

June 6, 2007 (8:58am)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket Nos. 50-387 PLA-6110
PPL SUSQUEHANNA, LLC	)	50-388
	)	
Susquehanna Steam Electric Station	)	ASLBP No. 07-854-01-OLA-BD01
Units 1 and 2	)	

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

INTRODUCTION

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

BACKGROUND

On October 11, 2006, PPL Susquehanna (PPL), filed an application to amend the operating license to Increase Thermal Power to Susquehanna Steam Electric Station (SSES) Units 1 & 2. The proposed amendment would change the SSES operating license to increase the maximum authorized power level from 3,489 megawatts thermal ("MWt") to 3,952 MWt. This requested change, designated an "extended power uprate ("EPU"),<sup>2</sup> represents an increase of approximately 13 percent above the current maximum authorized power level. The proposed amendment would also change the

<sup>1</sup> See Eric Joseph Epstein's Petition for Leave to Intervene, Request for Hearing, and Presentation of Contentions with Supporting Factual Data, May 11, 2007 (Petition).

<sup>2</sup> Power uprates are categorized based on the magnitude of the power increase and the methods used to achieve the increase. "Measurement uncertainty recapture" uprates result in power level increases that are generally less than 2 percent and are achieved by implementing enhanced techniques for measuring reactor power. "Stretch power" uprates typically result in power level increases that are up to 7 percent and do not generally involve major plant modifications. EPU's result in power level increases that are greater than stretch power uprates and may involve significant modifications to major balance-of-plant equipment such as the high pressure turbines, condensate pumps and motors, main generators, and/or transformers.

SSES technical specifications to provide for implementing uprated power operation. On March 13, 2007, the NRC published a notice of consideration of issuance of the proposed amendment and opportunity for hearing,<sup>3</sup> and the NRC's determination that the amendment request involves no significant hazards consideration. In response to this notice, by letter dated May 11, 2007, Petitioner filed his Petition.

## DISCUSSION

### I. Legal Standards

#### A. Legal Standards Governing Standing

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that he or she has standing to do so. Section 189a. of the Atomic Energy Act of 1954, as amended ("AEA"), 42 U. S. C. § 2239(a), instructs the Commission to grant a hearing upon the request of "any person whose interest may be affected by the proceeding." Commission regulations require that a petitioner demonstrate standing under the provisions of 10 C.F.R. § 2.309(d) and proffer at least one admissible contention.

Section 2.309(d) requires that a petition request to intervene state the following:

- (i) the name, address and telephone number of the requester or petitioner;
- (ii) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) the nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
- (iv) the possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

The Commission traditionally looks to judicial concepts of standing when determining whether a petitioner has established the necessary "interest," as required under § 2.309(d)(iv). *See, e.g., Private Fuel Storage, L.L.C.* Independent Spent Fuel

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<sup>3</sup> See *PPL Susquehanna, LLC*; Notice of Consideration and Issuance of Amendment to Facility Operating License and Opportunity for Hearing, (72 Fed. Reg.11392) (Mar 13, 2007).

Storage Installation), CLI-99-10, 49 NRC 318,22-23 (1999); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). Federal jurisprudence requires the petitioner to demonstrate that: (1) he or she has suffered a distinct and palpable harm that constitutes injury in fact within the zone of interests arguably protected by the governing statute,<sup>4</sup> (2) the injury can be fairly traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. See, e.g., *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995). The injury in fact must also be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders Of Wildlife*, 504 U.S. 555, 560 (1992). A petitioner must have a "real stake" in the outcome of the Proceeding, and while this stake need not be "substantial," it must be "actual," "direct," or "genuine." *Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 447-48 (1979), aff'd ALAB-549, 9 NRC 644 (1979).

In addition, the Commission has recognized standing based on a petitioner's proximity to the facility at issue. See *Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 23 (2002). This recognition "presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity." *Id.*, citing *Florida Power & Light Co.*, (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-6, 53 NRC 138,146 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001). In construction permit and operating

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<sup>4</sup> In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act ("NEPA"). *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998).

license proceedings, the presumption generally applies to petitioners residing within fifty miles of a reactor. *See Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994). In an operating license amendment proceeding, a petitioner cannot base his or her standing on proximity unless the proposed action quite "obvious[ly]" entails an increased potential for offsite consequences.

*Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 191 (1999), *pet. for rev. denied sub nom. Dienethal v. NRC*, 203 F.3d 52 (D.C. Cir. 2000). To determine whether the petitioner is within the potential zone of harm of the proposed action, the nature of the proposed action and the significance of the radioactive source must be examined. *See Sequoyah/Watts Bar*, LBP-02-14, 56 NRC at 23. This demonstration must be determined on a case-by-case basis by examining the significance of the radioactive source in relation to the distance involved and the type of action proposed. *See Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17, citing *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75 n.22.

B. Standing of Mr. Epstein

Mr. Epstein offers as his basis for standing the Memorandum and Order (Ruling on Standing and Contentions of Eric Joseph Epstein) issued in the SSES License Renewal matter, wherein the Board found that: "Petitioner Epstein has made a sufficient showing to establish standing for himself under the "proximity presumption."<sup>5</sup>

Mr. Epstein's reliance on a finding of standing in a different proceeding is misplaced. The Staff submits that an independent finding of standing must be made in this case.

Mr. Epstein states that he regularly visits towns within the 50-mile radius of SSES and has contacts within the proximity of SSES. He cites visits to six towns, three of which are within the 50-mile radius, but he fails to allege the frequency of his visits to the

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<sup>5</sup> See LBP-07-04, 65 NRC \_\_\_, slip op. at 9 (2007).

three towns within the 50-mile radius. Mr. Epstein has failed to demonstrate that he has frequent contacts within close proximity to SSES. Therefore, he has failed to demonstrate standing to intervene.

II. Contentions

A. Legal Requirements for Admitting Contentions

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

- (i) Provide a specific statement of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
- (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. 10 C.F.R. § 2.309(f)(1).

The Commission has emphasized that its rules on contention admissibility are “deliberately strict.” *USEC, Inc. (American Centrifuge Plant)*, CLI-06-9, 63 NRC 433, 437 (2006) (citing *Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 & 3)*, CLI-01-24, 54 NRC 349, 358 (2001)). Failure to comply with any of these requirements is grounds for dismissing a contention. *Id.* The contention rules exist to ensure that hearings “adjudicate genuine, substantive safety and environmental issues placed in contention by qualified intervenors.” *USEC, Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 455 (2006) (quoting *Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Unit 2)*, CLI-03-14, 58 NRC 207, 213 (2003)). The Commission will not convene a hearing unless there is an issue which is appropriate for resolution in a hearing. *Id.* at 456-57.

The contentions should refer to the specific documents or other sources of which the petitioner is aware and upon which he or she intends to rely in establishing the validity of the contentions. *Millstone*, CLI-01-24, 54 NRC at 358. Contention admissibility requirements “demand a level of discipline and preparedness on the part of petitioners, ‘who must examine the publicly available material and set forth their claims and the support for their claims at the outset.’” *Louisiana Energy Services (National Enrichment Facility) (LES)*, CLI-04-25, 60 NRC 223, 224-225 (2004). While Licensing Boards may be lenient with *pro se* intervenors, the Commission has stated that those who choose to participate in the proceedings must be prepared to expend the effort necessary to do so. *See USEC*, CLI-06-10, 63 NRC at 456. Even a *pro se* petitioner must submit more than “bald or conclusory allegation[s]” of a dispute with the applicant. *See id.*; *see also LES*, CLI-04-25, 60 NRC at 225. Pursuant to 10 C.F.R. § 2.309(f)(1)(iii), the petitioner must demonstrate that a contention is within the scope of the proceeding. The Commission defines the scope of the hearing in its initial hearing notice and order referring the proceeding to the Licensing Board. *Entergy Nuclear*

*Operations, Inc.* (Vermont Yankee Nuclear Power Station) LBP-04-28, 60 NRC 548, 555 (2004) (citing *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985)). Properly admissible contentions “must focus on the license application in question, challenging either specific portions of or alleged omissions from the application (including the SAR and ER).” *LES* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 57 (2004); *aff’d* CLI-04-25, 60 NRC 223 (2004); *see also* 10 C.F.R. § 2.309(f)(1)(vi).

Specifically in a license amendment proceeding, a petitioner's contentions must focus on the issues identified in the notice of hearing, the amendment application, and the Staff's environmental responsibilities relating to the application. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-39, 34 NRC 273, 282 (1991).

The petitioner has the burden of bringing contentions meeting the pleading requirements. *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001). The licensing board may not supply missing information or draw inferences on behalf of the petitioner.

### III. Proposed Contentions

The Staff respectfully submits that a review of the proposed contentions filed by Petitioner in this proceeding, in light of the established requirements set forth in the previous section, demonstrates that the contentions should not be admitted. The Staff discusses the proposed contentions *seriatim* as they appear in Petitioner's filing.

#### A. Proposed Contention 1 (TC-1)

PPL failed to consider the impact of the proposed uprate on certain state and federal water use issues, and the potential impact these regulations will have on water flow, water volume and surface water withdrawal for the SSES's cooling systems. The traditional implications of the Pennsylvania Public Utility Commission (“Pa PUC”) policy and regulations relating to “withdraw and treatment” of water, i.e., referred to as “cost of water” under the Public

Utility Code, Title 66, have to be factored in this application absent a PUC proceeding as well as Act 220 water usage guidelines. PPL has not established (nor has the NRC reviewed) compliance milestones for EPA's Act 316 (a) or 316 (b) and their impact on power uprates at the Susquehanna Electric Steam Station.

Petition at 10.

The Staff opposes admission of this Proposed Contention on the grounds that it is outside the scope of this license amendment proceeding, the issue raised is not material to the findings the NRC must make to support a license amendment decision, there is not sufficient information to show that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. §§ 2.309(f)(1)(iii),(iv),(vi), and it is not supported by bases that satisfy the pleading requirements of 10 C.F.R. § 2.309. Petitioner's reliance on vague data regarding nuclear power plants other than SSES, and references to the anticipated enactment of state regulations do not provide sufficient information to show that there are material issues of fact in dispute. Petitioner's asserted bases for Proposed Contention 1 lack sufficient facts and contain no supporting expert opinion to satisfy 10 C.F.R. § 2.309(f)(1)(v). Throughout his discussion of Proposed Contention 1, Petitioner raised numerous vague and unconnected issues but does not provide legal support why the application is inadequate or why those issues must be addressed in this proceeding. It is impermissible for Petitioner to rely on generalized suspicions and vague references to alleged events at SSES and equally unparticularized portions of general studies for providing a factual basis.

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

Petitioner asserts, in essence, that PPL failed to consider the impact on the State regulation and water issues regulated by the Pennsylvania Public Utility Commission known as the Susquehanna River Basin Commission (SRBC). The proposed Contention is inadmissible. Petitioner has cited the State's Public Utility Code as part of the Contention 1. That is outside the scope of this proceeding and not within the purview of the NRC. Petitioner lacks basis and support, and the contention is beyond the scope of this proceeding, is immaterial, and fails to establish that a genuine dispute exists on an issue of law or fact. Moreover, Petitioner has failed to support its contention with the required factual or expert supporting information. See 10 C.F.R. § 2.309(f)(1)(ii),(v).

Petitioner has cited the Environmental Protection Agency's (EPA) Cooling Water Intake Structures Phase II regulation under section 316 (b) of the Clean Water Act.<sup>6</sup> In the *Riverkeeper II* decision, the U.S. Court of Appeals for the Second Circuit ruled on January 25, 2007,<sup>7</sup> that key provisions of EPA's Phase II cooling water intake rule are inconsistent with Section 316(b) of the Clean Water Act or were not subject to proper notice and comment and therefore must be revised... Furthermore, the court looked at EPA's cost-benefit analysis and remanded four of the five "best technology available" (BTA) compliance alternatives included in the rule for existing cooling water intake structures for large power plants. As a result of the 2<sup>nd</sup> Circuit's opinion, the EPA has advised that the Phase II rule should be considered suspended.<sup>8</sup> Thus, inherent in this context within the scope of this proceeding the Licensee is not required to comply with the suspended rule. As such the contention is inadmissible as it has no basis in fact.

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<sup>6</sup> See 40 C.F.R. Part 125, Subpart J; 69 Fed. Reg. 41576 (July 6, 2004).

<sup>7</sup> *Riverkeeper, Inc., v. EPA*, 475 F.3d 83, (2d Cir. Jan. 25, 2007).

<sup>8</sup> United States Environmental Protection Agency, Memorandum, Dated Mar 20, 2007, see website ([www.epa.gov/waterscience/3166/phase2/implementation-200703.pdf](http://www.epa.gov/waterscience/3166/phase2/implementation-200703.pdf))

Furthermore, whether a utility meets the requirements of the Clean Water Act is for the EPA to decide not the NRC, as EPA has primary jurisdiction. The NRC only considers the impacts of operation in a manner sanctioned by the EPA.

Petitioner also alleges that an NRC licensee must meet the Commission's regulations, technical specifications and various requirements, but fails to cite anything specific. Petition at 11. Petitioner alleges that PPL failed to consider the coordination of water use issues with state and federal agencies and the potential impact these regulations will have on water flow, water volume and surface water withdrawal for the SSES's cooling systems. Petitioner is incorrect, as these issues are not within the purview of the Commission and have been considered within the PPL's Application for Surface Water Withdrawal Request to Modify Application,<sup>9</sup> and "Supplemental Environmental Report – Extended Power Uprate."<sup>10</sup> PPL's potential excessive use of water is also an issue outside of NRC's jurisdiction, is regulated by the SRBC and outside the scope of this proceeding.

Petitioner alleges that the water consumption, fish kills, thermal inversion and effluent discharges are not adequately covered and further discusses the amount of water vapor lost but fails to show how and what specific evidence supports his conclusions.

It is apparent that the Petitioner has misunderstood the entire scope of this amendment proceeding, relevance to supporting a valid contention, and/or petitioner confused this with a renewal proceeding, as the Petitioner states, "Water use must be factored into the application for renewal." Petition at 16.

Petitioner's insistence that the Applicant must resubmit its application after new

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<sup>9</sup> See application *PPL Susquehanna, LLC*, Application For Surface Water Withdrawal Request to Modify Application 19950301 EPUL-0578, dated December 20, 2006.

<sup>10</sup> See Supplemental Environmental Report – Extended Power Uprate, Attachment 3, dated March 2006.

emerging regulations are issued from the EPA or the SRBC and Pennsylvania Act 220 is beyond the scope of this proceeding. Petitioner offers no support for his assertion that PPL must anticipate a future law which may affect it, and revise and resubmit its amendment application when the law is enacted, or its regulations implemented. PPL holds both a National Pollutant Discharge Elimination System (NPDES) permit for water discharge into the Susquehanna River, as well as consumptive use water approval, issued and enforced by the Susquehanna River Basin Commission Application 19950301 for SSES.

Petitioner mentions invasive species in the Susquehanna River and alleges that PPL will submit an action plan to use Clamtrol to defeat potential Asiatic clam infestation and hypothesizes about Zebra mussel infestation if they should migrate upstream. Petition at 15. Petitioner does not supply any legal support for why this is an appropriate basis for his proposed contention. Petitioner does not explain what his concerns are about the invasive species other than to allege that at Three Mile Island these creatures obscured the view of the reactor core. He simply states that those species are present in the Susquehanna River, but he provides no indication that this is an issue at this facility. Therefore, the Petitioner has failed to provide sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact pursuant to 10 C.F.R. § 2.309(f)(1)(vi). Moreover, the Petitioner fails to discuss how the amendment to uprate the facility would impact the discharge of chlorine or other biocides.

Therefore, proposed Contention 1 is inadmissible because it is not supported by any basis that satisfy the pleading requirements of 10 C.F.R. § 2.309. The asserted bases fail to demonstrate that a genuine dispute exists with the Applicant regarding a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(vi). Additionally, Petitioner's asserted bases for Proposed Contention 1 lack sufficient facts and contain no supporting expert opinion to satisfy 10 C.F.R. § 2.309(f)(1)(v).

Therefore, for the reasons enumerated above, Contention 1 should not be admitted.

B. Proposed Contention 2 (TC-2)

PPL failed to disclose damaging information included in a hastily filed Application for Surface Water Withdrawal (11). "[W]hen a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him."

Petition at 19.

Proposed Contention 2 is inadmissible. Proposed Contention 2 is not supported by bases that satisfy the pleading requirements of 10 C.F.R. § 2.309. The asserted bases fail to demonstrate that a genuine dispute exists with the Applicant regarding a material issue of law or fact. Petitioner does not refer at all to the application for the uprate and therefore does not demonstrate the existence of a dispute with the applicant. See 10 C.F.R. § 2.309(f)(1)(vi). Furthermore, the Contention is not within the scope of this proceeding and the Contention lacks sufficient facts and contains no supporting expert opinion to satisfy 10 C.F.R. § 2.309(f)(1)(v).

Petitioner's contention is not relevant to the current proceeding as water withdrawal is regulated by the SRBC. Furthermore the issue of the intake pipe was addressed in the License Renewal Proceeding, where the Petitioner raised the issue regarding corroding and faulty pipe. At the License Renewal pre-hearing conference, PPL explained that this was an issue of a build-up of deposits inside the intake valve. Mr. Lewis, representing PPL, stated, "The Equipment that's being referred to is the intake pipe on the river. The issue that was being addressed is that there are deposits inside the pipe. It's not leakage from this pipe. It's deposits inside the pipe that make the diameter smaller and as a result there are some flow meters that no longer are accurately calibrated. So the issue that's being addressed was simply that in connection

with this water permit.”<sup>11</sup> Furthermore, with respect to the Petitioner’s contention that PPL has known about the problem yet failed to share the data or disclose the data to the NRC during the uprate process, PPL has, in fact, disclosed it in the License Renewal matter: “Section 3.1.2.1 of our environmental report reflects the fact that with uprated conditions we will have to change the approval that we need with respect to the maximum amount of water that we would be consuming. So the application clearly reported how much additional water the draw would be under uprated conditions and in addition reflected the fact that there would be a need to go to the Savannah (sic) River Basin Commission to obtain their approval”<sup>12</sup>.

Deficiencies in monitoring, failure to inspect structures and components adequately and the impact of aging equipment have no place in this amendment proceeding. Petitioner lacks basis and support for this contention, and the contention is beyond the scope of this proceeding, is immaterial, and fails to establish that a genuine dispute exists on an issue of law or fact. Moreover, Petitioner has failed to support its contention with the required factual or expert supporting information. See 10 C.F.R. § 2.309(f)(1)(ii), (v).

Petitioner asserts, in essence, that PPL failed to consider the impact on the State regulation and water issues regulated by the Pennsylvania Public Utility Commission known as the Susquehanna River Basin Commission (SRBC). The Petitioner has cited the State’s Public Utility Code as part of Contention 2. That is outside the scope of this proceeding and not within the purview of the NRC.

Petitioner alleges that the river intake structure monitors the volume of water, and the application is deficient as it does not provide for adequate inspection of systems that

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<sup>11</sup> See Hearing Transcript for *PPL Susquehanna LLC* (Susquehanna Steam Electric station, Units 1 and 2), Nuclear Regulatory Commission (N.R.C.), Docket No. 50-387/388-LR, March 8, 2007, ML070720568, at 25-26.

<sup>12</sup> *Id.* at 30.

may contain radioactivity. Petitioner does not point to any information to support his assertion that the intake system contains no radioactivity.

Petitioner's insistence that the Applicant must resubmit its application after it addresses the issues related to the alleged faulty corroded pipes and river intake valves is beyond the scope of this proceeding. Petitioner offers no support for his assertion that PPL must anticipate a future law which may affect it, and resubmit its LRA if or when the law is enacted, or its regulations implemented. PPL holds both a National Pollutant Discharge Elimination System (NPDES) permit for water discharge into the Susquehanna River, as well as consumptive use water approval, issued and enforced by the Susquehanna River Basin Commission for SSES as also noted in the pre-hearing conference in the License Renewal matter.<sup>13</sup> Therefore, proposed Contention 2 is inadmissible.

C. Proposed Contention 3 (TC-3)

The proposed change involves a significant increase in the "consequences" of an accident than previously evaluated, and the amount of radioactivity in the reactor core (and thus available for release in event of an accident) is significantly more at 120% power than at 100% power.

Petition at 26.

This contention is inadmissible. Petitioner lacks basis and support, and the contention fails to establish that a genuine dispute exists on an issue of law or fact; moreover, Petitioner has failed to support his contention with the required factual or expert supporting information. See 10 C.F.R. § 2.309(f)(1)(ii), (v). Furthermore, NRC's regulations provide that "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

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<sup>13</sup> Id. At 43.

discretion, on its own initiative, to review the determination." See 10 C.F.R.

§ 50.58(b)(6).

Petitioner appears to be challenging the Staff's Proposed No Significant Hazards Determination. Such an attack is not permitted. 10 C.F.R. § 50.58. Therefore, this contention is inadmissible.

To the extent that the Petitioner is attacking the application as deficient, he fails to point to any specific section in the application that he asserts is deficient.

The Petitioner erroneously alleges that the increase in power significantly increases the consequences of the potential accident but gives no expert testimony or evidence for this assertion. The reasonable specificity standard requires that an intervenor include in a contention a statement of the reason for his contention. This statement must either allege with particularity that an applicant is not complying with a specified regulation, or allege with particularity the existence and detail of a substantial safety issue on which the regulations are silent. In the absence of a "regulatory gap," the failure to allege a violation of the regulations or an attempt to advocate stricter requirements than those imposed by the regulations will result in a rejection of the contention, the latter as an impermissible collateral attack on the Commission's rules. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982), citing 10 C.F.R. § 2.758 (the predecessor to § 2.335).

Petitioner alleges that PPL neglected to evaluate the amount of radioactivity in the core, and thus available for release in event of an accident. This is erroneous since in the EPU application, PPL performed various radiological evaluations and analyses for the proposed Constant Pressure Power Uprate (see PPL Susquehanna, EPU

Application, Attachment 3, "SSES EPU Supp Environmental Report and Attachment 4 Power Uprate Safety Analysis Report ").<sup>14</sup>

Section 2.309(f)(1)(v) specifically requires a petitioner to provide a concise statement of the alleged facts or expert opinion which support its proposed contention, together with references to those specific sources and documents of which the petitioner is aware, and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner has not done so here and therefore, Contention 3 is inadmissible.

### CONCLUSION

For the reasons discussed above, Mr. Epstein has not proffered an admissible Contention. Therefore, the Licensing Board should deny his Petition.

Respectfully submitted



Lloyd B. Subin  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 5<sup>th</sup> day of June 2007

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<sup>14</sup> Attachment 4 (Power Uprate Safety Analysis Report [PUSAR])

(a) Section 8.3, pg 8-3 "Radiation Sources in the Reactor Core" states that post-accident dose consequence analyses and spent fuel pool evaluations were performed

(b) See Section 8.4, "Radiation Sources in Reactor Coolant,"

(c) See Section 8.5, "Radiation Levels" first paragraph states, "for CPPU at SSE, normal operation radiation levels increase by approximately the percentage increase in power level. For conservatism, many aspects of the plant were originally designed for higher-than-expected radiation sources. Thus, the increase in radiation levels does not affect radiation zoning or shielding in the various areas of the plant....."

(d) pg 8-11 summarizes a specific evaluation of the impact of CPPU on post accident vital areas and mission doses

- Attachment 3, "SSES EPU Supp Environmental Report

(a) Section 8.2 - In plant and off-site dose at EPU conditions evaluations

(b) Evaluation of Radiological Consequences of Accidents is provided in Section 8.3

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)  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF RESPONSE TO ERIC JOSEPH EPSTEIN'S PETITION FOR LEAVE TO INTERVENE, REQUEST FOR HEARING, AND CONTENTIONS" and NOTICES OF APPEARANCE for Lloyd B. Subin and Susan L. Uttal in the above-captioned proceeding have been served on the following by electronic mail with copies by deposit in the NRC's internal mail system or, as indicated by an asterisk, by electronic mail, with copies by U.S. mail, first class, this 5th day of June, 2007.

G. Paul Bollwerk III, Chair  
Administrative Judge  
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A handwritten signature in cursive script, reading "Lloyd B. Subin". The signature is written in black ink and is positioned above a horizontal line.

Lloyd B. Subin  
Counsel for NRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NOTICE OF APPEARANCE

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

Name:	Susan L. Uttal
Address:	Office of the General Counsel, U.S. Nuclear Regulatory Commission Mail Stop: O-15D21 Washington, DC 20555
Telephone Number:	(301) 415-1582
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E-mail Address:	slu@nrc.gov
Admissions:	State of New Jersey Commonwealth of Pennsylvania Supreme Court of the United States
Name of Party:	NRC Staff

Respectfully submitted,



Susan L. Uttal  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 5th day of June, 2007

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

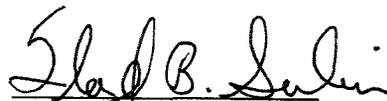
In the Matter of	)	Docket Nos. 50-387-OLA and
	)	50-388-OLA
PPL SUSQUEHANNA LLC	)	
	)	ASLBP No. 07-854-01-OLA-BD01
(Susquehanna Steam Electric Stations	)	
Units 1 and 2)	)	

NOTICE OF APPEARANCE

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

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Admissions:	State of New Jersey, State of New York State of Maryland
Name of Party:	NRC Staff

Respectfully submitted,

  
Lloyd B. Subin  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 5<sup>th</sup> day of June 2007