

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

**BEFORE THE SECRETARY**

In the Matter of:  
SOUTHERN NUCLEAR OPERATING CO.  
License Amendment Application for  
Combined Licenses NPF-91  
Vogtle Electric Generating Plant Unit 3  
Docket No. 52-025-LA-3  
NRC-2008-0252

May 11, 2020

**PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING BY  
THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE AND ITS  
CHAPTER CONCERNED CITIZENS OF SHELL BLUFF REGARDING  
SOUTHERN NUCLEAR OPERATING COMPANY'S REQUEST FOR A  
LICENSE AMENDMENT AND EXEMPTION FOR  
UNIT 3 AUXILIARY BUILDING WALL 11 SEISMIC GAP REQUIREMENTS,  
LAR-20-001**

**Introduction**

Pursuant to 10 C.F.R. § 2.309(f) and a notice published by the Nuclear Regulatory Commission ("NRC" or "Commission") at 85 Fed. Reg. 13944 (March 10, 2020), the Blue Ridge Environmental Defense League and its chapter Concerned Citizens of Shell Bluff ("BREDL" or "Petitioner") hereby petition for leave to intervene and request a hearing in the above-captioned License Amendment Request ("LAR") by Southern Nuclear Operating Company ("SNC" or "Company"). BREDL opposes the granting of the license amendment. This petition sets forth our interests in this proceeding, the reasons this intervention should be granted, and specific contentions we seek to have addressed. As demonstrated below, Blue Ridge Environmental Defense League has representational standing, through its members, to make this request.

## Description of the Proceeding

On February 9, 2012, the Nuclear Regulatory Commission approved Southern Nuclear Operating Company's application for a license to construct and operate two additional Westinghouse AP1000 reactor units at Plant Vogtle, located on the banks of the Savannah River in Shell Bluff, Georgia. Vogtle Electric Generating Plant Units 3 and 4 are now under construction.

On February 7, 2020, the Company submitted a request seeking a license amendment and exemption for Vogtle Electric Generating plant ("VEGP") Unit 3 proposing to depart from the Updated Final Safety Analysis Report ("UFSAR") Tier 2 and Tier 2 information.<sup>1</sup> The request involves related changes to VEGP Unit 3 plant-specific Tier 1 information, with corresponding changes to the associated VEGP Unit 3 COL Appendix C.

The requested amendment proposes changes to VEGP Unit 3 ITAAC (Inspections, Tests, Analyses and Acceptance Criteria); specifically, to modify the north-south minimum seismic gap requirements above grade between the nuclear island and the annex building west of Column Line I from elevation 141 feet to 154 feet to accommodate as-built nonconformances in the construction of Unit 3. See Figure 1 at right.

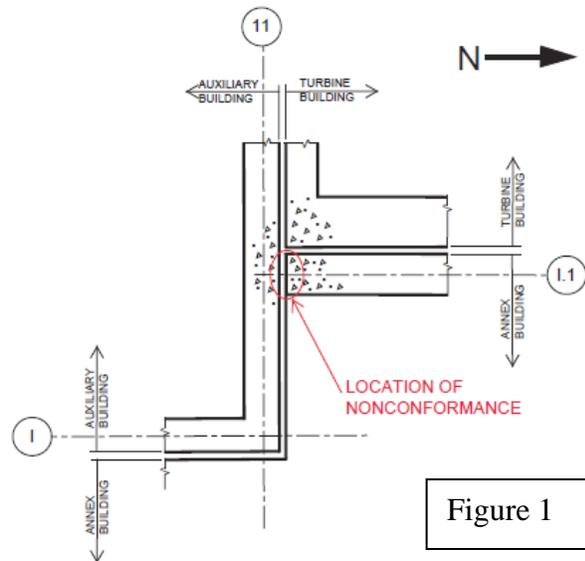


Figure 1

<sup>1</sup> Request for License Amendment and Exemption LAR-20-001, 7 February 2020

Figure 1: Plan View Showing Area of Non-conformance<sup>2</sup>

### **Description of the Petitioners**

Blue Ridge Environmental Defense League is a regional, community-based non-profit environmental organization working in Virginia, North Carolina, South Carolina, Tennessee, Alabama and Georgia. BREDL's founding principles are earth stewardship, environmental democracy, social justice, and community empowerment. BREDL encourages government agencies and citizens to take responsibility for conserving and protecting our natural resources and protecting public health. BREDL also functions as a "watchdog" of the environment, monitoring issues and holding government officials accountable for their actions. BREDL is a league of community groups called "chapters." BREDL and its chapters are unitary, with a common incorporation, financial structure, board of directors and executive officer. BREDL chapter Concerned Citizens of Shell Bluff was founded March 6, 2010 to advocate for environmental justice in Georgia.

### **Standing**

Under 10 CFR § 2.309(d), a request for hearing or petition for leave to intervene must address 1) name and address of petitioner, 2) the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding, 3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and 4) the

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<sup>2</sup> Request for License Amendment, LAR-20-001, 7 Feb 2020 "Location of Nonconforming Gap between End of Annex Building Wall I.1 and the Auxiliary Building," Enclosure 1, Page 4, Figure 1,

possible effect of any order that may be entered in the proceeding on the petitioner's interest. Other standing requirements are found in NRC case law. See *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 426 (2002).<sup>3</sup>

As demonstrated by the declarations of standing filed, Petitioner's members live near Vogtle. Representational standing has been granted to an organization with members within 15 miles of a plant. See *Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 553-54.

Further, as in *Vermont Yankee*, the LAR is an action with obvious potential for offsite consequences. A catastrophic earthquake affecting Vogtle Unit 3 could reasonably create a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes. The injury could be fairly traced to the conditions permitted by granting the LAR and the injury could be redressed by a denial or modification of the LAR.

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<sup>3</sup> In determining whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has traditionally applied judicial concepts of standing. See *Metropolitan Edison Co.* (Three Mile Island Nuclear station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983) (citing *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976)). Contemporaneous judicial standards for standing require a petitioner to demonstrate that (1) it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statutes (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA)); (2) the injury can be fairly traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. See *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plants), LBP-99-25, 50 NRC 25, 29 (1999). An organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm to its organizational interests, or in a representational capacity by demonstrating harm to its members. See *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 271 (1998). To intervene in a representational capacity, an organization must show not only that at least one of its members would fulfill the standing requirements, but also that he or she has authorized the organization to represent his or her interests. See *Private Fuel Storage, L.L.C.* (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 168, *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998).

Also, there is authority indicating that to establish injury-in-fact it is not necessary to proffer radiation impacts that amount to a regulatory violation. *See Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 417 (2001) (citing *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 247-48 (1996)).

Finally, a recent decision expands on previous holdings regarding associational representation. The Court held that an organization had standing to sue on behalf of people associated with the organization who were the “functional equivalent” of members. *See Flyers Rights Educ. Fund v. USDOT*, No. 19-1071 (D.C. Cir. 5-5-2020), slip op. at 3-6.

In light of the above, standing to participate in this proceeding is demonstrated by the declarations of the following members of the Blue Ridge Environmental Defense League and Concerned Citizens of Shell Bluff who have authorized Petitioners to represent their interests.

1. Richard Colclough, Hephzibah, GA
2. Claude Howard, Waynesboro, GA
3. Melvin Stewart, Augusta, GA
4. Rev. Charles N. Utley, Augusta, GA

These individuals who signed declarations of standing live well within 25 miles of Plant Vogtle; in fact, some are within 5 miles. *Locus standi* is based on three requirements: injury, causation and redressability. Petitioners hereby request to be made a party to the proceeding because: 1) Granting of the LAR would present a tangible and particular risk of harm to the health and well-being of our members, 2) The NRC has initiated proceedings for a license amendment, the granting of which would directly affect our members, and 3) The Commission is the sole agency with the power to approve

or deny the modification of a license to construct and operate a commercial nuclear power plant. The Petitioners' members seek to protect their health and lives by opposing the license amendment requested by SNC.

## **Background**

Under Title 10 CFR Part 52, all nuclear power plant construction must be in accord with the plant's design and current licensing basis (CLB) as well as the applicable statutes and regulations. The process for modifying the CLB is set forth in 10 CFR 52.98(f).<sup>4</sup> A licensee that requests an amendment or exemption must perform 1) an applicability determination evaluation, 2) a safety-security interface evaluation, 3) a construction impacts evaluation and 4) a 10 CFR 50.59-like screening evaluation. *See* COL-ISG-025. If upon completion of its review the NRC finds that there would be unacceptable incompatibilities, it may condition its approval of the LAR upon the licensee making adjustments to the existing design and licensing basis. *See* Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 565 (2004).

## **Analysis Hindered by Lack of Available Data**

Our review and analysis have been seriously hampered due to the lack of any complete engineering analyses or accurate information provided for review by SNC. In an email from Cayetano Santos, NRC Project Manager, to Louis Zeller, Executive

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<sup>4</sup> §52.98(f): Any modification to, addition to, or deletion from the terms and conditions of a combined license, including any modification to, addition to, or deletion from the inspections, tests, analyses, or related acceptance criteria contained in the license is a proposed amendment to the license. There must be an opportunity for a hearing on the amendment.

Director of the Blue Ridge Environmental Defense League, dated May 8, 2020, *it is clear that the NRC has no intention of providing the public and BREDL with any additional information about the dangerous dishing that is occurring in the Vogtle Unit 3 foundation.*

As I indicated in my e-mailed response this morning, May 8, 2020, at 9:05 a.m., the licensee made the documents and calculations you request available to the staff in an electronic reading room as part of an audit. The staff does not have possession of the documents and calculations that were identified in the audit plan. The NRC staff's safety review of License Amendment Request 20-001 will rely on information placed on the docket by the licensee. You also request "documents, notes or calculations" the NRC staff audit team made in carrying out the audit. As stated in the audit plan, the staff will prepare an audit summary report that will be entered as an official agency record in ADAMS.

Furthermore, in its recognition of the lack of information received from SNC, the NRC issued an Audit Plan on March 20, 2020 for LAR 20-001 that clearly states:

The audit team will view the documentation and calculations that provide the technical support for LAR 20-001... On completion of the audit, the staff will prepare an audit summary report that will be declared and entered as an official agency record in ADAMS. The audit outcome may be used to identify any additional information to be submitted for making regulatory decisions and will assist the staff in the issuance of requests for additional information (if necessary) in completing its review of LAR 20-001.<sup>5</sup>

Lastly, as of 11 May 2020, the detailed NRC Audit Summary has not been placed in the ADAMS system, nor has the information reviewed by the NRC Audit Team been placed in ADAMS. Therefore, due to a lack of timeliness by the NRC in filing these necessary reports, we reserve the right to modify this report when the appropriate information is finally placed in ADAMS for public review as required by federal statute. Gundersen Declaration Paragraphs 33–35.

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<sup>5</sup> NRC Memorandum, Santos to Hall, Audit Plan, 3/20/2020, ML20063H206

## **Overview of the Contentions to be Raised in this Petition**

Sometime in 2014, Southern Nuclear Operating Company commenced construction of the foundation for the Auxiliary and Annex Buildings, portions of which are considered part of the Nuclear Island (NI). Walls were constructed and concrete poured shortly afterward, certainly by sometime in 2015.<sup>6</sup>

Five years later, after the foundation and walls were already completed, SNC notified the NRC on February 7, 2020 that it was seeking a License Amendment due to the discovery that walls and the entire foundation of the Auxiliary Building have inexplicably moved, sunk and become distorted. Now, the Company is proposing to modify what it calls the “seismic gap” between the walls of the NI and the Annex building.

The Petitioners hereby seek to raise two contentions centered on both the seismic gap and the information gap which are at the core of SNC’s license amendment request: 1) License Revocation for Materially False Statements and 2) Basemat, Foundation and Construction Factors Create Unacceptable Operational Risk to Public Health and Safety.

Petitioner’s requests for leave to intervene and a hearing are supported by an affidavit submitted on behalf of the Petitioner by Arnold Gundersen (“Gundersen Declaration”) (Attachment A).

Based on our review, the license amendment request has not been fully evaluated by the NRC and is not justified by the information presented by the Company.

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<sup>6</sup> SNC has determined that the Vogtle construction schedule is “Proprietary” and the NRC has concurred so it is impossible for experts representing Non-Governmental Organizations such as BREDL to determine the exact construction dates from NRC documentation.

**CONTENTION ONE: License Revocation for Materially False Statements.**

*(i) Specific issue of law or fact to be raised*

Chapter 16 of the Atomic Energy Act provides in relevant part that: “Any license may be revoked for any material false statement in the application...for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application....” *See* Section 186 of the Act.<sup>7</sup> Other parts of Section 16 govern administrative procedures and license amendments.

Any responsible officer of a firm constructing...any facility or activity which is licensed...pursuant to the Atomic Energy Act of 1954 as amended...who obtains information reasonably indicating that such facility...contains a defect which could create a substantial safety hazard...shall immediately notify the Commission of such failure...to comply. 42 USC 5846 Sec. 206.

*(ii) Brief explanation of contention*

After Vogtle Electric Generating Plant Unit 3 foundation and walls had been completed, SNC notified the NRC on February 7, 2020 that it was seeking a License Amendment due to the discovery that walls and the entire foundation of the Auxiliary Building have inexplicably moved, sunk and become distorted. Now, the Company is proposing to modify what it calls the “seismic gap” between the walls of the Nuclear Island and the Annex building, ignoring the critical underlying safety conditions that

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<sup>7</sup> Atomic Energy Act of 1954 (P.L. 83-703) 42 USC 2236, Sec. 186. Revocation

a. Any license may be revoked for any material false statement in the application or any statement of fact required under section 182, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this Act or of any regulation of the Commission.

caused the gap to narrow. Petitioner contends that materially false statement and administrative delay call for revocation of the COL by the Commission.

*(iii) Contention is within the scope of the proceeding*

Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects. 10 CFR §50.9(a) Completeness and accuracy of information. Pursuant to 10 CFR 52.98, the NRC is responsible for approval of any modification, addition or deletion from the license (CLB).

*(iv) Issues raised are material to the findings NRC must make*

Federal regulations require that information provided to the Commission shall be complete and accurate in all material respects. An applicant or licensee violates this rule when information has significant implications for public health and safety or common defense and security. § 50.9 Completeness and accuracy of information. The Atomic Energy Act provides that any license may be revoked for any material false statement in the application. Chapter 16 Section 186 of the Act. Even without scienter, “forgiving innocent mistakes puts a premium on ignorance....” Virginia Electric & Power Co., (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 491 (1976), aff’d, 571 F.2d 1289 (4th Cir. 1978).

*(v) Expert opinion supporting Petitioner’s contention*

SNC posits a justification of its License Amendment Request: “In order to facilitate the construction of the nuclear island and adjacent buildings....” Request for License Amendment and Exemption: Unit 3 Auxiliary Building Wall 11 Seismic Gap

Requirements (LAR-20-001), at 4 of 14 [emphasis added]. However, in his review of the LAR, Arnold Gundersen reached the following conclusion: “The construction of the walls and foundations in question were completed at least a half-decade ago, therefore, it is technically impossible to ‘facilitate construction’ on structures that were completed at least five years earlier and that fall under strict seismic regulatory guides. Therefore, I believe that the above statement by SNC is materially false.” Gundersen Declaration at paragraph 13.1.

A statement is “material” if it has a natural tendency to influence or to be capable of influencing the decision of the decisionmaker to which it was addressed, regardless of whether the agency actually relied upon it.

Three possible explanations for the false statement are: 1) Westinghouse knew and did not inform SNC; 2) Both Westinghouse and SNC knew and did not inform NRC in a timely fashion; or 3) Westinghouse, SNC and NRC staff knew and delayed seeking amendment of the license under an expedited schedule in order to limit scrutiny. *See* Gundersen Declaration at Paragraph 13.4.3.

*(vi) Information showing a genuine dispute with licensee*

The position taken by SNC throughout the LAR is that there is an “as-built” reduction in the distance between the walls of the Nuclear Island and the Annex Building. Petitioners submit that the reduction is the result of movement of the walls and not a so-called as-built error.

**CONTENTION TWO: Basemat, Foundation and Construction Factors Create Unacceptable Operational Risk to Public Health and Safety.**

*(i) Specific issue of law or fact to be raised*

New nuclear power plant construction must be conducted in accordance with the combined license (COL) current licensing basis (CLB), the Atomic Energy Act, and the applicable regulations. The change process for the COL is set forth in 10 CFR 52.98.

Any modification to, addition to, or deletion from the terms and conditions of a combined license, including any modification to, addition to, or deletion from the inspections, tests, analyses, or related acceptance criteria contained in the license is a proposed amendment to the license. There must be an opportunity for a hearing on the amendment. § 52.98(f).

Any responsible officer of a firm constructing...any facility or activity which is licensed...pursuant to the Atomic Energy Act of 1954 as amended...who obtains information reasonably indicating that such facility...contains a defect which could create a substantial safety hazard...shall immediately notify the Commission of such failure...to comply. 42 USC 5846 Sec. 206.

*(ii) Brief explanation of the contention*

Construction of Vogtle Unit 3 should be stopped until Southern Nuclear Operating Company: 1) reevaluates the structural integrity of the entire Nuclear Island, 2) performs a complete root cause analysis of the new stresses on the basemat upon which the Nuclear Island on Vogtle Unit 3 is being constructed, 3) presents the complete analyses and root cause analysis information in public licensing hearings, and 4) an entirely new licensing review and full analysis of the new stress conditions placed on

other components on the site that are no longer level as a result of the disproportionate sinking have been concluded and subjected to satisfactory independent engineering review.

*(iii) Contention is within the scope of the proceeding*

New nuclear power plant construction must be conducted in accordance with the combined license (COL) current licensing basis (CLB)<sup>8</sup> including Inspections, Tests, Analyses and Acceptance Criteria (ITAAC), the Atomic Energy Act, and the applicable regulations. The change process for the COL is set forth in 10 CFR 52.98.

Pursuant to 10 CFR 52.98, the NRC is responsible for approval of any modification, addition or deletion from the license (CLB). SNC's requested amendment proposes to depart from CLB Updated Final Safety Analysis Report (UFSAR) Tier 2\* and Tier 2 information applicable only to VEGP Unit 3 (which includes the VEGP Unit 3 plant-specific Design Control Document (DCD) Tier 2\* and Tier 2 information) and involves related changes to VEGP Unit 3 plant-specific Tier 1 information, with corresponding changes to the associated VEGP Unit 3 COL Appendix C information.

*(iv) Issue is material to the findings NRC must make*

Material issues: Are the nonconformance and exemption of the LAR inimical to public health and safety. Is the so-called seismic gap the result of foundation problems

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<sup>8</sup> As defined in 10 CFR 54.3 – CLB is the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect. The CLB includes the NRC regulations contained in 10 CFR Parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, 100 and appendices thereto; orders; license conditions; exemptions; and technical specifications. It also includes the plant-specific design-basis information defined in 10 CFR 50.2 as documented in the most recent final safety analysis report as required by 10 CFR 50.71 and the licensee's commitments remaining in effect that were docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports.

which have plagued the construction of Vogtle 3 and 4 reactors since the very beginning of construction project; for example, in 2012 construction was halted due to improperly installed rebar, and in 2013 the first concrete pour at Vogtle led to an NRC finding of “significant breakdown in the Quality Assurance of [then contractor] CB&I.”<sup>9</sup> Is the differential downward deflection at the center of the foundation—dishing—exhibited at Vogtle being ignored in the current LAR.

One necessary component of NRC review of a license amendment application is review of the proposed amendment’s compatibility with the licensee’s existing design and licensing basis. If the NRC finds that there would be unacceptable incompatibilities, it may condition its approval of the amendment upon the licensee making necessary adjustments to the existing design and licensing basis to resolve these incompatibilities.

Entergy Nuclear Vermont Yankee, L.L.C. and Entergy Nuclear Operations, Inc.

(Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 565 (2004).

*(v) Expert opinion supporting Petitioner’s contention*

In seeking to minimize the underlying structural requirements approved as a baseline safety design feature for Vogtle Unit 3 for the approval of its initial construction license, Southern Nuclear Corp. (SNC) is attempting to obfuscate the true facts. Merely amending its license and modifying requirements for the seismic gap between a portion of a wall in the Annex Building and the NI (Nuclear Island), SNC appears to be using this alleged emergency license amendment request to ignore the significant seismic and

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<sup>9</sup> Southern Nuclear Operating Company Vogtle Electric Generating Plant Units 3 and 4 Request for License Amendment: Basemat Concrete/Rebar Details (LAR-12-007) August 1, 2012

“The nuclear island structures, consisting of the containment, shield building, and auxiliary building are founded on the 6-foot-thick, cast-in-place, reinforced concrete basemat foundation. The basemat provides the interface between the nuclear island structures and the supporting soil. The basemat transfers the load of nuclear island structures to the supporting soil. The basemat transmits seismic motions from the supporting soil to the nuclear island. Resistance to sliding of the concrete basemat foundation is provided by soil friction” Enclosure 1 at 3 of 10, <https://www.nrc.gov/docs/ML1221/ML12215A084.pdf>

structural concerns. In this License Amendment process, SNC has chosen to ignore these key factors relating to the degraded condition of the nuclear island: 1) The foundation of the Seismic Category 1 Nuclear Island has settled “more at the center and less at the perimeter”; 2) A wall has moved closer to the NI; 3) That same wall now is not level, and is leaning; 4) If the foundation of the NI has settled, “more at the center and less at the perimeter,” other systems and structures must also have become deformed yet have not been evaluated. SNC seeks to portray the “as-built condition” of the wall as a minor issue, less than an inch deflection from the designed value. SNC states in its License Amendment request that it seeks:

“to modify the north-south seismic gap requirement above grade between the nuclear island and the annex building west of Column Line I from El. 141’ through El. 154’ in the licensing basis to accommodate construction as-built localized nonconformances at VEGP Unit 3. Elevation 141’ is mid-span with respect to the auxiliary building and annex building.” [Emphasis Added]

This statement by SNC is incorrect. The “as-built” condition of the wall in question was correct at the time it was built. Its most recent location is not an “as-built localized nonconformance”. Without human intervention, the wall moved after it was constructed because the NI is sinking. Gundersen Declaration paragraphs 15–17.

The structural engineering term for the differential downward deflection forming at the center of the Vogtle foundation, due to additional weight in the middle of the structure, is called ‘dishing’ or ‘cupping’ and is known to present serious structural and seismic problems beyond the leaning walls encountered at Vogtle Unit 3. The dishing being exhibited at Vogtle was never anticipated and therefore was not considered in Vogtle’s original design. Currently the serious structural and seismic risk issue at Vogtle

has been ignored in the License Amendment Request. Gundersen Declaration at paragraph 21.

*(vi) Information showing a genuine dispute with licensee*

In January 2020, SNC informed the Commission that its scheduled date for initial loading of fuel into the reactor for Vogtle Unit 3 is November 23, 2020. 85 Fed. Reg. 8031 (Feb 12, 2020). The Commission will hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the combined license. 10 CFR § 52.103 Operation under a combined license. SNC's February 7, 2020, cover letter to the NRC submitting LAR-20-001 states:

The requested amendment proposes changes to VEGP Unit 3 COL Appendix C (and VEGP Unit 3 plant-specific Tier 1) Inspections, Tests, Analyses and Acceptance Criteria (ITAAC), and corresponding UFSAR Tier 2\* and Tier 2 information applicable only to VEGP Unit 3, to modify the north-south minimum seismic gap requirements....

10 CFR § 52.103(b) requires that

A request for hearing under paragraph (a) of this section must show, *prima facie*, that—(1) One or more of the acceptance criteria of the ITAAC in the combined license have not been, or will not be, met; and (2) The specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

The changes identified by the Petitioner in the LAR show *prima facie* that the acceptance criteria of the ITAAC in the combined license are not capable of being met. These seismic concerns within the basemat/foundation increase the likelihood of seismic failure and meltdown, creating operational consequences from the nonconformance which would be contrary to providing reasonable assurance of adequate protection of public health and safety.

BREDL hereby seeks to ensure that the requested license amendment is not issued by the Commission without resolution of the Petitioner's contentions, including the operational consequences of nonconformance with the Current Licensing Basis. SNC has not demonstrated full compliance with the Atomic Energy Act and implementing regulations. A licensee generally bears the ultimate burden of proof. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-697, 16 NRC 1265, 1271 (1982), citing 10 C.F.R. § 2.325 (formerly § 2.732).

For the foregoing reasons, the contention is admissible.

### **Conclusion**

The Company's License Amendment Request does not comply with the current licensing basis, the applicable statutes and regulations, or the process for modifying the current licensing basis for Vogtle Unit 3 as set forth in 10 CFR 52.98(f). The Nuclear Regulatory Commission cannot approve this license amendment request. Our principal interests are the health and safety of our members living near the plant and the general public.

The Combined Operating License for VEGP Unit 3 issued under Part 52 is, pursuant to § 52.98, final and its terms may not be modified, added to or deleted unless, pursuant to § 52.103, the Commission provides proper notice to request a hearing. The Commission has done so. Further, the Petitioner has shown *prima facie* that criteria have not been met regarding seismic gap and that there are operational consequences of the nonconformance as requested by the Company which are contrary to public health and safety. The Commission did not, as prescribed under § 52.97(a)(2), make a finding that

this criterion had been met when it issued the combined license. We hereby request a hearing.

Respectfully submitted

A handwritten signature in black ink, reading "Louis A. Zeller", is written over a horizontal line.

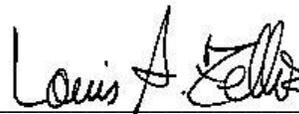
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**UNITED STATES OF AMERICA  
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**CERTIFICATE OF SERVICE**

I hereby certify that the  
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BUILDING WALL 11 SEISMIC GAP REQUIREMENTS, LAR-20-001**  
has been filed through the Electronic Information Exchange system  
this 11<sup>th</sup> day of May, 2020.



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