

**NUCLEAR REGULATORY COMMISSION  
ISSUANCES**

**OPINIONS AND DECISIONS OF THE  
NUCLEAR REGULATORY COMMISSION  
WITH SELECTED ORDERS**

---

January 1, 2023 – June 30, 2023

---

Volume 97  
Pages 1 - 188



Prepared by the  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(301-415-0955)

## COMMISSIONERS

Christopher T. Hanson, Chairman  
Jeff Baran\*  
David A. Wright  
Annie Caputo  
Bradley R. Crowell

---

Daniel H. Dorman, Executive Director for Operations

Marian L. Zabler, General Counsel

---

E. Roy Hawkens, Chief Administrative Judge,  
Atomic Safety & Licensing Board Panel

\* Jeff Baran's term as a Commissioner expired on June 30, 2023.

## ATOMIC SAFETY AND LICENSING BOARD PANEL

E. Roy Hawkens,\* *Chief Administrative Judge*  
Paul S. Ryerson,\* *Associate Chief Administrative Judge (Legal)*  
Dr. Sue H. Abreu,\* *Associate Chief Administrative Judge (Technical)*

### Members

Dr. Gary S. Arnold*	Dr Yassin A. Hassan	Dr. Sekazi K. Mtingwa
Dr. Anthony J. Baratta	Dr. William E. Kastenberg	Dr. William W. Sager
G. Paul Bollwerk, III*	Dr. Michael F. Kennedy	Nicholas G. Trikouros*
William J. Froehlich	Dr. Alice C. Mignerey	Dr. Craig M. White
Michael M. Gibson*		

---

\* *Full-time panel members*



## PREFACE

This is the ninety-seventh volume of issuances (1–188) of the Nuclear Regulatory Commission and its Atomic Safety and Licensing Boards, Administrative Law Judges, and Office Directors. It covers the period from January 1, 2023, to June 30, 2023.

Atomic Safety and Licensing Boards are authorized by Section 191 of the Atomic Energy Act of 1954. These Boards, comprised of three members, conduct adjudicatory hearings on applications to construct and operate nuclear power plants and related facilities and issue initial decisions which, subject to internal review and appellate procedures, become the final Commission action with respect to those applications. Boards are drawn from the Atomic Safety and Licensing Board Panel, comprised of lawyers, nuclear physicists and engineers, environmentalists, chemists, and economists. The Atomic Energy Commission (AEC) first established Licensing Boards in 1962 and the Panel in 1967.

Between 1969 and 1990, the AEC authorized Atomic Safety and Licensing Appeal Boards to exercise the authority and perform the review functions which would otherwise have been exercised and performed by the Commission in facility licensing proceedings. In 1972, that Commission created an Appeal Panel, from which were drawn the Appeal Boards assigned to each licensing proceeding. The functions performed by both Appeal Boards and Licensing Boards were transferred from the AEC to the Nuclear Regulatory Commission by the Energy Reorganization Act of 1974. Appeal Boards represented the final level in the administrative adjudicatory process to which parties could appeal. Parties, however, were permitted to seek discretionary Commission review of certain board rulings. The Commission also could decide to review, on its own motion, various decisions or actions of Appeal Boards.

On June 29, 1990, however, the Commission voted to abolish the Atomic Safety and Licensing Appeal Panel, and the Panel ceased to exist as of June 30, 1991. Since then, the Commission itself reviews Licensing Board and other adjudicatory decisions, as a matter of discretion. *See* 56 FR 29403 (1991).

The Commission also may appoint Administrative Law Judges pursuant to the Administrative Procedure Act, who preside over proceedings as directed by the Commission.

The hardbound edition of the Nuclear Regulatory Commission Issuances is a final compilation of the monthly issuances. It includes all of the legal precedents for the agency within a six-month period. Any opinions, decisions, denials, memoranda and orders of the Commission inadvertently omitted from the monthly softbounds and any corrections submitted by the NRC legal staff to the printed softbound issuances are contained in the hardbound edition. Cross references in the text and indexes are to the NRCI page numbers which are the same as the page numbers in this publication.

Issuances are referred to as follows: Commission (CLI), Atomic Safety and Licensing Boards (LBP), Administrative Law Judges (ALJ), Directors' Decisions (DD), and Decisions on Petitions for Rulemaking (DPRM).

The summaries and headnotes preceding the opinions reported herein are not to be deemed a part of those opinions or to have any independent legal significance.

Available from

U.S. Government Publishing Office  
PO Box 979050  
St. Louis, MO 63197-9000

<https://bookstore.gpo.gov/customer-service/order-methods>

See <https://catalog.gpo.gov/> for this publication.

Final 6-month compilations are available at:  
<https://purl.fdlp.gov/GPO/LPS23577>

Errors in this publication may be reported to the  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(301-415-0955)

**CONTENTS**

**Issuance of the Nuclear Regulatory Commission**

SUSQUEHANNA NUCLEAR, LLC  
(Susquehanna Steam Electric Station, Units 1 and 2)  
Dockets 50-387-LT-3, 50-388-LT-3, 72-28-LT-3  
MEMORANDUM AND ORDER, CLI-23-1, March 17, 2023 . . . . . 81

**Issuances of the Atomic Safety and Licensing Boards**

CAMMENGA AND ASSOCIATES, LLC  
(Denial of License Amendment Requests)  
Docket 030-38679-LA  
Memorandum and Order, LBP-23-3, February 28, 2023 . . . . . 59

CROW BUTTE RESOURCES, INC.  
(License Renewal for the In Situ Leach Facility,  
Crawford, Nebraska)  
Docket 40-8943  
Memorandum and Order, LBP-23-1, January 5, 2023 . . . . . 1

ENERGY NUCLEAR OPERATIONS, INC.,  
ENERGY NUCLEAR PALISADES, LLC,  
HOLTEC INTERNATIONAL, and  
HOLTEC DECOMMISSIONING INTERNATIONAL, LLC  
(Palisades Nuclear Plant and Big Rock Point Site)  
Dockets 50-255-LT-2, 50-155-LT-2, 72-007-LT, 72-043-LT-2  
Certification of Record to Commission, LBP-23-5, March 22, 2023 . . . 116

NUCLEAR FUEL SERVICES, INC.  
(License Amendment Application)  
Docket 70-143-LA  
Memorandum and Order, LBP-23-2, January 30, 2023 . . . . . 8

TMI-2 SOLUTIONS, LLC  
(License Amendment Request for Three Mile Island  
Nuclear Station, Unit 2)  
Docket 50-320-LA-2  
Memorandum and Order, LBP-23-4, March 1, 2023 . . . . . 89

VISTRA OPERATIONS COMPANY, LLC  
(Comanche Peak Nuclear Power Plant, Units 1 and 2)  
Dockets 50-445-LR, 50-446-LR  
Memorandum and Order, LBP-23-6, June 7, 2023 . . . . . 147

**Indexes**

Case Name Index ..... I-1  
Legal Citations Index ..... I-3  
    Cases ..... I-3  
    Regulations ..... I-17  
    Statutes ..... I-27  
    Others ..... I-29  
Subject Index ..... I-31  
Facility Index ..... I-57



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judges:**

**Michael M. Gibson**, Chairman  
**G. Paul Bollwerk, III**  
**Dr. Gary S. Arnold**

In the Matter of

**Docket No. 40-8943**  
**(ASLBP No. 08-867-02-OLA-BD01)**

**CROW BUTTE RESOURCES, INC.**  
**(License Renewal for the In Situ**  
**Leach Facility, Crawford, Nebraska)**

**January 5, 2023**

In this proceeding concerning the renewal of the 10 C.F.R. Part 40 license of Crow Butte Resources, Inc. for its Crawford, Nebraska in situ uranium recovery facility, the Board grants the NRC Staff's motion to terminate this proceeding and terminates this proceeding.

**LICENSING BOARDS: RESOLUTION OF ISSUES**

Once the last contention in a proceeding is resolved, the licensing board loses jurisdiction over the proceeding and the case must be terminated before the board. See *Virginia Electric and Power Co. d/b/a/ Dominion Virginia Power and Old Dominion Electric Cooperative* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 699-701 (2012) (finding licensing board decision to hold proceeding open after all contentions had been dismissed was reversible error).

**MEMORANDUM AND ORDER**  
**(Granting Motion to Terminate Proceeding)**

This proceeding regarding the renewal of the 10 C.F.R. Part 40 license of Crow Butte Resources, Inc. (CBR) for its Crawford, Nebraska in situ uranium recovery (ISR) facility currently is before the Atomic Safety and Licensing Board (the Board) pending disposition of the sole unresolved contested issue, i.e., Contention 1 (Consultation and Tribal Cultural Properties).

The Nuclear Regulatory Commission (NRC) Staff recently issued an environmental assessment (EA) supplement that addresses tribal cultural properties at the Crawford ISR facility. No new or amended contentions were filed challenging this EA supplement. Accordingly, on December 5, 2022, the NRC Staff moved to terminate the proceeding because no actual or potential disputed matters remain.<sup>1</sup> Of the other three parties to this proceeding, CBR responded with support for the motion, while Consolidated Intervenors stated they have no objection to the motion.<sup>2</sup> Intervenor Oglala Sioux Tribe (OST) declared that it takes no position on the grant or denial of the motion, but renewed its continuing subject matter jurisdiction objection to the proceeding, asserting that the United States, in the form of the NRC, has no authority to entertain or issue any permit or license to CBR to conduct activities on the land where the CBR ISR facility is located.<sup>3</sup>

For the reasons set forth below, we grant the NRC Staff's December 5, 2022 motion and terminate this proceeding.

**I. BACKGROUND**

The genesis of this proceeding was CBR's November 2007 application to renew its source materials license that authorizes CBR to operate its Dawes County, Nebraska ISR facility.<sup>4</sup> OST and Consolidated Intervenors challenged

---

<sup>1</sup> See NRC Staff's Motion to Terminate Proceeding (Dec. 5, 2022) at 1 [hereinafter Staff Termination Motion].

<sup>2</sup> See *id.* at 1 n.1; see also Answer Supporting NRC Staff's Motion to Terminate Proceeding (Dec. 15, 2022) at 1 [hereinafter CBR Answer].

<sup>3</sup> See Response of [OST] to NRC Staff's Motion to Terminate Proceeding (Dec. 15, 2022) at 12 [hereinafter OST Answer].

<sup>4</sup> See Letter from Stephen P. Collings, President, CBR, to Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs, NRC (Nov. 27, 2007) transmitting and enclosing CBR's Application for Material License, NRC Form 313 (Nov. 26, 2007) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML-073470645).

various aspects of the CBR license application and were granted party status in this adjudicatory proceeding because they established standing and proffered at least one admissible contention.<sup>5</sup> Several years later, the NRC Staff issued its October 2014 National Environmental Policy Act (NEPA)-related final EA addressing the CBR renewal application. OST and Consolidated Intervenor then submitted new and amended contentions challenging certain provisions of that EA. In March 2015, the Board ruled upon the admissibility of those nine contentions.<sup>6</sup>

Among the nine admitted contentions, Contention 1 raised concerns with the EA's treatment of tribal cultural properties. The other eight admitted contentions were associated with site geology and hydrogeology, including well monitoring frequency and excursion indicators, surface water impacts, aquifer communication, and consumptive groundwater use impacts during aquifer restoration. In August and October 2015, the Board held two evidentiary hearing sessions on these nine contentions.<sup>7</sup>

In May 2016, the Board issued a partial initial decision dealing with the tribal consultation and cultural resources matters embodied in Contention 1.<sup>8</sup> The Board resolved this contention in favor of OST and the Consolidated Intervenor, declaring that the NRC Staff's final EA failed to meet its identification obligations under the National Historic Preservation Act (NHPA) and failed to fulfill its NEPA responsibility to take the requisite "hard look" at cultural resources within the license area at the CBR facility.<sup>9</sup> The Board further ruled that the NRC Staff was obligated to take appropriate action to cure the deficiencies, including possibly issuing a cultural resources-related EA supplement.<sup>10</sup> The Board's second partial initial decision, issued in December 2016, addressed the balance of the admitted contentions, which concerned site geology and hydrogeology.<sup>11</sup> The Board ruled in favor of CBR and the NRC Staff on the site

---

<sup>5</sup> See LBP-08-24, 68 NRC 691, 760 (2008), *aff'd in part and rev'd in part*, CLI-09-9, 69 NRC 331 (2009).

<sup>6</sup> See LBP-15-11, 81 NRC 401, 449 (2015), *petition for review denied*, CLI-20-8, 92 NRC 255, 279 (2020) (Contention 1). Although the Commission dismissed OST's original Contention B concerning cultural resources and consultation as premature, see CLI-09-9, 69 NRC at 350-51, among the post-final EA new contentions submitted by OST and Consolidated Intervenor were several relating to cultural resources and consultation, which the Board admitted in part and combined into a single contention, designated as Contention 1, see LBP-15-11, 81 NRC at 411-15, 449.

<sup>7</sup> See Tr. at 949-2375, 2404-640.

<sup>8</sup> See LBP-16-7, 83 NRC 340 (2016), *petition for review denied*, CLI-20-8, 92 NRC at 279.

<sup>9</sup> See *id.* at 411.

<sup>10</sup> See *id.* at 414-15. The Board also concluded that the Staff had met its NHPA consultation obligations. See *id.* at 411.

<sup>11</sup> See LBP-16-13, 84 NRC 271 (2016), *petition for review denied*, CLI-18-8, 88 NRC 141 (2018).

geology and hydrogeology issues, with the exception of the ISR wastewater land application issue (Contention 12B).<sup>12</sup>

In rulings issued in November 2018, May 2019, and October 2020, respectively, the Commission denied Consolidated Petitioners' petition for review of the Board's findings on the site geology and hydrogeology contentions that the Board had resolved in favor of CBR and the NRC Staff, reversed the Board's determination regarding the ISR wastewater land application contention, and declined to take review of the Board's decision regarding Contention 1.<sup>13</sup> Thus, as of October 2020, only Contention 1 was unresolved.

Previously, in January 2017 the NRC Staff had advised the Board and the parties that it would suspend its work relating to Contention 1 until the pending appeal before the Commission had been decided.<sup>14</sup> But with the October 2020 Commission decision declining to take review of the Board's ruling regarding Contention 1, the NRC Staff again began working with CBR and OST to develop a methodology for a tribal cultural resources survey of the CBR license area.<sup>15</sup> As outlined in the September 2021 methodology, the tribal survey would include a field investigation of the CBR site as supplemented by oral history interviews with tribal elders, historians, and spiritual advisors, and would culminate in a report the NRC Staff could use to prepare an EA cultural resources supplement identifying sites of historic, cultural, or religious significance to OST.<sup>16</sup> With funding provided by CBR, OST hired a cultural resources management (CRM) firm to assist in conducting the survey.<sup>17</sup> The survey process included a four-week field investigation conducted over a six-week period in November and December 2021, oral history interviews of tribal elders during approximately the same time frame, and a report for the NRC Staff to use in preparing an EA supplement.<sup>18</sup> Using the April 2022 final survey report, the NRC Staff conducted

---

<sup>12</sup> See *id.* at 441.

<sup>13</sup> See CLI-18-8, 88 NRC at 172 (denying Consolidated Intervenor's petition for review of LBP-16-13); CLI-19-5, 89 NRC 329, 343-44 (2019) (granting CBR petition for review, reversing Licensing Board's LBP-15-11 admission of Contention 12B, and making sua sponte determination that environmental record in this case satisfies NEPA with respect to ISR wastewater land application issues); CLI-20-8, 92 NRC at 279 (denying Crow Butte's petition for review of Contention 1).

<sup>14</sup> See Letter from David M. Cylkowski, NRC Staff Counsel, to Licensing Board at 1 (Jan. 17, 2017).

<sup>15</sup> See Letter from Marcia J. Simon, NRC Staff Counsel, to Licensing Board at 1 (May 3, 2021).

<sup>16</sup> See Survey Methodology to Identify Sites of Historic, Cultural, and Religious Significance to [OST] for the [CBR ISR] Facility in Dawes County, Nebraska at 11-22 (Sept. 2021) (ADAMS Accession No. ML21252A074).

<sup>17</sup> See Letter from Marcia J. Simon, NRC Staff Counsel, to Licensing Board at 1-2 (Oct. 1, 2021).

<sup>18</sup> See Letter from Marcia J. Simon, NRC Staff Counsel, to Licensing Board at 1-2 (Nov. 1, 2021); Letter from Marcia J. Simon, NRC Staff Counsel, to Licensing Board at 1-2 (Dec. 1, 2021); Letter from Marcia J. Simon, NRC Staff Counsel, to Licensing Board at 1-2 (Jan 3, 2022).

additional NHPA and NEPA analyses and prepared both a draft and final supplement to the 2014 EA.<sup>19</sup> These supplements described the Staff's additional activities, analyses, and conclusions regarding cultural resources associated with the CBR site.

In June 2022, the NRC Staff provided OST with a preliminary draft of the EA supplement for review and comment.<sup>20</sup> After considering OST's initial comments, in August 2022 the NRC Staff issued a revised draft of the EA supplement and a draft finding of no significant impact (FONSI) for public review and comment.<sup>21</sup> Finally, on October 25, 2022, the NRC Staff issued the final EA supplement, including an appendix addressing all comments received and an updated FONSI.<sup>22</sup>

As the NRC Staff, CBR, and OST negotiated the methodology and implementation of the cultural resources survey, the parties apprised the Licensing Board about this process through the NRC Staff's monthly status reports and through a series of eight all-party status conferences.<sup>23</sup> Additionally, when the Board was informed in May 2022 that the draft EA supplement was nearing completion, it issued an order setting a briefing schedule for any new or amended contentions regarding the EA supplement and specified that any such contentions were to be filed within thirty days of the *Federal Register* publication of an agency notice of availability of the final EA supplement.<sup>24</sup> The Board reiterated this directive in a September 2022 issuance that also requested the NRC Staff to notify the Board and the parties of the ADAMS accession number of the final EA supplement contemporaneous with publication of the *Federal Register* notice

---

<sup>19</sup> See Letter from Marcia J. Simon, NRC Staff Counsel, to Licensing Board at 1 (May 1, 2022).

Regarding the cultural resources survey methodology and process crafted by the parties and utilized in this proceeding, which included a CRM firm chosen by OST and retained using funding provided by CBR, OST counsel described it as "unique" and "somewhat of a model on how to proceed in other matters so that we have both NEPA compliance and [NHPA] compliance" while at the same time characterizing the NRC Staff's approach in creating the process as being "very cooperative and very patient with us." Tr. at 3120. Given the result here, OST counsel's observations about the cultural resources methodology and process developed in this proceeding warrant serious consideration by the NRC Staff, license applicants, and Native American tribes or individuals for use in the future to achieve compliance with applicant and NRC NHPA and NEPA responsibilities.

<sup>20</sup> See Letter from Marcia J. Simon, NRC Staff Counsel, to Licensing Board at 1 (June 30, 2022).

<sup>21</sup> See Letter from Lorraine Baer, NRC Staff Counsel, to Licensing Board at 1 (Aug 1, 2022).

<sup>22</sup> See Letter from Marcia J. Simon, NRC Staff Counsel, to Licensing Board at 1 (Nov. 1, 2022) [hereinafter NRC Staff November 2022 Status Report].

<sup>23</sup> See, e.g., *supra* notes 15-16, 18-22; Tr. at 2681-3155.

<sup>24</sup> See Licensing Board Order (Establishing a Briefing Schedule for New and/or Amended Contentions) (May 12, 2022) at 1 (unpublished).

of the final EA supplement's availability, which the Staff did on October 25, 2022.<sup>25</sup>

When the November 25, 2022 deadline for filing new or amended contentions passed without a filing from either OST or the Consolidated Intervenor, the NRC Staff submitted the instant motion to terminate the proceeding, to which the other parties have responded as previously described.<sup>26</sup>

## II. DISCUSSION

Commission case law requires that once the last contention in a proceeding is resolved, the licensing board loses jurisdiction over the proceeding and the case must be terminated before the board.<sup>27</sup> Consistent with this authority, when all admitted contentions have been resolved, either through licensing board rulings or through party actions, and when there is no reasonable prospect that any new litigable issues will be timely raised, there is no basis for continuing the adjudicatory proceeding.<sup>28</sup> In responding to the Board's LBP-16-7 ruling, the NRC Staff adopted the October 25, 2022 final EA supplement on cultural resources and the associated FONSI related to the Crow Butte renewal application. This, combined with the lack of any new pending or amended contentions regarding tribal cultural resources (or any other matter), means that there is no unresolved contention (or the reasonable prospect of such a contention) for the Board to consider.

As noted previously, all parties to this proceeding either support, do not object to, or take no position regarding this NRC Staff motion.<sup>29</sup> OST does, however, reiterate its continuing subject matter objections regarding the proceeding, specifically disputing

---

<sup>25</sup> See Licensing Board Order (Requesting Notice of Publication of Final [EA] and Public Availability of Party Comments on Draft [EA] Supplement) (Sept. 13, 2022) at 2 (unpublished); NRC Staff November 2022 Status Report at 1.

<sup>26</sup> See *supra* notes 2-3 and accompanying text. Both the OST and CBR answers to the NRC Staff's termination motion were timely filed in accordance with the Board's December 6, 2022 issuance establishing the date for any answers to that NRC Staff filing. See Licensing Board Order (Providing Deadline for Replies to Motion to Dismiss) (Dec. 6, 2022) at 2 (unpublished).

<sup>27</sup> See *Virginia Electric and Power Co. d/b/a/ Dominion Virginia Power and Old Dominion Electric Cooperative* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 699-701 (2012) (finding licensing board decision to hold proceeding open after all contentions had been dismissed was reversible error).

<sup>28</sup> See *id.* Whether a different result might follow in the face of a licensing board's consideration of whether the record before the board justifies Commission referral of a sua sponte issue pursuant to 10 C.F.R. § 2.340(a)(1) is not a matter we need address here as that is not the circumstance before the Board.

<sup>29</sup> See *supra* p. 2.

the authority of the United States by its [NRC] to entertain or issue any permit or license to [CBR] or any other entity or person to conduct any activity upon the Unceded Lands of the 1868 Ft. Laramie Treaty or the territory of the 1868 and 1851 Ft. Laramie Treaties without the prior consent of OST and the Oceti Sakowin Oyate.<sup>30</sup>

As CBR points out, however, these claims were previously rejected by both the Board and the Commission.<sup>31</sup>

We thus conclude that, lacking any unresolved admitted contentions, this proceeding must be terminated.

### III. ORDER

There being no further matters relating to the CBR license renewal application pending for adjudication before this Licensing Board, the NRC Staff's December 5, 2022 motion to terminate this proceeding is *granted* and this proceeding is *terminated*.

In accordance with 10 C.F.R. § 2.341(a)(2), this ruling will constitute a final agency decision 120 days from the date of issuance, absent a Commission order extending the time for Commission sua sponte review or the filing of a petition for review pursuant to section 2.341(b).

It is so ORDERED.

THE ATOMIC SAFETY AND  
LICENSING BOARD

Michael M. Gibson, Chairman  
ADMINISTRATIVE JUDGE

G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

Dr. Gary S. Arnold  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
January 5, 2023

---

<sup>30</sup> OST Answer at 2.

<sup>31</sup> See CBR Answer at 2 nn.4-5 (citing LBP-08-24, 68 NRC at 712; CLI-09-9, 69 NRC at 337).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judges:**

**G. Paul Bollwerk, III, Chair**  
**William J. Froehlich**  
**Dr. Sue H. Abreu**

**In the Matter of**

**Docket No. 70-143-LA**  
**(ASLBP No. 23-976-01-LA-BD02)**

**NUCLEAR FUEL SERVICES, INC.**  
**(License Amendment Application)**

**January 30, 2023**

In this proceeding concerning a license amendment application by BWXT Nuclear Fuel Services, Inc. (NFS) for its Erwin, Tennessee nuclear fuel fabrication facility to authorize NFS to perform new processes associated with uranium purification and conversion to uranium metal, the Licensing Board denies petitioner Erwin Citizens Awareness Network, Inc.'s (ECAN) intervention request, concluding ECAN has established representational standing but has failed to show that any of its four contentions are admissible under the governing standards in 10 C.F.R. § 2.309(f)(1).

**RULES OF PRACTICE: STANDING (REPRESENTATIONAL)**

When an organization seeks to establish standing to participate in an NRC proceeding based on its representation of the interests of one or more individuals, a licensing board must look to the standing of the individuals being represented as well as to the organization's ability to establish its own standing in a representational capacity.



### **RULES OF PRACTICE: STANDING (REPRESENTATIONAL)**

The Commission recently noted that under section 2.309(d)(1), to establish representational standing,

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.

*Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237-38 & n.83 (2020) (footnote omitted) (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015)). The Commission further explained that “[w]hile we will construe the hearing request in the petitioner’s favor, the petitioner has the burden of demonstrating that the standing requirements are met.” *Id.* at 238.

### **RULES OF PRACTICE: STANDING TO INTERVENE**

Depending on the proceeding, an organization invoking representational standing can seek to establish the standing of one or more of its members by using either traditional judicial standing principles or the proximity presumption in applicable proceedings. See *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 579-83 (2005).

### **RULES OF PRACTICE: STANDING TO INTERVENE (TRADITIONAL REQUIREMENTS)**

Traditional judicial standing requires that a petitioner show (1) an actual or threatened, concrete and particularized injury (injury in fact); (2) that is fairly traceable to the challenged action (causation); (3) that falls within the zones of interest protected by the statutes that govern the agency's proceedings (such as the Atomic Energy Act or the National Environmental Policy Act (NEPA)) (zone of interest); and (4) that is likely to be redressed by a favorable decision (redressability). See *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station),

CLI-96-1, 43 NRC 1, 6 (1995); *see also Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009) (citation omitted).

**RULES OF PRACTICE: STANDING (PROXIMITY PRESUMPTION)**

The proximity presumption, which “rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility,” relieves a petitioner of the need to satisfy the traditional standing elements of injury in fact, causation, and redressability. *See Peach Bottom*, CLI-05-26, 62 NRC at 580.

**RULES OF PRACTICE: STANDING (PROXIMITY PRESUMPTION)**

In proceedings for light-water power reactor “construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool,” as well as for early site permits, combined licenses, and license renewals, NRC caselaw has established that a petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (citation omitted); *see, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-3, 89 NRC 245, 258-59 (2019) (subsequent license renewal), *appeal dismissed and referred ruling aff’d*, CLI-20-3, 91 NRC 133 (2020); *Calvert Cliffs*, CLI-09-20, 70 NRC at 916-17 (combined license); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 249-51 (2007) (early site permit).

**RULES OF PRACTICE: STANDING (PROXIMITY PLUS PRESUMPTION)**

The 50-mile proximity presumption applies to traditional light-water power reactor license proceedings, but not necessarily to other licensed activities, such as this nuclear fuel fabrication facility. Ruling on a proximity presumption claim in such a case, sometimes referred to as a “proximity plus” presumption, *CFC Logistics, Inc.*, LBP-03-20, 58 NRC 311, 318 (2003) (citing *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994)), requires “a case-by-case” analysis of the proposed licensing action to determine the radius beyond which “there is no longer an ‘obvious potential for offsite consequences’ by ‘taking into account the nature of the proposed

action and the significance of the radioactive source,” *Peach Bottom*, CLI-05-26, 62 NRC at 580-81 (quoting *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 116-17 (1995)).

#### **RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

A contention submitted by a hearing requestor such as ECAN as part of a timely intervention petition must satisfy the following six admissibility factors set forth in section 2.309(f)(1):

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing . . . ; and
- (vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

10 C.F.R. § 2.309(f)(1)(i)-(vi).

#### **RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

##### **LICENSING BOARD(s): SCOPE OF REVIEW (CONTENTIONS)**

These six criteria aim to “focus litigation on concrete issues and result in a clearer and more focused record for decision.” Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) [hereinafter 2004 Part 2 Changes]. The petitioner bears the burden to satisfy each of the criteria, *see id.* at 2221; *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); a failure to comply with any of the six requirements constitutes grounds for rejecting a proposed contention, *see Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) (“[I]t is Petitioners’ responsibility, not the Board’s, to formulate contentions and to provide ‘the necessary information to satisfy the basis requirement’ for admission.” (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998)). Moreover, when a petitioner neglects to provide the requisite support for its contentions, the board may not cure the deficiency by supplying that information. *See Arizona*

*Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991) (licensing board cannot supply missing information supporting a contention).

## **NEPA: SUFFICIENCY OF CONTENTIONS**

### **RULES OF PRACTICE: CONTENTIONS (CHALLENGE TO LICENSE APPLICATION)**

The Commission's rules of practice require that contentions be framed as challenges to the application, and for NEPA-related contentions, those challenges must be raised regarding the applicant's environmental report (ER) because the Staff has not necessarily conducted its environmental analysis at the hearing request stage. *See* LBP-22-2, 96 NRC 129, 144 & n.22 (2022) (citing *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (indicating that in a licensing proceeding, with the exception of certain NEPA issues, the applicant's license application is in issue, not the adequacy of the NRC Staff's review of the application), *petition for review denied*, CLI-83-32, 18 NRC 1309 (1983)); *see also* *Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-13-10, 78 NRC 117, 132-34 (2013) (indicating a NEPA contention initially properly framed as challenging an applicant's ER can migrate to become an issue contesting an NRC Staff NEPA statement once that NRC Staff NEPA statement is issued).

### **REGULATORY CONSTRUCTION OR INTERPRETATION: REGULATORY HISTORY**

Regulatory history based on the statement of considerations for a proposed or final rule is often cited for expressions of Commission intent. *See, e.g., Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-11-9, 74 NRC 233, 242-43 (2011) (referencing both proposed and final rule statements of considerations in using regulatory history to determine rule's meaning). But Commission statements made in the context of a rulemaking petition denial are equally appropriate for that purpose. *See Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-03-14, 58 NRC 104, 108 (2003) (indicating that when regulatory history shows the Commission has rejected an amendment to a rule, that rejection may be evidence the Commission did not intend the regulation to include the provision in the rejected amendment); *cf. Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 290 (finding NRC Staff regulatory guidance documents that are consistent with the regulations and are at

least implicitly endorsed by the Commission are entitled to correspondingly special weight), *petition for review denied*, CLI-88-11, 74 NRC 603 (1988).

**ATOMIC ENERGY ACT: REQUIREMENT FOR NUCLEAR PROLIFERATION ASSESSMENT**

**NEPA: REQUIREMENT FOR NUCLEAR PROLIFERATION IMPACTS ASSESSMENT**

As the Commission has recognized regarding fuel cycle facilities generally, the purified uranium metal's fabrication by NFS would fall within the confines of the NRC's domestic 10 C.F.R. Part 70 nuclear materials licensing and regulatory process. Part 70's health, safety, and security protections are designed to prevent nuclear equipment and material, as well as classified information and sensitive technologies, from becoming available to unauthorized foreign or domestic individuals or entities. A further proliferation analysis is not required by these regulations. In conjunction with the speculative nature of the proliferation assessment process that would be based on policy information and analyses remote from both the NRC's licensing process and the license request at issue, this establishes that the Commission's previous fuel cycle facility-related pronouncements that neither the AEA nor NEPA mandates the preparation of a proliferation assessment apply with equal force here.

**NEPA: CONSIDERATION OF ALTERNATIVES**

In the context of a purpose and need statement or otherwise, the alternatives selected for a NEPA analysis are necessarily informed by the project under review and its goals, which in turn are determined by the applicant. *See Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 607-08 (2007), *approved*, CLI-07-27, 66 NRC 215 (2007).

**RULES OF PRACTICE: CONTENTIONS (SCOPE OF PROCEEDING)**

While the Commission has long recognized that the scope of a hearing contesting a facility license amendment should encompass "any health, safety or environmental issues fairly raised by [the license amendment]," such a challenge still must be lodged within the confines of the Commission's contention admissibility rule, 10 C.F.R. § 2.309(f)(1). *Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 624 (1981). That provision, which is strict by design, *see, e.g., PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 504

(2015), does not permit a petitioner to file vague, unparticularized, unsupported contentions, *see, e.g., North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999).

#### **RULES OF PRACTICE: CONTENTIONS (CHALLENGE TO LICENSE APPLICATION)**

As evidenced by the requirement in section 2.309(f)(1)(vi) that a contention must include specific references to the disputed portions of the license application at issue, this provision does not permit challenges to (1) NRC Staff actions, *see* LBP-22-2, 96 NRC at 144 & n.22 (citing *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (indicating that in a licensing proceeding, with the exception of certain NEPA issues, the applicant’s license application is in issue, not the adequacy of the NRC Staff’s review of the application), *petition for review denied*, CLI-83-32, 18 NRC 1309 (1983)); *see also* *Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-13-10, 78 NRC 117, 132-34 (2013) (indicating a NEPA contention initially properly framed as challenging an applicant’s ER can migrate to become an issue contesting an NRC Staff NEPA statement once that NRC Staff NEPA statement is issued); or (2) past or current facility operations simply on the basis that the activities authorized under the license amendment would be conducted by the same licensee at the same facility, *see* *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), LBP-20-8, 92 NRC 23, 47 (indicating challenges to current plant licensing basis rather than the requested facility modification are not within the permissible scope of a license amendment proceeding and instead should be brought as an enforcement action pursuant to 10 C.F.R. § 2.206) (citing *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-19-7, 90 NRC 1, 14 (2019)), *aff’d*, CLI-20-18, 92 NRC 530 (2020).

#### **RULES OF PRACTICE: CONTENTIONS (CHALLENGE BASED ON MATERIAL ISSUE OF LAW OR FACT)**

Labeling information in an environmental analysis document as incorrect without also showing how that purported inaccuracy has some significance for the NEPA process fails to pass muster under section 2.309(f)(1)(vi)’s requirement that a contention’s sponsor must show that a “material” issue of fact is involved. *See* *Holtec International* (HI-STORE Consolidated Interim Storage Facility), CLI-20-4, 91 NRC 167, 190-91 (2020) (noting contention must frame a dispute as to a material issue and the Commission’s previous warning about trying to “flyspeck” an environmental impact statement).

## **RULES OF PRACTICE: CHALLENGE TO COMMISSION REGULATIONS**

Under 10 C.F.R. § 2.335, licensing boards may not entertain challenges to the validity of Commission regulations in individual licensing proceedings except in certain “special circumstances” in which a waiver is requested and found to be appropriate. Section 2.335(b) and Commission caselaw detail the prima facie showing that an intervenor must make to establish the requisite “special circumstances” so that a waiver may be granted. *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005). If a licensing board determines that such a prima facie showing has been made, section 2.335(d) provides that the question whether the regulation should be waived must be certified to the Commission. Without a waiver determination by the Commission, a contention that challenges a rule is outside the scope of the proceeding and may not be given further consideration by a licensing board. *See NextEra Energy Point Beach, LLC* (Point Beach Nuclear Plant, Units 1 and 2), CLI-22-5, 95 NRC 97, 101, 105 (2022); *see also* 10 C.F.R. § 2.335(c).

### **MEMORANDUM AND ORDER (Denying Intervention Petition and Terminating Proceeding)**

Currently under consideration in this proceeding is an October 31, 2022 hearing request filed by petitioner Erwin Citizens Awareness Network, Inc. (ECAN).<sup>1</sup> In its intervention petition, ECAN posits four contentions challenging aspects of the November 18, 2021 BWXT Nuclear Fuel Services, Inc. (NFS) request that the Nuclear Regulatory Commission (NRC) amend the existing 10 C.F.R. Part 70 license for NFS’s Erwin, Tennessee nuclear fuel fabrication facility to authorize NFS to perform new processes associated with uranium purification and conversion to uranium metal.<sup>2</sup> While the NRC Staff (NRC Staff) and NFS

---

<sup>1</sup> ECAN filed an initial hearing petition on October 31, 2022, which it amended later that same day. *See* Petition of [ECAN] for Leave to Intervene in Nuclear Fuel Services, Inc. License Amendment Proceeding, and Request for a Hearing (Oct. 31, 2022); Amended Petition of [ECAN] for Leave to Intervene in Nuclear Fuel Services, Inc. License Amendment Proceeding, and Request for a Hearing (Oct. 31, 2022) [hereinafter ECAN Amended Hearing Petition]. The subsequently filed version of ECAN’s submission is what we will reference in this issuance.

<sup>2</sup> *See* Letter from Tim Knowles, Director, Safety and Safeguards, NFS, to Director, Office of Nuclear Material Safety and Safeguards (NMSS), NRC at portable document format (PDF) 1-2

(Continued)

did not agree on whether ECAN has demonstrated its representational standing to object to the NFS license amendment application, both assert that ECAN has failed to provide an admissible contention so that its hearing request should be dismissed.<sup>3</sup>

For the reasons set forth below, we conclude that ECAN has established representational standing to intervene in this proceeding but has failed to show that any of its four contentions are admissible under the governing standards in 10 C.F.R. § 2.309(f)(1). Accordingly, ECAN's hearing request must be denied and this proceeding terminated.

## I. BACKGROUND

### A. NFS License Amendment Application

As noted previously, in a November 18, 2021 letter to the agency, NFS requested an amendment to its existing 10 C.F.R. Part 70 special nuclear materials (SNM) license, SNM-124. *See* NFS License Amendment Application at PDF 1. If granted, the amendment would allow NFS to provide uranium purification and conversion services at its Erwin, Tennessee nuclear fuel fabrication facility. *See id.* at PDF 5. According to the NFS application, the license amendment request stems from a contract awarded to NFS by the U.S. Department of Energy's (DOE) National Nuclear Security Administration (NNSA) for the "U-Metal Project." *Id.* at PDF 1. That contract, the amendment application indicates, is intended to bridge the gap between the shutdown of the NNSA Oak Ridge, Tennessee facility's Y-12 legacy uranium processing equipment and the transition to a new facility at Y-12 that uses new electrorefining technology to purify high-enriched uranium metal. *See id.* at PDF 1-2.

As the application reflects, in accordance with 10 C.F.R. § 70.72(c), NFS is required to seek NRC approval of the license changes necessary to implement the new U-Metal process, including addressing the baseline design criteria set forth in 10 C.F.R. § 70.64. *See id.* at PDF 4-5. To address these regulatory requirements, attachments to the NFS application included a proposed

---

(Nov. 18, 2021) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21327A099) [hereinafter NFS License Amendment Application]. In several instances in which a cited document has no marked pagination, we refer to the document's pagination as it resides as a PDF file in the agency's ADAMS document management system or the associated Electronic Hearing Docket.

<sup>3</sup> NRC Staff Answer to [ECAN] Petition to Intervene and Request for Hearing (Nov. 23, 2022) at 1 [hereinafter Staff Answer]; [NFS]'s Answer to [ECAN]'s Hearing Request and Petition for Leave to Intervene (Nov. 25, 2022) at 1 [hereinafter NFS Answer].



supplemental environmental report (ER) evaluating the environmental impacts associated with the addition of the U-Metal Project.<sup>4</sup> *See id.* at PDF 3.

On March 25, 2022, the NRC Staff acknowledged receipt of the information necessary to accept the NFS license amendment application and proceed with its detailed licensing review.<sup>5</sup> Just over a month later, on April 28, 2022, the NRC Staff issued a request for additional information (RAI) seeking material it deemed necessary to complete its detailed environmental review,<sup>6</sup> to which NFS responded on June 30, 2022.<sup>7</sup>

## **B. Procedural Background**

On April 27, 2022, the NRC Staff published a *Federal Register* notice indicating that it had received the November 2021 NFS license amendment application.<sup>8</sup> Further, in accordance with Atomic Energy Act (AEA) section 189a, 42 U.S.C. § 2239(a), the NRC Staff's notice stated that within 60 days any person whose interest might be affected by the application could file a hearing request and petition for leave to intervene challenging that application. *See* 87 Fed. Reg. at 25,055. On June 10, 2022, ECAN submitted a request for a three-month extension of this filing deadline, citing hardships related to the ongoing COVID-19 pandemic and a lack of broadband Internet access, which the Secretary of the

---

<sup>4</sup>The supplemental ER attached to the November 2021 NFS license amendment application was submitted as a nonpublic document. *See* NFS License Amendment Application, aff. ¶¶ A-B (Aff. of Tim Knowles, Director, Safety and Safeguards, NFS (Nov. 18, 2021)). Subsequently, in a January 22, 2022 request for supplemental information (RSI), the NRC Staff asked that NFS provide a version of the proposed supplemental ER that could be made available to the public. *See* Letter from James R. Downs, Senior Project Manager, NMSS, NRC, to Tim Knowles, Director, Safety and Safeguards, NFS, encl. at 5 (Jan. 21, 2022) ([RSI], Enterprise Project Identification Number: L-2021-LLA-0213) (ADAMS Accession No. ML22014A421). In a February 24, 2022 response, NFS provided a version of the supplemental ER suitable for public release. *See* Letter from Tim Knowles, Director, Safety and Safeguards, NFS, to Director, NMSS, NRC at PDF 1 (Feb. 24, 2022) (ADAMS Accession No. ML22066B004). That publicly available version of the supplemental ER is the version referenced in this decision. *See id.*, encl. (NFS, Supplemental [ER] for Amendment of Special Nuclear Material License No. SNM-124 (Nov. 2021)) (ADAMS Accession No. ML22066B005) [hereinafter ER].

<sup>5</sup>*See* Letter from James R. Downs, Senior Project Manager, NMSS, NRC, to Timothy Knowles, Director, Safety and Safeguards, NFS at 1 (Mar. 25, 2022) (ADAMS Accession No. ML22080A238).

<sup>6</sup>*See* Letter from Jill S. Caverly, Senior Project Manager, NMSS, NRC, to Timothy Knowles, Director, Safety and Safeguards, NFS at 1 (Apr. 28, 2022) (ADAMS Accession No. ML22111A281).

<sup>7</sup>*See* Letter from Tim Knowles, Director, Safety and Safeguards, NFS, to Director, NMSS, NRC, attach. (Jun. 30, 2022) (NFS Response to [RAI] for the Development of the Environmental Assessment for the [NFS] License Amendment Request to SNM-124 Authorizing Uranium Purification and Conversion Services (U-Metal Project) (ADAMS Accession No. ML22193A034) [hereinafter NFS RAI Response].

<sup>8</sup>*See* [NFS], 87 Fed. Reg. 25,054, 25,054 (Apr. 27, 2022).

Commission granted in part in a June 24, 2022 order extending the hearing petition filing deadline until July 27, 2022.<sup>9</sup> This was followed by a second ECAN extension request, dated July 26, 2022, seeking an additional three months to file a hearing petition.<sup>10</sup> In an August 8, 2022 order, the Secretary noted that the deadline for filing a hearing petition challenging the NFS application would be governed by a new hearing opportunity notice that the NRC Staff had advised was needed to outline the procedures by which a potential party could seek access to nonpublic sensitive unclassified non-safeguards information (SUNSI) documents provided by NFS in support of the license amendment application. *See* August 8, 2022 Commission Order at 1-2.

The NRC then published a hearing opportunity notice in the *Federal Register* on August 31, 2022, that set an October 31, 2022 deadline for any hearing requests challenging the NFS license amendment application.<sup>11</sup> On October 31, ECAN filed the instant amended hearing petition in which it proffers four contentions challenging various aspects of the NFS license amendment request.<sup>12</sup>

In answers filed by the NRC Staff and NFS on November 23 and 25, 2022, respectively, while differing on ECAN's representational standing in this proceeding, both participants challenge the admissibility of ECAN's four contentions.

---

<sup>9</sup> *See* Commission Order (June 24, 2022) at PDF 1 & n.1 (unpublished).

<sup>10</sup> *See* Commission Order, attach. (Aug. 8, 2022) (unpublished) (Letter from Linda Cataldo Modica, President, ECAN, to Rochelle C. Bovol, Acting Secretary, Office of the Secretary, NRC (July 26, 2022)) [hereinafter August 8, 2022 Commission Order].

<sup>11</sup> *See* [NFS], 87 Fed. Reg. 53,507, 53,508-09 (Aug. 31, 2022). Consistent with the Commission's August 8 issuance, the *Federal Register* notice also incorporated an order setting forth the procedures by which a potential party could seek access to SUNSI documents provided in support of the NFS license amendment application. *See id.* at 53,510-11. In response to the portion of the hearing notice regarding SUNSI access, Park Overall filed a SUNSI access request that ultimately was rejected by a licensing board consisting of the same three members appointed to this Board. That board rejected her request because it failed to articulate the requisite "need" for the SUNSI material as required under the standards governing such requests. *See* LBP-22-2, 96 NRC 129, 141-46 (2022). Thereafter, in response to the agency's August 31, 2022 hearing opportunity notice, Ms. Overall submitted an intervention petition that the Commission denied as failing to address any of the standing and contention admissibility criteria in 10 C.F.R. § 2.309(d) and (f). *See* Commission Order (Nov. 22, 2022) at 1-2 (unpublished).

<sup>12</sup> *See supra* note 1. For one of those contentions, ECAN references extensively the declaration of Michael Ketterer, Ph.D., which purportedly was included with the amended petition. *See* ECAN Amended Hearing Petition at 24-28. In a November 15, 2022 filing, however, ECAN acknowledged that it had failed to include the Ketterer declaration with its October 31, 2022 submission and indicated it was now "refiling" that declaration. Notice of Refiling of Declaration of Michael Ketterer, Ph.D. (Nov. 15, 2022) at 1 (indicating ECAN mistakenly filed only the Ketterer declaration's caption cover page at the time it submitted its hearing petition); *see also id.* attach. (Declaration of Michael E. Ketterer, Ph.D. (Oct. 26, 2022)) [hereinafter Ketterer Declaration].

*See supra* note 3 and accompanying text. In its December 2, 2022 reply,<sup>13</sup> ECAN asserts that all of its contentions are admissible such that it should be accepted as a party to this proceeding.<sup>14</sup>

In a series of issuances, the Board scheduled an initial prehearing conference,<sup>15</sup> conducted via WebEx on December 12, 2022, during which the Board heard oral argument from the participants on the sufficiency of ECAN's contention admissibility claims.<sup>16</sup>

With this background in mind, we turn to the matters of ECAN's standing and the admissibility of its four proposed contentions.

---

<sup>13</sup> In a November 28 issuance, the Board clarified that, notwithstanding the different filing dates by the NRC Staff and NFS for their answers, an ECAN reply to both participants' answers would be timely if filed by December 2, 2022. *See* Licensing Board Memorandum and Order (Clarifying Schedule for Submitting Reply Pleading) (Nov. 28, 2022) at 2 (unpublished).

<sup>14</sup> *See* [ECAN]'s Combined Reply in Support of Petition for Leave to Intervene (Dec. 2, 2022) at 1-2 [hereinafter ECAN Reply]. In a December 9, 2022 filing, NFS asked that the Board strike substantial portions of the ECAN reply regarding Contention C, the admissibility of which is discussed in section III.B.3 below, as impermissibly raising new information. *See* [NFS]'s Motion to Strike Portions of the Reply Filed by [ECAN] (Dec. 9, 2022) at 9. Although the NRC Staff did not file a response to the NFS motion to strike, ECAN submitted an answer on December 19, 2022, in which it contested each of the NFS claims regarding its reply. *See* [ECAN]'s Opposition to [NFS]'s Motion to Strike (Dec. 19, 2022) at 10 [hereinafter ECAN Motion to Strike Answer]; *see also* Licensing Board Memorandum and Order (Memorializing Schedule for Responding to Pending Motion to Strike) (Dec. 13, 2022) at 1 (unpublished). As ECAN noted in its response, because of the expiration of its counsel's digital certificate, it was unable to submit this pleading on December 19 using the agency's E-Filing system. *See* ECAN Motion to Strike Answer at 1 n.1. Instead, ECAN circulated its filing to the Board members, the other participants, and the agency's hearing docket as an attachment to a December 19, 2022 e-mail and then filed the pleading the next day using the E-Filing system. No objection has been raised about the Board considering this submission in ruling upon the NFS motion to strike, which is addressed below. *See infra* note 66.

<sup>15</sup> *See* Licensing Board Memorandum and Order (Initial Prehearing Order) (Nov. 9, 2022) at 6-7 (unpublished) [hereinafter Initial Prehearing Order]; Licensing Board Memorandum and Order (Tentative Initial Prehearing Conference Schedule) (Nov. 22, 2022) at 1-2 (unpublished); Licensing Board Memorandum and Order (Scheduling Initial Prehearing Conference) (Dec. 6, 2022) (unpublished).

<sup>16</sup> *See* Tr. at 1-93. Referencing this prehearing conference, several individuals submitted 10 C.F.R. § 2.315(a) limited appearance statements that, in addition to opposing the NFS license amendment request on grounds that generally parallel the issues raised in ECAN's contentions, questioned whether the Board had provided sufficient notice of the process by which members of the public could make a section 2.315(a) limited appearance statement. *See, e.g.*, E-Mail from William Boone to Licensing Board and EHD (Jan. 18, 2023, 22:56 EST). In a January 23, 2023 memorandum, the Board noted that its November 2022 initial prehearing order had provided guidance on submitting written limited appearance statements. *See* Licensing Board Memorandum (Submission of 10 C.F.R. § 2.315(a) Limited Appearance Statements) (Jan. 23, 2023) at 2 (unpublished) (citing Initial Prehearing Order at 7-8). Ultimately, the Board has received more than fifty limited appearance statements, which section 2.315(a) indicates "shall not be considered evidence in the proceeding."

## II. STANDING

### A. Standards Governing Standing Under 10 C.F.R. § 2.309(d)

ECAN seeks to establish standing based on its representation of an individual member in its organization. When an organization seeks to establish standing to participate in an NRC proceeding based on its representation of the interests of one or more individuals, a licensing board must look to the standing of the individuals being represented as well as to the organization's ability to establish its own standing in a representational capacity.

In this regard, the Commission recently noted that under section 2.309(d)(1), to establish representational standing,

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.<sup>17</sup>

The Commission further explained that “[w]hile we will construe the hearing request in the petitioner's favor, the petitioner has the burden of demonstrating that the standing requirements are met.” *Vogle*, CLI-20-6, 91 NRC at 238.

Depending on the proceeding, an organization invoking representational standing can seek to establish the standing of one or more of its members by using either traditional judicial standing principles or the proximity presumption in applicable proceedings.<sup>18</sup> Traditional judicial standing requires that a petitioner show (1) an actual or threatened, concrete and particularized injury (injury in fact); (2) that is fairly traceable to the challenged action (causation); (3) that falls within the zones of interest protected by the statutes that govern the agency's proceedings (such as the AEA or the National Environmental Policy Act (NEPA)) (zone of interest); and (4) that is likely to be redressed by a favor-

---

<sup>17</sup> *Southern Nuclear Operating Co., Inc.* (Vogle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237-38 & n.83 (2020) (footnote omitted) (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015)).

<sup>18</sup> See *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 579-83 (2005).

able decision (redressability).<sup>19</sup> On the other hand, the proximity presumption, which “rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility,” relieves a petitioner of the need to satisfy the traditional standing elements of injury in fact, causation, and redressability. *See Peach Bottom*, CLI-05-26, 62 NRC at 580.

In proceedings for light-water power reactor “construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool,”<sup>20</sup> as well as for early site permits, combined licenses, and license renewals,<sup>21</sup> NRC caselaw has established that a petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption. This 50-mile proximity presumption applies to traditional light-water power reactor license proceedings, but not necessarily to other licensed activities, such as this nuclear fuel fabrication facility. Instead, ruling on a proximity presumption claim in such a case, sometimes referred to as a “proximity plus” presumption,<sup>22</sup> requires “a case-by-case” analysis of the proposed licensing action to determine the radius beyond which “there is no longer an ‘obvious potential for offsite consequences’ by ‘taking into account the nature of the proposed action and the significance of the radioactive source.’” *Peach Bottom*, CLI-05-26, 62 NRC at 580-81 (quoting *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 116-17 (1995)).

## **B. Analysis of ECAN’s Representational Standing**

While the NRC Staff does not contest ECAN’s representational standing, NFS asserts that ECAN has failed to establish the grounds for either proximity-based standing or traditional standing on the part of the member whose location and other information was provided in support of the amended hearing

---

<sup>19</sup> *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1995); *see also Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009) (citation omitted).

<sup>20</sup> *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (citation omitted).

<sup>21</sup> *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-3, 89 NRC 245, 258-59 (2019) (subsequent license renewal), *appeal dismissed and referred ruling aff’d*, CLI-20-3, 91 NRC 133 (2020); *Calvert Cliffs*, CLI-09-20, 70 NRC at 916-17 (combined license); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 249-51 (2007) (early site permit).

<sup>22</sup> *CFC Logistics, Inc.*, LBP-03-20, 58 NRC 311, 318 (2003) (citing *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994)).

petition.<sup>23</sup> See Staff Answer at 6; NFS Answer at 9 n.35. To fulfill the representational standing requirement of demonstrating the standing of one or more individuals, ECAN supplied a member's affidavit showing that the individual (1) resides within one mile of the NFS facility; (2) is concerned about criticality and uranium hexafluoride accidents at the plant associated with both current operations and the proposed U-Metal process license amendment as well as the need for a NEPA-based assessment of proliferation impacts and the imposition of additional quality assurance (QA) requirements consistent with the AEA; and (3) authorizes ECAN to represent his interests in this proceeding. See ECAN Amended Hearing Petition, unnumbered attach. 1, at 1-2 (Decl. of Alfred John Davies (Oct. 30, 2022)).

In a prior proceeding involving the NFS facility, a licensing board concluded that residents located between two and twenty miles from the NFS facility failed to make a sufficient showing of a particularized injury relative to a proposed licensing action authorizing the downblending of uranium.<sup>24</sup> That licensing board also determined that an individual residing within one mile of the NFS Erwin facility and passing directly by the facility five days a week had established standing based on the individual's proximity to the facility and the application's description of the potential accidents that could occur from the downblending process. See *Nuclear Fuel Servs., Inc.*, LBP-04-5, 59 NRC at 196-98. In this instance, as the NRC Staff points out, criticality and uranium hexafluoride accidents like those referenced in the ECAN member's standing declaration are among those specified in the NFS emergency plan submitted with the November 2021 license amendment application, which are denoted as having potential offsite consequences. See Staff Answer at 6; ER at 7. Accordingly, consistent with agency caselaw, the analogous factual circumstances in this case lead us to conclude the ECAN member's standing has been established through the "proximity plus" presumption.

Additionally, to demonstrate that ECAN as an organization has representational standing, ECAN's president provided an affidavit in support of its hearing petition. This declaration shows that ECAN has met the representational standing requirements specified above, most notably that ECAN's primary purpose

---

<sup>23</sup>NFS also suggests that if the Board concludes that ECAN has not provided any admissible contentions, it can forego deciding the issue of ECAN's standing. See NFS Answer at 9 n.35. Although such an approach would not be improper as a procedural matter, we address ECAN's standing as a matter of administrative efficiency.

<sup>24</sup>See *Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-04-5, 59 NRC 186, 189-96, *aff'd*, CLI-04-13, 59 NRC 244 (2004) (ruling on appeal of petitioner Kathy Helms-Hughes).

is “to research and investigate issues involving the nuclear industry that affect the health, safety and environment in Erwin, Tennessee.”<sup>25</sup>

We thus conclude that ECAN has established its representational standing to intervene in this proceeding and move next to determining whether any of its four contentions are admissible so as to merit granting its hearing petition and admitting ECAN as a party in this proceeding.

### III. ADMISSIBILITY OF PETITIONER ECAN’S CONTENTIONS

#### A. Contention Admissibility Standards Under 10 C.F.R. § 2.309(f)(1)

A contention submitted by a hearing requestor such as ECAN as part of a timely intervention petition must satisfy the following six admissibility factors set forth in section 2.309(f)(1):

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing . . . ; and
- (vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

10 C.F.R. § 2.309(f)(1)(i)-(vi).

These six criteria aim to “focus litigation on concrete issues and result in a clearer and more focused record for decision.”<sup>26</sup> The petitioner bears the burden to satisfy each of the criteria;<sup>27</sup> a failure to comply with any of the six re-

---

<sup>25</sup> See ECAN Amended Hearing Petition, unnumbered attach. 2, at 1-2 (Decl. of Authorized Officer of [ECAN] for Leave to Intervene in [NFS] License Amendment Proceeding (Oct. 30, 2022)).

<sup>26</sup> Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) [hereinafter 2004 Part 2 Changes].

<sup>27</sup> See *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) (“[I]t is Petitioners’ responsibility, not the Board’s, to formulate contentions and to provide ‘the necessary information to satisfy the basis requirement’ for admission.” (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998))).

quirements constitutes grounds for rejecting a proposed contention.<sup>28</sup> Moreover, when a petitioner neglects to provide the requisite support for its contentions, the board may not cure the deficiency by supplying that information.<sup>29</sup>

## **B. Analysis of ECAN's Four Contentions**

### **1. ECAN Contention A: Nuclear Weapons Proliferation Review Is Required by NEPA and AEA**

The new process at NFS will provide purified [high-enriched uranium (HEU)] material for inclusion in nuclear weapons. It is an activity that signals to the international community continued U.S. government support for a policy of producing nuclear weapons for warmaking. The policy projects a message internationally that inclusion of continuously-improved nuclear weapons in international relations is acceptable. That policy is increasingly at odds with international laws and norms. Under NEPA, the NRC is required to investigate, analyze and publicly 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.

ECAN Amended Hearing Petition at 8.

#### *a. ECAN's Arguments*

As the basis for this contention, ECAN asserts that the U-Metal Project is intended to produce purified uranium metal for nuclear weapons production. Also as support for this contention, ECAN references various nuclear weapons-related items, including the ongoing Russian-Ukrainian conflict; a re-ignited arms race among the United States, Russia, and China; the possibility of nuclear war between the United States and Russia; American defense establishment promotion of the winnability of nuclear war and a new nuclear arms race; and several current international nuclear nonproliferation agreements such as the Nuclear Nonproliferation Treaty and the Treaty on the Prohibition of Nuclear Weapons (to which the United States is not a party). *See id.* at 8-11. All this, ECAN contends, establishes that the United States nuclear weapons program is “controversial,” “arguably illegal,” and “violative of international norms” so as to

---

<sup>28</sup> *See* 2004 Part 2 Changes, 69 Fed. Reg. at 2221; *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

<sup>29</sup> *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991) (licensing board cannot supply missing information supporting a contention).



raise “legal, moral, ethical, and survival questions.” *Id.* at 11. ECAN maintains that “NEPA requires the [NRC] to conduct a nuclear weapons proliferation assessment to examine the contribution of purified HEU manufactured at NFS with the overall weapons supply chain,” including identifying and analyzing “the particular impacts that purified HEU will have on the capabilities of the U.S. nuclear weapons program in the ongoing 21st century nuclear arms race.” *Id.*

ECAN contends in addition that under the AEA, the agency has a “legal and non-discretionary duty to consider whether, when granting a license, such an action could be inimical to the common defense and security of the United States or the health and safety of the public.” *Id.* at 12 (citing 42 U.S.C. §§ 2077(c)(2), 2099). ECAN further maintains this purported legal duty requires that “the Commission’s NEPA analysis must consider the full range of risks to the common defense and security potentially arising from its licensing decision, and must consider all reasonable alternatives that could eliminate or mitigate those risks.” *Id.* (citing *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006)). Thus, ECAN claims that, in the context of a United States “common defense and security” nuclear weapons complex-associated license amendment request like that proposed by NFS, an “[a]nalysis of the positive and negative impacts the purification line may have on nuclear weapons proliferation concerns” is clearly material to the NRC’s licensing decision. *Id.* at 12-13.

ECAN also asserts that there are numerous instances in which nuclear weapons proliferation and security issues have been the subject of NEPA assessments. These include a 1973 court-mandated Atomic Energy Commission (AEC) programmatic environmental impact statement (EIS) on the liquid metal fast breeder reactor program and a generic EIS on plutonium recycling that the AEC agreed to prepare as part of a 1974 settlement in litigation regarding mixed oxide fuel.<sup>30</sup> ECAN references as well various historical nuclear weapons-related government activities involving (1) the storage, testing, and destruction of nuclear weapons or the dismantling or updating of nuclear weapons missile launch facilities; (2) a never-finalized 2009 DOE draft programmatic EIS regarding the proposed Global Nuclear Energy Partnership (GNEP); (3) 1995 and 1999 DOE programmatic EISs regarding tritium supply and recycling associated with nuclear weapons production; and (4) a 2011 DOE EIS regarding the Y-12 nuclear weapons production facility. *See id.* at 13-15. All these, ECAN contends, establish that the NRC and DOE are familiar with the application of NEPA as a vehicle for analyzing proliferation impacts. *See id.* at 15.

---

<sup>30</sup> ECAN Amended Hearing Petition at 13 (citing *Scientists’ Inst. for Pub. Info., Inc. v. AEC*, 481 F.2d 1079 (D.C. Cir. 1973); *W. Mich. Envtl. Action Council v. AEC*, Docket No. G-58-73 (W.D. Mich. 1974)).

Finally, given what it asserts is the clear duty of the NRC under NEPA to consider proliferation impacts in appropriate instances, ECAN claims that its Contention A poses a genuine issue of law because the NFS supplemental ER omits any reference to relevant international treaty obligations, to the role the proposed U-Metal Project would “play in the U.S. nuclear weapons complex [or] how that would alter U.S. nuclear weapons readiness or U.S. national security,” or to the planned NFS project’s proliferation impacts. *Id.* at 16. By failing to include any analyses of these subjects, ECAN asserts that the NFS supplemental ER is “seriously incomplete” as a baseline NEPA document and must be corrected. *Id.*

*b. NFS and NRC Staff Responses*

In response to ECAN’s claims regarding the admissibility of Contention A, NFS asserts that ECAN’s characterization of the NFS license amendment as authorizing activities relating to “nuclear weapons” is incorrect because the “primary licensed activity is the production of nuclear fuel for the United States Navy.”<sup>31</sup> NFS also maintains that the contention seeks to frame this as a policy issue rather than contesting the license amendment and so fails to satisfy a number of the section 2.309(f)(1) admissibility criteria, including (1) being outside the scope of the proceeding as defined by the agency’s hearing opportunity notice; (2) failing to raise a material issue in that the proliferation assessment sought by ECAN has no impact on the grant or denial of the NFS license amendment application; and (3) failing to raise a genuine dispute with the application given that only the last half page of the eight-and-a-half pages devoted to this issue statement even mentions the application. *See* NFS Answer at 9-12. According to NFS, ECAN asserts on that half page that the supplemental ER is deficient in that it neither references international treaty obligations or corresponding statutes nor explains what role the uranium purification process plays in the United States nuclear weapons or national security program. *See id.* at 12. NFS maintains that 10 C.F.R. Part 51 imposes no such obligation; therefore, ECAN’s contention cannot be admitted because its concerns are immaterial to the NFS amendment application and ECAN fails to show a dispute over a material factual or legal issue. *See id.* at 12 (citing 10 C.F.R. § 2.309(f)(1)(iv), (vi)); *see also* Staff Answer at 14-15.

The NRC Staff contends that the ECAN definition of “proliferation” is problematic because it is based not on proliferation’s generally understood meaning

---

<sup>31</sup> NFS Answer at 10 (quoting ER at 2). The NRC Staff appears to agree with this point. *See* Staff Answer at 13 (indicating “NFS-produced U-Metal would not necessarily be destined for use in the nuclear weapons complex. NNSA has a multifaceted mission that, among other things, includes providing the U.S. Navy with nuclear fuel.”).

as concerned with the spread of nuclear weapons or fissionable nuclear material, but instead focuses improperly on the United States nuclear weapons programs. *See* Staff Answer at 10 & n.53. Nor does ECAN define the specific nature of the impacts it believes should be assessed under NEPA and the AEA, according to the NRC Staff. *See id.* at 10. As a result, the NRC Staff argues, the contention fails to recognize the regulatory framework within which the NRC Staff reviews a fuel cycle facility license amendment application like the one at issue here. *See id.* at 11. That review, according to the NRC Staff, considers AEA-related common defense and security issues such as physical security and radiological sabotage, theft, and diversion protection, the very matters the Commission has indicated, albeit in the context of a rulemaking proceeding, are adequate without a proliferation assessment.<sup>32</sup>

The NRC Staff further maintains that prior Commission cases make clear that proliferation is a matter of international policy involving a multi-layered domestic and international framework as well as the assessment of numerous speculative future independent actions by third-parties such as the President, the Congress, and officials from foreign nations.<sup>33</sup> This same caselaw, according to the NRC Staff, recognizes that licensing actions like that proposed by NFS are domestic activities in which the uranium product involved would become a proliferation concern only through its diversion to another nation by unforeseeable, illicit actions involving violations of law and NRC regulations. *See id.* at 13. Consequently, relying on the precept that NEPA consideration encompasses only reasonably foreseeable environmental impacts, not remote and speculative matters or worst-case scenarios, the NRC Staff maintains that this Commission precedent establishes that proliferation concerns in a case such as this lack the necessary causal links to the NRC licensing action at issue. *See id.* at 12-13.

The NRC Staff also asserts that the caselaw and agency actions referenced by ECAN fail to lend any support to ECAN's proposition that NEPA requires the NRC to consider proliferation in deciding whether to issue a license. *See id.* at 14. Rather, the NRC Staff describes ECAN's cited legal authority as inapposite for failing to discuss proliferation of nuclear weapons or as addressing mootness and the award of attorney's fees in litigation in which the NRC made a voluntary

---

<sup>32</sup> *See* Staff Answer at 11 & n.56 (citing Nuclear Proliferation Assessment in Licensing Process for Enrichment or Reprocessing Facilities, 78 Fed. Reg. 33,995, 34,007 (Jun. 6, 2013) [hereinafter Proliferation Assessment Rulemaking Petition Denial]).

<sup>33</sup> *See id.* at 12-13 (citing *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 724 (2005), and *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 463 (2006)).

election to prepare an EIS.<sup>34</sup> *See id.* (citing ECAN Amended Hearing Petition at 13). The NRC Staff further criticizes ECAN's other examples as instances in which other agencies voluntarily discussed nuclear weapons or nonproliferation in the context of possibly taking direct agency action with respect to such weapons or proliferation. *See id.* (citing ECAN Amended Hearing Petition at 13-15).

Ultimately, the NRC Staff concludes that ECAN's proliferation concerns are too speculative to require consideration in a licensing-related environmental review and thus fall outside the scope of this proceeding, are not material to the findings that the agency must make in support of the proposed licensing action, lack proper support, and do not establish the requisite genuine dispute on a material issue of law or fact. *See id.* at 14-15 (citing 10 C.F.R. § 2.309(f)(1)(iii)-(vi)).

*c. ECAN's Reply*

ECAN characterizes the NFS and NRC Staff answers to its hearing petition generally as having "conjured up a stream of apparitions and bugbears" intended to divert attention from ECAN's showing that there are material facts in dispute such that ECAN's contentions should be admitted into this proceeding. ECAN Reply at 2. More specifically regarding Contention A, to counter the NRC Staff's assertion that ECAN was imprecise in defining both "proliferation" and the nature of the impacts that should be assessed under NEPA and the AEA, ECAN references an NRC website discussion that indicates the agency's proliferation concerns are horizontal, i.e., stopping the spread of nuclear weapons to entities not currently possessing them, as well as vertical, i.e., deterring the increase in numbers of nuclear weapons in countries already possessing such weapons. *See id.* at 3 (citing <https://www.nrc.gov/materials/fuel-cycle-fac/support-us-nonproliferation-objectives.html>). According to ECAN, Contention A concerns both types of proliferation: vertical, because the U-Metal Project purification process would help "normalize" the nuclear weapons building/rebuilding process in the United States, and horizontal, in that purifying uranium

---

<sup>34</sup> Relative to the *Scientists' Institute for Public Information, Inc.* case discussed by ECAN, the NRC Staff states that in a subsequent decision in *Nat. Wildlife Fed'n v. FERC*, 912 F.2d 1471, 1478 (D.C. Cir. 1990), the United States Court of Appeals for the District of Columbia Circuit observed that the key reasoning in *Scientists' Institute* — that "future, yet unproposed projects" should be considered in an [EIS] "if the envisioned future projects would impact the relevant environment" — was likely supplanted by the Supreme Court's decision in *Kleppe v. Sierra Club*, [427 U.S. 390, 404-05 (1976)], which held that NEPA does not require an [EIS] in the absence of an actual proposed federal action.

Staff Answer at 14 n.69.

would sustain and intensify the international nuclear weapons demand notwithstanding evolving international law and norms opposing such weapons. *Id.* ECAN maintains that this requires an AEA and NEPA analysis of where the NFS purified HEU “fits within the continuum of U.S. weapons manufacturing, and how (or whether) the new NFS line fulfills the United States’ nonproliferation objectives.” *Id.* at 4.

In reply to the NFS and NRC Staff arguments that the U-Metal Project at the Erwin facility will not involve nuclear weapons production, ECAN states that this assertion creates factual issues supporting the admission of Contention A. Among the items ECAN claims create a factual dispute are statements from (1) officials of the City of Oak Ridge, Tennessee, questioning whether NRC regulation of the U-Metal Project will have the same level of proliferation protection for weapons-grade uranium as exists at the NNSA-operated Y-12 facility; (2) officials of the NFS workers’ union who indicated the purified HEU produced at the Erwin facility will be used for nuclear weapons purposes; and (3) a defense industry publication indicating the NFS Erwin-produced material will be used to fulfill NNSA’s need to make secondary stage subassemblies for refurbishing land-, sea-, and air-based nuclear weapons. *See id.* at 5-7. Further, according to ECAN, the NFS denial that any U-Metal Project uranium will be used for nuclear weapons and NFS’s associated assertion that no significant environmental change will result from the license amendment-authorized work (1) fails to inform the public that Erwin will become an upgraded espionage or attack target; (2) deprives Erwin residents of an adequate emergency plan as compared to what is available to the inhabitants of Oak Ridge; and (3) impedes a proper assessment of the amendment application’s socioeconomic and environmental impacts. *See id.* at 7. ECAN also asserts that the transfer of nuclear weapons production and materials from federal government entity NNSA to private entity NFS violates article 1 of the Nuclear Non-Proliferation of Nuclear Weapons Treaty. *See id.* Further, ECAN maintains that the NRC Staff’s assertion that any NEPA concerns about proliferation are governed by a “rule of reason” compels the conclusion that NFS’s indefensible denial of any U-Metal Project nuclear weapons connection requires a proliferation assessment as well as the ultimate denial of the NFS amendment request. *See id.* at 7-8.

ECAN goes on to contest the NRC Staff’s interpretation of the Commission’s *American Centrifuge Plant* decision as dispositive on the issue of the need for a proliferation assessment. *See id.* at 8. The focus of that ruling, ECAN indicates, was a draft suggestion by the Carnegie Endowment for International Peace about the possibility of a temporary pause in HEU enrichment and reprocessing, which the Commission found made the proliferation concern “potential” and therefore too unlikely and remote from licensing to require a NEPA assessment. *See id.* at 8-9 (citing *American Centrifuge Plant*, CLI-06-10, 63 NRC at 463). In contrast, ECAN states, here the HEU production project’s relationship to proliferation is

not speculative, involving a production line that will add to the United States' nuclear weapons inventories and thereby establishing a causal relationship between the U-Metal Project and proliferation. *See id.* at 9.

According to ECAN, the NRC Staff's dismissal of ECAN's reliance on the *Scientists' Institute for the Public Interest* case is without merit as well. *See id.* at 9-10. Of relevance here, ECAN insists, is the court's determination that an EIS was required for the liquid metal fast breeder reactor, which ECAN maintains was understood by DOE and the NRC to result from the fact that breeder reactors create plutonium fuel while generating electricity, thereby raising proliferation concerns that needed to be analyzed.<sup>35</sup> *See id.*

Finally, ECAN disputes the NRC Staff's challenge to the relevance of its citation to the 1973 *Western Michigan Environmental Action Council* litigation as limited to mootness and attorney fees, based on a subsequent 1983 lawsuit. *See id.* at 11 (citing *W. Mich. Env'tl. Action Council, Inc. v. NRC*, 570 F. Supp. 1052 (W. D. Mich. 1983)). ECAN maintains that, notwithstanding the later 1983 litigation referenced by the NRC Staff, the 1973 proceeding cited in its amended petition remains important because in that action's wake, the AEC voluntarily agreed to prepare a generic EIS regarding recycled plutonium use in light-water reactor mixed oxide fuel that included a proliferation analysis. *See id.*

#### d. Licensing Board Determination

In ruling on the admissibility of this contention, we begin by observing that ECAN argues that the NRC failed to conduct a nuclear weapons proliferation assessment that ECAN asserts is required under both the agency's AEA and NEPA obligations. The Commission's rules of practice require that contentions be framed as challenges to the application, and for NEPA-related contentions, those challenges must be raised regarding the applicant's ER because the Staff has not necessarily conducted its environmental analysis at the hearing request stage.<sup>36</sup> Although it framed its contention as a challenge to NRC Staff inaction,

---

<sup>35</sup> Additionally, responding to the NRC Staff's assertion that the 1973 *Scientists' Institute for the Public Interest* case had been diluted by the 1976 Supreme Court decision in *Kleppe*, *see supra* note 34, ECAN declares that the NRC Staff mischaracterizes the reason why ECAN referenced that case. *See* ECAN Reply at 10. According to ECAN, it cites the case to illustrate when an EIS needs to address proliferation concerns, not for the proposition cited by the NRC Staff that "future, yet unproposed projects" do not require coverage in an EIS. *See id.* Also, ECAN asserts that because the NRC Staff-referenced *National Wildlife Federation* case was not decided until 1990, how that case calls into question the continuing efficacy of the *Scientists' Institute for the Public Interest* decision or the 1981 DOE liquid metal breeder reactor EIS is not apparent. *See id.* at 10-11.

<sup>36</sup> *See* LBP-22-2, 96 NRC at 144 & n.22 (citing *Pacific Gas and Electric Co.* (Diablo Canyon  
(Continued)

ultimately ECAN indicates its Contention A challenge is to the NEPA-related portion of the NFS license amendment application, the supplemental ER, as being deficient because it does not include a proliferation analysis. See ECAN Amended Hearing Petition at 16. Consequently, Contention A is a contention of omission relative to the NFS supplemental ER. See *Ross*, LBP-13-10, 78 NRC at 132 n.6 (distinguishing contentions of “omission” from contentions of “adequacy”).

Turning then to the substance of ECAN’s claims, we conclude that Contention A does not meet the admissibility standards of section 2.309(f)(1). In adjudicatory decisions from 2005-2006 and a rulemaking petition denial from 2013, the Commission determined that a proliferation assessment such as that sought by ECAN here is not required under either the AEA or NEPA in connection with agency domestic licensing proceedings. In its decision in *National Enrichment Facility*, CLI-05-28, 62 NRC at 724, the Commission rejected the admissibility of contentions that asserted NEPA required an assessment of the impacts of a proposed enrichment facility on nuclear nonproliferation objectives, including the objectives of a 1993 US/Russia agreement for the purchase of enriched uranium from Russian weapons stocks. The Commission explained that “[nuclear] nonproliferation concerns span a host of factors far removed from the licensing action at issue” such that any potential effects of the facility on nonproliferation policies and programs are “speculative, and far afield from our decision whether to license the facility,” and concern achieving goals that depend “on independent future actions by numerous third parties, including the President, Congress, and officials of other nations.” *Id.* And more specifically regarding NEPA, the Commission concluded that the environmental impacts process “simply ‘does not extend to all conceivable consequences of agency decisions, no matter how far down the causal chain from a nuclear licensing decision and no matter how unpredictable.’” *Id.* (quoting *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 347 (2002)). Rather, the Commission found, nonproliferation concerns “are international in nature and do not have a ‘proximate cause’ connection to the proposed enrichment facility sufficient to require a NEPA inquiry.” *Id.* Similarly, in *American Centrifuge Plant*, CLI-06-10, 63 NRC at 463, referencing the above-quoted language from the *National Enrichment Facility* decision, the

---

Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (indicating that in a licensing proceeding, with the exception of certain NEPA issues, the applicant’s license application is in issue, not the adequacy of the NRC Staff’s review of the application), *petition for review denied*, CLI-83-32, 18 NRC 1309 (1983)); see also *Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-13-10, 78 NRC 117, 132-34 (2013) (indicating a NEPA contention initially properly framed as challenging an applicant’s ER can migrate to become an issue contesting an NRC Staff NEPA statement once that NRC Staff NEPA statement is issued).

Commission rejected a petitioner's safety-based contention calling for consideration of whether a proliferation-associated licensing freeze was required for a proposed enrichment facility, concluding that the contention "raises issues of international policy unrelated to the NRC's licensing criteria and therefore beyond the scope of th[e] proceeding."

Although these rulings concerned enrichment facilities, the Commission expanded the reach of the general principles embodied in these cases in the 2013 rulemaking petition denial. The rulemaking petition requested that the agency amend its Part 70 rules to require a proliferation assessment for any domestic enrichment or reprocessing facility license application. *See* Proliferation Assessment Rulemaking Petition Denial, 78 Fed. Reg. at 33,995. In response to the petition requester's assertion that the NRC's licensing process was insufficient to address proliferation concerns, the Commission stated that "[s]afety and security, including proliferation risks, are adequately addressed by the NRC's comprehensive licensing framework, which includes: (1) [e]xtensive regulatory requirements, (2) ongoing oversight, and (3) active Federal interagency cooperation." *Id.* at 33,998. Moreover, in its statement responding to a public comment championing the need for a proliferation assessment of all nuclear fuel cycle facilities, including mixed oxide fuel fabrication facilities and uranium conversion plants, the Commission again stated that fuel cycle facility applications do not require proliferation assessments:

The NRC disagrees that proliferation assessments should be required for all fuel cycle facilities. Existing NRC requirements address proliferation risks and concerns at all fuel cycle facilities. As discussed in response to petition Assertion 2, the existing NRC licensing framework is adequate to address proliferation concerns associated with nuclear fuel cycle facilities by including requirements to prevent the unauthorized disclosure of classified matter and sensitive technologies, and provide physical protection of nuclear equipment and materials.

*Id.* at 34,007.

The *American Centrifuge Plant* case, together with the Commission's 2013 rulemaking petition denial,<sup>37</sup> both make clear that a proliferation assessment is

---

<sup>37</sup>Regulatory history based on the statement of considerations for a proposed or final rule is often cited for expressions of Commission intent. *See, e.g., Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-11-9, 74 NRC 233, 242-43 (2011) (referencing both proposed and final rule statements of considerations in using regulatory history to determine rule's meaning). But Commission statements made in the context of a rulemaking petition denial are equally appropriate for that purpose. *See Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-03-14, 58 NRC 104, 108 (2003) (indicating that when regulatory history shows the Commission has rejected an amendment to a rule, that rejection may

(Continued)



not required under the AEA in connection with a fuel cycle facility licensing action. Further, while the 2013 rulemaking petition denial did not reach the question whether NEPA might mandate such an analysis, *see id.* at 35,005, in *National Enrichment Facility*, CLI-05-28, 62 NRC at 724, the Commission found the need for such an assessment “speculative” and lacking a “proximate cause connection.” Therefore, in the face of the Commission’s previous adjudicatory and rulemaking-related statements indicating that the AEA and NEPA generally do not compel a proliferation assessment in the context of an agency fuel cycle facility licensing action, Contention A is outside the scope of this proceeding and therefore inadmissible as failing to satisfy section 2.309(f)(1)(iii).<sup>38</sup>

Nor are we persuaded by ECAN’s attempt to cure this deficiency, as well as to fulfill the requisite section 2.309(f)(1)(vi) showing of a genuinely disputed

---

be evidence the Commission did not intend the regulation to include the provision in the rejected amendment); *cf. Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 290 (finding NRC Staff regulatory guidance documents that are consistent with the regulations and are at least implicitly endorsed by the Commission are entitled to correspondently special weight), *petition for review denied*, CLI-88-11, 74 NRC 603 (1988).

<sup>38</sup>Relative to the Commission’s statements in *National Enrichment Facility*, CLI-05-28, 62 NRC at 724 & n.11, that nonproliferation concerns are “speculative” and lack a “proximate cause connection” to licensing so as not to require a NEPA analysis, the authority cited in support of that proposition was the Commission’s ruling in *Private Fuel Storage*, CLI-02-25, 56 NRC at 347, 349 & n.33 (2002), that the agency is not obligated to consider terrorism impacts under NEPA. ECAN suggested during the December 12 oral argument, *see* Tr. at 32-33 (Lodge); *see also* ECAN Amended Hearing Petition at 12, that reliance on the Commission’s *Private Fuel Storage* holding is misplaced given the United States Court of Appeals for the Ninth Circuit’s determination in *San Luis Obispo Mothers for Peace*, 449 F.3d at 1034, that the NRC must consider the effects of terrorism under NEPA. Nonetheless, based on a contrary decision from the United States Court of Appeals for the Third Circuit in *N.J. Dep’t of Envtl. Prot. v. NRC*, 561 F.3d 132, 143 (3d Cir. 2009), the Commission follows the Ninth Circuit precedent only for facilities located within the jurisdiction of that circuit, *see AREVA Enrichment Services, LLC* (Eagle Rock Enrichment Facility), CLI-09-15, 70 NRC 1, 5 (2009), which the NFS Erwin facility is not. Thus, the Commission’s *Private Fuel Storage* decision remains instructive in this proceeding.

We note as well that the other examples cited by ECAN as legal authority supporting NEPA consideration of proliferation impacts do not require a different result for a nuclear fuel cycle facility generally. For instance, the *Scientists’ Institute for the Public Interest* and *Western Michigan Environmental Action Council* cases, *see supra* pp. 25, 30, involved the liquid metal fast breeder reactor and mixed oxide fuel programs, which are associated with the use of plutonium. Even putting aside the question of the continuing validity of these 1970s cases (predating the NRC) in light of the Commission’s more recent pronouncements on the need to perform proliferation assessments under the AEA and NEPA, *see supra* p. 31, the NFS license amendment at issue here does not involve plutonium, *see* Tr. at 63 (Lighty). Further, the ECAN-referenced examples of the never-completed DOE GNEP proliferation assessment and various military-related proliferation assessments regarding the storage, testing, and destruction of nuclear weapons or the dismantling or updating of nuclear weapons missile launch facilities, *see supra* p. 25, all are inapposite as outside of the NRC licensing and regulatory framework that the Commission repeatedly has indicated allays the need for any proliferation assessment under either the AEA or NEPA.

material factual issue, by claiming there is an issue whether the purified uranium produced at the NFS facility using the U-Metal process will be used by NNSA for nuclear weapons production purposes. This is significant, ECAN maintains, because the uranium metal that will be purified using the new U-Metal process at NFS can be used by the NNSA in the production of nuclear weapons, effectively creating a “hybrid” that places that purification process and its proliferation impacts outside of the naval vessel fuel fabrication regulatory regime under which the NFS Erwin facility heretofore has operated and been regulated. Tr. at 90 (Lodge); *see also* ECAN Reply at 5-7 (proffering trade press articles and local government and union officials’ statements as showing NNSA will use U-Metal process materials for the United States nuclear weapons program).

We are unable to conclude that the end use of the U-Metal processed-uranium metal (or any of ECAN’s other purported factual disputes proffered in support of Contention A) establishes a required genuine material disputed issue of fact or law under section 2.309(f)(1)(vi) or otherwise brings Contention A within the scope of this proceeding. As the NRC Staff suggested, *see* Staff Answer at 13, *see also* Tr. at 73-74 (Roach), even if the NNSA, as an authorized federal government entity, received the U-Metal processed material and used it for nuclear weapons production, the metal’s end use is not a relevant factor for the purpose of determining whether a proliferation impacts analysis is required under the AEA or NEPA.<sup>39</sup>

Rather, as the Commission has recognized regarding fuel cycle facilities generally, the purified uranium metal’s fabrication by NFS would fall within the confines of the NRC’s domestic Part 70 nuclear materials licensing and regulatory process. Part 70’s health, safety, and security protections are designed to prevent nuclear equipment and material, as well as classified information and sensitive technologies, from becoming available to unauthorized foreign or domestic individuals or entities. A further proliferation analysis is not required

---

<sup>39</sup> Regarding the significance of the use of the U-Metal process end-product as a basis for requiring a proliferation impacts analysis, NFS asserts that (1) while purified uranium metal currently produced by NNSA at its Y-12 facility can be used for both naval reactor fuel feedstock and nuclear weapons purposes, NFS does not know how NNSA might use the U-Metal process material at that facility, *see* Tr. at 46-51 (Lighty); (2) NFS is prohibited by 10 C.F.R. § 70.32(a)(6) from using any Part 70 special nuclear material to construct a nuclear weapon or any component of such a weapon, *see* Tr. at 51-53 (Lighty); and (3) NNSA activities at the Y-12 facility have previously been the subject of a sitewide EIS that included a nonproliferation assessment, *see* Tr. at 53-54 (Lighty); *see also* NFS Answer at 11 n.43 (citing ECAN Amended Hearing Petition at 15 (citing NNSA, DOE, Final Site-Wide [EIS] for the Y-12 National Security Complex at S-14 to -16 (Feb. 2011) (<https://www.energy.gov/sites/prod/files/EIS-0387-FEIS-Summary-2011.pdf>))). Given our conclusion that the U-Metal process end-product’s use is not a relevant factor in deciding whether a proliferation assessment is required for this license amendment request, we reach no conclusion about whether any of these factors would support that determination as well.

by these regulations. In conjunction with the speculative nature of the proliferation assessment process that would be based on policy information and analyses remote from both the NRC's licensing process and the license request at issue,<sup>40</sup> this establishes that the Commission's previous fuel cycle facility-related pronouncements that neither the AEA nor NEPA mandates the preparation of a proliferation assessment apply with equal force here.

Because ECAN has failed to meet its burden to establish that Contention A is within the scope of this proceeding and that it raises a genuine dispute regarding a material issue of law or fact, we do not admit that contention. *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi).

## **2. *ECAN Contention B: Narrow Scope of Purpose and Need Statement Undercuts Consideration of Alternatives***

The purpose and need for the project [are] expressed in unduly narrow and time-limited terms, which has caused inadequate consideration of the no-build alternative with the result of biasing the NEPA inquiry and decision to be made by NFS and the NRC in favor of amending the license and proceeding with the proposed project.

ECAN Amended Hearing Petition at 16.

### *a. ECAN's Arguments*

According to ECAN, a purpose and need statement in a NEPA environmental assessment or report is important because it “necessarily dictates the range of “reasonable” alternatives” and must be “supported by data and evidence” that establish the assessment is “reasonable.” *Id.* at 18 (quoting *City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997)). ECAN further asserts that the agency cannot simply “accept out of hand” an applicant's purpose and need statement or allow the objectives of an action under consideration to be defined “so unreasonably narrow[ly] that only one alternative . . . would accomplish the goals of the agency's action.” *Id.* (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991)). At the same time, ECAN maintains, while an agency is not required to include “all theoretically possible environmental effects arising out of an action,” it must

---

<sup>40</sup> Although ECAN argues the NRC Staff fails adequately to recognize that proliferation has both a horizontal (i.e., deterring nuclear weapons spread to entities not currently holding nuclear weapons) and a vertical (i.e., deterring increasing nuclear weapons numbers in countries already possessing such weapons) component, *see* ECAN Reply at 3-4, that definitional distinction has no relevance to our determination that Contention A fails to meet the admissibility standards of section 2.309(f)(1).

make “reasonable forecasts of the future.” *Id.* And relative to the consideration of alternatives to a proposed action, ECAN declares that agencies must, to the fullest extent possible, “[s]tudy, develop, and describe appropriate alternatives” that are within the “nature and scope of the proposed action . . . sufficient to permit a reasoned choice.” *Id.* (quoting *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519, 1520 (9th Cir. 1992) and *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982)).

Against this backdrop of asserted NEPA requirements, ECAN challenges the purpose and need statement in the NFS supplemental ER as being “unduly narrow” and inadequate in its consideration of the no-build alternative. *Id.* at 16. ECAN asserts that the changes at NFS are not needed to bridge the projected interruption of HEU metal production purification at the DOE NNSA’s Y-12 facility in Oak Ridge, Tennessee. *See id.* at 17. Further, ECAN contends that the purpose and need statement “does not contain timely information on the status of the Y-12 legacy equipment replacement process,” demonstrating that the statement lacks “fairness and adequacy” as a basis for a NEPA analysis of project alternatives. *Id.* at 17, 19. ECAN also offers two primary objections to the supplemental ER’s purpose and need statement as establishing genuine material issues of fact and law:

(1) NFS has not conclusively demonstrated that the no-build alternative should be rejected; and (2) the improved Y-12 facility, seen in light of the NNSA’s March 2022 stated intention to continue ‘to fund uranium purification in [Y-12] Building 9212 until the electrorefining process is fully operational’ in Oak Ridge (not Erwin), must be considered as an additional alternative to construction at Erwin.

*Id.* at 21 (emphasis omitted). Thus, according to ECAN, because “[o]nly a timely update as to the status of Y-12 will allow the public to assess how meaningful the no-action alternative really is,” this contention should be admitted “to ensure objective consideration of the no-build alternative . . . depicted according to its own timeline for completion and availability.” *Id.*

To illustrate this purported lack of information, ECAN references NFS’s supplemental ER statement that the Oak Ridge Y-12 facility “is tentatively planned for shutdown in the 2023 timeframe,” at which time the NNSA “plans to partially replace [its] legacy uranium processing system capability with new electrorefining technology to purify high-enriched uranium metal.” *Id.* at 19 (quoting ER at 1). ECAN asserts that the supplemental ER’s purpose and need statement also described a schedule for the new Y-12 purification equipment to come online by “2023 at the earliest,” but noted the enhanced Y-12 process “will not be capable of converting oxides to metal until completion of a separate future project,” a timeline ECAN maintains was confirmed in a March 2022 NNSA

report to Congress.<sup>41</sup> ECAN then highlights NFS's June 2022 RAI response in which NFS claimed construction of the new U-Metal Project facility would not be completed "until September 2024 or even later." *Id.* at 19 (citing NFS RAI Response at 4). All this, according to ECAN, means that

[w]ithout any record information on the status of the equipment updating and replacement project at Y-12, 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.

*Id.* at 17 (footnote omitted).

Further, as support for its claim that the supplemental ER's consideration of alternatives is inadequate, ECAN cites the applicant's discussion of the potential for significant adverse impacts from the construction at a new site. *See id.* at 19-20. According to ECAN, NFS has provided this analysis to downplay the benefits of the no-action alternative in that NFS focuses on how the no-action/no-build alternative would result in significant adverse impacts (1) at another site because of construction and start-up activities; (2) in the vicinity of the Erwin facility due to increased unemployment; and (3) by hindering DOE's nuclear material processing objectives. *See id.* at 20 (citing ER at 49-50). Additionally, ECAN points to a purported discrepancy between an NFS statement in the supplemental ER's no-action alternative discussion that "[t]he proposed license amendment . . . will not result in significant adverse impacts to air quality" and an NFS June 2022 RAI response indicating 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," which ECAN contends means that the U-Metal Project will actually result in a doubling of air pollutants. *Id.* (quoting NFS RAI Response at 6).

*b. NFS and NRC Staff Responses*

In response to ECAN's petition, NFS argues that Contention B "is not adequately supported, as required by 10 C.F.R. § 2.309(f)(1)(v), and that it fails to demonstrate a genuine dispute with the [license amendment application], as required by 10 C.F.R. § 2.309(f)(1)(vi)." NFS Answer at 14. Regarding ECAN's Contention B objection that NFS has failed to demonstrate that the no-action alternative should be rejected, NFS asserts it is under no legal obligation to

---

<sup>41</sup> ECAN Amended Hearing Petition at 16-17 (quoting ER at 1 and citing NNSA, DOE, Fiscal Year 2022, Stockpile Stewardship and Management Plan, Report to Congress at 3-11 (Mar. 2022) (<https://www.energy.gov/sites/default/files/2022-03/FY%202022%20SSMP%20March%202022.pdf>)).

“conclusively demonstrate” that any of the reasonable alternatives, including the no-action alternative, should be rejected; rather, Part 51 simply requires the discussion to be “sufficiently complete” to assist the Commission in “developing and exploring, pursuant to section 102(2)(E) of NEPA, ‘appropriate alternatives to recommended courses of action.’” *Id.* (quoting 10 C.F.R. § 51.45(b)(3)).

With respect to ECAN’s further claim that another offsite location for the Y-12 process must be considered as an additional alternative, NFS declares that the “no-action” alternative contemplated by the supplemental ER does involve NRC disapproval of the license amendment request, resulting in “a reasonable alternative in which the capability gap is bridged at a facility other than NFS.” *Id.* at 13 (emphasis omitted). Moreover, according to NFS, ECAN’s alternative scenario whereby the NNSA continues to purify uranium metal in Y-12’s Building 9212 until the new electrorefining technology comes online “conflates two different technologies and disregards the full purpose and need for the proposed action.” *Id.* at 14-15. NFS declares that the new electrorefining technology that would come online at the Y-12 facility in 2023 will only purify HEU metal and will not include the ability to convert oxides to metal, therefore creating a need to bridge the technology gap between the two processes. *See id.* at 15. NFS argues as well that only reasonable alternatives that will “bring about the ends of the proposed action,” i.e., adding oxide conversion, must be considered, and ECAN’s no-action alternative to continue relying solely on the current Y-12 facilities is not such an alternative. *Id.* (quoting *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001)). Further, NFS asserts that ECAN fails to explain, as required to support its contention, how the current proposed alternative is “unduly narrow,” particularly given it is an extraordinarily broad, performance-based objective. *Id.* at 15-16.

Similarly, the NRC Staff maintains that ECAN fails to contradict the stated purpose and need statement in the supplemental ER, thereby failing to raise a material dispute with the application. *See* Staff Answer at 15. Contending that “[u]ltimately, the alternatives that the applicant selects are informed by the project and its goals,” the NRC Staff points out that the NFS purpose and need statement not only addresses the technology gap for oxide conversion but also posits a need to “create redundant production capacity to ‘hedge against’ the risks of adopting new technology,” a central point the NRC Staff maintains is not addressed by ECAN in its hearing petition. *Id.* at 16-17 (quoting ER at 1). Consequently, according to the NRC Staff, ECAN has failed to frame a genuine dispute about a material issue of law or fact. *See id.* at 17 (citing 10 C.F.R. § 2.309(f)(1)(iv), (vi)).

Additionally, the NRC Staff asserts that ECAN “appears to challenge NNSA’s contracting decision” in its petition by questioning whether there is a need for NNSA to contract for additional uranium purification and conversion services. *Id.* (emphasis omitted). This, the NRC Staff observes, is a “determination [that]

has already been made by NNSA, as is evidenced by the contract NNSA entered into with NFS.” *Id.* Given that the only issue is the NFS amendment application, the NRC Staff likewise urges that Contention B is not within the scope of this licensing proceeding and is not material to the licensing findings the NRC must make. *See id.* (citing 10 C.F.R. § 2.309(f)(1)(iii)-(iv)).

*c. ECAN’s Reply*

ECAN’s reply asserts that the NRC Staff’s answer has confirmed that a factual issue exists relative to the supplemental ER in its description of the NFS amendment as a “‘hedge against’ the risks of adopting new technology” at the NNSA Y-12 facility. ECAN Reply at 12 (quoting Staff Answer at 17). ECAN questions why this “hedge” is necessary when the old purification process will continue to be available at Y-12, making the proposed NFS U-Metal Project redundant, wasteful, and a negative that cannot be outweighed by the environmental positive of not authorizing its construction and operation. *See id.* Also, according to ECAN, the start-up for the new electrorefining process at the Y-12 facility has been ongoing for two years with satisfactory results, meaning that the new process is likely to become operational in the near future, while the old Y-12 production line continues to function and, as such, constitutes “an alternative to the proposed NFS project not mentioned by NFS in its Supplemental ER.” *Id.* at 12-13. Specifically, ECAN states that the NEPA alternative of NNSA funding “uranium purification in Y-12 Building 9212 until the electrorefining process is fully operational” not only meets the NEPA “rule of reason” standard by having a “reasonable possibility” of occurring, but “is actually happening in real time.” *Id.* at 13 (emphasis omitted). As such, ECAN claims it must be addressed as an alternative in the supplemental ER.

*d. Licensing Board Determination*

In ruling on Contention B’s admissibility, we begin by noting information NFS clarified during oral argument: that the new uranium purification process under construction at the NNSA Y-12 facility in Oak Ridge, Tennessee “may start to come online in the 2023 timeframe . . . [and] is expected to be completed around 2028,” while “the conversion process would be a functionality that may or may not be added later, around the 2028 timeframe or afterwards.” Tr. at 56 (Lighty). Counsel for NFS also stated that the proposed U-Metal process in its Erwin, Tennessee facility “may be online [by] approximately 2026.” Tr. at 57 (Lighty).

As ECAN points out, “[i]t is entirely proper to raise a contention which challenges the fairness and adequacy of [an ER’s] purpose and need statement.”

ECAN Amended Hearing Petition at 17. Nonetheless, such a challenge must, among other things, demonstrate that the requisite genuine dispute exists with the applicant on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).<sup>42</sup>

In the context of a purpose and need statement or otherwise, the alternatives selected for a NEPA analysis are necessarily informed by the project under review and its goals, which in turn are determined by the applicant.<sup>43</sup> In questioning the adequacy of the NFS supplemental ER's purpose and need statement as being "unduly narrow" because it fails to consider a "no-build alternative," *id.* at 16, ECAN has failed to account for critical facts set forth in the supplemental ER. Specifically, ECAN never disputes the need to develop the U-Metal process to create a "separate process of converting isotopes to metal, as well as creating redundant capacity" if issues arise with the new electrorefining process at the Y-12 facility. Tr. at 68 (Roach); *see* NFS Answer at 13 (quoting ER at 1 indicating U-Metal Project was intended to provide both "oxide conversion capability and to hedge against the technology risk associated with the new electrorefining facility"); *see also* Tr. at 44 (Lighty) (observing that the existing equipment at the NNSA Y-12 facility "is aging and in the near future will not be capable of performing [purification and conversion] services"). Because ECAN fails to dispute these central facts, its Contention B lacks the necessary support to create a genuine dispute on a material issue of fact or law that is required for an admissible contention.<sup>44</sup>

**3. *ECAN Contention C: Legacy Contamination Is Understated, Uninvestigated and Missing from Cumulative Effects Analysis in the ER***

NFS has been the contributor as point source to multiple soil and groundwater

---

<sup>42</sup> Although ECAN seeks to establish such a genuine dispute with its assertion that the U-Metal Project will result in a doubling of air pollutants, *see supra* p. 37, as we note below in addressing this same argument presented as a supporting basis for Contention C, that claim is based on a misunderstanding of the supplemental ER's language and so fails to establish the requisite genuine dispute, *see supra* p. 52.

<sup>43</sup> *See Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 607-08 (2007), *approved*, CLI-07-27, 66 NRC 215 (2007).

<sup>44</sup> As was indicated in section III.B.2.b above, citing the section 2.309(f)(1)(iii) and (iv) admissibility factors regarding scope and materiality, the NRC Staff maintains that Contention B should be dismissed to the degree that it is an attempt to challenge whether there is an NNSA need to contract for additional uranium purification and conversion services. This proceeding undoubtedly is not the forum in which to challenge whether the NNSA needs the uranium purification and conversion services for which it has contracted. At the same time, while the NNSA contract certainly would inform the factual basis for a NEPA-associated purpose and need statement, the mere existence of that contract and its requirements would not foreclose a NEPA-related consideration of alternatives, including the no-action alternative.



episodes of industrial chemical contamination throughout its 65-year existence. Over time there have been remediation programs and various attempts to mitigate the presence and intensity of these toxins. They are not adequately identified in the NFS Supplemental [ER]. The present status of groundwater contamination is poorly explained and lacks a comprehensive perspective. The possibility of the presence of [per- and polyfluoroalkyl substances (PFAS)] chemicals is not addressed. The documented presence of radioisotopes identified with NFS for miles downstream in the Nolichucky River is unmentioned. None of the groundwater effects of NFS have been incorporated into the ER as part of a cumulative effects analysis.

ECAN Amended Hearing Petition at 21-22.

*a. ECAN's Arguments*

As the basis for this contention, ECAN points to three purported categories of groundwater contamination from NFS's Erwin facility: (1) particles of radioisotopes, including plutonium and uranium-235, found in the Nolichucky River ninety-five miles downstream from the NFS facility; (2) PFAS, based on the "verified presence of PFAS chemicals in the tissues of fish inhabiting the Nolichucky River," coupled with the likelihood of PFAS chemicals being present and used at the NFS facility; and (3) the historically high concentrations of partially remediated trichloroethylene (TCE) and tetrachloroethylene (PCE) at the site. *Id.* at 22. ECAN asserts that NFS's supplemental ER does not "meaningfully disclose the potential for similar or identical chemicals to be present in the future." *Id.* ECAN further argues that, notwithstanding the doubling of air emissions from the Erwin facility as a result of the U-Metal process, the NFS supplemental ER fails to disclose the chemicals that will be emitted from the purification and conversion processes proposed in the NFS license amendment application. *Id.* ECAN maintains as well that the NRC must both disclose the "continuing presence, movement and effects" of these existing toxins along with the chemicals that will be released into the water and air from the purification and conversion process, and evaluate the cumulative impacts upon the site of past, present, and future foreseeable actions, claims ECAN asserts render this contention within the scope of, and material to, this proceeding. *Id.* at 22-24; *see id.* at 33-35.

As technical support for its argument that the NFS facility is causing radiological groundwater contamination, ECAN relies on Dr. Michael Ketterer's declaration. *See id.* at 24. Dr. Ketterer, who states that he has sampled water, soil, sediment, and mollusks in and around the Nolichucky River near the NFS facility beginning in 2010, claims there is extensive evidence of multiple pathways and releases of enriched uranium and plutonium from NFS operations. *See*

*id.* at 24-26 (citing Ketterer Declaration at 1-2). ECAN contrasts Dr. Ketterer's opinion with what it describes as the NFS supplemental ER's dissembling discussion of radiological contamination of the Nolichucky from the Erwin facility. *See id.* at 26. Additionally, ECAN specifically notes that the long half-lives of uranium, plutonium, and other radioisotopes compel a supplemental ER discussion of cumulative impacts. *See id.*

As for nonradiological impacts, after providing an extended discussion of the dangers of PFAS chemicals, ECAN acknowledges that there is no "direct evidence that PFAS chemicals are present in the groundwater beneath, or in the vicinity of the NFS complex in Erwin." *Id.* at 26-28. Nonetheless, ECAN asserts that because PFAS chemicals have historically been used in lubricants and industrial processes such as fire protection, it is reasonable to assume PFAS chemicals could have been used there during the NFS Erwin facility's sixty-five years of industrial activity. *See id.* at 28. Significant as well in confirming this possible PFAS release, ECAN argues, are fish tissue samples taken by the Tennessee Department of Environment and Conservation (TDEC) in major Tennessee rivers, including the Nolichucky River, during 2008-2009. *See id.* ECAN thus urges, based on Dr. Ketterer's recommendation and consistent with the growing recognition of the "ubiquitous" presence of health-threatening PFAS chemicals in long-time industrial installation environments, that an investigation should be conducted to determine whether PFAS contamination exists at the NFS site. *Id.* (citing Ketterer Declaration at 2).

Asserting that groundwater contaminant plumes are known to underlie the NFS facility and migrate offsite, ECAN faults the NFS supplemental ER for failing to address PFAS groundwater contamination and migration as well as possible thorium and plutonium plumes. *See id.* at 29-30. ECAN also maintains that the NRC must determine whether the groundwater flow from the vicinity of the Erwin facility has contaminated (1) the Banner Hill Spring; (2) the nearby Banner Spring Branch; (3) the Nolichucky River itself; and (4) the Railroad Well's groundwater capture zone. *See id.* at 30-32. In this regard, while acknowledging that a previous amendment to the NFS license removed a requirement to sample the Banner Spring Branch, ECAN asserts that this "does not absolve the NRC from the responsibility to determine the extent to which Banner Spring Branch is contaminated." *Id.* at 30.

Lastly, ECAN argues that NFS's failure "to address sinkhole activity and karst terrain . . . underlying its site" is a dereliction of its NEPA responsibility to provide a thorough environmental impacts review, particularly in light of the development of a sinkhole next to a local elementary school. *Id.* at 32-33. According to ECAN, the failure of NFS and the NRC to evaluate the complex groundwater flow, the possible groundwater contamination, and the sinkhole activity and karst terrain at the Erwin facility has created "a dangerously incom-

plete assessment of the proposed action’s potential impacts on the environment.” *Id.* at 32.

*b. NFS and NRC Staff Responses*

In its response to ECAN’s hearing request, NFS asserts that Contention C should be dismissed because, instead of challenging the current license amendment, ECAN primarily raises concerns about past agency action and “fails to acknowledge that the NRC previously disclosed and analyzed past, present, and future facility effluents in its license renewal Environmental Assessment [(EA)] for the NFS facility.”<sup>45</sup> NFS also claims that ECAN disregards multiple disclosures about the NFS site’s current effluents. *See* NFS Answer at 16. NFS thus concludes that ECAN’s claims are “variously unsupported (both factually and legally), out-of-scope, immaterial, and fail to raise a genuine material dispute with the [current license amendment application].” *Id.* at 14-15.

Addressing the specifics of ECAN’s radiological contamination concerns and the related Ketterer Declaration,<sup>46</sup> NFS argues that the supplemental ER and NFS’s June 2022 RAI responses identify and analyze all radiological effluents and show that all radiological concentrations are lower than the applicable regulatory limits.<sup>47</sup> As to ECAN’s claim that the license amendment “will cause a doubling of air pollution over present levels,” NFS explains that this assertion is based on the incorrect assumption “that the new U-Metal activity will involve processing quantities of SNM in addition to the quantities authorized in the current license.” *Id.* at 19 (emphasis omitted) (quoting ECAN Amended Hearing Petition at 20). According to NFS, its requested license amendment does not seek an increase in NFS’s baseline production capacity, but only a change in production capability. *See id.* Additionally, NFS asserts that, contrary to ECAN’s claims, liquid effluents associated with the U-Metal process not only have been disclosed, but if the license amendment is granted they will

---

<sup>45</sup> *See* NFS Answer at 16 (citing Office of Federal and State Materials and Environmental Management Programs, NRC, Final [EA] for the Proposed Renewal of [NRC] License No. SNM-124 for [NFS] at vi (Oct. 2011) (ADAMS Accession No. ML112560265) [hereinafter NFS License Renewal EA]).

<sup>46</sup> In a footnote to its response, NFS points out that the Ketterer Declaration was filed fifteen days after the hearing opportunity notice deadline for submitting a timely hearing petition and asserts that ECAN having failed to show any “extreme and unavoidable circumstances” that would excuse such an untimely filing, the Board should disregard it as “inexcusably late.” *Id.* at 17 n.67 (quoting 10 C.F.R. § 2.307(a)).

<sup>47</sup> *See id.* at 17-19 (citing ER at 28, 35-42; NFS RAI Response at 1, 7; *id.* at R-11 to -18 (tbl.5 (Beta Particle Reasonable Potential Calculations, Based on NRC Semiannual Reports and Sum of Fractions Method)) [hereinafter Table 5]).

be materially the same as the currently-produced effluents. *See id.* at 19-20 (citing NFS RAI Response at 1, 8).

Relative to ECAN's argument that the supplemental ER's cumulative impacts analysis of industrial chemical groups is inadequate, NFS contends that ECAN fails to identify any supplemental ER deficiency under 10 C.F.R. Part 51. *See id.* at 20. Additionally, NFS maintains that the NRC Staff's previous analysis of cumulative impacts in its 2011 license renewal EA is dispositive of this question. *See id.* According to NFS, in that EA the NRC Staff explained that the NFS facility effluent discharges comply with federal, state, and local permit requirements and would not be expected to "pose undue cumulative risks to human health and the environment." *Id.* (emphasis omitted) (quoting NFS License Renewal EA at vi). Because ECAN does not contest NFS's statement that under the proposed license amendment effluents would remain within existing permit limits, NFS argues that no "significant environmental change" from the license renewal EA will occur and therefore no further supplemental ER analysis is needed. *See id.* at 20-21 (quoting 10 C.F.R. § 51.60(a)).

Addressing ECAN's assertions about NFS's legacy contamination and remediation activities, NFS declares that these issues also were analyzed and discussed in the license renewal EA, with updated information provided in the supplemental ER regarding NFS's post-EA remediation activities to address any such contamination. *See id.* at 21-22 (citing NFS License Renewal EA at 4-13 to -14; ER at 29). According to NFS, ECAN has failed to show that anything further is required under Part 51. Additionally, NFS argues that because the NRC has determined that the remediated area meets the radiological criteria for unrestricted use, a challenge to this finding is beyond the scope of this proceeding.<sup>48</sup>

NFS also asserts that, contrary to ECAN's claims in its hearing petition, the sinkhole activity associated with the nearby karst terrain in relation to the Rome Formation underlying the Erwin facility site has been addressed in the NFS license renewal proceeding EA.<sup>49</sup> Thus, NFS asserts, ECAN's attempt to relitigate the NRC's findings via Contention C is likewise beyond the scope of this proceeding. *See id.* at 23 (citing 10 C.F.R. § 2.309(f)(1)(iii)).

---

<sup>48</sup> *See id.* at 22 (citing Letter from Kevin M. Ramsey, Project Manager, NMSS, NRC, to Richard J. Freudenberger, Director, Safety and Safeguards, NFS, encl. at 4 (Dec. 11, 2018) (Safety Evaluation Report, [NFS] – North Site, Addendum to the Final Status Survey Report for Survey Units 4, 6, 7, 12, 16, 17 and 18, Survey Units 6 and 7 Surface Soil Characterization) (ADAMS Accession No. ML18338A246)).

<sup>49</sup> *See id.* at 22-23 (citing Frequently Asked Questions about the [NFS] Fuel Fabrication Facility, Emergency Planning, Sinkholes, <https://www.nrc.gov/materials/fuel-cycle-fac/fuel-fab/nfs-faqs.html#11d1> (Why was the NFS license renewed given the existence of sinkholes in the local area?) [hereinafter NFS FAQ on Sinkholes]).

Finally, NFS finds fault with ECAN's assertion that PFAS may be at the NFS site. According to NFS, neither ECAN nor its expert Dr. Ketterer have presented anything beyond speculation to support this generalized claim. *See id.* at 23-24. Noting ECAN's admission that it "does not have any direct evidence that PFAS chemicals are present in the groundwater beneath, or in the vicinity of the NFS complex in Erwin," NFS asserts that "black letter case law specifies that a contention cannot be based on speculation." *Id.* at 24 (quoting ECAN Amended Hearing Petition at 28). Moreover, NFS argues, even assuming ECAN's speculative assertion is correct, ECAN has failed to make any showing as to how or why having such chemicals onsite would present a "significant environmental change" that would need to be analyzed in the supplemental ER. *Id.* (quoting 10 C.F.R. § 51.60(a)). Consequently, NFS asserts, ECAN's PFAS claims lack support and fail to raise a genuine dispute on a material issue of law or fact regarding the NFS license amendment application. *See id.* at 24-25 (citing 10 C.F.R. § 2.309(f)(1)(iv)-(vi)).

In response to ECAN's claims regarding Contention C, the NRC Staff asserts that the contention is inadmissible because ECAN does not show the requisite genuine dispute with the NFS supplemental ER. *See* Staff Answer at 19 (citing 10 C.F.R. § 2.309(f)(1)(v)-(vi)). In this regard, the NRC Staff argues that ECAN "overlooks applicable information in the application and its references — particularly, the Supplemental ER and NFS'[s] responses to NRC environmental [RAI]." *Id.*

The NRC Staff first states that "the information ECAN provides about the presence of small amounts of radioisotopes in the environment near NFS is materially consistent with the information disclosed by NFS in its application." *Id.* Regarding ECAN's claims that, in light of the information provided in Dr. Ketterer's declaration, the supplemental ER fails to describe sufficiently the presence of radioisotopes in the Nolichucky River downstream of the NFS Erwin facility, the NRC Staff references the "numerous discussions, figures, and tables that identify the timing and amounts of past releases" of radioisotopes as required by NFS's regulatory permits along with the radiological pathway assessments in both the NFS supplemental ER and its June 2022 response to the Staff's RAI. *Id.* at 20 & nn.98-99 (citing ER at 4-5, 29, 37, and NFS RAI Response, encl. B, Table 5, at R-11 to -18). The NRC Staff maintains as well that because radioisotope effluents are discussed in NFS's application in detail, contrary to ECAN's allegation of omission of this information, ECAN has failed to raise a dispute with the application. *See id.* at 21.

Second, in response to ECAN's assertion that potential PFAS contamination should be investigated, the NRC Staff asserts that ECAN's claim is mere speculation in that "ECAN offers no tangible evidence of PFAS use or PFAS contamination at NFS." *Id.* Thus, the NRC Staff argues that Contention C's claim regarding the potential presence of PFAS at the Erwin facility lacks suffi-

cient supporting facts or expert opinion to provide the grounds for an admissible contention. *See id.* at 22 (citing 10 C.F.R. § 2.309(f)(1)(v)).

Third, relative to ECAN's expressed concerns about the lack of a groundwater assessment in the supplemental ER, the NRC Staff contends that "NFS'[s] application includes extensive discussion of groundwater contamination that ECAN does not address." *Id.* at 22. Specifically, the NRC Staff points to (1) the Erwin site's historically measured groundwater depth at ten feet below the ground surface; (2) NFS's control procedures for all spills and releases; and (3) NFS's statements that the "impact of the additional U-Metal process on liquid effluent and/or runoff will be minimal," and that there will be no "new chemical or radiological attributes with the potential to enter surface waterways." *Id.* (quoting NFS RAI Responses at 25, 40). The NRC Staff also asserts that ECAN's arguments about the failed PCE remediation activities and the contamination in Banner Hill Spring do not raise specific disputes with relevant portions of the supplemental ER, but instead are speculation based on "the suggestion of a mere possibility of contamination" and "unverified testimony" and thus "present no concrete facts or dispute with the application." *Id.* at 23-24 (citing 10 C.F.R. § 2.309(f)(1)(v)-(vi)).

Similarly, the NRC Staff asserts that ECAN has provided no support for its position that complex groundwater flow could lead to unpredictable contamination through groundwater pathways. *See id.* at 24. While ECAN references the 2011 final EA associated with the renewal of the NFS license for the Erwin facility, the NRC Staff asserts that this EA contradicts ECAN's assertions and thus does not raise a genuine dispute with the NFS supplemental ER. *See* Staff Answer at 24 (citing NFS License Renewal EA at 3-18). Further, the NRC Staff argues that "ECAN does not raise a specific dispute regarding NFS'[s] characterization of the foundation geology underlying the NFS site." *Id.* at 24-25. The NRC Staff again states that ECAN's assertions are speculative and that merely referencing the sinkhole incident in the vicinity of the facility ten years ago does not establish a litigable claim. *See id.* at 24. In sum, according to the NRC Staff, Contention C is inadmissible as failing to meet the pleading requirements of section 2.309(f)(1)(v) and (vi) and so should be dismissed. *See id.* at 25.

*c. ECAN's Reply*

ECAN asserts that the NRC has never taken the requisite "hard look" at the "cumulative impacts from radioactive air, water and soil contamination in the vicinity of, and downriver from, the NFS [Erwin] plant." ECAN Reply at 15. ECAN also takes issue with the lack of warning signs to alert and protect the public from what it claims is radiologically contaminated water that pools on the surface near a walking trail in the vicinity of the NFS facility. *See id.*

ECAN argues as well that the NRC is willing to accept false assertions in the NFS license amendment application, specifically that Banner Spring Branch is classified for fish and aquatic life, livestock watering, irrigation, and recreation, when it is, according to ECAN, channelized in a buried culvert. *See id.* at 16. According to ECAN, among the erroneous bases for NFS's false claim that Banner Spring Branch has diverse aquatic life are (1) the supplemental ER citation to a 2019 TDEC report that did not even list Banner Spring Branch; and (2) a 1996 DOE report referenced in the 2009 NFS environmental report supporting its license renewal application, as well as a 2017 Tennessee Wildlife Resources Agency report cited in NFS's June 2022 RAI responses, both of which indicated there are several species of minnows where Banner Spring Branch converges with Martin Creek, notwithstanding that Banner Spring Branch is "completely enclosed inside a pipe." *Id.* at 16-17 (quoting ER at 18).

In response to the PCE groundwater contamination and bioremediation discussion in the NRC Staff's answer, ECAN maintains that the NRC Staff mischaracterizes the NFS supplemental ER as having an extensive discussion of groundwater contamination when it in fact only has some "illegible" bar charts and a few isolated sentences on the subject. *Id.* at 17-18. Further, ECAN challenges the NRC Staff's failure to produce or seek from NFS new plume diagrams or maps regarding the purported new contaminants, particularly as it relates to the nearby Railway Well that ECAN labels "a major source of drinking water for the town." *Id.* at 18. Thus, ECAN claims the NFS license amendment application is deficient because NFS has not "adequately illustrated the data they purport to," and the NRC Staff has not sought clarification on this issue via RAIs. *Id.* So too, according to ECAN, the supplemental ER's discussion of cumulative impacts is lacking because it fails to explain (1) the higher upstream gross beta readings on the Nolichucky River in 2011 and 2019 and on Martin Creek in 2012 as compared to downstream gross beta readings; (2) the 2012 higher upstream gross alpha readings on the Nolichucky River as compared to downstream gross alpha readings; and (3) the 2018 higher upstream uranium readings on the Nolichucky River as compared to downstream uranium readings. *See id.* at 19. Finally, ECAN asserts that the NFS license amendment application omits any discussion of the Nolichucky River, specifically the Greeneville Water Commission's current NFS-related enhanced monitoring procedures and the fact that the river provides drinking water to Greeneville and other communities in the county. *See id.*

ECAN's reply also reiterates that the NFS application is "dangerously deficient because of its failure to address the geologic hazards," specifically sinkholes, at the NFS Erwin facility. *Id.* at 20. ECAN asserts as well that there are multiple false statements made in NFS's supplemental ER and other reports, focusing particularly on the previously raised issue of the pipe-enclosed Banner Spring Branch as being able to support aquatic life and wildlife, irri-

gation, and recreation. *See id.* at 20-22. In addition, ECAN declares that NFS falsely claims its supplemental ER presents “updated disclosures and analyses.” *Id.* at 22 (quoting NFS Answer at 16). In this regard, ECAN states that critical information is missing, particularly data on the migration of the uranium and PCE/TCE groundwater contaminant plumes, and cumulative plutonium contamination of water, sediment, and soil. *See id.* at 22-24. ECAN acknowledges the NRC Staff’s reference to the NFS supplemental ER and June 2022 RAI responses that provide plutonium contamination data for the Nolichucky River, but counters that these data only reflect recent discharges and do not take into account the cumulative impacts of these discharges, particularly given that the TDEC cannot regulate plutonium discharges under the Clean Water Act and can only monitor for uranium as a source of heavy metal toxicity, not as a radiological contaminant per se. *See id.* at 24-25. According to ECAN, given the long half-lives of uranium, thorium, and plutonium, the NRC and NFS must evaluate their cumulative impacts, as well as the extent of migration of the TCE, 1,2-dichloroethylene, and vinyl chloride plumes and the chemical contamination they carry. *See id.* at 25-26.

*d. Licensing Board Determination*

While the Commission has long recognized that the scope of a hearing contesting a facility license amendment should encompass “any health, safety or environmental issues fairly raised by [the license amendment],”<sup>50</sup> such a challenge still must be lodged within the confines of the Commission’s contention admissibility rule, 10 C.F.R. § 2.309(f)(1). That provision, which is strict by design,<sup>51</sup> does not permit a petitioner to file vague, unparticularized, unsupported contentions.<sup>52</sup> Moreover, as evidenced by the requirement in section 2.309(f)(1)(vi) that a contention must include specific references to the disputed portions of the license application at issue, this provision does not permit challenges to (1) NRC Staff actions; *see supra* note 36 and accompanying text, or (2) past or current facility operations simply on the basis that the activities authorized under the license amendment would be conducted by the same licensee at the same facility.<sup>53</sup>

---

<sup>50</sup> *Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 624 (1981).

<sup>51</sup> *See, e.g., PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 504 (2015).

<sup>52</sup> *See, e.g., North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999).

<sup>53</sup> *See Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), LBP-20-8, 92 (Continued)



As was the case with Contention A, ECAN improperly frames portions of its support for Contention C’s admissibility in terms of the NRC’s failure to carry out its NEPA responsibilities.<sup>54</sup> Nonetheless, as discussed above, *see supra* note 36 and accompanying text, environmental contentions first must challenge the applicant’s ER, and ECAN does challenge the NFS supplemental ER to the extent ECAN claims the ER is deficient because it does not include an analysis of the historic contamination that has occurred at the Erwin facility. Therefore, Contention C is, in general, a contention of omission relative to the NFS supplemental ER.<sup>55</sup> Yet, as we explain below, the concerns raised in Contention C about a variety of air, soil, and water contamination issues all are outside the scope of this license amendment proceeding, are otherwise unsupported, or fail to raise a genuine material dispute on an issue of law or fact. Contention C thus does not meet section 2.309(f)(1)’s contention admissibility requirements.

This license amendment proceeding is focused on the requested action stated in the hearing opportunity notice — a license amendment to allow NFS to perform uranium purification and conversion services at its Erwin facility. *See* 87 Fed. Reg. at 53,508-09. In many instances, however, ECAN does not raise concerns about this specific license amendment. Instead, ECAN raises several issues about purported historic contamination at the NFS facility. And where ECAN does raise a concern regarding the license amendment, ECAN fails to

---

NRC 23, 47 (indicating challenges to current plant licensing basis rather than the requested facility modification are not within the permissible scope of a license amendment proceeding and instead should be brought as an enforcement action pursuant to 10 C.F.R. § 2.206) (citing *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-19-7, 90 NRC 1, 14 (2019)), *aff’d*, CLI-20-18, 92 NRC 530 (2020).

<sup>54</sup> *See, e.g.*, ECAN Reply at 14-15 (claiming NRC’s failure to undertake a cumulative radiological impacts analysis in response to a radiological surface water quality figure in 2009 NFS license renewal application environmental report evidences the agency’s failure to carry out its NEPA responsibility to take the requisite “hard look” at such impacts); *id.* at 18 (NRC has not presented any new data or updated map on Railroad Wells capture zone or issued RAI to NFS on drinking water quality).

<sup>55</sup> In its reply, ECAN does make one claim that might be considered an “adequacy” challenge. *See Ross*, LBP-13-10, 78 NRC at 132 n.6. According to ECAN, information in the supplemental ER mischaracterizes the status of the Banner Spring Branch as able to support aquatic life and wildlife. *See* ECAN Reply at 16-17, 20-21 (arguing supplemental ER is deficient by failing to disclose Banner Spring Branch is a “stream in a pipe”). Nonetheless, labeling information in an environmental analysis document as incorrect without also showing how that purported inaccuracy has some significance for the NEPA process fails to pass muster under section 2.309(f)(1)(vi)’s requirement that a contention’s sponsor must show that a “material” issue of fact is involved. *See Holtec International* (HI-STORE Consolidated Interim Storage Facility), CLI-20-4, 91 NRC 167, 190-91 (2020) (noting contention must frame a dispute as to a material issue and the Commission’s previous warning about trying to “flyspeck” an EIS).

substantiate its claims that relevant data are missing and fails to supply its own supporting data.

First, ECAN's assertion that the movement and effects of various groundwater contaminants need to be "updated, investigated and analyzed, since they will continue to be found . . . into the unknown future," ECAN Amended Hearing Petition at 22, is unsupported by any legal authority and is related to historic contamination, not to the current license amendment. By ECAN's own admission "[t]he supplemental ER offers a comparison table of radiological contamination of the Nolichucky upstream and downstream of the NFS wastewater outfall." *Id.* at 26 (citing ER at 29, fig.5 (Radiological Surface Water Quality)). In its supplemental ER, NFS explains there are radioisotopes in these surface waters near the facility, but that all radiological concentration levels between 2009 and 2020 were well below the 10 C.F.R. Part 20 regulatory limit of 300 picocuries per liter (pCi/L). *See* ER at 28-29. More broadly, the specific radioisotopes and their quantities resulting from Erwin site effluents were identified as part of the NRC's 2011 EA associated with the renewal of the NFS Erwin facility license and found not to exceed individual radionuclide limits. *See* NFS License Renewal EA at iv, 3-31 to -34. Further, the NFS supplemental ER and June 2022 RAI responses provide updated information regarding the radiological effluents, liquid or otherwise, involved with the U-Metal process as well as tables showing the Erwin facility-associated levels of stream, soil, and vegetation radioactivity from 2009 through 2020, which show no amounts exceeding regulatory limits.<sup>56</sup> At the same time, the U-Metal process is expected to cause minimal gaseous or liquid effluent impacts. *See* NFS RAI Responses at 1-2, 6-8, 40.

In contrast, ECAN makes no showing that the U-Metal process license amendment will increase the current NFS facility-related radiological contamination. Rather, ECAN takes issue with past contamination, which is examined in the supplemental ER. Thus, ECAN's claims regarding the existence and assessment of radiological contamination are both outside the scope of this proceeding and fail to demonstrate a genuine material dispute of law or fact as required by section 2.309(f)(1). *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi).

---

<sup>56</sup> *See* ER at 35-40 (tbl.22A (2009-2020 Environmental Air Average Gross Radioactivity), tbl.22B (Stream Sediment Average Radioactivity 2009-2020), tbl.22C (Soil Average Radioactivity 2009-2020), tbl.22D (Vegetation Average Radioactivity 2009-2020), tbl.22E (Martin Creek Downstream — Average Radioactivity 2009-2020), tbl.22F (2009-2020 Nolichucky River Downstream — Environmental Monitoring Data)); NFS RAI Responses at 6-8 (tbl.2 (Gaseous Effluents from the U-Metal Project)). In its reply, ECAN takes issue with Table 22B in the supplemental ER, asserting that it fails to provide an explanation about a purported discrepancy with upstream and downstream radiological readings associated with the Nolichucky River and Martin Creek. *See* ECAN Reply at 19. Again, however, ECAN fails to make any showing as to why this is a "material" factual issue within the meaning of section 2.309(f)(1)(vi). *See supra* note 55.

Second, ECAN concedes that it has provided no direct evidence to support its claim that there is PFAS groundwater contamination at the Erwin facility.<sup>57</sup> Thus, ECAN has not substantiated its claim with adequate factual or expert opinion as required under 10 C.F.R. § 2.309(f)(1)(v). “Historic industrial” processes and uses purported to be associated with PFAS are the focus of ECAN’s claims. ECAN Amended Hearing Petition at 28. But ECAN does not make any claims or otherwise reference the U-Metal process license amendment application in relation to PFAS contamination. *See id.* at 26-28. This purported deficiency likewise is both outside the scope of this proceeding and fails to show a genuine material dispute of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi).

Third, ECAN’s claims about other omissions in the supplemental ER, including that the ER does not include an analysis of potential sinkhole activity and historic groundwater plumes moving offsite, are simply incorrect. *See* ECAN Amended Hearing Petition at 30-32. Groundwater plumes are identified and analyzed in the supplemental ER,<sup>58</sup> while sinkhole activity and its significance to the NFS facility were addressed in the context of the 2011 NFS license renewal proceeding and are reflected in the 2019 NFS supplemental ER.<sup>59</sup> As

---

<sup>57</sup> *See* ECAN Amended Hearing Petition at 28 (“Petitioner ECAN does not have direct evidence that PFAS chemicals are present in the groundwater beneath, or in the vicinity of the NFS complex in Erwin.”)

<sup>58</sup> Regarding groundwater plumes, the NFS supplemental ER indicates:

Operations at the NFS Erwin Facility resulted in the presence of radionuclides and organic constituents in the groundwater beneath the facility. . . . For remediation purposes, the primary groundwater contaminants of concern (COCs) include [PCE], uranium (U), and technetium (Tc-99). Bioremediation of PCE has created byproduct contaminations including [TCE], 1,2-dichloroethylene (1,2-DCE), and vinyl chloride (VCI). NFS has completed corrective actions involving 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.

There are no known users of the groundwater between the NFS Erwin Facility and the Nolichucky River. Groundwater collected in monitoring wells on the down-gradient (Plant west) boundary indicates that TCE, PCE, 1,2-DCE and VCI periodically exceed drinking water standards at one or more locations near the western boundary. NFS is actively working to remediate the off-site plumes and has achieved significant plume reductions. The goal of groundwater remediation is to meet the [United States Environmental Protection Agency’s] drinking water [maximum concentration levels] for all COCs.

ER at 29.

<sup>59</sup> *See* NFS License Renewal EA at B-71 (responding to a public comment about karst topography underlying the NFS site, the NRC Staff indicated that the “NFS site is directly underlain by the Rome Formation, a non-karstic formation (although there is some evidence of dissolution features

*(Continued)*

before, ECAN does not make any allegations regarding, nor does it otherwise reference, the U-Metal process license amendment application in relation to either groundwater plumes or sinkholes. *See* ECAN Amended Hearing Petition at 29-33; ECAN Reply at 19-20. Thus, these historic issues that are framed in terms of regulatory inaction are both beyond the scope of this proceeding and likewise fail to demonstrate the requisite genuine material dispute of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi).

Lastly, ECAN's claim that air emissions from the NFS Erwin facility will double with the license amendment, *see* ECAN Amended Hearing Petition at 22, is based on a misunderstanding of an NFS RAI response's language stating "[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," NFS RAI Response at 6. NFS confirmed in its answer that the requested licensing change pertains to capability only and not to an increase in capacity. *See* NFS Answer at 19. According to NFS, any new activities under the requested license amendment will be offset by a reduction in NFS's current activities such that air emissions "will remain 'similar' to current levels." *Id.* (quoting NFS RAI Response at 6). Therefore, ECAN's assertion that air emissions will double if the U-Metal process amendment is approved lacks both adequate factual or expert opinion support and fails to demonstrate a genuine material issue of fact or law. *See* 10 C.F.R. § 2.309(f)(1)(v)-(vi).

Because ECAN's Contention C does not meet all the section 2.309(f)(1) criteria, this contention is inadmissible.

---

in the northern part of the site). The Rome Formation is a competent rock consisting of sandstone, siltstone, shale, dolomite, and limestone. Karst topography is present in the southeasterly Shady Formation, but that is upgradient of the NFS site."); ER at 15 ("The bedrock strata at the NFS Erwin Facility are consolidated, providing firm foundations for buildings that lie directly on the strata or that are supported by footings."); *see also* NFS FAQ on Sinkholes ("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.") (last visited Jan. 27, 2023).

**4. ECAN Contention D: Fuel Cycle Facility Regulations Are Insufficient to Protect Public Health, Safety & Security Because They Lack Stringent Quality Assurance Requirements**

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.

ECAN Amended Hearing Petition at 35.

*a. ECAN's Arguments*

As the basis for this contention, ECAN asserts that despite being subject to numerous safety violations, several of which have occurred since the last Erwin facility license renewal in 2021, as well as being called multiple times to the NRC's Agency Action Review Meetings, NFS continues to operate without adequate regulatory oversight of "how NFS addresses worker safety and protection of the public health and safety." *Id.* at 35-36. Consequently, ECAN contends, NRC must impose tougher standards on NFS. *See id.* at 40.

ECAN declares that this contention is within the scope of this proceeding because the agency has a "legal and non-discretionary duty to consider whether, when granting a license, such an action could be inimical to the common defense and security of the United States or the health and safety of the public." *Id.* at 36. Further, according to ECAN, the issues raised in this contention are material to the findings the NRC must make to support the action involved in this proceeding because "[t]he adequacy of [QA] implicates considerations of public health and safety in the NRC's deliberations of whether to issue the license amendment." *Id.*

As support for this contention, ECAN asserts that since the 2012 license renewal, there have been at least thirty-two known safety violations and unresolved items, three times in which accidents at NFS and their aftermaths were listed in NRC's Report to Congress on Abnormal Occurrences, and repeated Nuclear Criticality Safety deficiencies, including a malfunctioning alarm system in the NFS wastewater treatment facility resulting in a stop work order.<sup>60</sup> *See id.* at 36-37. Further, ECAN asserts, NFS experienced sixteen environmental releases that triggered offsite notification between 1997 and 2021, seven known physical security-related violations after NFS's last license renewal, and six deficiencies

---

<sup>60</sup>The ECAN amended petition states that there have been "thirty-two (39) known safety violations and unresolved items" and "three (2) times where accidents and aftermaths at NFS have been serious." ECAN Amended Hearing Petition at 36-37. For consistency and clarity, in this decision we assume that the spelled-out number is the correct number for purposes of ECAN's arguments while noting, as a substantive matter, that which number is correct is not material to our ruling.

that were listed in an Independent Safety Culture Assessment.<sup>61</sup> *See id.* at 37. Additionally, ECAN argues that NFS historically has had trouble at this plant completing corrective actions in a timely manner. *See id.*

To further illustrate its concern, ECAN compares QA measures at a DOE uranium purification site to those at NFS. According to ECAN, at DOE's site in Oak Ridge, Tennessee, a different QA regime contractually obligates prime contractors to have QA management training and nuclear quality control engineers with adequate technical experience reporting to them. *See id.* at 38. In contrast, ECAN maintains, NFS is only required to follow QA controls on the shipment of special nuclear material and is not subject to the provisions of the American Society of Mechanical Engineers (ASME) Nuclear Quality Assurance (NQA-1) certification because NFS is not eligible for such certification. *See id.*

ECAN acknowledges that NFS is required to "implement and maintain a graded QA program commensurate with the risk posed by the facility," which ECAN asserts is "highly likely to increase as a consequence of the new uranium purification process." *Id.* at 38-39. These QA requirements, specified in 10 C.F.R. §§ 70.62(d) and 70.64, require each applicant/licensee to establish management measures to ensure compliance with performance requirements in 10 C.F.R. § 70.61.<sup>62</sup> *See id.* at 39. But the issue with the QA approach at NFS, ECAN claims, is that there are no organizationally designated staff tasked with performing QA functions, which ECAN asserts "means, in practical terms, that no one does them." *Id.*

As an example, ECAN states that an April 2012 NRC integrated inspection found the lack of adequate management measures pertaining to the maintenance

---

<sup>61</sup> As summarized by ECAN, the deficiencies are as follows:

- Need for licensee to develop and provide formal training to the appropriate front-line supervisors to improve their understanding and use of Operating Experience.
- Licensee lacked a way to document the review for major organizational changes during the change process review by the Change Control Board.
- Update the procedure for conducting Corrective Action Program (CAP) effectiveness reviews, and update the list of personnel required to be trained on the procedure.
- Two Unresolved issues: Deficiencies in the consistent application of the [CAP] within the Security and Material Control and Accounting (MC&A) Departments.
- Need for Licensee to develop consistent standards and expectations for supervisors with regards to improving oversight of work activities.

*Id.* at 37-38 (citing Letter from Alan J. Blarney, Branch Chief, NMSS, NRC, to Joseph G. Henry, President, NFS, encl. at 9-11 (Jan. 30, 2013) (NRC Integrated Inspection Report No. 70-143/2012-005) (ADAMS Accession No. ML13030A347)).

<sup>62</sup> According to ECAN, "Management Measures are those functions performed by the licensee that are applied to items relied on for safety (IROFS), to ensure the items are available and reliable to perform their functions when needed." *Id.* at 39. These include (1) configuration management; (2) maintenance; (3) training and qualifications; (4) procedures; (5) audits and assessments; (6) incident investigations; (7) records management; and (8) other QA elements. *See id.*

of a firewall and its associated penetrations adversely affected the firewall's two-hour National Fire Protection Association fire rating required by the NFS Integrated Safety Analysis and thus affected the function and reliability of NFS's IROFS, which led to two separate agency-issued notices of violation.<sup>63</sup> Citing another notice of violation, ECAN claims that the agency's integrated inspection report concluded that the lack of adequate management measures enabled the degradation of structural supports, thus adversely affecting the stability and reliability of the configuration-controlled storage columns designated as IROFS. *See id.* at 40 (citing April 2012 Inspection Reports at 8-10). All this, ECAN contends, establishes that NFS "should not be authorized to process nuclear weapons material without strict [QA] requirements." *Id.* at 38.

Finally, ECAN argues that Contention D presents a genuine material issue of law and fact because the safety and quality culture at NFS is severely lacking for a facility that "involve[s] handling ultrahazardous material in risky conditions," a situation in which "NRC's regulatory discretion certainly extends to the imposition of tougher QA standards." *Id.* at 40. ECAN claims that these previous violations, compliance issues, and NRC special enforcement measures, combined with the risks involved with the new purification process, should "herald the initiation of tougher [QA] standards." *Id.* Therefore, in ECAN's view, the current QA approach at NFS requires "[a] dramatic upgrade in safety and quality culture" to be more in-line with the ASME NQA-1 QA requirements, including having independent, third-party QA auditors with the power to stop work to correct adverse circumstances. *Id.* at 40-41.

*b. NFS and NRC Staff Responses*

NFS argues that Contention D is not only outside the scope of the proceeding, but also fails to raise issues that are material to the proposed license amendment and fails to raise a genuine dispute on a material issue with the amendment request. *See NFS Answer* at 26 (citing 10 C.F.R. § 2.309(f)(1)(iii)-(iv), (vi)). In NFS's view, ECAN's contention is "inadmissible on its face" because it does not make any mention of the license amendment request. *Id.* at 25 (emphasis omitted). Moreover, NFS argues that "it is the NRC's 'regulations' that are the target of Petitioner's attack in this contention." *Id.* This is impermissible, NFS maintains, because this adjudicatory proceeding regarding the NFS license amendment application "is not the appropriate vehicle for questioning the NRC Staff's past regulatory efforts nor is it an opportunity to raise generic grievances

---

<sup>63</sup> *See id.* at 39-40 (citing Letter from Alan Blarney, Branch Chief, NMSS, NRC, to Joseph Henry, President, NFS, encl. 2, at 4-6 (Apr. 30, 2012) (NRC Inspection Report Nos. 70-143/2012-002 and 70-143/2012-006) (ADAMS Accession No. ML12122A186) [hereinafter April 2012 Inspection Reports]).

about how the licensee has historically operated under its license.” *Id.* at 26 (quoting LBP-22-2, 96 NRC at 144).

Similarly, in its answer to ECAN’s hearing petition, the NRC Staff states that “NRC regulations preclude challenges to Commission rules or regulations in adjudicatory proceedings, absent a waiver granted by the Commission.” Staff Answer at 26 (citing 10 C.F.R. § 2.335(a)). Thus, “[c]ontentions that merely present the petitioner’s view of what applicable policies ought to be must be rejected,” because they are impermissible “attempts to advocate for requirements stricter than those imposed by regulation,” and are “outside the scope of the proceeding.” *Id.*

According to the NRC Staff, ECAN is arguing that “requirements other than those imposed by regulation should govern the review of NFS’[s] application.” *Id.* The NRC Staff maintains that QA requirements that are applicable to the requested license amendment for the NFS Erwin facility are already contained in 10 C.F.R. § 74.59. *See id.* at 27. Thus, the NRC Staff asserts that Contention D is impermissibly outside the scope of the proceeding because the contention merely presents ECAN’s view of what applicable policies ought to be or is an attempt to advocate for stricter requirements than those imposed by the applicable regulations. *See id.* (citing 10 C.F.R. § 2.309(f)(1)(iii)).

*c. ECAN’s Reply*

ECAN asserts that the NFS license amendment application “poses a very unique regulatory problem” because an industrial process that was subject to QA requirements particular to DOE facilities will now be “duplicated at a privately-owned industrial complex regulated by the NRC without those QA requirements.” ECAN Reply at 26. ECAN challenges the NFS assertion in its June 2022 response to the NRC Staff’s April 2022 RAI that for over twenty years NFS performed downblending operations safely. *See id.* at 26-27 (citing NFS RAI Response at 10). According to ECAN, a 2006 HEU spill at NFS resulted in the pooling of enough fissile material to have caused a criticality accident, for which NFS was cited with four violations. *See id.* at 27-28. Moreover, ECAN asserts, NFS was operating under the authority of several NRC Staff-approved license amendments that were assessed as having no significant environmental impacts. *See id.* ECAN ultimately ascribes this spill to inadequate configuration control, change analysis, and design requirements that constituted serious QA problems. *See id.* at 28.

ECAN thus maintains that Contention D should be admitted “[d]espite insurances by the NRC Staff and NFS that ECAN is impermissibly challenging a regulation.” *Id.* The real focus should be on “whether a facility that under other circumstances would be required by DOE regulations to have a process [QA] program should, based upon serious past violations, be disqualified from



receiving a license to pursue a quality-deficient, inherently dangerous radiological process.” *Id.*

*d. Licensing Board Determination*

ECAN’s assertion that NFS “should not be authorized to process nuclear weapons material without strict [QA] requirements,” ECAN Amended Hearing Petition at 38, does not account for the QA requirements in 10 C.F.R. § 74.59 that already are applicable to the NFS facility and, consequently, to the activities that would be authorized under the requested license amendment. ECAN’s Contention D thus is a challenge to the validity or sufficiency of a Commission regulation.

Under 10 C.F.R. § 2.335, licensing boards may not entertain challenges to the validity of Commission regulations in individual licensing proceedings except in certain “special circumstances” in which a waiver is requested and found to be appropriate. Section 2.335(b) and Commission caselaw detail the prima facie showing that an intervenor must make to establish the requisite “special circumstances” so that a waiver may be granted.<sup>64</sup> If a licensing board determines that such a prima facie showing has been made, section 2.335(d) provides that the question whether the regulation should be waived must be certified to the Commission. Without a waiver determination by the Commission, a contention that challenges a rule is outside the scope of the proceeding and may not be given further consideration by a licensing board.<sup>65</sup>

ECAN did not include a petition for a waiver to impose requirements beyond the existing applicable Part 74 QA regulations. *See* 10 C.F.R. § 2.335(b). Contention D therefore is outside the scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii).

#### IV. CONCLUSION

For the reasons set forth above in section II.B, ECAN has provided an adequate showing to establish its representational standing in this license amendment proceeding regarding NFS’s Erwin facility. For the reasons described in section III.B above, however, we find that under the applicable standards of 10

---

<sup>64</sup> *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005).

<sup>65</sup> *See NextEra Energy Point Beach, LLC* (Point Beach Nuclear Plant, Units 1 and 2), CLI-22-5, 95 NRC 97, 101, 105 (2022); *see also* 10 C.F.R. § 2.335(c).

C.F.R. § 2.309(f)(1) ECAN has failed to establish the grounds for admitting any of its four contentions.<sup>66</sup>

Accordingly, ECAN's hearing request is denied.

---

For the foregoing reasons, it is this thirtieth day of January 2023, ORDERED, that:

1. The October 31, 2022 hearing request of petitioner Erwin Citizens Awareness Network, Inc. is *denied* and this proceeding is *terminated*.

2. In accordance with the provisions of 10 C.F.R. § 2.311, as this memorandum and order rules upon an intervention petition, any appeal to the Commission from this memorandum and order must be taken within 25 days after this issuance is served.

THE ATOMIC SAFETY AND  
LICENSING BOARD

G. Paul Bollwerk, III, Chair  
ADMINISTRATIVE JUDGE

William J. Froehlich  
ADMINISTRATIVE JUDGE

Dr. Sue H. Abreu  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
January 30, 2023

---

<sup>66</sup>Regarding the outstanding December 9, 2022 NFS motion to strike a portion of ECAN's December 2, 2022 reply pleading regarding Contention C, *see supra* note 14, our conclusion in section III.B.3.d above that Contention C is not admissible, in conjunction with our denial of ECAN's hearing request, renders that NFS motion moot. The same is true with respect to the NFS request in connection with Contention C that the Board not consider Dr. Ketterer's declaration because it was late-filed without adequate justification. *See supra* note 46.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judges:**

**G. Paul Bollwerk, III, Chair**  
**Dr. Gary S. Arnold**  
**Nicholas G. Trikouros**

**In the Matter of**

**Docket No. 030-38679-LA**  
**(ASLBP No. 21-972-01-LA-BD01)**

**CAMMENGA AND ASSOCIATES, LLC**  
**(Denial of License Amendment Requests)**

**February 28, 2023**

In this proceeding concerning the denial of a license amendment application submitted by Cammenga and Associates, LLC (Cammenga) that sought Nuclear Regulatory Commission (NRC) approval to expand Cammenga’s existing authorization under 10 C.F.R. Parts 30 and 32 to distribute various tritium sealed-source self-luminous consumer products, concluding that a proposed settlement agreement fulfills the requirements of 10 C.F.R. § 2.338(g), (h), and (i), the Licensing Board grants Cammenga and the NRC Staff’s joint motion asking the Board to (1) approve the proposed settlement agreement; and (2) terminate the proceeding.

**RULES OF PRACTICE: SETTLEMENT OF CONTESTED CASES**

NRC regulations, specifically section 2.338 of Title 10 of the Code of Federal Regulations, encourage “[t]he fair and reasonable settlement of issues proposed for litigation” in NRC adjudicatory proceedings, with the strictures that govern such settlements set forth in the balance of section 2.338. 10 C.F.R. § 2.338; *see Rockwell International Corp.* (Rocketdyne Division), CLI-90-5, 31 NRC 337, 340 (1990) (“Commission policy strongly favors settlement of adjudicatory proceedings.”); *Statement of Policy on Conduct of Licensing Proceedings*,

CLI-81-8, 13 NRC 452, 456 (1981) (“Licensing boards are encouraged to hold settlement conferences with the parties.”).

**RULES OF PRACTICE: SETTLEMENT OF CONTESTED CASES  
(FORM OF SETTLEMENT)**

Section 2.338(g) of 10 C.F.R. outlines the form for such settlements:

A settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted. It must be signed by the consenting parties or their authorized representatives.

10 C.F.R. § 2.338(g).

**RULES OF PRACTICE: SETTLEMENT OF CONTESTED CASES  
(CONTENT OF SETTLEMENT AGREEMENT)**

Section 2.338(h) of 10 C.F.R. states that a proposed settlement agreement must contain the following items:

- (1) An admission of all jurisdictional facts;
- (2) An express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise to contest the validity of the consent order;
- (3) A statement that the order has the same force and effect as an order made after full hearing; and
- (4) A statement that matters identified in the agreement, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

*Id.* § 2.338(g).

**RULES OF PRACTICE: SETTLEMENT OF CONTESTED CASES  
(SETTLEMENT APPROVAL PROCESS)**

Particularly pertinent to the Board’s consideration of the parties’ joint motion, 10 C.F.R. § 2.338(i) describes the settlement agreement approval process:

Following issuance of a notice of hearing, a settlement must be approved by the presiding officer . . . to be binding in the proceeding. The presiding officer . . . may order the adjudication of the issues that the presiding officer . . . finds is required in the public interest to dispose of the proceeding. . . . If approved, the terms of

the settlement . . . must be embodied in a decision or order. Settlements approved by a presiding officer are subject to the Commission’s review in accordance with § 2.341.

*Id.* § 2.338(i).

**RULES OF PRACTICE: SETTLEMENT OF CONTESTED CASES  
(SETTLEMENT APPROVAL PROCESS)**

By its terms, section 2.338(i) requires Board approval of a settlement agreement “[f]ollowing issuance of a notice of hearing.” Such a notice often is issued in combination with the initial grant of a hearing request. *See James Chaisson*, LBP-15-21, 82 NRC 1, 5 (2015), *Commission review declined*, Memorandum from Annette L. Vietti-Cook, Secretary, Office of the Secretary, NRC, to Board and Parties (Oct. 30, 2015). In this instance, however, the Board did not issue a formal hearing notice in conjunction with its August 2021 order granting Cammenga’s hearing request. Nonetheless, in the context of a section 2.103 license application denial proceeding in which an applicant’s “demand” for a hearing is sufficient to warrant granting the applicant’s hearing request, *see Charlissa C. Smith* (Denial of Senior Reactor Operator License), LBP-13-3, 77 NRC 82, 89-95 (2013) (ruling applicant’s section 2.103(b)(2) hearing “demand” can be granted without section 2.309(f)(1)-compliant contentions), the Board’s order granting Cammenga’s hearing demand is the functional equivalent of a hearing notice such that section 2.338(i)’s requirement for Board approval of a settlement agreement is applicable in this instance.

**RULES OF PRACTICE: SETTLEMENT OF CONTESTED CASES  
 (“PUBLIC INTEREST” INQUIRY IN APPROVING SETTLEMENT)**

The Commission noted in its *Sequoyah Fuels Corp.* decision that “[i]n any pending proceeding [in which presiding officer approval of a settlement agreement is required], the presiding officer’s approval of settlement is a matter that must give due consideration to the public interest.” *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 207 (1997) (quoting *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)) (footnote omitted). The Commission then went on to explain that this “public interest” inquiry requires the presiding officer to consider:

- (1) whether, in view of the agency’s original order and the risks and benefits of further litigation, the settlement result appears unreasonable;
- (2) whether the terms of the settlement appear incapable of effective implementation and enforcement;
- (3) whether the settlement jeopardizes the public health and safety; and
- (4)

whether the settlement approval process deprives interested parties of meaningful participation.

*Id.* at 209 (footnote omitted).

**RULES OF PRACTICE: SETTLEMENT OF CONTESTED CASES  
("PUBLIC INTEREST" INQUIRY IN APPROVING SETTLEMENT)**

Although these four "public interest" factors were adopted by the Commission in an enforcement context, "the Commission derived these factors from an array of federal court settlement approval decisions that dealt with settlements ranging from public school desegregation class actions to antitrust enforcement suits." *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-18, 63 NRC 830, 837 (2006) (footnote omitted). Given the diversity of these cases and the fact that the Board finds these factors to be useful in determining whether there is some substantial public interest reason to reject the settlement in a licensing proceeding, the Board adopts the *Sequoyah Fuels Corp.* factors for the purpose of deciding whether to approve the proposed settlement agreement currently before the Board.

**RULES OF PRACTICE: SETTLEMENT OF CONTESTED CASES  
("PUBLIC INTEREST" INQUIRY INTO RISKS AND BENEFITS OF  
FUTURE LITIGATION)**

In reviewing a settlement, the first "public interest" factor the Board examines "is the risks and benefits of settling as compared to litigating the proceeding." *Sequoyah Fuels Corp.*, CLI-97-13, 46 NRC at 209. More specifically, as is appropriate here, the Board considers "(1) the likelihood (or uncertainty) of success at trial, (2) the range of possible recovery . . . , and (3) the complexity, length, and expense of continued litigation." *Id.*

**RULES OF PRACTICE: SETTLEMENT OF CONTESTED CASES  
("PUBLIC INTEREST" INQUIRY INTO RISKS AND BENEFITS OF  
FUTURE LITIGATION)**

The Board need not reject a settlement merely because one of the parties might have received a more favorable result had the case been fully litigated or because the settlement is not the best that could be obtained. *See id.* at 215. Instead, it is the Board's obligation to determine whether the agreement "is

within the *reaches* of the public interest.” *Id.* (quoting *United States v. Microsoft*, 56 F.3d 1448, 1460 (D.C. Cir. 1995)).

**RULES OF PRACTICE: DENIAL OF APPLICATION  
(OPPORTUNITY TO INTERVENE)**

The agency’s regulation governing license application denial proceedings states that a notice of proposed denial or denial of a license application is to be issued to “the applicant in writing” and is to inform the applicant of its “right . . . to demand a hearing,” 10 C.F.R. § 2.103(b)(2), and such notice was provided in this instance. While intervention by other interested persons in a proceeding regarding the proposed denial or denial of a license application is not without precedent, *see Advanced Medical Systems, Inc.* (1020 London Road, Cleveland, Ohio), LBP-98-32, 48 NRC 374, 376-77 (1998) (granting intervention requests in license renewal application denial proceeding), the absence here of a hearing opportunity notice for other interested persons is not an impediment to the Board’s approval of this settlement agreement because participation by such persons has not been foreclosed. *See* 10 C.F.R. § 2.309(b)(4)(ii) (providing for filing timely intervention petition when notice of agency action regarding an application is not published in the *Federal Register*).

**RULES OF PRACTICE: SETTLEMENT OF CONTESTED CASES  
(LICENSING BOARD AUTHORITY TO AMEND AGREEMENT)**

**SUA SPONTE REVIEW (LICENSING BOARD APPROVAL OF  
SETTLEMENT AGREEMENT)**

Section 2.338(i) indicates that “[s]ettlements approved by a presiding officer are subject to the Commission’s review in accordance with § 2.341.” 10 C.F.R. § 2.338(i). By its terms, section 2.341(b)(1) generally affords the parties the opportunity to proffer any challenges to a licensing board ruling resolving a proceeding by submitting a petition seeking Commission review of that decision. Nonetheless, given that (1) the Board’s authority under section 2.338(i) is to approve or reject a settlement agreement, *see Eastern Testing and Inspection, Inc.*, LBP-96-11, 43 NRC 279, 282 n.1 (1996) (indicating that, as is the case with the federal courts, a presiding officer cannot amend a settlement agreement without the consent of the parties); and (2) in accord with section 2.338(h)(2), the settlement agreement under consideration states that “[t]he Parties expressly waive . . . any right to challenge or contest the validity of the order entered into in accordance with this proposed settlement agreement,” Joint Motion to Approve Proposed Settlement Agreement and Terminate Proceeding (Jan. 26, 2023), attach. A at 4 (Proposed Settlement Agreement), a petition for review

challenging this issuance seems both unlikely and inappropriate. Thus, absent some wholly unanticipated development, *see Asberry v. U.S. Postal Serv.*, 692 F.2d 1378, 1380 (Fed. Cir. 1982) (indicating settlement agreement is not open to appellate challenge absent fraud or mutual mistake), additional Commission consideration of the Board's settlement approval determination will occur under its section 2.341(a)(2) sua sponte review authority.

**MEMORANDUM AND ORDER**  
**(Approving Settlement Agreement and Terminating**  
**Proceeding)**

In a license amendment application submitted in December 2020, Cammenga and Associates, LLC (Cammenga) sought Nuclear Regulatory Commission (NRC) approval to expand its existing authorization under 10 C.F.R. Parts 30 and 32 to distribute various tritium sealed-source self-luminous consumer products (such as compasses and knives) to include new multi-tool devices.<sup>1</sup> The NRC Staff's consideration of Cammenga's request resulted in July 2021 in the Staff's denial of the amendment application and a Cammenga hearing request challenging that Staff action.<sup>2</sup> Pending before the Licensing Board is a January 26, 2023 joint motion from Cammenga and the NRC Staff asking the Board to (1) approve an attached proposed settlement agreement specifying thirty-seven designs for self-luminous multi-tool devices that Cammenga will be allowed to distribute to members of the general public; and (2) terminate this proceeding.<sup>3</sup>

---

<sup>1</sup> See Letter from Christopher (CJ) Karchon, Vice President, Cammenga, to Office of Federal and State Materials and Environmental Management Programs (FSME), NRC (Dec. 30, 2020) (nonpublic) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21006A199) [hereinafter December 2020 Amend. Application]. This amendment application, along with several other documents cited in this decision, are being treated as nonpublic because they contain information that Cammenga asserts is proprietary. *See, e.g., id.*, unnumbered attach. 1 (Aff. of Christopher J. Karchon (Dec. 30, 2020)).

<sup>2</sup> See Letter from Kevin Williams, Division Director, Office of Nuclear Materials Safety and Safeguards (NMSS), to Christopher Karchon, Director of Strategic Initiatives, Cammenga, encl. (July 1, 2021) ([Cammenga] Denial of Application Dated December 30, 2020, Basis for Denial) (ADAMS Accession No. ML21139A100) [hereinafter Staff Amend. Denial]; Hearing Request (July 20, 2021) [hereinafter Cammenga Hearing Request]. Although the NRC Staff references other Cammenga license amendment applications and associated submissions, *see infra* notes 6-7 and accompanying text, Cammenga's December 30, 2020 application is the focus of the Staff's July 1, 2021 denial action, *see* Staff Amend. Denial at 1-2.

<sup>3</sup> See Joint Motion to Approve Proposed Settlement Agreement and Terminate Proceeding (Jan. 26, 2023) [hereinafter Joint Settlement Motion]. Included with the parties' joint motion and referenced

*(Continued)*



For the reasons set forth below, pursuant to 10 C.F.R. § 2.338(i), we grant the parties' joint motion; approve the January 26, 2023 settlement agreement, a copy of which is attached to this issuance as Appendix A; and terminate this proceeding.

## I. BACKGROUND

As outlined in 10 C.F.R. §§ 30.19, 32.22, and 32.210, an entity seeking to manufacture self-luminous products that contain tritium or to initially distribute such products for use by persons “exempt” from NRC licensing must apply for an NRC license and a certificate of registration that the NRC may issue after evaluating applicant-provided radiation safety information regarding the product.<sup>4</sup> In early 2020 when it first began seeking agency permission to distribute additional self-luminous products, Cammenga held both a section 32.22 exempt distribution license and a section 32.210 registration certificate authorizing the distribution of the VERSA series of self-luminous consumer products containing tritium sealed-sources.<sup>5</sup> With its February 2020 license amendment application,

---

in this decision are a proposed settlement agreement and a draft consent order. *See id.* attach. A (Proposed Settlement Agreement) [hereinafter Settlement Agreement]; *id.* attach. B (Consent Order) [hereinafter Consent Order].

<sup>4</sup>Section 30.19 exempts from NRC licensing any person who obtains a self-luminous product containing tritium that is manufactured, produced, or initially transferred by an entity holding a specific license issued under section 32.22. *See* 10 C.F.R. § 30.19(a). That section also requires an entity wishing to manufacture, produce, or initially transfer such a product to obtain both a section 32.22 license and a section 32.210 registration certificate. *See id.* § 30.19(b).

As the NRC Staff observed in its answer to the Cammenga hearing request, a license under section 32.22 that authorizes the transfer of self-luminous products to an “exempt” person is sometimes described as an “exempt distribution” license, but such an exemption from licensing “does not apply to tritium . . . used in products primarily for frivolous purposes or in toys or adornments.” NRC Staff’s Answer to Hearing Request of [Cammenga] (Aug. 16, 2021) at 1 n.1 (quoting 10 C.F.R. § 30.19(c)) [hereinafter Staff Answer]. And as the Staff also noted, the Commission has promulgated a Consumer Product Policy Statement that describes the criteria for evaluating whether consumer products should be approved for distribution and use by the general public without imposing regulatory controls on consumer users. *See id.* at 2 (citing Commission Product Policy Statement, 79 Fed. Reg. 2907 (Jan. 16, 2014)). In this regard, the Commission’s policy statement indicates that while it applies directly to any potential rulemaking to add or modify licensing exemptions that cover consumer products and usually “does not apply to individual licensing actions involving such products,” it nonetheless can be used for additional direction in licensing actions approving specific products “when there is a need for interpretation or judgment” to ensure consistency with the policy statement. 79 Fed. Reg. at 2908.

<sup>5</sup>Although there is some uncertainty about exactly when Cammenga submitted its initial license application, *see infra* note 6, as it is pertinent here, the Cammenga licenses that were operative

(Continued)

Cammenga requested that it be given authorization for the exempt distribution of multi-tool devices based on twenty new designs.<sup>6</sup>

After conducting its acceptance review and receiving requested information from Cammenga in April 2020 in the form of an application supplement, the NRC Staff advised Cammenga in October 2020 that it was suspending its review because the application did not contain the required information.<sup>7</sup> The Staff also indicated that Cammenga could resubmit its application with additional information, which Cammenga did in December 2020, requesting authorization for the exempt distribution of multi-tool devices based on more than 3600 new designs.<sup>8</sup> This triggered a Staff request for additional information (RAI), to which Cammenga responded in April 2021.<sup>9</sup> Ultimately, however, in a July 1, 2021

---

in that time frame all had essentially the same provisions. *See* NRC Form 374, Materials License, License No. 21-26460-03E, Amend. No. 10, at 1-2 (Aug. 19, 2019) (indicating license Cammenga is authorized to distribute to exempt persons compasses and knives manufactured in accordance with NRC sealed-source and device (SS&D) registration certificate No. NR-0210-D-101-E and listing the VERSA series as among series of self-luminous products licensee is authorized to distribute) (ADAMS Accession No. ML19231A175); *id.*, Amend. No. 11, at 1-2 (Feb. 26, 2020) (same) (ADAMS Accession No. ML20056C690); *id.*, Amend. No. 12, at 1-2 (Mar. 3, 2020) (same) (ADAMS Accession No. ML20063L571).

<sup>6</sup> *See* Letter from Christopher (CJ) Karchon, Vice President, Cammenga, to FSME, NRC, unnumbered attach. 9 (Feb. 18, 2020) (Model Information/Device List) (nonpublic) (ADAMS Accession No. ML20079D918). We note as well that some attachments to Cammenga's February 18, 2020 application letter have dates other than February 18, including an affidavit dated March 10, 2020, that was provided in support of Cammenga's request that its application should not be publicly available. *See id.*, unnumbered attach. 1 (Aff. of Christopher J. Karchon (Mar. 10, 2020)). Nonetheless, for the sake of consistency we refer to Cammenga's initial amendment request as its February 2020 application.

<sup>7</sup> *See* Letter from David Alley, Branch Chief, NMSS, NRC, to Christopher Karchon, Vice President, Cammenga at 1-2 (Apr. 6, 2020) (ADAMS Accession No. ML20085G069); Letter from Christopher J. Karchon, Director of Strategic Initiatives, Cammenga at 1 (Apr. 24, 2020) (referencing twenty-two new designs) (nonpublic) (ADAMS Accession No. ML20126G390); Letter from David Alley, Branch Chief, NMSS, NRC, to Christopher Karchon, Director of Strategic Initiatives, Cammenga at 1 (Oct. 27, 2020) (ADAMS Accession No. ML20296A362) [hereinafter Staff Review Suspension Letter].

<sup>8</sup> *See* Staff Review Suspension Letter at 1, encl. at 1-2 ([Cammenga] Amend. Request dated April 24, 2020) (identifying issues that need to be addressed in any future Cammenga amendment application resubmittal); December 2020 Amend. Application, unnumbered attach. 9 (Model Information/Device List). The number of designs reflected the proposed use a variety of materials to construct the multi-tool devices as well as the number and location of the tritium sealed-sources on the devices. *See* December 2020 Amend. Application, attach. 6 (10 [C.F.R. § ] 32.22 Information/Construction and Design (Dec. 30, 2020)).

<sup>9</sup> *See* Letter from Lymari Sepulveda, Mechanical Engineer, NMSS, NRC, to Christopher Karchon, Director of Strategic Initiatives, Cammenga, encl. (Apr. 26, 2021) ([Cammenga] Application Dated December 30, 2020, [RAI]) (ADAMS Accession No. ML21111A171); E-Mail from CJ Karchon,

(Continued)

letter the Staff denied Cammenga's amendment request, concluding that "[t]he introduction of tritium into the product, and its subsequent distribution, may result in widespread use of radioactive materials and does not have a clear tangible benefit to the public." Staff Amend. Denial, encl. at 2.

In its denial letter, the NRC Staff advised Cammenga that it could seek a hearing to challenge the denial action within twenty days, which Cammenga did by filing a hearing request on July 20, 2021. *See id.* at 1; Cammenga Hearing Request at unnumbered p. 1. Acting on a referral by the Secretary of the Commission, the Chief Administrative Judge on July 29, 2021, empaneled this Licensing Board to preside over the adjudication of Cammenga's hearing request.<sup>10</sup> In its August 16, 2021 answer to Cammenga's hearing request, the Staff indicated that Cammenga should be granted a hearing, at which the Staff would contest the merits of Cammenga's claims.<sup>11</sup> *See* Staff Answer at 6. In an August 25, 2021 issuance, the Licensing Board granted Cammenga's hearing request but deferred setting a scheduling conference date until Cammenga had

---

Cammenga, to Lymari Sepulveda, NRC, attach. (Apr. 29, 2021 11:54 EDT) (Letter from Christopher J. Karchon, Director of Strategic Initiatives, Cammenga (Apr. 29, 2021)) (nonpublic) (ADAMS Accession No. ML21137A111).

<sup>10</sup> *See* Memorandum from Richard J. Laufer, Acting Secretary, Office of the Secretary (SECY), NRC, to E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, NRC, at 1 (July 27, 2021); In the Matter of [Cammenga]; Establishment of Atomic Safety and Licensing Board, 86 Fed. Reg. 41,997 (Aug. 4, 2021). In the Licensing Board establishment notice, Administrative Judge Ronald M. Spritzer was appointed as Board chair. *See id.* at 41,998. With Judge Spritzer's retirement from federal service in July 2022, the Board was reconstituted with Administrative Judge Paul Bollwerk appointed as chair. *See* [Cammenga] (Denial of License Amend. Requests); Notice of Atomic Safety and Licensing Board Reconstitution, 87 Fed. Reg. 45,369 (July 28, 2022).

<sup>11</sup> In its answer, the NRC Staff also challenged Cammenga's request that its hearing petition be afforded nonpublic treatment, asserting that Cammenga's request met neither the procedural requirements of 10 C.F.R. § 2.390(b) to provide a supporting affidavit and page markings showing the purported confidential information in the document nor set forth a documented basis for determining what confidential information was in that pleading. *See* Staff Answer at 6. The Staff also indicated that, out of an abundance of caution, it likewise would submit its answer as a nonpublic document. *See id.* at 7. In a February 2, 2023 issuance, the Board directed that, in light of the disputed nature of these pleadings, the parties should submit a joint report providing their views on the nonpublic status of the Cammenga hearing petition and the Staff's answer. *See* Licensing Board Memorandum and Order (Requesting Information on Non-Public Status of Party Pleadings) (Feb. 2, 2023) at 2 (unpublished). In a February 8, 2023 joint response, the parties agreed that both filings could be made publicly available. *See* Joint Response to Memorandum and Order Requesting Information on Nonpublic Status of Party Filings (Feb. 7, 2023) at 1. As a result, in a February 10, 2023 memorandum, the Board requested that SECY take steps to have both documents classified as publicly available in the agency's Electronic Hearing Docket (EHD). *See* Licensing Board Memorandum (Requesting Previously Nonpublic Party Filings Be Made Publicly Available) (Feb. 10, 2023) at 1-2 (unpublished). As of the date of this issuance, both documents are publicly available in the EHD.

retained counsel.<sup>12</sup> Additionally, in response to an August 30, 2021 unopposed Staff motion, the Board on September 1, 2021, deferred discovery pending Cammenga retaining legal representation.<sup>13</sup>

Shortly following the September 28, 2021 entry of a notice of appearance by counsel for Cammenga, the Board set an October 12, 2021 conference date to discuss scheduling an evidentiary hearing.<sup>14</sup> On October 8, 2021, Cammenga and the Staff filed a joint motion requesting that the proceeding be held in abeyance and that a settlement judge be appointed in accordance with 10 C.F.R. § 2.338.<sup>15</sup> During the October 12 scheduling conference, the Board indicated that it intended in the near term to grant the motion and refer the parties' settlement judge appointment request to the Chief Administrative Judge for his consideration.<sup>16</sup> The Board issued an order to that effect the same day, which also included a directive that the parties file a joint status report on the progress of their settlement negotiations every thirty days thereafter.<sup>17</sup>

The next day, the Chief Administrative Judge named a settlement judge, who in turn issued an October 18, 2021 order requesting that the parties provide him with their dates of availability for an initial settlement conference to be convened during the week of November 1, 2021.<sup>18</sup> The first settlement conference was held on November 3, 2021, followed by additional conferences on November 29, 2021, February 3, 2022, and November 4, 2022. *See* Joint Settlement Motion at 4. Furthermore, the parties filed a series of sixteen monthly status reports, the last submitted on January 12, 2023, in which they generally reported that "continued dialogue would be mutually beneficial."<sup>19</sup> Then, on January 23, 2023,

---

<sup>12</sup> *See* Licensing Board Order (Granting Hearing Request; Deferring Scheduling Conference) (Aug. 25, 2021) at 1-2 (unpublished).

<sup>13</sup> *See* Unopposed NRC Staff Motion to Defer Initial Discovery Deadlines under 10 C.F.R. §§ 2.336 and 2.1203 (Aug. 30, 2021) at 1; Licensing Board Order (Granting Unopposed NRC Staff Motion to Defer Initial Discovery Deadlines) (Sept. 1, 2021) at 1-2 (unpublished).

<sup>14</sup> *See* Notice of Appearance of Madeline Fleisher (Sept. 28, 2021) at 1; Licensing Board Order (Scheduling Conference) (Sept. 30, 2021) at 1 (unpublished). This attorney subsequently withdrew from representing Cammenga but was replaced by another lawyer. *See* Notice of Withdrawal and Substitution of Party Representative (Dec. 30, 2021); Notice of Appearance of Kevin Desharnais (May 13, 2022).

<sup>15</sup> *See* Joint Motion Requesting to Postpone Discovery, Hold Proceeding in Abeyance, and Request Appointment of a Settlement Judge (Oct. 8, 2021) at 1.

<sup>16</sup> *See* Tr. at 4.

<sup>17</sup> *See* Licensing Board Order (Granting Joint Motion and Referring to Chief Administrative Judge for Appointment of Settlement Judge) (Oct. 12, 2021) at 1 (unpublished).

<sup>18</sup> *See* Chief Administrative Judge Order (Appointment of Settlement Judge) (Oct. 13, 2021) at 1-2 (unpublished); Administrative Judge William J. Froehlich (Settlement Judge) Order (Convening Initial Settlement Conference) (Oct. 18, 2021) at 2 (unpublished).

<sup>19</sup> *See, e.g.*, Joint Status Update Following Initial Settlement Conference (Nov. 10, 2021) at 1; Sixteenth Joint Status Update (Jan. 12, 2023) at 1.

Cammenga and the NRC Staff filed the pending joint motion to approve their proposed settlement agreement and terminate this proceeding. *See id.* at 1.

## II. ANALYSIS

### A. Standards Governing the Approval of Settlement Agreements

NRC regulations, specifically section 2.338 of Title 10 of the Code of Federal Regulations, encourage “[t]he fair and reasonable settlement of issues proposed for litigation” in NRC adjudicatory proceedings, with the strictures that govern such settlements set forth in the balance of section 2.338.<sup>20</sup> Thus, subsection (g) outlines the form for such settlements:

A settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted. It must be signed by the consenting parties or their authorized representatives.

10 C.F.R. § 2.338(g). In addition, subsection (h) states that a proposed settlement agreement must contain the following items:

- (1) An admission of all jurisdictional facts;
- (2) An express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise to contest the validity of the consent order;
- (3) A statement that the order has the same force and effect as an order made after full hearing; and
- (4) A statement that matters identified in the agreement, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

*Id.* § 2.338(h). Finally, and particularly pertinent to the Board’s consideration of the parties’ pending joint motion, subsection (i) describes the settlement agreement approval process:

Following issuance of a notice of hearing, a settlement must be approved by the presiding officer . . . to be binding in the proceeding. The presiding officer . . . may order the adjudication of the issues that the presiding officer . . . finds is required

---

<sup>20</sup> 10 C.F.R. § 2.338; *see Rockwell International Corp.* (Rocketdyne Division), CLI-90-5, 31 NRC 337, 340 (1990) (“Commission policy strongly favors settlement of adjudicatory proceedings.”); *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 456 (1981) (“Licensing boards are encouraged to hold settlement conferences with the parties.”).

in the public interest to dispose of the proceeding. . . . If approved, the terms of the settlement . . . must be embodied in a decision or order. Settlements approved by a presiding officer are subject to the Commission’s review in accordance with § 2.341.

*Id.* § 2.338(i).<sup>21</sup>

The Commission noted in its *Sequoyah Fuels Corp.* decision that “[i]n any pending proceeding [in which presiding officer approval of a settlement agreement is required], the presiding officer’s approval of settlement is a matter that must give due consideration to the public interest.”<sup>22</sup> The Commission then went on to explain that this “public interest” inquiry requires the presiding officer to consider:

(1) whether, in view of the agency’s original order and the risks and benefits of further litigation, the settlement result appears unreasonable; (2) whether the terms of the settlement appear incapable of effective implementation and enforcement; (3) whether the settlement jeopardizes the public health and safety; and (4) whether the settlement approval process deprives interested parties of meaningful participation.

*Sequoyah Fuels Corp.*, CLI-97-13, 46 NRC at 209 (footnote omitted). Although these factors were adopted by the Commission in an enforcement context, “the Commission derived these factors from an array of federal court settlement approval decisions that dealt with settlements ranging from public school desegregation class actions to antitrust enforcement suits.”<sup>23</sup> Given the diversity of these cases and the fact that we find these factors to be useful in determining

---

<sup>21</sup> By its terms, section 2.338(i) requires Board approval of a settlement agreement “[f]ollowing issuance of a notice of hearing.” Such a notice often is issued in combination with the initial grant of a hearing request. See *James Chaisson*, LBP-15-21, 82 NRC 1, 5 (2015), *Commission review declined*, Memorandum from Annette L. Vietti-Cook, Secretary, SECY, NRC, to Board and Parties (Oct. 30, 2015). In this instance, however, the Board did not issue a formal hearing notice in conjunction with its August 2021 order granting Cammenga’s hearing request. Nonetheless, in the context of a section 2.103 license application denial proceeding in which an applicant’s “demand” for a hearing is sufficient to warrant granting the applicant’s hearing request, see *Charlissa C. Smith* (Denial of Senior Reactor Operator License), LBP-13-3, 77 NRC 82, 89-95 (2013) (ruling applicant’s section 2.103(b)(2) hearing “demand” can be granted without section 2.309(f)(1)-compliant contentions), the Board’s order granting Cammenga’s hearing demand is the functional equivalent of a hearing notice such that section 2.338(i)’s requirement for Board approval of a settlement agreement is applicable in this instance.

<sup>22</sup> *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 207 (1997) (quoting *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)) (footnote omitted).

<sup>23</sup> *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-18, 63 NRC 830, 837 (2006) (footnote omitted).

whether there is some substantial public interest reason to reject the settlement in a licensing proceeding, the Board adopts the *Sequoyah Fuels Corp.* factors for the purpose of deciding whether to approve the proposed settlement agreement currently before us.

Accordingly, with these standards in mind, we undertake our section 2.338(g), (h), and (i) review of the January 26, 2023 settlement agreement between the NRC Staff and Cammenga, the terms of which are described in section II.B, below.

### **B. NRC Staff/Cammenga and Associates, LLC Settlement Agreement**

The settlement agreement between the NRC Staff and Cammenga states that the NRC Staff “has determined that Cammenga has resolved the issues raised in the July 1, 2021, denial letter and met the regulatory requirements in 10 C.F.R. § 32.22 and § 32.210 for a subset of the designs in its various applications.”<sup>24</sup> Further, the agreement indicates the NRC Staff will approve the designs listed for SS&D registration certificate No. NR-0210-D-101-E, as amended January 19, 2023,<sup>25</sup> and will amend Cammenga’s exempt distribution materials license No. 21-26460-03E and SS&D registration certificate No. NR-0210-D-101-E to reflect this approval. *See* Settlement Agreement at p. 78. According to the settlement agreement, the amended license and registration certificate will be issued by the NRC Staff within five days following the Board’s approval of the agreement. *See id.*

For its part, Cammenga agrees to withdraw its hearing request for any designs not listed in the settlement agreement, as well as for the CLAM models 2S-6 and 2S-8 that previously had been approved by the NRC Staff separate and apart from the agreement at issue here. *See id.* at pp. 78-79. The agreement also indicates that Cammenga’s withdrawal of its hearing request is effective upon Board approval of the settlement agreement and termination of this proceeding. *See id.* at p. 79.

Finally, the settlement agreement states that “[a]ll regulatory requirements

---

<sup>24</sup> Joint Settlement Motion, attach. A at p. 78 (Proposed Settlement Agreement Between [NRC] And [Cammenga] (Jan. 26, 2023)) [hereinafter Settlement Agreement].

<sup>25</sup> The approved designs are as follows:

GR-S1.1, GR-S2.1, GR-S3.1, GR-S4.1, SP-S1.1, SP-S2.1, SP-S3.1, SP-S4.1, SP-B1, MJ-S1.1, MJ-S2.1, MJ-S3.1, MJ-S4.1, GR-S1.2, GR-S2.2, GR-S3.2, GR-S4.2, SP-S1.2, SP-S2.2, SP-S3.2, SP-S4.2, MJ-S1.2, MJ-S2.2, MJ-S3.2, MJ-S4.2, GR-S1.3, GR-S2.3, GR-S3.3, GR-S4.3, SP-S1.3, SP-S2.3, SP-S3.3, SP-S4.3, MJ-S1.3, MJ-S2.3, MJ-S3.3, and MJ-S4.3.

*Id.* at p. 78. These designs are approved “with the nominal dimensions, combined with tolerances of +/- 0.1 millimeter as noted in the drawings included in [SS&D registration certificate No.] NR-0210-D-101E or referenced therein.” *Id.*

and conditions that apply to entities holding licenses under 10 C.F.R. § 32.22 and registration certificates under 10 C.F.R. § 32.210 shall apply to Cammenga just as they would if the approval” of the listed designs in the settlement agreement were “issued through the traditional licensing process.” *Id.* at p. 79. As such, the settlement agreement declares, “Cammenga is deemed to be a ‘licensee,’ a ‘person licensed under § 32.22,’ a ‘person licensed by the Commission pursuant to regulations’ in 10 C.F.R. Part 32, and a ‘certificate holder’” for the purposes of regulatory applicability. *Id.* Additionally, the settlement agreement recognizes that “activities authorized by the approval described in [the settlement agreement] constitute ‘activities authorized by the license issued under § 32.22.’” *Id.*

### **C. Licensing Board Determination**

#### ***1. 10 C.F.R. § 2.338(g) and (h): Settlement Agreement’s Form and Content***

In considering whether to approve the proposed settlement agreement between the NRC Staff and Cammenga with the terms described in section II.B above, the Board first must turn to section 2.338(g), which governs the agreement’s form, *see supra* section II.A. Here, the parties’ filing contains each of the elements outlined in subsection (g): (1) a proposed settlement agreement; (2) a consent order; and (3) a motion for its entry that includes the reasons why it should be accepted. *See* Joint Settlement Motion; Settlement Agreement; Consent Order. The settlement is also signed by the consenting parties or their authorized representatives. *See* Settlement Agreement at pp. 79-80. We thus conclude that the settlement fulfills the form requirements of section 2.338(g).

We next turn to section 2.338(h), which outlines the specific content of the proposed settlement agreement. *See supra* section II.A. As required by section 2.338(h)(1)-(4), the proposed agreement includes (1) the “admission of all jurisdictional facts” in section 5(a), *see* Settlement Agreement at p. 79; *see also id.* at pp. 77-78 (“whereas” clauses in the agreement’s introduction reciting factual background of the proceeding); (2) the “express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise contest the validity of the consent order” in section 5(b), *see id.* at p. 79; (3) the “statement that the order has the same force and effect as an order made after full hearing” in section 5(c), *see id.*; and (4) the “statement that matters identified in the agreement, required to be adjudicated have been resolved by the proposed settlement agreement and consent order” in section 5(d), *see id.* We therefore conclude that the above referenced sections of the proposed settlement agreement fulfill the requirements of section 2.338(h).



## 2. 10 C.F.R. § 2.338(i): Settlement Agreement and the Public Interest

In deciding whether to approve the proposed settlement agreement between the NRC Staff and Cammenga, the Board must give “due consideration to the public interest.” *Sequoyah Fuels Corp.*, CLI-97-13, 46 NRC at 207 (quoting *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)). As was noted in section II.A above, the public interest inquiry outlined in the Commission’s *Sequoyah Fuels Corp.* decision is divided into four parts. *See id.* at 209. In analyzing these factors below, the Board concludes that the public interest does not require any issues to be adjudicated before terminating this proceeding, thereby allowing the settlement agreement to be approved.

### a. Risks and Benefits

In reviewing a settlement, the first “public interest” factor the Board examines “is the risks and benefits of settling as compared to litigating the proceeding.” *Id.* More specifically, as is appropriate here, the Board considers “(1) the likelihood (or uncertainty) of success at trial, (2) the range of possible recovery . . . , and (3) the complexity, length, and expense of continued litigation.” *Id.*

Importantly, we first note that we need not reject a settlement merely because one of the parties might have received a more favorable result had the case been fully litigated or because the settlement is not the best that could be obtained. *See id.* at 215. Instead, it is the Board’s obligation to determine whether the agreement “is within the reaches of the public interest.” *Id.* (quoting *United States v. Microsoft*, 56 F.3d 1448, 1460 (D.C. Cir. 1995)).

Here, considering the risks of future litigation in light of the agency’s original application denial finding, the settlement appears to be a reasonable compromise between parties that are each ably represented by counsel.

In the context of the settlement, Cammenga provided the NRC Staff with sufficient information to make the requisite regulatory findings and to approve a subset of the designs in Cammenga’s various applications. *See Joint Settlement Motion* at 5. Additionally, Cammenga agrees to withdraw its hearing request for any designs not listed in the settlement agreement as well as the CLAM models 2S-6 and 2S-8 that were approved by the Staff separately from the proposed settlement agreement. *See id.* The parties therefore agree that in this proceeding “there are no disputed issues to litigate.” *Id.*

Were the Board to adjudicate Cammenga’s hearing request challenging the denial of its application without the settlement-related revisions to its self-illuminated device design approval requests, it is not clear that Cammenga would prevail on the merits of its original claims. On the other hand, Cammenga argued that the NRC Staff denied its application even though that amendment request included versions of its products that were “all but the same to the previ-

ously [agency-]approved model numbers,” thereby raising the question whether the Staff’s determination was inconsistent and arbitrary. Cammenga Hearing Request at unnumbered p. 2. Consequently, both sides faced litigation risks, as well as the possibility of extended litigation with not inconsiderable costs, making settlement a reasonable choice for both.

As noted above, *see supra* section II.B, while the parties’ settlement agreement contains provisions that approve several of Cammenga’s VERSA series designs, it also incorporates some clarifying strictures — i.e., Cammenga’s withdrawal of any VERSA series designs not listed in the agreement as well as the CLAM models 2S-6 and 2S-8. Relative to the *Sequoyah Fuels Corp.*-identified concern with the “range of possible recovery,” this suggests that the settlement agreement involved negotiation by both sides to reach a mutually agreeable result that provided a reasonable outcome for both parties.

Under these circumstances, we see no basis for questioning the “risk and benefits” judgments made by the NRC Staff and Cammenga and conclude that the settlement agreement achieves a reasonable result on this score.

*b. Implementation and Enforcement*

The second “public interest” factor looks to “whether the terms of the settlement appear incapable of effective implementation and enforcement.” *Sequoyah Fuels Corp.*, CLI-97-13, 46 NRC at 209.

Here, the settlement agreement contemplates a series of well-defined events — i.e., the NRC Staff will approve the listed designs and issue the amended license and registration certificate within five days of the Board’s approval of the settlement while Cammenga will withdraw its hearing request both with respect to otherwise-contested designs not listed in the settlement agreement and to the separately approved CLAM models 2S-6 and 2S-8 — that appear capable of being effectively implemented and enforced. Certainly, nothing presented by the parties suggests otherwise. *See* Settlement Agreement at pp. 78-79.

These considerations likewise support approval of the settlement agreement between the NRC Staff and Cammenga.

*c. Public Health and Safety*

The third “public interest” factor looks to “whether the settlement jeopardizes the public health and safety.” *Sequoyah Fuels Corp.*, CLI-97-13, 46 NRC at 209.

This resolution of Cammenga’s license amendment request in no way jeopardizes the public health and safety. The NRC Staff’s agreement to approve the listed designs was contingent on Cammenga’s meeting the regulatory requirements in 10 C.F.R. §§ 32.22 and 32.210 for these designs in accordance with

the Staff's review of Cammenga's application and related submissions provided during settlement negotiations. *See* Settlement Agreement at p. 78. According to the parties, the settlement agreement is not inconsistent with the public interest because "the Staff has made reasonable assurance findings with respect to the devices subject to the settlement agreement." *Id.*

Our review of the terms of the settlement agreement thus leads us to conclude that the agreement is fully consistent with the agency's mission of protecting the public health and safety and so supports approval of the settlement between the NRC Staff and Cammenga.

*d. Meaningful Participation*

Last, we look to "whether the settlement approval process deprives interested parties of meaningful participation." *Sequoyah Fuels Corp.*, CLI-97-13, 46 NRC at 209.

In contrast to the *Sequoyah Fuels Corp.* proceeding, no intervenors or other interested participants have come forward to assert that they might be impacted by the terms of the settlement agreement. *See id.* at 222-23. This proceeding has involved only the NRC Staff and Cammenga, and both participants fully support the Board's approval of the settlement agreement.

Accordingly, our approval of the settlement agreement does not deprive any interested party of meaningful participation in this proceeding,<sup>26</sup> and such a determination supports approval of the settlement agreement.

In sum, in analyzing the Commission's *Sequoyah Fuels Corp.* four-factor inquiry we conclude that the public interest does not require any issues to be adjudicated to reach a proper disposition of this proceeding.

### III. CONCLUSION

Finding that (1) the settlement agreement's form and content complies with the requirements of section 2.338(g)-(h); and (2) pursuant to section 2.339(i), the public interest does not require any issues to be adjudicated for an appro-

---

<sup>26</sup>The agency's regulation governing license application denial proceedings states that a notice of proposed denial or denial of a license application is to be issued to "the applicant in writing" and is to inform the applicant of its "right . . . to demand a hearing," 10 C.F.R. § 2.103(b)(2), and such notice was provided in this instance, *see supra* p. 67. While intervention by other interested persons in a proceeding regarding the proposed denial or denial of a license application is not without precedent, *see Advanced Medical Systems, Inc.* (1020 London Road, Cleveland, Ohio), LBP-98-32, 48 NRC 374, 376-77 (1998) (granting intervention requests in license renewal application denial proceeding), the absence here of a hearing opportunity notice for other interested persons is not an impediment to our approval of this settlement agreement because participation by such persons has not been foreclosed. *See* 10 C.F.R. § 2.309(b)(4)(ii) (providing for filing timely intervention petition when notice of agency action regarding an application is not published in the *Federal Register*).

appropriate disposition of this proceeding, the Board determines that the settlement agreement between the NRC Staff and Cammenga should be approved and that this proceeding should be terminated.

---

For the foregoing reasons, it is this twenty-eighth day of February 2023, ORDERED, that

1. The January 26, 2023 joint motion of Cammenga and Associates, LLC, and the NRC Staff is *granted*, and we *approve* the parties' January 26, 2023 settlement agreement and *terminate* this proceeding.

2. In accordance with 10 C.F.R. §§ 2.338(i), 2.341(a)(2), this issuance will constitute a final decision of the Commission 120 days from the date of issuance, i.e., on *Wednesday, June 28, 2023*, unless the Commission directs otherwise.<sup>27</sup>

THE ATOMIC SAFETY AND  
LICENSING BOARD

G. Paul Bollwerk, III, Chair  
ADMINISTRATIVE JUDGE

Gary S. Arnold  
ADMINISTRATIVE JUDGE

Nicholas G. Trikouros  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
February 28, 2023

---

<sup>27</sup> Section 2.338(i) indicates that “[s]ettlements approved by a presiding officer are subject to the Commission’s review in accordance with § 2.341.” 10 C.F.R. § 2.338(i). By its terms, section 2.341(b)(1) generally affords the parties the opportunity to proffer any challenges to a licensing board ruling resolving a proceeding by submitting a petition seeking Commission review of that decision. Nonetheless, given that (1) our authority under section 2.338(i) is to approve or reject a settlement agreement, *see Eastern Testing and Inspection, Inc.*, LBP-96-11, 43 NRC 279, 282 n.1 (1996) (indicating that, as is the case with the federal courts, a presiding officer cannot amend a settlement agreement without the consent of the parties); and (2) in accord with section 2.338(h)(2), the settlement agreement under consideration states that “[t]he Parties expressly waive . . . any right to challenge or contest the validity of the order entered into in accordance with this proposed settlement agreement,” Settlement Agreement at p. 79, a petition for review challenging this issuance seems both unlikely and inappropriate. Thus, absent some wholly unanticipated development, *see Asberry v. U.S. Postal Serv.*, 692 F.2d 1378, 1380 (Fed. Cir. 1982) (indicating settlement agreement is not open to appellate challenge absent fraud or mutual mistake), additional Commission consideration of our settlement approval determination will occur under its section 2.341(a)(2) sua sponte review authority.

## APPENDIX

### **Proposed Settlement Agreement Between U.S. Nuclear Regulatory Commission And Cammenga and Associates, LLC**

This agreement is made by and between the Staff of the U.S. Nuclear Regulatory Commission (NRC Staff or Staff) and Cammenga and Associates, LLC (Cammenga), to wit:

*Whereas*, Cammenga is the holder of NRC License No. 21-26460-03E and Sealed Source and Device Registration Certificate NR-0210-D-101-E;

*Whereas*, Cammenga submitted an application requesting amendments to its exempt distribution license and registration certificate to permit the distribution of more than twenty new VERSA series devices;

*Whereas*, the Staff reviewed Cammenga's application, as supplemented and re-submitted, and issued a July 1, 2021, letter denying Cammenga's amendment requests to allow distribution of certain VERSA models;

*Whereas*, on July 21, 2021, Cammenga transmitted its hearing request challenging the denial of its application;

*Whereas*, on July 29, 2021, an Atomic Safety and Licensing Board (Board) was established to preside over the proceeding;

*Whereas*, on August 16, 2021, the Staff answered Cammenga's hearing request. The Staff agreed that the hearing request should be granted but noted that it would contest the merits of Cammenga's claims;

*Whereas*, on August 25, 2021, the Board granted Cammenga's hearing request but deferred setting a date for a scheduling conference until Cammenga had retained counsel;

*Whereas*, on October 12, 2021, the Board granted the Staff and Cammenga's (hereinafter, the Parties) joint motion requesting that the Board postpone discovery, hold the proceeding in abeyance, and that the Board request that the Chief Administrative Judge appoint a Settlement Judge to oversee settlement negotiations;

*Whereas*, on October 13, 2021, the Chief Administrative Judge appointed Administrative Judge William J. Froehlich to serve as a Settlement Judge in this proceeding;

*Whereas*, the Parties held settlement conferences with the Settlement Judge on

November 3, 2021, November 29, 2021, February 3, 2022, and November 4, 2022. The Parties also continued to engage in productive settlement negotiations between settlement conferences;

*Whereas*, the Parties agree that the public interest does not require the adjudication of the issues resolved by the settlement agreement because the Staff has made reasonable assurance findings with respect to the devices subject to the settlement agreement, and there are no disputed issues to litigate. The settlement agreement also is consistent with the Commission's policy encouraging the "fair and reasonable settlement and resolution of issues;"<sup>1</sup> and

*Whereas*, the PARTIES AGREE TO THE FOLLOWING IN SETTLEMENT:

1. Based on application materials and information provided during settlement negotiations, the Staff has determined that Cammenga has resolved the issues raised in the July 1, 2021, denial letter and met the regulatory requirements in 10 C.F.R. § 32.22 and § 32.210 for a subset of the designs in its various applications. The Staff agrees to approve the following designs as described in registration certificate NR-0210-D-101-E, as amended January 19, 2023:

GR-S1.1, GR-S2.1, GR-S3.1, GR-S4.1, SP-S1.1, SP-S2.1, SP-S3.1, SP-S4.1, SP-B1, MJ-S1.1, MJ-S2.1, MJ-S3.1, MJ-S4.1, GR-S1.2, GR-S2.2, GR-S3.2, GR-S4.2, SP-S1.2, SP-S2.2, SP-S3.2, SP-S4.2, MJ-S1.2, MJ-S2.2, MJ-S3.2, MJ-S4.2, GR-S1.3, GR-S2.3, GR-S3.3, GR-S4.3, SP-S1.3, SP-S2.3, SP-S3.3, SP-S4.3, MJ-S1.3, MJ-S2.3, MJ-S3.3, and MJ-S4.3.

The Staff is approving these designs with the nominal dimensions, combined with tolerances of +/- 0.1 millimeter as noted in the drawings included in NR-0210-D-101E or referenced therein. The Staff will amend Cammenga's exempt distribution license, License No. 21-26460-03E, and Sealed Source and Device Registration Certificate NR-0210-D-101-E, consistent with this approval.

2. The Staff will issue the amended license and registration certificate described in Paragraph (1) to Cammenga within 5 days of the Board approving this settlement agreement.<sup>2</sup>
3. Cammenga agrees to withdraw its hearing request with respect to designs that are not covered by the description in Paragraph (1) and the CLAM models 2S-6 and 2S-8 that were previously approved by the Staff outside

---

<sup>1</sup> 10 C.F.R. § 2.338 (2022).

<sup>2</sup> See 10 C.F.R. § 2.306 (2022) (providing procedures for counting of days).

of this settlement agreement. The hearing request withdrawal shall be effective upon the Board's approval of this settlement agreement and termination of this proceeding.

4. All regulatory requirements and conditions that apply to entities holding licenses under 10 C.F.R. § 32.22 and registration certificates under 10 C.F.R. § 32.210 shall apply to Cammenga just as they would if the approval in Paragraph (1) had been issued through the traditional licensing process, regardless of whether the relevant requirement or condition uses the example language mentioned in this paragraph or similar but different language. Accordingly, for the purposes of regulatory applicability, Cammenga is deemed to be a "licensee," a "person licensed under § 32.22," a "person licensed by the Commission pursuant to regulations" in 10 C.F.R. Part 32, and a "certificate holder." Similarly, activities authorized by the approval described in Paragraph (1) constitute "activities authorized by the license issued under § 32.22."
5. Consistent with 10 C.F.R. § 2.338(h), the Parties agree that:
  - a. This proposed settlement agreement admits all jurisdictional facts;
  - b. The Parties expressly waive further procedural steps before the presiding officer, any right to challenge or contest the validity of the order entered into in accordance with this proposed settlement agreement, and all rights to seek judicial review or otherwise contest the validity of the consent order;
  - c. The order implementing this proposed settlement agreement has the same force and effect as an order made after full hearing; and
  - d. The matters identified in this proposed settlement agreement that were required to be adjudicated have been resolved by the proposed settlement agreement and consent order.
6. This settlement agreement shall be effective upon the Board's approval. Should the Board disapprove this settlement agreement, it shall be null and void.

WHEREOF, the Parties have executed this agreement as of the last date written below.

**/Signed (electronically) by/**  
Nicolas P. Mertz  
Counsel for NRC Staff  
Mail Stop: O-14-A44  
U.S. Nuclear Regulatory Commission

Washington, DC 20555-0001  
Telephone: (301) 415-0035  
E-mail: Nicolas.Mertz@nrc.gov

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

Christina L. England  
Counsel for NRC Staff  
Mail Stop: O-14-A44  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Telephone: (301) 287-0001  
E-mail: Christina.England@nrc.gov

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

Kevin G. Desharnais  
Dickinson Wright PLLC  
55 West Monroe Street Suite 1200  
Chicago, IL 60603  
Telephone: (312) 782-6660  
E-mail: kdesharnais@dickinsonwright.com

Dated in Washington, DC  
this 26th day of January 2023



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**COMMISSIONERS:**

**Christopher T. Hanson, Chair**  
**Jeff Baran**  
**David A. Wright**  
**Annie Caputo**  
**Bradley R. Crowell**

**In the Matter of**

**Docket Nos. 50-387-LT-3**  
**50-388-LT-3**  
**72-28-LT-3**

**SUSQUEHANNA NUCLEAR, LLC**  
**(Susquehanna Steam Electric Station,**  
**Units 1 and 2)**

**March 17, 2023**

**STANDING TO INTERVENE**

When a petitioner does not submit an admissible contention, the Commission need not address standing.

**FINANCIAL QUALIFICATIONS**

The financial qualifications requirements in 10 C.F.R. § 72.50(b) apply to specifically licensed independent spent fuel storage installations (ISFSIs), not to generally licensed ISFSIs. Section 72.13(c) clarifies that the only provision in section 72.50 that applies to a generally licensed ISFSI is section 72.50(a).

**BANKRUPTCY**

NRC guidance in NUREG-1556, vol. 15, “Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses,” primarily relates to bankruptcies for licenses issued under 10 C.F.R. Parts 30, 31, 40, and

70. It does not provide guidance for licenses issued under 10 C.F.R. Parts 50 and 72. A contention arguing that the Staff did not follow NUREG-1556, vol. 15, is inadmissible because the NUREG is guidance, not a requirement.

#### **CONTENTION ADMISSIBILITY**

To be admissible, contentions must focus on the application, not the NRC's review. *See, e.g., Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 237 (2008).

### **MEMORANDUM AND ORDER**

This proceeding stems from the Application of Susquehanna Nuclear, LLC to the NRC for approval of an indirect license transfer and conforming license amendments.<sup>1</sup> The Applicants request approval of an indirect license transfer of the operating licenses for Susquehanna Steam Electric Station (SSES), Units 1 and 2, and the general license for the Susquehanna independent spent fuel storage installation (ISFSI).<sup>2</sup> The Applicants seek the transfer of the licenses, and corresponding license amendments, to reflect a corporate restructuring resulting from bankruptcy proceedings of Talen Energy Supply, LLC, and certain of its subsidiaries including Susquehanna Nuclear, into a reorganized company that is not yet named (“Reorganized Talen”).<sup>3</sup> Today we consider Mr. Eric Epstein’s petition for leave to intervene and hearing request.<sup>4</sup> For the reasons described below, Mr. Epstein’s Petition does not include an admissible contention; therefore, we deny the Petition and terminate this proceeding.

#### **I. BACKGROUND**

Susquehanna Nuclear is the licensed operator of SSES, Units 1 and 2 and the associated ISFSI. Susquehanna Nuclear is a direct, wholly owned subsidiary of

---

<sup>1</sup> *See* Letter from Brad Berryman, Susquehanna Nuclear, LLC (Susquehanna Nuclear), to NRC Document Control Desk (Sept. 29, 2022) (ADAMS accession no. ML22272A604) (Application). Susquehanna Nuclear later supplemented the Application. *See* Letter from Brad Berryman, Susquehanna Nuclear, to NRC Document Control Desk (Oct. 28, 2022) (ML22301A205) (Application Supplement). Susquehanna Nuclear filed the Application on behalf of itself and the unsecured creditors of Talen Energy Supply, LLC (collectively, the “Applicants”). Application at 1.

<sup>2</sup> *See* Application at 1.

<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> Eric Joseph Epstein’s Petition for Leave to Intervene and Hearing (Nov. 25, 2022) (Petition).

Talen Energy Supply, which is in turn a direct, wholly owned subsidiary of Talen Energy Corporation, whose stock is held by affiliates of Riverstone Holdings, LLC.<sup>5</sup> On May 9, 2022, Talen Energy Supply and certain of its subsidiaries each filed a voluntary bankruptcy case under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Texas.<sup>6</sup> The debtors in the bankruptcy proceeding filed a Joint Plan of Reorganization in the Bankruptcy Court on September 9, 2022 that sets forth their intention to pursue a comprehensive restructuring.<sup>7</sup> According to Susquehanna Nuclear, after Mr. Epstein filed his Petition, the Bankruptcy Court ultimately confirmed the Joint Plan of Reorganization.<sup>8</sup>

Susquehanna Nuclear notified the NRC of the bankruptcy proceeding as required by 10 C.F.R. § 50.54(cc).<sup>9</sup> The Applicants are requesting that the NRC issue an order consenting to the indirect transfer of control of the SSES and its ISFSI under Section 184 of the Atomic Energy Act of 1954,<sup>10</sup> as amended, and 10 C.F.R. §§ 50.80 and 72.50.<sup>11</sup> They are also seeking license amendments under 10 C.F.R. § 50.90 to reflect a change in the entity responsible for providing a financial support agreement to Susquehanna Nuclear.<sup>12</sup>

The Applicants expect that at the end of the restructuring, Susquehanna Nuclear will continue to be directly owned by Talen Energy Supply, which will itself be owned by Reorganized Talen.<sup>13</sup> According to the Application, Susquehanna Nuclear will remain the licensed operator of SSES and the proposed transactions do not involve any changes to the conduct of operations at SSES or the ISFSI.<sup>14</sup>

After accepting the Application for review, the NRC issued a notice of opportunity for hearing and instructions for how to request Sensitive Unclassified

---

<sup>5</sup> Application at 1.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> Susquehanna Nuclear LLC's Answer Opposing Eric Joseph Epstein's Petition for Leave to Intervene and Hearing Request (Dec. 21, 2022), at 5 (Answer) (citing *In re Talen Energy Supply, LLC et al.*, Case No. 22-90054, Proposed Findings of Fact, Conclusions of Law, and Order Confirming Joint Chapter 11 Plan of Talen Energy Supply, LLC and its Affiliated Debtors (Doc. No. 1745) (Bankr. S.D. Tex. Dec. 15, 2022)).

<sup>9</sup> Preliminary Notification of Event or Unusual Occurrence, PNO-I-22-001, "Notification of Bankruptcy Filing by Talen Energy Supply and Susquehanna Nuclear" (May 11, 2022) (ML22131A329).

<sup>10</sup> 42 U.S.C. § 2234.

<sup>11</sup> Application, Encl. 1 at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, Encl. 1 at 2.

<sup>14</sup> Application at 3.

Non-Safeguards Information.<sup>15</sup> Mr. Epstein timely filed his Petition and proposed two contentions. Susquehanna Nuclear filed a timely answer opposing the Petition to which Mr. Epstein filed a reply.<sup>16</sup> Below we address Mr. Epstein's contentions.<sup>17</sup>

## II. DISCUSSION

### A. Contention Admissibility Standards

To obtain a hearing, a petitioner must propose an admissible contention. Our contention admissibility standards are found in 10 C.F.R. § 2.309(f)(1)(i)-(vi). To be admissible, a contention must provide a specific statement of the issue of law or fact to be raised or controverted and provide a brief explanation of its basis.<sup>18</sup> The contention must also raise issues within the scope of the proceeding and material to the findings that the NRC must make.<sup>19</sup> And it must include a concise statement of the alleged facts or expert opinions supporting the contention and sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.<sup>20</sup> These contention admissibility requirements are intended to ensure that adjudicatory hearings are triggered only by substantive safety or environmental issues that raise a supported dispute with the application on a matter material to the NRC's decision on the challenged action.<sup>21</sup>

### B. Contention 1: Financial Assurance Under 10 C.F.R. § 72.50

In Contention 1, Mr. Epstein argues that the Applicants must comply with the

---

<sup>15</sup> Susquehanna Steam Electric Station, Units 1 and 2 and Associated Independent Spent Fuel Storage Installation; Consideration of Approval of Indirect Transfer of Licenses and Conforming Amendments, 87 Fed. Reg. 67,511 (Nov. 8, 2022) (Hearing Notice).

<sup>16</sup> Answer; Eric Joseph Epstein's Reply to Susquehanna Nuclear, LLC's Answer Opposing Eric Joseph Epstein's Petition for Leave to Intervene and Hearing Request (Dec. 29, 2022) (Reply).

<sup>17</sup> Both the Petition and Answer address Mr. Epstein's standing in detail. However, because Mr. Epstein has not submitted an admissible contention, we need not address his standing. Mr. Epstein also makes several assertions about the Applicants in the Introduction portion of his Petition. Petition at 2-7. Because these assertions do not address or clearly link to the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1), we do not consider them further in this decision.

<sup>18</sup> 10 C.F.R. § 2.309(f)(1)(i)-(ii).

<sup>19</sup> *Id.* § 2.309(f)(1)(iii)-(iv).

<sup>20</sup> *Id.* § 2.309(f)(1)(v)-(vi).

<sup>21</sup> See, e.g., *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334-35 (1999) (explaining why the NRC tightened its contention admissibility standards in 1989).

financial assurance requirements for decommissioning in 10 C.F.R. § 72.50.<sup>22</sup> He also states that the prepayment mode of decommissioning funding is “no longer available as a stand-alone option for a bankrupt and debtor entity.”<sup>23</sup> Mr. Epstein contends that Reorganized Talen will not have adequate financial assurances to meet these requirements; therefore, the Application is deficient on its face and Reorganized Talen “must provide a supplemental ‘surety method, insurance, or other guarantee method’ outside of the new family corporate chain.”<sup>24</sup> In his Reply, Mr. Epstein claims that further funding is needed because the current funding assurance was addressed prior to deregulation of utilities in Pennsylvania.<sup>25</sup> He further argues that the decommissioning funding only meets the minimum amount required by the NRC and does not account for when “the NRC allow[s] licensees to tap into the Decommissioning Trust Fund . . . for unauthorized purposes.”<sup>26</sup>

At the outset, we note that the regulations cited by Mr. Epstein to support Contention 1 apply to specifically licensed ISFSIs — not generally licensed ISFSIs like the one at SSES. Mr. Epstein quotes from 10 C.F.R. § 72.50(b) to support Contention 1.<sup>27</sup> However, 10 C.F.R. § 72.13(c) clarifies that the only provision in section 72.50 that applies to a generally licensed ISFSI is section 72.50(a).<sup>28</sup> Because section 72.50(b) is not applicable here, the Applicants were not required to address its requirements. Therefore, Contention 1 does not raise an issue within the scope of this hearing or that is material to the findings that the NRC must make.<sup>29</sup>

The Applicants addressed decommissioning funding in the Application, stating that the funding is unaltered by the bankruptcy proceeding or any related transactions.<sup>30</sup> Susquehanna Nuclear currently uses the prepayment method of decommissioning funding assurance and has established a trust for its share of decommissioning.<sup>31</sup> This method of funding is one of the allowable methods under 10 C.F.R. § 50.75(e)(1).

Mr. Epstein does not contend that the Application fails to meet the requirements in section 50.75(e)(1). Instead, he states that the “prepayment mode is no

---

<sup>22</sup> Petition at 26.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 27-29.

<sup>25</sup> Reply at 10.

<sup>26</sup> *Id.* at 10-11.

<sup>27</sup> Petition at 26. Mr. Epstein cites section 72.50(c), but his quoted language appears in section 72.50(b)(3).

<sup>28</sup> 10 C.F.R. § 72.13(c) (listing which sections apply to activities associated with a general license).

<sup>29</sup> *Id.* § 2.309(f)(1)(iii), (iv).

<sup>30</sup> Application, Encl. 1 at 11.

<sup>31</sup> *Id.*

longer available as a stand-alone option for a bankrupt and debtor entity.”<sup>32</sup> But Mr. Epstein provides no support for this statement. To be admissible, a contention must provide support for its claims. In his Reply, Mr. Epstein contends that the amount of funding in the Application only meets the minimum amount in the regulation and states that this will be insufficient should the NRC allow the licensees to expend some of the funds for “unauthorized purposes.”<sup>33</sup> This claim also does not raise a material dispute with the Application. Our rules do not require an applicant to provide more than the minimum amount needed to meet the regulatory requirements. And while Mr. Epstein notes examples where the NRC has allowed expenditure of decommissioning funds for other purposes, in each of the examples cited by Mr. Epstein the NRC reviewed the decommissioning funding assurance prior to allowing the distributions to occur.<sup>34</sup> Therefore, these expenditures were not “unauthorized” and if the Applicants request similar expenditures at SSES, the NRC would review the request before making a determination.

Finally, Mr. Epstein argues that Reorganized Talen must “provide a supplemental ‘surety method, insurance, or other guarantee method’ outside of the new family corporate chain.”<sup>35</sup> But Mr. Epstein provides no support or citation for this claim. Susquehanna Nuclear addressed its decommissioning funding assurance in the Application, and Mr. Epstein did not challenge that discussion. Therefore, this claim does not raise a dispute with the Application on a material issue of law or fact.

### **C. Contention 2: Failure to Comply with Bankruptcy Review Team Compliance Mandates**

In Contention 2, Mr. Epstein cites 10 C.F.R. § 72.50 for the requirement that the control of an ISFSI shall not be transferred without the prior consent of the NRC.<sup>36</sup> As Mr. Epstein notes, the NRC will only allow a transfer after it finds that the transfer is in accordance with the Atomic Energy Act. The NRC is then required to give its consent in writing. Mr. Epstein further argues that the “Applicant failed to comply with [the] Bankruptcy Review Team compliance mandates for a bankrupt company” and that the NRC’s Bankruptcy Review

---

<sup>32</sup> Petition at 26.

<sup>33</sup> Reply at 11.

<sup>34</sup> See, e.g., Holtec Decommissioning International, LLC; Oyster Creek Nuclear Generating Station; Exemption; Issuance, 84 Fed. Reg. 30,247 (June 26, 2019).

<sup>35</sup> Petition at 29.

<sup>36</sup> *Id.* at 30.

Team (BRT) review is premature because the bankruptcy proceeding is not yet complete.<sup>37</sup>

Regarding Mr. Epstein's first point — that the Applicants must receive NRC approval before a license transfer — we agree. As Susquehanna Nuclear points out, that is the purpose of this proceeding.<sup>38</sup> The Applicants informed the NRC of the bankruptcy proceedings and applied for the NRC's approval of the indirect transfer of control of SSES and the related license amendments. As discussed in the Hearing Notice, the NRC staff must make the required findings before approving the transfer and amendments.<sup>39</sup> Because Mr. Epstein does not raise any arguments that the Application fails to meet these requirements, he has not raised a material dispute with the Application.

Mr. Epstein further argues that the Application is deficient because it does not meet BRT mandates. Mr. Epstein's reference to a BRT appears to be quoting from an NRC guidance document, NUREG-1556, vol. 15.<sup>40</sup> This guidance relates to requests involving materials license bankruptcy or change of control under 10 C.F.R. Parts 30, 31, 40, and 70.<sup>41</sup> Because NUREG-1556, vol. 15 does not provide guidance for licenses issued under 10 C.F.R. Parts 50 and 72, like the ones at issue in this proceeding, it does not appear that the NRC staff would automatically establish a BRT in this case.<sup>42</sup>

Regardless of whether the NRC staff chooses to establish a BRT in this case, the provisions in NUREG-1556, vol. 15 are not requirements for the Applicants (or the NRC staff). As noted in its introduction, NUREG-1556, vol. 15 is not a substitute for regulations and the approaches described in it are for information only.<sup>43</sup> Therefore, there is no requirement for the Applicants to address information in NUREG-1556, vol. 15 in the Application. Further, whether the NRC staff should create a BRT is not an admissible issue for a contention because it is not within the scope of this proceeding. Contentions must focus on the

---

<sup>37</sup> *Id.* at 30-31.

<sup>38</sup> Answer at 19.

<sup>39</sup> Hearing Notice, 87 Fed. Reg. at 67,512.

<sup>40</sup> "Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses" (Final Report), NUREG-1556, vol. 15, rev. 1 (June 2016) (ML16181A003) (NUREG-1556, vol. 15).

<sup>41</sup> *Id.* at 1-2 ("[This document] does not address bankruptcy or change of control for licenses issued under 10 CFR Parts 61, 72, 76, or 110.").

<sup>42</sup> While the guidance contemplates establishing a BRT for a license issued under Part 50 in "certain specific circumstances," the guidance is aimed at ensuring the safe control of nuclear materials or information that was in the possession of the bankrupt licensees. *Id.* at G-1. Because Susquehanna Nuclear is maintaining control and accountability of all nuclear material and information throughout the bankruptcy proceeding, the procedures in the BRT do not appear necessary in this case.

<sup>43</sup> *Id.* at vi.

application, not the NRC's review.<sup>44</sup> Therefore, Mr. Epstein's reference to the BRT does not raise an issue that is material to the findings the NRC must make in this proceeding.

### CONCLUSION

For the reasons discussed above, we *deny* the request for hearing and petition to intervene and *terminate* this proceeding.

IT IS SO ORDERED.

For the Commission

Brooke P. Clark  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 17th day of May 2023.

---

<sup>44</sup> See, e.g., *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 237 (2008) (“[T]he focus of a hearing on a proposed licensing action is the adequacy of the application to support the licensing action, not the nature of the NRC Staff’s review.”).



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judges:**

**E. Roy Hawkens, Chair  
Nicholas G. Trikouros  
Dr. Gary S. Arnold**

**In the Matter of**

**Docket No. 50-320-LA-2  
(ASLBP No. 23-977-02-LA-BD01)**

**TMI-2 SOLUTIONS, LLC  
(License Amendment Request for  
Three Mile Island Nuclear  
Station, Unit 2)**

**March 1, 2023**

This proceeding involves a challenge by Mr. Eric Epstein (petitioner) to a license amendment request (LAR) by TMI-2 Solutions, LLC (TMI-2 Solutions) seeking to amend its possession only license for Three Mile Island Nuclear Station, Unit 2. In his petition to intervene, petitioner alleged that the LAR improperly fails to consider the potential harm to the surrounding area, including harm from re-criticality, that may result from airplane crashes, explosions, fires, or terrorist attacks. Following oral argument on standing and contention admissibility, petitioner filed a motion for leave to file two new contentions. In its decision, the Licensing Board (1) denies the petition to intervene for failure to establish standing and failure to proffer an admissible contention; and (2) denies the motion to file new contentions for lack of standing.

**RULES OF PRACTICE: INTERVENTION**

A petitioner seeking to intervene in a licensing proceeding must (1) demonstrate standing pursuant to 10 C.F.R. § 2.309(d); and (2) proffer a contention

that satisfies the admissibility criteria in 10 C.F.R. § 2.309(f). *See* 10 C.F.R. § 2.309(a).

#### **RULES OF PRACTICE: STANDING**

Pursuant to the NRC's regulatory standing requirements, a petitioner's hearing request must include the information specified in 10 C.F.R. § 2.309(d)(1)(i)-(iv).

#### **RULES OF PRACTICE: STANDING**

In determining whether a petitioner has established standing, a board applies contemporaneous judicial concepts of standing, *see Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995), which require a petitioner to allege "(1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the Atomic Energy Act (or other applicable statute, such as the National Environmental Policy Act), and (4) is likely to be redressed by a favorable decision." *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001).

#### **RULES OF PRACTICE: STANDING**

The requirement that an alleged injury or threat of injury be concrete and particularized necessarily means that it must not be "conjectural" or "hypothetical." *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). Further, a determination that an alleged injury is fairly traceable to the challenged action requires a petitioner to show that "the chain of causation is plausible." *Id.* at 75.

#### **RULES OF PRACTICE: STANDING**

In a license amendment proceeding, the petitioner cannot obtain standing by simply alleging, without substantiation, that the proposed amendments will result in offsite radiological harm, *see Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 192 (1999); rather, the petitioner must specify "how the particular license amendments at issue would increase the risk of an offsite release of radioactive fission products." *Id.* at 189 (emphasis omitted).

**RULES OF PRACTICE: STANDING (PROXIMITY PRESUMPTION)**

For reactor licensing proceedings involving reactor construction permit proceedings and operating licenses, the Commission has authorized the use of a “proximity presumption,” in favor of standing for persons who [reside or] have ‘frequent contacts’ within a 50-mile radius of a nuclear power plant.” *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010). This presumption “rests on [the] finding, in construction permit and operating license cases, that persons living within the roughly 50-mile radius of [a] facility face a realistic threat of harm if a release from the facility of radioactive material were to occur.” *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 917 (2009) (internal quotation marks omitted).

**RULES OF PRACTICE: STANDING (PROXIMITY PRESUMPTION)**

The 50-mile proximity presumption “is simply a shortcut for determining standing in certain cases.” *Calvert Cliffs*, CLI-09-20, 70 NRC at 917. This shortcut satisfies contemporaneous judicial concepts of standing and promotes efficiency in the adjudicatory process. *See id.*

**RULES OF PRACTICE: STANDING (PROXIMITY PRESUMPTION)**

Aside from reactor licensing proceedings involving construction permits and operating licenses, the applicability of the proximity presumption is determined on a “case-by-case basis.” *Exelon Generation Co., LLC and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580 (2005). In making this case-specific determination, the pertinent question is “whether the kind of action at issue, when considered in light of the radioactive sources at the plant, justifies a presumption that the licensing action could plausibly lead to the offsite release of radioactive fission products . . . .” *Id.* at 581 (internal quotation marks omitted). The petitioner must show that the particular licensing action raises an “obvious potential for offsite consequences.” *Id.* (internal quotation marks omitted).

**RULES OF PRACTICE: STANDING**

A licensing board must be mindful to “construe the [intervention] petition in favor of the petitioner.” *Georgia Tech*, CLI-95-12, 42 NRC at 115.

### **PRO SE PETITIONERS**

A *pro se* petitioner's pleadings will not be held "to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015) (internal quotation marks omitted). Whether *pro se* or not, however, the petitioner bears the burden to set forth a coherent argument supported by plausible facts sufficient to establish standing. *See id.*

### **RULES OF PRACTICE: STANDING**

A licensing board need not accept assertions from a petitioner that are conclusory, conjectural, or otherwise untenable. *See Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 410 (2007); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000). Rather, a licensing board shall, where appropriate, "weigh the information provided" to determine whether a standing element is satisfied. *Bell Bend*, CLI-10-7, 71 NRC at 139.

### **RULES OF PRACTICE: DISCRETIONARY INTERVENTION**

Discretionary intervention may be granted in limited circumstances when a petitioner has failed to demonstrate standing as a matter of right; however, pursuant to 10 C.F.R. § 2.309(e), a request for such intervention will not be considered unless another petitioner "has established standing and at least one admissible contention has been admitted so that a hearing will be held." *See Exelon Generation Co., LLC* (Braidwood Station, Units 1 and 2, et al.), CLI-22-1, 95 NRC 1, 21 (2022).

### **RULES OF PRACTICE: STANDING (PROXIMITY PRESUMPTION)**

"A petitioner cannot seek to obtain [proximity] standing in a license amendment proceeding simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences." *Zion*, CLI-99-4, 49 NRC at 192.

### **RULES OF PRACTICE: STANDING**

To establish standing, a petitioner must demonstrate a plausible chain of causation specifying "how the particular license amendments at issue would increase the risk of an offsite release of radioactive fission products." *Zion*, CLI-

99-4, 49 NRC at 189; *accord International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001) (stating that a petitioner must show “the amendment will cause a distinct new harm or threat apart from the activities already licensed” to satisfy the causation component in a license amendment proceeding) (internal quotation marks omitted).

#### **RULES OF PRACTICE: STANDING**

“It is well established that mere intellectual or academic interest in a facility or proceeding is insufficient, in and of itself, to demonstrate standing.” *Peach Bottom*, CLI-05-26, 62 NRC at 580; *see also Sierra Club v. Morton*, 405 U.S. 727, 739 (1972) (“[A] mere ‘interest in a problem,’ no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization ‘adversely affected’ or ‘aggrieved’ within the meaning of the [Administrative Procedure Act].”).

#### **RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

To be admissible, a timely-filed contention must satisfy each of the criteria in 10 C.F.R. § 2.309(f)(1)(i)-(vi).

#### **RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

The Commission’s contention admissibility standard is “strict by design,” *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118 (2006) (quotation marks omitted), and failure to comply with any admissibility requirement “renders a contention inadmissible.” *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016).

#### **RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

This agency’s stringent contention admissibility rule “properly reserve[s] our hearing process for genuine, material controversies between knowledgeable litigants.” *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 396 (2012) (internal quotation marks omitted).

#### **RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

Contentions cannot be based on speculation; they must have “some reasonably specific factual or legal basis.” *Entergy Nuclear Vermont Yankee, LLC*,

*and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-15-20, 82 NRC 211, 221 (2015).

**RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

A contention that simply references documents without clearly identifying or summarizing portions of the documents that are being relied upon is inadequate. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989). Likewise inadequate are “generalized assertions, without specific ties to NRC regulatory requirements . . . [because they] do not provide adequate support demonstrating the existence of a genuine dispute of fact or law.” *U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 588 (2009).

**RULE OF PRACTICE: CONTENTIONS**

A contention of omission is one alleging that licensing documents failed to address a topic that, as a matter of law, was required to be discussed. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 200 n.53 (2011); *see also Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382-83 (2002).

**NATIONAL ENVIRONMENTAL POLICY ACT: CATEGORICAL EXCLUSION**

If an LAR includes an analysis that concludes the proposed amendments satisfy the regulatory criteria for a categorical exclusion from environmental review, a petitioner cannot challenge the absence of such review without showing, with specificity, why the categorical exclusion does not apply. *See Exelon Generation Co., LLC* (Three Mile Island Nuclear Station, Units 1 and 2), CLI-20-10, 92 NRC 327, 331 (2020) (affirming LBP-20-2, 91 NRC 10, 38 (2020)).

**NATIONAL ENVIRONMENTAL POLICY ACT: CATEGORICAL EXCLUSION**

A petitioner can challenge an applicant’s categorical exclusion determination by, *inter alia*, affirmatively showing the existence of “special circumstances” pursuant to section 51.22(b) that would justify excepting the proposed license amendment from the categorical exclusion. *See Entergy Nuclear Operations,*

*Inc.* (Indian Point, Unit 2), LBP-15-26, 82 NRC 163, 181 (2015); *accord Pa'ina Hawaii, LLC*, LBP-06-4, 63 NRC 99, 112-13 (2006).

#### **PRO SE PETITIONERS**

A *pro se* petitioner may be entitled to greater leeway when a tribunal construes his pleadings, but those pleadings must meet some minimum threshold in providing respondents with notice of what is at issue. *See DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146 n.53 (2015).

#### **RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

“Petitioners must do more than rest on the mere existence of [Requests for Additional Information (RAIs)] as a basis for their contention. Issuance of an RAI does not alone establish deficiencies in the application, or that the NRC Staff will go on to find any of the Applicant’s clarifications, justifications, or other responses to be unsatisfactory.” *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 506 n.47 (2015) (citations and internal quotation marks omitted).

#### **NATIONAL ENVIRONMENTAL POLICY ACT: SCOPE OF ENVIRONMENTAL ANALYSIS (REQUIREMENTS)**

In *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006), the Ninth Circuit held that NEPA required the NRC Staff’s environmental review to consider the likely consequences of a potential terrorist attack against the licensed facility in question. Although the Commission complied with the Ninth Circuit’s decision in that case, for licensing matters outside the Ninth Circuit, the Commission adheres to its longstanding view that NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. *See AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 126, 129 (2007), *aff’d*, *N.J Dep’t of Env’tl. Prot. v. NRC*, 561 F.3d 132 (3d Cir. 2009).

#### **NEPA: RULE OF REASON**

“NEPA requires a reasonably close causal relationship between the environmental effect and the [proposed action].” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (internal quotation marks omitted); *accord, e.g., N.J Dep’t of Env’tl. Prot.*, 561 F.3d at 136.

## **RULES OF PRACTICE: CONTENTIONS, NEW OR AMENDED**

A licensing board will not entertain requests for leave to file new contentions after the deadline for submitting a hearing petition has passed unless a litigant demonstrates good cause by showing the following: “(i) The information upon which the filing is based was not previously available; (ii) The information . . . is materially different from information previously available; and (iii) The filing has been submitted in a timely fashion . . . .” 10 C.F.R. § 2.309(c)(1)(i)-(iii).

## **PRO SE PETITIONERS**

The principle that a licensing board should be lenient in construing a *pro se* petitioner’s pleadings does not give a petitioner license to disregard procedural rules that are applicable to all parties and designed to promote fair and efficient adjudication. *See Turkey Point*, CLI-15-25, 82 NRC at 397 n.53 (“[A]lthough we afford some leniency to pro se petitioners, . . . we expect [them] to fulfill the obligations imposed by our rules.”); *accord Southern Nuclear Operating Co., Inc.* (Vogle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 230 (2020).

## **MEMORANDUM AND ORDER (Denying Eric Epstein’s (1) Petition to Intervene and Hearing Request; and (2) Motion for Leave to File New Contentions)**

Pending before this Licensing Board is a challenge by Eric Epstein to a February 19, 2021 request by TMI-2 Solutions, LLC to amend its possession only license for Three Mile Island Nuclear Station, Unit 2.<sup>1</sup> More precisely, we are considering (1) Mr. Epstein’s petition to intervene;<sup>2</sup> and (2) his motion for leave to file new contentions.<sup>3</sup>

As discussed below, we deny Mr. Epstein’s petition to intervene because we conclude he lacks standing and fails to proffer an admissible contention. Because Mr. Epstein lacks standing, we deny his motion to file new contentions.

---

<sup>1</sup> *See* TMI-2 Solutions, LLC, License Amendment Request — Three Mile Island, Unit 2, Decommissioning Technical Specifications, Attach. 1 (Feb. 19, 2021) (ADAMS Accession No. ML21057-A046) [hereinafter LAR].

<sup>2</sup> *See* Eric Joseph Epstein’s Petition for Leave to Intervene and Hearing Request (dated Nov. 4, 2022) (filed Nov. 3, 2022) [hereinafter Petition].

<sup>3</sup> *See* Petitioner Eric Epstein’s Motion for Leave to File New Contentions (Jan. 18, 2023) [hereinafter Motion].



## I. BACKGROUND

This proceeding concerns a challenge to a license amendment request (LAR) submitted by TMI-2 Solutions, LLC (TMI-2 Solutions) for Three Mile Island Nuclear Station, Unit 2 (TMI-2). TMI-2 is a defueled, non-operational, pressurized water reactor located in Dauphin County, Pennsylvania.<sup>4</sup>

TMI-2 has not been operational since 1979, when it experienced an accident that caused severe damage to its reactor core.<sup>5</sup> As a result of this accident, small quantities of spent nuclear fuel, damaged core material, and high-level waste — known as “debris material,” *see* 87 Fed. Reg. at 51,454 n.1 — were transported into the reactor coolant system, the reactor building, and the auxiliary and fuel handling buildings. After the accident, TMI-2 underwent site cleanup to remove debris material from systems and structures.<sup>6</sup>

In 1990, TMI-2 was defueled, resulting in the removal of approximately 99% of the fuel load, which was shipped to the U.S. Department of Energy’s Idaho National Laboratory. *See* LAR, Attach. 1 at 2.<sup>7</sup> The remaining 1% of the fuel load at TMI-2 (i.e., debris material) is dispersed in the form of dust-like sediment at the bottom of the plant, hardened material on components, and films on piping, tanks, and other components. *See* LAR, Attach. 5 at 5-6.

In 1993, the Nuclear Regulatory Commission (NRC) Staff issued a license amendment converting TMI-2’s operating license to a possession only license (POL).<sup>8</sup> That same year, TMI-2 entered the NRC-approved safe storage condition known as Post-Defueling Monitored Storage (PDMS) that, the NRC Staff

---

<sup>4</sup> *See* TMI-2 Solutions, LLC; [TMI-2], 87 Fed. Reg. 51,454, 51,455 (Aug. 22, 2022).

<sup>5</sup> *See* *Backgrounder on the Three Mile Island Accident*, <https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/3mile-isle.html> (last updated Nov. 15, 2022). Much of the factual background we describe above in text can also be found in the Commission’s recent decision in *Energy Solutions, LLC* (Zion Nuclear Power Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 2; et al.), CLI-22-9, 96 NRC 107, 116-19 (2022).

<sup>6</sup> *See* NUREG-0683, Programmatic Environmental Impact Statement Related to Decontamination and Disposal of Radioactive Wastes Resulting from March 28, 1979 Accident [TMI-2], Final Supplement Dealing with Post-Defueling Monitored Storage and Subsequent Cleanup, Supplement No. 3 (Aug. 1989) (ADAMS Accession No. ML20247F778); *see also* TMI-2 Cleanup Program, Post-Defueling Monitored Storage (Dec. 1986) (ADAMS Accession No. ML20214S448).

<sup>7</sup> *See also* SECY-93-238, [TMI-2] Possession Only License Amendment, at 2 (Aug. 24, 1993) (ADAMS Accession No. ML12257A733); Letter from Gregory H. Halnon, President and Chief Nuclear Officer, GPU Nuclear, Inc., to NRC Document Control Desk, Attach. 1 at 3 (Dec. 12, 2019) (ADAMS Accession No. ML20013E535) [hereinafter PSDAR Rev. 3].

<sup>8</sup> *See* [TMI-2 POL], Amendment No. 45, License No. DPR-73 (Sept. 14, 1993) (ADAMS Accession No. ML20029E535).

found, established an inherently stable and safe condition of the facility such that there was no risk to public health and safety.<sup>9</sup>

In 2021, the POL for TMI-2 was transferred to TMI-2 Solutions to decommission the facility. *See FirstEnergy Companies and TMI-2 Solutions, LLC* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70 (2021). Decommissioning includes removing the remaining debris material, decontaminating the structures, and dismantling the remaining equipment and facilities. *See* LAR, Attach. 1 at 1-2. TMI-2 Solutions plans to complete decommissioning activities and release the site by 2037, except for an area set aside, as may be required, for the storage of residual debris material. *See* 87 Fed. Reg. at 51,455.

In February 2021, TMI-2 Solutions filed the LAR at issue in this proceeding. *See supra* note 1. The LAR seeks to revise the TMI-2 POL and associated technical specifications (TS) by deleting requirements that no longer reflect the plant's current conditions and that are no longer applicable to a facility in decommissioning. *See* LAR, Attach. 1 at 1; 87 Fed. Reg. at 51,455. The LAR also seeks to modify the existing license to enable the transition of TMI-2 from a PDMS stage to a decommissioning stage in support of Phase 1b and Phase 2 decommissioning activities.<sup>10</sup> Finally, the LAR states that the proposed amendments meet the regulatory criteria for a categorical exclusion, which exempts the agency (and, hence, the licensee) from conducting an environmental review. *See* LAR, Attach. 1 at 76-77.

On August 22, 2022, the NRC Staff published a *Federal Register* Notice that described TMI-2 Solutions' LAR, discussed the Staff's proposal to determine the LAR involves "no significant hazards consideration" in accordance with 10 C.F.R. § 50.92(c), and informed the public of the opportunity to petition to intervene and request a hearing. *See* 87 Fed. Reg. at 51,454.

On November 3, 2022, Mr. Epstein filed a timely petition to intervene. *See*

---

<sup>9</sup> *See* PSDAR Rev. 3 at 1; [TMI-2 POL] No. DPR-73, Docket No. 50-320, Update 10 of the [PDMS] Safety Analysis Report (Aug. 23, 2013) (ADAMS Accession No. ML13238A221).

<sup>10</sup> *See* 87 Fed. Reg. at 51,455. TMI-2 decommissioning will occur in three phases. Phase 1a (which is not the subject of this LAR) consists of decommissioning preparation, which includes, for example, procurement of decommissioning materials and the installation of temporary infrastructure. *See* LAR, Attach. 1 at 2. Phase 1b consists of debris material recovery and source term reduction, which include the recovery, packaging, and storing of debris material and the reduction of the overall radiological source term at TMI-2 to levels that are consistent with a typical nuclear reactor at the end of its operational life. *See id.* Phase 2 consists of decommissioning and dismantling the site to a level that permits site release, except for an area potentially set aside for storage of debris material at the onsite Independent Spent Fuel Storage Installation. *See id.* Phase 3 (which is also not the subject of this LAR) involves debris material management, license termination, and site restoration. *See id.*

*supra* note 2.<sup>11</sup> His *pro se* petition proffers two related contentions asserting that the LAR should be denied because it fails to consider the potential harm to the surrounding area, including harm from re-criticality, that may result from airplane crashes, explosions, fires, or terrorist attacks. *See* Petition at 22, 28.

On November 28, 2022, TMI-2 Solutions and the NRC Staff filed answers opposing Mr. Epstein's petition, arguing that he lacked standing and failed to proffer an admissible contention.<sup>12</sup>

On December 6, 2022, Mr. Epstein — still appearing *pro se* — filed an untimely reply averring that, contrary to the views of TMI-2 Solutions and the NRC Staff, he has standing and his two contentions are admissible.<sup>13</sup>

On January 18, 2023, Mr. Epstein, now represented by counsel,<sup>14</sup> filed a motion for leave to file new contentions. *See supra* note 3.<sup>15</sup>

On January 19, 2023, this Board held oral argument on standing and contention admissibility. *See* Official Transcript of Proceedings, [NRC], TMI-2 Solutions, [LLC], Docket No. 50-320-LA-2 (Jan. 19, 2023) [hereinafter Tr.]. Mr. Epstein was represented by counsel at the argument. *See* Tr. at 2.

## II. ANALYSIS

A petitioner seeking to intervene in a licensing proceeding must (1) demon-

---

<sup>11</sup> Although Mr. Epstein's petition is dated November 4, 2022, *see* Petition at 1, it was received through the NRC's E-Filing System on November 3, 2022. Mr. Epstein previously had received a two-week extension of time for the filing of his petition, from October 21, 2022, to November 4, 2022. *See* Order of the Secretary of the Commission, Extending Deadline to Request for Hearing (Oct. 20, 2022).

<sup>12</sup> *See* TMI-2 Solutions' Answer Opposing Petition for Leave to Intervene and Hearing Request Filed by Eric Joseph Epstein (Nov. 28, 2022) [hereinafter TMI-2 Solutions' Answer]; NRC Staff Answer to Eric Joseph Epstein's Petition for Leave to Intervene and Hearing Request (Nov. 28, 2022) [hereinafter NRC Staff's Answer].

<sup>13</sup> *See* Reply of Eric Joseph Epstein to TMI-2 Solutions, LLC and the [NRC's] Answer Opposing the Petition of Eric Joseph Epstein for Leave to Intervene and for a Hearing (Dec. 6, 2022) [hereinafter Reply]. Mr. Epstein's reply was due by December 5, 2022. *See* Licensing Board Memorandum and Order (Initial Prehearing Order) at 2 (Nov. 14, 2022) (unpublished). Because neither TMI-2 Solutions nor the NRC Staff timely moved to strike the untimely reply, and in consideration of Mr. Epstein's *pro se* status at the time he filed his reply, we will exercise our discretion to consider it in our standing and contention admissibility analyses.

<sup>14</sup> Mr. Epstein's counsel entered an appearance on January 10, 2023. *See* Motion at 4.

<sup>15</sup> On February 13, 2023, TMI-2 Solutions and the NRC Staff filed answers opposing Mr. Epstein's motion. *See* TMI-2 Solutions' Answer Opposing Petitioner's Motion to File New Contentions (Feb. 13, 2023) [hereinafter TMI-2 Solutions' Answer to Motion]; NRC Staff Answer to Petitioner Eric Epstein's Motion for Leave to File New Contentions (Feb. 13, 2023) [hereinafter NRC Staff's Answer to Motion]. On February 21, 2023, Mr. Epstein filed a reply. *See* Petitioner Eric Epstein's Reply Brief in Support of Motion for Leave to File New Contentions (Feb. 21, 2023).

strate standing pursuant to 10 C.F.R. § 2.309(d); and (2) proffer a contention that satisfies the admissibility criteria in 10 C.F.R. § 2.309(f). *See* 10 C.F.R. § 2.309(a). As discussed *infra* Parts II.A and II.B, we conclude that Mr. Epstein fails to satisfy either requirement, and we therefore deny his petition. Because Mr. Epstein lacks standing, we deny his motion for leave to file new contentions. *See infra* Part II.C.

## A. Standing

### 1. Standards for Establishing Standing

Pursuant to the NRC's regulatory standing requirements, a petitioner's hearing request must include:

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

10 C.F.R. § 2.309(d)(1)(i)-(iv).

In determining whether a petitioner has satisfied the above standing requirements, the Commission applies contemporaneous judicial concepts of standing. *See Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995). These concepts require a petitioner to allege "(1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the Atomic Energy Act (or other applicable statute, such as the National Environmental Policy Act), and (4) is likely to be redressed by a favorable decision." *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001). The requirement that an alleged injury or threat of injury be concrete and particularized necessarily means that it must not be "conjectural" or "hypothetical." *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). Further, a determination that an alleged injury is fairly traceable to the challenged action requires a petitioner to show that "the chain of causation is plausible." *Id.* at 75. Relatedly, in a license amendment proceeding, the petitioner cannot obtain standing by simply alleging, without substantiation, that the proposed amendments will result in offsite radiological harm, *see Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 192 (1999); rather, the petitioner must specify "how the particular license amend-

ments at issue would increase the risk of an offsite release of radioactive fission products.” *Id.* at 189 (emphasis omitted).

As an alternative to applying traditional judicial concepts of standing, the Commission has, in a limited category of proceedings, recognized a “‘proximity presumption’ in favor of standing for persons who [reside or] have ‘frequent contacts’ within a 50-mile radius of a nuclear power plant.” *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010). The Commission has explained that this presumption “rests on our finding, in construction permit and operating license cases, that persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur.” *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 917 (2009) (internal quotation marks omitted).<sup>16</sup>

But aside from reactor licensing proceedings involving construction permits and operating licenses, the applicability of the proximity presumption is determined on a “case-by-case basis.” *Exelon Generation Co., LLC, and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580 (2005). In making this case-specific determination, the pertinent question is “whether the kind of action at issue, when considered in light of the radioactive sources at the plant, justifies a presumption that the licensing action could plausibly lead to the offsite release of radioactive fission products . . . .” *Id.* at 581 (internal quotation marks omitted). The petitioner must show that the particular licensing action raises an “obvious potential for offsite consequences.” *Id.* (internal quotation marks omitted).

Finally, when conducting its standing analysis, a licensing board must be mindful to “construe the [intervention] petition in favor of the petitioner.” *Georgia Tech*, CLI-95-12, 42 NRC at 115. Additionally, a *pro se* petitioner’s pleadings will not be held “to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere.” *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015) (internal quotation marks omitted). Whether *pro se* or not, however, the petitioner bears the burden to set forth a coherent argument supported by plausible facts sufficient to establish standing. *See id.*<sup>17</sup>

---

<sup>16</sup>The 50-mile proximity presumption “is simply a shortcut for determining standing in certain cases.” *Calvert Cliffs*, CLI-09-20, 70 NRC at 917. This shortcut satisfies contemporaneous judicial concepts of standing and promotes efficiency in the adjudicatory process. *See id.*

<sup>17</sup>A licensing board need not accept assertions from a petitioner that are conclusory, conjectural, or otherwise untenable. *See Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 410 (2007); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5,

(Continued)

## 2. *Mr. Epstein Fails to Establish Standing*

Mr. Epstein claims he has established standing under (1) the proximity presumption; and (2) traditional judicial concepts. *See* Petition at 9-15.<sup>18</sup> In support of this claim, he states he lives within twelve miles of TMI-2 and that his personal and professional activities bring him within five miles of the facility on a regular basis. *See id.* at 11. He asserts that granting the LAR will revise the license conditions in ways that will adversely impact his health and safety. *See id.* at 10, 11, 15.

In response, TMI-2 Solutions and the NRC Staff argue that Mr. Epstein fails to establish standing under either the proximity presumption or traditional judicial concepts. *See* TMI-2 Solutions' Answer at 13-17; NRC Staff's Answer at 10-14. We agree.

### a. *Mr. Epstein Fails to Establish Proximity Standing*

At the outset, we observe that Mr. Epstein misapprehends the proximity presumption rule. He argues that he is entitled to rely on that rule in this reactor licensing case because he resides and has frequent contacts within a 50-mile radius of TMI-2. *See* Petition at 13, 15. Contrary to Mr. Epstein's understanding, the 50-mile presumption applies only in reactor licensing proceedings that are akin to construction permits and operating licenses, where the Commission has found that petitioners face a realistic threat of harm if a release of radioactive material were to occur. *See Calvert Cliffs*, CLI-09-20, 70 NRC at 917. This license amendment proceeding involving a permanently shut down and defueled reactor is not analogous to such cases. *See Zion*, CLI-99-4, 49 NRC at 191 (“[G]iven the shutdown and defueled status of the units, the license amendments do not on their face present any ‘obvious’ potential of offsite radiological consequences.”).

---

51 NRC 90, 98 (2000). Rather, a licensing board shall, where appropriate, “weigh the information provided” to determine whether a standing element is satisfied. *Bell Bend*, CLI-10-7, 71 NRC at 139.

<sup>18</sup>Mr. Epstein also asserts he should be granted discretionary intervention pursuant to 10 C.F.R. § 2.309(e). *See* Petition at 16. We summarily reject that assertion. Although discretionary intervention may be granted in limited circumstances when a petitioner has failed to demonstrate standing as a matter of right, a request for such intervention will not be considered unless another petitioner “has established standing and at least one admissible contention has been admitted so that a hearing will be held.” 10 C.F.R. § 2.309(e). Because Mr. Epstein is the sole petitioner here, this threshold requirement has not been satisfied and, accordingly, Mr. Epstein is not eligible to seek discretionary intervention. *See Exelon Generation Co., LLC* (Braidwood Station, Units 1 and 2, et al.), CLI-22-1, 95 NRC 1, 21 (2022) (denying Mr. Epstein's request for discretionary intervention for the same reason).

Accordingly, if Mr. Epstein wishes to invoke proximity standing, he must show that this particular LAR, when considered in light of the radioactive sources at TMI-2, justifies a presumption that the licensing action could plausibly lead to the release of radioactive fission products with an obvious potential for offsite consequences that will adversely affect him. *See Peach Bottom*, CLI-05-26, 62 NRC at 580, 581. Mr. Epstein fails to make this showing.

Without identifying the specific license amendments that he deems objectionable, Mr. Epstein asserts that granting the LAR will (1) dismantle the safety-in-depth protocol; (2) weaken the design and management of equipment; (3) delete and modify the TS for PDMS, surveillance requirements, and administrative controls, as well as several license conditions; and (4) permit the storage of high-level radioactive waste at the site for an indefinite period. *See Petition* at 10, 11, 15. These changes, he claims, will expose him to harmful radiological exposure. *See id.* at 10, 11.

Mr. Epstein's claim is unacceptably conclusory and conjectural. It was incumbent on him to demonstrate some plausible chain of causation specifying how these particular license amendments have an obvious potential to cause off-site radiological consequences. *See Zion*, CLI-99-4, 49 NRC at 192. Mr. Epstein simply provides a list of general objections and then asserts, without explanation or support, that the LAR, if granted, would result in offsite radiological exposure. *See Petition* at 10, 11, 15. That is not sufficient. As the Commission held in the *Zion* decision, "[a] petitioner cannot seek to obtain [proximity] standing in a license amendment proceeding simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences." *Zion*, CLI-99-4, 49 NRC at 192.

The Commission's decision in *Zion* also provides compelling fact-specific support for rejecting Mr. Epstein's assertion of proximity standing. In *Zion*, as here, a petitioner sought to invoke proximity standing to challenge the LAR for a permanently shut down and defueled reactor.<sup>19</sup> *See Zion*, CLI-99-4, 49 NRC at 187. There, as here, the LAR sought to make technical and administrative changes to the license that would reflect the plant's shutdown and defueled condition.<sup>20</sup> *See id.* at 190. In declining to recognize proximity standing in

---

<sup>19</sup> In the instant case, 99% of the fuel load has been removed from the TMI-2 site and is being stored in Idaho by the U.S. Department of Energy. *See LAR*, Attach. 1 at 2.

<sup>20</sup> Here, the proposed license amendments include the following changes: (1) eliminate TS that are no longer applicable based on the current plant radiological conditions and updated safe fuel mass limits; (2) delete or modify licensing requirements consistent with 10 C.F.R. § 50.36 to enable TMI-2 to transition from a PDMS condition to that of a facility undergoing decommissioning; and (3) relocate administrative controls to the Decommissioning Quality Assurance Program and

(Continued)

Zion, the Commission stated that “given the shutdown and defueled status of [this facility], the license amendments do not on their face present any obvious potential for offsite radiological consequences.” *Id.* at 191 (internal quotation marks omitted). That rationale applies with equal force here and supports our rejection of proximity standing.<sup>21</sup> *Accord Exelon Generation Co., LLC* (Three Mile Island Nuclear Station, Units 1 and 2), LBP-20-2, 91 NRC 10, 30, *aff’d on other grounds*, CLI-20-10, 92 NRC 327 (2020).

*b. Mr. Epstein Fails to Satisfy Traditional Concepts of Standing*

Having concluded that Mr. Epstein fails to establish proximity standing, our “standing inquiry reverts to a ‘traditional standing’ analysis . . . .” *Peach Bottom*, CLI-05-26, 62 NRC at 581. As discussed *supra* Part II.A.1, the traditional standing analysis includes a causation component that, in the instant case, requires Mr. Epstein to show how the alleged injury (offsite radiological release) is fairly traceable to the LAR. More specifically, Mr. Epstein has the burden of demonstrating a plausible chain of causation specifying “how the particular license amendments at issue would increase the risk of an offsite release of radioactive fission products.” *Zion*, CLI-99-4, 49 NRC at 189; *accord International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001) (stating that a petitioner must show “the amendment will cause a distinct new harm or threat apart from the activities already licensed” to satisfy the causation component in a license amendment proceeding) (internal quotation marks omitted). Mr. Epstein fails to satisfy that burden.

As discussed above in our proximity standing analysis, Mr. Epstein’s unsubstantiated assertions that several license amendment provisions will cause him harm do not satisfy the causation component of standing because they fail to provide a plausible chain of causation specifying how the challenged provisions would increase the risk of an offsite release of radioactive fission products. *See Zion*, CLI-99-4, 49 NRC at 192.<sup>22</sup>

---

subsequently control them in accordance with 10 C.F.R. § 50.54(a) pursuant to the criteria in 10 C.F.R. § 50.36. *See* 87 Fed. Reg. at 51,455.

<sup>21</sup> The decision in *Zion* appears to be an *a fortiori* case for rejecting proximity standing here. There, the Commission denied proximity standing to a petitioner who claimed that (1) his residence was within 8 1/2 miles of the plant; and (2) his activities took him to within 1 mile of the plant. *See Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), LBP-98-27, 48 NRC 271, 273-74 (1998), *aff’d*, CLI-99-4, 49 NRC at 191-93. In contrast, Mr. Epstein’s argument for proximity standing is based on his claim that (1) he lives within 12 miles of TMI-2; and (2) his activities bring him within 5 miles of the plant. *See* Petition at 11.

<sup>22</sup> Although Mr. Epstein asserts that the proposed LAR “weakens cleanup by deleting and modifying TS for PDMS, surveillance requirements, and administrative controls,” Petition at 15, this con-

(Continued)



Mr. Epstein nonetheless attempts to bolster his standing argument by emphasizing his interest in and knowledge about TMI-2, as reflected in (1) his participation in NRC proceedings concerning the cleanup, defueling, and decommissioning of TMI-2; and (2) his experience as a publisher and researcher of documents addressing nuclear issues. *See* Petition at 14. His participation in this LAR proceeding, he asserts, “would add insight, institutional memory, and perspective.” *Id.* However, Mr. Epstein’s interest and expertise are irrelevant to the standing analysis. As the Commission explained in the *Peach Bottom* license transfer proceeding when it held that Mr. Epstein’s mere interest in the Peach Bottom facility did not confer standing:

Although these kinds of involvement demonstrate both Mr. Epstein’s general interest in electric and nuclear issues and his particular interest in the Peach Bottom facility, they do not demonstrate injury. It is well established that mere intellectual or academic interest in a facility or proceeding is insufficient, in and of itself, to demonstrate standing.

*Peach Bottom*, CLI-05-26, 62 NRC at 580; *accord Sierra Club v. Morton*, 405 U.S. 727, 739 (1972).

Mr. Epstein also cites several studies that examine how the 1979 accident at TMI-2 has affected the health of nearby residents. *See* Petition at 14 n.10. According to Mr. Epstein, these studies support a conclusion that nearby residents inevitably “will be exposed to radiation.” *Id.* at 13. These backward-looking studies, however, are irrelevant to the forward-looking standing analysis, which requires Mr. Epstein to show “how these particular license amendments would result in a distinct new harm or threat to him.” *Zion*, CLI-99-4, 49 NRC at 192.

Finally, in an effort to support standing, Mr. Epstein suggests that a triggering event — i.e., an airplane crash, explosion, fire, or terrorist attack — might cause re-criticality of the residual fuel debris material that may result in an offsite radiological release. *See, e.g.*, Petition at 10. He asserts that the “lack of real time emergency preparedness, fire protection, and radiation monitoring programs” will render him vulnerable to radiological harm. *Id.* But Mr. Epstein fails to show that the proposed LAR will affect emergency preparedness, fire protection, or radiation monitoring programs in a manner that would expose him to radiological harm.<sup>23</sup> Nor does he show how the proposed LAR would increase the possibility of re-criticality. This failure to show a plausible chain of

---

clusory assertion fails to explain how these deletions and modifications would weaken the cleanup or otherwise cause him an injury-in-fact.

<sup>23</sup> As previously mentioned, *supra* note 20, the challenged LAR proposes to remove or revise certain license conditions and TS requirements to reflect current plant conditions at TMI-2 and to support decommissioning.

causation between the LAR and a particularized injury is fatal to Mr. Epstein's effort to establish standing. *See Sequoyah Fuels Corp. and General Atomics*, CLI-94-12, 40 NRC at 75.<sup>24</sup>

## **B. Contention Admissibility**

Although Mr. Epstein's failure to establish standing suffices to deny his petition, for the sake of completeness we also consider the admissibility of his two contentions. As discussed below, we conclude that neither contention is admissible, which serves as an alternative ground for denying his petition.

### ***1. Contention Admissibility Standards***

To be admissible, a timely-filed contention must satisfy each of the following regulatory criteria:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the [petitioner's] position on the issue . . . , together with references to the specific sources and documents on which the [petitioner] intends to rely to support its position on the issue; [and]
- (vi) [P]rovide sufficient information to show that a genuine dispute exists with the [applicant] on a material issue of law or fact. This information must include references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief . . . .

10 C.F.R. § 2.309(f)(1)(i)-(vi).

---

<sup>24</sup>Because Mr. Epstein fails to provide a plausible causative link between the challenged LAR and his asserted injury, he has not demonstrated that denying the LAR, the only remedy he seeks, would prevent that injury. He thus also fails to satisfy the redressability component of standing. *See Zion*, CLI-99-4, 49 NRC at 196 (finding petitioner's redressability argument unpersuasive because "[d]enial of the current license amendments, the only remedy [petitioner seeks], would do nothing to [redress the alleged injury]").

The Commission's contention admissibility standard is "strict by design," *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118 (2006) (quotation marks omitted), and failure to comply with any admissibility requirement "renders a contention inadmissible." *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016). As the Commission has observed, this agency's stringent contention admissibility rule "properly reserve[s] our hearing process for genuine, material controversies between knowledgeable litigants." *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 396 (2012) (internal quotation marks omitted).

Although *pro se* litigants are not held to the "standards of clarity and precision to which a lawyer might reasonably be expected to adhere," they are held to the same specificity standards. *Public Service Electric & Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973). Thus, contentions cannot be based on speculation; they must have "some reasonably specific factual or legal basis." *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-15-20, 82 NRC 211, 221 (2015). Moreover, a contention that simply references documents without clearly identifying or summarizing portions of the documents that are being relied upon is inadequate. See *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989). Likewise inadequate are "generalized assertions, without specific ties to NRC regulatory requirements . . . [because they] do not provide adequate support demonstrating the existence of a genuine dispute of fact or law." *U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 588 (2009).

## **2. Mr. Epstein Fails to Proffer an Admissible Contention**

Mr. Epstein proffers two contentions. Contention 1 asserts that the LAR improperly "fails to consider the potential harm to the surrounding area from airplane crashes, explosions and fires or terrorist attacks." Petition at 22. Contention 2 is nearly identical to Contention 1, the only difference being that it expressly includes a re-criticality component, asserting that the LAR improperly "fails to consider the potential harm to the surrounding area from re-criticality due to airplane crashes, explosions and fires or terrorist attack." *Id.* at 28.

Although Contention 1 does not expressly mention re-criticality, Mr. Epstein relies on the alleged possibility of re-criticality as a basis for that contention, asserting that "reasonably foreseeable environmental harm could result [due to] re-criticality from an airline crash, explosion, fire or terrorist attack." Petition at 22; see also *id.* at 23. Hence, Contention 1, like Contention 2, includes a

re-criticality component.<sup>25</sup> Given the similarity between the two contentions, we will analyze them together.

Both contentions are contentions of omission,<sup>26</sup> alleging that the LAR violates the National Environmental Policy Act (NEPA) because it improperly fails to consider the potential harm, including harm from re-criticality, that may result from four triggering events — i.e., airplane crashes, explosions, fires, or terrorist attacks. *See* Petition at 22, 28. Mr. Epstein claims that the LAR fails to consider this potential harm “[d]espite TMI’s history of fires, security vulnerabilities, and proximity to an international airport . . . .” *Id.* at 22; *see also id.* at 28. This failure, contends Mr. Epstein, “violates NEPA’s requirement that environmental decisions must contain an evaluation of those aspects of a proposed action that will affect the quality of the human environment ‘in a significant manner or to a significant extent not already considered.’” *Id.* at 22, 28 (quoting *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 374 (1989)).<sup>27</sup>

TMI-2 Solutions and the NRC Staff argue that Mr. Epstein’s contentions fail to satisfy the admissibility criteria in 10 C.F.R. § 2.309(f)(1). *See* TMI-2 Solutions’ Answer at 19-25; NRC Staff’s Answer at 20-24. For the following reasons, we agree.

---

<sup>25</sup> *See* Tr. at 18 (Mr. Epstein’s counsel affirms that it is petitioner’s “position in both contentions that NEPA requires the analysis for airplane accidents, fires, explosions, [and] terrorist attacks which could result in re-criticality.”).

<sup>26</sup> A contention of omission is one alleging that licensing documents failed to address a topic that, as a matter of law, was required to be discussed. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 200 n.53 (2011); *see also Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382-83 (2002).

<sup>27</sup> Although Mr. Epstein asserts in passing that the LAR also violates the Atomic Energy Act because it “fails to . . . ensure safe operation during back end of nuclear power production,” Petition at 22, the gravamen of his argument is that the LAR violates NEPA because it fails to consider specified environmental impacts associated with the proposed amendments. *See id.* at 22, 25, 27, 28, 32, 34. We will therefore analyze his contentions as environmental challenges under NEPA. *See DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146 n.53 (2015) (stating that “contentions must be pled with sufficient specificity to put opposing parties on notice of which claims they will actually have to defend”).

Even if we were to view Mr. Epstein’s contentions as safety challenges, we would reject them as inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(ii), (v), (vi) because he fails to (1) link the LAR to any specific, non-speculative safety concern; or (2) provide an explanation, together with references to relevant supporting sources, sufficient to show that a genuine dispute exists with the LAR on a material issue of law or fact. *See Fermi*, CLI-15-18, 82 NRC at 146 n.53 (explaining that the “lenient treatment generally accorded to *pro se* litigants has limits,” and “[a] contention’s proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirements for the admission of contentions”) (citations omitted).

a. *The Contentions Are Not Admissible Because Mr. Epstein Fails to Address the Categorical Exclusion Discussion in the LAR*

Mr. Epstein is correct that the LAR does not include a NEPA analysis regarding the potential environmental harm to the surrounding area, including harm from re-criticality, that may result from airplane crashes, explosions, fires, or terrorist attacks. See Petition at 22, 28. But he fails to acknowledge, much less challenge, the discussion in the LAR where TMI-2 Solutions concludes the proposed amendments meet the regulatory criteria for a categorical exclusion from environmental review. See LAR, Attach. 1 at 76-77. In rendering its conclusion, TMI-2 Solutions determined that the proposed amendments (1) involve no significant hazards consideration; (2) will cause no significant change in the types, or significant increase in the amounts, of any effluents that may be released offsite; and (3) will cause no significant increase in individual or cumulative occupational radiation exposure. See *id.* at 76 (applying the categorical exclusion criteria in 10 C.F.R. § 51.22(c)(9)(i)-(iii)). TMI-2 Solutions thus concluded that, “[p]ursuant to 10 C.F.R. § 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the proposed amendment.” *Id.* at 77.<sup>28</sup> If Mr. Epstein wished to challenge that conclusion, it was incumbent on him to address the analysis in the LAR and to show, with specificity, why the categorical exclusion does not apply.<sup>29</sup> This he failed to do. Accordingly, his contentions are not admissible pursuant to 10 C.F.R. § 2.309(f)(1)(vi) because they fail to show a genuine dispute with the LAR on a material issue of law or fact.<sup>30</sup>

The Commission’s recent decision in *Three Mile Island* compels this result.

---

<sup>28</sup> TMI-2 Solutions’ analyses in the LAR, including its categorical exclusion determination, will be assessed by the NRC Staff incident to its review of the LAR. See NRC Staff’s Answer at 21 n.127; Tr. at 70.

<sup>29</sup> See *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), LBP-15-26, 82 NRC 163, 181 (2015) (explaining that an applicant’s categorical exclusion determination can be challenged by, *inter alia*, affirmatively showing the existence of “special circumstances” pursuant to section 51.22(b) that would justify excepting the proposed license amendment from the categorical exclusion); *accord Pa’ina Hawaii, LLC* LBP-06-4, 63 NRC 99, 112-13 (2006).

<sup>30</sup> We acknowledge that Mr. Epstein asserts the TMI-2 site is “unique [because, for example,] the community has already been exposed to radiation releases from meltdown.” Petition at 18. But his pleadings fail to argue, or even suggest, that TMI-2’s alleged “uniqueness,” Reply at 3 (unnumbered), equates to “special circumstances” that justify excepting the LAR from a categorical exclusion. See *supra* note 29. Simply stated, Mr. Epstein’s pleadings, fairly read, give no inkling that he is challenging TMI-2 Solutions’ categorical exclusion analysis. For that reason, we cannot credit his counsel’s assertion that Mr. Epstein’s pleadings “impl[y] an exception to categorical exclusion.” Tr. at 20. A *pro se* petitioner may be entitled to greater leeway when a tribunal construes his pleadings, but those pleadings must meet some minimum threshold in providing respondents with notice of what is at issue. See *Fermi*, CLI-15-18, 82 NRC at 146 n.53.

As relevant here, the petitioners in that case proffered a contention arguing that the LAR did not satisfy NEPA because it failed to include an adequate environmental review. *See Exelon Generation Co, LLC* (Three Mile Island Nuclear Station, Units 1 and 2), CLI-20-10, 92 NRC 327, 331 (2020). There, as here, the licensee included a categorical exclusion analysis in the LAR and determined that no additional environmental review was necessary. *See id.* There, as here, the petitioners failed to address the licensee’s categorical exclusion analysis, *see id.* at 331-32, “thus failing to fulfill their ironclad obligation to review the [LAR] thoroughly and to base their challenges on its contents, as required by 10 C.F.R. § 2.309(f)(1)(vi).” *Three Mile Island*, LBP-20-2, 91 NRC at 38 (internal quotation marks omitted). The licensing board therefore rejected the contention pursuant to section 2.309(f)(1)(vi) for failing to raise a genuine dispute with the LAR. *See id.* On appeal, the Commission affirmed the licensing board’s rationale and holding. *See* CLI-20-10, 92 NRC at 332. The Commission’s decision is on all fours with this case and mandates that we reject Mr. Epstein’s contentions pursuant to section 2.309(f)(1)(vi).<sup>31</sup>

*b. Alternative Reasons Why the Contentions Are Inadmissible*

Even assuming, for the sake of argument, that the Commission’s decision in *Three Mile Island* did not compel us to reject Mr. Epstein’s contentions, we would find them inadmissible for the following alternative reasons.

First, both contentions assert that the LAR improperly fails to consider the potential harm that might result if a triggering event — i.e., a terrorist attack, an explosion, a fire, or an airplane crash — were to cause re-criticality. *See* Petition at 22, 28. This argument ignores the LAR’s conclusion that re-criticality is not possible under any circumstance. *See* LAR, Attach. 1 at 62, 68, 69, 74; LAR, Attach. 5 at 5. TMI-2 is a defueled facility and 99% of the fuel has been removed from the site. *See* LAR, Attach. 5 at 5. The LAR estimates that the remaining 1% of debris material consists of 1097 kilograms (kg) of residual uranium dioxide (UO<sub>2</sub>), with the bulk residing in the lower head of the reactor vessel. *See id.* at 5-6.<sup>32</sup> Applying “conservatively estimated masses” coupled with a “conservative approach to adequately represent the inherent characteris-

---

<sup>31</sup> Mr. Epstein was a petitioner in the above-cited *Three Mile Island* case. He thus had notice that his failure to address the categorical exclusion discussion in TMI-2 Solutions’ LAR would render his contentions inadmissible.

<sup>32</sup> The debris material is “in the form of finely divided, small particle-size sediment material; re-solidified material either tightly adherent to components or in areas inaccessible to defueling; and adherent films on surfaces contained within piping, tanks, and other components.” LAR, Attach. 5 at 5.

tics of the remaining fuel,” *id.* at 31, the LAR concludes that criticality is not possible:

Even if the expected remaining fissile mass throughout the building (1097 kg UO<sub>2</sub>), including hold up in all piping and cubicles, were to be brought together, a criticality is not feasible. [Even if ideal conditions for criticality were to occur], it would require fissile mass in excess of that analyzed, which is greater than what is anticipated, in addition to a greatly reduced impurity concentration to present a criticality hazard.

*Id.*<sup>33</sup> Because Mr. Epstein fails to address the calculations and conservatisms embodied in the LAR’s criticality analysis, his contentions regarding the possibility of re-criticality must be rejected for failure to show a genuine dispute with the LAR on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(vi).<sup>34</sup>

The component of Mr. Epstein’s contentions alleging that the LAR improperly fails to consider the potential harm to the surrounding area due to a terrorist attack and resultant explosion, *see* Petition at 22, 28, is also inadmissible for an alternative reason.<sup>35</sup> In support of that aspect of his contentions, Mr. Epstein

---

<sup>33</sup>The NRC Staff’s review of TMI-2 Solutions’ criticality discussion in the LAR will include “independent analysis and calculations.” Tr. at 76.

<sup>34</sup>According to Mr. Epstein, Drs. Rasmussen and Kaku have postulated scenarios about the possibility of re-criticality at TMI-2. *See* Petition at 23, 29; *see also* Reply at 4-6 (unnumbered); *id.* encl. 1. However, neither individual examined the LAR, *see* Tr. at 32-33, much less endeavored to rebut the LAR’s analyses regarding the amount of uranium remaining at the site or the conclusion that re-criticality is impossible. Accordingly, Mr. Epstein’s reference to the notional scenarios postulated by these individuals fails to establish a genuine dispute with the LAR. *See USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 472 (2006) (“[A]n expert opinion that merely states a conclusion . . . without providing a reasoned basis or explanation for that conclusion is inadequate [to support a contention] because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion . . . .”) (internal quotation marks omitted).

Nor do Mr. Epstein’s references to various studies and NRC Staff Requests for Additional Information (RAIs) strengthen his admissibility argument. *See, e.g.*, Petition at 23-25, 27, 31. By failing to explain how these documents controvert any specific portion of the LAR or otherwise support his claims, Mr. Epstein fails to establish a genuine dispute of law or fact. *See American Centrifuge Plant*, CLI-06-10, 63 NRC at 457 (“It is simply insufficient, for example, for a petitioner to point to [a study] and expect the Board on its own to discern what particular issue a petitioner is raising, including what section of the application . . . is being challenged as deficient and why.”); *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 506 n.47 (2015) (“Petitioners must do more than rest on the mere existence of RAIs as a basis for their contention. Issuance of an RAI does not alone establish deficiencies in the application, or that the NRC Staff will go on to find any of the Applicant’s clarifications, justifications, or other responses to be unsatisfactory.”) (citations and internal quotation marks omitted).

<sup>35</sup>Mr. Epstein fails to specify how an explosion would occur at TMI-2 in its defueled, non-operational status. We will therefore analyze the explosion component as occurring incident to a terrorist attack.

cites to the decision by the U.S. Court of Appeals for the Ninth Circuit in *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006), where the court held that NEPA required the NRC Staff's environmental review to consider the likely consequences of a potential terrorist attack against a spent fuel storage facility on the Diablo Canyon reactor site in California. *See* Petition at 25, 27, 33, 34. Although the Commission did, of course, comply with the Ninth Circuit's decision in the *Diablo Canyon* proceeding itself, for licensing matters in other circuits the Commission adheres to its longstanding view (which has been affirmed by the U.S. Court of Appeals for the Third Circuit) that NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. *See AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 126, 129 (2007), *aff'd*, *N.J. Dep't of Env'tl. Prot. v. NRC*, 561 F.3d 132 (3rd Cir. 2009).<sup>36</sup> Mr. Epstein's contrary argument ignores controlling case law, is beyond the scope of this proceeding, and fails to raise a genuine dispute with the LAR on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi).

The aspect of Mr. Epstein's contentions alleging that the LAR improperly fails to consider the potential harm from an airplane crash is likewise inadmissible for an alternative reason. The Supreme Court has made clear that "NEPA requires a reasonably close causal relationship between the environmental effect and the [proposed action]." *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (internal quotation marks omitted); *accord, e.g., N.J. Dep't of Env'tl. Prot.*, 561 F.3d at 136. Although Mr. Epstein states that TMI-2 is located near an international airport, *see* Petition at 22, 28, he has not shown that there is a "reasonably close causal relationship" between the LAR and the environmental effects of an airplane crash, nor does he show that any aspect of the LAR would increase the risk of an offsite release of radioactivity in the event of an airplane crash. Accordingly, that component of his contentions fails to raise a genuine dispute with the LAR on a material issue of law or fact, as is required by section 2.309(f)(1)(vi).<sup>37</sup>

Finally, Mr. Epstein asserts that the LAR improperly fails to consider the potential harm from fires. *See* Petition at 22, 28. He is wrong as a factual matter. The LAR examines multiple scenarios involving fires at the TMI-2 site, including (1) the impact of a reactor building fire, *see* LAR, Attach. 1 at 3-4; (2) the impact of various fires outside the reactor building, *see id.* at 5; and (3) the impact of a fire involving ion-exchange resins. *See id.* at 5-7; *see also* 87 Fed. Reg. at 51,456, 51,457 (discussing TMI-2 Solutions' radiological analysis

---

<sup>36</sup> TMI-2 is located within the jurisdiction of the U.S. Court of Appeals for the Third Circuit.

<sup>37</sup> This rationale also provides an additional ground for rejecting Mr. Epstein's assertion that the LAR improperly fails to consider the potential harm from an explosion. *See* Petition at 22, 28.



of reactor building fire). Because the LAR addresses the topic that Mr. Epstein contends was improperly omitted, that aspect of his contentions is inadmissible for failing to raise a genuine dispute, as is required by section 2.309(f)(1)(vi). *See supra* note 26; Tr. at 79.<sup>38</sup>

### **C. Mr. Epstein’s Motion to File New Contentions Is Denied Because He Lacks Standing**

On the eve of oral argument for standing and contention admissibility, Mr. Epstein — now represented by counsel, *see supra* note 14 — filed a motion for leave to file two new contentions. *See supra* note 3. The crux of the new contentions is that (1) the LAR improperly fails to consider water-use restrictions that recently were imposed on TMI, Unit 1, and that may diminish water availability at TMI-2; and (2) this possible diminishment casts doubt on the LAR’s clean-up plan and the conclusion that criticality is not possible. *See* Motion at 3. Because the deadline for filing contentions lapsed in November 2022, *see supra* note 11, Mr. Epstein argues that he satisfies the good cause standard in 10 C.F.R. § 2.309(c) for filing contentions after the time for submitting a hearing petition has expired. *See* Motion at 4.<sup>39</sup>

TMI-2 Solutions and the NRC Staff argue that Mr. Epstein’s motion should be denied because he fails to satisfy the good cause standard, his newly proffered contentions are not admissible, and he lacks standing in any event. *See* TMI-2 Solutions’ Answer to Motion at 3-13; NRC Staff’s Answer to Motion at 4-11.

We need not resolve the existence of good cause or the admissibility of the new contentions because, as shown *supra* Part II.A, Mr. Epstein lacks standing. His failure to demonstrate standing is fatal to his effort to intervene in this proceeding and mandates that we deny his motion to file new contentions.

Perhaps recognizing the inadequacy of the standing argument advanced in his *pro se* petition, Mr. Epstein’s motion seeks leave to file two new documents

---

<sup>38</sup> The fire scenarios examined in the LAR were analyzed in the context of considering the safety impact of plausible accidents. For example, as TMI-2 Solutions explained in its response to an RAI: “The most limiting scenario, Reactor Building fire, is not based on any specific event. Its main purpose is to demonstrate that even if [high efficiency particulate air] filtration was bypassed, the event would not exceed 100 mrem to the maximally-exposed individual . . . .” [TMI-2 Solutions, LAR] — [TMI-2], Decommissioning [TS], Response to Questions, Attach. 1 (May 16, 2022) (ADAMS Accession No. ML22138A285).

<sup>39</sup> As relevant here, section 2.309(c) states that a licensing board will not entertain requests for leave to file new contentions after the deadline for submitting a hearing petition has passed unless a litigant demonstrates good cause by showing the following: “(i) The information upon which the filing is based was not previously available; (ii) The information . . . is materially different from information previously available; and (iii) The filing has been submitted in a timely fashion . . . .” 10 C.F.R. § 2.309(c)(1)(i)-(iii).

— i.e., settlement agreements executed by Mr. Epstein in 1992 and 1999 — to strengthen his claim of standing. *See* Motion at 5; *id.* at Exhibits 3, 4. Mr. Epstein claims that he could not locate these documents when he filed his *pro se* pleadings, but “after [he] engaged [the law firm of] Bernabei & Kabat, his counsel subsequently located them.” *Id.* at 5. Both settlement agreements were signed by licensees, and one agreement was signed by the NRC Staff, *see id.*, and they allegedly “acknowledge [Mr. Epstein’s] special interest in overseeing [TMI-2].” *Id.* Mr. Epstein argues that these documents demonstrate his standing pursuant to the principle that “*pro se* petitioners are held to less rigid pleading standards so that parties with a clear — but imperfectly stated — interest in the proceeding are not excluded.” *Id.* (quoting *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-17-7, 86 NRC 59, 77 (2017)).

Although Mr. Epstein avers that he was unable to locate the settlement agreements when he filed his *pro se* pleadings,<sup>40</sup> he was — in our view — required to at least mention them. Having failed to do so, he is foreclosed from relying on them in the first instance at this late date. The principle that a licensing board should be lenient in construing a *pro se* petitioner’s pleadings does not give Mr. Epstein license to disregard procedural rules that are applicable to all parties and designed to promote fair and efficient adjudication. *See Turkey Point*, CLI-15-25, 82 NRC at 397 n.53 (“[A]lthough we afford some leniency to *pro se* petitioners, . . . we expect [them] to fulfill the obligations imposed by our rules.”); *accord Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 230 (2020).

Even were we to grant Mr. Epstein’s untimely request to file these documents, however, our conclusion that he lacks standing would remain unchanged. As discussed *supra* Part II.A.1, to demonstrate standing, a petitioner bears the burden to set forth a coherent argument establishing, at an irreducible minimum, the following three elements: injury, causation, and redressability. Although Mr. Epstein purportedly has a “special interest in overseeing [TMI-2],” Motion at 5, he has not shown how that interest might be injured by the LAR and, accordingly, he has not demonstrated standing. *See Allied-General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976). As the Commission has held, “[i]t is well established that mere intellectual or academic interest in a facility or proceeding is insufficient, in and of itself, to demonstrate standing.” *Peach Bottom*, CLI-05-26, 62 NRC at 580;<sup>41</sup> *see also Sierra Club v. Morton*, 405 U.S. at 739 (“[A] mere ‘interest in a

---

<sup>40</sup> *But see* TMI-2 Solutions’ Answer to Motion at 12 n.39 (stating that “upon receipt of [Mr. Epstein’s] Motion, TMI-2 Solutions readily located both settlement agreements on the Internet and the NRC’s Agencywide Documents Access and Management System”).

<sup>41</sup> Mr. Epstein was the petitioner in the *Peach Bottom* proceeding to whom the Commission applied this well-established principle.

problem,’ no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization ‘adversely affected’ or ‘aggrieved’ within the meaning of the [Administrative Procedure Act.]”); *supra* Part II.A.2.b.<sup>42</sup>

### III. CONCLUSION

For the foregoing reasons, we (1) *deny* Mr. Epstein’s petition to intervene; (2) *deny* Mr. Epstein’s motion to file new contentions; and (3) *terminate* this proceeding.

Pursuant to 10 C.F.R. § 2.311, any appeal to the Commission from this Memorandum and Order must be filed within 25 days after service of this issuance. It is so ORDERED.

THE ATOMIC SAFETY AND  
LICENSING BOARD

E. Roy Hawkens, Chair  
ADMINISTRATIVE JUDGE

Nicholas G. Trikouros  
ADMINISTRATIVE JUDGE

Dr. Gary S. Arnold  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 1, 2023

---

<sup>42</sup>Mr. Epstein’s longstanding interest in TMI-2 is evidenced by his extensive participation in matters relating to TMI-2’s clean-up, defueling, and decommissioning. *See* Petition at 11-12, 14. Our conclusion that he does not meet the requirements for a hearing on this LAR does not preclude him from continuing to evince that interest by, e.g., participating in public meetings, serving on citizen advisory groups, or filing requests for a licensing action. *See* 10 C.F.R. § 2.206(a).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judge:**

**Michael M. Gibson**, Presiding Officer

**In the Matter of**

**Docket Nos. 50-255-LT-2  
50-155-LT-2  
72-007-LT  
72-043-LT-2  
(ASLBP No. 22-974-01-LT-BD01)**

**ENTERGY NUCLEAR OPERATIONS, INC.,  
ENTERGY NUCLEAR PALISADES, LLC,  
HOLTEC INTERNATIONAL, and  
HOLTEC DECOMMISSIONING  
INTERNATIONAL, LLC  
(Palisades Nuclear Plant and  
Big Rock Point Site)**

**March 22, 2023**

**CERTIFICATION OF RECORD TO COMMISSION**

This proceeding concerns an application to transfer control of four licenses: (1) the 10 C.F.R. Part 50 renewed facility operating license for the Palisades Nuclear Plant; (2) the 10 C.F.R. Part 72 general license for the Palisades Independent Spent Fuel Storage Installation; (3) the 10 C.F.R. Part 50 facility operating license for the Big Rock Point Nuclear Plant; and (4) the 10 C.F.R. Part 72 general license for the Big Rock Point Independent Spent Fuel Storage Installation. The current holders of these licenses, Entergy Nuclear Operations, Inc. and Entergy Nuclear Palisades, LLC, have joined with Holtec International, and Holtec Decommissioning International, LLC to seek Nuclear Regulatory Commission consent for the indirect transfer of control of these Part 50 and

Part 72 licenses to Holtec International and for the transfer of operating authority to Holtec Decommissioning International, LLC to conduct licensed activities at the Palisades and Big Rock Point sites. These parties also seek Nuclear Regulatory Commission approval of conforming administrative license amendments to reflect the requested transfers.

In a July 2022 Memorandum and Order, CLI-22-8, the Nuclear Regulatory Commission directed the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel to “[a]ppoint a single administrative judge . . . to serve as the Presiding Officer to take all necessary actions to compile, complete, and certify the hearing record, including presiding over any oral hearing.”<sup>1</sup> The Commission also stated in CLI-22-8 that (1) the scope of the oral hearing was to be limited to four specific issues set forth in CLI-22-8; (2) the Presiding Officer was to endeavor to adhere to the Model Milestones governing the conduct of a license transfer proceeding to the extent practicable; and (3) the Presiding Officer was to certify the hearing record to the Commission within twenty-five days of the conclusion of the hearing.<sup>2</sup>

Following the Presiding Officer’s July 2022 appointment,<sup>3</sup> and after a period of discovery by the parties in the proceeding, the Presiding Officer held an evidentiary hearing in Rockville, Maryland on February 8 and 9, 2023. After corrections to the transcript of the hearing were made, the evidentiary record of the proceeding was closed on February 28, 2023.

Consistent with 10 C.F.R. § 2.1320(b)(3) and the Commission’s directions in CLI-22-8, as the Presiding Officer in this proceeding I hereby certify to the Commission for its final decision the record of this proceeding, which includes

---

<sup>1</sup> *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1 (2021).

<sup>2</sup> *See id.* at 104, 106.

<sup>3</sup> *See* Entergy Nuclear Operations, Inc., Entergy Nuclear Palisades, LLC, Holtec International, and Holtec Decommissioning International, LLC (Palisades Nuclear Plant and Big Rock Point Site); Establishment of Atomic Safety and Licensing Board, 87 Fed. Reg. 43,909 (July 22, 2022); *see also* Entergy Nuclear Operations, Inc., Entergy Nuclear Palisades, LLC, HOLTEC International, and HOLTEC Decommissioning International, LLC (Palisades Nuclear Plant and Big Rock Point Site); Notice of Atomic Safety and Licensing Board Reconstitution, 88 Fed. Reg. 2645 (Jan. 17, 2023).

all documents filed from and after the issuance of CLI-22-8, as enumerated in the attached chart.<sup>4</sup>

THE ATOMIC SAFETY AND  
LICENSING BOARD

Michael M. Gibson  
PRESIDING OFFICER

Rockville, Maryland  
March 22, 2023

---

<sup>4</sup> All documents listed in the accompanying record are available in the NRC's Electronic Hearing Docket at <https://adams.nrc.gov/ehd>. Nonetheless, documents in the record labeled "Non Publicly Available" can be accessed only by (1) the Nuclear Regulatory Commission, the Office of Commission Appellate Adjudication, and the Atomic Safety and Licensing Board Panel personnel; and (2) the NRC Staff and the parties to this proceeding pursuant to the Presiding Officer's August 2022 protective order. *See* Presiding Officer Order (Protective Order Governing Disclosure of Proprietary Materials) (Aug. 31, 2022) at 1 & n.1 (unpublished).

**RECORD OF *ENTERGY NUCLEAR OPERATIONS, INC.,  
ENTERGY NUCLEAR PALISADES, LLC, HOLTEC  
INTERNATIONAL, AND HOLTEC DECOMMISSIONING  
INTERNATIONAL, LLC* PROCEEDING COMMENCING  
WITH THE ISSUANCE OF CLI-22-8**

<b>Commission and Board Orders</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22196A108	7/15/2022	Commission Memorandum and Order (CLI-22-8)	Publicly Available
ML22199A196	7/18/2022	Establishment of Atomic Safety and Licensing Board	Publicly Available
ML22202A062	7/21/2022	Notice of Conference Call (Scheduling Prehearing Conference to Discuss Matters Relating to Case Scheduling and Management)	Publicly Available
ML22209A099	7/28/2022	Order (Granting Joint Motion for Extension of Time to Provide Initial Disclosures)	Publicly Available
ML22220A093	8/8/2022	Order (Granting Joint Proposed Schedule)	Publicly Available
ML22243A145	8/31/2022	Order (Protocols Governing Mandatory Disclosures)	Publicly Available
ML22243A157	8/31/2022	Order (Protective Order Governing Disclosure of Proprietary Materials)	Publicly Available
ML22243A168	8/31/2022	Memorandum and Order (Scheduling and Case Management Order)	Publicly Available
ML22340A468	12/6/2022	Order (Granting Motion Regarding Confidential Exhibits)	Publicly Available

<b>Commission and Board Orders (Continued)</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22348A186	12/14/2022	Order (Providing Schedule for Timely Responses)	Publicly Available
ML22356A150	12/22/2022	Order (Granting Motion Regarding Amended Protective Order)	Publicly Available
ML22356A153	12/22/2022	Order (Amended Protective Order Governing Disclosure of Proprietary Materials)	Publicly Available
ML22362A096	12/28/2022	Order (Granting Joint Motion to Extend Deadline for Motion to Strike)	Publicly Available
ML23010A145	1/10/2023	Notice of Atomic Safety and Licensing Board Reconstitution	Publicly Available
ML23012A177	1/12/2023	Order (Scheduling Status Conference Call)	Publicly Available
ML23019A086	1/19/2023	Order (Providing Notice of Hearing)	Publicly Available
ML23020A113	1/20/2023	Order (Amending Notice of Hearing)	Publicly Available
ML23058A302	2/27/2023	Order (Denying in Part and Granting in Part Applicants' Renewed Motion to Strike)	Publicly Available
ML23058A395	2/27/2023	Order (Adopting Transcript Corrections and Closing Evidentiary Record)	Publicly Available
ML23059A370	2/28/2023	Order (Amending Order Adopting Transcript Corrections and Closing Evidentiary Record)	Publicly Available
ML23080A257	3/21/2023	Order (Adding the Parties' Proposed Questions to the Official Record)	Non-publicly Available



<b>Transcripts</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22215A231	8/3/2022	Transcript of Entergy Nuclear Operations, et al., Hearing, July 27, 2022, Pages 1-19	Publicly Available
ML23020A072	1/20/2023	18 January 2023 Hearing Transcript	Publicly Available
ML23044A330	2/8/2023	February 8, 2023 Hearing Transcript	Non-publicly Available
ML23044A396	2/9/2023	February 9, 2023 Hearing Transcript	Non-publicly Available

<b>Hearing Files and Discovery</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22287A057	10/14/2022	NRC Staff Initial Disclosures	Publicly Available
ML22287A160	10/14/2022	MIAG [Michigan Attorney General] Initial Disclosures	Publicly Available
ML22287A172	10/14/2022	Applicants' Certification of Initial Mandatory Disclosures	Publicly Available
ML22319A177	11/15/2022	NRC Staff November 2022 Disclosures Update	Publicly Available
ML22319A227	11/15/2022	Applicants' Certification of Supplemental Mandatory Disclosures	Publicly Available
ML22349A644	12/15/2022	Certification [by Applicants] of Second Supplemental Mandatory Disclosures Pursuant to 10 C.F.R. 2.336	Publicly Available
ML22349A674	12/15/2022	NRC Staff December 2022 Disclosures Update	Publicly Available

<b>Hearing Files and Discovery (Continued)</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML23017A050	1/17/2023	NRC Staff January 2023 Disclosures Update	Publicly Available
ML23017A169	1/17/2023	Certification [by Applicants] of Third Supplemental Mandatory Disclosures Pursuant to 10 CFR 2.336	Publicly Available
ML23046A316	2/15/2023	Certification [by Applicants] of Fourth Supplemental Mandatory Disclosures Pursuant to 10 CFR 2.336	Publicly Available
ML23046A352	2/15/2023	Notification of NRC Staff February 2023 Disclosures Update	Publicly Available

<b>Legal Pleadings and Motions</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22203A136	7/22/2022	Joint Motion for Extension of Time to Provide Initial Disclosures	Publicly Available
ML22217A031	8/5/2022	Joint Proposed Schedule	Publicly Available
ML22238A330	8/26/2022	Joint Motion Regarding Mandatory Disclosures and Proposed Protective Order	Publicly Available

<b>Legal Pleadings and Motions (Continued)</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22256A055	9/13/2022	Michigan AG [Attorney General] Discovery Request to Entergy and Holtec for Documents re NRC Atomic Safety Licensing Board Administrative Judge Paul S. Ryerson's August 31, 2022 Order Regarding Protocols Governing Mandatory Disclosures	Publicly Available
ML22322A159	11/18/2022	NRC Staff Position on the Applicability of the 10 CFR 50.75 Minimum Funding Requirement to the License Transfer Application	Publicly Available
ML22322A200	11/18/2022	Michigan Attorney General's Initial Written Statements of Position and Written Testimony with Supporting Affidavit	Non-publicly Available
ML22322A324	11/18/2022	Applicants' Initial Statement of Position on Michigan Attorney General Contentions	Non-publicly Available
ML23004A082	11/18/2022	Applicants' Redacted Initial Statement of Position on Michigan Attorney General Contentions	Publicly Available
ML23004A151	11/18/2022	[Redacted] Michigan Attorney General's Initial Written Statements of Position and Written Testimony with Supporting Affidavit	Publicly Available

<b>Legal Pleadings and Motions (Continued)</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22339A097	12/5/2022	Unopposed Motion Regarding Confidential Exhibits	Non-publicly Available
ML22350A747	12/16/2022	Michigan Attorney General's Written Responses and Rebuttal Testimony with Supporting Affidavit	Non-publicly Available
ML22350A788	12/16/2022	Applicants' Response to Michigan Attorney General's Initial Statement of Position and Testimony	Non-publicly Available
ML23004A083	12/16/2022	Applicants' Redacted Response to Michigan Attorney General's Initial Statement of Position and Written Testimony	Publicly Available
ML23004A152	12/16/2022	Redacted Michigan Attorney General's Written Responses and Rebuttal Testimony with Supporting Affidavit	Publicly Available
ML22354A162	12/20/2022	Joint Motion Regarding Amended Protective Order	Publicly Available
ML22361A181	12/27/2022	Applicants' Response to the Environmental Law and Policy Center's Request for Public Access	Publicly Available
ML22361A954	12/27/2022	Joint Motion to Extend Deadline for Motion to Strike	Publicly Available

<b>Legal Pleadings and Motions (Continued)</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML23003A813	1/3/2023	Applicants' Motion to Strike Portions of Michigan Attorney General's Written Responses and Rebuttal Testimony of Nicholas J. Capik	Non-publicly Available
ML23009B768	1/9/2023	Michigan Attorney General's Response to Applicants' Motion to Strike	Non-publicly Available
ML23027A126	1/27/2023	Michigan Attorney General's Written Concluding Statements of Position on the Issues	Non-publicly Available
ML23027A242	1/27/2023	Applicants' Concluding Statement of Position on Michigan Attorney General Contentions	Non-publicly Available
ML23044A471	1/27/2023	MIAG [Michigan Attorney General's Redacted Version of its Written] Concluding Statement [of Position on the Issues]	Publicly Available
ML23044A478	1/27/2023	Redacted Version of Applicants' Concluding Statement of Position on Michigan Attorney General Contentions	Publicly Available
ML23053A168	2/22/2023	Joint Motion to Close the Hearing Record	Publicly Available
ML23058A203	2/27/2023	Joint Motion for the Correction of Hearing Transcript	Publicly Available
ML23079A253	3/20/2023	Michigan Attorney General's Post-Hearing Statement of Position	Non-publicly Available

<b>Legal Pleadings and Motions (Continued)</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML23079A282	3/20/2023	Applicants' Post-Hearing Statement of Position on Michigan Attorney General Contentions	Non-publicly Available

<b>Legal Correspondence and Miscellaneous Filings</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22208A190	7/27/2022	Notice of Appearance and Substitution of Counsel for Holtec Applicants	Publicly Available
ML22213A224	8/1/2022	Notification That the NRC Staff Is not Participating as a Party	Publicly Available
ML22222A106	8/10/2022	Notice of Withdrawal of Margrethe Kearney	Publicly Available
ML22272A583	9/29/2022	Applicants' Notice Regarding Conduct of Discovery	Publicly Available
ML22342A427	9/30/2022	Nondisclosure Declaration for Susan H. Raimo of Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc.	Publicly Available
ML22342A425	10/4/2022	Nondisclosure Declaration for David R. Lewis of Pillsbury Winthrop Shaw Pittman, LLP; representing Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc.	Publicly Available

<b>Legal Correspondence and Miscellaneous Filings (Continued)</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22342A423	10/5/2022	Nondisclosure Declaration for Anne R. Leidich of Pillsbury Winthrop Shaw Pittman, LLP; representing Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc.	Publicly Available
ML22342A429	10/5/2022	Nondisclosure Declaration for Joel B. King of the State of Michigan Department of Attorney General	Publicly Available
ML22342A430	10/5/2022	Nondisclosure Declaration for Michael E. Moody of the State of Michigan Department of Attorney General	Publicly Available
ML22342A426	10/10/2022	Nondisclosure Declaration for Alan D. Lovett of Balch and Bingham, LLC representing Holtec Decommissioning International, LLC, and Holtec International	Publicly Available
ML22342A428	10/10/2022	Nondisclosure Declaration for Jason Tompkins of Balch & Bingham, LLC representing Holtec Decommissioning International, LLC, and Holtec International	Publicly Available

<b>Legal Correspondence and Miscellaneous Filings (Continued)</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22342A431	10/10/2022	Nondisclosure Declaration for Jason Day of Holtec Decommissioning International, LLC, and Holtec International	Publicly Available
ML22290A207	10/17/2022	Notice of Substitution of Caroline Cox	Publicly Available
ML22290A209	10/17/2022	Notice of Substitution of Robert Kelter	Publicly Available
ML22322A014	11/18/2022	Notice of Appearance for Laura Shrum	Publicly Available
ML22322A062	11/18/2022	NOA [Notice of Appearance] for Anita Ghosh Naber	Publicly Available
ML22322A326	11/18/2022	2.309 Affidavit of J. Day	Publicly Available
ML22322A327	11/18/2022	2.309 Affidavit of S. Raimo	Publicly Available
ML22322A328	11/18/2022	Applicants' Certificate of Service	Publicly Available
ML22343A174	12/9/2022	Nondisclosure Declaration of Amanda Churchill, MI Dept of Attorney General	Publicly Available
ML22348A166	12/14/2022	E-Mail and Letter from the Environmental Law and Policy Center	Publicly Available
ML22350A797	12/16/2022	Applicants' Certificate of Service	Publicly Available
ML23004A084	1/4/2023	Certificate of Service for Applicants' Redacted Statements	Publicly Available
ML23017A178	1/17/2023	Notice of Appearance of Adam K. Israel	Publicly Available
ML23017A179	1/17/2023	Notice of Appearance of Samantha J. Renshaw	Publicly Available



<b>Legal Correspondence and Miscellaneous Filings (Continued)</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML23017A180	1/17/2023	Adam Israel Nondisclosure Declaration	Publicly Available
ML23017A181	1/17/2023	Samantha Renshaw Nondisclosure Declaration	Publicly Available
ML23017A182	1/17/2023	Certificate of Service [of Samantha Renshaw]	Publicly Available
ML23031A234	1/31/2023	Transmittal Letter and Redline of Revised Pre-filed Direct Testimony of Allen Goulette	Non-publicly Available
ML23031A238	1/31/2023	Certificate of Service for Applicant Updated Exhibit List and Exhibit HOL004-R	Non-publicly Available
ML23031A251	1/31/2023	Nondisclosure Agreements	Publicly Available
ML23032A491	2/1/2023	Certificate of Service for Presiding Officer Exhibit (PSO001)	Publicly Available
ML23037A058	2/6/2023	Certificate of Service [of Jeremy Wachutka]	Publicly Available
ML23038A123	2/7/2023	Certificate of Service for Presiding Officer Exhibits (PSO002 and PSO003)	Publicly Available
ML23040A341	2/9/2023	Certificate of Service for Presiding Officer Exhibit (PSO004)	Publicly Available
ML23044A480	2/13/2023	Certificate of Service [of Alan Lovett]	Publicly Available

<b>Exhibit List</b>			
<b>Accession Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22322A073	11/18/2022	NRC Staff Exhibit List	Publicly Available
ML22322A213	11/18/2022	Michigan Attorney General Hearing Exhibit List	Non-publicly Available
ML22322A251	11/18/2022	Evidentiary Hearing Exhibit List	Non-publicly Available
ML22350A754	12/16/2022	State of MI Attorney General Rebuttal Exhibit List	Non-publicly Available
ML22350A789	12/16/2022	Applicants' Revised Evidentiary Hearing Exhibit List in the Matter of Palisades Nuclear Plant and Big Rock Point Site	Non-publicly Available
ML23031A236	1/31/2023	Applicants' Revised Exhibit List 1.31.2023	Non-publicly Available
ML23037A057	2/6/2023	NRC Staff Revised Exhibit List	Publicly Available

<b>Pre-filed Exhibits not Identified</b>				
<b>Accession Number</b>	<b>Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22322A265	HOL004	11/18/2022	HOL004 — Pre-filed Direct Testimony of Allen Goulette	Non-publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22322A252	HOL001-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL001-00-BD01 — NON-PUBLIC — Pre-Filed Direct Testimony of Frank C. Graves	Non-publicly Available
ML22322A263	HOL002-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL002-00-BD01 — NON-PUBLIC — Pre-Filed Direct Testimony of Christopher F. Tierney	Non-publicly Available
ML22322A264	HOL003-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL003-00-BD01 — NON-PUBLIC — Pre-Filed Direct Testimony of James B. Buckley, Jr.	Non-publicly Available
ML23031A237	HOL004-R-00-BD01	1/31/2023	OFFICIAL EXHIBIT — HOL004-R-00-BD01 — NON-PUBLIC — Revised Pre-filed Direct Testimony of Allen Goulette	Non-publicly Available
ML22322A271	HOL005-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL005-00-BD01 — Curriculum Vitae of Frank C. Graves	Publicly Available
ML22322A266	HOL006-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL006-00-BD01 — NON-PUBLIC — Brattle Holtec Acceptance Model	Non-publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22322A272	HOL007-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL007-00-BD01 — U.S. Department of Energy Contract No. De-Cr01-83ne44374 Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste for Palisades Nuclear Plant and Big Rock Point Site (June 3, 1983)	Publicly Available
ML22322A273	HOL008-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL008-00-BD01 — Blue Ribbon Commission on America's Nuclear Future's Report to the Secretary of Energy (Jan. 2012)	Publicly Available
ML22322A274	HOL009-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL009-00-BD01 — Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste (Jan. 2013)	Publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22322A275	HOL010-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL010-00-BD01 — Mission Plan for the Civilian Radioactive Waste Management Program (June 1985)	Publicly Available
ML22322A276	HOL011-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL011-00-BD01 — OCRWM Mission Plan Amendment (June 1987)	Publicly Available
ML22322A277	HOL012-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL012-00-BD01 — Office of Civilian Radioactive Waste Management Annual Capacity Report (June 1987)	Publicly Available
ML22322A278	HOL013-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL013-00-BD01 — Curriculum Vitae of Christopher F. Tierney	Publicly Available
ML22322A267	HOL014-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL014-00-BD01 — NON-PUBLIC — Entergy 50.75 Formula Amount Worksheet	Non-publicly Available
ML22322A279	HOL015-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL015-00-BD01 — Resume of James B. Buckley, Jr.	Publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22322A268	HOL016-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL016-00-BD01 — NON-PUBLIC — Decommissioning Cost Analysis for the Palisades Nuclear Plant Prepared for Entergy Nuclear Operations, Inc. Prepared by TLG Services, Inc. (June 2015)	Non-publicly Available
ML22322A269	HOL017-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL017-00-BD01 — NON-PUBLIC — Palisades Waste Bases of Estimate Workpapers	Non-publicly Available
ML22322A270	HOL018-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL018-00-BD01 — NON-PUBLIC — Palisades Activation Analysis and Component Characterization Prepared for Entergy Nuclear Operations, Inc. Prepared by WMG	Non-publicly Available
ML22322A253	HOL019-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL019-00-BD01 — NON-PUBLIC — Palisades Nuclear Power Plant Agreement	Non-publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22322A254	HOL020-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL020-00-BD01 — NON-PUBLIC — Palisades Nuclear Power Station General Services Agreement	Non-publicly Available
ML22322A280	HOL021-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL021-00-BD01 — Resume of Allen Goulette	Publicly Available
ML22322A255	HOL022-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL022-00-BD01 — NON-PUBLIC — HDI Palisades Cost Model	Non-publicly Available
ML22322A256	HOL023-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL023-00-BD01 — NON-PUBLIC — HDI Palisades Risk Register	Non-publicly Available
ML22322A257	HOL024-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL024-00-BD01 — NON-PUBLIC — HDI Palisades Risk Modeling Input File	Non-publicly Available
ML22322A258	HOL025-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL025-00-BD01 — NON-PUBLIC — HDI Palisades Risk Modeling Output File	Non-publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22322A259	HOL026-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL026-00-BD01 — NON-PUBLIC — HDI Palisades Estimation Uncertainty High-Low Range Input File	Non-publicly Available
ML22322A260	HOL027-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL027-00-BD01 — NON-PUBLIC — HDI Palisades Uncertainty Modeling Output File	Non-publicly Available
ML22322A261	HOL028-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL028-00-BD01 — NON-PUBLIC — HDI Palisades Assumptions Workpapers	Non-publicly Available
ML22322A262	HOL029-00-BD01	11/18/2022	OFFICIAL EXHIBIT — HOL029-00-BD01 — NON-PUBLIC — HDI Palisades Cash Flow Tables	Non-publicly Available
ML22350A790	HOL030-00-BD01	12/16/2022	OFFICIAL EXHIBIT — HOL030-00-BD01 — NON-PUBLIC — Pre-filed Rebuttal Testimony of Frank C. Graves	Non-publicly Available



<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22350A791	HOL031-00-BD01	12/16/2022	OFFICIAL EXHIBIT — HOL031-00-BD01 — NON-PUBLIC — Pre-filed Rebuttal Testimony of Christopher F. Tierney	Non-publicly Available
ML22350A792	HOL032-00-BD01	12/16/2022	OFFICIAL EXHIBIT — HOL032-00-BD01 — NON-PUBLIC — Pre-filed Rebuttal Testimony of James B. Buckley, Jr.	Non-publicly Available
ML22350A793	HOL033-00-BD01	12/16/2022	OFFICIAL EXHIBIT — HOL033-00-BD01 — NON-PUBLIC — Pre-filed Rebuttal Testimony of Allen Goulette	Non-publicly Available
ML22350A794	HOL034-00-BD01	12/16/2022	OFFICIAL EXHIBIT — HOL034-00-BD01 — NON-PUBLIC — Brattle Rebuttal Workpapers (native Excel file provided via CD)	Non-publicly Available
ML22350A795	HOL035-00-BD01	12/16/2022	OFFICIAL EXHIBIT — HOL035-00-BD01 — NON-PUBLIC — AACE International Recommended Practice No. 18R-97	Non-publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22350A796	HOL036-00-BD01	12/16/2022	OFFICIAL EXHIBIT — HOL036-00-BD01 — NON-PUBLIC — AACE International Recommended Practice No. 40R-08	Non-publicly Available
ML22322A214	MICH001-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH001-00-BD01 — NON-PUBLIC — Testimony of Nicholas Capik	Non-publicly Available
ML22322A219	MICH002-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH002-00-BD01 — NON-PUBLIC — Resume of Nicholas Capik	Non-publicly Available
ML22322A220	MICH003-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH003-00-BD01 — NON-PUBLIC — MIAG [Michigan Attorney General] Discovery Request	Non-publicly Available
ML22322A221	MICH004-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH004-00-BD01 — NON-PUBLIC — Palisades PSDAR/DCE	Non-publicly Available
ML22322A222	MICH005-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH005-00-BD01 — NON-PUBLIC — PGE Appeal 07-5046	Non-publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22322A224	MICH006-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH006-00-BD01 — NON-PUBLIC — Updated EIA Survey	Non-publicly Available
ML22322A225	MICH007-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH007-00-BD01 — NON-PUBLIC — GAO-12-258 Report	Non-publicly Available
ML22322A226	MICH008-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH008-00-BD01 — NON-PUBLIC — 2021 Decommissioning Status Report	Non-publicly Available
ML22322A227	MICH009-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH009-00-BD01 — NON-PUBLIC — NUREG 1757, Vol 3, Rev 1	Non-publicly Available
ML22322A235	MICH010-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH010-00-BD01 — NON-PUBLIC — NUREG/CR-6477	Non-publicly Available
ML22322A236	MICH011-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH011-00-BD01 — NON-PUBLIC — IP PSDAR/DCE	Non-publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22322A237	MICH012-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH012-00-BD01 — NON-PUBLIC — Oyster Creek PSDAR/DCE	Non-publicly Available
ML22322A238	MICH013-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH013-00-BD01 — NON-PUBLIC — Pilgrim PSDAR/DCE	Non-publicly Available
ML22322A239	MICH014-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH014-00-BD01 — NON-PUBLIC — PAL-003557 Agreement	Non-publicly Available
ML22322A240	MICH015-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH015-00-BD01 — NON-PUBLIC — NorthStar MOU	Non-publicly Available
ML22322A241	MICH016-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH016-00-BD01 — NON-PUBLIC — Vermont Yankee SER	Non-publicly Available
ML22322A242	MICH017-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH017-00-BD01 — NON-PUBLIC — ANS Article	Non-publicly Available
ML22322A243	MICH018-00-BD01	11/18/2022	OFFICIAL EXHIBIT — MICH018-00-BD01 — NON-PUBLIC — Affidavit of Nicholas Capik	Non-publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22350A755	MICH019-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH019-00-BD01 — NON-PUBLIC — Rebuttal Testimony of Nicholas Capik	Non-publicly Available
ML22350A762	MICH020-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH020-00-BD01 — NON-PUBLIC — Holtec Oyster Creek PSDAR and DCE	Non-publicly Available
ML22350A763	MICH021-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH021-00-BD01 — NON-PUBLIC — Holtec Pilgrim PSDAR and DCE	Non-publicly Available
ML22350A764	MICH022-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH022-00-BD01 — NON-PUBLIC — Indian Point PSDAR and DCE	Non-publicly Available
ML22350A765	MICH023-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH023-00-BD01 — NON-PUBLIC — Holtec 2019 Oyster Creek Effluent Report	Non-publicly Available
ML22350A766	MICH024-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH024-00-BD01 — NON-PUBLIC — Holtec 2020 Oyster Creek Effluent Report	Non-publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22353A540	MICH025-00-BD01	12/19/2022	OFFICIAL EXHIBIT — MICH025-00-BD01 — NON-PUBLIC — 2021 Oyster Creek Effluent Report	Non-publicly Available
ML22353A541	MICH026-00-BD01	12/19/2022	OFFICIAL EXHIBIT — MICH026-00-BD01 — NON-PUBLIC — Holtec 2019 Pilgrim Effluent Report	Non-publicly Available
ML22350A769	MICH027-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH027-00-BD01 — NON-PUBLIC — Holtec 2020 Pilgrim Effluent Report	Non-publicly Available
ML22350A756	MICH028-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH028-00-BD01 — NON-PUBLIC — Holtec 2021 Pilgrim Effluent Report	Non-publicly Available
ML22350A757	MICH029-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH029-00-BD01 — NON-PUBLIC — May 23, 2022 Holtec Pilgrim NDCAP Presentation	Non-publicly Available
ML22350A758	MICH030-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH030-00-BD01 — NON-PUBLIC — 2013 DOE Study	Non-publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML22350A759	MICH031-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH031-00-BD01 — NON-PUBLIC — September 19, 2022 NorthStar Vermont NDCAP Presentation	Non-publicly Available
ML22350A760	MICH032-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH032-00-BD01 — NON-PUBLIC — 2008 Exelon Letter	Non-publicly Available
ML22350A761	MICH033-00-BD01	12/16/2022	OFFICIAL EXHIBIT — MICH033-00-BD01 — NON-PUBLIC — Affidavit of Nicholas Capik	Non-publicly Available
ML22322A072	NRC001-00-BD01	11/18/2022	OFFICIAL EXHIBIT — NRC001-00-BD01 — Safety Evaluation Related to Request for Direct and Indirect Transfers of Control of Facility OL DPR-6 for Big Rock Point and Renewed Facility OL DPR-20 for Palisades Nuclear Plant and ISFSI (EPID L-2020-LLM-0003)	Publicly Available

<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML23037A055	NRC002-00-BD01	2/6/2023	OFFICIAL EXHIBIT — NRC002-00-BD01 — Statement of Professional Qualifications of Shawn W. Harwell	Publicly Available
ML23037A056	NRC003-00-BD01	2/6/2023	OFFICIAL EXHIBIT — NRC003-00-BD01 — Statement of Professional Qualifications of Richard H. Turtill	Publicly Available
ML23032A490	PSO001-00-BD01	2/1/2023	OFFICIAL EXHIBIT — PSO001-00-BD01 — Oyster Creek Nuclear Generating Station; Pilgrim Nuclear Power Station; and Indian Point Nuclear Generating Stations 1, 2, & 3 — Report on Status of Decommissioning Funding for Reactors and ISFSI — Holtec	Publicly Available



<b>Exhibits Identified and Admitted on February 8, 2023 (Continued)</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML23038A121	PSO002-00-BD01	2/7/2023	OFFICIAL EXHIBIT — PSO002-00-BD01 — 79 Federal Register No. 103 (2014) Nuclear Regulatory Commission: Notices: License Exemption Request for Dominion Energy Kewaunee, Inc.: [FR DOC # 2014-12486]	Publicly Available
ML23038A122	PSO003-00-BD01	2/7/2023	OFFICIAL EXHIBIT — PSO003-00-BD01 — Kewaunee Power Station — Supplement to Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv)	Publicly Available

<b>Exhibits Identified and Admitted on February 9, 2023</b>				
<b>Accession Number</b>	<b>Official Exhibit Number</b>	<b>Document Date</b>	<b>Title</b>	<b>Availability</b>
ML23040A339	PSO004-00-BD01	2/9/2023	OFFICIAL EXHIBIT — PSO004-00-BD01 — USDOE Office of Civilian Radioactive Waste Management Acceptance Priority Ranking and Annual Capacity Report, March 1995	Publicly Available

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judges:**

**G. Paul Bollwerk, III, Chair**  
**Dr. Gary S. Arnold**  
**Dr. Sue H. Abreu**

**In the Matter of**

**Docket Nos. 50-445-LR**  
**50-446-LR**  
**(ASLBP No. 23-978-01-LR-BD01)**

**VISTRA OPERATIONS COMPANY, LLC**  
**(Comanche Peak Nuclear Power**  
**Plant, Units 1 and 2)**

**June 7, 2023**

In this proceeding concerning an application by Vistra Operations Company, LLC, for the initial renewal of the 10 C.F.R. Part 50 operating licenses for its Comanche Peak Nuclear Power Plant, Units 1 and 2, the Licensing Board denies petitioner Citizens for Fair Utility Regulation's (CFUR) hearing request, concluding that while CFUR has established representational standing, none of its four contentions meets the admissibility standards of 10 C.F.R. § 2.309(f)(1).

**LICENSE RENEWAL: SCOPE OF APPLICATION (SAFETY REVIEW)**

The contents of a license renewal application as specified in 10 C.F.R. Part 54 reflect the scope of review necessary to support an agency determination whether to grant such an application. In that regard, in promulgating and interpreting Part 54 the Commission has made it clear that the Atomic Energy Act (AEA)-associated safety aspect of "[t]he license renewal review is not intended to duplicate the Nuclear Regulatory Commission's (NRC) ongoing oversight of operating reactors," but rather is "to ensure that the licensee can successfully

manage the detrimental effects of aging.” *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 347 (2015).

**LICENSE RENEWAL: SCOPE OF APPLICATION (SAFETY REVIEW)**

**RULES OF PRACTICE: WAIVER OF RULES OR REGULATIONS**

The upshot of the Part 54 regulatory approach, according to the Commission, is to place the “focus on whether the licensee can manage the effects of aging on certain long-lived, passive components that are important to safety.” *Id.* (citations omitted). By the same token, the Commission deems “unnecessary and wasteful” contentions that challenge the plant’s current licensing basis because the NRC already has in place “ongoing agency oversight, review, and enforcement” processes associated with operational issues. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7, 9 (2001). Accordingly, a challenge concerning safety issues associated with a plant’s current licensing basis, including the facility’s final safety evaluation report and other information reflecting the licensee’s commitments to ensuring compliance with applicable agency regulatory requirements, is beyond the permissible scope of a license renewal proceeding and so cannot be the subject of a license renewal adjudicatory hearing in the absence of a 10 C.F.R. § 2.335 waiver petition. *See id.* at 10.

**LICENSE RENEWAL: SCOPE OF APPLICATION (ENVIRONMENTAL REVIEW)**

**RULES OF PRACTICE: WAIVER OF RULES OR REGULATIONS**

Abbreviated as well is the permissible scope of the environmental review for a power plant license renewal. As Appendix B to subpart A of Part 51 makes clear, “[t]he Commission has assessed the environmental impacts associated with granting a renewed operating license for a nuclear power plant . . . [and] Table B-1 summarizes the Commission’s findings on the scope and magnitude of environmental impacts” that the National Environmental Policy Act (NEPA) requires to be addressed. 10 C.F.R. pt. 51, subpart A, app. B. Table B-1, in turn, indicates that the “[d]ata supporting this table are contained in NUREG-1437, Revision 1, ‘Generic Environmental Impact Statement for License Renewal of Nuclear Plants (June 2013)’” and that for Category 1 items, “[t]he generic analysis of the issue may be adopted in each plant-specific review.” *Id.* tbl. B-1 nn.1-2. Commission caselaw establishes that an adjudicatory challenge based on an applicant’s alleged failure to deal appropriately with a Category 1 item

constitutes an attack on an agency rule, making a section 2.335(b) waiver the sole vehicle for raising such an issue in an adjudication. *See Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 20 (2007) (citing *Turkey Point*, CLI-01-17, 54 NRC at 11-13).

**RULES OF PRACTICE: STANDING TO INTERVENE  
(REQUIREMENT FOR INDEPENDENT PRESIDING OFFICER  
DETERMINATION)**

A licensing board must determine independently whether a petitioner has fulfilled the requirements to establish standing to intervene in this proceeding. *See* 10 C.F.R. § 2.309(d)(2); *see also Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 491 (2019), *aff'd on other grounds*, CLI-20-11, 92 NRC 335 (2020).

**RULES OF PRACTICE: STANDING (REPRESENTATIONAL)**

An organization's standing to participate in an NRC proceeding based on its representation of interests of one or more individuals depends, in turn, on the standing of the individuals being represented and on the organization's ability to establish its standing in a representational capacity. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999); *see also Entergy Nuclear Operations, Inc. and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 263-65 (2008) (finding unions are not inherently representative, concludes union seeking to intervene in license transfer proceeding must satisfy representational standing criteria).

**RULES OF PRACTICE: STANDING (REPRESENTATIONAL)**

The Commission has noted that to establish representational standing under section 2.309(d)(1)

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 [them] and to request a hearing on [their] 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.

*Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237-38 & n.83 (2020) (footnote omitted) (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015)). The Commission also has explained that “[w]hile we will construe the hearing request in the petitioner’s favor, the petitioner has the burden of demonstrating that the standing requirements are met.” *Vogtle*, CLI-20-6, 91 NRC at 238.

#### **RULES OF PRACTICE: STANDING TO INTERVENE (TRADITIONAL REQUIREMENTS)**

Traditional judicial standing requires that a petitioner show (1) an actual or threatened, concrete and particularized injury (injury in fact); (2) that is fairly traceable to the challenged action (causation); (3) that falls within the zone of interests protected by the statutes that govern the agency’s proceedings (such as the AEA or NEPA) (zone of interests); and (4) that is likely to be redressed by a favorable decision (redressability). See *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1995); see also *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009).

#### **RULES OF PRACTICE: STANDING (PROXIMITY PRESUMPTION)**

In certain proceedings, including initial and subsequent license renewal proceedings, an organization’s representational standing can be established using the proximity presumption based on a showing that at least one individual who designates the group as their representative lives within fifty miles of the facility that is the subject of the proceeding. See, e.g., *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-3, 89 NRC 245, 258-59 (2019) (subsequent license renewal), *appeal dismissed and referred ruling aff’d*, CLI-20-3, 91 NRC 133 (2020), *rev’d on reconsideration*, CLI-22-2, 95 NRC 26 (2022). The proximity presumption, which relieves a petitioner of the need to satisfy the traditional standing elements of injury in fact, causation, and redressability, “rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility.” *Exelon Generation Co., LLC and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580 (2005).

**RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

A contention submitted by a hearing requestor must satisfy the following six admissibility factors set forth in section 2.309(f)(1)(i)-(iv). As the Commission recently observed relative to each of these elements:

To be admissible, a contention must provide a specific statement of the issue of law or fact to be raised or controverted and provide a brief explanation of its basis. The contention must also raise issues within the scope of the proceeding and material to the findings that the NRC must make. And it must include a concise statement of the alleged facts or expert opinions supporting the contention and sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. These contention admissibility requirements are intended to ensure that adjudicatory hearings are triggered only by substantive safety or environmental issues that raise a supported dispute with the application on a matter material to the NRC's decision on the challenged action.

*Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-23-1, 97 NRC 81, 84 (2023) (footnotes omitted).

**LICENSING BOARD(S): SCOPE OF REVIEW (CONTENTIONS)**

**RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

The petitioner bears the burden to satisfy each of the six criteria, *see Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) (“[I]t is Petitioners’ responsibility, not the Board’s, to formulate contentions and to provide ‘the necessary information to satisfy the basis requirement’ for admission.” (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998)); a failure to comply with any of these requirements constitutes grounds for rejecting a proposed contention, *see Changes to Adjudicatory Process*, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004); *Private Fuel Storage*, CLI-99-10, 49 NRC at 325. Moreover, when a petitioner neglects to provide the requisite support for its contentions, the licensing board may not cure the deficiency by supplying that information. *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991) (indicating licensing board cannot supply missing information supporting a contention).

**LICENSING BOARD(S): SCOPE OF REVIEW (CONTENTIONS)**

**RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

A licensing board cannot admit a contention based on a document or an expert

opinion that merely states a conclusion “without providing a reasoned basis or explanation for that conclusion” or accept “bare assertions or speculation,” even by experts, as providing the requisite support for a proposed contention. *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006); *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)).

**LICENSING BOARD(S): SCOPE OF REVIEW (CONTENTIONS)**

**RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)**

In reaching a decision on the admissibility of contentions, a licensing board must apply the Commission’s contention admissibility standards that, while “strict by design,” *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118 (2006) (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 544 NRC 349, 353 (2001), *petition for reconsideration denied*, CLI-02-11, 55 NRC 1 (2002)), are intended to “properly ‘reserve our hearing process for genuine, material controversies between knowledgeable litigants,’” *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 396 (2012) (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 50 NRC 207, 219 (2003)).

**NEPA: ENVIRONMENTAL REPORT (CONTENTS); NEED FOR POWER (LICENSE RENEWAL)**

**RULES OF PRACTICE: CONTENTIONS (SCOPE OF PROCEEDING)**

Because a license renewal environmental report need not include a “discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action,” 10 C.F.R. § 51.53(c)(2), any discussion of the economic costs and benefits of facility operation is outside the permissible scope of a license renewal proceeding and thus inadmissible under section 2.309(f)(1)(iii).

**NEPA: CEQ REGULATIONS**

Absent adoption by notice and comment rulemaking into 10 C.F.R. Part 51, the NRC is not bound by the Council on Environmental Quality’s (CEQ) NEPA regulations or guidance. See *Pacific Gas and Electric Co.* (Diablo Canyon



Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011) (stating that while the Commission looks to CEQ regulations for guidance, its longstanding policy is that, as an independent regulatory agency, the NRC is not bound by those portions of the CEQ regulations that have a substantive impact on the way the Commission performs its regulatory functions); *see also* 10 C.F.R. § 51.10(a) (indicating NEPA implementing regulations in Part 51, subpart A reflect Commission policy to take into account CEQ regulations voluntarily, subject to certain conditions).

#### **RULES OF PRACTICE: CHALLENGE TO COMMISSION REGULATIONS**

Hearing petitioner's attempt to advocate for requirements stricter than or in addition to those imposed by regulation constitutes a collateral attack on the Commission's rules that requires a section 2.335 waiver. *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 394-95 & n.19 (1987) (finding that, in the absence of a waiver request showing "special circumstances," intervenor contention asserting emergency planning zone should be extended beyond ten miles from a facility impermissibly challenges rule establishing planning zone size of "about 10 miles in radius"); *see also PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 22 (2007) (citing cases).

#### **LICENSE RENEWAL: SCOPE OF APPLICATION (SAFETY REVIEW)**

#### **RULES OF PRACTICE: CONTENTIONS (SCOPE OF PROCEEDING); WAIVER OF RULES OR REGULATIONS**

Because NRC's Part 54 license renewal safety review generally focuses on "plant systems, structures, and components for which current [regulatory] activities and requirements *may not* be sufficient to manage the effects of aging in the period of extended operation," a challenge to safety issues associated with a plant's current licensing basis is, in the absence of a section 2.335 waiver, beyond the permissible scope of a license renewal proceeding and thus insufficient to support an admissible contention. *Turkey Point*, CLI-01-17, 54 NRC at 9-10 (quoting 60 Fed. Reg. at 22,469); *see* 10 C.F.R. § 2.309(f)(1)(iii).

**MEMORANDUM AND ORDER**  
**(Denying Intervention Petition and**  
**Terminating Proceeding)**

Among the last of the existing large commercial power reactors to receive Nuclear Regulatory Commission (NRC) authorization under the 10 C.F.R. Part 50 construction permit/operating licensing regime, Comanche Peak Nuclear Power Plant, Units 1 and 2 (Comanche Peak) also are among the last of those facilities eligible for an initial twenty-year license renewal under Part 54. To that end, on October 3, 2022 Vistra Operations Company, LLC (Vistra) applied to renew its Part 50 operating licenses for each of the Comanche Peak units to extend their operating authority until February 8, 2050, and February 2, 2053, respectively.<sup>1</sup>

That Comanche Peak license renewal application is now before this Licensing Board as a result of the January 30, 2023 hearing request of Citizens for Fair Utility Regulation (CFUR), as amended on March 1, 2023, challenging certain aspects of the Vistra application.<sup>2</sup> Specifically, in its four contentions CFUR contests, respectively, the sufficiency of Vistra's analysis of (1) radiation releases and exposures to the public, facility workers, and terrestrial and aquatic organisms; (2) seismic risks; (3) reactor cooling water availability in light of climate change; and (4) climate change impacts generally, including greenhouse gas emissions from facility operations. *See* CFUR Amended Petition at 11-31. While Vistra and the NRC Staff have not contested CFUR's standing to intervene in this proceeding under 10 C.F.R. § 2.309(d), both assert that CFUR has failed to proffer an admissible contention under the governing standards of section 2.309(f)(1).<sup>3</sup>

---

<sup>1</sup> *See* Letter from Steven K. Sewell, Senior Director, Vistra, to Document Control Desk, NRC at 1-2 (Oct. 3, 2022) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML22276A082). As it is contained in the agency's ADAMS document repository, the Comanche Peak renewal request consists of nearly 2300 pages that encompass the license renewal application and five appendices. Most relevant to this decision, however, are the license renewal application and its final appendix, the environment report (ER). *See id.* encl. 1 ([Comanche Peak] License Renewal Application (rev. 0 Oct. 2022)) [hereinafter License Renewal Application]; License Renewal Application app. E ([Vistra ER], Operating License Renewal Stage, Comanche Peak Nuclear Power Plant, Units 1 and 2 (Oct. 2022)) [hereinafter ER].

<sup>2</sup> *See* Petition for Leave to Intervene and Request for Hearing of [CFUR] (Jan. 30, 2023) at 9; Amended Petition for Leave to Intervene and Request for Hearing of [CFUR] (Mar. 1, 2023) at 11 [hereinafter CFUR Amended Petition]. Because CFUR's March 1, 2023 amended petition essentially superseded its January 30 filing, all references in this ruling to CFUR's hearing request will be to the amended petition.

<sup>3</sup> *See* [Vistra's] Answer Opposing the Petition for Leave to Intervene and Request for Hearing of [CFUR] (Mar. 27, 2023) at 1-2 & n.7 [hereinafter Vistra Answer]; NRC Staff's Answer Opposing [CFUR's] Hearing Request (Mar. 27, 2023) at 2 [hereinafter NRC Staff Answer].

For the reasons set forth below, the Board concludes that while CFUR has established representational standing, none of its four contentions meets the admissibility standards of section 2.309(f)(1). As a result, CFUR's hearing request must be denied and this proceeding terminated.

## I. BACKGROUND

### A. Procedural Background

The NRC published in the *Federal Register* a December 1, 2022 notice regarding Vistra's initial license renewal request for Comanche Peak that established a January 30, 2023 deadline for any hearing requests challenging the Vistra application.<sup>4</sup> On January 30, 2023, the same day a CFUR hearing petition was filed with the agency, *see supra* note 2 and accompanying text, the Secretary of the Commission issued an order in response to several requests to extend the time for submitting a hearing petition. That order postponed the hearing request filing deadline until March 1, 2023, for five individuals.<sup>5</sup> A February 6, 2023 order from the Secretary then expanded that extension to encompass all potential intervention petition filers.<sup>6</sup>

That same day, the Secretary also referred the CFUR hearing petition to the Chief Administrative Judge for further action.<sup>7</sup> Two days later, the Chief Administrative Judge assigned the petition to this Licensing Board to rule on standing and contention admissibility matters and to preside at any hearing.<sup>8</sup>

While noting the extended date for filing timely intervention petitions regarding the Vistra license renewal application, in its February 8, 2023 initial prehearing order the Board advised the participants that the usual 10 C.F.R. § 2.309(i) briefing schedule would govern the submission of Vistra/NRC Staff answers and any CFUR reply pleading, absent a request for an alternative briefing schedule.<sup>9</sup> Thereafter, in response to a February 10, 2023 Vistra/CFUR joint

---

<sup>4</sup> See [Vistra]; Comanche Peak Nuclear Power Plant, Units 1 and 2, 87 Fed. Reg. 73,798 (Dec. 1, 2022).

<sup>5</sup> See Order of the Secretary (Jan. 30, 2023) at 2 (unpublished).

<sup>6</sup> See Order of the Secretary (Feb. 6, 2023) at 2 (unpublished); *see also* In the Matter of [Vistra] (Comanche Peak Nuclear Power Plant, Units 1 and 2); Order, 88 Fed. Reg. 8481 (Feb. 9, 2023).

<sup>7</sup> See Memorandum from Brooke P. Clark, Secretary of the Commission, to E. Roy Hawkens, Chief Administrative Judge (Feb. 6, 2023).

<sup>8</sup> See Establishment of Atomic Safety and Licensing Board; [Vistra], 88 Fed. Reg. 9543 (Feb. 14, 2023).

<sup>9</sup> See Licensing Board Memorandum and Order (Initial Prehearing Order) (Feb. 8, 2023) at 2-3 (unpublished).

motion,<sup>10</sup> the Board in a February 13, 2023 memorandum and order outlined two different briefing schedules that would be applicable based on whether any new or amended hearing petitions were submitted by March 1, 2023.<sup>11</sup>

Although no additional hearing requests were lodged by March 1, 2023, CFUR timely filed an amended hearing petition on that date, thereby triggering the normal section 2.309(i) briefing schedule.<sup>12</sup> In accordance with that schedule, Vistra and NRC Staff filed answers on March 27, 2023, and CFUR filed a reply to those answers on April 3, 2023.<sup>13</sup>

Thereafter, the Board issued a series of orders outlining the schedule and procedures governing the initial prehearing conference that would provide an opportunity to hear oral presentations by participants' counsel concerning three questions posed by the Board regarding the admissibility of CFUR's four proposed contentions under the standards of section 2.309(f)(1).<sup>14</sup> That conference was conducted virtually on April 19, 2023.<sup>15</sup>

---

<sup>10</sup> See Joint Unopposed Motion of [Vistra] and [CFUR] to Adjust Briefing Schedule (Feb. 10, 2023). The NRC Staff indicated that while it did not join in the motion, it also did not oppose that request. See *id.* at 1 n.3.

<sup>11</sup> See Licensing Board Memorandum and Order (Granting in Part and Denying in Part Joint Motion to Adjust Briefing Schedule) (Feb. 13, 2023) at 2-5 (unpublished).

<sup>12</sup> See Licensing Board Memorandum and Order (Initial Prehearing Order Supplement) (Mar. 6, 2023) at 2 (unpublished). Although technical issues resulted in CFUR's amended petition not being served on the other participants until the early morning of March 2, 2023, the circumstances involved provided no basis for any plausible assertion that the CFUR amended petition was untimely filed or that any of the participants suffered appreciable prejudice as a result of the service delay. See *id.* at 2 n.3.

<sup>13</sup> See *supra* note 3; [CFUR's] Reply in Support of Petition for Leave to Intervene and Request for Adjudicatory Hearing (Apr. 3, 2023) [hereinafter CFUR Reply].

<sup>14</sup> See Licensing Board Memorandum and Order (Scheduling Initial Prehearing Conference) (Apr. 6, 2023) at 4-6 (unpublished) [hereinafter Licensing Board Conference Scheduling Order]; Licensing Board Memorandum (Information Regarding Telephone Listen-Only Access for the Public to the Initial Prehearing Conference) (Apr. 10, 2023) (unpublished).

As part of its April 6 issuance, the Licensing Board indicated that in responding to the Board's three questions the participants generally should rely on materials cited in their pleadings and should not attempt to introduce new information. See Licensing Board Conference Scheduling Order at 3. The Board did, however, create one exception for question two concerning CFUR Contention 2 on seismic risk for which the participants were allowed "to reference material not previously cited in this proceeding or to specific uncited portions of otherwise previously cited material (such as the Vistra license renewal application)" so long as they advised the Board and the other participants of those references in a filing submitted by April 14, 2023. See *id.* at 5 n.5. Each of the participants made a filing on April 14. See [Vistra] Advisement of Supplemental References for Initial Prehearing Conference (Apr. 14, 2023) [hereinafter Vistra Supplemental References]; Additional Citations for Reference in NRC Staff's Oral Argument on April 19, 2023 (Apr. 14, 2023) [hereinafter NRC Staff Supplemental References]; [CFUR's] Notice of Supplemental References for Initial Prehearing Conference (Apr. 14, 2023) [hereinafter CFUR Supplemental References].

<sup>15</sup> See Tr. at 1-78.

## **B. 10 C.F.R. Part 50 Operating License Renewal Application and Associated Review Process**

### ***1. Operating License Renewal Application***

An application for a twenty-year initial renewal of the 10 C.F.R. Part 50 operating license for a nuclear power plant is governed by the provisions of 10 C.F.R. Part 54. Consistent with 10 C.F.R. § 54.21, the Atomic Energy Act (AEA) safety-related provisions of the application must include, among other things, (1) an integrated plant assessment that demonstrates facility systems and components requiring aging management review have been identified and will be maintained at an acceptable level of safety over the two-decade period of extended operation;<sup>16</sup> (2) a list of time-limited aging analyses conducted for those facility systems, structures, and components whose ability to operate safely was assumed to be limited to the initial forty-year operating license term that demonstrate they retain the capability to perform their intended functions during the extended operation period;<sup>17</sup> and (3) a final safety analysis report (FSAR) supplement that summarizes the facility's programs and activities intended to manage aging effects during the extended operation period. *See* 10 C.F.R. § 54.21(a), (c)-(d); *see also* License Renewal Application at 1-10 to -12. Additionally, section 54.23 describes the renewal application's required National Environmental Policy Act (NEPA) environmental-related contents as

---

<sup>16</sup>In describing an integrated program assessment, the Commission has observed that

Part 54 requires renewal applicants to demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation. This is a detailed [integrated program] assessment, conducted at "a component and structure level," rather than at a more generalized "system level." License renewal applicants must demonstrate that all "important systems, structures, and components will continue to perform their intended function in the period of extended operation." Applicants must identify any additional actions, i.e., maintenance, replacement of parts, etc., that will need to be taken to manage adequately the detrimental effects of aging. Adverse aging effects generally are gradual and thus can be detected by programs that ensure sufficient inspections and testing.

*Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8 (2001) (citations omitted).

<sup>17</sup>Regarding time-limited aging analyses, the Commission has noted:

[S]ome safety reviews or analyses made during the original term of the license may have been based upon a particular time period, such as, perhaps, an assumed service life of a specific number of years or some period of operation defined by the original license term, i.e., 40 years. Before the NRC will grant any license renewal application, an applicant must reassess these "time-limited aging analyses," and (1) show that the earlier analysis will remain valid for the extended operation period; or (2) modify and extend the analysis to apply to a longer term, such as 60 years; or (3) otherwise demonstrate that the effects of aging will be adequately managed in the renewal term.

*Id.* (citations omitted).

including “a supplement to the [ER] that complies with the requirements of subpart A of 10 CFR Part 51.” 10 C.F.R. § 54.23; *see also* License Renewal Application at 1-12. Of importance to this ER supplement is Appendix B to subpart A, which provides the results of the agency’s generic assessment of the environmental impacts associated with license renewal. *See* 10 C.F.R. pt. 51, subpart A, app. B. And more specifically, in outlining the pertinent information for such an ER supplement, section 51.53(c) provides in paragraphs (3)(i) and (ii) that while “[t]he [ER] for the operating license renewal stage is not required to contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in Appendix B to subpart A of this part,” that supplement “must contain analyses of the environmental impacts . . . for those issues identified as Category 2 issues.” *Id.* § 51.53(c)(3)(i)-(ii). Moreover, other Part 51 provisions require the same treatment for Category 1 and 2 issues in the NRC Staff’s plant-specific draft and final supplements to the agency’s generic environmental impact statement (GEIS) for license renewal. *See id.* §§ 51.71(d), 51.95(c)(1), (4).

## **2. License Renewal Application Safety Review**

The contents of a license renewal application as specified in Part 54 reflect the scope of review necessary to support an agency determination whether to grant such an application. In that regard, in promulgating and interpreting Part 54 the Commission has made it clear that the AEA-associated safety aspect of “[t]he license renewal review is not intended to duplicate the NRC’s ongoing oversight of operating reactors,” but rather is “to ensure that the licensee can successfully manage the detrimental effects of aging.”<sup>18</sup> Thus, section 54.29(a) indicates that the Commission may grant a license renewal if it finds that “[a]ctions have been or will be taken with respect to . . . (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review [by conducting an integrated program assessment] under § 54.21(a)(1);” and “(2) time-limited aging analyses that have been identified to require review under § 54.21(c),” such that “there is reasonable assurance that activities authorized by the renewed license will continue to be conducted in accordance with the [facility’s current licensing basis] and that any changes to the plant’s [current licensing basis]” are in accordance with the AEA and agency regulations.<sup>19</sup> *Id.* § 54.29(a)(1)-(2).

---

<sup>18</sup> *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 347 (2015).

<sup>19</sup> Section 54.3 defines the “Current licensing basis” as “the set of NRC requirements applicable to a specific plant and a licensee’s written commitments for ensuring compliance with and operation

(Continued)

The upshot of the Part 54 regulatory approach, according to the Commission, is to place the “focus on whether the licensee can manage the effects of aging on certain long-lived, passive components that are important to safety.” *Indian Point*, CLI-15-6, 81 NRC at 347 (citations omitted). By the same token, the Commission deems “unnecessary and wasteful” contentions that challenge the plant’s current licensing basis because the NRC already has in place “on-going agency oversight, review, and enforcement” processes associated with operational issues. *Turkey Point*, CLI-01-17, 54 NRC at 7, 9. Accordingly, a challenge concerning safety issues associated with a plant’s current licensing basis, including the facility’s FSAR and other information reflecting the licensee’s commitments to ensuring compliance with applicable agency regulatory requirements, is beyond the permissible scope of a license renewal proceeding and so cannot be the subject of a license renewal adjudicatory hearing in the absence of a 10 C.F.R. § 2.335 waiver petition. *See id.* at 10.

### **3. License Renewal Application Environmental Review**

Abbreviated as well is the permissible scope of the environmental review for a power plant license renewal. As Appendix B to subpart A of Part 51 makes clear, “[t]he Commission has assessed the environmental impacts associated with granting a renewed operating license for a nuclear power plant . . . [and] Table B-1 summarizes the Commission’s findings on the scope and magnitude of environmental impacts” that NEPA requires to be addressed. 10 C.F.R. pt. 51, subpart A, app. B. Table B-1, in turn, indicates that the “[d]ata supporting this table are contained in NUREG-1437, Revision 1, ‘[GEIS] for License Renewal of Nuclear Plants (June 2013)’” and that for Category 1 items, “[t]he generic analysis of the issue may be adopted in each plant-specific review.”<sup>20</sup> *Id.* tbl. B-1

---

within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect . . .” 10 C.F.R. § 54.3. As the Commission has further explained:

The current licensing basis consists of the license requirements, including license conditions and technical specifications. It also includes the plant-specific design basis information documented in the plant’s most recent [FSAR], and any orders, exemptions, and licensee commitments that are part of the docket for the plant’s license, i.e., responses to NRC bulletins, generic letters, and enforcement actions, and other licensee commitments documented in NRC safety evaluations or licensee event reports. The current licensing basis additionally includes all of the regulatory requirements found in Parts 2, 19, 20, 21, 30, 40, 50, 55, 72, 73, and 100 with which the particular applicant must comply.

*Turkey Point*, CLI-01-17, 54 NRC at 9 (citations omitted).

<sup>20</sup>The generic analysis supporting the Table B-1 summary impact findings referenced in Part 51 is the 2013 update of the analysis originally promulgated in 1996. *See* 1 Office of Nuclear Reactor Regulation (NRR), NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants,

(Continued)

nn.1-2. Commission caselaw establishes that an adjudicatory challenge based on an applicant's alleged failure to deal appropriately with a Category 1 item constitutes an attack on an agency rule, making a section 2.335(b) waiver the sole vehicle for raising such an issue in an adjudication.<sup>21</sup>

Among its listings that are pertinent here, Table B-1 specifically identifies summary environmental impact findings relating to "Human Health," including "Radiation exposures to the public" and "Radiation exposures to plant workers." *Id.* pt. 51, subpart A, app. B., tbl. B-1. Table B-1 classifies both public and worker radiation exposures as Category 1 items having an impact finding designated as SMALL,<sup>22</sup> because the radiation doses associated with continued facility operations and license renewal-associated refurbishment are expected to be "well below regulatory limits." *Id.*; see 2013 Revised GEIS at S-16, 3-136. In addition, Table B-1 includes summary environmental findings relating to "Terrestrial Resources" and "Aquatic Resources" that include, respectively, "Exposure of terrestrial organisms to radionuclides" and "Exposure of aquatic organisms to radionuclides." 10 C.F.R. pt. 51, subpart A, app. B., tbl. B-1. These generic environmental categories also are designated as Category 1 items having "SMALL" impacts, with license renewal-associated doses from continued facility operations and refurbishment "expected to be well below exposure guidelines developed to protect" these terrestrial and aquatic organisms. *Id.*; see 2013 Revised GEIS at 4-63 to -64, 4-106 to -107.

Seismic risk evaluation generally falls within the ambit of the current licensing basis safety issues. See 2013 Revised GEIS at 3-51 (indicating "[s]ite-specific design bases for seismic protection are prescribed by a nuclear plant's [FSAR] and by applicable technical specifications"). Generally such an analysis would be largely beyond challenge in a license renewal proceeding absent a section 2.335 waiver. See *supra* section I.B.2. But because a seismic event-triggered accident could have environmental consequences, Table B-1's sum-

---

Main Report, Final Report (rev. 1 June 2013) (ADAMS Accession No. ML13106A241) [hereinafter 2013 Revised GEIS]; see also 1 Office of Nuclear Regulatory Research (RES), NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Main Report, Final Report (May 1996) (ADAMS Accession No. ML040690705).

<sup>21</sup> See *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 20 (2007) (citing *Turkey Point*, CLI-01-17, 54 NRC at 11-13).

<sup>22</sup> Table B-1 defines the significance level of a "SMALL" impacts designation as

[f]or the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small as the term is used in this table.

10 C.F.R. pt. 51, subpart A, app. B., tbl. B-1 n.3.



mary environmental impact findings regarding “Postulated Accidents” specifically encompass the impacts resulting from significant earthquake-related facility accident sequences. 10 C.F.R. pt. 51, subpart A, app. B., tbl. B-1.

The first of these is the design-basis accident,<sup>23</sup> classified as a Category 1 item with a Table B-1 impact finding designated as “SMALL” based on the NRC Staff’s conclusion “that the environmental impacts of design basis accidents are of small significance to all plants” given their low probability of occurrence. *Id.* & n.3 (noting that “[f]or issues where probability is a key consideration (i.e., accident consequences), probability is a factor in determining significance”); *see* 2013 Revised GEIS at 2-26, S-17. In contrast, severe accidents, i.e., “beyond design-basis accidents . . . that could result in substantial damage to the reactor core,” 2013 Revised GEIS at 1-27, along with the severe accident mitigation alternatives (SAMA) analysis associated with such accidents in the NEPA context, are classified under Category 2 in Table B-1 designating those items for which “the analysis reported in the [GEIS] has shown that . . . additional plant-specific review is required.” 10 C.F.R. pt. 51, subpart A, app. B., tbl. B-1 n.2. Table B-1 designates such accidents as having a “SMALL” impact based on “[t]he probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic impacts from severe accidents.” *Id.* pt. 51, subpart A, app. B., tbl. B-1; *see* 2013 Revised GEIS at S-17. Table B-1 does indicate, however, that alternatives to mitigate severe accidents must be considered for plants that previously have not considered such alternatives. *See* 10 C.F.R. pt. 51, subpart A, app. B., tbl. B-1; 2013 Revised GEIS at S-17 to -18. Hence the listing as Category 2, rather than Category 1. Nonetheless, in instances such as here in which a facility-specific SAMA analysis already has been considered in an environmental impact statement (EIS),<sup>24</sup> under section 51.53(c)(3)(ii)(L) a license renewal contention regarding the adequacy of a previously considered SAMA cannot be litigated absent a section 2.335 waiver.<sup>25</sup>

---

<sup>23</sup> A design-basis accident is “[a] postulated accident that a nuclear facility must be designed and built to withstand without loss to the systems, structures, and components necessary to ensure public health and safety.” 2013 Revised GEIS at 7-15.

<sup>24</sup> *See* Environmental Review of Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,481 (June 5, 1996) (“NRC staff considerations of [SAMAs] have already been completed and included in an EIS or supplemental EIS for Limerick, Comanche Peak, and Watts Bar. Therefore, [SAMAs] need not be reconsidered for these plants for license renewal.”) [hereinafter 1996 GEIS Rule]; *see also* ER at 4-47 to -48 (indicating that because Comanche Peak qualifies for the SAMA “Category 1” exception, Vistra’s review of severe accident impacts was limited to whether there is “new and significant” information).

<sup>25</sup> *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199, 211-12 (2013) (indicating section 51.53(c)(3)(ii)(L) affords the “functional equivalent” of the

(Continued)

On the issue of climate change, the statement of considerations regarding the 2013 final rule that revised Part 51, including Table B-1, and supported the 2013 update to the 1996 GEIS, observed that in a 2009 adjudicatory ruling regarding two 10 C.F.R. Part 52 combined license applications, the Commission provided guidance to the NRC Staff to “include consideration of carbon dioxide and other greenhouse gas emissions in its environmental reviews for major licensing actions under [NEPA].”<sup>26</sup> Because “[p]resently, insufficient data exists to support an impact level on a generic basis,” the statement of considerations indicated that “[t]he [2013] final rule was not revised to include any reference to [greenhouse gas] emissions or climate change.” 2013 Revised GEIS Rule, 78 Fed. Reg. at 37,290, 37,291. Nonetheless, the statement of considerations also indicated that to comply with the 2009 Commission adjudicatory guidance (1) a new provision, section 4.12.3, was being added to the 2013 GEIS revision summarizing the potential cumulative impacts of greenhouse gas emissions and global climate change; and (2) each supplemental EIS with a particular license renewal application would include a plant-specific analysis of any “impacts caused by [greenhouse gas] emissions over the course of the license renewal term as well as any impacts caused by potential climate change upon the affected resources during the license renewal term.”<sup>27</sup>

With this background in mind, we turn to an analysis of the substance of CFUR’s hearing petition, including its standing to intervene and the admissibility of its four contentions.

## II. STANDING

### A. Standards Governing Standing Under 10 C.F.R. § 2.309(d)

While CFUR’s standing has not been contested,<sup>28</sup> a licensing board must

---

Category 1 issue preclusion established by section 51.53(c)(3)(i)), *petition for review denied sub nom. NRDC v. NRC*, 823 F.3d 641 (D.C. Cir. 2016)).

<sup>26</sup> Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37,282, 37,290 (June 20, 2013) (quoting *Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-09-21, 70 NRC 927, 931 (2009)) [hereinafter 2013 Revised GEIS Rule].

<sup>27</sup> *Id.* at 37,291; see 2013 Revised GEIS at 4-229 to -243; see also RES, NRC, Regulatory Guide 4.2, Supp. 1, Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications at 15, 48-49 (rev. 1 June 2013) (indicating operating license renewal applicant’s ER should include emissions data on greenhouse gases and a cumulative impacts analysis that includes a discussion of contributing factors, such as global climate change) (ADAMS Accession No. ML13067A354) [hereinafter Regulatory Guide 4.2].

<sup>28</sup> See *supra* note 3 and accompanying text. While not opposing CFUR’s representational stand-  
(Continued)

determine independently whether a petitioner has fulfilled the requirements to establish standing to intervene in this proceeding.<sup>29</sup> To establish standing, CFUR invokes its status as representing several individuals who oppose the renewal of the Comanche Peak operating licenses. *See* CFUR Amended Petition at 2. An organization's standing to participate in an NRC proceeding based on its representation of interests of one or more individuals depends, in turn, on the standing of the individuals being represented and on the organization's ability to establish its standing in a representational capacity.<sup>30</sup>

In this regard, the Commission has noted that to establish representational standing under section 2.309(d)(1)

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 [them] and to request a hearing on [their] 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.<sup>31</sup>

The Commission also has explained that “[w]hile we will construe the hearing request in the petitioner's favor, the petitioner has the burden of demonstrating that the standing requirements are met.” *Vogle*, CLI-20-6, 91 NRC at 238.

Traditional judicial standing requires that a petitioner show (1) an actual or

---

ing assertion, *Vistra* suggests that if the Board concludes CFUR has not provided an admissible contention, any Board determination concerning CFUR's standing “is immaterial.” *Vistra* Answer at 2 n.7. To whatever extent that may be true if such a Board contention inadmissibility finding is the subject of an affirmative Commission appellate ruling, we nonetheless consider it appropriate to address CFUR's standing as a matter of administrative efficiency.

<sup>29</sup> *See* 10 C.F.R. § 2.309(d)(2); *see also Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 491 (2019), *aff'd on other grounds*, CLI-20-11, 92 NRC 335 (2020).

<sup>30</sup> *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999); *see also Entergy Nuclear Operations, Inc. and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 263-65 (2008) (finding unions are not inherently representative, concludes union seeking to intervene in license transfer proceeding must satisfy representational standing criteria).

<sup>31</sup> *Southern Nuclear Operating Co., Inc.* (Vogle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237-38 & n.83 (2020) (footnote omitted) (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015)).

threatened, concrete and particularized injury (injury in fact); (2) that is fairly traceable to the challenged action (causation); (3) that falls within the zone of interest protected by the statutes that govern the agency's proceedings (such as the AEA or NEPA) (zone of interest); and (4) that is likely to be redressed by a favorable decision (redressability).<sup>32</sup> In certain proceedings, including initial and subsequent license renewal proceedings, an organization's representational standing can be established using the proximity presumption based on a showing that at least one individual who designates the group as their representative lives within fifty miles of the facility that is the subject of the proceeding.<sup>33</sup> The proximity presumption, which relieves a petitioner of the need to satisfy the traditional standing elements of injury in fact, causation, and redressability, "rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility."<sup>34</sup>

## B. Analysis of CFUR's Representational Standing

In support of its representational standing claim, CFUR proffers the declarations of ten individuals,<sup>35</sup> each of whom it asserts meets the requirements to establish standing as an individual. *See* CFUR Amended Petition at 9-11. These include affidavits from (1) six individuals who declare they are CFUR members living at addresses between thirty and forty miles from the Comanche Peak facility;<sup>36</sup> (2) one CFUR member who owns a family farm that is located

---

<sup>32</sup> *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1995); *see also Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009).

<sup>33</sup> *See, e.g., Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-3, 89 NRC 245, 258-59 (2019) (subsequent license renewal), *appeal dismissed and referred ruling aff'd*, CLI-20-3, 91 NRC 133 (2020), *rev'd on reconsideration*, CLI-22-2, 95 NRC 26 (2022).

<sup>34</sup> *Exelon Generation Co., LLC and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580 (2005).

<sup>35</sup> *See* Declarations in Support of the Petition of [CFUR] for Leave to Intervene (Mar. 1, 2023) [hereinafter Supporting Declarations].

<sup>36</sup> *See id.* unnumbered attach. at 1 (Decl. of Lon Burnam in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Jan. 30, 2023)); *id.* unnumbered attach. at 1 (Decl. of Janet Mattern in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Jan. 30, 2023)); *id.* unnumbered attach. at 1 (Decl. of Suzanne Mabe in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Jan. 30, 2023)); *id.* unnumbered attach. at 1 (Decl. of Linda Hanratty in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Feb. 27, 2023)); *id.* unnumbered attach. at 1 (Decl. of Reed Bilz in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Feb. 8, 2023)); *id.* unnumbered attach. at 1 (Decl. of John

(Continued)

seven to eight miles from the Comanche Peak plant and on which his elderly father resides;<sup>37</sup> (3) one CFUR member who owns retirement property ten miles from the Comanche Peak units;<sup>38</sup> (4) one CFUR member who, although she lives at an address significantly beyond a fifty-mile radius of Comanche Peak, asserts she frequently travels to locations within fifty miles of the facility to attend events and visit friends;<sup>39</sup> and (5) one individual who, while not a CFUR member, states she has a second home ten miles from the plant and authorizes CFUR to represent her in this litigation.<sup>40</sup> Additionally, CFUR provides a declaration from a CFUR authorized officer submitted on behalf of CFUR in support of its representational standing stating that CFUR opposes Comanche Peak's relicensing and intends, on its members' behalf, to ensure that all associated health and safety and environmental issues are considered in this proceeding.<sup>41</sup>

Based on the ten individual affidavits authorizing CFUR to provide representation in this proceeding, the proximity presumption clearly would afford one or more of these declarants with individual standing to intervene in this proceeding. Moreover, the CFUR declaration establishes that the interests it seeks to protect in this proceeding are germane to its purpose. CFUR's asserted claims or requested relief also would not require an individual member to participate. Consequently, CFUR has established its representational standing in this proceeding.

### III. CONTENTION ADMISSIBILITY

#### A. Contention Admissibility Standards under 10 C.F.R. § 2.309(f)(1)

A contention submitted by a hearing requestor such as CFUR must satisfy

---

MacFarlane in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Feb. 28, 2023)); *see also* CFUR Amended Petition at 3-7.

<sup>37</sup> *See* Supporting Declarations, unnumbered attach. at 1 (Decl. of Terry McIntire in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Jan. 30, 2023)); *see also* CFUR Amended Petition at 4.

<sup>38</sup> *See* Supporting Declarations, unnumbered attach. at 1 (Decl. of Anita Smith in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Jan. 30, 2023)); *see also* CFUR Amended Petition at 5.

<sup>39</sup> *See* Supporting Declarations, unnumbered attach. at 1 (Decl. of Karen Hadden in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Jan. 30, 2023)); *see also* CFUR Amended Petition at 6.

<sup>40</sup> *See* Supporting Declarations, unnumbered attach. at 1 (Decl. of Margaret DeMoss in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Jan. 30, 2023)); *see also* CFUR Amended Petition at 5.

<sup>41</sup> *See* Supporting Declarations, unnumbered attach. at 1 (Decl. of Authorized Officer of [CFUR] in Support of Leave to Intervene in [Comanche Peak] License Renewal Application Proceeding (Jan. 30, 2023)); *see also* CFUR Amended Petition at 3-4.

the six admissibility factors set forth in section 2.309(f)(1)(i)-(vi). As the Commission recently observed relative to each of these elements:

To be admissible, a contention must provide a specific statement of the issue of law or fact to be raised or controverted and provide a brief explanation of its basis. The contention must also raise issues within the scope of the proceeding and material to the findings that the NRC must make. And it must include a concise statement of the alleged facts or expert opinions supporting the contention and sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. These contention admissibility requirements are intended to ensure that adjudicatory hearings are triggered only by substantive safety or environmental issues that raise a supported dispute with the application on a matter material to the NRC's decision on the challenged action.<sup>42</sup>

The petitioner bears the burden to satisfy each of the six criteria;<sup>43</sup> a failure to comply with any of these requirements constitutes grounds for rejecting a proposed contention.<sup>44</sup> Moreover, when a petitioner neglects to provide the requisite support for its contentions, the licensing board may not cure the deficiency by supplying that information.<sup>45</sup>

## **B. CFUR Contentions**

### **1. CFUR Contention 1**

Contention 1 — The License Renewal Application (“LRA”) Lacks Adequate Data and Analysis Regarding Radiological Releases and Emissions and Potential Health Impacts.

CFUR Amended Petition at 11.

DISCUSSION: *Id.* at 11-16; *Vistra Answer* at 9-17; *NRC Staff Answer* at 13-22; *CFUR Reply* at 1-6; *Tr.* at 10-35.

---

<sup>42</sup> *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-23-1, 97 NRC 81, 84 (2023) (footnotes omitted).

<sup>43</sup> See *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) (“[I]t is Petitioners’ responsibility, not the Board’s, to formulate contentions and to provide ‘the necessary information to satisfy the basis requirement’ for admission.” (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998))).

<sup>44</sup> See *Changes to Adjudicatory Process*, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004); *Private Fuel Storage*, CLI-99-10, 49 NRC at 325.

<sup>45</sup> See *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991) (indicating licensing board cannot supply missing information supporting a contention).

RULING: An overarching issue concerning Contention 1's admissibility is CFUR's failure to present a concern that falls within the permissible scope of this proceeding or to raise a genuine issue with the Vistra license renewal application, as required by section 2.309(f)(1)(iii) and (vi).

As categorized in CFUR's reply,<sup>46</sup> the first four of the six claims proffered by CFUR in support of its contention assert that Vistra neither included updated information on releases of tritium and other radionuclides nor considered their potential impacts to humans, the environment, and surrounding farms, crops, wildlife, and vegetation. But these four claims challenge Table B-1 Category 1 issues that were resolved in the 2013 GEIS. *See supra* section I.B.3. Contentions that challenge a Table B-1 Category 1 determination are outside the scope of a license renewal proceeding unless a petitioner seeks and is granted a 10 C.F.R. § 2.335 waiver. *See supra* note 21 and accompanying text. Because CFUR has not requested a waiver, CFUR cannot challenge these Category 1 issues. Moreover, CFUR's assertion that the potential impacts of releases of tritium and other radionuclides were not analyzed in the ER fails to raise a genuine issue regarding the Vistra application given Vistra incorporated by reference the generic analysis from the GEIS into its ER. *See ER* at 4-2, 4-6 to -7. Because these CFUR claims run afoul of the section 2.309(f)(1)(iii) and (vi) admissibility standards, they do not support Contention 1's admissibility.

Nor does CFUR's assertion that "cumulative impacts" were not properly considered fare any better as grounds for admitting Contention 1. CFUR Amended Petition at 11, 12-13. At the April 2023 oral argument, the Board provided the participants an opportunity to address a question regarding the basis for CFUR's second and fourth claims supporting Contention 1 that the "cumulative impacts" of an additional twenty years of radiological releases on health risks and farms, crops, wildlife, and vegetation had not been adequately addressed. *See* Licensing Board Conference Scheduling Order at 4-5. Under the Council on Environmental Quality's (CEQ) definition of "cumulative impacts" incorporated

---

<sup>46</sup>In its reply, CFUR specifies that those six claims are as follows:

[T]he Application a.) failed to include updated information on the release of tritium and other radionuclides; b.) failed to analyze cumulative radiological impacts and resulting health risks of operating [Comanche Peak] for an additional 20 years; c.) failed to fully analyze the hazards that would result from 20 more years of discharge of water that contains radioactive particulates and tritium into [Comanche] Creek Reservoir; d.) failed to provide analysis of an additional 20 years of gamma emitters and the cumulative impacts of that on farms, crops, wildlife, and vegetation; [e.] failed to analyze the financial consequences of 20 more years of radiological releases and the potential cost of remediation in the future; and [f.] failed to provide analysis and omitted necessary information on the potential for pipe leaks that could occur in the future and related radiation release increase that could result in aging nuclear reactors.

CFUR Reply at 1-2 (citing CFUR Amended Petition at 11-12).

into the NRC's Part 51 environmental protection regulations,<sup>47</sup> CFUR's claimed "cumulative impacts" appear to be encompassed by the Table B-1 Category 1 findings discussed above. Moreover, to the extent CFUR takes issue with any Table B-1 Category 2 site-specific "cumulative impacts," these impacts are analyzed in Vistra's ER section 4.12. CFUR not only fails to engage with that ER provision in its amended petition, but its claims lack specificity and fail to raise a section 2.309(f)(1)(vi) genuine dispute.<sup>48</sup>

Also in support of this contention, CFUR argues that Vistra's renewal application should include the data from its 2021 Annual Radiological Environmental Operating Report (AREOR) in addition to the data from the 2020 AREOR and some of its predecessors.<sup>49</sup> CFUR, however, cites no regulation that would require Vistra to include this additional data. Moreover, Vistra explained that the

---

<sup>47</sup> According to the CEQ, a "cumulative impact" is

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. As the Staff acknowledges, Part 51 picks up the crux of this CEQ definition by requiring that a license renewal applicant provide information about "other past, present, and reasonably foreseeable future actions occurring in the vicinity of the nuclear plant that may result in a cumulative effect." NRC Staff Answer at 17 (quoting 10 C.F.R. § 51.53(c)(3)(ii)(O)).

<sup>48</sup> See Tr. at 26-27 (Licon) (contrasting CFUR's claim regarding radiological "cumulative impacts" arising solely from continued Comanche Peak facility operation with potentially admissible claim regarding "cumulative impacts" of Comanche Peak facility radioactive releases in conjunction with releases from radiological sources at Department of Energy or other facilities in the vicinity of the Comanche Peak plant).

We observe as well that at the April 19 oral argument, relying on four studies CFUR referenced in its April 14 supplemental notice, CFUR indicated that it was now challenging the plant-specific Category 2 cumulative impacts assessment in ER section 4.12 as failing to analyze particulate-bound radionuclides associated with other area pollution sources. See Tr. at 12-16 (Griggs); see also CFUR Supplemental References at 1. As presented by CFUR at this juncture in the proceeding, this argument, along with the supplemental materials CFUR seeks to rely upon to establish its validity, cannot be the basis for an admissible contention. In its April 6 order, the Board allowed the participants to submit supplemental references to address a specific question regarding CFUR's Contention 2 claims concerning seismic risks. See *supra* note 14. Because the Board did not allow the participants to submit supplemental material supporting any other contention, the references in CFUR's April 14 supplement provided as additional support for Contention 2 are precluded by the Board's directive. See Licensing Board Conference Scheduling Order at 5 n.5; cf. *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224 (indicating petitioner cannot use reply brief to "reinvigorate thinly supported contentions" by presenting entirely new arguments), *reconsideration denied*, CLI-04-35, 60 NRC 619 (2004).

<sup>49</sup> See CFUR Amended Petition at 12-13 (citing Letter from Jack C. Hicks, Regulatory Affairs Manager, Vistra, to NRC Document Control Desk, encl. (Apr. 28, 2022) (Luminant Generation

(Continued)



absence of the data from the 2021 AREOR was a matter of timing relative to the publication of its ER. *See* *Vistra Answer* at 11 n.55. Nor has CFUR made any showing that the 2021 report's data are different to any significant extent from that in the 2020 and prior year reports analyzed in the *Vistra* renewal application. *See* ER at 10-3, 10-10, 10-24 to -25. As a consequence, this CFUR assertion constitutes the type of NEPA "flyspecking" the Commission has recognized as inappropriate absent some showing of materiality so as to frame a genuine dispute regarding the renewal application.<sup>50</sup> *See* 10 C.F.R. § 2.309(f)(1)(vi).

Thus, CFUR's first four claims concerning deficiencies in the license application fail to satisfy at least two of the six admissibility criteria in 10 C.F.R. § 2.309(f)(1) necessary to establish an adequate basis for its contention. *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi).

CFUR's fifth claim, that the application does not include the potential cost of twenty additional years of radiological releases and future remediation, *see* CFUR Amended Petition at 12, also does not provide the framework for an admissible contention. In support of this claim, CFUR does not cite to an NRC regulation requiring such an analysis relative to either normal operations or post-accident-condition remediation, the latter being covered generally by *Vistra's* SAMA analysis about which CFUR also has not raised a dispute. *See* ER at 4-46 to -70. Without a citation to a specific deficiency in the application, this CFUR argument fails to support an admissible contention because it does not raise a genuine dispute with the application.<sup>51</sup> Thus, CFUR's fifth argument does not support an admissible contention either. *See* 10 C.F.R. § 2.309(f)(1)(vi).

CFUR's sixth claim asserts that the *Vistra* application does not include an analysis of future age-related pipe leaks and breakage akin to *Vistra's* ER section 3.6.4.2.1 discussion of past radiation releases. *See* CFUR Amended Petition at 12. Again, however, CFUR's assertion fails to include sufficient supporting information to establish a genuine dispute on a material issue. *See* 10 C.F.R. § 2.309(f)(1)(vi). Consistent with agency regulations and guidance, ER section 3.6.4.2.1 provides for a historical, environmental baseline approach to radioactive releases. *See id.* § 51.53(c)(2); Regulatory Guide 4.2, at 18-21. While

---

Co., LLC (Luminant), Comanche Peak Nuclear Power Plant, [AREOR], January 1, 2021, through December 31, 2021 (Apr. 12, 2022)) (ADAMS Accession No. ML22118A088) [hereinafter 2021 AREOR]).

<sup>50</sup> *See Holtec International (HI-STORE Consolidated Interim Storage Facility)*, CLI-20-4, 91 NRC 167, 190-91 (2020) (noting contention must frame a dispute as to a material issue and not "flyspeck" an EIS).

<sup>51</sup> Insofar as CFUR's challenge regarding *Vistra's* "future remediation" might be considered a challenge to *Vistra's* post-operational decommissioning, this issue has already been addressed in the 2013 GEIS as a Table B-1 Category 1 issue. *See* 2013 Revised GEIS at 2-4 to -6, 4-5. As is the case with CFUR's first four claims, *see supra* p. 167, a challenge to a Category 1 issue without a section 2.335 waiver is a matter outside the scope of this proceeding, *see* 10 C.F.R. § 2.309(f)(1)(iii).

CFUR apparently would prefer a forward-looking, predictive analysis regarding age-related pipe leaks and breakage, it fails to provide a legal basis, regulatory or otherwise, for requiring such an analysis. Further, CFUR does not acknowledge, much less challenge, ER section 4.5.5 that, consistent with 10 C.F.R. § 51.53(c)(3)(ii)(P), addresses the impacts of inadvertent radiological releases that may occur during the license renewal term. *See* ER at 4-13 to -15. Nor does CFUR acknowledge, much less challenge, ER section 3.6.4 that addresses the Vistra groundwater monitoring program. As part of the facility's current licensing basis, this program is outside the permissible scope of this proceeding absent a section 2.335 waiver. *See supra* section I.B.2. Moreover, as Vistra's ER notes, that groundwater monitoring program (1) resulted in the 2013 and 2015 detection and repair of pipe leaks that released tritium at levels below state drinking water limits; and (2) confirmed that no radionuclides were detected in Vistra's groundwater sampling during 2016-2020. *See id.* at 3-101 to -104.

Additionally, the specific sources CFUR proffers in support of its Contention 1 fail in that regard. CFUR cites a Centers for Disease Control and Prevention website about the dangers of exposure to Iodine-131 and refers to the data on gross beta activity from airborne Iodine-131 emissions in the 2021 AREOR report,<sup>52</sup> but fails to show how this website information creates a genuine dispute with the Vistra ER. CFUR also cites to a *Scientific American* article discussing tritium levels at a different nuclear plant,<sup>53</sup> but without explaining how this reactor facility or the study relate to Comanche Peak. So too, in referencing a 2009 article and table showing tritium concentrations in nearby Lake Granbury,<sup>54</sup> CFUR does not account for or otherwise controvert the one-way flow of water from Lake Granbury into the Comanche Creek Reservoir.<sup>55</sup> *See id.* at 3-139. Additionally, CFUR refers to the efforts of Colorado and California to set lower goals for tritium in drinking water than those established by the Environmental Protection Agency's standard. *See* CFUR Amended Petition at 16. This not only raises a matter beyond the permissible scope of this proceeding but lacks

---

<sup>52</sup> *See* CFUR Amended Petition at 13-14 (referencing Centers for Disease Control and Prevention, Radioisotope Brief: Iodine-131 (I-131) (Apr. 4, 2018), <https://www.cdc.gov/nceh/radiation/emergencies/isotopes/iodine.htm>; 2021 AREOR at 17).

<sup>53</sup> *See id.* at 14-15 (citing David Biello, *Is Radioactive Hydrogen in Drinking Water a Cancer Threat*, *Sci. Am.* (Feb. 7, 2014), <https://www.scientificamerican.com/article/is-radioactive-hydrogen-in-drinking-water-a-cancer-threat/>).

<sup>54</sup> *See id.* at 15-16 (citing Annie Makhijani & Arjun Makhijani, *Radioactive Rivers and Rain/Retiring Reference Man*, 16 *Sci. for Democratic Action* (Aug. 1, 2009), <https://ieer.org/article/science-for-democratic-action/volume-16-number-1/>).

<sup>55</sup> Although this reservoir is referenced by its prior name in the participants' pleadings, *see, e.g.*, NRC Staff Answer at 13, in this decision we will refer to the reservoir by its current United States Board of Geographic Names-recognized designation, *see* <https://edits.nationalmap.gov/apps/gaz-domestic/public/summary/1863319> (last visited June 5, 2023).

any explanation about how lowering such standards in those states relates in any way to the renewal of the operating licenses for the Comanche Peak facility in Texas. Certainly, CFUR has not shown that such standard setting is somehow in contravention of Part 51 or any other NRC regulation, and so has failed to establish a genuine dispute. *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi).

Finally, although it is unclear if CFUR is posing this claim as a possible safety contention, if that is the case its concern regarding age-related pipe leaks and breakage fails to refer to any specific provision of Vistra's license application, including Vistra's review of its aging management-related program and planned actions to address age-related degradation as required under 10 C.F.R. §§ 54.21, 54.29. CFUR offers no explanation why the existing regulatory activities and requirements associated with Vistra's age-related pipe leaks and breaks are insufficient to manage any aging effects during the requested twenty-year operating license renewal for Comanche Peak. Accordingly, CFUR's assertions lack the requisite factual and legal foundation to establish a genuine dispute regarding a material issue. *See id.* § 2.309(f)(1)(vi).

Thus, because CFUR has failed to satisfy the admissibility criteria in 10 C.F.R. § 2.309(f)(1)(iii) or (vi) as to each of the claims it provides in support of Contention 1, that contention is not admissible.

## 2. *CFUR's Contention 2*

Contention 2 — Seismic Analysis is Inadequate; Lack of Complete Data Could Result in Seismic Risks.

CFUR Amended Petition at 17.

DISCUSSION: *Id.* at 17-22; Vistra Answer at 17-27; NRC Staff Answer at 22-28; CFUR Reply at 7-10; Tr. at 35-54.

RULING: To assess the somewhat amorphous nature of CFUR's Contention 2 seismic risk claims, both in terms of their relationship to the Vistra application and to the NRC's regulatory requirements associated with license renewal requests, we look at each of CFUR's four claims provided in support of this contention as they are summarized in its reply.<sup>56</sup>

---

<sup>56</sup>In its reply, CFUR describes the supporting claims for its Contention 2 as

the Application a.) fails to provide an adequate analysis of the magnitude of seismic activity near the [Comanche Peak facility] and specifically that the Application omits reference to earthquakes of less than 3.0 magnitude; b.) fails to account for the effects of earthquakes within or near the karst zone adjacent to [the Comanche Peak facility]; c.) fails to account for the effect earthquakes could have on cracking of plant piping, structural supports, concrete, and foundations[;] and d.) fails to consider the effects of seismic activity on the Squaw Creek Reservoir (now called Comanche Creek Reservoir).

CFUR Reply at 7 (citing CFUR Amended Petition at 17-22).

Each of the four claims described by CFUR has a different factual predicate. Putting aside for the moment the adequacy of their factual foundations under section 2.309(f)(1)'s admissibility criteria, as we explain below, whether viewed as safety or environmental concerns, all of Contention 2's four supporting claims fail because they are outside the permissible scope of this renewal proceeding.

Consistent with Criterion 2 to 10 C.F.R. Part 50, Appendix A, the Comanche Peak facility's FSAR provides an extensive seismic analysis of the site and the surrounding region that encompasses (1) the available historical data, including the most severe historical earthquake for the site; and (2) a seismic design for facility structures that, based on an assessment of the accumulated historical data's accuracy, quantity, and duration, provides a sufficient safety margin.<sup>57</sup> Moreover, as part of its post-Fukushima review of the adequacy of the Comanche Peak units' seismic design basis,<sup>58</sup> this design-basis analysis was

---

<sup>57</sup> See *Vistra*, [Comanche Peak FSAR], amend. 111, at 2.5-1 to -89 (Feb. 2022) (analyzing geology and seismology associated with the Comanche Peak facility) (ADAMS Accession No. ML22277-A825) [hereinafter 2022 FSAR]; *id.* at 3.7N-1 to -21 (analyzing design of equipment and equipment supports to withstand abnormal loading conditions associated with earthquakes); *id.* at 3.7B-1 to -30 (analyzing seismic design response spectra indicating structure response to significant nearby earthquake ground motion). As *Vistra's* 2022 FSAR indicates, seismic loads were considered for earthquakes of two magnitudes: (1) the safe shutdown earthquake (SSE), which encompasses the maximum vibratory ground motion at the plant site that can reasonably be predicted from geologic and seismic evidence; and (2) the operating basis earthquake (OBE), which is defined as the earthquake that, considering the local geology and seismology, can be reasonably expected to occur during the plant's life. See *id.* at 3.7N-1.

<sup>58</sup> In the wake of the March 2011 earthquake and tsunami that severely compromised the Fukushima Dai-ichi nuclear power plant, the NRC required that all licensees, including *Vistra's* corporate predecessor Luminant, perform an evaluation of seismic risk and flooding at their nuclear facilities. See 3 NRR, NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Appendices, Final Report at B-29 to -30 (rev. 1 June 2013) (ADAMS Accession No. ML13106A244); 2013 Revised GEIS at 1-16. In the June 2013 statement of considerations accompanying the Commission's final rule updating the regulatory framework for the 1996 GEIS, although acknowledging that "no additional analyses have been performed in the revised GEIS as a result of the Fukushima events," the Commission indicated that if "the NRC identifies information from the Fukushima events that constitutes new and significant information with respect to the environmental impacts of license renewal, the NRC will discuss that information in its site-specific [supplemental EISs] to the GEIS, as it does with all such new and significant information." 2013 Revised GEIS Rule, 78 Fed. Reg. at 37,292; see also 2013 Revised GEIS at 1-34. To this end, the *Vistra ER's* discussion of severe accidents includes its analysis of the possible existence of "new and significant information" regarding such accidents and SAMAs. See *ER* at 4-46 to -55. Indicating that Comanche Peak "is located in an area with low seismic activity," *Vistra* stated that "[i]n its response to post-Fukushima Near Term Task Force recommendation 2.1, CPNPP re-evaluated its seismic risk" and concluded "that the seismic hazard at [Comanche Peak] is low . . ." *Id.* at 4-50. Further, stating that it had considered developments in a number of areas, including "risk-beneficial" plant changes "im-

(Continued)

confirmed by the NRC Staff.<sup>59</sup>

As we have noted previously, *see supra* section I.B.2, the scope of this renewal proceeding regarding safety issues is limited to the effects of age-related degradation on facility systems and structures and the adequacy of a licensee's efforts to assess and address those effects. Thus, to the degree CFUR would require a reanalysis of seismic safety, such a claim clearly is beyond the permissible scope of this proceeding absent a section 2.335 waiver.

Nor does such a claim fall within the permissible scope of the environmental issues that may be challenged in this proceeding. Environmental impacts associated with postulated accidents, including design-basis or severe accidents caused by seismic events, are Category 1 issues that have been determined generically to have a "SMALL" impact. *See supra* section I.B.3. As the Commission has made clear, this regulatory finding cannot be challenged here (relative to either the applicant's ER or the NRC Staff's supplemental EIS) absent a waiver, which CFUR has not requested in this proceeding. *See supra* note 21 and accompanying text.

Thus, each of CFUR's four claims fails to satisfy the section 2.309(f)(1) admissibility criterion because they fall outside the permissible scope of this license renewal proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii).

Additionally, these claims fail because they lack adequate support to raise a material dispute with the applicant. CFUR criticizes Vistra's ER for failing to reference earthquakes less than 3.0 magnitude on the Richter scale, but fails to explain how listing these earthquakes would be material to the NRC Staff's findings, particularly considering that such an analysis is not considered necessary under the Staff's environmental and safety regulatory guidance associated with seismic risk assessment.<sup>60</sup> Moreover, Vistra's ER does recognize and analyze historical seismic events in the vicinity of the Comanche Peak facility (going

---

plemented at the site in response to Fukushima Dai-ichi Near-Term Task Force recommendations and other plant-specific programs," Vistra indicated that "no new and significant information was identified" regarding seismic risk or other severe accident consequences issues. *See id.* at 4-55. Thus, contrary to CFUR's suggestion that "reliance on the outdated 2013 GEIS is not prudent," *see* CFUR Amended Petition at 21, Vistra has provided an analysis of "new and significant information" relative to the 2013 GEIS.

<sup>59</sup> *See* Letter from Frankie Vega, Project Manager, NRR, NRC, to Rafael Flores, Senior Vice President and Chief Nuclear Officer, Luminant, encl. at 9 (Jan. 22, 2016) (Staff Assessment by [NRR] Related to Seismic Hazard and Screening Report, Comanche Peak Nuclear Power Plant, Units 1 And 2, Docket Nos. 50-445 and 50-446) (ADAMS Accession No. ML16014A125).

<sup>60</sup> *See* 10 C.F.R. § 51.53(c)(2); Regulatory Guide 4.2, at 12, 16; Office of Standards Development, NRC, Regulatory Guide 1.70, Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants, [Light-Water Reactor] Edition, at 2-26 to -27 (rev. 2 Sept. 1975) (ADAMS Accession No. ML010610289)); NRR, NRC, NUREG-1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supp. 1: Operating License Renewal, Final Report at 3.3-1 to -3 (rev. 1 June 2013) (ADAMS Accession No. ML13106A246).

back to the late 1800s), as well as seismic events in the area that ranged in magnitude from 3.0 to 4.5 for the years 1970 to 2022,<sup>61</sup> all of which fall within the Comanche Peak facility's seismic design basis.<sup>62</sup> CFUR's assertion that below 3.0 magnitude events also need to be reported and analyzed is again the type of NEPA "flyspecking" the Commission has recognized is inappropriate absent some showing of that issue's materiality.<sup>63</sup>

Faring no better in this regard is CFUR's claim that earthquakes of such a reduced magnitude nonetheless can lead to cracking of pipes, structural supports, and concrete in various plant structures, with the inference that such cracking would have some significance in terms of safety or environmental impacts. In support of this proposition, referencing portions of the Vistra application, CFUR

---

<sup>61</sup> See ER at 3-57; see also *id.* at 3-69 to -77 (Table 3.5-2, Historic Earthquakes > 3.0 MB, 1970-2022). We note as well that in line with the guidance cited above, see *supra* note 60, ER Table 3.5-2 does not appear to be inconsistent with exhibit A to the CFUR amended petition. That exhibit purports to show earthquakes between 2000 and 2012 with magnitudes between 2.0 and 3.3, while earthquakes above 3.0 magnitude shown in that exhibit are listed in the ER table. In addition, relative to CFUR's related assertion that more than one dozen earthquakes occurred between 2009 and 2012, see CFUR Amended Petition at 17, this likewise fails to provide support for this contention in that (1) the ER reflects this information when it acknowledges that 133 of the 168 earthquakes reported since 1970 occurred after 2009 with magnitudes that were relatively low, see ER at 3-57; and (2) CFUR does not acknowledge or dispute this ER discussion.

<sup>62</sup> As the Vistra ER notes, earthquake severity is described by the modified Mercalli (MM) intensity scale and the Richter magnitude scale. See ER at 3-57. The MM intensity is a subjective measure of observed damage at a particular location caused by an earthquake, while the Richter magnitude scale estimates the total amount of energy released by an earthquake. *Id.* According to the ER, the highest intensity earthquake within 200 miles of the Comanche Peak site was an 1882 MM VII intensity earthquake. CFUR references a discussion of this earthquake in the 2014 Luminant response to the NRC's post-Fukushima request for additional seismic analysis as evidencing the possibility that another event of this magnitude could cause "meaningful damage" to the facility. CFUR Amended Petition at 20 (citing Letter from Rafael Flores, Senior Vice President and Chief Nuclear Officer, Luminant, to NRC Document Control Desk, attach. at 2 (Mar. 27, 2014) (Comanche Peak Nuclear Power Plant Seismic Hazard and Screening Report) (ADAMS Accession No. ML14099A197) [hereinafter Flores Letter Attachment]). As Vistra notes in its answer, however, the next sentence indicates that while historical records suggest the resulting ground accelerations would be no more than 0.10g, the peak ground acceleration for the design basis SSE for the facility is 20 percent higher at 0.12g, Vistra Answer at 21 n.99 (citing Flores Letter Attachment at 2); see also 2022 FSAR at 2.5-54, 2.5-56 (indicating Maximum Potential Earthquake equal to 1882 MM VII would produce horizontal ground motion of no more than 0.10g; SSE horizontal ground acceleration of 0.12g selected for design). Nothing provided by CFUR suggests that at a Richter scale magnitude of 4.5 or less, the more recent earthquakes outlined in the ER would exceed the facility's design basis earthquake.

<sup>63</sup> See *Holtec Int'l*, CLI-20-4, 91 NRC at 190-91. By the same token, the map provided by CFUR as Attachment A to its amended hearing petition, see CFUR Amended Petition, attach. A (Closest Earthquakes to Comanche Peak Reactor Site), showing earthquakes of 3.3 magnitude or less does not establish the requisite material issue.

asserts the application “documents” component cracking.<sup>64</sup> The cited portions of the application, however, discuss not what has been observed at the Comanche Peak facility, but rather describe Vistra’s aging management strategies for identifying, evaluating, and correcting cracking over the renewal period, the substance of which CFUR does not challenge. An apparent misconception about the meaning of provisions in the Vistra renewal application, coupled with a failure to proffer any challenge to the substance of those provisions,<sup>65</sup> does not provide the information necessary to establish a material dispute with the application as required by section 2.309(f)(1)(vi).<sup>66</sup>

Likewise insufficient as grounds for admitting Contention 2 is CFUR’s claim that Vistra failed to consider karst zone earthquake effects as they may be impacted by fracking. As support for this claim, CFUR provides as Attachment B to its amended petition a map of the Comanche Peak facility area that purports to show a “Projected karst zone” running through the facility site. This map includes notations indicating that (1) the map contours were “reinterpreted by Jerry Bartz 01/09/2023”; (2) “[h]igh pressure injected water in karst [is] strongly associated with activating dormant fracture systems and earthquakes in the [Dallas/Fort Worth] area”; and (3) “[five] 2012 earthquakes are within or proximal to the projected karst zone.” *See* CFUR Amended Petition, attach. B (Projected zone of karst collapsed features (cave) in the Ellenburger Group). In contrast,

---

<sup>64</sup> CFUR Amended Petition at 18 (citing License Renewal Application at 3.1-91 (Table 3.1.2-2 Reactor Vessel Internals - Summary of Aging Management Evaluation), 3.5-37, 3.5-49 to -50, 3.5-52 (Table 3.5-1 Summary of Aging Management Programs for Containment Building and Internal Structural Components)).

<sup>65</sup> In its reply, CFUR asserts that the reason it did not mount such a challenge to the adequacy of Vistra’s aging management program was that it “did not have meaningful access to this material.” CFUR Reply at 9. Regarding this claim, as one of the three questions for discussion at the April 19 oral argument, the Board asked whether CFUR was provided such access and gave the participants the opportunity to submit additional references to material concerning this issue, including material not previously cited. *See* Licensing Board Conference Scheduling Order at 5. Both Vistra and the NRC Staff made submissions referencing publicly available portions of the license renewal application concerning the Vistra aging management program, including some specifically directed to cracking due to earthquakes. *See* Vistra Supplemental References at 1-2; NRC Staff Supplemental References at 1-2 (citing, among others, License Renewal Application at 3.5-23 regarding aging management of piping and other containment liner penetrations due to cracking associated with “startups, shutdowns, or any earthquakes.”). Given these publicly available application materials, we find CFUR’s lack of meaningful access assertion unpersuasive.

<sup>66</sup> *See Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 300 (1995) (indicating petitioner’s “imprecise reading” of a supporting document cannot generate a litigable issue).

as reflected in its 2022 FSAR, Vistra’s investigation has ruled out karst terrain in the region of the site.<sup>67</sup>

The Board is not to supply information to support a contention. *See supra* note 45 and accompanying text. Nor can the Board admit a contention based on a document or an expert opinion that merely states a conclusion “without providing a reasoned basis or explanation for that conclusion” or accept “bare assertions or speculation,” even by experts, as providing the requisite support for a proposed contention.<sup>68</sup> CFUR does not provide any explanation about how this map was prepared or who prepared the map, much less provide information about the individual’s expertise in geology and/or seismology, and does not explain how the map refutes in any way the discussion of such geological features (including the absence of karst terrain) in Vistra’s 2022 FSAR. Thus, as presented, CFUR’s map does not establish there is the required material dispute of law or fact needed to make this contention admissible. *See* 10 C.F.R. § 2.309(f)(1)(vi).

Finally, CFUR claims that, given the Vistra license renewal application’s reference to “[l]oss of material[,] loss of form due to erosion, settlement, sedimentation” on dams and other earthen water control structures, Vistra has failed to consider the effects of an earthquake on Comanche Creek Reservoir and its associated dam.<sup>69</sup> As a general matter, however, dam safety is subject to Texas state regulation and monitoring, *see* 30 Tex. Admin. Code §§ 299.42-.43, placing that subject outside the permissible scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii). Further, as was the case with the previously noted Vistra application references to “cracking,” *see supra* notes 64-66 and accompanying text, CFUR’s references to “loss of material” and “loss of form” in the application are misdirected references to the application’s discussion about aging management programs that CFUR has not challenged, thereby failing to establish a material dispute with the application needed for an admissible contention. *See* 10 C.F.R. § 2.309(f)(1)(vi).

---

<sup>67</sup> *See* 2022 FSAR at 1.2-1 (“With regard to the stability of subsurface materials, there is no evidence in the site region indicating actual or potential uplift or subsidence, cavernous or karst terrain, tectonic warping or deformational zones pertinent to the site.”), 2.5-1 (same), 2.5-21 (“Study of topographic maps and [aerial] photography and examination of rock cores shows no indication of karst formation or other solution activity in the area. In addition, detailed onsite reconnaissance has failed to find any evidence of sink holes or solution cavities. The absence of such features was confirmed in interviews with federal civil construction agencies.”).

<sup>68</sup> *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006); *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)).

<sup>69</sup> CFUR Amended Petition at 19 (quoting License Renewal Application at 3.5-57 (Table 3.5-1 Summary of Aging Management Programs for Containment Building and Internal Structural Components)).



In addition, because the Comanche Creek Reservoir dam is not a safety-related component of the facility, concerns about its failure in a seismic event would not be within the permissible scope of this proceeding. Certainly, a Comanche Creek Reservoir dam failure would produce significant impacts for those near and downstream from the reservoir. Nonetheless, as the Vistra renewal application states, given both the dam's distance from the facility and the lack of interaction with nuclear safety-related components, a failure of the Comanche Creek Reservoir dam would not significantly affect the safe operation of the Comanche Peak facility.<sup>70</sup> The Comanche Peak facility has an impoundment dam, which was designed and constructed as a Seismic Category I structure to withstand the most severe postulated natural phenomena and forms a secondary reservoir separate from the main Comanche Creek Reservoir to hold a water supply for normal and emergency cooling use for up to thirty days without the addition of outside makeup water. *See* License Renewal Application at 2.3-119, 2.4-21. Further, the components associated with both the safe shutdown impoundment and the dam are subject to an aging management plan. *See id.* at 3.5-10. Given CFUR's seismic risk concern regarding a "catastrophic" reservoir breach is not a challenge to the adequacy of this safe shutdown impoundment and its associated dam, CFUR has not framed a material dispute with the application. *See* 10 C.F.R. § 2.309(f)(1)(vi).

Accordingly, for the reasons set forth above we find that CFUR's Contention 2 is not admissible.

### 3. *CFUR's Contention 3*

Contention 3 — The LRA fails to fully analyze predicted climate changes that could affect the ability of the Comanche Peak Nuclear Power Plant to have cooling water available at temperatures consistent with operational requirements.

CFUR Amended Petition at 22.

DISCUSSION: *Id.* at 22-24; Vistra Answer at 27-31; NRC Staff Answer at 29-42; CFUR Reply at 10-12.

RULING: In considering the two supporting claims for this contention as en-

---

<sup>70</sup> *See* License Renewal Application at 2.2-8, tbl. 2.2-3 at n.6 (Plant Level Scoping Results: Containments, Structures and Component Supports); *see also* NRR, NRC, NUREG-0797, Safety Evaluation Report Related to the Operation of Comanche Peak Steam Electric Station, Units 1 and 2, at 2-34 (July 1981) (indicating Comanche Creek Reservoir dam is "not required for the safe shutdown of the plant") (ADAMS Accession No. ML20009F815); 2022 FSAR at 9.2-29 ("If, as a result of an earthquake, the [Comanche Creek Reservoir] dam fails, [the plant will remain safe because] the equalization channel invert maintains the water level in the [safe shutdown impoundment]").

capsulated in CFUR’s reply brief,<sup>71</sup> we note initially that we agree with CFUR’s assertion in support of this contention that the public should have the “right to adjudicate its concerns in a fair and accessible hearing process.” CFUR Reply at 11. But in reaching a decision on the admissibility of this and CFUR’s other contentions, this Licensing Board must apply the Commission’s contention admissibility standards that, while “strict by design,”<sup>72</sup> are intended to “properly ‘reserve our hearing process for genuine, material controversies between knowledgeable litigants.’”<sup>73</sup>

During the April 19 oral argument, stating that “[t]he impacts of climate change on environmental resources are location specific, and cannot be evaluated generically,” Tr. at 57 (Griggs), CFUR argued that current and projected drought conditions in Texas remain unaccounted for in the current Comanche Peak facility environmental review, *see* Tr. at 58-59 (Griggs). However, as was the case with Contentions 1 and 2, this argument regarding the availability of water for facility operation does not account for the relevant findings in the 2013 GEIS. As reflected in Table B-1 under the heading “Surface Water Resources,” for facilities like Comanche Peak that employ once-through cooling systems, the impact of surface water availability and conflicts over its use is a Category 1 issue has been categorized as “SMALL.” 10 C.F.R. pt. 51, subpart A, app. B., tbl. B-1; *see* 2013 Revised GEIS at S-10, 4-40. Because CFUR did not file a petition to waive this Category 1 finding, CFUR’s cooling water availability

---

<sup>71</sup> In its reply, CFUR describes these claims as follows:

- a.) Vistra’s [license renewal application] fails to fully analyze increases in ambient water temperatures that could affect the capacity of the Squaw Creek Reservoir (*a/k/a* Comanche Peak Reservoir) to maintain water temperatures consistent with [Comanche Peak’s] operational requirements, and b.) the [license renewal application] omits discussion of predictions regarding increasing ambient water temperatures in the future, which could cause the nuclear units to decrease power outright or cease operations altogether.

CFUR Reply at 10; *see* CFUR Amended Petition at 22, 23.

<sup>72</sup> *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118 (2006) (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 544 NRC 349, 353 (2001), *petition for reconsideration denied*, CLI-02-11, 55 NRC 1 (2002)).

<sup>73</sup> *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 396 (2012) (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 50 NRC 207, 219 (2003)). Also in this regard, in its reply, CFUR cites several pre-1989 cases as support for the admissibility of its contentions. *See, e.g.*, CFUR Reply at 4 n.6, 13 n.29 (as support for the proposition that a petitioner need only “state the reasons for its concerns” to have an admissible contention, citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1654 (1982)). Given the toughened contention pleading standards in the Commission’s 1989 rulemaking, *see* *Millstone*, CLI-01-24, 54 NRC at 358, we question the continuing relevance of the contention admissibility holdings in these cases.

claim falls outside the permissible scope of this proceeding. *See supra* note 21 and accompanying text.

In addition, CFUR has failed to reference any portion of Vistra's application and/or provide support for its assertion that the application omits the information in question, as is required by section 2.309(f)(1)(vi). In this regard, section 4.12.4.3 of the ER's cumulative impacts analysis addresses climate change impacts on surface water resources. *See* ER at 4-39 to -40. This ER discussion recognizes that with climate change, both water availability and water/ambient air temperatures will be impacted, with potentially decreasing water availability and rising temperatures bringing into play operational limits based on cooling water discharge permit conditions. *See id.* Regarding water availability, the ER indicates that the exclusive availability of Comanche Creek Reservoir as a cooling water source, the facility's once-through cooling system's reduced demand for water resources, and the availability of supplemental water from Lake Granbury and other sources would make Comanche Peak's water availability cumulative impacts contribution "SMALL." *Id.* at 4-40. Further, addressing the potential impacts of water availability limitations and air temperature increases, the ER states that with the Comanche Creek Reservoir's primary function to act as a cooling water reservoir for the facility, no changes were "reasonably foreseeable," but noted that if such changes did occur, continued facility operation would remain within permitted conditions. *See id.*

Thus, CFUR's claim that, as an environmental concern, climate impacts on surface water availability and temperature are unaccounted for is inadmissible as it (1) involves a challenge to a Table B-1 Category 1 issue without an accompanying section 2.335 waiver petition and thereby falls outside the permissible scope of this proceeding; and (2) fails to reference specific portions of the application that address climate change issues or explain why such a discussion is insufficient.<sup>74</sup> *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi).

Furthermore, as a safety issue this claim runs contrary to the established tenet that a safety review in a license renewal proceeding is limited to issues related to aging and age-related management. *See supra* section I.B.2. CFUR fails to demonstrate how facility operational conditions that might be impacted by its claimed climate-induced conditions would fall into the category of aging

---

<sup>74</sup> CFUR references an August 2022 newspaper article and an EPA website in support of this claim as providing the basis for an admissible contention. *See* CFUR Amended Petition at 22-23, 24 (citing Maria Mendez, *Texas Is Facing Its Worst Drought Since 2011. Here's What You Need to Know*, Texas Tribune (Aug. 19, 2022), <https://www.texastribune.org/2022/08/19/texas-drought-water-conservation/>; EPA, Climate Impacts on Energy, [https://19january2017snapshot.epa.gov/climate-impacts/climate-impacts-energy\\_.html](https://19january2017snapshot.epa.gov/climate-impacts/climate-impacts-energy_.html) (last visited June 5, 2023)). But to whatever extent these materials have relevance, as presented they are not inconsistent with the analysis provided in ER section 4.12.4.3.

management concerns. Nor does CFUR account for the fact that, as part of the facility's current licensing basis, Vistra's FSAR addresses the facility's design capability via its safe shutdown impoundment to operate safely under extreme climate conditions and that the impact of such conditions on plant operability is the subject of ongoing regulatory oversight.<sup>75</sup> Thus, as a safety contention, Contention 3 is inadmissible because it is outside the permissible scope of this license renewal proceeding as well as immaterial to the findings that NRC must make to support this license renewal and failing to raise a genuine dispute as to a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(iii)-(iv), (iv).

Finally, CFUR claims that the ER has the effect of "overstating the advantages of nuclear power and understating [its] environmental impacts." CFUR Amended Petition at 23-24. Because a license renewal ER need not include a "discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action," 10 C.F.R. § 51.53(c)(2), any discussion of the economic costs and benefits of facility operation is outside the permissible scope of a license renewal proceeding and thus inadmissible under section 2.309(f)(1)(iii). Further, CFUR's conclusory assertion that the Vistra ER understates the environmental impacts of nuclear power fails to provide the supporting information to formulate a material dispute with the application as required under section 2.309(f)(1)(vi). *See supra* note 68 and accompanying text.

Based on the above, we find Contention 3 inadmissible.

#### **4. CFUR's Contention 4**

Contention 4 — The LRA fails to consider Greenhouse Gas emissions as required by the [CEQ's NEPA] Guidance.

CFUR Amended Petition at 24.

---

<sup>75</sup> As part of the agency's regulatory process for monitoring and addressing issues at an operating facility associated with maintaining an adequate cooling water supply at an appropriate temperature, among other things, in accordance with 10 C.F.R. § 50.36, included in Comanche Peak current licensing basis are the facility operating licenses' technical specifications with limiting conditions regarding (1) the cooling water level and temperatures that must be maintained in the safe shutdown impoundment to avoid a reactor shut down or allow other technical specification-permitted remedial measures until the conditions are met; and (2) monitoring requirements to ensure the limiting conditions are met. *See* 10 C.F.R. §§ 50.36(b), (c)(2)-(3); *see also id.* § 54.3 (including technical specifications in definition of "Current licensing basis"). Vistra's ER and FSAR indicate that the Comanche Peak facility is capable of operating under extreme conditions because its safe shutdown impoundment is designed and constructed to provide a body of cooling water sufficient to allow post-severe accident cooling for a period of thirty days without makeup water from the Comanche Creek Reservoir, notwithstanding extreme meteorological conditions impacting water temperature and evaporation rates and a postulated 100-year drought condition. *See* ER at 2-6; 2022 FSAR at 2.3-8 to -9, 2.4-28 to -30, 9.2-27 to -30.

DISCUSSION: *Id.* at 24-31; Vistra Answer at 31-35; NRC Staff Answer at 42-53; CFUR Reply at 12-14.

RULING: Each of CFUR's four distinct claims for its Contention 4, as recapitulated in its reply pleading,<sup>76</sup> are inadequate to form the basis of an admissible contention. CFUR initially claims that the Vistra ER fails to consider greenhouse gas emissions as required by the CEQ's recently adopted interim NEPA guidance in that the ER does not address "the required quantification of reasonably foreseeable [greenhouse gas] emissions."<sup>77</sup> Yet, CFUR fails to account for (1) the "Affected Environment" discussion in the ER under the "Meteorology and Air Quality" subheading, section 3.3.4, titled "Greenhouse Gas Emissions," *see* ER at 3-29; (2) the "Annual Greenhouse Gas Emissions Inventory Summary" presented in table 3.3-11, *see id.* at 3-42; and (3) various resource area "Climate Change" subsections covered in the "Cumulative Impacts" analysis presented in ER section 4.12, *see id.* at 4-38 to -42.<sup>78</sup> Additionally, the ER addresses greenhouse gas emissions for the base-load replacement alternatives for Comanche Peak, including an advanced light-water reactor, small modular reactors, natural gas-fired generation, and a combination of renewables and natural gas generation. *See* ER at 7-9 to -45, 8-9 (Table 8.0-3 Environmental Impacts Comparison Detail). Having failed to even refer to these ER analyses, much less dispute their adequacy, CFUR has not shown the requisite genuine dispute with the applicant regarding a material factual or legal issue. *See* 10 C.F.R. § 2.309(f)(1)(vi).

But even putting aside whether these ER discussions would be considered sufficient under the CEQ interim guidance, CFUR has failed to explain why Vistra is required by law to follow this guidance. As an administrative matter, because the October 3, 2022 submittal of Vistra's license renewal application preceded the CEQ interim guidance, Vistra could not be expected to incorporate

---

<sup>76</sup> According to CFUR's reply, these "four points" constitute the grounds for Contention 4:

- a.) the [Vistra ER] fails to comply with the [C]EQ Guidance;
- b.) the Application fails to consider climate impacts on Comanche Peak reactors and reactor safety;
- c.) the Application fails to consider anticipated water shortages; and
- d.) the Application fails to consider increases in extreme weather in Texas.

CFUR Reply at 12-13; *see* CFUR Amended Petition at 25, 26, 29, 30.

<sup>77</sup> CFUR Amended Petition at 24, 25 (citing [NEPA] Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196 (Jan. 9, 2023)).

<sup>78</sup> Instead, without further explanation, CFUR declares that any greenhouse gas emission discussion "should" have been included in ER section 7.2, entitled "Energy Alternatives that Meet System Generating Needs," and section 8.0, labeled "Comparison of the Environmental Impact of License Renewal with the Alternatives," which includes a series of tables that provide an environmental impacts comparison summary. *See* CFUR Amended Petition at 25-26. This assertion, which is provided with no explanation about why such a discussion should be lodged in these provisions, is clearly inadequate to support Contention 4. *See supra* note 66 and accompanying text.

guidance that did not exist when its application was filed. More importantly, however, absent adoption by notice and comment rulemaking into 10 C.F.R. Part 51, which CFUR acknowledges the Commission has not done here,<sup>79</sup> the NRC is not bound by CEQ's NEPA regulations or guidance.<sup>80</sup>

Thus, in stating its general disagreement with Vistra's approach to considering greenhouse gas impacts in light of the interim CEQ guidance, CFUR's attempt to advocate for requirements stricter than or in addition to those imposed by regulation constitutes a collateral attack on the Commission's rules that requires a section 2.335 waiver,<sup>81</sup> which CFUR has not sought. This renders CFUR's claim outside the permissible scope of this proceeding, as well as insufficient to show a genuine dispute on a material issue of law or fact. *See* 10 C.F.R. § 2.309(f)(1)(iii), (vi).

CFUR's second claim that the Vistra ER fails to consider "the impact of a changing climate on the safety and operations of the reactor," including drought, torrential rains, and increased cooling water temperatures, is, like Contention 3, focused on concerns about "this possibility or the safety or economic consequences if Comanche Peak were unable to run due to lack of cool water" given that "several nuclear reactors across the country have had to shut down when there was not enough cool water." CFUR Amended Petition at 27. Nonetheless, given the extent to which the Vistra ER has addressed these matters, all without challenge by CFUR, this general assertion fails to demonstrate that a genuine dispute exists with the applicant on a material issue of law or fact as is mandated by section 2.309(f)(1)(vi).<sup>82</sup> *See supra* pp. 178-179.

---

<sup>79</sup> *See* CFUR Reply at 13 ("Apparently . . . the NRC is not bound by CEQ's NEPA regulations or guidance unless the Commission adopts them by rulemaking. This may be true, but why wouldn't the Applicant not want to address this Guidance in an amended [license application], given the current climate crisis and the public concerns that could be generated by its failure to do so?").

<sup>80</sup> *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011) (stating that while the Commission looks to CEQ regulations for guidance, its longstanding policy is that, as an independent regulatory agency, the NRC is not bound by those portions of the CEQ regulations that have a substantive impact on the way the Commission performs its regulatory functions); *see also* 10 C.F.R. § 51.10(a) (indicating NEPA implementing regulations in Part 51, subpart A reflect Commission policy to take into account CEQ regulations voluntarily, subject to certain conditions).

<sup>81</sup> *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 394-95 & n.19 (1987) (finding that, in the absence of a waiver request showing "special circumstances," intervenor contention asserting emergency planning zone should be extended beyond ten miles from a facility impermissibly challenges rule establishing planning zone size of "about 10 miles in radius"); *see also PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 22 (2007) (citing cases).

<sup>82</sup> In support of its claim regarding a lack of consideration of climate change-related weather impacts, CFUR proffered a Nuclear Energy Agency (NEA) report table as providing "examples

(Continued)

Also, as was the case with Contention 3, this claim will not support a safety-based contention. Cooling water sufficiency concerns for the Comanche Peak facility, whether climate change-related or otherwise, have been analyzed as an operating concern in the Vistra FSAR and related documents that are part of the current licensing basis as well as being the subject of ongoing regulatory oversight. *See supra* pp. 179-180. Again, because NRC’s Part 54 license renewal safety review generally focuses on “plant systems, structures, and components for which current [regulatory] activities and requirements *may not* be sufficient to manage the effects of aging in the period of extended operation,” a challenge to safety issues associated with a plant’s current licensing basis is, in the absence of a section 2.335 waiver, beyond the permissible scope of a license renewal proceeding and thus insufficient to support an admissible contention. *Turkey Point*, CLI-01-17, 54 NRC at 9-10 (quoting 60 Fed. Reg. at 22,469); *see* 10 C.F.R. § 2.309(f)(1)(iii).

Likewise inadmissible is CFUR’s third and closely related claim that the Vistra renewal application fails to consider anticipated water shortages. As this assertion references the CEQ interim guidance for support, for the reasons we noted above, concerns about compliance with CEQ’s guidance cannot support an admissible contention because such claims are outside the permissible scope of this proceeding and fail to establish a genuine dispute about a material issue of law or fact. *See supra* pp. 181-182. And as we also explained above, CFUR’s general assertions about anticipated water shortages affecting cooling water availability are inadequate to establish the basis for either an admissible environmental or safety contention because those claims are outside the permissible scope of the proceeding and fail to establish a genuine dispute regarding a material issue.<sup>83</sup> *See supra* p. 182.

---

of power plant critical incidents caused by drought.” CFUR Amended Petition at 27-28 (referencing NEA, Organisation for Economic Co-operation and Development, Climate Change: Assessment of the Vulnerability of Nuclear Power Plants and Approaches for Their Adaptation at 67 (2021) (Table 4.4, Examples of Recent Power Plant Critical Incidents Caused by Drought, United States 2000-2012), [https://www.oecd-nea.org/jcms/pl\\_61802/climate-change-assessment-of-the-vulnerability-of-nuclear-power-plants-and-approaches-for-their-adaptation?details=true](https://www.oecd-nea.org/jcms/pl_61802/climate-change-assessment-of-the-vulnerability-of-nuclear-power-plants-and-approaches-for-their-adaptation?details=true)). To whatever extent it is relevant here, however, as presented it is not inconsistent with Vistra’s analysis of weather-related climate change impacts provided in the ER.

<sup>83</sup>In arguing that “[s]ince the Comanche Peak license renewal would extend operations until 2050 and 2053, data regarding water availability must be included and analyzed in the License Renewal Application, especially considering the new [CEQ] guidance,” CFUR includes as support a graph from a December 2022 Texas state comptroller publication predicting increasing climate change-related water shortages between 2020 and 2070. *Id.* at 29 (citing Jess Donald & Spencer Grubbs, Fiscal Notes, Drought in Texas, How Rain Scarcity Affects Texans and the Economy, ex. 2 (Dec. 2022) (Texas Municipal Water Demand, Supply and Need (Acre-Feet/Year)), <https://comptroller.texas.gov/economy/fiscal-notes/2022/dec/drought.php>). Again, however, to

(Continued)

Finally, the same rationale applies to CFUR's more general fourth claim that the Vistra application fails to consider increases in extreme weather in Texas, which it supports by providing a portion of a document prepared by the Office of the State Climatologist assessing historic and future extreme weather trends in Texas from 1900 to 2036.<sup>84</sup> See CFUR Amended Petition at 30. Emphasizing the report's finding that "[i]ncreasing temperatures, rainfall variability and other factors will in balance decrease water availability," CFUR states that the "Comanche Peak reactors are set to retire in 2030 and 2033, so the predictions of drought and high temperatures fall within the currently licensed operation timeframe." *Id.* at 30-31. But CFUR does not explain what relevance this publication has to this license renewal proceeding, given that, as CFUR expressly acknowledges, the report covers the time frame in which the Comanche Peak units will be operating under their existing licenses. Thus, this claim likewise cannot be the source of an admissible contention in that it fails to demonstrate that a genuine dispute exists with the applicant on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(vi).

Based on the foregoing analysis, the Board finds that Contention 4 is inadmissible.

#### IV. CONCLUSION

For the reasons set forth above in section II.B, CFUR has provided an adequate showing to establish its representational standing in this initial license renewal proceeding regarding Vistra's Comanche Peak facility. For the reasons described in section III.B above, however, we find that under the applicable standards of 10 C.F.R. § 2.309(f)(1) CFUR has failed to establish the grounds for admitting any of its four contentions.<sup>85</sup>

---

whatever extent these data are relevant here, as presented it does not contradict Vistra's analysis of weather-related climate change impacts provided in the ER.

<sup>84</sup> See *id.* at 30-31 (citing Office of the Texas State Climatologist, Texas A&M Univ., Assessment of Historic and Future Trends of Extreme Weather in Texas, 1900-2036 (Oct. 7, 2021), <https://climatexas.tamu.edu/files/ClimateReport-1900to2036-2021Update>; Office of the Texas State Climatologist, Texas A&M Univ., Assessment of Historic and Future Trends of Extreme Weather in Texas, 1900-2036, Executive Summary (Oct. 7, 2021), [https://climatexas.tamu.edu/files/2021UPDATE\\_Climate-ExecutiveSummary-Flyer.pdf#climatexas.tamu.edu:%20files/2021UPDATE\\_Climate-ExecutiveSummary-Flyer.pdf](https://climatexas.tamu.edu/files/2021UPDATE_Climate-ExecutiveSummary-Flyer.pdf#climatexas.tamu.edu:%20files/2021UPDATE_Climate-ExecutiveSummary-Flyer.pdf)).

<sup>85</sup> In its answer, the NRC Staff also noted that on March 3, 2023, the agency published in the *Federal Register* a proposed rule that would provide a periodic update to the GEIS. See NRC Staff Answer at 11 n.54 (citing Renewing Nuclear Power Plant Operating Licenses — Environmental Review, 88 Fed. Reg. 13,329 (Mar. 3, 2023)). While indicating that the Staff's views on the

(Continued)



Accordingly, CFUR's hearing request is denied.

---

For the foregoing reasons, it is this seventh day of June 2023, ORDERED, that:

1. The March 1, 2023 amended hearing request of petitioner Citizens for Fair Utility Regulation is *denied* and this proceeding is *terminated*.

2. In accordance with the provisions of 10 C.F.R. § 2.311, as this memorandum and order rules upon an intervention petition, any appeal to the Commission from this memorandum and order must be taken within twenty-five days after this issuance is served.

THE ATOMIC SAFETY AND  
LICENSING BOARD

G. Paul Bollwerk, III, Chair  
ADMINISTRATIVE JUDGE

Dr. Gary S. Arnold  
ADMINISTRATIVE JUDGE

Dr. Sue H. Abreu  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
June 7, 2023

---

admissibility of CFUR's contentions was based on the 2013 Revised GEIS and would not change if the GEIS update was adopted as proposed, the Staff also observed that "the Commission has previously stated that 'it has long been agency policy that Licensing Boards "should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.'" *Id.* (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999)). As a consequence, according to the Staff, "to the extent Proposed Contentions 1 and 3 challenge findings that are the subject of the 2023 license renewal GEIS rulemaking, the Board should reject these contentions based on this Commission policy as well." *Id.*; *see Tr.* at 64-65 (Licon) (indicating at the April 2023 oral argument that in the NRC Staff's view Contention 4 would be a candidate for rejection under this Commission policy as well). Given our determination above that the section 2.309(f)(1) contention admissibility standards clearly preclude accepting any of CFUR's contentions as litigable issues, *see supra* section III.B, we consider it unnecessary to reach the issue whether the Commission's policy regarding the pendency of a "general rulemaking" is grounds for finding any of CFUR's contentions inadmissible.

### **Additional Views of Bollwerk, A.J.**

While I agree fully with the Licensing Board's conclusions regarding petitioner Citizens for Fair Utility Regulation's (CFUR) standing to intervene and the admissibility of its four contentions, I nonetheless write separately concerning the applicability of the Commission policy referenced in footnote 85 of the Board's decision regarding the effect of a possible or pending "general rulemaking" on the admissibility of a petitioner's contention associated with the subject matter of that rulemaking.

In connection with the 2013 Generic Environmental Impact Statement (GEIS) and 10 C.F.R. Part 51's Table B-1, on March 3, 2023, the agency published in the *Federal Register* a proposed rule that would provide a periodic update to the GEIS. *See* Renewing Nuclear Power Plant Operating Licenses — Environmental Review, 88 Fed. Reg. 13,329, 13,332 (Mar. 3, 2023). As it might be relevant to the issues in this proceeding, that proposed rule would continue the Table B-1 Category 1 listing for "Design-basis accidents" and change "Severe accidents" from a Category 2 to a Category 1 listing because all reactor facilities seeking an initial or subsequent operating license renewal would now have a completed severe accident mitigation alternatives (SAMA) analysis. *See id.* at 13,344, 13,355. Also under the proposed rule, the Table B-1 Category 1 listings for "Radiation exposures to plant workers," "Radiation exposures to the public," "Exposure of terrestrial organisms to radionuclides," and "Exposure of aquatic organisms to radionuclides" would remain unchanged. *See id.* at 13,337, 13,341, 13,344, 13,353, 13,354, 13,355. And regarding climate change-associated impacts, the Table B-1 Category 1 listing for "Surface water use conflicts (plants with once-through cooling systems)" would not change either. *See id.* at 13,336. The proposed rule would, however, incorporate into Table B-1 two new issues, one for "Greenhouse gas impacts on climate change" and one for "Climate change impacts on environmental resources," which would be Category 1 and Category 2 listings, respectively. *See id.* at 13,345, 13,356 (indicating NRC's post-2013 evaluation of climate change supports finding that greenhouse gas emission impacts from continued facility operation during both an initial and subsequent license renewal term would be SMALL for all nuclear power plants, warranting a Category 1 listing, while the impacts of climate change on environmental resource conditions (e.g., precipitation, water availability, air and water temperature, sea level rise) that could also be affected by continued nuclear power plant operations require a Category 2 site-specific impact assessment); *see also id.* at 13,346, 13,351 (indicating that consistent with new Table B-1 Category 2 issue, proposed rule adds a new section 51.53(c)(3)(ii)(Q) requiring that a license renewal environmental report (ER) include an assessment of the effects of any changes in climate on environmental resource areas and plant operating mitigation measures designed to address climate change impacts).

As the Board observed in footnote 85, in its answer the NRC Staff noted that “the Commission has previously stated that ‘it has long been agency policy that Licensing Boards “should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission.”” NRC Staff Answer at 11 n.54 (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999)). The Staff also indicated that “[w]hile the Staff’s views concerning the admissibility of the proffered contentions are based on the 2013 GEIS, to the extent Proposed Contentions 1 and 3 challenge findings that are the subject of the 2023 license renewal GEIS rulemaking, the Board should reject these contentions based on this Commission policy as well.” *Id.* Subsequently, at the April 19, 2023 oral argument the Staff stated that Contention 4 would be a candidate for dismissal under this policy as well. *See* Tr. at 64-65 (Licon).

In light of the above description of the 2023 proposed rule’s Table B-1 revisions, the most likely candidate for dismissal under the Staff-referenced Commission “general rulemaking” policy would be the portion of CFUR’s Contention 4 that asserts, consistent with recently-released Council on Environmental Quality guidance, that the Vistra ER should include a discussion of the impacts of facility greenhouse gas emissions. *See* Amended Petition for Leave to Intervene and Request for Hearing of [CFUR] at 25 (Mar. 1, 2023). Although, as the Board described in section I.B.3 of its decision, while current Commission policy provides for such a plant-specific ER discussion, under the 2023 proposed rule this subject would become a Category 1 item such that no ER plant-specific discussion would be required and any adjudicatory challenge to an ER (or supplemental environmental impact statement) based on the need for further analysis of this subject would be precluded absent a timely filed section 2.335 waiver petition.

Looking at the cases cited by the Commission in its *Oconee* decision quoted by the Staff, it appears that the genesis of this “general rulemaking” policy goes back to a series of Atomic Safety and Licensing Appeal Board rulings in the early 1970s that culminated in the 1974 *Douglas Point* decision. *See Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79 (1974). In *Douglas Point*, in considering the degree to which contentions regarding the environmental impacts of the uranium fuel cycle were precluded by an agency rulemaking that sought to address those impacts generically, the Appeal Board declared that a Commission determination about whether to entertain such a contention in the face of an ongoing rulemaking was no more than the application of the recognized administrative law principle that “the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily within the informed discretion of the administrative agency.” *Id.* at 84 (quoting *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974)). According to the Appeal Board, this left to the Commission

“the flexibility to defer broad across-the-board issues presented in a multitude of individual adjudicatory proceedings and to consolidate them for consideration in a single rulemaking proceeding, while continuing in the interim to rely on individual adjudications to resolve remaining questions.” *Id.*

In applying the Appeal Board’s stated rationale for this “general rulemaking” policy, the license renewal GEIS and Table B-1, as they currently exist and as they are proposed for revision, certainly constitute an agency determination to address “broad across-the-board” environment issues relating to 10 C.F.R. Part 54 license renewal applications so as to avoid a “multitude of individual adjudicatory proceedings.” *Id.*; see *Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 79 & n.27 (2014) (ruling that because continued spent fuel storage GEIS was the subject of extensive public participation in the rulemaking process, generic environmental impact determinations regarding continued storage are excluded from litigation in individual adjudications). Nonetheless, the imposition of this “general rulemaking” policy in an instance like this also seems particularly fraught with procedural questions. For example, if under a proposed rule an issue such as whether an applicant needs a site-specific environmental greenhouse gas emissions analysis would become a Table B-1 Category 1 item, how and when would a petitioner be able to interpose a timely challenge regarding the need for such an analysis, including the proper procedure and timing for filing a section 2.335 waiver petition? See Tr. at 65-68 (Bollwerk/Licon).

With the Licensing Board’s determination that the section 2.309(f)(1) contention admissibility standards clearly preclude accepting any of CFUR’s contentions as litigable issues (including several instances in which CFUR failed to seek a section 2.335 waiver when challenging a Table B-1 Category 1 issue), it is unnecessary for the Board to consider or resolve this and other potentially troubling questions associated with the application of the Commission’s “general rulemaking” policy as the grounds for finding any of CFUR’s contentions inadmissible. Nonetheless, in light of the apparently indeterminate reach of this policy, the Commission may wish to offer some guidance on whether that policy remains viable and, if so, whether that policy should be subject to any constraints, particularly in instances when its application may present a petitioner with a quandary about how to submit a timely contention and an associated section 2.335 waiver petition.

## CASE NAME INDEX

CAMMENGA AND ASSOCIATES, LLC  
MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Approving Settlement Agreement and Terminating Proceeding); Docket No. 030-38679-LA (ASLBP No. 21-972-01-LA-BD01); LBP-23-3, 97 NRC 59 (2023)

CROW BUTTE RESOURCES, INC.  
MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Granting Motion to Terminate Proceeding); Docket No. 40-8943 (ASLBP No. 08-867-02-OLA-BD01); LBP-23-1, 97 NRC 1 (2023)

ENTERGY NUCLEAR OPERATIONS, INC.,  
LICENSE TRANSFER; CERTIFICATION OF RECORD TO COMMISSION; Docket Nos. 50-155-LT-2, 72-043-LT-2 (ASLBP No. 22-974-01-LT-BD01); LBP-23-5, 97 NRC 116 (2023)

ENTERGY NUCLEAR PALISADES, LLC,  
LICENSE TRANSFER; CERTIFICATION OF RECORD TO COMMISSION; Docket Nos. 50-255-LT-2, 72-007-LT (ASLBP No. 22-974-01-LT-BD01); LBP-23-5, 97 NRC 116 (2023)

HOLTEC DECOMMISSIONING INTERNATIONAL, LLC  
LICENSE TRANSFER; CERTIFICATION OF RECORD TO COMMISSION; Docket Nos. 72-007-LT, 72-043-LT-2 (ASLBP No. 22-974-01-LT-BD01); LBP-23-5, 97 NRC 116 (2023)

HOLTEC INTERNATIONAL  
LICENSE TRANSFER; CERTIFICATION OF RECORD TO COMMISSION; Docket Nos. 50-155-LT-2, 50-255-LT-2 (ASLBP No. 22-974-01-LT-BD01); LBP-23-5, 97 NRC 116 (2023)

NUCLEAR FUEL SERVICES, INC.  
MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Denying Intervention Petition and Terminating Proceeding); Docket No. 70-143-LA (ASLBP No. 23-976-01-LA-BD02); LBP-23-2, 97 NRC 8 (2023)

SUSQUEHANNA NUCLEAR, LLC  
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 50-387-LT-3, 50-388-LT-3, 72-28-LT-3; CLI-23-1, 97 NRC 81 (2023)

TMI-2 SOLUTIONS, LLC  
POSSESSION ONLY LICENSE AMENDMENT; MEMORANDUM AND ORDER (Denying Eric Epstein's (1) Petition to Intervene and Hearing Request; and (2) Motion for Leave to File New Contentions); Docket No. 50-320-LA-2 (ASLBP No. 23-977-02-LA-BD01); LBP-23-4, 97 NRC 89 (2023)

VISTRA OPERATIONS COMPANY, LLC  
OPERATING LICENSE RENEWAL; MEMORANDUM AND ORDER (Denying Intervention Petition and Terminating Proceeding); Docket Nos. 50-445-LR, 50-446-LR (ASLBP No. 23-978-01-LR-BD01); LBP-23-6, 97 NRC 147 (2023)



## LEGAL CITATIONS INDEX CASES

- Advanced Medical Systems, Inc.* (1020 London Road, Cleveland, Ohio), LBP-98-32, 48 NRC 374, 376-77 (1998)  
intervention requests have been granted in license renewal application denial proceedings; LBP-23-3, 97 NRC 59, 75 n.26 (2023)
- Allied-General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976)  
although petitioner purportedly has a special interest in overseeing the facility, he has not shown how that interest might be injured by the license amendment request and, accordingly, has not demonstrated standing; LBP-23-4, 97 NRC 89, 114 (2023)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118 (2006)  
contention admissibility standard is strict by design; LBP-23-4, 97 NRC 89, 107 (2023); LBP-23-6, 97 NRC 147, 178 (2023)
- AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 126, 129 (2007), *aff'd*, *N.J. Dep't of Env'tl. Prot. v. NRC*, 561 F.3d 132 (3rd Cir. 2009)  
NEPA does not require the NRC to consider environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities; LBP-23-4, 97 NRC 89, 112 (2023)
- AREVA Enrichment Services, LLC* (Eagle Rock Enrichment Facility), CLI-09-15, 70 NRC 1, 5 (2009)  
Commission follows the Ninth Circuit precedent only for facilities located within the jurisdiction of that circuit; LBP-23-2, 97 NRC 8, 33 n.38 (2023)
- Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991)  
when petitioner neglects to provide the requisite support for its contentions, the board may not cure the deficiency by supplying that information; LBP-23-2, 97 NRC 8, 24 (2023); LBP-23-6, 97 NRC 147, 166 n.45 (2023)
- Asberry v. U.S. Postal Serv.*, 692 F.2d 1378, 1380 (Fed. Cir. 1982)  
settlement agreement is not open to appellate challenge absent fraud or mutual mistake; LBP-23-3, 97 NRC 59, 76 n.27 (2023)
- California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982)  
in consideration of alternatives to a proposed action, agencies must study, develop, and describe appropriate alternatives that are within the nature and scope of the proposed action sufficient to permit a reasoned choice; LBP-23-2, 97 NRC 8, 36 (2023)
- Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009)  
traditional judicial standing requires that petitioner show injury in fact, causation, zone of interest, and redressability; LBP-23-2, 97 NRC 8, 20-21 (2023); LBP-23-6, 97 NRC 147, 163-64 (2023)
- Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 916-17 (2009)  
in proceedings for combined licenses, petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption; LBP-23-2, 97 NRC 8, 21 (2023)
- Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 917 (2009)  
50-mile proximity presumption is simply a shortcut for determining standing in certain cases; LBP-23-4, 97 NRC 89, 101 (2023)

## LEGAL CITATIONS INDEX

### CASES

- proximity presumption rests on a finding, in construction permit and operating license cases, that persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur; LBP-23-4, 97 NRC 89, 101, 102 (2023)
- proximity presumption satisfies contemporaneous judicial concepts of standing and promotes efficiency in the adjudicatory process; LBP-23-4, 97 NRC 89, 101 (2023)
- Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 79 & n.27 (2014)
- because continued spent fuel storage GEIS was the subject of extensive public participation in the rulemaking process, generic environmental impact determinations regarding continued storage are excluded from litigation in individual adjudications; LBP-23-6, 97 NRC 147, 188 (2023)
- CFC Logistics, Inc.*, LBP-03-20, 58 NRC 311, 318 (2003)
- 50-mile proximity presumption applies to traditional light-water power reactor license proceedings, but not necessarily to other licensed activities, such as this nuclear fuel fabrication facility; LBP-23-2, 97 NRC 8, 21 (2023)
- ruling on a proximity presumption claim in nuclear fuel fabrication facility case is sometimes referred to as a proximity plus presumption; LBP-23-2, 97 NRC 8, 21 (2023)
- Charlissa C. Smith* (Denial of Senior Reactor Operator License), LBP-13-3, 77 NRC 82, 89-95 (2013)
- applicant's section 2.103(b)(2) hearing demand can be granted without section 2.309(f)(1)-compliant contentions; LBP-23-3, 97 NRC 59, 70 n.21 (2023)
- Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991)
- agency cannot simply accept out of hand applicant's purpose and need statement or allow objectives of an action under consideration to be defined so unreasonably narrowly that only one alternative would accomplish the goals of the agency's action; LBP-23-2, 97 NRC 8, 35 (2023)
- in consideration of alternatives to a proposed action, agencies must study, develop, and describe appropriate alternatives that are within the nature and scope of the proposed action sufficient to permit a reasoned choice; LBP-23-2, 97 NRC 8, 36 (2023)
- City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997)
- purpose and need statement in a NEPA environmental assessment or report is important because it necessarily dictates the range of reasonable alternatives and must be supported by data and evidence establishing that the assessment is reasonable; LBP-23-2, 97 NRC 8, 35 (2023)
- Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 624 (1981)
- scope of a hearing contesting a facility license amendment should encompass any health, safety, or environmental issues fairly raised by the amendment; LBP-23-2, 97 NRC 8, 48 (2023)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 189 (1999)
- petitioner must demonstrate some plausible chain of causation specifying how the particular license amendments have an obvious potential to cause offsite radiological consequences; LBP-23-4, 97 NRC 89, 100-101, 104 (2023)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999)
- given shutdown and defueled status of units, license amendments do not on their face present any obvious potential for offsite radiological consequences meriting application of proximity presumption; LBP-23-4, 97 NRC 89, 102 (2023)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 192 (1999)
- backward-looking studies on health are irrelevant to the forward-looking standing analysis, which requires a showing of how these particular license amendments would result in a distinct new harm or threat to petitioner; LBP-23-4, 97 NRC 89, 105 (2023)
- petitioner in a license amendment proceeding cannot obtain standing by simply alleging, without substantiation, that the proposed amendments will result in offsite radiological harm; LBP-23-4, 97 NRC 89, 100 (2023)
- petitioner must demonstrate some plausible chain of causation specifying how the particular license amendments have an obvious potential to cause offsite radiological consequences; LBP-23-4, 97 NRC 89, 103 (2023)



## LEGAL CITATIONS INDEX

### CASES

- unsubstantiated assertions that several license amendment provisions will cause harm to petitioner do not satisfy the causation component of standing; LBP-23-4, 97 NRC 89, 104 (2023)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 196 (1999)
- denial of the current license amendments would do nothing to redress the alleged injury; LBP-23-4, 97 NRC 89, 106 (2023)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000)
- licensing board need not accept assertions from petitioner that are conclusory, conjectural, or otherwise untenable; LBP-23-4, 97 NRC 89, 101-02 (2023)
- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), LBP-98-27, 48 NRC 271, 273-74 (1998), *aff'd*, CLI-99-4, 49 NRC 185, 191-93 (1999)
- proximity standing was rejected where petitioner claimed residence within 8-1/2 miles of the plant and activities within 1 mile of the plant; LBP-23-4, 97 NRC 89, 104 n.21 (2023)
- Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 410 (2007)
- licensing board need not accept assertions from a petitioner that are conclusory, conjectural, or otherwise untenable; LBP-23-4, 97 NRC 89, 101 (2023)
- Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004)
- NEPA requires a reasonably close causal relationship between the environmental effect and the proposed action; LBP-23-4, 97 NRC 89, 112 (2023)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 50 NRC 207, 219 (2003)
- contention admissibility standards are intended to properly reserve the hearing process for genuine, material controversies between knowledgeable litigants; LBP-23-6, 97 NRC 147, 178 (2023)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 237 (2008)
- focus of a hearing on a proposed licensing action is adequacy of the application to support the licensing action, not the nature of NRC Staff's review; CLI-23-1, 97 NRC 81, 88 n.44 (2023)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 544 NRC 349, 353 (2001), *petition for reconsideration denied*, CLI-02-11, 55 NRC 1 (2002)
- contention admissibility standards are strict by design; LBP-23-6, 97 NRC 147, 178 (2023)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 544 NRC 349, 358 (2001), *petition for reconsideration denied*, CLI-02-11, 55 NRC 1 (2002)
- contention pleading standards were toughened in 1989 rulemaking, affecting continuing relevance of earlier contention admissibility holdings; LBP-23-6, 97 NRC 147, 178 n.73 (2023)
- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005)
- intervenor must make a prima facie showing that the requisite special circumstances exist so that a rule waiver may be granted; LBP-23-2, 97 NRC 8, 57 (2023)
- Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 NRC 539, 607-08 (2007), *approved*, CLI-07-27, 66 NRC 215 (2007)
- in context of purpose and need statement, alternatives selected for a NEPA analysis are necessarily informed by the project under review and its goals, which in turn are determined by applicant; LBP-23-2, 97 NRC 8, 40 (2023)
- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146 n.53 (2015)
- contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirements for admission; LBP-23-4, 97 NRC 89, 108 n.27 (2023)
- contentions must be pled with sufficient specificity to put opposing parties on notice of which claims they will actually have to defend; LBP-23-4, 97 NRC 89, 108 n.27 (2023)
- lenient treatment generally accorded to pro se litigants has limits; LBP-23-4, 97 NRC 89, 108 n.27, 109 n.30 (2023)

## LEGAL CITATIONS INDEX

### CASES

- Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-03-14, 58 NRC 104, 108 (2003)  
when regulatory history shows NRC has rejected an amendment to a rule, that rejection may be evidence the Commission did not intend the regulation to include the provision in the rejected amendment; LBP-23-2, 97 NRC 8, 32-33 n.37 (2023)
- Duke Energy Carolinas, LLC* (William States Lee III Nuclear Station, Units 1 and 2), CLI-09-21, 70 NRC 927, 931 (2009)  
NRC Staff is to consider carbon dioxide and other greenhouse gas emissions in its environmental reviews for major licensing actions under NEPA; LBP-23-6, 97 NRC 147, 162 n.26 (2023)
- Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382-83 (2002)  
contention of omission is one alleging that licensing documents failed to address a topic that, as a matter of law, was required to be discussed; LBP-23-4, 97 NRC 89, 108 n.26 (2023)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334-35 (1999)  
contention admissibility requirements are intended to ensure that adjudicatory hearings are triggered only by substantive safety or environmental issues that raise a supported dispute with the application on a matter material to the NRC's decision on the challenged action; CLI-23-1, 97 NRC 81, 84 (2023)
- Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999)  
licensing boards should not accept in individual license proceedings contentions that are or are about to become the subject of general rulemaking by the Commission; LBP-23-6, 97 NRC 147, 185 n.85, 187 (2023)
- Eastern Testing and Inspection, Inc.*, LBP-96-11, 43 NRC 279, 282 n.1 (1996)  
presiding officer cannot amend a settlement agreement without consent of the parties; LBP-23-3, 97 NRC 59, 76 n.27 (2023)
- Energy Solutions, LLC* (Zion Nuclear Power Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 2; et al.), CLI-22-9, 96 NRC 107, 116-19 (2022)  
TMI-2 accident and cleanup are described; LBP-23-4, 97 NRC 89, 97 n.5 (2023)
- Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016)  
failure to comply with any admissibility requirement renders a contention inadmissible; LBP-23-4, 97 NRC 89, 107 (2023)
- Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), LBP-15-26, 82 NRC 163, 181 (2015)  
applicant's categorical exclusion determination can be challenged by affirmatively showing existence of special circumstances pursuant to section 51.22(b) that would justify excepting the proposed license amendment from the categorical exclusion; LBP-23-4, 97 NRC 89, 109 n.29 (2023)
- Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 347 (2015)  
license renewal review is not intended to duplicate NRC's ongoing oversight of operating reactors, but rather to ensure that licensee can successfully manage detrimental effects of aging; LBP-23-6, 97 NRC 147, 158 (2023)  
Part 54 regulatory approach focuses on whether licensee can manage the effects of aging on certain long-lived, passive components that are important to safety; LBP-23-6, 97 NRC 147, 159 (2023)
- Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015)  
it is petitioners' responsibility, not the board's, to formulate contentions and provide necessary information to satisfy the basis requirement for admission; LBP-23-6, 97 NRC 147, 166 n.43 (2023)  
petitioner bears the burden to satisfy each of the contention admissibility criteria; LBP-23-2, 97 NRC 8, 23 (2023)
- Entergy Nuclear Operations, Inc., and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 263-65 (2008)  
unions are not inherently representative and must satisfy representational standing criteria; LBP-23-6, 97 NRC 147, 163 n.30 (2023)
- Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 20 (2007)  
adjudicatory challenge based on applicant's alleged failure to deal appropriately with a Category 1 item constitutes an attack on an agency rule, making a section 2.335(b) waiver the sole vehicle for raising such an issue in an adjudication; LBP-23-6, 97 NRC 147, 160 (2023)

## LEGAL CITATIONS INDEX

### CASES

- Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-15-20, 82 NRC 211, 221 (2015)  
contentions cannot be based on speculation but rather must have some reasonably specific factual or legal basis; LBP-23-4, 97 NRC 89, 107 (2023)
- Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-18, 63 NRC 830, 837 (2006)  
public interest factors adopted by NRC in an enforcement context were derived from an array of federal court settlement approval decisions; LBP-23-3, 97 NRC 59, 70 (2023)
- Exelon Generation Co., LLC* (Braidwood Station, Units 1 and 2, et al.), CLI-22-1, 95 NRC 1, 21 (2022)  
sole intervention petitioner in a proceeding is not eligible to seek discretionary intervention; LBP-23-4, 97 NRC 89, 102 n.18 (2023)
- Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199, 211-12 (2013), *petition for review denied sub nom. NRDC v. NRC*, 823 F.3d 641 (D.C. Cir. 2016)  
section 51.53(c)(3)(ii)(L) affords the functional equivalent of the Category 1 issue preclusion established by section 51.53(c)(3)(i); LBP-23-6, 97 NRC 147, 161-62 n.25 (2023)
- Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 491 (2019), *aff'd on other grounds*, CLI-20-11, 92 NRC 335 (2020)  
licensing board must determine whether petitioner has fulfilled the requirements to establish standing to intervene even if standing is uncontested; LBP-23-6, 97 NRC 147, 163 (2023)
- Exelon Generation Co., LLC* (Three Mile Island Nuclear Station, Units 1 and 2), CLI-20-10, 92 NRC 327, 331 (2020)  
contention arguing that license amendment request did not satisfy NEPA because it failed to include an adequate environmental review was inadmissible; LBP-23-4, 97 NRC 89, 110 (2023)
- Exelon Generation Co., LLC* (Three Mile Island Nuclear Station, Units 1 and 2), LBP-20-2, 91 NRC 10, 30, *aff'd on other grounds*, CLI-20-10, 92 NRC 327 (2020)  
proximity standing based on claim of residence within 12 miles of the facility and activities within 5 miles of the plant was rejected; LBP-23-4, 97 NRC 89, 104 (2023)
- Exelon Generation Co., LLC* (Three Mile Island Nuclear Station, Units 1 and 2), LBP-20-2, 91 NRC 10, 38, *aff'd on other grounds*, CLI-20-10, 92 NRC 327 (2020)  
petitioners have an ironclad obligation to review license amendment requests thoroughly and to base their challenges on its contents; LBP-23-4, 97 NRC 89, 110 (2023)
- Exelon Generation Co., LLC, and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 579-83 (2005)  
organization invoking representational standing can seek to establish standing of one or more of its members by using either traditional judicial standing principles or the proximity presumption in applicable proceedings; LBP-23-2, 97 NRC 8, 20 (2023)
- Exelon Generation Co., LLC, and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580 (2005)  
aside from reactor licensing proceedings involving construction permits and operating licenses, applicability of the proximity presumption is determined on a case-by-case basis; LBP-23-4, 97 NRC 89, 101 (2023)  
mere intellectual or academic interest in a facility or proceeding is insufficient, in and of itself, to demonstrate standing; LBP-23-4, 97 NRC 89, 105, 114 (2023)  
proximity presumption relieves petitioner of the need to satisfy traditional standing elements of injury in fact, causation, and redressability; LBP-23-2, 97 NRC 8, 21 (2023); LBP-23-6, 97 NRC 147, 164 (2023)  
proximity presumption rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility; LBP-23-2, 97 NRC 8, 21 (2023); LBP-23-6, 97 RC 147, 164 (2023)
- Exelon Generation Co., LLC, and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580, 581 (2005)  
given shutdown and defueled status of units, license amendments do not on their face present any obvious potential for offsite radiological consequences meriting application of proximity presumption; LBP-23-4, 97 NRC 89, 103 (2023)

## LEGAL CITATIONS INDEX

### CASES

- Exelon Generation Co., LLC, and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580-81 (2005)  
proximity-plus presumption requires a case-by-case analysis of the proposed licensing action to determine the radius beyond which there is no longer an obvious potential for offsite consequences by taking into account the nature of the proposed action and the significance of the radioactive source; LBP-23-2, 97 NRC 8, 21 (2023)
- Exelon Generation Co., LLC, and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 581 (2005)  
case-specific determination of proximity presumption rests on whether the kind of action at issue, when considered in light of radioactive sources at the plant, justifies a presumption that the licensing action could plausibly lead to the offsite release of radioactive fission products; LBP-23-4, 97 NRC 89, 101 (2023)  
petitioner applying the proximity presumption must show that the licensing action raises an obvious potential for offsite consequences; LBP-23-4, 97 NRC 89, 101 (2023)  
where proximity standing cannot be established, NRCs standing inquiry reverts to a traditional standing analysis; LBP-23-4, 97 NRC 89, 104 (2023)
- Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003)  
bare assertions or speculation, even by experts, does not provide the requisite support for a proposed contention; LBP-23-6, 97 NRC 147, 176 (2023)  
contention based on a document or expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadmissible; LBP-23-6, 97 NRC 147, 176 (2023)
- FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 396 (2012)  
NRC's stringent contention admissibility rule properly reserves its hearing process for genuine, material controversies between knowledgeable litigants; LBP-23-4, 97 NRC 89, 107 (2023); LBP-23-6, 97 NRC 147, 178 (2023)
- Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989)  
in proceedings for light-water power reactor construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool, petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption; LBP-23-2, 97 NRC 8, 21 (2023)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7, 9 (2001)  
contentions that challenge the plant's current licensing basis are unnecessary and wasteful because NRC already has in place ongoing agency oversight, review, and enforcement processes associated with operational issues; LBP-23-6, 97 NRC 147, 159 (2023)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8 (2001)  
adverse aging effects generally are gradual and thus can be detected by programs that ensure sufficient inspections and testing; LBP-23-6, 97 NRC 147, 157 n.16 (2023)  
before NRC will grant any license renewal application, applicant must reassess time-limited aging analyses; LBP-23-6, 97 NRC 147, 157 n.17 (2023)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 9 (2001)  
current licensing basis is defined; LBP-23-6, 97 NRC 147, 159 n.19 (2023)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 9-10 (2001)  
challenge to safety issues associated with a plant's current licensing basis is, absent a section 2.335 waiver, beyond the scope of a license renewal proceeding and thus insufficient to support an admissible contention; LBP-23-6, 97 NRC 147, 183 (2023)

## LEGAL CITATIONS INDEX

### CASES

- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 10 (2001)  
challenge concerning safety issues associated with a plant's current licensing basis is beyond the scope of a license renewal proceeding and so cannot be the subject of the hearing in the absence of a 10 C.F.R. 2.335 waiver petition; LBP-23-6, 97 NRC 147, 159 (2023)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 11-13 (2001)  
adjudicatory challenge based on applicant's alleged failure to deal appropriately with a Category 1 item constitutes an attack on an agency rule, making a section 2.335(b) waiver the sole vehicle for raising such an issue in an adjudication; LBP-23-6, 97 NRC 147, 160 (2023)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015)  
criteria to establish representational standing under 10 C.F.R. 2.309(d)(1) are discussed; LBP-23-6, 97 NRC 147, 163 (2023)  
interests that 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; LBP-23-2, 97 NRC 8, 20 (2023)  
intervention petitioner bears the burden to set forth a coherent argument supported by plausible facts sufficient to establish standing; LBP-23-4, 97 NRC 89, 101 (2023)  
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; LBP-23-2, 97 NRC 8, 20 (2023)  
pro se petitioner's pleadings will not be held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-23-4, 97 NRC 89, 101 (2023)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 397 n.53 (2015)  
although boards afford some leniency to pro se petitioners they are expected to fulfill the obligations imposed by NRC rules; LBP-23-4, 97 NRC 89, 114 (2023)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-19-3, 89 NRC 245, 258-59 (2019), *appeal dismissed and referred ruling aff'd*, CLI-20-3, 91 NRC 133 (2020), *rev'd on reconsideration*, CLI-22-2, 95 NRC 26 (2022)  
in proceedings for early site permits, combined licenses, and license renewals, petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption; LBP-23-2, 97 NRC 8, 21 (2023)  
in some proceedings, an organization's representational standing can be based on a proximity presumption showing that at least one individual who designates the group as their representative lives within 50 miles of the facility that is the subject of the proceeding; LBP-23-6, 97 NRC 147, 164 (2023)
- Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 NRC 149, 200 n.53 (2011)  
contention of omission is one alleging that licensing documents failed to address a topic that, as a matter of law, was required to be discussed; LBP-23-4, 97 NRC 89, 108 n.26 (2023)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995)  
licensing board construes intervention petition standing analysis in favor of petitioner; LBP-23-4, 97 NRC 89, 101 (2023)  
NRC applies contemporaneous judicial concepts of standing; LBP-23-4, 97 NRC 89, 100 (2023)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17 (1995)  
proximity-plus presumption requires a case-by-case analysis of the proposed licensing action to determine the radius beyond which there is no longer an obvious potential for offsite consequences by taking into account nature of the proposed action and significance of radioactive source; LBP-23-2, 97 NRC 8, 21 (2023)

## LEGAL CITATIONS INDEX

### CASES

- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 300 (1995)  
petitioner's imprecise reading of a supporting document cannot generate a litigable issue; LBP-23-6, 97 NRC 147, 175 n.66 (2023)
- GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)  
bare assertions or speculation, even by experts, does not provide the requisite support for a proposed contention; LBP-23-6, 97 NRC 147, 176 (2023)  
contention based on a document or expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadmissible; LBP-23-6, 97 NRC 147, 176 (2023)
- Holtec International* (HI-STORE Consolidated Interim Storage Facility), CLI-20-4, 91 NRC 167, 190-91 (2020)  
contention must frame a dispute as to a material issue and not flyspeck an environmental impact statement; LBP-23-2, 97 NRC 8, 49 n.55 (2023); LBP-23-6, 97 NRC 147, 169 n.50 (2023)
- Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001)  
only reasonable alternatives that will bring about the ends of the proposed action must be considered; LBP-23-2, 97 NRC 8, 38 (2023)
- Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519, 1520 (9th Cir. 1992)  
in consideration of alternatives to a proposed action, agencies must study, develop, and describe appropriate alternatives that are within the nature and scope of the proposed action sufficient to permit a reasoned choice; LBP-23-2, 97 NRC 8, 36 (2023)
- International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001)  
petitioner must demonstrate some plausible chain of causation specifying how the particular license amendments have an obvious potential to cause offsite radiological consequences; LBP-23-4, 97 NRC 89, 104 (2023)
- James Chaisson*, LBP-15-21, 82 NRC 1, 5 (2015)  
notice of hearing often is issued in combination with the initial grant of a demand for hearing; LBP-23-3, 97 NRC 59, 70 n.21 (2023)
- Kleppe v. Sierra Club*, 427 U.S. 390, 404-05 (1976)  
NEPA does not require an environmental impact statement in the absence of an actual proposed federal action; LBP-23-2, 97 NRC 8, 28 n.34 (2023)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 290 *petition for review denied*, CLI-88-11, 74 NRC 603 (1988)  
NRC Staff regulatory guidance documents that are consistent with regulations and are at least implicitly endorsed by the Commission are entitled to correspondently special weight; LBP-23-2, 97 NRC 8, 32-33 n.37 (2023)
- Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 394-95 & n.19 (1987)  
petitioner's attempt to advocate for requirements stricter than or in addition to those imposed by regulation constitutes a collateral attack on NRC's rules that requires a section 2.335 waiver; LBP-23-6, 97 NRC 147, 182 n.81 (2023)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224, *reconsideration denied*, CLI-04-35, 60 NRC 619 (2004)  
petitioner cannot use reply brief to reinvigorate thinly supported contentions by presenting entirely new arguments; LBP-23-6, 97 NRC 147, 168 n.48 (2023)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 724 (2005)  
nuclear weapons proliferation assessment is not required under either the AEA or NEPA in connection with agency domestic licensing proceedings; LBP-23-2, 97 NRC 8, 31 (2023)  
nuclear weapons proliferation is a matter of international policy involving a multilayered domestic and international framework as well as assessment of numerous speculative future independent actions by third parties such as the President, the Congress, and officials from foreign nations; LBP-23-2, 97 NRC 8, 27 (2023)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 724 & n.11 (2005)  
need for nuclear weapons proliferation assessment is speculative and lacks a proximate-cause connection; LBP-23-2, 97 NRC 8, 33 n.38 (2023)

## LEGAL CITATIONS INDEX

### CASES

- Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), CLI-11-9, 74 NRC 233, 242-43 (2011)  
Commission referenced both proposed and final rule statements of considerations in using regulatory history to determine rule's meaning; LBP-23-2, 97 NRC 8, 32 n.37 (2023)  
Commission statements made in the context of a rulemaking petition denial are appropriate to determine rule's meaning; LBP-23-2, 97 NRC 8, 32 n.37 (2023)
- Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 374 (1989)  
environmental decisions must contain an evaluation of those aspects of a proposed action that will affect the quality of the human environment in a significant manner or to a significant extent not already considered; LBP-23-4, 97 NRC 89, 108 (2023)
- N.J. Dep't of Envtl. Prot. v. NRC*, 561 F.3d 132, 136 (3rd Cir. 2009)  
NEPA requires a reasonably close causal relationship between the environmental effect and the proposed action; LBP-23-4, 97 NRC 89, 112 (2023)
- N.J. Dep't of Envtl. Prot. v. NRC*, 561 F.3d 132, 143 (3d Cir. 2009)  
Commission follows the Ninth Circuit precedent only for facilities located within the jurisdiction of that circuit; LBP-23-2, 97 NRC 8, 33 n.38 (2023)
- Nat. Wildlife Fed'n v. FERC*, 912 F.2d 1471, 1478 (D.C. Cir. 1990)  
future, yet unproposed project should be considered in an environmental impact statement if the envisioned projects would impact the relevant environment; LBP-23-2, 97 NRC 8, 28 n.34 (2023)
- NextEra Energy Point Beach, LLC* (Point Beach Nuclear Plant, Units 1 and 2), CLI-22-5, 95 NRC 97, 101, 105 (2022)  
without a rule waiver determination by the Commission, a contention that challenges a rule is outside the scope of the proceeding and may not be given further consideration by a licensing board; LBP-23-2, 97 NRC 8, 57 (2023)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-19-7, 90 NRC 1, 14 (2019)  
challenges to current plant licensing basis rather than the requested facility modification are not within the permissible scope of a license amendment proceeding and instead should be brought as an enforcement action pursuant to 10 C.F.R. 2.206; LBP-23-2, 97 NRC 8, 49 n.53 (2023)
- NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-17-7, 86 NRC 59, 77 (2017)  
pro se petitioners are held to less rigid pleading standards so that parties with a clear but imperfectly stated interest in the proceeding are not excluded; LBP-23-4, 97 NRC 89, 114 (2023)
- NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974)  
choice made between proceeding by general rule or by individual, ad hoc litigation lies primarily within the informed discretion of the administrative agency; LBP-23-6, 97 NRC 147, 187 (2023)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999)  
vague, unparticularized, unsupported contentions are inadmissible; LBP-23-2, 97 NRC 8, 48 (2023)
- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-04-5, 59 NRC 186, 189-96, *aff'd*, CLI-04-13, 59 NRC 244 (2004)  
licensing board concluded that residents located between 2 and 20 miles from a facility failed to make a sufficient showing of a particularized injury relative to a proposed licensing action authorizing the downblending of uranium; LBP-23-2, 97 NRC 8, 22 (2023)
- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-04-5, 59 NRC 186, 196-98, *aff'd*, CLI-04-13, 59 NRC 244 (2004)  
individual residing within 1 mile of a facility and passing directly by the facility 5 days a week established standing based on proximity to facility using uranium downblending process; LBP-23-2, 97 NRC 8, 22 (2023)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 *petition for review denied*, CLI-83-32, 18 NRC 1309 (1983)  
except for certain NEPA issues, applicant's license application is in issue, not adequacy of NRC Staff's review of the application; LBP-23-2, 97 NRC 8, 31 n.36 (2023)  
NEPA-related contentions must be raised regarding the applicant's environmental report because NRC Staff has not necessarily conducted its environmental analysis at the hearing request stage; LBP-23-2, 97 NRC 8, 30-31 (2023)

## LEGAL CITATIONS INDEX

### CASES

- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011)  
NRC is not bound by Council on Environmental Quality's NEPA regulations or guidance; LBP-23-6, 97 NRC 147, 182 n.80 (2023)
- Pa'ina Hawaii, LLC* LBP-06-4, 63 NRC 99, 112-13 (2006)  
applicant's categorical exclusion determination can be challenged by affirmatively showing the existence of special circumstances pursuant to section 51.22(b) that would justify excepting the proposed license amendment from the categorical exclusion; LBP-23-4, 97 NRC 89, 109 n.29 (2023)
- Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 84 (1974)  
choice made between proceeding by general rule or by individual, ad hoc litigation lies primarily within the informed discretion of the administrative agency; LBP-23-6, 97 NRC 147, 187 (2023)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010)  
in a limited category of proceedings, NRC recognizes a proximity presumption in favor of standing for persons who reside or have frequent contacts within a 50-mile radius of a nuclear power plant; LBP-23-4, 97 NRC 89, 101 (2023)
- PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010)  
licensing board shall, where appropriate, weigh the information provided to determine whether a standing element is satisfied; LBP-23-4, 97 NRC 89, 101-02 & n.17 (2023)
- PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 504 (2015)  
contention admissibility rule is strict by design; LBP-23-2, 97 NRC 8, 48 (2023)
- PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 506 n.47 (2015)  
petitioners must do more than rest on the mere existence of requests for additional information as a basis for their contention; LBP-23-4, 97 NRC 89, 111 n.34 (2023)
- PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 22 (2007)  
petitioner's attempt to advocate for requirements stricter than or in addition to those imposed by regulation constitutes a collateral attack on NRC's rules that requires a section 2.335 waiver; LBP-23-6, 97 NRC 147, 182 n.81 (2023)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999)  
organization's standing in NRC proceedings based on its representation of interests of one or more individuals depends, in turn, on standing of the individuals being represented and on the organization's ability to establish its standing in a representational capacity; LBP-23-6, 97 NRC 147, 163 (2023)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999)  
failure to comply with any of the six contention admission requirements constitutes grounds for rejecting a proposed contention; LBP-23-2, 97 NRC 8, 23-24 (2023); LBP-23-6, 97 NRC 147, 166 (2023)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 347 (2002)  
environmental impacts process does not extend to all conceivable consequences of agency decisions, no matter how far down the causal chain from a nuclear licensing decision and no matter how unpredictable; LBP-23-2, 97 NRC 8, 31 (2023)  
nonproliferation concerns are international in nature and do not have a proximate cause connection to the proposed enrichment facility sufficient to require a NEPA inquiry; LBP-23-2, 97 NRC 8, 31 (2023)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 347, 349 & n.33 (2002)  
nonproliferation concerns are speculative and lack a proximate cause connection to licensing so as not to require a NEPA analysis; LBP-23-2, 97 NRC 8, 33 n.38 (2023)



## LEGAL CITATIONS INDEX

### CASES

- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989)  
contention that simply references documents without clearly identifying or summarizing portions of the documents that are being relied upon is inadequate; LBP-23-4, 97 NRC 89, 107 (2023)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1654 (1982)  
petitioner need only state the reasons for its concerns to have an admissible contention; LBP-23-6, 97 NRC 147, 178 n.73 (2023)
- Public Service Electric & Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973)  
pro se litigants are not held to the standards of clarity and precision to which a lawyer might reasonably be expected to adhere, but they are held to the same specificity standards; LBP-23-4, 97 NRC 89, 107 (2023)
- Rockwell International Corp.* (Rocketdyne Division), CLI-90-5, 31 NRC 337, 340 (1990)  
NRC policy strongly favors settlement of adjudicatory proceedings; LBP-23-3, 97 NRC 59, 69 (2023)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006)  
NEPA requires NRC Staff's environmental review to consider the likely consequences of a potential terrorist attack against a spent fuel storage facility for reactor sites within the Ninth Circuit; LBP-23-4, 97 NRC 89, 111-12 (2023)  
NRC's NEPA analysis must consider the full range of risks to the common defense and security potentially arising from its licensing decision, and must consider all reasonable alternatives that could eliminate or mitigate those risks; LBP-23-2, 97 NRC 8, 25 (2023)
- San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1034 (9th Cir. 2006)  
NRC must consider the effects of terrorism under NEPA in the 9th Circuit; LBP-23-2, 97 NRC 8, 33 n.38 (2023)
- Scientists' Inst. for Pub. Info., Inc. v. AEC*, 481 F.2d 1079 (D.C. Cir. 1973)  
nuclear weapons proliferation and security issues have been the subject of NEPA assessments; LBP-23-2, 97 NRC 8, 25 (2023)
- Sequoyah Fuels Corp.* (Gore Oklahoma Site), CLI-97-13, 46 NRC 195, 207 (1997)  
in any pending proceeding in which presiding officer approval of a settlement agreement is required, that approval must give due consideration to the public interest; LBP-23-3, 97 NRC 59, 70, 73 (2023)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 209 (1997)  
board examines risks and benefits of settling vs. litigating the proceeding, likelihood (or uncertainty) of success at trial, range of possible recovery, and complexity, length, and expense of continued litigation; LBP-23-3, 97 NRC 59, 73 (2023)  
board look to whether the settlement approval process deprives interested parties of meaningful participation; LBP-23-3, 97 NRC 59, 75 (2023)  
public interest factor in settlement agreement looks to whether the terms of the settlement appear incapable of effective implementation and enforcement; LBP-23-3, 97 NRC 59, 74 (2023)  
public interest factor looks to whether the settlement jeopardizes public health and safety; LBP-23-3, 97 NRC 59, 74 (2023)  
requirements for public interest inquiry by the presiding officer are described; LBP-23-3, 97 NRC 59, 70, 73 (2023)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 215 (1997)  
board is obliged to determine whether a settlement agreement is within the reaches of the public interest; LBP-23-3, 97 NRC 59, 73 (2023)  
board need not reject a settlement merely because one of the parties might have received a more favorable result had the case been fully litigated or because the settlement is not the best that could be obtained; LBP-23-3, 97 NRC 59, 73 (2023)
- Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001)  
judicial concepts of standing require petitioner to allege injury traceable to the challenged action, interest, and redressability; LBP-23-4, 97 NRC 89, 100 (2023)

## LEGAL CITATIONS INDEX

### CASES

- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)  
in any pending proceeding in which presiding officer approval of a settlement agreement is required, the presiding officer's approval of settlement is a matter that must give due consideration to the public interest; LBP-23-3, 97 NRC 59, 70, 73 (2023)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994)  
requirement that an alleged injury or threat of injury be concrete and particularized means that it must not be conjectural or hypothetical; LBP-23-4, 97 NRC 89, 100 (2023)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994)  
contention that airplane crash, explosion, fire, or terrorist attack might cause re-criticality of residual fuel debris material that may result in an offsite radiological release is inadmissible; LBP-23-4, 97 NRC 89, 105-06 (2023)  
determination that an alleged injury is fairly traceable to the challenged action requires petitioner to show that the chain of causation is plausible; LBP-23-4, 97 NRC 89, 100 (2023)
- Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994)  
ruling on a proximity presumption claim in nuclear fuel fabrication facility case is sometimes referred to as a proximity plus presumption; LBP-23-2, 97 NRC 8, 21 (2023)
- Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)  
mere intellectual or academic interest in a facility or proceeding is insufficient, in and of itself, to demonstrate standing; LBP-23-4, 97 NRC 89, 105, 114-15 (2023)
- Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 249-51 (2007)  
in proceedings for early site permit, petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption; LBP-23-2, 97 NRC 8, 21 (2023)
- Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 230 (2020)  
although boards afford some leniency to pro se petitioners they are expected to fulfill the obligations imposed by NRC rules; LBP-23-4, 97 NRC 89, 114 (2023)
- Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237-38 & n.83 (2020)  
criteria to establish representational standing under 10 C.F.R. 2.309(d)(1) are discussed; LBP-23-6, 97 NRC 147, 163 (2023)  
interests that 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; LBP-23-2, 97 NRC 8, 20 (2023)  
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; LBP-23-2, 97 NRC 8, 20 (2023)
- Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 238 (2020)  
hearing request will be construed in petitioner's favor, but petitioner has the burden of demonstrating that the standing requirements are met; LBP-23-2, 97 NRC 8, 20 (2023); LBP-23-6, 97 NRC 147, 163 (2023)
- Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), LBP-20-8, 92 NRC 23, 47 *aff'd*, CLI-20-18, 92 NRC 530 (2020)  
challenges to current plant licensing basis rather than the requested facility modification are not within the permissible scope of a license amendment proceeding and instead should be brought as an enforcement action pursuant to 10 C.F.R. 2.206; LBP-23-2, 97 NRC 8, 48-49 (2023)
- Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998)  
it is petitioners' responsibility, not the board's, to formulate contentions and provide the necessary information to satisfy the basis requirement for admission; LBP-23-2, 97 NRC 8, 23 n.27 (2023); LBP-23-6, 97 NRC 147, 166 n.43 (2023)
- Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 456 (1981)  
licensing boards are encouraged to hold settlement conferences with the parties; LBP-23-3, 97 NRC 59, 69 (2023)

## LEGAL CITATIONS INDEX

### CASES

- Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-13-10, 78 NRC 117, 132 n.6 (2013)  
contentions of omission are distinguished from contentions of adequacy; LBP-23-2, 97 NRC 8, 31, 49 n.55 (2023)
- Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-13-10, 78 NRC 117, 132-34 (2013)  
NEPA contention challenging applicant's ER can migrate to become an issue contesting an NRC Staff NEPA statement once NRC Staff issues it; LBP-23-2, 97 NRC 8, 31 n.36 (2023)
- Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-23-1, 97 NRC 81, 84 (2023)  
contention must satisfy six admissibility factors of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-23-6, 97 NRC 147, 165-66 (2023)
- U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 588 (2009)  
generalized assertions, without specific ties to NRC regulatory requirements, do not provide adequate support demonstrating existence of a genuine dispute of fact or law; LBP-23-4, 97 NRC 89, 107 (2023)
- United States v. Microsoft*, 56 F.3d 1448, 1460 (D.C. Cir. 1995)  
board is obliged to determine whether a settlement agreement is within the reaches of the public interest; LBP-23-3, 97 NRC 59, 73 (2023)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006)  
it is insufficient for petitioner to point to a study and expect the board on its own to discern what particular issue petitioner is raising, including what section of the application is being challenged as deficient and why; LBP-23-4, 97 NRC 89, 111 n.34 (2023)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 463 (2006)  
contention raising issues of international policy unrelated to NRC's licensing criteria are beyond the scope of the proceeding; LBP-23-2, 97 NRC 8, 31-32 (2023)  
nuclear weapons proliferation is a matter of international policy involving a multilayered domestic and international framework as well as assessment of numerous speculative future independent actions by third parties such as the President, the Congress, and officials from foreign nations; LBP-23-2, 97 NRC 8, 27 (2023)  
possibility of a temporary pause in HEU enrichment and reprocessing made the proliferation concern potential and therefore too unlikely and remote from licensing to require a NEPA assessment; LBP-23-2, 97 NRC 8, 29 (2023)  
safety-based contention calling for consideration of whether a proliferation-associated licensing freeze was required for a proposed enrichment facility was rejected; LBP-23-2, 97 NRC 8, 31 (2023)
- USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006)  
bare assertions or speculation, even by experts, does not provide the requisite support for a proposed contention; LBP-23-6, 97 NRC 147, 176 (2023)  
expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadequate to support a contention; LBP-23-4, 97 NRC 89, 111 n.34 (2023); LBP-23-6, 97 NRC 147, 176 (2023)
- Virginia Electric and Power Co. d/b/a/ Dominion Virginia Power and Old Dominion Electric Cooperative* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 699-701 (2012)  
licensing board decision to hold proceeding open after all contentions had been dismissed was reversible error; LBP-23-1, 97 NRC 1, 6 n.27 (2023)  
when last contention in a proceeding is resolved, the licensing board loses jurisdiction over the proceeding and the case must be terminated before the board; LBP-23-1, 97 NRC 1, 6 (2023)
- W. Mich. Envtl. Action Council v. AEC*, Docket No. G-58-73 (W.D. Mich. 1974)  
nuclear weapons proliferation and security issues have been the subject of NEPA assessments; LBP-23-2, 97 NRC 8, 25 (2023)
- Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1995)  
traditional judicial standing requires that petitioner show injury in fact, causation, zone of interest, and redressability; LBP-23-2, 97 NRC 8, 20-21 (2023); LBP-23-6, 97 NRC 147, 163-64 (2023)



## LEGAL CITATIONS INDEX REGULATIONS

- 10 C.F.R. 2.103  
applicant's demand for a hearing is sufficient to warrant granting applicant's hearing request on a license application denial; LBP-23-3, 97 NRC 59, 70 n.21 (2023)
- 10 C.F.R. 2.103(b)(2)  
notice of proposed denial or denial of a license application is to be issued to applicant in writing and is to inform applicant of its right to demand a hearing; LBP-23-3, 97 NRC 59, 75 n.26 (2023)
- 10 C.F.R. 2.309(a)  
intervention petitioner must demonstrate standing and proffer an admissible contention; LBP-23-4, 97 NRC 89, 100 (2023)
- 10 C.F.R. 2.309(b)(4)(ii)  
absence of a hearing opportunity notice for other interested persons is not an impediment to approval of a settlement agreement because participation by such persons has not been foreclosed; LBP-23-3, 97 NRC 59, 75 n.26 (2023)
- filing timely intervention petition when notice of agency action regarding an application is not published in the Federal Register is provided; LBP-23-3, 97 NRC 59, 75 n.26 (2023)
- 10 C.F.R. 2.309(c)  
licensing board will not entertain requests for leave to file new contentions after the deadline for submitting a hearing petition has passed unless litigant demonstrates good cause; LBP-23-4, 97 NRC 89, 113 n.39 (2023)
- 10 C.F.R. 2.309(c)(1)(i)-(iii)  
leave to file new contentions filed after the deadline for submitting a hearing petition has passed must satisfy 3 conditions; LBP-23-4, 97 NRC 89, 113 n.39 (2023)
- 10 C.F.R. 2.309(d)  
intervention petition that fails to address any of the standing and contention admissibility criteria will be dismissed; LBP-23-2, 97 NRC 8, 18 (2023)  
intervention petitioner must demonstrate standing; LBP-23-4, 97 NRC 89, 99-100 (2023)
- 10 C.F.R. 2.309(d)(1)  
criteria to establish representational standing are discussed; LBP-23-2, 97 NRC 8, 20 (2023); LBP-23-6, 97 NRC 147, 163 (2023)
- 10 C.F.R. 2.309(d)(1)(i)-(iv)  
standards for establishing standing in an intervention petition are described; LBP-23-4, 97 NRC 89, 100 (2023)
- 10 C.F.R. 2.309(d)(2)  
licensing board must determine whether petitioner has fulfilled the requirements to establish standing to intervene even if standing is uncontested; LBP-23-6, 97 NRC 147, 163 (2023)
- 10 C.F.R. 2.309(e)  
discretionary intervention may be granted in limited circumstances when petitioner has failed to demonstrate standing as a matter of right; LBP-23-4, 97 NRC 89, 102 n.18 (2023)  
request for discretionary intervention will not be considered unless another petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held; LBP-23-4, 97 NRC 89, 102 n.18 (2023)
- 10 C.F.R. 2.309(f)  
intervention petition that fails to address any of the standing and contention admissibility criteria will be dismissed; LBP-23-2, 97 NRC 8, 18 (2023)

## LEGAL CITATIONS INDEX

### REGULATIONS

- intervention petitioner must proffer a contention that satisfies the admissibility criteria; LBP-23-4, 97 NRC 89, 99-100 (2023)
- 10 C.F.R. 2.309(f)(1)  
contention admissibility rule is strict by design; LBP-23-2, 97 NRC 8, 48 (2023)  
contention submitted as part of a timely intervention petition must satisfy six admissibility factors; LBP-23-2, 97 NRC 8, 23 (2023)  
contention that nuclear weapons proliferation review is required by NEPA and AEA for fuel cycle facility is inadmissible; LBP-23-2, 97 NRC 8, 31 (2023)  
petitioner established representational standing to intervene but has failed to show that any of its contentions were admissible; LBP-23-2, 97 NRC 8, 16 (2023)  
petitioner's assertions that do not address or clearly link to the contention admissibility requirements need not be considered further; CLI-23-1, 97 NRC 81, 84 (2023)  
where petitioner has not submitted an admissible contention, Commission need not address his standing; CLI-23-1, 97 NRC 81, 84 (2023)
- 10 C.F.R. 2.309(f)(1)(i)-(ii)  
contention must provide a specific statement of the issue of law or fact to be raised or controverted and provide a brief explanation of its basis; CLI-23-1, 97 NRC 81, 84 (2023)
- 10 C.F.R. 2.309(f)(1)(i)-(vi)  
contention admissibility criteria aim to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-23-2, 97 NRC 8, 23 (2023)  
timely-filed contention must satisfy each of the six regulatory criteria; LBP-23-4, 97 NRC 89, 106 (2023); LBP-23-6, 97 NRC 147, 165-66 (2023)
- 10 C.F.R. 2.309(f)(1)(ii)  
contentions asserting that license amendment request should be denied because it fails to consider potential harm to the surrounding area, including harm from re-criticality, that may result from airplane crashes, explosions, fires, or terrorist attacks is denied; LBP-23-4, 97 NRC 89, 108 n.27 (2023)
- 10 C.F.R. 2.309(f)(1)(iii)  
attempt to relitigate NRC's findings via a contention is beyond the scope of the proceeding; LBP-23-2, 97 NRC 8, 44 (2023)  
challenge to a Category 1 issue without a section 2.335 waiver is outside the scope of the proceeding; LBP-23-6, 97 NRC 147, 169 n.51 (2023)  
challenge to safety issues associated with a plant's current licensing basis is, in the absence of a section 2.335 waiver, beyond the scope of a license renewal proceeding and thus insufficient to support an admissible contention; LBP-23-6, 97 NRC 147, 183 (2023)  
claims regarding existence and assessment of radiological contamination are both outside the scope of the proceeding and fail to demonstrate a genuine material dispute of law or fact; LBP-23-2, 97 NRC 8, 50 (2023)  
contention challenging licensee's financial assurances for decommissioning is inadmissible; CLI-23-1, 97 NRC 81, 85 (2023)  
contention fails to show that state standard for tritium in drinking water is somehow in contravention of Part 51 or any other NRC regulation; LBP-23-6, 97 NRC 147, 171 (2023)  
contention that license renewal application fails to consider greenhouse gas emissions is inadmissible; LBP-23-6, 97 NRC 147, 182 (2023)  
contention that license renewal application fails to fully analyze predicted climate changes that could affect cooling water availability at temperatures consistent with operational requirements is inadmissible; LBP-23-6, 97 NRC 147, 179 (2023)  
contention that license renewal application lacks adequate data and analysis on radiological releases and emissions and potential health impacts is inadmissible; LBP-23-6, 97 NRC 147, 167 (2023)  
contention that merely presents petitioner's view of what applicable policies ought to be or attempts to advocate for stricter requirements than those imposed by the applicable regulations is inadmissible; LBP-23-2, 97 NRC 8, 56 (2023)  
contention that narrow scope of purpose and need statement undercuts consideration of alternatives is inadmissible; LBP-23-2, 97 NRC 8, 38 (2023)  
contention that nuclear weapons proliferation review is required by Part 70 for fuel cycle facility is inadmissible; LBP-23-2, 97 NRC 8, 35 (2023)

## LEGAL CITATIONS INDEX

### REGULATIONS

- contention that seismic analysis is inadequate and lack of complete data could result in seismic risks is inadmissible; LBP-23-6, 97 NRC 147, 173 (2023)
- dam safety is subject to state regulation and monitoring, placing that subject outside the scope of a license renewal proceeding; LBP-23-6, 97 NRC 147, 176 (2023)
- discussion of economic costs and benefits of facility operation is outside the scope of a license renewal proceeding and thus inadmissible; LBP-23-6, 97 NRC 147, 180 (2023)
- historic issues that are framed in terms of regulatory inaction are both beyond the scope of a license amendment proceeding and fail to demonstrate the requisite genuine material dispute of law or fact; LBP-23-2, 97 NRC 8, 52 (2023)
- need for reanalysis of seismic safety is beyond the scope of a license renewal proceeding absent a section 2.335 waiver; LBP-23-6, 97 NRC 147, 173 (2023)
- petitioner fails to connect PFAS contamination claims to U-Metal process license amendment application; LBP-23-2, 97 NRC 8, 51 (2023)
- 10 C.F.R. 2.309(f)(1)(iii)-(iv)
- contention challenging safety review in a license renewal proceeding is limited to issues related to aging and age-related management; LBP-23-6, 97 NRC 147, 180 (2023)
- contention must raise issues within the scope of the proceeding and material to findings that NRC must make; CLI-23-1, 97 NRC 81, 84 (2023)
- contention that narrow scope of purpose and need statement undercuts consideration of alternatives is inadmissible; LBP-23-2, 97 NRC 8, 39 (2023)
- contention that nuclear weapons proliferation review is required by NEPA and AEA is inadmissible; LBP-23-2, 97 NRC 8, 28 (2023)
- 10 C.F.R. 2.309(f)(1)(iv)
- contention challenging licensee's financial assurances for decommissioning is inadmissible; CLI-23-1, 97 NRC 81, 85 (2023)
- 10 C.F.R. 2.309(f)(1)(iv)-(vi)
- contention that legacy contamination is understated, uninvestigated, and missing from cumulative effects analysis in the environmental report is inadmissible; LBP-23-2, 97 NRC 8, 45 (2023)
- 10 C.F.R. 2.309(f)(1)(v)
- contention that narrow scope of purpose and need statement undercuts consideration of alternatives is inadmissible; LBP-23-2, 97 NRC 8, 37 (2023)
- contentions asserting that license amendment request should be denied because it fails to consider potential harm to the surrounding area, including harm from re-criticality, that may result from airplane crashes, explosions, fires, or terrorist attacks is denied; LBP-23-4, 97 NRC 89, 108 n.27 (2023)
- petitioner fails to connect PFAS contamination claims to U-Metal process license amendment application; LBP-23-2, 97 NRC 8, 51 (2023)
- 10 C.F.R. 2.309(f)(1)(v)-(vi)
- contention must include a concise statement of the alleged facts or expert opinions supporting the contention and sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact; CLI-23-1, 97 NRC 81, 84 (2023)
- contention that air emissions will double if the U-Metal process amendment is approved is inadmissible; LBP-23-2, 97 NRC 8, 52 (2023)
- suggestion of a mere possibility of contamination and unverified testimony presents no concrete facts or dispute with the application; LBP-23-2, 97 NRC 8, 45 (2023)
- 10 C.F.R. 2.309(f)(1)(vi)
- challenge to a Category 1 issue without a section 2.335 waiver is outside the scope of the proceeding; LBP-23-6, 97 NRC 147, 169 (2023)
- challenges to NRC Staff actions are not permitted; LBP-23-2, 97 NRC 8, 48 (2023)
- claim cannot be the source of an admissible contention if it fails to demonstrate that a genuine dispute exists with the applicant on a material issue of law or fact; LBP-23-6, 97 NRC 147, 183 (2023)
- claim that environmental report fails to consider impact of a changing climate on the safety and operations of the reactor, including drought, torrential rains, and increased cooling water temperatures is inadmissible; LBP-23-6, 97 NRC 147, 182 (2023)

## LEGAL CITATIONS INDEX

### REGULATIONS

claims regarding existence and assessment of radiological contamination are both outside the scope of the proceeding and fail to demonstrate a genuine material dispute of law or fact; LBP-23-2, 97 NRC 8, 50 (2023)

contention based on a document or expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadmissible; LBP-23-6, 97 NRC 147, 176 (2023)

contention challenging safety review in a license renewal proceeding is limited to issues related to aging and age-related management; LBP-23-6, 97 NRC 147, 180 (2023)

contention fails to address calculations and conservatism embodied in license amendment request's criticality analysis; LBP-23-4, 97 NRC 89, 110 (2023)

contention fails to argue that TMI-2's alleged uniqueness equates to special circumstances that justify excepting the license amendment request from a categorical exclusion; LBP-23-4, 97 NRC 89, 109 (2023)

contention fails to show that state standard for tritium in drinking water is somehow in contravention of Part 51 or any other NRC regulation; LBP-23-6, 97 NRC 147, 171 (2023)

contention must frame a dispute as to a material issue and not flyspeck an environmental impact statement; LBP-23-6, 97 NRC 147, 169 (2023)

contention must include specific references to the disputed portions of the license application at issue; LBP-23-2, 97 NRC 8, 48 (2023)

contention regarding age-related pipe leaks and breakage fails to refer to any specific provision of license renewal application; LBP-23-6, 97 NRC 147, 171 (2023)

contention that fuel cycle facility regulations are insufficient to protect public health, safety and security because they lack stringent quality assurance requirements is inadmissible; LBP-23-2, 97 NRC 8, 55 (2023)

contention that license amendment request improperly fails to consider the potential harm from fires is inadmissible; LBP-23-4, 97 NRC 89, 112-13 (2023)

contention that license renewal application fails to consider greenhouse gas emissions is inadmissible; LBP-23-6, 97 NRC 147, 181 (2023)

contention that license renewal application fails to fully analyze predicted climate changes that could affect cooling water availability at temperatures consistent with operational requirements is inadmissible; LBP-23-6, 97 NRC 147, 179 (2023)

contention that license renewal application lacks adequate data and analysis on radiological releases and emissions and potential health impacts is inadmissible; LBP-23-6, 97 NRC 147, 167 (2023)

contention that narrow scope of purpose and need statement undercuts consideration of alternatives is inadmissible; LBP-23-2, 97 NRC 8, 37, 38 (2023)

contention that nuclear weapons proliferation review is required by Part 70 for fuel cycle facility is inadmissible; LBP-23-2, 97 NRC 8, 35 (2023)

contentions asserting that license amendment request should be denied because it fails to consider potential harm to the surrounding area, including harm from re-criticality, that may result from airplane crashes, explosions, fires, or terrorist attacks is denied; LBP-23-4, 97 NRC 89, 108 n.27 (2023)

historic issues that are framed in terms of regulatory inaction are both beyond the scope of a license amendment proceeding and fail to demonstrate the requisite genuine material dispute of law or fact; LBP-23-2, 97 NRC 8, 52 (2023)

it is entirely proper to raise a contention that challenges fairness and adequacy of an environmental report's purpose-and-need statement but petitioner must demonstrate that the requisite genuine dispute exists with applicant on a material issue of law or fact; LBP-23-2, 97 NRC 8, 39-40 (2023)

misdirected references to application's discussion about aging management programs that petitioner has not challenged fail to establish a material dispute; LBP-23-6, 97 NRC 147, 176 (2023)

petitioner fails to connect PFAS contamination claims to U-Metal process license amendment application; LBP-23-2, 97 NRC 8, 51 (2023)

petitioners have an ironclad obligation to review license amendment requests thoroughly and to base their challenges on their contents; LBP-23-4, 97 NRC 89, 110 (2023)

petitioner's seismic risk concern regarding a catastrophic reservoir breach is not a challenge to the adequacy of the safe shutdown impoundment and its associated dam; LBP-23-6, 97 NRC 147, 177 (2023)



**LEGAL CITATIONS INDEX**  
**REGULATIONS**

- 10 C.F.R. 2.315(a)  
limited appearance statements shall not be considered evidence in a proceeding; LBP-23-2, 97 NRC 8, 19 n.16 (2023)
- 10 C.F.R. 2.335  
contentions that challenge a Table B-1 Category 1 determination are outside the scope of a license renewal proceeding unless a petitioner seeks and is granted a rule waiver; LBP-23-6, 97 NRC 147, 167 (2023)  
licensing boards may not entertain challenges to the validity of NRC regulations in individual licensing proceedings except in certain special circumstances in which a waiver is requested and found to be appropriate; LBP-23-2, 97 NRC 8, 57 (2023)
- 10 C.F.R. 2.335(a)  
challenges to NRC rules or regulations in adjudicatory proceedings are precluded absent a waiver granted by the Commission; LBP-23-2, 97 NRC 8, 56 (2023)
- 10 C.F.R. 2.335(b)  
intervenor must make a prima facie showing that the requisite special circumstances exist so that a rule waiver may be granted; LBP-23-2, 97 NRC 8, 57 (2023)
- 10 C.F.R. 2.335(c)  
without a rule waiver determination by the Commission, a contention that challenges a rule is outside the scope of the proceeding and may not be given further consideration by a licensing board; LBP-23-2, 97 NRC 8, 57 (2023)
- 10 C.F.R. 2.335(d)  
if a licensing board determines that a prima facie showing for rule waiver has been made, the question whether the regulation should be waived must be certified to the Commission; LBP-23-2, 97 NRC 8, 57 (2023)
- 10 C.F.R. 2.338  
applicant and NRC Staff's joint motion requesting that the proceeding be held in abeyance and that a settlement judge be appointed was granted; LBP-23-3, 97 NRC 59, 68 (2023)  
NRC regulations encourage fair and reasonable settlement of issues proposed for litigation in NRC adjudicatory proceedings; LBP-23-3, 97 NRC 59, 69 (2023)
- 10 C.F.R. 2.338(g)  
form for settlements is outlined; LBP-23-3, 97 NRC 59, 69, 72 (2023)
- 10 C.F.R. 2.338(h)  
content of proposed settlement agreement is described; LBP-23-3, 97 NRC 59, 69, 72 (2023)
- 10 C.F.R. 2.338(h)(2)  
parties expressly waive any right to challenge or contest the validity of an order entered into in accordance with a proposed settlement agreement; LBP-23-3, 97 NRC 59, 76 n.27 (2023)
- 10 C.F.R. 2.338(i)  
board approves settlement agreement and terminates proceeding; LBP-23-3, 97 NRC 59, 65 (2023)  
board authority is to approve or reject a settlement agreement; LBP-23-3, 97 NRC 59, 76 n.27 (2023)  
board's order granting applicant's hearing demand is the functional equivalent of a hearing notice such that the rule's requirement for board approval of a settlement agreement is applicable; LBP-23-3, 97 NRC 59, 70 n.21 (2023)  
settlement agreement approval process is described; LBP-23-3, 97 NRC 59, 69-70, 73 (2023)
- 10 C.F.R. 2.340(a)(1)  
Commission need not address whether a different result might follow in the face of a licensing board's consideration of whether the record before the board justifies Commission referral of a sua sponte issue; LBP-23-1, 97 NRC 1, 6 n.28 (2023)
- 10 C.F.R. 2.341  
settlements approved by a presiding officer are subject to Commission review; LBP-23-3, 97 NRC 59, 70 (2023)
- 10 C.F.R. 2.341(b)(1)  
parties are afforded the opportunity to proffer any challenges to a licensing board ruling resolving a proceeding by submitting a petition seeking Commission review of that decision; LBP-23-3, 97 NRC 59, 76 n.27 (2023)

**LEGAL CITATIONS INDEX**  
**REGULATIONS**

- 10 C.F.R. 2.390(b)  
request that hearing petition be afforded nonpublic treatment must provide a supporting affidavit and page markings showing the purported confidential information in the document and set forth a documented basis for determining what confidential information was in that pleading; LBP-23-3, 97 NRC 59, 67 n.11 (2023)
- 10 C.F.R. 2.1320(b)(3)  
presiding officer in license transfer proceeding certifies record to the Commission for its final decision; LBP-23-5, 97 NRC 116, 117-18 (2023)
- 10 C.F.R. Part 30  
licensee seeks NRC approval to expand existing authorization to distribute various tritium sealed-source self-luminous consumer products to include new multi-tool devices; LBP-23-3, 97 NRC 59, 64 (2023)
- 10 C.F.R. 30.19(a)  
person who obtains a self-luminous product containing tritium that is manufactured, produced, or initially transferred by an entity holding a specific license issued under section 32.22 is exempt from NRC licensing; LBP-23-3, 97 NRC 59, 65 n.4 (2023)
- 10 C.F.R. 30.19(b)  
entity wishing to manufacture, produce, or initially transfer such a tritium sealed-source product must obtain both a section 32.22 license and a section 32.210 registration certificate; LBP-23-3, 97 NRC 59, 65 n.4 (2023)
- 10 C.F.R. 30.19(c)  
exempt distribution license does not apply to tritium used in products primarily for frivolous purposes or in toys or adornments; LBP-23-3, 97 NRC 59, 65 n.4 (2023)
- 10 C.F.R. Part 32  
licensee seeks NRC approval to expand existing authorization to distribute various tritium sealed-source self-luminous consumer products to include new multi-tool devices; LBP-23-3, 97 NRC 59, 64 (2023)
- 10 C.F.R. 32.22  
authorized activities described in the settlement agreement constitute activities authorized by the license issued under this section; LBP-23-3, 97 NRC 59, 72 (2023)
- 10 C.F.R. 50.36  
license amendment sought to delete or modify licensing requirements to enable facility to transition from a PDMS condition to that of a facility undergoing decommissioning; LBP-23-4, 97 NRC 89, 103-04 n.20 (2023)  
license amendment sought to relocate administrative controls to the Decommissioning Quality Assurance Program and subsequently control them pursuant to criteria in this section; LBP-23-4, 97 NRC 89, 103-04 n.20 (2023)
- 10 C.F.R. 50.36(b), (c)(2)-(3)  
included in current licensing basis are the facility operating licenses' technical specifications with limiting conditions regarding cooling water; LBP-23-6, 97 NRC 147, 180 n.75 (2023)
- 10 C.F.R. 50.54(a)  
license amendment sought to relocate administrative controls to the Decommissioning Quality Assurance Program and subsequently control them in accordance with this section; LBP-23-4, 97 NRC 89, 103-04 n.20 (2023)
- 10 C.F.R. 50.54(cc)  
licensee must notify NRC of bankruptcy proceedings; CLI-23-1, 97 NRC 81, 83 (2023)
- 10 C.F.R. 50.75(e)(1)  
prepayment method of decommissioning funding assurance with trust established for its share of decommissioning is one of the allowable methods; CLI-23-1, 97 NRC 81, 85 (2023)
- 10 C.F.R. 50.80  
applicants request that NRC issue an order consenting to indirect transfer of control of nuclear power plants and independent spent fuel storage installation; CLI-23-1, 97 NRC 81, 83 (2023)
- 10 C.F.R. 50.90  
applicants seek license amendments to reflect a change in the entity responsible for providing a financial support agreement; CLI-23-1, 97 NRC 81, 83 (2023)

## LEGAL CITATIONS INDEX

### REGULATIONS

- 10 C.F.R. 51.10(a)  
NRC takes into account Council on Environmental Quality regulations voluntarily, subject to certain conditions; LBP-23-6, 97 NRC 147, 182 n.80 (2023)
- 10 C.F.R. 51.22(b)  
no environmental impact statement or environmental assessment need be prepared in connection with proposed license amendment; LBP-23-4, 97 NRC 89, 109 (2023)
- 10 C.F.R. 51.22(c)(9)(i)-(iii)  
proposed license amendment requests meet the regulatory criteria for a categorical exclusion from environmental review; LBP-23-4, 97 NRC 89, 109 (2023)
- 10 C.F.R. 51.45(b)(3)  
discussion of alternatives in the environmental report must be sufficiently complete to assist the Commission in developing and exploring appropriate alternatives to recommended courses of action; LBP-23-2, 97 NRC 8, 38 (2023)
- 10 C.F.R. 51.53(c)(2)  
analyzing earthquakes of less than 3.0 magnitude is not considered necessary under NRC Staff's environmental and safety regulatory guidance associated with seismic risk assessment; LBP-23-6, 97 NRC 147, 173 (2023)  
environmental report's historical, environmental baseline approach to radioactive releases is consistent with agency regulations and guidance; LBP-23-6, 97 NRC 147, 169 (2023)  
license renewal environmental review need not include a discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action; LBP-23-6, 97 NRC 147, 180 (2023)
- 10 C.F.R. 51.53(c)(3)(i)-(ii)  
environmental report for operating license renewal is not required to contain analyses of the environmental impacts of Category 1 issues but must address Category 2 issues; LBP-23-6, 97 NRC 147, 158 (2023)
- 10 C.F.R. 51.53(c)(3)(ii)(L)  
license renewal contention regarding adequacy of a previously considered SAMA cannot be litigated absent a section 2.335 waiver; LBP-23-6, 97 NRC 147, 161 (2023)
- 10 C.F.R. 51.53(c)(3)(ii)(O)  
license renewal applicant must provide information about other past, present, and reasonably foreseeable future actions occurring in the vicinity of the nuclear plant that may result in a cumulative effect; LBP-23-6, 97 NRC 147, 168 n.47 (2023)
- 10 C.F.R. 51.53(c)(3)(ii)(P)  
rule addresses impacts of inadvertent radiological releases that may occur during the license renewal term; LBP-23-6, 97 NRC 147, 170 (2023)
- 10 C.F.R. 51.60(a)  
if no significant environmental change from the license renewal environmental assessment will occur, then no further supplemental environmental analysis is needed; LBP-23-2, 97 NRC 8, 44, 45 (2023)
- 10 C.F.R. 51.71(d), 51.95(c)(1), (4)  
NRC Staff's plant-specific draft and final supplements to NRC's generic environmental impact statement for license renewal are not required to contain analyses of the environmental impacts of Category 1 issues but must address Category 2 issue; LBP-23-6, 97 NRC 147, 158 (2023)
- 10 C.F.R. Part 51, Subpart A, Appendix B  
NRC has assessed environmental impacts associated with granting a renewed operating license for a nuclear power plant and Table B-1 summarizes its findings on the scope and magnitude of environmental impacts that NEPA requires to be addressed; LBP-23-6, 97 NRC 147, 159 (2023)  
public and worker radiation exposures are Category 1 items having an impact finding designated as SMALL; LBP-23-6, 97 NRC 147, 160 (2023)  
results of NRC's generic assessment of the environmental impacts associated with license renewal are provided; LBP-23-6, 97 NRC 147, 158 (2023)
- 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1  
alternatives to mitigate severe accidents must be considered for plants that previously have not considered such alternatives; LBP-23-6, 97 NRC 147, 161 (2023)

## LEGAL CITATIONS INDEX

### REGULATIONS

- impact of severe accidents is designated SMALL based on probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic ; LBP-23-6, 97 NRC 147, 161 (2023)
- impact of surface water availability and conflicts over its use by facilities that use once-through cooling systems is a Category 1 issue, with impact categorized as SMALL; LBP-23-6, 97 NRC 147, 178 (2023)
- summary environmental impact findings regarding postulated accidents specifically encompass impacts resulting from significant earthquake-related facility accident sequences are included in the table; LBP-23-6, 97 NRC 147, 160-61 (2023)
- summary environmental findings relating to exposure of terrestrial and aquatic organisms to radionuclides are included in the table; LBP-23-6, 97 NRC 147, 160 (2023)
- 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1 n.2  
severe accidents and the severe accident mitigation alternatives analysis are classified as Category 2, requiring additional plant-specific review; LBP-23-6, 97 NRC 147, 161 (2023)
- 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1 n.3  
significance level of a SMALL impacts designation is defined; LBP-23-6, 97 NRC 147, 160 n.22 (2023)
- 10 C.F.R. 54.3  
current licensing basis is defined; LBP-23-6, 97 NRC 147, 158-59 n.19 (2023)
- technical specifications are included in definition of current licensing basis; LBP-23-6, 97 NRC 147, 180 n.75 (2023)
- 10 C.F.R. 54.21  
contention regarding age-related pipe leaks and breakage fails to refer to any specific provision of license renewal application; LBP-23-6, 97 NRC 147, 171 (2023)
- safety-related provisions of license renewal application are described; LBP-23-6, 97 NRC 147, 157 (2023)
- 10 C.F.R. 54.21(a)  
final safety analysis report supplement that summarizes facility programs and activities intended to manage aging effects during the extended operation period must be included in a license renewal application; LBP-23-6, 97 NRC 147, 157 (2023)
- 10 C.F.R. 54.21(a)(1)  
integrated program assessment is required to determine functionality of structures and components during the period of extended operation; LBP-23-6, 97 NRC 147, 158 (2023)
- 10 C.F.R. 54.21(c)  
NRC may grant a license renewal if it finds that actions have been or will be taken with respect to time-limited aging analyses that have been identified to require review; LBP-23-6, 97 NRC 147, 158 (2023)
- 10 C.F.R. 54.21(c)-(d)  
final safety analysis report supplement that summarizes facility programs and activities intended to manage aging effects during the extended operation period must be included in a license renewal application; LBP-23-6, 97 NRC 147, 157 (2023)
- 10 C.F.R. 54.23  
license renewal application's required environmental-related contents include supplement to the environmental report that complies with subpart A of 10 CFR Part 51; LBP-23-6, 97 NRC 147, 157-58 (2023)
- 10 C.F.R. 54.29  
contention regarding age-related pipe leaks and breakage fails to refer to any specific provision of license renewal application; LBP-23-6, 97 NRC 147, 171 (2023)
- 10 C.F.R. 54.29(a)(1)  
NRC may grant a license renewal if it finds that actions have been or will be taken to manage effects of aging during the period of extended operation on functionality of structures and components that require review; LBP-23-6, 97 NRC 147, 158 (2023)
- 10 C.F.R. 54.29(a)(1)-(2)  
there must be reasonable assurance that activities authorized by a renewed license will continue to be conducted in accordance with the facility's current licensing basis and that any changes to the plant's current licensing basis are in accordance with the AEA and agency regulations; LBP-23-6, 97 NRC 147, 158 (2023)

**LEGAL CITATIONS INDEX**  
**REGULATIONS**

- 10 C.F.R. 70.32(a)(6)  
nuclear fuel processor is prohibited from using any Part 70 special nuclear material to construct a nuclear weapon or any component of such a weapon; LBP-23-2, 97 NRC 8, 34 n.39 (2023)
- 10 C.F.R. 70.62(d)  
fuel fabrication facility applicant/licensee must establish management measures to ensure compliance with quality assurance performance requirements in 10 C.F.R. 70.61; LBP-23-2, 97 NRC 8, 54 (2023)
- 10 C.F.R. 70.64  
fuel fabrication facility applicant seeking amendment to implement the new U-Metal process must request NRC approval of the license changes including addressing the baseline design criteria; LBP-23-2, 97 NRC 8, 16 (2023)
- fuel fabrication facility applicant/licensee must establish management measures to ensure compliance with quality assurance performance requirements in 10 C.F.R. 70.61; LBP-23-2, 97 NRC 8, 54 (2023)
- 10 C.F.R. 70.72(c)  
fuel fabrication facility applicant seeking amendment to implement new U-Metal process must request NRC approval of the license changes including addressing the baseline design criteria; LBP-23-2, 97 NRC 8, 16 (2023)
- 10 C.F.R. 72.13(c)  
only provision in section 72.50 that applies to a generally licensed ISFSI is section 72.50(a); CLI-23-1, 97 NRC 81, 85 85(2023)
- sections that apply to activities associated with a general license are listed; CLI-23-1, 97 NRC 81, 85 (2023)
- 10 C.F.R. 72.50  
applicants request that NRC issue an order consenting to indirect transfer of control of nuclear power plants and independent spent fuel storage installation; CLI-23-1, 97 NRC 81, 83 (2023)
- contention challenging licensee's financial assurances for decommissioning is inadmissible; CLI-23-1, 97 NRC 81, 84-85 (2023)
- regulation applies to specifically licensed independent spent fuel storage installations, not to generally licensed ISFSIs; CLI-23-1, 97 NRC 81, 85 (2023)
- 10 C.F.R. 74.59  
contention that merely presents petitioner's view of what applicable policies ought to be or attempts to advocate for stricter requirements than those imposed by applicable regulations is inadmissible; LBP-23-2, 97 NRC 8, 56 (2023)
- 40 C.F.R. 1508.7  
cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time; LBP-23-6, 97 NRC 147, 168 n.47 (2023)



**LEGAL CITATIONS INDEX  
STATUTES**

Atomic Energy Act, 184, 42 U.S.C. § 2234

applicants request that NRC issue an order consenting to indirect transfer of control of nuclear power plants and independent spent fuel storage installation; CLI-23-1, 97 NRC 81, 83 (2023)

Atomic Energy Act, 189a, 42 U.S.C. § 2239(a)

any person whose interest might be affected by a license amendment application could file a hearing request and petition for leave to intervene challenging that application; LBP-23-2, 97 NRC 8, 17 (2023)

National Environmental Policy Act, 102(2)(E)

discussion of alternatives in the environmental report must be sufficiently complete to assist the

Commission in developing and exploring appropriate alternatives to recommended courses of action; LBP-23-2, 97 NRC 8, 38 (2023)

National Environmental Policy Act, 42 U.S.C. §§ 2077(c)(2), 2099

NRC has a legal and non-discretionary duty to consider whether, when granting a license, such an action could be inimical to the common defense and security of the United States or the health and safety of the public; LBP-23-2, 97 NRC 8, 25 (2023)





**LEGAL CITATIONS INDEX  
OTHERS**

30 Tex. Admin. Code §§ 299.42-.43  
dam safety is subject to state regulation and monitoring, placing that subject outside the permissible scope  
of a license renewal proceeding; LBP-23-6, 97 NRC 147, 176 (2023)

**LEGAL CITATIONS INDEX  
OTHERS**



## SUBJECT INDEX

### ABEYANCE OF PROCEEDING

applicant and NRC Staff's joint motion requesting that the proceeding be held in abeyance and that a settlement judge be appointed was granted; LBP-23-3, 97 NRC 59 (2023)

### ACCIDENTS, SEVERE

impact of severe accidents is designated SMALL based on probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic; LBP-23-6, 97 NRC 147 (2023)

severe accidents and the severe accident mitigation alternatives analysis are classified as Category 2, requiring additional plant-specific review; LBP-23-6, 97 NRC 147 (2023)

summary environmental impact findings regarding postulated accidents encompass impacts specifically resulting from significant earthquake-related facility accident sequences and are included in Table B-1; LBP-23-6, 97 NRC 147 (2023)

### ADJUDICATORY PROCEEDINGS

choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily within the informed discretion of the administrative agency; LBP-23-6, 97 NRC 147 (2023)

### ADMINISTRATIVE CONTROLS

license amendment sought to relocate administrative controls to the Decommissioning Quality Assurance Program and subsequently control them in accordance with 10 C.F.R. 50.54(a); LBP-23-4, 97 NRC 89 (2023)

### AFFIDAVITS

request that hearing petition be afforded nonpublic treatment must provide a supporting affidavit and page markings showing the purported confidential information in the document and set forth a documented basis for determining what confidential information was in that pleading; LBP-23-3, 97 NRC 59 (2023)

### AGING MANAGEMENT

adverse aging effects generally are gradual and thus can be detected by programs that ensure sufficient inspections and testing; LBP-23-6, 97 NRC 147 (2023)

contention regarding age-related pipe leaks and breakage fails to refer to any specific provision of license renewal application; LBP-23-6, 97 NRC 147 (2023)

final safety analysis report supplement that summarizes facility programs and activities intended to manage aging effects during the extended operation period must be included in a license renewal application; LBP-23-6, 97 NRC 147 (2023)

license renewal review is not intended to duplicate NRC's ongoing oversight of operating reactors, but rather to ensure that licensee can successfully manage detrimental effects of aging; LBP-23-6, 97 NRC 147 (2023)

misdirected references to application's discussion about aging management programs that petitioner has not challenged fail to establish a material dispute; LBP-23-6, 97 NRC 147 (2023)

NRC may grant a license renewal if it finds that actions have been or will be taken to manage effects of aging during the period of extended operation on functionality of structures and components that require review; LBP-23-6, 97 NRC 147 (2023)

Part 54 regulatory approach focuses on whether licensee can manage the effects of aging on certain long-lived, passive components that are important to safety; LBP-23-6, 97 NRC 147 (2023)

### AIR POLLUTION

contention that air emissions will double if the U-Metal process amendment is approved is inadmissible; LBP-23-2, 97 NRC 8 (2023)

## SUBJECT INDEX

### AMENDMENT

presiding officer cannot amend a settlement agreement without consent of the parties; LBP-23-3, 97 NRC 59 (2023)

See also License Amendment Proceedings; License Amendments

### AMENDMENT OF REGULATIONS

when regulatory history shows NRC has rejected an amendment to a rule, that rejection may be evidence the Commission did not intend the regulation to include the provision in the rejected amendment; LBP-23-2, 97 NRC 8 (2023)

### APPEALS

parties expressly waive any right to challenge or contest the validity of an order entered into in accordance with a proposed settlement agreement; LBP-23-3, 97 NRC 59 (2023)

settlement agreement is not open to appellate challenge absent fraud or mutual mistake; LBP-23-3, 97 NRC 59 (2023)

### ATOMIC ENERGY ACT

any person whose interest might be affected by a license amendment application could file a hearing request and petition for leave to intervene challenging that application; LBP-23-2, 97 NRC 8 (2023)

### BANKRUPTCY

contention that licensee fails to comply with bankruptcy review team compliance mandates is inadmissible; CLI-23-1, 97 NRC 81 (2023)

NRC guidance document NUREG-1556 relates to requests involving materials license bankruptcy or change of control under 10 C.F.R. Parts 30, 31, 40, and 70, not under 10 C.F.R. Parts 61, 72, 76, or 110; CLI-23-1, 97 NRC 81 (2023)

### BANKRUPTCY PROCEEDINGS

licensee must notify NRC of bankruptcy proceedings; CLI-23-1, 97 NRC 81 (2023)

### BENEFIT-COST ANALYSIS

discussion of economic costs and benefits of facility operation is outside the scope of a license renewal proceeding and thus inadmissible; LBP-23-6, 97 NRC 147 (2023)

license renewal environmental review need not discuss need for power or economic costs and economic benefits of the proposed action or of its alternatives; LBP-23-6, 97 NRC 147 (2023)

### CATEGORICAL EXCLUSION

applicant's categorical exclusion determination can be challenged by affirmatively showing that existence of special circumstances pursuant to section 51.22(b) would justify excepting the proposed license amendment from the categorical exclusion; LBP-23-4, 97 NRC 89 (2023)

contention fails to argue that TMI-2's alleged uniqueness equates to special circumstances that justify excepting the license amendment request from a categorical exclusion; LBP-23-4, 97 NRC 89 (2023)  
proposed license amendment requests meet the regulatory criteria for a categorical exclusion from environmental review; LBP-23-4, 97 NRC 89 (2023)

### CERTIFICATION

if a licensing board determines that a prima facie showing for rule waiver has been made, the question whether the regulation should be waived must be certified to the Commission; LBP-23-2, 97 NRC 8 (2023)

presiding officer in license transfer proceeding certifies to the Commission for its final decision the record of the proceeding; LBP-23-5, 97 NRC 116 (2023)

### CHANGE REQUESTS

there must be reasonable assurance that activities authorized by a renewed license will continue to be conducted in accordance with the facility's current licensing basis and that any changes to the plant's CLB are in accordance with the AEA and agency regulations; LBP-23-6, 97 NRC 147 (2023)

### CLIMATE CHANGE

contention that license renewal application fails to fully analyze predicted climate changes that could affect cooling water availability at temperatures consistent with operational requirements is inadmissible; LBP-23-6, 97 NRC 147 (2023)

NRC Staff is to consider carbon dioxide and other greenhouse gas emissions in its environmental reviews for major licensing actions under NEPA; LBP-23-6, 97 NRC 147 (2023)

## SUBJECT INDEX

### COMBINED LICENSE PROCEEDINGS

petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption; LBP-23-2, 97 NRC 8 (2023)

### COMMON DEFENSE AND SECURITY

NRC has a legal and non-discretionary duty to consider whether, when granting a license, such an action could be inimical to the common defense and security of the United States or the health and safety of the public; LBP-23-2, 97 NRC 8 (2023)

NRC's NEPA analysis must consider the full range of risks to the common defense and security potentially arising from its licensing decision, and must consider all reasonable alternatives that could eliminate or mitigate those risks; LBP-23-2, 97 NRC 8 (2023)

nuclear weapons proliferation and security issues have been the subject of NEPA assessments; LBP-23-2, 97 NRC 8 (2023)

### CONFIDENTIAL INFORMATION

request that hearing petition be afforded nonpublic treatment must provide a supporting affidavit and page markings showing the purported confidential information in the document and set forth a documented basis for determining what confidential information was in that pleading; LBP-23-3, 97 NRC 59 (2023)

### CONSIDERATION OF ALTERNATIVES

agencies must study, develop, and describe appropriate alternatives that are within the nature and scope of the proposed action sufficient to permit a reasoned choice; LBP-23-2, 97 NRC 8 (2023)

agency cannot simply accept out of hand an applicant's purpose and need statement or allow objectives of an action under consideration to be defined so unreasonably narrowly that only one alternative would accomplish the goals of the agency's action; LBP-23-2, 97 NRC 8 (2023)

alternatives to mitigate severe accidents must be considered for plants that previously have not considered such alternatives; LBP-23-6, 97 NRC 147 (2023)

contention that narrow scope of purpose and need statement undercuts consideration of alternatives is inadmissible; LBP-23-2, 97 NRC 8 (2023)

discussion of alternatives in the environmental report must be sufficiently complete to assist the Commission in developing and exploring appropriate alternatives to recommended courses of action; LBP-23-2, 97 NRC 8 (2023)

in context of purpose-and-need statement, alternatives selected for a NEPA analysis are necessarily informed by the project under review and its goals, which in turn are determined by applicant; LBP-23-2, 97 NRC 8 (2023)

NRC's NEPA analysis must consider the full range of risks to the common defense and security potentially arising from its licensing decision, and must consider all reasonable alternatives that could eliminate or mitigate those risks; LBP-23-2, 97 NRC 8 (2023)

only reasonable alternatives that will bring about the ends of the proposed action must be considered; LBP-23-2, 97 NRC 8 (2023)

purpose and need statement in a NEPA environmental assessment or report dictates the range of reasonable alternatives and must be supported by data and evidence establishing that the assessment is reasonable; LBP-23-2, 97 NRC 8 (2023)

### CONSTRUCTION OF MEANING

hearing request will be construed in petitioner's favor, but petitioner has the burden of demonstrating that the standing requirements are met; LBP-23-2, 97 NRC 8 (2023); LBP-23-4, 97 NRC 89 (2023)

### CONTENTIONS

applicant's section 2.103(b)(2) hearing demand can be granted without section 2.309(f)(1)-compliant contentions; LBP-23-3, 97 NRC 59 (2023)

contention of omission is one alleging that licensing documents failed to address a topic that, as a matter of law, was required to be discussed; LBP-23-4, 97 NRC 89 (2023)

contentions of omission are distinguished from contentions of adequacy; LBP-23-2, 97 NRC 8 (2023)

NEPA-related contentions must be raised regarding the applicant's environmental report because NRC Staff has not necessarily conducted its environmental analysis at the hearing request stage; LBP-23-2, 97 NRC 8 (2023)

## SUBJECT INDEX

### CONTENTIONS, ADMISSIBILITY

- adjudicatory challenge based on applicant's alleged failure to deal appropriately with a Category 1 item constitutes an attack on an agency rule, making a section 2.335(b) waiver the sole vehicle for raising such an issue in an adjudication; LBP-23-6, 97 NRC 147 (2023)
- admissibility criteria aim to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-23-2, 97 NRC 8 (2023)
- admissibility requirements are intended to ensure that adjudicatory hearings are triggered only by substantive safety or environmental issues that raise a supported dispute with the application on a matter material to the NRC's decision on the challenged action; CLI-23-1, 97 NRC 81 (2023)
- admissibility standard is strict by design; LBP-23-4, 97 NRC 89 (2023)
- analyzing earthquakes of less than 3.0 magnitude is not considered necessary under NRC Staff's environmental and safety regulatory guidance associated with seismic risk assessment; LBP-23-6, 97 NRC 147 (2023)
- applicant's categorical exclusion determination can be challenged by affirmatively showing the existence of special circumstances pursuant to section 51.22(b) that would justify excepting the proposed license amendment from the categorical exclusion; LBP-23-4, 97 NRC 89 (2023)
- attempt to relitigate NRC's findings via a contention is beyond the scope of the proceeding; LBP-23-2, 97 NRC 8 (2023)
- bare assertions or speculation, even by experts, do not provide the requisite support for a proposed contention; LBP-23-6, 97 NRC 147 (2023)
- because continued spent fuel storage GEIS was the subject of extensive public participation in the rulemaking process, generic environmental impact determinations regarding continued storage are excluded from litigation in individual adjudications; LBP-23-6, 97 NRC 147 (2023)
- challenge concerning safety issues associated with a plant's current licensing basis is beyond the scope of a license renewal proceeding and so cannot be the subject of the adjudicatory hearing in the absence of a 10 C.F.R. 2.335 waiver petition; LBP-23-6, 97 NRC 147 (2023)
- challenge to a Category 1 issue without a section 2.335 waiver is outside the scope of the proceeding; LBP-23-6, 97 NRC 147 (2023)
- challenge to licensee's financial assurances for decommissioning is inadmissible; CLI-23-1, 97 NRC 81 (2023)
- challenge to safety issues associated with a plant's current licensing basis is, in the absence of a section 2.335 waiver, beyond the scope of a license renewal proceeding and thus insufficient to support an admissible contention; LBP-23-6, 97 NRC 147 (2023)
- challenge to safety review in a license renewal proceeding is limited to issues related to aging and age-related management; LBP-23-6, 97 NRC 147 (2023)
- challenges to current licensing basis are unnecessary and wasteful because NRC already has in place ongoing agency oversight, review and enforcement processes associated with operational issues; LBP-23-6, 97 NRC 147 (2023)
- challenges to current plant licensing basis rather than the requested facility modification are not within the scope of a license amendment proceeding and instead should be brought as an enforcement action pursuant to 10 C.F.R. 2.206; LBP-23-2, 97 NRC 8 (2023)
- challenges to NRC rules or regulations in adjudicatory proceedings are precluded absent a waiver granted by the Commission; LBP-23-2, 97 NRC 8 (2023)
- challenges to NRC Staff actions are not permitted; LBP-23-2, 97 NRC 8 (2023)
- claim based on a document or expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadmissible; LBP-23-6, 97 NRC 147 (2023)
- claim regarding age-related pipe leaks and breakage fails to refer to any specific provision of license renewal application; LBP-23-6, 97 NRC 147 (2023)
- claim that license renewal application fails to consider greenhouse gas emissions is inadmissible; LBP-23-6, 97 NRC 147 (2023)
- claim that license renewal application fails to fully analyze predicted climate changes that could affect cooling water availability at temperatures consistent with operational requirements is inadmissible; LBP-23-6, 97 NRC 147 (2023)
- contention arguing that license amendment request did not satisfy NEPA because it failed to include an adequate environmental review was inadmissible; LBP-23-4, 97 NRC 89 (2023)

## SUBJECT INDEX

contention based on a document or expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadmissible; LBP-23-6, 97 NRC 147 (2023)

contention challenging licensee's financial assurances for decommissioning is inadmissible; CLI-23-1, 97 NRC 81 (2023)

contention fails to address calculations and conservatism embodied in license amendment request's criticality analysis; LBP-23-4, 97 NRC 89 (2023)

contention fails to argue that TMI-2's alleged uniqueness equates to special circumstances that justify excepting the license amendment request from a categorical exclusion; LBP-23-4, 97 NRC 89 (2023)

contention must frame a dispute as to a material issue; LBP-23-2, 97 NRC 8 (2023); LBP-23-6, 97 NRC 147 (2023)

contention must provide a specific statement of the issue of law or fact to be raised or controverted and provide a brief explanation of its basis; CLI-23-1, 97 NRC 81 (2023)

contention must raise issues within the scope of the proceeding and material to findings that NRC must make; CLI-23-1, 97 NRC 81 (2023)

contention raising issues of international policy unrelated to NRC's licensing criteria are beyond the scope of the proceeding; LBP-23-2, 97 NRC 8 (2023)

contention submitted as part of a timely intervention petition must satisfy six admissibility factors; LBP-23-2, 97 NRC 8 (2023)

contention that air emissions will double if the U-Metal process amendment is approved is inadmissible; LBP-23-2, 97 NRC 8 (2023)

contention that airplane crash, explosion, fire, or terrorist attack might cause re-criticality of residual fuel debris material that may result in an offsite radiological release is inadmissible; LBP-23-4, 97 NRC 89 (2023)

contention that fuel cycle facility regulations are insufficient to protect public health, safety, and security because they lack stringent quality assurance requirements is inadmissible; LBP-23-2, 97 NRC 8 (2023)

contention that license amendment request improperly fails to consider the potential harm from fires is inadmissible; LBP-23-4, 97 NRC 89 (2023)

contention that license renewal application lacks adequate data and analysis on radiological releases and emissions and potential health impacts is inadmissible; LBP-23-6, 97 NRC 147 (2023)

contention that licensee fails to comply with bankruptcy review team compliance mandates is inadmissible; CLI-23-1, 97 NRC 81 (2023)

contention that merely presents petitioner's view of what applicable policies ought to be or attempts to advocate for stricter requirements than those imposed by the applicable regulations is inadmissible; LBP-23-2, 97 NRC 8 (2023)

contention that narrow scope of purpose and need statement undercuts consideration of alternatives is inadmissible; LBP-23-2, 97 NRC 8 (2023)

contention that nuclear weapons proliferation review is required by NEPA and AEA for fuel cycle facility is inadmissible; LBP-23-2, 97 NRC 8 (2023)

contention that seismic analysis is inadequate and lack of complete data could result in seismic risks is inadmissible; LBP-23-6, 97 NRC 147 (2023)

contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirements for admission; LBP-23-4, 97 NRC 89 (2023)

contentions must be pled with sufficient specificity to put opposing parties on notice of which claims they will actually have to defend; LBP-23-4, 97 NRC 89 (2023)

dam safety is subject to state regulation and monitoring, placing that subject outside the scope of a license renewal proceeding; LBP-23-6, 97 NRC 147 (2023)

denial of the current license amendments would do nothing to redress the alleged injury; LBP-23-4, 97 NRC 89 (2023)

discussion of economic costs and benefits of facility operation is outside the scope of a license renewal proceeding and thus inadmissible; LBP-23-6, 97 NRC 147 (2023)

except for certain NEPA issues, applicant's license application is in issue, not the adequacy of NRC Staff's review of the application; LBP-23-2, 97 NRC 8 (2023)

expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadequate to support a contention; LBP-23-4, 97 NRC 89 (2023)

## SUBJECT INDEX

failure to comply with any admissibility requirement renders a contention inadmissible; LBP-23-2, 97 NRC 8 (2023); LBP-23-4, 97 NRC 89 (2023); LBP-23-6, 97 NRC 147 (2023)

focus of a hearing on a proposed licensing action is adequacy of the application to support the licensing action, not the nature of NRC Staff's review; CLI-23-1, 97 NRC 81 (2023)

historic issues that are framed in terms of regulatory inaction are beyond the scope of a license amendment proceeding; LBP-23-2, 97 NRC 8 (2023)

intervention petitioner must proffer a contention that satisfies the admissibility criteria; LBP-23-4, 97 NRC 89 (2023)

issues cannot be based on speculation but rather must have some reasonably specific factual or legal basis; LBP-23-4, 97 NRC 89 (2023)

it is entirely proper to raise a contention that challenges fairness and adequacy of an environmental report's purpose-and-need statement but petitioner must demonstrate that the requisite genuine dispute exists with applicant on a material issue of law or fact; LBP-23-2, 97 NRC 8 (2023)

it is insufficient for petitioner to point to a study and expect the board on its own to discern what particular issue a petitioner is raising, including what section of the application is being challenged as deficient and why; LBP-23-4, 97 NRC 89 (2023)

it is petitioners' responsibility, not the board's, to formulate contentions and to provide the necessary information to satisfy the basis requirement for admission; LBP-23-2, 97 NRC 8 (2023); LBP-23-6, 97 NRC 147 (2023)

license renewal contention regarding adequacy of a previously considered SAMA cannot be litigated absent a section 2.335 waiver; LBP-23-6, 97 NRC 147 (2023)

licensing board cannot supply missing information supporting a contention; LBP-23-6, 97 NRC 147 (2023)

licensing board need not accept assertions from a petitioner that are conclusory, conjectural, or otherwise untenable; LBP-23-4, 97 NRC 89 (2023)

licensing board will not entertain requests for leave to file new contentions after the deadline for submitting a hearing petition has passed unless a litigant demonstrates good cause; LBP-23-4, 97 NRC 89 (2023)

licensing boards should not accept in individual license proceedings contentions that are or are about to become the subject of general rulemaking by NRC; LBP-23-6, 97 NRC 147 (2023)

misdirected references to application's discussion about aging management programs that petitioner has not challenged fail to establish a material dispute; LBP-23-6, 97 NRC 147 (2023)

need for reanalysis of seismic safety is beyond the scope of a license renewal proceeding absent a section 2.335 waiver; LBP-23-6, 97 NRC 147 (2023)

NEPA contention challenging applicant's ER can migrate to become an issue contesting an NRC Staff NEPA statement once NRC Staff issues it; LBP-23-2, 97 NRC 8 (2023)

NRC has assessed environmental impacts associated with granting a renewed operating license for a nuclear power plant and Table B-1 summarizes its findings on the scope and magnitude of environmental impacts that NEPA requires to be addressed; LBP-23-6, 97 NRC 147 (2023)

NRC's stringent admissibility rule properly reserves its hearing process for genuine, material controversies between knowledgeable litigants; LBP-23-4, 97 NRC 89 (2023)

petition must include a concise statement of the alleged facts or expert opinions supporting the contention and sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact; CLI-23-1, 97 NRC 81 (2023)

petitioner bears the burden to satisfy each of the contention admissibility criteria; LBP-23-2, 97 NRC 8 (2023)

petitioner cannot use reply brief to reinvigorate thinly supported contentions by presenting entirely new arguments; LBP-23-6, 97 NRC 147 (2023)

petitioner fails to connect PFAS contamination claims to U-Metal process license amendment application; LBP-23-2, 97 NRC 8 (2023)

petitioner fails to show that state standard for tritium in drinking water is somehow in contravention of Part 51 or any other NRC regulation; LBP-23-6, 97 NRC 147 (2023)

petitioner must include specific references to the disputed portions of the license application at issue; LBP-23-2, 97 NRC 8 (2023)

petitioner must propose an admissible contention to obtain a hearing; CLI-23-1, 97 NRC 81 (2023)



## SUBJECT INDEX

petitioner must satisfy six admissibility factors of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-23-6, 97 NRC 147 (2023)

petitioner's assertions that do not address or clearly link to the contention admissibility requirements need not be considered further; CLI-23-1, 97 NRC 81 (2023)

petitioner's attempt to advocate for requirements stricter than or in addition to those imposed by regulation constitutes a collateral attack on NRC's rules that requires a section 2.335 waiver; LBP-23-6, 97 NRC 147 (2023)

petitioner's imprecise reading of a supporting document cannot generate a litigable issue; LBP-23-6, 97 NRC 147 (2023)

petitioner's need to only state the reasons for its concerns to have an admissible contention is argued; LBP-23-6, 97 NRC 147 (2023)

petitioners have an ironclad obligation to review license amendment requests thoroughly and to base their challenges on its contents; LBP-23-4, 97 NRC 89 (2023)

petitioners must do more than rest on the mere existence of requests for additional information as a basis for their contention; LBP-23-4, 97 NRC 89 (2023)

pleading standards were toughened in 1989 rulemaking, affecting continuing relevance of earlier contention admissibility holdings; LBP-23-6, 97 NRC 147 (2023)

public and worker radiation exposures are Category 1 items having an impact finding designated as SMALL; LBP-23-6, 97 NRC 147 (2023)

referencing documents without clearly identifying or summarizing portions of the documents that are being relied upon is inadequate; LBP-23-4, 97 NRC 89 (2023)

safety-based contention calling for consideration of whether a proliferation-associated licensing freeze was required for a proposed enrichment facility was rejected; LBP-23-2, 97 NRC 8 (2023)

scope of a hearing contesting a facility license amendment should encompass any health, safety, or environmental issues fairly raised by the license amendment; LBP-23-2, 97 NRC 8 (2023)

section 2.309(f)(1) is strict by design; LBP-23-2, 97 NRC 8 (2023); LBP-23-6, 97 NRC 147 (2023)

section 51.53(c)(3)(ii)(L) affords the functional equivalent of the Category 1 issue preclusion established by section 51.53(c)(3)(i); LBP-23-6, 97 NRC 147 (2023)

seismic risk concern regarding a catastrophic reservoir breach is not a challenge to the adequacy of the safe shutdown impoundment and its associated dam; LBP-23-6, 97 NRC 147 (2023)

standards are intended to properly reserve the hearing process for genuine, material controversies between knowledgeable litigants; LBP-23-6, 97 NRC 147 (2023)

suggestion of a mere possibility of contamination and unverified testimony presents no concrete facts or dispute with the application; LBP-23-2, 97 NRC 8 (2023)

timely-filed contention must satisfy each of the regulatory criteria of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-23-4, 97 NRC 89 (2023)

vague, unparticularized, unsupported contentions are inadmissible; LBP-23-2, 97 NRC 8 (2023)

when petitioner neglects to provide the requisite support for its contentions, the board may not cure the deficiency by supplying that information; LBP-23-2, 97 NRC 8 (2023)

where petitioner has not submitted an admissible contention, Commission need not address his standing; CLI-23-1, 97 NRC 81 (2023)

**CONTENTIONS, LATE-FILED**

leave to file new contentions filed after the deadline for submitting a hearing petition has passed must satisfy 3 conditions; LBP-23-4, 97 NRC 89 (2023)

licensing board will not entertain requests for leave to file new contentions after the deadline for submitting a hearing petition has passed unless a litigant demonstrates good cause; LBP-23-4, 97 NRC 89 (2023)

**COOLING SYSTEMS**

contention that license renewal application fails to fully analyze predicted climate changes that could affect cooling water availability at temperatures consistent with operational requirements is inadmissible; LBP-23-6, 97 NRC 147 (2023)

impact of surface water availability and conflicts over its use by facilities that use once-through cooling systems is a Category 1 issue, with impact categorized as SMALL; LBP-23-6, 97 NRC 147 (2023)

**COUNCIL ON ENVIRONMENTAL QUALITY**

NRC is not bound by CEQ's NEPA regulations or guidance; LBP-23-6, 97 NRC 147 (2023)

## SUBJECT INDEX

- NRC takes into account CEQ regulations voluntarily, subject to certain conditions; LBP-23-6, 97 NRC 147 (2023)
- CRITICALITY**  
contention that that airplane crash, explosion, fire, or terrorist attack might cause re-criticality of residual fuel debris material that may result in an offsite radiological release is inadmissible; LBP-23-4, 97 NRC 89 (2023)
- CRITICALITY ANALYSES**  
contention fails to address calculations and conservatisms embodied in license amendment request's criticality analysis; LBP-23-4, 97 NRC 89 (2023)
- CUMULATIVE IMPACTS ANALYSIS**  
contention that legacy contamination is understated, uninvestigated, and missing from cumulative effects analysis in the environmental report is inadmissible; LBP-23-2, 97 NRC 8 (2023)  
impacts can result from individually minor but collectively significant actions taking place over a period of time; LBP-23-6, 97 NRC 147 (2023)  
license renewal applicant must provide information about other past, present, and reasonably foreseeable future actions occurring in the vicinity of the nuclear plant that may result in a cumulative effect; LBP-23-6, 97 NRC 147 (2023)
- CURRENT LICENSING BASIS**  
challenges to CLB are unnecessary and wasteful because NRC already has in place ongoing agency oversight, review, and enforcement processes associated with operational issues; LBP-23-6, 97 NRC 147 (2023)  
challenges to CLB rather than the requested facility modification are not within the scope of a license amendment proceeding and instead should be brought as an enforcement action pursuant to 10 C.F.R. 2.206; LBP-23-2, 97 NRC 8 (2023)  
CLB is defined in 10 C.F.R. 54.3; LBP-23-6, 97 NRC 147 (2023)  
included in CLB are the facility operating licenses' technical specifications with limiting conditions regarding cooling water; LBP-23-6, 97 NRC 147 (2023)  
there must be reasonable assurance that activities authorized by a renewed license will continue to be conducted in accordance with the facility's CLB and that any changes to the plant's CLB are in accordance with the AEA and agency regulations; LBP-23-6, 97 NRC 147 (2023)
- DECOMMISSIONING**  
license amendment sought to relocate administrative controls to the Decommissioning Quality Assurance Program and subsequently control them in accordance with 10 C.F.R. 50.54(a); LBP-23-4, 97 NRC 89 (2023)
- DECOMMISSIONING FUNDING**  
applicant is not required to provide more than the minimum amount needed to meet regulatory requirements for decommissioning funding assurance; CLI-23-1, 97 NRC 81 (2023)  
contention challenging licensee's financial assurances for decommissioning is inadmissible; CLI-23-1, 97 NRC 81 (2023)  
prepayment method of decommissioning funding assurance with trust established for its share of decommissioning is one of the allowable methods; CLI-23-1, 97 NRC 81 (2023)
- DEFINITIONS**  
contention of omission is one alleging that licensing documents failed to address a topic that, as a matter of law, was required to be discussed; LBP-23-4, 97 NRC 89 (2023)  
current licensing basis is defined in 10 C.F.R. 54.3; LBP-23-6, 97 NRC 147 (2023)
- DEMAND FOR HEARING**  
applicant's demand for a hearing is sufficient to warrant granting applicant's hearing request on a license application denial; LBP-23-3, 97 NRC 59 (2023)  
applicant's section 2.103(b)(2) hearing demand can be granted without section 2.309(f)(1)-compliant contentions; LBP-23-3, 97 NRC 59 (2023)  
board's order granting applicant's hearing demand is the functional equivalent of a hearing notice such that the rule's requirement for board approval of a settlement agreement is applicable; LBP-23-3, 97 NRC 59 (2023)  
notice of hearing often is issued in combination with the initial grant of a demand for hearing; LBP-23-3, 97 NRC 59 (2023)

## SUBJECT INDEX

### DENIAL OF LICENSE

applicant's demand for a hearing is sufficient to warrant granting applicant's hearing request on a license application denial; LBP-23-3, 97 NRC 59 (2023)

applicant's section 2.103(b)(2) hearing demand can be granted without section 2.309(f)(1)-compliant contentions; LBP-23-3, 97 NRC 59 (2023)

filing timely intervention petition when notice of agency action regarding an application is not published in the Federal Register is provided in 10 C.F.R. 2.309(b)(4)(ii); LBP-23-3, 97 NRC 59 (2023)

intervention requests have been granted in license renewal application denial proceedings; LBP-23-3, 97 NRC 59 (2023)

### EARLY SITE PERMIT PROCEEDINGS

petitioner who lives within approximately 50 miles of such a nuclear reactor site generally will be able to invoke the proximity presumption; LBP-23-2, 97 NRC 8 (2023)

### EARTHQUAKES

analyzing earthquakes of less than 3.0 magnitude is not considered necessary under NRC Staff's environmental and safety regulatory guidance associated with seismic risk assessment; LBP-23-6, 97 NRC 147 (2023)

summary environmental impact findings regarding postulated accidents specifically encompass impacts resulting from significant earthquake-related facility accident sequences and are included in Table B-1; LBP-23-6, 97 NRC 147 (2023)

### ENFORCEMENT ACTIONS

public interest factors adopted by the Commission in an enforcement context were derived from an array of federal court settlement approval decisions; LBP-23-3, 97 NRC 59 (2023)

### ENVIRONMENTAL ANALYSIS

NRC's NEPA analysis must consider the full range of risks to the common defense and security potentially arising from its licensing decision, and must consider all reasonable alternatives that could eliminate or mitigate those risks; LBP-23-2, 97 NRC 8 (2023)

nuclear weapons proliferation and security issues have been the subject of NEPA assessments; LBP-23-2, 97 NRC 8 (2023)

possibility of a temporary pause in HEU enrichment and reprocessing made the proliferation concern potential and therefore too unlikely and remote from licensing to require a NEPA assessment; LBP-23-2, 97 NRC 8 (2023)

### ENVIRONMENTAL ASSESSMENT

purpose and need statement in a NEPA environmental assessment or report is important because it necessarily dictates the range of reasonable alternatives and must be supported by data and evidence establishing that the assessment is reasonable; LBP-23-2, 97 NRC 8 (2023)

### ENVIRONMENTAL IMPACT STATEMENT

contention must frame a dispute as to a material issue and not flyspeck an EIS; LBP-23-6, 97 NRC 147 (2023)

future, yet unproposed project should be considered in an EIS if those projects would impact the relevant environment; LBP-23-2, 97 NRC 8 (2023)

NEPA contention challenging applicant's ER can migrate to become an issue contesting an NRC Staff NEPA statement once NRC Staff issues it; LBP-23-2, 97 NRC 8 (2023)

NEPA does not require an EIS in the absence of an actual proposed federal action; LBP-23-2, 97 NRC 8 (2023)

purpose and need statement in a NEPA environmental assessment or report is important because it dictates the range of reasonable alternatives and must be supported by data and evidence establishing that the assessment is reasonable; LBP-23-2, 97 NRC 8 (2023)

### ENVIRONMENTAL ISSUES

environmental decisions must contain an evaluation of those aspects of a proposed action that will affect the quality of the human environment in a significant manner or to a significant extent not already considered; LBP-23-4, 97 NRC 89 (2023)

NRC has assessed environmental impacts associated with granting a renewed operating license for a nuclear power plant and Table B-1 summarizes its findings on the scope and magnitude of environmental impacts that NEPA requires to be addressed; LBP-23-6, 97 NRC 147 (2023)

## SUBJECT INDEX

### ENVIRONMENTAL REPORT

contention that challenges fairness and adequacy of an ER's purpose-and-need statement is entirely proper but petitioner must demonstrate that the requisite genuine dispute exists with applicant on a material issue of law or fact; LBP-23-2, 97 NRC 8 (2023)

discussion of alternatives in the ER must be sufficiently complete to assist NRC in developing and exploring appropriate alternatives to recommended courses of action; LBP-23-2, 97 NRC 8 (2023)

ER's historical, environmental baseline approach to radioactive releases is consistent with agency regulations and guidance; LBP-23-6, 97 NRC 147 (2023)

in context of purpose-and-need statement, alternatives selected for a NEPA analysis are necessarily informed by the project under review and its goals, which in turn are determined by applicant; LBP-23-2, 97 NRC 8 (2023)

license renewal application's required environmental-related contents include supplement to the ER that complies with subpart A of 10 C.F.R. Part 51; LBP-23-6, 97 NRC 147 (2023)

NEPA contention challenging applicant's ER can migrate to become an issue contesting an NRC Staff NEPA statement once NRC Staff issues it; LBP-23-2, 97 NRC 8 (2023)

NEPA-related contentions must be raised regarding applicant's ER because NRC Staff has not necessarily conducted its environmental analysis at the hearing request stage; LBP-23-2, 97 NRC 8 (2023)

only reasonable alternatives that will bring about the ends of the proposed action must be considered; LBP-23-2, 97 NRC 8 (2023)

operating license renewal application is not required to contain analyses of the environmental impacts of Category 1 issues but must address Category 2 issues; LBP-23-6, 97 NRC 147 (2023)

### ENVIRONMENTAL REVIEW

agency cannot simply accept out of hand an applicant's purpose and need statement or allow objectives of an action under consideration to be defined so unreasonably narrowly that only one alternative would accomplish the goals of the agency's action; LBP-23-2, 97 NRC 8 (2023)

contention that license amendment request did not satisfy NEPA because it failed to include an adequate environmental review was inadmissible; LBP-23-4, 97 NRC 89 (2023)

contention that nuclear weapons proliferation review is required by Part 70 for fuel cycle facility is inadmissible; LBP-23-2, 97 NRC 8 (2023)

environmental impacts process does not extend to all conceivable consequences of agency decisions, no matter how far down the causal chain from a nuclear licensing decision and no matter how unpredictable; LBP-23-2, 97 NRC 8 (2023)

except for certain NEPA issues, applicant's license application is in issue, not the adequacy of NRC Staff's review of the application; LBP-23-2, 97 NRC 8 (2023)

license renewal environmental review need not include a discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action; LBP-23-6, 97 NRC 147 (2023)

NEPA requires NRC Staff's environmental review to consider the likely consequences of a potential terrorist attack against a spent fuel storage facility for reactor sites only within the Ninth Circuit; LBP-23-4, 97 NRC 89 (2023)

nonproliferation concerns are international in nature and do not have a proximate cause connection to the proposed enrichment facility sufficient to require a NEPA inquiry; LBP-23-2, 97 NRC 8 (2023)

NRC Staff is to include consideration of carbon dioxide and other greenhouse gas emissions in its environmental reviews for major licensing actions under NEPA; LBP-23-6, 97 NRC 147 (2023)

proposed license amendment requests meet the regulatory criteria for a categorical exclusion from environmental review; LBP-23-4, 97 NRC 89 (2023)

### ERROR

licensing board decision to hold proceeding open after all contentions had been dismissed was reversible error; LBP-23-1, 97 NRC 1 (2023)

### EVIDENCE

limited appearance statements shall not be considered evidence in a proceeding; LBP-23-2, 97 NRC 8 (2023)

### EXEMPT DISTRIBUTION LICENSE

license does not apply to tritium used in products primarily for frivolous purposes or in toys or adornments; LBP-23-3, 97 NRC 59 (2023)

## SUBJECT INDEX

### EXEMPTIONS

person who obtains a self-luminous product containing tritium that is manufactured, produced, or initially transferred by an entity holding a specific license issued under section 32.22 is exempt from NRC licensing; LBP-23-3, 97 NRC 59 (2023)

### FINAL SAFETY ANALYSIS REPORT

FSAR supplement that summarizes facility programs and activities intended to manage aging effects during the extended operation period must be included in a license renewal application; LBP-23-6, 97 NRC 147 (2023)

### FINANCIAL ASSURANCE

applicant is not required to provide more than the minimum amount needed to meet regulatory requirements for decommissioning funding assurance; CLI-23-1, 97 NRC 81 (2023)

applicants seek license amendments to reflect a change in the entity responsible for providing a financial support agreement; CLI-23-1, 97 NRC 81 (2023)

contention challenging licensee's financial assurances for decommissioning is inadmissible; CLI-23-1, 97 NRC 81 (2023)

contention that licensee fails to comply with bankruptcy review team compliance mandates is inadmissible; CLI-23-1, 97 NRC 81 (2023)

licensee must notify NRC of bankruptcy proceedings; CLI-23-1, 97 NRC 81 (2023)

prepayment method of decommissioning funding assurance with trust established for its share of decommissioning is one of the allowable methods; CLI-23-1, 97 NRC 81 (2023)

section 72.50 applies to specifically licensed independent spent fuel storage installations, not generally licensed ISFSIs; CLI-23-1, 97 NRC 81 (2023)

### FINANCIAL PROTECTION

applicants seek license amendments to reflect a change in the entity responsible for providing a financial support agreement; CLI-23-1, 97 NRC 81 (2023)

### FIRES

contention that license amendment request improperly fails to consider the potential harm from fires is inadmissible; LBP-23-4, 97 NRC 89 (2023)

### FLOOD PROTECTION

dam safety is subject to state regulation and monitoring, placing that subject outside the permissible scope of a license renewal proceeding; LBP-23-6, 97 NRC 147 (2023)

petitioner's seismic risk concern regarding a catastrophic reservoir breach is not a challenge to the adequacy of the safe shutdown impoundment and its associated dam; LBP-23-6, 97 NRC 147 (2023)

### FUEL FABRICATION

facility applicant seeking amendment to implement new U-Metal process must request NRC approval of the license changes including addressing the baseline design criteria; LBP-23-2, 97 NRC 8 (2023)

nuclear fuel processor is prohibited from using any Part 70 special nuclear material to construct a nuclear weapon or any component of such a weapon; LBP-23-2, 97 NRC 8 (2023)

### FUEL FABRICATION FACILITY LICENSING

50-mile proximity presumption applies to traditional light-water power reactor license proceedings, but not necessarily to nuclear fuel fabrication facilities; LBP-23-2, 97 NRC 8 (2023)

applicant/licensee must establish management measures to ensure compliance with quality assurance performance requirements in 10 C.F.R. 70.61; LBP-23-2, 97 NRC 8 (2023)

contention that fuel cycle facility regulations are insufficient to protect public health, safety, and security because they lack stringent quality assurance requirements is inadmissible; LBP-23-2, 97 NRC 8 (2023)

contention that nuclear weapons proliferation review is required by Part 70 for fuel cycle facility is inadmissible; LBP-23-2, 97 NRC 8 (2023)

ruling on a proximity presumption claim in nuclear fuel fabrication facility case is sometimes referred to as a proximity plus presumption; LBP-23-2, 97 NRC 8 (2023)

### GENERAL LICENSES

sections that apply to activities associated with a general license are listed in 10 C.F.R. 72.13(c); CLI-23-1, 97 NRC 81 (2023)

## SUBJECT INDEX

### GENERIC ENVIRONMENTAL IMPACT STATEMENT

because continued spent fuel storage GEIS was the subject of extensive public participation in the rulemaking process, generic environmental impact determinations regarding continued storage are excluded from litigation in individual adjudications; LBP-23-6, 97 NRC 147 (2023)

impact of severe accidents is designated SMALL based on probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic; LBP-23-6, 97 NRC 147 (2023)

results of NRC's generic assessment of the environmental impacts associated with license renewal are provided in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-23-6, 97 NRC 147 (2023)

significance level of a SMALL impact designation is defined; LBP-23-6, 97 NRC 147 (2023)

summary environmental impact findings regarding postulated accidents specifically encompass impacts resulting from significant earthquake-related facility accident sequences and are included in Table B-1; LBP-23-6, 97 NRC 147 (2023)

### GREENHOUSE GAS EMISSIONS

contention that license renewal application fails to consider greenhouse gas emissions is inadmissible; LBP-23-6, 97 NRC 147 (2023)

NRC Staff is to include consideration of carbon dioxide and other greenhouse gas emissions in its environmental reviews for major licensing actions under NEPA; LBP-23-6, 97 NRC 147 (2023)

### HEALTH AND SAFETY

NRC has a legal and non-discretionary duty to consider whether, when granting a license, such an action could be inimical to the common defense and security of the United States or the health and safety of the public; LBP-23-2, 97 NRC 8 (2023)

### HEARING RIGHTS

any person whose interest might be affected by a license amendment application could file a hearing request and petition for leave to intervene challenging that application; LBP-23-2, 97 NRC 8 (2023)

applicant's demand for a hearing is sufficient to warrant granting applicant's hearing request on a license application denial; LBP-23-3, 97 NRC 59 (2023)

petitioner must propose an admissible contention to obtain a hearing; CLI-23-1, 97 NRC 81 (2023)

### INDEPENDENT SPENT FUEL STORAGE INSTALLATION

only provision in section 72.50 that applies to a generally licensed ISFSI is section 72.50(a); CLI-23-1, 97 NRC 81 (2023)

section 72.50 applies to specifically licensed independent spent fuel storage installations, not generally licensed ISFSIs; CLI-23-1, 97 NRC 81 (2023)

### INJURY IN FACT

determination that an alleged injury is fairly traceable to the challenged action requires petitioner to show that the chain of causation is plausible; LBP-23-4, 97 NRC 89 (2023)

petitioner in a license amendment proceeding cannot obtain standing by simply alleging, without substantiation, that the proposed amendments will result in offsite radiological harm; LBP-23-4, 97 NRC 89 (2023)

requirement that an alleged injury or threat of injury be concrete and particularized means that it must not be conjectural or hypothetical; LBP-23-4, 97 NRC 89 (2023)

### INTEGRATED PLANT ASSESSMENT

program assessment is required to determine functionality of structures and components during the period of extended operation; LBP-23-6, 97 NRC 147 (2023)

### INTERVENTION PETITIONS

filing timely intervention petition when notice of agency action regarding an application is not published in the Federal Register is provided in 10 C.F.R. 2.309(b)(4)(ii); LBP-23-3, 97 NRC 59 (2023)

hearing request will be construed in petitioner's favor, but petitioner has the burden of demonstrating that the standing requirements are met; LBP-23-2, 97 NRC 8 (2023); LBP-23-4, 97 NRC 89 (2023)

petition that fails to address any of the standing and contention admissibility criteria will be dismissed; LBP-23-2, 97 NRC 8 (2023)

petitioner bears the burden to set forth a coherent argument supported by plausible facts sufficient to establish standing; LBP-23-4, 97 NRC 89 (2023)

pro se petitioner's pleadings will not be held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-23-4, 97 NRC 89 (2023)

## SUBJECT INDEX

- where petitioner has not submitted an admissible contention, Commission need not address his standing; CLI-23-1, 97 NRC 81 (2023)
- INTERVENTION**  
requests have been granted in license renewal application denial proceedings; LBP-23-3, 97 NRC 59 (2023)
- INTERVENTION, DISCRETIONARY**  
intervention may be granted in limited circumstances when petitioner has failed to demonstrate standing as a matter of right; LBP-23-4, 97 NRC 89 (2023)  
request for discretionary intervention will not be considered unless another petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held; LBP-23-4, 97 NRC 89 (2023)  
sole intervention petitioner in a proceeding is not eligible to seek discretionary intervention; LBP-23-4, 97 NRC 89 (2023)
- INTERVENTION RULINGS**  
licensing board decision to hold proceeding open after all contentions had been dismissed was reversible error; LBP-23-1, 97 NRC 1 (2023)  
licensing board must determine whether petitioner has fulfilled the requirements to establish standing to intervene even if standing is uncontested; LBP-23-6, 97 NRC 147 (2023)  
petitioner established representational standing to intervene but has failed to show that any of its contentions were admissible; LBP-23-2, 97 NRC 8 (2023)  
where petitioner has not submitted an admissible contention, Commission need not address his standing; CLI-23-1, 97 NRC 81 (2023)
- LABOR UNIONS**  
unions are not inherently representative and must satisfy representational standing criteria; LBP-23-6, 97 NRC 147 (2023)
- LICENSE AMENDMENT PROCEEDINGS**  
petitioner cannot obtain standing by simply alleging, without substantiation, that the proposed amendments will result in offsite radiological harm; LBP-23-4, 97 NRC 89 (2023)  
petitioner must specify how the particular license amendments at issue would increase the risk of an offsite release of radioactive fission products; LBP-23-4, 97 NRC 89 (2023)  
proximity standing based on claim of residence within 12 miles of the facility and activities within 5 miles of the plant was rejected; LBP-23-4, 97 NRC 89 (2023)  
proximity standing was rejected where petitioner claimed residence within 8-1/2 miles of the plant and activities within 1 mile of the plant; LBP-23-4, 97 NRC 89 (2023)  
See also Materials License Amendment Proceedings
- LICENSE AMENDMENTS**  
applicants seek amendments to reflect a change in the entity responsible for providing a financial support agreement; CLI-23-1, 97 NRC 81 (2023)  
proposed amendment requests meet the regulatory criteria for a categorical exclusion from environmental review; LBP-23-4, 97 NRC 89 (2023)  
See also Materials License Amendment Applications; Source Materials License Amendment
- LICENSE RENEWAL APPLICATIONS**  
final safety analysis report supplement that summarizes facility programs and activities intended to manage aging effects during the extended operation period must be included in the application; LBP-23-6, 97 NRC 147 (2023)  
required environmental-related contents include supplement to the environmental report that complies with subpart A of 10 C.F.R. Part 51; LBP-23-6, 97 NRC 147 (2023)  
safety-related provisions are described; LBP-23-6, 97 NRC 147 (2023)
- LICENSE RENEWALS**  
if no significant environmental change from the license renewal environmental assessment will occur, then no further supplemental environmental analysis is needed; LBP-23-2, 97 NRC 8 (2023)
- LICENSE TRANSFER APPLICATIONS**  
applicants request that NRC issue an order consenting to indirect transfer of control of nuclear power plants and independent spent fuel storage installation; CLI-23-1, 97 NRC 81 (2023)

## SUBJECT INDEX

### LICENSE TRANSFER PROCEEDINGS

applicants request that NRC issue an order consenting to indirect transfer of control of nuclear power plants and independent spent fuel storage installation; CLI-23-1, 97 NRC 81 (2023)  
NRC guidance document NUREG-1556 relates to requests involving materials license bankruptcy or change of control under 10 C.F.R. Parts 30, 31, 40, and 70, not under 10 C.F.R. Parts 61, 72, 76, or 110; CLI-23-1, 97 NRC 81 (2023)  
presiding officer certifies the record of the proceeding to the Commission for its final decision; LBP-23-5, 97 NRC 116 (2023)

### LICENSING BOARDS, AUTHORITY

board authority is to approve or reject a settlement agreement; LBP-23-3, 97 NRC 59 (2023)  
board cannot supply missing information supporting a contention; LBP-23-2, 97 NRC 8 (2023); LBP-23-6, 97 NRC 147 (2023)  
board exercises its discretion to consider pro se petitioner's unopposed reply in its standing and contention admissibility analyses; LBP-23-4, 97 NRC 89 (2023)  
boards are encouraged to hold settlement conferences with the parties; LBP-23-3, 97 NRC 59 (2023)  
boards may not entertain challenges to the validity of NRC regulations in individual licensing proceedings except in certain special circumstances in which a waiver is requested and found to be appropriate; LBP-23-2, 97 NRC 8 (2023)

### LICENSING BOARDS, JURISDICTION

licensing board decision to hold proceeding open after all contentions had been dismissed was reversible error; LBP-23-1, 97 NRC 1 (2023)  
when last contention in a proceeding is resolved, the licensing board loses jurisdiction over the proceeding and the case must be terminated before the board; LBP-23-1, 97 NRC 1 (2023)

### LIMITED APPEARANCE STATEMENTS

such statements shall not be considered evidence in a proceeding; LBP-23-2, 97 NRC 8 (2023)

### MATERIALS LICENSE AMENDMENT APPLICATIONS

fuel fabrication facility applicant seeking amendment to implement new U-Metal process must request NRC approval of the license changes including addressing the baseline design criteria; LBP-23-2, 97 NRC 8 (2023)

### MATERIALS LICENSE AMENDMENT PROCEEDINGS

any person whose interest might be affected by a license amendment application could file a hearing request and petition for leave to intervene challenging that application; LBP-23-2, 97 NRC 8 (2023)  
challenges to current plant licensing basis rather than the requested facility modification are not within the permissible scope of a license amendment proceeding and instead should be brought as an enforcement action pursuant to 10 C.F.R. 2.206; LBP-23-2, 97 NRC 8 (2023)  
contention that air emissions will double if the U-Metal process amendment is approved is inadmissible; LBP-23-2, 97 NRC 8 (2023)  
historic issues that are framed in terms of regulatory inaction are both beyond the scope of a license amendment proceeding; LBP-23-2, 97 NRC 8 (2023)  
scope of a hearing contesting a facility license amendment should encompass any health, safety or environmental issues fairly raised by the amendment; LBP-23-2, 97 NRC 8 (2023)

### NATIONAL ENVIRONMENTAL POLICY ACT

NEPA does not require an EIS in the absence of an actual proposed federal action; LBP-23-2, 97 NRC 8 (2023)  
NEPA requires NRC Staff's environmental review to consider the likely consequences of a potential terrorist attack against a spent fuel storage facility for reactor sites within the Ninth Circuit; LBP-23-2, 97 NRC 8 (2023); LBP-23-4, 97 NRC 89 (2023)

### NEED FOR POWER

license renewal environmental review need not include a discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the action; LBP-23-6, 97 NRC 147 (2023)

### NOTICE OF HEARING

absence of a hearing opportunity notice for other interested persons is not an impediment to approval of a settlement agreement because participation by such persons has not been foreclosed; LBP-23-3, 97 NRC 59 (2023)



## SUBJECT INDEX

board's order granting applicant's hearing demand is the functional equivalent of a hearing notice such that the rule's requirement for board approval of a settlement agreement is applicable; LBP-23-3, 97 NRC 59 (2023)

filing timely intervention petition when notice of agency action regarding an application is not published in the Federal Register is provided in 10 C.F.R. 2.309(b)(4)(ii); LBP-23-3, 97 NRC 59 (2023)

notice often is issued in combination with the initial grant of a demand for hearing; LBP-23-3, 97 NRC 59 (2023)

### NOTIFICATION

licensee must notify NRC of bankruptcy proceedings; CLI-23-1, 97 NRC 81 (2023)

### NRC GUIDANCE DOCUMENTS

NUREG-1556 relates to requests involving materials license bankruptcy or change of control under 10 C.F.R. Parts 30, 31, 40, and 70, not under 10 C.F.R. Parts 61, 72, 76, or 110; CLI-23-1, 97 NRC 81 (2023)

### NRC POLICY

NRC encourages fair and reasonable settlement of issues proposed for litigation in NRC adjudicatory proceedings; LBP-23-3, 97 NRC 59 (2023)

### NRC STAFF REVIEW

analyzing earthquakes of less than 3.0 magnitude is not considered necessary under NRC Staff's environmental and safety regulatory guidance associated with seismic risk assessment; LBP-23-6, 97 NRC 147 (2023)

challenges to NRC Staff actions are not permitted; LBP-23-2, 97 NRC 8 (2023)

environmental impacts process does not extend to all conceivable consequences of agency decisions, no matter how far down the causal chain from a nuclear licensing decision and no matter how unpredictable; LBP-23-2, 97 NRC 8 (2023)

except for certain NEPA issues, applicant's license application is in issue, not adequacy of NRC Staff's review of the application; CLI-23-1, 97 NRC 81 (2023); LBP-23-2, 97 NRC 8 (2023)

license renewal review is not intended to duplicate NRC's ongoing oversight of operating reactors, but rather to ensure that licensee can successfully manage the detrimental effects of aging; LBP-23-6, 97 NRC 147 (2023)

NRC Staff is to include consideration of carbon dioxide and other greenhouse gas emissions in its environmental reviews for major licensing actions under NEPA; LBP-23-6, 97 NRC 147 (2023)

### NUCLEAR REGULATORY COMMISSION, AUTHORITY

choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily within the informed discretion of the administrative agency; LBP-23-6, 97 NRC 147 (2023)

### NUCLEAR WEAPONS

nuclear fuel processor is prohibited from using any Part 70 special nuclear material to construct a nuclear weapon or any component of such a weapon; LBP-23-2, 97 NRC 8 (2023)

### NUCLEAR WEAPONS PROLIFERATION

contention that nuclear weapons proliferation review is required by NEPA and AEA is inadmissible; LBP-23-2, 97 NRC 8 (2023)

contention that nuclear weapons proliferation review is required by Part 70 for fuel cycle facility is inadmissible; LBP-23-2, 97 NRC 8 (2023)

nonproliferation concerns are international in nature and do not have a proximate cause connection to the proposed enrichment facility sufficient to require a NEPA inquiry; LBP-23-2, 97 NRC 8 (2023)

nuclear weapons proliferation and security issues have been the subject of NEPA assessments; LBP-23-2, 97 NRC 8 (2023)

possibility of a temporary pause in HEU enrichment and reprocessing made the proliferation concern potential and therefore too unlikely and remote from licensing to require a NEPA assessment; LBP-23-2, 97 NRC 8 (2023)

proliferation is a matter of international policy involving a multilayered domestic and international framework as well as assessment of numerous speculative future independent actions by third parties such as the President, the Congress, and officials from foreign nations; LBP-23-2, 97 NRC 8 (2023)

safety-based contention calling for consideration of whether a proliferation-associated licensing freeze was required for a proposed enrichment facility was rejected; LBP-23-2, 97 NRC 8 (2023)

## SUBJECT INDEX

### OPERATING LICENSE RENEWAL

adverse aging effects generally are gradual and thus can be detected by programs that ensure sufficient inspections and testing; LBP-23-6, 97 NRC 147 (2023)

applicant must provide information about other past, present, and reasonably foreseeable future actions occurring in the vicinity of the nuclear plant that may result in a cumulative effect; LBP-23-6, 97 NRC 147 (2023)

before NRC will grant any license renewal application, applicant must reassess time-limited aging analyses; LBP-23-6, 97 NRC 147 (2023)

environmental report is not required to contain analyses of the environmental impacts of Category 1 issues but must address Category 2 issues; LBP-23-6, 97 NRC 147 (2023)

environmental review need not include a discussion of need for power or economic costs and economic benefits of the proposed action or of alternatives to the proposed action; LBP-23-6, 97 NRC 147 (2023)

integrated program assessment is required to determine functionality of structures and components during the period of extended operation; LBP-23-6, 97 NRC 147 (2023)

NRC may grant a license renewal if it finds that actions have been or will be taken to manage effects of aging during the period of extended operation on functionality of structures and components that require review; LBP-23-6, 97 NRC 147 (2023)

NRC Staff review is not intended to duplicate NRC's ongoing oversight of operating reactors, but rather to ensure that licensee can successfully manage the detrimental effects of aging; LBP-23-6, 97 NRC 147 (2023)

Part 54 regulatory approach focuses on whether licensee can manage the effects of aging on certain long-lived, passive components that are important to safety; LBP-23-6, 97 NRC 147 (2023)

results of NRC's generic assessment of environmental impacts are provided in 10 C.F.R. Part 51, Subpart A, Appendix B; LBP-23-6, 97 NRC 147 (2023)

section 51.53(c)(3)(ii)(P) addresses impacts of inadvertent radiological releases that may occur during the license renewal term; LBP-23-6, 97 NRC 147 (2023)

severe accidents and the severe accident mitigation alternatives analysis are classified as Category 2, requiring additional plant-specific review; LBP-23-6, 97 NRC 147 (2023)

there must be reasonable assurance that authorized activities will continue to be conducted in accordance with the facility's current licensing basis and that any changes to the CLB are in accordance with the AEA and agency regulations; LBP-23-6, 97 NRC 147 (2023)

### OPERATING LICENSE RENEWAL PROCEEDINGS

contention challenging safety review is limited to issues related to aging and age-related management; LBP-23-6, 97 NRC 147 (2023)

contention regarding adequacy of a previously considered SAMA cannot be litigated absent a section 2.335 waiver; LBP-23-6, 97 NRC 147 (2023)

contention that application fails to fully analyze predicted climate changes that could affect cooling water availability at temperatures consistent with operational requirements is inadmissible; LBP-23-6, 97 NRC 147 (2023)

contention that application lacks adequate data and analysis on radiological releases and emissions and potential health impacts is inadmissible; LBP-23-6, 97 NRC 147 (2023)

contention that seismic analysis is inadequate and lack of complete data could result in seismic risks is inadmissible; LBP-23-6, 97 NRC 147 (2023)

contentions that challenge a Table B-1 Category 1 determination are outside the scope of the proceeding unless petitioner seeks and is granted a rule waiver; LBP-23-6, 97 NRC 147 (2023)

dam safety is subject to state regulation and monitoring, placing that subject outside the scope of the proceeding; LBP-23-6, 97 NRC 147 (2023)

economic costs and benefits of facility operation are outside the scope of a proceeding and thus inadmissible; LBP-23-6, 97 NRC 147 (2023)

need for reanalysis of seismic safety is beyond the scope of a proceeding absent a section 2.335 waiver; LBP-23-6, 97 NRC 147 (2023)

NRC has assessed environmental impacts and Table B-1 summarizes its findings on the scope and magnitude of environmental impacts that NEPA requires to be addressed; LBP-23-6, 97 NRC 147 (2023)

## SUBJECT INDEX

### OPINIONS

expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadequate to support a contention; LBP-23-4, 97 NRC 89 (2023)

### PIPING

contention regarding age-related pipe leaks and breakage fails to refer to any specific provision of license renewal application; LBP-23-6, 97 NRC 147 (2023)

### PLEADINGS

contentions must be pled with sufficient specificity to put opposing parties on notice of which claims they will actually have to defend; LBP-23-4, 97 NRC 89 (2023)

licensing board need not accept assertions from a petitioner that are conclusory, conjectural, or otherwise untenable; LBP-23-4, 97 NRC 89 (2023)

request that hearing petition be afforded nonpublic treatment must provide a supporting affidavit and page markings showing the purported confidential information in the document and set forth a documented basis for determining what confidential information was in that pleading; LBP-23-3, 97 NRC 59 (2023)

### POLICY

contention raising issues of international policy unrelated to NRC's licensing criteria are beyond the scope of the proceeding; LBP-23-2, 97 NRC 8 (2023)

### POSSESSION-ONLY LICENSES

amendment sought to relocate administrative controls to the Decommissioning Quality Assurance Program and subsequently control them in accordance with 10 C.F.R. 50.54(a); LBP-23-4, 97 NRC 89 (2023)

petitioner must specify how the particular license amendments at issue would increase the risk of an offsite release of radioactive fission products; LBP-23-4, 97 NRC 89 (2023)

### PRIMA FACIE SHOWING

intervenor must make a prima facie showing that the requisite special circumstances exist so that a rule waiver may be granted; LBP-23-2, 97 NRC 8 (2023)

### PRO SE LITIGANTS

licensing board exercises its discretion to consider pro se petitioner's unopposed reply in its standing and contention admissibility analyses; LBP-23-4, 97 NRC 89 (2023)

pleadings will not be held to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere; LBP-23-4, 97 NRC 89 (2023)

### PROBABILISTIC RISK ASSESSMENT

impact of severe accidents is designated SMALL based on probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic; LBP-23-6, 97 NRC 147 (2023)

### PROXIMATE CAUSE

nonproliferation concerns are international in nature and do not have a proximate cause connection to the proposed enrichment facility sufficient to require a NEPA inquiry; LBP-23-2, 97 NRC 8 (2023)

### PROXIMITY PRESUMPTION

50-mile proximity presumption applies to traditional light-water power reactor license proceedings, but not necessarily to nuclear fuel fabrication facilities; LBP-23-2, 97 NRC 8 (2023)

50-mile proximity presumption is simply a shortcut for determining standing in certain cases; LBP-23-4, 97 NRC 89 (2023)

aside from reactor licensing proceedings involving construction permits and operating licenses, applicability of the proximity presumption is determined on a case-by-case basis; LBP-23-4, 97 NRC 89 (2023)

case-specific determination of proximity presumption rests on whether the kind of action at issue, when considered in light of radioactive sources at the plant, justifies a presumption that the licensing action could plausibly lead to the offsite release of radioactive fission products; LBP-23-4, 97 NRC 89 (2023)

given shutdown and defueled status of units, license amendments do not on their face present any obvious potential of offsite radiological consequences meriting application of proximity presumption; LBP-23-4, 97 NRC 89 (2023)

in a limited category of proceedings, NRC recognizes a proximity presumption in favor of standing for persons who reside or have frequent contacts within a 50-mile radius of a nuclear power plant; LBP-23-2, 97 NRC 8 (2023); LBP-23-4, 97 NRC 89 (2023)

## SUBJECT INDEX

- in proceedings for early site permits, combined licenses, and license renewals, petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption; LBP-23-2, 97 NRC 8 (2023)
- in proceedings for light-water power reactor construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool, petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption; LBP-23-2, 97 NRC 8 (2023)
- in some proceedings, an organization's representational standing can be based on a proximity presumption showing that at least one individual who designates the group as their representative lives within 50 miles of the subject facility; LBP-23-6, 97 NRC 147 (2023)
- individual residing within 1 mile of a facility and passing directly by the facility 5 days a week established standing based on proximity to facility using uranium downblending process; LBP-23-2, 97 NRC 8 (2023)
- petitioner applying the proximity presumption must show that the particular licensing action raises an obvious potential for offsite consequences; LBP-23-4, 97 NRC 89 (2023)
- petitioner is relieved of the need to satisfy the traditional standing elements of injury in fact, causation, and redressability; LBP-23-2, 97 NRC 8 (2023); LBP-23-6, 97 NRC 147 (2023)
- presumption satisfies contemporaneous judicial concepts of standing and promotes efficiency in the adjudicatory process; LBP-23-4, 97 NRC 89 (2023)
- proximity-based standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility; LBP-23-2, 97 NRC 8 (2023)
- proximity-plus presumption requires a case-by-case analysis of the proposed licensing action to determine the radius beyond which there is no longer an obvious potential for offsite consequences by taking into account the nature of the proposed action and significance of radioactive source; LBP-23-2, 97 NRC 8 (2023)
- residents located between 2 and 20 miles from a facility failed to make a sufficient showing of a particularized injury relative to a proposed licensing action authorizing the downblending of uranium; LBP-23-2, 97 NRC 8 (2023)
- ruling on a proximity presumption claim in nuclear fuel fabrication facility case is sometimes referred to as a proximity-plus presumption; LBP-23-2, 97 NRC 8 (2023)
- standing based on claim of residence within 12 miles of the facility and activities within 5 miles of the plant was rejected; LBP-23-4, 97 NRC 89 (2023)
- standing was rejected where petitioner claimed residence within 8-1/2 miles of the plant and activities within 1 mile of the plant; LBP-23-4, 97 NRC 89 (2023)
- PUBLIC INTEREST**
- board is obliged to determine whether a settlement agreement is within the reaches of the public interest; LBP-23-3, 97 NRC 59 (2023)
- board looks to whether a settlement jeopardizes public health and safety; LBP-23-3, 97 NRC 59 (2023)
- board looks to whether the terms of the settlement appear incapable of effective implementation and enforcement; LBP-23-3, 97 NRC 59 (2023)
- factors adopted by the Commission in an enforcement context were derived from an array of federal court settlement approval decisions; LBP-23-3, 97 NRC 59 (2023)
- QUALITY ASSURANCE**
- contention that fuel cycle facility regulations are insufficient to protect public health, safety, and security because they lack stringent quality assurance requirements is inadmissible; LBP-23-2, 97 NRC 8 (2023)
- fuel fabrication facility applicant/licensee must establish management measures to ensure compliance with quality assurance performance requirements in 10 C.F.R. 70.61; LBP-23-2, 97 NRC 8 (2023)
- QUALITY ASSURANCE PROGRAMS**
- license amendment sought to relocate administrative controls to the Decommissioning QA Program and subsequently control them in accordance with 10 C.F.R. 50.54(a); LBP-23-4, 97 NRC 89 (2023)
- RADIOACTIVE RELEASES**
- contention that license renewal application lacks adequate data and analysis on radiological releases and emissions and potential health impacts is inadmissible; LBP-23-6, 97 NRC 147 (2023)

## SUBJECT INDEX

environmental report's historical, environmental baseline approach to radioactive releases is consistent with agency regulations and guidance; LBP-23-6, 97 NRC 147 (2023)

petitioner must specify how the license amendments at issue would increase the risk of an offsite release of radioactive fission products; LBP-23-4, 97 NRC 89 (2023)

proximity presumption rests on a finding, in construction permit and operating license cases, that persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur; LBP-23-4, 97 NRC 89 (2023)

section 51.53(c)(3)(ii)(P) addresses impacts of inadvertent radiological releases that may occur during the license renewal term; LBP-23-6, 97 NRC 147 (2023)

### RADIOLOGICAL CONTAMINATION

contention that legacy contamination is understated, uninvestigated, and missing from cumulative effects analysis in the environmental report is inadmissible; LBP-23-2, 97 NRC 8 (2023)

suggestion of a mere possibility of contamination and unverified testimony presents no concrete facts or dispute with the application; LBP-23-2, 97 NRC 8 (2023)

### RADIOLOGICAL EXPOSURE

petitioner in a license amendment proceeding cannot obtain standing by simply alleging, without substantiation, that the proposed amendments will result in offsite radiological harm; LBP-23-4, 97 NRC 89 (2023)

public and worker radiation exposures are Category 1 items having an impact finding designated as SMALL; LBP-23-6, 97 NRC 147 (2023)

summary environmental findings relating to exposure of terrestrial and aquatic organisms to radionuclides are included in Table B-1; LBP-23-6, 97 NRC 147 (2023)

### REASONABLENESS STANDARD

only reasonable alternatives that will bring about the ends of the proposed action must be considered; LBP-23-2, 97 NRC 8 (2023)

### REDRRESSABILITY

denial of the current license amendments would do nothing to redress the alleged injury; LBP-23-4, 97 NRC 89 (2023)

### REFERRAL OF RULING

Commission need not address whether a different result might follow in the face of a licensing board's consideration of whether the record before the board justifies Commission referral of a sua sponte issue; LBP-23-1, 97 NRC 1 (2023)

### REGISTRATION

entity wishing to manufacture, produce, or initially transfer such a tritium sealed source product must obtain both a section 32.22 license and a section 32.210 registration certificate; LBP-23-3, 97 NRC 59 (2023)

### REGULATIONS

NRC is not bound by Council on Environmental Quality's NEPA regulations or guidance; LBP-23-6, 97 NRC 147 (2023)

NRC takes into account Council on Environmental Quality regulations voluntarily, subject to certain conditions; LBP-23-6, 97 NRC 147 (2023)

See also Amendment of Regulations

### REGULATIONS, INTERPRETATION

Commission referenced both proposed and final rule statements of considerations in using regulatory history to determine rule's meaning; LBP-23-2, 97 NRC 8 (2023)

NRC Staff regulatory guidance documents that are consistent with regulations and are at least implicitly endorsed by NRC are entitled to correspondently special weight; LBP-23-2, 97 NRC 8 (2023)

only provision in section 72.50 that applies to a generally licensed ISFSI is section 72.50(a); CLI-23-1, 97 NRC 81 (2023)

section 51.53(c)(3)(ii)(L) affords the functional equivalent of the Category 1 issue preclusion established by section 51.53(c)(3)(i); LBP-23-6, 97 NRC 147 (2023)

section 72.50 applies to specifically licensed independent spent fuel storage installations, not generally licensed ISFSIs; CLI-23-1, 97 NRC 81 (2023)

sections that apply to activities associated with a general license are listed in 10 C.F.R. 72.13(c); CLI-23-1, 97 NRC 81 (2023)

## SUBJECT INDEX

when regulatory history shows NRC has rejected an amendment to a rule, that rejection may be evidence that NRC did not intend the regulation to include the provision in the rejected amendment; LBP-23-2, 97 NRC 8 (2023)

### REGULATORY GUIDES

NRC Staff regulatory guidance documents that are consistent with regulations and are at least implicitly endorsed by NRC are entitled to correspondently special weight; LBP-23-2, 97 NRC 8 (2023)

See also NRC Guidance Documents

### REGULATORY OVERSIGHT PROCESS

contentions that challenge the plant's current licensing basis are unnecessary and wasteful because NRC already has in place ongoing agency oversight, review, and enforcement processes associated with operational issues; LBP-23-6, 97 NRC 147 (2023)

### REPLY BRIEFS

licensing board exercises its discretion to consider pro se petitioner's unopposed reply in its standing and contention admissibility analyses; LBP-23-4, 97 NRC 89 (2023)

petitioner cannot use reply brief to reinvigorate thinly supported contentions by presenting entirely new arguments; LBP-23-6, 97 NRC 147 (2023)

### REQUEST FOR ADDITIONAL INFORMATION

petitioners must do more than rest on the mere existence of requests for additional information as a basis for their contention; LBP-23-4, 97 NRC 89 (2023)

### REVIEW

See Environmental Review; NRC Staff Review; Safety Review

### RULEMAKING

choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily within the informed discretion of the administrative agency; LBP-23-6, 97 NRC 147 (2023)

licensing boards should not accept in individual licensing proceedings contentions that are or are about to become the subject of general rulemaking by NRC; LBP-23-6, 97 NRC 147 (2023)

### RULES OF PRACTICE

challenges to NRC rules or regulations in adjudicatory proceedings are precluded absent a waiver granted by the Commission; LBP-23-2, 97 NRC 8 (2023)

Commission need not address whether a different result might follow in the face of a licensing board's consideration of whether the record before the board justifies Commission referral of a sua sponte issue; LBP-23-1, 97 NRC 1 (2023)

contention admissibility criteria aim to focus litigation on concrete issues and result in a clearer and more focused record for decision; LBP-23-2, 97 NRC 8 (2023)

contention admissibility rule is strict by design; LBP-23-2, 97 NRC 8 (2023)

contention must include a concise statement of the alleged facts or expert opinions supporting the contention and sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact; CLI-23-1, 97 NRC 81 (2023)

contention must provide a specific statement of the issue of law or fact to be raised or controverted and provide a brief explanation of its basis; CLI-23-1, 97 NRC 81 (2023)

contention must raise issues within the scope of the proceeding and material to findings that NRC must make; CLI-23-1, 97 NRC 81 (2023)

contention submitted as part of a timely intervention petition must satisfy six admissibility factors; LBP-23-2, 97 NRC 8 (2023)

filing timely intervention petition when notice of agency action regarding an application is not published in the Federal Register is provided in 10 C.F.R. 2.309(b)(4)(ii); LBP-23-3, 97 NRC 59 (2023)

intervention petition that fails to address any of the standing and contention admissibility criteria will be dismissed; LBP-23-2, 97 NRC 8 (2023); LBP-23-4, 97 NRC 89 (2023)

licensing board will not entertain requests for leave to file new contentions after the deadline for submitting a hearing petition has passed unless litigant demonstrates good cause; LBP-23-4, 97 NRC 89 (2023)

limited appearance statements shall not be considered evidence in a proceeding; LBP-23-2, 97 NRC 8 (2023)

petitioner established representational standing to intervene but has failed to show that any of its contentions were admissible; LBP-23-2, 97 NRC 8 (2023)

## SUBJECT INDEX

petitioner's assertions that do not address or clearly link to the contention admissibility requirements need not be considered further; CLI-23-1, 97 NRC 81 (2023)

timely-filed contention must satisfy each of the regulatory criteria of 10 C.F.R. 2.309(f)(1)(i)-(vi); LBP-23-4, 97 NRC 89 (2023)

to establish representational standing, hearing request must state name, address, and phone number of petitioner, nature of petitioner's right under the AEA to be made a party to the proceeding, nature and extent of the petitioner's property, financial, or other interest in the proceeding, and possible effect of any decision or order that may be issued on petitioner's interest; LBP-23-2, 97 NRC 8 (2023)

### SAFETY ISSUES

challenge to safety issues associated with a plant's current licensing basis is, in the absence of a section 2.335 waiver, beyond the scope of a license renewal proceeding and thus insufficient to support an admissible contention; LBP-23-6, 97 NRC 147 (2023)

safety-based contention calling for consideration of whether a proliferation-associated licensing freeze was required for a proposed enrichment facility was rejected; LBP-23-2, 97 NRC 8 (2023)

### SAFETY REVIEW

contention challenging safety review in a license renewal proceeding is limited to issues related to aging and age-related management; LBP-23-6, 97 NRC 147 (2023)

### SAFETY-RELATED

provisions of license renewal application are described; LBP-23-6, 97 NRC 147 (2023)

### SEALED SOURCES

entity wishing to manufacture, produce, or initially transfer a tritium sealed source product must obtain both a section 32.22 license and a section 32.210 registration certificate; LBP-23-3, 97 NRC 59 (2023)

exempt distribution license does not apply to tritium used in products primarily for frivolous purposes or in toys or adornments; LBP-23-3, 97 NRC 59 (2023)

licensee seeks NRC approval to expand existing authorization to distribute various tritium sealed-source self-luminous consumer products to include new multi-tool devices; LBP-23-3, 97 NRC 59 (2023)

person who obtains a self-luminous product containing tritium that is manufactured, produced, or initially transferred by an entity holding a specific license issued under section 32.22 is exempt from NRC licensing; LBP-23-3, 97 NRC 59 (2023)

### SEISMIC ANALYSIS

contention that seismic analysis is inadequate and lack of complete data could result in seismic risks is inadmissible; LBP-23-6, 97 NRC 147 (2023)

need for reanalysis of seismic safety is beyond the scope of a license renewal proceeding absent a section 2.335 waiver; LBP-23-6, 97 NRC 147 (2023)

### SEISMIC RISK

analyzing earthquakes of less than 3.0 magnitude is not considered necessary under NRC Staff's environmental and safety regulatory guidance associated with seismic risk assessment; LBP-23-6, 97 NRC 147 (2023)

contention that seismic analysis is inadequate and lack of complete data could result in seismic risks is inadmissible; LBP-23-6, 97 NRC 147 (2023)

petitioner's seismic risk concern regarding a catastrophic reservoir breach is not a challenge to the adequacy of the safe shutdown impoundment and its associated dam; LBP-23-6, 97 NRC 147 (2023)

### SETTLEMENT AGREEMENTS

absence of a hearing opportunity notice for other interested persons is not an impediment to approval of a settlement agreement because participation by such persons has not been foreclosed; LBP-23-3, 97 NRC 59 (2023)

agreement is not open to appellate challenge absent fraud or mutual mistake; LBP-23-3, 97 NRC 59 (2023)

approval process is described in 10 C.F.R. 2.338(i); LBP-23-3, 97 NRC 59 (2023)

authorized activities described in the settlement agreement constitute activities authorized by the license issued under 10 C.F.R. 32.22; LBP-23-3, 97 NRC 59 (2023)

board authority is to approve or reject a settlement agreement; LBP-23-3, 97 NRC 59 (2023)

board examines risks and benefits of settling vs. litigating the proceeding, likelihood (or uncertainty) of success at trial, range of possible recovery, and complexity, length, and expense of continued litigation; LBP-23-3, 97 NRC 59 (2023)

## SUBJECT INDEX

board is obliged to determine whether a settlement agreement is within the reaches of the public interest; LBP-23-3, 97 NRC 59 (2023)

board looks to whether the settlement approval process deprives interested parties of meaningful participation; LBP-23-3, 97 NRC 59 (2023)

board need not reject a settlement merely because one of the parties might have received a more favorable result had the case been fully litigated or because the settlement is not the best that could be obtained; LBP-23-3, 97 NRC 59 (2023)

content of proposed agreement is described in 10 C.F.R. 2.338(h); LBP-23-3, 97 NRC 59 (2023)

form for settlements is outlined in 10 C.F.R. 2.338(g); LBP-23-3, 97 NRC 59 (2023)

in any pending proceeding in which presiding officer approval of a settlement agreement is required, that approval must give due consideration to the public interest; LBP-23-3, 97 NRC 59 (2023)

NRC regulations encourage fair and reasonable settlement of issues proposed for litigation in NRC adjudicatory proceedings; LBP-23-3, 97 NRC 59 (2023)

parties expressly waive any right to challenge or contest the validity of an order entered into in accordance with a proposed settlement agreement; LBP-23-3, 97 NRC 59 (2023)

presiding officer cannot amend a settlement agreement without consent of the parties; LBP-23-3, 97 NRC 59 (2023)

public interest factor in settlement agreement looks to whether the terms of the settlement appear incapable of effective implementation and enforcement; LBP-23-3, 97 NRC 59 (2023)

public interest factor looks to whether the settlement jeopardizes public health and safety; LBP-23-3, 97 NRC 59 (2023)

public interest factors adopted by the Commission in an enforcement context were derived from an array of federal court settlement approval decisions; LBP-23-3, 97 NRC 59 (2023)

settlements approved by a presiding officer are subject to Commission review; LBP-23-3, 97 NRC 59 (2023)

**SETTLEMENT NEGOTIATIONS**

applicant and NRC Staff's joint motion requesting that the proceeding be held in abeyance and that a settlement judge be appointed was granted; LBP-23-3, 97 NRC 59 (2023)

boards are encouraged to hold settlement conferences with the parties; LBP-23-3, 97 NRC 59 (2023)

**SEVERE ACCIDENT MITIGATION ALTERNATIVES**

license renewal contention regarding adequacy of a previously considered SAMA cannot be litigated absent a section 2.335 waiver; LBP-23-6, 97 NRC 147 (2023)

**SEVERE ACCIDENT MITIGATION ALTERNATIVES ANALYSIS**

alternatives to mitigate severe accidents must be considered for plants that previously have not considered such alternatives; LBP-23-6, 97 NRC 147 (2023)

NRC's NEPA analysis must consider the full range of risks to the common defense and security potentially arising from its licensing decision and must consider all reasonable alternatives that could eliminate or mitigate those risks; LBP-23-2, 97 NRC 8 (2023)

severe accidents and SAMA analysis are classified as Category 2, requiring additional plant-specific review; LBP-23-6, 97 NRC 147 (2023)

**SOURCE MATERIALS LICENSE AMENDMENT**

licensee seeks NRC approval to expand existing authorization to distribute various tritium sealed-source self-luminous consumer products to include new multi-tool devices; LBP-23-3, 97 NRC 59 (2023)

**SOURCE MATERIALS LICENSES**

authorized activities described in the settlement agreement constitute activities authorized by the license issued under 10 C.F.R. 32.22; LBP-23-3, 97 NRC 59 (2023)

entity wishing to manufacture, produce, or initially transfer such a tritium sealed source product must obtain both a section 32.22 license and a section 32.210 registration certificate; LBP-23-3, 97 NRC 59 (2023)

exempt distribution license does not apply to tritium used in products primarily for frivolous purposes or in toys or adornments; LBP-23-3, 97 NRC 59 (2023)

**SPECIAL CIRCUMSTANCES**

applicant's categorical exclusion determination can be challenged by affirmatively showing the existence of special circumstances pursuant to section 51.22(b) that would justify excepting the proposed license amendment from the categorical exclusion; LBP-23-4, 97 NRC 89 (2023)



## SUBJECT INDEX

- contention fails to argue that TMI-2's alleged uniqueness equates to special circumstances that justify excepting the license amendment request from a categorical exclusion; LBP-23-4, 97 NRC 89 (2023)
- intervenor must make a prima facie showing that the requisite special circumstances exist so that a rule waiver may be granted; LBP-23-2, 97 NRC 8 (2023)
- SPECIAL NUCLEAR MATERIALS**
- nuclear fuel processor is prohibited from using any Part 70 special nuclear material to construct a nuclear weapon or any component of such a weapon; LBP-23-2, 97 NRC 8 (2023)
- SPENT FUEL STORAGE**
- because continued spent fuel storage GEIS was the subject of extensive public participation in the rulemaking process, generic environmental impact determinations regarding continued storage are excluded from litigation in individual adjudications; LBP-23-6, 97 NRC 147 (2023)
- STANDING TO INTERVENE**
- 50-mile proximity presumption applies to traditional light-water power reactor license proceedings, but not necessarily to nuclear fuel fabrication facilities; LBP-23-2, 97 NRC 8 (2023)
- 50-mile proximity presumption is simply a shortcut for determining standing in certain cases; LBP-23-4, 97 NRC 89 (2023)
- aside from reactor licensing proceedings involving construction permits and operating licenses, applicability of the proximity presumption is determined on a case-by-case basis; LBP-23-4, 97 NRC 89 (2023)
- backward-looking studies on health are irrelevant to the forward-looking standing analysis; LBP-23-4, 97 NRC 89 (2023)
- case-specific determination of proximity presumption rests on whether the kind of action at issue, when considered in light of radioactive sources at the plant, justifies a presumption that the licensing action could plausibly lead to the offsite release of radioactive fission products; LBP-23-4, 97 NRC 89 (2023)
- determination that an alleged injury is fairly traceable to the challenged action requires petitioner to show that the chain of causation is plausible; LBP-23-4, 97 NRC 89 (2023)
- discretionary intervention may be granted in limited circumstances when petitioner has failed to demonstrate standing as a matter of right; LBP-23-4, 97 NRC 89 (2023)
- given shutdown and defueled status of units, license amendments do not on their face present any obvious potential of offsite radiological consequences meriting application of proximity presumption; LBP-23-4, 97 NRC 89 (2023)
- hearing request will be construed in petitioner's favor, but petitioner must demonstrate that the standing requirements are met; LBP-23-2, 97 NRC 8 (2023)
- in a limited category of proceedings, NRC recognizes a proximity presumption in favor of standing for persons who reside or have frequent contacts within a 50-mile radius of a nuclear power plant; LBP-23-4, 97 NRC 89 (2023)
- in proceedings for early site permits, combined licenses, and license renewals, petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption; LBP-23-2, 97 NRC 8 (2023)
- in proceedings for light-water power reactor construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool, petitioner who lives within approximately 50 miles of such a nuclear reactor generally will be able to invoke the proximity presumption; LBP-23-2, 97 NRC 8 (2023)
- individual residing within 1 mile of a facility and passing directly by the facility 5 days a week established standing based on proximity to facility using uranium downblending process; LBP-23-2, 97 NRC 8 (2023)
- intervention petitioner bears the burden to set forth a coherent argument supported by plausible facts sufficient to establish standing; LBP-23-4, 97 NRC 89 (2023)
- intervention petitioner must demonstrate standing; LBP-23-4, 97 NRC 89 (2023)
- judicial concepts of standing require petitioner to allege injury, traceable to the challenged action, interest, and redressability; LBP-23-4, 97 NRC 89 (2023)
- licensing board must determine whether petitioner has fulfilled the requirements to establish standing to intervene even if standing is uncontested; LBP-23-6, 97 NRC 147 (2023)
- licensing board shall, where appropriate, weigh the information provided to determine whether a standing element is satisfied; LBP-23-4, 97 NRC 89 (2023)

## SUBJECT INDEX

mere intellectual or academic interest in a facility or proceeding is insufficient, in and of itself, to demonstrate standing; LBP-23-4, 97 NRC 89 (2023)

NRC applies contemporaneous judicial concepts of standing; LBP-23-4, 97 NRC 89 (2023)

petitioner applying the proximity presumption must show that the particular licensing action raises an obvious potential for offsite consequences; LBP-23-4, 97 NRC 89 (2023)

petitioner in a license amendment proceeding cannot obtain standing by simply alleging, without substantiation, that the proposed amendments will result in offsite radiological harm; LBP-23-4, 97 NRC 89 (2023)

petitioner must specify how the license amendments at issue would increase the risk of an offsite release of radioactive fission products; LBP-23-4, 97 NRC 89 (2023)

proximity presumption relieves petitioner of the need to satisfy traditional standing elements of injury in fact, causation, and redressability; LBP-23-2, 97 NRC 8 (2023); LBP-23-6, 97 NRC 147 (2023)

proximity presumption rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility; LBP-23-2, 97 NRC 8 (2023); LBP-23-6, 97 NRC 147 (2023)

proximity presumption satisfies contemporaneous judicial concepts of standing and promotes efficiency in the adjudicatory process; LBP-23-4, 97 NRC 89 (2023)

proximity standing based on claim of residence within 12 miles of the facility and activities within 5 miles of the plant was rejected; LBP-23-4, 97 NRC 89 (2023)

proximity standing was rejected where petitioner claimed residence within 8-1/2 miles of the plant and activities within 1 mile of the plant; LBP-23-4, 97 NRC 89 (2023)

proximity-plus presumption requires a case-by-case analysis of the proposed licensing action to determine the radius beyond which there is no longer an obvious potential for offsite consequences by taking into account the nature of the proposed action and significance of the radioactive source; LBP-23-2, 97 NRC 8 (2023)

requirement that an alleged injury or threat of injury be concrete and particularized means that it must not be conjectural or hypothetical; LBP-23-4, 97 NRC 89 (2023)

residents located between 2 and 20 miles from a facility failed to make a sufficient showing of a particularized injury relative to a proposed licensing action authorizing the downblending of uranium; LBP-23-2, 97 NRC 8 (2023)

ruling on a proximity presumption claim in nuclear fuel fabrication facility case is sometimes referred to as a proximity-plus presumption; LBP-23-2, 97 NRC 8 (2023)

traditional judicial standing requires that petitioner show injury in fact, causation, zone of interest, and redressability; LBP-23-2, 97 NRC 8 (2023); LBP-23-6, 97 NRC 147 (2023)

unsubstantiated assertions that several license amendment provisions will cause harm to petitioner do not satisfy the causation component of standing; LBP-23-4, 97 NRC 89 (2023)

where petitioner has not submitted an admissible contention, Commission need not address his standing; CLI-23-1, 97 NRC 81 (2023)

where proximity standing cannot be established, NRC's standing inquiry reverts to a traditional standing analysis; LBP-23-4, 97 NRC 89 (2023)

**STANDING TO INTERVENE, ORGANIZATIONAL**

interests that 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; LBP-23-2, 97 NRC 8 (2023)

organization invoking representational standing can seek to establish the standing of one or more of its members by using either traditional judicial standing principles or the proximity presumption in applicable proceedings; LBP-23-2, 97 NRC 8 (2023)

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; LBP-23-2, 97 NRC 8 (2023)

organization's standing in NRC proceedings based on its representation of interests of one or more individuals depends, in turn, on standing of the individuals being represented and on the organization's ability to establish its standing in a representational capacity; LBP-23-6, 97 NRC 147 (2023)

## SUBJECT INDEX

### STANDING TO INTERVENE, REPRESENTATIONAL

criteria to establish representational standing under 10 C.F.R. 2.309(d)(1) are discussed; LBP-23-2, 97 NRC 8 (2023); LBP-23-6, 97 NRC 147 (2023)

in some proceedings, an organization's representational standing can be based on a proximity presumption showing that at least one individual who designates the group as their representative lives within 50 miles of the subject facility; LBP-23-6, 97 NRC 147 (2023)

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; LBP-23-2, 97 NRC 8 (2023)

organization's standing in NRC proceedings based on its representation of interests of one or more individuals depends, in turn, on standing of the individuals being represented and on the organization's ability to establish its standing in a representational capacity; LBP-23-6, 97 NRC 147 (2023)

unions are not inherently representative and must satisfy representational standing criteria; LBP-23-6, 97 NRC 147 (2023)

### STATE REGULATORY REQUIREMENTS

contention fails to show that state standard for tritium in drinking water is somehow in contravention of Part 51 or any other NRC regulation; LBP-23-6, 97 NRC 147 (2023)

dam safety is subject to state regulation and monitoring, placing that subject outside the permissible scope of a license renewal proceeding; LBP-23-6, 97 NRC 147 (2023)

### STATEMENT OF CONSIDERATIONS

Commission referenced both proposed and final rule statements of considerations in using regulatory history to determine rule's meaning; LBP-23-2, 97 NRC 8 (2023)

### SUA SPONTE ISSUES

Commission need not address whether a different result might follow in the face of a licensing board's consideration of whether the record before the board justifies Commission referral of a sua sponte issue; LBP-23-1, 97 NRC 1 (2023)

### SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT

if no significant environmental change from the license renewal environmental assessment will occur, then no further supplemental environmental analysis is needed; LBP-23-2, 97 NRC 8 (2023)

### TECHNICAL SPECIFICATIONS

included in current licensing basis are the facility operating licenses' technical specifications with limiting conditions regarding cooling water; LBP-23-6, 97 NRC 147 (2023)

### TERMINATION OF PROCEEDING

when last contention in a proceeding is resolved, the licensing board loses jurisdiction over the proceeding and the case before the board must be terminated; LBP-23-1, 97 NRC 1 (2023)

### TERRORISM

NEPA requires NRC Staff's environmental review to consider the likely consequences of a potential terrorist attack against a spent fuel storage facility for reactor sites within the Ninth Circuit; LBP-23-2, 97 NRC 8 (2023); LBP-23-4, 97 NRC 89 (2023)

### THREE MILE ISLAND ACCIDENT

accident and cleanup are described; LBP-23-4, 97 NRC 89 (2023)

decommissioning of TMI-2 is described; LBP-23-4, 97 NRC 89 (2023)

### TIME LIMITED AGING ANALYSES

before NRC will grant any license renewal application, applicant must reassess TLAAAs; LBP-23-6, 97 NRC 147 (2023)

### TRITIUM

contention fails to show that state standard for tritium in drinking water is somehow in contravention of Part 51 or any other NRC regulation; LBP-23-6, 97 NRC 147 (2023)

entity wishing to manufacture, produce, or initially transfer such a tritium sealed-source product must obtain both a section 32.22 license and a section 32.210 registration certificate; LBP-23-3, 97 NRC 59 (2023)

exempt distribution license does not apply to tritium used in products primarily for frivolous purposes or in toys or adornments; LBP-23-3, 97 NRC 59 (2023)

licensee seeks NRC approval to expand existing authorization to distribute various tritium sealed-source self-luminous consumer products to include new multi-tool devices; LBP-23-3, 97 NRC 59 (2023)

## SUBJECT INDEX

person who obtains a self-luminous product containing tritium that is manufactured, produced, or initially transferred by an entity holding a specific license issued under section 32.22 is exempt from NRC licensing; LBP-23-3, 97 NRC 59 (2023)

### URANIUM ENRICHMENT FACILITIES

nonproliferation concerns are international in nature and do not have a proximate cause connection to the proposed enrichment facility sufficient to require a NEPA inquiry; LBP-23-2, 97 NRC 8 (2023)

safety-based contention calling for consideration of whether a proliferation-associated licensing freeze was required for a proposed enrichment facility was rejected; LBP-23-2, 97 NRC 8 (2023)

### URANIUM PROCESSING FACILITY

contention that air emissions will double if the U-Metal process amendment is approved is inadmissible; LBP-23-2, 97 NRC 8 (2023)

fuel fabrication facility applicant seeking amendment to implement new U-Metal process must request NRC approval of the license changes including addressing the baseline design criteria; LBP-23-2, 97 NRC 8 (2023)

individual residing within 1 mile of a facility and passing directly by the facility 5 days a week established standing based on proximity to facility using uranium downblending process; LBP-23-2, 97 NRC 8 (2023)

residents located between 2 and 20 miles from a facility failed to make a sufficient showing of a particularized injury relative to a proposed licensing action authorizing the downblending of uranium; LBP-23-2, 97 NRC 8 (2023)

### WAIVER OF RULE

if a licensing board determines that a prima facie showing for rule waiver has been made, the question whether the regulation should be waived must be certified to the Commission; LBP-23-2, 97 NRC 8 (2023)

intervenor must make a prima facie showing that the requisite special circumstances exist so that a rule waiver may be granted; LBP-23-2, 97 NRC 8 (2023)

without a rule waiver determination by the Commission, a contention that challenges a rule is outside the scope of the proceeding and may not be given further consideration by a licensing board; LBP-23-2, 97 NRC 8 (2023)

### WATER POLLUTION

contention fails to show that state standard for tritium in drinking water is somehow in contravention of Part 51 or any other NRC regulation; LBP-23-6, 97 NRC 147 (2023)

### WATER SUPPLY

contention that license renewal application fails to fully analyze predicted climate changes that could affect cooling water availability at temperatures consistent with operational requirements is inadmissible; LBP-23-6, 97 NRC 147 (2023)

impact of surface water availability and conflicts over its use by facilities that use once-through cooling systems is a Category 1 issue, with impact categorized as SMALL; LBP-23-6, 97 NRC 147 (2023)

### WITNESSES, EXPERT

bare assertions or speculation, even by experts, does not provide the requisite support for a proposed contention; LBP-23-6, 97 NRC 147 (2023)

expert opinion that merely states a conclusion without providing a reasoned basis or explanation for that conclusion is inadequate to support a contention; LBP-23-4, 97 NRC 89 (2023); LBP-23-6, 97 NRC 147 (2023)

## FACILITY INDEX

BIG ROCK POINT SITE; Docket Nos. 50-155-LT-2, 72-043-LT-2  
LICENSE TRANSFER; March 22, 2023; CERTIFICATION OF RECORD TO COMMISSION; LBP-23-5,  
97 NRC 116 (2023)

COMANCHE PEAK NUCLEAR POWER PLANT, Units 1 and 2; Docket Nos. 50-445-LR, 50-446-LR  
OPERATING LICENSE RENEWAL; June 7, 2023; MEMORANDUM AND ORDER (Denying  
Intervention Petition and Terminating Proceeding); LBP-23-6, 97 NRC 147 (2023)

IN SITU LEACH FACILITY, Crawford, Nebraska; Docket No. 40-8943  
MATERIALS LICENSE AMENDMENT; January 5, 2023; MEMORANDUM AND ORDER (Granting  
Motion to Terminate Proceeding); LBP-23-1, 97 NRC 1 (2023)

PALISADES NUCLEAR PLANT; Docket Nos. 50-255-LT-2, 72-007-LT  
LICENSE TRANSFER; March 22, 2023; CERTIFICATION OF RECORD TO COMMISSION; LBP-23-5,  
97 NRC 116 (2023)

SUSQUEHANNA STEAM ELECTRIC STATION, Units 1 and 2; Docket Nos. 50-387-LT-3, 50-388-LT-3,  
72-28-LT-3  
LICENSE TRANSFER; March 17, 2023; MEMORANDUM AND ORDER; CLI-23-1, 97 NRC 81 (2023)

THREE MILE ISLAND NUCLEAR STATION, Unit 2; Docket No. 50-320-LA-2  
POSSESSION ONLY LICENSE AMENDMENT; March 1, 2023; MEMORANDUM AND ORDER  
(Denying Eric Epstein's (1) Petition to Intervene and Hearing Request; and (2) Motion for Leave to  
File New Contentions); LBP-23-4, 97 NRC 89 (2023)