RAS 14157

September 19, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Presiding Officer

In the Matter of	)	
	)	Docket No. 70-143
NUCLEAR FUEL SERVICES, INC.	)	
	)	

LICENSEE'S ANSWER TO REQUEST FOR A HEARING OF A. CHRISTINE TIPTON

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.1205(g), Nuclear Fuel Services, Inc. ("Licensee" or "NFS") hereby answers and opposes the request for a hearing of A. Christine Tipton ("Ms. Tipton"), dated August 27, 2007 ("Tipton Hearing Request") regarding the Confirmatory Order published by the United States Nuclear Regulatory Commission ("Commission" or "NRC") in the above-captioned docket. The Tipton Hearing Request should be denied because Ms. Tipton did not file within the time allowed, has not demonstrated standing, raises issues entirely beyond the scope of the Confirmatory Order and has identified no admissible contentions.

II. PROCEDURAL BACKGROUND

On July 30, 2007, the Commission published a Confirmatory Order in the above-captioned docket based on an agreement between NFS and NRC, which resolved several pending apparent violations. Notice of Publication of Confirmatory Order and Opportunity for Hearing, 72 Fed. Reg. 41,528, 41,529 (July 30, 2007) ("Federal Register Notice"). The Federal Register Notice states that any person adversely affected by the Order could request a hearing within 20 days of its issuance. Id. at 41,530. The NRC defined the scope of the hearing opportunity as follows: "the issue to be considered at

such hearing shall be whether this Confirmatory Order should be sustained." Id. at 41,531. The Federal Register Notice further requires that any person filing a request for hearing "shall set forth with particularity the manner in which his interest is adversely affected by [the Confirmatory] Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f). Id.

III. THE TIPTON HEARING REQUEST WAS UNTIMELY[1]

The NRC, in the Federal Register Notice, required all requests for hearing on this Confirmatory Order to be filed within 20 days of the issuance of the notice. 72 Fed. Reg. at 41,530. Because the Federal Register Notice was issued on July 30, 2007, the deadline for requests for hearing was August 20, 2007.[2] Ms. Tipton filed her request for hearing on August 27, 2007—seven days after the deadline. Under 10 C.F.R. § 2.309(c)(1), nontimely requests for hearing are not to be considered absent a determination that the request should be granted based on the balancing of eight factors. The regulations require that a petitioner who files an untimely request address these factors. 10 C.F.R. § 2.309(c)(2); see also Private Fuel Storage, L.L.C. (Independent Fuel Storage Installation), LBP-00-16, 51 N.R.C. 320, 325 (2000); Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-816, 22 N.R.C. 461, 446 n.22 (1985). Unlike another pro se requestor,

[1] Licensee acknowledges that Ms. Tipton has filed her request for hearing *pro se* and therefore may be granted some lenience on the technical aspects of her pleading. However, Ms. Tipton still must comply with the requirements in the opportunity for hearing and all other NRC regulations. See, e.g., Consolidated Edison Co. of N.Y. (Indian Point, Unit 2) and Power Authority of the State of N.Y. (Indian Point, Unit 3), LBP-83-5, 17 N.R.C. 134, 136 (1983) (holding that although *pro se* intervenors are not held to a high degree of technical compliance, they must satisfy the requirements for each contention).

[2] Twenty days from July 30, 2007 is August 19, 2007, but because August 19 was a Sunday, the deadline for the requests was Monday, August 20, 2007. See 10 C.F.R. § 2.306.

Ms. Tipton did not request permission to file after the deadline or address the required factors for so doing. Therefore, the hearing request must be dismissed as untimely.

IV. MS. TIPTON LACKS STANDING

Even if Ms. Tipton's late-filed request is considered, it must be dismissed for lack of standing. In determining whether to grant a petitioner's request to hold a hearing, the Presiding Officer must first determine whether the petitioner meets the judicial standards for standing and must consider, among other factors:

> 1) the nature of the requestor's right under the [Atomic Energy] Act to be made a party to the proceeding;
>
> 2) the nature and extent of the requestor's property, financial, or other interest in the proceeding; and
>
> 3) the possible effect of any order that may be entered in the proceeding on the requestor's interest.

10 C.F.R. § 2.309(d) (formerly 10 C.F.R. § 2.1205(h)). The Commission has held that to demonstrate standing in materials licensing cases, a petitioner must allege:

> (1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the Atomic Energy Act (or other applicable statute such as the National Environmental Policy Act) and (4) is likely to be redressed by a favorable decision.

See Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 N.R.C. 9, 13 (2001). The burden of establishing the alleged injuries is on the petitioner. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility – Decommissioning Plan), LBP-93-4, 37 N.R.C. 72, 81 (1993).

Ms. Tipton argues that she has standing to request a hearing because she lives in the town of Erwin, "one mile from the NFS site," and she believes that "[a]ccidents with radioactive elements, human failures at a nuclear facility and NRC violations definitely affect myself, my family, my property, my community and my well being and peace of mind." Tipton Request at 2.

Ms. Tipton's proximity to NFS alone does not confer standing. Unlike nuclear power reactor licensing proceedings, in materials licensing proceedings there is no presumption that a petitioner has standing merely because he or she lives in or frequents a location at a particular distance from a facility. Atlas Corp. (Moab, Utah Facility) LBP-97-9, 45 N.R.C. 414, 426 (1997); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 N.R.C. 179, 193 (1991).

Ms. Tipton must demonstrate injury-in-fact. To show injury-in-fact, petitioners "must provide some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests." Babcock & Wilcox, LBP-93-4, 37 N.R.C. at 83-84, 87 (rejecting per se standing for petitioners living as close as one-eighth of a mile from and visiting an apartment "within one foot" of the facility). The petitioner must demonstrate that the subject licensing action "is defective in a manner so as to cause the injuries described." Northern States Power Co. (Pathfinder Atomic Plant), LBP-90-3, 31 N.R.C. 40, 44 (1990). Ms. Tipton's allegations concerning adverse affects on herself, her family, her property, and her community do not provide standing with regard to this proceeding. As Ms. Tipton concedes, none of the adverse affects she alleges are caused by the Confirmatory Order. Tipton Request at 2. Thus, Ms. Tipton has failed to

demonstrate injury-in-fact as to the Confirmatory Order. See Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), LBP-98-27, 48 N.R.C. 271, 276 (1998) (requiring a causal connection between the injury and the proposed action); Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 3), LBP-98-22, 48 N.R.C. 149, 155 (1998) (same). In addition, because any adverse affects on Ms. Tipton are not traceable to the Confirmatory Order, such injuries could not be redressed by a hearing in this proceeding.

V. THE ISSUES RAISED IN THE TIPTON HEARING REQUEST ARE OUTSIDE THE SCOPE OF THIS PROCEEDING

The NRC has the authority to define the scope of an enforcement proceeding, including proceedings on confirmatory orders. See Bellotti v. U.S. NRC, 725 F.2d 1380, 1381 (D.C. Cir. 1983); see also In re Alaska Dep't of Transp. & Pub. Facilities, 60 N.R.C. 399, 405 (2004). In the Federal Register Notice, the Commission defined the scope of this proceeding as follows: "the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained." 72 Fed. Reg. at 41,531.

A. Ms. Tipton's Proffered Contentions Are Unrelated to the Confirmatory Order

In her request, Ms. Tipton alleges that she and the community have lost trust in NFS due to "non-compliance" and "secrecy" and that she does not believe a "self-assessment by NFS" gives her "renewed confidence" that the public health and safety are protected by the NRC. Tipton Hearing Request at 3. Ms. Tipton's contention fundamentally alleges that the NRC is not properly enforcing its regulations with regard to Licensee. However, such an assertion is unrelated to the Confirmatory Order, which is

referred to only obliquely by a reference to a purported "self-assessment" that the Licensee will conduct. Tipton Hearing Request at 1. Rather, Ms. Tipton appears to be concerned about "just who . . . is enforcing" the NRC regulations and that there is a "secrecy policy" (apparently a reference to the Official Use Only ("OUO") designation of documents). Tipton Hearing Request at 2, 4. Ms. Tipton's concerns regarding the Commission's regulatory oversight and the OUO designation are not within the scope of the Confirmatory Order.[3]

B. Ms. Tipton's Proffered Contentions Do Not Address Whether the Confirmatory Order Should be Sustained

Not only are the proffered contentions beyond the scope of the proceeding in that they involve issues wholly unrelated to the Confirmatory Order, but where they do try to invoke the Confirmatory Order by reference, they further fail to address the only issue relevant to this proceeding – "whether this Confirmatory Order should be sustained." – and, therefore, must be rejected.

In 1983, the U.S. Court of Appeals for the D.C. Circuit addressed what a petitioner requesting a hearing must demonstrate in order for a hearing to be granted in Bellotti v. U.S. NRC. In Bellotti, the court affirmed the NRC's decision to deny a petition to intervene in an enforcement proceeding because the petitioner did not oppose the order but instead asserted that the order should be more stringent. Bellotti, 725 F.2d at 1382. In Bellotti, the proceeding was the result of an enforcement order issued against Boston Edison's Pilgrim Nuclear Power Station ("Pilgrim") that required development of

[3] To the extent Ms. Tipton seeks public discussion regarding the NFS Nuclear Fuel Plant Performance, the NRC has already addressed those concerns by scheduling public meetings in Erwin, including two meetings

a plan for reappraisal and improvement of management functions at Pilgrim. Id. at 1381. The Massachusetts Attorney General, Francis X. Bellotti, filed a request for a hearing that addressed "the plant's continued operation, the adequacy of Boston Edison's reappraisal plan, the nature of necessary improvements at the plant and the adequacy of Boston Edison's implementation of required changes." Id. The Court noted:

> The Order Modifying License provides that the issue at any hearing held pursuant to it shall be "whether, on the basis of the matters set forth in Sections II and III of this Order, this Order should be sustained." J.A. at 13. As [the NRC] interpret[s] it, this language limits possible intervenors to those who think the Order should not be sustained, thereby precluding from intervention persons such as petitioner who do not object to the Order but might seek further corrective measures.

Id. at n.2. The Court agreed with this interpretation, holding further that:

> We are reinforced in this view by an examination of the larger regulatory structure. Petitioner Bellotti is in no sense left without recourse by the NRC's denial of intervention in the Boston Edison proceeding. Commission regulations provide for public petitions to modify a license, which may lead to license modification proceedings if the Commission finds that appropriate. 10 C.F.R. § 2.206 (1983). Moreover, Commission denials to institute proceedings under section 2.206 are subject to judicial review.

Id. (citations omitted).

The court explained that because the NRC has the authority to limit the scope of a proceeding, and because the NRC limited the scope to "whether the order should be sustained," only petitioners who contended that the order should not be sustained offered contentions within the scope of the proceeding. Id. at 1381-82. For example, if the Confirmatory Order had changed NFS's discharge limits into the Nolichucky River and a petitioner could demonstrate an injury as a result of that change, then that petitioner could

---

on September 17, 2007 to discuss the facility's safety performance.

contend that the Confirmatory Order should not be sustained and that contention would be within the scope of the proceeding.

It is well-established that "NRC hearing petitioners may not seek additional measures going beyond the terms of the enforcement order triggering the hearing request." In re Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-04-5, 59 N.R.C. 52, 58 (2004). Maine Yankee involved a post-September 11 order modifying the licenses of licensees that stored ,or had near-term plans to store, spent fuel in an independent spent fuel storage installation. The NRC order defined the scope of the proceeding as "whether this Order should be sustained." 50 N.R.C. 52, 54 (2004). The petitioner stated that it opposed the order unless it was modified to: "(1) define the time period during which the [interim compensatory measures] are necessary; (2) set forth what resources will be required from State and local law enforcement to implement the measures; and (3) delineate the funding mechanism that will ensure State resources are available to implement those measures." Id. at 56. Because the petitioner sought additional measures in the form of modifications to the order, the Commission affirmed the Board's denial of its request for a hearing. Id. at 61.

The NRC made a similar finding in In re FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1), CLI-04-23, 60 N.R.C. 154 (2004), which involved a confirmatory order that required certain additional safety-related measures at the Davis-Besse Nuclear Power Station. Id. at 156. Once again, the order set the scope of any hearing as "whether this Confirmatory Order should be sustained." Id. at 157. Several petitioners filed a request for a hearing in which they asked the NRC to address

fire-protection issues, regulatory indifference, and all licensing criteria. Id. In its decision below, the Atomic Safety and Licensing Board denied the request for hearing, reasoning that

> any issues the Petitioners seek to litigate would fall within the scope of the proceeding only if they amount to matters that oppose the issuance of the order as unwarranted, so as to require relaxation, or affirmatively detrimental to the public health and safety, so as to require re[s]cission (as opposed to supplementation).

In re FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1), 59 N.R.C. 379, 385 (2004). The Commission affirmed the denial of the petition, quoting the Board's language. Davis-Bessie, 60 N.R.C. at 158-59.

In another confirmatory order proceeding, the Commission further clarified the scope of enforcement order hearings. In re Alaska Dep't of Transp. & Pub. Facilities, CLI-04-26, 60 N.R.C. 399 (2004) (hereinafter "Alaska DOT"). In Alaska DOT, the NRC issued a confirmatory order requiring the licensee to take actions to comply with the Commission's employment discrimination regulations. Id. at 402. The NRC again defined the scope of the proceeding as "whether this Confirmatory Order should be sustained." Id. at 402-03. The petitioner's request for a hearing "sought to replace or supplement the order with civil penalties and enforcement actions against individual managers" at the Alaska DOT facility. Id. at 403. In denying the petitioner's request, the Commission held:

> The critical inquiry under Bellotti in a proceeding on a confirmatory order is whether the order improves the licensee's health and safety conditions. If it does, no hearing is appropriate.

Id. at 408. Significantly, the Commission also held that

> [If petitioner] believes the Confirmatory Order does not go far enough to remedy the whistleblower situation at ADOT, he can file a petition with the NRC under 10 C.F.R. § 2.206.

Id. at n.35.

Even if Petitioner's allegations regarding inadequate "self-assessment," "secrecy policy" and regulatory oversight are within the general scope of the Confirmatory Order, Petitioner fails to make any allegation with respect to why the Confirmatory Order should not issue. Rather, Petitioner's allegations are all in the nature of requests for additional action by the Commission. Petitioner does not contend that the Confirmatory Order does not improve health and safety at all, but rather that she believes additional measures should be taken by the NRC. Thus, under well-established Commission case law and under Bellotti, Ms. Tipton's allegations are outside the scope of this proceeding.

VI. MS. TIPTON HAS NOT PROFFERED AN ADMISSIBLE CONTENTION

The Federal Register Notice requires that any person filing a request for hearing "shall set forth with particularity the manner in which his interest is adversely affected by [the Confirmatory] Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f). 72 Fed. Reg. at 41,531.

A. Standards for the Admissibility of 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. As discussed earlier in this Answer, Ms. O'Neal's contentions

are beyond the scope of this proceeding. As discussed below, they otherwise fail to meet the Commission's standards for admissibility.

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).

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.[4] 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

[4] 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.").

a desire for more time and more information in order to identify a genuine material dispute for litigation. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003).

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

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

Ms. Tipton's proffered contention, as discussed above, is that she and the community have lost trust in NFS due to "non-compliance" and "secrecy" and that she does not believe a "self-assessment by NFS" gives her "renewed confidence." Tipton Hearing Request at 1-2. This proffered contention does not meet the Commission's requirements for an admissible contention under 10 C.F.R. § 2.309(f)(1).

As discussed above, Ms. Tipton's contention is beyond the scope of this proceeding and is inadmissible. Additionally, the contention fails to meet the Commission's pleading requirements. Ms. Tipton's contention relies on the incorrect characterization of the Confirmatory Order as including a "self-assessment" by NFS. The Confirmatory Order refers to a third-party assessment of NFS's safety culture, not a self-assessment. 72 Fed. Reg. at 41,529-30. Moreover, even if the allegation were not factually incorrect, Ms. Tipton has provided no explanation why any such assessment

would be deficient. Nowhere in Ms. Tipton's request does she explain how she believes the Confirmatory Order or any part thereof, including the assessment, would not promote health and safety. Absent any factual basis for Ms. Tipton's allegations and any explanation as to how those allegations would support a determination that the Confirmatory Order should not be issued, Ms. Tipton has failed to meet the Commission's requirements for an admissible contention and the Tipton Hearing Request must be dismissed.

VII. CONCLUSION

For the foregoing reasons, the Presiding Officer should deny Ms. Tipton's request for a hearing on the Confirmatory Order.

Respectfully submitted,

Ann McClure Ward
General Counsel
Nuclear Fuel Services, Inc.
1205 Banner Hill Road
Erwin, TN 37650
(423) 743-1708

Daryl M. Shapiro
Blake J. Nelson
Stefanie M. Nelson
PILLSBURY WINTHROP SHAW
PITTMAN, LLP
2300 N Street, N.W.
Washington, DC 20037
(202) 663-8000
Counsel for Nuclear Fuel Services, Inc.

Dated: September 19, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
NUCLEAR FUEL SERVICES, INC.	)	Docket No. 70-143
	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the Licensee's Answer to Request for a Hearing of A. Christine Tipton were served on the persons listed below by U.S. mail, first class, postage prepaid, and by electronic mail as indicated by an asterisk (*) on this 19th day of September, 2007.

Lawrence G. McDade, Chair*
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
lgm1@nrc.gov

Dr. Richard F. Cole*
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
rfc1@nrc.gov

Dr. Peter S. Lam*
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
psl@nrc.gov

SherVerne R. Cloyd*
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
src2@nrc.gov

Office of Commission Appellate Adjudication*
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
Washington, DC 20555
OCAAmail@nrc.gov

Office of the Secretary*
Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
Washington, DC 20555
hearingdocket@nrc.gov

Adjudicatory File
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, DC 20555-0001

Michael J. Clark*
Jody C. Martin*
Tison A. Campbell*
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15 D21
Washington, DC 20555
mjc1@nrc.gov
jcm5@nrc.gov
tac2@nrc.gov

Emily Krause, Law Clerk*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, DC 20555-0001
eik1@nrc.gov

Ann M. Ward, Esq.*
General Counsel
Nuclear Fuel Services, Inc.
1205 Banner Hill Road
Erwin, TN 37650
amward@nuclearfuelservices.com

Linda C. Modica, Chair*
Sierra Club Radiation Committee
266 Mayberry Road
Jonesborough, TN 37659
Linda.C.Modica@mac.com

Anne Harris, Executive Director
We the People, Inc.
341 Swing Look Road
Rockwood, TN 37854

R. Feher
489 Arnold Road
Jonesborough, TN 37659

Wanda Sue Kelley
123 Rolling Hills Road
Erwin, TN 37650

Barbara A. O'Neal
173 Roy Duncan lane
Erwin, TN 37650

A. Christine Tipton
312 New Avenue
Erwin, TN 37650

Ken Silver, DSc, SM
Assistant Professor of Environmental Health
East Tennessee State University
Department of Environmental Health
Box 70682
Johnson City, TN 37614-0682

Stefanie M. Nelson