

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	
	)	
STP NUCLEAR OPERATING COMPANY	)	Docket Nos. 50-498-LR
	)	50-499-LR
(South Texas Project, Units 1 and 2)	)	
	)	April 7, 2011

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**STP NUCLEAR OPERATING COMPANY'S ANSWER OPPOSING  
REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE**

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**I. INTRODUCTION**

In accordance with 10 C.F.R. § 2.309(h), STP Nuclear Operating Company (“STPNOC”) hereby timely files its Answer to the “Petition for Leave to Intervene and Request for Hearing” (“Petition”) jointly filed by SEED Coalition and Susan Dancer (“Petitioners”) on March 14, 2011. The Petition proffers four proposed contentions. Three of the proposed contentions relate to the requirements of 10 C.F.R. § 50.54(hh)(2) for mitigative strategies for loss of large areas (“LOLA”) of the plant due to fires or explosions, and the remaining proposed contention relates to reduced demand for electricity due to adoption of an energy efficient building code in Texas.

To be granted a hearing in this license renewal proceeding, a petitioner must demonstrate standing and submit at least one admissible contention.<sup>1</sup> STPNOC does not challenge Petitioners’ standing. All of Petitioners’ proposed contentions, however, are inadmissible. Therefore, the Petition should be denied in its entirety.

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<sup>1</sup> See 10 C.F.R. § 2.309(a).

## II. BACKGROUND

South Texas Project (“STP”) is a two-unit pressurized water reactor facility located in Matagorda County, Texas, which is designed to generate baseload electrical power.<sup>2</sup> The operating licenses for STP Units 1 and 2 (License Nos. NPF-76 and NPF-80) expire at midnight on August 20, 2027 and December 15, 2028, respectively.<sup>3</sup> On October 28, 2010, the NRC received the STPNOC License Renewal Application (“Application”),<sup>4</sup> which requested that the Nuclear Regulatory Commission (“NRC” or “Commission”) renew the operating licenses for STP Units 1 and 2 for an additional twenty years; *i.e.*, until midnight on August 20, 2047 and December 15, 2048, respectively.<sup>5</sup> The NRC accepted the Application for docketing and published a Hearing Notice in the *Federal Register* on January 13, 2011.<sup>6</sup> The Hearing Notice required any person who wishes to participate as a party in this proceeding to file a written request for a hearing and petition to intervene within 60 days of its publication (*i.e.*, by March 14, 2011) in accordance with 10 C.F.R. § 2.309.<sup>7</sup> Petitioners filed their Petition on March 14, 2011.

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<sup>2</sup> License Renewal Application, South Texas Project Unit 1 and Unit 2, at 1.3-1 (Oct. 2010) (“Application”), available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/south-texas-proj/south-texas-project-lra.pdf>.

<sup>3</sup> *Id.* at 1.1-1.

<sup>4</sup> Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Numbers NPF-76 and NPF-80 for an Additional 20-Year Period, STP Nuclear Operating Company, South Texas Project, Units 1 and 2, 76 Fed. Reg. 2426, 2426 (Jan. 13, 2011) (“Hearing Notice”).

<sup>5</sup> Applicant’s Environmental Report – Operating License Renewal Stage, South Texas Project Units 1 & 2, at 1.1-1 (Sept. 2010) (“ER”), available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/south-texas-proj/south-texas-project-enviro.pdf>.

<sup>6</sup> See Hearing Notice, 76 Fed. Reg. at 2426-28.

<sup>7</sup> *Id.* at 2427.

### III. RESPONSE TO PETITIONERS' PROPOSED CONTENTIONS

#### A. Contention Admissibility Standards

Under 10 C.F.R. § 2.309(f)(1), a hearing request “must set forth with particularity the contentions sought to be raised.” In addition, that regulation specifies that each contention must: (1) provide a specific statement of the legal or factual issue sought to be raised or controverted; (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 the specific sources and documents that support the petitioner’s position and upon which the petitioner intends to rely; and (6) provide sufficient information to show that a genuine dispute exists on a material issue of law or fact.<sup>8</sup>

The purpose of these six criteria is to “focus litigation on concrete issues and result in a clearer and more focused record for decision.”<sup>9</sup> The Commission has clearly 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.”<sup>10</sup>

The Commission’s rules on contention admissibility are “strict by design.”<sup>11</sup> The rules were “toughened . . . in 1989 because in prior years ‘licensing boards had admitted and litigated

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<sup>8</sup> See 10 C.F.R. § 2.309(f)(1)(i)-(vi).

<sup>9</sup> Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

<sup>10</sup> *Id.*

<sup>11</sup> *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

numerous contentions that appeared to be based on little more than speculation.”<sup>12</sup> As the Commission has stated:

Nor does our practice permit “notice pleading,” with details to be filled in later. Instead, we require parties to come forward at the outset with sufficiently detailed grievances to allow the adjudicator to conclude that genuine disputes exist justifying a commitment of adjudicatory resources to resolve them.<sup>13</sup>

Failure to comply with any one of the six admissibility criteria is grounds for rejecting a contention.<sup>14</sup>

**B. Petitioners’ Proposed Contentions Do Not Satisfy the Admissibility Criteria of 10 C.F.R. § 2.309(f)(1)**

**1. Proposed Contentions 1, 2, and 3 (Mitigative Strategies for LOLA Events)**

Proposed Contentions 1, 2, and 3 all relate to consideration of mitigative strategies for LOLA events under 10 C.F.R. § 50.54(hh)(2):

- Proposed Contention 1 states: “The Applicant’s License Renewal Application and Environmental Report fail to adequately address the Applicant’s capacity to deal with fires and explosions that cause a loss of large areas (LOLA) of the plant. This requirement for mitigative strategies related to LOLA events is specified at 10 C.F.R. 50.54(hh)(2).”<sup>15</sup>
- Proposed Contention 2 states: “The Applicant’s License Renewal Application is deficient because it does not describe the means that it will use to determine radiation exposures to LOLA responders.”<sup>16</sup>
- Proposed Contention 3 states: “The Applicant’s License Renewal Application is deficient because it does not describe the means that it will use to protect LOLA responders from excessive radiation exposures.”<sup>17</sup>

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<sup>12</sup> *Id.* (citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 334 (1999)).

<sup>13</sup> *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999).

<sup>14</sup> *See* Changes to Adjudicatory Process, 69 Fed. Reg. at 2221; *see also* *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

<sup>15</sup> Petition at 4. The pages of the Petition are not numbered. All citations made in this Answer to specific pages of the Petition refer to the pages of the PDF document at ADAMS Accession No. ML110740848.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 5.

As demonstrated below, these proposed contentions should be dismissed because they are outside the scope of the proceeding, are not material, are not supported by alleged facts or expert opinions, and do not show that a genuine dispute of material law or fact exists. Therefore, these proposed contentions do not satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1)(iii)-(vi), and should be rejected in their entirety.

*a. Proposed Contentions 1, 2, and 3 Are Outside the Scope of the Proceeding*

Proposed Contentions 1, 2, and 3 all relate to the requirements of 10 C.F.R. § 50.54(hh)(2).<sup>18</sup> By way of background, Section 50.54(hh)(2) arose out of the security orders following the events of September 11, 2001.<sup>19</sup> It requires that licensees preplan strategies to cope with beyond design basis events.<sup>20</sup> Section 50.54(hh)(2) states:

Each licensee shall develop and implement guidance and strategies intended to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire, to include strategies in the following areas:

- (i) Fire fighting;
- (ii) Operations to mitigate fuel damage; and
- (iii) Actions to minimize radiological release.

As explained below, issues related to Section 50.54(hh)(2) are outside the scope of license renewal proceedings.

The Commission has stated that “[a]djudicatory hearings in individual license renewal proceedings will share the same scope of issues as our NRC Staff review, for our hearing process (like our Staff’s review) necessarily examines only the questions our safety rules make

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<sup>18</sup> See *id.* at 4-6.

<sup>19</sup> See Final Rule, Power Reactor Security Requirements, 74 Fed. Reg. 13,926, 13,926 (Mar. 27, 2009).

<sup>20</sup> See *id.* at 13,928.

pertinent.”<sup>21</sup> In this regard, the Commission has specifically limited its license renewal safety review to the matters specified in 10 C.F.R. §§ 54.21 and 54.29, which focus on the management of aging of certain systems, structures and components, and the review of time-limited aging analyses.<sup>22</sup> Specifically, applicants must “demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation,” at a “detailed . . . ‘component and structure level,’ rather than at a more generalized ‘system level.’”<sup>23</sup> Thus, the “potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs” are the issues that define the scope of the safety review in license renewal proceedings.<sup>24</sup>

The NRC’s license renewal regulations thus deliberately and sensibly reflect the distinction between *aging management issues*, on the one hand, and the *ongoing regulatory process* (e.g., security and emergency planning issues) on the other.<sup>25</sup> The NRC’s longstanding license renewal framework is premised upon the notion that, with the exception of aging management issues, the NRC’s ongoing regulatory process is adequate to ensure that the current

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<sup>21</sup> *Fla. Power & Light Co.* (Turkey Point Nuclear Power Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 10 (2001); see also Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,482 n.2 (May 8, 1995).

<sup>22</sup> See *Turkey Point*, CLI-01-17, 54 NRC at 7-8; *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363 (2002).

<sup>23</sup> *Turkey Point*, CLI-01-17, 54 NRC at 8 (quoting Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. at 22,462).

<sup>24</sup> *Turkey Point*, CLI-01-17, 54 NRC at 7. Detrimental aging effects can result from, for example, metal fatigue, erosion, corrosion, thermal and radiation embrittlement, microbiologically induced effects, creep, and shrinkage. See *id.* at 7-8.

<sup>25</sup> Specifically, in developing Part 54, the NRC sought “to develop a process that would be both efficient, avoiding duplicative assessments where possible, and effective, allowing the NRC Staff to focus its resources on the most significant safety concerns at issue during the renewal term.” *Id.* at 7. See also *AmerGen Energy Co., LLC* (License Renewal for Oyster Creek Nuclear Generating Station), CLI-07-08, 65 NRC 124, 129 (2007) (reiterating that security issues are unrelated to the detrimental effects of aging, and are outside the scope of license renewal proceedings).

licensing basis (“CLB”) of operating plants provides and maintains an acceptable level of safety.<sup>26</sup> As the Commission explained in *Turkey Point*:

[CLB is] a term of art comprehending the various Commission requirements applicable to a specific plant that are in effect at the time of the license renewal application. . . . The [CLB] represents an “evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety.” 60 Fed. Reg. at 22,473. It is effectively addressed and maintained by ongoing agency oversight, review, and enforcement.<sup>27</sup>

For that reason, the Commission concluded that requiring a full reassessment of safety issues that continue to be “routinely monitored and assessed by ongoing agency oversight and agency-mandated licensee programs” would be “both unnecessary and wasteful.”<sup>28</sup> The Commission reasonably refused to “throw open the full gamut of provisions in a plant’s current licensing basis to re-analysis during the license renewal review.”<sup>29</sup>

Contentions seeking to challenge the adequacy of the CLB for the STP facility are clearly outside the scope of this license renewal proceeding.<sup>30</sup> Thus, for example, issues pertaining to emergency planning are excluded from consideration in license renewal proceedings, because “[e]mergency planning is, by its very nature, *neither germane to age-related degradation nor*

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<sup>26</sup> See Final Rule, Nuclear Power Plant License Renewal; Revisions, 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991). The term “current licensing basis” is defined in 10 C.F.R. § 54.3. See also 10 C.F.R. §§ 54.29, 54.30.

<sup>27</sup> *Turkey Point*, CLI-01-17, 54 NRC at 9.

<sup>28</sup> *Id.* at 7.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> See *id.* at 8-9, 23; see also *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 117-18 (2006) (holding that “review of a license renewal application does not reopen issues relating to a plant’s current licensing basis, or any other issues that are subject to routine and ongoing regulatory oversight and enforcement”); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-26, 56 NRC 358, 364 (2002) (“This agency’s ongoing regulatory oversight programs routinely address many safety issues and will continue to address them in years 41 through 60 of a plant’s life . . .”).



*unique to the period covered by the . . . license renewal application.*<sup>31</sup> Likewise, the NRC has stated that issues such as “quality assurance, physical protection (security), and radiation protection requirements[ ] are not subject to physical aging processes that may cause noncompliance with those aspects of the CLB.”<sup>32</sup>

Section 50.54(hh)(2) issues are part of the CLB. The CLB is defined to include “the NRC regulations contained in 10 CFR part[ ] . . . 50 . . . [and] license conditions.”<sup>33</sup> Section 50.54 states that paragraphs within the section, including Section 50.54(hh)(2), “are conditions in every nuclear power reactor operating license issued under this part.” Therefore, because Section 50.54(hh)(2) is contained in 10 C.F.R. Part 50 and is a license condition, it is clearly within the CLB. As part of the CLB, and because they are unrelated to aging management, Section 50.54(hh)(2) issues are outside the scope of this proceeding.<sup>34</sup> These issues are addressed by the NRC’s ongoing regulatory process and are neither germane to aging management nor unique to the proposed period of extended operation requested in the Application. For these reasons alone, proposed Contentions 1, 2, and 3 should be rejected.

In proposed Contention 1, Petitioners attempt to bring LOLA mitigation into the scope of this proceeding by simply pointing to Applicant’s Final Safety Analysis Report Supplement, Section A1.12.<sup>35</sup> Section A1.12, however, addresses aging management of fire protection

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<sup>31</sup> *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station Units 2 & 3), CLI-05-24, 62 NRC 551, 561 (2005).

<sup>32</sup> Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. at 22,475.

<sup>33</sup> 10 C.F.R. § 54.3(a).

<sup>34</sup> *Turkey Point*, CLI-01-17, 54 NRC at 7-9; *McGuire/Catawba*, CLI-02-26, 56 NRC at 364.

<sup>35</sup> Petition at 4.

systems.<sup>36</sup> This section does not mention LOLA mitigation or any other issues related to Section 50.54(hh)(2).<sup>37</sup>

Similarly, in proposed Contentions 2 and 3, Petitioners refer to Environmental Report (“ER”) Sections 4.21.9 and 4.21.10 in an attempt to bring these contentions within the scope of the proceeding.<sup>38</sup> As a threshold matter, Petitioners fail to recognize that 10 C.F.R. § 50.54(hh)(2) is a safety regulation that is irrelevant to an environmental analysis performed under the National Environmental Policy Act (“NEPA”). Moreover, Sections 4.21.9 and 4.21.10 address the cumulative impacts of postulated accidents and radiological health impacts given the extended operation of STP Units 1 and 2 and other past, present, and reasonably foreseeable future actions, such as possible construction of STP Units 3 and 4.<sup>39</sup> These subjects are unrelated to the topics of proposed Contentions 2 and 3; *i.e.*, means to determine radiation exposures to LOLA responders and protection of LOLA responders from excessive radiation exposures.<sup>40</sup> ER Sections 4.21.9 and 4.21.10 do not mention LOLA mitigation or any other issues related to Section 50.54(hh)(2).

For all of these reasons, these proposed contentions should be denied as outside the scope of the proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

*b. Proposed Contentions 1, 2, and 3 Are Not Material*

A petitioner must demonstrate “that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.”<sup>41</sup> As the

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<sup>36</sup> Application at A-6.

<sup>37</sup> Additionally, 10 C.F.R. § 54.4(a)(3) makes clear that the evaluation of fire protection during license renewal is related to 10 C.F.R. § 50.48, not 10 C.F.R. § 50.54(hh)(2).

<sup>38</sup> Petition at 5.

<sup>39</sup> ER Ch. 4, at 44, 51-52.

<sup>40</sup> See Petition at 4-5.

<sup>41</sup> 10 C.F.R. § 2.309(f)(1)(iv).

Commission has observed, “[t]he dispute at issue is ‘material’ if its resolution would ‘make a difference in the outcome of the licensing proceeding.’”<sup>42</sup> The findings that the NRC must make prior to issuing a renewed license are found in 10 C.F.R. § 54.29. Since Section 54.29 does not implicate Section 50.54(hh)(2) or other LOLA mitigation issues, the determination that such a discussion is lacking or incorrect has no bearing on the outcome of the proceeding. Therefore, Petitioners have failed to show that these proposed contentions are material to the current proceeding, and have not satisfied 10 C.F.R. § 2.309(f)(1)(iv).

*c. Proposed Contentions 1, 2, and 3 Are Not Adequately Supported*

Further underscoring their inadmissibility, the proposed contentions are devoid of supporting alleged facts or expert opinions. For example, proposed Contention 1 merely states: “Based on information and belief, the Applicant’s mitigative strategies for addressing LOLA events are inadequate to address the consequences of events such as the impacts of large commercial aircraft into the Applicant’s power plants and related facilities.”<sup>43</sup> This conclusory sentence is the full statement of supporting alleged facts and expert opinions. A similar single sentence of alleged support is provided for proposed Contentions 2 and 3.<sup>44</sup>

Such “notice pleading” does not support admission of the proposed contentions.<sup>45</sup> The Petition does not in any way describe a single inadequacy with the contents of the Application nor does it point to any study or expert describing improper treatment of LOLA mitigation in the Application. These proposed contentions simply purport to be made on “information and

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<sup>42</sup> *Oconee*, CLI-99-11, 49 NRC at 333-34 (citing Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989)).

<sup>43</sup> Petition at 4.

<sup>44</sup> *See id.* at 4-5.

<sup>45</sup> *Seabrook*, CLI-99-6, 49 NRC at 219 (holding that mere notice pleading, based on nothing more than unspecified information and unsupported belief, is insufficient for a petition to intervene).

belief.”<sup>46</sup> There is absolutely no indication, however, of what “information” supports the proposed contentions, nor an explanation of the purported “belief.” The Commission has found that an admissible contention may not rest on such “bare assertions and speculation.”<sup>47</sup> Proposed Contentions 1-3 are text book examples of bare assertions. Therefore, these proposed contentions should be denied pursuant to 10 C.F.R. § 2.309(f)(1)(v).

*d. Proposed Contentions 1, 2, and 3 Do Not Raise a Genuine Dispute*

Petitioners seem to claim that the discussion of LOLA mitigation strategies in the Application is inadequate. Because the Application does not discuss LOLA mitigation strategies at all, these proposed contentions are most appropriately viewed as contentions of omission. Petitioners, however, have failed to point to an applicable regulation requiring this discussion to be included, contrary to 10 C.F.R. § 2.309(f)(1)(vi). Instead, Petitioners cite 10 C.F.R. § 52.80(d), which only applies to applicants for a combined license (“COL”).<sup>48</sup> Section 52.80(d) does not apply to license renewal. These proposed contentions cite an inapplicable regulation as their basis. Therefore, these proposed contentions should be denied pursuant to 10 C.F.R. § 2.309(f)(1)(vi) because they do not demonstrate a genuine dispute.<sup>49</sup>

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In summary, proposed Contentions 1, 2, and 3 are outside the scope of the license renewal proceeding, are not material, are not supported by alleged facts or expert opinions, and

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<sup>46</sup> Petition at 5.

<sup>47</sup> *Fansteel, Inc.* (Muskogee, Okla. Site), CLI-03-13, 58 NRC 195, 203 (2003) (citing *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)).

<sup>48</sup> See 10 C.F.R. § 52.80 (identifying content requirements for a combined license application). Petitioners have raised contentions related to Section 50.54(hh)(2) in both the STP and Comanche Peak combined license proceedings. In these new reactor proceedings, Section 52.80(d) was the appropriate regulation. For license renewal proceedings, however, there is no equivalent regulation.

<sup>49</sup> See, e.g., *Calvert Cliffs 3 Nuclear Project, LLC* (Combined License Application for Calvert Cliffs Unit 3), LBP-09-04, 69 NRC 170, 189-90 (2009) (holding that a “contention of omission must describe the information that should have been included in the [application] and provide the legal basis that requires the omitted information to be included”).

do not demonstrate that a genuine dispute of material law or fact exists. Accordingly, for each of these reasons, these proposed contentions should be rejected in their entirety.

**2. Proposed Contention 4 (Decline in Demand due to Energy Efficient Building Code)**

Proposed Contention 4 simply states: “The Applicant’s License Renewal Application is deficient because it does not determine the projected decline in demand for electricity attributable to adoption of energy efficient building code in Texas.”<sup>50</sup> Petitioners then jump to the conclusion that adoption of an energy efficient building code will result in energy savings of approximately 2,362 MW by 2023.<sup>51</sup>

As demonstrated below, this proposed contention should be dismissed because it is outside the scope of the proceeding, is not supported by alleged facts or expert opinions, and does not raise a genuine dispute of material law or fact. Therefore, proposed Contention 4 does not satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1)(iii), (v), and (vi), and should be rejected in its entirety.

*a. Proposed Contention 4 Is Outside the Scope of the Proceeding*

Proposed Contention 4 is a *de facto* challenge to the need for power from STP Units 1 and 2. Petitioners claim that the Application fails to “specify the estimated diminished demand anticipated from adoption of the energy efficient building code.”<sup>52</sup> Without supporting facts, Petitioners conclude that this energy efficient building code will result in energy savings of approximately 2,362 MW by 2023, which would nearly offset the net electrical output from STP Units 1 and 2.<sup>53</sup>

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<sup>50</sup> Petition at 6.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

Although Petitioners provide absolutely no basis or references for their conclusion, they appear to be referring to the same issues they raised in the STP Units 3 and 4 COL proceeding.<sup>54</sup> Specifically, in the COL proceeding Petitioners submitted a proposed contention claiming that the need for power evaluation in the Draft Environmental Impact Statement for STP Units 3 and 4 failed to account for reduced demand that would result from a proposed adoption of an energy efficient building code.<sup>55</sup> Similar to their proposed contention in this proceeding, Petitioners argued that adoption of the energy efficient building code could reduce demand by 2,362 MW by 2023.<sup>56</sup> The licensing board in the STP Units 3 and 4 COL proceeding took notice that Texas adopted the energy efficient building code on June 4, 2010, and admitted the proposed contention as a contention of omission.<sup>57</sup> The licensing board ruled that the contention is a *need for power* contention.<sup>58</sup> Contention 4 is based on the same underlying information, and similarly is a need for power contention.

The regulations governing the content of an ER for license renewal, 10 C.F.R. § 51.53(c)(2), clearly state that the ER “is not required to include discussion of need for power.”<sup>59</sup> Therefore, because an evaluation of the need for power from STP Units 1 and 2 is not required to be included in the ER, Petitioners’ arguments are outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii), and do not support an admissible contention.

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<sup>54</sup> See *Nuclear Innovation N. Am. LLC* (S. Tex. Project Units 3 & 4), LBP-11-07, 73 NRC \_\_\_, slip op. at 41-48 (Feb. 28, 2011).

<sup>55</sup> *Id.* at 41-42.

<sup>56</sup> *Id.* at 42.

<sup>57</sup> *Id.* at 42, 48 (citing 35 Tex. Reg. 4727, 4728 (June 4, 2010) (adopting Final Rule, 34 Tex. Admin. Code § 19.53)).

<sup>58</sup> *S. Tex. Project*, LBP-11-07, slip op. at 48 (admitting the contention and stating that it alleges that the “analysis of the need for power is incomplete”).

<sup>59</sup> See also Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,484 (June 5, 1996) (stating that the “Commission has concluded that, for license renewal, the issues of need for power . . . should be reserved for State and utility officials to decide” and “the NRC will not conduct an analysis of these issues in the context of license renewal”).

Furthermore, these arguments represent an impermissible challenge to the requirements specified in Section 51.53(c)(2).<sup>60</sup> For these reasons alone, proposed Contention 4 should be rejected in its entirety.

*b. Proposed Contention 4 Does Not Raise a Genuine Dispute*

Petitioners cite to ER Section 7.2.1.4, which discusses demand side management (“DSM”) as an alternative to license renewal for STP Units 1 and 2.<sup>61</sup> Under 10 C.F.R. § 51.53(c)(2), a license renewal ER must include a discussion of the environmental impacts of alternatives. Petitioners attempt to challenge this section by claiming that it omits discussion of the energy efficient building code that would result in energy savings that would nearly offset the net electrical output from STP Units 1 and 2. For the following reasons, this argument does not demonstrate a genuine dispute with the ER.

First, the largest owner of STP Units 1 and 2, NRG South Texas LP (“NRG”), is a merchant generator and does not need to consider DSM.<sup>62</sup> In the *Clinton* early site permit proceeding, the Commission held that the applicant, a merchant generator like NRG, was “not obliged to examine general efficiency or conservation proposals that would do nothing to satisfy [the] particular project’s goal [of producing baseload power].”<sup>63</sup> The Commission emphasized that “the NEPA ‘rule of reason’ does not demand an analysis of what the Board called the ‘general goal’ of energy efficiency.”<sup>64</sup> In affirming the NRC’s *Clinton* decision, the Seventh Circuit expressly agreed that “it was reasonable for the [NRC] to conclude that NEPA did not

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<sup>60</sup> See 10 C.F.R. § 2.335.

<sup>61</sup> Petition at 6.

<sup>62</sup> ER Ch. 7, at 9-10.

<sup>63</sup> *Exelon Generation Co. (Early Site Permit for Clinton ESP Site)*, CLI-05-29, 62 NRC 801, 808 (2005), *aff’d sub nom., Env’tl. Law & Policy Ctr. v. NRC*, 470 F.3d 676 (7th Cir. 2006).

<sup>64</sup> *Id.* at 807; *see also Entergy Nuclear Operations, Inc. (Indian Point, Units 2 & 3)*, LBP-08-13, 68 NRC 43, 204-05 (2008).

require consideration of energy efficiency alternatives when [the applicant] was in no position to implement such measures.”<sup>65</sup>

Second, the ER already considers energy efficiency for the two remaining owners of STP Units 1 and 2, CPS Energy and Austin Energy, *including energy efficiency from the building code referenced by Petitioners*.<sup>66</sup> CPS Energy and Austin Energy are regulated utilities and therefore do have some ability to engage in DSM.<sup>67</sup> ER Section 7.2.1.4 states: “Both CPS Energy and Austin Energy have aggressive DSM programs that include . . . the *adoption of updated energy codes for new building construction*.”<sup>68</sup> ER Section 7.2.1.4 further states: “The Texas Legislature is currently considering several bills that would increase demand-reduction mandates in ERCOT and other regions of Texas.”<sup>69</sup> These statements encompass the energy efficient building code raised in this proposed contention.<sup>70</sup> No further discussion is necessary.

ER Section 7.2.1.4 concludes that “it is unlikely that implementation of additional DSM measures in the CPS Energy and Austin Energy service areas could offset the electricity generated by STP Units 1 & 2.”<sup>71</sup> The Commission has stated that the petitioner must “read the pertinent portions of the license application . . . state the applicant’s position and the petitioner’s opposing view,” and explain why it disagrees with the applicant.<sup>72</sup> Petitioners have not done

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<sup>65</sup> *Envtl. Law & Policy Ctr.*, 470 F.3d at 684. Moreover, “[t]he NRC is not in the business of crafting broad energy policy involving other agencies and nonlicensee entities.” *Hydro Res. Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001).

<sup>66</sup> ER Ch. 7, at 9-10.

<sup>67</sup> *See id.* at 9.

<sup>68</sup> *Id.* (emphasis added).

<sup>69</sup> *Id.*

<sup>70</sup> If a petitioner submits a contention of omission, but the allegedly missing information is indeed in the license application, then the contention does not raise a genuine issue. *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), LBP-04-15, 60 NRC 81, 95-96 (2004).

<sup>71</sup> ER Ch. 7, at 9.

<sup>72</sup> Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170; *see also Millstone*, CLI-01-24, 54 NRC at 358.



this. In upholding rejection of an alternatives contention in another proceeding, the Commission stated that “general assertions, without some effort to show why the assertions undercut findings or analyses in the ER, fail to satisfy the requirements of Section 2.309(f)(1)(vi).”<sup>73</sup> Petitioners fail to challenge the information in the ER on the very subject of their contention, and therefore fail to demonstrate a genuine dispute.

Third, ER Section 7.2.1.4 concludes that DSM is not a reasonable alternative to license renewal for STP Units 1 and 2 because it “does not fulfill the stated purpose and need to ‘provide power generation capability,’” which STPNOC explains is 2,560 MWe of “baseload capacity.”<sup>74</sup> In this regard, ER Section 7.1 explains that “any alternative would be unreasonable if it did not include replacing the baseload capacity of STP Units 1 & 2.”<sup>75</sup> Petitioners have not challenged these conclusions. The Commission has held that “reasonable alternatives” are those that “will bring about the ends” of the proposed action.<sup>76</sup> The proposed action here is generation of 2,560 MWe of baseload electricity. Petitioners have not alleged, or provided any basis for an allegation, that the energy efficient building code would have any impact on the demand for baseload power, as distinct from peak loads.<sup>77</sup> For these reasons, the amount of demand reduction is inconsequential to the rejection of DSM as a reasonable alternative.

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<sup>73</sup> *S.C. Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 & 3), CLI-10-01, 71 NRC \_\_\_, slip op. at 28 (Jan. 7, 2010).

<sup>74</sup> ER Ch. 7, at 10-11.

<sup>75</sup> *Id.* at 3.

<sup>76</sup> *Hydro Res. Inc.*, CLI-01-4, 53 NRC at 55 (citing *Citizens Against Burlington*, 938 F.2d 190, 195-96 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991); *City of Grapevine v. Dep’t of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir.), *cert. denied*, 513 U.S. 1043 (1994)).

<sup>77</sup> Petitioners’ similar contention in the STP COL proceeding references a report by the American Council for an Energy-Efficient Economy, *Potential for Energy Efficiency, Demand Response, and Onsite Renewable Energy to Meet Texas’s Growing Electricity Needs* (Mar. 2007) (“ACEEE Report”). As explained by the licensing board in the STP COL proceeding, the ACEEE Report states that the new building codes have “the potential to reduce *peak demand* by 2,362 MW annually in Texas by the year 2023.” *S. Tex. Project*, LBP-11-07, slip op. at 42 (emphasis added).

Finally, even if the ER had not already considered the energy efficient building code raised by Petitioners, the proposed contention still would not raise a genuine dispute. While Petitioners claim a savings of 2,362 MW by 2023, this alleged savings would occur across all of Texas, not just in the service areas for CPS Energy and Austin Energy. CPS Energy and Austin Energy only cover a fraction of the electricity demand in Texas. For example, based on 2009 data compiled by the U.S. Energy Information Administration,<sup>78</sup> the total retail sales for CPS Energy and Austin Energy were 20,026,721 MWh and 12,035,686 MWh, respectively, compared to total retail sales reported for Texas of 328,938,599 MWh. Based on this information, the share of total retail sales of CPS Energy and Austin Energy in Texas is only about 10%. Therefore, even assuming that Petitioners' estimate of 2,362 MW savings by 2023 is correct, CPS Energy's and Austin Energy's share of the reduction due to the energy efficient building code together would be only about 236 MW, far less than the output from STP Units 1 and 2.

For all of these reasons, this proposed contention does not demonstrate a genuine dispute with the Application, contrary to 10 C.F.R. § 2.309(f)(1)(vi), and should be rejected.

*c. Proposed Contention 4 Is Not Adequately Supported*

Proposed Contention 4 also is fatally flawed because Petitioners have not pointed to any alleged facts or expert opinions. The only claim mentioned in the proposed contention is the potential savings of 2,362 MW by 2023 from the new building code.<sup>79</sup> This claim, however, is based only on "information and belief" and is therefore mere notice pleading, which is insufficient under 10 C.F.R. § 2.309(f)(1)(v) to support an admissible contention.<sup>80</sup> The Board is required to scrutinize factual support to confirm it stands for the proposition for which

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<sup>78</sup> See U.S. Energy Information Administration, Form EIA-861 Database, <http://www.eia.doe.gov/cneaf/electricity/page/eia861.html> (using 2009 data from the file titled "file1.xls").

<sup>79</sup> Petition at 6.

<sup>80</sup> See *Seabrook*, CLI-99-6, 49 NRC at 219.

Petitioners claim it stands.<sup>81</sup> As Petitioners did not provide any factual support but merely made a bare assertion of fact, this proposed contention must be denied as contrary to 10 C.F.R. § 2.309(f)(1)(v).

\* \* \*

In summary, proposed Contention 4 is outside the scope of this license renewal proceeding, is not supported by alleged facts or expert opinions, and does not demonstrate that a genuine dispute of material law or fact exists. Accordingly, for each of these reasons, the proposed contention should be rejected in its entirety.

#### IV. CONCLUSION

For the reasons discussed above, all of the proposed contentions are inadmissible. Accordingly, the Petition should be denied in its entirety.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, D.C.  
this 7th day of April 2011

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<sup>81</sup> See *Vt. Yankee Nuclear Power Corp.* (Vt. Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), vacated in part on other grounds and remanded, CLI-90-4, 31 NRC 333 (1990).

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of ) STP NUCLEAR OPERATING COMPANY ) (South Texas Project, Units 1 and 2) )	Docket Nos. 50-498-LR 50-499-LR  April 7, 2011
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**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, a copy of “STP Nuclear Operating Company’s Answer Opposing Request for Hearing and Petition for Leave to Intervene” was filed with the Electronic Information Exchange in the above-captioned proceeding on the following recipients.

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