LBP-13-08

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Paul B. Abramson
Dr. Gary S. Arnold

In the Matter of	Docket Nos. 50-327-LR, 50-328-LR
TENNESSEE VALLEY AUTHORITY	ASLBP No. 13-927-01-LR-BD01
(Sequoyah Nuclear Plant, Units 1 and 2)	July 5, 2013

MEMORANDUM AND ORDER
(Ruling on Petition to Intervene and Request for Hearing)

This proceeding arises from an application filed with the U.S. Nuclear Regulatory Commission (NRC) by the Tennessee Valley Authority (TVA) to renew its licenses to operate two nuclear power reactors located at TVA's Sequoyah Nuclear Plant (Sequoyah).[1] Sequoyah is located approximately 18 miles northeast of Chattanooga, Tennessee, and consists of two reactors - Sequoyah Unit 1 and Unit 2. The license for Unit 1 expires on September 17, 2020, and the license for Unit 2 expires on September 15, 2021. TVA seeks to renew these licenses for an additional 20 years. 78 Fed. Reg. at 14,362.

On May 6, 2013, three entities – the Blue Ridge Environmental Defense League (BREDL), Bellefonte Efficiency and Sustainability Team (BEST), and Mothers Against Tennessee River Radiation (MATRR) (collectively, Petitioners) – jointly challenged TVA's license renewal application (LRA) by filing a petition to intervene and request for a hearing

[1] Tennessee Valley Authority; Notice of Acceptance for Docketing of Application and Notice of Opportunity for Hearing Regarding Renewal of Sequoyah Nuclear Plant, Units 1 and 2, Facility Operating License Nos. DPR-77, DPR-79 for an Additional 20-Year Period, 78 Fed. Reg. 14,362, 14,363 (Mar. 5, 2013) [Notice].

(Petition).[2] The Petitioners have put forth eight contentions alleging that the LRA is deficient and should not be granted.

For the reasons set forth below, the Board concludes that BREDL has established standing to intervene and has proffered a portion of one contention – Contention B – that must be held in abeyance (without being admitted or denied). BREDL's seven other contentions are not admissible. We also conclude that neither BEST nor MATRR has established standing and therefore their requests for hearing are denied. Because no contentions are admitted but a portion of one is held in abeyance, we neither grant nor deny the hearing request with respect to BREDL.

I. Procedural Background

On January 7, 2013, TVA submitted its LRA for the renewal of the operating licenses for Sequoyah Units 1 and 2. 78 Fed. Reg. at 14,363. On March 5, 2013, the NRC published a notice in the Federal Register stating that any person whose interests may be affected by this proceeding, and who wishes to participate as a party, must file a petition for leave to intervene with the NRC within 60 days. 78 Fed. Reg. at 14,364. On May 6, 2013, Petitioners filed a petition, proffering eight contentions, denominated Contentions A through E and Contentions F-1, F-2, and F-3. See Petition at 10-27.

On May 31, 2013, TVA and the NRC Staff filed answers opposing the petition.[3] Although neither TVA nor the NRC Staff disputes BREDL's standing to intervene, both argue

[2] Petition for Leave to Intervene and Request for Hearing by the Blue Ridge Environmental Defense League, Bellefonte Efficiency and Sustainability Team, and Mothers Against Tennessee River Radiation (May 6, 2012).

[3] [TVA]'s Answer Opposing the Petition for Leave to Intervene and Request for Hearing by [BREDL], et al. (May 31, 2013) [TVA Answer]; NRC Staff Answer to Petition for Leave to Intervene and Request for Hearing by [BREDL], [BEST], and [MATRR] (May 31, 2013) [NRC Answer].

that BEST and MATRR lack standing. TVA Answer at 3 & n.2; NRC Answer at 5-6. TVA asserts that none of the contentions are admissible. TVA Answer at 1. The NRC Staff argues that seven of the contentions are inadmissible and that the eighth must be held in abeyance. NRC Answer at 1. On June 7, 2013, Petitioners filed their reply.[4]

NRC regulations state that a Board may grant a request for hearing and petition to intervene "if it determines that the requestor/petitioner has standing . . . and has proposed at least one admissible contention." 10 C.F.R. § 2.309(a). We examine below the issues of standing and contention admissibility.

II. Standing

A. Standards Governing Standing

NRC regulations specify that, in order to demonstrate standing, a petitioner must provide information regarding (1) the nature of the petitioner's right under a relevant statute to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that might be issued in the proceeding on the petitioner's interest. 10 C.F.R. § 2.309(d)(1)(ii)-(iv). But this is not enough. Although the regulations are silent on this point, the Commission has also stated that it will apply "contemporaneous judicial concepts" of standing before it will allow a citizen to obtain a hearing.[5] Thus, the Commission also requires that a petitioner "demonstrate that (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of

[4] Reply of [BREDL], [BEST], and [MATRR] re: Petition for Leave to Intervene and Request for Hearing (June 7, 2013) [Reply].

[5] See, e.g., Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Servs., LLC (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009) (quotation omitted).

interests arguably protected by the governing statute; (2) that the injury can fairly be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision."[6]

In applying these principles, the Commission has developed a "proximity presumption," holding that if an individual resides within 50 miles of a nuclear power plant, then the petitioner is presumed to have standing. Calvert Cliffs 3, CLI-09-20, 70 NRC at 915-16. The proximity presumption applies to this license renewal proceeding.[7]

When, as here, the petitioner is an organization rather than an individual, it must demonstrate organizational or representational standing.

> An organization may base its standing on either immediate or threatened injury to its organizational interests, or to the interests of identified members. To derive standing from a member, the organization must demonstrate that the individual member has standing to participate, and has authorized the organization to represent his or her interests.

Id. (citation omitted).

B. Rulings on Standing

Neither TVA nor the NRC Staff disputes BREDL's standing to intervene. TVA Answer at 3 n.2; NRC Answer at 5. In contrast, however, TVA and the NRC Staff both contend that neither BEST nor MATRR has established standing. TVA Answer at 3; NRC Answer at 5-6. We agree.

The petition is accompanied by declarations by 16 individuals, each of whom states that he or she (a) lives within 50 miles of Sequoyah, (b) is a member of BREDL, and (c) authorizes

[6] Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

[7] See id. at 915 n.15 (citing with approval Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-06, 53 NRC 138, 150 (2001), aff'd on other grounds, CLI-01-17, 54 NRC 3 (2001) (applying proximity presumption in reactor operating license renewal proceeding)).

BREDL to represent his or her interest in this proceeding.[8] By virtue of the proximity presumption, each of these individuals would have standing to intervene in this proceeding in his or her own right. Calvert Cliffs 3, CLI-09-20, 70 NRC at 915 n.15. Based on these declarations, we conclude that BREDL has standing because it is the authorized representative of these individuals.[9]

As to BEST and MATRR, however, none of the declarations mention either of them. The petition and the reply inform us that BEST is a "chapter" of BREDL and that MATRR is a "project" of BREDL. Petition at 1; Reply at 1-2. But none of the individuals state that they are members of either the BEST chapter or the MATRR project. Although this failure was pointed out by both TVA and the NRC Staff, neither BEST nor MATRR attempted to cure this defect in the reply.[10]

Accordingly, neither BEST nor MATRR can successfully claim representational standing based on the interests of these 16 BREDL members. BEST and MATRR appear to be subsets of BREDL. While membership in a subset (BEST or MATRR) indicates membership in the set

[8] See, e.g., Declaration of Standing [of Heather Bradley] (Apr. 25, 2013); Declaration of Standing [of Emily Marr Davis] (Apr. 29, 2013); Declaration of Standing [of Phil Davis] (Apr. 29, 2013); Declaration of Standing [of Keith Goodall] (Apr. 29, 2013); Declaration of Standing [of Barbara A. Kelly] (Apr. 29, 2013).

[9] We note that BREDL has identified three additional members who live beyond 50 miles from Sequoyah. See Petition at 5. Because we have concluded that BREDL has representational standing arising from the proximity of those 16 members living within 50 miles of Sequoyah, we need not consider whether these three individuals would have standing for other, non-proximity-related reasons.

[10] The Commission has held that a petitioner may use its reply to "cure the affidavits" used to establish standing. South Carolina Electric and Gas Company and South Carolina Public Service Authority (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010).

(BREDL), the reverse is not true. That is, we cannot logically infer that any of the 16 identified BREDL members are also members of either BEST or MATRR.[11]

Nor have BEST or MATRR attempted to demonstrate organizational standing by showing that the renewal of the licenses for Sequoyah Units 1 and 2 will injure either of their organizations. Neither has indicated, for example, that their corporate headquarters or physical facilities are located in close proximity to Sequoyah. Accordingly, we conclude that BEST and MATRR have failed to demonstrate standing, either representational or organizational.[12]

III. Standards Governing Contention Admissibility

To intervene in a proceeding, a petitioner must put forward at least one admissible contention. 10 C.F.R. § 2.309(a). NRC regulations specify that, in order to be admissible, a contention must meet all of the following requirements: (i) provide a specific statement of the issue of law or fact to be raised; (ii) provide a brief explanation of the basis for the contention; (iii) demonstrate that the issue raised is within the scope of the proceeding; (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) provide a concise statement of the alleged facts or expert opinions that support the petitioner's position and upon which the petitioner intends to rely at hearing; and (vi) show that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(i)-(vi).

The purpose of Section 2.309(f)(1) is to "focus litigation on concrete issues and result in a clearer and more focused record for decision." Changes to Adjudicatory Process, 69 Fed.

[11] BEST has previously been deemed to lack standing in other proceedings for similar reasons. See Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 and 2), LBP-10-7, 71 NRC 391, 413-14; Tennessee Valley Authority (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC 361, 379-80.

[12] Nor can we discern how either BEST or MATRR would be injured by failure to be granted standing, as their interests are represented through BREDL as subset members thereof.

Reg. 2182, 2202 (Jan. 14, 2004). The Commission has stated that "the hearing process [is only intended for] issue[s] that [are] appropriate for, and susceptible to, resolution in an NRC hearing." Id. "While a board may view a petitioner's supporting information in a light favorable to the petitioner . . . the petitioner (not the board) [is required] to supply all of the required elements for a valid intervention petition."[13] The rules on contention admissibility are "strict by design."[14] If a contention fails to comply with any of these requirements, then it may not be admitted.[15]

IV. Analysis and Rulings on Contention Admissibility

A. Contention A

Contention A states:

> TVA's LRA fails to adequately address the risks from flooding at Sequoyah which could result from the failure of upstream dams. The consequences of such an event on the plant would be severe.

Petition at 10.

1. Positions of the Parties

In support of Contention A, BREDL states, with no reference to any supporting documentation, that NRC recently issued "six citations to TVA and placed the plant under its 'yellow' safety flag." Id. at 10-11. BREDL then quotes from what it asserts to be a March 12, 2013, NRC letter (not attached to the petition) regarding Sequoyah that, BREDL states, says: "the enclosed inspection report discusses . . . two Apparent Violations (AVs) associated with site

[13] AmerGen Energy Co. (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009).

[14] See, e.g., Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 233 (2008).

[15] Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 636 (2004).

flood mitigation strategy." Id. at 11. BREDL recounts that, following the March 2011 accident at the Fukushima Dai-Ichi nuclear power plant in Japan, the NRC required all power reactor licensees to "'develop, implement, and maintain guidance and strategies to maintain or restore core cooling, containment, and SFP [spent fuel pool] cooling capabilities following a beyond-design-basis external event.'"[16] BREDL states, with no citation or documentation, that "TVA's updated calculations showed flooding at Sequoyah could rise 2.4 feet higher than that plant was designed to handle." Id. BREDL asserts that "TVA's remedy [consists of] sand and gravel baskets placed on upstream riverbanks" and concludes that they are "stopgaps." Id. BREDL alleges that "[m]ore substantial measures for TVA's nuclear fleet would cost tens of millions of dollars, and flood-proof modifications could top a billion dollars." Id. No citation, documentation, or support is provided for these allegations.

BREDL states that the "Fukushima meltdown was caused by a flood of water" and that "TVA has not implemented necessary precautions to prevent [a] similar disaster in the Tennessee Valley." Id. at 12. BREDL quotes an NRC spokesman as stating that "[o]ur inspectors found that their [TVA's] strategies were not adequate." Id. (citing to a March 19, 2013 article in the Chattanooga Times-Free Press).

BREDL asserts that NRC regulations specify that an LRA must include an integrated plant assessment (IPA) that demonstrates that the "effects of aging" on plant "systems, structures, and components" "will be adequately managed so that the intended function(s) will be maintained consistent with the CLB [current licensing basis] for the period of extended

[16] Id. The source of BREDL's quote is unclear, but the context indicates that it is derived from an unspecified page of NRC Order EA-12-049, "Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events," issued on March 12, 2012.

operation," citing to 10 C.F.R. § 54.21(a). Id. BREDL concludes by stating:

> Under 10 C.F.R. § 54.30(a), if the reviews required by § 54.21(a) or (c) show that there is not reasonable assurance during the current licensing term that licensed activities will be conducted in accordance with the CLB, then the licensee shall take measures under its current license, as appropriate to ensure that the intended function of those systems, structures or components will be maintained in accordance with the CLB throughout the term of its current license.

Id.

Both TVA and the NRC Staff argue that Contention A is inadmissible. See TVA Answer at 13-18; NRC Answer at 19-24.

2. Analysis and Ruling on Contention A

For the reasons discussed below, we hold that Contention A is inadmissible.

As a preliminary matter, we note that although Contention A asserts that the "LRA fails to adequately address the risk of flooding," the contention does not indicate what legal requirement, if any, requires the LRA to address the risk of flooding. More specifically, Contention A does not specify whether it is the Atomic Energy Act and NRC's regulations thereunder (10 C.F.R. Part 54), or the National Environmental Policy Act (NEPA) and NRC's regulations thereunder (10 C.F.R. Part 51), that require the LRA to "address the risk of flooding." Is Contention A a "safety" contention under AEA, an "environmental" contention under Part 51, or both?

The answer is important because the scope of the environmental review in a license renewal proceeding is different from the scope of the safety review, and different regulations and legal criteria apply. Thus, in order to assess the admissibility of a contention (e.g., whether it is within the scope of, and material to, the proceeding as required by 10 C.F.R. § 2.309(f)(1)(iii) and (iv)) we need to know the legal basis (safety or environmental) of the

contention. But BREDL fails to suggest what legal criteria should be applied to evaluate whether the LRA's discussion of flooding is "adequate."

The discussion of Contention A in the petition and reply reveal that Contention A is a safety contention under the AEA and 10 C.F.R. Part 54. This is because, in the discussion of Contention A, BREDL never mentions NEPA or Part 51 and instead focuses entirely on Part 54. BREDL bases Contention A in large part on "six citations" the NRC issued to TVA, and the NRC's placement of Sequoyah "under its 'yellow' safety flag." Petition at 10-11. These alleged violations are safety/AEA issues, not environmental. The petition and reply rely entirely on NRC safety-related regulations at 10 C.F.R. §§ 54.21(a), 54.21(b), and 54.30(a). See id. at 12.

Having determined that Contention A is alleging a non-compliance with NRC's Part 54 requirement, we turn to the issue of its admissibility, i.e., whether the contention satisfies the six requirements of 10 C.F.R. § 2.309(f)(1)(i)-(vi). The answer is clearly no.

At the outset, Contention A is inadmissible because it is not "within the scope of the proceeding" as required by 10 C.F.R. § 2.309(f)(1)(iii). The essence of Contention A is that TVA is not in compliance with its "current licensing basis (CLB)"[17] and that 10 C.F.R. § 54.30(a) demands that it come into compliance with its CLB. Petition at 12. But the case law and the black letter of our regulations at 10 C.F.R. § 54.30(b) are plain that compliance with the CLB is not within the scope of a license renewal proceeding. "The licensee's compliance with the obligation under Paragraph (a) of this section to take measures under its current license is not within the scope of the license renewal review." 10 C.F.R. § 54.30(b) (emphasis added).

Section 54.30(b), combined with the requirement that contentions be within the scope of the license proceeding, 10 C.F.R. § 2.309(f)(1)(iii), are fatal to Contention A. TVA's current

[17] NRC regulations define "current licensing basis" at 10 C.F.R. § 54.3(a).

compliance with the NRC's safety requirements, as reflected in TVA's CLB, is outside of the scope of Part 54 and therefore cannot form the basis of an admissible contention.

Even without BREDL's citation to 10 C.F.R. § 54.30(a), it is apparent that Contention A, which deals with flooding, is a challenge based on TVA's alleged non-compliance with its CLB. First, under the NRC regulations, the prevention and management of flooding is encompassed within the licensee's CLB. The term "CLB" includes "the NRC regulations contained in 10 CFR parts . . . 50 . . . and appendices thereto." 10 C.F.R. § 54.3(a). Appendix A to Part 50 establishes "General Design Criteria for Nuclear Power Plants." 10 C.F.R. Part 50, Appendix A. These include "General Design Criterion 2," which states:

> Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as . . . floods . . . without loss of capability to perform their safety functions.

Id. at General Design Criterion 2. In short, licensees are required to protect their nuclear power plants against the risk of flooding as a part of their current regulatory obligations under the AEA (i.e., as part of the CLB) and any challenge to the adequacy of the licensee's flood management measures is not with the scope of the license renewal process.

The Commission's decision in Florida Power & Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3 (2001) is the seminal ruling. In it, the Commission stated that it "has the ongoing responsibility to oversee the safety and security of operating nuclear reactors" and asserted that "the NRC maintains an aggressive and ongoing program to oversee plant operation" and to maintain compliance with the CLB. Id. at 8. In light of this "aggressive program" the Commission stated that "it would be unnecessary to include in our [license renewal] review all those issues already monitored, reviewed, and commonly resolved as needed by ongoing regulatory oversight." Id.

> In establishing its license renewal process, the Commission did not believe it necessary or appropriate to throw open the full gamut of provisions in a plant's current licensing basis to re-analysis during the license renewal review.

Id. at 9.[18]

Subsequently, the Commission has reversed several Boards that attempted to admit a contention alleging that a licensee's current compliance problems could be within the scope of Part 54, e.g., could possibly undermine the licensee's ability to manage aging during the license renewal period. For example, in Prairie Island, the Commission reversed the Board for admitting a contention charging that a licensee's poor safety culture could undermine its ability to manage aging during the period of extended operations.[19] The Commission ruled that such an issue is not within the scope of license renewal. Id.

Likewise, in Diablo Canyon, the Commission reversed a Board (Judge Abramson dissenting) that admitted a contention alleging that (a) the licensee had a repeated pattern of violations, (b) such a pattern could undermine the licensee's ability to manage aging during the period of extended operations, and therefore (c) the contention was within the scope of license

[18] If Contention A had been articulated as an environmental contention (e.g., TVA's environmental report failed to adequately address the reasonably foreseeable environmental impacts from flooding), then it would likely have been within the scope of this license renewal proceeding. The Commission has clearly stated that, in the context of license renewal, "[t]he Commission's AEA review under Part 54 does not compromise or limit NEPA." Turkey Point, CLI-01-17, 54 NRC at 13. Although the Part 54 review focuses on aging of a limited set of systems, structures, and components, rather than on the CLB, the NEPA review is not so restricted. Indeed, the Commission's Part 51 regulations dealing with license renewal never even mention the term "CLB." The Commission has ruled: "the two inquiries are analytically separate: one (Part 54) examines radiological health and safety, while the other (Part 51) examines environmental effects of all kinds. Our aging-based safety review does not in any sense 'restrict NEPA' or 'drastically narrow[] the scope of NEPA.'" Id. Contention A, however, focused entirely on Part 54 and never mentioned NEPA or Part 51.

[19] Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 484 (2010).

renewal.[20] The Commission stated "license renewal should not include a new, broad-scoped inquiry into compliance that is separate from and parallel to our ongoing compliance oversight activity" and that the license renewal rule was "developed to exclude from review conceptual issues such as operational history, quality assurance, quality control, management competence, and human factors." Id. at 435 (internal quotations and citations omitted).

In its reply, BREDL makes a brief attempt to escape the strictures of 10 C.F.R. § 54.30(b) by asserting that Contention A addresses "factors beyond the current license term of 2021." Reply at 3-4. BREDL states "given the short amount of time remaining within the current licensing term, the huge costs of remediation at [Sequoyah], and the problem multiplied by similar conditions at Watts Bar, can TVA correct this problem within eight years?" Id. at 4.

This argument is unavailing. First, as a legal matter, we find no support for the proposition that 10 C.F.R. § 54.30(b), which states that a "licensee's compliance with the obligation . . . to take measures [to comply with its CLB] is not within the scope of the license renewal review," (emphasis added), only applies to measures that will achieve compliance during the current licensing term. Stated otherwise, we do not read 10 C.F.R. § 54.30(b) as stating or implying that if compliance with the CLB cannot be fully achieved during the current licensing term (and must be consummated during the period of extended operation), then a contention raising issues about such CLB compliance is within the scope of license renewal. We know of no legal precedent to support such an interpretation of 10 C.F.R. § 54.30(b) and, if it was implied by BREDL, we reject it.

Second, even if BREDL's construction of the regulation were correct, Contention A would still fail because BREDL has failed to provide sufficient support for the factual predicate to

[20] Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 432 (2011).

this interpretation, i.e., that compliance with the CLB cannot be achieved before the current licenses expire because the flooding risk issues related to the Sequoyah plant are too expensive and difficult to cure by 2020 and 2021. We recognize that 10 C.F.R. § 2.309(f)(1)(v) requires only "alleged facts," and does not require that a contention be supported by evidence or by expert opinion. A contention need not be proven at the admissibility stage.[21] But this regulation also calls for the petitioner to provide "references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position." 10 C.F.R. § 2.309(f)(1)(v). Moreover, the very next section of our regulations reinforces this point by calling for the requestor/petitioner to "provide sufficient information" to show that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). BREDL provides nothing to satisfy these regulations, and bald allegations that it "could" cost TVA over a "billion dollars" to install "flood-proof modifications," Petition at 11, and bald questions, such as "can TVA correct this problem within eight years?" Reply at 4, do not suffice under 10 C.F.R. § 2.309(f)(1)(v) and (vi).[22]

For these reasons, we hold that Contention A is inadmissible.

B. Contention B

Contention B states:

> NRC cannot grant the Sequoyah license renewal without conducting a thorough analysis of the risks of the long-term storage of irradiated nuclear fuel generated by Sequoyah Units 1 and 2.

Petition at 12.

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[21] See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004).

[22] See, e.g., Union Electric Co. d/b/a Ameren Missouri (Callaway Plant, Unit 2) et al., CLI-11-05, 74 NRC 141, 169 (2011); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 359-60 (2001).

1. Positions of the Parties

BREDL states that Contention B is based on New York v. NRC, 681 F.3d 471 (D.C. Cir. 2012), the June 8, 2012 decision of the United States Court of Appeals for the District of Columbia Circuit that vacated portions of the NRC NEPA regulation that assessed the environmental impact of the storage and disposal of spent nuclear fuel generated by nuclear power reactors such as Sequoyah Units 1 and 2. Petition at 12-13. BREDL notes that New York v. NRC vacated NRC's "Waste Confidence Decision" (WCD) regulation and NRC's "Temporary Storage Rule" (TSR) regulation.[23] Id. at 13. BREDL asserts that these regulations provide part of the basis for the LRA "on issues regarding the safety and environmental impacts of irradiated reactor fuel storage and disposal." Id. BREDL asserts that, under New York v. NRC, the LRA no longer complies with the safety requirements of 10 C.F.R. Part 54 and that TVA's Environmental Report is insufficient because it can no longer rely on the WCD and TSR to cover the environmental impacts of the storage and disposal of the spent fuel that will be generated during the 20 year renewal term for Sequoyah Units 1 and 2. Id.

The NRC Staff takes the position that "consistent with the recent Commission decision in [Calvert Cliffs Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63 (2012)], [Contention B] should be held in abeyance pending further Commission order." NRC Answer at 25.

TVA asserts that Contention B is an inadmissible attack on an NRC regulation; it violates 10 C.F.R. § 2.335(a) which has, itself, never been vacated or overridden by the Commission. Therefore, TVA argues that the contention should be denied now. TVA Answer at 20-22. TVA never mentions the Calvert Cliffs order cited by the NRC Staff.

[23] The TSR is the first sentence of 10 C.F.R. § 51.23(a) and the WCD is the second.

2. Analysis and Ruling on Contention B

For the reasons set forth below, we deny the safety portion of Contention B and hold the environmental portion of Contention B in abeyance (without admitting or denying it) pending further direction from the Commission.

To the extent that Contention B asserts that New York v. NRC undermines or invalidates the safety portion of the LRA for Sequoyah, we reject it. New York v. NRC dealt solely with NEPA and environmental issues. New York v. NRC invalidated portions of NRC's NEPA regulations under 10 C.F.R. Part 51. That decision did not involve 10 C.F.R. Part 54 and it cannot provide support for the claim that TVA's safety analysis now fails to satisfy Part 54. The safety portion of Contention B is inadmissible under 10 C.F.R. § 2.309(f)(1)(ii), (v), and (vi).

Turning to the environmental portion of Contention B, we conclude that it is substantially similar to the petitions that were filed in twenty-two reactor licensing adjudications in the immediate aftermath of the decision in New York v. NRC. See Calvert Cliffs, CLI-12-16, 76 NRC 63. The Commission dealt clearly and specifically with those petitions. It directed "as an exercise of [its] inherent supervisory authority over NRC adjudications" that "these contentions—and any related contentions that may be filed in the near term—be held in abeyance pending our further order." Id. at 6.

Calvert Cliffs is binding on this Board. Contention B is clearly a "related contention . . . filed in the near term." In addition, we are unaware of any "further order" by the Commission that resolves the WCD or TSR situation.

Accordingly, we neither admit nor deny the environmental portion of Contention B but hold it in abeyance pending further order from the Commission.[24]

[24] On June 20, 2013, the NRC published in the Federal Register a final rule entitled Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses. 78 Fed. Reg.

C. Contention C

Contention C states:

> License renewal regulations at § 54.21 require reasonable assurance during the license term that activities will be conducted in accordance with the CLB [current licensing basis], but four counties out of five within 50 miles of Sequoyah have higher cancer death rates than the state average.

Petition at 15.

1. Positions of the Parties

Although the express language of Contention C refers to NRC safety regulations (10 C.F.R. § 54.21 and the requirement that there be "reasonable assurance" of a facility's safety), the first sentence of BREDL's explanation of this contention refers to TVA's Environmental Report (ER). Id. at 14-15. Thus, it is unclear whether Contention C is a safety contention, an environmental contention, or both. BREDL certainly makes its arguments based upon environmental matters, noting that "the ER states that human health impacts from the license renewal would be 'small.'" Id. at 15. BREDL challenges this conclusion, stating that "cancer statistics in counties within 50 miles around Sequoyah Nuclear Plant point to a relationship between cancer rates and [Sequoyah]." Id. (emphasis added). BREDL states that it is "focusing on counties within the 50-mile zone around Sequoyah – Hamilton, Bledsoe, Marion, Monroe and McMinn." Id. (emphasis added). The petition includes a chart with the title "Cancer Statistics for Counties within 50 miles of Sequoyah in Tennessee." Id. (emphasis added). The only counties on the chart are Hamilton, Bledsoe, Marion, Monroe, and McMinn. Id. Contention

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37,282 (June 20, 2013). A number of these revisions bear on the WCD and the TSR. While they do not directly affect our decision on Contention B, we do note that the NRC states, "In accordance with CLI-12-16, the NRC will not approve any site-specific license renewal applications until the deficiencies identified in [New York v. NRC] have been resolved." 78 Fed. Reg. at 37,293. This reiteration of the NRC's policy of holding off on granting any reactor license renewal requests until WCD and TSR-related issues are settled supports our decision to hold Contention B in abeyance.

C states, in pertinent part, that "four counties out of five within 50 miles of Sequoyah have higher cancer rates than the state average." Id. (emphasis added).

Based on the foregoing allegations, BREDL asks: "Is the observed fluctuation and general increase [in the cancer rate] caused by [Sequoyah]?" Id. at 16. BREDL does not attempt to answer this question but asserts that "[f]urther study is needed." Id. BREDL argues that TVA's ER is incorrect because BREDL asserts that its statistics "indicate the human health impact is not 'small.'" Id. This casts the issue as an environmental contention. But, on the other hand, BREDL's discussion of Contention C also asserts that if the licensee is not complying with its CLB, then 10 C.F.R § 54.30(a) requires the licensee to take measures to restore and maintain such compliance. Id. This casts the issue as a safety contention.

Both TVA and the NRC Staff argue that Contention C is inadmissible. See TVA Answer at 22-26; NRC Answer at 26-32.

2. Analysis and Ruling on Contention C

For the reasons discussed below, we conclude that Contention C is inadmissible.

As an initial matter (as we noted) it is unclear whether BREDL is arguing that its cancer statistics show that the LRA fails to comply with NRC's safety regulations, or that the ER fails to comply with NRC's environmental regulations, or both. Here again, the distinction makes a difference. For example, in license renewal proceedings, the scope of review for environmental contentions is different from the scope of review for safety contentions. See supra at note 18. In addition, the criteria and requirements under Part 54 are different from those under Part 51. Contention C is confusing, however, because although the contention refers to 10 C.F.R. § 54.21, the text of the petition focuses on the ER and asserts that the ER conclusion that the environmental impact is "small" is incorrect.

For purposes of our analysis, we will treat Contention C as both a safety contention and an environmental contention. From both perspectives, it is inadmissible.

If we assume that Contention C is a safety contention, then it is outside of the scope of the license renewal process under 10 C.F.R. § 54.30(b) and is therefore inadmissible under 10 C.F.R. § 2.309(f)(1)(iii). Contention C states, in pertinent part, that "License renewal regulations at § 54.21 require reasonable assurance during the license term that activities will be conducted in accordance with the CLB." Petition at 14-15. BREDL then cites us to 10 C.F.R. § 54.30(a) which specifies that the licensee must take measures to restore and maintain compliance with the CLB. Id. at 16. Once again, BREDL fails to mention that 10 C.F.R. § 54.30(b) states that compliance with the CLB is "not within the scope of the license renewal review." Thus, if Contention C is a safety contention, then it is inadmissible for the same reason that Contention A inadmissible. It is not within the scope of this license renewal proceeding and thus fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(iii).

Considering the admissibility of Contention C as an environmental contention, the legal analysis is different, but the result is the same. Construed as an environmental contention the thrust of Contention C is that the ER erroneously concludes that the human health impacts of the license renewal would be "small." As support for this contention, BREDL proffers a chart of "Cancer Statistics for Counties within 50 Miles of Sequoyah in Tennessee" which displays data on five counties. BREDL asserts that this chart shows that "[f]or the five counties surrounding Sequoyah, the cancer death rate is much more variable" and that "four counties – Hamilton, Marion, Monroe and McMinn – have higher cancer death rates than the state average level." Id. at 15-16.

This chart and the data on which it is allegedly based, are highly problematic. BREDL has provided no information regarding the methodology used in developing this data. The chart

does not indicate whether it is referring to cancer mortality or morbidity. BREDL mentions that the data was compiled by an intern, but there is no supporting affidavit or declaration from this person explaining how she prepared the chart and we have no curriculum vitae or other indicia of her qualifications as a data analyst or statistician. There is no attempt to identify the types of cancer that are covered by BREDL's chart, or to distinguish between those types that may be associated with radiation exposure and those that are not. There is no allegation or showing that the data indicating higher cancer rates in the four counties is statistically significant.

And, more fundamentally, BREDL has failed even to allege that there is any causal nexus between the operation of Sequoyah and the cancer data presented for the four counties in question. Indeed, BREDL's statement that "[f]urther study is needed" is essentially an admission that a causal link has not yet been demonstrated.

In addition, it cannot go unremarked that BREDL's statistics and assertions regarding the prevalence of cancer in the "counties within 50 miles of Sequoyah," Petition at 14-15, appear to be highly misleading. BREDL repeatedly states that its data shows that "four counties out of five within 50 miles of Sequoyah" have a higher incidence of cancer. Id. at 15. This statement plainly implies that there are only five counties within 50 miles of Sequoyah and four of them have a higher incidence of cancer than the Tennessee state average. However, the NRC Staff has alleged that there are 14 counties wholly within 50 miles of Sequoyah. NRC Answer at 31 n.123 ("[T]here are, in fact, ten Tennessee counties and four Georgia counties within a 50 mile radius of the plant."). The NRC Staff also asserts that there are 17 additional counties that are at least partially within 50 miles of the Sequoyah plant. Id. Thus, the NRC Staff claims that there are a total of 31 counties wholly or partially within 50 miles of Sequoyah. Moreover, the five counties used by BREDL in its statistics are apparently not even the five counties closest to Sequoyah. See ER at 2-124.

Furthermore, the ER includes maps that indicate there are many more than five counties within a 50-mile radius of Sequoyah. See id. BREDL has not disputed the accuracy of these maps.

If this information is correct, then BREDL's repeated statements that "four counties out of five within 50 miles of Sequoyah have higher cancer death rates than the state average" are seriously misleading. BREDL's pleadings strongly imply that the five counties covered by BREDL's data are the only counties within a 50 mile radius of Sequoyah, when in fact they represent less than 25 percent of the relevant counties. A reasonable person reading BREDL's pleadings on this issue would certainly have been misled. We find this unacceptable.[25]

Turning back to the contention itself, even assuming arguendo the truth of BREDL's data concerning the higher cancer rates in Hamilton, Marion, Monroe, and McMinn counties, we conclude that Contention C, as an environmental contention, is inadmissible because it is based upon unsupported speculation that operation of Sequoyah might cause higher cancer rates. The Commission has made clear that contentions based on "bare assertions and speculation" will not be admitted. See, e.g., Fansteel, Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). Therefore, Contention C is inadmissible for failing to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v) to provide sufficient supporting information.

Furthermore, even if BREDL's claims regarding elevated cancer risk in the four counties are correct, and even if we assume (which we may not) a causal connection between these cancers and the operation of the Sequoyah plant, BREDL has not provided any support for its proposition that these rates are not small. The ER states that the impacts to human health are

[25] We remind Mr. Zeller, who signed the Petition and is an experienced pro se representative in ASLBP proceedings, that, like all other representatives and/or lawyers herein, he is subject to the duties of 10 C.F.R. §§ 2.304(d) (truthfulness), 2.314(c) (reprimand/censure/suspension), and 2.323(d) (accuracy).

small. BREDL has not provided any report, reference, analysis, or expert testimony which supports the proposition that they are not. BREDL has not alleged that its data show a statistically significant increase in cancer. And although NRC's regulations specifically define the terms "small," "moderate," and "large" environmental impacts, see 10 C.F.R. Part 51, Subpart A, Appx. B, Tbl. B-1 at n.3, BREDL has not attempted to apply these definitions to Sequoyah, much less explain how its cancer data changes the impact of Sequoyah from small to moderate or large. For example, BREDL has made no attempt to show that the radiological impacts from Sequoyah would "exceed permissible levels in the Commission's regulations" and thus would not qualify as "small."[26]

Contention C is simply not moored to any relevant NEPA regulation. Therefore, even if it were not inadmissible for its failure to satisfy 10 C.F.R. § 2.309(f)(1)(v), because BREDL has not explained the regulatory significance of its data or argument, Contention C would still be inadmissible for failing to present an issue that is material to the findings the NRC must make in this proceeding. 10 C.F.R. § 2.309(f)(1)(iv).

In sum, if Contention C is a safety contention, then it is not admissible under 10 C.F.R. § 2.309(f)(1)(iii), and if it is an environmental contention, then it is not admissible under 10 C.F.R. § 2.309(f)(1)(iv) and (v).

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[26] 10 C.F.R. Part 51, Subpart A, Appx. B, Tbl. B-1 at n.3. defines "small" impacts as follows:

> For the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small as the term is used in this table.

D. Contention D

Contention D states:

> TVA's Integrated Plant Assessment ("IPA") for the LRA fails to identify and assess safety-related incidents at [Sequoyah] in its required time-limited aging analysis ("TLAA"). 10 CFR 54.21.

Petition at 16.

1. Positions of the Parties

Contention D alleges that the LRA is inadequate because the time-limited aging analysis (TLAA) in the application did not discuss a number of safety-related incidents that have allegedly occurred at Sequoyah over the last 14 years. Id. at 17. BREDL asserts, with no citation, documentation, or other support, that during the last 14 years, "Sequoyah's quarterly incident reports indicate an average of 7.14 safety-related findings per annum . . . but for the last six to eight years the trend . . . indicates increasing levels of safety-related incidents." Id. Again without supporting information, BREDL alleges and discusses a 1999 incident, a 2000 incident, a 2001 incident, and a 2004 incident. Id. at 17-18. BREDL asserts that these incidents are "things that could cause unimaginable destruction." Id. at 18. BREDL concludes that "[t]he failures to detect problems, to prepare for storms and to maintain security are shortcomings of TVA management," id., and therefore that TVA has failed to demonstrate that the effects of aging will be adequately managed during the renewal period, as required by 10 C.F.R. § 54.21(c)(iii). Id.

Both TVA and the NRC Staff argue that Contention D is inadmissible. See TVA Answer at 26-33; NRC Answer at 32-37.

2. Analysis and Ruling on Contention D

For the reasons discussed below, we conclude that Contention D, which raises issues concerning TVA's compliance with its CLB and is a safety contention, is not admissible.[27]

As discussed with regard to Contention A above, the Commission has recently rejected contentions similar to Contention D in the Prairie Island and Diablo Canyon license renewal proceedings. Prairie Island, CLI-10-27, 72 NRC 481; Diablo Canyon, CLI-11-11, 74 NRC 427. The petitioners in both of those proceedings proffered contentions alleging that the applicants' handling of past safety issues at the plants demonstrated that the applicants could not provide reasonable assurance that they would manage the effects of aging during the license renewal term, as required by NRC regulations. Prairie Island, CLI-10-27, 72 NRC at 484; Diablo Canyon, CLI-11-11, 74 NRC at 432. In both cases the boards admitted these contentions and the Commission reversed them, ruling that the contentions raised CLB issues that were outside of the scope of license renewal and therefore inadmissible under 10 C.F.R. § 2.309(f)(1)(iii). Prairie Island, CLI-10-27, 72 NRC at 490-92; Diablo Canyon, CLI-11-11, 74 NRC at 435-36. The Commission's holdings in these two proceedings are dispositive here. Contention D is inadmissible for failure to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(iii).

In addition, while BREDL argues that TVA must "identify and assess safety-related incidents," it does not identify the regulation that supposedly requires such information to be included in a license renewal application. BREDL notes that 10 C.F.R. § 54.21(c)(iii) requires an applicant to demonstrate that "[t]he effects of aging on the intended function(s) will be adequately managed for the period of extended operation." Petition at 18. But Section 54.21 nowhere requires an applicant to identify safety-related incidents that have occurred during the

[27] Neither the Petition nor the Reply attempts to raise environmental issues with regard to Contention D.

current licensing term. Section 54.21 "requires applicants to list structures and components subject to an aging management review." 10 C.F.R. § 54.21(a)(1). It does not require license renewal applicants to identify safety-related incidents in their applications. Thus, BREDL's assertion that TVA failed to provide such information is not material to the findings the NRC must make to approve the license request. Contention D, cast in this way, is inadmissible for its failure to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(iv).

E. Contention E

Contention E states:

> The LRA fails to consider Plutonium fuel use at [Sequoyah] which would place it outside the current licensing basis.

Petition at 18.

1. Positions of the Parties

BREDL states that the Sequoyah Units 1 and 2 are "under consideration for plutonium fuel." Id. BREDL states that TVA is a "cooperating agency" with the U.S. Department of Energy in the preparation of the DOE Final Surplus Plutonium Disposition Supplemental Environmental Impact Statement (DOE SEIS), and that this makes "Sequoyah central to the plutonium fuel program." Id. at 18-19. BREDL asserts that the DOE SEIS lists two TVA nuclear power plants, Sequoyah and Browns Ferry as potential users of reactor fuel containing plutonium (sometimes referred to as "mixed-oxide" or "MOX" fuel). Id. at 19. BREDL claims that "plutonium is fundamentally different from uranium. With plutonium fuel loaded into any commercial reactor, the power station becomes more dangerous." Id.

Both TVA and the NRC Staff argue that Contention E is not admissible. See TVA Answer at 33-36; NRC Answer at 37-39.

2. Analysis and Ruling on Contention E

For the reasons discussed below, we conclude that Contention E is inadmissible.

BREDL has provided no link between anything in the LRA and its naked claim that mixed-oxide (MOX) fuel (containing oxides of both plutonium and uranium) is more dangerous than the uranium fuel TVA currently uses at Sequoyah. BREDL has also not alleged or provided any information that indicates an intent by TVA to seek to use MOX fuel during the license renewal term. The Commission rejected an almost identical contention in the McGuire/Catawba license renewal proceeding, where BREDL itself was a petitioner.[28] In McGuire/Catawba, a petitioner proffered two contentions alleging that the applicant did not discuss the impacts of using MOX fuel, and that use of such fuel would be unsafe. Id. at 291. As here, however, the applicant had not sought to obtain NRC approval to use MOX fuel. Id. at 292. The Commission held that "[n]othing in our case law or regulations suggests that license renewal is an occasion for far-reaching speculation about unimplemented and uncertain plans like [the applicant's] MOX plan." Id. at 293. The Commission noted that this sort of "inquiry into future, inchoate plans of the Licensee would, as a general matter, invite petitioners in license renewal cases to raise safety issues involving a myriad of possible future license amendments." Id. at 292.

This Commission precedent is dispositive of Contention E. As in McGuire/Catawba, BREDL is seeking to litigate the merits of a plan that TVA has not yet adopted and may never adopt. As TVA concedes (and as the Commission noted in McGuire/Catawba with respect to those plants), if TVA does endeavor to use MOX fuel during the license renewal term, it will need to seek a license amendment. TVA Answer at 34; McGuire/Catawba, CLI-02-14, 55 NRC at 293. At that point, BREDL, and any other interested entity, may seek to raise challenges regarding the use of MOX fuel. At this point, however, Contention E is inadmissible because it

[28] Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278 (2002).

fails to raise a genuine dispute with TVA's current application as required by 10 C.F.R. § 2.309(f)(1)(vi).

F. Contention F – Introductory Statement and 3 Subparts

Contention F starts with an introductory assertion:

> The aging management programs associated with TVA's Sequoyah ice condenser systems are insufficient to assure safe operations and prevent design-basis and severe accidents.

Petition at 21.

The petition then raises three "Containment Contention" subparts: "Containment Contention F-1: Aging Management Plans Lacking," id.; "Containment Contention F-2: Severe Accident Mitigation Analysis Lacking," id. at 23; and "Containment Contention F-3: Accuracy of Information is Compromised." Id. at 25. BREDL provides a declaration from Arnold Gundersen to support each of the three subparts.[29]

Before launching into the three subparts, the introductory statement is followed by references to both safety and environmental regulations. First, BREDL cites to NRC safety regulations and states that "aging management and time-limited aging management programs of numerous Ice Condenser systems and components are required to comply with 10 C.F.R. § 54.4, 10 C.F.R. § 54.21(a)(1) and 10 C.F.R. § 54.21(a)(3) in order to insure safe operations and prevent design basis and severe accidents." Id. at 21. Next, BREDL points to NRC's NEPA regulations, stating that "10 C.F.R. § 51.53(c)(3)(ii)(L) requires 'consideration of alternatives to mitigate severe accidents.'" Id. BREDL then states that "[i]n short, the [Sequoyah] Units 1 and 2 ice-condenser nuclear power plant containment systems are the most vulnerable to loss of containment accidents." Id. The introductory statement then refers to

[29] Expert Witness Report of Arnold Gundersen to Support the Petition for Leave to Intervene and Request for Hearing by [BREDL], [BEST], and [MATRR] (May 6, 2013) [Gundersen Declaration].

"[t]he following three related contentions" and notes that they are supported by the Gundersen Declaration.

The Board concludes that the introductory statement for "Contention F" does not constitute a separate contention, but instead serves as a preface that applies to each of the three "Containment Contention" sub-parts – Contentions F-1, F-2, and F-3.

G. Containment Contention F-1: Aging Management Plans Lacking

Contention F-1 reads:

> TVA license extension application for the Sequoyah reactors' ice condenser containments lacks acceptable aging management plans to adequately maintain critical components of the ice condenser containment for 20 years of additional operation.

Id.

1. Positions of the Parties

BREDL supports Contention F-1 by asserting that "NRC is clearly aware of the existing design flaws and inspection failures at Ice Condenser ('IC') containment nuclear power plants," id. at 21-22, and that "[f]or more than 15 years, the industry has known that Aging Management Programs ('AMP') on IC containments are inadequate." Id. at 22. BREDL quotes from a Sandia National Laboratories Report entitled "Analyses of Containment Structures with Corrosion Damage" as follows: "In actual containments, the region around the ice basket has a high potential for corrosion, but the status is unknown because the area is inaccessible for inspections." Id. BREDL states, "Given the critical safety importance of single-failure proof operation of the Sequoyah IC containment coupled with the long history of IC containment design flaws and failures, the Sequoyah Aging Management Plan should have specific action plans in place to address these aforementioned . . . flaws." Id. (emphasis added).

BREDL concludes that since TVA has not provided any "Sequoyah-specific" AMPs addressing Ice Condenser containment issues the "NRC must reject TVA's requested license extension." Id. at 23.

TVA argues that Contention F-1 is inadmissible under 10 C.F.R. § 2.309(f)(1)(vi) because it fails to challenge the AMPs in the LRA. TVA Answer at 36. "Nowhere in Contention F-1 or in the Gundersen Declaration . . . is there a single reference to the relevant AMPs identified in the LRA, let alone any discussion why these AMPs are inadequate." Id. TVA recognizes that the contention focuses on "potential corrosion of the steel containment vessel ('SCV') in the region of the ice baskets where the interior of the SCV is inaccessible." Id. TVA asserts that "Consistent with the NRC's Generic Aging Lessons Learned (GALL) Report, the LRA identifies two AMPs that manage this potential aging effect: [1] the Containment Inservice Inspection – IWE Program and [2] the Containment Leak Rate [AMP]." Id. at 37.

TVA describes each of these AMPs as follows. TVA says that the LRA's "Containment Inservice Inspection – IWE Program [AMP] implements the requirements of 10 C.F.R. § 50.55a" and states that "NRC rules incorporating IWE contain additional requirements for inaccessible areas (10 C.F.R. § 50.55a(b)(2)(ix)), and these requirements are included in the AMP." Id. TVA describes these additional measures. Id. at 37-38. For example, TVA maintains that the Containment Inservice Inspection – IWE AMP requires TVA:

> to evaluate the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of or result in degradation to such inaccessible areas. In addition, moisture barriers are examined for wear, damage, erosion, tear, surface cracks, or other defects that permit intrusion of moisture in the inaccessible areas of the pressure retaining surfaces of the metal containment shell or liner.[30]

[30] TVA Answer at 37-38 (citing the NRC Office of Nuclear Reactor Regulation Generic Aging Lessons Learned (GALL) Report, NUREG 1801, at XI S1-2 to -3 (Rev. 2, Dec. 2010) [GALL Report]).

TVA states that its Containment Leak Rate AMP also addresses the Ice Condenser problem raised by BREDL. Id. at 38. TVA asserts that this AMP "consists of tests performed in accordance with the program requirements provided in 10 C.F.R. Part 50, Appendix J, Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors, Option B" and the GALL guidance. Id. TVA says that the "LRA concludes that continued monitoring of the SCV for loss of material through these two AMPS provides reasonable assurance that loss of material in inaccessible areas of the SCV is insignificant and will be detected prior to a loss of an intended function" citing the LRA at section 3.5.2.2.1.3. Id. TVA concludes that neither Contention F-1 nor the Gundersen Declaration challenges this LRA conclusion and neither of them even mentions or discusses the two AMPs in question. Id. at 38-39.

TVA disputes BREDL's characterization of the Sandia Report. Id. at 42. TVA says that Contention F-1 and the Gundersen Declaration characterize the Sandia Report as "demonstrating a class-wide problem with corrosion of the steel containment in the vicinity of the ice basket that is 'known to have already occurred and postulated to occur in the future.'" Id. (citing Petition at 22-23 and Gundersen Declaration at ¶¶ 17-19). TVA rejoins that the "Sandia Report says nothing of the sort." Id. at 42-43. TVA says that the Sandia Report merely discusses the "'potential' for localized corrosion at the ice basket region . . . not that corrosion at the ice basket region has been observed or will occur." Id. at 43. TVA states that the Sandia Report does "not refer to observed or predicted corrosion at Sequoyah or another plant, but to corrosion locations conservatively assumed for the purpose of finite element analysis performed for the hypothetical, 'typical' ice condenser containment." Id.

The NRC Staff agrees with TVA that Contention F-1 is not admissible. NRC Answer at 43. The Staff notes that the TVA LRA "devotes a significant portion of its discussion to ice condenser components and containment" and discusses their AMPs "in depth." Id. at 46. The

Staff lists many of the ice condenser components that, it says, are addressed in the LRA and discusses the LRA AMPs for each of these components. Id. at 46-47. Given this "extensive discussion of the AMPs readily available for BREDL's review" combined with BREDL's assertion that "no AMPs exist," the Staff concludes that BREDL's position is "insupportable and erroneous." Id. at 47. The Staff asserts that "Commission precedent demands more from intervenors" and that they "must identify the portion of the license renewal application with respect to which they have a material dispute." Id.

In its reply, BREDL states that the "crux of the problem is an area 'inaccessible for inspection' around the ice baskets, where there is high potential for corrosion" of the containment structure. Reply at 7. BREDL challenges the adequacy of the LRA's Containment Inservice Inspection – IWE AMP stating that it exempts inaccessible portions of the containment vessel from examination and that the Sandia Report shows that the inaccessible area "is the area of highest strains." Id. at 8. BREDL maintains that this region of the SVC "suffers a triple whammy: it is susceptible to corrosion, does not get inspected, yet is subject to the greatest strain" and dismisses the LRA as simply making "conclusory assertions that corrosion in the inaccessible areas is insignificant and will be detected before it is too late." Id.

2. Analysis and Ruling on Contention F-1

Contention F-1 is inadmissible.[31] Contention F-1 alleges that the LRA "lacks acceptable aging management plans to adequately maintain critical components of the ice condenser containment for 20 years of additional operation." Petition at 21. But this contention fails to acknowledge that the LRA contains several AMPs designed to manage ice condenser containment issues, much less to set forth any arguments why these AMPs are inadequate.

[31] We deem Contention F-1 to be a safety contention arising under the AEA and 10 C.F.R. Part 50 and 54. These are the only regulations cited by BREDL in its discussion of Contention F-1. Neither NEPA nor Part 51 is mentioned.

Moreover, BREDL provides no legal or factual support for its claim that TVA must have a "Sequoyah-specific" AMP. Id. at 23.

TVA and the NRC Staff maintain, and we agree, that Contention F-1 fails to comply with the regulation that requires that contentions "provide sufficient information to show that a genuine dispute exists . . . on a material issue of law or fact" and that "[t]his information must include references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute." 10 C.F.R. § 2.309(f)(1)(vi). We need not venture into the merits of Contention F-1 to see that the LRA contains many provisions that purport to address and to resolve the aging management issues raised by BREDL and to see that BREDL fails to confront these provisions. Nor do we know of any law that supports the BREDL assertion that the AMPs based on the GALL Report are automatically inadequate and thus that TVA must submit a "Sequoyah-specific" AMP on this topic.

In addition, we conclude that BREDL has mischaracterized the Sandia Report. The information before us indicates that this report merely discusses the theoretical potential for localized corrosion in the inaccessible region behind the ice condensers. It neither states nor provides any data or experimental evidence supporting the proposition that such corrosion has been observed or will occur. See TVA Answer at 42-43. Moreover, the information before us advises that the AMPs in the LRA are based on the GALL Report and were developed after the Sandia Report was issued. If there is something inadequate about those AMPs, it was incumbent upon BREDL to have mounted and supported a direct and specific challenge. Simply demanding that TVA develop a "Sequoyah-specific" AMP cannot satisfy this requirement. There is no support from BREDL for the proposition that use of the GALL Report-based AMPs is insufficient here.

For the reasons set forth in detail by TVA and the NRC Staff, which we adopt, Contention F-1 fails to satisfy 10 C.F.R. § 2.309(f)(1)(vi) and therefore is not admissible.

H. Containment Contention F-2 – Severe Accident Mitigation Analysis Lacking

Contention F-2 states:

> NRC must reject TVA's application for a license extension at the Sequoyah [nuclear power plant] due to the lack of supporting documentation providing the analysis detailing TVA's assumptions that prove that indeed the Sequoyah IC containment can withstand severe accidents without leaking.

Petition at 23.

1. Positions of the Parties

BREDL claims that TVA's application "states that [the Sequoyah] containment is specifically able to withstand severe accident forces" without leaking. Id. at 24 (emphasis in original). This, in turn, leads BREDL to claim that "NRC must reject TVA's application . . . because it fails to provide any documentation or analysis regarding [TVA's] assumption that the Sequoyah IC Containment can withstand 'severe accidents' without leaking." Id. at 24-25. BREDL asserts that "a Severe Accident Mitigation Analysis (SAMA) [sic] must include details with the exact sequences of events proving that the [Sequoyah] Ice Condenser containment will withstand a severe accident without leaking any radiation," and that TVA's LRA lacks such an analysis. Id. at 25.

Both TVA and the NRC Staff oppose admission of Contention F-2. See TVA Answer at 48-52; NRC Answer at 48-55.

2. Analysis and Ruling on Contention F-2

We find that Contention F-2 is inadmissible for each of a number of reasons, discussed below.

First, we note that Contention F-2 is an environmental contention. BREDL is alleging inadequacies in TVA's Severe Accident Mitigation Alternatives (SAMA) analysis, which is part of

TVA's Environmental Report (ER). Indeed, as the Commission has noted, "[t]he SAMA analysis is not part of the agency's safety review for license renewal under the Atomic Energy Act (AEA), but is instead a mitigation alternatives analysis conducted pursuant to the National Environmental Policy Act (NEPA)."[32]

BREDL's argument appears to be based on a mischaracterization of TVA's application. BREDL argues that TVA's application claims that the Sequoyah containment can sustain a severe accident without leaking. Petition at 24. But it is plain that TVA does not make such a claim in its application.

The relevant language appears in the ER: "The reactor containment is designed to adequately retain these fission products under the most severe accident conditions." ER at 3-2. (emphasis added.) BREDL claims that this language implies that the containment will never leak. And while this interpretation might appear to be reasonable if the sentence were taken alone and out of context, it is clear to us that the true meaning is that, as TVA states, "the containment is designed to retain fission products under 'the most severe' accident conditions for which it is designed." TVA Answer at 50 (emphasis added). As TVA points out, this sentence is immediately followed by a citation to Section 1.2.2.2 of TVA's Updated Final Safety Analysis Report (UFSAR). Id. at 51. That Section of the UFSAR states, "[t]he reactor containment is designed to adequately retain these fission products under the most severe accident conditions, as analyzed in Chapter 15."[33] The modifying phrase "as analyzed in

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[32] Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 706 (2012).

[33] UFSAR Section 1.2.2.2 (emphasis added). A copy of the Sequoyah UFSAR is available at the NRC Public Document Room. Documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or you can contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to pdr.resource@nrc.gov.

Chapter 15" establishes and qualifies the substantive meaning of the preceding language. Chapter 15, in turn, is titled "Accident Analyses" and contains TVA's analyses of the consequences of design-basis events, not of severe accidents. And – to put this in context – events characterized as "severe accidents" from the SAMA analysis perspective are, per se, not design-basis accidents.[34] TVA's statement at issue dealt with severe design-basis accidents, and not with the beyond-design-basis accidents that are covered in a SAMA analysis.

BREDL's misapprehension (or mischaracterization) of the statement in the ER cannot, and does not, serve to bootstrap its claim into a genuine dispute with the application. TVA's reference to "the most severe accident conditions, as analyzed in Chapter 15" is a reference to the most severe design-basis accidents, not to severe accidents generally. Making no reference to Chapter 15, let alone demonstrating where in Chapter 15 TVA makes the claim that Sequoyah's containment will retain all fission products during a severe accident, BREDL fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(vi).

In addition, as the NRC Staff points out, the UFSAR elsewhere states as follows:

> The preoperational integrated leak tests at peak pressure and at reduced pressure verify that the containment, including the isolation valves and the resilient penetration seals, leaks less than the allowable value of 0.25 weight percent per day at peak pressure.

NRC Staff Answer at 53 (citing UFSAR at 3.1-28).

In simpler terms, the UFSAR states that some nominal amount of leakage from the containment is allowed. This further supports the interpretation, if it were not the plain meaning of the language in question, that TVA is not claiming that Sequoyah's containment is completely

[34] See, e.g., Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants, 50 Fed. Reg. 32,138, 32,138-39 (Aug. 8, 1985) (defining severe nuclear accidents as "those in which substantial damage is done to the reactor core whether or not there are serious offsite consequences," and noting that "accidents of this class . . . are beyond the substantial coverage of design basis events").

leak-proof under severe accident conditions. Contention F-2 is simply rooted in a mischaracterization of TVA's application; BREDL has not put forward a genuine dispute with the application, as required by 10 C.F.R. § 2.309(f)(1)(vi), and Contention F-2 is thus inadmissible.

Moreover, BREDL seems to be laboring under the erroneous assumption that a license renewal applicant must demonstrate that the containment will not leak following a severe accident. But BREDL fails to refer us to any regulatory provisions that support this assumption, and indeed, NRC regulations contain no such requirement. Rather, as TVA notes, NRC regulations require "containments to remain 'essentially leak-tight' during 'postulated accidents' – i.e., those design-basis events analyzed in the FSAR."[35] Severe accidents include accidents beyond these "postulated accidents." See supra at note 34. So, because TVA has no burden under NRC regulations to demonstrate that its containment will not leak during severe accidents,[36] BREDL's claim that TVA has not made such a demonstration is simply not material to the findings the NRC must make in its review of this license application. Contention F-2 therefore fails to satisfy 10 C.F.R. § 2.309(f)(1)(iv) and is inadmissible.

I. Containment Contention F-3 – Accuracy of Information is Compromised

Contention F-3 states:

> TVA's long standing breakdown in dealing with the mismanagement of its whistleblower complaints is a reflection of the corporation's lack of integrity and insufficient adherence to regulatory statutes that demand nuclear power owners put safety first. Given these ongoing systemic problems the accuracy and validity of the license renewal application cannot be assured and therefore must be rejected.

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[35] TVA Answer at 49 (citing Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), CLI-81-12, 13 NRC 838, 844 (1981)).

[36] Indeed, the basic premise of a SAMA analysis is to assume (a) that a beyond-design basis accident occurs and (b) that a release occurs, i.e., that the containment fails to contain all of the radioactive products. Based on those hypothetical conditions, the SAMA analysis identifies and evaluates alternative designs that could serve to reduce the likelihood and/or mitigate the consequences of such a release.

Petition at 25.

1. Positions of the Parties

The central thrust of Contention F-3 is that TVA has a "longstanding breakdown in dealing with the mismanagement of its whistleblower complaints" that reflects "the corporation's lack of integrity" and therefore that the LRA must be rejected because its "accuracy and validity . . . cannot be assured." Id. BREDL asserts, without supporting citations or documentation, that there are a "rising number of allegations at Sequoyah coinciding with the 2012 replacement of steam generators." Id. BREDL states, again without support, that "TVA whistleblower concerns have spanned more than 10 years, and are continuing to occur as recently as May 2013." Id. at 26. BREDL cites, as an illustrative example, to a 2001 advocacy letter from a lawyer representing a "Mr. Overall" which alleges he was harassed in 1998 at TVA's Watts Bar nuclear power plant. Id. BREDL then states that "the latest incident occurred just days ago," citing to an article in the Washington Post.[37] BREDL concludes that "TVA's Sequoyah has [a] decade-long history of whistleblower complaints and safety concerns, and three TVA nuclear reactor sites top the US list for the most whistleblower complaints. TVA personnel have been harassed and intimidated for bringing forward legitimate safety and public health concerns." Id. at 27.

Both TVA and the NRC Staff contend that Contention F-3 is inadmissible. TVA Answer at 52-57; NRC Answer at 55-64.

2. Analysis and Ruling on Contention F-3

Contention F-3 is inadmissible for the reasons discussed below.

First, we note that Contention F-3 appears to be a safety contention. While BREDL does not cite to any safety-related or environmental-related regulations, the heart of this

[37] Id. A review of the article reveals no current allegation of a harassment or whistleblowing incident.

contention is the assertion that Sequoyah will not be safely operated during the renewal term because TVA's "mismanagement" of whistleblowers and "lack of management integrity" mean that the LRA cannot be trusted.

Turning to the admissibility of Contention F-3, our analyses of Contentions A and D apply equally here. BREDL is essentially alleging that TVA's history of managing whistleblower complaints regarding safety issues at Sequoyah demonstrates that Sequoyah will not be operated safely during the license renewal term. As noted supra at IV.A.2, the Commission has recently rejected similar contentions. See Prairie Island, CLI-10-27, 72 NRC 481; Diablo Canyon, CLI-11-11, 74 NRC 427. For the same reasons that we found these Prairie Island and Diablo Canyon decisions dispositive of Contentions A and D, we conclude that they are dispositive of Contention F-3 as well.

TVA's alleged history of mis-managing whistleblower complaints is precisely the sort of issue the NRC handles on an ongoing basis during the current licensing period that the Commission sought to exclude from review in license renewal proceedings. Diablo Canyon, CLI-11-11, 74 NRC at 435; Prairie Island, CLI-10-27, 72 NRC at 491.

As in the Diablo Canyon proceeding, BREDL "offers no explanation how its assertions are directly relevant to [the applicant's] ability to manage the effects of aging during the renewal term." Diablo Canyon, CLI-11-11, 74 NRC at 436. As noted above, BREDL claims that "[d]iscrimination and retaliation against nuclear whistleblowers is detrimental to the safe operation of any nuclear power plant." Petition at 25.

An allegation regarding whistleblower retaliation is a serious matter. But even if it were within the scope of a license renewal proceeding, BREDL has provided no support or documentation for the proposition that whistleblower retaliation has occurred at TVA's Sequoyah plant during the last ten years.

In addition, as in the Prairie Island proceeding, Contention F-3 "seems fundamentally a concern that relates to current operations at the plant, as opposed to how it might operate during the period of extended operation." Prairie Island, CLI-10-27, 72 NRC at 492. Indeed, BREDL refers to its allegation regarding whistleblower retaliation as an "ongoing safety concern." Petition at 26. BREDL is essentially asserting that Sequoyah is unsafe now, and therefore will be in the future as well. As the Commission noted, "if a stakeholder is of the view that immediate action is needed to remedy an ailing safety culture . . . at any facility, then that matter should be brought immediately to the attention of the agency via section 2.206." Prairie Island, CLI-10-27, 72 NRC at 492. Such concerns about current operations are outside the scope of license renewal, and we therefore conclude that Contention F-3 is inadmissible. 10 C.F.R. § 2.309(f)(1)(iii).

Finally, we reject BREDL's aspersions on the "management integrity" of TVA. As Diablo Canyon illustrates, management integrity contentions are generally not within the scope of a license renewal proceeding for a nuclear power plant (i.e., under Part 54). Even in a license renewal proceeding for a research reactor (i.e., not under Part 54), the Commission only affirmed the admission of a management integrity contention by relying on "specific supporting information, including references to a serious incident involving the shutdown of the reactor, the fact that the management responsible for the incident remained in place, a purported climate of reprisals for bringing forward safety issues and significantly, a reference to at least one expert in support of the contention." Diablo Canyon, CLI-11-11, 74 NRC at 436 n.47. There is no allegation here, for example, (a) that the current management of TVA's Sequoyah plant is harassing whistleblowers and (b) that this management will remain in place during the period of extended operation. And, although Contention F-3 is supported by the declaration of Mr. Gundersen, all he does is cite to the same 2001 lawyer letter (alleging 1998 harassment at

Watts Bar) and the same Washington Post article discussed above. This is not enough. Like the intervenors in Diablo Canyon, BREDL has provided no meaningful support for the claim that its concerns are linked to TVA's ability to manage the effects of aging during the period of extended operation.

J. Miscellaneous Claims Common to Multiple Contentions

In addition to the eight contentions, BREDL has put forward a number of claims that it states are "common to multiple contentions." Petition at 7-9. It is not clear what purpose these claims are intended to serve, as they are separate from the contentions themselves. Despite this confusion, we analyze these claims and find them lacking for the reasons discussed below.

First, BREDL argues that "NRC cannot renew the [Sequoyah] license unless TVA can prove that it can continue to run it without failure." Id. at 8. BREDL cites 10 C.F.R. § 54.21, which provides that an IPA must "demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation." Id.; 10 C.F.R. § 54.21(a)(3). The NRC Staff points out, however, that the regulation providing the standard for granting a license renewal request is 10 C.F.R. § 54.29, which states that the applicant must provide "reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB." NRC Staff Answer at 64; 10 C.F.R. § 54.29(a). As the NRC Staff notes, "reasonable assurance" that a plant will operate within its CLB is not the same as "pro[of] that it can continue to run . . . without failure," which is the standard BREDL has put forward. NRC Staff Answer at 64; Petition at 8. In short, BREDL has misstated the law. There is simply no requirement in NRC regulations that an applicant "prove" that its plant will not fail during license renewal.

Second, BREDL argues that TVA has not provided time-limited aging analyses showing that "the effects of aging on the intended function(s) will be adequately managed for the period

of extended operation." Petition at 8 (citing 10 C.F.R. § 54.21(c)(iii)). As the NRC Staff notes, the Application does provide time-limited aging analyses in Section 4. NRC Staff Answer at 65. Whether these analyses are adequate is another issue that we do not consider here, but it is clear at this point that BREDL's claim that the Application does not contain TLAAs is in error, and therefore cannot form the basis of an admissible contention. 10 C.F.R. § 2.309(f)(1)(vi).

Third, BREDL appears to argue that NUREG-1437, the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS),[38] is inadequate and should "be discarded and revised" to take into account "all of the elements of risk to the community, to commerce and to the environment." Petition at 8. BREDL further argues that such an analysis must consider "the human health effects of low dose exposures, the mental stress to the population living with such risk, low-income and disproportionately affected individuals and the full effect of cancer-causing agents emitted to the environment." Id. at 9. To the extent BREDL challenges the GEIS, these arguments are outside the scope of this proceeding. The Commission has made clear that challenges to the GEIS's generic determinations (which are incorporated into NRC regulations as "Category 1" issues in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1) amount to attacks on NRC regulations and are not within the scope of license renewal proceedings. See, e.g., Turkey Point, CLI-01-17, 54 NRC at 16.

V. Selection of Hearing Procedures

NRC regulations state that "upon a determination that a request for hearing/petition to intervene should be granted and a hearing held, . . . the [Board] designated to rule on the request/petition will determine and identify the specific hearing procedures to be used for the proceeding" pursuant to 10 C.F.R. § 2.310(a)-(h). Because we determine that Contention B

[38] See Office of Nuclear Reactor Regulation, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG-1437 (May 1996).

shall be held in abeyance, we neither grant nor deny BREDL's request for a hearing and petition to intervene. As such, we need not select hearing procedures at this juncture. Any such determination must await the potential admission of Contention B or another new contention.

VI. Conclusion

For the foregoing reasons, it is determined:

A. BREDL has demonstrated standing to intervene in this proceeding.

B. BEST and MATRR have not demonstrated standing to intervene in this proceeding.

C. Contentions A, C, D, E, F-1, F-2, F-3, and the safety-related portion of Contention B are inadmissible.

D. The environmental-related portion of Contention B is held in abeyance, pending further order of the Commission.

E. The Licensing Board will hold a telephone conference with the parties in which we will discuss a schedule of further proceedings in this matter.

F. This Order is subject to appeal to the Commission in accordance with the provisions of 10 C.F.R. § 2.311. An appeal meeting applicable requirements set forth in that section must be filed within twenty-five (25) days of service of this order.

It is so ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

/RA/

_____
Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

/RA/

_____
Dr. Paul B. Abramson
ADMINISTRATIVE JUDGE

/RA/

_____
Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 5, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
TENNESSEE VALEY AUTHORITY	)	
	)	
SEQUOYAH NUCLEAR PLANT,	)	Docket Nos. 50-327-LR and 50-328-LR
UNITS 1 AND 2 (License Renewal)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Ruling on Petition to Intervene and Request for Hearing) LBP-13-08** have been served upon the following persons by Electronic Information Exchange.

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Docket No. 55-23694-SP
MEMORANDUM AND ORDER (Ruling on Petition to Intervene and Request for Hearing)
LBP-13-08

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[Original signed by Herald M. Speiser]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 5th day of July, 2013.