

proceedings. In particular, two licensing boards have determined that Mr. Epstein demonstrated standing in previous proceedings involving the neighboring Susquehanna Station. In a 2007 license renewal proceeding, the board found that Mr. Epstein had shown sufficient business contacts within close proximity to the plant to demonstrate standing, but rejected his intervention petition for failure to propose an admissible contention.³ Later that same year, the board in another Susquehanna proceeding – involving a request for an extended power uprate (EPU) – similarly found that Mr. Epstein had demonstrated standing but, again, had not offered an admissible contention.⁴ Mr. Epstein appealed. We affirmed the board’s ruling based on Mr. Epstein’s failure to offer an admissible contention, but did not review the board’s standing determination.⁵

In his initial intervention petition before the Board in this matter, Mr. Epstein stated that he resides in Pennsylvania, although outside the 50-mile radius of the proposed site. However, he stated that he has business dealings that take him within that radius.⁶ Mr. Epstein based his standing claim on two theories. First, he argued that he automatically had established standing by virtue of his showing in the Susquehanna license renewal proceeding.⁷ In addition, he described his various contacts with the area within a 50-mile radius of the proposed Bell Bend

³ *PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 293-96 (2007)*. Mr. Epstein did not appeal this ruling to the Commission.

⁴ *PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 17 (2007)*.

⁵ *PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101 (2007)*.

⁶ *Eric Joseph Epstein’s, Pro Se, Petition for Leave to Intervene, Request for Hearing, and Contentions with Supporting Factual Data Re: PPL Bell Bend LLC: Combined License Application for the Bell Bend Nuclear Power Plant Docket No. 52-039; NRC-2009-0112 Adams Accession No. ML082140630 (May 18, 2009) (Petition) at 8-9.*

⁷ Petition at 7.

plant. His Petition stated that he “routinely pierces the 50-mile proximate rule [sic] during his day-to-day activities simply by travelling to Lebanon, Schuylkill and northern and Dauphin counties [sic].”⁸ He claimed that he represents East Hanover Township as “a contracted advocate” and thus his “livelihood” is tied to the “well-being and safety of East Hanover’s residents, property and infrastructure.”⁹ Mr. Epstein further claimed he commutes to Grantville, PA, a minimum of once a week.¹⁰ In addition, Mr. Epstein stated that he serves on the board of directors for two organizations based in Allentown, and attends meetings in Allentown, Berwick, Fogelsville, Hazleton, and Kingston (all of which, Mr. Epstein states, are within a 50-mile radius of the proposed site).¹¹ Mr. Epstein claimed that these contacts are sufficient to show that he has “well-established business and professional interests ‘within a 50-mile radius of the facility.’”¹²

PPL Bell Bend and the NRC Staff both disputed Mr. Epstein’s standing claims.¹³ Both argued that Mr. Epstein had not provided sufficient detail concerning his contacts with the area near the proposed site, such as the duration, frequency, and actual proximity to the proposed facility, other than the general implication that the contacts occur within 50 miles of the proposed

⁸ *Id.* at 8.

⁹ *Id.*

¹⁰ *Id.* Although the Petition is silent as to whether Grantville, PA, is within a 50-mile radius of the proposed Bell Bend site, it appears that the town is slightly more than 50 miles away. See <http://www.geobytes.com/CityDistanceTool.htm> (distance from Berwick, PA, to Grantville, PA estimated to be 53 miles) (last visited 10/20/09).

¹¹ Petition at 9.

¹² *Id.*

¹³ *Applicant’s Answer to Petitions to Intervene* (June 12, 2009) (Applicant’s Answer) at 20-24; *NRC Staff Answer to “Eric Joseph Epstein’s Petition for Leave to Intervene, Request for Hearing, and Presentation of Contentions with Supporting Factual Data”* (June 12, 2009) (Staff Answer) at 8-11.

facility.¹⁴ The Staff argued that simply traveling within a 50-mile radius is not sufficient to show a “bond” between Mr. Epstein and the proposed reactor, “particularly in the absence of information regarding the length of time that he is within the 50-mile radius.”¹⁵

In his Reply to the NRC Staff’s and PPL Bell Bend’s answers, Mr. Epstein did not supply additional details concerning the frequency and duration of his contacts with the site, nor did he provide any other information showing his interest in the proposed facility. Rather, he merely reiterated that he had already established standing in the 2007 Susquehanna license renewal proceeding, and cited a filing he provided in that case in response to a board request for additional information regarding standing.¹⁶

The Board here found that Mr. Epstein had not demonstrated standing. First, it rejected the argument that Mr. Epstein’s showing in the Susquehanna license renewal proceeding had any bearing on the standing issue in this proceeding.¹⁷ The Board observed that in the Susquehanna EPU proceeding – decided only months after the Susquehanna license renewal board’s ruling on standing – the board specifically had rejected Mr. Epstein’s attempted reliance on the prior board’s ruling.¹⁸ The Board went on to find that Mr. Epstein had not provided sufficient information concerning the extent, frequency, and duration of his contacts in the vicinity of the proposed Bell Bend power plant.¹⁹

¹⁴ Applicant’s Answer at 8-9; Staff Answer at 22-23.

¹⁵ Staff Answer at 22.

¹⁶ *Eric Joseph Epstein’s Reply to Applicant’s Answers and the Nuclear Regulatory Commission Staff’s Answer to Eric Joseph Epstein Petition for Leave to Intervene, Request for hearing, and Contentions with Supporting Factual Data* (June 19, 2009) at 8 n.2.

¹⁷ LBP-09-18, 70 NRC __ (slip op. at 13-14).

¹⁸ *Id.* (slip op. at 14).

¹⁹ *Id.* (slip op. at 15).

The Board also rejected Mr. Epstein's four proposed contentions as inadmissible.²⁰ Among these was proposed Contention 2, which claimed that the application did not address how PPL Bell Bend would store and dispose of Class B and Class C low level radioactive waste (LLRW) in view of the partial closing of the Barnwell, South Carolina, disposal facility.²¹ The Board found that Contention 2 failed to demonstrate a genuine dispute with the application. In particular, the Board observed that the application acknowledged the possibility that no offsite disposal facility would be available for Class B and C waste, described methods for minimization of LLRW, and discussed plans for additional storage should that become necessary.²²

Mr. Epstein's appeal challenges only the Board's rulings on standing and Contention 2.²³

II. DISCUSSION

We generally defer to Board decisions regarding standing and contention admissibility in the absence of clear error or an abuse of discretion.²⁴ Because, as discussed below, we find that the Board did not err in its ruling on standing, we need not revisit its ruling on the admissibility of Mr. Epstein's proposed Contention 2.

²⁰ See generally *id.* (slip op. at 39-55).

²¹ Petition at 20-21. As of July, 2008, the EnergySolutions Barnwell Operations facility in Barnwell, South Carolina only accepts Class B and C LLRW from facilities in South Carolina, New Jersey, and Connecticut.

²² LBP-09-18, 70 NRC __ (slip op. at 45-46). See also *id.* (slip op. at 26-28).

²³ *Eric Joseph Epstein's Appeal of the Memorandum and Order Issued by the Atomic Safety and Licensing Board on August 10, 2009* (Aug. 20, 2009) (Appeal).

²⁴ *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 319, 324 (2009); *Crow Butte Resources, Inc.* (License Renewal for In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 336 (2009) (citing, *inter alia*, *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit No. 3), CLI-08-17, 68 NRC 231, 234 (2008)); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006).

As an initial matter, the Board correctly concluded that Mr. Epstein could not rely on other boards' findings of standing in the two prior proceedings concerning the Susquehanna facility. Unreviewed board decisions – including both Susquehanna standing rulings here – have no binding effect on a later board.²⁵ Further, our case law is clear that a petitioner must make a fresh standing demonstration in *each* proceeding in which intervention is sought because a petitioner's circumstances may change from one proceeding to the next.²⁶ We recently reiterated this principle in the *Crow Butte* case.²⁷ Therefore, the Board correctly found that it may focus only on the support Mr. Epstein presented with respect to *this proceeding* in ruling on his standing to intervene.

In proceedings for construction permit and operating licenses for nuclear power plants, we recognize a “proximity presumption” in favor of standing for persons who have “frequent contacts” within a 50-mile radius of a nuclear power plant.²⁸ As noted above, Mr. Epstein claims standing by virtue of his business contacts generally within the site vicinity.²⁹ The

²⁵ See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-22, 62 NRC 542, 544 (2005); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-99-24, 50 NRC 219, 222 (1999). This rule of practice was pointed out to Mr. Epstein by the Susquehanna EPU board. See LBP-07-10, 66 NRC at 19.

²⁶ *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 162-63 (1993).

²⁷ See *Crow Butte Resources, Inc.* (License Renewal for In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC at 343 (organizational petitioner could not rely on affidavit authorizing representation that was executed with respect to one proceeding to authorize representation in separate proceeding involving the same license).

²⁸ *USEC, Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311 (2005) (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 95 (1993)).

²⁹ See, e.g., Appeal at 3 (stating that Mr. Epstein lives “slightly more than” 50 miles from the proposed facility).

question the Board faced was whether Mr. Epstein articulated sufficient information to demonstrate frequent contacts within the 50-mile site radius.

The petitioner bears the burden to provide facts sufficient to establish standing.³⁰ While determining a petitioner's residence generally is relatively straightforward, the sufficiency of a nonresident petitioner's "frequent contacts" is a determination that necessarily will require the Board to weigh the information provided. Therefore, a petitioner who seeks to base standing in a combined license proceeding on contacts within a 50-mile radius of the proposed facility must provide enough detail to allow the Board to distinguish a casual interest from a substantial one. A board may well consider that a person who spends one day a week five miles from a proposed reactor has a more significant interest in the combined license application than a person who passes within 45 miles of the site in his daily commute. By the same token, a board might consider that a petitioner who owns rental property three miles from the site that he occasionally visits, has a greater interest than a person who often visits parkland twenty miles from the proposed facility.³¹

As the Board correctly observed, a petitioner's lack of specificity concerning the nature, extent, and duration of his contacts with the area surrounding the proposed site is a sufficient

³⁰ *U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001) (citing *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000)).

³¹ *Compare Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17 (1995) (petitioner whose office was located within one half mile from research reactor may be "presumed to be affected by operation of the facility;" similarly, licensing board reasonably found that a petitioner whose daily commute took her within less than one half mile of a research reactor had standing based on the obvious potential for offsite consequences) *and Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 44-45 (1990) (in a decommissioning proceeding – where the "proximity presumption did not apply – a petitioner who commuted past the entrance of plant once or twice a week was found to have standing). Neither case involved a license to construct and/or operate a power reactor, so a 50-mile "proximity presumption" did not apply.

basis to reject a claim of standing.³² At bottom, the Board found fault with Mr. Epstein's vague and generalized claims supporting his standing case, particularly the omission of specific supporting information concerning the distance between the proposed facility and the towns and other locations referenced in the Petition, and concerning the frequency and duration of Mr. Epstein's visits. Mr. Epstein had the opportunity to cure on reply the defects in his initial petition, but did not avail himself of that opportunity.³³ Given the lack of specificity, the Board found itself unable to gauge the "extent, frequency, and duration" of Mr. Epstein's contacts with the site or locations within its vicinity.³⁴

We find that the Board did not abuse its discretion in determining that Mr. Epstein did not meet his burden to demonstrate standing. Mr. Epstein's various assertions in support of his standing do not demonstrate with the requisite specificity that he has *substantial* and *regular* contacts within the vicinity of the site. We agree with the Board that Mr. Epstein's general statement that that he "routinely pierces" a 50-mile radius around the site, is too vague a statement on which to base standing. To support this, Mr. Epstein makes several claims that, even taken together, fail to demonstrate a pattern of regular, significant contacts within the vicinity of the site that would be sufficient to satisfy our standing requirements. For example, Mr. Epstein reiterates his claim that he has represented East Hanover Township "as a contracted advocate" since 2008, and commutes to the township building and makes

³² LBP-09-18, 70 NRC __ (slip op. at 15 n.85) (citing *Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 354-55 (1999); *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324 (1999).

³³ LBP-09-18, 70 NRC __ (slip op. at 15). Indeed, Mr. Epstein was cautioned by the Susquehanna EPU Board that it was his burden to demonstrate that the frequency, duration, and location of his contacts were sufficient to establish a bond with the area. *See Susquehanna*, LBP-07-10, 66 NRC at 19 ("... a petitioner who fails to provide specific information regarding the geographic proximity or the timing and duration of its visits only complicates matters for itself") (citing *Private Fuel Storage*, CLI-99-10, 49 NRC at 325).

³⁴ LBP-09-18, 70 NRC __ (slip op. at 15).

unspecified “site visits” at a minimum of once per week.³⁵ Without more, we do not find it unreasonable for the Board to consider that a once-a-week commute to the township (only some portions of which lie within a 50-mile radius of the site) was not sufficient to establish a connection.³⁶ Mr. Epstein’s additional claim that he is on the board of directors of two organizations with interests within 50 miles of the site is likewise insufficiently specific to articulate the requisite pattern of regular contacts with the area.³⁷ Finally, we agree with the Board that Mr. Epstein’s claim that his business visits to Allentown, Berwick, Fogelsville, Hazelton and Kingston add up to “substantial periods of time” was not sufficiently concrete to establish the requisite “significant contacts” within the 50-mile radius. General assertions such as these are simply insufficient to establish standing under the proximity presumption.

We therefore decline to disturb the Board’s ruling on standing. The Board did not err in its rulings on applicable law, nor did it abuse its discretion in finding that Mr. Epstein had not demonstrated a sufficient connection with the proposed license to warrant standing to intervene in the proceeding. Because we find that the Board ruled correctly on the issue of standing, it is not necessary for us to reach the admissibility of proposed Contention 2.

³⁵ Appeal at 3. Mr. Epstein states that “[p]ortions of the township are within the 50 mile radius” of the Bell Bend site. *Id.*

³⁶ *See supra* n.10.

³⁷ *Id.* at 4. Mr. Epstein notes that he commutes to Allentown, PA for meetings associated with the organizations. He states only that his “meeting schedule for this calendar year includes Berwick, Fogelsville, Hazelton, and Kingston.” *Id.*

III. CONCLUSION

For the foregoing reasons, we *deny* Mr. Epstein's appeal, and *affirm* the Board's decision to deny his intervention petition in this proceeding.

IT IS SO ORDERED.

For the Commission

(NRC Seal)

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 7th day of January, 2010.