UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of	)	
	)	
SOUTHERN NUCLEAR OPERATING CO.	)	Docket Nos. 52-025-COL and 52-026-COL
	)	
(Vogtle Electric Generating Plant Units 3 and 4)	)	
	)	

NRC STAFF ANSWER TO PETITIONERS' MOTION TO ADMIT NEW CONTENTION REGARDING THE SAFETY AND ENVIRONMENTAL IMPLICATIONS OF THE NRC TASK FORCE REPORT ON THE FUKUSHIMA DAI-ICHI ACCIDENT

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby answers the "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," (Motion to Reopen) and "Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report," (Proposed Contention) filed by Center for 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 (SACE Petitioners) on August 11, 2011. On that same date, Blue Ridge Environmental Defense League (BREDL) filed a similar Motion to Reopen and Proposed Contention which the Staff also answers herein. For the reasons set forth below, the motions to reopen and proposed contentions are untimely and fail to meet the Commission's requirements for reopening the record or admitting a new contention.

PROCEDURAL BACKGROUND

Southern Nuclear Operating Company ("Southern" or "Applicant") and several co-applicants applied for a combined license (COL) for Vogtle Electric Generating Plant Units 3 and 4. Southern Nuclear Operating Company; Acceptance for Docketing of an Application for

Combined License for Vogtle Electric Generating Plant Units 3 and 4, 73 Fed. Reg. 33,118 (June 11, 2008). On September 16, 2008, the NRC published a notice of hearing on the Application. Southern Nuclear Operating Company; Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for Vogtle Electric Generating Plants Units 3 and 4, 73 Fed. Reg. 53,446 (Sept. 16, 2008). Pursuant to that notice, on November 17, 2008, several organizations filed a joint petition to intervene. Petition for Intervention (Nov. 17, 2008). On March 5, 2009, the Atomic Safety and Licensing Board (ASLB) designated to rule on the petition granted the petition and admitted one contention, designated Safety-1, characterizing that contention as a contention of omission. *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-03, 69 NRC 139, 160-164 (2009). The ASLB granted a request to amend the contention on January 8, 2010 and established a schedule for the filing of summary disposition motions. *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), (LBP Jan. 8, 2010) (unpublished order). On May 19, 2010, the ASLB granted the Applicant's motion for summary disposition, thereby resolving all the contested issues in the proceeding, and concluding the contested portion of the proceeding. *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-08, 72 NRC __ (May 19, 2010) (slip op.).

On August 12, 2010, BREDL and CSC Movants (except for Southern Alliance Against Clean Energy) submitted a "Proposed New Contention by Joint Intervenors Regarding the Inadequacy of Applicant's Containment/Coating Inspection Program (Aug. 12, 2010). Because the Board before which it was filed had ceased to exist with the denial of Contention Safety 1 and the termination of the proceeding, the filing was referred to the Commission. The Commission forwarded the filing to the Chief Administrative Judge of the ASLB Panel, which appointed a second ASLB to consider the proposed new contention. That ASLB denied the motion to admit the proposed new contention because of its failure to satisfy the criteria for opening a closed record under 10 C.F.R. § 2.326. On December 9, 2010, BREDL and CSC

Movants (except for Southern Alliance Against Clean Energy) filed a notice of appeal to the Commission 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 the NRC staff filed briefs in opposition to the appeal, which remains pending before the Commission..

On April 14, 2011, the SACE Petitioners and BREDL filed "Emergency Petitions to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident" (Emergency Petition) before the Commission. BREDL filed a corrected Emergency Petition on April 18, 2011, and the SACE Petitioners filed an Errata on April 18, 2011. On April 20, 2011, BREDL filed a Supplement to the Emergency Petition. Accompanying the Supplement to the Emergency Petition was a "Declaration of Dr. Arjun Makhijani in Support of 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" (First Makhijani Declaration). *See, e.g.*, First Makhijani Declaration (Apr. 19, 2011) (ML111100633) (filed on April 20, 2011). The Staff and Applicant filed answers to the Emergency Petition on May 2, 2011.

On August 11, 2011, the SACE Petitioners and BREDL each filed a Motion to Reopen and Proposed Contention. Along with their motions and proposed contentions, the SACE Petitioners and BREDL each filed a "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," (Second Makhijani Declaration). BREDL also filed a "Declaration of Dr. Ross McCluney Regarding Environmental and Safety Issues at Nuclear Power Plants Based on Events at Fukushima and the Findings of the NRC Interim Task Force," (McCluney Declaration) and a "Declaration of Rev. Charles N. Utley Regarding Environmental Justice and Emergency Response Issues at Plant Vogtle Electric Generating Plant Based on Events at Fukushima and the Findings of the NRC Interim Task Force" (Utley

Declaration). Also, in support of their respective motions, SACE Petitioners and BREDL attached declarations from their members showing standing.[1] On August 18, 2011, the Commission issued an Order referring the SACE Petitioners' and BREDL's motions and new contentions to the Atomic Safely and Licensing Board Panel (ASLBP) for appropriate action. Order (Referring Motions to the ASLBP) (Aug. 18, 2011) (unpublished) (ADAMS Accession No. ML11230B325).

LEGAL STANDARDS

The admissibility of new and amended contentions is governed by 10 C.F.R. § 2.309(f)(2) and 2.309(f)(1). New or amended contentions filed after the initial filing period may be admitted only with leave of the presiding officer if, in accordance with 10 C.F.R. § 2.309(f)(2), the contention meets the following requirements:

> (i) The information upon which the amended or new contention is based was not previously available;
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> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
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> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2)(i)-(iii).

Additionally, a new or amended contention must also meet the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). *Id*. In accordance with 10 C.F.R. § 2.309(f)(1), an admissible contention must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
>
> (ii) Provide a brief explanation of the basis for the contention;

[1] A petitioner who is admitted as a party in one proceeding must re-establish standing once the original proceeding is dismissed—he may not simply rely on standing established in the prior proceeding. Texas Utils. Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 162-63 (1993). The Staff agrees that the SACE Petitioners and BREDL have satisfied the requirements for re-establishing standing. *See* SACE Motion to Reopen at 8; BREDL Motion to Reopen at 8.

> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;
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> (vi) . . . provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. . . .

10 C.F.R. § 2.309(f)(1)(i)-(vi). The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). "Mere 'notice pleading' does not suffice." *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (internal quotation omitted).

Finally, a contention that does not qualify for admission as a new contention under § 2.309(f)(2) may still be admitted if it meets the provisions governing nontimely contentions set forth in 10 C.F.R. § 2.309(c)(1).[2] Pursuant to 10 C.F.R. § 2.309(c)(2), each of the factors is

[2] 10 C.F.R. § 2.309(c)(1) requires a balancing of the following factors to the extent that they apply to a particular nontimely filing:

> (i) Good cause, if any, for the failure to file on time;

required to be addressed in the requestor's nontimely filing. The first factor, whether good cause exists for the failure to file on time, is the "most important" and entitled to the most weight. *Amergen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-09-07, 69 NRC 235, 261 (2009). Where no showing of good cause for the lateness is tendered, "petitioner's demonstration on the other factors must be particularly strong." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 73 (1992) (quoting Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460, 462 (1977)).

DISCUSSION

I. Reopening Standards

On August 11, 2011, the Petitioners[3] submitted a Motion to Reopen. In their motion, the Petitioners assert that the Final Supplemental Environmental Impact Statement for Combined Licenses (COLs) for Vogtle Electric Generating Plant Units 3 and 4 (March 2011) (FSEIS) fails to address the "extraordinary environmental and safety implications of the findings and recommendations raised by the Nuclear Regulatory Commission (NRC) in its

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

10 C.F.R. § 2.309(c)(1)(i)-(viii).

[3] Two separate groups, the SACE Petitioners and BREDL, have submitted nearly identical Proposed Contentions and Motions to Reopen. When discussing portions of their Motions to Reopen and Proposed Contentions that are nearly identical, the Staff refers to the both groups together as "Petitioners." However, portions of BREDL's Motion to Reopen and Proposed Contention contain additional issues not discussed by the SACE Petitioners in their filings. To the extent that the Staff is discussing issues addressed only in BREDL's filings, the Staff will refer to BREDL individually.

'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)." SACE Motion to Reopen at 1; BREDL Motion to Reopen at 1. The Petitioners also contend that reopening the record and admitting the new contention is necessary to ensure that the NRC "fulfills its nondiscretionary duty under the National Environmental Policy Act ("NEPA") to consider the new and significant information set forth in the Fukushima Task Force Report" before issuing a COL for Vogtle Units 3 and 4. SACE Motion to Reopen at 1-2; BREDL Motion to Reopen at 1-2.

The Commission has stated that a petitioner seeking to introduce a new contention after the record has been closed should "address the reopening standards contemporaneously with a late-filed intervention petition, which must satisfy the standards for both contention admissibility and late filing." *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 124 (2009). As set forth below, the Petitioners fail to meet the reopening standards.

Section 2.326(a) of the Commission's regulations set forth the reopening standards. Specifically, section 2.326(a) states:

> A motion to reopen a closed proceeding to consider additional evidence will not be granted unless the following criteria are satisfied:
> (1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
> (2) The motion must address a significant safety or environmental issue; and
> (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

10 CFR § 2.326(a).

The Commission has held that "the standard for admitting a contention after the record is closed is higher than for an ordinary late-filed contention." *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350 (2005). In the context of an environmental issue, the motion to reopen standard is analogous to the standard

for requiring a supplemental EIS. *See Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 27 (2006). The NRC staff must prepare a supplement to a final environmental impact statement if: "(1) [t]here are substantial changes in the proposed action that are relevant to environmental concerns; or (2) [t]here are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 10 C.F.R § 51.92(a)(1)-(2). Any "new information must paint a '*seriously* different picture of the environmental landscape.'" *PFS*, CLI-06-3, 63 NRC at 28, quoting *National Committee for the New River, Inc. v. Fed. Energy Regulatory Comm'n*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (emphasis in original).

The Petitioners do not meet the reopening standards outlined in § 2.326(a)(2)-(3) because their proffered contention does not address a significant environmental issue, nor does it demonstrate that a materially different result would be likely if the Petitioners' new contention had been raised at the beginning of the proceeding. Moreover, the Petitioners have not demonstrated how the environmental impacts of the proposed action would be altered at all, much less how there are substantial changes in the proposed action or new and significant circumstances or information relevant to environmental concerns that have bearing on the proposed action. *See* 10 C.F.R. 51.92(a)(1)-(2).

In their Motion to Reopen, the Petitioners assert that the environmental issues raised in their contention are significant because "the Task Force 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." SACE Motion to Reopen at 5; BREDL Motion to Reopen at 5. The Petitioners also assert that a materially different result would be likely if the NRC had considered the new information set forth in the Task Force Report. *Id.* The Petitioners assert that the Task Force Report recommends that severe accident mitigation alternatives (SAMAs) should be imposed as mandatory measures. *Id.* If SAMAs were imposed, the Petitioners assert that the environmental analysis would have to consider the implications of

the Task Force's conclusion that "compliance with current NRC safety standards does not adequately protect public health and safety from severe accidents and their environmental effects." *Id.* The Petitioners also assert that if applicants are unable to comply with new mandatory requirements, their license may be denied and that the cost of adopting the recommendation may likely be significant. SACE Motion to Reopen at 6; BREDL Motion to Reopen at 6.

However, the Task Force Report specifically states that "in 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 . . . continued operation and continued licensing activities do not pose an imminent risk to the public health and safety." Task Force Report at 18, 73. Moreover, the Task Force Report 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 [recommended actions] have been implemented." *Id.* at 73. The Petitioners simply assert that the environmental implications of the Task Force Report should be considered without indicating what any of those environmental implications would actually be. Thus, the Petitioners do not raise a significant environmental issue in their motion because they have not shown that the current analysis set forth in the FSEIS is inadequate and would need to be supplemented.

The Petitioners' claims that imposition of SAMAs may result in denial of licenses and higher costs similarly do not raise a significant environmental issue because they are based on an inaccurate premise, namely that the Task Force Report recommends imposition of SAMAs. As further discussed in Section II.B, the Task Force Report simply does not make such a recommendation. Moreover, even if additional measures were imposed, the Petitioners have not shown how this Applicant would be unable to comply with them such that their license would be denied, or that the costs of compliance would be so great so as to materially alter the environmental impacts.

Finally, BREDL fails to address the reopening standards with respect to the portions of the Proposed Contention concerning seismic and flooding events and environmental justice. BREDL does not explain why these portions address a significant environmental issue nor do they demonstrate that a materially different result would be likely if BREDL's new contention had been raised at the beginning of the proceeding.

The Petitioners have failed to meet the reopening standards in § 2.326. Accordingly, the Petitioners' late filed petition to intervene should be denied.

II. Proposed Contention

According to the Petitioners, the Proposed Contention is based on a conclusion in the Task Force Report that the level of protection currently provided by NRC regulations is inadequate to ensure protection of public health, safety, and the environment. SACE Proposed Contention at 2; BREDL Proposed Contention at 2; *see also* Second Makhijani Declaration ¶ 11. From this starting point, the Petitioners argue that the conclusions and recommendations presented in the Task Force Report constitute 'new and significant information,' the environmental implications of which "must be considered before the NRC may make a decision" on any new reactor licensing. SACE Proposed Contention at 10; BREDL Proposed Contention at 10. The Petitioners therefore claim that any conclusions in environmental documents associated with the Vogtle COL application must be revisited, because compliance with NRC safety regulations is no longer sufficient to ensure that environmental impacts of accidents are acceptable. SACE Proposed Contention at 13; BREDL Proposed Contention at 12; *see also* Second Makhijani Declaration ¶ 11.

The Petitioners also make several distinct claims regarding both the content of the Task Force Report and the deficiencies they allege in environmental documents issued in COL proceedings. First, they claim that new reactor environmental licensing documents do not adequately address the environmental analysis of design basis accidents, severe accidents, and severe accident mitigation alternatives (SAMAs). SACE Proposed Contention at 12-15; BREDL

Proposed Contention at 11-15. Second, the Petitioners assert that the Task Force Report requires supplementation of environmental documents in the Vogtle proceeding to address recommendations related to seismic and flooding events. SACE Proposed Contention at 12-15; BREDL Proposed Contention at 13-15. Finally, the Petitioners argue that all twelve recommendations in the Task Force Report should be considered in the Vogtle environmental review before licensing decisions are made. SACE Proposed Contention at 16-18; BREDL Proposed Contention at 17-19.

As further discussed below, the Proposed Contention is barred to the extent that it challenges existing NRC safety regulations, is not supported by the Task Force Report with respect to severe accident analyses under NEPA, and includes several additional claims that are not supported by the Task Force Report. For these reasons and others discussed below, it fails to satisfy the contention pleading rules in 10 C.F.R. §§ 2.309 and 2.335 and should be rejected.

A. To the Extent the Proposed Contention Challenges Existing Safety Regulations, it is Barred by NRC Regulations.

The Proposed Contention is styled as a contention regarding both the safety and environmental implications of the Task Force Report. SACE Proposed Contention at 1; BREDL Proposed Contention at 1. According to the Petitioners, "[t]he NRC's current regulatory scheme requires significant re-evaluation and revision in order to expand or upgrade the design basis for reactor safety as recommended by the Task Force Report." SACE Proposed Contention at 9; BREDL Proposed Contention at 8. The Petitioners also challenge 10 C.F.R. §§ 52.47(a)(23) and 52.79(a)(38), apparently on the grounds that these regulations are subject to cost-benefit analysis. SACE Proposed Contention at 8; BREDL Proposed Contention at 7.

To the extent the Proposed Contention is intended to challenge existing NRC safety regulations, it is barred from consideration in adjudicatory proceedings by 10 C.F.R. § 2.335(a). Pursuant to this regulation, "no rule or regulation of the Commission, or any provision

thereof . . . is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part." 10 C.F.R. § 2.335(a). Petitioners seeking a waiver of this rule in a particular proceeding must meet the standards set forth in 10 C.F.R. § 2.335(b), something the Petitioners have not attempted here. For this reason, to the extent the Proposed Contention is meant as a challenge to the adequacy of current NRC safety regulations, it is not adjudicable in this proceeding and must be rejected.[4]

B. The Proposed Contention is Not Supported by the Task Force Report with respect to Severe Accidents.

The Petitioners' overarching argument, that the Task Force Report demonstrates the inadequacy of current NRC safety regulations and therefore of all related environmental reviews, is not supported by the Task Force Report itself. The Petitioners assert that the Proposed Contention is based on a conclusion in the Task Force Report that the level of protection currently provided by NRC regulations is inadequate to ensure protection of public health, safety, and the environment, and that the environmental implications of the report's recommendations must be considered before any new reactor licensing decision. SACE Proposed Contention at 2; BREDL Proposed Contention at 2; *see also* Second Makhijani Declaration ¶ 11. The Task Force Report does not reach this conclusion; rather, it states that "continued operation and continued licensing activities do not pose an imminent risk to the public health and safety and are not inimical to the common defense and security." Task Force Report at 18. The Task Force notes that the level of safety associated with adequate protection of public health and safety has improved over time and should continue to improve "supported by new scientific information, technologies, methods, and operating experience," but does not state that the current level of protection is inadequate. *Id*. Furthermore, the Task Force Report

[4] The NRC Staff notes that a Petition for Rulemaking under 10 C.F.R. § 2.802 has also been submitted in response to the Task Force Report. To the extent any interested person desires a specific change to NRC regulations, this is the correct procedural approach. The Petitioners themselves recognize that some of the issues they raise may be more appropriate for generic resolution by rulemaking, Proposed Contention at 4, and the Petition for Rulemaking provides further indication that the Proposed Contention is intended in part to challenge Commission rules.

does not take any position on NRC's environmental reviews. It is well established that a document cited by a petitioner as the supporting basis for a contention is subject to scrutiny, both for what it does and does not say. When a report is the central support for a contention, the contents of that report in its entirety is before the Board and subject to the Board's scrutiny. *See, e.g.*, *Yankee Atomic Electric Co*. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996); *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). *See also Southern Nuclear Operating Co*. (Early Site Permit for the Vogtle ESP Site), LBP-07-3, 65 NRC 237, 254 (2007) ("the material provided in support of a contention will be carefully examined by the Board to confirm that on its face it does supply an adequate basis for the contention"). Because this central element of the Petitioners' argument is not supported by the document that serves as the grounds for filing the Proposed Contention, the Petitioners have not provided a sufficient basis for the contention or sufficient information to show that a genuine dispute with the Applicant exists. One of the most important claims made in the Proposed Contention therefore fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(ii) and (vi).

The Petitioners appear to believe that the Task Force Report calls for a change to the way accidents are treated in environmental documents. *See* SACE Proposed Contention at 12-14; BREDL Proposed Contention at 11-13. The Task Force does discuss the distinction between design basis accidents and severe or beyond design basis accidents. Task Force Report at 17-22. It suggests creating a new category of events designated as "extended design-basis" and including a number of existing regulatory requirements under this heading. *Id*. at 20.

However, the Petitioners appear to have interpreted this section of the Task Force Report as support for a claim either that severe accidents are not currently addressed in NRC environmental reviews, or that the way they are addressed must be changed. *See* SACE Proposed Contention at 12-13; BREDL Proposed Contention at 11-12. To the extent that the Petitioners intend the former interpretation, they are simply incorrect. The Environmental Standard Review Plan ("ESRP"), which provides guidance for all NRC COL reviews, includes

instructions for NRC staff reviewers to consider the environmental impacts of both design-basis accidents and severe accidents. *See generally* NUREG-1555, *Environmental Standard Review Plan*, Chapter 7 (Oct. 1999). The Final Supplemental Environmental Impact Statement for Combined Licenses (COLs) for Vogtle Electric Generating Plant, Units 3 and 4 (March 2011) (FSEIS) addresses the environmental impacts of design basis accidents at 5-16 to 5-18, and of severe accidents at 5-18 to 5-20. A petitioner's imprecise reading of a reference document does not create a contention suitable for litigation. *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300 (1995). This portion of the contention, like the previous one, fails to demonstrate the existence of a genuine dispute with the Applicant, and is therefore inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(vi).

1. The Challenge to the Adequacy of the Vogtle Severe Accident Review is Unsupported by the Task Force Report and Therefore Untimely.

To the extent that the Petitioners intend instead to question the adequacy of the Vogtle FSEIS with respect to its analysis of the environmental consequences of accidents, the Petitioners have not cited any part of the Task Force Report in support of their claims. *See* SACE Proposed Contention at 12; BREDL Proposed Contention at 11. Rather, this portion of their argument is based on assertions by the Petitioners' expert, Dr. Arjun Makhijani, that

> a major overarching step that needs to be taken is to integrate into the design basis for NRC safety requirements an expanded list of severe accidents and events, based on current scientific understanding and evaluations. This would ensure that potential mitigation measures are evaluated on the basis of whether they are needed for safety and not whether they are merely desirable. Should the NRC fail to incorporate an expanded list of severe accident requirements in the design basis of reactors, then a conclusion that the design provides for adequate protection to the public against severe accident risks could not be justified.

Second Makhijani Declaration ¶ 7. The Petitioners rephrase Dr. Makhijani's assertions as a claim that the Task Force recommends "the incorporation of accidents formerly classified as 'severe' or 'beyond design basis' into the design basis." SACE Proposed Contention at 12; BREDL Proposed Contention at 11. According to the Petitioners, this recommendation invalidates the environmental conclusions in the Vogtle FSEIS. *Id*.

Neither Dr. Makhijani's Declaration nor the Proposed Contention text cites to the Task Force Report in support of this proposition. Indeed, both ignore statements to the contrary within the Task Force Report itself, including the statement that "[t]he Task Force envisions a framework in which the current design-basis requirements (i.e., for anticipated operational occurrences and postulated accidents) would remain largely unchanged" and the proposal to establish a new "extended design-basis" category for both current beyond design-basis regulatory requirements and any future rules that may be added. Task Force Report at 21. Both also disregard the Task Force's conclusion that "the ESBWR and AP1000 designs have many of the design features and attributes necessary to address the Task Force recommendations" and the Task Force's recommendation that design certification rulemakings for those designs be completed "without delay." *Id*. at 71-72.

With respect to this portion of the Proposed Contention, the Petitioners' assertions are untimely in that they are not based on any new information contained in the Task Force Report and could have been filed on a number of occasions prior to that report's publication. Related claims were, in fact, made in Dr. Makhijani's April 2011 declaration accompanying the Emergency Petition currently pending before the Commission. *See* First Makhijani Declaration ¶¶ 16, 33-35. Any specific challenges to the FSEIS could have been raised at any time following publication of that document. NRC regulations permit the filing of new or amended contentions

> only with leave of the presiding officer upon a showing that (i) [t]he information upon which the amended or new contention is based was not previously available; (ii) [t]he information upon which the amended or new contention is based is materially different than information previously available; and (iii) [t]he amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2). The Petitioners have not cited to any allegedly new information in the Task Force Report that supports their argument regarding "the incorporation of accidents

formerly classified as 'severe' or 'beyond design basis' into the design basis," and this portion is therefore untimely.

The Petitioners have also failed to show good cause for untimely filing, as required by 10 C.F.R. § 2.309(c)(1)(i). Good cause for late filing is the most important factor to consider when evaluating whether an untimely filing will be accepted, and failure to meet this factor requires a compelling showing regarding the other factors. *See Commonwealth Edison Co*. (Braidwood Nuclear Plant, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 397 (1983). Of the remaining factors in 10 C.F.R. § 2.309(c)(1), (vii) and (viii) also disfavor the Petitioners, as the issues they raise would broaden the proceeding, result in delays, and not contribute to a sound record. The other factors favor the Petitioners or are neutral. However, given the importance of 10 C.F.R. § 2.309(c)(1)(i), (vii), and (viii), this untimely portion of the Proposed Contention should not be entertained.

Like those before it, this portion of the Proposed Contention also fails to supply an adequate basis or demonstrate the existence of a genuine dispute with the Applicant on a material issue of law or fact. In part, this failure may be related to the Petitioners' assumption, evident throughout their pleading, that only design-basis accidents and not severe accidents are associated with mandatory safety regulations. *See* SACE Proposed Contention at 2, 6-9, 12-13; BREDL Proposed Contention at 2, 5-8, 11-12; *see also infra* n. 5. The Task Force Report itself notes the potential for confusion associated with this issue, and observes that

> the phrase "beyond design basis" is vague, sometimes misused, and often misunderstood. Several elements of the phrase contribute to these misunderstandings. *First, some beyond-design-basis considerations have been incorporated into the requirements and therefore directly affect reactor designs*. The phrase is therefore inconsistent with the normal meaning of the words. In addition, there are many other beyond-design-basis considerations that are not requirements. The phrase therefore fails to convey the importance of the requirements to which it refers.

Task Force Report at 19 (emphasis added). The Task Force Report makes recommendations regarding a new regulatory framework for mandatory requirements related to beyond design-basis considerations, including a terminology change intended to clarify the nature of these requirements, but does not propose changes to current design-basis requirements. *Id*. at 20-21. As noted above, a petitioner's imprecise reading of a reference document does not create a contention suitable for litigation. *Georgia Tech*, LBP-95-6, 41 NRC at 300. The Petitioners' arguments related to this issue therefore fail to provide an adequate basis for an admissible contention, in violation of 10 C.F.R. § 2.309(f)(1)(ii), or to demonstrate the existence of a material dispute as required by 10 C.F.R. § 2.309(f)(1)(vi).

2. The Discussion of SAMAs is Not Supported by the Task Force Report.

The Proposed Contention also includes an argument related to SAMAs, which are considered in NRC environmental reviews. *See, e.g*., FSEIS at 5-19 to 5-20**.** According to the Petitioners, the Task Force Report includes a recommendation that all SAMAs be incorporated into the set of features required in all nuclear power plants "*without regard to their cost* as fundamentally required for all NRC standards that set requirements for adequate protection of health and safety." SACE Proposed Contention at 13 (emphasis in original); BREDL Proposed Contention at 11-12 (emphasis in original). Neither the Task Force Report nor the declaration submitted in support of the Proposed Contention includes any statement to that effect; further, as noted in Section B above, the Task Force Report makes no reference to SAMAs or any other portion of NRC's environmental reviews. Because neither the Task Force Report nor the declaration submitted with the contention includes such a statement, this portion of the Proposed Contention fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v), which requires factual or expert support for a contention.

The recommendations in the Task Force Report, were they to be adopted, would have no impact on the nature of SAMA analysis. SAMA analyses, which are related to the probabilistic risk assessment (PRA) requirement of 10 C.F.R. § 50.34(f)(1)(i) and include cost–

benefit analysis by definition, are intended "to review and evaluate plant-design alternatives that could significantly reduce the radiological risk from a severe accident." *See* ESRP at 7.3-1 to 7.3-5. As the Commission has stated, SAMAs are safety enhancements intended to reduce the risk of severe accidents. *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 290-91 (2010). A SAMA analysis examines the extent to which implementation of the SAMA would decrease the probability-weighted consequences of the analyzed severe accident sequences. *Id.* at 291. "Significantly, NRC SAMA analyses are not a substitute for, and do not represent, the NRC NEPA analysis of potential impacts of severe accidents." *Id.* at 316. Rather, SAMA analyses are rooted in a cost-beneficial assessment:

> SAMA analysis is used for determining whether particular SAMAs would sufficiently reduce risk – *e.g.*, by reducing frequency of core damage or frequency of containment failure – for the SAMA to be cost-effective to implement. The SAMA analysis therefore is a [PRA] analysis. If the cost of implementing a particular SAMA is greater than its estimated benefit, the SAMA is not considered cost-beneficial to implement.

Id. at 291. For a SAMA analysis, the "goal is *only* to determine what safety enhancements are cost-effective to implement." *Id.* at 317 (emphasis added). A SAMA analysis, including cost-benefit considerations, is specifically required by NRC regulations governing the environmental review of standard design certification applications. *See* 10 C.F.R. § 51.55(a). Design features required by safety regulations are not subject to SAMA analysis in the environmental review, even if they are related to severe accidents, because the SAMA analysis only considers mitigation *alternatives*, that is, features that are not already incorporated into the design.

In making their argument, the Petitioners appear to merge concepts related to mandatory safety regulations under 10 C.F.R. Parts 50 and 52 with the SAMA analysis process. As noted above, the Petitioners incorrectly allege that 10 C.F.R. §§ 52.47(a)(23) and 52.79(a)(38) are subject to cost-benefit analysis, a proposition they support with citations to discussions related to

the SAMA analysis for the AP1000 design certification rule and not with any references to NRC safety regulations or the Task Force Report. SACE Proposed Contention at 8; BREDL Proposed Contention at 7. Furthermore, the Petitioners assert that "the Task Force effectively recommends a complete overhaul of the NRC's system for mitigating severe accidents through consideration of SAMAs. SACE Proposed Contention at 12; BREDL Proposed Contention at 11. According to the Petitioners, the NRC's current strategy related to severe accidents is limited to the SAMA analysis prepared as part of the environmental review and any voluntary measures adopted at a specific facility. *Id.*

In so arguing, the Petitioners ignore those regulations mentioned in the Task Force Report that do impose mandatory safety requirements related to severe accidents, and which the Task Force identifies as elements to be incorporated into their proposed "extended design-basis" regulatory framework. Task Force Report at 20-21. These include the station blackout rule in 10 C.F.R. § 50.63, the rules governing anticipated transient without scram in 10 C.F.R. § 50.62, the maintenance rule in 10 C.F.R. § 50.65, the aircraft impact rule in 10 C.F.R. § 50.150, the rule for protection against beyond design-basis fires and explosions in 10 C.F.R. § 50.54(hh), and others. *Id*. at 20. Furthermore, the Petitioners ignore the Task Force's observation that 10 C.F.R. §§ 52.47(a)(23), which applies to design certifications, and 52.79(a)(38), which applies to COLs, have "clearly established . . . defense-in-depth requirements for new reactors, . . . thus bringing unity and completeness to the defense-in-depth concept." *Id*. By disregarding these regulatory requirements and focusing on the cost-benefit analysis conducted as part of the SAMA review in the EIS, the Petitioners misunderstand the NRC's current approach to severe accidents, as well as the Task Force's recommendations.

To the extent Petitioners are using the term "SAMA" as shorthand for new design features they wish to see implemented at nuclear facilities, the correct procedural option is to file a Petition for Rulemaking under 10 C.F.R. § 2.802 rather than contentions in individual proceedings. The SACE Petitioners themselves concede that some of the issues they raise may

be resolved more appropriately by rulemaking than in site-specific proceedings. SACE Proposed Contention at 4. The Petitioners have not identified any such feature or features here.

The possibility that the Petitioners are using the term "SAMA' outside its usual NEPA context may be responsible for the assertion that certain mandatory safety regulations are "subject to cost-benefit analysis." *See* SACE Proposed Contention at 8; BREDL Proposed Contention at 7. As stated above, SAMA analyses conducted pursuant to NEPA use cost-benefit analyses to evaluate potential design alternatives for use at specific facilities. As discussed in Section II.B.1, safety regulations in 10 C.F.R. Parts 50 and 52 do not use cost-benefit analyses, regardless of whether they apply to design-basis or severe accident phenomena.[5] Whatever the Petitioners' intent in using the "SAMA" terminology, however, nothing in this portion of their argument amounts to a contention meeting the requirements of 10 C.F.R. § 2.309(f)(1).

3. Assertions Related to the Alternatives Analysis in the EIS are Also Unsupported by the Task Force Report and Do Not Include an Admissible Contention.

The Petitioners' final NEPA-related claim is that making SAMAs mandatory would affect the outcome of NRC's environmental reviews in two ways. First, the Petitioners argue that making SAMAs mandatory would improve plant safety. SACE Proposed Contention at 13; BREDL Proposed Contention at 12. Second, the Petitioners assert that imposing new

[5] It appears that the Petitioners have drawn incorrect inferences from *Union of Concerned Scientists v. NRC*, which they cite in their pleading. Proposed Contention at 9, citing 824 F.2d 108, 120 (D.C. Cir., 1987). As stated in this case, the AEA

> prohibits the Commission from considering costs in setting the level of adequate protection and requires the Commission to impose backfits, regardless of cost, on any plant that fails to meet this level. The Act allows the Commission to consider costs only in deciding whether to establish or whether to enforce through backfitting safety requirements that are not necessary to provide adequate protection.

824 F.2d at 119-20. This distinction, which relates to NRC decisions about making new regulations and applying them to existing licensees by imposing a backfit, does not open the door to the use of cost-benefit analysis by license applicants with respect to safety features required by current mandatory safety rules. The distinction between design-basis and beyond design-basis phenomena, which the Petitioners consider central to their argument, therefore has no connection to the question of whether a given safety feature is mandatory or not.

mandatory safety features would raise the cost of new reactors and could affect the alternatives analysis in the FEIS. *Id*.; *see also* Second Makhijani Declaration ¶¶ 13-24. According to the Petitioners, "these costs may be significant, showing that other alternatives such as the no-action alternative and other alternative electricity production sources may be more attractive." SACE Proposed Contention at 13; BREDL Proposed Contention at 12.

The first of these claims does nothing to invalidate the analysis in the Vogtle FSEIS. If additional safety measures were to be imposed on reactors for any reason, the result would likely be to lower accident risks and therefore reduce accident impacts below those stated in the FEIS. Any environmental analysis carried out under the current regulations would therefore be conservative.

The second claim states what appears to be the essence of the Petitioner's NEPA contention, namely that the alternative analysis in the Vogtle FSEIS is inadequate. If this is intended as the core of the Proposed Contention, then the Proposed Contention as a whole is untimely for the reasons discussed in Section II.B.1 above. As in that section, the argument that increased costs for nuclear facilities will alter the alternatives analysis in environmental reviews for new reactors has been submitted previously in connection with the Emergency Petition currently pending before the Commission. *See* First Makhijani Declaration ¶ 35. Additionally, contentions challenging the alternatives analysis in the Vogtle COL application (including the supplemental EIS) could have been filed at any time since the application (or supplemental EIS) became available. This portion of the Proposed Contention should therefore be rejected for timeliness reasons alone.

In addition to the timeliness issue, the Proposed Contention also fails to meet the pleading requirements of 10 C.F.R. § 2.309(f)(1). The text of the Proposed Contention does not mention the specific recommendations in the Task Force Report or raise a challenge to any portion of the Vogtle COL application. The accompanying declaration does list a number of specific items that, according to Dr. Makhijani, are likely to substantially increase the cost of

nuclear reactors in general. Second Makhijani Declaration ¶¶ 13-24. Many of these are clearly inapplicable to the Vogtle proceeding in that they recommend specific upgrades to the existing reactor fleet rather than any changes related to new reactors. *See id*. ¶¶ 15, 19, 21, 22, & 23. Others, such as a recommendation to review design certifications with respect to station blackout and spent fuel pool issues, are not drawn from the Task Force Report directly, but rather represent Dr. Makhijani's inferences. *See id*. ¶ 20. Even with respect to the others, however, Dr. Makhijani makes no attempt to relate his assertions to the Vogtle alternatives analysis, and merely asserts that significantly increased costs are likely. The Petitioners in this proceeding make no attempt to focus the claims made in Dr. Makhijani's declaration, which is extremely broad and has been filed in multiple proceedings, to anything specific to the Vogtle COL application. For these reasons, this portion of the Proposed Contention fails to meet the basis requirement of 10 C.F.R. § 2.309(f)(1)(ii), or the requirements in 10 C.F.R. § 2.309(f)(1)(v)-(vi) that petitioners provided supporting information to shows a genuine dispute with the applicant.

In addition, the Petitioners' assertions regarding the proposed reactors' costs fail to meet the materiality requirements of 10 C.F.R. § 2.309(f)(1)(iv) and (vi) because reactor costs are not material to the Vogtle environmental review. In the *Summer* COL proceeding, the Commission held that contentions related to reactor costs "were potentially relevant only if an environmentally preferable alternative had been identified." *See South Carolina Electric & Gas Co. & South Carolina Public Service Authority (Also Referred to as Santee Cooper)* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-21, 72 NRC __, __ (Aug. 27, 2010) (slip op. at 4). The Commission provided the basis for this holding in a previous decision in the same proceeding:

> [N]either NEPA nor any other statute gives us the authority to reject an applicant's proposal solely because an alternative might prove less costly financially. Monetary considerations come into play in only the opposite fashion — i.e., if an alternative to the applicant's proposal is environmentally preferable, then we must determine whether the environmental benefits conferred by that alternative are worthwhile enough to outweigh any additional cost needed to achieve them.

South Carolina Electric & Gas Co. & South Carolina Public Service Authority (Also Referred to as Santee Cooper) (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 23-24 (2010) (quoting *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162 (1978)). In *Summer*, the possibility of an environmentally preferable alternative remained only if the petitioners' alternatives contention was admissible, and the Commission therefore stated that should the licensing board reject this alternatives contention, then it must also reject the petitioners' cost-related contentions. *Summer*, CLI-10-21, 72 NRC at __ (slip op. at 4). In the instant proceeding, the FSEIS analyzes alternatives and concludes that none of them are environmentally preferable. *See* FSEIS at 9-4. In addition, there are no pending or admitted alternatives contentions in this proceeding. Therefore, the Petitioners' assertions regarding reactors costs are not material to this proceeding and do not form an admissible basis for the Proposed Contention. *See* 10 C.F.R. § 2.309(f)(1)(iv), (vi).

C. The Petitioners' Further Assertions Related to Environmental Implications of the Task Force Report are Unsupported and Inadmissible.

The Petitioners assert that environmental documents in the Vogtle proceeding must be supplemented to include a discussion of the Task Force Report's recommendations related to seismic and flooding events. SACE Proposed Contention at 14-15; BREDL Proposed Contention at 13-15. Additionally, BREDL's assertion is based on statements made in the declaration of Dr. Ross McCluney, who discusses the general nature of seismic seiches and earthquake predictions based on references to previously available information and suggests that the task force's recommendations related to seismic and flooding issues be implemented immediately. See McCluney Declaration ¶ 6-15. This portion of the Proposed Contention is untimely because the Petitioners' assertions are based on the Task Force Report and the McCluney Declaration, but Petitioners fail to explain why either of these documents contain any new information material to seismic or flooding considerations at the Vogtle site. *See* 10 C.F.R. § 2.309(f)(2).

As a result, the Petitioners fail to demonstrate why their assertions could not have been filed prior to the publication of the Task Force Report. The suitability of the Vogtle site, including with respect to seismic and flooding hazards, was resolved as part of the review of the Vogtle Early Site Permit, which was issued in August 2009. Seismic and hydrologic site characteristics were addressed in the application and evaluated in the Staff's Final Safety Evaluation Report. See Final Safety Evaluation Report for Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4 § 2.4, 2.5 (August 2011) (FSER). The Final Environmental Impact Statement for an Early Site Permit at the Vogtle Electric Generating Site (ESP FEIS), which was published in August of 2008, evaluated the environmental impacts of the construction and operation of new reactor units at the site, including with respect to design basis accidents and severe accidents. *See, e.g.*, FEIS at § 5.10. As noted above, the Vogtle COL FSEIS found that the conclusions in the ESP FEIS with respect to the environmental impacts of accidents remained valid. FSEIS at § 5.10. As discussed above, the Petitioners have not shown that the Task Force Report contains any new information affecting any specific analysis or conclusion in the Vogtle application. And other than its references to the Task Force Report, the McCluney Declaration identifies no references or factual information dated more recently than 1999. Accordingly, Petitioners fail to demonstrate why the generalized concerns about seismic and flooding considerations provide any new information that could not have been raised well before the issuance of the Vogtle Electric Generating Plant Early Site Permit (ESP) on August 26, 2009, let alone earlier in this COL proceeding. Under the finality provisions for early site permits, a contention may be litigated in the same manner as other issues material to a proceeding for a combined license referencing an early site permit if, "new or additional information is provided in the application that substantially alters the bases for a previous NRC conclusion or constitutes a sufficient basis for the Commission to modify or impose new terms and conditions related to emergency preparedness." 10 C.F.R. § 52.39(c)(1)(iv). The Petitioners fail to even refer to the portions of the ESP or COL application concerning seismic or hydrologic hazards, let alone

explain how their claims derive from any new or additional information provided in the Vogtle COL application. For all of these reasons, this portion of the Proposed Contention is untimely.

In addition to being untimely, this portion of the Proposed Contention also fails to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1). Because the Petitioners' claims regarding seismic or hydrologic hazards are directed to matters resolved in the ESP, and because they fail to specify how any of their statements contradict any portion of the application, the Petitioners have failed to demonstrate that this portion of the contention falls within the scope of the Vogtle COL proceeding and that there is a genuine dispute on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi). Additionally, the Petitioners' assertion that the Task Force Report requires supplementation to address recommendations related to seismic and flooding events does not accurately reflect the report's contents. The Petitioners cite portions of the Task Force Report that recommend existing licensees reevaluate seismic and flooding hazards at their sites and make any necessary changes to structures, systems, and components that are important to safety. SACE Proposed Contention at 14-15, citing Task Force Report at 30; BREDL Proposed Contention at 13, citing Task Force Report at 30. The Petitioners conclude that, as a consequence of this recommendation, the environmental documents in the Vogtle proceedings are incomplete and require supplementation. SACE Proposed Contention at 15; BREDL Proposed Contention at 15. However, the Task Force Report states clearly that all current design certification and COL applicants address seismic and flooding issues adequately under existing regulations and guidance. Task Force Report at 71. As noted in Section II.B above, a referenced document may be scrutinized both for what it does and what it does not say. *Yankee Atomic,* LBP-96-2, 43 NRC at 90. Thus, the Petitioners fail to show how their reliance on the Task Force Report provides factual support for the proposed contention, in contravention of the requirements of 10 C.F.R. § 2.309(f)(1)(v).

Additionally, BREDL makes new assertions relating to environmental justice. BREDL Proposed Contention at 15-16. BREDL asserts that the Staff conclusions regarding

environmental justice in the ESP FEIS are "plainly wrong" and that, "[u]nless and until the NRC fully implements Executive Order 12898, environmental injustice will continue at Plant Vogtle and elsewhere." *Id.* BREDL relies on the declaration of Rev. Charles N. Utley, who criticizes the discussion of environmental justice in the ESP FEIS and references a 2009 study which, he asserts, "suggests that there is a 'reactor-related environmental injustice' at Plant Vogtle." Utley Declaration at 4-5. The Utley Declaration expresses general dissatisfaction with the NRC's implementation of Executive Order 12898 since 1994. The Utley Declaration also references a recommendation in the Task Force Report that "the NRC should pursue emergency preparedness topics related to decisionmaking, radiation monitoring, and public education." Utley Declaration at 5.

For several reasons, this part of the Proposed Contention is both untimely and otherwise inadmissible. BREDL acknowledges that in the Vogtle COL FSEIS, the Staff determined that the ESP FEIS conclusion regarding environmental justice remained valid. Consequently, BREDL fails to explain why claims based on a study from 2009 are based on new information and could not have been raised earlier in this proceeding or indeed even in the ESP proceeding. 10 CFR § 2.309(f)(2). The Utley Declaration also refers to the Task Force Report and suggests that it provides an "opportunity to address environmental injustice." Utley Declaration at 5. Referencing the general Task Force Report recommendation to pursue "emergency preparedness topics," the Utley Declaration proposes that potassium iodide (KI) "should be distributed in Burke County, Georgia and an educational program established by the NRC." *Id.* However, BREDL again fails to explain why these claims, including any concerns regarding emergency planning, could not have been raised earlier, including in the ESP proceeding. BREDL thus does not demonstrate how the Task Force Report represents new information with respect to environmental justice issues, at the Vogtle site or otherwise. Therefore, this portion of the Proposed Contention is untimely.

For similar reasons, this part of the Proposed Contention also fails to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1). Referring to a journal article from 2009, BREDL suggests that there is "reactor-related environmental injustice," and BREDL criticizes the ESP FEIS as "plainly wrong," but does not explain how the cited passages from the article contradict anything in the EIS analysis. Utley Declaration at 3-5. Likewise, the Utley Declaration proposes KI distribution and raises several rhetorical questions regarding evacuation procedures for residents near the Vogtle site. Utley Declaration at 5-6. However, he does not specify how these proposals or questions actually contradict any statements or conclusions in the COL application or FSEIS. Accordingly, BREDL fails to show that these concerns represent a genuine dispute on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi).

Furthermore, as the Utley Declaration acknowledges, "Executive Orders are policy directives that implement or interpret a federal statute, a constitutional provision, or a treaty." Utley Declaration at 3. While the Utley Declaration expresses dissatisfaction with the NRC's implementation of Executive Order 12898 since 1994, broad complaints regarding NRC's environmental justice policies and its implementation of Executive Order 12898 raise general policy matters not specific to the Vogtle proceeding. A petitioner may not demand an adjudicatory hearing to express generalized grievances about NRC policies. *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999). Thus, these aspects of BREDL's assertions are outside the scope of this proceeding and are insufficient to show that a genuine dispute exists on a material issue of law or fact. *See* 10 CFR § 2.309(f)(1)(iii), (vi). Accordingly, this portion of the Proposed Contention is not admissible.

Finally, the Petitioners' assertion that all twelve of the task force's recommendations must be addressed in environmental documents prior to COL issuance is not supported by the report itself. As stated previously, the Task Force Report makes no mention of environmental reviews. It also recommends specific strategies for addressing its recommendations in the

safety reviews of design certification and COL applications. Task Force Report at 71-72. To the extent the Petitioners are relying on Task Force Recommendations as support, the Petitioners do not address this portion of the report, which specifically states that not all recommendations related to the existing reactor fleet apply to new reactors. This portion of the Proposed Contention, like the previous one, therefore fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi).

CONCLUSION

As discussed above, Petitioners' Motions to Reopen and Proposed Contentions are untimely and fail to meet the Commission's requirements for reopening the record or admitting a new contention. Accordingly, the Board should deny the requests to reopen the record and reject the Proposed Contentions.

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Dated at Rockville, Maryland
This 6th day of September 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of	)	
	)	
SOUTHERN NUCLEAR OPERATING CO.	)	Docket Nos. 52-025-COL and 52-026-COL
	)	
(Vogtle Electric Generating Plant Units 3 and 4)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC Staff Answer to Petitioners' Motion to Admit New Contention Regarding the Safety and Environmental Implications of the NRC Task Force Report on the Fukushima Dai-ichi Accident have been served upon the following persons by Electronic Information Exchange this 6th day of September, 2011:

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Dated at Rockville, Maryland
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