January 29, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PPL SUSQUEHANNA, LLC	)	Docket Nos. 50-387-LR
	)	50-388-LR
	)	
(Susquehanna Steam Electric Station	)	ASLBP No. 07-851-01-LR
Units 1 and 2)	)	

NRC STAFF RESPONSE TO ERIC JOSEPH EPSTEIN'S PETITION FOR LEAVE TO INTERVENE, REQUEST FOR HEARING, AND CONTENTIONS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the U.S. Nuclear Regulatory Commission Staff (Staff) hereby files its response to the request for hearing and petition to intervene filed by Eric Joseph Epstein (Petitioner).[1] For the reasons set forth below, Petitioner's intervention request should be denied.

BACKGROUND

By letter dated September 13, 2006, PPL Susquehanna, LLC (PPL or Applicant) submitted an application for renewal of Operating License Nos. NPF-14 and NPF-22 for the Susquehanna Steam Electric Station (SSES) Units 1 & 2 for an additional 20 years.[2] The current operating licenses expire on July 27, 2022 and March 23, 2024, respectively.

On November 2, 2006, NRC published a notice of acceptance and docketing and

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[1] *See* Eric Joseph Epstein's Petition for Leave to Intervene, Request for Hearing, and Presentation of Contentions with Supporting Factual Data, January 2, 2007 (Petition).

[2] *See* Letter from Britt T. McKinney, PPL Susquehanna, LLC to U.S. NRC, Susquehanna Steam Electric Station Application for Renewed Operating Licenses Numbers NPF-14 and NPF-22 PLA-6110, September 13, 2006. Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML062620157, ML062630225, ML062630235.

opportunity for hearing regarding the License Renewal Application (LRA),[3] and on December 21, 2006, NRC published a correction to the notice, extending the comment period for public scoping for the Environmental Impact Statement to January 2, 2007.[4] On January 2, 2007, Eric Joseph Epstein filed his Petition, alleging individual standing, and representational and organizational standing on behalf of Three Mile Island Alert, Inc. (TMIA), and proffering five proposed contentions. On January 18, 2007, this Atomic Safety and Licensing Board (Board) was established to preside over this proceeding.

The Staff hereby files its response in opposition to Mr. Epstein's Petition.[5]

DISCUSSION

I. Petitioner's Standing

A. Legal Requirements

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

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[3] Notice of Acceptance for Docketing of the Application, Notice of Opportunity for Hearing and Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process for Facility Operating License Nos. NPF-14 and NPF-22 for an Additional 20-Year Period PPL Susquehanna LLC., Susquehanna Steam Electric Station, Units 1 and 2, 71 Fed. Reg. 64,566 (November 2, 2006).

[4] PPL Susquehanna, LLC; Notice of Correction to the Public Scoping Comment Period for the Environmental Impact Statement for the License Renewal of Susquehanna Steam Electric Station, Units 1 & 2, 71 Fed. Reg. 76,706 (December 26, 2006). The deadline for filing a request for hearing/ petition to intervene was stated correctly as January 2, 2007 in the first notice, *supra* n.3.

[5] On January 23, 2007 the Board issued its Order (Regarding Schedule and Guidance for the Proceedings) stating that requests for oral argument may be made in the answer or reply. The Staff does not believe oral argument is necessary.

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;
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> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
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> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

The Commission has long applied contemporaneous judicial concepts of standing to determine whether a party has a sufficient interest to intervene as a matter of right in a licensing proceeding. *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995); *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610 (1976). 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 of 1969 (as amended) 42 U.S.C. §§ 4321, *et seq*. (2000) (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).

The economic interests of a ratepayer are not within the zone of interests sought to be protected by the AEA. *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1420-21 (1977); *Portland General Electric Company* (Pebble Springs

Nuclear Plant, Units 1 & 2), ALAB-333, 3 NRC 804, 806 (1976). Similarly, general economic interests of ratepayers are not within the zone of interests protected by NEPA. *Pebble Springs,* ALAB-333, 3 NRC at 806. Additionally, taxation rates do not fall within the zone of interests of either NEPA or the AEA. *Watts Bar*, ALAB-413, 5 NRC at 1420-21. These economic concerns are more appropriately raised before state economic regulatory agencies. *Public Service Co. of New Hampshire* (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984).

Further, a petitioner must 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 the 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).

Under the long-recognized "proximity presumption" principle, the commission will presume 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. *Virginia Electric and Power Company,* (North Anna Nuclear Power Station, Units 1 & 2*),* ALAB-522, 9 NRC 54, 57 n.5 (1979). 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 by several licensing boards. *See e.g. Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc*. (Pilgrim Nuclear Power Station), LBP-06-848, 61 NRC __

(October 16, 2006) (slip. op. at 8); *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-06, 53 NRC 138, 146-50 (2001).[6]

An organization may establish standing by demonstrating an injury-in-fact to: (1) its interests as an organization; or, (2) the interests of any of its members. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 30-31 (1998) (PFS); *Yankee Atomic Elec*., CLI-98-21, 48 NRC at 185. The organization must, in itself, and through its own membership fulfill the standing requirements. *Pebble Springs*, CLI-76-27, 4 NRC at 613. The injury-in-fact must be a discrete institutional injury to the organization itself; general policy interests are insufficient. *International Uranium (USA) Corp.*, (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001).

When an organization wishes to represent the interests of its members, "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-99-10, 49 NRC 318, 323 (1999) (PFS).

Further, the organization must demonstrate that at least one of its members has authorized the organization to represent his/her interests. *Id*. The organization must identify this member by name and address and demonstrate how that member may be affected (such as by activities on or near the site) and show (preferably by affidavit) that the group is authorized to request a hearing on behalf of the member. *GPU Nuclear, Inc*. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000); *Houston Lighting and Power*

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[6] The Commission has not ruled on this presumption in the context of license renewal. *See Duke Energy Corp*. (Oconee Nuclear Station, Units 1, 2 and 3) CLI-99-11, 49 NRC 328, 333 n. 2 (1999)*; Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 20 n. 20 (2001).

Co. (South Texas Project, Units 1 & 2), ALAB-549, 9 NRC 644, 646-47 (1979). It is incumbent on the organization to clearly demonstrate that a member has in fact authorized the representation. *S. Tex. Project*, ALAB-549, 9 NRC at 444; *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994).

B. Mr. Epstein Lacks Individual Standing

Mr. Epstein lacks individual standing because he fails to demonstrate any of the required standing elements. His petition contains a list of statements concerning activities associated with SSES, but he never specifies an injury-in-fact. Petition at 4-7. A special interest in nuclear power alone cannot convey standing; instead, Mr. Epstein must satisfy judicial standing requirements. *Sierra Club v. Morton*, 405 U.S. 727, 738-39 (1972); *See also Georgia Tech*, CLI-95-12, 42 NRC at 115. Mr. Epstein's petition completely ignores these judicial requirements; therefore, he should be denied standing.

First, Mr. Epstein has not shown a distinct and palpable harm that constitutes an injury-in-fact within the zone of interests arguably protected by the governing statute. *Georgia Tech*, CLI-95-12, 42 NRC at 115. Mr. Epstein lists several facts in support of his standing claim; including, *inter alia*, being a PPL rate payer and shareholder, advocating for rate relief before the Pennsylvania Public Utility Commission, being a signatory to a settlement regarding PPL's restructuring plan, being chairman of a nuclear monitoring and advocacy group, Three Mile Island Alert (TMIA), and his involvement in several other Pennsylvania rate cases. Petition at 4-7. None of Mr. Epstein's activities demonstrate an injury-in-fact within the zone of interests of the AEA or NEPA. It is well settled that general economic concerns and the economic interests of ratepayers are not within the zone-of-interests of either statute. *See Pebble Springs*, ALAB-333, 3 NRC at 804. Mr. Epstein's alleged injuries are all economic in nature. Petition at 4-7. In addition, Mr. Epstein has not shown that this injury is concrete and particularized, rather than merely hypothetical. *See Sequoyah Fuels*, CLI-94-12, 40 NRC at 72. In fact,

Mr. Epstein never specifies precisely what injury he will suffer if SSES' license is renewed; therefore, he lacks standing.

Secondly, Mr. Epstein must demonstrate a causal nexus by showing that his injury can fairly be traced to the challenged action. *See PFS* CLI-99-10, 49 NRC at 323. The chain of causation between the challenged action and the Applicant's injury must be plausible. *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75. Mr. Epstein never links his injuries to the license renewal of SSES. For instance, Mr. Epstein states that he has "experienced consistent and chronic rate shock as a result of corporate decisions made by PP&L and its successor PPL." Petition at 4. Mr. Epstein, however, never demonstrates how this rate shock or any future rate shock can be traced to any action of the NRC or the license renewal of SSES. Mr. Epstein has not established causation; consequently, he lacks standing.

Third, standing requires a showing of redressability, that is that the actual or threatened injury can be cured by some action of the decisionmaker. *See Sequoyah Fuels* , CLI-01-02, 53 NRC at 14. Once again, Mr. Epstein does not address this requirement. It is not clear how an NRC license renewal decision will provide relief for Mr. Epstein's numerous state rate issues. Mr. Epstein never identifies how any decision of this Board will redress his injuries; instead, he merely includes the unsubstantiated claim that because the Pennsylvania Utility Court limited its oversight over nuclear power, "the NRC's Atomic Safety & Licensing Board (ASLB) is the appropriate body to raise economic impact issues relating to license extension of the SSES." Petition at 7. Mr. Epstein provides no basis for this claim. In fact, such a claim is in direct contradiction with Commission precedent. *See Seabrook,* CLI-84-6, 19 NRC at 978 (These economic concerns are more appropriately raised before state economic regulatory agencies.).

Mr. Epstein could still be granted standing if he satisfied the Commission's proximity principle. *North Anna*, ALAB-522, 9 NRC at 57 n.5. Mr. Epstein, however, never claims to live within a 50-mile radius of the plant. Without the aid of the proximity principle, and given that he

has not met any of the Commission's requirements for standing, Mr. Epstein should not be granted standing in this proceeding.

Additionally, Mr. Epstein devotes one section of his brief to prudential standing. Petition at 13. Prudential standing is not an independent basis from which to grant standing. Instead, prudential requirements are "judicially self-imposed limits on the exercise of federal jurisdiction." *Bennet v. Spear*, 520 U.S. 154, 162 (1997), *citing Allen v. Wright*, 468 U.S. 737, 751 (1984). Prudential standing requires that the plaintiff's interests fall within the "zone of interests" of the applicable statute. *Id.* The NRC has incorporated this "zone of interests" test into its standing requirements and despite Mr. Epstein's blanket statement to the contrary, Petition at 13, his interests are outside the zone of interests of both the AEA and NEPA.

C. Mr. Epstein and TMIA Lack Both Organizational and Representational Standing

Mr. Epstein attempts to establish both organizational standing on behalf of TMIA, Petition at 8-10, and representational standing for himself "as chairman of TMIA." Petition at 11-12. For the reasons set forth below, neither Mr. Epstein nor TMIA have demonstrated standing.

First, Mr. Epstein has failed to demonstrate that TMIA has organizational standing. In support of the organizational standing claim, Mr. Epstein makes numerous unsubstantiated statements; including, *inter alia*, that TMIA "members have concrete and particularized interests that will be directly affected by this proceeding" and that "TMIA's membership have legitimate and historic concerns regarding radiological contamination resulting from radiological releases related to normal and abnormal operations that impact the value of its property, and interfere with the organization's rightful ability to conduct operations in an uninterrupted and undisturbed manner." Petition at 8-9 (footnotes omitted). None of the injuries to TMIA that Mr. Epstein alleges satisfy the Commission's standing requirements.

Mr. Epstein's statements lack specificity as to how the alleged injuries confer standing.

In order to be granted organizational standing, a petitioner must demonstrate a discrete institutional harm. *White Mesa*, CLI-01-21, 54 NRC at 252. Completely lacking from Mr. Epstein's petition are what this discrete institutional harm is, why it is arguably within the zone of interests of the AEA or NEPA, how the license renewal of SSES will cause this injury, and how the injury can be redressed by this Board. *See Sequoyah*, CLI-94-3, 40 NRC at 71-72. Mr. Epstein has not addressed any of the Commission's standing requirements; therefore, TMIA has not demonstrated organizational standing

Further, Mr. Epstein has not demonstrated representational standing through one of TMIA's members. Mr. Epstein states that "many TMI-Alert members live less than fifty miles from the SSES, or are within its Emergency Planning Zone" but he fails to identify any specific individual who has authorized representation. Petition at 11. Mr. Epstein must identify by name and address a member who is affected by the proposed action, and must clearly demonstrate that the member provided authorization for the organization to represent him/her. *S. Tex. Project*, ALAB-549, 9 NRC at 646-47. Mr. Epstein has not provided any statement from any member of TMIA authorizing representation; therefore, Mr. Epstein's representational standing argument on behalf of TMIA must fail.

D. <u>Discretionary Intervention</u>

In his Petition, Mr. Epstein also seeks discretionary intervention in the event that he is found not to have standing. Petition at 10. Mr. Epstein should not be granted discretionary intervention because there is currently no hearing and no admitted contentions. Pursuant to 10 C.F.R. § 2.309(e), discretionary intervention can be granted only when "at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held." *See also*, 69 Fed. Reg. at 2,189 ("Discretionary intervention, however, will not be allowed unless at least one other petitioner has established standing and at least one admissible contention."). There have been no other contentions

admitted nor hearings granted in this proceeding; therefore, Mr. Epstein's request for discretionary intervention should be denied.[7]

II. Contentions

A. Legal Requirements for Admitting 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;
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> (ii) Provide a brief explanation of the basis for the contention;
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> (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). The Commission has emphasized that its rules on contention admissibility are "deliberately strict." *USEC, Inc.* (American Centrifuge Plant), CLI-06-9,

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[7] Even if discretionary intervention was available in this case, Mr. Epstein's claim should be denied because his petition failed to address any of the factors listed in 10 C.F.R. § 2.309(e).

63 NRC 433, 437 (2006) (citing *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. *Id.* The contention rules exist to ensure that hearings "adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors." *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 455 (2006) (*quoting Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003)). The Commission will not convene a hearing unless there is an issue which is appropriate for resolution in a hearing. *Id.* at 456-57.

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. Contention admissibility requirements "demand a level of discipline and preparedness on the part of petitioners, 'who must examine the publicly available material and set forth their claims and the support for their claims at the outset.'" *Louisiana Energy Services* (National Enrichment Facility) (*LES*), CLI-04-25, 60 NRC 223, 224-225 (2004). While Licensing Boards may be lenient with *pro se* intervenors, the Commission has stated that those who choose to participate in the proceedings must be prepared to expend the effort necessary to do so. *See USEC,* CLI-06-10, 63 NRC at 456. Even a *pro se* petitioner must submit more than "bald or conclusory allegation[s]" of a dispute with the applicant. *See id.; see also LES*, CLI-04-25, 60 NRC at 225.

Pursuant to 10 C.F.R. § 2.309(f)(1)(iii), the petitioner must demonstrate that a contention is within the scope of the proceeding. The Commission defines the scope of the hearing in its initial hearing notice and order referring the proceeding to the Licensing Board. *Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station) LBP-04-28, 60 NRC 548, 555 (2004) (citing *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985)). Properly formatted contentions "must focus on the

license application in question, challenging either specific portions of or alleged omissions from the application (including the SAR and ER)." *LES* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 57 (2004); *aff'd* CLI-04-25, 60 NRC 223 (2004); *see also* 10 C.F.R. § 2.309(f)(1)(vi). Additionally, "any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed." *LES*, LBP-04-14, 60 NRC at 57.

More specifically, the scope of a license renewal proceeding is limited in both the safety and environmental areas. The scope of Commission review determines the scope of admissible contentions in a renewal hearing absent a Commission finding under 10 C.F.R. § 2.335 (formerly § 2.758). "Nuclear Power Plant License Renewal; Revisions [1995 Final Rule]," 60 Fed. Reg. 22,461, 22,482 n. 2. 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); 10 C.F.R. §§ 54.4, 54.21(a), (c). License renewal focuses on the potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 3-4 (2001).

The scope of the environmental review is also limited in accordance with 10 C.F.R. §§ 51.71(d) and 51.95(c). *See Turkey Point,* CLI-01-17, 54 NRC at 11-13. 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). *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 138, 152-53, *aff'd,* CLI-01-17, 54 NRC at 11. The remaining issues, designated as "Category 2" in Appendix B, must be addressed by the applicant in its environmental report (ER), 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*.

A petitioner also must "present the factual information and expert opinions necessary to support its contention adequately" and failure to provide such an explanation regarding the basis of a proffered contention requires the Board to reject the contention. *LES,* LBP-04-14, 60 NRC at 55. In this regard, "neither mere speculation nor bare assertions alleging that a matter should be considered will suffice to allow the admission of a proferred contention." *Id.* A petitioner is responsible for making clear what the bases for the contention are, and why the cited references provide a basis for the contention. *USEC*, CLI-06-10, 63 NRC at 457. The Board may not "'infer' unarticulated bases of contentions," *id.,* nor can a Board "make assumptions of fact that favor the petitioner." *LES*, LBP-04-14, 60 NRC at 56. Finally, "with limited exception, no rule or regulation of the Commission can be challenged in an adjudicatory proceeding." *Id.* at 54; *see also* 10 C.F.R. § 2.335.

B. <u>The Proposed Contentions are not Admissible</u>

The Staff submits that Mr. Epstein has not put forth an admissible contention. The contentions are discussed in the order in which Mr. Epstein asserted them.

1. Proposed Contention 1

> PPL Susquehanna failed to provide the requisite data necessary to determine if it has the ability to maintain and service the financial obligations it inherited from the original licensee, i.e., PP&L. Regulatory conditions have materially changed and adversely affected PPL's ability to guarantee it can finance the "back-end" of nuclear power production at the SSES.

Petition at 15. Mr. Epstein provides an explanation for the basis of the Proposed Contention as follows:

> PPL Susquehanna LLC, the majority owner and operator of the Susquehanna Electric Station, is the corporate progeny of the original holding company, i.e., PP&L, that applied for, and obtained a license to operate the SSES, and the new corporation warrants a comprehensive financial due diligence to ascertain the ability of the nascent and emerging limited liability corporation to service its nuclear obligations under deregulation.

Id. Mr. Epstein expands on Proposed Contention 1 by, *inter alia*, questioning PPL's status as a "utility," PPL's ability to finance decommissioning costs, and PPL's continued economic solvency following Pennsylvania's deregulation of the utility industry. Petition at 16-22. For a remedy, Mr. Epstein requests that this Board force PPL Susquehanna LLC to conduct a comprehensive financial due diligence, to force PPL to prove it satisfies the NRC's "electric utility" definition, and to compel PPL to "provide an action plan" for financing its nuclear debt load and decommissioning costs. Petition at 21.

Staff's Response to Proposed Contention 1

The Staff opposes admission of this Proposed Contention on the grounds that it is outside the scope of license renewal, is not material to the findings the NRC must make to support a license renewal application, and does not demonstrate that a genuine dispute exists with the applicant on a material issue of law or fact. 10 C.F.R. §§ 2.309(f)(1)(iii), (iv), (vi).

First, Proposed Contention 1 is not admissible because it is outside the scope of license renewal. 10 C.F.R. § 2.309(f)(1)(iii). The scope of Commission review determines the scope of admissible contentions in a license renewal hearing. 60 Fed. Reg. at 22,482 n.2. This review

focuses on potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs. *Turkey Point*, CLI-01-17, 54 NRC at 3. The Commission has specifically removed financial questions, including decommissioning concerns, from the scope of a license renewal review. 10 C.F.R. § 50.33(f)(2) ("An applicant seeking to renew or extend the term of an operating license for a power reactor need not submit the financial information that is required in an application for an initial license.").[8] Mr. Epstein never specifies why his financial arguments are within the scope of license renewal. Mr. Epstein's concerns with the corporate evolution of PPL, involve a matter already approved by the Commission. *See* 66 Fed. Reg. 30,492 (June 6, 2001). Any concerns Mr. Epstein had with the nature of this corporate restructuring should have been brought during the consideration of that application. His remaining concerns cover a variety of financing and decommissioning topics; however, they never include any demonstration that they are within the scope of license renewal. The Commission's contention admissibility standards are deliberately strict. *USEC*, 06-09, 63 NRC at 437. Mr. Epstein must provide more than "bald or conclusory allegations;" instead, he must demonstrate that his contention is within the scope of this hearing. *See LES*, CLI-04-45, 60 NRC at 224-25. Mr. Epstein has not done this; therefore, this contention is wholly outside the scope of license renewal and is, thus, inadmissible.

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[8] *See also* Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,484 (May 8, 1995). "The economics of electrical power generation is the responsibility of the individual utility and the Federal or State agencies that are given that authority and responsibility. Generally, a State public utility commission or the Federal Energy Regulatory Commission, along with the utility, have the responsibility and the authority to address economic issues associated with power generation. Furthermore, the Commission's regulatory responsibility (as defined by the Atomic Energy Act, the NRC's organic statute) does not confer upon the Commission primary authority for regulating the economics of nuclear power generation. Under these circumstances, the Commission does not believe that it should perform economic analyses of nuclear power generation as a basis for informing the Commission's licensing decisions. While it is true that the Commission currently addresses the economics of operating a nuclear power plant in the context of an environmental impact statement (EIS), it should be recognized that these analyses have been conducted in the context of EISs as part of the Commission's process for complying with the mandates of the National Environmental Policy Act (NEPA). However, NEPA does not require such economic analyses."

Second, Proposed Contention 1 fails because it is not material to a finding the NRC must make to support its decision regarding this license renewal application. 10 C.F.R. § 2.309(f)(1)(iv). Mr. Epstein asserts several reasons why he believes Proposed Contention 1 is material to this proceeding. Petition at 16. First, he sets out the NRC's definition of a utility. *Id*. Second, Mr. Epstein states that "PPL's status as an 'electric utility' is in jeopardy and its ability to service financial, fiscal, and decommissioning obligations has been eroded by the Company's removal from the rate base." *Id*. Finally Mr. Epstein asserts that the application does not demonstrate that PPL can meet its future financial obligations. *Id*. Lacking from Mr. Epstein's discussion is why any of these issues are material to this license renewal proceeding. As discussed *supra*, none of these arguments are within the scope of license renewal; therefore, none of these issues are material to the findings necessary to support this license renewal action.

Finally, Proposed Contention 1 must be denied because it does not demonstrate that a genuine issue of material fact exists between Mr. Epstein and PPL. 10 C.F.R. § 2.309(f)(1)(vi). Mr. Epstein never points to a single regulation being violated or a specific portion of the application which is deficient. For example, Mr. Epstein strongly argues that PPL is no longer an "electric utility" under the NRC's definitions. Petition at 16-29. Nowhere, however, does Mr. Epstein identify why this definition is relevant to PPL's license renewal application. In fact, there is no requirement that an applicant for license renewal be an electric utility. *See e.g.* 10 C.F.R. § 50.33(f). Properly formatted contentions "must focus on the license application in question, challenging either specific portions of or alleged omissions from the application." *LES*, LBP-04-14, 60 NRC at 57. Mr. Epstein ignores this requirement by merely listing portions of the application that mention financial issues, Petition at 15, but he never specifically states any "genuine issue or material fact" in dispute between himself and the Applicant. For all of these reasons, admission of Proposed Contention 1 must be denied.

2. Proposed Contention 2

> PPL failed to factor, consider and address numerous water use and indigenous aquatic challenges present and anticipated for the Susquehanna River.

Petition at 23. Mr. Epstein provides an explanation for the basis of the contention as follows:

> The Susquehanna River Basin Commission and the Pennsylvania Department of Environmental Protection (PA DEP) are in the process of collecting, evaluating, and implementing a comprehensive water use plan for Pennsylvania, i.e., Act 220. Moreover, recent and consistent droughts in Pennsylvania (2002) as well as flooding (2006) have forced state and regulatory bodies to reexamine water as a commodity in the Commonwealth of Pennsylvania.
>
> In addition, a number of infestations, specifically Asiatic clams and Zebra mussels, have required power plants to prepare plans to defeat these aquatic invasions.

Id.

Staff's Response to Proposed Contention 2

Proposed Contention 2 is inadmissible. Proposed Contention 2 is not supported by bases that satisfy the pleading requirements of 10 C.F.R. § 2.309. First, the asserted bases fail to demonstrate that a genuine dispute exists with the Applicant regarding a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi). Additionally, Petitioner's reliance on vague data regarding nuclear power plants other than SSES, generic questions, and references to the anticipated enactment of state regulations do not provide sufficient information to show that there are material issues of fact in dispute. *Id*. Second, Petitioner's asserted bases for Proposed Contention 2 lack sufficient facts and contain no supporting expert opinion to satisfy 10 C.F.R. § 2.309(f)(1)(v). Throughout his discussion of Proposed Contention 2 Petitioner poses numerous, vague questions to the NRC and Applicant, but does not provide legal support for why those questions must be addressed in this proceeding nor does he explain what would constitute sufficient answers. Petition at 23-29. It is impermissible for Petitioner to rely on generalized suspicions and vague references to alleged events at SSES and other plants and equally unparticularized portions of general studies for providing a factual basis.

10 C.F.R. § 2.309(f)(1)(v); *Millstone*, CLI-01-24, 54 NRC at 363. Petitioner's brief explanation of its bases for Proposed Contention 2 does not encompass all that is included in its discussion, and it is unclear exactly what bases Petitioner wishes to rely on, so the Staff responds below to what it believes are Petitioner's main arguments.

First, Petitioner's insistence that the Applicant must resubmit its application after the enactment or implementation of Pennsylvania Act 220 is beyond the scope of this proceeding. It is true that an applicant must provide the status of compliance with its permits and licenses in its Environmental Report, and the Applicant here does that. *See,* 10 C.F.R. § 51.45(d); LRA Appendix E, §§ 9.0-9.1. Petitioner offers no support for his assertion that the Applicant must anticipate a future law which may affect it, and resubmit its LRA if or when the law is enacted, or its regulations implemented. PPL holds both a National Pollutant Discharge Elimination System (NPDES) permit for water discharge into the Susquehanna River, as well as consumptive use water approval, issued and enforced by the Susquehanna River Basin Commission, Application 19950301, for SSES. *See* LRA, Appendix E, §§ 9.0-9.1, Appendix F. The Applicant also discusses its water use in its LRA, Appendix E § 3.2.1.2. That section addresses all of the questions posed by the Petitioner in Proposed Contention 2, and Petitioner does not explain what he believes has been omitted or inadequately addressed. Therefore the contention does not meet the pleading requirements of 10 C.F.R. § 2.309(f)(1)(vi). The Petitioner does not appear to contend that SSES is in violation of its permits, that it will violate them if its license is renewed, or that it is or will be in violation of any other state or federal laws. In order for NRC to issue the renewed license, SSES must explain the status of compliance with its water use permits, but NRC does not rely on an independent analysis of water consumption as a factor in its license renewal decision. 10 C.F.R. § 54.45(d); *Dominion Nuclear Conn. Inc.* (Millstone Nuclear Power Station Units 2 & 3) LBP-04-15, 60 NRC 81, 93 (2004); *aff'd,* CLI-04-36, 60 NRC 631 (2004). Therefore, compliance with Pennsylvania Act

220 as a basis for Proposed Contention 2 is outside the scope of this proceeding and not material to NRC's decision. 10 C.F.R. §§ 2.309(f)(1)(iii), (iv).

Petitioner's discussion of impingement and entrainment of organisms is not a basis for Proposed Contention 2. The Petitioner references other power plants on the Susquehanna River which impinge and entrain organisms, and a fish kill at Brunner Island, but offers no explanation for requiring impingement or entrainment assessment at SSES. Petition at 25-26. Because SSES does not utilize once-through cooling or cooling pond heat dissipation systems, it is not required to assess the impact of the facility on fish, early life stages of fish, or heat shock. 10 C.F.R. § 51.53(c)(3)(ii)(B). These are Category 1 issues. *See* 10 C.F.R. Part 51, Appendix B. Therefore, an assessment of these issues is outside the scope of this proceeding, and not material to NRC's license renewal decision. 10 C.F.R. §§ 2.309(f)(1)(iii), (v).

In his discussion of Proposed Contention 2, Petitioner mentions invasive species in the Susquehanna River and asks how "PPL plans to defeat Asiatic clam and/or Zebra mussel infestation." Petition at 28. Petitioner does not supply any legal support for why this is an appropriate basis for his proposed contention. Petitioner does not explain what his concerns are about the invasive species. He simply states in a footnote that those species are present in the Susquehanna River. *Id.* Therefore, the Petitioner has failed to provide sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). Moreover, the discharge of chlorine or other biocides is a Category 1 issue, and thus not a part of the environmental review for license renewal. 10 C.F.R. Part 51, Subpart A, Appendix B. Therefore, this basis for Proposed Contention 2 also fails because it is beyond the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii).

Petitioner poses a question about tritium monitoring, but does not specify what he sees as a flaw or omission in the LRA or ER. Petition at 26. Therefore, it does not even come close to meeting the requirements of 10 C.F.R. § 2.309. Petitioner cannot just ask a question and

expect the Staff, Applicant, or Board to discern what he is implying as a basis for his contention. *See, USEC*, CLI-06-10, 63 NRC at 457; *LES*, LBP-04-14, 60 NRC at 56. This mere mention of tritium monitoring does not provide sufficient information to show that a genuine dispute exists on a material issue of law or fact, and therefore fails to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1)(vi).

Petitioner's vague statements, questions, and unparticularized references to other power plants fail to provide adequate bases for Proposed Contention 2, with most of his assertions beyond the scope of a license renewal proceeding. Furthermore, Petitioner does not offer any support for the Board's imposition of his suggested remedies. Petition at 29. Mr. Epstein asks that PPL be required to resubmit a revised LRA addressing the issues he raises in Proposed Contention 2, *id.*, but that remedy is not supported by bases, the issues he raises are beyond the scope of license renewal, not material to NRC's determination, and not supported by sufficient information or an expert opinion. Petitioner asks PPL to include an impact statement addressing the "synergetic impact of a 200 mw uprate, coupled with a 20-year license extension on the environment." Petition at 29. The uprate is factored into the license renewal application, and Petitioner offers no legal support, nor expert opinion which shows that a genuine dispute exists with the Applicant on a material issue of law or fact regarding that analysis. *See*, LRA § 1.2; Petition at 27-29. Therefore, Proposed Contention 2 does not satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(vi) and is inadmissible. Finally, Petitioner does not support his request that the Applicant resubmit its application after the implementation of Pennsylvania Act 220 with any legal argument or expert opinion. Not only is that request not redressible by the Board, but the basis fails to meet the requirements of 10 C.F.R. § 2.309(f)(1). Thus, for the aforementioned reasons, Proposed Contention 2 is inadmissible.

3. Proposed Contention 3

> PPL's demographic profile is flawed and incomplete and fails to consider the aging population and workforce which impacts supports services, emergency planning, workforce replenishment and traffic patterns.

Petition at 30. Mr. Epstein's brief explanation of the basis for this Proposed Contention is as follows.

> Pennsylvania is the second oldest state in the nation after Florida and its fastest growing population segment is octogenarians. An aging population base has unique and sensitized needs that were not factored, considered, or analyzed in the licensee's application. Moreover, PPL's intent to raise electric prices by at least 20% to 30% in the near future hits fixed-income and aging population bases especially hard.

Id. Mr. Epstein further supports Proposed Contention 3 by, *inter alia*, describing the aging workforce in the area surrounding SSES, documenting SSES' "out sourcing" and early retirement trend, predicting probable increases in utility rates, and explaining the disproportionate impact these rates will have on aging populations. Petition at 30-35. Mr. Epstein seeks to have PPL resubmit the portions of its application that relate to an aging labor and population base and the associated socioeconomic stress, and demands that PPL and the NRC "reexamine the plant's demographics." Petition at 35.

Staff Response to Proposed Contention 3

The Staff opposes admission of this Proposed Contention on the grounds that it is not material to the findings the NRC must make to support a license renewal application and does not demonstrate that a genuine dispute exists with the applicant on a material issue of law or fact. 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

First, Proposed Contention 3 is not material to the findings the NRC must make to support its decision regarding this license renewal application. 10 C.F.R. § 2.309(f)(1)(iv). Mr. Epstein states generically that this Proposed Contention is material to the NRC staff's findings because "these human components are critical ingredients in the infrastructure of any large

industrial complex." Petition at 31. This unsubstantiated statement, standing alone, does not demonstrate why this Proposed Contention is material to the NRC staff's license renewal findings. Indeed, Contention 3 appears to be wholly unrelated to any NEPA finding the NRC must make. In license renewal, an Applicant's environmental report is not required to consider the economic costs and benefits of the proposed action, except insofar as they relate to alternatives or are relevant to mitigation. 10 C.F.R. § 51.53(c)(2).

Second, Proposed Contention 3 does not provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). Commission regulations require that contentions contain references to specific portions of the applicant's environmental or safety report that the petitioner disputes or believes omitted relevant information. 10 C.F.R. § 2.309(f)(1)(vi). Mr. Epstein never provides this analysis. Instead, Mr. Epstein provides a long list of population statistics and compares them to answers PPL employees have given in other cases and interviews. Petition at 32-35. While Mr. Epstein lists the sections of the Application where demographics are mentioned, Petition at 30, he never identifies what the dispute is with the Application, nor what portion of PPL's analysis he believes is wrong. PPL provided both an environmental justice and demographic analysis of the communities within fifty miles of the SSES. *See* LRA, Appendix E §§ 2.6, 2.7. Many of Mr. Epstein's assertions concern SSES' aging population base and workforce, in one case referencing the number of "low-income households" in Luzerne and Columbia counties. Petition at 34. PPL specifically analyzed the impact of the license renewal of SSES on low income populations in its environmental report. LRA, Appendix E § 2.6.2.2. Mr. Epstein never specifies the deficiencies in this analysis. Properly formatted contentions "must focus on the license application in question, challenging either specific portions of or alleged omissions from the application." *LES*, LBP-04-14, 60 NRC at 57. It is never clear from

Mr. Epstein's assertions what specific analysis or fact contained in PPL's Application he is challenging.

Mr. Epstein further states that the "problems PPL faces moving forward, such as a declining and aging labor pool and aging population base were omitted from PPL's renewal application." Petition at 33. To the extent that Mr. Epstein believes PPL's Application "fails to contain information on a relevant matter as required by law," Mr. Epstein must identify each failure and provide supporting reasons for his belief. 10 C.F.R. § 2.309(f)(1)(iv). Mr. Epstein never provides support for his belief that there was an omission. Instead, he merely states that PPL and the NRC have "spent large sums of money and countless hours examining the effect of aging of reactor components and an aging management review," but that "neither entity has examined the impact of relicensing on aging human beings who live within the shadow of the plant." Petition at 33. In fact, PPL did provide a demographic analysis in its environmental review. LRA, Appendix E § 2.6. Mr. Epstein never demonstrates why PPL's existing analysis is insufficient, nor does he provide any legal basis for why more is required. Mr. Epstein has not provided sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

Finally, Mr. Epstein alleges that PPL's practice of "out sourcing" work should have been addressed in the LRA. Petition at 30-33. Again, Mr. Epstein does not provide support for why this must be included in PPL's analysis. Mr. Epstein's "out sourcing" arguments concern PPL's current operating practice, as he is worried by the current amount of labor "contracted to 'work by others'" and the ratio of "linesman to households." Petition at 31-33. Concerns with current operating practices are outside the scope of license renewal as they are not Category 2 environmental issues nor related to a plant structure or component that will require an aging management review. *See McGuire; Catawba*, CLI-02-26, 56 NRC at 363-64.

Based on the foregoing, Proposed Contention 3 is not admissible.

4. Proposed Contention 4

> PPL's tax analysis is fatally flawed and lacks historical perspective. The company failed to assess the impact of Revenue Neutral Reconciliations at the SSES on local citizens, residents, taxpayers, and homeowners.

Petition at 36. Mr. Epstein's basis for Proposed Contention 4 is as follows.

> By limiting their historic snapshot from 2001-2005, PPL provides a false and incomplete fiscal picture of the impact their property devaluations and legal suits had on local taxing bodies. The transition from the PURTA to RNR has been a disaster. PPL has conveniently omitted the tax strain it has caused the Berwick Area School District, Salem Township, Luzerne County, residential consumers and senior citizens living on fixed incomes.

Id. Mr. Epstein supports this Proposed Contention by analyzing the historic valuation of SSES and the different tax rates it paid throughout its history. Petition at 37-39. He also documents earlier tax court cases. *Id*. For a remedy, Mr. Epstein asks the NRC to compel PPL to revise and resubmit the "tax impact" of SSES' license renewal using modern numbers, to compel PPL to resubmit portions of its application relating to socioeconomic stress and economic impact "based on PPL's tax shifting policies," and for the NRC to compel PPL to explain how its tax policies benefit local communities. Petition at 39.

Staff Response to Proposed Contention 4

The Staff opposes admission of this Proposed Contention on the grounds that it is outside the scope of license renewal, the issue raised is not material to the findings the NRC must make to support a license renewal decision, and there is not sufficient information to show that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. §§ 2.309(f)(1)(iii), (iv), (vi).

Portions of Proposed Contention 4 are outside the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii). It is unclear precisely what remedy Proposed Contention 4 seeks. To the extent it seeks to have the NRC provide a new property tax valuation for SSES, the Proposed Contention is clearly outside the scope of license renewal. *See* Environmental Review of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28467, 28471-72 (June 5, 1996)

(Stating that issues relating to utility economics are outside the scope of an environmental analysis because they are state issues). If Proposed Contention 4 is requesting the NRC to compel PPL to explain the impact of a state tax assessment or to develop a more community friendly tax policy (Petition at 36, 39) then this is also outside the scope of this proceeding. *Id.*

Secondly, Proposed Contention 4 is not material to the findings the NRC must make to support a license renewal decision. 10 C.F.R. § 2.309(f)(1)(iv). In support of materiality, Mr. Epstein states that "relicensing a nuclear power plant should not impose economic hardships on the host community." Petition at 37. Mr. Epstein further suggests that "either the NRC must reexamine the economic impact of SSES on the community, or address how relicensing a nuclear power plant while shifting the tax burden and increasing rates on an aging community is incompatible with the NRC's mission." *Id.* Mr. Epstein provides no authority to support this novel claim. While it is true that applicants include tax information in their applications, *see* LRA, Appendix E § 2.7, Mr. Epstein does not make it clear why this imposes a duty on the NRC to examine shifting tax burdens that resulted from state deregulation. It is incumbent upon petitioners to clearly state the bases for their contentions as a Board may not infer unarticulated bases. *USEC*, CLI-06-10, 63 NRC at 457. Mr. Epstein's unsubstantiated arguments for materiality do not meet the Commission's stringent pleading requirements and are without merit.

Further, Proposed Contention 4 is inadmissible because it does not provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). Commission regulations require contentions to contain references to specific portions of the applicant's environmental or safety report that the petitioner disputes or believes omitted relevant information. 10 C.F.R. § 2.309(f)(1)(vi). While Mr. Epstein lists the sections of the Application that mention socioeconomic and tax related issues, Petition at 36, he never specifies which portion of this analysis he believes is flawed.

PPL provided a tax analysis as part of its environmental report. *See* LRA, Appendix E § 2.7. Mr. Epstein never specifies which portion of this analysis he believes is incorrect. Instead, Mr. Epstein merely lists past tax figures and tax related litigations and settlements, without demonstrating the precise issue of law or fact disputed. *Id*. At 37-39.

Additionally, Mr. Epstein makes numerous unsubstantiated declarations. For example, Mr. Epstein lists property valuation statistics from both before and after deregulation, speaks about "stranded costs" that PPL collected "based on earlier miscalculations," and contends that PPL purposefully devalued SSES because they "supposedly understood that in order for free-enterprise to thrive, they would have to abandon their rate recovery dependency." *Id*. Mr. Epstein never provides any citations or expert testimony to support these assertions nor provides any causal connection between the license renewal of SSES and these state tax issues. It is the petitioner's duty to present the factual information and expert opinions necessary to support his contention adequately. *See USEC*, CLI-06-10, 63 NRC at 457. Further, Mr. Epstein never specifies how these unsubstantiated assertions create a genuine issue of law or fact with PPL. Mr. Epstein's bare assertions are not sufficient to satisfy the Commission's stringent pleading requirements; therefore, Proposed Contention 4 is inadmissible. *See Id.*

5. <u>Proposed Contention 5</u>

> PPL is in violation of the following Federal Regulations: 10 C.F.R. § 50.47; 10 C.F.R. § 50.54; 10 C.F.R. § [sic] Part 50 Appendix E; and 44 C.F.R. § 350.

Petition at 41. Mr. Epstein's brief explanation of the basis for this contention is as follows:

> The Nuclear Regulatory Commission should hold a final decision for relicensing the SSES in abeyance until such time that PPL can demonstrate and verify its compliance with emergency preparedness measures at the Susquehanna Steam Electric Station under the Radiological Emergency Protective Measures outlined in 10 C.F.R. § 50.47 (Condition of Licenses).

Id.

Staff Response to Proposed Contention 5

Proposed Contention 5 is inadmissible. It is outside the scope of license renewal and it does not provide enough information or support for Mr. Epstein's position on the issue. 10 C.F.R. §§ 2.309(iii), (vi). Evacuation planning is not related to a structure or component which requires an aging management review, nor is it a Category 2 environmental issue which must be analyzed for a license renewal. *See* 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1; *McGuire; Catawba*, CLI-02-26, 56 NRC at 363-64. The Commission has specifically excluded emergency planning from license renewal proceedings because the issue is not germane to age-related degradation or unique to the period of time covered by the license renewal. *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 560-61 (2005); *Turkey Point*, CLI-01-17, 54 NRC at 9-10. Thus, Proposed Contention 5 is inadmissible because it is outside the scope of this proceeding, and should not be admitted. § 2.309(f)(1)(iii).

CONCLUSION

For the reasons discussed above, Mr. Epstein has not demonstrated standing to intervene, on his own behalf or on behalf of TMIA, nor has he proffered an admissible contention. Therefore, the Licensing Board should deny his Petition.

Respectfully submitted,

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Molly L. Barkman
Jody C. Martin
Counsel for NRC Staff

Dated at Rockville, Maryland
this 29th day of January, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PPL SUSQUEHANNA LLC	)	Docket Nos. 50-387-LR
	)	50-388-LR
	)	
(Susquehanna Steam Electric Station	)	ASLBP No. 07-851-01-LR
Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF RESPONSE TO ERIC JOSEPH EPSTEIN'S PETITION FOR LEAVE TO INTERVENE, REQUEST FOR HEARING, AND CONTENTIONS" in the above-captioned proceeding have been served on the following by electronic mail with copies by deposit in the NRC's internal mail system or, as indicated by an asterisk, by electronic mail, with copies by U.S. mail, first class, this 29th day of January, 2007.

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