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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before the Commission

In the Matter of)

Nuclear Management Company, LLC)

(Palisades Nuclear Plant))

Docket No. 50-255-LR

— **NUCLEAR MANAGEMENT COMPANY'S BRIEF
IN OPPOSITION TO PETITIONERS' APPEAL
OF BOARD DECISION DENYING INTERVENTION**

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**NUCLEAR MANAGEMENT COMPANY'S BRIEF IN OPPOSITION TO PETITION-
ERS' APPEAL OF BOARD DECISION DENYING INTERVENTION**

Pursuant to 10 C.F.R. § 2.311(a), Nuclear Management Company, LLC ("NMC") submits this brief in opposition to the appeal filed by Nuclear Information and Resource Service, West Michigan Environmental Action Council, Don't Waste Michigan, the Green Party of Van Buren County, the Michigan Land Trustees, and a number of individuals belonging to these organizations (collectively, "Petitioners") in the Palisades license renewal proceeding. The Petitioners' Notice of Appeal¹ seeks review of the Atomic Safety and Licensing Board's ("Board") memorandum and order² denying Petitioners' request for Hearing and Petition to Intervene.³ The Board properly denied Petitioners' request because none of their proffered contentions satisfied the Commission's requirements for admissibility in 10 C.F.R. § 2.309(f)(1), and hence they provided no grounds for a hearing in this proceeding.⁴

¹ Petitioners' Notice of Appeal from ASLB Denial of Hearing, and Supporting Brief (March 17, 2006) (hereinafter "Petitioners' Appeal" or "Appeal").

² Nuclear Management Company, LLC (Palisades Nuclear Plant), Memorandum and Order (Ruling on Standing, Contentions, and Other Pending Matters), LBP-06-10, 63 N.R.C. __, slip op. (March 7, 2006) ("LBP-06-10").

³ Request for Hearing and Petition to Intervene (August 8, 2005) ("Petition").

⁴ LBP-06-10 at 60.

The Commission should affirm the Board's decisions because (1) Petitioners have failed to identify any error of fact or law in the Board's decision, and have not claimed any procedural error by the Board that might warrant Commission review, and (2) the Board's decision is clearly correct. The Petitioners' appeal relies solely upon rhetoric, not substance, and should be rejected.

STATEMENT OF THE CASE

On March 22, 2005, NMC submitted its application under 10 C.F.R. Part 54 to renew Operating License DPR-20 for the Palisades Nuclear Plant for an additional 20-year period beyond its current expiration date (the "Application"). On June 8, 2005, the Nuclear Regulatory Commission ("NRC" or "Commission") published a Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing ("Notice") regarding NMC's application.⁵ The Notice permitted any person whose interest may be affected to file a request for hearing and petition for leave to intervene within 60 days of the notice.⁶

The Notice directed that any petition set forth with particularity the interest of the petitioner and how that interest may be affected, as well as the specific contentions sought to be litigated.⁷ The Notice further advised prospective petitioners on the proper pleading of contentions as follows:

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the re-

⁵ "Nuclear Management Company, LLC, Palisades Nuclear Plant; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. DPR-20 for an Additional 20-Year Period," 70 Fed. Reg. 33,533 (June 8, 2005).

⁶ Id. at 33,534.

⁷ Id.

questor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.⁸

On August 8, 2005, Petitioners submitted their Petition, seeking to raise twelve proposed contentions for consideration in this proceeding. In response, the Board was established on August 25, 2005 to preside over the proceeding.

On August 31, 2005, the Board issued an order establishing the initial schedule for the proceeding.⁹ The Scheduling Order required "any answer to the Request for Hearing and Petition to Intervene to be filed no later than September 2, 2005; and any reply to any answer to be filed within seven (7) days after service of any such answer upon the Petitioners."¹⁰ The Scheduling Order further set September 13-14, 2005, for a pre-hearing conference to hear "oral argument on the Petitioners' standing and contentions" and also directed that a preliminary pre-hearing telephone conference would be held September 7, 2005, to "discuss the issues in the proceeding, any preliminary matters, and any questions" of the parties regarding the proceeding.¹¹

In accordance with this schedule, NMC and the NRC Staff ("Staff") promptly filed answers to the Petition on September 2, 2005, opposing the intervention on the grounds that the Petitioners had failed to plead an admissible contention.¹² On that same day, however, the Petitioners filed a request to modify the schedule established by the Board in all its remaining respects.¹³ Citing numerous conflicts with the schedule established by the Board throughout Sep-

⁸ Id. (footnote omitted).

⁹ Nuclear Management Company, LLC (Palisades Nuclear Plant), Order (Regarding Schedule and Guidance for Proceedings) (Aug. 31, 2005) ("Scheduling Order").

¹⁰ Id. at 2.

¹¹ Id.

¹² Nuclear Management Company's Answer to the August 8, 2005 Request for Hearing and Petition to Intervene (Sept. 2, 2005) ("NMC Answer"); NRC Staff Answer Opposing Petition to Intervene and Request for Hearing, (Sept. 2, 2005) ("Staff Answer").

¹³ Petitioners' Response to ASLB Order Regarding Schedule and Guidance for Proceedings/Motion for Rescheduling of Critical Dates (Sept. 2, 2005).

tember and into October, the Petitioners first requested a two week extension to September 23, 2005 for filing their reply to the Applicant's and Staff's answers.¹⁴ The Petitioners also stated that participation in the pre-hearing telephone conference would be "impossible," and requested that the conference be held either September 12 or September 23, 2005.¹⁵ Finally, citing conflicts in early October, the Petitioners requested that the date for the pre-hearing conference to hear oral argument be changed to the latter half of October or later, suggesting three blocks of dates, "October 15-31, November 1-8, or November 21-25."¹⁶

NMC promptly filed an opposition to these modifications to the schedule, noting that the Petitioners "have the resources of five organizations and are represented by two attorneys, as well as five other individuals who have entered appearances in this proceeding."¹⁷ Notwithstanding NMC's opposition, the Board accommodated all of Petitioners' requests to modify schedule.¹⁸

On September 6, 2005, the Board issued an Order that added seven days to the time allowed for the Petitioners to submit a reply and set the date of the pre-hearing telephone conference for September 12. The Board also advised the parties to hold open October 3-7 and 11-14, and November 3-4 and 7-8 for oral argument.¹⁹ Because the October dates conflicted with reli-

¹⁴ Id. at 3.

¹⁵ Id. at 2-3.

¹⁶ Id. at 2. Contrary to Petitioners' assertion in their Appeal (at 7), the date for oral argument was not originally altered "to accommodate the religious requirements of the lead attorney for the Staff."

¹⁷ Nuclear Management Company's Response Opposing Petitioners' Motion for Re-scheduling (Sept. 6, 2005) at 1.

¹⁸ Nuclear Management Company, LLC (Palisades Nuclear Plant), Order (Regarding Requests to Re-schedule) (Sept. 6, 2005).

¹⁹ Id. at 2.

gious holidays,²⁰ the Board eventually scheduled oral argument for “the earliest of the remaining dates,” November 3-4.²¹

On September 16, 2005, Petitioners filed their reply²² in accordance with the modified schedule established by the Board and voluntarily withdrew all but five of the originally asserted contentions.²³ However, with respect to the five remaining contentions, the Petitioners’ Reply introduced myriad new claims and information, including numerous exhibits,²⁴ none of which had been attached or referred to in Petitioners’ original contentions. In response to this disregard for Commission rules, both NMC and the Staff filed Motions to Strike Petitioners’ Reply on September 26, 2005.²⁵ NMC’s Motion to Strike argued that “[r]ather than responding to legal or logical arguments,” Petitioners’ Reply improperly “raise[d] entirely new arguments and claims nowhere to be found within the four corners of the original Petition which are based on a host of new documents and other information, neither referenced in, nor supplied with, the original Petition.”²⁶ The Staff’s Motion to Strike similarly argued that the Petitioners’ Reply “improperly attempts to expand the scope of the arguments set forth in the original petition,...[and] improperly provides bases and documents that could have been submitted in its original petition and are, therefore, impermissibly late without good cause.”²⁷ On October 6, 2005, the Petitioners replied

²⁰ Letter from Susan L. Uttal, Counsel for the NRC Staff, to the Board (Sept. 6, 2005).

²¹ Nuclear Management Company, LLC (Palisades Nuclear Plant), Order (Regarding Telephone Conference and Oral Argument on Contentions) (Sept. 7, 2005).

²² Petitioners’ Combined Reply to NRC Staff and Nuclear Management Company Answers (Sept. 16, 2005) (“Petitioners’ Reply”).

²³ Id. at 55.

²⁴ See, e.g., id. at Exhibits 1-A through 1-M related to Contention 1.

²⁵ Nuclear Management Company’s Motion to Strike Petitioners’ September 16, 2005 Combined Reply to NRC Staff and Nuclear Management Company Answers (Sept. 26, 2005) (“NMC’s Motion to Strike”); NRC Staff Motion to Strike Petitioners’ Combined Reply to NRC Staff and NMC Answers to Petition to Intervene and Request for Hearing (Sept. 26, 2005) (“Staff’s Motion to Strike”).

²⁶ NMC’s Motion to Strike at 7.

²⁷ Staff’s Motion to Strike at 2.

to NMC's and the Staff's Motions to Strike,²⁸ claiming that "at worst" the host of new information provided in Petitioners' Reply "'legitimately amplified' the disputes established in their original well-pleaded contentions."²⁹

The pre-hearing conference was held on November 3 and 4, 2005.³⁰ It included oral argument on the motions to strike, oral argument on the Petitioners' proposed contentions, and limited appearance statements on the evening of November 3, 2005.³¹ With respect to the motions to strike, the Board tentatively ruled that it would consider only those portions of Petitioners' Reply that focused on matters raised in the Answers and that it would not consider new information and assertions made for the first time in the Reply.³²

On November 14, 2005, the Board issued an Order, stating that, as a result of the delays described above, it had been unable to meet the regulatory deadline of October 31, 2005 prescribed by 10 C.F.R. § 2.309(l) for issuing a decision on Petitioners' hearing request, but that it expected doing so during December, 2005 or early January, 2006.³³ Before the Board could do so, however, on December 20, 2005, counsel for the Staff advised the Board that she had been contacted by Mr. Demetrios Basdekas, whom Petitioners had identified as their expert for Contention 1, who had informed her that, "although he was contacted by the petitioners regarding being their expert witness," he had "subsequently declined" to serve as their expert witness in

²⁸ Petitioners' Combined Response in Opposition to NRC Staff and Nuclear Management Company Motions to Strike (Oct. 6, 2005).

²⁹ *Id.* at 3.

³⁰ Nuclear Management Company, LLC (Palisades Nuclear Plant) Prehearing Conference Transcripts ("Prehearing Tr.").

³¹ The Board's provision for limited appearance statements at the petition stage of the proceeding runs counter to usual NRC practice to hold limited appearance statements during the course of a hearing after a petition for intervention has been granted.

³² Prehearing Tr. at 24-26, 32-33.

³³ Nuclear Management Company, LLC (Palisades Nuclear Plant), Order (Notice of Need for More Time) (Nov. 14, 2005).

this matter.³⁴ Viewing this communication as a “very significant development in this proceeding,” the following day the Board directed the Petitioners to “respond to the information provided by Staff counsel” by January 3, 2006,³⁵ and gave NMC and the Staff until January 9, 2006 to reply to the Petitioners’ Response.³⁶

On January 3, 2006, the Petitioners filed their response to the Board’s Order, although “object[ing] that there is no foundation apparent in the Board’s Order for its issuance.”³⁷ In their response, Petitioners acknowledged that they had been informed by Mr. Basdekas that he would not serve as their expert on August 22, 2005³⁸ – more than two months prior to oral argument. But they had never so advised the Board, even when queried by the Chairman of the Board during the oral argument.³⁹ Indeed, Petitioners’ response portrays themselves as victims of harass-

³⁴ Nuclear Management Company, LLC (Palisades Nuclear Plant), Order and Revised Notice (Setting Deadlines to Respond to Staff Notification of December 20, 2005) (Dec. 21, 2005). Further, Mr. Basdekas advised Staff counsel that he had “informed the petitioners that, as a generic matter, the longer a reactor operates, the more embrittled the vessel becomes,” but he had “made no statements regarding the state of the Palisades reactor as he had no site specific information on which to base an opinion.” Id.

³⁵ Id. at 1-2.

³⁶ Id. at 2.

³⁷ Petitioners’ Response to Board Order on Matter of Expert Opinion (January 3, 2006).

³⁸ Id. at 3.

³⁹ At the pre-hearing conference on November 3, 2005, Judge Young inquired of Petitioner’s counsel regarding Contention 1 concerning reactor embrittlement as follows:

Admin Law Judge Young: . . . What I am getting at is if we were to admit this contention –

Mr. Lodge: Right.

Admin Law Judge Young: You have an expert, the expert can talk about what happened at the Palisades Plant.

Mr. Lodge: Right.

Admin Law Judge Young: Okay. What’s the impact of that?

Prehearing Tr. at 48.

ment by both the Board and the Staff, claiming that the Board's "Order implicates matters that are beyond the purview of the Board to consider."⁴⁰

Both NMC and the Staff filed replies to the Petitioner's response.⁴¹ NMC argued in its response that the Petitioners' duty to inform the Board of the loss of their expert – particularly when queried by the Board Chairman – was clear under the NRC's contention rules and long-standing NRC precedent, but that Contention 1 was inadmissible whether the Board accepted or rejected Mr. Basdekas's generalized opinion expressed in the Contention.⁴² Similarly, the Staff's response argued that Mr. Basdekas's lack of plant-specific knowledge with regard to embrittlement would disqualify him from serving as Petitioners' expert on Contention 1 even if he had not declined from doing so.⁴³ In short, with or without Mr. Basdekas's opinion, Contention 1 was unsupported.

Eighteen days later, on January 27, 2006, the Petitioners moved to strike NMC's and the Staff's replies and requested a stay in the proceedings until such time that the Petitioners could depose members of the Staff to determine if the Staff had "violated the [American Bar Association's Code of Professional Responsibility] rule preventing communication with a party represented by counsel."⁴⁴ On January 30, 2006, the Board issued an Order for NMC and the Staff to

⁴⁰ Petitioners' Response to Board Order at 12.

⁴¹ NRC Staff Reply to Petitioners' Response to Board Order (Jan. 9, 2006); Nuclear Management Company's Reply to Petitioners' Response to Board December 21, 2005 Order Regarding Expert Opinion Allegedly Supporting Contention 1 – Palisades Reactor Embrittlement (Jan. 9, 2006) ("NMC Reply to Petitioners' Response").

⁴² NMC Reply to Petitioners' Response at 3.

⁴³ NRC Staff Reply to Petitioners' Response to Board Order at 5-10.

⁴⁴ Petitioners' Motion to Strike Staff and NMC Responses to Board Order on Expert Witness Matter, to Stay Proceedings and to Take Deposition of NRC Staff Counsel (Jan. 27, 2006) ("Petitioners' Motions") at 5.

file responses to the Petitioners' Motions by February 3, 2005.⁴⁵ In compliance with the Board's Order, NMC and the Staff filed timely responses with the Board,⁴⁶ urging the Board to deny the Petitioners' Motions and to rule expeditiously on the Petitioners' contentions and request for hearing.⁴⁷

On March 7, 2006, almost one year after NMC first submitted the license application, the Board determined that the Petitioners, "not having proffered any admissible contention, [had] not established grounds for granting a hearing in this proceeding."⁴⁸ The Petitioners' additional motions were denied as well.⁴⁹ On March 17, 2006, Petitioners filed their Notice of Appeal and Brief regarding the Board's decisions concerning Contentions 1 and 3.⁵⁰

ARGUMENT

I. PETITIONERS HAVE IDENTIFIED NO ERRORS OF FACT OR LAW OR PROCEDURAL ERRORS BY THE BOARD THAT REQUIRE REDRESS

The Commission should affirm the Board's decision because Petitioners have failed to identify any error of law or fact or procedural error or abuse of discretion by the Board. As made clear by previous Commission precedent, licensing board rulings are to be affirmed where the "brief on appeal points to no error of law or abuse of discretion that might serve as grounds for

⁴⁵ Nuclear Management Company, LLC (Palisades Nuclear Plant), Order and Notice (Regarding Petitioners' Motion of January 27, 2006, and Expected Rulings on Motion, Standing, Contentions and Other Pending Matters) (Jan. 30, 2006).

⁴⁶ Nuclear Management Company's Answer to Petitioners' Motion to Strike, Stay Proceeding and Take Deposition (Feb. 3, 2006) ("NMC Response to Petitioners' Motions"); NRC Staff Answer to Petitioners' Motion to Strike Staff and NMC Responses to Board Order, to Stay Proceedings and to Take Deposition of NRC Staff Counsel (Feb. 3, 2006) ("NRC Staff Response to Petitioners' Motions").

⁴⁷ See NMC Response to Petitioners' Motions at 4; NRC Staff Response to Petitioners' Motions at 13.

⁴⁸ LBP-06-10 at 60.

⁴⁹ Id.

⁵⁰ In the introduction to their Brief, Petitioners claim to appeal the Board's rulings on Contentions 1, 3 and 5. Appeal at 2. However, no argument regarding Contention 5 is contained elsewhere in their brief, and indeed Contention 5 was one of the Contentions voluntarily withdrawn by Petitioners in their reply. See Petitioners' Reply at 55. Hence, there is no Board decision concerning Contention 5 from which an appeal could even be taken. See LBP-06-10.

reversal of the Board's decision."⁵¹ A "failure to illuminate the bases" for an exception to the Board's decision is "sufficient grounds to reject it as a basis for appeal."⁵² As explained by the Commission in the Advanced Medical Systems:

The appellant bears the responsibility of clearly identifying the errors in the decision below and ensuring that its brief contains sufficient information and cogent argument to alert the other parties and the Commission to the precise nature of and support for the appellant's claims.⁵³

In their appeal, Petitioners rely solely upon rhetoric to have the Commission believe that their contentions were dismissed for trivial reasons unrelated to the merits of their proffered claims – an argument that, as discussed below, is clearly invalid. Petitioners, however, have made no effort to address and challenge the grounds reached by the Board for rejecting the Petitioners' contentions – that Contention 1 (concerning reactor embrittlement) as pled in the Petition was vague and unsupported, contrary to well-established Commission pleading requirements, or the Board's determination that Contention 3 (concerning dry cask storage at Palisades) is outside the scope of this proceeding. The Petitioners' utter failure to challenge the Board's determinations is fatal to their appeal.

II. THE BOARD'S REJECTION OF CONTENTION 1 REGARDING REACTOR EMBRITTLEMENT AS VAGUE AND UNSUPPORTED IS CLEARLY CORRECT

The Board's rejection of Contention 1 should also be affirmed because the Contention was clearly vague and unsupported, and thus failed to meet the Commission's standards for admissibility. As discussed below, the Contention was in essence nothing more than a truism that

⁵¹ Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-00-21, 52 N.R.C. 261, 265 (2000).

⁵² Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 N.R.C. 285, 297 (1994).

⁵³ Id. (emphasis added) citing General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 2), ALAB-926, 31 N.R.C. 1, 9 (1990); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 N.R.C. 277, 278 (1982).

embrittlement increases with time and made no effort whatsoever to address or challenge the treatment of this aging mechanism in NMC's Application.

As pled by Petitioners, Contention 1 and its basis in their entirety stated:

The license renewal application is untimely and incomplete for failure to address the continuing crisis of embrittlement.

The Petitioners allege that the Palisades license renewal application is fundamentally deficient because it does not adequately address technical and safety issues arising out of the embrittlement of the reactor pressure vessel and unresolved Pressure Thermal Shock ("PTS") concerns that might reasonably result in the failure of the reactor pressure vessel ("RPV"). The Palisades nuclear power station is identified as prone to early embrittlement of the reactor pressure vessel, which is a vital safety component. As noted in the opinion of Petitioners' expert on embrittlement, Mr. Demetrios Basdekas, retired from the Nuclear Regulatory Commission, the longer Palisades operates, the more embrittled its RPV becomes, with decreasing safety margins in the event of the initiation of emergency operation procedures. Therefore, a hearing on the public health and safety effects of a prospective additional twenty years of operation, given the present and prospective embrittlement trend of the RPV is imperative to protecting the interests of those members of the petitioning organization who are affected by this proceeding.⁵⁴

The Board denied Contention 1 for being vague and unsupported because, as submitted by the Petitioners, (1) the contention lacked a "brief explanation of the basis for the contention" as required by 10 C.F.R. §2.309(f)(1)(ii); (2) the contention neither provided a "concise statement of the alleged facts or expert opinion" supporting the contention "on which the petitioner[s] intend[ed] to rely at hearing" nor provided any "references to the specific sources and documents" on which Petitioners' intended to rely to support the contention, as required by 10 C.F.R. §2.309(f)(1)(v); and (3) the contention failed to "[p]rovide sufficient information to show that a genuine dispute exists . . . on a materials issue of law or fact," referring nowhere to the

⁵⁴ Petition at 4.

specific portions of the application disputed by the Petitioners and the supporting reason for each dispute as expressly required by 10 C.F.R. §2.309(f)(1)(iv).⁵⁵

The Board was clearly correct in rejecting Contention 1 for being vague and unsupported. The contention simply asserted that the Application “is fundamentally deficient because it does not adequately address the technical issues arising out of the embrittlement” of the RPV without referencing anywhere “the specific portion[s] of the application” disputed by the Petitioners and the supporting reason for each dispute as expressly required by the Commission’s rules. Although NMC’s Application fully explained how the age related effects of reactor embrittlement will be managed at the Palisades plant,⁵⁶ nowhere did the contention even implicitly refer to the Application. Indeed, the Board observed that “[i]t cannot be ascertained whether the drafters of Contention 1 actually even read the Application.”⁵⁷

Furthermore, despite the clear requirement of the regulations – reiterated in the notice of hearing quoted above – to supply a factual basis for a contention, Contention 1 provided no facts to support a claim. The only assertion offered in support of the contention was a single statement by Mr. Demetrios Basdekas that the longer that Palisades operates, the “more embrittled its RPV becomes, with decreasing safety margins in the event of the initiation of emergency operating

⁵⁵ LBP-06-10 slip op. at 36-39.

⁵⁶ Section 4.2 of the Application (“Reactor Vessel Neutron Embrittlement”) addresses the technical issues relating to neutron irradiation embrittlement of the RPV, i.e., the Upper Shelf Energy of materials in the reactor vessel beltline (Section 4.2.1), Pressurized Thermal Shock (Section 4.2.2) and Pressure-Temperature Limits and Low Temperature Overpressure Protection Setpoints (sections 4.2.3 and 4.2.4) and discusses how the effects of aging “will be adequately managed for the period of extended operation” in accordance with 10 C.F.R. § 54.21(c)(1). Application at 4-10 to 4-16. Additionally, the Application states that “the relevant activities” relating to each technical issue “will be managed under the Reactor Vessel Integrity Surveillance Program” for the Palisades plant, Id.; see also id. at 3-19, an existing program at the Palisades plant that “manages the aging effect reduction of fracture toughness due to neutron embrittlement . . . in accordance with 10 CFR Appendix H” that is designed to ensure that “the reactor vessel materials (a) meet the fracture toughness requirements of 10 CFR 50, Appendix G, and (b) have adequate margins against brittle fracture caused by Pressurized Thermal Shock (PTS) in accordance with 10 CFR 50.61.” Id. at B-120; see also NMC Answer at 11-13.

⁵⁷ LBP-06-10, slip op. at 39 (emphasis added).

procedures.”⁵⁸ This statement does not raise a material issue. The question is not whether the RPV becomes more embrittled with continued operation, but whether the Application provides for adequate management of RPV embrittlement. Contention 1 provides absolutely no factual basis to support any claim challenging the adequacy of any aspect of NMC’s management of RPV embrittlement set forth in the Application, as the Contention fails to mention or refer to the Application in any respect.

A wealth of Commission precedent holds that such vague, unsupported contentions must be rejected. Just recently in the LES proceeding, the Commission rejected similar broad “conclusory and unsupported allegations” proffered by the New Mexico Attorney General that storage of depleted uranium at the LES facility “poses a distinct environmental risk to New Mexico” and broad, conclusory claims made by the New Mexico’s Environment Department that such “onsite storage ‘may pose a threat’ to health and property and that the LES’s proposed storage plan was insufficiently detailed.”⁵⁹ The Commission described the inadequacy of these broad, conclusory contentions as follows:

Neither petition alleged facts or expert opinion in support of these broad and conclusory allegations. LES’s application outlines potential environmental, health, and safety impacts of storing depleted uranium in uranium byproduct cylinders (UBCs) on an open-air storage pad. But neither the Attorney General nor the Environment Department addressed with any particularity or support how LES’s proposed plan for onsite storage of depleted uranium lacks sufficient information, provides an inaccurate environmental impacts assessment, or otherwise falls short.⁶⁰

⁵⁸ Petition at 4.

⁵⁹ Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-35, 60 N.R.C. 619, 622 (2004).

⁶⁰ Id. (emphasis added).

The Commission's ruling in LES is on all fours with the present circumstances. Many other NRC precedents similarly decree that broad, conclusory contentions such as Petitioners' vague and baseless claims in Contention 1 must be rejected.⁶¹

Except to suggest that the Board erroneously discounted Mr. Basdekas's opinion,⁶² the Petitioners do not challenge any of the Board's findings regarding the inherently deficient nature of Contention 1. However, contrary to Petitioners' suggestion, the Board fully credited the statement in Contention 1 attributed to Mr. Basdekas that "the longer Palisades operates, the more embrittled its RPV becomes, with decreasing safety margins in the event of the initiation of emergency operation procedures."⁶³ But, as observed by the Board, the statement "is obvious and presents no specific issue susceptible to litigation."⁶⁴ The statement provides no specifics regarding, for example, the present and prospective embrittlement trend of the RPV of the Palisades plant, which would distinguish it from any other nuclear power plant. Such "general and non-specific" statements provide no factual basis for the admission of a contention under the Commission's rules as made evident by the previously cited precedent.⁶⁵

⁶¹ See, e.g., Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 N.R.C. 509, 521 & n.12 (1990) (an allegation that some aspect of a license application is "inadequate" or "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); Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 246 (1993), review declined, CLI-94-2, 39 N.R.C. 91 (1994) (a statement "that simply alleges that some matter ought to be considered" does not provide a sufficient basis for a contention). See also Conn. Bankers Ass'n v. Bd. of Governors, 627 F.2d 245, 251 (D.C. Cir. 1980), cited approvingly in Statement of Considerations for Revised NRC Pleading Requirements, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) ([A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an "inquiry in depth" is appropriate.)

⁶² Appeal at 2.

⁶³ See LBP-06-10, slip op. at 37.

⁶⁴ Id.; see also LES and other precedent cited supra.

⁶⁵ Id. at 38.

Nowhere in their appeal do the Petitioners defend the contention as pled. Rather, the Petitioners argue that the Board wrongfully failed to consider information submitted for the first time in their Reply⁶⁶ to which Petitioners had attached and referred to numerous historical documents concerning reactor embrittlement, both generally and related to the Palisades plant. None of this material had been referenced in the original Petition, and the Board properly declined to consider this new information proffered by the Petitioners because it was an improper attempt to amend the contention without addressing the late filing factors. The Board's ruling is clearly correct and should be affirmed by the Commission.

Commission precedent is crystal clear. A petitioner's 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.⁶⁷ In LES, the Commission affirmed a board decision that had declined to consider new 'purportedly material' information in support of the contentions that was first submitted as part of a reply pleading" because it "essentially constituted untimely attempts to amend [the] original petitions" without "any attempt to address the late-filing factors in section 2.309(c), (f)(2)."⁶⁸ The Commission emphasized that reply briefs are to be "narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer," and affirmed the board's decision that replies cannot be used "to 'reinvigorate' and effectively amend what had been inadequately supported contentions in the hearing petitions."⁶⁹ The Commission explained its rationale as follows;

"Allowing contentions to be added, amended, or supplemented at any time would defeat the purpose of the specific contention requirements . . . by permitting the

⁶⁶ See, e.g., Appeal at 2-3.

⁶⁷ Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-25, 60 N.R.C. 223, 225 (2004) ("LES"); CLI-04-35, 60 N.R.C. 622 (denying motion to reconsider CLI-04-25).

⁶⁸ CLI-04-25, 60 N.R.C. at 224.

⁶⁹ CLI-04-35, 60 N.R.C. at 621.

intervenor to initially file vague, unsupported, and generalized allegations and simply recast, support, or cure them later.” The Commission has made numerous efforts over the years to avoid unnecessary delays and increase the efficiency of NRC adjudication and our contention standards are a cornerstone of that effort. We believe that the 60-day period provided under 10 C.F.R. § 2.309(b)(3) for filing hearing requests, petitions, and contentions is “more than ample time for a potential requestor/intervenor to review the application, prepare a filing on standing, and develop proposed contentions and references to materials in support of the contentions.” Under our contention rule, Intervenor is not being asked to prove their case, or to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention, and to do so at the outset.⁷⁰

The Commission in LES went on to note that “our rules allow” petitioners to file a motion requesting an extension of the filing deadline if exigent circumstances warrant such an extension and, in addition, “our rules allow a late filed petition and contentions where there is compelling justification.” But the Commission then emphasized:

What our rules do not allow is using reply briefs to provide, for the first time, the necessary threshold support for contentions; such a practice would effectively bypass and eviscerate our rules governing timely filing, contention amendment, and submission of late-filed contentions.⁷¹

The Petitioners blithely ignored – and continue to ignore – the Commission’s rules. No attempt was made by Petitioners in their Reply either to amend their contentions or to address the late-filing criteria of 10 C.F.R. §§ 2.309(c), (f)(2), or to otherwise justify or excuse the submission of extensive new information in their Reply. Under the NRC’s Rules of Practice, nontimely requests and/or petitions and contentions will not be entertained absent a determination that the contentions should be admitted based upon a balancing of eight specific late-filing factors.⁷² The Petitioners’ failure to address the lateness factors in their Reply is sufficient grounds in and of itself to reject any amended or late-filed contention.⁷³

⁷⁰ Id. at 622-23 (footnotes omitted).

⁷¹ Id. at 623.

⁷² 10 C.F.R. § 2.309(c).

⁷³ Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 347 (1998); Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Footnote continued on next page

Moreover, none of the new materials in Petitioners' Reply met the late-filing criteria. As the Board observed:

None of it appears to have been previously unavailable. One exhibit provided with the Reply is from a 1970 report; many exhibits or referenced items are documents produced in the 1990s, and the most recent document is a March 2005 letter.⁷⁴

Nor did the Board find "any good cause for Petitioners not to have provided this information with the original petition, nor any other reason to consider it under the other relevant criteria."⁷⁵

Having failed to supply any justification for their late filing as required under the Commission's rules, Petitioners now harshly criticize the Board for having "exalted form over substance, letting slavish adherence to rules work to bar the litigation on its merits of matters which the Board has itself termed 'very serious.'"⁷⁶ However, in rejecting an identical claim,⁷⁷ the Commission has stressed that it does not look with favor on amended or new contentions filed after the initial filing and it has upheld the dismissal of such late filings when the petitioner "failed to demonstrate even a modicum of the necessary discipline and preparedness" required by the contention admissibility rules.

The Petitioners further suggest that "[a]ny damage from Petitioners' five week delay (between the August 8 and September 16 filings)" is insignificant compared to other delays in the proceeding for which Petitioners disclaim any responsibility.⁷⁸ That certainly does not square

Footnote continued from previous page

Units 1 and 2), CLI-93-11, 37 N.R.C. 251, 255 (1993). See also Boston Edison Company (Pilgrim Nuclear Power Station), ALAB-816, 22 N.R.C. 461, 465-68 (1985).

⁷⁴ LBP-06-10, slip op. at 37.

⁷⁵ Id.

⁷⁶ Appeal at 2.

⁷⁷ Dominion Nuclear Connecticut, Incorporated (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 641 (2004).

⁷⁸ Id. at 8.

with the history of this case set forth above which reflects that oral argument would have been held in September, 2005, but for Petitioners' requests for extensions. Even accepting, however, Petitioners' strained view of events, potential delay of the proceeding is only one of the factors governing untimely submissions under the late-filing criteria of 10 C.F.R. §§ 2.309(c), (f)(2). The Petitioners ignore all the other lateness factors, and even ignore their obligation to address them. Rather than acknowledging and candidly addressing their obligations under the Commission's rules of practice, they harshly criticize the Board for failing to likewise ignore the Commission's rules. To the contrary, it is Petitioners' attempts to run roughshod over the Commission's rules that would totally "eviscerate" any reasonable governance of the contention pleading process.⁷⁹

There is similarly no merit in Petitioners' suggestions that the Board "contrived to deny admission of the embrittlement contention"⁸⁰ in order to create a "'fortress' . . . impervious to . . . inconvenient facts."⁸¹ The gist of Petitioners' assertion is that "it is unreasonable for the Applicant to forego Flux Reduction programs for the extension period which might reasonably reduce the risk to public health and safety from a Pressure Thermal Shock ["PTS"] Accident potentially occurring during the same license extension period unless NMC can show, *now*, with high confidence that alternative approaches, *including* the option of annealing the vessel, can adequately

⁷⁹ The Petitioners' claim that the Board's "slavish adherence" to Commission rules resulted in barring litigation on its merits of matters that Board itself termed "very serious" is yet another rhetorical overstatement that misstates the Board's decision. The Board never suggested that the Petitioners had raised meritorious claims that were being barred on procedural grounds. Rather, the Board's statement was that "embrittlement of the reactor pressure vessel" is "a very serious topic, with regard to Pali-sades or indeed any nuclear power plant." LBP-06-10, slip op. at 35 (emphasis added). Nowhere did the Board suggest in any way that any of the myriad assertions raised by the Petitioners in their Reply was meritorious.

⁸⁰ Appeal at 3.

⁸¹ Appeal at 4.

preserve required public margins in the 20-year extension period.”⁸² This assertion – which appears nowhere in Contention 1 as pled – mischaracterizes the facts and constitutes an impermissible attack on the NRC regulations.

First, as described in the Application (and nowhere challenged in Contention 1), NMC has implemented a very aggressive and extensive flux reduction program⁸³ Palisades now utilizes a redesigned “ultra low leakage core” in which third and fourth cycle fuel assemblies are located around the periphery of the core to reduce flux generally and specially designed shielding assemblies are placed to protect and reduce flux to the critical, limiting reactor vessel axial welds.⁸⁴ This flux reduction program greatly reduces the fluence and thus increases the time before the screening criterion would be exceeded.⁸⁵

Second, the NRC’s rules do not require a demonstration that the PTS screening criteria will not be exceeded during the entire period of operation. NRC regulations allow a license renewal applicant to address time limited aging analyses (“TLAAs”), such as reactor embrittlement, by one of three approaches prescribed by 10 C.F.R. § 54.21(c)(1): (i) demonstrating that

⁸² Appeal at 6-7 (emphasis in original) (footnote omitted); see also Appeal at 6 (NMC must provide a plan that “conclusively demonstrates” now – “not 2011 or 2014” – the ability to sustain operations of the Palisades plant “for the full 20 years of additional licensure”).

⁸³ Application at 4-10; see also Prehearing Tr. at 123, 171.

⁸⁴ Id.

⁸⁵ Id. In both their Appeal and Reply, the Petitioners rhetorically attack historical changes that have occurred in the projections at which the Palisades reactor would exceed the PTS screening criterion of 10 C.F.R. § 50.61. Petitioners’ incessant rhetorical attacks, however, wholly ignore the extensive flux reduction efforts undertaken at Palisades to greatly reduce reactor embrittlement as well as additional data that was collected and integrated into the fluence calculation and other refinements that result in more accurately determining reactor embrittlement. See, e.g., Prehearing Tr. at 122-24. The NRC Staff issued a Safety Evaluation Report on November 14, 2000 in which it approved all of the elements (chemistry factors, fluence calculations) for the Palisades’ PTS calculations using the ultra low leakage core upon which the current dates for exceeding the PTS screening criterion are based. Id.; see also Application at 4-10. Nowhere in the excess of rhetorical flourishes evident in both Petitioners’ Appeal and Petitioners’ Reply is there any acknowledgement of the significant flux reduction achieved by the Palisades ultra low leakage core or any suggestion of errors in the NRC approved calculation projecting when the PTS screening criteria will be exceeded.

existing analyses “remain valid for the period of extended operation;” (ii) revising existing analyses to demonstrate their validity “to the end of the period of extended operation;” or (iii) demonstrating that “[t]he effects of aging on the intended function(s) will be adequately managed for the period of extended operation.” With respect to the reactor embrittlement, the Application adopts the third option – demonstrating that the effects of reactor embrittlement will be adequately managed for the period of extended operation.⁸⁶ As allowed under the applicable NRC regulations, NMC will manage the aging effects of reactor embrittlement by continuing to implement its Reactor Vessel Integrity Surveillance Program for the Palisades plant⁸⁷ and by implementing the requirements for plants projected to exceed the PTS screening criteria established by 10 C.F.R. § 50.61. In accordance with the requirements of 10 C.F.R. § 50.61, NMC will, at least three years prior to Palisades’ exceeding the PTS screening criteria of 10 C.F.R. § 50.61, either undertake the safety analysis required by 10 C.F.R. § 50.61(b)(4) to determine those plant modifications, if any, that are necessary to protect against PTS failure of reactor vessel, or else perform a thermal-annealing treatment of the reactor vessel pursuant to 10 C.F.R. § 50.61(b)(7).⁸⁸

Petitioners’ assertion that NMC must at this point “conclusively demonstrate[]” by analysis or otherwise that the capability for Palisades to sustain operations of “for the full 20 years of

⁸⁶ See Application, Table 4.1-1 at 4-4, and Section 4.2; see also Section 3.1.2.2.3 and Appendix B at B-120 to B-126.

⁸⁷ The Reactor Vessel Integrity Surveillance Program for the Palisades plant “manages the aging effect reduction of fracture toughness due to neutron embrittlement . . . in accordance with 10 CFR Appendix H” that is designed to ensure that “the reactor vessel materials (a) meet the fracture toughness requirements of 10 CFR 50, Appendix G, and (b) have adequate margins against brittle fracture caused by Pressurized Thermal Shock (PTS) in accordance with 10 CFR 50.61.” Application at B-120;

⁸⁸ Application at 4-10; see also id. at 4-15. NMC will submit the necessary information to the NRC for its review and approval at least three years prior to exceeding the PTS screening as required by the regulation. Id. Similarly, NMC will submit an equivalent margins analysis in accordance with 10 C.F.R. Appendix G Section IV.A.1 for NRC review and approval at least three years before any reactor vessel beltline material upper shelf energy decreases to less than 50 ft-lb. Id. at 4-12.

additional licensure”⁸⁹ would read out of the regulation option (iii) of 10 C.F.R. § 54.21(c)(1) – which allows management of aging related effects for the period of the extended operation as opposed to demonstrating the validity of analyses through to the end of the extended operation period. Similarly, requiring such demonstration now is directly contrary to the PTS rule, 10 C.F.R. § 50.61, which only requires such demonstration to be made three years prior to exceedance of the screening criteria. Moreover, it would be directly contrary to the rationale underlying the PTS rule, which was explained by the Commission as follows:

[T]he purpose of the PTS screening criterion is to determine whether and when further plant-specific analyses are required. . . . [G]eneric PTS studies already performed . . . provide reasonable assurance that operation of PWR pressure vessels with RT_{NDT} values below the screening criterion does not result in undue risk to the public health and safety⁹⁰

Thus, Petitioners’ belated assertion impermissibly challenges NRC regulation and must be rejected on that ground as well.⁹¹

In summary, Petitioners’ appeal of the Board’s dismissal of Contention 1 must be rejected and the Board’s decision dismissing Contention 1 should be affirmed.

⁸⁹ Appeal at 6.

⁹⁰ 50 Fed. Reg. 29,937, 29,939 (July 23, 1985) (emphasis added); see also 56 Fed. Reg. 22,300, 22,302 (May 15, 1991) (emphasis added) (The PTS “screening criterion is not a safety limit. It is a tripwire which triggers a plant-specific safety analysis, i.e., it defines which licensees need to do that analysis and when it should be done.”); Yankee Atomic Electric Company (Yankee Rowe Nuclear Power Station), CLI-91-11, 34 N.R.C. 3, 10 (1991).

⁹¹ See, e.g., Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 N.R.C. 1649, 1656 (1982) (a contention which “advocate[s] stricter requirements than those imposed by the regulations” is “an impermissible collateral attack on the Commission’s rules”); see also Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), LBP-91-19, 33 N.R.C. 397, 410, aff’d in part and rev’d in part on other grounds, CLI-91-12, 34 N.R.C. 149 (1991).

III. THE BOARD'S REJECTION OF CONTENTION 3 REGARDING DRY CASK SPENT FUEL STORAGE AT PALISADES FOR BEING OUTSIDE THE SCOPE OF THIS LICENSE RENEWAL PROCEEDINGS IS CLEARLY CORRECT

Petitioners acknowledge in the opening paragraph of their appeal of Contention 3 that the Board determined the issue raised by Contention 3 to be "outside the scope of a license renewal proceeding for not addressing an age-related component" and inappropriate because alternative means are available for Petitioners to seek redress of their concerns.⁹² In their subsequent discussion, Petitioners fail to identify a single error in the Board's ruling regarding the admissibility of Contention 3. They cannot do so, because the ruling is clearly correct.

The Board determined that Contention 3 was "inadmissible because it is outside the relatively narrow scope of a license renewal proceeding as defined by the Commission in its rules and relevant case law."⁹³ The "narrow scope of a license renewal proceeding" is well established: admissible contentions in a license renewal proceeding must concern 1) "aging-related issues associated with the functions of [designated] plant systems, structures, and components" prescribed by the Commission's license renewal regulations,⁹⁴ or 2) Category 2 environmental issues, characterized 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."⁹⁵

As submitted, Petitioners' Contention 3 in its entirety reads as follows:

The Palisades reactor has no place to store its overflowing irradiated nuclear fuel inventory within NRC regulations.

The indoor irradiated fuel storage pool reached capacity in 1993. But the outdoor dry cask storage pads at Palisades, both the older one nearer Lake Michigan and

⁹² Appeal at 9.

⁹³ LBP-06-10, slip op. at 48 (footnote omitted).

⁹⁴ Id. at 26 (footnote omitted).

⁹⁵ Id. at 30.

the newer one further inland, are in violation of NRC earthquake regulations. 10 CFR § 72.212(b)(2)(i)(B) requires that:

Cask storage pads and areas have been designed to adequately support the static and dynamic loads of the stored casks, considering potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion...

According to the Petitioner's anticipated expert, Dr. Ross Landsman, former U.S. Nuclear Regulatory Commission Region III dry cask storage inspector, the older pad violates the liquefaction portion of this regulation, and the new pad violates the amplification portion of the regulation. Petitioners contend that neither the older nor new dry cask storage pads at the Palisades plant were designed in consideration of the factors contained in the cited regulation.⁹⁶

The Petitioners' own wording in the proffered contention demonstrates the correctness of the Board's ruling. There is no mention of aging and it is clear that Petitioners are seeking to raise a design issue. The contention alleges that the storage pad currently violates applicable NRC design requirements for dry cask storage pads – a matter pertaining to the adequacy of the current licensing basis regardless of whether the Palisades license is renewed. Thus, on its face, this issue cannot qualify as an "aging-related issue" associated with license renewal, for the condition alleged by Petitioners would exist regardless of whether or not license renewal is granted.

Previous Commission precedent supports the conclusion that alleged deficiencies regarding the adequacy of a facility's spent fuel storage capability are not an "aging-related issue" in the context of a license renewal proceeding. In the Turkey Point license renewal proceeding, the Commission considered the admissibility of a contention claiming "severe and unusual challenges to the safe storage of high level radioactive spent fuel whether in spent fuel pools or in dry

⁹⁶ Petition at 5. The allegation that the older pad violates seismic design requirements was considered in depth and was found by the NRC to be without merit. See Information Notice 95-28, "Emplacement of Support Pads for Spent Fuel Dry Storage Installations at Reactor Sites" (June 5, 1995). The allegation that the new pad violates seismic design requirements is an open inspection item that is now being addressed by the current regulatory process.

cask storage.”⁹⁷ The Commission’s affirmation of the licensing board’s dismissal of this contention is telling:

[Petitioner’s] spent fuel storage concerns (Contention 2) do not raise any admissible safety issues under the NRC’s Part 54 safety review.¹⁵ His concerns do not relate to managing the aging of systems, structures, and components or to any time-limited aging analyses, the safety inquiries contemplated by Part 54...

* * * * *

At no point does [Petitioner] identify any deficiency in the renewal application’s discussion of spent fuel storage and handling. He never even refers to any part of the license renewal application.

¹⁵ It should be noted that during the licensing of the spent fuel pools under the current Turkey Point license, the operation of the pools was previously evaluated and found safe for operation up to the approved capacity. If, in the future, Turkey Point were to seek to expand the capacity of the pools or to construct dry cask storage, its action would be subject to separate environmental and safety evaluation by the NRC, with associated license amendments and hearing opportunities. If additional capacity is not required, it is possible that the spent fuel pools will never operate differently as a result of license renewal. This highlights that the concerns raised by [Petitioner] with respect to the spent fuel pools are not inherent in license renewal itself and are not within the scope of this renewal proceeding.⁹⁸

Petitioners’ contention and appeal here suffer from the identical deficiencies. Nowhere in their contention do they allege an aging management issue or any deficiency in NMC’s license renewal application

Additionally, this contention is beyond the scope of 10 C.F.R. Part 54 because the dry cask storage pads are part of the Independent Spent Fuel Storage Installation (“ISFSI”) facility which is distinct from – and licensed separately from – the Palisades nuclear power plant. ISFSIs are licensed and regulated under 10 C.F.R. Part 72 of the NRC’s regulations.⁹⁹ 10 C.F.R. Part 72 provides for two types of ISFSI licenses, site specific licenses and general licenses (such

⁹⁷ Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 N.R.C. 3, 20 (2001).

⁹⁸ Id. at 23 (emphasis added).

⁹⁹ See 10 C.F.R. §§ 72.2 and 72.3.

as that for the ISFSI at Palisades).¹⁰⁰ Both site specific and general licenses are issued for a maximum of 20 years, not 40 years as for nuclear power plants.¹⁰¹ Moreover, Part 72 contains its own license renewal provisions for ISFSIs separate and distinct from 10 C.F.R. Part 54 for nuclear power plants.¹⁰² For these reasons, the Commission observed in the context of the license renewal proceeding for the Oconee nuclear power plant that it “handles as a separate licensing matter” the licensing of onsite ISFSIs under Part 72 of its regulations.¹⁰³ Reflecting the fact that ISFSIs are handled as a separate licensing matter, the storage pads for the dry storage casks do not fall within the scope of 10 C.F.R. Part 54 as defined by 10 C.F.R. § 54.4.¹⁰⁴

¹⁰⁰ 10 C.F.R. § 72.40 provides for site specific licenses for ISFSIs located either at or away from reactor sites subject to the applicable procedural and substantive requirements of Part 72. 10 C.F.R. § 72.210 provides for general licenses for ISFSIs located at nuclear power plants using approved NRC spent fuel casks subject to the conditions set forth in 10 C.F.R. § 72.212. The ISFSI at the Palisades plant has a general license under 10 C.F.R. § 72.210. See Kelley v. Selin, 42 F.3d 1501 (6th Cir.), cert. denied, 515 U.S. 1159 (1995).

¹⁰¹ See 10 C.F.R. §§ 72.42(a) (license term for site-specific licenses); 10 C.F.R. § 72.212(a)(3) (license term for general licenses).

¹⁰² See 10 C.F.R. §§ 72.42(b) (license renewal for site-specific licenses); 10 C.F.R. § 72.212(a)(3) (extension of general licenses).

¹⁰³ Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 N.R.C. 328, 344 n.4 (1999). Thus, for example, the NRC has renewed the licenses for the on-site ISFSIs at the Surry and Robinson nuclear power plants under 10 C.F.R. Part 72 separately from renewal of the licenses for the Surry and Robinson nuclear power plants. See Notice of Issuance of Renewed Materials License SNM-2501; Virginia Elec. & Power Co., Surry Independent Spent Fuel Storage Installation, 70 Fed. Reg. 10,695 (Mar. 4, 2005); Notice of Issuance of Renewed Materials License SNM-2502; Progress Energy Carolinas, Inc.; H.B. Robinson Steam Electric Plant, Unit 2 Independent Spent Fuel Storage Installation, 70 Fed. Reg. 17,721 (Apr. 7, 2005).

¹⁰⁴ That provision limits the scope 10 C.F.R. Part 54 to (1) safety related systems, structures and components relied on to maintain the integrity of the reactor coolant pressure boundary, to shut down the reactor and maintain it in a safe condition, and to prevent or mitigate the consequences of reactor accidents; (2) non-safety related systems, structures and components whose failure could prevent safety-related systems from accomplishing their function, and (3) other nuclear power plant systems, structures and components relied on to meet certain Commission rules, none of which pertain to an ISFSI or its storage pads. Thus, as noted in the Application, the dry fuel storage systems at Palisades “are managed under 10 CFR 72 and do not fall under the requirements of 10 CFR 54.” Application at 2-43 (Table 2.2-1).

Moreover, Contention 3 is also barred by the NRC's Waste Confidence Rule at 10 C.F.R.

§ 51.23. That rule states in relevant part as follows:

The Commission has made a generic determination that, if necessary, spent fuel generated at any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin or at either onsite or offsite independent spent fuel storage installations.¹⁰⁵

The Petitioners' assertion in Contention 3 that the "Palisades reactor has no place to store its overflowing irradiated fuel inventory . . ." runs afoul of 10 C.F.R. § 51.23.

Nor can Petitioners find support for asserting their proposed contention in a license renewal proceeding as a Category 2 environmental issue in previous NRC decisions. This lack of support is most obvious in the Commission's ruling dismissing a virtually identical contention in the Oconee license renewal proceeding:

Category 1 issues include the radiological impacts of spent fuel and high-level waste disposal, low-level waste storage and disposal, mixed waste storage and disposal, and on-site spent fuel. See Table B-1, Part 51, Subpart A, Appendix B. The Commission's generic determinations governing onsite waste storage preclude the Petitioners from attempting to introduce such waste issues into this adjudication.¹⁰⁶

In short, as ruled by the Board, Contention 3 is simply beyond the scope of this license renewal proceeding. Petitioners' assertion that it is "impossible to disconnect cask storage pad problems from the proposed license extension"¹⁰⁷ and their litany of rhetorical questions and foreboding statements regarding the ISFSI only highlight that Petitioners have an issue with the current facility license rather than any issue associated with renewing the Palisades' operating license. Therefore, even assuming that Contention 3 has technical merit, the issue raised would be outside of the scope of license renewal and thus inappropriate for consideration in this pro-

¹⁰⁵ 10 C.F.R. § 51.23(a) (emphasis added).

¹⁰⁶ Oconee, CLI-99-11, 49 N.R.C. at 343 (emphasis added).

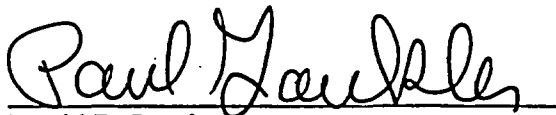
¹⁰⁷ Appeal at 11.

ceeding. In its appeal, Petitioner has not offered a single argument that the Board's conclusions in this regard were not correct, and the Commission should affirm the Board's determination.

CONCLUSION

For the reasons stated above, the Commission should affirm the Board's decision dismissing the Petitioners' contentions and terminate this license renewal proceeding.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paul Gaukler", written over a horizontal line.

David R. Lewis

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Dated: March 27, 2006

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	
Nuclear Management Company, <i>et al.</i>)	Docket No. 50-255-LR
)	ASLBP No. 05-842-03-LR
(Palisades Nuclear Plant))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Nuclear Management Company's Brief in Opposition to Petitioners' Appeal of Board Decision Denying Intervention," dated March 27, 2006, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 27th day of March, 2006.

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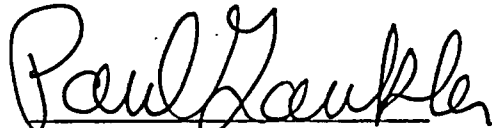
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