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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before the Commission

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| In the Matter of |) | |
| |) | |
| Nuclear Management Company, et al. |) | Docket No. 50-263-LR |
| |) | |
| (Monticello Nuclear Generating Plant) |) | |

**NUCLEAR MANAGEMENT COMPANY'S ANSWER TO
REQUEST FOR HEARING AND PETITION TO INTERVENE BY
THE NORTH AMERICAN WATER OFFICE**

I. INTRODUCTION

Nuclear Management Company ("NMC") hereby answers and opposes the "Request for Hearing and Petition for Leave to Intervene By the North American Water Office," dated July 9, 2005 (the "Petition"), regarding NMC's application to renew the operating license for the Monticello Nuclear Generating Plant. The Petition should be denied because the North American Water Office ("NAWO") fails to demonstrate standing and fails to identify any admissible contention.

II. PROCEDURAL BACKGROUND

NMC has submitted its application, dated March 16, 2005, for renewal of the operating license for the Monticello Nuclear Generating Plant.¹ On May 12, 2005, the Nuclear Regulatory Commission published a Notice of Acceptance for Docketing of Application and Notice of Opportunity for Hearing. 70 Fed. Reg. 25,117 (2005). The Notice permitted any person whose

¹ NMC is the licensed operator of the Monticello Nuclear Generating Plant and submitted this application on its own behalf and as agent for the Northern States Power Company, which owns the plant.

interest may be affected to file a request for hearing and petition for leave to intervene within 60 days of the notice. Id. at 25,118.

The Notice directs that any petition shall set forth with particularity the interest of the petitioner and how that interest may be affected, and must also set forth the specific contentions sought to be litigated. Id. The Notice states:

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Id. (footnote omitted).

III. NAWO HAS NOT DEMONSTRATED STANDING

NAWO's Petition fails to establish NAWO's standing to participate in this proceeding. Standing is not a mere legal technicality, but "an essential element in determining whether there is any legitimate role" for the Commission "in dealing with a particular grievance."

Westinghouse Electric Corp. (Nuclear Fuel Export License for Czech Republic – Temelin Nuclear Power Plants), CLI-94-7, 39 N.R.C. 322, 331-32 (1994).

To determine whether a petitioner's interest provides a sufficient basis for intervention, "the Commission has long looked for guidance to current judicial concepts of standing." Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 N.R.C. 1, 5-6 (1998).

Judicial concepts of standing require a petitioner to establish that:

(1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can be fairly traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 N.R.C. 1, 6 (1996)

(citation omitted).

In order to meet these standards, an organization must show that the action will cause injury-in-fact either to its own organizational interests or to the interests of its members. Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 N.R.C. 95, 102 n.10 (1994).

Where an organization asserts a right to represent the interests of its members, the "judicial concepts of standing" require a showing that:

(1) its members would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization's lawsuit.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48

N.R.C. 26, 30-31 (1998), citing Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343

(1977). Under NRC practice, an organization seeking to establish representational standing

"must demonstrate how at least one of its members may be affected by the licensing action (such as by activities on or near the site), must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized by that member to request a hearing on behalf of that member." Northern States Power Co. (Monticello Nuclear Generating

Plant), CLI-00-14, 52 N.R.C. 37, 47 (2000); see also GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 202 (2000).

NAWO has made none of these showings. NAWO states that it has standing because it is a member of a community that consumes electricity generated by Monticello. Petition at 1.

However, such an economic interest is not within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act (“NEPA”) and therefore does not confer standing. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 N.R.C. 804, 806 (1976), aff’d, CLI-76-27, 4 N.R.C. 610, 614 (1976); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 N.R.C. 1418, 1420-21 (1977).

NAWO states that it has a history of examining and educating about the socio-economic and environmental costs, benefits and consequences of electric utility services options. Petition at 1.

Such an interest in providing information to the public is also insufficient for standing.

Transnuclear Inc. (Export of 93.15% Enriched Uranium), CLI-94-1, 39 N.R.C. 1, 5 (1994); Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 N.R.C. 47, 57-61 (1992); Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 N.R.C. 521, 529-30 (1991). “An organization’s asserted purposes and interests, whether national or local in scope, do not, without more, establish independent organizational standing.” Turkey Point, ALAB-952, 33 N.R.C. at 530, citing Sierra Club v. Morton, 405 U.S. 727, 729 (1972).

NAWO also states that it “is geographically located in the region that will be adversely impacted if or when the Monticello reactor experiences a significant event.” Petition at 1.

NAWO does not explain what this region is, whether it owns any property in this region, what it

means by a significant event, or how NAWO would be impacted. Again, if NAWO is referring to an adverse economic impact, its interest is not cognizable in this proceeding.

Nor has NAWO established standing to represent any members. NAWO has not identified any members who have standing in their own right and who have authorized NAWO to represent them.

In short, NAWO fails to establish its standing. This failure alone requires denial of the Petition.

IV. NAWO'S CONTENTIONS ARE INADMISSIBLE

None of NAWO's contentions are admissible. This failure is also grounds by itself to deny the Petition.

A. Standards for Admissibility of Contentions

1. Contentions Must Be Within the Scope of the Proceeding and May Not Challenge NRC's Rules

As a fundamental requirement, a contention is only admissible if it addresses matters within the scope of the proceeding and does not seek to attack the NRC's regulations governing the proceeding. This fundamental limitation is particularly important in a license renewal proceeding, because the Commission has conducted extensive rulemaking proceedings to define and limit the technical and environmental showing that an applicant must make. As discussed later in this answer, a number of NAWO's contentions exceed the scope of this proceeding.

10 C.F.R. Part 54 governs the health and safety matters that must be considered in a license renewal proceeding. The Commission has specifically limited this safety review to the

matters specified in 10 C.F.R. §§ 54.21 and 54.29(a),² which focus on the management of aging of certain systems, structures and components, and the review of time-limited aging evaluations. See Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 N.R.C. 3, 7-8 (2004); Duke Power Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-02-26, 56 N.R.C. 358, 363 (2002). Thus, the potential effect of aging is the issue that essentially defines the scope of license renewal proceedings. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 637 (2004).

The rules in 10 C.F.R. Part 54 are intended to make license renewal a stable and predictable process. 60 Fed. Reg. at 22,461, 22,463, 22,484. As the Commission has explained, “We sought to develop a process that would be both efficient, avoiding duplicative assessments where possible, and effective, allowing the NRC staff to focus its resources on the most significant safety concerns at issue during the renewal term.” Turkey Point, CLI-01-17, 54 N.R.C. at 7 (2001). “License renewal reviews are not intended to ‘duplicate the Commission’s ongoing reviews of operating reactors.’” Id. (citation omitted). To this end, the Commission has confined 10 C.F.R. Part 54 to those issues uniquely determined to be relevant to the public health and safety during the period of extended operation, leaving all other issues to be addressed by the existing regulatory processes. 60 Fed. Reg. at 22,463. This scope is based on the principle, established in the rulemaking proceedings, that with the exception of the detrimental effects of aging and a few other issues related to safety only during the period of extended operation, the existing regulatory processes are adequate to ensure that the licensing bases of currently-

² The Commission has stated that the scope of review under its rules determines the scope of admissible issues in a renewal hearing. 60 Fed. Reg. 22,461, 22,482 n.2 (May 8, 1995). “Adjudicatory hearings in individual license renewal proceedings will share the same scope of issues as our NRC Staff review, for our hearing process (like our Staff’s review) necessarily examines only the questions our safety rules make pertinent.” Turkey Point, CLI-01-17, 54 N.R.C. at 10.

operating plants provide and maintain an adequate level of safety. 60 Fed. Reg. at 22,464, 22,481-82. Consequently, license renewal does not focus on operational issues, because these issues "are effectively addressed and maintained by ongoing agency oversight, review, and enforcement." Millstone, CLI-04-36, 60 N.R.C. at 638 (footnote omitted).

The NRC rules governing environmental matters – which are contained in 10 C.F.R. §§ 51.53(c), 51.95(c), and Appendix B to Part 51 – are similarly intended to produce a more focused and, therefore, more effective review. 61 Fed. Reg. 28,467 (June 5, 1996); Turkey Point, CLI-01-17, 54 N.R.C. at 11. To accomplish this objective, the NRC prepared a comprehensive Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants (NUREG-1437) and made generic findings reflected in the GEIS and in Appendix B to 10 C.F.R. Part 51. Those issues that could be resolved generically for all plants are designated as Category 1 issues and are not evaluated further in a license renewal proceeding (absent waiver or suspension of the rule by the Commission based on new and significant information). 61 Fed. Reg. at 28,468, 28,470, 28,474; Turkey Point, CLI-01-17, 54 N.R.C. at 12. The remaining (i.e., Category 2) issues that must be addressed in an applicant's environmental report are defined specifically in 10 C.F.R. § 51.53(c). See generally, Turkey Point, CLI-01-17, 54 N.R.C. at 11-12.

10 C.F.R. § 2.309(f)(1)(iii)-(iv) requires a petitioner to demonstrate that the issue raised by each of its contentions is within the scope of the proceeding and material to the findings that the NRC must make. Licensing boards "are delegates of the Commission" and, as such, they may "exercise only those powers which the Commission has given [them]." Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 N.R.C. 167, 170 (1976) (footnote omitted); accord Portland General Electric Co. (Trojan Nuclear Plant),

ALAB-534, 9 N.R.C. 287, 289-90 n.6 (1979). Accordingly, it is well established that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the licensing board has been delegated jurisdiction. Id.; see also Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 N.R.C. 419, 426-27 (1980); Commonwealth Edison Co. (Carroll County Site), ALAB-601, 12 N.R.C. 18, 24 (1980).

It is also well established that a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations. Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999). "[A] licensing proceeding . . . is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process." Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 A.E.C. 13, 20, aff'd in part on other grounds, CLI-74-32, 8 A.E.C. 217 (1974) (footnote omitted). Thus, a contention which collaterally attacks a Commission rule or regulation is not appropriate for litigation and must be rejected. 10 C.F.R. § 2.335; Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 A.E.C. 79, 89 (1974). A contention which "advocate[s] stricter requirements than those imposed by the regulations" is "an impermissible collateral attack on the Commission's rules" and must be rejected. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 N.R.C. 1649, 1656 (1982); see also Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 N.R.C. 397, 410, aff'd in part and rev'd in part on other grounds, CLI-91-12, 34 N.R.C. 149 (1991). Likewise, a contention that seeks to litigate a generic determination established by Commission rulemaking is "barred as a matter of law." Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 N.R.C. 5, 30 (1993).

These limitations are very germane to this proceeding in that the scope of admissible environmental contentions is constrained by the NRC's GEIS, and the scope of technical contentions is constrained by 10 C.F.R. Part 54. See Turkey Point, CLI-01-17, 54 N.R.C. at 5-13. See also Florida Power & Light Co. (Turkey Point Plant, Units 3 and 4), CLI-00-23, 52 N.R.C. 327, 329 (2000); Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41 (1998), motion to vacate denied, CLI-98-15, 48 N.R.C. 45, 56 (1998); Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3), CLI-98-17, 48 N.R.C. 123, 125 (1998).

2. Contentions Must Be Specific and Supported By a Basis Demonstrating a Genuine, Material Dispute

In addition to the requirement to address issues within the scope of the proceeding, a contention is admissible only if it provides:

- a "specific statement of the issue of law or fact to be raised or controverted;"
- a "brief explanation of the basis for the contention;"
- a "concise statement of the alleged facts or expert opinion" supporting the contention together with references to "specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;" and
- "[s]ufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact," which showing must include "references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if 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."

10 C.F.R. § 2.309(f)(1)(i), (ii), (v) and (vi). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. Palo Verde, CLI-91-12, 34 N.R.C. at 155-56. As discussed later in this answer, none of NAWO's contentions complies with these requirements.

These pleading standards governing the admissibility of contentions are the result of a 1989 amendment to 10 C.F.R. § 2.714, now § 2.309, which was intended "to raise the threshold for the admission of contentions." 54 Fed. Reg. 33,168 (Aug. 11, 1989); see also Oconee, CLI-99-11, 49 N.R.C. at 334; Palo Verde, CLI-91-12, 34 N.R.C. at 155-56. The Commission has stated that the "contention rule is strict by design," having been "toughened . . . in 1989 because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'" Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001) (citation omitted). The pleading standards are to be enforced rigorously. "If any one . . . is not met, a contention must be rejected." Palo Verde, CLI-91-12, 34 N.R.C. at 155 (citation omitted). A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information. Id.

The Commission has explained that this "strict contention rule" serves multiple purposes, which include putting other parties on notice of the specific grievances and assuring that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions. Oconee, CLI-99-11, 49 N.R.C. at 334. By raising the threshold for admission of contentions, the NRC intended to obviate lengthy hearing delays caused in the past by poorly defined or supported contentions. Id. As the Commission reiterated in incorporating these same standards into the new Part 2 rules, "[t]he threshold standard is necessary to ensure that hearings cover only genuine and pertinent issues of concern and that issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues." 69 Fed. Reg. 2,182, 2,189-90 (Jan. 14, 2004).

Under these standards, a petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention." Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, vacated in part and remanded on other grounds, CLI-95-10, 42 N.R.C. 1, aff'd in part, CLI-95-12, 42 N.R.C. 111 (1995). Where a petitioner has failed to do so, "the [Licensing] Board may not make factual inferences on [the] petitioner's behalf." Id., citing Palo Verde, CLI-91-12, 34 N.R.C. 149.

Further, admissible contentions "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]." Millstone, CLI-01-24, 54 N.R.C. at 359-60. In particular, this explanation must demonstrate that the contention is "material" to the NRC's findings and that a genuine dispute on a material issue of law or fact exists. 10 C.F.R. § 2.309(f)(1)(iv), (vi) (emphasis added). The Commission has defined a "material" issue as meaning one where "resolution of the dispute would make a difference in the outcome of the licensing proceeding." 54 Fed. Reg. at 33,172 (emphasis added).

As observed by the Commission, this threshold requirement is consistent with judicial decisions, such as Conn. Bankers Ass'n v. Bd. of Governors, 627 F.2d 245, 251 (D.C. Cir. 1980), which held that:

[A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an "inquiry in depth" is appropriate.

Id. (footnote omitted); see also Calvert Cliffs, CLI-98-14, 48 N.R.C. at 41 ("It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions . . ."). A contention, therefore, is not to be admitted "where an intervenor has no facts to support its position and where the intervenor

contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts." 54 Fed. Reg. at 33,171.³ As the Commission has emphasized, the contention rule bars contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2, CLI-03-17, 58 N.R.C. 419, 424 (2003)).

Therefore, under the Rules of Practice, a statement "that simply alleges that some matter ought to be considered" does not provide a sufficient basis for a contention. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 246 (1993), review declined; CLI-94-2, 39 N.R.C. 91 (1994). Similarly, a mere reference to documents does not provide an adequate basis for a contention. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 348 (1998).

Rather, NRC's pleading standards require a petitioner to read the pertinent portions of the license application, including the safety analysis report and the environmental report, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant. 54 Fed. Reg. at 33,170; Millstone, CLI-01-24, 54 N.R.C. at 358. If the petitioner does not believe these materials address a relevant issue, the petitioner is "to explain why the application is deficient." 54 Fed. Reg. at 33,170; Palo Verde, CLI-91-12, 34 N.R.C. at 156. A contention that does not directly controvert a position taken by the applicant in the

³ See also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. 460, 468 (1982), vacated in part on other grounds, CLI-83-19, 17 N.R.C. 1041 (1983) ("[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable [the petitioner] to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a of the Act nor Section 2.714 [now 2.309] of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.").

license application is subject to dismissal. See Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 N.R.C. 370, 384 (1992). An allegation that some aspect of a license application is “inadequate” or “unacceptable” does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect. Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 N.R.C. 509, 521 & n.12 (1990).

B. NAWO’s Contentions Are Beyond the Scope of this Proceeding, Vague, Unsupported, and Entirely Inadmissible

As explained below, NAWO’s contentions do not meet any of the applicable standards.

1. Contention 1 (Re Alternatives) Is Inadmissible

NAWO’s Contention 1 is inadmissible because it is vague and unsupported, and fails to demonstrate the existence of a genuine dispute on a material issue. NAWO’s contention asserts that the no-action alternative and alternative energy options are not adequately addressed (Petition at 2), but NAWO identifies no particular deficiency in NMC’s discussion of these topics and provides no basis supporting the need for any further analysis.

In particular, Contention 1 contains no discussion whatsoever of the sections of the application addressing the no-action alternative and alternative energy sources. The no-action alternative is addressed in section 7.1 of the NMC’s Environmental Report,⁴ and alternative energy sources are addressed in sections 7.2 and 7.3 of the Environmental Report. NAWO does not identify any deficiency in these analyses.

⁴ Applicant’s Environmental Report – Operating License Renewal Stage, Monticello Nuclear Generating Plant (March 2005), hereinafter cited as “ER.” The Environmental Report is included as Attachment E in the application.

NAWO does refer to wind/bio-fuel combustion hybrid facilities that it suggests would be developed as Community-Based Energy Development (C-BED) projects (Petition at 2-3), but it provides nothing to indicate that such facilities would be a reasonable alternative to the renewal of the Monticello license. Both wind power and biomass are considered in the Environmental Report but are not found to be reasonable alternatives. As Table 7.2-3 of the Environmental Report states, “Intermittency of adequate wind speed and expense of energy storage results in capacity factors too low for baseload generation. . . .” ER at 7-36.⁵ That table also explains why biomass is not considered a reasonable alternative. *Id.* at 7-37. NAWO provides no basis to dispute this analysis.

As has been long held, NEPA only requires consideration of reasonable alternatives. Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 834, 837 (D.C. Cir. 1972).⁶ In Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978), the Supreme Court held that NEPA does not require discussion of alternatives deemed only remote and speculative possibilities. *Id.* at 551. An EIS cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable to the mind of man. *Id.* Here, NAWO presupposes that a new type of new wind/bio-fuel hybrid facility will be developed in the future, but the possibility of such future development is exactly the type of remote and speculative alternative that the Courts have rejected. Carolina Envtl. Study Group v. United States, 510 F.2d. 796, 800 (D.C. Cir. 1975); Morton, 458 F.2d at 837-38.

⁵ As shown in section 8.3.1 and Figure 8.1 of the GEIS, most of Minnesota is not in an area with adequate wind speeds for generating electricity. NUREG-1437 at 8-17, 8-18.

⁶ The rule of reason governs both which alternatives the agency must discuss and the extent it must discuss them. Citizens Against Burlington v. Busey, 938 F.2d 190, 195 (D.C. Cir.), *cert. denied* 502 U.S. 994 (1991).

NAWO provides no basis to demonstrate that its distributed, wind/bio-fuel combustion hybrid is a reasonable alternative to replace a large base-load facility. It cites no expert opinion and provides no reference to documents or other sources to support the feasibility of replacing large base load capacity with these distributed hybrid facilities. NAWO's sole vague reference to a statutory provision for C-BED (Petition at 3) falls far short of the mark, because legislative encouragement of wind power⁷ does not imply that wind is a reasonable means of providing base-load capacity.

Similarly, NAWO provides no basis indicating that its postulated hybrid facilities are environmentally superior to Monticello's continued operation. As NMC's Environmental Report and the NRC's GEIS state, wind facilities require very large areas of land (and the GEIS also identifies impacts on birds, noise and aesthetics). ER at 7-36; NUREG-1437 at 8-17 to 8-19. Further, the GEIS estimates the capacity factor of wind generation at between 21 to 29 percent. NUREG 1437 at 8-17. Therefore, if Monticello were replaced by NAWO's postulated alternative, most of the replacement power would be provided by bio-fuel combustion. It is hard to imagine – and certainly NAWO has made no showing – that numerous small, community-based combustion facilities providing most of the replacement power would be environmentally superior to the emission-free generation from Monticello.

Similarly, NAWO makes no showing that its postulated hybrid facilities are environmentally superior to alternatives examined in the Environmental Report. The discussion of the gas-fired combined-cycle plant analyzed as an alternative in sections 7.2.2.2 and 7.3.2 of NMC's Environmental Report is based on the Mankato Energy Center being developed by

⁷ The legislation to which NAWO refers defines C-BED as a new wind energy project. 2005 Minn. ALS 97 §§ 216B.1612, 216B.243, 216C. The legislation does not provide for the development of bio-fuel combustion facilities.

Calpine Corporation in Minnesota. See ER at 7-14. In a hearing for the Minnesota Public Utilities Commission and the Environmental Quality Board on this project, the presiding officer found:

The environmental impacts associated with distributed generation, assuming fossil fuel based power, are greater than the impacts potentially associated with the Facility. . . . This is due to the fact that the small size of the distributed generation facilities allows them to escape more stringent air emission requirements associated with a larger facility.

In the Matter of the Application for a Certificate of Need & a Site Permit by Mankato Energy

Ctr., LLC, Docket No. IP-6345/CN-03-1884, Findings of Fact, Conclusions of Law &

Recommendation, ¶ 104 (Minn. PUC, Aug. 20, 2004).⁸ Moreover, because wind is intermittent,

the bio-fuel combustion facilities would presumably have to be able to supply the full 600 MWe of capacity represented by Monticello, in order to be accredited as a baseload energy resource.

Therefore, there is no basis to assume that the construction impacts would be any smaller than the alternatives considered in the Environmental Report. NAWO provides no information to the contrary and thus no basis demonstrating its “new paradigm” is a reasonable alternative that must be considered.

Moreover, NAWO fails to address the decisional standard in this proceeding and thus fails to demonstrate the materiality of this distributed, wind/bio-fuel combustion hybrid scenario. In promulgating its license renewal rules, the Commission considered comments from States expressing concern that NRC decisions on alternative energy sources might infringe upon and interfere with State decision-making on energy planning. 61 Fed. Reg. at 28,471. To avoid

⁸ NMC is not citing this decision to support a ruling on the merits of NAWO’s contention, but simply to underscore the fact that one cannot assume that NAWO’s alternative is reasonable. Rather, it is NAWO’s burden under the NRC rules to provide a basis demonstrating that its contention raises a genuine dispute on a material issue. 10 C.F.R. § 2.309(f)(vi). This NAWO has failed to do.

interfering with energy planning decisions which are the responsibility of the States, the NRC defined the purpose of license renewal as providing an option that allows for power generation capability beyond the term of a current nuclear power plant operating license to meet future system generating needs, as such needs may be determined by the State, utility, and, where authorized, Federal (other than NRC) decision-makers. Id. at 28,472. Consistent with this limited purpose, the NRC defined the standard for considering energy alternatives as one where the NRC must determine if the adverse impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable. Id. Under this standard, the Commission explained:

Given the uncertainties involved and the lack of control that the NRC has in the choice of energy alternatives in the future, the Commission believes that it is reasonable to exercise its NEPA Authority to reject license renewal applications only when it has determined that the impacts of license renewal sufficiently exceed the impacts of all or almost all of the alternatives that preserving the option of license renewal for future decision makers would be unreasonable.

Id. at 28,473.

NMC's Environmental Report analyzes the impacts of a gas-fired generation, coal-fired generation, and purchased power as reasonable alternatives (ER, §§ 7.2 – 7.3), and its analysis of the purchased power alternative incorporates the NRC's discussion of a number of energy alternatives in Chapter 8 of the GEIS. See ER at 7-14, 7-22. This discussion shows that license renewal is an option within the range of alternatives that state decisionmakers would consider. Without any basis demonstrating that license renewal is beyond the range of alternatives that energy planning decision-makers would consider, NAWO's identification of merely another alternative is immaterial (and would remain so even if NAWO had demonstrated its feasibility and environmental superiority – which it did not).

2. Contention 2 (Re Radiation Safety and Monitoring) Is Inadmissible

NAWO's Contention 2, which alleges that there is no safe dose of radiation and that radiation monitoring is not sufficient (Petition at 3), is inadmissible because these topics are outside the scope of this proceeding. Contention 2 is also inadmissible because it is vague and unsupported by any basis demonstrating a genuine issue.

Radiation risk assessment and monitoring are not issues related to the management of the aging or time-limited aging analyses. Thus, the contention represents a challenge to the scope of 10 C.F.R. Part 54, which is limited to these aging-related issues. See Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-01-6, 53 N.R.C. 138, 163-64 (2001), aff'd, CLI-01-17, 54 N.R.C. at 15-16 (holding that a contention alleging that the release of radionuclides and chemicals would endanger the public was unrelated to aging management and therefore outside the scope of a license renewal proceeding).

To the extent that this contention might be construed as raising an issue under NEPA, it similarly represents a challenge to the scope of the environmental review specified in 10 C.F.R. § 51.53(c) and to the NRC's generic environmental findings in the GEIS and Appendix B to C.F.R. Part 51. See id. NAWO's allegations do not relate to any of the matters required to be addressed by 10 C.F.R. § 51.53(c). Instead, to the extent that these allegations may be construed as having any bearing on environmental impacts during the period of extended operation, they relate to generically resolved Category 1 issues. Radiation exposure to the public during the renewal term is a Category 1 issue determined to be small, based on a generic finding that radiation doses to the public will continue at current levels associated with normal operations. 10 C.F.R. Part 51, App. B, Table B-1.

Even if Contention 2 were within the scope of this proceeding – it is not – it would be inadmissible because it is vague and unsupported. NAWO asserts that the most recent BEIR Report indicates that the linear, no threshold model is the appropriate approach to radiation risk assessment (Petition at 3), but provides no explanation as to why this presents any genuine issue. The NRC's Standards for Protection Against Radiation, in 10 C.F.R. Part 20, are based on the linear no-threshold hypothesis. See 56 Fed. Reg. 23,360 (May 21, 1991). Further, the GEIS applied a 4×10^{-4} risk coefficient without any threshold in assessing the radiological impacts of license renewal. See, e.g., NUREG 1437 at 4-98 and E-31 to E-32. NAWO identifies no deficiency in NMC's application, and provides no expert opinion or reference to specific documents, sources or other information sufficient to demonstrate any genuine, material dispute.

Similarly, NAWO's assertion that radiation monitoring at Monticello is not sufficient to establish where radiation releases go (Petition at 3) is unsupported by any basis. As described in its annual Offsite Radiation Dose Assessments⁹ and in accordance with Technical Specification 6.8 of the Monticello operating license, NMC uses an NRC-approved Off-Site Dose Calculation Manual ("OCDM") to calculate the doses resulting from monitored releases. This modeling calculates the dispersion of releases based on local meteorology and site conditions. In addition, as described in the Updated Safety Analysis Report ("USAR")¹⁰ for Monticello and in the Annual Radiological Environmental Operating Report,¹¹ NMC conducts a Radiation Environmental Monitoring Program which includes 14 thermo-luminescent dosimeters ("TLDs")

⁹ Letter from T. Palmisano to U.S. NRC, "2004 Radioactive Effluent Report," Encl. 2 (May 9, 2005) (ML051360163).

¹⁰ USAR, § 2.7.

¹¹ Letter from T. Palmisano to U.S. NRC, "2004 Annual Radiological Environmental Operating Report" (Apr. 29, 2005) (ML051250473).

around the perimeter of the plant, another 16 TLDs in a ring approximately 5 miles from the plant, 5 locations for sampling airborne particulates, milk sampling at three farms, collection of vegetables, well and river monitoring, weekly drinking water samples from the City of Minneapolis water supply, and monitoring of fish, invertebrates and shoreline sediments.¹² NAWO provides no discussion of this information readily available on the docket, and provides no basis to question the adequacy of Monticello's radiation monitoring programs.

3. Contention 3 (Re Security) Is Inadmissible

NAWO's Contention 3, which alleges that security is not sufficient (Petition at 3), is inadmissible because it is outside the scope of this proceeding. Security issues are simply not among the aging-related questions considered in a license renewal proceeding. Millstone, CLI-04-36, 60 N.R.C. at 638.

Further, NAWO Contention 3 focuses on certain terrorist threats, and the Commission has specifically ruled that "contentions related to terrorism are beyond the scope of the NRC Staff's safety review under the Atomic Energy Act and this [license renewal] proceeding." McGuire, CLI-02-26, 56 N.R.C. at 363. Terrorism contentions "are, by their very nature, directly related to security and are, therefore, under our rules, unrelated to 'the detrimental effects of aging.'" Id. at 364. Thus, such contentions "are beyond the scope of, not 'material' to, and inadmissible in, a license renewal proceeding." Id.

To the extent that this contention could be construed as raising an issue under NEPA, it is again outside the scope of this proceeding. First, terrorism is not within the scope of any of the NEPA issues that must be addressed in this proceeding pursuant to 10 C.F.R. § 51.53(c).

¹² See id., § 3.2

Second, the Commission has explicitly ruled “that NEPA imposes no legal duty on the NRC to consider intentional malevolent acts, such as the [September 11, 2001, attacks] on a case-by-case basis in conjunction with commercial power reactor license renewal applications.” McGuire, CLI-02-26, 56 N.R.C. at 365. More generally, the Commission has held that terrorism is not cognizable under NEPA. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 N.R.C. 340, 357 (2002); Dominion Nuclear Connecticut, Inc. (Millstone Power Station, Unit 3), CLI-02-27, 56 N.R.C. 367 (2002).

NAWO’s Contention 3 is also inadmissible because it lacks any basis. NAWO identifies no expert opinion and refers to no documents or sources to support its claims.

4. Contention 4 (Re Aging Problems Escaping Detection) Is Inadmissible

NAWO’s Contention 4 is inadmissible because it is vague and speculative, and unsupported by any basis. NAWO alleges that the application does not contain adequate assurance that all components needing to be inspected and maintained will actually be subject to inspection and maintenance in a timely manner. Petition at 4. NAWO does not identify any required component that has been omitted from NMC’s application. NAWO does not identify any aging management program alleged to be inadequate. NAWO does not provide any basis to assume that NMC will fail to implement the programs specified in its application, and indeed, a contention that presupposes regulatory violations without some particularized demonstration is inadmissible. Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), LBP-99-25 50 N.R.C. 25, 34 (1999) citing General Public Utilities Nuclear Corp. (Oyster Creek Nuclear Generating station), LBP-96-23, 44 N.R.C. 143, 164 (1996).

NAWO's reference to the Davis-Besse corrosion episode is inapplicable to Monticello. The Davis-Besse reactor head was corroded by boric acid leakage, but boiling water reactors like Monticello do not borate the reactor coolant. Further, Davis-Besse is operated by a different company than NMC, and the actions of another company have no bearing on NMC's performance.

Further, NAWO identifies no expert opinion supporting its contention. It provides no reference to specific documents, sources or other information sufficient to demonstrate any genuine, material dispute.

5. Contention 5 (Re Drinking Water) Is Inadmissible

Contention 5, which alleges that the drinking water supply is not adequately safeguarded and remediation plans do not exist (Petition at 5), is inadmissible because it is beyond the scope of this proceeding. It is also inadmissible because it lacks any basis demonstrating the existence of a genuine dispute on a material issue.

Contention 5 is not related to the management of aging and therefore fails to raise a safety issue within the scope of this proceeding. Similarly, Contention 5 does not raise any issue within the scope of the Category 2 issues required to be addressed by 10 C.F.R. § 51.53(c)(3) and therefore fails to raise an environmental issue within the scope of this proceeding. Radiation exposure to the public during the renewal term is a Category 1 issue determined to be small, based on a generic finding that radiation doses to the public will continue at current levels associated with normal operations. 10 C.F.R. Part 51, App. B, Table B-1. Similarly, the risk

from design basis and severe accidents are Category 1 issues determined to be small for all plants.¹³ Id. Challenges to these generic findings are barred, absent a waiver of the NRC's rules.

Instead, Contention 5 appears to relate primarily to emergency preparedness (i.e., to the ability to interdict and remediate a release if there were an event). As stated by the Commission when it first promulgated 10 C.F.R. Part 54, "the Commission concludes that the adequacy of existing emergency preparedness plans need not be considered anew as part of issuing a renewed operating license." 56 Fed. Reg. 64,943, 64,967 (Dec. 13, 1991). See also Turkey Point, CLI-01-17, 54 N.R.C. at 9; Millstone, CLI-04-36, 60 N.R.C. at 640.

Further, there is no basis to assume that the plant design to prevent releases or NMC's programs protecting the water supply in the event of an accident are inadequate. The emergency plan for Monticello includes measures such as closure of water intakes that would be recommended by NMC and taken by the State and supporting agencies if needed.¹⁴ NAWO provides no expert opinion and no reference to any specific documents, sources or other information demonstrating any genuine issue with respect to NMC's and the State's ability to protect the drinking water.

6. Contention 6 (Re Global Warming) Is Inadmissible

NAWO's Contention 6, which alleges inadequate accounting of reactor operating parameters in the era of global warming (Petition at 5), is inadmissible because it is outside the scope of this proceeding. It is also inadmissible because it is vague and unsupported by a basis demonstrating the existence of any genuine, material issue.

¹³ The assessment of accident risk in the GEIS considered dose from fallout onto bodies of water and possible releases to groundwater. See NUREG-1437, §§ 5.3.3.3 and 5.3.3.4.

¹⁴ Monticello Nuclear Generating Plant, Emergency Plan, Rev. 26 (Feb. 2005), §§ 5.5.10, 5.5.11 and Table 6.0-3.

At the outset, it is unclear whether Contention 6 is intended to raise a safety or an environmental issue. NAWO does not identify any portion of Integrated Plant Assessment or any portion of the Environment Report that is alleged to be deficient, or otherwise explain how global warming affects any particular section of the application.¹⁵ NAWO also does not identify what operating parameters will be affected.¹⁶ By itself, this vagueness makes the contention inadmissible.

If Contention 6 is intended to raise a safety issue, it is beyond the scope of this proceeding because it does not relate to the management of the aging. NAWO does not identify any deficiency in any of NMC's aging management programs or in any of the evaluations of time-limited aging analyses. If Contention 6 is intended to raise an environmental issue, it is beyond the scope of this proceeding because there is no apparent connection to any of the Category 2 environmental issues required to be addressed by 10 C.F.R. § 51.53(3)(c).

Further, Contention 6 is entirely unsupported. NAWO does not provide any expert opinion on which it intends to rely. It does not provide any references to specific documents or sources supporting its position. It does not provide one whit of support for its assertion that climatic alterations have impacted nuclear operations in Europe. It provides no explanation of how reactor operations would be affected, or how such affect is material to the issues within the scope of this proceeding. It provides no explanation of how any environmental impact within the

¹⁵ To be admissible at this stage of the proceeding, a contention must dispute a specific portion of the application or, if the petitioner believes that the application fails to contain information on a relevant matter, identify each such failure and the supporting reasons. 10 C.F.R. § 2.309(f)(1)(vi). See also Turkey Point, CLI-01-17, 54 N.R.C. at 24-25 (contentions must be based on applicant's application and environmental report).

¹⁶ It is possible that Contention 6 is challenging whether the Mississippi will remain a suitable ultimate heat sink for the plant. This is not an aging issue within the scope of this proceeding. In any event, NAWO does not explain how there would be any safety issue. The Monticello USAR establishes an operational limit of 90 °F on the service water temperature. USAR, § 5.2.3.2.4.

scope of license renewal would be affected.¹⁷ In sum, NAWO provides no information showing that there is a genuine dispute concerning a material issue.

7. Contention 7 (Re Severe Accident Mitigation) Is Inadmissible

Contention 7, which alleges that severe accident mitigation analysis is not adequate (Petition at 5), is inadmissible because it is vague and unsupported, and fails to establish a genuine dispute over a material issue. Further, it appears that Contention 7 is really focused on emergency preparedness, which is clearly beyond the scope of this proceeding.

NAWO's discussion of Contention 7 states that "[l]ack of discussion regarding drinking water impacts on the Twin Cities is indicative of the Application's shallow preparedness for severe accident scenarios." Petition at 6-7 (emphasis added). Emergency "preparedness" is not within the scope of this proceeding. Turkey Point, CLI-01-17, 54 N.R.C. at 9.; Millstone, CLI-04-36, 60 N.R.C. at 640. Similarly, NAWO alleges that there is no reason to believe that public notification of an event will occur in a timely manner, questions what criteria will apply to determine if public notice is warranted, and suggests that an evacuation might direct the public into a radioactive plume. Again, all of these allegations relate to emergency preparedness and are therefore beyond the scope of the proceeding.

NAWO makes no attempt to relate any of these allegations to NMC's analysis of severe accident mitigation alternatives ("SAMAs"). NAWO does not identify any portion of that analysis as being deficient. Indeed, in the discussion of Contention 7, the only reference to

¹⁷ It should be noted that Monticello includes cooling towers and the capability to operate in open cycle, helper cycle, partial recirculation, and closed cycle modes. See ER at 3-4 to 3-8. The National Pollution Discharge Elimination System ("NPDES") permit for the facility places limits on the thermal discharges from the facility and requires helper cycle, partial circulation or closed cycle operation when river temperature or flow reach certain limits. *Id.* at 3-7 to 3-8. The adequacy of these limitations is beyond the NRC's jurisdiction. Section 511(c) of the

Footnote continued on next page

NMC's SAMA analysis is a vague and conclusory assertion that the analysis in the application is lacking in depth and thoroughness. Petition at 5. NAWO makes no attempt to discuss the 143-page discussion of the SAMA analysis in NMC's Environmental Report, or any of the numerous alternatives that were considered. See ER, Att. F.

Moreover, if NAWO is suggesting that the SAMA analysis did not consider the risk from the drinking water pathway, its suggestion is baseless. The Environmental Report references NUREG/CR-6613, Vol. 1, "Code Manual for MACCS2: User's-Guide" (1998), in identifying the code that was used to produce the level 3 probabilistic safety assessment for Monticello (i.e., to model consequences). ER at F-13, F-119. This User's-Guide referenced in the application clearly indicates that the model includes water ingestion. See NUREG/CR-6613. Vol. 1, at 2-3, 2-10 (Table 2-3). See also NUREG/CR-4691, Vol. 2, MELCOR Accident Consequence Code System (MACCS), Model Description (Feb. 1990) at 1-7 ("MACCS models seven exposure pathways . . . [including] ingestion of contaminated water (water ingestion)"). As stated in the GEIS, "MACCS is the consequence code currently supported by the NRC for estimating consequences associated with severe reactor accidents." NUREG-1437 at 5-44.

NAWO provides no basis to suggest any deficiency in this model. NAWO does not identify any expert opinion or refer to any document, source, or other information indicating that there is any genuine issue at all with respect to the sufficiency of the MACCS2 code.

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Clean Water Act, 33 U.S.C. § 1371(c)(2), prohibits the NRC from using NEPA to review any effluent limitation or requirement established under that Act.

In sum, dressing up emergency preparedness as a SAMA contention does nothing to make these issues admissible. Emergency preparedness is simply beyond the scope of this proceeding, and NAWO has provided no basis to question the sufficiency of the SAMA analysis.

V. SELECTION OF HEARING PROCEDURES

NAWO has not addressed the selection of hearing procedures, as permitted by 10 C.F.R. § 2.309(g).¹⁸ Accordingly, any hearing should be governed by the procedures of Subpart L.

VI. CONCLUSION

For the reasons stated above, NAWO has failed to demonstrate standing and has failed to offer any admissible contention in this proceeding. Therefore, its Request for Hearing and Petition to Intervene should be denied.

Respectfully Submitted,



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Dated: August 3, 2005

¹⁸ Pursuant to 10 C.F.R. § 2.309(g), a petitioner who relies on 10 C.F.R. § 2.310(d) – i.e., a petitioner seeking to have a proceeding conducted under the Subpart G procedures – has the burden of demonstrating “by reference to the contention and bases provided and the specific procedures in Subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures.”

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of)
)
Nuclear Management Company, et al.) Docket No. 50-263-LR
)
(Monticello Nuclear Generating Plant))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Nuclear Management Company's Answer to the Request for Hearing and Petition to Intervene by the North American Water Office," dated August 3, 2005, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 3rd day of August, 2005.

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