UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of: NUCLEAR FUEL SERVICES, INC. (License Amendment Application)	Docket No. 70-143-LA November 25, 2022

NUCLEAR FUEL SERVICES, INC.'S ANSWER TO ERWIN CITIZENS AWARENESS NETWORK'S HEARING REQUEST AND PETITION FOR LEAVE TO INTERVENE

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Nuclear Fuel Services, Inc. ("NFS") submits this Answer opposing the Hearing Request and Petition to Intervene ("Petition") filed by Erwin Citizens Awareness Network ("ECAN" or "Petitioner") on October 31, 2022, in the above-captioned proceeding.[1] This proceeding pertains to the license amendment request submitted by NFS to the U.S. Nuclear Regulatory Commission ("NRC") on November 18, 2021 ("LAR").[2] The LAR asks the NRC to amend NFS's existing special nuclear materials ("SNM") license (SNM-124) to authorize new activities (but no change in material volume) associated with uranium purification and conversion (informally called the "U-Metal" process). ECAN seeks an evidentiary hearing on four proposed contentions ("A" through "D") purporting to challenge the LAR. However, as explained below, none of the proposed contentions are admissible. Accordingly, the Petition should be denied.

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1 Amended Petition of Erwin Citizens Awareness Network for Leave to Intervene in Nuclear Fuel Services, Inc. License Amendment Proceeding, and Request for a Hearing (Oct. 31, 2022) (ML22304A709).

2 Letter from T. Knowles, NFS, to NRC Document Control Desk, "License Amendment Request for U-Metal at the NFS Site" (Nov. 18, 2021) (ML21327A099) (public version) ("LAR"). The LAR also includes the Supplement to Applicant's Environmental Report (ML22066B005) ("SAER").

ECAN's Proposed Contention "A" demands a "proliferation assessment" under the National Environmental Policy Act of 1969, and its Proposed Contention "D" challenges the NRC's quality assurance regulations. In broad terms, these proposed contentions attack government policy choices, NRC regulations, and past agency actions. In contrast, the scope of the instant hearing opportunity is limited to determining whether the LAR satisfies NRC regulatory requirements. Accordingly, these proposed contentions are inadmissible because they are far beyond the scope of this proceeding and fail to demonstrate a genuine dispute with the LAR on a material issue.

ECAN's other proposed contentions fare no better. In Proposed Contention "B," Petitioner challenges the "purpose and need" statement NFS provided for the NRC's environmental review, claiming it is unduly narrow and forecloses consideration of an additional alternative proposed by Petitioner. However, these claims are premised on a factual misreading of the application and a misunderstanding of the various technologies at issue in the U-Metal project. Because they are demonstrably unsupported, these claims fail to raise a genuine material dispute with the LAR.

So too with Proposed Contention "C," in which ECAN raises wide-ranging claims related to historical effluents from the NFS facility and potential cumulative effects thereof. However, many of these claims raise issues that already have been analyzed by the NRC in other licensing proceedings; whereas, Petitioner identifies no regulatory obligation to re-analyze them here in the instant LAR proceeding. Petitioner also claims that granting the LAR would "double" certain facility effluents. But, as detailed below, that claim is demonstrably false and is based on a misreading of the application. Indeed, if the LAR is granted, facility effluents would remain essentially the same as current levels—and well within all regulatory thresholds, which, as

determined by the cognizant regulatory agencies, are adequate to avoid undue risks (including cumulative risks) to human health and the environment. Petitioner does not acknowledge or dispute these highly-relevant facts. Accordingly, these claims also fail to demonstrate a genuine dispute with the LAR.

In sum, none of ECAN's proposed contentions are admissible. Thus, the Petition should be denied as a matter of law.

II. BACKGROUND & LEGAL STANDARDS

A. The LAR & Procedural History

NFS is a manufacturer and processor of specialty nuclear fuels.[3] The primary licensed activity at its Erwin, Tennessee, facility (under its existing 10 C.F.R. Part 70 license, SNM-124) is the production of nuclear fuel for the United States Navy.[4] NFS submitted the LAR on November 18, 2021. Given the sensitive nature of the application, some of the information was submitted as Sensitive Unclassified Non-Safeguards Information ("SUNSI"). However, NFS submitted a publicly-available version of the LAR's "Supplement to Applicant's Environmental Report" ("SAER") on February 24, 2022. The LAR asks the NRC to amend the SNM-124 license to allow new capabilities associated with the "U-Metal" process, pursuant to a contract between NFS and the U.S. Department of Energy's National Nuclear Security Administration ("NNSA").

By way of background, NNSA is tentatively planning to shutdown certain legacy uranium processing equipment at its Y-12 facility in Oak Ridge, Tennessee, in the 2023 time frame. NNSA plans to partially replace this legacy uranium processing system capability with

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[3] LAR, attach. 1 at app. 1A (PDF page 32 of 35) (emphasis added).

[4] SAER at 2 (PDF page 12 of 65).

new electrorefining technology to purify high-enriched uranium ("HEU") metal. However, this new technology will not be available until 2023, at the earliest. Moreover, even after the new electrorefining technology is available, it will not be capable of converting oxides to metal—an important part of the conversion process—until completion of a separate future project that may not be completed for several years. NNSA's contract with NFS is intended to address two needs: (1) to ensure NNSA can convert oxides to metal after the legacy equipment at Y-12 is shut down, and (2) to hedge against the technology risk associated with the new electrorefining technology.

On March 25, 2022, the NRC staff docketed the LAR for detailed licensing review.[5] Shortly thereafter, on April 28, 2022, the NRC Staff sent a request for additional information ("RAI") to NFS seeking further information related to the environmental review.[6] NFS responded via letter dated June 30, 2022, providing additional details to supplement the SAER ("RAI Response").[7] The NRC published a notice in the *Federal Register* on August 31, 2022, providing an opportunity for members of the public to challenge the LAR by submitting hearing requests and petitions to intervene by October 31, 2022 ("Hearing Opportunity Notice").[8] On October 31, 2022, ECAN filed its Petition.[9] Fifteen days after the hearing request deadline

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5 Letter from J. Downs, NRC, to T. Knowles, NFS, "Acceptance of Application for U-Metal License Amendment – Enterprise Project Identification Number L-2021-LLA-0213" at 1 (Mar. 25, 2022) (ML22080A238).

6 Letter from J. Caverly, NRC, to T. Knowles, NFS, "Request for Additional Information to Support Environmental Review of Nuclear Fuel Services, Inc. Application to Amend Its Special Nuclear Materials License SNM-124 to Construct and Operate a Uranium Metal Process (Docket Number: 70-143)" at 1 (Apr. 28, 2022) (ML22111A281).

7 Letter from T. Knowles, NFS, to NRC Document Control Desk, "Response to NRC Request for Additional Information to Support Environmental Review of NFS Application to Amend SNM-124 to Construct and Operate a Uranium Metal Process" at 1 (Jun. 30, 2022) (ML22193A034).

8 Nuclear Fuel Services, Inc., 87 Fed. Reg. 53,507 (Aug. 31, 2022). The Hearing Opportunity Notice also provided an opportunity for members of the public to request access to the SUNSI portions of the LAR, but ECAN did not request such access.

9 The Petition was not accompanied by a Certificate of Service as required by 10 C.F.R. § 2.302(c). Also, the Petition referenced a Declaration of Dr. Michael E. Ketterer as being attached thereto. *See, e.g.*, Petition at 24.

expired, ECAN served on the parties to this proceeding a Declaration from Dr. Michael Ketterer ("Untimely Ketterer Declaration").[10] NFS timely files this Answer to the Petition.[11]

B. Legal & Regulatory Standards

1. Environmental Review for the LAR

NRC licensees and license applicants are not directly subject to the requirements of NEPA—because NEPA only prescribes requirements for federal agencies.[12] However, NRC licensees and license applicants are expected to provide certain information to the NRC (to assist the agency in complying with those obligations) pursuant to requirements codified in 10 C.F.R. Part 51. Certain types of applicants are required, under 10 C.F.R. § 51.45, to submit a comprehensive "Applicant's Environmental Report" providing analyses of the full range of topics addressed under NEPA, such as "alternatives to the proposed action," and "cumulative impacts." However, that requirement is not directly applicable here.

Under 10 C.F.R. §§ 70.35, 70.23, and 51.60, NFS was required to submit with its LAR a document titled "Supplement to Applicant's Environmental Report" ("SAER"). Pursuant to 10 C.F.R. § 51.60, applicants for Part 70 license amendments are not required to submit the comprehensive information specified in 10 C.F.R. § 51.45. Rather, the regulations require the

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However, the attachment served on the parties on October 31, 2022, contained only a cover page with no declaration. *See* Decl. of Dr. Michael E. Ketterer (Oct. 31, 2022) (ML22319A251).

[10] *See* Notice of Refiling of Decl. of Michael Ketterer, Ph.D (Nov. 15, 2022) (ML22319A251) ("Untimely Ketterer Declaration").

[11] *See* 10 C.F.R. § 2.309(i) (requiring answers be filed within 25 days of service of a hearing request); Licensing Board Order (Initial Prehearing Order) at 2 (Nov. 9, 2022) (establishing November 25, 2022, as the deadline for NFS and NRC Staff answers to ECAN's Petition).

[12] *Pa'ina Hawaii, LLC*, CLI-06-18, 64 NRC 1, 5 (2006) ("It is the Staff, not the applicant, that has the legal duty to perform a NEPA analysis and to issue appropriate NEPA documents.").

submission of a far more streamlined document—*i.e.*, an SAER—that merely identifies any "significant environmental change" since the previous environmental review.[13]

2. Hearing Requests & Contention Admissibility

Pursuant to 10 C.F.R. § 2.309(a)(1), a hearing request may only be granted if the presiding officer determines that the petitioner has demonstrated standing and has proposed at least one admissible contention that meets all of the requirements of 10 C.F.R. § 2.309(f)(1). Thereunder, to be admissible, a proposed contention must: (i) provide a **specific statement** of the issue of law or fact to be raised or controverted; (ii) provide a brief explanation of the **basis** for the contention; (iii) demonstrate that the issue raised is within the **scope** of the proceeding; (iv) demonstrate that the issue raised is **material** to the findings the NRC must make to support the action that is involved in the proceeding; (v) provide a concise statement of the alleged **facts or expert opinions**, including references to the specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and (vi) provide sufficient information to show that a **genuine dispute** exists with the applicant on a material issue of law or fact.

Failure to satisfy any one of these six admissibility criteria requires that a proposed contention be rejected.[14] These criteria are "strict by design."[15] The rules were "toughened…in 1989 because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'"[16] The purpose of the six criteria is to

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13 10 C.F.R. § 51.60(a).

14 *See* Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2,182, 2,221 (Jan. 14, 2004); *see also Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

15 *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

16 *Id.* (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (1999)).

"focus litigation on concrete issues and result in a clearer and more focused record for decision."[17] The petitioner alone bears the affirmative burden to satisfy these criteria.[18] Thus, where a petition fails to do so on its face, the Board may not cure a deficiency or fill a gap by supplying the information that is lacking or making factual assumptions that favor the petitioner.[19]

Basis and Specificity: In simple terms, a contention must articulate the specific legal or regulatory requirement that it claims to be unsatisfied, and then it also must explain the basis for that claim. That is because the parties are "entitled to be told at the outset, *with clarity and precision*, what arguments are being advanced and what relief is being" sought.[20] The Board and the parties "cannot be faulted for not having searched for a needle that may be in a haystack."[21]

Scope: The subject matter of all contentions is limited to the scope of the proceeding delineated by the Commission in its hearing notice and referral order delegating to the Licensing Board the authority to conduct the proceeding.[22] A corollary of this fundamental principle is that challenges to NRC rules are prohibited as outside the scope of a proceeding because, absent a

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17 Changes to Adjudicatory Process, 69 Fed. Reg. at 2,202; *see also Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43, 61 (2008).

18 *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 325, 329 (2015) (stating "[t]he proponent of a contention is responsible for formulating the contention and providing the necessary support to satisfy the contention admissibility requirements" and "it is Petitioners' responsibility, not the Board's, to formulate contentions and to provide 'the necessary information to satisfy the basis requirement' for admission") (citation omitted); *see also DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 149 (2015) ("the Board may not substitute its own support for a contention or make arguments for the litigants that were never made by the litigants themselves.") (citation omitted).

19 *See Fermi*, CLI-15-18, 82 NRC at 149.

20 *Kansas Gas & Elec. Co.* (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 576 (1975) (emphasis added).

21 *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-3, 29 NRC 234, 241 (1989).

22 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-825, 22 NRC 785, 790 (1985).

waiver, "no rule or regulation of the Commission…is subject to attack…in any adjudicatory proceeding."[23]

Materiality: A "material issue" is one that would "make a difference in the outcome of the licensing proceeding."[24] The petitioner must demonstrate that "the subject matter of the contention would impact the grant or denial of a pending license application."[25]

Adequate Support: Presiding officers must scrutinize documents and expert opinions to confirm that they support the proposed contention(s).[26] A petitioner's imprecise reading of a document cannot support a litigable contention.[27] Nor can a document or expert opinion that merely states a conclusion without reasonably explaining why the application is inadequate.[28] "Bare assertions and speculation" are wholly inadequate to support a proposed contention.[29]

Genuine Dispute: The Commission has stated that petitioners must "read the pertinent portions of the license application . . . state the applicant's position and the petitioner's opposing view," and explain why the petitioner disagrees with the applicant.[30] If a petitioner believes the license application fails to adequately address a relevant issue, then the petitioner is to "explain why the application is deficient."[31] In other words, a contention of sufficiency that does not

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23 10 C.F.R. § 2.335(a).

24 *Oconee*, CLI-99-11, 49 NRC at 333-34 (citation omitted).

25 *Indian Point*, LBP-08-13, 68 NRC at 62 (citation omitted).

26 *See Vt. Yankee Nuclear Power Corp.* (Vt. 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).

27 *See Ga. Inst. of Tech.* (Ga. Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300 (1995).

28 *See USEC, Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006).

29 *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)).

30 Rules of Practice for Domestic Licensing Proceedings; Procedural Changes in the Hearing Process; Final Rule, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989); *see also Millstone*, CLI-01-24, 54 NRC at 358.

31 Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170.

directly controvert specific text within the application is subject to dismissal.[32] And for contentions of omission, the petitioner must demonstrate two things: (a) that the applicant had a legal obligation to provide the allegedly-omitted information, and (b) that such information is, in fact, absent from the application.[33]

III. THE PETITION SHOULD BE DENIED BECAUSE PETITIONER HAS NOT PROPOSED AN ADMISSIBLE CONTENTION

A hearing may only be granted upon a demonstration of standing by a petitioner who proposes at least one admissible contention that meets all of the requirements of 10 C.F.R. § 2.309(f)(1).[34] Here, Petitioner has not proposed an admissible contention.[35] Thus, the Petition should be denied as required by 10 C.F.R. § 2.309(a).

A. Proposed Contention "A" (Proliferation Assessment) Is Inadmissible

In Proposed Contention "A," Petitioner asserts that U.S. Government "policy" regarding nuclear weapons is "at odds with international laws" and that the *NRC* is required to "disclose a nuclear weapons proliferation assessment, discussing the impacts and policy implications of the new NFS purification process on the U.S. weapons program and prospects."[36] Indeed, Petitioner

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32 *See S.C. Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 & 3), CLI-10-1, 71 NRC 1, 21-22 (2010); *Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992), *vacated as moot*, CLI-93-10, 37 NRC 192 (1993).

33 *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), LBP-04-15, 60 NRC 81, 95 (2004) (if the allegedly missing information is indeed in the license application, then the contention does not raise a genuine dispute).

34 10 C.F.R. § 2.309(a).

35 ECAN seeks representational standing based on the declaration of its member, Mr. Davies, who claims residency one mile from the NFS facility. *See* Petition, attach., Decl. of Alfred John Davies ("Davies Declaration"). Petitioner cites no authority regarding the distance threshold for proximity-based standing in a Part 70 license amendment proceeding. And, contrary to ECAN's claim, the Davies Declaration does not remotely demonstrate "traditional" Article III standing because, among other reasons, it does not allege an injury-in-fact. However, the Board need not evaluate standing here because Petitioner has not proffered an admissible contention. *See DTE Elec. Co.* (Fermi 2), CLI-21-5, 93 NRC 131, 143 (2021) (affirming Board decision to not evaluate standing where petitioner failed to propose an admissible contention).

36 Petition at 8.

makes many alarmist claims regarding "nuclear weapons" throughout its discussion of this contention. To be absolutely clear, the LAR does *not* seek approval to conduct activities related to "nuclear weapons." As noted in the LAR, NFS "is a manufacturer and processor of specialty nuclear *fuels*."[37] Indeed, Nuclear *Fuel* Services is the name of the licensee entity. And, as further explained in the SAER, "[t]he primary licensed activity is the production of nuclear *fuel* for the United States Navy."[38] To the extent Petitioner claims or believes otherwise, it is simply mistaken.

As to admissibility, this contention (as framed by Petitioner) is inadmissible *on its face* because it does not dispute—or even mention—the LAR. As further explained below, Petitioner's disagreement with U.S. Government "policy" is far beyond the scope of this proceeding. Moreover, ECAN's assertions about allegedly-required *NRC* actions do not identify any material issue or deficiency in the LAR. Accordingly, Proposed Contention "A" is inadmissible because it fails to satisfy multiple criteria in 10 C.F.R. § 2.309(f)(1).

First, the focus of the contention (according to Petitioner's own framing of it) is on U.S. Government "policy."[39] Petitioner's statement of the "Proposed Contention"[40] does not even mention the LAR or allege any defect therein. As noted above, the Commission has long held that contentions are limited to the scope of the proceeding delineated in the hearing opportunity notice.[41] Here, the Hearing Opportunity Notice limits the instant adjudicatory proceeding to the

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37 LAR, attach. 1 at app. 1A (PDF page 32 of 35) (emphasis added).

38 SAER at 2 (PDF page 12 of 65) (emphasis added).

39 Petition at 8. Petitioner cites 42 C.F.R. § 1508.1(q)(3)(i) and (iii) to assert that the LAR is a "major federal action" because it involves "implementation of treaties" and "adoption of programs." Petition at 15. However, no such regulation exists. To the extent Petitioner intended to cite 40 C.F.R. § 1508.1(q)(3)(i) and (iii), its claims are meritless because that regulation is inapplicable to the NRC. *See* 10 C.F.R. § 51.10. And as a practical matter, the proposed action here is not to "implement" a treaty or "adopt" a government program.

40 Petition at 8.

41 *Turkey Point*, CLI-00-23, 52 NRC at 329; *Catawba*, ALAB-825, 22 NRC at 790.

LAR. Thus, on its face, the contention proposed by the Petitioner, challenging U.S. government "policy," is beyond the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).[42]

Second, Petitioner's suggestion that the "NRC" is required to prepare a "proliferation assessment" is immaterial to this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iv). The NRC's adjudicatory rules at 10 C.F.R. § 2.309(f)(2) require that, "[o]n issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant's environmental report." Petitioner failed to do that here.[43] Instead, Proposed Contention "A" opines on what the NRC allegedly is required to do. But that does not identify an issue that "would impact the grant or denial of a pending license application."[44]

Moreover, the Commission has repeatedly explained that, in order to demonstrate a genuine dispute, petitioners must "read the pertinent portions of the license application . . . state the applicant's position and the petitioner's opposing view," and explain why the petitioner disagrees with the applicant.[45] Indeed, this Board recently explained that "the section 2.309(f) criteria governing the admissibility of any contention filed in support of a hearing petition call for a *focus* on the license application."[46] In contrast, 8 of the 8.5 pages of the Petition discussing

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42 Furthermore, to the extent Proposed Contention "A" asserts that the potential environmental impacts of U.S. Government "policy" related to nuclear weapons activities have not been analyzed under NEPA, that claim is factually incorrect—and contradicted by the Petition itself. *See* Petition at 15 (citing DOE/EIS-0387, "Final Site-Wide Environmental Impact Statement for the Y-12 National Security Complex" (Feb. 2011)).

43 The contention is framed as a NEPA challenge, but, to the extent Petitioner invokes the "inimicality" finding specified in the Atomic Energy Act of 1954, as amended, *see* Petition at 12, the Petition fails to discuss the relevant portions of the LAR and associated regulatory requirements. *See, e.g.*, *GE-Hitachi Global Laser Enrichment LLC* (GLE Commercial Facility), LBP-12-21, 76 NRC 218, 241 (2012) ("10 C.F.R. Parts 73, 74, and 95, clearly have nonproliferation, security, and terrorism objectives.").

44 *Indian Point*, LBP-08-13, 68 NRC at 62 (citation omitted).

45 Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170; *see also Millstone*, CLI-01-24, 54 NRC at 358.

46 *Nuclear Fuel Servs., Inc.*, (License Amendment Application), LBP-22-02, 96 NRC __, __ (slip op. at 11 n.21) (Oct. 19, 2022) (emphasis added).

Proposed Contention "A" disregard the SAER altogether. And, in the few passing sentences that do purport to criticize the SAER,[47] Petitioner fails to demonstrate a material deficiency therein.

Specifically, Petitioner claims the SAER "contains no reference to relevant international treaty obligations" and "does not mention" corresponding statutes.[48] However, Petitioner points to no prescriptive obligation in 10 C.F.R. Part 51 requiring the SAER to contain such references. Nor does any such requirement exist. Similarly, Petitioner criticizes the SAER because it "does not reveal the practical role the proposed uranium purification process would play in the U.S. nuclear weapons complex, nor how that would alter U.S. nuclear weapons readiness or U.S. national security," and because it does not use "the words 'weapons,' 'treaty,' 'nonproliferation,' and 'proliferation.'"[49] Again, Part 51 contains no requirement to include such information, or vocabulary, in an SAER; and Petitioner does not claim or demonstrate otherwise. These complaints are not material to the NRC Staff's review and fail to demonstrate a genuine dispute with the LAR. Accordingly, Petitioner's brief and immaterial criticisms of the SAER fail to satisfy 10 C.F.R. § 2.309(f)(1)(iv) and (vi). Ultimately, Proposed Contention "A" is inadmissible for all these many reasons.

B. <u>Proposed Contention "B" (Purpose & Need) Is Inadmissible</u>

In Proposed Contention "B," Petitioner asserts that the "purpose and need" statement in the SAER is "unduly narrow and time-limited," and therefore its consideration of alternatives is inadequate.[50] To be sure, a purpose and need statement cannot be defined so narrowly that only

47 Petition at 16.

48 *Id.*

49 *Id.*

50 *Id.*

one alternative will satisfy it.[51] But, that is not the case in the SAER. As explained below, Proposed Contention "B" is inadmissible because it is predicated on inaccurate factual and legal claims.

Here, the proposed action is to approve an amendment to the NFS license to authorize a new capability (the U-Metal process) at NFS's facility in Erwin, Tennessee.[52] The SAER explains that the purpose of and need for the proposed action is to bridge a capability gap that will occur when certain equipment at Y-12 shuts down in the 2023 timeframe.[53] Specifically, the SAER states as follows:

> Legacy uranium processing equipment at the National Nuclear Security Agency's (NNSA) Y-12 plant in Oak Ridge, Tennessee is tentatively planned for shutdown in the 2023 timeframe. Based upon available information, NNSA plans to partially replace this legacy uranium processing system capability with new electrorefining technology to purify high-enriched uranium (HEU) metal. However, this new process will not be available until 2023 at the earliest and will not be capable of converting oxides to metal until completion of a separate future project. Therefore, to maintain the ability to convert oxides to metal, NNSA requires separate HEU purification and conversion capability. To provide both this oxide conversion capability and to hedge against the technology risk associated with the new electrorefining facility, NNSA contracted with NFS to design, license, and demonstrate the capability to perform uranium purification and conversion to uranium metal at the NFS Erwin Facility which is an NRC licensed Category 1 HEU manufacturing facility.[54]

The SAER also considers the "no-action" alternative, in which the NRC does *not* approve an amendment to the NFS license. Under that scenario, the SAER explains that the purpose and need could be accomplished through a reasonable alternative in which the capability gap is bridged at a facility *other* than NFS. The SAER then analyzes that alternative and compares it to

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51 *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991).

52 SAER at 2 (PDF page 12 of 65).

53 *Id*. at 1 (PDF page 11 of 65).

54 *Id*.

the proposed action, as required by Part 51. In Proposed Contention "B," Petitioner raises two objections to this analysis.

First, Petitioner complains that the SAER is inadequate because "NFS has not conclusively demonstrated that the no-[action] alternative should be rejected."[55] However, Petitioner identifies no obligation to do so. Nor does such a requirement exist. Rather, Petitioner's claim misapprehends the obligations imposed on applicants in Part 51, which only require the alternatives discussion to be "sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, 'appropriate alternatives to recommended courses of action.'"[56] Part 51 does not require the SAER to "conclusively demonstrate" *anything*. Petitioner's complaint rests on an incorrect statement of the law. Accordingly, it is not adequately supported, as required by 10 C.F.R. § 2.309(f)(1)(v), and it fails to demonstrate a genuine dispute with the LAR, as required by 10 C.F.R. § 2.309(f)(1)(vi).

Second, Petitioner argues that the SAER improperly omits consideration of a different alternative. Specifically, Petitioner points to the installation of "new electrorefining technology to purify [HEU] metal" at Y-12 (projected to be operational in the 2023 timeframe) and a report from the NNSA stating that it "will continue to fund the purification of metal in Building 9212 [an existing building at Y-12] until the electrorefining process is fully operational."[57] Petitioner then speculates that the NNSA could seamlessly continue to purify metal in Building 9212 until the new electrorefining process comes online, thereby obviating the need for the LAR

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55 Petition at 21. The Petition uses the term "no-build," but that appears to be a typographical error. The alternative discussed in the SAER likely *would* involve construction. SAER at 8 (PDF page 18 of 65).

56 10 C.F.R. § 51.45(b)(3).

57 Petition at 17, 19.

altogether.[58] Petitioner asserts that this scenario posits an alternative to the proposed action that must be analyzed. However, Petitioner appears to conflate two different technologies and disregards the full purpose of and need for the proposed action.

As noted in the SAER, the "new electrorefining technology" at Y-12 that is scheduled to come online in 2023 will "*purify* high-enriched uranium (HEU) *metal*."[59] However, that technology "will not be capable of *converting oxides to* metal until completion of a *separate* future project."[60] Oxide conversion is the capability gap that the LAR is intended to address. In contrast, the alternative contemplated by Petitioner is incapable of providing oxide conversion capabilities. As the Commission has observed, "[a]gencies need only discuss those alternatives that are reasonable and will bring about the ends of the proposed action. When the purpose of the action is to accomplish one thing, it makes no sense to consider alternative ways by which another thing might be achieved."[61]

The U-Metal process at NFS is also intended "to hedge against the technology risk associated with the new [Y-12] electrorefining facility."[62] Petitioner identifies no reason that this defense-in-depth strategy is unreasonable; and Petitioner provides no explanation of how this objective could be viewed as unduly narrow. This objective is performance-based and

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58 Petition at 17 (speculating that "it is possible that most of the anticipated HEU purification interruption at Y-12 has passed and that implementation of NNSA's March 2021 plan for a 'bridging strategy' at NFS will be a waste of time, resources, and taxpayer monies.").

59 SAER at 1 (PDF page 11 of 65) (emphasis added).

60 *Id*. (emphasis added). Based on a recent media report, that separate future project (known as the Uranium Processing Facility or "UPF") is unlikely to be completed before the year 2028. *See NNSA Preparing to Explain UPF Delays to Congress*, EXCHANGE MONITOR, Oct. 30, 2022, https://www.exchangemonitor.com/nnsa-preparing-to-explain-upf-delays-to-congress/.

61 *Hydro Res., Inc.* (Rio Rancho, NM), CLI-01-4, 53 NRC 31, 55 (2001).

62 SAER at 1 (PDF page 11 of 65).

extraordinarily broad.[63] More importantly, Petitioner's proposed "alternative" (relying only on Y-12 facilities) certainly does not accomplish this sensible hedging objective. Accordingly, Petitioner's proposed alternative is not a "reasonable" one for this additional reason.

Ultimately, Proposed Contention "B" is inadmissible because it is unsupported and fails to demonstrate a genuine dispute with the application, as required by 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

C. Proposed Contention "C" (Effluents) Is Inadmissible

In Proposed Contention "C," Petitioner raises a hodge-podge assortment of various claims alleging that the SAER fails to disclose or analyze past, present, and future effluents and does not consider the cumulative effects thereof.[64] However, most of these concerns relate to past agency action, with which Petitioner seemingly disagrees, rather than challenging the instant LAR. Also, Petitioner fails to acknowledge that the NRC previously disclosed and analyzed past, present, and future facility effluents in its license renewal Environmental Assessment for the NFS facility ("LR EA").[65] Petitioner also disregards the multiple portions of the application that present updated disclosures and analyses regarding the presence and quantity of facility effluents. Likewise, Petitioner's claim that the SAER does not address cumulative effects of effluents is premised on a misunderstanding of the application. Contrary to Petitioner's claims, facility effluents will remain essentially unchanged if the LAR is approved. Thus, Petitioner fails to identify any "significant environmental change" from what was analyzed in the LR EA. In sum, Petitioner's claims are variously unsupported (both factually and legally), out-of-scope,

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63 *Contra Busey*, 938 F.2d at 195 (purpose and need statement may be unduly narrow where *only one* action could satisfy it).

64 Petition at 21-22.

65 Final Environmental Assessment for the Proposed Renewal of U.S. Nuclear Regulatory Commission License No. SNM-124 at vi (Oct. 2011) (ML112560265).

immaterial, and fail to raise a genuine material dispute with the LAR. As explained below, far more is required for an admissible contention.

1. Possible Effects of Radiological and Industrial Effluents Have Been Considered to the Full Extent Required by Part 51

Petitioner proffers several claims essentially arguing that the SAER does not adequately address possible effects of radiological and non-radiological effluents and the possible cumulative effects thereof. However, as explained below, these arguments fail to raise an admissible contention for multiple overlapping reasons.

First, Petitioner argues that the SAER inadequately discloses and discusses the presence of "various Uranium radioisotopes" and Plutonium in the Nolichucky River.[66] However, Petitioner fails to explain why the discussion in the SAER is, in any way, inadequate. As alleged support for its argument, Petitioner points to statements in the Untimely Ketterer Declaration concluding that radiological effluents are present downstream from the NFS facility in the Nolichucky River.[67] However, these observations are unremarkable and fail to identify a genuine dispute with the LAR because the *presence* of radiological effluents is squarely presented and analyzed in the SAER.[68] In fact, the SAER expressly provides sampling data showing that the "radiological concentrations in surface water are below the 300 pCi/1 limit with

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66 Petition at 33.

67 As noted above the Untimely Ketterer Declaration was filed 15 days late. *See* supra Part II.A. However, adjudicatory deadlines can only be extended in "extreme and unavoidable circumstances." 10 C.F.R. 2.307(a); *see* Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998). Petitioner identifies no such circumstances here. Accordingly, the Board should disregard the Untimely Ketterer Declaration because it is inexcusably late. Regardless, the Untimely Ketterer Declaration fails to raise a genuine dispute with the LAR, as explained above.

68 *See, e.g.*, SAER at 35-42 (PDF pages 45-52 of 65) (presenting an assessment of "Radiological Impacts" with various data tables).

the highest concentration of 30 pCi/1 (Martin Creek Downstream) being an order of magnitude less tha[n] the regulatory limit."[69]

As to the *quantity* of radiological effluents, the NRC has already concluded that discharges of radiological effluents from the NFS facility that are in compliance with 10 CFR Part 20 annual regulatory limits "are protective of public health and safety and the environment" and "would thus not be expected to pose undue cumulative risks to human health and the environment."[70] Neither the Petition nor the Untimely Ketterer Declaration assert that, if the LAR is approved, discharges of radiological effluents will exceed 10 C.F.R. Part 20 annual regulatory limits. In fact, as noted by NFS, they will not.[71] Thus, there is no genuine material dispute regarding the quantity of radiological effluents either.

Instead, Petitioner's key complaint appears to be that the SAER does not identify which specific isotopes are in those effluents.[72] However, detailed information regarding specific isotopes was presented and analyzed in the LR EA.[73] And NFS has confirmed that effluent attributes and quantities will remain materially the same if the LAR is approved.[74] Isotope-specific discussions are also provided in the SAER and RAI Response.[75] Petitioner does not acknowledge or dispute this information. In sum, Petitioner's claim that radiological effluents

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69 SAER at 28 (PDF page 38 of 65).

70 LR EA at vi.

71 *See, e.g.*, SAER at 28 (PDF page 38 of 65) (currently "an order of magnitude less than the regulatory limit"); RAI Response, attach. at 1 (PDF page 5 of 133) (U-Metal effluent "volume/amount" will not significantly increase).

72 Petition at 26 (claiming there is no discussion of "specifically which Uranium isotopes" are in the effluents).

73 *See, e.g.*, LR EA at 3-31 to -32 tbl. 3-14 ("Radionuclides in Effluents from the NFS Site").

74 *See, e.g.*, RAI Response, attach. at 1 (PDF page 5 of 133).

75 *See, e.g.*, RAI Response, attach. at 7 (PDF page 11 of 133) (listing effluents); *id*., attach., encl. B at R-11 to R-18 (PDF page 91 to 98 of 133) (NPDES permit presenting isotope-specific volumes and activity concentrations); SAER at 37-42 (PDF page 47-52) (data tables).

are undisclosed and unanalyzed is plainly incorrect and therefore fails to support or raise a genuine dispute with the LAR on a material issue of law or fact.

As to air effluents, Petitioner repeatedly claims that the LAR "will cause a *doubling* of air pollution over present levels."[76] As alleged support, Petitioner points to the RAI Response in which NFS states that "[t]he gaseous effluents from the new U-Metal process are similar in attribute and quantity to those emitted from current operations at the NFS facility."[77] Petitioner's conclusion that air emissions will "double" is apparently based on an (incorrect) assumption that the U-Metal activity would involve processing quantities of SNM *in addition* to the quantities authorized in the current license. But that is demonstrably incorrect. As shown in the LAR, the requested licensing change pertains to *capability* only; the LAR does not request any increase in NFS's baseline production *capacity*.[78] Simply put, the new activities contemplated in the LAR will be offset by a reduction in NFS's current activities, which is why effluents will remain "similar" to current levels.[79] Thus, Petitioner's claim that air emissions would "double" is unsupported and factually incorrect. Petitioner's misreading of the LAR cannot serve as a basis for an admissible contention.[80]

Petitioner's claims regarding liquid effluents are meritless for similar reasons. For example, Petitioner alleges that the SAER "does not disclose the chemicals that will be emitted

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76 Petition at 20 (emphasis in original); *see also id*. at 22 (making the same claim).

77 Petition at 20 (citing RAI Response, attach. at 6).

78 *See generally* LAR, attach. 1 at 1-8 to 1-10 (PDF pages 19-21 of 35) (markup of current license with no changes to quantity).

79 RAI Response, attach. at 6 (PDF page 10 of 133).

80 *See Ga. Tech.*, LBP-95-6, 41 NRC at 300.

into the water from the purification and conversion process."[81] That is factually incorrect. As noted in the RAI Response:

> The potential liquid effluents generated from the proposed uranium metal process operation (U-Metal) will not introduce any new radiological or chemical attributes. Any additional effluent volumes generated by the new process will be nominal. The volume/amount that NFS discharges will not significantly increase. Therefore, [NFS's existing water permits] will not require modification to support the U-Metal Project.[82]

Contrary to Petitioner's claim, NFS has "disclosed" that, if the LAR is granted, liquid effluents from the NFS facility would be materially the same as they are today (and as analyzed in the LR EA). Again, an unsupported misreading of the LAR cannot generate a genuine dispute with the application,[83] as required for an admissible contention.

Next, Petitioner argues that NFS provides "little to no analysis of the cumulative effects of the aforementioned industrial chemical groups, considered either individually or collectively respecting their past, present and future effects."[84] However, Petitioner fails to identify any deficiency in the LAR under Part 51. As an overarching matter, the NRC Staff previously analyzed the cumulative effects of effluent releases from NFS. The LR EA explains that discharges of effluents that are in compliance with federal, state, and local permits "are protective of public health and safety and the environment" and "would thus not be expected to pose undue *cumulative* risks to human health and the environment."[85] As NFS stated in the RAI Response, effluents would remain within the current limits of its existing permits after the LAR

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81 Petition at 22.

82 RAI Response, attach. at 1 (PDF page 5 of 133). *See also id*. at 8 (PDF page 12 of 133) ("The proposed process will not generate any new chemical or radiological attributes with the potential to enter surface water ways. Liquid effluent sampling or treatment will not require any changes to support the U-Metal process.").

83 *See Ga. Tech.*, LBP-95-6, 41 NRC at 300.

84 Petition at 34.

85 LR EA at vi.

is approved. Petitioner does not dispute this assertion. Ultimately, because there will be no "significant environmental change" from what was analyzed in the LR EA, Part 51 does not require further analysis in the SAER.[86]

Simply put, the possible direct and cumulative effects of radiological and industrial effluents have been considered to the full extent required by Part 51, and Petitioner fails to support or identify a material challenge or genuine dispute with the LAR.

2. Historical Site Contamination and Remediation Have Been Considered to the Full Extent Required by Part 51

The status of historical site contamination and remediation activities at the NFS facility are described in the SAER. In Proposed Contention "C," Petitioner argues that this information is "poorly explained" and complains that the "results of past remediation are not reassuring."[87] However, Petitioner identifies no obligation under Part 51 to provide anything further. To the extent Petitioner is challenging the sufficiency of the remediation itself—an activity unrelated to the LAR—its arguments are beyond the scope of this proceeding.

The LR EA and SAER present various analyses of legacy groundwater contamination and remediation. For example, the discussion of operational and cumulative groundwater impacts (including existing groundwater contamination and cleanup) is discussed at pages 4-13 to 4-15 of the LR EA. And the SAER provides updated information regarding remediation activities:

> Operations at the NFS Erwin Facility resulted in the presence of radionuclides and organic constituents in the groundwater beneath the Facility. The primary sources of contamination were: i) three unlined surface impoundments (formerly Ponds 1, 2, and 3), ii) the "Pond 4" disposal area and iii) radiological burial grounds, all of which were located in the northern portion of the Facility (GMI 1996) in an area referred to as

86 *See* 10 C.F.R. § 51.60(a).

87 Petition at 34.

> the "North Site". For remediation purposes, the primary groundwater contaminants of concern (COCs) include tetrachloroethylene (PCE), uranium (U), and technetium (Tc-99). Bioremediation of PCE has created byproduct contaminants including trichloroethylene (TCE), 1,2-dichloroethylene (1,2-DCE), and vinyl chloride (VCl). NFS has completed corrective actions involving the excavation, transport, and removal of over 5 million cubic feet of contaminated soil and debris to remove PCE, Tc-99, and uranium sources at the North Site. In 2018, NFS obtained NRC concurrence that final status survey requirements were achieved at the North Site for subsurface and surface soil. NFS is currently continuing corrective actions to address the residual groundwater contamination remaining now that the main contributing sources have been excavated and removed.[88]

The NRC concurrence referenced in the SAER provides the NRC's conclusion that the remediated area "meets the radiological criteria for unrestricted use in 10 CFR 20.1402."[89] Petitioner fails to explain why any further discussion is required here. And, to the extent Petitioner attacks this conclusion from a separate regulatory action as "not reassuring," Petitioner's challenge is beyond the scope of this proceeding, which pertains solely to the LAR. As this Board previously noted, "questions about the appropriateness of a licensee's past (or current) operational activities are more appropriately interposed in the context of [a] 10 C.F.R. § 2.206 petition."[90]

Next, Petitioner complains that NFS has not addressed "sinkhole activity and karst terrain in the Rome Formation underlying its site."[91] However, that issue was squarely addressed in the NFS license renewal proceeding. The following information on an NRC "FAQ" web page provides a simple summary of the issue:

> As discussed in Chapter 3 of the NFS License Renewal EA (ML112560265), the NFS site is underlain by the Rome Formation, which is composed predominantly of siltstones and sandstones with deeper levels

88 SAER at 29 (PDF page 39 of 65).

89 Safety Evaluation Report, Nuclear Fuel Services, Inc. - North Site at 4 (Dec. 11, 2018) (ML18338A246).

90 *NFS*, LBP-22-02, 96 NRC at __ (slip op. at 12 n.23).

91 Petition at 32.

> containing limestone and dolomite. NFS has reported some evidence of karstic dissolution features in the deep bedrock of the Rome Formation at the north end of the site. Because of this geography, sinkholes are less likely to form at NFS than in the boundary regions of the Rome Formation, which is where sinkholes in the local area have formed. It is our assessment that sinkholes do not pose a significant threat to the site.
>
> As the NRC considered the license renewal application for NFS, the consequences of accidents caused by natural phenomena were considered in the EA. The sinkhole events constituted new information, but the NRC staff concluded that the consequences from a sinkhole event would not be worse than the consequences from earthquakes, floods, and other natural phenomena that were already evaluated.[92]

Petitioner's argument here apparently seeks to relitigate the NRC's findings from the license renewal proceeding. But, this LAR adjudicatory proceeding "is not an appropriate vehicle for questioning the NRC Staff's past regulatory efforts."[93] Thus, Petitioner's complaints about historical regulatory action are beyond the scope of this proceeding, contrary to 10 C.F.R. 2.309(f)(1)(iii).

3. Speculation Regarding PFAS Fails to Provide the Requisite Support for an Admissible Contention

Petitioner suggests that the SAER is deficient because it does not discuss PFAS chemicals, which Petitioner speculates "may" be present on the NFS site.[94] But neither Petitioner nor its expert present anything beyond speculation to undergird this generalized claim. In contrast, adequate support is required for an admissible contention.[95] As the Commission has repeatedly explained, "[b]are assertions and speculation" are wholly inadequate to satisfy that

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92 *Frequently Asked Questions about the Nuclear Fuel Services Fuel Fabrication Facility*, NRC.gov, https://www.nrc.gov/materials/fuel-cycle-fac/fuel-fab/nfs-faqs.html#11d1 (last visited Nov. 19, 2022).

93 *NFS*, LBP-22-02, 96 NRC at __ (slip op. at 12).

94 Petition at 26.

95 10 C.F.R. § 2.309(f)(1)(v).

requirement.[96] Thus, Petitioner's speculation regarding PFAS supplies no basis for an admissible contention.

As Petitioner admits, it "does not have direct evidence that PFAS chemicals are present in the groundwater beneath, or in the vicinity of the NFS complex in Erwin."[97] Petitioner merely speculates that PFAS chemicals "may" be present, at some unspecified location, in some unspecified quantity, because NFS has previously conducted "industrial activity."[98] However, arguments such as this, which are "based on little more than speculation," are insufficient to support an admissible contention.[99] Simply put, black letter case law specifies that a contention cannot be based on speculation.

Even assuming *arguendo* that Petitioner's speculative assertion was correct (that some PFAS chemicals may be present somewhere at the NFS site), Petitioner makes no claim—and offers no explanation or support—as to how or why it would be material to the LAR at issue in this proceeding. As noted above, only "significant environmental change[s]"[100] need be discussed in an SAER. In contrast, Petitioner neither acknowledges this standard nor opines on how or why it is satisfied here. Put another way, Petitioner neither claims nor offers support for a claim that the speculative and unspecified quantity of PFAS that "may" be present at the site somehow would be "significant" or material to this licensing action. And, even if Petitioner had offered such layered speculation, it would be even further attenuated from the adequate support required for an admissible contention. Ultimately, Petitioner's PFAS arguments are unsupported

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96 *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)).

97 *Id*. at 28.

98 *Id*.

99 *Millstone*, CLI-01-24, 54 NRC at 358 (quoting *Oconee*, CLI-99-11, 49 at 334).

100 10 C.F.R. § 51.60(a).

and fail to raise a genuine dispute with the application on a material issue of law or fact, contrary to 10 C.F.R. 2.309(f)(1)(iv) to (vi).

D. Proposed Contention "D" (Quality Assurance) Is Inadmissible

In Proposed Contention "D," Petitioner argues that the "NRC's Fuel Cycle Facility regulations have failed to achieve a sustained safety culture at NFS and therefore, do not protect the public, workers, or environment."[101] As with Proposed Contention "A," this contention (as framed by Petitioner) is inadmissible *on its face* because it does not dispute—or even mention—the LAR. Not only does Petitioner fail to mention the LAR in the statement of the contention, but Petitioner also fails to mention the LAR *anywhere* in the discussion of Proposed Contention "D."[102] Unquestionably, these claims are beyond the scope of this LAR proceeding and fail to demonstrate a genuine dispute with the LAR.

To be sure, it is the NRC's "regulations" that are the target of Petitioner's attack in this contention.[103] But, absent a waiver (which Petitioner did not seek or obtain), "no rule or regulation of the Commission, or any provision thereof . . . is subject to attack . . . in any adjudicatory proceeding."[104] Proposed Contention "D" also outlines a list of grievances flowing from the NRC's current oversight program—which Petitioner claims is ineffective.[105] As the Commission has repeatedly explained, "the adjudicatory process is not the proper venue to hear any contention that merely addresses petitioner's own view regarding the direction regulatory

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101 Petition at 35. Petitioner asserts that NFS should "not be authorized to process nuclear weapons material without strict Quality Assurance (QA) requirements." Petition at 38. As previously noted, NFS provides services related to nuclear *fuel*. *See supra* Part III.A.

102 Petition at 35-41.

103 *See, e.g.*, Petition at 35 ("CONTENTION D: FUEL CYCLE FACILITY REGULATIONS ARE INSUFFICIENT . . ."); *id*. ("NRC's Fuel Cycle Facility regulations have failed . . .").

104 10 C.F.R. § 2.335(a)

105 *See, e.g.*, Petition at 35 (alleging a lack of "serious regulatory questioning").

policy should take."[106] Petitioner also mentions various historical oversight and enforcement matters as a basis for its challenge to the NRC's regulations.[107] But, as the Board recently explained, this LAR adjudicatory proceeding "is not an appropriate vehicle for questioning the NRC Staff's past regulatory efforts nor is it an opportunity to raise generic grievances about how the licensee has historically operated under its NRC license."[108]

Ultimately, Proposed Contention "D" fails to present a challenge narrowly focused on the LAR. Thus, it is inadmissible because it is outside the scope of the proceeding under 10 C.F.R. § 2.309(f)(1)(iii), fails to raise issues that are material to the present license amendment under 10 C.F.R. § 2.309(f)(1)(iv), and omits discussion of the LAR itself, failing to raise a genuine dispute under 10 C.F.R. § 2.309(f)(1)(vi).

IV. CONCLUSION

Because ECAN has not proposed at least one admissible contention as required by 10 C.F.R. § 2.309(a), the Petition should be DENIED.

Respectfully submitted,

Signed (electronically) by Ryan K. Lighty

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

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Dated in Washington, D.C.
This 25th day of November 2022

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106 *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-08-9, 67 NRC 421, 431 (2008) (citing *Phila. Elec. Co.* (Peach Bottom Atomic Power Station), ALAB-216, 8 AEC 13, 21 n.33 (1974), *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974)).

107 *See, e.g.*, Petition at 37.

108 *NFS*, LBP-22-02, 96 NRC at __ (slip op. at 12).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of: NUCLEAR FUEL SERVICES, INC. (License Amendment Application)	Docket No. 70-143-LA November 25, 2022

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "NUCLEAR FUEL SERVICES, INC.'S ANSWER TO ERWIN CITIZENS AWARENESS NETWORK'S HEARING REQUEST AND PETITION FOR LEAVE TO INTERVENE" was served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty
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