

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

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))	
)	February 8, 2013

**SOUTHERN CALIFORNIA EDISON COMPANY'S ANSWER IN OPPOSITION TO
THE CITIZENS OVERSIGHT PETITION FOR REVIEW OF LBP-12-25**

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**SOUTHERN CALIFORNIA EDISON COMPANY’S ANSWER IN OPPOSITION TO
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I. INTRODUCTION

In accordance with 10 C.F.R. § 2.311(b), Southern California Edison Company (“SCE”) submits this Answer in opposition to “Citizens Oversight Petition for Review of LBP-12-25” (“Petition for Review”), filed by Citizens Oversight, Inc. (or Citizens Oversight Projects, “COPS”) on January 14, 2013.

The Petition for Review seeks review of part of the Atomic Safety and Licensing Board (“Board”) decision in LBP-12-25, which rejected COPS’ October 17, 2012 “Petition to Intervene and Request for Hearing” (“Petition to Intervene”) in its entirety.¹ The Petition to Intervene challenged portions of SCE’s July 29, 2011 License Amendment Request that would convert the current Technical Specifications for San Onofre Nuclear Generating Station (“SONGS”) Units 2 and 3 to the updated Improved Standard Technical Specifications for Combustion Engineering plants. COPS’ Petition for Review is limited to the Board’s rejection of proposed Contention 1, which challenged the relocation of surveillance frequencies from the Technical Specifications to an SCE-controlled document.

¹ See *S. Cal. Edison Co.* (San Onofre Nuclear Generating Station, Units 2 & 3), LBP-12-25, 76 NRC ___, slip op. (Dec. 21, 2012) (“LBP-12-25”).

For the reasons discussed below, the Petition for Review fails to demonstrate that the Board committed an error of law or abused its discretion in rejecting proposed Contention 1. Additionally, even assuming *arguendo* that the Board erred in LBP-12-25, proposed Contention 1 still should be rejected for failure to satisfy additional contention admissibility requirements not addressed by the Board and because COPS' Petition to Intervene was untimely and COPS failed to demonstrate standing. Accordingly, the Commission should deny the Petition for Review and affirm the well-reasoned decision by the Board to reject the COPS' Petition to Intervene.

II. BACKGROUND AND PROCEDURAL HISTORY

SONGS is located near San Clemente, California. SONGS Units 2 and 3 are pressurized water reactors using a Combustion Engineering design. SCE is the operator of SONGS Units 2 and 3.

On July 29, 2011, SCE submitted the License Amendment Request pursuant to 10 C.F.R. § 50.90 that would convert the current Technical Specifications for SONGS Units 2 and 3 to the updated Improved Standard Technical Specifications for Combustion Engineering plants.²

In the early 1990s, SONGS was the lead Combustion Engineering plant to convert to the initial draft of Improved Standard Technical Specifications in NUREG-1432, "Standard Technical Specifications, Combustion Engineering Plants."³ In 1996, the NRC approved the SONGS Units 2 and 3 conversion.⁴ The Improved Standard Technical Specifications in NUREG-1432 have evolved since their initial issuance. SONGS' 2011 License Amendment

² See Letter from D. Bauder, SCE, to NRC, License Amendment Requests (LAR) 260 and 246, Technical Specifications Conversion to NUREG-1432, Rev. 3.0 Plus Selected Approved Travelers (July 29, 2011), available at ADAMS Accession No. ML112510214 ("LAR").

³ See LAR, Cover Letter, at 1.

⁴ See *id.*

Request was based on Revision 3 of NUREG-1432, along with adoption of recent Technical Specification Task Force (“TSTF”) travelers that were expected to be included in Revision 4 of NUREG-1432.⁵ In summary, the License Amendment Request seeks to revise the SONGS Units 2 and 3 current Technical Specifications to include improvements from the most recent revision of the Improved Standard Technical Specifications in NUREG-1432 and additional approved TSTF travelers.

The License Amendment Request adopts TSTF-425-A, Rev. 3, “Relocate Surveillance Frequencies to License Control – RITSTF Initiative 5b.”⁶ TSTF-425-A involves the application of NEI 04-10, Rev. 1, “Risk-Informed Technical Specifications Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies.” The NEI 04-10 methodology uses a risk-informed, performance based approach for establishing surveillance frequencies.⁷ This change would affect multiple sections in the SONGS Technical Specifications, and would relocate certain surveillance frequencies specified in the current Technical Specifications to a licensee-controlled document called the Surveillance Frequency Control Program,⁸ which will be required and controlled pursuant to Section 5.5.2.18 of the Technical Specifications.⁹ The Nuclear Regulatory Commission (“NRC”) Staff issued a *Federal Register* notice on July 6, 2009

⁵ See *id.* The TSTF is an industry group that develops generic industry positions on Technical Specifications. The TSTF works with the industry Risk Informed Technical Specification Task Force (“RITSTF”) to create travelers to implement risk-informed initiatives. TSTF travelers are approved standard Technical Specification changes that have not yet been incorporated into the next revision of the Improved Standard Technical Specifications.

⁶ See LAR, Enclosure 3, at 2. The TSTF describes TSTF-425-A as follows: “The proposed change relocates all periodic Surveillance Frequencies to licensee control. Revisions to the Surveillance Frequencies will be made in accordance with a new program, the Surveillance Frequency Control Program, which is added to the Administrative Controls.” Letter from TSTF, to NRC, Transmittal of TSTF-425, Revision 3, “Relocate Surveillance Frequencies to Licensee Control – RITSTF Initiative 5b,” Enclosure, § 1.0 (Mar. 18, 2009), available at ADAMS Accession No. ML090850627.

⁷ See NEI 04-10, Rev. 1, Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies, at 1 (Apr. 2007), available at ADAMS Accession No. ML071360456.

⁸ See LAR, Enclosure 3, at 2.

⁹ LAR, Att. 1, Vol. 14, at 83.

endorsing the use of TSTF-425-A and approving NEI-04-10.¹⁰ The Staff has already approved nearly 50 other license amendment requests adopting TSTF-425-A.¹¹ Thus, relocation of surveillance frequencies from the Technical Specifications to a licensee-controlled document has been widespread among nuclear power plants and an accepted practice by the NRC.

TSTF-425-A and the License Amendment Request do not propose to relocate the surveillance requirements themselves to a licensee-controlled document. Therefore, under the License Amendment Request, the surveillance requirements will continue to be in the Technical Specifications.

COPS filed its Petition to Intervene on October 17, 2012, alleging three contentions. The Petition to Intervene included proposed Contention 1, which objected to the relocation of surveillance frequencies to a licensee-controlled document.¹² On November 13, 2012, SCE filed its answer opposing the Petition to Intervene on the grounds that it was late without good cause, COPS had failed to demonstrate standing to intervene, and none of the three proposed contentions was admissible.¹³ SCE opposed the admission of Contention 1 for several reasons, including that it was outside the scope of this proceeding, it did not identify any issue that was material to this proceeding, it was not adequately supported, and it did not raise a genuine dispute.¹⁴ The NRC Staff filed its answer on November 9, 2012 opposing the Petition to

¹⁰ See Notice of Availability of Technical Specification Improvement to Relocate Surveillance Frequencies to Licensee Control—Risk-Informed Technical Specification Task Force (RITSTF) Initiative 5b, Technical Specification Task Force—425, Revision 3, 74 Fed. Reg. 31,996 (July 6, 2009).

¹¹ See Transcript of the December 5, 2012 Prehearing Conference (“Tr.”) at 91 (NRC Staff) (Dec. 13, 2012) (stating that the amended licenses for SONGS Units 2 and 3 to move the surveillance frequencies would be “licenses number 50 and 51, should they be granted” to do so).

¹² See Petition to Intervene at 5.

¹³ See generally Southern California Edison Company’s Answer Opposing Petition to Intervene and Request for Hearing by Citizens Oversight (Nov. 13, 2012) (“SCE Answer”).

¹⁴ See *id.* at 18-27.

Intervene on similar grounds.¹⁵ COPS filed its Reply on November 16, 2012.¹⁶ On December 2, 2012, COPS filed an “Addendum” to its November 16, 2012 Reply, which sought to introduce a new exhibit onto the record.¹⁷ SCE moved to strike the Addendum because it was an unauthorized filing, it was late without cause, and it impermissibly attempted to expand on COPS’ earlier arguments.¹⁸ The Board held oral argument on the Petition to Intervene on December 5, 2012.

On December 21, 2012, the Board issued LBP-12-25 denying COPS’ Petition to Intervene, and ruling that all of the proposed contentions were inadmissible because they did not satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). The Board ruled that Contention 1 fails to raise a material issue and, in part, is outside the scope of this proceeding.¹⁹ Given this ruling and the rejection of the proposed contentions, the Board did not rule on the other grounds proffered by SCE and the NRC Staff for why Contention 1 was inadmissible,²⁰ and also did not rule on timeliness, standing, and SCE’s motion to strike the Addendum.²¹

On January 14, 2013, COPS filed the Petition for Review, essentially rehashing many of the arguments it placed before the Board in its original Petition to Intervene for Contention 1,

¹⁵ See NRC Staff’s Answer to Petition to Intervene and Request for a Hearing by Citizens Oversight (Nov. 9, 2012).

¹⁶ See Citizens Oversight’s Answer to Submissions by NRC Staff and Southern California Edison Opposing the Petition to Intervene and Request for a Hearing by Citizens Oversight (Nov. 16, 2012) (“COPS Reply”).

¹⁷ See Addendum to Citizens Oversight’s Answer to Submissions by NRC Staff and Southern California Edison Opposing the Petition to Intervene and Request for a Hearing by Citizens Oversight (Dec. 2, 2012).

¹⁸ See Southern California Edison Company’s Motion to Strike Citizens Oversight’s Addendum to Its Reply (Dec. 4, 2012).

¹⁹ See LBP-12-25, slip op. at 14-15.

²⁰ See *id.* at 10 n.20.

²¹ See *id.* at 4, 21 n.30.

without coming to grips with the Board's reasoning for rejecting Contention 1. COPS did not appeal the Board's ruling on Contentions 2 and 3.

III. LEGAL STANDARDS

A. Standard of Review

An order denying a petition to intervene and/or request for hearing is appealable by the petitioner and/or requester pursuant to 10 C.F.R. § 2.311.²² Contrary to this rule, and the Board's instructions in LBP-12-25,²³ COPS filed the Petition for Review pursuant to Section 2.341, instead of Section 2.311.²⁴ Importantly, Section 2.311 does not allow COPS to file a reply to this Answer.²⁵

Pursuant to 10 C.F.R. § 2.311(c), COPS' appeal must demonstrate that the "request and/or petition should have been granted." The Commission reviews Board decisions on contention admissibility under a standard of "substantial deference."²⁶ Board decisions are subject to reversal only due to an "error of law or abuse of discretion."²⁷ "The appellant bears

²² See 10 C.F.R. § 2.311(a) (stating that "[a]n order of the presiding officer. . . may be appealed to the Commission with respect to . . . [a] petition to intervene").

²³ See LBP-12-25, slip op. at 22.

²⁴ COPS cites to 10 C.F.R. § 2.341(b), see Petition for Review at 1, which does not apply to this appeal. Section 2.341 explicitly excludes appeals subject to Section 2.311, stating that "this section does not apply to appeals under § 2.311." 10 C.F.R. § 2.341(a)(1).

²⁵ Under 10 C.F.R. § 2.311 there is no opportunity for reply as there is under 10 C.F.R. § 2.341. Compare 10 C.F.R. § 2.311(b) with 10 C.F.R. § 2.341(b)(3). COPS is therefore not authorized to file a reply to this Answer. COPS should not be afforded such an opportunity simply because it relied upon the incorrect regulation in filing its appeal. See *All Operating Boiling Water Reactor Licensees with Mark I and Mark II Containments: Order Modifying Licenses with Regard to Reliable Hardened Containment Vents; All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status: Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation*, CLI-13-02, 77 NRC ___, slip op. at 5-6 n.20 (Jan. 31, 2013).

²⁶ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006) (citing *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324 (1999); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-855, 24 NRC 792, 795 (1986)).

²⁷ See *S.C. Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 & 3), CLI-10-01, 71 NRC 1, 5-6 & n.24 (2010); *Progress Energy Fla., Inc* (Combined License Application, Levy County Nuclear Power Plant, Units 1 & 2), CLI-10-02, 71 NRC 27, 29 (2010).

the responsibility of clearly identifying the errors in the decision below and ensuring that its brief contains sufficient information and cogent argument to alert the other parties and the Commission to the precise nature of and support for the appellant's claims.”²⁸

B. Contention Admissibility

To be granted, a petition to intervene must include an admissible contention. The contention admissibility requirements are set forth in 10 C.F.R. § 2.309(f)(1). Specifically, under Section 2.309(f)(1), a petitioner “must set forth with particularity the contentions sought to be raised.” The regulation specifies that each contention must:

- (1) provide a specific statement of the legal or factual issue sought to be raised;
- (2) provide a brief explanation of the basis for the contention;
- (3) demonstrate that the issue raised is within the scope of the proceeding;
- (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and
- (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.²⁹

As the Commission has explained, failure to comply with any one of the six admissibility criteria is grounds for rejection.³⁰ The Commission further explained that its “strict contention

²⁸ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-04-36, 60 NRC 631, 639 n.25 (2004) (quoting *Advanced Med. Sys., Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-06, 39 NRC 285, 297 (1994)).

²⁹ 10 C.F.R. § 2.309(f)(1)(i)-(vi).

³⁰ *See, e.g., FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-08, 75 NRC ___, slip op. at 3 (Mar. 27, 2012) (stating that proposed contentions “must satisfy all six of the

rule is designed to avoid resource-intensive hearings where petitioners have not provided sufficient support for their technical claims, and do not demonstrate a potential to meaningfully participate and inform a hearing.”³¹ As the Commission has stated:

Nor does our practice permit “notice pleading,” with details to be filled in later. Instead, we require parties to come forward at the outset with sufficiently detailed grievances to allow the adjudicator to conclude that genuine disputes exist justifying a commitment of adjudicatory resources to resolve them.³²

The NRC specifically revised the admissibility rules in 1989 “to prevent the admission of ‘poorly defined or supported contentions,’ or those ‘based on little more than speculation.’”³³

IV. THE PETITION FOR REVIEW SHOULD BE REJECTED

As discussed in detail below, the Petition for Review fails to demonstrate any abuse of discretion or error of law in the Board’s decision to reject Contention 1 for not satisfying the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). Furthermore, in addition to the defects identified by the Board, the Petition to Intervene did not satisfy several other provisions in 10 C.F.R. § 2.309. Therefore, the Petition for Review should be denied and the Board’s order should be affirmed.

[admissibility] requirements”); *see also* Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004).

³¹ *Davis-Besse*, CLI-12-08, slip op. at 31; *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001) (explaining that the Commission’s rules on contention admissibility are “strict by design”).

³² *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-06, 49 NRC 201, 219 (1999).

³³ *Davis-Besse*, CLI-12-08, slip op. at 3-4 (citations omitted) (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 334 (1999)).

A. COPS Has Failed to Demonstrate that the Board Committed an Error of Law or Abuse of Discretion in Rejecting Contention 1

As noted above, the Board rejected Contention 1 primarily because it failed to raise a material issue. In doing so, the Board concluded that the Commission's 2001 *Millstone* decision is "directly on point here and compels the rejection of Contention 1."³⁴

In the Petition for Review, COPS argues that Contention 1 is material because (1) "[t]his case is substantially different from *Millstone*"; (2) "deletion of surveillance frequencies from the technical specification is in direct conflict with NRC regulations and commission statements"; and (3) the "proposal is not automatically appropriate and lawful just because it is being done already or endorsed by the industry or NRC staff."³⁵ As demonstrated below, these and all other arguments in the Petition for Review fail to demonstrate that the Board committed an error of law or abuse of discretion in rejecting Contention 1.

1. COPS Has Not Identified an Error in the Board's Application of *Millstone*

COPS alleges that "[t]his case is substantially different from *Millstone*."³⁶ COPS fails, however, to identify an error in the Board's application of *Millstone*.

The Board concluded that *Millstone* compels the rejection of Contention 1 on the grounds that it fails to raise a material issue, contrary to 10 C.F.R. § 2.309(f)(1)(iv).³⁷ As the Board explained, at its heart, Contention 1 argues that relocation of the surveillance frequencies to a licensee-controlled document is improper because it would deprive the public of any opportunity

³⁴ LBP-12-25, slip op. at 10-13.

³⁵ Petition for Review at 8.

³⁶ *Id.* at 9; *see also id.* at 6 ("[O]nce these specifications are deleted from the technical specifications documents, then the licensee will be able to modify those with no oversight by the public and no approval from the NRC.").

³⁷ LBP-12-25, slip op. at 10.

to scrutinize or challenge future changes to the surveillance frequencies.³⁸ These arguments are identical to the arguments raised by the petitioner in *Millstone*, in which the Commission upheld rejection of a proposed contention challenging the removal of details from a licensee’s Technical Specifications to a licensee-controlled document.³⁹ There, the Commission rejected arguments similar to those raised by COPS, concluding that this “theory essentially means that no item could ever be transferred from the technical specifications because one could always argue that there is a potential, however remote, of a greater possibility of injury if the item in the future can be changed without a full license amendment.”⁴⁰ Therefore, the Board correctly relied upon this controlling precedent in *Millstone* in rejecting Contention 1,⁴¹ and COPS has not demonstrated any error by the Board in doing so.

In rejecting Contention 1, the Board further relied upon the Commission’s holding in *Millstone* that, rather than complaining of lost future hearing rights, a petitioner must provide a legal or safety objection to the removal of a provision to the Technical Specifications.⁴² The Commission held that: “If a procedural or other requirement meets any one of the criteria [set forth in 10 C.F.R. § 50.36], it must be retained in the technical specifications. Technical specifications that do not meet any of the criteria may be transferred to licensee-controlled documents.”⁴³ The Board rejected Contention 1 for failure to identify any legal or safety

³⁸ See *id.* at 10-11.

³⁹ *Millstone*, CLI-01-24, 54 NRC at 349.

⁴⁰ *Id.* at 360.

⁴¹ See LBP-12-25, slip op. at 13.

⁴² *Id.*

⁴³ *Millstone*, CLI-01-24, 54 NRC at 352 (citations and internal quotation marks omitted).

objection to relocation of the surveillance frequencies to the Surveillance Frequency Control Program.⁴⁴

COPS has not identified any error in that ruling. For example, COPS' Petition to Intervene did not reference 10 C.F.R. § 50.36 even once.⁴⁵ Furthermore, other than vague and generalized allegations lacking any technical support,⁴⁶ the Petition to Intervene did not identify any safety concerns with relocation of the surveillance frequencies to the Surveillance Frequency Control Program. Thus, the Board was correct in concluding that “[t]he Millstone decision is directly on point here and compels the rejection of Contention 1.”⁴⁷

Additionally, the Board ruled that COPS did not show that the proposed relocation was improper “because of some particular aspect of the other conditions in the SCE license or some alleged deficiencies in the SCE surveillance program.”⁴⁸ This too is consistent with *Millstone*, in which the Commission ruled that petitioners must show that a proposed change to the Technical Specifications is prohibited by the regulations or generally of such safety significance that no licensee should be allowed to make it; or, in the alternative that because of some particular aspect of the plant, the licensee in particular should not be allowed to make this change.⁴⁹ On

⁴⁴ LBP-12-25 at 13.

⁴⁵ *See generally* Petition to Intervene; COPS Reply; *see also* LBP-12-25, slip op. at 13 (“Nowhere, for instance . . . do the Petitioners even refer to the section 50.36 criteria that govern which technical specifications must be retained and which can be relocated to licensee-controlled documents.”). In the Petition for Review, COPS also provides a definition of “Surveillance requirements,” and states that there is no such definition of “Surveillance Frequency.” *See* Petition for Review at 13. This argument does not support COPS’ position; instead, the lack of a definition of “Surveillance Frequency” and the omission of this term from 10 C.F.R. § 50.36 demonstrates that the regulations do not mandate inclusion of surveillance frequencies in the Technical Specifications. Regardless, COPS does not explain how this argument relates to an error with LBP-12-25.

⁴⁶ The Board summarizes those allegations in LBP-12-25 at 6-7.

⁴⁷ *Id.* at 13.

⁴⁸ *Id.* (stating that COPS “has not provided the minimal factual or legal basis” to show that surveillance frequencies are of sufficient safety significance on their own that they must remain in the Technical Specifications).

⁴⁹ *See Millstone*, CLI-01-24, 54 NRC at 360; LBP-12-25, slip op. at 13.

appeal, COPS has not identified an error in the Board’s application of *Millstone* in this regard. In light of COPS’ failure to identify any safety significance specific to SONGS, the Board correctly concluded that the proposed relocation of surveillance frequencies is both “legal and unobjectionable.”⁵⁰

COPS attempts to distinguish *Millstone* by arguing that the SCE surveillance frequencies are related to limiting conditions of operation (“LCOs”), whereas the Technical Specification provisions relocated in *Millstone* were not.⁵¹ Surveillance frequencies, however, are not part of LCOs, and SCE is not proposing to alter LCOs by relocating the surveillance frequencies to the Surveillance Frequency Control Program. Thus, COPS’ arguments are irrelevant.

COPS also repeats statements from oral argument, where it claimed that the proposed change in *Millstone* was not “directly related to the operation of the plant” or of a significant safety impact,⁵² and in the instant case, the specifications relate to a “very, very critical system” that is of large safety significance.⁵³ Similarly, COPS, for the first time, hypothesizes about a scenario where, if surveillance was not performed as frequently as is currently set forth in the Technical Specifications, a loss of coolant accident (“LOCA”) could occur.⁵⁴

⁵⁰ LBP-12-25, slip op. at 11. Indeed, the LAR provides a thorough and clear discussion of why relocation of the surveillance frequencies is not hazardous to public health and safety. For example, for the movement of the current primary to secondary leakage surveillance frequency identified by COPS, the LAR provides a detailed justification for use of a licensee-controlled document, explaining that the proposed change meets the current regulations, is consistent with the defense-in-depth philosophy, maintains sufficient safety margins, results in small changes to core damage frequency consistent with the intent of the Commission’s Safety Goal Policy Statement, and will be monitored using performance management strategies. *See* LAR, Att. 1, Vol. 7, at 351-53. COPS has made no attempt to controvert or address these facts.

⁵¹ *See* Petition for Review at 11.

⁵² *See* Tr. at 31 (COPS); Petition for Review at 11-12, 15.

⁵³ *See* Tr. at 31 (COPS); Petition for Review at 12.

⁵⁴ *See* Petition for Review at 14-16. In making this argument, COPS attempts to rely on the “testimony” of Udaya Krishna Rath, designated Exhibit V. COPS has presented no information on Ms. Rath’s qualifications or indicated that her statements are under oath. Even if Ms. Rath is qualified and her statements were under oath, they were not presented to the Licensing Board, and therefore COPS’ arguments constitute an unauthorized attempt to supplement the record on appeal. *See Toledo Edison Co. & Cleveland Elec. Illuminating Co.* (Davis-Besse Nuclear Power Station, Units 1, 2 & 3; Perry Nuclear Power Plant, Units 1 &

These arguments, however, misinterpret *Millstone*, and do not identify an error by the Board. The Board correctly stated that under COPS' theory no item could ever be transferred from the Technical Specifications.⁵⁵ It is not sufficient that an item in the Technical Specifications be related to a critical safety system. As the Commission explained in *Millstone*, "almost every item originally contained in technical specifications has some conceivable connection to safety."⁵⁶ The Board ruled that COPS must demonstrate that the surveillance frequencies themselves are of sufficient safety significance on their own that they must be retained.⁵⁷ As the Board correctly concluded, COPS' Petition to Intervene did not do so.

For these reasons, the Board properly applied the *Millstone* decision, and COPS has not identified any error by the Board in its application of *Millstone*.

2. COPS Has Failed to Identify any Other Error in the Board's Conclusions Regarding COPS' Failure to Provide a Legal or Safety Objection to Relocation of the Surveillance Frequencies

In addition to its arguments regarding *Millstone*, COPS raises other arguments, including that SCE has failed to cite any legal basis that its removal of the frequency specifications should be allowed and "[t]he deletion of surveillance frequencies from the technical specification is in direct conflict with NRC regulations and Commission policy statements."⁵⁸ These arguments, however, do not identify any error or abuse of discretion with the Board's decision in LBP-12-25.

2), ALAB-430, 6 NRC 457, 459 (1977). The table of changes to the Technical Specifications provided as Exhibit I, which COPS previously submitted as its Supplement on December 2, 2012 just before the oral argument, similarly should not be considered by the Commission. SCE moved to strike that document, but the Board did not rule on that motion. See LBP-12-25, slip op. at 21 (finding the motion moot given the Board's ultimate ruling).

⁵⁵ See LBP-12-25, slip op. at 13 (quoting *Millstone*, CLI-01-24, 54 NRC at 360).

⁵⁶ *Millstone*, CLI-01-24, 54 NRC at 360.

⁵⁷ See LBP-12-25, slip op. at 13.

⁵⁸ Petition for Review at 8, 16.

As held by the Board, there is no legal prohibition for SCE's proposed change in the Technical Specifications.⁵⁹ In reaching its decision, the Board noted the historical and ongoing attempts to simplify licensee Technical Specifications.⁶⁰ As part of that effort, the Commission issued a policy statement which established clearer criteria as to what constitutes a Technical Specification that must be in the license and what may be moved to other documents.⁶¹ In 1995, 10 C.F.R. § 50.36 was revised to codify that guidance.⁶² Surveillance frequencies are not mentioned in 10 C.F.R. § 50.36, and there is no regulation or Commission policy that would require that surveillance frequencies be contained in Technical Specifications. Instead, 10 C.F.R. § 50.36(c)(3) only requires that "surveillance requirements" be included in Technical Specifications, stating:

Surveillance requirements. Surveillance requirements are requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met.

The proposed relocation of the surveillance frequencies would not delete any surveillance requirements in the SONGS Technical Specifications. As discussed on page 12 of LBP-12-25, the Commission's Policy Statement on Technical Specifications allows Technical Specifications that do not meet any of the criteria in 10 C.F.R. § 50.36 to be transferred to licensee-controlled documents in order to prune Technical Specifications of voluminous details that are relatively less significant, thereby focusing licensee and plant operator attention on the most significant technical concerns.⁶³ COPS fails to identify any error in this reasoning in LBP-12-25.

⁵⁹ See LBP-12-25, slip op. at 11.

⁶⁰ See *id.* at 11-12.

⁶¹ See *id.* at 12.

⁶² See Technical Specifications, 60 Fed. Reg. 36,953, 36,954 (July 19, 1995).

⁶³ *Id.*

On appeal, COPS argues that the surveillance frequencies “are an integral component of the Surveillance Requirement” and thus cannot be removed.⁶⁴ COPS offers no explanation for why this is the case, and provides no legal support for its argument. Furthermore, COPS does not attempt to reconcile its views with the language of the regulations, which does not mention surveillance frequencies.

Furthermore, the Board’s decision is consistent with the Commission’s policy statement, which clearly states a preference that Technical Specifications be simplified and for licensee use of the Improved Standard Technical Specifications.⁶⁵ The Commission “encourages licensees to use the improved STS as the basis for plant-specific Technical Specification.”⁶⁶ The License Amendment Request follows the Commission’s policy statement to revise the SONGS current Technical Specifications to match the Improved Standard Technical Specifications and TSTF travelers, and the proposed relocation of the surveillance frequencies implements TSTF-425-A, which, as noted above, has been explicitly endorsed by the NRC Staff. These facts, taken together with the language set forth in 10 C.F.R. § 50.36 and the Commission’s conclusions in *Millstone*, make plain that the relocation of surveillance frequencies to a licensee-controlled document is permitted by the regulations. COPS has not demonstrated that the Board erred in any manner.

COPS also claims that, in relocating the surveillance frequencies to a licensee-controlled document, SCE will have “free-rein” to reduce those frequencies.⁶⁷ That claim is without any support in the record. To the contrary, as described in the License Amendment Request, the

⁶⁴ Petition for Review at 17.

⁶⁵ See Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, 58 Fed. Reg. 39,132, 39,136 (July 22, 1993).

⁶⁶ See *id.*

⁶⁷ Petition for Review at 7.

surveillance frequencies will be identified and controlled in accordance with specific criteria in the Surveillance Frequency Control Program, which would be required by Section 5.5.2.18 of the Technical Specifications.⁶⁸ That section provides that SCE will only be allowed to change the surveillance frequencies in accordance with NEI-04-10, which requires a complex set of evaluations and retention of documentation for NRC audit. Given the provision in Section 5.5.2.18 of the proposed Technical Specifications, only those changes that are compliant with NEI 04-10 will be allowed. Thus, SCE will not have “free rein” to change its surveillance frequencies.

Accordingly, the Board properly found that the relocation of surveillance frequencies is both “legal and unobjectionable.”⁶⁹ COPS has identified no error of law or abuse of discretion by the Board in making this conclusion.

3. COPS Has Not Identified an Error in the Board’s Conclusions Regarding Precedent from Other Licensees

Finally, COPS claims that “[t]he proposal is not automatically appropriate and lawful just because it is being done already or endorsed by the industry or NRC staff.”⁷⁰ This argument does not support COPS’ Petition for Review, because as COPS concedes, “[t]he Board in LBP-12-25 already agreed with [COPS’] assertion that the admissibility of our contention is not dependent upon whether similar actions had been performed at other plants, whether NRC Staff or the industry endorses it.”⁷¹ Because COPS agrees with the Board’s statements in LBP-12-25 on this topic, it has not identified any error of law or abuse of discretion.

⁶⁸ See LAR, Att. 1, Vol. 14, at 83.

⁶⁹ See LBP-12-25, slip op. at 11.

⁷⁰ Petition for Review at 8.

⁷¹ *Id.*

B. The Commission Should Affirm the Board’s Decision Based on Additional Reasons Set Forth in the Record

The Commission may affirm the Board’s decision based on any ground finding support in the record, whether relied upon by the Board or not.⁷² The Board rejected Contention 1 on the grounds that it was not material and, in part, was outside the scope of this proceeding.⁷³ SCE’s Answer to COPS’ Petition to Intervene, however, also demonstrated that Contention 1 should be rejected because: (1) Contention 1 failed other contention admissibility requirements; (2) COPS has not demonstrated standing; and (3) the Petition to Intervene was untimely.⁷⁴ Therefore, even if the Commission determined that the Board erred in rejecting Contention 1 in LBP-12-25, Contention 1 and the Petition to Intervene should be rejected for these additional reasons.

1. Contention 1 Fails to Satisfy Additional Contention Admissibility Requirements

The Board rejected Contention 1 primarily because it failed to raise a material issue.⁷⁵ The Board acknowledged that SCE and the NRC Staff raised other arguments against the admission of Contention 1.⁷⁶ The Commission could reject Contention 1 for these additional reasons as well.

First, Contention 1 does not demonstrate that a genuine dispute exists with SCE on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi).⁷⁷ COPS’ arguments that the relocation of the surveillance frequencies is hazardous to public health and safety are general

⁷² See, e.g., *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-05-01, 61 NRC 160, 166 (2005) (citing *Hertz v. Luzenac America, Inc.*, 370 F.3d 1014, 1017 (10th Cir. 2004)).

⁷³ LBP-12-25, slip op. at 14-15.

⁷⁴ See SCE Answer at 13-18.

⁷⁵ See LBP-12-25, slip op. at 14.

⁷⁶ See *id.* at 7-10.

⁷⁷ See SCE Answer at 22-24; 10 C.F.R. § 2.309(f)(1)(vi) (requiring that a proposed contention “include references to specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute”).

in nature and fail to address the License Amendment Request's explanation of why this is not the case.⁷⁸ As discussed above,⁷⁹ the License Amendment Request provides a thorough and clear discussion of why relocation of surveillance frequencies is not hazardous to public health and safety. The Petition to Intervene did not reference or dispute that discussion. A contention that does not directly controvert a position taken by the applicant in the application is subject to dismissal.⁸⁰

Second, part of Contention 1 is outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii). For example, COPS' claim that the current surveillances "must be split into two major categories, and the surveillance frequencies increased (less time delay) for critical parameters" is an attempt to rewrite the current Technical Specifications.⁸¹ The scope of this proceeding is limited to the changes requested as part of the License Amendment Request. COPS' efforts to impose further changes to the current Technical Specifications are outside the scope of this proceeding.⁸²

⁷⁸ See, e.g., LAR, Att. 1, Vol. 7, at 351-53. Save for one instance, Contention 1 provides no references to specific portions of the application, but instead provides generalized statements about the LAR. The one instance is a reference to LAR Attachment 1, Volume 7 (Chapter 3.4 Reactor Coolant System (RCS)) and the surveillance requirement for steam generator primary to secondary leakage. Petition to Intervene at 8. But this challenges the current surveillance frequency, not any change to it. *Id.* at 8-9. As the Board ruled, because this argument contests the current Technical Specifications and not the proposed Technical Specifications, it does not demonstrate a genuine dispute with respect to the LAR. See LBP-12-25, slip op. at 14-15.

⁷⁹ See *supra* footnote 51.

⁸⁰ See *Sumner*, CLI-10-01, 71 NRC at 21-22.

⁸¹ Petition to Intervene at 8.

⁸² See, e.g., *Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 624 (1981) (holding that "the scope of any hearing should include the proposed license amendments, and any health, safety or environmental issues fairly raised by them"); see also *Wis. Elec. Power Co.* (Point Beach Nuclear Plant, Units 1 & 2), LBP-82-88, 16 NRC 1335, 1342 (1982) (holding that it is not "appropriate to permit an intervenor to question the original design of the reactor or the systems not directly involved in [the license amendment] application").

Finally, Contention 1 was not adequately supported, as required by 10 C.F.R. § 2.309(f)(1)(v).⁸³ For example, COPS appears to rely upon Mr. Raymond Lutz for most of its arguments on Contention 1, but failed to demonstrate his qualifications. Although COPS states that Mr. Lutz is an electrical engineer with a Master’s degree, COPS has not shown that Mr. Lutz has any experience with nuclear plants, Technical Specifications, or surveillance frequencies specifically.⁸⁴ As a result, Mr. Lutz is unqualified to support the allegations in Contention 1.⁸⁵

Thus, Contention 1 could have been rejected for these additional reasons. This provides an independent basis for upholding the Board’s decision in LBP-12-25 to reject COPS’ Petition to Intervene.

2. COPS Has Not Demonstrated Standing

COPS seeks to participate in the hearing process based on the standing of one of its members, Mr. Raymond Lutz.⁸⁶ To establish representational standing, COPS must show that Mr. Lutz has standing in his own right. It has not done so. As demonstrated in SCE’s Answer to the Petition to Intervene,⁸⁷ and discussed below, Mr. Lutz does not have standing under either a proximity presumption or based on evaluation of the traditional standing requirements.

a. COPS Lacks Standing Based on Geographic Proximity

For license amendment proceedings, the presumption that an individual has standing based upon his proximity to the plant only applies if the amendment results in an “obvious

⁸³ See SCE Answer at 25-27.

⁸⁴ See generally *id.*

⁸⁵ See *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 & 2), CLI-04-21, 60 NRC 21, 27-28 (2004) (holding that the burden of demonstrating that a witness is qualified to be an expert falls on the party offering the witness); *Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-669, 15 NRC 453, 475 (1982) (holding that experts must possess “the knowledge, skill, experience, training, or education” to be qualified to provide expert testimony, and that expertise must be in the field in which they provide testimony).

⁸⁶ Petition to Intervene at 2.

⁸⁷ SCE Answer at 16-18.

potential for offsite consequences.”⁸⁸ The License Amendment Request simply revises the SONGS current Technical Specifications to incorporate changes from the Improved Standard Technical Specifications for Combustion Engineering plants. This does not present an obvious potential for offsite consequences or involve any physical alterations to the facility, and COPS has not argued nor demonstrated otherwise. As such, the License Amendment Request does not involve a clear potential for offsite consequences, which is necessary for application of the proximity presumption.⁸⁹

Even if the proximity presumption applied, Mr. Lutz, the representative for COPS and the only individual identified in the Petition to Intervene, would not satisfy it. Mr. Lutz lives 53 miles from the nearest portion of SONGS.⁹⁰ This is greater than the 50-mile maximum distance relied upon for proximity presumption.⁹¹

In its Petition for Review, COPS states that Martha Sullivan, a member of the organization, lives within 34.5 miles of SONGS.⁹² Similarly, in its Reply, COPS identified other individuals that live within 50 miles of SONGS.⁹³ COPS’ Petition to Intervene did not mention those individuals, and therefore reliance on those individuals for standing purposes is untimely.⁹⁴ Moreover, COPS has not submitted the required affidavits for these individuals.⁹⁵ Therefore,

⁸⁸ See *Fla. Power & Light Co.* (St. Lucie, Units 1 & 2), CLI-89-21, 30 NRC 325, 329-30 (1989); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-04, 49 NRC 185, 191 (1999).

⁸⁹ See *St. Lucie*, CLI-89-21, 30 NRC at 329-30; *Zion*, CLI-99-04, 49 NRC at 191.

⁹⁰ See SCE Answer at 16-17.

⁹¹ See, e.g., *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 916 (2009).

⁹² Petition for Review at 3-4.

⁹³ COPS Reply at 9.

⁹⁴ Additionally, COPS has failed to establish Ms. Sullivan’s residence, because COPS has not provided her address as required by 10 C.F.R. § 2.309(d)(1).

⁹⁵ See *Crow Butte Res., Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-09, 69 NRC 331, 342-43 (2009) (“Our case law requires an organization to submit written authorization from a member whose interests

COPS has failed to demonstrate the standing of these individuals based upon geographic proximity, even if it were to apply.

b. COPS Lacks Standing Based on Traditional Standing Requirements

Because there is no presumption of standing based upon proximity to the plant, COPS was required to demonstrate standing using traditional standing rules.⁹⁶ COPS failed to do so. COPS only indirectly addressed injury-in-fact and completely failed to address causation and redressability in its standing argument.

COPS has not demonstrated an injury-in-fact. COPS claims that Mr. Lutz is a “ratepayer of the San Diego Gas and Electric” and as such has a financial interest in the effective operation of SONGS.⁹⁷ But the economic interests of ratepayers are not within the zone of interests protected by the Atomic Energy Act, and cannot support Mr. Lutz’s standing.⁹⁸ Similar arguments which seek to establish standing based on COPS’ members status as taxpayers are equally unpersuasive.⁹⁹

In its Petition to Intervene, COPS also stated that “Mr. Lutz is concerned about the safety of the plant, particularly in light of the continuing plant shutdown after the emergency shutdown on January 31, 2012, apparently due to design errors of SCE and Mitsubishi Heavy Industries, and is still being investigated.”¹⁰⁰ Contrary to the Commission’s requirements, these general objections to SONGS cannot satisfy the injury-in-fact requirement because they are unrelated to

it purports to represent in order to have a ‘concrete indication’ that the member wishes to have the organization represent his interests there.”).

⁹⁶ *St. Lucie*, CLI-89-21, 30 NRC at 329-30; *see also Zion*, CLI-99-04, 49 NRC at 191.

⁹⁷ COPS Reply at 4.

⁹⁸ *Portland Gen. Elec. Co.* (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610, 614 (1976) (holding that the economic interests of ratepayers are not within the zone of interests protected by the Atomic Energy Act).

⁹⁹ *See* COPS Reply at 5-6; *Tenn. Valley Auth.* (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977).

¹⁰⁰ Petition to Intervene at 2.

the License Amendment Request at issue in this proceeding.¹⁰¹ Furthermore, a general allegation of safety without any support cannot support standing.¹⁰²

For these reasons, COPS has not demonstrated standing to intervene. This provides an independent basis for upholding the Board's decision in LBP-12-25 to reject COPS' Petition to Intervene.

3. The Petition to Intervene Was Untimely

The NRC Rules of Practice state that for proceedings with a *Federal Register* notice, such as this one, a hearing request and petition to intervene must be filed within the time specified in a notice of hearing.¹⁰³ By its own admission, COPS filed its Petition to Intervene “two days after the deadline.”¹⁰⁴ Hearing requests and petitions to intervene submitted after the deadline established by 10 C.F.R. § 2.309(b) are considered untimely and the petitioner must justify its untimely filing. Specifically, COPS must demonstrate under 10 C.F.R. § 2.307(a) that it had “good cause” for filing late.¹⁰⁵ A petitioner bears the burden of successfully addressing the “stringent” late-filing standards.¹⁰⁶

¹⁰¹ See *Zion*, CLI-99-04, 49 NRC at 188.

¹⁰² See *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001) (requiring a petitioner to “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.”) (citation omitted).

¹⁰³ 10 C.F.R. § 2.309(b)(3).

¹⁰⁴ Petition for Review at 3 n.4.

¹⁰⁵ The NRC recently revised 10 C.F.R. Part 2, including revisions to the requirements for untimely filings. See Final Rule, Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2012). These revisions went into effect on September 4, 2012, and therefore applied to the COPS Petition to Intervene, which was filed on October 17, 2012. See *id.* at 46,562. Section 2.309(c)(2)(i) explains that “Section 2.307 applies to requests to change a filing deadline (requested before or after that deadline has passed) based on reasons not related to the substance of the filing.” The Part 2 revisions state that a petitioner “may file such a request under § 2.307 in advance of a deadline—for example, if the participant is unable to meet a deadline because of health issues” or “shortly after a deadline—for example, if unanticipated events, such as a weather event or unexpected health issues, prevented the [petitioner] from filing for a reasonable period of time after the deadline.” *Id.* at 46,571.

¹⁰⁶ See, e.g., *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-07, 69 NRC 235, 260-61 (2009).

COPS did not demonstrate good cause for this failure to file on time. Instead, COPS simply explains that it filed two days late because it had reversed two dates in the Hearing Notice.¹⁰⁷ This is not good cause. For example, in *Seabrook*,¹⁰⁸ the Commission dismissed a petition to intervene filed seven days late, rejecting the petitioner's argument that it had misread the regulations. The Commission concluded that petitioner's failure to read carefully the governing procedural regulations constitutes good cause for accepting the late-filed petition.¹⁰⁹ The Commission stated the failure was especially egregious because the petitioner had actual notice of the filing deadline.¹¹⁰ In this proceeding, COPS similarly misread the Hearing Notice and had both constructive and actual notice of the filing deadline.

For these reasons, the Petition to Intervene was untimely without good cause. This provides an independent basis for upholding the Board's decision in LBP-12-25 to reject COPS' Petition to Intervene.

¹⁰⁷ See Petition for Review at 23.

¹⁰⁸ *Seabrook*, CLI-99-06, 49 NRC at 222-23.

¹⁰⁹ See *id.* at 223.

¹¹⁰ See *id.*

V. CONCLUSION

For the reasons discussed above, the COPS' Petition for Review fails to show that the Board erred as a matter of law or abused its discretion in LBP-12-25. Additionally, there are several other grounds that support affirmation of the Board's decision to reject COPS' Petition to Intervene. Accordingly, the Commission should deny the Petition for Review and affirm the decision by the Board in LBP-12-25.

Respectfully submitted,

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

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Dated in Washington, DC
this 8th day of February 2013

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

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))	
)	February 8, 2013

CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of “Southern California Edison Company’s Answer in Opposition to the Citizens Oversight Petition for Review of LBP-12-25” was filed through the E-Filing system.

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