

**UNITED STATES OF AMERICA
U.S. NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:
SOUTHERN NUCLEAR OPERATING CO.
License Amendment Application for
Combined Licenses NPF-91 and NPF-92
Vogtle Electric Generating Plant Units 3 and 4
Docket Nos. 052-00025 and 052-00026;
NRC-2008-0252

ASLBP No. 16-944-01-LA-BD01

January 11, 2016

**REPLY OF THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE AND
ITS CHAPTER CONCERNED CITIZENS OF SHELL BLUFF TO
ANSWERS FILED BY SOUTHERN NUCLEAR OPERATING COMPANY AND
NUCLEAR REGULATORY COMMISSION STAFF**

Introduction

Pursuant to 10 CFR 2.309(i)(2), the Blue Ridge Environmental Defense League and its chapter the Concerned Citizens of Shell Bluff (“Petitioners”) hereby submit a reply to the answers filed on January 4, 2016 by Southern Nuclear Operating Company (“SNOC”) and the Nuclear Regulatory Commission Staff (“NRC Staff”).

Background

On January 4, 2016, SNOC and NRC Staff filed their respective answers (“SNOC Answer” and “NRC Staff Answer”) to the Petition for Leave to Intervene and Request for Hearing filed December 7, 2015 by the Blue Ridge Environmental Defense League and its chapter Concerned Citizens of Shell Bluff (“BREDL Petition”). The license amendment request (“LAR”) submitted by Southern Nuclear Operating Company may be

approved or rejected by NRC, or withdrawn by the licensee. Petitioners oppose granting of the LAR.

Standing

The NRC Staff and SNOC dispute Petitioner's standing, stating: "[I]n a license amendment proceeding such as this, proximity cannot be relied upon to demonstrate standing." See SNOC Answer at 5. And "[T]he petitioner cannot rely on the [proximity] presumption and must claim particularized injury to obtain standing." See NRC Answer at 5. Both parties' opposing arguments rely on a limited interpretation of standing.

The Blue Ridge Environmental Defense League and its chapter Concerned Citizens of Shell Bluff have provided 62 valid declarations¹ by their members living near Plant Vogtle. Representational standing has been granted to an organization with members within 15 miles of a plant challenging an extended power uprate application.² A plant's power level is determined by specific license and technical specifications, and the NRC must approve a licensee's application for change before it takes place. A power upgrade is an action with consequences well short of those from an operating license and analogous to the Vogtle License Amendment Request; further, many BREDL and CCSB members who signed declarations of standing live within just 7 miles of Plant Vogtle. Therefore, qualifying for standing in the extant matter does not require the Petitioner to take the extra step of demonstrating obvious potential for offsite consequences; the demonstration of proximity meets its burden. However, each declaration also states a

¹ One person, Lori R. Johnson, indicated on her declaration that she was not a member of the Blue Ridge Environmental Defense League or the Concerned Citizens of Shell Bluff.

² Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 553-54 (2004)

particular concern about offsite impacts of both accidental and routine radiological exposures caused by Plant Vogtle to the declarant and his or her family.³

Contentions

In defense of its request, SNOC points to the issuance of a license amendment by the NRC to the Virgil C. Summer Nuclear Station in South Carolina, stating: “The LAR is similar in technical content to a license amendment request submitted by South Carolina Electric & Gas Company on September 25, 2014.” SNOC Answer at 4.

Although an application for amendment of an operating license may include relevant precedent-setting licensing actions, the mere existence of a precedent does not provide justification for approval of a proposed licensing action. The Applicant’s citation to the previous granting of an LAR provides no precedent in the extant proceeding at Vogtle because the SCE&G LAR was never subject to a petition to intervene. Had the similar plant LAR at Virgil C. Summer been subjected to an intervention, the record generated might have been useful to a LAR at Plant Vogtle; however, that is not the case.

In its petition, BREDL has made use of information obtained from the American Concrete Institute and the Nuclear Energy Standards Coordination Collaborative. Such information is credible and represents relevant industry standards. The NRC itself relies on similar sources of industry experience including BWR and PWR Owners Groups, regional utility groups, NEI, INPO and EPRI. For decades, the NRC has relied on codes and standards governing structural integrity applicable to nuclear plants. NUREG/CR-6358 states: “Throughout its history, the USNRC has remained committed to the use of industry consensus standards for the design, construction, and licensing of commercial

³ The Petitioner’s declarations of standing at paragraph 3 state: “In particular, I am concerned about releases of radioactive substances to the air and water, an accident involving the release of radioactive materials, and my ability to protect myself and my family if a radioactive accident were to occur.”

nuclear power facilities.”⁴ The section on American Concrete Institute standards specifically addresses factors cited in BREDL Petition, stating, “The ACI-349 Code provides the *minimum requirements* for the design and construction of nuclear safety related concrete structures and structural elements for nuclear power generating stations.”⁵ [emphasis added]

In their answers, SNOC and the NRC Staff argue that the Petitioner fails to satisfy the criteria in 10 CFR § 2.309(f)(1). But a Licensing Board need not address the merits of a contention when determining its admissibility and a petitioner does not have to prove its contention at the admissibility stage.⁶ In accord with § 2.309, the petitioner must of course state the reasons for its concerns. In the extant matter, the Petitioner has stated its concerns within a limited framework of accessible information. Important, relevant data on structures, systems and components necessary for intervention are unavailable to the Petitioner at this stage. For example, the UFSAR Nuclear Island Sections A-A and B-B are withheld under § 2.390(d), Security-Related Information.⁷ Publicly available UFSAR

⁴ *Assessment of United States Structural Codes and Standards for Application to Advanced Nuclear Power Reactors*, NUREG/CR-6358 Vol. 2, October 1995, Abstract

⁵ *Id.* Appendix B2: ACI-349 Comparison, Section B2.1, page B-9

⁶ See *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), LBP-82-106, 16 NRC 1649, 1654 (1982), citing *Allens Creek*, supra, 11 NRC at 542; *Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1)*, LBP-84-1, 19 NRC 29, 34 (1984); *Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 & 2)*, LBP-85-11, 21 NRC 609, 617 (1985), rev'd and remanded on other grounds, CLI-86-8, 23 NRC 241 (1986); *Carolina Power and Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant)*, ALAB-837, 23 NRC 525, 541 (1986); *Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1)*, ALAB-868, 25 NRC 912, 933 (1987); *Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station)*, LBP-88-26, 28 NRC 440, 446 (1988), reconsidered on other grounds, LBP-89-6, 29 NRC 127 (1989), rev'd on other grounds, ALAB-919, 30 NRC 29 (1989), vacated in part on other grounds and remanded, CLI-90-4, 31 NRC 333 (1990), request for clarification, ALAB-938, 32 NRC 154 (1990), clarified, CLI-90-7, 32 NRC 129 (1990); *Sierra Club v. NRC*, 862 F.2d 222, 228 (9th Cir. 1988). See *Consumers Power Co. (Midland Plant, Units 1 & 2)*, LBP-84-20, 19 NRC 1285, 1292 (1984), citing *Allens Creek*, supra, 11 NRC 542; *Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 & 2)*, ALAB-182, 7 AEC 210, 216 (1974), rev'd on other grounds, CLI-74-12, 7 AEC 203 (1974); and *Duquesne Light Co. (Beaver Valley Power Station, Unit 1)*, ALAB-109, 6 AEC 243, 244-45 (1973).

⁷ 10 CFR 2.390(d) The following information is considered commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and is subject to disclosure only in accordance with the provisions

pages 3.3-34 through 3.3-48 are completely blank. Petitioners will request that an access order to this information be granted or, upon a grant of intervenor status by the ASLB, access to these data under the Commission's discovery rule.

Importantly, there is no dispute that safety margins have been reduced, thereby triggering 10 CFR §50.59 which requires a licensee to obtain a license amendment prior to implementing a proposed change. The NRC has compiled a list of violations of this regulation, including numerous failures to obtain license amendments prior to implementing design changes at licensed nuclear power stations, resulting in SL-IV violations.⁸ The failure to obtain a license amendment at Plant Vogtle prior to obtaining NRC review and approval before altering construction standards is a violation of 50.59.

Finally, Petitioners are residents in the immediate area around Plant Vogtle and are directly affected by the operation of the power station. Our principal interests are the health and safety of our members living near the plant and the general public. The purpose of Executive Order 12898, 3 C.F.R. 859 (1995) is to "underscore certain provision[s] of existing law that can help ensure that all communities and persons across the nation live in a safe and healthful environment."⁹

of § 9.19 of this chapter. (1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection, classified matter protection, or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data. (2) Information submitted in confidence to the Commission by a foreign source.

⁸ 50.59 Findings and Violations, McGuire Nuclear Station, 09/11/2004, NRC ADAMS Access # ML13094A257

⁹ Louisiana Energy Services (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 102 (1998); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 35-36 (1998); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-0220, 56 NRC 147, 153 (2002), rev'g LBP-02-8, 55 NRC 171 (2002); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-04-9, 59 NRC 120, 123 (2004).

Conclusion

We ask that the Atomic Safety and Licensing Board grant standing in this matter and that, within the boundaries of § 2.309, find the contentions acceptable and admit them for a hearing.

Respectfully,

A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

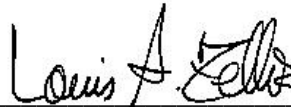
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CERTIFICATE OF SERVICE

I hereby certify that the
**REPLY OF THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE AND
ITS CHAPTER CONCERNED CITIZENS OF SHELL BLUFF TO
ANSWERS FILED BY SOUTHERN NUCLEAR OPERATING COMPANY AND
NUCLEAR REGULATORY COMMISSION STAFF**
has been filed through the Electronic Information Exchange system
this 11th day of January, 2016.



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