RAS 12971

January 29, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



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

**PPL SUSQUEHANNA'S ANSWER TO**
**ERIC EPSTEIN'S PETITION FOR LEAVE TO INTERVENE**

## I. INTRODUCTION

PPL Susquehanna, LLC ("PPL Susquehanna") hereby answers and opposes "Eric Joseph Epstein's Petition for Leave to Intervene, Request for Hearing, and Presentation of Contentions with Supporting Factual Data," dated January 2, 2007 (the "Petition" or "Pet."), regarding PPL Susquehanna's application to renew the operating licenses for the Susquehanna Steam Electric Station ("SSES"). Mr. Epstein's Petition should be denied because Mr. Epstein has not demonstrated standing and has identified no admissible contentions. In large measure, both Mr. Epstein's interest and his proposed contentions relate to economic issues which are not germane to this proceeding.

## II. PROCEDURAL BACKGROUND

On September 13, 2006, PPL Susquehanna submitted its application requesting renewal of Operating License Nos. NPF-14 and NPF-22 for SSES Units 1 and 2 (the "Application"). On November 2, 2006, the Nuclear Regulatory Commission ("NRC" or "Commission") published a Notice of Opportunity for Hearing ("Notice") regarding PPL Susquehanna's Application. 71

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Fed. Reg. 64,566 (Nov. 2, 2006). The Notice permitted any person whose interest may be affected to file a request for hearing and petition for leave to intervene within 60 days of the Notice. Id.

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

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

Id. at 64,566-67 (footnote omitted).

## III. MR. EPSTEIN LACKS STANDING

The Petition fails to establish Mr. Epstein's standing to participate in this proceeding. Standing is not a mere legal technicality, but "an essential element in determining whether there is any legitimate role" for the Commission "in dealing with a particular grievance." Westinghouse Electric Corp. (Nuclear Fuel Export License for Czech Republic – Temelin Nuclear Power Plants), CLI-94-7, 39 N.R.C. 322, 331-32 (1994).

To determine whether a petitioner's interest provides a sufficient basis for intervention, "the Commission has long looked for guidance to current judicial concepts of standing." Quivira

Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 N.R.C. 1, 5-6 (1998). Judicial concepts of standing require a petitioner to establish that:

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

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

The Petition does not demonstrate that Mr. Epstein will suffer any injury within the zone of interest of the statutes administered by the NRC, or any injury that can be traced to license renewal. The only injury that Mr. Epstein claims is that as a residential customer of PPL, he has allegedly experienced "rate shock." (Pet. at 4). However, such an economic interest is not within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act ("NEPA"), and therefore does not confer standing. Portland General Electric Co. (Pebble Springs Nuclear Plant Units 1 and 2), ALAB-333, 3 N.R.C. 804, 806 (1976), aff'd, CLI-76-27, 4 N.R.C. 610, 614 (1976). Concern about rates is not within the scope of interest protected by the Atomic Energy Act. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 N.R.C. 327, 332 n.4 (1983); Pebble Springs, CLI-76-27, 4 N.R.C. at 614. Nor is such an interest within the zone of interest protected by NEPA. Pebble Springs, ALAB-333, 3 N.R.C. at 806. A petitioner who suffers only economic injury lacks standing to bring a NEPA-based challenge to agency action. International Uranium (USA) Corp. (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 N.R.C. 259, 264 (1998); Quivira Mining Co., CLI-98-11, 48 N.R.C. at 8-10. Further, Mr. Epstein's concerns with rates do not appear to have any connection to license renewal and are therefore not redressable in this proceeding.

Mr. Epstein also claims standing on behalf of Three Mile Island Alert, Inc. ("TMIA") (Pet. at 8), but membership in an organization confers no standing on an individual. Further, there is no demonstration in the Petition that TMIA has standing as an organization. In order to establish standing, an organization must show that the action will cause injury-in-fact either to its own organizational interests or to the interests of its members. Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 N.R.C. 95, 102 n.10 (1994). Where an organization asserts a right to represent the interests of its members, the "judicial concepts of standing" require a showing that:

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

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-98-13, 48 N.R.C. 26, 30-31 (1998), citing Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977). Under NRC practice, an organization seeking to establish representational standing "must demonstrate how at least one of its members may be affected by the licensing action (such as by activities on or near the site), must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized by that member to request a hearing on behalf of that member." Northern States Power Co. (Monticello Nuclear Generating Plant), CLI-00-14, 52 N.R.C. 37, 47 (2000); see also GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 202 (2000).

There is no indication in the Petition that TMIA has any property of its own that would be affected by license renewal, or would suffer any other injury as a result of license renewal. While the Petition asserts that TMIA is a "safe energy organization" and "serves as a regional clearing house on a broad spectrum of issues" (Pet. at 8), "[a]n organization's asserted purposes

and interests, whether national or local in scope, do not, without more, establish independent organizational standing." Florida Power and Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 N.R.C. 521, 530 (1991), citing Sierra Club v. Morton, 405 U.S. 727, 739 (1972). Similarly, an organization's interest in providing information to the public is insufficient for standing. Transnuclear, Inc. (Export of 93.15% Enriched Uranium), CLI-94-1, 39 N.R.C. 1, 5 1994); Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 N.R.C. 47, 57-61 (1992); Turkey Point, ALAB-952, 33 N.R.C. at 529-30.

Nor is there any indication that TMIA has representational standing. Although the Petition claims that TMIA has members living within 50 miles of SSES, it does not identify any particular member who would be injured by license renewal, or provide any indication that such a person has authorized TMIA to represent his or her interest.

Finally, the Petition argues that Mr. Epstein qualifies for "discretionary standing." Under the NRC rules, discretionary intervention may only be granted when at least one petitioner has established standing and at least one admissible contention has been admitted. 10 C.F.R. § 2.309(e). See also 69 Fed. Reg. 2,182, 2,189 (2004) ("Discretionary intervention . . . will not be allowed unless at least one other petitioner has established standing and at least one admissible contention.").[1]

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[1] Even if discretionary intervention were available, which it is not, Mr. Epstein has clearly not demonstrated that it should be granted. Discretionary intervention depends on a balancing of factors, the most important of which is a petitioner's potential contribution to the record. Pebble Springs, CLI-76-27, 4 N.R.C. at 616-17. Furthermore, the petitioner, as the proponent of an order permitting intervention, has the burden of persuasion (10 C.F.R. § 2.325), and the Commission in Pebble Springs intimated that specificity should be demanded. While Mr. Epstein holds himself out as an "acknowledged nuclear expert" (Pet. at 10), he provides no resume establishing any education or training that would qualify him as an expert. To the best of counsel's recollection and belief, Mr. Epstein is or was a visiting assistant professor of humanities teaching holocaust studies at Penn State's Harrisburg campus. Further, the value of his potential contribution is belied by his concern with rates – a concern entirely unrelated to the scope of this proceeding.

In sum, Mr. Epstein fails to establish standing under any theory. This failure alone requires denial of the Petition.

## IV. NONE OF MR. EPSTEIN'S CONTENTIONS IS ADMISSIBLE

In order to be admitted to a proceeding, a petitioner must also plead at least one admissible contention. 10 C.F.R. § 2.309(a). None of Mr. Epstein's contentions meets the standards for admissibility set forth below. This failure too requires that the Petition be denied.

### A. Standards for Contentions

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

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

10 C.F.R. Part 54 governs the health and safety matters that must be considered in a license renewal proceeding. The Commission has specifically limited this safety review to the matters specified in 10 C.F.R. §§ 54.21 and 54.29(a),[2] which focus on the management of aging of certain systems, structures and components, and the review of time-limited aging evaluations. See Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-

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

17, 54 N.R.C. 3, 7-8 (2001); Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-02-26, 56 N.R.C. 358, 363 (2002). Thus, the potential effect of aging on systems, structures and components is the issue that essentially defines the scope of the safety review in license renewal proceedings. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 637 (2004).

The rules in 10 C.F.R. Part 54 are intended to make license renewal a stable and predictable process. 60 Fed. Reg. at 22,461, 22,462, 22,463, 22,485. As the Commission has explained, "[w]e sought to develop a process that would be both efficient, avoiding duplicative assessments where possible, and effective, allowing the NRC Staff to focus its resources on the most significant safety concerns at issue during the renewal term." Turkey Point, CLI-01-17, 54 N.R.C. at 7 (2001). "License renewal reviews are not intended to 'duplicate the Commission's ongoing reviews of operating reactors.'" Id. (citation omitted). To this end, the Commission has confined 10 C.F.R. Part 54 to those issues uniquely determined to be relevant to the public health and safety during the period of extended operation, leaving all other safety issues to be addressed by the existing regulatory processes. 60 Fed. Reg. at 22,463. This scope is based on the principle established in the rulemaking proceedings that, with the exception of the detrimental effects of aging and a few other issues related to safety only during the period of extended operation, the existing regulatory processes are adequate to ensure that the licensing bases of currently-operating plants provide and maintain an adequate level of safety. 60 Fed. Reg. at 22,464, 22,481-82. Consequently, license renewal does not focus on operational issues, because these issues "are effectively addressed and maintained by ongoing agency oversight, review, and enforcement." Millstone, CLI-04-36, 60 N.R.C. at 638 (footnote omitted).

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

10 C.F.R. § 2.309(f)(1)(iii)-(iv) requires that a petitioner demonstrate that the issue raised by each of its contentions is within the scope of the proceeding and material to the findings that the NRC must make. Licensing boards "are delegates of the Commission" and, as such, they may "exercise only those powers which the Commission has given [them]." Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 N.R.C. 167, 170 (1976) (footnote omitted); accord Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 N.R.C. 287, 289-90 n.6 (1979). Accordingly, it is well established that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the licensing board has been delegated jurisdiction. Id.; see also

Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 N.R.C. 419, 426-27 (1980); Commonwealth Edison Co. (Carroll County Site), ALAB-601, 12 N.R.C. 18, 24 (1980).

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

These limitations are very germane to this proceeding in that the scope of admissible environmental contentions is constrained by 10 C.F.R. §§ 51.53(c), 51.95(c), and Appendix B to Part 51; and the scope of technical contentions is constrained by 10 C.F.R. Part 54. See Turkey

Point, CLI-01-17, 54 N.R.C. at 5-13. See also Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 N.R.C. 327, 329 (2000); Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41 (1998), motion to vacate denied, CLI-98-15, 48 N.R.C. 45, 56 (1998); Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3), CLI-98-17, 48 N.R.C. 123, 125 (1998).

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

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

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

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

These pleading standards governing the admissibility of contentions are the result of a 1989 amendment to 10 C.F.R. § 2.714, now § 2.309, which was intended "to raise the threshold

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

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

Under these standards, a petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention." Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41

N.R.C. 281, 305, vacated in part and remanded on other grounds, CLI-95-10, 42 N.R.C. 1, aff'd in part, CLI-95-12, 42 N.R.C. 111 (1995). Where a petitioner has failed to do so, "the [Licensing] Board may not make factual inferences on [the] petitioner's behalf." Id., citing Palo Verde, CLI-91-12, 34 N.R.C. 149. See also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 180 (1998) (a "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient"; rather "a petitioner must provide documents or other factual information or expert opinion" to support a contention's "proffered bases") (citations omitted).

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

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

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

Id. (footnote omitted); see also Calvert Cliffs, CLI-98-14, 48 N.R.C. at 41 ("It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions . . . ."). A contention, therefore, is not to be

admitted "where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts." 54 Fed. Reg. at 33,171.[3] As the Commission has emphasized, the contention rule bars contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003).

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

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

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

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

B. Mr. Epstein's Contentions Are Beyond the Scope of this Proceeding, Vague, Unsupported, Based on Erroneous Factual Assertions, and Otherwise Inadmissible

As explained below, none of Mr. Epstein's proposed contentions meets the applicable standards for the admission of contentions in NRC licensing proceedings.

1. Contention 1 Is Beyond the Scope of the Proceeding and Raises No Material Genuine Issue

Contention 1, which alleges that PPL Susquehanna has failed to provide data necessary to determine if it has the ability to maintain and service financial obligations, is inadmissible because it is beyond the scope of this license renewal proceeding. PPL Susquehanna's financial qualifications is not an issue related to the management of equipment aging or time-limited aging analyses, and thus Contention 1 represents an impermissible challenge to the scope of 10 C.F.R. Part 54, which is limited to these aging-related issues.

Indeed, the Commission conducted a specific rulemaking eliminating any requirement for a license renewal applicant to submit financial qualifications information. 69 Fed. Reg. 4,439 (2004).

> With this final rule, the NRC believes that review of financial qualifications of non-electric utility licensee applicants at license renewal is not necessary. The resulting process for oversight of financial qualifications is sufficient to ensure that the NRC has adequate warning of adverse financial impacts so that the NRC

> can take timely regulatory action to ensure public health and safety and the common defense and security. The resulting process has two components: (1) A formal review of major triggering events, and (2) monitoring of financial health between the formal reviews due at the "triggering events." The relevant triggering events are (1) initial operating license application, (2) license transfer, and (3) transition from an electric utility to a non-electric utility, either with or without transfer of control of the license. In addition, the NRC can review a licensee's financial qualifications at any point during the term of the license if there is evidence of a decline in the licensee's financial health. The NRC believes that there are no unique financial circumstances associated with license renewal because the NRC has no information indicating a licensee's revenues and expenses change due to license renewal.

Id. at 4,440.

Nor is the issue of financial qualifications within the scope of any of the Category 2 environmental issues that must be addressed pursuant to 10 C.F.R. § 51.53(c)(3). Mr. Epstein's assertion that this contention addresses environmental and socioeconomic issues raised in the Environmental Report (App. E to the Application, and hereinafter cited as "ER") is entirely unfounded. None of the sections of the Environmental Report identified by Mr. Epstein – ER §§ 3.4, 5.0-5.1.1, 6.1, E.3.2, E.3.3, and E.4.5 (see Pet. 15) – has anything to do with PPL Susquehanna's financial qualifications. Section 3.4 provides background information on the number of employees at the plant. Sections 5.0 and 5.1 of the Environmental Report address whether PPL Susquehanna is aware of any new and significant information that would alter the conclusions on any of the generically-resolved Category 1 environmental issue.[4] There is no mention of any financial issue in these sections. Section 6.1 of the ER simply summarizes the license renewal impacts and similarly makes no mention of any financial qualifications issue. Sections E.3.2, E.3.3, and E.4.5 pertain to the evaluation of severe accident mitigation alternatives ("SAMA"), and as part of this analysis consider the offsite economic impact of a

[4] Moreover, if a petitioner wishes to litigate a Category 1 issue, it must seek a waiver from the Commission. Turkey Point, CLI-01-17, 54 N.R.C. at 12.

severe accident (e.g., property depreciation, relocation costs, farm decontamination costs, etc.). None of these sections relates to PPL Susquehanna's financial qualifications.

Further, it is clear from the Petition that Contention 1 focuses on financial qualifications, and not on any environmental issue. In attempting to explain why he thinks Contention 1 is material, Mr. Epstein alleges that "PPL's status as an 'electric utility'" under NRC's definition "is in jeopardy," and he asserts that "its ability to service financial, fiscal and decommissioning obligations has been eroded by the Company's removal from the rate base." Pet. at 16. Thus, the entire focus of this contention is on whether deregulation has affected PPL Susquehanna's financial qualifications – an issue that the Commission has expressly removed from the scope of license renewal proceedings.

Moreover, even if financial qualifications were within the scope of a license renewal proceeding, which it is not, Contention 1 would still be inadmissible because it is not supported by any basis demonstrating a genuine, material issue. Mr. Epstein's contention is entirely predicated on testimony in 1997 before the Pennsylvania Public Utility Commission concerning whether PP&L Inc. (the previous SSES licensee prior to deregulation and license transfer in 2000, and now named PPL Electric Utilities[5]) might lose its status as an "electric utility" after deregulation. However, when the NRC approved the transfer of the operating licenses for SSES from PP&L Inc. to PPL Susquehanna in 2000, the NRC determined that PPL Susquehanna does not qualify as an electric utility, and therefore at that time conducted a more detailed review establishing PPL Susquehanna's financial qualifications as a non-electric utility licensee.[6] With

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[5] Order Approving Transfer of Licenses and Conforming Amendments, 65 Fed. Reg. 37,418 (2000).

[6] Safety Evaluation by the Office of Nuclear Reactor Regulation, Proposed Transfer of Licenses to the Extent Held by PP&L, Inc. to PPL Susquehanna, LLC, Susquehanna Steam Electric Station, Units 1 and 2, Docket Nos. 50-387 and 50-388, pp. 2-7 (June 6, 2000), available at ADAMS Accession No. ML0037204940, Enclosure 3. As discussed in the Safety Evaluation, PP&L Inc., which was renamed PPL Electric Utilities LLC, transferred the

respect to decommissioning funding assurance for the SSES units, the NRC approved a non-bypassable charge and determined that it would be sufficient to fully fund PPL's Susquehanna's ownership share of SSES's decommissioning funding obligation.[7] Thus, the Commission fully reviewed PPL Susquehanna's financial qualifications as a non-electric utility when the SSES licenses were transferred to it. Mr. Epstein's contention is simply based on out-of-date testimony unrelated to the current licensee, and therefore raises no genuine issue. Mr. Epstein does not provide one whit of support – no expert opinion or reference to any source or document – that would remotely suggest that PPL Susquehanna lacks the financial qualifications to perform NRC licensed activities.

2. Contention 2 Is Inadmissible Because It Is Vague, Seeks to Raise Issues Outside the Scope of the Proceeding, and Is Unsupported by Any Information Raising a Genuine, Material Dispute with the Application.

Contention 2, which alleges that PPL Susquehanna failed to consider "numerous water use and indigenous aquatic challenges" (Pet. at 23), is inadmissible because it is vague, seeks to raise issues outside of the scope of the proceeding, and does not raise any genuine, material dispute with the Application. Contention 2 begins with a vague and overly broad allegation which fails to provide notice of the issue which Mr. Epstein seeks to litigate. It then follows with a rambling string of unconnected assertions and questions, most of which are beyond the scope

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operating licenses for the SSES Units to PPL Susquehanna to enable it to respond effectively to the deregulation of the electric utility industry. Id. at 1. As described in the Application, PPL Susquehanna is a subsidiary of PPL Generation LLC, which is in turn a subsidiary of PPL Energy Supply, LLC, which is a subsidiary of PPL Corporation – the ultimate parent. Application, § 1.1.1; ER § 1.2.

[7] Safety Evaluation, supra note 6, at 7 ("The staff has reviewed the terms of the non-bypassable charge and has concluded that it, plus funds accumulated in the decommissioning trust so far and earnings on the current and future accumulated amounts, will be sufficient to fully fund PPL Susquehanna's proposed ownership share of SES." Under a license condition imposed in connection with this review, PPL Susquehanna is required to maintain the contractual arrangements necessary to obtain the decommissioning funds through the non-bypassable charge until the decommissioning trust is fully funded, or must provide equivalent assurance in accordance with the NRC's regulations. Id. at 8.

of the proceeding and none of which identifies any genuine, material dispute with the Application.

At the outset, the contention itself is unduly vague. Contention 2 does not identify what "water use" or "indigenous aquatic challenges" have been ignored. Such an open-ended and ill-defined contention lacking in specificity is not admissible. Millstone, CLI-01-24, 54 N.R.C. at 359. Contention 2 points to no particular deficiency in the application. Indeed, Contention 2 does not discuss sections 3.1.2.1 and 4.1 of the Environmental Report, which analyze the consumptive use of water.[8] A contention does not establish a genuine dispute and hence is not admissible if it does not controvert specific sections of the application and explain why they are wrong. 54 Fed. Reg. at 33,170; Millstone, CLI-01-24, 54 N.R.C. at 358: Palo Verde, CLI-91-12, 34 N.R.C. at 156; Nuclear Management Co., LLC (Monticello Nuclear Generating Plant), LBP-05-31, 62 N.R.C. 735, 750 (2005).

The brief explanation of Contention 2 in the Petition (Pet. at 23) does not cure these deficiencies. First, Mr. Epstein states that "[t]he Susquehanna River Basin Commission and the Pennsylvania Department of Environmental Protection are in the process of collecting, evaluating and implementing a comprehensive water use plan for Pennsylvania, i.e. Act 220."

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[8] Mr. Epstein asserts in conclusory fashion that "[t]his contention addresses technical, environmental and safety concerns raised in the Application and Appendix E: Environmental Report 2.2.21 [sic] - 2.5, 2.91 [sic], 2.9.2, 4.0 to 4.8.1 [sic], 4.12, 4.15.1 [sic], 5.0-5.1.1 and 6.1, and SAMA; 4.15 PUBLIC UTILITIES; PUBLIC WATER SUPPLY AVAILABILITY and 5.16 Flood et al. [sic]" Pet. at 23. Five of these sections (2.2.21, 2.91, 4.8.1, 4.15.1, and 5.16) do not even exist. Mr. Epstein makes no effort to discuss any of these sections, and provides no explanation why any of these sections is disputed or allegedly deficient. It should be noted that the Category 2 issue addressed in section 4.15 of the ER is the "impact of population increases attributable to the proposed project on the water supply." This issue does not relate to the plant's use of water for cooling purposes, which is the focus of Mr. Epstein's contention. Compare Pet. at 24 ("Nuclear power plants require large amounts of water for cooling purposes. . . ."). Further, section 4.15 demonstrates that the population increase attributable to license renewal will be small, on the order of 428 persons, in an area where the excess public water supply exceeds 5.1 million gallons per day. Mr. Epstein provides no basis to dispute this conclusion.

Pet. at 23.[9] This statement does not indicate that there is any deficiency in the analysis of consumptive water use in sections 3.1.2.1 and 4.1 of the Environmental Report (not even mentioned by Mr. Epstein), which quantify consumptive use both numerically and as a percentage of river flow. Both sections discuss the Susquehanna River Basin Commission's ("SBRC") regulation of consumptive water use, including how SSES complies with SRBC regulations by compensating for the consumptive water use by sharing in the costs of the Cowanesque Lake Reservoir (ER at 3.1-4), which provides another source of water during low flow conditions (ER at 4.1.2). The updated State Water Plan, which is not scheduled to be complete until March 2008,[10] will not alter any requirements or PPL Susquehanna's commitments relating to water use.[11] The update may improve the knowledge of policymakers and regulators, which would allow for more informed rulemaking in the future, but it is not a prerequisite for any agency decisions today. Nor has any agency taken the view that it must await the updated State Water Plan before it can make any decisions today. Mr. Epstein provides no support – no expert opinion or references to other documents or sources – that would indicate any error in the Environmental Report's assessment of consumptive water use.

Second, the Petition's brief explanation of this contention states that power plants must have plans to defeat invasions of Asiatic clams and Zebra mussels. Pet. at 23. If this statement is intended to suggest a safety issue, it is outside the scope of the proceeding, because it is unrelated to aging management. To the extent that this statement may be intended to relate to an

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[9] Act 220 requires the Pennsylvania Department of Environmental Protection ("DEP") to update the State Water Plan by March 2008. See DEP Fact Sheet, The Pennsylvania State Water Plan and Act 220 of 2002, available at http://www.dep.state.pa.us/dep/deputate/watermgt/wc/Act220/BckGrndInfo/FACTSHEETS.htm. The Act does not give the DEP any authority to regulate, control, or require permits for the withdrawal or use of water. DEP, Section-By-Section Summary – Water Resources Planning Act, available at http://www.dep.state.pa.us/dep/deputate/watermgt/wc/Act220/Docs/WaterResourcesSecSummary.htm.

[10] Id.

[11] As previously noted, Act 220 does not give the DEP any authority to regulate, control, or require permits for the withdrawal of use of water. See note 9 supra.

environmental issue, it does not relate to any of the Category 2 impacts that may be considered in a license renewal proceeding. Mr. Epstein's subsequent discussion of this contention indicates that his concern is with the potential effects of biocides that may be used to control these organisms (Pet. at 27, 28), but this is a Category 1 issue that has been resolved generically by rule. See 10 C.F.R. Part 51, App. B, Table B-1; GEIS § 4.4.2.2 and Table 4.4.[12]

Later in attempting to explain why this contention is allegedly material, Mr. Epstein raises a hodge-podge of issues and poses a number of questions, none of which raises a genuine material dispute. First, he asserts that "[m]illions of fish . . . , fish eggs, shellfish, and other organisms are sucked out of the Susquehanna River and killed by nuclear power plants annually." Pet. at 25. This allegation, which refers to "nuclear power plants" generally with no specific focus on SSES, does not raise a genuine material issue within the scope of this proceeding for two reasons. First, the NRC rules only require an analysis of entrainment, impingement and heat shock for plants with once-through cooling systems or cooling ponds (10 C.F.R. § 51.53(c)(3)(ii)(B)), having determined generically that such impacts are small for plants such as SSES that use cooling towers. See GEIS, § 4.3.3. Thus, this issue is barred as an impermissible challenge to the NRC rules and generic determination. Second, Mr. Epstein's discussion does not relate to SSES, but instead refers to impacts at Peach Bottom (which is a nuclear plant using once-through cooling[13]) and the Brunner Island station (which is a fossil plant). See Pet. at 25. This discussion is irrelevant.

Next, Mr. Epstein questions whether there will be an impact on shad ladders. Pet. at 26. Simply posing a question without any support – without any expert opinion or reference – does

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[12] If Mr. Epstein's concern is for potential stimulation of nuisance organisms, this is also is a Category 1 issue that has been resolved generically by rule and is not a problem for plants such as SSES which use cooling towers. See 10 C.F.R. Part 51, App. B, Table B-1; GEIS, § 4.2.2.1.11.

[13] GEIS, Supp. 10, at 2-6.

not demonstrate a genuine, material issue. In any event, the issue of thermal plume barrier to migration is a Category 1 issue and therefore may not be raised as a contention. See 10 C.F.R. Part 51, App. B, Table B-1.

Mr. Epstein also refers to and poses a question related to the EPA's July 9, 2004 Final Phase II rule implementing Section 316(b) of the Clean Water Act. Pet. at 26. Again, a mere question does not demonstrate the existence of a genuine dispute on a material issue; and in any event this EPA rule establishes standards to reduce entrainment and impingement,[14] which are issues that must be analyzed in a license renewal proceeding only if the applicant uses once-through cooling or cooling ponds. 10 C.F.R. § 51.53(c)(3)(ii)(B). For plants like SSES that use cooling towers, these impacts have been determined generically to be small. See GEIS, § 4.3.3. Further, if a plant has intake flows that are commensurate with a closed-cycle cooling system – as SSES has – it is deemed to meet the performance standards in the EPA's rule. 40 C.F.R. § 125.94(a)(1)(i).

In addition, Mr. Epstein questions what will be the Commission's compliance monitoring in regard to onsite and offsite tritium monitoring, and how will the Commission account for "offsite masking as a result of landfill tritium leachate?" Pet. at 26. This question is irrelevant because SSES does not have any landfill producing tritium leachate. From footnote 28 of the Petition, it appears that his concern relates to disposal and licensing of tritium exit signs, suggesting that Mr. Epstein has simply cut and pasted irrelevant materials from some other document. In any event, radiological monitoring is an operational program that is beyond the scope of license renewal. See, e.g., Monticello, supra, LBP-05-31, 62 N.R.C. at 754 (rejecting claims of inadequate "radiation monitoring" and asserted need "for new monitoring techniques").

[14] 69 Fed. Reg. 41,576 (2004) ("Today's final rule establishes performance standards that are projected to reduce impingement mortality by 80 to 95 percent and, if applicable, entrainment by 60 to 90 percent.").

Operational issues such as radiological monitoring are not addressed in license renewal proceedings because the Commission has determined that such matters are appropriately handled by its regulations governing plant operations. See, e.g., 60 Fed. Reg. at 22,464, 22,481-82; Turkey Point, supra, CLI-01-17, 54 N.R.C. at 5-6. Moreover, if Mr. Epstein's vague question is meant to intimate the need for further evaluation of radiological impacts as an environmental issue, such an issue would be barred. Both occupational radiation exposure and radiation exposure to the public are Category 1 issues determined to have small effects, based on a generic finding in the GEIS. 10 C.F.R. Part 51, App. B, Table B-1. Thus, as the Commission has held, radiological exposure from power reactor operation is a Category 1 issue, and such a contention is not litigable. Turkey Point, CLI-01-17, 54 N.R.C. at 17, 19.[15]

Finally, Mr. Epstein asserts that PPL Susquehanna needs to include an impact statement that factors in the synergistic impact of a 200 MW uprate coupled with a 20 year license extension. Pet. at 29. This assertion raises no genuine issue because in fact the Environmental Report clearly and explicitly evaluates the impacts of license renewal coupled with the extended power uprate for which PPL Susquehanna has applied. As section 2.12 of the Environmental Report states,

> PPL Susquehanna has applied for an Extended Power Uprate for SSES. The impacts evaluated in this environmental report consider extended operations at the increased power levels associated with this uprate.

ER at 2.12-1. Consistent with this statement, section 4.1 of the ER evaluates the consumptive water use that would occur with the extended power uprate. See ER at 4.1-1 to 4.1-2.[16] Contention 3 thus simply fails to address the Application. A contention which mistakenly asserts

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[15] This Category 1 issue "covers all public exposure pathways – gaseous and liquid effluents, including buildup and concentration of radioactive materials in soils and sediments. . . ." Turkey Point, CLI-01-17, 54 N.R.C. at 17.

[16] Similarly, section 3.1.2.1 of the ER identifies the evaporative loss, blowdown, and consumptive water use under both current conditions and with the extended power uprate). See ER at 3.1-4.

that the application does not address a relevant issue may be dismissed. Monticello, LPB-05-31, 62 N.R.C. at 750.

In sum, Contention 2 raises no admissible issue. It is essentially vague rhetoric that is largely unrelated to SSES, fails to address the Application, and for the most part seeks to raise issues beyond the scope of the proceeding. While Mr. Epstein may view SSES as a "menacing predator" (Pet. at 29), such rhetoric does not demonstrate any genuine, material dispute with the Application.

3. Contention 3 Is Inadmissible Because It Raises Issues Outside the Scope of the Proceeding and Fails to Demonstrate a Genuine, Material Dispute

Contention 3, which alleges that PPL Susquehanna's demographic profile fails to consider the aging population and workforce (Pet. at 30), is inadmissible because it seeks to raise issues that are outside the scope of the proceeding and fails to demonstrate a genuine, material dispute with the Application. Mr. Epstein asserts that the Contention is relevant because "an aging population affects staffing, offsite support and response times, emergency planning and social services." Pet. at 31. None of these issues is relevant to this proceeding.

To the extent that Mr. Epstein may be attempting to raise a safety issue, Contention 3 is beyond the scope of the proceeding and inadmissible because it does not relate to managing the aging of systems, structures and components, or to time-limited aging analyses of such components. See Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), LBP-02-4, 55 N.R.C. 49, 117 (2002) (holding that a contention relating to the workforce aging raised no issues within the scope of Part 54). The technical qualifications of the plant staff is not an issue that

may be addressed under 10 C.F.R. Part 54.[17] Emergency planning and response are also beyond the scope of the proceeding. 56 Fed. Reg. at 64,967; Turkey Point, CLI-01-17, 54 N.R.C. at 9; see also Millstone, CLI-04-36, 60 N.R.C. at 640.

Moreover, Mr. Epstein provides no basis for any concern with the adequacy of SSES's staffing. Instead, Mr. Epstein refers to increased use of outside contractors by "PPL Electric," which is the regulated electric utility delivering electricity to retail customers[18] – not PPL Susquehanna which owns and operates SSES – for activities such as "service requests; power service problems; disconnects and reconnects; specific projects, maintenance; inspections; collections; waste removal; consultant support services; and, manual labor." Pet. at 32. Mr. Epstein refers specifically to the number of "linesman type positions per customer." Id. at 33. None of this information has any bearing on SSES's nuclear organization or staffing.

If Contention 3 is intended to raise an environmental issue, it is still inadmissible. It appears from the discussion of the Contention that Mr. Epstein's real concern is that a potential rate increase by PPL Electric Utilities[19] might affect fixed-income and elderly residents. See Pet.

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[17] In connection with the issuance of the license renewal rules, the Commission issued NUREG-1412, "Foundation for the Adequacy of the Licensing Basis – A Supplement to the Statement of Consideration for the Rule on Nuclear Power Plant License Renewal (10 CFR Part 54)," which details the Commission's reasons for considering it unnecessary to re-review an operating plant's licensing basis, except for age-related degradation concerns, at the time of license renewal. See 55 Fed. Reg. 29,043, 29,048 (1990); 56 Fed. Reg. 64,943, 64,950 (1991). With respect to the Management, Operations and Technical Support Organization, it concludes:

> When a license is granted, the licensee must be technically qualified to engage in the activities authorized by the license and remain so for the term of the license, including any renewal term. Reviews and approval of technical specification changes, interactions with the staff, and the inspection program provide the Commission with a continuing evaluation of the licensee's management, operations and technical support organizations. If new information occurs which dictates that new or different requirements should be implemented, the staff has the authority under existing regulatory programs to require plant changes to ensure the continued safe operation of the plant.

NUREG-1412 at 13-2.

[18] SSES is owned and operated by PPL Susquehanna, and not by PPL Electric Utilities. See note 6 supra.

[19] While the Petition at 30 refers vaguely to "PPL's intent to raise electric prices by at least 20% to 30%," footnote 7 of the Petition makes it clear that Mr. Epstein is referring to PPL Electric Utilities, not PPL Susquehanna. See Pet. at 6 n.7. PPL Susquehanna does not have retail rates. Further, the testimony cited by Mr. Epstein pertains to

at 30, 34-35. The Petition makes no showing that potential rate increases by PPL Electric Utilities have any connection with SSES license renewal. Nor is this concern within the scope of any of the Category 2 environmental issues that must be analyzed in a license renewal proceeding pursuant to 10 C.F.R. § 51.53(c)(3)(ii).[20] Indeed, while Mr. Epstein provides a string-citation to eighteen sections of the Environmental Report (Pet. at 30), this citation appears to be largely boilerplate included in each of the contentions (compare Pet. at 15, 23, 36, 41), and Mr. Epstein makes absolutely no effort to explain how any of these sections is deficient or disputed, or how they relate to Contention 3. In particular, he does not explain how the analysis of any particular Category 2 impact analyzed in the ER is in error.[21] To demonstrate a genuine dispute with the applicant on a material issue, it is not enough to merely refer to multiple sections

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the projected market price of electricity in 2010, and not to any rate increase attributable to SSES's generating costs. See id.

[20] Indeed, Mr. Epstein's concern not only is unrelated to (1) any effect attributable to license renewal and (2) any Category 2 environmental issue, but also does not even pertain to an environmental impact within the ambit of NEPA. NEPA only requires an agency to assess the impacts or effects of a proposed action on the physical environment. Metro. Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 772 (1983). Accordingly, economic effects must be addressed only when they are interrelated with the natural or physical effects of a proposed action. 40 C.F.R. § 1508.14. Under the NRC rules governing license renewal proceedings, an applicant's environmental report is not required to consider the economic costs and benefits of the proposed action or of alternatives except insofar as such costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. 10 C.F.R. § 51.53(c)(2).

[21] Mr. Epstein's string citation includes four sections (4.13, 4.14, 4.18, and 4.19) of the ER which analyze Category 2 issues. Section 4.13 analyzes whether transmission lines connecting the plant to the grid could create a significant electric shock hazard, and demonstrates that those lines meet code specifications that keep induced currents below levels at which an electric shock might occur. This issue has nothing to do with an aging population or rate shock. Section 4.14 analyzes whether housing availability would be reduced as a result of a potential increase in plant staff needed either for refurbishment of the plant or for aging management activities in the period of extended operation. Section 4.14 indicates that no refurbishment activities have been identified that would require an increase in staffing, and no more than 60 employees would be required for aging management activities in the period of extended operation. It concludes that even considering indirect jobs, no more than 177 housing units might be required, in an area that is estimated to contain approximately 700,000 housing units. This issue has nothing to do with an aging population or rate shock. Section 4.18 similarly considers whether additional workers would have an impact on transportation, but concludes that the small projected increase would have only a small impact on transportation. This issue has nothing to do with an aging population or rate shock. Finally, Section 4.19 analyzes whether license renewal would have any impact on historic or archeological resources – an issue obviously unrelated to aging of the population. Mr. Epstein also cites portions of Appendix E of the ER, which provide information related to the analysis of severe accident mitigation alternatives, but he does not mention or challenge section 4.20 of the ER, which presents the results of the SAMA analysis. In any event, these sections too have nothing to do with an aging population or rate shock.

of the application. Instead, a petitioner must indicate the supporting reasons for each dispute. Turkey Point, CLI-01-17, 54 N.R.C. at 19.

Lacking any relevance to this proceeding, as well as any factual basis demonstrating a genuine dispute with the Application, Contention 3 is clearly inadmissible. Therefore, it must be rejected.

4. Contention 4 Is Inadmissible Because It Seeks Evaluation of Tax Laws That Are Unaffected By and Unrelated to License Renewal

Contention 4, which alleges that PPL Susquehanna's tax analysis is flawed because it does not assess the impact of Revenue Neutral Reconciliations, is inadmissible because it seeks to raise an issue that is beyond the scope of the proceeding and does not raise a genuine material dispute with the Application. In essence, this Contention advocates analyzing the impact of past changes in Pennsylvania's property tax laws resulting from deregulation – an impact that is not caused or affected by license renewal. Because past changes in tax laws are not caused by the proposed license renewal, they are beyond the scope of the environmental review in this proceeding.

Section 2.7 of the Environmental Report provides information on the property taxes paid by SSES to local jurisdictions over the last five years, and identifies what percentage of the local jurisdiction's tax revenues the SSES payments represent. Mr. Epstein's contention identifies no inaccuracy in this information. Section 4.17.2 then considers whether SSES's tax payments will drive significant land use changes in the renewal term.[22] Mr. Epstein's contention identifies no

[22] Tax payments themselves are essentially transfer payments (i.e., transfer of a benefit) which do not have to be considered under NEPA. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 A.E.C. 159, 177 (1974); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), ALAB-336, 4 N.R.C. 3, 4 (1976); and Illinois Power Co. (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 N.R.C. 27, 49 (1976). Further, concerns over the disparate receipt of benefits are beyond the scope

error in this analysis. Therefore, the Contention fails to dispute any specific portion of the Application, as is required by 10 C.F.R § 2.309(f)(1)(vi) for a contention to be admissible.

Instead, Mr. Epstein alleges that "PPL failed to address the negative impact that the Revenue Neutral Reconciliation tax assessment [which Mr. Epstein mistakenly equates with the cessation of payments under the Pennsylvania Utility Realty Tax Act ("PURTA")] has had on the school district, municipalities and residential customers."[23] Pet. at 36. As explained in the Environmental Report,

> In the past, PPL Susquehanna paid real estate taxes to the Commonwealth of Pennsylvania for their generating, transmission, and distribution facilities. Under authority of the Pennsylvania Utility Realty Tax Act (PURTA), real estate taxes collected from all utilities (water, telephone, electric, and railroads) were redistributed to the taxing jurisdictions within the Commonwealth. In Pennsylvania, these jurisdictions include counties, cities, townships, boroughs, and school districts. The distribution of PURTA funds was determined by formula, and was not necessarily based on the individual utility's effect on a particular government entity.
>
> In 1996, Electricity Generation Customer Choice and Competition Act became law, which allowed consumers to choose among competitive generation suppliers. As a result of utility restructuring, Act 4 of 1999 revised the tax base assessment methodology for utilities from the depreciated book value to the market value of utility property. Additionally, as of January 1, 2000, PPL Susquehanna was required to begin paying real estate taxes directly to local taxing jurisdictions, ceasing payments to the Commonwealth's PURTA fund.

ER at 2.7-1. Thus, the change in how property taxes are assessed and distributed was the result of deregulation and a 1999 change in tax law in Pennsylvania, and is not a change that in any way results from license renewal. There is no dispute that the information in section 2.7 of the

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of NEPA. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-20, 56 N.R.C. 147, 154 (2002).

[23] The Revenue Neutral Reconciliation is a tax on the gross receipts of electric distribution companies and electric generation suppliers in Pennsylvania intended to ensure that the State's tax revenues are not reduced by restructuring of the electric industry. 66 Pa.C.S. § 2810 (2006). This tax has no bearing on the property taxes paid to local taxing bodies. From Mr. Epstein's discussion of this contention, it is clear that his real concern relates to the past changes in PURTA. See, e.g., Pet. at 36 ("The transition from PURTA to RNR has been a disaster); id. at 37 ("PURTA was the tax sharing formula used prior to the deregulation of the electric generating stations"); id. at 38 ("PPL should prepare and submit documentation as to the amount of taxes paid under the Public Utility Real Estate Tax Assessment in 1995 . . .").

Environmental Report accurately describes the property taxes paid by SSES under Pennsylvania's current law. Mr. Epstein criticizes this change in tax laws as a "disaster" (Pet. at 36), but he provides no demonstration that such change has any causal connection to license renewal.

NEPA does not require an evaluation of deregulation or the 1999 changes in tax law, because these changes are not causally related to license renewal. NEPA requires consideration only of "the environmental impact of the proposed action" (42 U.S.C. § 4332(C)(i)), and this provision has been interpreted as requiring a reasonably close causal relationship between the proposed action and an alleged environmental effect or impact – similar to proximate cause in tort law -- before that effect need be considered. Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 773-74 (1983). The CEQ regulations also define the effects that must be considered in an EIS as those "which are caused by the action." 40 C.F.R. § 1508.8. Consequently, NEPA does not require an evaluation of effects that will be unaffected by the proposal. Burbank Anti-Noise Group v. Goldschmidt, 622 F.2d 115, 116-17 (9th Cir. 1980), cert. denied, 450 U.S. 965 (1981) ("An EIS is not required, however, when the proposed federal action will effect no change in the status quo"). Deregulation and the 1999 changes in Pennsylvania's tax laws are not caused by license renewal and will not be affected by license renewal.

Similarly, in Department of Transportation v. Public Citizen, 541 U.S. 752 (2004), the Supreme Court held that "where an agency has no ability to prevent a certain effect due to its limited statutory authority[,]" it cannot be "considered a legally relevant 'cause' of the effect."

541 U.S. at 770.[24] In other words, "the relevant question is whether [the 1999 changes in Pennsylvania tax law] is an 'effect' of [the proposed renewal of SSES's operating license by the NRC]." Id. at 764. Here, NRC clearly has no authority to establish or alter how property taxes are assessed and distributed in Pennsylvania, and thus its license renewal decision cannot be considered the cause of Pennsylvania's 1999 changes in tax law.[25]

Further, Mr. Epstein provides no basis – no expert opinion or reference to any document or source – showing that the local taxing authorities are receiving less revenues from SSES than they received under PURTA. In fact, because PURTA revenues were shared more widely by the State and other jurisdictions, the local taxing authorities now receive more income as a result of the property taxes paid by SSES than they did as a result of PURTA distributions.[26] Thus, even if Pennsylvania's 1999 changes in tax law were somehow within the scope of the NRC's environmental review – which of course they are not – Mr. Epstein's contention would still fail to establish any genuine material dispute

Finally, Mr. Epstein makes gratuitous allegations that "PPL" refuses to pay its taxes. Pet. at 39 and Exh. 3. However, it is clear from the snippets of newspaper articles that Mr. Epstein

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[24] In Public Citizen, the Court held that in evaluating the environmental impacts of proposed rules concerning safety regulation of Mexican motor carriers, the Federal Motor Carrier Safety Administration ("FMCSA") was not required by NEPA to consider environmental impacts that could be caused by the increased presence of Mexican trucks within the United States resulting from the President's lifting of a moratorium on Mexican motor carrier certification. Because only the President, not FMCSA, could authorize cross-border operations from Mexican motor carriers, and because FMCSA had "no ability to countermand the President's lifting of the moratorium"(541 U.S. at 766), FMCSA did not need to consider the environmental effects arising from the entry.

[25] As a general matter, the Commission has made it clear that licensing boards should narrowly construe their scope to avoid where possible the litigation of issues that are the primary responsibility of other agencies and whose resolution is not necessary to meet NRC's statutory requirements. Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-96-16, 48 N.R.C. 119, 121-22 (1996).

[26] The total amount that PP&L Inc. paid in 1999 under PURTA relating to all of its property in Luzerne County (in which SSES is located) was approximately $1 million, compared with approximately $4 million in property taxes now paid by SSES to the local jurisdictions. Mr. Epstein's statement that "PP&L was paying $38 million annually for just the SSES" (Pet. at 38, emphasis added) is entirely without basis. Mr. Epstein provides no citation or other support for this figure, which in fact corresponds approximately to the taxes that were paid to Pennsylvania under PURTA for **all of PP&L's assets in the State of Pennsylvania.**

provides in his Exhibit 3 that (1) PPL Corp. was disputing a property assessment, as any property owner may do; (2) the dispute involved the Brunner Island Power Plant, and thus had nothing to do with SSES; and (3) the dispute was settled. Thus, Mr. Epstein's allegations are irrelevant.

5. Contention 5 Is Inadmissible As Beyond the Scope of the Proceeding

Contention 5, which in essence alleges that child care facilities are not included in Pennsylvania's emergency plans, is inadmissible because it is beyond the scope of the proceeding. This contention is beyond the scope of the proceeding because it does not relate to the management of aging or to time-limited aging analyses, and because the Commission has specifically determined that emergency preparedness need not be reassessed as part of license renewal. Further, Mr. Epstein's allegations are baseless.

As stated by the Commission when it first promulgated 10 C.F.R. Part 54, "the Commission concludes that the adequacy of existing emergency preparedness plans need not be considered anew as part of issuing a renewed operating license." 56 Fed. Reg. at 64,967. This exclusion of emergency preparedness from license renewal proceedings has been repeatedly reaffirmed by the Commission:

> 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. 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 N.R.C. at 9; see also Millstone, CLI-04-36, 60 N.R.C. at 640 ("We consider Turkey Point dispositive of this issue.").

Contention 5 is also inadmissible because it lacks any basis. The Commission has previously considered Mr. Epstein's allegations regarding the emergency planning arrangements

for child care facilities in Pennsylvania and has found no basis to question findings of the Department of Homeland Security (FEMA's predecessor) concerning the adequacy of Pennsylvania emergency preparedness. See SECY-06-0101, Emergency Preparedness for Daycare Facilities Within the Commonwealth of Pennsylvania; Update on Staff Actions and Request for Commission Approval for Related Staff Actions (May 4, 2006) at 3.[27] SECY-06-0101 demonstrates not only the absence of any real substance behind Mr. Epstein's allegations, but also how NRC's ongoing regulatory oversight ensures the adequacy of emergency preparedness, which is the very reason why emergency planning is beyond the scope of license renewal. Because it is both beyond the scope of the proceeding and baseless, Contention 5 must be rejected.

## V. SELECTION OF HEARING PROCEDURES

Commission rules require the Atomic Safety and Licensing Board designated to rule on a petition for leave to intervene to "determine and identify the specific procedures to be used for the proceeding" pursuant to 10 C.F.R. §§ 2.310 (a)-(h). 10 C.F.R. § 2.310. The regulations are explicit that "proceedings for the . . . renewal . . . of licenses subject to [10 C.F.R. Part 50] may be conducted under the procedures of subpart L." Id. § 2.310(a). The regulations permit the presiding officer to use the procedures in 10 C.F.R. Part 2, Subpart G ("Subpart G") in certain circumstances. Id. § 2.310(d). It is the proponent of the contentions, however, who has the

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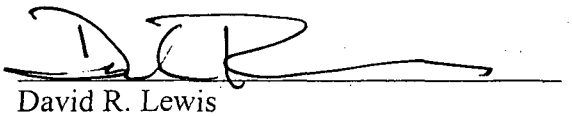
[27] As Enclosures 1 and 2 to SECY-06-0101 explain, prior to 2004, Pennsylvania treated daycare facilities as a member of a "special population" rather than a "special facility," and daycare facilities were therefore subject to general arrangements with the local emergency management agency ("EMA"). In 2004, however, Pennsylvania enacted a law that directed every custodial care facility, in cooperation with the local EMA and the Pennsylvania Emergency Management Agency ("PEMA") to develop and implement a comprehensive disaster response and emergency plan consistent with guidelines developed by PEMA. See, e.g., SECY-06-01, Encl. 2 at 4-5. The NRC has also denied a rulemaking petition that is connected with Mr. Epstein's allegations. 71 Fed. Reg. 44,593 (Aug. 7, 2006). Mr. Epstein asserts that he "filed suit at the Department of Justice on August 28, 2006" relating to these topics. Pet. at 43. Mr. Epstein did not file any lawsuit, but is instead referring to a letter that he sent to the Department of Justice asking it to investigate the same allegations that the NRC had already addressed.

burden of demonstrating "by reference to the contention and bases provided and the specific procedures in Subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified [Subpart G] procedures." Id. § 2.309(g). Mr. Epstein did not address the selection of hearing procedures in the Petition and so failed to satisfy his burden to demonstrate why Subpart G procedures should be used in this proceeding. Accordingly, any hearing should be governed by the procedures of Subpart L.

## VI. CONCLUSION

For the reasons stated above, Mr. Epstein's Petition should be denied.

Respectfully Submitted,



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Dated: January 29, 2007

**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "PPL Susquehanna's Answer to Eric Epstein's Petition for Leave to Intervene," dated January 29, 2007, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 29th day of January, 2007.

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