UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO "ERIC JOSEPH EPSTEIN'S PETITION FOR LEAVE TO INTERVENE, REQUEST FOR HEARING, AND PRESENTATION OF CONTENTIONS WITH SUPPORTING FACTUAL DATA"

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the staff of the U.S. Nuclear Regulatory Commission ("NRC") hereby answers "Eric Joseph Epstein's Petition for Leave to Intervene, Request for Hearing, and Presentation of Contentions with Supporting Factual Data," ("Epstein Petition"), dated May 18, 2009. For the reasons set forth below, the NRC staff ("Staff") submits that Mr. Epstein has not presented information sufficient to establish standing in this proceeding, has not submitted an admissible contention, and, accordingly, the Petition should be denied.

BACKGROUND

On October 10, 2008, PPL Bell Bend, LLC ("Applicant"), pursuant to the Atomic Energy Act of 1954, as amended ("AEA"), and 10 C.F.R. Part 52, submitted to the NRC an application ("Application") for a combined license ("COL") for a U.S. Evolutionary Power Reactor ("U.S. EPR"). The proposed facility would be located adjacent to the PPL Susquehanna Steam Electric Station in Luzerne County, Pennsylvania. Application, Part 3 at 1-1. The Application incorporates by reference the design certification application submitted on December 11, 2007, by AREVA NP ("AREVA") for the U.S. EPR, including supplements 1 and 2. Application, Part 2 at 1-1. The Applicant calls the proposed plant the Bell Bend Nuclear Power Plant. *Id*.

On November 13, 2008, the Staff published in the *Federal Register* a "Notice of Receipt and Availability of Application for a Combined License" for the proposed facility. 73 Fed. Reg. 67,214 (Nov. 13, 2008). The Application was accepted for docketing on December 29, 2008. Acceptance for Docketing of an Application for Combined License for Bell Bend Nuclear Power Plant, 73 Fed. Reg. 79,519 (Dec. 29, 2008). On March 18, 2009, the NRC published a Notice of Hearing on the Application, which provided members of the public sixty days from the date of publication to file a petition for leave to intervene in this proceeding. Combined License Application for the Bell Bend Nuclear Power Plant; Notice of Hearing, Opportunity To Petition for Leave To Intervene, and Associated Order, 74 Fed. Reg. 11,606 (Mar. 18, 2009) ("Notice of Hearing"). In response to the Notice of Hearing, Mr. Epstein, also referred to herein as the Petitioner, timely filed his petition, through which he seeks to intervene in this proceeding.

DISCUSSION

In his petition, Mr. Epstein asserts that he has standing to intervene in this proceeding (Epstein Petition at 5) and proposes four contentions. The four proposed contentions relate to the adequacy of decommissioning funding assurance (*id*. at 12), low level radioactive waste ("LLRW") that would be generated by the facility if the Application were granted (*id*. at 20), foreign ownership of the Applicant (*id*. at 24), and certain socioeconomic environmental impacts of the proposed action (*id*. at 29). The Staff addresses Mr. Epstein's standing and each of these contentions *seriatim* below.

I. LEGAL STANDARDS

A. Standing to Intervene

In accordance with the Commission's Rules of Practice:

> [a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene and a specification of the contentions which the person seeks to have litigated in the hearing.

10 C.F.R. § 2.309(a). The regulations further provide that the Licensing Board "will grant the [petition] if it determines that the [petitioner] has standing under the provisions of [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of [10 C.F.R. § 2.309(f)]." *Id.*

Under the general standing requirements set forth in 10 C.F.R. § 2.309(d)(1), a request for hearing or petition for leave to intervene must state:

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

10 C.F.R. § 2.309(d)(1). As the Commission has observed, "[a]t the heart of the standing inquiry is whether the petitioner has 'alleged such a personal stake in the outcome of the controversy' as to demonstrate that a concrete adverseness exists which will sharpen the presentation of issues." *Sequoyah Fuels Corp. and Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994) (citing *Duke Power Co. v. Carolina Envtl. Study Group, Inc*., 438 U.S. 59, 72 (1978), and quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). In order to demonstrate the requisite "personal stake," the petitioner must:

> (1) allege an "injury in fact" that is
> (2) "fairly traceable to the challenged action" and
> (3) is "likely" to be "redressed by a favorable decision."

Sequoyah Fuels, CLI-94-12, 40 NRC at 71-72 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and internal quotations omitted) (citing *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)).

In reactor licensing proceedings, licensing boards have acknowledged that "Commission case law has established a 'proximity presumption,' whereby an individual may satisfy . . .

standing requirements by demonstrating that his or her residence or activities are within . . . a 50-mile radius of such a plant." *Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), LBP-09-04, 68 NRC __ (Mar. 24, 2009) (slip op. at 6) ("*Calvert Cliffs*") (citing *Carolina Power & Light Co*. (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 65 NRC 41, 52 (2007)).

The Commission has concluded that individuals residing within the 50-mile radius "face a realistic threat of harm if a release of radioactive material were to occur from the facility," and therefore are not required to make individual showings of injury, causation, and redressability. *Id*. at 12-13 (citing *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) ("*St. Lucie*"); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150 (2001)). Further, licensing boards have consistently applied the proximity presumption in reactor licensing proceedings, granting standing to individuals residing within the 50-mile radius. *See, e.g., Virginia Elec. & Power Co., d/b/a/ Dominion Virginia Power and Old Dominion Elec. Coop.* (COL for North Anna Unit 3), LBP-08-15, 68 NRC 294, 304 (2008) ("*North Anna*").

A prospective petitioner has an affirmative duty to demonstrate that he has standing in each proceeding in which he seeks to participate, since a petitioner's status can change over time, and the bases for standing in an earlier proceeding may no longer apply. *Texas Utilities Elec. Co*. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 162-63 (1993) ("*Comanche Peak*"). A petitioner may seek to rely on prior demonstrations of standing if those prior demonstrations are (1) specifically identified and (2) shown to correctly reflect the current status of the petitioner's standing. *Id*.

B. Legal Requirements for Contentions

The legal requirements governing the admissibility of contentions are well established and are currently set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice

(formerly 10 C.F.R. § 2.714(b)).[1] In order to be admissible under 10 C.F.R. § 2.309(f)(1), a proposed contention must:

> (1) provide a specific statement of the legal or factual issue sought to be raised;
>
> (2) provide a brief explanation of the basis for the contention;
>
> (3) demonstrate that the issue raised is within the scope of the proceeding;
>
> (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and
>
> (6) provide information sufficient to show that a genuine dispute with the applicant exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case of an application that is asserted to be deficient, the identification of such deficiencies and supporting reasons for this belief.

See 10 C.F.R. § 2.309(f).[2]

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[1] In 2004, the Commission codified the requirements of former § 2.714, together with rules regarding contentions set forth in Commission cases, in 10 C.F.R. § 2.309. *See* Changes to Adjudicatory Process (Final Rule), 69 Fed. Reg. 2182 (Jan. 14, 2004), *as corrected*, 69 Fed. Reg. 25,997 (May 11, 2004). In the Statements of Consideration for the final rule, the Commission cited several Commission and Atomic Safety and Licensing Appeal Board decisions applying former § 2.714 in support of the codified provisions of § 2.309. *See* 69 Fed. Reg. at 2202. Accordingly, Commission and Atomic Licensing Appeal Board decisions on former § 2.714 retain their vitality, except to the extent the Commission changed the provisions of § 2.309 as compared to former § 2.714.

[2] Section 2.309(f)(1)(1)-(iv) are identical to the criteria in (1) through (4) above. Criteria (5) and (6) above, however, summarize the rule language, but are not identical to it. Section 2.309(f)(1)(v) and (vi), and § 2.309(f)(2) read as follows:

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

(Continued…)

Sound legal and policy considerations underlie the Commission's contention requirements. The purpose of the contention rule is to "focus litigation on concrete issues and result in a clearer and more focused record for decision." 69 Fed. Reg. at 2202. 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." *Id*. The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. 69 Fed. Reg. at 2221; *see also Private Fuel Storage, L.L.C.,* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 325, 318 (1999). "Mere 'notice pleading' does not suffice." *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (internal citations omitted).

> (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.
>
> (vii) [Standards for hearings under 10 C.F.R. § 52.103]
>
> (2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report.

10 C.F.R. § 2.309(f)(1)-(f)(2).

Finally, it is well established that the purpose for requiring a would-be intervener to establish the basis of each proposed contention is: (1) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; (2) to establish a sufficient foundation for the contention to warrant further inquiry into the assertion; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against or oppose. *Peach Bottom*, ALAB-216, 8 AEC at 20-21; *Ariz. Pub. Serv. Co., et al.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-91-19, 33 NRC 397, 400 (1991). The *Peach Bottom* decision requires that a contention be rejected if:

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

Peach Bottom, ALAB-216, 8 AEC at 20-21.

These rules focus the hearing process on real disputes susceptible to resolution in an adjudication. *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999) ("*Oconee*"). For example, "a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations or to express generalized grievances about NRC policies." *Id.* Specifically, NRC regulations do not allow a contention to attack a regulation unless the proponent requests a waiver from the Commission. *See* 10 C.F.R. § 2.335; *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-07-3, 65 NRC 13, 17-18 and n.15 (2007) (citing *Millstone*, CLI-01-24, 54 NRC at 364).

II. THE PETITIONER HAS NOT ESTABLISHED STANDING.

The Commission's general rule of thumb in construction permit and reactor licensing proceedings is that persons who reside or frequent the area within a 50-mile radius of the facility are presumed to have standing. *Calvert Cliffs*, LBP-09-04, 68 NRC __ (Mar. 24, 2009) (slip op. at 6) (*citing Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 95 (1993)) (other citations omitted). Because Mr. Epstein apparently lives more than 50 miles from the proposed site for the Bell Bend Nuclear Power Plant, he bases his standing to participate in this proceeding on the extent of his day-to-day activities within the vicinity of the site proposed for the new plant, and a previous Atomic Safety and Licensing Board's finding that he established standing in the proceeding on the application to renew the licenses for the adjacent Susquehanna Steam Electric Station ("SSES"). Epstein Petition at 6-9 (*citing PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-04, 65 NRC 281, 295-96 (2007) ("*Susquehanna LR*")).

With respect to his activities near the proposed site for the Bell Bend facility, Mr. Epstein does not state where he lives or how far he resides from the proposed site, and does not provide details about how often or for what period of time his profession and interests cause him to travel within fifty miles of the site. Mr. Epstein generally indicates that he "routinely" pierces the 50-mile radius around the proposed Bell Bend Nuclear Power Plant during his "day-to-day" activities (Epstein Petition at 8), but he does not state the frequency of these activities, precisely where they take him (with a few exceptions discussed below), or the length of time he spends at these locations. Mr. Epstein indicates that he commutes to an East Hanover Township building north of Grantville, 48 miles from the site, and engages in "site visits" (at unspecified locations) at least once a week. *Id.* Mr. Epstein, however, does not specify the length of these visits. Mr. Epstein also indicates that his commute to the Sustainable Energy Fund ("SEF") office in Allentown and meetings at offsite locations bring him within the 50-mile zone around the proposed facility "for substantial periods of time." *Id*. at 9. Although Allentown appears to be

approximately 50 miles from the proposed site near Berwick, Pennsylvania, Mr. Epstein does not identify the length of the "substantial periods of time" he claims to spend within the 50-mile radius of the proposed site during his commutes.[3]

The information described above is less detailed than that upon which a Licensing Board relied in granting Mr. Epstein standing to intervene in the SSES extended power uprate ("EPU") proceeding. *See PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 19-21 (2007) ("*Susquehanna EPU*"). Specifically, Mr. Epstein described the times and locations of his activities within the 50-mile radius of SSES in sufficient detail for the *Susquehanna EPU* Board to find that he had presented activities of "minimally sufficient regularity and duration" to establish standing in that proceeding. *Id*. at 19, n.12 (meetings lasting "at least 5 hours"; travel within the 50-mile zone lasting between 1 and 1½ hours). Mr. Epstein's assertion that he spends "substantial periods of time" within a 50-mile radius of the proposed site is too vague to establish standing. *See Private Fuel Storage*, CLI-99-10, 49 NRC at 324 (petitioners who fail to provide "specific information regarding either the geographic proximity or timing of their visits will only complicate matters for themselves").

Mr. Epstein also argues that he established standing in the license renewal proceeding for the SSES, which is adjacent to the proposed Bell Bend site, and he should therefore be admitted as a party to this proceeding. Epstein Petition at 7. However, the fact that Mr. Epstein was granted standing in an earlier SSES proceeding does not automatically merit granting him standing in this proceeding. *Comanche Peak*, CLI-93-4, 37 NRC at 162-63. Under the test laid down in *Comanche Peak*, a petitioner may seek to rely on a prior demonstration of standing if that prior demonstration is (1) specifically identified and (2) shown to correctly reflect the current

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[3] While Mr. Epstein identifies a number of sites as being in close proximity to the proposed site (Epstein Petition at 9), he does not indicate how often or for how long he visits those sites. The Staff has not confirmed their proximity to the proposed site.

status of the petitioner's standing. *Id*. at 163. While Mr. Epstein satisfies the first prong of this test by identifying the decision in the *Susquehanna LR* proceeding, he does not satisfy the second prong. Specifically, he does not address whether there has been any change in his circumstances or the nature and frequency of his activities since the *Susquehanna LR* Board granted him standing. Epstein Petition at 7. Nor does Mr. Epstein's description of his activities in the area in this proceeding clearly match the SSES license renewal Board's recitation of the facts supporting his standing in that proceeding. *Compare id*. at 8-9 *with Susquehanna LR*, LBP-07-04, 65 NRC at 295-96. Accordingly, Mr. Epstein has not submitted information sufficient to allow him to rely on the *Susquehanna LR* decision to establish standing in this proceeding under the *Comanche Peak* standard.

Mr. Epstein notes that the Commission has held that even if a petitioner cannot establish standing, standing to intervene can still be granted as a matter of discretion. Epstein Petition at 7 (*citing Portland General Electric Company* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614-17 (1976) ("*Pebble Springs*")). In *Pebble Springs*, the Commission held that in determining whether to permit intervention in a particular case by a petitioner who otherwise lacks standing, "adjudicatory boards should exercise their discretion based on an assessment of all of the facts and circumstances of the particular case." *Pebble Springs*, CLI-76-27, 4 NRC at 616. The Commission then set out six factors to be weighed, three of which weigh in favor of allowing intervention and three of which weigh against allowing it. *Id*. The Commission has codified these six standards in 10 C.F.R. § 2.309(e).[4] Mr. Epstein fails to address these factors, much less show that he should be accorded standing based on their

[4] Section 2.309(e) also provides that discretionary intervention is available only if at least one petitioner has established standing and at least one contention has been admitted so that hearing will be held.

application. Accordingly, Mr. Epstein has not shown that he should be granted discretionary intervention under *Pebble Springs* and § 2.309(e).

III. CONTENTIONS

A. PROPOSED CONTENTION 1:

> PPL has stated in Part 1 of the General Information section of its Bell Bend COL Application that PPL Bell Bend, LLC will use a parent company guarantee from PPL Energy Supply, LLC to provide reasonable assurance of decommissioning funding as required by 10 CFR 50.75. Part 1: General Information 1.6.2. The Decommissioning Funding Assurance (6) described in the Application is grossly inadequate to provide "assurance" that PPL can provide "minimum certification amounts" or "assure sufficient funds will be available" to fully decontaminate and decommission Bel[l] Bend. The Applicant must submit prepayment for more than "minimum certification amount," and the proposed certified amount must be adjusted upward to account for: PPL's declining financial performance; PPL's mismanagement of the Susquehanna Steam Electric Station's current decommissioning fund; Financial Accounting Standards Board ("FASB") accounting methods; increased low-level radioactive waste costs; and, cost escalator percentages associated with labor, provided by Applicant's contractor - TLG, Inc. - should supplant the generic estimates provided by the U.S. Department of Labor, Bureau of Labor Statistics.

Epstein Petition at 12.

Mr. Epstein contends that the decommissioning funding assurance described in the Application is based on false information and is inadequate to provide assurance that the Applicant can provide sufficient funds to fully decommission and decontaminate the proposed Bell Bend Nuclear Power Plant. Epstein Petition at 12 -13. Mr. Epstein also contends that the Applicant should be required to prepay more than the NRC's minimum certification amount, and then adjust the increased amount upward to account for both the Applicant's declining financial performance and increased costs. *Id.*

Staff Response: The Staff opposes admission of this contention because it raises issues that are outside the scope of this licensing action. 10 C.F.R. § 2.309(f)(1)(iii). Further, the Petitioner does not demonstrate that there is a genuine dispute with the Applicant on an

issue of law or fact that is material to any finding the NRC must make to grant or deny this application for a combined license. 10 C.F.R. § 2.309(f)(1)(iii), (iv) and (vi). The Petitioner also fails to provide references to specific sources and documents he relies on to support his argument that there is a dispute as to the adequacy of the Application. 10 C.F.R. § 2.309(f)(1)(v). To the extent Mr. Epstein challenges the NRC's regulations regarding the method, amount, and timing of providing reasonable assurance of decommissioning funding, and argues that the standards he proposes should be implemented instead, his contention constitutes an impermissible challenge to the NRC's rules. 10 C.F.R. § 2.335.

1. This Proposed Contention is outside the scope of this proceeding.

Proposed Contention 1 challenges the Applicant's ability to provide an adequate financial instrument to implement the method of providing financial assurance for decommissioning proposed in the Application (a parent company guarantee). *See* Application, § 1.6.2 at 1-11. The proposed contention, however, rests on an incorrect assumption, namely, that an applicant for a combined license must provide a financial instrument with the application as part of its certification that financial assurance for decommissioning will be provided. Epstein Petition at 12-13. As explained below, 10 C.F.R. § 50.75 does not require that an applicant for a combined license provide such a financial instrument with its application. Accordingly, the adequacy of any financial instrument is not before the NRC for decision, and is not within the scope of this proceeding.

A combined license *applicant* is not required to provide the NRC with a final, executed financial instrument. 10 C.F.R. § 50.75(b)(4) and (e)(3). Even after a license has been issued, a *combined license holder* is not required to provide the NRC with a final, executed financial instrument *until 30 days after the Commission publishes notice in the Federal Register under 10 C.F.R. § 52.103(a)*. 10 C.F.R. § 50.75(e)(3). The rulemaking record for these provisions supports the foregoing construction. *See* Licenses, Certifications, and Approvals for Nuclear Power Plants; Final Rule, 72 Fed. Reg. 49,352, 49,397 (Aug. 28, 2007).

In preparation for receiving new COL applications under Part 52, the NRC reviewed its licensing rules, including those governing decommissioning funding assurance. In drafting the rules and regulations pertaining to decommissioning funding assurance requirements for combined license applications, the NRC made changes "reflecting the unique considerations of a combined license." *Id*. at 49,406. The NRC noted that some of the requirements in 10 C.F.R. § 50.75 "are directed at the two-phase licensing process in 10 C.F.R. Part 50, in which the NRC issues a construction permit followed by an operating license." *Id*. The NRC also noted that the requirements of 10 C.F.R. § 50.75 that pertain to the two-phase licensing process were "not well suited to the combined license process under Part 52" because requiring an applicant for a COL to 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" than on an operating license applicant, "inasmuch as that [COL] applicant would be required to fund decommissioning assurance at an earlier date as compared with the operating license applicant." *Id.*

To address these issues, the NRC revised its regulations to require that a combined license applicant submit "information in the form of a report, as described in § 50.75, indicating how reasonable assurance will be provided that funds will be available to decommission the facility." 10 C.F.R. § 50.33(k)(1). The NRC did not, however, require the combined license applicant to obtain a financial instrument to fund decommissioning or to submit a copy of that instrument to the NRC.[5]

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[5] Requiring the Staff to analyze a financial test for a proposed parent company guarantee now, before a COL applicant or licensee certifies that it will use that particular method and provides a final, executed financial instrument containing the terms of the guarantee and financial test information the NRC Staff would review, would waste the NRC Staff's limited resources and serve no useful purpose. A parent company's financial condition, and its ability to pass the NRC's financial tests, can change over time, and the NRC's regulations regarding financial tests take this uncertainty into consideration. 10 C.F.R. Part 30, Appendix A, II.C.1 and 2. The Commission has found that its "generic formula, along with [its] end-of-license requirements, will result in reasonable assurance of adequate decommissioning (Continued…)

In the Application, the Applicant has provided more information than the regulations require. As stated in the Application, PPL Energy Supply, LLC, which is the parent company of the Applicant, will, pursuant to 10 C.F.R. § 50.75(e)(1)(iii), provide a parent company guarantee as the decommissioning funding mechanism, as well as initial capitalization and equity for construction of the proposed plant. The Applicant has also included the NRC's financial test for parent company guarantees to show that its parent company can meet the requirements of 10 C.F.R. Part 30, Appendix A, in Part 9, Appendix A, of the Application. The regulations, however, do not require a COL applicant to include this information in the application for consideration in a combined license proceeding.

Where, as here, an applicant voluntarily provides information that the NRC's regulations do not require and which the NRC Staff is not required to analyze in order for the Commission to grant or deny the application, issues concerning that information are outside the scope of the proceeding. *Exelon Generating Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 179 (July 28, 2005) (citing *Exelon Generating Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 241 (2004)). In short, neither a financial instrument, nor the test applied to determine if the instrument is sufficient, nor issues pertaining to the timing of that test are now before the NRC for decision, and are outside the scope of this licensing proceeding. Accordingly, proposed Contention 1 is not litigable because its challenge to the adequacy of the Applicant's proposed parent company guarantee is outside the scope of this proceeding.

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funding[,]" and that "'[m]ore detailed consideration by the NRC early in life … is not considered necessary….'" *Consolidated Energy Co., Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Operations, Inc.* (Indian Point, Units 1 & 2), CLI-01-19, 54 NRC 109, 144 (2001) (*citing and quoting* General Requirements for Decommissioning Nuclear Facilities, 53 Fed. Reg. 24,018, 24,030-31 (June 27, 1988)).

2. Mr. Epstein has not demonstrated that there is a genuine dispute on an issue of law or fact which is material to any finding the NRC must make to grant or deny a combined license.

The NRC's regulations in 10 C.F.R. Part 50 require a COL applicant to provide decommissioning funding assurance through a series of steps, not all of which must be taken during the course of this combined license action, as described above. 10 C.F.R. § 50.75(a). Proposed Contention 1 focuses on the methods set out in 10 C.F.R. § 50.75 by which a COL license holder indicates to the NRC that the licensee will provide reasonable assurance that funds will be available for the decommissioning process. The Applicant, however, is not now required to provide a financial instrument (including the parent company guarantee identified in application). 10 C.F.R. § 50.75(e)(3).

The NRC's regulations contemplate and provide for changes in the method by which applicants or licensees provide reasonable assurance of decommissioning funding, and only require a licensee to provide a financial instrument to assure decommissioning funding after a license has been issued and the initial loading of fuel has been scheduled. 10 C.F.R. § 50.75(e). Accordingly, the financial instrument a combined license applicant may eventually employ and the timing of the NRC financial review of that instrument and applicable tests do not affect the Commission's decision to grant or deny an application for a combined license.[6] The regulations do not require the Applicant to submit a financial instrument to provide

[6] The Applicant may choose any mechanism or combination of mechanisms pursuant to 10 C.F.R. § 50.75(e)(1)(vi) which provides, "[a]ny other mechanism or combination of mechanisms that provides, as determined by the NRC upon its evaluation of the specific circumstances of each licensee submittal, assurance of decommissioning funding . . . ." As the Licensing Board in *Calvert Cliffs* recently recognized, "[T]here is no provision that requires an applicant or a licensee to choose one form of decommissioning assurance over another." *Calvert Cliffs 3*, LBP-09-04, 69 NRC __ (slip op. at 35). "Licensees and applicants can demonstrate financial assurance by 'one or more' of the funding mechanisms." *Id.* at 35-36 (*citing* NUREG-1577 at 13). The Applicant has chosen to use a parent company guarantee, but the Applicant is free to change this method between now and the time the Commission issues the requisite notice pertaining to fuel load.

decommissioning funding assurance with its Application, and the NRC is not required to make findings regarding such an instrument in order to grant or deny the Application.

In order for a contention to be admissible, the subject matter of the contention must impact the grant or denial of a pending license application. *North Anna*, LBP-08-15, 67 NRC at 315 (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 179 (1998)). As explained above, no findings regarding a proposed financial instrument providing decommissioning funding assurance are required in order for the Commission to grant or deny a COL application. Therefore, the final financial instrument providing a parent company guarantee and the financial tests of that instrument are not material to the findings the NRC must make to grant or deny the Application, and cannot be invoked to raise a genuine dispute with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (vi).

3. Mr. Epstein has provided some facts and specific information, but this information does not support this contention.

Mr. Epstein asserts that neither the Applicant nor its parent company can individually or jointly guarantee adequate decommissioning funding. Epstein Petition at 13. Mr. Epstein further asserts that the Applicant's financial information is "dated, and does not reflect PPL's declining financial position, decommissioning losses, or the absence of rate relief as a safety net[,]" and that the Applicant's parent company cannot provide an ultimate guarantee that decommissioning costs will be paid. Epstein Petition at 12-13. To support his contention, Mr. Epstein references the PPL Annual Report for 2008, which he did not submit as an exhibit with his Petition; the NRC's April 14, 2009, decision not to grant the request of the Allegheny Electric Cooperative, Inc., to withhold financial information relating to SSES as proprietary; and excerpted quotes from the August 6, 2006, testimony of a consultant for an affiliate of the

Applicant before the Pennsylvania Public Utility Commission, which Mr. Epstein also did not submit with his Petition.[7] Epstein Petition at 13-17.

The facts that Mr. Epstein recites relate to an argument that an affiliate of the Applicant or one of its parents has suffered some financial losses, but do not demonstrate that the Application is false or deficient, nor do these facts support the contention that the Applicant cannot provide reasonable assurance of decommissioning funding. "[A] petitioner must provide documents or other factual information or expert opinion that sets forth the necessary technical analysis to show why the proffered bases support its contention." *PFS*, LBP-98-7, 47 NRC at 180 (*citing Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995) (A petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention.")). While Mr. Epstein does identify certain specific facts in some of the documents he cites, he does not offer any expert opinion regarding their meaning or significance. Without the support of facts, documents, sources or expert opinions to support the contention, Mr. Epstein has not met the requirements of 10 C.F.R. § 2.309(f)(1)(v).

Mr. Epstein also states that other documents and authorities that support his contention "can be found in the BBNPP Application, Appalachian Low Level Waste Compact, PPL Corporation 2008 Annual Report, PPL 2008 10 K, Financial Accounting Standards Board, Nuclear Regulatory Commission, and Pennsylvania Public Utility Commission." Epstein Petition at 18. This general statement – that information to support the contention exists in various places – impermissibly shifts the burden of identifying the relevant material from the Petitioner to

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[7] The Petitioner uses the acronym "PPL" to refer to an entity the Petitioner apparently identifies as the ultimate parent of the Applicant. Epstein Petition at 2, n.1. In the context of the Petitioner's reference to "PPL's nuclear decommissioning consultant" (*id*. at 17, n.3), it is not entirely clear to the Staff whether the Petitioner is referring to this ultimate parent, the Applicant, or some other affiliated entity.

the Staff and the Board. "The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may not be in a haystack." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989). Citing numerous federal agencies where the Commission might look to find support for a contention no more supplies the requisite basis for a contention than would attaching a document without any explanation of its significance. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-10, 47 NRC 288, 298-99 (1988).

Merely identifying information, or places it might be found, without an explanation of the significance of the information, is insufficient; Mr. Epstein bears the burden of identifying the material he relies upon as support for his contentions, and explaining the relevance and significance of the material he cites. "Commission practice is clear that a petitioner may not simply incorporate massive documents by reference as the basis for or as a statement of his contentions." *Seabrook*, CLI-89-3, 29 NRC at 240-41 (citing *Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 200, 216 (1976)). "Such a wholesale incorporation by reference does not serve the purposes of a pleading." *Seabrook*, CLI-89-3, 29 NRC at 240-41 (citing *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1741 (1985), *rev'd and remanded on other grounds*, CLI-86-8, 23 NRC 241 (1986)). Accordingly, the bases for Proposed Contention 1 do not satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v).

4. <u>The Proposed Contention impermissibly challenges NRC regulations</u>.

Mr. Epstein contends that the Applicant's statement that financial assurance for decommissioning the proposed Bell Bend Nuclear Power Plant will be provided by parent company guarantee in the amount of $398.6 million is deficient for two reasons. Epstein Petition at 12-19. First, Mr. Epstein asserts that the Applicant does not demonstrate in the Application that the parent company can provide this funding. *Id*. Second, he asserts that the

Applicant has omitted damaging financial information that would show that its parent company cannot provide financial assurance. *Id*. Mr. Epstein notes that the Applicant has agreed to provide the NRC's minimum amount of decommissioning funding, but he asserts that this amount is insufficient, according to 10 C.F.R. § 50.75. Epstein Petition at 12, 19. Mr. Epstein also objects to the Applicant's use of a parent company guarantee from PPL Energy Supply Company, LLC, and argues that the Applicant should be required to prepay more than the NRC's minimum certification amount, and then upwardly adjust this prepaid amount to account for the Applicant's declining performance and escalating costs. Epstein Petition at 12, 19.

Mr. Epstein's assertions described above are an attack on Commission regulations that establish minimum decommissioning funding requirements and methods for providing financial assurance of decommissioning funding. Specifically, Mr. Epstein complains that although the Applicant has computed the NRC's minimum funding requirements for decommissioning funding, and has indicated it will use a parent company guarantee to provide those funds, which is permitted by the regulations, both the NRC's minimum funding calculation and the parent company guarantee are inadequate to decommission the proposed Bell Bend Nuclear Power Plant. Petition at 12-19. Mr. Epstein's belief that the Application should contain additional information that the regulations do not require does not qualify as sufficient support for this contention under 10 C.F.R. § 2.309(f)(1)(v). "[A] contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue." *Susquehanna EPU*, LBP-07-10, 66 NRC at 23 (citing *Philadelphia Elec. Co.* (*Peach Bottom*, ALAB-216, 8 AEC at 20-21 & n.33, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974)).

The NRC's regulations do not require the Applicant to provide financial assurance for decommissioning funding beyond the minimum that the NRC has determined is sufficient, nor do these regulations require the Applicant to demonstrate now, in the Application, that its parent company can pass the NRC's financial test in order to qualify as a provider of a parent company guarantee. Similarly, requiring a combined license applicant to use a particular method of

providing decommissioning funding is contrary to the NRC's regulations and beyond this Board's authority. *Calvert Cliffs*, LBP-09-04, 68 NRC __ (March 24, 2009) (slip op. at 35).

It is well settled that a petitioner in an individual adjudication cannot challenge generic decisions that the Commission has made in rulemaking. 10 C.F.R. § 2.335; *Vermont Yankee Nuclear Power Corporation and Amergen Vermont, LLC* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 166 (2000). This licensing proceeding is not the proper forum for challenging applicable regulatory requirements or the basic structure of the NRC's regulatory process. *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-01, 66 NRC 1, 22 (2007) (citing *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974), *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974)). To the extent Mr. Epstein seeks to substitute his judgment for what the regulatory process should require for the NRC's regulations, or to argue that the regulations should be read to include a requirement the NRC could have required but did not, his argument constitutes an impermissible challenge to the Commission's regulations. 10 C.F.R. § 2.335. A contention that advocates stricter requirements than agency rules impose, or that otherwise seeks to litigate a generic determination established by the Commission, is inadmissible. *Susquehanna,* LBP-07-01, 66 NRC at 22 (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159, *aff'd*, CLI-01-17, 54 NRC 3 (2001); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-93-1, 37 NRC 5, 29-30 (1993); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 251 (1996); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC

397, 410 (1991), *aff'd in part and rev'd in part on other grounds*, CLI-91-12, 34 NRC 149 (1991)).[8]

In conclusion, the Petitioner has not demonstrated that the contention is within the scope of this proceeding, or that this contention is material to any finding the NRC must make to grant or deny this application for a combined license. The Petitioner has not provided sufficient information to show that there is a genuine dispute with the Applicant on an issue of law or fact that is material to this proceeding. By attempting to substitute his own process for the regulatory process the Commission has designed, the Petitioner has also impermissibly challenged the NRC's regulations regarding financial assurance for decommissioning funding. Proposed Contention 1 does not meet the requirements of 10 C.F.R. §§ 2.309(f)(1)(iii), (iv), (v) and (vi), is inconsistent with the requirements of § 2.335, and is therefore inadmissible.

B. PROPOSED CONTENTION 2

> The Application to build and operate Bell Bend violated the National Environmental Policy Act ("NEPA") and NRC COLA guidelines by failing to demonstrate that the site has the capability to store Class B and C low level radioactive waste ("LLRW") during the entire operating life of the plant and beyond in the event Barnwell remains closed to PPL, Clive, Utah operated by Energy Solutions "no longer becomes cost effective," (15) or no other waste disposal options are developed or available. Bell Bend Environmental Report ("ER") is deficient in discussing its plans for management of Class B and C wastes. In light of the current lack of a licensed offsite disposal facility, and the uncertainty of whether a new disposal facility will become available during the license term, the ER must either describe how Applicant will store Class B and C wastes onsite and the environmental consequences of extended onsite storage by transferring its Class B and C wastes to another facility for storage of LLRW.

Epstein Petition at 20.

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[8] Mr. Epstein does not seek or attempt to justify a waiver under 10 C.F.R. § 2.335(b) for this attack on the Commission's regulations.

Mr. Epstein frames Proposed Contention 2 as a contention of omission because the ER "fails to offer a realistic plan for" disposal of Class B and C" LLRW. *Id.* at 20. Mr. Epstein argues that the Applicant should consider how it will safely store or dispose of waste during the period of operations as well as for an indefinite period of time after operations cease. *Id.* at 21. Mr. Epstein claims that the LLRW storage plan provided in ER Section 3.5.4.3 is not a plan at all and relies on speculation. *Id.* at 22. Furthermore, Mr. Epstein claims that the Applicant has not provided sufficient analyses to support this plan. *Id.* at 22-23. Mr. Epstein claims this contention is within the scope of this proceeding and raises a genuine dispute because the Applicant has failed to comply with NEPA and NRC COLA guidelines. *Id.* at 20, 21, 23.

Staff Response: The Staff opposes admission of Proposed Contention 2, which raises issues with regard to safety and environmental impacts of onsite LLRW storage. Whether this contention is interpreted as a safety or environmental contention, as discussed below, it is inadmissible because Petitioner has failed to show that it is a contention of omission, raises an issue that is material to this proceeding; has failed to demonstrate that a genuine dispute exists; and has not provided alleged facts or expert opinions for support. *See* 10 C.F.R. § 2.309(f)(1)(ii), (iv), (v), and (vi).

1. The environmental aspects of Proposed Contention 2 fail to meet the requirements of 10 C.F.R. § 2.309(f)(1).

As the Commission stated in *Bellefonte,* questions regarding environmental impacts of onsite low-level radioactive waste storage are "largely site- and design-specific, and appropriately decided in an individual licensing proceeding, *provided that* litigants proffer properly framed and supported contentions." *Bellefonte,* CLI-09-03, 68 NRC __ (slip op. at 11) (emphasis added). As discussed below, Proposed Contention 2 is not a properly framed and supported contention because it does not meet the requirements of 10 C.F.R. § 2.309(f)(1), and therefore is not admissible. *See id.*

a. Proposed Contention 2 cannot be construed as an admissible environmental contention of omission, fails to raise a genuine dispute and is not supported by alleged facts or expert opinion.

An admissible contention must show that a "genuine dispute exists with the applicant/licensee on a material issue of law or fact," identify either specific portions of, or alleged omissions from, the application, and provide supporting reasons for the petitioner's position. 10 C.F.R. § 2.309(f)(1)(vi). A petitioner must submit more than "'bald or conclusory allegation[s]' of a dispute with the applicant," but instead "must 'read the pertinent portions of the license application . . . and . . . state the applicant's position and the petitioner's opposing view.'" *Millstone*, CLI-01-24, 54 NRC at 358 (citing Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170-71 (Aug. 11, 1989)). In addition, a petitioner must provide alleged facts or expert opinions to support his position. 10 C.F.R. § 2.309(f)(1)(v).

Here, as Petitioner notes, the Applicant discusses onsite storage of LLRW in Section 3.5.4.3 of the ER. Epstein Petition at 22 (quoting ER). ER Section 3.5.4.3 states that the solid waste storage system includes Radioactive Waste Storage Buildings, which provide capacity to store five to six years of Class B and C waste. ER at 3-59. The ER further states that "[i]n the event 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." *Id*. The ER states that these measures could extend capacity in the Radioactive Waste Storage Buildings to over 10 years, which "would provide ample time for offsite disposal capability to be developed or additional onsite capacity to be added." *Id.* If additional onsite capacity is needed, the ER states that additional storage facilities would be built. *Id.* at 3-60. The construction of these buildings would, according to the ER, have a minimal impact and "would provide appropriate protection against releases, maintain exposures to workers and the public below applicable

limits, and result in no significant environmental impact" consistent with NRC Guidance. *Id.* at 3-60.

Mr. Epstein dismisses the Applicant's plan, claiming that it is in fact "no plan," and argues that the Applicant has failed to provide the supporting empirical evidence to demonstrate that construction of a new facility will have a minimal impact. *See* Epstein Petition at 22-23. Mr. Epstein argues that Proposed Contention 2 is a contention of omission because the ER fails to describe how it will manage onsite storage of LLRW "during the operational life of the plant, and for an indefinite period of time following cessation of operations." *Id.* at 21. Petitioner argues that this constitutes a deficiency because the Applicant has failed to comply with NEPA and NRC COLA guidelines. *Id*. at 20, 21, 23.

This general reference to NEPA and NRC COLA guidelines is not sufficient to support admission of a contention of omission; rather, a petitioner must provide a legal basis to demonstrate that allegedly missing information is required by law. *See Calvert Cliffs*, LBP-09-04, 68 NRC __ (Mar. 24, 2009) (slip op. at 22) ("A contention of omission claims that 'the application fails to contain information on a relevant matter as required by law . . . and [provides] the supporting reasons for the petitioner's belief.' To satisfy Section 2.309(f)(1)(i)-(ii), the contention of omission must describe the information that should have been included in the ER and provide the legal basis that requires the omitted information to be included."). Petitioner has not provided a specific regulatory basis to support his assertion that the Applicant is required to provide detailed plans for and an assessment of impacts from onsite LLRW storage for the entire operational life of the plant and for an indefinite period of time after operations cease.

In regard to Mr. Epstein's assertion that empirical evidence must be provided, the only support Mr. Epstein provides is a reference to PPL's Annual Report, which states that the company is "authorized up to $490 million on the COLA and other permits." Epstein Petition at 23 (quoting PPL Corporation 2008 Annual Report at 148, *available at*

http://www3.pplweb.com/invest_in_ppl/annualrpts/2008/ar2008_fullreport.pdf). Petitioner argues that a company with these funds "can prepare and provide a plan with empirical evidence to demonstrate how it will isolate and dispose of radioactive waste." *Id.* This assertion and reference do not provide a legal basis to support Mr. Epstein's position. Again, because Petitioner has failed to provide a regulatory basis to support his assertions that information required by law is missing from the application, Proposed Contention 2 cannot be construed as a contention of omission. *See* 10 C.F.R. § 2.309(f)(1)(vi); *Calvert Cliffs,* LBP-09-04, 68 NRC __ (slip op. at 22).

Similarly, Petitioner asserts that, in addition to omitting necessary information, the ER does not sufficiently present information. *See* Petition at 21 (citing ER Sections 3.5, 3.8, 5.9, and 5.11). Petitioner, however, fails to provide any facts or reasoned expert opinion to demonstrate that the cited ER Sections are not sufficient and that additional details and analyses must be considered to render the ER legally sufficient. Bare assertions alleging that "matter[s] ought to be considered or that a factual dispute exists . . . [are] not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention." *PFS,* LBP-98-7, 47 NRC at 180 (internal citation omitted).

Finally, Mr. Epstein's claim that the Applicant "must offer a plan that details how it will safely store waste on site during the operating life of the plant, and for an indefinite period of time following cessation of operations" fails to raise a genuine dispute regarding a material issue of law or fact. *See* Epstein Petition at 21. Mr. Epstein claims that the Applicant's plan is a "no plan" that "relies on speculation, the magical 'elimination' of waste generation, and an unsubstantiated hope that disposal will be available." *Id.* at 22.

In the recent *Calvert Cliffs* COL proceeding, a similar contention was proffered and admitted, as narrowed by the Board. The contention as admitted stated:

> The ER for CCNPP-3 is deficient in discussing its plans for management of Class B and C wastes. In light of the current lack of a licensed off-site disposal facility, and the uncertainty of whether a new disposal facility will become available during the license term, the ER must either describe how Applicant will store Class B and C wastes on-site and the environmental consequences of extended on-site storage, or show that Applicant will be able to avoid the need for extended on-site storage by transferring its Class B and C wastes to another facility licensed for the storage of LLRW.

Calvert Cliffs, LBP-09-04, 68 NRC __ (slip op. at 66). The Board's decision to admit this contention seemed to hinge on the fact that the Applicant failed to acknowledge the closing of Barnwell and failed to explain how it intended to manage LLRW in the absence of an offsite disposal facility. *See Calvert Cliffs,* LBP-09-04, 68 NRC __ (slip op. at 70).[9] The Board stated that the Applicant did not even "refer to a 'concept' for managing LLRW on-site absent a permanent disposal facility." *Id.* at __ (slip op. at 75).[10]

Alternatively, as discussed above, the Applicant here acknowledges that an offsite disposal facility may not be available and discusses future additional onsite storage, if necessary. *See* ER at Section 3.5.4.3. Mr. Epstein has not provided sufficient factual support or expert opinion to demonstrate that the Applicant's plan is not adequate. *Millstone*, CLI-01-24,

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[9] In Calvert Cliffs, the Board ruled that the Applicant's plan, which stated that the site had "several years' volume of solid waste," was not sufficient. *Id*. at 74-75 (citing EPR FSAR § 11.4.1.2.1). The *Calvert Cliffs* Board also stated that the applicant must demonstrate it "will be able to store on-site the volume of LLRW that will be generated during the license term." *Id.* at 75. The *Calvert Cliffs* Board, like this Petitioner, did not, however, reference any regulatory basis to support this assertion. An appeal of this decision is currently pending before the Commission. *See* Applicant's Brief in Support of Appeal from LBP-09-04 (Apr. 3, 2009) (ADAMS Accession No. ML090930785).

[10] The *Calvert Cliffs* Board referenced a *Vogtle* decision, which held that a Safety contention regarding onsite disposal of LLRW was admissible. *Calvert Cliffs,* LBP-09-04, 68 NRC __ (slip op. at 75) (citing *Southern Nuclear operating Co.* (Vogtle Electric Generating Plant, Units 3 & 4), LBP-09-03, 69 NRC __ (Mar. 5, 2009)). The *Vogtle* Board held that while the applicant had referred to a concept for managing LLRW, none of the details were included or explicitly referenced in the FSAR. *Id. at* __ (slip op. at 26-27). An appeal of this decision is currently pending before the Commission. *See* Southern Nuclear Operating Company's Brief in Support of Appeal of LBP-09-03 (Mar. 14, 2009) (ADAMS Accession No. ML090750054); NRC Staff Brief in Support of Appeal from LBP-09-03 (Mar. 14, 2009) (ADAMS Accession No. ML090750722).

54 NRC at 358 (A petitioner must submit more than "'bald or conclusory allegation[s]' of a dispute with the applicant . . . .").

Mr. Epstein references, as support for this contention, PPL's 10-K, which states that LLRW will be stored onsite in the event offsite disposal facilities become unavailable or are no longer cost effective. Epstein Petition at 20 n.15 (citing PPL's 10-K).[11] Mr. Epstein argues that the quoted statement from the 10-K report is inconsistent with Section 1.6.1 of the Application, which Mr. Epstein claims relies on waste vendors. *Id.* at 22 n.17.[12] The referenced section discusses decommissioning cost estimates. Mr. Epstein does not explain how a statement in the decommissioning cost estimates discussion (*see* Application General Information, § 1.6.1) supports admission of his contention, which claims the ER is deficient because it does not adequately consider environmental consequences of onsite storage.

Further, the ER and this quoted statement are not inconsistent. Both recognize that if an offsite disposal facility is not available, LLRW will have to be stored on site. *Compare id.* at 20 n.15 *with* ER at 3-59 to 3-60. While the 10-K report references both the unavailability of a site as well as economic barriers to offsite disposal and the ER only discusses unavailability, in either situation, the result is the unavailability of an offsite disposal facility and a need for onsite storage. The ER addresses this situation and discusses onsite storage in the event an offsite disposal facility is unavailable. *See* ER at 3-59 to 3-60. Because Petitioner has failed to show

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[11] Mr. Epstein refers to the quoted report as PPL's 10-K but does not indicate the date of this document or where it may be located. Petition at 20 n.15. The Staff was able to locate PPL's 2008 10-K, which was filed with the SEC on February 27, 2009, and includes the quoted statement, at http://www.sec.gov/Archives/edgar/data/317187/000092222409000020/form10k2008.htm.

[12] Section 1.6.1., Decommissioning Cost Estimate, states: "The minimum certification amounts were calculated for both disposition of low level radioactive waste (LLRW) by waste vendors and disposal of LLRW by direct burial options. The minimum certification amounts calculated in 2008 dollars are $398.6 million for the disposition of LLRW by waste vendors option and $730.1 million for the disposal of LLRW by direct burial option. The Applicant intends to use the disposition of LLRW by waste vendors option for the decommissioning of BBNPP."

an inconsistency in the referenced documents, the 10-K report cannot support admission of this contention. *See* 10 C.F.R. § 2.309(f)(1)(v).

b. Proposed Contention 2 fails to satisfy 10 C.F.R. § 2.309(f)(1)(iv).

With respect to environmental contentions, the Commission has stated that in "NRC licensing hearings, petitioners may raise contentions seeking correction of significant inaccuracies and omissions in the ER. Our boards do not sit to 'flyspeck' environmental documents or to add details or nuances." *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 13 (2005) (internal citations omitted). NEPA analyses are subject to a "'rule of reason,' which frees the agency from pursuing unnecessary or fruitless inquiries." *Private Fuel Storage, LLC,* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004) (internal citations omitted). NEPA only requires an analysis of reasonably foreseeable environmental effects, not those that are speculative. *See Dubois v. U.S. Dep't of Agric.,* 102 F.3d 1273, 1286 (1st Cir. 1996) (stating that "[r]easonable forecasting . . . is . . . implicit in NEPA", but "[a]n environmental effect would be considered 'too speculative' for inclusion in the EIS if it cannot be described at the time the EIS is drafted with sufficient specificity to make its consideration useful to a reasonable decision-maker.") (internal citation omitted).

Here, Petitioner argues that the ER must describe how the Applicant will store Class B and C waste onsite for the period of operation as well as for an indefinite period of time after operations cease. Epstein Petition at 21. The basis for this contention, as set forth by Petitioner, is the absence of a realistic disposal plan for Class B and C LLRW and a failure to consider potential economic barriers of disposal. *Id.* at 20. Petitioner, however, fails to demonstrate that the issues raised in Proposed Contention 2 are material and "seek correction[ ] of significant inaccuracies and omissions . . . ." *See Grand Gulf ESP,* CLI-05-5, 61 NRC at 13. For example, Petitioner generally alleges that the Applicant's plan for onsite storage is based on speculation, is not supported by empirical evidence, and fails to consider

the cost-effectiveness of offsite disposal. But, Petitioner does not provide any factual support or expert opinion to show that the Applicant's analysis is flawed and that consideration of additional analyses would significantly affect the outcome of this proceeding. *See id.* Nor has Petitioner shown that additional, detailed analyses of impacts from onsite LLRW storage for the period of operations and for an indefinite period of time after operations cease is not "'too speculative' for inclusion in the EIS" and can "be described at the time the EIS is drafted with sufficient specificity to make its consideration useful to a reasonable decision-maker." *See Dubois,* 102 F.3d at 1286. Finally, as discussed above, Petitioner has failed to provide a regulatory basis to support his assertion that Proposed Contention 2 is a contention of omission because information required by law has been omitted from the ER. Thus, Petitioner has not demonstrated that additional consideration of onsite, long term storage of LLRW is required and may be material to this proceeding. Therefore, because Proposed Contention 2 fails to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1)(iv), it should be dismissed.

c. To the extent Petitioner seeks to challenge Table S-3, Proposed Contention 2 should be dismissed.

The regulation that applies to the environmental effects of LLRW is 10 C.F.R. § 51.51, in particular, Table S-3. *See Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 & 4), CLI-09-03, 69 NRC at __ (Feb. 17, 2009) (slip op. at 8-9) (citing *North Anna*, LBP-08-15, 68 NRC at 316).[13] Section 51.51 requires COL applicants to use Table S-3, "Table of Uranium Fuel Cycle Environmental Data," as the basis for evaluating the contribution of the environmental effects of many stages of the uranium fuel cycle, including low-level waste

[13] In the *Bellefonte* proceeding, the Commission reversed the Board's decision to admit a contention that stated that the Applicant failed to consider the environmental consequences of onsite storage of Class B and C waste, where the Board relied on a decision from the *North Anna* COL proceeding. *See Bellefonte,* CLI-09-03, 69 NRC at __ (slip op. at 8-9). The Commission held that "the *Bellefonte* Board's adoption of this rationale from *North Anna* suffer[ed] from a flaw" because the contention at issue constituted a collateral attack on Table S-3. *See id.* at 9.

management, to the environmental costs of licensing a nuclear reactor. 10 C.F.R. § 51.51(a). Table S-3 provides a list of effluents and other environmental impacts for light-water-cooled reactors and "may be supplemented by a discussion of the environmental significance of the data set forth in the table as weighted in the analysis for the proposed facility." *Id.*

To the extent that Petitioner seeks to challenge 10 C.F.R. § 51.51, this contention is barred from consideration in this proceeding by 10 C.F.R. § 2.335(a). *See also Bellefonte,* CLI-09-03, 68 NRC __ (slip op. at 9) (overturning a licensing board's decision to admit an environmental contention regarding LLRW because it was an impermissible attack on the Commission's regulation).

An attack on a Commission regulation is only permitted where a waiver is explicitly granted or an exception is made for a particular proceeding. 10 C.F.R. § 2.335(a), (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." 10 C.F.R. § 2.335(b). 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.* Petitioner has failed to establish that the contention meets any of these requirements imposed by the Commission's regulations. Therefore, to the extent Proposed Contention 2 constitutes an attack on a Commission regulation and a waiver or exception has not been granted, this contention should not be admitted. *See* 10 C.F.R. § 2.335; *Oconee*, CLI-99-11, 49 NRC at 334.

2. Proposed Contention 2 cannot be construed as an admissible safety contention.

Petitioner asserts that the Applicant has not provided an adequate plan for long term, onsite storage of LLRW and that the Applicant fails to comply with "COLA regulations." Epstein Petition at 20, 21, 23. Petitioner claims that the Applicant assumes that additional storage would become available in accordance with NRC guidance. *Id.* at 22. To the extent the Petitioner is raising an issue with respect to safety matters, he has failed to proffer an admissible contention.

Petitioner does not reference any specific COLA regulation that would require the Applicant to provide additional information. *See id.* at 20, 21, 23. The Commission's regulations do not dictate the duration and capacity for onsite LLRW storage that COL applicants must provide. Applicants must simply comply with Part 20 dose limits. The Staff's most recent guidance on interim LLRW storage, issued December 30, 2008, "specifies the information that NRC staff has determined should be included in a Construction and Operating License Application" and Appendix 11.4-A of the Standard Review Plan, NUREG-0800, "provides specific guidance to licensees for increasing on-site LLRW storage capacity." *See* RIS 2008-32, Interim Low Level Radioactive Waste Storage at Reactor Sites at 4 (Dec. 30, 2008) ("RIS 2008-32") (ADAMS Accession No. ML082190768) (discussing Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants (Mar. 2007) ("RIS 2008-32")). RIS 2008-32 also explains that additional storage facilities may be added to a facility through the 10 C.F.R. § 50.59 process. *See id.* at 2, 3, 4 (consolidating relevant information from previous staff guidance documents on interim long-term storage).

Nothing in the Commission's regulations or guidance indicates that a COL applicant is required to provide a detailed explanation of how long-term storage of LLRW will be handled in

the event that an offsite disposal facility is unavailable.[14] Because the Petitioner has failed to demonstrate that the allegedly missing information is required by law, Proposed Contention 2 cannot be construed as a safety contention of omission. *See* 10 C.F.R. § 2.309(f)(1)(vi); *Pa'ina Hawaii, LLC* (Material License Application), LBP-06-12, 63 NRC 403, 414 (2006) (stating that a petitioner must show that information missing is required by the Commission's regulations). Finally, Petitioner fails to reference any portion of the Final Safety Analysis Report ("FSAR") to demonstrate that this safety contention raises a genuine dispute, and should be dismissed. *See* 10 C.F.R. § 2.309(f)(1)(vi).

For the reasons discussed above, Proposed Contention 2 should not be admitted as a safety contention.

C. PROPOSED CONTENTION 3:

Foreign Ownership

> PPL Bell Bend claims that PPL Corporation is the ultimate parent for all PPL's generation assets (fossil, renewable and nuclear), generating operating companies, marketing and trading activities and distribution companies. (Final Safety Analysis Report, Chapter 1, 1.4.1.7) However, PPL identifies UniStar Nuclear Services, LLC as a contractor/participant (1.4.2). UniStar Nuclear (18) is owned 50 percent by Constellation Energy ("Constellation"), and 50 percent by the French company Électricité de France ("EDF"), which is 84.85 percent owned by the government of France. Section 103 (d) of the Atomic Energy Act 42 U.S.C. § 2133 (d) is explicit:
>
> > No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance if a license to such person would be

[14] The Board in the *Vogtle* COL proceeding did, however, admit a similar safety contention. *Vogtle,* LBP-09-03, 69 NRC __ (slip op. at 24-25). An appeal of this decision is currently pending before the Commission. *See* Southern Nuclear Operating Company's Brief in Support of Appeal of LBP-09-03 (Mar. 14, 2009); NRC Staff Brief in Support of Appeal from LBP-09-03 (Mar. 14, 2009).

> inimical to the common defense and security or to the health and safety of the public.

Epstein Petition at 12.

Mr. Epstein contends that UniStar Nuclear Services, Inc. ("UniStar"), which is fifty-percent owned by Constellation Energy and fifty-percent owned by Électricité de France ("EDF"), a French company of which the French Government owns 84.85%, is a participant in the proposed Bell Bend Nuclear Power Plant. Epstein Petition at 24. Mr. Epstein further contends that the Applicant and UniStar have formed or will form a joint venture to construct this proposed power plant, and that information regarding the relationship of these entities is not accurately provided in the Application. Epstein Petition at 24-26. As a result, Mr. Epstein contends that the Commission cannot issue a power reactor license to the Applicant, since the Applicant is owned, controlled or dominated by an alien or by a foreign corporation or a foreign government. Epstein Petition at 25, 26, 28.

Staff's Response: This contention is inadmissible because the Petitioner has misread the Application, and has failed to provide sufficient information to show that a genuine dispute exists with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi)). Further, while the Petitioner has cited some facts as support, these facts do not support the Petitioner's position on the issue, and the Petitioner has failed to provide other specific sources and documents on which he intends to rely to support his position. 10 C.F.R. § 2.309(f)(1)(v).

1. Petitioner misreads the Application.

Mr. Epstein has misread and incorrectly referenced the Application. Part 1 of the Application, which contains general and financial information for the Applicant and its parent companies, does not mention UniStar at all. While Chapter 1, Section 1.4.1.7 of the FSAR identifies PPL Corporation as the ultimate parent company for the Applicant and all other wholly-owned subsidiaries involved in the development, funding, generation, supply, and distribution of electric power under PPL Corporation, this section of the FSAR does not even mention UniStar

or EDF. Mr. Epstein's imprecise reading of the Application, the U.S. EPR FSAR, or any other document does not generate an issue suitable for litigation in this licensing proceeding. *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 300 (1995). This contention both fails to directly controvert the application and mistakenly asserts that the application does not address a relevant issue, and therefore may be dismissed on both grounds. *Susquehanna EPU*, LBP-07-10, 66 NRC at 24 (internal citations omitted).

Section 1.4.2 of Chapter 1 of the FSAR (Part 2 of the Application) identifies all other contractors and participants in the proposed new power plant, none of which has an ownership interest in the Applicant or its parent companies, and references the FSAR for the U.S. EPR, which is the reactor the Applicant proposes to construct and operate at the Bell Bend site. Application, Part 2 at 1-1, 1-21, 1-22. FSAR § 1.4.2 describes the entities involved in the design, development, and construction of the reactor, references the U.S. EPR FSAR, and describes UniStar's involvement in the development of the application, as well as other aspects of the proposed Bell Bend Nuclear Power Plant. *Id*. at 1-21, 1-22. Neither the Applicant's FSAR nor the U.S. EPR FSAR describes UniStar or EDF as owning or controlling, much less dominating, the Applicant, its parent company, or any of its parent company's wholly-owned subsidiaries.

The Applicant has set forth sufficient information in the Application to identify each entity associated with the Applicant, and all of the managers and officers of these entities. Part 1 of the Application, entitled "General and Administrative Information," lists the Applicant, PPL Bell Bend, LLC, as a Delaware Limited Liability Corporation headquartered in Allentown, Pennsylvania. Application, Part 1, § 1.1. The Application also lists all of the managers and officers of the Applicant, and states that each is a United States citizen. *Id*., § 1.3.1. The Application also states that the Applicant is a subsidiary of PPL Bell Bend Holdings, LLC, which is also domiciled in Pennsylvania and operated by United States citizens. *Id.*, § 1.3.2.

PPL Bell Bend Holdings, LLC, created to facilitate the development and financing of the proposed new power plant, is, in turn, a wholly-owned subsidiary of PPL Nuclear Development, LLC, which is, in turn, a wholly-owned subsidiary of PPL Generation, LLC, which, again, is a wholly-owned subsidiary of PPL Energy Supply, LLC, the parent company of the Applicant. PPL Energy Supply, LLC, owns and controls generating capacity of 11,556 megawatts of power in the United States, and is a Delaware corporation managed and operated by United States citizens. *Id*., §§ 1.3.5 and 1.7. PPL Energy Supply, LLC, is engaged in the generation of electric power in the United States and the delivery of electricity in the United Kingdom, and is a wholly-owned subsidiary of PPL Energy Funding Corporation, the parent company for various finance and service companies serving PPL Corporation. *Id*., §§ 1.2, 1.3.2-1.3.5. All subsidiaries of the PPL Corporation are wholly owned by the PPL Corporation or its subsidiaries, and there are no participants in the Bell Bend Nuclear Power Plant project that are not part of the PPL Corporation or its subsidiaries. *Id*., § 1.2. Each of these entities is a United States corporation, managed and operated by United States citizens. *Id*., §§ 1.2, 1.3.2-1.3.7, and 1.7. None of these entities is owned, dominated or controlled by foreign interests. *Id*. The Petitioner is simply mistaken in asserting that a foreign entity has an ownership interest in the Applicant.

2. The contention does not raise a genuine dispute with the application.

Some of the facts Mr. Epstein has submitted to support this contention involve the financial state of the Applicant and its parent company, and other transfers of nuclear licenses to companies with foreign owners. Epstein Petition at 25-27. Mr. Epstein also condemns some of EDF's and France's activities, and describes the foreign ownership of UniStar. *Id.* None of this information supports this contention, but from it Mr. Epstein speculates that the Applicant must be planning a joint venture with EDF. *Id*. at 25. Mr. Epstein bases his speculation, in part, on a partial quote he cites from the July 2007 issue of *Nuclear News*, and a partial quote he cites from the PPL 2008 annual report, neither of which was submitted as an exhibit with his

Petition. *Id.* Speculation about future partnerships or joint ventures the Applicant may or may not become involved in is neither required nor appropriate in this proceeding. *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-04-4, 59 NRC 129, 171 (2004). "An NRC proceeding considers the application presented to the agency for consideration and not possible future amendments that are a matter of speculation at the time of the ongoing proceeding." *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 294 (2002) (citing *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 257, 267 (1996)). Accordingly, Petitioner does not raise a genuine dispute with the Application.

3. Petitioner does not identify specific sources of documents on which he proposes to rely.

Mr. Epstein states that documents and other authorities that support his contention "can be found in the American Nuclear Society, the BBNPP Application, Constellation Energy, Électricité de France, European Commission, French Foreign Ministry, North Atlantic Treat Organization, Nuclear Regulatory Commission, Pennsylvania Public Utility Commission, PPL Corporation 2008 Annual Report, PPL 2008 10 K, UniStar Nuclear Energy, LLC, U.S. Department of Justice, U.S. Federal Energy Regulatory, Commission, U.S. Departments of State, and U.S. Securities and Exchange Commission." Epstein Petition at 28. This general statement that information to support the contention exists in various places impermissibly shifts the Petitioner's burden to identify bases to support the proposed contention from the Petitioner to the Staff and the Board. Moreover, Petitioner's identification of these documents without specific reference to relevant material does not provide the requisite basis to support this contention. "The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may not be in a haystack." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41

(1989). Citing numerous federal agencies where the Commission might look to find support for a contention no more supplies the requisite basis for a contention than would attaching a document without any explanation of its significance. *PFS,* LBP-98-10, 47 NRC at 298-99.

Merely identifying information, or places it might be found, without an explanation of the significance of the information, is insufficient; a petitioner bears the burden of identifying material he cites as support for his contentions and explaining its relevance and significance to his arguments. "Commission practice is clear that a petitioner may not simply incorporate massive documents by reference as the basis for or as a statement of his contentions." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989) (citing *Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 200, 216 (1976)). "Such a wholesale incorporation by reference does not serve the purposes of a pleading." *Seabrook Station*, CLI-89-3, 29 NRC at 240-41 (citing *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1741 (1985), *rev'd and remanded on other grounds*, CLI-86-8, 23 NRC 241 (1986)).

In summary, this contention is inadmissible because the Petitioner has misread the Application and does not identify a genuine dispute on a material issue of law or fact with the Application. 10 C.F.R. § 2.309(f)(1)(vi). Additionally, while the Petitioner has cited some facts as support, these facts do not support the Petitioner's position on the issue, and the Petitioner has failed to provide other specific sources and documents on which he intends to rely to support his position. 10 C.F.R. § 2.309(f)(1)(v). For these reasons, this contention should be dismissed.

D. PROPOSED CONTENTION 4:

Epstein Proposed Contention 4:

> Conclusions in PPL's Application, Part 3: Environmental Report, Rev. 1, Chapter 4 and 5, relating to Socio Economic Impacts: Labor Force Availability and Possible Composition 4.4.2.2.1.,

> Employment and Income 5.8.2.2.3 and Police, EMS and Fire suppression Services 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 Petition at 29. Mr. Epstein alleges, as a basis for this contention, that Pennsylvania's large aging population "has unique and sensitized needs that were not factored, considered, or analyzed in the Application." *Id.* at 31. Petitioner argues that the Applicant failed to consider the impact this aging population has on staffing, response times, emergency planning and social services. *See id.* at 29. In addition, Petitioner claims that many seniors are on fixed incomes and will be faced with rate shock, increased health care premiums, and high property taxes. *Id.* at 30. Finally, Petitioner argues that the Applicant has failed to provide a plan to staff the construction and operation of the plant as well as local emergency services. *Id.* at 33-35.

Petitioner argues that Proposed Contention 4 is within the scope of this proceeding because an Applicant is required "to demonstrate that a sufficient labor pool exists to support Bell Bend . . . [and] that the construction and operation of the BBNPP will not adversely impact police, fire, EMS, and other vital social services." *Id.* at 33. Finally, Petitioner argues that a genuine dispute exists regarding the demographics in the area surrounding the proposed plant and lists nine specific socioeconomic issues that the Applicant purportedly failed to address. *Id.* at 37-39.

Staff Response: The Staff opposes admission of Proposed Contention 4 because it is not supported by alleged facts or expert opinion, and fails to raise a genuine dispute regarding a material issue of law or fact, is not supported by a regulatory basis, and fails to demonstrate that the issues raised are material and within the scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(ii), (iii), (iv), (v), (vi).

1. Proposed Contention 4 cannot be construed as a contention of omission.

An admissible contention of omission must identify either specific portions of, or alleged omissions from, the application, and provide supporting reasons for the petitioner's position.

10 C.F.R. § 2.309(f)(1)(vi). Here, Petitioner argues that the Applicant failed to consider a number of socioeconomic impacts. Epstein Petition at 29. Specifically, Petitioner lists nine questions that he asserts the Applicant failed to address. *Id.* at 38-39. These nine questions can be divided into three categories: 1) questions regarding impacts on senior citizens (questions 1, 2, 5, 6); 2) questions regarding staffing needs both onsite and offsite (questions 3, 4); and 3) questions regarding recent shutoffs for PPL customers and staffing history at SSES (questions 7, 8, 9).[15] *Id.* Petitioner, has not, however, provided any regulatory basis to support his assertions that the above socioeconomic questions are required to be assessed in the ER or EIS. *See* 10 C.F.R. § 2.309(f)(1)(vi); *Pa'ina,* LBP-06-12, 63 NRC at 414 (stating that a petitioner must show that missing information is required by the Commission's regulations).

Although Petitioner argues that this contention is within the scope of this proceeding because an applicant is required to demonstrate that a sufficient labor pool exists and that construction and operation of the plant will not adversely impact police, fire, EMS, and other vital services, he fails to provide a legal basis to support this assertion. Epstein Petition at 33. In fact, nowhere in Proposed Contention 4 does Petitioner reference any legal requirement. Therefore, because Petitioners have failed to provide the required legal basis to support this contention, Proposed Contention 4 cannot be construed as a contention of omission. *See Calvert Cliffs,* LBP-09-04, 69 NRC __ (slip op. at 22) ("A contention of omission claims that 'the application fails to contain information on a relevant matter as required by law . . . and [provides] the supporting reasons for the petitioner's belief.' To satisfy Section 2.309(f)(1)(i)- (ii), the

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[15] In the bases for this proposed contention, Petitioner mentions concerns that might be taken as safety issues. *See, e.g.*, Epstein Petition at 33 (discussing the need to demonstrate a sufficient labor pool to support the proposed facility), and 35 (discussing staffing plans for the Applicant and local response personnel). To the extent the Petitioner intends to raise a safety contention, the Petition does not provide a specific statement of the issue of law or fact to be raised and therefore does not satisfy § 2.309(f)(1)(i), nor does the Petition identify any NRC requirement governing such matters to demonstrate materiality, as required by § 2.309(f)(1)(iv).

contention of omission must describe the information that should have been included in the ER and provide the legal basis that requires the omitted information to be included.").

2. Proposed Contention 4 does not raise a genuine dispute regarding a material issue of law or fact, is not supported by alleged facts or expert opinion, raises issues outside the scope of this proceeding, and/or raises issues that are not material to this proceeding.

An admissible contention must demonstrate that the issues raised are material to the outcome and are within the scope of the proceeding. 10 C.F.R. § 2.309(f)(1)(iii), (iv). In addition, a petitioner must show that a "genuine dispute exists with the applicant/licensee on a material issue of law or fact," identify either specific portions of, or alleged omissions from, the application, and provide supporting reasons for the petitioner's position. 10 C.F.R. § 2.309(f)(1)(vi). A petitioner must submit more than "'bald or conclusory allegation[s]' of a dispute with the applicant," but instead "must 'read the pertinent portions of the license application . . . and . . . state the applicant's position and the petitioner's opposing view.'" *Millstone*, CLI-01-24, 54 NRC at 358 (citing Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170-71 (Aug. 11, 1989)). Finally, a petitioner must provide alleged facts or expert opinions to support admission of its contention. *See* 10 C.F.R. § 2.309(f)(1)(v).

Here, Petitioner claims that the Applicant's conclusions regarding socioeconomic impacts, employment and income, police, EMS and Fire suppression services are flawed and that the Applicant has omitted relevant data from its analyses. *See* Epstein Petition at 29 (internal citations to ER omitted). As stated above, Petitioner lists nine questions regarding socioeconomics that the Applicant allegedly failed to assess, which can be divided into three categories. *See* Epstein Petition at 38-39. Each category will be addressed in turn below.

a. Petitioner's assertions regarding the Applicant's failure to consider impacts on an aging population do not demonstrate a genuine dispute exists, are not supported by alleged facts or expert opinions, and do not raise issues within the scope of this proceeding.

Petitioner claims, as a basis for this contention that the Applicant has failed to consider the unique and sensitized needs of the local aging population. Epstein Petition at 31. Specifically, Mr. Epstein claims that the Applicant failed to consider the impacts of increasing rates, health care premiums and property taxes on senior citizens. *Id.* at 29, 38 (question 1, 2). Petitioner states that because the Applicant has $90 million designated for its COL application, it should be able to find the time and resources to assess the impacts on the aging population. *Id.* at 30, 38 (question 6). Finally, Petitioner also questions whether similar demographics exist at any other reactor community. *Id.* at 39 (question 7). The Petitioner's claims regarding the Applicant's failure to assess impacts on the elderly population are inadmissible for four reasons: (1) Petitioner has failed to proffer an admissible environmental justice ("EJ") contention; (2) Petitioner has failed to show that the issues raised are material to the NRC's licensing decision; (3) Petitioner has failed to show that the issues raised are within the scope of this proceeding; and (4) Petitioner has failed to provide alleged facts or expert opinions to support admission of this contention.

First, Proposed Contention 4 cannot be construed as an admissible EJ contention, because although Petitioner seems to suggest that there will be disparate impacts on the aging population, he has failed to provide facts or a reasoned expert opinion to support this position. *See* Epstein Petition at 29-30.

The Commission has held that the "disparate impact" analysis is the agency's principal tool for advancing environmental justice ("EJ") under NEPA. *Louisiana Energy Servs., L.P.* (Claiborne Enrichment Center), CLI-98-03, 47 NRC 77, 100 (1998). With regard to EJ, the agency's goal is to identify and adequately weigh, or mitigate effects on low-income and minority communities." *Id. See also* Policy Statement on the Treatment of Environmental

Justice Matters in NRC Regulatory and Licensing Actions, 69 Fed. Reg. 52,040, 52,040 (Aug. 24, 2004) (quoting Executive Order 12,898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 16, 1994)). The Commission has stated that, with regard to its EJ policy:

> The NRC's obligation is to assess the proposed action for significant impacts on the physical or human environment. Thus, admissible contentions in this area are those which allege, with the requisite documentary basis and support as required by 10 CFR Part 2, that the propose action will have significant adverse impacts on the physical or human environment that were not considered because the impacts to the community were not adequately evaluated.

69 Fed. Reg. at 52,047. EJ does not create new substantive rights; rather, "[t]he basis for admitting EJ contentions . . . stems from the agency's NEPA obligations . . . ." *Id.* at 52,046. NEPA requires agencies to look at those "socioeconomic impacts that have a nexus to the physical environment." *Id.* at 52,047 (citing 40 C.F.R. §§ 1508.8 and 1508.14).

Here, Petitioner argues that the Applicant failed to consider the socioeconomic impacts on the elderly population. Epstein Petition at 29, 31. Petitioner asserts that "many seniors are on fixed incomes," but fails to provide any facts or expert opinion to demonstrate how many seniors are in fact on fixed incomes and how many are considered low-income. *Id.* at 30. As the ER states, in order for a community to be identified as a minority or low-income population, certain thresholds must be met. ER at pages 2-565 to2-566. Because Petitioner has not provided information to demonstrate that the aging population qualifies as low-income or minority, Petitioner has failed to demonstrate that additional analyses regarding the aging population are required for EJ purposes. *See PFS,* LBP-98-7, 47 NRC at 180 (internal citation omitted) (A "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient"; rather, "a petitioner must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention.").

Second, the Petitioner has failed to demonstrate, in accordance with 10 C.F.R. § 2.309(f)(1)(iv), that consideration of the aging population raises an issue material to this proceeding. Materiality requires the petitioner to show "why the alleged error or omission is of possible significance to the result of the proceeding," i.e., there is "some significant link between the claimed deficiency and either health and safety of the public, or the environment." *See Nuclear Management Co.* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 748-49 (2005). Mr. Epstein has failed to demonstrate that consideration of the impacts on an aging population is "of possible significance" and has a "significant link" to health and safety or the environment. *See Monticello,* LBP-05-31, 62 NRC at 748-49.

Third, Petitioner asserts that the Applicant failed to assess several impacts on the aging population, but does not demonstrate that these impacts are within the scope of this proceeding. *See* 10 C.F.R.§ 2.309(f)(1)(iii). For example, Mr. Epstein suggests that the Applicant failed to consider how the aging population will be impacted by "rate shock". Epstein Petition at 30 and n.25. In dismissing a similar claim, the Board in *V.C. Summer* stated that "[t]he issue of future rates for Applicant's customers is outside the purview of the NRC because the issue of electric rates is . . . 'germane to protection of the 'public interest' as opposed to public health and safety or the environment.'" *South Carolina Electric & Gas Co. & South Caroling Public Serv. Authority (also referred to as Santee Cooper)* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-02, 69 NRC __ (Feb. 18, 2009) (slip op. at 26) (quoting SCE&G Answer at 71). Similarly, Mr. Epstein claims that the aging population will be impacted by increased health care premiums and property taxes. Epstein Petition at 30 and n.26, 27. Petitioner has not, however, shown how or if increasing health premiums or property taxes for senior citizens are related to the proposed project and are within the scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii). Nor has Mr. Epstein provided facts or reasoned expert opinions to demonstrate that these impacts are required to be considered under NEPA because they "have a nexus to the physical environment." *See* 69 Fed. Reg. at 52,047.

Fourth, Mr. Epstein has failed to provide alleged facts or expert opinion to support his assertion that additional analyses are required. *See* 10 C.F.R. § 2.309(f)(1)(v). In addition to the unsupported assertions claiming that the Applicant should consider impacts of rate shock, property taxes, and health care premiums on the elderly, Mr. Epstein also questions whether the Applicant can identify any other reactor communities with similar demographics. *See* Epstein Petition at 30, 38 (question 5). Mr. Epstein's unsupported assertions claiming that these "matter[s] ought to be considered or that a factual dispute exists . . . is not sufficient"; rather, he "must provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support . . . [the] contention." *PFS,* LBP-98-7, 47 NRC at 180 (1998) (internal citation omitted). Because Mr. Epstein has failed to provide alleged facts or expert opinions to support his assertion that the ER is inadequate because it fails to consider impacts of an aging population that are material to and within the scope of this proceeding, this portion of Proposed Contention 4 should be dismissed for failure to comply with 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v) and (vi).

b. Petitioner's assertions regarding onsite and offsite labor force analyses are not supported by alleged facts or expert opinions and fail to raise a genuine dispute regarding a material issue of law or fact.

Petitioner claims that the conclusions in ER section 4.4.2.2.1, 5.8.2.2.3, 2.5.2, and 4.4.2 "are based on flawed assumptions and specious conclusions and have omitted key data and statistics. . . ." Epstein Petition at 29. Petitioner also claims that the Applicant is required to "demonstrate that a sufficient labor pool exists to support Bell Bend . . . [and] that the construction and operation of the BBNPP will not adversely impact police, fire, EMS, and other vital social services." *Id.* at 33. As discussed below, Petitioner does not demonstrate that these issues are material to this proceeding, raise a genuine dispute, or are supported by alleged facts or expert opinions. *See* 10 C.F.R. § 2.309(f)(1)(iv), (v), (vi).

First, with respect to onsite staffing, Mr. Epstein argues that the Applicant has failed to demonstrate that a "labor pool exists to support Bell Bend." Epstein Petition at 33-34, 38 (question 3). Petitioner quotes ER Section 4.4.2.2.1, which states that "a shortage of qualified labor appears to be a looming problem" and "[e]stimates about the composition of the BBNPP construction workforce have not been developed . . . ." Petition at 33-34 (quoting ER). In addition, Petitioner refers to articles that speculate the future impact baby boomers may have on the national economy and discuss the number of nuclear engineers within the country that are of retirement age. *Id.* at 36 (internal citations to articles omitted). Further, Petitioner notes that in accordance with PPL's 2008 cost reduction initiative, jobs have been eliminated across the county. *Id.* at 34 (citing PPL 2008 Annual Report at 196). Although Mr. Epstein provides sources to support these assertions, he does not provide any facts or reasoned expert opinions to demonstrate how or if national data regarding employment cuts, baby boomers and the number of engineers is relevant to rural Pennsylvania and the Applicant's analysis in the ER. *See* 10 C.F.R. § 2.309(f)(1)(v). Simply referencing these articles "without 'explanation or analysis' of their relevance, d[oes] not provide adequate basis for admitting the contention." *See USEC,* CLI-06-10, 63 NRC at 472 (internal citation omitted). Further, Mr. Epstein has not provided any information or analyses to demonstrate that consideration of the above impacts will materially impact the Applicant's analysis in ER Section 4.2.2.1.1 regarding labor force availability and potential composition. *See* 10 C.F.R. § 2.309(f)(1)(iv). Mr. Epstein is permitted to "raise contentions seeking correction of significant inaccuracies and omissions in the ER," but "[o]ur boards do not sit to 'flyspeck' environmental documents or to add details or nuances. If the ER (or EIS) on its face 'comes to grips with all important considerations' nothing more need be done." *See System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-04, 61 NRC 10, 13 (2005) (internal citations omitted).

Second, Mr. Epstein also asserts that impacts from local conditions on onsite staffing, including the aging population and large construction projects that are scheduled for the same

timeframe as the proposed plant, have not been assessed. *See* Epstein Petition at 29, 32, 38 (question 3). Mr. Epstein does not, however, provide any facts or expert opinion to indicate how or if the aging population may impact future staffing needs at the proposed facility. *See* § 2.309(f)(1)(v); *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003) (bare or speculative assertions are not sufficient to support admission of a contention). Similarly, Mr. Epstein does not provide, in accordance with 10 C.F.R. § 2.309(f)(1)(v), any support to demonstrate that the planned construction projects, which include an airport, coal to oil project, and construction and drilling in the Marcellus shale formation, will have an impact on onsite staffing at the proposed nuclear plant. *See* Epstein Petition at 32. A petitioner's "'suggestions' or ideas of additional details or description that conceivably could be included" are not sufficient to support the admission of a contention; rather an admissible contention "must be based on alleged facts or expert opinion pointing to an actual error or deficiency . . . ." *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 477 (2006).

With respect to offsite staffing, Petitioner claims that the Applicant has not assessed who will "provide the emergency services for an economically distressed" and aging population. Epstein Petition at 38 (question 4). Petitioner argues that the Applicant's analysis on Police and Fire Suppression services is flawed because the Applicant failed to consider the age and relative poverty level of senior citizens. *See id.* at 32. Petitioner also claims that because the Applicant found that there would be increased demand on doctors and hospitals during construction which would result in a small impact, it is required to offer mitigation measures. *See id.* at 33 (quoting ER Section 4.4.2.8 at 4-64).

Although Petitioner references the Applicant's conclusion that the proposed project would likely have a small impact on these social services, Petitioner does not specifically reference or dispute the Applicant's analysis and conclusion regarding mitigation measures. In addition to stating that the impact on public services would be small, the Applicant states 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." ER at 4-65. Further, the Applicant states that the new tax revenues generated in Luzerne and Columbia Counties would provide additional funding to expand or improve EMS and Fire Suppression services to meet the additional demands created by the plant. *Id.* Therefore, because "additional tax funds would be available," the Applicant concluded that there would be a small impact "on fire and law enforcement departments and *additional mitigation would not be required.*" *Id.* (emphasis added). Petitioner does not provide any information to demonstrate that this analysis is flawed and that mitigation measures are required. Therefore, Petitioner's assertions fail to meet the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi).

Although, Petitioner does reference a newspaper article discussing corruption of social services (*see* Epstein Petition at 32 n.30), he does not explain how this article is relevant to or supports his claim that the local aging population will impact social services. Nor does Petitioner provide any information to demonstrate how this information is relevant to this proceeding. Simply referring to this information, without setting forth an explanation of that information's significance, is not sufficient to support admission of this contention. *See Susquehanna EPU,* LBP-07-10, 66 NRC at 23 (citing *Muskogee*, CLI-03-13, 58 NRC at 204-05).

Finally, with respect to onsite staffing, Petitioner claims that the Applicant failed to consider, in light of the aging population, who would staff the EMS services. Epstein Petition at 32. To support this claim, Petitioner references the average age of EMTs versus other occupations nationwide from the Bureau of Labor Statistics "Occupational Outlook Handbook" (2006-2007). *Id.* at 35. Again, Petitioner does not explain how these nationwide data support his claim that the proposed plant will impact EMT staffing capabilities. Similarly, Petitioner references, without explaining how it is relevant to or supports admission of this contention, countrywide data regarding the age of persons brought to emergency departments by ambulance. *Id.* (referencing data from the National Hospital Ambulatory Medical Care Survey). Finally, Petitioner has not provided any information to demonstrate that the Applicant is required

to assess offsite EMS staffing in its Application. Absent support, Petitioner's bare assertions claiming that the proposed plant will adversely impact offsite staffing and that Applicant is required to assess these impacts cannot support admission of this contention. *See* 10 C.F.R. § 2.309(f)(1)(v); *PFS*, LBP-98-7, 47 NRC at 180 (internal citation omitted) (A "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient.").

c. Petitioner's assertions regarding recent electricity cuts and SSES staffing does not support admission of this contention.

Petitioner claims that the ER fails to include the fact that PPL is "cutting off more customers (for) unpaid bills." Epstein Petition at 31 (citing "*PPL cutting off more customers (for) Unpaid Bills: The number losing power is up 111% over 2007,*" THE MORNING CALL, Sept. 24, 2008, at A1).[16] Petitioner does not, however, explain how his reference supports his contention, which claims that the ER fails to consider impacts on the elderly as well as onsite and offsite staffing. Petitioner does not describe the area in which these cutoffs occurred nor does he indicate that the cutoffs were to a certain group of people, e.g., senior citizens. Petitioner cannot simply refer to this article as a basis for this contention without explaining the significance of this information. *See Susquehanna EPU*, LBP-07-10, 66 NRC at 23 (2007) (citing *Muskogee*, CLI-03-13, 58 NRC at 204-05) ("Simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention.").

Finally, Petitioner claims, on the last page of the contention, that the Applicant failed to consider the average age of the SSES workforce and average overtime logged. Epstein

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[16] The Petitioner did not include this reference with his filing. The referenced article is not in the MORNING CALL online archive "[d]ue to newsroom front-end system production difficulties" and a fee is required order to access it. *See http://pqasb.pqarchiver.com/mcall/access/1561016401.html?dids=1561016401:1561016401&FMT=ABS&FMTS=ABS:FT&date=Sep+24%2C+2008&author=Brian+Callaway&pub=Morning+Call&edition=&startpage=A.1&desc=PPL+cutting+off+more+customers+**Unpaid+bills%3A+The+number+losing+power+is+up+111%25+over+2007.* Thus, this article is not generally accessible to the public.

Petition at 39 (questions 8 and 9). This is the first time either of these issues are mentioned; thus, Petitioner has not provided any support to demonstrate that this information is required by law, how this information is relevant to this proceeding, or that consideration of these issues may be material to the NRC's licensing decision. Thus, Petitioner has failed to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iv), (v) and (vi).

Accordingly, for the reasons discussed above, Proposed Contention 4 should be dismissed.

CONCLUSION

In view of the foregoing, the Petitioner, Eric Joseph Epstein, has not demonstrated standing to intervene in this proceeding, and has not submitted an admissible contention. Therefore, pursuant to 10 C.F.R. § 2.309(a), the Petition should be denied.

Respectfully submitted,
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Dated at Rockville, Maryland
this 12th day of June, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S ANSWER TO PETITION FOR INTERVENTION AND REQUEST FOR HEARING FILED BY ERIC JOSEPH EPSTEIN" have been served on the following persons by Electronic Information Exchange on this 12th day of June, 2009:

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