

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Annie Caputo
David A. Wright
Christopher T. Hanson

In the Matter of

Southern Nuclear Operating Company, Inc.

(Vogtle Electric Generating Plant, Unit 3)

Docket No. 52-025

CLI-20-06

MEMORANDUM AND ORDER

Today we address the petition to intervene and request for a hearing submitted by Nuclear Watch South regarding the conformance of Southern Nuclear Operating Company, Inc. (Southern) with the acceptance criteria in the combined license for Vogtle Electric Generating Plant, Unit 3.¹ For the reasons discussed below, we deny the petition to intervene and request for hearing.

I. BACKGROUND

The NRC issued a combined license to Southern for the construction and operation of Vogtle Unit 3, a Westinghouse Advanced Passive 1000 (AP1000) pressurized water reactor, in

¹ Nuclear Watch South Petition for Public Hearing (Apr. 20, 2020) (Petition).

2012.² Combined licenses include inspections, tests, analyses, and acceptance criteria (ITAAC) to verify that the facility has been constructed and will be operated consistent with the license; the Atomic Energy Act of 1954, as amended (AEA); and NRC rules and regulations.³ The inspections, tests, and analyses are the means of verification and the acceptance criteria are the standards that must be satisfied.⁴ Before operation may begin, the NRC must find that all acceptance criteria in the ITAAC are satisfied.⁵ This finding will be based on NRC review of licensee ITAAC notifications and NRC inspections. After the NRC finds that the acceptance criteria are met, the ITAAC no longer constitute regulatory requirements for the licensee.⁶

For every ITAAC, the licensee must submit an ITAAC closure notification to the NRC explaining the basis for concluding that the inspections, tests, and analyses have been performed and the acceptance criteria have been met.⁷ If an event occurs after submission of an ITAAC closure notification that materially alters the basis of that closure, licensees are required to submit an ITAAC post-closure notification documenting successful resolution of the issue.⁸ Licensees must also submit an uncompleted ITAAC notification to the NRC at least 225 days before scheduled initial fuel load.⁹ Based on its early submission of individual

² Combined License Vogtle Electric Generating Plant Unit 3, Southern Nuclear Operating Company, Inc., License No. NPF-91 (Feb. 10, 2012) (ADAMS accession no. ML14100A106).

³ Final Procedures for Conducting Hearings on Conformance With the Acceptance Criteria in Combined Licenses, 81 Fed. Reg. 43,266, 42,267 (July 1, 2016) (Final Procedures for ITAAC Hearings); 10 C.F.R. § 52.80(a).

⁴ Final Procedures for ITAAC Hearings, 81 Fed. Reg. at 42,267.

⁵ AEA § 185b.; 10 C.F.R. § 52.103(g).

⁶ 10 C.F.R. § 52.103(h); Final Procedures for ITAAC Hearings, 81 Fed. Reg. at 43,278.

⁷ Final Procedures for ITAAC Hearings, 81 Fed. Reg. at 43,267.

⁸ *Id.*; 10 C.F.R. § 52.99(c)(2).

⁹ Final Procedures for ITAAC Hearings, 81 Fed. Reg. at 43,267; 10 C.F.R. § 52.99(c)(3).

uncompleted ITAAC notifications, Southern submitted the notification for all uncompleted ITAAC, required under section 52.99(c)(3), 315 days prior to scheduled fuel load for Vogtle Unit 3.¹⁰ This notification describes the licensee's plans to complete the ITAAC that are still incomplete.¹¹ When these ITAAC are completed, the licensee must submit an ITAAC closure notification.¹²

In January 2020, Southern informed the NRC that its scheduled date for initial fuel load into the reactor for Vogtle Unit 3 is November 23, 2020.¹³ The NRC published in the *Federal Register* a notice of intended operation and opportunity for hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.¹⁴ In response, Nuclear Watch South submitted a hearing request on April 20, 2020.¹⁵ The Staff and Southern filed answers opposing the request.¹⁶

¹⁰ Letter from Michael J. Yox, Southern, to NRC Document Control Desk (Jan. 13, 2020) (ML20013F132). This notice listed the 280 ITAAC that had not been closed as of the submittal date with references to the previously submitted uncompleted ITAAC notification for each. *Licensees' Answer to Nuclear Watch South's Petition for Public Hearing* (May 15, 2020), at 6 (Southern Answer).

¹¹ Final Procedures for ITAAC Hearings, 81 Fed. Reg. at 43,267; 10 C.F.R. § 52.99(c)(3).

¹² Final Procedures for ITAAC Hearings, 81 Fed. Reg. at 43,267; 10 C.F.R. § 52.99(c)(1), (c)(4).

¹³ Vogtle Electric Generating Plant, Unit 3; Hearing Opportunity Associated with Inspections, Tests, Analyses, and Acceptance Criteria, 85 Fed. Reg. 8030, 8030 (Feb. 12, 2020) (Hearing Opportunity).

¹⁴ *Id.* at 8031.

¹⁵ Nuclear Watch South received an extension of the time to file a hearing request. Order of the Secretary (Apr. 9, 2020) (unpublished). Along with the petition, Nuclear Watch South filed a declaration from a member, Susan Bloomfield; a declaration from its expert, Arthur Frank Higley; and a curriculum vitae for Mr. Higley.

¹⁶ *NRC Staff Answer to Petition for Public Hearing from Nuclear Watch South* (May 14, 2020) (Staff Answer). Southern filed an answer on behalf of the licensed owners, Georgia Power Company; Oglethorpe Power Corporation; MEAG Power SPVM, LLC; MEAG Power SPVJ, LLC; MEAG Power SPVP, LLC; and the City of Dalton, Georgia. Southern Answer at 2.

II. DISCUSSION

A. ITAAC Hearing Procedures

The contention standards for an ITAAC hearing under 10 C.F.R. § 52.103(b) are based on the NRC's rules of practice in 10 C.F.R. Part 2, primarily Subpart C, with modifications to account for the expedited schedule and specialized nature of hearings on ITAAC.¹⁷ Contentions must meet the requirements of 10 C.F.R. § 2.309(f)(1)(i) through (v) and 10 C.F.R. § 2.309(f)(1)(vii).¹⁸ These requirements are strict by design and intended to ensure that adjudicatory proceedings address substantive issues that are rooted in a "reasonably specific factual or legal basis."¹⁹ They require a petitioner to explain the basis for each contention and provide supporting facts or expert opinion on which the petitioner intends to rely. To be admissible, each contention must also fall within the scope of the proceeding and be material to the findings that the NRC must make.

In an ITAAC hearing, the petitioner is required to contend and support with a *prima facie* showing that one or more of the acceptance criteria in the combined license have not been, or will not be, met and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and

¹⁷ Hearing Opportunity, 85 Fed. Reg. at 8036, Attach., Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request, 85 Fed. Reg. at 8037 (Additional Procedures Order).

¹⁸ *Id.* The requirements of 10 C.F.R. § 2.309(f)(1)(vi) do not apply to this proceeding. *Id.*

¹⁹ See *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 504 (2015) (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003) (citation omitted)). The NRC need not draw any conclusion about environmental impacts in connection with a finding under 10 C.F.R. § 52.103(g) that the acceptance criteria are met, and contentions in ITAAC proceedings must relate to safety issues. Hearing Opportunity, 85 Fed. Reg. at 8033 & n.6 (citing 10 C.F.R. § 51.108).

safety.²⁰ Petitioners must also identify the specific portion of the section 52.99(c) report that they believe is inaccurate, incorrect, or incomplete.²¹ Contentions that challenge the sufficiency of the ITAAC themselves are not admissible because the ITAAC have already been approved by the NRC in connection with the issuance of the combined license.²²

The procedures contemplate the possibility that the licensee's section 52.99(c) notification is incomplete and precludes the petitioner from making the necessary *prima facie* showing with respect to one or more of the applicable requirements of 10 C.F.R. § 2.309(f)(1). In such a case, before submitting a claim of incompleteness, the petitioner must consult with the licensee regarding access to the purportedly missing information.²³ Consultation must be initiated within twenty-one days of the publication of the notice of intended operation for publicly available ITAAC notifications.²⁴ The petitioner must submit a certification by its attorney or representative that the petitioner complied with the timeliness requirements for consultation and made a sincere effort to meaningfully engage in consultation with the licensee on access to the purportedly missing information prior to filing the claim of incompleteness.²⁵

²⁰ 10 C.F.R. § 2.309(f)(1)(i), (vii); see also AEA § 189a.(1)(B); Final Procedures for ITAAC Hearings, 81 Fed. Reg. at 43,277. The NRC's definition of "*prima facie*" is consistent with other legal authorities: "[*prima facie*] evidence must be legally sufficient to establish a fact or case unless disproved." *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-653, 16 NRC 55, 72 (1981) (public version of ALAB-653 released as an attachment to *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-82-19, 16 NRC 53 (1982)).

²¹ 10 C.F.R. § 2.309(f)(1)(vii).

²² Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,367 n.3 (Aug. 28, 2007) (2007 Part 52 Rule). Challenges to the ITAAC may be raised through other means, such as petitions under 10 C.F.R. §§ 2.206, 2.802, or 52.103(f).

²³ Final Procedures for ITAAC Hearings, 81 Fed. Reg. at 43,283.

²⁴ Additional Procedures Order, 85 Fed. Reg. at 8037.

²⁵ *Id.* at 8038.

Any declarations of eyewitnesses or expert witnesses offered in support of contention admissibility must be signed by the eyewitness or expert witness in accordance with 10 C.F.R. § 2.304(d).²⁶ If declarations are not signed, they will be considered but not given the weight of an eyewitness or expert witness with respect to satisfying the *prima facie* showing required by 10 C.F.R. § 2.309(f)(1)(vii).²⁷ This provision ensures that a position that is purportedly supported by an eyewitness or expert witness is actually supported by that witness.²⁸

B. Nuclear Watch South Petition

To be granted a hearing, Nuclear Watch South must demonstrate standing and include an admissible contention in its hearing request. Nuclear Watch South's petition does not specifically address the regulatory standards for contention admissibility or standing. Given that it is a *pro se* petitioner, we hold Nuclear Watch South to less rigid pleading standards than parties who are represented by counsel so that parties with a clear, but imperfectly stated, interest in the proceeding are not excluded.²⁹ Nevertheless, *pro se* petitioners are still expected to comply with our procedural rules.³⁰

As an initial matter, we note that in its petition Nuclear Watch South includes a "Background" section addressing asserted construction and ITAAC program problems at Vogtle.³¹ For the most part, Nuclear Watch South does not tie the assertions in this section to

²⁶ *Id.* at 8037.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See *U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), CLI-10-20, 72 NRC 185, 192 (2010).

³⁰ *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 6 (2010).

³¹ Petition at 2-5.

its contention or either of the ITAAC mentioned in its contention.³² Nuclear Watch South offers this background to support its position that there must be “rigorous review of Southern Nuclear’s Notice of Intended Operation of Vogtle Unit 3,” and we will consider it in that manner.³³

Nuclear Watch South characterizes its contention as one of omission and argues that Southern’s uncompleted ITAAC notification “is grossly incomplete.”³⁴ Nuclear Watch South argues that the notification “does not contain sufficient detail for the NRC to find that the acceptance criteria in the [combined license] are, or will be, met.”³⁵ The contention specifically challenges two ITAAC: (1) No. 3.3.00.02a.ia.a, Index No. 760, which addresses aspects of the nuclear island, including the concrete walls; and (2) No. 3.3.00.02a.i.b, Index No. 761, which addresses the shield building.³⁶ These ITAAC generally serve to ensure that the as-built containment internal structures and shield building conform to the specified design, codes, and standards.³⁷ Because we are not certain whether Nuclear Watch South—a *pro se* petitioner—intended its filing to be treated as a claim of incompleteness or a freestanding contention, we assess whether the filing meets the standards for either below.

³² ITAAC Index No. 760 is mentioned once in this section. Nuclear Watch South claims that the last civil engineer was laid off in 2018, and that it is unclear how ITAAC related to concrete were completed after that departure. Petition at 4. Nuclear Watch South further asserts, without support, that “[j]udging by the information deficiencies in ITAAC #760, [Southern has] been unable to properly address the concrete ITAAC for the nuclear island.” *Id.* at 4.

³³ Petition at 5.

³⁴ *Id.* at 1.

³⁵ *Id.* at 5 (citing 10 C.F.R. § 52.99(c)(3)).

³⁶ *Id.* at 7, 9.

³⁷ Southern Answer at 7.

1. ***Claim of Incompleteness***

Southern submitted the uncompleted ITAAC notifications for ITAAC 760 and 761 in November 2019.³⁸ Under our rules, “If a requestor identifies a specific portion of the § 52.99(c) report as incomplete and the requestor contends that the incomplete portion prevents the requestor from making the necessary *prima facie* showing, then the requestor must explain why this deficiency prevents the requestor from making the *prima facie* showing.”³⁹ “In determining whether a claim of incompleteness is valid, the Commission will consider all of the information available to the petitioner . . . [and] whether the participants have discharged their consultation obligations in good faith.”⁴⁰ Claims of incompleteness must include a demonstration that the allegedly missing information is reasonably calculated to support a *prima facie* showing.⁴¹ Petitioners must provide an adequately supported showing that the section 52.99(c) report fails to include information required by that section.⁴²

Nuclear Watch South has not demonstrated that it consulted with Southern before filing its petition.⁴³ Additionally, Nuclear Watch South does not show that the purportedly missing information is required by section 52.99(c) or indicate how that information is reasonably calculated to support a *prima facie* showing. Further, Nuclear Watch South was required to

³⁸ Letter from Michael J. Yox, Southern, to NRC Document Control Desk (Nov. 22, 2019) (ML19326C865) (Uncompleted ITAAC Notification (UIN) for Index No. 760); Letter from Michael J. Yox, Southern, to NRC Document Control Desk (Nov. 22, 2019) (ML19326B992) (UIN for Index No. 761).

³⁹ 10 C.F.R. § 2.309(f)(1)(vii).

⁴⁰ Final Procedures for ITAAC Hearings, 81 Fed. Reg. at 43,270.

⁴¹ *Id.* at 43,271.

⁴² *Id.*

⁴³ Nuclear Watch South does not discuss the consultation requirement in its Petition, and Southern certified that Nuclear Watch South did not contact Southern in relation to its Petition. Southern Answer, Attach., Certification Regarding Consultation.

satisfy the other applicable elements of 10 C.F.R. § 2.309(f)(1).⁴⁴ As discussed below, the Petition does not satisfy the contention admissibility requirements or address how Nuclear Watch South's claim of incompleteness prevents it from making the required showings. Therefore, Nuclear Watch South does not raise a valid claim of incompleteness.

2. Contention of Omission

Uncompleted ITAAC notifications must include a description of the specific procedures and analytical methods that will be used for performing the prescribed inspections, tests, and analyses and determining that the prescribed acceptance criteria are met.⁴⁵ In the Final Procedures for ITAAC Hearings, we stated that we “expect[] that any contentions submitted by prospective parties regarding uncompleted ITAAC would focus on any inadequacies of the specific procedures and analytical methods described by the licensee” in its uncompleted ITAAC notification.⁴⁶ Nuclear Watch South has not focused on the specific procedures and analytical methods described in the uncompleted ITAAC notifications.

The overarching theme of Nuclear Watch South's contention is that Southern has not provided “sufficient detail for the NRC to find that the acceptance criteria in the [combined license] are, or will be, met.”⁴⁷ While we acknowledged that “a purported incompleteness in the [section] 52.99(c) notification might be the basis for a petitioner's *prima facie* showing,” the petitioner must still make that *prima facie* showing.⁴⁸ Nuclear Watch South did not address the specific portion of the notification that it believes is incomplete or the specific operational

⁴⁴ Hearing Opportunity, 85 Fed. Reg. at 8033.

⁴⁵ 10 C.F.R. § 52.99(c)(3).

⁴⁶ Final Procedures for ITAAC Hearings, 81 Fed. Reg. at 43,267 (quoting 2007 Part 52 Rule, 72 Fed. Reg. at 49,367).

⁴⁷ Petition at 5.

⁴⁸ Hearing Opportunity, 85 Fed. Reg. at 8033 n.7.

consequences of the claimed nonconformance with acceptance criteria.⁴⁹ Therefore, the Petition fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vii). For this reason, Nuclear Watch South's hearing request should not be granted. Nevertheless, we consider its claims in more detail below and conclude that none of the claims, either separately or taken together, satisfy the 10 C.F.R. § 2.309(f)(1) admissibility criteria applicable to this proceeding.

a. Impermissible Challenges to NRC Rules and Procedures

Nuclear Watch South claims that Southern submitted "flagrantly incomplete" uncompleted ITAAC notifications instead of ITAAC closure notifications.⁵⁰ This claim essentially challenges the rules allowing submission of uncompleted ITAAC notifications; therefore, it is outside the scope of this proceeding.⁵¹ Section 52.99(c)(3) specifically provides for the filing of uncompleted ITAAC notifications; sections 52.103 and 2.309(f)(1) contemplate hearings on a facility under construction; and the Hearing Opportunity and Additional Procedures Order for this proceeding address uncompleted ITAAC notifications. Petitioners may not use our hearing process to challenge NRC regulations or express generalized grievances with NRC policies.⁵²

To the extent that Nuclear Watch South's claim about Southern's failure to conduct nondestructive testing challenges specific procedures and analytical methods established by the ITAAC, it is a challenge to the approved ITAAC itself and should have been raised earlier.⁵³ The sections of the Vogtle licensing basis that describe the construction inspection activities for the containment internal structures and shield building were reviewed and approved by the NRC

⁴⁹ *Id.* at 8033.

⁵⁰ Petition at 6.

⁵¹ 10 C.F.R. § 2.309(f)(1)(iii).

⁵² 10 C.F.R. § 2.335; *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 364 (2001).

⁵³ Petition at 8-9.

in issuing the AP1000 Design Control Document and incorporated by reference into the Vogtle combined license.⁵⁴ The activities described therein are resolved with finality and are not subject to challenge in an ITAAC closure proceeding.⁵⁵

With respect to the level of detail, the uncompleted ITAAC notifications for ITAAC 760 and 761 follow the generic guidance of what constitutes sufficient information as well as the organization of the templates in NEI 08-01, which the Staff endorsed in Regulatory Guide 1.215.⁵⁶ Like the NEI 08-01 templates, the notifications for ITAAC 760 and 761 quote the design commitment and ITAAC, provide an ITAAC completion description, list and address the status of ITAAC findings, provide a list of references that will be available for NRC review at the site, and attach tables referenced by the ITAAC.⁵⁷ In particular, the ITAAC completion descriptions state the relevant design basis loads, describe the basic completion steps, and reference specific sections of the Updated Final Safety Analysis Report for procedures, analyses methods, and criteria for completion of the ITAAC.⁵⁸

⁵⁴ Southern Answer at 11 (citing “Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design,” (Initial Report), NUREG-1793 (Sept. 2004), §§ 3.7 and 3.8; “Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design,” NUREG-1793, Supplement 2 (Sept. 2011), §§ 3.7 and 3.8; “Final Safety Evaluation Report for Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4,” NUREG-2124 (Aug. 2011), §§ 3.7 and 3.8).

⁵⁵ See 10 C.F.R. §§ 2.335, 52.63, 52.98, 52.103(f); *id.* pt. 52, app. D, § VI.B; Final ITAAC Procedures, 81 Fed. Reg. at 43,277 n.10.

⁵⁶ Nuclear Energy Institute, “Industry Guideline for the ITAAC Closure Process Under 10 CFR Part 52,” NEI 08-01, rev. 5 (corrected) (June 2014), at 29-31, app. D, app. E (ML14182A160) (NEI 08-01); “Guidance for ITAAC Closure Under 10 CFR Part 52,” Regulatory Guide 1.215, rev. 2 (July 2015), at 2 (ML15105A447) (Regulatory Guide 1.215).

⁵⁷ Compare UIN 760, Encl.; UIN 761, Encl. with NEI 08-01, app. E-2.

⁵⁸ UIN 760, Encl. at 2-3; UIN 761, Encl. at 2-3.

NEI 08-01 has a specific example for the ITAAC completion notification for ITAAC 760, and Southern's notification mirrors the template.⁵⁹ In Regulatory Guide 1.215, the Staff noted that NEI 08-01 had been revised to update the format of uncompleted ITAAC notifications to better match the format of ITAAC closure notifications, which makes it easier for readers to compare an uncompleted ITAAC notification with a later ITAAC closure notification on the same ITAAC.⁶⁰ The Staff "accepted NEI's proposal to use ITAAC closure notification examples to inform the content expectations for uncompleted ITAAC notifications because the revised and improved ITAAC closure notification examples meet the 'specific procedures and analytical methods' standard for uncompleted ITAAC notifications."⁶¹

Nuclear Watch South claims that the principal closure documents such as test reports, completed procedures, and completed analyses are missing from the notification.⁶² As explained in NEI 08-01, principal closure documents are cited in the ITAAC Determination Basis, which is part of the ITAAC closure notification and directly support the conclusion that acceptance criteria are met.⁶³ Accordingly, we would not expect the uncompleted ITAAC notifications for ITAAC 760 and 761 to include principal closure documents. Further, when these documents are complete, licensees are not required to submit them to the NRC; rather, licensees must submit "sufficient information" to support closure of the ITAAC.⁶⁴ NEI 08-01

⁵⁹ Compare UIN 760, Encl. with NEI 08-01, app. D-9. There is a difference in scope in that Southern also discusses radiation shielding. In addition, there is a difference in headings; in lieu of "ITAAC Determination Basis," Southern uses "ITAAC Completion Description" to reflect the difference between an ITAAC closure notification and an uncompleted ITAAC notification.

⁶⁰ Regulatory Guide 1.215 at 2.

⁶¹ *Id.* at 3.

⁶² Petition at 6.

⁶³ NEI 08-01 at 5.

⁶⁴ 2007 Part 52 Rule, 72 Fed. Reg. at 49,450 (stating that the "sufficient information" requirement for uncompleted ITAAC notifications "requires, at a minimum, a summary

provides that the principal closure documents should be available for NRC inspection at the site.⁶⁵

b. Failure to Meet Section 2.309(f)(1) Requirements

Section 2.309(f)(1)(v) requires petitioners to state the alleged facts or expert opinions supporting its position with references to the specific sources and documents on which the petitioner intends to rely to support its position. Instead of referencing a detailed affidavit of an expert, the Petition references Mr. Higley's affidavit, which states that he assisted Nuclear Watch South in the preparation of the contentions, that the factual statements in the Petition are true and correct to the best of his knowledge, and that the opinions in the Petition are based on his professional judgment.⁶⁶ We have no reason to doubt Mr. Higley's involvement in or endorsement of the statements in the Petition. However, an expert opinion that states a conclusion without providing a reasoned basis or explanation for that conclusion does not allow us to assess the merits of that opinion.⁶⁷ Mr. Higley's work on the Vogtle project did not begin until October 2016. The Petition discusses events that occurred before that time, but neither the Petition nor the affidavit contains details as to the bases of the assertions in the Petition.⁶⁸ As such, we find that the section 2.309(f)(1)(v) requirement is not met.

description of the bases for the licensee's conclusion" that the ITAAC will be successfully completed).

⁶⁵ NEI 08-01 at 27-28.

⁶⁶ Petition, Attach., Declaration of Arthur Frank Higley.

⁶⁷ *USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 472 (2006) (quoting *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, LBP-98-7, 47 NRC 142, 181 (1998)).

⁶⁸ *See id.* (rejecting the view that conclusory statements by an expert support contention admissibility).

With respect to the *prima facie* showing required by 10 C.F.R. § 2.309(f)(1)(vii), the Petition discusses potential problems during concrete placement that might lead to nonconformance with ITAAC and assertions that Vogtle Unit 3 is “risky” and that “[f]ailure to prove that the structure is built according to the design may result in catastrophic radiological exposure to the environment and public.”⁶⁹ However, these are conclusory and speculative claims that are insufficient to make the required *prima facie* showing related to “specific operational consequences of nonconformance [that] would be contrary to providing reasonable assurance of adequate protection of the public health and safety.”⁷⁰

In addition, Nuclear Watch South argues that Southern’s notifications are confusing because they include information about Unit 4.⁷¹ As Nuclear Watch South has not offered any specific reason why this practice would be potentially confusing, we find that this claim does not support contention admissibility. Further, because the uncompleted ITAAC notifications for ITAAC 760 and 761 address the same requirements for AP1000 structures described by the Updated Final Safety Analysis Report common to Units 3 and 4, we find nothing impermissible with Southern’s decision to consolidate the uncompleted ITAAC notifications for Units 3 and 4.

With respect to the lack of references to inspection reports or historical licensing documents in the uncompleted ITAAC notifications, Nuclear Watch South has not explained why the lack of such references is a violation of a requirement or reveals a problem with Southern’s closure methodology. For example, Nuclear Watch South points out that the findings for ITAAC 760 listed in Southern’s notification and in the Staff’s ITAAC Review Status

⁶⁹ Petition at 2, 8-10.

⁷⁰ 10 C.F.R. § 2.309(f)(1)(vii).

⁷¹ Petition at 7, 9.

Report do not match.⁷² As a general matter, the ITAAC Review Status Report lists construction and vendor inspection reports and does not separately list ITAAC findings.⁷³ If an NRC inspection does not result in an issue with a finding, then the inspection report will not document an ITAAC finding.⁷⁴ Southern's notifications list, on the other hand, documents closing ITAAC findings, not the original inspection reports identifying the issue. Thus, it is not unexpected that the ITAAC Review Status Report would list more inspection reports than the number of documents under the ITAAC findings section in Southern's notifications.⁷⁵ In light of the differences between what the Staff's report and Southern's notifications are designed to show and the failure to connect any inconsistencies between these documents to a deficiency with Southern's closure methodology, Nuclear Watch South's argument does support contention admissibility.⁷⁶

Nuclear Watch South further takes issue with the references to "numerous large documents without specificity as to page number" and "reports that do not exist."⁷⁷ With respect to the lack of page numbers, Nuclear Watch South has not pointed to specific documents or cited any specific consequences. The "reports that do not exist" appear to be references to

⁷² *Id.* at 7.

⁷³ Staff Answer at 22. "An ITAAC finding is an NRC inspection finding 'that is associated with a specific ITAAC and is material to the ITAAC acceptance criteria.'" *Id.* (citing NRC Inspection Manual Chapter 2506: Construction Reactor Oversight Process General Guidance and Basis Document, at 11 (Feb. 19, 2020) (ML20029E947)).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ The Staff inadvertently failed to include several documents closing ITAAC findings in the Staff's ITAAC Review Status Report. Staff Answer at 23 & n.94. The Staff has since updated its report to include the missing documents. *Id.* at 23 n.94. Nevertheless, Southern's notification addressed these findings, and proposed contentions must focus on the licensee's ITAAC notifications. Any deficiencies in the Staff's review are outside the scope of the proceeding.

⁷⁷ Petition at 7, 9.

“As-Built Summary Report[s],” which, according to the Staff, would not be finalized until the relevant ITAAC are completed.⁷⁸ As with the principal closure documents discussed earlier, there is no requirement for the licensee to submit these documents with the ITAAC completion notification. The relevant regulatory requirement is that the notification “must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met.”⁷⁹ We see no reason to believe that this standard has not been satisfied.

Nuclear Watch South also claims that LAR-19-005R1 should have been included.⁸⁰ The Staff granted this license amendment request when issuing license amendment numbers 167 and 165 for Vogtle Units 3 and 4, respectively.⁸¹ These license amendments were approved before the uncompleted ITAAC notifications were submitted and are reflected in those notifications.⁸² Nuclear Watch South has not shown how the failure to include the license amendment request is material to the findings that the NRC must make or how it demonstrates that the acceptance criteria will not be met.

In summary, Nuclear Watch South asserts that Southern’s uncompleted ITAAC notifications lack sufficient detail for a petitioner or the NRC to meaningfully review them. But the Petition does not point to any required information that is missing or assert any

⁷⁸ Staff Answer at 20.

⁷⁹ 10 C.F.R. § 52.99(c)(3).

⁸⁰ Petition at 8-9.

⁸¹ Staff Answer at 21 n.87 (citing Letter from William Gleaves, NRC, to Brian H. Whitley, Southern (Nov. 15, 2019) (ML19164A264)).

⁸² Southern Answer at 14 n.54; UIN 760, Encl. at 4; UIN 761, Encl. at 4. Our regulations allow combined license applicants to reference information previously filed with the NRC if the references are clear and specific. 10 C.F.R. § 52.8(b). Nuclear Watch South does not raise any reason, and we do not see any, that this practice should not be acceptable for ITAAC notifications.

inadequacies of the specific procedures and analytical methods described by the licensee. While the Petition includes an affidavit from an expert, we do not know the bases for the conclusory statements made in the Petition. Thus, the Petition does not make the required *prima facie* showing that an acceptance criterion will not be met and result in specific operational consequences that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

3. Standing of Nuclear Watch South

Nuclear Watch South also would need to demonstrate standing to be granted a hearing. However, Nuclear Watch South does not address standing in its Petition. Under section 2.309(d)(1) and the Additional Procedures Order, the hearing request must state (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the AEA to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest. In addition, an organization seeking to represent its members must show that at least one member has standing and has authorized the organization to represent her and to request a hearing on her behalf. Further, the interests that the representative organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor requested relief must require an individual member to participate in the organization's legal action.

While we will construe the hearing request in the petitioner's favor, the petitioner has the burden of demonstrating that the standing requirements are met.⁸³ We find that Nuclear Watch South has not met its burden here, as it does not address standing in its Petition.

⁸³ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015).

III. CONCLUSION

For the reasons discussed above, we *deny* Nuclear Watch South's request for a hearing and petition to intervene and *terminate* this proceeding.

IT IS SO ORDERED.

For the Commission



Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of June 2020.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
Southern Nuclear Operating Company) Docket No. 52-025-ITAAC
(Vogtle Electric Generating Plant, Unit 3))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-20-06)** have been served upon the following persons by Electronic Information Exchange.

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Vogle 52-025-ITAAC

COMMISSION MEMORANDUM AND ORDER (CLI-20-06)

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Dated at Rockville, Maryland,
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