

RAS 10690

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-05-31
DOCKETED 11/01/05

ATOMIC SAFETY AND LICENSING BOARD

SERVED 11/01/05

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Richard E. Wardwell
Dr. William M. Murphy

In the Matter of

Nuclear Management Company, LLC

(Monticello Nuclear Generating Plant)

Docket No. 50-263-LR

ASLBP No. 05-841-02-LR

November 1, 2005

MEMORANDUM AND ORDER
(Ruling on Standing and Contention Admissibility)

Before the Board is a petition to intervene related to the application of the Nuclear Management Company, LLC (NMC) to renew the operating license for its Monticello Nuclear Generating Plant (MNGP) in Monticello, Minnesota (located approximately 30 miles northwest of Minneapolis). The Petition was filed by the North American Water Office (NAWO),¹ an organization that describes itself as a public interest group formed to educate the public regarding environmental problems caused by society's waste, with a particular focus on the adverse health and economic consequences that the waste from electric utilities has on Indigenous Peoples, Peoples of Color, and those who live at subsistence levels.² On August 8, 2005, the Commission referred this petition to the Licensing Board Panel for its consideration.³

For the reasons set forth below, we find that NAWO has not demonstrated standing to

¹ Request for a Hearing and Petition for Leave to Intervene by the North American Water Office (July 9, 2005) [hereinafter NAWO Petition].

² Id. at 1.

³ Memorandum to Chief Administrative Judge G.P. Bollwerk, III, from A.L. Bates, NRC Acting Secretary (Aug. 8, 2005). See also 70 Fed. Reg. 48,607 (Aug. 18, 2005) (establishing Licensing Board) and ASLBP Notice of Reconstitution (Aug. 25, 2005) (unpublished).

intervene in this proceeding, nor has it submitted an admissible contention relating to the NMC license renewal application. Accordingly, for both of these reasons we decline to admit NAWO as a party to this proceeding.

I. BACKGROUND

A. NMC's Application and the Proposed License Renewal

On March 16, 2005, pursuant to 10 C.F.R. Part 54, NMC filed with the Commission an application for a twenty-year renewal of its 10 C.F.R. Part 50 operating license for its MNGP. The current license expires on September 8, 2010. NMC's license application (LA) includes a final safety analysis report (FSAR) supplement, an environmental report (ER) supplement, an integrated plant assessment (IPA), an aging management review (AMR), and time-limited aging analyses (TLAAs).⁴ The MNGP, NMC, and the license renewal process are adequately described in the license application and those descriptions need not be repeated here.

B. NAWO Hearing Request/Intervention Petition and Responses

On July 9, 2005, in accordance with the Commission's Notice of Opportunity for Hearing in this proceeding,⁵ NAWO filed with the Commission a request for a hearing and petition for leave to intervene in the proceeding on the MNGP license renewal application, stating that it has standing to intervene and has proffered admissible contentions.⁶ On August 3, 2005, NMC

⁴ Application for Renewed Operating License, Monticello Nuclear Generating Plant (Mar. 16, 2005), ADAMS Accession No. ML0508802450.

⁵ 70 Fed. Reg. 25,117-19 (May 12, 2005).

⁶ See NAWO Petition. We note that in its Answer to NAWO's Petition the NRC Staff stated, at 2 n.3, that while the Petition was served via e-mail on July 9, 2005, NAWO failed to serve an original signed copy as required by 10 C.F.R. § 2.305(c). NAWO did not respond to this allegation in its Reply Comment (Aug. 9, 2005) [hereinafter NAWO Reply]. Pursuant to 10 C.F.R. § 2.302(a)(3), petitions to intervene in Commission proceedings may be filed by e-mail. However, such documents "may be refused acceptance for filing," 10 C.F.R. § 2.304(g), unless, within two (2) days after the electronic filing, an original and two copies of these documents, in the format specified at Section 2.304(b), are mailed to the Commission's Rulemakings and Adjudications Staff. 10 C.F.R. § 2.304(f). Here, the NRC Staff did not request that the Board

and the NRC Staff each filed responses to the NAWO petition. For its part, NMC asserts that NAWO failed to demonstrate either organizational or representational standing, and further failed to proffer any admissible contentions because, among other things, NAWO's contentions are outside the scope of the license renewal proceeding and provide inadequate factual and expert opinion support.⁷ The NRC Staff similarly contests NAWO's standing to intervene, either in an organizational or in a representational capacity, and likewise avers that NAWO has not set out an admissible contention.⁸ NAWO filed a reply to these responses on August 9, 2005, in which it provided additional information relative to its proffered contentions, specifically with regard to NAWO Contentions Nos. 4 and 5.⁹

C. Additional Matters

On August 19, 2005, the NRC Staff filed a Motion to Strike NAWO's Reply,¹⁰ asserting that by its reply NAWO sought to raise for the first time wholly new arguments that were not included in its original petition and failed to address the 10 C.F.R. §§ 2.309(c), 2.309(f)(2) criteria for late-filed contentions. NAWO responded to that Motion on August 29, 2005, stating that its reply was a legitimate response to the Staff's Answer, and that the Staff had not made a "sincere effort" to resolve the issues raised in the Motion to Strike before filing that motion with

take any action based on NAWO's failure to comply with the rules, and the Commission did accept the Petition for filing.

⁷ NMC's Answer to Request for Hearing and Petition to Intervene by the NAWO (Aug. 3, 2005) [hereinafter NMC Answer].

⁸ NRC Staff Answer to Petition to Intervene and Request for Hearing of the NAWO (Aug. 3, 2005) [hereinafter NRC Staff Answer].

⁹ Reply Comment of NAWO (Aug. 3, 2005) [hereinafter NAWO Reply].

¹⁰ NRC Staff Motion to Strike Comment of the NAWO (Aug. 19, 2005) [hereinafter Staff Motion to Strike].

the Board as required by 10 C.F.R. § 2.323(b).¹¹ As discussed further below at p. 26, the NRC Staff's Motion to Strike is denied, and the Board has fully considered the NAWO Reply to the extent its substance legitimately amplifies issues first raised in the NAWO Petition.¹²

Thereafter, on September 30, 2005, NAWO filed a Motion in which it asked this Board to declare NMC's LA incomplete and to direct that it be withdrawn. More specifically, NAWO alleged that the LA failed to identify numerous components that experience aging-related deterioration. As evidence of that fact, NAWO offered the requests for additional information (RAIs) that were sent to NMC by the NRC Staff on September 15 and 16, 2005. This motion is also denied.¹³

The completeness of NMC's LA is not a matter that this Board should, or can, decide

¹¹ Reply of the North American Water Office to NRC Staff Motion to Strike Comment of North American Water Office (Aug. 29, 2005) at 2-3.

¹² See Louisiana Energy Services, L.P. (National Enrichment Facility), LBP-04-14, 60 NRC 40, 58 (2004), aff'd in relevant part, CLI-04-25, 60 NRC 223 (2004).

¹³ In its response, the NRC Staff asks that we not consider this motion because it was not timely filed in accordance with 10 C.F.R. § 2.323(a) (the NRC Staff avers that the motion was filed more than 10 days after the NRC submitted the RAIs to NMC), and also because NAWO did not consult with the other parties prior to filing the motion in an effort to resolve the issues raised in the motion as required by 10 C.F.R. § 2.323(b). Given that NAWO is proceeding pro se, that it is clear that neither the NRC Staff nor NMC would have agreed to the relief requested in the motion, and that it is unclear when the occurrence or circumstance from which the motion arose occurred, we decline the Staff's suggestion to dispose of this motion on procedural defects, and we have considered NAWO's motion on its merits. See Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973); International Uranium Corp. (White Mesa Uranium Mill), LBP-01-08, 53 NRC 204, 207-08 (2001).

We note, however, our discomfort with the apparent fact that NAWO did not serve a copy of this motion on counsel for the NRC Staff. See NRC Staff Answer to Motion of NAWO (Oct. 17, 2005) at 1, n.1. If NAWO files additional pleadings in NRC adjudicatory proceedings, it should consider that the failure properly to serve counsel for the other participants in the litigation may result in its pleading being stricken. See 10 C.F.R. § 2.319; see also Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 2), LBP-92-26, 36 NRC 191 (1992) (striking of a pleading was viewed as an appropriate sanction to educate a litigant on the need to comply with NRC Rules of Practice and directives from the Board).

upon a motion. The decision whether to accept the LA for docketing is made by the NRC Staff, and that decision is not subject to review by this Board.¹⁴ If NAWO believed there were deficiencies in the LA that it wished to raise before this Board, it should have identified them in a proposed contention and, if the contention were admitted and found meritorious, the license application would not be granted.¹⁵ NAWO's motion is simply not an appropriate manner by which to raise these issues.

II. ANALYSIS

NRC regulations require that any individual, group, business, or governmental entity that wishes to intervene as a party in an adjudicatory proceeding addressing a proposed licensing action must (1) file a timely written request to intervene; (2) establish that it has standing; and (3) offer at least one admissible contention.¹⁶

A. Standing

A petitioner seeking to establish that it has standing to participate in an NRC adjudicatory proceeding must provide information in its petition to intervene concerning: (1) the nature of the petitioner's right under the Atomic Energy Act (AEA) or the National Environmental Policy Act (NEPA) to be made a party; (2) the petitioner's property, financial, or other interests in the proceeding; and (3) the potential effect that any decision reached within the proceeding

¹⁴ New England Power Company, et al. (NEP Units 1 and 2), LBP-78-9, 7 NRC 271, 280 (1978).

¹⁵ Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-98-26, 48 NRC 232, 242-43, aff'd CLI-98-25, 48 NRC 325, 349-50 (1998). See also Louisiana Energy Services, L.P. (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 338-39 (1991).

¹⁶ 10 C.F.R. § 2.309(a)-(b). The current regulation covering, inter alia, contention requirements is 10 C.F.R. § 2.309, adopted on January 14, 2004, effective February 13, 2004. 69 Fed. Reg. 2,182, 2,198-2,203 (Jan. 14, 2004). The current regulation is, in pertinent part, substantially similar to the prior regulation, 10 C.F.R. § 2.714. The case law cited herein generally refers to the prior regulation or its predecessors.

may have on the petitioner's interest.¹⁷

More specifically, to establish standing a petitioner must demonstrate "injury in fact." That is, the petitioner must show that some injury has occurred to it, or will probably occur to it, as a result of the agency action, and that the injury is within the "zone of interests" protected by the AEA or NEPA. Moreover, the demonstrated injury to the petitioner must be both concrete and particularized, not conjectural or hypothetical.¹⁸ The petitioner must demonstrate that the injury is traceable to the proposed action, and that a favorable decision in the proceeding is likely to redress the alleged injury.¹⁹ An academic interest in the matter, without a direct impact on the person or organization asserting it, does not confer standing.²⁰

An organization may satisfy the standing criteria set forth in 10 C.F.R. § 2.309(d)(1) by demonstrating (1) organizational standing, or (2) representational standing. To demonstrate organizational standing, the petitioner must show "injury in fact" to the interests of the organization itself,²¹ as well as demonstrate a causal nexus and redressability. To plead representational standing, on the other hand, the organization

must demonstrate how at least one of its members may be affected by the licensing action (such as by activities on or near the site), must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that

¹⁷ 10 C.F.R. § 2.309(d)(1)(ii)-(iv).

¹⁸ O'Shea v. Littleton, 414 U.S. 488, 494 (1974).

¹⁹ Nat'l Wildlife Fed'n v. Hodel, 839 F.2d 694, 705 (D.C. Cir. 1988); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (must be likely, as opposed to merely speculative, the injury will be redressed by a favorable decision).

²⁰ See Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

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

member.²²

In other words, the organization must show that one or more of its members would have standing to intervene on their own behalf, and that such a specifically-identified member has authorized the organization to request a hearing on their behalf.²³ A petitioner may not simply assert interests of third persons as a basis for standing.²⁴

In determining whether NAWO has demonstrated standing, we must determine whether a cognizable interest of the petitioner organization, or of one of its specifically-identified members, will be adversely affected if the proceeding has one outcome rather than another.²⁵ More specifically, we must determine whether NAWO has demonstrated such a personal stake, on behalf of itself or its member(s), in the outcome of this proceeding as to show that a concrete adverseness exists that will sharpen the presentation of issues.²⁶

In its Request for Hearing, NAWO represents that “it is a member of the community that consumes electricity generated by the Monticello Reactor” and that it “is geographically located in the region that will be adversely impacted if or when the Monticello Reactor experiences a significant event.”²⁷ In addition, NAWO represents that it “has a deep history of involvement

²² Northern States Power Company (Monticello Nuclear Generating Plant; Prairie Island Nuclear Generating Plant, Units 1 and 2; Prairie Island Independent Spent Fuel Storage Installation), CLI-00-14, 52 NRC 37, 47 (2000).

²³ Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

²⁴ Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994).

²⁵ See Sequoia Fuels Corporation and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 69 (1994); Nuclear Engineering Co. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

²⁶ Duke Power Co. v. Carolina Env'tl Study Group, Inc., 438 U.S. 59, 72 (1978); see also Baker v. Carr, 369 U.S. 186, 204 (1962).

²⁷ NAWO Petition at 1.

with commercial nuclear operations from a public interest perspective” and that “the decision made in this proceeding has the possible effect . . . of transforming the broader community in which NAWO personnel live and work into an abandoned sacrifice zone.”²⁸ In its request for hearing, however, we are not told anything specific about NAWO or its members. We are not told how many members or employees NAWO has. We are not told how many, if any, of its members or employees live or work within 5 miles, 50 miles, or 500 miles of the MNGP. The only biographical information that NAWO supplied in its pleadings is the name of its Executive Director, and a P.O. Box in Lake Elmo, MN, which it provided as a return address for mail delivery.²⁹

We accept that NAWO has a general interest in effective and efficient regulation of the nuclear power industry, has been engaged in past NRC actions, and has shown a keen interest in NRC proceedings.³⁰ What Petitioner has not shown, however, is that it, or any of its members, would suffer a concrete and particularized harm if the proposed action were permitted.³¹ It has not shown that an adverse ruling by this Board in this proceeding would result in an “injury in fact” to it or to its members.³² It has not established that it, or its members, have a “direct stake” in the outcome of this proceeding that is greater than that of any other resident that consumes electricity generated by the Monticello plant.³³ As the Commission has

²⁸ Id.

²⁹ Id. at 7.

³⁰ Id. at 1-2, 6.

³¹ See Gore, CLI-94-12, 40 NRC at 72; see also International Uranium (USA) Corporation (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117 (1998).

³² Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 112-13 (1979).

³³ See Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 448 (1979), aff'd, ALAB-549, 9 NRC 644 (1979); see also Sierra Club v.

stated, “a ‘generalized grievance’ shared in substantially equal measure by all or a large class of citizens will not result in a distinct and palpable harm sufficient to support standing.”³⁴

Likewise, an allegation of “special interest” without a showing of “particularized harm” is insufficient to establish standing.³⁵ Thus, Petitioner’s interest in nuclear safety, “no matter how long standing the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render [it] ‘adversely affected’”³⁶

Moreover, Petitioner has made no effort to demonstrate its authority to intervene and request a hearing on behalf of a NAWO member. Not only has NAWO failed to provide an affidavit or other express delegation of authority from any individual to represent it before this Board, NAWO has failed to identify any individual whose interests it seeks to represent. If we were to find that such a vague and cursory showing established standing, it would render Section 2.309(d) virtually meaningless. Even construing the intervention petition in the light most favorable to NAWO,³⁷ we conclude that it has not met the standing requirements of 10 C.F.R. § 2.309(d) and that, accordingly, it cannot be admitted as a party to this proceeding.

Morton, 405 U.S. 727, 740 (1972).

³⁴ Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 333 (1983).

³⁵ Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982).

³⁶ Sierra Club v. Morton, 405 U.S. at 739-40; see also Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 421 (1976).

³⁷ Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

B. Standards Governing Contention Admissibility³⁸

The requirements that must be met if a contention is to be admitted are set out at 10 C.F.R. § 2.309(f). Pursuant to that regulation, an admissible contention must (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely at hearing; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief.³⁹

The purpose of the contention rule, 10 C.F.R. § 2.309(f), is to "focus litigation on concrete issues and result in a clearer and more focused record for decision."⁴⁰ The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC

³⁸ Notwithstanding that we have found NAWO has failed to demonstrate the requisite standing to be admitted as a party to this proceeding, because petitioner is proceeding pro se, we have examined its proposed contentions in detail and conclude, as more fully set out in the text of this Memorandum and Order, that even if NAWO had demonstrated standing none of its proposed contentions would be admissible.

³⁹ 10 C.F.R. § 2.309(f)(1)(i) - (vi).

⁴⁰ 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004). See also Vermont Yankee Nuclear Power Corp. v. Natural Resources Def. Council, Inc., 435 U.S. 519, 553-54 (1978); BPI v. AEC, 502 F.2d 424, 428 (D.C. Cir. 1974); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

hearing.”⁴¹ The Commission has emphasized that the rules on contention admissibility are “strict by design.”⁴² Failure to comply with any of these requirements is grounds for the dismissal of a contention.⁴³

The application of these requirements has been further developed as summarized below.

1. Brief Explanation of the Basis for the Contention

A “brief explanation of the basis for the contention” is a necessary prerequisite for an admissible contention.⁴⁴ “[A] petitioner must provide some sort of minimal basis indicating the potential validity of the contention.”⁴⁵ The brief explanation helps define the scope of a contention – “[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases.”⁴⁶

2. Within the Scope of the Proceeding

A petitioner must demonstrate that the “issue raised in the contention is within the scope of the proceeding,”⁴⁷ which is defined by the Commission in its initial hearing notice and order

⁴¹ 69 Fed. Reg. at 2,202.

⁴² Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), petition for reconsideration denied, CLI-02-1, 55 NRC 1 (2002).

⁴³ 69 Fed. Reg. at 2,221. See also Private Fuel Storage, CLI-99-10, 49 NRC at 325; Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

⁴⁴ 10 C.F.R. § 2.309(f)(1)(ii).

⁴⁵ 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989).

⁴⁶ Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), aff’d sub nom. Massachusetts v. NRC, 924 F.2d 311 (D.C. Cir. 1991), cert. denied, 502 U.S. 899 (1991); see also Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002).

⁴⁷ 10 C.F.R. § 2.309(f)(1)(iii).

referring the proceeding to the Licensing Board.⁴⁸ Any contention that falls outside the specified scope of the proceeding must be rejected.⁴⁹ Given that an operating license renewal for a nuclear generating plant is the genesis of this proceeding, the review of technical issues in this proceeding will generally be limited to a review of plant structures and components that will require an aging management review for the proposed extended period of operation, 10 C.F.R. §§ 54.21, 54.22, 54.29, and the review of environmental issues will be limited by 10 C.F.R. §§ 51.53(c), 51.71(d), 51.95(c), 54.23. Accordingly, issues relating to any other matters are outside the scope of this proceeding, and cannot serve as the basis for an admissible contention.

3. Materiality

To proffer an admissible contention, a petitioner must demonstrate that the contention asserts an issue of law or fact that is “material to the findings the NRC must make to support the action that is involved in the proceeding;”⁵⁰ that is, the petitioner must demonstrate that the subject matter of the contention would impact the grant or denial of a pending license application. “Materiality” requires that the petitioner show why the alleged error or omission is of possible significance to the result of the proceeding. This means that there must be some significant link between the claimed deficiency and either the health and safety of the public, or the environment.⁵¹

⁴⁸ Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985).

⁴⁹ Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979).

⁵⁰ 10 C.F.R. § 2.309(f)(1)(iv).

⁵¹ Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 75 (1996), rev'd in part on other grounds, CLI-96-7, 43 NRC 235 (1996); see also Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375, 394 (D.C. Cir. 1973), cert. denied sub nom. Portland Cement Corp. v. Adm'r, E.P.A., 417 U.S. 921 (1974); Pacific Gas & Electric Co. (Diablo Canyon

4. Concise Allegation of Supporting Facts or Expert Opinion

Contentions must be supported by “a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue . . . together with references to the specific sources and documents on which [it] intends to rely to support its position.”⁵² It is the obligation of a petitioner to present the factual information and expert opinions necessary to adequately support its contention.⁵³ Failure to do so requires that the contention be rejected.⁵⁴

Determining whether a contention is adequately supported by a concise allegation of the facts or expert opinion does not require the equivalent of a hearing on the merits.⁵⁵ A petitioner does not have to prove its contention at the admissibility stage. However, supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny.⁵⁶ The contention admissibility threshold is less than is required at the summary disposition stage⁵⁷ and, although a “Board may appropriately view petitioners’ support

Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41 (2002), petition for review denied, CLI-03-12, 58 NRC 185, 191 (2003).

⁵² 10 C.F.R. § 2.309(f)(1)(v).

⁵³ Georgia Institute of Tech. (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, vacated in part and remanded on other grounds and aff’d in part, CLI-95-10, 42 NRC 1, and CLI-95-12, 42 NRC 111 (1995).

⁵⁴ Palo Verde, CLI-91-12, 34 NRC at 155.

⁵⁵ Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1654 (1982).

⁵⁶ Private Fuel Storage L.L.C. (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004); Yankee Nuclear, LBP-96-2, 43 NRC at 90.

⁵⁷ See 10 C.F.R. § 2.710(c). “[A]t the contention filing stage the factual support necessary to show that a genuine dispute exists need not be in affidavit or formal evidentiary form and need not be of the quality necessary to withstand a summary disposition motion.” 54 Fed. Reg. at 33,171.

for its contention in a light that is favorable to the petitioner,”⁵⁸ a petitioner must provide some support for his contention, either in the form of facts or expert testimony.

Mere “notice pleading” is insufficient. A petitioner’s contention will be inadmissible if the petitioner “has offered no tangible information, no experts, no substantive affidavits,” but instead only “bare assertions and speculation.”⁵⁹ Further, if a petitioner neglects to provide the requisite support for its contentions, the Board should not make assumptions of fact that favor the petitioner, or supply information that is lacking.⁶⁰ Likewise, providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention.⁶¹

In short, the information, facts, and expert opinions provided by the petitioner will be examined by the Board to confirm that they do indeed supply adequate support for the contention.⁶² Nevertheless, at the contention admissibility stage all that is required is that the petitioner provide “some alleged fact, or facts, in support of its position.”⁶³

⁵⁸ Palo Verde, CLI 91-12, 34 NRC at 155.

⁵⁹ See Fansteel, Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003) (citing GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)); see also Louisiana Energy Servs., L.P., LBP-04-14, 60 NRC at 55.

⁶⁰ Georgia Tech, LBP-95-6, 41 NRC at 305; see also Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001).

⁶¹ See Fansteel, CLI-03-13, 58 NRC at 205.

⁶² Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), vacated in part on other grounds and remanded, CLI-90-4, 31 NRC 333 (1990).

⁶³ 54 Fed. Reg. at 33,170 (“This requirement does not call upon the intervenor to make its case at this stage of the proceeding, but rather to indicate what facts or expert opinions, be it one fact or opinion or many, of which it is aware at that point in time which provide the basis for its contention.”).

5. Genuine Dispute Regarding Specific Portions of Application

All contentions must “show that a genuine dispute exists” with regard to the license application in question, identify and challenge either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each dispute.⁶⁴ Any contention that fails directly to controvert the application, or that mistakenly asserts that the application does not address a relevant issue, may be dismissed.⁶⁵

6. Challenges to NRC Regulations

In addition to the requirements set out above, with limited exceptions not applicable in this case, “no rule or regulation of the Commission . . . is subject to attack . . . in any [NRC] adjudicatory proceeding.”⁶⁶ By the same token, any contention that amounts to an attack on applicable statutory requirements or represents a challenge to the basic structure of the Commission’s regulatory process must be rejected by a Licensing Board as outside the scope of its proceeding.⁶⁷ The NRC adjudicatory process is not the proper venue for the evaluation of a petitioner’s personal view regarding the direction regulatory policy should take.⁶⁸

Applying the above-stated standards, our rulings on NAWO’s various contentions are outlined below.

⁶⁴ 10 C.F.R. § 2.309(f)(1)(vi).

⁶⁵ Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), review declined, CLI-94-2, 39 NRC 91 (1994); see also Texas Utilities Elec. Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).

⁶⁶ 10 C.F.R. § 2.335(a); see also Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 218 (2003).

⁶⁷ Pub. Serv. Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982) (citing Peach Bottom, ALAB-216, 8 AEC at 20-21).

⁶⁸ Peach Bottom, ALAB-216, 8 AEC at 21 n.33.

C. Rulings on NAWO Contentions

1. NAWO Contention No. 1

“The No Action Alternative and Alternative Options for Providing Electrical Utility Services Are Not Adequately Addressed.”⁶⁹

The first contention addresses the “no action alternative” and “alternative options” analysis requirements imposed by 10 C.F.R. §§ 51.45(b)(3), 51.53(c)(2), and NEPA. NAWO asserts that throughout the life of the license renewal period, Community-Based Energy Development (C-BED) energy projects will be viable alternatives to nuclear power and will “out-perform Monticello.”⁷⁰ Petitioner proceeds to explain the perceived virtues of the C-BED projects, including the backing of the Minnesota state government.⁷¹

As the basis for this contention, NAWO suggests that the energy capacity provided by MNGP during the license renewal period will be replaced by C-BED alternative energy projects in the region, specifically by wind/bio-fuel combustion hybrid facilities. NAWO states that C-BED “is a statutory provision that establishes a framework within which all electric utilities serving loads in Minnesota will negotiate power purchase agreements with qualifying owners” of locally owned, distributed, and dispersed renewable energy projects.⁷² In addition to replacing NMC energy generating capacity, NAWO asserts that these new energy sources will “significantly diminish or eliminate waste management and public health and safety issues,” and “provide dramatically enhanced local economic development value to the regional economy.”⁷³

⁶⁹ NAWO Petition at 2.

⁷⁰ Id.

⁷¹ Id. at 3.

⁷² Id. at 2.

⁷³ Id.

NAWO's discussion of proposed C-BED projects does not, however, provide any specific information to assess the extent of the program, its specific mission and authority, or its potential effectiveness in developing alternative energy sources. In proposing C-BED projects, NAWO does not provide any factual information or expert opinion that supports the potential for wind/bio-fuel combustion hybrid facilities to provide for the loss of baseload capacity provided by the MNGP should the license not be renewed.

As noted above, a contention is inadmissible if it does not include expert testimony, tangible information, or substantive affidavits, but instead, contains only "bare assertions and speculation."⁷⁴ Failure to provide such facts or expert opinions does not satisfy Section 2.309(f)(1)(v) and, accordingly, is insufficient to support the admissibility of a contention.

Failing to supply adequate factual support for this contention, NAWO also fails to address that NMC did, in fact, discuss alternatives to the proposed action, and analyzed the environmental effects of those alternatives in Section 7 of the ER.⁷⁵ NMC divided its discussion of alternatives into two categories; (1) the "no action" alternative, and (2) other alternatives that meet system generating needs. In ER Section 7.1, NMC addresses the "no action" alternative by evaluating the potential environmental impacts of not renewing the MNGP operating license (i.e., ecological and socioeconomic impacts from decommissioning). This discussion is independent of actions to replace or compensate for the loss of generating capacity. NMC went on in ER Section 7.2 to describe feasible options for replacing the baseload power (i.e., purchased power, natural gas-fired generation, and coal-fired generation). NMC also discussed alternatives that it deemed unreasonable, such as: (a) generating options including wind and

⁷⁴ Fansteel, CLI-03-13, 58 NRC at 203 (citing Oyster Creek, CLI-00-06, 51 NRC at 208).

⁷⁵ Monticello Nuclear Generating Plant Application for Renewed Operating License, Appendix E - Environmental Report, Section 7 (Mar. 16, 2005), ADAMS Accession No. ML050880250 [hereinafter NMC ER].

biomass, among others (Table 7.2-3); (b) delayed retirement of existing non-nuclear units; and (c) demand-side management. ER Section 7.3 discussed the environmental impacts of the reasonable options for energy replacement.

An applicant for a license renewal is required to prepare an ER which, among other things, must discuss the environmental impacts of its proposed action (including modifications directly affecting the environment or affecting plant effluents) and compare these impacts to alternatives,⁷⁶ including the “no action” alternative.⁷⁷ The discussion of alternatives must be “sufficiently complete to aid the Commission in developing and exploring, pursuant to section 102(2)(E) of NEPA, ‘appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.’”⁷⁸ In this regard, there is no requirement for an applicant to look at every conceivable alternative to its proposed action.⁷⁹ NEPA only requires consideration of reasonable alternatives,⁸⁰ (*i.e.*, those that are feasible and non-speculative).⁸¹

While an applicant cannot define a project so narrowly as to eliminate the NRC’s consideration of the full range of “reasonable alternatives” in the Environmental Impact Statement (EIS),⁸² a rule of reason governs which alternatives the applicant must discuss in the

⁷⁶ 10 C.F.R. §§ 51.45, 51.53(c).

⁷⁷ 10 C.F.R. § 54.23, Part 51, App. A; see also 40 C.F.R. §1502.14(d).

⁷⁸ 10 C.F.R. § 51.45(b)(3).

⁷⁹ See Vermont Yankee, 435 U.S. at 551.

⁸⁰ Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827, 834, 837 (D.C. Cir. 1972).

⁸¹ City of Carmel-by-the-Sea v. Dep’t of Transp., 123 F.3d 1142, 1155 (9th Cir. 1997); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-02, 33 NRC 61, 65 (1991).

⁸² Simmons v. U.S. Army Corps of Eng’rs, 120 F.3d 664, 666 (7th Cir. 1997).

ER and the extent to which it must discuss them.⁸³ The Commission need only consider the range of alternatives “reasonably related to the scope and goals of the proposed action”⁸⁴ (which, for MNGP, is to provide baseload generating capacity) and the “no action” alternative.⁸⁵ NMC has submitted information concerning the “no action” alternative and other alternatives it finds reasonable and feasible to achieving its goals. Because there is no requirement for NMC to address every conceivable option, especially one as vague and speculative as C-BED alternative energy options proposed by NAWO, nothing more is required of the applicant.

NMC presented a discussion of alternatives in its ER as required by the regulations. 10 C.F.R. §§ 51.53(c), 51.45. The issue then is one of adequacy. NAWO implies only that the application is inadequate because the ER failed to consider C-BED options, which will be “dominated by wind/bio-fuel combustion hybrid facilities.”⁸⁶ While the Applicant presented numerous alternatives in its ER, including wind and biomass options, NAWO fails to identify any specific error in NMC’s discussion of these alternatives and has, therefore, fails to raise a genuine issue with regard to any material fact or law as required by the regulations. 10 C.F.R. § 2.309(f)(1)(vi). With regard to the alleged omission of an appropriate discussion of C-BED options, NAWO’s contention is not supported by facts or expert opinion and is too speculative to raise a genuine issue of law or fact.

In summary, NAWO has failed to provide a concise statement of alleged facts or expert

⁸³ Citizens Against Burlington v. Busey, 938 F.2d 190, 195 (D.C. Cir.) (stating that the agency should “accord substantial weight to the preferences of the applicant and/or sponsor”), cert. denied, 502 U.S. 994 (1991).

⁸⁴ Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 144-45 (1993) (citing Process Gas Consumers Group v. U.S. Department of Agriculture, 694 F.2d 728, 769 (D.C. Cir. 1981)); Hydro Resources, Inc. (Rio Rancho NM), CLI-01-4, 53 NRC 31, 55 (2001) (citing Busey, 938 F.2d at 195).

⁸⁵ 10 C.F.R. Part 51, App. A; see also 40 C.F.R. § 1502.14(d).

⁸⁶ NAWO Petition at 2.

opinions required by Section 2.309(f)(1)(v), and has not provided sufficient information to show that a genuine dispute exists as required by Section 2.309(f)(1)(vi). For these reasons, NAWO Contention No. 1 is not admissible.

2. NAWO Contention No. 2

“No Safe Dose of Radiation; Radiation Monitoring Is Not Sufficient.”⁸⁷

NAWO contends that there is no “threshold of exposure below which ionizing radiation can be demonstrated to be harmless” and that the radiation monitoring at Monticello is insufficient to “establish where reported radiation releases go.”⁸⁸ Petitioners argue that because there is “no safe dose” of ionizing radiation and the current monitoring procedures cannot identify the location of released radiation, Monticello will pose a threat to the public health and safety and, accordingly, the MNGP operating license should not be renewed.⁸⁹

NAWO’s second contention, like its first, fails to meet the pleading requirements of 10 C.F.R. Part 2. NAWO’s contention asserts that “radiation monitoring at Monticello is not adequate” and calls for new monitoring techniques.⁹⁰ Radiation monitoring programs, however, are subject to ongoing regulatory oversight, are not related to the detrimental effects of aging and, therefore, are beyond the scope of this proceeding.⁹¹

In addition, NMC is bound by the NRC regulatory requirements for radiation monitoring, as provided for in 10 C.F.R. Part 20, and Part 50.⁹² The adequacy of these regulations cannot

⁸⁷ Id. at 3.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ See Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-01-6, 53 NRC 138, 163-64, aff’d, CLI-01-17, 54 NRC 3, 15-16 (2001).

⁹² See 10 C.F.R. §§ 20.1002, 20.1101(a), & 50.36a.

be adjudicated in this proceeding. Specifically:

[N]o rule or regulation of the Commission, or any provision thereof concerning the licensing of production and utilization facilities, source material, special nuclear material, or byproduct material, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding.⁹³

Therefore, because NAWO's radiation monitoring contention calls for a change in the NRC's regulatory requirements, for this additional reason NAWO Contention No. 2 is outside the scope of this proceeding.⁹⁴

In summary, this contention is beyond the scope of this proceeding, is an impermissible attack on NRC regulations as proscribed by 10 C.F.R. § 2.335(a), and fails to establish that a genuine dispute exists as to any issue of law or fact that is material to this proceeding. 10 C.F.R. § 2.309(f)(1)(ii)-(vi). For these reasons, NAWO Contention No. 2 is not admissible.

3. NAWO Contention No. 3

"Security Is Not Sufficient."⁹⁵

NAWO contends that "security at Monticello is primarily a public relations affair."⁹⁶ More specifically, NAWO claims that NMC is unable "to adequately defend the Monticello Nuclear Generating Plant from a reasonably postulated 'force on force' attack, or from a very plausible stand off attack"⁹⁷ NAWO describes attacks from "land and/or water by 20 well-armed and well informed intruders," and alleges that the LA's "design basis threat" is inadequate.⁹⁸

⁹³ 10 C.F.R. § 2.335(a).

⁹⁴ Id.; see also Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) CLI-87-12, 26 NRC 383, 395 (1987).

⁹⁵ NAWO Petition at 3.

⁹⁶ Id. at 4.

⁹⁷ Id.

⁹⁸ Id.

The third NAWO contention similarly fails to meet the pleading requirements of 10 C.F.R. Part 2, by raising issues that are beyond the scope of the proceeding, fail to establish the existence of a genuine dispute on a material issue of law or fact, and lack the requisite factual or expert opinion support.

The contention's discussion of "9/11" and "a stand-off attack" raises terrorism issues which the Commission has found to be insufficiently related to the effects of plant aging to be material to, or admissible in, a license renewal proceeding.⁹⁹ Accordingly, they are not within the scope of this proceeding. To the extent that this contention attempts to raise NEPA-related terrorism issues, the Commission has ruled that an EIS is not an appropriate place to address such issues.¹⁰⁰ Therefore, NMC's ER is not inadequate in this regard. For these reasons, NAWO Contention No. 3 is not admissible.

4. NAWO Contention No. 4

"Reactor Aging Problems Will Escape Detection Until Too Late."¹⁰¹

NAWO contends that the LA "does not contain adequate assurance that all components needing to be inspected and maintained will actually be subject to inspection and maintenance in a timely manner."¹⁰² NAWO further contends that there is a need to inspect all reactor components "within the right time-frame,"¹⁰³ and calls for "'out-of-scope' pipe replacement, with testing to failure of replaced piping in multiple failure modes, so that reactor operators can know

⁹⁹ Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 364 (2002); see also Private Fuel Storage L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340 (2002).

¹⁰⁰ McGuire, CLI-02-26, 56 NRC at 365.

¹⁰¹ NAWO Petition at 4.

¹⁰² Id.

¹⁰³ Id.

better ahead of time where weak spots need to be reinforced or replaced.”¹⁰⁴

This contention generally questions the LA’s treatment of component inspection and testing, and offers to provide expert testimony “regarding diverse inspection methods that look at the right components with the right techniques at the right time.”¹⁰⁵ NAWO does not, however, adequately explain why it believes that NMC’s LA is deficient in this regard. NAWO’s contention is vague and speculative, and lacks expert opinion, documents, or sources to support it. This contention is therefore inadmissible because it presents nothing more than an unsupported conclusion.¹⁰⁶

In addition, through this contention NAWO attempts to bring reactor components, which are subject to routine monitoring and oversight, into the license renewal review. These component issues are, however, everyday operating issues that are unrelated to an aging analysis of the plant’s structures, systems, and components. To the extent this contention suggests that required inspection and maintenance is inadequate, it impermissibly attacks Commission regulations.¹⁰⁷

As with the previous contentions, NAWO’s fourth contention has failed to meet the pleading requirements of 10 C.F.R. Part 2. The contention is not supported by facts or expert opinion, fails to raise a genuine dispute with regard to any material issue of law or fact, and impermissibly attacks Commission regulations. For these reasons, NAWO Contention No. 4 is not admissible.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ 10 C.F.R. § 2.309(f)(1)(v).

¹⁰⁷ 10 C.F.R. § 2.335(a).

5. **NAWO Contention No. 5**

“Drinking Water for Minneapolis and St. Paul Is Not Adequately Safeguarded, and Remediation Plans in the Event of Contamination Do Not Exist.”¹⁰⁸

In its Petition, NAWO contends that NMC’s re-licensing application fails to address possible events such as reactor component failures, operator errors, and sabotage, that could lead to contamination of the Mississippi River. NAWO also contends that NMC’s LA is inadequate because it does not include a remediation plan to address risks to the drinking water of the Minneapolis/St. Paul region.¹⁰⁹

As an initial matter, it is unclear whether NAWO intends its Contention No. 5 as an environmental or as a safety contention. Reading the contention as a challenge to the environmental analysis performed in the application, the NRC Staff argues that the contention is outside the scope of the proceeding,¹¹⁰ and that it attempts an impermissible “reopening of the NRC’s generic findings in the [Generic Environmental Impact Statement] GEIS.”¹¹¹ Alternatively, reading the contention as a safety issue, the Staff argues that it is beyond the scope of the proceeding and inadmissible under Sections 2.309(f)(1)(iii) and (vi).¹¹² The NRC Staff further asserts that the safety issues NAWO attempts to raise are related to Monticello’s siting, not aging, and are therefore covered by 10 C.F.R. Part 100.¹¹³

NMC argues that this contention neither raises a relevant safety issue, because it is not related to the management of aging, nor a relevant environmental issue, since it is not within

¹⁰⁸ NAWO Petition at 5.

¹⁰⁹ Id.

¹¹⁰ NRC Staff Answer at 25-27.

¹¹¹ Id. at 27.

¹¹² Id.

¹¹³ Id. at 28.

the scope of the Category 2 issues designated in the GEIS for license renewals. 10 C.F.R. § 51.53(c)(3). NMC goes on to point out that, as this contention relates to emergency preparedness, the Commission does not require existing emergency plans to be considered anew for renewal applications. In addition, to the extent that NAWO challenged the MNGP's existing emergency plan, it did not provide any evidence that the measures to protect water supplies from accidents provided in its existing plan are inadequate.¹¹⁴

In its Reply Comment, NAWO explains that its drinking water contention is related to aging "in that certain passive components are not subject to any aging management review process . . . , yet could fail causing site specific drinking water contamination issues" ¹¹⁵ Specifically, NAWO takes issue with the application's failure to discuss the effects of equipment aging on the following components: (1) "pump mounting base plates, grout, or mounting hardware;" (2) "mounting plates, grout, or mounting hardware" for "heat exchangers, compressors, tanks, turbines, and motors;" (3) "valve stem and pump shaft packing;" (4) "consumable items; including "lubrication media such as oils and greases;" and (5) "valve internals flow isolation sealing subcomponents such as valve discs, plugs, or gates" ¹¹⁶

The NRC Staff, in a Motion to Strike, suggests that the five deficiencies listed by NAWO in its Reply are new issues "unassociated with the arguments raised in the Answers of the Staff and NMC."¹¹⁷ Relying on the Commission's ruling in Louisiana Energy Services, L.P., (National Enrichment Facility), CLI-04-25, 60 NRC 223 (2004), and its interpretation of 10 C.F.R. § 2.309(h)(2), the NRC Staff would have the Board find that these allegations are beyond the

¹¹⁴ NMC Answer at 22-23.

¹¹⁵ NAWO Reply at 2.

¹¹⁶ Id. at 2-9.

¹¹⁷ NRC Staff Motion to Strike at 4.

scope of a reply brief.¹¹⁸ We do not believe, however, that NAWO raised new issues in its Reply. Factoring into our analysis that NAWO is proceeding pro se, we believe that the NAWO Reply properly explains that its original contention is related to the aging of plant components, provides more specificity with regard to equipment that it believes should be included in the aging analysis, and does not impermissibly raise new issues.¹¹⁹ Accordingly we deny the NRC Staff's Motion to Strike, and we have fully considered NAWO's Reply in reaching our decision on the admissibility of its contentions.

We find it difficult, however, to understand NAWO's argument in support of this contention from its vague, general statements.¹²⁰ It was not clear to us whether the broad and speculative events presented by NAWO in its initial petition were accidents (i.e., environmental issues) or rather equipment malfunctions that might result from inadequate time-limited aging analyses (i.e., safety issues). In its Reply, NAWO seems to clarify that this contention relates to the aging management review process.¹²¹ As such, we focus our review on drinking water impacts that might result from aging systems, structures, and components within the scope of the renewal regulation, 10 C.F.R. §§ 54.4, 54.21, and provide a more abbreviated discussion of the contention relative to NMC's evaluation of accidents.¹²²

With regard to the safety aspects, NAWO provides no specific information to support its allegations (e.g., a description of the drinking water sources, information showing that it is the

¹¹⁸ Id. at 4-5.

¹¹⁹ See Salem Nuclear Generating Station, ALAB-136, 6 AEC at 489; White Mesa Uranium Mill, LBP-01-08, 53 NRC at 207-08.

¹²⁰ Since NAWO did not adequately explain the basis for this contention, it could be dismissed as not meeting the requirements of 10 C.F.R. § 2.309(f)(1)(ii).

¹²¹ NAWO Reply at 2.

¹²² 10 C.F.R. § 51.53(c).

major source for the Twin Cities, a discussion of the potential aging events at the MNGP which might cause a drinking water impact, a link between these events and the resulting concentration levels of drinking water contamination, or a demonstration that these levels pose a health risk). NAWO initially provided only a vague description of a “variety of reactor component failures, operator errors, and sabotage” that might cause water quality impacts by undisclosed means.¹²³ In its Reply, NAWO is somewhat more specific in listing numerous passive components that it alleges fall within the scope of 10 C.F.R. Part 54, which have not been included in the aging management program by NMC, and might fail and lead to drinking water impacts for the Twin Cities.¹²⁴

In neither of its submittals, however, does NAWO provide any evidence to support its argument that the referenced equipment is related to the structure and components delineated in 10 C.F.R. § 54.4(a), and thus subject to an aging management review. In addition, NAWO does not provide any support for the proposition that aging during the renewal period might cause failure or, if failure occurs, that such failure would lead to drinking water impacts to the extent that public safety is jeopardized. Without adequate facts or expert opinion to support its argument, NAWO fails to demonstrate that a genuine dispute exists with regard to this issue. As such, this contention must be dismissed for not meeting the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi).

NAWO further states that it will present testimony regarding the potential for events to occur during the re-license period (that will threaten the drinking water for the Twin Cities area), the consequences should such event occur, and the need to develop remediation plans as a

¹²³ NAWO Petition at 5.

¹²⁴ NAWO Reply at 2-9.

condition for re-licensing.¹²⁵ While NAWO makes this offer for the future, to be admitted this contention must be supported at this point of the proceeding by some specifics as to alleged facts or expert opinions and references to the specific sources and documents.¹²⁶ In its petition, however, NAWO provides only bare assertions, unsupported by expert opinion or relevant documentary material, that drinking water supplies will be contaminated by undefined equipment failures from a plethora of speculative components at MNGP that are not linked to the cause of failure, or subsequent impact to, the referenced water supplies. This does not meet the standards for admissibility.

When viewed as an environmental contention, this contention also fails. To fall within the scope of this proceeding events at the MNGP, which NAWO speculates could contaminate the Twin Cities' drinking water, would have to be either design-basis accidents or severe accidents. The environmental impacts for each of these scenarios, however, are evaluated in the GEIS for license renewals and considered to be of small risk for all plants including MNGP.¹²⁷ Any attempt by NAWO to allege that the Commission erred in the GEIS by assigning too small a risk to these accidents, or that NMC should address additional dose pathways for severe accidents constitutes an impermissible attack on the regulations. Since "no rule or regulation of the Commission . . . is subject to attack . . . in any [NRC] adjudicatory proceeding,"¹²⁸ this contention must be rejected by this Licensing Board as not meeting 10 C.F.R. § 2.309(f)(1)(iii).

As required by the GEIS, NMC developed site-specific severe accident mitigation design

¹²⁵ NAWO Petition at 5.

¹²⁶ 10 C.F.R. § 2.309(f)(1)(v).

¹²⁷ 10 C.F.R. Part 51, Table B-1, Appendix B to Subpart A.

¹²⁸ 10 C.F.R. § 2.335(a). See also Millstone Nuclear Power Station, CLI-03-14, 58 NRC at 218.

alternatives (SAMDAs) for MNGP.¹²⁹ NAWO provides no facts or expert opinion that demonstrate a deficiency in NMC's SAMDAs and, as a result, has not shown that a genuine dispute exists on a material issue of law or fact. Since NAWO does not meet the requirements of Section 2.309(f)(1)(v), or demonstrate a genuine dispute required by Section 2.309(f)(1)(vi), this contention may not be admitted as an environmental contention.

In summary, NAWO does not adequately explain the basis for this contention as required by Section 2.309(f)(1)(ii), fails to provide a concise statement of alleged facts or expert opinions which support this contention as required by Section 2.309(f)(1)(v), and does not provide sufficient information to show that a genuine dispute exists as required by Section 2.309(f)(1)(vi). For these reasons, NAWO Contention No. 5 is not admissible.

6. NAWO Contention No. 6

“Inadequate Accounting of Reactor Operating Parameters in an Era of Global Warming.”¹³⁰

NAWO contends that the LA does not address the effects of global warming on Monticello's operations.¹³¹ Referring to possible deviations from the historical low flow occurrences, NAWO argues that “climate change may diminish the ability of the River to accommodate Monticello nuclear operations more during the re-license period than was the case in the past”¹³² The Petitioner asserts that future climate change will inhibit Monticello's ability to protect public health, safety, and the environment.¹³³

¹²⁹ NMC ER § 4.17.

¹³⁰ NAWO Petition at 5.

¹³¹ Id.

¹³² Id.

¹³³ Id.

NAWO fails in this contention to identify any specific deficiencies in NMC's aging management programs that raise a valid safety issue. The contention does not discuss, or even identify, what operating parameters of the MNGP would be affected by global warming. Further, NAWO's climate change propositions are presented without any factual or expert support. For example, NAWO offers no support for its claim that nuclear operations in Europe have already been affected by climate change.¹³⁴ Finally, climate change is an issue of generic applicability to all nuclear plants and is, therefore, not a Category 2 environmental issue, nor an issue of aging. Accordingly, it is not within the scope of this proceeding.

NAWO provides no factual or expert support indicating the potential validity of this contention, Section 2.309(f)(1)(v), and fails to establish the existence of a genuine dispute on any material issue of law or fact that is of consequence in this proceeding, as required by Section 2.309(f)(1)(vi). In addition, as noted above, the impact of climate change on the MNGP is not within the scope of this proceeding.¹³⁵ Accordingly, NAWO Contention No. 6 is not admissible.

7. NAWO Contention No. 7

“Severe Accident Mitigation Analysis Is Not Adequate.”¹³⁶

NAWO contends that the Application's SAMA is “unacceptably lacking in depth and thoroughness”¹³⁷ and that, as a result, if events occurred they would “run their course amidst

¹³⁴ Id.

¹³⁵ See Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), LBP-02-02, 55 NRC 49, 88 (2002), rev'd on other grounds, CLI-02-14, 55 NRC 279, and aff'd and rev'd on other grounds, CLI-02-17, 56 NRC 1; see also Turkey Point, CLI-01-17, 54 NRC at 7-12.

¹³⁶ NAWO Petition at 5.

¹³⁷ Id.

chaos throughout the affected regions.”¹³⁸ Specifically, NAWO contends that a “lack of discussion regarding drinking water impacts,” and issues relating to public notification and evacuation plans render the application inadequate.¹³⁹ NAWO claims that the fate of evacuees “over the course of time is totally unexamined.”¹⁴⁰

As with previous contentions, NAWO Contention No. 7 is outside the scope of the proceeding and lacks the necessary factual or expert support. In this contention NAWO references “preparedness,” “public notification,” and “evacuation.”¹⁴¹ Accordingly, we view this contention as primarily directed at emergency planning and response, despite a reference to the SAMA. Emergency planning issues, as discussed above, are inapplicable to license renewals and, therefore, are outside the scope of this proceeding.¹⁴²

With regard to the SAMA, NAWO does not explain why any portion of NMC’s analysis might be inadequate. NAWO alleges that NMC’s “lack of discussion regarding drinking water impacts on the Twin Cities is indicative of the Application’s shallow preparedness for severe accident scenarios.”¹⁴³ NAWO, however, offers no discussion whatsoever of why it believes the analysis is inadequate, and it fails to discuss, or even mention, NMC’s ER which references NUREG/CR-6613, Vol. 1, (1998), which identifies the code used to produce its probabilistic safety assessment for the MNGP. Thus, NAWO does not raise a genuine issue with regard to

¹³⁸ Id.

¹³⁹ Id. at 6.

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² See 10 C.F.R. § 50.47(a)(1); Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-04-36, 60 NRC 631, 640-41 (2004); Turkey Point, CLI-01-17, 54 NRC at 19; see also Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-05-24, 62 NRC __ (slip op. at 9) (Oct. 26, 2005).

¹⁴³ NAWO Petition at 5-6.

the adequacy of the SAMA. For these reasons, NAWO Contention No. 7 is not admissible.

III. CONCLUSION

For the reasons set forth above, we find that NAWO does not have standing under 10 C.F.R. § 2.309(d). In addition, we also find that NAWO has not submitted an admissible contention under 10 C.F.R. § 2.309(f). Accordingly, for both of these reasons NAWO's Petition to Intervene is denied and this proceeding is terminated. We have also, through this Memorandum and Order, denied the NRC Staff's Motion to Strike NAWO's Reply, and denied NAWO's Motion to Find the Application for Re-licensing the MNGP Incomplete.

In accordance with the provisions of 10 C.F.R. § 2.311, any appeal to the Commission from this Memorandum and Order must be filed within ten (10) days after it is served.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD¹⁴⁴

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

/RA/

Richard E. Wardwell
ADMINISTRATIVE JUDGE

/RA/

William M. Murphy
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 1, 2005

¹⁴⁴ Copies of this Memorandum and Order were sent this date by Internet e-mail transmission to: (1) Counsel for the Applicant NMC, David R. Lewis; (2) Counsel for the NRC Staff, Michael A. Woods; and (3) Petitioner NAWO c/o Executive Director, George Crocker.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
NUCLEAR MANAGEMENT COMPANY, LLC)	Docket No. 50-263-LR
)	
(Monticello Nuclear Generating Plant))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON STANDING AND CONTENTION ADMISSIBILITY) (LBP-05-31) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 50-263-LR
LB MEMORANDUM AND ORDER (RULING ON
STANDING AND CONTENTION ADMISSIBILITY)
(LBP-05-31)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 1st day of November 2005