RAS 13736

June 5, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket Nos. 50-387-OLA
PPL SUSQUEHANNA, LLC	)	50-388-OLA
	)	
(Susquehanna Steam Electric Station, Units 1 and 2)	)	ASLBP No. 07-854-01-OLA-BD01

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 May 11, 2007 (the "Petition" or "Pet."), regarding PPL Susquehanna's application for a constant pressure power uprate ("CPPU") 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.[1]

In particular, Mr. Epstein's contentions do not identify any particular section of the CPPU application that is allegedly deficient. Indeed, judging both from the lack of citations to the application and from assertions in the contentions that simply ignore relevant information in the application, it does not appear that Mr. Epstein has read the application with any care. Instead, for the most part, his contentions simply repeat allegations that were rejected as

[1] Mr. Epstein has proposed three contentions. In accordance with the Board's May 31, 2007 Memorandum and Order (Initial Prehearing Order), these three contentions will be referred to in this Answer as Technical Contention (TC)-1, TC-2 and TC-3.

TEMPLATE = SECY-037

SECY-02

unsupported in the SSES license renewal proceeding. See PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-04, 65 N.R.C. __, slip op. (Mar. 23, 2007).

II. PROCEDURAL BACKGROUND

On October 11, 2006, PPL Susquehanna submitted its application requesting approval of amendments to Operating License Nos. NPF-14 and NPF-22 for SSES Units 1 and 2 to increase the maximum authorized power level from 3489 megawatts thermal (MWt) to 3952 MWt,[2] approximately a 13% increase. The Application includes a number of attached analyses, including a 350-page Power Uprate Safety Analysis Report ("PUSAR")[3] and a 54-page Environmental Report ("ER").[4] As a constant pressure power uprate, the increase in electrical output is accomplished primarily by generating and supplying higher steam flow to the turbine generator (PUSAR at xxvii), rather than any significant increase in reactor or main steam pressure or temperature.[5]

On March 13, 2007, the Nuclear Regulatory Commission ("NRC" or "Commission"), published a notice of consideration of the amendment, proposed determination of no significant hazards considerations, and opportunity for hearing ("Notice"). 72 Fed. Reg. 11,383, 11,384, 11,392 (Mar. 13, 2007). 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. at 11,384.

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[2] PPL Letter PLA-6076, Susquehanna Steam Electric Station, Proposed License Amendment Numbers 285 for Unit 1 Operating License No. NPF-14 and Proposed License Amendment 253 for Unit 2 Operating License No. NPF-22, Constant Pressure Power Uprate (Oct. 11, 2006) (ADAMS Accession No. ML062900160) ("Application').

[3] Id., Attachment 6, Power Uprate Safety Analysis Report (ADAMS Accession No. ML062900401) ("PUSAR").

[4] Id., Attachment 3, Supplemental Environmental Report (ADAMS Accession No. ML062900161).

[5] See PUSAR at 3-23 ("The nominal operating pressure and temperature of the reactor are not changed by CPPU. Aside for [Main Steam] and [Feedwater], no other system connected to the [Reactor Coolant Pressure Boundary] experiences a significant increased flow rate at CPPU conditions."). See also id. at 1-20 (Table 1-2, "Current and CPPU Plant Operating Conditions").

The Notice directs 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 petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include 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 amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/ requestor to relief. A petitioner/ requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Id.

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) (citation omitted).

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) (citation omitted). 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 required injury may be either actual or threatened. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-98-21, 48 N.R.C. 185, 195 (1998) (citing Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102-04 (1998); Kelley v. Selin, 42 F.3d 1501, 1508 (6th Cir. 1995)). However, the injury must lie within the "zone of interests" protected by the statutes governing the proceeding. Id. at 195-96 (citing Ambrosia Lake Facility, CLI-98-11, 48 N.R.C. 1, 6 (1998)).

Where a petitioner does not reside within 50 miles of the plant, the petitioner must demonstrate the three elements required for standing independently and cannot rely on a "proximity presumption."[6] See, e.g., Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 N.R.C. 95, 102 n.8 (1994) ("the Petitioner's organizational address is further than 50 miles from the [site] and thus outside even the radius within which we normally presume standing for those actions which may have significant offsite standing for those actions

[6] Commission case law has established a "proximity presumption," whereby an individual may satisfy the standing requirements where his or her residence is within the geographical area that might be affected by an accidental release of fission products from a nuclear power plant. In proceedings involving nuclear power plants, the Commission has determined that a "proximity presumption" exists if the petitioner's residence is within 50 miles of the plant. See Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 N.R.C. 325, 329-30 (1989); Florida Power & Light Co. (Turkey Point Nuclear Generating Plants, Units 3 and 4), LBP-01-6, 53 N.R.C. 138, 146-50 (2001); Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 N.R.C. 54, 56 (1979). Mr. Epstein apparently contends that there is some "proximity plus" doctrine that applies to power reactors. Pet. at 5-6. This assertion is not correct. The Licensing Board case cited by Mr. Epstein referring to "proximity plus," CFC Logistics, Inc. (Materials License), LBP-04-24, 60 N.R.C. 475 (2004), is inapposite to this proceeding because it did not involve a power reactor, but the case-by-case analysis used for non-power reactor facilities. See id. at 486-87 ("In other words, except for power reactors, for a neighbor to have presumptive standing depends upon three factors: (1) proximity to the facility, (2) the presence of a "significant source" of radioactivity at the facility, and (3) that source's 'obvious potential' to cause offsite damage due to its radioactive properties.") (emphasis added). Such an analysis is not relevant to power reactors where the 50-mile radius proximity presumption has been established and beyond which there is no proximity presumption.

which may have significant offsite consequences at plants that are operating at full power."). Where the petitioner does not have a proximity presumption, but claims standing based on visits within the vicinity of a facility, his or her standing depends on traditional standing doctrine. See, e.g., Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 N.R.C. 318, 322-25 (1999).

In analyzing whether the contacts with the vicinity of the facility meet the traditional standing requirements, the Commission has focused on the (1) length of the visit, and (2) the nature of the visit (including the proximity to the site). See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation). CLI-98-13, 48 N.R.C. 26, 31-32 & n.3 (1998) ("[Petitioner's] standing does not depend on the precise number of . . . visits. It is the visits' length (up to two weeks) and nature . . . ."). The Commission has emphasized that the visits must "establish a bond" between the petitioner and the facility vicinity, and "the likelihood of an ongoing connection and presence." 48 N.R.C. at 32. The Commission has further emphasized that the proximity of the visit(s) to a site and the importance of the site(s) to the activity are crucial. See, e.g., Private Fuel Storage, LLC, CLI-99-10, 49 N.R.C. at 324 ("Most importantly . . . [a member of the organizational petitioner] has demonstrated actual contact with the area based on his 'frequent' physical presence on the very parcel of land that would be altered by the proposed action.")

Mr. Epstein asserts that he regularly "pierces the fifty mile proximity zone" when he (1) commutes from Harrisburg to Allentown, (2) conducts day-to-day activities in Lebanon, Schuylkill and Upper Dauphin counties; and (3) attends "meetings at off site locations." Pet. at 6-7. None of the asserted activities is adequate to establish Mr. Epstein's standing. Mr. Epstein does not reside within 50 miles of the plant (Pet. at 5), and the "proximity presumption" does not

provide Mr. Epstein with standing. The Commission's case law "proximity presumption" is invoked only when the petitioner resides within the fifty mile radius, and it is not invoked merely because a petitioner travels within 50 miles of a plant as Mr. Epstein contends. Otherwise, every traveler passing through Pennsylvania on Interstate Routes 78, 80, and 81 would have standing. Rather, Mr. Epstein must show, inter alia, that he "has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute," as required by Commission case law. See Vermont Yankee, CLI-96-1, 43 N.R.C. at 5. He has failed to do so.

Commission case law is clear that, where there is no proximity presumption, the petitioner must demonstrate that the petitioner satisfies the standing doctrine, including having an ongoing connection with and presence close to the site. As the Commission emphasized in Private Fuel Storage, standing is demonstrated by "actual contact with the area based on . . . 'frequent' physical presence on the very parcel of land that would be altered by the proposed action." CLI-99-10, 49 N.R.C. at 324 (emphasis added). Mr. Epstein by contrast merely travels within a fifty mile radius of the plant and has demonstrated no connection with the area of the plant site itself.[7] Traveling within a 50 mile radius of and attending or holding meetings within a fifty mile radius of a plant, where such trips are occasional "day" trips, does not establish a bond between petitioner and the plant site.

[7] Even if mere proximity to the plant during travel could provide support for standing, the Petition is silent as to the duration of Mr. Epstein's commute to Allentown, the closest approach to the plant site of Mr. Epstein's commute to and from Allentown and the number of such commutes in a given period of time. Where driving in the proximity of a non-power reactor has been found to support a petitioner's standing, the factual record has demonstrated that such driving is in very close proximity to the facility on a daily basis and that the Commission has presumed that other daily activities take place within similarly close proximity to the facility. See Georgia Inst. of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 N.R.C. 111, 117 (1995). Petitioner has alleged no such facts in the Petition.

Mr. Epstein implies that the injury-in-fact that may occur is "exposure to radiation," even within regulatory limits. Pet. at 6. This is insufficient to establish injury-in-fact. In the absence of the proximity presumption:

> Where there is no "obvious" potential for radiological harm at a particular distance frequented by a petitioner, it becomes the petitioner's "burden to show a specific and plausible means" of how the challenged action may harm him or her.

USEC, Inc. (American Centrifuge Plant), CLI-05-11, 61 N.R.C. 309, 311-12 (2005) (quoting NFS, CLI-04-13, 59 N.R.C. 244, 248 (2004)). Mr. Epstein fails to specify how he contends that he could be exposed to radiation based on his activities. According to Mr. Epstein's representations, most of his traveling and other activities that he claims "pierce[] the fifty mile veil" appear to take place well to the southwest of the plant. See Pet. at 6-7 (Harrisburg, Lebanon, Upper Dauphin County and Schuylkill Haven are all to the southwest of Berwick). Mr. Epstein also fails to provide a specific and plausible means by which he may experience radiation exposure in the course of his activities due to the uprate, which is required to demonstrate standing. See, e.g., Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 N.R.C. 185, 191 (1999); see also Energy Fuels Nuclear, Inc. (White Mesa Uranium Mill), LBP-97-10, 45 N.R.C. 429, 431 (1997).

Mr. Epstein further asserts that a ruling that he had standing in the SSES license renewal proceeding establishes his standing in this proceeding as a matter of precedent. Pet. at 7. Mr. Epstein's assertion is incorrect. First, having been granted standing in one proceeding does not automatically grant standing in a second proceeding involving the same facility. See, e.g., Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-92-27, 36 N.R.C. 196, 198 (1992), citing Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), LBP-92-4, 35 N.R.C. 114, 125-26 (1992). Second, Petitioner does not have standing under the proximity presumption and must demonstrate that he has standing by showing, inter

alia, that the amendment in this proceeding will cause a distinct new harm or threat that is separate and apart from already licensed activities. International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 N.R.C. 247, 251 (2001), citing International Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-18, 54 N.R.C. 27 (2000); see also Zion, CLI-99-4, 49 N.R.C. at 192. Because the present proceeding is a separate proceeding, involving a different licensing action, standing must be evaluated in the context of any distinct new harm or threat (which Mr. Epstein has failed to specify) associated with the power uprate. Third, the Licensing Board ruling on Mr. Epstein's standing in the SSES license renewal proceeding was dicta, because it was unnecessary to the decision.[8] Finally, the Licensing Board's ruling on standing in the SSES license renewal proceeding was not subject to review on appeal and therefore does not constitute binding precedent. Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-482, 7 N.R.C. 979, 981 n.4 (1978); Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-03-14, 58 N.R.C. 104, 110 (2003). Therefore, the ruling in the license renewal proceeding is both inapposite and not controlling, and the Board in this proceeding must make an independent determination of Mr. Epstein's standing. Accordingly, Mr. Epstein does not have individual standing to participate in this proceeding as a matter of precedent.

Mr. Epstein also argues that the Commission may allow discretionary intervention where a petitioner does not meet the standing requirements. Pet. at 6. 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 (Jan 14, 2004) ("Discretionary intervention . . . will not be

[8] The Licensing Board denied Mr. Epstein's hearing request because he proffered no admissible contention. LBP-07-04, slip op. at 2, 67. It was therefore unnecessary to rule on his standing, and there was no opportunity for PPL Susquehanna to seek Commission review of that ruling.

allowed unless at least one other petitioner has established standing and at least one admissible contention.")[9] In this case, there is no other petitioner and, as set forth below, there are no admissible contentions.

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 three contentions meets the standards for admissibility set forth below. This failure too requires that the Petition be denied.

A. Standards for Contentions

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 demonstration "that the issue raised in the contention is within the scope of the proceeding;"

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[9] Even if discretionary intervention were available, which it is not, Mr. Epstein does not meet the criteria required for such discretionary intervention. Discretionary intervention was created to afford party status to petitioners unable to demonstrate standing if their participation would make a valuable contribution to the proceeding:

> Under current agency case law, the Commission may . . . allow discretionary intervention to a person who does not meet standing requirements, where there is reason to believe the person's participation will make a valuable contribution to the proceeding and where a consideration of the other criteria on discretionary intervention shows that such intervention is warranted.

Final Rule, "Streamlined Hearing Process for NRC Approval of License Transfers," 63 Fed. Reg. 66,721, 66,724 (Dec. 3, 1998). Mr. Epstein has not demonstrated that he would make such a contribution to the proceeding. As discussed later in this Answer, the contentions proffered by Mr. Epstein are vague, unsupported and based on erroneous factual assertions. Moreover, Mr. Epstein possesses no particular expertise or experience that may be useful to the Board. As the Commission recently held:

> If the Board cannot identify specific contributions it expects from Petitioners, then the Board should deny their request to intervene as parties, absent other "compelling" factors favoring intervention . . . .

Andrew Siemaszko, CLI-06-16, 63 N.R.C. 708, 722 (2006). Consequently, this factor would weigh heavily against granting discretionary intervention even if it were available. None of the other factors enumerated in Portland General Elec. Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 N.R.C. 610, 613-14 (1976) would weigh in favor of granting discretionary intervention to Mr. Epstein.

- a demonstration "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;"

- 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

- "sufficient 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)-(vi). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155-56 (1991). As discussed later in this Answer, none of Mr. Epstein's three 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 Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999); 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 Baltimore Gas & Elec. Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41 (1998) ("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.[10] As the Commission has emphasized, the contention rule bars contentions

[10] 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

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 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

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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.").

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. A Contention May Not Challenge the NRC Staff's Proposed Finding of No Significant Hazards Considerations

Although Mr. Epstein's Petition does not explicitly challenge the NRC Staff's proposed finding of no significant hazards considerations ("NSHC"), his Petition contains a number of assertions suggesting that this is his aim. As discussed below, such an attack is impermissible under 10 C.F.R. § 50.58(b)(6) and case law.

For example, in TC-1, Mr. Epstein states that PPL must "resubmit and revise its amendment application to analyze the impact of state and federal regulations on the proposed uprate and potential for a 'new and different kind of accident for any accident previously evaluated' . . ." Pet. at 17 (emphasis added). This language refers to the standard for a NSHC finding in 10 C.F.R. § 50.92(c)(2). Similarly, TC-2 alleges that a problem with the facility river intake "significantly reduces the margin of safety" (Pet. at 21) and again asserts that the application must be resubmitted and revised to analyze potential for a "new and different kind of accident for any accident previously evaluated" (Pet. at 25). This language refers to the standards for a NSHC finding in 10 C.F.R. § 50.92(c)(2)-(3). Finally, in TC-3, Mr. Epstein alleges that the proposed change "involves a significant increase in the 'consequences' of an accident . . . previously evaluated." Pet. at 26. See also Pet. at 28. This language refers to the standard for a NSHC finding in 10 C.F.R. § 50.92(c)(1).

Section 189(a)(2)(A) of the Atomic Energy Act expressly authorizes the NRC to grant license amendments, and to make them immediately effective "in advance of the holding and

completion of any required hearing," as long as the NRC determines that the amendment involves "no significant hazards consideration." 42 U.S.C. § 2239(a)(2)(A). Under the NRC rules,

> No petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination.

10 C.F.R. § 50.58(b)(6) (emphasis added). See Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), CLI-05-14, 61 N.R.C. 359, 361 n.2 (2005); Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), CLI-01-7, 53 N.R.C. 113, 118 (2001).

C. Mr. Epstein's Contentions Are 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. TC-1 Is Inadmissible Because It Is Vague and Unsupported, and Fails to Demonstrate a Genuine, Material Dispute with the Application

TC-1, which alleges that PPL failed to consider water use issues, is inadmissible because it is vague and unsupported, and fails to demonstrate a genuine (Pet. at 10), material dispute with the Application. Indeed, TC-1 does not identify or discuss any specific section of the Application alleged to be deficient. Instead, it essentially copies portions of a contention (as well as related pleadings)[11] that was rejected in the SSES license renewal proceeding. LBP-07-04,

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[11] Compare Eric Joseph Epstein's Petition for Leave to Intervene, Request for Hearing, and Presentation of Contentions with Supporting Factual Data (Jan. 2, 2007) (ADAMS Accession No. ML070170485) at 23-29 (Contention 2); Eric Joseph Epstein's Response to PPL Susquehanna's Answer to Eric Joseph Epstein's Petition to Intervene and Eric Joseph Epstein's Response the NRC Staff's Response to Eric Joseph Epstein's Petition for leave to Intervene . . . (Feb. 5, 2007) (ADAMS Accession No. ML070510363) at 20-24; Eric Joseph Epstein's Response to PPL Susquehanna's Motion to Strike Portions of Eric Epstein's Response to Answers to Petitions to Intervene (Feb. 23, 2007) at 4-11 (ADAMS Accession No. ML070610194).

For example, Mr. Epstein asserts that "[t]he Company applied a generic scoping brush to water use and aquatic challenges at the SSES that failed to include site specific, regional and indigenous heath and safety challenges."

slip op. at 38-39. In the SSES license renewal proceeding, the Licensing Board rejected Mr. Epstein's contention alleging failure to address water use issues because it did not "provide[] either the focus necessary to support an admissible contention, or the 'minimal factual and legal foundation' necessary to trigger a full adjudicatory hearing" and because it "fail[ed] to provide sufficient information to show a genuine dispute with the Application on a material issue of law or fact." Id. at 47, 49.

TC-1 shares all the same infirmities as its prior incarnation and is no more admissible the second time around. TC-1, which contains a rambling jumble of assertions, is extremely unfocused, vague, and difficult to understand. Nowhere in the contention is there any lucid or supported explanation demonstrating a genuine, material dispute with the Application.

First, consistent with the Board's categorization, it appears that TC-1 is intended to raise a safety issue, but TC-1 provides no information demonstrating that any genuine safety issue exists. In explaining the purported basis for this contention, Mr. Epstein alleges that "State and federal regulations which many [sic] impact, constrict or restrict water flow that would adversely impact cooling systems at the plant, and lead to health and safety challenges for local communities." Pet. at 10 (emphasis added). However, the Susquehanna River, which provides makeup for SSES' cooling towers, is not relied upon as a safety-related source of water for reactor cooling. Rather, SSES has an Ultimate Heat Sink ("UHS") consisting of a concrete-lined spray pond covering approximately 8 acres and containing 25,000,000 gallons of water. PUSAR at 6-12; ER at 7-7. Thus, while a regulatory restriction on surface water withdrawals by SSES

Pet. at 11. This assertion is copied verbatim from Mr. Epstein's response to the motion to strike in the license renewal proceeding. Eric Joseph Epstein's Response to PPL Susquehanna's Motion to Strike Portions of Eric Epstein's Response to Answers to Petitions to Intervene (Feb. 23, 2007) at 7. In license renewal proceedings, the NRC has resolved certain environmental issues generically by rule. See 10 C.F.R. § 51.53(c)(3)(i); NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (May 1996). This assertion from the license renewal pleadings has no bearing on this uprate proceeding.

might affect the generation of electricity, it would not endanger the health and safety of the public.

Second, Mr. Epstein provides no basis to assume that SSES' surface water withdrawals will be restricted or that this possibility is material to NRC licensing. Mr. Epstein suggests that some "alternative plan" may be needed as a result of "Act 220"[12] (Pet. at 12), but that Pennsylvania law does not create any authority to regulate withdrawal of water from the Susquehanna River.[13] Rather, such withdrawals are regulated by the Susquehanna River Basin Commission ("SRBC"). See 18 C.F.R. § 801.6.

Referring to Act 220, Mr. Epstein asserts that in March, 2008, areas will be identified where water use exceeds or is projected to exceed available supplies, and "if SSES is designated as an endangered or sensitive area, PPL will have to comply with a 'water budget' established by the Regional Water Resource Committee and Critical Advisory Committee." Pet. at 12. Mr. Epstein provides no citation or support for this bald assertion. As noted earlier, Act 220 does not grant any authority to regulate or require permits for withdrawal of water. See note 13 supra. Indeed, Act 220 states, "Critical area resource plans shall be construed as a component of the State water plan and may be implemented voluntarily." 27 Pa. Cons. Stat. § 3112(d)(6). Further, Mr. Epstein provides absolutely no basis to suggest that the north branch of the Susquehanna River on which SSES is located is or will be designated as a critical area.

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[12] 27 Pa. Cons. Stat. Ch. 31.

[13] 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. 27 Pa. Cons. Stat. § 3104. See also 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.

It is true that the uprate will result in an increase in consumptive water use, as is fully disclosed and quantified in Section 7.2.1 of the ER (which Mr. Epstein ignores), and that SSES has applied to the SRBC for a modification of its water use approval to accommodate this increase. See Pet. Exh. 1 at 3. However, these facts do not raise any material issue regarding the Application. While water permits may be necessary for a nuclear plant to operate, NRC licensing is not dependent upon those permits. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 N.R.C. 81, 93, aff'd, CLI-04-38, 60 N.R.C. 631, 639 (2004); Philadelphia Elec. Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 A.E.C. 13, 58, rev'd in part on other grounds, CLI-74-32, 8 A.E.C. 217 (1974); Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 N.R.C. 108, 124 (1979). 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).

Although TC-1 appears intended to raise a safety issue (see Pet. at 11), it also clearly fails to raise any genuine, material environmental issue. Mr. Epstein neither discusses nor identifies any deficiency in the ER. While he alleges without any support that "[s]urface water consumption, fish kills, thermal inversion, and effluent discharges, are not adequately covered or evaluated in the proposed amendment for an uprate at the SSES" (Pet. at 13), he simply ignores the sections of the ER that address each of these topics. Section 7.2.1 of the ER quantifies the increased water consumption, Section 7.2.3 evaluates entrainment and impingement, Section 7.2.4 evaluates thermal discharge effects, and section 7.2.2 evaluates discharges of liquid

effluents. Mr. Epstein fails to identify any error in or genuine dispute with these or any other sections of the Application. 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). Simply alleging that the Application is inadequate without any factual support or reasoning does not give rise to a genuine dispute. Turkey Point, LBP-90-16, 31 N.R.C. at 521 & n.12. Further, Mr. Epstein provides no basis – no document, reference, or expert opinion – demonstrating that any effects at SSES attributable to the uprate are significant.

Mr. Epstein similarly makes unsupported and inaccurate assertions in alleging that during the 2002 drought, SSES did not take any measures or precautions to conserve water. Pet. at 13, 16. In particular, Mr. Epstein conveniently omits any mention of the fact that SSES complies with SRBC regulations by compensating for the consumptive water use by sharing in the costs of the Cowanesque Lake Reservoir, which provides another source of water to augment river flow during low flow conditions. Mr. Epstein is aware of this arrangement, which essentially mitigates the SSES consumptive use during low flow periods, because it was described in the environmental report in the license renewal proceeding,[14] and described in PPL Susquehanna's answer to this same contention in the license renewal proceeding.[15]

The allegation in TC-1 that "PPL has not established (nor has the NRC reviewed) compliance milestones for EPA's 316(a) or (b) and their impact on power uprates at the

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[14] Applicant's Environmental Report, Operating License Renewal Stage, Susquehanna Steam Electric Station (Sept. 2006) at 2.1-4, 4.1-2 (ADAMS Accession No. ML062630235).

[15] PPL Susquehanna's Answer to Eric Epstein's Petition for Leave to Intervene (Jan. 29, 2007) at 19 (ADAMS Accession No. ML070360282).

Susquehanna Electric Steam Station" (Pet. at 10, 14, 15) similarly fails to establish any genuine, material issue. Mr. Epstein states that compliance milestones for Sections 316(a) and 316(b) [of the Clean Water Act] "have been in play since July 9, 2004 when the [Environmental Protection] Agency issued the Final Phase Rule II implementing Section 316(b). . . ." Pet. at 14. Mr. Epstein does not explain how compliance with Section 316(a) is affected by the Phase II rules, which only implement Section 316(b) of the Clean Water Act. See 69 Fed. Reg. 41,576 (July 9, 2004). Further, SSES employs cooling towers, and thus does not require any thermal effluent limitation variance under Section 316(a) of the Clean Water Act.[16] Nor does Mr. Epstein provide any basis to suggest that there is any issue of compliance with Section 316(a).

With respect to Section 316(b) of the Clean Water Act, Mr. Epstein once more simply ignores the relevant information in the ER. Section 7.2.3 of the ER states that the Station is subject to the EPA's Final Rule to Establish Regulations for Cooling Water Intake Structures at Phase II Existing Facilities (69 Fed. Reg. 41,576 (July 9, 2004)). ER at 7-10. Section 7.2.3 goes on to explain these Phase II rules are met by a plant that has intake flows commensurate with a closed-cycle cooling system. Id., citing 40 C.F.R. § 125.94(a)(1)(i). SSES has a closed-cycle cooling system. Id. Mr. Epstein does not identify any error in this discussion, and does not provide any explanation of how there is any issue of compliance with the Phase II rules for a plant that meets the performance standard in 40 C.F.R. § 125.94(a)(1)(i).

The lack of any real substance, basis, or genuine issue is demonstrated by the sole purported example given by Mr. Epstein. In support of the claimed need for compliance milestones under Sections 316(a) and 316(b) of the Clean Water Act, Mr. Epstein alleges that

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[16] Section 316(a) of the Clean Water Act allows establishment of an alternative thermal effluent limitation for plants that do not employ closed cycle cooling. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 N.R.C. 1, 25 (1978).

"PPL Susquehanna failed to investigate or report the impact of the uprate [on some] fragile series of shad ladders." Pet. at 15. Mr. Epstein does not identify any shad ladder the vicinity of SSES, or provide any basis to suggest that the uprate could affect any shad ladder. In fact, there here are no shad ladders anywhere near SSES. All shad ladders are on dams downstream of Harrisburg, approximately 100 river miles below SSES. See http://www.fish.state.pa.us/shad_susq.htm. As a plant with closed-cycle cooling, it is inconceivable that the thermal discharge from SSES or the design of the intake (the matters addressed by Sections 316(a) and (b) respectively) would have any affect 100 river miles down stream. Certainly, without any expert or scientific support, Mr. Epstein's fanciful assumption provides no basis demonstrating a genuine, material dispute.

Nor do Mr. Epstein's general concerns with Asiatic clams and Zebra mussels raise a genuine material dispute with the Application. Mr. Epstein asserts that "it is logical for PPL Susquehanna to submit an action plant to defeat both environmental challenges should they migrate upstream." Pet. at 15. Again, Mr. Epstein ignores the Application. As discussed in Section 7.2.5 of the ER, no Zebra mussels have been observed to date at the Station or in the vicinity in the North Branch of the Susquehanna River. ER at 7-13. The Asiatic clam has been found in the River and Station, and will be controlled by treating the Spray Pond with an approved molluscide. Id. Mr. Epstein does not address or identify any material dispute with this discussion in the ER.

Mr. Epstein's general statement that "nuclear plants" occasionally discharge chlorinated water or Clamtrol directly into the River (Pet. at 15) likewise raises no genuine dispute with the Application. As the ER states, the molluscide at SSES will be applied to the ESSW Spray Pond. ER at 7-13. Further, as stated in the ER, discharges are controlled under an NPDES permit,

which establishes limits on chlorine. ER at 7-8. Mr. Epstein provides no basis whatsoever – no document, reference, or expert opinion – to suggest that the use of biocides and discharges regulated under the NPDES permit will have any significant adverse effect. More importantly, Mr. Epstein makes no showing that the use of biocides is in anyway attributable to the power uprate.[17] The use of biocides is required irrespective of the uprate.

Finally, Mr. Epstein takes some gratuitous and irrelevant potshots at PPL Susquehanna's affiliates. Mr. Epstein alleges that PPL Susquehanna's corporate family has a history of fouling water, and refers to discharge of fly ash and a fish kill at the Brunner Island Station. These allegations relate to fossil plants that are neither owned nor operated by PPL Susquehanna. They provide no basis to challenge the Application.

In sum, TC-1 raises no admissible issue. It is vague, in large measure is unrelated to the uprate, and fails to address or demonstrate any genuine material dispute with the Application.

2. TC-2 Is Inadmissible Because It Is Irrelevant and Immaterial, Unsupported, and Fails to Demonstrate Any Genuine Material Dispute

TC-2,[18] which alleges that "PPL failed to disclose damaging information included in a hastily filed Application for a Surface Water Withdrawal" (Pet. at 19),[19] is inadmissible because it is irrelevant and immaterial, is unsupported, and fails to demonstrate any genuine, material

[17] 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, 623 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").

[18] This allegation was also raised in the SSES license renewal proceeding. See Eric Joseph Epstein's Response to PPL Susquehanna's Answer to Eric Joseph Epstein's Petition to Intervene and Eric Joseph Epstein's Response the NRC Staff's Response to Eric Joseph Epstein's Petition for leave to Intervene . . . (Feb. 5, 2007) (ADAMS Accession No. ML070510363) at 23.

[19] There is no basis for Mr. Epstein's characterization of the SRBC application as "hastily filed."

dispute with the Application. TC-2 pertains to a statement in an application from PPL Susquehanna to the SRBC that metering of withdrawal from the River Intake Structure has been inaccurate due mainly to corrosion and fouling of the intake pipes. SRBC Application (Pet., Exh. 1), at 3. As discussed below, the River Intake Structure does not provide any safety-related function, the flow meters are not used to meet any NRC requirement, and the accuracy of the flow meters does not have any bearing on any matter within the scope of the uprate proceeding.

Mr. Epstein argues incorrectly that this issue is material because the failure to correct a problem with the river intake "significantly reduces margin of safety." Pet. at 20. Mr. Epstein provides no information supporting this assertion. As stated in the Application, SSES has an UHS consisting of a concrete lined spray pond covering approximately 8 acres and containing 25,000,000 gallons of water. PUSAR at 6-12; ER at 7-7. Consequently, the Susquehanna River is not relied upon as a safety-related source of water for reactor cooling, and the River Intake Structure is not a safety-related system. Therefore, this is no basis for Mr. Epstein's suggestion that the Intake reduces a margin of safety or creates any safety issue.

Mr. Epstein is also incorrect in asserting that TC-2 is material because it undermines the Company's evaluation of water related components and systems, and the potential impact an uprate would have on those systems. Pet. at 20. Mr. Epstein provides no explanation how Intake flow would undermine any evaluations in the PUSAR. He does not identify any particular component that would be of concern, and does not identify any particular evaluation in the PUSAR that is undermined. He provides no basis – no document, reference, or expert opinion – supporting any interrelationship between the Intake flow and the evaluation of components that would be affected by the uprate. In short, this assertion is nothing more than vague and unsupported speculation.

In the same vein, Mr. Epstein states, "[s]ince the River Intake Structure flow monitors the volume of water, the Company's current application is deficient and does not provide for adequate inspection of systems and components that may contain radioactively contaminated water." Pet. at 22. This statement is a non-sequitur. There is no relationship between the Intake, which withdraws river water and feeds it to the Cooling Tower basin,[20] and the need to inspect systems and components containing radioactively contaminated water. Mr. Epstein provides no explanation or basis to suggest otherwise. Mr. Epstein states vaguely that some of these systems include underground pipes and tanks which he alleges are not adequately managed. Pet. at 22, 24. Mr. Epstein does identify any specific system or component of concern. Mr. Epstein provides no information showing that any buried pipe or tank containing radioactively contaminated water would be affected by the Intake flow. Nor does Mr. Epstein provide any information showing that any buried pipe or tank would be affected by uprated conditions. Such components are not within the reactor coolant pressure boundary or part of the feedwater and main steam systems in which increased flow rates occur.[21] In sum, this contention is nothing more than a strained attempt to resurrect a groundwater monitoring contention that was rejected in the license renewal proceeding[22] and has nothing to do with the uprate.

Mr. Epstein then makes a series of unsupported assertions in an attempt to suggest that issues exist. Not one of these assertions is supported by a document, reference, or expert opinion demonstrating any genuine issue.

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[20] See ER at 7-15.

[21] See note 5 supra. Mr. Epstein suggests that there should be pre- and post- examination of equipment. Pet. at 24. He ignores the sections of the Application that in fact describe programs that include pre- and post-examination of equipment affected by uprated conditions. These programs include, for example, the Flow Induced Vibration Piping Components Evaluation (Application, Att. 9) and the Flow Accelerated Corrosion program (PUSAR § 10.7). Mr. Epstein does not identify any deficiency in these programs.

[22] See Eric Joseph Epstein's Response to PPL Susquehanna's Answer to Eric Joseph Epstein's Petition to Intervene and Eric Joseph Epstein's Response the NRC Staff's Response to Eric Joseph Epstein's Petition for leave to Intervene . . . (Feb. 5, 2007) (ADAMS Accession No. ML070510363) at 20.

First, Mr. Epstein asserts without any basis that, because the Intake flow meters are inaccurate, there is no mechanism for accurately determining water use, and therefore consumptive use cannot be accurately gauged. This assertion is belied by the SRBC application attached to Mr. Epstein's own Petition. As is evident from the SRBC application, the projected increase in consumptive use does not rely on flow meter measurements. Instead, the current and projected consumptive use are determined by calculating the sum of the cooling tower loss, cooling tower blowdown, and UHS makeup.[23] Pet. Exh. 1 at 3 and Att. C. Mr. Epstein identifies no error with this calculation.[24]

Second, Mr. Epstein asserts vaguely and without any basis that some "water variable" (which he does not explain) undermines the ability of PPL to affix the appropriate chemical dosage needed to defeat unanticipated thermal aquatic invasions. Pet. at 23. As stated in the ER, the molluscide at SSES will be applied to the UHS. ER at 7-13. Mr. Epstein simply ignores the information in the Application. The UHS has a known volume (25 million gallons)[25] and is easily sampled to verify the molluscide concentration during applications.

Next, Mr. Epstein asserts without any basis that the water variable disrupts SSES' borated water formula in the standby liquid control system ("SLCS").[26] Pet. at 23. Mr. Epstein provides no explanation of how the River Intake flow can have any effect on the boration in the SLCS. The boron solution tank is located in the Reactor Building (FSAR at 9.3-23), and the

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[23] Because the flow meters are not relied upon, there is no basis for Mr. Epstein's claim that PPL Susquehanna failed to disclose "damaging" information, and no merit for his suggestion that a negative inference should be drawn. See Pet. at 19-20.

[24] It should be noted that the flow meters are inaccurate in that they overstate the withdrawal. To determine the rate of withdrawal through a pipe (volume/time), the flow (velocity) is multiplied by the cross sectional area of the pipe. If the inside diameter of the pipe is smaller than the nominal value used to convert flow to the rate of withdrawal (because the interior diameter has been reduced by buildup of corrosion or fouling), the measured withdrawal rate will be greater than the actual rate of withdrawal.

[25] PUSAR at 6-12; ER at 7-7.

[26] The SLCS is a backup system used to manually shut down the reactor by injecting a borated solution into reactor. See SSES FSAR § 9.3.5.

required boron concentrations in that tank are established and measured under surveillances required by Technical Specifications in the operating licenses.[27] The River Intake velocity has no effect on the volume of this tank, or on the volume of water in the reactor coolant system. Mr. Epstein provides no basis – no expert opinion, document or reference – establishing any relationship or effect that the River Intake could have on the SLCS.

Finally, Mr. Epstein refers generally to turbine stress cracks at Dresden and Fermi, and to steam dryer issues at Quad Cities. Pet. at 24. Again, it is clear that Mr. Epstein has not read the Application with any care and thus raises no genuine challenge to it.

The PUSAR states that the high pressure turbine will be modified to include a design with a new inner cylinder, two new blade carries, a new rotor, and new blades with appropriate flow margin. PUSAR at 7-1.[28] Thus, the turbines are being extensively modified to be compatible with the increased steam flow. Mr. Epstein identifies no issue with the modification or the adequacy of the design of the new turbines. Mr. Epstein also fails to demonstrate that any safety issue exists. The turbines are not safety-related components. Moreover, Section 7.1 of the PUSAR shows that the probability that a main turbine missile will be generated, would strike a barrier that houses a critical component, and would breach that barrier and damage the component is less than 10^{-7} per year.[29] PUSAR at 7-2. Mr. Epstein identifies no error or deficiency in this analysis.

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[27] Operating License Nos. NPF-14 and NPF-22, App. A, Tech. Spec. 3.1-7.

[28] The low pressure turbines were originally designed for higher steam flow and higher stress than what they will see at full CPPU conditions and thus do not need to be replaced. PPL Letter PLA-6174, Susquehanna Steam Electric Station, Proposed License Amendment No. 285 for Unit 1 Operating License No. NPF-14 and Proposed License Amendment No. 253 for Unit 2 Operating License No. NPF-22, Constant Pressure Power Uprate – Supplement (Apr. 13, 2007), Att. at 2 (ADAMS Accession No. ML071150113).

[29] The probability that a turbine missile would be generated at a unit is less than 10^{-5} per year. PUSAR at 7-3. The precise probability is 3×10^{-6} per year per unit. Application, April 2007 Supplement, Att. at 5. The probability that such a missile would strike a barrier that houses a critical component, and would breach that barrier and damage the component is 10^{-2} per year. PUSAR at 7-3 (ADAMS Accession No. ML063460354).

PPL Susquehanna has similarly committed to replace the steam dryers with an improved design prior to the uprate.[30] PPL Susquehanna has provided a fatigue analysis demonstrating that the stresses for all structural components of the replacement stream dryers will be under the ASME Code allowable limits at CPPU conditions.[31] In addition, the Application commits to a steam dryer inspection program. Application, Att. 10 at 8 ("PPL has adopted the inspection guidelines for both Unit 1 and Unit 2 steam dryers per BWRVIP-139.") Mr. Epstein identifies no deficiency in the design of the new steam dryers, the fatigue analysis, or the proposed inspection program described.

In short, TC-2 is nothing more than a string of conclusory, unsupported allegations that fail to discuss – let alone identify any material dispute with – the Application. A contention such as this should not be admitted when it amounts to nothing more than vague rhetoric unsupported by any discussion of the Application, or any demonstration that a genuine, material issue exists.

3. TC-3 Is Inadmissible Because It Is Irrelevant and Immaterial, Unsupported, and Fails to Demonstrate Any Genuine Material Dispute

TC-3, which alleges that the uprate involves a significant increase in the "consequences" of an accident than previously evaluated (Pet. at 26), is inadmissible because it does not identify any error or deficiency in the Application, and is unsupported by any information demonstrating a genuine material dispute. As previously discussed, TC-3 appears to be nothing more than a challenge to the NRC Staff's proposed finding of no significant hazards consideration. See

[30] PPL Letter PLA-6138, Proposed License Amendment No. 285 for Unit 1 Operating License No. NPF-14 and Proposed License Amendment No. 253 for Unit 2 Operating License No. NPF-22, Constant Pressure Power Uprate – Supplement (Dec. 4, 2006) at 2 and Att. 1 at 3..

[31] PPL Letter PLA-6146, Proposed License Amendment No. 285 for Unit 1 Operating License No. NPF-14 and Proposed License Amendment No. 253 for Unit 2 Operating License No. NPF-22, Constant Pressure Power Uprate – Supplement (Dec. 26, 2006) (ADAMS Accession No. ML070040376), Encl. 2 - Susquehanna Replacement Steam Dryer Fatigue Analysis (Dec. 2006) (ADAMS Accession No. ML070040383).

Section IV.B of this Answer, supra. As discussed there, a contention seeking to challenge this finding is not admissible.

Mr. Epstein alleges without any basis that PPL and NRC are overly reliant on compliance with NRC's regulations without examining the "consequences" caused by the proposed uprate. Mr. Epstein is simply ignoring the evaluation of accident consequences in the Application. Accident consequences are analyzed in Section 9.2 of the PUSAR, which also references an October 13, 2005 application for approval of Alternative Source Terms ("AST"). PUSAR at 9-4. The analyses in the October 13, 2005 application were performed with core isotopic inventories at EPU conditions.[32] Accident consequences are also analyzed in Section 8.3 of the ER, which provides the dose consequences of accidents under CPPU conditions. Mr. Epstein does not discuss any of this information, does not dispute any of the dose consequences reported in the Application, and does not identify any error in the analyses.

A particularly egregious example of Mr. Epstein's failure to read or dispute the Application is his assertion that "PPL neglected to evaluate the amount of radioactivity in the core, and thus available for release in the event of an accident, is significantly more at 120% power than at 100% power." Pet. at 27. Section 8.3 of the ER states,

> Under EPU conditions, the dose consequences estimated in the FES can be reasonably and conservatively expected to increase by the percentage change in power level form the original licensed power to the EPU power level. In numerical terms this is approximately 20% (from 3293 MWt to 3952 MWt).

[32] Susquehanna Steam Electric Station, Proposed Amendment No. 281 to License NPF-14 and Proposed Amendment No. 251 to License NPF-22: Application for License Amendment and Related Technical Specification Changes to Implement Full-Scope Alternative Source Term in Accordance with 10 CFR 50.67 (Oct. 13, 2005) (ADAMS Accession No. ML060120353) at 2. The doses for the design basis accidents are provided in Chapter 4 of the AST Safety Assessment Report that was provided as Attachment 2 to the AST application.

ER at 8-9. Thus, Mr. Epstein's contention simply ignores the Application, alleging an error which is belied by the Application on its face. A contention such as this which simply ignores the Application does not establish any genuine material dispute and therefore is not admissible.

Finally, Mr. Epstein does not identify any particular accident that he contends has been inadequately analyzed. Therefore, TC-3 is also inadmissible because it is vague and lacks specificity.

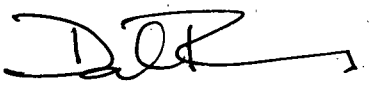
V. SELECTION OF HEARING PROCEDURES

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." 10 C.F.R. § 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. 10 C.F.R. § 2.310(d). It is the proponent of the contentions, however, who has the burden of demonstrating "by reference to the contention and bases provided and the specific procedures in Subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified [Subpart G] procedures." 10 C.F.R. § 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 Subpart L.

VI. CONCLUSION

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

Respectfully Submitted,



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Dated: June 5, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket Nos. 50-387-OLA
PPL SUSQUEHANNA, LLC	)	50-388-OLA
	)	
(Susquehanna Steam Electric Station, Units 1 and 2)	)	ASLBP No. 07-07-854-01-OLA-BD01

CERTIFICATE OF SERVICE

I hereby certify that copies of "PPL Susquehanna's Answer to Eric Epstein's Petition for Leave to Intervene," dated June 5, 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 5th day of June, 2007.

*Administrative Judge
G. Paul Bollwerk, III, Esq., Chairman
Atomic Safety and Licensing Board
Mail Stop T-3F23
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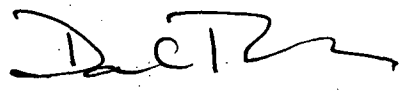

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