October 31, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
Union Electric Co.	)	Docket No. 50-483-LR
	)	
(Callaway Plant, Unit 1)	)	

AMEREN'S ANSWER OPPOSING
PETITION TO SUSPEND LICENSING PROCEEDINGS,
RELATED CONTENTION AND MOTION TO REOPEN

I. INTRODUCTION

Pursuant to the Commission's Memorandum and Order of October 7, 2014 (CLI-14-09), Union Electric Company, dba Ameren Missouri ("Ameren"), hereby submits this consolidated answer opposing the Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings (Sept. 29, 2014) ("Petition") and the related motions seeking admission of a new contention on this same topic.[1] The Petition and Contention, which have been filed in this proceeding by Missouri Coalition for the Environment and in fifteen other pending reactor licensing and license renewal proceedings by other organizations[2] both assert that, in order to satisfy its statutory obligation under the Atomic

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[1] Missouri Coalition for the Environment's Motion for Leave to File a New Contention Concerning the Absence of Required Waste Confidence Safety Findings in the Relicensing Proceeding at Callaway 1 Nuclear Power Plant (Sept. 29, 2014) ("Contention") and Motion to Reopen the Record for Callaway Nuclear Power Plant (Sept. 29, 2014) ("Motion to Reopen").

[2] The Petition has been filed jointly by Beyond Nuclear, Blue Ridge Environmental Defense League, Citizens Environmental Alliance of Southwestern Ontario, Citizens for Alternatives to Chemical Contamination, Don't Waste Michigan, Ecology Party of Florida, Friends of the Coast, Green Party of Ohio, Missouri Coalition for the Environment, National Parks Conservation Association, New England Coalition, Nuclear Information and Resource Service, San Luis Obispo Mothers for Peace, Sierra Club Michigan Chapter, Southern Alliance for

Energy Act ("AEA") to provide adequate protection to the public health and safety, the NRC must make predictive safety findings that spent fuel can be safely disposed of in a repository. *See* Contention at 3; Petition at 8. The Petitioners argue that, because the Continued Storage Rule no longer contains generic safety findings concerning the feasibility and capacity of a geologic repository, the NRC must now make those findings either in individual proceedings or promulgate those findings generically with notice and comment supported by an environmental impact statement or environmental assessment. *See* Petition at 9; Contention at 5. As will be established below, the Petitioners' sole argument fails as a matter of law. There is no requirement that the Commission address the feasibility of a geologic repository as a safety finding under the AEA in reactor licensing proceedings. Further, in this license renewal proceeding, the Contention is an impermissible challenge to the NRC rules at 10 C.F.R. § 54.29, which establish and limit the safety findings on which license renewal is based. Accordingly, and as discussed more fully below, the Petition, Contention, and Motion to Reopen should be denied.

II. PETITIONERS' LEGAL CLAIMS ARE UNSUPPORTED AND INCORRECT AS A MATTER OF LAW

The Petitioners' sole contention – that the NRC must make predictive safety findings that spent fuel can be safely disposed of in a repository in order to satisfy its statutory obligation under the AEA – is simply wrong as a matter of law. Decades ago, the Commission considered and rejected this very claim in denying a rulemaking petition, explaining that

> It seems clear . . . that the statutory findings required by section 103 [of the AEA] apply specifically to the "proposed activities" and "activities under such licenses." (42 U.S.C. 2133). These activities include some interim storage activities for

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Clean Energy and Sustainable Energy and Economic Development ("SEED") Coalition (collectively, "Petitioners").

> spent fuel. *They do not include the permanent disposal of high-level wastes though wastes are, in fact, generated by operation of the reactor*.

Denial of Petition for Rulemaking, 42 Fed. Reg. 34,391 (July 5, 1977) (emphasis added). The Commission also reasoned that Congress did not intend such a finding to be required, as Congress had authorized the NRC to issue licenses knowing that no repository was available. *See id.* at 34,392-93.

The Second Circuit upheld the Commission's decision. *NRDC v. NRC*, 582 F.2d 166 (2d Cir. 1978). The Court rejected the argument that the AEA requires an affirmative determination that spent fuel can be disposed of safely.[3] 582 F.2d at 171. The Court held that Congress did not intend such a condition. *Id.*

> [I]f there were any doubt over the intent of Congress (1) not to require NRC to make the definitive determination requested by NRDC and (2) not to require a moratorium on nuclear power reactor licensing pending an affirmative determination, we are persuaded that the matter was laid to rest by enactment of the Energy Reorganization Act … [in which] Congress expressly recognized and impliedly approved NRC's regulatory scheme and practice under which the safety of interim storage of high-level radioactive wastes at commercial nuclear power reactor sites has been determined separately from the safety of Government-owned permanent storage facilities which have not, as yet, been established.

Id. at 174.[4]

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[3] *See* 582 F.2d at 168, setting out the determination sought by the petitioner. NRDC asserted, "[p]lainly, a determination that operation of such a reactor will not create undue risk to the public health and safety requires a determination that these highly hazardous and long-lived radioactive materials can be disposed of safely." *Id.*

[4] The subsequent passage of the Nuclear Waste Policy Act ("NWPA" or "Act") strongly reinforces this conclusion. That law, from its enactment in 1982 and amendment in 1987, presumes that there have been no definitive safety findings as to the disposal of spent fuel. The Act establishes the process for making definitive safety findings for the disposal of spent fuel. *See, e.g.*, NWPA §114(d) (NRC licensing of a repository) (42 U.S.C. § 10134(d)). The Findings and Purposes of the NWPA similarly make clear that definitive safety findings for disposal have yet to be made. *See, e.g.*, § 111(a)(1) ("radioactive waste creates potential risks"); § 111(a)(2) ("a national problem has been created by the accumulation of . . .spent nuclear fuel from nuclear reactors"); § 111(a)(7) ("high-level radioactive waste and spent nuclear fuel have become major subjects of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety . . .); § 111(b)(1) (the purposes of the law are "to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository.") 42 U.S.C. § 10131. The standards for spent fuel disposal had not been created

> In view of the foregoing, we hold that NRC is not required to conduct the rulemaking requested by NRDC or to withhold action on pending or future applications for nuclear power reactor operating licenses until it makes a determination that high-level wastes can be permanently disposed of safely.

Id. at 175. Thus, there is no requirement to make any finding on the safety of a geologic repository either generically by rule or explicitly in any individual proceeding.

Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979), on which the Petitioners principally rely (*see* Contention at 7-8, 10; Petition at 9), does not disturb this holding. The issue considered in *Minnesota* was whether, if no off-site solution to spent fuel disposal was projected to be probably available by license expiration, the NRC must take into account the safety and environmental implications *of maintaining the spent fuel at the reactor site after the expiration of the license*. *Id.* at 416. The Court confined its decision to this contention, *id.* at 419, and remanded the petitioners' claim to the Commission to consider whether there is reasonable assurance that an off-site storage solution would be available by "the expiration of the plants' operating licenses," *id.* at 418, *and if not, "whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates*." *Id.* at 418 (emphasis added).

The Commission's Continued Storage Rule[5] and GEIS[6] are completely consistent with this direction. The GEIS analyzes continued storage under three time frames, including an

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when the Act was passed. *See* NWPA § 121(b) (requiring the NRC to issue technical requirements and criteria), 42 U.S.C. § 10141(b). Yet there is nothing in the NWPA to suggest that reactor licensing should be suspended until such time as the disposal standards had been enacted, let alone applied. Indeed, the NWPA provided for dry storage programs specifically aimed at reactors "that will soon have a shortage of interim storage capacity for spent nuclear fuel." NWPA § 218(a), 42 U.S.C. § 10198(a).

[5] 79 Fed. Reg. 56,238 (Sept. 19, 2014).

[6] Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157) (Sept. 30, 2014) ("GEIS" or "NUREG-2157").

indefinite period. *See* NUREG-2157, Vol. 1, at 2-24 to 2-35. It provides a specific discussion of the safety of continued storage at the site (which the Petitioners explicitly do not challenge[7]).

> The NRC concludes that spent fuel can continue to be safely managed in spent fuel pools and dry casks and that regulatory oversight exists to ensure the aging management programs continue to be updated to address the monitoring and maintenance of structures, systems, and components that are important to safety. Based on all of the information set forth in Appendix B of the GEIS, the NRC concludes that spent fuel can be safely managed in spent fuel pools in the short-term timeframe and dry casks during the short-term, long-term, and indefinite timeframes evaluated in the GEIS.

79 Fed. Reg. at 56,253.

> This understanding is based upon the technical feasibility analysis in Appendix B of the GEIS and the NRC's decades-long experience with spent fuel storage and development of regulatory requirements for licensing of storage facilities that are focused on safe operation of such facilities, which have provided substantial technical knowledge about storage of spent fuel. Further, spent fuel is currently being stored safely at reactor and storage sites across the country, which supports the NRC's conclusion that it is feasible for spent fuel to be stored safely for the timeframes considered in the GEIS.

Id. at 56,255.[8]

The Petitioners' contention that the NRC must make safety findings – either generically by rule or in individual proceedings – that spent fuel can be safely disposed of in a repository is not supported by any authority, but instead relies solely on a misinterpretation of the decisions above.

First, the Petitioners' seize on the Commission's statement in the 1977 Denial of Rulemaking that the Commission "would not continue to license reactors if it did not have reasonable confidence that wastes can and will in due course be disposed of safely." Petition at 6, quoting Denial of Petition for Rulemaking, 42 Fed. Reg. at 34,393; Contention at 2, 7, 10.

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[7] Petition at 7 n.9; Contention at 3 n.6.

[8] The NRC's technical analysis on safe storage is set forth in detail in NUREG-2157, Vol. 1, App. B, at B-9 to B-33, none of which is challenged by the Petitioners.

The Commission's statement, and accompanying expression of confidence that a safe method of disposal would be available when needed (42 Fed. Reg. at 34,393), were presented as "Policy Considerations" in denying the rulemaking petition. 42 Fed. Reg. at 34,393-94. They were not made as specific required safety findings in a licensing proceeding or in a rule. Regardless, the Commission has already addressed the same policy considerations in the Statement of Consideration supporting the Continued Storage Rule and in Appendix B to the GEIS, which were issued after an opportunity for public comment. 79 Fed. Reg. at 56,253.

> As discussed in Section B.2.1, the consensus within the scientific and technical community engaged in nuclear waste management is that safe geologic disposal is achievable with currently available technology. . . .
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> After decades of research into various geological media, no insurmountable technical or scientific problem has emerged to challenge the conclusion that safe disposal of spent fuel and high-level radioactive waste can be achieved in a mined geologic repository. . . .
>
> Based on the examination of a number of international programs and DOE's current plans, the NRC continues to believe that 25 to 35 years is a reasonable period for repository development (i.e., candidate site selection and characterization, final site selection, licensing review, and initial construction for acceptance of waste).

79 Fed. Reg. at 56,251.[9]

Second, Petitioners inaccurately assert that *NRDC v. NRC* "*concluded*" that "issuing operating licenses, with an implied finding of reasonable assurance that safe permanent disposal

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[9] Petitioners argue that the NRC cannot rely on the GEIS to make waste confidence findings because the AEA imposes more rigorous standards than NEPA. *See* Contention at 11-12. This argument incorrectly presupposes that a safety finding on geologic disposal is required by the AEA, when in fact it is not. Further, Petitioners' arguments are internally inconsistent because the Petitioners' own interpretation of the case law is that the confidence findings need not be rigorous. *See* Contention at 5. Moreover, even if the AEA required a finding on the safety of geologic disposal, which it does not, there is no law or precedent that would preclude the Commission from relying on an adequate analysis in the GEIS.

In any event, because the Commission's statement in the 1977 Denial of Rulemaking was merely a policy declaration, and not a safety finding required by the AEA, there is nothing that would prevent the Commission from changing the basis for its policy declaration. The Commission's confidence that spent fuel can be stored safely and without significant environmental impact indefinitely amply supports the policy not to discontinue licensing.

of [spent reactor fuel] can be available when needed, is in accord with the intent of Congress underlying the AEA and the [Energy Reorganization Act]." Contention at 9 (emphasis added), citing 582 F.2d at 170. Contrary to Petitioners' characterization of the decision, the Court did not conclude that any such finding (either implicit or explicit) was required by the AEA, but rather held flatly that the AEA does not require a determination that spent fuel can be disposed of safely. *NRDC v. NRC*, 582 F.2d at 171, 174-75. While the Court alluded to the Commission's position (*see* 582 F.2d at 170), the Denial of Petition for Rulemaking places the Commission's reference to an implied finding in proper context. There, the Commission prefaced its discussion of an implicit finding with the statement that "[e]ven if, *contrary to the Commission's view, some kind of prior finding were required under the statutory scheme*, such a finding would not have to be a definitive conclusion that disposal of high-level wastes can be accomplished safely at the present time." 42 Fed. Reg. at 34,393 (emphasis added). Thus, the Commission's reference to an implicit finding was made as part of an argument in the alternative and should not be construed as any statement that the AEA requires such a finding.

Third, the Petitioners point to the fact that the NRC has made findings regarding the feasibility and capacity of geologic repositories in its Waste Confidence Decisions since 1984. Petition at 6, Contention at 7-9. That the Commission chose to do so in no way implies any requirement under the AEA to make safety findings on these issues either generically by rule or in individual proceedings. The Commission's Waste Confidence Decisions were not promulgated as a rule, but rather were published as separate decisions. Indeed, the Petitioners appear to be confusing and conflating the Waste Confidence Decisions and the former Waste Confidence Rule. *See, e.g.*, Contention at 1-2 ("Because the NRC no longer makes generic safety findings . . . in the *Continued Storage Rule* (*previously the Waste Confidence*

Decision). . .") (emphasis added). The Waste Confidence Decisions formalized the Commission's confidence that a repository would become available, previously articulated as "Policy Considerations" in denying NRDC's rulemaking petition. As *NRDC v. NRC* held, the Atomic Energy Act does not require a finding that spent fuel can be permanently disposed of safely. And, how the Commission chooses to articulate its policy determination does not alter statutory requirements.

While it also contained findings on the feasibility and capacity of a repository, the former Waste Confidence Rule addressed solely the Commission's responsibilities under NEPA. This is obvious from the placement of the findings not in 10 C.F.R. Part 50, but in Part 51. Further, in promulgating the first Waste Confidence Rule in 1984, the Commission made it clear that it was addressing the environmental impacts "of extended on-site storage of spent fuel" under NEPA's rule of reason because its Waste Confidence Decision had determined a probability that such on-site storage after license expiration would be necessary. 49 Fed. Reg. 34,688 (Aug. 31, 1984). The Commission further explained,

> The Commission hereby adopts a rule providing that *the environmental impacts* of at-reactor storage after the termination of reactor operating licenses need not be considered in Commission proceedings related to issuance or amendment of a reactor operating license. This rule has the effect of continuing the Commission's practice, employed in the proceedings reviewed in *State of Minnesota*, of limiting considerations of *environmental impacts* of spent fuel storage in licensing proceedings to the period of the license in question and not requiring the NRC staff or the applicant to address the impacts of extended storage past expiration of the license applied for. The rule relies on the Commission's generic determination in the Waste Confidence proceeding that the licensed storage of spent fuel for 30 years beyond the reactor operating license expiration either at or away from the reactor site is feasible, safe, and would not result in a significant impact on the environment. For the reasons discussed in the Waste Confidence decision, the Commission believes there is reasonable assurance that adequate disposal facilities will become available during this 30-year period. *Thus, there is no reasonable probability that storage will be unavoidable past the 30-year period in which the Commission has determined that storage impacts will be insignificant.*

Id. at 34,688-89 (emphasis added). As this statement makes clear, the conclusions on the feasibility and capacity of a repository were included in the Waste Confidence Rule to define the period of interim storage that was being generically assessed pursuant to NEPA. Because the GEIS now evaluates the environmental impacts of indefinite storage, there is no longer any need in the Continued Storage Rule to make findings on the availability or a capacity of a repository. In sum, the findings in the Waste Confidence Rule related solely to the Commission's responsibilities under NEPA, and never purported to be safety findings required under the Atomic Energy Act.

Fourth, the Petitioners assert that in *Minnesota*, the Court "affirmed the NRC's reliance for reactor licensing on duly promulgated technical findings of 'reasonable confidence' that solutions [regarding spent fuel disposal] would be available when needed." Contention at 10, citing *Minnesota*, 602 F.2d at 417. The Court in *Minnesota* merely referred to the statement in the Commission's denial of the rulemaking petition, recognizing it as a "declaration of policy" and observing that "we need not consider what course we would have followed if this were all that were before us." 602 F.2d at 416, 417. *Minnesota* makes no statements suggesting that the AEA predicates licensing on findings regarding the feasibility and capacity of a repository. *Minnesota* merely directed the Commission to consider whether an offsite solution would be available when plants' operating licenses expire, and if not, to consider whether there is reasonable assurance that the fuel can be *stored* safely at the sites beyond those dates. *Id.* at 418.

Finally, Petitioners assert that "the D.C. Circuit summed up the *Minnesota* decision as a 'mandate . . . to ensure that plants are only licensed while the NRC has reasonable assurance that permanent disposal of the resulting waste will be available.'" Contention at 10, citing *New York v. NRC*, 681 F.3d 471, 476 (D.C. Cir. 2012). The quoted statement is not the Court's opinion or

any holding, but *dicta* attributing this position to the Commission, and this abbreviated characterization is not accurate. *Minnesota* contains no such mandate. As stated above, *Minnesota* requires the Commission to consider whether there is reasonable assurance that the fuel can be *stored* safely at the sites if a repository will not be available *when plants' operating licenses expire*. Indeed, the Petitioners admit as much when they quote *New York v. NRC* as stating that, "[i]n *Minnesota*, we directed the Commission to consider 'whether there is reasonable assurance . . . that spent fuel can be *stored* safely.'" Petition at 9, quoting *New York*, 681 F.3d at 474.[10] The Petitioners also refer to New *York* as holding that waste confidence findings enable reactor licensing decisions. Petition at 3, citing *New York*, 681 F.3d at 477. *See also* Contention at 10. Under the framework established in *Minnesota*, licensing is enabled by the Commission's determination that spent fuel can be stored safely until a repository becomes available. Here, the GEIS fully supports the Commission's current findings that spent fuel can be stored safely indefinitely. No further finding or environmental review is required to enable licensing.

It bears repeating that the Petition and Contention do not challenge the validity of these storage-related findings. Petition at 7 n.9; Contention at 3 n.6. They only contend that safety findings *on disposal* are required, which, as discussed above, is not the case. As this contention is unsupported by legal basis, and is in fact contrary to all precedents, the Petition and Contention do not raise any credible basis for a moratorium on licensing.

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[10] The full statement of the Court was:

> In *Minnesota*, we directed the Commission to consider "whether there is a reasonable assurance than an offsite storage solution [for spent fuel] will be available by . . . the expiration of the plants' operating license, and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates.

New York, 681 F.3d at 474.

III. THE CONTENTION FAILS TO MEET ADMISSIBILITY STANDARDS

Because there is no support for, or validity to, Petitioners' sole legal claim – that the NRC must make predictive safety findings, under the AEA, that spent fuel can be safely disposed of in a repository – the Contention fails to meet the standards for admissibility set forth at 10 C.F.R. § 2,309(f).[11] First, there is no legal basis for the contention, and thus it fails to satisfy 10 C.F.R. § 2.209(f)(1)(ii). Second, the Contention is neither within the scope of the proceeding nor material to the findings the NRC must make, as required by 10 C.F.R. § 2.309(f)(1)(iii)-(iv), because the "safety finding" that Petitioners seek is not one required by the AEA. *NRDC v. NRC*, 582 F.2d at 171. Third, because the Petitioners provide no precedent or valid support for their Contention, it fails to satisfy 10 C.F.R. § 2.309(f)(1)(vi), which requires "sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact."

IV. THE PETITION AND CONTENTION IMPERMISSIBLY CHALLENGE THE LICENSE RENEWAL RULES

Both the Petition and Contention are impermissible challenges to 10 C.F.R. § 54.29, which establishes the findings that the Commission must make in a license proceeding and limits

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[11] Under 10 C.F.R. § 2.309(f)(1), to support an admissible contention, a petitioner must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at the hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include reference to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute.

Failure to meet any of these requirements is grounds to dismiss the Contention. *See* Final Rule, "Changes to Adjudicatory Process," 69 Fed. Reg. 2,182, 2,221 (Jan. 14, 2004); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 N.R.C. 318, 325 (1999).

those findings to matters related to managing the effects of aging. *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 N.R.C. 449, 462 n.71 (2010) (observing that the reasonable assurance findings in 10 C.F.R. § 54.29 is limited to the specified matters requiring aging management review). *See also N.J. Envtl. Fed'n v. NRC*, 645 F.3d 220, 224 (3d Cir. 2011) (License renewal proceedings are narrow in scope, focusing only on the "detrimental effects of aging … posed by long-term reactor operation.").[12] Here, Missouri Coalition for the Environment has not sought a waiver of 10 C.F.R. § 54.29, as required by 10 C.F.R. § 2.335. Nor has it submitted any rulemaking petition to revise 10 C.F.R. § 54.29. Accordingly, the Contention is barred by 10 C.F.R. § 2.335 and for this reason too is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii)-(iv) as outside the scope of the proceeding and immaterial to the findings that the NRC must make.

V. THE MOTION TO REOPEN DOES NOT MEET REOPENING STANDARDS

The Commission should also reject the Contention because the accompanying Motion to Reopen fails to meet the Commission's high standards for reopening under 10 C.F.R. § 2.326. Petitioners neither raise a significant safety issue (§ 2.326(a)(2)), nor demonstrate that a materially different result would be likely (i.e., that Petitioners are likely to prevail) (§ 2.326(a)(3)). As previously explained, there is no requirement that the Commission address the feasibility of a geologic repository as a safety finding under the AEA. Nor is Petitioners' Motion to Reopen accompanied by an affidavit that sets forth the bases for Petitioners' claim (as mandated by § 2.326(b)) that such a safety finding is required. Petitioners rely on the

[12] To the extent that the Petitioners argue that there must be an environmental impact statement or environmental assessment analyzing the environment impacts of spent fuel disposal, Contention at 12-13, Petition at 9, the Contention is also an impermissible challenge to 10 C.F.R. § 51.53(c) and App. B, Table B-1. Table B-1 as recently amended makes the disposal component of the fuel cycle a Category 1 issue (*see* 79 Fed. Reg. at 56,263), and 10 C.F.R. § 5153(c)(3)(i) precludes consideration of Category 1 issues (absent a waiver or suspension of the rule, neither of which the Petitioners have sought).

Makhijani[13] and Cooper[14] Declarations, but neither Declarant is qualified to address whether Petitioners are likely to prevail on their legal claims. And both Declarations fail to make any demonstration that Petitioners are likely to prevail. Dr. Makhijani merely provides his "professional opinion" that safety findings supported by adequate environmental analysis are required in order to license or relicense reactors in light of alleged health hazards from spent nuclear fuel. Makhijani Decl. at ¶ 8.3. Dr. Cooper's Declaration focuses on what an environmental impact statement on spent fuel disposal might show. *See, e.g.*, Cooper Decl. at ¶ 5 ("if the NRC were to include the costs of spent fuel storage and disposal in its cost-benefit analyses for reactor licensing and re-licensing decisions . . . ."). The Declarations are thus irrelevant to whether the NRC is legally required to make AEA safety findings on spent fuel disposal to license or relicense reactors.

VI. THE SUSPENSION PETITION IS PROCEDURALLY IMPROPER AND FAILS TO DEMONSTRATE ANY IMMEDIATE THREAT TO PUBLIC HEALTH AND SAFETY

The Petition seeking suspension of final decisionmaking is procedurally improper and therefore should be denied. 10 C.F.R. § 2.802(d) allows a person that has submitted a petition for rulemaking to seek suspension of proceedings in which that petitioner is a participant. Here, the Petitioners have not submitted any rulemaking petition. Instead, they have filed the Contention in individual proceedings asserting that a safety finding in the safety of a geologic repository must now be made in each of these individual proceedings. Contention at 1-2. No NRC rule allows suspension in such circumstances. While the NRC rules do allow motions for stay under certain circumstances – *see* 10 C.F.R. §§ 2.342, 2.1213 – the Petitioners have made no

[13] Declaration of Dr. Arjun Makhijani in Support of Motions to Reopen the Record of NRC Reactor Licensing and Re-Licensing Proceedings (Sept. 29, 2014) ("Makhijani Decl.").

[14] Declaration of Mark Cooper in Support of Motions to Reopen the Record of NRC Reactor Licensing and Re-Licensing Proceedings (Sept. 29, 2014) ("Cooper Decl.").

attempt to address the standards applicable to a stay. Consequently, the Petition should be denied.

The Petition also appears pointless. If the Commission were to admit the proposed Contention, it would have to be resolved before licensing. If the Commission rejects the proposed Contention, there will be no remaining issue or cause for suspension.

Even if the Petition were procedurally proper and meaningful (which it is not), it falls far short of the Commission's high standard for suspending a final licensing decision. *Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 N.R.C. 141, 146, 159 (2011). The Commission considers suspension a "'drastic' action that is not warranted absent 'immediate threats to public health and safety,' or other compelling reason." *Id.* at 158, quoting *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 N.R.C. 461, 484 (2008); *see also Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 N.R.C. 151, 173-74 (2000). The Commission has not taken such drastic action lightly and has allowed licensing proceedings to continue in the wake of the Three Mile Island accident, *see Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-27, 54 N.R.C. 385, 390 (2001) (referring to Interim Statement of Policy and Procedure, 44 Fed. Reg. 58,559 (Oct. 10, 1979)), the terrorist attacks on September 11, 2001, *see Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 N.R.C. 376, 380 (2001), and the more recent events at Fukushima Daiichi, *Callaway*, CLI-11-5, 74 N.R.C. at 175.

To determine whether there is an "immediate threat[] to public health and safety, or other compelling reason" warranting proceeding suspension, the Commission considers whether going forward with a proceeding will (1) "jeopardize the public health and safety;" (2) "prove an

obstacle to fair and efficient decisionmaking;" and (3) "prevent appropriate implementation of any pertinent rule or policy changes that might emerge from our …ongoing evaluation." *Callaway*, CLI-11-5, 74 N.R.C. at 158-59, quoting *Private Fuel Storage*, CLI-01-26, 54 N.R.C. at 380 (internal quotations omitted); *Mass. v. NRC*, 708 F.3d 63, 80 (1st Cir. 2013) (upholding the NRC's application of its suspension standard). These factors weigh heavily against suspending decisionmaking here.

The Petitioners have not even alleged that moving forward with this proceeding will immediately jeopardize the public health and safety. Instead, the Petitioners have based their arguments on purely procedural grounds, alleging that the NRC "lacks a lawful basis… to issue licensing decisions" (Petition at 8) without "*predictive* safety findings" (*id.* 7) (emphasis added). The Petitioners have failed to explain how their procedural argument implicates any immediate threat to the public health and safety.

The Petitioners are also seeking to suspend proceedings that themselves pose no immediate threat to public health and safety. As the Commission has found, there is no immediate threat to the public health and safety in a licensing renewal proceeding where the period of extended operation will not begin for at least a year. *Callaway*, CLI-11-05, 74 N.R.C. at 163. In this case, the period of extended operation will not begin until 2024, allowing for no possible immediate threat. There is simply no threat to the public health and safety by continuing this proceeding.

With respect to the second factor, moving forward will present no obstacle to fair and efficient decision-making. When considering a petition to suspend, the Commission has previously found that the need for timely adjudication may weigh in favor of denying a suspension petition so that the Commission may continue to resolve unrelated issues, *see*

Callaway, CLI-11-5, 74 N.R.C. at 166; *see also Pacific Gas & Electric Co.* (Diablo Canyon Independent Spent Fuel Storage Installation), CLI-03-4, 57 N.R.C. 273, 277 (2003), as the Commission has "a responsibility to go forward with other regulatory and enforcement activities." *Callaway*, CLI-11-05, 74 N.R.C. at 166 (quoting *Private Fuel Storage*, CLI-01-26, 54 N.R.C. at 381).

Petitioners nowhere address this second factor. And Petitioners' actions belie any need to suspend the proceeding. They have filed the Contention seeking to litigate substantively identical claims raised in the Petition. It does not make sense to seek a proceeding's suspension while at the same time pursuing a Contention in that same proceeding on the same grounds that purportedly support the suspension request.

Additionally, going forward will not prevent the appropriate implementation of any pertinent rule or policy changes. Even if the Commission were inclined to address the substance of Petitioners' spent fuel disposal concerns in a future rulemaking or other proceeding, suspension of this license renewal proceeding is not warranted. The Commission has "well-established processes for imposing any new requirements necessary to protect public health and safety and the common defense and security." *Callaway*, CLI-11-5, 74 N.R.C. at 166. Going forward "will have no effect on the NRC's ability to implement necessary rule or policy changes that might come out of" any future Commission action. *Id.*

VII. CONCLUSION

For all of the above reasons, the Petition, accompanying Contention and Motion to Reopen should be denied.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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Dated: October 31, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
Union Electric Co.	)	Docket No. 50-483-LR
	)	
(Callaway Plant, Unit 1)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Ameren's Answer Opposing Petition to Suspend Licensing Proceedings, Related Contention and Motion to Reopen" have been served through the E-Filing system on the participants in the above-captioned proceeding, this 31st day of October, 2014.

/Signed electronically by David R. Lewis/

David R. Lewis