UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
USEC, Inc.	)	Docket No. 70-7004
	)	
(American Centrifuge Plant)	)	
	)	

NRC STAFF'S RESPONSE TO PETITIONS TO INTERVENE FILED BY PORTSMOUTH/PIKETON RESIDENTS FOR ENVIRONMENTAL SAFETY AND SECURITY (PRESS) AND GEOFFREY SEA

Marian Zobler
Sara Brock
Melissa Duffy
Counsel for NRC Staff

March 25, 2005

TABLE OF CONTENTS

TABLE OF AUTHORITIES

JUDICIAL DECISIONS

ADMINISTRATIVE DECISIONS

Commission:

Atomic Safety and Appeal Board:

Atomic Safety and Licensing Board:

STATUTES

REGULATIONS

MISCELLANEOUS

March 25, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
USEC, Inc.	)	Docket No. 70-7004
	)	
(American Centrifuge Plant)	)	

NRC STAFF'S RESPONSE TO PETITIONS TO INTERVENE FILED BY PORTSMOUTH/PIKETON RESIDENTS FOR ENVIRONMENTAL SAFETY AND SECURITY (PRESS) AND GEOFFREY SEA

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h), the Staff of the Nuclear Regulatory Commission ("Staff") hereby files its response to the Petitions to Intervene filed by the Piketon/Portsmouth Residents for Environmental Safety and Security ("PRESS")[1] and by an individual Geoffrey Sea.[2] For the reasons set forth herein, the Staff submits that PRESS has demonstrated standing, but has not submitted at least one admissible contention. Thus, the Staff submits that the PRESS Petition should be denied. The Staff further submits that Petitioner Sea has not demonstrated standing, but has proffered at least one admissible contention. Therefore, the Sea Petition should also be denied.

BACKGROUND

On August 23, 2004, USEC, Inc. ("USEC" or "Applicant") filed an application for a license to possess and use source, byproduct and special nuclear material (SNM) and to enrich natural uranium to a maximum of 10 percent U-235 by the gas centrifuge process. In addition to the

[1] "Petition to Intervene by Portsmouth/Piketon Residents for Environmental Safety and Security," dated Feb. 28, 2005 ("PRESS Petition").

[2] "Petition to Intervene by Geoffrey Sea," dated Feb. 28, 2005 ("Sea Petition").

license application ("LA") USEC submitted an Environmental Report ("ER"). *USEC, Inc.* (American Centrifuge Plant), CLI-04-30, 60 NRC 426 (2004). USEC proposes to build a gas centrifuge plant, known as the American Centrifuge Plant ("ACP"), located on premises leased from the Department of Energy ("DOE") near Piketon, OH. LA at 1-1 (Section 1.0 "General Information"). USEC is a Delaware corporation, entirely independent and distinct from DOE.[3] USEC Privatization Act, 42 U.S.C. 2011, *et seq.*, Pub. L. No. 104-134, 110 Stat. 1321-349 (1996); LA at 1-47 (Section 1.2 "Institutional Information").

Pursuant to the Atomic Energy Act of 1954, as amended (AEA) and the Commission's regulations at 10 C.F.R. § 70.23a, a hearing on the application is required. *See* § 193 of the AEA, 42 U.S.C. 2243. Accordingly, the Commission issued an order noticing receipt of the LA and consideration of issuance of the license, and noticing the hearing. *American Centrifuge Plant*, CLI-04-30, 60 NRC 426; 69 Fed. Reg. 61411 (Oct. 18, 2004). The Commission, among other matters, directed that the hearing in this proceeding will be subject to the provision in 10 C.F.R. Part 2, Subparts A, C, and G and provided a broad overview of the requirements regarding the admissibility of contentions that may be proffered by petitioners. *Id.* at 428, 436-39. The Commission also addressed specific issues that could be raised in the hearing, noting that a number of Commission decisions had been issued in the course of a previous enrichment facility licensing proceeding which could be relied upon as precedent.[4] *Id.* at 436.

Additionally, the order included a Notice of Hearing requiring interested persons to file petitions for leave to intervene in the hearing with the Commission by December 17, 2004. Due

---

[3] USEC, Inc.'s wholly-owned subsidiary, U.S. Enrichment Corporation, is the certificate holder for the Paducah Gaseous Diffusion Plant (PGDP) and the Portsmouth Gaseous Diffusion Plant (PORTS). LA at 1-47, Section 1.2 "Corporate Identity."

[4] Those decisions are: *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77 (1998); *Louisiana Energy Services*, *L.P.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294 (1997); and *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-92-7, 37 NRC 93 (1992).

to the fact that on October 25, 2004, public access was temporarily suspended to the LA and ER the Commission extended the filing time for intervention petitions to February 28, 2005 for those petitioners who had requested an extension by December 17, 2004. *USEC, Inc.* (American Centrifuge Plant), (unpublished order), (Dec. 29, 2004). In response to the Notice of Hearing, Petitions to Intervene were filed by PRESS and by Geoffrey Sea on February 28, 2005.

DISCUSSION

I. STANDING:

A. Legal Requirements for Standing

It is fundamental that any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that it has standing to do so. 10 C.F.R. § 2.309(a). Section 2.309(d) outlines the general requirements for standing, and explains that a request for hearing or petition for leave to intervene must state:

> (i) The name, address and telephone number of the requestor or petitioner;
>
> (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
>
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
>
> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1).

In determining whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing. *See, e.g., Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994) *citing Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993). In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest and that the injury is arguably within the "zone of interests" protected by the

statutes governing the proceeding. *See, e.g., Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993). In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act ("NEPA"). *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998).

To establish standing, the petitioner must establish: (a) that he personally has suffered or will suffer a "distinct and palpable" harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Dellums v. NRC,* 863 F.2d 968, 971 (D.C. Cir. 1988); *Public Service Co. of New Hampshire* (Seabrook Station, Unit 1)*,* CLI-91-14, 34 NRC 261, 266 (1991). It must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). A petitioner must have a "real stake" in the outcome of the proceeding; while this stake need not be a "substantial" one, it must be "actual," "direct" or "genuine." *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, *aff'd*, ALAB-549, 9 NRC 644 (1979).

A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982), c*iting Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 252 (1991), *aff'd in part on other grounds,* CLI-92-11, 36 NRC 47 (1992).

In order for an organization to establish standing, it must either demonstrate standing in its own right or claim standing through one or more individual members who have standing. *Georgia*

Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). An organization may meet the injury in fact test either (1) by showing an effect upon its organizational interests, or (2) by showing that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it "derivative" or "representational" standing. *South Texas Project*, ALAB-549, 9 NRC at 646-4. An organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or NEPA. *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528-30 (1991). Where the organization relies upon the interests of its members, it must show that at least one member who would possess standing in his individual capacity has authorized the organization to represent him. *Georgia Tech,* CLI-95-12, 42 NRC at 115.

In certain types of proceedings, a petition may be presumed to have fulfilled the first of the required standing showings based upon geographical proximity to the facility, without having specifically to plead that element if the petitioner resides within the facility's zone of possible harm. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146, *aff'd*, CLI-01-17, 54 NRC 3 (2001). Whether this presumption applies depends upon whether there is an obvious potential for offsite consequences. *See id.* at 148. Further the zone of possible harm varies depending on the type of proceeding. *See Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), LBP-00-2, 51 NRC 25, 28 (2000).

B. Petitioner Geoffrey Sea Has Not Demonstrated Standing to Intervene in this Proceeding

Applying these principles to the petition to intervene filed by Geoffrey Sea, the Staff contends that Petitioner has not demonstrated his standing to intervene in this proceeding. Petitioner has not established that he qualifies for presumed standing based on the geographic

proximity of his residence to the facility, nor has he shown that he has or will suffer concrete and imminent injury under the traditional standing analysis.

Petitioner asserts foremost that he is entitled to presumed standing by virtue of his equitable title, proximity to the proposed project, and injuries actual and potential. Sea Petition, at 7. Commission precedent requires that a petitioner seeking to intervene under a geographic or proximity presumption of standing must demonstrate that he lives within, or otherwise has frequent contacts with, the zone of reasonably foreseeable harm from the source of radioactivity. *See U.S. Dept. Of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 364 (2004). Merely owning property near a proposed nuclear facility, without residence, is not sufficient to confer presumed standing. *See Nuclear Fuel Services, Inc.* (Erwin, Tennessee), CLI-04-13, 59 NRC 244, 247-48 (2004) (finding that a petitioner who owned property near a nuclear facility but who actually resided in another state did not have presumed standing, despite her stated intentions to return to the area within five years). *See also Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336-38 (1979) (finding that a petitioner who owned and rented out farmland 10 to 15 miles from the site and visited the farm occasionally, yet actually resided several hundred miles from the site, did not meet standing requirements).

If a petitioner does not reside near a proposed facility, he may have standing under the proximity presumption only if he can demonstrate a frequency of contact with the area. *See, e.g., Perry*, CLI-93-21, 38 NRC at 95. The term "frequent" has been interpreted to mean "habitual" or "persistent." *See Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-99-3, 49 NRC 40, 52, *aff'd* CLI-99-10, 49 NRC 318 (1999).

Under Commission precedent establishing that standing based on proximity is only created by residence or by frequent contact, rather than by merely owning property, it is clear that Petitioner here does not meet the requirements for standing. Petitioner claims to have equitable title under a September 2004 contract to purchase the Barnes Home and surrounding 87 acres,

that he has paid a deposit under the contract, and that he has extended purchase options and legal fees to arrange the purchase. Sea Petition at 6. Petitioner also submits that the Barnes home is located within one mile of the proposed facility, is in the direction of prevailing winds and previous offsite migrations of uranium hexaflouride gas, including an accidental release that occurred in March 1978. *Id*. If Petitioner actually resided on the property in question, he would arguably be geographically proximate enough to the facility to merit standing in this proceeding. However, Petitioner resides in New York, (*id.* at 37), he has not resided in Piketon, Ohio since 1986 (*id*. at 2), and his intention to relocate to Piketon remains an uncertain prospect of the future at this time as he does not yet possess the Barnes property and has encountered difficulty in obtaining financing for the property. *Id* at 6.

Furthermore, Petitioner does not claim that his daily activities require him to have *any* physical contact with the region, much less the frequent level of contact required to obtain presumed standing. Petitioner does suggest that he would like to complete his purchase of the Barnes property neighboring the proposed facility, so that he might raise a family there, and open the home as a museum, as a memorial to the passenger pigeon, and as an educational center. *Id.* at 7. These plans have not yet materialized, however, and the Commission has stated that "mere intentions to visit 'some day' are not sufficient to establish standing." *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999) (*citing Lujan*, 504 U.S. at 563-64. Accordingly, Petitioner is not entitled to standing on account of his property interest or proximity to the proposed project.

Petitioner does not demonstrate that he has standing under the traditional analysis because he has not shown that he is or would be "personally and individually" injured. *See Lujan*, 504 US at 561-62. As discussed above, Petitioner does not yet own the property upon which he founds his claim to standing in this proceeding. At most, the Petitioner's prior occupational history in Piketon and his scholarly publications touching on the region amount to an academic interest,

which is not sufficient to constitute injury-in-fact for the purposes of standing, no matter how long-standing or specialized the interest. *See, e.g., Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-26, 15 NRC 742, 743 (1982), *citing Sierra Club v. Morton*, 405 US 727 (1972). Petitioner also mentioned that his interests coincide with those of other parties who "clearly look to Petitioner's intervention as an expression of their thwarted interests." Sea Petition at 9. However, as Petitioner correctly acknowledges, a petitioner who resides far from a facility cannot acquire standing to intervene by asserting the interests of a third party who will be near the facility but who is not a minor or otherwise under a legal disability which would preclude his own participation. *Id. See also Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2) ALAB-413, 5 NRC 1418, 1421 (1977). Because Petitioner does not assert a distinct and palpable harm he would personally and individually suffer, he has failed to establish standing under the traditional judicial analysis.

As discussed above, Petitioner has not demonstrated that he is entitled to standing in this proceeding, either on grounds of proximity or on the basis of an injury-in-fact. As Petitioner does not have standing, his petition to intervene in this proceeding should, therefore, be denied.

C. PRESS Has Established Standing to Intervene in this Proceeding

Turning to the PRESS Petition, PRESS has established standing to intervene in this proceeding. According to the PRESS Petition, PRESS was formed to represent the "interest in economic vitality, environmental quality, health and justice." PRESS Petition at 7. PRESS asserts it has standing as a representative of several of its members who live near the proposed ACP and who have authorized PRESS to represent their interests. *Id.* at 9. PRESS asserts that these members have "presumptive standing" based on the proximity of its members to the ACP. *Id.* Attached to PRESS' Petition are several declarations of PRESS members who indicate that they live various distances from the site and authorized PRESS to represent their interests. At least three of the declarants live as close as 1 mile from the site. *See id.* at 10 and attached

Declarations of Terry W. Brumfield, Tressie Hall, and William R. Hall. PRESS also asserts that issuance of the license sought by USEC could have an adverse effect on its members' health and safety interests. *Id.* at 9.

Based on PRESS' assertions and the declarations provided, PRESS has established representational standing to intervene in this proceeding. PRESS has provided the names of several members who authorize PRESS to represent their interests in this proceeding. Further, while no specific geographic zone of possible harm has been established for enrichment facility licensing matters, it is reasonable to assume that the 1 mile distance from the proposed site is within the geographical zone that might be affected by construction, operation or decommissioning of the facility. *See Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 53-54 (2000), *citing* Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-15, slip op. (May 20, 2004) (unpublished). Thus, at least three of PRESS' members have standing to intervene in their own right. Accordingly, PRESS has established standing to intervene in this proceeding. However, PRESS must still proffer at least one admissible contention in order to intervene in this proceeding.

II. CONTENTIONS:

A. Legal Standards:

In addition to satisfying the standing requirements, a petitioner must also provide at least one admissible contention in order to be admitted into an NRC proceeding. 10 C.F.R. § 2.309(a); *USEC, Inc.,* CLI-04-30, 60 NRC at 429. It is well established that contentions may only be admitted in an NRC proceeding if they fall within the scope of the proceeding and comply with the requirements of 10 C.F.R. § 2.309(f). *Id. See also Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-171 (1976). As explained in CLI-04-30, a petitioner must state with particularity the contentions sought to be raised. *USEC,* Inc., CLI-04-30, 60 NRC at 429; 10 C.F.R. § 2.309(f)(1). Furthermore, each contention must be

accompanied by: (1) a specific statement of the issue of law or fact to be raised or controverted, (2) a brief explanation of the basis for the contention, (3) a demonstration that the issue is within the scope of the proceeding, (4) a demonstration that the issue is material to the findings the NRC must make regarding the action subject to the proceeding, (5) a concise statement of the alleged facts or expert opinions which support the contention and on which the petitioner intends to rely at hearing, including references to the specific sources and documents, and (6) sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(i)-(vi). Failure to comply with any of these requirements is grounds for a dismissal of a contention. *LES,* LBP-04-14, 60 NRC 40, 54 (2004), *citing PFS*, CLI-99-10, 49 NRC at 325.

The application of these requirements has been further developed by NRC case law. To be admissible, contentions must fall within the scope of the proceeding as defined by the notice of hearing. *See id. citing, Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000). Moreover, a contention must present a genuine dispute with the applicant on a material issue of law or fact, and any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed. *See Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994). The petitioner must present the factual information and expert opinions necessary to support its contention adequately. *See Georgia Institute Technology* (Georgia Tech Research Reactor), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds,* CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). Neither mere speculation nor bare assertions alleging that a matter should be considered will suffice to allow the admission of a proffered contention. *See Fansteel, Inc*. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support to its contentions, it is not within

the Board's power to make assumptions of fact that favor the petitioner. *See Georgia Tech* , LBP-95-6, 41 NRC at 305. With these general principles in mind, the Staff addresses each contention in turn.

B. Geoffrey Sea's Contentions

Sea Contention 1.1:

> Petitioner contends that USEC has failed to identify cultural resources potentially impacted by the American Centrifuge Plant.

Basis:

> Nowhere in USEC's environmental report do the words "National Register of Historical Places" appear, and it is apparent by their absence that either no one at USEC or the Department of Energy checked to see if any National Register sites were nearby, or after checking no one wanted to admit the findings. Had they done so, they would have discovered and reported that the only two prehistoric National Register sites in Pike County are in immediate proximity to the proposed ACP, and that these two sites, which once were connected, constitute one of the largest, most important and most beautiful examples of prehistoric architecture in the world. . . . These obvious and illegal omissions have allowed DOE to avoid its obligation of conducting thorough cultural resource impact assessments, to match its elaborate environmental impact assessments. And USEC has inherited that DOE record of negligence.

Sea Petition at 14, 21.

The Staff does not oppose the admission of this contention, limited to the extent that it is based on the claim that the Applicant's ER does not adequately take into account the cultural and historical impacts within the appropriate area of potential effects. Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires that prior to the issuance of any license, an agency must "take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register." 16 U.S.C. 470f. The "area of potential effects" the NRC is required to consider in performing its Section 106 analysis is defined as:

> [T]he geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

36 C.F.R. § 800.16(d). The Applicant's ER provides an assessment of Cultural Resources at Section 3.8.1 (ER at 3-62)[5] and analyzes the proposed impact on these resources at Section 4.8.3 (ER at 4-88), concluding, in part, that there are no known areas of historic significance or known American Indian religious or cultural areas on site that could be potentially disturbed by the construction of the new American Centrifuge Plant ("ACP") buildings.[6] ER at 3-62, 63. To the extent this contention is asserting that the ER considered an incorrect "area of potential effects" in its NHPA analysis, thereby improperly omitting two sites listed on the National Register,[7] it presents a genuine dispute with the applicant on a material issue of fact which is relevant to the subject of this proceeding, and is thus admissible. 10 C.F.R. 2.309(f)(1)(vi).

The Staff opposes the basis that DOE has avoided its obligation of conducting thorough cultural resource impact assessments and that USEC has inherited the inadequacy of DOE's

---

[5] Petitioner claims, "Nowhere in USEC's environmental report do the words 'National Register of Historic Places' appear, and it is apparent by their absence that either no one at USEC or at the Department of Energy checked to see if any National Register sites were nearby, or after checking no one wanted to admit their findings." Sea Petition at 14. Contrary to Petitioner's assertions, the National Register of Historic Places and the National Register Criteria for Evaluation are discussed in relation to the surroundings of the proposed Piketon in the ER. *See* ER at 3-62, 3-63.

[6] The Staff has requested additional information from the Applicant to clarify what historic and cultural resources would fall within the potentially effected area. Letter from J. Davis, NRC to S. Toelle, USEC (Feb. 23, 2005), request 3-5 at 8 (ADAMS Accession No. ML050490210). The Staff has also requested a "description of how new buildings would be constructed to support the statement that they would not alter the property's significant historic setting." *Id.,* request 4-7 at 15.

[7] Petitioner refers specifically to the Piketon Works (National Register site 74001599, listed as "Piketon Mounds") and the Scioto Township Works (National Register site 74001600). Sea Petition at 15, 17.

assessments. "DOE activities are not part of USEC's operations and are not subject to NRC jurisdiction." *See U.S. Enrichment Corp.* (Paducah, KY and Piketon, OH), CLI-96-12, 44 NRC 231, 243 (1996).[8] DOE's conduct is irrelevant to this proceeding, and there is no basis to impute DOE's alleged non-compliance to USEC. To the extent the petitioner seeks admission of issues involving DOE's compliance with the National Historic Preservation Act, these issues exceed the scope of the proceeding and should be excluded. *See* 10 C.F.R. § 2.309(f)(1)(iii).

Sea Contention 1.2

> Petitioner contends that USEC has failed to identify potential impacts of the American Centrifuge Plant on nearby historic and prehistoric sites.

Basis:

> Among the potential adverse impacts of the ACP on cultural resources, none mentioned by USEC, are the following:
> 3. Potential direct damage to the Scioto River earthworks caused by renewed water pumping once ACP is in operation.
> 4. Continuation of the DOE policy of using herbicides to defoliate a "security strip" around the atomic perimeter.
> 5. Maintenance of the "national security" regime, with its profusion of barbed wire fences, security gates, and closed access to rare cultural treasures.
> 6. The discouragement of tourism and academic study caused by real and perceived nuclear dangers.
> 7. Additional degradation, contamination and obliteration of priceless archaeological sites caused by additional road-building, traffic congestion, waste storage and plant emissions.

Sea Petition at 22-23.

The Staff opposes basis 1 because it does not include a statement of facts or expert opinions that support the contention and on which Petitioner could rely at the hearing. *See* 10 C.F.R. § 2.309(f)(1)(v). Petitioner provides no support for his statement that water pumping will

---

[8] It should be noted that that case addressed the gaseous diffusion plant operations of U.S. Enrichment Corp., the wholly owned subsidiary of USEC, Inc. whereas the subject of this proceeding involves the operations of USEC, Inc. the parent company. *U.S. Enrichment Corp.,* CLI-96-12, 44 NRC at 232.

potentially damage the Scioto works, therefore, Basis 1 does not support the admission of Contention 1.2. *Id.*

The Staff opposes bases 2 and 3 because they are not within the scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii). These bases are essentially the same as the arguments raised in Contention 1.1 regarding the activity of DOE, and the Staff's response is the same. DOE conduct is not subject to the NRC's jurisdiction and thus is not relevant to this proceeding. *See U.S. Enrichment Corp.*, CLI-96-12, 44 NRC at 243.

The Staff opposes basis 4 in that it raises the question of the potential psychological impact of constructing the ACP, a matter that falls outside the scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii). Petitioner asserts that real and perceived nuclear dangers might discourage tourism and academic study in the area surrounding the proposed ACP site, impacts that are psychological in nature. Sea Petition at 23. The Commission has determined that the NRC need not consider psychological impact or mental stress to the public in exercising its regulatory responsibilities under the Atomic Energy Act. *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-82-6, 15 NRC 407 (1982) (finding that the psychological perceptions of the local community surrounding the start-up of Three Mile Island need not be taken into consideration under the AEA). The Supreme Court further held that the NRC need not consider these factors under NEPA. *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983) (affirming the Commission's opinion in Three Mile Island and extending the rule to NEPA). Because neither the AEA nor NEPA require the NRC to analyze the psychological impacts of constructing the ACP, Basis 4 falls outside the scope of this proceeding.

The Staff opposes basis 5 because it does not include a statement of facts or expert opinions that support the contention and on which Petitioner could rely on at the hearing. *See* 10 C.F.R. § 2.309(f)(1)(v). Basis 5 does not provide a reference to cultural or historic resources that appear on or qualify for the National Historic Register and does not describe any specific site

but instead generally mentions "priceless archeological sites." Sea Petition at 23. The NHPA only requires consideration of "the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register." *See* 16 U.S.C. 470f. Without specific factual support that the resources in basis 5 are included on or qualify for the National Register, these bases simply amount to bare assertions alleging that a matter should be considered, which is not sufficient to support the admission of this contention. *See Fansteel*, CLI-03-13, 58 NRC at 203.

Sea Contention 2.1:

> The Petitioner contends the USEC-DOE collaborative arrangement is out of compliance with the National Historic Preservation Act and related legislation.

Basis:

> Compliance with NHPA has been shoddy at best, especially for Department of Energy sites that generally predate the Act, with established operational modes that are hard to change. . . . [S]ection 110 applies in addition to 106 since prehistoric sites extend onto agency land. . . . [The Absentee Shawnee Tribe of Oklahoma] has never been asked to consult on a 106 or 110 review at Piketon, and neither DOE nor USEC contacted the tribe about the ACP. Likewise, Charles Beegle, the owner of one of the most important historic homes and of land that borders on DOE property, was never, since 1966, contacted for his participation in a 106 or 110 review, and was never contacted by either DOE or USEC about the ACP. . . . Perhaps the largest adverse potential effect at Piketon is the whole umbrella of national security restriction.
>
> Sea Petition at 23-27.

The Staff opposes Contention 2.1 to the extent that it alleges that two potentially interested parties have not been consulted pursuant to Section 106. This basis is premature, as the consultation requirements apply to the Staff and not the applicant. 36 C.F.R. § 800.2(a)(4). In his basis for Contention 2.1, Petitioner asserts that Sections 106 and 110 of the NHPA apply to this proceeding. Sea Petition at 24-25. The Staff does not disagree that Section 106 applies to this matter. However, as discussed below, the Staff asserts that Section 110 does not apply.

The Staff opposes Contention 2.1 to the extent it brings into question the conduct of DOE, which is beyond the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii). The Petitioner argues that the DOE has a history of non-compliance with the NHPA on this site under Sections 106 and 110. It should be noted that Section 110, which provides that agencies shall "assume responsibility for the preservation of historic properties which are owned or controlled by such agency," only applies to DOE in this matter, as DOE is the agency that owns and leases to USEC the land on which the ACP is to be constructed. 16 U.S.C. 470h-2(a)(1). The LA provides that the ACP is to be constructed on DOE owned land, where USEC already leases some of the DOE facilities. *See* LA at 1. As discussed above in the responses to Contentions 1.1 and 1.2, "DOE activities are not part of USEC's operations and are not subject to NRC jurisdiction." *See U.S. Enrichment Corp.*, CLI-96-12, 44 NRC at 243. To the extent that Petitioner seeks admission of issues involving DOE's compliance with the National Historic Preservation Act, these issues clearly exceed the scope of the hearing and should be excluded.[9]

The regulations implementing Section 106 require agency consultation with certain participants in the Section 106 process.[10] 36 C.F.R. §§ 800.1(a), 800.2(a)(4). In addition to the relevant state historic preservation officer (SHPO), local Indian tribes must be consulted if the proposed action would potentially impact tribal lands or other properties of significance to Indian tribes. 36 C.F.R. §§ 800.2(c)(2). Furthermore, individuals with a demonstrated interest in the undertakings may participate as consulting parties due to the nature of their legal or economic

---

[9]DOE did, in fact, contact, the Absentee Shawnee Tribe of Oklahoma. "Final Environmental Impact Statement for Construction and Operation of Depleted Uranium Hexaflouride Conversion Facility at Portsmouth, Ohio," DOE/EIS-0360 at G-15 (June 2004).

[10]It should be noted that the obligation of consultation under the NHPA rests with the NRC, not with the Applicant. *See* 36 C.F.R. §§ 800.1(a), 800.2(a)(4). The NRC does, however, rely on information provided by the Applicant in the ER, in conjunction with the NRC's own independent review, as the NRC prepares its EIS. 10 C.F.R. §§ 51.45, 51.71.

relation to the undertaking or affected properties. 36 C.F.R. §§ 800.2(c)(5). Affected properties may include those within the "area of potential effects."[11] Petitioner has identified two parties who he claims have not been consulted under the Section 106 process, but who allegedly qualify as parties to be consulted. Sea Petition at 26. Petitioner asserts that neither the Absentee Shawnee Tribe of Oklahoma nor Charles Beegle (owner of the Rittenour Home, which Petitioner claims would qualify for the National Register and thus fall within the Section 106 definition of "historic property") have been contacted with regard to the potential impacts the ACP would have on their land. Sea Petition at 26. The ER identifies that approval from the Ohio SHPO is required prior to construction of the ACP and states that "informal consultations" have been made with the responsible agencies in compliance with Section 106. ER at 1-14, 1-30. Petitioners note that there is no mention in the ER that consultation has been made pursuant to Section 106 with Indian Tribes or the owners of local historic properties. While this may be true, this basis is premature because the NRC, which bears the obligation to conduct the consultation, has only just begun its Section 106 process. Petitioners may seek to raise the issue of the Staff's compliance with Section 106 when the draft environmental impact statement is issued.

The Staff opposes Petitioner's assertion that the ER fails to identify and discuss the impacts on the Scioto River. Sea Petition at 25. The NRC is obligated, under NEPA, to consider the environmental impacts on local surface water.[12] *See* 10 CFR Part 51. The ER does discuss the

---

[11] Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of the historic properties, if such properties exist. 36 C.F.R. §§ 800.16(d).

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. 36 C.F.R. §§ 800.16(l)(1).

[12] Petitioner observes that the ER states, "There are no existing nature preserves or scenic rivers in the area." *Id. citing* ER at 3-64. The ER is correct that the Scioto River has not been designated as a "Wild and Scenic River" by the National Parks Service. *See Scenic and Wild*

(continued...)

Scioto River, and the potential impacts upon it, in its Section 3.4 description of Water Resources (at 3-18 to 3-23) and in its Section 4.4 evaluation of Water Resources Impacts (at 4-48 to 4-61). Petitioner does not reference this part of the ER in the basis for his contention, nor does he specifically criticize any aspect of the analysis regarding environmental impacts on the Scioto River. The Staff, therefore, opposes Contention 2.1 to the extent that it is not based on the ER's consideration of the potential impacts on the Scioto River. That basis is not supported by a specific statement of facts of expert opinion nor does it demonstrate that a genuine dispute exists on a material issue of fact or law. *See* 10 C.F.R. § 2.309(f)(1)(v)(vi).

Sea Contention 2.2

> Petitioner contends that noncompliance with federal preservation law has undermined the legitimacy and legal basis of the USEC-DOE agreement.

Basis:

> DOE's compliance status has bearing on the viability of USEC's lease agreement with DOE, just as if DOE had failed to comply with NEPA in laying the groundwork for the ACP project. Ultimately, DOE's compliance status and the complexities of the relationships between DOE, USEC and NRC will likely be determined by the Advisory Council on Historic Preservation. But as that process unfolds, NRC has responsibility to determine if the license applicant has a legal basis for proceeding to build and operate. DOE's noncompliance may have undermined that legal basis. This is a consideration that NRC must give in its licensing deliberations.

Sea Petition at 27-28.

The Staff opposes this Contention for the same reason it opposes Contention 2.1, namely that it challenges the conduct of DOE, which is beyond the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii).

---

[12](...continued)
Rivers Act, 16 U.S.C. 1271-1287, Pub. L. No. 90-542 *as amended*, 82 Stat. 906 (1968). To the extent that Petitioner challenges the ER's omission of the Scioto River as a "scenic river," Petitioner has failed to demonstrate that a genuine dispute exists with the applicant on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi).

The Staff also opposes this Contention because it is not supported by a legal or factual basis. Petitioner claims that the USEC-DOE agreement has been undermined and that the NRC has a responsibility to determine if the license applicant has a legal basis for proceeding to build and operate. Sea Petition at 27. This contention is inadmissible because Petitioner fails to provide a concise statement of the alleged facts or experts opinions which support this Contention, nor does he present sufficient information to show a genuine dispute with the Applicant on a material issue of law or fact exists. 10 C.F.R. § 2.309(f)(1)(v),(vi). At most, Petitioner asserts the conclusory statement that in failing to conduct its 106 review properly, DOE may have undermined the legal basis of its lease to USEC. This is not an appropriate basis, as DOE's compliance or noncompliance with the NHPA is beyond the NRC's jurisdiction. *See U.S. Enrichment Corp.*, CLI-96-12, 44 NRC at 243. Without any other factual or legal development Petitioner's contention amounts to nothing more than mere speculation and bare assertions alleging that a matter should be considered. *See Fansteel*, CLI-03-13, 58 NRC at 203. Accordingly, Contention 2.2 is inadmissible.

Sea Contention 3.1:

> Petitioner contends that USEC has failed to consider a broad range of alternatives to the proposed action.

Basis:

> USEC, in its environmental report, considers only alternatives for USEC, not for the Piketon site or the community or the American public. Thus, USEC's "alternatives" consist only of "no action," moving ACP to another part of the Piketon site, and moving ACP to Paducah, Kentucky. This is a wholly inadequate approach to the whole question of alternatives. Especially when the applicant proposes to build and operate on public land, it's not the applicant's alternatives that are at issue, but the public's alternatives. [Other alternatives include] a private truck manufacturing company that expressed a desire to lease one of those buildings for a plant that would employ about 800 people, . . . the old X-326 building, the upper bomb-grade end of the Cascade which is forever contaminated, could be entombed as a national monument – a pyramid – as a memorial to the passenger pigeon, . . . move that part of Oak Ridge National Laboratory that does research on environmental cleanup

> to Piketon. . . . A multiplicity of new public and private uses all with an environmental theme must be considered as a "reasonable alternative" to the construction of one iffy and dirty centrifuge plant.

Sea Petition at 28-31.

The Staff opposes this contention on the grounds that it fails to raise a genuine dispute on a material law or fact with the Applicant. *See* 10 CFR § 2.309(f)(1)(vi). Petitioner suggests that NEPA requires the NRC to consider the public's alternatives for the use of the land on which the ACP is to be constructed, even though those alternatives would bear no relation to the proposed project. Sea Petition at 28. This assertion misconstrues NEPA, however, as the NRC is only required under NEPA to consider reasonable alternatives that serve the purpose and need of the project. *See Citizens Against Burlington v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991). The Petitioner asserts no complaint against the adequacy of the project-related alternatives considered in the ER, therefore, Petitioner's contention does not demonstrate a genuine dispute on a material question of law or fact and is consequently inadmissible.

As required by NEPA, the NRC must look at "alternatives available for reducing or avoiding adverse environmental effects." 10 C.F.R. § 51.71(d). The "rule of reason" guides "both the choice of alternatives as well as the extent to which the [EIS] must discuss each alternative," (*City of Carmel-by-the-Sea v. DOT*, 123 F.3d 1142, 1155 (9th Cir. 1997)), and "frees the agency from pursuing unnecessary or fruitless inquiries." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004). Thus, the discussion "must consider not every possible alternative, but every reasonable alternative." *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1991). *See also NRDC v. Moston*, 458 F.2d 827, 837 (D.C. Cir. 1972). ("[T]he requirement in NEPA of discussion as to reasonable alternatives does not require 'crystal ball' inqury.") Moreover, agencies are only required to discuss those alternatives that "will bring about the ends" of the proposed project.

Burlington, 938 F.2d at 195. "When the purpose is to accomplish one thing, it makes no sense to consider alternative ways by which another thing might be achieved." *Id.*

The stated mission of the ACP is "to provide the United States with a reliable and economical sources of enrichment uranium." LA at 1. The alternatives Petitioner suggests – leasing the property to a truck manufacturing company, converting the property to a monument to the passenger pigeon, and moving part of the Oak Ridge National Laboratory to the property – are not reasonable alternatives to bring about the ends of the proposed action. Sea Petition at 29-30. Petitioner's suggestions are, instead, "alternative ways by which another thing might be achieved." *Burlington*, 938 F.2d at 195. Because Petitioner's alternatives are not required to be considered under NEPA, and as Petitioner does not challenge the adequacy of the alternatives that are considered in the ER, Petitioner fails to demonstrate that a genuine dispute exists with the applicant on a material question of law or fact. *See* 10 CFR § 2.309(f)(1)(vi). Accordingly, Contention 3.1 should not be admitted to this proceeding.

Sea Contention 3.2:

> Petitioner contends that USEC's stated action alternatives should be seriously evaluated.

Basis:

> In its environmental report, USEC suggests the alternative of moving ACP only to shoot it down. . . . USEC treats the cultural resource impacts at Piketon and Paducah as if they would be the same. However, we now know that impacts would not be the same. The southwest corner of the Piketon site is precisely the most sensitive in terms of multiple impacts to precious and sacred cultural resources. USEC therefore should be taken at its word and be instructed to move ACP to Paducah.

Sea Petition at 31-32.

The Staff opposes Contention 3.2 because it is not supported by an adequate legal or factual basis. *See* 10 CFR § 2.309(f)(1)(v). In order to contend that action alternatives have not been adequately evaluated under NEPA, Petitioner must "offer tangible evidence" of an "obviously

superior site" sufficient to call for a more thorough site-by-site NEPA review. *See LES*, CLI-98-3, 47 NRC at 104 (1998), *citing Roosevelt Campobello International Park Commission v. EPA*, 684 F.2d 1041, 1047 (1st Cir.1982). In support of Contention 3.2, Petitioner only asserts conclusory opinions that the impacts would not be the same between the proposed and alternative sites and that the proposed site at Piketon is the most sensitive. Sea Petition at 31-32. Petitioner acknowledges that USEC has compared the impacts for the Piketon and Paducah alternatives, and he observes that USEC has identified Piketon as the advantageous site. *Id.* at 31. Petitioner does not, however, offer any factual basis or expert opinion in support of his contention that Piketon is in fact more sensitive. Nor does Petitioner point to any specific inadequacy in the Applicant's ER alternatives analysis or offer any other tangible evidence that the alternative site at Paducah is an obviously superior site. Contention 3.2 is an unsupported assertion and should not be admitted to this proceeding.

The Staff also opposes this contention on the grounds that it presents no dispute on a material issue of law or fact. *See* 10 CFR § 2.309(f)(1)(vi). Petitioner would have the NRC dictate the choice of location to the Applicant, without regard to cost-benefit analysis or other concerns and preferences of the Applicant. Sea Petition at 31. This is a mischaracterization of NEPA, which requires that the NRC take a "hard look" at proposed alternatives, finding none to be "obviously superior" to the one proposed by the Applicant, but which otherwise accords substantial deference to the Applicant's choice of action and which allows for a cost-benefit analysis. *See* 10 C.F.R. § 51.45(c) (providing for economic cost-benefit analysis); *see also Public Service Co. of New Hampshire* (Seabrook Stations Units 1 and 2), CLI-77-8, 5 NRC 503, 514 (1977). The ACP is a project proposed by a private applicant, not by the NRC. "'Where the Federal government acts, not as a proprietor, but to approve . . . a project being sponsored by a local government or private applicant, the Federal Agency is necessarily more limited." *Hydro Resources* (Rio Rancho, New

Mexico 87174), CLI-01-04, 53 NRC 31, 55 (2001), *quoting Burlington*, 938 F.2d at 197. "When reviewing a discrete license application filed by a private applicant, a federal agency may appropriately 'accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.'" *Id*. "The agency thus may take into account the 'economic goals of the project's sponsor.'" *Id*., *quoting City of Grapevine v. Dept. of Transportation,* 17 F.3d 1502, 1506 (D.C. Cir 1994). Moreover, NEPA does not require the selection of the most environmentally benign alternative if "other values outweigh the environmental costs." *LES*, CLI-98-3, 47 NRC at 88, *quoting Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Petitioner requests that the NRC dictate to the Applicant the choice of location, without regard to economic cost-benefit analysis. Sea Petition at 31, 32. Contention 3.2 is inadmissible because it is based upon an incorrect interpretation of the NRC's authority under NEPA and thus presents no genuine dispute as to a material issue of law or fact. *See* 10 CFR § 2.309(f)(1)(vi).

Contention 4.1:

> Petitioner contends that USEC neglects many potential impacts of ACP on the local community.

Basis:

> When security tightened at the plant-site after 9/11, the perimeter road was closed to local traffic. This is a tremendous inconvenience to residents on the east side of the plant, whose access to town and the highways was blockaded. In 2003 and 2004, the herbicide Garlan-4 was used to defoliate a ten-foot strip around the entire outer boundary of the site, destroying the lush natural vegetation and spreading a kill-zone onto adjoining properties. . . . [Construction] of the ACP means continued atomic dependency and control, and an artificial economy for the region, continuing into the indefinite future, perhaps irrevocably even if the project fails. At the very least, given the many uncertainties of this project, NRC must consider what project failure as well as operation will mean for all the small hamlets and towns in Pike County and beyond.

Sea Petition at 32-33.

The Staff opposes Contention 4.1 to the extent that it is based on DOE activity, which falls outside the scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii). Petitioner provides two

examples of impacts on the community that require further examination: the closing of the plant-site perimeter road during the tightened security period after September 11, 2001, and the use of herbicide in 2003 and 2004 to defoliate a ten-foot strip around the outer boundary of the plant. Sea Petition at 32. Even if these assertions were true, they are inadmissible because they address DOE activity, which is outside the scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii).

The Staff also opposes Contention 4.1 on the grounds that it does not set forth sufficient information to show that a genuine dispute exists regarding the Applicant's discussion of the impacts on the local community. *See* 10 C.F.R. § 2.309(f)(1)(v),(vi). In his discussion of potential project failure and the creation of an artificial economy for the region, Petitioner appears to contend that the ACP will cause a negative socio-economic effect on the area surrounding the ACP. Sea Petition at 32-33. NEPA does require analysis of economic and other benefits and costs associated with the proposed action and alternatives. 10 CFR § 51.54(c). The Applicant's ER provides a socio-economic description of the area in section 3.10 and the ER analyzes the potential socio-economic impacts of the ACP on the proposed site at Piketon as well as the socio-economic impacts of the action alternatives in section 4.10. ER at 3-70-81, 4-91-97. Petitioner's contention fails because it does not refer to any specific deficiencies with the detailed socio-economic impact analysis set forth in the ER, nor does Petitioner cite any requirements that would mandate the Applicant to perform an additional or more detailed analysis. *See* 10 C.F.R. § 2.309(f)(1)(vi). Furthermore, Petitioner's assertions that the ACP will result in an artificial economy for the region are uncorroborated by factual support or by expert opinions upon which he could rely at the hearing. *See* 10 C.F.R. § 2.309(f)(1)(v). Without more precise information, the vague assertions contained in Petitioner's basis do not put the parties on notice as to a material issue of fact or law raised by Contention 4.1 and should accordingly be denied.

Sea Contention 5.1:

> Petitioner contends that USEC fails to consider that ACP has resulted and will result in the relaxation of DOE cleanup standards at the site and reduced possibilities for community reuse of facilities.

Basis:

> There is a sense in Piketon that DOE supports the USEC vision not just because it was congressionally mandated, but because new nuclear development will relieve DOE of its cleanup obligation and forestall the necessity of restoring parts of the site to safe industrial or agricultural standards. In fact, DOE has already proposed that certain cleanup standards be relaxed because of ACP's predominance on the site. This local concern must be taken seriously, and NRC must explore the cleanup and restoration pathways under both license and license denial scenarios.

Sea Petition at 33-34.

The Staff opposes this contention because it brings into question the conduct of DOE, which is beyond the scope of this proceeding. As discussed above, "DOE activities are not part of USEC's operations and are not subject to NRC jurisdiction." *See U.S. Enrichment Corp.* CLI-96-12, 44 NRC at 243. Contention 5.1 raises issues that are irrelevant to the scope of this proceeding and is thus inadmissible. *See* 10 C.F.R. § 2.309(f)(1)(iii).

The Staff also opposes Contention 5.1 on the grounds that it is unsupported and speculative. Even if this contention were found to be relevant to the scope of the proceeding, Petitioner does not provide a concise statement of the alleged facts or expert opinion, or any reference to specific sources and documents, which support the contention and on which Petitioner intends to rely at hearing. *See* 10 C.F.R. § 2.309(f)(1)(v). *See also Fansteel,* CLI-03-13, 58 NRC at 203. Contention 5.1 is, therefore, inadmissible.

Sea Contention 6.1:

> Petitioner contends that USEC has not accounted for the proliferation risks associated with centrifuge technology.

Basis:

> It is obvious that when "The American Centrifuge" is announced as a fait accompli to the world, there will be a backlash. We will be accused of being hypocrites, because we are. Countries on the edge of reconsidering their compliance with the fraying Nonproliferation Treaty will teeter over the edge. . . . Due to such considerations, reputable international policy experts have already started calling for an international ban on centrifuge technology. . . . And yet no place in the USEC environmental report is the concept of nuclear proliferation even mentioned.

Sea Petition at 34-35.

The Staff opposes the admission of Contention 6.1 on the grounds that non-proliferation issues exceed the scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii). Although the domestic security measures are designed to minimize the potential for the proliferation of nuclear material, the Commission's regulations do not require an applicant to specifically address non-proliferation issues in the security and material control portions of the application. *See Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 456 (2001). Petitioner's attempt to impose broader requirements on the applicant constitutes an impermissible challenge to Commission regulations and should be rejected. *See* 10 C.F.R. §§ 70.22, 70.23; *see also Pacific Gas and Electric Company* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 438 (2002). Contention 6.1 should not be admitted as it raises issues surrounding U.S. non-proliferation policies, which are beyond the scope of this proceeding.

Sea Contention 7.1:

> USEC has not clarified the company's stability or long-term prospects, or how its relationship with the Department of Energy is intended to function, or how that relationship might evolve over time.

Basis:

> USEC has been financially unstable, subject to wild fluctuations in its stock price, and the subject of ongoing speculation as to its viability. . . . USEC has had to defend itself against at least one class action lawsuit by investigators charging that the company engaged in fraudulent misrepresentation of the viability of the ACP's predecessor, the AVLIS uranium enrichment program. . . . Surely, NRC must conduct a thorough investigation of USEC's financial, management, and planning practices as part of the licensing process. . . . Now it is clear that USEC's only hope for "private" survival rests on access to federal facilities for waste processing and disposal, paid for by American taxpayers.

Sea Petition 36-37.

The Staff opposes Contention 7.1 to the extent that it brings into question the conduct of DOE and its relationship to USEC, which is beyond the scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii). As discussed above, "DOE activities are not part of USEC's operations and are not subject to NRC jurisdiction." *See U.S. Enrichment Corp.* CLI-96-12, 44 NRC at 243.

The Staff also opposes Contention 7.1 because its vague assertions attacking the financial stability of USEC are not sufficiently supported and do not raise a genuine dispute on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(v)(vi). Petitioner appears to claim that USEC is not financially able to construct and viably operate the ACP over the long-term. USEC is required, pursuant to 10 C.F.R. §§ 70.20(a)(8) and 70.23(a)(5) to submit information concerning its financial qualifications to engage in the proposed activity. *USEC, Inc.,* CLI-04-30, 60 NRC at 437. The Commission has held, "The fundamental purpose of the financial qualifications provision . . . is the protection of public health and safety and the common defense and security." *LES*, CLI-97-15, 46 NRC at 303. In order to meet the financial qualifications requirements, USEC proposed two license conditions which it asserts will ensure that adequate funding will be in place before

construction of each phase and before operations will begin.[13] LA at 1-49. Petitioner fails to provide any basis for his assertion that USEC is financially unstable and that USEC faces long-term uncertainty. Petitioner does not reference the financial proposal in the LA or take any specific issue with the Applicant's financial qualifications. Nor does Petitioner assert that the Applicant has not complied with relevant financial qualification regulations. The Staff, therefore, opposes Contention 7.1 on the grounds that it does not demonstrate that a dispute exists with the applicant on a material issue of law or fact and it lacks a sufficiently specific statement of alleged facts or expert opinion. 10 C.F.R. § 2.309(f)(1)(v)(vi).

In summary, Geoffrey Sea has proffered at least one admissible contention. However, his Petition should be denied for failure to establish standing. 10 C.F.R. § 2.309(f)(a); *USEC,* CLI-04-30, 60 NRC at 429.

C. PRESS' Contentions

PRESS, in its Petition, proffers 22 contentions, each with several bases, broken into three categories; Safety, Environmental, and General. The Staff will address the admissibility of each contention below:

1. Safety Contentions

Contention 1: Criticality Monitoring Exemption

> Petitioners contend that USEC's request for an exemption from 10 CFR 70.25(e) is not justified. 10 CFR 70.25(e) requires, in part, that "the decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning," is not justified.

---

[13]In CLI-04-30, the Commission explicitly noted that it had found similar licensing conditions an acceptable means to demonstrate compliance with the financial assurance requirements. *USEC, Inc.,* CLI-04-30, 60 NRC at 437, *citing Claiborne*, CLI-97-15, 46 NRC at 309.

PRESS Petition at 11. Although PRESS entitles this contention "Criticality Monitoring Exemption," the text of the contention refers to USEC's request for an exemption from the decommissioning funding plan requirements. However, a review of the bases cited by PRESS in support of its contention clearly indicate that PRESS intends to challenge USEC's request for exemptions from criticality monitoring requirements of 10 C.F.R § 70.24 and labeling requirements of 10 C.F.R. Part 20. *See* PRESS Petition at 11-12. In light of the difference between the wording of the contention and the bases, it is unclear what issue PRESS wishes to litigate. The contention should be rejected on this grounds alone. However, the Staff will address the bases of this contention.

PRESS first asserts that an exemption from the requirements for criticality monitoring of UF6 storage yards is unjustified. *Id.* at 13-14. USEC, in the LA, indicated that this exemption would be similar to the exemption granted for the Portsmouth Gaseous Diffusion Plant. *See* LA at 1-53. PRESS argues that since the number of cylinders that would be handled at the ACP would be much higher than those of the GDP, the exemption should not automatically apply. PRESS Petition at 14. However, PRESS fails to address the statements in the LA that support USEC's request. The LA provides that:

> [t]he UF6 cylinder storage yards are not covered by a criticality monitoring system because the frequency for criticality accidents in the cylinder yards range between 5 x 10-6/year and 1 x 10-6/year (Highly Unlikely), the increased vehicular and pedestrian traffic in support of CAAS [criticality accident alarm system] maintenance and calibration requirements causes a subsequent increased likelihood for impact events involving cylinders, and there is an increased safety risk for workers from radiation exposure due to the ongoing CAAS maintenance and calibration requirements.

LA at 1-54. The LA goes on to provide a more detailed discussion of the exemption request. *See id.* Nowhere does PRESS challenge USEC's specific statements in support of its exemption request. PRESS, therefore, fails to provide sufficient information to show that a genuine dispute

exists with the applicant on a material issue of law or fact. This basis should, therefore, be denied. 10 C.F.R. § 2.309(f)(1)(vi).

PRESS next challenges USEC's request for an exemption from the posting and labeling requirements of 10 C.F.R. § 20.1904. PRESS Petition at 14. Specifically, PRESS questions USEC's assertion that such an exemption is warranted because it would be "impractical" to label each and every container in the Restricted Areas within the ACP. *Id.* at 14, *citing* LA at 4-16. However, PRESS provides no discussion on why USEC's assertion regarding the impracticality of labeling every container located in the Restricted Areas is in any way inadequate. PRESS simply questions who made this determination. *Id.* at 14-15. Pursuant to 10 C.F.R. § 20.2301, the Commission may grant exemptions from 10 C.F.R. Part 20. The Staff, as part of its review of the LA, will review this exemption request. However, PRESS fails to provide sufficient information to show that a genuine dispute of law or fact exists with the Applicant. Accordingly, this basis must be rejected. 10 C.F.R. § 2.309(f)(1)(vi).

Further, to the extent that PRESS is asserting that the exemption request from Part 20 is related to USEC's request for an exemption from Part 70 criticality monitoring requirement, this basis fails to support the contention. USEC's radiation protection program and its nuclear criticality safety program are two separate topics. The radiation protection program addresses principally the requirements of 10 C.F.R. Part 20. The nuclear criticality safety program addresses the requirements of 10 C.F.R. § 70.24. PRESS fails to identify any relationship between the two programs that would make Basis 1.2 admissible as support for this contention.

Also, under Basis 1.2, PRESS references two prior enforcement actions taken against USEC, Inc.'s wholly-owned subsidiary, U.S. Enrichment Corporation as the certificate holder for PORTS and PGDP. *See* PRESS Petition at 15. While both of these prior enforcement actions relate to issues concerning labeling and posting, and training related to radiological workers,

PRESS fails to explain how these prior violations, at different facilities, with different corporate identities, is related to the requested exemptions here. *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365 (2001).

In the third basis for Contention 1, PRESS asserts that USEC has failed to provide specific details regarding USEC's request for an exemption from 10 C.F.R. § 70.24 for criticality accident alarm system (CAAS) coverage. PRESS Petition at 15-16. USEC provides in its application that "[o]ther exceptions to CAAS coverage are documented in NCS [Nuclear Criticality Safety] evaluations and are based on a conclusion in the NCSE [Nuclear Criticality Safety Evaluation] that a criticality accident is not-credible in the area where the fissile material operation is ongoing." PRESS Petition at 16. With respect to this statement, PRESS asserts that USEC should itemize the specific exemption it seeks. *Id.*

The statement quoted by PRESS was the subject of a Staff Request for Additional Information (RAI). Letter to S.A.Toelle From Y. Faraz, Feb. 7, 2005 (ADAMS Accession No. 050260306). In its response, USEC explained that 10 C.F.R. § 70.24 only requires monitoring systems in areas where special nuclear material in quantities exceeding 700 grams of 235U in each area where such material is handled, as such USEC's proposal is consistent with the regulations. Thus, PRESS' basis is moot, as USEC now has addressed the exemption request. PRESS, however, may file a late-filed contention based on this information, pursuant to 10 C.F.R. § 2.309(c)(f)(2).

PRESS also states under this basis that USEC's safety record is questionable and refers to eight safety violation notices issued to the U.S. Enrichment Corp. PRESS Petition at 16. However, PRESS fails to explain the relevance of these violation to the CAAS discussion. As such, it does not support this basis. *See Millstone*, CLI-01-24, 54 NRC at 365.

For the reasons discussed above, PRESS Contention 1 is not supported by adequate bases, it should, therefore be rejected.

Contention 2: Radiation Work Permits

> USEC Inc fails to specify, in its application, the approved procedures in which the Radiation Protection Manager may exempt the requirement for a Radiation Work Permit in certain Radiation Areas. Moreover, it fails to identify the specific Radiation Areas in which the Radiation Protection Manager may exempt the requirement for a Radiation Work Permit.

PRESS Petition at 16-17. As support for its assertion, PRESS simply refers to a notice of violation in which USEC demonstrated a relaxed approach to keeping unused security badges in a secured place. *Id.* at 17. PRESS argues that the LA should include the procedures used to approve exemptions from the requirement for a Radiation Work Permit as well as those Radiation Areas in which the exemption may apply. Staff guidance with respect to an application for a fuel cycle facility indicates that an applicant need not submit the radiation protection procedures. Section 4.4.3. of the Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility (NUREG-1520) provides that an applicant's commitment to prepare written radiation protection procedures and Radiation Work Permits can be acceptable if certain criteria are met. Although Staff guidance is not a regulation, PRESS offers no reason why such information would be necessary. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001). *See also USEC,* CLI-04-30, 60 NRC at 429 ("[I]f the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief" is necessary). As such, the contention should be rejected.

Contention 3: Cylinder Labeling

> Petitioners contend that USEC's request for exemption from labeling UF_6 Cylinders is not warranted.

PRESS Petition at 17. PRESS' basis for this contention is almost verbatim its basis for Contention 1. *See* PRESS Petition at 14 (Basis 1.2), 17-18. Although entitled "Deemed Impractical," PRESS does not question this assertion in Basis 3.1. However, to the extent that PRESS wishes to raise the same issues it raised in connection with Contention 1, the Staff opposes the admission of this basis for the reasons discussed in its response to Contention 1.

PRESS also refers to an enforcement action taken against U.S. Enrichment Corp. concerning the failure of the certificate holder to follow rules concerning labeling and area posting.[14] PRESS Petition at 18. As with its other references to prior enforcement actions, PRESS fails to establish a link between the basis of the enforcement action and the contention PRESS is seeking to raise. Thus, Contention 3 fails to demonstrate that disputes exists on a material issue of law or fact with the Applicant. 10 C.F.R. § 2.309(f)(1)(vi).

Contention 4: 10% Assay

> Petitioners contend that USEC has not demonstrated that it has a market for 10% assay $_{235}U$. Furthermore, USEC has exceeded its possession limit for enriched uranium previously.

PRESS Petition at 18. As a basis for this contention, PRESS asserts that USEC makes no attempt to explain why it requires a license for 10% assay U-235. *Id*. at 19. PRESS further asserts that USEC would not suffer any disadvantage if it obtained a license that allowed only 5% assay. *Id.* Pursuant to 10 C.F.R. § 70.22(a), an applicant for a license to possess or use special nuclear material must provide, among other things, the name, amount and specifications of the special

---

[14] Although referencing the same enforcement action, PRESS specifically refers to different violations. *See* PRESS Petition at 15,18.

nuclear material the applicant proposes to use or produce. An Applicant is not required to justify the assay of the SNM it is requesting, but rather the applicant needs to demonstrate the design, construction, and operation of the facility will be safe and secure for the most conservative facility conditions, such as the highest authorized enrichment level. Thus, PRESS' assertion that USEC must justify why it requires a license for 10% assay is not material to any finding the Staff must make and is outside the scope of this proceeding. 10 C.F.R. § 2.309(f)(iii)(iv).

PRESS also refers to previous enforcement actions in which U.S. Enrichment Corp. exceeded its possession limit for uranium, greater than 10% assay. PRESS Petition at 19. However, PRESS does not explain how the referenced enforcement action has any relevance to USEC's request to possess SNM up to 10%. Moreover, PRESS misrepresents the basis for the violation. U.S. Enrichment Corp. did not exceed its possession limit, rather, the violation involved a cell containing uranyl fluride enriched to about 5.5 % U-235 with a mass that was greater than the safe mass. EA-98-249, EA-98-250; EA-98-251.[15] *See also* PRESS Petition at 65. Accordingly, Contention 4 lacks an adequate basis and should be rejected.

Contention 5: Domino Effect

> Petitioners contend that the Application exhibits no evidence that USEC has attempted to model the catastrophic scenario associated with centrifuge cascades: the "Domino Effect." Further, the petitioners contend that the Application has not exhibited sufficient design specification data to allow the public to assess the likelihood of the occurrence of such an accident. This is contrary to 10 CFR 70.22(h)(2)(i)(1)(ii).

PRESS Petition at 20. PRESS asserts that USEC failed to provide pertinent details about the centrifuges that could lead to the "domino effect." *Id.* PRESS further asserts, as a second basis and referencing a statement in the ER, that constructing 20 centrifuges a day for two years will

---

[15] Copies of these documents are available on the NRC public web site: http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/.

"elevate the likelihood for a catastrophic event like the 'domino effect.'" *Id.* at 21. PRESS also notes two enforcement actions that, according to PRESS, indicate that USEC cannot be relied upon in the event of a catastrophic event. *Id*. at 21-22. As discussed below, PRESS' contention should not be admitted.

PRESS' assertions concerning the "domino effect" are not supported by any expert opinion or fact. PRESS provides a website address to a report which discussed the domino effect, but does not provide any discussion concerning the report, its relevance to the ACP or how it supports PRESS' contention. As such, these bases do not support the admission of Contention 5. A petitioner is obligated to provide some explanation of the significance of documents it references. *See LES*, LBP-04-14, 60 NRC at 56, *citing Fansteel*, CLI-03-13, 58 NRC at 204. Accordingly, these basis fail to demonstrate that a dispute of as to a material issue of law or fact exists with the Applicant and fails to provide any expert opinion or fact. 10 C.F.R. § 2.390(f)(1)(v)(vi).

With respect to the referenced enforcement actions, PRESS asserts that they show that USEC could not be relied upon to "do the right thing" if a catastrophic event were to occur. PRESS Petition at 21. As already discussed, mere reference to previous enforcement history without establishing a link between the prior history and the contention at issue is insufficient to support a contention. Moreover, PRESS does not explain even if its assertion were true, how this relates to the assertion in the Contention that USEC has failed to consider the "domino effect." Thus, this basis fails to support the admission of Contention 5. 10 C.F.R. § 2.309(f)(1)(v).

Contention 6: Health Risks

> Petitioners contend that ER 3.11 "Public and Occupational Health" dangerously underestimates the health risks and damage already effecting worker and public health as a result of operations on the site.
>
> Calculations of "Air releases of radionuclides from the operations at the site in radiation exposure to people in the vicinity well within regulatory limits" are understated.
>
> Also "beryllium" exposure and "certain chemicals" and their "health effects" relies on contested evidence.

PRESS Petition at 22. PRESS appears to be challenging statements in the ER concerning operational emissions from operations at the GDP and not any anticipated emissions from the ACP. As written, therefore, this contention is outside the scope of this proceeding. PRESS also provides 6 bases for this contention. As discussed below, none of them support the admission of Contention 6.

PRESS first references the website of the National Nuclear Workers for Justice (NNWJ) and "all of the testimonials and information" in support of this contention. PRESS Petition at 22-23. The website for this organization contains a vast amount of information, some related to the U.S. Enrichment Corp., some related to other issues such as references to the Environmental Protection Agency and worker compensation issues.[16] *See* www.nnwj.com. PRESS, in its Petition, fails to provide any indication of which information it intends to rely upon as evidence to support this contention, nor does PRESS indicate how any of this information supports its contention. Similarly, PRESS, as a second basis, references a letter addressed to the National Institute for Occupational Health and Safety from Paper Allied-industrial, Chemical and Energy International Union. *Id.* at 23. The quoted portion of the letter (the full letter is not attached to PRESS' Petition)

---

[16] According to its website, NNWJ is a project of PRESS who expressly "places no claim to the content or copy written materials found within."

simply indicates that there is information that may be helpful available on the union's website. PRESS provides no information as to the nature of this information and how it would be helpful to support its proposed contention. Mere reference to a massive amount of documents is insufficient to support a contention. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989) ("Commission practice is clear that a petitioner may not simply incorporate massive documents by reference as the basis for or as a statement of his contentions."). Thus, PRESS' first two bases fail to support the admission of Contention 6.

The next bases relates to events that occurred at PORTS before the U.S. Enrichment Corp. was the certificate holder for the GDP. PRESS Petition at 23. The event described by PRESS involved accidental releases of liquid uranium hexaflouride and the alleged failure of certain alarms. *See id.* However, the section of the ER being challenged by PRESS involves the air release of radionuclides from operations at the site, not accidental releases. PRESS fails to explain how any of these past events have any bearing on the issue in its contention or any other statement in the ER or LA. Thus, PRESS fails to demonstrate that a genuine dispute with the Applicant exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi).

PRESS next provides portions of "typical testimonials" by workers who were employed at the plant "pre-USEC." PRESS Petition at 24-26. PRESS appears to recognize that the statements from these workers are not relevant to U.S. Enrichment Corp. operations at PORTS, but assert that it is evidence as to how bad conditions were and how important outside monitoring is. *Id.* at 24. It is clear from reading the portions of the testimonials that the workers' concerns relate to certain activities associated with weapons production by DOE. As such, these concerns are outside the scope of this proceeding and are not material to any finding the Staff must make with respect to USEC's LA. 10 C.F.R. § 2.309(f)(1)(iii), (iv). Further, PRESS' assertion that these testimonials show the importance of outside monitoring is unsupported. It appears that many of the concerns

expressed in the testimonials related to exposure to certain radionuclides without the workers' knowledge. None of these testimonials challenge the statement in the ER regarding emissions from operations of the ACP. Thus, they do not support the admission of this contention. 10 C.F.R. § 2.309(f)(1)(iv), (v).

PRESS' fifth and sixth bases are simply references to reports concerning potential health effects. PRESS Petition at 26. As already discussed above, it is insufficient for PRESS to merely provide a reference to a document without any further discussion of its significance. Moreover, based on the titles of these reports it is unclear how they relate to statements in the ER concerning operational emissions or how they challenge any statement in the ER. They, therefore, do not support the admission of this contention.

PRESS' final basis raises issues outside the scope of this proceeding as it relates to how DOE spends its funding. PRESS Petition at 26. PRESS fails to provide any explanation of how this concern has any relationship to its proposed contention, or to USEC's LA in general.[17] Accordingly, it is not an adequate basis to support admission of this contention.

For the reasons discussed above, PRESS' Contention 6 and its bases fail to meet the requirements of 10 C.F.R. § 2.309(f)(1). Contention 6 should, therefore, be rejected.

Contention 7: 3.9% Feedstock

> Petitioners contend that USEC is primarily interested in LEU feedstock of about 3.9% assay. This is contrary to the general impression of the Application that the feedstock would be natural assay. Moreover, petitioners contend that 4000 (14-ton equivalent) containers of feedstock would be required per year, and that 3000

[17] PRESS also provides references, without further discussion, to the Commission's regulations. *Id.* at 27. As discussed above, mere reference, without further discussion, of the Commission's regulations is inadequate to support the admission of a contention. *See Arizona Public Service Company* (Palo Verde Nuclear Generating Station), CLI-91-12, 34 NRC 149, 155 (1991) (Failure to provide an explanation regarding the bases of a proffered contention requires the contention to be rejected).

> containers of product would be produced. Petitioners contend that USEC should have been more forthright in the Application and quoted these figures in addition to the figures for tails.

PRESS Petition at 27. In support of this argument, PRESS offers a calculation which purports to demonstrate that USEC intends to use 3.9% feedstock. On the basis of that calculation, PRESS asserts that USEC will consume 3,600 cylinders of feedstock and will generate about 2,700 cylinders of product each year. *Id.* at 30. PRESS then asserts that there will be 17 14-ton cylinders per day being transported on the road. *See id.* Presumably, therefore, USEC should have included this number in its LA.

As a general matter, there is no basis for PRESS' assertion that USEC intends to use feedstock of 3.9% assay. Even if PRESS' calculations were correct, PRESS does not explain how these numbers affect any finding the Staff must make respect to the LA. PRESS does not explain what effect on safety or the environment 17 shipments per day would have. Nor does PRESS raise any issue with respect to the discussion in the ER concerning the transportation impacts of the proposed action. *See* ER at 4-4. Thus, this basis does not support the admission of this contention.[18] 10 C.F.R. §2.309(f)(1)(iv), (v), (vi).

PRESS also raises a concern regarding the use of Russian low-enriched uranium (LEU) and the reference in the LA regarding the "HEU program." PRESS Petition at 30. With respect to the use of Russian LEU, PRESS fails to identify any safety or environmental issue with respect to the alleged use of LEU as feedstock. Similarly, USEC's reference to the "HEU program" fails to raise a safety or environmental issue. The statement quoted by PRESS simply indicates that

---

[18] The Staff does recognize that some of the information contained in the ER regarding transportation has been withheld. However, PRESS does not even attempt to address the information that is publically available.

uranium product may be received as part of the HEU program.[19] *See* ER at 4-31. There is no reason to believe, on the basis of this statement, that the "HEU Program" will be sited at Piketon, as alleged by PRESS. Activities at the Piketon site are discussed in the LA. LA at 1-49. Thus, neither basis raises an issue material to a finding the Staff must make with respect to the LA. 10 C.F.R. § 2.309(f)(1)(iv).

2. Environmental Contentions

Contention 8: Scioto Survey

> Petitioners contend that the use of an average figure for uranium concentration in the Scioto is a misleading way to characterize the transport of uranium in water. A full survey should be undertaken.

PRESS Petition at 31. The first basis for this contention is entitled "Misuse of average," and consists solely of a quotation from the LA that discusses the average uranium concentration in the Scioto River. *See id.* at 31. It appears that PRESS is concerned about the statement in the LA that states, "[a]ssuming a full dilution, this would result in an average uranium concentration 1.1 X 10^{-5} milligrams per liter in the Scioto River well below the maximum concentration." *See id*., *citing* LA at 1-76. As a second basis, PRESS refers to section D.1.2 of the Petition, which in turn, is a quotation of 10 C.F.R. § 70.22(h)(2)(i)(2). *Id*. at 32.[20]

Neither of the two bases offered by PRESS support the admission of Contention 8. The quoted language from the Application is simply a description of the average uranium concentration level in the Scioto River and is found in the "general information" section of the LA. *See* LA at 1-76.

---

[19] The ER does contain a discussion concerning the U.S. Enrichment Corp.'s agreement to purchase, if made available by the Russian Executive Agent, 5.5 million SWU per year of LEU that is derived from down blending of HEU from Russian warheads. ER at 1-11.

[20] Sections D and E of PRESS' Petition simply sets forth the requirements for an application found at 10 C.F.R. § 70.22.

PRESS fails to explain how any deficiency in this information would be material to a finding the Staff must make relative to the Application. 10 C.F.R. § 2.309(f)(1)(iv). Moreover, PRESS fails to explain why the use of an average concentration level is inadequate and that a full survey of the Scioto River should be undertaken. Similarly, PRESS' mere reference to Commission regulations, without any discussion, fails to provide an adequate basis to support Contention 8. *See Palo Verde,* CLI-91-12, 34 NRC at 155 (Failure to provide an explanation regarding the bases of a proffered contention requires the contention to be dismissed).

Based on the above, PRESS has not provided sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact; has not demonstrated that the issue is material to the findings the NRC must make; and has not provided a concise statement of alleged facts or expert opinion to support its position. *See* 10 C.F.R. § 2.309(f)(iv), (v), (vi). Contention 8 should, therefore, be rejected.

Contention 9: LLMW Exemption

> Petitioners contend that LLMW Exemption doesn't apply to material that was generated offsite. (See OAC 3745-266).

PRESS Petition at 32. In support of Contention 9, PRESS quotes from USEC's environmental report which states that LLMW is exempted from the storage requirements of RCRA hazardous waste because it is a RCRA hazardous waste and is generated and managed by USEC as described in 40 CFR Part 266, Subpart N and OAC-3745-266. *Id*. at 32 *citing* ER at 3-89. PRESS appears to argue that USEC is not entitled to this exemption because the LLMW will be generated offsite. *See id. citing* OAC 3745-266-220. As a second basis for this contention PRESS also refers to sections D.1.2. and D.1.1 of its Petition, which in turn, reference 10 C.F.R. §§ 70.22 (a)(8)-(h)(1); 70.22(h)(2)(i)(2). *Id*. at 33.

Neither basis supports the admission of Contention 9. The exemption from RCRA requirements is outside the scope of this proceeding, as any exemption from the RCRA requirements pursuant to Ohio law is within the authority of the state of Ohio and not the NRC. Further, PRESS provides no basis for its assumption that LLMW will be generated offsite. And, mere reference to the regulations without any discussion on how the regulations will not be met is insufficient to support the Contention. PRESS, therefore, has not provided sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact and has not provided a concise statement of alleged facts or expert opinion to support its position. *See* 10 C.F.R. § 2.309(f) (v), (vi). Contention 9 should, therefore, be rejected.

Contention 10: Independent Environmental Reporting

> Petitioners contend that USEC has a very poor record of self-assessment, and that an independent assessment of the environmental base-state is justified.

PRESS Petition at 33. As a basis for this contention, PRESS states that USEC has a documented history of misleading the NRC. *Id*. To support this assertion, PRESS lists a number of enforcement actions taken against USEC which, according to PRESS, show that USEC should not be entrusted with assessing the environmental state of the site. *Id.* PRESS also references, without further discussion, as a second basis for this contention, sections D.1.2. (10 C.F.R. § 70.22(h)(2)) and D.1.1 (10 C.F.R. § 70.22(a)(8)-(h)(1)) of its Petition. *Id.*

Neither basis supports the admission of Contention 10. In accordance with NEPA and the Commission's regulations, the NRC staff will be undertaking an independent environmental assessment of the proposed action and has stated that it will prepare an environmental impact statement. *See USEC,* CLI-04-30, 60 NRC at 427. This process is currently ongoing, and on January 18, 2005, the Staff held a public scoping meeting in Piketon, Ohio. Thus, PRESS fails to

demonstrate that a genuine dispute exists with the applicant on a material issue of law or fact and its contention should be denied.

If PRESS intends to challenge USEC's environmental report by asserting that the NRC should not rely on the ER when it performs its own independent environmental review, such a challenge is unsupported. If this is PRESS' intent, PRESS fails to provide specific references to any portion of the ER that should not be relied upon. Thus, PRESS fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi). In order to rely on past enforcement history as a basis for a contention, there must be some "direct and obvious relationship between the character issues and the licensing action in dispute." *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2)), CLI-99-4, 49 NRC 185, 189 (1999), *citing Vogtle*, CLI-93-16, 38 NRC at 32. *See also Millstone*, CLI-01-24, 54 NRC at 365-66. None of the enforcement actions cited by PRESS involve the provision of false or inaccurate information. Thus, PRESS has failed to establish a "direct and obvious relationship" between these enforcement actions and the licensing action in dispute.

For the reasons set forth above, PRESS has not provided sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact and has not demonstrated that the issue is material to the findings the NRC must make. Further, as discussed previously, mere reference to the regulations without further discussion is inadequate to support the admission of a contention. Contention 10 should, therefore, be rejected. *See* 10 C.F.R. § 2.309(f)(iv), (v).

Contention 11: Ground and Surface Water

> Petitioner contends that the Environmental Report (ER) 3-18 through 3-23 contained in the application does not contain a complete or adequate assessment of the potential environmental impacts of the proposed project on ground and surface water, contrary to the requirements of 10 CFR 51.45.

PRESS Petition at 34. PRESS goes on to discuss that ER sections 3.4.1. "Groundwater" and 3.4.2 "Surface Water" fails to discuss certain concerns. *Id.* As bases for this contention, PRESS references three reports and a quote from a letter from the Ohio EPA Southeast District Office.[21] *See* PRESS Petition at 34-35. PRESS also references, without further discussion, sections D.1.2 and D.1.1 of its Petition (10 C.F.R. §§ 70.22 (a)(8)-(h)(1); 70.22(h)(2)(i)(2)). PRESS claims that the three reports contain information that could be considered "security" information similar to the information withheld from USEC's ER and, therefore, did not provide copies of these reports. *Id*.

Although the Staff appreciates PRESS' concerns for security, PRESS offers no reasons why it could not provide some discussion of these reports and how the reports have any significance to the ER.[22] *See id.* A petitioner is obligated to provide some explanation of the

---

[21] The reports are entitled "Danger Lurks Below - The Threat to Major Water Supplies from DOE Nuclear Weapons Plant," April 2004, Chapter 12, Portsmouth Gaseous Diffusion Plant, "Groundwater Movement at the Portsmouth Gaseous Diffusion Plant," a report commissioned by PRESS, February 2002, and a draft report by Dr. Sergey E. Pashenko, November 2003. PRESS Petition at 34-35.

[22] Although PRESS does briefly discuss Dr. Pashenko's report as indicating that he discovered levels of beta activity in "sample foam" that were "at least 100 times higher than normal background levels." PRESS Petition at 35. This assertion, without any reference to which statements in the ER it is challenging or any supporting documentation of Dr. Pashenko's findings is totally inadequate to support the admission of this contention. *See Private Fuel Storage, L.L.C.*, (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998) (An expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadequate.).

significance of documents it references. *See National Enrichment Facility*, LBP-04-14, 60 NRC at 56, *citing Fansteel*, CLI-03-13, 58 NRC at 204. Because PRESS fails to meet this obligation, these bases do not support the admission of this contention.

PRESS' fourth basis, a quotation from a letter to the OHIO EPA, also fails to provide an adequate basis for Contention 11. This letter, which is not attached to the Petition, appears to be concerned with DOE's compliance with RCRA requirements. *See* PRESS Petition at 35. PRESS does not explain the significance of this letter. Moreover, the NRC has no jurisdiction over compliance with RCRA in general and no regulatory authority over DOE in this case. *See U.S. Enrichment Corp.*, CLI-96-12, 44 NRC at 243. As such, this basis is outside the scope of this proceeding and is not material to findings the staff must make. 10 C.F.R. § 2.309(f)(1)(iii), (iv).

For the reasons set forth above, PRESS has not provided sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact and has not provided a concise statement of alleged facts or expert opinion to support its position. *See* 10 C.F.R. § 2.309(f) (v), (vi). Contention 11 is, therefore, inadmissable.

Contention 12: Radiological Impacts

> Petitioners contend that ER 4.12.3.2 "Radiological Impacts" and "Pathway Assessments," "Accident Analysis" and "Public & Occupational Expose" is inadequate.

PRESS Petition at 36. As a basis for this contention, PRESS refers to "typical reports," and cites, as examples, reports from the General Accounting Office. *See id*. PRESS also refers to a website and purports to rely on "All 'Enrichment Project Reports.'" *Id.* As discussed above, mere reference to these reports without further discussion on how these reports support PRESS' contention, even if they contain security information, is insufficient to support the contention. *See Fansteel*, CLI-03-13, 58 NRC at 204. Moreover, a simple reference to a large number of undefined

documents does not provide a sufficient basis for a contention. *See Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1741, *rev'd and remanded on other grounds,* CLI-86-8, 23 NRC 241 (1986). *See also Seabrook*, CLI-89-3, 29 NRC at 240-41 ("Commission practice is clear that a petitioner may not simply incorporate massive documents by reference as the basis for or as a statement of his contentions."). Accordingly, this basis does not support the admission of Contention 12.

As a second basis, PRESS references "personal correspondence" from Sergei Pashenko to contest two sections of the ER.[23] PRESS Petition at 36. PRESS quotes Mr. Pashenko "verbatim without any attempt to interpret the language." *Id.* PRESS first challenges statements in the ER that describes the radiological and non-radiological environmental monitoring that is occurring at the DOE reservation. *Id.*, *citing* ER, section 4.12.3.2.1., Pathway Assessment.[24] Mr. Pashenko's assessment of these statements is that the information is "very poor and very unconcrete." *Id.* at 37. Mr. Pashenko references "examples" in a "SSGR" report and mentions problems with UF6 cylinders. *Id.* Other than these vagues references, however, Mr. Pashenko offers to no explanation for the basis of his conclusion that the information is "very poor." As such, Mr. Pashenko's statements do not support the admission of this contention. *See PFS*, LBP-98-7, 47 NRC at 181.

PRESS and Mr. Pashenko also challenge statements in section 4.12.3.2.1 (Pathway Assessment) of the ER concerning radioactive and chemical emissions. *See* PRESS Petition at 37. The ER provides that "radioactive and chemical emissions are expected to increase based on current conceptual plant design input 'modeled' emission. . . ." ER at 4-109. Mr. Pashenko

---

[23] A copy of Mr. Pashenko's correspondence is not attached to PRESS' Petition.

[24] It appears, however, that the section PRESS cites is not section 4.12.3.2.1 Pathway Assessment, but section 4.12.3.2., Radiological Impacts. *Compare* PRESS Petition at 36 with ER at 4-109.

states that "[i]t's a very bad model." *Id.* at 37. He further asserts that he must know the wind velocity and what conditions were used in the model. *Id.* at 37. However, as with his other statements, neither he nor PRESS provide any basis for his conclusions. The ER indicates that a detailed discussion concerning the models used for airborne emissions can be found in section 4.6.2.2. of the ER. ER at 4-110. Section 4.6.2.2 indicates that the CAP-88 model was used to estimate annual average air concentrations. *Id.* at 4-68-69. Neither PRESS nor Mr. Pashenko reference or address the discussion found in this section. This basis, therefore, fails to support the admission of this contention. *LES*, LBP-04-14, 60 NRC at 57, *citing Rancho Seco*, LBP-93-23, 38 NRC at 247-48 ("Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be rejected.").

Moreover, even if USEC's model were somehow faulty, PRESS fails to demonstrate how this would be material to any conclusions the Staff must make in deciding whether to grant or deny the license. As such, it does not provide a basis for the admission of Contention 12. *See* 10 C.F.R. § 2.309(f)(1)(iv).

Thus, for the reasons discussed above, Contention 12 fails to demonstrate that the issue is material to the finding the NRC must make to support the action; fails to demonstrate that a genuine issue exists with the Applicant on a material issue of law or fact; and lacks a concise statement of alleged facts or expert opinion that supports the contention. Nor does the mere reference to the regulations support the admission of this contention. Contention 12 should, therefore, not be admitted. 10 C.F.R. §§ 2.309(f)(1)(iv), (v), (vi).

Contention 13: D & D Plans Inadequate:

> petitioners contend that ER 4.13.2.4 "Operations Phase Feed Withdrawal, and Customer Services Facilities" does not contain viable Decontamination & Decommissioning plans or adequate information about radioactive and hazardous materials.

Petition at 38. As a basis for Contention 13, PRESS claims that disposal facilities must be identified and that statements from the waste facilities that they will accept the waste must be provided, and the cost must be provided. *Id.* PRESS also references section D.1.2. of its Petition (10 C.F.R. §70.22(h)(2)).[25] *Id.*

Although PRESS asserts that more details are necessary on disposal, other than referencing a regulation that does not address decontamination and decommissioning plans, PRESS does not explain why the phrases it quotes from the ER are inadequate or that such details are even necessary under the Commission's regulations. Section 70.25 requires the submission of a decommissioning funding plan. This plan must contain a cost estimate for decommissioning and a description of the method for assuring funds for decommissioning.[26] 10 C.F.R. § 70.25(e). The purpose of this plan is to determine whether the applicant has considered what decommissioning activities may be needed in the future, has performed a credible site-specific cost estimate for those activities and has submitted sufficient financial assurance to cover the cost of those activities in the future. *See* NUREG-1520 at 10-1. What is not required at this stage is a

---

[25] PRESS also asserts that it finds "statements like 'USEC has a strong history of safe handling,' completely unacceptable" and references another of its contentions concerning violations. PRESS Petition at 38. PRESS' statement here is so vague that it fails to provide any support for Contention 13.

[26] PRESS is correct in one regard, the costs associated with disposal is one aspect of the cost estimate. USEC has provided some cost estimates in its Decommissioning Funding Plan (LA 1-45) and the Staff has requested additional information concerning these costs. Letter to S.A.Toelle From Y. Faraz, Feb. 7, 2005 (ADAMS Accession No. ML050260306). However, PRESS fails to even discuss the cost information provided in the LA and why PRESS believes it is insufficient. PRESS Petition at 38.

detailed plan for decommissioning the site.[27] *See id.* The LA addresses these requirements at Chapter 10. PRESS makes no reference to any deficiencies to USEC's discussion in Chapter 10. Thus, PRESS fails to provide sufficient information that a genuine dispute exists with the applicant on a material issue of law or fact. 10 C.F.R. §2.309(f)(1)(vi). *See LES*, CLI-04-14, 60 NRC at 57.

3. General Contentions

Contention 14: Application Inadequate:

> The Fundamental Nuclear Materials Control Plan (FNMCP) doesn't satisfy the requirements of 10 CFR 74.13(a), therefore the application is inadequate.

Petition at 38. As a basis for this contention, PRESS cites a statement in the LA that indicates that USEC will request an exemption from the requirements of 10 C.F.R. § 74.13(a). *Id.* at 38-39, *citing* section 1.2.5 of the LA. However, exemptions to Commission regulations are permitted and such requests will be evaluated by the NRC staff. Section 74.7 permits the granting of an exemption from any requirement of Part 74 if it is determined that such exemption is "authorized by law and will not endanger life or property or the common defense and security and [is] otherwise in the public interest."[28] 10 C.F.R. § 74.7. The section referenced by PRESS contains a discussion of the exemption being requested. PRESS provides no discussion of why USEC's requested exemption should not be granted. Thus, PRESS fails to demonstrate that a genuine dispute exists

---

[27] The submission and approval of a detailed decommissioning plan is called for in accordance with the provisions of 10 C.F.R. § 70.38, which provides for submission of a decommissioning plan for approval by the Commission after the license expires or the determination has been made to cease operations. *See* 10 C.F.R. § 70.38(d).

[28] Section 74.7 appears to be missing from the published version of the Code of Federal Regulations, however, the text of 74.7 is published in the *Federal Register* at 50 Fed. Reg. 7575, 7580 (Feb. 25, 1985). The text reads: "The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest."

with the application on a material issue of law or fact. The contention should, therefore, not be admitted. 10 C.F.R. § 2.309(f)(1)(iv).

Contention 15: National Security

> Petitioners contend that USEC hasn't demonstrated that ACP would advance national security goals. The editorial of Congressman David Hobson suggests that it may well be the opposite.

Petition at 39. PRESS refers to certain statements in the ER which assert that the deployment of the ACP advances national security goals. *Id.* at 39-40, *citing* ER at 1 & 34. PRESS asserts, relying on an editorial published in the Washington Times by Congressman David Hobson, that the ACP in fact would risk national security. *Id*. at 40. PRESS also asserts that pursuant to 10 C.F.R. § 70.40(b) the Commission should not issue the license because, relying again on Congressman Hobson's editorial, such issuance would be inimical to the common defense and security. *Id.*

PRESS' reliance on Congressman Hobson's editorial is misplaced. The statements quoted by PRESS from the editorial refer to nuclear weapons initiatives, not enrichment technology. *See* "Forward Thinking on Nuclear Policy," by David L. Hobson, PRESS Petition, Appendix A at 55. PRESS then makes the unsupported assertion that the concerns regarding North Korea and Iran stem from their pursuit of centrifuge uranium enrichment. PRESS Petition at 40. Nowhere in the editorial reproduced by PRESS does Congressman Hobson even mention enrichment technology. Thus, PRESS' arguments concerning national security lack any expert basis. Accordingly, Contention 15 should be rejected. 10 C.F.R. § 2.309(f))(1)(v).

Contention 16: Alternative Site Use

> Petitioners contend that the no-action alternative is more beneficial to the site than the proposed action. Piketon could be an industrial heaven employing many thousands if it were cleaned up. USEC will block alternative uses because of the security arrangements that would have to be made.

PRESS Petition at 40. PRESS refers to USEC's statement in the ER that provides that it considered a range of reasonable alternatives to the proposed action including the No-Action Alternative and an alternative siting in Paducah, Kentucky. *Id.*, *citing* ER at 3. USEC goes on to state that since its agreement with DOE requires the ACP be sited at either Piketon or Paducah, Paducah was the only alternative site considered. *Id* at 41. PRESS asserts that USEC's agreement with DOE to site the ACP at either Piketon or Paducah has no bearing on the consideration of the No-Action Alternative. *Id.*

The No-Action Alternative discussion in an environmental review need not be extensive. *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 54 (2001). It is viewed as maintaining the status quo; in this case, it would be denying the license. ER at 5. USEC's discussion of the No-Action Alternative includes its conclusion that the No-Action Alternative will not meet the national energy goal, will have serious economic impact on the region around the proposed ACP and will not meet the commercial needs of the corporation.[29] ER at 3. The No-Action Alternative for the ACP is discussed further in Section 4 of the ER. PRESS makes no references to any of USEC's discussion of the No-Action Alternative in Section 4 and simply asserts that the No-Action Alternative would be more beneficial than the proposed action.[30] PRESS Petition at 41. Thus, PRESS fails to provide sufficient information to show that a genuine dispute exist with the applicant on a material issue of law or fact. 10 C.F.R. §2.309(f)(1)(vi). *See LES,* CLI-04-14, 60 NRC at 57.

---

[29] Although USEC does note that the No-Action Alternative would be inconsistent with its agreement with DOE-USEC to deploy an advanced technology enrichment facility. ER at 2-1.

[30] PRESS asserts in the text of its contention that Piketon could be an industrial heaven employing many thousands if it were cleaned up. PRESS Petition at 40. However, USEC does not own the Piketon site, any decision with respect to use of the site in the event the LA were denied would be DOE's to make.

PRESS does reference one statement in the ER, as a basis for its contention, but seems to confuse the No-Action Alternative with the discussion of considerations of alternative sites. It appears that PRESS believes that the conclusion in the ER that the No-Action Alternative is not the preferred option is somehow based on USEC's agreement with DOE to build the ACP at one of two sites. However, it is clear that USEC is discussing two separate considerations, the No-Action Alternative and consideration of alternative sites. *See* ER at 3. USEC's consideration of the No-Action Alternative is not based on consideration of siting the ACP at Paducah, but rather on the denial of the license.[31] Although PRESS may prefer the No-Action Alternative, NEPA does not require the selection of the "most benign alternative." *Hydro*, CLI-01-4, 53 NRC at 55, *citing Robertson v. Methow Valley*, 490 U.S. at 350. Nor has PRESS demonstrated that USEC's discussion of this alternative is inadequate. Thus, this basis for Contention 14 should be rejected. 10 C.F.R. § 2.309(f)(a)(v)(vi).

PRESS also asserts that the use of AVLIS should be considered as a reasonable alternative. PRESS Petition at 41. PRESS implies that AVLIS (Atomic Vapor Laser Isotopic Separation) technology would be better environmentally because centrifuge technology has the consequence of concentrating U-234. *Id.* at 41. Under NEPA law, only those alternatives that are reasonable and "will bring about the ends" of the proposed action need be considered. *Hydro*, CLI-01-4, 53 NRC at 55, *citing Burlington*, 938 F.2d at 195. With respect to AVLIS, USEC states

---

[31] Specifically, USEC provides:

> In this ER, the Proposed Action is compared to a range of reasonable alternatives. These alternatives include: the No Action Alternative (i.e., not licensing the ACP) and the siting alternative of Paducah, Kentucky. Since the DOE-USEC Agreement requires that the ACP be sited either at the DOE reservation in Piketon, Ohio, or the Paducah Gaseous Diffusion Plant (PGDP) in Paducah, Kentucky, the only siting alternative considered was PGDP.

ER at 3.

that it determined in 1999 that it was not an economically viable technology, and suspended its development. ER at 3. In considering alternatives, it is appropriate to take into account the economic goals of the applicant. *See Hydro*, CLI-01-4, 53 NRC at 55, *citing Grapevine,* 17 F.3d at 1506. PRESS does not challenge USEC's assertion that AVLIS is not economically viable technology. Rather PRESS seems to assert, without basis, although expensive, AVLIS would be better environmentally. Even if AVLIS was more environmentally benign than centrifuge technology, as discussed above, NEPA does not require the selection of the most environmentally benign action. *Hydro*, CLI-01-4, 53 NRC at 55. Accordingly, this basis lacks adequate support and fails to demonstrate a genuine dispute with the application. It should, therefore, be denied. 10 C.F.R. § 2.309(f)(1)(v),(vi).

Contention 17: ACP Project Failure

> Petitioners contend that USEC's request for incremental payment is a symptom of its weak financial position.

PRESS Petition at 41-42. PRESS asserts that USEC hasn't provided any assurance that its centrifuge plans won't "go the way of its AVLIS plans." *Id.* at 42. PRESS refers to a class action lawsuit filed against USEC by its investors after USEC's stock price dropped when it announced that it was not pursuing AVLIS. *Id.* PRESS also asks what effect would the decontamination and decommissioning of the gaseous diffusions facilities at Paducah would have on USEC"s ability to pay for the operation of the ACP. Finally, PRESS refers to section E.1.2 of its Petition, which in turn is quotation of 10 C.F.R. §§ 70.23(a)(5)-(10).

USEC is required, pursuant to 10 C.F.R. §§ 70.22(a)(8) and 70.23(a)(5) to submit information concerning its financial qualifications to engage in the proposed activity. *USEC,* CLI-04-30, 60 NRC at 437. The Commission has held that the "'[t]he fundamental purpose of the financial qualifications provision . . . is the protection of public health and safety and the common

defense and security." *LES*, CLI-97-15, 46 NRC at 303, *citing* 33 Fed. Reg. 9704 (July 4, 1968). In its Application, USEC states that the ACP can be constructed and installed incrementally. LA at 1-49. USEC asserts that "[a]s groups of machines are installed, operations will be initiated and will result in enrichment production that will generate revenue and cash flow." *Id.* USEC states that it will obtain financing at each stage using a variety of funding mechanisms. *Id.* In order to meet the financial qualifications requirements, USEC proposed two license conditions which it asserts will ensure that adequate funding will be in place before construction of each phase and before operations will begin.[32] *Id.*

Turning to PRESS' contention, PRESS fails to provide any basis for its assertion that USEC's proposal is inadequate and does not even address why the proposed license conditions would be inadequate. PRESS simply avers that the ACP project will fail because USEC is proposing to fund the plan incrementally and because AVLIS was not developed. However, PRESS' assertion lacks any basis or explanation. *See* PRESS Petition at 41-42. Moreover, PRESS' question of how would D&D at PGDP affect USEC's financial qualifications is irrelevant, as the U.S. Enrichment Company, the certificate holder for the PGDP, is required to have funds set aside to decommission that facility, as well as PORTS.[33] *See* 10 C.F.R. § 76.35(n). Nor does PRESS' mere reference to the regulations provide any support for its contention. *See Palo Verde,* CLI-91-1, 34 NRC at 155 (Failure to provide an explanation regarding the bases of a proffered contention requires the contention to be dismissed). For these reasons, Contention 17 should not be admitted. 10 C.F.R. §§ 2.309(f)(1)(iv), (v), (vi).

---

[32] In CLI-04-30, the Commission explicitly noted that it had found similar licensing conditions an acceptable means to demonstrate compliance with the financial assurance requirements. *USEC*, CLI-04-30, 60 NRC at 437, *citing LES*, CLI-97-15, 46 NRC at 309.

[33] PRESS refers to D&D at Paducah, but the language cited by PRESS appears to refer to D&D at PORTS. *See* ER at 2-2. In addition, DOE also has some responsibility to pay for D&D at PGDP and PORTS. *See* 42 U.S.C. § 2297c-2.

Contention 18: USEC Incompetence

> Petitioner contends that as the leading violator of the NRC materials licensees, USEC is incompetent to hold a license to operate a centrifuge plant.

Petition at 42. PRESS refers to various enforcement actions taken against the U.S. Enrichment Corporation as the holder of certificates for the PORTS in Piketon, Ohio and PGDP in Paducah, Kentucky to support its assertion that USEC, Inc. is not competent to operate a centrifuge plant. PRESS also relies on these enforcement actions to refute certain statements in the ER and refers to section E.1.1. (10 C.F.R. § 70.23(a)(2)). *See* PRESS Petition at 42-47.

By referring to previous enforcement actions, it appears that PRESS is questioning USEC's character or integrity. In order for a contention concerning management character or integrity to be admissible "there must be some direct and obvious relationship between the character issues and the licensing action in dispute." *Millstone*, CLI-01-24, 54 NRC at 365, *citing Zion*, CLI-99-4, 49 NRC at 189. Past management impropriety must "relate directly to the proposed licensing action." *Id.* at 366, *citing Georgia Tech,* CLI-95-12, 42 NRC at 120. In order for management integrity issues to be admissible, a contention must assert (and demonstrate) that the management personnel alleged to have acted improperly in the past are also going to be involved with the activity that is the subject of the current proceeding. *See Georgia Tech*, CLI-95-12, 42 NRC at 120; *Vogtle*, CLI-93-16, 38 NRC at 36. A licensing proceeding is not the forum to litigate mistakes in the past. *See Georgia Tech*, CLI-95-12, 42 NRC at 120-21.

Turning to PRESS' contention, all of the enforcement actions cited by PRESS occurred at either PGDP at Paducah or PORTS in Piketon. The most recent of which occurred in 1999. PRESS has not alleged that any of the EA's involved managers or individuals who would be

currently working at the ACP.[34] *See Georgia Tech*, CLI-95-12, 42 NRC at 122. Further, PRESS has provided no reason to believe that such would be the case as the violations cited by PRESS occurred over 5 years ago, at different facilities operating under different regulations. As such, PRESS has failed to provide an adequate basis for this contention and it should be rejected. 10 C.F.R. §2.309(f)(1)(vi).

Contention 19 Enrichment Freeze

> Petitioner contends that there may be an international freeze on uranium enrichment. In that case USEC would not be able to survive.

PRESS Petition at 47. In support of this contention, PRESS references the ER and a report. *Id.* at 47-48, *referencing* "Universal Compliance: A Strategy For Nuclear Security, Carnegie Report, June 2004.[35] PRESS also references, without further discussion, 10 C.F.R. § 70.23. Further, it is not clear whether PRESS is challenging USEC's financial qualifications or whether they intend to challenge the need for the action as part of the Staff's environmental review. To the extent that PRESS is challenging USEC's financial qualifications, such challenge is unsupported by quoted portions of the Carnegie Report. 10 C.F.R. § 2.309(f)(1)(v). Further, as PRESS fails to identify which specific portions of the LA it disagrees with, it has failed to demonstrate a genuine dispute of law or fact. 10 C.F.R. § 2.309(1)(f)(vi).

With respect for the need for the proposed action, USEC states in the ER that "[c]onstruction and operation of a gas centrifuge plant utilizing the US-origin advanced technology is key to supporting DOE's national energy security goals by providing a reliable and secure

---

[34] In fact, the certificate holder involved in the EAs does not have the same corporate identity as the Applicant. The U.S. Enrichment Corporation, the certificate holder, is a wholly owned subsidiary of USEC, Inc., the applicant here. LA at 1-47

[35] PRESS does not provide a copy of this report and its contention should be denied on this basis alone. *See Braidwood*, LBP-85-20, 21 NRC at 1741, *citing Tennessee Valley Authority* (Browns Ferry Nuclear plant, Units 1 and 2), LBP-76-10, 3 NRC 200, 216 (1976).

domestic source of enriched uranium." ER at 1-10. If PRESS intends to challenge USEC's assertion concerning the need for the proposed action, such a challenge is unsupported by the quoted portion of the Carnegie Report. Nor does PRESS identify which portions of USEC's discussion of this issue it disagrees with. Accordingly, Contention 19 should be rejected. 10 C.F.R. § 2.309(1)(f)(v), (vi).

Contention 20: Need for Proposed Action

> Petitioners contend that there is no need for the proposed action. The future of power generated by enriched uranium is very uncertain. There is a growing understanding among decision makers that nuclear power is not only unsafe and generating huge amounts of dangerous wastes but is also expensive and unnecessary.

PRESS Petition at 48. In support of this contention, PRESS references several reports and articles that indicate either that there will not be a need for enriched uranium as other, cheaper sources of electricity are being pursued or that there will be a "pause" on the production of enriched uranium."[36]

With respect to other sources of enriched uranium, the articles referenced by PRESS simply indicate that governments and industry may be pursuing the greater use of renewable energy. PRESS then makes the unsupported assumption that the reliance on nuclear power will drop so low as to no longer make enriched uranium necessary. However, this is mere speculation and cannot support the admission of this contention. *LES*, CLI-04-14, 60 NRC at 55*, citing Fansteel*, CLI-03-13, 58 NRC at 203. Similarly, speculation concerning whether they may be a "pause" on enrichment activities does not provide an adequate basis for this contention.

---

[36]None of the references are provided by PRESS and thus, this contention should be rejected on this basis alone. *See Braidwood,* LBP-85-20, 21 NRC at 1741

Contention 21: Unnecessary Censorship

> Petitioners contend that some of the public censorship of the USEC documents was unnecessary.

PRESS Petition at 51. As a bases PRESS notes that parts of the LA and the ER have been withheld from public disclosure. *Id.* at 52-53. In CLI-04-30, the Commission clearly articulated the scope of this proceeding, that is "whether the application satisfies the standards set forth in this . . . Order and the applicable standards in 10 C.F.R. §§ 30.33, 40.32, and 70.23, and whether the requirements of 10 C.F.R. Part 51 have been met." *USEC,* CLI-04-30, 60 NRC at 428. PRESS' contention raises an issue regarding the withholding of portions of USEC's documents which is outside the outlined scope of the proceeding. Moreover, PRESS does not raise any issues with respect to the LA or the ER, and thus, fails to raise a genuine dispute of law of fact with the LA. This contention should, therefore, be rejected. 10 C.F.R. § 2.309(f)(1)(iii), (iv).

Contention 22: Gender Discrimination

> Petitioners suggest that a wording change would be in order in the decommissioning funding plan, C-10, et seq.

PRESS Petition at 52-53. As a basis PRESS states that a table in the decommissioning funding plan indicates that USEC does not plan to hire women. *Id.* This contention lacks any basis, is not material to any finding the Staff must make with respect to the licensing action, and fails to demonstrate a genuine dispute exists with the applicant on a material issue of law or fact. It should therefore be rejected. 10 C.F.R. §§ 2.309(f)(1)(iv)(v), (vi).

CONCLUSION

For the reasons discussed above, PRESS, although establishing standing, has failed to offer one admissible contention. Geoffrey Sea has failed to establish standing. Accordingly, both of the petitions should be denied.

Respectfully submitted,

/RA/

Marian L. Zobler
Sara E. Brock
Melissa L. Duffy
Counsel for NRC Staff

Dated at Rockville, Maryland
this 25th day of March, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
USEC, Inc.	)	Docket No. 70-7004
	)	
(American Centrifuge Plant)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO PETITIONS TO INTERVENE FILED BY PORTSMOUTH/PIKETON RESIDENTS FOR ENVIRONMENTAL SAFETY AND SECURITY (PRESS) AND GEOFFREY SEA" in the above-captioned proceeding has been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), or by electronic mail as indicated by a double asterisk (**) on this 25th day of March, 2005.

Atomic Safety and Licensing Board Panel *
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555

Office of the Secretary * **
ATTN: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: HEARINGDOCKET@nrc.gov

Office of Commission Appellate Adjudication *
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555

Geoffrey Sea **
340 Haven Avenue, Apt. 3C
New York, NY 10033
E-Mail: geoffreyseanyc@aol.com

Dennis J. Scott, Esq. **
USEC Inc.
6903 Rockledge Drive
Bethesda, MD 20817
E-mail: scottd@usec.com

Donald J. Silverman **
Morgan Lewis & Bockius, LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
E-mail: dsilverman@morganlewis.com

Vinna K. Colley (Press) **
3706 McDermott Pond Creek
McDermott, OH 45652
E-mail: vcolley@earthlink.net

/RA/

Melissa L. Duffy
Counsel for NRC Staff