

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

In the Matter of)	
)	
SOUTH CAROLINA ELECTRIC & GAS)	Docket Nos. 52-027 and 52-028
COMPANY AND SOUTH CAROLINA)	
PUBLIC SERVICE AUTHORITY (ALSO)	January 2, 2009
REFERRED TO AS SANTEE COOPER))	
)	
(Virgil C. Summer Nuclear Station Units 2)	
and 3))	

**SOUTH CAROLINA ELECTRIC & GAS COMPANY'S
ANSWER OPPOSING JOSEPH WOJCICKI'S PETITION TO INTERVENE**

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.309(h), South Carolina Electric & Gas Company ("SCE&G"), applicant in the above-captioned matter, acting for itself and on behalf of the South Carolina Public Service Authority, hereby files its timely Answer to Mr. Joseph Wojcicki's Petition to Intervene ("Petition") dated December 7, 2008, but served by the NRC's Electronic Information Exchange (EIE) system on December 8, 2008.¹ The Petition responds to the U.S. Nuclear Regulatory Commission's ("NRC" or "Commission") Notice of Order, Hearing, and

¹ Mr. Wojcicki's Petition otherwise includes no form of certification of service. The electronic message from the NRC's Office of the Secretary states:

Re: NRC Hearing Docket Virgil C Summer 52-027 and 52-028-COL
The Office of the Secretary has received a document entitled
'Petition to Intervene'
that was submitted by Joseph Wojcicki who is affiliated with Consultant.
It is intended for inclusion in the referenced docket. It was submitted through the NRC's
Electronic Information Exchange (EIE) system and arrived on 12/08/2008 14:46:59.

Opportunity to Petition for Leave to Intervene on a Combined License (“COL”) for Virgil C. Summer Nuclear Station (“VCSNS”) Units 2 and 3, published in the *Federal Register* on October 10, 2008² (“Hearing Notice”). In its application, SCE&G has applied for a COL to construct and operate two AP1000 advanced passive pressurized water reactors on the VCSNS site in Fairfield County, South Carolina.

As discussed below, because he fails to demonstrate standing and proffer at least one admissible contention, Mr. Wojcicki has not satisfied the Commission’s requirements to intervene in this matter. Therefore, pursuant to 10 C.F.R. § 2.309, the Petition should be denied.

II. BACKGROUND

On March 27, 2008, SCE&G submitted an application to the NRC for a COL for VCSNS Units 2 and 3.³ The NRC Staff accepted the application for docketing on August 6, 2008, and the Commission issued a Hearing Notice that was published in the *Federal Register* on October 10, 2008.⁴ The Hearing Notice stated that any person whose interest may be affected by this proceeding and who wishes to participate as a party must file a petition for leave to intervene within 60 days of the Hearing Notice (*i.e.*, by December 9, 2008) in accordance with 10 C.F.R. § 2.309.⁵ As noted above, Mr. Wojcicki filed his Petition on December 8, 2008; SCE&G now responds in accordance with 10 C.F.R. § 2.309(h).

In his Petition, Mr. Wojcicki asserts—without offering any supporting evidence, explanation, or detail—that he has standing to be a party to this proceeding.⁶ Equally important,

² 73 Fed. Reg. 60,362.

³ See Acceptance for Docketing of an Application for Combined License for Virgil C. Summer Nuclear Station Units 2 and 3, 73 Fed. Reg. 45,792 (Aug. 6, 2008).

⁴ *Id.*; Hearing Notice, 73 Fed. Reg. at 60,362.

⁵ Hearing Notice, 73 Fed. Reg. at 60,363.

⁶ Petition at 1.

Mr. Wojcicki fails to set forth any specific contentions challenging SCE&G's application. Rather, Mr. Wojcicki vaguely states that he wants to be sure that "the motion^[7] to change the location of the two AP1000 nuclear reactors from the currently proposed Jenkinsville, SC site, to a new location near the Atlantic Ocean, providing significantly better economic, environmental, and social solutions, is accepted by the NRC."⁸ As explained below, this statement highlights and captures the overall deficient nature of the Petition, as well as the many reasons why it should be denied in its entirety.

III. MR. WOJCICKI HAS FAILED TO SHOW THAT HE HAS STANDING

A. Applicable Legal Standards and Relevant NRC Precedent

To be admitted as a party to this proceeding, Mr. Wojcicki must demonstrate standing and submit at least one admissible contention.⁹ Turning first to standing, Commission regulations¹⁰ require that a petitioner provide certain basic information, including: (1) the nature of the petitioner's right under the Atomic Energy Act of 1954, as amended ("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 its interest.¹¹ Thus, Mr. Wojcicki has the burden to present facts that demonstrate either that he satisfies the traditional elements of standing, or that he has presumptive standing based on geographic proximity to the proposed facility.¹²

⁷ We are unaware of any motion to this effect filed by Petitioner in this proceeding. Nor has Mr. Wojcicki provided any information about the nature of such motion, or the relief or other action sought.

⁸ Petition at 1.

⁹ See 10 C.F.R. § 2.309(a).

¹⁰ See *id.* § 2.309(d)(1).

¹¹ See *id.* § 2.309(d)(1)(ii)-(iv).

¹² See *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-05-26, 62 NRC 577, 579-83 (2005); *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 18 (2007) ("The relevant concern in this instance . . . is whether the record reflects information that

1. Traditional Standing

Judicial concepts of standing are generally followed in NRC proceedings.¹³ Thus, to demonstrate standing, a petitioner must show: (1) an actual or threatened, concrete and particularized injury that is (2) fairly traceable to the challenged action, and (3) likely to be redressed by a favorable decision.¹⁴ These three criteria are commonly referred to as injury-in-fact, causality, and redressability, respectively.

First, a petitioner's injury-in-fact showing "requires more than an injury to a cognizable interest. It requires that the party seeking [to participate] be himself among the injured."¹⁵ The injury must be "concrete and particularized," not "conjectural" or "hypothetical."¹⁶ "As a result, standing [will be] denied when the threat of injury is too speculative."¹⁷ Additionally, the alleged "injury-in-fact" must lie within "the zone of interests" protected by the statutes governing the proceeding—either the AEA or the National Environmental Policy Act of 1969, as amended.¹⁸ The injury-in-fact, therefore, must generally involve potential radiological or environmental harm.¹⁹

Second, a petitioner must establish that the injuries alleged are fairly traceable to the proposed action—in this case, the issuance of a COL for VCSNS Units 2 and 3.²⁰ Although a

adequately demonstrates . . . whether petitioner . . . has shown he has sufficient contacts within that area to establish the applicability of the presumption [that a petitioner has standing based on geographic proximity.]”).

¹³ See *Nuclear Mgmt. Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 163 (2006).

¹⁴ See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

¹⁵ *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972).

¹⁶ *Sequoyah Fuels Corp.* (Gore, Okla. Site), CLI-94-12, 40 NRC 64, 72 (1994) (citations omitted).

¹⁷ *Id.*

¹⁸ *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, N.M.), CLI-98-11, 48 NRC 1, 5 (1998), *aff'd sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999).

¹⁹ See *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 336 (2002).

²⁰ See *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75.

petitioner is not required to show that the injury flows directly from the challenged action, it must nonetheless show that the “chain of causation is plausible.”²¹ The relevant inquiry is whether a cognizable interest of the petitioner might be adversely affected by one of the possible outcomes of the proceeding.²²

Finally, each petitioner is required to show that “its actual or threatened injuries can be cured by some action of the [NRC].”²³ In other words, each petitioner must demonstrate that the injury can be redressed by a decision in this proceeding. Furthermore, “it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.”²⁴

2. Standing Based on Geographic Proximity

Under NRC case law, a petitioner may, in some instances, be presumed to have fulfilled the judicial standards for standing based on his or her geographic proximity to a facility or source of radioactivity.²⁵ “Proximity” standing is based on the assumption “that an accident associated with [a] nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility.”²⁶ The Commission has held that working or living within a 50-mile radius of a nuclear power reactor is sufficient to invoke the proximity presumption in proceedings involving the issuance of a construction permit or an operating license.²⁷

²¹ *Id.*

²² *Nuclear Eng’g Co., Inc.* (Sheffield, Ill., Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

²³ *Sequoyah Fuels Corp.* (Gore, Okla. Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001).

²⁴ *Sequoyah Fuels*, CLI-94-12, 40 NRC at 76 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotations omitted)).

²⁵ *Peach Bottom*, CLI-05-26, 62 NRC at 580.

²⁶ *Id.* (citations omitted).

²⁷ *See Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989); *Tenn. Valley Auth.* (Bellefonte Nuclear Power Plant Units 3 & 4), LBP-08-16, slip op. at 8 (Sept. 12, 2008). Nevertheless, to the extent that the Commission adheres to “contemporaneous judicial concepts of

B. Mr. Wojcicki Has Failed to Demonstrate That He Has Standing

As explained above, Mr. Wojcicki shoulders the burden of showing that he has standing in the proceeding.²⁸ When evaluating whether a petitioner has standing, the Board is limited to the facts that have been provided by the participants.²⁹ Even a *pro se* petitioner, like Mr. Wojcicki, is required to present facts to the Board that demonstrate his standing to participate in the proceeding.³⁰

Herein, Mr. Wojcicki has utterly failed to proffer *any* facts, through a declaration or other means, to demonstrate his standing in this proceeding. He has merely asserted that he has a right to be a party to the proceeding and that he is an intervenor in the proceeding currently before the South Carolina Public Service Commission.³¹ But, other than including, as part of his signature block, an address in West Columbia, South Carolina, the Petition is devoid of any information

standing,” the Board may wish to consider the U.S. Supreme Court’s recent decision in *Davis v. Fed’l Election Comm’n*, 554 U.S. ___ (2008), slip-op. at p. 7. In *Davis*, the Court found that “[s]tanding is not dispensed in gross.” “Rather, ‘a plaintiff must demonstrate standing for each claim he seeks to press’ and ‘for each form of relief that is sought.’” *Davis*, slip op. at p. 7 (citing *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)(quoting *Friends of Earth v. Laidlaw Environmental Servs. (TOC), Inc.*, 528 U.S. 185 (2000)). This case appears to at least limit the holdings in *Duke Power Co.* and *Sierra Club*, prior Supreme Court decisions on which the Commission has relied, if not overturn them. The *Davis* opinion suggests that a generic presumption of standing for individuals living within fifty miles of a nuclear plant is no longer supported by contemporaneous judicial concepts of standing. Rather, if there is no nexus between the specific contentions proposed and the basis proposed to demonstrate standing (living in proximity to the proposed site), then the petitioner’s standing is challengeable. In other words, the proposition that an individual who lives within fifty miles of a nuclear power plant has a presumption of standing should be rebuttable. For example, even if the Board finds that Mr. Wojcicki lives within fifty miles of the proposed site, Mr. Wojcicki still does not have standing because there is no nexus between his basis for standing (living within fifty miles of the proposed site) and the claim he describes in his Petition.

²⁸ See *supra* note 12.

²⁹ *Susquehanna*, 66 NRC at 19-20 (noting that Board’s determination regarding standing should be based on the record of the case, which means the facts proffered by the participants in the proceeding).

³⁰ See *id.* at 20. The Board noted that a petitioner, whether *pro se* or otherwise, is “best served by accurately delineating in as much detail as practicable the particulars associated with [its claim of standing.]” *Id.* at 21, n. 13. The Board also noted that a petitioner who fails to provide specific information regarding . . . [its claim of standing] only complicates matters for itself.” *Id.* at 19.

³¹ See Petition at 1.

having a bearing on standing.³² A petitioner cannot meet his burden by merely providing an address.³³ In this case, for instance, Petitioner does not explain whether that address is his residence, a business address, or some other address.

Moreover, a petitioner must do more than simply assert that he is a party in a non-NRC proceeding; he must explain why such status satisfies NRC requirement for standing.³⁴ This, Mr. Wojcicki has not done. Thus, Mr. Wojcicki clearly failed to meet his burden. The Board should find that he does not have standing and dismiss his Petition, on this ground alone, pursuant to 10 C.F.R. § 2.309(d).

IV. MR. WOJCICKI FAILS TO PROFFER AN ADMISSIBLE CONTENTION

A. Applicable Legal Standards and Relevant NRC Precedent

As explained above, to intervene in an NRC licensing proceeding, a petitioner must, in addition to establishing standing, propose at least one admissible contention.³⁵ Under 10 C.F.R. § 2.309(f)(1), a hearing request “must set forth with particularity the contentions sought to be raised.” Herein, Mr. Wojcicki has failed to propose any contention—with particularity or otherwise. In this regard, Section 2.309(f)(1) specifies that each contention must: (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make

³² See *id.* at 2.

³³ See *Nuclear Mgmt. Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 745-46 (2005) (finding that organization failed to show that it had standing because it only provided its return address in its pleadings).

³⁴ See *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-90-29, 32 NRC 89, 91 (1990) (finding that standing in a non-NRC proceeding is not relevant to a determination of whether the petitioner has standing in an NRC proceeding unless petitioner shows equivalence of applicable standards and an overlap of relevant issues).

³⁵ See 10 C.F.R. § 2.309(a).

to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.³⁶

The purpose of these six criteria is to “focus litigation on concrete issues and result in a clearer and more focused record for decision.”³⁷ This purpose will be completely undermined in this proceeding should the Board grant the instant Petition. The Commission has stated that it “should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing.”³⁸ This underlying consideration has resulted in NRC rules on contention admissibility that are “strict by design” and which were “toughened . . . in 1989 because in prior years ‘licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.’”³⁹

B. Mr. Wojcicki Has Not Proffered a Contention

Failure to comply with any *one* of the six admissibility criteria set forth in 10 C.F.R. § 2.309(f)(1) is grounds for rejecting a proposed contention.⁴⁰ As will become evident in the remainder of this Answer, Mr. Wojcicki has failed to satisfy *any* of the criteria. In fact, it is not just that the Petition lacks an *admissible* contention, but that it is devoid of *any* contention

³⁶ See 10 C.F.R. § 2.309(f)(1)(i)-(vi). The seventh contention admissibility requirement—10 C.F.R. § 2.309(f)(1)(vii)—is only applicable in proceedings arising under 10 C.F.R. § 52.103(b) and therefore has no bearing on the admissibility of the petitioner's contentions in this proceeding.

³⁷ Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004) (Final Rule).

³⁸ *Id.*

³⁹ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001) (citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (1999)).

⁴⁰ See Changes to Adjudicatory Process, 69 Fed. Reg. at 2,221; see also *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

whatsoever. In light of the Petitioner's glaring failure, no matter how generously the Board construes the Petition,⁴¹ to present a contention (let alone an admissible contention), the Petition is fatally deficient and must be rejected in its entirety.

1. Mr. Wojcicki Has Not Specifically Stated the Issue of Law or Fact to Be Raised

It is fundamental that a petitioner must provide "a specific statement of the issue of law or fact to be raised or controverted."⁴² Specifically, the petitioner must "articulate at the outset the specific issues [it] wish[es] to litigate as a prerequisite to gaining formal admission as [a party]."⁴³ Namely, an "admissible contention must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]."⁴⁴ The contention rules "bar contentions where petitioners have only 'what amounts to generalized suspicions, hoping to substantiate them later.'"⁴⁵

Petitioner has not proffered any contention. Rather, he only vaguely indicates that he wishes to have the proposed reactors built at a different undisclosed location "near the Atlantic Ocean."⁴⁶ This bare-bones assertion does not specifically identify the issue of law or fact to be raised in this proceeding, as called for by 10 C.F.R. § 2.309(f)(1)(i). Vague musings such as

⁴¹ Notwithstanding that *pro se* petitioners are not necessarily held to the same standard of pleading as those represented by counsel, *Shaw Areva MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 188 (2007) (citing *Pub. Serv. Elec. & Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487 (1973)), the Petitioner here has flouted every aspect of the Commission's intervention requirements. The Petitioner's undefined interest in changing the location of the new Summer Units is simply insufficient to satisfy the Commission's contention requirements.

⁴² 10 C.F.R. § 2.309(f)(1)(i).

⁴³ *Oconee*, CLI-99-11, 49 NRC at 338.

⁴⁴ *Millstone*, CLI-01-24, 54 NRC at 359-60.

⁴⁵ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-03-17, 58 NRC 419, 424 (2003) (quoting *Oconee*, CLI-99-11, 49 NRC at 337-39).

⁴⁶ Petition at 1.

these are not sufficiently specific to warrant admission in this proceeding. As a result, the Petition should be denied.

2. Mr. Wojcicki Fails to Explain the Basis for a Contention

A petitioner must provide “a brief explanation of the basis for the contention.”⁴⁷ This includes “sufficient foundation” to “warrant further exploration.”⁴⁸ The petitioner’s explanation serves to define the scope of a contention, as “[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases.”⁴⁹ The Board, however, must determine the admissibility of the contention itself, not the admissibility of individual “bases.”⁵⁰

As the Commission has observed, “[i]t is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions and demonstrate that a genuine dispute exists within the scope of [the] proceeding.”⁵¹ In other words, “[a] contention’s proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions.”⁵²

No matter how generously the petition is construed,⁵³ Mr. Wojcicki has not provided any explanation of the basis for his ruminations about relocating the proposed reactors. Nor has he provided any information in support of this opinion—mere reference to his submittal before the

⁴⁷ 10 C.F.R. § 2.309(f)(1)(ii); *see* Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989) (Final Rule).

⁴⁸ *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), ALAB-942, 32 NRC 395, 428 (1990) (citation omitted).

⁴⁹ *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), ALAB-899, 28 NRC 93, 97 (1988), *aff’d sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir. 1991).

⁵⁰ *See La. Energy Servs., L.P.* (Nat’l Enrichment Facility), LBP-04-14, 60 NRC 40, 57 (2004) (“licensing boards generally are to litigate ‘contentions’ rather than ‘bases’”) (citation omitted).

⁵¹ *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-14, 48 NRC 39, 41 (1998).

⁵² *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998).

⁵³ *See supra* note 41.

South Carolina Public Service Commission, without more, is not sufficient to warrant admission of an issue before the NRC.⁵⁴ Because he fails to provide any explanation of the basis of the matter he seems to want to raise, the Petition should be denied.

3. Mr. Wojcicki Has Not Shown That His Petition Is Within the Scope of the Proceeding

A petitioner must demonstrate “that the issue raised in the contention is within the scope of the proceeding.”⁵⁵ The scope of the proceeding is defined by the Commission’s notice of opportunity for a hearing.⁵⁶ Moreover, contentions are necessarily limited to issues that are germane to the specific application pending before the Licensing Board.⁵⁷ Any contention that falls outside the specified scope of the proceeding must be rejected.⁵⁸

Yet another glaring deficiency in the instant Petition is Mr. Wojcicki’s failure to address whether the matter he seeks to raise is within the scope of the proceeding at issue. He cites no regulatory authority for his seeming proposition that the Board direct that the proposed reactors be relocated. In light of this failure, the Board should deny the Petition in its entirety.

4. Mr. Wojcicki Fails to Raise a Material Issue

A petitioner must demonstrate “that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.”⁵⁹ The standards defining the findings that the NRC must make to support issuance of a COL in this

⁵⁴ See *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 & 2), LBP-85-20, 21 NRC 1732, 1741 (1985) (citing *Tenn. Valley Auth.* (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 200, 216 (1976)), *rev'd and remanded on other grounds*, CLI-86-8, 23 NRC 241 (1986); *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989) (A simple reference to a large number of documents does not provide a sufficient basis for a contention. An intervenor must clearly identify and summarize the incidents being relied upon, and identify and append specific portions of the documents.)

⁵⁵ 10 C.F.R. § 2.309(f)(1)(iii).

⁵⁶ See *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-825, 22 NRC 785, 790-91 (1985).

⁵⁷ See *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 204 (1998).

⁵⁸ See *Portland Gen. Elec. Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979).

⁵⁹ 10 C.F.R. § 2.309(f)(1)(iv).

proceeding are set forth in 10 C.F.R. §§ 51.107 and 52.97. As the Commission has observed, “[t]he dispute at issue is ‘material’ if its resolution would ‘make a difference in the outcome of the licensing proceeding.’”⁶⁰ In this regard, each contention must be one that, if proven, would entitle the petitioner to relief.⁶¹ Additionally, contentions alleging an error or omission in an application must establish some significant link between the claimed deficiency and protection of the health and safety of the public or the environment.⁶²

Mr. Wojcicki has not demonstrated that the content of his petition is material to the findings the NRC must make in this proceeding. Significantly, he does not posit any specific shortcoming in the application or identify some aspect of it with which he takes issue and wishes to contest. Instead, he merely asserts, without providing any explanation, that building the reactors at some other undisclosed location will provide better economic, environmental and social solutions. But significantly, Mr. Wojcicki fails to address the underlying legal predicate of his request; namely, the NRC’s, much less this Board’s, authority to direct SCE&G to relocate its proposed reactors to a different site. The short answer is that while the NRC Staff must, under NEPA, give due consideration to alternative sites (and Mr. Wojcicki has not identified any shortcoming in the Applicant’s ER in this respect), the Board cannot, at the end of the day, grant the relief he seeks.⁶³ Absent such showing of materiality, Mr. Wojcicki’s general assertion is

⁶⁰ *Oconee*, CLI-99-11, 49 NRC at 333-34 (citing Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,172).

⁶¹ See *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-26, 56 NRC 358, 363 n.10 (2002).

⁶² *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), LBP-04-15, 60 NRC 81, 89, *aff’d*, CLI-04-36, 60 NRC 631 (2004).

⁶³ Notwithstanding Mr. Wojcicki’s unsupported suggestion that a site along the Atlantic Ocean is preferable, the Board can only deny the application if the alternate site is “obviously superior.” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), CLI-77-8, 5 NRC 503, 530 (1977). “The licensing process is structured for rejection or acceptance of the proposed site rather than choice of sites. If one of our licensing boards disapproves of the proffered site, it lacks the authority to require an application to be filed for a facility at another location.” *Id.* at 529.

clearly not sufficient to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iv). Thus, his Petition should be denied.

5. Mr. Wojcicki Fails to Provide Any Factual Information or Expert Opinion In Support of His Petition

A petitioner bears the burden to present the factual information or expert opinions necessary to support its contention adequately, and failure to do so requires the Board to reject the contention.⁶⁴ The petitioner's obligation in this regard has been described as follows:

[A]n intervention petitioner has an *ironclad obligation* to examine the *publicly available documentary material pertaining to the facility in question* with sufficient care to enable [the petitioner] to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a. of the Act nor Section [2.309] of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.⁶⁵

Where a petitioner neglects to provide the requisite support for its contentions, the Board may not make assumptions of fact that favor the petitioner or supply information that is lacking.⁶⁶ The petitioner must explain the significance of any factual information upon which it relies.⁶⁷ 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."⁶⁸

⁶⁴ *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262 (1996). See 10 C.F.R. § 2.309(f)(1)(v).

⁶⁵ *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983) (emphasis added).

⁶⁶ See *Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, & 3), CLI-91-12, 34 NRC 149, 155 (1991).

⁶⁷ See *Fansteel, Inc.* (Muskogee, Okla., Site), CLI-03-13, 58 NRC 195, 204-05 (2003).

⁶⁸ *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), Licensing Board Mem. & Order (Denying the N.Y. Affordable Reliable Elec. Alliance's Pet. to Intervene) at 6 (Dec. 12, 2007) (unpublished) (*quoting Fansteel* CLI-03-13, 58 NRC at 203 (citation omitted)).

Mr. Wojcicki did not provide any expert opinion in support of his issue.⁶⁹ Besides some vague references to an undisclosed site along the Atlantic coastline where an oil refinery will be built⁷⁰, he has not offered any facts in support of his claim that there are benefits to relocating the proposed reactors. On the other hand, the Commission has stated unequivocally that it adheres to “the general premise that the NRC may ‘accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.’”⁷¹ As a result, Mr. Wojcicki fails to provide, as he is required to, the factual information or expert opinions necessary to adequately support his participation in this proceeding. Thus, the Petition should be denied.

6. Mr. Wojcicki Fails to Raise a Genuine Dispute of Material Law or Fact

With regard to the requirement that a petitioner “provide sufficient information to show . . . a genuine dispute . . . with the applicant[] . . . on a material issue of law or fact,”⁷² the Commission has stated that the petitioner must “read the pertinent portions of the license application . . . state the applicant’s position and the petitioner’s opposing view,” and explain why it disagrees with the applicant.⁷³ If a petitioner believes the license application fails to adequately address a relevant issue, then the petitioner is to “explain why the application is

⁶⁹ See *Bellefonte*, LBP-08-16, slip op. at 41-42 (denying a proposed contention because it failed to provide any expert or documentary support).

⁷⁰ Petition at 1.

⁷¹ Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,905, 55910 (Sept. 29, 2003), (quoting *Hydro Res., Inc.*, CLI-01-4, 53 NRC 31, 55 (2001) (citing *Citizens Against Burlington v. Busey*, 938 F.2d 190, 197 (D.C. Cir.), cert. denied, 502 U.S. 994 (1991)).

⁷² 10 C.F.R. § 2.309(f)(1)(vi).

⁷³ Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170; see also *Millstone*, CLI-01-24, 54 NRC at 358.

deficient.”⁷⁴ A contention that does not directly controvert a position taken by the applicant in the application is subject to dismissal.⁷⁵

Mr. Wojcicki has not identified any aspects of the application with which he disagrees has not explained why he believes the application is in some way deficient, and does not provide any basis which might contradict or undermine positions taken in the application. These failures, like the others before it, are fatal to his Petition. As a result, the Petition should be denied.

V. CONCLUSION

For the foregoing reasons, Mr. Wojcicki has not demonstrated standing and has failed to submit an admissible contention. Accordingly, his Petition must be rejected by the Board.

Respectfully submitted,

Signed (electronically) by Kathryn M. Sutton

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Dated in Washington, D.C.
this 2nd day of January 2009

⁷⁴ Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170; *see also Palo Verde*, CLI-91-12, 34 NRC at 156.

⁷⁵ *See Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992), *vacated as moot*, 37 NRC 192 (1993).

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

)		
In the Matter of)		
)	Docket Nos. 52-027 and 52-028	
SOUTH CAROLINA ELECTRIC & GAS)		
COMPANY AND SOUTH CAROLINA)	January 2, 2009	
PUBLIC SERVICE AUTHORITY (ALSO)		
REFERRED TO AS SANTEE COOPER))		
)		
(Virgil C. Summer Nuclear Station Units 2)		
and 3))		
)		

CERTIFICATE OF SERVICE

I hereby certify that, on January 2, 2009, a copy of “South Carolina Electric & Gas Company’s Answer Opposing Joseph Wojcicki’s Petition to Intervene” was filed electronically with the Electronic Information Exchange on the following recipients:

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