

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman
Dr. Gary S. Arnold
Dr. Thomas J. Hirons

In the Matter of

Northern States Power Co. (formerly
Nuclear Management Company, LLC)

(Prairie Island Nuclear Generating Plant,
Units 1 and 2)

Docket Nos. 50-282-LR and 50-306-LR

ASLBP No. 08-871-01-LR

December 5, 2008

MEMORANDUM AND ORDER

(Ruling on Petition to Intervene, Request for Hearing, and Motion to Strike)

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Before us is a petition to intervene and request for hearing filed by the Prairie Island Indian Community (PIIC or Petitioner) concerning the application of Northern States Power Company (Northern States or Applicant) to renew its operating licenses for the Prairie Island Nuclear Generating Plant (PINGP), Units 1 and 2, for an additional 20 years. PINGP is located near the city of Red Wing, in Goodhue County, Minnesota. The current licenses expire on August 9, 2013 for Unit 1 and on October 29, 2014 for Unit 2.

Both Northern States and NRC Staff oppose Petitioner's request for hearing. For the reasons set forth below, we find that PIIC has established its standing to intervene in the proceeding and has proffered at least one admissible contention as required by 10 C.F.R. § 2.309(a). Accordingly, we grant PIIC's request for a hearing.

I. BACKGROUND

On April 11, 2008, Nuclear Management Company, LLC¹ requested renewal of Operating License Nos. DPR-042 and DPR-060 for PINGP Units 1 and 2.² On June 17, 2008, the Nuclear Regulatory Commission (NRC or Commission) published a notice of opportunity for hearing regarding this license renewal application (Application or LRA).³ The hearing notice permitted any person whose interest might be affected by the license renewal to file a request for hearing and petition for leave to intervene within 60 days of the hearing notice.⁴ It directed that any petition must set forth with particularity the specific contentions sought to be litigated.⁵

On August 18, 2008, PIIC filed a petition to intervene containing eleven proposed contentions and requesting an adjudicatory hearing.⁶ Following the designation of this Licensing Board,⁷ Northern States and NRC Staff timely filed answers to the PIIC

¹ Since the Application was filed, the NRC has approved the transfer of operating authority over Prairie Island Nuclear Generating Station, Units 1 and 2, from Nuclear Management Company, LLC (NMC) to Northern States. Order Approving Transfer of License and Conforming Amendment (Sept. 15, 2008) (ADAMS Accession No. ML082521182).

² Application for Renewed Operating Licenses (Apr. 2008) [hereinafter LRA] (ADAMS Accession No. ML081130673).

³ 73 Fed. Reg. 34,335 (June 17, 2008).

⁴ Id.

⁵ Id. at 34,336.

⁶ Prairie Island Indian Community Notice of Intent to Participate and Petition to Intervene (Aug. 18, 2008) [hereinafter PIIC Petition].

⁷ Establishment of Atomic Safety and Licensing Board, 73 Fed. Reg. 52,426 (Sept. 9, 2008).

Petition.⁸ In its answer, Northern States does not contest Petitioner's standing to participate in this proceeding. NRC Staff, on the other hand, believes the Petitioner must submit additional information to demonstrate standing in this proceeding. Both Northern States and NRC Staff assert that PIIC has not proffered an admissible contention. On September 19, 2008, PIIC timely filed a reply to the Northern States and NRC Staff answers, accompanied by an expert declaration from Christopher I. Grimes and a Declaration on Standing by counsel for PIIC.⁹

On September 29, 2008, Northern States filed a motion to strike portions of the PIIC Reply, arguing that PIIC used the reply improperly as an opportunity to provide new support for its contentions.¹⁰ NRC Staff promptly filed a response supporting Northern States' motion,¹¹ and Petitioner filed a response in opposition.¹²

The Board heard oral arguments on Petitioner's standing and contentions as well as the motion to strike on October 29, 2008 in Hastings, Minnesota.¹³

⁸ Nuclear Management Company's Answer to the Prairie Island Indian Community's Petition to Intervene (Sept. 12, 2008) [hereinafter Northern States Answer]; NRC Staff's Answer to the Prairie Island Indian Community's Petition for Leave to Intervene (Sept. 12, 2008) [hereinafter NRC Staff Answer].

⁹ Prairie Island Indian Community's Reply to Nuclear Management Company's and the NRC's Answers to the Prairie Island Indian Community's Petition to Intervene (Sept. 19, 2008) [hereinafter PIIC Reply].

¹⁰ Northern States Power Company's Motion to Strike Portions of the Prairie Island Indian Community's Reply (Sept. 29, 2008) [hereinafter Northern States Motion to Strike].

¹¹ NRC Staff's Response Supporting Northern States Power Company's Motion to Strike Portions of the Prairie Island Indian Community's Reply (Oct. 9, 2008) [hereinafter NRC Staff's Response to Motion to Strike].

¹² Prairie Island Indian Community's Response Opposing Northern States Power Company's Motion to Strike Portions of the Prairie Island Indian Community's Reply (Oct. 10, 2008) [hereinafter PIIC's Response Opposing Motion to Strike].

¹³ See Tr. at 1-162.

II. STANDING ANALYSIS

NRC regulations require that any person that wishes to intervene as a party in an adjudicatory proceeding addressing a proposed licensing action must (1) establish that it has standing, and (2) offer at least one admissible contention.¹⁴

A. Standards Governing Standing

A petitioner's right to participate in a licensing proceeding stems from Section 189a of the Atomic Energy Act of 1954 (AEA).¹⁵ That section provides for a hearing "upon the request of any person whose interest may be affected by the proceeding."¹⁶ The Commission regulations implementing Section 189a require that a licensing board, in deciding whether the petitioner has an interest affected by the proceeding, consider (1) the nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest.¹⁷ In determining whether an individual or organization should be granted party status in a proceeding based on standing "as of right," the agency has applied contemporaneous judicial standing concepts that require a participant to establish (1) it has suffered or will suffer "a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute[s]" (e.g., the AEA or the National Environmental Policy Act of

¹⁴ 10 C.F.R. § 2.309(a).

¹⁵ 42 U.S.C. § 2011 et seq.

¹⁶ Id. § 2239(a)(1)(A).

¹⁷ 10 C.F.R. § 2.309(d)(1).

1969 (NEPA)); (2) “the injury can fairly be traced to the challenged action;” and (3) “the injury is likely to be redressed by a favorable decision.”¹⁸

In applying the traditional requirements for standing, the Commission has recognized that a petitioner may have standing based upon its geographical proximity to a particular facility.¹⁹ In certain types of proceedings, the Commission will presume that “a petitioner has standing to intervene without the need to specifically 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.”²⁰ This presumption, known as the “proximity presumption,” has been found to arise in a license renewal proceeding if the petitioner lives within a specific distance from the power reactor.²¹

An organization may establish its standing to intervene based on either organizational standing or representational standing. Organizational standing arises if the organization can demonstrate that the licensing action will cause an institutional injury to the organization’s interests.²² Representational standing requires the organization to demonstrate that the

¹⁸ Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); Dellums v. NRC, 863 F.2d 968, 971 (D.C. Cir. 1988); Pub. Serv. Co. of New Hampshire (Seabrook Station, Unit 1), CLI-91-14, 34 NRC 261, 266-67 (1991); Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993).

¹⁹ See Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

²⁰ Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146 (2001), aff’d on other grounds, CLI-01-17, 54 NRC 3 (2001).

²¹ See St. Lucie, CLI-89-21, 30 NRC at 329-30; Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Unit 1), CLI-89-21, 65 NRC 41, 52 (2007); Turkey Point, LBP-01-6, 53 NRC at 146-50.

²² See Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998).

licensing action will affect at least one of its members. The organization must identify the member by name and address, demonstrate that the member has standing, and show that the organization is authorized to request a hearing on that member's behalf.²³

It is important to note that, in determining whether a petitioner has met the requirements for establishing standing, the Commission has directed us to "construe the petition in favor of the petitioner."²⁴

B. Ruling on Standing

In its Petition, PIIC states it is a federally recognized Indian Tribe with a 1,900-acre reservation situated just 600 yards north of PINGP.²⁵ It further states that nearly half of the tribe's 767 members live on or near the reservation.²⁶ Given the Indian Community's close proximity to the facility, PIIC is concerned that renewal of the PINGP license might affect the health and safety of its members and might have a detrimental effect on the environment in which the Community is situated, especially as it relates to the protection of burial mounds and other areas of cultural, historical, or spiritual significance.²⁷ The PIIC is represented by its General Counsel, Philip Mahowald, who filed a notice of appearance on August 18, 2008.²⁸ The

²³ Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).

²⁴ Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

²⁵ PIIC Petition at 2.

²⁶ Id. at 3.

²⁷ Id.

²⁸ Notice of Appearance for Philip R. Mahowald (Aug. 18, 2008) [hereinafter Mahowald Notice of Appearance].

notice indicates that Mr. Mahowald is a member of the bar in Minnesota and South Dakota.²⁹ At oral argument, Mr. Mahowald indicated he is also a member of the bar of the PIIC Tribal Court.³⁰

Northern States does not challenge PIIC's standing to intervene in this proceeding.³¹ NRC Staff, however, expresses some concern about PIIC's standing. Specifically, NRC Staff states that it 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 represented by the attorneys [sic] of record."³² NRC Staff suggests that the Board require an affidavit from a tribe official authorizing participation and representation.³³ In response to this suggestion, Mr. Mahowald submitted a declaration stating that he is General Counsel for PIIC³⁴ and that on July 16, 2008 the PIIC Tribal Council approved a motion authorizing him to file a petition to intervene and request an adjudicatory hearing in this proceeding.³⁵ Mr. Mahowald's declaration was submitted under penalty of perjury and attached to the PIIC Reply.

Under the Commission's regulations, specifically 10 C.F.R. § 2.314, Mr. Mahowald was not required to submit this declaration. On the contrary, Mr. Mahowald's Notice of Appearance

²⁹ Id.

³⁰ Tr. at 47.

³¹ Northern States Answer at 3; Tr. at 49.

³² NRC Staff Answer at 5.

³³ Id. at 6.

³⁴ PIIC Reply, Declaration of Philip R. Mahowald ¶ 1 (Sept. 19, 2008) [hereinafter Mahowald Declaration].

³⁵ Id. ¶ 2.

is sufficient in itself for him to represent PIIC in this proceeding. Section 2.314 distinguishes between representation by an attorney and representation by a non-attorney. Section 2.314(b) provides:

Representation. A person may appear in an adjudication on his or her own behalf or by an attorney-at-law. A partnership, corporation, or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law. A party may be represented by an attorney-at-law if the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. Any person appearing in a representative capacity shall file with the Commission a written notice of appearance. The notice must state his or her name, address, telephone number, and facsimile number and email address, if any; the name and address of the person or entity on whose behalf he or she appears; and, in the case of an attorney-at-law, the basis of his or her eligibility as a representative or, in the case of another representative, the basis of his or her authority to act on behalf of the party.³⁶

Thus, PIIC may be represented by Mr. Mahowald because he is an attorney-at-law in good standing, and he has been admitted to practice before the highest court in two states. As an attorney, his statement that he is General Counsel of the PIIC and his Notice of Appearance are all the bases he must present to act on behalf of the party. He need only give the name and address of the person or entity on whose behalf he appears. Counsel Mahowald's Notice of Appearance is therefore sufficient for him to represent the PIIC.

This Board easily concludes that PIIC has established organizational standing in accord with Section 2.309(d). The PIIC Petition, submitted by its counsel, declares it is a sovereign, federally recognized Indian Tribe, a factual representation that NRC Staff does not contest. Further, PIIC's reservation is located contiguous with the PINGP facility. A majority of tribal members live near the PINGP, clearly within the "zone of possible harm"³⁷ from the nuclear

³⁶ 10 C.F.R. § 2.314(b).

³⁷ Turkey Point, LBP-01-6, 53 NRC at 146.

facility. PIIC has signed a Memorandum of Understanding with the NRC, designating PIIC as a cooperating agency for the environmental review of the LRA.³⁸ And PIIC has identified property, financial, and historical interests that may be affected by the pending Application. Thus, this Board finds that PIIC has met the requirements of Section 2.309(d) and has standing to intervene.

III. CONTENTION ANALYSIS

A. Standards Governing Contention Admissibility

In addition to demonstrating standing, a petitioner must also proffer at least one admissible contention to be admitted as a party to a proceeding.³⁹ For license renewal proceedings, the Commission's contention pleading requirements are found at 10 C.F.R. § 2.309(f)(1)(i)-(vi) and incorporate the prior contention pleading requirements of old 10 C.F.R. § 2.714 (2004).⁴⁰ Specifically, Section 2.309(f)(1) of the Commission's regulations sets out the requirements that must be met if a contention is to be admitted. An admissible contention must (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the

³⁸ Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the Prairie Island Indian Community as a Cooperating Agency (June 14, 2008) (ADAMS Accession No. ML081610273) [hereinafter Memorandum of Understanding].

³⁹ 10 C.F.R. § 2.309(a).

⁴⁰ The pleading requirements of former 10 C.F.R. § 2.714(b) now appear in the regulations at 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi). Section 2.309(f)(1)(iii)-(iv) additionally requires that a contention be within the scope of the proceeding and material to the findings the NRC must make.

NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and (6) provide sufficient information to show that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief.⁴¹ The purpose of the contention rule is to "focus litigation on concrete issues and result in a clearer and more focused record for decision."⁴² The Commission has emphasized that the rules on contention admissibility are "strict by design."⁴³ Further, contentions challenging the Commission's regulations are not admissible in agency adjudications.⁴⁴ Failure to comply with any of these requirements is grounds to reject a contention.⁴⁵ However, the petitioner is not required to provide an exhaustive discussion in its proffered contention, so long as the contention meets the Commission's admissibility requirements.

The application of these requirements has been further developed by NRC case law, as is summarized below:

⁴¹ 10 C.F.R. § 2.309(f)(1)(i)-(vi).

⁴² 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004); see also Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, 435 U.S. 519, 553-54 (1978); BPI v. AEC, 502 F.2d 424, 428 (D.C. Cir. 1974); Philadelphia Elec. Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

⁴³ Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), reconsideration denied, CLI-02-1, 55 NRC 1 (2002).

⁴⁴ 10 C.F.R. § 2.335(a).

⁴⁵ 69 Fed. Reg. at 2221; Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); Arizona Pub. Serv. Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

i. Specific Statement and Brief Explanation of the Basis for the Contention

An admissible contention must include not only a “specific statement of the issue of law or fact to be raised or controverted,”⁴⁶ but also a “brief explanation of the basis for the contention.”⁴⁷ When the contention admissibility standards were revised in 1989, the Commission commented that “a petitioner must provide some sort of minimal basis indicating the potential validity of the contention.”⁴⁸ This “brief explanation” of the logical underpinnings of a contention does not require a petitioner “to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention.”⁴⁹

ii. Within the Scope of the Proceeding

A petitioner must demonstrate that the “issue raised in the contention is within the scope of the proceeding.”⁵⁰ The scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board.⁵¹ Any contention that falls outside the specified scope of the proceeding must be rejected.⁵²

Challenges to NRC regulations are almost always outside the scope of the proceeding. With limited exceptions, “no rule or regulation of the Commission . . . is subject to attack . . . in

⁴⁶ 10 C.F.R. § 2.309(f)(1)(i).

⁴⁷ Id. § 2.309(f)(1)(ii).

⁴⁸ 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989).

⁴⁹ Louisiana Energy Serv., L.P. (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004).

⁵⁰ 10 C.F.R. § 2.309(f)(1)(iii).

⁵¹ Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985).

⁵² See Portland Gen. Elec. Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979).

any adjudicatory proceeding.”⁵³ Additionally, the adjudicatory process is not the proper venue to hear any contention that merely addresses petitioner’s own views on regulatory policy.⁵⁴ In sum, any contention that amounts to an attack on applicable regulatory requirements must be rejected.⁵⁵

iii. Materiality

An admissible contention must assert an issue of law or fact that is “material to the findings the NRC must make to support the action that is involved in the proceeding.”⁵⁶ In other words, the subject matter of the contention must impact the grant or denial of a pending license application.⁵⁷ “Materiality” requires the petitioner to show why the alleged error or omission is of significance to the result of the proceeding.⁵⁸ This means that there must be some link between the claimed deficiency and the agency’s ultimate determination regarding whether or not the license applicant will adequately protect the health and safety of the public and the environment.⁵⁹

⁵³ 10 C.F.R. § 2.335(a); see also Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 218 (2003).

⁵⁴ Peach Bottom, ALAB-216, 8 AEC at 21 n.33.

⁵⁵ Pub. Serv. Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982) (citing Peach Bottom, ALAB-216, 8 AEC at 20-21).

⁵⁶ 10 C.F.R. § 2.309(f)(1)(iv).

⁵⁷ Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179-80 (1998).

⁵⁸ Id. at 179.

⁵⁹ Id. at 180.

iv. Concise Statement of the Alleged Facts or Expert Opinion

An admissible contention must include “a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue . . . together with references to the specific sources and documents on which [it] intends to rely to support its position.”⁶⁰ “It is the obligation of the petitioner to present the factual information or expert opinions necessary to support its contention adequately.”⁶¹ “[F]ailure to do so requires that the contention be rejected.”⁶²

Determining whether a contention is adequately supported by a concise allegation of the facts or expert opinion is, however, distinct from what is required to support the petitioner’s case at a hearing on the merits.⁶³ The petitioner does not need to prove its contention at this stage in the proceeding.⁶⁴ While the petitioner must present adequate support and demonstrate a genuine issue of material fact, the amount of support required to meet the contention admissibility threshold is less than is required at the summary disposition stage.⁶⁵ And, as with

⁶⁰ 10 C.F.R. § 2.309(f)(1)(v).

⁶¹ Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 356 (2006).

⁶² Id.; Palo Verde, CLI-91-12, 34 NRC at 155.

⁶³ Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 151 (2006).

⁶⁴ Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004).

⁶⁵ 54 Fed. Reg. at 33,171 (“[A]t the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion.”).

a summary disposition motion,⁶⁶ a “Board may appropriately view Petitioners’ support for its contention in a light that is favorable to the Petitioner.”⁶⁷

Nonetheless, “mere ‘notice pleading’ is insufficient under these standards.”⁶⁸ Any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny.⁶⁹ A petitioner’s contention “will be ruled inadmissible if the petitioner ‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation.’”⁷⁰ And if a petitioner neglects to provide the requisite support for its contentions, the Board may not make assumptions of fact that favor the petitioner or supply information that is lacking.⁷¹ Likewise, simply attaching material or documents in support of a contention, without explaining their significance, is inadequate to

⁶⁶ See Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-03-21, 58 NRC 338, 342 (2003).

⁶⁷ Palo Verde, CLI-91-12, 34 NRC at 155.

⁶⁸ Fansteel, Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). “Notice pleading” is a broad standard requiring only “a short and plain statement of the claim.” Conley v. Gibson, 355 U.S. 41, 47 (1957).

⁶⁹ Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996); rev’d in part on other grounds, CLI-96-7, 43 NRC 235 (1996).

⁷⁰ Fansteel, CLI-03-13, 58 NRC at 203 (quoting GPU Nuclear Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)).

⁷¹ Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001); Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305 (1995).

support the admission of a contention.⁷² Rather, a Board will carefully examine the supporting facts or expert opinions provided to confirm their adequacy.⁷³

v. Genuine Dispute Regarding Specific Portions of Application

All contentions must “show that a genuine dispute exists” on a material issue of law or fact with regard to the license application in question. The contention must challenge and identify either specific portions of, or alleged omissions from, the application and provide the supporting reasons for each dispute.⁷⁴ Any contention that fails to controvert directly the application or that mistakenly asserts the application does not address a relevant issue must be dismissed.⁷⁵

B. Standards Governing Reply Comments

Pursuant to the NRC’s rules at 10 C.F.R. § 2.309(h)(2), a petitioner may file a reply to any answer to a hearing petition within seven days after service of that answer. While the rules do not specify the content of such a reply, the Statement of Considerations published with the final rule made clear that a petitioner’s reply brief “should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer.”⁷⁶ In other words, a reply is not an opportunity for a petitioner to bolster its original contentions with new supporting

⁷² See Fansteel, CLI-03-13, 58 NRC at 204-05.

⁷³ 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).

⁷⁴ 10 C.F.R. § 2.309(f)(1)(vi).

⁷⁵ See Sacramento Mun. Util. Dist. (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), review declined, CLI-94-2, 39 NRC 91 (1994).

⁷⁶ 69 Fed. Reg. 2182, 2203 (Jan. 14, 2004).

facts and arguments. Rather, it is a chance to “amplify” issues presented in the initial petition as well as the applicant’s and NRC Staff’s answers.⁷⁷ To the extent a petitioner uses the reply as an “attempt to reinvigorate thinly supported contentions by presenting entirely new arguments,” the Board should decline to consider it.⁷⁸ The Commission has provided further guidance on the appropriate content of a reply. In the Palisades license renewal proceeding, the licensing board had held that it would not “consider anything in the [Petitioner’s] Reply that did not focus on the matters raised in the [Applicant’s and NRC Staff’s] Answers.”⁷⁹ The licensing board declined to consider information first submitted in the petitioners’ reply, finding that petitioners had provided no good cause for failing to provide that information with the original petition to intervene.⁸⁰ Thus, the licensing board limited its admissibility review to that information submitted with the original petition in support of the contention.⁸¹ The Commission affirmed the Palisades licensing board’s decision, ruling that the petitioner’s reply “constituted an untimely attempt to supplement” the contention.⁸² It is, however, appropriate to take into account any information from a reply that legitimately amplifies issues presented in the original petition.⁸³

⁷⁷ Louisiana Energy Servs., L.P. (National Enrichment Facility), CLI-04-25, 60 NRC 223 (2004), reconsideration denied, CLI-04-35, 60 NRC at 623.

⁷⁸ Id.

⁷⁹ Nuclear Management Company (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 329 (2006).

⁸⁰ Id. at 351.

⁸¹ Id.

⁸² Nuclear Management Company (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 730 (2006).

⁸³ PPL Susquehanna, LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 281, 302 (2007).

Further, it is proper for a reply to respond to the legal, logical, and factual arguments presented in answers, so long as new issues are not raised.⁸⁴

In certain circumstances, the Board may allow a petitioner to file new or amended contentions based on new information.⁸⁵ Specifically, under NEPA a petitioner can “file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant’s documents.”⁸⁶ Outside the NEPA context, a petitioner can file a new or amended contention upon a showing that “(i) The information upon which the amended or new contention is based was not previously available; (ii) The information upon which the amended or new contention is based is materially different than information previously available; and (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.”⁸⁷

Applying the standards stated in Section IIA, we draw the following conclusions on the admissibility of PIIC’s eleven proffered contentions.

⁸⁴ Id.; see also LES, CLI-04-25, 60 NRC at 225 (quoting 69 Fed. Reg. at 2203, which states that a reply must be “narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC Staff answer”); Palisades, CLI-06-17, 63 NRC at 732 (noting that “[r]eplies must focus narrowly on the legal or factual arguments first presented in the original petition or raised in the answers to it”).

⁸⁵ 10 C.F.R. § 2.309(f)(2).

⁸⁶ Id.

⁸⁷ Id.

C. Rulings on Petitioner's Contentions

i. PIIC Contention 1

The analysis of historical and archaeological resources in Section 4.1.6 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).⁸⁸

In this contention, Petitioner argues that Applicant's Environmental Report (ER) fails to provide adequate assurance that cultural properties and artifacts, central to the core beliefs and value system of the Community, will be protected during the relicensing period.⁸⁹ Petitioner lists a number of concerns. First, it points to The 106 Group, which Applicant hired to assess the cultural properties of the PINGP site based solely on a review of collected literature. Because The 106 Group identified "undisturbed land" within the study area and noted the "potential for finding intact burials," PIIC urges that Northern States has an obligation to perform a thorough field assessment before undertaking any construction activity.⁹⁰ Second, Petitioner states that it disapproves of Applicant's "Excavation and Trenching Controls" program to protect historic resources because it grants authority to an Environmental Coordinator whose qualifications are not specified.⁹¹ Petitioner also faults Applicant for failing to identify exactly where refurbishment activities, such as the steam generator replacement project, will occur⁹² and for ignoring the potential impacts of the expansion of PINGP's Independent Spent Fuel Storage Installation

⁸⁸ PIIC Petition at 5.

⁸⁹ Id. at 6.

⁹⁰ Id. at 7.

⁹¹ Id. at 8.

⁹² Id.

(ISFSI).⁹³ Finally, PIIC points to the lack of care for cultural resources during the construction of the original units at PINGP, as well as during pre-construction excavation, as cause for concern during the current relicensing proceeding.⁹⁴

Northern States and NRC Staff argue that this contention is inadmissible because it does not demonstrate a genuine, material dispute with the application, is not supported by any expert opinion, and raises issues beyond the scope of the proceeding.⁹⁵ Specifically, Applicant asserts that it has no obligation to perform new field work, since The 106 Group assessment relied on several prior surveys that did involve field work.⁹⁶ Applicant further maintains that it does not need to specify the exact location of steam generator construction activities beyond the fact that they will occur in “previously disturbed areas.”⁹⁷ Both Applicant and NRC Staff point out that any future proposal to expand the ISFSI would fall under a separate license, outside the scope of this proceeding.⁹⁸

In its reply, Petitioner presents evidence intended to show that the surveys relied upon by The 106 Group in its assessment, which were conducted in the 1960s, were faulty. First, PIIC points out that two previously undiscovered sites of cultural significance were discovered in the 1980s.⁹⁹ Also, PIIC notes that a human burial mound site was impacted by construction of

⁹³ Id. at 9.

⁹⁴ Id. at 10-11.

⁹⁵ Northern States Answer at 11; NRC Staff Answer at 15.

⁹⁶ Northern States Answer at 11-12.

⁹⁷ Id. at 12-13.

⁹⁸ Id. at 15; NRC Staff Answer at 16-17.

⁹⁹ PIIC Reply at 5.

the original cooling towers.¹⁰⁰ Petitioner further insists that Applicant provides no assurance that the steam generator replacement activities will be confined to previously disturbed areas.¹⁰¹

Northern States filed a motion to strike portions of Petitioner's reply, arguing that the reply raises new claims that could have been raised in the Petition.¹⁰² NRC Staff supports, in part, the motion to strike.¹⁰³

The Board finds Contention 1 admissible. First, we note that under Commission regulations, an applicant must "assess whether any historic or archaeological properties will be affected by the proposed project."¹⁰⁴ The regulations also shed light on the required extent of this assessment: "The environmental report should contain sufficient information to aid the Commission in development of an independent analysis."¹⁰⁵ In the present case, Applicant has attempted to satisfy this requirement by stating its belief that historic and archaeological resources will not be disturbed and detailing its intended actions to ensure this outcome.¹⁰⁶ These intended actions consist of using available surveys to avoid disturbances, restricting refurbishment activities to previously disturbed areas, and designating an Environmental Coordinator to be present during excavation operations.

¹⁰⁰ Id. at 6-7.

¹⁰¹ Id. at 5-6.

¹⁰² Northern States Motion to Strike at 7-8.

¹⁰³ NRC Staff's Response to Motion to Strike at 4-6. NRC Staff disagrees with Applicant's motion to strike on just one point. Namely, NRC Staff believes that the statement "additional survey work is needed before construction begins," which Applicant wants stricken from PIIC's Reply, is a legitimate reiteration of a claim in the original Petition.

¹⁰⁴ 10 C.F.R. § 51.53(c)(3)(ii)(K).

¹⁰⁵ Id. § 51.45(c).

¹⁰⁶ ER at 4-54 to -56.

Petitioner has properly articulated a challenge to Applicant's assessment of cultural resources. In essence, PIIC has made the assertion that, in order to "aid the Commission in development of an independent analysis,"¹⁰⁷ Applicant's ER should also include any pitfalls to its plan to protect cultural resources. As pointed out by the PIIC in its Petition, these pitfalls include the facts that existing surveys are imperfect, that land identified as "previously disturbed" may still contain historic sites, that the location of refurbishment activities is not adequately specified, and that the Environmental Coordinator's qualifications are not known. The Board finds that the information contained in the Petition is sufficient to raise a genuine and material dispute.¹⁰⁸

In admitting this contention, the Board finds it unnecessary to rely on Petitioner's statements in the reply. Nonetheless, we note that certain parts of the reply contain information that did not become available to Petitioner until after the due date for contentions to be filed. As Petitioner confirmed at oral argument, it did not learn about two facts – the artifacts discovered in the 1980s and the burial mounds destroyed during construction of the original cooling towers – until the Environmental Site Audit of August 21, 2008, three days after filing its Petition to intervene.¹⁰⁹ The Board does not rely on these facts from the reply but notes that, to the degree these facts are relevant, they may be litigated in the context of any merits consideration of this case.

Finally, the Board rejects those portions of Contention 1 that refer to the ISFSI expansion as a potential source of archaeological destruction. As both Applicant and NRC Staff explain, expansion of the ISFSI "is a separate project, subject to a separate proceeding, and

¹⁰⁷ 10 C.F.R. § 51.45(c).

¹⁰⁸ Id. § 2.309(f)(1)(vi).

¹⁰⁹ PIIC Reply at 6-7; Tr. at 17-18.

governed by the regulations in 10 C.F.R. Part 72, not the license renewal regulations at 10 C.F.R. Part 54.”¹¹⁰ Therefore, Applicant has no obligation to discuss the impacts of a potential ISFSI expansion in its ER. Moreover, Section 51.53(c)(3)(ii)(K) requires an applicant to assess only those historical resources affected by a “proposed project.” As of yet, NRC has received no proposal from Applicant to expand the ISFSI at PINGP.¹¹¹ For these reasons, the Board finds this element of Contention 1 to be outside the scope of this proceeding.¹¹²

Contention 1 is admitted in the following form:

The ER in the LRA does not provide an adequate analysis of historical and archaeological resources that may be affected by the proposed license renewal. The LRA does not include information concerning pitfalls that could adversely affect the plan to avoid damage to Historical and Archaeological Resources.

ii. PIIC Contention 2

The severe accident mitigation alternatives (SAMA) analysis does not accurately reflect decontamination 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).¹¹³

Petitioner argues that the SAMA analysis for PINGP should incorporate the methodology contained in the 1996 Site Restoration Study,¹¹⁴ rather than use the “outdated” cost figures contained in the MELCOR Accident Consequence Code System (MACCS2).¹¹⁵ According to

¹¹⁰ NRC Staff Answer at 16; see also Northern States Answer at 15.

¹¹¹ Northern States Answer at 15.

¹¹² 10 C.F.R. § 2.309(f)(1)(iii).

¹¹³ PIIC Petition at 11.

¹¹⁴ D. Chanin & W. Murfin, Site Restoration: Estimation of Attributable Costs from Plutonium-Dispersion Accidents, SAND96-0957 (May 1996).

¹¹⁵ PIIC Petition at 11. The SAMA analysis is a process that determines the worth of potential actions that could be taken, in advance, to mitigate the effects of a severe accident. One step in this process is to determine the cost of a severe accident with no mitigation measures

Petitioner, the Site Restoration Study's "methodology and conclusions to estimate decontamination costs are directly applicable to the SAMA analysis in the ER."¹¹⁶ Petitioner further asserts that the SAMA analysis should account for the cultural and economic impacts of a severe reactor accident, including the stigma effects on the tourist industry associated with the Treasure Island Casino and Resort and the unique property values of the land surrounding PIIC.¹¹⁷ According to Petitioner, the SAMA analysis currently under-represents the real value of PIIC's property adjacent to the plant.¹¹⁸

Applicant and NRC Staff both oppose the admission of Contention 2, arguing that it lacks support and fails to establish a material dispute with the Application.¹¹⁹ Applicant notes that the MACCS2 code is widely used and endorsed by the NRC.¹²⁰ Moreover, it asserts that the Site Restoration Study was developed for a plutonium-dispersal accident, not a severe reactor accident.¹²¹ Thus, Applicant claims it is not "directly applicable" to the PINGP site, as Petitioner maintains. NRC Staff argues that Contention 2 fails to raise a material issue, since "[n]owhere . . . does the Petitioner allege that the use of the cost figures from the Sandia Report

instituted. As part of that determination, the licensee must calculate the cost of decontaminating adjacent properties – all affected property within a 50-mile radius of the plant. The MACCS2 code is the standard method for performing this calculation and, indeed, it was used by Northern States in its relicensing Application. An alternative method for performing this particular cost calculation is described in the Site Restoration Study.

¹¹⁶ Id. at 12.

¹¹⁷ Id. at 13.

¹¹⁸ Id.

¹¹⁹ Northern States Answer at 17; NRC Staff Answer at 17.

¹²⁰ Northern States Answer at 17.

¹²¹ Id.

would result in additional SAMAs applicable to Prairie Island.”¹²² Finally, NRC Staff points out that, contrary to Petitioner’s assertion, the ER does in fact incorporate site-specific property values in the SAMA analysis.¹²³

In its reply, Petitioner clarifies that “[t]he Community does not claim that the MACCS2 code is outdated, . . . but rather that the Sandia Site Restoration Study provides information related to clean-up costs that must be factored in to the Applicant’s SAMA analysis.”¹²⁴ Neither Applicant nor NRC Staff moves to strike any portion of this reply.

The Board finds that Petitioner has set forth an admissible contention. Petitioner has alleged specific deficiencies in the ER and provided adequate support for its position. Petitioner argues that the SAMA analysis, which Applicant undertook in Section 4.17 of the ER, does not accurately reflect the cost of cleanup at the PINGP site because it relies on outdated assumptions and it undervalues the land occupied by the Indian Community. During oral argument, Petitioner reiterated that it does not oppose use of the MACCS2 code.¹²⁵ Rather, it believes that the Site Restoration Study methodology should be used to develop more appropriate input specific to the Prairie Island region.¹²⁶ Neither Applicant nor NRC Staff disputes this statement.¹²⁷ Although Northern States claims that it did incorporate site-specific property values in its analysis, Petitioner believes that the values used do not reflect the

¹²² NRC Staff Answer at 18.

¹²³ Id. at 19.

¹²⁴ PIIC Reply at 10.

¹²⁵ Tr. at 73.

¹²⁶ Id.

¹²⁷ Id. at 71-72, 80-81.

property's actual value to the PIIC. Thus, Petitioner has established a genuine dispute with the Application.¹²⁸

Regarding the applicability of the Site Restoration Study, this Board acknowledges that the study primarily addresses plutonium-dispersal accidents. But, as Petitioner points out, the study does address severe reactor accidents as well. Specifically, it states that “[d]ata on recovery from nuclear explosions that have been publicly available since the 1960’s appear to have been misinterpreted, which has led to long-standing underestimates of the potential economic costs of severe reactor accidents.”¹²⁹ Based on this quotation, as well as the reasoning of the Indian Point Licensing Board in recently admitting a similar contention,¹³⁰ we conclude that the Site Restoration Study provides an adequate basis for admitting Contention 2.¹³¹

This Board finds that Petitioner has raised questions of material fact, adduced sufficient support for its contention, and demonstrated a genuine dispute with the Application.¹³²

Therefore, we admit Contention 2 in the following form:

The SAMA analysis in the LRA does not accurately reflect the site restoration costs for the area surrounding the PINGP, including the PIIC and its associated Treasure Island complex. The Site Restoration Study methodology should be used to develop more appropriate input for the analysis.

¹²⁸ 10 C.F.R. § 2.309(f)(1)(vi).

¹²⁹ PIIC Petition at 13.

¹³⁰ Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating, Units 2 and 3), LBP-08-13, 68 NRC __, __ (slip op. at 64-65) (July 31, 2008)]. Northern States tries to distinguish Indian Point by suggesting that the Site Restoration Study applies to “large scale urban areas” like the area surrounding Indian Point, but not to rural areas like the area surrounding PINGP. Northern States Answer at 20. But PIIC insists that it applies “to a broad range of environments, not just urban areas.” PIIC Reply at 10. Specifically, Petitioner notes that “the study examined the costs for extended remediation for mixed-use urban land . . . , Midwest farmland, arid western rangeland, and forested area.” PIIC Petition at 12.

¹³¹ 10 C.F.R. § 2.309(f)(1)(ii).

¹³² Id. § 2.309(f)(1)(iv)-(vi).

iii. PIIC 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. § 51.53(c)(3)(ii)(E).¹³³

This contention is supported by two specific factual allegations. First, Petitioner asserts that Applicant did not adequately discuss impacts on the Higgins eye pearlymussel, an endangered species present in the vicinity of PINGP.¹³⁴ According to PIIC, the ER should have included a more detailed discussion of entrainment and provided greater support for its conclusion that “renewal of the PINGP license is not expected to jeopardize” any endangered species.¹³⁵ Second, Petitioner states that Applicant failed to assess the impacts on endangered avian species resulting from collisions with transmission lines.¹³⁶ PIIC believes that because PINGP sits in an important migratory flyway, and because a study from the 1970s revealed a large number of bird mortalities around PINGP’s transmission lines, Applicant must identify and analyze the present-day impacts on endangered avian species.¹³⁷

Applicant and NRC Staff believe that PIIC’s two assertions fail to identify any deficiency on a relevant matter in Northern States’ Application. Therefore, they assert, neither claim satisfies 10 C.F.R. § 2.309(f)(1)(vi). With regard to the Higgins eye pearlymussel, Applicant argues that PIIC provides “no basis – no expert opinion, reference, or other source – indicating

¹³³ PIIC Petition at 14.

¹³⁴ Id. at 15-16.

¹³⁵ Id.

¹³⁶ Id. at 16-17.

¹³⁷ Id. at 16-19.

that there is any significant effect requiring further analysis.”¹³⁸ On the contrary, Applicant believes the ER provides ample support for its “no jeopardy” conclusion.¹³⁹ Moreover, Applicant notes that under 10 C.F.R. § 51.53(c)(3)(ii)(B), Northern States had no obligation to analyze the impacts of entrainment, given that it provided a copy of its current Section 316(b) determinations under the Clean Water Act.¹⁴⁰ Finally, NRC Staff faults Petitioner for failing to “specifically identify” the information omitted from the ER, thus raising no genuine dispute with the Application.¹⁴¹

With regard to endangered avian species, Applicant and NRC Staff argue that PIIC provides no support for its claim that PINGP’s transmission lines pose a threat to endangered birds.¹⁴² Moreover, NRC Staff points out that Applicant does indeed address an endangered bird species – the peregrine falcon – in Sections 4.6 and 4.7 of the ER.¹⁴³ To the extent Petitioner faults Northern States for adopting the Generic Environmental Impact Statement (GEIS) conclusion on avian collisions, NRC Staff and Applicant characterize this as an

¹³⁸ Northern States Answer at 23; see also NRC Staff Answer at 22.

¹³⁹ Northern States Answer at 23; see also NRC Staff Answer at 22.

¹⁴⁰ Northern States Answer at 22-23. Under 10 C.F.R. § 51.53(c)(3)(ii)(B), as long as the applicant can provide a copy of its current Clean Water Act 316(b) determinations, the applicant does not need to “assess the impact of the proposed action on fish and shellfish resources resulting from heat shock and impingement and entrainment.”

¹⁴¹ NRC Staff Answer at 23.

¹⁴² Northern States Answer at 26; NRC Staff Answer at 23-24.

¹⁴³ NRC Staff Answer at 25.

impermissible attack on NRC rules.¹⁴⁴ Avian mortality from transmission lines in general, they point out, is a Category 1 issue outside the scope of this proceeding.¹⁴⁵

In its reply, Petitioner suggests that Applicant still must evaluate entrainment impacts on the Higgins eye pearlymussel, citing to NRC Regulatory Guide 4.2S1 and the fact that Applicant's "316(b) report was not attached to the ER."¹⁴⁶ Petitioner also reiterates its concern about avian mortality and suggests that "it is not the Community's obligation to demonstrate that threatened or endangered avian species are being affected. That is the responsibility of the Applicant and the NRC."¹⁴⁷ Applicant, with NRC Staff's support, moves to strike certain parts of this reply.¹⁴⁸

The Board rejects this contention in its entirety. With regard to the Higgins eye pearlymussel, NRC Staff stated at oral argument that Applicant's analysis in the ER provided adequate information for the NRC to develop an environmental impact statement and that, in NRC Staff's opinion, Northern States analyzed the potential impacts on the Higgins eye pearlymussel to the full extent required by Section 51.53(c)(3)(ii)(E).¹⁴⁹ Petitioner provides no support for its claim that Applicant must offer further explanation and quantification of impacts

¹⁴⁴ Northern States Answer at 24-26; NRC Staff Answer at 25-26.

¹⁴⁵ Northern States Answer at 24-26; NRC Staff Answer at 25-26. The GEIS distinguishes between environmental issues that can be treated generically, adopting the GEIS discussion (Category 1), or which must be discussed explicitly for the subject plant (Category 2). Division of Regulatory Applications, Office of Nuclear Regulatory Research, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG-1437 (May 1996) (ADAMS Accession Nos. ML040690705, ML040690738).

¹⁴⁶ PIIC Reply at 12-13.

¹⁴⁷ Id. at 16 n.2.

¹⁴⁸ NRC Staff's Response to Motion to Strike at 9; NRC Staff's Response to Motion to Strike at 6-7.

¹⁴⁹ Tr. at 84.

other than “we are left wanting to know more.”¹⁵⁰ We find that Petitioner does not sufficiently demonstrate the existence of a material dispute.¹⁵¹ The Board thus rejects the first part of Contention 3.¹⁵²

The Board also rejects the second part of Contention 3 related to endangered avian species. Based on our reading of the pleadings and the oral argument, we recognize two possible alternative grounds for this contention, but the contention fails in either case. If, on the one hand, Petitioner intends to challenge NRC’s generic conclusion regarding bird collisions with power lines, this represents an impermissible challenge to NRC regulations. On the other hand, if Petitioner intends to challenge Applicant’s failure to address endangered avian species, Petitioner has failed to specify that any such species exist in the area or that they are impacted by PINGP’s transmission lines. Moreover, Petitioner did not even acknowledge Applicant’s analysis of one endangered avian species – the peregrine falcon. Because PIIC has identified no genuine dispute with Northern States’ Application,¹⁵³ we are compelled to reject the second part of Contention 3.

¹⁵⁰ Id. at 85.

¹⁵¹ 10 C.F.R. § 2.309(f)(1)(iv).

¹⁵² To the extent Petitioner believes Applicant must address entrainment impacts in the ER, we agree that 10 C.F.R. § 51.53(c)(3)(ii)(B) relieves Applicant of this obligation. In any case, Applicant indicates that the decision to repopulate the Higgins eye pearly mussel was made by appropriate state and federal agencies. Northern States Answer at 24. Their determination that the upstream site was appropriate for repopulation regardless of the intake downstream undercuts Petitioner’s unsupported assertion that the effects of entrainment have not adequately been evaluated.

¹⁵³ 10 C.F.R. § 2.309(f)(1)(vi).

Lastly, the Board finds this contention inadmissible notwithstanding any new information presented in PIIC's reply. Nothing in the reply has any bearing on our decision to reject Contention 3.

iv. PIIC 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.¹⁵⁴

In Contention 4, Petitioner acknowledges that radiation exposure to the public is a Category 1 issue¹⁵⁵ but insists that "new and significant" evidence requires Applicant to analyze cancer effects in the ER.¹⁵⁶ This "new and significant" evidence consists of (1) the Declaration of Joseph J. Mangano from the aforementioned Indian Point proceeding, (2) a series of European studies reporting elevated cancer risks for people – especially children – who live close to nuclear facilities, and (3) other studies reporting that Native Americans in general, and those in Minnesota in particular, have higher cancer rates than the general population.¹⁵⁷ Based on these studies, Petitioner asserts that "children who live near nuclear power plants develop cancer and leukemia more frequently than [sic] those living farther away" and that "[t]he possibility of an increased risk for older children and adults living near NPPs cannot be ruled out."¹⁵⁸

Applicant and NRC Staff maintain that Contention 4 is inadmissible because it "seeks to raise a Category 1 environmental issue that cannot be litigated in this proceeding absent a

¹⁵⁴ PIIC Petition at 20.

¹⁵⁵ See supra note 145.

¹⁵⁶ PIIC Petition at 20.

¹⁵⁷ Id. at 20-23.

¹⁵⁸ Id. at 23.

waiver of the rules by the Commission.”¹⁵⁹ They go on to insist that even if Petitioner were to seek a waiver, Petitioner does not allege any “special circumstances” specific to PINGP that would warrant the grant of one.¹⁶⁰ Also, both Applicant and NRC Staff criticize PIIC’s reference to the Mangano Declaration.¹⁶¹ In their view, the Mangano Declaration contains assertions specific to the Indian Point nuclear plant and hardly advances any “new and significant” information relevant to this proceeding.

In its reply, Petitioner argues that the studies cited in the original Petition obligate Northern States to “disclose more detailed monitoring results to the Community and its residents living well within [a 5 km radius] so they can establish baselines for evaluating and measuring potential adverse health effects.”¹⁶² Petitioner goes on to cite an “unplanned” release of tritium on August 5, 2006, and steadily rising tritium concentration levels in drinking water as further sources of concern.¹⁶³ Applicant moves to strike all of these statements from the reply, characterizing them as “an attempt to provide support that could have been included with the original contention.”¹⁶⁴ NRC Staff supports the motion to strike.¹⁶⁵

¹⁵⁹ Northern States Answer at 27; see also NRC Staff Answer at 27.

¹⁶⁰ Northern States Answer at 28; NRC Staff Answer at 29-30.

¹⁶¹ Northern States Answer at 29; NRC Staff Answer at 28-29.

¹⁶² PIIC Reply at 17.

¹⁶³ Id. at 18.

¹⁶⁴ Northern States Motion to Strike at 9.

¹⁶⁵ NRC Staff’s Response to Motion to Strike at 7.

The Board finds that Contention 4 is inadmissible because it raises an issue that is outside the scope of a license renewal proceeding.¹⁶⁶ As Applicant and NRC Staff point out, offsite radiological impacts are a Category 1 issue, and the Commission has determined such impacts to be “small” for all nuclear power plants seeking a renewed license.¹⁶⁷ If Petitioner wishes to challenge this generic determination in this proceeding, it must seek and receive a waiver under 10 C.F.R. § 2.335(b).¹⁶⁸ In the present case, not only has PIIC failed to request a waiver, but it has failed to present any “special circumstances” that would warrant the grant of a waiver. The European studies cited by Petitioner, to whatever degree they may be indicative of higher cancer rates among populations near certain foreign nuclear plants, do not demonstrate any special circumstances particular to the PINGP site that would compel us to disturb the Commission’s Category 1 determination. Similarly, the studies reporting higher cancer rates among Native Americans in Minnesota are unavailing since the studies do not attribute these higher rates to radionuclide emissions. Finally, the Mangano Declaration, as NRC Staff and Applicant note, addresses circumstances particular to the Indian Point facility, with no apparent relevance to the present proceeding.

For these reasons, the Board declines to admit this contention. We find Contention 4 inadmissible regardless of whether we consider the information contained in Petitioner’s reply.

¹⁶⁶ 10 C.F.R. § 2.309(f)(1)(iii).

¹⁶⁷ 10 C.F.R. Part 51, App. B, Table B-1; see also Northern States Answer at 27; NRC Staff Answer at 29-30.

¹⁶⁸ Section 2.335(b) allows an adjudicatory party to petition for a waiver of a Commission rule or regulation by demonstrating that “special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted.” See also Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 12 (2001) (explaining that “petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule”).

v. PIIC 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.¹⁶⁹

In Contention 5, Petitioner argues that “[t]he ER fails to consider the disparate impacts of the PINGP on the adjacent minority population.”¹⁷⁰ The impacts to which Petitioner refers are similar to those cited in Contention 4: the higher-than-average cancer rates borne by Native Americans and populations living in the vicinity of nuclear plants. According to Petitioner, Applicant must specifically address the Indian Community in its ER and acknowledge the particular impacts it will face as a result of relicensing.¹⁷¹

Applicant dismisses Contention 5 as an impermissible challenge to the Commission's finding that offsite radiological impacts have small effects.¹⁷² Applicant further argues that it has no obligation to address environmental justice issues in the first place. According to Applicant, while it is true that NEPA requires the Commission to consider significant adverse impacts on minority populations, Commission rules impose no such obligation on the applicants themselves.¹⁷³ As an additional argument, both Applicant and NRC Staff state that Contention 5 fails to present a genuine dispute with the Application, given that “the PIIC provides no basis – no expert opinion, reference or other source – to suggest that [high cancer rates among Native Americans in Minnesota] are attributable to radiation.”¹⁷⁴ Finally, NRC Staff points out that the

¹⁶⁹ PIIC Petition at 20.

¹⁷⁰ Id. at 24.

¹⁷¹ Id. at 25.

¹⁷² Northern States Answer at 30-31.

¹⁷³ Id. at 31.

¹⁷⁴ Id. at 33; see also NRC Staff Answer at 31-32.

ER explicitly acknowledges PIIC's presence in the vicinity of PINGP, and Petitioner "has failed to explain why the analysis provided is inadequate."¹⁷⁵

In its reply, Petitioner advances three arguments. First, it notes that NRC Regulatory Guide 4.2S1 makes clear that "the NRC staff expects the applicant to analyze environmental justice issues."¹⁷⁶ Second, it argues that, because Applicant actually does address environmental justice in the ER, Applicant undermines its own argument that it is not required to do so.¹⁷⁷ Third, Petitioner suggests that "the Category 2 issue of environmental justice is an overarching site specific issue" that must be evaluated in the ER.¹⁷⁸ Neither NRC Staff nor Applicant moved to strike any portion of the PIIC Reply.

The Board finds that Petitioner has stated an admissible contention. We disagree with Applicant's assertion that it has no obligation to address environmental justice in the ER. While true that, under NEPA, the Commission is ultimately responsible for evaluating impacts on minority groups, nonetheless, 10 C.F.R. § 51.45(c) requires Applicant to assist the Commission with that evaluation.¹⁷⁹ In the present case, Applicant's ER identifies the minority population in the vicinity of PINGP, thus complying with the letter of Regulatory Guide 4.2S1. But compliance with the Regulatory Guide does not always indicate compliance with the Commission's regulations or NEPA. In fact, PIIC contends that, by strictly complying with the Regulatory

¹⁷⁵ NRC Staff Answer at 32.

¹⁷⁶ PIIC Reply at 18-19.

¹⁷⁷ Id. at 19.

¹⁷⁸ Id.

¹⁷⁹ Section 51.45(c) instructs that an "environmental report should contain sufficient data to aid the Commission in its development of an independent analysis." Undoubtedly, this "data" includes information that might aid the Commission in its analysis of environmental justice.

Guide, Applicant has identified the minority populations surrounding PINGP in a way that essentially averages out, or dilutes, the Prairie Island Indian Community. Thus, PIIC is concerned that NRC Staff will overlook PIIC when it conducts its environmental justice review.

The Board understands that PIIC's intent is to address the issue to NRC Staff – the entity responsible for preparing the EIS and complying with NEPA – not Northern States. Nonetheless, NRC regulations require the Petitioner to raise contentions related to NEPA as challenges to Applicant's environmental report, which acts as a surrogate for the EIS during the early stages of a relicensing proceeding.¹⁸⁰ If Petitioner were to delay and submit contentions on NEPA topics addressed in the ER after issuance of the EIS, they would likely be characterized as "late-filed contentions," subject to much more stringent admissibility standards.¹⁸¹ Thus, the Board admits Contention 5 now as a contention of omission and a timely challenge to Northern States' Application. PIIC has raised a genuine dispute with the Application.¹⁸² Because Petitioner sets forth a contention of omission, alleging that Applicant has failed to address the environmental justice impacts of license renewal on the Indian Community, Petitioner is not required to provide supporting facts or expert opinion at this stage.¹⁸³

¹⁸⁰ See 10 C.F.R. § 2.309(f)(2) (explaining that "[o]n issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report").

¹⁸¹ See Id. § 2.309(c)(1); Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC __, __ (slip op. at 31-32) (Nov. 21, 2008).

¹⁸² 10 C.F.R. § 2.309(f)(1)(vi).

¹⁸³ The Pa'ina Licensing Board laid out a modified standard for raising a contention of omission, noting that "the pleading requirements of 10 C.F.R. § 2.309(f)(1)(v), calling for a recitation of facts or expert opinion supporting the issue raised, are inapplicable to a contention of omission beyond identifying the regulatively required missing information." Pa'ina Hawaii LLC (Material License Application), LBP-06-12, 63 NRC 403, 414 (2006).

vi. **PIIC 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.¹⁸⁴

In this contention, Petitioner argues that containment coatings have a “clear safety function,” thus putting them within scope of license renewal and requiring Applicant to monitor and manage the effects of aging.¹⁸⁵ Petitioner cites Applicant’s own response to Generic Letter (GL) 2004-02, in which Applicant indicated that “the containment inservice program provides a means to check the condition of coatings as a potential source of debris that could block the sump recirculation strainers.”¹⁸⁶ As support for its position, Petitioner points to the Generic Aging Lessons Learned (GALL) Report,¹⁸⁷ which “describes the potential for system fouling resulting from the failure of protective coatings, as a source of debris.”¹⁸⁸ Petitioner also points to a 2007 NRC audit of the license renewal program, which described “a failure to consider operating experience during the review of the Oconee LRA, ‘casting doubt on the efficacy of Oconee’s aging management program for coatings.’”¹⁸⁹

¹⁸⁴ PIIC Petition at 26.

¹⁸⁵ Id. at 27. Section 54.4(a)(2) defines the scope of license renewal to include “[a]ll nonsafety-related systems, structures, and components whose failure could prevent satisfactory accomplishment of any of the [safety-related] functions identified in paragraphs (a)(1) (i), (ii), or (iii) of this section.” The license renewal application must identify and demonstrate an aging management program for structures and components that “perform an intended function, as described in § 54.4.” 10 C.F.R. § 54.21(a).

¹⁸⁶ PIIC Petition at 26.

¹⁸⁷ Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, Generic Aging Lessons Learned (GALL) Report, NUREG-1801 (Rev. 1 Sept. 2005) (ADAMS Accession No. ML052110905) [hereinafter NUREG-1801].

¹⁸⁸ PIIC Petition at 27.

¹⁸⁹ Id.

Applicant responds that Contention 6 fails to present a genuine dispute with the Application.¹⁹⁰ According to Applicant, GL 2004-02 requires Applicant to perform an analysis of the effects of debris blockage, and Applicant detailed the results of this analysis in its Application.¹⁹¹ This analysis, according to Applicant, assumed that containment coatings will fail and become debris and demonstrated that such debris will not prevent safety-related equipment from performing its safety function.¹⁹² Thus, Applicant argues, coatings do not fall within the scope of license renewal.¹⁹³

NRC Staff claims that Contention 6 raises an issue outside the scope of license renewal. Because containment coatings “are subject to ongoing oversight that addresses their current status and will continue to address their status over the period of license renewal,” they “are not within the scope of this proceeding.”¹⁹⁴

In its Reply, Petitioner attached an affidavit from its expert Christopher Grimes, which stresses the importance of monitoring and managing containment coatings.¹⁹⁵ Petitioner acknowledges Applicant’s GL 2004-02 analysis, which assumed that a conservative amount of all coatings fail. But Petitioner also states that “[t]he PINGP Application is deficient because it does not describe an effective aging management program for coatings which would ensure that the debris generated by a design-basis accident is bounded by the assumptions in the

¹⁹⁰ Northern States Answer at 34.

¹⁹¹ Id.

¹⁹² Id. at 36-37.

¹⁹³ Id.

¹⁹⁴ NRC Staff Answer at 34.

¹⁹⁵ PIIC Reply at 20.

analysis performed for GL 04-02.”¹⁹⁶ Applicant moves to strike from PIIC’s reply the “new assertions” made by Mr. Grimes, as well as Petitioner’s accompanying “new claim.”¹⁹⁷ NRC Staff supports Applicant’s motion to strike.¹⁹⁸

It is clear to the Board, from information provided in Northern States’ Answer and at oral argument, that Applicant has considered the issue of debris from failed containment coatings. Applicant’s reply to GL 2004-02 and the associated strainer analysis may well demonstrate that coating degradation due to aging is adequately managed. Nonetheless, we find that Petitioner has proffered an admissible contention – namely, that Northern States does not adequately describe its aging management plan in the Application.

The GALL Report contains an aging management program for containment coatings that states:

Proper maintenance of protective coatings inside containment (defined as Service Level I in Nuclear Regulatory Commission [NRC] Regulatory Guide [RG] 1.54, Rev. 1) is essential to ensure operability of post-accident safety systems that rely on water recycled through the containment sump/drain system. Degradation of coatings can lead to clogging of strainers, which reduces flow through the sump/drain system. This has been addressed in NRC Generic Letter (GL) 98-04.¹⁹⁹

In the LRA, aging management is addressed in Appendix B. The only mention of containment coatings in this Appendix is within the table contained in Section B2.0, which compares the GALL Report and PINGP aging management programs. Under the entry for “Protective Coating Monitoring and Maintenance Program” the Application simply states “Not Applicable,” with no

¹⁹⁶ Id.

¹⁹⁷ Northern States Motion to Strike at 10-11.

¹⁹⁸ NRC Staff’s Response to Motion to Strike at 7-8.

¹⁹⁹ NUREG-1801, at XI S-24.

further explanation.²⁰⁰ Furthermore, in addressing the relevant generic safety issue, the Application contains the following unsupported statement:

PINGP does not credit coatings inside the containment to assure that the intended functions of coated structures and components are maintained. The contribution of coatings to containment debris is event driven and is not related to aging. Therefore, those coatings do not have an intended function.²⁰¹

In light of the GALL Report finding that coating aging creates a safety concern and the bald statement in the Application that debris from containment coatings is not related to aging, we consider it reasonable for Petitioner to question the adequacy of Applicant's AMP for containment coatings. Petitioner has stated a genuine, material dispute with the Application that falls within the scope of this license renewal proceeding.²⁰² Because Petitioner sets forth a contention of omission, alleging that Applicant has failed to describe a required AMP, Petitioner is not required to provide supporting facts or expert opinion at this stage.²⁰³ Thus, the Board admits Contention 6 as formulated by Petitioner.²⁰⁴

vii. PIIC 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.²⁰⁵

²⁰⁰ LRA at B-11.

²⁰¹ Id. at 2.1-8.

²⁰² 10 C.F.R. § 2.309(f)(vi), (iii).

²⁰³ See supra note 183.

²⁰⁴ The Board admits this contention without reference to PIIC's reply. Indeed, we grant Northern States' motion to strike the Grimes Declaration and any statements in the reply that are based on it. See infra Part IV (ruling on motion to strike).

²⁰⁵ PIIC Petition at 27.

In support of this contention, Petitioner argues that “the PINGP LRA does not include any mention that it took embrittlement into account when it assessed the effect of transient loads.”²⁰⁶ Petitioner proceeds to describe the dangers associated with embrittlement. Relying heavily on the declaration of Richard Lahey submitted in the Indian Point proceeding,²⁰⁷ Petitioner explains that embrittlement can reduce the ability of metals to withstand thermal shock loads, which can ultimately lead to a melting of the core and a significant release of radiation.²⁰⁸ Notwithstanding this danger, Petitioner asserts, “applicant has not presented any experiments or analysis to justify that the embrittled RPV internal structures will not fail”²⁰⁹ Petitioner makes one further claim. Citing to Sections A2.34 and B2.1.34 of the Application, PIIC claims that “it is not clear . . . whether PINGP Units 1 & 2 have adequate standby surveillance capsules to support the calculated fluence projections described in WCAP-14040-NP-A and Regulatory Guide 1.190 for the period of extended operation.”²¹⁰

Applicant and NRC Staff believe that Contention 7 is inadmissible because “it does not identify any portion of the LRA that is deficient” and ignores the analysis contained in Section 4.2 of the Application.²¹¹ In fact, as both Applicant and NRC Staff point out, Section 4.2 contains a time-limited aging analysis (TLAA) that addresses embrittlement of the reactor vessel and demonstrates it will meet all the regulatory criteria throughout the period of extended

²⁰⁶ Id. at 28.

²⁰⁷ Id. at 27-29. Petitioner believes the Lahey Declaration is applicable to PINGP because “PINGP and Indian Point are both Westinghouse reactor designs of comparable vintage,” even though “PINGP is a two-loop plant and Indian Point is a four-loop plant.” Id. at 28.

²⁰⁸ Id. at 28-29.

²⁰⁹ Id. at 29.

²¹⁰ Id.

²¹¹ NRC Staff Answer at 35; see also Northern States Answer at 38.

operation.²¹² With regard to the Lahey Declaration, Applicant and NRC Staff insist that it has “no relevance” to PINGP and in any case represents “an impermissible challenge to the sufficiency of the reactor toughness requirements.”²¹³ Next, Applicant responds to PIIC’s argument concerning the number of spare capsules by noting that the Application commits to a Reactor Vessel Surveillance Program, consistent with the GALL Report, which indicates an adequate number of spare capsules.²¹⁴ NRC Staff further asserts that Petitioner’s concern is unsupported and fails to present any issue or controversy for the Board to consider.²¹⁵ Finally, Applicant points out that, contrary to Petitioner’s claim, “[t]here is no provision in the license renewal rules requiring presentation of . . . experiments or analysis” showing that embrittled structures will not fail.²¹⁶

In its reply, PIIC attaches an affidavit from Christopher Grimes explaining how the concerns raised in the Lahey Declaration are directly applicable to PINGP.²¹⁷ PIIC goes on to identify the alleged deficiency in Northern States’ Application: it “does not provide the detail to determine whether the program can manage the effects of embrittlement for the period of

²¹² NRC Staff Answer at 35; Northern States Answer at 38-39.

²¹³ Northern States Answer at 39; see also NRC Staff Answer at 35-36.

²¹⁴ Northern States Answer at 39-40. Applicant further explained the Vessel Surveillance Program at oral argument. See Tr. at 118-121. Each vessel initially contained six surveillance capsules and currently contains two capsules. Only one capsule per vessel is needed to evaluate the neutron embrittlement caused by the end-of-life neutron fluence. Because the capsules are located in regions of high neutron flux, both capsules in each vessel have reached that value of fluence. One capsule per vessel will be removed and destructively evaluated within the next couple of years, and that will complete the needed surveillance program for a 60-year vessel life.

²¹⁵ NRC Staff Answer at 37-38.

²¹⁶ Northern States Answer at 40.

²¹⁷ PIIC Reply at 21.

extended operation.”²¹⁸ Finally, PIIC maintains that “the LRA does not provide a [sic] an adequate description of the program that will rely on saved capsules to demonstrably manage fluence monitoring to manage embrittlement”²¹⁹ Northern States moves to strike these portions of PIIC’s reply,²²⁰ and NRC Staff supports the motion to strike.²²¹

The Board finds it useful to divide Contention 7 into three claims: (1) failure to consider embrittlement of the reactor vessel, (2) failure to consider embrittlement of reactor vessel internals, and (3) failure to adequately describe the aging management program for the reactor vessel with regard to the Vessel Surveillance Program. As to the first claim, Petitioner does not present a genuine dispute with the Application.²²² As NRC Staff and Applicant point out, Northern States accounted for reactor vessel embrittlement in Section 4.2 of its Application,²²³ and Petitioner has not identified any deficiency in Applicant’s analysis.

PIIC’s second claim, on the other hand, states an admissible contention of omission. Petitioner points to an omission in the Application – a failure to account for the effects of a pressure shock on reactor vessel internals. Petitioner notes that the Application must provide an aging management plan (AMP) for those structures and components that fall under 10 C.F.R. § 54.21(a)(1) and asserts that this analysis is missing for vessel internals.²²⁴ Because

²¹⁸ Id.

²¹⁹ Id. at 22.

²²⁰ Northern States Motion to Strike at 11-12.

²²¹ NRC Staff’s Response to Motion to Strike at 8-9.

²²² 10 C.F.R. § 2.309(f)(1)(vi).

²²³ LRA at 4.2-1 to -10.

²²⁴ PIIC Petition at 28.

PIIC alleges a facially viable contention of omission, PIIC does not need to provide supporting facts or expert opinion at this stage.²²⁵ Thus, with regard to Petitioner's second claim, Petitioner has stated an admissible contention.

PIIC's third claim, regarding the vessel surveillance program as part of the aging management plan for the reactor vessel, does not meet the admissibility standards of Section 2.309(f)(1). Specifically, Petitioner has not alleged a genuine dispute with the Application on a material issue of law or fact.²²⁶ If a component falls within the scope of 10 C.F.R. § 54.4 and meets the requirements of 10 C.F.R. § 54.21 such that aging of the component is a relicensing issue, Applicant may address this issue in one of two ways. An analysis may be performed showing that the aging mechanism will not cause failure of the component. If the analysis fails, then the application must include a specific aging program to manage the effects of aging on that component. If, however, the analysis succeeds, then no AMP is required. With regard to embrittlement of the vessel at PINGP, a TLAA was performed. This analysis showed satisfactory vessel performance through the end of a 60-year life.²²⁷ Thus, no AMP is required for the vessel. The Reactor Vessel Surveillance Program is not part of a vessel AMP. It is instead a program that validates the input to the vessel TLAA. It need not even be mentioned in the AMP section of the Application. To the extent that Contention 7 alleges deficiencies in this program, it cannot be admitted because there is no requirement to include this program in the Application.

But even if the Vessel Surveillance Program were considered part of a vessel AMP, the Board would still decline to admit this part of Contention 7. Northern States claims in its answer

²²⁵ See supra note 183.

²²⁶ 10 C.F.R. § 2.309(f)(1)(vi).

²²⁷ LRA at 4.2-1.

that the Reactor Vessel Surveillance Program is consistent with the GALL Report.²²⁸ The only program enhancement is a commitment “to preserve withdrawn and spare surveillance capsules for future use.”²²⁹ Petitioner provides no foundation for its claims alleging an inadequate number of standby surveillance capsules and an inadequate description of the program enhancement. The Reactor Vessel Surveillance Program is an existing program fully described in other license documents that, in its existing form, provides adequate surveillance of the vessel throughout the license extension period. Because the Commission can utilize this preexisting documentation in making its final determination on license renewal, Northern States need not repeat the description of this program in its Application. Such a description would be redundant and would in no way affect the Commission’s ultimate decision. Thus, the third element of Contention 7 raises an issue immaterial to the NRC’s determination.²³⁰

Based on the preceding analysis, we admit Contention 7 as modified:²³¹

The LRA does not contain an adequate plan to monitor and manage the effects of aging due to embrittlement of the reactor vessel internals.

viii. PIIC Contention 8

The program for managing primary stress corrosion cracking for nickel-alloy components fails to comply with 10 C.F.R. § 54.21(a)(3).²³²

²²⁸ Northern States Answer at 39.

²²⁹ Id.; see also Tr. at 123.

²³⁰ 10 C.F.R. § 2.309(f)(1)(iv).

²³¹ The Board makes this determination without reference to PIIC’s reply. Indeed, we grant Northern States’ motion to strike the Grimes Declaration and any statements in the reply that are based on it. See infra Part IV (ruling on motion to strike).

²³² PIIC Petition at 30.

Petitioner argues that Applicant's "commitment to do whatever the NRC tells them to do" to address the primary water stress corrosion cracking (PWSCC) of nickel-alloy components does not amount to an effective AMP.²³³ Petitioner faults Northern States for simply committing to "1. comply with applicable NRC orders, and 2. implement applicable NRC Bulletins, Generic Letters, and staff-accepted industry guidelines."²³⁴ Moreover, Petitioner notes, Applicant describes a monitoring program that merely implements the requirements of NRC First Revised Order EA-03-009 (Order EA-03-009)²³⁵ and the NRC's Interim Staff Guidance.²³⁶ Thus, in Petitioner's view, Northern States' Application fails to "address all ten elements of an effective aging management program."²³⁷

Applicant responds that Contention 8 does not present a genuine dispute with the Application on a material issue of law or fact.²³⁸ Applicant begins by distinguishing two different programs dealing with PWSCC of nickel-alloy nozzles and penetrations: a "specific program" applicable to "the penetration nozzles welded to the upper reactor vessel head," and "a general program, still under development by the NRC."²³⁹ With regard to the first program, announced in Order EA-03-009, Applicant explains that PINGP has implemented the inspection requirements with the Nickel-Alloy Vessel Head Penetration Nozzles Program described in

²³³ Id. at 31.

²³⁴ Id. at 30.

²³⁵ EA-03-009, "Issuance of Order Establishing Interim Inspection Requirements for Reactor Pressure Vessel Heads at Pressurized Water Reactors" (Feb. 11, 2003) (ADAMS Accession No. ML030380470) [hereinafter Order EA-03-009].

²³⁶ PIIC Petition at 30-31.

²³⁷ Id. at 31.

²³⁸ Northern States Answer at 46-47.

²³⁹ Id. at 41.

Section B2.1.28 of the Application, and Petitioner does not allege any specific deficiencies with regard to this program.²⁴⁰ The second program, also announced in Order EA-03-009, is currently in development.²⁴¹ In the interim, NRC Bulletin 2003-02 requires all PWRs to describe a lower head inspection program. Northern States asserts that it has complied with this interim requirement.²⁴² NRC also established an Interim Staff Guidance item “to alert license renewal applicants that a longer term program is under development,” and Northern States acknowledged this Guidance in its Application.²⁴³ In sum, Applicant asserts that its commitments to continue complying with the Order EA-03-009 inspection program and other generic communications, as well as its promise to comply with the program currently under development, are enough to satisfy the requirements of Section 54.21(a)(3).

NRC Staff considers Contention 8 inadmissible because Petitioner has failed to provide any factual support for its claim, any facts or expert opinion supporting its position, or a genuine dispute on a material issue of fact or law.²⁴⁴ NRC Staff also points out that, contrary to PIIC’s assertion, Section 54.21(a)(3) does not necessarily require an applicant to address the ten elements of an effective AMP. In any case, NRC Staff argues, Petitioner fails to identify those ten elements in its contention.²⁴⁵

²⁴⁰ Id.

²⁴¹ Id. at 44.

²⁴² Id. at 44-45.

²⁴³ Id. at 45.

²⁴⁴ NRC Staff Answer at 39-40.

²⁴⁵ Id. at 39.

In its reply, Petitioner includes an excerpt from the Grimes Declaration attached to the Petition alleging that “[t]he LRA does not explain how the existing interim inspection requirements satisfy the requirements of an effective aging management program.”²⁴⁶ Petitioner goes on to maintain that Section 54.21(a)(3) requires Applicant to show exactly how the interim inspection requirements demonstrate the adequacy of its aging management program.²⁴⁷ Applicant seeks to strike these portions of PIIC’s reply,²⁴⁸ and NRC Staff supports Applicant’s motion to strike.²⁴⁹

This contention is more conveniently treated as two issues. The first concerns the AMP described in Section B2.1.27 of the Application – the “Nickel-Alloy and Penetrations Program.” The second involves the AMP of Section B2.1.28 – the “Nickel-Alloy Penetration Nozzles Welded to the Upper Reactor Vessel Closure Heads of Pressurized Water Reactors Program.”

The first of these issues is admissible as part of this contention. Section 54.21(a)(c) of the Commission’s regulations requires the Applicant to “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.”²⁵⁰ Section B2.1.27 of the Application describes Applicant’s AMP in its entirety:

For the Nickel-Alloy Nozzles and Penetrations Program, PINGP is providing a commitment to the following activities for managing the aging of nickel-alloy components susceptible to primary water stress corrosion cracking: 1. comply with applicable NRC orders, and 2. implement applicable NRC Bulletins, Generic

²⁴⁶ PIIC Reply at 22 (quoting Grimes Declaration).

²⁴⁷ Id.

²⁴⁸ Northern States Motion to Strike at 14.

²⁴⁹ NRC Staff’s Response to Motion to Strike at 9.

²⁵⁰ 10 C.F.R. § 54.21(a)(3). “CLB” stands for “current licensing basis,” which is defined at 10 C.F.R § 54.3(a).

Letters, and staff-accepted industry guidelines. This commitment is included in LRA Appendix A (USAR Supplement) for incorporation into the USAR.²⁵¹

The Board finds that PIIC has stated a genuine dispute with the Application²⁵² – namely, that Applicant fails to describe its AMP to the extent required by Section 54.21. Because PIIC alleges a facially viable contention of omission, PIIC does not need to provide supporting facts or expert opinion at this stage.²⁵³ Thus, we admit this part of Contention 8.

The second issue addresses nickel-alloy upper head penetrations. For convenience, we will analyze this second issue for two time periods: a current AMP and a future AMP. The current part consists of Applicant's direct implementation of the requirements imposed by Order EA-03-009. The future part consists of Applicant's promise to implement the Commission's finalized inspection requirements, which will be incorporated into 10 C.F.R. § 50.55a at some future date. The admissibility of the second issue is herein addressed separately for these two periods of the AMP.

Regarding the current period, Order EA-03-009 directs that all affected licensees implement an inspection program to address PWSCC of nickel-alloy upper head penetrations. This order created an immediately effective modification of all licensees' licenses. Thus, the currently implemented AMP for stress corrosion cracking of nickel-alloy head penetrations is part of PINGP's current licensing basis.

Order EA-03-009 imposes a generic inspection requirement on the approximately 70 plants to which the letter was addressed. Hence, a contention alleging that Applicant's AMP is inadequate would be an allegation that the upper head inspection programs for 70 plants are

²⁵¹ LRA at B-58.

²⁵² 10 C.F.R. § 2.309(f)(1)(vi).

²⁵³ See supra note 183.

inadequate. This would be a generic allegation rather than a contention specific to the Prairie Island plant. Therefore, a petition for rulemaking would be a more appropriate means to address this alleged deficiency. However, Contention 8 does not allege inadequacy of the AMP; it merely states that the plan is not adequately described in the Application. Concerning the aging management plan, Section B.2.1.28 of the Application states:

The Nickel-Alloy Penetration Nozzles Welded to the Upper Reactor Vessel Closure Heads of Pressurized Water Reactors Program (Nickel-Alloy Vessel Head Penetration Nozzle Program) is a condition monitoring program that implements the requirements of the NRC First Revised Order EA-03-009, "Issue of Order Establishing Interim Inspection Requirements for Reactor Pressure Vessel Heads at Pressurized Water Reactors," dated February 20, 2004.²⁵⁴

NRC Order EA-03-009 provides more than adequate detail of the inspection program to satisfy the need for a description of the AMP in the Application. Detail of the AMP has been incorporated by reference. PIIC also alleges that the AMP description does not address all ten elements of an effective AMP. These ten elements must be addressed when an applicant's AMP differs from the AMP identified in the GALL Report.²⁵⁵ However, in this case, the AMP imposed by Order EA-03-009 is the relevant AMP identified by the GALL Report.²⁵⁶ Hence, the ten elements need not be addressed. We conclude that this part of the contention is not supported by fact or expert opinion as required by 10 C.F.R. § 2.309(f)(1)(v) and is therefore inadmissible.

The second part of this issue concerns the future AMP that will be implemented once the NRC incorporates finalized inspection requirements into 10 C.F.R. § 50.55a. The claim here is that "[t]he LRA program commitment to do whatever the NRC tells them to do does not

²⁵⁴ LRA at B-59.

²⁵⁵ Amergen Energy Company, LLC (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC __, __ (slip op. at 6) (Oct. 6, 2008).

²⁵⁶ See NUREG-1801, at XI M-45.

demonstrate the effectiveness of an aging management program.”²⁵⁷ The Board believes that the LRA must be evaluated on the basis of AMPs now in effect. This means we will evaluate the LRA based on the requirements of Order EA-03-009. At some future date, the NRC might or might not implement finalized inspection requirements. The Application has provided a commitment that, should the inspection requirements be changed, Applicant will implement those new inspection requirements.²⁵⁸ It will be the responsibility of NRC Staff and Applicant to ensure that this commitment is fulfilled. This Board lacks the authority – much less the ability – to require Applicant clairvoyantly to predict the future inspection requirements and to describe their future implementation. On this issue, Petitioner has failed to identify any deficiency on a relevant matter in Northern States’ Application and therefore does not satisfy 10 C.F.R. § 2.309(f)(1)(vi). This part of the contention is inadmissible.

In summary, the Board admits this contention in so far as it applies to the AMP described in Section B2.1.27 of the Application. Petitioner has raised a question of material fact and demonstrated a genuine dispute with the Application.²⁵⁹ The Board rejects this contention, however, as it relates to the AMP of Section B2.1.28.²⁶⁰ Thus, the Board admits Contention 8 in modified form:

²⁵⁷ PIIC Petition at 31.

²⁵⁸ The Commission has explained that mere “speculation” that an applicant will not comply with NRC regulations, in the absence of documentary support, does not amount to an admissible contention. GPU Nuclear, Inc. (Oyster Creek Generating Station), CLI-00-06, 51 NRC 193, 207 (2000) (stating that “this agency has declined to assume that licensees will contravene our regulations”).

²⁵⁹ 10 C.F.R. § 2.309(f)(1)(iv), (vi).

²⁶⁰ The Board admits this contention without reference to PIIC’s reply. Indeed, we grant Northern States’ motion to strike the Grimes Declaration and any statements in the reply that are based on it. See infra Part IV (ruling on motion to strike).

Section B2.1.27 of the LRA does not contain an adequate plan to monitor the effects of primary water stress corrosion cracking of nickel-alloy components.

ix. PIIC Contention 9

The aging management program 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.²⁶¹

In this contention, Petitioner alleges three deficiencies in Applicant's AMP for buried pipes containing radioactive fluid: it does not provide for adequate inspection, there is no adequate leak prevention program, and there is no adequate monitoring to determine when leakage occurs.²⁶² Petitioner explains that such leakage, if it goes undetected, could "be a significant contributor to the potential for a core damage accident."²⁶³ Citing a 2006 NRC report, Petitioner points to several recent examples of aging piping systems at other facilities that have experienced undetected leaks.²⁶⁴ While Petitioner acknowledges that Northern States' Application contains an inspection program for underground piping, it finds that program deficient because it "does not specifically commit to conducting any inspections of buried systems, structures, or components to establish baseline conditions that can be used to ensure the effectiveness of the program."²⁶⁵ In support of this claim, Petitioner cites to the Hausler Declaration submitted in the Indian Point proceeding. According to Petitioner, "[t]he proposed

²⁶¹ PIIC Petition at 32.

²⁶² Id.

²⁶³ Id.

²⁶⁴ Id. at 33-34.

²⁶⁵ Id. at 35.

program for PINGP is similarly deficient because it contains no provision for using cathodic protection or other methods to prevent leaks from occurring.”²⁶⁶

Applicant considers Contention 9 inadmissible because, in its view, it is outside the scope of license renewal, provides no factual basis for its claims, and fails to demonstrate a genuine dispute with the Application.²⁶⁷ First, Applicant argues, the contention is overly broad because it does not specify which buried pipes containing radioactive fluid fall within the scope of license renewal as defined by 10 C.F.R. § 54.4. “In fact,” Applicant asserts, “there are no buried components within the scope of the license renewal rule at PINGP that contain radioactive liquids.”²⁶⁸ Second, Applicant maintains that Petitioner’s claims regarding PINGP’s monitoring and leak prevention programs have no relevance to aging management and are therefore beyond the scope of this proceeding.²⁶⁹ Third, Applicant urges that neither the Hausler Declaration nor Petitioner’s numerous examples of leaks at other plants provides an adequate basis for Contention 9, given that they are in no way related to PINGP, and Petitioner makes no attempt to demonstrate their applicability.²⁷⁰ Fourth, Applicant suggests that the contention is “unduly vague” and faults Petitioner for failing to carefully review the Application, which “reveals that there in fact are no buried components within the scope of the license renewal rule at PINGP that contain radioactive liquids.”²⁷¹

²⁶⁶ Id.

²⁶⁷ Northern States Answer at 47.

²⁶⁸ Id. at 48 n.50.

²⁶⁹ Id. at 49.

²⁷⁰ Id. at 51-54.

²⁷¹ Id. at 54-55.

Like Northern States, NRC Staff argues that Contention 9 is overly broad, falls outside the scope of this proceeding, lacks any facts or expert opinion specific to PINGP, and fails to raise a genuine dispute with the Application.²⁷²

In its reply, Petitioner includes an excerpt from the Grimes Declaration. Grimes acknowledges that the Application contains a “Buried Piping and Tanks Inspection Program” but finds that program deficient because it “only commits to conduct inspections if the opportunity arises, with at least one inspection occurring within ten years.”²⁷³ Moreover, for those systems that contain buried piping, Grimes asserts that “it is not clear whether the components and systems normally contain radioactive liquid or might contain radioactive liquid as a result of an accident or transient.”²⁷⁴ Finally, PIIC states that it is not reassured by Applicant’s claim that there are “no buried components within the scope of the license renewal rule at PINGP that contain radioactive liquids.”²⁷⁵ Applicant moves to strike all “new allegations” set forth in the Grimes Declaration and PIIC’s accompanying text in the PIIC Reply.²⁷⁶ NRC Staff supports this motion to strike.²⁷⁷

The Board finds that Petitioner has not stated an admissible contention. Section 2.309(f)(1)(i) requires a petitioner to “[p]rovide a specific statement of the issue of law or fact to be raised or controverted”²⁷⁸ PIIC fails to meet this requirement, because it has submitted

²⁷² NRC Staff Answer at 41-45.

²⁷³ PIIC Reply at 23 (quoting Grimes Declaration).

²⁷⁴ Id.

²⁷⁵ Id. at 23-24.

²⁷⁶ Northern States Motion to Strike at 15-16.

²⁷⁷ NRC Staff’s Response to Motion to Strike at 10.

²⁷⁸ 10 C.F.R. § 2.309(f)(1)(i).

a contention aimed broadly at all “buried systems, structures, and components that may convey or contain radioactively-contaminated water.”²⁷⁹ Petitioner does not identify any specific buried components at PINGP that may contain radioactive fluids. On the other hand, Applicant has identified three systems within the scope of license renewal that contain buried piping and has asserted that “[n]one of these three systems contains or carries radioactive liquids.”²⁸⁰ If Petitioner disputes this assertion, it provides no basis for this position nor any supporting facts or expert opinion.²⁸¹ Thus, it fails to state an admissible contention.²⁸² Moreover, the Board agrees with Applicant that Petitioner’s claims regarding PINGP’s monitoring and leak prevention programs have no relevance to aging management and are therefore beyond the scope of this proceeding.²⁸³

In sum, the Board declines to admit this contention. We find Contention 9 inadmissible regardless of whether we consider the information contained in Petitioner’s reply.

x. PIIC Contention 10

The LRA violates 10 C.F.R. §§ 54.21(a) and 54.29 because it fails to include an aging management plan for each electrical transformer that has a safety-related function.²⁸⁴

²⁷⁹ PIIC Petition at 32.

²⁸⁰ Northern States Answer at 55. The three systems include “(1) [the intake portion of the] cooling water systems (Application at 2.3.3.6), (2) the fire protection systems (id. at 2.3.3.9), and (3) the fuel oil system (id. at 2.3.3.10).” Id.; see also Tr. at 133.

²⁸¹ 10 C.F.R. § 2.309(f)(1)(ii), (v).

²⁸² The Board acknowledges that the Indian Point Licensing Board recently admitted a contention similar to Contention 9. Indian Point, LBP-08-13, 68 NRC at ___ (slip op. at 34-35). In that case, however, the petitioner was able to identify numerous buried components within the scope of Part 54 that contain radioactive fluid. In the present case, Petitioner has failed to identify any such components.

²⁸³ 10 C.F.R. § 2.309(f)(1)(iii).

²⁸⁴ PIIC Petition at 36.

In this contention, Petitioner faults Applicant for failing to demonstrate a plan for managing electrical transformers with a safety-related function.²⁸⁵ According to Petitioner, electrical transformers are subject to aging management review because they “function without moving parts or without a change in configuration or properties”²⁸⁶

Applicant responds that Contention 10 is an impermissible challenge to the NRC’s license renewal rule.²⁸⁷ As Applicant points out, 10 C.F.R. § 54.21(a)(1) requires an AMP only for structures and components “that perform an intended function . . . without moving parts or without a change in configuration or properties.”²⁸⁸ These are known as “passive” structures and components. Transformers, however, according to Applicant, have been determined by the NRC to be “active components excluded from aging management review.”²⁸⁹ Thus, Applicant asserts, Petitioner’s claim in Contention 10 represents an “impermissible challenge to 10 C.F.R. § 54.21(a)(1) under which active components are screened out.”²⁹⁰ Moreover, “PIIC provides no basis to dispute the NRC’s determination that transformers are active components.”²⁹¹

NRC Staff agrees with Northern States. NRC Staff outlines how the Commission distinguishes between active and passive components and explains how the Commission

²⁸⁵ Id.

²⁸⁶ Id.

²⁸⁷ Northern States Answer at 56.

²⁸⁸ Id.

²⁸⁹ Id. at 57.

²⁹⁰ Id. at 58.

²⁹¹ Id.

reached its conclusion that transformers are active components.²⁹² NRC Staff also notes that Petitioner “offers no factual support or expert opinion to support the assertion that transformers function without a change in configuration or properties.”²⁹³

In its reply, Petitioner acknowledges the NRC’s position that transformers are active components. “While it is difficult for the Community to understand why a transformer is an ‘active’ component,” Petitioner states, “we now recognize that it is an established NRC position.”²⁹⁴ At oral argument, Petitioner confirmed that it wishes to withdraw Contention 10.²⁹⁵

Contention 10 is withdrawn.

xi. PIIC Contention 11

The program for managing flow accelerated corrosion (FAC) fails to comply with 10 C.F.R. § 54.21(a)(3).²⁹⁶

In this contention, Petitioner takes issue with the “Flow-Accelerated Corrosion (FAC) Program” described in the Application. Petitioner acknowledges that, according to the Application, the FAC program is consistent with the GALL Report.²⁹⁷ Nonetheless, it insists, “the LRA does not offer any demonstration that the FAC effects will be adequately managed.”²⁹⁸ Citing to the expert declaration of Dr. Joram Hopfenfeld submitted in the Indian Point

²⁹² NRC Staff Answer at 46-49 (citing Nuclear Energy Institute (NEI) “Industry Guideline for Implementing the Requirements of 10 CFR Part 54 – The License Renewal Rule,” Revision 3, at Appendix B (March 2001) (ADAMS Accession No. ML011100576)).

²⁹³ Id. at 46.

²⁹⁴ PIIC Reply at 24.

²⁹⁵ Tr. at 140.

²⁹⁶ PIIC Petition at 37.

²⁹⁷ Id. at 37-38.

²⁹⁸ Id. at 38.

proceeding, Petitioner argues that “[t]he proposed FAC program is deficient because it relies on the computer code CHECWORKS, without sufficient benchmarking of the operating parameters.”²⁹⁹ Dr. Hopfenfeld recommends a benchmarking period of six years for low-turbulence straight pipes and at least 10-15 years for elbows and branching areas, where turbulence is considerably higher.³⁰⁰ Notwithstanding those recommendations, Petitioner asserts, “[t]he LRA does not explain how the FAC program has been benchmarked.”³⁰¹ Moreover, “it does not provide any explanation of the predictive capability of CHECWORKS when wall thinning was identified.”³⁰²

Applicant responds that Contention 11 is inadmissible because Petitioner does not demonstrate a genuine, material dispute with the Application.³⁰³ First, Applicant suggests that PIIC’s reliance on a declaration from the Indian Point proceeding is entirely misplaced. According to Applicant, Petitioner makes no attempt to relate Dr. Hopfenfeld’s assessments to the use of CHECWORKS at PINGP.³⁰⁴ In fact, Applicant points out, Dr. Hopfenfeld’s benchmarking assessments reflect the fact that Indian Point, unlike PINGP, underwent a power uprate.³⁰⁵ Thus, Applicant argues, the Hopfenfeld Declaration is inapplicable to Petitioner’s claim. And even if it were applicable, Northern States “has incorporated FAC monitoring data back to 1988 into its CHECWORKS modeling, so that by 2013 there will be a total of 25 years of

²⁹⁹ Id. at 40.

³⁰⁰ Id. at 41.

³⁰¹ Id.

³⁰² Id.

³⁰³ Northern States Answer at 58.

³⁰⁴ Id. at 59-60.

³⁰⁵ Id. at 61-62.

plant inspection data into the model, in excess of even the outside limit postulated by Dr. Hopenfeld.³⁰⁶ Finally, Applicant points out that its Application demonstrates consistency with the FAC program described in GALL Report, and the GALL Report “is entitled to significant weight in addressing the issue of adequacy of aging management programs.”³⁰⁷ Because “[t]he PIIC provides no information . . . that would indicate any ineffectiveness of the program determined to be adequate by the GALL Report standards,” Applicant believes that PIIC’s claim is unsupported and therefore inadmissible.³⁰⁸

NRC Staff also takes issue with Petitioner’s reliance on the Hopenfeld Declaration. According to NRC Staff, “[t]he declaration by itself provides no facts or opinion regarding FAC; it simply supports two of Riverkeeper’s contentions in a separate proceeding.”³⁰⁹ Thus, Petitioner has failed to provide any expert witness or facts to support its assertions.

In its reply, Petitioner insists that it has no obligation to “exhaust the record to determine how long [the FAC] program has been used at PINGP to demonstrate the extent to which it should have been benchmarked.”³¹⁰ PIIC also disputes Applicant’s assertion that mere consistency with the GALL Report is sufficient to demonstrate an adequate AMP.³¹¹

The Board finds Contention 11 admissible. As stated by Petitioner, 10 C.F.R. § 54.21(a)(3) requires that the Application, “[f]or structures and components identified in

³⁰⁶ Id. at 61 (emphasis in original).

³⁰⁷ Id.

³⁰⁸ Id.

³⁰⁹ NRC Staff Answer at 51.

³¹⁰ PIIC Reply at 24.

³¹¹ Id. at 25.

paragraph (a)(1) of this Section, 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.” Applicant has chosen to make this demonstration for the effects of FAC by applying an AMP that measures its effects. Section B2.1.17 of the Application states that the FAC program is an existing program, is based upon EPRI guidelines, and is consistent with the GALL Report.³¹² It consists of three components: (1) initial analysis, (2) baseline inspections, and (3) follow-up inspections. The Application does not, however, provide any more than this brief description of the plan.

A recent Commission decision states that “the license renewal applicant's use of an aging management program identified in the GALL Report constitutes reasonable assurance that it will manage the targeted aging effect during the renewal period.”³¹³ In the present case, Northern States’ Application asserts that its AMP is consistent with the program described in the GALL Report for managing FAC. The LRA makes this assertion not because Applicant has adopted the AMP directly from the GALL Report, but rather because Applicant has compared the two programs and found them to be consistent. Still, the Application must contain sufficient information to independently confirm consistency with the GALL Report. Currently, the description of the AMP in the Application leaves this in question. Thus, Contention 11 raises a genuine and material concern about whether or not the AMP is consistent with the GALL

³¹² LRA at B-42 to -43.

³¹³ Oyster Creek, CLI-08-23, 68 NRC at __ (slip op. at 6).

Report, whether it fulfills the requirements of 10 C.F.R. § 54.21(a)(3), and potentially, whether the AMP actually exists.³¹⁴ For this reason Contention 11 is admitted in the following form:

The LRA fails to supply sufficient details of the aging management program for flow accelerated corrosion to demonstrate that its effects will be adequately managed.

IV. CONCLUSION

Based on the foregoing, the Prairie Island Indian Community is admitted as a party to this license renewal proceeding pursuant to 10 C.F.R. § 2.309.

The following contentions have been admitted, as limited and reworded by the Licensing Board:

1. Contention 1 – The ER in the LRA does not provide an adequate analysis of historical and archaeological resources that may be affected by the proposed license renewal. The LRA does not include information concerning pitfalls that could adversely affect the plan to avoid damage to Historical and Archaeological Resources.

2. Contention 2 – The SAMA analysis in the LRA does not accurately reflect the site restoration costs for the area surrounding the PINGP, including the PIIC and its associated Treasure Island complex. The Site Restoration Study methodology should be used to develop more appropriate input for the analysis.

3. 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.

³¹⁴ 10 C.F.R. § 2.309(f)(1)(vi).

4. Contention 6 – The LRA 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.

5. Contention 7 – The LRA does not contain an adequate plan to monitor and manage the effects of aging due to embrittlement of the reactor vessel internals.

6. Contention 8 – Section B2.1.27 of the LRA does not contain an adequate plan to monitor the effects of primary water stress corrosion cracking of nickel-alloy components.

7. Contention 11 – The LRA fails to supply sufficient details of the aging management program for flow accelerated corrosion to demonstrate that its effects will be adequately managed.

The Board rules that the procedures of Subpart L shall be used for these admitted contentions. Within fifteen (15) days of the issuance of this order, NRC Staff shall notify the Board and the parties of whether it desires to participate in this proceeding as a party pursuant to 10 C.F.R. § 2.1202(b)(2). Within thirty (30) days of this order, the parties shall make their initial disclosures pursuant to 10 C.F.R. § 2.336(a). NRC Staff shall make its initial disclosures pursuant to 10 C.F.R. § 2.336(b) and shall file in the docket, present to the Board, and make available to the parties to the proceeding the hearing file pursuant to 10 C.F.R. § 2.1203(a)(1).

For the foregoing reasons, Petitioner's first, second, fifth, sixth, seventh, eighth, and eleventh contentions are admitted as restated, while the Petitioner's third, fourth, and ninth contentions are not admitted. Petitioner has withdrawn Contention 10.

Northern States' motion to strike is granted as follows: the Declaration of Christopher I. Grimes is struck in its entirety and all references to his declaration in the PIIC Reply are also struck. The Grimes Declaration constitutes "new support" and therefore is not proper in a reply.

Pursuant to 10 C.F.R. § 2.311, an appeal of this Memorandum and Order may be filed within ten (10) days of service of this Memorandum and Order by filing a notice of appeal and

an accompanying supporting brief. Any party opposing an appeal may file a brief in opposition to the appeal. All briefs must conform to the requirements of 10 C.F.R. § 2.341(c)(2).

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD³¹⁵

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

/RA/

Dr. Thomas J. Hirons
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 5, 2008

³¹⁵ Copies of this order were sent this date by the agency's E-Filing system to counsel for (1) Applicant, Northern States Power Company, (2) Petitioner, Prairie Island Indian Community, and (3) NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)
)
(License Renewal))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON PETITION TO INTERVENE, REQUEST FOR HEARING, AND MOTION TO STRIKE) (LBP-08-26) have been served upon the following persons by Electronic Information Exchange.

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DOCKET NOS. 50-282 AND 50-306-LR

LB MEMORANDUM AND ORDER (RULING ON PETITION TO INTERVENE, REQUEST FOR HEARING, AND MOTION TO STRIKE) (LBP-08-26)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 5th day of December 2008