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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	Docket Nos. 50-247-LR and 50-286-LR
	)	
ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	
(Indian Point Nuclear Generating Units 2 and 3)	)	
	)	August 15, 2008

ANSWER OF ENTERGY NUCLEAR OPERATIONS, INC. OPPOSING SUPPLEMENTAL PETITION OF WESTCAN ET AL.

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.309(h)(1), Entergy Nuclear Operations, Inc. ("Entergy") responds in opposition to the July 18, 2008, Supplemental Petition submitted by Westchester Citizen's Awareness Network ("WestCAN"), Rockland County Conservation Association, Public Health and Sustainable Energy, Sierra Club-Atlantic Chapter, and Assemblyman Richard Brodsky (collectively, "WestCAN" or "Petitioners").[1] The Supplemental Petition seeks the admission of a late-filed contention (hereinafter, "Proposed Contention"). Petitioners allege that Entergy's License Renewal Application ("LRA") for Indian Point Energy Center ("IPEC") Units 2 and 3 "does not set forth an aging management plan . . . to prevent accidental emergency shutdowns triggered by microwatt electronic devices," including devices which may be developed over the next 20 years.[2]

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1 *See* "Supplemental Intervenor Petition by Westchester Citizen's Awareness Network (WestCAN), Rockland County Conservation Association (RCCA), Public Health and Sustainable Energy (PHASE), Sierra Club-Atlantic Chapter (Sierra Club), and Assemblyman Richard Brodsky" (July 18, 2008) ("Supplemental Petition"). As explained further below, while the Supplemental Petition is dated July 18, 2008, WestCAN did not complete service of the Supplemental Petition and all associated exhibits on Entergy until July 21, 2008. Counsel for Entergy notified the Licensing Board of this fact by letter dated July 28, 2008. NRC Staff counsel similarly notified the Board of this fact by letter dated August 11, 2008. Thus, pursuant to 10 C.F.R. § 2.309(h)(1), the due date for Entergy's answer is August 15, 2008 (*i.e.*, 25 days from July 21, 2008).

2 Supplemental Petition at 2.

TEMPLATE = SECY-037

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As discussed further below, the Board has since stricken WestCAN's December 10, 2007, Request for Hearing.[3] In doing so, however, the Board did not address or otherwise mention WestCAN's filing of a Supplemental Petition dated July 18, 2008. Furthermore, WestCAN has appealed the Board's July 31 Order striking its prior Request for Hearing. Accordingly, notwithstanding the Board's unambiguous rejection of WestCAN's previously-filed Request for Hearing, Entergy hereby responds in full to WestCAN's Supplemental Petition.

As explained herein, Entergy opposes the admission of the Proposed Contention because it fails to meet the late-filing criteria and contention admissibility standards contained in 10 C.F.R. §§ 2.309(c)(1) and 2.309(f)(2), respectively. In short, Petitioners have failed to demonstrate good cause for the nontimely submittal of the Proposed Contention. Moreover, the Proposed Contention raises a current operating term issue that has no material nexus to aging management and falls outside the scope of this license renewal proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii)-(iv). Finally, the Proposed Contention lacks reasonable specificity and fails to directly controvert the LRA, contrary to 10 C.F.R. § 2.309(f)(1)(i) and (vi). Accordingly, the Board should reject the Supplemental Petition.

II. BACKGROUND

A. Relevant Procedural History

On April 23, 2007, Entergy submitted an application to the NRC to renew the IPEC Unit 2 and Unit 3 operating licenses for an additional 20 years. The Commission published a notice of opportunity for a hearing on Entergy's LRA in the *Federal Register* on August 1, 2008,[4] and by further notice dated October 1, 2007,[5] extended the period for filing hearing requests until November

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[3] *See* Licensing Board Order (Striking WestCAN's Request for Hearing) (July 31, 2008) ("July 31 Order").

[4] *See* 72 Fed. Reg. 42,134 (Aug. 1, 2007).

[5] *See* 72 Fed. Reg. 55,834 (Oct. 1, 2007).

30, 2007. On December 10, 2007, after receiving an additional 10-day extension from the Licensing Board,[6] WestCAN, among other petitioners, filed a Request for Hearing and Petition to Intervene in this proceeding. Entergy and the NRC Staff filed answers thereto on January 22, 2008, to which WestCAN replied on February 15, 2008.

On July 31, 2008, the Board ruled on eight then-pending petitions to intervene in this proceeding. By separate Order dated July 31, 2008, the Board, acting pursuant to 10 C.F.R. § 2.314, struck WestCAN's Request for Hearing.[7] Citing WestCAN's "appalling lack of candor" and multitudinous procedural missteps in this proceeding, the Board explained that it "cannot conduct a fair, orderly, and efficient proceeding if [it] can not rely on the integrity of the parties, and WestCAN has repeatedly demonstrated that [the Board] can not rely on their attorneys to be credible in their dealings with the Board and the parties."[8]

In the interim, WestCAN submitted the instant Supplemental Petition. Specifically, at 10:06 pm on Friday, July 18, 2008, Susan Shapiro, counsel for WestCAN, served an electronic copy of the Supplemental Petition by e-mail. Counsel for Entergy was unable to open one of the four exhibits (Exhibit 4) attached to the e-mail (not unlike at least one prior occasion), and promptly notified Ms. Shapiro. Ms. Shapiro responded by indicating that she had sent a paper copy of the Supplemental Petition to counsel for Entergy for delivery during the week of July 21, 2008.

Counsel for Entergy received that paper copy on July 21, 2008. Notably, the paper copy included an additional exhibit (Exhibit 5), which was *not* included as an attachment to WestCAN's July 18 electronic filing. The paper copy received by counsel for Entergy on July 21, 2008, included a transmittal letter from Ms. Shapiro to the Office of the Secretary dated July 19, 2008, stating: "Inadvertently, a set of Petitions without the exhibits was sent to you yesterday, therefore please only

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6 *See* Licensing Board Order (Granting an Extension of Time Within Which To File Requests For Hearing) (Nov. 29, 2007).

7 *See* July 31 Order at 1, 12.

8 *Id.*

use this enclosed set with Exhibits as the filed version." Accordingly, Entergy considers the paper copy of the Supplemental Petition to be the operative version of that submittal, and July 21, 2008 to be the official date of filing. The Certificate of Service attached to the July 21 paper copy of the Supplemental Petition incorrectly lists July 18, 2008, as the date of service. Petitioners thus failed to include a revised Certificate of Service, contrary to instructions previously provided by this Board.[9]

B. The Late-Filed Proposed Contention

In their late-filed Proposed Contention, WestCAN asserts as follows:

> [] Entergy's LRA does not set forth an aging management plan or safeguards to prevent accidental emergency shutdown triggered by mircowatt [sic] electronic devices currently in use such as digital cameras, cell phones, pacemakers, hearing aids, etc, nor for such electronic devices which will be developed and used popularly over the next 20 years.[10]

The ostensible impetus for this new contention is an event that occurred on March 23, 2008. Specifically, on March 23, 2008, Entergy initiated a manual reactor trip of IPEC Unit 2 from approximately 94.5 percent reactor power due to a loss of speed in the 22 Main Boiler Feed Pump ("MBFP"). As explained in the associated Licensee Event Report ("LER") submitted by Entergy on May 22, 2008, pursuant to 10 C.F.R. § 50.73, the event occurred due to a malfunction of the MBFP Lovejoy control system.[11] The malfunction was caused by radio frequency interference ("RFI") from a digital camera being used by plant personnel to photograph the MBFP Lovejoy power supplies in preparation for an upcoming refueling outage.

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9 For brevity's sake, Entergy does not recite the litany of service and other procedural deficiencies that have characterized WestCAN's filings in this proceeding. The Licensing Board's July 31 Order striking WestCAN's Request for Hearing, and the various prior Board Orders cited in footnote 7 therein, amply describe WestCAN's myriad procedural transgressions in this proceeding.

10 Supplemental Petition at 10-11.

11 *See* Letter from J. E. Pollock, Entergy, to NRC Document Control Desk, "Licensee Event Report #2008-001-00, 'Manual Reactor Trip Due to Decreasing Steam Generator Levels Caused by Loss of Feedwater Flow as a Result of a Feedwater Pump Speed Control Malfunction,'" NL-08-075 (May 22, 2008) (WestCAN Exhibit 3).

Petitioners claim that the Proposed Contention is timely because they allegedly first learned of the shutdown event from a June 12, 2008, news article published in *The Journal News* (WestCAN Exhibit 1).[12] As a substantive matter, Petitioners assert that the nuclear industry lacks guidance or rules to preclude RFI-related events from occurring during the period of extended operation, and that "design and operational controls must be established to prevent similar types of accidents."[13] Although Petitioners readily acknowledge that RFI caused by microwatt electronic devices relates to "current operations,"[14] they try (unavailingly) to cast the issue as an aging management concern.

In support of the Proposed Contention, Petitioners reference an Electric Power Research Institute ("EPRI") webpage and a May 2005 report sponsored by the U.S. Department of Energy ("DOE") and EPRI.[15] Both documents pertain to aging and obsolescence of electronic instrument and control ("I&C") systems in nuclear power plants. Petitioners maintain that these documents "confirm that the current electronic boards and components are becoming obsolete and that Entergy's LRA does not adequately present an aging management plan that will assure adequate protection of public health and safety."[16]

III. LEGAL STANDARDS FOR LATE-FILED CONTENTIONS

A petitioner submitting a late-filed contention has an affirmative burden to demonstrate that it meets the criteria of 10 C.F.R. § 2.309(f)(2), which provides that new or amended contentions may be filed after the initial filing only with leave of the presiding officer upon a showing that:

> (i) The information upon which the amended or new contention is based was not previously available;

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[12] Supplemental Petition at 4.

[13] *Id.* at 7-8.

[14] *Id* at 10.

[15] *See id.* at 8-10 (quoting *Instrumentation and Control Aging and Obsolescence (supplemental)*, EPRI 2009 Research Portfolio, *available at* http://portfolio.epri.com/ProgramTab.aspx?sId=NUC&rId%20=126&pId=4593&pjId=4596 (WestCAN Exhibit 4); *Evaluating the Effects of Aging on Electronic Instrument and Control Circuit Boards and Components in Nuclear Power Plants*, U.S. Department of Energy and EPRI (May 2005) ("DOE/EPRI Report") (WestCAN Exhibit 5)).

[16] *Id.* at 9-10.

(ii) The information upon which the amended or new contention is based is *materially different* than information previously available; *and*

(iii) *The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.*[17]

If a Petitioner cannot satisfy the requirements of Section 2.309(f)(2), any contention it is seeking to have admitted is considered "nontimely," and the petitioner must then demonstrate that admission of a non-timely contention is warranted by satisfying the eight-factor balancing test in 10 C.F.R. § 2.309(c)(1).[18] The eight factors include:

(i) Good cause, if any, for the failure to file on time;

(ii) The nature of the requestor's/petitioner's right under the [Atomic Energy Act of 1954, as amended] to be made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;

(iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;

(v) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;

(vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and

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[17] 10 C.F.R. § 2.309(f)(2) (emphasis added). In addition to the late-filing criteria discussed above, a proposed new contention must meet the substantive admissibility criteria set forth in 10 C.F.R. § 2.309(f)(1). Those criteria are discussed at length in Entergy's January 22, 2008, Answer to WestCAN's Petition to Intervene, and Entergy incorporates that discussion by reference here. *See* "Answer of Entergy Nuclear Operations, Inc. Opposing WestCAN Et Al. Petition to Intervene and Request for Hearing" (Jan. 22, 2008) at 16-29. Failure to comply with any one of the six admissibility criteria is grounds for the dismissal of a proposed new or amended contention. *See* Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. 2182, 2221; *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

[18] *See* 10 C.F.R. § 2.309(c)(2) ("The requestor/petitioner *shall* address the factors in paragraphs (c)(1)(i) through (c)(1)(viii) of this section in its nontimely filing.") (emphasis added).

(viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.[19]

The first factor, whether "good cause" exists for the failure to file on time, is entitled to the most weight.[20] Where no showing of good cause for the lateness is tendered, "petitioner's demonstration on the other factors must be particularly strong."[21]

IV. ARGUMENT

Entergy opposes the Supplemental Petition on two independent grounds. First, WestCAN's Proposed Contention is nontimely, and WestCAN has failed to show that a balancing of the eight factors enumerated in 10 C.F.R. § 2.309(c)(1) supports admission of the Proposed Contention. Second, the Proposed Contention raises a current operating term issue that is 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). The Proposed Contention also lacks sufficient specificity and does not directly controvert the LRA, contrary to 10 C.F.R. § 2.309(f)(1)(i) and (vi), respectively.

A. WestCAN Has Not Demonstrated That Its Proposed Contention is Timely or Admissible Based Upon a Balancing of the Factors Set Forth in 10 C.F.R. § 2.309(c)(1)

Entergy opposes the Proposed Contention as nontimely. WestCAN claims to proffer its new contention in response to an RFI event that occurred about five months ago. As an initial matter, RFI-induced events are anything but new. RFI is an operational issue that has been recognized by the nuclear industry and the NRC for decades and addressed on a generic basis in various standards and guidance documents issued by the industry and NRC.[22] Thus, any suggestion by Petitioners that

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[19] 10 C.F.R. § 2.309(c)(1)(i)-(viii).

[20] *See State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993).

[21] *Tex. Utils Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 73 (1992) (quoting *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460, 462 (1977)).

[22] *See, e.g.*, NRC IE Information Notice No. 83-83, "Use of Portable Radio Transmitters Inside Nuclear Power Plants" (Dec. 19, 1983) (discussing reported instances in which RFI from portable radio transmitters caused system malfunctions and spurious actuations in nuclear power plants); NRC IE Information Notice No. 86-15, "Loss of Offsite Power Caused by Problems in Fiber Optics Systems" (Mar. 10, 1986) (discussing loss of offsite power caused by RFI from hand-held radios that affected fiber optics systems used to control switchyard circuit breakers); NRC Regulatory Guide 1.180, *Guidelines for Evaluating Electromagnetic and Radio-Frequency Interference in Safety-*

the RFI-caused malfunction of the speed controller at IPEC Unit 2 on March 23, 2008, involved a new phenomenon, and that such phenomenon is somehow aging-related, is entirely without basis. Insofar as WestCAN might harbor longstanding concerns about RFI-related issues generally (as arguably exemplified by the specific event cited by WestCAN in its Supplemental Petition), WestCAN is woefully late in raising its concerns before the NRC. The technical issue identified in the Proposed Contention certainly is not a new one.

Furthermore, with respect to the specific event cited by WestCAN, the NRC issued an Event Notification Report (Event Number 44089) on March 24, 2008, upon being notified of the event. That Report stated: "The Indian Point Unit 2 reactor was manually tripped from 94% power at 2216 on 3/23/08 due to a loss of speed on 22 main boiler feed pump (MBFP)" (WestCAN Exhibit 2). Entergy, in turn, submitted an LER on May 22, 2008 (WestCAN Exhibit 3), which the NRC subsequently placed into ADAMS (the CITRIX version of ADAMS indicates a June 5 release date).

WestCAN claims that it did not learn about the event until it was reported in *The Journal News* on June 12, 2008. Even if WestCAN could not have learned about the event before June 12, 2008, it waited about five weeks to file the Proposed Contention. NRC rules "require[] that [a] new or amended contention be filed promptly after the new information purportedly forming the basis for the new or amended contention becomes available."[23] Petitioners have an "ironclad obligation" to find "any information that could serve as a foundation for a contention,"[24] and to raise their claims "at the earliest possible moment."[25] Although the regulations do not specify a number of days for

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Related Instrumentation and Control Systems, Revision 1 (Oct. 2003). Regulatory Guide 1.180 provides guidance to licensees and applicants on methods acceptable to the NRC Staff for complying with the NRC's regulations on design, installation, and testing practices for addressing the effects of electromagnetic and radio-frequency interference ("EMF/RFI") and power surges on safety-related I&C systems. It also endorses Military Standard MIL-STD-461E and the International Electrotechnical Commission ("IEC") 61000 series of EMI/RFI test methods.

23 Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. at 2221.

24 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 24-25 (2001) (citations omitted).

25 *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 429 (2003).

determining whether a new-contention motion is "timely" as required by 10 C.F.R. § 2.309(f)(2)(iii), "many boards . . . have established a general 30-day rule for the filing of such motions."[26]

It is not clear to Entergy why the Petitioners needed five weeks to prepare and initially submit their Supplemental Petition on July 18, 2008, less than two weeks before the Board's scheduled (and actual) date for ruling on Petitioner's initial Request for Hearing and Petition to Intervene. The Supplemental Petition contains no independent or expansive technical analysis (*e.g.*, expert declarations) that might have required an extended period of time to prepare, and the exhibits appear to have been simply extracted from readily accessible internet sources (*e.g.*, the NRC and EPRI websites). Entergy submits that Petitioners' delay renders the Proposed Contention nontimely under the "general 30-day rule" noted above, and thus requires Petitioners to address the eight late-filing criteria contained in 10 C.F.R. § 2.309(c)(1).

As noted in Section III, *supra*, the burden falls squarely on Petitioners to satisfy the eight late-filed criteria.[27] Significantly, contrary to their affirmative burden, Petitioners have neglected to explicitly address the late-filing criteria set forth in 10 C.F.R. § 2.309(c)(1)(i)-(viii). This omission alone renders the contention fatally defective.[28] Regardless, as shown below, application of those criteria (referred to below as Factors 1-8) to the present facts does not support a finding by this Board that the nontimely Proposed Contention should be admitted:

- Factor 1 (Good Cause for Late-Filing): As discussed above, Petitioners do not explain why it took them five weeks to submit the Proposed Contention. Good cause for late-filing is lacking.

- Factors 2-4 (Petitioners' Right to Participate and Interest in this Proceeding): Insofar as these factors "essentially deal with the question of whether a petitioner has standing to

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26 *Entergy Vt. Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 NRC 261, 266 n.11 (2007).

27 *See* 10 C.F.R. § 2.309(c)(2); *see also Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 347 (1998).

28 *See Calvert Cliffs*, CLI-98-25, 48 NRC at 347 & n.9 ("[A]s the Board pointed out, [the petitioner] failed even to address our late-filing criteria, and that default alone warrants rejection of late-filed contentions.")

intervene,"[29] Entergy does not address them here. Entergy did not oppose Petitioners' standing to intervene in its January 22, 2008, Answer to WestCAN's initial Petition to Intervene and Request for Hearing.

- Factor 5 (Other Means to Protect Petitioners' Interests): Insofar as Petitioners might harbor concerns about "current operations" or the industry's alleged lack of "rules or guidance,"[30] they fail to explain why they could not file a petition for enforcement action or a petition for rulemaking pursuant to 10 C.F.R. §§ 2.206 and 2.802, respectively. These represent "other means" whereby Petitioners can seek to protect their interests.

- Factor 6 (Representation of Petitioners' Interests by Other Parties): Although other petitioners to this proceeding have not raised RFI-related concerns, they have presented numerous challenges to the adequacy of Entergy's LRA, including challenges to various aging management plans. The Board has admitted some of those safety contentions for hearing, including contentions proffered by the State of New York, the state in which WestCAN and its cited members and representatives reside.

- Factor 7 (Broadening of Issues and Delay in Proceeding): As explained below, the RFI issue raised by WestCAN, in any case, relates to the current, ongoing operation of IPEC, and is therefore beyond the scope of this proceeding. Litigating current operating term issues would improperly broaden the scope of, and potentially delay, this license renewal proceeding.

- Factor 8 (Development of a Sound Record): For the reasons discussed in the Board's July 31 Order striking Petitioners' December 2007 Request for Hearing, there are compelling reasons to conclude that Petitioners would not reasonably be expected to assist in developing a sound record. Indeed, the Board concluded that "it would be *impossible* for the Board to meet its responsibilities under 10 C.F.R. § 2.319 to conduct a fair, orderly, and efficient adjudicative hearing with WestCAN as a participant."[31]

In summary, Petitioners have failed to fully address, much less discharge, their burden under the Commission's rules for admission of nontimely contentions. The application of those rules here, moreover, clearly militates against the admission of WestCAN's Proposed Contention.

B. WestCAN Has Not Demonstrated That Its Proposed Contention Meets the Admissibility Criteria Set Forth in 10 C.F.R. § 2.309(f)(1)

As shown below, because WestCAN's Proposed Contention does not meet each of the Section 2.309(f)(1) admissibility criteria, it must be rejected, irrespective of its non-timeliness.

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[29] *La. Energy Servs., L.P.* (National Enrichment Facility), Licensing Board Order (Ruling on Late-Filed Contentions) (unpublished) (Nov. 22, 2004) at 6 (ADAMS Accession No. ML043280031).

[30] Supplemental Petition at 7, 10.

[31] July 31 Order at 1 (emphasis added).

1. *The Proposed Contention is Neither Within the Scope of This Proceeding Nor Material to the NRC Staff's License Renewal Findings*

Petitioners' concerns regarding RFI fall squarely outside the scope of this focused license renewal hearing, contrary to 10 C.F.R. § 2.309(f)(1)(iii). To be admissible here, Petitioners' allegations must be "related to the potential detrimental effects of aging—which is, after all, the issue that essentially defines the scope of . . . *license renewal* proceedings."[32] The Commission has emphasized that "[its] license renewal inquiry is narrow," as "[i]t focuses on 'the potential impacts of an additional 20 years of nuclear power plant operation,' not on everyday operational issues."[33] Operational issues are "effectively addressed and maintained by ongoing agency oversight, review, and enforcement."[34]

In the Supplemental Petition, WestCAN expressly recognizes that RFI caused by microwatt electronic devices—the purported subject of the Proposed Contention—is a current operating term issue with generic industry implications. Specifically, Petitioners state:

> [T]he unplanned shut down caused by a digital camera clearly demonstrates a problem in *current operations*, which will be carried over into the proposed new license period. It is an unacceptable risk to public health and safety for microwatt technologies to cause unplanned shutdowns, and the corrective actions proposed in the LER are insufficient in addressing the issue.
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> * * *
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> Petitioners assert that in order to establish these *changes to the CLB and subset DB [design basis]* a "no significant hazards analysis considerations" is also required prior to this issue being resolved satisfactorily and controls implemented for not just this particular unit *but for any licensee's facility with this vulnerability*.[35]

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[32] *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 637 (2004) (emphasis in original) (citing *Turkey Point*, CLI-01-17, 54 NRC at 7 (2001); Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461 (May 8, 1995)).

[33] *Id.* at 637-38 (quoting *Turkey Point*, CLI-01-17, 54 NRC at 7).

[34] *Id.* at 638 (quoting *Turkey Point*, CLI-01-17, 54 NRC at 9).

[35] Supplemental Petition at 10 (emphasis added). WestCAN has failed to show how a manual trip conducted in accordance with plant procedures poses an "unacceptable risk to public health and safety."

WestCAN thus urges this Board to explore the sufficiency of the corrective actions presented by Entergy in the May 22, 2008, LER, and to modify the current licensing and/or design bases for IPEC Units 2 and 3 (and even other plants), to include "[s]hielding or [] regulatory limits for these [RFI] emitters."[36] The Commission, however, has held unequivocally that "a license renewal proceeding is not the proper forum for the NRC to consider operational issues."[37] A petitioner concerned about such issues should seek redress through "a citizen's petition filed under 10 C.F.R. § 2.206."[38] By questioning the adequacy of the corrective actions proposed in Entergy's May 22 LER, Petitioners tacitly acknowledge that the RFI issue is subject to ongoing NRC oversight.[39]

Petitioners nevertheless try to shoehorn the RFI issue into this proceeding by suggesting that it is an aging management issue. But they offer no credible support for their position. First, they contend that the RFI issue warrants review by this Board because the issue "will be carried over into the proposed new license period."[40] This argument rings hollow. Petitioners ignore a seminal principle underlying 10 C.F.R. Part 54; *i.e.*, with the exception of aging management issues, the NRC's *ongoing regulatory process* is deemed adequate to ensure that the CLB of operating plants provides and maintains an acceptable level of safety. Part 54 accordingly provides that measures taken under a current operating license are "not within the scope of the license renewal review,"[41] and that "[t]he licensing basis for the renewed license includes the CLB, as defined in § 54.3(a)."[42] Petitioners' argument is antithetical to the plain language and purpose of Part 54. Taken to its logical

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36 *Id.*

37 *Millstone*, CLI-04-36, 60 NRC at 638.

38 *Id.*

39 Furthermore, Petitioners' reference to "no significant hazards consideration" suggest that they believe the CLB for IPEC Units 2 and 3 should be modified to address their concerns. Supplemental Petition at 10. As discussed herein, proposed changes to the CLB are not cognizable in this license renewal proceeding.

40 Supplemental Petition at 10.

41 10 C.F.R. § 54.30(b).

42 10 C.F.R. § 54.33(d).

extreme, it suggests that *any* operational issue that might recur during the period of extended operation is within the scope of license renewal. Plainly, that is not the Commission's intent.

Second, Petitioners' reliance on the EPRI and DOE documents described above is entirely misplaced and lends no support to the notion that RFI is an aging management concern. The cited EPRI document (WestCAN Exhibit 4) simply recognizes that the transition from analog to digital I&C systems poses certain engineering design and installation challenges for the nuclear power industry. It does *not* mention RFI, much less suggest that RFI is an aging management concern. The DOE/EPRI report (WestCAN Exhibit 5) discusses "specific techniques for improving the ability to monitor *aging-induced* changes in [I&C] circuits and board components that could lead to board failure," which the report notes are "slow" and may occur "due to temperature, operating stress, quality of components, corrosion, and environment."[43] The DOE/EPRI report likewise contains no discussion of RFI, and understandably so, given that RFI-related failures are not "slow" and "aging-induced."

Petitioners do not explain how the EPRI and DOE documents relate in any way to RFI-induced (as opposed to aging-induced) failures of I&C systems and components, in order to show that such events involve aging-related issues that are within the scope of this proceeding. Any supporting material provided by a petitioner is subject to Board scrutiny "both for what it does and does not show."[44] Here, Petitioners' imprecise reading, misunderstanding, or misdirected use of the EPRI and DOE documents cannot provide the basis for an admissible contention.[45]

In sum, the Proposed Contention "has nothing whatever to do with aging-related issues, is beyond the scope of this proceeding, and is therefore inadmissible,"[46] per 10 C.F.R. § 2.309(f)(1)(iii).

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[43] WestCAN Exhibit 5 at 4, 6 (pages vi, viii of DOE/EPRI Report) (emphasis added).

[44] *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).

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

[46] *Millstone*, CLI-04-36, 60 NRC at 639.

In addition, the Proposed Contention is immaterial to this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iv). Specifically, Petitioners seek relief in the wrong forum with regard to an issue that has no bearing on the NRC Staff's license renewal review, the focus of which is aging management.

2. The Proposed Contention Lacks Sufficient Specificity and Fails to Directly Controvert the LRA

Even assuming, *arguendo*, that WestCAN's Proposed Contention somehow relates to aging management issues, the contention lacks sufficient specificity and fails to directly controvert the LRA, contrary to 10 C.F.R. § 2.309(f)(1)(i) and (vi). Petitioners demand that the LRA include a "comprehensive aging management plan" to address RFI. They do not, however, specify which particular plant structures or components would be included in such an aging management plan, or provide any basis for concluding that Part 54 requires an aging management review of such structures or components.

As the LER explains, the March 23, 2008, event resulted from a malfunction of the MBFP Lovejoy control system (which contains both analog and digital components) caused by RFI from an energized digital camera. Section 54.21(a)(1) states that aging management reviews are performed only for those structures and components that perform an intended function without moving parts or a change in configurations or properties, and that are not subject to replacement based on a qualified life or specified period of time.[47] (Thus, certain active components may fall within the "scope" of the license renewal rule but not be subject to an aging management review.) The non-safety MBFP Lovejoy control system components specifically involved in the March 23, 2008, event do not meet the Section 54.21(a)(1) criteria stated above because they perform their intended functions with moving parts or a change in configuration or properties. Therefore, those components are not subject to an aging management review. Petitioners provide no information or expert support to support a

[47] *See* 10 C.F.R. § 54.21(a)(1)(i)-(ii).

contrary conclusion. Nor do Petitioners identify any structures or components that might require aging management review.

With regard to the last point, the LRA identifies plant electrical and I&C systems that are included in the scope of license renewal and *are* subject to aging management review. Petitioners do not reference these portions of the LRA, much less assert that they are deficient in some material respect. Section 2.5 of the LRA presents the scoping and screening results for electrical and I&C systems. Table 2.5-1 lists the component types that require aging management review. Section 3.6 of the LRA provides the results of the aging management review for the in-scope electrical and I&C components. Section 3.6.2.1 describes the specific materials, environments, aging effects requiring management,[48] and aging management programs for electrical and I&C components subject to aging management review. The components of the non-safety MBFP Lovejoy control system that are subject to aging management review (but which, in any case, were not implicated in the March 23 event) are included in LRA Sections 2.5 and 3.6. Specifically, the MBFP Lovejoy control system insulated cables and connections are included in the aging management program in LRA Section B.1.25, Non-EQ Insulated Cables and Connections. Significantly, this program, like the GALL Report, does not address RFI because it is *not* an aging mechanism or stressor for insulated cables and connections.[49] Petitioners thus do not identify any deficiency in an aging management program.[50]

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[48] The aging effects requiring management include loosening of bolted connections, loss of circuit continuity, loss of material, and reduced insulation resistance.

[49] As noted above, components that are in the scope of the license renewal rule and subject to aging management review are those that perform an intended function without moving parts or a change in configurations or properties, such as, insulated cables and connections. RFI has no effects on such components.

[50] A petitioner is required to read the pertinent portions of the license application and state the applicant's position and the petitioner's opposing view, and then explain why it disagrees with the applicant. *See* 10 C.F.R. § 2.309(f)(1)(vi); *see also* Final Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989).

In sum, the Proposed Contention also is inadmissible because it lacks reasonable specificity 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) and (vi).

V. CONCLUSION

For the reasons set forth above, the Supplemental Petition should be dismissed. The Proposed Contention does not meet the NRC's contention timeliness or admissibility requirements.

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DB1/62016730.4

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)	)	
	)	August 15, 2008

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Answer of Entergy Nuclear Operations, Inc. Opposing Supplemental Petition of WestCAN Et Al.," dated August 15, 2008, were served this 15th day of August, 2008 upon the persons listed below, by first class mail and e-mail as shown below.

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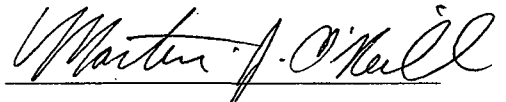

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