RAS 14976

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)	

ANSWER OF ENTERGY NUCLEAR OPERATIONS, INC. OPPOSING FRIENDS UNITED FOR SUSTAINABLE ENERGY'S SUPERCEDING PETITION TO INTERVENE AND REQUEST FOR HEARING

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Lawrence G. McDade, Chair
Dr. Richard E. Wardwell
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ENTERGY NUCLEAR OPERATIONS, INC.	)	ASLBP No. 07-858-03-LR-BD01
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(Indian Point Nuclear Generating Units 2 and 3	)	January 22, 2008

ANSWER OF ENTERGY NUCLEAR OPERATIONS, INC. OPPOSING FRIENDS UNITED FOR SUSTAINABLE ENERGY'S SUPERCEDING PETITION TO INTERVENE AND REQUEST FOR HEARING

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 "Superceding Formal Petition to Intervene, Formal Request for Hearing, and Contentions," filed on or about December 24, 2007 ("Petition"), by Friends United for Sustainable Energy, USA ("FUSE"). 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, 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 in its entirety.

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] That Notice advised:

> Requests for a hearing or petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2.[3]

Since publication of the Notice, FUSE has submitted no fewer than five petitions to intervene, has been repeatedly admonished regarding adherence to the Commission's Rules of Practice and basic standards of decorum, and has seen its original representative barred from this proceeding.[4]

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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 *Id.*

4 *See* Motion of Entergy Nuclear Operations, Inc. to Strike Superceding Request for Hearing and Petition to Intervene by Friends United for Sustainable Energy, USA (Jan. 10, 2008); *see also* Licensing Board Order (Administrative Matters and Directing Parties Attention to Requirements of Proper Service) (Oct. 29, 2007); Licensing Board Order (Denying an Extension of Time Within Which to File Requests for Hearing) (Nov. 27, 2007); Licensing Board Order (Denying Entergy's Motion to Strike But Sua Sponte Striking FUSE's Multiple Requests for Hearing) (Nov. 28, 2007); Licensing Board Order (Censure of Sherwood Martinelli) (Dec. 3, 2007), *aff'd.* CLI-07-28 (Dec. 12, 2007). By filing this Answer, Entergy does not withdraw or otherwise waive its Motion to Strike FUSE's Superceding Petition, filed on January 10, 2008, nor alter its position with respect to a similar motion filed by the NRC Staff on January 4, 2008, as supplemented on January 9, 2008.

On October 1, 2007, the Commission extended the period for filing requests for hearing until November 30, 2007.[5] In accordance with that extension, FUSE, on November 30, 2007, filed its Petition to Intervene in this proceeding. On December 13, 2007, the Licensing Board issued an Order (Barring Sherwood Martinelli [to that point, FUSE's representative] From Further Participation In This Proceeding), based on counsel's reply to the Board's December 3, 2007 Order (Censure of Sherwood Martinelli). In its December 13th Order, the Board also directed that:

> in order to be considered for intervener status in this proceeding, FUSE will complete the following actions in a revised Superceding Request for Hearing and Petition for Leave to Intervene and submit it to this Board no later than December 24, 2007: 1) clearly label the revised petition as the "Superceding Request for Hearing and Petition to Intervene," with each page numbered, and an index listing all of the attached exhibits; 2) modify the petition to reflect the new representation (e.g., changing, as needed the first person pronouns) and to delete or correct language not meeting common standard of practice and decorum; 3) verify that all proffered contentions are numbered sequentially; and 4) certify that the numbered contentions are the only ones to be considered by the parties and the Board.[6]

The Board further cautioned FUSE that:

> we expressly advise FUSE that this is not a license to add additional contentions, to substantively amend contentions previously filed, or to develop additional bases in support of those previously submitted contentions. Rather, it is only an opportunity to make clerical and administrative corrections to the Request for Hearing and Petition to Intervene that was filed on November 30, 2007, so that FUSE's Superceding Petition will be in a form that is acceptable to the Board, and the procedure will be fair to the other participants in this litigation.[7]

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[5] 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).

[6] Licensing Board Order (Barring Sherwood Martinelli From Further Participation In This Proceeding), at 5 (Dec. 13, 2007) (unpublished).

[7] *Id.* at 5 n.12.

As noted above, FUSE filed its Petition on or about December 24, 2007,[8] to which Entergy now responds in accordance with the Board's schedule.[9]

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. In Section III below, Entergy acknowledges that the Petitioner has demonstrated standing to participate as a party to this proceeding pursuant to 10 C.F.R. § 2.309(d)(1), but shows that FUSE has not demonstrated that it is entitled to discretionary intervention under 10 C.F.R. § 2.309(e). Section IV of this Answer describes the standards governing the admissibility of proposed contentions and demonstrates that none of Petitioner's proposed contentions is admissible. 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, 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.[10] Thus, petitioner must demonstrate either that it satisfies the traditional elements of standing, or that it has presumptive standing based on

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[8] Notwithstanding the Board's very explicit direction, FUSE's Superceding Petition fails to comply with the Board's December 13, 2007 Order and basic standards of decorum, by, for example, comparing Entergy to "Adolph Hitler" and charging the NRC and Entergy with "prostitut[ing] the license renewal submittal . . ." Superceding Petition at 153, 277. FUSE also violated the Board's Order prohibiting substantial amendments to its Petition. *See generally* Entergy's Motion to Strike FUSE's Superceding Petition, and note 4 above.

[9] The Board directed Entergy and the NRC Staff to file their answers to all timely petitions to intervene on or before January 22, 2008. *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)(Jan. 2, 2008).

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

geographic proximity to the proposed facility.[11] 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."[12] 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.[13] 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."[14] The injury must be "concrete and particularized," not "conjectural" or "hypothetical."[15] As a result, standing will be denied when the threat of injury is too speculative.[16] Additionally, the alleged "injury in fact" must lie within "the zone of interests" protected by the statutes governing the proceeding either the AEA or the National Environmental Policy Act of 1969, as amended

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

[12] *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).

[13] *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, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1998).

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

[15] *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994) (citations omitted).

[16] *Id.*

("NEPA").[17] The injury in fact, therefore, must generally involve potential radiological or environmental harm.[18]

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.[19] 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."[20] The relevant inquiry is whether a cognizable interest of the petitioner might be adversely affected by one of the possible outcomes of the proceeding.[21]

Finally, each petitioner is required to show that "its actual or threatened injuries can be cured by some action of the [NRC]."[22] 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."[23]

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 of radioactivity.[24] "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

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

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

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

20 *Id.*

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

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

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

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

offsite but within a certain distance of that facility.[25] 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.[26] The proximity presumption, which has been defined as being within a 50-mile radius of plants, applies to license renewal cases as well.[27]

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).[28] 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.[29] General environmental and policy interests are insufficient to confer organizational standing.[30] Thus, for example, an organization's assertion "that it has an interest in state and federal environmental laws and in the land, water, air, wildlife, and other natural resources that would be affected" is insufficient to establish standing.[31]

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25 *Id.* (citations omitted).

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

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

28 *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)).

29 *See Ga. Tech. Research Reactor*, CLI-95-12, 42 NRC at 115.

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

31 *Id.* at 251-52.

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.[32] A partnership, corporation or unincorporated association may be represented by a duly authorized member of officer, or by an attorney-at-law.[33] Any person appearing in a representative capacity must file with the Commission a written notice of appearance.[34] 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.[35]

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 (preferably by affidavit) that the organization is authorized by that member to request a hearing on behalf of the member.[36] Where the affidavit of the member is devoid of any statement that he or she wants and has authorized the organization to represent his interests, the Board should not infer such authorization.[37]

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[32] *See, e.g., Ga. Tech. Research Reactor*, CLI-95-12, 42 NRC at 115 (citation omitted).

[33] *See* 10 C.F.R. § 2.314(b).

[34] *See id.*

[35] *See id.*

[36] *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-00-6, 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).

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

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.[38] 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;

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.

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[38] 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.").

Of these criteria, the primary consideration concerning discretionary intervention is the first factor—assistance in developing a sound record.[39] The petitioner has the burden to establish that the factors in favor of intervention outweigh those against intervention.[40]

B. Petitioner's Standing to Intervene

FUSE, in support of the required showing of standing, provides the Declarations of Remy Chevalier, John Lekay, Heather DeMelo, Jackie Jacques, and Bill Thomas.[41] The Petition also argues that FUSE has standing "on its own behalf," based on the location of its headquarters at 351 Dyckman Street, Peekskill, New York, and the statement that "FUSE has members . . . who make their residences, places of occupation and recreation within fifty (50) miles of Indian Point."[42]

Each of the five declarations is deficient. First, none of the five declarants state that FUSE represents their interests in this proceeding, as required under 10 C.F.R. § 2.309(d)(1) and Commission precedent.[43] Each of the declarations has additional deficiencies. Remy Chevalier's and John Lekay's declarations do not state that the declarants are members of FUSE.[44] Ms. DeMelo's declaration states that she lives 58.6 miles from IPEC; *i.e.*, outside the

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[39] *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).

[40] *See Nuclear Eng'g*, ALAB-473, 7 NRC at 745 (requiring potential discretionary intervenor to show "that it is both willing and able to make a valuable contribution to the full ruling of the issues . . . in this proceeding").

[41] FUSE Exh. 81-85, respectively.

[42] Superceding Petition at 32.

[43] *See* FUSE Exh. 81-85; *Monticello*, CLI-00-14, 52 NRC 37 (2000); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000). The statement on pages 464 through 467 of the Petition that "the undersigned citizens . . . hereby endorse and cosign onto as intervenors the Formal Request for Hearing, and Petition to Intervene (with contentions) being presented *by Sherwood Martinelli*, and FUSE USA" is also deficient in that there are no signatures associated with this document. (Emphasis added.)

[44] FUSE Exh. 81-82.

50-mile radius.[45] Ms. Jacques' and Mr. Thomas' declarations are neither signed nor notarized, and they do not state that the declarants are members of FUSE.[46] Thus, none of the five declarations is sufficient, and FUSE has not demonstrated representational standing, as required by 10 C.F.R. § 2.309(d)(1).

FUSE has, however, demonstrated organizational standing in its own right. FUSE asserts that it has standing based on the purported "central office" of FUSE, located in Mr. Martinelli's home,[47] located about 3 miles from Indian Point, and that a radiological release would impact the value of the property and interfere with the organization's ability to conduct its operations.[48] FUSE's vague statements that it "also has numerous members that reside in the Indian Point immediate vicinity,"[49] on the other hand, cannot support a finding of standing as there is no meaningful way of judging the standing of these "numerous" unidentified individuals. Thus, FUSE has not demonstrated that it represents the interests of anyone, much less any individual in geographic proximity to IPEC.[50]

FUSE also has requested "discretionary intervention."[51] FUSE has not, however, demonstrated that it is entitled to discretionary intervention pursuant to 10 C.F.R. § 2.309(e). FUSE's request is based solely on its naked assertions that it meets some of the discretionary intervention factors.[52] FUSE presents no evidence to support its assertions, and as described

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45 FUSE Exh. 83.

46 FUSE Exh. 84-85.

47 Superceding Petition at 33.

48 *See Georgia Tech. Research Reactor*, CLI-95-12, 42 NRC at 115 (1995).

49 *Id.* at 33.

50 *See, e.g., Monticello*, CLI-00-14, 52 NRC at 37 (requiring an organization to demonstrate that it is authorized by a member to request a hearing on behalf of that member).

51 Superceding Petition at 34-35.

52 *Id.*

further below, does not carry its burden of demonstrating that it should be permitted to intervene without an admissible contention.[53]

As explained in Section IV.D, below, FUSE has not submitted an admissible contention, and has instead raised a variety of issues that are based wholly on unsupported assertions and that do not controvert the LRA. Moreover, many of FUSE's issues are outside the scope of this proceeding. In short, contrary to FUSE's assertion, its Superceding Petition does not show that "[i]t is well versed in the field of nuclear energy and safety."[54] Accordingly, FUSE has not met its burden with regard to the most important of the discretionary intervention factors: assistance in developing a sound record. Although FUSE asserts that it has "property interests," it does not further address discretionary intervention factors (a)(2) (property or financial interests) and (a)(3) (possible effect of any decision).

The factors weighing against allowing discretionary intervention also cut against FUSE. As explained in Section IV.D, below, many of the concerns raised by FUSE are generic in nature and/or relate to current IPEC operations. Thus, FUSE has other, more appropriate, means available to protect its interests. FUSE's attempts to bootstrap itself into this proceeding, by copying contentions submitted by other parties, also belies FUSE's claim that its interests are "unique."[55] Finally, because, as explained in Section IV.D, below, FUSE's Superceding Petition raises inadmissible issues, its participation as a party likely would lead to additional similar attempts to inappropriately broaden the issues or delay the proceeding.

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[53] *Nuclear Eng'g*, ALAB-473, 7 NRC at 745.

[54] Superceding Petition at 34.

[55] *See generally* WestCAN Petition for Leave to Intervene with Contentions and Request for Hearing (Dec. 10, 2007) (presenting similar contentions and, in many cases, similar text to the contentions in FUSE's Superceding Petition).

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 Adequate Basis

As explained above, to intervene in an NRC licensing proceeding, a petitioner must proffer at least one admissible contention."[56] 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.[57] 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 of its contentions and demonstrate that a genuine dispute exists within the scope of this proceeding."[58] 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."[59]

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

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[56] *See* 10 C.F.R. § 2.309(a).

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

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

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

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.[60]

The purpose of the contention rule is to "focus litigation on concrete issues and result in a clearer and more focused record for decision."[61] 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."[62] Thus, the rules on contention admissibility are "strict by design."[63] Failure to comply with any one of the six admissibility criteria is grounds for the dismissal of a contention.[64]

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."[65] The petitioner must "articulate at the outset the specific issues [it] wish[es] to litigate as a prerequisite to gaining formal admission as parties."[66] Namely, an "admissible contention must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]."[67] The contention rules "bar contentions where petitioners have only 'what amounts to generalized suspicions, hoping to substantiate them later.'"[68]

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

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

62 *Id.*

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

64 *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).

65 10 C.F.R. § 2.309(f)(1)(i).

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

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

68 *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).

b. Petitioner Must Briefly Explain the Basis for the Contention

A petitioner must provide "a brief explanation of the basis for the contention."[69] This includes "sufficient foundation" to "warrant further exploration."[70] Petitioner's explanation serves to define the scope of a contention, as "[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases."[71] The Board, however, must determine the admissibility of the contention itself, not the admissibility of individual "bases."[72]

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."[73] 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.[74] (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.[75] Any contention that falls outside the specified scope of the proceeding must be rejected.[76]

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,

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69 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).

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

71 *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).

72 *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'").

73 10 C.F.R. § 2.309(f)(1)(iii).

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

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

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

absent a waiver, "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding."[77] 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.[78] Similarly, any contention that collaterally attacks applicable statutory requirements or the basic structure of the NRC regulatory process must be rejected by the Board as outside the scope of the proceeding.[79] Accordingly, a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue.[80]

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."[81] 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.'"[82] In this regard, "[e]ach contention must be one that, if proven, would entitle the petitioner to relief."[83] Additionally, contentions alleging an error or

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77 *See* 10 C.F.R. § 2.335(a).

78 *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).

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

80 *See Peach Bottom*, ALAB-216, 8 AEC at 20-21, 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.

81 10 C.F.R. § 2.309(f)(1)(iv).

82 *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.

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

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.[84]

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.[85] 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.[86]

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.[87] The petitioner must explain the significance of any factual information upon which it relies.[88]

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."[89] Any supporting material provided by a petitioner, including those portions thereof not relied upon, is subject to Board scrutiny, "both

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[84] *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).

[85] *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).

[86] *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).

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

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

[89] *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).

for what it does and does not show."[90] The Board will examine documents to confirm that they support the proposed contention(s).[91] A petitioner's imprecise reading of a document cannot be the basis for a litigable contention.[92] Moreover, vague references to documents do not suffice—the petitioner must identify specific portions of the documents on which it relies.[93] The mere incorporation of massive documents by reference is similarly unacceptable.[94]

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."[95] Conclusory statements cannot provide "sufficient" support for a contention, simply because they are made by an expert.[96] 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.'"[97]

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[90] *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).

[91] *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).

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

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

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

[95] *Private Fuel Storage, L.L.C.*, 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 *Private Fuel Storage,* LBP-98-7, 47 NRC at 181).

[96] *See American Centrifuge Plant*, CLI-06-10, 61 NRC at 472.

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

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,"[98] the Commission has stated that the petitioner must "read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report, state the applicant's position and the petitioner's opposing view," and explain why it disagrees with the applicant.[99] If a petitioner does not believe these materials address a relevant issue, the petitioner is to "explain why the application is deficient."[100] A contention that does not *directly controvert a position taken by the applicant in the application* is subject to dismissal.[101] 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.[102]

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98 10 C.F.R. § 2.309(f)(1)(vi).

99 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.

100 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.

101 *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).

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

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."[103] 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.

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."[104] In its 2001 *Turkey Point* decision, the Commission explained in detail the scope of its license renewal review, its regulatory oversight process, and the meaning of "current licensing basis," or "CLB."[105] Key aspects of that decision and of other significant license renewal decisions are summarized below.

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

[104] *Turkey Point*, CLI-01-17, 54 NRC at 7.

[105] *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 Updated Final Safety Analysis Report ("UFSAR") supplement. *See* 10 C.F.R. § 54.21(b). The license renewal 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 ("AMR") or evaluation of TLAAs in accordance with § 54.21." 10 C.F.R. § 54.37(b).

In brief, under the governing regulations in Part 54, the review of license renewal applications is confined to matters relevant to the extended period of operation requested by the applicant. 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 ("TLAAs").[106] In addition, the review of environmental issues is limited by rule by the generic findings in NUREG-1437, "Generic Environmental Impact Statement ("GEIS") for License Renewal of Nuclear Plants."[107]

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."[108] The Commission has specifically limited its license renewal safety review to the matters specified in 10 C.F.R. §§ 54.21 and 54.29(a)(2), which focus on the management of aging of certain systems, structures and components, and the review of time-limited aging analyses.[109] 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

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[106] *See* 10 C.F.R. §§ 54.21(a) and (c), 54.29 and 54.30.

[107] *See id.* §§ 51.71(d) and 51.95(c).

[108] *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.

[109] *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).

level.'"[110] 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.[111]

The NRC's license renewal regulations thus deliberately and sensibly reflect the distinction between *aging management issues*, on the one hand, and the *ongoing regulatory process* (*e.g.*, security and emergency planning issues) on the other.[112] The NRC's longstanding 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.[113] As 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.[114]

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

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[110] *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 id.* at 7-8.

[111] *Id.* at 7.

[112] 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.*

[113] *See* Final Rule, Nuclear Power Plant License Renewal; Revisions, 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.

[114] *Turkey Point*, CLI-01-17, 54 NRC at 9.

programs" would be "both unnecessary and wasteful."[115] 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."[116]

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 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 environmental report ("ER") that complies with the requirements of Subpart A of Part 51.[117]

An IPA is a licensee assessment reviewed by the NRC that demonstrates that a nuclear power plant's structures and components requiring 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 . . . ."[118] Only passive, long-lived structures and components are subject to AMR.[119] 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

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[115] *Id.* at 7.

[116] *Id.* at 9.

[117] 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.

[118] 10 C.F.R. § 54.29(a).

[119] *See id.* § 54.21(a)(1).

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.[120] 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, such as 60 years; *or* (iii) otherwise demonstrate that the effects of aging will be adequately managed during the renewal term.[121]

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.[122] The GALL Report also contains recommendations concerning specific areas for which existing programs should be augmented for license renewal.[123] Thus, programs that are consistent with the GALL Report are generally accepted by the Staff as adequate to meet the license renewal rule.[124]

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[120] *See id.* § 54.3.

[121] *See id.* § 54.21(c)(1).

[122] *See* GALL Report, Vol. 1, at 1.

[123] *See id.* at 4.

[124] *See id.* at 3.

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.[125] Likewise, the question of whether 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."[126] In this regard, the ASLB recently stated that "monitoring is not proper subject matter for license extension contentions."[127] 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.*"[128]

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.[129] 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

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[125] *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.").

[126] *Oyster Creek*, LBP-07-17 (slip op. at 14 n.17). An example of an ongoing NRC inspection and enforcement activity is the Reactor Oversight Process ("ROP").

[127] Order Denying Pilgrim Watch's Motion for Reconsideration, ASLBP No. 06-848-02-LR at 5 (Jan. 11, 2008) (citations omitted)

[128] *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 561 (2005).

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

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.[130]

Generic issues are identified in the GEIS as "Category 1" impacts.[131] 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."[132] 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."[133] 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,[134] 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.[135] 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

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[130] *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.

[131] GEIS, Vol. 1 at 1-5 to 1-6.

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

[133] *Id.*

[134] 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).

[135] 10 C.F.R. § 51.53(c)(3)(ii).

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.[136]

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.[137] 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.[138] 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.[139]

This definition is consistent with NEPA caselaw.[140]

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.[141] In short, when

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[136] 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.

[137] 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).

[138] 10 C.F.R. § 51.53(c)(3)(ii), (iv).

[139] 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").

[140] *See, e.g., 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)).

[141] *See Entergy Nuclear Vermont 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*

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."[142] The NRC added the provision in response to suggestions by the Environmental Protection Agency ("EPA") and the Council on Environmental Quality ("CEQ") that the NRC expand "the framework for consideration of significant new information."[143] 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."[144] 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.[145] The Commission ultimately approved the changes to the proposed rule and specifically endorsed SECY-93-032.[146] The Statement of Considerations for the final rule refers to SECY-93-032.[147]

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).

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

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

[144] SECY-93-032, Memorandum from James M. Taylor, Executive Director of 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).

[145] *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.

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

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

In *Turkey Point*, the Commission reaffirmed the forgoing conclusions in a formal adjudicatory decision.[148] There, the Commission summarized the appropriate procedural vehicles for "revisiting" generic environmental determinations relevant to license renewal:

> Our rules thus provide a number of opportunities for individuals to alert the Commission to *new and significant information* that might render a generic finding invalid, either with respect to all nuclear power plants or for one plant in particular. In the hearing process, for example, petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule. *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.[149]

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."[150] 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."[151] In fact, the U.S. Supreme Court has specifically upheld

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[148] *Turkey Point*, CLI-01-17, 54 NRC at 12, 22-23.

[149] *Id.* at 12 (emphasis added).

[150] *Vt. Yankee*, CLI-07-13, 65 NRC at 17-18; *see also Turkey Point*, CLI-01-17, 54 NRC at 12; *Vt. 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 (1st Cir.).

[151] *Vermont Yankee*, CLI-07-13, 65 NRC at 21.

the Commission's authority to discharge its responsibilities under NEPA through generic rulemaking.[152]

3. Waiver of Regulations Under Section 2.335

In order to seek waiver of a rule in a particular adjudicatory proceeding, a petitioner must submit a petition pursuant to 10 C.F.R. § 2.335 ("2.335 petition"). The requirements for a 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 or regulation was adopted.[153]

Further, such a petition,

> *must be accompanied by an affidavit* that identifies the specific aspect or aspects of the 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.[154]

If the petitioner makes a prima facie showing, then the Board shall certify the matter to the Commission.[155] If there is no prima facie showing, then the matter may not be litigated, and "the presiding officer may not further consider the matter."[156] In this regard, the recent

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[152] *See Balt. Gas & Elec. Co. 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.").

[153] 10 C.F.R. § 2.335(b).

[154] *Id.* (emphasis added).

[155] *See id.* § 2.335 (c), (d).

[156] *Id.* § 2.335(c).

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 satisfies each of the filing criteria: [157]

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."[158]

In summary, a Section 2.335 petition "can be granted only in unusual and compelling circumstances."[159]

C. Co-Sponsorship of Contentions and Incorporation by Reference

Pursuant to 10 C.F.R. § 2.309(f)(3), contentions may be sponsored by two or more requestors/petitioners. Specifically, 10 C.F.R. § 2.309(f)(3) states:

> If two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. 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 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.

10 C.F.R. § 2.309(f)(3). While the regulation acknowledges that two or more petitioners may co-sponsor a contention, it does not address whether the petitioner who seeks co-

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[157] *Millstone*, 62 NRC at 560 (emphasis added) (citing *Seabrook*, CLI-88-10, 28 NRC at 596-97).

[158] *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 at 597).

[159] *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).

sponsorship may be granted party status merely by incorporating contentions only by reference to another party's pleading.

The Commission, however, has addressed this issue. In a license transfer proceeding involving Indian Point, Units 1 and 2, two intervenors (Town of Cortland and Citizens Awareness Network (CAN)) sought to adopt each other's contentions.[160] 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.[161] If the primary sponsor of a contention withdraws from the proceeding, then the remaining petitioner must demonstrate that it can independently litigate the issue.[162] If the petitioner cannot make such a showing, then the issue is subject to dismissal prior to hearing.[163] Incorporation by reference also should be denied to parties who merely establish standing and then attempt to incorporate issues of other petitioners.[164]

Incorporation by reference would be improper in cases where a petitioner has not independently established compliance with requirements for admission in its own pleadings by submitting at least one admissible contention of its own.[165] 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.'"[166]

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

[161] *Id.* at 132.

[162] *Id.*

[163] *Id.*

[164] *Id.* at 133.

[165] *Id.*

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

D. FUSE's Proposed Contentions Are Not Admissible

FUSE's Superceding Petition contains no admissible contentions. Although each will be discussed below, it is worth noting at the outset two fatal deficiencies applicable to *all* of FUSE's contentions. First, FUSE's contentions are nearly devoid of specific citations to any portion of the Indian Point LRA or ER, and FUSE does not identify any specific deficiency in the LRA. A contention that does not *directly controvert a position taken by the applicant in the application* is subject to dismissal under 10 C.F.R. § 2.309(f)(1)(vi).[167] Second, FUSE's allegations lack appropriate references to documents or expert opinion, as required by 10 C.F.R. § 2.309(f)(1)(v). Rather, FUSE's contentions rely upon conjecture and unsupported assertions with occasional passing references to industry documents. This is despite the fact that FUSE provides a set of double-sided exhibits that fills nine three-ring binders and an Exhibits Index, not a page of which is tied or correlated to the proposed contentions.[168] Thus, all of FUSE's contentions are inadmissible because 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.'"[169] All of FUSE's contentions should be rejected for either or both of these reasons, as a threshold matter.

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[167] *See Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992) (emphasis added); *see also U.S. Army*, LBP-06-27, 64 NRC at 456.

[168] *Statement of Policy on Conduct of Adjudicatory Proceedings,* CLI-98-12, 48 NRC 18, 22 (1998)(providing that a petitioner seeking the admission of a contention, and 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.")

[169] *Muskogee*, CLI-03-13, 58 NRC at 203.

1. Proposed Contention 1 – "Entergy with the help and assistance of the NRC, in violation of their own Rules and Regulations, is wrongfully abridging the public's right to adequate availability of information necessary to fully and adequately participate in the License Renewal Process, therein negligently, egregiously and wantonly abridging our First Amendment rights to redress."[170]

In 25 pages of rambling discourse on how FUSE believes the NRC's Freedom of Information Act ("FOIA") process *should* work, Petitioner makes the following unsupported assertions and asks the Board to form from them a logical contention: (a) NRC does not properly limit licensee requests for withholding information from public disclosure under 10 C.F.R. § 2.390; (b) licensees generally, and Entergy in this case, abuse 10 C.F.R. § 2.390 by requesting nondisclosure of documents that FUSE believes should not be protected; (c) "gallant" (but unspecified) efforts on the part of FUSE's Director to obtain "the entire CLB" have been stymied by "brush offs, and refusals on the part of the NRC and Entergy"; (d) FOIA requests for the complete CLB for Indian Point Units 2 and 3 submitted by FUSE representatives have not produced all of the categories of documents to which FUSE believes it is entitled; and (e) every document referenced in the LRA becomes incorporated and must be made available to the public by the NRC.[171]

In making these points, FUSE asserts:

> [I]n the opinion of FUSE USA Entergy and the NRC in recent history have been acting in direct conflict of the regulatory rules and regulations when it comes to keeping documents outside of the public domain . . . We in this contention are not asking for a change of the rules and regulations, but asking that they be ENFORCED as written, and that the citizen stakeholder community surrounding Indian Point be given adequate access to

[170] The headings for the discussion of each contention on this Answer are quoted verbatim from FUSE's Superceding Petition.

[171] *See* Superceding Petition at 56-80.

> full library of documents necessary to review the application, and form our contentions.[172]

Late in its Petition, FUSE sums up Contention 1 as follows:

> This contention succinctly defines itself, alleges that Entergy and the NRC are not giving us adequate and fair access to the documents necessary to fully and completely review and discuss Entergy's License Renewal Application, and the adequacy of their proposed Aging Management and Safety Plans. Further this inability to gain full and complete access to the necessary documents is greatly inhibiting our ability to raise and defend our contentions in and [sic] adequate fashion, therefore defacto [sic] abridging our first amendment [sic] right to redress.[173]

Finally, FUSE includes a prayer for specific relief in this contention. It asks that the Board: (a) put in abeyance all matters related to Entergy's LRA, including this hearing, until all of its document access concerns have been "fully and completely adjudicated to the fullest extent of the law"; (b) hold open the time to request a hearing or petition to intervene until all of its FOIA requests have been resolved to its satisfaction and it has had sufficient time to digest those materials; and (c) order Entergy and the NRC to provide copies of all communications between them or generated during these hearings.[174]

Entergy opposes admission of Proposed Contention 1 on the grounds that (1) it lacks foundation, (2) is raises concerns beyond the scope of this proceeding, (3) fails to raise a genuine dispute with regard to any material issue of law or fact, and (4) seeks relief beyond the authority of this Board to grant, all contrary to 10 C.F.R. § 2.309(f)(1).

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[172] Superceding Petition at 61.

[173] *Id.* at 80.

[174] *Id.*

First, even if Petitioner's claims regarding access to non-public information were true, Petitioner was not without redress. Specifically, the Commission's August 1, 2007, Notice of Opportunity for Hearing explicitly directed Petitioner to proceed as follows:

> To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or *proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.*[175]

To the best of its knowledge, Petitioner did not contact counsel for Entergy to discuss any potential need for a protective order or other appropriate legal device (*e.g.*, confidentiality/nondisclosure agreement). Indeed, had Petitioner done so, it may have discovered that the information it purportedly sought is, in fact, publicly available or could have been obtained through an appropriate agreement with Entergy and/or the NRC Staff. Accordingly, FUSE cannot now claim that it has been unfairly denied access to information in the LRA and related documents.[176]

Fundamentally, Proposed Contention 1 amounts to an impermissible challenge to the exercise of NRC discretion under the FOIA regulations at 10 C.F.R. § 2.390. Allegations about NRC's implementation of its existing regulations fall outside the scope of this proceeding.[177] Further, Petitioner has appropriate avenues for appeal of agency FOIA decisions both inside the agency and in the Federal courts.[178]

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[175] 72 Fed. Reg. at 42,135 n.1 (Aug. 1, 2007) (emphasis added).

[176] Petitioner's suggestion that its Constitutional right to petition the government for redress has been infringed is simply incredible. Superceding Petition at 80-81. The Commission provides members of the public, including Petitioner, ample means to participate in the hearing process and to obtain necessary information to support that participation. It is Petitioner who has not fully availed itself of the procedural options available to it.

[177] *E.g.*, *Turkey Point*, LBP-01-6, 53 NRC at 159.

[178] Petitioner does not even assert that it has tried, let alone been unsuccessful, in resolving its FOIA issues with the NRC. In fact, it appears that NRC responded to FUSE's request for documents and FUSE declined to pursue the matter based on the NRC's estimated cost of fulfilling the request. *See* Superceding Petition at 68.

Moreover, the Commission has expressly rejected the stated purpose of Proposed Contention 1. Petitioner claims it needs the entire, compiled CLB for Indian Point Units 2 and 3, and complete unredacted copies of every document referenced therein, as well as copies of every communication between the NRC and Entergy and every document produced during this hearing solely for the purpose of forming new contentions or revising existing ones. The Commission expressly rejected such demands for the purpose of forming contentions.[179] Moreover, there is no legal basis for demanding compilation of the CLB. A 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.[180]

Finally, this Board lacks the authority, on its own, to grant the relief sought by Petitioner; *i.e.*, indefinite postponement of the time for filing petitions to intervene pending the resolution of litigation of Petitioner's FOIA requests.[181]

2. Proposed Contention 2 – "NRC Rules and Regulations as relate to the hearing process defacto mitigate and abridge a citizen's right to redress under the law, as is protected under our rights as outlined in the First Amendment. Further, Entergy as a licensee if [sic] given far too much sway in dictating to the NRC what is an appropriate time schedule for the process."

Petitioner's Proposed Contention 2 presents a challenge to the NRC's Rules of Practice at 10 C.F.R. Part 2 alleging that they: (a) unfairly designate a lead party for contentions; (b) are

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[179] *McGuire*, CLI-03-17, 58 NRC at 424 (citing *Oconee*, CLI-99-11, 49 NRC at 337-39).

[180] *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).

[181] *See* 10 C.F.R. § 2.334(c) (requiring the Board to notify the Commission of significant delays in the proceeding).

complicated for *pro se* litigants; and (c) impose schedules FUSE finds challenging.[182] FUSE also asserts it cannot receive a fair hearing because members of the Board are NRC employees.[183] Accordingly, FUSE requests that the Board: (a) consult with the International Atomic Energy Agency ("IAEA") and the United Nations before making any ruling on this contention; (b) grant a "change of venue" to the IAEA or World Court; (c) order Entergy to reimburse FUSE's legal and professional costs associated with challenging the LRA; and (d) reopen the time in which to submit contentions until all of its document access requests have been resolved to its satisfaction and it has had sufficient time to digest those materials.[184]

Energy opposes admission of Proposed Contention 2 on the grounds that it constitutes an impermissible challenge to the NRC Rules of Practice, contrary to 10 C.F.R. § 2.335 (a), is not supported by an adequate basis in law or fact, as required by 10 C.F.R. § 2.309(f)(1), and requests relief beyond that which can be provided by the Board.

FUSE alleges that the requirement in 10 C.F.R. § 2.1404 for designation of a lead sponsor for contentions submitted by multiple petitioners is "arbitrary and capricious" because different petitioners may have different interests.[185] Further it asserts that unspecified scheduling rules are "biased and prejudice against stakeholder citizens who desire to represent their own interests in proceedings Pro Se. . ."[186] Finally with respect the complexity of the rules and schedules inherent in them, FUSE insinuates that, "the system is designed to disadvantage and

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[182] Superceding Petition at 81-84.

[183] *Id.* at 95.

[184] *Id.*

[185] *Id.* at 82.

[186] *Id.* at 83.

discourage pro se stakeholders, perhaps sets them up in such a fashion as to make their failure in the process a foregone conclusion."[187] None of these arguments is admissible in this proceeding.

In January 2004, the Commission—pursuant to formal notice and comment rulemaking—issued a substantial revision to its Rules of Practice housed in 10 C.F.R. Part 2.[188] In doing so, the Commission paid particular attention to ensuring orderly and timely hearings, and ensuring that all stakeholders are afforded a meaningful opportunity to participate in the hearing process.[189] The Commission also added specific time constraints applicable to petitioners, parties, and the Board. FUSE's contention constitutes an impermissible attack on those rules and must be dismissed.[190]

FUSE next asserts that a Board comprised of NRC employees creates a conflict of interest.[191] FUSE's reasoning seems to be as follows: "Many" (unidentified) documents relied upon in Entergy's [aging management programs ("AMPs")] were joint collaborations by the Department of Energy, Electric Power Research Institute, Nuclear Energy Institute, and NRC.[192] In "some cases" (unidentified) by Petitioner, NRC and the nuclear industry jointly funded those documents.[193] Further, "members of this [B]oard" (unspecified) played some part (unspecified)

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187 *Id.*

188 Changes to Adjudicatory Process, 69 Fed. Reg. 2182 (Jan. 14, 2004).

189 *See id.* at 2182 (affirming "the fundamental importance [the NRC] attributes to public participation in the Commission's adjudicatory processes").

190 In addition, "No rule or regulation of the Commission . . . is subject to attach . . . in any adjudicatory proceeding." 10 C.F.R. § 2.335(a). FUSE does not explain the significance of its reference to 10 C.F.R. Part 2, Subpart N, nor its relevance to this proceeding. License renewal proceedings are conducted in accordance with the provisions of 10 C.F.R., Part 2, Subpart L. In any event, the requirements of 10 C.F.R. § 2.309(f)(3) are substantially identical to the provision cited by FUSE.

191 Superceding Petition at 95.

192 *Id.*

193 *Id.*

in the creation and acceptance of those (unspecified) documents.[194] FUSE somehow then concludes that "[n]o board member is going to vote against a criteria [sic] that he/she played a part in creating. . . ."[195]

Quite simply, FUSE's claimed bases for these assertions lack the specificity, much less any colorable basis, required by 10 C.F.R. § 2.309(f)(1) or (2). Further, to the best of Entergy's knowledge, FUSE has not presented any request, or supporting basis for a request, that any Board member recuse himself from this proceeding, as provided for in 10 C.F.R. § 2.313. Indeed, assuming *arguendo*, that a Board member played some significant role with respect to an unspecified aging management study or program, FUSE's Proposed Contention 2, fails to connect any such activity to an issue in the scope of this proceeding. The Contention must be dismissed, as exactly the kind of raw, unsupported conjecture that lacks the requisite basis and specificity required by 10 C.F.R. § 2.309(f)(1)(v).

In addition, FUSE asks the Board to grant relief beyond the scope of its authority. The Commission's delegation of authority to Board panels contained in 10 C.F.R. Part 2, while broad, is bounded.[196] In this regard, the NRC is charged by statute, the Atomic Energy Act of 1954, as amended ("AEA"), to issue licenses for the operation of commercial nuclear power plants.[197] The AEA delegates no authority to the Board to change the venue of this proceeding to an entity outside of the NRC, much less outside the United States. The same conclusion holds true with respect to FUSE's request that the time for filing hearing requests and forming contentions be tolled, as this Board lacks the authority to grant the relief sought by Petitioner;

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[194] Superceding Petition at 95.

[195] *Id.*

[196] *See* 10 C.F.R. § 2.319.

[197] AEA § 103, 42 U.S.C. § 2.133.

i.e., indefinite postponement of the time for filing petitions to intervene pending the resolution of litigation of Petitioner's FOIA requests.[198] Accordingly, Proposed Contention 2 should be dismissed as outside the scope of the Board's authority under 10 C.F.R. § 2.319.

3. Proposed Contention 2-A – "Generic safety concern contention for Entergy's entire application, and approach to ascertaining the fitness of Indian Point for a period of 20 more years of operation."

In two pages,[199] FUSE launches a broadside attack on 10 C.F.R. Part 54. In particular, it contends that the entire structure of NRC's approach to license renewal is inadequate.[200] It claims that the evaluation of specific degradation mechanisms associated with aging of plant systems, structures, and components "fails to consider how well supposed safety margins will perform if there is a [sic] multiple breakdown or failure of systems, mechanisms and processes during a significant event. . . ."[201] Reaching an off-key crescendo, FUSE asserts "there is a cascading failure of MULTIPLE systems and equipment, and this reality is not adequately reviewed in the LRA."[202]

Entergy opposes the admission of Proposed Contention 2-A principally on the ground that it presents a challenge to NRC's rules in 10 C.F.R. Part 54 without even a feeble attempt at an argument that application of its provisions here would not serve that intended purpose.[203] In its challenge, FUSE contends that NRC's license renewal rules should consider, for example, multiple, cascading system or component failures. In addition, contrary to the approach embodied in Part 54, FUSE would have Entergy re-evaluate the entire safety basis as if the

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198 *See* 10 C.F.R. § 2.334(c) (requiring the Board to notify the Commission of significant delays in the proceeding).

199 Superceding Petition at 98-99.

200 *Id.*

201 *Id.*

202 *Id.*

203 *See* 10 C.F.R. § 2.335.

applicant were requesting an initial operating license. NRC's regulatory framework addresses FUSE's concerns about multiple failures through its ongoing inspection and enforcement activities under 10 C.F.R. Part 50. Because Proposed Contention 2-A constitutes an impermissible challenge to Part 54 and encompasses matters outside the scope of license renewal, contrary to 10 C.F.R. § 2.309(f)(1)(iii) and (iv), it must be dismissed in its entirety.

4. Proposed Contention 3 – "Fatal flaws, and perhaps egregious misrepresentation of facts as related to Environmental Qualification of Low-Voltage Instrumentation and Control Cables."

In Proposed Contention 3, FUSE alleges that the AMP for low-voltage instrumentation and control cables "to a large degree" is based on industry best practices and NRC guidance documents.[204] FUSE then presents its disagreements with the conclusions stated in one particular NRC document, Regulatory Issue Summary ("RIS") 2003-09, "Environmental Qualification of Low-Voltage Instrumentation and Control Cables."[205] Essentially, FUSE disagrees with NRC's conclusion set forth in the RIS, about the adequacy of monitoring for these cables.

Entergy opposes admission of Proposed Contention 3 because it fails to identify with sufficient specificity a portion of the LRA that it believes is deficient,[206] and because current, ongoing monitoring activities—such as those addressed by the RIS—fall outside the scope of this license renewal proceeding. Additionally, Entergy opposes admission of this proposed contention because FUSE fails to provide supporting bases for its allegations, contrary to 10 C.F.R. § 2.309(f)(1)(ii).

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[204] Superceding Petition at 100.

[205] *Id.* at 100-04.

[206] *See Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992)(noting that a "contention that does not *directly controvert a position taken by the applicant in the application* is subject to dismissal.").

FUSE fails to identify the portion(s) of the LRA that it contends are inadequate, much less explain on what grounds it bases its opinion.[207] The RIS with which FUSE disagrees did not create any changes to NRC's requirements for Environmental Qualification in 10 C.F.R. § 50.49. The disagreement FUSE appears to be trying to create is with NRC's conclusion about the adequacy of monitoring as a basis for ensuring the reliability of these components. Because monitoring issues fall outside the scope of license renewal,[208] Proposed Contention 3 must be dismissed.

5. Proposed Contention 4 – "Failure to adequately Address Known Irradiation-Induced Swelling in the PWR Core Internal Components of the Indian Point Reactors."

In Proposed Contention 4, FUSE appears to assert that swelling of core components has not been adequately addressed in the LRA.[209] FUSE acknowledges that the LRA addresses core internals and discusses their aging management through current monitoring programs and inspections.[210] Without reference to a specific AMP, however, FUSE appears to contend that Entergy's aging management plans for core internals are insufficient.

Entergy thus opposes admission of Proposed Contention 4 on the grounds that it is vague, outside the scope of license renewal, fails to provide supporting facts or expert opinion, and fails to demonstrate that a genuine dispute of material law or fact exists, all contrary to 10 C.F.R. § 2.309(f)(1).

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[207] Contrary to 10 C.F.R. § 2.309(f)(1)(v), FUSE fails to provide appropriate references to the EPRI and NRC documents to which it cites. For example, the significance of FUSE's reference to EPRI 1001002, "Investigation of Bonded Jacket Cable Insulation Failure Mechanisms," (May 2002), is unclear since this document does not pertain to environmental qualification testing of electrical cables.

[208] *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), Licensing Board Order (Denying Pilgrim Watch's Motion for Reconsideration) (Jan 11, 2008) at 5 (unpublished) ("monitoring is not proper subject matter for license extension contentions" and "is therefore outside the scope of matters properly considered in license extension hearings").

[209] Superceding Petition at 104.

[210] *Id.* at 104-06.

In fact, the LRA addresses void swelling of reactor pressure vessel ("RPV") internals and provides the required aging management activities for these components.[211] Petitioner challenges Entergy's analysis without providing any discussion of how or why the LRA is deficient, thereby failing to adequately support its proposed contention because it does not provide the factual basis required by 10 C.F.R. § 2.309(f)(1)(v), much less demonstrate a genuine dispute of material law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi). As discussed above, a contention that does not *directly controvert a position taken by the applicant in the application* is subject to dismissal.[212]

Rather than articulate any cogent basis for its disagreement with the content of the LRA, FUSE merely offers that "there is some discussion of this issue that can be found" in a transcript of an ACRS meeting available through ADAMS.[213] FUSE does not provide any explanation, however, of how the ACRS discussion bears any relevance to treatment of aging of core internals in the Indian Point LRA. Further, FUSE blatantly concedes that, with full knowledge and purpose, the documents referenced in this contention "have not been labeled and included as exhibits to this contention as it is assumed that Entergy and the NRC themselves are capable of doing the same due diligence stakeholders have done in finding said documents."[214] They are mistaken on this point and their failure to do so, in and of itself, renders the proposed contention inadmissible. In essence, in addition to asking the Board to formulate the contention for them, FUSE also tells the Board to go find a supporting basis as well.[215]

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[211] *See* LRA Section 3.1.2.2.15, Changes in Dimensions due to Void Swelling.

[212] *Comanche Peak*, LBP-92-37, 36 NRC at 384.

[213] Superceding Petition at 104-05.

[214] *Id.* at 106.

[215] *See Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1998)(noting that "[i]t is the responsibility of the Petitioner to provide the necessary information to satisfy the

As a result, Proposed Contention 4 is inadmissible for numerous reasons. In addition to the discussion above, FUSE does not provide adequate factual information or expert opinion to support its claims, as required by 10 C.F.R. § 2.309(f)(1)(v). Likewise, Petitioner fails to raise a genuine dispute of material law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi). As demonstrated above, Proposed Contention 4 simply fails to meet any of the pleading requirements specified in 10 C.F.R. § 2.309(f)(1) and must be rejected in its entirety.

6. Proposed Contention 5 – "Entergy Aging Management Plans for almost all components and systems at both IP2 and IP3 are inadequate, non-existent, or are wrongfully written up as future commitments that A) are not legally enforceable, and B) have not, cannot and are not being met in a timely fashion."

In this Proposed Contention, FUSE makes a general assertion that the LRA "simply fails to mention many necessary and critical aging management problems,"[216] claiming that some are not sufficiently detailed. It also asserts, generally, that descriptions of AMPs as being consistent with the GALL Report are insufficient for an AMP because they are "unenforceable" commitments.[217] Finally, FUSE quotes a paragraph from Section 3.0 of the LRA, "Aging Management Review Results," for its view that Entergy and NRC do not know enough at the present time to understand the effects of aging. Finally, as explained below, FUSE provides an extensive list of various components, materials, and programs for which it contends Entergy fails to provide a sufficiently detailed aging management program, but not the requisite specificity to support an admissible contention.

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basis requirement for the admission of its contentions and demonstrate that a genuine dispute exists within the scope of this proceeding").

[216] Superceding Petition at 106.

[217] *Id.*

Entergy opposes admission of Proposed Contention 5 on the grounds that it is overly vague, fails to provide a specific statement of what it intends to contest, fails to provide any basis for its contention, fails to demonstrate that the contention is material to NRC's license renewal decision, and fails to establish any genuine dispute of material fact or law. Together, and as described below, these deficiencies render Proposed Contention 5 inadmissible pursuant to 10 C.F.R. § 2.309(f)(1).

As a threshold matter, FUSE fails to identify what section(s) of the LRA it contends are inadequate or the specific inadequacies. Instead, it merely lists AMPs and generally asserts that their descriptions in the LRA are not sufficiently detailed. Not for any one of the listed programs does FUSE assert what detail is lacking or what aging effect has not been addressed. Not only is this essentially an impermissible challenge to NRC's decision to docket the application, it is a textbook example of a vague, unspecific, unsupported contention that warrants rejection pursuant to 10 C.F.R. § 2.309(f)(1).[218]

Moreover, FUSE's assertion that references to conformance with the GALL Report in the LRA somehow makes the LRA deficient under 10 C.F.R. Part 54 is left unexplained. By way of example, FUSE's first listed program is "Alloy 600 Program – No Specific Mention in Aging Management Review in Section 3 or the LRA on Aging Management Review."[219] FUSE's inclusion of Alloy 600 is baffling because discussion of the nickel based alloys (such as Alloy 600) is expressly provided in Section 3.1 of the LRA. Furthermore, a detailed AMP is provided in Section B.1.21 of the LRA. Ignoring this information, FUSE completely fails to describe how either Section in the LRA is inadequate or somehow incomplete. This is but one example of how

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[218] *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-98-26, 48 NRC 232, 242 (1998).

[219] Superceding Petition at 107.

Proposed Contention 5 fails to raise a genuine issue of material dispute.[220] Because Proposed Contention 5 is overly vague, fails to state with specificity a material issue of law or fact, and fails to provide a basis for its contention, Proposed Contention 5 must be rejected pursuant to 10 C.F.R. § 2.309(f)(1).

7. Proposed Contention 6 – "At least one of Indian Points' spent fuel pools is using Boraflex, and in fact and deed ha [sic] Age Related Degradation issues which in fact and deed are creating potentially significant risk to human health and the environment."

Proposed Contention 6 asserts that the Indian Point Unit 2 Spent Fuel Pool ("SFP") has experienced water clarity issues resulting from degradation of Boraflex neutron-absorbing material in the pool.[221] FUSE apparently believes that the LRA does not adequately address SFP visibility, or provide an AMP for SFP visibility. It also asserts that the LRA and ER fail to address the environmental impacts of an accident caused by SFP visibility.[222]

Entergy opposes admission of this Proposed Contention on the grounds that it fails to identify any portion of the LRA or ER which it claims is inadequate, fails to provide a clear statement of the issue controverted, fails to provide any supporting basis of fact or law, and raises an issue outside the scope of license renewal.

In proffering this Proposed Contention, FUSE does not cite any page or chapter of the LRA or ER that it contends is deficient, much less the purported basis for the deficiency. It is noteworthy that FUSE does not contend that Boraflex degradation is not addressed in the LRA, but rather focuses on SFP clarity. Indeed, the LRA includes an AMP at Appendix B.1.3,

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[220] Applicant notes that Alloy 600 is one of approximately 40 programs that FUSE lists without any hint as to what it believes to be inadequate. This attempt by Petitioner to shift the burden to the Board to form contentions for it seriously miscomprehends its burden as a Petitioner to provide a specific statement of the issue to be raised under 10 C.F.R. § 2.309(f)(1)(i). *See Calvert Cliffs*, CLI-98-14, 48 NRC at 41 (noting that it is "the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions and demonstrate that a genuine dispute exists within the scope of this proceeding."

[221] Superceding Petition at 112-13.

[222] *Id.* at 107-14.

"Boraflex Monitoring" to address degradation of Boraflex material in the Unit 2 SFP. This AMP describes an existing monitoring program that will continue to be implemented during the period of extended operation without modification. This AMP specifically addresses the effects of aging on Boraflex. SFP water clarity is an ongoing operational issue that is monitored and addressed during the current operating term by operational activities, such as filtering during refueling operations. SFP visibility is not a form of age-related degradation that falls within the scope of Part 54. Fuel handling accidents are also an issue addressed in the current operating term. Entergy's current general fuel handling instructions restrict fuel movement under low visibility conditions.

While FUSE criticizes Entergy's LRA and ER for failing to address the potential radiological consequences of "an accident caused by [SFP] clarity," it fails to present any description of a postulated accident sequence caused by SFP visibility,[223] contrary to 10 C.F.R. § 2.309(f)(1)(ii). It also fails to explain how this supposed issue falls within the scope of this license renewal proceeding as required by 10 C.F.R. § 2.309(f)(1)(iii). It fails to show how this issue is material to the NRC decision on license renewal as required by 10 C.F.R. § 2.309(f)(1)(iv). It fails to provide any basis, at all, for the contention as required by 10 C.F.R. § 2.309(f)(1)(v). Finally, it fails to raise a genuine issue of material fact as required by 10 C.F.R. § 2.309(f)(1)(vi). Accordingly, this contention must be dismissed in its entirety.

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[223] *Id.* at 114.

8. Proposed Contention 7 – "Emerging Issues Typically, following a component failure event at a nuclear power plant, the NRC raised a question as to how the failure relates to an applicant whose license renewal application (LRA) is currently under review. This same question may then be asked of subsequent applicants. There are NUMEROUS emerging issues, that according to the NRC Rules and Regulations we are now entitled to raise in the License Renewal Process. We therefore raise the following issues as contentions in this LRA process."

Proposed Contention 7 asserts that, because NRC evaluates emerging issues at facilities for which applicants have filed LRAs, this inspection activity somehow, through a logic not explained by FUSE, brings emerging plant issues into the scope of license renewal. Further stretching the bounds of its attenuated "logic," FUSE then identifies four current term issues that it contends need to be addressed for purposes of license renewal.[224] For each, FUSE asserts or implies that Entergy's LRA fails to adequately address it.[225]

Entergy opposes the admission of Proposed Contention 7 on the ground that its "emerging issues" theory represents an impermissible attack on the NRC's license renewal rules at 10 C.F.R. Part 54, prohibited by 10 C.F.R. § 2.335, and falls outside the scope of Part 54. Additionally, Entergy opposes the admission of this proposed contention because, as demonstrated below, each of the four "emerging issues" FUSE identifies lack basis and are plagued by a host of further deficiencies.

a. Transformer Aging Management and Replacement

In three sentences, FUSE informs the Board that transformers are important to nuclear power plants. With this much of the proposed contention, Entergy agrees. Leaping forward, however, FUSE next implies that Entergy's LRA fails to adequately address transformer aging management. This allegation is completely unsupported by sufficient basis, contrary to

[224] *See* Superceding Petition at 114-16.

[225] *See id.*

10 C.F.R. § 2.309(f)(1)(ii) and (v). Finally, by failing to identify any specific deficiency in the LRA, FUSE's allegations fail to demonstrate a genuine dispute with regard to a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

Fundamentally, only certain transformers fall within the scope of license renewal. The NRC regulations at 10 C.F.R. § 54.4 explain which systems, structures, and components are within the scope of license renewal. Of these, only the IP2 and IP3 transformers that are safety-related or are necessary for compliance with 10 C.F.R. §§ 50.48 and 50.63 are within the scope of license renewal.

That certain transformers are in the scope of license renewal, however, does not mean that an AMP is required under 10 C.F.R. Part 54. The NRC regulations at 10 C.F.R. § 54.21(a) state that the effects of aging must be effectively managed only for components that perform an intended function per Section 54.4, without moving parts or without a change in configuration or properties, *i.e.*, are not active components.

Appendix B of NEI 95-10,[226] which is endorsed by NRC Regulatory Guide 1.188,[227] provides guidance for the determination of whether components are active or passive. As shown in Item 104 of Appendix B of NEI 95-10, transformers are listed as active components that are not subject to 10 C.F.R. § 54.21(a)(1)(i).[228] Thus, transformers do not require an AMP, as argued by FUSE. Instead, the effects of aging on transformers are managed by ongoing Maintenance Rule activities in accordance with 10 C.F.R. § 50.65, which is outside the scope of

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[226] NEI 95-10, Industry Guideline for Implementing the Requirements of 10 CFR Part 54 – The License Renewal Rule, Rev. 6 (Jun. 2005), *available at* ADAMS Accession No. ML051860406.

[227] Regulatory Guide 1.188, Standard Format and Content for Applications to renew Nuclear Power Plant Operating Licenses (Sep. 2005), *available at* ADAMS Accession No. ML051920430 ("The Nuclear Energy Institute's NEI 95-10, 'Industry Guideline for Implementing the Requirements of 10 CFR Part 54 – The License Renewal Rule,' Revision 6 (June 2005), provides methods that are acceptable to the NRC staff for complying with the requirements of 10 CFR Part 54 for preparing a license renewal application").

[228] NEI-95-10, Appendix B, Item 104.

license renewal. As such, this purported "emerging issue" does not serve as a sufficient legal basis for the admission of Proposed Contention 7, pursuant to 10 C.F.R. § 2.309(f)(1)(ii) and (v). Nor does it provide sufficient information to demonstrate a genuine dispute exists on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi).

b. Electrical Connections

In a depth similar to the transformer contention—three sentences—FUSE asserts that Entergy's LRA "appears to be silent" on electrical connections, and asserts that an AMP is required.[229] This aspect of the proposed contention fails to account for Entergy's treatment of electrical connections in Sections 2.5 and 3.6 of the LRA. Table 2.5-1 lists "Cable connections (metallic parts)," "Electrical cables and connections not subject to 10 C.F.R. § 49 EQ requirements, "and "Electrical connections not subject to 10 C.F.R. § 50.49 EQ requirements exposed to borated water leakage," as being subject to an aging management review. Tables 3.6.1 and 3.6.2, in turn, provide the results of the aging management review and identify the necessary AMPs; *i.e.,* LRA Sections B.1.22, "Non-EQ Bolted Cable Connections," and B.1.25, "Non-EQ Insulated Cables and Connections." As in the previous "emerging issue" cited by Petitioner, the 39 words of these three sentences do not come close to satisfying any of the requirements of 10 C.F.R. § 2.309(f)(1).

c. Electrical Cables and Connections

This argument, though more difficult to follow, also seems to take issue with the NRC component screening methodology set out in 10 C.F.R. § 54.21. As such, it presents a collateral attack on the regulation impermissible under 10 C.F.R. § 2.355(a). Yet again, unburdened by the need for references to the LRA, FUSE disagrees with Entergy's treatment of "Electrical and

[229] Superceding Petition at 115.

Instrumentation and Control Systems," described in Section 2.1.2.3 of the LRA. In particular, LRA Section 2.5, and Tables 2.5-1, 3.6.1 and 3.6.2-1 contain the commodity types that FUSE claims are missing from the review.[230] Contrary to Petitioner's claims, these sections of the LRA describe how Entergy considered passive electrical components, their aging effects, and how they would be managed during a period of extended operation. FUSE fails once again to identify or articulate any specific deficiency in the LRA. Rather, it voices its view, unfettered by 10 C.F.R. Part 54, that every voltage and EQ category of electrical components requires its own unique AMP. This view contradicts 10 C.F.R.§ 54.21 and stands in opposition to the guidance in the GALL Report. As with the previous two "emerging issues" above, these 11 lines of text again fail to satisfy any of the requirements of 10 C.F.R. § 2.309(f)(1).

d. *Seismic Issues*

This six-line explication of the fourth "emerging issue" asserts that, because Japan experienced an earthquake in 2007, seismic issues are relevant to the Indian Point license renewal proceeding. Even FUSE concedes in this contention that it has not yet raised any issue for the Board's consideration as, in the last sentence, it pronounces the following: "We therefore bring into the scope of this license renewal ALL SEISMIC issues for challenge, *which will be more fully defined at the appropriate time.*"[231] The appropriate time has come and gone. NRC contention pleading requirements at 10 C.F.R. § 2.309(f)(1) require that the contention be pleaded with specificity in response to the Notice of Hearing. Instead, FUSE asks the Board to admit the contention and allow FUSE to later fill in the blanks. This it cannot do. Because this "emerging issue" also fails to satisfy any of the requirements of 10 C.F.R. § 2.309(f)(1), Proposed Contention 7 must be dismissed in its entirety.

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[230] *Id.*

[231] *Id.* at 115-16 (emphasis (added).

As shown above, each of the four "emerging issues" that FUSE identifies as Proposed Contentions fails to satisfy NRC contention pleading requirements at 10 C.F.R. § 2.309(f)(1). Additionally, FUSE's "emerging issues" theory represents an impermissible collateral attack (prohibited by 10 C.F.R. § 2.335) on the NRC's license renewal rules at 10 C.F.R. Part 54. Accordingly, Entergy opposes the admission of this Proposed Contention.

9. Proposed Contention 8 – "Entergy has provided NO CABLE MANAGEMENT PLANS, but instead relies upon FUTURE COMMITMENTS, despite the fact that ALL LICENSE RENEWAL APPLICANTS are required to have a Cable Aging Management Plan. It is noted here, that NONE of the already approved superceding licenses for other applicants have Cable Aging Management Plans. Stakeholder quotes from EPRI."

In this proposed contention, other than in the underlined title above, FUSE does not articulate any issue specific to renewal of the licenses for Indian Point Units 2 and 3. FUSE quotes an EPRI document stating that other plans have made commitments related to cable aging management.[232] It then expresses its dislike for commitments.[233] With this as background, FUSE contends that Entergy's LRA presents no aging management plans for electrical cables.[234]

Entergy opposes admission of this contention on the ground that it fails to satisfy any of the NRC contention pleading requirements at 10 C.F.R. § 2.309(f)(1), and because it is facially inaccurate.

The assertion that the LRA has "no" AMPs for electrical cables is false. Entergy describes its scoping, screening and aging management review results for electrical cables and connections in Sections 2.5 and 3.6 of the LRA. The AMPs for electrical cables and connections are included in LRA Sections B.1.22, "Non-EQ Bolted Cable Connections," B.1.23, "Non-EQ

[232] *Id.* at 116-17.

[233] *Id.* at 117.

[234] *Id.* at 116-17.

Inaccessible Medium Voltage Cables, B.1.24, "Non-EQ Instrumentation Circuits Test Review," and B.1.25, "Non-EQ Insulated Cables and Connections." FUSE does not identify any deficiency with Entergy's cable-related AMPs, nor does it provide a basis or support, or explain how any deficiency is material to the proceeding. It raises no genuine material issues in dispute. Because this Proposed Contention fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1), it must be dismissed.

To the extent that FUSE contends that descriptions of future AMPs are inadequate because they are commitments that are not enforceable, FUSE misunderstands the nature of regulatory commitments. License renewal commitments, just as the commitments for the CLB, cannot be casually ignored by Entergy. As held by the Board in the Oyster Creek license renewal proceeding, one cannot impute to a licensee an intention to act in derogation of its formal commitment to the NRC Staff.[235] The Standard Review Plan, NUREG-1800, states an applicant is required to demonstrate that the effects of aging on structures and components subject to an Aging Management Review (AMR) will be adequately managed so that their intended functions will be maintained consistent with the CLB for the period of extended operation. The LRA follows the guidance of NUREG-1800, and NEI 95-10, and provides a consistency evaluation between the Entergy AMPs and the GALL AMPs, with details provided for exceptions.

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[235] *AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), LBP-06-07, 63 NRC 188, 207 (2006), n.14, *aff'd* CLI-06-24, 64 NRC 111 (2006).

10. Proposed Contention 9 – "Indian Point wrongfully eliminates from consideration almost all SAMA candidates, primarily based upon a Cost/Benefit Analysis, which uses fuzzy logic, antiquated population figures, and by placing a low dollar value on PUBLIC EXPOSURE to radiological contaminants."

This Proposed Contention presents an amalgam of unsupported assertions regarding Entergy's consideration of SAMAs and concludes that "there are material issues in dispute."[236] As with so many of FUSE's contentions it provides no support for its cryptic assertions.[237] In this instance, FUSE criticizes:

- "a $2,000 value used for REM exposures";[238]
- "the population figures";[239]
- use of assumed cost based on other facilities rather than site specific studies;[240]
- "grouping a higher risk singular item with lower risk ones to come up with a group model that works in their favor to rule out specific SAMA's;"[241]
- using mixed data from two weather stations inside 50 miles is not adequate and that Entergy should have collected data within the 10-mile EPZ;[242] and
- "sheltering in place may, or may not be the most conservative modeling scenario for exposures"[243]

Entergy opposes admission of Proposed Contention 9 because it fails to meet any of the contention pleading requirements at 10 C.F.R. § 2.309(f)(1). For each of these issues, FUSE provides little more than the itemization presented above. It utterly fails to explain its concern or provide an explanation of the basis for that concern. It fails to provide any support or authority

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236 Superceding Petition at 117-21.

237 Entergy's consideration of SAMAs is contained in Section 4.21 of the ER, "Severe Accident Mitigation Alternatives."

238 Superceding Petition at 117-18.

239 *Id.* at 118.

240 *Id.*

241 *Id.*

242 *Id.*

243 *Id.* at 119.

in support of its contention. If fails to explain how the contention raises any genuine issue of material fact within the scope of this license renewal proceeding.

a. "a $2,000 value used for REM exposures"

FUSE says nothing more than that it "contests" this value. The Parties and the Board are left to wonder what about the value FUSE disputes. Does FUSE believe it should be higher, or lower, or some variable? Why does FUSE think it should be other than $2000? What are the studies and who are the experts that support this alternate belief? How would another value change Entergy's SAMA analyses? Does the contest have some other relevance to the license renewal decision? FUSE answers none of these questions about the $2000 value, or any others. FUSE impermissibly invites the Board to form a contention for it.

Additionally, FUSE seeks improperly to adjudicate a generic issue involving NRC regulatory policy or process. The NRC specifically *recommends* that license renewal applicants use a $2,000 per person-rem conversion factor as the cost-benefit component of their SAMA analyses. Specifically, the use of a $2,000 per person-rem conversion factor is consistent with guidance set forth in NEI05-01, which the NRC recently endorsed in ISG-LR-2006-03.[244] In fact, the $2,000 per person-rem conversion factor has been used by other license renewal applicants with the approval of the NRC.[245] Moreover, this number is firmly embedded in NRC regulatory practice and guidance that is not specific to license renewal.[246] Accordingly, by

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[244] Letter to J. Riley (NEI) from P. Kuo (NRC NRR), encl. (Aug. 2, 2007) (Final License Renewal Interim Staff Guidance LR-ISG-2006-03; Staff Guidance for Preparing Severe Accident Mitigation Alternatives (SAMA) Analyses), *available at* ADAMS Accession No. ML071640133.

[245] *E.g.*, GEIS Supp. 27 (Palisades Nuclear Plant) (Oct. 2006) at G-24 to -28; GEIS Supp. 26 (Monticello Nuclear Generating Plant) (Aug. 2006) at G-21 to -25.

[246] *See* NUREG-BR-0058, Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, Rev. 3 (July 2000) at vii ("current NRC policy is to use a $2000 per person-rem conversion factor").

challenging Entergy's use of the $2,000 per person-rem factor, Petitioner raises a matter of regulatory policy that is beyond the scope of this proceeding.[247]

b. "the population figures"

Without repeating the rhetorical questions set out in the preceding section, it suffices to say that three words do not a contention make. FUSE does not identify the figures to which it refers or why they are inadequate, why it believes they are inadequate or any basis for that belief, how the inadequacy is material to Entergy's SAMA analyses or any genuine material issue for resolution by this Board.

c. "use of assumed cost based on other facilities rather than site specific studies"

FUSE appears to contend that Entergy's evaluation of SAMA's must be based on site specific estimates rather than generic estimates or actual data from other facilities. This is the extent of Petitioner's statement. Nowhere does FUSE identify the section of the LRA or ER in which the use of assumed costs was inappropriate. There is no statement describing what FUSE takes issue with as required by 10 C.F.R. § 2.309(f)(1)(i). FUSE provides no explanation of why use of assumed costs is deficient or support for that position as required by 10 C.F.R. § 2.309(f)(1)(ii) and (v), respectively. The contention does not describe how use of assumed costs or site specific costs is material to the NRC's license renewal determination or that there is any genuine material issue in dispute as required by 10 C.F.R. § 2.309(f)(1)(iv) and (vi). Accordingly, because the contention fails to satisfy any of the requirements of the NRC contention pleading requirements, it may not be admitted in this proceeding.

Use of cost estimates is specifically described in guidance endorsed by NRC. Section 7.2 of NEI 05-01, "Cost of SAMA Implementation," notes "the cost of each SAMA candidate

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[247] *See Peach Bottom*, ALAB-216, 8 AEC at 20-21 n.33.

should be conceptually estimated to the point where economic viability of the proposed modification can be adequately gauged. . . . For hardware modifications, the cost of implementation may be established from existing estimates of similar modifications from previously performed SAMA and SAMDA analyses."

d. *"grouping a higher risk singular item with lower risk ones to come up with a group model that works in their favor to rule out specific SAMA's;"*

FUSE provides no explanation at all to help decipher this one-sentence concept. This is the extent of Petitioner's statement. Nowhere does FUSE identify the section of the LRA or ER in which the use of "grouping" was inappropriate. There is no statement describing what FUSE takes issue with as required by 10 C.F.R. § 2.309(f)(1)(i). FUSE provides no explanation of why this use of "grouping" is deficient or support for that position as required by 10 C.F.R. § 2.309(f)(1)(ii) and (v), respectively. The contention does not describe how grouping or individual consideration is material to the NRC's license renewal determination, or that there is any genuine material issue in dispute as required by 10 C.F.R. § 2.309(f)(1)(iv) and (vi). Accordingly, because the contention fails to satisfy any of the requirements of the NRC contention pleading requirements, it may not be admitted in this proceeding.

Entergy's approach to bounding analyses is described in ER Sections E.2.3 and E.4.3. Bounding evaluations (or analysis cases) were performed to address specific SAMA candidates or groups of similar SAMA candidates. These analysis cases overestimated the benefit and thus were conservative calculations. For example, one SAMA candidate suggested installing a digital feedwater upgrade system. The bounding calculation estimated the benefit of this improvement by total elimination of risk due to loss of feedwater events (see analysis of Phase II SAMA 41 in Table E.2-2). This calculation obviously overestimated the benefit, but if the inflated benefit

indicated that the SAMA candidate was not cost beneficial, then the purpose of the analysis was satisfied.

This approach has been used by other applicants and is in accordance with the guidelines in NEI 05-01, Section 7.1.1, which recommends, "Perform bounding analyses to determine the change in risk following implementation of SAMA candidates or groups of similar SAMA candidates."

e. *using mixed data from two weather stations inside 50 miles is not adequate and that Entergy should have collected data within the 10-mile EPZ*

In this aspect of the Proposed Contention, FUSE purports to quotes a paragraph from the LRA, without citation.[248] The section describes how Entergy used data from the two closest National Weather Service Stations selected by meteorologists at the National Climatic Data Center to define regional mixing height. FUSE asserts that data from within 10 miles of the site must be gathered to adequately evaluate certain SAMAs. Again, this is all Petitioner provides. Nowhere does FUSE describe the section of the LRA or ER which is ostensibly deficient because it defines regional mixing height in this manner. While there is no requirement that data be obtained from inside the 10-mile EPZ, FUSE's challenge to the approach used is without technical foundation. For that matter, there is no statement describing what FUSE takes issue with as required by 10 C.F.R. § 2.309(f)(1)(i). FUSE provides no explanation of why or how this method is deficient or support for its alternative position as required by 10 C.F.R. § 2.309(f)(1)(ii) and (v), respectively. The contention does not describe how use of other data to define regional mixing height is material to the NRC's license renewal determination or that

[248] The quoted language appears to come from the ER, Attachment E, Section E.1.5.2.6, "Meteorological Data."

there is any genuine material issue in dispute as required by 10 C.F.R. § 2.309(f)(1)(iv) and (vi). Accordingly, this aspect of the contention fails to support admission of this contention.

f. *"sheltering in place may, or may not be the most conservative modeling scenario for exposures"*

In this aspect of the contention, Petitioner challenges Applicant's claim, in its SAMA analysis, that a "no-evacuation" scenario provides a conservative estimate of the population dose of radiation. Entergy opposes admission of this Proposed Contention in that it fails to raise an issue that is material to the outcome of the proceeding, and fails to establish a genuine dispute with Applicant, contrary to 10 C.F.R. § 2.309(f)(1)(iii), (iv) and (vi). Petitioner fails to show that its contention raises any issue that is material to Entergy's analysis of the cost-effectiveness of any SAMA.

The "no evacuation" scenario considered in Entergy's SAMA analysis assumes that an individual would continue normal activity for the emergency-phase period of one week following a postulated accident, without taking emergency response actions such as evacuation and sheltering. This scenario is more conservative in terms of radiation exposure than the sheltering in place scenario, evacuation scenario, or a combination of evacuation and sheltering scenario. The radiation exposure is estimated as the total dose commitment that could be received by an individual who remains in place for the duration of emergency-phase while engaging in normal activity.

Entergy opposes admission of FUSE Contention 9 because it fails to meet any of the contention pleading requirements at 10 C.F.R. § 2.309(f)(1). FUSE provides little more than the itemization presented above. It fails to explain its concern or provide an explanation of the basis for that concern. It fails to provide any support or authority in support of its contention, and it

fails to explain how the contention raises a genuine issue of material fact within the scope of this license renewal proceeding.

11. Proposed Contention 10 – "Increased leakage from primary to secondary aging is not addressed, despite two key facts that would increase the risk to public health and safety."

Proposed Contention 10 asserts that Entergy's LRA fails to adequately address "primary to secondary aging." FUSE asserts that increased leakage increases the probability of a significant tube rupture and increase the amount of unmonitored tritium released. Petitioner asserts that the LRA fails to provide an AMP.[249] Beyond this, FUSE says nothing more on the subject. Entergy opposes admission of this Proposed Contention on the grounds that it fails to meet any of the NRC's pleading contention requirements at 10 C.F.R. § 2.309(f)(1).

At the outset, it is worth noting that Entergy's LRA at Appendix B, Section B.1.35, "Steam Generator Integrity," provides an AMP for just this issue. The AMP notes that this existing program "includes processes for monitoring and maintaining secondary side component integrity." FUSE does not even acknowledge Entergy's treatment of this issue, much less identify a deficiency in the analysis or AMP. There is no statement describing precisely what FUSE takes issue with as required by 10 C.F.R. § 2.309(f)(1)(i). FUSE provides no explanation of why or how this method is deficient or support for any alternative position as required by 10 C.F.R. § 2.309(f)(1)(ii) and (v), respectively. The contention does not describe how any deficiency in Entergy's treatment of steam generator integrity is material to the NRC's license renewal determination, or that there is any genuine material issue in dispute as required by 10 C.F.R. § 2.309(f)(1)(iv) and (vi). Accordingly, because the contention fails to satisfy any of

[249] Superceding Petition at 121.

the requirements of the NRC contention pleading requirements, it may not be admitted in this proceeding.

12. Proposed Contention 11 – "Both Indian Point 2 LLC and Indian Point 3 have OEM coatings in contaminants that are not classified as DBA qualified or acceptable. These OEM DBA unqualified coatings in the Indian Point PWR containments will fail during a loss-of-coolant accident (LOCA) and thus be available for transport to the emergency core cooling system's (ECCS') sump, thus negatively impacting the licensee's ability to have and maintain Safe Shutdown."

This Proposed Contention asserts that industrial coatings on systems structures and components create a safety issue with respect to emergency core cooling system sump pump performance because those coatings have not been qualified for design basis accident ("DBA") conditions.[250]

Entergy opposes admission of this Proposed Contention Proposed Contention because it fails to meet any of NRC's contention pleading requirements. This Proposed Contention simply sets out this generic current operating issue, under review by the NRC Staff and the nuclear industry. This Proposed Contention makes no reference, even in passing, to the period of extended operations. Similar to its Proposed Contention 7, FUSE seems to imply that simply because this is an emerging issue, it must be evaluated uniquely for the period of extended operations. Part 54 contains no such requirement. Entergy opposes admission of this contention because it fails to meet any of NRC contention pleading requirements at 10 C.F.R. § 2.309(f)(1), because it raises an issue pertinent to ongoing regulatory oversight and outside the scope of license renewal, and because it poses a collateral attack on the screening rules at 10 C.F.R. § 54.21, prohibited by 10 C.F.R. § 2.355(a).

[250] Superceding Petition at 121-23.

Petitioner provides nothing more than a restatement of NRC Generic Issue 191.[251] Nowhere does FUSE identify what section of the LRA or ER is ostensibly deficient for its treatment of containment coatings or clogging of ECCS suction strainers. There is no statement describing what aspect of the LRA FUSE takes issue with as required by 10 C.F.R. § 2.309(f)(1)(i). FUSE provides no explanation of why or how this method is deficient or support for its alternative position as required by 10 C.F.R. § 2.309(f)(1)(ii) and (v), respectively. The contention does not describe how current treatment of these coatings is material to the NRC's license renewal determination, which it is not, so this contention fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii) or (iv).[252] Nor does FUSE address any specific deficiency in the LRA, so there is no genuine material issue in dispute as required by 10 C.F.R. § 2.309(f)(1)(vi). Accordingly, because the contention fails to satisfy any of the NRC contention pleading requirements, it may not be admitted in this proceeding.

13. Proposed Contention 12 – "In Entergy's Environmental Report, Appendix E to the LRA, Entergy admits that the majority of their plant employees for both IP2 and IP3 reside in Dutchess County, New York. A close study of their employee population distribution tables, shows that a very small handful of Entergy's employees actually live relatively close to the Nuclear Facility, with only 22 living in Buchanan. In the event of a SIGNIFICANT radiological event at the plant such as a SCRAM, LOCA, or DBT or a DBA, especially during a holiday makes it impossible for Entergy to return employees to the facility in a timely fashion, thus greatly impacting their ability to do and maintain a safe shutdown of the plant."

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[251] NUREG-0933, "A Prioritization of Generic Safety Issues," (Sept. 2007), *available at* http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0933/, contains a list of over 200 issues under active consideration by the NRC Staff.

[252] Entergy's response to NRC Generic Letter 2004-02 explains how both IPEC Units are addressing the issue of debris blockage on ECCS functions in re: *current licensing term. See* Letter from F. Dacimo, Entergy, to NRC, "Response to NRC Generic Letter 2004-02, Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized Water Reactors," Sept. 1, 2005, *available at* ADAMS Accession No. ML052500197. Entergy also does not rely on these coatings to manage the effects of aging. LRA Table 3.5.1, Item 3.5.1-25.

In this Proposed Contention, FUSE quotes an unspecified EPRI document, which allegedly states that: "In some cases, there may be a short period of time to react to the potential threat of the [sic] beyond design bases conditions."[253] FUSE then alleges that many Entergy employees live far from the plant. FUSE provides no basis or citations for the statistical data it includes. FUSE concludes with the statement that "Entergy's claim that they [sic] can do and maintain a safe shutdown . . . is a material fact in dispute . . . as a result of where their employees live related to the Indian Point facility."[254] In sum, FUSE apparently believes that Entergy's response to emergency events during the period of extended operation will somehow be compromised because many Entergy employees do not now live in close proximity to IPEC.

Once again, FUSE relies upon bare assertions with no references to the underlying documentary sources or expert opinion, contrary to 10 C.F.R. § 2.309(f)(1)(v), and no references to Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi). This contention should be denied for these reasons alone.[255]

Moreover, Entergy opposes the admission of Proposed Contention 12 on the additional grounds that it: (1) raises issues that are neither within the scope of this proceeding or material to the Staff's license renewal findings contrary to 10 C.F.R. § 2.309(f)(1)(iii); (2) constitutes an impermissible challenge to the Commission's regulations, contrary 10 C.F.R. § 2.335(a); (3) directly contravenes controlling Commission legal precedent; and (4) fails to establish a genuine dispute with the Applicant on a material issue of law or fact contrary to 10 C.F.R. § 2.309(f)(1)(vi).

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[253] Superceding Petition at 123.

[254] *Id.* at 124.

[255] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC 370, 384 (1992).

The plain language of the Commission's regulations regarding emergency planning is as follows: "No finding under [Section 50.47] is necessary for issuance of a renewed nuclear power reactor operating license."[256] In the *Turkey Point* proceeding, the Commission specifically addressed emergency planning in the scope of license renewal:

> Issues like emergency planning – which already are the focus of ongoing regulatory processes – do not come within NRC safety review at the license renewal stage . . . .[257]

The Commission elaborated on its rationale regarding emergency planning in the scope of license renewal in the *Millstone* proceeding.[258] As the Commission explained:

> Emergency planning is, by its very nature, neither germane to age-related degradation nor unique to the period covered by the Millstone license renewal application. Consequently, it makes no sense to spend the parties' and our own valuable resources litigating *allegations of current deficiencies* in a proceeding that is *directed to future-oriented* issues of aging.[259]

Based on the Commission's clear position that emergency planning is not within the scope of license renewal, FUSE's Proposed Contention 12 regarding the alleged inability of Entergy employees to respond in an emergency also constitutes an impermissible challenge to Commission regulations and binding Commission precedent and is, therefore, outside the scope of this proceeding.[260]

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[256] 10 C.F.R. § 50.47(a)(1)(i).

[257] *Turkey Point*, CLI-01-17, 54 NRC 3, 10-11.

[258] *Millstone*, CLI-05-25, 62 NRC at 551.

[259] *Id.* at 561 (emphasis added); *see also Shearon Harris*, LBP-07-11, 66 NRC at 92.

[260] However, within the adjudicatory context, 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.

Finally, to the extent FUSE's alleges that Entergy cannot now safely shut down either of the IPEC units, this claim speaks to current operations, which are also outside the scope of this license renewal proceeding.[261]

14. Proposed Contention 13 – "In certain accident scenarios such as an outside Design Basis Accident, or a LOCA (Loss of Coolant Accident), or in the case of widespread blackout off site, Entergy wrongfully places far too much emphasis on outside assistance in dealing with their onsite accident scenario. This reliance on offsite assistance from local police, fire fighting and other first responders in turn GREATLY IMPACTS public health and safety for the citizens living with the EPZ, due to what could become a critical shortage of both manpower and critical equipment that our communities rely upon in maintaining our health and safety."

In this Proposed Contention, FUSE expresses its desire that, in the event of a significant accident, it should be the responsibility of Entergy to respond in a timely fashion, and not rely upon first responders from the community: "it is imperative that our community resources are not squandered . . . to protect Entergy infrastructure . . . ."[262] FUSE then repeats its assertion that "Entergy's ability to do and maintain a safe shutdown is a material fact in dispute in this LRA."[263] Finally, FUSE lists some "possible measures for the protection of the reactor core and spent fuel" in the event of a severe accident, and lists what it apparently considers to be appropriate "objectives" for "beyond design basis conditions," without any explanation of how these lists relate to the other allegations in this contention.[264]

Once again, FUSE relies upon bare assertions with no references to the underlying documentary sources or expert opinion, contrary to 10 C.F.R. § 2.309(f)(1)(v), and no references

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

262 Superceding Petition at 126.

263 *Id.*

264 *Id.* at 127-28.

to Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi). This contention should be denied for these reasons alone.[265]

Moreover, as described in Entergy's response to FUSE Contention 12, above, this emergency planning contention is also inadmissible because it (1) raises issues that are neither within the scope of this proceeding or material to the Staff's license renewal findings contrary to 10 C.F.R. § 2.309(f)(1)(iii); (2) constitutes an impermissible challenge to the Commission's regulations, contrary 10 C.F.R. § 2.335(a); (3) directly contravenes controlling Commission legal precedent; and (4) fails to establish a genuine dispute with the Applicant on a material issue of law or fact contrary to 10 C.F.R. § 2.309(f)(1)(vi).

15. Proposed Contention 14 – "The LRA, and the UFSAR's for IP2 and IP3 fail to adequately address the currently existing, known and unknown, environmental impacts and affects from the ongoing known and unknown leaks of underground pipes, and fails to lay out a workable aging management plan for said leaks."

This Proposed Contention alleges that the LRA "fails to lay out in specific, understandable detail a workable aging management plan to deal with both known and unknown underground leaks in the underground pipes and spent fuel pools . . . ."[266] FUSE claims that the sources of ongoing radiological leaks include: (a) failed or degraded pipes; (b) cracks in spent fuel pools; (c) failed or degraded valves; (d) reactor vessel failed welds; (e) pinhole leaks around weld joints; (f) failed or degraded gauges; (g) failed or degraded fuel transfer tube sleeves; (h) failed or degraded steam generator tubes; (i) inadequate or improperly operating drain systems; (j) cracks and fissures; and "(H) [sic]" various inaccessible reactor cooling system pipe structures.[267]

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[265] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC 370, 384 (1992).

[266] Superceding Petition at 128.

[267] *Id.* at 129-30.

Proposed Contention 14 rambles for over 11 more pages, alleging a variety of purportedly related facts while providing *only one* specific reference to a documentary source (discussed below), but, notably, no specific references to any portion of Entergy's LRA.

FUSE's unsupported accusations include:[268]

- that multiple leaks provide direct evidence that aging of various systems is not being properly addressed;
- that leaks have been discovered "purely by random accident";
- that in an April 26, 2007 public meeting, NRC and Applicant "conceded" that they did not know the metallurgic composition of underground piping;
- that there has been a significant increase in leaks found at IPEC in recent years;
- that the Applicant has "not been able to identify all the sources" of leaks;
- alleged reactor safety implications of leakage;
- that leaks are a precursor to pipe bursting in primary coolant systems;
- an alleged attempted removal of radioactive effluent from the ground led to "more radioactive material" being released;
- that certain communities use, or plan to use, the Hudson River as a drinking water source;
- that compromised pipes could cause or fail to mitigate a serious accident.

FUSE's only supporting reference is to NUREG/CR-6674,[269] which allegedly shows that the "NRC itself has expressed concerns on this very issue . . . and requested as a part of the license renewal process" an assessment from applicants of the "potential severity of the effects of reactor water coolant environment on fatigue."[270] Although FUSE includes a list of six "Supporting Document References for This Important and Crucial Contention,"[271] it provides no

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[268] *Id.* at 130-141

[269] Fatigue Analysis of Components for 60-Year Plant Life (June 2000), *available at* ADAMS Accession No. ML003724215.

[270] Superceding Petition at 136.

[271] *Id.* at 140-41.

description of *how* these documents support their contention or any specific reference to information contained within any particular document.

a. Proposed Contention 14 Is Inadmissible

Once again, FUSE relies upon bare assertions with essentially no references to the underlying documentary sources or expert opinion, contrary to 10 C.F.R. § 2.309(f)(1)(v). The single reference provided is to a generic document, NUREG/CR-6674, with no specific relevance to the IPEC LRA. Moreover, FUSE's explanation that NUREG/CR-6674 shows that the NRC Staff is concerned about the "effects of reactor water coolant environment on fatigue"[272] does not bear any understandable relationship to any alleged deficiencies specific to Entergy's LRA. Proposed Contention 14 also contains no references to specific portions of Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi). This contention should be denied for these reasons alone.[273]

Ultimately, FUSE underscores the baselessness of this Proposed Contention: "Maintenance logs and other documents that will be found in-pre-hearing discovery will prove IP2 and IP3's aging management plan for this issue is woefully inadequate."[274] The NRC Rules of Practice prohibit such a strategy because they "bar contentions where petitioners have only 'what amounts to generalized suspicions, hoping to substantiate them later.'"[275]

To the extent FUSE challenges Entergy's AMP for underground piping, such arguments are (1) outside the scope of license renewal; (2) ignore the LRA, and thus fail to raise a genuine

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[272] *Id.* at 136.

[273] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC 370, 384 (1992).

[274] Superceding Petition at 137.

[275] *McGuire/Catawba*, CLI-03-17, 58 NRC at 424 (quoting *Oconee*, CLI-99-11, 49 NRC at 337-39); *see also* 10 C.F.R. § 2.309 (f)(1)(v).

dispute on a material issue of law or fact; and (3) fail to provide the requisite specificity. Thus, such allegations fail to meet the requirements of 10 C.F.R. § 2.309(f)(1)(i), (iii), (iv) and (vi).

Recent decisions in the ongoing license renewal proceeding for the Pilgrim Nuclear Power Station ("Pilgrim") make clear that ongoing monitoring for leakage of radioactive liquids is outside of the scope of license renewal.[276] For example, in a very recent decision in *Pilgrim,* the Licensing Board denied Pilgrim Watch's Motion for Reconsideration, stating:

> As we have said on numerous occasions, *monitoring is not proper subject matter for license extension contentions.* Thus, where Pilgrim Watch's original formulation of its contention focused upon the potential for surface and groundwater contamination from radioactivity contained by certain of the Applicant's buried pipes and tanks, that *subject is a matter managed by the Applicant's ongoing monitoring programs*, and is therefore *outside the scope of matters properly considered in license extension hearings.*[277]

This holding by the *Pilgrim* Board confirms the inadmissibility of Petitioner's Proposed Contention 14.

Thus, to the extent this Proposed Contention is based on the allegation that there is no AMP to "deal with known and unknown leaks in the underground pipes and spent fuel pools, and that as a result, "leaks of radioactive effluents" are allegedly "unplanned [and] unmonitored,"[278] as discussed above, such issues are outside the scope of license renewal, because they are managed by ongoing monitoring programs.[279] Therefore, because Petitioner focuses on

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[276] Order Denying Pilgrim Watch's Motion for Reconsideration, ASLBP No. 06-848-02-LR (Jan. 11, 2008) (citations omitted) (emphasis added); *see also Pilgrim*, LBP-06-23, 64 NRC at 274-77 (2006) (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generation Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7 (2001)); Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. at 22,481-82 (May 8, 1995); *Nuclear Management Company, LLC.* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 754 (2005).

[277] *Id.* at 5 (emphasis added).

[278] Superceding Petition at 128-129.

[279] *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), Licensing Board Order Denying Pilgrim Watch's Motion for Reconsideration, ASLBP No. 06-848-02-LR, at 5 (Jan. 11, 2008).

monitoring of leakage from underground piping and tanks, and on radioactive leakage into surface and groundwater, Proposed Contention 14 must fail as it does not meet the standard of an admissible contention set forth in 10 C.F.R. § 2.309(f)(1)(iii), which requires that a contention fall within the scope of the license renewal proceeding.

Moreover, the Buried Piping and Tanks Inspection Program, in LRA Appendix B.1.6, is consistent with the program recommended by the NRC's Generic Aging Lessons Learned ("GALL") Report in NUREG-1801.[280] Petitioner does not refute this AMP's consistency with the GALL Report, nor does it even acknowledge the existence of this AMP.[281]

Aside from ignoring the Buried Piping and Tanks Inspection Program, FUSE fails to acknowledge and apparently fails to realize the existence of the many other programs for aging management of these buried components as set forth in the LRA.[282] FUSE's generalized charges regarding the "insufficiency of a reliable aging management program in the LRA"[283] fail to satisfy the requirement that it challenge the content of the LRA with requisite basis and specificity.[284]

FUSE's statement that the LRA "fails to lay out, in detail, a workable aging management plans [sic] to deal with known leaks" fails to identify, much less directly controvert, any of the spent fuel pool-related aging management plans identified in the application, and thus fails to raise a genuine dispute on a material issue of law or fact, contrary to 10 C.F.R.

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280 GALL Report, Vol. 2, Rev. 1, § XI.M34.

281 *See id.*

282 For example, management of loss of material for internal surfaces of buried piping and tanks is managed by Water Chemistry Control-Primary and Secondary Program (LRA Appendix B.1.41).

283 Superceding Petition at 135.

284 *See* 10 C.F.R. § 2.309(f)(1)(i), (ii), and (vi); *see also* 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.

§ 2.309(f)(1)(vi).[285] Moreover, by ignoring the text of the LRA, FUSE once again fails to provide the requisite specificity as well as information showing that a genuine dispute exists by reference to specific portions of the application, contrary to 10 C.F.R. § 2.309(f)(1)(i) and (vi).

To the extent FUSE alleges, in this Proposed Contention, deficiencies in Entergy's consideration of the environmental impacts of radiological leakage on groundwater, FUSE's claims: (1) raise issues that are outside the scope of this proceeding by positing stricter requirements than NRC's regulations impose, contrary to 10 C.F.R. § 2.309(f)(1)(iii); (2) lack adequate factual and/or expert support contrary to 10 C.F.R. § 2.309(f)(1)(v); and (3) fail to establish a genuine dispute on a material issue of law or fact contrary to 10 C.F.R. § 2.309(f)(1)(vi).

(i) Section 5.0 of the Environmental Report appropriately characterized the releases to the environment due to spent fuel pool leaks as a potentially new but not significant issue pursuant to 10 C.F.R. § 51.53(c)(3)(iv).

Section 5.0 of the ER complies with the NRC requirement that an applicant for license renewal assess any "new and significant" information regarding environmental impacts of a plant's operation during the extended license term.[286] To do so, Entergy identified any (1) information that identifies a significant environmental issue not covered in the NRC's GEIS and codified in Part 51, or (2) information not covered in the GEIS analyses that lead to an impact finding different from that codified in Part 51.[287] Because NRC does not specifically define the term "significant," Entergy used guidance available in Council on Environmental Quality ("CEQ") regulations.[288] For the purposes of this evaluation, Entergy assumed that MODERATE

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[285] Superceding Petition at 128; *see Comanche Peak*, LBP-92-37, 36 NRC at 384 (emphasis added).

[286] 10 C.F.R. § 51.53(c)(3)(iv).

[287] ER at 5-1.

[288] *Id.* (citing 40 C.F.R. § 1508.27).

and LARGE impacts, as defined by the NRC in the GEIS, would be significant.[289] Petitioner has not challenged Entergy's assumption in this regard.

Section 5.1 of the ER, New and Significant Information: Groundwater Contamination, provides Entergy's assessment of whether the identified groundwater radionuclide contamination at the Indian Point site ("site") is potentially "new and significant" as it relates to license renewal. Entergy confirmed the presence of tritium in site groundwater in October 2005. Since then, Entergy has conducted an extensive site assessment utilizing a network of monitoring wells to assess and characterize groundwater movement and behavior relative to groundwater contamination. When the license renewal application was submitted in April 2007, Entergy had installed numerous groundwater monitoring and test wells to delineate the extent of groundwater impacts and to define the source(s). Importantly, in this regard, Entergy explicitly noted in the ER that at the time, "[f]ull characterization of the impact to groundwater is continuing."[290]

Entergy also identified in the ER that "some contaminated groundwater has likely migrated to the Hudson River" and that release pathway is now being monitored and is included in the site effluents offsite dose calculations and documented in the Annual Radiological Effluents Release report prepared in accordance with NRC RG 1.21.[291] As explained in Sections 5.1 and 2.3 of the ER, however, the site does not utilize groundwater for any of its cooling water, service water, potable water needs, or for any other beneficial uses. There is also no known drinking water pathway associated with groundwater or the Hudson River in the region surrounding the site and, accordingly, the ER specifically states that "*EPA drinking water limits*

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289 *Id.*

290 ER at 5-4.

291 *Id.* at 5-4, 5-5; Measuring, Evaluating, and Reporting Radioactivity in Solid Wastes and Releases of Radioactive Materials in Liquid and Gaseous Effluents from Light-Water-Cooled Nuclear Power Plants, *available at* ADAMS Accession No. ML003739960.

are not applicable" to site area groundwater.[292] Significantly, FUSE has not disputed this fact and has provided no data to the contrary. Samples taken in support of the NRC-required Radiological Environmental Monitoring Program ("REMP") further indicate no detectable plant-related radioactivity in groundwater above safe drinking water standards beyond the site boundary.[293]

In sum, based on samples from the site monitoring wells, survey analyses, annual rainfall recharge to groundwater, and information determined from ongoing hydrogeological assessments, Entergy estimated in the ER a total body dose of 1.65E-3 mrem/year to the maximally exposed individual as a result of the identified groundwater contamination, which represents *0.055%* of the NRC limit of 3 mrem/yr for liquid effluent release.[294] Entergy, therefore, concluded that "no NRC dose limits have been exceeded and EPA drinking water limits are not applicable since no drinking water pathway exists."[295]

As Entergy describes in Section 5.1 of the ER, the NRC evaluated the impairment of groundwater quality in Section 4.8.2 of the GEIS, including impacts of tritium.[296] The NRC concluded that groundwater quality impacts are considered to be of SMALL significance when the plant does not contribute to changes in groundwater quality that would preclude current and future uses of the groundwater.[297] Based on the above-cited radiological data indicating that estimated doses due to the groundwater contamination are well below NRC dose limits and that

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[292] *Id.* at 5-6 (emphasis added).

[293] *Id.* at 5-5. Samples taken include the offsite REMP sampling locations as defined in the IP2 and IP3 Offsite Dose Calculation Manual, the local municipal drinking water reservoirs, and other groundwater monitoring wells located in the immediate vicinity of the plant.

[294] *Id.*

[295] *Id.* at 5-6.

[296] Section 4.8.2 of the GEIS references "slightly elevated" concentrations of tritium in groundwater adjacent to the Prairie Island plant on the Mississippi River in southern Minnesota.

[297] ER at 5-3 (citing Section 4.8.2 of the GEIS).

EPA drinking water limits are not applicable, Entergy concluded that site conditions do not impact the onsite workforce.[298] Entergy further concluded that the radionuclide release is not anticipated to change environmental considerations, such as water usage, land usage, terrestrial or aquatic ecological conditions, or air quality, and is not expected to affect socioeconomic conditions, as a result of license renewal activities.[299] Accordingly, Entergy determined that while the identification of site groundwater contamination is potentially "new," the impacts of those radionuclides would be SMALL and therefore not "significant."

Petitioner has not disputed any of Entergy's radiological findings or provided any basis, expert or otherwise, for their implied argument that EPA's drinking water standards are even applicable.[300] In fact, nowhere does FUSE present any specific evidence of any adverse impact associated with groundwater contamination.[301] On this basis alone, this aspect of Proposed Contention 14 should be rejected as a matter of law.

(ii) The Hydrogeological Investigation of the Indian Point Site is complete and confirms the conclusions in the ER that the releases to the environment due to spent fuel pool leaks are a small percentage of regulatory limits and no threat to public health and safety.

As noted in Section 5.1 of the ER, full characterization of the impact to groundwater was ongoing when the License Renewal Application ("LRA") was submitted to the NRC in April 2007. Since submission of the LRA, Entergy has completed the two-year site hydrogeologic investigation of the Indian Point site, including all three units (IP1, IP2, and IP3), and a comprehensive report summarizing the findings and conclusions of that study was submitted to

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298 *Id.* at 5-6.

299 Superceding Petition at 139.

300 *See, e.g, Millstone,* CLI-01-24, 54 NRC at 359-60 (requiring specificity in the legal or factual reasons for contesting the application).

301 Superceding Petition at 18-23.

the NRC, NYSDEC, and NY State Public Service Commission on January 11, 2008.[302] As noted in Section 1.0 of the Investigation Report, at no time did the results of that analysis yield any indication of potential adverse environmental or health risk as assessed by Entergy, as well as by the principal regulatory authorities.[303] In fact, radiological assessments have consistently shown that the releases to the environment are a small percentage of regulatory limits, and no threat to public health and safety.[304] The Investigation Report presents the results of two years of comprehensive hydrogeological investigations performed at the Indian Point Site between September 2005 and September 2007.[305] The overall purpose of the report was to identify the nature and extent of radiological groundwater contamination and assess the hydrogeological implications of that contamination.

The groundwater monitoring network is extensive and comprised shallow and deep, overburden and bedrock, multi-level monitoring instrumentation installations, site storm drains and building footing drains.[306] Groundwater testing, while initially focused on gamma emitters and tritium, was expanded in 2006 to encompass other radionuclides typically associated with nuclear power generation, although tritium and strontium remained the principal constituents of concern.

The investigation of possible contaminant source and release mechanisms included an extensive investigation of the IP2 spent fuel pool ("IP2-SFP") liner integrity and also areas

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302 Hydrogeological Site Investigation Report (Jan 11, 2008) ("Investigation Report"). A copy of that Report is included as Exhibit M to "Answer of Entergy Nuclear Operations, Inc. Opposing Riverkeeper, Inc.'s Request for Hearing and Petition to Intervene."

303 During the two-year investigation period, Entergy provided full and open access to and there were regular and frequent meetings with representatives of the NRC, the United States Geological Survey, and the New York State Department of Environmental Conservation (NYSDEC). Entergy also presented the preliminary findings at a number of external stakeholder and public meetings. *See* Investigation Report at 1.

304 *Id.*

305 *Id.* The study was performed by GZA GeoEnvironmental, Inc. ("GZA") for Entergy.

306 *Id.* at 4-5.

surrounding IP1, IP2 and IP3. Section 8.0 of the Investigation Report documents the results of the investigation of contaminant sources and release mechanisms. Its conclusions are summarized below:

- The source of strontium contamination detected in groundwater beneath the Site has been established as the Unit 1 Fuel Pool Complex (IP1-SFPs). The IP1 SFPs have been drained except for the West Pool. While the West Pool is estimated to currently be leaking at a rate of up to 70 gallons per day, the source term to groundwater has been reduced through reduction in the contaminant concentrations in the pool water. Further, Entergy plans to permanently eliminate the West Pool, as well as the IP1-SFP complex, as a source of contamination to groundwater by relocating the spent fuel stored in the West Pool to dry storage casks at an Independent Spent Fuel Storage Installation ("ISFSI") and permanently draining the West Pool in 2008.[307]

- The majority of the tritium detected in the groundwater at the Site was traced to the IP2 spent fuel pool ("IP2-SFP"). Two confirmed leaks through the IP2 spent fuel pool stainless steel liner have been documented. All identified leaks have been terminated. The first spent fuel pool line leak was identified and repaired in 1992. The second leak, a single small weld imperfection in the IP2-SFP transfer canal, was identified in September 2007 after the canal was drained for further liner investigations specific to the transfer canal. While additional active leaks cannot be completely ruled out, if they exist, the data indicate that they are very small and of little impact to the groundwater.[308]

- No releases were identified as coming from the IP3 structures, systems or components. The absence of releases from Unit 3 SFP sources is attributed to the design upgrades in that Unit, including a stainless steel liner (consistent with IP2 but not included in the IP1 design) and an additional, secondary leak detection drain system not included in the IP2 design.[309]

Consistent with Section 5.1 of the ER, the Investigation Report confirms that there is no current or reasonably anticipated use of groundwater at IPEC and, according to the NYDEC, there are no active potable water wells or other production wells on the east side (plant side) of the Hudson River in proximity to IPEC.[310] Drinking water in the area (Town of Buchanan and City of Peekskill) is sourced from surface water reservoirs in Westchester County and the

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[307] *Id.* at 102-103, 135.

[308] *Id.* at 2-4, 92.

[309] *Id.* at 11, 89.

[310] *Id.* at 14.

Catskills region of New York.[311] The nearest of these reservoirs is 3.3 miles north-northeast of the site and its elevation is hundreds of feet above the IPEC ground elevation.[312] Because the site groundwater flows to the west towards the Hudson River, it is not possible for the contaminated groundwater to ever impact these drinking water sources. In summary, the only pathway of significance for groundwater is through consumption of fish and invertebrates in the Hudson River, and the calculated doses are less than 1/100 of the federal limits.[313]

FUSE provides no factual or expert opinion evidence to dispute any of these conclusions, and as a result, this aspect of Proposed Contention 14 fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi).

b. Additional Topics Addressed in Proposed Contention 14[314]

To the extent FUSE, in Proposed Contention 14, presents claims that relate to Entergy's "leak before break" analysis, Entergy's response is in its answer to FUSE Contention 33.

16. Proposed Contention 15 – "Numerous ENVIRONMENTAL and ECONOMIC JUSTICE Issues related to License Renewal need to be addressed in the hearing that directly and or indirectly affect public well being, health and safety."

Proposed Contention 15 presents an assortment of unrelated allegations under the rubric of environmental and "economic justice." Once again, FUSE provides *no* specific reference to any documentary sources, expert opinion, or to any portion of Entergy's allegedly deficient LRA. Fundamentally, FUSE's environmental justice argument is that "sustenance fishermen" are affected because they are unaware that they are catching fish that are "laced with

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311 *Id.* at 15.

312 *Id.*

313 *Id.*

314 With respect to FUSE's request to amend its contention after submittal of the hydrogeological Investigation Report, Entergy recognizes that the Investigation Report was not issued until after FUSE submitted its Petition. To the extent FUSE wishes to challenge data or findings of the Investigation Report, it must do so pursuant to 10 C.F.R. § 2.309(f)(2).

strontium."[315] FUSE believes that the magnitude of this impact is currently "MODERATE," but will become "LARGE" during the period of extended operation. FUSE also alleges that populations near IPEC that do not speak English are unjustly endangered because they cannot read the emergency evacuation materials.

This contention also discusses a variety of allegations unrelated to environmental justice. Apparently, FUSE believes that these facts support an "economic justice" claim:

- Alleged disproportionate financial incentives given to nuclear industry, in violation of the Fair Trade doctrine;[316]
- Alleged "gross inequity" in Entergy's nuclear-related business profits and executive salaries, in light of the Entergy New Orleans bankruptcy;[317]
- To "mitigate this imbalance," FUSE requests that NRC require Entergy to pay for legal expenses of stakeholders and other costs, including cost of emergency preparedness, security costs, and the "cost of health effects";[318]
- Wind and solar generating sources allegedly do not require emergency planning;[319]
- Entergy's license transfer application related to its corporate restructuring;[320]
- IPEC is the "only plant in the nation leaking strontium-90";[321]
- IPEC never built a fish-return pipeline "required" in 1986, in alleged violation of New York State law;[322] and
- Microbial corrosion may affect stainless steel roller bearings on traveling water screens.[323]

As an initial matter, FUSE offers no discussion, let alone legal theory, related to its "economic justice" allegations. Thus, all of the allegations listed above, which have no

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[315] Superceding Petition at 146-47.

[316] *Id.* at 141.

[317] *Id.* at 142.

[318] *Id.* at 144-46.

[319] *Id.* at 143.

[320] *Id.* at 143.

[321] *Id.* at 147.

[322] *Id.* at 148-49.

[323] *Id.* at 149-50.

relationship to environmental justice issues, must be rejected because they fail to provide a specific statement of the issue of law or fact to be raised, as required by 10 C.F.R. § 2.309(f)(1)(i).[324]

Moreover, FUSE once again relies upon bare assertions with no references to the underlying documentary sources or expert opinion, contrary to 10 C.F.R. § 2.309(f)(1)(v), and provides no references to Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi). Both the "economic" and "environmental justice" aspects of this Proposed Contention should be denied for these reasons alone.[325]

Proposed Contention 15 is also inadmissible because it raises issues that are outside the scope of this proceeding and fails to show genuine dispute on a material issue of fact, contrary to 10 C.F.R. § 2.309(f)(1)(iii) and (vi).

a. Legal Standards for Environmental Justice ("EJ") Analyses

EJ analysis is guided by the NRC's Final Policy Statement on Environmental Justice[326] ("Final Policy Statement"), NUREG-1555, Regulatory Guide 4.2 Supp. 1, and Executive Order 12,898.[327] The Final Policy Statement summarizes the goals of EJ analyses as follows:

> (1) To identify and assess environmental effects on low-income and minority communities by assessing impacts peculiar to those communities; and (2) to identify significant impacts, if any, that will fall disproportionately on minority and low-income

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[324] Moreover, many of these allegations raise issues that relate to another pending proceeding (license transfer), are beyond the authority of this Board (financial compensation), are otherwise outside the scope of this proceeding, or addressed elsewhere in this Answer (radiological leakage).

[325] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC 370, 384 (1992).

[326] 69 Fed. Reg. 52,040 (Aug. 24, 2004).

[327] Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7,629 (Feb. 16, 1994).

> communities. It is not a broad-ranging review of racial or economic discrimination.[328]

To this end, "[t]he focus of any EJ review should be on identifying and weighing disproportionately *significant and adverse* environmental impacts on minority and low-income populations that may be *different from the impacts on the general population.*"[329] Thus, if no significant and adverse impacts are identified, then a detailed analysis of disparate impacts is not appropriate.[330]

Accordingly, for an EJ contention to be admissible, mere identification of the presence of an EJ population alone is insufficient.[331] Supported allegations of *significant and disproportionate* adverse impacts must be proffered. "Adverse impacts that fall heavily on minority and impoverished citizens call for particularly close scrutiny."[332] Two necessary prerequisites must support the admission of a contention alleging deficiencies in an applicant's EJ analysis. First, "support must be presented regarding the alleged existence of adverse impacts or harm on the physical or human environment." Second "a supported case must be made that these purported adverse impacts could disproportionately affect poor or minority communities in the vicinity of the facility at issue."[333] Thus, in order to establish a genuine dispute on a material

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328 69 Fed. Reg. at 52,048; *see also La. Energy Servs., LP* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 101 (1998) ("*LES*") ("nothing in NEPA or in the cases interpreting it indicates that the statute is a tool for addressing problems of racial discrimination").

329 69 Fed. Reg. at 52,047 (emphasis added) (internal quotations omitted).

330 *See id.*

331 Identification of EJ populations "in impacted area[s that] exceed[] that of the State or County percentage for either the minority or low income population" remains a significant consideration for EJ analyses. *See Dominion Nuclear N. Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC at __ (slip op. at 27) (citing 69 Fed. Reg. at 52,048). However, identification of EJ populations alone is insufficient to support admission of an EJ contention. *See id.*, slip op. at 39 (describing EJ issues as those "that could lead to a disproportionately high and adverse impact").

332 *LES*, CLI-98-3, 47 NRC at 106.

333 *Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-03, 65 NRC 237, 262 (2007) (citing 69 Fed. Reg. 52,047).

issue of fact, a petitioner must "identify [a] *significant and disproportionate* environmental impact on the minority or low-income population relative to the general population . . . ."[334]

In particular, allegations of releases of radioactivity below regulatory limits are insufficient to demonstrate significant adverse impact that would support admission of an EJ contention. As the Licensing Board in the *Vogtle* early site permit ("ESP") proceeding recently observed,

> When a contention alleges that increases in radioactive releases create higher doses, but does not provide information or expert opinion to dispute the conclusion that the higher doses would still be under NRC regulatory limits, and no evidence has been presented to show that the higher levels will cause harm, sufficient information to show that a material dispute exists has not been provided and the contention making these claims should not be admitted.[335]

b. FUSE Proposed EJ Contention is Inadmissible

FUSE alleges that "sustenance [sic] fishermen" are affected by radioactive releases.[336] FUSE, however, simply assumes, but does not demonstrate the existence of any significant adverse impact. Moreover, FUSE provides no evidence of any disproportionate impact related to subsistence fishing.

For example, while FUSE warns that "fishermen are unaware of the radioactive strontium in the bones of the fish,"[337] there is no assertion or information showing that the Applicant has not or is not operating IPEC in accordance with the Commission's requirements with respect to radiological releases in 10 C.F.R. Part 20. FUSE provides no evidence that there are any fish in the Hudson River that are contaminated above regulatory limits, or that any contamination is

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[334] *System Energy Resources, Inc.* (Grand Gulf Early Site Permit), LBP-04-19, 60 NRC 277, 294 (2004); *see also LES*, CLI-98-3, 47 NRC at 106.

[335] *Vogtle*, LBP-07-3, 65 NRC at 26.

[336] Superceding Petition at 146.

[337] *Id.* at 147.

linked to IPEC.[338] FUSE does not provide evidence of radiologically-contaminated fish, much less of contaminated a fish due to discharges from IPEC.[339]

Thus, the Board's observation in the *Vogtle* ESP proceeding applies equally here: FUSE's "concern . . . lacks an adequate showing of adverse impacts, without which disparate impacts have no significance."[340] This Board should reject FUSE's Proposed Contention 15 for the same reasons that the Board in the *Vogtle* ESP proceeding rejected the proffered EJ contention: "without adverse effects, how those effects are distributed is immaterial to this proceeding."[341]

FUSE also attempts to raise the issue of Spanish-speaking residents who cannot read evacuation materials. This claim, although cloaked as an EJ issue, is in fact an emergency planning issue. Like all emergency planning issues, it is outside the scope of this proceeding and cannot provide a basis for an admissible contention.[342]

17. Proposed Contentions 16 through 19 – "Applicants' violation of the Administrative Procedures Act in bypassing the Code of Federal Regulations (CFR) in lieu of trade guidance for defining Indian Point 2's General Design Criteria relevant to current design and more on point relevant to superceding the current operating license with a new operating license to facilitate an extended period of operation."

Petitioner argues that Entergy followed "trade industry-endorsed commentary"[343] developed in the late 1960s to early 1970s rather than following applicable regulations, and that

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338 *See id.*

339 *Id.* Entergy, however, as described in response to Proposed Contention 14 above, *has* evaluated the potential adverse impacts from groundwater contamination, including the potential impacts of fish consumption, and determined that there are no significant adverse impacts.

340 LBP-07-3, 65 NRC at 263.

341 *Vogtle*, LBP-07-3, 65 NRC at 267.

342 *Millstone*, CLI-05-24, 62 NRC at 561 ("Emergency planning is, by its very nature, *neither germane to age-related degradation nor unique to the period covered by the . . . license renewal application.*"); 10 C.F.R. § 50.47(a)(1) ("No finding under this [emergency planning] section is necessary for issuance of a renewed nuclear power reactor operating license.").

343 Superceding Petition at 154.

the Aging Management Programs proposed by Entergy are based upon misrepresentations of the actual GDC to which IPEC Unit 2 was licensed. Petitioner accuses both Entergy and the NRC (for allegedly failing to enforce Entergy compliance with the GDC) of having violated the Administrative Procedure Act ("APA").[344] As discussed below, Petitioner purports to provide specific examples of failures to meet the GDC and concludes that the CLB for IPEC Unit 2 is "unknown" and "unmonitored."[345]

Entergy opposes the admission of Proposed Contentions 16-19 because they fail to satisfy the admissibility standards set forth in 10 C.F.R. § 2.390(f)(1). In short, Proposed Contentions 16-19 should not be admitted because Petitioner has failed to: (1) provide a *specific* statement of the issue of law or fact that the Petitioners wishes to raise or controvert, contrary to 10 C.F.R. § 2.309(f)(1)(i); (2) provide a *brief explanation* of the factual or legal bases of the contention, contrary to 10 C.F.R. § 2.309(f)(1)(ii); (3) demonstrate that the issues raised are within the scope of this license renewal proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(ii); (4) demonstrate that the issues raised are material to the NRC's licensing decision in this case, contrary to 10 C.F.R. § 2.309(f)(1)(iv); (5) provide adequate factual and/or expert support for the Proposed Contentions, contrary to 10 C.F.R. § 2.309(f)(1)(v); and (6) demonstrate that a genuine dispute exists on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi). In addition, Proposed Contentions 16-19 improperly challenge the Commission's regulations at 10 C.F.R. Part 54 and other aspects of the NRC's regulatory process.

a. Proposed Contentions 16-19 Lack Adequate Specificity and Basis

First, among the many reasons supporting rejection of Proposed Contentions 16-19 is their failure to satisfy the specificity and basis requirements of Section 2.309(f)(1)(i) and (ii).

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[344] *Id.* at 153.

[345] *Id.* at 166.

The NRC's contention admissibility rules "insist upon some 'reasonably specific factual and legal' basis for [a] contention."[346] As such, "presiding officers may not admit open-ended or ill-defined contentions lacking in specificity or basis."[347] Petitioner's lengthy and desultory presentation—which purportedly encompasses four separate contentions—is exactly the type of "open-ended" and "ill-defined" presentation barred by the NRC's "strict contention rule."

For example, over the course of 15 pages, Petitioner raises issues related to asserted "breathtaking" violations of the APA by the NRC; the adequacy of the CLB for IPEC Unit 2, including Entergy's compliance with the GDC; the validity of relying on certain regulatory guidance; the adequacy of prior NRC adjudicatory decisions; and alleged "egregious conduct" by Entergy and "regulatory failure" by the Commission.[348] In doing so, Proposed Contentions 16-19 lack the requisite specificity and basis as they do not specify how the various chains relate to the LRA or even 10 C.F.R. Part 54, and should be accordingly dismissed in their entirety pursuant to 10 C.F.R. § 2.309(f)(1). Indeed, their admission would frustrate the very purposes of the Commission's strict pleading requirements, which include, among others, focusing the hearing process on real disputes susceptible to resolution in an adjudication.

b. Proposed Contentions 16-19 Do Not Raise a Material Issue within the Scope of License Renewal

More importantly, Proposed Contentions 16-19 fail to raise any issue that is within the scope of this proceeding or material to the Staff's licensing decision. As discussed above, "[t]he scope of license renewal is narrow."[349] A Proposed Contention that "does not raise any aspect of the Applicant's aging management review or evaluation of the plant's systems, structures, and

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346 *Millstone*, CLI-01-24, 54 NRC at 359 (citing 54 Fed. Reg. at 33,168, 33,171).

347 *Id.*

348 Superceding Petition at 152-166.

349 *McGuire/Catawba*, CLI-02-14, 55 NRC at 290.

components subject to time-limited aging analysis" is inadmissible.[350] Similarly, a contention is not admissible if it fails to raise a material issue; *i.e.*, an issue whose resolution would make a difference in the outcome of the licensing proceeding.

As best Entergy can discern, FUSE alleges that Entergy—a private company—has violated the APA, purportedly by failing to comply with certain GDC.[351] FUSE further asserts that the NRC has violated the APA by allowing the licensee to operate Unit 2 while in alleged violation of its operating license.[352] Petitioner's assertion that either Entergy or the NRC violated the APA is misguided and reflects at best a misunderstanding of the requirements and applicability of the APA. The APA governs the manner in which federal agencies conduct formal rulemaking and adjudications and defines the applicable standards of judicial review.[353] The APA applies only to agencies of the U.S. Government; it does not apply to private entities like Entergy.[354] Any suggestion that Entergy has violated the APA is without legal basis. Moreover, alleged historical violations of the APA by the NRC, presumably during original licensing, are clearly beyond the limited scope of this license renewal proceeding.

To the extent Petitioner seeks to challenge the present ability or willingness of this Board to properly review and evaluate Entergy's pending license renewal application, Petitioner further raises issues outside the scope of this proceeding. For example, FUSE "wonders how can a board that is selected by the Commission be allowed to judge the acts of the commission.

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350 *Turkey Point*, CLI-01-17, 54 NRC at 16 (quoting LBP-01-6, 53 NRC at 164).

351 Superceding Petition at 153.

352 *Id.* at 153-54.

353 According to the *Attorney General's Manual on the Administrative Procedure Act* (1947) drafted after the 1946 enactment of the APA, the basic purposes of the APA are: (1) to require agencies to keep the public informed of their organization, procedures and rules; (2) to provide for public participation in the rulemaking process; (3) to establish uniform standards for the conduct of formal rulemaking and adjudication; (4) to define the scope of judicial review. *Id.* at 9, *available at* http://www.oalj.dol.gov/PUBLIC/APA/REFERENCES/REFERENCE_WORKS/AG01.HTM#A.

354 *See id.*

[sic]"[355] Petitioner's aspersions on the integrity of the Board offer no support for the admission of its Proposed Contentions.[356] Further, it is well established that contentions concerning the adequacy of the NRC Staff's review of a license application (as opposed to the application itself) are inadmissible in licensing hearings.[357]

Finally, Petitioner asserts that "[t]he [APA] under chapter 5 provides for adjunction [sic] in the federal court the [sic] exactly this kind of broad unlawful act."[358] The time to challenge the various historical licensing and other agency actions cited by FUSE in its Petition has long passed. Moreover, the NRC has taken no final agency action in this proceeding that would trigger judicial review under the APA. To date, the NRC has only docketed the Indian Point license renewal application (a discretionary action), commenced its detailed technical review, and issued a notice of opportunity for hearing. None of those actions constitutes final agency action for purposes of judicial review, and none of those actions is reviewable by the Board in this proceeding.

Putting aside FUSE's flawed legal premise (*i.e.*, that Entergy and/or the NRC have previously violated the APA and that such violations are cognizable in this forum), the various bases proffered by Petitioner in support of Proposed Contentions 16-19 relate principally—and improperly—to alleged inadequacies in the CLB for Unit 2. For example, FUSE asserts:

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[355] Superceding Petition at 166.

[356] *See, e.g.*, Superceding Petition at 153 (charging that Entergy and the NRC "prostituted the license renewal submittal"); *see also Millstone*, CLI-01-24, 54 NRC at 366 (citation omitted); *petition for recons. denied,* CLI-02-01, 55 NRC 1, 3-4 (2002) ("Allegations of management improprieties or poor 'integrity' . . . must be of more than historical interest: they must relate directly to the proposed licensing action.").

[357] *Curators of the Univ. of Mo.*, CLI-95-8, 41 NRC at 395-96; *see also* CLI-95-1, 41 NRC at 121-22, 122 n.67 (citing reactor cases in which this principle has been applied).

[358] Superceding Petition at 166.

- "The as-built construction of the facility does not comply with the safety evaluation report, the operating license or to the code of federal regulations."[359]

- "[T]he plant design, programs and procedures *were* licensed to trade industry-endorsed commentary regarding the general design criteria, as can be seen by a close examination of the submitted FSAR for the LRA and approved in the 1970 SER which bypassed the federal rules as found in 10 CFR 50 Appendix A . . ."[360]

- "Entergy's failure to adhere to general design criteria substantially reduces safety margins for safe plant operation, by severely reducing detection of and the consequential mitigation of accident conditions resulting in substantial reduction in protecting the health and safety of the public."[361]

- "Entergy was in fact not in compliance then and not [sic] in compliance with them now as provided in current 2006 LRA submitted for relicensing."[362]

- "[T]he IP2 FSAR does not address Criterion 35 at all. This essentially makes the GDC meaningless in its intent to protect the health and safety of the public, and places the plant in clear violation of 10CFR50 Appendix A."[363]

- "[T]he egregious conduct by the applicant and the regulatory failure raises questions about any statement made in the LRA, or the *CLB for Unit 2*. The *design basis* is unknown, unmonitored, and the materiel [sic] condition also [sic] unknown."[364] *Id.* at 38-39 (emphasis added).

The foregoing arguments fall outside the scope of this proceeding because they contest the adequacy of the CLB and current design basis.[365] 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."[366] The NRC addresses and maintains current plant licensing bases through ongoing agency oversight, review, and enforcement. The NRC chose to "focus[] the renewal process on [passive] plant systems,

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[359] *Id.* at 153.

[360] *Id.* at 154 (emphasis in original).

[361] *Id.*

[362] *Id.* at 156.

[363] *Id.* at 161.

[364] *Id.* at 166.

[365] *See* 10 C.F.R. § 54.30; *see also generally* Section IV.B, above.

[366] Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. at 22,473.

structures, and components for which current [regulatory] activities and requirements *may not* be sufficient to manage the effects of aging in the period of extended operation."[367]

Consistent with that focus, the Commission deliberately chose not to "throw open the full gamut of provisions in a plant's current licensing basis to re-analysis during the license renewal review."[368] As such, the NRC does not treat a license renewal review as the equivalent of a *de novo* review for an initial construction permit or operating license. Nonetheless, that is precisely the result FUSE seeks here.

Furthermore, FUSE's impermissible challenge to the Indian Point CLB is premised on an erroneous assumption; *i.e.*, that Indian Point Unit 2 *must* comply with the GDC. Specifically, FUSE argues "the plant design, programs and procedures *were* licensed to trade industry-endorsed regarding the general design criteria . . ."[369] FUSE presents a chronology of events that ostensibly supports its claim, and avers that Entergy's failure to adhere to a [sic] general design criteria substantially reduces safety margins for safe plant operation, by severely reducing detection of and the consequential mitigation of accident conditions with adequate means to protect the health and safety of the public."[370]

As discussed previously, the GDC, which are contained in Appendix A to 10 C.F.R. Part 50, establish minimum requirements for the principal design criteria for water-cooled nuclear power plants. As set forth in NRR Office Instruction LIC-100, Revision 1, *the GDC are not applicable to plants with construction permits issued prior to May 21, 1971.*[371] The construction permits for Indian Point Units 2 and 3 were issued before that date, on October 14, 1966, and

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[367] *Id.* at 22,469.

[368] *Turkey Point*, CLI-01-17, 54 NRC at 9.

[369] Superceding Petition at 154.

[370] *Id.* at 154.

[371] § 21.5.7 (Jan. 7, 2004), *available at* ADAMS Accession No. ML072000067.

August 13, 1969, respectively. Thus, the GDC do not apply to those plants. Indeed, the Commission has explained its sound rationale for not applying the GDC to such plants:

> The Commission (with all Commissioners agreeing) has approved the staff proposal in Option 1 of this paper in which the staff will not apply the [GDC] to plants with construction permits issued prior to May 21, 1971. At the time of promulgation of Appendix A to 10 CFR Part 50, the Commission stressed that the GDC were not new requirements and were promulgated to more clearly articulate the licensing requirements and practice in effect at that time. While compliance with the intent of the GDC is important, *each plant licensed before the GDC were formally adopted was evaluated on a plant specific basis, determined to be safe, and licensed by the Commission.* Furthermore, current regulatory processes are sufficient to ensure that plants continue to be safe and comply with the intent of the GDC. Backfitting the GDC would provide little or no safety benefit while requiring an extensive commitment of resources. Plants with construction permits issued prior to May 21, 1971 do not need exemptions from the GDC. [372]

The falsity of FUSE's claims concerning alleged noncompliance with the GDC is further illustrated by the Commission's February 11, 1980 Confirmatory Order that, among other things, required the "[c]onduct [of] a study to determine and document the method by which its plant complies with current safety rules and regulations, in particular those contained in 10 CFR Part 20 and 50."[373] On August 11, 1980, Consolidated Edison ("ConEd") submitted its response to the Order. The Commission replied to ConEd's letter on January 19, 1982, stating: "Our audit of your submittal indicates that the Indian Point Unit No. 2 design and operation does meet the applicable regulations."[374] Accordingly, FUSE's allegations of noncompliance with the GDC lack any valid factual or legal basis and do not provide an adequate basis for admissibility per the requirements of 10 C.F.R. § 2.309(f)(1)(i), (ii), and (iii).

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[372] SRM-SECY-92-223 (emphasis added).

[373] Office of Nuclear Reactor Regulatory, Confirmatory Order, Feb. 11, 1980, App. A at 8.

[374] Letter from S. Varga, NRC to J. O'Toole, Consolidated Edison Co. of New York, Jan. 19, 1982.

c. *Proposed Contentions 16-19 Lack Adequate Factual or Expert Support and Fail to Establish a Genuine Dispute*

Even *assuming* the issues raised by FUSE fall within the scope or are material to the outcome of this proceeding, Proposed Contentions 16-19 lack the necessary factual or expert support, and fail to raise a genuine dispute relative the application, as required by 10 C.F.R. § 2.309(f)(1)(v) and (vi). FUSE's scant references to specific portions of the license renewal application, coupled with its misguided focus on CLB-related issues, underscore its failure to controvert the application on a material issue of law or fact.[375] Additionally, as demonstrated below, Petitioner's arguments lack any factual or expert support and are fraught with factual errors.

Petitioner's statements regarding GDC 35 and 45 are two particularly egregious examples of Petitioner's failure to furnish adequately supported and accurate information. For example, Petitioner claims that the IPEC Unit 2 FSAR does not address Criterion 35 (related to emergency core cooling) "at all."[376] FUSE provides no factual or expert basis for this claim, and simply overlooks the fact that the requirements for emergency core cooling systems are addressed in Section 1.3 of the UFSAR. Moreover, issues regarding the adequacy of the design and construction of the facilities, for example compliance with the GDC, are outside the scope of matters considered in this license renewal proceeding.[377]

FUSE also argues that LCO 3.4.13 permits reactor containment pressure leakage from primary to secondary systems in "quantities [that] are much larger than reasonable limits implicit

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375 *See* 10 C.F.R. § 2.309(f)(1)(i) (requiring that a petitioner provide "a specific statement of the issue of law or fact to be raised or controverted . . . .").

376 Superceding Petition at 161.

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

under [GDC] 35."[378] FUSE hypothesizes that "[t]his non-conservative quantity may have contributed to the root cause of [an unspecified] tube rupture accident—and is intolerable as an acceptable quantity for age management of the RCS leakage."[379] FUSE, however, provides no documentary or expert support for these conclusory assertions, relying instead upon a postulated correlation between a sudden and rapid steam generator tube leak and allowable reactor containment pressure leakage. Loss of coolant accident via steam generator tube rupture is an accident scenario analyzed for the current operating term. As such, it falls outside the scope of this proceeding. Steam Generator Integrity, AMP B.1.35, addresses tube integrity.

Similarly, in assailing Entergy for its alleged noncompliance with GDC 45 (concerning cooling water system inspections), Petitioner states that "Indian Point 2 relies on water chemistry in lieu of" inspections.[380] Petitioner fails again to provide factual or expert basis to support its conclusory statements. Petitioner refers the Board generally to the Declaration of Ulrich Witte, which FUSE submits as Exhibit Q. Mr. Witte, however, no longer associates himself with FUSE.[381] Because FUSE cannot make Mr. Witte available for examination on the subject of his declaration, FUSE cannot rely upon his opinions to support admission of its contention.[382]

The declaration itself contains only vague and unsubstantiated allegations of deficiencies in the design (*e.g.*, spent fuel pool leaks, leaks from underground piping, "design basis event tube rupture") and licensing bases (*e.g.*, noncompliance with GDC) for IPEC Unit 2 and allegations of past instances of licensee/regulatory misconduct. It provides no technical analysis or other

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[378] Superceding Petition at 163.

[379] *Id.*

[380] *Id.* at 164.

[381] *Id.* at 29; Letter from U. Witte to S. Turk, NRC OGC, "Termination of Services for Expert Witness and Technical Advisory Work for FUSE" (Dec. 12, 2007).

[382] *See* 10 C.F.R. § 2.309(f)(1)(v).

reasoned explanation that might constitute expert opinion or might assist the Board in assessing the admissibility of Petitioner's claims. Indeed, aside from a passing reference to "aging programs for the reactor's systems," the Witte Declaration contains no apparent link to license renewal. FUSE quotes LRA Section "A.2.1.141," but fails to provide any explanation of *why* it believes LRA Section *A.2.1.41* is deficient.[383] The Board cannot make inferences on FUSE's behalf.[384] Thus, the Witte Declaration fails to support the admission of this contention.[385]

Proposed Contentions 16-19 also impermissibly challenge 10 C.F.R. Part 54 and the agency's implementing regulatory process.[386] In short, by seeking to litigate the adequacy of the Unit 2 design and licensing bases, Petitioner collaterally attacks Section 54.30, which expressly removes issues concerning the adequacy of the CLB from the scope of a license renewal proceeding. Petitioner also contravenes the NRC's determination that the GDC do not apply to plants with construction permits issued prior to May 21, 1971.

Finally, Petitioner takes issue with industry and NRC reliance on regulatory guidance documents that have been developed or otherwise endorsed by the NRC. Petitioner's unfocused arguments (which include a claim that an Appeal Board "erred" in a decision issued 26 years ago)[387] do not warrant repetition here. It suffices to say that the use of guidance documents by applicants and the NRC is a longstanding practice and an integral part of the NRC regulatory

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383 Superceding Petition at 164.

384 *See Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Station, Units 1, 2, and 3), CLI091012, 34 NRC 149, 155 (1991).

385 *See 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) ("[A]n expert opinion that merely states a conclusion (*e.g.*, the application is 'deficient,' 'inadequate,' or 'wrong') without providing a reasoned basis or explanation is inadequate because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion at is alleged to provide a basis for the contention.").

386 *See* 10 C.F.R. § 2.335(a).

387 Superceding Petition at 159.

process. Further, as demonstrated above, Petitioner fails to establish any dispute relative to Entergy's compliance with the applicable regulations, as contained 10 C.F.R. Part 54.

In sum, the Board must deny the admission of Proposed Contentions 16-19. Petitioner fails to establish, with the requisite specificity and basis, the existence of genuine dispute on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(i), (ii) and (v). In addition, Petitioner raises issues outside the scope of this proceeding for which no relief can be granted, contrary to 10 C.F.R. § 2.309(f)(1)(iii), and improperly challenges the regulatory process. Petitioner has met none of the criteria set forth in Section 2.309(f)(1).

18. Proposed Contention 20 – "The License Renewal Application (LRA) fails to provide sufficient detailed information regarding technical, safety and environmental pendant issues."

Petitioner presents vague, unsubstantiated assertions in support of this Proposed Contention. First, FUSE asserts that Entergy's LRA "fails to meet the threshold of providing explicit specific technical information as called for under 10 C.F.R. § 2.309" and "CFR54.21," specifically with regard to Environmental Qualification ("EQ") of Electric Equipment and Flow-accelerated Corrosion ("FAC") programs.[388] Petitioner then accuses Entergy of "point[ing] to the present [CLB] as sufficient," and contends that this is "an ambiguous and generic approach that is rejected under NUREG-1801 . . . ."[389] FUSE argues that NUREG-1801 requires "a specific and particularized program" that defines component and system scope, inspection criteria, methodology, frequency and remediation commitments when acceptance criteria for FAC inspections are not met."[390] Finally, Petitioner asserts that Entergy's alleged failure to

[388] Superceding Petition at 167.

[389] *Id.*

[390] *Id.* at 167-68.

comply with Part 54 "makes it virtually impossible to review the legal or technical integrity of each of these programs."[391]

Entergy opposes the admission of Proposed Contention 20 on the grounds that it lacks the requisite specificity and foundation, lacks adequate factual or expert support, fails to establish a genuine dispute on a material issue of law or fact, and improperly challenges 10 C.F.R. Part 54.[392] In short, Petitioner fails to posit any reason or support—no alleged facts and no expert opinions—as to *where* or *how* the LRA is materially deficient. "Petitioner seeking to litigate contentions must do more than . . . declare an application 'incomplete.' It is their job to review the application and to identify *what* deficiencies exist and to explain *why* the deficiencies raise material safety concerns."[393] This entails identifying specific portions of the application that the petitioner disputes and providing supporting reasons for each dispute.[394] Here, FUSE offers only broad-brushed references to Entergy's EQ and FAC programs.[395] Petitioner makes no attempt to explain how the programs are inadequate from an aging management perspective. It also fails to identify any supposedly deficient portions of the application in support of its contention.

In sum, the Board must deny the admission of Proposed Contention 20 because it lacks specificity, presents no support for its claims of deficiencies in Entergy's programs, fails to show a genuine dispute on a material issue, and impermissibly challenges the CLB.[396]

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391 *Id.* at 168.

392 *See* 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi).

393 *Oconee*, CLI-99-11, 49 NRC at 337.

394 *See Turkey Point*, CLI-01-17, 54 NRC at 19.

395 To the extent FUSE presents further arguments concerning the Applicant's EQ and FAC programs in subsequent contentions, Entergy addresses those arguments in its responses to those contentions.

396 *See* 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), (vi).

19. Proposed Contention 21 – "Co-mingling three dockets, and three DPR licenses under a single application is in violation of C.F.R. Rules, specifically 10 C.F.R. 54.17(d) as well as Federal Rules for Civil Procedure rule 11(b)."

In support of this contention, Petitioner cites 10 C.F.R. 54.17(d), and contends that "co-mingling" of renewal applications for Units 2 and 3 is inappropriate because each plant has or has had separate dockets, separate "DPR" numbers, separate owners and license holders for most of the plants' 30 years of operation, separate "Architects/Engineers," distinctly different CLBs, separate onsite plant inspection teams, different sets of licensing commitments, and different enforcement histories.[397] With respect to Unit 1, Petitioner submits that Entergy violates unspecified provisions of "10 C.F.R." "by not distinguishing the current Safe Stor status of Unit 1 decommissioning, and in fact seeking approval to make use of Unit 1 systems and/or components/infrastructure for extended operation of Unit 2, and to a lesser degree Unit 3."[398]

Entergy opposes the admission of Proposed Contention 21 on the grounds that it lacks a factual or legal foundation, raises issues beyond the scope of this proceeding and immaterial to the NRC's licensing decision, fails to establish a genuine dispute on a material issue of law of or fact, improperly challenges Part 54 and the regulatory process, and seeks relief that is unavailable in this forum, contrary to 10 C.F.R. § 2.309(f)(1).

First, FUSE offers no credible legal basis for its assertion that an applicant must submit separate license renewal applications for each unit at a site. Petitioner suggests that Section 54.17(d) requires such an approach, but that provision states: "An applicant may combine an application for a renewed license with applications for other kinds of licenses." The phrase "other kinds of licenses" refers to source, byproduct, or special nuclear material licenses that

[397] Superceding Petition at 169-70.

[398] *Id.* at 169.

may be incidental to, and necessary for, operation of the plant. Section 54.17(d) does not preclude an applicant from addressing multiple units within a single license renewal application. Indeed, the NRC's Standard Review Plan ("SRP") for review of license renewal applications contemplates such an approach, indicating that, to be docketed, an application must, *inter alia*, identify "the specific *unit(s)* applying for license renewal."[399]

Second, the NRC has routinely reviewed and approved single license renewal applications that address multiple units. The NRC-approved license renewal applications for Browns Ferry (Units 1, 2, and 3), Brunswick (Units 1 and 2), and Nine Mile Point (Units 1 and 2) provide three recent examples.[400] In fact, the NRC has approved single license renewal applications encompassing not only multiple reactor units, *but different facilities on different sites*. They include the license renewal applications for the North Anna/Surry, Catawba/McGuire, and Dresden/Quad Cities facilities. Clearly, the licensees for the aforementioned facilities successfully addressed units of varying ages, designs, and licensing bases within a single renewal application. Insofar as FUSE argues that a single license renewal application is inappropriate here, it impermissibly challenges the Part 54 regulatory process and ignores relevant regulatory precedent.

Third, FUSE provides no reasoned explanation as to why the decommissioning status of Unit 1 is litigable in this proceeding. Petitioner similarly fails to explain *what* "procedure governed by 10 CFR"[401] are violated by the "use of Unit 1 systems and/or

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[399] NUREG-1800, Rev. 1, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants" (Sept. 2005), Table 1.1-1, at 1.1-5 (emphasis added).

[400] *See* http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html (providing links to the cited license renewal applications and the Staff's related safety and environmental review documents).

[401] Superceding Petition at 169.

components/infrastructure for extended operation" of Units 2 or 3,[402] or how such alleged violation constitutes a material deficiency with respect to the LRA; *i.e.*, one that is related to the detrimental effects of aging.[403] Petitioner fails again to identify, let alone controvert, any particular portion of the application. Indeed, Petitioner fails to cite any specific pages or sections of the application.[404]

Finally, insofar as the Staff has docketed the LRA and undertaken its detailed technical review, FUSE, in effect, challenges that docketing decision. Such a contention is neither within the scope of this proceeding nor the subject of relief available in this forum. Specifically, "[a]s the Commission has made clear, how thoroughly the Staff conducts its preacceptance review process and whether its decision to accept an application for filing was correct are not matters of concern in [an] adjudicatory proceeding."[405] The proper focus of this hearing is the adequacy of the application as it has been accepted and docketed for licensing review. As discussed above, Proposed Contention 21 fails to identify or explain any material deficiencies in the application.

In summary, the Board must deny the admission of Proposed Contention 21. It lacks foundation, fails to controvert the application on a material issue of law or fact, and

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[402] *Id.* at 169.

[403] Section 1.2 of the LRA expressly states the following:

> Although the extension of the IP1 license is not a part of this license renewal application, IP1 systems and components interface with and in some cases support the operation of IP2 and IP3. Therefore, IP1 systems and components were considered in the scoping process (see Section 2.1.1). The aging effects of Unit 1 SSCs within the scope of license renewal for IP2 and IP3 will be adequately managed so that the intended functions will be maintained consistent with the current licensing basis throughout the period of extended operation.

[404] *Comanche Peak*, LBP-92-37, 36 NRC at 384.

[405] *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-98-26, 48 NRC 232, 242 (1998) (citing *Curators of the Univ. of Mo.*, CLI-95-8, 41 NRC 386, 395-96 (1995)); *New Eng. Power Co.* (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 280-81 (1978).

impermissibly challenges NRC regulations and procedures, contrary to 10 C.F.R. § 2.309(f)(1)(i), (iv) and (vi).

20. Proposed Contention 22 – "The NRC violated its own regulations by accepting a single License Renewal Application made by the following parties: Entergy Nuclear Indian Point 2, LLC ("IP2 LLC"), Entergy Nuclear Indian Point 3, LLC ("IP3 LLC"), and Entergy Nuclear Operations, LLC (ENO)."

The gist of this contention is that "any transfer of the licenses in the middle of an LRA proceeding brings into scope Entergy's *entire corporate structure and complex financial qualification review* to continue operating the licenses during the license renewal period of 20 years."[406] FUSE asserts that the requested indirect transfer of control "would result in substantial reorganization of Entergy's corporate structure, and LLC holdings effecting [sic] the fiscal responsibility and liabilities of Indian Point 1, Indian Point 2 and Indian Point 3."[407] Petitioner also suggests that the transfer request will compromise the Staff's review of Entergy's license renewal application by diverting Staff attention and resources.[408] Petitioner contends that this is particularly problematic given the General Accounting Office's ("GAO") purported finding that past NRC license transfer reviews have involved inadequate assessments of fiscal responsibility.[409]

Once again, FUSE relies upon bare assertions with no basis or references to the underlying documentary sources or expert opinion, contrary to 10 C.F.R. § 2.309(f)(1)(ii) and

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[406] Superceding Petition at 174 (emphasis added).

[407] *Id.* at 173.

[408] *Id.* at 174.

[409] *Id.* at 175.

(v), and no references to Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi). This contention should be denied for these reasons alone.[410]

Moreover, Entergy opposes the admission of this contention because it raises issues that are unrelated to the management of equipment aging or to the review of time-limited aging analyses. As such, the contention is beyond the narrow scope of this proceeding and immaterial to the Staff's license renewal findings, contrary to 10 C.F.R. § 2.309(f)(1)(iii) and (iv).

This contention raises financial issues that have no place in this proceeding. At its core, Proposed Contention 22 is a challenge to Entergy's financial qualifications. The Commission has made clear, however, that such claims are not within the scope of a license renewal proceeding. In a 2004 rulemaking concerning this very subject, the Commission stated:

> *With this final rule, the NRC believes that review of financial qualifications of non-electric utility licensee applicants at license renewal is not necessary.* The resulting process for oversight of financial qualifications is sufficient to ensure that the NRC has adequate warning of adverse financial impacts so that the NRC can take timely regulatory action to ensure public health and safety and the common defense and security. The resulting process has two components: (1) A formal review of major triggering events, and (2) monitoring financial health between the formal reviews due at the "triggering events." The relevant triggering events are (1) initial operating license application, (2) license transfer, and (3) transition from an electric utility to a non-electrical utility, either with or without transfer of control of the license. In addition, the NRC can review a licensee's financial qualifications at any point during the term of the license if there is evidence of a decline in the licensee's financial health. The NRC believes that there are no unique financial circumstances associated with license renewal because the NRC has no information indicating a licensee's revenues and expenses change due to license renewal.

Section 50.33(f)(2) now expressly states: "An applicant seeking to renew or extend the term of an operating license for a power reactor need not submit the financial information that is required

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[410] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC at 384.

in an application for an initial license." An applicant's financial qualifications similarly are not within the scope of any of the Category 2 environmental issues that must be addressed pursuant to 10 C.F.R. § 51.53(c)(3). For example, in the *Susquehanna* license renewal proceeding, the Licensing Board concluded that financial issues of the sort raised by FUSE are outside the scope of a license renewal hearing. There, the petitioner questioned "the current owner/applicant's ability to meet 'its financial obligations associated with the operation, decontamination and decommissioning of the [plant]."[411] The Board denied admission of the proposed contention, in part, because it fell outside the scope of the proceeding and raised no issues material to the Staff's findings on the license renewal application.[412] Here, Petitioner's financial-based arguments similarly are beyond the scope of this proceeding and can have no bearing on its outcome.

Proposed Contention 22 also suffers from major factual deficiencies. First, Petitioner suggests that the indirect license transfer application somehow renders information in the license renewal application "ex post facto invalid."[413] Entergy notes that the relevant information presented in Chapter 1 of the application regarding the identity of the IPEC Unit 2 and 3 owners and license renewal applicants remains accurate. The fact that Entergy has submitted an indirect transfer request, approval of which is pending, does not alter this fact. Further, any material changes to information contained in the renewal application that might result from NRC approval of the indirect transfer request would be reflected in the annual updates to the application that Entergy is required to provide under Section 54.21(b).

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411 *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 316 (2007).

412 *Id.* at 313.

413 Superceding Petition at 170.

Second, the indirect transfer of control sought by Entergy will have none of the adverse repercussions suggested by FUSE. The indirect transfer of control results from certain restructuring transactions that will involve the creation of new intermediary holding companies and/or changes to existing intermediary holding companies within the Entergy corporate structure.[414] The licensees of Units 1, 2, and 3 will remain the same, Entergy Corporation (the parent company) will remain the same, and that ENO will remain the licensed operator of the Indian Point facility.[415] The transfer will involve no changes to plant technical specifications or the CLB.[416] Thus, there is no basis for Petitioner's claims that Entergy is seeking to eschew fiscal responsibility, or that the proposed indirect transfer of control poses a threat to the public health and safety.

Finally, the NRC Staff's review and approval of the indirect transfer is separate from its review in this proceeding. The NRC's ultimate determination with respect to Entergy's request for an indirect transfer of control is the subject of a separate opportunity to request a hearing under Subpart M of the NRC's Rules of Practice.[417] Indeed, FUSE already has submitted a petition to intervene in that proceeding, which the Secretary of the Commission returned because it was premature.[418] Given the frequency with which license transfers occur, the agency has

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414 Entergy Nuclear Operations, Inc.; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; Indian Point Nuclear Generating Unit Nos. 1, 2 and 3; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing, 73 Fed. Reg. 2955 (Jan. 18, 1008).

415 *Id.*

416 *See id.*

417 *See* 10 C.F.R. § 2.1301; *see also* 10 C.F.R. § 2.105(d); Energy Operations, Inc.; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing, 73 Fed. Reg. 2995 (Jan. 16, 2008).

418 Letter from A. Vietti-Cook to S. Martinelli, "Request for Hearing and Petition to Intervene of Friends United for Sustainable Energy (Indian Point Energy Center License Transfer Application)," (Jan. 14, 2008). A Federal Register Notice providing opportunity to request a hearing was subsequently published on January 16, 2008. Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing. 73 Fed. Reg. 2955 (Jan. 16, 2008).

likely allocated sufficient resources to perform the associated technical, financial, and legal reviews.[419] Thus, contrary to Petitioner's claims, Entergy's request for NRC approval of an indirect transfer of control will not adversely impact the Staff's review of the Indian Point license renewal application.

For the above reasons, the Board must deny admission of Proposed Contention 22. It fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v) and (vi).

21. Proposed Contention 23 – "The Decommissioning fund inadequacy and the plan for Entergy to mix funding across Unit 2, 1 and 3 violates commitments not acknowledged in the application and 10 C.F.R. Rule 54.3."

Citing 10 C.F.R. §§ 50.75 and 54.3, FUSE contends that "the costs for complete decommissioning and cleanup of the site must be adjusted to reflect significant changes in the contamination streams, including the large underground radioactive leaks."[420] FUSE alleges that "the Indian Point 2 decommissioning fund has not been adjusted to take into consideration the enormous, newly discovered, underground radioactive contamination."[421] Shifting to a different topic altogether, FUSE also expresses concern about "the storage of an additional 20 years of waste, either in the spent fuel pools or in dry cask storage, increases the risk to human health and safety far beyond the original Design Basis for this site."[422] In making these arguments, FUSE

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[419] Petitioner's reliance on the referenced GAO report is misplaced. That report, for which Petitioner provides no specific page citations, relates to the NRC's requirements and procedures for ensuring that nuclear power plants owned by limited liability companies comply with the Price-Anderson Act's liability requirements. It is not a study of the adequacy of the NRC's license transfer review process. In any event, the adequacy of the Staff's review is beyond the scope of this proceeding.

[420] Superceding Petition at 176.

[421] *Id.*

[422] *Id.* at 182.

provides no reference to relevant portions of the application (including the UFSAR or ER) nor does FUSE provide any expert support.[423]

Entergy opposes the admission of this contention because, once again, FUSE relies upon bare assertions with almost no reference to the underlying documents nor any citations to expert opinion, contrary to 10 C.F.R. § 2.309(f)(1)(v),[424] and no specific references to Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi).[425]

Moreover, Proposed Contention 23 is inadmissible because it raises issues that, contrary to 10 C.F.R. § 2.309(f)(1)(iii), are beyond the narrow scope of this proceeding and immaterial to the Staff's license renewal findings. The contention also improperly challenges the NRC's Part 54 and Part 51 regulations in contravention of 10 C.F.R. § 2.335.

As discussed in Entergy's response to FUSE Proposed Contention 22, above, matters such as an applicant's financial qualifications or decommissioning funding arrangements are outside the scope of license renewal. For that reason, the *Susquehanna* Licensing Board rejected arguments similar to those made by Petitioner here; *i.e.*, that the applicant will be unable to meet its financial obligations associated with decommissioning of the facility.[426] Decommissioning after the plant has ceased to operate has nothing to do with the management of equipment aging or time-limited aging analyses during the renewed operating term.[427]

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[423] *Id.* at 183-85 ("Contention is Supported by Facts and/or Expert Opinion").

[424] It is notable that although implying that this contention is "Supported by Facts and/or Expert Opinion," Superceding Petition at 183, the text provides no facts or identification of experts on whom FUSE relies, but, in large part, merely recites related regulations and statements of consideration. *Id.* at 183-85.

[425] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC at 384.

[426] *PPL Susquehanna LLC* (Susquehanna Stream Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 316 (2007) (denying admission of contention related to sufficiency of decommissioning funding as outside scope of license renewal).

[427] Moreover, FUSE cites Section 54.3, which simply defines terms used throughout Part 54. Superceding Petition at 176. That regulation contains no provision or reference relevant to decommissioning or decommissioning funding. Section 54.4, the more pertinent regulation, which defines the scope of Part 54, contains no such reference.

In support of its contention, FUSE cites 10 C.F.R. § 50.75, several recent decommissioning funding reports submitted by Entergy to the NRC, and a 2000 Commission license transfer adjudicatory decision.[428] These references further reinforce the conclusion that Proposed Contention 23 cannot be admitted because it raises issues addressed in other regulatory processes. The NRC's decommissioning funding regulations—not its license renewal regulations—are specifically designed to ensure that when a plant ceases permanent operations, sufficient funds are available to decommission the facility in a manner that protects the public health and safety. The NRC regulations accomplish this by requiring (1) adequate financial responsibility early in plant life, (2) periodic adjustments, and (3) an evaluation of specific provisions close to the time of decommissioning.[429]

As reflected in Section 50.75(f)(1), the NRC requires every power reactor licensee to submit, at least biennially, a report on the status of decommissioning funding for each licensed power reactor owned in whole or in part by the licensee. Those status reports (to which Petitioner refers on page 181) provide information related to: updated NRC minimum decommissioning funding levels, the amount of funds accumulated to the end of the preceding calendar year, a schedule of annual amounts remaining to be collected (in the case of utilities making periodic contributions to their decommissioning funds), assumptions related to decommissioning cost escalation and fund earnings, contracts relied upon and changes since the previous report to methods of providing financial assurance of adequate decommissioning funding, and material changes to decommissioning trust agreements. Thus, Petitioner's reliance on Section 50.75 and Entergy's decommissioning funding status reports offer no support for its contention. In fact, those very requirements ensure that a licensee's decommissioning funds are

[428] Superceding Petition at 178-83.

[429] 10 C.F.R. § 50.75.

continually monitored and adjusted (as necessary) during the initial and renewed operating terms to ensure that decommissioning funding remains adequate.

FUSE's claim that the Commission's 2000 decision (CLI-00-22) in the Indian Point/Fitzpatrick license transfer proceeding supports the admissibility of Contention 23 is wrong.[430] FUSE erroneously ascribes the following statement to the Commission: "[r]egarding decommissioning Stakeholders have the right to seek intervenor status in any application for license renewal or extension that Entergy Indian Point may file."[431] Based on this error, FUSE asserts that "the issue of whether there are adequate decommissioning funds is within [the] scope of the licensing renewal proceedings."[432]

Contrary to Petitioner's claim, the Commission, in CLI-00-22, did not hold that decommissioning funding issues are within the scope of a license renewal proceeding. In that proceeding, the Commission rejected certain arguments made by the Town of Cortlandt, New York in its intervention petition. The Town of Cortlandt had claimed that Entergy would be more likely to apply for license renewal than the Power Authority of the State of New York ("PASNY") and "thereby delay Cortlandt's enjoyment of the full panoply of health-and-safety benefits associated with the expected decommissioning of all three units."[433] Cortlandt argued that any delay in decommissioning would "adversely affect Cortlandt's health and safety interests by subjecting Cortlandt and its citizens to the possibility of increased radiological exposure as a result both the continued operation of the plant and the continued (and possibly

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[430] *Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 304 (2000).

[431] Superceding Petition at 179.

[432] *Id.*

[433] *FitzPatrick*, CLI-00-22, 52 NRC at 304.

expanded) onsite storage of spent fuel."[434] For these reasons, Cortlandt asserted that the NRC staff's assessment of financial ability should include an evaluation of the transferees' ability to decommission Indian Point 3—both for the current term and for the license renewal term.[435]

The Commission held that Cortlandt's concerns did not fall within the scope of the license transfer proceeding.[436] The Commission reasoned that (1) a license renewal application from Entergy was not pending and (2) Entergy was no more likely to seek renewal than PASNY.[437] While the Commission acknowledged Cortlandt's "right to seek intervenor status in any application for license renewal or license extension that Entergy Indian Point may file," it did not hold that issues related to decommissioning, decommissioning funding, or the impacts of spent fuel storage are subject to adjudication in a license renewal proceeding.[438]

In this proceeding, FUSE makes analogous arguments regarding the NRC's alleged failure to consider the costs and impacts of "storage of an additional 20 years of waste . . . ."[439] To the extent Petitioner's claims relate to the adequacy of decommissioning funding for IPEC, they are not litigable in this proceeding for the reasons set forth in response to Proposed Contention 22, above. Insofar as Petitioner's arguments might be construed to relate to the Commission's generic consideration of the impacts of onsite waste storage in Part 51, they are

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434 *Id.*

435 *Id.*

436 *Id.*

437 *Id.* at 304-05.

438 In fact, in the context of its *license transfer* holding, the Commission noted that Cortlandt had "provided no basis for [the Commission] to question Entergy Indian Point's ability or willingness to comply with the NRC's decommissioning requirements," and that Cortlandt's "challenge to the Applicants' use of the very decommissioning cost estimate methodology sanctioned by [NRC] rules amounts to an impermissible collateral attack on 10 C.F.R. § 50.75." CLI-00-22, 52 NRC at 303.

439 Superceding Petition at 182.

likewise are not litigable in this proceeding.[440] As the Licensing Board explained in the Oconee license renewal proceeding:

> The Commission's regulations provide that applicants for operating license renewals do not have to furnish environmental information regarding the onsite storage of spent fuel or high-level waste disposal, low-level waste storage and disposal, and mixed waste storage and disposal. *See* 10 C.F.R. §§ 51.53(c)(2), 51.53(c)(3)(i), and 51.95. *See also* the presumptions in 10 C.F.R. § 51.23 regarding high-level waste permanent storage; *and see* Table B-1 in Appendix B to Subpart A of Part 51, "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants" (which includes specific findings on offsite radiological impacts of spent fuel and high-level waste disposal, low-level waste storage and disposal, mixed waste storage and disposal, and onsite spent fuel storage). Each of these areas of waste storage is barred as a subject for contentions because 10 C.F.R. § [2.335] provides that Commission rules and regulations are not subject to attack in NRC adjudicatory proceedings involving initial or renewal licensing.[441]

In affirming the Board's ruling on contention admissibility, the Commission stated that "Category 1 issues include the radiological impacts of spent fuel and high-level waste disposal, low-level waste storage and disposal, mixed waste storage and disposal, and onsite spent fuel."[442]

In sum, the Board must deny admission of Proposed Contention 23 for failing to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v) and (vi), and for improperly challenging generic determinations made by the NRC in 10 C.F.R. Part 54 and Part 51 regarding the scope of license renewal and the impacts of onsite waste storage, respectively.

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[440] Thus, FUSE's citations to the NRC's "Liquid Radiation Release Lessons Learned Task Force Final Report" and recent decommissioning funding reports from Entergy, Superceding Petition at 181, provide no support for the admission of litigable issues, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

[441] *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 and 3), LBP-98-33, 48 NRC 381, 391 (1988).

[442] *Oconee*, CLI-99-11, 49 NRC at 343.

22. Proposed Contention 24 – "Inability to Access Proprietary Documents Impedes Adequate Review of Entergy Application for License Renewal of IP2 LLC and IP3 LLC."

Petitioner offers the following principal arguments as bases for this contention: (1) "massive redactions" of proprietary information from the LRA "make it impossible for Stakeholders to adequately review the LRA documents and form/support their contentions;"[443] (2) over 80 percent of the Chapter 14 of the UFSAR has been redacted;[444] (3) Entergy and/or the NRC have violated Petitioner's constitutional rights under the First Amendment and 42 U.S.C. § 1983;[445] (4) Entergy has wrongfully withheld information as proprietary;[446] and (5) the NRC designed the license renewal process "to eliminate any meaningful public involvement."[447] As relief, Petitioner requests that the "time clock" for submitting hearing requests and petitions to intervene "should not begin until stakeholders have access to a full and complete set of un-redacted versions of the [license renewal application] and its underlying documents," including all versions of the FSAR, UFSAR, as well as the entire CLB.[448]

Proposed Contention 24 substantially overlaps the arguments FUSE presents in Proposed Contention 1. Entergy responds to FUSE's arguments regarding access to proprietary information in its answer to Proposed Contention 1, above.

Entergy further objects to the admission of Proposed Contention 24 because, once again, FUSE relies upon bare assertions with no references to the underlying documentary sources and

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443 Superceding Petition at 187.

444 *Id.* at 190.

445 *Id.* at 194-197.

446 *Id.* at 187.

447 *Id.* at 196.

448 *Id.* at 188. The purported need to compile the entire CLB for purposes of license renewal is the subject of a separate FUSE contention (Proposed Contention 29). As discussed in response to that Proposed Contention, below, the Commission has specifically addressed that issue and determined that a license renewal applicant is not required to compile the CLB.

no citations to expert opinion, contrary to 10 C.F.R. § 2.309(f)(1)(v), and no specific references to Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi). Thus, in addition to the reasons set forth in Entergy's response to Proposed Contention 1, this contention should also be denied for these reasons.[449]

23. Proposed Contention 25 – "Regulatory Guidance contained in 10 C.F.R. 50.4 and Rule Implementing Standards under the American Rules and Procedures Act require Stakeholders to have reasonable opportunity to bring forth issues beyond the narrow scope where members of the public have specific and direct substantiated concerns."

Petitioner argues that the 10 C.F.R. § 50.4 and the "American Rules and Procedures Act" authorizes it to raise "specific and directly substantiated concerns" that would otherwise be considered beyond the narrow scope of a license renewal proceeding.[450] In particular, Petitioner asserts that certain listed Stakeholders "have call[ed] for an Independent Safety Assessment (ISA) of Indian Point \ systems, components, and programs beyond the narrow recommendations of existing regulatory guidance . . . ."[451] Petitioner asserts that the denial of this request would undermine accountability and transparency in the license renewal process.

Entergy opposes admission of Proposed Contention 25 because it fails to meet any of the admissibility criteria set forth in Section 2.309(f)(1) and improperly challenges 10 C.F.R. Part 54.[452] The contention lacks specificity because it is unclear what issues Petitioner seeks to litigate in this proceeding. Petitioner states the "areas of scope *include* the 4.16 KV electrical distribution, Control Ventilation, containment ventilation."[453] As such, Proposed Contention 25

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[449] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC at 384.

[450] Superceding Petition at 203.

[451] *Id.* at 204.

[452] *See* 10 C.F.R. § 2.335(a).

[453] Superceding Petition at 204.

is another example of an ill-defined and open-ended contention that fails to meet the NRC's strict pleading requirements.

Proposed Contention 25 lacks any basis in law. Petitioner relies on a statute – the American Rules and Procedure Act – that does not exist. Petitioner provides no legal citation (*e.g.*, reference to the United States Code).[454] Petitioner's reference to Section 50.4 also is mystifying. Section 50.4 prescribes requirements for written communications from Part 50 licensees to the NRC. It is has no direct relationship with license renewal.

Furthermore, to the extent it asks the Staff and/or Licensing Board to undertake an ISA (which, by definition, concerns the adequacy of the CLB and as-built plant design), Petitioner raises issues that are beyond the scope of this proceeding and which have no bearing on Staff's license renewal findings. In *Turkey Point*, the Commission, in reaffirming the narrow focus of the NRC's license renewal review, emphasized 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."[455] Petitioner's attempt to introduce such issues here is an impermissible collateral attack on 10 C.F.R. Part 54. Finally, by raising issues related solely to the CLB, Petitioner fails to identify any material omissions or deficiencies in the application.

Finally, once again, FUSE relies upon bare assertions with no references to the underlying documentary sources and no citations to expert opinion, contrary to 10 C.F.R.

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[454] Petitioner may have intended to refer to the APA. Regardless, as noted previously in response to Proposed Contentions 16-19, the APA does not support the arguments made or the relief sought by Petitioner in Proposed Contention 25. Additionally, the APA includes no such provision analogous to that described by Petitioner.

[455] *Turkey Point*, CLI-01-7, 54 NRC at 7.

§ 2.309(f)(1)(v), and no specific references to Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi). These reasons alone are also sufficient to deny admission of this contention.[456]

In sum, the Board must deny admission of Proposed Contention 25. It meets none of the Section 2.309(f)(1) admissibility criteria and seeks improperly to expand the scope of Part 54.

24. Proposed Contention 26 – "The LRA, in which Indian Point 2 LLC seeks a new superceding license to replace the existing license, is incomplete and should be dismissed."

In short, Petitioner contends that the NRC cannot approve the license renewal application because it allegedly contains "uncertain," "vaguely defined," and "unenforceable" commitments.[457]

Entergy opposes the admission of Proposed Contention 26 because (1) it is not supported by facts or expert opinion, (2) fails to raise a genuine dispute on a material issue of law or fact, and (3) impermissibly challenges the regulatory process. Ironically, Petitioner's Proposed Contention suffers from the very defect that it alleges – vagueness or lack of specificity. Petitioner fails to provide references to *specific* portions of the application that it contends are incomplete and the supporting reasons for each dispute, as required by 10 C.F.R. § 2.309(f)(1). Instead, Petitioner refers generically to Aging Management Plans and TLAAs. The only examples provided by Petitioner is an alleged commitment made by the IPEC Unit 2 licensee over 30 years ago "to design and build a closed cooling system," the relevance of which is unclear, and alleged commitments regarding fatigue issues, "*in past LRA proceedings*" that the NRC staff "allowed the Applicant to make . . . ."[458] Indeed, Petitioner devotes most of its "supporting" discussion to unfounded criticisms of the NRC and a discussion of contract law.

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[456] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC at 384.

[457] Superceding Petition at 205.

[458] *Id.* at 207-08.

That discussion cannot substitute for the factual or documentary support necessary to justify admission of the contention in accordance with 10 C.F.R. § 2.309(f)(1).

Finally, by rebuking the NRC for its reliance on applicant/licensee commitments, Petitioner mounts yet another impermissible challenge to the regulatory process. Applicant/licensee commitments, whether made in a license application or associated documents (*e.g.*, UFSAR), are a common and necessary component of the licensing and regulatory processes. NRC licensees must comply with commitments that are part of the licensing basis for their facilities, even if such commitments do not take the form of formal license conditions.[459]

25. Proposed Contention 27 – "The LRA submitted fails to include Final License Renewal Interim Staff Guidance. For example, LR-ISG 2006-03, "Staff guidance for preparing Severe Accident Mitigation Alternatives."

Petitioner states that the referenced Interim Staff Guidance ("ISG") recommends that applicants for license renewal use an industry-developed guidance document entitled NEI 05-01, Revision A, "Severe Accident Mitigation Alternatives (SAMA) Analysis" (Nov. 2005).[460] Petitioner adds that the NRC Staff intends to incorporate the guidance provided in NEI 05-01, Revision A, into a future update of Supplement 1 to Regulatory Guide 4.2 ("RG 4.2S1").[461]

Entergy opposes admission of Proposed Contention 27 on the ground that it fails to establish a genuine dispute on a material issue of law or fact, the resolution of which is material to the outcome of this proceeding, as required by 10 C.F.R. § 2.309(f)(1). It also lacks adequate factual or expert support.

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[459] *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 21 (2003).

[460] Superceding Petition at 211.

[461] RG 4.2S1, Supplement 1 to Regulatory Guide 4.2, "Preparation of Supplemental Environmental Reports for Application to Renew Nuclear Power Plant Operating Licenses" (Sept. 2000).

At the time Entergy submitted the LRA, LR-ISG-2006-03 had been issued in draft form for public comment. As discussed in NEI 95-10, the NRC encourages applicants for license renewal to address proposed ISGs in their applications. Consistent with the NRC's direction, Entergy specifically addressed LR-ISG-2006-03 as follows:

> This ISG [LR-ISG-2006-03, issued for comment by the NRC, recommends that applicants for license renewal use guidance document NEI 05-01, Rev. A when preparing SAMA analyses. *The IPEC SAMA analysis provided as a part of Appendix E is consistent with the guidance of NEI 05-01 as discussed in this ISG.* [LRA at 2.1-21 (emphasis added)]

Thus, Entergy did prepare its SAMA analysis in accordance with NEI-05-01, Revision A. Proposed Contention 14 fails to identify any deficiency in the LRA. The proposed contention is therefore inadmissible and should be denied.

Section 4.21 of the IPEC ER contains the SAMA analysis required by 10 C.F.R. § 51.53(c)(3)(ii)(L). As stated therein, "[t]he method used to perform the SAMA analysis was based on the handbook used by the NRC to analyze benefits and costs of its regulatory activities"; *i.e.*, NUREG/BR-0184, *Regulatory Analysis Technical Evaluation Handbook* (1997). Reg. Guide 4.2S1, which Entergy consulted in preparing the LRA, states explicitly: "In structuring the analysis, the applicant should consider the methodology presented in NUREG/BR-0184." NUREG-1555, Supplement 1, the Staff's Environmental Standard Review Plan ("ESRP") for license renewal, also references NUREG/BR-0184. Petitioner makes no attempt to explain how Entergy's reliance on this guidance (as opposed to the newly-issued ISG) constitutes a failure to comply with the pertinent NRC requirements. Petitioner, in other words, identifies no specific deficiencies or omissions in the SAMA analysis, so as to establish a genuine dispute.

In sum, the Board must deny the admission of Proposed Contention 27. It fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), and (vi).

26. Proposed Contention 28 – "The Updated Final Safety Report fails to meet the requirements of 10 C.F.R. 55(a) by deletion of required codes and standards, and obviates the ability for a petitioner to perform a technical review as required under 10 C.F.R. 50.4."

Petitioner claims that the alleged "deletion" of codes and standards from the UFSAR leaves "no basis to ensure the safe operation and protection of the health and safety of the public."[462]

Entergy opposes the admission of Proposed Contention 28 because it fails to meet any of the requirements of 10 C.F.R. § 2.309(f)(1). The contention lacks the requisite specificity and basis because Petitioner does not explain what to specific "codes and standards" it is referring, or why those "codes and standards" must be included in the UFSAR. Petitioner fails to identify any Part 54 regulations or implementing guidance documents that address this issue, or any specific portion of the license renewal application (other than "the UFSAR") as deficient.[463] Moreover, Petitioner fails to explain why the alleged "deletion" is material to the Staff's review of the application. Petitioner provides no factual or expert support for its naked assertion that operation of the plant is unsafe and a threat to the public health and safety.

To the extent Petitioner is challenging the nature or scope of reliefs granted pursuant to 10 C.F.R. § 50.55a, the Proposed Contention is outside the scope of this proceeding because it collaterally attacks 10 C.F.R. § 54.21. In particular, in its 1995 license renewal rulemaking, the Commission specifically eliminated the requirement, contained in former Section 54.21(c), that

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[462] Superceding Petition at 212.

[463] As noted above, 10 C.F.R. § 50.4 has no apparent relationship to this discussion.

license renewal applicants provide a list of Code reliefs granted pursuant to 10 C.F.R. § 50.55a. In the Statement of Considerations, the Commission explained its modification of the rule:

> A relief from Codes need not be evaluated as part of the license renewal process. A relief granted pursuant to 10 CFR 50.55a is specifically envisioned by the regulatory process. A relief expires after a specified time interval (not to exceed 10 years) and a licensee is required to rejustify the basis for the relief. At that time, the NRC performs another review and may or may not grant the relief. Because a relief is, in fact, an NRC-approved deviation from the Codes and subject to a periodic review, the Commission concludes that reliefs are adequately managed by the existing regulatory process and should not require an aging management review and potential rejustification for license renewal. Therefore, the Commission has deleted the requirement to list and evaluate reliefs from Sec. 54.21(c).[464]

In sum, the Board must deny admission of Proposed Contention 28. It satisfies none of the requirements of 10 C.F.R. § 2.309(f)(1) and improperly challenges an NRC regulation.

27. Proposed Contention 29 – "Inability to Access Proprietary Documents Impedes Adequate Review of Entergy Application for License Renewal of IP2 LLC and IP3 LLC (Specifically, in this case the CLB)."

Petitioner alleges that the CLB for IPEC Units 2 and 3 is "unavailable," and that as a result, "it is impossible for stakeholders to adequately review the application . . . ."[465] Petitioner further claims that investigation by the GAO "concluded that the CLB for each plant is not known."[466] Petitioner again asks that the NRC "deny" the application.

Proposed Contention 29 substantially overlaps the arguments FUSE presents in Proposed Contention 1 and 24. Entergy responds to FUSE's arguments regarding access to proprietary information in its answer to Proposed Contentions 1 and 24, above.[467]

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[464] 60 Fed. Reg. at 22,483 col. 1 (May 8, 1995).

[465] Superceding Petition at 213.

[466] *Id.* at 214.

[467] FUSE acknowledges this Superceding Petition at 213, but later reiterates its request for relief in Contention 24 by requesting yet another postponement of the deadline for submission of petitions to intervene. Superceding Petition at 217.

Entergy further opposes the admission of Proposed Contention 29 on the grounds that (1) it lacks a factual or legal foundation, (2) raises issues beyond the scope of this proceeding, and (3) fails to establish a genuine dispute with Applicant on a material issue. First, the Proposed Contention impermissibly challenges 10 C.F.R. Part 54—and thus is beyond scope—because it asserts that Entergy is required to compile and make available a "full and complete set" of the FSAR, "USFAR's" [sic], and the CLB for IPEC as part of the license renewal application process.[468] The Commission specifically considered and rejected that notion in the 1991 and 1995 license renewal rulemakings, noting that "[c]ompilation . . . is unnecessary to perform a license renewal review." The Commission discussed this issue at length in the 1995 Statements of Considerations, in which it rejected Public Citizen's suggestion that the plant-specific CLB should be compiled and that the NRC should verify compliance with the CLB as part of the license renewal process. First, the Commission explained the basis for its disagreement with Public Citizen:

> The Commission disagrees with the commenter, and points out that the proposed rule did not explicitly require the renewal applicant to compile the CLB for its plant. The Commission rejected a compilation requirement for the previous license renewal rule for the reasons set forth in the accompanying SOC (56 FR at 64952). The Commission continues to believe that a prescriptive requirement to compile the CLB is not necessary. Furthermore, submission of documents for the entire CLB is not necessary for the Commission's review of the renewal application. . . . [T]here is no compelling reason to consider, for license renewal, any portion of the CLB other than that which is associated with the structures and components of the plant (*i.e.*, that part of the CLB that can suffer detrimental effects of aging). All other aspects of the CLB have continuing relevance in the license renewal period as they do in the original operating term, but without any association with an aging process that may cause invalidation. From a practical standpoint, an applicant must consult the CLB for a structure or component in order to perform an aging management review. The CLB for the structure or component of interest contains the

[468] Superceding Petition at 217.

> information describing the functional requirements necessary to determine the presence of any aging degradation.[469]

Second, the Commission explained why and how the CLB already is available for review by the NRC and members of the public:

> The definition of CLB in Sec. 54.3(a) states that a plant's CLB consists, in part, of "a licensee's written commitments . . . that are docketed . . . ." *Because these documents have already been submitted to the NRC and are in the docket files for the plant, they are not only available to the NRC for use in the renewal review, they are also available for public inspection and copying in the Commission's public document rooms.* Furthermore, the NRC may review any supporting documentation that it may wish to inspect or audit in connection with its renewal review. If the renewed license is granted, those documents continue to remain subject to NRC inspection and audit throughout the term of the renewed license. The Commission continues to believe that resubmission of the documents constituting the CLB is unnecessary.[470]

Finally, the Commission rejected the argument that the CLB requires "reverification," stating as follows:

> [T]he Commission had concluded when it adopted the previous license renewal rule that a reverification of CLB compliance as part of the renewal review was unnecessary (56 FR at 64951-52). Public Citizen presented no information questioning the continuing soundness of the Commission's rationale, and *the Commission reaffirms its earlier conclusion that a special verification of CLB compliance in connection with the review of a license renewal application is unnecessary.* The Commission intends, as stated by the commenter, to examine the plant-specific CLB as necessary to make a licensing decision on the continued functionality of systems, structures, and components subject to an aging management review and a license renewal evaluation. This activity will likely include examination of the plant itself to understand and verify licensee activities associated with aging management reviews and actions being taken to mitigate detrimental effects of aging. After consideration of all comments concerning the compilation of the CLB, *the Commission has reconfirmed its conclusion made for the previous rule that it is not necessary to compile, review, and*

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[469] Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. at 22,474 (May 8, 1995).

[470] *Id.*

submit a list of documents that comprise the CLB in order to perform a license renewal review.[471]

In view of the above, Proposed Contention 29 lacks a legal basis and raises issues that can have no bearing on the outcome of this proceeding.

Proposed Contention 29 also lacks adequate factual or expert support. In particular, the supposed "GAO investigation" report that FUSE describes is actually a 2003 NRC Office of the Inspector General Event Inquiry report concerning NRC oversight of operations at IPEC Unit 2.[472] The report specifically concerns issues related to compliance with certain design basis commitments and hence has no nexus to aging-management issues. Thus, the report, which Petitioner inexcusably fails to explain or reference with any specificity, provides no factual basis for Petitioner's claims in this license renewal proceeding. The Licensing Board should "not be expected to sift unaided through large swaths [of voluminous petitioner exhibits] in order to piece together and discern a party's particular concerns or the grounds for its claims."[473]

In sum, the Board must reject Proposed Contention 29. It does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(ii)-(vi).

28. Proposed Contention 30 – "Despite best efforts on the part of the Stakeholders, Entergy's claims of entitlement to Proprietary Information, and the NRC's granting of their request for same have created a situation where petitioners are unable and incapable of properly forming and supporting certain contentions we wish to raise."

Petitioner repeats its allegations that Entergy has redacted over 80 percent of Chapter 14 of the UFSAR, and that the nuclear industry has improperly withheld information from public disclosure as proprietary, including an unnamed EPRI report that purportedly concerns an

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[471] *Id.*

[472] Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. at 22,474 (May 8, 1995).

[473] *Hydro Resources, Inc.*, CLI-01-4, 53 NRC 31, 46 (2001).

investigation into "Boraflex degradation or actual failure in the spent fuel pools."[474] FUSE goes on to repeat many of the allegations, and much of the text of its Proposed Contentions 1, 24 and 29. At the outset, it should be noted that, as stated above, even if Petitioner's unfounded claims regarding the redaction of information from the LRA were true, they could not provide the basis for an admissible contention. Petitioner's ability to obtain non-public information is a procedural matter that has no relevance to managing the effects of aging during extended plant operation.

Entergy further opposes the admission of Proposed Contention 30 on the same grounds that it opposes the admission of Proposed Contentions 1, 24 and 29. In short, Proposed Contention 30: (1) lacks foundation, (2) is outside the scope of this proceeding, (3) fails to raise a genuine dispute with regard to a material issue of law or fact, (4) impermissibly challenges NRC regulations (10 C.F.R. § 2.390), and (5) seeks relief not available in this forum.

Petitioner's argument concerning the need for additional time to review documents from DOE obtained via the FOIA process fails for the same reasons.[475] Petitioner makes no effort to explain the relevance to the Indian Point LRA of the DOE documents Sherwood Martinelli received, and, even if it did, the result would be no different. Nor does FUSE state whether it is currently seeking documents related to "issues regarding Boraflex degradation/failure."[476] Thus, FUSE shows no basis for any request for an extension of time based on the seven-month delay Mr. Martinelli allegedly experienced in his DOE FOIA request, nor do these arguments provide the basis for an admissible contention.

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[474] Superceding Petition at 219-20.

[475] *Id.* at 220-21.

[476] *Id.* at 220.

For the forgoing reasons, the Licensing Board must deny the admission of Proposed Contention 30. It fails to meet the admissibility requirements of Section 2.309(f)(1)(iii), (iv), (v), and (vi) and impermissibly challenges 10 C.F.R. § 2.390.

29. Proposed Contention 31 – "Safety/Aging Management: Entergy's LRA for Indian Point 2 is insufficient in managing the equipment qualification required by federal rules mandated after Three Mile Island that are required to mitigate numerous design basis accidents to avoid a reactor core melt and to protect the health and safety of the public."

FUSE next contends that the NRC must deny the LRA "because it does not adequately address the license renewal requirements of 10CFR [Part] 54, specifically 50.54.4 [sic], Scope, for those components required for renewal defined in 10 C.F.R. 50.49(b)(1)."[477]

After purporting to discuss the applicable NRC requirements and prescribed contents of an LRA, FUSE offers a number of arguments related to the NRC's competence or performance as a regulator. Nevertheless, Petitioner's lengthy and meandering discussion contains the following principal arguments:

- Entergy wrongly claims credit in the LRA for Table 3.6.1, and for the EQ analysis in Section 4.4.[478]
- The NRC has violated the law by accepting unqualified components and using a flawed approval process that is based upon industry guidance. Petitioner accuses the NRC of procuring or accepting a "high school quality economic analysis" (but provides no citation to, or a lucid description of, the allegedly defective analysis).[479] Petitioner asserts that issues concerning 10 CFR 50.49 "were subsequently investigated by numerous parties" and that "many components were found unqualified to function for 40 years let alone 60 years."[480] Petitioner suggests that such components are presently installed at IPEC Units 2 and 3.[481] Finally, Petitioner claims that unspecified "Brookhaven Testing" results indicate that "degradation due to aging beyond the qualified life of the cables may

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[477] *Id.* at 221.

[478] *Id.* at 222.

[479] *Id.* at 236.

[480] *Id.* at 229-30.

[481] *Id.* at 230.

be too severe for the insulation material to withstand and still be able to perform during an accident."[482]

- The NRC recognized its alleged errors and then "by pass[ed]" [sic] the APA by attempting to "cover up the blunder with an unlawful procedural process using PRA and cost benefit analysis. . . ."[483]

- In doing so, the NRC "bypass[ed]" Advisory Committee on Reactor Safeguards ("ACRS") recommendations, as reflected in Regulatory Information Summary ("RIS") 2003-09 and dissenting views associated with the closure of Generic Safety Issue 168 ("GSI-168"). With regard to this point, Petitioner suggests that "[a] combination of condition-monitoring techniques may be needed since no single technique is currently demonstrated to be adequate to detect and locate degradation of I&C cables."[484]

- The GAO has "noticed the approach taken by the NRC and Entergy on other issues, yet Entergy failed to act."[485]

Petitioner states that the contention is supported by the declaration of Ulrich Witte, who Petitioner claims is an expert on EQ issues. Mr. Witte, however, no longer associates himself with FUSE.[486] Because FUSE cannot make Mr. Witte available for examination on the subject of his declaration, FUSE cannot rely upon his opinions to support admission of its contention.[487]

Entergy opposes the admission of Proposed Contention 31 on the grounds that it (1) raises issues that are outside the scope of the proceeding and/or not material to the Staff's license renewal findings, contrary to 10 C.F.R. § 2.309(f)(1)(iii) and (iv); (2) lacks adequate factual or expert support, contrary to 10 C.F.R. § 2.309(f)(1)(v); (3) fails to raise a genuine dispute on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi); and (4) impermissibly challenges NRC regulations contrary to 10 C.F.R. § 2.335(a).

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[482] *Id.* at 232.

[483] *Id.* at 235.

[484] *Id.* at 233.

[485] *Id.* at 235.

[486] *Id.* at 29; Letter from U. Witte to S. Turk, NRC OGC, "Termination of Services for Expert Witness and Technical Advisory Work for FUSE" (Dec. 12, 2007).

[487] *See* 10 C.F.R. § 2.309(f)(1)(v).

First, while the environmental qualification of electrical components program is credited in the LRA, the specific issues raised by Petitioner generally fall outside the scope of this proceeding. Specifically, Petitioner principally objects to the *process* by which the NRC Staff reviews the EQ portion of an LRA, including the Staff's disposition of GSI-168, as reflected in RIS 2003-09. As discussed above, neither the adequacy of the Staff's regulatory processes (including the development and implementation of regulations and guidance) nor the adequacy of its technical review can be the subject of an admissible contention in this proceeding.[488]

To the extent FUSE attempts to contest the adequacy of the LRA, it falls far short of doing so in a manner that would support admission of its contention. Specifically, FUSE's assertion that Entergy wrongly claims credit in the LRA for Table 3.6.1, and for the EQ analysis in Section 4.4, is conclusory and lacks requisite detail and specificity, contrary to 10 C.F.R. § (f(1)(vi). It also lacks any support in the form of factual information or expert opinion. FUSE, including its former purported expert, fails to explain why the *application* is deficient in some material respect.

Contrary to FUSE's claim, Entergy's LRA complies with NRC requirements and guidance. Under 10 C.F.R. Part 54, some aging evaluations for EQ components are TLAAs for purposes of license renewal (*i.e.*, EQ evaluations that specify a qualification duration of at least 40 years, but less than 60 years). As set forth in Section 54.21(c)(1), there are three methods by which an applicant may evaluate TLAAs: (i) show that the original TLAAs will remain valid for the extended operation period; (ii) project the TLAAs to apply to a longer term, such as 60 years; or (iii) demonstrate that the effects of aging will be adequately managed during the renewal term. As reflected in its LRA, Entergy has selected the last option; *i.e.*, to demonstrate its ability to

[488] 10 C.F.R. § 2.309(f)(1)(iii), (iv).

manage the aging effects of the electrical components during the renewal period *under its current EQ program.*[489]

This demonstration is presented in Section B.1.10 of Appendix B (pp. B-39 to B-40). Section B.1.10 states that the EQ Program "is consistent with the program defined in NUREG-1801, Section X.E.1, Environmental Qualification (EQ) of Electrical Components [*i.e.*, the GALL Report]." In Chapter X of the GALL report, the NRC Staff has evaluated the EQ program (as implemented consistent with 10 C.F.R. § 50.49) and determined that it is an acceptable aging management program to address environmental qualification according to 10 C.F.R. § 54.21(c)(1)(iii). NUREG-1800, Revision 1, in turn, states that a license renewal applicant may reference the GALL Report in its application.

As part of its EQ program, Entergy is required to replace or refurbish the component at the end of its qualified life, perform re-analysis of its qualified life to extend the qualification of a component, or requalify the component by additional testing pursuant to 10 C.F.R. § 50.49(e) and (f). Section B.1.10 of the license renewal application confirms this fact:

> The reanalysis of an aging evaluation could extend the qualification of the component. If the qualification cannot be extended by reanalysis, the component is to be refurbished, replaced, or requalified prior to exceeding the period for which the current qualification remains valid. A reanalysis is to be performed in a timely manner (that is, sufficient time is available to refurbish, replace, or requalify the component if the reanalysis is unsuccessful).[490]

Thus, the approach used by Entergy in its LRA complies with Section 54.21(c)(1)(iii), applicable NRC guidance and § 50.49(f). Petitioner fails to show otherwise, and instead seeks to

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[489] *See* LRA at Table 3.6.1; p. 4.4-1; App. A at A-21; and App. B at B-39 to B-41.

[490] *See also* App. A, § A.2.1.9 at A-21 (stating that "[a]s required by 10 CFR 50.49, EQ components are refurbished, replaced, or their qualification extended prior to reaching the aging limits established in the evaluations"),

challenge the process itself, in contravention of longstanding precedent on the scope of admitted contentions.

For the above reasons, the Board must deny the admission of Proposed Contention 31. It fails to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), and (vi).

30. Proposed Contention 32 – "Entergy's License Renewal Application Does Not Include an Adequate Plan to Monitor and Manage Aging of Plant Piping Due to Flow-Accelerated Corrosion During the Period of Extended Operation."

Petitioner asserts that the application does not include an adequate plan to monitor and manage the aging of plant piping due to Flow Accelerated Corrosion ("FAC"), as required by 10 C.F.R. § 54.21(a)(3).[491] Petitioner cites Entergy's proposal, consistent with NUREG-1801, to use a computer model called CHECWORKS to determine the scope and the frequency of inspections of components that are susceptible to FAC.[492] Petitioner contends that the CHECWORKS model cannot be used to determine inspection frequency at IPEC Unit 2 because that unit (1) recently increased its operating power level by about 5 percent, and (2) experienced an unprecedented steam generator tube rupture event.[493] As such, Petitioner states that "[t]he profiles required for CHECWORKS and the grid check points are unsubstantiated based upon these two significant changes."[494] Petitioner concludes that "Entergy cannot assure the public that the minimum wall thickness of carbon steel piping and valve components will not be reduced by FAC to below ASME code limits during the period of extended operation."[495]

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[491] Superceding Petition at 237.

[492] *Id.* at 239.

[493] *Id.* at 240.

[494] *Id.*

[495] *Id.* at 241.

Entergy opposes the admission of Proposed Contention 32 on the grounds that it (1) lacks adequate factual or expert support and (2) fails to establish a genuine dispute. Specifically, Petitioner has submitted a nearly verbatim copy of a FAC-related contention admitted by the Licensing Board in the contested proceeding on the license renewal application for Entergy's Vermont Yankee Nuclear Power Station. However, closer inspection of the contention makes it clear that Petitioner has failed to identify a material deficiency in the IPEC license renewal application.

Petitioner has *not* provided adequate factual or expert support to support the admission of its Proposed Contention. Petitioner relies upon the declaration of Ulrich Witte, which purportedly supports this contention. Mr. Witte, however, no longer associates himself with FUSE.[496] Because FUSE cannot make Mr. Witte available for examination on the subject of his declaration, FUSE cannot rely upon his opinions to support admission of its contention.[497] Moreover, the Witte declaration, itself, contains *no* reference to the issue of flow-accelerated corrosion, let alone a reasoned explanation as to why Entergy's discussion of the FAC Program in the IPEC license renewal application is inadequate. Indeed, Mr. Witte's declaration is expressly limited to Proposed Contentions 16-19. Notwithstanding this lack of corroborating expert opinion, FUSE alleges:

> Accurate specification of scope and inspection frequency is the key to a valid FAC management program. Entergy proposes, through reference to NUREG 1801, to use a computer model called CHECWORKS to determine the scope and the frequency of inspections of components that are susceptible to FAC. * * * License Renewal Application Table 3.4.1 ¶ 3.4.1-29, and Appendix B § B.1.13 (stating that management of FAC is per NUREG 1801, which in turn recommends CHECWORKS) does not meet the

[496] *Id.* at 29; Letter from U. Witte to S. Turk, NRC OGC, "Termination of Services for Expert Witness and Technical Advisory Work for FUSE" (Dec. 12, 2007).

[497] *See* 10 C.F.R. § 2.309(f)(1)(v).

> requirements of [10] CFR54.22. Because the Indian point 2 plant recently increased its operating power level by approximately 5%, and experienced an unprecedented steam generator tube rupture event. The profiles required for CHECWORKS and the grid check points are unsubstantiated based upon these two significant changes. Changing plant parameters including coolant flow rate, the CHECWORKS model cannot be used to determine inspection frequency at Indian Point2.
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> CHECWORKS is an empirical model that must be continuously updated with plant-specific data such as inspection results. Once "benchmarked" to a specific plant, it makes accurate predictions so long as plant parameters, such as velocity and coolant chemistry, do not change drastically. It would take as much as 10 or more years of inspection data collection and entry to the model to benchmark CHECWORKS for use at Indian Point 2.[498]

The above excerpt, which clearly contains assertions of a technical nature that go to the heart of Petitioner's Proposed Contention, cannot legitimately be ascribed to Mr. Witte, as demonstrated by the absence of any reference to this issue in Mr. Witte's declaration.[499] Indeed, Petitioner has simply parroted statements by made *another* petitioner (New England Coalition) in *another* proceeding (Vermont Yankee license renewal) based on the opinion of *another* expert (Dr. Joram Hopenfeld). The similarity between the statements is obvious and surely not coincidental. New England Coalition's May 26, 2006, petition to intervene states as follows:

> Accurate specification of inspection frequency is the key to a valid FAC management program. Entergy proposed, through reference to NUREG-1801, to use a computer model called CHECWORKS to determine the scope and frequency of inspections of components that are susceptible to FAC. License Renewal Application Table 3.4.1 ¶ 3.4.1-29, and Appendix B § B.1.13 (stating that management of FAC is per NUREG 1801, which in turn recommends CHECWORKS). Because the Vermont Yankee plant recently increased its operating power level by approximately 20%, changing plant parameters including coolant flow rate, the CHECWORKS model cannot be used to determine inspection frequency at Vermont Yankee.

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[498] Superceding Petition at 239-40.

[499] To the extent such statements may be attributed to a member or representative of FUSE, there is no basis to assume that the statements have any valid technical basis.

> CHECWORKS is an empirical model that must be continuously updated with plant-specific data such as inspection results. Once "benchmarked" to a specific plant, it makes accurate predictions so long as plant parameters, such as velocity and coolant chemistry, do not change drastically. It would take as much as 10-15 years of inspection data collection and entry to the model to benchmark CHECWORKS for use at Vermont Yankee.[500]

Contrary to the FUSE Petition in this proceeding, the New England Coalition petition was directly supported by opinion evidence on the subject of flow-accelerated corrosion. Specifically, in his declaration, Dr. Hopenfeld, with supporting references, provided information on the adequacy of the Vermont Yankee FAC following an extended power uprate of 20 percent, upon which the petitioner based its contention and bases. FUSE has not furnished any expert or documentary support, from Dr. Hopenfeld or otherwise, that would support its contention for IPEC license renewal. In admitting New England Coalition's contention, the Board, in the *Vermont Yankee* proceeding, quoted directly from Dr. Hopenfeld's declaration, and noted that it described "his professional reasoning and conclusions."[501] The same cannot be said for FUSE's statements in this proceeding. Simply copying the text of another parties' admitted contention from another proceeding, without providing any data or expert opinion as to why the information applies to this proceeding cannot demonstrate a genuine dispute on a material issue of fact that is required for an admissible contention under 10 C.F.R. § 2.309(f)(1)(vi).

A contention that does not directly controvert a position taken by the applicant, in the application, is subject to dismissal.[502] Here, Petitioner has failed to clear that hurdle, by *not*

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[500] New England Coalition's Petition for Leave to Intervene, Request for Hearing, and Contentions (May 26, 2006), at 18-19.

[501] *Entergy Nuclear Vermont Yankee* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 194 (2006).

[502] *Comanche Peak*, LBP-92-37, 36 NRC at 384.

demonstrating that the LRA is deficient is some *material* respect.[503] The IPEC FAC Program complies with 10 C.F.R. § 54.21, as well as the GALL Report (NUREG-1801), contrary to Petitioner's claim.[504] As the LRA states, the IPEC FAC Program is consistent with the program described in the Section XI.M17, "Flow-Accelerated Corrosion," of the GALL Report).[505] As described in the GALL Report, an acceptable FAC program:

> relies on implementation of the [EPRI] guidelines in the Nuclear Safety Analysis Center (NSAC)-202L-R2 for an effective [FAC] program. The program includes performing (a) an analysis to determine critical locations, (b) limited baseline inspections to determine the extent of thinning at these locations, and (c) follow-up inspections to confirm the predictions, or repairing or replacing components as necessary.[506]

The GALL Report further states that, "[t]o ensure that all the aging effects caused by FAC are properly managed, the program includes the use of a predictive code, such as CHECWORKS, that uses the implementation guidance of NSAC-202L-R2 to satisfy the criteria specified in 10 C.F.R. Part 50, Appendix B" concerning control of special processes.[507] Significantly, the GALL Report states as follows with respect to CHECWORKS:

> CHECWORKS or a similar predictive code is used to predict component degradation in the systems conducive to FAC, as indicated by specific plant data, including material, hydrodynamic, and operating conditions. CHECWORKS is acceptable because it provides a bounding analysis for FAC. CHECWORKS was developed and benchmarked by using data obtained from many plants. The inspection schedule developed by the licensee on the basis of the results of such a predictive code provides reasonable

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

504 Superceding Petition at 243.

505 LRA, App. B at B-54.

506 GALL Report, Vol. 2, Rev. 1, Ch. XI at XI M-61.

507 *Id.*

> assurance that structural integrity will be maintained between inspections.[508]

Thus, Entergy's use of CHECWORKS is consistent with longstanding industry practice and the GALL Report. The NRC has stated explicitly that "[a]n applicant may reference the GALL report in a license renewal application to demonstrate that the programs at the applicant's facility correspond to those reviewed and approved in the GALL report and that no further staff review is required."[509] Indeed, the GALL Report "has been referenced in numerous license renewal applications [] as a basis for aging management reviews to satisfy the regulatory criteria contained in 10 CFR [§ 54.21]."[510]

FUSE also includes an excerpt from the transcript of a January 26, 2005 meeting of the ACRS Thermal Hydraulic Phenomena Subcommittee (specifically an exchange between Rob Aleksick of Entergy and Dr. Graham Wallis of the ACRS).[511] While that excerpt contains a discussion of CHECWORKS, Petitioner makes no meaningful attempt to explain how that discussion serves to establish a deficiency in the LRA. Petitioner, without any expert support, merely states that it suggests "weakness in reliability of the methodology," particularly as it pertains to the "Extraction Steam System."[512] Furthermore, the January 2005 ACRS meeting concerned a request for an EPU of 8 percent (roughly twice the recent stretch power uprates approved for IPEC) at the Waterford Plant. Petitioner makes no attempt to explain how the

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[508] *Id.* at XI M-61 to M-62.

[509] *Id.* at iii.

[510] GALL Report, Vol. 1, Rev. 1 at 2.

[511] Transcript of ACRS Thermal Hydraulic Phenomena Subcommittee Meeting (Jan. 26, 2005) (*available at* ADAMS Accession No. ML050400613) ("ACRS Jan. 26, 2005 Tr."). FUSE incorrectly identifies the date of this meeting as January 26, 2003.

[512] Superceding Petition at 238.

plant-specific data discussed during that ACRS meeting are relevant to the Indian Point FAC Program and Entergy's use of CHECWORKS for purposes of license renewal.

Moreover, when put in context, the statements quoted by Petitioner cannot be construed to mean that Waterford's reliance on CHECWORKS is unacceptable, let alone Entergy's use of the model. Petitioner simply ignores subsequent exchanges between members of the ACRS Subcommittee and industry or NRC representatives that provide important additional insights into the Waterford plant's use of CHECWORKS.[513] The gist of that dialogue is that, while CHECWORKS does on occasion underestimate wear rates, it is not the only tool or source of information relied upon by a licensee in determining inspection priorities.[514] Moreover, licensees can and do make appropriate adjustments both with respect to the scope of their inspections and calibration of their CHECWORKS models. Thus, the statements cited by Petitioner do not directly controvert a position taken by Entergy in its Application.

Petitioner's bald assertion that "an unprecedented steam generator tube rupture event" invalidates Entergy's use of the CHECWORKS program has no better footing. Petitioner does not explain how the event to which it vaguely alludes bears on the reliability of the CHECWORKS model. CHECWORKS is not used to evaluate the integrity of steam generator tubes. Steam generator tubes are addressed in the Steam Generator Integrity AMP, B.1.35. Moreover, Petitioner simply ignores statements in the LRA that indicate that Entergy has taken recent and significant steps to calibrate the model. For example, Section B.1.15 states, *inter alia*, that:

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[513] ACRS Jan. 25, 2005 Tr. at 245-247.

[514] *Id.*

> Operating experience for IP2 and IP3 was accounted for in the most recent updates of the respective CHECWORKS FAC models. This includes inspection data from the outage inspections *as well as the changes to FAC wear rates due to the recent power uprates.* These updates further calibrate the model, improving the accuracy of the wear predictions.

FUSE's statement that IPEC has "a track record of broken pipes due to corrosion" similarly fails to provide the requisite factual support for its contention.[515] FUSE provides no documentary references to substantiate this claim, let alone explain how it bears on the adequacy of the IPEC FAC Program or the reliability of the CHECWORKS model.

Finally, Proposed Contention 32 fails to explain how the asserted deficiencies in CHECWORKS present a safety concern or are material to the outcome of the Staff's licensing review. 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.[516] Here, FUSE has failed to establish such a link. In any case, as noted above, the GALL Report states that CHECWORKS is acceptable.

For the foregoing reasons, the Board must deny the admission of Proposed Contention 32. It fails to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi).

31. Proposed Contention 33 – "Leak-Before-Break analysis is unreliable for welds associated with high energy line piping containing certain alloys at Indian Point 2."

FUSE alleges that the leak-before-break ("LBB") analysis "is unreliable," based on "[i]ndustry guidance and emerging regulatory funded studies" that raise a potential safety issue that is not addressed in the LRA, which relies on "out of date" studies such as WCAP-10977 and

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[515] Superceding Petition at 241.

[516] *Millstone*, LBP-04-15, 60 NRC at 89.

WCAP-10931.[517] Petitioner also asserts that recent events at the V.C. Summer nuclear power plant and "other PWR plants" call into question the use of LLB analyses for butt welds associated 82/182 alloys.[518] Finally, Petitioner states that the NRC has issued Confirmatory Action Letters confirming licensees' commitments to put in place "more timely inspection and [weld] flaw prevention measures, more aggressive monitoring of RCS leakage, and more conservative leak rate thresholds for a plant to shut down to investigate a possible [coolant water] leak."[519]

Entergy opposes the admission of Proposed Contention 33 on the grounds that it (1) lacks reasonable specificity, (2) lacks adequate factual or expert support, and (3) fails to establish a genuine dispute on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(i),(iii), (v) and (vi).

While Petitioner cites various historical events and documents,[520] Petitioner fails explain why and/or how those events and documents demonstrate a deficiency in the LRA. For example, Petitioner's discussion of reactor coolant system leakage, flaws in Alloy 82 and Alloy 182 welds, and stress-corrosion cracking is similarly insufficient to establish a genuine dispute on a material issue of law or fact. In particular, Petitioner's references to "recent events with [82/182 alloy] welds" at V.C. Summer and "other PWR plants" are unacceptably vague.[521] In any case, Petitioner fails to establish a nexus to the management of aging effects or the review of time-limited aging analyses. Indeed, Petitioner's discussion of those issues (particularly the NRC's

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[517] Superceding Petition at 241, 243.

[518] *Id.* at 242.

[519] *Id.* at 243-44.

[520] *Id.* at 242-44.

[521] *Id.* at 242.

issuance of Confirmatory Action Letters) underscores the fact that they fall within the ambit of the NRC's ongoing regulatory oversight and enforcement activities.

Additionally, Petitioner's assertions that recent studies somehow render Entergy's LBB analyses invalid or outdated similarly lack any reasonably specific, expert-endorsed explanation. Specifically, Petitioner mentions a NUREG report by title,[522] but provides no specific page citations.[523] "Mere reference to documents does not provide an adequate basis for a contention."[524]

Nor does FUSE make an attempt to directly controvert the relevant portions of the LRA.[525] Section 4.7.2 of the LRA expressly addresses LBB as a time-limited aging analysis. As explained in that section, LBB analyses evaluate postulated flaw growth in piping, and consider the thermal aging of the cast austenitic stainless steel ("CASS") piping and fatigue transients that drive flaw growth over the operating life of the plant.[526] Section 4.7.2 concludes:

> The calculated fatigue crack growth for 40 years was very small (less than 50 mils) regardless of the material evaluated. As noted in Section 4.3.1, the projections for 60 years of operation indicate that the numbers of significant transients for IP2 or IP3 will not exceed the design analyzed values. Thus, the IP2 and IP3 analyses will remain valid during the period of extended operation in accordance with 10 CFR 54.21(c)(1)(i).[527]

FUSE ignores Section 4.7.2 of the LRA, and does not controvert the information and conclusions set forth therein, as required by 10 C.F.R. § 2.309(f)(1)(vi). Plainly, no genuine

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[522] NUREG/CR-6936, Probabilities of Failure and Uncertainty Estimate Information for Passive Components – A Literature Review (May 2007), *available at* ADAMS Accession No. ML071430371.

[523] Superceding Petition at 243. Moreover, NUREG/CR-6936 does not even address WCAP-10977 or WCAP-10931, much less show that they are "out of date."

[524] *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 348 (1998) (citation omitted).

[525] A contention that does not *directly controvert a position taken by the applicant in the application* is subject to dismissal. *See Comanche Peak*, LBP-92-37, 36 NRC at 384.

[526] LRA at 4.7-1.

[527] *Id.* at 4.7-2.

dispute exists here. The various events cited by FUSE bear no discernible or reasonable relationship to thermal aging of CASS or fatigue crack growth—and FUSE makes no attempt to articulate such a relationship. In fact, none of the events or information FUSE describes has any specific relevance to IPEC.[528]

In sum, the Board must deny the admission of Proposed Contention 33. It raises current operating term issues that are outside the scope of this proceeding, fails to provide a concise statement of alleged facts or expert opinion that support the contention, and fails to provide sufficient information to show that a genuine dispute exists. For all of these reasons, Proposed Contention 3 is inadmissible pursuant to 10 C.F.R. § 2.309(f).

32. Proposed Contention 34-36 – "IP2 LLC's ineffective Quality Assurance Program violates fundamental independence requirements of Appendix B, and its ineffectiveness furthermore triggered significant cross cutting events during the past eight months that also indicate a broken Corrective Action Program."

Petitioner argues that Entergy's Quality Assurance Program violates 10 C.F.R. Part 50, Appendix B, and that significant recent cross-cutting events indicate that its Corrective Action and Design Control Programs are "broken."[529] Petitioner contends that these alleged deficiencies render "[a]ctual condition of the plant in terms of a baseline for managing aging [] unknown," and "essentially invalidate those specific programs that credit the current material condition of the plant" for purposes of license renewal.[530]

Once again, FUSE relies upon bare assertions with *no* references to the underlying documentary sources or expert opinion, contrary to 10 C.F.R. § 2.309(f)(1)(v), and no references

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[528] Superceding Petition at 243.

[529] *Id.* at 244.

[530] *Id.* at 248.

to Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi). This contention should be denied for these reasons alone.[531]

Entergy also opposes the admission of Proposed Contentions 34-36 on the ground that they fall squarely outside the scope of this license renewal proceeding. As discussed above, the Commission has specifically limited the NRC's safety review—and thus any related adjudicatory proceeding—to the matters specified in 10 C.F.R. §§ 54.21 and 54.29(a), which focus on the management of aging of certain systems, structures, and components, and on the review of time-limited aging analyses. The Commission, therefore, purposely excluded issues relating to a plant's CLB—including operational and programmatic issues—because they "are effectively addressed and maintained by ongoing agency oversight, review, and enforcement." In the Statement of Considerations for its 1995 license renewal rulemaking, the Commission removed any and all ambiguity on this subject:

> When the design bases of systems, structures, and components can be confirmed either indirectly by inspection or directly by verification of functionality through test or operation, a reasonable conclusion can be drawn that the CLB is or will be maintained. This conclusion recognizes that the portion of the CLB that can be impacted by the detrimental effects of aging is limited to the design-bases aspects of the CLB. *All other aspects of the CLB, e.g., quality assurance, physical protection (security), and radiation protection requirements, are not subject to physical aging processes that may cause noncompliance with those aspects of the CLB.*
>
> Although the definition of CLB in Part 54 is broad and encompasses various aspects of the NRC regulatory process (*e.g.*, operation and design requirements), the Commission concludes that a specific focus on functionality is appropriate for performing the license renewal review. *Reasonable assurance that the function of important systems, structures, and components will be maintained throughout the renewal period, combined with the rule's stipulation that all aspects of a plant's CLB (e.g., technical specifications) and the NRC's regulatory process carry forward into the renewal period, are viewed as sufficient*

[531] *See Muskogee*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC 370, 384 (1992).

> *to conclude that the CLB (which represents an acceptable level of safety) will be maintained.* Functional capability is the principal emphasis for much of the CLB and is the focus of the maintenance rule and other regulatory requirements to ensure that aging issues are appropriately managed in the current license term.[532]

Thus, FUSE's alleged concerns regarding Entergy's Quality Assurance, Corrective Action, and Design Control Programs are beyond the scope of this proceeding. The Board must deny the admission of Proposed Contentions 34-36 as they fail to meet the requirements of Section 2.309(f)(1)(iii).

33. Proposed Contention 37 – "(Environmental) The Applicant's LRA does not specify, as required in 10 C.F.R. 50.65 and 10 C.F.R. 50.82(a)(1), an Aging Management plan to monitor and maintain all structures, systems, or components associated with the storage, control, and maintenance of spent fuel in a safe condition, in a manner sufficient to provide reasonable assurance that such structures, systems, and components are capable to fulfilling their intended functions."

According to FUSE, the license renewal application and the UFSAR for Unit 2 inadequately address the currently existing, known and unknown, environmental affects of ongoing leaks from the spent fuel pool, and fail to lay out a workable aging management plan for those leaks. In support, FUSE offers a chronology of alleged spent fuel pool "problems" "[s]ince September 20, 2005."[533] The chronology contains no citations to any source documents.

Once again, FUSE relies upon bare assertions with *no* references to the underlying documentary sources or expert opinion, contrary to 10 C.F.R. § 2.309(f)(1)(v), and no references to Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi). This contention should be denied for these reasons alone.[534]

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[532] 60 Fed. Reg. at 22,475 cols. 2 & 3 (emphasis added).

[533] Superceding Petition at 252-54.

[534] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC 370, 384 (1992).

To the extent Proposed Contention 37 raises issues related to alleged inadequacies of Entergy's aging management programs for the spent fuel pool at IPEC Unit 2, as well as allegations related to the impacts of radiological leakage upon groundwater, Entergy responds to such issues in its answer to FUSE Proposed Contention 14, above.

34. Proposed Contention 38 – "(Environmental) The LRA, and the UFSAR's for IP2 inadequately address the currently existing, known and unknown, environmental affects and aging degradation issues of ongoing leaks, and fails to lay out workable aging management plans for said leaks and systems imperative for Safe Shutdown and cooling of the reactor."

This contention raises substantially the same issues as those raised in Proposed Contention 14. In Proposed Contention 38, however, FUSE provides purportedly more details examples of "inadequately addressed aging management issues," including: (1) its desire for a "detailed site specific aging management plan" for reactor coolant pump seals;[535] (2) the statement that it believes the feedwater heater should be in scope for license renewal;[536] and (3) its desire for a "detailed aging and maintenance plan" for stainless steel pipe replacement.[537] FUSE also discusses leaks allegedly discovered at the Kashiwazaki plant in Japan in 2007, although it offers no reasonable connection between alleged events at this facility and any issue at IPEC.[538]

Throughout the seventeen pages of this proposed contention, FUSE once again relies almost exclusively upon bare assertions with almost no references to the underlying documentary sources or expert opinion, contrary to 10 C.F.R. § 2.309(f)(1)(v). The few references and

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[535] Reactor coolant pump seals are active components that are not subject to aging management review under 10 C.F.R. § 54.21(a)(1)(i). *See* LRA § 2.1.2.4.1.

[536] This aspect of FUSE's contention is correct. The feedwater heaters are in scope. *See* LRA §§ 3.3.2-19-4-IP2; 3.3.2-19-12-IP3.

[537] Superceding Petition at 257-58. Stainless steel piping is addressed in various AMPs. *See, e.g.*, LRA, App. B, §§ B.1.18 (Inservice Inspection); B.1.41 (Water Chemistry Control – Primary and Secondary).

[538] Superceding Petition at 263 ("The existence of the Radiation Leaks [at the Kashiwazaki plant] provides direct evidence of underground pipe failure . . . that has not been adequately addressed by the licensee.").

quotations that FUSE does provide are disjointed, and in at least one instance, blatantly misleading.[539] Proposed Contention 38 also contains no references to specific portions of Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi). This contention should be denied for these reasons alone.[540]

To the extent Proposed Contention 38 repeats issues that are raised in FUSE Proposed Contention 14, Entergy responds to such issues in its answer to Proposed Contention 14.

35. Proposed Contention 39 – "Severe Accident Mitigation Alternatives."

This contention alleges that, although there are "hundreds" of blocked steam generator tubes at IPEC, Unit 2, the "[c]urrent [SAMA] analyses" for both Units rely upon "an assumption that there are no blocked" tubes.[541] Building on these unsupported assertions, FUSE concludes that the "SAMA analysis is inadequate." FUSE also provides conclusory references to an alleged public discussion of this topic "in ACRS meeting in May 2007" and to an unspecified EPRI report.

This contention must be denied because it fails to provide adequate references to the underlying documentary sources, contrary to 10 C.F.R. § 2.309(f)(1)(v), and provides no references to Entergy's LRA, contrary to 10 C.F.R. § 2.309(f)(1)(vi).[542]

This contention is also deficient in that FUSE fails to explain, with any specificity, how the current analysis, with respect to steam generator tube blockage, is deficient. Thus, Proposed Contention 39 lacks the requisite specificity, contrary to 10 C.F.R. § 2.309(f)(1)(ii), (v) and (vi).

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[539] Superceding Petition at 259-260 (FUSE purportedly provides a block quotation from an article in The Journal News by Brian J. Howard. The final indented paragraph, however, is not a quotation from the newspaper article but is FUSE's baseless accusation that Entergy's spokesman "was/is lying through his teeth.").

[540] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC 370, 384 (1992).

[541] Superceding Petition at 273.

[542] *See Fansteel*, CLI-03-13, 58 NRC at 203; *Comanche Peak*, LBP-92-37, 36 NRC 370, 384 (1992).

Moreover, both of FUSE purported documentary references are faulty. There was no discussion of the impact of steam generator tube blockage on SAMA analyses at any May 2007 meeting of the ACRS.[543] FUSE also does not specify the EPRI report it relies upon, and, in any case, FUSE states that this report "supports [] the current analytical approach."[544] FUSE's statement that the "current" approach is inadequate is, therefore, unsupported by any analysis, and fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(v).

36. Proposed Contention 40 – "Applicants have failed to meet the mandates of NEPA, of NRC 10 C.F.R. 51.53 post construction environmental reports or of NRC 10 C.F.R. 51.21 actions requiring environmental assessments in their applications or have deliberately attempted to conceal refurbishment issues and the risks associated there with from the NRC and/or members of the public."

FUSE next argues that, in Section 3.3 of the ER, Entergy "claim[s] that there are no refurbishment issues, thus no environmental concerns which would need to be addressed."[545] Petitioner then accuses Entergy of having "omitted" mention of its plans for a major refurbishment, as reflected in its order of a Replacement Reactor Vessel Heads for Indian Point #2. Petitioner gleans this knowledge from a slide contained in a March 2007 presentation by Doosan Heavy Industries & Construction Co., Ltd., deeming it "clear evidence of Applicant's plans for refurbishment."[546] Petitioner characterizes Entergy's alleged omission as a deliberate "attempt[]to hide significant environmental, health and safety concerns" in violation of 10 C.F.R.

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[543] ACRS 542nd Meeting, Full Committee, Tr. (May 3, 2007) (available in ADAMS at ML071300354); ACRS Safety Research Program Subcommittee, Tr. (May 2, 2007) (available in ADAMS at ML071360261); ACRS Thermal Hydaulic Phenomena Subcommittee, Tr. (May 15, 2007) (available in ADAMS at ML071520316); ACRS Thermal Hydaulic Phenomena Subcommittee, Tr. (May 16, 2007) (available in ADAMS at ML071520225); ACRS Thermal Hydaulic Phenomena Subcommittee, Tr. (May 24, 2007) (available in ADAMS at ML071700579); ACRS Thermal Hydaulic Phenomena Subcommittee, Tr. (May 25, 2007) (available in ADAMS at ML071640336).

[544] Superceding Petition at 273.

[545] *Id.* at 279.

[546] *Id.*

§§ 50.5 and 50.9.[547] Petitioner also asserts that Entergy has failed to evaluate the environmental impacts associated with the refurbishment in accordance with Part 51 requirements.

Entergy opposes admission of Proposed Contention 40 on the grounds that it (1) lacks a proper factual or legal foundation, contrary to 10 C.F.R. § 2.309(f)(1)(v); (2) raises issues outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii) and (iv); and (3) fails to establish a genuine dispute on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi). As set forth in Section 3.3 of the Environmental Report, 10 C.F.R. § 51.53(c)(2) requires that a license renewal applicant's environmental report provide a description of the proposed action, "including the applicant's plans to modify the facility or its administrative control procedures *as described in accordance with Section 54.21.*" The objective of the review required by Section 54.21—the Integrated Plant Assessment ("IPA")—is to determine whether the detrimental effects of aging could preclude certain systems, structures, and components from performing in accordance with the CLB during the extended operation period. The results of Entergy's IPA are documented in Chapter 3 of the LRA.

LRA Section 3.1.2.1, in particular, addresses the materials, environments, aging effects requiring management, and aging management programs for the reactor coolant system components, including the reactor vessel. Significantly, Section 3.1.3 concludes:

> The reactor vessel, internals, reactor coolant system and steam generator components that are subject to aging management review have been identified in accordance with the requirements of 10 CFR 54.21. The aging management programs selected to manage the effects for the reactor vessel, internals, reactor coolant system and steam generator components are identified in Section 3.1.2.1 and in the

[547] And based on this, FUSE concludes that Entergy "is a low life, filthy dirty lying scum" and "scoundrels of the worse, [sic] lower than OJ Simpson and Adolph Hitler" who "deliberately, egregiously, negligently and with malice have submitted a materially false LRA." This reprehensible language and baseless accusations have no place in any adjudicatory proceeding. As noted above, the Board has already sanctioned FUSE's previous representative for similar violations of decorum, and Entergy hereby requests that the Board consider additional sanctions under 10 C.F.R. § 2.314 against FUSE for this and similar statements in its Superceding Petition.

> following tables. A description of these aging management programs is provided in Appendix B, along with the demonstration that the identified aging effects will be managed for the period of extended operation.
>
> *Therefore, based on the demonstrations provided in Appendix B, the effects of aging associated with the reactor coolant system components will be managed such that there is reasonable assurance that the intended functions will be maintained consistent with the current licensing basis during the period of extended operation.*

Section 3.3 of the Environmental Report appropriately reflects the results of this evaluation. It states that "[the] evaluation did not identify the need for refurbishment of structures or components for purposes of license renewal and there are no such refurbishment activities planned at this time." Section 3.3 further states that, "[a]lthough routine plant operational and maintenance activities will be performed during the license renewal period, these activities are not refurbishments as described in Sections 2.4 and 3.1 of the GEIS and will be managed in accordance with appropriate Entergy programs and procedures."

The upshot is that FUSE's Proposed Contention lacks a legal or factual foundation and fails to demonstrate that the application is deficient in some material respect. As discussed above, Entergy has complied fully with the applicable Part 51 and Part 54 requirements. Moreover, contrary to Petitioner's claims, Entergy has not deliberately omitted or misrepresented information in violation of Sections 50.5 or 50.9 (or their Part 54 counterparts).

FUSE's Proposed Contention also is outside the scope of this proceeding insofar as it collaterally attacks generic findings made by the NRC Staff in its GEIS. The NRC, in the GEIS, recognizes that "the license renewal rule does not require any specific repairs, refurbishment, or modifications to nuclear facilities," but only that appropriate actions are taken to ensure the continued functionality of SSC's in the scope of the rule.[548] Thus, to determine if an activity

[548] GEIS § 2.4, at 2-30.

needs to be addressed in the context of refurbishment—a term not defined in the Commission's regulations or GEIS—it is first necessary to determine if it affects an SSC within the scope of the rule. If so, then it is necessary to determine if the action is necessary to ensure its continued functionality. Here, while the reactor vessel head is "in-scope," replacement is not necessary to ensure its continued functionality.

Another indicia of whether an activity may be within the type of activities contemplated as refurbishment is how extensive a work effort it entails. For example, the GEIS postulates that a refurbishment activity will occur "during four outages plus a single large outage devoted to major items."[549] The examples of refurbishment activities in the GEIS envision efforts of this magnitude.

Entergy's long-lead time planning, notwithstanding its order for replacement reactor vessel heads, on the other hand, stands in stark contrast to the foregoing. The LRA itself makes clear that the reactor vessel head is subject to aging management through appropriate programs,[550] and head replacement is not envisioned as a necessary measure to ensure functionality of the vessel in the period of renewal. Rather, replacement of the heads is viewed by Entergy to be a discretionary matter, to be handled as a routine operational and maintenance activity.[551] A decision to in fact proceed with fabrication of the heads, one to be made in the future, will be predicated on economic considerations related to potential cost reductions, not because of concerns regarding continued functionality of the heads themselves.[552] For purposes of understanding the relatively routine nature of a reactor vessel head replacement, no major

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[549] *Id.* § 3.8.2.3, at 3-45.

[550] *See* LRA § 3.1 and Tables 3.1.2-1-IP2 and 3.1.2-1-IP3

[551] ER § 3.3 at 3-24

[552] *See* Letter from F.R. Dacimo, Entergy, to U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Reply to Request for Additional Information Regarding Environmental Review for License Renewal Application, Response for RAI 3, at 3-4, NL-08-006, Jan.. 4, 2008

refurbishment outage is planned for this effort;[553] it should be recalled that vessel heads are removed from vessels and then reinstalled every time a reactor is refueled.

As the GEIS indicates (and specifically accounts for), "[l]icensees may also choose to undertake various refurbishment and upgrade activities at their nuclear facilities to better maintain or improve reliability, performance, and economics of power plant operation during the extended period of operation."[554] Such activities "would be performed at the option of the licensee and . . . are in addition to those performed to satisfy the license renewal rule requirements."[555] Any decision by Entergy to replace the reactor pressure vessel heads for IPEC Units 2 and 3 for economic reasons would fall into this latter category. In fact, the document cited by FUSE reflects Entergy's decision to purchase certain "long lead" components to facilitate *possible* replacement of the reactor pressure vessel heads in the future.

In sum, Proposed Contention 33, beyond FUSE's *ipse dixit* assertions, fails to provide a concise statement of the alleged facts or expert opinions which support the Petition, including references to sources and documents on which it intends to rely, as required by 10 C.F.R. § 2.309(f)(1)(v), or, beyond its baseless insinuations of wrongdoing, include specific references to the application and environmental report which it disputes, as called for by 10 C.F.R. § 2.309(f)(1)(iv). Accordingly, this Proposed Contention should be denied in its entirety.

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[553] *Id.*

[554] GEIS § 2.6.1 at 2-33

[555] *Id.*

37. Proposed Contention 41 – "Environmental Effects and Cascading Consequences on the Aging structures, deteriorated conditions and compromised systems, of a Terrorist Attack On Aging Indian Point Nuclear Reactors are not considered in the LRA for IP2."

Petitioner accuses the nuclear industry and NRC of using "statistical analysis to justify eliminating the environmental effects of a terrorist attack from review and consideration" in the IPEC license renewal application.[556] Petitioner states that it refuses to accept the "NRC's false assurances that a pathetic DBT and a poorly trained private security force . . . can keep us safe."[557] Petitioner implores the NRC—as part of the license renewal process—to consider a wide array of postulated terrorist attacks on the Indian Point facility.[558] In repetitive citations to the Ninth Circuit's decision in *San Luis Obispo Mothers for Peace v. NRC*,[559] Petitioner argues that "NEPA requires the NRC and licensee to answer what are the environmental costs of a successful terrorist attack on a Nuclear Reactor Site . . . ."[560] Petitioner further states that, in reviewing a license application submitted by Pa'ina Hawaii, LLC, to build and operate a commercial irradiator in Hawaii, the NRC Staff decided on its "own accord" to consider the potential environmental impacts of a terrorist attack on the proposed facility as part of its NEPA review.[561]

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556 Superceding Petition at 294.

557 *Id.* at 295.

558 Petitioner contends that the NRC must consider attacks by nuclear "insiders;" acts of sabotage against off-site power transmission; risks associated with attacking various components of the facility independently and jointly, including, for instance, the reactor itself, the control room, the spent fuel pools, and the water intake and/or discharge channel; an attack equivalent to that carried out by the 9/11 terrorists (*i.e.*, an attacking force of no less than 18 terrorists using up to four large commercial airplanes); attacks by terrorists using "known terrorist weapons of choice," including large vehicle bombs, armor piercing munitions, shoulder launched rockets/grenades, semi-automatic 50-caliber firearms, and mortars; waterborne assaults and sabotage. Superceding Petition at 301, 303-304.

559 449 F.3d 1016 (9th Cir. 2006), *cert. denied sub nom. Pac. Gas & Elec. Co. v. San Luis Obispo Mothers for Peace*, 127 S. Ct. 1124 (2007).

560 Superceding Petition at 303.

561 *Id.* at 308.

Entergy opposes the admission of Proposed Contention 41 on the grounds that it: (1) raises issues that are neither within the scope of this proceeding or material to the Staff's license renewal findings, (2) fails to establish a genuine dispute on a material issue of law or fact, (3) directly contravenes controlling Commission legal precedent, and (4) collaterally attacks the NRC's Part 73 and Part 51 regulations.

The Commission and its Licensing Boards have consistently held that the NRC Staff does not need to consider, as part of its safety or environmental review, terrorist attacks on nuclear power plants seeking renewed licenses.[562] In *Oyster Creek*, the Commission recently reiterated the principal bases for its refusal to admit contentions asserting that the license renewal process requires consideration of postulated terrorist attacks on the plants seeking renewed licenses:

> Terrorism contentions are, by their very nature, directly related to security and are therefore, under our license renewal rules, unrelated to the detrimental effects of aging. Consequently, they are beyond the scope of, not material to, and inadmissible in, a license renewal proceeding. Moreover, as a general matter, NEPA imposes no legal duty on the NRC to consider intentional malevolent acts . . . in conjunction with commercial power reactor license renewal applications. The 'environmental' effect caused by third-party miscreants is simply too far removed from the natural or expected consequences of agency action to require a study under NEPA. The claimed impact is too attenuated to find the proposed federal action to be the proximate cause of that impact.[563]

The Commission also expressly rejected the assertion that the Ninth Circuit's decision in *San Luis Obispo Mothers for Peace* requires the NRC and its licensees to address the

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[562] *See, e.g., Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373 (2002); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 638 (2004); *Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 756 (2005); *AmerGen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-07- 08, 65 NRC 124,129 (2007).

[563] *See* CLI-07-08, 65 NRC 124, 129 (2007) (internal quotations and citations omitted).

environmental costs of a successful terrorist attack on a nuclear plant seeking to renew its operating license.[564] In *Oyster* Creek, the Commission stated that:

> The terrorism risk at Oyster Creek remains the same during the renewal period as it was the day before when the plant still operated under its original license. . . . A license renewal proceeding is distinguishable from the situation considered in *San Luis Obispo Mothers for Peace*, where the NRC had before it a proposal to construct a dry cask storage facility at a nuclear reactor site. Unlike the situation in that case, a license renewal application does not involve new construction. So there is no change to the physical plant and thus no creation of a new "terrorist target."[565]

The Commission further explained that, while it was required to comply with the Ninth Circuit's remand in the *Diablo Canyon* proceeding, it "is not obliged to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question." Such an obligation, the Commission observed, "would defeat any possibility of a conflict between the Circuits on important issues. As such, in *Oyster Creek* the Commission held that the Board had properly applied our settled precedents on the NEPA-terrorism issue.[566]

The Commission's *Oyster Creek* decision thus requires that this Board reject Proposed Contention 41. Where a matter has been considered by the Commission, it may not be reconsidered by a Board. Commission precedent must be followed.[567]

Proposed Contention 41 also must be rejected because it impermissibly challenges NRC safety and environmental regulations found in 10 C.F.R. Part 51. With respect to the NRC's Part 51 regulations, Proposed Contention 41 improperly challenges the findings in the GEIS; *i.e.*, that

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564 *Id.* at 129.

565 *Id.* at 130 n.25.

566 *Id.* at 131-34. Petitioner's reference to the *Pa'ina* proceeding lends no weight to its argument inasmuch as that facility is located in Hawaii, which is in the Ninth Circuit.

567 *Virginia Elec. & Power Co.* (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 463-65 (1980); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-86-21, 23 NRC 849, 859, 871-72 (1986).

the risk from sabotage is small and that the associated environmental impacts are adequately addressed by a generic consideration of internally initiated severe accidents. The GEIS provides that:

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

In the GEIS, the Commission thus discussed sabotage as the potential initiator of a severe accident. The Commission determined generically that severe accident risk is of small significance for all nuclear power plants. Thus, no separate NEPA analysis is required to evaluate the potential environmental impacts of a terrorist attack, because the GEIS analysis of severe accident consequences bounds the potential consequences that might result from a large scale radiological release, irrespective of the initiating cause.[568] By contending that Entergy and the NRC must address the environmental costs of a successful terrorist attack on the Indian Point facility, FUSE improperly challenges the GEIS and Part 51 regulations. As noted above, the rulemaking process, not this adjudicatory proceeding, is the proper forum for seeking to modify generic determinations made by the Commission.[569]

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[568] *Oyster Creek*, CLI-07-08, 65 NRC at 131.

[569] As the Commission explained in *Turkey* Point, petitioners with "new and significant" information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule pursuant to 10 C.F.R. § 2.335. The requirements for seeking such a waiver are set forth in 10 C.F.R. § 2.335(b), which provides that "[t]he 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 a provision of it) would not serve the purposes for which the rule or regulation was adopted." *Id.* (emphasis added). Petitioner has not availed themselves of this procedure in Proposed Contention 41. Regardless, even if Petitioner had sought such a waiver, it has failed to meet is burden to demonstrate the existence of "special circumstances" and/or "new and significant information"." Instead, Petitioner raises only generic

For the foregoing reasons, the Board must deny Proposed Contention 41. It does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), and (vi).

38. Proposed Contention 42 – "The License Renewal Application (LRA) fails to provide sufficient detailed information regarding technical, safety and environmental, issues as required by 10 C.F.R. 2.309."

This contention substantially overlaps the issues FUSE raises in Proposed Contention 20. Entergy responds to FUSE's generalized charges regarding the detail included in the LRA in its response to Proposed Contention 20, above.

Proposed Contention 42 lacks specificity because FUSE seeks to litigate countless topics under this contention.[570] The scope of FUSE's allegations include "Safety Analysis, Aging Management Plans, Internal Reactor Vessel Corrosion, Equipment Environmental and Qualification Program, Flow Accelerated Corrosion Program, Cooling System Program and *other programs too numerous to mention.*"[571] As such, Proposed Contention 42 is another example of an ill-defined and open-ended contention that fails to meet the NRC's strict pleading requirements.

The additional information FUSE provides in Proposed Contention 42 is also insufficient to support admission of this contention. FUSE quotes Entergy's program description for the Aboveground Steel Tanks program as an example of alleged deficiencies in the LRA.[572] FUSE provides no explanation, however, of any specific deficiencies in this program, and merely

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considerations that would apply to virtually any reactor at any site. The Commission has stated unambiguously that "[w]aiver of a Commission rule is simply not appropriate for a generic issue." *Haddam Neck,* CLI-03-7, 58 NRC at 8 (citing *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-80-16, 11 NRC 674, 675 (1980)).

[570] Moreover, 10 C.F.R. § 2.309 does not impose any obligation on Entergy. Rather, it sets forth the criteria to be satisfied for intervention.

[571] Superceding Petition at 314 (emphasis added)

[572] *Id.* at 315.

alleges that "stakeholders can[not] understand and grasp" the description of the Aboveground Steel Tanks program.[573] Significantly, FUSE has not proffered any technical expert witnesses, so its lack of ability to "understand and grasp" technical documents such as this section of the LRA is unsurprising, but nonetheless fails to provide support for admission of a contention pursuant to 10 C.F.R. § 2.309(f)(1)(ii), (iv), (v), and (vi).

39. Proposed Contention 43 – "Co-mingling three dockets, and three DPR licenses under a single application is in violation of C.F.R. Rules, Specifically 10 C.F.R. 54.17(d) as well as *Federal Rules for Civil Procedure rule 11(b).*"

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 21 with respect to IPEC Unit 2. Entergy responds to FUSE's claims regarding the submission of a combined LRA for multiple units in its response to Proposed Contention 21, above. FUSE presents additional information in Proposed Contention 43 regarding the fact that the Boraflex Monitoring program applies to IPEC Unit 2, but not to IPEC Unit 3.[574] As explained in Entergy's response to Proposed Contention 21, above, this additional information is irrelevant to the question of whether a single license renewal application for multiple units is permissible under Commission regulations.

40. Proposed Contention 44 – "The NRC violates its own regulations by accepting a single License Renewal Application made by the following parties: Entergy Nuclear Indian Point 2, LLC ("IP2 LLC"), Entergy Nuclear Indian Point 3, LLC ("IP3 LLC"), and Entergy Nuclear Operations, LLC (Entergy Nuclear Operations). NRC further violates its own regulations found in 10 C.F.R. 51 in considering Entergy's recent request to change the holder of record for IP1, IP2 and IP3. Additionally, the NRC is wrongfully allowing Entergy to do one stop filing (IE, filing one set of papers to change ownership status of five SEPARATE licensed reactors) in a fleet like manner, even though each reactor is owned by separate LLC's."

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[573] *Id.* at 316.

[574] *Id.* at 320.

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 22 with respect to Unit 2. Entergy responds to FUSE's arguments regarding Entergy's pending license transfer application in its response to Proposed Contention 22, above.

41. Proposed Contention 44 B – "The NRC has no statutory authority to require a licensee in bankruptcy to continue making safety-related or decommissioning expenditures or to pay retrospective Price-Anderson Act premiums. Therefore, any transfer of the licenses in the middle of an LRA proceeding brings into scope Entergy's entire corporate structure and complex financial qualification review to continue operating the licenses during the license renewal period of 20 years."

The text of this contention appears in the middle of Proposed Contention 44. FUSE provides no information to support this contention beyond the text above. The theory raised by FUSE in this paragraph—that the transfer of licenses during a license renewal proceeding brings the applicant's financial qualifications into the scope of license renewal—substantially overlaps the issues FUSE raises in Proposed Contentions 22 and 44. Entergy responds to those issues in its response to Proposed Contention 22, above.

The additional point FUSE includes in Proposed Contention 44B is its claim that the "NRC has no statutory authority to require a licensee in bankruptcy to continue making safety-related or decommissioning expenditures or to pay retrospective Price-Anderson Act premiums."[575] FUSE offers no citations for this alleged legal principle, and no discernable connection between this point and its impact on any license renewal proceeding, much less the instant proceeding or the IPEC LRA. Thus, this contention meets none of the requirements of 10 C.F.R. § 2.309(f)(1)—there is no specific statement of the issue of fact or law to be raised, no explanation of the basis, no demonstration that the issue is within the scope of the proceeding, no

[575] *Id.* at 325. The same allegation does appear in Proposed Contention 22, Superceding Petition at 174, making it even less clear why FUSE identifies this issue as a separate contention for IPEC Unit 3.

demonstration that the issue is material, no statement of facts or expert opinion, with references, and no information showing a genuine dispute on an issue of fact or law.

42. Proposed Contention 45 – "The Decommissioning Trust Fund is woefully inadequate and Entergy's plan to mix funding across Unit 2, 1 and 3 violates commitments not acknowledged in the application and 10 C.F.R. rule 54.3 (We Specifically Address This to IP3, though wording is similar to other contentions."

As FUSE admits, this contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 23 with respect to Unit 2.[576] Entergy responds to FUSE's arguments regarding the decommissioning trust fund and purportedly related concerns about the onsite storage of radioactive waste in its response to Proposed Contention 23, above.

43. Proposed Contention 45 B – "Since, Cask [sic] storage is slated to begin in 2008, and the renewed license for IP2 and IP3 if granted will expire in 2033 and 2035 respectively, it is imperative that the licensee and the NRC deal with the fact that Entergy in their [sic] LRA have not provided a full and complete plan to deal with the waste streams generated and stored at the facility, and the issue of dry cask storage units reaching their end lives has to be dealt with before a new superceding license can be granted. Stakeholders herein claim this as a new contention."

The text of this contention appears in the middle of Proposed Contention 45. It is unclear whether the text that follows Proposed Contention 45B supports that contention, or is a continuation of the discussion of Proposed Contention 45. In either case, the issues FUSE raises in this paragraph—concerns about onsite storage of radioactive waste—substantially overlap the issues FUSE raises in Proposed Contentions 23 and 45. Entergy responds to issues related to radioactive waste storage in its response to Proposed Contention 23, above.

[576] *Id.* at 327 ("wording is similar to other contentions").

44. Proposed Contention 45 C – As a host site, it is imperative that we receive the necessary assurances that Indian Point will not become a permanent waste disposal site for Indian Point's waste streams. Guarantees/commitments written into the new superceding license, coupled with yearly fines of say $5 million per fuel rod paid to the local community should the 30 year time period be violated, would guarantee a far greater chance of the NRC, DOE and Entergy abiding by the Federal Laws that require said waste streams to be removed and safely stored OFF SITE. Stakeholders again claim this as a [sic] additional contention. It is imperative that final disposition of these waste streams be resolved before a new superceding license is granted to Entergy for Indian Point, since many of the spent fuel waste streams should have already been removed from the site as a term of the original license to operate.

The text of this contention also appears in the middle of Proposed Contention 45. It is also unclear whether the text that follows Proposed Contention 45C supports that contention, or is a continuation of the discussion of Proposed Contention 45. In either case, the issues FUSE raises in this paragraph—concerns about onsite storage of radioactive waste—substantially overlap the issues FUSE raises in Proposed Contentions 23 and 45. Entergy responds to issues related to radioactive waste storage in its response to Proposed Contention 23, above.

45. Proposed Contention 46 – "Inability to Access Proprietary Documents Impedes Adequate Review of Entergy Application for License Renewal of IP2 LLC and IP3 LLC."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contentions 1, 24, 29 and 30 generically and with respect to Unit 2. Entergy responds to issues related to access to proprietary documents in its response to Proposed Contentions 1, 24, 29 and 30, above.

46. Proposed Contention 47 – "Regulatory Guidance contained in 10 C.F.R. 50.4 and Rule Implementing Standards under the American Rules and Procedures Act require Stakeholders to have reasonable opportunity to bring forth issues beyond the narrow scope where members of the public have specific and direct substantiated concerns as related to IP3 specifically."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 25 with respect to Unit 2. Entergy responds to such issues in its response to Proposed Contention 25, above.

47. Proposed Contention 48 – "The LRA, in which Indian Point 3 LLC seeks a new superceding license to replace the existing license, is incomplete and should be dismissed. Instead of presenting required Time Limiting Aging Analysis and an Adequate Aging Management Plan, it seeks to agree to uncertain commitments with regard to the Aging Management of the plant at an uncertain date in the future, thereby causing the license agreement to be voidable by either party, but specifically the Licensee."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 26 with respect to Unit 2. Entergy responds to FUSE's generalized disagreements with the use of commitments in the LRA in its response to Proposed Contention 26, above.

48. Proposed Contention 49 – "The LRA as relates to IP3 that was submitted fails to include Final License Renewal Interim Staff Guidance. For example, LR-ISG 2006-03. "Staff guidance for preparing Severe Accident Mitigation Alternatives."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 27 with respect to Unit 2. Entergy responds to issues related to LR-ISG 2006-03 and SAMAs in its response to Proposed Contention 27, above.

49. Proposed Contention 50 – "The Updated Final Safety Analysis Report (UFSAR) for IP3 fails to meet the requirements of 10 C.F.R. 55(a) by deletion of certain required codes and standards, and obviates the ability of a petitioner to perform a technical review as required under 10 C.F.R. 504."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 28 with respect to Unit 2. Entergy responds to FUSE's generalized disagreements regarding the alleged "deletion of required codes and standards" in its response to Proposed Contention 28, above.

50. Proposed Contention 51 – "The applicant does not have in its possession the Current License Basis (CLB) for Indian Point 3, that is required for license renewal per C.F.R. 2.390."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 29 with respect to Unit 2. Entergy responds to issues related to FUSE's concerns regarding the CLB in its response to Proposed Contention 29, above.

51. Proposed Contention 51 A – "List of Exceptions to the CLB "

In this contention, FUSE attempts to expand the scope of Contention 51 based the allegation that "massive amounts of it [the CLB] are buried on old microfiche . . . ."[577] FUSE believes:

> This may explain the NRC comment that there is no list of exemptions that the Licensee intends to carry over into the new superceding license, and we would like that A) in writing, and if it is put in writing, we would ask the Board to note that no exemptions (regardless of the word used to describe them-IE deviation, exceptions and exclusion) from the existing license are to be carried over to, and made a part of the new superceding license. This is a separate sub-contention and request.[578]

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[577] Superceding Petition at 369-70.

[578] *Id.* at 370.

FUSE's desires with respect to this contention are indecipherable. It is unclear whether it desires a written statement that the CLB is documented, in part, on "old microfiche," or whether it desires a written statement that Entergy intends to carry over the CLB, including any existing regulatory exemptions, into the license renewal period. It is also unclear who FUSE would like to see provide this statement. In either case, the "contention" is simply a request for information from an unspecified source.[579] As such, it meets none of the requirements of 10 C.F.R. § 2.309(f)(1): there is no specific statement of the issue to be raised, no explanation of the basis, no demonstration that the issue is within the scope of the proceeding, no demonstration that the issue is material, no statement of facts or expert opinion, with references, and no information showing a genuine dispute on an issue of fact or law.

52. Proposed Contention 52 – "Safety/Aging Management: Applicant's LRC for Indian Point 3 LLC is insufficient in managing the environmental equipment qualification required by federal rules mandated after Three Mile Island that are required to mitigate numerous design basis accidents to avoid a reactor core melt and to protect the health and safety of the public."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 31 with respect to Unit 2. Entergy responds to issues related to equipment qualification in its response to Proposed Contention 31, above.

[579] It is also based on FUSE's apparent fundamental misunderstanding of the CLB, as the term is defined in 10 C.F.R. § 54.3. FUSE apparently believes that the CLB is (or should be) a single document. *See* Superceding Petition at 370-71. To the extent FUSE is requesting that Entergy or the NRC provide a summary of the CLB, Entergy responds to FUSE in its answer to Proposed Contention 29, above.

53. Proposed Contention 53 – "Entergy's License Renewal Application Fails to Include an Adequate Plan to Monitor and Manage Aging of IP3 Plant Piping Due to Flow-Accelerated Corrosion During the Period of Extended Operation."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 32 with respect to Unit 2. Entergy responds to issues related to FAC in its response to Proposed Contention 32, above.

54. Proposed Contention 54 – "Leak-Before-Break analysis is unreliable for welds associated with high energy line piping containing certain alloys at Indian Point 3."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 33 with respect to Unit 2. Entergy responds to issues related to leak-before-break analyses in its response to Proposed Contention 33, above.

Beyond copying the text of Proposed Contention 33, this contention adds a discussion of IPEC's allegedly "disturbing track record regarding pipe integrity issues."[580] The allegations in this discussion are purportedly taken from a local newspaper, The Journal News. FUSE presents no connection between the alleged facts it presents and any specific deficiency in the LRA[581]. Thus, the additional information provided in Proposed Contention 54 also fails to raise a genuine dispute on a material issue of fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

55. Proposed Contention 55 – "(Environmental) The Applicant's LRA for IP3 does not specify, as required in 10 C.F.R. 50.65 and 10 C.F.R. 50.82(a)(1), an Aging Management plan to monitor and maintain all structures, systems, or components associated with the storage, control, and maintenance of spent fuel in a safe condition, in a manner sufficient to provide reasonable assurance that such structures, systems and components are capable to fulfilling their intended functions."

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[580] Superceding Petition at 393.

[581] *Id.* at 393-97.

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 37 with respect to Unit 2. Entergy responds to issues related to alleged spent fuel leakage in its response to Proposed Contention 37, above.

56. Proposed Contention 56 – "(Environmental) The LRA, and the UFSAR's for IP3 inadequately address the currently existing, known and unknown, environmental affects and aging degradation issues of ongoing leaks, and fails to lay out workable aging management plans for said leaks and systems imperative for Safe Shut down and cooling of the reactor."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 38 with respect to Unit 2. Entergy responds to issues related to aging management plans to address leakage in its response to Proposed Contention 38, above.

57. Proposed Contention 57 – "The Applicant has failed in its LRA for IP3 LLC to include as part of the EIS Supplemental Site Specific Report any refurbishment plans in order to meet the mandates of NEPA, of NRC 10 C.F.R. 51.53 post construction environmental reports or of NRC 10 C.F.R. 51.21."

This contention repeats for IPEC Unit 3 essentially the same claims FUSE raises in Proposed Contention 40 with respect to Unit 2. Entergy responds to issues related to refurbishment plans in its response to Proposed Contention 40, above.

58. Proposed Contention 58 – "The radiological discharges, both legal and illegal, known and unknown from Indian Point 3, LLC are causing elevated cancer rates in the 50 mile EPZ which includes portions of Connecticut, New Jersey, and New York. Said elevated cancers are causing premature deaths, painful mastectomies in women who are getting non-hereditary breast cancers, and our children are being struck down with leukemia, as a result of Indian Point 3 LLC operations. The death of just one child in the name of Indian Point License Renewal is unacceptable, elevated cancer rates, especially breast cancer is and unacceptable price to ask any community to pay in the name of "National Interests" and NEI's dearly beloved Nuclear Renaissance."

Proposed Contention 58 is another collection of unsupported allegations, this time alleging generic cancer-causing effects of the operation of nuclear power plants. None of the information FUSE presents in support of this contention is specific to IPEC. FUSE's generic

allegations include: (1) unspecified admissions from "NRC, NEI, DOE, and Entergy" that "some deaths, some cancers will occur from the operation of a nuclear power plant"; (2) alleged cancer cases related to DOE laboratories and enrichment facilities; (3) NRC, DOE, and NEI *attempts to debunk* the "Tooth Fairy Project"; (4) "a recent study in Germany" and an apparent excerpt from the "European Journal of Cancer care" that purportedly show a connection between childhood cancer and proximity to nuclear power plants; (5) a study by "Dr. Louise Parker of the Royal Victoria Infirmary," purportedly showing adverse health effects from an English reprocessing plant; (6) statements by the late Secretary Stewart Udall regarding "official deceit and lying" to protect the nuclear industry; (7) an essay purportedly by one David Proctor regarding the alleged cancer-causing effects of radiation.[582]

As an initial matter, none of the documents FUSE cites in support of this contention have any specific relevance to IPEC. Thus, Proposed Contention 58 fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(v).[583] For these reasons alone, there is an insufficient basis for a contention.[584]

Entergy also opposes the admission of Proposed Contention 58 on the grounds that it (1) raises generic issues that challenge Commission regulations, contrary to 10 C.F.R. § 2.309(f)(iii); (2) raises issues that are not unique to the period of extended operation and are therefore outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii), and (3) raises no material issues of fact or law, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

Conspicuously absent from Contention 58 is any assertion or information showing that the applicant has not and is not operating IPEC in accordance with the Commission's

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582 Superceding Petition at 453-59 (emphasis added).

583 *Id.* at 453-60.

584 See *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989); *Tenn. Valley Auth.* (Browns Ferry Nuclear Plant, Units 1 & 2), LBP-76-10, 3 NRC 209, 216 (1976).

requirements with respect to radiological releases,[585] and, more importantly, that there is any 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 that (a) despite the inclusion of references to IPEC in the text of the contention, the issue FUSE wishes to raise is clearly a generic matter which challenges a Commission regulation with respect to health effects of low levels of radiation, and (b) the information is anything but new.

FUSE seeks to raise here essentially the same issue that 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. There, the Board rejected a contention similarly seeking to challenge the radiological impacts of plant operations.[586] 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, and 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, 10 C.F.R. § 51.53(c)(3) and App. B, Table B-1.[587] The Board's conclusion in the McGuire and Catawba proceeding is equally relevant in the instant proceeding:

> 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

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585 *See* 10 C.F.R. Part 20

586 *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), LBP-02-04, 55 NRC 49, 85-87 (2002).

587 *Id.*

> radiological impacts through a petition for rulemaking under 10 C.F.R. § 2.802.[588]

Similarly, in the Millstone Nuclear Power Station, Units 2 and 3, license renewal proceeding, the Board rejected a substantively similar contention because it was unrelated to matters material to license renewal under Part 54.[589] 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.[590] The Commission, in affirming the Licensing Board's decision denying the petitioner's motion for reconsideration and petition for leave to amend its petition, 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.[591]

And finally, another Board, in the context of a license amendment proceeding, rejected a contention seeking to address the radiological impacts of operation at Millstone within regulatory limits because it was an impermissible challenge to the Commission's regulations in 10 C.F.R. Parts 20 and 50.[592] The Commission upheld the Board on review, stating:

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

589 *Dominion Nuclear Connecticut Inc.* (Millstone Nuclear Power Station, Units 2 and 3),LBP-04-15, 60 NRC 81, 90-91 (2004), *aff'd*, CLI-04-36, 60 NRC 631 (2004).

590 *Id.* at 91-92.

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

592 *Northeast Nuclear Energy Company* (Millstone Nuclear Power Station, Units 2 and 3), LBP-01-10, 53 NRC 273 (2001), *aff'd sub nom Dominion Nuclear Connecticut Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349 (2001).

> They [the petitioner] 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."[593]

Thus, Commission precedent makes it abundantly clear that the issue FUSE seeks to raise in this proceeding is generic and has no unique tie to either license renewal or to IPEC.[594]

Moreover, there is nothing put forward by FUSE to make this issue relevant to operation of IPEC during a renewed period of plant operation. Notably, Entergy's most recent reports—the 2006 Annual Radioactive Effluent Release Report and Annual Radiological Environmental Operating Report for 2006, submitted to the NRC in April 2007 and May 2007, respectively—show no instance where NRC requirements were exceeded during the operating period, for Indian Point Units 1, 2 and 3. 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

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

[594] *Turkey Point*, LBP-01-6, 53 NRC at 152.

did not result exposure [sic] to the public greater than environmental background levels."[595] "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."[596] Nothing provided by FUSE is to the contrary.

In sum, Contention 58 is inadmissible because it proposes consideration of an issue that is beyond the scope of this proceeding, and presents a generic issue decided by rule not to warrant specific evaluation in the context of an individual license renewal proceeding.[597] As a result, it must be rejected pursuant to 10 C.F.R. § 2.309(f)(1)(iii). 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 IPEC in the period of renewal.[598] Stripped to its essence, the contention is nothing more than an obvious 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. To the extent circumstances are alleged to warrant waiver of a rule in a specific proceeding, the appropriate course is through a petition pursuant to 10 C.F.R. § 2.335. To the extent the underlying matter is generic, as to the case here, the proper course is through a petition for rulemaking under 10 C.F.R. § 2.802.[599] Finally, the purported references to supporting facts or

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[595] Executive Summary at 1-2.

[596] *Id.* Introduction at 2-2.

[597] *See* 10 C.F.R. Part 51, Table B-1.

[598] *See Millstone*, CLI-05-24, 62 NRC at 561.

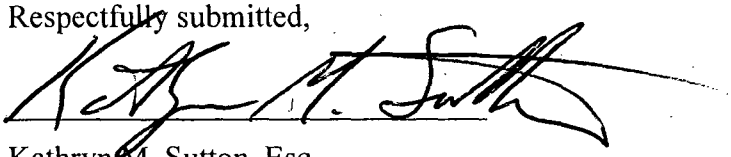
[599] 10 C.F.R. § 2.335(a); *see also, e.g., Turkey Point*, CLI-01-17, 54 NRC at 3.

expert opinion are inadequate, and the contention fails to raise a genuine dispute of material fact, contrary to 10 C.F.R. § 2.309(f)(1)(v) and (vi).

V. CONCLUSION

For the reasons set forth above, Entergy does not contest FUSE's organizational standing pursuant to 10 C.F.R. § 2.309(d)(1). FUSE, however, has failed to proffer any admissible contention pursuant to 10 C.F.R. 2.309(f)(1). Therefore, its Petition must be denied in its entirety.

Respectfully submitted,



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Dated at Washington, District of Columbia
this 22nd day of January, 2008

1-WA/2885534

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 Friends United for Sustainable Energy's Superseding Petition to Intervene and Request for Hearing" 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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