

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

_____)	
In the Matter of:)	Docket No. 52-025-LA-3
)	
SOUTHERN NUCLEAR OPERATING CO.)	
)	
Vogtle Electric Generating Plant, Unit 3)	December 17, 2020
_____)	

SOUTHERN NUCLEAR OPERATING COMPANY'S ANSWER
OPPOSING BREDL'S MOTION TO REOPEN THE RECORD
AND REQUEST TO AMEND CONTENTION

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In accordance with 10 C.F.R. § 2.323(c) and 2.309(i)(1), Southern Nuclear Operating Company, Inc. (“SNC”) submits this Answer in opposition to the Motion to Reopen and Request to Amend Contention (the “Motion”)¹ filed on December 7, 2020, by Blue Ridge Environmental Defense League and its chapter Concerned Citizens of Shell Bluff (“BREDL”). BREDL asks that the Commission reopen the above-captioned proceeding and allow submission of an amended contention in light of the Nuclear Regulatory Commission (“NRC” or “Commission”) Staff’s response to a May 11, 2020 Freedom of Information Act (“FOIA”) request filed by BREDL. As explained below, the Motion must be rejected because it fails to satisfy the Commission’s standards for reopening the record under 10 C.F.R. § 2.326.

¹ Motion to Reopen the Proceeding and Request to Amend Contention by the Blue Ridge Environmental Defense League and its Chapter Concerned Citizens of Shell Bluff Regarding Southern Nuclear Operating Company’s Request for a License Amendment and Exemption for Unit 3 Auxiliary Building Wall 11 Seismic Gap Requirements, LAR-20-001 (Dec. 7, 2020) (ADAMS Accession No. ML20342A389).

I. Introduction

This proceeding involves SNC's license amendment request, LAR-20-001, submitted on February 7, 2020, to accommodate an as-built localized nonconformance (a slight bulge of approximately 13/16 of an inch) in a 13-foot vertical section of wall on the Vogtle Unit 3 auxiliary building.² Specifically, the LAR proposed to modify the Vogtle Unit 3 Updated Final Safety Analysis Report ("UFSAR") to reduce the minimum gap requirements between the annex building and auxiliary building for the 13-foot span from 3 inches to 2-1/16 in order to account for the nonconformance.³

In response to the Commission's Federal Register notice, BREDL submitted two contentions in a petition filed on May 11, 2020 ("Petition").⁴ BREDL's Motion only relates to Contention 2, titled "Basemat, Foundation and Construction Factors Create Unacceptable Operational Risk to Public Health and Safety," which requested that the Atomic Safety and Licensing Board (the "Board") halt construction of Unit 3 and require SNC to perform a full reanalysis of the stresses placed on the nuclear island during construction and the impacts on foundational settlements. The root of BREDL's contention is an assertion that SNC has ignored differential settlement of the nuclear island (which BREDL refers to as "dishing" or "cupping") in the LAR and in general during construction of Vogtle Unit 3,⁵ notwithstanding the fact that differential settlement is analyzed in the AP1000 Design Control Document ("DCD"), and the

² ND-20-0075, Letter from Brian Whitley to NRC Control Desk, Vogtle Electric Generating Plant Unit 3 Request for License Amendment and Exemption: Unit 3 Auxiliary Building Wall 11 Seismic Gap Requirements (LAR-20-001), Encl. 1, at 4-5 (Feb. 7, 2020) (ADAMS Accession No. ML20038A939) ("LAR").

³ *Id.* at 5.

⁴ Petition for Leave to Intervene and Request for Hearing by [BREDL] Regarding [SNC]'s Request for a License Amendment and Exemption for Unit 3 Auxiliary Building Wall 11 Seismic Gap Requirements, LAR-20-001 (May 11, 2020) (ADAMS Accession No. ML20132D303) ("Petition").

⁵ *See id.* at 15-16.

LAR itself includes a section explaining why differential settlement will not adversely affect the gap between the auxiliary and annex buildings.⁶

On August 4, 2020, prior to the Board's order on BREDL's contentions, NRC Staff approved the LAR after making a no significant hazards determination.⁷ Thereafter, following briefing and oral argument, the Board rejected both BREDL contentions and terminated the proceeding. In rejecting Contention 2, the Board held that BREDL's argument amounted to a general challenge to the safety of the settlement of the nuclear island foundation that falls outside the narrow scope of the proceeding; did not raise a material dispute with the LAR; and lacked adequate expert support.⁸ On September 4, 2020, BREDL filed an appeal seeking to overturn the Board's rejection of Contention 2 (the "Appeal").⁹ The Appeal, which is still pending before the Commission, focused on perceived deficiencies in NRC Staff's review of the LAR and failure to provide non-public information to BREDL at the contention admissibility phase (arguments that BREDL repeats throughout the present Motion).

In addition to filing its Petition, on May 11, 2020, BREDL also filed a FOIA request for documents, data, and calculations used by NRC Staff in its review of the LAR.¹⁰ BREDL's FOIA

⁶ See DCD Tier 2, Section 3.8.5.4.2; LAR at 8. And, while not directly relevant to the LAR, it bears noting that during NRC's review of settlement data in 2018, Staff found that actual settlement was 40% less than the amount anticipated and allowed by the DCD. See Safety Evaluation Report, Vogtle Electric Generating Plant Units 3 and 4, Amendment Nos. 127 and 126 (LAR-18-002) at 5 (June 15, 2018) (ADAMS Accession No. ML18120A345).

⁷ See Safety Evaluation Report by [NRR] Related to Amendment No. 182 to the Combined License No. NPF-91, Vogtle Electric Generating Plant Unit 3, at 9–11 (Aug. 4, 2020) (ADAMS Accession No. ML20132A078) ("SER").

⁸ *Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), LBP-20-08, 90 NRC __ (slip op.) (Aug. 10, 2020) (ADAMS Accession No. ML20223A385) ("Order"). A more detailed recitation of the Board's bases for rejecting Contention 2 can be found in SNC's reply brief to BREDL's Appeal. SNC Brief in Opposition to Appeal (Sept. 29, 2020) (ADAMS Accession No. ML20273A315).

⁹ [BREDL's] Notice of Appeal and Brief in Support of Appeal from the Atomic Safety and Licensing Board Decision Denying Admissibility of Contentions in License Amendment Proceeding (Sept. 4, 2020) (ADAMS Accession No. ML20248J166) ("Appeal").

¹⁰ See Email from Lou Zeller, Request for Documents in Vogtle 52-025-LA-3 (May 7, 2020) (ADAMS Accession No. ML20142A385).

request focused on information reviewed by NRC Staff during its post-docketing technical review of the LAR.¹¹ NRC Staff provided an interim response to BREDL’s FOIA request on September 22, 2020.¹² On November 6, 2020, NRC Staff provided a final response to BREDL’s FOIA request.¹³ BREDL’s Motion is based on one of the documents produced in the FOIA response.

Specifically, BREDL points to an internal Staff management briefing (“Management Briefing”)¹⁴ created while Staff was performing its initial review of the LAR. BREDL’s arguments are mostly directed at NRC Staff—criticizing its review of the LAR and handling of BREDL’s FOIA petition—but BREDL also offers a handful of arguments directed at the LAR, such as: “The FOIA response information clearly shows that the wall in question continues to move due to unanticipated and unmeasured sinking of the Vogtle Unit 3 foundation” and “These documents reveal evidence that [the LAR] makes the site and the reactor under construction patently unsafe.”¹⁵ None of these statements are accompanied by any explanation of *why* the FOIA document supports these conclusory allegations. In fact, most of the Motion and supporting declaration consist of quotes from the Management Briefing that are simply offered up without any explanation, followed by the conclusion that these quotes support BREDL’s position. BREDL does not acknowledge that the Management Briefing was prepared before NRC Staff had completed its review of SNC’s settlement data, nor does BREDL attempt to reconcile statements

¹¹ *See id.*

¹² *See* FOIAOnline, Interim Response to Freedom of Information Act Request and Interim Released Records (Sept. 22, 2020) (available at <https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=NRC-2020-000234&type=Request>) (“Interim FOIA Response”).

¹³ *See* FOIAOnline, Final Response to Freedom of Information Act Request and Final Released Records (Nov. 6, 2020) (available at <https://foiaonline.gov/foiaonline/action/public/submissionDetails?trackingNumber=NRC-2020-000234&type=Request>) (“Final FOIA Response”).

¹⁴ *See* Interim FOIA Response at 82–83. An earlier version of the Management Briefing with redline markups was included in the Final FOIA Response. *See* Final FOIA Response at 8–10. This earlier, draft version of the Management Briefing is the only additional document included in the November 6 FOIA response that was not also included in the September 22 FOIA response.

¹⁵ Motion at 13.

in the Management Briefing with Staff’s ultimate conclusions in the SER that directly refute BREDL’s arguments. Instead, BREDL draws the extraordinary conclusion that NRC Staff never got answers to the preliminary questions raised in the internal Management Briefing or reached a satisfactory conclusion on the issues specifically identified for further inquiry—notwithstanding the fact that the SER specifically concludes that “differential settlement of the foundations of the Nuclear Island and the Annex Building will not adversely affect the seismic gap between these two structures.”¹⁶

Of course, NRC Staff’s review is not subject to BREDL’s challenge in a proceeding on the LAR. With respect to the LAR itself, the FOIA information merely demonstrates the unsurprising fact that NRC Staff conducted a full and careful review of the LAR. Just as a request for additional information (“RAI”) is not evidence of deficiencies in the application, the fact that Staff challenged SNC’s positions and asked questions in an internal Management Briefing is not evidence that the LAR was incorrect or deficient. It means Staff did their job. BREDL has not identified any new or relevant information, much less information that satisfies the strict requirements for reopening the record. As discussed in more detail below, the Management Briefing and arguments advanced in BREDL’s motion do not provide a basis to reopen the record, and BREDL’s Motion should therefore be rejected.

II. Legal Standards for Motions to Reopen the Record

A motion to reopen is an “extraordinary action” that mandates petitioners to comply with “stringent” requirements.¹⁷ These requirements impose an “intentionally heavy burden on parties

¹⁶ SER at 6.

¹⁷ See Final Rule, Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19,538 (1986); *Tennessee Valley Auth.* (Watts Bar Unit 2), CLI-15-19, 82 NRC 151, 156 (2015) (quoting *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-11-02, 73 NRC 333, 337–38 (2011)).

seeking to reopen the record.”¹⁸ The Commission has recognized that “there would be little hope of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings.”¹⁹ Accordingly, in order to justify reopening the record, a petitioner must comply with the standards set forth in 10 C.F.R. § 2.326(a):

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

Additionally, the motion must be accompanied by an affidavit setting forth the factual and/or technical bases for the claim that the 2.326 criteria have been met.²⁰ The affidavit must address each of the criteria separately, with a specific explanation of why the criteria have been met, must be given by “experts in the disciplines appropriate to the issues raised,” and must meet the ordinary admissibility standards applicable to hearing requests.²¹ The Commission will not grant a motion to reopen unless a petitioner satisfies all of these criteria.²²

BREDL fails each of these criteria, and so the Motion must be denied.

III. BREDL’s Motion Does Not Satisfy the Reopening Requirements

A. BREDL’s Motion is Untimely

A motion to reopen is considered timely if it is based on new information that is materially different from previously available information.²³ Timeliness is based upon when a petitioner first

¹⁸ *Watts Bar*, CLI-15-19, 82 NRC at 155.

¹⁹ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 n.18 (2005) (quoting *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 554-55 (1978)).

²⁰ 10 C.F.R. § 2.326(b).

²¹ *Id.*

²² *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 287 (2008).

²³ *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-12-1, 75 NRC 1, 9 (2012).

had access to the information giving rise to the motion.²⁴ While 2.326(a)(1) does not include a specific deadline, the NRC has generally applied a 30-day limit on motions to reopen.²⁵ BREDL represents that the Motion is timely because it was filed 30 days after NRC provided its final FOIA response, which BREDL received on November 6, 2020.²⁶ The Motion actually came 31 days after the November 6, 2020 FOIA response, but more importantly, BREDL received a copy of the Management Briefing (the only document on which its Motion relies) in the September 22, 2020 interim response.²⁷ BREDL's Motion is thus 76 days late and, therefore, untimely.

The fact that the November 6, 2020 FOIA response included a draft redline version of the Management Briefing (that does not appear to have been included in the earlier FOIA response) does not make BREDL's Motion timely, because the redline draft does not provide any relevant information that was not already available to BREDL in the September 22, 2020 FOIA response. The redline draft shows the edits Staff made to an earlier version of the Management Briefing, which were all accepted in the final version of the Management Briefing that was produced to BREDL on September 22, 2020. BREDL's sole reference to the draft document is to point to the deletion of the phrase "the staff could not determine the seismic gap predicted in future," in an attempt to assert that Staff technical reviewers withheld information from their management and in the SER about their ability to verify settlement trends for the Vogtle Unit 3 nuclear island.²⁸

²⁴ See *Vermont Yankee*, CLI-11-02, 73 NRC at 339.

²⁵ See *id.* at 342 n.43; *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 NRC 491, 499 (2012); *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 223 (2011) (applying a "30-day clock" to motion to reopen); *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 493 (2008) (noting that "boards have selected 30 days as [the] specific presumptive time period" for contentions filed after the initial deadline).

²⁶ Motion at 2.

²⁷ Interim FOIA Response at 82–83.

²⁸ See Motion at 11, 13; Declaration of Arnold Gundersen to Support the Motion to Reopen Proceeding and Request to Amend Contention by [BREDL] Regarding [SNC's] Request for a License Amendment and Exemption for Unit 3 Auxiliary Building Wall 11 Seismic Gap Requirements at 8–9 (Dec. 7, 2020) (ADAMS Accession No. ML20342A390) (the "Declaration").

NRC Staff's review of the LAR is not subject to challenge by BREDL in this proceeding,²⁹ and BREDL provides no factual support for its audacious claim—but, in any event, all the deletion demonstrates is the preliminary nature of the draft, which was prepared before Staff finished their audit of settlement data and before they had received additional clarification and documents from SNC following their initial reviews.³⁰ The draft Management Briefing does not provide any new information that is relevant to BREDL's motion to reopen or BREDL's resubmitted Contention 2 that was not already available six weeks earlier. Accordingly, even assuming that BREDL received the redline draft of the Management Briefing for the first time on November 6, 2020, the Motion is still untimely and should be rejected.

The Motion is likewise not saved by BREDL's decision to wait for a final FOIA response. BREDL states that the two-part FOIA response should afford it additional time to file a Motion based on the initial September 22, 2020 information.³¹ There is, of course, no exception to the timeliness standard for petitioners who are in possession of information they believe warrants reopening, but hope they may receive more later.³² Nor is there an exception for petitioners who voluntarily delay filing a motion to reopen (as BREDL implies it did)³³ to improve administrative

²⁹ See *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 350 (1998); *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-08-9, 67 NRC 421, 444 (2008); *Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-16-5, 83 NRC 259, 286 (2016)

³⁰ The original draft was presumably prepared sometime before April 23, 2020 (the Final FOIA Response shows that the redlined version was transmitted via email on that day). Final FOIA Response at 7. Staff's audit lasted from March 10 to April 30, 2020, during which Staff held three follow-up calls with SNC and Westinghouse on April 6, April 8, and April 28, 2020, "to better understand the reports, calculations, and data provided." Memorandum from Cayetano Santos, Project Manager, NRR Vogtle Project Office, to Victor Hall, Chief, NRR Vogtle Project Office, Audit Report for [Vogtle] Unit 3, Request for License Amendment and Exemption: Unit 3 Auxiliary Building Wall 11 Seismic Gap Requirements (LAR 20-001) at 3 (May 26, 2020) (ADAMS Accession No. ML20141L698) ("Audit Report"). In response to these requests for clarification, SNC provided additional information, including new figures "to more clearly illustrate the information provided because some of the figures in the original documents were difficult to read and interpret." *Id.* at 3.

³¹ Motion at 10.

³² See *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-1, 81 NRC 1, 7–8 (2015).

³³ See Motion at 10.

efficiency or as a courtesy so the respondents must only reply once. The FOIA process in particular is not known for its expediency, so tolling the clock in situations like this would provide an indefinite extension to a well-known deadline based solely on the capacity and priorities of the NRC's FOIA office. Needless to say, such an open-ended extension would run directly contrary to the intentionally-strict reopening standard that is meant to protect the finality of proceedings that have already run their course. Even under the less-stringent 2.309(c) standard for late-filed contentions in proceedings that are still open, the Commission has admonished petitioners to “file[] as soon as possible,”³⁴ and “[p]etitioners who choose to wait . . . do so at their peril.”³⁵ In this case, BREDL chose to wait. That it was hoping more information supportive of its arguments might emerge does not excuse BREDL's decision to sit on the information in its possession.³⁶ The Motion is based on information from the September 22, 2020 FOIA response. It is 76 days late and is, therefore, untimely.

Finally, BREDL has not justified its late filing based on the presentation of an “exceptionally grave issue.” While 2.326(a)(1) allows discretion to admit an otherwise untimely motion if a petitioner raises such an issue, the Commission has recognized that this exception

³⁴ Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2012) (quoting *Dominion Nuclear Conn. Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 564–65 (2005)).

³⁵ *Fermi*, CLI-15-1, 81 NRC at 7.

³⁶ Applying the timeliness standard to the September 22, 2020 FOIA response does not, as BREDL asserts, constitute “unfair tactics.” See Motion at 10. It is well-established precedent that the NRC filing clock starts ticking when the underlying information becomes available, regardless of context. See, e.g., *Vermont Yankee*, CLI-11-02, 73 NRC at 339; *Pilgrim*, CLI-12-21, 76 NRC at 498; *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 492–93 (2012). The procedural rules NRC uses to strictly govern its adjudicatory docket “require a high level of discipline and preparation by petitioners.” *Oyster Creek*, CLI-09-7, 69 NRC at 271. Indeed, BREDL has had late-filed contentions rejected for failure to file on time, so the application of the 30-day clock to the September 22, 2020 FOIA response should come as no surprise to BREDL. See *Vogtle*, CLI-11-8, 74 NRC at 224 (finding that BREDL failed to “analyze diligently information readily available” within the 30-day timeframe). If it believed compelling circumstances justified an extension to the ordinary 30-day limit, BREDL could have requested an extension of time to file its Motion. See 10 C.F.R. § 2.307. But it did not.

should be “granted rarely and only in truly extraordinary circumstances.”³⁷ As addressed in more detail below, the FOIA information presented by BREDL merely shows that NRC Staff diligently reviewed the LAR, including on a topic (settlement) specifically addressed in the LAR—a fact that is neither exceptional nor grave. BREDL devotes one sentence of its Motion to this standard, merely stating in conclusory fashion that it has raised an exceptionally grave issue “regarding the ability of the Plant Vogtle Unit 3 to withstand a safe-shutdown earthquake (SSE).”³⁸ But neither BREDL nor Mr. Gundersen addresses how the settlement of the foundation—which is indisputably within design limits and will not narrow the gap between the annex and auxiliary walls—presents a safety issue, much less an exceptionally grave one.³⁹ In short, BREDL has not raised an exceptionally grave issue that warrants an excuse from the ordinary 2.326 timeliness requirements.

B. BREDL Has Not Raised a Significant Safety or Environmental Issue

BREDL likewise has not identified a significant safety or environmental issue in the Motion or underlying FOIA information. The Motion attempts to address the 2.326(a)(2) requirement by simply summarizing why the gap between the annex and auxiliary building matters: “The seismic gap issue embraces whether the distance between the Nuclear Island and adjacent structures will be enough to isolate them from damaging contact during horizontal

³⁷ Final Rule, Criteria for Reopening Records in Formal Licensing Proceedings, 51 Fed. Reg. 19,535, 19,536 (1986).

³⁸ Motion at 3. Moreover, Mr. Gundersen’s Declaration does not even address the “exceptionally grave” standard or state that the FOIA information shows that the Unit 3 nuclear island would fail in a SSE, much less supply the requisite support that would be required for such a claim. Taken together, the Motion’s and Mr. Gundersen’s general claims simply repeat (verbatim in many places) their generic claims from the Petition and Mr. Gundersen’s original declaration that there is unanalyzed “dishing” of the nuclear island that poses a significant safety risk. These claims have already been rejected by the Board as unsupported, and nothing in the FOIA information changes that. Order at 26 (citing *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-03, 65 NRC 237, 253 (2007)).

³⁹ See *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-08-12, 68 NRC 5, 18 (2008) (“[A] movant who seeks to reopen the record does not show the existence of a significant safety issue by merely showing that a plant component ‘perform[s] safety functions and thus ha[s] safety significance.’”) (citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-90-6, 31 NRC 483, 487 (1990)).

accelerations resulting from potential earthquakes.”⁴⁰ This is a correct statement, pulled from the Vogtle licensing basis and LAR itself, but does not provide the requisite showing for reopening the record. “[A] movant who seeks to reopen the record does not show the existence of a significant safety issue by merely showing that a plant component ‘perform[s] safety functions and thus ha[s] safety significance.’”⁴¹ BREDL has not identified, and the FOIA information does not show, any newly-discovered error in the LAR’s settlement analysis or provide any alternative analysis to support Mr. Gundersen’s bare claims (repeated from his original declaration) that differential settlement will adversely affect the gap between the buildings. The Commission also has long held that Staff questions on an application do not demonstrate a deficiency with the application itself,⁴² much less the existence of a significant safety issue that justifies reopening the record.

In reality, BREDL’s argument that the FOIA information presents a safety issue is based on Mr. Gundersen’s unsupported claim that the questions and challenges documented in the Management Briefing were never addressed during Staff’s completion of its review. However, as illustrated below, all of the statements highlighted by BREDL in the Management Briefing were either resolved in the SER or simply provided reasons why Staff thought it was important to follow up on a particular issue. BREDL provides absolutely no support for Mr. Gundersen’s claim that NRC Staff withheld information about its review of the LAR. “[B]are assertions and speculation...do not supply the requisite support” necessary to reopen a proceeding.⁴³ Moreover, the Commission has long held that a petitioner may not presume a licensee will violate NRC

⁴⁰ Motion at 3.

⁴¹ *Oyster Creek*, LBP-08-12, 68 NRC at 18 (citing *Seabrook*, CLI-90-6, 31 NRC at 487); see also *Amergen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 670 (2008) (holding that a significant safety issue is not satisfied “by a ‘mere showing’ that a possible violation of regulatory safety standards could occur”).

⁴² *Calvert Cliffs*, CLI-98-25, 48 NRC at 349.

⁴³ *Oyster Creek*, CLI-08-28, 68 NRC at 674.

regulations.⁴⁴ The same is manifestly true for NRC Staff. The fact that an internal status document shows that Staff raised questions on a LAR is not evidence of agency malfeasance—in fact, it shows the opposite: that Staff diligently challenged portions of the LAR that it did not immediately agree with or understand. This ordinary documentation of intermediate questions and next steps does not create an issue of fact or provide any other basis for reopening the record in this LAR or any other.

The portions of the Management Briefing BREDL relies on are addressed in turn below.

1. Redline Deletion from the Earlier Draft

First, as noted above, the redline deletion of “staff could not determine the seismic gap predicted in future,” in an earlier, preliminary draft of the Management Briefing merely shows that the document was created before Staff completed its evaluation of the audited data. The SER clearly states that Staff resolved this issue:

The staff also **confirmed through examination of the settlement survey data and plots during the audit** that the Nuclear Island basemat has deflected more in the center (where the Shield Building is located) and less at the perimeter. This pattern of basemat deflection would tend to cause the perimeter walls to lean towards the center of the Nuclear Island. Additionally, the **staff confirmed** that the foundation deflection of the Annex Building is quite uniform near the Nuclear Island. This observation indicates that the walls of the Annex Building near the Nuclear Island are not exhibiting a tendency to lean towards the Nuclear Island. **Based on above, the staff finds that the differential settlement of the foundations of the Nuclear Island and the Annex Building will not adversely affect the seismic gap between these two structures** by reducing the currently available gap, especially at the area of nonconformance.⁴⁵

There is no new information here, much less new information that reveals a significant safety issue.

⁴⁴ See *Pacific Gas and Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 29 (2003) (NRC “ha[s] long declined to assume that licensees will refuse to meet their obligations under their licenses or [NRC] regulations”) (citing *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000); *Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 400 (1995); *Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear-1), ALAB-207, 7 AEC 957, 958 (1974)).

⁴⁵ SER at 6.

2. Discussion of 1/16" Margin

Second, BREDL points to two statements regarding a “margin of 1/16”” between the two buildings, which Staff observed “is extremely small” and “can reduce further due to continued settlement.”⁴⁶ In the Management Briefing itself, this information is presented as the reason Staff conducted an audit, not a conclusion from Staff’s analysis. While the Management Briefing does not fully explain the “margin” referred to, it appears to be a shorthand reference to the various allowances in the UFSAR that relate to the gap between the two buildings, taking into account the change requested by the LAR.

The LAR addressed the as-built gap between the buildings, which SNC requested to change from 3" to 2-1/16" at the location of the nonconformance. A separate section of the UFSAR (unchanged by the LAR) requires that at least 1" separation be maintained in a SSE.⁴⁷ The UFSAR also allows up to 2" in relative displacement between the annex and auxiliary building roofs during a SSE.⁴⁸ Thus, a simplistic comparison of the 2-1/16" as-built gap and the maximum allowable deflection at the roofs would leave 1/16" in a SSE. However, the LAR specifically addressed this issue; it describes the site-specific analysis that shows the relative displacement at the elevations of the nonconformance is much less than 2" during a SSE, such that a 1.32" gap will be maintained at the point of nonconformance.⁴⁹ Thus, the LAR explained, even with the reduced as-built gap, the UFSAR requirement to maintain at least 1" between the buildings during a SSE continues to be met.⁵⁰ Presumably, the Management Briefing simply pointed out the theoretical 1/16" margin

⁴⁶ See Motion at 13.

⁴⁷ See Revision 8 to UFSAR, Chapter 3, Design of Structures, Components, Equipment and Systems, Section 3.8.5.1 (ADAMS Accession No. ML19171A058).

⁴⁸ *Id.*

⁴⁹ LAR at 7–8. The generic AP1000 SASSI shows a 1.32" gap will be maintained during a SSE. If the site-specific SASSI is used, the gap is larger at 1.73".

⁵⁰ *Id.* at 9.

resulting from the maximum allowed displacement as one of the reasons for Staff’s additional validation of SNC’s analyses.

Upon completing that review, Staff ultimately agreed that even with the reduced as-built gap, the buildings will maintain at least 1" separation during a SSE:

LAR 20-001 states that “the gap between the auxiliary building and annex building at locations with nonconformances during a seismic event calculated based on the VEGP Unit 3 site-specific SASSI [analysis] is larger than 1.73 inches.” The **staff confirmed these results during the audit**. Therefore, the gap at locations with nonconformances is larger than the 1-inch minimum gap during an SSE that is stated in the UFSAR.⁵¹

The statement in the Management Briefing that settlement potentially “can reduce” this seismic margin further is not new or controversial. It is the very reason SNC analyzed differential settlement in the LAR to demonstrate that, while it *could in theory* reduce the seismic gap between the two buildings, in this case it *will not*.⁵² Again, Staff reviewed the data and agreed, as shown in the SER excerpts on the pages above.

BREDL’s reliance on intermediate internal discussion by Staff prior to reaching final conclusions do not contradict the NRC Staff’s findings in the SER, provide relevant information to BREDL’s challenge of the LAR, or reveal a new significant safety issue.

3. Discussion of Available Settlement Data Points

Third, BREDL quotes the Management Briefing’s issue statement that “[t]here is no settlement data between these two structures in the North-South direction.”⁵³ Again, this issue is presented as part of the reason Staff initiated the audit, not the outcome of their analyses. Mr. Gundersen points to this statement as a basis for his claim that “SNC has not been monitoring the

⁵¹ SER at 4.

⁵² LAR at 8 (“ . . . differential settlement of foundations may impact the gaps between the nuclear island and adjacent buildings. Therefore, differential settlement of foundations is evaluated . . . ”).

⁵³ Motion at 13.

dishing of the Vogtle 3 Nuclear Island.”⁵⁴ Mr. Gundersen once again does not acknowledge the requirements in the AP1000 DCD governing Vogtle settlement monitoring or challenge SNC’s compliance with those requirements, both of which are outside the scope of this proceeding anyway.⁵⁵ Nor does Mr. Gundersen acknowledge the portions of the SER explaining that Staff audited “settlement data at different locations around the Nuclear Island and adjacent buildings from the beginning of construction through the current state.”⁵⁶ And most importantly, Mr. Gundersen does not attempt to connect the FOIA information to the LAR or explain how it poses a new significant safety issue that warrants reopening this proceeding on the LAR.

In fact, the LAR itself indicates that SNC relied on settlement data and modeling between the nuclear island and turbine building to conservatively bound the expected behavior of the annex building.⁵⁷ BREDL never challenged this in the Petition and still has not in its restated contention. BREDL likewise has not challenged the reasonableness of SNC’s use of existing settlement data to conclude that the observed trends for the nuclear island and annex building foundation, respectively, would tend to expand rather than shrink the gap between the two structures.⁵⁸ Instead, Mr. Gundersen claims, contrary to the LAR and SER, that SNC is conducting no monitoring at all.

⁵⁴ See Declaration at 10.

⁵⁵ The Board has already made BREDL aware that these types of challenges are outside the scope of a proceeding on this LAR. See Order at 24. See also *Millstone*, LBP-08-9, 67 NRC at 437–38 (contentions that challenge the existing licensing basis not proposed to be modified by a license amendment are outside the scope of a LAR proceeding); *Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), DD-17-13, 85 NRC 195, 207 (2017) (claims that a licensee violated NRC regulations or its license are handled through the NRC’s enforcement process).

⁵⁶ SER at 6.

⁵⁷ LAR at 7. SNC evaluated relative displacement between the turbine building and nuclear island—informed by settlement data between the turbine building and nuclear island in the North-South direction—and then showed that the annex building was stiffer (i.e., would deflect less) than the turbine building, thus the nuclear island vs. turbine building analysis (which showed more than 1" separation would be maintained in a SSE) conservatively bounded the North-South gap between the nuclear island and annex building.

⁵⁸ See LAR at 8. Nor does BREDL challenge statements in the LAR that explain how SNC could use construction techniques to overcome short-term settlement, even if it did tend to shrink the gap, and the LAR’s statement that long-term settlement is expected to be small due to the engineering fill and Blue Bluff Marl at the Vogtle site. See *id.*

Merely pointing to Staff’s acknowledgement that a specific data point is not captured by the Vogtle monitoring program is not evidence that SNC is not in compliance with its licensing basis. Nor does it mean that SNC and Staff were unable to reasonably reach the conclusions presented in the LAR and SER based on the data that is available, which Mr. Gundersen and BREDL do not contend with or challenge. None of this information creates a question of fact or law regarding the conclusions in the LAR or SER or poses a new significant safety issue that justifies reopening the record.

4. Predicted vs. Observed Settlement

Next, BREDL points to the Management Briefing’s issue statement that “predicted settlement is significantly different than what has been observed.” Once again, although vague, this statement appears to have been presented as a basis for further review of the settlement data—not a conclusion or critique of the LAR. Mr. Gundersen draws from this statement his own unsupported conclusion that “the initial seismic analysis for Vogtle Unit 3 is significantly flawed.”⁵⁹ However, the statement itself says no such thing and, moreover, the original AP1000 seismic analysis is not subject to challenge in this proceeding.

The “predicted settlement” in this case presumably refers to the bounding settlement analysis reflected in the AP1000 DCD.⁶⁰ By necessity, this type of bounding assessment makes conservative assumptions about site properties and construction sequencing to ensure that the analysis envelopes the expected differences between sites and construction schedules to maintain

⁵⁹ Declaration at 10.

⁶⁰ See DCD Tier 2, Section 3.8.5.4.2 (describes the evaluation of settlement on the AP1000 basemat during construction, considering various construction sequences and soil properties).

standardization and usefulness across multiple AP1000 projects.⁶¹ Indeed, when Staff audited SNC's settlement data in 2018, it came to the following conclusion:

[M]easured actual settlements are at least **40 percent less** than the calculated settlements using the analytical model. This indicates that the subsurface material properties under the foundations were conservatively assumed in analytical analysis. Based on this observation, the **staff reasonably expects that settlement will be well controlled within the settlement limits throughout the entire construction sequence** and through the long-term (plant operation).⁶²

Though conformance with the DCD's settlement allowance was not specifically at issue in the LAR, Staff also noted in the SER:

The staff notes that both the **actual settlement at the survey points and the predicted settlement values in the UFSAR are within the acceptable limits given in Table 5.0-1, "Site Parameters," of the AP1000 DCD and UFSAR.** Consequently, the staff expects that settlement will be well controlled within the acceptable settlement limits throughout the entire construction sequence and through plant operation.⁶³

In other words, actual Vogtle Unit 3 settlement remains within the limits specified in the DCD. Mr. Gundersen does not challenge—or even acknowledge—this fact. Importantly, he also fails to connect statements in the Management Briefing or any differences between prior settlement analyses and current data to the LAR's conclusion—that observed settlement trends indicate that settlement will not adversely affect the gap between the annex and auxiliary buildings.

5. Potential Safety Significance if the Gap Reduces to Zero

BREDL next excerpts a statement in the Management Briefing that merely restates the licensing basis requirement that the annex building (seismic Category II) cannot interact with the auxiliary building (Category I) during a SSE. The Management Briefing says, "[p]otential Safety

⁶¹ *See id.* (the assessment uses three different construction sequences and "maximize[s] the potential settlement" by using certain soil properties).

⁶² Safety Evaluation Report, Vogtle Electric Generating Plant Units 3 and 4, Amendment Nos. 127 and 126 (LAR-18-002) at 5 (June 15, 2018) (ADAMS Accession No. ML18120A345).

⁶³ SER at 6.

significance occurs if the gap between Cat 1 and Cat II closes to zero because there is no analysis presented showing that a zero gap will not affect the structural integrity of the CAT I structure by the Licensee.” As the Vogtle UFSAR explains, Category II structures must be designed to *either* not interact with a Category I structure *or* not impair the integrity of a Category I structure.⁶⁴ The annex building satisfies this requirement by *not interacting* with the nuclear island Category I structures.⁶⁵ Accordingly, the DCD and Vogtle UFSAR rely on the seismic gap to preclude interaction and do not need to include a detailed structural analysis of the effects on the Category I nuclear island structures if the Category II annex building interacted with them during a SSE.

Nothing in the LAR changes these licensing requirements. SNC was not required to include a new structural analysis detailing the hypothetical impacts on the auxiliary building if the annex building interacts with it during a SSE, because the LAR demonstrated that the annex building would continue *not* to interact with the auxiliary building in an SSE.

Of course, Staff’s statement that SNC would have to provide additional structural analyses if the annex building interacted with the auxiliary building does not constitute evidence that they, in fact, will interact. It appears that Staff included it in the Management Briefing to reinforce the importance of confirming that the buildings will not interact, which Staff did as documented in the SER.⁶⁶ Further, Mr. Gundersen still has not provided any analysis to support his statement that the walls in question are moving closer together, nor has he meaningfully engaged with or contested SNC’s conclusion in the LAR that settlement trends would tend to *increase* rather than *shrink* the gap between the buildings. Nor does he cite any information that contradicts NRC Staff’s finding

⁶⁴ Revision 8 to UFSAR, Chapter 3, Design of Structures, Components, Equipment and Systems, Section 3.7.2.8 (ADAMS Accession No. ML19171A057).

⁶⁵ *Id.*; *see also* Revision 8 to UFSAR, Chapter 3, Design of Structures, Components, Equipment and Systems, Section 3.8.5.1 (ADAMS Accession No. ML19171A058).

⁶⁶ *See* SER at 6.

that “predicted settlement values in the UFSAR are within the acceptable limits given in Table 5.0-1, ‘Site Parameters,’ of the AP1000 DCD and UFSAR.”⁶⁷

In summary, none of his arguments are new; they are the same unsupported and conclusory allegations he offered in his original declaration that were rejected by the Board as irrelevant and unsupported.⁶⁸ The FOIA information does not conflict with that determination and certainly a summary of the requirements applicable to Category II buildings—devoid of any supported conclusion that the Vogtle Cat II buildings affected by the LAR do not satisfy those requirements—does not constitute new evidence of a significant safety issue.

6. Staff’s Request for Additional Support from SNC

Next BREDL excerpts the “Path Forward” from the Management Briefing, which states that “SNC needs either (1) to provide a realistically predicted settlement affecting the seismic gap in the North-South direction from the remaining loadings of the completed structures or (2) to address that the zero gap is acceptable based on an analysis demonstrating that a Cat II structure (Annex Building) will not affect the structural integrity of the Cat 1 Nuclear Island during an SSE.”⁶⁹ As is evident from the SER, SNC satisfied the first portion of the request, thus making the second half unnecessary (because SNC demonstrated to Staff’s satisfaction that differential settlement would not cause the structures to interact). The fact that Staff asked SNC for additional support, and ultimately agreed with SNC’s conclusions in the LAR, only further demonstrates that the Management Briefing was prepared before Staff had completed its review.

In fact, this information was already available in Staff’s publicly available audit report, which explained that, after initial review of SNC and Westinghouse data, Staff conducted follow-

⁶⁷ *See id.*

⁶⁸ *See* Order at 25–26.

⁶⁹ Motion at 13–14.

up teleconferences to improve their understanding of the data and calculations.⁷⁰ As a result “SNC and Westinghouse provided clarification” and provided supplemental documents “to more clearly illustrate the information provided because some of the figures in the original documents were difficult to read and interpret.”⁷¹ Following this clarification, “NRC Staff did not identify any outstanding issues or the need for the licensee to submit any additional information on the docket.”⁷²

Mr. Gundersen argues that the mere fact that Staff asked questions shows “that the LAR was incomplete and the walls inside Vogtle 3 continue to move because of the ongoing dishing.”⁷³ As the Commission has long held, “NRC staff’s mere posing of questions does not suggest that the application was incomplete.”⁷⁴ And of course, the fact that Staff asked questions does not constitute affirmative evidence that SNC’s conclusion was wrong nor is it evidence of a significant safety issue.

7. Redactions

Finally, BREDL criticizes the redactions in the FOIA information. In short, Staff’s response to BREDL’s FOIA request is not the subject of this proceeding. The redactions are not evidence that the LAR is deficient or defective. The Management Briefing statement following the redactions that “staff has another issue of using the predicted settlement to assess the seismic gap” is merely more evidence that Staff challenged SNC’s positions as they were evaluating them. The SER clearly states that Staff was ultimately satisfied in its own review of the data which allowed Staff to reach the same conclusion as the LAR—that differential settlement will not adversely

⁷⁰ Audit Report at 3.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Declaration at 11.

⁷⁴ *Calvert Cliffs*, CLI-98-25, 48 NRC at 349.

affect the gap between the annex and auxiliary buildings. BREDL has done nothing more than identify some of the questions Staff asked itself and SNC along the way. None of this information identifies a new significant safety issue that warrants reopening the record.

In sum, none of the excerpts BREDL offers from the FOIA information reveals any new information that calls into question SNC's conclusions in the LAR (or Staff's conclusions in the SER). BREDL has succeeded only in pointing out the unsurprising fact that NRC Staff conducted a thorough review of issues identified in the LAR before ultimately agreeing with SNC's conclusions. Mr. Gundersen's farfetched claim that NRC Staff lied about its ability to validate Vogtle settlement data is not supported by any evidence and does not provide a basis for reopening the record.

C. BREDL Has Not Shown That a Materially Different Result is Likely

Section 2.326(a)(3) requires BREDL to show that the new FOIA information “would likely have materially affected the outcome of the licens[ing] proceeding.”⁷⁵ While the term “likely” is undefined, it has been interpreted to be synonymous with “probable” or “more likely than not.”⁷⁶ BREDL superficially addresses this standard,⁷⁷ but does not provide any new arguments or explain how BREDL's “amended” version of Contention 2—which is nearly identical to BREDL's original formulation and provides no material new arguments—would lead the Board to admit Contention 2 to hearing. Large portions of BREDL's Motion merely repeat arguments from its Petition and Appeal verbatim, with no meaningful explanation of how the FOIA information bears on the strength or admissibility of the restated Contention 2 in light of the Board's determination

⁷⁵ *Oyster Creek*, LBP-08-12, 68 NRC at 22.

⁷⁶ *Id.* at n.16 (citing Webster's Third New International Dictionary of the English Language Unabridged 1310 (1976)).

⁷⁷ See Motion at 3 (“Petitioner contends that the ASLB would not have approved the LAR due to the lack of data, an incomplete application, or lack of substantial analyses regarding the unstable Nuclear Island basemat foundation to Vogtle Unit 3.”)

that (1) BREDL's attacks on nuclear island settlement in general are beyond the scope of the proceeding; (2) BREDL's repeated claims that nuclear island settlement has never been analyzed do not raise a material dispute with the LAR (which addresses the very issue); and (3) BREDL's and Mr. Gundersen's unexplained assertions are unaccompanied by the kind of documentary and analytical support required to pass muster.⁷⁸ In fact, beyond unsupported conclusory statements, the Motion is devoid of any meaningful explanation of how the FOIA information helps BREDL's cause, and the restated Contention suffers from all the same faults that led the Board to reject it in the first place.

Mr. Gundersen recycles the same bare assertions the Board has already rejected as "nothing more than mere speculation."⁷⁹ While Mr. Gundersen's new Declaration intersperses his exact same unsupported claims with quotes from the FOIA information, none of the material he quotes actually supports his claims. For example, Mr. Gundersen cites the deletion of the phrase "staff could not determine the seismic gap predicted in future" alongside his claim that "dishing is worsening and that walls inside Vogtle Unit 3 will move much further in the future."⁸⁰ Of course, the deletion does not indicate anything at all with respect to the Vogtle differential settlement, and it certainly does not support Mr. Gundersen's opinion that "dishing is worsening" and the walls "will move much further." Similarly, Mr. Gundersen presents the Management Briefing statement that the margin between buildings "can reduce further due to continued settlement," as supposed support for his claim that "the walls inside Vogtle 3 continue to move because of the ongoing dishing."⁸¹ As noted above, *the LAR itself* stated that settlement could affect the separation between

⁷⁸ See Order at 24–26.

⁷⁹ *Id.* at 27.

⁸⁰ Declaration at 9.

⁸¹ Declaration at 9–10.

buildings, which is the very reason SNC included a settlement analysis in the LAR. Staff's acknowledgement of the same possibility does not support Mr. Gundersen's claim that differential settlement will reduce the gap. The rest of his claims are no different and have already been addressed in the preceding section. Mr. Gundersen cannot manufacture the support required by NRC's pleading standard by simply sprinkling in quotes that do not *actually support* the arguments Mr. Gundersen advances. His Declaration and BREDL's Motion remain unsupported and inadmissible.

BREDL's Motion also repeats unsupported claims that were demonstrably false even when it filed its Petition, were further debunked during briefing and oral argument, and were eventually rejected as unsupported by the Board's Order. For example, BREDL's Motion continues to insist that the annex and auxiliary walls in question were completed by 2015 and, rather than resulting from an "as-built nonconformance" as represented in the LAR, the gap between buildings shrunk because the foundations "inexplicably moved, sunk and become distorted."⁸² BREDL makes this assertion despite the clear statements in the LAR to the contrary, SNC's reply to BREDL's original Petition providing citations to public documents showing BREDL's statement to be wrong,⁸³ and the Board's Order rejecting these obviously incorrect claims as unsupported.⁸⁴ BREDL points to nothing in the FOIA information that supports this claim, because no such document exists. BREDL is simply wrong.

BREDL also continues to make the same out of scope arguments—maintaining its demand to halt construction until SNC "reevaluates the structural integrity of the entire Nuclear Island."⁸⁵

⁸² Motion at 10–11.

⁸³ See [SNC]'s Answer Opposing Petition to Intervene and Request for Hearing at 14–15 (June 5, 2020) (ADAMS Accession No. ML20157A261).

⁸⁴ Order at 23, 25.

⁸⁵ Motion at 15.

The Board already rejected BREDL’s general attacks on settlement of the entire nuclear island and BREDL’s requested remedy as out of scope.⁸⁶ Nothing in the Motion or FOIA information changes that. All of BREDL’s arguments remain aimed at the general foundational integrity of the Vogtle Unit 3 nuclear island rather than the change sought by the LAR. Indeed, BREDL still asserts that *the LAR itself* is evidence of the “serious structural and seismic problems beyond the leaning walls” that “was never anticipated . . . in Vogtle’s original design” and “has been ignored in the [LAR].”⁸⁷ Even contending with these out-of-scope arguments, nothing in the FOIA information calls into question the seismic analyses enshrined in the Vogtle DCD or SNC’s and NRC Staff’s documented conclusions that actual settlement data shows that the Vogtle settlement is within the acceptable settlement limits allowed by UFSAR Table 2.5-1. Regardless, the structural integrity of the nuclear island remains beyond the scope of this proceeding.

BREDL likewise devotes a significant portion of its Motion to NRC Staff’s failure to provide non-public information to BREDL at the contention admissibility stage. Staff’s response to BREDL’s FOIA request is not subject to challenge in this proceeding. As explained in SNC’s reply to BREDL’s Appeal, which raised these arguments for the first time, BREDL does not have a general right to discovery at the contention admissibility stage under NRC procedural rules (or the “rules of evidence” cited by BREDL in the Motion that apply to hearings under 10 C.F.R. Part 13).⁸⁸ BREDL’s attacks on NRC Staff’s response to BREDL’s requests for information are beyond the scope of this proceeding.

Similarly, BREDL still has not raised a genuine dispute with the LAR, which deals solely with the required minimum distance between portions of two walls. Instead, BREDL continues to

⁸⁶ Order at 24.

⁸⁷ Motion at 18.

⁸⁸ See SNC Brief in Opposition to Appeal at Section IV.B.ii (Sept. 29, 2020) (ADAMS Accession No. ML20273A315).

insist that SNC never analyzed differential settlement of the nuclear island,⁸⁹ and Mr. Gundersen continues to assert that settlement of the foundation is inexplicably causing the annex and auxiliary building walls to move closer together without ever explaining *why* and without addressing SNC's directly contradictory settlement analysis and the NRC Staff's findings in connection with previous license amendments and within the current LAR.⁹⁰ The Board found that BREDL's failure to acknowledge the portions of the LAR and UFSAR that specifically address differential settlement do not raise a genuine dispute with the application.⁹¹ Nothing in the information relied upon by BREDL in its Motion cures that failure. BREDL continues to ignore the LAR and UFSAR and continues to insist, without explanation, that SNC is ignoring differential settlement.⁹²

Likewise, the Board found that BREDL's insistence that the walls are moving closer together fails to raise a dispute with the LAR because BREDL and Mr. Gundersen never acknowledged the contradictory SNC analysis or provided any support for their view "that the wall is acting in a way contrary to the physics precept described in the LAR."⁹³ The only difference in BREDL's argument is, rather than blindly insisting the walls are inexplicably moving closer together, BREDL now blindly insists that "[t]he FOIA response information clearly shows that the wall in question continues to move due to the unanticipated and unmeasured sinking."⁹⁴ But BREDL and Mr. Gundersen do not explain how the Management Briefing "clearly shows" this and still do not contend with the contrary analysis in the LAR. As outlined above, the Management Briefing makes no conclusions about Vogtle settlement or its impact on the gap between buildings

⁸⁹ Motion at 17–18.

⁹⁰ *See, e.g.*, Declaration at 10-12.

⁹¹ Order at 25.

⁹² *See, e.g.*, Motion at 11, 14, 18; Declaration at 10.

⁹³ Order at 26.

⁹⁴ Motion at 11.

and provides no support for BREDL's claim that the annex and auxiliary building walls will tilt *toward* each other, in a manner contrary to the analysis provided in the LAR and ultimately confirmed by NRC Staff in the SER. Perfunctory references to the FOIA material do not cure BREDL's failure to raise a material dispute with the LAR.

In summary, BREDL offers the same contention it raised in the original Petition, which remains out of scope, fails to raise a dispute with the LAR, and is unsupported.

D. BREDL's Motion is not Supported by an Expert in the Applicable Disciplines

Section 2.326(b) requires an affidavit "by experts in the disciplines appropriate to the issues raised." BREDL's Motion raises issues related to the interaction between nuclear structures and foundations during a seismic event; however, BREDL fails to establish how Mr. Gundersen is qualified to provide an expert affidavit on such matters. As noted in SNC's reply to BREDL's initial Petition,⁹⁵ although Mr. Gundersen's declaration and resume indicate that he has some experience with structural engineering, his experience is listed generally, with little detail. Mr. Gundersen's qualifications do not include structural engineering or professional engineering licensure. BREDL and Mr. Gundersen provide no specific description of Mr. Gundersen's experience as it relates to detailed aspects of the structural integrity of the Vogtle Unit 3 facility. Nowhere does Mr. Gundersen demonstrate he has any education, knowledge or experience with respect to settlement surveys. Nor does Mr. Gundersen demonstrate how he is an expert on identifying structural and seismic issues caused by, what he refers to as, "dishing" or "cupping." In short, BREDL has not established that Mr. Gundersen is an expert in the disciplines relevant to the issues raised in BREDL's Motion.

⁹⁵ See [SNC]'s Answer Opposing Petition to Intervene and Request for Hearing at 11–12 (June 5, 2020) (ADAMS Accession No. ML20157A261).

IV. BREDL's Contention Remains Inadmissible

As already addressed in the sections above, BREDL's Motion merely restates its original Contention 2 without changing any of its arguments, adding any support, or curing any of the defects that led the Board to reject it as inadmissible. For the reasons set forth above and in SNC's replies to BREDL's Petition and Appeal, the contention does not satisfy the 2.309(f)(1) admissibility criteria. To the extent the Commission addresses BREDL's discussion of the 2.309(c) standard for late-filed amendments to contentions, BREDL's "amended" contention likewise fails that standard because it is untimely, fails to address any new and materially different information, and fails to satisfy the 2.309(f)(1) admissibility criteria.

V. Conclusion

For the forgoing reasons, the Motion should be denied. BREDL has not identified any new information or presented any new arguments that call into question the settlement analysis in the LAR, which NRC Staff confirmed in the SER.

Respectfully submitted,

Executed in accord with 10 C.F.R. § 2.304(d)

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Date of Signature: December 17, 2020

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

_____)	
In the Matter of:)	Docket No. 52-025-LA-3
)	
SOUTHERN NUCLEAR OPERATING CO.)	
)	
Vogtle Electric Generating Plant, Unit 3)	December 17, 2020
_____)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that on this date copies of the foregoing Answer Opposing BREDL's Motion to Reopen the Record and Request to Amend Contention was served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above captioned matter.

Signed electronically by

/s/ Alan D. Lovett

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