

September 2, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
NUCLEAR MANAGEMENT)	Docket No. 50-255-LR
COMPANY, LLC)	
)	ASLBP No. 05-842-03-LR
(Palisades Nuclear Plant))	

NRC STAFF ANSWER OPPOSING
PETITION TO INTERVENE AND REQUEST FOR HEARING

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the U.S. Nuclear Regulatory Commission Staff (“Staff”) hereby answers the Request for Hearing and Petition to Intervene of the Nuclear Information and Resource Service (“NIRS”), West Michigan Environmental Action Council (“WMEAC”), Don’t Waste Michigan (“DWM”), the Green Party of Van Buren County (“Green Party”), the Michigan Land Trustees (collectively, “Organizational Petitioners”), and several individuals (collectively, “Individual Petitioners”). As set forth below, although Organizational and Individual Petitioners have shown standing to intervene in this proceeding, they have not proffered an admissible contention. Thus, the Petition should be denied.

BACKGROUND

By letter dated March 22, 2005, Nuclear Management Company, LLC (“NMC”) submitted an application for renewal of Operating License No. DPR-20 for the Palisades Nuclear Plant for an additional 20 years.¹ The current operating license for the Palisades plant expires March 24, 2011.

¹ See Letter from Daniel J. Malone, Site Vice President, Palisades Nuclear Plant, [NMC], to U.S. NRC (Mar. 2, 2005) (Agencywide Documents and Access Management System (“ADAMS”) Accession No. ML050940434).

On June 8, 2005, the NRC published a notice of acceptance for docketing and opportunity for hearing regarding the license renewal application.² On August 8, 2005, Petitioners jointly filed a Request for Hearing and Petition to Intervene on NMC's license renewal application.³

DISCUSSION

A. Petitioners' Standing

1. Legal Requirements for Standing

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that he or she has standing to do so. Section 189a.(1)(A) of the Atomic Energy Act of 1954, as amended ("AEA" or "Act"), 42 U.S.C. § 2239(a)(1)(A), states:

In any proceeding under this Act, for the granting, suspending, or amending of any license . . . , the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

The Commission's regulations in 10 C.F.R. § 2.309(d)(1) provide that a request for hearing or petition to intervene must state:

- (i) The name, address and telephone number of the 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; and

² See [NMC], Palisades Nuclear Plant; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. DPR-20 for an Additional 20-Year Period, 70 Fed. Reg. 33,533 (June 8, 2005).

³ See Request for Hearing and Petition to Intervene (Aug. 8, 2005) ("Petition"). The Petition was served upon the Staff by e-mail at 11:57 p.m. on August 8, 2005. The Staff notes that Petitioners failed to serve an original and two copies on the Secretary of the Commission by mail within two days of filing by electronic mail as required by 10 C.F.R. § 2.304(f). The Secretary has in the past rejected petitions to intervene that were deficient for failing to comply with these requirements, based on the authority set forth at 10 C.F.R. § 2.304(g). See, e.g., Letter from Annette L Vietti-Cook to Mr. Mitchell "Mickey" J. Maricque (June 25, 2004) (ADAMS Accession No. ML041810651).

(iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

Additionally, the relevant case law provides that, to attain standing, a petitioner must demonstrate 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) the injury can fairly be traced to the challenged action; and
- (3) the injury is likely to be redressed by a favorable decision.

See, e.g., Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

To establish standing, there must be an "injury in fact" that is either actual or threatened. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) (citing *Wilderness Soc'y v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987)). The injury must be "concrete and particularized," not "conjectural" or "hypothetical." *Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). As a result, standing will be denied when the threat of injury is too speculative. *Id.* Furthermore, the alleged "injury in fact" must lie within the "zone of interests" protected by the statutes governing the proceeding; either the AEA or the National Environmental Policy Act ("NEPA"). *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998), *aff'd sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999).

Further, a petitioner must also establish a causal nexus between the alleged injury and the challenged action. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), LBP-98-27, 48 NRC 271, 276 (1998), *aff'd*, CLI-99-4, 49 NRC 185 (1999). A determination that the injury is fairly traceable to the challenged action, however, does not depend "on whether the

cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible.” *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75. Finally, the redressability element of standing requires a petitioner to show that its claimed actual or threatened injury could be cured by some action of the decisionmaker. *Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning)*, CLI-01-2, 53 NRC 9, 14 (2001).

An organization may satisfy the standing criteria of 10 C.F.R. § 2.309(d)(1) based either on its own interests or that of its members. To establish “organizational standing,” the organization must allege with particularity that the proposed action will cause an “injury in fact” to the organization itself, with respect to its own organizational interests. The asserted “injury” to the organization must meet the three-part judicial test for the standing of a “person.” See *Houston Lighting & Power Co. (South Texas Project, Units 1 & 2)*, ALAB-549, 9 NRC 644, 646 (1979) and discussion *supra* at 3.

Alternatively, an organization can plead standing based on representing its members’ interests (“representational standing”). To do this, it must demonstrate that at least one individual member has standing to participate, in accordance with a three-part judicial test. *Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1)*, ALAB-535, 9 NRC 377, 390-94 (1979). The organization must: (1) identify at least one of its members by name and address; (2) demonstrate how that member may be affected by the licensing action; and (3) show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member. *Yankee Atomic Elec. Co. (Yankee Nuclear Power Station)*, LBP-98-12, 47 NRC 343, 354, *aff’d in part, rev’d in part*, CLI-98-21, 48 NRC 185 (1998).

2. Individual Petitioners Have Demonstrated Standing to Intervene in this Proceeding.

The Petition states that:

Members of these organizations who live or have property and family within the 50-mile Emergency Planning Zone (EPZ) including the immediate area around [Palisades] which is sited in Covert, Michigan have requested [NIRS, WMEAC, DWM, the Green Party], and the Michigan Land Trustees to represent them and their respective interests in this proceeding.

Petition at 3. Each of the Individual Petitioners purports to live within 50 miles of the Palisades plant and has attached to the Petition a declaration which states that “the continued operation of this nuclear power station could reasonably pose a grave risk to my health and safety.”

Petition at Declarations. “In particular, I am concerned that if a nuclear accident or terrorist attack involving the atmospheric release of radiological material were to occur, I and my family could be killed or become very ill.” *Id.*

Individual Petitioners fail to establish that they have suffered any concrete or particularized injury caused by the challenged action that would be redressed by a favorable decision. However, under the long-recognized “proximity presumption” principle, an individual petitioner, or a member of an organization, may base its standing upon a showing that his or her residence, or that of its members, is within the geographical area that might be affected by an accidental release of fission products. This approach “presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity. *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-6, 53 NRC 138, 146 (2001), *aff’d on other grounds*, CLI-01-17, 54 NRC 3 (2001). The Commission’s general rule of thumb in reactor licensing proceedings (that persons who reside or frequent the area within a 50-mile radius of

the facility are presumed to have standing) has also been applied to license renewal proceedings. *See Id.* at 148-49. Based on the “proximity presumption” principle, although the Individual Petitioners failed to demonstrate injury, causation, and redressability, they are nevertheless presumed to have standing based on their proximity of residences being within 50 miles of the Palisades plant.

3. Organizational Petitioners Have Demonstrated Standing to Intervene.

Organizational Petitioners state the following with respect to their interests in this proceeding:

[NIRS] is a nonprofit corporation with over 6000 members, a number of whom live in the Great Lakes Region of the United States, including over 100 in Michigan and 50 of whom make their residences within fifty (50) miles of [Palisades].

...

[WMEAC] has 1500 members, most of whom live in Michigan, and an estimated 400 to 500 live within 50 miles of the Palisades nuclear plant.

...

[DWM] is a nonprofit organization . . . with about 25 members, nearly all of whom live in Michigan, and of which an estimated 5 currently live within 50 miles of the Palisades nuclear plant.

...

[The Green Party] has a membership of approximately 15 members, all of whom are residents of Van Buren County, Michigan, and all of whom reside within 50 miles of the Palisades nuclear plant.

...

Michigan Land Trustees . . . is an association of 60 to 70 individuals and families dedicated to preserving and protecting farm land in Michigan. Most of its members reside in southwest Michigan, at least 15 of whom live within the 50-mile zone around the Palisades nuclear reactor.

...

Members of these organizations who live or have property and family within the 50-mile Emergency Planning Zone (EPZ) including the immediate area around [Palisades] which is sited in Covert, Michigan have requested [NIRS, WMEAC, DWM, the Green Party], and the Michigan Land Trustees to represent them and their respective interests in this proceeding.

...

[Organizational Petitioners], as organizational intervenors, believe that their members' interests will not be adequately represented without this action to intervene, and without the opportunity to participate as full parties in this proceeding. If the [Palisades] license is renewed without resolving the [Organizational Petitioners'] safety concerns and environmental issues, this nuclear generating station may operate unsafely and pose an unacceptable risk to the environment, thereby jeopardizing the health and welfare of the respective [Organizational Petitioners'] members who live, recreate and have businesses within the vicinity of the nuclear power reactor.

Petition at 2-4. As stated above, there are two means for an organization to demonstrate standing in an NRC adjudicatory proceeding. First, an organization may assert injury to its organizational interests and demonstrate that these interests are protected by the AEA or NEPA. See *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 529-30 (1991). Or, second, an organization may base standing on the interests of members that it represents. *Id.* at 530-31. Organizational Petitioners have established standing based only on representation of their members.

a. Organizational Petitioners Have Failed to Demonstrate they Have Organizational Standing.

With respect to their organizational interests, Organizational Petitioners have not satisfied the requirement to demonstrate an "injury in fact." In their Petition, Organizational Petitioners state that "their members' interests will not be adequately represented without this action to intervene, and without the opportunity to participate as full parties in this proceeding." Petition at 3. They further state that if their safety concerns and environmental issues are not resolved before renewing the Palisades license, the plant "may operate unsafely and pose an unacceptable risk to the environment, thereby jeopardizing the health and welfare of the

respective Organizational Intervenors' members who live, recreate and have businesses within the vicinity of the nuclear power reactor." Petition at 4.

Generalized concerns, such as these, do not result in any distinct and palpable harm that is sufficient to confer standing. See *Metro. Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, CLI-83-25, 18 NRC 327, 333 (1983). For an organization to have standing to participate in an adjudicatory proceeding, it must demonstrate more than a desire to vindicate its "own value preferences." See *Sierra Club*, 405 U.S. at 740. It must show that it has itself suffered an injury and thus has "a direct stake in the outcome." *Id.* at 738, 740. Organizational Petitioners' recitation of their generalized environmental and safety concerns amounts to a mere expression of an "interest" in a problem, which is insufficient to confer standing. *Id.* at 739; Petition at 4. Organization Petitioners do not evidence that any harm would be directly experienced by the organizations and do not demonstrate that any of the Organizational Petitioners have any real and actual "stake in the outcome." See *Sierra Club*, 405 U.S. at 738, 740. Further, Organizational Petitioners have not alleged any tangible "injury in fact" to any of their organizational interests that is fairly traceable to the license renewal application. The concerns articulated by Organizational Petitioners are thus insufficient to establish their "interest in the proceeding" under 10 C.F.R. § 2.309(d)(1). For these reasons, NIRS, WMEAC, DWM, the Green Party, and the Michigan Land Trustees have each failed to establish organizational standing.

b. Organizational Petitioners Have Demonstrated Representational Standing.

Organizational Petitioners have established representational standing. To demonstrate standing based on the interests of its members, a group must show that the licensing action it challenges may injure the group or someone the group is authorized to represent. *Int'l Uranium (USA) Corp. (White Mesa Uranium Mill)*, LBP-97-14, 46 NRC 55, 56 (1997). The organization

must identify at least one member by name and address, demonstrate how that member's interests may be affected, and show that the group is authorized to request a hearing on behalf of that member. *Yankee Rowe*, LBP-98-12, 47 NRC at 354-55. The Petition makes this showing by identifying the names and addresses of members who will be affected by issuance of a renewed license. Furthermore, Organizational Petitioners have demonstrated that affected members have authorized each of their respective organizations to represent them in this proceeding by attaching declarations to the Petition. See Petition at 3. As discussed above, the Petition demonstrates the requisite element, that any member would have standing in his or her own right based on the proximity presumption. For these reasons, Organizational Petitioners have satisfied the requirements necessary to establish representational standing. Accordingly, Organizational Petitioners have met the requirements for standing to intervene in this proceeding.

B. Petitioners' Proposed Contentions

Even though Organizational and Individual Petitioners have demonstrated standing to intervene pursuant to 10 C.F.R. § 2.309(d)(1), they have nonetheless failed to submit an adequate petition, because they have failed to proffer any admissible contentions.

1. Legal Standards Governing the Admission of Contentions

To gain admission to a proceeding as a party, in addition to satisfying the criteria for standing, a petitioner must submit at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f). See 10 C.F.R. § 2.309(a). This regulation requires a petitioner to:

- (i) Provide a specific statement of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;

- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
- (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information 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).⁴ The Commission has emphasized that its rules on contention admissibility establish an evidentiary threshold more demanding than a mere pleading requirement and are “strict by design.” *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001). Failure to comply with any of these requirements is grounds for dismissing a contention. *See Private Fuel Storage*, CLI-99-10, 49 NRC at 325.

The contentions should refer to the specific documents or other sources of which the petitioner is aware and upon which he or she intends to rely in establishing the validity of the contentions. *Millstone*, CLI-01-24, 54 NRC at 358 (citing *Duke Energy Corp.* (Oconee Nuclear

⁴ Although the Commission recently revised its Rules of Practice in 10 C.F.R. Part 2, the provisions of § 2.309 “incorporate the longstanding contention support requirements of former § 2.714—no contention will be admitted for litigation in any NRC adjudicatory proceeding unless these requirements are met.” Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,221 (Jan. 14, 2004).

Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 333 (1999)). The petitioner must submit more than “bald or conclusory allegation[s]” of a dispute with the applicant. *Id.*

Furthermore, the scope of a license renewal proceeding is limited, in both the safety and environmental contexts. Review of safety issues is limited to “a review of the plant structures and components that will require an *aging* management review for the period of extended operation and the plant’s systems, structures and components that are subject to an evaluation of time-limited *aging* analyses.” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-26, 56 NRC 358, 363-64 (2002) (citations omitted) (emphasis in original). *See also Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), LBP-04-15, 60 NRC 81, 90 (2004), *aff’d*, CLI-04-36, 60 NRC 631 (2004); *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-14, 48 NRC 39, 41 (1998); 10 C.F.R. §§ 54.4, 54.21(a) and (c).

The scope of the environmental review is limited in accordance with 10 C.F.R. §§ 51.71(d) and 51.95(c). *See Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 11-13 (2001). As reflected in *Turkey Point*, consideration of environmental issues in the context of license renewal proceedings is specifically limited by 10 C.F.R. Part 51 and by the NRC’s “Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants” (NUREG-1437) (“GEIS”). *Id.* A number of environmental issues potentially relevant to license renewal are classified in 10 C.F.R. Part 51, Subpart A, Appendix B as “Category 1” issues, which means that “the Commission resolved the[se] issues generically for all plants and those issues are not subject to further evaluation in any license renewal proceeding.” *Turkey Point*, LBP-01-06, 53 NRC at 152-53, *aff’d*, CLI-01-17, 54 NRC 3. The remaining issues in Appendix B, designated as “Category 2,” must be addressed by the Applicant in its environmental report,

and in the NRC's supplemental environmental impact statement for the facility at issue pursuant to 10 C.F.R. §§ 51.71(d) and 51.95(c). *Id.*

2. Petitioners Have Not Proffered a Valid Contention.

For the reasons set forth below, none of Petitioners' twelve proffered contentions is admissible.⁵

Petitioners' Proposed Contention 1:

The license renewal application is untimely and incomplete for failure to address the continuing crisis of embrittlement.

Basis: The Palisades license renewal application is deficient for not adequately addressing technical and safety issues arising out of the embrittlement of the reactor pressure vessel and unresolved Pressure Thermal Shock ("PTS") concerns that might reasonably result in the failure of the reactor pressure vessel ("RPV").

Petition at 4.

Staff Response to Proposed Contention 1:

Proposed Contention 1 is inadmissible. This proposed contention lacks basis, support and specificity, is outside the scope of license renewal proceedings, is immaterial, and fails to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i)-(vi) and (f)(2). Therefore, Proposed Contention 1 fails to meet the Commission's pleading requirements articulated in 10 C.F.R. Part 2.

As an initial matter, this proposed contention makes generic statements that are unsupported by any documentary evidence or affidavit by an expert witness. Petition at 4. Petitioners state that "[t]he Palisades nuclear power station is identified as prone to early

⁵ The Petition sets forth two proposed contentions as "Miscellaneous Contention" number 8. Thus, although the proposed contentions are numbered up to number 11, there are in fact twelve proffered contentions. For the purposes of this brief, Petitioners' second Miscellaneous Contention (regarding environmental justice) will be referred to as proposed contention 9, and the following proposed contentions will follow sequentially.

embrittlement of the reactor pressure vessel,” but fail to provide references to supporting evidence or to relevant portions of NMC’s application. *Id.*; See 10 C.F.R. §§ 2.309(f)(1)(v)-(vi) and (f)(2). Failing to cite deficiencies in NMC’s application also causes Petitioners to fall short of the Commission’s requirement that an admissible contention must include a demonstration that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

Furthermore, Proposed Contention 1 is beyond the scope of this proceeding because it raises issues that are subject to regulations independent of license renewal. See 10 C.F.R. § 2.309(f)(1)(iii). Fracture toughness requirements for protection against pressurized thermal shock (“PTS”) events are set forth in 10 C.F.R § 50.61, which specifies PTS screening criteria and provides options for licensees to meet PTS requirements if the PTS screening criteria are expected to be exceeded. Moreover, the Commission does not allow a reactor to operate if the 10 C.F.R § 50.61 requirements are not met. In *Turkey Point*, the Commission held that safety issues that are “effectively addressed and maintained by ongoing agency oversight, review and enforcement” need not “be re-examined within the context of license renewal.” CLI-01-17, 54 NRC at 9. The Commission explained that it focuses its renewal review “on plant systems, structures, and components for which current [regulatory] activities and requirements may not be sufficient to manage the effects of aging in the period of extended operation.” *Id.* (citing Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,469 (May 8, 1995)). Since 10 C.F.R. § 50.61 sets forth current regulations regarding PTS requirements, this topic is subject to the Commission’s ongoing review, and is beyond the scope of this license renewal proceeding. Based on the above discussion, Proposed Contention 1 is inadmissible.

Petitioners' Proposed Contention 2:

Excessive radioactive and toxic chemical contamination in local drinking water due to emissions from Palisades nuclear power plant as part of its daily, "routine" operations.

Basis: The radioactive and toxic chemical emissions from the Palisades nuclear power plant into the waters of Lake Michigan contaminate the recently-installed drinking water supply intake for the City of South Haven, built just offshore from Van Buren State Park and just downstream from the Palisades reactor, due to the direction of the flow of Lake Michigan's waters and the very close proximity of the Palisades reactor to the South Haven drinking water supply intake.

Petition at 4-5.

Staff Response to Proposed Contention 2:

Proposed Contention 2 is inadmissible. This proposed contention lacks basis and support, is beyond the scope of this proceeding, is immaterial, and fails to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i)-(vi). Therefore, Proposed Contention 2 fails to meet the Commission's pleading requirements articulated in 10 C.F.R. Part 2.

This contention is vague and lacking in the required supporting information. Proposed Contention 2 alludes to "radioactive and toxic chemical emissions" from the Palisades plant into Lake Michigan, but fails to provide the specific factual information necessary to provide a valid basis for any safety claim. See 10 C.F.R. § 2.309(f)(1)(ii), (v)-(vi), and (f)(2); *Millstone*, CLI-01-24, 54 NRC at 358 (citing *Oconee*, CLI-99-11, 49 NRC at 333). Petitioners have the obligation to include "references to the specific portions of the application (including the applicant's environmental report . . .) that the petitioner disputes and the supporting reasons for each dispute[.]" *Dominion Nuclear Conn., Inc.* (Millstone Power Station, Unit 2), LBP-03-12, 58 NRC 75, 82, *aff'd*, CLI-03-14, 58 NRC 207 (2003). Petitioners' assertions regarding the alleged contamination of Lake Michigan and the recently-installed drinking water supply intake

for the City of South Haven are generalized and unsupported arguments. In fact, Petitioners even admit their lack of support when stating that they “*hope to produce* public records of toxics and radiation testing of the water source to evidence this public health problem.” Petition at 5 (emphasis added). An unsupported contention cannot be admitted on the notion that the discovery process will uncover some basis for it. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, fn. 17 (2001). Since Petitioners have failed to follow the Commission’s basic pleading requirements, Proposed Contention 2 is inadmissible.

Petitioners’ Proposed Contention 3:

The Palisades reactor has no place to store its overflowing irradiated nuclear fuel inventory within NRC regulations.

Basis: The outdoor dry cask storage pads at Palisades, both the older one nearer Lake Michigan and the newer one further inland, are in violation of NRC earthquake regulations (10 C.F.R. § 72.212(b)(2)(i)(B)). The older pad violates the liquefaction portion of this regulation, and the new pad violates the amplification portion of the regulation. Petitioners contend that neither the older nor new dry cask storage pads at the Palisades plant were designed in consideration of the factors contained in the cited regulation.

Petition at 5.

Staff Response to Proposed Contention 3:

Proposed Contention 3 is inadmissible. This proposed contention lacks basis and support, is beyond the scope of this proceeding, is immaterial, fails to establish that a genuine dispute exists on a material issue of law or fact, and effectively amounts to an impermissible attack on the Commission’s regulations. See 10 C.F.R. §§ 2.309(f)(1)(i)-(vi), 2.335(a). Therefore, Proposed Contention 3 fails to meet the Commission’s pleading requirements articulated in 10 C.F.R. Part 2.

Petitioners lack the requisite basis and support for their claim, highlighted by the fact that they have not produced any affidavits or other evidence as to the opinion of their “anticipated expert.” Petition at 5. Additionally, Petitioners quote 10 C.F.R. Part 72 regulations, “Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.” This Part of the Commission’s regulations has no relation to license renewal, and by citing it, Petitioners effectively demonstrate that spent fuel storage is outside the scope of this proceeding. See 10 C.F.R. § 2.309(f)(1)(iii).

Furthermore, since spent fuel storage is a Category 1 issue addressed in the GEIS and codified in Appendix B to 10 C.F.R. Part 51, Subpart A, Petitioners’ proposed contention constitutes an impermissible attack on the Commission’s regulations. See 10 C.F.R. § 2.335(a). This proposed contention also impermissibly challenges the Commission’s regulations, particularly the Waste Confidence Rule found at 10 C.F.R. § 51.23(a), which states that “[t]he Commission has made a generic determination that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation . . . of that reactor at its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations.” See 10 C.F.R. § 2.335(a); see *Turkey Point*, LBP-01-6, 53 NRC at 161 and discussion *supra* at 21. Therefore, 10 C.F.R. § 51.53(c)(2) provides that the applicant need not discuss spent fuel storage in its environmental report. See *Turkey Point*, LBP-01-6, 53 NRC at 161. Considering the foregoing discussion, Proposed Contention 3 is inadmissible.

Petitioners’ Proposed Contention 4:

The unloadable, unmovable dry storage cask #4 at Palisades.

Basis: Consumers Energy has failed to unload a cask that was admitted to having faulty welds in 1994, despite assurances made

to a federal district judge that if it encountered problems with loaded dry casks at Palisades, it would reverse the loading procedure and return the high-level radioactive waste to the storage pools. The significance of this problem with cask #4 is considerable because the configuration of the 18 to 19 dry casks currently stored on the older pad is such that the casks furthest back cannot be moved or unloaded until all other casks in front of them have been moved out of the way first. This configuration increases the risks, making it very difficult to address emergencies involving certain casks in the configuration in a timely manner.

Petition at 5.

Staff Response to Proposed Contention 4:

Proposed Contention 4 is inadmissible. This proposed contention lacks basis and support, is beyond the scope of this proceeding, is immaterial, and fails to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i)-(vi). Therefore, proposed Contention 4 fails to meet the Commission's pleading requirements articulated in 10 C.F.R. Part 2.

Petitioners generically speculate that "Consumers has yet to unload the defective cask, because it cannot." Petition at 5. Proposed Contention 4 lacks basis and support in that Petitioners offer no evidence or expert opinion with which to substantiate their claim. Nor have they provided support for the other assertions in the proposed contention. Such "'bald or conclusory allegations' of a dispute with the applicant" do not satisfy the Commission's pleading requirements found in 10 C.F.R. § 2.309(f)(1)(vi). *Millstone*, CLI-03-14, 58 NRC at 216. This proposed contention also raises issues outside the scope of this proceeding in two aspects. First, it asserts that "Consumers perpetrated a fraud upon the [federal district] court," Petition at 5, which is a matter solely within the federal district court's jurisdiction, and beyond the jurisdiction of the NRC. Second, the proposed contention claims that the configuration of the spent fuel storage casks makes it "very difficult to address emergencies involving certain

casks.” *Id.* As will be discussed in greater detail below (*infra* at 21), environmental issues relating to onsite spent fuel storage fall outside the scope of license renewal proceedings. See *Turkey Point*, CLI-01-17, 54 NRC at 23. Furthermore, Petitioners have also failed to establish that a genuine dispute exists on a material issue of law or fact because they do not point to any relevant deficiency in NMC’s application. See 10 C.F.R. § 2.309(f)(1)(iv) and (vi). For the reasons discussed above, Proposed Contention 4 is inadmissible.

Petitioners’ Proposed Contention 5:

There is no permanent repository for the nuclear waste which would be generated at Palisades after 2010.

Basis: Any waste generated at Palisades after 2010 would be excess to the capacity of the proposed national dump at Yucca Mountain, Nevada according to the U.S. Department of Energy (“DOE”) projections in its Yucca Mountain Final Environmental Impact Statement (Feb. 2002). The State of Nevada maintains that NRC’s “Nuclear Waste Confidence Decision” is erroneous, in that it biases NRC to favor the Yucca Mountain dump license lest it be proven wrong in its assurance to the public that a high-level radioactive waste geological repository will open in the U.S. by 2025. Because so much uncertainty surrounds the Yucca Mountain and other high-level radioactive dump proposals, waste generated at Palisades during the 20 year license extension could very well be stored at Palisades indefinitely, a scenario inadequately addressed by the applicant and NRC.

Petition at 6.

Staff Response to Proposed Contention 5:

Proposed Contention 5 is inadmissible. This proposed contention lacks support, is beyond the scope of this proceeding, is immaterial, fails to establish that a genuine dispute exists on a material issue of law or fact, and is an impermissible attack on NRC regulations. See 10 C.F.R. §§ 2.309(f)(1)(i)-(vi), 2.335(a). Therefore, proposed Contention 5 fails to meet the Commission’s pleading requirements articulated in 10 C.F.R. Part 2.

As explained above, proposed environmental contentions regarding spent fuel storage amount to impermissible attacks on the Commission's regulations. Similar to Proposed Contention 3, Proposed Contention 5 challenges the Commission's Waste Confidence Rule, set forth in 10 C.F.R. § 51.23(a). Moreover, spent fuel storage is a Category 1 issue dealt with in the GEIS and codified in 10 C.F.R. Part 51, Subpart A, Appendix B. As such, "[t]he impacts associated with spent fuel and high-level waste disposal, low-level waste disposal, mixed waste storage, and onsite spent fuel storage are . . . not subject to further evaluation in this license renewal proceeding." *Turkey Point*, LBP-01-6, 53 NRC at 161 (citations omitted).

Petitioners attempt to cite the Department of Energy's Final Environmental Impact Statement for Yucca Mountain to support this proposed contention. Petition at 6. However, they offer no direct evidence, expert opinions, or references to documents to substantiate their claim, nor do they provide sufficient (or any) evidence to demonstrate that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(v)-(vi). Lastly, as will be discussed in greater detail below (*infra* at 21), environmental issues relating to onsite spent fuel storage generically fall outside the scope of license renewal proceedings. See *Turkey Point*, CLI-01-17, 54 NRC at 23. For the above reasons, Proposed Contention 5 is inadmissible.

Petitioners' Proposed Contention 6:

Intensifying sand erosion and avalanche risk around dry cask storage pads.

Basis: The more casks loaded on the storage pads at Palisades, the more risk of erosion to the sand supporting the pads, given the large weight of the casks themselves (well over 100 tons each), weather related erosion of the sand dunes, as well as the erosion that will occur due to more severe weather impacts from the global climate crisis and climate de-stabilization. Arresting erosion at both pads is important to safety and radiation containment over the long haul, given the proximity of the water of Lake Michigan. Additionally, the dunes and shore line are geologically prone to sand avalanche, which, with a seismic event, could compromise the integrity of one or more casks at Palisades.

Petition at 6.

Staff Response to Proposed Contention 6:

Proposed Contention 6 is inadmissible. This proposed contention lacks support, is beyond the scope of this proceeding, is immaterial, and fails to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i)-(vi). Therefore, proposed Contention 6 fails to meet the Commission's pleading requirements articulated in 10 C.F.R. Part 2.

As an initial matter, the contention is vague and lacking in the required supporting information. Although Petitioners have included this contention under the "Environmental Contentions" portion of their brief, the proposed contention states that "[a]rresting erosion at both pads is important to *safety*." Petition at 6 (emphasis added). In either case, as explained below, Petitioners have not provided the specific factual or legal information necessary to support any environmental or safety claims with a valid basis. See 10 C.F.R. § 2.309(f)(1)(ii), (v)-(vi) and (f)(2); See *Millstone*, CLI-01-24, 54 NRC at 358 (citing *Oconee*, CLI-99-11, 49 NRC at 333).

Although Petitioners cite to various sources as evidence that the Lake Michigan dunes are subject to sand erosion and "blow outs," they offer no direct support for their claim that these phenomena would affect the storage pads at Palisades.⁶ Petition at 6; See 10 C.F.R. § 2.309(f)(1)(v). Petitioners also fail to demonstrate that a genuine dispute exists as to a material issue of law or fact because they do not call out any portion of NMC's application that they believe to be deficient, nor do they specifically state how the application fails to contain required information. See 10 C.F.R. §§ 2.309(f)(1)(vi) and (f)(2). Petitioners have the

⁶ Nor, in fact, do Petitioners provide support for their claim that the dunes located at Palisades are subject to erosion and "blow outs," and instead only cite to an article regarding a location 35 miles south of Palisades. Petition at 6.

obligation to include “references to the specific portions of the application (including the applicant’s environmental report . . .) that the petitioner disputes and the supporting reasons for each dispute[.]” *Millstone*, LBP-03-12, 58 NRC at 82, *aff’d*, CLI-03-14, 58 NRC 207.

Turkey Point involved a similar contention, in which one of the proposed contentions revolved around the possibility of a spent fuel accident because of the facility’s susceptibility to hurricanes and aircraft crashes. CLI-01-17, 54 NRC at 20. The Commission affirmed the Licensing Board’s decision that the contention was inadmissible on two grounds that are also applicable in the current case. First, spent fuel storage impacts are not subject to litigation in license renewal proceedings because they are characterized as generic Category 1 issues in 10 C.F.R. Part 51. *Id.* at 21. As such, the Commission had previously considered the effect of hurricanes on spent fuel issues in the GEIS, and the petitioner’s spent fuel contention raised no information that would render the GEIS’s Category 1 finding inapplicable to the Turkey Point facility. *Id.* at 22. In the case at hand, Petitioners’ proposed contention challenges the GEIS’s consideration of spent fuel issues without offering any information demonstrating that the relevant GEIS findings do not apply to Palisades.

Second, the petitioner’s proposed contention in *Turkey Point* raised “none of the aging-related issues that are the focus of the NRC’s safety review.” *Id.* Therefore, the Commission found that the petitioner’s proposed spent fuel contention raised no “admissible safety issues under the NRC’s Part 54 safety review. *Id.* at 23. Proposed Contention 6, despite falling under the “environmental contentions” heading of the Petition, also raises safety issues that are not aging-related, and are therefore inadmissible.

Petitioners’ Proposed Contention 7:

Non-radiological persistent toxic burdens to area water sources.

Basis: The impact of 20 additional years of pollution by toxics disclosed but not adequately controlled under requirements of the

National Pollutant Discharge Elimination System will directly affect water quality of nearby sources, including Lake Michigan.

Petition at 7.

Staff Response to Proposed Contention 7:

Proposed Contention 7 is inadmissible. This proposed contention lacks specificity and support, is beyond the scope of this proceeding, is immaterial, and fails to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i)-(vi). Therefore, proposed Contention 7 fails to meet the Commission's pleading requirements articulated in 10 C.F.R. Part 2.

This contention essentially challenges the adequacy of the requirements of the Federal Water Pollution Act ("FWPA" or "Clean Water Act"), as implemented through the National Pollutant Discharge Elimination System ("NPDES"). In *Millstone*, the Petitioners proposed a contention arguing that the applicant lacked a valid NPDES permit, and that without this permit, the facility could not be safely operated. *Millstone*, LBP-04-15, 60 NRC at 93. In concluding that the contention was inadmissible, the Board ruled that it raised issues which were "outside the scope of this proceeding and outside the reach of the jurisdiction" of the Board. *Id.* On appeal, the Commission affirmed that "[t]his contention has nothing whatever to do with aging-related issues, is beyond the scope of this proceeding, and is therefore inadmissible." *Millstone*, CLI-04-36, 60 NRC at 639.

It is clear that this issue is one that is solely within the purview of the Michigan Department of Environmental Quality ("MDEQ"), which administers the Clean Water Act within the jurisdiction of the State of Michigan. Although an applicant is required by 10 C.F.R. § 51.45(d) to "list all Federal permits, licenses, approvals and other entitlements which must be obtained in connection with the proposed action," it is not within the Commission's jurisdiction to make any determination as to the adequacy of such permits in

protecting the environment. See *Millstone*, LBP-04-15, 60 NRC at 93. Therefore, the proposed contention is outside the scope of the proceeding, and is inadmissible. See 10 C.F.R. § 2.309(f)(1)(iii).

Petitioners' Proposed Contention 8:

Increased embrittlement of re-used fuel rods as buffers to reduce embrittlement of RPV walls.

Basis: To mitigate the prospect of increased embrittlement of the reactor pressure vessel (RPV), the Palisades operator uses previously-irradiated fuel to create a buffer next to the RPV wall. The second-use of irradiated fuel assemblies in the reactor core tends to weaken and damage the cladding on the fuel rods, making future waste handling, storage and ultimate disposal – whether on-site at Palisades, in transport, and at future storage or dump sites – problematic. It poses an elevated risk for the safety of Palisades workers and the general public.

Petition at 7.

Staff Response to Proposed Contention 8:

Proposed Contention 8 is inadmissible. This proposed contention lacks basis, specificity and support, is beyond the scope of this proceeding, is immaterial, and fails to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i)-(vi). Therefore, proposed Contention 8 fails to meet the Commission's pleading requirements articulated in 10 C.F.R. Part 2.

Petitioners generically claim that “[t]he second-use of irradiated fuel assemblies in the reactor core tends to weaken and damage the cladding on the fuel rods, making future waste handling, storage, and ultimate disposal . . . problematic.” Petition at 7. Although Petitioners offer this under the heading of “Miscellaneous Contentions,” they state that the use of previously-irradiated fuel to buffer the RPV wall “poses an elevated risk for the *safety* of Palisades workers and the general public.” Petition at 7 (emphasis added). Despite their broad claims, Petitioners offer no documentary evidence, references, or expert opinions to provide the

requisite basis and support. *Id.*; See 10 C.F.R. § 2.309(f)(1)(i)-(ii) and (v). As a result of Petitioners' failure to cite any relevant portions of NMC's application that they believe to be deficient, they are unable to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. §§ 2.309(f)(1)(iv)-(vi) and (f)(2).

In addition, Proposed Contention 8 is outside the scope of this proceeding. As noted above, Petitioners' main concern in this contention appears to be safety. Petition at 7. However, 10 C.F.R. Part 54 does not require the aging management of fuel cladding, and this issue is beyond the scope of license renewal. See 10 C.F.R. § 54.4. Furthermore, to the extent Proposed Contention 8 raises safety issues concerning waste handling and storage, Petitioners fail to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(iv) and (vi). At no point do Petitioners identify any deficiency in NMC's renewal application. See 10 C.F.R. § 2.309(f)(2). For the above reasons, Proposed Contention 8 is inadmissible.

Petitioners' Proposed Contention 9:

Environmental justice denied by the continuing operations of Palisades.

Basis: Palisades nuclear generating station is a source of environmental justice violations. Palisades provides woefully inadequate tax revenues to the host community considering the large adverse impacts and risks the reactor inflicts. Palisades' African-American employees have traditionally been stuck in the dirtiest and most dangerous jobs at the reactor, with little to no prospects for promotion. Some of Palisades' African-American employees have also experienced death threats at the work place, including nooses hung to symbolize lynching, an attempt to silence their public statements for workplace justice.

Palisades' license extension application also has inadequately addressed the impacts on tribes in the vicinity of the plant and beyond. Only three tribes were contacted by the NRC by August 8, 2005, which effectively excluded a number of tribes from participating in the license extension proceedings.

Palisades' license extension application inadequately addresses the adverse socio-economic impacts of a catastrophic

radiation release on the low-income Latin American agricultural workforce in the Palisades area.

Also, there is an unacceptable lack of Spanish language emergency evacuation instructions to serve the Spanish speaking population within 50 miles of Palisades.

Petition at 7-8.

Staff Response to Proposed Contention 9:

Proposed Contention 9 is inadmissible. This proposed contention lacks basis, specificity and support, is beyond the scope of this proceeding, is immaterial, and fails to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i)-(vi). Therefore, Proposed Contention 9 fails to meet the Commission's pleading requirements articulated in 10 C.F.R. Part 2.

The Commission has made it clear that environmental justice ("EJ") issues are only considered when and to the extent required by NEPA. In *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-98-03, 47 NRC 77 (1998), regarding an application to construct and operate a privately owned uranium enrichment facility located between two minority communities, the Commission held that the disparate impact analysis within NEPA is the principal tool for addressing EJ issues and that the "NRC's goal is to identify and adequately weigh or mitigate effects, on low-income or minority communities" by assessing impacts "peculiar" to those communities. *Id.* at 100. The Commission emphasized that the Executive Order directing federal agencies to "make achieving environmental justice part of its mission" did not establish any new rights or remedies; instead the Commission based its decision on NEPA, stating that "[t]he only 'existing law' conceivably pertinent here is NEPA, a statute that centers on environmental impacts." Executive Order ("E.O.") No. 12989 (Section 1-101), 59 Fed. Reg. 7,629 (Feb. 16, 1994); *LES*, 47 NRC at 102.

The Commission also addressed the possibility that racial considerations affected the facility siting. *LES*, 47 NRC at 100. The Commission concluded that an “agency inquiry into a license applicant’s supposed discriminatory motives or acts would be far removed from NEPA’s core interest: the physical environment—the world around us, so to speak.” *Id.* at 102 (citation omitted). The implementing Executive Order “focuses exclusively on identifying and adequately assessing the impacts of the proposed actions on minority populations, low-income populations, and Indian Tribes” and that the guidance “makes no mention of a NEPA-based inquiry in racial discrimination.” *Id.* at 102. Accordingly, *LES* limits the scope of an environmental justice contention to issues considered in a NEPA analysis.

More recently, the Commission reiterated its views on environmental justice in *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147 (2002), a proceeding involving the licensing of a proposed fuel storage facility on land owned by the Skull Valley Band of Goshute Indians. *Id.* at 149. The intervenor, Ohngo Gaudadeh Devia (“OGD”), argued that individual members of OGD, including band members who opposed the project, might suffer the environmental impacts of the project without enjoying its benefits as a result of an alleged misappropriation of funds paid on the PFS lease. *Id.*

First, the Commission reiterated its view that NEPA is the only pertinent statute and stated that environmental justice, as applied at the NRC, “means that the agency will make an effort under NEPA to become aware of the demographic and economic circumstances of local communities. . .and take care to mitigate or avoid special impacts attributable to the special character of the community.” *Id.* at 156. The Commission then reasoned that “the essence of an environmental justice claim, in NRC practice, is disparate environmental *harm*.” *Id.* at 153 (emphasis added). Accordingly, in the Commission’s view, NEPA does not call for an investigation into disparate economic benefits as a matter of EJ because “nothing” in the

Executive Order or NEPA suggests “that a failure to receive an economic benefit should be considered tantamount to a disproportionate impact.” *Id.* at 154. Thus, NEPA does not call for a detailed examination of the distribution of the financial benefits of a proposed project. *Id.*

Most recently, the Commission published a policy statement setting out its views and policy on the significance of the Executive Order and guidelines on when and how EJ will be considered in NRC licensing and regulatory actions. Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040 (Aug. 24, 2004). The Commission confirmed that “the basis for admitting EJ contentions in NRC licensing proceedings stems from the agency’s NEPA obligations.” *Id.* at 52,046. Procedurally, an EJ review is a tool, within the normal NEPA process, “to identify communities that might otherwise be overlooked and identify impacts due to their uniqueness as part of the NRC’s NEPA review process.” *Id.* at 52,047. Thus, admissible contentions in this area are “those which allege, with the requisite documentary basis and support as required by 10 C.F.R. Part 2, that the proposed action will have *significant adverse* impacts on the physical or human environment that were not considered because the impacts to the community were not adequately evaluated.” *Id.* (emphasis added). The Commission reiterated that “racial motivation and fairness or equity issues are not cognizable under NEPA.” *Id.* Thus, the focus of an EJ review should be on “identifying and weighing disproportionately significant and adverse environmental impacts on minority and low-income populations that may be different from the impacts on the general population.” *Id.* Furthermore, “the goal of an EJ portion of the NEPA analysis is (1) To identify and assess environmental effects on low-income and minority communities by assessing impacts peculiar to those communities; and (2) to identify significant impacts, if any, that will fall disproportionately on minority and low-income communities. It is not a broad-ranging review of racial or economic discrimination.” *Id.* at 52,048.

In light of the foregoing, proposed Contention 9 is inadmissible. As an initial matter, this proposed contention sets forth no basis upon which its claims are grounded. See 10 C.F.R. § 2.309(f)(1)(ii). The Commission has stated that in the context of EJ issues, “the only possible basis for an admissible contention is NEPA.” *Id.* at 52,044. However, Proposed Contention 9 is deficient for failing to even mention any issues cognizable under NEPA. Additionally, Proposed Contention 9 lacks support and specificity to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i) and (v)-(vi). Although Petitioners claim that the Palisades license renewal application has inadequately addressed certain purported EJ issues, in no instance does the Petition include specific references to the portions of the application which they dispute. Petition at 8. Furthermore, the Petition does not specifically indicate how the application fails to contain information on a relevant matter *as required by law*, nor does it cite any support for such a claim. See 10 C.F.R. § 2.309(f)(1)(vi) (emphasis added).

In addition to the above, Proposed Contention 9 falls outside the scope of this license renewal proceeding. See 10 C.F.R. § 2.309(f)(1)(iii). Petitioners first claim that the local African-American community suffers inadequate tax revenues “considering the large adverse impacts and risks the reactor inflicts.” Petition at 7. The Commission has declared that NEPA “[does] not call for investigation into the disparate economic benefits as a matter of environmental justice.” *PFS*, CLI-02-20, 56 NRC at 154. Even though greater tax revenues might make it easier to tolerate environmental impacts, “nothing” in NEPA suggests “that a failure to receive an economic benefit should be considered tantamount to a disproportionate environmental impact.” *Id.* An examination into local tax policies is beyond the scope of this proceeding because “NEPA is simply not the vehicle, and the NRC not the forum, for resolving the question of whether a state’s tax policies are discriminatory.” *Id.* at 159.

Petitioners next raise the issue of employment discrimination against African-Americans as a basis for their EJ contention. Petition at 7. As previously stated, the Commission's policy on EJ contentions states that they must be grounded in NEPA, and "racial motivation and fairness . . . issues are not cognizable under NEPA." 69 Fed. Reg. 52,047. The mandate of the NRC's EJ review is not a "broad-ranging or even limited review of racial or economic discrimination." *Id.* Accordingly, a claim of employment discrimination against the African-American population are not within the scope of an admissible environmental justice contention, and is thus beyond the scope of this proceeding.

The Petitioners' third EJ assertion claims that NMC's application for the Palisades license renewal inadequately addresses the impacts of renewal upon Indian tribes "in the vicinity of the plant and beyond." Petition at 8. As explained above, this basis for Proposed Contention 9 is inadmissible for failing to meet the basis, specificity, and support requirements of 10 C.F.R. § 2.309(f)(1). Petitioners also claim that the NRC did not provide sufficient notice to these Indian tribes regarding the Palisades license renewal.⁷ *Id.* This issue does not fall within the purview of a legitimate environmental justice contention, and falls outside the scope of this license renewal proceeding. See 10 C.F.R. § 2.309(f)(1)(iii). According to the Commission's Policy Statement, "EJ issues are only considered when and to the extent required by NEPA." 69 Fed. Reg. at 52,047. Making specific contact with Indian tribes (or other potentially interested parties, for that matter) about the Palisades license renewal

⁷ Petitioners claim that "[o]nly three tribes were contacted by the NRC by August 8th, 2005, and invited to participated in the license extension proceedings," and that "[f]or this reason alone, the August 8, 2005 deadline for requesting a hearing to intervene . . . should be extended, until all tribes within the 50-mile zone and beyond, which have ties to the power plant site and its environs, are contacted." Petition at 8. However, the NRC sent letters to eleven American Indian tribes on July 13, 2005, inviting them to provide input in the environmental scoping process related to NMC's application for the license renewal of Palisades. See ADAMS Accession Numbers ML051950435, ML051950495, ML051950574, ML051960002, ML051960011, ML051960027, ML51960069, ML051960103, ML051960173, ML051950614, and ML051950602.

application is not required by NEPA and, thus, is not an EJ issue for consideration before the NRC. Moreover, the essence of this claim is procedural, having no relation to license renewal *per se*.

Petitioners further allege that NMC's license renewal application has insufficiently addressed the "adverse socio-economic impacts of a catastrophic radiation release . . . as they would be found among the low-income Latin American agricultural workforce of the Palisades area." Petition at 8. While this contention indicates the presence of a low-income and minority population near the Palisades, it fails to identify a disproportional environmental impact on this population relative to the general population. Thus, it fails to raise a genuine dispute on a material issue of law or fact because it lacks the requisite support. See 10 C.F.R. § 2.309(f)(1)(v)-(vi). Although this specific claim is not necessarily outside the scope of this proceeding (as are the remainder of the purported EJ issues raised by Petitioners), it nevertheless fails to meet the Commission's contention admissibility standards. See 10 C.F.R. § 2.309(f)(1).

Lastly, Petitioners charge that "there is an unacceptable lack of Spanish language emergency evacuation instructions and notifications." Petition at 8. The Commission has held that emergency planning issues are beyond the scope of license renewal proceedings. *Turkey Point*, CLI-01-17, 54 NRC at 9; *Millstone*, CLI-04-36, 60 NRC at 640. Emergency planning requirements are independent of license renewal, are part of an ongoing regulatory process, and amount to safety issues that "need not be re-examined within the context of license renewal." *Turkey Point*, CLI-01-17, 54 NRC at 9. Therefore, Petitioners' claim of insufficient Spanish language emergency planning instructions are beyond the scope of this proceeding. Based on the foregoing reasons, Proposed Contention 9 is inadmissible.

Petitioners' Proposed Contention 10:

Chronic emergency unpreparedness within [emergency planning zone] EPZ.

Basis: Emergency responders in the 50 mile zone around the Palisades nuclear reactor are inadequately trained and inadequately equipped to respond to a major radioactivity release during an accident or attack at the plant.

Petition at 8.

Staff Response to Proposed Contention 10:

Proposed Contention 10 is inadmissible. This proposed contention lacks basis, specificity and support, is beyond the scope of this proceeding, is immaterial, fails to establish that a genuine dispute exists on a material issue of law or fact, and impermissibly attacks the Commission's regulations. See 10 C.F.R. §§ 2.309(f)(1)(i)-(vi), 2.335(a). Therefore, Proposed Contention 10 fails to meet the Commission's pleading requirements articulated in 10 C.F.R. Part 2.

Proposed Contention 10 does not set forth the requisite specific factual or legal basis. The Commission's regulations require a "detailed, fact-based showing that a genuine dispute of law or fact exists." See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-14; 55 NRC 278, 289 (2002) (citing *Millstone*, CLI-01-24, 54 NRC at 358-9). A contention alleging that an application is deficient must identify "each failure and the supporting reasons for the petitioner's belief." See *Millstone*, CLI-03-14, 58 NRC at 216 ("To trigger an adjudicatory hearing, a petitioner must do more than submit 'bald or conclusory allegations' of a dispute with the applicant.") Petitioners' assertion that "[e]mergency responders . . . are inadequately trained and inadequately equipped to respond to a major radioactivity release during an accident or attack at the plant" does not provide the

requisite specificity for the admissibility of a contention and, therefore, the proposed contention should be rejected. Petition at 8.

Furthermore, as discussed *supra*, emergency planning issues fall outside the scope of the license renewal procedure because they are already the focus of ongoing regulatory processes. *Turkey Point*, CLI-01-17, 54 NRC at 10. In this regard, the Commission has stated:

The Commission has various regulations establishing standards for emergency plans. See 10 C.F.R. §§ 50.47, 50.54(s)-(u); Appendix E to Part 50. These requirements are independent of license renewal and will continue to apply during the renewal term. They include provisions to ensure that the licensee's emergency plan remains adequate and continues to meet sixteen performance objectives. Through mandated periodic reviews and emergency drills, "the Commission ensures that existing plans are adequate throughout the life of any plant even in the face of changing demographics, and other site-related factors . . . [D]rills, performance criteria, and independent evaluations provide a process to ensure continued adequacy of emergency preparedness. 56 Fed. Reg. at 64,966. *Emergency planning, therefore, is one of the safety issues that need not be re-examined within the context of license renewal.*

Turkey Point, CLI-01-17, 54 NRC at 9 (emphasis added). Petitioners' Proposed Contention 10 raises no more than "everyday operating issues." See *Duke Energy Corp.*, (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-01-27, 54 NRC 385, 391 (2001); *Turkey Point*, CLI-01-17, 54 NRC at 7. Nowhere in the contention do Petitioners raise an issue related to the detrimental effects of *aging* and, therefore, the proposed contention falls outside the scope of the proceeding. See *Duke Energy Corp.*, (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-26, 56 NRC 385, 363-64 (2001). Petitioners also ignore 10 C.F.R. § 50.47(a), which specifically states that no finding regarding the adequacy of emergency plans need be made in the case of an application for license renewal. As the Commission has removed emergency planning from the scope of

license renewal by rule, Petitioners' proposed contention that emergency planning should be addressed in this proceeding amounts to an attack upon the Commission's regulations. See 10 C.F.R. § 2.335(a). For these reasons, Proposed Contention 10 is inadmissible.

Petitioners' Proposed Contention 11:

Economic damage in Palisades region in event of accident or attack on the power plant causing severe radiation release.

Basis: A severe radiation release from Palisades due to accident or attack would significantly damage the economic base of western Michigan, not only within the 50 mile zone around the reactor, but even beyond it, due to crops and products that would have to be destroyed. A Severe Accident Mitigation Analysis must be performed, publicized, and circulated for public review and comment as a precondition to considering whether or not to grant a license extension.

Petition at 8-9.

Staff Response to Proposed Contention 11:

Proposed Contention 11 is inadmissible. This proposed contention lacks basis, specificity and support, is immaterial, and fails to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i)-(vi). Therefore, Proposed Contention 11 fails to meet the Commission's pleading requirements articulated in 10 C.F.R. Part 2.

Petitioners generically state that a Severe Accident Mitigation Alternative ("SAMA") analysis must be "performed, publicized, and circulated for public review and comment."

Petition at 9. 10 C.F.R. § 51.53(c)(3)(ii)(L) requires an applicant for license renewal to include a SAMA analysis in its environmental report, and states that:

(ii) The environmental report must contain analyses of the environmental impacts of the proposed action, including . . . the impacts of operation during the renewal term, for those issues identified as Category 2 issues in appendix B to [10 C.F.R. Part 51]. The required analyses are as follows:

(L) If the staff has not previously considered [SAMA] for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be included.

In fact, Section 4.12 and Attachment E of the ER submitted as part of NMC's application for the Palisades license renewal contain the required SAMA analysis that Petitioners seek. The SAMA analysis contained in the ER is publically available via the NRC's website, and the public indeed has an opportunity to comment on it. Furthermore, this proposed contention also fails to specify which mitigation alternatives should be considered or otherwise describe how the SAMA analysis contained in the applicant's ER is deficient. See 10 C.F.R. § 2.309(f)(2); see *Turkey Point*, LBP-01-6, 53 NRC at 161. Therefore, this proposed contention is inadmissible for failing to meet the basis, specificity and support requirements of the Commission's regulations, as well as failing to establish that a genuine dispute exists on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(i)-(ii) and (iv)-(vi).

Petitioners' Proposed Contention 12:

Threats of terrorist attack and sabotage against the Palisades nuclear power plant.

Basis: Located on the shoreline of Lake Michigan, the source of drinking water, fish, recreation, and other economic value to tens of millions of people downstream, Palisades represents a target for potentially catastrophic terrorist attack or sabotage intended to release large amounts of radioactivity into the Great Lakes basin.

Petition at 9.

Staff Response to Proposed Contention 12:

Proposed Contention 12 is inadmissible. This proposed contention lacks basis, specificity and support, is beyond the scope of this proceeding, is immaterial, and fails to establish that a genuine dispute exists on a material issue of law or fact. See

10 C.F.R. § 2.309(f)(1)(i)-(vi). Therefore, Proposed Contention 12 fails to meet the Commission's pleading requirements articulated in 10 C.F.R. Part 2.

Inasmuch as this contention raises issues of terrorism, it is inadmissible. The Commission has held that terrorism issues are insufficiently related to the effects of plant aging to form the basis of a litigable safety contention in a license renewal proceeding. *See McGuire*, CLI-02-26, 56 NRC at 364. In the Statement of Consideration accompanying the Commission's 1995 revisions to Part 54, the Commission noted the following: "the portion of the [current licensing basis] that can be impacted by the detrimental effects of aging is limited to the design-basis aspects of the [current licensing basis]. All other aspects of the [current licensing basis], e.g., . . . *physical protection (security)*, . . . are not subject to physical aging processes[.]" 60 Fed. Reg. at 22,475 (emphasis added). As the Commission has explained, "a license renewal review is narrow in scope, confined to aging analyses of the plant's structures, systems and components." *McGuire*, CLI-02-26, 56 NRC at 363. According to the Commission, contentions raising terrorism issues "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. As a result, the Commission has determined that terrorism contentions "are beyond the scope of, not 'material' to, and inadmissible in, a license renewal proceeding." *Id.* As Proposed Contention 12 consists solely of unsupported claims of potential terrorist attacks on the Palisades plant, and is not related to the detrimental effects of aging, the contention is beyond the scope of this proceeding and must be rejected. *See* 10 C.F.R. § 2.309(f)(1)(iii).

Moreover, Petitioners have failed to support their proposed contention with the required facts or expert opinion. *See* 10 C.F.R. § 2.309(f)(1)(v). Petitioners make only generalized claims to support their contention, such as that "Palisades represents a radioactive bull's eye on the shore of 20% of the planet's surface fresh water, the Great Lakes." Petition at 9.

Petitioners fail to provide any adequate basis supporting admission of the contention, which consists of no more than “generalized suspicions[.]” See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2); CLI-03-17, 58 NRC 419, 424 (2003). Petitioners also fail to highlight any portion of the application they dispute so as to establish the existence of a genuine dispute with the applicant. See 10 C.F.R. § 2.309(f)(1)(vi). Accordingly, the contention lacks the required specific basis and support, and is inadmissible. See 10 C.F.R. § 2.309(f)(1)(ii) and (v)–(vi).

CONCLUSION

Organizational and Individual Petitioners have established standing to intervene in this proceeding, but have failed to proffer an admissible contention. Therefore, the Licensing Board should deny their Petition.

Respectfully submitted,

/RA/

Darani Reddick
Susan Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 2nd day of September, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)		
)		
NUCLEAR MANAGEMENT)	Docket No.	50-255-LR
COMPANY, LLC)		
)	ASLBP No.	05-842-03-LR
(Palisades Nuclear Plant))		

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

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Name of Party:	NRC Staff

Respectfully submitted,

/RA/

Darani M. Reddick
Counsel for NRC Staff

Dated at Rockville, Maryland
this 2nd day of September, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
NUCLEAR MANAGEMENT) Docket No. 50-255-LR
COMPANY, LLC)
) ASLBP No. 05-842-03-LR
(Palisades Nuclear Plant))

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

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Respectfully submitted,

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Dated at Rockville, Maryland
this 2nd day of September, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)		
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(Palisades Nuclear Plant))	ASLBP No.	05-842-03-LR

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER OPPOSING PETITION TO INTERVENE AND REQUEST FOR HEARING," "NOTICE OF APPEARANCE OF DARANI M. REDDICK," and "NOTICE OF APPEARANCE OF SUSAN L. UTTAL," in the above-captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, by U.S. mail, first class, as indicated by double asterisk, with copies by electronic mail, or by U.S. mail, first class, as indicated by triple asterisk, this 2nd day of September, 2005:

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