

September 23, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 50-443-LA
FPL Energy Seabrook, LLC)	
)	ASLBP No. 08-872-02-LA-BD01
(Seabrook Station, Unit 1))	
)	

NRC STAFF'S ANSWER TO SAPORITO ENERGY
CONSULTANTS' PETITION TO INTERVENE AND REQUEST FOR HEARING

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the Staff of the Nuclear Regulatory Commission ("Staff") hereby answers the "Request for Hearing and Leave to Intervene" ("Petition") submitted by and through Thomas Saporito as President of Saporito Energy Consultants ("Petitioners" or "SEC"). For the reasons stated below, the Petition should be denied for failure to demonstrate standing and to submit an admissible contention.

BACKGROUND

By letter dated February 8, 2008, Florida Power & Light Company ("FPL" or "Applicant") submitted an application to change Seabrook Station, Unit 1 Technical Specifications ("TS").¹ The amendment proposes to "delete Surveillance Requirement 4.6.3.1, which specifies post-maintenance testing requirements for containment isolation valves (CIV)." Amendment Request at 2. The Applicant stated that this amendment "will eliminate unnecessary testing and

¹ See Letter from Gene F. St. Pierre, FPL Energy Seabrook, LLC to the NRC Document Control Desk, Seabrook Station License Amendment Request 07-04 "Application for Amendment to Delete Post-Maintenance Testing Surveillance Requirement for Containment Isolation Valves" (Feb. 8, 2008) ("Amendment Request" or "LAR") (ADAMS Accession No. ML080440304).

provide flexibility in determining the proper post-maintenance testing for CIVs being returned to service following maintenance activities.” *Id.* at 2. On August 26, 2008, the Staff published a notice of consideration of issuance of the proposed amendment, proposed no significant hazards consideration determination, and opportunity for a hearing in the *Federal Register*.² In response to this notice, SEC, through Mr. Saporito, filed their Petition on August 29, 2008.³

DISCUSSION

I. Legal Standards

A. Legal Standards Governing Standing

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that he or she has standing to do so. Section 189a of the Atomic Energy Act of 1954, as amended (“AEA”), 42 U.S.C. § 2239(a), instructs the Commission to grant a hearing upon the request of “any person whose interest may be affected by the proceeding.”

Commission regulations require that a petitioner demonstrate standing under the provisions of 10 C.F.R. § 2.309(d) and proffer at least one admissible contention. 10 C.F.R. § 2.309(a).

Section 2.309(d) requires that a petition or request to intervene state the following:

- (i) the name, address and telephone number of the requester or petitioner;

² Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazard Considerations, 73 Fed. Reg. 50,356, 50,361 (Aug. 26, 2008).

³ This is the fourth of a recent series of petitions by Petitioners that includes unsupported requests and illustrates a disregard for the Commission’s regulations regarding standing and contention admissibility requirements. See, e.g., Request for Hearing and Leave to Intervene (Aug. 20, 2008) (regarding Point Beach License Amendment); Request for Hearing and Leave to Intervene (Aug. 18, 2008) (regarding Turkey Point License Amendment); Request for Hearing and Leave to Intervene (July 2, 2008) (regarding St. Lucie confirmatory order). This continuing disregard for the Commission’s regulatory and case law pleading requirements should warrant summary rejection. In fact, the Secretary, pursuant to 10 C.F.R. § 2.346(h), has the authority to deny requests for failing “to comply with the Commission’s pleading requirements . . . and fail[ing] to set forth an arguable basis for further proceedings.” The resources and efficiencies of the Staff, the Board, and Applicant should not be continuously tested by clearly deficient petitions.

- (ii) the nature of the requestor's/petitioner's right under the Act 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)(i)-(iv).

The Commission traditionally looks to judicial concepts of standing when determining whether a petitioner has established the necessary "interest," as required under § 2.309(d)(iv). *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 322-23 (1999); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) ("Yankee Rowe"). Federal jurisprudence requires a petitioner to demonstrate that (1) he has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute⁴ (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See, e.g., Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995).

The injury-in-fact must also be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). A petitioner must have a "real stake" in the outcome of the proceeding, and while this stake need not be "substantial," it must be "actual," "direct," or "genuine." *Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 447-48 (1979), *aff'd* ALAB-549,

⁴ In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act ("NEPA"). *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998).

9 NRC 644 (1979). A petitioner himself, must fulfill the standing requirements; “he may not derive standing from the interests of another person or organization.” *Florida Power and Light* (St. Lucie, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989) (“St. Lucie”) (internal citations omitted). In addition, a person may not represent another absent express authorization to do so. *Id.*, citing *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1) ALAB-535, 9 NRC 377, 394-400 (1979).

An organization may base its standing either upon the interest of at least one of its members who has authorized the organization to represent him or her (i.e., representational standing) or upon the licensing action's effect upon the interest of the petitioning organization itself (i.e., organizational standing). See *Yankee Rowe*, CLI-98-21, 48 NRC at 195. An organization seeking to intervene in its own right (i.e., based on organizational standing) must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or NEPA. See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 528-30 (1991).

When an organization asserts a right to represent the interests of its members, judicial concepts of standing require a showing that: (1) its member(s) would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization's lawsuit. See *Private Fuel Storage*, CLI-99-10, 49 NRC at 323, citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). In addition, the organization “[m]ust demonstrate how at least one member may be affected by the licensing action, must identify that member by name/address, and must show that the organization is authorized to request a hearing on that member’s behalf.” *N. States Power Co.* (Monticello; Prairie Island, Units 1 & 2; Prairie Island ISFSI), CLI-00-14,

52 NRC 37, 47 (2000).

In certain situations, the Commission has also recognized standing based on a petitioner's proximity to the facility at issue. See *Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 23 (2002). This recognition “presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity.” *Id.*, citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-6, 53 NRC 138, 146 (2001), *aff’d on other grounds*, CLI-01-17, 54 NRC 3 (2001). In construction permit and operating license proceedings, the “proximity presumption” generally applies to petitioners residing within fifty miles of a reactor. See *Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994). In an operating license amendment proceeding, however, a petitioner cannot base his or her standing on proximity unless the proposed action “quite obvious[ly] entails an increased potential for offsite consequences.” *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 191 (1999), *pet. for rev. denied sub nom. Dienethal v. NRC*, 203 F.3d 52 (D.C. Cir. 2000). Absent such “obvious potential for offsite consequences, a petition must allege some specific ‘injury-in-fact’ that will result from the action taken” *St. Lucie*, CLI-89-21, 30 NRC at 329-30.

To determine whether a petitioner is within the potential zone of harm of the proposed action, the nature of the proposed action and the significance of the radioactive source must be examined. See *Sequoyah/Watts Bar*, LBP-02-14, 56 NRC at 23. This determination is made on a case-by-case basis by examining the significance of the radioactive source in relation to the distance involved and the type of action proposed. See *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17 (1995), *citing*

Sequoyah Fuels, CLI-94-12, 40 NRC at 75 n.22.

B. Legal Standards Governing the Admission of Contentions

To gain admission to a proceeding as a party, a petitioner must submit at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f). 10 C.F.R. § 2.309(a).

This regulation requires a petitioner to:

- (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 support 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 petitioner 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.

10 C.F.R. § 2.309(f)(1).

The Commission has emphasized that its rules on contention admissibility establish an evidentiary threshold more demanding than a mere pleading requirement and is "strict by design." *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *reconsideration denied*, CLI-02-1, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for dismissing a contention. See

Private Fuel Storage, CLI-99-10, 49 NRC at 325. The contentions should refer to the specific documents or other sources for which the petitioner is aware and upon which he or she intends to rely in establishing the validity of the contentions. *Millstone*, CLI-01-24, 54 NRC at 358, *citing Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 333 (1999). The petitioner must submit more than “bald or conclusory allegation[s]” of a dispute with the applicant. *Id.* A contention will not be admitted “if the petitioner has offered no tangible information, no experts, no substantive affidavits, but instead only bare assertions and speculation.” *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003) (internal quotations omitted).

II. SEC’s Standing

To obtain standing in this proceeding, SEC must show “either an immediate or threatened injury to its organizational interests or to the interests of identified members.” *Georgia Tech*, CLI-95-12, 42 NRC at 115. In support of SEC’s standing, the Petition merely lists Thomas Saporito, the president of SEC with a street address and P.O. Box in Jupiter, Florida. Petition at 1. Petitioners claim that Mr. Saporito, as a U.S. citizen, has “an inherent right under the [AEA] to be made a party to the proceeding,” and therefore, based on Mr. Saporito’s citizenship and his status as president of SEC, SEC has a right to be made a party as well. *Id.* at 2. Petitioners also state that Mr. Saporito and SEC have “real property and personal property and financial interests . . . which can be adversely affected” if operations at Seabrook Station “cause a release of radioactive particles into the environment.” *Id.* Specifically, Petitioners claim that such a release “could render the Petitioners’ prospective business partners and clients’ homes and property unavailable for human contact or use for many years or forever,” and “could forever compromise the environment where the Petitioners[’] prospective business partners and clients reside, live and do business and therefore economically harm Petitioners.” *Id.*

Neither Mr. Saporito, as an individual, nor SEC, as an organization, has made the required showing to support standing.⁵ First, contrary to Petitioners' assertion, there is no "inherent right" under the AEA, based on U.S. citizenship or otherwise, to participate as a party in a proceeding. See *BPI v. Atomic Energy Commission*, 502 F.2d 424, 428 (D.C. Cir. 1974) (stating that the AEA "does not confer the automatic right of intervention on anyone").

Second, Petitioners' vague assertions of possible harm do not amount to a showing of "concrete and particularized" injury to Mr. Saporito's interests or SEC's interests that is "actual or imminent, not conjectural or hypothetical." *Gore*, CLI-94-12, 40 NRC at 72. Moreover, Petitioners vaguely assert only that harm could result from "operations at . . . Seabrook Nuclear Plant" (Petition at 2) and fail to demonstrate that such injury would result *from the challenged license amendment*. *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 & 2), LBP-07-10, 66 NRC 1, 15 (2007), *citing Zion*, CLI-99-4, 49 NRC at 188 (1999). Specifically, Petitioners fail to indicate how the challenged license amendment, which simply "eliminate[s] unnecessary testing and provide[s] flexibility in determining the proper post-maintenance testing for CIVs being returned to service following maintenance activities" (Application at 2), would increase the risk of an offsite release of radioactive material. Petitioners have stated merely a vague "general objection to the facility," and therefore they have not demonstrated injury-in-fact in this license amendment proceeding. *Id.*

Third, Petitioners cannot gain standing in this proceeding by asserting injuries to others, nor can they represent the interests of others without express authorization. *St. Lucie*,

⁵ See *Florida Power & Light Co* (St. Lucie Nuclear Plant, Units 1 & 2), LBP-08-14 at 11-12 (denying this Petitioner standing).

CLI-89-21, 30 NRC at 329.⁶ Here, Petitioners have simply stated that “prospective business partners and clients” have real property and financial interests; they have not identified any *actual* business partners or clients who would be affected. See Petition at 2. Therefore, Petitioners’ assertion is merely speculative and insufficient to support standing.

Finally, Petitioners cannot rely on the proximity presumption to support their standing. Both Mr. Saporito and SEC have listed addresses in Jupiter, Florida, over 1,200 miles from Seabrook Station and far beyond the 50-mile radius that would grant them proximity standing in a construction permit or operating license proceeding.⁷ In this license amendment proceeding, where the 50-mile presumption does not apply, Petitioners have made no showing of an “obvious potential for offsite consequences” from the requested action that would justify recognizing any proximity presumption, much less one extending over 1,200 miles from the plant site. See *St. Lucie*, CLI-89-21, 30 NRC at 329-30. Nor have Petitioners shown “a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm or threat” from this purely administrative license amendment. *Zion*, CLI-99-4, 49 NRC at 192. Rather, Petitioners have provided only conclusory allegations about possible property, environmental and economic harm from operations at Seabrook Station. Therefore, because the proximity presumption does not apply, and because Mr. Saporito and SEC have failed to demonstrate injury-in-fact, Petitioners do not have standing in this proceeding.

⁶ The Staff notes that the *St. Lucie* case also involved a petition from Mr. Saporito, in which he attempted to demonstrate his own standing through assertions of injury to others. *St. Lucie*, CLI-89-21, 30 NRC at 328. The Commission found that the petition “fail[ed] to meet the threshold standards for instituting a proceeding under the Commission’s regulations.” *Id.* at 330.

⁷ According to the distance calculator available at <http://www.infoplease.com/atlas/calculate-distance.html>, Jupiter, Florida is approximately 1,230 miles from Portsmouth, New Hampshire. Seabrook Station is located 13 miles south of Portsmouth, New Hampshire. <http://www.nrc.gov/info-finder/reactor/seab1.html> (last visited Sept. 11, 2008). The calculation of distance is based on a straight-line distance between points.

III. SEC's Contentions

The Petitioners' three contentions are inadmissible because they fail to satisfy, or even address, the Commission's contention pleading requirements set forth in 10 C.F.R.

§ 2.309(f)(1).⁸ A contention must be rejected if it fails to meet any one of these requirements.

Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 & 3), CLI-91-12, 34 NRC 149, 155 (1991).

Petitioners' contentions read as follows:

- (1) Petitioners contend here that the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment to the technical specifications removes the surveillance requirement related to post-maintenance testing of containment isolation valves (CIVs). Deletion of these surveillance requirements could lead to an accident; and consequently, the proposed change significantly increases the probability of an accident previously evaluated. The proposed change alters the reliability of operability of CIVs, and continued testing may not confirm the operability of these valves following maintenance activities to the extent required to ensure for the health and safety of the public. The CIVs may not continue to be tested in a manner and at a frequency that demonstrates they remain capable of performing their intended safety function to the extent prior to the proposed amendment change. As a result, the proposed amendment significantly affects the consequences of an accident previously evaluated. Therefore, the proposed change involves a significant increase in the probability or consequences of an accident previously evaluated.
- (2) The proposed change appears to create the possibility of a new or different kind of accident from any previously evaluated. The proposed change appears to introduce new accident scenarios, failure mechanisms, or single failures. The change does not add new equipment to the plant, but does modify or remove existing equipment reliability, and therefore could significantly change the operation of the plant. The ability

⁸ Other than stating their contentions, Petitioners provide no other discussion of the contentions in their petition. Petitioners have provided no discussion or explanation of the bases for their contentions, no facts, expert opinions, or documents that support their contentions, and no supporting reasons for the alleged deficiencies in the licensee's analysis of no significant hazards consideration. See Petition at 2-4. On its face, therefore, the Petition is deficient because it fails to address the requirements of 10 C.F.R. § 2.309(f)(1).

of any operable equipment to perform its specified safety function may be adversely affected by this change. Therefore, the proposed change appears to create the possibility of a new or different kind of accident from any previously evaluated.

- (3) The proposed change involves a significant reduction in the margin of safety. The proposed change appears to alter the initial conditions or results of any accident analyses. The operability requirements, performance, and design of the CIVs may not remain unchanged with this proposed change. The CIVs may not continue to meet the design bases for the containment isolation system as described in the Seabrook Station [updated final safety analysis report]. The proposed amendment will not minimize unnecessary testing of CIVs because the testing should continue unabated. Therefore, the proposed change involves a significant reduction in the margin of safety.

Petition at 3-4.

At the outset, the Staff notes that each of these contentions challenges the Staff's proposed no significant hazards consideration determination for this proposed amendment. Specifically, each contention proposes that one of the three criteria of 10 C.F.R. § 50.92(c) has not been met. A licensing board may not entertain such a challenge. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-09-7, 33 NRC 179, 183 (1991); *see also* 10 C.F.R. § 50.58(b)(6) (only the Commission, at its discretion, may review such a determination).

Under the Commission's pleading requirements, a petitioner must provide "a *specific* statement of the issue of law or fact to be raised or controverted." 10 C.F.R. § 2.309(f)(1)(i) (emphasis added). The filing of "vague, unparticularized contentions" is prohibited. *Oconee*, CLI-99-11, 49 NRC at 338. Here, instead of identifying a specific issue of law or fact related to the license amendment, petitioners merely parrot the language of the Applicant's no significant hazards consideration determination ("NSHCD") analysis. In Contention 1, for example, Petitioners do not identify specific changes that could "increase the probability or consequences of an accident previously evaluated." *See* Petition at 3. Petitioners simply state, without any specificity, that the proposed change "could lead to an accident," alters the reliability of CIV

operability, and continued testing of CIVs may not be conducted “in a manner and at a frequency that demonstrates they remain capable of performing their intended safety function” Petition at 3. Similarly, Contention 2 does not identify specific changes in physical plant parts or modes of operation that could “create the possibility of a new or different” accident. See *id.* Finally, Contention 3 also fails to indicate what initial conditions or previous accident analysis results would be altered, resulting in a “significant reduction in the margin of safety.” See *id.* Thus, because Petitioners have failed to state their contentions with sufficient particularity as required by 10 C.F.R. § 2.309(f)(1)(i), the contentions should be rejected.

In addition, in order for a contention to be admissible, a petitioner must “provide some sort of minimal basis indicating the potential validity of the contention.” See Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989). 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).

Here, Petitioners have not provided any supporting information to support the bases of their contentions. See *generally* Petition. Instead, Petitioners have simply formulated contentions by negating statements in the Applicant’s NSHCD analysis.⁹ For example, where

⁹ For example, the Applicant’s analysis for the second prong of the NSHCD states as follows:

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not introduce any new accident scenarios, failure mechanisms, or single failures. The change does not add new equipment to the plant, does not modify or remove existing equipment, and does not significantly change the operation of the plant. The ability of any operable equipment to perform its specified safety

(continued. . .)

the Applicant states that the amendment does “not involve a significant reduction in the margin of safety” (73 Fed. Reg. at 50,361), Petitioners state that the “change involves a significant reduction in the margin of safety” (Petition at 3). Thus, Petitioners contentions should be rejected because they fail to state even a minimal basis as required by 10 C.F.R.

§ 2.309(f)(1)(ii).

A petitioner must also provide a “concise statement of the alleged facts or expert opinions which support the [petitioner’s] position on the issue . . . together with references to specific sources and documents on which [the petitioner] intends to rely to support its position.” 10 C.F.R. § 2.309(f)(1)(v). Petitioners have failed to provide any statement of facts, any expert opinions, or any references to sources or documents supporting their position (see Petition); therefore, their contentions amount to nothing more than “bare assertions and speculation” which must be rejected. *Fansteel*, CLI-03-13, 58 NRC at 203.

Finally, Petitioners must “show that a genuine dispute exists” with regard to the license amendment application. 10 C.F.R. § 2.309(f)(1)(vi). To do so, a petition must “identify the disputed portion of the application, and provide ‘supporting reasons’ for the challenge to the application,” or, if the petitioner alleges that information has been omitted from the application, “identify each [omission] and the supporting reasons for the petitioner’s belief.” *USEC*, CLI-06-10, 63 NRC at 456 (internal citations omitted). Here, the Petitioners have not

(. . .continued)

function is unaffected by this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

73 Fed. Reg. at 50,361. Comparing the Applicant’s language with the Petitioners’ second contention illustrates that Petitioners formed their contentions by negating the statements made by the licensee. *Compare id. with* Petition at 3. A comparison of the licensee’s NSHCD analysis with contentions 1 and 3 will also illustrate this. *Compare* 73 Fed. Reg. at 50,361 *with* Petition at 3-4.

identified specific portions of the application that they dispute, or specific omissions, in any of their contentions. See Petition at 3-4. Nor have they supplied supporting reasons for such challenges or omissions. *Id.* Therefore, the Petitioners have failed to raise a genuine dispute with the application and their contentions must be rejected.

CONCLUSION

For the foregoing reasons, the Petition filed by Thomas Saporito as President of SEC fails to comply with the standing requirements of 10 C.F.R. § 2.309(d) and the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). Therefore, the petition to intervene and request for hearing should be denied.

Respectfully submitted,

Signed (electronically) by

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Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated at Rockville, Maryland
this 23rd day of September, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 50-443-LA
FPL Energy Seabrook, LLC)	
)	ASLBP No. 08-872-02-LA-BD01
(Seabrook Station, Unit 1))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO SAPORITO ENERGY CONSULTANTS' PETITION TO INTERVENE AND REQUEST FOR HEARING" in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 23rd day of September, 2008.

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