

Blue Ridge Environmental Defense League

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December 2, 2016

Stephen G. Burns, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Docket Nos. 52-025-LA-2 and 52-026-LA-2, Vogtle Electric Generating Plant

Dear Chairman Burns:

On behalf of the Blue Ridge Environmental Defense League and our chapter Concerned Citizens of Shell Bluff, I write to request that the Commission consider the conditions under which we have had to work in the ongoing matter. As you may know, we have filed an appeal from the Atomic Safety and Licensing Board order LBP-16-10 denying our petition to intervene. I will not repeat here the arguments which are in the record of this proceeding and which are certainly available to you. Rather, I would like to put before the Commission the tendentious manner in which the Atomic Safety and Licensing Board has conducted the proceeding which led to our appeal.

On August 3, 2016, the Board heard oral arguments on standing and contention admissibility via online video conference. As a *pro se* litigator, I have appeared before several ASLB panels, and did represent the petitioners on that day. Only designated representatives were permitted to present oral arguments.

The hearing was anticipated to take two hours; however, it went much longer. The immediate issues properly posed for discussion by the Board were standing and contention admissibility. But it soon veered into the wilderness of technical issues, which were relevant to the case but which we were preemptively prohibited from presenting by the format of the hearing and the decisions of the ASLB panel. The transcript of the oral argument details the attempt to divine technical issues without the participation of an expert, one whom we made available.

JUDGE TRIKOUROS: Is this a 3D mixing analysis of some sort? I don't understand it.

MR. ZELLER: Well, that's an engineering question, and I think that is precisely what is lacking here. I mean, these are technical questions which we would hope to bring up, with the assistance of our technical expert and nuclear engineer...¹

Of course, I was prepared to present and argue the issues of standing and contention admissibility. I did so. However, the nature of the questions went beyond the scope of 10 CFR § 2.309 and into nuclear engineering issues.

¹ Oral Argument Transcript at 21, line 9-15

JUDGE TRIKOUROS: But, Mr. Gundersen, then, or whoever could answer this question, would it -- does it make sense that an analysis would result in telling you to put igniters further away from the IRWST or further in the IRWST? I don't understand -- where there already are other igniters. I don't understand that point.

MR. ZELLER: You don't understand why there is a problem -- I'm sorry, Judge Trikouros.

JUDGE TRIKOUROS: Well, what I don't understand is what this analysis is that you're referring to that might tell you to put the igniters either further away from the IRWST or further into the IRWST.²

As stated in the ASLB order establishing the August 3rd oral arguments, "The argument is not an evidentiary hearing, and the participants therefore should not attempt to introduce evidence during the argument."³ Yet non-legal questions requiring technical expertise continued to be raised by the judges throughout the hearing. I had taken the precaution of having our technical expert, Arnold Gundersen, enter an appearance so he could be available to answer these very questions. However, even after being apprised of this, ASLB Chairman Spritzer prevented his expert testimony.

MR. ZELLER: Computer analysis is done on a routine basis, and so I would call upon our technical expert at this point, Mr. Gundersen, to point out what other type of analysis might could actually be done. In fact, I believe that the outfit he works for has investigated such scenarios.

CHAIRMAN SPRITZER: Mr. Zeller, if you want to talk with him, as I suggested, that's fine. But we want to hear from you. We don't want him testifying. As we said, this is not an evidentiary hearing.⁴

Nevertheless, the technical questions continued at length along a line of inquiry appropriate for an evidentiary hearing, not a preliminary hearing for standing and contention admissibility.

JUDGE TRIKOUROS: Now, so, I still don't understand the analysis that Mr. Gundersen is referring to. We never did get that cleared up in this hearing so far, or in this oral argument so far.

CHAIRMAN SPRITZER: All right, well, maybe you can address that in rebuttal. We're already past 11:00, so we've gone from a half hour for your presentation to an hour and a half.⁵

In addition to the nuclear engineering questions which dominated the hearing, a novel proposition was raised during an exchange between Judge Arnold and NRC Counsel Marcia Carpentier. At the crux of the matter was our contention that rather than performing a rigorous gaseous diffusion and flame propagation analysis as required under

² Oral argument Transcript at 22-23, lines 17-25 and 1-4

³ ASLB Order Scheduling Oral Argument, June 29, 2016

⁴ Oral Argument Transcript at 29-30, lines 24-25 and 1-9

⁵ Oral Argument Transcript at 63-64, pages 19-25 and 1-2

10 CFR § 50.44, the licensee chose to place two hydrogen igniters in a "likely area" by relying upon the personal "engineering judgment" of its engineers. The issue of relative safety was raised by Judge Arnold:

JUDGE ARNOLD: Contention one states, quote, the proposed modifications by the Southern Company creates an extremely dangerous situation rather than mitigating it. Is there any rule stating that all proposed license amendments must increase safety?⁶

NRC's representative cited from the power plant design certification 10 CFR Part 52, VIII, No. 46 which states that the Commission would deny a request for an exemption from Tier 1 requirements under certain circumstances. Judge Arnold persisted in this line of inquiry, whether a decrement or reduction in safety is permitted by the NRC:

JUDGE ARNOLD: Okay. So, if it's significant degradation to safety, it will be rejected. But, that suggests that there's no clear requirement that a license amendment not decrement safety in any way. You could hypothesize a situation in which there would be a slight decrement in safety and still approve a license amendment?⁷

After a brief consultation with the NRC staff on whether a reduction in safety margin could be permitted, the answer was "yes, if it's not significant."⁸ This statement is now part of the record. Will the Commission allow this to stand?

In their license amendment request, the licensee said that they used engineering judgement, which violates the requirement for "analysis" in 10 CFR § 50.44. After our petition, they claim after the fact that they did use analysis. They are using the ASLB process to submit a modification to their license. And if the addition of two hydrogen igniters was within the current licensing basis, why was a license amendment necessary?

The Atomic Safety and Licensing Board order LBP-16-10 should be overturned by the Commission. The proper venue for presentation of the technical arguments only glimpsed during oral argument is an evidentiary hearing, one denied by the ASLB's ruling on our petition to intervene and request for hearing.

Respectfully,



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⁶ Oral Argument Transcript at 114, lines 1-6

⁷ Oral Argument Transcript at 115, lines 5-12

⁸ Oral Argument Transcript at 115, lines 14-15

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

In the Matter of:
SOUTHERN NUCLEAR OPERATING CO.
License Amendment Application for
Combined Licenses NPF-91 and NPF-92
Vogtle Electric Generating Plant Units 3 and 4
Docket Nos. 52-025-LA-2 and 52-026-LA-2
NRC-2008-0252-0057

CERTIFICATE OF SERVICE

I hereby certify that the
LETTER TO CHAIRMAN BURNS
has been filed through the Electronic Information Exchange system
this 2nd day of December, 2016.



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