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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
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 TOWN OF CORTLANDT REQUEST FOR HEARING AND PETITION TO INTERVENE

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I. INTRODUCTION

In accordance with 10 C.F.R. § 2.309(h), Entergy Nuclear Operations, Inc. ("Entergy" or "Applicant"), applicant in the above-captioned matter, hereby files its Answer opposing the Town of Cortlandt "Request for Hearing and Petition to Intervene" ("Petition") filed on November 29, 2007, by the Town of Cortlandt ("Cortlandt" or "Petitioner"). The Petition responds to the United States Nuclear Regulatory Commission ("NRC" or "Commission") "Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing," published in the *Federal Register* on August 1, 2007 (72 Fed. Reg. 42,134) ("Hearing Notice") concerning Entergy's application to renew the operating licenses for the Indian Point Nuclear Generating Units 2 and 3, also referred to as Indian Point Energy Center ("IPEC"). As discussed below, the Petitioner has not satisfied Commission 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 Unit 2 and Unit 3 operating licenses (License Nos. DPR-26 and DPR-64) for an additional 20 years ("Application").[1] The Commission 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.*, October 1, 2007), in accordance with the provisions of 10 C.F.R. § 2.309.[2] On October 1, 2007, the Commission extended the period for filing requests for hearing until November 30, 2007.[3]

By Order dated November 27, 2007, the Atomic Safety and Licensing Board ("ASLB" or "Board") directed Entergy and the NRC Staff to file their answers to all timely petitions to intervene on or before January 22, 2008.[4] As noted above, Cortlandt filed its Petition on November 29, 2007, seeking party status pursuant to 10 C.F.R. § 2.309(d)(2) and, in the alternative, participation as an "interested" governmental entity pursuant to 10 C.F.R. § 2.315(c).[5] Entergy now responds in accordance with the Board's schedule.

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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 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).

4 *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).

5 *See* Petition at 2.

To be admitted as a party to this proceeding, Petitioner must demonstrate standing and must submit at least one admissible contention within the scope of this proceeding. Section III, below, describes the criteria for establishing standing under 20 C.F.R. § 2.309(d) and explains the reasons why Petitioner has satisfied the requisite criteria. Section IV of this Answer describes the standards governing the admissibility of proposed contentions and addresses, in turn, each of Petitioner's proposed contentions explaining the reasons why they are inadmissible. Therefore, the Petition should be denied in its entirety.

III. STANDING

A. Applicable Legal Standards and Relevant NRC Precedent

Both the Commission Hearing Notice for this proceeding and NRC regulations require a petitioner to set forth: (1) the nature of its right under the Atomic Energy Act ("AEA") of 1954, as amended, to be made a party to the proceeding; (2) the nature and extent of its property, 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.[6] Thus, a petitioner must demonstrate either that it satisfies the traditional elements of standing, or that it has presumptive standing based on geographic proximity to the proposed facility.[7]

With regard to the latter, the Commission, historically, has offered state and local government entities (county, municipality or other subdivision) a choice as to how they may participate in a licensing proceeding. First a state or local government entity may choose to participate formally, as a party to the proceeding, under 10 C.F.R. § 2.309. To participate as a party under 10 C.F.R. § 2.309(d)(2), a state must satisfy the same standards as an individual

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

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

petitioner insofar as proffering at least one admissible contention, but a state that wishes to be a party in a proceeding for a facility located within its boundaries need not satisfy the standing requirements under 10 C.F.R. § 2.309(d)(1).[8] This also has been extended to include Federally-recognized Indian Tribes. States, local governments, and Federally-recognized Indian Tribes other than those that contain the facility within their boundaries must address the standing requirements of 10 C.F.R. § 2.309(d)(1).[9]

Second, in accordance with Section 274(l) of the AEA, as implemented by 10 C.F.R. § 2.315(c), a state or local government entity or Federally-recognized Indian Tribe which does not wish to participate as a formal party, may nevertheless choose to participate in the proceedings as an "interested" state or local government. This provision applies not only to the state in which a facility is or will be located, but also to those other states that demonstrate an interest cognizable under Section 2.315(c).[10] Under this longstanding approach, the governmental entity is not required to proffer an admissible contention of its own, but rather, *within the scope of admitted contentions*, is afforded an opportunity to participate in the proceeding.

The mere filing by a state of a petition to participate in an operating license application pursuant to 10 C.F.R. § 2.315(c) as an interested state, however, is not cause for ordering a hearing; the application can receive a thorough agency review, outside of the hearing process, absent indications of significant controverted matters or serious safety or environmental issues within the scope of the AEA and/or the National Environmental Policy Act of 1969, as amended

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8 *See AmerGen Energy Co.*, LBP-06-07, 63 NRC at 194-95.

9 *See* 10 C.F.R. § 2.309(d)(2).

10 *Exxon Nuclear Co., Inc.* (Nuclear Fuel Recovery and Recycling Center), ALAB-447, 6 NRC 873, 876 (1977); *see also, e.g., Phila. Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-74-32, 8 AEC 217 (1974).

("NEPA").[11] As such, a state or local government entity may not participate as an "interested" state or local government entity unless there is a hearing (*i.e.*, another party has demonstrated standing and has proffered an admissible contention).[12] Pursuant to the Board's schedule, a petition to participate under Section 2.315(c) with regard to any admitted contention should be submitted within 30 days of the contention being admitted.[13]

B. Petitioner's Standing to Intervene

Cortlandt asserts that it is located on the northwestern corner of Westchester County and is comprised of two incorporated villages, Croton-on-Hudson and Buchanan. IPEC is located within the Village of Buchanan and within the boundaries of the Town of Cortlandt. Therefore, Cortlandt has standing to participate in this proceeding.

IV. PETITIONER'S PROPOSED CONTENTIONS ARE INADMISSIBLE

A. Applicable Legal Standards and Relevant NRC Precedent

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

As explained above, to intervene in an NRC licensing proceeding, a petitioner must proffer at least one admissible contention.[14] 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.[15] 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

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[11] *See Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Unit 2), LBP-83-45, 18 NRC 213, 216 (1983); *see also Duquesne Light Co.*, LBP-84-6, 19 NRC at 426 (1984) (citing *N. States Power Co.* (Tyrone Energy Park, Unit 1), CLI-80-36, 12 NRC 523, 527 (1980)).

[12] *See Niagara Mohawk,* LBP-83-45, 18 NRC at 216; *Duquesne Light Co.*, LBP-84-6, 19 NRC at 426.

[13] *See* Licensing Board Order (Denying Westchester County's Request for a 30-Day Extension of Time Within Which to Submit an *Amicus Curiae* Brief) at 2 (Nov. 28, 2007) (unpublished).

[14] *See* 10 C.F.R. § 2.309(a).

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

of its contentions and demonstrate that a genuine dispute exists within the scope of this proceeding."[16]

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."[17] Finally, "Government entities seeking to litigate their own contentions are held to the same pleading rules as everyone else."[18]

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

Section 2.309(f)(1) requires a petitioner to "set forth with particularity the contentions sought to be raised," and with respect to each contention proffered, satisfy six criteria, as discussed in detail below. An admissible contention must: (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.[19]

The purpose of the contention rule is to "focus litigation on concrete issues and result in a clearer and more focused record for decision."[20] The Commission has stated that it "should not

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

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

18 *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 568 (2005).

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

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

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."[21] Thus, the rules on contention admissibility are "strict by design."[22] Failure to comply with any one of the six admissibility criteria is grounds for the dismissal of a contention.[23]

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."[24] The petitioner must "articulate at the outset the specific issues [it] wish[es] to litigate as a prerequisite to gaining formal admission as [a party]."[25] Namely, an "admissible contention must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]."[26] The contention rules "bar contentions where petitioners have only 'what amounts to generalized suspicions, hoping to substantiate them later.'"[27]

b. Petitioner Must Briefly Explain the Basis for the Contention

A petitioner must provide "a brief explanation of the basis for the contention."[28] This includes "sufficient foundation" to "warrant further exploration."[29] Petitioner's explanation serves to define the scope of a contention, as "[t]he reach of a contention necessarily hinges upon

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21 *Id.*

22 *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).

23 *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).

24 10 C.F.R. § 2.309(f)(1)(i).

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

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

27 *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).

28 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).

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

its terms coupled with its stated bases."[30] The Board, however, must determine the admissibility of the contention itself, not the admissibility of individual "bases."[31]

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."[32] 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.[33] (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.[34] Any contention that falls outside the specified scope of the proceeding must be rejected.[35]

A contention that challenges any NRC rule (or seeks to litigate a matter that is, or clearly is about to become, the subject of a rulemaking) is outside the scope of the proceeding because, absent a waiver, "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding."[36] 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.[37] Similarly, any contention that collaterally attacks applicable statutory requirements or the basic structure of the NRC regulatory process must be rejected by

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30 *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).

31 *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'").

32 10 C.F.R. § 2.309(f)(1)(iii).

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

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

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

36 *See* 10 C.F.R. § 2.335(a).

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

the Board as outside the scope of the proceeding.[38] Accordingly, a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue.[39]

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."[40] 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.'"[41] In this regard, "[e]ach contention must be one that, if proven, would entitle the petitioner to relief."[42] Additionally, contentions alleging an error or omission in an application must establish some significant link between the claimed deficiency and protection of the health and safety of the public or the environment.[43]

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

39 *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.

40 10 C.F.R. § 2.309(f)(1)(iv).

41 *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.

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

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

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

A petitioner bears the burden to present the factual information or expert opinions necessary to support its contention adequately, and failure to do so requires that the contention be rejected.[44] 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.[45]

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.[46] The petitioner must explain the significance of any factual information upon which it relies.[47]

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."[48] Any supporting material provided by a petitioner, including those portions thereof not relied upon, is subject to Board scrutiny, "both for what it does and does not show."[49] The Board will examine documents to confirm that they

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[44] *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).

[45] *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).

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

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

[48] *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).

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

support the proposed contention(s).[50] A petitioner's imprecise reading of a document cannot be the basis for a litigable contention.[51] Moreover, vague references to documents do not suffice—the petitioner must identify specific portions of the documents on which it relies.[52] The mere incorporation of massive documents by reference is similarly unacceptable.[53]

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."[54] Conclusory statements cannot provide "sufficient" support for a contention, simply because they are made by an expert.[55] 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.'"[56]

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,"[57] 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

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50 *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).

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

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

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

54 *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, 63 NRC 451, 472 (2006) (quoting *Private Fuel Storage*, LBP-98-7, 47 NRC at 181).

55 *See American Centrifuge Plant*, CLI-06-10, 63 NRC at 472.

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

57 10 C.F.R. § 2.309(f)(1)(vi).

applicant's position and the petitioner's opposing view," and explain why it disagrees with the applicant.[58] If a petitioner believes the Safety Analysis Report and the Environmental Report fail to adequately address a relevant issue, then the petitioner is to "explain why the application is deficient."[59] A contention that does not *directly controvert a position taken by the applicant in the application* is subject to dismissal.[60] 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.[61]

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."[62] 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.

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[58] 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.

[59] 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.

[60] *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.

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

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

Pursuant to 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 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."[63] In its 2001 *Turkey Point* decision, the Commission explained in detail the established scope of its license renewal review process, its regulatory oversight process, and the meaning of "current licensing basis," or "CLB."[64] Key aspects of that decision and of other significant license renewal decisions are summarized below, in Section IV. B. 1-2.

As further explained below, under the governing regulations in Part 54, the review of LRAs is confined to matters relevant to the extended period of operation requested by the applicant, which are not reviewed on a continuing basis under existing NRC inspection, oversighted enforcement processes, including the Reactor Oversight Process ("ROP"). The safety review is limited to the plant systems, structures, and components (as delineated in 10 C.F.R. § 54.4) that will require an aging management review for the period of extended operation or are subject to an evaluation of TLAAs.[65] In addition, the review of environmental

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

[64] *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 Final Safety Analysis Report ("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).

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

issues is limited by rule by the generic findings in NUREG-1437, Generic Environmental Impact Statement ("GEIS") for License Renewal of Nuclear Plants.[66]

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."[67] 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."[68] Specifically, applicants must "demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation," at a "detailed . . . 'component and structure level,' rather than at a more generalized 'system level.'"[69] 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.[70]

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*

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

67 *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.

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

69 *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.

70 *Id.* at 7.

process (*e.g.*, security and emergency planning issues) on the other.[71] 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.[72] 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.[73]

For that reason, the Commission concluded that requiring a full reassessment of safety issues that were "thoroughly reviewed when the facility was first licensed" and continue to be "routinely monitored and assessed by ongoing agency oversight and agency-mandated licensee programs" would be "both unnecessary and wasteful."[74] 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."[75]

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 UFSAR (and periodic changes to the UFSAR and CLB) during NRC

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[71] Specifically, in developing Part 54, the NRC sought "to develop a process that would be both efficient, avoiding duplicative assessments where possible, and effective, allowing the NRC Staff to focus its resources on the most significant safety concerns at issue during the renewal term." *Id.* at 7.

[72] *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.

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

[74] *Id.* at 7.

[75] *Id.* at 9.

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.[76]

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 . . . ."[77] Only passive, long-lived structures and components are subject to AMR.[78] Passive structures and components are those that perform their intended functions without moving parts or changes in configuration (*e.g.*, reactor vessel, piping, steam generators), and are not subject to replacement based on a qualified life or specified time period (*i.e.*, "long-lived" structures and components). The TLAAs involve in-scope systems, structures, and components; consider the effects of aging; and involve assumptions based on the original 40-year operating term.[79] 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*

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[76] 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.

[77] 10 C.F.R. § 54.29(a).

[78] *See id.* § 54.21(a)(1).

[79] *See id.* § 54.3.

(iii) otherwise demonstrate that the effects of aging will be adequately managed during the renewal term.[80]

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 Generic Aging Lessons Learned Report (NUREG-1801) ("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.[81] The GALL Report also contains recommendations concerning specific areas for which existing programs should be augmented for license renewal.[82] Thus, programs that are consistent with the GALL Report are generally accepted by the Staff as adequate to meet the license renewal rule.[83]

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80 *See id.* § 54.21(c)(1).

81 *See* GALL Report, Vol. 1, at 1.

82 *See id.* at 4.

83 *See id.* at 3.

b. Scope of Adjudicatory Hearings in 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.[84] 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."[85] In this regard, the ASLB recently stated that "monitoring is not proper subject matter for license extension contentions."[86] 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.*"[87]

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.[88] 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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[84] *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.").

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

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

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

[88] *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.[89]

Generic issues are identified in the GEIS as "Category 1" impacts.[90] 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."[91] 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."[92] 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,[93] refer to and, in the absence of new and significant information, adopt the generic environmental impact findings found in Appendix B, Table B-1, for all Category 1 issues. An applicant, however, must address environmental issues for which the Commission was not able to make generic environmental findings.[94] 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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89 *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.

90 GEIS, Vol. 1, at 1-5 to 1-6.

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

92 *Id.*

93 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).

94 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.[95]

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.[96] 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.[97] 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.[98]

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.[99] In short, when first proposed, the NRC's Part 51 license renewal environmental regulations did not include the

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95 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.

96 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).

97 10 C.F.R. § 51.53(c)(3)(ii), (iv).

98 RG 4.2, Supp. 1, Preparation of Supplemental Environmental Reports for Application to Renew Nuclear Power Plant Operating Licenses, at 4.2-S-4 (Sept. 2000) *available at* ADAMS Accession No. ML003710495 ("RG 4.2S1").

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

current provision, 10 C.F.R. § 51.53(c)(3)(iv), regarding "new and significant information."[100] 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."[101] 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."[102] In a public briefing concerning SECY-93-032, as well as the EPA and CEQ comments, 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.[103] The Commission ultimately approved the changes to the proposed rule and specifically endorsed SECY-93-032.[104] The Statement of Considerations for the final rule refers to SECY-93-032.[105]

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[100] *See* Proposed Rule, Environmental Review for Renewal of Operating Licenses, 56 Fed. Reg. 47,016, 47,027-28 (Sept. 17, 1991).

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

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

[103] *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.

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

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

In *Turkey Point*, the Commission reaffirmed the forgoing conclusions in a formal adjudicatory decision[106] and summarized the appropriate procedural vehicles for "revisiting" generic environmental determinations relevant to license renewal as follows:

> Our rules thus provide a number of opportunities for individuals to alert the Commission to *new and significant information* that might render a generic finding invalid, either with respect to all nuclear power plants or for one plant in particular. In the hearing process, for example, petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may 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.[107]

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."[108] 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."[109] In fact, the U.S. Supreme Court has specifically upheld

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

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

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

[109] *Vermont Yankee*, CLI-07-3, 65 NRC at 21.

the Commission's authority to discharge its responsibilities under NEPA through generic rulemaking.[110]

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. 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.[111]

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.[112]

If the petitioner makes a prima facie showing, then the Board shall certify the matter to the Commission.[113] If there is no prima facie showing, then the matter may not be litigated, and "the presiding officer may not further consider the matter."[114] In this regard, the recent Commission decision in the *Millstone* case sets forth a four-part test for Section 2.335 petitions,

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

[111] 10 C.F.R. § 2.335(b).

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

[113] *See id.* § 2.335 (c), (d).

[114] *Id.* § 2.335(c).

under which the petitioner must demonstrate that it meets each of the following factors for a waiver to be granted:

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."[115]

In summary, a Section 2.335 petition "can be granted only in unusual and compelling circumstances."[116]

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-sponsorship

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[115] *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.

[116] *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).

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 Cortlandt and Citizens Awareness Network ("CAN")) sought to adopt each other's contentions.[117] 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.[118] If the primary sponsor of a contention withdraws from the proceeding, then the remaining petitioner must demonstrate that it can independently litigate the issue.[119] If the petitioner cannot make such a showing, then the issue is subject to dismissal prior to hearing.[120]

Incorporation by reference should be denied to parties who merely establish standing and then attempt to incorporate issues of other petitioners.[121] Incorporation by reference also 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.[122] 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.'"[123]

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

[118] *Id.* at 132.

[119] *Id.*

[120] *Id.*

[121] *Id.* at 133.

[122] *Id.*

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

D. None of Cortlandt's Proposed Contentions is Admissible

Cortlandt has proffered six contentions: three "technical" contentions and three "miscellaneous" contentions. As explained below, none of Cortlandt's six proposed contentions is admissible.

1. Proposed Contention TC-1 that the LRA Does Not Provide Sufficiently Detailed Information is Inadmissible

Cortlandt maintains that Entergy's LRA does not provide explicit specific technical information, as required by 10 C.F.R. Part 54, specifically with respect to the Equipment Environmental Qualification ("EQ") program and Flow-accelerated Corrosion ("FAC") program.[124] Cortlandt further asserts, in general, that the LRA "does not include certain threshold technical requirements, but merely makes non-specific conclusory statements."[125] According to the Petition, 10 C.F.R. § 54.21 requires that an applicant "justify the methods used" for performing an "integrated plant assessment."[126]

Petitioner cites purported examples of incomplete information in the LRA, including the EQ and FAC program descriptions, stating, for example, that the "Applicant included a one-paragraph description of its planned Aging Management Program and credited the current FAC program without providing any explanation."[127] Cortlandt alleges that because such program descriptions are purportedly inadequate, it is precluded "from adequately reviewing the legal or technical integrity of the [p]rograms."[128]

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[124] Petition at 2.

[125] *Id.*

[126] *Id.*

[127] *Id.* at 3.

[128] *Id.*

Proposed Contention TC-1 is inadmissible because, contrary to 10 C.F.R. § 2.309(f)(1)(v), Petitioner fails to posit any reason or support—no alleged facts and no expert opinions—as to why the application is materially deficient. "Petitioners 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."[129] This entails identifying specific portions of the application that the petitioner disputes and providing supporting reasons for each dispute.[130]

Here, Petitioner only makes broad-brush references to Entergy's EQ and FAC programs. It provides no citations to the relevant portions of the LRA in its contention, nor does it attempt to explain how those programs are inadequate from an aging management or safety perspective pursuant to 10 C.F.R. Part 54. As the Commission stated in *Oconee*, "it is not unreasonable to expect a petitioner to provide additional information corroborating the existence of an actual safety problem. Documents, expert opinion, or at least a fact-based argument are necessary."[131]

To the extent Proposed Contention TC-1 might be construed as a contention of "omission," it nonetheless remains deficient and inadmissible.[132] Contrary to Petitioner's claim, Entergy's LRA complies with the requirements specified in 10 C.F.R. § 54.21, as well as the GALL Report. First, Petitioner misquotes 10 C.F.R. § 54.21 as stating that an applicant must "justify the methods used" for performing an "integrated plant assessment."[133] The actual words

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[129] *Oconee*, CLI-99-11, 49 NRC 328 at 337 (emphasis added).

[130] *See Turkey Point*, CLI-01-17, 54 NRC at 19.

[131] *Oconee*, CLI-99-11, 49 NRC at 342.

[132] *See generally Duke Energy Corp.* (McGuire Nuclear Energy Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382-84 (2002).

[133] Petition at 2.

are "justify the methods used in paragraph (a)(1) of this section."[134] Paragraph (a)(1) directs applicants to identify structures and components subject to an aging management review, *i.e.*, its scoping and screening methodology. LRA Section 2.1, Scoping and Screening Methods, provides the methodological description and justification required by 10 C.F.R. § 54.21(a)(2). This activity is unrelated to the descriptions of the actual aging management *programs*, such as those for EQ and FAC, contained in Appendix B to the LRA.

Second Petitioner's claim that the LRA does not provide appropriate program details is unsupported and incorrect. Entergy prepared the IPEC LRA in accordance with NRC-approved guidance. Specifically the LRA states:

> The application is based on guidance provided by the U.S. Nuclear Regulatory Commission in NUREG-1800, *Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants*, Revision 1, September 2005, and Regulatory Guide 1.188, "Standard Format and Content for Applications to Renew Nuclear Power Plant Operating Licenses," Revision 1, September 2005, and guidance provided by NEI 95-10, *Industry Guidelines for Implementing the Requirements of 10 CFR 54 – The License Renewal Rule*, Revision 6, June 2005.[135]

Regulatory Guide 1.188 endorses NEI 95-10, Revision 6, which presents a standard format for LRAs. This standard format encompasses Appendix B of the application, which addresses aging management programs and activities. In essence, NEI 95-10 incorporates by reference the program descriptions contained in the GALL Report. Insofar as the IPEC LRA was prepared in accordance with NEI 95-10, its Appendix B descriptions of Aging Management Programs—including those for EQ and FAC—are consistent with the GALL Report. Any exceptions or enhancements to the GALL Report programs are explicitly identified in the LRA.

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[134] 10 C.F.R. § 54.21(a)(2).

[135] LRA at 1-1.

With regard to the EQ Program, Appendix B, Section B.1.10 of the LRA states that it "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 of electrical components according to 10 C.F.R. § 54.21(c)(1)(iii). NUREG-1800, Revision 1, states that a license renewal applicant may reference the GALL Report in its application.[136] Thus, the approach used by Entergy in its LRA complies fully with 10 C.F.R. § 54.21 and the NUREG-1800, Revision 1. Petitioner fails to show otherwise, or even to specify the nature of its objection to the LRA's content, contrary to 10 C.F.R. § 2.309(f)(1)(i) and (vi).

Similarly, Entergy's proposed FAC program complies with the above-identified NRC rules and guidance. Appendix B, Section B.1.15 of the LRA describes the IPEC FAC Program. Section B.1.15 states explicitly that the IPEC FAC Program is consistent with the program described in Section XI.M17, "Flow-Accelerated Corrosion," of the GALL Report, with no exceptions.[137] As described above, the GALL Report may be referenced in an LRA as a basis for aging management programs and to satisfy the regulatory criteria contained in 10 C.F.R. § 54.21.[138]

In summary, Petitioner fails to explain the basis for its contention, fails to provide a concise statement of alleged facts or expert opinion that support the contention, and does not provide sufficient information to show that a genuine dispute exists with the Applicant, contrary

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[136] NUREG-1800, Rev. 1 at 3.0-1 to 3.0-2.

[137] *See id.*

[138] *See* GALL Report, Vol. 1, Rev. 1 at 2.

to 10 C.F.R. § 2.309(f)(1)(i), (v), and (vi), respectively For these reasons, Proposed Contention TC-1 is inadmissible.

2. Proposed Contention TC-2 That Entergy's Leak-Before-Break Analysis is Unreliable for Welds Associated with High Energy Line Piping Containing Certain Alloys is Inadmissible

Cortlandt generally avers that the Applicant's Leak-Before-Break ("LBB") analysis is "unreliable and does not provide an adequate aging management plan."[139] To buttress this claim, Cortlandt cites to several 2006-2007 *Journal News* reports regarding purported "serious piping issues" at IPEC.[140] Cortlandt maintains that the locations of piping systems that are susceptible to stress corrosion "may not" qualify for LBB relief, and that the LRA does not respond to the potential safety threat of stress corrosion of weld alloys.[141] Therefore, it contends that the NRC must require the Applicant to include a "reliable and adequate Aging Management Plan regarding piping and welds . . . ."[142]

Entergy opposes the admission of Proposed Contention TC-2 on the grounds that it lacks reasonable specificity, raises issues beyond the scope of this proceeding, lacks adequate factual or expert support, and 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)(i),(iii), (v) and (vi), respectively. First, the proposed contention is unduly vague. Petitioner makes cryptic references to "high energy line piping containing certain alloys" and "stress corrosion of weld alloys," but makes no attempt to

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139 Petition at 3.

140 *Id.* at 4-5.

141 *Id.* at 5.

142 *Id.*

identify the specific piping or weld alloys of alleged concern.[143] Petitioner thus has not provided the Board or parties with sufficient notice of Petitioner's "specific grievances."[144]

Similarly, Petitioner's vague references to "stress corrosion" and "weld alloys" appear to relate to generic NRC concerns regarding flaws in certain welds containing materials known as Alloy 82 and Alloy 182 in the reactor coolant systems of pressurized water reactors ("PWRs").[145] The NRC's concerns arose in October 2006 as a result of the discovery of flaws in pressurizer welds at the Wolf Creek plant. In March 2007, the NRC issued Confirmatory Action Letters ("CALs") to 40 NRC licensees with PWR plants to confirm their commitments to complete specified inspections and other activities. Because IPEC Units 2 and 3 were not among the plants specifically affected by the weld issue, they did not receive CALs. Nonetheless, the weld-related issue addressed by the CALs, to which Petitioner is presumably alluding, is a current operating term issue. It is being addressed through the NRC's ongoing regulatory oversight program and is, thus, beyond the scope of this license renewal proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).[146]

In support of its contention, Petitioner cites various historical events at IPEC that it claims constitute "serious piping issues."[147] Petitioner, again, fails entirely to explain how, if at all, those events relate to the management of aging effects during the license renewal term or demonstrate a specific deficiency in the LRA related to the LBB analysis. For example, the events cited by Petitioner relate principally to the detection of tritium in groundwater and issues

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[143] Petition at 3, 5.

[144] *Oconee*, CLI-99-11, 49 NRC at 334.

[145] The NRC's website contains detailed information concerning reactor coolant system welds. *See* "Reactor Coolant System Weld Issues," *available at* http://www.nrc.gov/reactors/operating/ops-experience/pressure-boundary-integrity/weld-issues/index.html.

[146] *See Turkey Point*, CLI-01-17, 54 NRC at 8-9.

[147] Petition at 4-5.

involving the plant's steam generators. Petitioner makes no attempt to explain how these past events—which clearly are operational issues "effectively addressed and maintained by ongoing agency oversight, review, and enforcement"[148]—relate to the management of aging of structures, systems, and components for purposes of license renewal or to the review of TLAAs.[149]

Mere references to documents, including the *Journal News*, are not sufficient to support admission of a proposed contention.[150] 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.[151] That burden includes explaining the relevance and significance of any factual information upon which it relies.[152] Petitioner does not explain the alleged relevance or significance of the cited events to Entergy's LBB analyses.

Additionally, Petitioner makes no attempt to directly controvert the relevant portions of the LRA.[153] Section 4.7.2 of the LRA expressly addresses LBB as a TLAA. As explained in that section, LBB analyses evaluate postulated flaw growth in reactor coolant loop 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.[154] 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

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148 *Millstone*, CLI-04-36, 60 NRC at 638 (citing *Turkey Point*, CLI-01-17, 54 NRC at 9).

149 As indicated in LRA Section 4.7.2, LBB involves reactor coolant loop pipes. None of the historical events cited by Petitioner involves reactor coolant loop pipes. Thus, the events cited by Petitioner are irrelevant to LBB analysis and provide no factual basis for its contention.

150 The Petitioner must identify specific portions of the documents on which it relies. *See Seabrook*, CLI-89-3, 29 NRC 240-41.

151 *See Yankee*, CLI-96-7, 43 NRC at 262.

152 *See id.*

153 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 (emphasis added).

154 LRA at 4.7-1.

> 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).[155]

Petitioner 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), to show that a genuine dispute exists with the Applicant on a material issue of law or fact. Plainly, no such dispute exists here. The various events cited by Petitioner bear no discernible or reasonable relationship to thermal aging of CASS or fatigue crack growth—and Petitioner makes no attempt to elucidate such a relationship. Instead, it baldly asserts that "[l]ocations of piping systems that are susceptible to stress corrosion *may* not qualify for LBB relief."[156] Contrary to Section 2.309(f)(1)(i) and (v), Cortlandt fails to identify the piping systems purportedly at issue, and presents no factual or expert opinion to support its conclusory assertions regarding stress corrosion.[157]

In summary, Petitioner does not adequately provide the requisite specificity, raises current operating 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 does not provide sufficient information to show that a genuine dispute exists with the Applicant, contrary to 10 C.F.R. § 2.309(f)(1)(i), (iii), and (v)-(vi), respectively. For these reasons, Proposed Contention TC-2 is inadmissible.

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

[156] Petition at 5 (emphasis added).

[157] The LRA identifies numerous programs that will be used to address the issue of stress corrosion cracking as it relates to aging management during the period of extended operation. Such programs include, for example, the Water Chemistry – Primary and Secondary Program, the Inservice Inspection Program, and the Thermal Aging and Neutron Irradiation Embrittlement of Cast Austenitic Stainless Steel ("CASS") Program. Petitioner fails to address any of these programs.

3. Proposed Contention TC-3 That the LRA Does Not Specify an Aging Management Plan Is Inadmissible

The Petitioner asserts that the LRA fails to specify an aging management plan to monitor and maintain all structures, systems and 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 of fulfilling their intended functions, citing 10 C.F.R. § 50.65.[158] In support of its proposed contention, Petitioner asserts that tritium is leaking from the IPEC Unit 2 spent fuel pool, and claims the pool's concrete, rebar and steel liner are faulty.[159]

Further, Cortlandt alleges that radioactive effluents such as "Tritium, Strontium-90, and Cesium-36 [sic]"[160] are leaking from IPEC into the groundwater and the Hudson River, noting that the duration, extent, flow paths, and/or source of the leaks are unknown.[161] According to the Petitioner, Entergy only examined about 60% of the pool liner during its evaluation for leaks "because of the high density of spent fuel storage racks and the small clearance between the pool floor and the bottom of the racks."[162] The Petitioner also asserts that the "Environmental Report does not address whether it is feasible to inspect the remaining pool liner for leaks nor does it address any other steps that Entergy could take to determine the source of the leaks."[163] Cortlandt argues that the LRA "fails to provide a detailed and workable aging management plan to deal with the known leaks."[164]

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158 Petition at 5.

159 *Id.* at 6.

160 *Id.*

161 *Id.*

162 *Id.*

163 *Id.*

164 *Id.* at 7.

The Applicant opposes the admission of this contention on the grounds that it: (1) lacks reasonable specificity, contrary to 10 C.F.R. § 2.309(f)(1)(i); (2) lacks adequate factual or expert support, contrary to 10 C.F.R. § 2.309(f)(1)(v); and (3) 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).

a. Cortlandt Ignores the Content of the License Renewal Application

Cortlandt's allegation that the LRA does not specify an AMP to monitor and maintain structures, systems, and components (SSCs) associated with the storage, control, and maintenance of spent fuel lacks the requisite specificity, fails to provide the requisite basis in fact or expert opinion, and fails to raise a material issue of fact.

Petitioner's fundamental deficiency is its failure to recognize that the LRA *contains* AMPs related to the spent fuel pools. Specifically, Entergy's LRA includes AMPs for spent fuel pool structural components, including liner plates and gates,[165] primary and secondary water chemistry control programs,[166] concrete structures including floor slabs, interior walls and ceilings,[167] spent fuel storage racks,[168] and neutron absorbers.[169] By ignoring all of these AMPs, Cortlandt fails to directly controvert the LRA, and thus 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).[170] Moreover, by ignoring the LRA, Cortlandt once again fails to plead a contention with the requisite specificity, contrary to 10 C.F.R. § 2.309(f)(1)(i), and provides no facts or expert opinion to support its position, contrary to 10 C.F.R. § 2.309(f)(1)(v).

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[165] LRA at Table 3.5.2-3.

[166] *Id.*

[167] *Id.*

[168] *Id.*

[169] LRA at Tables 3.3.2-1-IP2, 3.3.2-1-IP3.

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

Petitioner also cites the requirements of 10 C.F.R. § 50.65 in support of this contention.[171] Section 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," however, pertains to on-going regulatory requirements (*i.e.*, the "Maintenance Rule"), as opposed to managing the effects of aging for purposes of license renewal.[172] Thus, this aspect of the contention is outside the scope of this proceeding.

b. Petitioner's Claim Regarding Leaks from the IP2 Spent Fuel Pool Is Unsupported

As stated above, the Petitioner claims that "[t]he duration, extent, flow path, and/or source of [the groundwater contamination] are largely unknown."[173] As noted in Section 5.1 of the ER, full characterization of the impact to groundwater was ongoing when the LRA was submitted in April 2007. Since submission of the LRA, Entergy has completed an extensive two-year hydrogeologic investigation of the Indian Point site.[174] Through these efforts, Entergy has identified and characterized known leaks, repaired known leaks from IP2 spent fuel pool, and has established a detailed, workable plan, as more fully described below.

Entergy confirmed the presence of tritium in Indian Point site groundwater in October 2005.[175] Since then, Entergy has been conducting an extensive site assessment utilizing a network of monitoring wells to assess and characterize groundwater movement and behavior

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171 Petition at 5.

172 *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-07-12 (slip op. at 18 n.81) (Oct. 17, 2007) ("[I]ssues concerned with monitoring of radiological releases, or determinations of how leakage could harm health or the environment, are not legitimately in dispute here, because they do not relate to aging and/or because they are addressed as part of ongoing regulatory processes.").

173 Petition at 6.

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

175 ER at 5-4.

relative to groundwater contamination.[176] Prior to the LRA submission 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 at the time that "[f]ull characterization of the impact to groundwater is continuing."[177]

As a result of the ongoing hydrogeologic characterization of the Site, Entergy identified in the ER that tritium, Strontium-90, Cesium-137, and Nickel-63 "have been detected in low concentrations in some onsite groundwater monitoring well samples" and that the IP1 spent fuel pool was "a confirmed source of at least some of the tritium, as well as strontium, cesium and nickel in the groundwater."[178] With regard to IP2, based on preliminary site monitoring data available at that time, Entergy concluded in the ER that contamination related to the IP2 spent fuel pool was "the result of historical pool leakage in the 1990s which has since been repaired."[179] Entergy also identified in the ER that "some contaminated groundwater has likely migrated to the Hudson River" and that the 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 Regulatory Guide 1.21.[180] Entergy estimated in the ER a total body dose of 1.65^{E-3} mrem/yr to the maximally exposed individual as a result of the identified groundwater contamination, which represents

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[176] *Id.*

[177] *Id.*

[178] *Id.* at 5-4, 5-5.

[179] *Id.* at 5-6. In addition, as Entergy stated in the ER, *on-going* monitoring was in process to delineate discharges to groundwater. *See id.* at 5-4.

[180] *Id.* at 5-4.

0.055% of the NRC limit of 3 mrem/yr for liquid effluent release.[181] Entergy, therefore, concluded that no NRC dose limits had been exceeded.[182]

Since submission of the LRA in April 2007, Entergy has completed the two-year site hydrogeologic investigation of the Indian Point Site and a comprehensive report summarizing the findings and conclusions of that study was submitted to the NRC, New York State Department of Environmental Conservation ("NYSDEC"), and New York Public Service Commission on January 11, 2008.[183] The Investigation Report presents the results of comprehensive geohydrological investigations performed at the site between September 2005 and September 2007. The purpose of the report was to identify the nature and extent of radiological groundwater contamination and assess the geohydrological implications of that contamination.

As noted in Section 1.0 of the Investigation Report, at no time did the results of the analysis yield any indication of potential adverse environmental or health risk as assessed by Entergy as well as the principal regulatory authorities.[184] 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.[185]

The Investigation Report fully documents the results of the investigation of contaminant sources and release mechanisms. Its conclusions are summarized below:

- The source of the Strontium contamination detected in groundwater beneath the site has been established as the Unit 1 Fuel Pool Complex (IP1-SFPs). All the IP1 SFPs have been drained except for the West Pool. While the West Pool is

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[181] *Id.* at 5-5.

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

[183] The study was performed by GZA GeoEnvironmental, Inc. ("GZA") for Entergy.

[184] During the two-year investigation period, Entergy provided free access to, and there were regular and frequent meetings with, representatives of the NRC, the United States Geological Survey, and the NYSDEC. Entergy also presented the preliminary findings at a number of external stakeholder and public meetings. *See* Investigation Report at 1.

[185] *See id.*

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.[186] Further, Entergy plans to permanently eliminate the West Pool, as well as the entire IP1-SFP complex, as a source of contamination to groundwater by relocating the spent fuel stored in the West Pool into dry storage casks at an Independent Spent Fuel Storage Installation ("ISFSI") and permanently draining the West Pool in 2008. [187]

- The majority of the tritium detected in the groundwater at the site was traced to the IP2 spent fuel pool ("IP2-SFP").[188] Two confirmed leaks in the IP2 spent fuel pool stainless steel liner have been documented. Identified leaks have been repaired. The first leak was identified and repaired in 1992. The second leak, a single small weld imperfection in the IP2 spent fuel pool transfer canal, was identified in September 2007 after the canal was drained for further 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.[189]
- No release was identified in the Unit 3 area. The absence of releases from Unit 3 spent fuel pool 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.[190]

With regard to Petitioner's claim regarding the alleged inadequacy of the IP2 pool liner investigation, the investigation of possible contaminant source and release mechanisms included an extensive investigation of the IP2-SFP liner integrity. Within areas accessible to investigation, no additional leaks were found in the liner of the pool itself. As described above, however, after the IP2-SFP transfer canal was drained for further liner investigations specific to the transfer canal, a single, small weld imperfection was detected in September 2007. This weld imperfection has since been repaired and is no longer a source of leakage to groundwater.

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[186] *Id.* at 102-03.

[187] *Id.* at 135.

[188] *Id.* at 90.

[189] *Id.* at 92.

[190] *Id.* at 89.

Finally, Petitioner asserts that the LRA "fails to provide a detailed and workable aging management plan to deal with known leaks."[191] Cortlandt fails to provide any factual support or expert opinion for its vague assertion and fails to specify where this alleged requirement exists specific to license renewal. To the extent that the Petitioner refers to ongoing investigation of the groundwater leaks, Entergy has, as described above, completed a full characterization of the leaks associated with the IP1 and IP2 spent fuel pools.

To the extent that the Petitioner is referring to remediation of the groundwater leaks, this issue in no way pertains to managing the effects of aging, and, is therefore, inadmissible.[192] This is because "issues concerned with monitoring of radiological releases, or determinations of how leakage could harm health or the environment . . . do not relate to aging and/or . . . are addressed as part of ongoing regulatory processes."[193] Therefore, this issue is outside the scope of this proceeding. Moreover, as the Licensing Board in *Pilgrim* observed:

> [P]revention of leaks *per se* is not a stated objective of any relevant aging management program. On the other hand, prevention of an aging-induced leak large enough to compromise the ability of buried piping or tanks to fulfill their intended safety function is indeed a clear goal of an AMP.[194]

As stated in the LRA, however, the "fuel storage buildings have the following intended functions . . . . [m]aintain integrity . . . such that safety functions are not affected by maintaining pool water inventory . . . ."[195] Petitioners have not addressed this aspect of the LRA, or stated with any specificity how they allege that the intended functions of the spent fuel pool will not be maintained. For this reason alone, TC-3 is not sufficiently specific, contrary to 10 C.F.R.

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[191] Petition at 7.

[192] *Turkey Point*, CLI-01-17, 54 NRC at 7; *Pilgrim*, LBP-07-12, slip op. at 18 n.81.

[193] *Pilgrim*, LBP-07-12, slip op. at 18 n.81.

[194] *Id.* at 17.

[195] LRA at 2.4-15.

§ 2.309(f)(1)(i), and fails to demonstrate that there is a genuine dispute of material fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi). Therefore, Petitioner's Proposed Contention TC-3 is inadmissible.

4. Proposed Contention MC-1 Regarding Impacts to the Local Economy is Inadmissible Because it is Beyond the Scope of this Proceeding

Cortlandt argues that the Applicant must consider the potential effect on the economy if IPEC is not renewed for an additional 20 years, citing the number of people employed, the millions of dollars distributed in taxes, and Entergy's contributions to local nonprofit programs.[196] The Petitioner asserts that the effects on the economy will be severe if the IPEC license is not renewed, and the NRC should "strongly consider" this issue if it decides not to grant the Application.[197]

While Entergy does not dispute Petitioner's assertions in MC-1, this contention is outside the scope of this proceeding and fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v) and (vi). The Board recently rejected a similar contention in this proceeding that was filed by the Village of Buchanan ("Buchanan").[198] In its Petition to Intervene, Buchanan stated that there are significant economic, tax, and financial benefits to the village and the region from

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[196] Petition at 7-8.

[197] *Id.* at 8.

[198] *See* Licensing Board Memorandum and Order (Denying the Village of Buchanan's Hearing Request and Petition to Intervene) at 8-9 (Dec. 5, 2007) (unpublished).

the facility.[199] The Board ruled that this contention is outside the scope of the proceeding and, therefore, inadmissible.[200]

Specifically, the Board found that the contention asserted by Buchanan regarding the economic, tax, and financial benefits from the facility is not in any way related to plant aging issues at IPEC within the scope of this proceeding, nor does it raise any genuine disputes with the Applicant on any material issue of law or fact.[201] Further, the Board ruled that Buchanan failed to demonstrate that this issue is material and failed to provide statements of fact or expert opinions supporting its positions.[202] Cortlandt's Proposed Contention MC-1 suffer from the same deficiencies. In sum, the Board must deny the admission of Proposed Contention MC-1 as it fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), and (vi).[203]

5. Proposed Contention MC-2 Regarding The Decommissioning Trust Fund Is Inadmissible

Cortlandt also asserts that the Applicant's "decommissioning trust fund balances are inadequate and insufficient to properly decommission the site as required by 10 C.F.R. § 50.75."[204] The Petitioner argues that IPEC's decommissioning fund should account for the

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[199] *See Village of Buchanan Hearing Request and Petition to Intervene* at 4 (Nov. 15, 2007). Specifically, Buchanan asserted the following: (1) Indian Point currently pays $34 million in annual property taxes; (2) the energy supplied by Indian Point affords its recipients a 20% savings in electricity costs; (3) the Metropolitan Transit Authority uses electricity from Indian Point to power Metro-North commuter trains and the New York City subway system, which keeps fare costs low; and (4) a rate increase caused by a more expensive energy source would discourage the use of mass transit leading to traffic congestion and increased air pollution caused by the additional cars.

[200] *See* Licensing Board Memorandum and Order (Denying the Village of Buchanan's Hearing Request and Petition to Intervene) at 8-9 (Dec. 5, 2007) (unpublished).

[201] *Id.*

[202] *Id.* at 9.

[203] Entergy, however, would not object to Cortlandt's opportunity to comment on this issue in a limited appearance statement pursuant to 10 C.F.R. § 2.315(a), and/or to submit an *amicus curiae* brief pursuant to 10 C.F.R. § 2.315(d).

[204] Petition at 8.

removal of contamination caused by underground radioactive leaks.[205] Shifting to a different topic altogether, Cortlandt next asserts that the LRA "does not adequately address protection standards for long term citing [sic] of hazardous waste," including low-level and high-level radioactive waste.[206] Petitioner further asserts that the "[s]torage of an additional twenty years of waste, in either spent fuel pools or dry cask storage, increases the risk to human health and safety beyond the original Plant's design."[207]

Entergy opposes admission of Proposed Contention MC-2 because it raises issues that are 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)-(iv). The contention makes no reference to the LRA, lacks adequate factual or expert support, and fails to establish a genuine dispute on a material issue of law or fact, all contrary to 10 C.F.R. § 2.309(f)(1)(v)-(vi).[208] Finally, the contention improperly challenges the NRC's Part 54 and Part 51 regulations in contravention of 10 C.F.R. § 2.335.

At its core, Proposed Contention MC-2 is a challenge to Entergy's financial qualifications. The Commission has made clear that financial qualifications or decommissioning funding arrangements 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

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[205] *Id.* at 8-9.

[206] *Id.* at 9.

[207] *Id.*

[208] 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. *See Yankee*, CLI-96-7, 43 NRC at 262.

> 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 of financial health between the formal reviews due at the "triggering events." . . . 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.*[209]

Thus, 10 C.F.R. § 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 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). In the *Susquehanna* license renewal proceeding, the Licensing Board concluded that financial issues of the sort raised here by Cortlandt are outside the scope of a license renewal hearing.[210] 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].'"[211] 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.[212]

Here, Petitioner's decommissioning arguments similarly are beyond the scope of this proceeding and can have no bearing on its outcome. Petitioner's reference to the

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[209] *Final Rule, Financial Information Requirements for Applications To Renew or Extend the Term of an Operating License for a Power Reactor*, 69 Fed. Reg. 4439, 4440 (Jan. 30, 2004) (emphasis added).

[210] *See PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-04, 65 NRC 281, 315 (2007).

[211] *Id.* at 313.

[212] *Id.* at 315-16.

"decommissioning funds for an aging management program" is a futile attempt to suggest some non-existent nexus between decommissioning and license renewal.[213] Clearly, however, decommissioning after the plant has ceased to operate has nothing to do with the management of equipment aging or TLAAs during the renewed operating term, and therefore, is beyond the scope of this proceeding.

In support of its contention, Cortlandt also cites 10 C.F.R. § 50.75 and a 2006 report from the Liquid Radiation Release Lessons Learned Task Force.[214] In actuality, these references reinforce the conclusion that Proposed Contention MC-2 cannot be admitted because it raises issues that are adequately dealt with by ongoing regulatory review 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.[215]

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 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

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[213] Petition at 9.

[214] *Id.* at 8-9.

[215] *See, e.g.*, 10 C.F.R. § 50.75.

decommissioning trust agreements. Thus, Petitioner's reliance on Section 50.75 offers no support for its contention because it is completely unrelated to license renewal. In fact, those very requirements ensure that a licensee's decommissioning funds are continually monitored and adjusted (as necessary) to ensure that decommissioning funding remains adequate throughout the life of a plant.

Additionally, Petitioner makes arguments regarding the Applicant's alleged failure to "adequately address protection standards for long term citing [sic] of hazardous waste," including low-level and high-level radioactive waste.[216] 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 above. Insofar as Petitioner's arguments might be construed to relate to the Commission's generic consideration of the impacts of on-site waste storage in Part 51, they are likewise not litigable in this proceeding. 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 on-site 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" (that 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 on-site spent fuel storage). Each of these areas of waste storage are barred as subjects 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.[217]

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[216] Petition at 9.

[217] *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-98-33, 48 NRC 381, 391 (1998).

In affirming the Board's *Oconee* 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."[218]

In sum, the Board should deny admission of proposed Contention MC-2 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.

6. Proposed Contention MC-3 That The LRA Fails To Address A Potential Terrorist Attack Is Inadmissible

Petitioner contends that NEPA requires an applicant to consider the impacts of terrorist attacks in the context of license renewal.[219] In support of its proposed contention, Cortlandt indicates that "the 9/11 Commission learned that the terrorists originally planned to strike nuclear power plants," although the Petitioner fails to supply a reference for this claim.[220] Citing the Ninth Circuit's decision in *San Luis Obispo Mothers for Peace v. NRC*,[221] Petitioner asserts that "the NRC's refusal to consider the environmental impacts of a terrorist attack under ... [NEPA] fail[s] to satisfy the reasonableness standard."[222]

Furthermore, Cortlandt argues that, pursuant to 10 C.F.R. § 51.53(c)(3)(iv), an Applicant's ER should include any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware,[223] asserting that "[t]he potential for a

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

[219] Petition at 10.

[220] *Id.*

[221] 449 F.3d 1016, 1035 (9th Cir. 2006), *cert. denied sub nom. Pac. Gas & Elec. Co. v. San Luis Obispo Mothers for Peace*, 127 S. Ct. 1124 (2007).

[222] Petition at 10.

[223] *Id.* at 10-11.

terrorist attack on IPEC is 'new and significant information' of which the Applicant is aware."[224] Cortlandt claims that "[the] Applicant's LRA Study should include, but not be limited to, the effect of an attack on: the nuclear reactor units, the control room, the spent fuel pools, and the water intake and/or discharge channel."[225]

Entergy opposes the admission of Proposed Contention MC-3 on the grounds that it: (1) raises issues that are neither within the scope of this proceeding nor material to the Staff's license renewal findings, contrary to 10 C.F.R. § 2.309(f)(1)(iii)-(iv); (2) 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); (3) directly contravenes controlling Commission legal precedent; and (4) collaterally attacks the NRC's Part 51 regulations, contrary 10 C.F.R. § 2.335(a).

To the extent Petitioner is asserting that Entergy and the NRC must, as part of license renewal, address the potential impacts of a terrorist attack on IPEC, 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. [226] In *Oyster Creek*, the Commission reiterated the principal bases for its refusal to admit contentions asserting that the license renewal process requires consideration of postulated terrorist attacks:

> 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

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[224] *Id.* at 16.

[225] *Id.*

[226] *See, e.g., McGuire and Catawba*, CLI-02-26, 56 NRC at 363; *Millstone*, Units 2 and 3, CLI-04-36, 60 NRC at 638; *Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 756 (2005); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-08, 65 NRC 124, 129 (2007).

> 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.[227]

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 environmental costs of a successful terrorist attack on a nuclear plant seeking to renew its operating license.[228] In *Oyster* Creek, the Commission stated that:

> 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."[229]

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."[230] Such an obligation, the Commission observed, "would defeat any possibility of a conflict between the Circuits on important issues."[231] As such, in *Oyster Creek*, the Commission held that the Board had properly applied its settled precedents on the NEPA-terrorism issue.[232]

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[227] CLI-07-08, 65 NRC at 129 (internal quotations omitted).

[228] *Id.* at 128-29.

[229] *Id.* at 130 n.25.

[230] *Id.* at 128-29.

[231] *Id.* at 129.

[232] *Id.*

The Commission's *Oyster Creek* decision thus requires that this Board reject Proposed Contention MC-3. Where a matter has been considered by the Commission, it may not be reconsidered by a Board, and Commission precedent must be followed.[233]

Proposed Contention MC-3 also must be rejected because it impermissibly challenges NRC environmental regulations found in 10 C.F.R. Part 51. With respect to the NRC's Part 51 regulations, Proposed Contention MC-3 improperly challenges the findings in the GEIS; *i.e.*, that the risk from sabotage is small and that the associated environmental impacts are adequately addressed by a generic consideration of internally initiated severe accidents. Specifically, 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.[234]

In the GEIS, the Commission thus discussed sabotage as the potential initiator of a severe accident.[235] The Commission determined generically that severe accident risk is of small significance for all nuclear power plants.[236] Thus, no separate NEPA analysis is required to evaluate the potential environmental impacts of a terrorist attack, because the GEIS analysis of

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

[234] NUREG-1437, Vol. 1 at § 5.3.3.1.

[235] *See id.*

[236] *See id.*

severe accident consequences bounds the potential consequences that might result from a large scale radiological release, irrespective of the initiating cause.[237]

In sum, by contending that Entergy and the NRC must address the environmental consequences of a successful terrorist attack, Petitioner improperly challenges the GEIS and the Commission's regulations in 10 C.F.R. Part 51. As noted above, the rulemaking process, not this adjudicatory proceeding, is the proper forum for seeking to modify generic determinations made by the Commission.

Finally, Petitioner claims, without more, that "[t]he potential for a terrorist attack on IPEC is 'new and significant information' of which the Applicant is aware."[238] As the Commission explained in *Turkey Point*, petitioners with purportedly "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.[239] Petitioner has not requested such a waiver.

> 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 a provision of it) would not serve the purposes for which the rule or regulation was adopted.[240]

Petitioner clearly has not demonstrated that either circumstance exists here. First, it has failed to show that the information is "new." To the contrary, as reflected in the several Commission decisions in recent years addressing and rejecting consideration of this matter in various licensing contexts, the Commission has already confronted this very issue on a number

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[237] *Oyster Creek*, CLI-07-08, 65 NRC at 131.

[238] Petition at 11.

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

[240] 10 C.F.R § 2.335(b) (emphasis added).

of occasions and resolved it consistently. Moreover, Petitioner has failed to meet its burden to demonstrate the existence of "special circumstances" that establish any unique or compelling factor(s) that would warrant distinguishing the Indian Point facilities from others previously addressed. Instead, Petitioner raises only generic 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."[241]

For the foregoing reasons, the Board should deny proposed Contention MC-3. It does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (vi).

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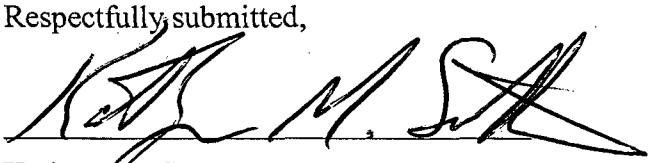
[241] *Connecticut Yankee Atomic Power Co.*, Haddam Neck Plant, CLI-03-7, 58 NRC 1, 8 (2003) (citing *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-80-16, 11 NRC 674, 675 (1980)).

V. CONCLUSION

Although Cortlandt has standing to intervene in this proceeding, for the many reasons discussed above, it has failed to proffer a single admissible contention. Therefore, its Petition to Intervene should be denied in its entirety.

Respectfully submitted,



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1-WA/2877690.5

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 Town of Cortlandt Request for Hearing and Petition to Intervene" 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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