November 9, 2012

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361-LA/50-362-LA
	)	
(San Onofre Nuclear Generating Station	)	
Units 2 and 3)	)	
	)	

NRC STAFF'S ANSWER TO PETITION TO INTERVENE AND REQUEST FOR HEARING BY CITIZENS OVERSIGHT

INTRODUCTION

On October 17, 2012, Petitioner Citizens Oversight, Inc. ("Petitioner" or "COPS")[1] filed a petition to intervene and a request for hearing ("Petition") concerning a license amendment request ("LAR") by Southern Californian Edison Company ("SCE" or "Licensee") for San Onofre Nuclear Generating Station ("SONGS") Units 2 and 3. Pursuant to 10 C.F.R. § 2.309(i), the Staff of the Nuclear Regulatory Commission ("Staff") hereby files its answer. The Staff opposes the hearing request because Petitioner lacks standing, did not file before the established deadline, and does not proffer an admissible contention.[2]

[1] Citizens Oversight, Inc. refers to itself as Citizens Oversight Projects or "COPS." *See* Petition to Intervene and Request for Hearing by Citizens Oversight at 1 (Oct. 17, 2012) (Agencywide Documents Access and Management System ("ADAMS") Accession No. ML12291B227) ("Petition").

[2] 10 C.F.R. § 2.309(c)(1), (d), (f)(1).

BACKGROUND

This proceeding involves SONGS Units 2 and 3, which are located in Pendleton, California on the Pacific coast. On July 29, 2011, SCE[3] submitted the license amendment request for SONGS Units 2 and 3 asking to amend the technical specifications for each Unit to follow NUREG-1432, "Standard Technical Specifications, Combustion Engineering Plants," Rev. 3, as modified by certain NRC-approved Technical Specification Task Force ("TSTF") travelers.[4]

The Commission encourages licensees to use the vendor-specific Standard Technical Specifications ("STS") as the bases for plant-specific Technical Specifications ("TS").[5] In September of 1992, after extensive technical meetings and discussions among the NRC staff, industry owners groups, vendors, and the Nuclear Management and Resources Council ("NUMARC"), the NRC published STS as NRC Reports: NUREG-1430, "Standard Technical Specifications, Babcock and Wilcox Plants"; NUREG-1431, "Standard Technical Specifications, Westinghouse Plants"; NUREG-1432, "Standard Technical Specifications, Combustion Engineering Plants"; NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4"; and NUREG-1434, "Standard Technical Specifications, General Electric Plants, BWR/6."[6] SONGS was the lead Combustion Engineering-type plant to convert to STS (sometimes called improved technical specifications ("ITS") or improved standard technical

[3] SCE is authorized to act as agent for the other co-owners of the two reactors. *See* Docket No. 50-361, SONGS Unit 2 Facility Operating License No. NPF-10 at 1 n.* ("The Southern California Edison Company is authorized to act as agent for the other co-owners and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.") and Docket No. 50-362, SONGS Unit 3 Facility Operating License No. NPF-15 at 1 n.* (same). Unit 2's license and technical specifications are available at ADAMS Accession No. ML053130316 (last revised October 16, 2012) ("SONGS Unit 2 Operating License"); Unit 3's license and technical specifications are available at ADAMS Accession No. ML053140357 (last revised October 16, 2012) ("SONGS Unit 3 Operating License").

[4] The 19 electronic documents composing the application are in an electronic "package" in ADAMS Accession No. ML112510214 ("LAR").

[5] Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, 58 Fed. Reg. 39,132, 39,136 (July 22, 1993).

[6] 58 Fed. Reg. at 39,132.

specifications ("iSTS")) in parallel with the development of NUREG-1432, Rev. 0.[7] Through the current licensing request, SCE seeks approval of the most-current revision of STS.[8]

On August 16, 2012, the NRC published a notice of opportunity to request a hearing on the LAR ("Notice").[9] COPS filed a hearing request on October 17, 2012.[10] The Petition contains three contentions. The first brings several challenges to SCE's proposal to move numerous surveillance frequencies from the current SONGS licenses to licensee-controlled documents.[11] The second contention alleges that the LAR contains several mistakes and errors, which could negatively impact SONGS's safety performance.[12] Finally, the third contention relates to SCE's proposed restart of SONGS Unit 2.[13] As discussed below, the Board should deny the hearing request because COPS has not established standing, did not file within the allotted timeframe for requesting a hearing, and has not submitted an admissible contention.[14]

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[7] *See* LAR Cover Letter at 1 (ADAMS Accession No. ML11251A086).

[8] *Id.*

[9] Southern California Edison, San Onofre Nuclear Generating Station, Units 2 and 3; Application and Amendment to Facility License Involving Proposed No Significant Hazards Consideration Determination, 77 Fed. Reg. 49,463 (Aug. 16, 2012) ("Notice").

[10] Petition.

[11] *Id.* at 5-9.

[12] *Id*. at 9-16.

[13] *Id*. at 16. Units 2 and 3 have been shut down since January 2012. They have remained shut down while the Licensee and NRC have evaluated a steam generator leak in Unit 3. NRC Staff's Answer to Friends of the Earth's Application to Stay Any Decision to Start Unit 2 or 3 at the San Onofre Nuclear Generating Station Pending Conclusion of the Proceedings Regarding Consideration of the Safety of Replacement Steam Generators, at 6 (June 28, 2012) (ADAMS Accession No. ML12180A624).

[14] 10 C.F.R. § 2.309(c)(1), (d), (f)(1).

DISCUSSION

I. Standing

A. General Requirements

In accordance with 10 C.F.R. § 2.309(a), "[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing." The regulations further provide that the "Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has standing … and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section."

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

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

The Commission traditionally looks to judicial concepts of standing when determining whether a petitioner has established the necessary "interest," as required under § 2.309(d)(iv).[15]

While the Commission has recognized a presumption of standing for those that reside within 50 miles of a facility in a construction permit, operating license, or license renewal

[15] *See, e.g.*, *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318,322-23 (1999) (*PFS*); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998).

proceeding,[16] a petitioner in a license amendment proceeding cannot base standing solely on proximity unless the proposed action quite "obvious[ly] entails an increased potential for offsite consequences."[17]

Otherwise, the Commission has held that "a petitioner seeking to intervene in a license amendment proceeding must assert an injury-in-fact associated with the *challenged license amendment*, not simply a general objection to the facility."[18] Similarly, the Commission stated, "[s]ince a license amendment involves a facility with ongoing operations, a petitioner's challenge must show that the amendment will cause a distinct new harm or threat apart from the activities already licensed. Conclusory allegations about potential radiological harm from the facility in general, which are not tied to the specific amendment at issue, are insufficient to establish standing."[19]

As tailored to NRC proceedings, judicial standing requires a showing of: "(1) an actual or threatened, concrete and particularized injury [(injury-in-fact)], that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the Atomic Energy Act …, and (4) is likely to be redressed by a favorable decision."[20] The injury-in-fact must also be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[21] To constitute an adequate showing of injury-in-fact within a cognizable sphere of interest,

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[16] *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994).

[17] *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-04, 49 NRC 185, 191 (1999).

[18] *Id*. at 188 (emphasis in original).

[19] *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001) (citation and internal quotation marks omitted).

[20] *Id.* at 251 (citing *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001)); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995).

[21] *Sequoyah Fuels*, CLI-94-12, 40 NRC at 72; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

"pleadings must be something more than an ingenious academic exercise in the conceivable. A plaintiff must allege that he has or will in fact be perceptibly harmed by the challenged agency action, not that he can imagine circumstances in which he could be affected by the agency's action."[22] Moreover, "[w]here there is no obvious potential for radiological harm at a particular distance frequented by a petitioner, it becomes the petitioner's burden to show a specific and plausible means of how the challenged action may harm him or her."[23] Finally, "[a] petitioner cannot seek to obtain standing in a license amendment proceeding simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences."[24]

When an organization asserts a right to represent the interests of its members, judicial concepts of standing require a showing that: (1) its member(s) would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization's lawsuit.[25] To demonstrate representational standing, the organization must also show "how at least one of its members may be affected by the licensing action, must identify the member, and must show that the organization is authorized to represent that member."[26] The Commission has held that "[t]he burden of setting forth a clear

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[22] *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-15, 53 NRC 344, 349 (2001) (citing *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 688-89 (1973)).

[23] *USEC, Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311-12 (2005).

[24] *Zion*, CLI-99-04, 49 NRC at 192.

[25] *See PFS*, CLI-99-10, 49 NRC at 323 (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

[26] *White Mesa*, CLI-01-21, 54 NRC at 250.

and coherent argument for standing and intervention is on the petitioner. It should not be necessary to speculate about what a pleading is supposed to mean."[27]

B. COPS Does Not Demonstrate Standing

Petitioner asserts representational standing through its founder and member, Mr. Lutz.[28] Therefore, Petitioner must demonstrate that Mr. Lutz has standing to sue in his own right.[29] However, Mr. Lutz cannot establish standing because he does not show that he will be subject to a concrete and actual injury-in-fact stemming from the license amendment. Petitioner makes only broad and unsupported assertions to show standing. Petitioner states its concern with the "safety of the plant," particularly after the shutdown on January 31, 2012,[30] and asserts that "the current situation at the plant" (presumably the events related to the shutdown) threatens the "health and physical safety" of its members.[31] These claims cannot meet the standard outlined above because they are unrelated to the agency action at issue—the license amendment—and are far too generalized to demonstrate a specific injury-in-fact to Mr. Lutz.[32] Similarly, Petitioner's bald statement that Mr. Lutz has indeed "met the requirements for injury-in-fact, causation, and redressability"[33] is an unsupported assertion.

Nevertheless, mindful of the fact that when considering standing, the Board should construe the petition in favor of the petitioner,[34] particularly in the case of a *pro se* petitioner

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[27] *Zion*, CLI-99-04, 49 NRC at 194 (citation and internal quotation marks omitted).

[28] Petition at 2.

[29] *PFS*, CLI-99-10, 49 NRC at 323.

[30] Petition at 2. *See supra* n.13.

[31] *Id.* at 4.

[32] *Sequoyah Fuels*, CLI-94-12, 40 NRC at 72.

[33] Petition at 3.

[34] *See Georgia Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

such as COPS,[35] the Staff examined the substance of the contentions to determine whether any of Petitioner's claims potentially demonstrate an injury-in-fact under Commission precedent. The Staff concludes that none of Petitioner's claims demonstrate the potential for injury-in-fact.

Contention 1 challenges the proposal in the LAR to relocate, from the technical specifications to a licensee controlled document, provisions specifying the maximum interval that can elapse between surveillance of various systems, structures, and components.[36] Petitioner asserts that this increases the complexity of the surveillance frequency program, which in turn increases the potential for human error.[37] Furthermore, Petitioner speculates that the Licensee will decrease the surveillance frequencies, which Petitioner contends will "not improve safety at the plant."[38] These claims cannot meet the standard for injury-in-fact because Petitioner alleges no specific radiological harm to Mr. Lutz, and the potential for such harm is merely conjectural at best.[39] One must assume that the Licensee will decrease surveillance frequencies,[40] reduced surveillance will contribute to an accident with offsite consequences, and that Mr. Lutz resides close enough to the plant to be harmed.[41] This string of hypothetical situations cannot constitute injury-in-fact.

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[35] *See U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii & Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 189 (2010) ("although a Board should afford greater latitude to a pleading submitted by a *pro se* petitioner, that petitioner ultimately bears the burden to provide facts sufficient to show standing") (internal citations omitted).

[36] Petition at 5.

[37] *Id*. at 6-7.

[38] *Id.*

[39] *Zion*, CLI-99-04, 49 NRC at 192.

[40] Should the surveillance frequencies be moved to a licensee controlled document, the licensee still does not have absolute authority to modify them. Rather, all proposed changes to the frequencies would be moderated by the NRC through the 10 C.F.R. § 50.59 process. *See infra* at II.B.2.

[41] This final assumption is particularly problematic because Mr. Lutz resides 53 miles from the plant, which is outside both the plume exposure pathway emergency planning zone (EPZ) and the ingestion pathway EPZ. *See* 10 C.F.R. § 50.47(c)(2).

In Contention 2, Petitioner objects to a variety of provisions in the technical specifications.[42] A careful examination reveals that all but one of Petitioner's claims relate to existing features of the license and not to the changes proposed in the LAR.[43] The final claim in Contention 2 relates to the clarity of a sentence and does not show any potential for radiological harm.[44] Since the assertions in Contention 2 do not show harm from the LAR, Petitioner cannot demonstrate the requisite injury-in-fact required for standing.[45]

Petitioner's Contention 3 does not assert any injury at all. Rather, Petitioner merely speculates that the Licensee may somehow attempt to relate the LAR to a proposal to restart SONGS Unit 2 at reduced power.[46] Petitioner does not explain, nor is it evident, how an attempt to tie this LAR to the SONGS restart would cause any radiological consequences to Mr. Lutz. Moreover, Petitioner's claim, by its nature, admits that the SONGS restart is outside the scope of this LAR.[47] For these reasons, Contention 3 does not demonstrate injury-in-fact.

Petitioner cannot demonstrate representational standing through Mr. Lutz because Mr. Lutz fails to meet the standards for individual standing. Moreover, Petitioner does not attempt to show, nor could Petitioner successfully demonstrate, that Mr. Lutz's proximity to SONGS entitles him to a presumption of standing. As noted above, a petitioner in a license amendment proceeding cannot base standing solely on proximity unless the proposed action quite "obvious[ly] entails an increased potential for offsite consequences."[48] Petitioner does not allege sufficient facts to support a finding that the changes proposed by the LAR obviously

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[42] Petition at 9-16.

[43] *See infra* at Section III.C.

[44] *See infra* at Section III.C.5.

[45] *Zion*, CLI-99-04, 49 NRC at 188.

[46] Petition at 16.

[47] *Id.*

[48] *Zion*, CLI-99-04, 49 NRC at 191.

increase the potential for offsite consequences. As discussed above, Petitioner's claims in Contentions 2 and 3 are largely unrelated to changes proposed by the LAR, and with regard to Contention 1, it is not obvious that relocating the surveillance frequencies to a licensee-controlled document would contribute to an event with offsite consequences. Moreover, the address provided for Mr. Lutz in the Petition is more than 50 miles from SONGS, which is outside any emergency planning zone specified in NRC regulations, and is too far away from the plant to entitle Mr. Lutz to a proximity presumption even in a reactor licensing case.[49] For these reasons, the Board should not find standing based on proximity.

For these reasons, the Board should find that Petitioner lacks an interest affected by the proceeding.[50]

II. COPS Filed the Petition after the Deadline to Intervene in this Proceeding and Did Not Show Good Cause for the Delay

Pursuant to 10 C.F.R. § 2.309(b), the deadline for filing petitions to intervene in this proceeding was October 15, 2012.[51] Because COPS filed the Petition on October 17, 2012, COPS filed after the deadline. Under 10 C.F.R. § 2.309(c)(1), petitions to intervene "filed after the deadline . . . will not be entertained" unless the petitioner demonstrates good cause.[52]

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[49] *See* 10 CFR 50.47(c)(2); *see also Sequoyah Fuels*, CLI-94-12, 40 NRC at 75 n.22 (geographical proximity presumption applied in license amendment cases only at "distances much closer than 50 miles").

[50] 10 C.F.R. § 2.309(d)(1)(iv).

[51] 10 C.F.R. § 2.309(b); 77 Fed. Reg. 49,463 ("Within 60 days after the publication of this notice [August 16, 2012], any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene.") 10 C.F.R. § 2.306 indicates that when computing time periods under NRC practice, "the day of the act, event, or default after which the designated period of time begins to run is not included." Thus, October 15, 2012, was the deadline because it was the sixtieth day after August 16, 2012.

[52] 10 C.F.R. § 2.309(c).

The Commission recently amended § 2.309(c)(1) to specify what showing will constitute good cause.[53] To demonstrate good cause under the current regulations, a petitioner must show that the filing is timely in light of new information that is "materially different" from previously available information.[54] While the regulations do not define "timely," most boards provide a thirty-day deadline for petitions based on new information.[55] COPS has not attempted to address this standard. Even if COPS had addressed current § 2.309(c)(1), COPS could not show good cause under that provision. None of the documents on which COPS relies became available within the last thirty days and are materially different from previously available information.[56]

COPS contends that the Board should nonetheless consider its contention under the Commission's previous test for untimely filings in the earlier version of 10 C.F.R. § 2.309(c)(1), which contained eight factors.[57] COPS's confusion on the appropriate standard for this

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[53] Amendments to Adjudicatory Process Rules and Related Requirements; Final Rule, 77 Fed. Reg. 46,562, 46,591 (Aug. 3, 2012).

[54] 10 C.F.R. § 2.309(c)(1).

[55] *E.g., Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 574 (2008).

[56] The Petition contains only one reference to a document published thirty days before October 17; COPS cites a "recent request by the licensee to operate SONGS Unit 2 at reduced power output." Petition at 16. On October 3, 2012, SCE provided a restart plan to the NRC, which involves operation at reduced power. San Onofre Nuclear Generating Station, Unit 2 - Confirmatory Action Letter - Actions to Address Steam Generator Tube Degradation (Oct. 3, 2012) (ADAMS Accession No. ML122850320). While this request predates the Petition by less than 30 days, it does not relate to this LAR. Moreover, to the extent COPS claims that SCE must seek a license amendment for its restart plan, information regarding SCE's intent to restart SONGS Unit 2 without seeking a license amendment has been available for months. Letter from Peter T. Dietrich, Senior Vice President & Chief Nuclear Officer, Southern California Edison Company to Elmo E. Collins, Regional Administrator, Region IV, USNRC, subject: *Docket Nos. 50-361 and 50-362, Steam Generator Return-to-Service Action Plan, San Onofre Nuclear Generating Station* (March 23, 2012) (ADAMS Accession No. ML12086A182). Moreover, this question is the topic of another proceeding before the NRC. *Southern California Edison, Co.* (San Onofre Nuclear Generating Station, Units 2 & 3), CLI-12-20, 76 NRC __ (Nov. 8, 2012) (slip op.).

[57] Petition at 3-4 (citing 10 C.F.R. § 2.309(c)(1) (2011)). Those eight factors were (1) good cause for failure to file on time, (2) petitioner's right to be a party, (3) petitioner's interest in the proceeding, (4) effect of the proceeding on that interest, (5) availability of other means to protect that interest, (6) extent to which existing parties will represent that interest, (7) whether petitioner's participation would broaden or delay the proceeding, and (8) whether petitioner would assist in developing a sound record.

proceeding is understandable because the Staff referred to the former § 2.309(c)(1) factors in the Notice.[58] But, COPS has not shown that the Petition meets these standards.

Under the previous version of 10 C.F.R. § 2.309(c), untimely petitions could only be entertained following a determination by the Presiding Officer that a balancing of the eight factors weighed in favor of admission.[59] While the Commission required petitioners to show a "favorable balance among the [eight] factors," the Commission gave good cause the most weight.[60] If a petitioner could not show good cause, it would have to show a "compelling" balance of the other factors.[61] Regarding the first factor, the Commission stated that "[g]ood cause has long been interpreted to mean that the information on which the proposed new contention is based was not previously available."[62] For the reasons discussed above, COPS cannot show "good cause" because the Petition does not rest on new information that is materially different from previously available information.

Previously, Boards had found that the second through fourth factors "focus on the status of the requestor/petitioner seeking admission to a proceeding (e.g., standing, nature of the requestor/petitioner's affected interest)."[63] As discussed above, COPS has not established standing in this proceeding.[64] Consequently, these factors do not weigh in COPS's favor.

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[58] 77 Fed. Reg. at 49,472.

[59] 10 C.F.R. § 2.309(c)(1) (2011).

[60] *Id.* at 261.

[61] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 565 (2005); *Tennessee Valley Authority* (Watts Bar Nuclear Plant Unit 2), CLI-10-12, 71 NRC 319, 323 (2010).

[62] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-09-05, 69 NRC 115, 125-26 (2009); *Texas Utilities Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 164-65 (1993).

[63] Vermont Yankee, LBP-06-14, 63 NRC at 581.

[64] *See supra* Section I.

Likewise, the seventh factor weighs against intervention. Because there is currently no ongoing adjudicatory proceeding in this case, admitting the Petition's contentions will necessarily broaden the issues and delay the proceeding.[65] Consequently, COPS cannot make the "compelling" showing needed to overcome a lack of good cause under the prior § 2.309(c)(1).[66]

III. COPS Has Not Filed an Admissible Contention

A. Contention Admissibility Standards

In addition to meeting the deadline for hearing requests and demonstrating standing, an admissible contention must also meet the requirements of 10 C.F.R. § 2.309(f)(1). Under § 2.309(f)(1), an admissible contention must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
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> (ii) Provide a brief explanation of the basis for the contention;
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> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
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> (iv) 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;
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> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
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> (vi) . . . provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petition disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a

[65] 10 C.F.R. § 2.309(c)(1)(vii); *Private Fuel Storage, L.L.C.*, LBP-99-06, 49 NRC 114,119 (1999).

[66] *Millstone*, CLI-05-24, 62 NRC at 565-66.

> relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.[67]

The contention admissibility requirements are "strict by design."[68] Thus, the Commission has strictly applied them in NRC adjudications.[69]

Well-established NRC precedent limits the scope of NRC proceedings to the matters specified in the notice of hearing.[70] Here, the Notice clearly stated, "Contentions shall be limited to matters within the scope of the amendment under consideration."[71] The Notice explains, the LAR "requests approval to convert the Current Technical Specifications (CTS) to be consistent with the most recently approved version of the Standard Technical Specifications (STS) for Combustion Engineering Plants," with certain TSTFs.[72] Consequently, claims that do not relate to SCE's proposed changes to the current license are outside the scope of this proceeding.

Although petitioners are not required "to prove their case, or to provide an exhaustive list of possible bases" at the contention admissibility phase, they are required to provide "sufficient alleged factual or legal bases to support the contention, and to do so at the outset."[73] In addition, "[T]he Commission will not accept the filing of a vague, unparticularized [contention],

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[67] 10 C.F.R. § 2.309(f)(1).

[68] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

[69] *AmerGen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-19 (2006).

[70] *Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n. 6 (1979) (citing *Public Services Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-316, 3 NRC 167, 170-71 (1976)); *See, e.g.*, *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station Unit 3), LBP-08-9, 67 NRC 421, 437 (2008), *affirmed* CLI-08-17, 68 NRC 231, 240 (2008).

[71] 77 Fed. Reg. at 49,471.

[72] *Id*. at 49,464.

[73] *Louisiana Energy Services, LP* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004).

unsupported by alleged fact or expert opinion and documentary support."[74] Put another way, "[g]eneral assertions or conclusions will not suffice."[75] Thus, "[a] petitioner's issue will be ruled inadmissible if the petitioner has offered no tangible information, no experts, [or] no substantive affidavits but instead only bare assertions and speculation."[76]

B. Contention 1 (Surveillance Frequency Control Program)

Contention 1 states,

> Petitioner contends that removing surveillance frequencies from the operating license document obfuscates the minimum requirements, may introduce human error, and limits review by the public.[77]

The Petitioner's concern is with SCE's proposal to use a "Surveillance Frequency Control Program" (SFCP) based on an industry guidance document, NEI 04-10, Rev.1.[78] Petitioner does not discuss or dispute processes, flowcharts, and programs discussed in NEI 04-10, Rev. 1, but instead generally alleges that operators will reduce surveillance frequencies, omit surveillance tests, and incorrectly perform surveillances.[79] Also, Petitioner alleges that workers

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[74] *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 414 (2007) (quotations omitted).

[75] *Id*.

[76] *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003) (internal quotations omitted).

[77] Petition at 5.

[78] *See id* at 5-6. LAR, Attachment 1, Vol. 14, at 83 specifies at proposed TS 5.5.2.18.b., that changes to the frequencies listed in the SFCP shall be made in accordance with NEI 04-10, Rev. 1. *See also* NEI 04-10, Rev. 1, "Risk-Informed Technical Specifications Initiative 5b; Risk Informed Method for Control of Surveillance Frequencies: (April 2007) (ADAMS Accession No. ML071360456) ("NEI 04-10 Rev. 1"). The NRC staff found NEI 04-10, Rev. 1, to be an acceptable method for establishing a Surveillance Frequency Control Program in Technical Specifications. Letter from M. Case (for H. Nieh), Deputy Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, to Biff Bradley, Director Risk Assessment, Nuclear Energy Institute, enclosing "Safety Evaluation by the Office of Nuclear Reactor Regulation for Topical Report (TR) 04-10, Revision 1 [']Risk-Informed Technical Specification Initiative 5b, Risk-Informed Method for Control Of Surveillance Frequencies['] Nuclear Energy Institute Project No. 689" (Sept. 19, 2007) (ADAMS Accession No. ML072570267) ("Safety Evaluation of Nuclear Energy Institute 04-10").

[79] Petition at 6.

will be "overconfident" and the SFCP will complicate the surveillance program and not improve plant safety.[80] To remedy these problems, Petitioner contends that surveillance frequencies should be broken into two categories.[81] Finally, Petitioner asserts that the surveillance frequency to check for steam generator leakage is too infrequent.[82] As discussed below, the issues presented in Contention 1, when read together with their supporting bases, do not form admissible issues.

1. The Claim that the LAR Obfuscates Minimum Requirements is Inadmissible

The SFCP relocates surveillance frequencies from the pages of the technical specifications into the pages of licensee-controlled document such as a "Technical Review Manual" ("TRM").[83] Petitioner claims that this change would obfuscate minimum operating requirements.[84] However, Petitioner has offered no support for this claim. The LAR would not "obfuscate" the minimum requirements from the licensee's staff, who actually use the surveillance tests. Instead, licensees who adopt SFCP maintain the list or table of surveillance frequencies in a TRM.[85]

Petitioner asserts that the LAR will make it "difficult for the public and other organizations to review the surveillance frequencies in use and to provide useful feedback to correct

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[80] *Id.* at 7-8.

[81] *Id*. at 8.

[82] *Id*.

[83] NEI 04-10, Rev. 1, at B-1. Licensees vary the name of the document listing the surveillance frequencies. *See e.g.* Appendix I of Quad Cities Nuclear Power Station TRM at Table 1 "Surveillance Requirement Frequencies" (October 2011) (ADAMS Accession No. ML11305A134) (showing, *inter alia*, the TS surveillance requirement, description, and testing frequency).

[84] Petition at 6.

[85] NEI 04-10 Rev. 1 at B-1.

assumptions made by operators."[86] But, Petitioner does not cite to any requirement which mandates that the applicant must provide to the public (and other organizations) feedback mechanisms during operations. Rather, Congress intended that the federal government, not a member of the public, should regulate the radiological safety aspects involved in the operation of a nuclear plant.[87] Therefore, this claim is immaterial because it entirely fails to establish any legal deficiency with the application.[88]

In addition, COPS does not acknowledge the feedback mechanisms which the licensee already proposes in the LAR. SCE's proposal includes establishing an "Independent Decisionmaking Panel" (IDP) comprising the site Maintenance Rule Expert Panel, a Surveillance Test Coordinator with experience in surveillance tests, and a Subject Matter Expert with experience in system or component reliability.[89] The panel's responsibilities include "reviewing the cumulative impact of all changes carried out over a period of time, [and] monitoring the impact of changes on failure rates."[90] Furthermore, feedback is explicitly addressed at various other steps in NEI-04-10, Rev. 1.[91] COPS offers no reasons why the licensee's proposed feedback mechanisms are deficient.

Therefore, these challenges do not support admission of Contention 1. This does not leave COPS without remedy as the Commission's regulations provide a variety of mechanisms which COPS may use to provide feedback. For example, if COPS determines that a particular frequency must be used, and furthermore must be specified in the technical specifications, then

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[86] Petition at 6.

[87] *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 205 (1983).

[88] 10 C.F.R. § 2.309(f)(1)(vi).

[89] NEI-04-10, Rev. 1 at 27.

[90] *Id.*

[91] *See id*. at 28 Step 18 ("Monitoring and Feedback"); *id.* at 29-30 Step 19 ("Periodic Re-assessment").

it may also request that the NRC institute a proceeding to modify the licenses to specify a particular frequency.[92] Moreover, nothing prohibits COPS from providing feedback to the licensee with respect to the appropriateness of any particular surveillance frequency.

2. The Petition's Human Factors Claims Are Inadmissible

In addition, COPS notes that "many" changes in the LAR "remove surveillance frequency specifications (typically specified by the maximum time between inspection) from the operating license document and instead refer to a companion document, which is under the control of the licensee, where the surveillance frequencies are then specified."[93] COPS cites a number of general human performance studies to conclude that "maintenance-related omissions constitute a substantial proportion of the human failure root causes in significant event reports."[94] Thus, COPS asserts that if SCE decreases the surveillance frequencies, SCE may perform them incorrectly. The Petition also contends that "problem solvers and planners . . . are likely to be overconfident in assessing the correctness of their knowledge," SCE may overly rely on probabilistic risk assessment ("PRA") to decrease surveillance frequency, and the proposed change will increase the complexity of the license by moving the surveillance frequencies to a licensee-controlled document.[95] As a result, COPS alleges that the licensee may decrease surveillance frequencies to an unsafe level. Therefore, COPS "objects to relocation of these [surveillance frequencies] to a licensee-controlled document."[96] COPS contends that "allowing the licensee free-rein to reduce the surveillance frequencies" will reduce plant safety.[97] As

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[92] *See* 10 C.F.R. §§ 2.202, 2.206.

[93] Petition at 5.

[94] *Id*. at 6.

[95] *Id*. at 7.

[96] *Id*.

[97] 10 C.F.R. § 50.59.

discussed below, these arguments lack an adequate factual basis and are outside the scope of this proceeding.

First, this speculative claim fails to discuss and dispute the LAR. In the LAR, the overall approach for changing the SFCP will be in accord with NEI 04-10, Rev. 1.[98] In turn, NEI 04-10 reflects guidance in several staff documents.[99] Indeed, NEI 04-10, Rev. 1, provides five key safety principles for consideration when changing frequencies:

1) the proposed change meets the current regulations unless it is explicitly related to a requested exemption or rule change;

2) The proposed change is consistent with the defense-in-depth philosophy;

3) The proposed change maintains sufficient safety margins;

4) When proposed changes result in an increase in core damage frequency or risk, the increases should be small and consistent with the intent of the Commission's Safety Goal Policy Statement; and

5) The impact of the proposed change should be monitored using performance measurement strategies.[100]

In addition, the process for amending surveillance frequencies in NEI 04-10 includes peer review, use of industry standards, and sensitivity and uncertainty analyses.[101]

COPS does not discuss or dispute the contents of NEI 04-10, the background documents behind NEI 04-10, or the methods for changes described therein. COPS has not alleged, much less shown, that these safeguards on the licensee's analysis, such as peer

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[98] LAR, Attachment 1, Vol. 14, at 83.

[99] NEI 04-10, Rev. 1 is consistent with Regulatory Guide (RG) 1.174, Rev. 1, "An Approach for using Probabilistic Risk Assessment in Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis," (Nov. 2002) (ADAMS Accession No. ML023240437) and RG1.177, Rev. 0, "An Approach for Plant-Specific Risk-Informed Decisionmaking: Technical Specifications," (Aug. 1998) (ADAMS Accession No. ML003740176).

[100] NEI 04-10, Rev. 1, at 5-7.

[101] Safety Evaluation of Nuclear Energy Institute 04-10, at 4-6.

review or uncertainty analyses, would be inadequate. Therefore, the documents cited by the Petition do not provide sufficient information to support a claim that SCE would decrease a surveillance frequency to an unsafe level.[102] Instead, they simply establish the potential for human error inherent to every licensee action. Thus, this contention lacks an adequate factual basis because it fails to demonstrate, with any specificity, how the licensee would unsafely alter surveillance frequencies.[103]

Moreover, COPS's claim that SCE will have "free rein to reduce the surveillance frequencies" ignores the requirements of 10 C.F.R. § 50.59.[104] That section requires all licensees to evaluate changes to plant procedures in licensee-controlled documents and to seek a license amendment under 10 C.F.R. § 50.90 for any change that results in a substantial change from previous analyses or results in a "more than minimal" increase in risk.[105] Thus, the NRC already has a regulation in place to ensure that the licensee will not change licensee-controlled documents to reduce the level of safety provided by the current licensing basis without first obtaining NRC approval. The Commission has frequently stated that contentions alleging that NRC "regulatory provisions are themselves insufficient to protect the public health and safety [constitute] an improper collateral attack."[106] Therefore, because this claim challenges the efficacy of 10 C.F.R. § 50.59, it is outside the scope of this proceeding.[107]

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[102] The Commission has found that admissible contentions must not only provide factual support, but provide some explanation for how those materials support the contention. *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-05, __ NRC __, __ (Mar. 8. 2012) (slip op. at 10-18) (noting that an improvidently admitted contention did not "explain specifically why any [of the alleged factual bases] supports the contention's admission").

[103] 10 C.F.R. § 2.309(f)(1)(v), (vi).

[104] Petition at 7.

[105] 10 C.F.R. § 50.59(c)(1), (2).

[106] *Curators of the University of Missouri*, CLI-95-01, 41 NRC 71, 170 (1995).

[107] 10 C.F.R. § 2.309(f)(1)(iii). While petitioners may file a waiver petition to challenge a rule in NRC proceedings under 10 C.F.R. § 2.335, COPS declined to do so in this case.

COPS's claim could be read to imply that SCE will not properly evaluate the impact of changes reducing surveillance frequency and, as a result, may violate § 50.59 by incorrectly determining that a given surveillance frequency alteration does not require a license amendment. But, the Commission has frequently declined "to assume that licensees will contravene our regulations" absent some "documentary support" that such a violation is likely.[108] COPS cites to a number of documents related to human performance to support its assertion that SCE may not exercise due caution in amending surveillance frequencies. But some of these references do not appear to relate to the nuclear industry at all and none of them mention SCE; more importantly, COPS has not provided any indication that the works discuss surveillance frequencies in general or those that are the subject of the LAR. Thus, COPS has not provided sufficient information to show that SCE will likely violate § 50.59 should the NRC grant the LAR. Consequently, this portion of COPS claim is inadmissible because it lacks an adequate basis and is outside the scope of this proceeding.[109]

3. Two Classes of Surveillance Frequencies

COPS contends that surveillance frequencies should be split into two categories. Class 1 would consist of "critical operational parameters," for which the frequency of surveillance should be increased.[110] Class 2 would include "backup and safety equipment that is not necessary for the normal operation of the plant,"[111] for which surveillance "can be reasonably decreased in frequency."[112] In this claim, COPS merely suggests a new regulatory policy, but

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[108] *E.g., GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 207 (2000).

[109] 10 C.F.R. § 2.309(f)(1)(iii), (v), (vi).

[110] Petition at 8.

[111] *Id.*

[112] *Id.* at 9.

does not demonstrate a factual dispute with the LAR. Therefore, Petitioner's suggestion is inadmissible in this adjudicatory proceeding.[113] Nonetheless, if Petitioner believes this suggestion could improve the NRC's regulatory process, Petitioner may always file a rulemaking petition under 10 C.F.R. § 2.802.

4. Inadequacy of 72-Hour Surveillance Frequency

COPS argues that "surveillance frequencies of critical operational parameters (CLASS 1) are far too low (infrequent) to allow operators to – through those surveillances – catch an ongoing failure at the plant."[114] Specifically, COPS argues that "checking leakage from the steam generators only once every 72 hours is ridiculously infrequent," and cites the January 31, 2012 steam generator failure, which led to the current shutdown, as support for this claim.[115] COPS suggests that the quick progression of the leak showed that a 72-hour surveillance frequency is insufficient.[116]

This claim is outside the scope of this proceeding and therefore does not support an admissible contention. The 72-hour surveillance frequency for steam generator leakage is not a proposed change to the technical specifications in the license amendment request, but rather part of the current operating license.[117] COPS itself notes this fact, as it cites to the 72-hour

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[113] *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 21 n.33 (1974) ("a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue."); 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), (vi).

[114] Petition at 8.

[115] *Id.*

[116] *Id*.

[117] LRA, Attachment 1, Vol 7, at 349 (noting that current TS SR 3.4.13.2 requires SCE to "[v]erify primary to secondary LEAKAGE is ≤ 150 gallons per day through any one SG" at a frequency of "72 hours").

surveillance frequency in the current technical specifications.[118] Because challenges to the current operating license are outside the scope of matters challengeable in a license amendment proceeding, this claim fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii).[119]

C. Contention 2 (Alleged Mistakes in the LAR)

In Contention 2, COPS asserts that there are mistakes in the application that reduce the level of safety provided by the current licensing basis.[120] As discussed below, these claims lack an adequate basis. Moreover, they largely challenge parts of the existing license and are therefore outside the scope of this proceeding.

1. Steam Generator Level Reactor Trip Bases 3.4.4

COPS first contends that the LAR mistakenly lists a change in the steam generator level reactor trip from 25% to 20%, whereas it should list a change from 25% to 50%.[121] COPS argues that this claimed error "puts the plant in severe danger."[122]

This challenge is outside the scope of a license amendment proceeding and therefore does not support an admissible contention. The current technical specifications already list the steam generator level reactor trip as 20% and the LAR does not change this requirement.[123] Rather, the LAR modifies the improved STS to reflect the current licensing basis.[124] Thus, to

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[118] Petition at 8 (noting, "Attachment 1 Vol[.] 7 (Chapter 3.4 Reactor Coolant System (RCS)) – Page 351 – CTS SR 3.4.13.2 requires verifying that primary to secondary LEAKAGE is ≤ 150 gallons per day through any one SG every 72 hours").

[119] *See, e.g.*, *Trojan,* ALAB-534, 9 NRC at 289 n. 6.

[120] Petition at 9-16.

[121] *Id*. at 9.

[122] *Id.*

[123] LAR, Attachment 1, Volume 7, at 99, 102.

the extent that COPS challenges a steam generator level reactor trip of 20%, it challenges the current license, rather than any proposed change in the LAR. As such, this contention is outside the scope of this proceeding and therefore inadmissible.[125]

Furthermore, this claim is not supported by an adequate factual basis and thus cannot form part of an admissible contention.[126] Even if the LAR did propose a change in the steam generator level reactor trip to 20%, COPS offers no evidence that 20% is an unsafe level beyond its bare statement that this level "puts the plant in severe danger."[127] COPS offers no "facts or expert opinions which support [its] position on the issue" and no "specific sources or documents" supporting its claim.[128] Because this claim lacks an adequate factual basis, it cannot support an admissible contention, even if it were within the scope of this proceeding.

2. Leakage

Petitioner states that it identified an internal inconsistency in TS 3.4.13, Reactor Coolant System Operational Leakage, in that TS LCO 3.4.13.a. requires "No pressure boundary LEAKAGE" but TS LCO 3.4.13.d. limits allowed leakage to "150 gallons per day primary to secondary LEAKAGE through any one Steam Generator (SG)."[129] Petitioner's concern is that the leakage of 150 gallons per day under TS 3.4.13.d. would be released to the environment.[130] Petitioner proposes that the internal inconsistency be resolved through either 1) a change to

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[124] LAR, Attachment 1, Vol. 7, at 97-99.

[125] 10 C.F.R. § 2.309(f)(1)(iii).

[126] 10 C.F.R. § 2.309(f)(1)(v), (vi).

[127] Petition at 9.

[128] 10 C.F.R. § 2.309(f)(1)(v).

[129] Petition at 10-12.

[130] *Id.* at 11.

definition of "reactor coolant pressure boundary" in 10 C.F.R. § 50.2, or 2) modifying TS LCO 3.4.13.a. and TS LCO 3.4.13.d. by adding additional details.[131]

Petitioner's concerns with TS LCO 3.4.13.a. and d. are beyond the scope of this proceeding, inasmuch as no substantive changes to TS LCO 3.4.13.a. and d. are being requested by the licensee.[132] Instead, TS LCO 3.4.13.d. is the result of an LAR submitted seven years ago.[133] Thus, inasmuch as the licensee is not now requesting changes to the leakage limits, the limits are beyond the scope of the proceeding.[134]

Because no material changes to the leakage limits in TS LCO 3.4.13 are being proposed by SCE, Petitioner cannot seek relief in the instant proceeding. Instead, to modify the TS in the fashion Petitioner believes is appropriate (e.g. changing TS or definitions within the TS), Petitioner may file a request under 10 C.F.R. § 2.206 for the NRC to institute a proceeding pursuant to 10 C.F.R. § 2.202 to modify, suspend, or revoke a license, or for any other action as

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[131] *Id.* at 11-13.

[132] *See* LAR, Attachment 1, Volume 7, at 346 (showing, though a markup of changes to the current technical specification 3.4.13, that no material changes are proposed in TS LCO 3.4.13.a. and d.); see also Attachment 1, Volume 7, Rev. 0, Page 356 of 554 (showing, though a markup of STS 3.4.13, no material changes to TS LCO 3.4.13).

[133] Letter from Brian Katz, Vice President Southern California Edison to US Nuclear Regulatory Commission, Subject: Docket Nos. 50-361 and 50-362, Proposed Change Number NPF-10/15-564, Application for Technical Specification Improvement Regarding Steam Generator Tube Integrity, San Onofre Nuclear Generating Station, Units 2 and 3 (Nov. 30, 2005) (ADAMS Accession No. ML053390294) (describing, at Enclosure 3 page 5, changes to TS 3.4.13, while retaining a LCO limit of 150 gallons per day primary-to-secondary leakage through any on steam generator to ensure that total primary-to-secondary leakage through both steam generators (there are two per unit) is not allowed to exceed 300 gallons per day.). On February 14, 2006, the NRC published a notice of opportunity for hearing on the changes in TS LCO 3.4.13. Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, 71 Fed. Reg. 7804 & 7812 (Feb. 14, 2006) (providing 60 days from publication for a hearing request concerning the Nov. 30, 2005 LAR which addressed leakage rates). On September 16, 2006, the NRC issued the Amendment No. 204 to Facility Operating License No. NPF-10 and Amendment No. 196 to Facility Operating License No. NPF-15 for San Onofre Nuclear Generating Station, Units 2 and 3, respectively in response to the LAR dated November 30, 2005, as supplemented by letter dated May 30, 2006. Letter from N. Kalyanam, Project Manager, US NRC to R. Rosenblum, Chief Nuclear Officer, SCE, Subject: San Onofre Nuclear Generating Station, Units 2 and 3 - Issuance of Amendments Re: Technical Specification Improvement Regarding Steam Generator Tube Integrity Based On Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF-449, "Steam Generator Tube Integrity" (Tac Nos. MC9236 and MC9237), (Sept. 19, 2009) (ADAMS Package Accession No. ML062620367).

[134] *See, e.g.*, *Trojan,* ALAB-534, 9 NRC at 289 n. 6.

may be proper.[135] Alternatively, to the extent that Petitioner believes the definition of reactor coolant pressure boundary in 10 C.F.R. § 50.2 requires changes, Petitioner may petition the NRC to amend the regulation using the process described in 10 C.F.R. § 2.802(a). However, these claims do not support admission of this portion of Contention 2 in this LAR proceeding.

Petitioner states that revision to the definition in pressure boundary is necessary to achieve internal consistency in the TS.[136] The concerns over the definition of pressure boundary leakage, and potential internal inconsistency in TS LCO 3.4.13.a. and d. are beyond the scope of the proceeding because the LAR is not proposing to change the definition of "Pressure Boundary LEAKAGE." Although not discussed by the Petitioner, a review of the definition of "Pressure Boundary LEAKAGE" in both the existing current TS as well as the proposed new TS shows that, by definition, such leakage excludes reactor coolant system leakage through a steam generator to the secondary system.[137] In other words, the existing TS, which are unchanged by the LAR, directly address the area which the Petitioner thought was inconsistent.

Similarly, where the Petitioner claims that the NRC's inspection report incorrectly interpreted the TS to allow leakage through a steam generator, the Petitioner's claim does not withstand the clarifying information present in the definitions.[138] Those definitions clearly indicate that the definition of leakage excludes that leakage from the steam generators.[139] In

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[135] 10 C.F.R. § 2.206(a).

[136] Petition at 11.

[137] *See* LAR Attachment 1, Vol. 1, at 9 (showing markup of Unit 2 TS 1.1) , *id.* at 43 (showing markup of Unit 3 TS 1.1); *id.* at 86 (showing markup of STS).

[138] Petition at 12 (citing Augmented Inspection Team Report 05000361/2012007 and 05000362/2012007 (July 18, 2012) (ADAMS Accession No. ML12188A748)).

[139] *See* LAR Attachment 1, Vol. 1, at 9 (showing markup of Unit 2 TS 1.1) , *id.* at 43 (showing markup of Unit 3 TS 1.1); *id.* at 86 (showing markup of STS).

any event, claims concerning the Staff's documentation of its inspection activities are beyond the scope of this proceeding.[140]

3. Atmospheric Dump Valves

Next, COPS "objects to [the] change to the license which incorrectly allows a single Atmospheric Dump Valve" ("ADV").[141] COPS notes that the LAR reads, "The [iSTS] LCO 3.7.4 is being changed from 'Two ADV lines shall be OPERABLE' to 'One ADV line per required steam generator shall be OPERABLE.' "[142] Because the STS explains that the plant design "must accommodate the single failure of one ADV to open on demand," COPS "contends this change is unsafe and petitioner therefore objects to this change which incorrectly allows a single ADV."[143]

This claim is outside the scope of this proceeding because the LAR does not propose any change to the current licensing basis, which only requires one ADV line to be operable for each steam generator at SONGS.[144] COPS's claim appears to confuse the applicant's modifications to the STS with the proposed changes to the current SONGS operating license.[145] SONGS's design only has one ADV line per steam generator.[146] The current SONGS operating license reflects this design feature, and only requires one ADV line to be operable for each

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[140] *See, e.g.*, *Trojan,* ALAB-534, 9 NRC at 289 n. 6; 77 Fed. Reg. at 49,471 ("Contentions shall be limited to matters within the scope of the amendment under consideration.").

[141] Petition at 13.

[142] *Id*. (citing LAR, Attachment 1, Vol. 10, at 99).

[143] Petition at 14.

[144] LAR, Attachment 1, Vol. 10, at 83; *see* Issuance of Amendment No. 89 to Facility Operating License No. NPF-10 and Amendment No. 79 to Facility Operating License No. NPF-15 San Onofre Nuclear Generating Station, Unit Nos. 2 and 3 (TAC Nos. 74586 and 74587) (Jul 10, 1990) (ADAMS Accession No. ML021980516).

[145] *Compare* LAR, Attachment 1, Vol. 10, at 82-88, *with* LAR, Attachment 1, Vol. 10, at 95-98.

[146] *Id.*

steam generator.[147] The STS, however, rests on the assumption that each steam generator has two ADV lines.[148] Thus, SCE's LAR modifies the STS to only require one ADV line to be operable per SG in order to reflect the current design and licensing basis of SONGS. Consequently, the LAR actually proposes no change in the number of ADV lines required to be operable for each steam generator. As a result, the contention is not within the scope of this proceeding.[149]

Moreover, COPS's claim that the SONGS design basis is unsafe because it cannot accommodate the single failure of one ADV to open lacks an adequate factual basis.[150] The LAR explains that the ADVs are designed to cool the unit to shutdown cooling ("SDC") system entry conditions.[151] However, the SONGS current operating license specifies that in addition to an ADV, each SG also has several main steam safety valves ("MSSV").[152] COPS has not provided any indication that these MSSVs would be unable to cool the unit in the event one SG were inoperable and an ADV failed.[153] Rather, COPS only speculates that the current SONGS design cannot accommodate an ADV single failure and leaps to the conclusion that this design

[147] LAR, Attachment 1, Vol. 10, at 83 ("One ADV per required Steam Generator (SG) shall be operable.").

[148] NUREG-1432, Standard Technical Specifications, Combustion Engineering Plants, Bases, Vol. 2, Rev. 3, at 3.7.4-1 (Jun. 2004) (ADAMS Accession No. ML041830101) ("NUREG-1432, Vol. 2, Rev. 3").

[149] *See, e.g.*, *Trojan,* ALAB-534, 9 NRC at 289 n. 6; 77 Fed. Reg. at 49,471 ("Contentions shall be limited to matters within the scope of the amendment under consideration.").

[150] Petition at 14.

[151] LAR, Attachment 1, Vol. 10, at 101.

[152] *Id.* at 4-12.

[153] NUREG-1432, Vol. 2, Rev. 3, at 3.7.4-3 (indicating that MSSVs provide a back up function for ADVs).

feature is "unsafe."[154] Thus, this claim is unsupported and does not raise a genuine dispute with the application.[155]

4. Exclusion Area

Petitioner contends that SCE does not satisfy 10 C.F.R. § 50.2 because SCE does not have the "authority to determine all activities" in the exclusion area surrounding SONGS.[156] Specifically, Petitioner asserts that SCE is in violation of NRC regulations because, in the event of an emergency, SCE would be unable to stop all traffic on the portion of Interstate-5 which traverses the exclusion area.[157] Petitioner additionally asserts that the portion of the public beach in the exclusion area must have signage warning the public that they may be exposed to higher than allowable radiation doses in the event of an emergency.[158]

The boundaries of the exclusion area are referenced in the technical specifications, but the LAR does not propose any change to the current operating license with regard to the exclusion area.[159] Therefore, the contention is outside the scope of this proceeding and is inadmissible.[160] Likewise, Petitioner's suggestion that SCE should install exclusion gates on the interstate highway to redirect traffic in case of an emergency and increase signage on the public

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[154] Petition at 14.

[155] 10 C.F.R. § 2.309(f)(1)(v), (vi); *Fansteel, Inc.*, CLI-03-13, 58 NRC at 203.

[156] Petition at 14.

[157] *Id.* at 15.

[158] *Id.*

[159] As with many of its claims in Contention 2, Petitioner mistakes Applicant's changes to the STS for changes to the current operating license. *See* LAR, Attachment 1, Vol. 13, at 18 ("The ITS drawings have been updated to be consistent with the current Exclusion Area Boundary and Low Population Zone drawings in the UFSAR. The proposed changes do not affect the release points, nor the dimensions of the Exclusion Area Boundary or the Low Population Zone, associated with the SONGS Units 2 and 3 operating license. Therefore, since the ITS Figures are consistent with the figures in the UFSAR, this change is acceptable and is designated as administrative.").

[160] *See, e.g.*, *Trojan,* ALAB-534, 9 NRC at 289 n. 6.; 77 Fed. Reg. at 49,471 ("Contentions shall be limited to matters within the scope of the amendment under consideration."); 10 C.F.R. § 2.309(f)(1)(iii), (iv).

roads and beach at the boundary of the exclusion area is a matter of regulatory policy and is inadmissible in this proceeding.[161]

Moreover, Petitioner's concerns regarding the boundaries of the exclusion area were already litigated extensively during the initial construction permit proceeding for SONGS. 10 C.F.R. § 50.2 and the identical provision at 10 C.F.R. § 100.3 define exclusion area in part as:

> that area surrounding the reactor, in which the reactor licensee has the authority to determine all activities including exclusion or removal of personnel and property from the area. This area may be traversed by a highway, railroad, or waterway, provided these are not so close to the facility as to interfere with normal operations of the facility and provided appropriate and effective arrangements are made to control traffic on the highway, railroad, or waterway, in case of emergency, to protect the public health and safety.

With regard to the interstate highway that traverses SONGS's exclusion area, the Appeal Board ruled that Section 50.2, by its own terms, exempted passageways such as highways from the strict "authority" requirements and instead required that there be "appropriate arrangements" to "control traffic" in the event of an emergency.[162] SCE has made such arrangements.[163] Therefore, contrary to Petitioner's assertion, NRC regulations do not require SCE to have the ability to "stop traffic on the freeway"[164] in the event of an emergency.[165]

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[161] *Peach Bottom*, ALAB-216, 8 AEC at n.33 ("a contention that simply states the petitioner's views about what regulatory policy should be does not present a litigable issue.").

[162] *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-248, 8 AEC 957, 965 n.17 (1974) ("[W]e are not troubled by the presence of the highway, railroad, and waterway within the exclusion area. For, as we read the applicable regulation, it exempts such passageways from the strict 'authority' requirements."); *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-268, 1 NRC 383, 393 (1975) (finding that an "exception relaxes the control requirement by permitting the exclusion area to be 'traversed by a highway, railroad, or waterway,' provided, *inter alia*, that 'appropriate and effective arrangements are made to control traffic on the highway, railroad, or waterway, in case of emergency, to protect the public health and safety.' . . . [P]ersons utilizing the [highway] can be expected to be (1) highly mobile and thus able to leave the exclusion area quickly; (2) limited by the nature of the passageway to that portion of the exclusion area; and (3) readily excludable from the entire area by the simple expedient of closing the passageway to traffic.").

[163] NUREG-0712, Safety Evaluation Report Related to the Operation of San Onofre Nuclear Generating Station Units 2 and 3, at 2-5 (Feb. 1981) ("In case of a radiological emergency, the applicants have made arrangements with agencies of the Federal, State and local governments to control all traffic on the railroad, roadways and waterways.").

[164] Petition at 15.

Regarding the strip of public beach within the exclusion area, the Appeal Board affirmed a Licensing Board determination that the applicant's lack of control over that portion of beach was *de minimis* because very few members of the public used it for recreational activities and it could be evacuated expeditiously in the event of an emergency.[166] Furthermore, the Appeal Board affirmed the Licensing Board's finding that even in the event of an accident, there remained a "high probability" that the radiation exposure of those on the beach would be "well within permissible limits."[167] Petitioner provides no basis for its claim that those on the beach within the exclusion area during an accident may be exposed to higher than the allowable standards of radiation.[168] Because COPS provides no evidence to challenge the Appeal Board's well-reasoned findings regarding SONGS's exclusion area, its claim lacks an adequate factual basis and should be rejected.[169]

5. Steam Generator Repair Criteria

Petitioner states that a paragraph of the proposed bases[170] for the SG tube integrity TS LCO 3.4.17 (i.e. LCO B.3.17) is confusing, and suggests as a solution deleting a sentence in the

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[165] If Petitioner is suggesting that current regulations are inadequate, such a collateral attack is outside the scope of an adjudicatory proceeding absent a successful waiver request. *Curators of the University of Missouri*, CLI-95-01, 41 NRC at 170.

[166] *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-432, 6 NRC 465, 467-68 (1977); *see also Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 & 3), LBP-77-34, 5 NRC 1270, 1276-84 (1977).

[167] *San Onofre*, ALAB-432, 6 NRC at 468; *see also San Onofre*, LBP-77-34, 5 NRC at 1284-88.

[168] Petition at 15.

[169] 10 C.F.R. § 2.309(f)(1)(v), (vi).

[170] Bases are summary statements of the reasons for non-administrative technical specifications which are required to be submitted in initial license applications along with the technical specifications, but are not part of the technical specifications themselves. 10 C.F.R. § 50.36(a)(1). The bases were enhanced when the STS were produced. 58 Fed. Reg. at 39,133 ("The new STS should also provide improvements to the Bases Section of Technical Specifications which provides the purpose for each requirement in the specification."). It is the Commission's policy and intention that the wording and bases of the improved STS be used to the extent practicable. 58 Fed. Reg. at 39,136.

paragraph.[171] That sentence states, "If a tube was determined to satisfy the repair criteria but was not plugged, the tube may still have tube integrity." However, LCO B.3.17 goes on to explain that "A SG tube has tube integrity when it satisfies the SG performance criteria" which is "defined in Specification 5.5.9, 'Steam Generator Program.' "[172] Thus, the proposed bases elaborate and explain the sentence which Petitioner found confusing. In consideration of the additional description in the proposed bases, the Petitioner's suggested change does not identify an error or omission in the application.

D. Contention 3 (Separation from Steam Generator Issues)

Last, COPS speculates that "the licensee may attempt to claim that the current LAR also applies to the recent request by the licensee to operate SONGS Unit 2 at reduced power (70%)."[173] COPS contends that "the scope of the LAR must not be allowed to encompass those very important concerns."[174] The Staff is unaware of any attempt by SCE to modify the LAR to include the proposed Unit 2 restart. Absent such a modification, claims regarding the proposed restart are indeed outside the scope of this proceeding.[175] Should SCE attempt to expand the scope of the LAR to include the restart, COPS could amend its Petition to address restart issues.[176]

COPS also "contends that a new LAR must be processed to allow the plant to operate in a reduced-power configuration so that the NRC and the public can review their proposal in

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[171] Petition at 16.

[172] LAR, Attachment 1, Vol. 7, at 510.

[173] Petition at 16.

[174] *Id*.

[175] *See, e.g.*, *Trojan,* ALAB-534, 9 NRC at 289 n. 6.; 77 Fed. Reg. at 49,471 ("Contentions shall be limited to matters within the scope of the amendment under consideration.").

[176] 10 C.F.R. § 2.309(c)(1).

detail."[177] But this claim is outside the scope of this proceeding and immaterial to the findings that the NRC Staff must make to determine whether to grant the LAR.[178] COPS concedes that the scope of this proceeding is limited to the amendments in the LAR.[179] Whether the NRC ultimately decides to allow the Unit 2 restart without a license amendment is unrelated to those amendments. Because these concerns are not related to the LAR at issue, they ultimately have no bearing on the NRC's determination of whether to grant a license amendment to implement STS revision 3. Consequently, this claim is outside the scope of this proceeding and is immaterial.

In addition, even if this claim were a proper subject for this proceeding, COPS has not provided adequate support for it. To support an admissible contention, a petitioner must provide a factual basis to support the claim.[180] Under NRC regulations, 10 C.F.R. § 50.59 governs the question of whether a licensee must submit a license amendment to support a proposed change in plant operation. That section requires a licensee to request an amendment in eight circumstances. COPS has not addressed these eight circumstances, let alone provided any justification for why the proposed restart would meet any of them. Thus, in addition to being immaterial and out of scope, this claim constitutes the type of "bare assertion" that the Commission has previously found cannot support an admissible contention.[181]

Although the proposed restart of SONGS Unit 2 is not an appropriate inquiry for this proceeding, COPS is not without remedy. If SCE ultimately submits a license amendment to support restart, COPS will have an opportunity to file a petition to intervene on the amendment

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[177] Petition at 16.

[178] 10 C.F.R. § 2.309(f)(1)(iii), (iv), (vi).

[179] Petition at 16.

[180] 10 C.F.R. § 2.309(f)(1)(v), (vi).

[181] *Fansteel, Inc.*, CLI-03-13, 58 NRC at 203.

at that time.[182] On the other hand, if SCE does not submit such a license amendment and COPS believes that this violates 10 C.F.R. § 50.59, then COPS can always file an enforcement petition under 10 C.F.R. § 2.206.[183]

Conclusion

For the foregoing reasons, COPS's Petition should be denied. COPS lacks standing, did not meet the filing deadline, and has not proffered an admissible contention.

Respectfully submitted,

Executed in Accord with 10 CFR 2.304(d)

/***Signed (electronically) by***/

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[182] 42 U.S.C. § 2239(a).

[183] In another proceeding regarding SONGS, the Commission referred to the Director of Nuclear Reactor Regulation assertions that SCE did not comply with § 50.59 in replacing its steam generators and referred to the Atomic Safety and Licensing Board the question of whether the NRC Staff's confirmatory action letter regarding restart constituted a *de facto* license amendment. *San Onofre*, CLI-12-20, 76 NRC at __ (slip op. at 3-5).

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361-LA/50-362-LA
	)	
(San Onofre Nuclear Generating Station	)	
Units 2 and 3)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO PETITION TO INTERVENE AND REQUEST FOR HEARING BY CITIZENS OVERSIGHT" dated November 9, 2012, have been served over the Electronic Information Exchange, the NRC's E-Filing System, this 9th day of November, 2012:

Signed (electronically) by

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