June 2, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
STP NUCLEAR OPERATING COMPANY	)	Docket No. 50-498-LR and 50-499-LR
	)	
(South Texas Project Electric Generating Station Units 1 and 2)	)	ASLBP No. 11-909-02-LR-BD01
	)	
	)	

NRC STAFF ANSWER TO PROPOSED AMENDED PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING OF SEED COALITION AND SUSAN DANCER

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the Staff of the U.S. Nuclear Regulatory Commission ("Staff") files its answer to the Proposed Amended Petition for Leave to Intervene and Request for Hearing ("Amended Petition") filed by the Sustainable Energy and Economic Development ("SEED") Coalition and Susan Dancer (collectively, "SEED" or "Petitioner").[1]

SEED's Amended Petition contains three new footnotes that provide additional bases in support of Contentions 1, 2, and 4. Because the requirements for late-filed contentions and new or amended petitions apply to the proposed Amended Petition, and SEED has not addressed or met those requirements, its request to admit the Amended Petition should be denied for untimeliness. In addition, for the reasons discussed below and in the "NRC Staff's Answer to Petition For Leave To Intervene and Request For Hearing by SEED Coalition and Susan

[1] *See* Proposed Amended Petition for Leave to Intervene and Request For Hearing of SEED and Susan Dancer (May 8, 2011) (Agency Documents Access and Management System ("ADAMS") Accession No.ML111280002) ("Amended Petition").

Dancer" (hereinafter "Staff's Answer")[2] filed on April 7, 2011, the contentions in the Amended Petition are inadmissible because they do not meet the requirements for admission of a contention.[3]

BACKGROUND

This proceeding arises out of the application of South Texas Project Nuclear Operating Company ("Applicant" or "STPNOC"), dated October 25, 2010, to renew its operating license for South Texas Project ("STP") Units 1 and 2 ("LRA" or "Application").[4] The current license for STP Unit 1 expires on August 20, 2027, and the current license for STP Unit 2 expires on December 15, 2028.

SEED filed a timely initial petition to intervene ("Initial Petition") on March 14, 2011.[5] The petition to intervene consisted of three contentions related to loss of large area events under 10 C.F.R. §§ 52.80(d) and 50.54(hh) and one contention challenging the need for power under 10 C.F.R. § 51.53(c).

On April 7, 2011, the Staff and STPNOC each separately filed their answer to SEED's initial petition to intervene.[6] The Staff opposed admission of all four contentions because SEED and Susan Dancer did not satisfy standing and contention admissibility requirements under 10

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[2] ADAMS Accession No. ML110970659.

[3] Amended Petition at 4-6. Although SEED has not numbered the pages in its Amended Petition, for ease of reference the Staff will cite to specific page numbers in the Amended Petition, with the first page corresponding to page 1.

[4] Letter from G. T. Powell, Vice President, Technical Support and Oversight, South Texas Project Electric Generating Station, STP Nuclear Operating Company, dated October 25, 2010, transmitting application for license renewal for STP Units 1 and 2, operating licenses NPF-76 and NPF-80, respectively (ADAMS Accession No. ML103010256) ("LRA" or Application").

[5] *See* Petition for Leave to Intervene and Request For Hearing of SEED and Susan Dancer (Mar. 14, 2011) (ADAMS Accession No. ML110740848) ("Initial Petition").

[6] STP Nuclear Operating Company's Answer Opposing Request for Hearing and Petition for Leave to Intervene (April 7, 2011) (ADAMS Accession No. ML110970544).

C.F.R. §§ 2.309(d) and (f)(1) i-vi, respectively. Staff's Answer. Although SEED was provided an opportunity to file a reply to the Staff's answer under 10 C.F.R. § 2.309(h)(2), SEED chose not to do so.

On May 8, 2011, SEED filed its Amended Petition containing three new footnotes in support of contentions 1, 2, and 4. The three footnotes consist largely of information referenced and submitted by SEED in new reactor licensing proceedings under 10 C.F.R. Part 52. The footnotes include no challenges to the applicant's obligations under 10 C.F.R. part 54, the requirements for license renewal applications.

In addition to the Amended Petition, SEED filed a written request for oral argument on the contentions.[7] On May 23, 2011, the Atomic Safety and Licensing Board ("Board" or "ASLB") issued an order to hold oral arguments on June 27, 2011.[8] In the order, the Board stated that participants will address SEED's Initial Petition, SEED's and Susan Dancer's standing to intervene, and the Amended Petition. May 23, 2011 Order at 2.

DISCUSSION

I. Standing to Intervene

The Amended Petition contains a discussion of SEED's and Susan Dancer's standing to intervene that appears to reassert arguments from SEED's initial petition to intervene filed on March 14, 2011. *Compare* Initial Petition at 1-4 *with* Amended Petition at 1-4. The Staff notes that SEED did not include a standing declaration by Susan Dancer with the Amended Petition as claimed on page 3 of the Amended Petition. Originally, the Staff opposed SEED's and Susan Dancer's standing because Ms. Dancer's declaration attached to the Initial Petition did not provide her physical address as required under 10 C.F.R. § 2.309(d)(1)(i). Staff's Answer at

[7] Intervenors Request for Oral Argument on Contentions Raised on Relicensing (May 8, 2011) (ADAMS Accession No. ML111280003).

[8] Order (Scheduling Oral Argument), (May 23, 2011) (ADAMS Accession No. ML111430799) ("May 23, 2011 Order").

6-7. Contrary to the Commission's regulations, and in spite of the fact that Staff pointed out this omission in its answer, SEED makes no attempt to cure this deficiency. Staff's Answer at 6.

Therefore, the Staff's position remains unchanged and incorporates by reference its arguments opposing SEED's and Susan Dancer's standing on pages 4-7 of its initial answer to the petition to intervene filed on April 7, 2011.

II. The Amended Petition Does Not Meet The Requirements for New or Amended Contentions under 10 C.F.R. § 2.309

The Commission has stated that the NRC does not look with favor on amended or new contentions filed after the initial filing. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 636 (2004). Thus, a petitioner may file late contentions "only 'upon a showing that -- (i) [t]he information upon which the amended or new contention is based was not previously available; (ii) [t]he information upon which the amended or new contention is based is materially different than information previously available; and (iii) [t]he amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.'" *Id.* (quoting 10 C.F.R. § 2.309(f)(2)(i)-(iii) (alterations in original)). *See also* 10 C.F.R. § 2.309(c)(1). When a contention is not based on new or previously unavailable information, the stricter standards of 10 C.F.R. § 2.309(c)(1)(i)-(viii) apply. *See id; infra* section II. Recent Atomic Safety and Licensing Boards have examined new or amended contentions based on previously unavailable information under the 10 C.F.R. § 2.309(f)(2) standards. *Shaw Areva Mox Services* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 210 n.95 (2007). SEED's amended petition does not contain new or previously unavailable information or otherwise meet the requirements of 10 C.F.R. § 2.309(c). Therefore, the Board should deny the Amended Petition.

A. SEED's Amended Petition Does Not Contain Previously Unavailable Information and Therefore Does Not Meet the Requirements of 10 C.F.R. § 2.309(f)(2)(i), (ii)

SEED did not provide any explanation or justification for the inclusion of the additional information in its Amended Petition. SEED was required to make a "showing" that the amended portion was based on information that was previously not available and materially different and that the amended petition was filed in a timely manner. 10 C.F.R. § 2.309(f)(2). The Amended Petition contains no discussion of the amended portion, other than stating its reliance on the information to support its contentions. It therefore does not make a "showing" as required by 10 C.F.R. § 2.309(f)(2).

In addition, the Amended Petition does not contain information that was new or previously unavailable as required by 10 C.F.R. § 2.309(f)(2)(i) and (ii). The Amended Petition is identical to the initial petition, with the exception of three footnotes wherein SEED relies on prior Licensing Board orders and pleadings in previous cases. *Compare* Amended Petition *with* Initial Petition. These documents range in date from August 10, 2009 to March 11, 2011. Amended Petition at 4-6. Footnote 1 references two pleadings—filed by SEED in the Comanche Peak combined operating license ("COL") proceeding—dated August 10, 2009 and March 11, 2011.[9] Footnote 2 references the dissenting opinion of LBP-10-05 in the Comanche Peak COL proceeding, dated March 10, 2010.[10] Footnote 3 references an opinion in the South Texas COL proceeding, dated February 28, 2011.[11] All of these documents existed, in some cases well over a year, prior to the initial petition filing date. Most compellingly, SEED was a

[9] *Id.* at 4 n.1 (*citing* Intervenor's Contentions Regarding Applicant's Submittal Under 10 C.F.R. § 52.80 and 10 C.F.R. § 50.54(hh)(2) and Request for Subpart G Hearing (August 10, 2009) (non-publicly available); Intervenor's Petition for Review Pursuant to 10 C.F.R. § 2.341,(March 11, 2011) (non-publicly available)).

[10] Amended Petition at 5 n. 2(*citing Luminant Generation Co.* (Comanche Peak Nuclear Power Plant, Units 3 & 4), LBP-10-05, 71 NRC __ (March 10, 2010) (non-publicly available)).

[11] Amended Petition at 6 n.3 (*citing Nuclear Innovation North America*, (South Texas Project, Units 3 & 4), LPB-11-07, 73 NRC __ (Feb. 28, 2011)(slip op. at 41-48)).

party to these previous cases, was therefore aware of the documents and their availability, and was fully capable of including that information in its Initial Petition.

Additionally, while Footnote 3 references an opinion dated February 28, 2011, the relevant inquiry is not whether the party was unaware of the information, but is whether the information was "not previously *available*." 10 C.F.R. § 2.309(f)(2)(i) (emphasis added). SEED was a party to that proceeding and therefore would have received a copy of the Board's order ruling on the contentions. *South Texas*, LPB-11-07, 73 NRC __ (slip op. at Certificate of Service, 2). Moreover, the decision in LBP-11-07 relies on documents—which SEED filed—that are over one year old to justify the conclusions drawn by the Board. The Commission has repeatedly held that petitioners must file new or amended contentions based on information when it becomes available and not await a document "that collects, summarizes, and places into context the facts supporting that contention." *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC __ (Sep. 30, 2010)(slip op. at 17) (ADAMS Accession No. ML102730779) (finding that the issuance of a safety evaluation report ("SER") was not the "final piece in the puzzle" allowing for timely contentions when the information upon which petitioners relied was available in some other form and available well before the issuance of the SER but was compiled and summarized in the SER). Consequently, the information discussed in Footnote 3 was available long before February 28, 2011. Therefore, the information upon which SEED seeks to rely was available prior to its filing of the Initial Petition. Since the information was not new or previously unavailable, the Amended Petition does not meet the requirements under 10 C.F.R. § 2.309(f)(2)(i), (ii). As a result, the Board should not admit the contentions in the Amended Petition.

B. <u>The Amended Petition Was Not Submitted in a Timely Fashion</u>

Even if Petitioner's amendments were based on previously unavailable information, SEED's Amended Petition was not filed in a "timely fashion" as required by 10 C.F.R. §

2.309(f)(2)(iii). In promulgating 10 C.F.R. Part 2, the Commission stated,

> For [non-NRC-environmental-document-based] new or amended contentions the rule makes clear that the criteria in § 2.309(f)(2)(i) through (iii) must be satisfied for admission. Include[d] in these standards is the requirement that it be shown that the new or amended contention has been submitted in a timely fashion based on the timing of availability of the subsequent information. *See* § 2.309(f)(2)(iii). This requires that the new or amended contention be filed promptly after the new information purportedly forming the basis for the new or amended contention becomes available.

Statement of Considerations, Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,221 (Jan. 14, 2004).

Although NRC regulations do not precisely define when an "amended or new contention has been submitted in a timely fashion," 10 C.F.R. § 2.309(f)(2)(iii), "[s]everal boards have established a 30-day rule [after receipt of relevant new information] for new contentions," *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 574 (2006).

The most recent document upon which SEED seeks to rely is a petition for review filed by SEED in the Comanche Peak COL proceeding, dated March 11, 2011. Amended Petition at 4 n.1 (*citing* Intervenor's Petition for Review Pursuant to 10 C.F.R. § 2.341(March 11, 2011) (non-publicly available)). An examination of the Comanche Peak petition reveals that the information provided in support of that petition is over one year old. Even assuming that the Comanche Peak petition contained new information, under the 30-day principle the Amended Petition should have been filed within 30 days of March 11, 2011 to have been timely filed. SEED, however, waited until May 8, 2011, almost two months later, to file its Amended Petition. *See* Amended Petition.[12]

[12] This delay occurred even though SEED appeared to have been in possession of the documents at least seven days after filing the Initial Petition and almost two months before filing the Amended Petition. In an e-mail to Staff's and Applicant's attorneys dated March 21, 2011, SEED

Since the Amended Petition was not filed in a timely manner and contains no discussion or justification for the inclusion of the footnotes, the Board should not admit the Amended Petition under 10 C.F.R. § 2.309(f)(2)(iii).

C. The Amended Petition Does Not Meet the Requirements of Non-timely Filing under 10 C.F.R. § 2.309(c)

Even if a proposed new contention is not based on previously unavailable information, the Board might still consider the petition under the stricter standards of 10 C.F.R. § 2.309(c)(1)(i)-(viii). *See Shaw Areva*, LBP-07-14, 66 NRC at 210 & n. 95 (2007). To consider a late contention under 10 C.F.R. § 2.309, the Board must balance the following factors: (i) good cause for failure to file on time; (ii) the right to be made a party to the proceeding; (iii) the nature and extent of petitioner's interest in the proceeding; (iv) the possible effect of any order that may be entered in the proceeding on that interest; (v) the availability of other means to protect the interest; (vi) the extent to which the interests will be represented by existing parties; (vii) the extent to which the petitioner's participation will broaden the issues or delay the proceeding; and (viii) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record. 10 C.F.R. § 2.309(c)(1)(i)-(viii). The Commission has held that the most important of these factors is the first, the requirement for the petitioner to demonstrate good cause for the failure to file on time. *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-09-05, 69 NRC 115, 125-26 (2009). "Good cause has long been interpreted to mean that the information on which the proposed new contention is based was not previously available." *Id*. Moreover, to be considered under the late-filing contention standard, petitioners must address the eight factors in 10 C.F.R. § 2.309(c)(1). 10 C.F.R. §

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circulated a draft of the Amended Petition identical to the one it ultimately filed.

2.309(c)(2). The failure to comply with the Commission's pleading requirements for late filings constitutes sufficient grounds for rejecting the pleading.[13]

SEED did not address these factors altogether. Consequently, for this reason alone, the Amended Petition does not meet the requirements of 10 C.F.R. § 2.309(c). Moreover, as discussed above, SEED did not demonstrate that the information upon which it bases the Amended Petition was not previously available. Therefore, SEED cannot satisfy the most important factor of the balancing test: good cause. SEED was a party to the proceeding in which these documents were filed, and the documents were available long before SEED filed its Amended Petition. SEED has not shown what good cause excuses the delay to file the Amended Petition. Therefore, the Board should not admit the Amended Petition under 10 C.F.R. § 2.309(c).

III. The Amended Petition Does Not Meet The Requirements of 10 C.F.R. § 2.309(f)(1)

The Commission has noted that late-filed contentions must meet the criteria for filing non-timely contentions as well as the normal standards of pleading under 10 C.F.R. § 2.309(f)(1). *Prairie Island*, CLI-10-27, 72 NRC __ (slip op. at 9-10). Thus, the Amended Petition must meet both sets of requirements. Even if the Board finds the Amended Petition satisfies the criteria for filing non-timely contentions, the Amended Petition still does not meet the standards of 10 C.F.R. § 2.309(f)(1), as discussed below.

[13] *Florida Power & Light Company, FPL Energy Seabrook, LLC, FPL Energy Duane Arnold, LLC, Constellation Energy Group, Inc.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 NRC 30, 33-34 (2006) (rejecting petitioner's intervention request on the basis that petitioners did not comply with all NRC pleading requirements for late filings, including discussion of each of the eight factors in 10 C.F.R. § 2.309(c)).

A. The Amended Petition, Like the Initial Petition, Raises Contentions that Are Not Material, Are Not Adequately Supported, and Are Outside the Scope of This License Renewal Proceeding

With the exception of three footnotes, the Amended Petition is identical to the Initial Petition. *Compare* Amended Petition *with* Initial Petition. The NRC Staff observed that the contentions in the Initial Petition were outside the scope of this license renewal proceeding, not material, and lacked an adequate factual basis. Staff's Answer. Given the overriding similarity between the two petitions, the Staff's arguments in response to the Initial Petition apply with equal force to the Amended Petition. Rather than needlessly repeat material from its Answer, the Staff relies on the arguments in its Answer to respond to the portions of the Amended Petition that are identical to the Initial Petition. The Staff will respond to the three new footnotes below.

B. The Three New Footnotes Do Not Provide Specific References to Documents the Petitioners Intend to Rely On and Therefore Do Not Provide a Sufficient Factual Basis Under Commission Precedent

For each proffered contention, a petitioner must provide "references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue." 10 C.F.R. § 2.309(f)(1)(v). The Commission has stated that "a Board is not to permit 'incorporation by reference' where the effect would be to circumvent NRC-prescribed … specificity requirements." *Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 132-33 (2001). "The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may be in a haystack." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 241 (1989).

In its three new footnotes, SEED ignores its obligation to identify with specificity the sources on which it relies. Rather, SEED broadly attempts to incorporate by reference

documents filed in other proceedings, and the factual support on which those documents rest, to support the amended contentions. In a footnote to Amended Contention 1, SEED states that it relies "on the information submitted in Docket Nos. 52-034 and 52-035 related to Intervenors' contentions related to compliance with 10 C.F.R. § 50.54(hh)(2)."[14] Amended Petition at 4 n.1. SEED narrows the scope of this haystack only slightly by specifying that, in particular, it intends to rely on the arguments and authorities in the following documents filed in that proceeding: "Intervenors' Contentions Regarding Applicant's Submittal Under 10 C.F.R. 52.80 and 10 C.F.R. 50.54(hh)(2) filed on August 10, 2009, and Intervenors' Petition for Review Pursuant to 10 C.F.R. 2.341." *Id*. In a footnote to Amended Contention 2, SEED also claims that it relies "on the dissent in LBP-10-05 (March 11, 2010), pp. 75-82." *Id*. at 5 n.2. The documents referenced by Footnotes 1 and 2, filed in the Comanche Peak combined operating license ("COL") proceeding, constitute nearly forty pages, much of which appears unrelated to the Amended Petition or this proceeding. Moreover, several other documents in the Comanche Peak COL adjudication also address 10 C.F.R. § 50.54(hh)(2), the topic of Amended Contentions 1 and 2 and Contention 3, and SEED has not limited itself to the arguments and authorities in the specified pleadings. *Id*. at 4 n.1. Therefore, SEED's footnotes leaves the Board, the Applicant, and the Staff to scour the docket of the Comanche Peak COL proceeding to discover if any authority, citation, reference, or footnote therein offers some additional support for Amended Contentions 1 and 2, or Contention 3. This is contrary the Commission's requirement that would-be-intervenors clearly and specifically identify the materials on which they intend to rely.

[14] The NRC Staff presumes, based on SEED's latest submittal, that SEED only intended for the information in each footnote to apply to the contention it supports. Nonetheless, Amended Contentions 1 and 2 and Contention 3 are very similar. Thus, the information in footnotes 1 and 2 could apply to all three contentions. As a result, the Staff's arguments will demonstrate that the documents referenced by footnotes 1 and 2 do not provide adequate support for Amended Contentions 1 and 2, and Contention 3.

As a result, these citations do not satisfy the Commission's requirement that contentions reference a "specific point." *Seabrook*, CLI-89-3, 29 NRC at 241 (1989).

With regard to Amended Contention 4, SEED relies "on the decision in LBP-11-07, pp. 41-48, admitting Contention DEIS 1 related to the adoption of the energy efficient building code in Texas." Amended Petition at 6 n.5. SEED refers to a portion of a Board order admitting Contention DEIS-1-G, related to the energy efficient building code, in the South Texas Project Units 3 and 4 COL proceeding. The section at issue contains thirty-two footnotes. Therefore, Footnote 3 requires the applicant, NRC Staff, and the Board to comb through these citations in an effort to find support for Contention 4. Moreover, the case refers to other documents to support its ruling. *South Texas*, LBP-11-07, 73 NRC __ (slip op. at 41-48) (referencing technical reports supporting the intervenors' need for power claim). This vague citation, which requires the Board, STPNOC, and the Staff to scavenge the record in the STP COL proceeding to uncover the factual basis for Contention 4, plainly does not meet the Commission's requirement for specificity in pleading. *Id*. Rather, it is precisely the type of incorporation by reference the Commission found would circumvent the specificity requirements in its pleading rules. *Indian Point*, CLI-01-19, 54 NRC at 132-33. Consequently, it does not provide an adequate basis for Contention 4 under 10 C.F.R. § 2.309(f)(1)(v).

C. The Information Reference by the Three New Footnotes Does Not Provide an Adequate Basis for the Amended Contentions

Even if the Board attempted to sift through the docket of the Comanche Peak COL proceeding, none of the arguments or authorities in that docket supports Amended Contentions 1 and 2 and Contention 3. Amended Contention 1 claims that that the "Applicant's mitigative strategies for addressing [loss of large area ("LOLA")] events are inadequate to address the consequences of events such as the impacts of large commercial aircraft." Amended Petition at 4. Similarly, Amended Contention 2 and Contention 3 claim that the Applicant's mitigative

strategies for LOLA events are inadequate to "determine radiation exposures for responders to LOLA events" and "protect LOLA responders from excessive radiation exposures," respectively. Amended Petition at 5-6. SEED claims that the information related to LOLA events in the Comanche Peak COL proceeding supports these assertions that STP's LOLA plan is inadequate.

STP developed and implemented its plan to respond to LOLA events in response to the Commission's security orders following the September 11, 2001, terrorist attacks. *See* South Texas Project Units 1 and 2 – Conforming License Amendments to Incorporate the Mitigation Strategies Required by Section B.5.b of Commission Order EA-02-026 (Jul. 11, 2007) (ADAMS Accession No. ML071910382); Power Reactor Security Requirements, 74 Fed. Reg. 13,926, 13,928 (2009) (noting that the Commission's B.5.b orders imposed requirements similar to those in 10 C.F.R. § 50.54(hh)(2)). The filings in the Comanche Peak COL proceeding cited by SEED do not demonstrate how STP's plans are inadequate. That information primarily focuses on alleged deficiencies in the Comanche Peak applicant's plan for meeting the LOLA requirements in 10 C.F.R. § 50.44(hh)(2). Notably, the Board rejected all of these contentions. *Comanche Peak*, LBP-10-05, 71 NRC __ (slip. op. at 22) (ADAMS Accession No. ML100700523) (publicly available version). As a result, the information does not demonstrate any inadequacy in STP's plan for complying with the LOLA requirements in 10 C.F.R. § 50.44(hh)(2) for STP Units 1 and 2. Moreover, SEED has made no effort to connect the information in the Comanche Peak COL proceeding to the STP LOLA plan. Consequently, the Comanche Peak COL references do not provide an adequate factual basis for Amended Contentions 1 and 2 or Contention 3. 10 C.F.R. § 2.309(f)(1)(v). In addition, the references obviously do not demonstrate a material dispute with the STP license renewal application. 10 C.F.R. § 2.309(f)(1)(vi). Similarly, the references do not indicate how SEED's LOLA claims fall

within the limited scope of a license renewal proceeding. As a result, even if the Board considers these footnotes, they do not provide adequate support for the contentions.

Likewise, should the Board consider the proffered support for Amended Contention 4, it does not provide an adequate basis for the contention. Amended Contention 4 alleges that the LRA does not adequately consider the energy efficient building code as an alternative to license renewal. Amended Petition at 6. But, the new information in the Amended Petition does not demonstrate that the energy efficient building code could be a reliable means of meeting the need for baseload energy in Texas.

In defining the scope of alternatives that must be considered by an applicant, the Commission has held that an ER "need only consider the range of alternatives that are capable of achieving the goals of the proposed action." *Sacramento Mun. Util. District* (Rancho Seco), CLI-93-3, 37 NRC 135, 144-45; *Hydro Res., Inc.* (P.O. Box 15910, Rio Rancho, New Mexico 87174), CLI-01-4, 53 NRC 31, 55 (2001). The purpose and need for the action, as stated in the Applicant's ER, "is to provide an option that allows for power generation capability beyond the term of [the] current nuclear power plant operating license[s] to meet future system generating needs." ER at § 1.1 (internal quotation omitted). Thus, the Applicant's ER considered alternatives that "would be capable of replacing the net baseload capacity of STP Units 1 & 2." ER at § 7.2-1. "STPNOC believes that any alternative would be unreasonable if it did not include replacing the baseload capacity of STP Units 1 & 2." *Id*. at 7.1.

The NRC generally defers to an applicant's stated purpose "so long as that purpose is not so narrow as to eliminate alternatives." *South Carolina Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-09-2, 69 NRC 87, 110 (2009). Generation of baseload power is an acceptable purpose for a licensing action and is broad enough "to permit consideration of a host of energy generating alternatives." *Envtl. Law & Policy Ctr.v. NRC*, 470 F.3d 676, 684 (7th Cir. 2006). Other licensing boards have limited consideration of alternatives

in license renewal proceedings to those capable of generating baseload power. *E.g., Entergy Nuclear Operation, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 95-96 (2008); *Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-02, 73 NRC __ (Feb. 15, 2011)(slip op. at 19-27).

To support DEIS-1-G in the combined operating license proceeding, SEED relied on a report from an expert, David Power, and a report from the American Council for an Energy-Efficient Economy ("ACEEE"). *South Texas*, LBP-11-07, 73 NRC __ (slip op. at 43 & n. 236, 46). The Power report concluded that adoption of an energy efficient building code could save Texas "2,362 megawatts [("MW")] annually of peak summer demand by 2023." David Power, Comments Regarding Draft Environmental Impact Statement for Combined Licenses for South Texas Project Units 3 and 4, at 4 (May 19, 2010) (ADAMS Accession No. ML101400160) (internal quotations omitted). Likewise, the ACEE report found that an energy efficient building code could result in 2,362 MW in peak summer demand savings. ACEEE, Potential for Energy Efficiency, Demand Response, and Onsite Renewable Energy to Meet Texas's Growing Electricity Needs, Report Number E073, at 48 (March 2007) (available at http://www.aceee.org/research-report/e073). Consequently, the evidence produced by SEED to support contention DEIS-1-G in the COL proceeding does not support Amended Contention 4 in the license renewal proceeding. The reports SEED relied on in the COL proceeding establish that the energy efficient building code may result in saving peak summer demand electricity, but these documents do not establish how much baseload power the energy efficient building code would save. Because a reasonable alternative to license renewal must provide, or replace, baseload power, SEED has not shown that the energy efficient building code could constitute a reasonable alternative. As a result, the Board should not admit Amended Contention 4 because it lacks an adequate basis. 10 C.F.R. § 2.309(f)(1)(v).

Therefore, like the contentions in the Initial Petition, the contentions in the Amended Petition do not meet the requirements of 10 C.F.R. § 2.309(f)(1) because they are outside the scope of license renewal proceedings, are not material, and do not contain an adequate factual basis. The three new footnotes do not cure any of these deficiencies. The footnotes are too vague to satisfy the Commission's pleading requirements and reference materials that, while perhaps relevant to the STP and Comanche Peak Part 52 COL proceedings, do not provide adequate support for Amended Contentions 1, 2, and 4 and Contention 3, challenging STPNOC's application for license renewal of STP Units 1 and 2.

CONCLUSION

The Board should find the contentions in SEED's Amended Petition inadmissible. The Amended Petition is not timely, and does not cure any of the defects the Staff identified in the Initial Petition.

Respectfully submitted,

Signed (electronically) by

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STP NUCLEAR OPERATING COMPANY	)	Docket No. 50-498-LR and 50-499-LR
	)	
(South Texas Project Electric Generating Station Units 1 and 2)	)	ASLBP No. 11-909-02-LR-BD01
	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO PROPOSED AMENDED PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING OF SEED COALITION AND SUSAN DANCER" have been served on the following by Electronic Information Exchange this 2nd day of June, 2011.

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