UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: SOUTHERN NUCLEAR OPERATING CO. License Amendment Application for Combined Licenses NPF-91 and NPF-92 Vogtle Electric Generating Plant Units 3 and 4	)	Docket Nos. 52-025-LA; 52-026-LA January 4, 2016

SOUTHERN NUCLEAR OPERATING COMPANY'S ANSWER OPPOSING PETITION TO INTERVENE AND REQUEST FOR HEARING

In accordance with 10 CFR § 2.309(i), Southern Nuclear Operating Company ("SNC" or "Licensee"), applicant in the above-captioned matter, hereby files its Answer to the "Petition for Leave to Intervene and Request for Hearing," (the "Petition") submitted by the Blue Ridge Environmental Defense League and its chapter Concerned Citizens of Shell Bluff ("BREDL" or "Petitioner"). The Petition responds to the United States Nuclear Regulatory Commission's ("NRC") October 8, 2015 notice of an opportunity to request a hearing[1] regarding SNC's September 18, 2015 License Amendment Request ("LAR")[2] for the Vogtle Electric Generating Plant ("VEGP") Units 3 and 4 Combined License ("COL").

[1] Vogtle Electric Generating Plant, Units 3 and 4: License Amendment Application; Opportunity to Comment, Request a Hearing, and Petition for Leave to Intervene, 80 Fed. Reg. 60,937 (Oct. 8, 2015).

[2] ND-15-1742, Letter from B. Whitley to NRC Control Desk, Vogtle Electric Generating Plant Units 3 and 4 Request for License Amendment and Exemption: CA04 Structural Module ITAAC Dimensions Change (LAR-15-015) (Sept. 18, 2015) (hereafter "LAR-15-015"), *available at* ADAMS Accession No. ML15261A757.

Petitioner has neither demonstrated standing nor proffered an admissible contention. Therefore, pursuant to 10 CFR § 2.309, the Petition should be dismissed.

I. BACKGROUND

On February 10, 2012, the NRC issued COLs NPF-91 and NPF-92 to SNC for the construction and operation of VEGP Units 3 and 4. On September 18, 2015, pursuant to 10 CFR § 52.98(c) and in accordance with 10 CFR § 50.90, SNC submitted to the NRC LAR-15-015 to revise the concrete thickness tolerance for portions of four containment internal structure ("CIS") walls from ±1" to ±1-5/8". The four CIS walls, which are each adjacent to the reactor vessel cavity, have nominal wall thicknesses of 3'-0" (shield wall between Reactor Vessel Cavity and reactor coolant drain tank ("RCDT") Room), 7'-6" (West Reactor Vessel Cavity Wall), 9'-0" (North Reactor Vessel Cavity Wall), and 7'-6" (East Reactor Vessel Cavity Wall). The revision would result in a thickness tolerance that is greater than the thickness tolerance originally identified in COL Appendix C, Table 3.3-1 and the tolerances in sections of ACI 349-01 and ACI 117 referenced in the VEGP Updated Final Safety Analysis Report ("UFSAR").[3]

The difference between the proposed tolerance and the original COL Appendix C requirement is ±5/8"; between the proposed tolerance and the ACI 349-01 requirement is ±5/8"; and between the proposed tolerance and the ACI 117 requirement is +5/8"/-7/8". The proposed thickness tolerance does not require a deviation from the other applicable codes referenced in the UFSAR relative to concrete thickness.[4] As explained in the LAR, assuming the worst-case scenario, the proposed new tolerance results in the four CIS walls continuing to meet the relevant seismic design requirements, including ACI 349-01 requirements for reinforcement.

[3] The 1" thickness tolerance specified in the pre-LAR COL Appendix C, Table 3.3-1 was the same as the positive tolerance and slightly less stringent than the negative tolerance derived from ACI 117.

[4] E.g., AWS D1.1 and AISC N690. *See* LAR-15-015, Enclosure 1 at 6.

Furthermore, because the radiation source terms used to demonstrate compliance with the requirements for radiation shielding were conservatively selected to envelope plant operating conditions, and the changed tolerance impacts only a localized area, the CIS walls using the proposed new tolerance continue to perform their radiation shielding function.[5] The only deviation from the applicable codes proposed by the LAR is from the concrete thickness tolerance requirements, not code requirements for reinforcement, concrete composition, radiation shielding, or other provisions.

Accordingly, the LAR requested a change to plant-specific Design Control Document ("DCD") Tier 1 information in COL Appendix C and plant-specific DCD Tier 2 information in the UFSAR.[6] SNC evaluated the tolerance revision against the structural and radiation-shielding design function of the affected CIS walls and concluded:

- "[The CIS walls] continue to perform their design basis functions in accordance with the underlying safety analyses. The containment internal structures design criteria and requirements are unchanged by this activity. Thus, the proposed changes do not alter the expected response of the structure to seismic events or the structural analysis of the containment internal structures."

- "The impact to the walls' effectiveness in providing radiation shielding was also examined, and there were no adverse effects because the radiation source terms were conservatively selected to envelope plant operating conditions. Consequently, this method accounts for tolerances and small perturbations in the as-built configuration of the plant are not expected to impact the bounding conclusions of the radiation analysis."

- "Plant radiation zones (as described in UFSAR Section 12.3), controls under 10 CFR Part 20, and expected amounts and types of radioactive materials are not affected by the proposed changes. The increased wall tolerance was also

[5] *See* LAR-15-015, Enclosure 1 at 8; *see also* UFSAR Section 12.3.2 (discussing shielding design and explaining in Section 12.3.2.1 that the plant shielding design assumes three operating states in addition to normal, full-power operation: shutdown operation, spent resin transfer, and emergency operations (for required access to safety-related equipment)).

[6] Because the proposed changes require a departure from Tier 1 information in the AP1000 DCD, SNC also sought an exemption from the requirements of the Generic DCD, pursuant to 10 CFR § 52.63(b)(1). SNC's exemption request is not the subject of the Petition.

> examined with respect to the walls' effectiveness in providing radiation shielding, and no adverse impacts were identified. Therefore, individual and cumulative radiation exposures do not change."[7]

The LAR is similar in technical content to a license amendment request submitted by South Carolina Electric & Gas Company ("SCE&G") on September 25, 2014.[8] The NRC issued the license amendment requested by SCE&G on August 24, 2015.[9]

On October 8, 2015, the NRC published a notice of opportunity to request a hearing on SNC's LAR and published the Staff's proposed determination that the LAR involves no significant hazards consideration ("Notice"). In response to the Notice, Petitioner filed comments on November 9, 2015, and filed the Petition on December 7, 2015.

On December 16, 2015, the NRC issued the license amendment ("Amendment No. 42") and an associated final determination of no significant hazards consideration.[10] In support of the issuance of Amendment No. 42, the NRC Staff completed a Safety Evaluation Report ("SER") which evaluated the changes proposed in the LAR and found:

- "The NRC staff reviewed the licensee's proposed UFSAR changes to wall thickness tolerances to confirm that the safety of the affected CIS walls is not compromised by the proposed increase in tolerance and that the changes to wall

[7] LAR-15-015, Enclosure 1 at 7-8.

[8] NND-14-0430, Letter from R.A. Jones to NRC Control Desk, LAR 14-07 License Amendment and Exemption Request: CA04 Structural Model ITAAC Dimensions Change (Sept. 25, 2014), *available at* ADAMS Accession No. ML14268A388. SCE&G later supplemented LAR 14-07. NND-15-0096, Letter from A.R. Rice to NRC Control Desk, LAR 14-07 S1 License Amendment and Exemption Request: CA04 Structural Module ITAAC Dimensions Change (Mar. 13, 2015), *available at* ADAMS Accession No. ML15072A306.

[9] Virgil C. Summer Nuclear Station Units 2 and 3 – Issuance of Amendment No. 29 and Granting of Exemption RE: CA04 Structural Module Inspection, Test, Analysis, and Acceptance Criteria Dimensions Change (TAC No. RQ0424) (Aug. 24, 2015), *available at* ADAMS Accession No. ML15216A072.

[10] *See* Vogtle Electric Generating Plant Units 3 and 4 – Issuance of Amendment No. 42 and Granting of Exemption RE: CA04 Structural Module Inspection, Test, Analysis, and Acceptance Criteria Dimensions Change (CAC No. RP9518) (Dec. 16, 2015), *available at* ADAMS Accession No. ML15302A401. License Amendment No. 42 to the VEGP Unit 3 COL is available at ADAMS Accession No. ML15302A406. License Amendment No. 42 to the VEGP Unit 4 COL is available at ADAMS Accession No. ML15302A413.

thickness tolerances will not result in increased radiation exposures to plant personnel."[11]

- "[T]he staff confirmed that for the thinner walls, even assuming the minimum tolerance, the provided reinforcement would still remain well above the minimum reinforcement required by the Code. Likewise, for the thicker walls, the staff confirmed that even conservatively assuming the worst case tolerance, any decrease in concrete volume would be minimal, less than 1.5%, which the staff agreed would constitute an insignificant change that would have negligible effect on structural analyses."[12]

The requested exemption associated with the LAR, which was not challenged by the Petition, was also issued on December 16, 2015.

II. PETITIONER DOES NOT SATISFY 10 CFR § 2.309(d) STANDING REQUIREMENTS

BREDL fails to demonstrate any valid basis for standing. BREDL claims "presumptive standing" on behalf of its members based on their proximity to the VEGP 3 and 4 site. However, in a license amendment proceeding such as this, proximity cannot be relied upon to demonstrate standing. Rather, a petitioner must show a "plausible chain of causation" explaining how the amendment would result in a "distinct new harm or threat" beyond that posed by the licensed facility itself.[13] The Petition fails to satisfy § 2.309(d) and, therefore, should be denied.

Section 2.309(d)(1) requires a petitioner to provide: (1) the nature of the petitioner's right under the Atomic Energy Act of 1954 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 effects of any decision or order that may be issued in the proceeding on the petitioner's

[11] Safety Evaluation by the Office of New Reactors Related to Exemption and Amendment No. 42 to the Combined License Nos. NPF-91 and NPF-92, at 6 (Dec. 16, 2015), *available at* ADAMS Accession No. ML15302A473.

[12] *Id.* at 8.

[13] *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-04, 49 NRC 185, 192 (1999) (quoting *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), LBP-98-27, 48 NRC 271, 277 (1998)).

interest.[14] In order to demonstrate standing, a petitioner must show: (1) a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision.[15] In proceedings involving amendments to a license to construct or operate a reactor, petitioners must provide a "plausible chain of causation" explaining how the amendment would result in a "distinct new harm or threat" and cannot rely on injuries attributable to the facility in general.[16]

In certain proceedings, the "proximity presumption" allows petitioners to establish standing by simply showing geographical proximity to a reactor. This presumption, however, is limited to proceedings for "construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool."[17] In proceedings involving less-significant license amendments, petitioners cannot rely on proximity to establish standing absent a showing of an "obvious potential for offsite consequences."[18]

An organization may establish standing either in its own right (by demonstrating injury to its organizational interests) or in a representative capacity (by demonstrating harm to the

[14] 10 CFR § 2.309(d)(1). The NRC applies "contemporaneous judicial concepts of standing" when applying these factors. *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009) (internal citation omitted); *see also Nuclear Mgmt. Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-06, 63 NRC 161, 163 (2006).

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

[16] *Zion*, CLI-99-04, 49 NRC at 192; *see, e.g.*, *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-08-18, 68 NRC 533, 541 (2008) (holding that a petitioner failed to establish standing because it "fail[ed] to explain how any release of radioactive particles that could be linked to the proposed amendment would cause an increased potential for consequences to the environment or the Petitioner's residence, life, or business in particular").

[17] *Fla. Power & Light Co.* (St. Lucie, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989) (citation omitted)); *see also Exelon Generation Co., LLC and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-05-26, 62 NRC 577, 580-81 (2005).

[18] *See St. Lucie*, CLI-89-21, 30 NRC at 329-30; *Peach Bottom*, CLI-05-26, 62 NRC at 580-81; *Zion*, CLI-99-04, 49 NRC at 191.

interests of its members).[19] To establish representational standing, an organization must: (1) show that at least one of its members has standing in his or her own right; (2) identify that member; and (3) show, "preferably by affidavit," that the organization is authorized by that member to request a hearing on behalf of the member.[20] BREDL relies on representational standing in this proceeding.

Petitioner attempts to establish that its members have standing by submitting declarations of 63 individuals[21] stating that they live within 50 miles of VEGP Units 3 and 4—relying on the NRC's proximity presumption to establish its members' standing.[22] Petitioner incorrectly presumes the proximity presumption applies to this proceeding[23] without explaining how Amendment No. 42, as opposed to the construction and operation of VEGP Units 3 and 4 generally, has an "obvious potential for offsite consequences" or otherwise why the proximity presumption should apply as required by clear NRC precedent.[24] Petitioner does not even assert, much less support, a "plausible chain of causation" explaining how Amendment No. 42 would result in a "distinct new harm or threat" as required to show standing where the proximity

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[19] *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) (citing *Ga. Inst. of Tech*. (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995)).

[20] *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 409 (2007).

[21] SNC does not contest that Petitioner has identified some members who live within 50 miles of VEGP Units 3 and 4 and who have authorized Petitioner to act on their behalf. However, the declaration of Lori R. Johnson indicates that she is not a member of Petitioner's organization. BREDL, Declarations of Standing, at 30 (Dec. 7, 2015), *available at* ADAMS Accession No. ML15341A354; *cf. Yankee*, CLI-96-1, 43 NRC at 6 ("[A] prospective intervenor may not derive standing to participate in a proceeding from another person who is not a party to the action or is not a member of its organization.").

[22] Petition at 5-6.

[23] *Id.* at 6 ("Here, [SNC] has been granted [a COL] for Vogtle nuclear reactor Unit 3 and Unit 4, and seeks to amend said license. Thus, the same standing concepts apply.").

[24] *See, e.g.*, *Zion*, CLI-99-04, 49 NRC at 191 ("[A] petitioner cannot base his or her standing simply upon a residence or visits near the plant, unless the proposed action quite 'obvious[ly]' entails an increased potential for offsite consequences." (second alteration in original)).

presumption does not apply.[25] "[A] petitioner seeking to intervene in a license amendment proceeding must assert an injury-in-fact associated with *the challenged license amendment*, not simply a general objection to the facility."[26] Contrary to this requirement, the injury identified by Petitioner is the potential harm to its members' health and well-being attributed to the "[c]onstruction and operation of additional nuclear reactors at Vogtle."[27]

BREDL has not established that its members have standing in this license amendment proceeding because it has not demonstrated or alleged an injury caused by the license amendment. Accordingly, Petitioner does not have representational standing to participate in this proceeding on their behalf. The Petition should be dismissed for failure to satisfy 10 CFR § 2.309(d).

III. PETITIONER HAS NOT SUBMITTED AN ADMISSIBLE CONTENTION PURSUANT TO 10 CFR § 2.309(f)(1)

To intervene in a licensing proceeding, a petitioner must propose at least one admissible contention.[28] Each of the three contentions included in the Petition fails to meet multiple requirements in § 2.309(f)(1). The Petition should be denied due to the lack of an admissible contention, in addition to the failure to demonstrate standing discussed above.

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[25] *Id.* at 192; *St. Lucie*, CLI-89-21, 30 NRC at 329-30 ("Absent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific 'injury in fact' which will result from the action taken….").

[26] *Zion*, CLI-99-04, 49 NRC at 188 (emphasis in original).

[27] Petition at 6. To the extent the Petition includes general claims that the license amendment would harm BREDL's members (*see, e.g.*, Petition at 6, 11), such bare statements do not establish the standing to challenge a license amendment. *See Zion*, CLI-99-04, 49 NRC at 192 ("A petitioner cannot seek to obtain standing in a license amendment proceeding simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences."); *see also Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994) ("The alleged injury, which may be either actual or threatened, must be both concrete and particularized, not 'conjectural,' or 'hypothetical.' As a result, standing has been denied when the threat of injury is too speculative." (internal citations omitted)).

[28] 10 CFR § 2.309(a).

A hearing request "must set forth *with particularity* the contentions sought to be raised."[29] In addition, § 2.309(f)(1) specifies that each contention must: (i) provide a specific statement of the legal or factual issue sought 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, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and (vi) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.[30] A contention that fails to comply with even one of the 10 CFR § 2.309(f)(1) criteria is inadmissible.[31]

The NRC specifically revised the admissibility rules in 1989 "to prevent the admission of 'poorly defined or supported contentions,' or those 'based on little more than speculation.'"[32] The "strict contention rule is designed to avoid resource-intensive hearings where petitioners have not provided sufficient support for their technical claims, and do not demonstrate a potential to meaningfully participate and inform a hearing."[33]

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[29] 10 CFR § 2.309(f)(1) (emphasis added).

[30] *See* 10 CFR § 2.309(f)(1)(i)-(vi). The seventh contention admissibility requirement, 10 CFR § 2.309(f)(1)(vii), is only applicable in proceedings arising under 10 CFR § 52.103(b).

[31] *See, e.g.*, *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-08, 75 NRC 393, 395-96 (2012) (stating that proposed contentions "must satisfy all six of the [admissibility] requirements"); *see also Changes to Adjudicatory Process*, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004).

[32] *See Davis-Besse*, CLI-12-08, 75 NRC at 396 (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 334 (1999)); *see also Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

[33] *Davis-Besse*, CLI-12-08, 75 NRC at 416.

A. Each of Petitioner's Contentions Fails to Satisfy 10 CFR § 2.309(f)(1)(i) and (ii)

As a threshold matter, none of the three contentions satisfy the basic pleading standards in 10 CFR § 2.309(f)(1)(i) and (ii), which require a contention to contain "a specific statement of the issue of law or fact to be raised or controverted" and "a brief explanation of the basis for the contention."[34] The NRC's contention admissibility rules are intentionally strict—more than mere "notice pleading"—and require petitioner "to come forward at the outset with sufficiently detailed grievances to allow the adjudicator to conclude that genuine disputes exist justifying a commitment of adjudicatory resources to resolve them."[35] The heightened pleading requirements are designed to weed out "poorly defined or supported contentions."[36]

The Petition fails to satisfy these minimum requirements. For each of the three contentions, the Petition presents a heading and a single-sentence opening paragraph, but many of the statements that follow do not appear to provide support for the opening paragraph. For example, under Contention ONE, the Petition discusses the 10 CFR § 50.59 process and "internal attack" without explaining the relevance of these issues to the immediate proceeding, to Contention ONE's topic of conformance with certain construction industry standards, or what point Petitioner is trying to make. "A contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions…."[37] The Petition should be denied because the proffered contentions fail to satisfy § 2.309(f)(1)(i) and (ii).

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[34] 10 CFR § 2.309(f)(1)(i) and (ii).

[35] *N. Atl. Energy Svc. Corp.* (Seabrook Station, Unit 1), CLI-99-06, 49 NRC 201, 219 (1999); *see also Millstone*, CLI-01-24, 54 NRC at 358-59.

[36] *Davis-Besse*, CLI-12-08, 75 NRC at 396 (citation omitted).

[37] Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22 (1998).

In addition to this threshold deficiency in Petitioner's pleadings, each contention is also inadmissible for the additional reasons set forth below.

B. Petitioner's Contention ONE Fails to Satisfy 10 CFR § 2.309(f)(1)(iii), (iv), (v) and (vi)

Contention ONE—titled "License Amendment Request Fails to Meet Industry Standards"—fails to satisfy the criteria in § 2.309(f)(1) because it does not raise a contested issue of law or fact that is germane to this license amendment proceeding, it is not supported by any relevant evidence, and it seeks to litigate issues beyond the scope of this proceeding.

1. *Contention ONE fails to articulate any disputed issue of fact or law that is relevant to this proceeding*

Contention ONE does not satisfy the requirements of § 2.309(f)(1)(iv) and (vi) because the contention does not raise an issue that is material to the findings the NRC must make in issuing Amendment No. 42, and does not articulate any issue of fact or law that is in dispute.

Contention ONE asserts that Amendment No. 42 would result in a design for the four CIS walls that does not comply with the thickness tolerances in ACI 117 and ACI 349 and the preexisting licensing basis. These statements are not in dispute, are the reason SNC submitted the LAR, and are prominently set forth in the LAR itself. The whole purpose of the LAR is to obtain NRC approval of a departure from the licensing documents that apply the ACI 117 and ACI 349-01 concrete thickness tolerances to the portions of the four CIS walls identified in the LAR. Put simply, Petitioner argues that the amendment to the license should not be issued because the proposed amendment does not comply with the license. This argument is essentially challenging the NRC's ability to amend the license—a challenge to the regulatory framework that is clearly outside the scope of this proceeding—as discussed more fully below.[38]

[38] *See Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 66 NRC 41, 57-58 (2007).

The relevant question in this proceeding is whether the NRC should grant that LAR based on the criteria governing license amendments in 10 CFR § 50.92 and 10 CFR Part 52 Appendix D. Use of ACI 117 and ACI 349-01 is not required by NRC regulations in 10 CFR Part 50 or Part 52, such as 10 CFR § 50.55a, and ACI 117 and 349-01 are not regulatory requirements by sole virtue of the fact that they are industry standards. Therefore, they are not requirements that independently control the design of VEGP Units 3 and 4 separate from the COLs.[39]

Instead, the codes are made applicable to VEGP Units 3 and 4 through the VEGP COLs, which *are* regulatory requirements governing the VEGP design, but which can be amended in accordance with the process set forth in 10 CFR § 50.90 and Part 52, Appendix D. Under this process, proposed amendments are evaluated against the same NRC design criteria used during review of the initial license.[40] Accordingly, the relevant question in this proceeding is whether the ±1-5/8" tolerance allows SNC to satisfy the NRC's safety requirements applicable to the CIS walls *irrespective of the fact* that the proposed new tolerance exceeds the requirements in the preexisting licensing basis (and code requirements incorporated therein).

Apart from Petitioner's observation that the ±1-5/8" tolerance is greater than the tolerance in ACI 117 and ACI 349-01, Contention ONE does not contain any objection to the ±1-5/8" tolerance and does not supply any technical or legal justification for rejecting the amendment under the NRC's safety requirements. Petitioner does not claim (or provide any information that could substantiate a claim) that exceeding the code tolerance for the structural walls in question could or will result in these walls failing to meet any applicable safety requirement or that an

[39] In fact, the ACI codes themselves allow for designs that deviate from the code—provided the design is still satisfactory to the applicable regulatory authority (in this case, the NRC). *See, e.g.*, ACI 349-01, Section 1.4 (2001).

[40] 10 CFR § 50.92(a); *cf. id.* at § 52 Appendix A, General Design Criterion ("GDC") 1, *Quality Standards and Records*, GDC 2, *Design Bases for Protection Against Natural Phenomena*, and GDC 4, *Environmental and Dynamic Effects Design Bases*.

injury could possibly result to Petitioner's members.[41] Petitioner does not assert that a ±1-5/8" tolerance would cause any aspect of the CIS's design to be out of compliance with the remaining portions of the VEGP licensing basis (including codes referenced therein) or the General Design Criterion ("GDC") in Appendix A to Part 50 applicable to the CIS. And Petitioner does not take issue with SNC's technical evaluation in the LAR, which concludes that the walls in question continue to perform their design basis structural functions and radiation-shielding functions and that the increased tolerance will not adversely affect the ability of the structure to perform in a predictable, ductile manner.[42]

In fact, Petitioner's only mention of SNC's technical evaluation is in reference to the calculation of structural margins for the CIS after accounting for the increased tolerance specified in the LAR. Petitioner does not question either SNC's calculation of these margins or SNC's conclusion that the CIS walls using the new tolerance exceed applicable code structural reinforcement requirements. Nor does Petitioner claim that the involved CIS walls using the new tolerances fail to perform their safety function. Instead, Petitioner asserts, without evidentiary or technical support, that the additional tolerance *might have reduced* the margins as compared to the margins associated with the 1" tolerances by a considerable amount. Petitioner's supposition is irrelevant. Petitioner does not claim or provide any basis for a claim that the remaining margin is insufficient to provide adequate protection of the public health and safety.

[41] In fact, because Petitioner's sole argument appears to be that the 1-5/8" tolerance exceeds the tolerance allowed by ACI 117 and ACI 349-01, Contention ONE does not identify any applicable safety criteria that are implicated by the increased tolerance value.

[42] LAR-15-015, Enclosure 1 at 6-9.

The NRC's consideration of a license amendment request is "guided by the considerations which govern the issuance of initial licenses."[43] Here, those considerations are 10 CFR Part 52 Appendix D and the applicable GDC in 10 CFR Part 50 Appendix A.[44] The margins Petitioner discusses refer only to the ratio of the reinforcement required by the applicable codes and the reinforcement in the shield wall between the Reactor Vessel Cavity and RCDT room using the new tolerances—the margins are not generic "safety margins" quantifying the ability of the wall to perform its safety function.[45] The cited margins show that the shield wall between Reactor Vessel Cavity and RCDT room using the increased tolerances exceeds the minimum reinforcement required by ACI 349-01 and ACI 117.

Put another way, although Amendment No. 42 allows a deviation from the *concrete thickness tolerances* allowed by ACI 349-01 and ACI 117, both the pre-Amendment No. 42 and post-Amendment No. 42 shield wall between Reactor Vessel Cavity and RCDT room meet the applicable code requirements *for reinforcement*. Both the original and post-Amendment No. 42 CIS walls also comply with GDC 1, 2, and 4.[46] Petitioner has not explained why, or even alleged that, a difference in the margins relative to reinforcement in one of the impacted CIS walls raises any issue material to the adequacy of the CIS walls with the new tolerances to perform their

[43] 10 CFR § 50.92; *see Tenn. Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 35 (2002) ("[A]n applicant must satisfy the requirements of 10 CFR § 50.90 and demonstrate that the requested amendment meets all applicable regulatory requirements and acceptance criteria and does not otherwise harm the public health and safety or the common defense and security." (citations omitted)).

[44] *See, e.g.*, SER at 10 (citing Part 52 Appendix D and GDC 1, 2, and 4).

[45] The other three impacted walls, which are thicker, are analyzed differently, as mass concrete structures. Using this analysis, SNC concluded that the potential decrease in the area of surrounding concrete "is insignificant and negligible in the structural analyses". *See* LAR-15-015, Enclosure 1 at 7. The Petition did not address SNC's analysis of these other three walls.

[46] *See* LAR-15-015, Enclosure 1 at 9-10; *see also* SER at 10.

safety function, particularly where each of the four CIS walls continues to meet code requirements for reinforcement.

Finally, Petitioner tacks on to the end of its discussion of Contention ONE the statement that SNC identified the need for the amendment "after the fact."[47] Petitioner does not explain how this statement is relevant to Contention ONE or the license amendment proceeding, nor does Petitioner make any argument following this untethered statement. While the need for the license amendment was identified through SNC's Quality Control and Construction Oversight process, not by an NRC inspector, the reasons for SNC seeking an amendment and the timing of its decision to request one have no bearing on the NRC's evaluation of whether that amendment satisfies applicable safety requirements.[48]

In summary, Contention ONE neither demonstrates that the issues raised are material to the findings the NRC must make to grant Amendment No. 42 per § 2.309(f)(1)(iv) nor provides sufficient information to show that a genuine dispute exists with SNC on a material issue of law or fact § 2.309(f)(1)(vi). Therefore, Contention ONE should be dismissed.

2. *Contention ONE is not supported by any relevant technical support*

Even if Contention ONE contained a legal argument or contested fact relevant to the outcome of this proceeding, the contention is completely devoid of any evidentiary support in the form of factual information or expert opinion and, thus, does not satisfy 10 CFR § 2.309(f)(1)(v). A contention "will be ruled inadmissible if the petitioner 'has offered no tangible information, no

[47] Petition at 10.

[48] *See Entergy Nuclear Ops., Inc.* (Palisades Nuclear Plant), CLI-15-22, 82 NRC__, slip op. at 10 (Nov. 9, 2015) ("If the Staff determines that the licensee has satisfied our regulatory requirements, it then issues the requested license amendment."); *Sequoyah*, LBP-02-14, 56 NRC at 35 (explaining that the relevant inquiry is whether a requested amendment meets applicable regulatory requirements and does not otherwise endanger public health and safety or the common defense and security).

experts, no substantive affidavits,' but instead only 'bare assertions and speculation.'"[49] A petitioner does not carry its evidentiary burden by simply referencing documents or facts without explaining their significance and how they support the petitioner's position.[50] Here, Petitioner has not even attempted to explain the connection between its scant evidentiary support and the issues in this proceeding. Accordingly, Contention ONE should be dismissed for lack of any factual support.

Petitioner cites excerpts from two reports in the section of the Petition styled Contention ONE. The first excerpt is from a 2010 presentation by the Nuclear Energy Standards Coordination Collaborative ("NESCC") Concrete Task Group recommending that certain types of accidents be incorporated into the design basis of nuclear plants' structures, systems, and components.[51] Petitioner does not explain how the NESCC excerpt is relevant to the changed tolerances proposed by the LAR or to the issues raised in Contention ONE. The connection, if any, between the NESCC excerpt and Contention ONE is not apparent, and the licensing board is not responsible for trying to divine whether any such connection may or may not exist.[52] Accordingly, the 2010 NESCC report does not constitute the requisite factual or expert support for Contention ONE.

Petitioner next cites a 2011 NESCC report discussing the impact on concrete durability attributed to various chemical and radiological factors and the need to account for these

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[49] *Fansteel, Inc.* (Muskogee, Okla. Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 208 (2000)).

[50] *See Fansteel,* CLI-03-13, 58 NRC at 204-05.

[51] Petition at 9 (citing Nuclear Energy Standards Coordination Collaborative Concrete Task Group Presentation to NESCC, May 26, 2010, "Concrete Codes and Standards for Nuclear Power Plants (CTG)").

[52] *See Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC at 22; *Ariz. Pub. Svc. Co.* (Palo Verde Nuclear Station, Units 1, 2 & 3), CLI-91-12, 34 NRC 149, 155 (1991).

degrading forces when evaluating the mineralogical traits of concrete constituents.[53] This discussion from the 2011 report is also unrelated to Contention ONE and the LAR, and Petitioner does not explain what relevant point the report is intended to prove or disprove. Following the excerpt, Petitioner adds, without citation, that the 2011 report explains "that accurate measurement, inspection on the nuclear plant construction site and proper test standards are essential."[54] This statement is also proffered without any explanation or elaboration and without any attempt to connect it to Contention ONE or the issues implicated by the LAR.

Nothing from the sections of the NESCC reports referenced by Petitioner has any apparent connection to Contention ONE.[55] Nor does Petitioner provide any citation to discussions of concrete thickness, appropriate tolerances for CIS walls, or any other issue relevant to the LAR. Contention ONE is unsupported by any factual basis or expert opinion as required by § 2.309(f)(1)(v) and is, therefore, inadmissible.

3. *Contention ONE is a challenge to the NRC's license amendment process and, thus, is beyond the scope of this proceeding*

Contention ONE is fundamentally a challenge to the NRC's license amendment process, which is outside the scope of the LAR and Amendment No. 42. Contention ONE does not raise any specific challenge to the LAR at issue in this proceeding but instead insinuates that Amendment No. 42 should be denied because it would allow a tolerance thickness for the CIS walls in question that exceeds the thickness called for in the preexisting licensing basis and code

[53] Petition at 9 (citing Nuclear Energy Standards Coordination Collaborative, Final Report of the Concrete Task Group: "Concrete Codes and Standards for Nuclear Power Plants: Recommendations for Future Development" (June 2011)).

[54] Petition at 9.

[55] Even if the Petition intended to rely on the two NESCC reports as a whole, it is worth noting that vague reference to a document or set of documents does not constitute adequate factual support—a petitioner must identify the specific portions of a referenced document and explain how those portions support its point. *See Pub. Svc. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-03, 29 NRC 234, 240-41 (1989); *Oconee*, CLI-99-11, 49 NRC at 337.

sections referenced therein. Petitioner ignores the fact that SNC is following the controlling regulations in 10 CFR Part 52 Appendix D and 50.90 by seeking NRC approval to deviate from the ACI codes referenced in the preexisting VEGP licensing basis. To accept Petitioner's supposition as an admissible contention would subject every license amendment to an evidentiary hearing because a license amendment, by definition, is a departure from the licensing basis. The Petition makes the point explicitly in the conclusion:

> The granting of the Company's License Amendment Request would not comply with UFSAR technical bases at Plant Vogtle.[56] The American Concrete Institute standards for nuclear power plants should be adhered to. The standards are in need of strengthening; further departures from ACI-349 and other standards should not be approved by the Nuclear Regulatory Commission.[57]

As explained below, Petitioner's argument is an attack on the ACI codes in general and the NRC's process allowing departures from the licensing basis. Neither is within the scope of this proceeding.

Contentions filed in adjudicatory proceedings that attempt to collaterally attack statutory or regulatory requirements or the NRC licensing process in general are due to be dismissed.[58] The venue for Petitioner's concerns about the NRC's regulations governing amendments to facility licenses is the NRC's rulemaking process, not an adjudicatory proceeding on a specific license amendment.[59] As for the generalized (and wholly unsupported) assertion that the ACI

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[56] Petitioner never asserts that the increased tolerance in the CIS walls would cause these walls or any other aspect of the VEGP design to be out of compliance with an applicable safety requirement. Petitioner's assertion is as straightforward as it appears to be—that the requested amendment does not comply with the pre-existing UFSAR.

[57] Petition at 12.

[58] *See* 10 CFR §2.335; *see also, e.g.*, *Shearon Harris*, LBP-07-11, 66 NRC at 57-58 (citing *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20 (1974)).

[59] *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-08-9, 67 NRC 421, 431 (2008) ("[T]he adjudicatory process is not the proper venue to hear any contention that merely addresses petitioner's own view regarding the direction regulatory policy should take." (citing *Peach Bottom*, ALAB-216, 8 AEC at 21 n.33)).

codes need "strengthening," there is no action on the LAR or Amendment No. 42 that can address that complaint. The ACI codes are consensus-based industry standards that are developed by technical committees of the American Concrete Institute, often with input from NRC staff, and formally adopted by the ACI's standards board. The perceived need for "stronger" industry codes, or for the NRC to cease relying on the existing ACI codes (if that is what Petitioners are seeking), is far beyond the scope of this proceeding. Or, if what Petitioners are seeking is to challenge the preexisting licensing basis (which references those ACI codes), that challenge is also beyond the scope of this proceeding.[60]

Contention ONE challenges the NRC's regulations that authorize departures from operating licenses rather than any aspect of the LAR. Accordingly, the contention is beyond the scope of this proceeding and is inadmissible pursuant to § 2.309(f)(1)(iii).

C. Petitioner's Contention TWO Fails to Satisfy 10 CFR § 2.309(f)(1)(v) and (vi)

Contention TWO—titled "License Amendment Does Not Meet ALARA"—does not satisfy the requirements of § 2.309(f)(1)(v) and (vi) because it provides no factual or other evidentiary support and fails to provide sufficient information to show a material dispute of law or fact that would justify a hearing. Contention TWO begins with two straightforward observations: (1) "[t]hickness affects the radiation shielding ability of a concrete wall,"[61] and (2) the increased thickness tolerance could reduce the thickness of the concrete walls that serve radiation shielding functions. SNC does not contest either fact. As set forth in the LAR's technical evaluation, SNC evaluated the impact on the CIS walls' radiation shielding and found "no adverse effects" because the original design included conservatisms that would account for

[60] *See Wis. Elec. Power Co.* (Point Beach Nuclear Plant, Units 1 & 2), LBP-82-88, 16 NRC 1335, 1342 (1982).

[61] Petition at 11.

variations in the as-built configuration and plant operation.[62] But, radiation shielding is only one portion of the considerations underlying potential occupational dose that is the subject of Contention TWO. SNC also employs radiation protection controls that recognize the presence of radiation in some areas of the plant and limits worker access to control dose. SNC concluded that these controls also were not implicated by the changed concrete thickness tolerance.

Petitioner's argument is unaccompanied by any explanation or attempt to connect Petitioner's conclusions to any material issue in this proceeding. Petitioner singles out one of the CIS walls impacted by the amendment—the shield wall between the Reactor Vessel Cavity and the RCDT room, which has a nominal thickness of 3 feet (or 36")—presumably because it is the thinnest of the CIS walls impacted by the LAR. Petitioner observes (correctly) that a 1-5/8" tolerance would allow a minimum wall thickness of 34-3/8" and a maximum thickness of 37-5/8". Petitioner then points out that "[t]he 3-1/4 inch spread is 9% of the nominal wall thickness of 36 inches."[63] Petitioner fails to explain how this 9% differential creates some risk that a violation of Part 20 regulations will occur, providing no explanation of the significance of this percentage or how it relates to the radiation shielding function of the RCDT wall. Only the *reduction* in thickness would lessen the radiation shielding function, and only a 5/8" difference in the minimum tolerance from the prior VEGP COL Appendix C requirement was proposed by the LAR. Thus, the percentage figure, to the extent percentage has any technical relevance in assessing the radiation shielding function, is 1.74%. Regardless, however, Petitioner does not explain how the percentage relates to the adequacy of the radiation shielding function, or to SNC's application of ALARA principles.

[62] LAR-15-015, Enclosure 1 at 8.

[63] Petition at 10.

Moreover, concrete thickness in one portion of a wall is one of several variables that go into the analysis of the radiation shielding function, including, for example, the density of the concrete used and the thickness in other portions of the connected wall. Here, the modules on either side of the impacted RCDT wall are unchanged by the LAR and the potential decrease in thickness is only in a localized area.[64] Petitioner does not explain how the proposed localized potential decrease in thickness would render the radiation shielding analysis potentially incorrect in light of the other inputs that go into the analysis, none of which is changed by the LAR. In summary, Petitioner does not provide any support for a challenge to SNC's conclusion in the LAR that there was no adverse impact on the adequacy of the radiation shielding provided by the CIS walls.

The Petition is silent with respect to SNC's radiation protection controls altogether. Based on the radiation that is anticipated in particular areas of the plant (in light of the radiation shielding functions in the plant design, such as that of the RCDT wall), SNC employs controls using ALARA principles to limit worker exposure to radiation. The higher the radiation expected in a particular area, the higher the "Radiation Zone" that applies to that area, and those Zones are determined using conservative design data.[65] The different zones, in turn, have varying levels of access control that function to limit worker exposure. For areas with "high radiation sources", the controls provide for "limited worker occupancy".[66] Because of the radiation protection controls, a potential increase in the radiation levels in an area does not necessarily lead to a corresponding increase in worker exposure or implicate the ALARA principle.

[64] LAR-15-015, Enclosure 1 at 8.

[65] UFSAR Section 12.3.1.2.

[66] UFSAR Figure 12.3-1 (Sheet 1 of 16).

Petitioner does not provide any support for its suggestion that a 34-3/8" RCDT wall of the minimum thickness allowed by the new tolerance would result in a violation of the ALARA requirements or any other safety requirements. The LAR specifically noted that "[p]lant radiation zones (as described in UFSAR Section 12.3), controls under 10 CFR Part 20, and expected amounts and types of radioactive materials are not affected by the proposed changes."[67] Petitioner disregards key aspects of ALARA by ignoring the radiation controls, restrictions on employee access during operation, or the other controls that ensure ALARA principles are satisfied and dose limits are met in all Radiation Zones, including the RCDT room.[68] By disregarding these key aspects of ALARA, Petitioner fails to show a genuine dispute with respect to potential worker exposure.

SNC evaluated the proposed concrete thickness tolerance in the LAR against the worker safety requirements in 10 CFR Part 20 and found that "individual and cumulative radiation exposures do not change."[69] Other than Petitioner's bald statement that the LAR "does not demonstrate that it meets standards for nuclear plant worker radiation exposure limits", Contention TWO does not question SNC's evaluation and does not supply an alternative analysis to suggest that the impacted CIS walls would provide inadequate shielding as a result of a decrease in thickness of 5/8" or would potentially increase worker exposure given SNC's ALARA controls.[70] Petitioner does not articulate any dispute regarding the content of SNC's

[67] LAR-15-015, Enclosure 1 at 8.

[68] *See* UFSAR Appendix 12AA.

[69] LAR-15-015, Enclosure 1 at 8.

[70] The Petition also questions the use of the preliminary amendment request ("PAR") process for the LAR. Petition at 11. The PAR process allows a licensee to proceed with installation of the proposed modification, pending review and approval by the NRC. This process is incorporated as a license condition in the VEGP COL. *See* COL at 2.D. Additionally, the notice of hearing in this proceeding does

LAR or provide any factual or expert support related to the radiation shielding function or ALARA requirements. This is precisely the type of vague and unsupported contention that § 2.309(f)(1)(v) and (vi) are intended to weed out.[71]

D. Petitioner's Contention THREE Fails to Satisfy 10 CFR § 2.309(f)(1)(iii), (iv), (v) and (vi)

Contention THREE—titled "Disproportionate Impact on Shell Bluff Residents"—is inadmissible because it fails to raise any legal or factual issues relevant to this proceeding and instead challenges the NRC's environmental justice policy and seeks to relitigate issues addressed during the VEPG Units 3 and 4 Early Site Permit ("ESP") and COL proceedings.

Contention THREE appears to be concerned with the NRC's compliance with Executive Order ("E.O.") 12898, which requested that agencies adopt certain environmental justice principles. The NRC incorporated these environmental justice principles into its National Environmental Policy Act ("NEPA") process. But contrary to what Petitioner seems to be arguing, E.O. 12898 does not provide petitioners with an independent substantive challenge. Instead, any claims related to the NRC's review of environmental justice principles arise under its obligations to comply with NEPA. As explained below, issuance of a license amendment is excluded from environmental review requirements except in certain situations. Petitioner fails to show why the license amendment should not be subject to the categorical exclusion. Rather, the five "bases" provided by Petitioner to support Contention THREE make clear that Petitioner's issue is not with NRC's issuance of the license amendment, but instead is with the NRC's overall

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not identify the PAR process as being within the scope of this opportunity to request a hearing, and, therefore, issues associated with the use of a PAR are not litigable. In any event, Amendment No. 42 has been issued, thereby mooting any issue regarding the use of the PAR process.

[71] *See Millstone*, CLI-01-24, 54 NRC at 358; *Changes to Adjudicatory Process,* 69 Fed. Reg. at 2202 ("The Commission should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing.").

administration of E.O. 12898 or with the VEGP COL generally. This is not the proper forum for such challenges.

1. *The NRC implements E.O. 12898 through its NEPA process and, accordingly, environmental justice contentions are limited to challenges to the NRC's NEPA review*

E.O. 12898 does not supply Petitioner with an independent substantive basis to challenge the LAR, and Petitioner's complaints regarding E.O. 12898, therefore, do not raise a genuine dispute as required by 10 CFR § 2.309(f)(1)(vi). The E.O. requested that agencies adopt certain environmental justice principles, which the NRC has done by incorporating environmental justice review into its NEPA process.[72] As the NRC explained in its Environmental Justice Policy Statement, "E.O. 12898 does not establish new substantive or procedural requirements applicable to NRC regulatory or licensing activities" and "the E.O. itself does not provide a legal basis for contentions to be admitted and litigated in NRC licensing proceedings."[73] "Because E.O. 12898 does not create any new rights, it cannot provide a legal basis for contentions to be litigated in NRC licensing proceedings"; instead, "the only possible basis for an admissible [environmental justice] contention is NEPA."[74]

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[72] *See Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions*, 69 Fed. Reg. 52,040, 52,040-41 (Aug. 24, 2004) (hereafter "Environmental Justice Policy Statement") ("Although independent agencies, such as the NRC, were only requested, rather than directed, to comply with the E.O., NRC Chairman Ivan Selin, in a letter to President Clinton, indicated that the NRC would endeavor to carry out the measures set forth in the E.O. and the accompanying memorandum as part of the NRC's efforts to comply with the requirements of NEPA.").

[73] *Id.* at 52,046 (citing *La. Energy Svcs., L.P.* (Clairborne Enrichment Center), CLI-98-03, 47 NRC 77 (1998); *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-02-20, 56 NRC 147 (2002)); *see also Entergy Nuclear Ops., Inc.* (Indian Point, Units 2 & 3), CLI-15-06, 81 NRC 340, 369 (2015) ("Executive Order 12898 did not, in itself, create new substantive authority for federal agencies; therefore, the NRC determined at the time that it would endeavor to carry out these environmental justice principles as part of the agency's responsibilities under NEPA.").

[74] *Environmental Justice Policy Statement*, 69 Fed. Reg. at 52,044; *see also id.* ("The [Atomic Energy Act] does not give the Commission the authority to consider EJ-related issues in NRC licensing and regulatory proceedings.").

Like all NEPA claims, these contentions must be directed at an alleged deficiency in the NRC's process; they are not an independent means to attack the ultimate outcome of a licensing proceeding.[75] Accordingly, to the extent Petitioner seeks to raise an environmental justice contention applicable to this proceeding, Petitioner is limited to a contention attacking the NRC's NEPA review of *the challenged licensing action*. As discussed in subsection 2 below, the Petitioner is foreclosed from raising environmental justice contentions in the context of NRC's NEPA review of the LAR because, as SNC demonstrated in the LAR, the LAR is subject to a categorical exclusion.

It appears that Petitioner's actual concern relates to the environmental justice associated with issuance of the COLs for Vogtle, rather than the LAR. The NRC addressed environmental justice issues associated with the construction and operation of VEGP Units 3 and 4 in the Environmental Impact Statements ("EIS") for the ESP and COLs, published in August 2008 and March 2011, respectively.[76] Despite suggestions by Petitioner to the contrary, NEPA review of the Units 3 and 4 ESP and COLs is closed. As discussed in more detail in subsection 3 below, Petitioner's argument related to environmental justice for the COLs raises an issue that is outside the scope of this proceeding.

2. *License amendments are categorically excluded from NEPA review unless they fail to satisfy the requirements of 10 CFR § 51.22(c)(9)*

NRC regulations make clear that the NRC's NEPA obligations related to issuance of license amendments is limited; *i.e.*, issuance of a license amendment is categorically excluded

[75] *See Nuclear Innovation N. Am. LLC* (S. Tex. Project, Units 3 & 4), LBP-12-5, 75 NRC 227, 236 (2012) ("NEPA does not mandate substantive results; rather, NEPA imposes procedural restraints on agencies….").

[76] NUREG-1872, Vol. 2, "Final Environmental Impact Statement for an Early Site Permit (ESP) at the Vogtle Electric Generating Plant Site" (July 2008); NUREG-1947, "Final Environmental Impact Statement for Combined Licenses (COL) for Vogtle Electric Generating Plant Units 3 and 4" (Mar. 2011).

from the environmental review requirement provided that "(i) The amendment . . . involves no significant hazards consideration; (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and (iii) There is no significant increase in individual or cumulative occupational radiation exposure."[77]

Here, where the contention is based on a claim of a violation of E.O. 12898, and thus with the NRC's NEPA review, in order to show a "genuine dispute" with respect to the LAR as required by § 2.309(f)(1)(vi), Petitioner must at a minimum show a genuine dispute with SNC's conclusion that the LAR falls within the 10 CFR § 51.22(c)(9) categorical exclusion. Petitioner fails to address whether – much less demonstrate that – the LAR does not fall within the categorical exclusion in § 51.22(c)(9). Petitioner has not identified any deficiency in SNC's environmental review presented in the LAR[78] and has not alleged that any significant environmental impacts caused by the LAR would disproportionately impact low-income or minority populations when compared to those experienced by the general population.[79]

Further, to the extent Petitioner is attempting to rely generally on a "greater risk from ionizing radiation exposure," Petitioner has not provided any factual or expert support for this

[77] 10 CFR § 51.22(c)(9)(i)-(iii).

[78] In Section 4.3 and Section 5 of the LAR, SNC evaluates the amendment against the criteria set forth in 10 CFR § 51.22(a)(9) and concludes that (i) there is no significant hazards consideration, (ii) there is no significant change in the types of effluents that may be released offsite, and (iii) there is no significant increase in occupational radiation exposure. LAR-15-015, Enclosure 1 at 10-13.

[79] To make out an environmental justice contention: "First, support must be presented regarding the alleged existence of adverse impacts or harm on the physical or human environment. Second, a supported case must be made that these purported adverse impacts could disproportionately affect poor or minority communities in the vicinity of the facility at issue." *Southern Nuclear Op. Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-03, 65 NRC 237, 262 (2007); *see also System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-04, 61 NRC 10, 20-21 (2005) (affirming the licensing board's rejection of an environmental justice contention because the petitioner failed to show a disproportionate impact on the low-income population in question).

bare assertion as necessary for the contention to comply with § 2.309(f)(1)(v).[80] In fact, not only is the Petition devoid of technical support related to increased risk from ionizing radiation exposure in general, but the Petition does not discuss what populations the risk could impact. With no support for the claimed injury, and no support for the connection between that injury and a population that would implicate environmental justice considerations, Contention THREE does not satisfy § 2.309(f)(1)(v).

Accordingly, Contention THREE is inadmissible because it fails to demonstrate that a genuine dispute exists per § 2.309(f)(1)(vi) with regard to the LAR's categorical exclusion from a detailed NEPA review or provide any factual or expert support for the asserted environmental impact per § 2.309(f)(1)(v).

3. *Contention THREE raises issues beyond the scope of this proceeding and seeks to relitigate NEPA claims already rejected by the NRC*

Contention THREE is nothing more than a challenge to the NRC's policy for implementing the E.O. and a (second) attempt to reopen the environmental justice evaluation conducted in the VEGP Units 3 and 4 ESP and COL proceedings. Neither is within the scope of this proceeding and neither raises an issue material to the findings the NRC must make in this proceeding.

The Petition and the Declaration of Rev. Charles Utley raise several general concerns with the NRC's environmental justice policy; however, an adjudicatory proceeding on a specific

[80] *See Vogtle ESP*, LBP-07-03, 65 NRC at 262-63; *see also PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), LBP-09-18, 70 NRC 385, 430 (2009) (requiring a showing of "*significant, adverse, environmental impacts* that will result from the [licensing action in question]") (emphasis added)); *Indian Point*, CLI-15-6, 81 NRC at 380 ("By the terms of the Executive Order, magnitude [of the environmental impact] is relevant.").

license amendment is not the forum to address such concerns.[81] In that regard, the only basis offered by the Petitioner for Contention THREE is the Declaration of Rev. Utley. However, that Declaration does not even mention the LAR. Instead, the Declaration and the Petitioner allege that the location of the new VEGP units raises environmental justice problems. In this respect Petitioner simply seeks to reopen the EIS on the VEGP ESP and COLs and relitigate a contention that was rejected during the VEGP Units 3 and 4 COL proceeding. In August 2011, Petitioner filed a motion to reopen the record and admit a new NEPA contention raising the same environmental justice concerns that are the subject of Contention THREE, accompanied by a similar declaration by Rev. Utley and the same 2009 report relied on in the present Petition.[82]

Petitioner filed the motion to reopen and admit a contention ostensibly in response to the Fukushima Near-Term Task Force's 2011 report. The licensing board rejected the contention on the grounds that it was untimely because it was not triggered by the Fukushima accident or the subsequent Near Term Task Force Report.[83] The licensing board noted that Petitioner's arguments "are footed in (1) longstanding generic concerns about the agency's implementation of environmental justice . . . and (2) a 2009 siting study, concerns about which could have been raised at a much earlier junction in the proceeding".[84] For the same reasons articulated by the ASLB in 2011, Contention THREE was also not triggered by anything in the LAR, but rather is

[81] *See Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), LBP-00-23, 52 NRC 114, 125 (2000) ("[A] contention is subject to dismissal if it . . . is nothing more than a generalization regarding the petitioner's views of what applicable policies ought to be . . . .").

[82] BREDL Motion to Reopen the Record and Admit Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-ichi Accident (Aug. 11, 2011), *available at* ADAMS Accession No. ML11223A481.

[83] *PPL Bell Bend, LLC et al.*, LBP-11-27, 74 NRC 591, 602 n.54 (2011) (citations omitted), *aff'd* CLI-12-07, 75 NRC 379, 391 n.46 (2012).

[84] *Id*.

a "longstanding generic concern[ ]" that should have been raised at the outset of the VEGP COL proceeding.

As discussed above, the NEPA process for VEGP Units 3 and 4 ESP and COL is closed and Petitioner does not support a claim regarding the environmental impacts of *the LAR*, as opposed to the operation of VEGP Unit 3 and 4 generally. As a challenge to the NRC's environmental justice policy and the environmental justice analysis conducted in the VEGP Units 3 and 4 ESP and COL proceedings, Contention THREE is beyond the scope of this proceeding. Further, consideration of environmental impacts (including related to environmental justice) of the overall operation of VEGP Unit 3 and 4 are not material to the findings the NRC must make to support Amendment No. 42. Contention THREE is inadmissible for failure to satisfy § 2.309(f)(1)(iii) and (iv).

IV. CONCLUSION

The Petition should be denied because Petitioner has not established that its members have standing and, thus, that it has representational standing. Petitioner's sole standing argument is based on its members' proximity to the VEGP units, but the NRC's "proximity presumption" does not apply to this proceeding. In addition, none of Petitioner's three contentions satisfies the requirements of § 2.309(f)(1). Each of the contentions fails to clearly articulate a genuine dispute that BREDL seeks to litigate and Petitioner has not supported any of its assorted statements with sufficient factual evidence or expert support. Petitioner's arguments largely raise issues that are not relevant to this proceeding, which is limited only to Amendment No. 42 and does not involve the NRC's regulations authorizing license amendments, the stringency of ACI codes, the NRC's environmental justice policy, or the impacts of constructing and operating the new VEGP units. Accordingly, the Petition must be denied.

Respectfully submitted,

Executed in accord with 10 CFR 2.304(d)
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: SOUTHERN NUCLEAR OPERATING CO. License Amendment Application for Combined Licenses NPF-91 and NPF-92 Vogtle Electric Generating Plant Units 3 and 4	)	Docket Nos. 52-025-LA; 52-026-LA January 4, 2016

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305, I certify that on this date copies of the foregoing Answer Opposing Petition to Intervene and Request for Hearing were served upon the Electronic Information Exchange (the NRC's E-Filing System) in the above captioned matter.

Signed electronically by

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