SUMMARY OF ARGUMENT

The catastrophic nuclear disaster at the Fukushima Dai-ichi power plant caused the NRC to reevaluate its entire regulatory program for providing an adequate level of protection to public health and safety. Fully adopting the recommendations of its own Fukushima Task Force, the Commission committed to making significant regulatory changes in three major areas – risk analysis for earthquakes and floods, equipment upgrades to protect reactor core and spent fuel cooling systems during extended power outages and multi-unit accidents, and emergency planning upgrades for extended power outages and multi-unit accidents. The Commission proposed to implement some recommendations immediately but a significant number were postponed into the future, raising questions as to whether and how they ultimately would be implemented.

At the time it committed to making these regulatory changes, the Commission had before it both Southern Co.'s application for COLs for Vogtle 3 & 4 and Westinghouse's application for amended certification of the underlying AP1000 design. Instead of considering the impact the changes would have on the decisions before it, the Commission pushed ahead as if Fukushima never happened. But NEPA prohibits such voluntary ignorance. *See Marsh v. Oregon Natural Resource Council*, 490 U.S. 360, 371 ("NEPA ensures that the agency will

not act on incomplete information, only to regret its decision after it is too late to correct.")

By the Commission's own admission, the information brought to light in the Task Force Report was both new and significant. Accordingly, the Commission violated NEPA when it issued a COL for Vogtle 3 & 4 without considering this information in a supplemental SEIS and when it certified the AP1000 reactor design without a supplemental EA.

These violations are all the more egregious because the Commission denied Petitioners the opportunity for a hearing on whether supplemental NEPA analysis was required. Instead, at the same time as Petitioners were foreclosed from being heard, the Commission opened its doors to Southern Co. and the NRC Staff. Based on the testimony of these parties at the COL mandatory hearing – and at the exclusion of Petitioners – it decided not to conduct further environmental analysis. NEPA does not allow the public to be excluded from the decision making process. *See id.* ("The broad dissemination of information mandated by NEPA permits the public and other government agencies to react to the effects of a proposed action at a meaningful time.")

The Atomic Energy Act likewise prohibits the Commission's refusal to grant Petitioners a hearing. Indeed, the Act ensures that parties impacted by the Commission's decision have a right to be heard.

Accordingly, and as set forth in more detail below, the Commission's decisions to issue the Vogtle 3 & 4 COLs and certify the AP1000 design should be overturned and the NRC should be ordered to supplement the environmental analyses supporting those decisions and address the environmental implications of the Fukushima Task Force recommendations. At the very least, Petitioners should be granted the hearing to which they are entitled on the question of whether NEPA requires supplementation of the SEIS and the EA in these circumstances.
