

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Lawrence G. McDade, Chair
Dr. Richard E. Wardwell
Dr. Kaye D. Lathrop

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ADJUDICATIONS STAFF

In the Matter of)

ENTERGY NUCLEAR OPERATIONS, INC.)

(Indian Point Nuclear Generating Units 2 and 3))

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

ANSWER OF ENTERGY NUCLEAR OPERATIONS, INC. OPPOSING
REQUEST FOR HEARING, PETITION TO INTERVENE AND
PETITION FOR WAIVER OF CONNECTICUT RESIDENTS
OPPOSED TO RELICENSING OF INDIAN POINT

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January 22, 2008

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I. INTRODUCTION

In accordance with 10 C.F.R. § 2.309(h), Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant"), applicant in the above-captioned matter, hereby files its Answer to "Connecticut Residents Opposed to Relicensing of Indian Point and its Designated Representative's Petition to Intervene and Request for Hearing" ("Petition") filed by Nancy Burton, jointly on her own behalf and on behalf of Connecticut Residents Opposed to Relicensing Indian Point (collectively referred to herein as "CRORIP" or "Petitioner"), on December 10, 2007. The Petition responds to the United States Nuclear Regulatory Commission's ("NRC" or "Commission") "Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing," published in the *Federal Register* on August 1, 2007 (72 Fed. Reg. 42,134) ("Hearing Notice") concerning Entergy's application to renew the operating licenses for the Indian Point Nuclear Generating Units 2 and 3, also referred to as Indian Point Energy Center ("IPEC"). As discussed below, the

Petitioner has not satisfied the Commission's requirements to intervene in this matter, having failed to proffer at least one admissible contention. Therefore, pursuant to 10 C.F.R. § 2.309, the Petition should be denied.

Also filed in support of its Petition is CRORIP's petition, submitted pursuant to 10 C.F.R. § 2.335, for "a waivers [sic], for purposes of the pending relicensing proceedings, of the NRC's Generic Environmental Impact Statement ("GEIS") with regard to (a) the exclusion of radiation exposures to the public and occupational radiation exposures during the license renewal term as Category 1 excluded issues which do not require site-specific analysis and (b) its use of the 'Reference Man' dose models from 1980," with the supporting affidavit of Nancy Burton. This predicate for CRORIP's proffered contention, asking for a waiver of a Commission regulation, is likewise defective, and should be denied.

II. BACKGROUND

On April 23, 2007, as supplemented by letters dated May 3, 2007 and June 21, 2007, Entergy submitted an application to the NRC to renew the IPEC, Units 2 and 3 operating licenses (License Nos. DPR-26 and DPR-64) for an additional 20 years ("Application").¹ The Commission's Hearing Notice stated that any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a petition for leave to intervene within 60 days of the Notice (*i.e.*, by October 1, 2007), in accordance with the provisions of 10 C.F.R. § 2.309.² On October 1, 2007, the Commission extended the period for filing requests for hearing until November 30, 2007.³ Subsequently, on November 30, 2007,

¹ Entergy subsequently submitted one amendment to the Application on December 18, 2007. See Letter from F. Dacimo, Entergy Vice President, License Renewal, to NRC Document Control Desk (Dec. 18, 2007), available at ADAMS Accession No. ML073650195.

² 72 Fed. Reg. at 42,134 (Aug. 1, 2007).

³ Extension of Time for Filing of Requests for Hearing or Petitions for Leave To Intervene in the License Renewal Proceeding, 72 Fed. Reg. 55,834 (Oct. 1, 2007).

CRORIP filed a request that the Atomic Safety and Licensing Board (“ASLB” or “Board”) extend the deadline for filing a petition to intervene by 10 days.⁴ On December 5, 2007, the Board granted CRORIP’s request for a 10-day extension to December 10, 2007, to file any petition to intervene and request for hearing.⁵

By Order dated November 27, 2007, the Board directed Entergy and the NRC Staff to file their answers to all timely petitions to intervene on or before January 22, 2008.⁶ As noted above,

⁴ Three years ago, the Commission admonished Ms. Burton, then-counsel to a petitioner, in a separate proceeding, regarding her participation in future NRC proceedings. That rebuke bears repeating here:

Finally, we join the Licensing Board in expressing displeasure at the CCAM attorney’s consistent disregard for our procedural rules. As we noted just last year when criticizing CCAM’s same counsel for similar dereliction, she is “no stranger [] to the NRC adjudicatory process.” This is her fifth NRC adjudication since 1999, so she cannot credibly claim ignorance of our practices and procedures. As the Board’s two orders in this proceeding and our own order today make clear, CCAM’s attorney has repeatedly failed to provide support at the hearing for her client’s contentions, as required under section 2.309(f) of our rules of practice and procedure. Further, the record in this proceeding indicates that CCAM’s attorney has likewise ignored numerous other Commission adjudicatory procedures. Nor has her disregard for our procedures been limited to this proceeding. She has a similar record in four previous *Millstone* proceedings, where she has repeatedly failed to follow basic NRC adjudicatory procedures. CCAM’s Counsel is informed that any further disregard of our practices and procedures in future adjudications will result in reprimand, censure, or suspension pursuant to 10 C.F.R. § 2.314(c)(1) (providing for sanctions against any “representative of a party who refuses to comply with [the Commission’s or the Licensing Board’s] directions”). This ruling applies regardless of whether her representation before the NRC is as an attorney at law or otherwise.

Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 643-644 (2004) (citations omitted). Ms. Burton was more recently reminded of the foregoing by the Commission in its denial of her motion to reopen in the Millstone operating license renewal proceeding. *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-06-04, 63 NRC 32, 38 (2006).

⁵ *See* Order (Granting an Extension of Time To CRORIP Within Which To File Requests For Hearing) (Dec. 5, 2007) (unpublished). In that Order, the Board, essentially repeating the warning by the Commission in 2004, admonished CRORIP’s representative regarding its expectations with respect to a number of procedural matters in this proceeding: “That said, CRORIP. . . is now on notice that it must become familiar with and follow the Part 2 Rules and the Orders of this Board, and that failure to do so may well result in future pleadings being rejected.” *Id.* at 3-5 (unpublished) (emphasis added).

⁶ *See* Licensing Board Order (Granting an Extension of Time to Clearwater Within Which to File Requests for Hearing) at 3 n.8 (Nov. 27, 2007) (unpublished); *see also* Licensing Board Order (Clarifying Time for Entergy to File Answer to CRORIP 10 C.F.R. 2.335 Petition) at 1 (Jan. 2, 2008) (unpublished).

CRORIP filed its Petition on December 10, 2007,⁷ to which Entergy now responds in accordance with the Board's schedule.

To be admitted as a party to this proceeding, Petitioner must demonstrate standing and must submit at least one admissible contention within the scope of this proceeding. Section III below describes the criteria for establishing standing under 10 C.F.R. § 2.309(d) and explains the reason why the Petitioner has satisfied the requisite criteria. Section IV below describes the standards governing the admissibility of contentions, as well as the requirements regarding petitions pursuant to 10 C.F.R. § 2.335; it demonstrates that CRORIP's Section 2.335 petition should be denied and that Petitioner's proposed contention is inadmissible. Therefore, the Petition should be denied in its entirety.

III. STANDING

A. Applicable Legal Standards and Relevant NRC Precedent

Both the Commission Hearing Notice for this proceeding and NRC regulations require a petitioner to set forth: (1) the nature of its right under the Atomic Energy Act ("AEA") of 1954, as amended, to be made a party to the proceeding; (2) the nature and extent of its property,

⁷ Notwithstanding the Board's very explicit direction, Entergy received CRORIP's December 10th Petition in 17 separate, unpaginated e-mails, including ten copies of the petition itself and two copies of one of the supporting declarations. Although a paper copy of CRORIP's petition and attachments were subsequently received, those documents (with the arguable exception of Mr. Mangano's Report and the Section 2.335 Petition and Affidavit) do not conform to the formal requirements of 10 C.F.R. § 2.304(b), which calls for documents to be double-spaced. *See also* 10 C.F.R. § 2.304(f). Despite CRORIP's failure to adhere to the Licensing Board's direction, which alone warrants rejection of its Petition, Counsel for the applicant has responded in a substantive manner. In doing so, however, Entergy does not waive any rights to seek appropriate sanctions or other remedies in response to CRORIP's failure to comply with the Commission's Part 2 rules and the orders of this Board with respect to any future submissions.

In addition, by Order dated December 14, 2007, the Licensing Board stated that in accordance with the Commission's direction in *Millstone*, CLI-06-4, 63 NRC at 38-39, it would not act on CRORIP's filings until notified by the NRC's Office of the Secretary that the documents had been accepted. Memorandum (Regarding the Status of the CRORIP Petition to Intervene and Section 2.335 Petition) (unpublished). The Secretary issued an order accepting the Petition to Intervene and Section 2.335 Petition, but not its December 11, 2007 Motion for Leave to Add James A. Himes to CRORIP's Membership Statement in the Petition to Intervene. *See* Secretary of the Commission Order (Dec. 19, 2007) (unpublished). As noted below at note 39, this Motion was denied by the Commission on January 8, 2008. Order (unpublished) (Jan. 8, 2008).

financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on its interest.⁸ Thus, petitioner must demonstrate either that it satisfies the traditional elements of standing, or that it has presumptive standing based on geographic proximity to the proposed facility.⁹ These concepts, as well as organizational standing and discretionary intervention, are discussed below.

1. Traditional Standing

To determine whether a petitioner's interest provides a sufficient basis for intervention, "the Commission has long looked for guidance to current judicial concepts of standing."¹⁰ Thus, to demonstrate standing, a petitioner must show: (1) an actual or threatened, concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision.¹¹ These three criteria are commonly referred to as injury-in-fact, causality, and redressability, respectively.

First, a petitioner's injury in fact showing "requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured."¹² The injury must be "concrete and particularized," not "conjectural" or "hypothetical."¹³ As a result, standing will be denied when the threat of injury is too speculative.¹⁴ Additionally, the alleged "injury in fact" must lie within "the zone of interests" protected by the statutes governing the

⁸ See 72 Fed. Reg. at 42,135; 10 C.F.R. § 2.309(d)(l).

⁹ See *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 579-83 (2005).

¹⁰ *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, N.M.), CLI-98-11, 48 NRC 1, 5-6, *aff'd sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999)(citations omitted).

¹¹ See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998)(citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-104 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1998).

¹² *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972).

¹³ *Sequoiah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994) (citations omitted).

¹⁴ *Id.*

proceeding—either the AEA or the National Environmental Policy Act of 1969, as amended (“NEPA”).¹⁵ The injury in fact, therefore, must generally involve potential radiological or environmental harm.¹⁶

Second, a petitioner must establish that the injuries alleged are fairly traceable to the proposed action—in this case, the renewal of IPEC Unit 2 and 3 operating licenses for an additional 20 years.¹⁷ Although petitioners are not required to show that the injury flows directly from the challenged action, they must nonetheless show that the “chain of causation is plausible.”¹⁸ The relevant inquiry is whether a cognizable interest of the petitioner might be adversely affected by one of the possible outcomes of the proceeding.¹⁹

Finally, each petitioner is required to show that “its actual or threatened injuries can be cured by some action of the [NRC].”²⁰ In other words, each petitioner must demonstrate that the injury can be redressed by a decision in this proceeding. Furthermore, “it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.”²¹

2. Standing Based on Geographic Proximity

Under NRC case law, a petitioner may, in some instances, be presumed to have fulfilled the judicial standards for standing based on his or her geographic proximity to a facility or source

¹⁵ *Quivira Mining Co.*, CLI-98-11, 48 NRC at 5.

¹⁶ *See Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 336 (2002).

¹⁷ *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75.

¹⁸ *Id.*

¹⁹ *Nuclear Eng’g Co. Inc.* (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

²⁰ *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001).

²¹ *Sequoyah Fuels*, CLI-94-12, 40 NRC at 76 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotations omitted)).

of radioactivity.²² “Proximity” standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility.²³ The NRC has held that the proximity presumption is sufficient to confer standing on an individual or group in proceedings conducted pursuant to 10 C.F.R. Part 50 for reactor construction permits, operating licenses, or significant license amendments.²⁴ The proximity presumption, which has been defined as being within a 50-mile radius of plants, applies to license renewal cases as well.²⁵

3. Standing of Organizations

An organization that wishes to intervene in a proceeding may do so either in its own right (by demonstrating injury to its organizational interests), or in a representative capacity (by demonstrating harm to the interests of its members).²⁶ To intervene in a proceeding in its own right, an organization must allege, just as an individual petitioner must, that it will suffer an immediate or threatened injury to its organizational interests that can be fairly traced to the proposed action and be redressed by a favorable decision.²⁷ General environmental and policy interests are insufficient to confer organizational standing.²⁸ Thus, for example, an organization’s assertion “that it has an interest in state and federal environmental laws and in the

²² *Peach Bottom*, CLI-05-26, 62 NRC at 580.

²³ *Id.* (citations omitted).

²⁴ *Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989)(citations omitted).

²⁵ *See Carolina Power & Light Co.*, (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 66 NRC 41, 52-54 (2007).

²⁶ *Yankee*, CLI-98-21, 48 NRC at 195 (citing *Ga. Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995)).

²⁷ *Georgia Tech Research Reactor*, CLI-95-12, 42 NRC at 115.

²⁸ *See Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001).

land, water, air, wildlife, and other natural resources that would be affected” is insufficient to establish standing.²⁹

Where an organization is to be represented in an NRC proceeding by one of its members, the member must demonstrate authorization by that organization to represent it.³⁰ A partnership, corporation or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law.³¹ Any person appearing in a representative capacity must file with the Commission a written notice of appearance.³² The notice of appearance must state the representative’s name, address, telephone number, facsimile number, and e-mail address, if any; the name and address of the person or entity on whose behalf the representative appears, and the basis of his or her authority to act on behalf of the party.³³

To invoke representational standing, an organization (1) must show that at least one of its members has standing in his or her own right (*i.e.*, by demonstrating geographic proximity in cases where the presumption applies, or by demonstrating injury-in-fact within the zone of protected interests, causation, and redressability), (2) must identify that member by name and address, and (3) must show (*e.g.*, by affidavit) that the organization is authorized by that member to request a hearing on behalf of the member.³⁴ Where the affidavit of the member is devoid of

²⁹ *Id.* at 251-52.

³⁰ *See, e.g., Georgia Inst. of Tech.*, CLI-95-12, 42 NRC at 115 (1995)(citation omitted).

³¹ *See* 10 C.F.R. § 2.314(b).

³² *See id.*

³³ *See id.*

³⁴ *See, e.g. N. States Power Co.* (Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 & 2; Prairie Island Independent Spent Fuel Storage Installation), CLI-00-14, 52 NRC 37, 47 (2000); *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-6, 51 NRC 193, 202 (2000); *White Mesa*, CLI-01-21, 54 NRC at 250; *see also AmerGen Energy Co. LLC* (License Renewal for Oyster Creek Nuclear Generating Station), LBP-06-07, 63 NRC 188, 195 (2006).

any statement that he or she wants and has authorized the organization to represent his interests, the Board should not infer such authorization.³⁵

4. Discretionary Intervention

Pursuant to 10 C.F.R. § 2.309(e), a presiding officer may consider a request for discretionary intervention where a party lacks standing to intervene as a matter of right under 10 C.F.R. § 2.309(d)(1). Discretionary intervention, however, may only be granted when at least one petitioner has established standing and at least one contention has been admitted in the proceeding.³⁶ The regulation specifies that in addition to addressing the factors in 10 C.F.R. § 2.309(d)(1), a petitioner who seeks intervention as a matter of discretion, in the event it is determined that standing as a matter of right is not demonstrated, must specifically address the following factors set forth in 10 C.F.R. § 2.309(e) in its initial petition, which the Commission, ASLB, or the presiding officer will consider and balance:

(a) Factors weighing in favor of allowing intervention—

1. the extent to which its participation would assist in developing a sound record;
2. the nature of petitioner's property, financial or other interests in the proceeding;
3. the possible effect of any decision or order that may be issued in the proceeding;

(b) Factors weighing against allowing intervention—

4. the availability of other means whereby the petitioner's interest might be protected;

³⁵ *Duquesne Light Co.* (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 411 (1984).

³⁶ 10 C.F.R. § 2.309(e); *see also* *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 21 n.14 (2007) (“[D]iscretionary standing [is] only appropriate when one petitioner has been shown to have standing as of right and admissible contention so that a hearing will be conducted.”).

- 5 the extent to which petitioner's interest will be represented by existing parties; and
6. the extent to which petitioner's participation will inappropriately broaden the issues or delay the proceeding.

Of these criteria, the primary consideration concerning discretionary intervention is the first factor—assistance in developing a sound record.³⁷ The petitioner has the burden to establish that the factors in favor of intervention outweigh those against intervention.³⁸

B. Petitioner's Standing to Intervene

CRORIP, in support of the required showing of standing, provides the declarations of Nancy Burton, Gail Merrill, and Lally Codriansky.³⁹ Ms. Burton's declaration includes a further list of CRORIP members, both organizations and individuals, and the Petition itself identifies Ms. Merrill and Ms. Codriansky, in addition to Ms. Burton. The declarations of Ms. Burton and Ms. Merrill explicitly aver that they reside at distances within 50 miles of the Indian Point site, and, while Ms. Codriansky's declaration has only a blank space in this regard, Ms. Burton asserts that Ms. Codriansky's residence is similarly within 50 miles. As Ms. Merrill and Ms. Codriansky explicitly authorize CRORIP to represent their respective interests in this proceeding, Entergy does not challenge CRORIP's representation of their interests in this matter.

³⁷ See *Portland Gen. Elec. Co.* (Pebble Springs Nuclear Power Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1979); see also *Pub. Utils. Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 160 (1996).

³⁸ See *Nuclear Eng'g Co., Inc.*, ALAB-473, 7 NRC at 745.

³⁹ As noted above in note 7, on December 11, 2007, Ms. Burton filed a motion seeking leave to add the name of James A. Himes to the list of CRORIP members identified in its Petition, his name having been inadvertently omitted from her December 10th Petition. The Secretary of the Commission rejected this motion by Order dated December 19, 2007, because of Ms. Burton's failure to have contacted other counsel as required by 10 C.F.R. § 2.323(b). Order (unpublished) (December 19, 2007). On December 31, 2007, Ms. Burton filed a Motion of Connecticut Residents Opposed to Relicensing of Indian Point and Its Designated Representative's [sic] for Reconsideration with the Board, asking for reconsideration of the Commission's earlier rejection of her motion. The Secretary of the Commission again denied CRORIP's motion in an unpublished Order dated January 8, 2008. Order (unpublished) (Jan. 8, 2008).

The organizations identified in Ms. Burton's Declaration (at ¶ 5.A – G.), however, have not been shown to have standing on their own and, therefore, lend no weight to CRORIP's position in this regard. Similarly, except for Ms. Burton, Ms. Merrill, and Ms. Codriansky, there is no meaningful way of judging the standing of the other persons identified in paragraph 5.H.

In sum, Entergy does not contest CRORIP's standing to represent the interests of its three named members based on geographic proximity.⁴⁰ Judged against the previously-discussed criteria, CRORIP, through Ms. Burton, Ms. Merrill, and Ms. Codriansky, has made a showing sufficient to satisfy the requirements of 10 C.F.R. § 2.309 with respect to standing.⁴¹

IV. PETITIONER'S PROPOSED CONTENTIONS ARE INADMISSIBLE

A. Applicable Legal Standards and Relevant NRC Precedent

1. Petitioner Must Submit at Least One Admissible Contention Supported by an Adequate Basis

As explained above, to intervene in an NRC licensing proceeding, a petitioner must propose at least one admissible contention.⁴² The NRC will deny a petition to intervene and request for hearing from a petitioner who has standing but has not proffered at least one admissible contention.⁴³ As the Commission has observed, "[i]t is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission

⁴⁰ Ms. Burton states that her Petition is filed pursuant to 10 C.F.R. §§ 2.309(d) and (e), the former pertaining to intervention as a matter of right, the latter, as a matter of discretion. The Petition, however, is devoid of any discussion of the various criteria set forth in § 2.309(e), and, thus, warrants no further discussion in this Answer; intervention as a matter of discretion is unwarranted, unsupported, and should be summarily denied.

⁴¹ There is, however, no corresponding indication, other than the assertion by Ms. Burton in her Declaration (at ¶ 15) that the organization has in turn authorized her to represent it. With no other information about the CRORIP organization—its structure and leadership—having been provided by Ms. Burton, if, notwithstanding the other flaws in CRORIP's petition, discussed below, it is permitted to intervene in this proceeding, that shortcoming should be remedied. See *Ga. Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-90-29, 32 NRC 89, 92 (1990) (A group represented by a member must demonstrate that it has authorized the particular member to represent it.).

⁴² See 10 C.F.R. § 2.309(a).

⁴³ *Fla. Power & Light Co.* (Turkey Point Nuclear Power Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 5 (2001).

of its contentions and demonstrate that a genuine dispute exists within the scope of this proceeding.”⁴⁴ Additionally, “[a] contention’s *proponent*, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions.”⁴⁵

2. Proposed Contentions Must Satisfy the Requirements of 10 C.F.R. § 2.309(f) to be Admissible

Section 2.309(f)(1) requires a petitioner to “set forth with particularity the contentions sought to be raised,” and with respect to each contention proffered, satisfy six criteria, as discussed in detail below. An admissible contention must: (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner’s position and upon which the petitioner intends to rely; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.⁴⁶

The purpose of the contention rule is to “focus litigation on concrete issues and result in a clearer and more focused record for decision.”⁴⁷ The Commission has stated that it “should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing.”⁴⁸ Thus, the rules on

⁴⁴ *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1998).

⁴⁵ *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998).

⁴⁶ See 10 C.F.R. § 2.309(f)(1)(i)-(vi).

⁴⁷ Final Rule Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

⁴⁸ *Id.*

contention admissibility are “strict by design.”⁴⁹ Failure to comply with any one of the six admissibility criteria is grounds for the dismissal of a contention.⁵⁰

a. Petitioner Must Specifically State the Issue of Law or Fact to Be Raised

A petitioner must “provide a specific statement of the issue of law or fact to be raised or controverted.”⁵¹ The petitioner must “articulate at the outset the specific issues [it] wish[es] to litigate as a prerequisite to gaining formal admission as [a party].”⁵² Namely, an “admissible contention must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].”⁵³ The contention rules “bar contentions where petitioners have only ‘what amounts to generalized suspicions, hoping to substantiate them later.’”⁵⁴

b. Petitioner Must Briefly Explain the Basis for the Contention

A petitioner must provide “a brief explanation of the basis for the contention.”⁵⁵ This includes “sufficient foundation” to “warrant further exploration.”⁵⁶ Petitioner’s explanation serves to define the scope of a contention, as “[t]he reach of a contention necessarily hinges upon

⁴⁹ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for recons. denied*, CLI-02-1, 55 NRC 1 (2002).

⁵⁰ See Final Rule Changes to Adjudicatory Process, 69 Fed. Reg. at 2221; see also *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

⁵¹ 10 C.F.R. § 2.309(f)(1)(i).

⁵² *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 NRC 328, 338 (1999).

⁵³ *Millstone*, CLI-01-24, 54 NRC at 359-60.

⁵⁴ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 424 (2003) (quoting *Oconee*, CLI-99-11, 49 NRC at 337-39).

⁵⁵ 10 C.F.R. § 2.309(f)(1)(ii); see Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989).

⁵⁶ *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), ALAB-942, 32 NRC 395, 428 (1990) (footnote omitted).

its terms coupled with its stated bases.”⁵⁷ The Board, however, must determine the admissibility of the contention itself, not the admissibility of individual “bases.”⁵⁸

c. Contentions Must Be Within the Scope of the Proceeding

A petitioner must demonstrate “that the issue raised in the contention is within the scope of the proceeding.”⁵⁹ The scope of the proceeding is defined by the Commission’s notice of opportunity for a hearing and order referring the proceeding to the Board.⁶⁰ (The scope of license renewal proceedings, in particular, is discussed in Section IV.B, *infra*.) Moreover, contentions are necessarily limited to issues that are germane to the specific application pending before the Board.⁶¹ Any contention that falls outside the specified scope of the proceeding must be rejected.⁶²

A contention that challenges any NRC rule (or seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking) is outside the scope of the proceeding because, absent a waiver, “no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding.”⁶³ This includes contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking.⁶⁴ Similarly, any contention that collaterally attacks applicable statutory requirements or the basic structure of the NRC regulatory process must be rejected by

⁵⁷ *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff’d sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir. 1991), *cert. denied*, 502 U.S. 899 (1991).

⁵⁸ *See La. Energy Servs., L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 57 (2004) (“licensing boards generally are to litigate ‘contentions’ rather than ‘bases’”).

⁵⁹ 10 C.F.R. § 2.309(f)(1)(iii).

⁶⁰ *See, e.g., Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985).

⁶¹ *Yankee*, CLI-98-21, 48 NRC at 204 n.7.

⁶² *See, e.g., Portland Gen. Elec. Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979).

⁶³ *See* 10 C.F.R. § 2.335(a).

⁶⁴ *See Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159, *aff’d*, CLI-01-17, 54 NRC 3 (2001).

the Board as outside the scope of the proceeding.⁶⁵ Accordingly, a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue.⁶⁶

d. Contentions Must Raise a Material Issue

A petitioner must demonstrate "that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding."⁶⁷ The standards defining the findings that the NRC must make to support issuance of renewed operating licenses in this proceeding are set forth in 10 C.F.R. § 54.29. As the Commission has observed, "[t]he dispute at issue is 'material' if its resolution would 'make a difference in the outcome of the licensing proceeding.'"⁶⁸ In this regard, "[e]ach contention must be one that, if proven, would entitle the petitioner to relief."⁶⁹ Additionally, contentions alleging an error or omission in an application must establish some significant link between the claimed deficiency and protection of the health and safety of the public or the environment.⁷⁰

⁶⁵ *Shearon Harris*, LBP-07-11, 66 NRC at 57-58 (citing *Phila. Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974)).

⁶⁶ See *Peach Bottom*, ALAB-216, 8 AEC at 20-21 n.33. Within the adjudicatory context, however, a petitioner may submit a request for waiver of a rule under 10 C.F.R. § 2.335(b). Conversely, outside the adjudicatory context, a petitioner may file a petition for rulemaking under 10 C.F.R. § 2.802 or request that the NRC Staff take enforcement action under 10 C.F.R. § 2.206.

⁶⁷ 10 C.F.R. § 2.309(f)(1)(iv).

⁶⁸ *Oconee*, CLI-99-11, 49 NRC at 333-34; see also Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,172.

⁶⁹ USEC, Inc. (American Centrifuge Plant), Notice of Receipt of Application for License, 69 Fed. Reg. 61,411, 61,412 (Oct. 18, 2004).

⁷⁰ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 89, *aff'd*, CLI-04-36, 60 NRC 631 (2004).

e. Contentions Must Be Supported by Adequate Factual Information or Expert Opinion

A petitioner bears the burden to present the factual information or expert opinions necessary to support its contention adequately, and failure to do so requires that the contention be rejected.⁷¹ The petitioner's obligation in this regard has been described as follows:

[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 [2.309] 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.⁷²

Where a petitioner neglects to provide the requisite support for its contentions, the Board may not make assumptions of fact that favor the petitioner or supply information that is lacking.⁷³ The petitioner must explain the significance of any factual information upon which it relies.⁷⁴

With respect to factual information or expert opinion proffered in support of a contention, "the Board is not to accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention."⁷⁵ Any supporting material provided by a petitioner, including those portions thereof not relied upon, is subject to Board scrutiny, "both for what it does and does not show."⁷⁶ The Board will examine documents to confirm that they

⁷¹ See 10 C.F.R. § 2.309(f)(1)(v); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262 (1996).

⁷² *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983) (emphasis added).

⁷³ See *Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

⁷⁴ See *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204-05 (2003).

⁷⁵ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181, *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998).

⁷⁶ See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90, *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996).

support the proposed contention(s).⁷⁷ A petitioner's imprecise reading of a document cannot be the basis for a litigable contention.⁷⁸ Moreover, vague references to documents do not suffice—the petitioner must identify specific portions of the documents on which it relies.⁷⁹ The mere incorporation of massive documents by reference is similarly unacceptable.⁸⁰

In addition, “an expert opinion that merely states a conclusion (e.g., the application is ‘deficient,’ ‘inadequate,’ or ‘wrong’) without providing a *reasoned basis or explanation* for that conclusion is inadequate because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion as it is alleged to provide a basis for the contention.”⁸¹ Conclusory statements cannot provide “sufficient” support for a contention, simply because they are made by an expert.⁸² In short, a contention “will be ruled inadmissible if the petitioner ‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation.’”⁸³

f. Contentions Must Raise a Genuine Dispute of Material Law or Fact

With regard to the requirement that a petitioner “provide sufficient information to show . . . a genuine dispute . . . with the applicant . . . on a material issue of law or fact,”⁸⁴ the Commission has stated that the petitioner must “read the pertinent portions of the license application, including the Safety Analysis Report [(“SAR”)] and the Environmental Report

⁷⁷ See *Vt. Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).

⁷⁸ See *Ga. Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300 (1995).

⁷⁹ *Pub. Service Co. of N.H.* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989).

⁸⁰ See *Tenn. Valley Auth.* (Browns Ferry Nuclear Plant, Units 1 & 2), LBP-76-10, 3 NRC 209, 216 (1976).

⁸¹ *Private Fuel Storage*, LBP-98-7, 47 NRC at 181 (emphasis added); see also *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 61 NRC 451, 472 (2006) (quoting LBP-98-7, 47 NRC at 181).

⁸² See *American Centrifuge Plant*, CLI-06-10, 61 NRC at 472.

⁸³ *Fansteel*, CLI-03-13, 58 NRC at 203 (2003) (quoting *GPU Nuclear, Inc.*, CLI-00-6, 51 NRC at 207).

⁸⁴ 10 C.F.R. § 2.309(f)(1)(vi).

[(“ER”)], state the applicant’s position and the petitioner’s opposing view,” and explain why it disagrees with the applicant.⁸⁵ If a petitioner believes the SAR and the Environmental Report (“ER”) fail to adequately address a relevant issue, then the petitioner is to “explain why the application is deficient.”⁸⁶ A contention that does not *directly controvert a position taken by the applicant in the application* is subject to dismissal.⁸⁷ 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.⁸⁸

B. Scope of Subjects Admissible in License Renewal Proceedings

The scope of a proceeding, and, as a consequence, the scope of contentions that may be admitted, is limited by the nature of the application and pertinent Commission regulations.”⁸⁹ Broadly speaking, license renewal proceedings concern requests to renew 40-year reactor operating licenses for additional 20-year terms. The NRC regulations governing license renewal are contained in 10 C.F.R. Parts 51 and 54.

⁸⁵ Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170; *Millstone*, CLI-01-24, 54 NRC at 358.

⁸⁶ Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170; *Palo Verde*, CLI-91-12, 34 NRC at 156.

⁸⁷ See *Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992) (emphasis added). Further, regarding challenges to the NRC Staff’s findings, the Commission has unequivocally held that:

The adequacy of the applicant’s license application, not the NRC staff’s safety evaluation, is the safety issue in any licensing proceeding, and under longstanding decisions of the agency, contentions on the adequacy of the [content of the] SER are not cognizable in a proceeding.

U.S. Army (Jefferson Proving Ground Site), LBP-06-27, 64 NRC 438, 456 (2006), quoting Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. at 2202.

⁸⁸ See *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 521 n.12 (1990).

⁸⁹ *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC at 22.

Pursuant to 10 C.F.R. Part 54, the NRC Staff conducts a technical review of the license renewal application ("LRA") to assure that public health and safety requirements are satisfied. Pursuant to 10 C.F.R. Part 51, the NRC Staff completes an environmental review for license renewal, focusing upon the potential impacts of an additional 20 years of nuclear power plant operation. As the Commission has observed, "[b]oth sets of agency regulations derive from years of extensive technical study, review, inter-agency input, and public comment."⁹⁰ In its 2001 *Turkey Point* decision, the Commission explained in detail the scope of its license renewal review process, its regulatory oversight process, and the meaning of "current licensing basis," or "CLB."⁹¹ Key aspects of that decision and of other significant license renewal decisions are summarized below.

As further explained below, under the governing regulations in Part 54, the review of LRAs is confined to matters relevant to the extended period of operation requested by the applicant, which are not reviewed on a continuing basis under existing NRC inspection and oversight processes, including the Reactor Oversight Process ("ROP"). The safety review is limited to the plant systems, structures and components (as delineated in 10 C.F.R. § 54.4) that will require an aging management review ("AMR") for the period of extended operation or are subject to a time-limited aging analyses.⁹² In addition, the review of environmental issues is

⁹⁰ *Turkey Point*, CLI-01-17, 54 NRC at 7.

⁹¹ See *id.* at 6-13. Because the CLB may change while the NRC Staff is conducting its review, each year following submittal of an LRA (and at least three months before scheduled completion of the NRC Staff review), an amendment to the LRA must be submitted to identify any change to the CLB that materially affects the content of the LRA, including the UFSAR supplement. See 10 C.F.R. § 54.21(b). The license renewal Updated Final Safety Analysis Report ("UFSAR") supplement provides a summary of the programs and activities for managing the effects of aging and evaluation of time-limited aging analyses ("TLAAs") for the period of extended operation. After issuance of a renewed operating license, the annual FSAR update required by 10 C.F.R. § 50.71(e) must include any structures, systems and components "newly identified that would have been subject to an [aging management review] or evaluation of [TLAAs] in accordance with § 54.21." 10 C.F.R. § 54.37(b).

⁹² See 10 C.F.R. §§ 54.21(a) and (c), 54.29 and 54.30.

limited by rule by the generic findings in NUREG-1437, “Generic Environmental Impact Statement (“GEIS”) for License Renewal of Nuclear Plants.”⁹³

1. Scope of Safety Issues in License Renewal Proceedings

a. Overview of the Part 54 License Renewal Process and LRA Content

The Commission has stated that “[a]djudicatory 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.”⁹⁴ The Commission has specifically limited its 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 TLAAs.⁹⁵ Specifically, applicants must “demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation,” at a “detailed . . . ‘component and structure level,’ rather than at a more generalized ‘system level.’”⁹⁶ Thus, the “potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs” is the issue that defines the scope of the safety review in license renewal proceedings.⁹⁷

The NRC’s license renewal regulations deliberately and sensibly reflect the distinction between *aging management issues*, on the one hand, and the *ongoing regulatory process*

⁹³ See *id.* §§ 51.71(d) and 51.95(c).

⁹⁴ *Turkey Point*, CLI-01-17, 54 NRC at 10; see also Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,482 n.2.

⁹⁵ See *Turkey Point*, CLI-01-17, 54 NRC at 7-8; *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363 (2002).

⁹⁶ *Turkey Point*, CLI-01-17, 54 NRC at 8 (quoting Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,462 (May 8, 1995)). If left unmitigated, detrimental aging effects can result from, for example, metal fatigue, erosion, corrosion, thermal and radiation embrittlement, microbiologically induced effects, creep, and shrinkage. See *Turkey Point*, CLI-01-17, 54 NRC at 7-8.

⁹⁷ *Id.* at 7.

(e.g., security and emergency planning issues) on the other.⁹⁸ The NRC's long-standing license renewal framework is premised upon the notion that (with the exception of aging management issues, the NRC's ongoing regulatory process is adequate to ensure that the CLB of operating plants provides and maintains an acceptable level of safety.⁹⁹ For that reason, the Commission explained in Turkey Point:

[CLB is] a term of art comprehending the various Commission requirements applicable to a specific plant that are in effect at the time of the license renewal application. . . . The [CLB] represents an "evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety." 60 Fed. Reg. at 22,473. It is effectively addressed and maintained by ongoing agency oversight, review, and enforcement.¹⁰⁰

For that reason, the Commission concluded that requiring a full reassessment of safety issues that were "thoroughly reviewed when the facility was first licensed" and continue to be "routinely monitored and assessed by ongoing agency oversight and agency-mandated licensee programs" would be "both unnecessary and wasteful."¹⁰¹ Therefore, the Commission reasonably refused to "throw open the full gamut of provisions in a plant's current licensing basis to re-analysis during the license renewal review."¹⁰²

In accordance with 10 C.F.R. §§ 54.19, 54.21, 54.22, 54.23, and 54.25, an LRA must contain general information, an Integrated Plant Assessment ("IPA"), an evaluation of TLAAs, a supplement to the plant's Updated Final Safety Analysis Report ("UFSAR") (and periodic

⁹⁸ Specifically, in developing Part 54, the NRC 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." *Id.* at 7.

⁹⁹ See Final Rule, Nuclear Power Plant License Renewal; 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991). The term "current licensing basis" is defined in 10 C.F.R. § 54.3. See also 10 C.F.R. §§ 54.29, 54.30.

¹⁰⁰ *Turkey Point*, CLI-01-17, 54 NRC at 9.

¹⁰¹ *Turkey Point*, CLI-01-17, 54 NRC.

¹⁰² *Id.* at 9.

changes to the UFSAR and CLB) during NRC review of the application, changes to the plant's Technical Specifications to manage the effects of aging during the extended period of operation, and a supplement to the ER that complies with the requirements of Subpart A of Part 51.¹⁰³

An IPA is a licensee assessment reviewed by the NRC that demonstrates that a nuclear power plant's structures and components requiring aging management review ("AMR") in accordance with 10 C.F.R. § 54.21(a) for license renewal have been identified and that "actions have been identified and have been or will be taken . . . such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB"¹⁰⁴ Only passive, long-lived structures and components are subject to AMR."¹⁰⁵ Passive structures and components are those that perform their intended functions without moving parts or changes in configuration (*e.g.*, reactor vessel, piping, steam generators), and are not subject to replacement based on a qualified life or specified time period (*i.e.*, "long-lived" structures and components). The TLAAs involve in-scope systems, structures, and components; consider the effects of aging; and involve assumptions based on the original 40-year operating term.¹⁰⁶ An applicant must (i) show that the original TLAAs will remain valid for the extended operation period; (ii) modify and extend the TLAAs to apply to a longer term,

¹⁰³ NRC guidance for the license renewal process is set forth in the Generic Aging Lessons Learned Report (NUREG-1801) ("GALL Report"), the Standard Review Plan for License Renewal (NUREG-1800), and Regulatory Guide ("RG") 1.188, Standard Format and Content for Applications to Renew Nuclear Power Plant Operating License. NUREG-1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants, and its supplement, provide guidance for implementing 10 C.F.R. Part 51 environmental requirements, which ensure compliance with NEPA.

¹⁰⁴ 10 C.F.R. § 54.29(a).

¹⁰⁵ *See id.* § 54.21(a)(1).

¹⁰⁶ *See id.* § 54.3.

such as 60 years; *or* (iii) otherwise demonstrate that the effects of aging will be adequately managed during the renewal term.¹⁰⁷

To meet the requirements of Part 54, applicants generally rely upon existing programs, such as inspection, testing and qualification programs. Some new activities or program augmentations also may be necessary for purposes of license renewal (*e.g.*, one-time inspections of structures or components). The NRC's GALL Report, which provides the technical basis for the Standard Review Plan for License Renewal, contains the NRC Staff's generic evaluation of existing plant programs and documents the technical bases for determining the adequacy of existing programs, with or without modification, in order to effectively manage the effects of aging during the period of extended plant operation. The evaluation results documented in the GALL Report indicate that many existing programs are adequate to manage the aging effects for particular structures or components for license renewal without change.¹⁰⁸ The GALL Report also contains recommendations concerning specific areas for which existing programs should be augmented for license renewal.¹⁰⁹ Thus, programs that are consistent with the GALL Report are generally accepted by the Staff as adequate to meet the license renewal rule.¹¹⁰

b. Scope of Adjudicatory Hearings on Part 54 License Renewal Issues

Contentions seeking to challenge the adequacy of the CLB for the IPEC facility are not within the scope of this license renewal proceeding.¹¹¹ Likewise, the question of whether

¹⁰⁷ See *id.* § 54.21(c)(1).

¹⁰⁸ See GALL Report, Vol. 1, at 1.

¹⁰⁹ See *id.* at 4.

¹¹⁰ See *id.* at 3.

¹¹¹ *Turkey Point*, CLI-01-17, 54 NRC at 8-9, 23; see also *AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), LBP-07-17 (slip op. at 14 n.17) (Dec. 18, 2007) (finding any challenge to the CLB to be outside the scope of the proceeding because such issues are "(1) not germane to aging management concerns; (2) previously have been the subject of thorough review and analysis; and, accordingly (3) need not be revisited in a license renewal proceeding.").

Entergy is currently in compliance with the IPEC CLB is beyond the scope of this proceeding, because “the Commission’s on-going regulatory process – which includes inspection and enforcement activities – seeks to ensure a licensee’s current compliance with the CLB.”¹¹² In this regard, the ASLB recently stated that “monitoring is not proper subject matter for license extension contentions.”¹¹³ Thus, for example, under 10 C.F.R. § 50.47(a)(1), issues pertaining to emergency planning are excluded from consideration in license renewal proceedings, because “[e]mergency planning is, by its very nature, *neither germane to age-related degradation nor unique to the period covered by the . . . license renewal application.*”¹¹⁴

2. Scope of Environmental Issues in License Renewal Proceedings

The NRC has promulgated regulations, 10 C.F.R. Part 51, to implement NEPA. In 1996, the Commission amended Part 51 to address the scope of its environmental review for LRAs.¹¹⁵ To make Part 51 more efficient and focused, the NRC divided the environmental requirements for license renewal into generic and plant-specific components. The NRC prepared a GEIS to evaluate and document those generic impacts that are well understood based on experience gained from the operation of the existing fleet of U.S. nuclear power plants.¹¹⁶

¹¹² *Oyster Creek*, LBP-07-17 (slip op. at 14 n.17). An example of an ongoing NRC inspection and enforcement activity is the ROP.

¹¹³ Order Denying Pilgrim Watch’s Motion for Reconsideration, ASLBP No. 06-848-02-LR, at 5 (Jan. 11, 2008) (citations omitted) (emphasis added).

¹¹⁴ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC at 561 (2005).

¹¹⁵ See Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467 (June 5, 1996), *amended by* Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 66,537 (Dec. 18, 1996).

¹¹⁶ See NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Final Report, Vols. 1 & 2 (May 1996), *available at* ADAMS Accession Nos. ML040690705 and ML040690738.

Generic issues are identified in the GEIS as “Category 1” impacts.¹¹⁷ These are issues on which the Commission found that it could draw “generic conclusions applicable to all existing nuclear power plants, or to a specific subgroup of plants.”¹¹⁸ The Commission concluded that such issues involve “environmental effects that are essentially similar for all plants,” and thus they “need not be assessed repeatedly on a site-specific basis.”¹¹⁹ The NRC has codified its generic findings in Table B-1, Appendix B to Subpart A of 10 C.F.R. Part 51.

Under 10 C.F.R. § 51.53(c)(3)(i), a license renewal applicant may, in its site-specific ER,¹²⁰ refer to and, in the absence of new and significant information, adopt the generic environmental impact findings found in Appendix B, Table B-1, as Category 1 issues. An applicant, however, must address environmental issues for which the Commission was not able to make generic environmental findings.¹²¹ Specifically, an ER must “contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term,” for those issues listed at 10 C.F.R. § 51.53(c)(3)(ii) and identified as “Category 2,” or “plant specific,” issues in Table B-1.¹²²

¹¹⁷ GEIS, Vol. 1, at 1-5 to 1-6.

¹¹⁸ *Turkey Point*, CLI-01-17, 54 NRC at 11 (citing 10 C.F.R. Part 51, Subpart A, App. B).

¹¹⁹ *Id.*

¹²⁰ NRC regulations require an LRA to include an ER describing the environmental impacts of the proposed action and alternatives. See 10 C.F.R. §§ 51.53(c), 54.23. The ER is intended to assist the NRC Staff prepare the agency’s independent environmental impact statement. See *Curators of the Univ. of Mo.*, CLI-95-8, 41 NRC 386, 396 (1995)(citing NRC regulations). The NRC Staff ultimately prepares a draft and final site-specific supplement to the GEIS for each plant, using the ER and other independent sources of information. See 10 C.F.R. §§ 51.71(d), 51.95(c).

¹²¹ 10 C.F.R. § 51.53(c)(3)(ii).

¹²² The Commission has described those issues as involving environmental impact severity levels that “might differ significantly from one plant to another,” or impacts for which additional plant-specific mitigation measures should be considered. *Turkey Point*, CLI-01-17, 54 NRC at 11.

Furthermore, in its ER, an applicant must include “any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware,” even if a matter would normally be considered a Category 1 issue.¹²³ The supplement to the GEIS similarly must include evaluations of site-specific Category 2 impacts and any “new and significant information” regarding generic Category 1 impacts.¹²⁴ NRC regulatory guidance defines “new and significant information” as follows:

(1) information that identifies a significant environmental issue that was not considered in NUREG-1437 and, consequently, not codified in Appendix B to Subpart A of 10 CFR 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 CFR Part 51.¹²⁵

In the ongoing *Vermont Yankee* and *Pilgrim* license renewal proceedings, the presiding Licensing Boards discussed the regulatory history of the “new and significant information” provision, and applied that provision in rejecting certain proposed contentions.¹²⁶ In short, when first proposed, the NRC’s Part 51 license renewal environmental regulations did not include the current provision, 10 C.F.R. § 51.53(c)(3)(iv), regarding “new and significant information.”¹²⁷ The NRC added the provision in response to suggestions by the Environmental Protection

¹²³ 10 C.F.R. § 51.53(c)(3)(iv); see also *Turkey Point*, CLI-01-17, 54 NRC at 11; *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 290 (2002).

¹²⁴ 10 C.F.R. § 51.53(c)(3)(ii), (iv).

¹²⁵ RG 4.2, Supp. 1, “Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses, 4.2-S-4 (Sept. 2000), available at ADAMS Accession No. ML003710495 (“RG4.2S1”). See also *Nat’l Comm. for the New River, Inc. v. FERC*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (referring to “new information [regarding the action which] 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. Nat. Res. Council*, 490 U.S. 360, 374 (1989)).

¹²⁶ See *Entergy Nuclear Vt. Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 155-59 (2006), *aff’d*, CLI-07-3, 65 NRC 13, *recons. denied*, CLI-07-13, 65 NRC 211 (2007); *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 288, 294-300 (2006), *aff’d*, CLI-07-3, 65 NRC 13, *recons. denied*, CLI-07-13, 65 NRC 211 (2007).

¹²⁷ See Proposed Rule, Environmental Review for Renewal of Operating Licenses, 56 Fed. Reg. 47,016, 47,027-028 (Sept. 17, 1991).

Agency (“EPA”) and the Council on Environmental Quality (“CEQ”) that the NRC expand “the framework for consideration of significant new information.”¹²⁸ At that time, in SECY-93-032, the NRC Staff had explained that adding Section 51.53(c)(3)(iv) would not affect license renewal adjudications because “[l]itigation of environmental issues in a hearing will be limited to unbounded category 2 and category 3 issues unless the rule is suspended or waived.”¹²⁹ In a public briefing concerning SECY-93-032, as well as the EPA and CEQ comments, the NRC confirmed that a successful petition for rulemaking (if the new information was generic), or a petition for a rule waiver (if the new information was plant-specific), would be necessary to litigate previously-determined generic findings at NRC adjudicatory hearings on LRAs.¹³⁰ The Commission ultimately approved the changes to the proposed rule and specifically endorsed SECY-93-032.¹³¹ The Statement of Considerations for the final rule refers to SECY-93-032.¹³²

In *Turkey Point*, the Commission reaffirmed the forgoing conclusions in a formal adjudicatory decision¹³³ and summarized the appropriate procedural vehicles for “revisiting” generic environmental determinations relevant to license renewal as follows:

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

¹²⁸ Final Rule, Environmental Review for Renewal of Nuclear Plant Operating Licenses, 61 Fed. Reg. at 28,470.

¹²⁹ SECY-93-032, Memorandum from James M. Taylor, Executive Director for Operations (“EDO”), to the Commissioners, “Subject: 10 CFR Part 51 Rulemaking on Environmental Review for Renewal of Nuclear Power Plant Operating Licenses” at 4 (Feb. 9, 1993) at 4, *available at* ADAMS Accession No. ML072260444. (Category 2 and 3 issues were eventually combined into Category 2).

¹³⁰ See Pub. Meeting Tr., Briefing on Status of Issues and Approach to GEIS Rulemaking for Part 51, at 20-22 (Feb. 19, 1993), *available at* ADAMS Accession No. ML072070193.

¹³¹ See Memorandum from Samuel J. Chilk, Secy, to James M. Taylor, EDO (Apr. 22, 1993), *available at* ADAMS Accession No. ML003760802.

¹³² Final Rule, Environmental Review for Renewal of Nuclear Plant Operating Licenses, 61 Fed. Reg. at 28,474.

¹³³ *Turkey Point*, CLI-01-17, 54 NRC at 12, 22-23 (2001).

seek a waiver of the rule. *See* 10 C.F.R. § [2.335] [internal citation omitted]. Petitioners with evidence that a generic finding is incorrect for all plants may petition the Commission to initiate a fresh rulemaking. *See* 10 C.F.R. § 2.802. Such petitioners may also use the SEIS notice-and-comment process to ask the NRC to forgo use of the suspect generic finding and to suspend license renewal proceedings, pending a rulemaking or updating of the GEIS. *See* 61 Fed. Reg. at 28,470; GEIS at 1-10 to 1-11.¹³⁴

Accordingly, the Commission has held—most recently in the *Vermont Yankee* and *Pilgrim* license renewal proceedings—that because the generic environmental analyses of the GEIS have been incorporated into NRC regulations, “the conclusions of [those] analys[es] may not be challenged in litigation unless the rule [10 C.F.R. § 51.53(c)(3)(i)] is waived by the Commission for a particular proceeding or the rule itself is suspended or altered in a rulemaking proceeding.”¹³⁵ The Commission emphasized that “[a]djudicating Category 1 issues site by site based merely on a claim of ‘new and significant information,’ would defeat the purpose of resolving generic issues in a GEIS.”¹³⁶ In fact, the U.S. Supreme Court has specifically upheld the Commission’s authority to discharge its responsibilities under NEPA through generic rulemaking.¹³⁷

¹³⁴ *Id.* at 12 (emphasis added).

¹³⁵ *Vermont Yankee*, CLI-07-3, 65 NRC at 17-18; *see also* *Turkey Point*, CLI-01-17, 54 NRC at 12; *Vermont Yankee*, LBP-06-20, 64 NRC at 155-59; *Pilgrim*, LBP-06-23, 64 NRC at 288, 294-300 *Shearon Harris*, LBP-07-11, 66 NRC at 64 (citing the foregoing cases). The *Pilgrim* and *Vermont Yankee* decisions have been appealed to the United States Court of Appeals for the First Circuit in *Massachusetts v. NRC*, Docket Nos. 07-1482 and 07-1493.

¹³⁶ *Vermont Yankee*, CLI-07-3, 65 NRC at 21.

¹³⁷ *See* *Balt. Gas & Elec. v. NRDC*, 462 U.S. 87, 100-01 (1983) (“Administrative efficiency and consistency of decision are both furthered by a generic determination of [environmental impacts] without needless repetition of the litigation in individual proceedings.”); *see also* *Tribune Co. v. FCC*, 133 F.3d 61, 68 (D.C. Cir. 1998) (citations omitted) (“[I]t is hornbook administrative law that an agency need not—indeed should not—entertain a challenge to a regulation, adopted pursuant to notice and comment, in an adjudication or licensing proceeding.”).

C. CRORIP's Sole Proposed Contention is Not Admissible

CRORIP's sole contention, EC-1, states:

Health risks from the cumulative effects of radiation exposure traceable to Indian Point routine and accidental releases during the projected relicensing term are substantial, have not been adequately accounted for in the RLA^[138] and constitute new information which must be but which has not been analyzed under 10 CFR Part 51.¹³⁹

CRORIP bases its proposed contention principally on past releases from Indian Point for the period of 1970 to 1993, which, it contends, makes Indian Point's emissions "the fifth highest of 72 nuclear power stations then operating in the U.S. . . .," as well as on increases in "fission gases from fourth-quarter 2001 to 1st quarter 2002 . . . including a 15-fold increase for Xenon-133."¹⁴⁰ According to CRORIP, "these facts provide a basis for concern about the potential releases of radiation during the projected relicensing period as the facility ages and cracks and leaks which have been detected currently inevitably worsen over time."¹⁴¹

CRORIP further alleges that "these facts also suggest an upward trending of radiological releases contrary to the RLA [sic], which asserts that radiological releases will continue at 'current' levels."¹⁴² This issue of environmental and health consequences of radiation is material to the NRC's license renewal decision, CRORIP contends, because "continued Indian Point operations beyond the current licensing period will subject the public to undue health and safety risks which have not been adequately analyzed."¹⁴³ Citing the attached declarations of Joseph J.

¹³⁸ Presumably, this reference is to the "License Renewal Application" initially identified by CRORIP as the "LRA" (Petition at 1).

¹³⁹ Petition at 4.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 4-5.

Mangano (“Mangano Declaration”) and Helen M. Caldicott (“Caldicott Declaration”),¹⁴⁴ CRORIP asserts that information regarding a purported “statistical link between elevated levels of strontium-90 detected in baby teeth of children living in the region surrounding Indian Point and heightened cancer and associated disease incidence in the same region has been made public” and should have been addressed in the LRA.¹⁴⁵ Mr. Mangano, in his declaration, incorporates by reference his appended September 12, 2007 report entitled, “Public Health Risk to Fairfield County of Keeping the Indian Point Nuclear Reactors Open” (“Mangano Report”).

1. CRORIP’s Contention is Inadmissible as It Seeks to Raise a Generic Issue Challenging a Commission Regulation

Conspicuously absent from the Petition, as well as from the supporting declarations of Mr. Joseph J. Mangano and Dr. Helen M. Caldicott, is any assertion or information showing that the applicant has not and is not operating Indian Point Units 2 and 3 in accordance with the Commission’s requirements with respect to radiological releases.¹⁴⁶ More importantly, there is no basis for concluding that the pending application fails to satisfy NRC requirements for license renewal in 10 C.F.R. Part 54.

To the contrary, it is evident from the Petition, as well as from the declarations of Mr. Mangano and Dr. Caldicott, that despite the inclusion of references to Indian Point in their materials¹⁴⁷ and the bald assertion that the information is new, the issue CRORIP wishes to raise is clearly a generic matter which challenges a Commission regulation with respect to health

¹⁴⁴ Mr. Mangano is Executive Director of the Radiation and Public Health Project. Dr. Caldicott is a physician, certified as a member of the Royal Australasian College of Physicians in Pediatrics and a diplomate of the American Board of Pediatrics.

¹⁴⁵ Petition at 5.

¹⁴⁶ See 10 C.F.R. Part 20.

¹⁴⁷ For that matter, it is not evident that either Mr. Mangano or Dr. Caldicott has any familiarity with the LRA or ER. Neither the declaration of Mr. Mangano nor that of Dr. Caldicott makes any mention of either document. To the extent that Mr. Mangano purports to make specific reference to Indian Point data in his Mangano Declaration and Mangano Report, it appears to have been obtained from other information reported on the NRC website. See, e.g., Declaration at 2 ¶¶ 4, 5, and refs. 1, 2, 4.

effects of low levels of radiation. These deficiencies, individually and collectively, render the contention inadmissible pursuant to 10 C.F.R. § 2.309(f).

Essentially the same issue that CRORIP seeks to raise here was proffered, and rejected, in the McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2, license renewal proceeding almost six years ago.¹⁴⁸ There, the Board rejected a contention, again relying (in part) on studies by Mr. Mangano and by the Radiation and Public Health Project, similarly seeking to challenge the radiological impacts of plant operations.¹⁴⁹ Specifically, the Board found that the matter is appropriately identified as a Category 1 issue, not requiring site-specific consideration in individual license renewal environmental reviews. The Board also held that the petitioner there had failed to establish the existence of special circumstances regarding the specific matter of that proceeding that might warrant waiving the regulation at 10 C.F.R. § 51.53(c)(3) and App. B, Table B-1.¹⁵⁰ The Board concluded:

The issue is manifestly a generic one, as applicable to all nuclear plants as to any one of the plant units at issue in this proceeding. Therefore, even were we to consider the documents submitted in support of the contentions to constitute affidavits as required by section 2.758(b), we do not find a rule waiver to be appropriate in this proceeding. As the Commission has suggested, the Petitioners may wish to present their essentially generic concerns about radiological impacts through a petition for rulemaking under 10 C.F.R. § 2.802.¹⁵¹

The Board's conclusion in *McGuire/Catawba*, that the matters are appropriately identified as generic issues not requiring site-specific consideration in license renewal environmental reviews, is equally appropriate here.

¹⁴⁸ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 NRC 49 (2002).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 85-87.

¹⁵¹ *Id.* at 86-87 (citations omitted).

Similarly, in the Millstone Nuclear Power Station, Units 2 and 3, license renewal proceeding, Ms. Burton proffered a substantively similar contention, also supported in part by Mr. Mangano, which was rejected as unrelated to matters material to license renewal under Part 54.¹⁵² The contention there was initially rejected because it consisted of unsupported speculation, contrary to 10 C.F.R. § 2.309, and, in any event, did not bear on any matter related to the detrimental effects of plant aging.¹⁵³ The Commission, in affirming the Licensing Board's decision denying the petitioner's motion for reconsideration and petition for leave to amend its petition, reiterated its earlier view that the issue the petitioner sought to raise related to operational matters and not to license renewal, and held

Our license renewal inquiry is narrow. It focuses on "the potential impacts of an additional 20 years of nuclear power plant operation," not on everyday operational issues. Those issues are "effectively addressed and maintained by ongoing agency oversight, review, and enforcement."

... We are saying merely that a license renewal proceeding is not the proper forum for the NRC to consider operational issues. If CCAM has information supporting its claim that Millstone's operation has caused "human suffering on a vast scale," its remedy would not be a narrowly focused license renewal hearing, but a citizen's petition under 10 C.F.R. § 2.206.¹⁵⁴

And finally, yet another contention offered by Ms. Burton in a license amendment proceeding, seeking to address the radiological impacts of operation at Millstone within regulatory limits, again supported by an affidavit submitted by Mr. Mangano, was rejected as an

¹⁵² *Millstone*, LBP-04-15, 60 NRC at 90-91, *aff'd*, LBP-04-22, 60 NRC 379, *aff'd*, CLI-04-36, 60 NRC 631 (2004). See also *Millstone*, CLI-06-04, 63 NRC at 37. ("But CCAM does not explain how the release of strontium-90 falls within the framework of a license renewal proceeding, which 'focuses on 'the potential impacts of an additional 20 years of nuclear power plant operation,' not on everyday operational issues.' [citation omitted]. If the Millstone facility were releasing excessive amounts of strontium-90 under its current license, that would be reason for corrective enforcement action of an 'everyday operational issue [under 10 C.F.R. § 2.206],' *Millstone*, CLI-04-36, *supra* note 4. [It] would not be a reason for denying license renewal.")

¹⁵³ *Millstone*, LBP-04-15, 60 NRC at 91-92.

¹⁵⁴ *Millstone*, CLI-04-36, 60 NRC at 637-38 (citations omitted).

impermissible challenge to the Commission's regulations in 10 C.F.R. Parts 20 and 50.¹⁵⁵ In that proceeding, related to a request to remove the Radiological Effluent Technical Specifications from the operating license itself, the petitioner offered the affidavit of Mr. Mangano. There, as here,

Mr. Mangano's affidavit does not make clear whether the increased effluent releases he alleges (and which he claims will cause adverse health effects) will be within regulatory limits or violate the Commission's regulations. If the former, Mr. Mangano's assertion represents an impermissible challenge to the Commission's regulations, 10 C.F.R. Part 20 and Part 50, that establish radiological dose limits. See 10 C.F.R. § 2.758.¹⁵⁶

The Commission, on review stated:

They [the petitioners] say they "are prepared to establish through expert testimony that any increase in routine radiological effluent to the air and water by the Millstone reactors will expose the public to greater risk of cancer, immunodeficiency diseases and other adverse health effects." See Appeal Brief at 4. But routine permissible releases occur virtually daily, and they do not remain at a constant level but go up and down routinely. All such releases are small and must remain within NRC-prescribed limits. Regulatory limits on effluent concentrations take into account the licensee's need to make frequent adjustments in releases, while still imposing absolute limits on both the rate of release and the dose to the nearest member of the public. The license amendments at issue here have no bearing on the Licensee's ability to make these frequent adjustments. If the Petitioners are objecting to all possible routine adjustments in effluent releases, then their claim amounts to an impermissible general attack on our regulations governing public doses at operating nuclear plants. See 10 C.F.R. § 2.758. Petitioners "may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies." *Oconee*, 49 NRC at 334.¹⁵⁷

¹⁵⁵ *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273, *aff'd sub nom. Dominion Nuclear Conn. Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349 (2001), *recons. denied*, CLI-02-1, 55 NRC 1 (2002).

¹⁵⁶ *Millstone*, LBP-01-10, 53 NRC at 286-87 (citations omitted).

¹⁵⁷ CLI-01-24, 54 NRC at 364 (citing *Oconee*, 49 NRC at 334).

Without attempting to fully catalogue his various submissions and presentations to the NRC regarding health effects associated with nuclear power plants, Mr. Mangano has presented the essence of his thesis to the NRC in various forms, including comments on environmental impact statements and in Limited Appearance statements regarding the North Anna Early Site Permit proceeding (February 2005);¹⁵⁸ the Oyster Creek License Renewal proceeding (July 2006 and May 2007);¹⁵⁹ the Grand Gulf Early Site Permit proceeding (July 2005);¹⁶⁰ the Peach Bottom License Renewal proceeding (November 2001 and July 2002);¹⁶¹ the Shearon Harris License Renewal proceeding (July 2007);¹⁶² the Turkey Point License Renewal proceeding (July 2001);¹⁶³ and the Diablo Canyon independent spent fuel storage installation proceeding (July 2007).¹⁶⁴ Presenting fundamentally the same hypothesis in numerous proceedings over many years¹⁶⁵ makes it abundantly clear that the issue CRORIP seeks to raise in this proceeding is

¹⁵⁸ See Pub. Mtg. Tr. (Feb. 17, 2005) (Radiation and Public Health Project, Death Rates in Central Virginia in the Vicinity of North Anna Nuclear Station (Jan. 19, 2005)), *available at* ADAMS Accession No. ML050750309.

¹⁵⁹ See Letter from Joseph Mangano to NRC (July 14, 2006), *available at* ADAMS Accession No. ML062050309; Ltd. Appearance Session Tr. 23-27 (May 31, 2007), *available at* ADAMS Accession No. ML071580352; Joseph Mangano, Radioactive Contamination and Cancer Near the Oyster Creek Nuclear Reactor (May 31, 2007), *available at* ADAMS Accession No. ML071650053.

¹⁶⁰ See Letter from Joseph Mangano to NRC (July 5, 2005), *available at* ADAMS Accession No. ML051960026.

¹⁶¹ See E-mail from Joseph Mangano to NRC (Nov. 21, 2001), *available at* ADAMS Accession No. ML020230268; Pub. Mtg. Tr. 79-90 (July 31, 2002), *available at* ADAMS Accession No. ML022390448.

¹⁶² See Joseph Mangano, Patterns of Radioactive Emissions and Health Trends Near the Shearon Harris Nuclear Reactor (July 17, 2007), *available at* ADAMS Accession No. ML072120423; Ltd. Appearance Session Tr. 5-9 (July 17, 2007), *available at* ADAMS Accession No. ML072040023.

¹⁶³ See Pub. Mtg. Tr. 93-94 (July 17, 2001), *available at* ADAMS Accession No. ML012270223; GEIS Supp. 5, App. A, A-291 to A-307 (Jan. 2002) (Comment of the Radiation and Public Health Project (July 17, 2001)), *available at* ADAMS Accession No. 020280226.

¹⁶⁴ See E-mail from Joseph Mangano to NRC (July 2, 2007), *available at* ADAMS Accession No. ML071870039.

¹⁶⁵ The Radiation and Public Health Project website includes a list of some 50 articles, letters to editors and other presentations related to a number of reactor facilities—existing and proposed—nationwide, regarding which Mr. Mangano has presented his position (in more summary form) with respect to radiation, nuclear power plants, the tooth fair project and the incidence of cancer. See <http://www.radiation.org/press/index.html>. Regardless of where the facility is located (or proposed), Mr. Mangano's theme with respect to the foregoing is fundamentally the same.

generic in nature and has no unique tie to either license renewal or to Indian Point, despite its representations to the contrary.

CRORIP itself apparently recognizes that its proposed contention would be barred by the existing rule, but rather than seeking to propose rulemaking, has submitted, as a prerequisite to consideration of its proposed contention, its petition seeking a waiver, pursuant to 10 C.F.R. § 2.335 (“Section 2.335 Petition”). Because of its pivotal role, the Section 2.335 Petition is addressed first.

a. Waiver of Regulations Under Section 2.335

In order to seek to waive the requirements of a rule in a particular adjudicatory proceeding, a petitioner must submit a petition pursuant to 10 C.F.R. § 2.335. The requirements for a Section 2.335 petition are as follows:

The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule was adopted.¹⁶⁶

Further, such a petition,

must be accompanied by an affidavit that identifies the specific subject matter of the proceeding as to which the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted. *The affidavit must state with particularity* the special circumstances alleged to justify the waiver or exception requested.¹⁶⁷

If the petitioner makes a *prima facie* showing, then the Board shall certify the matter to the Commission.¹⁶⁸ If there is no *prima facie* showing, then the matter may not be litigated, and

¹⁶⁶ 10 C.F.R. § 2.335(b).

¹⁶⁷ *Id.* (emphasis added).

¹⁶⁸ *See id.* § 2.335 (c), (d).

“the presiding officer may not further consider the matter.”¹⁶⁹ In this regard, the recent Commission decision in the *Millstone* case sets forth a four-part test for Section 2.335 petitions, under which the petitioner must demonstrate that it meets each of the following factors for a waiver to be granted:¹⁷⁰

- i. The rule’s strict application “would not serve the purposes for which [it] was adopted”;
- ii. The movant has alleged “special circumstances” that were “not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived”;
- iii. Those circumstances are “unique” to the facility rather than “common to a large class of facilities”; and
- iv. A waiver of the regulation is necessary to reach a “significant safety problem.”¹⁷¹

In summary, a Section 2.335 petition “can be granted only in unusual and compelling circumstances.”¹⁷²

b. *CRORIP’s Petition Fails to Meet the Criteria of 10 C.F.R. § 2.335*

The Section 2.335 Petition (and Nancy Burton’s supporting affidavit) seeks to waive the GEIS prepared in support of license renewal, NUREG-1437, insofar as that document and “the categorical exclusion rule”¹⁷³ excludes from consideration in individual proceedings, as a Category 1 issue, radiation exposure, and its use of the “Reference Man” dose models.¹⁷⁴

¹⁶⁹ *Id.* § 2.335(c).

¹⁷⁰ *Millstone*, CLI-05-24, 62 NRC at 560 (emphasis added) (citing *Seabrook*, CLI-88-10, 28 NRC at 597).

¹⁷¹ *Millstone*, CLI-05-24, 62 NRC at 560 (citing *Pub. Serv. Co. of N. H.* (Seabrook Station, Units 1 and 2), CLI-89-20, 30 NRC 231, 235 (1989); *Seabrook*, CLI-88-10, 28 NRC 573, 597 (1988)).

¹⁷² *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), ALAB-895, 28 NRC 7, 16 (1988), *aff’d*, CLI-88-10, 28 NRC at 597, *recons denied*, CLI-89-3, 29 NRC 234 (1989).

¹⁷³ Although the GEIS is the underpinning of the determination that radiation exposure is a Category 1 issue, it is presumably the rule, 10 C.F.R. Part 51, Subpart A, App. B at Tbl. B-1 (and 10 C.F.R. § 51.53(c)(3)(ii)), from which a waiver is being sought.

¹⁷⁴ Section 2.335 Petition at 1; Affidavit in Support of Connecticut Residents Opposed to Relicensing of Indian Point and Its Designated Representative’s 10 C.F.R. § 2.335 Petition at 1-2 (“Section 2.335 Affidavit”).

Measured against the foregoing, it is plain that CRORIP's Section 2.335 Petition fails to satisfy the requirements warranting a waiver of the regulations. Most fundamentally, the Section 2.335 Petition fails to substantively address the lynchpin for a waiver—a demonstration that the rule would not serve the purpose for which it was adopted.

(i) Consideration of health effects of radiation in individual license renewal proceedings is contrary to 10 C.F.R. § 51.53(c)(3)

First, Ms. Burton, in her affidavit, reiterates the NRC's reasoning for adopting the approach reflected in 10 C.F.R. § 51.53(c)(3) with respect to the evaluation of environmental impacts through a GEIS and codification of generic findings as either Category 1 or Category 2, in Table B-1.¹⁷⁵ She then incorrectly suggests that “the process that produced the GEIS does not includes [sic] components such as public input and operational conditions occurring post-adoption of the GEIS . . . nor progress in the evolution of standards to better protect the public health and safety from radiological exposures to workers and the public off-site.”¹⁷⁶ In turn, the affidavit asserts that reliance on the categorization of this issue as Category 1, “removes from the proceeding arguably the most critical issue involved in continuation of operations during the license renewal term: the very health of the plant's workers and the public surrounding the plant.”¹⁷⁷

The affidavit speculates, relying on Mr. Mangano's declaration, that “Indian Point's radiological emissions cannot be completely disregarded as a *possible* factor in the high levels of

¹⁷⁵ Section 2.355 Affidavit ¶ 7.

¹⁷⁶ *Id.* ¶ 8. Contrary to Ms. Burton's assertion that the “process that produced the GEIS” was not a public process, the rulemaking codifying the generic categorization of environmental issues for purposes of license renewal was a notice-and-comment rulemaking, offering the public an opportunity to have input to the rule. *See* Proposed Rule, Environmental Review for Renewal of Operating Licenses, 56 Fed. Reg. at 47,016; Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. at 28,467. In addition to the traditional notice-and-comment process, the NRC also conducted a number of public workshops and meetings to solicit public input. As part of this rulemaking, the NRC determined that the GEIS and rule will be subject to periodic review and revision. *Id.* at 28, 468.

¹⁷⁷ Section 2.355 Affidavit ¶ 14.A.

strontium-90 found in baby teeth near the plant and the correlation found between high strontium-90 levels and elevated cancer incidences in the communities closest to the plant.”¹⁷⁸

And finally, regarding this factor, the Affidavit states that there have been leaks at the Indian Point facility since publication of the GEIS in 1996 and a “prospect for continued and/or worsening leakages” in the period of renewal which needs to be considered.¹⁷⁹

As noted above, the Mangano declaration and related report, upon which admission of CRORIP’s contention rests, make clear that the issue CRORIP seeks to raise is generic in nature, and that there is nothing unique to this license renewal proceeding that warrants waiver of the categorization of this issue as Category 1. For that matter, the Burton Affidavit does not explicitly suggest otherwise. Mr. Mangano has advanced the same fundamental hypothesis and underlying data in connection with numerous licensing actions throughout the country. While here, he references Indian Point, his bottom line remains the same: radiation releases from nuclear power plants operating in conformance with NRC regulations purportedly can be correlated with increased incidence of cancer. Thus, similar to the emergency planning issue in *Millstone*,¹⁸⁰ it is plain that this issue, to the extent it may have any validity, is not unique here. Moreover, other than unsupported speculation regarding releases in the future and superficial citation to Entergy’s ER,¹⁸¹ there is nothing substantive put forward by CRORIP to make this issue relevant to operation of Indian Point during a period of license renewal.

Notably, Entergy’s most recent reports—the 2006 Annual Radioactive Effluent Release Report and Annual Radiological Environmental Operating Report for 2006,¹⁸² submitted to the

¹⁷⁸ *Id.* ¶ 14.B (emphasis added).

¹⁷⁹ *Id.* ¶ 14.C.

¹⁸⁰ CLI-05-24, 62 NRC at 561.

¹⁸¹ The ER is Appendix E to the LRA.

¹⁸² See ER § 4.23.3, at 4-85 (Cumulative Radiological Impacts).

NRC in April 2007 and May 2007, respectively—show no instance where Indian Point Units 1, 2, and 3 exceeded NRC requirements during that operating period. In fact, the Annual Radiological Environmental Operating Report for 2006 concludes: “the levels of radionuclides in the environment surrounding Indian Point were within the historical ranges, i.e., previous levels resulting from natural and anthropogenic sources for the detected radionuclides. Further, Indian Point operations in 2006 did not result exposure [sic] to the public greater than environmental background levels.”¹⁸³ “Plant related radionuclides were detected in 2006; however, residual radioactivity from atmospheric weapons tests and naturally occurring radioactivity were the predominant sources of radioactivity in the samples collected. Analysis of the 2006 REMP [Radiological Environmental Monitoring Program] sample results supports the premise that radiological effluents were well below regulatory limits.”¹⁸⁴ Nothing provided by CRORIP is to the contrary.

As the Commission stated in *Millstone*:

*Issues that have relevance during the term of operation under the existing operating license as well as license renewal would not be admissible under the new provision of § 2.758 [now § 2.335] because there is no unique relevance of the issue to the renewal term.*¹⁸⁵

Mr. Mangano’s declaration, while including some Indian Point-specific information, in the end, is based on the same dated information he provided in support of other unsuccessful attempts to have a similar contention admitted in other proceedings (including license renewal proceedings)

¹⁸³ Annual Radiological Environmental Operating Report for 2006, at 1-2, available at ADAMS Accession No. ML071420088.

¹⁸⁴ *Id.* at 2-2.

¹⁸⁵ *Turkey Point*, CLI-05-24, 62 NRC at 561 (citing Final Rule, Nuclear Power Plant Renewal, 56 Fed. Reg. at 64,961-62 (emphasis in original)).

in other areas of the country. Now, however, his information is even more dated, as demonstrated above in Section IV.C.

Mr. Mangano's report includes an amalgam of disassociated "facts" drawn, in some cases, from assessments of the effects of atomic bombs and weapons-testing conducted many decades ago and assessments of beyond design basis accidents/severe accidents including terrorist attacks.¹⁸⁶ This information is then strung together with data annually reported by Entergy, to show the occurrence of releases of various routine radionuclides over time; releases which, not surprisingly, are subject to fluctuation. (Mr. Mangano does not suggest, though, that while subject to fluctuation, these releases exceeded regulatory limits.) From this, and without any further support or, for that matter, qualification to offer the opinion, he then leaps to the unsupported conclusion that "Indian Point is more vulnerable to a meltdown from mechanical failure than most reactors because of its age The reactors are also vulnerble to a meltdown due to its parts corroding as the plant ages and as the reactors operate much more of the time in recent years" ¹⁸⁷ Such gross speculation has been¹⁸⁸ and should be summarily rejected.

Moreover, Mr. Mangano's analyses and hypotheses with respect to health effects have been previously rejected by the NRC,¹⁸⁹ and discredited by the State of New Jersey, Commission on Radiation Protection, Department of Environmental Protection.¹⁹⁰ The latter, set out in a

¹⁸⁶ See Mangano Report, §§ II. A-B, III.B, IV, V.

¹⁸⁷ See Mangano Report, § II.B.

¹⁸⁸ See McGuire, LBP-02-04, 55 NRC at 85-87; Millstone, LBP-04-15, 60 NRC at 90-91; Millstone, CLI-04-36, 60 NRC at 637-38; Millstone, LBP-01-10, 53 NRC at 273; Millstone, CLI-01-24, 54 NRC at 349.

¹⁸⁹ See Letter from Christopher L. Grimes, Program Dir., License Renewal and Environmental Impacts, Division of Regulatory Improvements Programs, Office of Nuclear Reactor Regulation, NRC, to Dr. Jerry Brown, Radiation and Public Health Project (Jan. 15, 2002) (regarding comments provided by the Radiation and Public Health Project in connection with the Turkey Point license renewal), available at ADAMS Accession No. ML020150511.

¹⁹⁰ See Letter from Dr. Julie Timins, Chair, Comm. on Radiation Protection, to N. J. Gov. Jon Corzine, (Jan. 18, 2006) (regarding state funding of the Radiation and Public Health Project for further analysis of strontium-90 in

44-page report (which includes two earlier assessments of the Tooth Fairy Project and of the analyses and data employed) goes on at some length to examine significant and material flaws in the study, and refute its findings. In light of the foregoing, his report cannot provide a sufficient basis for CRORIP's Petition in this proceeding.

Likewise, Dr. Caldicott's declaration, but for the sweeping generalization in Paragraph 8 that everything in the following paragraphs of her declaration applies to Indian Point, and the essentially irrelevant reference to a February 2000 steam generator leak in Paragraph 25, is, at bottom, bereft of specific information regarding Indian Point or the NRC's requirements for license renewal. Rather, Dr. Caldicott's declaration is, in essence, a generic tutorial with respect to radiation and related medical hazards.¹⁹¹ Moreover, notwithstanding Dr. Caldicott's credentials, her expertise does not lend support to her allegations regarding future failures of an operational nature that she suggests might occur in the renewal period.¹⁹²

In short, CRORIP has failed to satisfy the requirements of 10 C.F.R. § 2.335. While the Section 2.335 Petition is accompanied by the affidavit of Nancy Burton, that affidavit falls far short of the showing necessary to justify the requested waiver. Without any credible substantive support, the Section 2.335 Petition in superficial terms asserts (1) a policy rationale for considering radiation exposure—that failure to consider such exposures “simply buries the issue” (Section 2.335 Petition ¶ 14.A.),¹⁹³ and (2) unsupported “facts”—strontium-90 found in baby teeth and its purported correlation to elevated cancer incidences, “leaks of radioactive material

baby teeth of children living near the Oyster Creek Nuclear Generating Station in New Jersey), available at ADAMS Accession No. ML060410476.

¹⁹¹ See Caldicott Declaration ¶¶ 8, 9-23.

¹⁹² See Caldicott Declaration ¶ 24-25.

¹⁹³ “By the same token, a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue. See *Peach Bottom*, ALAB-216, 8 AEC at 20-21 & n.33.” *Private Fuel Storage L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998).

have occurred at the plant since GEIS was enacted [sic] in 1996,” and the claim that there is a “prospect for continued and/or worsening leakages in the relicensing term.” These superficial assertions do not constitute adequate bases for waiver. Further, as discussed earlier, the basis put forward by CRORIP for seeking relief from the existing rule makes clear the generic nature of the matter. For that reason, a petition for rulemaking under 10 C.F.R. § 2.802, not a petition under 10 C.F.R. § 2.335, to allow a challenge to the regulation in a specific adjudication, would have been the appropriate course to follow.¹⁹⁴

(ii) Petitioner's Claim That The “Reference Man” Dose Model Should Not Be Used Should Be Rejected

In regard to use of the “Reference Man” model, CRORIP contends that it improperly excludes from consideration the health effects on women and children.¹⁹⁵ On its face, the foregoing is a generic issue not amenable to waiver. More significantly, the use of a given model is addressed only in the affidavit of Nancy Burton, and not in the declarations of those who might arguably have the requisite expertise to address the matter. This is clearly insufficient to satisfy the requirements that “*The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested.*”¹⁹⁶

Accordingly, to the extent CRORIP believes a change to the underlying regulation—10 C.F.R. Part 51, Table B-1—is called for because of new information, the appropriate course would be through a petition for rulemaking pursuant to 10 C.F.R. § 2.802.¹⁹⁷ In sum, the Section 2.335 Petition is patently inadequate and should be denied.

¹⁹⁴ *Turkey Point*, CLI-01-17, 54 NRC at 12 (2001).

¹⁹⁵ Burton Affidavit ¶ 16-19.

¹⁹⁶ 10 C.F.R. § 2.335(b)(emphasis added).

¹⁹⁷ *See Millstone*, CLI-05-24, 62 NRC at 561.

2. CRORIP's Petition to Intervene Fails to Satisfy 10 C.F.R. § 2.309

As fully discussed above in the context of CRORIP's Section 2.335 Petition, EC-1 proposes consideration of an issue which is beyond the scope of this proceeding. It presents a generic issue decided by rule not to warrant specific evaluation in the context of an individual license renewal proceeding.¹⁹⁸

But even beyond being a challenge to the regulation, the proposed contention also fails because it lacks the requisite specificity with respect to the subject matter of this proceeding—impacts attributable to the operation of the Indian Point facilities in the period of license renewal.¹⁹⁹ Stripped to its essence, this contention is nothing more than a challenge to the Commission's permissible doses in 10 C.F.R. Part 20, which simply cannot be contested in an individual license renewal proceeding such as this.²⁰⁰ Moreover, given the generic nature and questionable reliability of its underlying information, CRORIP has not in any way presented any "new and significant information" that must be addressed in the ER for license renewal.²⁰¹

D. CRORIP's Proposed Adoption of Contentions Must Be Rejected

Finally, CRORIP states that it "supports and adopts the contentions of the Attorney General of New York, Riverkeeper, Inc. and the Attorney General of Connecticut, all as filed on November 30, 2007, and the contentions of Hudson River Sloop Clearwater, Inc., PHASE and FUSE, Inc., all as filed on December 10, 2007."²⁰² As provided by 10 C.F.R. § 2.309(f)(3):

... If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the

¹⁹⁸ See 10 C.F.R. Part 51, App. B to Subpart A, Tbl. B-1.

¹⁹⁹ See *Millstone*, CLI-05-24, 62 NRC at 561.

²⁰⁰ 10 C.F.R. § 2.335(a); see also *Turkey Point*, CLI-01-17, 54 NRC at 3.

²⁰¹ See 10 C.F.R. § 51.53(c)(3)(iv).

²⁰² Petition at 4.

sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

Thus, while there may be circumstances in which a petitioner may adopt contentions of another petitioner,²⁰³ CRORIP's casual assertion satisfies neither the requirements for adoption in the regulation, nor Commission precedent, for a number of reasons.

First, contrary to 10 C.F.R. § 2.309(f)(3), CRORIP's petition fails to reflect any agreement with any of the other petitioners regarding adoption, and designation of a single authorized representative. It is, therefore, entirely unclear whether any other party to this proceeding wants to represent CRORIP on such matters, or vice versa.

Second, and more fundamentally, CRORIP has not addressed other aspects pertinent to adoption of contentions; in particular, CRORIP does not discuss whether it may participate as a party to this proceeding by simply adopting contentions of another petitioner. This underlying issue was addressed by the Commission in a license transfer proceeding involving Indian Point, Units 1 and 2, in which the participants, the Town of Cortlandt and Citizens Awareness Network, sought to adopt each other's contentions.²⁰⁴ There, the Commission held that where *both petitioners have independently met* the requirements for participation, the Presiding Officer may provisionally permit petitioners to adopt each other's issues early in the proceeding.²⁰⁵ If the primary sponsor of a contention withdraws from the proceeding, then the remaining petitioner must demonstrate that it can independently litigate the issue. If the petitioner cannot make such a showing, then the issue is subject to dismissal prior to hearing.²⁰⁶

²⁰³ 10 C.F.R. § 2.309(f)(3).

²⁰⁴ See *Consol. Edison Co.*, (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 131-33 (2001).

²⁰⁵ *Id.* at 132.

²⁰⁶ *Id.*

Third, incorporation also must be denied to parties who merely establish standing and then attempt to incorporate issues of other petitioners.²⁰⁷ As especially pertinent here, incorporation by reference is improper in cases where a petitioner has not independently established compliance with requirements for admission on the basis of its own pleadings by submitting at least one admissible contention—the *sine qua non* for any consideration of adoption of contentions.²⁰⁸ As the Commission indicated, “[o]ur contention-pleading rules are designed, in part, ‘to ensure 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.’”²⁰⁹ In this proceeding, it is clear that CRORIP has failed to submit an admissible contention of its own, and, accordingly, cannot adopt contentions sponsored by others.

V. CONCLUSION

As discussed above, Entergy does not contest that CRORIP has standing to represent its members. CRORIP, however, has failed to demonstrate that a 10 C.F.R. § 2.335 waiver of Table B-1, Appendix B to Subpart A of 10 C.F.R. Part 51, insofar as it categorizes routine radiation exposures as a Category 1 issue and utilizes the “Reference Man” standard, is warranted. CRORIP has also failed to present an admissible contention pursuant to 10 C.F.R. § 2.309. In

²⁰⁷ *Id.* at 133.

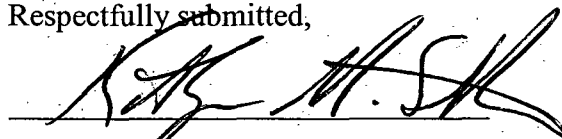
²⁰⁸ *Id.*

²⁰⁹ *Id.* (citing *Oconee*, CLI-99-11, 49 NRC at 334).

addition, CRORIP has failed to satisfy the requirements for intervention as a matter of discretion.

Accordingly, CRORIP's Petition should be denied in its entirety.

Respectfully submitted,



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1-WA/2876832

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

Before Administrative Judges:

Lawrence G. McDade, Chair

Dr. Richard E. Wardwell

Dr. Kaye D. Lathrop

In the Matter of)	Docket Nos. 50-247-LR and 50-286-LR
)	
ENTERGY NUCLEAR OPERATIONS, INC.)	ASLBP No. 07-858-03-LR-BD01
)	
(Indian Point Nuclear Generating Units 2 and 3))	January 22, 2008
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Answer of Entergy Nuclear Operations, Inc. Opposing Request For Hearing, Petition To Intervene And Petition For Waiver Of Connecticut Residents Opposed To Relicensing Of Indian Point " were served this 22nd day of January 2008 upon the persons listed below, by first class mail and e-mail as shown below. Due to the size of the multiple exhibits to be filed in this proceeding, the exhibits have been provided in hard copy only, via first class mail.

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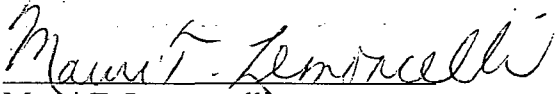
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