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November 6, 2017

NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY OPERATIONS, INC.) Docket No. 50-458-LR
)
(River Bend Station, Unit 1))

NRC STAFF'S RESPONSE TO PETITION TO INTERVENE
AND REQUEST FOR HEARING FILED BY THE SIERRA CLUB

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i), the Staff of the U.S. Nuclear Regulatory Commission ("NRC Staff") hereby files its response to the petition for leave to intervene and request for hearing filed by the Sierra Club on October 12, 2017.¹ For the reasons set forth herein, the Staff submits that the Sierra Club has demonstrated its standing to intervene in this proceeding but has not proffered an admissible contention, as required by 10 C.F.R. § 2.309(f)(1)-(2). Accordingly, the Staff respectfully submits that the Petition should be denied.

In the following discussion, the Staff provides, first, a brief description of the background of this license renewal proceeding; second, a discussion of the petitioner's standing to intervene; and third, a discussion of the admissibility of each of the petitioner's three proposed contentions.

BACKGROUND

This proceeding arises from the application submitted by Entergy Operations, Inc. on May 25, 2017, on behalf of itself and Entergy Louisiana, LLC (collectively, "Entergy" or

¹ See Petition to Intervene and Request for Adjudicatory Hearing by Sierra Club ("Petition") (Oct. 12, 2017) (Agencywide Documents Access and Management System ("ADAMS") Accession No. ML17285B126).

“Applicant”) to renew the operating license for River Bend Station, Unit 1 (“River Bend” or “RBS”).² River Bend is a boiling-water reactor plant of the General Electric (“GE”) Type 6 design; it is currently licensed to operate at a power level of 3,091 megawatts thermal (MWt), with a net maximum output of approximately 967 megawatts electric (MWe).³ River Bend’s current license expires at midnight on August 29, 2025; Entergy’s license renewal application (“LRA”) seeks to extend the River Bend license for an additional 20 years, until August 29, 2045.⁴

River Bend is located on approximately 3,342 acres of Entergy Louisiana, LLC-owned land, situated on the east bank of the Mississippi River at about RM 262, in the southern portion of West Feliciana Parish, Louisiana.⁵ The RBS site is approximately 3 miles east-southeast of Francisville, Louisiana, which is the closest community to the site; the nearest population center is the city of Baton Rouge, Louisiana, located approximately 24 miles south-southeast of the RBS site.⁶

On August 7, 2017, the NRC issued a determination of acceptability and sufficiency for docketing of the LRA,⁷ and on August 14, 2017, the NRC published a notice of opportunity for

² Letter from William F. Maguire,(Entergy) to NRC Document Control Desk, Re: License Renewal Application, River Bend Station – Unit 1, Docket No. 50-458, License No. NPF-47, RBG-47735 (May 25, 2017) (ADAMS Document Package Accession No. ML17153A282) (“LRA”).

³ Environmental Report (“ER”), LRA Appendix E, at 2-2 (ADAMS Accession No. ML17174A531).

⁴ *Id.* at 1-1 and 2-1. River Bend Station, Unit 1 is the only nuclear plant at the site. River Bend Station, Unit 2, was cancelled on January 5, 1984. Entergy later submitted a combined license (“COL”) application for RBS Unit 3 on September 25, 2008, which it withdrew on December 4, 2015. *Id.* at 1-7.

⁵ *Id.* at 3-1.

⁶ *Id.*

⁷ Letter from Sheldon Stuchell (NRC) to William F. Maguire (Entergy), Re: Determination of Acceptability and Sufficiency for Docketing and Proposed Review Schedule Regarding the Application from Entergy Operations, Inc. For Renewal of the Operating License for River Bend Station, Unit 1 (CAC No. MF9747 and MF9778) (Aug. 7, 2017) (ADAMS Accession No. ML17187A035).

hearing on the LRA.⁸ The Notice required that petitions for leave to intervene and requests for hearing be filed within 60 days of publication of the Notice (i.e., by October 13, 2017).⁹ On October 12, 2017, the Sierra Club timely filed its Petition. An Atomic Safety and Licensing Board (“Licensing Board” or “Board”) was established on October 18, 2017, to rule on petitions to intervene and hearing requests, and to preside over any proceeding that may be held.¹⁰

DISCUSSION

I. Standing to Intervene

A. Applicable Legal Requirements

In accordance with the Commission’s Rules of Practice, “[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing [or petition for leave to intervene] and a specification of the contentions which the person seeks to have litigated in the hearing.” 10 C.F.R. § 2.309(a).¹¹ The regulations further provide that the Licensing Board “will grant the request/petition if it determines that the requestor/ petitioner has standing under the provisions of [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of [10 C.F.R. § 2.309(f)].” *Id.*

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

⁸ Entergy Operations, Inc., River Bend Station, Unit 1; License renewal application; opportunity to request a hearing and to petition for leave to intervene, 82 Fed. Reg. 37,908 (Aug. 14, 2017) (“Notice”).

⁹ *Id.*, 82 Fed. Reg. at 37,909.

¹⁰ Entergy Operations, Inc.; Establishment of Atomic Safety and Licensing Board, 82 Fed. Reg. 49,233 (Oct. 24, 2017).

¹¹ “*Person* means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission . . . , any State or any political subdivision of, or any political entity within a State, any foreign government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.” 10 C.F.R. § 2.4.

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

10 C.F.R. § 2.309(d)(1).¹² The regulations state that in ruling on a request for hearing or petition to intervene, the Commission, presiding officer or Licensing Board “must determine, among other things, whether the petitioner has an interest affected by the proceeding considering the factors enumerated in [§ 2.309(d)(1)].”¹³

As the Commission has observed, the NRC has “long applied ‘contemporaneous judicial concepts of standing’” which requires a “concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision.”¹⁴ As the Commission has stated, “[a]t the heart of the standing inquiry is whether the petitioner has ‘alleged such a personal stake in the outcome of the controversy’ as to demonstrate that a concrete adverseness exists which will sharpen the presentation of issues.”¹⁵

¹² If a state, local governmental body or affected Federally-recognized Indian Tribe wishes to participate as a party in a proceeding for a facility located within its boundaries, it need not address the standing requirements. 10 C.F.R. § 2.309(h)(2).

¹³ 10 C.F.R. § 2.309(d)(2). The presiding officer may also consider a request for discretionary intervention in the event that a petitioner is determined to lack standing to intervene as a matter of right, where a sufficient showing is made with respect to the factors enumerated in 10 C.F.R. § 2.309(e).

¹⁴ *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009) (quoting *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993))

¹⁵ *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994), (citing *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72 (1978) and quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962))

In construction permit and operating license proceedings, standing to intervene has been found to exist based upon a proximity presumption, for persons who reside or frequent an area within approximately 50 miles of the facility.¹⁶ Similarly, as the Commission recently observed, the proximity presumption has been found to establish standing to intervene in license renewal proceedings.¹⁷ The proximity presumption establishes standing to intervene without the need to establish the elements of injury, causation, or redressability.

An organization may establish its standing to intervene based on organizational standing (showing that its own organizational interests could be adversely affected by the proceeding), or representational standing (based on the standing of its members). Where an organization seeks to establish "representational standing," it must show that at least one of its members may be affected by the proceeding, it must identify that member's name and address, and it must show that the member has "authorized the organization to request a hearing on their behalf."¹⁸ Further, for the organization to establish representational standing, the member seeking representation must qualify for standing in his or her own right; the interests that the organization seeks to protect must be germane to its own purpose; and neither the asserted

¹⁶ See, e.g., *Calvert Cliffs*, CLI-09-20, 70 NRC at 915-16.

¹⁷ *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 n.15, citing *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-06, 53 NRC 138, 150 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001) (noting that the *Turkey Point* Board decision was "applying [the] proximity presumption in [a] reactor operating license renewal proceeding"). See also, *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), LBP-13-8, 78 NRC 1, 7-8 (2013) (citing *Calvert Cliffs*, CLI-09-20, 70 NRC at 915 n.15); *Entergy Nuclear Operations Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43 at 60 (2008); *AmerGen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), LBP-06-07, 63 NRC 188, 196-97 (2006).

¹⁸ *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 409-10 (2007). See also, *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), LBP-15-5, 71 NRC 249, 256 (2015); *Oyster Creek*, LBP-06-07, 63 NRC at 195 (2006) (citing *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 192, 202 (2000)).

claim nor the requested relief must require an individual member to participate in the organization's legal action.¹⁹

B. The Petitioner's Standing to Intervene

The Sierra Club seeks to establish representational standing to intervene, based on the individual standing of William Fontenot.²⁰ Mr. Fontenot filed a Declaration in support of the Petition, in which he provides his home address and states, *inter alia*, that his home is approximately 30 miles from the River Bend site; that he is a member (and Conservation Chair) of the Delta Louisiana Chapter of the Sierra Club; that he is concerned over the safety of River Bend, increased spent fuel storage at the site, and the risks of an accident; that he opposes River Bend's application for license renewal; and that he authorizes the Sierra Club to represent his interests in the proceeding.²¹

As discussed above, under the doctrine of representational standing, an organization may demonstrate standing based on the interests of its members. The group must show that the licensing action it challenges may injure someone the group is authorized to represent. The organization must identify at least one member, demonstrate how that member's interests may be affected, and show that the group is authorized to request a hearing on behalf of that member.

Here, the Sierra Club provides the name and address of one of its members (William Fontenot) who states that he opposes the renewal of the River Bend license and is concerned about the safety of the plant, increased spent fuel storage and the risks of an accident that may

¹⁹ *Palisades*, CLI-07-18, 65 NRC at 409-10; *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999) (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

²⁰ Petition at 3.

²¹ Declaration of William Fontenot (Sept. 14, 2017), ¶¶ 1-7.

occur if the license is renewed. While the Sierra Club has not shown that its member would suffer any concrete or particularized injury caused by the challenged action that would be redressed by a favorable decision in this proceeding, Mr. Fontenot's Declaration demonstrates that he resides within 50 miles of the plant and that he has authorized the Sierra Club to represent him in this proceeding. As such, the Sierra Club has shown that at least one of its members would have standing to intervene in his own right, based on the proximity presumption. Accordingly, the Staff submits that the Sierra Club has satisfactorily established its representational standing to intervene in this proceeding under the proximity presumption, based on the location of its member's residence within 50 miles of River Bend.²²

II. Admissibility of the Petitioners' Proffered Contentions

A. Legal Requirements for Contentions

1. General Requirements for Admissibility

The legal requirements governing the admissibility of contentions are set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice (formerly 10 C.F.R. § 2.714(b)).²³ Specifically, in order to be admitted, a contention must satisfy the following requirements:

²² The use of online mapping tools confirms that Mr. Fontenot's residence is located approximately 30 miles from River Bend.

²³ These requirements substantially reiterate the requirements stated in former § 2.714, published in revised form in 1989. See Statement of Consideration, "Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process," 54 Fed. Reg. 33,168 (Aug. 11, 1989), as corrected, 54 Fed. Reg. 39,728 (Sept. 28, 1989). While § 2.714 was revised in 1989, those revisions did not constitute "a substantial departure" from then existing practice in licensing cases. 54 Fed. Reg. at 33,170-71. See also *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-94-11, 39 NRC 205, 207 (1994). Thus, the prior standards governing the admissibility of contentions remain in effect to the extent they do not conflict with the 1989 amendments. *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-91-19, 33 NRC 397, 400 (1991).

(f) *Contentions*. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition 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;²⁴
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;²⁵
- (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;²⁶
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/ petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;²⁷ [and]

²⁴ The requirement that a petitioner provide an explanation of the basis for its contention helps to define the scope of a contention – “[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases.” *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988); *accord Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002).

²⁵ The scope of any particular proceeding is defined by the Commission in its initial hearing notice and Order referring the proceeding to the Board. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). Contentions may only be admitted if they fall within the scope of issues set forth in the Federal Register Notice and comply with the requirements of former § 2.714(b) (restated in § 2.309(f)), and applicable case law. *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976); *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

²⁶ “Materiality” requires that the petitioner show why the alleged error or omission is of possible significance to the result of the proceeding, demonstrating a “significant link between the claimed deficiency and the agency’s ultimate determination. *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), LBP-15-20, 81 NRC 829, 850 (2015).

²⁷ It is the petitioner’s obligation to present the factual information and expert opinions necessary to support its contention. *See USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006) (it is the Proponent’s responsibility to satisfy the basic contention admissibility requirements; Boards should not have to search through a petition to “uncover” arguments and support for a contention, and “may not simply “infer’ unarticulated bases of contentions”). *See also Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149, 155 (1991).

- (vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. . . .²⁸

- (vii) [Inapplicable]²⁹

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report . . .

10 C.F.R. § 2.309(f)(1)-(2) (emphasis added).

As has often been observed, the contention admissibility rules exist to "focus litigation on concrete issues, and result in a clearer and more focused record for decision."³⁰ In this regard, the Commission has explained that the rules governing the admissibility of contention

²⁸ All contentions must "show that a genuine dispute exists" with regard to the license application in question, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute. This requires the Petitioner to read the entire application, state both the applicant and petitioner's views, and explain the disagreement, and if Petitioner believes an issue is not addressed, to explain the deficiency. Basic assertions that an application is insufficient or inadequate is insufficient to meet this standard. *Nuclear Management Co., LLC* (Palisades Nuclear Power Plant), LBP-06-10, 63 NRC 314, 340-42 (2006).

²⁹ The provisions in 10 C.F.R. § 2.309(f)(1)(vii) pertain to proceedings regarding combined licenses under 10 C.F.R. Part 52 and are not applicable here.

³⁰ See e.g., *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, NE), LBP-15-15, 81 NRC 598, 601 (2015) (citing "Changes to Adjudicatory Process," 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004)).

are "strict by design."³¹ Failure to comply with any of the requirements set forth in the regulations is grounds for the dismissal of a contention.³² As further stated by the Commission, the rules require "a clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish the validity of the contention." "Mere 'notice pleading' does not suffice."³³ "A petitioner's issue will be ruled inadmissible if the petitioner 'has offered no tangible information, no experts, no substantive affidavits,' but instead only 'bare assertions and speculation.'"³⁴

It is well established that the purpose for the "basis" requirements is (1) to assure that the contention raises a matter appropriate for adjudication in a particular proceeding; (2) to establish a sufficient foundation for the contention to warrant further inquiry into the assertion; and (3) to put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against or oppose.³⁵ Determining whether the contention is

³¹ *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2) CLI-16-5, 83 NRC 131, 136 (2016) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001) and *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010)). As the Commission further stated, it "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." Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004); *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), LBP-15-17, 81 NRC 753, 777 (2015).

³² *Indian Point*, CLI-16-5, 83 NRC at 136. See also *Oconee Nuclear Station*, CLI-99-11, 49 NRC at 334-35 (identifying that heightened contention admissibility are designed to preclude contentions "based on little more than speculation"). These requirements are intended, *inter alia*, to ensure that a petitioner reviews the application and supporting documentation prior to filing contentions; that the contention is supported by at least some facts or expert opinion known to the petitioner at the time of filing; and that there exists a genuine dispute between the petitioner and the applicant before a contention is admitted for litigation -- so as to avoid the practice of filing contentions which lack any factual support and seeking to flesh them out later through discovery. See e.g., *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-35, 34 NRC 163, 167-68 (1991).

³³ *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-119 (2006) (footnotes omitted).

³⁴ *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003) (citing *Oyster Creek*, CLI-00-6, 51 NRC at 208).

³⁵ *Peach Bottom*, ALAB-216, 8 AEC at 20-21.

adequately supported by a concise allegation of the facts or expert opinion is not a hearing on the merits; a petitioner does not have to prove its contention at the admissibility stage,³⁶ or provide all the evidence required to withstand a summary disposition motion.³⁷ Nonetheless, the Petitioner must provide some support for its contention, either in the form of facts or expert testimony, and “[f]ailure to do so requires that the contention be rejected.”³⁸

If a petitioner neglects to provide the requisite support for its contentions, the Board should not make assumptions of fact that favor the petitioner, or search for or supply information that is lacking.³⁹ Moreover, any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny.⁴⁰ Likewise, providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention.⁴¹ In short, the information, facts, and expert opinions provided by the petitioner are to be examined by the Board to confirm that they do indeed supply adequate support for the contention.⁴²

³⁶ *Private Fuel Storage L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004).

³⁷ Compare 10 C.F.R. § 2.710(c). “[A]t the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion.” 54 Fed. Reg. at 33,171.

³⁸ *Palo Verde*, CLI-91-12, 34 NRC at 155; *accord*, *Indian Point*, CLI-16-5, 83 NRC at 136. See “Rules of Practice for Domestic Licensing Proceedings - Procedural Changes in the Hearing Process,” 54 Fed. Reg. at 33,170 (“This requirement does not call upon the intervener to make its case at this stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for its contention.”).

³⁹ See *American Centrifuge Plant*, CLI-06-10, 63 NRC at 457 (2006).

⁴⁰ *Tennessee Valley Authority* (Bellefonte Nuclear Plant, Units 1 and 2), LBP-10-7, 71 NRC 391, 421 (2010); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996).

⁴¹ See *Fansteel*, CLI-03-13, 58 NRC at 205.

⁴² *Bellefonte Nuclear Plant*, LBP-10-7, 71 NRC at 421 (citing *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990)).

Finally, the *Peach Bottom* decision requires that a contention be rejected if it constitutes an attack on applicable statutory requirements; challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;⁴³ is nothing more than a generalization regarding the petitioner's view of what applicable policies ought to be; seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or seeks to raise an issue which is not concrete or litigable.⁴⁴

2. Scope of License Renewal Proceedings

As stated in 10 C.F.R. 2.309(f)(1)(iii), *supra*, a petitioner must demonstrate that the "issue raised in the contention is within the scope of the proceeding"; a contention that falls outside the specified scope of the proceeding must be rejected.⁴⁵ In particular, the scope of a license renewal proceeding is limited, under the Commission's regulations in 10 C.F.R. Part 54, to the specific matters that must be considered for the license renewal application to be granted.⁴⁶ Pursuant to 10 C.F.R. § 54.29, the following standards are considered in determining whether to grant a license renewal application:

⁴³ As set forth in 10 C.F.R. § 2.335(a), "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding," in the absence of a waiver petition granted by the Commission. See also *Millstone*, CLI-03-14, 58 NRC at 218. Further, any contention that amounts to an attack on applicable statutory requirements or represents a challenge to the basic structure of the Commission's regulatory process must be rejected. *Public Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982) (*citing Peach Bottom*, ALAB-216, 8 AEC at 20-21).

⁴⁴ *Peach Bottom*, ALAB-216, 8 AEC at 20-21.

⁴⁵ *Portland Gen. Elec. Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979); *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-12-18, 76 NRC 127, 157 (2012).

⁴⁶ *Oyster Creek*, CLI-06-24, 64 NRC at 118-119.

10 C.F.R. § 54.29 Standards for issuance of a renewed license:

A renewed license may be issued by the Commission up to the full term authorized by § 54.31 if the Commission finds that:

(a) Actions have been identified and have been or will be taken with respect to the matters identified in Paragraphs (a)(1) and (a)(2) of this section, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB [current licensing basis], and that any changes made to the plant's CLB in order to comply with this paragraph are in accord with the Act and the Commission's regulations. These matters are:

(1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under § 54.21(a)(1); and

(2) time-limited aging analyses that have been identified to require review under § 54.21(c).

(b) Any applicable requirements of Subpart A of 10 C.F.R. Part 51 have been satisfied.

(c) Any matters raised under § 2.335 have been addressed.

These standards, along with other regulations in 10 C.F.R. Part 54, and the environmental regulations related to license renewal set forth in 10 C.F.R. Part 51 and Appendix B thereto, establish the scope of issues that may be considered in a license renewal proceeding.⁴⁷ The failure of a proposed contention to demonstrate that an issue is within the scope of the proceeding is grounds for its dismissal.⁴⁸

⁴⁷ See generally, Statement of Consideration, "Nuclear Power Plant License Renewal," 56 Fed. Reg. 64,943 (Dec. 13, 1991) (hereinafter referred to as "1991 Statement of Consideration"); Statement of Consideration, "Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461 (May 8, 1995) (hereinafter referred to as "1995 Statement of Consideration").

⁴⁸ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 567 (2005).

The Commission has provided guidance for license renewal adjudications regarding what safety and environmental issues fall within or beyond its license renewal requirements.⁴⁹ Specifically, the NRC conducts a technical review pursuant to 10 C.F.R. Part 54, to assure that pertinent public health and safety requirements have been satisfied.⁵⁰ In addition, the NRC performs an environmental review pursuant to 10 C.F.R. Part 51 to assess the potential impacts of twenty additional years of operation.⁵¹ Regardless of whether or not a license renewal application has been filed for a facility, the Commission has a continuing responsibility to oversee the safety and security of ongoing plant operations, and it routinely oversees a broad range of operating issues under its statutory responsibility to assure the protection of public health and safety for operations under existing operating licenses. Therefore, for license renewal, the Commission has found it unnecessary to include a review of issues already monitored and reviewed in ongoing regulatory oversight processes.⁵²

The Commission has clearly stated that its license renewal safety review focuses on “plant systems, structures, and components for which current [regulatory] activities and requirements *may* not be sufficient to manage the effects of aging in the period of extended operation.”⁵³ Further, the Commission stated that: “Adjudicatory hearings in individual license renewal proceedings will share the same scope of issues as our NRC Staff review; for our

⁴⁹ See *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 6 (2001).

⁵⁰ *Id.* at 6

⁵¹ *Id.* at 6-7.

⁵² *Id.* at 8-10. For example, the Commission has held that “[i]ssues like emergency planning – which already are the focus of ongoing regulatory processes – do not come within the NRC’s safety review at the license renewal stage.” *Turkey Point*, CLI-01-17, 54 NRC at 10; *accord, Millstone*, CLI-05-24, 62 NRC at 565, 567. In this regard, it should be noted that no finding under 10 C.F.R. § 50.47 (“Emergency Plans”) is necessary for issuance of a renewed nuclear power reactor operating license.

⁵³ *Id.* at 10, *quoting* 60 Fed. Reg. at 22,469.

hearing process (like our Staff's review) necessarily examines only the [safety] questions our safety rules make pertinent."⁵⁴

The permissible scope of the Commission's environmental review in a license renewal proceeding is similarly limited by NRC regulations. In 1996, the Commission amended the environmental review requirements in 10 C.F.R. Part 51 to address the scope of environmental review for license renewal applications. The regulations divide the license renewal environmental review into (1) generic issues, and (2) plant-specific issues. The generic impacts of operating a plant for an additional 20 years that are common to all plants, or to a specific subgroup of plants, were addressed in the Commission's 1996 Generic Environmental Impact Statement for License Renewal of Nuclear Plants ("GEIS");⁵⁵ The findings and analyses contained in the GEIS were used by the Commission in revising 10 C.F.R. Part 51 to define the scope of the agency's review of the environmental impacts of license renewal under NEPA.⁵⁶ In addition, the 1996 rule added Appendix B to Subpart A of 10 C.F.R. Part 51, "Environmental Effect of Renewing the Operating License of a Nuclear Power Plant"; Appendix B included Table B-1, "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants," which summarized the findings of the 1996 GEIS.

Generic impacts analyzed in the GEIS are designated as "Category 1" issues, whereas site-specific issues are designated as "Category 2" issues. A license renewal applicant is generally not required to discuss generic Category 1 issues in its Environmental Report, but instead may reference and adopt the Commission's generic findings set forth in 10 C.F.R. Part

⁵⁴ *Id.* at 10.

⁵⁵ See NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" ("GEIS") (May 1996). The 1996 GEIS was revised in June 2013. See NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," Rev. 1 (June 2013).

⁵⁶ Final Rule, "Environmental Review of Renewal of Nuclear Power Plant Operating Licenses," 61 Fed. Reg. 28,467 (June 5, 1996).

51 and the GEIS.⁵⁷ An applicant must, however, provide a plant-specific review of the non-generic "Category 2" issues in its Environmental Report, and must address any new and significant information which might render the Commission's generic determinations incorrect in that proceeding.⁵⁸ Similarly, the NRC Staff is not required to address generic (Category 1) impacts in its plant-specific environmental impact statement, which it publishes as a supplement to the GEIS ("SEIS").⁵⁹

Contentions raising environmental issues in a license renewal proceeding are similarly limited to those issues which are affected by license renewal and have not been addressed by rulemaking or on a generic basis.⁶⁰ As the Commission has stated, Category 1 issues "are not subject to site-specific review and thus fall beyond the scope of individual license renewal proceedings."⁶¹ Thus, in ruling that a contention raising the environmental impacts of spent fuel storage may not be admitted in a license renewal proceeding, the Commission stated:

⁵⁷ *Turkey Point*, CLI-01-17, 54 NRC at 11. The Commission has emphasized that generic analysis is an appropriate method of meeting the agency's statutory obligations under NEPA. *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-09-10, 69 NRC 521, 523-25 (2009) (citing *Massachusetts v. NRC*, 522 F.3d 115 (1st Cir. 2008)).

⁵⁸ *Turkey Point*, CLI-01-17, 54 NRC at 11-12; *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-09-10, 69 NRC 521, 527 (2009). As a result, Category 1 issues "are not subject to site-specific review and thus fall beyond the scope of individual license renewal proceedings." *Turkey Point*, CLI-01-17, 54 NRC at 12; see 10 C.F.R. § 51.53(c)(3)(i)-(ii).

⁵⁹ The 1996 GEIS identified 92 environmental issues for license renewal, of which 69 issues were determined to be generic (i.e., Category 1), 21 were determined to be plant-specific (i.e., Category 2), and two did not fit into either category (i.e., uncategorized), and which are to be evaluated in each SEIS. Table B-1 of Appendix B summarizes the findings of the environmental impact analyses conducted for the 1996 GEIS, listing each issue and its category level.

⁶⁰ *Turkey Point*, CLI-01-17, 54 NRC at 11-12.

⁶¹ *Id.* at 12; see 10 C.F.R. § 51.53(c)(3)(i)-(ii). In *Turkey Point*, the Commission recognized that the rules "provide a number of opportunities for individuals to alert the Commission to new and significant information that might render a generic finding invalid, either with respect to all nuclear power plants or for one plant in particular. In the hearing process, for example, petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule." *Turkey Point*, CLI-01-17, 54 NRC at 12. No request for waiver has been requested by the Sierra Club here.

In 1996, the Commission amended the environmental review requirements in 10 C.F.R. Part 51 to address the scope of environmental review for license renewal applications. The regulations divide the license renewal environmental review into generic and plant-specific issues. The generic impacts of operating a plant for an additional 20 years that are common to all plants, or to a specific subgroup of plants, were addressed in a 1996 GEIS. Those generic impacts analyzed in the GEIS are designated "Category 1" issues. A license renewal applicant is generally excused from discussing Category 1 issues in its environmental report. Generic analysis is "clearly an appropriate method" of meeting the agency's statutory obligations under NEPA.

The license renewal GEIS determined that the environmental effects of storing spent fuel for an additional 20 years at the site of nuclear reactors would be "not significant." Accordingly, this finding was expressly incorporated into Part 51 of our regulations. Because the generic environmental analysis was incorporated into a regulation, the conclusions of that analysis may not be challenged in litigation unless the rule is waived by the Commission for a particular proceeding or the rule itself is suspended or altered in a rulemaking proceeding.⁶²

B. Analysis of the Sierra Club's Proposed Contentions

1. Sierra Club Contention 1

The Sierra Club's Contention 1 asserts as follows:

The environmental report submitted by Entergy Operations does not properly and adequately state a purpose and need for the relicensing of River Bend Station.

Petition at 6. In explaining this contention, the Sierra Club states that the ER "relies on an NRC guidance document that says the purpose and need for a license renewal will be determined by decisionmakers other than the NRC." Petition at 6 (citing Section 1.0 of the ER). The

⁶² *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-07-03, 65 NRC 13, 17 (footnotes omitted), *reconsid. denied*, CLI-07-13, 65 NRC 211, 214 (2007). This approach has been found to comply with NEPA. See, e.g., *Massachusetts v. NRC*, 708 F.3d at 68-69. Following publication of a site-specific supplement to the GEIS, further supplementation is required only "if there are 'significant new circumstances or information' . . . [that] paint[s] a dramatically different picture of impacts compared to the description of impacts in the EIS." *Id.* at 68-69, quoting *Town of Winthrop v. FAA*, 535 F.3d 1, 7, 12 (1st Cir. 2008).

Petitioner then asserts that “[r]eliance on other decisionmakers to determine the purpose and need is an abdication of the NRC’s duty under NEPA and contrary to the requirements of NEPA.” *Id.*⁶³ Further, the Petitioner states that the Applicant’s Environmental Report “does not actually state a purpose and need for the relicensing of the River Bend station,” that the Applicant’s purpose and need is the re-licensing of River Bend, and that this purpose and need is unreasonably narrow. *Id.* at 6-7. Finally, the Petition asserts that “[t]he real purpose and need should be to provide the citizens of Louisiana with safe, clean, and affordable power.” *Id.* at 8; emphasis added.

Regardless of the Petitioner’s view of what the “real purpose and need” for River Bend license renewal is or “should be”, its Contention 1 is not admissible for litigation because, among other things, it constitutes an impermissible challenge to the Commission’s regulatory framework establishing the purpose and need for license renewal.

The Commission has clearly explained how the purpose and need for license renewal should be addressed in an environmental review. In 1991, the NRC published its proposed rules governing the environmental review of license renewal applications;⁶⁴ in 1994, the NRC proposed supplemental rulemaking to revise the definition of “purpose and need” to be used in the environmental review of license renewal applications.⁶⁵ The recommended approach set forth in the supplemental rulemaking included redefining the “purpose and need for the

⁶³ The Petitioner’s Contention 1 and supporting information is similar to information that was submitted on behalf of the Nuclear Free Campaign of the Sierra Club, regarding the Draft Environmental Impact Statement (DEIS) for the combined operating license for the Turkey Point Nuclear Plant, Units 6 and 7, received by the NRC on July 16, 2015. (“Comment (253) of Wallace Taylor”) (ADAMS Accession No. ML15294A378) at 1-2 (addressing “Purpose and Need” statement in Draft EIS for Combined Licenses (COLs) for Turkey Point Nuclear Plant, Units 6 and 7). The Petitioner, however, does not show how this information demonstrates an omission or other failing in the Applicant’s River Bend LRA.

⁶⁴ Proposed Rule, Environmental Review for Renewal of Operating Licenses, 56 Fed. Reg. 47,016 (Sept. 17, 1991).

⁶⁵ Supplemental Proposed Rule, Environmental Review for Renewal of Operating Licenses, 52 Fed. Reg. 37,724 (July 8, 1994).

proposed action (renewal of an operating license) as preserving continued operation of a nuclear power plant as a safe option that State regulators and utility officials may consider in their future energy planning decisions.” 52 Fed. Reg. at 37,725.

In 1996, the Commission published its final license renewal regulations and a generic environmental impact statement for license renewal.⁶⁶ In the statement of consideration for the revised regulations, the Commission explained that the 1996 GEIS “clarified the purpose and need for license renewal,” stating as follows:

[T]he Commission has clarified the purpose and need for license renewal in the GEIS as follows:

The purpose and need for the proposed action (renewal of an operating license) is to provide an option that allows for power generation capability beyond the term of a current nuclear power plant operating license to meet future system generating needs, as such needs may be determined by State, utility, and, where authorized, Federal (other than NRC) decisionmakers.

Using this definition of the purpose of and need for the proposed action, which stresses options for the generation of power, the environmental review will include a characterization of alternative energy sources as being the alternatives to license renewal and not merely the consequences of the no-action alternative

. . . This definition of purpose and need reflects the Commission's recognition that, absent findings in the safety review required by the Atomic Energy Act of 1954, as amended, or in the NEPA environmental analysis that would lead the NRC to reject a license renewal application, the NRC has no role in the energy planning decisions of State regulators and utility officials.⁶⁷

⁶⁶ Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (“GEIS”), NUREG-1437, Vols. 1-2 (May 1996).

⁶⁷ Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,472 (June 5, 1996) (emphasis added).

In 2013, the Commission revised the GEIS.⁶⁸ As the Commission later observed, however, in revising the GEIS, “the NRC did not . . . revise the agency's long-standing position that energy alternatives, to be considered reasonable, must be [“]capable of meeting the purpose and need of the proposed action (license renewal) or replacing the power generated by a nuclear power plant.[“]”⁶⁹

In sum, the GEIS describes the “purpose and need” for renewal of a nuclear power plant license.⁷⁰ Here, the Petitioner’s assertions in Contention 1 impermissibly challenge the Commission’s regulatory pronouncements regarding the purpose and need for license renewal, and would instead require the Commission to consider the Sierra Club’s broadly proposed standard of providing the citizens of Louisiana “with safe, clean, and affordable power” (Petition at 8). As such, the Sierra Club impermissibly challenges the Commission’s regulations governing the consideration of purpose and need in license renewal proceedings.

Contention 1 is inadmissible for several additional reasons beyond being a challenge to the regulations. First, nothing in 10 C.F.R. § 51.53(c) suggests that an applicant must propose a “purpose and need” different than the purpose and need set forth in NUREG-1437. In fact, the Applicant’s Environmental Report echoes the purpose and need defined by the Commission.⁷¹ In this regard, a comparison of Section 1.0 (“Purpose of and Need for Action”)

⁶⁸ See (1) Final Rule, Revisions to the Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37282 (June 20, 2013); and (2) Generic Environmental Impact Statement for License Renewal of Nuclear Plants (“GEIS”), NUREG-1437, Rev. 1, Vols. 1-3 (June 2013).

⁶⁹ *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-16-11, 83 NRC 524, 530 (2016).

⁷⁰ See Appendix B to subpart A of 10 C.F.R. Part 51 “Environmental Effect of Renewing the Operating License of a Nuclear Power Plant,” and Section 1.3 “Purpose and Need for the Proposed Action” of NUREG–1437, Rev. 1, (“The purpose and need for the proposed action (issuance of a renewed license) is to provide an option that allows for baseload power generation capability beyond the term of the current nuclear power plant operating license to meet future system generating needs.”).

⁷¹ See Environmental Report, Section 1.0, “Purpose Of And Need For Action,” at 1-1, quoting Regulatory Guide 4.2, Supplement 1, Revision 1, Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications (June 2013) at 10.

of the ER with Section 1.3 “Purpose and Need for the Proposed Action” of the GEIS (NUREG-1437) shows them to be congruent.

Second, in light of the fact that the GEIS identifies the purpose and need for license renewal which will be used by the Staff in developing the SEIS for River Bend license renewal, the Petitioner has not shown how the issue raised (i.e., its challenge to the purpose and need stated in the ER) is material to the findings the NRC must make. Accordingly, its assertions fail to satisfy the requirements of 10 C.F.R. 2.309(f)(1)(iv).

In sum, Contention 1 must be rejected for failing to satisfy the contention admissibility requirements of 10 C.F.R. § 2.309(f)(iv), (v), and (vi).

2. Sierra Club Contention 2

In its Contention 2, the Sierra Club asserts:

In examining the no action alternative, the ER improperly failed to include renewable energy and energy efficiency as a consequence of the River Bend license not being renewed.

Petition at 8. In support of this contention, the Petitioner asserts that, as part of the “no action” alternative, the ER must (1) discuss whether the River Bend Station is needed to produce the power required to serve the people of Louisiana, and (2) “whether there is another, perhaps better, way to deliver the power.” *Id.* at 9-10. The Petitioner contends that renewable energy and energy efficiency must be considered in a discussion of the no-action alternative. *Id.* at 10. The Petitioner then provides a lengthy discussion of various non-nuclear ways to get power, *Id.* at 10-18; the need for expansion of the grid, *id.* at 18; the potential to obtain baseload power through means other than fossil fuel or nuclear power, *id.* at 22; and recent developments in renewable energy and energy efficiency, *id.* at 22-30.⁷² The Petitioner concludes that “until an

⁷² Most of Petitioner’s argument is devoid of any specific references to the ER or other parts of Entergy’s application. Instead, the Petitioner’s supporting information repeats information that was submitted on behalf of the Nuclear Free Campaign of the Sierra Club, regarding the Draft Environmental Impact Statement (DEIS) for the combined operating license for the Turkey Point Nuclear Plant, Units 6 (continued. . .)

environmental impact statement (EIS) is prepared by the NRC, the discussion of alternatives in the ER is inadequate.” *Id.* at 30.

Notwithstanding the extensive discussion of alternative energy sources, it has not shown any reason to believe that the Applicant’s treatment of the “no-action alternative” in the Environmental Report is insufficient under existing Commission standards; moreover, the contention fails to recognize that the ER does address the alternatives (renewables and efficiency) which are the focus of this contention, and the Petitioner nowhere disputes any of the information provided in the ER. As such, the Petitioner has failed to demonstrate a genuine dispute of material fact with the Applicant, as required by 10 C.F.R. § 2.309(f)(vi).

Pursuant to Section 102 of the National Environmental Policy Act of 1969, as amended (“NEPA”), 42 U.S.C. § 4332, a Federal agency is required to prepare a detailed statement evaluating the environmental impacts of any major Federal action significantly affecting the quality of the human environment; this is to include an evaluation of the proposed action’s environmental impacts and of “alternatives to the proposed action.” While NEPA requires a Federal agency to take a “hard look” at the environmental impacts of major Federal actions,⁷³ the agency need not consider remote and highly speculative consequences;⁷⁴ further, the agency is required to consider only “reasonable” and “feasible” alternatives to its proposed action, and the impacts thereof.⁷⁵

(. . .continued)

and 7, received by the NRC on July 16, 2015. (“Comment (253) of Wallace Taylor”) (ADAMS Accession No. ML15294A378) at 9-26. As in the case of Contention 1, the Petitioner does not show how this information demonstrates an omission or other failing in the Applicant’s River Bend LRA.

⁷³ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 339 (1989); *accord*, *Massachusetts v. NRC*, 708 F.3d 63, 67 (1st Cir. 2013).

⁷⁴ *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974); *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837-38 (D.C. Cir. 1972).

⁷⁵ *Beyond Nuclear v. NRC*, 704 F.3d 12, 16 (1st Cir., Jan. 4, 2013), *citing* *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972), and *Vt. Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 551 (1978).

In accordance with these requirements, the NRC considers a range of alternatives in connection with license renewal, including the “no action alternative.” As stated in NRC regulatory guidance, the “no-action alternative represents a decision by the NRC not to renew the operating license of a nuclear power plant beyond the current operating license term.” NUREG-1437, Rev.1, at 2-17. Section 2.2 of the GEIS provides an analysis of the no-action alternative. As noted in Section 1.4 of the GEIS, “in plant-specific environmental reviews, the NRC compares the environmental impacts of license renewal with those of the no-action alternative and replacement power alternatives to determine whether the adverse environmental impacts of license renewal are great enough to deny the option of license renewal for energy-planning decision-makers.” Section 4.1.3 “Environmental Consequences of the No-Action Alternative,” of the GEIS states:

The power not generated by the nuclear plant during a license renewal term would likely be replaced by (1) generating alternatives other than the nuclear power plant, (2) demand-side management, (3) power purchased from other electricity providers, or (4) some combination of these options. Note that NRC’s consideration of the no-action alternative does not involve the determination of whether any power is needed or should be generated. The decision to generate power and the determination of how much power is needed are at the discretion of State, Federal (non-NRC), and utility officials.

NUREG-1437, Rev.1, at 4-4.

An extensive discussion of the no-action alternative is not required in an ER.⁷⁶ The Commission has noted that “[t]he extent of the [“no-action[”] discussion is governed by a [“]rule of reason.[”]⁷⁷ Further, it is not necessary for an applicant’s discussion of the no-action

⁷⁶ Cf. *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 54 (2001) (citing *Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174, 1181 (9th Cir. 1990)).

⁷⁷ *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 97 (1998) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C.Cir.), cert. denied, 502 U.S. 994 (1991)).

alternative to repeat environmental impacts that are discussed elsewhere in the ER.⁷⁸ Thus, in the *Limerick* license renewal proceeding, the Board declined to admit a contention asserting that the applicant's ER did not adequately consider the "no-action alternative."⁷⁹ The Board held:

While [the petitioner in *Limerick*] would like to have seen a discussion of "Demand Side Management (DSM), waste heat cogeneration, combined heat and power, and distributed renewable energy resources," given the Commission's holdings that the no-action alternative discussion "need not be exhaustive," and need only include "feasible, non-speculative alternatives," we conclude that [the petitioner in *Limerick*] has provided us with no support for the notion that [the applicant's] analysis of the no-action alternative is unreasonable under NEPA. [The "no-action" contention] is inadmissible because it fails to provide "a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issue."⁸⁰

Moreover, in promulgating its license renewal environmental review rules, the Commission observed that a characterization of alternative energy sources is "not merely the consequences of the no-action alternative" but is instead "options for the generation of power."⁸¹ Here, the Petitioner has not shown that Entergy's discussion of the no-action alternative in the ER failed to address "options for generation of power." In fact, Entergy addressed this issue, stating in part that "[t]he environmental impacts of the no-action alternative would be the impacts associated with the construction and operation of the type of replacement power utilized, such as those identified in Section 7.1.1 of this ER [i.e., natural

⁷⁸ Cf. *Claiborne Enrichment Center*, CLI-98-3, 47 NRC at 98 (citing CEQ's "Memorandum to Agencies: Answers to 40 Most Asked Questions on NEPA Regulations," 46 Fed. Reg. 18,026 (Mar. 1, 1981) ("We do not find the FEIS's incorporation by reference approach unreasonable as such. We agree ... that it was not necessary for the ["]no-action["] discussion to repeat lengthy assessments of adverse environmental impacts contained elsewhere in the FEIS").

⁷⁹ *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-12-8, 75 NRC 539, 568, *reversed and remanded on other grounds*, CLI-12-19, 76 NRC 377 (2012).

⁸⁰ *Limerick*, LBP-12-8, 75 NRC at 568-69 (footnotes omitted).

⁸¹ 61 Fed. Reg. at 28,472.

gas-fired generation, coal-fired generation, new nuclear generation, and a combination of alternatives].”⁸² The ER’s discussion of options for generation of power is consistent with what the Commission contemplated when promulgating its rules.

Further, the discussion of the alternatives only needs to include “feasible, non-speculative alternatives.”⁸³ Here, Entergy determined that renewable energy was appropriate for further analysis (ER at Section 2.6.2, page 2-34 (stating that Entergy’s 2015 Integrated Resource Plan contains the determination, and that the alternatives considered to be reasonable are discussed in Chapter 7 of the ER). Further, in ER Chapter 7, Entergy provided a detailed analysis of alternative energy sources, explaining why it found certain alternatives to be unreasonable.⁸⁴ Significantly, the Petitioner nowhere identifies any errors or omissions in Entergy’s discussion, and does not identify any dispute it may have with Entergy regarding those discussions; in particular, the Petitioner does not provide any reasons to believe Entergy erred in concluding that renewable energy and energy efficiency were not reasonable alternatives. Thus, the Petitioner has not met its burden under 10 C.F.R. § 2.309(f)(1)(vi) (requiring the Petitioner to include references to specific portions of the environmental report that the petitioner disputes and the supporting reasons for each dispute).

Further, while the Petitioner asserts that the “no-action alternative” discussion in ER must address power sources that are “perhaps better” (Petition at 10 (referring to wind and

⁸² ER Section 7.3.2 “No-Action Alternative,” at 7-58.

⁸³ *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-2, 33 NRC 61, 71 (1991) (quoting *Piedmont Heights Social Club, Inc. v. Moreland*, 637 F.2d 430, 436 (5th Cir. 1981)).

⁸⁴ Entergy identified the following energy alternatives and explained why it found they are not reasonable alternatives to license renewal: (1) Purchased Power (ER § 7.1.2.1.1); (2) Plant Reactivation or Extended Service Life (ER § 7.1.2.1.2); (3) Conservation or Demand-Side Management (ER § 7.1.2.1.3); (4) Wind power (ER § 7.1.2.2.1); (5) Solar Technologies, Photovoltaic Cells, and Solar Thermal Power (ER § 7.1.2.2.2); (6) Hydropower (ER § 7.1.2.2.3); (7) Geothermal (ER § 7.1.2.2.4); (8) Wood Waste (ER § 7.1.2.2.5); (9) Municipal Solid Waste (ER § 7.1.2.2.6); (10) Other Biomass-Derived Fuels (ER § 7.1.2.2.7); (11) Fuel Cells (ER § 7.1.2.2.8); (12) Oil (ER § 7.1.2.2.9); (13) Ocean Wave and Current Energy (ER § 7.1.2.2.10); and (14) Coal-Fired Integrated Gasification Combined-Cycle (ER § 7.1.2.2.11).

solar energy, and energy efficiency), those energy sources are addressed in other portions of the ER, and the Petitioner does not explain why repetitive discussions are needed. Thus, the ER addresses the topics of interest to the Petitioner directly (e.g., ER § 7.1.2.2.1, Wind) and in incorporated documents (e.g., Entergy 2015j), and no reason has been shown why the ER needs to repeat those discussions in ER Section 7.3 “No-Action Alternative.”⁸⁵ Indeed, the ER contains many statements describing how topics of interest to the Petitioner were discussed in Entergy’s 2015 Integrated Resource Plan,⁸⁶ but the Petitioner does not address or dispute that information. The Petitioner has not identified any error or dispute with the information provided in the ER and/or the incorporated documents. Accordingly, Contention 2 fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(vi).

In addition, there is no basis for the Petitioner’s argument that “electric utilities and energy companies assert that in order to provide base load power they have to use coal, natural gas or nuclear power. The GEIS adopts this assertion.”⁸⁷ The Petitioner asserts that renewable energy and energy efficiency can supply what is needed.⁸⁸ In fact, the ER shows that Entergy analyzed many alternatives, including renewable energy and energy efficiency, thus showing that Entergy did not make an arbitrary assumption about which energy alternatives can provide baseload power. For example, regarding energy efficiency, Entergy stated:

⁸⁵ Cf. *LES*, CLI-98-3, 47 NRC at 98 (acknowledging the use of incorporation by reference and agreeing with the applicant “and the NRC Staff that it was not necessary for the [‘no-action[’] discussion to repeat lengthy assessments of adverse environmental impacts contained elsewhere in the FEIS.”).

⁸⁶ See, e.g., ER § 7.1.2.1.3 “Conservation or Demand-Side Management,” *citing* “Entergy Gulf States Louisiana, LLC and Entergy Louisiana, LLC, 2015 Integrated Resource Plan, Final Report” (Aug. 3, 2015) (“Entergy 2015j”) (available at http://www.energy-louisiana.com/content/irp/2015_0803_Louisiana_Final_IRP_Public.pdf).

⁸⁷ Petition at 21-22.

⁸⁸ *Id.* at 22.

7.1.2.1.3 Conservation or Demand-Side Management

DSM includes energy efficiency programs, energy conservation, and demand response initiatives to reduce energy usage during peak demand periods. To be considered a reasonable alternative, a DSM alternative would need to reduce the base-load demand within Entergy Louisiana, LLC's service territory by 967 MWe, which is equivalent to the amount generated by RBS. To develop its IRP, Entergy reviewed deployment of a full range of existing and potentially deployable DSM programs across the residential, commercial, and industrial sectors served by Entergy. . . . The DSM Potential Study projected a cumulative DSM savings high in 2025 of approximately . . . 457 MWe.

The DSM potential within the Entergy Louisiana, LLC service area is not adequate for the replacement of RBS's generating capacity. The energy savings for 2025 were projected for three levels of implementation and funding, with all the projections falling short of what is needed for replacement of RBS's base-load generating capacity. . . . Therefore, DSM is not considered a reasonable alternative by itself. However, DSM is a component of the combination of alternatives included as a reasonable alternative for replacing RBS's base-load generation.⁸⁹

Similarly, Energy considered renewable energy sources such as wind power, as well, and evaluated the environmental impacts of those alternatives.⁹⁰ No basis has been shown to support the Petitioner's assertions to the contrary.

Further, contrary to Petitioner's assertion, the Commission's GEIS does not "adopt" an assertion that baseload must use coal, natural gas or nuclear power. Rather, as the Commission has observed, the criteria of the GEIS are the viability and availability of power:

In the 2013 GEIS, the NRC did not, however, revise the agency's long-standing position that energy alternatives, to be considered reasonable, must be "capable of meeting the purpose and need of the proposed action (license renewal) or replacing the power generated by a nuclear power plant." In fact, consistent with our holdings in *Seabrook* and *Davis-Besse*, the revised GEIS expressly states that "[a] reasonable alternative must be commercially viable on a utility scale and operational prior to the

⁸⁹ ER § 7.1.2.1.3, "Conservation or Demand-Side Management," at 7-5 to 7-6.

⁹⁰ See, e.g., ER at 7-7 ("even if wind were considered to be reasonable, the impacts discussed above show that the impacts from wind (with or without [compressed air energy storage]) would be higher than the impacts for renewal of the RBS license").

expiration of the reactor's operating license, or expected to become commercially viable on a utility scale and operational prior to the expiration of the reactor's operating license.”[FN 33]

[FN 33] GEIS Rev. 1, at 2-18. We “need only discuss those alternatives that are reasonable and ‘will bring about the ends’ of the proposed action.” *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001) (quoting *Citizens Against Burlington v. Busey*, 938 F.2d 190, 195 (D.C. Cir.), *cert. denied*, 502 U.S. 994 (1991)).⁹¹

The Petitioner’s arguments to the contrary lack bases and do not support admission of the contention.

Finally, while the Petitioner asserts that distributed generation (DG) (i.e., “an energy production facility, primarily solar and wind, owned by the entity consuming the power”), should not be overlooked,⁹² that assertion does not support the admission of the contention. In fact, the ER discussed solar and wind alternatives for generating power,⁹³ and the Petitioner does not dispute the ER’s discussion of solar and wind power. While the Petitioner asserts that the cost of installing a distributed generation has decreased with time, and that current regulations are more favorable,⁹⁴ these generic assertions do not address the Applicant’s treatment of these energy alternatives in the River Bend ER, and do not show that replacing River Bend with DG solar and/or wind would be (1) commercially viable on a utility scale and (2) operational prior to the expiration of the River Bend operating license such that DG is a reasonable

⁹¹ *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-16-11, 83 NRC 524, 530 (2016) (footnote 32 omitted).

⁹² Petition at 26.

⁹³ See ER §§ 7.1.2.2.1 “Wind” and 7.1.2.2.2 “Solar Technologies: Photovoltaic Cells and Solar Thermal Power.”

⁹⁴ Petition at 26.

alternative warranting further discussion.⁹⁵ Accordingly, Contention 2 fails to satisfy the requirements of 10 C.F.R. § 2.309(f)(v) and (vi) and should be rejected.

3. Sierra Club Contention 3

In Contention 3, the Sierra Club asserts:

The LRA does not undertake an adequate aging management review of the concrete on the containment vessel.

Petition at 30. The Petitioner argues that the application fails to properly consider concrete degradation as a result of an alkali-silica reaction (ASR).⁹⁶ The Petition alleges that the concrete drywell is susceptible to this form of degradation and claims that the application “does not address the degradation of the concrete drywell due to ASR.”⁹⁷ The Petitioner further points to the requirements of 10 C.F.R. 54.21(a)(3), which requires that the application contain information demonstrating that the effects of aging will be adequately managed for the structures and components listed in 10 C.F.R. 54.21(a)(1).⁹⁸ As its basis, the Petitioner identifies Information Notice 2011-20,⁹⁹ asserting (a) that the Information Notice “made clear that the ASR-induced degradation must be considered in the context of a license renewal,” and (b) that the application “does not include any discussion of ASR-induced degradation” (emphasis added).¹⁰⁰

⁹⁵ *Diablo Canyon*, CLI-16-11, 83 NRC at 530.

⁹⁶ Petition at 30-31.

⁹⁷ *Id.* at 31.

⁹⁸ *Id.*

⁹⁹ NRC Information Notice 2011-20: Concrete Degradation by Alkali-Silica Reaction (Nov. 18, 2011) (ADAMS Accession No. ML112241029) (hereinafter, “Information Notice” or “IN 2011-20”).

¹⁰⁰ Petition at 31-32

Notwithstanding the Petitioner's assertions, Contention 3 must be rejected in that it lacks basis and fails to provide sufficient information demonstrating a genuine dispute of a material issue of law or fact as required by 2.309(f)(1)(vi). In particular, the Petition provides no reason to believe that the license renewal application omits discussion of "ASR-induced degradation" -- and most significantly, it fails to recognize that the River Bend license renewal application does in fact address this issue. Accordingly, the Petition fails to satisfy 10 C.F.R. 2.309(f)(1)(vi), which requires that a petitioner "must include references to specific portions of the application" with "supporting reasons for each dispute" or, in the case of an alleged omission from the application, "the identification of each failure and the supporting reasons for the petitioner's belief" (emphasis added).

In support of its contention on the adequacy of the aging management for the containment vessel, the Petitioner relied primarily upon the background found in the Information Notice.¹⁰¹ The Information Notice, as noted by the Petitioner, was addressed to a large number of licensees, including most holders of operating licenses under 10 C.F.R. Part 50.¹⁰² The Information Notice served to inform licensees of an occurrence of concrete degradation at a licensed facility as a result of reactions between alkalis present in the cement and reactive forms of silica that may be present in certain types of aggregate.¹⁰³ The Information Notice provided background on the reaction mechanism, the circumstances in which it presented itself at the licensed facility, and testing methods that can be used to detect such degradation.¹⁰⁴ Additionally, it identified actions that had been undertaken at that facility, and reflected the

¹⁰¹ Petition at 31-32.

¹⁰² The Information Notice excluded Part 50 licensees who had permanently ceased operations and certified that fuel had been permanently removed from the reactor vessel. IN 2011-20, at 1.

¹⁰³ *Id.* at 2-3.

¹⁰⁴ *Id.* at 2-4.

Staff's understanding that additional information would be submitted in that facility's license renewal submittals to demonstrate how the licensee's aging management program would properly account for this discovered condition.¹⁰⁵

Here, the Petitioner asserts that the application "does not undertake an adequate aging management review of the concrete on the containment vessel," claiming that "[t]he license renewal application submitted for River Bend Station does not address the degradation of the concrete drywell due to ASR" and "does not include any discussion of ASR-induced degradation."¹⁰⁶ However, no supporting reasons for the petitioner's belief were identified in the Petition.¹⁰⁷ Contrary to the Petitioner's assertion, the LRA does address ASR-induced degradation. While the LRA does not utilize the term "Alkali-Silica Reaction" or "ASR," the LRA does discuss this potential degradation mechanism in multiple portions of the application -- most thoroughly in Subsection 3.5.2.2.2.1, Item 2, "Cracking due to Expansion and Reaction with Aggregates in Below-Grade Inaccessible Concrete Areas for Groups 1-5 and 7-9 Structures";¹⁰⁸ as well as elsewhere in the application.¹⁰⁹ As the Petitioner observes, "ASR is one type of alkali-aggregate reaction that can degrade concrete structures."¹¹⁰ In addressing this phenomenon, the LRA utilizes the term "Reaction with Aggregates,"¹¹¹ which is the same

¹⁰⁵ *Id.* at 2-4.

¹⁰⁶ Petition at 31-32.

¹⁰⁷ *See id.*

¹⁰⁸ LRA at 3.5.1-43. While not identified by name in this section, the concrete drywell is considered a containment internal structure and is categorized as "Group 4." See NUREG-1800 Page 3.5-1, GALL Report at III A4-1, and LRA at 2.4-4.

¹⁰⁹ *See* LRA, Table 3.5.1, Item 3.5.1-43, at 3.5-35, and Item 3.5.1-54, at 3.5-39; Table 3.5.2-1, Item 3.5.1-43, at 3.5-67, and Item 3.5.1-54, at 3.5-64; and LRA at B-145 and A-37 (describing the Applicant's Structures Monitoring Program).

¹¹⁰ Petition at 32 (discussing the Information Notice at 2).

¹¹¹ LRA at 3.5-12.

term used in the GALL Report;¹¹² the GALL Report defines this term to include “alkali-silica reactions” as well as “cement-aggregate” and “aggregate-carbonate” reactions.¹¹³

Subsection 3.5.2.2.1 of the LRA identifies the standards that were utilized in the construction of these portions of the plant and the materials that were used, and states that while the Applicant has not observed concrete cracking as a result of reaction with aggregate at the site, “based on ongoing industry operating experience,” it has elected to manage this aging effect in its Structures Monitoring Program.¹¹⁴ The Applicant further states that the enhancements described in the application to its current Structures Monitoring Program will make the program consistent with the GALL.¹¹⁵

In sum, the Petition is not accurate in stating that the Applicant’s LRA omits an aging management plan for ASR, and lacks any “references to the specific portions of the application”

¹¹² NUREG 1801, “Generic Aging Lessons Learned [GALL] Report,” Rev. 2 (Dec. 2010).

¹¹³ In defining the term “Reaction with aggregate,” the GALL Report states:

The presence of reactive alkalis in concrete can lead to subsequent reactions with aggregates that may be present. These alkalis are introduced mainly by cement, but also may come from admixtures, salt-contamination, seawater penetration, or solutions of deicing salts. These reactions include alkali-silica reactions, cement-aggregate reactions, and aggregate-carbonate reactions. These reactions may lead to expansion and cracking.

GALL Report, Section IX.F, “Selected Definitions & Use of Terms for Describing and Standardizing AGING MECHANISMS,” at p. IX-36.

¹¹⁴ LRA at 3.5-12. Here, the Applicant has elected to place the containment internal structures in its Structures Monitoring Program. Guidance for structures monitoring programs is provided in the GALL Report, Section XI.S6, and includes provisions for monitoring parameters such as “loss of material, cracking, increase in porosity and permeability, loss of foundation strength, and reduction in concrete anchor capacity due to local concrete degradation.” *Id.* at XI S6-2.

¹¹⁵ See LRA at B-145 – B-149, 3.5-35, 3.5-67, 3.5-39, 3.5-64; GALL Report at XI S6-1 – XI S6-5 (defining the requirements of the Structures Monitoring Program by providing standards for the scope, the preventive actions, the monitored or inspected parameters, the detection of aging effects, monitoring and trending, the acceptance criteria, the corrective action requirements, the confirmation processes, the administrative controls, and the use of operating experience).

that support of its contention, as required by 10 C.F.R. § 2.309(f)(1)(vi).¹¹⁶ In addition, the Petitioner did not include “supporting reasons” for its belief that the LRA does not adequately address the ASR degradation mechanism, aside from providing bare assertions that no such discussion appears in the LRA.¹¹⁷ As the Commission has stated, petitioners must “plead specific grievances, not simply [] provide general ‘notice pleadings.’”¹¹⁸ Rather than including any such information, the Sierra Club’s Petition is based on “little more than speculation.”¹¹⁹ Accordingly, the Petition does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(v) to set forth the alleged facts or expert opinions which support the contention, together with references to specific sources and documents on which the Petitioner intends to rely; and it fails to meet the requirement in 10 C.F.R. § 2.309(f)(1)(vi) that it provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that it disputes and the supporting reasons for each dispute.¹²⁰ Therefore, Contention 3 must be rejected.

¹¹⁶ 10 C.F.R. 2.309(f)(1)(vi). See also *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 327-28 (2015) (finding that a contention was inadmissible when it only asserted the need for additional analysis without further support.).

¹¹⁷ 10 C.F.R. 2.309(f)(1)(vi). See *Palo Verde*, CLI-91-12, 34 NRC 149, 156 (petitioners must “read the relevant parts of the license application and show where the application is lacking.”).

¹¹⁸ *Entergy Nuclear Generation Co. and Entergy Nuclear Operations Co.* (Pilgrim Nuclear Power Station), CLI-10-15, 71 NRC 479, 482 (2010) (quoting *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428 (2003)).

¹¹⁹ *Duke Energy Co.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (1999). See also *Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552 (2009) (“contentions based on little more than guesswork would waste the scarce adjudicatory resources of all involved”).

¹²⁰ See *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001).

CONCLUSION

For the reasons set forth above, the NRC Staff respectfully submits that while the Sierra Club has demonstrated its standing to intervene, it has failed to submit at least one admissible contention, as required by 10 C.F.R. § 2.309(f)(1)-(2). Accordingly, the Sierra Club's petition to intervene and request for hearing should be denied.

Respectfully submitted,

/Signed (electronically) by/

Sherwin E. Turk
Counsel for NRC Staff
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop – O-14-A44
Washington, DC 20555
Telephone: (301) 287-9194
E-mail: Sherwin.Turk@nrc.gov

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

David E. Roth
Counsel for NRC Staff
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop – O-14-A44
Washington, DC 20555
Telephone: (301) 287-9121
E-mail: David.Roth@nrc.gov

Joe I. Gillespie III
Counsel for NRC Staff
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop – O-14-A44
Washington, DC 20555
Telephone: (301) 287-9184
E-mail: Joe.Gillespie@nrc.gov

Dated at Rockville, Maryland
this 6th day of November 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ENTERGY OPERATIONS, INC.) Docket No. 50-247/458-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3))

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305 (as revised), I hereby certify that copies of the foregoing “NRC STAFF’S RESPONSE TO PETITION TO INTERVENE AND REQUEST FOR HEARING FILED BY THE SIERRA CLUB” dated November 6, 2017, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding, this 6th day of November, 2017.

/Signed (electronically) by/

Sherwin E. Turk
Special Counsel for Litigation
Counsel for NRC Staff
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop – O-14-A44
Washington, DC 20555
Telephone: (301) 287-9194
E-mail: Sherwin.Turk@nrc.gov