LBP-07-04

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Ann Marshall Young, Chair
Dr. Kaye D. Lathrop
Dr. William W. Sager

In the Matter of:	Docket No's. 50-387-LR, 50-388-LR
PPL SUSQUEHANNA LLC (Susquehanna Steam Electric Station, Units 1 and 2)	ASLBP No. 07-851-01-LR-BD01 March 22, 2007

MEMORANDUM AND ORDER
(Ruling on Standing and Contentions of Petitioner Eric Joseph Epstein)

I. Introduction

This proceeding involves the application of PPL Susquehanna, LLC [PPL], to renew its operating licenses for Units 1 and 2 of the Susquehanna Steam Electric Station [SSES] for additional twenty-year periods. Eric Joseph Epstein has filed a petition to intervene,[1] in which he submits contentions raising certain financial, socioeconomic, water use, and emergency preparedness issues that are asserted to concern the proposed license renewal. In this Memorandum and Order, in addition to addressing two pending motions and summarizing some of the law that governs this proceeding and serves as context for our ultimate rulings on contention admissibility, we find that, while Petitioner Epstein has shown individual standing to participate in the proceeding, he has not submitted any admissible contentions. Thus, as we are required to do under relevant law, we dismiss his petition and terminate this proceeding.[2]

II. Background

PPL submitted its application requesting renewal of Operating License Nos. NPF-14 and NPF-22 by letter dated September 13, 2006.[3] The current operating licenses expire on July 27, 2022, and March 23, 2024, respectively; the renewals would extend these by additional 20-year

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[1] We note that, despite the fact that in his Petition he discusses his standing not only on his own behalf but also on behalf of the organization Three Mile Island Alert, Inc. [hereinafter TMI Alert], Mr. Epstein styles his Petition in his own name only, *see infra* n.6, and we find therein no indication of any authorization for his representation of the group in this proceeding. For this reason, even though we address representational standing in our ruling in section III of this Memorandum and Order, we refer generally herein to a singular petitioner rather than to multiple petitioners.

[2] *See infra n.286,* for explanation and clarification of certain legal principles that underlie our rulings herein, provided in recognition of Petitioner's *pro se* status.

[3] Letter from Britt T. McKinney, PPL Susquehanna, LLC, to U.S. NRC, Susquehanna Steam Electric Station Application for Renewed Operating Licenses Numbers NPF-14 and NPF-22 PLA-6110 (Sept. 13, 2006). Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML062620157, ML062630225, ML062630235.

periods. The NRC published a notice of acceptance and docketing and opportunity for hearing regarding this license renewal application (LRA or Application) on November 2, 2006,[4] and on December 21 published a correction to the notice, extending the comment period for public scoping for the Environmental Impact Statement to January 2, 2007.[5] Eric Joseph Epstein timely filed his petition to intervene on January 2, 2007.[6]

On January 18, 2007, this Atomic Safety and Licensing Board (Board) was established to preside over this adjudicatory proceeding, and on January 23 the Board issued an order providing guidance for the proceeding.[7] On January 29, 2007, the NRC Staff and PPL filed responses to the Petition to Intervene,[8] and on February 5, 2007, Petitioner Epstein filed a reply to these responses, along with a "Motion to Compel [PPL] to: (1) Apply for a Direct License Transfer (Or Incorporate Modifications from an NRC Approved Transfer Into The Relicensing Application) Prior to the Issuance of a Relicensing Application for the [SSES]; and, (2) Request

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[4] Notice of Acceptance for Docketing of the Application, Notice of Opportunity for Hearing and Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process for Facility Operating License Nos. NPF-14 and NPF-22 for an Additional 20-Year Period PPL Susquehanna LLC., Susquehanna Steam Electric Station, Units 1 and 2, 71 Fed. Reg. 64,566 (Nov. 2, 2006).

[5] PPL Susquehanna, LLC; Notice of Correction to the Public Scoping Comment Period for the Environmental Impact Statement for the License Renewal of Susquehanna Steam Electric Station, Units 1 & 2, 71 Fed. Reg. 76,706 (Dec. 26, 2006). The deadline for filing a request for hearing/petition to intervene was stated correctly as January 2, 2007, in the first notice.

[6] Eric Joseph Epstein's Petition for Leave to Intervene, Request for Hearing, and Presentation of Contentions with Supporting Factual Data (Jan. 2, 2007) [hereinafter Petition or Petition to Intervene].

[7] Licensing Board Order (Regarding Schedule and Guidance for Proceedings) (Jan. 23, 2007) (unpublished).

[8] NRC Staff Response to Eric Joseph Epstein's Petition for Leave to Intervene, Request for Hearing, and Contentions (Jan. 29, 2007) [hereinafter Staff Response]. PPL Susquehanna's Answer to Eric Epstein's Petition for Leave to Intervene (Jan. 29, 2007) [hereinafter PPL Answer].

and Receive a Schedular [sic] Exemption to Proceed With a Premature Relicensing Application for the [SSES]."[9] PPL responded to Petitioner's Motion to Compel on February 13, 2007, and the same day filed a "Motion to Strike Portions of Eric Epstein's Response to Answers to Petition to Intervene."[10] The NRC Staff responded to the Motion to Compel on February 15, 2007.[11] Mr. Epstein filed his reply to PPL's Motion to Strike on February 23, 2007.[12]

On February 28, 2007, the Board issued an order scheduling a telephone conference for March 8, to allow the participants to address various points in dispute.[13] During the conference, in addition to hearing limited argument on pending issues, the Board permitted the participants to submit certain additional information after the conference, namely, citations of : (1) any case law regarding standing and the "proximity presumption,"[14] and (2) any category 2 issues listed

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[9] Eric Joseph Epstein's Response to PPL Susquehanna's Answer to Eric Joseph Epstein's Petition to Intervene and Eric Joseph Epstein's Response to the NRC Staff's Response to Eric Joseph Epstein's Petition for Leave to Intervene, Request for Hearing and Contentions RE: PPL Susquehanna LLC Application for Susquehanna Steam Electric Stations Renewed Operating Licenses NPF-14 and NPF-22 Docket Nos. 50-387 PLA-6110 and 50-388 (Feb. 5, 2006) [hereinafter Epstein Reply]; Eric Joseph Epstein's Motion to Compel [PPL] to: (1) Apply for a Direct License Transfer (Or Incorporate Modifications from an NRC Approved Transfer Into The Relicensing Application) Prior to the Issuance of a Relicensing Application for the [SSES]; and, (2) Request and Receive a Schedular Exemption to Proceed With a Premature Relicensing Application for the [SSES] (Feb. 5, 2007) [hereinafter Motion to Compel].

[10] [PPL]'s answer to Eric Epstein's Motion to Compel Application for License Transfer (Feb. 13, 2007) [hereinafter PPL Answer to Motion to Compel]; [PPL]'s Motion to Strike Portions of Eric Epstein's Response to Answers to Petition to Intervene (Feb. 13, 2007) [hereinafter PPL Motion to Strike].

[11] NRC Staff Response to Eric Joseph Epstein's Motion to Compel and Request for Schedular Exemption (Feb. 15, 2007) [hereinafter Staff Response to Motion to Compel].

[12] Eric Joseph Epstein's Response to PPL Susquehanna's Motion to Strike Portions of Eric Epstein's Response to Answers to Petition To Intervene (Feb. 23, 2007).

[13] Licensing Board Order (Scheduling Telephone Conference) (Feb. 28, 2007) (unpublished).

[14] Tr. at 13.

at 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1, that are argued to be applicable to any of the contentions in the proceeding.[15] PPL and the Staff submitted filings on March 9, 2007,[16] and Mr. Epstein submitted his filing on March 11, 2007.[17] Thereafter, on March 15, 2007, the Staff filed a Motion to Strike Portions of Mr. Epstein's Response to the Board's Request for Information, and on March 20 Petitioner filed a Response to this motion.[18]

The participants have also filed other information related to this case with the Board for inclusion in the record of this proceeding. On January 3, 2007, Petitioner Epstein filed a notice of his submission, on behalf of Three Mile Island Alert Incorporated [TMI Alert], of comments in support of the Massachusetts Attorney General's Petition for Rulemaking to Amend 10 C.F.R. Part 51, Docket No. PRM-51-10, regarding the treatment of high-density spent fuel storage in NEPA decision-making documents.[19] On February 28, 2007, Mr. Epstein filed an e-mail indicating that the Department of Homeland Security had acknowledged receipt of information from TMI Alert that relates to the subject matter of one of the contentions in this proceeding.[20]

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[15] *Id.* at 28-29.

[16] Letter from David R. Lewis, Counsel for PPL Susquehanna LLC, to the Licensing Board (Mar. 9, 2007) [PPL Citation Letter]; Letter from Jody C. Martin, Counsel for the NRC Staff, to the Licensing Board (Mar. 9, 2007) [Staff Citation Letter].

[17] Letter from Eric Joseph Epstein, Petitioner, to the Licensing Board (Mar. 11, 2007) [Epstein Citation Letter].

[18] Motion to Strike Portions of Mr. Epstein's Response to the Board's Request for Information (Mar. 15, 2007) [hereinafter Staff Motion to Strike]; Eric Joseph Epstein's Response to the Nuclear Regulatory Commission Staff's Motion to Strikes [sic] Portions of Eric Joseph Epstein Response to the Atomic Safety and Licensing Board Panel's Request for Information (Mar. 20, 2007) [hereinafter Petitioner's Response to Staff Motion to Strike].

[19] Notice of Related Filing by Three Mile Island Alert Incorporated, with attachments (Jan. 31, 2007).

[20] E-mail from Eric Joseph Epstein, to Licensing Board, Notice of U.S. Department of Homeland Security, Office of Inspector General's Response to the Government Accountability Office Referral of Mr. Eric Joseph Epstein's Motions "Re: Special Needs' Emergency Planning As A Condition For A License" (Feb. 28, 2007) [Epstein Homeland Security E-mail].

Finally, on March 15, 2007, counsel for the NRC Staff filed a letter informing the Board and the parties that a Notice of Opportunity for Hearing in the Susquehanna Extended Power Uprate (EPU) case was published in the *Federal Register* on March 13, 2007.[21]

III. Board Ruling on Standing of Petitioner to Participate in Proceeding

A petitioner's standing, or right to participate in a Commission licensing proceeding, is derived from section 189a of the Atomic Energy Act (AEA), which requires the NRC to provide a hearing "upon the request of any person whose interest may be affected by the proceeding."[22] The Commission has implemented this requirement in its regulations at 10 C.F.R. § 2.309.[23]

When determining whether a petitioner has established the necessary "interest" under Commission rules, licensing boards are directed by Commission precedent to look to judicial concepts of standing for guidance.[24] Under this authority, in order to qualify for standing a petitioner must "allege (1) a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision" — three criteria commonly referred to as "injury in fact," causality, and redressability.[25] The requisite injury may

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[21] Letter from Jody Martin, Counsel for the NRC Staff, to the Licensing Board (Mar. 15, 2007) (citing 72 Fed. Reg. 11,383) [Staff EPU Letter].

[22] 42 U.S.C. § 2239(a)(1)(A) (2000).

[23] Subsection (d)(1) of 10 C.F.R. § 2.309 provides in relevant part that the Board shall consider three factors when deciding whether to grant standing to a petitioner: the nature of the petitioner's right under the AEA to be made a party to the proceeding; the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and the possible effect of any order that may be entered in the proceeding on the petitioner's interest. 10 C.F.R. § 2.309(d)(1)(ii)-(iv). The provisions of 10 C.F.R. § 2.309 were formerly found at 10 C.F.R. § 2.714, prior to a major revision of the Commission's procedural rules for adjudications in 2004.

[24] *See, e.g., Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998); *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 5-6 (1998); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

[25] *Yankee*, CLI-98-21, 48 NRC at 195 (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995)).

be either actual or threatened,[26] but must arguably lie within the "zone of interests" protected by the statutes governing the proceeding — here, either the AEA or the National Environmental Policy Act (NEPA).[27] Additionally, Commission caselaw has established a "proximity presumption," whereby an individual may satisfy these standing requirements by demonstrating that his or her residence is within the geographical area that might be affected by an accidental release of fission products, and in proceedings involving nuclear power plants this area has been defined as being within a 50-mile radius of such a plant.[28]

An organization that wishes to establish standing to intervene may do so by demonstrating either organizational standing or representational standing. In order to establish organizational standing it must show that the interests of the organization will be harmed by the proposed licensing action, while an organization seeking representational standing must demonstrate that the interests of at least one of its members will be so harmed.[29] To establish such representational standing, an organization must: (1) show that at least one of its members may be affected by the licensing action and, accordingly, would have standing to sue in his or her own right; (2) identify that member by name and address; and (3) show that the organization is authorized to request a hearing on behalf of that member.[30]

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[26] *Id.* (citing *Wilderness Soc'y v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987)).

[27] *Id.* at 195-196 (citing *Ambrosia Lake Facility*, CLI-98-11, 48 NRC at 6).

[28] *See Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plants, Units 3 and 4), LBP-01-06, 53 NRC 138, 146-150 (2001); *Virginia Elec. and Power Co.* (North Anna Nuclear Power Station, Units 1 & 2), ALAB-522, 9 NRC 54, 56 (1979) ("close proximity [to a facility] has always been deemed to be enough, standing alone, to establish the requisite interest" to confer standing).

[29] *See Yankee*, CLI-98-21, 48 NRC at 195.

[30] *See GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 202 (2000).

Petitioner Epstein asserts standing both on his own behalf and on behalf of the organization TMI Alert.[31] He argues that he is a residential customer and a shareholder of PPL, and that he has participated as a party and as a witness in several other proceedings before state regulatory bodies.[32] Petitioner also argues that he has standing on behalf of TMI Alert both because the organization's interests are affected by the proposed licensing action[33] and because certain unnamed members of the organization reside within fifty miles of the plant.[34]

Both the NRC Staff and the Applicant disagree, claiming that Mr. Epstein does not have standing either as an individual or as a representative of TMI Alert. According to the Staff, "[t]he economic interests of a ratepayer are not within the zone of interests sought to be protected by the AEA" or of NEPA.[35] Additionally, argues the Staff, Mr. Epstein has not shown an injury-in-fact that can be traced to the proposed license renewal and has not even attempted to argue that he resides within the 50-mile radius required for the "proximity presumption" to apply.[36] Furthermore, the Staff asserts, Mr. Epstein fails both to demonstrate that TMI Alert has institutional interests that may be harmed by the licensing action and to identify organization members who live within fifty miles of the plant and who have authorized TMI Alert, and

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[31] As indicated above, Petitioner does not indicate that the organization took any action to authorize his representation, but we nonetheless address herein the issue of its standing, assuming *arguendo* that such authorization was in fact actually given. Whether such authorization is a "curable" matter, such that a petitioner might show after the fact that such authorization was in fact given in some formal manner, would have likely been an issue that we would have requested argument and/or required briefing on, had it appeared likely that standing would otherwise have been found on the part of TMI Alert.

[32] Petition at 4-7.

[33] Petition at 8-10.

[34] Epstein Reply at 11. Petitioner does not argue that he himself qualifies as such a member for purposes of representational standing.

[35] Staff Response at 3-4.

[36] *Id.* at 6-8.

Petitioner Epstein on its behalf, to represent them.[37] PPL presents essentially the same arguments in support of its claim that Mr. Epstein lacks standing.[38]

In his Reply, Petitioner states that he lives "just outside of the proximity zone (approximately 56 miles from [SSES]), but works within 50 miles of the plant on a regular basis," providing as examples a date in January and two dates in February when he was in these locations.[39] He indicates that his consulting business regularly takes him to Hazleton, 15 miles from the plant; Fogelsville, 45 miles from the plant; and Allentown, 47 miles from the plant.[40] Also, in his argument during the March 8 telephone conference, Mr. Epstein provided additional information about the work he performs within fifty miles of the plant, stating that he makes four to six trips weekly to locations within the 50-mile radius in connection with his work for several organizations in the area, and that he has made such trips for the past eight years.[41]

We find that Petitioner Epstein has not made the requisite showing to establish organizational or representational standing on the part of TMI Alert. General policy interests alone are not sufficient to establish organizational standing; rather, a petitioner seeking to show standing in this way must demonstrate a "discrete institutional injury" to the organization itself.[42] Petitioner has not done so here. Petitioner has also failed to make the case for representational standing because, although he asserts that TMI Alert has members who live

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[37] *Id.* at 8-9.

[38] PPL Answer at 2-6.

[39] Epstein Reply at 8.

[40] *Id.* Petitioner states that his consulting business, EFMR Monitoring Group, established in 1992, "monitors radiation levels, invests in community development, and sponsors remote robotics research." *Id.* at n.3.

[41] Tr. at 14.

[42] *International Uranium (USA) Corp*. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001).

within fifty miles of the plant, he has failed to identify such individuals or to show that the organization, or indeed he himself, is authorized to act on their behalf.[43] In order for an organization to qualify for the proximity presumption, a bare assertion that a member lives within 50 miles is not sufficient; any such member must be identified by name and address, and it must be shown (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member.[44] Based on the preceding, we find that Petitioner has failed to establish standing on the part of TMI Alert to participate in this proceeding.

We do, however, find that Petitioner Epstein has made a sufficient showing to establish standing for himself under the "proximity presumption." Mr. Epstein admits that he resides more than fifty miles from the plant. However, significant contacts with an affected area can be sufficient to establish standing, even when full-time residence within the 50-mile zone is not shown.[45] While not all such intermittent contacts are sufficient to establish standing,[46] the regularity of Mr. Epstein's trips to the area around the plant, for a number of years, weighs in his favor. In addition, he resides six miles outside the area in question[47] and can therefore be expected to continue to conduct business there in the future. Because of this pattern of regular

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[43] *See* Epstein Reply at 10 (asserting that TMI Alert's membership list is proprietary).

[44] *See Oyster Creek*, CLI-00-6, 51 NRC at 202, and authorities cited therein.

[45] *See Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NEC 318, 323-25 (1999) (frequent recreational use of a specific parcel of land sufficient to establish standing); *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation). CLI-98-13, 48 NRC 26, 31-32 (1998) (frequent, extended visits to relatives sufficient to establish standing); *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 35 (1993) (residence in a location one week per month sufficient to establish standing).

[46] *See Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15 (2002) (occasional contact not sufficient to establish standing).

[47] Epstein Reply at 8.

contacts within the 50-mile radius around the plant, we find that Mr. Epstein has standing on his own behalf.

With regard to the Staff's Motion to Strike, neither the information provided by Petitioner in his March 11 letter, nor the fact that he provided more than the citations discussed in the March 8 telephone conference, alters our ruling on standing. Therefore there is no need for a ruling on this motion.

IV. Board Rulings on Pending Motions

A. Epstein Motion to Compel PPL to Apply for Direct License Transfer

As indicated above, Petitioner Epstein on February 5, 2007, filed a "Motion to Compel [PPL] to: (1) Apply for a Direct License Transfer (Or Incorporate Modifications from an NRC Approved Transfer Into The Relicensing Application) Prior to the Issuance of a Relicensing Application for the [SSES]; and, (2) Request and Receive a Schedular Exemption to Proceed With a Premature Relicensing Application for the [SSES]." This motion is premised primarily on the Petitioner's allegation that PPL has neither applied for nor received a license transfer from the preceding licensee for SSES, PPL Electric.[48] Petitioner also questions whether PPL qualifies as an "electric utility,"[49] and asserts that PPL must seek a "schedular exemption" as a new licensee,[50] apparently believing that the transferred license in the hands of the new licensee is

[48] PPL Susquehanna, LLC, is a subsidiary of PPL Generation, LLC, which is a subsidiary of PPL Energy Supply, LLC, which is an indirect wholly owned subsidiary of PPL Corporation, an energy and utility holding company. *See* Motion to Compel at 4; Application at § 1.1.3.

[49] Motion to Compel at 8, 10.

[50] *Id.* at 6, 8, 9.

actually in the nature of a new license, with a term ending later than the original license.[51] Finally, Petitioner questions the financial impact of the license transfer on rate-payers.[52]

The NRC Staff opposes Petitioner's Motion, noting that the NRC has in fact approved the transfer of the SSES operating licenses to PPL, that there is no requirement that an applicant be an electric utility, and that PPL's license renewal application is timely.[53] PPL also points out the approval of the license transfer, and notes that Petitioner Epstein failed to make any effort to consult with the other parties prior to filing his motion, as required under 10 C.F.R. § 2.323(b), a step which, if taken, would have corrected his oversight of the transfer approval.[54]

We find that, indeed, such consultation should have provided Petitioner with knowledge of the true situation as regards the license transfer. As evidenced by publication in the *Federal Register*, the transfer of the SSES operating licenses to PPL was granted by the NRC in 2000, subject to certain conditions requiring PPL to provide various decommissioning and other funding assurances.[55] Moreover, a corporate restructuring undertaken by PPL while the application for license transfer was pending, adding PPL Energy Supply, LLC, as an

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[51] *Id.* at 9.

[52] *See id.* at 7.

[53] Staff Response to Motion to Compel at 3.

[54] PPL Response to Motion to Compel at 1. 10 C.F.R. § 2.323(b) requires any motion, other than one made orally on the record during a hearing or as otherwise directed by the presiding officer, to contain a certification that the movant has made a sincere effort to contact the other parties and resolve the matter, and that this effort was unsuccessful. 10 C.F.R. § 2.323(b).

[55] *See* PP&L, Inc. Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments, 65 Fed. Reg. 37,418 (June 14, 2000). In approving the transfer the NRC found that, subject to the conditions spelled out in the Order, PPL met relevant requirements of Section 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2243 (2000), and 10 C.F.R. § 50.80, which governs license transfers. *Id.* at 37,419. Further, consistent with 10 C.F.R. § 2.1315(b), all of the conforming license amendments required for this transfer were approved. *Id.*

intermediary, indirect parent of PPL Susquehanna, was approved by the Commission in 2001.[56] We note, with regard to both the application for approval of the license transfer and that for approval of the restructuring, that notice was provided to the public of the right to request a hearing,[57] but that in neither instance was any hearing request or comment filed.[58]

Consultation with the NRC Staff and/or PPL would have also made clear, with regard to PPL's status as a non-electric utility, (1) that a licensee need not be an electric utility, but (2) that a non-electric utility license applicant must meet heightened financial qualifications under 10 C.F.R. § 50.33(f).[59] As noted by the Staff and PPL, the Staff in reviewing PPL's license transfer application in fact found that PPL was not an "electric utility" under 10 C.F.R. § 50.2 and as a result conducted a more detailed review of PPL's financial qualifications under § 50.33(f) before the license transfer was approved.[60] This information might also have been provided to Petitioner, had he consulted with the other participants before filing his motion.

Finally, as the Staff points out, a license transfer does not result in a new license with a new term, but results merely in an amendment of the original license, with the same term, and with

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[56] PPL Susquehanna, LLC, Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2); Order Approving Application Regarding Proposed Corporate Restructuring, 66 Fed. Reg. 30,492 (June 6, 2001).

[57] *See*, respectively, PP&L, Inc., Susquehanna Steam Electric Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for Hearing, 65 Fed. Reg. 11,611 (Mar. 3, 2000); PPL Susquehanna, LLC, Susquehanna Steam Electric Station, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for Hearing, 66 Fed. Reg. 20,839 (Apr. 25, 2001).

[58] *See*, respectively, 65 Fed. Reg. at 37,419; 66 Fed. Reg. at 30,492.

[59] *See* Staff Response to Motion to Compel at 5; PPL Answer at 16-17.

[60] *See* Safety Evaluation by the Office of Nuclear Reactor Regulation Proposed Transfer of Licenses to the Extent Held by PP&L, Inc., to PPL Susquehanna, LLC, Section 2.0, Financial Qualifications Analysis (June 6, 2000) ADAMS Accession No. ML003720494; Staff Response to Motion to Compel at 5 & n.10; PPL Answer at 16 & n.6.

the new licensee "stepping into the shoes" of the original licensee.[61] Under 10 C.F.R. § 54.17(c), the time frame for filing a license renewal application is no more than 20 years prior to the expiration of the current operating license, and thus PPL's Application was timely.[62]

Based on the preceding, we find Petitioner's "Motion to Compel" lacks merit and deny it.

B. PPL Motion to Strike Portions of Petitioner's Reply

PPL on February 13, 2007, filed a motion to strike portions of Petitioner's Reply to PPL's Answer and the Staff's Response to the Petition in this proceeding, focusing in particular on those portions "that seek to raise safety and aging management issues under the ambit of Mr. Epstein's Contention 2."[63] PPL contends that such issues are "entirely new" and "not found in [Petitioner's] original contention."[64] We note that in Contention 2 Petitioner alleges that "PPL failed to factor, consider and address numerous water use and indigenous aquatic challenges present and anticipated for the Susquehanna River."[65]

PPL observes that the Commission's rules[66] do not specify the content of a petitioner's reply to answers to a petition, but argues that "other provisions of Part 2, the Statement of Considerations published with the final rule, and Commission precedent make clear that a reply to an answer is to 'be narrowly focused on the legal or logical arguments presented' in the answers of the applicant/licensee and NRC Staff."[67] PPL also cites Commission case law to the

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[61] Staff Response to Motion to Compel at 6.

[62] *See supra* Section II.

[63] PPL Motion to Strike at 1.

[64] *Id.*

[65] Petition at 23.

[66] Under 10 C.F.R. § 2.309(h)(2), a petitioner may file a reply to any answer within seven days after service of that answer.

[67] PPL Motion to Strike at 3 (citing 69 Fed. Reg. 2182, 2203 (Jan. 14, 2004)).

effect that “a reply to an answer may not be used as a vehicle to raise new arguments or claims not found in the original contention or be used to cure an otherwise deficient contention.”[68] The licensing board in the LES case had, in rejecting four contentions filed by the State of New Mexico Environment Department and the New Mexico Attorney General, "declined to consider new 'purportedly material' information in support of the contentions that was first submitted as part of a reply pleading."[69] On appeal the Commission agreed with the board that "the reply briefs constituted a late attempt to reinvigorate thinly supported contentions by presenting entirely new arguments in the reply briefs."[70]

PPL quotes various portions of the Commission’s rulings in the *LES* case, including its admonition that “[w]hat our rules do not allow is using reply briefs to provide, for the first time, the necessary threshold support for contentions.”[71] Arguing that Petitioner’s Reply “clearly runs afoul” of this precedent,[72] PPL moves that we “strike all portions of the Reply that attempt to raise aging management or safety issues under the ambit of Contention 2, including all claims concerning (1) aging management; (2) inspection of systems and components that contain radioactively contaminated water; (3) monitoring for leakage; and (4) a tritium action plan.”[73]

Petitioner responds to PPL’s motion by indicating that in his Reply he was in effect replying to PPL’s comments that he had been “vague” in his Petition, arguing that he had “cured all

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[68] *Id.* (citing *Louisiana Energy Services, L.P.* (National Enrichment Facility) [*LES*], CLI-04-25, 60 NRC 223, 225 (2004), *reconsideration denied*, *LES*, CLI-04-35, 60 NRC 619 (2004)).

[69] *Id.* (citing *LES*, CLI-04-25, 60 NRC at 224).

[70] *Id.* at 3-4 (citing *LES*, CLI-04-25, 60 NRC at 224).

[71] *Id.* at 5 (citing *LES*, CLI-04-35, 60 NRC at 623).

[72] *Id.* at 5.

[73] *Id.* at 7.

three purported shortcomings [raised by PPL] , and now PPL seeks to strike what it requested from Mr. Epstein."[74] As an example of this, he notes his "rhetorical Question 7, which PPL sought to have refined," and claims to have "presented a cogent presentation related to tritium monitoring in his Response (pp. 20-23) to PPL's concern about the 'vague' representations contained in his rhetorical questions."[75] Petitioner also argues that "[c]learly, water use and aquatic challenges have been a consistent thread in Mr. Epstein's representations dating back to the November 15, 2006 scoping hearing in Berwick, Pennsylvania."[76] Continuing, he asserts that "[a]t the heart of . . . Contention 2 are acts of omission by the licensee during the filing of the SSES relicensing application," and makes various arguments about NRC licensees being required to meet NRC regulations, and related matters.[77]

Petitioner argues that the issues he raises in the contention are significant and refers to some of the information he submitted in his Reply as evidence of this.[78] This information includes allegations that PPL's Application had failed to include certain information in a December 20, 2006, water use permit application to the Susquehanna River Basin Commission (SRBC) regarding "corrosion and fouling of [water] intake pipes,"[79] which Petitioner states he did not "'discover' until after his January 2, 2007, Petition to Intervene was filed."[80] Petitioner states that this matter, which "PPL has publicly announced," is a "significant technical problem

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[74] Petitioner's Response to Motion to Strike at 4-5; *see* PPL Motion to Strike at 3-4.

[75] Petitioner's Response to Motion to Strike at 6.

[76] *Id.*

[77] *Id.* at 7.

[78] *See id.* at 8-10.

[79] Epstein Reply at 23; *see* Tr. at 23.

[80] Petitioner's Response to Motion to Strike at 10.

with health and safety implications that needs to be investigated prior to issuing a 20-year extension,"[81] and urges the NRC not to "excuse PPL's omissions" or "penalize Mr. Epstein because PPL withheld information in its possession that had a direct bearing on the issues he raised in Contention 2."[82]

We note in ruling on PPL's motion the determination upheld by the Commission in the *LES* case that, although that board would take into account any information from reply briefs that "legitimately amplified" issues presented in original petitions in that case, it would not consider instances of what "essentially constituted untimely attempts to amend their original petitions."[83] Because the reply briefs in *LES* had not been accompanied by any attempt to address the late- and new-filing factors of sections 2.309(c), (f)(2), they were not considered in determining the admissibility of the contentions.[84] However, the Commission later remanded to the Licensing Board a request to consider several previously-rejected contentions under the late- and new-filing criteria of 10 C.F.R. § 2.309(c), (f)(2), despite the fact that the Petitioner therein had addressed such criteria for the first time only in its interlocutory appeal to the Commission.[85] For this reason, in an abundance of caution and in order to give the Petitioner every appropriate benefit of the doubt, we have also considered in making our rulings herein whether any of the

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[81] *Id.*

[82] *Id.* at 11.

[83] *LES*, CLI-04-25, 60 NRC at 224; *see LES*, CLI-04-35, 60 NRC at 625. We note that the Commission in both *LES* rulings pointed out that a petitioner may in instances of exigent or unavoidable circumstances file a request for an extension of time to file an original hearing petition and contentions, an action which, as in this proceeding, was not done in *LES*. *LES*, CLI-04-25, 60 NRC at 225; *LES*, CLI-04-35, 60 NRC at 623 (citing 69 Fed. Reg. at 2200).

[84] *See LES*, CLI-04-25, 60 NRC at 224 (citing *LES*, LBP-04-14, 60 NRC 40, 58 (2004)).

[85] *LES*, CLI-04-35, 60 NRC at 625.

later-filed support for Contention 2 might be admissible under the late- and new-filing criteria of 10 C.F.R. §§ 2.309(c), (f)(2).

Based on the Commission's rulings in *LES*, while we will not "strike from the record" any portions of the Petitioners' Reply,[86] we also will not, in ruling on the admissibility of Contention 2, consider anything in the Reply that does not focus on the matters raised in the Answers, as permitted by the Commission. It is appropriate, however, for a reply to respond to the legal, logical, and factual arguments presented in the answers, so long as new issues are not raised.[87] Thus, except to the extent necessary to elucidate and explain specific rulings regarding various pieces of information, in determining the admissibility of Contention 2 we have not considered any information in Petitioner's Reply other than that which would constitute "legitimate amplification," appropriate responses to arguments raised in the answers, or properly late- or newly-filed[88] material. The extent to which any part of the Reply has been considered, and for what purposes, should be obvious in our discussion of the contention.

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[86] It would be inappropriate actually to "strike" anything from the record in this proceeding, as any part of the record, whether included in that which we do consider herein, or not, may become relevant in any appeal. Therefore, while we will not consider any information that would be inappropriate under relevant law, we will retain in the record other submitted information, for appeal purposes.

[87] *See LES*, CLI-04-25, 60 NRC at 225 (quoting Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. 2182, 2203 (Jan. 14, 2004) (reply must be "narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC Staff answer")); *Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) ("Replies must focus narrowly on the legal or factual arguments first presented in the original petition or raised in the answers to it.").

[88] *See* 10 C.F.R. § 2.309(c), (f)(2).

V. Standards for Admissibility of Contentions in License Renewal Proceedings

A. Regulatory Requirements on Contentions

As has previously been noted in a number of NRC adjudication proceedings,[89] to intervene in an NRC proceeding, a petitioner must, in addition to demonstrating standing, submit at least one contention meeting the requirements of 10 C.F.R. § 2.309(f)(1).[90] Failure of a contention to meet any of the requirements of § 2.309(f)(1) is grounds for its dismissal.[91] Heightened

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[89] *See*, *e.g.*, *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 272-74 (2006). An Appendix to the *Pilgrim* decision provides a more detailed summary of relevant case law on contention admissibility than that found in this Memorandum and Order. *See id.* at 351-59.

[90] *See* 10 C.F.R. § 2.309(a). 10 C.F.R. § 2.309(f)(1) states that:

> (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:
>
> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
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> (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, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
>
> (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

[91] *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); *Arizona Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

standards for the admissibility of contentions originally came into being in 1989, when the Commission amended its rules to "raise the threshold for the admission of contentions."[92] The Commission has stated that the "contention rule is strict by design," having been "toughened . . . in 1989 because in prior years licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation."[93] More recent amendments to the NRC procedural rules,[94] which went into effect in 2004, restricted the contention admissibility rule even further,[95] and contain various changes to provisions relating to the hearing process.[96] They contain essentially the same substantive admissibility standards for contentions, however.

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[92] Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,168 (Aug. 11, 1989); *see also Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999).

[93] *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001) (citing *Oconee*, CLI-99-11, 49 NRC at 334).

[94] *See* 69 Fed. Reg. at 2182.

[95] For example, the current version of the rules no longer incorporate provisions formerly found at 10 C.F.R. §§ 2.714(a)(3), (b)(1), which permitted the supplementation of petitions and the filing of contentions after the original filing of petitions. Under the current rules, contentions must be filed with the original petition within 60 days of notice of the proceeding in the *Federal Register*, unless a longer period is therein specified, an extension is granted, *see supra* n.83, or the contentions meet certain criteria for late-filed or new contentions based on information that is available only at a later time, *see* 10 C.F.R. §§ 2.309(b)(3)(iii), (c), (f)(2),

[96] In this connection we note that a challenge to the new rules by several public interest groups (supported by several states including Massachusetts) was rejected in the case of *Citizens Awareness Network, Inc. v. NRC [CAN v. NRC]*, 391 F.3d 338 (1st Cir. 2004). The Court denied the petitions for review, on the basis that the new procedures "comply with the relevant provisions of the [Federal Administrative Procedure Act (APA)] and that the Commission has furnished an adequate explanation for the changes," as well as on the basis of the NRC's representation that the opportunity for cross-examination under 10 C.F.R. § 2.1204(b)(3) of Subpart L is equivalent to the opportunity for cross-examination under the [APA], 5 U.S.C. §556(d), *i.e.*, that cross-examination is available whenever it is "required for a full and fair adjudication of the facts." *Id.* at 343, 351.

The Commission has explained that the "strict contention rule serves multiple interests."[97] These include the following (quoted in list form):

> First, it focuses the hearing process on real disputes susceptible of resolution in an adjudication. For example, a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies.
>
> Second, the rule's requirement of detailed pleadings puts other parties in the proceeding on notice of the Petitioners' specific grievances and thus gives them a good idea of the claims they will be either supporting or opposing.
>
> Finally, the rule helps to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions.[98]

In its Statement of Considerations adopting the most recent revision of the rules, the Commission reiterated the same principles that previously applied; namely, that "[t]he threshold standard is necessary to ensure that hearings cover only genuine and pertinent issues of concern and that the issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues."[99] Additional guidance with respect to each of the requirements of subsections (i) through (vi) of § 2.309(f)(1) is found in NRC case law, familiarity with which can be significant to the matter of whether a contention will be admitted or denied.

Our rulings on the contentions submitted by Petitioner rest primarily on subsections (iii), (iv), and (vi) of 10 C.F.R. § 2.309(f)(1). Under subsection (iii), a contention must allege facts "sufficient to establish that it falls directly within the scope of a proceeding,"[100] and is not

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[97] *Oconee*, CLI-99-11, 49 NRC at 334.

[98] *Id.* (citations omitted).

[99] 69 Fed. Reg. at 2189-90.

[100] *Arizona Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 NRC 397, 412 (1991), *appeal denied on other grounds*, CLI-91-12, 34 NRC 149 (1991).

cognizable unless it is material to matters that fall within the scope of the proceeding for which the licensing board has been delegated jurisdiction.[101] The Commission has addressed the scope of license renewal proceedings in a number of contexts, which we discuss in some detail in section V.B below. Also, a contention that challenges any Commission rule is outside the scope of the proceeding because, absent a waiver, "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding."[102] Similarly, any contention that amounts to an attack on applicable statutory requirements must be rejected by a licensing board as outside the scope of the proceeding.[103] A petitioner may, however, within the adjudicatory context submit a request for waiver of a rule under 10 C.F.R. § 2.335, and outside the adjudicatory context file a petition for rulemaking under 10 C.F.R. § 2.802 or a request that the NRC Staff take enforcement action under 10 C.F.R. § 2.206.

Under 10 C.F.R. § 2.309(f)(1)(iv), a petitioner must "[d]emonstrate 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," and the standards defining the "findings the NRC must make to support" a license renewal are set forth at 10 C.F.R. § 54.29. This section, entitled, "Standards for issuance of a renewed license," provides that:

> A renewed license may be issued by the Commission up to the full term authorized by § 54.31 if the Commission finds that:
> (a) Actions have been identified and have been or will be taken with respect to the matters identified in Paragraphs (a)(1) and (a)(2) of this section, such that there is reasonable assurance that the activities authorized by the renewed license will continue

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[101] *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985); *Pub. Serv. Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976); *see also Commonwealth Edison Co.* (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419, 426-27 (1980); *Commonwealth Edison Co.* (Carroll County Site), ALAB-601, 12 NRC 18, 24 (1980).

[102] 10 C.F.R. § 2.335(a).

[103] *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

to be conducted in accordance with the CLB,[104] and that any changes made to the plant's CLB in order to comply with this paragraph are in accord with the Act and the Commission's regulations. These matters are:

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

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

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

(c) Any matters raised under § 2.335 have been addressed.[105]

We discuss the aging and environmental issues that fall under § 54.29 below in section V.B of this Memorandum.

On the requirement of 10 C.F.R. § 2.309(f)(1)(vi) that a petitioner "provide sufficient information to show . . . a genuine dispute . . . with the applicant . . . on a material issue of law or fact," the Commission has stated that the petitioner must "read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report, state the applicant's position and the petitioner's opposing view," and explain why it disagrees with the applicant.[106] If a petitioner does not believe these materials address a relevant issue, the petitioner is to "explain why the application is deficient."[107] A contention that does not directly controvert *a position taken by the applicant in the application* is subject to dismissal.[108] For example, an allegation that some aspect of a license application is "inadequate" or

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[104] "CLB" refers to a plant's current licensing basis. *See infra* n.118.

[105] 10 C.F.R. § 54.29.

[106] 54 Fed. Reg. at 33,170; *Millstone*, CLI-01-24, 54 NRC at 358.

[107] 54 Fed. Reg. at 33,170; *Palo Verde*, CLI-91-12, 34 NRC at 156.

[108] *See Texas Utilities Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992) (emphasis added).

"unacceptable" does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect.[109]

B. Scope of Subjects Admissible in License Renewal Proceedings

As noted in previous NRC proceedings,[110] Commission regulations and case law address in some detail the scope of license renewal proceedings, which generally concern requests to renew 40-year reactor operating licenses for additional 20-year terms.[111] The regulatory authority relating to license renewal is found at 10 C.F.R. Parts 51 and 54. Part 54 concerns the "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," and addresses safety-related issues in license renewal proceedings. Part 51, concerning "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," addresses, among other things, the environmental aspects of license renewal. The Commission has interpreted these provisions in various adjudicatory proceedings, probably most extensively in a decision in the 2001 *Turkey Point* proceeding.[112]

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[109] *See Florida Power & Light Co*. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 521 & n.12 (1990).

[110] *See*, *e.g.*, *Pilgrim*, LBP-06-23, 64 NRC at 274-80.

[111] 10 C.F.R. § 54.31(b) provides that:

> [a] renewed license will be issued for a fixed period of time, which is the sum of the additional amount of time beyond the expiration of the operating license (not to exceed 20 years) that is requested in a renewal application plus the remaining number of years on the operating license currently in effect. The term of any renewed license may not exceed 40 years.

10 C.F.R. § 50.51(a) states in relevant part that "[e]ach [original] license will be issued for a fixed period of time to be specified in the license but in no case to exceed 40 years from date of issuance."

[112] *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 6-13 (2001); *see also Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363-65 (2002); *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1998), *motion to vacate denied*, CLI-98-15, 48 NRC 45 (1998); *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 and 3), CLI-98-17, 48 NRC 123, 125 (1998);

1. Safety-Related Issues in License Renewal Proceedings

Various sections of Part 54 speak to the scope of safety-related issues in license renewal proceedings. First, 10 C.F.R. § 54.4, titled "Scope," specifies the plant systems, structures, and components that are within the ambit of Part 54.[113] Sections 54.3 (containing definitions), 54.21 (addressing technical information to be included in an application and further identifying relevant structures and components), and 54.29 (stating, as indicated above, the "Standards for issuance of a renewed license") provide additional definition of what is encompassed within a license renewal review, limiting the scope to aging-management issues and some "time-limited aging analyses" that are associated with the functions of relevant plant systems, structures, and components.[114] Applicants must "demonstrate how their programs will be effective in managing

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Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 90, *aff'd*, CLI–04-36, 60 NRC 631 (2004).

[113] 10 C.F.R. § 54.4(a) describes those "systems, structures, and components" that are within scope as:

> (1) Safety-related systems, structures, and components which are those relied upon to remain functional during and following design-basis events (as defined in 10 CFR 50.49(b)(1)) to ensure the following functions--
>
> (i) The integrity of the reactor coolant pressure boundary;
>
> (ii) The capability to shut down the reactor and maintain it in a safe shutdown condition; or
>
> (iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.
>
> (2) All nonsafety-related systems, structures, and components whose failure could prevent satisfactory accomplishment of any of the functions identified in paragraphs (a)(1)(i), (ii), or (iii) of this section.
>
> (3) All systems, structures, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the Commission's regulations for fire protection (10 CFR 50.48), environmental qualification (10 CFR 50.49), pressurized thermal shock (10 CFR 50.61), anticipated transients without scram (10 CFR 50.62), and station blackout (10 CFR 50.63).

[114] *See* Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,463 (May 8, 1995).

the effects of aging during the proposed period of extended operation," at a "detailed . . . 'component and structure level,' rather than at a more generalized 'system level.'"[115]

The Commission in *Turkey Point* stated that, in developing 10 C.F.R. Part 54 beginning in the 1980s, it sought "to develop a process that would be both efficient, avoiding duplicative assessments where possible, and effective, allowing the NRC Staff to focus its resources on the most significant safety concerns at issue during the renewal term."[116] Noting that the "issues and concerns involved in an extended 20 years of operation are not identical to the issues reviewed when a reactor facility is first built and licensed," the Commission found that requiring a full reassessment of safety issues that were "thoroughly reviewed when the facility was first licensed" and continue to be "routinely monitored and assessed by ongoing agency oversight and agency-mandated licensee programs" would be "both unnecessary and wasteful."[117] Nor did the Commission "believe it necessary or appropriate to throw open the full gamut of provisions in a plant's current licensing basis to re-analysis during the license renewal review."[118]

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[115] *Turkey Point*, CLI-01-17, 54 NRC at 8 (quoting 60 Fed. Reg. at 22,462).

[116] *Id.* at 7.

[117] *Id.*

[118] *Id.* at 9. "Current licensing basis" (CLB) is described by the Commission in *Turkey Point* as follows:

> ["CLB" is] a term of art comprehending the various Commission requirements applicable to a specific plant that are in effect at the time of the license renewal application. 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 Final Safety Analysis Report, 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. *See* 10 C.F.R. § 54.3. 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

The Commission chose, rather, to focus the NRC license renewal safety review "upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs," which it considered "the most significant overall safety concern posed by extended reactor operation."[119] The Commission in *Turkey Point* described some of the "Detrimental Effects of Aging and Related Time-Limited Issues" as follows:

> By its very nature, the aging of materials "becomes important principally during the period of extended operation beyond the initial 40-year license term," particularly since the design of some components may have been based explicitly upon an assumed service life of 40 years. *See* [Final Rule, Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991)]; *see also* Final Rule, "Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461, 22,479 (May 8, 1995). Adverse aging effects can result from metal fatigue, erosion, corrosion, thermal and radiation embrittlement, microbiologically induced effects, creep, and shrinkage. Such age-related degradation can affect a number of reactor and auxiliary systems, including the reactor vessel, the reactor coolant system pressure boundary, steam generators, electrical cables, the pressurizer, heat exchangers, and the spent fuel pool. Indeed, a host of individual components and structures are at issue. *See* 10 C.F.R. § 54.21(a)(1)(i). Left unmitigated, the effects of aging can overstress equipment, unacceptably reduce safety margins, and lead to the loss of required plant functions, including the capability to shut down the reactor and maintain it in a shutdown condition, and to otherwise prevent or mitigate the consequences of accidents with a potential for offsite exposures.[120]

The Commission has also framed the focus of license renewal review as being 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."[121] An

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> 100 with which the particular applicant must comply. *Id.*
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> . . . . The [CLB] represents an "evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety." 60 Fed. Reg. at 22,473. It is effectively addressed and maintained by ongoing agency oversight, review, and enforcement.

Id. *See also* 10 C.F.R. § 54.30.

[119] *Turkey Point*, CLI-01-17, 54 NRC at 7.

[120] *Id.* at 7-8.

[121] *Id.* at 10 (citing 60 Fed. Reg. at 22,469) (alteration in original).

issue can be related to plant aging and still not warrant review at the time of a license renewal application, if an aging-related issue is "adequately dealt with by regulatory processes" on an ongoing basis.[122] For example, if a structure or component is already required to be replaced "at mandated, specified time periods," it would fall outside the scope of license renewal review.[123]

2. Environmental Issues in License Renewal Proceedings

Regulatory provisions relating to the environmental aspects of license renewal arise out of the requirement that the National Environmental Policy Act (NEPA) places on Federal agencies to "include in every recommendation or report on . . . major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on [ ] the environmental impact of the proposed action . . . ."[124] As has been noted by the Supreme Court, the "statutory requirement that a federal agency contemplating a major action prepare such an environmental impact statement [EIS] serves NEPA's 'action-forcing' purpose in two important respects":

> It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.[125]

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[122] *Id.* at 10 n.2.

[123] *Id.*

[124] 42 U.S.C. § 4332(c); *see Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989).

[125] *Robertson*, 490 U.S. at 349 (citations omitted). The Court also noted that "NEPA itself does not mandate particular results, but simply prescribes the necessary process. . . . If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Id.* at 350 (citations omitted). As the Court also observed, in the companion case of *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989), "by focusing Government and public attention on the environmental effects of proposed agency

10 C.F.R. Part 51 contains NRC's rules relating to and implementing relevant NEPA requirements, and § 51.20(a)(2) requires an environmental impact statement for issuance or renewal of a nuclear reactor operating license. Other sections relating to license renewal include, most significantly, 10 C.F.R. §§ 51.53(c), 51.95(c), and 51.103(a)(5), and Appendix B to Subpart A.

Although the requirements of NEPA are directed to Federal agencies and thus the primary duties of NEPA fall on the NRC Staff in NRC proceedings,[126] the initial requirement to analyze the environmental impacts of an action, including license renewal, is directed to applicants under relevant NRC rules.[127] Accordingly, § 51.53(c) requires a license renewal applicant to submit with its application an environmental report (ER), which must "contain a description of the proposed action, including the applicant's plans to modify the facility or its administrative control procedures as described in accordance with § 54.21," and "describe in detail the modifications directly affecting the environment or affecting plant effluents that affect the environment."[128]

The ER is not required to contain analyses of environmental impacts identified as "Category 1," or "generic," issues in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1.[129] The basis of this is the Commission's 1996 "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (GEIS), adopted as required under 10 C.F.R. § 51.95(c).

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action," NEPA "ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct."

[126] *See*, *e.g.*, 10 C.F.R. § 51.70(b), which states among other things that "[t]he NRC staff will independently evaluate and be responsible for the reliability of all information used in the draft environmental statement."

[127] *See* 10 C.F.R. § 51.41.

[128] 10 C.F.R. § 51.53(c)(2); *see id.* § 51.53(c)(1).

[129] 10 C.F.R. § 51.53(c)(3)(i).

The GEIS is an extensive study of the potential environmental impacts of extending the operating licenses for nuclear power plants, which was published as NUREG-1437 and provides data supporting the table of Category 1 and 2 issues in Appendix B.[130] Issuance of the 1996 GEIS was part of an amendment of the requirements of Part 51 undertaken by the Commission to establish environmental review requirements for license renewals "that were both efficient and more effectively focused."[131]

Issues on which the Commission found that it could draw "generic conclusions applicable to all existing nuclear power plants, or to a specific subgroup of plants," were, as indicated above, identified as "Category 1" issues.[132] This categorization was based on the Commission's conclusion that these issues involve "environmental effects that are essentially similar for all plants," and thus they "need not be assessed repeatedly on a site-specific basis, plant-by-plant."[133] Thus, under 10 C.F.R. § 51.53(c)(3)(i), license renewal applicants may in their site-specific ERs refer to and adopt the generic environmental impact findings found in Appendix B, Table B-1, for all Category 1 issues.[134]

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[130] *See* NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (May 1996) [hereinafter GEIS]; Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467 (June 5, 1996), *amended by* 61 Fed. Reg. 66,537 (Dec. 18, 1996); 10 C.F.R. Part 51, Subpart A, App. B n.1.

[131] *Turkey Point*, CLI-01-17, 54 NRC at 11.

[132] *Id.* at 11 (citing 10 C.F.R. Part 51, Subpart A, App. B).

[133] *Id.*

[134] Even though a matter would normally fall within a Category 1 issue, ERs are also required to contain "any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware," under 10 C.F.R. § 51.53(c)(3)(iv). The Commission has, however, ruled that such information is not a proper subject for a contention, absent a waiver of the rule at 10 C.F.R. § 51.53(c)(3)(i) that Category 1 issues need not be addressed in a license renewal. *See Turkey Point*, CLI-01-17, 54 NRC at 12; *Pilgrim*, LBP-06-23, 64 NRC at 288, 294-300; *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 155-59 (2006)

Applicants must, however, address environmental issues for which the Commission was not able to make generic environmental findings.[135] An ER must "contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term," for those issues listed at 10 C.F.R. § 51.53(c)(3)(ii) and identified as "Category 2," or "plant specific," issues in Table B-1.[136] These issues are characterized by the Commission as involving environmental impact severity levels that "might differ significantly from one plant to another," or impacts for which additional plant-specific mitigation measures should be considered.[137] For example, the "impact of extended operation on endangered or threatened species varies from one location to another," according to the Commission, and is thus included within Category 2.[138] Another example is the requirement that "alternatives to mitigate severe accidents must be considered for all plants that have not [previously] considered such alternatives."[139] Again, although the initial requirement falls upon applicants, the ultimate responsibility lies with the Staff, who must address these issues in a Supplemental

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[135] *Turkey Point*, CLI-01-17, 54 NRC at 11 (citing 10 C.F.R. Pt. 51, Subpt. A, App. B).

[136] 10 C.F.R. § 51.53(c)(3)(ii).

[137] *Turkey Point*, CLI-01-17, 54 NRC at 11.

[138] *Id.* at 12.

[139] 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1; *see* 10 C.F.R. § 51.53(c)(3)(ii)(L). This requirement arises out of "NEPA's 'demand that an agency prepare a detailed statement on 'any adverse environmental effects which cannot be avoided should the proposal be implemented,' 42 U.S.C. § 4332(C)(ii)," implicit in which "is an understanding that the EIS will discuss the extent to which adverse effects can be avoided." *Robertson*, 490 U.S. at 351-52. The basis for the requirement is that "omission of a reasonably complete discussion of possible mitigation measures would undermine the 'action-forcing' function of NEPA. Without such a discussion, neither the agency nor other interested groups or individuals can properly evaluate the severity of the adverse effects." *Id.* at 352.

Environmental Impact Statement (SEIS)[140] that is specific to the particular site involved and provides the Staff's independent assessment of the Applicant's ER.[141]

Finally, § 51.103 defines the requirements for the "record of decision" relating to any license renewal application, including the standard that the Commission, in making such a decision pursuant to Part 54, "shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable."[142]

VI. Board Analysis and Rulings on Petitioner's Contentions

With the preceding context regarding contention admissibility requirements and license renewal scope principles in mind, we turn now to the Petitioner's contentions. While some may raise questions of interest in other contexts, none meet all of the requirements discussed in Section V above. Accordingly, as we explain below, all must be rejected as inadmissible.

A. Contention 1: Alleged Inability of Applicant to Maintain Financial Obligations

. Petitioner's Contention 1 states:

> PPL Susquehanna failed to provide the requisite data necessary to determine if it has the ability to maintain and service the financial obligations it inherited from the original licensee, i.e., PP&L. Regulatory conditions have materially changed and adversely affected PPL's ability to guarantee it can finance the "back-end" of nuclear power production at the SSES.[143]

The subject matter of this contention is similar to Petitioner's Motion to Compel, discussed above in Section III. Petitioner questions the current owner/applicant's ability to meet "its financial obligations associated with the operation, decontamination and decommissioning of

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[140] *See* 10 C.F.R. § 51.95(c).

[141] *See Turkey Point*, CLI-01-17, 54 NRC at 12 (citing 10 C.F.R. §§ 51.70, 51.73–.74).

[142] 10 C.F.R. § 51.103(a)(5).

[143] Petition at 15.

the [SSES]," as well as its status as an "electric utility," in the context of various utility ratemaking and related issues.[144] Petitioner is concerned about increased utility rates for PPL's customers,[145] and asks this Board to require PPL to "conduct a comprehensive financial due diligence to ascertain the ability of the nascent and emerging limited liability corporation to service its nuclear obligations under deregulation," to compel PPL to prove that it is an "electric utility," and to require it to provide an "action plan to address how the Company will finance nuclear debt load [sic], particularly the cost of decommissioning."[146] Petitioner asserts that the financial issues he raises are related to various financial matters discussed in several sections of the Application, including PPL's Environmental Report. He lists certain sections of the Application that are related to environmental issues, but does not dispute any specific part of any section, asserting instead, regarding the financial issues he raises, that PPL has "offered only cursory and superficial data, and omitted damaging material as a means of satisfying the license extension."[147]

PPL and the NRC Staff oppose this contention on the grounds that it is outside the scope of a license renewal proceeding and raises no genuine dispute on a material issue of fact or

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[144] *Id.* at 16.

[145] *See id.* at 17-20.

[146] *Id.* at 21.

[147] *Id.* at 15. Under the heading, "*Demonstrate that the issue raised in the contention is within the scope of the proceeding*," and following the language quoted in the text, Petitioner states:

> Specifically, this contention addresses technical, environmental, safety concerns and socioeconomic [sic] raised in Application and Appendix E: Environmental Report and 5.0-5.1.1 and 6.1, and SAMA: E.3.2 Population, E.3.3 Economy, 3.4 EMPLOYMENT Current Workforce, and E.4.5 Replacement Power Cost, and Susquehanna MACCS2 Economic Parameters Variable Description SSES Value, et al.

Id.

law.[148] Both note that the Commission has specifically stated that financial questions are not within the scope of license renewal,[149] and also point out that the license transfer to PPL was in fact approved by the NRC.[150]

The Staff points out the provision of 10 C.F.R. § 50.33(f)(2) that "[a]n applicant seeking to renew or extend the term of an operating license for a power reactor need not submit the financial information that is required in an application for an initial license,"[151] and also cites the 1995 rule-making amending the license renewal rules, in which the Commission in its Statement of Considerations made the following observations:

> The economics of electrical power generation is the responsibility of the individual utility and the Federal or State agencies that are given that authority and responsibility. Generally, a State public utility commission or the Federal Energy Regulatory Commission, along with the utility, have the responsibility and the authority to address economic issues associated with power generation. Furthermore, the Commission's regulatory responsibility (as defined by the Atomic Energy Act, the NRC's organic statute) does not confer upon the Commission primary authority for regulating the economics of nuclear power generation. Under these circumstances, the Commission does not believe that it should perform economic analyses of nuclear power generation as a basis for informing the Commission's licensing decisions. While it is true that the Commission currently addresses the economics of operating a nuclear power plant in the context of an environmental impact statement (EIS), it should be recognized that these analyses have been conducted in the context of EISs as part of the Commission's process for complying with the mandates of the National Environmental Policy Act (NEPA). However, NEPA does not require such economic analyses.[152]

As noted by PPL, the Commission later adopted additional amendments specifically relating to the financial information requirements for license renewal applications.[153] PPL quotes the

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[148] *See* PPL Answer at 14; Staff Response at 14.

[149] Staff Response at 15; PPL Answer at 14.

[150] PPL Answer at 16; Staff Response at 15.

[151] Staff Response at 15.

[152] Staff Response at 15 (quoting Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,484 (May 8, 1995)).

[153] PPL Answer at 14.

Statement of Consideration for this rule-making, in which the Commission, In explaining the rule, stated:

> With this final rule, the NRC believes that review of financial qualifications of non-electric utility licensee applicants at license renewal is not necessary. The resulting process for oversight of financial qualifications is sufficient to ensure that the NRC has adequate warning of adverse financial impacts so that the NRC can take timely regulatory action to ensure public health and safety and the common defense and security. The resulting process has two components: (1) A formal review of major triggering events, and (2) monitoring of financial health between the formal reviews due at the "triggering events." The relevant triggering events are (1) initial operating license application, (2) license transfer, and (3) transition from an electric utility to a non-electric utility, either with or without transfer of control of the license. In addition, the NRC can review a licensee's financial qualifications at any point during the term of the license if there is evidence of a decline in the licensee's financial health. The NRC believes that there are no unique financial circumstances associated with license renewal because the NRC has no information indicating a licensee's revenues and expenses change due to license renewal.[154]

Petitioner in his Reply to PPL and the Staff among other things requests an independent audit of PPL, but does not directly address the points of PPL and the Staff relating to the scope of license renewal proceedings and whether this contention presents any genuine dispute on a material issue. Nor does he appear to acknowledge that there were opportunities to request a hearing with regard to both the license transfer and the corporate restructuring at issue.[155] However, subsequent to a March 8, 2007, telephone conference held to allow the participants to address certain matters relating to the petition,[156] Petitioner submitted a filing arguing that the contention falls within the environmental Category 2 item found in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1, under the heading “Socioeconomic[s],” designated as follows:

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[154] PPL Answer at 14-15 (quoting Final Rule, Financial Information Requirements for Applications To Renew or Extend the Term of an Operating License for a Power Reactor, 69 Fed. Reg. 4439, 4440 (Jan. 30, 2004)).

[155] *See* Epstein Reply at 15-19. Indeed, he suggests that “[t]here was no opportunity to review the financial status of PPL Susquehanna at the time PPL was licensed to operate [SSES].” *Id.* at 15.

[156] *See* Tr. at 1-39.

Offsite land use (license renewal term) —	SMALL, MODERATE, OR LARGE. Significant changes in land use may be associated with population and tax revenue changes resulting from license renewal.[157]

We find, in light of 10 C.F.R. § 50.33(f)(2), the explanations of the Commission in the above-quoted statements, and the case law discussed in Section V.B above on the scope of license renewal proceedings, that Contention 1 fails to meet the requirement of 10 C.F.R. § 2.309(f)(1)(iii) that a petitioner "[d]emonstrate that the issue raised in the contention is within the scope of the proceeding." Petitioner's mere listing of various sections of the Environmental Report of the Application cannot be said to bring this contention within scope. Nor can his recent reference to the Category 2 issue of offsite land use bring the contention within scope. He not only makes no reference whatsoever to land use in his Petition (or indeed in his Reply), he also fails to challenge or even mention Section 4.17 of the Application ER, which involves offsite land use. Thus, although this subject may, properly supported, be an appropriate one for an admissible environmental contention, and although the subject may involve tax revenue changes in an affected area, Contention 1 does not involve the subject lately posed by Petitioner, and in any event, he has shown no genuine dispute on the subject with any part of the actual Application that is at issue in this proceeding. Moreover, Petitioner has not shown how his contention is "material to the findings the NRC must make to support the action involved in the proceeding," as required by 10 C.F.R. § 2.309(f)(1)(iv).

Nor, finally, can it be said that Petitioner has "[p]rovide[d] sufficient information to show that a genuine dispute exists with the applicant/licensee" on *any* "material issue of law or fact," as required by 10 C.F.R. § 2.309(f)(1)(vi). Apart from the lack of any material, in-scope issue being shown, it appears that Petitioner Epstein has, as discussed more fully above in Section

[157] Epstein Citation Letter at 4.

IV.A, not taken into account the financial assurances that PPL was required to provide — and that were evaluated by NRC Staff — in the PPL license transfer proceeding, of which we take judicial notice. Petitioner had opportunities to petition to intervene in the license transfer and restructure proceedings, but stated during the March 8, 2007, telephone conference that he "was engaged in a parallel proceeding at the Public Utility Commission [s]o I had made a decision not to intervene in that particular proceeding."[158] This does not, however, constitute a valid ground for raising issues concerning the license transfer and restructuring in *this* proceeding.

Even assuming that the sort of information Contention 1 concerns did fall within the limited financial information called for in a NEPA context, Petitioner's lack of any reference to the actual facts with regard to financial assurances, as established in these earlier proceedings,[159] as well as his failure to state any specific dispute he has with the substance of any specific part of the Application (providing only the very general allegation that the Application "offered only cursory and superficial data [in the Application], and omitted damaging material"), renders it impossible to find that he has met the requirements of 10 C.F.R. § 2.309(f)(1)(vi).

Based on the failure to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (vi), we deny the admission of Contention 1.

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[158] Tr. at 15-16.

[159] Petitioner might have attempted to contest such financial issues in the license transfer proceeding; as we indicate above, there was an opportunity to petition for a hearing in that proceeding, but no such petition was filed.

B. Contention 2: Alleged Failure to Address Water Use Issues

Petitioner in Contention 2 alleges:

> PPL failed to factor, consider and address numerous water use and indigenous aquatic challenges present and anticipated for the Susquehanna River.[160]

As explanation, in satisfaction of 10 C.F.R. § 2.309(f)(1)(ii), Petitioner states:

> The Susquehanna River Basin Commission and the Pennsylvania Department of Environmental Protection (PA DEP) are in the process of collecting, evaluating, and implementing a comprehensive water use plan for Pennsylvania, i.e., [Pennsylvania] Act 220. Moreover, recent and consistent droughts in Pennsylvania (2002) as well as flooding (2006) have forced state and regulatory bodies to reexamine water as a commodity in the Commonwealth of Pennsylvania.
>
> In addition, a number of infestations, specifically Asiatic clams and Zebra mussels, have required power plants to prepare plans to defeat these aquatic invasions.[161]

To demonstrate that the contention is within the scope of this proceeding, as required by 10 C.F.R. § 2.309(f)(1)(iii), Petitioner states:

> The applicant raised and attempted to address water quality, water use, aquatic communities, groundwater use, entrainment and impingement, and impact microbiologic organisms throughout the license application, but offered only cursory and superficial data, and failed to address numerous issues that could adversely impact the license extension request. Specifically, this contention addresses technical, environmental and safety concerns raised in Application and Appendix E: Environmental Report 2.2.21-2.5, 2.91, 2.9.2, 4.0 to 4.8.1, 4.12, 4.15.1, 5.0-5.1.1 and 6.1, and SAMA: 4.15 PUBLIC UTILITIES: PUBLIC WATER SUPPLY AVAILABILITY and 5.16 Flood, et al.[162]

To demonstrate that the contention meets the final three subsections of 10 C.F.R. § 2.309(f)(1), Petitioner begins:

> Nuclear power plants require large amounts of water for cooling purposes. PPL's Susquehanna Electric Steam Station power plant will remove water from the Susquehanna River, and it is likely fish and aquatic life will be harmed. Animals and people who depend on these aquatic resources will also be affected. PPL's planned uprate and application for relicensing will further place pressure on limited water resources. Freshwater water withdrawals by Americans increased by 8% from 1995-2000, and Americans per capita water withdrawal is three times above the international

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[160] Petition at 23.

[161] *Id.*

[162] *Id.*

average. [Citing "U.S. National Report on Population and the Environment" (2006) published by the Center for Environment and Population, a nonprofit corporation based in Connecticut.]

Question 1: How can the NRC approve the license renewal for of [sic] the SSES prior to the adoption and implementation of the the Water Resources and Planning Plan plan under Act 220?

Question 2: How many fish (game and consumable), fish eggs, shellfish and other organisms will be harmed or killed annually by the license renewal?[163]

Petitioner continues by discussing the impact of other nuclear power plants that are located on the Susquehanna River on fish and other organisms.[164] He follows this with additional questions, interspersed with references to: an EPA Clean Water Act rule,[165] how plants commonly discharge chlorinated water and Clamtrol (used to minimize bacteria and defeat Asiatic clam infestation) into the river,[166] the amount of water drawn from the river by SSES,[167] and the alleged failure of SSES to take any measures to conserve water during a drought in the summer of 2002.[168]

The additional questions posed by Petitioner concern "acceptable levels" of fish kills, the impact of a power uprate, the impact of license renewal on sport and commercial fishing, the Commission's compliance reporting requirements with regard to onsite and offsite tritium monitoring and related issues, the amount of water that will be drawn from and returned to the

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[163] *Id.* at 24.

[164] *Id.* at 25.

[165] *Id.* at 26.

[166] *Id*. at 27.

[167] *Id.* at 28. Petitioner states that the plant "draws 40.86 million gallons per day from the Susquehanna River. For each unit, 14.93 million gallons per day are lost as vapor out of the cooling tower stack while 11 million gallons per day are returned to the River as cooling tower basin blow down. On average, 29.86 million gallons per day are taken from the Susquehanna River and not returned." *Id*.

[168] *Id.* at 29.

Susquehanna River after the renewal and uprate, whether the water will be treated with chemicals, how PPL plans to "defeat Asiatic clam and/or Zebra mussel infestations," and what actions PPL will take to "curb water consumption during periods of conservation and drought."[169]

Petitioner requests that PPL be required to "resubmit and revise its application to address issues raised by Mr. Epstein (*"after* Act 220 has been implemented"), and to include a statement on the impact of the license renewal combined with "the synergetic impact of a 200 mw uprate."[170] This is necessary, according to Petitioner, because SSES is asserted to be a "menacing predator on the Susquehanna River, and a large industrial consumer of a valuable and limited commodity."[171]

PPL argues that Contention 2 is outside the scope of license renewal and asserts that it is vague and non-specific, failing to point to any particular deficiency in the Application or raise any genuine, material dispute with the Application.[172] Noting that the contention "does not discuss sections 3.1.2.1 and 4.1 of the Environmental Report, which analyze the consumptive use of water,"[173] PPL states that some of the sections cited by Petitioner either do not exist or do not relate to the plant's use of water for cooling purposes, and that section 4.15 actually "demonstrates that the population increase attributable to license renewal will be small, on the

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[169] *Id.* at 26-29.

[170] *Id.* at 29.

[171] *Id.*

[172] PPL Answer at 17-18.

[173] *Id.* at 18.

order of 428 persons, in an area where the excess public water supply exceeds 5.1 million gallons per day," which PPL asserts Petitioner provides no basis to dispute.[174]

PPL counters Petitioner's allegations and explanation by noting that the Application does, at sections 3.1.2.1 and 4.1 of the ER, discuss:

> the Susquehanna River Basin Commission's ("SBRC") [sic] regulation of consumptive water use, including how SSES complies with SRBC regulations by compensating for the consumptive water use by sharing in the costs of the Cowanesque Lake Reservoir (ER at 3.1-4), which provides another source of water during low flow conditions (ER at 4.1.2).[175]

According to PPL, the State Water Plan, which Act 220 requires to be updated by March 2008, "will not alter any requirements or [PPL]'s commitments relating to water use," as it gives the Pennsylvania Department of Environmental Protection no "authority to regulate, control, or require permits for the withdrawal or use of water."[176] While the update "may improve the knowledge of policymakers and regulators, which would allow for more informed rulemaking in the future," it is "not a prerequisite for any agency decisions today."[177] In any event, according to PPL, Petitioner provides no support — expert opinions, documents or other sources — for any allegation of error in the ER's assessment of consumptive water use.[178]

Regarding Petitioner's concern about Asiatic clams and Zebra mussels, PPL asserts these are neither aging issues nor issues that fall under any Category 2 item in 10 C.F.R. Part 51, Subpart A, Appendix B, and the potential effects of any biocides that may be used to control

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[174] *Id.* at 18 n.8.

[175] *Id.* at 19.

[176] *Id.* at 19 & n.9.

[177] *Id.* at 19.

[178] *Id.*

these organisms is a Category 1 issue outside the scope of license renewal.[179] PPL argues that Petitioner's questions, without any support, are inadequate to establish any genuine, material issue.[180]

With regard to the power uprate, PPL points out that the ER at § 2.12 in fact "clearly and explicitly evaluates the impacts of license renewal coupled with the extended power uprate for which PPL Susquehanna has applied," stating that the "impacts evaluated in this [ER] consider extended operations at the increased power levels associated with this uprate.[181] In addition, PPL states, § 4.1 of the ER "evaluates the consumptive water use that would occur with the extended power uprate."[182]

Both PPL and the Staff point out that some of Petitioner's questions are irrelevant to SSES because, among other things, NRC rules require an analysis of entrainment and impingement of fish, and heat shock, only for plants with once-through cooling or cooling ponds, "having determined generically that such impacts are small for plants such as SSES that use cooling towers."[183] Because SSES uses cooling towers rather than once-through cooling or cooling pond heat dissipation systems, it is, PPL and the Staff argue, not required to assess the impact of the facility on fish, early life stages of fish, or heat shock.[184] For plants such as

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[179] *Id.* at 19-20 (citing 10 C.F.R. Part 51, Subpart A, App. B, Table B-1; GEIS § 4.4.2.2 and Table 4.4).

[180] *Id.* at 20-23.

[181] *Id.* at 22 (citing ER at 2.12-1).

[182] *Id.* (citing ER at 4.1-1 to 4.1-2).

[183] *Id.* at 20 (citing 10 C.F.R. § 51.53(c)(3)(ii)(B)).

[184] Staff Response at 19 (citing 10 C.F.R. § 51.53(c)(3)(ii)(B)); PPL Answer at 20.

Susquehanna, these are Category 1 issues, as is the discharge of biocides and chlorine, according to Staff.[185]

The Staff agrees with PPL that Contention 2 is not supported by sufficient bases under the contention admissibility rule provisions, that its asserted bases do not demonstrate any genuine dispute on a material issue of law or fact, and that it is not sufficiently specific.[186] In addition, Staff urges, although applicants must provide the status of compliance with permits and licenses, including water use permits, Petitioner does not argue that this has not been done, nor does he provide any support for delaying license renewal until Act 220 is implemented, or for any other of his requested remedies.[187] In fact, according to Staff, PPL holds a National Pollutant Discharge Elimination System (NPDES) permit for water discharge, issued by the Pennsylvania Department of Environmental Protection, and a consumptive use water approval, issued by the Susquehanna River Basin Commission, and the Application at Appendix E, § 3.2.1.2, "addresses all of the questions posed by the Petitioner in Proposed Contention 2."[188] As Petitioner "does not explain what he believes has been omitted or inadequately addressed," Staff insists the contention fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi).[189]

Nor, says the Staff, does the "mere mention" of tritium monitoring provide sufficient information to show any genuine dispute on a material issue.[190] On this issue, PPL points out

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[185] Staff Response at 19.

[186] Staff Response at 17.

[187] *Id.* at 18, 20.

[188] *Id.* at 18.

[189] *Id.*

[190] *Id.* at 20.

that SSES has no landfill producing tritium leachate, and in any event, radiological monitoring is "an operational program that is beyond the scope of license renewal."[191]

With regard to Petitioner's Reply — which discusses, among other things, various asserted inadequacies in the aging management program for SSES,[192] some issues related to the NRC's voluntary program on addressing potential tritium leaks,[193] and some information about corrosion of water intake pipes that was disclosed by PPL in a water use permit application[194] — we discuss issues relating to the Reply in our ruling above on PPL's Motion to Strike.[195] We conclude therein that, in making our ruling on Contention 2, although anything that might constitute "legitimate amplification," appropriate responses to arguments raised in the answers, or properly late- or newly-filed[196] material may appropriately be considered under relevant law, we will not consider any information that would fall outside that permitted by the Commission, except as necessary to explain our rulings here.

In analyzing issues relevant to Contention 2, we note first that a review of Petitioner's original Contention 2 reveals no references therein to aging management or inspection of systems and components that contain radioactively contaminated water. Petitioner does, however, mention tritium monitoring in his discussion in support of the contention, posing the following question:

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[191] PPL Answer at 21 (citing *Nuclear Management Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 754 (2005)).

[192] Epstein Reply at 20-21.

[193] *Id.* at 22.

[194] *Id.* at 23.

[195] *See supra* section IV.B.

[196] *See* 10 C.F.R. § 2.309(c), (f)(2).

> Question 7: What will the Commission's compliance reporting requirements be in regard to onsite and offsite tritium monitoring? How will the Commission account for offsite masking as a result of landfill tritium leachate? Where will the results be published?[197]

He also provides the following footnote to this question:

> *Re: Disposal and licensing of tritium exit signs,* Letter from Thomas J. Fiddler, Pa DEP, Deputy Secretary to Nils. J. Diaz, Chairman, US NRC, January 17, 2006.[198]

Thus it might be said that Petitioner raised at least the issue of monitoring for tritium in his Petition, even as he confuses the two issues of (1) monitoring for tritium in water that may have leaked from SSES, and (2) disposal of tritium exit signs, the latter of which would not seem to be related to SSES in any way. The question becomes, whether Petitioner implicitly raised an aging issue by posing his Question 7. An additional question is whether his learning about the information in the December 20, 2006, SRBC permit application only after he submitted his January 2, 2007, Petition, renders it permissible to raise in his Reply, or as part of a new contention filed within a reasonable time after he became aware of the information. The dates in question would support consideration of the new information — the one and a half to two week period between December 20 and January 2 is obviously short, particularly in the context of the holiday season, such that filing information after January 2, by February 5, 2007 (the date of Petitioner's Reply), might be considered reasonable.

The problem with regard to whether there was any implicit reference to aging in Petitioner's original Contention 2 is that, even though it included the question quoted above, the original contention was clearly focused on environmentally-related aquatic issues, including "water use" and "indigenous aquatic challenges."[199] Petitioner's recitation quoted above,[200] regarding

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[197] Petition at 26.

[198] *Id.* at 26 n.28.

[199] *Id.* at 23.

[200] *See* text accompanying n.162 *supra.*

whether the contention is within the scope of license renewal, mentions "water quality, water use, aquatic communities, groundwater use, entrainment and impingement, and impact microbiologic organisms," all of which are environmental issues and none of which are aging issues. In addition, several sections of the ER are mentioned, but there is, as indicated above, no reference to any parts of the Application relating to aging. Question 7, regarding monitoring for tritium, is the sole reference in Petitioner's original Contention 2 to any even arguably aging-related issue, and, as indicated above, it stands alone with only its footnote, on a similar — but clearly distinct — issue, offered as support.

With regard to the timing issue relating to the December 20, 2006, information, the problem is that the information provided in Petitioner's February 2, 2007, Reply is quite general and somewhat scattered in its various references to, *e.g.*:

> — the aging management program not including "proactive action plans for water challenges resulting from natural and mechanical adversaries," and not recognizing "that it is initial [sic] manifest with the [SRBC] application has been grandfathered and must be resubmitted";[201]
>
> — not including a "voluntary tritium action plan," along with references to tritium being a "national and localized issue of import" and to NRC's tritium task force and voluntary tritium program;[202]
>
> — an alleged lack of "adequate monitoring to determine if and when leakage from [all systems and components that may contain radioactively contaminated water] occurs";[203]
>
> — the same issues from the original contention concerning Asiatic clams and related matters;[204]
>
> — certain water shortages;[205] and

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[201] Epstein Reply at 20.

[202] *Id.* at 20, 22.

[203] *Id.* at 20.

[204] *Id.* at 21.

[205] *Id.* at 21-22.

— the SRBC application and the reference therein to difficulty PPL was having metering withdrawal of water accurately "due mainly to corrosion and fouling of the intake pipes" and the fact that PPL was as a result evaluating replacement of sections of the pipe.[206]

Even if we considered the above information, along with other information of a similar nature in the Reply, we could not say that it provides either the focus necessary to support an admissible contention, or the "minimal factual and legal foundation" necessary to trigger a full adjudicatory hearing.[207]

Before stating our ultimate ruling on Contention 2, however, we note certain additional information provided by Petitioner subsequent to the aforementioned March 8, 2007, telephone conference. As we permitted, Petitioner submitted a filing, arguing that the contention falls within several environmental Category 2 items found in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1, including "Groundwater use conflicts (potable and service water, and dewatering; plants that use >100 gpm)"; "Groundwater use conflicts (plants using cooling towers withdrawing make-up water from a small river)"; "Public services: public utilities"; and "Microbiological organisms (public health) (plants using lakes or canals, or cooling towers or cooling ponds that discharge to a small river)."[208]

In ruling on this contention, we find, first of all, as argued by the Staff and PPL, that the mere posing of questions does not provide sufficient support to admit a contention. Under 10 C.F.R. § 2.309(f)(1)(vi), "sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact" must be provided, and neither Petitioner's questions, nor his additional commentary in his original contention, provide the reasoned

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[206] *Id.* at 23 (quoting Letter from Jerome S. Fields, Senior Environmental Scientist - Nuclear, to Paul O. Swartz, Executive Director, Susquehanna River Basin Commission, PPL Susquehanna, LLC, Application for Surface Water Withdrawal, Request to Modify Application 19950301, EPUL-0578 (Dec. 20, 2006)).

[207] *See* discussion *supra* § V.A; *Oconee*, CLI-99-11, 49 NRC at 334.

[208] Epstein Citation Letter at 5-6.

explanation and support necessary to satisfy this requirement. Nor, we find, even considering the information recounted above from his Reply, does the information he has provided satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(vi).

With regard to his references to water consumption and related issues, Petitioner does not discuss at all the sections of the ER that address consumptive use of water, and he fails to show any specific or genuine dispute with these or any other section of the Application. Moreover, as pointed out by PPL and the Staff, Susquehanna is not the type of plant for which any of the Category 2 items listed under "Aquatic Ecology" in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1, apply. As has also been pointed out, discharge of chlorine or other biocides is a Category 1, out-of-scope issue. With regard to the four additional Category 2 items more recently asserted to bring the contention within scope, although the sections of the ER that address these items are contained in Petitioner's list of section numbers quoted above from his original Petition, he nowhere demonstrates any specific dispute with any of the information contained in any of these sections.

Regarding tritium monitoring, again, the mere posing of a question does not suffice for purposes of contention admissibility; no mention is made of this subject elsewhere in the Petition, nor is any support provided for any challenge regarding tritium monitoring, nor is any genuine dispute shown regarding this issue, even taking into account the quite general information regarding this subject in Petitioner's Reply.[209] Nor, for that matter, does any of the other information provided by the Petitioner in the Reply so suffice. Even if we were to take all

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[209] *Compare* the ruling in *Pilgrim*, LBP-06-23, 64 NRC at 300-315. In the *Pilgrim* proceeding, the petitioners, in stark contrast to what the Petitioner herein has provided, among other things specifically discussed (1) relevant sections of the Application and how they were alleged to be inadequate; (2) the relevance of a number of exhibits and documents to specific points in their argument; (3) incidents at other plants and how leaks were detected in some instances by monitoring wells; and (4) the specific topography of the Pilgrim plant site and how monitoring wells should be placed there.

the allegations made therein to be true (which PPL strongly contests[210]), Petitioner's failure to tie any such alleged facts to any aging issues with any specificity, in order to show a genuine dispute on a material issue of law or fact, renders the contention insufficient in this regard as well.

Nor, we would note, has any basis been shown to warrant any of the remedies requested by Petitioner. As to the pending uprate application, as PPL points out, the license renewal application does take into account the pending uprate application, and, as Staff has pointed out, there will be an opportunity for a hearing on this, for any petitioner who files a properly supported request for hearing and petition to intervene.[211] In this proceeding, however, we must dismiss this contention, as it fails to provide sufficient information to show a genuine dispute with the Application on a material issue of law or fact.

C. Contention 3: Alleged Flawed Demographic Profile

Petitioner in Contention 3 alleges:

> PPL's demographic profile is flawed and incomplete and fails to consider the aging population and workforce which impacts supports services, emergency planning, workforce replenishment and traffic patterns.[212]

By way of explanation of this contention, Petitioner states:

> Pennsylvania is the second oldest state in the nation after Florida and its fastest growing population segment is octogenarians. (34) An aging population base has unique and sensitized needs that were not factored, considered, or analyzed in the licensee's

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[210] *See*, *e.g.*, Tr. at 30.

[211] *See* Tr. at 21; Staff EPU Letter; Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations, 72 Fed. Reg. 11,383, 11,392 (Mar. 13, 2007). This notice pertains to a number of applications from various entities. Provisions on requesting hearings and petitioning to intervene are found at 72 Fed. Reg. at 11,384-85, 11,402-03.

[212] Petition at 30.

application. Moreover, PPL's intent to raise electric prices by at least 20% to 30% in the near future hits fixed-income and aging population bases especially hard.[213]

Petitioner asserts, to demonstrate that this contention is within the scope of this proceeding, that it:

addresses socioeconomic, environmental and safety concerns raised in [sic] Application and Appendix E: Environmental Report 2.6-2.7, 2.8, 2.9, 2.9.1-2.9.3, 3.4.1, 4.13 - 4.14, 4.18, 4.19, 5.0-5.1.1 and 6.1, and SAMA: E.3.2 Population, E.3.3 Economy, 3.4 EMPLOYMENT Current Workforce, and E.4.5 Replacement Power Cost, and Susquehanna MACCS2 Economic Parameters Variable Description SSES Value, et al.[214]

Petitioner goes on to discuss the reduction of the Applicant's workforce "through attrition, 'out sourcing' and early retirements while the surrounding population base is growing older";[215] the ratio of workers to households in the context of rates, costs, and the economic hardships of the community;[216] the low likelihood of older persons "to be absorbed into a nuclear work force";[217] the absence of polling to assess the impact of rate issues;[218] and the refusal of PPL to support special rate relief for special needs communities.[219] He requests that PPL be required to:

resubmit portions of its application relating to an aging labor force and aging population base and the socioeconomic stress that these developments have on social services, the tax base, rate shock, existing poverty levels, and institutional memory. PPL and the

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[213] *Id.* (footnote omitted).

[214] *Id.*

[215] *Id.* at 31.

[216] *Id.* at 33-34.

[217] *Id.* at 34.

[218] *Id.*

[219] *Id.* at 35.

NRC must reexamine the plant's demographics for operating the nation's 19th and 20th largest nuclear reactors.[220]

PPL avers that Contention 3 is inadmissible because it is outside the scope of license renewal and fails to demonstrate a genuine, material dispute.[221] It neither relates to plant aging issues, nor provides any basis for concern over the adequacy of the staffing of SSES, nor falls within a Category 2 environmental issue, according to PPL.[222] PPL summarizes the matters addressed in the ER sections cited by Petitioner — having to do with transmission lines and electric shock hazard, the effect of potential increased staff on housing availability and transportation, and the effect of license renewal on historic or archaeological resources — and illustrates how they do not relate to the socioeconomic stress issues raised by Petitioner, urging also that the SAMA (severe accident mitigation alternatives) analysis does not relate to these issues.[223] PPL argues that Petitioner neither explains how the analysis of any particular Category 2 impact in the Susquehanna ER is in error, nor shows any genuine dispute with the Applicant regarding any.[224]

The Staff opposes admission of Contention 3 as neither being material to any finding the NRC must make to support license renewal, nor demonstrating any genuine dispute on a material issue, nor being related to any NEPA finding the NRC must make.[225] Staff points out that an ER need only consider economic costs and benefits as they relate to alternatives and mitigation, noting that the ER includes both an environmental justice and demographic analysis

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[220] *Id.* at 35.

[221] PPL Answer at 23.

[222] *Id.* at 23-25.

[223] *Id.* at 25 n.21.

[224] *Id.* at 25.

[225] Staff Response at 21-22.

of the communities within 50 miles of SSES, and argues that Petitioner specifies no deficiencies in these analyses.[226] In addition, the Staff urges, Petitioner identifies no failure of the ER to contain information and provides no supporting reasons for his belief that the ER should contain such information, and Petitioner's concerns with "out sourcing" and SSES operating practices are not Category 2 issues and therefore outside the scope of license renewal.[227]

Petitioner in his Reply does not address the scope and "genuine dispute" issues raised by PPL and the Staff, but rather suggests that license renewal *should* address "the impact of relicensing on aging human beings who live within the shadow of the plant," and who "are not abstract hypotheticals that attorneys in DC can rework into a neat formula."[228] Again, he seeks that we require PPL to resubmit portions of the application and to address the socioeconomic stress issues he presses in this contention.[229] Finally, in his March 11, 2007, filing, Petitioner submits that Contention 3 falls within the same environmental Category 2 item found in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1, as that provided for Contention 1, namely, "Offsite land use (license renewal term)."[230]

We find that, while Petitioner in this contention discusses an aging population, he does not address any issues involving the aging of any relevant plant systems, structures, or components, or any aging-management issues. Nor does he demonstrate how any of the issues he raises in this contention fall within any Category 2 items involving socioeconomics — *i.e.*, housing impacts, public services relating to water supply and education (impacts from

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[226] *Id.* at 22.

[227] *Id.* at 23.

[228] Epstein Reply at 26.

[229] *Id.* at 27.

[230] Epstein Citation Letter at 7.

refurbishment activities only), land use, transportation, and historic and archaeological resources.[231] With regard to his submission asserting that the contention falls under "Offsite land use (license renewal term)," he fails to challenge or controvert in any way § 4.17 of the Application ER, which specifically concerns this subject. The contention fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi) and must therefore be dismissed.

D. Contention 4: Alleged Flawed Tax Analysis

Petitioner in Contention 4 alleges:

> PPL's tax analysis is fatally flawed and lacks historical perspective. The Company failed to assess the impact of Revenue Neutral Reconciliations [sic] at the SSES on local citizens, residents, taxpayers, and homeowners.[232]

As with other contentions, Petitioner here lists several sections of the Environmental Report of the Application to demonstrate that the contention is within the scope of license renewal, alleging that PPL has "offered only cursory and superficial data" in the ER.[233] Petitioner also alleges that PPL "failed to address the negative impact that the Revenue Neutral Reconciliation tax assessment has had on the school district, municipalities and residential consumers"; states that the contention "addresses socioeconomic, environmental and safety concerns raised in the [ER]"; and provides the following "brief explanation of the basis for the contention":

> By limiting their historic snapshot from 2001-2005, PPL provides a false and incomplete fiscal picture of the impact their property devaluations and legal suits had on local taxing bodies. The transition from the PURTA to RNR has been a disaster. PPL has conveniently omitted the tax strain it has caused the Berwick Area School District, Salem Township, Luzerne County, residential consumers and senior citizens living on fixed incomes.[234]

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[231] *See* our discussion below of Petitioner's Contention 4 for a more detailed treatment of the socioeconomic issues that are within the scope of license renewal.

[232] Petition at 36.

[233] *Id.*

[234] *Id.* According to Petitioner, PURTA refers to the "Public Utility Realty Tax Assessment . . . tax sharing formula used prior to the deregulation of electric generating

Petitioner asserts in support of the materiality of the contention the following:

> Relicensing a nuclear power plant should not impose economic hardships on the host community. PPL has successfully sued local taxing authorities and defended [sic] the school system while at the same time increasing capacity and requesting a license extension. Either the NRC must reexamine the economic impact of SSES on the community, or address how relicensing a nuclear power plant while shifting the tax burden and increasing rates on an aging community is incompatible with the NRC's mission.[235]

As factual support and in an effort to show a genuine dispute on a material issue, Petitioner discusses various issues relating to Pennsylvania tax law, the effect of deregulation on tax revenue, property valuation, and tax rates for power plants.[236] He then urges that "[a] sense of fair play and economic sanity require that the NRC compel PPL to revise and resubmit the tax impact of relicensing the SSES under current condition [sic]."[237] He wants PPL to submit documentation of the amount of taxes paid under the Pennsylvania tax laws in effect in 1995 and 2005, as well as the projected amount for 2015. He asks the NRC to "compel PPL" to provide information "relating to the socioeconomic stress that the RNR assessment has had on social services, the tax base, existing poverty levels."[238] He also asserts the NRC should reexamine the plant's economic impact based on "PPL's tax shifting policies," and that it "must compel PPL to explain how its tax policies benefit local communities as the SSES's capacity and environmental impact increase, while the Company's charitable contributions, social programing and revenue contributions steadily decline."[239]

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stations," and RNR refers to the post-deregulation Revenue Neutral Reconciliation tax assessment formula used in Pennsylvania. *See id.* at 37.

[235] *Id.*

[236] *Id.* at 37-39.

[237] *Id.* at 39.

[238] *Id.*

[239] *Id.*

Petitioner concludes by discussing how utilities in the state influenced deregulation, claiming "that local communities would increase their revenues," while the utilities paid less taxes, which in the end "created a material adverse conditions [sic] for local communities."[240] He further asserts adverse impacts on "an aging population dependent on a fixed income levels [sic]" that is being "asked to absorb rising electric and property tax rates, in part due to the extended operation of the [SSES]."[241]

PPL and the Staff oppose Contention 4 as raising an issue outside the scope of this license renewal proceeding and failing to raise a genuine material dispute with the Application.[242] PPL argues that the contention, in advocating the analysis of the impacts of past changes in Pennsylvania's property tax laws resulting from deregulation, seeks to address "an impact that is not caused or affected by license renewal" and is therefore outside the scope of license renewal.[243] Noting that its ER does provide information about property taxes paid to localities over the past five years, identifying "what percentage of the local jurisdiction's tax revenue the SSES payments represent," PPL points out that Petitioner in Contention 4 "identifies no inaccuracy in this information."[244] PPL notes further that the ER addresses "whether SSES's tax payments will drive significant land use changes in the renewal term," and asserts that Petitioner "identifies no error in this analysis" and thus fails to dispute any part of the Application as required under 10 C.F.R. § 2.309(f)(1)(vi).[245] PPL disputes Petitioner's understanding of

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[240] *Id.* at 40

[241] *Id.*

[242] PPL Answer at 26-30; Staff Response at 24-26.

[243] PPL Answer at 26.

[244] *Id.*

[245] *Id.* at 26-27.

Pennsylvania tax law (asserting that he has mistakenly equated the RNR with cessation of payments under PURTA, and citing a section in its ER in which the tax situation is discussed in a more accurate manner), and urges that Petitioner's criticism of the change in Pennsylvania's tax laws "provides no demonstration that such change has any causal connection to license renewal."[246]

The NRC Staff argues that "[p]ortions" of Contention 4 are outside the scope of this proceeding, citing a 1996 amendment to the license renewal rules in which the Commission indicated that "issues relating to utility economics are outside the scope of an environmental analysis because they are state issues."[247] The Staff characterizes Petitioner's call for re-

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[246] *Id.* at 27-28. Noting that NEPA "requires consideration only of 'the environmental impact of the proposed action,'" *id.* at 28 (citing 42 U.S.C. § 4332(C)(i)), PPL cites Council on Environmental Quality (CEQ) regulations defining the effects that must be considered in an EIS as those "which are caused by the action," *id.* (citing 40 C.F.R. § 1508.8), as well as case law interpreting this provision as "requiring a reasonably close causal relationship between the proposed action and an alleged environmental effect or impact — similar to proximate cause in tort law — before that effect need be considered," *id.* (citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 773-74 (1983)), and stating that "[a]n EIS is not required . . . when the proposed federal action will effect no change in the status quo." *Id.* (citing *Burbank Anti-Noise Group v. Goldschmidt*, 622 F.2d 115, 116-17 (9th Cir. 1980), *cert. denied*, 450 U.S. 965 (1981)). Consequently, PPL argues, since "[d]eregulation and the 1999 changes in Pennsylvania's tax laws are not caused by license renewal and will not be affected by license renewal," NEPA requires no analysis of them. *Id.* In addition, PPL cites the Supreme Court decision in the 2004 case of *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), in which the Court "held that 'where an agency has no ability to prevent a certain effect due to its limited statutory authority[,]' it cannot be 'considered a legally relevant 'cause' of the effect.'" *Id.* at 28-29 (citing 541 U.S. at 770).

PPL also disputes some of the factual allegations Petitioner makes, including that localities receive less income as a result of SSES's current tax payments (stating that it now pays $4 million as compared to $1 million under PURTA for its property in the county in which SSES is located), *id.* at 29 & n.26, and that PPL somehow "refuses" to pay its taxes (noting with regard to the lawsuit referred to by Petitioner that this involved a different power plant and PPL's dispute of a property assessment, "as any property owner may do"). *Id.* at 30. Of course, we do not address the merits of any allegations in our ruling on the admissibility of the contention, but include this to provide PPL's "side of the story" with regard to the Petitioner's allegations.

[247] Staff Response at 24-25 (citing Final Rule, Environmental Review of Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28471-72 (June 5, 1996) (quote in text is Staff's paraphrasing).

examination of the economic impact of SSES on the community" as a "novel claim," for which no basis is offered.[248] Finally, the Staff criticizes Petitioner's failure to specify any parts of the Application he disputes, his "unsubstantiated declarations" about the tax issues he raises, and his failure to explain how these create any genuine dispute on any material issue of law or fact.[249]

Again, Petitioner in his Reply does not address the issues raised by PPL and the Staff in their responses to his contention, relating to the scope of license renewal and the need to show a genuine dispute on a material issue of law or fact.[250] Citing various other law, he does not mention the contention admissibility rules or any law on the scope of license renewal, arguing instead, *e.g.*, that "[r]elicensing a nuclear power plant *should not* impose economic hardships on the host community,"[251] and that the "impact of relicensing on the local community is material and germane and the NRC *should not* sanction the relicensing of nuclear power plant [sic] that will result increased [sic] property taxes and electric rates and through [sic] up their hands and shout, 'Not my problem.'"[252]

The primary bases offered for Petitioner's argument, that the "NRC can and must consider economic affects [sic] on a community," are "since they are interrelated with the natural physical effects of relicensing the SSES," and, again, because a "sense of fair play and economic sanity require" it.[253] Petitioner repeats his argument that PPL should be compelled to resubmit

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[248] *Id.* at 25.

[249] *Id.* at 25-26.

[250] Epstein Reply at 28-31.

[251] *Id.* at 28 (emphasis added).

[252] *Id.* at 29 (emphasis added).

[253] *Id.* at 29, 31.

information regarding socioeconomic stress on the community as well as regarding the amount of taxes it has paid.[254] And, finally, yet again with regard to this contention, Petitioner submits in his March 11, 2007, filing that the contention falls within the same environmental Category 2 item found in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1, as that provided for Contentions 1 and 3, namely, "Offsite land use (license renewal term)."[255]

In making our ruling, we note first, regarding Petitioner's recent March 11 submission, that, although the ER section dealing with offsite land use is among those listed by Petitioner, nothing is provided to show any genuine dispute with what is contained in that section of the ER. Land use is not discussed or even mentioned in the Petition or any other document apart from Petitioner's March 11 submission, nor indeed is *any* part of the Application specifically challenged. With regard to the general arguments made in both the Petition and in Petitioner's Reply, these lack the focus as well as the "minimal factual and legal foundation" necessary to support an admissible contention.[256]

With specific regard to issues relating to utility economics, we note that the Commission explained its exclusion of consideration of this subject in the NEPA review associated with license renewal in its 1996 rule-making, indicating that it had included such issues in the original proposed rule but eliminated consideration of them in response to concerns expressed by State, Federal and utility representatives who argued that "regulatory authority over utility economics falls within the States' jurisdiction and to some extent within the jurisdiction of the Federal Energy Regulatory Commission."[257] Most concerned states had expressed concern

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[254] *Id.* at 31.

[255] Epstein Citation Letter at 7.

[256] *See* discussion *supra* § V.A; *Oconee*, CLI-99-11, 49 NRC at 334.

[257] 61 Fed. Reg. at 28,471.

that NRC's NEPA analysis not preempt their jurisdiction over the determination of need for generating capacity.[258]

The NRC decided to adopt an approach that, among other things, defined the "purpose and need for the proposed action (i.e. license renewal)" as "preserving the continued operation of a nuclear power plant as a safe option that State regulators and utility officials may consider in their future planning actions."[259] The context for the Commission's approach was stated as being the NEPA analysis of "alternatives," in which the environmental review in license renewals "would include a comparison of the environmental impacts of license renewal with impacts of the range of energy sources that may be chosen in the case of 'no action.'"[260] The Commission continued:

> The NRC's NEPA decision standard for license renewal would require the NRC to determine whether the environmental impacts of license renewal are so great that preserving the option of license renewal for future decisionmakers would be unreasonable.
>
> The statement that the use of economic costs will be eliminated in this approach refers to the ultimate NEPA decision regarding the comparison of alternatives and the proposed action. This approach does not preclude a consideration of economic costs if these costs are essential to a determination regarding the inclusion of an alternative in the range of alternatives considered (i.e., an alternative's exorbitant cost could render it nonviable and unworthy of further consideration) or relevant to mitigation of environmental impacts. Also, the two local tax issues and the two economic structure issues under socioeconomics in the table would be removed from consideration when applying the decision standard.[261]

Petitioner does not discuss alternatives at all in Contention 4, appearing instead to be primarily concerned with issues of socioeconomic stress in the community, but he fails to

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[258] *Id.*

[259] *Id.*

[260] *Id.*

[261] *Id.* at 28,471-72.

provide sufficient information to show any genuine dispute with the Application on this or any other material issue of law or fact. We are thus obliged to find Contention 4 to be inadmissible.

E. Contention 5: Alleged Non-compliance with Emergency Preparedness Requirements

Petitioner in Contention 5 asserts:

> PPL is in violation of the following Federal Regulations: 10 CFR § 50.47; 10 CFR § 50.54; 10 CFR § Part 50 Appendix E; and 44 CFR § 350.[262]

The following explanation is provided:

> The Nuclear Regulatory Commission should hold a final decision for relicensing the SSES in abeyance until such time that PPL can demonstrate and verify its compliance with emergency preparedness measures at the Susquehanna Steam Electric Station under the Radiological Emergency Protective Measures outlined in 10 CFR § 50.47 (Condition of Licenses).[263]

To demonstrate that the "issue raised in the contention is within the scope of the proceeding," Petitioner states that;

> The Susquehanna Steam Electric Station has failed to include child care facilities in their Radiological Emergency Plans for the past 24 years. As such, all three [sic] facilities are in violation of Federal Laws put into place due to Presidential Executive Order 12148 which mandates the provision of "reasonable assurance" that the public, including preschool children, could be protected in the event of a Radiological Emergency as a condition to own and operate a nuclear power license, and SAMA: E.3.2 Population, E.3.3 Economy, 3.4 EMPLOYMENT Current Workforce, E.3.5 Nuclide Release, E.3.6 Evacuation, E.4.5 Replacement Power Cost, and Susquehanna MACCS2 Economic Parameters Variable Description SSES Value, et al.[264]

To show the materiality of Contention 5, Petitioner asserts:

> The NRC can not extend the license of a nuclear power plant that is in violation of the following Federal Regulations: 10 CFR § 50.47; and 10 CFR § 50.54; 10 CFR § Part 50 Appendix E; and 44 CFR § 350.[265]

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[262] Petition at 41.

[263] *Id.*

[264] *Id.*

[265] *Id.* at 42.

Petitioner refers to a Federal Emergency Management Agency (FEMA) "Guidance Memorandum EV-2 Protective Actions for School Children (GM EV-2)," stating that this "federal regulation" requires that:

> appropriate state and local government agencies provide all licensed childcare facilities (with more than 10 children) residing in Emergency Planning Zones (EPZs) with pre-planned radiological emergency services including notification, transportation and relocation centers.[266]

According to Petitioner, the preceding requirement has not been implemented within 10 miles of SSES.[267] Petitioner has been in contact with the NRC, FEMA, and the State of Pennsylvania to address this issue, and says he has also "filed suit at the Department of Justice on August on 28, 2006 [sic]," seeking "to compel the Department of Justice to compel [FEMA] and the [NRC] to review and assess the Special Needs' Emergency Preparedness Plans at Pennsylvania's nuclear generating stations to ensure that GM EV-2's Protective Measures are in place for preschoolers and day care centers through Pennsylvania."[268] Petitioner states that the NRC, FEMA and Pennsylvania have "steadfastly refused to provide or enforce the protective actions" of GM EV-2, and attaches a "Chronology of the Legal History" on these matters to his Petition, which refers among other things to contacts he has had with various officials and entities, including two rule-making petitions to the NRC with which he has been associated, on the same subject as raised in this contention.[269]

Petitioner seeks to have this proceeding "delayed until this legal challenge is resolved to ensure that the NRC does no [sic] extend an out-of-compliance license."[270] Additionally, he

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[266] *Id.*

[267] *Id.*

[268] *Id.* at 43.

[269] *Id.*

[270] *Id.* at 44.

indicates that the Pennsylvania Attorney General referred Petitioner's complaints with the State to the General Accounting Office, who according to Petitioner has since "forwarded the case to the Department of Homeland Security on November 20, 2006."[271] Finally, he states that "[n]o proof exists that [SSES] is in compliance for any special needs' populations within ten miles," questions whether the public and children "could be protected in the event of a Radiological Emergency," alleges that FEMA "is unable to properly implement GM EV-2 and has been submitting false finding to the NRC relating to [SSES] for 24 years," and asserts that it is "impossible for federal, state, and local government to verify that any of Pennsylvania's special needs' populations can subscribe to NUREG-0654 J-12 Reception Centers since these facilities have not been assigned a relocation center."[272]

PPL responds to Contention 5 by stating that it is outside the scope of license renewal and lacks any basis.[273] PPL refers us to SECY-06-0101, Emergency Preparedness for Daycare Facilities Within the Commonwealth of Pennsylvania; Update on Staff Actions and Request for Commission Approval for Related Staff Actions (May 4, 2006), which "demonstrates not only the absence of any real substance behind [Petitioner's] allegations," but also "how NRC's ongoing regulatory oversight ensures the adequacy of emergency preparedness, which is the very reason why emergency planning is beyond the scope of license renewal."[274]

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[271] *Id.* In his later filing of February 28, 2007, Petitioner notified the Board and parties that the U.S. Department of Homeland Security (DHS) Inspector General's had acknowledged receipt of Mr. Epstein's "Motions 'Re: Special Needs' Emergency Planning As A Condition For A License,'" which had been forwarded by the Pennsylvania Attorney General's office. Epstein Homeland Security E-mail.

[272] Petition at 45 (footnote omitted).

[273] PPL Answer at 30.

[274] *Id.* at 31.

The Staff agrees with PPL, emphasizing that evacuation planning is "not related to a structure or component which requires an aging management review, nor is it a Category 2 environmental issue which must be analyzed for a license renewal," and that the Commission "has specifically excluded emergency planning from license renewal proceedings because the issue is not germane to age-related degradation or unique to the period of time covered by the license renewal."[275]

Petitioner in his Reply, again, does not address the law and rules governing the scope of license renewal and the admissibility of contentions, but instead essentially repeats arguments made in his original contention.[276]

In ruling on Contention 5, we recognize that Petitioner raises a significant issue. Obviously, emergency evacuation of children in day care centers in the event of a radiological emergency is a matter of concern. The Commission, however, has categorically stated in the introductory language of 10 C.F.R. § 50.47 that emergency plans do not fall within the scope of license renewal. More specifically, 10 C.F.R. § 50.47, entitled "Emergency Plans," which Petitioner alleges PPL is in violation of, and which is a multi-page rule governing many aspects of the sort of protective measures that must be taken in the event of a radiological emergency, states the following at the second sentence thereof: "No finding under this section is necessary for issuance of a renewed nuclear power reactor operating license."

Regarding the other regulations Petitioner alleges PPL to violate, 10 C.F.R. § 50.54 is an even longer rule concerning "Conditions of licenses," and addresses a large number of

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[275] Staff Response at 27 (citing 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1; *McGuire; Catawba*, CLI-02-26, 56 NRC at 363-64; *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 560-61 (2005); *Turkey Point*, CLI-01-17, 54 NRC at 9-10).

[276] Epstein Reply at 33. Petitioner again insists that he "filed suit at" the Department of Justice, and takes issue with PPL's characterization of the document he sent to DOJ as a "letter." *Id.* n.20.

conditions that "shall be deemed conditions in every license issued." 10 C.F.R. Part 50 Appendix E governs "Emergency Planning and Preparedness for Production and Utilization Facilities" and has sections addressing the preliminary and final Safety Analysis Reports, the Content of Emergency Plans, Implementing Procedures, and an Emergency Response Data System. 44 C.F.R. § 350 is a rule of the Federal Emergency Management Agency (FEMA), concerns "Review and Approval of State and Local Radiological Emergency Plans and Preparedness," and has 15 subsections ranging from "Purpose" to "Criteria . . ." to "Exercises" to "Appeal Procedures." Petitioner does not discuss any specific sections of any of these rules that PPL allegedly violates, again making only general references in this regard.[277]

We recognize that Petitioner in his discussion of Contention 5 uses the term "SAMA," referring to the Category 2 issue of "Severe accidents" (and mitigation alternatives) that is listed in Table B-1 of 10 C.F.R. Part 51, Subpart A, Appendix B.[278] More than this is required, however. While 10 C.F.R. § 2.309(f)(1)(vi) requires that the information provided to support a

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[277] In comparison, we note that the licensing board in another license renewal proceeding, involving the Pilgrim Nuclear Power Station in Massachusetts, admitted a contention involving certain emergency evacuation issues, in the specific context of three of the specific input data for the severe accident mitigation alternatives (SAMA) analysis that license renewal applicants are required to perform. *See Pilgrim*, LBP-06-23, 64 NRC at 323-41. In that limited context, based on a relatively well-supported and technical presentation in comparison to that made by Petitioner, the licensing board admitted a contention stating the following:

> Applicant's SAMA analysis for the Pilgrim plant is deficient in that the input data concerning (1) evacuation times, (2) economic consequences, and (3) meteorological patterns are incorrect, resulting in incorrect conclusions about the costs versus benefits of possible mitigation alternatives, such that further analysis is called for.

Id. at 341. That contention thus fell squarely within the environmental aspect of license renewal as opposed to the safety aspect thereof (in which it has been ruled that emergency planning is an issue that need not be re-examined in a license renewal). *Id.* at 340 (citing *Turkey Point*, CLI-01-17, 54 NRC at 9). Moreover, what was called for in that contention was "further analysis." *See id.* at 341. We note that NEPA requires only *analysis* and *consideration* of significant environmental impacts, not action on or "resolution" of any issues in the manner suggested by Petitioner. *See supra* n.125.

[278] *See* text accompanying n.264 *supra*.

contention must "include references to specific portions of the application," this is but part of what is required. As stated above, a Petitioner must provide "sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact." This Petitioner Epstein has not done. In contrast to the petitioners in the *Pilgrim* proceeding,[279] Petitioner Epstein nowhere discusses, or challenges, any specific input data for the SAMA analysis, nowhere discusses how the issue he wishes to raise fits into the Susquehanna SAMA analysis, and nowhere provides any supporting information to show any genuine dispute with the Applicant on such data. Therefore, even apart from the scope issue, the contention must be denied because it has not met the requirements of 10 C.F.R. § 2.309(f)(1)(vi).

With regard to Petitioner's rule-making petitions on the subject of emergency planning for day care centers, the Commission denied both petitions.[280] We note that, in the denial of the latter petition, which was apparently filed by Mr. Epstein alone, the Commission indicated that the "petition and information obtained during the review of the petition, raised questions about local implementation of relevant requirements and guidelines," and that it had accordingly "directed the NRC staff to undertake several actions to further assess these implementation questions and to provide appropriate recommendations for improvement."[281] In response to this direction, the NRC staff had met with DHS and the Pennsylvania Emergency Management Agency, who had "described a comprehensive program, mandated by Pennsylvania law, for licensed day care facilities that substantially enhances the existing emergency preparedness

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[279] *See id.*

[280] *See* Proposed Rules, 10 CFR Part 50, Mr. Lawrence T. Christian, et al.; Denial of Petition for Rulemaking, 70 Fed. Reg. 75,085 (Dec. 19, 2005); Proposed Rules, 10 CFR Part 50, Mr. Lawrence T. Christian, et al.; Denial of Petition for Rulemaking, 71 Fed. Reg. 44,593 (Aug. 7, 2006); Proposed Rules, 10 CFR Part 50, Mr. Eric Epstein; Denial of Petition for Rulemaking, 72 Fed. Reg. 9708 (Mar. 5, 2007).

[281] 72 Fed. Reg. at 9708 (citing Staff Requirements Memorandum (SRM), Oct. 26, 2005, ADAMS Accession No. ML052990321).

posture that was previously found by DHS to provide reasonable assurance that adequate protective measures will be taken for the public, including children in day care facilities."[282] The Commission in denying the petition indicated that the NRC staff had "provided the Commission the results of this assessment and other related initiatives" in SECY–06–0101, ADAMS Accession No. ML060760586.[283]

The Commission noted that it had considered a differing professional opinion (DPO) regarding the issue that was cited by Mr. Epstein in his rule-making petition, but that the DPO raised issues about "local implementation of the requirements and guidance, and DHS/ FEMA evaluation of local implementation, neither of which could be resolved by the petitioner's proposal that the GM EV–2 criteria be incorporated into NRC regulations."[284] Noting that "GM EV–2 is a guidance document developed by FEMA and utilized by the DHS, which has primary responsibility for assessing the adequacy of offsite emergency preparedness," and that the "NRC bases its own findings in part on a review of DHS's findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented," the Commission also stated, in a footnote, that it had on October 26, 2005, directed the staff to "develop guidance and expectations for the NRC review of FEMA's assessment and findings of offsite emergency preparedness," which activity "should address the petitioner's and the DPO's issues with respect to the adequacy of FEMA/DHS evaluation of local implementation of offsite emergency preparedness."[285]

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[282] *Id.* at 9709.

[283] *Id.*

[284] *Id.* at 9708.

[285] *Id.* at 9709 & n.3.

It thus appears that Pettioner's concerns are not being ignored, as he suggests. In addition, as he has informed us, he continues to press his issue before the Department of Homeland Security. As discussed above, however, under relevant law governing license renewal proceedings, this Licensing Board may not admit the contention submitted by Petitioner.

VII. CONCLUSION and ORDER

In conclusion, although we find that Petitioner Epstein has established individual standing in this proceeding, we further find that his petition may not be granted because he has not submitted an admissible contention, for the reasons we have stated above.[286]

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[286] Because Petitioner Epstein appears *pro se* in this proceeding, we add an additional note of explanation and clarification at this point, centering on the observation that there are some basic legal principles that not only govern our actions herein but also protect the rights of petitioners such as himself to fair and neutral decision-making in such proceedings. These principles include the related requirements that we be independent in our decision-making, ruling without fear or favor, and that we base our rulings solely on the facts and the law applicable in any given case — no matter where this leads us, whether for or against any party, including the NRC Staff, a license applicant, or a petitioner such as Mr. Epstein. *See*, *e.g.*, ABA Model Code of Judicial Conduct (Feb. 2007), Canon 1; Rule 1.1; Canon 2; Rules 2.2, 2.4. While there may be varying views in some instances on what the result should be in a particular case, as administrative judges we are required to base our decisions on our own best reading of the facts and law of any given case, and not on any other factors or influences.

The law that governs our actions in this proceeding includes, as we discuss in sections III and V.A of our Memorandum, statutes, regulations and case law decisions relating to the standing of petitioners to participate in NRC adjudicatory proceedings and to the admissibility of contentions submitted in such proceedings. It also, as illustrated in section V.B above, includes law specifically concerning license renewal proceedings, the scope of which has been narrowly restricted by the Commission in its regulations and decisions in other license renewal proceedings. We have summarized some of the relevant law on these subjects, as context for our rulings herein.

We note that in some instances Petitioner herein appears to disagree strongly with a law or rule, or alleged lack thereof. However, adjudication involves the resolution of disputes *based on existing law*, which effectively sets the parameters of the dispute and governs how it is to be resolved. In contrast, to the extent one disagrees with existing law, including regulations governing matters at issue, this is best addressed through means other than adjudication; for example, through legislation or rule-making.

One may petition the Commission for a rule-making to change an NRC rule of concern; one may also request waiver of a rule, seek an enforcement action by Commission staff, or approach other entities with relevant legislative, regulatory, or enforcement jurisdiction. *See*, *e.g.*, section V.A & text accompanying nn.102-103 *supra*. It appears that Petitioner is familiar with the rule-making approach, having been involved in the filing of at least two such petitions to the Commission. *See* discussion of Contention 5 in section VI.E above. Also, it may be that

Therefore, based on the preceding rulings, findings, and conclusion, it is, this 22nd day of March, 2007, ORDERED that the Petition to Intervene of Eric Joseph Epstein be DENIED and this proceeding be TERMINATED.

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some entities will have greater discretion to consider some of the other sorts of approaches that Petitioner proposes in his arguments to us. But with regard to adjudication, it may be helpful to observe that the limitation of judges' discretion to following relevant law, and applying it to the best of their ability to the individual facts of particular cases (as opposed to being open to arguments based on appeals to emotion, for example), better ensures decisions that are fair — consistently applied to all similarly situated persons — rather than based on bias, prejudice, caprice, improper influence, or indeed sympathy, which may vary depending upon the individual inclinations and personalities of different judges.

We would also observe that, while petitioners such as Mr. Epstein are to be commended for becoming involved as concerned citizens on public issues of concern, it is generally the case in legal proceedings that the assistance of competent legal counsel is necessary in order to be as focused and effective as possible in pursuing one's case. Particularly in a proceeding (such as this one) involving relatively complex issues and law, a party without a lawyer will likely be at a disadvantage. But while we may reasonably accommodate *pro se* petitioners who are not technically perfect in their pleading, such parties must still meet the basic requirements of the contention admissibility rules, and if these are not met, we may not "fill in" any missing support, but, rather, are legally required to deny the contention. *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1,2, and 3), CLI-91-12, 34 NRC 149, 155 (1991); *Consolidated Edison Co. Of N.Y.* (Indian Point, Unit 2) and *Power Authority of the State of N.Y.* (Indian Point, Unit 3), LBP-83-5, 17 NRC 134, 136 (1983); *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-01-3, 53 NRC 84, 99 (2001); *see also Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305 (1995).

Our responsibility to make our decisions based on existing law and on what is provided by a petitioner in support of a contention is, thus, not suspended in an instance in which a petitioner may have failed to comply with all relevant requirements as a result of not having a lawyer and not being skilled in the law himself. Indeed, the principles underlying the contention admissibility requirements of the NRC procedural rules include the need for a petitioner to show "at least some minimal factual *and legal* foundation" in order to trigger a full adjudicatory hearing, which must be focused on "real disputes susceptible of resolution in an adjudication." *See* discussion at section V.A above; *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999) (emphasis added). More broadly, only through our own best, good-faith efforts to follow and apply the law consistently can we aid in the realization of the broader public interest in fair proceedings generally. We endeavor herein to fulfill our duty in this regard.

Because we rule herein on an intervention petition, *any appeal to the Commission from this Memorandum and Order must be filed within ten (10) days after it is served*, in accordance with the provisions of 10 C.F.R. § 2.311.

THE ATOMIC SAFETY
AND LICENSING BOARD

_____
Ann Marshall Young, Chair
ADMINISTRATIVE JUDGE

_____
Dr. Kaye D. Lathrop
ADMINISTRATIVE JUDGE

_____
Dr. William W. Sager
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 22, 2007[287]

[287] Copies of this Order were sent this date by Internet e-mail transmission to all participants or counsel for participants.