force Report.[34]

Movants' failure to show that the recommendations constitute "new and significant circumstances or information" also undermines their ability to demonstrate that a "materially different result" would be likely, as required under § 2.326(a)(3), as discussed below.

3. The Motions to Reopen Do Not Demonstrate That a Materially Different Result Would Be or Would Have Been Likely and Therefore Do Not Meet the Requirements of 10 C.F.R. § 2.326(a)(3).

In addition to being untimely and not raising a significant environmental issue, the Motions to Reopen fail to demonstrate, and in fact cannot demonstrate, that a materially different result would be likely in light of the recommendations made by the Task Force. A "materially different result" can only occur if the conclusions in the EIS would be different, *e.g.*, if

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[33] For these reasons, Movants have also failed to show that Proposed NEPA-1 raises an "exceptionally grave issue" which would justify reopening the record despite Proposed NEPA-1's untimeliness under § 2.326(a)(1). The Commission has stated that it "anticipates that [the] exception [to timeliness for an "exceptionally grave issue"] will be granted rarely and only in truly extraordinary circumstances." 51 Fed. Reg. at 19,536. The Task Force Report's clear statements indicate that there is no threat to public health and safety warranting the rare invocation of this exception.

[34] Movants cannot create a genuine issue of fact through bare assertions misstating the Task Force Report's conclusions. S*ee Ga. Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta Ga), LBP-95-6, 41 NRC 281, 300 (1995), *vacated in part on other grounds* CLI-95-10, 42 NRC 1 (1995); *see also, e.g., Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), 61 NRC 71, 81 (2005) ("Bare assertions and general denials are insufficient to defend against a properly supported motion for summary disposition. Likewise, "quotations from or citations to [the] published work of researchers who have apparently reached conclusions at variance with the movant's affiants" likely will be insufficient to defeat a motion for summary disposition. … Expert opinion is admissible only if … the factual basis for that opinion is adequately stated and explained in the affidavit.") (citing *Advanced Med. Sys., Inc.*, CLI-93-22, 38 NRC 98, 102 (1993); *Houston Lighting and Power Co.* (Aliens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 81 (1981); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-18, 44 NRC 86, 103 (1996); *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-84-7, 19 NRC 432, 435-36 (1984); *United States v. Various Slot Machines on Guam*, 658 F.2d 697, 700 (9th Cir. 1981); *Rohrbough by Rohrbough v. Wyeth Laboratories, Inc.*, 719 F. Supp. 470, 475 (N. D. W. Va. 1989), *aff'd on other grounds*, 916 F.2d 970 (4th Cir. 1990); *State Farm Fire and Casualty Co. v. Miles*, 730 F. Supp. 1462, 1473 (S.D. Ind. 1990), *aff'd*, 930 F.2d 25 (7th Cir. 1991)); *see also generally* Order on Safety-2, at 21 ("[T]o justify reopening the record to admit a new contention 'the moving papers must be strong enough, in the light of any opposing filings, to avoid summary disposition,' and the new information 'must be significant and plausible enough to require reasonable minds to inquire further.' *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005) (internal quotations omitted).").

environmental impacts identified as SMALL would instead be classified as MODERATE or LARGE.

If impacts may be materially different than those in the EIS, NRC would be required to prepare a supplemental EIS. NRC's regulations are clear that a supplemental EIS is required only: when "[t]here are substantial changes in the proposed action that are relevant to environmental concerns; or [t]here are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."[35] There are no changes in the proposed action and Movants cannot demonstrate that the recommendations in the Task Force Report are likely to cause the Staff to change its conclusions in the EIS.

a. Movants Have Not Demonstrated that Consideration of the Task Force's Recommendations Would Affect the Conclusions of the EIS.

As an initial matter, the recommendations in the Task Force Report upon which Movants base their Motions to Reopen are generic and not specific to the Vogtle site. The Commission has explained that "bare assertions and speculation do not supply the requisite support" and cursory language "consisting merely of conclusory assumptions and predictions" do not constitute the "the kind of substantive information and argument that would constitute a successful demonstration of 'likelihood' under § 2.326(a)(3)."[36] In its recent decision in *Vermont Yankee* affirming an ASLB denial of a motion to reopen on the basis that the motion failed to meet the requirements of § 2.326(a)(3), the NRC clarified that generalized concerns are not enough to satisfy the § 2.326(a)(3) requirement:

> NEC directs our attention to four *generic statements* in the Information Notice. Yet these statements make no mention of either *the Vermont Yankee facility*

[35] 10 C.F.R. § 51.92.

[36] *Entergy Nuclear* (Vermont Yankee), CLI-11-02, slip op. at 15-16 (citing *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 287 & 291 (2009)).

> *generally* or *the Vermont Yankee license renewal application in particular*. Consequently, they are *too general* to satisfy our requirement of materiality – either as a requirement for contention admissibility or as part of the required showing that new evidence would be likely to lead to a "materially different result" in the case…. In sum, NEC *does not come close to demonstrating* a likelihood that it would have prevailed on the merits of Contention 7 and that its success would have materially altered the outcome of this proceeding.[37]

The information relied upon by Movants is of the very nature the Commission has warned is not sufficient to support a § 2.326(a)(3) showing.[38] Proposed NEPA-1 relies on the Task Force Report and a generic declaration containing no Vogtle-specific data. These are precisely the types of "generic statements" that the Commission has noted "make no mention of either the [Vogtle] facility generally or the [Vogtle Units 3 and 4 COL] application in particular" and, "[c]onsequently, … are too general to satisfy our requirement of materiality – either as a requirement for contention admissibility or as part of the required showing that new evidence would be likely to lead to a 'materially different result' in the case."[39]

A substantive, in depth, argument demonstrating the real "likelihood" of a materially different result is required to justify reopening the record under § 2.326(a)(3). Moreover, neither the Commission nor an ASLB may "accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention."[40] Similarly, a petitioner's imprecise reading of a document cannot be the basis for a litigable contention.[41]

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[37] *Entergy Nuclear* (Vermont Yankee), CLI-11-02, slip op. at 17-18 (emphasis added).

[38] *See id.*

[39] *Id*.

[40] *See Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998) *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998).

[41] *See Ga. Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Ga), LBP-95-6, 41 NRC at 300.

Rather, any supporting material provided by a petitioner, including those portions thereof not relied upon, is subject to scrutiny, "for what it does and does not show."[42]

Each of Movants' assertions is either incorrect and/or inadequate to demonstrate the NRC's NEPA conclusions would have likely been materially different. Movants dedicate one paragraph of their 12 page motions to attempt to satisfy this requirement. Specifically, Movants' motions claim

> a materially different result would be likely had the NRC considered the new and significant information set forth in Task Force Report in its environmental analysis for the Vogtle COL. In particular, if severe accident mitigation alternatives ("SAMAs") were imposed as mandatory measures – as recommended by the Task Force – the outcome of the EIS could be affected in three major respects. First, the environmental analysis would have to consider the implication of the Task Force Review that compliance with current NRC safety requirements does not adequately protect public health and safety from severe accidents and their environmental effects. Second, for reactors that are unable to comply with new mandatory requirements, it could result in the denial of licenses. Third, the cost of adopting mandatory measures necessary to significantly improve the safety of currently operating reactors and proposed new reactors is likely to be significant.[43]

Movants' first assertion is simply untrue. Thus, the Staff's environmental analysis with respect to protection of health and safety from severe accidents would not change. As set out in Section II.A.2, *supra*, the Task Force Report does not state that "current NRC safety requirements do[] not adequately protect public health and safety from severe accidents and their environmental effects."[44] Instead, the Task Force Report repeatedly states that the NRC's current regulatory scheme reasonably assures that public health and safety are adequately protected and that "[c]ontinued operation of these plants and continued licensing activities do not

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[42] *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 & n.30, *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996).

[43] CSC Motion, at 5-6; *see* BREDL Motion, at 5-6 (the language in this motion is identical to the CSC Motion in every material aspect).

[44] CSC Motion, at 6; BREDL Motion, at 5-6.

pose an imminent risk to public health and safety."[45] To the extent that the Task Force Report suggests that NRC should amend its regulations to redefine the level of safety considered adequate, that recommendation is simply not material to the Vogtle EIS. The Task Force Report does not call into question whether the current regulatory scheme adequately protects public health and safety as currently defined. To the contrary, and as previously stated, the Task Force affirms that it does. The Task Force's suggestion that the level of safety considered to be adequate should be re-examined does not implicate the assessment of the environmental impacts of construction or operation of Plant Vogtle under current regulations and the current level of safety.

Movants' second assertion falls far short of *demonstrating* it is *likely* that the conclusions in the EIS should change. "The *possibility* of a materially different result is insufficient. The movant must show that it is *likely* that the result would have been materially different, *i.e*., that it is *more probable than not*."[46] Movants have not, and indeed cannot, point to any specific facts or circumstances to support their assertions that certain reactors will be unable to comply with any purported new mandatory requirements, thereby resulting in the denial of licenses by the Commission. In fact, Movants couch their own assertions in conditional terms: "for reactors that are unable to comply with new mandatory requirements, it **could** result in the denial of licenses."[47] Without specific evidence relevant to Plant Vogtle, Movants' second assertion does

[45] Task Force Report, at 73 & vii.

[46] *Entergy Nuclear Vermont Yankee, L.L.C.*, (Vermont Yankee Nuclear Power Station), LBP-10-19, __ NRC __ (Oct. 28, 2010), slip op. at 26, *aff'd* CLI-11-02 (emphasis added). In *Vermont Yankee*, the Commission stated further: "Certainly, *if* the Board had admitted [a contention] and *if* the Board had ruled in [the petitioner's] favor on the merits of [the contention], *then* the result would have been materially different (*e.g*., some additional conditions would have been imposed . . . But [the petitioner] has not demonstrated that it is *likely* that it would have prevailed on the merits . . . . A motion to reopen requires more than a possibility. It requires a demonstration that the petitioner is likely to succeed." *Id.* at 27.

[47] CSC Motion, at 6; BREDL Motion, at 6 (emphasis added).

not support a conclusion that changing the result of an element of NRC's NEPA analysis from SMALL to MODERATE or to LARGE would be likely.[48]

Movants' third assertion is without merit for two reasons. Similar to Movants' second assertion, this too is mere conjecture. Movants only speculate that the cost of complying with any purported new safety measures is "*likely* to be significant." The standard to reopen the record requires a demonstration, not speculation or conclusory predictions. More importantly, however, Movants' third assertion is not in any way related to NRC's NEPA analysis. Therefore, even if found to be true, which it is not, Movants' assertion could not provide the materially different result necessary to require the NRC to reevaluate its NEPA conclusions and/or issue an additional SEIS.

b. Movants Have Failed to Demonstrate that the Task Force Report Constitutes New and Significant Information Warranting the Preparation of a Supplement to the FEIS

In order to demonstrate that a materially different result would be likely, Movants must show that the recommendations of the Task Force are "new and significant" as that phrase is understood in the context of the Staff's NEPA analysis. Only then would the Staff be required to supplement its EIS. However, Movants fail to demonstrate how the information contained in the Task Force Report constitutes "new and significant" information sufficient to warrant preparation of additional supplementation of the EIS under NEPA. NRC's NEPA regulations are clear: supplementation is required only where "(1) There are substantial changes in the proposed action that are relevant to environmental concerns; or (2) There are new and significant

[48] "For new information to be 'significant,' it must be material to the issue being considered, that is, it must have the potential to affect **the finding or conclusions of the NRC staff's evaluation** of the issue. The COL applicant need only provide information about a previously resolved environmental issue if it is both new and significant." *Licenses, Certifications, and Approvals for Nuclear Power Plants,* 72 Fed. Reg. 49,352, 49,431 (Aug. 28, 2007) (emphasis added).

circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 10 CFR § 51.92(a). The information in the Task Force Report does not meet these standards; thus, supplementation under NEPA is not warranted.

Contrary to Movants' assertions, NRC's regulations do not require the agency to undertake a supplemental NEPA analysis as a result of the recommendations contained in the Task Force Report. The information is neither new nor significant. To be "new," the information must not have been (1) considered in the preparation of the EIS, or (2) generally known and available during the preparation of the EIS. Similarly, to be "significant," information must present a "seriously different picture" of the environmental impact of the proposed project from what was previously considered.[49] For the reasons stated below, the recommendations contained in the Task Force Report fail to meet either regulatory definition. As such, a supplemental NEPA analysis is not required.

i. The Task Force Report is not "New" Information

The consequences of severe accidents at Plant Vogtle were considered in the EIS and were made available to NRC during the preparation of the EIS. Specifically, in § 5.10.2 of the Early Site Permit ("ESP") EIS, the Staff analyzed the potential consequences of severe accidents and concluded that the probability-weighted consequences of severe accidents from an AP1000 reactor at the Vogtle ESP site are small.[50] Moreover, Southern conducted a search for new information related to severe accidents in 2009 and determined that no significant changes existed in either the reactor-specific or site-specific information used in the original severe accident consequence assessment.[51] NRC Staff conducted its own search in 2009, as well, and

[49] *Wisconsin v. Weinberger*, 745 F.2d 412, 420 (7th Cir. 1984).

[50] FEIS for an ESP at the Vogtle Elec. Generating Plant Site, NUREG-1872 (Aug. 2008), at § 5.10.2.

[51] Vogtle COLA Environmental Report, Rev. 1 (Sept. 23, 2009), at § 5.10.

concurred with SNC's conclusion that no new and significant information existed related to the site-specific input to the severe accident consequence assessment in § 5.10.2 of the ESP EIS.[52]

The NRC staff specifically evaluated the significance of the new information related to the AP1000 design.[53] Westinghouse reviewed the AP1000 PRA for Revision 15 of the AP1000 Design Control Document (Westinghouse 2005) and concluded that the PRA remained valid for a proposed Revision 16 of the AP1000 Design Control Document (Westinghouse 2007).[54] The PRA remained unchanged for Revision 17 (Westinghouse 2008).[55] The NRC staff also evaluated the current PRA using DC/COL-ISG-3, Probabilistic Risk Assessment Information to Support Design Certification and Combined License Applications (NRC 2008c), and concluded that the PRA submitted with Revision 15 is a conservative and acceptable basis for evaluating severe accident consequences for the current revision.[56]

In the end, the NRC Staff concluded that no new and/or significant site-specific or reactor-specific information existed that would alter the conclusion set forth in § 5.10.2 of the ESP EIS.[57] The Staff's opinion that the probability-weighted consequences of severe accidents at the VEGP site remains small continues to be valid and nothing within the Task Force Report is material to that assessment.

Movants attempt to circumvent the fact that incidents equivalent to the Fukushima Dai-ichi accident were considered during NRC's initial NEPA review by asserting that the Task Force has "fundamentally questioned the adequacy of the current level of safety provided by the

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[52] Final Supplemental EIS for COLs for Vogtle Elec. Generating Plant Units 3 and 4, NUREG-1947 (Mar. 2011), at § 5.10.2.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

NRC's program for nuclear reactor regulation," thereby making any prior considerations of similar accidents by the NRC ineffectual.[58] However, the Task Force Report's findings do not go nearly as far as Movants contend. To the contrary, the Task Force's findings state that "the current regulatory approach and regulatory requirements continue to serve as a basis for the reasonable assurance of adequate protection of public health and safety" and that "[c]ontinued operation and continued licensing activities do not pose an imminent risk to public health and safety" in their current form.[59]

Movants fail to put forth any additional basis or reasons as to why the Task Force Report amounts to "new" information warranting the preparation of an SEIS and/or any basis for suggesting that the evaluation of severe accidents already performed in this proceeding were incorrect. In fact, the Task Force Report constitutes a set of recommendations based upon previously available information regarding the accident at Fukushima. Thus, the Task Force Report does not meet the regulatory definition of "new" information and preparation of an SEIS by the NRC is neither required nor warranted by NRC's regulations.

ii. The Task Force Report is not "Significant" Information

In addition to not being "new," the recommendations by the Task Force are not "significant" sufficient to warrant supplementation under NEPA because they do not present a "seriously different picture" of the likely environmental consequences associated with the proposed action that were not already envisioned by NRC's original EIS.[60] The United States

[58] CSC Contention Filing, at 10-11; BREDL Contention Filing, at 10-11.

[59] Task Force Report, at 73 & vii.

[60] *See Weinberger*, 745 F.2d at 418; *Sierra Club v. Froehlke*, 816 F.2d 205, 210 (5th Cir. 1987) (citing *Weinberger* and stating that an SEIS need not be prepared unless the new information was not envisioned by the original EIS); *Airport Impact Relief, Inc. v. Wykle*, 192 F.3d 197, 204 (1st Cir. 1999) (providing that an SEIS is required only when new information or circumstances bearing on the proposed action would result in significant environmental impacts not evaluated in the EIS).

Supreme Court has recognized, "an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made."[61] Furthermore, "[t]here is no benefit in taking another 'hard look' at an action if that view is taken from the same vantage point and overlooks the same environmental panorama."[62]

Therefore, in *Town of Winthrop v. FAA*, an appellate court upheld the FAA's decision that an SEIS was not warranted when a new study regarding the health impacts of a newly-recognized air pollutant was released following the agency's issuance of its initial EIS because the new study did not "paint[ ] a dramatically different picture of impacts compared to the description of impacts in the EIS."[63] The court further provided that because the research included in the new study was still developing, the agency was reasonable in declining to study in an SEIS a pollutant for which no standard methods of measurement or analysis currently exist.[64] "An SEIS is not, after all, a research document."[65]

In determining whether information is "significant," the question is not whether the general subject matter is "significant," but whether the deficiency allegedly discovered in the COLA raises a significant environmental impact.[66] Nothing in the Task Force Report even

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[61] *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 373 (1989) (citations omitted).

[62] *Nat'l Indian Youth Council v. Andrus*, 501 F. Supp. 649, 661 (D.N.M. 1980), *aff'd*, 664 F.2d 220 (10th Cir. 1981); *see also New River Valley Greens v. U.S. Dept. of Transp.*, No. 96-2545, 1997 WL 712887, *3 (4th Cir. Nov. 17, 1997) (unpublished table decision at 129 F.3d 1260) (providing that an SEIS is not required if the environmental impact of the project remains virtually unchanged).

[63] 535 F.3d 1, 12-13 (1st Cir. 2008) (citation and internal quotations omitted).

[64] *Id.* at 13.

[65] *Id*.

[66] *See Amergen Energy Co*. (Oyster Creek), LBP-08-12, 68 NRC at 18-19 ("Nor can Citizens satisfy their burden of showing that the alleged nonconservatism in the CUF computation gives rise to a significant safety issue by making the generalized claim that their issue relates to a safety-critical component. …[T]he relevant issue is not the safety

discusses environmental impacts. Certainly, the Task Force Report contains no statement alleging any "deficiency" in the existing NEPA analysis for Vogtle Units 3 and 4 or even for COLAs currently under review generally. Although Movants suggest that the severe accident mitigation recommendations in the Task Force Report could alter the FEIS, nothing in the Task Force's discussion of severe accident impacts in the FEIS is deficient or incorrect. Furthermore, there is nothing in the Task Force Report that indicates that the severe accident mitigation alternatives ("SAMAs") in the FEIS are deficient or incorrect. In fact, to the extent that the Commission were to adopt the recommendations of the Task Force, it would have the effect of reducing the environmental impacts of severe accidents and rendering the evaluation of SAMAs in the FEIS even more conservative. In that regard, were the Commission to adopt the Task Force Report recommendations as a requirement, such recommendations would not even need to be considered in the SAMA analysis because they would no longer be "alternatives."

Moreover, the Task Force Report endorses the NRC's requirements for the development and maintenance of PRAs, the analysis of severe accidents, and the seismic and flooding analyses conducted in connection with the licensing of new plants, such as Vogtle 3 and 4.[67] Movants rely on general conjecture related to the **potential** changes to the cost-benefit analysis that **could** result from additional SAMA requirements; the Makhijani Declaration makes not even *one* citation to the Vogtle FEIS or to site specific data relating to the Vogtle site or its particular SAMA analysis or how that specific SAMA analysis would be changed. Furthermore, the Makhijani Declaration does not identify the economic impact of implementing the Task Force recommendations at Vogtle, and does not provide any basis for contending that the cost

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significance of the components *per se*, but rather the safety significance of the alleged probable non-conservatism as it relates to these components.") (citations omitted).

[67] Task Force Report, at 19-20; *see also* Section II.A.2 *supra*.

impact would be sufficient to affect the cost-benefit balance. In the FSEIS for the Vogtle 3 and 4 COLA, the NRC Staff determined in its analysis of the no action alternative, that even if the COL is denied, "the power will still be needed as discussed in Chapter 8 of the ESP EIS."[68] Further, the NRC "staff affirm[ed] its conclusion in Section 9.2.5 of the ESP EIS (NRC 2008) that, from an environmental perspective, none of the viable energy alternatives would be clearly preferable to construction of a new base-load nuclear power generation plant at the VEGP ESP site."[69] Absent an environmentally superior alternative, the cost of constructing and operating a nuclear power plant is not a factor in the NRC's NEPA analysis:

> Unless the proposed nuclear plant has environmental disadvantages in comparison to possible alternatives, differences in financial cost are of little concern to us. ... The passage of [NEPA] increased our concern with the economics of nuclear power plants, but only in a limited way. That Act requires us to consider whether there are environmentally preferable alternatives to the proposal before us. If there are, we must take the steps we can to see that they are implemented if that can be accomplished at a reasonable cost; *i.e.*, one not out of proportion to the environmental advantages to be gained. But if there are no preferable environmental alternatives, such cost-benefit balancing does not take place.[70]

This lack of support is fatal to the Motions to Reopen. "[A] speculative conclusion derived from a conjectural assumption," is inadequate for a finding that a significant environmental issue is raised as required by § 2.326(a)(2).[71] For all of these reasons, the Motions to Reopen should be denied, and Proposed NEPA-1 rejected.

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[68] Vogtle COLA FSEIS, at § 9.1.

[69] *Id.* at § 9.2.

[70] *Consumers Power Company* (Midland Plant, Units 1 and 2), ALAB–458, 7 NRC 155, 162 (1978); *see also South Carolina Elec. And Gas Co. And South Carolina Pub. Serv. Auth.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-01, 71 NRC __, slip op. at 30-31 (2010).

[71] *Amergen Energy Co.* (Oyster Creek), LBP-08-12, 68 NRC at 19 ("Citizens have provided no factual or technical information to support a conclusion that the putative deficiency in calculating the recirculation nozzle CUF will present a significant safety issue. Rather, they have assumed that the CUF analysis for the recirculation nozzle at Oyster Creek is nonconservative. From this assumption they have concluded — without adequate expert testimony or analysis — that the putative nonconservative CUF will result in a failure of the nozzle that will cause safety-significant harm. Citizens' argument, which asserts a speculative conclusion derived from a conjectural assumption,

4. The Motions to Reopen and Their Proposed Contentions Do Not Meet The Requirements For Nontimely Filings under 10 C.F.R. § 2.309(c) and Therefore Do Not Meet the Requirements of 10 C.F.R. 2.326(d).

The Commission's "rules of practice make it clear that the reopening standards — as well as the late intervention standards — must be met when an entirely new issue is sought to be introduced after the closing of the record."[72] Under § 2.309(c)(1), "good cause" is the most important factor in determining whether a nontimely contention ought to be admitted, and has been consistently interpreted to mean that a proposed new contention be based on information that was not previously available, and was timely submitted in light of that new information.[73] The § 2.309(c)(1)(i) good cause factor, the most important factor required to be considered among the seven § 2.309(c)(1) considerations to be balanced for nontimely contentions pursuant to § 2.326(d), has been interpreted as submission within thirty days of the new information.[74] After "good cause," seven other § 2.309(c)(1) factors are balanced in determining whether to admit the contention, including "[t]he extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding."[75]

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fails to present a significant safety issue."); *see also Amergen Energy Co.* (Oyster Creek), CLI-08-28, 68 NRC at 671-73 ("Citizens provided no evidence to support its argument that AmerGen's calculations were based on nonconservative assumptions or methodologies, or to support its premise that a change to a more conservative analytical methodology would push the cumulative usage factor over 1.0.") (denying petition for review regarding LBP-08-12's finding of no significant safety issue).

[72] *Dominion Nuclear Conn., Inc.* (Millstone Power Station, Unit 3), CLI-09-05, 69 NRC 115, 124 (2009); *Texas Util. Elec. Co*. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 161 (1993) ("[I]n order to obtain a new hearing when the record has been closed, as in this case, a potential intervenor must satisfy both the late intervention and reopening criteria.") (citation omitted).

[73] *Dominion Nuclear* (Millstone), CLI-09-05, 69 NRC at 125-26 (citing *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Indep. Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 6 (2008); *Texas Util.* (Comanche Peak), CLI-93-4, 37 NRC at 164-65).

[74] *See* Order on Safety-2, at 24. Generally, in order to be timely under § 2.309(c)(1) and/or § 2.309(f)(2)(iii), Boards have determined that the contention should be submitted within 30 days of the new information. *See, e.g., Entergy Nuclear Vt. Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 574 (2006); *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), LBP-00-28, 52 NRC 226, 231 (2000).

[75] 10 C.F.R. § 2.309(c)(1)(vii). The other six factors Movants are required to address in their nontimely filing are: the nature of the requestor's/petitioner's right to be made a party to the proceeding; the nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; the possible effect of any order that

As discussed in detail in Section II.A.1 above, the only "new" material contained in the Task Force Report are the recommendations themselves, which do not constitute "new information" within the meaning of §§ 2.326(a)(1) or 2.309(c)(1)(i), making the Motions to Reopen and Proposed NEPA-1 untimely under both standards, as well as under § 2.309(f)(2), should this standard be applied.[76] Regarding the other factors in the § 2.309(c)(1) balancing test, Proposed NEPA-1's generalized and vague assertions factor heavily against them. As explained more fully below in Section II.B.1, Proposed NEPA-1 is centrally a challenge to a broad array of NRC regulations. Because Proposed NEPA-1 would create a hopelessly broad inquiry involving potential NRC regulatory changes and would likely delay the Vogtle proceeding until the NRC had made final determinations on the Task Force Report, the balance of factors under § 2.309(c)(1) weigh in favor of rejecting Proposed NEPA-1.

B. Even Assuming the Motions to Reopen Were Granted, Movants' Proposed Contentions Do Not Meet the Requirements of 10 C.F.R. § 2.309(f) and Should Therefore Not Be Admitted.

1. Proposed NEPA-1 is Inadmissible Under § 2.309(f)(1) for Failure to Raise a Material Issue.

Because Movants "must first become a party to a proceeding before seeking to reopen that proceeding" under § 2.326,[77] they must demonstrate that they have standing *as well as*

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may be entered in the proceeding on the requestor's/petitioner's interest; the availability of other means whereby the requestor's/petitioner's interest will be protected; the extent to which the requestor's/petitioner's interests will be represented by existing parties; and the extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record. 10 C.F.R. § 2.309(c)(1).

[76] 10 C.F.R. § 2.309(f)(2) states: "[C]ontentions 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." As explained in Sections II.A.2 and II.A.3.b, there is no materially different "new" information in the Task Force Report.

[77] *See Texas Util.* (Comanche Peak), CLI-93-4, 37 NRC at 161 n.1.

submit an admissible contention.[78] As explained above, the reopening standards are more strict than the general contention admissibility standards, meaning that a contention which is not generally admissible necessarily fails to meet the reopening standards' higher bar.[79] Or, stated differently, a movant seeking to reopen the record to consider a new contention must also show that the contention is admissible.[80]

To be generally admissible under § 2.309(f)(1), Movants must "[d]emonstrate that the issue raised in the contention is within the scope of the proceeding," raise an issue "in the contention [] material to the findings the NRC must make to support" the issuance of SNC's COLA, and "provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact."[81] "[A] contention that attacks a Commission rule" is not admissible.[82] "[A] contention … which seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking, is inadmissible," including contentions "that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking. By the same token,

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[78] 10 C.F.R. § 2.309(a).

[79] *Entergy Nuclear* (Vermont Yankee), CLI-11-02, slip op. at 16-17 ("[B]y arguing about whether its new contention has 'merit sufficient to be heard,' NEC confuses the standard for contention admissibility (section 2.309(f)) with the more rigorous evidentiary standard for reopening the record, i.e., a *likely* material change of result, pursuant to section 2.326(a).") (emphasis in original); *Amergen* (License Renewal for Oyster Creek), LBP-08-12, 68 NRC at 21 n.15 ("That Citizens' newly proffered contention in their April 18 motion is moot also means that the motion must be denied on the ground that the contention is inadmissible…").

[80] Order on Safety-2, LBP-10-21, slip op. at 40-41 ("In addition to the provisions of the agency's rules under 10 C.F.R. §§ 2.326, 2.309(c)(1), (f)(2), governing, respectively, reopening a closed record and the admission of nontimely hearing petitions and new contentions, Joint Intervenors had to provide a showing that the contention fulfilled the admissibility requirements of section 2.309(f)(1).").

[81] Per 10 C.F.R. § 2.309(f)(1), Movants also must "[p]rovide a specific statement of the issue of law or fact to be raised or controverted;" "[p]rovide a brief explanation of the basis for the contention;" and "[p]rovide 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."

[82] *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-03, 69 NRC 139, 152 (2009).

a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue."[83]

By their own words, Movants' challenge is to the adequacy of NRC regulations. Lest there be any doubt on the subject, Movants further explain that "the Commission could moot the contention by adopting all of the Task Force's recommendations."[84] CSC Movants even go so far as to "attach" a petition for rulemaking, which they openly state has the same basis as Proposed NEPA-1.[85]

Movants have made no allegation that the Vogtle Units 3 and 4 FSEIS is inadequate under current NRC regulations, but have only alleged that the Vogtle FEIS' "assum[ption] that compliance with existing NRC safety regulations was sufficient to ensure that the environmental impacts of accidents were acceptable" is called into question by the Task Force Report.[86] Movants, however, do not point to any analysis in the FSEIS which is based on an "assumption" challenged by the Task Force, nor is any such assumption readily apparent – environmental analysis performed pursuant to NEPA does not look to NRC safety regulations for a determination of whether the agency should take action in light of the environmental impacts of

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[83] *Id.* at 152-53 (citing 10 C.F.R. § 2.335; *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85, 89 (1974); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159 (2001); *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 410, *aff'd in part and rev'd in part on other grounds*, CLI-91-12, 34 NRC 149 (1991); *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 & n.33, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974)).

[84] CSC Contention Filing, at 18. BREDL likewise notes "Although the EIS and other environmental documents would still need to be supplement [sic], the Commission could moot the contention by adopting all of the Task Force's recommendations." BREDL Contention Filing, at 18.

[85] *See* CSC Petition to Suspend, at 2. As noted in Section II.C of this Answer, the CSC Petition to Suspend has no bearing on the Vogtle Units 3 and 4 COLA proceeding, as it requests changes to regulations governing licensing renewal applications. However, the fact that Movants believe that the basis for Proposed NEPA-1 is also the basis for a rulemaking petition just evidences the generic nature of Proposed NEPA-1.

[86] CSC Motion, at 5; BREDL Motion, at 4.

the proposed action. For example, CSC Movants allege that the "full spectrum of all design basis accidents has not been assessed" without identifying a single accident that the Task Force finds should be added to those included in the Vogtle-specific assessment.[87] Furthermore, Movants have mischaracterized the Task Force Report. Contrary to their allegations, the Task Force Report does not recommend that additional accident scenarios or additional design features be added to the design basis. Instead, the Task Force Report recommends the creation of a new regulatory category called "extended design basis." Most of the elements of these "extended" design basis requirements are already contained in existing regulations (*e.g.*, 10 C.F.R. §§ 50.54(hh), 50.62, 50.63, 50.65, 50.150). As the Task Force noted, under a new framework, "current design-basis requirements . . . would remain largely unchanged" and the new framework, "by itself, would not create new requirements nor eliminate any current requirements."[88]

Movants also allege that the EIS should be supplemented to consider additional mitigation measures, but does not explain how the EIS as it stands is inadequate under existing regulations without this supplement.[89] In fact, common sense dictates that additional accident mitigation measures could only reduce either the frequency or severity of accidents, which could not logically lead to a revised conclusion that the environmental impacts of accidents are greater than as currently assessed. In other words, the basis for the proposed new contention is that NRC regulations are inadequate, but Movants have failed to establish any link between those purported regulatory inadequacies and any allegedly incorrect or incomplete information in the FEIS, making Proposed NEPA-1 immaterial to the Vogtle Units 3 and 4 COLA.

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[87] CSC Contention Filing, at 12.

[88] Task Force Report, at 20-21.

[89] CSC Contention Filing, at 16; BEDL Contention Filing, at 16-17.

Proposed NEPA-1 is squarely within that class of contentions which are prohibited as challenges to NRC rulemakings and which attempt to litigate in a particular adjudicatory proceeding a matter already being or soon to be addressed in an NRC rulemaking proceeding.[90] Such challenges cannot meet the general admissibility requirements under § 2.309(f)(1) that "the issue raised in the contention is within the scope of the proceeding" and "material to the findings the NRC must make to support" the issuance of SNC's COLA.

Further, 10 C.F.R. § 52.39 provides that all environmental issues resolved in an ESP proceeding are resolved for the purpose of a COL proceeding referencing that ESP, and that a contention challenging such a resolved issue, absent the identification of "significant new information," is inadmissible. For all of the reasons discussed in connection with Movants' failure to demonstrate that the Task Force Report contains significant environmental information or information that makes a materially different result likely,[91] neither does the Task Force Report contain information that constitutes significant new information that satisfies the requirement for a contention under 10 C.F.R. § 52.39(c)(v).

Therefore, Proposed NEPA-1 is inadmissible under § 2.309(f)(1) both as an improper challenge to NRC's regulations[92] and as an improper attempt to re-litigate an issue resolved in the Vogtle ESP proceeding.

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[90] *See* SECY-11-0093, "Near-Term Report And Recommendations For Agency Actions Following The Events In Japan" (Aug. 19, 2011) ("direct[ing] the staff to engage promptly with stakeholders to review and assess the recommendations of the Near-Term Task Force in a comprehensive and holistic manner for the purpose of providing the Commission with fully-informed options and recommendations"). SECY-11-0093 shows that the Commission has already begun the process of considering the Task Force Report in the context of a rulemaking.

[91] *See* Sections II.A.2 and II.A.3, *supra.*

[92] *See* 10 C.F.R. § 2.335. If Movants' filing(s) were construed as a petition for waiver or exemption from certain NRC regulations in the Vogtle Units 3 and 4 COLA proceeding, Movants have failed to make the requisite showing that "the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted," nor are Movants a "party" to this proceeding. *See* 10 C.F.R. § 2.335(b); *see also generally Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-03, 69 NRC at 152-53.

2. BREDL's Environmental Justice and Seismic-Flooding related contentions are not addressed by the BREDL Motion to Reopen and nevertheless fail to meet the standards under § 2.309(f)(1).

a. BREDL Fails to Address the Motion to Reopen Standards for the Environmental Justice and Seismic-flooding Contentions.

BREDL fails to address its purported environmental justice and seismic-flooding contentions in the BREDL Motion, and, therefore, the portion of BREDL's Contention Filing referring to these issues should be summarily rejected. In addition to failing to address § 2.326(a)(2) and (3) altogether, the environmental justice and seismic-flooding issues are blatantly untimely.

Regarding its seismic-flooding issue, BREDL offers the declaration of Dr. Ross McCluney,[93] which is based in no part on new information and which is largely irrelevant to the COL proceeding. Dr. McCluney cites a 1968 US Geological Survey Professional Paper (¶ 7) and a 1999 report in his call for more work to identify potential subsurface threats to plant safety in the event of seismic activity, especially with regard to Karst formations (¶ 12). Dr. McCluney then offers that "[a]n earthquake is an unpredictable event," citing a 1996 report (¶ 13). BREDL and Dr. McCluney ignore the seismic analysis conducted in the Vogtle Units 3 and 4 ESP proceeding, with the NRC Staff stating in the Final Safety Evaluation Report ("FSER") that "[t]he staff concurs that data and analyses presented by the applicant in the [Site Safety Analysis Report ("SSAR")] provide an adequate basis to conclude that there is no evidence to indicate that surface or near-surface faulting or nontectonic deformation presents a hazard for the site area."[94] There is nothing approaching new information here, and the seismic-flooding issue raised by BREDL must be rejected.

[93] There is no indication that Dr. McCluney has any experience, training, or education related to seismic analyses, and therefore his declaration is entitled to no weight.

[94] SER for an ESP at the Vogtle Elec. Generating Plant ESP Site, NUREG-1923 (July 2009), at § 2.5.3.4.

Regarding environmental justice, the declaration of Rev. Charles N. Utley is also based entirely on previously available information. First, Rev. Utley makes the general complaint that the NRC has failed to fulfill its commitment to environmental justice, citing Executive Order 12898 from 1994 and a letter from NRC Chairman Ivan Selin regarding that Executive Order, also from 1994 (pp. 2-3). Then, Rev. Utley makes claims related to Plant Vogtle by citing as support a 2009 article apparently based on a study of fuel cycle facilities – not nuclear power plants (pp. 3-4). Rev. Utley does acknowledge the finding of the July 2008 ESP FEIS, that "the impacts of plant operations on environmental justice would be SMALL," but still asserts (without specifically refuting any of the EIS analysis) that environmental injustice exists and continues "at Plant Vogtle and elsewhere" (pp. 4-5). Rev. Utley concludes with an assertion that the Task Force Report provides "an opportunity" to address environmental injustice and cites a 2007 letter. (p. 5, fn 13). Finally, Rev. Utley calls for the NRC to become a signatory to the August 4, 2011 Memorandum of Understanding on Environmental Justice and Executive Order 12898 (p. 6).[95] Rev. Utley's declaration contains no new information, and, therefore, the environmental justice issue raised by BREDL is untimely and due to be dismissed. BREDL's attempt to satisfy § 2.326 requirements as to these two untimely contentions by linking them to the Task Force Report fails on its face.[96] For that matter, neither Dr. McCluney nor Rev. Utley rely on the Task Force Report for any of their allegations.

[95] *See* MOU available at http://www.epa.gov/compliance/ej/resources/publications/interagency/ej-mou-2011-08.pdf. Rev. Utley, and in turn BREDL, offer no explanation for how the NRC's decision to sign the Executive Order could be within the scope of the Vogtle Units 3 and 4 proceeding.

[96] "As noted above, the information on which this Motion and accompanying contention are based is taken from the Task Force Report, which was issued on July 12, 2011 and analyzes NRC processes and regulations in light of the Fukushima accident, an event that occurred a mere five months ago, and through analysis of seismic and flooding, and environmental justice issues stemming directly from the findings and recommendations in the Task Force Report. This Motion and accompanying contention are being submitted less than thirty (30) days after issuance of the Task Force Report." BREDL Motion, at 7-8. The Task Force Report does not even *mention* the phrase "environmental justice," nor does BREDL's attached declaration of Ross McCluney rely on one shred of factual or scientific evidence or analysis contained in the Task Force Report.

There is no basis for asserting that a motion to reopen need only address one contention in order to admit several – in fact, Commission orders have consistently evaluated the motion to reopen standards separately with respect to each individual contention, and the regulation itself requires that "[w]hen multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in [§ 2.326(a)]."[97] BREDL cannot rely on its Proposed NEPA-1 analysis to bring in the wholly unrelated environmental justice and seismic-flooding issues.

b. The Environmental Justice and Seismic-flood Contentions are Inadmissible Under § 2.309(f)(1).

Neither Dr. McCluney nor Rev. Utley raise an issue material to the findings the NRC must make to support the issuance of SNC's COLA, or provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact, as required by § 2.309(f)(1). Rev. Utley, although generally referring to the contents of the FEIS for the Vogtle ESP, fails to show any deficiency in the environmental justice analysis contained in §§ 2.10, 4.7, and 5.7 of the FEIS for the Vogtle ESP (p. 4). Much of Rev. Utley's discussion simply states his personal view of appropriate policy objects for the NRC (pp. 5-6). Thus, in addition to being untimely and based on previously available information, the environmental justice issue BREDL raises is inadmissible because it fails to show that a genuine dispute exists on a material issue of law or fact.

[97] 10 C.F.R. § 2.326(b); *see also, e.g., Dominion Nuclear Conn., Inc.* (Millstone), CLI-09-05, 69 NRC at 124-25; *Amergen* (License Renewal for Oyster Creek), LBP-08-12, 68 NRC at 25. Movants' assertion that, were the Commission to grant the pending appeal regarding the rejection of their first motion to reopen the record, they would no longer be required to meet the § 2.326 standards for the instant Motions to Reopen is also unavailing. *See* BREDL Motion, at 2 n.1; CSC Motion, at 2 n.2.

Dr. McCluney's declaration regarding seismic issues does not contain the word "Vogtle." He offers no citation to any document in the Vogtle ESP or Vogtle COLA which he alleges is inadequate. His general discussion raises no issue material to the Vogtle COLA issuance, especially given the significant attention to seismic issues already included in the Vogtle ESP proceeding. The unchallenged findings in the Vogtle ESP SSAR, employing the updated 200+ year seismic catalog, show no earthquakes within the Vogtle site boundary and only a small number of magnitudes 3.99 or less within a 25 mile radius of the site.[98] The seismic analysis of the Vogtle 3 and 4 site was included in SNC's ESP Application, reviewed by the NRC Staff and evaluated in the FSER, and was one of the hearing topics before the ESP Licensing Board at the ESP Mandatory Hearing. The Licensing Board devoted nearly fifteen pages of its Second and Final Partial Initial Decision recommending issuance of the Vogtle ESP to a discussion of the evidence and analysis related to seismic issues, ultimately concluding "that a preponderance of the evidence in the record before us supports the conclusion that the site, as modified with the proposed backfill, has seismic characteristics that meet the agency's regulatory requirements."[99] Further, the Vogtle ESP FSER particularly addresses the seiche phenomenon discussed by Dr. McCluney:

> A probable maximum surge in the Savannah River Estuary can occur. However, this probable maximum surge does not affect the VEGP site. The VEGP site is also not affected by seiche because the site is located approximately 150 river miles inland from the ocean and there are no large bodies of water in the vicinity. All safety-related SSC will be placed above the highest flood water surface elevation that is controlled by flooding in the Savannah River resulting from cascading upstream dam failures.[100]

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[98] Vogtle SSAR, Revision 5 (Dec. 2008), at § 2.5.1.

[99] *So. Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-09-19, 70 NRC 433, 533, 520-534 (2009).

[100] Vogtle ESP FSER, at § 2.4.5.4.

These findings are final for the purpose of the Vogtle COLA.[101] Dr. McCluney has offered nothing challenging their accuracy, and cited no "new and significant" information that would justify the admission of a contention relative to an issue resolved in the ESP proceeding under 10 C.F.R. § 52.39.

Nothing offered by BREDL, Rev. Utley, or Dr. McCluney qualifies either the environmental justice or seismic-flood issues as admissible under § 2.309(f)(1). Both issues should be rejected.

C. CSC Movants Petition to Suspend Should Be Denied

As a threshold issue, it is unclear why CSC Movants filed the CSC Petition to Suspend in this docket as none of their cited regulations contain generic conclusions applicable to COLAs, but rather apply to license renewals.[102] It is obviously nonsensical to request suspension in this COLA proceeding to await Commission rulemaking regarding regulations governing license renewals. Any petition for rulemaking must meet the requirements in 10 C.F.R. § 2.802. The CSC Petition to Suspend fails to even address, much less satisfy, these requirements.[103] Under § 2.802(d), a filing requesting to suspend is typically reserved for a party to the proceeding. Here, CSC Movants are currently not parties to the Vogtle Units 3 and 4 COLA proceeding; therefore,

[101] 10 C.F.R § 52.39.

[102] CSC Movants request the NRC rescind 10 C.F.R. Part 51, Appendix B; 10 C.F.R. §§ 51.45, 51.53, and 51.95.

[103] SNC reserves the right to respond or participate in any proceeding(s) that may later arise out of the Petition for Rulemaking, in due course and in accordance with NRC regulations governing such proceedings. *See generally* 10 C.F.R. § 2.802(c) ("Each petition filed under this section shall: (1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended; (2) State clearly and concisely the petitioner's grounds for and interest in the action requested; (3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.")

their petition is not proper.[104] Although SNC maintains that the CSC Petition to Suspend is *per se* invalid as applied to Vogtle, and invalid generally, for these reasons, SNC also notes that even if the CSC Petition to Suspend applied to COLAs, it would fail.[105]

CSC Movants request suspension of the Vogtle COLA licensing proceeding "while [the NRC] considers this petition and the environmental issues raised in [Proposed NEPA-1]."[106] As SNC pointed out in its opposition to the Emergency Petition, the Commission has particular, well-defined standards regarding the suspension of proceedings pending a rulemaking:

> [O]ur "longstanding practice has been to limit orders delaying proceedings to the duration and scope necessary to promote the Commission's dual goals of public safety and timely adjudication."[107] Ours is a dynamic regulatory process and we constantly re-evaluate our rules and procedures, both on our own initiative and at the suggestion of others. Absent extraordinary cause, however, seldom do we interrupt licensing reviews or our adjudications – particularly by an indefinite or very lengthy stay as contemplated here – on the mere possibility of change. Otherwise, the licensing process would face endless gridlock. As we recently summarized in *Vermont Yankee*, "we generally have declined to hold proceedings in abeyance pending the outcome of other Commission actions or adjudications."[108]
>
> Just a few years ago, we denied a general stay of license renewal proceedings pending proposed rulemaking when intervenors in the *Oyster Creek* and other pending license renewal cases urged upon us their proposal for changes in the

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[104] *See* 10 C.F.R. § 2.802(d) ("The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking."). Additionally, as noted above, should the CSC Petition to Suspend be construed either alone or in conjunction with CSC's other filings as a petition for exemption or waiver under § 2.335, CSC Movants have also utterly failed to address and meet those standards. *See* note 92 *supra.*

[105] *See* SNC's Answer To Emergency Petition To Suspend All Pending Reactor Licensing Decisions And Related Rulemaking Decisions Pending Investigation Of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident, Docket Nos. 52-025-COL and 52-026-COL (May 2, 2011) (discussing the required showing for suspension of a proceeding at length and explaining that the NRC can adequately implement any regulations applicable to Vogtle Units 3 and 4 that may arise out of its regulatory review of the events in Japan after issuing the Vogtle Units 3 and 4 COLs).

[106] CSC Petition to Suspend, at 1.

[107] *Petition for Rulemaking to Amend 10 C.F.R. § 54.17(c),* CLI-11-01, Docket No. PRM-54-6, __ NRC __ slip op. at 2-3 (Jan. 24, 2011) (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 381 (2001)).

[108] *Id.* at 3 (citing *Entergy Nuclear Vermont Yankee, L.L.C.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC___ (July 8, 2010) (slip op. at 10 & n.36)).

> license renewal process.[109] As we stated in *Oyster Creek*, we continue to consider "suspension of licensing proceedings a 'drastic' action that is not warranted absent 'immediate threats to public health and safety.'"[110]

CSC Movants have made no showing of an immediate threat to public health and safety, nor did they even attempt to do so. In fact, the very Task Force Report upon which the CSC Petition to Suspend relies, clearly states that there is no such immediate risk.[111]

Attempting to bypass this extremely high bar for suspension of proceedings, CSC Movants rely once again on an erroneous understanding of NEPA – arguing that "The NRC's obligation to delay licensing decisions until after it has considered the environmental impacts of those decisions is [] nondiscretionary. [T]he NRC has a non-discretionary duty to suspend the Vogtle licensing proceeding while it considers the environmental impacts of that decision, including the environmental implications of the Task Force Report with respect to severe reactor and spent fuel pool accidents."[112] NRC has satisfied its obligation to comply with NEPA. Following the Commission's regulations set out in 10 C.F.R. Part 51, the Staff has fully analyzed the impacts associated with issuance of the COL. NRC's NEPA regulations require supplementation of this analysis only when there is "new and <u>significant</u> circumstances or information."[113] Movants have not, and in fact cannot, demonstrate that the information in the Task Force Report warrants supplementation under NEPA.

Once again, Movants ignore NRC procedural rules. Because they cannot form an admissible contention or meet the reopening requirements, they employ the tactic of petitioning

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[109] *Id.* (citing Petition for Rulemaking: Denial, 71 Fed. Reg. 74,848 (Dec. 13, 2006)).

[110] *Id.* (citing *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 173-74 (2000)).

[111] *See supra* Section II.A.2 of this Answer.

[112] CSC Petition to Suspend, at 3-4.

[113] 10 C.F.R. § 51.92 (emphasis added).

for rulemaking, and demanding suspension of the proceeding pending their newly-filed rulemaking petition's consideration. This amounts to nothing more than gamesmanship, and the this tactic should be swiftly and summarily rejected.

III. CONCLUSION

The Motions to Reopen the record to consider Proposed NEPA-1 fail as untimely, do not raise a significant environmental issue, and do not demonstrate any likelihood of a materially different result. For many of the same reasons underlying those failures, Proposed NEPA-1 fails the nontimely balancing factors for failure to show good cause and potentially broadening of and delaying the proceeding, as well as failing the basic contention admissibility requirements. BREDL's environmental justice and seismic-flooding issues must be rejected for failure to address the motion to reopen standards and for being categorically untimely. SNC respectfully requests that the CSC Motion and BREDL Motion be denied, and Proposed NEPA-1 and BREDL's environmental justice and seismic-flooding issues be rejected. SNC additionally requests denial of CSC Movants' request to suspend this proceeding.

Respectfully submitted,

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Dated this 22nd day of August, 2011.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	**Docket Nos. 52-025-COL and 52-026-COL**
Southern Nuclear Operating Company	)	
	)	
(COL Application for Vogtle Electric Generating Plant, Units 3 and 4)	)	**August 22, 2011**

CERTIFICATE OF SERVICE

I hereby certify that copies of SOUTHERN NUCLEAR OPERATING COMPANY'S ANSWER IN OPPOSITION TO MOTIONS TO REOPEN THE RECORD AND REQUEST TO ADMIT NEW CONTENTIONS in the above-captioned proceeding have been served by electronic mail as shown below, this 22nd day of August, 2011, and/or by e-submittal.

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(Original signed by M. Stanford Blanton)

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Dated this 22nd day of August, 2011.