January 22, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
	)	
STP NUCLEAR OPERATING COMPANY	)	Docket Nos. 52-012 & 52-013
	)	
	)	
(South Texas Project, Units 3 & 4)	)	

NRC STAFF'S ANSWER TO THE INTERVENORS' AMENDED AND NEW ACCIDENT CONTENTIONS

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's (Board's) Order dated December 18, 2009, the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby answers the proposed amended contention in "Intervenors' Response to Applicant's Motion to Dismiss Contention 21 as Moot" (Dec. 14, 2009) ("Motion Answer") and the new contentions in "Intervenors' Contentions Regarding Applicant's Proposed Revision to Environmental Report Section 7.5S and Request for Hearing" (Dec. 22, 2009) ("New Accident Contentions"). Order (Granting Applicant & NRC Staff's Joint Motion to Consolidate Answers), p. 1-2 (Dec. 18, 2009). For the reasons set forth below, Amended Contention 21 and the four new proposed contentions should be dismissed for failure to comply with the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1) and/or the requirements for new and amended contentions in 10 C.F.R. §§ 2.309(f)(2) and (c).[1]

[1] In the Board's Initial Scheduling Order of October 20, 2009, the Board stated that parties seeking to submit additional contentions should file a "motion for leave and the substance of the proposed (continued. . .)

BACKGROUND

On September 20, 2007, STP Nuclear Operating Company (Applicant), pursuant to the Atomic Energy Act of 1954, as amended (AEA) and the Commission's regulations, submitted an application for combined licenses (COL) for two Advanced Boiling Water Reactors (ABWRs) to be located adjacent to the existing South Texas Project, Units 1 and 2 near Bay City, Texas (Application). The Application references the issued standard design certification, including a design control document (DCD), issued to General Electric (GE) Nuclear Energy. The proposed units are known as South Texas Project, Units 3 & 4.

On April 21, 2009, Sustainable Energy and Economic Development Coalition (SEED), the South Texas Association for Responsible Energy, and Public Citizen (Intervenors) filed a Petition for Intervention and Request for Hearing ("Petition to Intervene") proposing several contentions, including the original Contention 21. On August 27, 2009, and September 29, 2009, the Board ruled on the Intervenors' proposed contentions, admitting contentions 8, 9, 14, 16, and 21. *South Texas Project Nuclear Operating Co.* (South Texas Project Units 3 & 4), LBP-

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(. . .continued)

contention simultaneously." Initial Scheduling Order at 8. The Board also stated:

> The pleading shall include a motion for leave to file a timely new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file an untimely new or amended contention under 10 C.F.R. § 2.309(c) (or both), and the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). Within twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention.

Id. The Intervenors submitted their amended and new contentions in two separate pleadings, neither of which was accompanied by a "a motion for leave to file a timely new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file an untimely new or amended contention under 10 C.F.R. § 2.309(c) (or both)." Although, the Intervenors did not submit a motion or otherwise address the late-filing factors, the Staff's answer, here, will address § 2.309(c) and (f)(2), as relevant, in addition to the contention admissibility requirements of § 2.309(f)(1).

09-21, 70 NRC __ (slip op.) (Aug. 27, 2009); *South Texas Project Nuclear Operating Co.* (South Texas Project Units 3 & 4), LBP-09-25, 70 NRC __ (slip op.) (Sept. 29, 2009).

On November 11, 2009, the Applicant notified the Board and the parties of an amendment to the Environmental Report (ER) relating to Contention 21.[2] Letter from Stephen J. Burdick to Members of the Licensing Board, Notification of Filing Related to Contention 21, (Nov. 11, 2009). Attached to this letter was an Applicant submission to the NRC dated November 10, 2009, which contained an attached supplement to the Environmental Report (Co-location Submission). Subsequently, the Applicant filed a motion to dismiss Contention 21 as moot. Applicant's Motion to Dismiss Contentions 21 as Moot (Nov. 30, 2009) ("Motion to Dismiss"). The Staff agreed with the Applicant that Contention 21 should be dismissed as moot. *Id.* at 6. In their answer to the Motion to Dismiss, the Intervenors proposed that Contention 21 be modified. Motion Answer. On December 22, 2009, the Intervenors filed four new contentions regarding the Applicant's Co-location Submission. The Staff is filing this consolidated response to the Motion Answer and the New Accident Contentions pursuant to the Board's December 18 Order. Order (Granting Applicant & NRC Staff's Joint Motion to Consolidate Answers), p. 1-2.

DISCUSSION

Intervenors assert that Amended Contention 21 and four new contentions (CL-1 to CL-4) should be admitted in this proceeding. For the reasons set forth below, the Intervenors' amended and new contentions should be dismissed.

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[2] Contention 21, as originally admitted by the Board, stated, "Impacts from severe radiological accident scenarios on the operation of other units at the STP site have not been considered in the Environmental Report." *South Texas Project*, LBP-09-21, 70 NRC at __, slip op. at 36.

I. LEGAL STANDARDS

The admissibility of new and amended contentions is governed by 10 C.F.R. §§ 2.309(f)(2), 2.309(c), and 2.309(f)(1).

First, contentions filed after the initial filing period may be admitted with leave of the presiding officer if, in accordance with 10 C.F.R. § 2.309(f)(2), the contention meets the following requirements:

> (i) The information upon which the amended or new contention is based was not previously available;
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> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
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> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2)(i)-(iii). Specifically, in this proceeding, the Board has stated that a motion and proposed new contention will be considered timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed "within thirty (30) days of the date when the new and material information on which it is based first becomes available . . . ." Initial Scheduling Order at 8 (Oct. 20, 2008).

Second, a contention that does not qualify for admission as a new contention under 10 C.F.R. § 2.309(f)(2) may still be admitted if it satisfies the provisions set forth in of 10 C.F.R. § 2.309(c). *See* Initial Scheduling Order at 8-9. In accordance with § 2.309(c)(1), the presiding officer may admit a late filed contention after balancing the following eight factors:

> (i) Good cause, if any, for the failure to file on time;
> (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
> (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
> (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
(vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and
(viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. § 2.309(c)(1). Intervenors seeking admission of a late-filed contention bear the burden of showing that a balancing of these factors weighs in favor of admittance. *See Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 347 (1998) (noting that the Commission has summarily dismissed petitioners who failed to address the factors for a late-filed petition).

The first factor, whether good cause exists for the failure to file on time, is entitled to the most weight. *State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993). Where no showing of good cause for lateness is tendered, a petitioner's demonstration on the other factors must be particularly strong. *Texas Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 73 (1992). The fifth and sixth factors, the availability of other means to protect the petitioner's interest, and the ability of other parties to represent the petitioner's interest, are less important than the other factors, and are therefore entitled to less weight. *See id.* at 74.

Third, amended and late-filed contentions must comply with the general contention admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1). In accordance with 10 C.F.R. § 2.309(f)(1), an admissible contention must:

(i) provide a specific statement of the legal or factual issue sought to be raised;

(ii) provide a brief explanation of the basis for the contention;

(iii) demonstrate that the issue raised is within the scope of the proceeding;

> (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing;
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> (vi) . . . provide sufficient information to show that a genuine dispute with the Applicant exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief . . . .

10 C.F.R. § 2.309(f)(1). 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. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325. "Mere 'notice pleading' does not suffice." *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (internal quotation omitted).

II. Amended Contention 21 from the Answer to the Motion to Dismiss

As originally admitted by the Board, Contention 21 states:

> Impacts from severe radiological accident scenarios on the operation of other units at the STP site have not been considered in the Environmental Report.

South Texas Project, LBP-09-21, 70 NRC at __, slip op. at 36. In their Motion Answer, the Intervenors offered an amended contention in three parts, as follows:

> A.) The Environmental Report is deficient because it fails to discuss how a large release of radiation from an affected unit(s) will impact safe shutdown at an unaffected unit(s).
>
> B.) The Environmental Report is deficient because it assumes there will be

> sufficient warning of an accident at an affected unit to allow an unaffected unit(s) to complete safe shutdown.
>
> C.) The Environmental Report is deficient because it assumes that a separation distance of 1500 feet is adequate to preclude impacts from fires and explosions originating from an affected unit on other co-located units.

Motion Answer at 2. The three subparts of Amended Contention 21 address different aspects of the Applicant's Co-location Submission. For this reason, the Staff will separately address each subpart.

> A. Contention 21A: The Environmental Report is deficient because it fails to discuss how a large release of radiation from an affected unit(s) will impact safe shutdown at an unaffected unit(s).

Motion Answer at 2.

In support of Contention 21A, the Intervenors claim that the Co-location Submission fails to discuss the impact of a large release of radiation on the safe shutdown of unaffected units. *Id.* The Intervenors quote the Co-location Submission's statement that the safe shutdown of unaffected units would not be disturbed in the absence of a large radiation release, and then claim that this implies that a large release would disturb safe shutdown of the unaffected units. *Id.*[3] The Intervenors believe that the Applicant implicitly admits that a "large radiation release could complicate, delay and/or preclude the safe shutdown of an unaffected unit." *Id.* at 3. The Intervenors also appear to be asserting that the Applicant should discuss severe accidents without considering the probability of the accident occurring. *Id.* at 2. As additional support for Contention 21A, the Intervenors cite to 10 C.F.R. §§ 50.54(hh)(2) and 50.150, as well as 42 U.S.C. § 2133(d). *Id.* at 3.

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[3] The Intervenors quote page four of the Co-location submission, which is where the impact of severe accidents at an affected unit on safe shutdown of the other units is discussed. *See* Co-location Submission at 4-5.

Staff Response: Contention 21A is inadmissible because it fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(v)-(vi). Contrary to the Intervenors' assertions, the Applicant does consider scenarios involving a large radiation release. *See* Co-Location Submission at 4-5.[4] The Applicant states in the Co-location Submission that equipment at the unaffected units can withstand the radiation from the affected unit and that there will be sufficient time to put the unaffected units into a stable configuration before safety at those units would be compromised. *Id.* at 4-5. Contention 21A does not offer any facts or expert opinions disputing the Applicant's conclusions.

In addition, the Intervenors incorrectly conclude that because the Applicant states that safe shutdown will not be affected in the absence of a large release, then the Applicant is necessarily conceding that safe shutdown will be affected in the presence of a large release. The Applicant, in fact, explains why it believes that a large radiation release will not affect safe shutdown at an unaffected unit. *Id.* at 4-5. The Intervenors also object to the Applicant discussing severe accidents in probabilistic terms, but discussing severe accidents in terms of probability weighted consequences (risk) is consistent with NRC guidance. *See* Standard Review Plans for Environmental Reviews for Nuclear Power Plants, NUREG-1555, p. 7.2-3 and 7.2-4. (Oct. 1999) (hereinafter "E-SRP"). The Intervenors point to no authority or other expert opinion or fact indicating that such treatment is incorrect.

Finally, in support of Contention 21A, the Intervenors point to two NRC safety regulations (10 C.F.R. §§ 50.54(hh)(2) and 50.150) and a provision of the Atomic Energy Act (42 U.S.C. § 2133(d)) concerning the NRC's duty to protect public health and safety to question

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[4] The Applicant also considers the monetized impacts of a severe accident on unaffected units. *Id.* at 6-7, 9.

the conclusion made in the Co-location Submission that a large release will not adversely affect safe shutdown. Motion Answer at 3. However, as already discussed above, the Applicant does consider whether accidents involving large releases could affect safe shutdown at the other units. Contention 21A does not point out any flaws in the Applicant's analysis, nor does it explain how accident scenarios considered under the NRC's safety regulations would somehow invalidate the Applicant's analysis under NEPA.

As discussed above, Contention 21A is primarily based on a misunderstanding of the Co-location Submission and the applicable requirements for severe accident analyses under NEPA. Accordingly, Contention 21A does not demonstrate a genuine, material dispute with the Applicant. 10 C.F.R. § 2.309(f)(1)(vi). The Intervenors also fail to meet § 2.309(f)(1)(v) because they do not offer any facts or expert opinions in support of their position. Accordingly, Contention 21A should not be admitted.

B. Contention 21B: The Environmental Report is deficient because it assumes there will be sufficient warning of an accident at an affected unit to allow an unaffected unit(s) to complete safe shutdown.

Motion Answer at 2.

The Intervenors claim that it is unreasonable to conclude that there will be sufficient time to complete safe shutdown and that the Applicant should assess the environmental impacts that would occur if there is insufficient time to complete safe shutdown. *Id.* at 4.

Staff Response: Contention 21B is inadmissible because it lacks any factual or expert support and fails to establish a genuine, material dispute with the Applicant. 10 C.F.R. § 2.309(f)(1)(v)-(vi). The Intervenors dispute the Applicant's statement that the unaffected units can safely be shut down, but they provide no support for this proposition. The NRC's contention rule places the burden of demonstrating the admissibility of a contention on the Intervenors, and providing factual and expert support is part of that burden. § 2.309(f)(1)(v); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262

(1996) (stating that the contention admissibility rule (formerly 10 C.F.R. § 2.714) "places an initial burden on Petitioners to come forward with reasonably precise claims rooted in fact, documents, or expert opinion in order to proceed past the initial stage and toward a hearing"). Moreover, ER Section 7.5S.6 addresses the probability-weighted consequences of postulating that a severe accident at one unit could cause a simultaneous accident at all of the other units, and the Applicant concludes that the consequences would be "SMALL." Co-location Submission at 8. The Intervenors do not dispute this conclusion. The simple act of disagreeing with the Applicant does not provide sufficient information to establish a genuine, material dispute with the Applicant. *See USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) (internal citations omitted) (stating that even an expert opinion is inadequate if it merely states a conclusion without providing a reasoned basis or explanation for that conclusion). Therefore, Contention 21B should not be admitted.

C. Contention 21C: The Environmental Report is deficient because it assumes that a separation distance of 1500 feet is adequate to preclude impacts from fires and explosions originating from an affected unit on other co-located units.

Motion Answer at 2.

In support of Contention 21C, the Intervenors cite to the transcript of a June 2009 oral argument to claim that the Applicant argues that a 1500 foot separation distance is sufficient to obviate the need to consider fire and explosion impacts. *Id.* at 4. The Intervenors further argue that the Applicant's argument is arbitrary in this regard, and should describe the damage state underpinning the assumption that a 1500 feet separation distance is sufficient. *Id.* The Intervenors believe that the Co-location Submission should consider the "full spectrum of damage states," and that analyzing design basis accidents and severe accidents is insufficient. *Id.*

Staff Response: Contention 21C is inadmissible because it lacks any factual or expert

support and fails to establish a genuine, material dispute with the Applicant. 10 C.F.R. § 2.309(f)(1)(v)-(vi). In the Co-location Submission, the Applicant addresses the potential impacts of fires and explosions, references additional analyses in the FSAR, and explains why it believes that the unaffected units could withstand fires and explosions originating from the affected unit. Co-location Submission at 1. The Intervenors, however, focus their claims on an assertion made by the Applicant during an oral argument that occurred five months before the Applicant submitted the Co-location Submission. Contentions are to be based on disputes with the application, not disputes with statements made at oral argument. *See* 10 C.F.R. § 2.309(f)(1)(vi) (stating that petitioners are to identify the disputed portions of the application or alleged omissions in the application) *and* § 2.309(f)(2) (stating that environmental contentions are to be based on an applicant's ER). *See also Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 3), CLI-09-4, 69 NRC 80, 83 (2009) (stating that the proper focus of any contention should be on the application). In addition, although the Intervenors claim that the Applicant's discussion omits a description of the damage states underpinning its conclusions, the Co-location Submission discusses the safe distances from chemical storage facilities and the impacts from fires, explosions and releases of toxic chemicals. Co-location Submission at 1. The FSAR section referenced in the Co-location Submission contains further discussion of the types of fires and explosions considered. *See* FSAR § 2.2S.3. The Intervenors do not point to any specific errors in the Applicant's analysis. The Intervenors, therefore, have failed to demonstrate a genuine dispute with the Applicant on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi).

The Intervenors also do not provide any support for the proposition that the full spectrum of damage states must be discussed in the ER, or that accidents in addition to severe accidents and design basis accidents need to be considered. The Intervenors, therefore, have not met their burden of demonstrating that this part of Contention 21C is material to a finding the NRC

must make in the licensing action. § 2.309(f)(1)(iv). Finally, the Intervenors fail to meet § 2.309(f)(1)(v) for any part of the contention because they do not provide factual or expert support for their positions. For the above reasons, the Intervenors fail to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1). Contention 21C is, therefore, inadmissible.

III. New Accident Contentions (CL-1 to CL-4)

A. Contention CL-1: The STPNOC evaluation of the possible impacts of a severe accident at one of the STP units on the other STP units is inadequate.

New Accident Contentions at 3.

This broadly worded contention is divided into four bases, which the Staff will treat individually. In support of Contention CL-1, the Intervenors state that Dr. Lyman is responsible for the factual content and analysis in the contention. *See id.* and Lyman Declaration at 2.

BASIS A:

> The Amended ER §7.5S.3 states that the time from general emergency warning until the first release of radiation was of sufficient duration in all ten accident scenarios to put unaffected units into stable long term decay heat removal condition. However, in Applicant's accident scenario eight the release occurred prior to bringing unaffected units into stable long-term decay heat removal condition. Therefore, the proposed amendment to the ER is not adequately substantiated.

New Accident Contentions at 3-4. With Contention CL-1, Basis A (Contention CL-1A), the Intervenors dispute the Applicant's claim that there would be sufficient time to put the unaffected units into stable long-term decay heat removal condition before a radiation release from a severe accident occurring at one of the proposed ABWR units. *Id.*

Staff Response: In an environmental evaluation of severe accident impacts, the focus is on significant contributors to the risk of an accident. Risk is the product of the consequences of an accident and the probability that the accident will occur. E-SRP at 7.2-4. The environmental consequences of a severe accident are assessed (and compared) in terms of risk. An event could possibly occur and yet be an insignificant contributor to the overall risk of severe

accidents because of its low probability or its low consequences (or a combination thereof) in comparison with other possible severe accidents.

With Contention CL-1A, the Intervenors are attacking the evaluation of severe accidents in ER Section 7.5S.3. In this section of the ER, the Applicant states that for all ten internally initiated severe accident scenarios evaluated in the ABWR DCD, the time increment from the general emergency warning until the first release of radioactivity to the environment is greater than the time required to put an unaffected unit into a stable long-term decay heat removal condition. Co-location Submission at 4. The Applicant goes on to conclude that "any doses experienced at the control rooms of STP 1 & 2 or the unaffected ABWR unit from a severe accident at either STP 3 or 4 would not prevent the operators from completing safe shutdown of the unaffected units." *Id.* The Intervenors, however, argue that there is a flaw in the Applicant's argument with respect to an accident originating in one of the proposed units. *See* New Accident Contentions at 4-5. Specifically, the Intervenors point to the radiation release time for the Case 8 accident sequence in the ABWR DCD, which is less than the time for putting the reactors into a stable condition that the Applicant uses in its analysis. *See* New Accident Contentions at 4-5. The Intervenors claim that the Applicant must further analyze the possibility that radiological releases might reach the control rooms of the unaffected units before these units are put into stable configurations. *Id.* at 5.

While, the Intervenors may have correctly pointed out an error in the Co-location Submission, this error, alone, does not support the admission of the contention. The question is whether the issue raised by the Intervenors establishes a genuine dispute with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi).

With respect to the materiality of contentions, issues are material if they represent significant inaccuracies or omissions. The Commission, in affirming a licensing board's rejection of a contention, stated the following:

> At 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). *See also Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 259 (1996) (stating, "[I]t should be evident that not all actual or alleged errors in a decommissioning plan are of equal significance; to be significant enough to be 'material,' within the meaning of the contention rule, there needs to be some indication that an alleged flaw in a plan will result in a shortfall of the funds actually needed for decommissioning"). When the Commission amended its hearing regulations in 1989 to strengthen the standards for contention admissibility, the Commission explained that a dispute would not be considered "material" under former 10 C.F.R. § 2.714(b)(2)(iii) unless "the resolution of the dispute would make a difference in the outcome of the licensing proceeding." Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (hereinafter "1989 Part 2 Rule").[5]

What the Intervenors have shown with Contention CL-1A is that the Applicant's analysis, based on the Applicant's assumptions, is not sufficient to preclude the possibility that a severe accident at an ABWR could cause an accident at another unit. However, in Section 7.5S.6, the Applicant considered the possibility that an accident occurring at one ABWR unit could trigger a simultaneous accident at the other units. Co-Location Submission at 8. The Applicant states that the radioactivity releases of an accident at all four units would be approximately four times the release from a single unit. *Id.* The Applicant further claims that if the environmental risk for

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[5] Former § 2.714(b)(2)(iii) contained the genuine, material dispute standard that is now found, with some minor differences, in § 2.309(f)(1)(vi).

a single ABWR were to be multiplied by four, the cumulative environmental risk would not be significant. *Id.* The Intervenors do not dispute this conclusion or the analysis on which it rests. The Intervenors also do not explain how this conclusion would be materially altered by the possibility that a particular type of accident at an ABWR unit could cause a severe accident at the other units. Therefore, even though the Intervenors appear to have pointed out an error in the Applicant's analysis, they have not established that the inaccuracy in the Co-location Submission is a significant one that could make a difference to the outcome of this licensing proceeding. For this reason, the Intervenors have not established a genuine dispute on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi). Accordingly, Contention CL-1A is not admissible.

BASIS B:

> The proposed amendments to the ER do not address the radiological impact of a severe accident at an STP unit during shutdown, when the primary containment head is removed, on the other STP units.

New Accident Contentions at 5. With Contention CL-1, Basis B (Contention CL-1B), the Intervenors claim that the Co-location Submission should have accounted for severe accidents during shutdown. *Id.* To support this, the Intervenors first cite to a request for additional information (RAI) that was issued on June 17, 2009, and was directed at Chapter 19 of the Applicant's Final Safety Analysis Report (FSAR). *Id.* (citing Tom Tai, "Request for Additional Information Letter No. 124 Related to SRP Section 19 for the South Texas Project Combined License Application," Enc. at 5 (ML091671797) (RAI 19-3)). The Intervenors also support their argument with citations to the Final Safety Evaluation Report (FSER) for the ABWR design certification. New Accident Contentions at 5-6. The ABWR design certification was issued in 1997.

Staff Response: Contention CL-1B is inadmissible because it is untimely and because the Intervenors have not specifically explained how their concerns invalidate the analysis in the

Applicant's Co-location Submission. Contention CL-1B raises a generic issue and is based on documents that were issued at least six months prior to the filing of the contention.

As the language of 10 C.F.R. § 2.309(c) and (f)(2) makes clear, Intervenors have the burden of demonstrating that contentions filed after the initial filing deadline meet the late-filing standards of section 2.309(c) and (f)(2). *See Calvert Cliffs*, CLI-98-25, 48 NRC at 347. The Board's Initial Scheduling Order reminded them of this burden, *see* Initial Scheduling Order at 8-9, but the Intervenors have not attempted to meet it.

The central issue raised by the Intervenors is whether the ER adequately considers the contributions from severe accidents during shutdown. However, this issue is generally applicable to the severe accidents analysis in the ER, and is not a new issue that is specifically associated with co-location accidents. RAI 19-3, upon which the Intervenors rely, was issued as part of the safety review and was not motivated by a specific concern for co-location accident impacts. Therefore, the central issue raised by the Intervenors is a generally applicable one that could have been raised long ago. The Initial Scheduling Order provides that late contentions will be considered to be timely filed under § 2.309(f)(2)(iii) if submitted within thirty days of the date when the new, material information first becomes available. Initial Scheduling Order at 8. In this instance, the latest information relied upon by the Intervenors is RAI 19-3, issued in June 2009. The Intervenors, therefore, do not meet the three late filing factors of § 2.309(f)(2). With respect to the § 2.309(c) balancing factors, the Intervenors have not shown good cause under § 2.309(c)(1)(i) because the information they rely upon is not new and could have been raised much earlier. *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 564-65 (2005) (defining "good cause" as a showing that the petitioner (1) could not have met the filing deadline and (2) "filed as soon as possible thereafter"). Good cause is the most important of the balancing factors, *State of New Jersey*, CLI-93-25, 38 NRC at 296, and where good cause has not been shown, the showing on

the other factors must be particularly strong. *Comanche Peak*, CLI-92-12, 36 NRC at 73. The Intervenors, however, do not even attempt to make a showing on these other factors. For the foregoing reasons, the Intervenors have not met their burden of demonstrating that Contention CL-1B meets the late-filing factors of § 2.309.

The Intervenors may argue that although the issue they raise has generic implications, they are applying this issue to new information provided by the applicant. Therefore, they may argue that Contention CL-1B is timely filed with respect to the Co-location Submission. A similar argument, however, was made (and rejected) in the *Oyster Creek* license renewal proceeding. In *Oyster Creek*, the licensing board faced a situation in which the Intervenor challenged the acceptance criteria to be used for ultrasonic measurements in the sand bed region of the drywell liner that the licensee committed to performing during the renewal period. *AmerGen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 233 (2006). Originally, the license renewal application contained no commitment to performing ultrasonic testing during the renewal period. *Id.* at 231. The licensing board admitted a contention of omission claiming that the aging management program was inadequate because it failed to include periodic ultrasonic testing of the sand bed region of the drywell liner during the period of extended operation. *Id.* at 231 n.3 (quoting LBP-06-7, 63 NRC 188, 217 (2006)). After the intervention petition was submitted, the licensee later made three commitments related to the performance of ultrasonic testing during the renewal period. *Id.* at 232. The admitted contention was subsequently dismissed as moot based on the licensee's commitments. LBP-06-16, 63 NRC 737 (2006).

With respect to a subsequently filed new contention that challenged the acceptance criteria for performing ultrasonic testing during the extended period of operation, the licensing board concluded that this challenge should have been made *at the time the original intervention petition was submitted*. LBP-06-22, 64 NRC 229, 240. Although the commitments to perform

the testing had more recently been made, the acceptance criteria to be used in the testing had not been changed, had been in use for years, and had been used to assess measurements performed during the 1990s. *Id.* at 238. The licensing board reasoned that challenges to the acceptance criteria should have been made earlier. On appeal, the Commission agreed with the licensing board's reasoning and affirmed the decision on this point. CLI-09-7, 69 NRC 235, 272 (2009). In doing so, the Commission said the following:

> There simply would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding.

Id. (internal quotations omitted). The situation here is similar in that the Intervenors are raising an issue with respect to the Co-location Submission that could have been raised earlier with respect to the severe accidents analysis as a whole. Therefore, Contention CL-1B has not been timely filed and should be rejected because the Intervenors have not demonstrated that it satisfies the § 2.309 late-filing standards.

In addition, the Intervenors do not explain how the generally applicable issue they raise specifically relates to the Applicant's analysis in the Co-location Submission. The Intervenors state, in the last sentence under Basis B, that "[f]uel damage events occurring during refueling outages have a much higher risk of early large radiological releases to the environment than when the reactor is at power, and therefore should be events of particular concern with regard to any analysis of co-location environmental impacts." New Accident Contentions at 6. The Co-location Submission, however, contains several distinct analyses related to co-location impacts. The Intervenors, however, do not identify any specific portion of the Co-location Submission with which they take issue, much less explain how any specific portion of the Applicant's analysis of co-location accidents is incorrect. Thus, with respect to the analyses set forth in the Co-location Submission, the Intervenors fail to cite the specific portions of the application they

are disputing or explain how these portions of the application are incorrect. Contention CL-1B, therefore, fails to raise a genuine, material dispute with any specific part of the Contention CL-1B analysis. Contention CL-1B does not meet § 2.309(f)(1)(vi) with respect to the analyses in the Co-location Submission.

For the above reasons, Contention CL-1B is inadmissible.

BASIS C:

> The amendments to the ER fail to evaluate the impact of a severe accident at one STP unit on the other units when the initiating event of the accident is an external event such as an earthquake, that could result in common-cause failures of systems at one or more of the other units, potentially extending the time necessary for operators to put the units into stable long-term decay heat removal configurations.

New Accident Contentions at 6. The Intervenors claim that under the scenario described in Contention CL-1, Basis C (Contention CL-1C), "additional time may be required to restore operability of safety systems and achieve stable long-term configurations, increasing the risk that stable shutdown will not be achieved and core-melt may occur at one of the other units." *Id.* The Intervenors claim that excluding external events from the analysis does not make sense because they are "large – possibly dominant – contributors to the overall plant risk profile." *Id.*

Staff Response: Contention CL-1C is not admissible because it does not provide sufficient information to establish a genuine dispute with the applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). With Contention CL-1C, the Intervenors again focus on the Applicant's claim that the operators at the unaffected units would have time to put these units into a stable long-term decay heat removal condition. The Intervenors, however, do not describe which safety systems they have in mind or provide any support for the proposition that such common cause failures would be *likely* in the case of an external initiating event, and that such common cause failures would be *likely* to significantly extend the time needed to put the plant into a stable long-term decay heat removal condition. Indeed, the Intervenors only claim

that such an external event may "potentially extend[]" the time needed to achieve a stable configuration. New Accident Contentions at 6.

To be material, environmental contentions must focus on "significant inaccuracies or omissions in the ER." *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10, 13 (2005). Contentions based in speculation are not admissible. *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site) LBP-07-03, 65 NRC at 253 (2007). Finally, unsupported expert assertions, by themselves, do not offer support for an admissible contention. *See South Carolina Electric & Gas Co. & South Carolina Public Service Authority (Also Referred to as Santee Cooper)* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-01, 71 NRC __, __ (Jan. 7, 2010) (slip op. at 22 n.84) (agreeing with the Board that sufficient information to establish a genuine dispute with the applicant was not provided by an expert who used statistical and anecdotal references to the economic downturn rather than quantifying the need for power or specifically challenging the applicant's analysis*). See also USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) (internal citations omitted) ("An expert opinion that merely states a conclusion (e.g., the application is 'deficient,' 'inadequate,' or 'wrong') without providing a reasoned basis or explanation for that conclusion is inadequate . . . ."). In this instance, the Intervenors do not present an adequately explained and supported dispute with any specific portion of the application at issue. Contention CL-1C only provides vague, unsupported assertions about what might "potentially" happen. This contention, therefore, does not provide sufficient information to demonstrate a genuine dispute about a significant error or omission in the Co-location Submission. 10 C.F.R.§ 2.309(f)(1)(vi). For this reason, Contention CL-1C is inadmissible.

BASIS D:

The amended ER fails to fully evaluate the impact of a chain-reaction that leads

to more than one unit experiencing a severe accident.

New Accident Contentions at 7. In Contention CL-1, Basis D (Contention CL-1D), the Intervenors first point to the Applicant's conclusion that the environmental impact of an accident at all four units would be small because the individual impact risk associated with each plant is small. *Id.* The Intervenors then claim that in such a situation, the combined radiological consequences "*could* have a significant impact on the ABWR severe accident mitigation design alternatives analysis." *Id.* (emphasis added).

Staff Response: Contention CL-1D is not admissible because it does not provide sufficient information to demonstrate a genuine, material dispute with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). The Intervenors do not specifically explain how the ABWR SAMDA analysis would be affected. Also, although the Intervenors claim that Dr. Lyman provides expert support for Contention CL-1D, the assertions in the contention are vague and unsupported and do not support contention admissibility.

While the Intervenors cite to the Applicant's discussion in Section 7.5S.6 of the impacts of a severe accident simultaneously occurring at all four units, they do not dispute the Applicant's characterization of the cumulative environmental impacts as being "SMALL." Rather, the Intervenors bring up the SAMDA analysis for the ABWR and claim, without support, that this analysis "could" be significantly impacted. New Accident Contentions at 7. The determination of the environmental impacts of a severe accident in terms of risk, however, is a different analysis than the determination of whether there is an appropriate severe accident mitigation alternative (SAMA) for severe accidents. As the Commission explained:

> The purpose of the SAMA review is to ensure that any plant changes - in hardware, procedures, or training - that have a potential for significantly improving severe accident safety performance are identified and assessed. If the cost of implementing a particular SAMA is greater than its associated benefit, the SAMA would not be considered cost-beneficial. SAMAs, in short, are rooted in a cost-benefit assessment.

Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units and 2), CLI-02-17, 56 NRC 1, 5 (2002).

SAMDAs are a subset of SAMAs that focus on design alternatives. The Intervenors, however, do not explain how the SAMDA analysis for the ABWR would be affected, and indeed, they only claim that it "could" be significantly impacted. New Accident Contentions at 7. The Intervenors, therefore, have not pointed to a significant inaccuracy or omission in the relevant environmental analysis. *See Grand Gulf*, CLI-05-4, 61 NRC at 13. Moreover, to the extent there is any expert support for the contention, it consists of vague, conclusory allegations that do not support contention admissibility. *See USEC,* CLI-06-10, 63 NRC at 472. For the foregoing reasons, Contention CL-1D is inadmissible because it fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi).

B. Contention CL-2: The Applicant's quantification of the probable replacement power costs in the event of a forced shutdown of nuclear units on the STP site is inadequate and understates the replacement power costs which would be incurred.

New Accident Contentions at 7.

Based on an analysis by their proffered expert, Mr. Johnson, the Intervenors claim that the Applicant understates the "per day" replacement power costs resulting from a severe accident at an ABWR by a factor of between 3 and 3.8. *Id.* at 8. Mr. Johnson bases his opinion on an analysis of replacement power costs that relies on the price of gas-fired generation in the Electric Reliability Council of Texas (ERCOT). *See* Johnson Report at 3-4. Mr. Johnson concludes that the replacement power costs for an ABWR at the STP site is $1.66 million per day (or $1.3 million per day for a six year period using a 7% discount rate). *Id.* at 4. Mr. Johnson contrasts this result with a figure of $430,000 that he believes was used by the Applicant. *Id.*

Staff Response: As explained below, Contention CL-2 is inadmissible because it fails to

demonstrate a genuine, material dispute with the Applicant over whether there is a cost-beneficial SAMDA, as required by 10 C.F.R. § 2.309(f)(1)(vi). In addition, a portion of the application that the Intervenors implicitly dispute involves issues that are not material to the licensing decision. 10 C.F.R. § 2.309(f)(1)(iv).

Section 7.5S.5 of the Co-location Submission examines the economic impacts of a temporary shutdown of the unaffected units. Co-location Submission at 6. The analysis quantifies "the onsite exposure and cleanup costs at the unaffected units together with replacement power costs from an outage at the unaffected units." *Id.* The method used is analogous to the one used in Section 7.3 of the ER, except that Section 7.3 focuses on a single affected unit. *Id.* Section 7.3 of the ER examines severe accident mitigation alternatives (SAMAs). As explained in the Staff's response to Contention CL-1D, SAMA analyses are rooted in a cost-beneficial assessment. ER Section 7.3 outlines a four step process for identifying SAMAs that examines the costs of implementing the SAMA with the benefit to be provided by the SAMA. *See* ER Section 7.3 at 7.3-1 to -2. "Those SAMAs with reasonable cost-benefit ratios are considered for implementation." *Id.* at 7.3-2.

Section 7.5S.5 calculates the cost-risk from an accident at one unit on an unaffected unit for three different scenarios: (1) the cost-risk of an accident at the proposed unit on the other proposed unit, (2) the cost-risk of an accident at the proposed unit on an existing unit, and (3) the cost-risk of an accident at an existing unit on one of the proposed units. Co-location Submission at 7, 9. Replacement power cost is one component of the cost-risk. *Id.* After calculating the economic impacts at the unaffected units, Section 7.5S.5 concludes that, for accidents originating at the proposed units, the "Section 7.3 conclusion that there is no cost-effective ABWR operation design change holds for the mitigation of impacts at other site units." *Id.* at 8. Section 7.5S.5 also concludes that, for an accident originating at the existing units, there are no cost-effective severe accident mitigation design alternatives (SAMDAs) for

mitigating the consequences of a large radiation release from STP Units 1 and 2. *Id.* In support of this latter conclusion, the Co-location Submission cites to Reference 7.5S-3, Technical Support Document for the ABWR, Revision 1. *Id.* at 7, 8.

The Intervenors do not meet their burden of establishing a genuine dispute with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). Even assuming that the power replacement cost figure used by the Applicant is off by a factor of 3.8, the Intervenors have not demonstrated how this could potentially lead to the identification of a cost-beneficial SAMDA. In addition and as explained below, a portion of ER Section 7.5S.5 involves issues that are not material to the licensing decision.

With respect to the materiality of contentions, the Commission, in affirming a licensing board's rejection of a contention, stated the following:

> At 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.

Grand Gulf, CLI-05-4, 61 NRC at 13. *See also Yankee Nuclear*, CLI-96-7, 43 NRC at 259 (stating that a flaw in a decommissioning plan is material for contention admissibility purposes if there is an indication that the alleged flaw will result in a shortfall of the funds needed for decommissioning); *and* 1989 Part 2 Rule, 54 Fed. Reg. 33,168, 33,172 (stating that a dispute is not material unless resolving the dispute could make a difference in the outcome of the licensing proceeding).

In the context of a SAMDA evaluation, a dispute would be material if its resolution could result in the identification of a cost-beneficial SAMDA. The Intervenors, however, only take issue with one component of the cost-risk in the Applicant's analysis, described above. They do not show how this would affect the overall cost-risk figure or show whether such a change might result in the identification of a cost-beneficial SAMDA. For this reason, the Intervenors have not met their burden to provide sufficient information to demonstrate a genuine, material dispute

with the Applicant on a material issue of law or fact with respect to Scenarios 1 and 2. *See* 10 C.F.R. § 2.309(f)(1)(vi).

The cost-risk for Scenario 3 is much higher than the cost-risk for Scenarios 1 and 2, but, although included in the Applicant's Co-location Submission, the cost-risk calculated for Scenario 3 is not material to a finding the NRC must make to issue the license. 10 C.F.R. § 2.309(f)(1)(iv). Scenario 3 addresses the cost-risk for an accident occurring at the existing units. This proceeding, however, is addressing the licensing of the proposed units, and only contentions relating to the environmental impacts of the proposed units could be material to this proceeding. The Board, in originally admitting Contention 21, cited to the E-SRP for the proposition that in the severe accident context, "'[t]he events arising from causes external to the plant that are considered possible contributors to the risk associated with the plant should be discussed.'" *South Texas Project*, LBP-09-21, 70 NRC at __, slip op. at 38-39 (quoting E-SRP at 7.2-3). This quotation, however, relates to external events that could be a contributor to the risk of a severe accident occurring at the proposed reactor that is the subject of the proceeding.

External events significantly contributing to the risk of an accident at the proposed reactors could be material to this proceeding because they have the potential to trigger an accident at the *proposed units*, which could result in environmental impacts from the proposed units. The cost-risk calculated for Scenario 3, however, relates to the risk-based consequences of an accident at the *existing units* and does not address the contribution to the risk of a severe accident occurring at the proposed units. While the consideration of SAMDAs to mitigate the environmental consequences of the *proposed action* is a valid NEPA consideration, the consideration of SAMDAs at the proposed units to mitigate the environmental consequences of the *existing reactors* is not a valid NEPA consideration. The Scenario 3 cost-risk calculation and the portions of any contentions related to it, therefore, are not material to the findings that must be made to license the proposed reactors. 10 C.F.R. § 2.309(f)(1)(iv). Thus, although the

cost-risk calculation for Scenario 3 is included in the Applicant's ER, the NRC has the ultimate responsibility for producing an EIS, not the Applicant. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-02, 71 NRC at __ (Jan. 7, 2010) (slip op. at 7-8). While the ER provides information that the NRC can use in discharging its responsibilities, the Applicant cannot expand or reduce the scope of the NRC's environmental review.

For the above reasons, Contention CL-2 is inadmissible.

C. Contention CL-3: The Applicant's quantification of the replacement power costs in the event of a forced shutdown of nuclear units on the STP site is inadequate in that it does not take into account the increase of ERCOT market prices due to the market effects of a STP outage.

New Accident Contentions at 8.

In Contention CL-3, the Intervenors rely upon the conclusions of Mr. Johnson, who claims that a forced shutdown of the STP units would cause an increase in ERCOT market prices that should have been considered by the Applicant in determining the cost of replacement power. *Id.* at 8-9. Mr. Johnson believes that "[r]emoving STP generation will change the marginal units for most time intervals; in essence, removing STP from the bottom of the bid stack will have a domino impact which allows units to set the market price which are less efficient than the units which were on the margin when STP generation was on line." Johnson Report at 5. Mr. Johnson claims that this impact should have been evaluated by the Applicant, but he did not attempt to assess this impact. *Id.*

Staff Response: Contention CL-3 is inadmissible because it fails to provide sufficient information to demonstrate a genuine dispute with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). As explained below, the Intervenors do not provide a reason to believe that the replacement power cost figure would be substantially changed because of any changes in market conditions, nor do they attempt to show how the SAMDA analysis in ER Section 7.5S.5 would be substantially affected.

Mr. Johnson does not attempt to estimate the extent of any potential increases in the cost of replacement power above and beyond the daily replacement cost value that was the subject of Contention CL-2. As explained in the Staff Response to Contention CL-2, replacement power costs are just one component of the monetized impact of a severe accident, and differences in the monetized impact of a severe accident would only become material if a cost-beneficial SAMDA could be identified. Here, the Intervenors provide no reason to believe that any difference in the replacement power cost would be substantial, much less show that such a difference could be material to the SAMDA evaluation. 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). Contention CL-3 does not show that the market effects analysis desired by the Intervenors would be a worthwhile inquiry, nor does it point to any significant inaccuracies or omissions in the Co-location Submission as the NRC contention rule requires. *See Grand Gulf*, CLI-05-4, 61 NRC at 13. Mr. Johnson's assertion that market effects on replacement power costs should be considered in the severe accidents context does not create a genuine, material dispute with the Applicant. *See Summer*, CLI-10-01, 71 NRC at __, slip op. at 22 n.84.

For the above reasons, Contention CL-3 does not demonstrate a genuine dispute with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). Contention CL-3 is not admissible.

D. Contention CL-4: The Applicant's Environmental Report is inadequate in that it does not evaluate or take into account the impacts on ERCOT consumers and the disruptive impacts of potential price spikes and grid outages, which could be triggered by the simultaneous shutdown of all four units at STP.

New Accident Contentions at 9.

Contention CL-4 focuses on the impacts to consumers of electricity. The Intervenors

claim that a shutdown of the STP reactors would cause increases in electricity prices and is likely to produce price spikes. *Id.* According to the Intervenors, price spikes, in turn, could have direct impacts on electricity prices and indirectly cause economic dislocation. *Id.* The Intervenors also claim that it is possible that a shutdown of the STP reactors could cause controlled or uncontrolled outages, which themselves might cause economic damage. *Id.* at 9-10.

Staff Response: Contention CL-4 is inadmissible because it fails to provide sufficient information to demonstrate a genuine dispute with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). As explained below, the Intervenors fail to explain how the issues they raise might materially affect the SAMDA evaluation, i.e., lead to the identification of a cost-beneficial SAMDA. Therefore, the Intervenors have not demonstrated that the analyses they desire would constitute a worthwhile effort within NEPA's rule of reason. *See Private Fuel Storage,* CLI-04-22, 60 NRC at 139 (2004).

Regarding consumer price increases, Mr. Johnson states that the increase "depends on many factors, including supplier market power during particular time intervals, the ERCOT reserve margins after the outage occurs, the ability of the market to adjust supply, and the elasticity of demand." Johnson Report at 5. Mr. Johnson then presents the results of a sensitivity calculation that assumes a $10 increase in the ERCOT market price, Johnson Report at 5, but he never explains how he performed this sensitivity calculation or why a $10 increase is likely. Mr. Johnson also does not attempt to explain how such potential market affects might lead to the identification of a cost-beneficial SAMDA. Accordingly, his report does not provide adequate support for this contention, *see Summer*, CLI-10-01, 71 NRC at __, slip op. at 22 n.84, and does not provide sufficient information pointing to a significant omission or inaccuracy in the Applicant's SAMDA analysis. *See Grand Gulf*, CLI-05-4, 61 NRC at 13.

Mr. Johnson also discusses the possibility of price spikes, the direct and indirect impacts

of price spikes, and the possibility of grid outages. Johnson Report at 5-7. Mr. Johnson states that the magnitude and frequency of price spikes could depend on many factors. *Id.* Mr. Johnson, however, fails to explain how price spikes would impact the risk-based monetized costs of a severe accident discussed in Section 7.5S.5, much less explain how these impacts might lead to the identification of a cost-beneficial SAMDA. Mr. Johnson also discusses the possibility that price impacts could include economic dislocation, *id.*, but he only does so in vague terms and does not explain how the Applicant's SAMDA analysis might be materially affected. In discussing the possibility of grid outages, Mr. Johnson concedes that the probability of outages "may not be high," and his discussion focuses on examples that he admits are "extreme." *Id.* at 7. Mr. Johnson also does not explain how any grid outage impacts would factor into the discussion of monetized costs in Section 7.5S.5 or how a cost-beneficial SAMDA might thereby be identified. The Johnson Report, therefore, does not constitute adequate support for Contention CL-4, *See Summer*, CLI-10-01, 71 NRC at __, slip op. at 22 n.84, and does not provide sufficient information pointing to a significant omission or inaccuracy in the Applicant's SAMDA analysis. *See Grand Gulf*, CLI-05-4, 61 NRC at 13.

For the above reasons, Contention CL-4 does not demonstrate a genuine dispute with the Applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). Contention CL-4 is not admissible.

CONCLUSION

As explained above, none of the amended and new accident contentions submitted by the Intervenors satisfy the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). In

addition, Contention CL-1B is untimely, and the Intervenors have not demonstrated that it meets the late-filing factors in 10 C.F.R. § 2.309(c) and (f)(2). For these reasons, the Intervenors amended and new contentions should be dismissed.

Respectfully submitted,

/Signed (electronically) by/
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Dated at Rockville, Maryland
this 22nd day of January 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
	)	
STP NUCLEAR OPERATING COMPANY	)	Docket Nos. 52-012 & 52-013
	)	
	)	
(South Texas Project, Units 3 & 4)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC Staff's Answer to the Intervenors' Amended and New Accident Contentions," have been served upon the following persons by Electronic Information Exchange this 22nd day of January 2010:

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