

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

PPL BELL BEND, LLC

(Bell Bend Nuclear Power Plant)

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Docket No. 52-039-COL

APPLICANT'S ANSWER TO PETITIONS TO INTERVENE

David A. Repka
Tyson R. Smith
Emily J. Duncan
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

Bryan A. Snapp
PPL Services Corporation
2 North Ninth St.
Allentown, PA 18101-1179

COUNSEL FOR PPL BELL BEND, LLC

June 12, 2009

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APPLICANT’S ANSWER TO PETITION TO INTERVENE

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h), PPL Bell Bend, LLC, (“PPL” or “Applicant”), applicant in the above-captioned matter, hereby answers the petitions to intervene filed by Gene Stilp and Taxpayers and Ratepayers United (“TRU”)¹ and Eric Joseph Epstein,² both dated May 18, 2009. The petitions relate to PPL’s application for a combined license (“COL”) to construct and operate one U.S. EPR reactor at a new site in Luzerne County, Pennsylvania — the Bell Bend Nuclear Power Plant (“Bell Bend” or “BBNPP”). The application was filed by PPL

¹ “Petition to Intervene in the Radioactive Bell Bend Nuclear Power Plant Combined Construction and License Application” (“TRU Petition”). The Office of the Secretary, in its “Memorandum of the Secretary to E. Roy Hawkens, Chief Administrative Judge, ASLBP, Referring Requests for a Hearing,” dated May 22, 2009, indicated that it had received three petitions to intervene. The first petition was submitted by Gene Stilp on behalf of Taxpayers and Ratepayers United (“TRU”). The second petition was also submitted by Gene Stilp, but on a pro se basis. Based upon a side-by-side comparison, the two petitions appear to be identical, and we therefore treat them as one petition for the purposes of this filing.

² “Petition for Leave to Intervene, Request for Hearing, and Contentions with Supporting Factual Data Re: PPL Bell Bend LLC: Combined License Application for the Bell Bend Nuclear Power Plant Docket No. 52-039” (“Epstein Petition”).

on October 10, 2008, supplemented by several letters, and revised on February 27, 2009. The NRC accepted the application for docketing on December 19, 2008. 73 Fed. Reg. 79,519. The NRC published the “Notice of Hearing and Opportunity to Petition for Leave to Intervene” on March 19, 2009 (74 Fed. Reg. 11,606) (“Hearing Notice”). Petitioners timely filed the petitions to intervene on May 18, 2009.

PPL supports public input in a variety of venues, including before the NRC. However, as discussed below, Petitioners have not satisfied the Commission’s requirements to intervene in this proceeding because they do not have standing and because they have failed to proffer at least one admissible contention. This NRC proceeding is not the appropriate forum for the issues that they are raising. Therefore, in accordance with 10 C.F.R. § 2.309, the Petitions should be denied.

II. REGULATORY BACKGROUND

A. Standing Requirements

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that he or she has standing. 10 C.F.R. § 2.309(a). The Commission’s regulations in 10 C.F.R. § 2.309(d)(1) provide that a request for hearing or petition to intervene must state:

- (i) The name, address and telephone number of the petitioner;
- (ii) The nature of the requestor’s/petitioner’s right to be made a party to the proceeding;
- (iii) The nature and extent of the requestor’s/petitioner’s property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor’s/petitioner’s interest.

The Commission has long applied contemporaneous judicial concepts of standing to determine whether a party has a sufficient interest to intervene as a matter of right. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). To establish standing, there must be an “injury-in-fact” that is “fairly traceable to the challenged action” and redressible in the proceeding. *Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-72 (1994), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 505 (1992) and *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit1), CLI-93-21, 38 NRC 87, 92 (1993).

The “injury-in-fact” must be either actual or threatened. *Id.*, citing *Wilderness Soc’y v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987). The injury must be “concrete and particularized,” not “conjectural” or “hypothetical.” *Sequoyah Fuels*, CLI-94-12, 40 NRC at 72. As a result, standing will be denied when the threat of injury is too speculative. *Id.* Furthermore, the alleged “injury-in-fact” must lie within the “zone of interests” protected by the Atomic Energy Act or the National Environmental Policy Act (“NEPA”). *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 6 (1998).

A petitioner must also establish a causal nexus between the alleged injury and the challenged action. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), LBP-98-27, 48 NRC 271, 276 (1998), *aff’d*, CLI-99-4, 49 NRC 185 (1999). A determination that the injury is fairly traceable to the challenged action depends, in part, on whether the chain of causation is “plausible.” *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75. Judicial and Commission standing jurisprudence requires a “realistic threat . . . of direct injury.” *Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 254 (2001).

Finally, a petitioner must establish redressibility — that is, that the claimed actual or threatened injury could be cured by some action of the decisionmaker. *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 14 (2001).

An organization may establish standing to intervene based on organizational standing (showing that its own organizational interests could be adversely affected by the proceeding) or representational standing (based on the standing of its members). Where an organization seeks to show organizational standing, the organization must meet the same requirements of injury, causation, and redressibility as an individual. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Where an organization seeks to establish “representational standing,” it must show that at least one of its members may be affected by the proceeding, it must identify that member by name and address, and it must show that the member “has authorized the organization to represent him or her and to request a hearing on his or her behalf.” *See, e.g., Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 409 (2007).

B. Contention Admissibility Requirements

In addition to establishing standing, petitioners must proffer at least one contention that meets the admissibility standards in 10 C.F.R. § 2.309(f)(1)(i)-(vi).³ A proposed contention must contain:

- (i) A specific statement of the issue of law or fact raised;
- (ii) A brief explanation of the basis for the contention;
- (iii) A demonstration that the issue is within the scope of the proceeding;

³ 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 Petitioners’ contentions in this proceeding.

- (iv) A demonstration that the issue is material to the findings that the NRC must make regarding the action which is the subject of the proceeding;
- (v) A concise statement of the alleged facts or expert opinions supporting the contention; and
- (vi) Sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

The purpose of these six criteria is to “focus litigation on concrete issues and result in a clearer and more focused record for decision.” “Changes to Adjudicatory Process; Final Rule,” 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004). The NRC will deny a petition to intervene and request for hearing from a petitioner who has standing but has not proffered at least one admissible contention. *Fla. Power & Light Co.* (Turkey Point Nuclear Power Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 26 (2001). 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.” 69 Fed. Reg. at 2202. As a result, the contention admissibility standard is “strict by design.” *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001). Failure to comply with any one of the six admissibility criteria is grounds for rejecting a proposed contention. 69 Fed. Reg. at 2221.

In support of a contention, a petitioner must provide “a specific statement of the issue of law or fact to be raised or controverted.” 10 C.F.R. § 2.309(f)(1)(i). 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].” *Oconee*, CLI-99-11, 49 NRC at 338. Namely, an “admissible contention must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].” *Millstone*, CLI-01-24, 54 NRC at 359-60. The contention rules

“bar contentions where petitioners have only ‘what amounts to generalized suspicions, hoping to substantiate them later.’” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2), CLI-03-17, 58 NRC 419, 424 (2003).

A petitioner must provide “a brief explanation of the basis for the contention.” 10 C.F.R. § 2.309(f)(1)(ii). This includes “sufficient foundation” to “warrant further exploration.” *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), ALAB-942, 32 NRC 395, 428 (1990) (citation omitted). 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.” *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).

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 this proceeding.” *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-14, 48 NRC 39, 41 (1998). 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.” *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998).

A petitioner must demonstrate “that the issue raised in the contention is within the scope of the proceeding.” 10 C.F.R. § 2.309(f)(1)(iii). The scope of the proceeding is defined by the Commission’s notice of opportunity for a hearing. *See Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-825, 22 NRC 785, 790-91 (1985). Any contention that

falls outside the specified scope of the proceeding must be rejected. *See Portland Gen. Elec. Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979).

Moreover, a contention that challenges an NRC rule is outside the scope of the proceeding because, absent a waiver, “no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding.” *See* 10 C.F.R. § 2.335(a). Furthermore, a contention that raises a matter that is, or is about to become, the subject of a rulemaking, is also outside the scope of this proceeding. *See Oconee*, CLI-99-11, 49 NRC at 345. This includes contentions that advocate stricter requirements than agency rules impose or that otherwise seek to litigate a generic determination established by a Commission rulemaking. *See Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-6, 53 NRC 138, 159, *aff’d*, CLI-01-17, 54 NRC 3 (2001).

Similarly, any contention that collaterally attacks applicable statutory requirements or the basic structure of the NRC regulatory process must be rejected by the Board as outside the scope of the proceeding. *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 65 NRC 41, 57-58 (2007), *citing Phila. Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20 (1974). Accordingly, a contention that simply states the petitioner’s views about what regulatory policy should be does not present a litigable issue.

A petitioner must also 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.” 10 C.F.R. § 2.309(f)(1)(iv). The standards defining the findings that the NRC must make to support issuance of a COL in this 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.’” *Oconee*, CLI-99-11, 49 NRC at 333-34. In this regard, each contention must be one that, if proven, would entitle the petitioner to relief. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2), CLI-02-26, 56 NRC 358, 363 n.10 (2002). 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. *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).

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. *See* 10 C.F.R. § 2.309(f)(1)(v); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262 (1996). 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.⁴

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

⁴ *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).

lacking. *Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Station, Units 1, 2, & 3), CLI-91-12, 34 NRC 149, 155 (1991). The petitioner must explain the significance of any factual information upon which it relies. *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 204-05 (2003).

With respect to factual information or expert opinion proffered in support of a contention, “the Board is not to accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention.” *Private Fuel Storage*, LBP-98-7, 47 NRC at 181. Any supporting material provided by a petitioner, including those portions thereof not relied upon, is subject to Board scrutiny, “both for what it does and does not show.” *See 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). The Board must examine documents to confirm that they support the proposed contentions. *See Vt. 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). A petitioner’s imprecise reading of a document cannot be the basis for a litigable contention. *See Ga. Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300 (1995). Moreover, vague references to documents do not suffice—the petitioner must identify specific portions of the documents on which it relies. *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-03, 29 NRC 234, 240-41 (1989). The mere incorporation of massive documents by reference is similarly unacceptable. *Id.*; *see also TVA* (Browns Ferry Nuclear Plant, Units 1 & 2), LBP-76-10, 3 NRC 209, 216 (1976).

In addition, an expert opinion that merely states a conclusion (*e.g.*, the application is deficient, inadequate, or wrong) without providing *a reasoned basis or explanation* for why the application is adequate cannot provide a basis for the contention because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion as it is alleged. *USEC, Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 472 (2006) (emphasis added and internal citations omitted). Conclusory statements cannot provide “sufficient” support for a contention, simply because they are made by an expert. *Id.* In short, a 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.’” *Fansteel*, CLI-03-13, 58 NRC at 203 (quoting *GPU Nuclear (Oyster Creek Nuclear Generating Station)*, CLI-00-06, 51 NRC 193, 208 (2000)).

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,”⁵ the Commission has stated that the petitioner must “read the pertinent portions of the license application . . . [and] state the applicant’s position and the petitioner’s opposing view,” and explain why it disagrees with the applicant.⁶ If a petitioner believes the license application fails to adequately address a relevant issue, then the petitioner is to “explain why the application is deficient.” “Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process; Final Rule,” 54 Fed. Reg. 33168, 33170 (Aug. 11, 1989); *see also Palo Verde*, CLI-91-12, 34 NRC at 156. A contention that does not directly controvert a position taken by

⁵ 10 C.F.R. § 2.309(f)(1)(vi).

⁶ 54 Fed. Reg. at 33,170; *see also Millstone*, CLI-01-24, 54 NRC at 358.

the applicant in the application is subject to dismissal. *See Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).

Similarly, a petitioner's oversight or mathematical error does not raise a genuine issue. For example, if a petitioner submits a contention of omission, but the allegedly missing information is indeed in the license application, then the contention does not raise a genuine issue. *See Millstone*, LBP-04-15, 60 NRC at 95-96. An allegation that some aspect of a license application is "inadequate" or "unacceptable" does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect. *See Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-90-16, 31 NRC 509, 521 and n.12 (1990).

III. DISCUSSION

A. Petitioners Do Not Have Standing

In assessing whether a petitioner has set forth a sufficient "interest" within the meaning of the NRC's regulations to intervene as a matter of right in a licensing proceeding, the Commission has long applied contemporaneous judicial concepts of standing. *See, e.g., Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995). At one time, judicial concepts of standing were sufficiently flexible to permit the NRC to make a "presumption" of standing in licensing cases where a petitioner lived within a certain geographic area near the plant. In proceedings involving nuclear power reactors the Commission historically adopted a presumption whereby a petitioner could base its standing upon no more than a showing that his or her residence, or that of its members, was within the geographical zone (usually taken to be 50 miles) that might be affected

by an accidental release of fission products. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 443 (1979); *see also*, *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 78 (1979) (“A petitioner may base its standing upon a showing that his or her residence, or that of its members, is ‘within the geographical zone that might be affected by an accidental release of fission products.’ *La. Power and Light Co.* (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 371 n.6 (1973).”).

The Commission’s “proximity presumption” has remained relatively unchanged since it was first developed in the late-1970s. However, judicial concepts of standing have been clarified since that time, effectively refuting the basis for the presumption and requiring a more concrete, case-specific showing. In *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), the Supreme Court made clear that plaintiffs must suffer a concrete, discernible injury to be able to bring suit. This injury-in-fact requirement is case-specific, “turn[ing] on the nature and source of the claim asserted”⁷ and “whether the complainant has personally suffered the harm.” *Wilderness Soc’y v. Alcock*, 83 F.3d 386, 390 (11th Cir. 1996). Moreover, the alleged harm must be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)) (internal quotations omitted). These qualifiers ensure that courts address only cases and controversies in which the plaintiff is “in a personal and individual way”⁸ “immediately in danger of sustaining

⁷ *Raynes v. Byrd*, 521 U.S. 811, 818 (1997).

⁸ *Id.* at 560 n.1.

some direct injury,”⁹ thus avoiding advisory opinions in matters “in which no injury would have occurred at all.” *Lujan*, 504 U.S. at 564 n.2.

By requiring plaintiffs to demonstrate an injury in a concrete factual context, courts also avoid claims involving “only . . . generally available grievances” shared by other members of the public. *Valley Forge Christian Coll. v. Americans United for Separation of Church & State*, 454 U.S. 464, 472 (1982) This is typically not a concern when the plaintiff is himself an object of the action at issue because there is little question that the action or inaction has caused him injury. But when the “asserted injury arises from the government’s allegedly unlawful regulation (or lack of regulation) of *someone else*” — such as when a petitioner challenges a COL application but is not itself regulated by the NRC — “standing . . . is ordinarily ‘substantially more difficult’ to establish.” *Lujan*, at 562 (quoting *Allen v. Wright*, 468 U.S. 737, 758 (1984)). Indeed, the Supreme Court has held that “much more is needed” in terms of the “nature and extent of facts . . . averred” to show that the petitioner will be affected by the alleged injury “in such a manner as to produce causation.” *Id.* The Supreme Court’s standing test is plainly inconsistent with the Commission’s now-outdated and overly-simplified proximity presumption, which is based on no more than a speculative, hypothetical accident.

Recently, the Supreme Court issued a decision on standing that directly undermines the basis for the proximity presumption. *See Summers v. Earth Island Inst.*, ___ U.S. ___, 07–463, slip op. at 11 (U.S. Mar. 3, 2009). In *Summers*, the Court reiterated many of the principles discussed above and found that the plaintiff’s “intention” to visit the National Forests in the future, without showing that the challenged regulations would affect a specific forest

⁹ *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983).

visited by the plaintiff, “would be tantamount to eliminating the requirement of concrete, particularized injury in fact.” *Id.*, slip op. at 7. The Court rejected a standing test that would have accepted a statistical probability that some of an organization’s members would be threatened with concrete injury.¹⁰ *Id.*, slip op. at 9. Finally, the Court declined to substitute the requirement for “imminent” harm with a requirement of a “*realistic threat*.” *Id.*, slip op. at 11 (emphasis in original). In doing so, the Supreme Court rejected a standing test that is substantially similar to the NRC’s proximity presumption.¹¹

Taken together, the recent precedent on judicial concepts of standing establishes a significantly increased level of scrutiny, dictates a more demanding showing necessary to establish standing, and renders the “proximity presumption” obsolete. Accordingly, the Licensing Board should assess the Petitioners’ claims against contemporaneous standing principles rather than a rote “proximity presumption.” As discussed below, under these contemporaneous standards, petitioners fail to demonstrate standing.

I. Gene Stilp

In his declaration, Mr. Stilp states that he owns a house and property less than 20 miles from the proposed site and expresses concern that the proposed reactor could affect his

¹⁰ The Court also declined to reduce the threshold for standing because the case involved a procedural injury (such as a claim under NEPA). Specifically, the Court concluded that “deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create [standing].” *Summers*, slip op. at 8.

¹¹ *Summers* also effectively forecloses the types of standing analyses that have recently been used in the Court of Appeals for the D.C. Circuit to permit a finding of injury-in-fact where harm was “substantially probable.” See *Fla. Audubon Soc’y v. Bentsen*, 94 F.3d 658 (D.C. Cir. 1996); *Nat. Res. Def. Council v. U.S. Env. Prot. Agency*, 464 F.3d 1 (D.C. Cir 2006).

health and safety and the integrity of the environment as well as the value of his property. However, Mr. Stilp does not state that he lives at the location 20 miles from the site (275 Poplar Street, Wilkes-Barre, Pennsylvania). Moreover, according to documents filed before the Pennsylvania Public Service Commission (*see* PPL Exhibit 1), Mr. Stilp in fact resides in Harrisburg, PA, which is greater than 50 miles away from the proposed site. Thus, Mr. Stilp may not rely merely on geographic proximity even if the Board were to apply the now-outdated proximity presumption and must instead satisfy traditional standing requirements.

Under traditional standing principles, a petitioner must demonstrate an injury-in-fact, causation, and redressibility. For petitioners with transient contacts with a site, the Commission has focused on the (1) length of visits to the site, and (2) the nature of the visits (including the proximity to the site) to determine whether the petitioner’s contact with the facility’s vicinity satisfies the first of these three principles. *See Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation). CLI-98-13, 48 NRC 26, 31-32 & n.3 (1998) (“[Petitioner’s] standing does not depend on the precise number of . . . visits. It is the visits’ length (up to two weeks) and nature.”). NRC licensing boards and the Commission look to whether a petitioner “*frequently engages in substantial business and related activities in the vicinity of the facility,*”¹² engages in “normal, *everyday activities*” in the vicinity,¹³ and has

¹² *Maine Yankee Atomic Power Co.* (Maine Yankee Atomic Power Station), LBP-82-4, 15 NRC 199, 204 n.7 (1982) (emphases added).

¹³ *Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974) (emphasis added).

“regular”¹⁴ and “frequent contacts”¹⁵ in an area near a licensed facility. The Commission has emphasized that the contacts must “establish a bond” between the petitioner and the facility vicinity. *PFS*, CLI-98-13, 48 NRC at 32. The Commission has further emphasized that the proximity of the visits to a site and the importance of the site to the activity are crucial. *See, e.g., Private Fuel Storage, LLC*, CLI-99-10, 49 NRC at 324 (“Most importantly . . . [a member of the organizational petitioner] has demonstrated actual contact with the area based on his ‘frequent’ physical presence on the very parcel of land that would be altered by the proposed action.”). Mr. Stilp has failed to demonstrate contacts with the affected area that would be sufficient to establish standing.

Mr. Stilp instead states that an accident or terrorist attack at Bell Bend could result in radioactive releases and environmental contamination that would adversely affect Mr. Stilp’s health and safety and the value of his property. Mr. Stilp is also concerned that the plant would interfere with his business interests, which include fighting high utility rate increases, consulting on government issues that affect taxpayers, and advocating for alternative energy sources. And, Mr. Stilp claims that his business continually takes him within the fifty mile radius of the proposed Bell Bend site. Mr. Stilp also asserts that he has extended family within a 50-mile radius of the proposed plant.

Mr. Stilp’s economic interests as a ratepayer do not confer standing in NRC licensing proceedings. *See, e.g., Metropolitan Edison Co.* (Three Mile Island Nuclear Station,

¹⁴ *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 26 (2002) (emphasis added) (frequency must reflect “regular interaction” with the zone of harm, not merely “occasional contact”).

¹⁵ *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 & n.22 (1994) (emphasis added).

Unit 1), CLI-83-25, 18 NRC 327, 332 n.4 (1983). And, Mr. Stilp cannot assert the rights of third parties (such as his extended family) as a basis for intervention. *See Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387, *aff'd*, ALAB-470, 7 NRC 473 (1978) (denying standing to a mother asserting the rights of her son who attended medical school near a proposed facility). Moreover, the Petition provides no detailed information regarding frequency of use or the extent of Mr. Stilp's contact with areas potentially impacted by the proposed plant, other than his alleged business interests and his generalized fear of health or environmental impacts. By not providing any specific information, or by describing activities only using vague terms such as "near," "close proximity," or "in the vicinity" of the facility at issue, a petitioner fails to carry his burden of establishing the requisite "injury in fact." *Atlas Corp.* (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 425-26 (1997). Any injury asserted based on future accidental releases is entirely speculative and hypothetical.¹⁶ Mr. Stilp has established no direct personal interest in the construction or operation of the proposed new unit.

Likewise, there is no discussion about how construction and operation of the proposed plant might *cause* any harm to Mr. Stilp. There is no discussion of any harm caused by construction or routine operation of the plant. Nor is there any discussion of potential release mechanisms or accident sequences that could cause personal and specific harm in the future. There is simply no information regarding causation. Conclusory allegations about potential

¹⁶ Likewise, mere "concern" about the "risk" of accidental releases is insufficient injury for standing. *See, e.g., Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983) (holding that fear of an accident is not a cognizable injury under NEPA); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-85-14, 22 NRC 177, 180 (1985) (holding that mere exposure to the risk of full power operation of a facility does not constitute irreparable injury when the risk is so low as to be remote and speculative).

radiological harm from the facility in general are insufficient to establish standing. *White Mesa*, CLI-01-21, 54 NRC at 251.

At bottom, a petitioner that bases its standing on its proximity to a nuclear facility must still describe the nature of its property or residence and its proximity to the facility, and describe how the health and safety of the petitioner may be jeopardized. *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 315 (1989). Here, the instant declaration does not describe how health and safety might be jeopardized by construction and operation of new unit. There is nothing more than conclusory and unsupported statements and no explanation as to how or why such injuries might occur. In the absence of any concrete injury or causation, there can be no standing.

For these reasons, Mr. Stilp does not have standing.

2. *Taxpayers and Ratepayers United*

In order to establish organizational standing, an organization must allege that the action will cause an “injury in fact” to either (a) the organization’s interests or (b) the interests of its members. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994). For organizational standing, an organization must demonstrate a discrete institutional injury to the organization itself. *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001). Here, TRU provides little information regarding impacts to its organizational interests and no information that satisfies the injury-in-fact or causation prong of the standing inquiry.

The Petition states that TRU is currently fighting the 40% rate increase scheduled for all PPL customers and asserts that the rate increase is directly related to cost overruns at the

Susquehanna Steam Electric Station (“SSES”).¹⁷ TRU Petition at 4. Apart from the fact that rates are set by PPL Electric Utilities Corporation and the Pennsylvania Public Utility Commission (not PPL Bell Bend), and that Bell Bend will be operated as a merchant plant (ER, at 8-1), the economic interest of a ratepayer is not sufficient to allow standing to intervene as a matter of right. Concern about rates is not within the scope of interests sought to be protected by the Atomic Energy Act (“AEA”) or the National Environmental Policy Act (“NEPA”). *See, e.g., Kansas Gas & Electric Co.* (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977); *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-333, 3 NRC 804 (1976). Moreover, allegations that a plant will adversely impact the value of property or business interests, without more, are too remote and too generalized to provide a basis for standing to intervene. *See Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1449 (1982). With respect to TRU’s interests, there also is no discussion of a causal mechanism or any discussion of redressibility. Thus, TRU has failed to demonstrate organizational standing.

TRU also cannot have representational standing based on the standing of its members (Gene Stilp and Adam Helfrich). Neither of those members has demonstrated standing in his own right. Mr. Stilp does not have standing for the reasons discussed *supra*. Mr. Helfrich lacks standing because his affidavit fails to demonstrate an injury-in-fact that would be caused by Bell Bend. Specifically, Mr. Helfrich states that he is concerned about the risk of accidental releases to the environment. *See Helfrich Aff.* at 1. That, however, is the extent of the alleged

¹⁷ PPL Bell Bend, the applicant in this proceeding, does not own, directly or indirectly, SSES.

injury.¹⁸ There is no information regarding specific risks to Mr. Helfrich or the extent of his contacts with areas potentially impacted by Bell Bend, other than his residence and his generalized fear of health or environmental impacts. By not providing any specific information regarding specific contacts with affected areas and specific injuries, a petitioner fails to carry his burden of establishing the requisite “injury in fact.” *Atlas Corp. (Moab, Utah Facility)*, LBP-97-9, 45 NRC 414, 425-26 (1997). Moreover, any injury asserted based solely on future accidental releases is entirely speculative and hypothetical.¹⁹ Mr. Helfrich has established no direct personal interest in the construction or operation of the proposed new unit that constitutes an injury-in-fact under contemporaneous concepts of standing.

For these reasons, neither TRU, Mr. Stilp, nor Mr. Helfrich have established standing to intervene in this proceeding.

3. *Eric Joseph Epstein*

The Petition fails to establish that Mr. Epstein has standing. Where, as here, a petitioner does not reside within 50 miles of the plant, the petitioner cannot rely on a “proximity presumption” and must demonstrate the three elements required for standing independently. *See, e.g., Yankee Atomic Electric Co. (Yankee Nuclear Power Station)*, CLI-94-3, 39 N.R.C. 95, 102

¹⁸ A bare claim that a challenged licensing action will impact the health, safety and financial interests of a petitioner who reside within 50 miles of the facility fails to “set forth with particularity” a statement that could grant standing. *Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2)*, CLI-00-05, 51 NRC 90, 98 (2000).

¹⁹ Likewise, mere “concern” about the “risk” of accidental releases is insufficient injury for standing. *See, e.g., Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983) (holding that fear of an accident is not a cognizable injury under NEPA); *Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2)*, CLI-85-14, 22 NRC 177, 180 (1985) (holding that mere exposure to the risk of full power operation of a facility does not constitute irreparable injury when the risk is so low as to be remote and speculative).

n.8 (1994) (“[T]he Petitioner’s organizational address is further than 50 miles from the [site] and thus outside even the radius within which we normally presume standing for those actions which may have significant offsite consequences at plants that are operating at full power.”). Where the petitioner claims standing based on visits in the vicinity of a facility, his standing depends on the traditional standing doctrine. *See, e.g., Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 322-25 (1999).

As discussed above, the Commission has emphasized that the contacts must “establish a bond” between the petitioner and the area affected by the proposed facility. *PFS*, CLI-98-13, 48 NRC at 32. The Commission has further emphasized that the proximity of the visits to a site and the importance of the site to the activity are crucial. *See, e.g., PFS*, CLI-99-10, 49 NRC at 324. Mr. Epstein has failed to establish sufficient contacts to the affected area to establish standing.

Mr. Epstein asserts that he “routinely pierces the 50-mile proximate [sic] rule during his day-to-day activities simply by traveling to Lebanon, Schuylkill and northern and Dauphin counties.” Epstein Pet. at 8. Mr. Epstein also points out that he has represented East Hanover Township, portions of which lie within a 50-mile radius from Bell Bend, as a contracted advocate since 2008, and asserts that his livelihood is directly related to the safety of the township’s residents. *Id.* Mr. Epstein also highlights his role as a member of the Board of Directors of the Sustainable Energy Fund of Central Eastern Pennsylvania and GreenConnexions, Inc., which are both based in Allentown, Pennsylvania, and states that his commute to business-related meetings “necessarily pierce the 50-mile proximity zone for substantial periods of time.” *Id.* at 9. These contacts are insufficient to establish standing.

First, simply piercing the 50-mile radius does not constitute sufficient contacts to establish a “bond” between Mr. Epstein and the proposed reactor — particularly in the absence of information regarding the length of time that he is within the 50-mile radius or any indication of his closest proximity to the site.²⁰ Even if mere proximity to the plant during travel could provide support for standing, the Petition is silent as to the duration of Mr. Epstein’s commute to Allentown, the closest Mr. Epstein comes to the plant site during his commute, and the number of such commutes in a given period of time.²¹ Likewise, Mr. Epstein’s statements that he commutes to the township building in Grantville once a week does not indicate the location of the building relative to the proposed plant site.²² These vague, intermittent and distant contacts are insufficient to establish standing.

Second, Mr. Epstein fails to make the required showings of an injury-in-fact, causation, and redressibility. A petitioner which bases its standing on its proximity to a nuclear facility must describe the nature of its property or residence and its proximity to the facility, and should describe how the health and safety of the petitioner may be jeopardized. *Northern States Power Co. (Pathfinder Atomic Plant)*, LBP-89-30, 30 NRC 311, 315 (1989). Here, Mr. Epstein does not assert any injury beyond “injury to the health and safety” or “adverse health and safety

²⁰ Most of his traveling and other activities that Mr. Epstein claims “routinely pierce[]” the 50-mile radius appear to take place well to the southwest of the plant. *See* Pet. at 8 (Harrisburg, Lebanon, Schuylkill Haven, and Upper Dauphin County are all to the southwest of Berwick).

²¹ Mr. Epstein states that his meeting schedule for the calendar year includes four meetings in different towns. However, a footnote appears to indicate that the meetings may all be held at an office in Kingston. Epstein Pet. at 9, n.4.

²² According to one distance calculator, the distance between Berwick and Grantville is 51.5 miles. *See* <http://www.infoplease.com/atlas/calculate-distance.html>.

consequences, loss of business revenue, and security harms associated with the proposed Bell Bend Nuclear Power Plant.” *See* Epstein Pet. at 7. These generalized injuries — not tied to any specific aspect of the proposed plant — are too vague and hypothetical to support standing. Similarly, Mr. Epstein does not establish any causal relationship between the proposed reactor and the generalized injuries. There is no information about how the proposed plant might adversely impact his health or business interests and no discussion of any security-related harms. In short, Mr. Epstein has failed to meet his burden of affirmatively demonstrating standing.

Mr. Epstein also does not purport to represent East Hanover Township in this proceeding. A petitioner who resides far from a facility cannot acquire standing to intervene by asserting the interests of a third party who will be near the facility but who is not a minor or otherwise under a legal disability which would preclude his own participation. *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474 n.1 (1978). Similarly, standing cannot be based on any harm to the Sustainable Energy Fund or GreenConnexions (*see* Epstein Pet. at 8), as those organizations have not authorized Mr. Epstein to represent them in this proceeding.²³ Consequently, none of those activities provides a basis for standing.

Finally, Mr. Epstein’s assertion (Pet. at 7) that a ruling on standing in the Susquehanna Steam Electric Station (“SSES”) license renewal proceeding establishes his standing in this proceeding as a matter of precedent is incorrect. First, having been granted standing in one proceeding does not automatically grant standing in a second proceeding even if

²³ Further, economic injury gives standing under the National Environmental Policy Act only if it is environmentally related. *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977). Mr. Epstein has not posited any link between his business interests and environmental harm.

both involve the same facility.²⁴ *See, e.g., Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-92-27, 36 NRC 196, 198 (1992). Second, this proceeding involves a different applicant (PPL Bell Bend) and a different facility (Bell Bend). Thus, the prior holding is not determinative for purposes of this proceeding.

For these reasons, Mr. Epstein has failed to establish standing.²⁵

B. Gene Stilp and TRU Have Not Submitted One Admissible Contention

Applying the legal standards summarized above, each of Gene Stilp and TRU's five proposed contentions is deficient on one or more grounds. As a result, the Petition should be denied for failure to proffer an admissible contention in accordance with 10 C.F.R. § 2.309(c).

1. *Gene Stilp and TRU - Contention 1: Bell Bend's Application should be denied because there is no reasonable or technical confidence or belief that the plant's high level radioactive waste can be disposed of.*

Petitioners allege in proposed Contention 1 that the NRC should not grant the COL application for Bell Bend because there is no place to dispose of the high level radioactive waste generated at the plant. TRU Pet. at 7. The Petitioners further allege that Bell Bend's spent fuel presents unique and site specific safety, health and environmental issues that permit the

²⁴ The Commission has also found in other proceedings that Mr. Epstein did not have standing. *See, e.g., Exelon Generation Company et al* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580-81 (2005); *Amergen Energy Company, LLC* (Three Mile Island Nuclear Station, Unit 1), CLI-05-25, 62 NRC 572, 576 (2005).

²⁵ Mr. Epstein also argues that the Commission may allow discretionary intervention where a petitioner does not meet the standing requirements. Epstein Pet. at 7. Under the NRC rules, discretionary intervention may only be granted when at least one petitioner has established standing and at least one admissible contention has been admitted. 10 C.F.R. § 2.309(e). *See also* 69 Fed. Reg. 2182, 2189 (Jan 14, 2004) ("Discretionary intervention . . . will not be allowed unless at least one other petitioner has established standing and at least one admissible contention."). In this case, there is no other petitioner with standing and, as set forth below, there are no admissible contentions.

Board to address this contention in this proceeding rather than apply the NRC's existing Waste Confidence Rule.²⁶ *Id.*

Proposed Contention 1 should be rejected because it impermissibly attacks existing Commission regulations, is not within the scope of this proceeding, and is contrary to Commission precedent. *See* 10 C.F.R. § 2.335; *Vermont Yankee*, CLI-07-3, 65 NRC at 17-18 and n.15; *Millstone*, CLI-01-24, 54 NRC at 364; *see also* *Dominion Nuclear North Anna, LLC* (Early Site Permit for the North Anna ESP Site), LBP-04-18, 60 NRC 253, 268-70 (2004) (holding inadmissible similar contentions as impermissibly challenging the NRC's regulations).

As explained by the Licensing Board in the recent *North Anna ESP* proceeding with respect to a similar contention:

The matters the Petitioners seek to raise have been generically addressed by the Commission through the Waste Confidence Rule, the plain language of which states:

[T]he Commission believes there is reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation of *any* reactor to dispose of the commercial high level waste and spent fuel originating in such reactor and generated up to that time.

10 C.F.R. § 51.23(a) (emphasis added). Furthermore, when the Commission amended this rule in 1990, it clearly contemplated and intended to include waste produced by a new generation of reactors.²⁷

²⁶ The Waste Confidence Decision contains a generic finding that a geologic repository will be available for disposal of spent nuclear fuel. *See* 10 C.F.R. § 51.23(a).

²⁷ *North Anna ESP*, LBP-04-18, 60 NRC at 269; *see also* 55 Fed. Reg. 38474, 38504 (Sept. 18, 1990) (“The availability of a second repository would permit spent fuel to be shipped offsite well within 30 years after expiration of [the current fleet of] reactors’ [operating licenses]. The same would be true of the spent fuel discharged from any new generation

Thus, based on the plain language of the rule and its regulatory history, the Waste Confidence Decision applies in this proceeding.²⁸

To the extent that the proposed contention challenges the environmental impacts of the management of high-level radioactive waste, this proposed contention also represents an impermissible challenge to Table S-3 of 10 C.F.R. § 51.51. Commission regulations require that a COL ER use the values in Table S-3 as the basis for assessing the environmental impacts of high-level waste. *See* 10 C.F.R. § 51.51(a). Table S-3 indicates that high-level waste will be disposed of through deep burial at a federal repository. In accordance with 10 C.F.R. § 51.51, Section 5.7 of the Bell Bend ER uses Table S-3 as the basis for the discussion of the environmental impacts of high-level waste. Petitioners attempt to attack Table S-3 by questioning whether high-level waste from Bell Bend will be disposed of at a federal repository. TRU Pet. at 16-18. As discussed above, however, this portion of the contention is a direct challenge to existing NRC regulations and must be rejected.

of reactor designs.”). The Commission reaffirmed its 1990 findings in 1999. *See* “Status Report on the Review of the Waste Confidence Decision,” 64 Fed. Reg. 68005, 68007 (Dec. 6, 1999). And, the NRC amended the Waste Confidence Rule in 2007 to clarify that the rule encompasses COL applications. “Licenses, Certifications, and Approvals for Nuclear Power Plants; Final Rule,” 72 Fed. Reg. 49352, 49429 (Aug. 28, 2007) (“The NRC is revising §§ 51.23(b) and (c) to indicate that the provisions of these paragraphs also apply to combined licenses.”).

²⁸ The NRC has initiated a rulemaking to update the Waste Confidence Rule. *See* “Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation; Proposed Rule,” 73 Fed. Reg. 59,547 (October 9, 2008); “Waste Confidence Decision Update,” 73 Fed. Reg. 59,551 (October 9, 2008). The NRC also does not accept in individual licensing cases matters that are the subject of an ongoing rulemaking. *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319 (1972).

The Petitioners also argue that the ASLB should address the issue of disposal of high-level waste before the NRC issues its updated Waste Confidence Decision or completes the Proposed Temporary Spent Fuel Storage rulemaking because Bell Bend's high-level waste disposal problem is unique. TRU Pet. at 7. The Petitioners list several reasons Bell Bend is unique: (1) because the site is adjacent to the currently operational Susquehanna nuclear power plant; (2) PPL is the only utility in Pennsylvania submitting an application for a new nuclear plant; (3) PPL's application came into existence "with the complete defunding" of Yucca Mountain; (4) Bell Bend is "unique to the environment to which it exists"; (5) unlike other plants, Bell Bend does not have access to Barnwell; and (6) Bell Bend's plant design has not been used in the U.S. before. *Id.* at 18-23. Petitioners, however, have not met any of the requirements for waiver pursuant to 10 C.F.R. § 2.335(b).

The Commission permits litigants in an adjudicatory proceeding the opportunity to request that a Commission rule or regulation "be waived or an exception made for the particular proceeding." 10 C.F.R. § 2.335(b). The Commission has specified that "[t]he sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation . . . would not serve the purposes for which the rule or regulation was adopted." *Id.* The Commission requires that any request for such waiver or exception "be accompanied by an affidavit that identifies . . . the subject matter of the proceeding as to which application of the rule or regulation . . . would not serve the purposes for which the rule or regulation was adopted." *Id.* Additionally, "[t]he affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested." *Id.* Petitioners have neither

proffered the required supporting affidavit, nor have they addressed the requisite four-part *Millstone* test. See *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560-61 (2005).

Further, the Petitioners have not stated any unique circumstances related to the proposed Bell Bend reactor that would justify waiving the applicable regulation. The Commission has stated unambiguously that “[w]aiver of a Commission rule is simply not appropriate for a generic issue.” *Conn. Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-03-7, 58 NRC 1, 8 (2003) (citing *Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-80-16, 11 NRC 674, 675 (1980)). None of the Petitioners’ supposedly “unique” circumstances warrant a waiver. Instead, each supposedly “unique” attribute reinforces the obvious conclusion that high-level waste storage and disposal is a generic issue that has been and is being addressed by the Commission through rulemaking. The Petitioners have therefore failed to establish that they meet any of the requirements for a waiver.

The Petitioners have also failed to establish that application of the Waste Confidence Rule in this particular proceeding would not serve the purpose for which the rule was adopted. To the contrary, 10 C.F.R. § 51.23 reflects, on its face, that the rule was designed to dispense with the need for NRC adjudications to address the impacts associated with the ultimate disposal of spent fuel and high-level waste. This proceeding is not the appropriate forum for a challenge to the Commission’s regulations on high-level waste.

Lastly, this contention is similar to contentions unanimously rejected by several licensing boards in other early site permit and COL proceedings.²⁹ The logic of those prior decisions applies here and the proposed contention should be rejected.

2. *Gene Stilp and TRU Contention 2: Bell Bend's application and environmental report violate NEPA by failing to address the environmental, health and safety impacts of the low level radioactive waste that the plant will generate and must store in the absence of a permanent disposal facility.*

This contention alleges that the application fails to offer a viable plan for disposal of low-level radioactive waste (“LLRW”) because, as of June 30, 2008, the disposal facility in Barnwell, South Carolina no longer accepts Class B and Class C LLRW that is generated outside the Atlantic Compact Commission States of Connecticut, New Jersey, and South Carolina. TRU Pet. at 27-28. The Petitioners also assert that “[t]he ER does not contain the needed facts to provide for a complete and comprehensive understanding of the health effects of extended on site storage of radioactive nuclear B and C class low level wastes and Greater than Class C nuclear waste.” *Id.* at 31. Contrary to the Petitioners’ arguments, the ER does describe the plan for managing Class B and C waste at Bell Bend, and Petitioners’ unsupported allegations regarding

²⁹ See *Virginia Electric and Power Co.*, (Combined License Application for North Anna Unit 3), LBP-08-15, 68 NRC__ (slip op. at 52-54) (Aug. 15, 2008), *Tenn. Valley Auth.*, (Combined License Application for Bellefonte Nuclear Power Plant Units 3 and 4), LBP-08-864, __NRC__ (slip op. at 60-62) (Sept. 12, 2008), *Duke Energy Carolinas, LLC.*, (Combined License Application for William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, __NRC__ (slip op. at 28-30) (Sept. 22, 2008), *Southern Nuclear Operating Co.*, (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237 at 267-68; *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 246-47 (2004); *Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 268-70 (2004); *Sys. Energy Res., Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-04-19, 60 NRC 277, 296-97 (2004).

potential health impacts fail to provide adequate support to demonstrate a genuine dispute with the application.

First, Petitioners have not cited any (and there is no) requirement that the ER specify exactly how the applicant will manage LLW based on future contingencies regarding access to disposal sites. Regardless, Petitioners mistakenly assert that the ER does not address waste management in the absence of licensed disposal facilities. If a petitioner submits a contention of omission, but the allegedly missing information is indeed in the license application, then the contention does not raise a genuine issue. *See Millstone*, LBP-04-15, 60 NRC at 95-96. As discussed below, the application clearly addresses both the plan for handling LLRW onsite and the environmental impacts of storing such waste.

In Section 3.5.4.3 of the ER, the application describes the solid waste storage system as follows:

The different properties, sizes, materials and activity of the solid radioactive waste are considered while collecting the waste in different containers so as to simplify both handling and storage of the waste in the plant and its transport.

Various storage areas are provided in the Radioactive Waste Building for the different types of solid waste and contaminated components. The Radioactive Waste Processing Building includes a tubular storage area for higher activity waste. This area would provide capacity to store on the order of five to six years of Class B and C waste (using the conservative waste volumes estimated in the U.S. EPR FSAR) without further waste minimization and volume reduction efforts. In the event that no offsite disposal facility is available to accept Class B and C waste from BBNPP when it commences operation, additional waste minimization measures would be implemented to reduce or eliminate the generation of Class B and C waste.

These measures could include the [sic] reducing the service run length for resin beds, short loading media volumes in ion exchange vessels, and other techniques discussed in the EPRI Class B/C Waste Reduction Guide

(Nov. 2007) and EPRI Operational Strategies to Reduce Class B/C Wastes (April 2007). These measures could extend the capacity of the Radioactive Waste Processing Building to store Class B and C waste to over ten years. This would provide ample time for offsite disposal capability to be developed or additional onsite capacity to be added. Continued storage of Class B and C waste in the Radioactive Waste Processing Building would maintain occupational exposures within permissible limits and result in no additional environmental impacts.

If additional storage capacity for Class B and C were necessary, BBNPP would implement the applicable NRC guidance, including Appendix 11.4-A of the Standard Review Plan, “Design Guidance for Temporary Storage of Low-Level Waste.” Such a facility would be located in a previously disturbed area in the vicinity of the power block, and in a location that would not affect wetlands. The impacts of constructing such a facility would be minimal. The operation of a storage facility meeting the standards in Appendix 11.4-A would provide appropriate protection against releases, maintain exposures to workers and the public below applicable limits, and result in no significant environmental impact.

Although PPL has described how it intends to manage low-level waste notwithstanding the lack of an available disposal site at present, the proposed contention also starts with the flawed premise that there will be no options other than on-site storage. In fact, there are other means of managing low-level waste that do not require extended on-site storage or an expansion of low-level waste storage capacity. For example, under 10 C.F.R. Part 20, a power reactor licensee could transfer the material to another licensee that is licensed to accept and treat waste prior to disposal. 10 C.F.R. § 20.2001. The waste treatment facility would then be responsible for eventual waste disposal. *See, e.g.*, PPL Exhibit 2.³⁰ This option is specifically noted in Section 3.5.4.2 of the ER, which acknowledges that wastes could be shipped to a “licensed waste processor for additional processing,” and in Section 3.5.4.3, which states that

³⁰ Studsvik, *Press Release*, “First contract signed with FPL for new U.S. waste model” (December 2, 2008). Studsvik will treat the Class B and C waste at its Erwin, Tennessee facility and thereafter take responsibility for storage and final disposal, for which a storage agreement has been reached with Waste Control Specialists in Texas.

wastes may be sent to an “off site licensed waste processor for sorting and treatment for volume reduction.” Accordingly, even with the closure of Barnwell, there is a plausible disposition path for removing Class B and C wastes from the Bell Bend site.

At bottom, contrary to the proposed contention, PPL’s ER contains a plan for managing low level waste at Bell Bend. The ER describes a plan for handling Class B and C wastes that provides for years of onsite storage, discusses the impacts of expanding onsite storage if necessary,³¹ describes volume reduction techniques that could be applied, and preserves the option to ship wastes to a third party processor. In contrast, the proposed contention contains no facts or experts opinion that call into question PPL’s plan for managing low level wastes,³² and no facts to demonstrate a genuine dispute with the application on a material issue. The proposed contention must be rejected.

Second, the proposed contention asserts that the ER does not contain the needed facts to provide for a complete and comprehensive understanding of the health effects of extended on site storage of Class B and C wastes. TRU Pet. at 31. However, the Petitioners do not provide any facts or expert opinion to demonstrate that any health impacts were underestimated or overlooked. Instead, the Petitioners repeat their argument regarding the current lack of a disposal site for Class B and C waste and assert that the discussion of the

³¹ If it turns out that an expansion of the low-level waste storage facility is necessary, approval of that change would be the subject of a separate licensing process. A licensing board must deny a contention which involves an inchoate plan of the licensee/applicant. *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 293 (2002).

³² The affidavit of Diane d’Arrigo does not cite to the Bell Bend application or otherwise challenge any of the specific information provided in the COLA. The affidavit merely describes low-level waste and low-level waste policy in general terms.

criteria for construction of additional onsite storage and health effects associated with onsite storage is inadequate. The sole basis for this argument is that the reference to NRC guidance in Appendix 11.4-A of the Standard Review Plan (NUREG-0800), “Design Guidance for Temporary Storage of Low-Level Waste,” is insufficient because “NRC guideline documents are not rules.” TRU Pet. at 32.

While it is clear that regulatory guides and Standard Review Plans are not regulations, need not be followed by applicants, and do not purport to represent the only satisfactory method of meeting a specific regulatory requirement, they do provide guidance as to acceptable modes of conforming to specific regulatory requirements and are therefore entitled to special weight. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001). Indeed, such documents are entitled to considerable *prima facie* weight. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-74-40, 8 AEC 809, 811 (1974).

For an admissible contention, therefore, a petitioner must do more than challenge the mere use of NRC guidance documents. A petitioner must point to a specific regulatory non-compliance that allegedly flows from an applicant’s use of NRC guidance. Here, the proposed contention does not challenge any specific aspect of PPL’s use of NRC guidance. Petitioners merely highlight short excerpts of the portions of the application that address the criteria applicable to constructing additional onsite storage and describe the environmental impacts of constructing additional storage. TRU Pet. at 30, 34. Petitioners do not identify any portion of the application that contains an allegedly incorrect assessment of environmental or health impacts. Nor do Petitioners identify which processes or programs described in the application

supposedly fail to protect public health and safety.³³ Finally, Petitioners do not present any references to documents or other sources that would indicate any genuine material dispute. The Petitioners have wholly failed to satisfy their burden of affirmatively demonstrating a genuine dispute with the discussion in the application.

Accordingly, the proposed contention lacks the factual or expert support needed to establish a genuine dispute. The proposed contention should be rejected.

3. *Gene Stilp and TRU Contention 3: Bell Bend's environmental report is deficient because it fails to analyze the environmental, health, and safety effects of a terrorist attack on Bell Bend or its proposed high and low level radioactive waste storage areas.*

In this proposed contention, the Petitioners assert that the ER is deficient “because it does not look at the environmental, health and safety effects of a terrorist attack against the proposed radioactive nuclear plant at Bell Bend.” TRU Pet. at 38. This contention raises a matter that is not within the scope of this proceeding and fails to present a genuine dispute regarding a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi). This proposed contention is directly contrary to clear Commission precedent and must be rejected.

In various rulings, the Commission has made clear its position that a NEPA analysis is not the vehicle for exploring questions about the potential consequences of a terrorist attack upon a proposed nuclear facility. *See Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 269 & n.16 (2007) (citing cases).³⁴ The Licensing

³³ To the extent Petitioners would challenge NRC regulations themselves as being inadequate to protect public health and safety, the contention is not admissible in the proceeding. 10 C.F.R. § 2.335(a).

³⁴ *See, e.g., Sys. Energy Res., Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 122 (2007); *Nuclear Mgmt., LLC* (Palisades Nuclear Plant), CLI-07-9, 65 NRC 139, 141-42 (2007); *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating

Board is in no position to reconsider these legal rulings by the Commission. Outside the geographic boundaries of the Ninth Circuit Court of Appeals,³⁵ the Licensing Board must apply the Commission's case law directives.

4. *Gene Stilp and TRU Contention 4: The redesign of the European Pressurized Reactor/Evolutionary Pressurized Reactor ("USEPR") that Bell Bend intends to use is not approved by the NRC and the NRC's design certification process.*

In proposed Contention 4, the Petitioners argue that the entire COL proceeding is "premature" and "must be suspended or held in abeyance" because the U.S. EPR design certification is not yet complete. TRU Pet. at 59. This proposed contention impermissibly challenges an existing Commission regulation and is directly contrary to recent Commission precedent.

The proposed contention is similar to a request to suspend a COL proceeding pending completion of the design certification rulemaking for the AP1000 filed in the Shearon Harris licensing proceeding. According to the Commission in *Harris*, a specific provision of Part 52 allows applicants to reference a certified design that has been docketed but not approved and, further, parties may not challenge Commission regulations in licensing proceedings. *See Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 67 NRC ___, slip. op. at 3 (July 23, 2008) (citing 10 C.F.R. §§ 52.55(c) and 2.335(a)). The

Station), CLI-07-8, 65 NRC 124, 128-34 (2007); *see also*, *N.J. Dept. Env't'l Prot. v. NRC*, No. 07-2271, slip op. at 4-5 (3rd Cir. March 31, 2009) (upholding Commission decisions declining to evaluate the environmental impacts of a terrorist attack).

³⁵ "[The Commission] is not obliged to adhere, in all of its proceedings, to the first court of appeals decision to address a controversial question," in that "[s]uch an obligation would defeat any possibility of a conflict between the Circuits on important issues." *Oyster Creek*, CLI-07-8, 65 NRC at 128-29.

Commission also noted that it had discussed this very situation in its Final Policy Statement on the Conduct of New Reactor Licensing Proceedings. *See* 73 Fed. Reg. 20963 (April 17, 2008). Against that backdrop, the Commission held that there was no basis to hold the hearing in abeyance pending completion of the design certification rulemaking. CLI-08-15, slip op. at 4.

The proposed contention is also similar to a request made in a January 14, 2009 letter to the Commission regarding the pending ESBWR rulemaking. That request was denied in CLI-09-04. *See Detroit Edison Co. (Fermi Unit 3)*, CLI-09-01, __ NRC __, slip op. at 7 (February 17, 2009). The Commission first reiterated that it had recently issued a policy statement indicating that a COLA may reference a docketed design certification that the Commission has not yet approved. *Id.* at 6. The Commission next noted that 10 C.F.R. § 52.55(c) explicitly envisions concurrent proceedings on a design certification rule and a COLA and specifically permits an applicant to reference a design certification that the Commission has docketed but not granted. *Id.* The Commission also rejected concerns regarding the Atomic Energy Act hearing requirement and the Administrative Procedure Act's notice provisions. *Id.* at 7. Finally, the Commission reaffirmed its decision in *Harris* and declined to suspend the Fermi 3 COL proceedings pending the outcome of the ESBWR design certification process.

The Petitioners have not demonstrated that the Commission's decisions with respect to the same issue now warrant revision or that any special circumstance exists for Bell Bend. Therefore, proposed Contention 4 is inadmissible.

5. Gene Stilp and TRU Contention 5: The Decommissioning Funding Assurance Described in the Application Is Inadequate to Assure Sufficient Funds Will Be Available to Fully Decontaminate and Decommission Bell Bend.

In proposed Contention 5, Petitioners argue that the decommissioning funding assurance described in the application is inadequate to ensure that funds will be available to decommission Bell Bend and that PPL must “immediately show that the Applicants [*sic.*] selected method of funding must pass an immediate financial test to assure adequate funding.” TRU Pet. at 66. The Petitioners also contend “that the amount of money that PPL says it is required to assure sufficient funds for the decommissioning of [Bell Bend] will not be enough and that [the Applicant] must show that the method of financial assurance is financially possible now.” *Id.*

As is discussed below, the application clearly contains the information that Petitioners assert is missing. Revision 1 of the Bell Bend COLA states that PPL Bell Bend, LLC (the owner-licensee) intends to utilize a parent company guarantee from PPL Energy Supply, LLC, as provided in 10 C.F.R. § 50.75(e)(1)(iii), to provide reasonable assurance of decommissioning funding under 10 C.F.R. § 50.75. *See* “Bell Bend COL Application, General Information Rev. 1,” at 1-11. Consistent with the requirements of 10 C.F.R. § 50.75(e)(1)(iii)(B), the parent company guarantee method to be adopted by PPL Bell Bend, LLC, will provide an ultimate guarantee that decommissioning costs will be paid in the event the Applicant is unable to meet its decommissioning obligations at the time of decommissioning. *Id.* Although the Petitioners assert that PPL has not demonstrated “that it can meet the criteria for funding assurance for decommissioning” and argue that PPL does not meet the adequacy test now (TRU Pet. at 68), the application specifically states that PPL Energy Supply’s ability to

provide this guarantee is demonstrated by compliance with the test specified in 10 C.F.R. Part 30, App. A, Section II, paragraph A.2. *Id.* at 1-12. A worksheet showing that PPL Energy Supply, LLC meets this test is included as Appendix A. *Id.* at 1-28. Thus, there is no omission and the proposed contention must be rejected.

There is also no requirement that PPL Bell Bend demonstrate that PPL Energy Supply passes the test as part of the COLA. The NRC regulations on decommissioning financial assurance do not require that a parent company guarantee or other financial assurance mechanisms be in place at the time of the combined license application. Instead, NRC regulations only require a licensee to successfully demonstrate passage of the financial test for a parent guarantee at the time when decommissioning funding assurance is required to be put in place, just prior to fuel load. According to 10 C.F.R. § 50.75(b), PPL Bell Bend was required only to file a “decommissioning report” that contains a certification that financial assurance for decommissioning will be provided no later than 30 days after the Commission publishes notice of initial fuel loading in the *Federal Register* under § 52.103(a), using one of the specified methods. 10 C.F.R. § 50.75(b). The authorized methods listed in Section 50.75 specifically include a surety method, insurance, or other guarantee method (*e.g.*, parent guarantee). PPL Bell Bend provided the certification and described the combination of methods that it intends to use to provide decommissioning funding assurance in its application. General Information, at 1-11. This satisfies the applicable NRC requirements.

At present, PPL is not required to have in place the specific funds, funding mechanisms, or financial instruments that will provide reasonable assurance that there will be adequate decommissioning funding. According to Section 50.75(e)(3), each holder of a

combined license (not an applicant) shall, two years before and one year before the scheduled date for initial loading of fuel, consistent with the schedule required by Section 52.99(a), submit a report to the NRC containing a certification updating the information described under paragraph (b)(1) of this section, including a copy of the financial instrument to be used. An applicant for or holder of a combined license need not obtain the actual financial instrument or submit a copy to the Commission until 30 days after the Commission publishes the § 52.103(a) notice.³⁶ 10 C.F.R. § 50.75(e)(3); *see also* 10 C.F.R. § 50.75(b)(4). Therefore, there is no requirement in the regulation that a parent guarantee be authorized (*i.e.*, that the financial test be satisfied) at this point in time.³⁷ Instead, the NRC regulations establish a schedule with specific milestones for updating the decommissioning funding report and providing the initial funding assurance using an approved method.³⁸

Finally, the contention asserts that the decommissioning cost estimate provided by PPL is not enough. TRU Pet. at 66. However, Petitioners do not provide any facts, argument, or

³⁶ This notice is published approximately 180 days prior to fuel load. 10 C.F.R. § 52.103(a).

³⁷ If the parent guarantee is not available when the necessary decommissioning funding assurance is required to be in place (for example, because the financial test could not be met), then PPL Bell Bend could not use the parent guarantee and would have to use an alternative funding method.

³⁸ According to the Commission, requiring a combined license applicant to comply with the then-current requirement in § 50.75(b)(4) that the operating license applicant submit a copy of the financial instrument obtained to satisfy the requirements of § 50.75(e) would place a more stringent requirement on the combined license applicant, inasmuch as that applicant would be required to fund decommissioning assurance at an earlier date as compared with the operating license applicant. “Licenses, Certifications, and Approvals for Nuclear Power Plants; Final Rule,” 72 Fed. Reg. 49352, 49406 (Aug. 28, 2007). Consequently, the Commission amended its regulations to provide that the combined license applicant must submit a decommissioning report, but need not obtain a financial instrument to fund decommissioning or submit a copy to the NRC. *Id.*

expert opinion to support their contention. Moreover, to the extent that Petitioners are challenging PPL's use of the decommissioning formula amounts explicitly laid out in 10 C.F.R. § 50.75(c), the contention impermissibly challenges an existing NRC regulation. As discussed in Section 1.6.1 of the General Information section of the application, the minimum certification amount was computed using the formula provided in 10 C.F.R. § 50.75(c)(1) and (2) and applying appropriate escalation factors for energy, labor, and waste burial costs. The escalation factors for labor and energy were taken from regional data of the US Department of Labor, Bureau of Labor Statistics, and the escalation factor for waste burial was taken from NUREG-1307, "Report of Waste Burial Charges" (2007). Petitioners do not challenge PPL's application of the formula or assert that any calculations were performed incorrectly. At bottom, Petitioners are simply challenging the use of the formula explicitly spelled out in NRC regulations. When a Commission regulation permits the use of a particular analysis, a contention which asserts that a different analysis or technique should be utilized is inadmissible because it attacks the Commission's regulations. *Metropolitan Edison Co.* (Three Mile Island Nuclear station, Unit No. 1), LBP-83-76, 18 NRC 1266, 1273 (1983).

For all of these reasons, proposed Contention 5 is based on a flawed premise, fails to satisfy the Commission's admissibility standards, and otherwise impermissibly challenges existing Commission regulations.

C. Eric Epstein Has Not Submitted One Admissible Contention

Applying the legal standards summarized above, each of Eric Epstein's four proposed contentions is deficient on one or more grounds. As a result, the Petition should be denied for failure to proffer an admissible contention in accordance with 10 C.F.R. § 2.309(c).

1. *Eric Epstein - Contention 1: Bell Bend's decommissioning funding assurance, in the form of a parent guarantee, is grossly inadequate to provide assurance that Bell Bend can provide "minimum certification amounts" or "assure sufficient funds will be available."*

In his proposed Contention 1, Eric Epstein asserts that the decommissioning funding assurance described in the application is "grossly inadequate" to provide assurance that sufficient funds will be available to decommission Bell Bend and that PPL "must submit prepayment for more than 'minimum certification amount.'" Epstein Pet. at 12. The contention also asserts that PPL's financial information "does not reflect PPL's declining financial position, decommissioning losses, or the absence of rate relief as a safety net." *Id.* at 13. The Petition also claims that PPL mismanaged the decommissioning funds for Susquehanna Units 1 and 2; that Financial Accounting Standards Board accounting rule changes have determined that PPL's nuclear assets will not be able to recover their value; that PPL's recordkeeping commitments are undermined by recent litigation; that PPL assumptions regarding low level waste isolation are dated and based on miscalculation; and that decommissioning costs should be aligned to match cost escalators provided by a PPL consultant. *Id.* at 12. As discussed below, none of these arguments is adequately supported or demonstrates a genuine dispute with PPL Bell Bend on a material issue. Moreover, several of these issues impermissibly challenge existing NRC regulations.

First, to the extent that Petitioner argues that PPL must use the “prepayment method” for decommissioning funding (Epstein Pet. at 12), the proposed contention is an impermissible challenge to NRC regulations. According to 10 C.F.R. § 50.75(b), each applicant for a combined license must submit a decommissioning report that contains a certification that financial assurance for decommissioning will be provided using one or more of the methods described in § 50.75(e). The authorized methods listed in Section 50.75 specifically include prepayment; external sinking fund; a surety method, insurance, or other guarantee method; contractual obligations; and any other mechanism, or combination of mechanisms. PPL states that it intends to rely upon a parent guarantee. General Information at 1-11. Because the parent guarantee method is clearly authorized by NRC regulations — both on its own and in combination with an external sinking fund — the Petitioners’ broad challenge to its proposed use by PPL must fail as a collateral attack on the Commission’s regulations. 10 C.F.R. § 2.335; *see also Calvert Cliffs 3 Nuclear Project et al* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-04, ___ NRC ___ (slip op. at 36) (March 24, 2009).

Similarly, the proposed contention impermissibly challenges the current decommissioning funding amount provided in the application. As discussed in Section 1.6.1 of the General Information section of the application, for Bell Bend the minimum certification amount was computed using the formula provided in 10 C.F.R. § 50.75(c)(1) and (2) and appropriate escalation factors for energy, labor, and waste burial costs. The escalation factors for labor and energy were taken from regional data of the US Department of Labor, Bureau of Labor Statistics, and the escalation factor for waste burial was taken from NUREG-1307, “Report of Waste Burial Charges” (2007). Petitioner does not challenge PPL’s application of the formula or

assert that any calculations were performed incorrectly. At bottom, Petitioner is simply challenging the use of the formula explicitly spelled out in NRC regulations. When a Commission regulation permits the use of a particular analysis, a contention which asserts that a different analysis or technique should be utilized is inadmissible because it attacks the Commission's regulations. *Metropolitan Edison Co.* (Three Mile Island Nuclear station, Unit No. 1), LBP-83-76, 18 NRC 1266, 1273 (1983); *see also Calvert Cliffs*, LBP-09-04, slip op. at 36.

The Petitioner's argument regarding recent downturns in the stock market raises an issue that is not material to the findings that must be made in this proceeding. Neither market capitalization nor share price are variables used in the financial test for a parent guarantee set forth in the regulations (10 C.F.R. Part 30, Appendix A), nor are these values related to tangible net worth or the other financial parameters that are used in the test. The Petitioner has provided no other information to call into question the use of the parent guarantee.³⁹ The contention is therefore inadmissible because the Petitioner "has offered no tangible information, no experts, no substantive affidavits, but instead only 'bare assertions and speculation'" regarding PPL's ability to use a parent guarantee. *Fansteel*, CLI-03-13, 58 NRC at 203 (quoting *GPU Nuclear* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 208 (2000)). A contention that simply states the petitioner's views about what regulatory policy should be does not present

³⁹ The Petitioner appears to argue that the decommissioning funding obligation for Susquehanna Units 1 and 2 somehow impacts the availability of the parent guarantee for Bell Bend. Epstein Pet. at 14. However, for the existing Susquehanna units, which are rate-regulated and, further, not owned by PPL Bell Bend, decommissioning funding is provided by an external trust fund maintained in accordance with NRC regulations. Decommissioning costs for the existing Susquehanna units therefore have no bearing on Bell Bend decommissioning costs or on PPL Energy Supply's ability to provide a parent guarantee.

a litigable issue. *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 1), LBP-86-10, 23 NRC 283, 285 (1986), *citing Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

Finally, the remaining issues related to decommissioning funding assurance raised in the contention are outside the scope of this proceeding or otherwise fail to demonstrate a genuine dispute with the application on a material issue. For example, allegations that “PPL” (presumably, the Petitioner is referring to PPL Susquehanna) sought to circumvent recordkeeping requirements do not relate to the applicant here (PPL Bell Bend) and, in any event, revolve around public disclosure of information, not withholding of the information from the NRC. Additionally, the Petitioner’s assertions regarding the use of escalation factors developed by a consultant again relate to Susquehanna Units 1 and 2, not to Bell Bend. And, to the extent that Mr. Epstein is arguing that PPL Bell Bend must provide financial assurance for an amount greater than that calculated using the formula in 10 C.F.R. § 50.75(c), the contention constitutes an impermissible challenge to NRC regulations. 10 C.F.R. § 2.335(a). These issues are all outside the scope of this proceeding.

For these reasons, proposed Epstein Contention 1 is inadmissible and should be rejected.

2. *Eric Epstein - Contention 2: Bell Bend’s application and environmental report violate NEPA by failing to demonstrate that the site has the capability or procedures to store Class B and C low level radioactive waste during the entire operating life of the plant and beyond.*

In proposed Contention 2, the Petitioner states that the ER “is deficient in discussing its plans for management of Class B and C wastes.” Epstein Pet. at 20. The proposed contention also asserts that the ER is “deficient by omission” and fails to offer a realistic plan for

disposal of Class B and C wastes in light of the closure of Barnwell to out-of-compact waste. *Id.* As discussed below, this contention raises issues that are nearly identical to TRU Contention 2 and is inadmissible for similar reasons.

As discussed above (*see supra* Section III.B.2), the Petitioner mistakenly asserts that the ER does not address low level waste management in the absence of licensed disposal facilities. ER Section 3.5.4.3 describes the solid waste storage system, including provisions for increasing storage capacity or reducing the volume of waste that would be generated. The ER also provides an assessment of the environmental and health/safety impacts of constructing additional storage. And, Section 3.5.4.2 of the ER suggests that wastes could be shipped to a “licensed waste processor for additional processing.” Thus, PPL has described its plan for managing low level waste.

Petitioner Epstein has provided no information to call into question the adequacy of the discussion in the ER. Instead, he merely highlights a recent Commission decision that found a proposed low level waste contention to be inadmissible. Epstein Pet. at 21. In *Bellefonte*, the Commission considered the admissibility of a contention that alleged that the COLA failed to offer a viable plan for disposal of Class B and C waste. The contention argued that, if extended on-site storage is needed, that circumstance is not discussed in the COL application. *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 3 and 4), CLI-09-03, __ NRC __, slip op. at 5-9 (Sept. 12, 2008). After finding the proposed contention inadmissible, the Commission acknowledged that, in limited circumstances, a petitioner might be able to offer an application-specific contention based on site- and design-specific information, but noted that, as a general matter, power reactor licensees have been safely storing and

managing low-level waste onsite for years under NRC oversight. *Id.* at 11, n.42. The Commission also recognized that the Staff has not identified any immediate safety problems or concerns with such storage. *Id.*

Here, the Petitioner has provided no site- or design-specific support for the proposed contention or argued that any environmental impacts have been overlooked. The Petitioner did not present any factual information or expert opinion that that calls into question PPL's plan for managing low level wastes at Bell Bend. The Petitioner's unsupported statements are wholly inadequate to support an admissible contention under the Commission's strict contention admissibility requirements.

In the absence of an omission or any expert opinion or factual support demonstrating a genuine dispute with the application, the proposed contention must be rejected.

3. *Eric Epstein - Contention 3: Bell Bend is working with UniStar Nuclear Services, LLC as a contractor/participant, and UniStar is owned 50 percent by the French company Électricité de France, which is contrary to the Atomic Energy Act and NRC Regulations.*

In proposed Contention 3, Mr. Epstein asserts that issuance of a COL to the Applicants would be contrary to the foreign ownership, domination, or control restrictions of Section 103.d of the Atomic Energy Act ("AEA"). 42 U.S.C. § 2133(d). Although the argument is not clear, the Petition appears to suggest that PPL Bell Bend's use of UniStar Nuclear as a contractor somehow runs afoul of the control and ownership provisions of the AEA. Epstein Pet. at 24. In particular, the proposed contention cites the foreign participation of Électricité de France ("EDF") in UniStar Nuclear as the source of the alleged foreign control. As discussed below, this proposed contention is based on a flawed premise, has no legal basis, and otherwise fails to meet the Commission's admissibility criteria.

By longstanding Commission precedent, the NRC has applied the Atomic Energy Act to focus on the issue of control. In *General Electric Co. & Southwest Atomic Energy Associates*, 3 AEC 99 (1966) (“*SEFOR*”), the Atomic Energy Commission addressed a case of foreign participation in a test reactor (subject to comparable foreign ownership restrictions under Section 104.d of the Act). The administrative board rescinded a construction permit on the grounds that a foreign part owner caused the applicants to be in violation of the prohibition on foreign ownership, control, or domination. The Commission, however, reversed the board, ruling:

. . . the limitation [on foreign ownership, control, or domination in AEA Section 104.d] should be given an orientation toward safeguarding the national defense and security. We believe that the words “owned, controlled, or dominated” refer to relationships where the will of one party is subjugated to the will of another, and that the Congressional intent was to prohibit such relationships where an alien has the power to direct the actions of the licensee.

SEFOR, 3 AEC 101.

The principle that the Commission will focus on the ability of any foreign entity to direct actions of the licensee is reflected in the Standard Review Plan (“SRP”) on Foreign Ownership, Control or Domination.⁴⁰ An applicant is considered to be foreign owned, controlled or dominated “whenever a foreign interest has the ‘power,’ direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant.” SRP, Section 3.2.

Here, the proposed contention fails to raise any colorable argument that would suggest even a modicum of foreign ownership in or control of Bell Bend. According to the COL

⁴⁰ “Final Standard Review Plan on Foreign Ownership, Control, or Domination,” 64 Fed. Reg. 52, 355 (Sept. 28, 1999).

application, the sole applicant for the Bell Bend Nuclear Power Plant is PPL Bell Bend, LLC. General Information at 1-1. PPL Bell Bend is a wholly-owned subsidiary of PPL Corporation, and is not acting as the agent or representative of another person. *Id.* All subsidiaries of the PPL Corporation, including PPL Bell Bend, are wholly-owned by the PPL Corporation or subsidiaries of the PPL Corporation. There are no participants in the Bell Bend project that are not part of the PPL Corporation or subsidiaries of the PPL Corporation. *Id.* Moreover, as described in General Information Sections 1.3.1 to 1.3.7, all of the managers, executives, and officers of the entities in the PPL Bell Bend organizational structure are U.S. citizens.

Section 1.7 of the application specifically addresses foreign ownership, control, and domination. The application notes that:

PPL Corporation is a publicly traded Pennsylvania corporation, and its securities are traded on the New York Stock Exchange and Philadelphia Stock Exchange and are widely held. Section 13 of the Securities Exchange Act of 1934, as amended, 15 USC 78m(d), requires that a person or entity that owns or controls more than 5% of the stock of a company must file notice with the Securities and Exchange Commission (SEC). Based upon the review of the relevant filings with the SEC, the Applicant has identified that FMR LLC (“FMR”) and related parties control approximately 6.11% of the voting stock of PPL Corporation. FMR is a Delaware limited liability company. PPL Bell Bend, LLC is not aware of any other alien, foreign corporation, or foreign government that holds more than 5% of the securities of PPL Corporation or will hold more than 5% of the securities of PPL Corporation following the issuance of the combined license.

UniStar Nuclear is not an owner, applicant, or proposed licensee for the Bell Bend project. It is no more than a contractor for PPL Bell Bend on the project. There is no basis in law for a contention that a contractor may not be foreign-owned, much less only 50% foreign owned. Moreover, the Petitioner’s simplistic reference to EdF’s 50% participation in a contractor is completely inadequate to demonstrate a genuine dispute of fact with respect to

ultimate control over Bell Bend.⁴¹ Petitioners do not attack the adequacy of any information provided in the application, which clearly shows that the ultimate authority to control the proposed facility lies with PPL Bell Bend.

At bottom, the proposed contention should be rejected for failure to establish that relief could be granted based on EdF's participation in a contractor alone, and for failure to demonstrate any genuine dispute regarding governance and control of the Applicant.

4. *Eric Epstein - Contention 4: Portions of Bell Bend's application are based on flawed assumptions and specious conclusions, and have omitted key data and statistics that undermine the applicant's determinations.*

In proposed Contention 4, Mr. Epstein contends that portions of the ER — in particular, Sections 4.4.2.2.1, 5.8.2.3, 2.5.2, and 4.4.2 — are based “on flawed assumptions and specious conclusions” and “have omitted key data and statistics that undermine the Applicant’s determinations.” Epstein Pet. at 29. In support of the contention, the Petition argues that the impacts of the aging population in the vicinity of the plant were not adequately discussed in the application. Pet. at 29. As discussed below, the proposed contention lacks adequate factual or expert support to demonstrate a genuine dispute with the application on a material issue and is therefore inadmissible.

As an initial matter, many of the asserted “impacts” highlighted by the Petitioner are unrelated to Bell Bend and therefore outside the scope of the proceeding. For example, the

⁴¹ To the extent that the contention is alleging that PPL may in the future choose to partner with another entity to construct Bell Bend (Epstein Pet. at 27), the contention is premature. If, down the road, it turns out that there is a change in the ownership structure of Bell Bend, approval of that change would be subject of a separate licensing action at that time. However, a licensing board must deny a basis for a contention which involves an inchoate plan of the licensee. *See Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2)*, CLI-02-14, 55 NRC 278, 293 (2002).

Petition highlights rate increases by “PPL” to support the proposed contention. Epstein Pet. at 30 n.25, n.27, 31. However, the rates are set by the Pennsylvania Public Utility Commission and PPL Electric Utilities Corporation, which is a rate-regulated entity. Bell Bend will operate as a merchant plant. Similarly, portions of the contention related to “PPL” shutting off power to its customers and “PPL” eliminating various positions have no bearing on PPL Bell Bend or the construction of a new reactor at Bell Bend. Other aspects of the proposed contention relate to operation of Susquehanna Units 1 and 2 rather than the proposed construction and operation of Bell Bend. *Id.* at 39 (posing questions related to the age and overtime hours for the workforce as Susquehanna). These matters are all outside the scope of this proceeding.

The Petition also makes several unsupported arguments in support of its contention. Although the Petitioner contends that an aging population affects staffing, response times, emergency planning and social services (Epstein Pet. at 29), the Petition does not point to any particular impacts that were overlooked or not considered in the ER. In Section 2.5.2.3, the ER describes both the income distribution and age distribution for the two-county region of influence. The ER specifically notes the aging populations in those counties. The impacts of construction of Bell Bend on the available labor force, regional demography, housing, and public services (police, EMS, and fire) are discussed in ER Section 4.4.2. The impacts on the same areas during operation of Bell Bend are discussed in ER Section 5.8.2. Yet again the Petition lacks any specific references or expert support that calls into question the conclusions in the application.

Finally, the Petition asserts in several places that the ER fails to provide a staffing plan for Bell Bend or develop a strategy to replenish police, fire, and EMS personnel. *See, e.g.,*

Epstein Pet. at 32 (The ER fails to discuss “how or who would provide police and fire services or who would staff and transport the EMS services.”); *id.* at 35, 38. The Petitioners fail to identify any requirement (and there is none) that would obligate the Applicant to develop a specific staffing plan as part of its COL application. Thus, the issue involves routine operational matters that are not material to an initial licensing proceeding.

But, in any event, the ER does discuss the relationship between an aging and out-migrating population and public services. For example, ER Section 5.8.2.7 concludes that an increase in population levels from the BBNPP operational workforces would not likely place additional demands on area doctors and hospitals, police services, fire suppression and EMS services, and schools because the area is experiencing an overall population decline, which would somewhat reduce the need for public services. The ER notes that the loss of population would be offset somewhat by the direct and indirect in-migration of people into the area for operation of BBNPP. However, the ER concludes that, because the addition of BBNPP-related population is so much less than the general projected out-migration of population, there should still be an overall reduced need for public services. Further, for additional unforeseen service needs that might arise, the significant new tax revenues generated by operation of Bell Bend would provide additional funding to expand or improve services and equipment to meet any additional daily demands created by the plant. The contention fails to demonstrate any flaw in the discussion provided in the ER and fails to demonstrate that any material issue was omitted.

In total, proposed Contention 4 raises issues that are outside the scope of the proceedings or not material to the findings that must be made in the proceeding. Further, the

Petition is wholly lacking in any factual or expert support for the contention that would call into question the conclusions in the application. Thus, proposed Contention 4 is inadmissible.

IV. CONCLUSION

For all of the above reasons, Petitioners lack standing and have not submitted an admissible contention. Accordingly the petitions to intervene and requests for hearing should be denied.

Respectfully submitted,

/s/ signed electronically by _____
David A. Repka
Tyson R. Smith
Emily J. Duncan
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

Bryan A. Snapp
PPL Services Corporation
2 North Ninth St.
Allentown, PA 18101-1179

COUNSEL FOR PPL BELL BEND, LLC

Dated at Washington, District of Columbia
this 12th day of June 2009

June 12, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
PPL BELL BEND, LLC) Docket No. 52-039-COL
)
(Bell Bend Nuclear Power Plant))

NOTICE OF APPEARANCES

Notice is hereby given that the following attorneys enter an appearance in the captioned matter on behalf of the Applicant, PPL Bell Bend, LLC. Each attorney is duly authorized, has been admitted to practice in the jurisdiction noted, and is in good standing. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

Name: David A. Repka
Address: Winston & Strawn LLP
1700 K St. NW
Washington, DC 20006
E-Mail: drepka@winston.com
Telephone Number: (202) 282-5726
Facsimile Number: (202) 282-5200
Admissions: District of Columbia

Name: Tyson R. Smith
Address: Winston & Strawn LLP
1700 K St. NW
Washington, DC 20006
E-Mail: trsmith@winston.com
Telephone Number: (415) 591-6874
Facsimile Number: (202) 282-5200
Admissions: District of Columbia

Name: Emily J. Duncan
Address: Winston & Strawn LLP
1700 K St. NW
Washington, DC 20006
E-Mail: ejduncan@winston.com
Telephone Number: (202) 282-5629
Facsimile Number: (202) 282-5200
Admissions: Commonwealth of Virginia

Name: Bryan A. Snapp
Address: PPL Services Corporation
2 North Ninth St.
Allentown, PA 18101-1179
E-Mail: basnapp@pplweb.com
Telephone Number: (610) 774-4397
Facsimile Number: (610) 774-6726
Admissions: Commonwealth of Pennsylvania

/s/ signed electronically by
David A. Repka
COUNSEL FOR PPL BELL BEND, LLC

Dated at Washington, District of Columbia
this 12th day of June 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
PPL BELL BEND, LLC) Docket No. 52-039
)
(Bell Bend Nuclear Power Plant, Unit 1))

CERTIFICATE OF SERVICE

I hereby certify that copies of “APPLICANT’S ANSWER TO PETITIONS TO INTERVENE” and “NOTICE OF APPEARANCES” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 12th day of June 2009, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by _____
David A. Repka
Tyson R. Smith
Emily J. Duncan
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

COUNSEL FOR PPL BELL BEND, LLC

PPL EXHIBIT 1

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PPL CORPORATION FOR
APPROVAL OF A RATE STABILIZATION PLAN

DOCKET No. 100

PREHEARING MEMORANDUM

Pursuant to 66 PA. C.S Section 333 the following is provided:

1. Introduction. PPL Corporation filed a petition requesting approval of a rate stabilization plan. The plan puts rate increases in the service area in to effect immediately.
2. Issues. PPL's petition should be rejected. The opt out mechanism is not a desirable method for ratepayers and raise rates illegally. Discovery will uncover more questions related to this issue and more issues related to entering or leaving the plan
3. Witnesses. Intervener reserves the right to present necessary witnesses. Public hearings will be an appropriate. Intervener is hereby requesting public hearing throughout service area.
4. Schedule. Intervene is flexible.
5. Settlement. The settlement can be worked out among the parties and public.

Submitted.

January 25, 2008

Gene Stilp, pro se
1550 Fishing Creek Valley Road
Harrisburg, Pa 17112
717-829-5600

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PPL CORPORATION
FOR RATE STABILIZATION PLAN

DOCKET NO 100

PETITION TO INTERVENE

This Petition To Intervene is filed in the above matter

Submitted,

Gene Stilp, Pro se
1550 Fishing Creek Valley Road
Harrisburg, Pa 17112
717-829-5600

PPL EXHIBIT 2

December 2, 2008

First contract signed with FPL for new U.S. waste model

Studsvik has signed a long term contract with FPL Group for the treatment of medium-level (Class B/C) waste at the facility in Erwin. This is the first contract for waste treatment that has been signed under Studsvik's new model for medium-level waste in the USA.

"The strong interest that we see from customers for this new model has convinced me that we will operate the waste treatment facility in Erwin profitably from 2009 and onwards," says Studsvik's CEO Magnus Groth. "The model offers a solution to a major problem for the American nuclear power industry. Our initiative means that customers now have a competitive and environmentally sound alternative for their medium-level waste."

Contract negotiations according to this model are under way with several customers. Studsvik will re-start the Erwin facility for waste treatment in December when it starts receiving waste from FPL Group under the new contract.

The contract with FPL Group lasts through 2013. FPL Group operates 8 commercial nuclear power reactors, and with annual revenues of more than \$15 billion and a presence in 27 states is one of the largest providers of electricity-related services in the United States.

Studsvik launched its new business model for the treatment of medium-level waste in the USA after obtaining necessary licenses in October. In the model, Studsvik will treat the waste at the Erwin facility in the same way as before and thereafter take responsibility for storage and final disposal, for which a storage agreement has been reached with Waste Control Specialists (WCS) in Texas.

"Our relationship with WCS is essential," states Lewis Johnson, President of Studsvik Inc. "The ability of our two companies to come together to provide this solution for the nuclear industry ensures a continuous waste management path to our customers."

Studsvik has been treating and reducing the volume of medium-level wet waste from the American nuclear power industry, mainly ion exchange resins, since the early 2000s. After treatment, the residual products were previously sent for final disposal to the Barnwell disposal facility in South Carolina. Since July this facility only accepts waste from three of the United States' 50 states, leaving most of the American nuclear power industry without access to final disposal of medium-level waste.

December 2, 2008

For further information please contact:

Magnus Groth, President and Chief Executive Officer, tel +46 155 22 10 86 or
cell +46 709 67 70 86

Lewis Johnson, President of Studsvik Inc., tel + 1 404 497 4911 or cell
+ 1 678 549 8958

Facts about Studsvik

Studsvik offers a range of advanced technical services to the international nuclear power industry in such areas as waste treatment, decommissioning, engineering & services, and operating efficiency. The company has 60 years experience of nuclear technology and radiological services. Studsvik is a leading supplier on a rapidly expanding market. The business is conducted through five segments: Sweden, United Kingdom, Germany, USA and Global Services. Studsvik has 1 200 employees in 8 countries and the company's shares are listed on NASDAQ OMX Stockholm.