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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)	Docket No. 50-400-LR
)	
CAROLINA POWER & LIGHT COMPANY)	ASLBP No. 07-855-02-LR-BD01
(Shearon Harris Nuclear Power Plant, Unit 1))	

**CAROLINA POWER & LIGHT COMPANY'S ANSWER TO
PETITION FOR LEAVE TO INTERVENE OF NCWARN AND NIRS**

I. INTRODUCTION

Carolina Power & Light Company, doing business as Progress Energy Carolinas, Inc. ("Progress Energy") hereby answers and opposes the "Petition for Leave to Intervene and Request for a Hearing with Respect to Renewal of Facility Operating License No. NPF-63 [for the Harris Nuclear Plant ("Harris")] by the North Carolina Waste Awareness and Reduction Network and the Nuclear Information and Resource Service," dated May 18, 2007 ("Petition" or "Pet."). The Petition should be denied because the North Carolina Waste Awareness and Reduction Network ("NCWARN") and the Nuclear Information and Resource Service ("NIRS") (collectively, "Petitioners") have failed to identify any admissible contention. In large measure, Petitioners seek to litigate the adequacy of the Harris Nuclear Plant's current licensing basis, and do not raise any aging management issue to which this proceeding is limited.

II. PROCEDURAL BACKGROUND

On November 16, 2006, Progress Energy submitted its application requesting renewal of Operating License Nos. NPF-63 for the Harris Nuclear Plant (the "Application"). On March 20,

2007, the Nuclear Regulatory Commission (“NRC” or “Commission”) published a Notice of Opportunity for Hearing (“Notice”) regarding this Application. 72 Fed. Reg. 13,139 (Mar. 20, 2007). The Notice permits 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 13,140.

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

Id.

III. STANDING

Petitioners assert standing as representatives of their members. Pet. at 6. An organization seeking to obtain standing in a representative capacity must demonstrate “a member [], who has authorized the organization to represent his or her interests.” Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 72 (1994); PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-04, 65 N.R.C. _____, slip op. at 7-9 (Mar. 22, 2007). However, Petitioners have failed to demonstrate that they

are authorized to represent the members whose affidavits are attached to the Petition as Attachments 1 and 2. None of the affiants state that they authorize Petitioners to represent them in this proceeding. Therefore, Petitioners have not demonstrated that they have standing to intervene in this proceeding.¹

IV. PETITIONERS' CONTENTIONS DO NOT MEET THE COMMISSION'S STANDARDS FOR ADMISSIBILITY

In order to be admitted to a proceeding, a petitioner must plead at least one admissible contention. 10 C.F.R. § 2.309(a). For the reasons set forth below, Petitioners have failed to do so, and the Petition must be denied.

A. Standards for Contentions

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

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

¹ Petitioners also have failed to meet the standards for organizational standing. In order for an organization to demonstrate organizational standing, it has to demonstrate that individual members have standing as a petitioner and must allege (1) a particularized injury, (2) that is fairly traceable to the challenged action, and (3) is likely to be redressed by a favorable decision. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 N.R.C. 318, 323 (1999). As discussed herein, Petitioners have failed to allege a particularized injury that is fairly traceable to the license renewal, nor have they demonstrated how a decision regarding the license renewal would redress those concerns.

10 C.F.R. Part 54 governs the health and safety matters that must be considered in a license renewal proceeding. The Commission has specifically limited this safety review to the matters specified in 10 C.F.R. §§ 54.21 and 54.29(a),² which focus on the management of aging of certain systems, structures and components, and the review of time-limited aging evaluations. See Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 N.R.C. 3, 7-8 (2001); Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-02-26, 56 N.R.C. 358, 363 (2002). Thus, the potential effect of aging on systems, structures and components is the issue that defines the scope of the safety review in license renewal proceedings. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 637 (2004).

The rules in 10 C.F.R. Part 54 are intended to make license renewal a stable and predictable process. Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,462, 22,463, 22,485 (May 8, 1995). As the Commission has explained, “[w]e sought to develop a process that would be both efficient, avoiding duplicative assessments where possible, and effective, allowing the NRC Staff to focus its resources on the most significant safety concerns at issue during the renewal term.” Turkey Point, CLI-01-17, 54 N.R.C. at 7. “License renewal reviews are not intended to ‘duplicate the Commission’s ongoing reviews of operating reactors.’” Id. (citation omitted). To this end, the Commission has confined 10 C.F.R. Part 54 to those issues uniquely determined to be relevant to the public health and safety during the period of extended operation, leaving all other safety issues to be addressed by the existing regulatory processes. 60 Fed. Reg. at 22,463. This scope is based on the principle established in

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

the rulemaking proceedings that, with the exception of the detrimental effects of aging and a few other issues related to safety only during the period of extended operation, the existing regulatory processes are adequate to ensure that the licensing bases of currently-operating plants provide and maintain an adequate level of safety. 60 Fed. Reg. at 22,464, 22,481-82. Consequently, license renewal does not focus on operational issues, because these issues “are effectively addressed and maintained by ongoing agency oversight, review, and enforcement.” Millstone, CLI-04-36, 60 N.R.C. at 638 (footnote omitted).

NRC rules governing environmental matters – which are contained in 10 C.F.R. §§ 51.53(c), 51.95(c), and Appendix B to Part 51 – are similarly intended to produce a more focused and, therefore, more effective review. 61 Fed. Reg. 28,467 (June 5, 1996); Turkey Point, CLI-01-17, 54 N.R.C. at 11. To accomplish this objective, the NRC prepared a comprehensive Generic Environmental Impact Statement for License Renewal of Nuclear Plants (1996) (“GEIS”), NUREG-1437, and made generic findings in the GEIS, which it then codified in Appendix B to 10 C.F.R. Part 51. Those issues that could be resolved generically for all plants are designated as Category 1 issues and are not evaluated further in a license renewal proceeding (absent waiver or suspension of the rule by the Commission based on new and significant information). 61 Fed. Reg. at 28,468, 28,470, 28,474; Turkey Point, CLI-01-17, 54 N.R.C. at 12. The remaining (i.e., Category 2) issues that must be addressed in an applicant’s environmental report are defined specifically in 10 C.F.R. § 51.53(c). See generally, Turkey Point, CLI-01-17, 54 N.R.C. at 11-12.

10 C.F.R. § 2.309(f)(1)(iii)-(iv) requires that a petitioner demonstrate that the issue raised by each of its contentions is within the scope of the proceeding and material to the findings that the NRC must make. Licensing boards “are delegates of the Commission” and, as such, they

may “exercise only those powers which the Commission has given [them].” Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 N.R.C. 167, 170 (1976) (footnote omitted); accord Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 N.R.C. 287, 289-90 n.6 (1979). Accordingly, it is well established that a contention is not cognizable unless it is material to a matter that falls within the scope of the proceeding for which the licensing board has been delegated jurisdiction. Id.; see also Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 N.R.C. 419, 426-27 (1980); Commonwealth Edison Co. (Carroll County Site), ALAB-601, 12 N.R.C. 18, 24 (1980).

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

(1991). Likewise, a contention that seeks to litigate a generic determination established by Commission rulemaking is “barred as a matter of law.” Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 N.R.C. 5, 30 (1993).

These limitations are controlling in this proceeding in that the scope of admissible environmental contentions is constrained by 10 C.F.R. §§ 51.53(c), 51.95(c), and Appendix B to Part 51; and the scope of technical contentions is constrained by 10 C.F.R. Part 54. See Turkey Point, CLI-01-17, 54 N.R.C. at 5-13; see also Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 N.R.C. 327, 329 (2000); Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41 (1998), motion to vacate denied, CLI-98-15, 48 N.R.C. 45, 56 (1998); Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3), CLI-98-17, 48 N.R.C. 123, 125 (1998).

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

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

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

10 C.F.R. § 2.309(f)(1)(i), (ii), (v) and (vi). The failure of a contention to comply with any one of these requirements is grounds for dismissing the contention. Palo Verde, CLI-91-12, 34 N.R.C. at 155-56.

These pleading standards governing the admissibility of contentions are the result of a 1989 amendment to 10 C.F.R. § 2.714, now § 2.309, which was intended “to raise the threshold for the admission of contentions.” 54 Fed. Reg. 33,168 (Aug. 11, 1989); see also Oconee, CLI-99-11, 49 N.R.C. at 334; Palo Verde, CLI-91-12, 34 N.R.C. at 155-56. The Commission has stated that the “contention rule is strict by design,” having been “toughened . . . in 1989 because in prior years ‘licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.’” Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001) (citation omitted). The pleading standards are to be enforced rigorously. “If any one . . . is not met, a contention must be rejected.” Palo Verde, CLI-91-12, 34 N.R.C. at 155 (citation omitted). A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information. Id.

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

and that issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues.” 69 Fed. Reg. 2,182, 2,189-90 (Jan. 14, 2004).

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

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

Id. (footnote omitted); see also Calvert Cliffs, CLI-98-14, 48 N.R.C. at 41 ("It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions . . ."). A contention, therefore, is not to be admitted "where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts." 54 Fed. Reg. at 33,171.³ As the Commission has emphasized, the contention rule bars contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003).

Therefore, under the Rules of Practice, a statement "that simply alleges that some matter ought to be considered" does not provide a sufficient basis for a contention. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 246 (1993), review declined, CLI-94-2, 39 N.R.C. 91 (1994). Similarly, a mere reference to

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

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 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 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. Petitioners' Contentions Are Beyond the Scope of this Proceeding, Are Collateral Attacks on the Commission's Rules, Lack Basis, and Are Otherwise Inadmissible

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

1. Contention T-1 (Fire Protection)

Petitioners' Contention T-1 states that it is "imprudent and improper to even consider extending the operating license for the SHNPP⁴ for an additional 20 years until the plant comes

⁴ Petitioners refer to Harris as SHNPP.

into full compliance with all relevant fire protection regulations.”⁵ Pet. at 18-19. Contention T-1 is inadmissible because it is beyond the scope of this license renewal proceeding; it does not address aging management. In addition, Contention T-1 does not satisfy the Commission’s pleading standards, and Petitioners do not refer to a specific section of the Application that is alleged to be incorrect.

a. Contention T-1 Is Beyond the Scope of a License Renewal Proceeding

Petitioners’ Contention T-1 which asserts that it would be “improper” for the Commission “to even consider extending the operating license for the SHNPP . . . until the plant comes into full compliance with all relevant fire protection regulations” (Pet. at 18-19) is inadmissible because it is outside the scope of this proceeding. Contention T-1 is beyond the scope of the proceeding because it does not relate to the potential effects of aging, which define the scope of the safety review in license renewal proceedings. Millstone, CLI-04-36, 60 N.R.C. at 637. As discussed above, the Commission has limited its safety review in license renewal proceedings to the matters specified in 10 C.F.R. §§ 54.21 and 54.29(a), which focus on the management of aging of certain systems, structures and components, and the review of time-limited aging evaluations. See Turkey Point, CLI-01-17, 54 N.R.C. at 7-8 (2001); McGuire,

⁵ In the Introduction, Petitioners more generally maintain “that it is inappropriate, if not reckless, to extend the operating license for the SHNPP for the simple reason that the present license will not expire for another 20 years.” Petition at 2. Petitioners find “[t]his is the basic flaw with the early license renewal process and allowing CPL to extend its license only halfway through the current license is an egregious abuse of this process.” Id. Here, and often, Petitioners simply attack the Commission’s regulations – in this case 10 C.F.R. § 54.17(c), which establishes the period within which an application for a renewed license may not be submitted. The Harris Operating License expires on October 24, 2026; as permitted by the regulations, the Application was submitted on November 16, 2006, less than 20 years from the expiration of the Harris Operating License.

Further, the Commission’s rule allowing a license renewal application to be filed up to 20 years prior to expiration of the existing license was based on the Commission’s determination that (1) 20 years of operating experience is sufficient to support the aging review, and (2) this time limit is reasonable because of the long lead times necessary if the capacity is to be replaced. 56 Fed. Reg. 64, 943, 64, 963 (Dec. 13, 1991). Thus, the Commission’s rule is justified and neither “inappropriate” nor “reckless.”

CLI-02-26, 56 N.R.C. at 363. In limiting the scope of a license renewal proceeding, the Commission expressly rejected the litigation of issues concerning an applicant's current licensing basis because:

... (a) [the Commission's] program of oversight is sufficiently broad and rigorous to establish that the added discipline of a formal license renewal review against the full range of current safety requirements would not add significantly to safety, and (b) such a review is not needed to ensure that continued operation during the period of extended operation is not inimical to the public health and safety.

56 Fed. Reg. at 64,945; see also, 60 Fed. Reg. at 22,473. The Commission explained that "the Commission engages in a large number of regulatory activities which, when considered together, constitute a regulatory process that provides ongoing assurance that the licensing bases of nuclear power plants provide an acceptable level of safety. This process includes research, inspections, audits, investigations, evaluations of operating experience, and regulatory actions to resolve identified issues." 56 Fed. Reg. at 64,946. Therefore, these issues are exclusively resolved under the Commission's regulatory process for operations and are not within the scope of this license renewal proceeding. Turkey Point, CLI-01-17, 54 N.R.C. at 7-8. [and cases cited at page [4] supra.]

b. Contention T-1 Is Not Adequately Supported and Petitioners Have Not Provided Reference to Specific Sections of the Application with Which They Take Issue

Contention T-1 is also inadmissible because it is not supported by a sufficient basis demonstrating a genuine dispute with the Application. As discussed in Section IV.A.2., supra, admissible contentions must meet the pleading requirements in 10 CFR § 2.309(f). Contention T-1 does not even begin to meet those requirements. For example, Petitioners fail to provide a "concise statement of the alleged facts or expert opinions" supporting Contention T-1 or references to "specific sources and documents on which the requestor/petitioner intends to rely to

support its position on the issue,” as required by 10 C.F.R. § 2.309(f)(1)(i) and (v). Petitioners fail “to provide the [technical] analyses and expert opinion” or other information “showing why its bases support its contention.” Georgia Institute of Technology, LBP-95-6, 41 N.R.C. at 305. Petitioners reference a letter by Congressman David Price (D-NC) that requests a study by the Government Accountability Office (“GAO”) of NRC enforcement of fire safety standards.⁶ Petitioners also cite their 2.206 Petition and the Proposed Director’s Decision under 10 C.F.R. § 2.206 in Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Unit 1), Docket No. 50-400, (April 2, 2007) (“Proposed Director’s Decision”), although that document in no way supports their claims.⁷ None of the documents reference or relate to any portion of the Application or explain how the Application is deficient. With respect to Congressman Price’s letter, there is nothing in the letter that suggests any problem with the Application, or with Harris’ fire protection program.⁸

With respect to Petitioners’ 2.206 Petition and the Proposed Director’s Decision, Petitioners incorporate their 2.206 Petition by reference (Pet. at 22 n.8), contending that: “[n]ot only is the SHNPP out of compliance [with the Commission’s fire protection regulations], the NRC does not inspect the OMAs used at the plant because NRC staff knows that the OMAs are not in compliance.” Pet. at 23. Petitioners’ 2.206 Petition, and Petitioners’ assertions in that Petition, involve only the current licensing basis of Harris and Petitioners’ attack on the

⁶ Petitioners mischaracterize the letter as a request by Congressman Price for “a study by the Government Accountability Office (“GAO”) for an investigation of the SHNPP.” Pet. at 23. In fact, the letter does not mention Harris at all.

⁷ It also has been superseded by a final Director’s Decision Under 10 C.F.R. 2.206, DD-07-03 (June 13, 2007) (“Final Director’s Decision”).

⁸ Petitioners cannot rely on a potential future GAO Report. Aside from not having any idea of the content of such a report, if the report is ever written, the Board cannot consider Petitioners’ representation that there may be a future report that may relate to Harris in some fashion. See, e.g., Millstone, CLI-04-36, 60 N.R.C. at 639 (finding that a petitioner’s “willingness to produce supporting documentation at a future hearing,” was “not nearly enough to revive a contention that lacks support in the law or facts.”) (footnote omitted).

Commission's fire protection regulations and how the NRC enforces those regulations.⁹ In the Final Director's Decision (as in the Proposed Director's Decision), the Acting Director of the Office of Nuclear Reactor Regulation rejects all of Petitioners' claims.¹⁰ Under Commission regulations, the Final Director's Decision can only be reviewed by the Commission on its own motion, and a Licensing Board does not have jurisdiction to review a Director's Decision on a Section 2.206 petition.¹¹

Moreover, Petitioners are obligated to review the Application and point to specific portions that are either deficient or do not comply with the Commission's regulations. 10 C.F.R. § 2.309(f)(1)(vi). They have failed to do so. See Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 N.R.C. 49, 80 (2002). (rejecting a fire barrier penetration seals contention). Petitioners do not try to relate any of the content of their 2.206 Petition to the Application, as required by Commission case law. See Millstone, 54 N.R.C. at 359-60 (Petitioner "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].") Nor have Petitioners asserted that the alleged non-compliance with fire protection regulations described in the 2.206 Petition (and rejected by the Acting Director) constitutes a genuine dispute of fact in regard to whether Harris' license should be renewed, as required by Commission case law. See, e.g., Calvert Cliffs, CLI-98-14, 48 N.R.C. at 41 ("It is the responsibility of the Petitioner to provide the

⁹ As discussed in Section IV.B.3.d., infra, Petitioners are attacking the Commission's fire protection regulations; and the Commission's approach to risk-based and performance-based fire protection. See, e.g., Pet. at 23.

¹⁰ The DD provides:

The NRC denies the Petitioners' request for an order that would revoke the SHNPP operating license
The NRC appropriately exercised its enforcement discretion under the NRC's "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48(c)).

Final Director's Decision at 19.

¹¹ Pursuant to 10 C.F.R. § 2.206(c), the decision will constitute the final action of the Commission 25 days after the date of decision unless the Commission, on its own motion, institutes a review of a decision within that time. Petitioners cannot attempt to collaterally attack the Final Director's Decision and re-litigate it in this proceeding.

necessary information to satisfy the basis requirement for the admission of its contentions”); see also Private Fuel Storage, L.L.C., LBP-98-7, 47 N.R.C. at 180 (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).

Therefore, Contention T-1 is not material to this proceeding, and the resolution of the alleged dispute between Petitioners and Licensee would not make a difference in the outcome of the license renewal proceeding. Petitioners have not demonstrated fault with the Application supported by sufficient basis. A “genuine dispute” does not exist “with the applicant/licensee on a material issue of law or fact” therefore the contention must be rejected. 10 C.F.R. § 2.309(f)(1)(vi).

2. Contention EC-1 Is Inadmissible

Petitioners seek to admit Contention EC-1 on the basis that the “Environmental Report for the SHNPP license extension fails to satisfy NEPA because it does not address the environmental impacts of a successful attack by the deliberate and malicious crash of a fuel laden and/or explosive laden aircraft and the severe accident consequences of the aircraft’s impact and penetration on the facility.” Pet. at 24. This contention is inadmissible because, as the Commission has recently and repeatedly held, terrorist attacks are (1) not required to be analyzed as part of the Commission’s NEPA review, and (2) beyond the scope of a license renewal proceeding, even if they were otherwise subject to NEPA review. Contention EC-1 is also beyond the scope of the proceeding because the GEIS already addresses the environmental impacts of sabotage, and Petitioners neither request a waiver of the GEIS generic determination regarding sabotage nor do they provide new and significant information that would be required

for such a waiver to be granted. Further, Contention EC-1 is inadmissible because it otherwise fails to meet the standards for an admissible contention.

a. Contention EC-1 is Inadmissible Because Malevolent Acts Are Beyond the Scope of NEPA Review

Contention EC-1 is inadmissible because it is premised entirely upon a “successful attack by the deliberate and malicious crash of a fuel laden or explosive laden aircraft.” Pet. at 24. However, the Commission has held that the analysis of the environmental impacts of a terrorist act is not required by NEPA and not within the scope of a license renewal proceeding and must be rejected.

“Terrorism contentions are, by their very nature, directly related to security and are therefore under our [license renewal] rules, unrelated to ‘the detrimental effects of aging.’ Consequently, they are beyond the scope of, not ‘material’ to, and inadmissible in, a license renewal proceeding.” Moreover, as a general matter, NEPA “imposes no legal duty on the NRC to consider intentional malevolent acts . . . in conjunction with commercial power reactor license renewal applications.” “The ‘environmental’ effect caused by third-party miscreants ‘is . . . simply too far removed from the natural or expected consequences of agency action to require a study under NEPA.’”

AmerGen Energy Company, LLC (Oyster Creek Nuclear Generating Station), CLI-07-08, 65 N.R.C. 124,129 (2007) (quoting McGuire, CLI-02-26, 56 N.R.C. at 364, 365; see also Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 300 (2006) (“ . . . terrorism concerns, even assuming new and significant information is presented, are not litigable in a license renewal proceeding . . . ”).

The Commission has also expressly rejected the assertion made by Petitioners (see Pet. at 16) that the decision in San Luis Obispo Mothers for Peace v. NRC, 449 F.3d 1016 (9th Cir. 2006), cert. denied sub nom. Pacific Gas & Elec. Co. v. San Luis Obispo Mothers for Peace, 127 5.Ct. 1124 (2007), requires additional analysis in license renewal

proceedings. The Commission held that San Luis Obispo Mothers for Peace is inapposite to a license renewal proceeding because:

A license renewal proceeding is distinguishable from the situation considered in San Luis Obispo Mothers for Peace, where the NRC had before it a proposal to construct a dry cask storage facility at a nuclear reactor site. Unlike the situation in that case, a license renewal application does not involve new construction. So there is no change to the physical plant and thus no creation of a new “terrorist target.”

Oyster Creek, CLI-07-08, 65 N.R.C. at 130 n.25.

Moreover, the Commission has expressly held that the analysis it conducted as part of its GEIS satisfies any NEPA requirement that the Commission may have in regard to terrorist acts related to license renewal proceedings:

Even if we were required by law to consider terrorism under NEPA, the NRC has already issued a [GEIS] that considers sabotage in connection with license renewal The GEIS concluded that, if such an event were to occur, the resultant core damage and radiological release would be no worse than those expected from internally initiated events.

McGuire, CLI-02-26, 56 N.R.C. at 365 n.24 (citations omitted).

b. Contention EC-1 Is Inadmissible Because Sabotage Is Already Considered in the GEIS

Petitioners improperly seek to challenge the findings in the GEIS – that the risk from sabotage is small and that the environmental impacts therefrom are adequately addressed by a generic consideration of internally initiated severe accidents. Petitioners mistakenly assert that the GEIS “does not include any discussion of how deliberate malicious attacks on nuclear power plants may increase the likelihood or consequences of severe accidents.” Pet. at 15. Petitioners further assert that the NRC has “declined” to address this issue adequately in the GEIS. Id. Petitioners are incorrect in their characterization of the Commission’s consideration of sabotage in the GEIS.

The GEIS provides that:

The regulatory requirements under 10 CFR part 73 provide reasonable assurance that the risk from sabotage is small. Although the threat of sabotage events cannot be accurately quantified, the commission believes that acts of sabotage are not reasonably expected. Nonetheless, if such events were to occur, the commission would expect that resultant core damage and radiological releases would be no worse than those expected from internally initiated events.

Based on the above, the commission concludes that the risk from sabotage . . . at existing nuclear power plants is small

GEIS § 5.3.3.1; see also Oyster Creek, CLI-07-08- 65 N.R.C. at 131-32 & n.32. McGuire, CLI-02-26, 56 N.R.C. at 365 n.24. Moreover, the Commission has determined generically that severe accident risk is of small significance for all nuclear power plants.¹² The Commission has determined that no separate NEPA analysis is required to evaluate the potential environmental impacts of a terrorist attack because the GEIS analysis of severe accident consequences bounds the potential consequences that might result from a large scale radiological release, regardless of the initiating cause. The Commission's analysis in the GEIS satisfies any NEPA requirement with regard to the environmental impacts of a postulated terrorist act.¹³

Because the Commission has (1) generically determined in the GEIS that the risk of sabotage is small and bounded by the evaluated consequences of severe accidents, (2) generically determined in 10 CFR Part 51, App. B, Table B-1 that severe accident risk is small for all plants,

¹² See 10 C.F.R. Part 51, App. B, Table B-1; GEIS § 5.5.2.

¹³ It is well established that a NEPA analysis need not consider a particular scenario where the risk for that scenario has been bounded by the NEPA analysis performed by the agency, as the Commission has done for terrorism in the GEIS. See, e.g., Hirt v. Richardson, 127 F. Supp. 2d 833, 839 (W.D. Mich. 1999) (a Department of Energy analysis of the risks associated with the shipping of plutonium was not arbitrary and capricious for failing to consider the possibilities of terrorism and sabotage because "the consequences of any such criminal act would not exceed those discussed in the [Environmental Assessment] for accidental destruction of the container.") (emphasis added); South Carolina ex rel. Beasley v. O'Leary, 953 F. Supp. 699, 708 (E.D.S.C. 1996) (finding that the Department of Energy considered all "reasonably possible vulnerabilities" of a spent fuel rod storage basin by employing a "bounding" analysis" that evaluated risks under a "worst case" scenario that "looked at the possible hazards as if the worst would occur"); Sierra Club v. Watkins, 808 F. Supp. 852, 866-67 (D.D.C. 1991) (finding that analysis of risk based on a "generic port" that used "bounding values" to "conservatively" estimate risk of shipping spent nuclear fuel into the U.S. satisfied NEPA, such that analysis of risk of shipments into specific ports would not be required).

and (3) has not required any analysis of the issue in 10 C.F.R. § 51.53(c)(3)(iv), Petitioners may not raise this issue without seeking a waiver of the rule pursuant to 10 C.F.R. § 2.355 (formerly § 2.758). As the Commission has held:

The Commission recognizes that even generic findings sometimes need revisiting in particular contexts. Our rules thus provide a number of opportunities for individuals to alert the Commission to new and significant information that might render a generic finding invalid, either with respect to all nuclear power plants or for one plant in particular. In the hearing process, for example, petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule.

Turkey Point, CLI-01-17, 54 N.R.C. at 12 (citations omitted); Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), CLI-07-03, 65 N.R.C.13, 20 (2007). Petitioners have failed to seek a waiver of the GEIS determinations in this proceeding, a requisite to the potential setting aside of the GEIS determinations regarding sabotage. Accordingly, Contention EC-1 must be rejected as inadmissible.

Moreover, even if Petitioners had sought such a waiver, Petitioners have failed to satisfy their burden to demonstrate that “new and significant information” exists that shows that the GEIS determination that environmental impacts from sabotage would be no different than those expected from already analyzed severe accident events is incorrect (or that the environmental impacts of such an act would be small). “New and significant information” is defined by Supplement 1 to Regulatory Guide 4.2, Preparation of Supplemental Environmental Report for Applications to Renew Nuclear Power Plant Operating Licenses (Sept. 2000) (“RG 4.2, Supp. 1”) as:

(1) information that identifies a significant environmental issue that was not considered in NUREG-1437 and, consequently, [was] not codified in Appendix B to Subpart A of 10 C.F.R. Part 51, or (2) information that was not considered in the analyses summarized in NUREG-1437 and that leads to an impact finding different from that codified in 10 C.F.R. Part 51.

RG 4.2, Supp. 1 at 4.2-S-4. This definition is consistent with NEPA case law.¹⁴ Petitioners provide no new or significant information, but baldly assert that San Luis Obispo Mothers for Peace and the attacks of September 11, 2001, and the NRC response to those attacks constitute “significant new information.” Pet. at 16. Petitioners further quote extensively from NUREG-2859, “Evaluation of Aircraft Hazards Analysis for Nuclear Power Plants,” (1982), but never assert that NUREG-2859 constitutes new and significant information in regard to the GEIS.¹⁵ Rather, Petitioners assert that the “EIS for the original SHNPP license did not evaluate the consequences of an aviation attack” Pet. at 24.

None of these sources satisfy either prong of the definition of “new and significant information.” First, the Ninth Circuit’s decision in San Luis Obispo Mothers for Peace cannot constitute new and significant information. A court decision does not meet either prong of the NRC definition. Moreover, as discussed above, the decision is irrelevant to license renewal proceedings. Oyster Creek, CLI-07-08, 65 N.R.C. at 130 n.25. Second, neither the attacks of September 11, 2001, nor NRC response to those attacks meet the definition of new and significant information. Contrary to Petitioners’ assertion, sabotage was considered in the GEIS. See GEIS § 5.3.3.1; see also McGuire, CLI-02-26, 56 N.R.C. at 365 n.24. Likewise, the impact:

¹⁴ See, e.g., Nat’l Comm. for the New River, Inc. v. FERC, 373 F.3d 1323, 1330 (D. C. Cir. 2004) (if “new information [regarding the action] shows that the remaining action will affect the quality of the environment ‘in a significant manner or to a significant extent not already considered.’”) (quoting Marsh v. Or. Natural Res. Council, 490 U. S. 360, 374 (1989)).

¹⁵ Petitioners also mention a March 2000 response by the Turkey Point Plant to an NRC request for information and an October 2000 “Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants” (“Spent Fuel Report”), Pet. at 27-28, but provides no explanation as to the relevance of those documents to the instart license renewal proceeding, nor that anything about either document constitutes new information. For example, Petitioners, without citation, mischaracterize the Spent Fuel Report as stating the “the impacts of an aircraft attack were possible” Pet. at 28. However, the Spent Fuel Report does not examine “aircraft attack” (see Spent Fuel Report § 3.5.2), and found that the probability of an aircraft impact as an initiating event for spent fuel uncoverly was 2.9×10^{-9} . Spent Fuel Report § 3.7, Table 3.7-5. Moreover, on-site spent fuel storage – including any accidents related thereto – is a Category 1 environmental issue where the Commission has determined the environmental impacts are “small.” 10 C.F.R. Part 51, App. B, Table B-1. The Commission has held in Turkey Point that such Category 1 determinations are not subject to review in a license renewal proceeding. Turkey Point, 54 N.R.C. at 12.

of sabotage was considered in the GEIS. Id.; see also 10 C.F.R. Part 51, App. B, Table B-1; GEIS § 5.5.2.

Finally, the fact that NUREG-2859 was published after the original EIS for Harris is irrelevant. The issue is whether it constitutes new information in regard to the GEIS. It does not. The GEIS was issued after NUREG-2859. The GEIS evaluated sabotage of nuclear power plants. The GEIS made a generic determination that the risk from sabotage at existing nuclear power plants is “small” (see 10 C.F.R. Part 51, App. B, Table B-1; GEIS §5.5.2) and, additionally, that the risks from sabotage are adequately addressed by a generic consideration of severe accidents. See GEIS § 5.3.3.1. Therefore, not only did the GEIS address the sabotage, it made the determination that sabotage was not significant.

c. **Contention EC-1 Is Inadmissible To the Extent It Seeks to Raise Safety Issues That Are Beyond the Scope of a License Renewal Proceeding and a Collateral Attack on NRC Regulations**

While Contention EC-1 is an environmental contention challenging the environmental report, Petitioners make a number of statements suggesting that aviation attacks are design basis threats warranting backfitting to protect the public health and safety. See, e.g., Pet. at 16-17. Such allegations are not only beyond the scope of this license renewal proceeding because they are unrelated to aging, but are also impermissible challenges to NRC regulations.

Petitioners repeatedly state, in support of proffered Contention EC-1, that they do not believe that the Commission’s regulation at 10 C.F.R. § 73.1 regarding design basis threats for nuclear power plants are adequate, including:

- “It is further clear that given the state of world affairs, aviation attacks are *design basis threats* that must be addressed.” Pet. at 16 (emphasis added).
- “The potential for accidents caused by deliberate malicious actions and the resulting equipment failures is not only reasonably foreseeable, but it is likely

enough to qualify as a '*design-basis accident*,' i.e., an accident that must be designed against under NRC safety regulations." Pet. at 25 (emphasis added).

- "The NRC did not address active protection measures against aviation attacks as it considered the 'passive measures already in place . . . are appropriate for protecting nuclear facilities from an aerial attack.'" Pet. at 28 (footnote omitted).
- "The assertions in the Proposed Director's Decision [in response to a rulemaking petition to amend 10 C.F.R. § 73.1] and by Chairman Klein are contrary to the findings in a long series of studies on security issues that have been undertaken by the NRC . . . that show that the plants cannot withstand an aerial attack." Pet. at 29 (footnote omitted).
- "The Commission shall always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security." Pet. at 17.

The scope of safety allegations in a license renewal proceeding is proscribed by the Commission's regulations. As discussed in Section IV, above, the Commission has confined 10 C.F.R. Part 54 to those issues uniquely determined to be relevant to the public health and safety during the period of extended operation, leaving all other safety issues to be addressed by the existing regulatory processes. 60 Fed. Reg. at 22,463. The design of nuclear power plants to withstand an aviation attack is not within the scope of a license renewal proceeding and Contention EC-1 is not an admissible contention.

Further, Petitioners' allegations that aviation attacks are design basis threats warranting backfits is a challenge to the NRC's rule at 10 C.F.R. § 73.1 defining the radiological sabotage against which a licensee must defend.¹⁶ Such an attack on the adequacy of the NRC rules is prohibited by 10 C.F.R. § 2.335.

¹⁶ Since September 11, 2001, the Commission has undertaken extensive efforts to enhance security at nuclear facilities. On February 25, 2002, the NRC issued an Order requiring nuclear plants to take steps to enhance security at nuclear power plants. See Order Modifying Licenses (Effective Immediately) (Feb. 25, 2002) On April 29, 2003, the NRC issued an Order requiring nuclear power plants to revise their physical security plans, security personnel training and qualification plans, and safeguards contingency plan to implement requirements beyond those set forth in 10 C.F.R. § 73.1. See Issuance of Order Requiring Compliance with Revised Design

Finally, these allegations are barred by 10 C.F.R. § 50.13, which provides:

An applicant for a license to construct and operate a production or utilization facility, or for an amendment to such license, is not required to provide for design features or other measures for the specific purpose of protection against the effects of (a) attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or (b) use or deployment of weapons incident to U.S. defense activities.

Contention EC-1 is a direct attack on this regulation by seeking to require the Applicant to protect against the effects of attacks and destructive acts by an enemy of the United States and must be rejected.

d. Contention EC-1 Is Inadmissible Because It Does Not Meet the Commission's Specificity Requirements for Admissible Contentions

Contention EC-1 fails to meet the Commission's pleading requirements for admissible contentions as discussed in Section IV.A.2., supra. Petitioners assert that the Environmental Report must address the environmental impact of a "successful attack by the deliberate and malicious crash of a fuel laden and/or explosive laden aircraft" and therefore fails to satisfy NEPA. Pet. at 24. Petitioners, however, do not provide a concise statement of the alleged facts or expert opinion supporting the contention that a deliberate and malicious crash must be addressed separately or that the environmental impacts of such an act are not already encompassed within the GEIS. Nor do Petitioners explain how their assertions regarding Contention EC-1 would make a difference in the outcome of the licensing renewal proceeding.

Basis Threat for Operating Power Reactors: Order Modifying Licenses (Effective Immediately) (Apr. 29, 2003). On November 2, 2005, the NRC issued a proposed rule to incorporate the supplemental Design Basis Threat requirements prescribed by its Order of April 29, 2003. See "Design Basis Threat," Proposed Rule, 70 Fed. Reg. 67,380 (Nov. 7, 2005) ("Proposed DBT Rule"). On January 29, 2007, the Commission voted to approve the revised final rule, but it has not yet been published in the Federal Register. Staff Requirements – Affirmation Session, regarding SECY-06-0219, Final Rulemaking to Revise 10 CFR 73.1, Design Basis Threat Requirements (Jan. 29, 2007). Petitioners are attempting to litigate, in this proceeding, their disagreement with the Commission's efforts and regulations concerning security at nuclear facilities. However, the Commission has long held that contentions may not raise issues that are being resolved in a rulemaking proceeding. See, e.g., Oyster Creek, 65 N.R.C. at 133 and n.43; see also Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 345(1999).

As discussed above, the Commission has made a determination that environmental impacts of deliberate sabotage “are adequately addressed by a generic consideration of internally initiated severe accidents.”¹⁷ GEIS § 5.3.3.1. Petitioners do not allege that the GEIS fails to address “internally initiated severe accidents.” And, although Petitioners cite extensively from NUREG-2859, Petitioners do not allege how the environmental impacts of a “deliberate and malicious crash of a fuel laden and/or explosive laden aircraft” would differ from the environmental impacts of an “internally initiated severe accident.” Accordingly, Contention EC-1 fails to meet the pleading requirements of the Commission’s regulations and must be rejected.

e. Contention EC-1 Is Inadmissible Because Petitioners’ Severe Accident Mitigation Alternative Claim Is Not an Admissible Contention

(i) Petitioners’ Severe Accident Mitigation Alternative Claim Is Beyond the Scope of this Proceeding

Petitioners assert that Severe Accident Mitigation Alternatives (“SAMAs”) “for aircraft impact have not been previously considered for the SHNPP.” Pet. at 29. This claim is not an admissible contention because terrorism is beyond the scope of a license renewal proceeding, as discussed in Section IV.B.2.a, above. If an applicant does not have to include an analysis of the risk of a terrorist attack, perforce, the applicant does not have to analyze the mitigation of that risk.

Moreover, for the same reasons that terrorism is not within the scope of a license renewal proceeding, a SAMA analysis of a terrorist attack is not within the scope of a license renewal proceeding. The Commission summarized the inappropriateness of addressing terrorism in an environmental impact statement in McGuire, listing the following reasons:

¹⁷ Also, as discussed above, the Commission has determined that the environmental impacts of any severe accidents are small for all power plants. See 10 C.F.R. Part 51, App. B, Table B-1; GEIS § 5.5.2.

- (1) the likelihood and nature of postulated terrorist attack are speculative and not “proximately caused” by an NRC licensing decision;
- (2) the risk of a terrorist attack cannot be meaningfully determined;
- (3) NEPA does not require a “worst case” analysis and such an analysis would not enhance the agency’s decisionmaking process; and
- (4) a terrorism review is incompatible with the public character of the NEPA process.

McGuire, CLI-02-26, 56 N.R.C. at 365 (footnotes omitted). These same reasons apply with equal force to a SAMA analysis. “The ‘environmental’ effect caused by third-party miscreants ‘is . . . simply too far removed from the natural or expected consequences of agency action to require a study under NEPA.’” Oyster Creek, CLI-07-08, 65 N.R.C. at 6 (footnote omitted). It is far too removed for an analysis of mitigation alternatives. Therefore, Petitioners’ contention that a SAMA analysis of terrorist attacks must be included in an applicant’s environmental report is contrary to the Commission’s determination that terrorism is outside of a license renewal proceeding and must be rejected.

(ii) SAMA Analysis Is Limited to Reactor Accidents

The Commission has held that SAMAs apply only to reactor accidents:

The NRC customarily has studied reactor accidents and spent fuel accidents separately. For instance, our “Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants,” discusses only reactor accidents and defines “severe nuclear accidents [as] those in which substantial damage is done to the reactor core whether or not there are serious offsite consequences.” 50 Fed. Reg. 32,138 (Aug. 1985) (emphasis added). Similarly, the various NRC studies on severe accidents typically focus upon potential damage to the reactor core of nuclear power plants.

Turkey Point, CLI-01-17, 54 N.R.C. at 22; see also Pilgrim, LBP-06-23, 64 N.R.C. at 291 (“. . . SAMAs apply only to reactor accidents . . .”). Petitioners’ Contention EC-1 involves a

“malicious attack” by aircraft. See, e.g., Pet. at 29. Petitioners provide no basis or supporting information regarding an aircraft attack causing, or having an impact on, a reactor accident.¹⁸

(iii) Petitioners’ Have Failed to Meet the Threshold to Raise a SAMA Claim

In order for a petitioner to properly raise a SAMA claim, a petitioner must do more than use the term “SAMA.” A petitioner must: (1) “include references to specific portions of the application,” (2) provide “sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.” Susquehanna LLC, LBP-07-04, slip op. at 19 n.90.

As in Susquehanna, Petitioners have failed to meet their burden to raise an admissible SAMA contention. Petitioners have not referred to any specific portion of the Applicant’s Environmental Report with which they take issue. Petitioners merely assert that “[t]he ER in CPL’s application for license renewal in Appendix E does not address any [SAMAs for aircraft impact]. The ER also fails to satisfy 10 C.F.R. § 51.53(c)(3)(iii) because it does not consider reasonable alternatives for avoiding or reducing the environmental impacts of this class of accidents.” Pet. at 29-30. However, the assertion that a SAMA analysis has not been conducted does not satisfy the pleading requirement for a challenge to Applicant’s SAMA analysis.¹⁹

Petitioners are required to discuss, or challenge, specific input data for the Harris SAMA analysis. Susquehanna, LBP-07-04, slip op. at 19 n.90. Petitioners do not challenge any input data for the Harris SAMA analysis. Nor do the Petitioners discuss how the “successful attack by the deliberate and malicious crash of a fuel laden or explosive laden aircraft” fits into the Harris

¹⁸ Moreover, as discussed in Section IV.B.2.b, Petitioners have provided no information to controvert NRC determination that any reactor accident occurring due to sabotage is “no worse than those expected from internally initiated events.” GEIS § 5.3.3.1.

¹⁹ Indeed, a petitioner can always assert that an unlimited number of SAMAs have not been included or examined in an applicant’s environmental report.

SAMA analysis. Petitioners have not provided any information that would controvert NRC determination that any reactor accident occurring due to sabotage is “no worse than those expected from internally initiated events.” GEIS § 5.3.3.1.

Petitioners do not address how they contend a SAMA analysis of a “malicious attack” should be conducted, nor do they provide any supporting information to show that any genuine dispute with the Applicant exists. Moreover, Petitioners have failed to relate any of the documents Petitioners cite to the SAMA analysis conducted by the Applicant and have failed to explain how any information they have submitted would relate to a SAMA analysis of an “attack by the deliberate and malicious crash” of an aircraft, or what the mitigation alternatives would be for such a hypothetical aircraft attack. Petitioners have therefore failed to meet their threshold burden for an admissible SAMA contention.

3. Contention EC-2 Is Inadmissible

Contention EC-2, which does no more than repackage Contention EC-1 and aspects of Contention T-1, is not admissible for the reasons previously discussed regarding those two contentions. Petitioners seek to admit Contention EC-2 on the basis that the “[t]he Environmental Report for the SHNPP license extension fails to satisfy NEPA because it does not address a significant fire involving noncompliant fire protection features for both primary and redundant safe shutdown electrical circuits caused by a deliberate malicious action using a fuel-laden and/or explosive-laden aircraft on the facility.” Pet. at 30. Contention EC-2 is premised entirely upon the validity of Contention EC-1. “As described in Contention EC-1 above, the potential consequences of a successful aviation attack on the SHNPP have not been evaluated for fire and explosion resulting from a deliberate aircraft strike.” *Id.* Contention EC-2 is inadmissible because terrorist attacks are beyond the scope of a license renewal proceeding and

beyond the scope of NEPA, and Contention EC-2 is an impermissible collateral attack on the Commission's regulations. Contention EC-2 also is beyond the scope of the proceeding because the GEIS for license renewals already addresses the possibility of sabotage and Petitioners neither request a waiver of the GEIS generic determination regarding sabotage nor do they provide new and significant information that would be required to grant such a waiver. Further, Contention EC-2 is inadmissible because it fails to meet the standards for an admissible contention.

a. Contention EC-2 is Inadmissible Because Malevolent Acts Are Beyond the Scope of NEPA Review

Contention EC-2, as with Contention EC-1, is premised entirely upon "a deliberate malicious action using a fuel-laden and/or explosive-laden aircraft on the facility." Pet. at 30. For the reasons set forth in Section IV.B.2.a above, demonstrating that Contention EC-1 is inadmissible, Contention EC-2 also is inadmissible. Terrorist acts are beyond the scope of NEPA review and beyond the scope of a license renewal proceeding.

b. Contention EC-2 Is Inadmissible Because Sabotage Is Already Considered in the GEIS

Because Contention EC-2 is premised upon Contention EC-1, it also challenges the finding in the GEIS for license renewal that the risk from sabotage is small.²⁰ Petitioners assert that "[m]ore recent studies, discussed in Contention EC-1 above, point out that an aviation attack is possible and potentially devastating."²¹ Pet. at 31. For the reasons set forth in Section

²⁰ Although Petitioners try to cast their concerns as Severe Accident Mitigation Alternatives, see Pet. at 34, Petitioner's attack is on the Commission's generic determinations regarding the impact of a terrorist act, which takes into account sabotage in evaluating severe accidents. See GEIS § 5.3.3.1.

²¹ See also Pet. at 33 ("As described in Contention EC-1 above, significant fires caused by deliberate malicious acts are credible.")

IV.B.2.b above, demonstrating that Contention EC-1 is inadmissible, Contention EC-2 is also inadmissible.

c. Contention EC-1 Is Inadmissible To the Extent It Seeks to Raise Safety Issues That Are Beyond the Scope of a License Renewal Proceeding and a Collateral Attack on NRC Regulations

Because it is premised upon Contention EC-1 and Contention T-1, Contention EC-2 is inadmissible because it also raises safety issues beyond the scope of a license renewal proceeding. Contention EC-2 is also an attack on the Commission's regulations regarding design-basis threat, as discussed in regard to Contention EC-1 in Section IV.B.2.c, above, as well as the Commission's regulations regarding fire protection, set forth in Section IV.B.1, above.

For example, Petitioners assert that "[t]he [NRC's] fire protection regulations, even if met in full and nonexempted, are intended to deal with a single fire in a single room or area," and therefore inadequate to deal with "fires in multiple rooms and areas that can easily result from an aircraft crash." Pet. at 34. This is clearly an attack on the Commission's fire protection regulations. Petitioners have not filed a petition for waiver of those regulations (or the design-basis threat regulations) in this proceeding, nor have they provided new and significant information that would support such a petition. For the reasons set forth in Section IV.B.2.c, above, Petitioners' collateral attacks on the Commission's regulations are inappropriate both in regard to design basis threats and fire protection.

d. Contention EC-2 Is Inadmissible Because It Does Not Meet the Commission's Specificity Requirements for Admissible Contentions

Contention EC-2 is premised on "the potential consequences of a successful aviation attack on the SHNPP have not been evaluated for fire and explosion resulting from a deliberate aircraft strike" as set forth in Contention EC-1. Pet. at 30. Because Contention EC-1 fails to

meet the Commission's pleading standards as described in Section IV.B.2.d, above, Contention EC-2 also fails to meet the Commission's pleading standards.

e. Contention EC-2 Is Inadmissible Because Petitioners' Severe Accident Mitigation Alternative Claim Is Not an Admissible Contention

Petitioners contend that, as with Contention EC-1, "SAMAs for fires caused by aircraft impact have not been previously considered for the SHNPP." Pet. at 34. Contention EC-2 is premised on Contention EC-1 and provides no additional information to show that a genuine dispute exists with the Applicant on a material issue of law or fact exists. For the reasons set forth in Section IV.B.2.e, above, Contention EC-2 is inadmissible.

4. Contention EC-3 (Evacuation Plan)

Contention EC-3, which asserts that "the evacuation plan for the SHNPP does not adequately protect the health and safety of the residents, students, and workers around the plant," Pet. at 35, is inadmissible because it is outside the scope of this license renewal proceeding. In addition, Contention EC-3 is an impermissible attack on the Commission's regulations. Lastly, Petitioners provide no supporting basis for the Contention as (1) the Petitioners mischaracterize the press reports they provide, (2) a future State report cannot support a current contention, and (3) Petitioner's purported expert is an epidemiologist lacking training or experience in emergency planning.

a. Contention EC-3 Is Beyond the Scope of a License Renewal Proceeding

Contention EC-3 is based entirely on the premise that the evacuation plan for Harris is inadequate. Pet. at 35. It is well-established that challenges to emergency planning are beyond the scope of a license renewal proceeding. The Commission, in describing the limited scope of a license renewal proceeding, held that:

In establishing its license renewal process, the Commission did not believe it necessary or appropriate to throw open the full gamut of provisions in a plant's current licensing basis to re-analysis during the license renewal review. . . .

. . . . Through mandated periodic reviews and emergency drills, 'the Commission ensures that existing [emergency response] plans are adequate throughout the life of any plant even in the face of changing demographics, and other site-related factors. . . . [D]rills, performance criteria, and independent evaluations provide a process to ensure continued adequacy of emergency preparedness.' 56 Fed. Reg. at 64,966. Emergency planning, therefore, is one of the safety issues that need not be re-examined within the context of license renewal.²²

Issues like emergency planning - which already are the focus of ongoing regulatory processes - do not come within NRC safety review at the license renewal stage

Turkey Point, CLI-01-17, 54 N.R.C. at 9-10; see also Millstone, CLI-04-36, 60 N.R.C. at 640

("... [petitioner] argued . . . that parts or all of Connecticut and Long Island "cannot be evacuated." The Licensing Board declined to admit the contention because it did not relate to aging We consider Turkey Point dispositive of this issue.").

The Commission has repeatedly affirmed that emergency planning is beyond the scope of a license renewal proceeding:

. . . the primary reason we excluded emergency-planning issues from license renewal proceedings was to limit the scope of those proceedings to "age-related degradation unique to license renewal." Emergency planning is, by its very nature, neither germane to age-related degradation nor unique to the period covered by the Millstone license renewal application. Consequently, it makes no sense to spend the parties' and our own valuable resources litigating *allegations of current deficiencies* in a proceeding that is *directed to future-oriented* issues of aging.

²² Petitioners characterize Contention EC-3 as an environmental contention. However, Petitioners fail to identify any deficiency in the Environmental Report and, therefore, Contention EC-3 must be rejected as fatally flawed. LBP-02-4, 55 N.R.C. at 78. Petitioners baldly assert that the ER should address the inability for the 1987 evacuation plan to protect the health and safety of the public. Pet. at 17. Such a conclusory assertion, little more than a claim that some matter ought to be studied, is not an adequate basis for a contention. Rancho Seco, LBP-93-23, 38 N.R.C. at 246. In any event, Petitioners cannot claim a deficiency in the Environmental Report for its failure to address a matter outside the scope of the licensing action for which the Environmental Report was prepared.

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 N.R.C. 551,560-61 (2005) (footnote omitted) (emphases added). Accordingly, Contention EC-3 is inadmissible because it is beyond the scope of this proceeding.

b. Contention EC-3 Is Inadmissible Because It Is A Collateral Attack on the Commission's Emergency Planning Regulations

Petitioners attempt to support Contention EC-3 by asserting that "susceptible populations, such as homebound persons and number of children attending schools within the 10-mile, 20-mile and 50-mile radii around the plant are not adequately covered in the evacuation plan." Pet. at 36. Petitioners thereby seek to collaterally attack the Commission's emergency planning regulations that establish a plume-exposure pathway emergency planning zone ("EPZ") for nuclear power reactors of an area about 10 miles in radius. 10 C.F.R. § 50.47(c)(2). Commission regulations require evacuation planning only in regard to the 10-mile plume-exposure pathway EPZ. See 10 C.F.R. § 50.47(b)(10). By asserting that evacuation planning is required beyond the plume-exposure pathway EPZ, Petitioners are improperly attempting to collaterally attack the Commission's regulations. See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 N.R.C. 383, 395 (1987) (10 C.F.R. § 50.47(c)(2) precludes adjustments on safety grounds to the size of an EPZ that is "about 10 miles in radius"); Citizens Task Force of Chapel Hill, DPRM-90-1, 32 N.R.C. 281, 290-92 (1990) (rejecting petition to expand EPZ from 10 to 20 miles in radius).

Accordingly, Contention EC-3 must be rejected.

c. Contention EC-3 Lacks an Adequate Basis

The Petition provides no documentary evidence or expert opinion in support of its broad claims of serious flaws in the evacuation plans. It relies on a future State report of unknowable content and the opinion of an epidemiologist with no experience in emergency planning.

Petitioners assert that a State report will be introduced at a hearing on the merits, but admits that the official study by the State of North Carolina of a fire in Apex, NC, and associated evacuation, has not been completed. Pet. at 38 n. 26. The content of the future State report is unknowable, but the newspaper articles referenced by the Petition and provided as its Attachment 6 do not support the Petitioners' claim that the evacuation around Apex, NC indicates that the local evacuation plan "was woefully ineffective and it was apparent that the government officials and the members of the public had no knowledge of the evacuation plans." Pet. at 38. In fact, the articles identify that over 16,000 residents were evacuated (Petition, Attachment 6 at 5, 7) with no major injuries reported (Petition, Attachment 6 at 2). Nothing in Attachment 6 supports Petitioners' claims of ineffective local emergency planning. Promises to provide factual material at a later date in support of a proffered contention do not support the contention's admissibility. Millstone, CLI-04-36, 60 N.R.C. at 639.

In addition, Petitioners assert Contention EC-3 is supported by the opinions of Dr. Steven Wing. Pet. at 36. In fact, Dr. Wing asserts only that "[t]he 1987 evacuation plan needs to be closely reexamined to meet the current and projected population increases." Id. at 37 & Attachment 4, ¶ 12. Dr. Wing identifies no deficiencies in the Application. His conclusory assertion, little more than a claim that the evacuation plan ought to be studied, is not an adequate

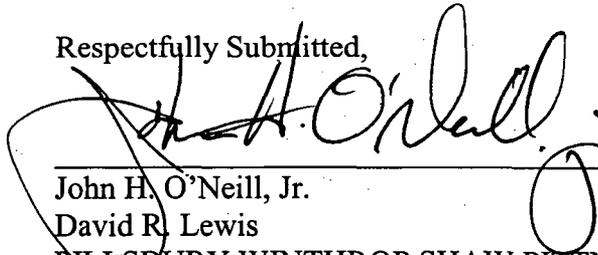
basis for a contention.²³ Rancho Seco, LBP-93-23, 38 N.R.C. at 246. Furthermore, Dr. Wing's expertise is as an epidemiologist. Petition, Attachment 4A. Such training and experience provide no basis to assert any expertise in emergency planning.²⁴

Neither the current newspaper articles, a future State report, nor the purported expert provide a basis for Contention EC-3. Contention EC-3 thus fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v).

V. CONCLUSION

For the reasons stated above, the Petition should be denied.

Respectfully Submitted,



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Dated: June 18, 2007

²³ As discussed in Section IV.B.4.a. *supra*, the emergency plans are periodically reviewed to ensure they are "adequate throughout the life of any plant even in the face of changing demographics and other site related factors. . . ." Turkey Point, CLI-01-17, 54 N.R.C. at 9.

²⁴ Dr. Wing's future population projections, for example, are not discussed in the context of projections of future additional evacuation routes and additional traffic control and management measures.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of:)	Docket No. 50-400-LR
)	
CAROLINA POWER & LIGHT COMPANY)	ASLBP No. 07-855-02-LR-BD01
(Shearon Harris Nuclear Power Plant, Unit 1))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Carolina Power & Light Company's Answer to Petition for Leave to Intervene of NCWARN and NIRS," dated June 18, 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 18th day of June, 2007.

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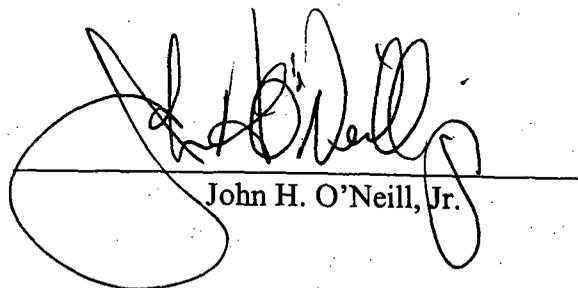
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