

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
NUCLEAR MANAGEMENT COMPANY, LLC ) Docket Nos. 50-282-LR/ 50-306-LR  
 )  
(Prairie Island Nuclear Generating Plant )  
Units 1 and 2)

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NRC STAFF'S ANSWER TO THE PRAIRIE ISLAND INDIAN COMMUNITY'S  
PETITION FOR LEAVE TO INTERVENE

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September 12, 2008

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the Staff of the U.S. Nuclear Regulatory Commission hereby files its answer to the petition for leave to intervene filed by the Prairie Island Indian Community ("PIIC" or "Petitioner").

As more fully set forth below, the Staff does not contest PIIC's standing to intervene in this proceeding. The Staff does, however, oppose PIIC's petition for intervention on the grounds that PIIC has failed to put forward any admissible contentions. Accordingly, PIIC's Petition for Leave to Intervene and request for an adjudicatory hearing should be denied.

BACKGROUND

This proceeding addresses the application of Nuclear Management Company, LLC ("NMC" or "Applicant") to renew its operating license for Prairie Island Nuclear Generating Plant, Units 1 and 2 ("PINGP").<sup>1</sup> PINGP is located near the city of Red Wing, in Goodhue County,

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<sup>1</sup> Letter from Michael D. Wadley, Site Vice President, Prairie Island Nuclear Generating Plant Units 1 and 2, Nuclear Management Company, LLC, dated April 11, 2008, transmitting application for license renewal for Prairie Island Nuclear Generating Plant Units 1 and 2, operating licenses DRF-42 and DPR-60, respectively, ADAMS Accession No. ML081130666.

Minnesota on the West bank of the Mississippi River at the river's confluence with the Vermillion River. PINGP Units 1 and 2 are pressurized water reactors, designed by Westinghouse Electric Corporation. Each unit is authorized to operate at 1650 megawatts thermal, which corresponds to a turbine generator output of 575 megawatts. The current license for PINGP Unit 1 expires on August 9, 2013; NMC's license renewal application ("LRA" or "Application") seeks authorization to allow Unit 1 to operate for an additional 20 years beyond the period specified in the current license, *i.e.*, until August 9, 2033. The current license for PINGP Unit 2 expires on October 29, 2014; NMC's Application seeks authorization to allow Unit 2 to operate for an additional 20 years beyond the period specified in the current license, *i.e.*, until October 29, 2034.

On May 6, 2008, the NRC published a notice of receipt of the PINGP LRA.<sup>2</sup> Subsequently, the NRC and PIIC entered into a Memorandum of Understanding ("MOU") that established a cooperating agency relationship between the NRC and PIIC for the purpose of preparing the Supplemental Environmental Impact Statement ("SEIS") to be issued in connection with the Prairie Island license renewal.<sup>3</sup> The MOU provides that the NRC will be the lead agency, with final responsibility for the content of all documents issued in the license renewal proceeding.

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<sup>2</sup> "Nuclear Management Company, LLC; Notice of Receipt and Availability of Application for Renewal of Prairie Island Nuclear Generating Plant, Units 1 and 2 Facility Operating Licenses Nos. DPR-42 and DPR-60 for an Additional 20-Year Period," 73 Fed. Reg. 25,034 (May 6, 2008). The NRC filed a corrected notice on May 27, 2008, in which it corrected the date of receipt of the application and the accession number for the application in the ADAMS document system. "Nuclear Management Company, LLC; Correction to Notice of Receipt and Availability of Application for Renewal of Prairie Island Nuclear Generating Plant, Units 1 and 2. Facility Operating Licenses Nos. DPR-42 and DPR-60," 73 Fed. Reg. 30,423 (May 27, 2008).

<sup>3</sup> Memorandum of Understanding Between The U.S. Nuclear Regulatory Commission and The Prairie Island Indian Community as a Cooperating Agency dated June 17, 2008 (ADAMS Accession No. ML081610273).

On June 17, 2008, the NRC published a notice of acceptance for docketing and notice of opportunity for hearing on the LRA.<sup>4</sup> The notice of acceptance for docketing stated that petitions for leave to intervene and requests for hearing were due to be filed within 60 days. The 60 day period for filing ended on August 18, 2008. On August 18, 2008, and in accordance with the NRC E-Filing rule, PIIC filed a petition for leave to intervene (“Petition”). PIIC filed the sole petition to intervene in this matter.

On September 3, 2008, an Atomic Safety and Licensing Board (“Board”) was established to rule on petitions for leave to intervene and hearing requests, and to preside over any proceeding that may be held in this matter.<sup>5</sup>

## DISCUSSION

### I. Standing to Intervene

#### A. Applicable Legal Requirements

In accordance with the Commission’s Rules of Practice,<sup>6</sup> “[a]ny person<sup>7</sup> whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene and a specification of the contentions which the person seeks to have litigated in the hearing.” 10 C.F.R. § 2.309(a). The regulations

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<sup>4</sup> “Nuclear Management Company, LLC, Prairie Island Nuclear Generating Plant, Units 1 and 2; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR-42 and DPR-60 for an Additional 20-Year Period,” 73 Fed. Reg. 34,335 (June 17, 2008).

<sup>5</sup> “Establishment of Atomic Safety and Licensing Board,” 73 Fed. Reg. 52,426 (Sept. 9, 2008).

<sup>6</sup> See “Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,” 10 C.F.R. Part 2.

<sup>7</sup> “Person” is defined as “(1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission . . . any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.” 10 C.F.R. § 2.4

provide that the Board “will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of [10 C.F.R. § 2.309(f)].” *Id.* A request for hearing or petition for leave to intervene must state:

(i) The name, address, and telephone number of the requestor or petitioner;

(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; and

(iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor’s/petitioner’s interest.

10 C.F.R. § 2.309(d)(1). These are the factors that the Board will consider in determining whether the petitioner has an interest affected by the proceedings. 10 C.F.R. § 2.309(d)(3).

As the Commission has observed, “[a]t the heart of the standing inquiry is whether the petitioner has ‘alleged such a personal stake in the outcome of the controversy’ as to demonstrate that a concrete adverseness exists which will sharpen the presentation of the issues.” *Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site)*, CLI-94-12, 40 NRC 64, 71 (1994), *citing Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72 (1978), and *quoting Baker v. Carr*, 369 U.S. 186, 204 (1962). The Commission explained that in order to determine whether a petitioner has demonstrated a personal stake in the outcome

the Commission applies contemporaneous judicial concepts of standing. Accordingly, a petitioner must (1) allege an “injury in fact” that is (2) “fairly traceable to the challenged action” and (3) is “likely” to be “redressed by a favorable decision.”

*Id.* at 72, *citing Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), and *Cleveland Elec.*

*Illuminating Co. (Perry Nuclear Power Plant, Unit 1)*, CLI-93-21, 38 NRC 87, 92 (1993). See

*also Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

An organization may establish its standing to intervene based on organizational standing (showing that its own organizational interest could be adversely affected by the proceeding), or representational standing (based on the standing of its members). *Florida Power and Light Company* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-13, 34 NRC 185, 187 (1991). The strong interest that an Indian tribe has in protecting individuals and property within its sovereign sphere has been held sufficient to satisfy organizational standing requirements. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 33 (1998); *Sequoyah Fuels Corporation and General Atomics* (Gore, Oklahoma Site), LBP-94-19, 40 NRC 9 (1994). In recognition of this strong interest, the Commission noted that “a State, local governmental body, or Federally-recognized Indian Tribe which is adjacent to a facility . . . and presents such information in its request/petition, would ordinarily be accorded standing.” Statement of Considerations, “Changes to Adjudicatory Process”, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004).

B. The Prairie Island Indian Community’s Standing to Intervene

In its petition, PIIC stated that it is a Federally-recognized Indian Tribe and that its property is adjacent to the Prairie Island nuclear facility. Given these statements and the Commission’s recognition of the organizational interest of Indian Tribes in proceedings involving facilities on adjacent property, the Staff does not oppose PIIC’s intervention in this matter provided that the Petition is properly supplemented with evidence that a tribe official has authorized participation of PIIC as an entity in this proceeding and representation by the attorneys of record.

The Staff wishes to call the Board's attention to a prior decision on standing involving PIIC. That case, *Northern States Power Company* (Independent Spent Fuel Storage Installation), LBP-96-22, 44 NRC 138 (1996), involved the application for an independent spent fuel storage facility at Prairie Island. The Board in that case evinced a willingness to find that PIIC met standing requirements, but noted that PIIC's petition was not accompanied by evidence that the tribe authorized the attorney to represent it and participate in the proceeding. The Board required PIIC to supplement its petition by filing an affidavit "from a tribe official stating that the tribe wishes to participate as an entity and be represented by the tribe's attorneys of record" if the tribe intended to assert organizational standing. *Id.* at 141. PIIC's petition in this proceeding presents the same omission.<sup>8</sup> Accordingly, and before PIIC is accorded standing, the Staff respectfully suggests that the Board may wish to consider a similar requirement: the filing of an affidavit from a tribe official authorizing participation and representation.

II. Admissibility of the Petitioner's Proffered Contentions

A. Legal Requirements for Contentions

1. General Requirements for Admissibility

The legal requirements governing the admissibility of contentions are well-established and set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice (formerly § 2.714(b)).<sup>9</sup> Specifically, in order to be admitted, a contention must satisfy the following requirements:

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<sup>8</sup> Petition at 43 and Declaration of Philip R. Mahowald, dated August 18, 2008.

<sup>9</sup> These requirements substantially reiterate the requirements stated in former § 2.714, published in revised form in 1989. See Statement of Considerations, "Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process," 54 Fed. Reg. 33,168 (Aug. 11, 1989), as corrected, 54 Fed. Reg. 39,728 (Sept. 28, 1989). Further, while § 2.714 was revised in 1989, those (continued. . .)

(f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request of petition must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) 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;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to supports its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petition disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report,

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(. . .continued)

revisions did not constitute "a substantial departure" from then existing practice in licensing cases. 54 Fed. Reg. at 33,170-71; *see also Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-94-11, 39 NRC 205-07 (1994). Thus, while the 1989 amendments superseded, in part, the prior standards governing the admissibility of contentions, those standards otherwise remained in effect to the extent they did not conflict with the 1989 amendments. *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-91-19, 33 NRC 397, 400 (1991).

environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report...

10 C.F.R. § 2.309(f)(1)-(2).<sup>10</sup>

The requirements governing the admissibility of contentions have been strictly applied in NRC adjudicatory proceedings, including license renewal proceedings. For example, in a recent decision involving license renewal, the Commission stated:

To intervene in a Commission proceeding, including a license renewal proceeding, a person must file a petition for leave to intervene. In accordance with 10 C.F.R. § 2.309(a), this petition must demonstrate standing under 10 C.F.R. § 2.309(d), and must proffer at least one admissible contention as required by 10 C.F.R. §§ 2.309(f)(1)(i)-(vi). The requirements for admissibility set out in 10 C.F.R. § 2.309(f)(1)(i)-(vi) are "strict by design," and we will reject any contention that does not satisfy these requirements. Our rules require "a clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish the validity of the contention." Mere 'notice pleading' does not suffice." Contentions must fall within the scope of the proceeding – here, license renewal – in which intervention is sought.

*AmerGen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-19 (2006) (footnotes omitted).

The basis requirements serve (1) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; (2) to establish a sufficient foundation for

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<sup>10</sup> Similarly, long-standing Commission precedent establishes that contentions may only be admitted in an NRC licensing proceeding if they fall within the scope of issues set forth in the Federal Register notice of hearing and comply with the requirements of former § 2.714(b) (subsequently restated in 2.309(f)), and applicable Commission case law. See, e.g., *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976); *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974); *Duquesne Light Co.* (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973); *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), *aff'd sub nom. BPI v. Atomic Energy Commission*, 502 F.2d 424, 429 (D.C. Cir. 1974).

the contention to warrant further inquiry into the assertion; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against or oppose. *Peach Bottom*, ALAB-216, 8 AEC at 20; *Palo Verde*, LBP-91-19, 33 NRC at 400. The *Peach Bottom* decision requires that a contention be rejected if:

- (1) it constitutes an attack on applicable statutory requirements;
- (2) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (3) it is nothing more than a generalization regarding the petitioner's view of what applicable policies ought to be;
- (4) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (5) it seeks to raise an issue which is not concrete or litigable.

*Peach Bottom*, *supra*, 8 AEC at 20-21.

In *Oconee*, the Commission explained that it "toughened its contention rule in a conscious effort to ... obviate serious hearing delays caused in the past by poorly defined or supported contentions." *Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3)*, CLI-99-11, 49 NRC 328, 334 (1999). The Commission observed that prior to the revision of the rule "Licensing Boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation. Indeed, in practice, intervenors could meet the rule's requirements merely 'by copying contentions from another proceeding involving another reactor.'" *Id.* The petitioner in *Oconee* submitted a contention based on the fact that the Staff had requested additional information from the applicant. The petitioner submitted no documents, expert opinion or fact-based argument in support of the contention and the *Oconee* Board ruled the contention inadmissible. In upholding the Board, the Commission wrote:

It is surely legitimate for the Commission to screen out contentions of doubtful worth and to avoid starting down the path toward a hearing at the behest of Petitioner who themselves have no particular expertise – or expert assistance – and no particularized grievance, but are hoping

something will turn up later as a result of NRC staff work.

*Id.* at 342.

An expert's affidavit is not required to support every contention. The regulation governing admissibility requires an intervenor to present "a concise statement of the alleged facts or expert opinion" supporting his contention and "references to the specific sources and documents on which [he] intends to rely". 10 C.F.R. § 2.309. For some contentions, materiality, specificity, and concreteness can be demonstrated by factual analysis or documentary evidence and no expert affidavit is required.

However, some contentions must be supported by an expert's affidavit. Where a contention is based on a conclusory allegation, speculation or opinion, and the allegation, speculation, or opinion is not supported by an expert's affidavit, Boards have ruled those contentions inadmissible. *Private Fuel Storage, L.L.C.*, (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139-140; *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 216 (2003); *Georgia Institute of Technology* (Georgia Tech Research Reactor), LBP-95-6, 41 NRC 281, 300, 302, and 304-05 (1995), *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). Similarly, where a contention seeks to connect a set of facts with a specific result and that result is not self-evident, expert analysis is needed to bridge the gap. *Nuclear Management Company, LLC* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 352, *aff'd* CLI-06-17, 63 NRC 727 (2006); *Private Fuel Storage*, CLI-04-22, 60 NRC at 139-40. As the Board in *Georgia Tech* recognized, "it is the petitioner who is obligated to provide the analyses and expert opinion showing why its bases support its contention." *Georgia Tech Research Reactor*, LBP-95-6, 41 NRC at 305. And that obligation must be satisfied when the petition is filed.

[T]he mere possibility . . . that Petitioner might in the future find an expert

who could provide the assistance necessary to define clearly the issues in question and effectively litigate them, does not warrant admitting the contention at this stage of the proceeding, when we must rule on such questions of admissibility based on what has been provided to this point.

*Palisades Nuclear Plant*, CLI-06-17, 63 NRC 314 at 352, fn 152.

## 2. Scope of License Renewal Proceedings

The scope of a license renewal proceeding is limited, under the Commission's regulations in 10 C.F.R. Part 54,<sup>11</sup> to the specific matters that must be considered for the license renewal application to be granted. Pursuant to 10 C.F.R. § 54.29, the following standards are considered in determining whether to grant a license renewal application:

10 C.F.R. § 54.29 Standards for issuance of a renewed license:

A renewed license may be issued by the Commission up to the full term authorized by § 54.31 if the Commission finds that:

- (a) Actions have been identified and have been or will be taken with respect to the matters identified in Paragraphs (a)(1) and (a)(2) of this section, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB, and that any changes made to the plant's CLB in order to comply with this paragraph are in accord with the Act and the Commission's regulations. These matters are:
  - (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under § 54.21(a)(1); and
  - (2) time-limited aging analyses that have been identified to require review under § 54.21(c).
- (b) Any applicable requirements of Subpart A of 10 C.F.R. Part 51 have been satisfied.

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<sup>11</sup> See generally, Statement of Considerations, "Nuclear Power Plant License Renewal," 56 Fed. Reg. 64,943 (Dec. 13, 1991) ("1991 Statement of Considerations"); Statement of Considerations, "Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461 (May 8, 1995) ("1995 Statement of Considerations").

(c) Any matters raised under § 2.335 have been addressed.

These standards, along with other regulations in 10 C.F.R. Part 54, and the environmental regulations related to license renewal set forth in 10 C.F.R. Part 51 and Appendix B thereto, establish the scope of issues that may be considered in a license renewal proceeding. The failure of a proposed contention to demonstrate that an issue is within the scope of the proceeding is grounds for its dismissal. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 567 (2005).

The Commission has provided guidance for license renewal adjudications regarding what safety and environmental issues fall within or beyond its license renewal requirements. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 6 (2001). Specifically, the NRC conducts a technical review pursuant to 10 C.F.R. Part 54, to assure that pertinent public health and safety requirements have been satisfied. *Id.* at 6. In addition, the NRC performs an environmental review pursuant to 10 C.F.R. Part 51 to assess the potential impacts of twenty additional years of operation. *Id.* at 6-7. Regardless of whether or not a license renewal application has been filed for a facility, the Commission has a continuing responsibility to oversee the safety and security of ongoing plant operations, and it routinely oversees a broad range of operating issues under its statutory responsibility to assure the protection of public health and safety for operations under existing operating licenses. Therefore, for license renewal, the Commission has found it unnecessary to include a review of issues already monitored and reviewed in ongoing regulatory oversight processes. *Id.* at 8-10.

The Commission has clearly indicated that its license renewal safety review focuses on “plant systems, structures, and components for which current [regulatory] activities and requirements *may* not be sufficient to manage the effects of aging in the period of extended operation.” *Id.* at 10, *quoting* 60 Fed. Reg. at 22,469. Further, the Commission stated that:

“Adjudicatory 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 [safety] questions our safety rules make pertinent.” *Id.* at 10.

Contentions raising environmental issues in a license renewal proceeding are similarly limited to those issues which are affected by license renewal and have not been addressed by rulemaking or on a generic basis. *Turkey Point*, CLI-01-17, 54 NRC at 11-12. In 10 C.F.R. Part 51, the Commission divided the environmental requirements for license renewal into generic and plant-specific components. *Id.* at 11. The Generic Environmental Impact Statement (GEIS) contains “Category 1” issues for which the NRC has reached generic conclusions. *Id.* Applicants for license renewal do not need to submit analyses of Category 1 issues in their Environmental Reports, but instead may reference and adopt the generic findings. *Id.* Applicants, however, must provide a plant-specific review of the non-generic “Category 2” issues. *Id.* Category 1 issues “are not subject to site-specific review and thus fall beyond the scope of individual license renewal proceedings.” *Id.* at 12;<sup>12</sup> see 10 C.F.R. § 51.53(c)(3)(i)-(ii).

The Commission recently reiterated this principle, and specified that the GEIS Category 1 conclusions generally may not be challenged in a license renewal proceeding:

In 1996, the Commission amended the environmental review requirements in 10 C.F.R. Part 51 to address the scope of environmental review for license renewal applications. The regulations divide the license renewal environmental review into generic and plant-specific issues. The generic impacts of operating a plant for an additional 20 years that are common to all

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<sup>12</sup> In *Turkey Point*, the Commission recognized that “even generic findings sometimes need revisiting in particular contexts. 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, Petitioner with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule.” *Turkey Point*, CLI-01-17, 54 NRC at 12.

plants, or to a specific subgroup of plants, were addressed in a 1996 GEIS. Those generic impacts analyzed in the GEIS are designated "Category 1" issues. A license renewal applicant is generally excused from discussing Category 1 issues in its environmental report. Generic analysis is "clearly an appropriate method" of meeting the agency's statutory obligations under NEPA.

The license renewal GEIS determined that the environmental effects of storing spent fuel for an additional 20 years at the site of nuclear reactors would be "not significant." Accordingly, this finding was expressly incorporated into Part 51 of our regulations. Because the generic environmental analysis was incorporated into a regulation, the conclusions of that analysis may not be challenged in litigation unless the rule is waived by the Commission for a particular proceeding or the rule itself is suspended or altered in a rulemaking proceeding.

*Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-07-3, 65 NRC 13, 17 (footnotes omitted), *reconsid. denied*, CLI-07-13, 65 NRC 211, 214 (2007).

B. Discussion of Admissibility of Prairie Island Indian Community's Contentions

The Petition proffered 11 contentions. The following summarizes those contentions and provides the Staff's response to each contention.

1. Contention 1

THE ANALYSIS OF HISTORICAL AND ARCHAEOLOGICAL RESOURCES IN SECTION 4.16 OF THE ENVIRONMENTAL REPORT (PAGES 4-54 TO 4-56) IS INCOMPLETE BECAUSE IT DOES NOT CONTAIN INFORMATION SUFFICIENT TO MAKE AN ACCURATE ASSESSMENT OF WHETHER ANY HISTORIC OR ARCHAEOLOGICAL PROPERTIES WILL BE AFFECTED BY THE PROPOSED LICENSE RENEWAL AND DOES NOT COMPLY WITH 10 C.F.R. 51.53(c)(3)(ii)K).

Petition at 5. The Petitioner asserts that the Applicant's conclusion, that refurbishment activities will have no effect on historic or archaeological resources, is deficient because it does not describe with sufficient specificity the area in which refurbishment activities will take place. *Id.*

at 8. The Petitioner also asserts that the Applicant's Environmental Report ("ER") is deficient because it does not address the effect of a proposed expansion of the independent spent fuel storage installation ("ISFSI") on archaeological and historic resources at the site. *Id.* at 9.

2. Staff Response to Contention 1

Contention 1 is inadmissible because it does not raise a material issue in dispute with respect to refurbishment and, with respect to the proposed expansion of the ISFSI, raises an issue outside of the scope of license renewal.

The regulations governing this proceeding require that a petition for leave to intervene

[p]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact . . . and if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(iv).

Contention 1 does not establish a genuine dispute on a material issue of fact or law and does not provide supporting reasons for the Petitioner's belief that the ER is deficient in its treatment of the effects of refurbishment. The Petitioner acknowledges that the ER identifies the area that will be affected by refurbishment as "previously disturbed lands." *Id.* at 8. The Petitioner complains that this description is insufficient "because it is not disclosed exactly where construction activities for the steam generator replacement project will occur. . . . More specificity is needed to identify precisely where on the *previously disturbed lands* these construction activities will take place." *Id.* (emphasis in original). However, the Petitioner does not explain why more specificity is required and thus does not provide the required "supporting reasons" for its belief that more information is required. "[A]n 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.” *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 306 (2007). *See also, Florida Power and Light Company* (Turkey Point Nuclear Generating Plant, Units Nos. 3 and 4), LBP-90-16, 31 NRC 509, 521 & n.12 (1990) (in the absence of facts, expert sources, or reasoned statement that produces doubt about the adequacy of application, contention held inadmissible). For this reason, the part of Contention 1 that addresses refurbishment does not meet the requirements of 10 C.F.R. § 2.309(f)(iv) and is inadmissible for failing to raise a material issue.

The second part of the Contention is inadmissible because it raises an issue that is outside of the scope of this proceeding. In this part of the contention, the Petitioner asserts that the ER is deficient because it does not address the effect that the expansion of the ISFSI at Prairie Island will have on archaeological and historical resources. Petition at 9. It is true that the ER does not address the effect of the expansion of the ISFSI, but expansion of the ISFSI is not a proper subject of the ER in this proceeding. The regulations require each applicant “for renewal of a license to operate a nuclear power plant under part 54 of this chapter [to] submit with its application, a separate document entitled ‘Applicant’s Environmental Report – Operating License Renewal Stage,’” 10 C.F.R. § 51.53(c)(1), and further require the applicant to “assess whether any historic or archaeological properties will be affected by the proposed project.” 10 C.F.R. § 51.53(c)(3)(ii)(K). The project in this instance is license renewal. Expansion of the ISFSI is not within the scope of license renewal. Expansion of the ISFSI is a separate project, subject to a separate proceeding, and governed by the regulations in 10 C.F.R. Part 72, not the license renewal regulations at 10 C.F.R. Part 54. The expansion of the ISFSI is, thus, not an appropriate subject for inclusion in the license renewal ER and the ER is not deficient for failure to address the ISFSI. As the Commission observed in affirming a board decision that held a similar contention out of scope,

[T]he dry cask storage facility or independent spent fuel storage

installation (ISFSI), is licensed separately from the reactor. The current proceeding concerns the renewal of the reactor operating license pursuant to 10 C.F.R. Parts 51 and 54, and not the ISFSI, which is licensed pursuant to 10 C.F.R. Part 72. Issues involving the ISFSI are, quite simply, separate licensing matters.

*Palisades*, CLI-06-17, 63 NRC at 732 (footnotes omitted), *affirming* LBP-06-10, 63 NRC 314 (2006). Contention 1 does not raise an issue within the scope of this proceeding as required by 10 C.F.R. § 2.309(f)(1)(iii) and is, therefore, inadmissible.

3. Contention 2

THE SEVERE ACCIDENT MITIGATION ALTERNATIVES (SAMA) ANALYSIS DOES NOT ACCURATELY REFLECT DECONTAMINATION AND CLEAN UP COSTS ASSOCIATED WITH A SEVERE ACCIDENT AT THE PRAIRIE ISLAND SITE AND, THEREFORE, THE SAMA ANALYSIS UNDERESTIMATES THE COST OF A SEVERE ACCIDENT AND IS NOT IN COMPLIANCE WITH 10 C.F.R. § 51.53(c)(3)(ii)(L).

Petition at 11. Specifically, the Petitioner argues that, when the Applicant conducted its SAMA analysis, it should have used cost figures from a 1996 Sandia National Laboratories report (“Sandia Report”), instead of the cost figures in the MELCOR accident consequences code system, version 2 (“MACCS2”). *Id.* The Petitioner asserts that clean up and decontamination costs in the SAMA analysis will be higher when the Sandia Report cost figures are used because the Sandia Report cost figures reflect the dispersion of small particles which are more difficult to clean up than the large particles that the MACCS2 Code assumes. *Id.* at 11-13. In addition, the Petitioner claims that the “cultural and economic” impacts on the Prairie Island Indian Community -- in particular, the value of its casino complex -- must be factored into the Applicant’s SAMA analysis. *Id.* at 13. In support of its contention, the Petitioner simply cites the Sandia Report, but does not proffer any affidavit or expert opinion in support.

4. Staff Response to Contention 2

The Staff opposes the admission of Contention 2 because it fails to raise a material issue of fact or law and is unsupported by expert opinion or documents.

A material issue is one in which “resolution of the dispute would make a difference in the outcome of the licensing proceeding.” Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989). Nowhere in Contention 2 does the Petitioner allege that the use of the cost figures from the Sandia Report would result in additional SAMAs applicable to Prairie Island. The Petitioner thus fails to establish that this issue is material to a decision the NRC must make as required by 10 C.F.R. § 2.309(f)(1)(iv). Therefore, Contention 2 is inadmissible.<sup>13</sup>

Even if the Petition could be read to include the allegation that use of the Sandia Report would result in a change in the SAMA results, the Petition fails to provide any support for this proposition. Other than the Sandia Report, the Petition proffers no documentary support or expert opinion. In contrast, the State of New York supported its argument in the Indian Point proceeding with reports from two experts that discussed accident costs at Indian Point.<sup>14</sup> There is no such support in Contention 2, either in documentary form or by way of expert affidavit, for the proposition that application of the Sandia Report small particle inputs will result in higher clean-up and decontamination costs at Prairie Island. In the Indian Point proceeding, the State of New York argued that clean-up costs for the uniquely urban, densely populated, New York

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<sup>13</sup> New York State raised a very similar contention in the Indian Point license renewal proceeding. The Indian Point Board admitted the contention in a July 31, 2008 Order. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), LBP-08-13, 67 NRC \_\_\_\_ (July 31, 2008) slip op. at 64-65. However, New York State made a materiality claim; it asserted that the Applicant’s SAMA analysis did not accurately determine which mitigation measures were cost effective. New York State Notice of Intention to Participate and Petition to Intervene, dated November 30, 2007, p. 144 (ADAMS Accession No. ML073400174). PIIC here has not made a similar claim that use of the Sandia Report inputs would result in a change in the SAMA results.

<sup>14</sup> Beyea, Lyman and von Hippel, Damages from a Major Release of 137Cs into the Atmosphere of the United States, *Science and Global Security*, Vol. 12 at 125-136 (2004); Lyman, Chernobyl on the Hudson? The Health and Economic Impacts of a Terrorist Attack at the Indian Point Nuclear Power Plant, *Union of Concerned Scientists* (September 2004).

City metropolitan area “would likely be staggering.”<sup>15</sup> In contrast, the area around the Prairie Island plant is “predominantly rural.”<sup>16</sup> While it may be obvious that a change in input data may change the resulting clean up costs for New York City, it is not obvious that a change in the input data would have a similar effect on clean-up costs at Prairie Island. In the end, the Petitioner’s failure to put forward and support the argument that use of its preferred inputs with expert analysis will make a difference in the SAMA analysis renders the contention inadmissible.

Contention 2 is also inadmissible because it mistakenly asserts that the ER should “incorporate the property values appropriate to the unique area of the Prairie Island Indian Community and associated Treasure Island complex”. Petition at 13. The ER’s discussion of the SAMA analysis states that the analysis incorporated “site–specific meteorology, demographic, land use, and emergency response data as input”. LRA, Appendix E, Environmental Report, Page 4-58. The ER does incorporate site specific property values. PIIC’s assertion that it does not is simply wrong. “A petitioner’s imprecise reading of a reference document cannot serve to generate an issue suitable for litigation.” *Georgia Tech*, 41 NRC at 300. *See also Private Fuel Storage*, CLI-04-22, 60 NRC at 136.

Finally, Contention 2 is inadmissible for failure to establish the relevance of the report on which it relies. As the Petitioner acknowledges, the Sandia Report discusses “a scenario in which plutonium from a nuclear weapon is dispersed as a result of an accident resulting from a fire or non-nuclear detonation of the weapon’s explosive trigger device.” *Id.* at 12. The release at issue in this proceeding is the release of radionuclides associated with a severe accident at a

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<sup>15</sup> New York State Notice of Intention to Participate and Petition to Intervene, dated November 30, 2007, p. 144, ADAMS Accession No. ML073400174.

<sup>16</sup> LRA, Appendix E, Environmental Report, § 2.1.1, at page 2-2.

nuclear power plant. These are, on their face, two significantly different events. The Petitioner has not demonstrated a nexus between the nuclear weapon analysis in the Sandia Report and a severe accident at a commercial nuclear power plant. It has not explained why the analysis for the costs associated with a release involving a nuclear warhead should be considered in the calculation of costs associated with a commercial plant accident.<sup>17</sup>

For the foregoing reasons, Contention 2 is inadmissible for lack of basis and failure to raise a material issue in dispute.

5. Contention 3

THE INFORMATION AND ANALYSIS IN THE ER ON  
ENDANGERED AND THREATENED SPECIES IS INADEQUATE  
AND INCOMPLETE AND DOES NOT COMPLY WITH 10 C.F.R.  
SECTION 51.53(c)(3)(ii)(E).

Petition at 14. The Petitioner claims, specifically, that the ER is deficient in assessing the impact of license renewal on the Higgins' eye pearly mussel (*Lampsilis higginsii*<sup>18</sup>) and in analyzing the impacts of transmission lines on the mortality of any threatened or endangered birds. *Id.* Regarding *L. higginsii*, the Petitioner asserts that the discussion of *L. higginsii* in the ER is insufficient and conclusory, making it "difficult to determine how the applicant reached [its] conclusion" that license renewal would not jeopardize threatened or endangered species, or destroy or adversely modify any critical habitat. Petition at 15-16. The Petitioner claims that the Applicant's "conclusory statements" do not satisfy 10 C.F.R. § 51.53(c)(3)(ii)(E).<sup>19</sup>

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<sup>17</sup> While the Staff recognizes that this objection was rejected by the Board in the Indian Point license renewal proceeding, LBP-08-13, 67 NRC at \_\_\_\_, (slip op. at 64-65), the Staff respectfully maintains that the failure to establish the relevance of the Sandia Report to the facts at issue in this matter requires a finding that Contention 2 is inadmissible.

<sup>18</sup> See ER at 2-14.

<sup>19</sup> The regulation at 10 C.F.R. §51.53(c)(3)(ii)(E) provides: "All license renewal applicants shall assess the impact of refurbishment and other license-renewal-related construction activities on important (continued. . .)

With regard to avian mortality caused by collisions with transmission lines, the Petitioner asserts that it cannot ascertain the impact on endangered or threatened species because of omissions from the ER. For example, the Petitioner asserts that the ER did not provide “information regarding species composition” from a study conducted over a 5-year period (1973-1978), or “any data to definitely indicate that avian mortality has been not [sic] reduced since the study was conducted.” *Id.* at 16-17. The Petitioner also asserts that (1) the ER did not discuss “why avian mortality was so high at the PINGP,” *id.* at 17; (2) the ER did not state that PINGP “sits in the “Mississippi River flyway”, *id.*; (3) the ER did not state that the site was in the middle of the “Vermillion River and Lower Cannon River Important Bird Area,” *id.* at 19; and that (4) section 4.7 of the ER “offers no information or analysis relative to possible impacts on threatened or endangered migratory bird species, as required by [10] C.F.R. § 51.53(c)(3)(ii)(E).” *Id.* Further, the Petitioner states that, absent “systematic searches or formal studies,” it was inappropriate for the ER to adopt the conclusion from the GEIS that “collision mortality is of small significance.” *Id.* at 19-20. Finally, the Petitioner states that, as of April, 2008, the Applicant had not developed an “Avian Protection Plan” pursuant to a 2002 Memorandum of Understanding between the Applicant and the U.S. Fish and Wildlife Service (USFWS). *Id.* at 20.

6. Staff Response to Contention 3

The Staff opposes the admission of Contention 3 because the Petitioner has failed to provide a sufficient basis for its contention, failed to identify facts or expert opinion supporting the contention, and failed to raise a genuine dispute with the Applicant. See 10 C.F.R.

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(. . .continued)

plant and animal habitats. Additionally, the applicant shall assess the impact of the proposed action on threatened or endangered species in accordance with the Endangered Species Act.”

§ 2.309(f)(1)(ii), (v), and (vi). Furthermore, the Petitioner's claim that the GEIS was incorrectly relied upon is outside the scope of the proceeding, and the Petitioner's claim that the Applicant did not complete an "Avian Protection Plan" is not material to a decision the Staff must make.

With respect to the portion of the Petitioner's contention asserting that the discussion of the mussel, *L. Higginsi*, in the ER is inadequate and consists of "conclusory statements", the Petitioner failed to point to any facts, documents, or expert opinion to support its claim. The only factual information the Petitioner provides, aside from information in the ER itself, is a paragraph from a website maintained by the U.S. Fish and Wildlife Service ("USFWS") that briefly describes the lifecycle of *L. higginsi*. *Id.* at 14-16. Contrary to the Petitioner's assertions, the ER provides more than "conclusory statements" regarding *L. higginsi*. For example, in the section on Biological Resources, the ER describes the mussel, discusses its current and former habitat, and notes that the species was not found during surveys in 1986, 1999, 2000, and 2003. ER at 2-15. This section of the ER also describes recent re-introduction of cage-raised mussels, including the location relative to the plant, discusses threats to the mussels, and states that no critical habitat for *L. higginsi* has been designated. *Id.* Further discussion is provided in the ER section on threatened and endangered species, which discusses the lifecycle of the mussel and lists the types of fish that serve as hosts for its larvae. ER at 4-25. This section of the ER also points out that state and federal agencies have determined that the area 0.5 mile north of PINGP, despite its proximity to the plant, was suitable for relocation of *L. higginsi*, and that, while it is "conceivable that some larval *L. higginsi* will be carried downstream into the [PINGP] intake screenhouse," those larvae probably would not have survived anyway because of the low survival rate for larvae that fail to attach to fish hosts soon after release. *Id.*

The Petitioner has pointed to no requirement, in 10 C.F.R. § 51.53(c)(3)(ii)(E) or elsewhere, that additional information is necessary in the ER, nor has the Petitioner provided documentary or expert opinion supporting such a requirement, or specifying what additional

information would be required. See Petition at 15-16. The Petitioner has also asserted, incorrectly, that this section requires "quantification of losses" and "further assessment." Petition at 16. A plain reading of 10 C.F.R. § 51.53(c)(3)(ii)(E), however, shows that no such requirements exist. As noted above, the Applicant has provided an assessment of the impact of renewal on *L. higginsii*, and the Petitioner has not disputed the applicant's information, nor has the Petitioner explained why the Applicant's analysis is insufficient.

The Applicant also assessed the effect of refurbishment on *L. higginsii*. ER at 4-22, 4-27. Again, the Petitioner has failed to provide facts or expert opinion indicating that the Applicant's assessment is deficient, or explaining how it is deficient or how it violates the applicable regulation. Without tangible information, documents or expert opinion to support them, the Petitioner's claims are merely bare assertions and speculation that are insufficient to support admission of the contention. *Fansteel, Inc.*, CLI-03-13, 58 NRC at 203.

Finally, the Petitioner fails to raise a genuine dispute of material fact or law with the application. The Petitioner does not dispute any of the information provided by the Applicant. With regard to omissions, the Petitioner must identify *specific* omissions "*and the supporting reasons* for the petitioner's belief." 10 C.F.R § 2.309(f)(1)(vi) (emphasis added). Although the Petitioner asserts that omissions exist, it does not *specifically* identify what was omitted, but instead merely claims that "there is very little discussion or analysis" or that "no information . . . is provided." Petition at 15-16. Furthermore, the Petitioner has failed to provide supporting reasons for its belief that material information has been omitted from the ER. Thus, this portion of the contention does not satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(vi).

The portion of the Petitioner's contention asserting deficiencies in the ER's discussion of avian mortality is also inadmissible because it lacks support and fails to raise a genuine dispute. The Petitioner has not provided any facts, documents, or expert opinion explaining why it is necessary for the ER to contain the information it alleges is missing. See Staff Response at 21-

22. The Petitioner also asserts its belief that “because of the PINGP’s location within the Mississippi River flyway and the past high incidence of avian mortalities, there is a possibility that threatened or endangered species may be impacted by continued operation of the plant.” Petition at 19. However, the Petitioner does not provide any concrete information suggesting that threatened or endangered birds have been or will be impacted.<sup>20</sup> It is the Petitioner’s responsibility to formulate its contentions and provide the information necessary to satisfy the basis requirement. *USEC, Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 457 (2006), quoting *Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2)*, ALAB-942, 32 NRC 395, 416-17 (1990). Without any factual basis or expert opinion to support it, Petitioner’s belief amounts to mere speculation and is inadmissible. *Fansteel, Inc. (Muskogee, Oklahoma Site)*, CLI-03-13, 58 NRC 195, 203 (2003).

The Petitioner has also failed to raise a genuine dispute with the Applicant. In order to do so, the Petitioner must identify specific portions of the application where information is lacking and must provide *supporting reasons* for its belief that a material omission exists. 10 C.F.R. § 2.309(f)(1)(vi) (emphasis added). A contention that fails to controvert the application or that mistakenly asserts the application does not address a relevant issue is subject to dismissal. *Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station)*, LBP-93-23, 38 NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994); *Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2)*, LBP-92-37, 36 NRC 370, 384 (1992)). Here, because the Petitioner has failed to provide reasons supporting its belief that omissions exist, it has failed to satisfy this admissibility criterion.

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<sup>20</sup> With regard to the impact of collisions with transmission lines, in a discussion of the 1973-1978 Prairie Island study on avian mortality (see ER at § 3.1.6.3, Petition at 16), the GEIS provides a breakdown of types of birds affected that does not mention any threatened or endangered species. See GEIS at 4-77.

Moreover, the Petitioner's asserted omissions are incorrect. For example, the alleged failure to mention "that the PINGP sits in the Mississippi River flyway", (Petition at 17), is flatly contradicted by the ER, which states, "This section of the corridors [where the carcasses were collected] is perpendicular to the *bird migration corridor along the Mississippi River.*" ER at 3-13 (emphasis added). In addition, the Petitioner claims that section 4.7 of the ER "offers no information or analysis relative to possible impacts on threatened or endangered migratory bird species, as required by [10] C.F.R. [§] 51.53(c)(3)(ii)(E)." Petition at 19. Contrary to the Petitioner's assertion, however, section 4.7 (and section 4.6 as well) discusses peregrine falcons, which are state-listed as threatened. The Petitioner has not specifically disputed the Applicant's discussion of peregrine falcons, nor has the Petitioner identified any other endangered or threatened bird that the Applicant should have included. Thus, this portion of the contention fails to satisfy 10 C.F.R. § 2.309(f)(1)(vi).

The Petitioner's assertion that the Applicant inappropriately adopted the conclusion of the GEIS regarding avian collisions with power lines, Petition at 19, is unsupported and outside the scope of this proceeding. The Petitioner has provided no facts or expert opinion to support its claim that the conclusions of the GEIS do not apply at PINGP.<sup>21</sup> Furthermore, this claim addresses avian mortality from transmission lines in general, which is a Category 1 issue, rather than the Category 2 analysis of impacts on threatened or endangered species. See 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1. Because the Petitioner is challenging the conclusions of the GEIS, as set forth in Part 51, Appendix B, this claim amounts to an impermissible attack on the Commission's regulations. See 10 C.F.R. § 2.335. Pursuant to the

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<sup>21</sup> Indeed, the Petitioner admits that the GEIS was informed by the studies at PINGP; therefore, there is no logical reason why the GEIS could not be applied there.

Commission's decision in *Turkey Point*, Category 1 issues are outside the scope of license renewal proceedings and can only be challenged if a waiver is granted. *Turkey Point*, CLI-01-17, 54 NRC at 11-13. Because PIIC has neither requested nor been granted a waiver, this claim is inadmissible in this proceeding.<sup>22</sup>

Finally, the Petitioner's assertion that the Applicant has failed to implement an "Avian Protection Plan" as part of an MOU with the USFWS is not material to the Staff's license renewal review. Enforcement of an MOU is not a matter within the scope of NEPA. This issue is not encompassed by the regulatory requirements at 10 C.F.R. § 51.53(c)(3)(ii)(E).

7. Contention 4

APPLICANT'S ENVIRONMENTAL REPORT FAILS TO  
CONSIDER THE DISPARATE IMPACT OF HIGHER THAN  
AVERAGE CANCER RATES AND OTHER ADVERSE HEALTH  
IMPACTS IN THE ADJACENT MINORITY POPULATION.

Petition at 20. The Petitioner acknowledges that radiation exposure during the license renewal period is classified as a Category 1 issue and thus outside the scope of license renewal, but asserts that there is "new and significant" evidence of higher than average cancer rates and other adverse health consequences among people living near Prairie Island that warrants reconsideration of the classification. *Id.* This "new and significant" evidence consists of 1) the Declaration of Joseph Mangano; 2) studies of populations in England, Spain, and Germany; and 3) reports that find higher cancer and cancer mortality rates for Native Americans, including Native Americans in Minnesota, as compared to the general U.S. population. *Id.* at 20-24. The Petitioner also asserts that these studies "expose significant environmental justice issues

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<sup>22</sup> If the Petitioner has evidence that a generic finding in the GEIS is incorrect for PINGP, it may petition the Commission to initiate a fresh rulemaking pursuant to 10 C.F.R. § 2.802. See *Turkey Point*, CLI-01-17, 54 NRC at 12.

because the Community potentially represents a specific minority area with higher than expected cancer rates.”<sup>23</sup> *Id.* at 21.

8. Staff Response to Contention 4

Contention 4 is inadmissible because it constitutes an impermissible challenge to Commission regulations and is thus outside of the scope of this proceeding. In addition, the contention lacks sufficient factual and expert support. It challenges 10 C.F.R. § 51.95(c), which provides that the Commission will make its license renewal decision based, in part, on NUREG-1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (“GEIS”) (May 1996) for issues designated as “Category 1” issues, and 10 C.F.R. § 51.53(c)(3)(i) which provides that a license renewal applicant need not include an analysis of such generic issues in its environmental report. Category 1 issues are listed in Appendix B to 10 C.F.R. Part 51 and include radiation exposure to the public during the license renewal period. As the Commission made clear in the GEIS and in Appendix B to Part 51, it has made a generic determination regarding the environmental impact of radiation exposures during the license renewal period. That determination covers all applicants for license renewal, including Prairie Island; further, the Commission determined that the impact is small. While PIIC may disagree with this determination, the Commission’s determination is not subject to attack in an adjudicatory proceeding. *Oconee*, CLI-99-11, 49 NRC at 343. The regulations at 10 C.F.R. § 2.335(b) explicitly prohibit such an attack. As the Commission stated recently in *Vermont Yankee and Pilgrim*, “[f]undamentally, any contention on a ‘Category 1’ issue amounts to a challenge to our regulation that bars challenges to generic environmental findings.” *Vermont*

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<sup>23</sup> To the extent that this contention seeks to raise an environmental justice issue, it will be addressed in the Staff’s Response to Contention 5, *infra*.

*Yankee and Pilgrim*, CLI-07-03, 65 NRC at 20.<sup>24</sup> The Commission went on to note that 10 C.F.R. § 2.335(b) permits the waiver of a rule, and that, in theory, “approval of a waiver could allow a contention on a Category 1 issue to proceed where special circumstances exist.”

*Vermont Yankee and Pilgrim*, CLI-07-03, 65 NRC at 20. Here, however, the Petitioner has not sought a waiver -- and even if it had, nothing it has put forward demonstrates the special circumstances required to justify acceptance of its contention.

While the Petitioner asserts that “new and significant” evidence supports its contention, the proffered evidence is not new or significant. The Petitioner’s reference to the Declaration of Joseph Mangano filed in the Indian Point proceeding<sup>25</sup> is particularly unavailing. Many of Mr. Mangano’s assertions (that all nuclear power reactors emit radioactivity, that there is no safe low dose exposure to radioactivity, that children are more susceptible to radiation exposure, and his asserted statistical link between the level of Strontium-90 in children’s teeth and the incidence of childhood cancer at Indian Point and other reactors) are not significant for purposes of this inquiry. They are not unique to Prairie Island and not relevant to this proceeding. See *Palisades*, LBP-06-10, 63 NRC at 351-352 (2006) (contention based on putative expert’s general and non-specific facts held inadmissible). The general applicability of these claims to all nuclear plants undermines their use in this adjudicatory proceeding; by their nature, they are more *apropos* of a request for rulemaking under 10 C.F.R. § 2.802.<sup>26</sup> Finally,

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<sup>24</sup> See also *Turkey Point*, CLI-01-17, 54 NRC at 13-15.

<sup>25</sup> In the Indian Point proceeding, Mr. Mangano submitted Declarations in support of the contention filed by Connecticut Residents Opposed to Relicensing of Indian Point and in support of Hudson River Sloop Clearwater Contention EC-2. While PIIC does not specify which Declaration it relies upon, the Declarations are largely identical. The Mangano Declarations may be found at ADAMS Accession Nos. ML073520597 and ML073520042.

<sup>26</sup> In 2007, the Commission denied a petition for rulemaking that sought a revision of the GEIS to reflect findings from a 2005 study by the National Academy of Sciences, “Health Risks From Exposure to (continued. . .)

Mr. Mangano's study regarding levels of Strontium-90 in baby teeth does not constitute new information. He made these claims at least as early as 2000.<sup>27</sup> The NRC addressed Mr. Mangano's claims three years ago in "Backgrounder on Radiation Protection and the 'Tooth Fairy' Issue,"<sup>28</sup> prepared by the Office of Public Affairs. Thus Mr. Mangano's claims are hardly new.

The reports regarding populations in England, Spain, and Germany are not relevant and not significant with respect to the issues in this proceeding, regarding the Prairie Island nuclear plant – a plant in the United States. Moreover, the Prairie Island plant is subject to NRC regulatory requirements and processes. Plants in England, Spain, and Germany are not. Reports regarding radiation exposure related to plants that are outside the United States and subject to regulation by foreign regulatory agencies are clearly not relevant here. At bottom, the Petitioner has failed to articulate a factual correlation between the reports it cites and the PINGP.

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(. . .continued)

Low Levels of Ionizing Radiation: Biological Effects of Ionizing Radiation (BEIR) VII, Phase 2." Sally Shaw, Denial of Petition for Rulemaking, 72 Fed. Reg. 71,083 (Dec. 14, 2007). Relying on the BEIR VII report, the rulemaking petitioner claimed, *inter alia*, that the BEIR VII Report concluded that there was no safe radiation dose; accordingly, the petitioner asserted that "the GEIS's radiological impact analysis is calculated based on an 'arbitrary and false' threshold dose model, implying that a dose received below the threshold would not be of 'regulatory concern.'" *Id.* The Commission found that "the NRC's regulations continue to ensure adequate protection of the public health and safety and the environment," and denied the petition for rulemaking. *Id.* at 71,086.

<sup>27</sup> Mr. Mangano published an article in 2000 regarding the levels of strontium-90 in baby teeth. J. M. Gould, E. J. Sternglass, J. D. Sherman, J. Brown, W. McDonnell, and J. J. Mangano, 2000. "Strontium-90 in Deciduous Teeth as a Factor in Early Childhood Cancer." International Journal of Health Services. Vol. 30, No. 3; and Mangano, J. et al., 2003 "An Unexpected Rise in Strontium-90 in US Deciduous Teeth in the 1990s." The Science of the Total Environment, Elsevier Press.

<sup>28</sup> "Backgrounder on Radiation Protection and the 'Tooth Fairy' Issue," is available on the NRC's public website at <http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/tooth-fairy.html>.

The Petitioner's reliance on a "comprehensive meta-analysis concerning leukemia in children living near nuclear plants" is similarly flawed. That meta-analysis addresses 17 international studies carried out in Germany, Spain, France, Japan, and North America; it does not address Prairie Island and is not relevant to the issue at bar. The issue here is whether the radiological effects at Prairie Island are so different from those at other plants that the effects at Prairie Island cannot be treated on a generic basis, *i.e.*, as a Category 1 issue in the GEIS.

Finally, the Petitioner cites several studies for the proposition that "Native Americans, in general, and Native Americans in Minnesota in particular, had higher cancer incidence rates and higher cancer mortality rates"<sup>29</sup> compared to other groups in the United State. These studies are, on their face, general in nature, and are not specific to Prairie Island. In addition, they cite multiple risk and societal factors associated with cancer rates and mortality. Thus they do not support the Petitioner's conclusion that the higher cancer and mortality rates are the result of radiation exposure from Prairie Island. Also, the Petitioner has supplied no expert opinion linking the cancer and mortality rates in these studies to Prairie Island. See *Georgia Tech*, LBP-95-6, 41 NRC at 300 (contention based on opinion that was not supported by basis or expert opinion held inadmissible). Accordingly, these studies do not constitute new and significant information that would warrant revisiting the classification of radiological effects at Prairie Island as a GEIS Category 1 issue.

As the Commission wrote in *Vermont Yankee and Pilgrim*, "[a]djudging 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." *Vermont Yankee and Pilgrim*, CLI-07-03, 65 NRC at 21. Contention 4 would have just that effect. It is, therefore, inadmissible.

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<sup>29</sup> Petition at 21.

9. Contention 5

APPLICANT'S ENVIRONMENTAL REPORT CONTAINS A SERIOUSLY FLAWED ENVIRONMENTAL JUSTICE ANALYSIS THAT DOES NOT ADEQUATELY ASSESS THE IMPACTS OF THE PINGP ON THE ADJACENT MINORITY POPULATION.

Petition at 24. Specifically, the Petitioner asserts that “the studies cited in Contention 4 expose significant environmental justice issues because the [PIIC] potentially represents a specific minority area with higher than expected cancer rates” and “the relicensing of the PINGP has a disparate impact on the [PIIC].” In support of these assertions, the Petitioner cites statistics on cancer rates in Native Americans, which indicate that Native Americans in the northern plains have higher cancer rates than the national average for certain types of cancers, that Native Americans in Minnesota have the highest overall cancer incidence rates, and that, in Minnesota, Native American mortality rates from cancer are significantly higher than those of non-Hispanic whites. Petition at 24-25. The Petitioner also asserts that “the ER does not adequately acknowledge the minority community near the PINGP or assess the impact of the facility on them,” despite “significant, adverse environmental impacts that will result from the relicensing of the PINGP that will fall disproportionately on the minority population of the [PIIC].” Petition at 25.

10. Staff Response to Contention 5

In order for an environmental justice contention to be admissible, it must “allege, *with the requisite documentary basis and support as required by 10 CFR Part 2*, that the proposed action will have significant adverse impacts on the physical or human environment that were not considered because the impacts to the community were not adequately evaluated.” Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040, 52,047 (Aug. 24, 2004) (emphasis added). Although not explicitly stated, the Petitioner appears to be asserting that renewal of the PINGP license would

cause disproportionately higher cancer rates in the PIIC. The Petitioner's contention is inadmissible because it fails to provide facts or expert opinions linking renewal of the PINGP license and a significant adverse impact on the environment; specifically, higher cancer rates. The Petitioner's citation to regional and state cancer statistics provides no indication of a nexus between operation of PINGP and higher cancer rates.<sup>30</sup> Similarly, the studies of health risks from nuclear power plants cited in support of Contention 4 address an issue that is generic, not specific to PINGP. Thus, the Petitioner's contention is inadmissible as speculation lacking sufficient factual support or expert opinion.

The Petitioner has similarly failed to provide any factual support or expert opinion for its assertion that "the ER does not adequately acknowledge the minority community near the PINGP." The LRA acknowledges the presence of the PIIC and provides an analysis of minority and low-income populations near the PINGP pursuant to NRC guidance. LRA at § 2.5.3; see also 69 Fed. Reg. at 52,048 (describing the NRC staff guidance for identifying minority or low-income populations). The Petitioner has failed to explain why the analysis provided is inadequate, and has failed to cite any specific portion of the analysis that is deficient. Because the Petitioner has not provided any facts or expert opinion indicating an error or omission in the analysis, this claim amounts to mere speculation, is unsupported and lacks specificity, and is inadmissible under the Commission's pleading rules. See 10 C.F.R. § 2.309(f)(1)(v); *Fansteel, Inc.*, CLI-03-13, 58 NRC at 203-204.

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<sup>30</sup> Importantly, the Petitioner provides no information on cancer incidence within the PIIC. According to the 2000 Census, there are over 54,000 Native Americans living in Minnesota, (<http://censtats.census.gov/data/MN/04027.pdf>), but only about 250 of them, or 1/2 of 1 percent, live on or near the Prairie Island Reservation. Petition at 3. Thus, there is no basis for concluding from the information provided by Petitioner that the cited cancer statistics are applicable to the members of the PIIC, or that the higher rates of cancers among Native Americans throughout Minnesota are related to operation of the PINGP.

Finally, the Petitioner has failed to show that a genuine dispute exists with regard to the LRA. In order to show that a genuine dispute exists, the petitioner must “challenge and identify specific portions of the application that are deficient, or alleged omissions, and provide supporting reasons for the dispute.” 10 C.F.R. 2.309(f)(1)(vi). A contention must “identify the disputed portion of the application, and *provide ‘supporting reasons’ for the challenge to the application.*” *USEC, Inc.*, CLI-06-10, 63 NRC at 456 (emphasis added); *see also Turkey Point*, LBP-90-16, 31 NRC at 521 & n.12 (1990)(stating that, in order to give rise to a genuine dispute, an allegation that a portion of a license application is "inadequate" or "unacceptable" requires factual support and a reasoned statement of why the application is unacceptable). Here, the Petitioner fails to identify the disputed portion of the ER; instead, it merely states that the Applicant’s environmental justice analysis is flawed, and, as discussed above, fails to give supporting reasons for that statement. Therefore, Contention 5 is also inadmissible under 10 C.F.R. § 2.309(f)(1)(vi).

11. Contention 6

THE LICENSE RENEWAL APPLICATION DOES NOT INCLUDE AN ADEQUATE PLAN TO MONITOR AND MANAGE THE EFFECTS OF AGING FOR CONTAINMENT COATINGS, WHOSE INTEGRITY IS DIRECTLY RELATED TO PLANT SAFETY AND THE PERFORMANCE OF THE EMERGENCY CORE COOLING SYSTEMS.

Petition at 26. The Petitioner asserts that “containment coatings should be included in the scope of license renewal, and the applicable aging effects should be appropriately managed” because failure of containment coatings could clog the containment sump and preclude the sump from functioning. *Id.* at 27.

12. Staff Response to Contention 6

Contention 6 is inadmissible because it raises an issue outside of the scope of license renewal. “[T]he NRC’s license renewal review focuses upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs.” *Turkey*

*Point*, CLI-01-17, 54 NRC at 7. As the Petitioner notes, containment coatings are addressed by an ongoing regulatory oversight program: “NMC carefully describes how the containment inservice inspection program provides a means to check the condition of coatings as a potential source of debris that could block the sump recirculation strainers.” Petition at 26. As the Commission noted, “Just as these oversight programs help ensure compliance with the current licensing basis during the original license term, they likewise can reasonably be expected to fulfill this function during the renewal term.” *Turkey Point*, CLI-01-17, 54 NRC at 9. The Commission went on to observe that “[s]ome aging-related issues are adequately dealt with by regulatory processes and need not be subject to further review during the license renewal proceeding.” *Id.* at fn 2, see also *Susquehanna Steam Electric Station*, LBP-07-4, 65 NRC at 309. Containment coatings, because they are subject to ongoing oversight that addresses their current status and will continue to address their status over the period of license renewal, are not within the scope of this proceeding. Because Contention 6 does not raise an issue within the scope of this proceeding, as required by 10 C.F.R. S 2.309(f)(1)(iii), it is inadmissible.

13. Contention 7

THE PINGP LICENSE RENEWAL APPLICATION DOES NOT INCLUDE AN ADEQUATE PLAN TO MONITOR AND MANAGE THE EFFECTS OF AGING DUE TO EMBRITTLEMENT OF THE REACTOR PRESSURE VESSELS AND THE ASSOCIATED INTERNALS.

Petition at 27. Specifically, PIIC asserts that the LRA “does not include any mention that it took embrittlement into account when it assessed the effect of transient loads.” *Id.* at 28. In addition, PIIC states that “[i]t is not clear . . . whether PINGP Units 1 and 2 have adequate standby surveillance capsules[.]” *Id.*

14. Staff Response to Contention 7

Contention 7 lacks specificity and fails to raise a material issue of fact or law, lacks support, and consists of speculation. It does not meet the requirement of 10 C.F.R.

§ 2.309(f)(iv), (v) and (vi) for an admissible contention.

Contention 7 lacks specificity; it does not identify any portion of the LRA that is deficient. *Fansteel, Inc.*, CLI-03-13, 58 NRC at 203-204I; *Comanche Peak*, LBP-92-37, 36 NRC at 380, *appeal dismissed as moot and decision vacated on other grounds*, CLI-93-10, 37 NRC 192 (1993).

The contention fails to raise a material issue because it erroneously asserts that the LRA does not address embrittlement. Section 4.2 of the LRA addresses Reactor Vessel Neutron Embrittlement and discusses how TLAs associated with embrittlement are either projected to be acceptable to 60 years or how they will be managed. The LRA contains detailed discussions of Reactor Vessel Fluence (LRA Section 4.2.1), Charpy Upper-Shelf Energy (LRA Section 4.2.2), Pressurized Thermal Shock (LRA Section 4.2.3), and Pressure - Temperature Limits (LRA Section 4.2.4). In the LRA, the Applicant states that the analyses were done pursuant to the requirements of 10 C.F.R. § 50.60 to show how PINGP meets the fracture toughness, pressure-temperature limits, and material surveillance program requirements for the reactor coolant boundary set forth in Appendices G and H of 10 C.F.R. § 50, and to show that the fracture toughness requirements for protection against pressurized thermal shock are met pursuant to 10 C.F.R. § 50.61. LRA at 4.2-1. Because the contention mistakenly asserts that reactor vessel embrittlement has not been addressed, it is inadmissible for failure to raise a material issue. *Southern Nuclear Operating Company* (Early Site Permit for Vogtle ESP Site), 65 NRC 237, 254 (2007)(citing *See Rancho Seco*, LBP-93-23, 38 NRC at 247-8, *review declined*, CLI-94-2, 39 NRC 91 (1994); *Comanche Peak*, LBP-92-37, 36 NRC at 384).

Furthermore, throughout Contention 7, PIIC quotes extensively from a declaration that was submitted by New York State in support of its Contention 25 in the Indian Point

proceeding.<sup>31</sup> In that declaration, Dr. Richard Lahey stated that he had reviewed the Indian Point LRAs and opined that some of the Indian Point reactor pressure vessel (“RPV”) structures and internal components “have serious embrittlement concerns which are not adequately addressed in Entergy’s relicensing application.” Lahey Declaration at 3-4. Dr. Lahey, however, submitted no declaration in support of PIIC. There is no evidence that he examined the Prairie Island LRA and no opinion from him as to any structure or component at the Prairie Island plant. While Dr. Lahey identified embrittlement issues at Indian Point, and New York State’s contention was admitted based on his declaration,<sup>32</sup> he has not done the same for Prairie Island. The mere citation of his declaration does not support admission of this contention regarding a different plant and one with respect to which he has not opined.

Moreover, the quotes and discussion attributable to Dr. Lahey are general in nature, regarding the effects of embrittlement experienced by all reactors. Such general discussion is not specific to Prairie Island and does not distinguish it from any other plant and thus is not sufficient to support admissibility.

A similar situation arose in the *Palisades* matter. *Palisades*, LBP-06-10, 63 NRC 314, *aff’d* CLI-06-17, 63 NRC 727 (2006). The petitioner in that matter proffered a contention supported by an individual who subsequently withdrew from his position as the petitioner’s expert. The *Palisades* board observed that the information attributed to the expert was “general and provides no specifics regarding, for example, the ‘present and prospective embrittlement trend of the RPV’ of the Palisades plant, which would distinguish it from any other nuclear power

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<sup>31</sup> Declaration of Dr. Richard T. Lahey, Jr., dated November 2007, submitted as an attachment to New York State Notice of Intention to Participate and Petition to Intervene in Entergy Nuclear Operations, Inc. (Indian Point, Units 2 and 3), Docket Nos. 50-247-LR and 50-286-LR, ADAMS Accession No. ML073400174.

<sup>32</sup> Indian Point Memorandum and Order at 103-104.

plant.” *Id.* at 351. The board found that the contention was unsupported and held it inadmissible, writing: “Making sense of this, particularly in the absence of any documents, sources, or expert on which Petitioners plan to rely at hearing, demands inferences we do not find to be warranted in this case; in other words, not enough has been provided to warrant ‘further inquiry.’” *Id.* at 352.

The PIIC also asserts that “it is not clear” whether PINGP has a sufficient number of standby surveillance capsules to allow the Applicant to meet the requirements of its surveillance program.

Surveillance capsules contain material representative of the material that makes up the RPV and, because the capsules are placed at the beltline of the vessel, they are exposed to the same neutron radiation and thermal environment as the vessel itself. Under the material surveillance program, capsules are withdrawn and tested on a periodic basis. These tests allow the plant operator to monitor embrittlement in the reactor vessel in a non-invasive and non-destructive manner. See Appendix H to 10 C.F.R. Part 50, Reactor Vessel Material Surveillance Program Requirements. The Applicant has proposed enhancements to the surveillance program<sup>33</sup> and the Petitioner claims that the Applicant’s discussion of these

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<sup>33</sup> The two enhancements the Applicant discussed in the LRA consist of

A requirement will be added to the program to ensure that all withdrawn and tested surveillance capsules, not discarded as of August 31, 2000, are placed in storage for possible future reconstitution and use. . . .

A requirement will be added to the program to ensure that in the event spare capsules are withdrawn, the untested capsules are placed in storage and maintained for future insertion.

enhancements raises doubt whether there are sufficient standby surveillance capsules to cover the license renewal period. Petition at 29.

The contention is inadmissible. It is, on its face, speculative. It is, moreover, unsupported by any document, factual analysis, or expert opinion and fails to provide reason to believe that PIIC's concern over the number of capsules is well-founded or that further inquiry is warranted. Finally, the Petitioner's concern over adequate standby surveillance does not present any issue or controversy for the Board to consider. The Petitioner has not alleged or suggested any requirement that an application must demonstrate an "adequate [number] of standby surveillance capsules" as part of an aging management program.<sup>34</sup> The Petitioner generally cites WCAP-14040-NP-A and RG 1.190,<sup>35</sup> but fail to explain how these two documents suggest that the PINGP LRA is deficient. On its face, the enhancement in the LRA suggests that there is an *abundance* of capsules, with some being considered extra or "spare" capsules in the vessel, as well as extra capsules withdrawn over the past eight years that might *possibly* be recycled.<sup>36</sup> The Petitioner has made no showing that the Reactor Vessel Surveillance Program cannot be executed due to an inadequate number of standby surveillance capsules.

For the foregoing reasons, Contention 7 is inadmissible.

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<sup>34</sup> See Petition at 29.

<sup>35</sup> *Id.*

<sup>36</sup> LRA § B2.1.34, page B-69; Petition at 29.

15. Contention 8

THE PROGRAM FOR MANAGING PRIMARY STRESS  
CORROSION CRACKING FOR NICKEL-ALLOW COMPONENTS  
FAILS TO COMPLY WITH 10 C.F.R. § 54.21(a)(3).

Petition at 30. Specifically, the Petitioner asserts that “[t]he LRA commitment to do whatever the NRC tells them to do does not demonstrate the effectiveness of an aging management program” and that “[t]he LRA violates 10 C.F.R. § 54.21(a)(3) because it does not address all ten elements of an effective aging management program for PWSCC aging effects on nickel-alloy components and welds.” Petition at 31.

16. Staff Response to Contention 8

This contention is inadmissible because the Petitioner has failed to provide a factual basis for its claim that the commitment in § B2.1.27 does not demonstrate the effectiveness of the AMP, or that the proposed AMP violates 10 C.F.R. § 54.21(a)(3). The Petition recites the contents of the AMPs in Appendix B, §§ B.2.1.27 and B.2.1.28 of the LRA, and briefly discusses NRC interim staff guidance, LR-ISG-19B and NRC Order EA-03-009. Petition at 30-31. None of these statements, however, support the Petitioner’s assertions. The regulation the Petitioner cites, 10 C.F.R. § 54.21(a)(3), states that an applicant must “demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation,” but does not require an applicant to address the ten elements of an effective aging management program. Moreover, the Petition does not even identify what those ten elements are, or where they can be found. “A contention must make clear why cited references provide a basis for a contention,” *USEC*, CLI-06-10, 63 NRC at 457, and it is not the Board’s responsibility “to search through pleadings or other materials to uncover arguments and support never advanced by the Petitioner themselves.” *Id.*, citing *Arizona Public Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149,155 (1991), and *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1

and 2), CLI-99-4, 49 NRC at 194; *see also Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998).

This contention is also inadmissible because the Petitioner has not provided facts or expert opinion supporting its position on this issue (i.e., supporting the deficiencies they allege), as required by 10 C.F.R. 2.309(f)(1)(v). As noted above, the facts the Petitioner does provide – descriptions of the Applicant's AMPs, discussion of interim staff guidance and an NRC order – are merely descriptive and do not support the alleged deficiencies.

Finally, the Petitioner has not satisfied § 2.309(f)(1)(vi), because it has not raised a genuine dispute with the Applicant on a material issue of fact or law. In order to satisfy this pleading requirement, the Petitioner must, in addition to identifying specific challenges to the application or omissions from the application, provide supporting reasons for those challenges or omissions. 10 C.F.R. § 2.309(f)(1)(vi); *See also USEC*, CLI-06-10, 63 NRC at 457. Moreover, an allegation that an 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. *Turkey Point*, LBP-90-16, 31 NRC at 521 & n.12. Here, the Petitioner has alleged a deficiency and an omission, but has failed to provide supporting rationale for its assertions. Thus, because its assertions amount to no more than conclusory allegations and speculation, the Petitioner fails to raise a genuine dispute and Contention 8 must be rejected.

17. Contention 9

THE AGING MANAGEMENT PLAN CONTAINED IN THE LICENSE RENEWAL APPLICATION VIOLATES 10 C.F.R. §§ 54.21 AND 54.29(a) BECAUSE IT DOES NOT PROVIDE ADEQUATE INSPECTION AND MONITORING FOR CORROSION OR LEAKS IN ALL BURIED SYSTEMS, STRUCTURES, AND COMPONENTS THAT MAY CONVEY OR CONTAIN RADIOACTIVELY-CONTAMINATED WATER OR OTHER FLUIDS AND/OR MAY BE IMPORTANT FOR PLANT SAFETY.

Petition at 32. The Petitioner states that the proposed AMPs for PINGP are inadequate for three reasons: “(1) it [sic] does not provide for adequate inspection of all systems, structures and components that may contain or convey water, radioactively-contaminated water, and/or other fluids, (2) there is no adequate leak prevention program designed to replace such systems, structures and components before leaks occur; and (3) there is no adequate monitoring to determine if and when leakage from these systems, structures and components occurs.” *Id.* Noting that “piping” is specifically listed as a “structure or component” in 10 C.F.R. § 54.21, the Petitioner states that pipes may contain radioactive water “by design” or due to “a structural or system failure.” *Id.* The Petitioner states further that “some of these piping systems work in conjunction with the essential service water system,” which removes decay heat from the reactor coolant system.

18. Staff Response to Contention 9

The Petitioner’s contention is inadmissible because it is overbroad and lacks the “reasonable specificity” required by the Commission’s pleading rules. See 10 C.F.R. § 2.309(f)(1)(i). The contention fails to identify a single specific system at PINGP, but rather purports to encompass “all buried systems, structures, and components that may contain or convey water, radioactively-contaminated water, and/or other fluids.” Petition at 32. In its supporting discussion, the Petitioner does refer to underground piping and tanks, and, more specifically, to piping that “works in conjunction with the essential service water [ESW] system to convey heat from the reactor coolant system to the ultimate heat sink,” Petition at 32; however, the Petitioner fails to identify a specific piping system from the PINGP LRA that falls within this contention.

The contention is outside the scope of the proceeding with respect to any buried SSCs that are not within the scope of license renewal. See 10 C.F.R. §§ 54.4 and 54.21. Furthermore, the contention, as a whole, is outside the scope of the proceeding because the

contention's focus is leaks resulting in radiological releases or harm to the environment. These leaks are addressed as current operating safety issues. See Turkey Point, CLI-01-17, 54 NRC at 6-10. The Staff does not contest that buried piping associated with the ESW system, or its analog at PINGP,<sup>37</sup> is within the scope of license renewal *with respect to its intended safety function*, which is to maintain the pressure boundary in order to maintain the ability to remove decay heat from the reactor.<sup>38</sup> However, the Petitioner does not allege that leaks from such buried pipes at PINGP will affect the ability of the piping to perform its intended safety function. Instead, the Petitioner makes the general assertion that "leaks and corrosion [from aging piping systems] threaten the integrity of such systems and compromise their ability to perform their intended function," which the Petitioner *incorrectly* identifies as "[maintaining] sufficient integrity to prevent the uncontrolled release of radioactivity to the environment." Petition at 33. The Petitioner also cites several examples of leaks that have occurred in nuclear power plants other than PINGP, *id.* at 33-34, but fails to explain how the leaks at other facilities support their contention regarding buried piping at PINGP and fails to cite any evidence of leaks from buried piping or tanks at PINGP.<sup>39</sup> In any event, prevention and detection of such leaks is a current operating issue that is outside the scope of license renewal. See 10 C.F.R. § 54.4(b); *Entergy*

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<sup>37</sup> The Cooling Water System at PINGP appears to be the analog of the ESW system referred to by Petitioner. See PINGP LRA at 2.3-56 – 2.3-58.

<sup>38</sup> See PINGP LRA at 2.3-62 (indicating that the intended function of piping in the Cooling Water system at PINGP is "Pressure Boundary"), 2.1-41 (defining the intended function "Pressure Boundary").

<sup>39</sup> In *Pilgrim*, the Board found that "leakage events at other plants" were not relevant to the contention at issue; rather, the "uniqueness of the Pilgrim plant and what may be required with regard to it" was the primary concern. *Pilgrim*, LBP-07-12, 66 NRC at 130. Accordingly, what is important for PINGP is not events at other plants, but the unique aspects of PINGP and the requirements that result from them.

*Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-07-12, 66 NRC 113, 129-30 (2007).<sup>40</sup>

The contention is also inadmissible because the Petitioner has failed to state an adequate factual basis for its contention and has failed to provide facts or expert opinion supporting its position. See 10 C.F.R. § 2.309(f)(1)(ii), (v). The basis requirement has several purposes, one of which is “to assure that the contentions apply to the facility at bar.” *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 1), LBP-86-10, 23 NRC 283, 285 (1986), citing *Peach Bottom*, ALAB-216, 8 AEC at 20-21. A “contention’s proponent, not the licensing board . . . is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement.” *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC at 22. Likewise, it is the petitioner’s obligation to provide the factual information or expert opinions necessary to support its contention adequately, *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262 (1996), and failure to do so requires that the contention be rejected. *Palo Verde*, CLI-91-12, 34 NRC at 155.

As the basis for its contention, the Petitioner lists several instances of leaks from pipes

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<sup>40</sup> 10 C.F.R. § 54.4(b) limits the intended functions that the SSCs must be shown to fulfill in § 54.21 to “those functions that are the bases for including them within the scope of license renewal as specified in [10 C.F.R.] § 54.4(a)(1)-(3).” In this case, the applicant has identified the intended function as maintaining the pressure boundary. Further, in the *Pilgrim* license renewal proceeding, the Board recognized that the objective of an aging management program for buried pipes or tanks is not “prevention of leaks *per se*,” but rather “prevention of an aging-induced leak large enough to compromise the ability of buried piping or tanks to fulfill their intended safety function.” *Pilgrim*, LBP-07-12, 66 NRC at 129. Thus, the *Pilgrim* Board found that the crucial issue is whether the AMPS “provide appropriate assurance . . . that the buried pipes and tanks *will not develop leaks so great as to cause those pipes and tanks to be unable to perform their intended safety functions.*” *Id.* (emphasis added). The *Pilgrim* Board also noted that “issues concerned with monitoring of radiological releases, or determinations of how leakage could harm health and/or the environment” are not properly in dispute in a license renewal proceeding because “they do not relate to aging and/or because they are addressed as part of ongoing regulatory processes.” *Id.* at 130 n. 81.

or high detected levels of tritium in groundwater near nuclear plants. Petition at 33-34. The Petitioner also cites the “Hausler Declaration submitted for the Indian Point license renewal”<sup>41</sup> (“Hausler Declaration”) to support allegations that the PINGP AMP for buried pipes and tanks is deficient because (1) it does not provide for evaluation of baseline conditions, (2) it does not provide support for postulated or “typical” corrosion rates within the facility, (3) it contains no provision for cathodic protection or other methods of preventing leaks, and (4) it does not commit to comply with the National Association of Corrosion Engineers (NACE) corrosion control standards.<sup>42</sup> Petition at 35-36.

Because the Petitioner has provided no facts or expert opinion *specific to PINGP* in support of its contention, the contention should be rejected. See *Palisades*, LBP-06-10, 63 NRC at 352 (rejecting a contention founded upon general facts that were not specific to the plant). With regard to the list of leaks at other facilities, the Petitioner fails to explain how these events relate to the claimed deficiencies in the PINGP LRA. Merely providing information as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support admission of the contention. See *Fansteel, Inc.*, CLI-03-13, 58 NRC at 203. The

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<sup>41</sup> The Staff notes that the Hausler Declaration was not attached to the PIIC petition and a specific citation to the document was not provided. Thus, a party unfamiliar with the Indian Point proceeding, in which fifteen petitions were submitted, has no way of discerning, from PIIC’s vague reference, where to find this document. A petitioner’s obligation to provide the information supporting his contention includes specifying where such information may be located if it is not attached to his petition. Neither the Board nor other parties should be expected to search through the record of another proceeding to find documents relied on by the Petitioner. Cf. *Turkey Point*, CLI-01-17, 54 NRC at 15 (stating that “the Commission should not be expected to sift unaided through . . . earlier briefs in order to piece together and discern Intervenor’s particular concerns or the grounds for their claims.”)

<sup>42</sup> These alleged deficiencies in the PINGP “Buried Piping and Tanks Inspection Program” consist of a nearly word-for-word recitation of language from the New York State Indian Point Petition, including its citations to the Hausler Declaration. See NYS IP Petition at 84, ¶¶ 10-12. The Staff notes that the cited paragraphs in the Hausler Declaration contain facts or statements that are specific to Indian Point (¶¶ 39-40, 42-44, 46-48); speculation (¶ 41); and general statements regarding degradation of pipes and recommendations for monitoring (¶¶ 47, 49). See Declaration of Rudolf H. Hausler, dated Nov. 26, 2007 (submitted with NYS IP Petition, Supporting Declarations and Exhibits, Volume I of II, dated Nov. 30, 2007).

Petitioner similarly fails to explain the significance, or the relevance, of the Hausler Declaration to this proceeding, given that it was prepared based on review of a different LRA for a different reactor in a different licensing proceeding.<sup>43</sup> Moreover, the Petitioner has provided no other facts or expert opinion indicating that the PINGP LRA exhibits the same deficiencies noted in the Hausler Declaration. Therefore, because the Petitioner has provided no facts or expert opinion to support the purported deficiencies *in the PINGP LRA*, its claim amounts to nothing more than “bare assertions and speculation,” and its contention is inadmissible. *Fansteel, Inc.*, CLI-03-13, 58 NRC at 208 (internal citations omitted).

Finally, the contention is inadmissible because it fails to raise a genuine dispute with the application regarding a material issue of fact or law. The regulations specifically require Petitioner to identify “specific portions of the application . . . that the petitioner disputes *and the supporting reasons* for each dispute,” or to identify specific omissions “*and the supporting reasons* for the petitioner’s belief.” 10 C.F.R § 2.309(f)(1)(vi). Here, the Petitioner points to sections of the LRA that describe the proposed inspection program for buried pipes and tanks, summarizes the contents of those sections, and asserts that the sections are inadequate, without providing valid supporting reasons for its claim. As discussed above, the Petitioner cannot rely on a list of leaks that occurred at other facilities, or on the Hausler Declaration, as support for its contention. Absent supporting expert opinion or relevant facts, the Petitioner has not raised a genuine issue with the application and the contention should be rejected.

19. Contention 10

THE LRA VIOLATES 10 C.F.R. §§ 54.21(a) AND 54.29

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<sup>43</sup> The Petitioner has provided no indication that the Hausler Declaration is based on a review of the PINGP LRA. PIIC has not, for example, provided a declaration from Dr. Hausler indicating that his Declaration from the Indian Point proceeding is applicable to PINGP and that he has reviewed the PINGP LRA. The mere quotation of an expert’s statements, without any attempt to interpret them, does not identify an error or omission in the application. *USEC*, CLI-06-10, 63 NRC at 472.

BECAUSE IT FAILS TO INCLUDE AN AGING MANAGEMENT PLAN FOR EACH ELECTRICAL TRANSFORMER THAT HAS A SAFETY-RELATED FUNCTION.

Petition at 36. The Petitioner states, without reference to supporting facts or expert opinion, that “[t]ransformers function without moving parts or without a change in configuration or properties” and that they perform a function described in 10 C.F.R. § 54.4. *Id.* In Contention 10, the Petitioner attempts to allege an omission in that they state that the electrical commodity groups in Table 2.5-1 do not identify the transformers as part of any of the commodity groups, and that Appendix B of the LRA does not identify an aging management program for the safety-related station transformers. *Id.* at 36-37.

20. Staff Response to Contention 10

Contention 10 is inadmissible because it lacks support in the form of factual analysis or expert opinion, and fails to demonstrate that the contention is material to the findings the NRC must make. 10 CFR 2.309(f)(1)(iv) – (v). Moreover, the Petitioner’s description of the function of transformers is incorrect.

The contention is based on the false premise that

Transformers function without moving parts or without a change in configuration or properties as defined in that regulation.<sup>[44]</sup>

Petition at 36. The Petitioner offers no factual support or expert opinion to support the assertion that transformers function without a change in configuration or properties. In contrast, 10 C.F.R. § 54.21(a)(1) provides examples of electrical components that are excluded from 10 C.F.R. § 54.4, and demonstrates by analogy that the function of transformers involves a change in

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<sup>44</sup> Petitioner’s reference to 10 C.F.R. § 54.4 is incorrect; that regulation does not define or discuss functioning without moving parts, changing properties, or changing configuration. The regulation that discusses these attributes is 10 C.F.R. § 54.21(a)(1). It states that structures and components subject to an aging management review shall encompass those structures and components that perform an intended function without moving parts or without a change in configuration or properties.

configuration or properties and, accordingly, requires no aging management review.

In its revisions to the License Renewal Rule the Commission discussed what it meant when it used the terms "active" and "passive." Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,477 (May 8, 1995) (to be codified at 10 C.F.R. Pts. 2, 52, and 54). The Commission explained that several industry concepts of "passive" structures and components were not accurate in their description of the structures and components that should be subject to an aging management review for license renewal. *Id.* Accordingly, the Commission developed a description of "passive" characteristics of structures and components. *Id.* To be "passive," the structure or component must 1) have no means of readily monitoring its degradation, and 2) perform its intended function without moving parts or without a change in *configuration or properties*. *Id.* (emphasis added.) The Commission considered a battery not to be passive because it changes its electrolyte properties during use. *Id.* The performance of a battery (supplying DC electric current and voltage) is readily monitored and would not be considered "passive." *Id.* The Commission concluded that "a change in configuration or properties" should be interpreted to include "a change in state," even though the term "change of state" is sometimes used as relating to "passive." *Id.* In another example, the Commission concluded that a transistor<sup>45</sup> can "change its state" even though it has no moving parts and does not chemically change, and therefore is not passive. *Id.* The Commission gave additional examples of non-passive electrical items: power inverters and power supplies. *Id.*

In addition, the Staff provided guidance to the industry on this topic. In Regulatory Guide 1.188, "Standard Format and Content for Applications to Renew Nuclear Power Plant Operating

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<sup>45</sup> A transistor is defined as "(1) an active semiconductor device with three or more terminals. It is an analog device. (2) A semiconducting device for controlling the flow of current between two terminals, the emitter and the collector, by means of variations in the current flow between a third terminal, the base, and the other two." IEEE 100, *Authoritative Dictionary of IEEE Standard Terms* 125 (7<sup>th</sup> ed. 2000).

Licenses," the Staff discussed the information to be submitted in an application for renewal of a nuclear power plant operating license. RG 1.188 (July 2001) at 1.188-2. The Staff documented its review and acceptance of the industry guideline Nuclear Energy Institute (NEI) NEI 95-10, "Industry Guideline for Implementing the Requirements of 10 CFR Part 54 – The License Renewal Rule," Revision 3 (March 2001) (available at ADAMS Accession No. ML011100576). *Id.* at 1.188-3. As documented in the NEI 95-10, Appendix B "Typical Structure, Component, And Commodity Groupings And Active/Passive Determinations For The Integrated Plant Assessment," transformers (e.g., instrument transformers, load center transformers, small distribution transformers, large power transformers, isolation transformers, coupling capacitor voltage transformers) are not part of a commodity group subject to an aging management review in accordance with 10 C.F.R. § 54.21(a)(1)(i). NEI-95-10 Rev. 3 at Appendix B B-14.

The Staff explained that transformers are not passive components

Transformers perform their intended function through a change in state by stepping down voltage from a higher to a lower value, stepping up voltage to a higher value, or providing isolation to a load. Transformers perform their intended function through a change in state similar to switchgear, power supplies, battery chargers, and power inverters, which have been excluded in §54.21(a)(1)(i) from an aging management review. Any degradation of the transformer's ability to perform its intended function is readily monitorable by a change in the electrical performance of the transformer and the associated circuits. Trending electrical parameters measured during transformer surveillance and maintenance such as Doble test results, and advanced monitoring methods such as infrared thermography, and electrical circuit characterization and diagnosis provide a direct indication of the performance of the transformer. Therefore, transformers are not subject to an aging management review.

NEI 95-10, Appendix C, "References" at C-11 (C-9 to C-14 provided the NRC's Determination Of Aging Management Review For Electrical Components, Letter to Douglas J. Walters, Nuclear Energy Institute, from Christopher I. Grimes, NRC, dated September 19, 1997).<sup>46</sup>

This interpretation is consistent with the Statement of Considerations that accompanied the promulgation of the license renewal rule. *Id.* at C-10, citing the 1995 Statement of Considerations, 60 Fed. Reg. at 22477.

Under the NRC's well-established rules, contentions that advocate stricter requirements than agency rules impose, or that otherwise seek to litigate a generic determination established by a Commission rulemaking, are inadmissible. See *e.g. Vogtle*, 65 NRC at 252 and cases cited therein.

As explained above, the NRC has already determined that, pursuant to 10 C.F.R. § 54.21(a)(1)(i), transformers are not subject to an aging management review. Accordingly, contrary to the unsupported assertion of the Petitioner, there is no requirement for the application to list transformers as a commodity group subject to an AMR, or to develop an AMP for transformers.

As observed by other boards, any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can be dismissed. *Vogtle*, 65 NRC at 254 (citing *Rancho Seco*, LBP-93-23, 38 NRC at 247-8, *review declined*, CLI-94-2, 39 NRC 91 (1994); *Comanche Peak*, LBP-92-37, 36 NRC at 384).

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<sup>46</sup> In the letter from C. Grimes to D. Walters, the NRC staff recommended in part revising Appendix B of NEI 95-10 to indicate that transformers do not require an aging management review. NEI 95-10 Rev. 3 at App. C-14. NEI 95-10 captures this recommendation. *Id.* at Appendix B B-14.

The Petitioner fails to provide any reference to any regulation or Commission decision that would invalidate the Staff's determination of how transformers function and how to apply 10 C.F.R. § 54.21(a)(1)(i) to transformers.

21. Contention 11

THE PROGRAM FOR MANAGING FLOW ACCELERATED  
CORROSION (FAC) FAILS TO COMPLY WITH 10 C.F.R.  
§ 54.21(a)(3)

Petition at 37. The Petitioner states that, other than the assertion of conformance with Electric Power Research Institute guidelines and the "generic" program description, the application does not offer any demonstration that "FAC effects" will be adequately managed. Petition at 38. The Petitioner alleges that the proposed FAC program is deficient because it relies on the computer code CHECWORKS without sufficient benchmarking<sup>47</sup> of the operating parameters, and that the program fails to specify the method and frequency of component inspections or criteria for component repair or replacement. *Id.* at 40. The Petitioner states that, because of large uncertainties in CHECWORKS, it is important that PINGP clearly describe the basis for its determination that the FAC program will adequately manage FAC, and that PINBP must also describe the acceptance criteria, which would define when a component would be replaced or repaired, and the inspection requirements that apply to components. *Id.* at 42-43.

22. Staff Response to Contention 11

The Staff opposes Contention 11. It is unsupported; the Petitioner provides no expert witness or facts to support its assertions. Furthermore, the Petitioner does not directly dispute any portion of the application, but instead alleges a vague omission of details.

The Petitioner asserts that the "contention is supported by the expert Declaration of Dr.

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<sup>47</sup> The Petitioner believes six to fifteen years of benchmarking is sufficient, depending on the geometry of the piping being modeled. See Petition at 41.

Joram Hopenfeld (November 29, 2007) [sic]<sup>48</sup> for the Indian Point license renewal application." *Id.* Contrary to the assertions by the Petitioner, Dr. Hopenfeld's four-paragraph declaration in the Indian Point matter did not provide any technical details regarding FAC. Instead, it stated 1) that he was an expert, 2) that he was hired by Riverkeeper to review Entergy's application for Indian Point, 3) that he was familiar with aspects of Entergy's application and NRC regulations, and 4) that he helped Riverkeeper prepare two contentions.<sup>49</sup> The declaration by itself provides no facts or opinion regarding FAC; it simply supports two of Riverkeeper's contentions in a separate proceeding.

The regulation at 10 C.F.R. § 2.309(f)(2) requires the proponent of a contention to provide the alleged facts or expert opinions on which the petitioner intends to rely at hearing. The declaration of a potential witness from another proceeding is not a substitute for an "expert opinion" and cannot be relied upon as such as evidence at a hearing. Nothing in the Petition suggests that Dr. Hopenfeld was familiar with or read the PINGP application or the Petition. Quotes from his declaration in the Indian Point proceeding do not support admission of Contention 11 here, where the contention raises issues with respect to a different plant and one with respect to which Dr. Hopenfeld has not opined. For the reasons set forth in the Staff's

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<sup>48</sup>The declaration submitted by Dr. Hopenfeld in the Indian Point proceeding was actually dated November 28, 2007. Riverkeeper Exhibit 1, "Declaration of Dr. Joram Hopenfeld In Support Of Riverkeeper's Contentions TC-1 AND TC-2" (November 28, 2007).

<sup>49</sup> Dr. Hopenfeld stated,

I assisted Riverkeeper with the preparation of contentions TC- 1 (Inadequate Time Limited Aging Analyses and Failure to Demonstrate That Aging Will be Managed Safely) and TC-2 (Failure to Provide for Adequate Management of Flow-Accelerated Corrosion). The factual statements in those contentions are true and correct to the best of my knowledge, and the expressions of opinion in the contentions are based on my best professional judgment.

Hopenfeld at 1-2.

Response to Contention 7, the rationale of which is incorporated herein by reference, Contention 11 is inadmissible.

Even if statements attributed to Dr. Hopfenfeld are considered to be "alleged facts" they still do not support admission of Contention 11. First, the alleged statements fail to show controversy. The Petitioner asserts that Dr. Hopfenfeld would be satisfied if a facility benchmarked CHECWORKS for six to fifteen years, depending on the geometry of the piping. Petition at 41.<sup>50</sup> However, after laying down this unestablished standard, the Petitioner fails to assert controversy by failing to allege that PINGP's benchmarking is inadequate. To the contrary, the Petition assumes that PINGP has been using CHECWORKS for 21 years, well beyond the period Dr. Hopfenfeld felt was necessary for Indian Point. See Petition at 42 ("Given that CHECWORKS was released to the industry in 1987, and presuming that all plants have been using it [.]") Therefore this is fundamentally fatal to any inadequate benchmarking allegation in Contention 11 with respect to PINGP.

Second, the Petitioner mischaracterizes NUREG/CR-6936, the only document offered in support of its position.<sup>51</sup> Any supporting material provided by a petitioner, including those

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<sup>50</sup> In the other proceeding, regarding the other facility, the declarant believed

CHECWORKS can be reliably used to predict pipe wall thinning only so long as: (a) all relevant locations are benchmarked for relevant plant parameters; (b) relevant plant parameters do not change significantly over time; and (c) benchmark data on relevant plant parameters are collected for a sufficiently long period of time.

Petition at 40 (emphasis added). Six to fifteen years of benchmarking is sufficient. Petition at 41 (discussing Dr. Hopfenfeld's judgment).

<sup>51</sup> They generally allege that CHECWORKS is not effective in reducing the number of pipe failures based on a comparison of data from an 11-year period starting in 1976 with a 17-year period starting in 1988. Petition at 42 (stating data came from NUREG/CR-6936, "Probabilities of Failure and Uncertainty Estimate Information for Passive Components – A Literature Review," May 2007).

portions of the material that are not relied upon, is subject to Board scrutiny. *Vogtle*, 65 NRC at 254 (citing *Yankee Atomic Electric 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)). A Board will carefully examine material provided in support of a contention to confirm that, on its face, it supplies an adequate basis for the contention. *Id.*, see *Vermont 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)).

According to NUREG/CR-6936,

Flow-accelerated corrosion (FAC) is defined as a chemical process whereby the normally protective oxide layer on carbon or low-alloy steel dissolves into a stream of flowing water or water-steam mixture.

NUREG/CR-6936 at 5.24. On its face, NUREG/CR-6936 contradicts the Petitioner's definition of FAC.<sup>52</sup>

Further examination of the report shows that it flatly contradicts the Petitioner's claims. For example, while the Petitioner claims that "the behavior of FAC is not completely understood" (Petition at 38) the NUREG/CR-6936 states,

The cause and effect of FAC is well understood, and the industry has implemented FAC inspection programs, as well as piping replacements using FAC resistant materials such as stainless steel, carbon steel clad on the inside diameter with stainless steel,

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<sup>52</sup> The error is where Petitioner states, "As described in Dr. Hopenfeld's declaration, FAC is a pipe wall thinning phenomena in which the thinning rate is accelerated by flow velocity. FAC includes wall thinning by electrochemical corrosion, erosion-corrosion, and cavitation-erosion." Petition at 38. By contrast, according NUREG/CR-6936, "In the United States, flow-accelerated corrosion (FAC) is commonly but incorrectly known as "erosion-corrosion." Unlike FAC, the accelerated corrosion rates in the erosion-corrosion process are dominated by mechanical factors such as the impact of water droplets on the surface in two-phase flow steam systems, cavitation effects, or entrained particles." NUREG/CR-6936 at 5.24 n.(b).

More significantly, the four-paragraph declaration of Dr. Hopenfeld did not describe FAC at all. The Petitioner is apparently confusing the petition filed by Riverkeeper in Indian Point with the declaration of Dr. Hopenfeld in support of Riverkeeper's petition.

or chrome-molybdenum alloy steel.

NUREG/CR-6936 at 5.25. In other words, the document that the Petitioner brings to the Board's attention directly disputes the Petitioner's argument.

In addition, the Petitioner presented NUREG/CR-6936 in an attempt to demonstrate that FAC programs using CHECWORKS were not effective. See Petition at 42. First, NUREG/CR-6936 makes no mention of CHECWORKS. Second, NUREG/CR-6936 documented a finding that is contrary to the finding the Petitioner puts forward. Instead of showing greater problems after 1987, the document states that the pre-1987 and post-1987 service experience was an indication of the effectiveness of FAC mitigation programs implemented by industry in the aftermath of lessons learned from FAC-induced pipe failures at Trojan in 1985 and Surry Unit 2 in 1986. NUREG/CR-6936 at 5.25; Table 5.15 Summary of Service Experience Involving Flow-Accelerated Corrosion, at 5.25.<sup>53</sup>

For the foregoing reasons, Contention 11 is inadmissible.

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<sup>53</sup> The raw data, which was not normalized on a per-plant basis, compared two 17-year periods (from 1970-1987 with 1988-2005). It showed that for PWRs, the number of "Part Through Wall" leaks went from 818 in the pre-1987 period to 195 in the post-1987 period. Table 5.15 Summary of Service Experience Involving Flow-Accelerated Corrosion, NUREG/CR-6936 at 5.25. While the petitioner is correct that the number of "Through Wall" leaks increased from 89 to 150, the Petitioner's attempt to dispute the findings of NUREG/CR-6936 fails for a number of reasons. First, the petitioner offers no credible reason why the assessment made by the authors of NUREG/CR-6936 should be disregarded. Second, Petitioner fails to inform the Board of the dramatic drop in the number of part through-wall leaks. Third, Petitioner fails to consider that the number of plants operating increased, thus an increase in the overall number of failures is to be expected. Fourth, the total number of part-through-wall and through wall leaks dropped significantly from 907 (818+98) to 345 (195+150). Petitioner's attempt to present only part of the NUREG/CR, while neglecting to present what the NUREG/CR actually found, demonstrates that there is no support for Contention 11.

CONCLUSION

For the reasons set forth above, the NRC Staff respectfully submits that the Prairie Island Indian Community has failed to submit at least one admissible contention and its petition for leave to intervene and request for hearing should be denied.

**/Signed (electronically) by/**

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**/Executed in accord with 10 CFR  
2.304(d)/**

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
)  
NUCLEAR MANAGEMENT COMPANY, LLC ) Docket Nos. 50-282-LR/ 50-306-LR  
)  
(Prairie Island Nuclear Generating Plant ) ASLBP No. 08-871-01-LR-BDOI  
Units 1 and 2 )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO THE PRAIRIE ISLAND INDIAN COMMUNITY'S PETITION FOR LEAVE TO INTERVENE," dated September 12, 2008, have been served upon the following by the Electronic Information Exchange, this 12<sup>th</sup> day of September, 2008:

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