UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	**Docket Nos. 52-025-COL and 52-026-COL**
Southern Nuclear Operating Company	)	
	)	
(COL Application for Vogtle Electric Generating Plant, Units 3 and 4)	)	**September 20, 2011**

SOUTHERN NUCLEAR OPERATING COMPANY'S
REQUEST FOR LEAVE TO FILE SUPPLEMENT TO ANSWER

In accordance with 10 C.F.R. §§ 2.323(c) and 2.309(h), Southern Nuclear Operating Company ("SNC") submits this Request for Leave to File Supplement to Answer ("Request for Leave"). On August 11, 2011, the Blue Ridge Environmental Defense League ("BREDL") filed a "Motion to Reopen The Record And Admit Contention Regarding The Safety And Environmental Implications Of The Nuclear Regulatory Commission Task Force Report On The Fukushima Dai-ichi Accident" along with a "Contention Regarding NEPA Requirement To Address Safety And Environmental Implications Of The Fukushima Task Force Report," which contained three proposed contentions. Also on August 11, 2011, Center for a Sustainable Coast, Georgia Women's Action for New Directions f/k/a Atlanta Women's Action for New Directions, and Southern Alliance for Clean Energy ("CSC Movants")[1] filed a "Motion To Reopen The

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

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" along with a "Contention Regarding NEPA Requirement To Address Safety And Environmental Implications Of The Fukushima Task Force Report," which contained one proposed contention.[2]

SNC addressed the inadmissibility of each newly proposed contention in its answer filed August 22, 2011 in the above-captioned dockets,[3] which CSC Movants replied to on August 29, 2011.[4] On September 6, 2011, SNC filed a separate answer to BREDL and the CSC Movants' underlying petitions to intervene pursuant to 10 C.F.R. § 2.309(h).[5] Also on September 6, 2011, NRC Staff filed an Answer opposing the admission of the new contentions,[6] which CSC Movants replied to on September 13, 2011.[7]

I. Need for Supplement to Answer

On September 9, 2011, during the period between SNC's and NRC Staff's Answers and CSC Reply to Staff on September 13, 2011, the Nuclear Regulatory Commission ("Commission" or "NRC") issued Order CLI-11-05, which addressed a series of petitions to suspend adjudicatory, licensing, and rulemaking activities, and requesting additional related relief in

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[2] The Mandatory Hearing for the uncontested portion of the Vogtle Units 3 and 4 combined license proceeding is scheduled to commence September 27, 2011. Pursuant to the Commission's procedures, the Commission's related adjudicatory decision on the Vogtle Units 3 and 4 combined license is expected in December, 2011. *See* SECY-11-0042, Revisions To Internal Commission Procedures Section On Mandatory Hearings (Mar. 25, 2011), Enc. at p.5.

[3] Southern Nuclear Operating Company's Answer In Opposition To Motions To Reopen The Record And Request To Admit New Contentions, Docket Nos. 52-025 and 52-026 (Aug. 22, 2011) ("SNC Answer to Motions").

[4] Intervenors' Reply To Southern Nuclear Operating Company's Answer In Opposition To Admission Of New Contention, Docket Nos. 52-025-COL and 52-026-COL (Aug. 29, 2011).

[5] Southern Nuclear Operating Company's Answer In Opposition To Petitions To Intervene And Requests To Admit New Contentions, Docket Nos. 52-025 and 52-026 (Sept. 6, 2011).

[6] 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, Docket Nos. 52-025-COL and 52-026-COL (Sept. 6, 2011).

[7] Intervenors' Reply To Opposition To Admission Of New Contention, Docket Nos. 52-025-COL and 52-026-COL (Sept. 13, 2011) ("CSC Reply to Staff"). BREDL included the same substantive reply in its September 18, 2011 reply.

several ongoing licensing and rulemaking proceedings, allegedly arising out of the recent events at the Fukushima Dai-ichi Nuclear Power Station, following the March 11, 2011, earthquake and tsunami in Japan.[8] CLI-11-05 addresses, among other issues, (1) the correct procedural treatment of contentions filed arising out of the Fukushima events and subsequent NRC review of those events,[9] (2) the continued applicability of the motion to reopen standards,[10] and (3) the current posture of the NRC's environmental assessment of the Fukushima events.[11] SNC agrees with CSC Movants' that CLI-11-05 "contains language that bears on the timeliness and admissibility of the contentions."[12] SNC therefore requests leave to provide a limited supplement to the SNC Answer to Motions in order to address CLI-11-05's applicability to the CSC Movants' and BREDL's August 11, 2011 filings and respond to CSC Movants' arguments relating to CLI-11-05.

II. Request for Leave to Supplement SNC Answer to Motions

SNC recognizes that pursuant to 10 C.F.R. § 2.309(h)(3) answers to replies are generally not permissible. Similarly, under 10 C.F.R. § 2.323(c), replies and answers after the initial answer to a motion are not permitted, except a reply by the moving party where compelling circumstances can be demonstrated. However, in this case, applicable new precedent has come to light that CSC Movants had an opportunity to address in the CSC Reply to Staff, but which SNC could not have addressed in its Answer to Motions. This is precisely the situation where § 2.323(c) contemplates giving the moving party an additional reply. SNC "could not reasonably

[8] *Union Electric Company d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, __ NRC __ (Sept. 9, 2011) ("CLI-11-05").

[9] *Id.*, slip op. at 33-34.

[10] *Id.*, slip op. at 14 & 33-34.

[11] *Id.*, slip op. at 31.

[12] CSC Reply to Staff, at 2.

have anticipated the arguments to which it seeks leave to reply," because CLI-11-05 had not yet been issued. SNC respectfully moves that the Atomic Safety and Licensing Board ("Board") apply this same standard and allow SNC to supplement its Answer to Motions. If this Request for Leave is considered instead as a request for leave to file out of time, SNC notes that the issuance of CLI-11-05 pending the CSC Reply to Staff is an "extraordinary circumstance"[13] justifying a limited grant for SNC to address only CLI-11-05. Granting this Request for Leave is within the Board's discretionary authority pursuant to § 2.319.[14]

III. Certification of Coordination

CSC Movants stated in the CSC Reply to Staff that they had no objection to SNC being granted the opportunity to address CLI-11-05, therefore, counsel for SNC did not contact CSC Movants.[15] Similarly, BREDL stated in their Memorandum In Reply To Oppositions To Admission Of New Contention that they had no objection to SNC being granted the opportunity to address CLI-11-05, therefore, counsel for SNC did not contact BREDL.[16] Counsel for SNC contacted NRC Staff, and NRC Staff has no objection to SNC's Request for Leave.

IV. Conclusion

SNC respectfully requests that the Board grant its Request for Leave, and accept SNC's Supplement To Answer To Motions, which is filed simultaneously with this Request for Leave.

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[13] *Tenn. Valley Auth.* (Bellefonte Nuclear Plant, Units 1 and 2), CLI-10-26, Docket Nos. 50-438-CP & 50-439-CP (Sept. 29, 2010), slip op. at 3-4 & n.18.

[14] *See* 10 C.F.R. § 2.319(d), (h), (p), (q), and (r).

[15] CSC Reply to Staff, at 2 n.3 ("Because SNC and the NRC Staff have not had an opportunity to address the effect of CLI-11-05 on the timeliness and admissibility of Intervenors' contention, Intervenors would not object to a response by SNC and the NRC Staff to their arguments regarding the relevance of CLI-11-05 to their contention.").

[16] Intervenor's Memorandum In Reply To Oppositions To Admission Of New Contention, Docket Nos. 52-025-COL & 52-026-COL (Sept. 18, 2011), at 2 n.2.

Respectfully submitted,

Signed (electronically) by M. Stanford Blanton

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Dated this 20th day of September, 2011.

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NUCLEAR REGULATORY COMMISSION

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SOUTHERN NUCLEAR OPERATING COMPANY'S
SUPPLEMENT TO ANSWER TO MOTIONS

In accordance with 10 C.F.R. §§ 2.323(c) and 2.309(h) of the Nuclear Regulatory Commission's ("NRC" or "Commission") regulations, Southern Nuclear Operating Company ("SNC") submits this Supplement to its August 22, 2011 Answer In Opposition To Motions To Reopen The Record And Request To Admit New Contentions ("Supplement").[1] On September 9, 2011, during the period between SNC's and NRC Staff's Answers and the CSC Reply to Staff on September 13, 2011, the Commission issued Order CLI-11-05, which addressed a series of petitions to suspend adjudicatory, licensing, and rulemaking activities, and requesting additional related relief in several ongoing licensing and rulemaking proceedings, allegedly arising out of the recent events at the Fukushima Dai-ichi Nuclear Power Station, following the March 11,

[1] Southern Nuclear Operating Company's Answer In Opposition To Motions To Reopen The Record And Request To Admit New Contentions, Docket Nos. 52-025 and 52-026 (Aug. 22, 2011) ("SNC Answer to Motions"). In SNC's Request for Leave to File Supplement to Answer, filed concurrently with this Supplement, SNC describes the relevant procedural background in the above-captioned docket, and incorporates that information herein. Request for Leave, at 1-2. The Mandatory Hearing for the uncontested portion of the Vogtle Units 3 and 4 combined license proceeding is scheduled to commence September 27, 2011. Pursuant to the Commission's procedures, the Commission's related adjudicatory decision on the Vogtle Units 3 and 4 combined license is expected in December, 2011. See SECY-11-0042, Revisions To Internal Commission Procedures Section On Mandatory Hearings (Mar. 25, 2011), Enc. at p.5.

2011, earthquake and tsunami in Japan.[2] CLI-11-05 addresses, among other issues, (1) the correct procedural treatment of contentions filed arising out of the Fukushima events and subsequent NRC review of those events,[3] (2) the continued applicability of the motion to reopen standards,[4] and (3) the current posture of the NRC's environmental assessment of the Fukushima events.[5]

On August 11, 2011, BREDL and the CSC Movants (collectively, "Movants") filed substantially the same motion to reopen the record and filed substantially the same contention ("Proposed NEPA-1") alleging that NRC's Fukushima Task Force Report[6] constituted new and significant information necessitating review under the National Environmental Policy Act ("NEPA"). SNC explained in response that, in fact, nothing in the Task Force Report constituted new and significant information necessitating a supplement to the Environmental Impact Statement.[7] The NRC Staff similarly argued that Movants "ha[d] 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."

I. Supplement to Answer

In the CSC Reply to Staff, CSC Movants asserted the following with respect to CLI-11-05:

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[2] *Union Electric Company d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, __ NRC __ (Sept. 9, 2011) ("CLI-11-05").

[3] *Id.*, slip op. at 33.

[4] *Id.*, slip op. at 14 & 33.

[5] *Id.*, slip op. at 31.

[6] "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").

[7] SNC Answer to Motion, at 16-22;

> [W]hile the Task Force Report does not justify a generic NEPA review, it is possible that new and significant information about the environmental implications of the Fukushima accident may "come to light" and require consideration "as part of the ongoing preparation of application-specific NEPA documents" with respect to individual reactor license applications. At this point in time, neither the Commission nor the NRC Staff has yet undertaken its independent NEPA obligations to consider the question of whether the Task Force Report constitutes such new and significant information that must be considered in individual reactor licensing decisions. By submitting the Task Force Report-based contentions within thirty days of the issuance of the Task Force Report, the Intervenors have timely raised their concern regarding this failure to satisfy NEPA.

In fact, CLI-11-05 expressly shows that the Commission *has* considered whether the Fukushima events and related documents contain such new and significant information, and has found that they do not:

> At bottom, according to petitioners, such a review is required now because the NRC has "admitted" that it "has new information that concededly could have a significant effect on its regulatory program and the outcome of its licensing decisions for individual reactors."
>
> This request is premature. Although the Task Force completed its review and provided its recommendations to us, the agency continues to evaluate the accident and its implications for U.S. facilities and the full picture of what happened at Fukushima is still far from clear. In short, we do not know today the full implications of the Japan events for U.S. facilities. Therefore, any generic NEPA duty—if one were appropriate at all—does not accrue now.
>
> If, however, new and significant information comes to light that requires consideration as part of the ongoing preparation of application-specific NEPA documents, the agency will assess the significance of that information, as appropriate. Our regulations specify the circumstances under which the Staff must prepare supplemental environmental review documents. Section 51.72(a) requires preparation of a supplemental draft EIS when:
>
> > (1) There are substantial changes in the proposed action that are relevant to environmental concerns; or
> >
> > (2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

> **To merit this additional review, information must be both "new" and "significant," and it must bear on the proposed action or its impacts. As we have explained, "[t]he new information must present 'a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.'" That is not the case here, given the current state of information available to us.** For these reasons, we decline petitioners' request to commence a generic NEPA review today.[8]

As this explanation in CLI-11-05 makes clear, the Commission has considered the Task Force Report and other Fukushima-related information and has concluded that they contain no new and significant environmental information. Contrary to CSC Movants' assertion, the Commission has not abrogated its duty to review whether information requires a supplemental analysis under NEPA, but instead has done so, and has concluded that the information known at this time does not require such supplementation because it is not new and significant. It is not, then, as CSC Movants' claim, that "neither the Commission nor the NRC Staff has yet undertaken its independent NEPA obligations,"[9] but rather that the Commission has, but did not give the answer Movants desired.

CLI-11-05 contains the Commission's statement that individual licensing dockets need not supplement their existing environmental review documents *unless* new and significant information comes to light pursuant to existing NRC regulations. As demonstrated in CLI-11-05 and in SNC's Answer to Motions, no such new and significant information has come to light relevant to Vogtle Units 3 and 4. As the Commission made abundantly clear in CLI-11-05, all existing NRC procedural rules relative to motions to reopen and the admissibility of contentions apply to contentions filed in response to or allegedly relating to Fukushima:

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[8] CLI-11-05, slip op. at 30-31 (citing *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999) (citing *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989); *Sierra Club v. Froehlke*, 816 F.2d 205, 210 (5th Cir. 1987))) (other citations omitted) (emphasis added).

[9] CSC Reply to Staff, at 4.

> Our normal processes for filing new or amended contentions, submitting rulemaking comments, and motions (including motions to reopen) carry with them costs typically associated with participation in litigation and rulemaking. Participants accept these costs when they elect to participate in our proceedings; our rules require a level of engagement that far exceeds simple interest in the outcome of a proceeding. For example, our rules deliberately place a heavy burden on proponents of contentions, who must challenge aspects of license applications with specificity, backed up with substantive technical support; mere conclusions or speculation will not suffice. An even heavier burden applies to motions to reopen.[10]

CSC Movants have failed to make a specific challenge to the Vogtle Combined Operating License Application ("COLA"). Instead, they attempt to rely on CLI-11-05 as evidence that the Commission and NRC Staff have not performed their NEPA obligations with respect to the question of whether individual licensing proceedings ought to be made to consider - independent of existing NRC regulations - the content of the Task Force Report in a supplemental NEPA analysis. Challenges to Commission policy based on the Commission's alleged failure to abrogate or amend its regulations to make an exception for Fukushima-related information cannot be resolved in the Vogtle COLA adjudicatory proceeding. With respect to the existing NRC regulations, which CLI-11-05 mandates still apply, Movants have failed to make the necessary showing to reopen the record or admit Proposed NEPA-1.

II. Conclusion

For the reasons contained in this Supplement as well as the SNC Answer to Motions, SNC respectfully requests that the CSC Movants' and BREDL's August 11, 2011 motions to reopen be denied and all related newly proposed contentions be rejected.

Respectfully submitted,

Signed (electronically) by M. Stanford Blanton

[10] CLI-11-05, slip op. at 33 (citing *AmerGen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 259-61 (2009); 10 C.F.R. § 2.326); *see also id.* at 14 (stating that after TMI "[t]he Commission also directed boards to adhere strictly to our standards for reopening records, where applicable").

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Dated this 20th day of September, 2011.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of SOUTHERN NUCLEAR OPERATING COMPANY'S REQUEST FOR LEAVE TO FILE SUPPLEMENT TO ANSWER and copies of SOUTHERN NUCLEAR OPERATING COMPANY'S SUPPLEMENT TO ANSWER TO MOTIONS in the above-captioned proceeding have been served by electronic mail as shown below, this 20th day of September, 2011, and/or by e-submittal.

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SOUTHERN NUCLEAR OPERATING COMPANY

Dated this 20th day of September, 2011.