

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ronald M. Spritzer, Chairman  
Nicholas G. Trikouros  
Larry R. Foulke

In the Matter of

SOUTH TEXAS PROJECT NUCLEAR  
OPERATING COMPANY

(South Texas Project, Units 1 and 2)

Docket Nos. 50-498-LR and 50-499-LR

ASLBP No. 11-909-02-LR-BD01

August 26, 2011

MEMORANDUM AND ORDER

(Ruling on Petition for Leave to Intervene and Request for Hearing)

This case arises from an application by South Texas Project Nuclear Operating Company (STPNOC) to the Nuclear Regulatory Commission (NRC) for renewal of licenses authorizing operation of its two nuclear power reactors, STP Units 1 and 2, located near Wadsworth, Texas.<sup>1</sup> The proposed renewal would authorize STPNOC to operate STP Units 1 and 2 for an additional twenty years after the current licenses expire in 2027 and 2028, respectively.<sup>2</sup> The Sustainable Energy and Economic Development (SEED) Coalition, an organization that has members living within 50 miles of STP Units 1 and 2, has challenged the application by filing a petition to intervene and request for a hearing.<sup>3</sup>

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<sup>1</sup> Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Numbers NPF-76 and NPF-80 for an Additional 20-Year Period, STP Nuclear Operating Company, South Texas Project, Units 1 and 2, 76 Fed. Reg. 2,426, 2,426 (Jan. 13, 2011).

<sup>2</sup> Id.

<sup>3</sup> Petition for Leave to Intervene and Request for Hearing of SEED Coalition and Susan Dancer (Mar. 14, 2011) (Petition).

Because we conclude that Petitioner, SEED Coalition, has failed to proffer an admissible contention as required under 10 C.F.R. § 2.309(a), we deny its Petition.

## I. BACKGROUND

On October 25, 2010, STPNOC applied to the NRC for a renewal of its licenses (NPF-76 and NPF-80) to operate its two nuclear power reactors, STP Units 1 and 2.<sup>4</sup> The current licenses expire on August 20, 2027 and December 15, 2028, respectively.<sup>5</sup> The renewed licenses would authorize operation of the reactors for an additional twenty years beyond those dates.<sup>6</sup>

STPNOC submitted its application pursuant to NRC's license renewal regulations, 10 C.F.R. Part 54.<sup>7</sup> The general requirements regarding the contents of a license renewal application are set forth in 10 C.F.R. §§ 54.19-54.23. The environmental requirements regarding the contents of a license renewal application are set forth in 10 C.F.R. § 51.53(c). Additionally, in accordance with 10 C.F.R. § 51.95(c), the NRC Staff will prepare a Supplemental Environmental Impact Statement (SEIS) to the Commission's Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG-1437. The standard for issuing the renewed license is set forth in 10 C.F.R. § 54.29.

On January 13, 2011, the NRC published a notice of opportunity for hearing in the STP license renewal proceeding in the Federal Register.<sup>8</sup> On March 14, 2011, SEED Coalition filed a petition challenging the license renewal.<sup>9</sup> The Petition proffers four proposed contentions.

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<sup>4</sup> 76 Fed. Reg. at 2,426.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Petition at 1. Petitioner did not number the pages of their filings. So, the page numbers identified in this and subsequent citations are the product of Board review.

Proposed Contentions 1, 2, and 3 relate to the requirements of 10 C.F.R. § 50.54(hh)(2) for mitigative strategies for loss of large areas (LOLA) of the plant due to fires or explosions.

Proposed Contention 4 relates to reduced demand for electricity due to adoption of an energy efficient building code in Texas.<sup>10</sup> The Petition and accompanying documents indicate that SEED Coalition seeks to intervene as a pro se litigant, represented by its Executive Director, Karen Hadden.<sup>11</sup> On March 23, 2011, the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel appointed this Board to preside over the adjudicatory proceeding concerning STPNOC's license renewal application for STP Units 1 and 2.<sup>12</sup>

Thereafter on April 7, 2011, STPNOC and the NRC Staff filed answers to the Petition, opposing the admission of all four proposed contentions.<sup>13</sup> SEED Coalition did not file a reply.<sup>14</sup> However, on May 11, 2011, nearly two months after filing its Petition, SEED Coalition did file an amended Petition<sup>15</sup> and a request for oral argument.<sup>16</sup> STPNOC and the NRC Staff filed

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<sup>10</sup> Id. at 4-6.

<sup>11</sup> Id. at 1, 7; Id., Exh., Declaration of Karen Hadden at 1 (Mar. 14, 2011) (Hadden Declaration). Only after the filing of its Petition and Amended Petition, SEED Coalition obtained legal counsel.

<sup>12</sup> South Texas Project Nuclear Operating Company, South Texas Project, Units 1 and 2, Establishment of Atomic Safety and Licensing Board (Mar. 23, 2011) (unpublished); 76 Fed. Reg. 17,460 (Mar. 29, 2011).

<sup>13</sup> [STPNOC's] Answer Opposing Request for Hearing and Petition for Leave to Intervene (Apr. 7, 2011) (STPNOC Answer); NRC Staff's Answer to Petition for Leave to Intervene and Request for Hearing of SEED Coalition and Susan Dancer (Apr. 7, 2011) (Staff Answer).

<sup>14</sup> Commission rules permit SEED Coalition to file a reply seven days after the filing of STPNOC and Staff answers. 10 C.F.R. § 2.309(h)(2).

<sup>15</sup> Petitioners' Proposed Amended Petition for Leave to Intervene and Request for Hearing of SEED Coalition and Susan Dancer (May 8, 2011) (Amended Petition). SEED Coalition did not perfect this filing until three days later, when it certified service on May 11, 2011. See 10 C.F.R. § 2.302(c), (e) (stating service of a filing is not complete until accompanied by a certificate of service).

<sup>16</sup> Intervenors Request for Oral Argument on Contentions Raised on Relicensing (May 8, 2011). As with its Amended Petition, SEED Coalition did not perfect this filing until three days later, when it certified service on May 11, 2011. See 10 C.F.R. § 2.302(c), (e).

answers to the Amended Petition on June 2, 2011.<sup>17</sup> On June 27, 2011 the Board heard oral argument on the Petition and Amended Petition by teleconference.<sup>18</sup>

In order for a request for hearing and petition to intervene to be granted, a petitioner must (1) establish that it has standing and (2) propose at least one “admissible” contention.<sup>19</sup> We address each of these two requirements in turn.

## II. STANDING

### A. Standards Governing Standing

Under NRC regulations, a petitioner must demonstrate standing to intervene in a licensing process.<sup>20</sup> A proper showing includes (1) the name, address and telephone number of the petitioner; (2) the nature of the petitioner’s right under a relevant statute to be made a party to the proceeding; (3) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order that might be issued in the proceeding on the petitioner’s interest.<sup>21</sup> Yet, while judicial concepts of standing are generally followed in NRC proceedings,<sup>22</sup> in reactor license renewal proceedings the Commission recognizes a proximity presumption, whereby a petitioner is presumed to have

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<sup>17</sup> NRC Staff Answer to Proposed Amended Petition for Leave to Intervene and Request for Hearing of SEED Coalition and Susan Dancer (June 2, 2011); [STPNOC’s] Answer Opposing Amended Petition to Intervene (June 2, 2011).

<sup>18</sup> Tr. at 1-22.

<sup>19</sup> 10 C.F.R. § 2.309(a).

<sup>20</sup> Id.

<sup>21</sup> Id. § 2.309(d)(1)(i)-(iv).

<sup>22</sup> Nuclear Mgmt. Co., LLC (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 163 (2006). Judicial concepts of standing require that a petitioner establish that “(1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) that the injury can fairly be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.” Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

standing to intervene without the need to specifically plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power facility.<sup>23</sup>

In the context of a license renewal application, the Atomic Energy Act of 1954 (42 U.S.C. §§ 2011-2213 (1954)) (AEA) and the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4335 (1969)) (NEPA) are the primary statutes establishing the appropriate zone of interests that the petitioners may assert. Once parties demonstrate that they have standing, the parties will then be free to assert any contention, which, if proven, will afford them the relief they seek.<sup>24</sup> Thus, for example, if a petitioner is challenging license renewal, then once it has standing, it can pursue any other issue that, if resolved in its favor, would prevent or otherwise affect license renewal.

If the petitioner is an organization seeking to intervene in an NRC proceeding in its own right, it must allege that the challenged action will cause a cognizable injury to its interests or to the interests of its members.<sup>25</sup> Alternatively, when seeking to intervene in a representational capacity, as is the case here, an organization must identify at least one member who is affected by the licensing action and who qualifies for standing in his or her own right, and show that the member has authorized the organization to intervene on his or her behalf.<sup>26</sup>

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<sup>23</sup> Calvert Cliffs 3 Nuclear Project, LLC (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC 911, 915-16 & n.15 (2009); see also Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989).

<sup>24</sup> Yankee Atomic, CLI-96-1, 43 NRC at 6.

<sup>25</sup> Yankee Atomic, CLI-94-3, 39 NRC 95, 102 n.10 (1994).

<sup>26</sup> Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).

## B. Ruling on Standing

SEED Coalition bears the burden of providing facts sufficient to establish its standing.<sup>27</sup> In its petition, SEED Coalition identifies one member, Susan Dancer, who allegedly lives within 50 miles of STP Units 1 and 2.<sup>28</sup> By virtue of Ms. Dancer's alleged proximity to the facility, she would have standing to participate in this proceeding in her own right. SEED Coalition seeks representational standing on Ms. Dancer's behalf.<sup>29</sup>

STPNOC does not challenge SEED Coalition's standing.<sup>30</sup> The Staff challenges the standing of Susan Dancer and thereby the standing of SEED Coalition to intervene in this proceeding.<sup>31</sup> The Staff claims that Susan Dancer fails to provide sufficient facts in her declaration to establish standing.<sup>32</sup> In her declaration, among other things, Ms. Dancer states that she "live[s] in Blessing, Texas[,] . . . [residing] approximately eight miles from South Texas Project Units 1 & 2."<sup>33</sup> The Staff argues this statement fails to provide Ms. Dancer's address, which according to the Staff (1) is required by the Commission's rules of procedure and (2) precludes the Staff from verifying the accuracy of her declaration with regard to her proximity to STP Units 1 and 2.<sup>34</sup>

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<sup>27</sup> See PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-07, 71 NRC 133, 139 (2010).

<sup>28</sup> Petition at 1; Hadden Declaration at 1; Petition, Exh., Declaration of Susan Dancer at 1 (Mar. 14, 2011) (Dancer Declaration).

<sup>29</sup> Petition at 1, 3.

<sup>30</sup> STPNOC Answer at 1.

<sup>31</sup> Staff Answer at 6. Since SEED Coalition's standing is derivative to Ms. Dancer's, the Staff also puts SEED Coalition's standing at issue.

<sup>32</sup> Staff Answer at 6.

<sup>33</sup> Dancer Declaration at 1.

<sup>34</sup> Staff Answer at 6 (citing 10 C.F.R. § 2.309(d)(1)(i)).

The Staff's argument overlooks a significant inconsistency. Although the Commission's regulations mandate that a petition contain the name, address, and telephone number of the petitioner,<sup>35</sup> the Commission's hearing notice advises prospective petitioners "not to include personal privacy information, such as. . . home addresses or home phone numbers in their filings."<sup>36</sup> A petitioner must therefore choose between obeying the warning in the hearing notice and thereby violating the Commission's regulations, or exceeding what is asked by the hearing notice and thereby ignoring the Commission's warning. Here, Ms. Dancer apparently chose the former course of action.

Given the obvious inequity of denying standing to SEED Coalition because Ms. Dancer heeded the Commission's warning, we will not question SEED Coalition's standing. Ms. Dancer affirms under oath that she lives in Blessing, Texas, and Blessing is within approximately seven miles of STP Units 1 and 2.<sup>37</sup> If we found one of SEED Coalition's proposed contentions admissible, we could require that it provide Ms. Dancer's address in a manner consistent with maintaining the confidentiality of that information.<sup>38</sup> Because we do not find any of the four proposed contentions admissible, however, we see no point in requiring SEED Coalition to provide further information.

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<sup>35</sup> 10 C.F.R. § 2.309(d)(1)(i).

<sup>36</sup> 76 Fed. Reg. at 2,428.

<sup>37</sup> Dancer Declaration at 1.

<sup>38</sup> A petitioner may correct or supplement its showing on standing. See Bell Bend, CLI-10-7, 71 NRC at 139-40; see also South Carolina Elec. and Gas Co. and South Carolina Pub. Serv. Auth. (also Referred to as Santee Cooper) (Virgil C. Summer Nuclear Station, Units 2 & 3), CLI-10-1, 71 NRC 1, 7 (2010).

### III. CONTENTION ADMISSIBILITY

#### A. Standards Governing Contention Admissibility

Under 10 C.F.R. § 2.309(f)(1) a hearing request or petition to intervene “must set forth with particularity the contentions sought to be raised.” To satisfy this requirement, section 2.309(f)(1) specifies six criteria that each contention must meet:

- (i) Specificity: Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Brief Explanation: Provide a brief explanation of the basis for the contention;
- (iii) Within Scope: Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Materiality: Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Concise Statement of Alleged Facts or Expert Opinion: Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
- (vi) Genuine Dispute: Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner’s belief.<sup>39</sup>

The purpose of the contention rule is to “focus litigation on concrete issues and result in a clearer and more focused record for decision.”<sup>40</sup> The Commission has stated that it “should not have to expend resources to support the hearing process unless there is an issue that is

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<sup>39</sup> See 10 C.F.R. § 2.309(f)(1).

<sup>40</sup> Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004).

appropriate for, and susceptible to, resolution in an NRC hearing.”<sup>41</sup> The Commission has emphasized that the rules on contention admissibility are “strict by design.”<sup>42</sup> Further, absent a waiver, contentions challenging applicable statutory requirements or Commission regulations are not admissible in agency adjudications.<sup>43</sup> Failure to comply with any of these requirements precludes admission of a contention.<sup>44</sup>

Yet, while mere notice pleading is insufficient,<sup>45</sup> a petitioner does not have to prove its contentions at the admissibility stage.<sup>46</sup> Boards do not adjudicate disputed facts at this juncture.<sup>47</sup>

#### B. Proposed Contentions 1, 2, and 3<sup>48</sup>

Petition states in Contention 1:

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<sup>41</sup> Id.

<sup>42</sup> Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003); Millstone, CLI-01-24, 54 NRC 349, 358-59 (2001); Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334-35 (1999).

<sup>43</sup> See 10 C.F.R. § 2.335(a).

<sup>44</sup> See Millstone, CLI-04-36, 60 NRC 631, 636 (2004); Private Fuel Storage, LLC (Independent Spent Fuel Storage Facility), CLI-99-10, 49 NRC 318, 325 (1999) (citing Arizona Public Serv. Co. (Palo Verde Nuclear Station, Units 1, 2, & 3), CLI- 91-12, 34 NRC 149, 155-56 (1991)).

<sup>45</sup> Fansteel, Inc. (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003).

<sup>46</sup> PFS, CLI-04-22, 60 NRC 125, 139 (2004); see also Nuclear Innovation North America LLC (South Texas Project, Units 3 and 4), LBP-11-07, 73 NRC \_\_, \_\_ (slip op. at 46) (Feb. 28, 2011) (“[A]t the contention admissibility stage of a proceeding, [petitioners] need not marshal their evidence as though preparing for an evidentiary hearing.”); Dep’t of Energy (High-Level Waste Repository), LBP-09-6, 69 NRC 367, 416 (2009) (noting that requiring petitioners to proffer additional and conclusive support for the effect of their proposed contention “would improperly require. . . Boards to adjudicate the merits of contentions before admitting them”), aff’d in pertinent part, CLI-09-14, 69 NRC 580 (2009).

<sup>47</sup> See Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 244 (2006) (citing Mississippi Power & Light, Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 426 (1973)).

<sup>48</sup> Given the substantial overlap among these “LOLA contentions,” we analyze them together.

The Applicant's License Renewal Application and Environmental Report fail to adequately address the Applicant's capacity to deal with fires and explosions that cause a loss of large areas (LOLA) of the plant.<sup>49</sup>

Petition states in Contention 2:

The Applicant's License Renewal Application is deficient because it does not describe the means that it will use to determine radiation exposures to LOLA responders.<sup>50</sup>

Petition states in Contention 3:

The Applicant's License Renewal Application is deficient because it does not describe the means that it will use to protect LOLA responders from excessive radiation exposures.<sup>51</sup>

1. Parties' Positions

In proposed Contentions 1, 2, and 3 SEED Coalition challenges the adequacy of STPNOC's mitigation measures for addressing LOLA events. For each of these LOLA contentions, SEED Coalition claims that STPNOC fails to meet its obligations under 10 C.F.R. § 52.80 and 10 C.F.R. § 50.54(hh)(2).<sup>52</sup> In support, SEED Coalition cites several sections of the Applicant's Final Safety Analysis Report (FSAR) or Environmental Report (ER) that deal with topics allegedly "within the scope of this proceeding."<sup>53</sup> For example, SEED Coalition argues that since STPNOC addresses fire protection in its FSAR, fire protection mitigation measures for LOLA events are mandated by 10 C.F.R. § 52.80 and 10 C.F.R. § 50.54(hh)(2).

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<sup>49</sup> Petition at 4.

<sup>50</sup> Id. at 4-5.

<sup>51</sup> Id. at 5-6.

<sup>52</sup> Id. at 4-6.

<sup>53</sup> For contention 1, SEED Coalition claims that the contention is within the scope of the proceeding because STPNOC addresses fire protection in its FSAR in Appendix A, section 1.12. Id. at 4. For contentions 2 and 3, SEED Coalition claims the contentions are within the scope of the proceeding because STPNOC addresses the cumulative impacts of postulated accidents and the cumulative impacts on radiological health (occupational and public dose) in its ER in sections 4.21.9, 4.21.10, and 4.21.10.1, respectively. Id. at 5.

Both STPNOC and the Staff argue that the proposed LOLA contentions are outside the scope of this proceeding. According to STPNOC, the Commission has specifically limited its license renewal safety review to the matters specified in 10 C.F.R. Part 54, which focus on the management of aging for certain systems, structures and components, and the review of time-limited aging analyses.<sup>54</sup> To meet those regulations, applicants must “demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation,” at a “detailed . . . ‘component and structure level,’ rather than at a more generalized ‘system level.’”<sup>55</sup>

STPNOC asserts that as part of their daily responsibilities, current licensees—including those applying for a renewed license—must comply with the NRC’s ongoing regulatory process. STPNOC states that this process ensures the current licensing basis (CLB) of an operating plant remains acceptably safe.<sup>56</sup> According to STPNOC, entertaining contentions in a license renewal proceeding that challenge the CLB would be “both unnecessary and wasteful” given ongoing agency oversight, review and enforcement.<sup>57</sup>

Thus, according to STPNOC and the Staff, the Commission distinguishes between aging management issues, reviewed at the time of license renewal, and operational issues, reviewed at all times as part of the CLB. Contentions on aging management issues are appropriate for a

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<sup>54</sup> STPNOC Answer at 6 (citing Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 7-8 (2001) and Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363 (2002)).

<sup>55</sup> Id. at 6 (quoting Turkey Point, CLI-01-17, 54 NRC at 8).

<sup>56</sup> Id. at 6-7 (citing Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991) and 10 C.F.R. § 54.3).

<sup>57</sup> Id. at 7 (citing Turkey Point, CLI-01-17, 54 NRC at 9).

license renewal proceeding, whereas contentions on operational issues<sup>58</sup> are outside the scope of such a proceeding.<sup>59</sup>

STPNOC and the Staff contend that the LOLA mitigation measures SEED Coalition raises under section 50.54(hh)(2) are part of the CLB, properly challenged with a petition to initiate an enforcement action, rather than petition for a hearing in a license renewal proceeding.<sup>60</sup> STPNOC argues that the Commission's regulations define section 50.54(hh)(2) as part of the CLB and conceptually LOLA mitigation measures are "unrelated" to aging management.<sup>61</sup> In the same vein, the Staff argues that LOLA mitigation measures implemented under section 50.54(hh)(2) are "conceptual issues. . . outside the bounds of the passive, safety-related physical systems, structures and components that form the scope of [the Commission's] license renewal review."<sup>62</sup> Moreover, the Staff emphasizes that even SEED Coalition's purported basis for its LOLA contentions, section 52.80(d), is outside the scope of the proceeding because that section only applies to combined license applicants, not license renewal applicants.<sup>63</sup>

Both STPNOC and the Staff argue that the proposed LOLA contentions do not present a genuine dispute on a material issue of fact or law. According to STPNOC, SEED Coalition bases its LOLA contentions on 10 C.F.R. § 52.80(d), but that regulation only applies to

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<sup>58</sup> STPNOC provides examples of several operational issues it claims as unfit for a license renewal proceeding, including emergency planning, quality assurance, physical protection, and radiation protection. Id. at 7-8.

<sup>59</sup> Id. at 7-8; Staff Answer at 16.

<sup>60</sup> See STPNOC Answer at 8; Staff Answer at 16.

<sup>61</sup> STPNOC Answer at 8.

<sup>62</sup> Staff Answer at 16, 21-22 (emphasis in original).

<sup>63</sup> Id. at 15.

combined operating license (COL) applications, not license renewal applications.<sup>64</sup> STPNOC argues that, because they are based upon an irrelevant regulation, the contentions do not present a genuine dispute with the application as required by 10 C.F.R. § 2.309(f)(1)(vi).<sup>65</sup>

The Staff argues that the LOLA contentions do not present a genuine dispute for different reasons: the contentions do not provide the information required by 10 C.F.R. § 2.309(f)(1)(vi).<sup>66</sup> According to the Staff, SEED Coalition neither explains how the application is inadequate nor identifies which sections of the application are inadequate.<sup>67</sup> The Commission's regulations and case law, however, require greater specificity.<sup>68</sup>

Finally, both STPNOC and the Staff argue that SEED Coalition does not support its LOLA contentions with alleged facts or expert opinion as required by 10 C.F.R. § 2.309(f)(1)(v). STPNOC and the Staff liken SEED Coalition's petition to a "notice pleading."<sup>69</sup> According to STPNOC, the Petition does not address any inadequacies with the application or point to any study or expert statements describing how the application improperly treats LOLA event mitigation.<sup>70</sup> Even though SEED Coalition claims that information and belief support the Petition, SEED Coalition does not reveal the information or explain the belief.<sup>71</sup> According to

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<sup>64</sup> STPNOC Answer at 11.

<sup>65</sup> Id. at 11. Similarly, STPNOC also argues that because 10 C.F.R. § 54.29, the Commission's standards for issuing a renewal license, does not implicate LOLA mitigation measures, such issues are not material to the present license renewal proceeding. See Id. at 9-10 (citing 10 C.F.R. § 2.309(f)(1)(iv)).

<sup>66</sup> Staff Answer at 17-18, 24.

<sup>67</sup> Id. at 17, 24.

<sup>68</sup> Id. at 17 (citing Yankee Atomic, CLI-05-15, 61 NRC 365, 381 (2005)).

<sup>69</sup> STPNOC Answer at 10-11; Staff Answer at 18-19, 23.

<sup>70</sup> STPNOC Answer at 10.

<sup>71</sup> Id. at 11.

STPNOC, SEED Coalition cannot rest its contentions on “bare assertions and speculation.”<sup>72</sup>

The Staff echoes this sentiment, noting that such bare assertions run afoul of the Commission’s intention to focus the hearing process and provide notice to the other parties.<sup>73</sup>

To these assertions, SEED Coalition did not file a reply.

2. Board Ruling

a. Safety Issues

For the reasons set forth below, the Board concludes that Contentions 1, 2, and 3, which challenge STPNOC’s compliance with the LOLA requirements of 10 C.F.R. § 50.54(hh)(2), are not admissible because they are not within the scope of this license renewal proceeding as required by 10 C.F.R. § 2.309(f)(1)(iii). The NRC’s license renewal process concerns a particularized and limited inquiry into the potential impacts of an additional 20 years of nuclear power plant operation, not day-to-day operational issues as SEED Coalition suggests.<sup>74</sup> The relevant issues for an additional 20 years of reactor plant operation differ from those when a reactor plant is first built and licensed.<sup>75</sup> For example, many safety questions that relate to plant aging become important during the extended renewal term since the design of some components may have been based upon a service lifetime of only 40 years.<sup>76</sup>

As a plant ages, degradation mechanisms such as corrosion, fatigue, and embrittlement may adversely affect physical parts of the plant. If these degradation mechanisms go

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<sup>72</sup> Id. at 11 (citing Fansteel, CLI-03-13, 58 NRC at 203).

<sup>73</sup> See Staff Answer at 19, 23 (citing PPL Susquehanna, LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-04, 65 NRC 281, 303-04 (2007)).

<sup>74</sup> See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC \_\_, \_\_ (slip op. at 10-11) (Sept. 30, 2010) (citing Millstone, CLI-04-36, 60 NRC at 637-38).

<sup>75</sup> Turkey Point, CLI-01-17, 54 NRC at 7.

<sup>76</sup> Id., CLI-01-17, 54 NRC at 7 (citing 56 Fed. Reg. at 64,946 and Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,479 (May 8, 1995)).

unconsidered or unmitigated they might reduce safety margins or affect plant operability. Accordingly, renewal applicants must demonstrate how they will adequately manage the effects of aging during the proposed renewal term.<sup>77</sup> This requires renewal applicants to make a detailed assessment, conducted on passive, safety-related physical systems, structures, and components (SSC) of the plant,<sup>78</sup> as well as those other SSCs identified in 10 C.F.R. § 54.4(a). Additionally, renewal applicants must reassess time-limited aging analyses—those analyses made during the original license term and based upon the length of the original license term, for example 40 years.<sup>79</sup>

The license renewal process is not an open invitation for new, broad-scoped inquiries into compliance that are separate from and parallel to the Commission's day-to-day operational oversight duties.<sup>80</sup> The Commission has rejected many such broad-based conceptual inquiries as beyond the bounds of a license renewal proceeding: safety culture, operational history, quality assurance, quality control, management competence, human factors, and emergency planning.<sup>81</sup> To require a full reassessment of these issues during license renewal would be both unnecessary and wasteful.<sup>82</sup> Accordingly, the NRC's license renewal review focuses upon those potential detrimental effects of aging that are not routinely addressed by ongoing regulatory oversight programs.

While the license renewal process seeks to mitigate the detrimental effects of aging from operation beyond the initial license term, everyday public health and safety are assured by the

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<sup>77</sup> See 10 C.F.R. § 54.21(a)(3).

<sup>78</sup> Prairie Island, CLI-10-27, 72 NRC at \_\_\_ (slip op. at 11); see also 60 Fed. Reg. at 22,462.

<sup>79</sup> See 10 C.F.R. §§ 54.3, 54.21(c).

<sup>80</sup> 56 Fed. Reg. at 64,952.

<sup>81</sup> Prairie Island, CLI-10-27, 72 NRC at \_\_\_ (slip op. at 10-11) (citing 56 Fed. Reg. at 64,959, 64,967-68); Turkey Point, CLI-01-17, 54 NRC at 10.

<sup>82</sup> Turkey Point, CLI-01-17, 54 NRC at 7.

comprehensive and continuous process of operational oversight.<sup>83</sup> Operational oversight allows the NRC to “continuously analyze[] conditions, acts, and practices that could affect safe operation of plants”<sup>84</sup> through “research, inspections, audits, investigations, evaluations of operating experience, and regulatory actions to resolve identified issues.”<sup>85</sup> The NRC undertakes this mission by ensuring that a licensed facility remains in compliance with the plethora of binding requirements constituting the facility’s Current Licensing Basis (CLB).<sup>86</sup> The CLB “represents the evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety.”<sup>87</sup>

SEED Coalition’s LOLA contentions fall outside the scope of this proceeding as they do not relate to aging management review and fall squarely within the STP Unit 1 and 2 CLB. SEED Coalition anchors its LOLA contentions on the requirements of section 50.54(hh)(2). Section 50.54(hh)(2), which arose as a post-9/11 security regulation, requires licensees to develop guidance and strategies for addressing the loss of large areas of the plant due to

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<sup>83</sup> Id., CLI-01-17, 54 NRC at 9-10.

<sup>84</sup> 60 Fed. Reg. at 22,485.

<sup>85</sup> 56 Fed. Reg. at 64,947; see also 60 Fed. Reg. at 22,485.

<sup>86</sup> The CLB represents the set of NRC requirements applicable to a specific plant and a licensee’s written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect. The CLB includes the NRC regulations contained in 10 C.F.R. Parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, 100 and appendices thereto; orders; license conditions; exemptions; and technical specifications. It also includes the plant-specific design-basis information defined in 10 C.F.R. § 50.2 as documented in the most recent final safety analysis report (FSAR) as required by 10 C.F.R. § 50.71 and the licensee’s commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports. 10 C.F.R. § 54.3; see also Turkey Point, CLI-01-17, 54 NRC at 9.

<sup>87</sup> 60 Fed. Reg. at 22,473.

explosions or fires from a beyond-design basis event.<sup>88</sup> Section 50.54(hh)(2) applies to both current reactor licensees under Part 50 and new applicants for licenses under Part 52.<sup>89</sup> Thus, section 50.54(hh)(2) focuses on pre-planning for beyond-design basis events and applies to all nuclear facilities regardless of age; consequently, challenges to that provision are neither germane to age-related degradation nor unique to the license renewal period.<sup>90</sup>

Moreover, compliance with the requirements of 10 C.F.R. § 50.54(hh)(2) falls within the STP Units 1 and 2 CLB. A facility's CLB contains, inter alia, any license conditions.<sup>91</sup> And in both the regulations and the statement of considerations accompanying the promulgation of section 50.54(hh)(2), the Commission states that current reactor licensees comply with the requirements of section 50.54(hh)(2) through conditions on their operating licenses.<sup>92</sup> Therefore, SEED Coalition's challenge to STPNOC's compliance with section 50.54(hh)(2) falls outside the scope of a license renewal proceeding.<sup>93</sup> As a result, proposed Contentions 1, 2, and 3 are inadmissible.<sup>94</sup>

Furthermore, SEED Coalition's Petition undermines the admissibility of proposed Contentions 1, 2, and 3 because the purported basis for each of these LOLA contentions is irrelevant to this license renewal proceeding. As the basis for each of its LOLA contentions, SEED Coalition cites the requirements of 10 C.F.R. § 52.80(d).<sup>95</sup> However, section 52.80(d)

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<sup>88</sup> Power Reactor Security Requirements, 74 Fed. Reg. 13,926, 13,926, 13,957 (Mar. 27, 2009).

<sup>89</sup> Id. at 13,957.

<sup>90</sup> Cf. Millstone, CLI-05-24, 62 NRC 551, 561 (2005) (emergency planning contention).

<sup>91</sup> 10 C.F.R. § 54.3.

<sup>92</sup> Id. § 50.54; 74 Fed. Reg. at 13,957.

<sup>93</sup> 10 C.F.R. § 54.30(b).

<sup>94</sup> Id. § 2.309(f)(1)(iii).

<sup>95</sup> Petition at 4, 5. Section 52.80(d) in turn mandates compliance with the agency's LOLA requirements at § 10 C.F.R. § 50.54(hh)(2).

and its requirements do not apply to this proceeding. Part 52 of the Commission's regulations "governs the issuance of early site permits, standard design certifications, combined licenses, standard design approvals, and manufacturing licenses for nuclear power facilities. . . ." <sup>96</sup> Yet, this proceeding concerns the renewal of STPNOC's existing operating licenses for STP Units 1 and 2, not a combined license application for new reactor units. <sup>97</sup> As such, STPNOC's application to renew its operating licenses will not be evaluated against the requirements of section 52.80(d). Therefore, section 52.80(d) cannot act as a basis for a contention within the scope of this proceeding. <sup>98</sup> SEED Coalition offers no other basis for its LOLA contention.

b. NEPA Issues

We also conclude that proposed Contentions 1, 2, and 3 do not present admissible contentions under Part 51 of the Commission's regulations—the NEPA regulations. SEED Coalition refers to STPNOC's ER in Contentions 1, 2, and 3. Even though SEED Coalition does not address any of the specific requirements of Part 51, we construe these references to invoke the requirements of Part 51 and therefore as attempts to proffer NEPA contentions.

As with safety contentions, the NRC's regulations put limits on NEPA contentions in a license renewal proceeding. The ER for the operating license renewal stage need not contain environmental analysis of the "Category 1" issues identified in Appendix B to Subpart A of 10 C.F.R. Part 51. <sup>99</sup> Category 1 issues are not subject to challenge in a relicensing proceeding, absent a waiver under 10 C.F.R. § 2.335, because they "involve environmental effects that are essentially similar for all plants [and] need not be assessed repeatedly on a site-specific

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<sup>96</sup> 10 C.F.R. § 52.0 (scope). In contrast, Part 54 "governs the issuance of renewed operating license...." 10 C.F.R. § 54.1 (purpose).

<sup>97</sup> 76 Fed. Reg. at 2,426; see also License Renewal Application, South Texas Project Units 1 and 2, Facility Operating License Nos. NPF-76 and NPF-80, at 1.1-1.

<sup>98</sup> 10 C.F.R. § 2.309(f)(1)(iii).

<sup>99</sup> Id. § 51.53(c)(3)(i).

basis.”<sup>100</sup> But the ER must contain analyses of the environmental impacts of the proposed action for those matters identified as “Category 2” license renewal issues in Appendix B.<sup>101</sup> The ER must also “contain a consideration of alternatives for reducing adverse impacts, as required by [10 C.F.R. § 51.45(c)], for all Category 2 license renewal issues in [Appendix B].”<sup>102</sup> Finally, “[i]f the staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment, a consideration of alternatives to mitigate severe accidents must be provided” in the ER.<sup>103</sup> Category 2 issues must be reviewed on a site-specific basis because they have not been determined to be “essentially similar” for all plants.<sup>104</sup> Therefore, challenges relating to these issues are properly part of a license renewal proceeding.

In its ER, STPNOC addresses severe accident mitigation alternatives (SAMAs) and concludes that no SAMAs would be beneficial to implement given their costs.<sup>105</sup> The Commission defines LOLA events as severe accidents.<sup>106</sup> Thus, because Contentions 1, 2, and 3 allege that the ER “fail[s] to adequately address the Applicant’s capacity to deal with fires and explosions that cause a loss of large areas (LOLA) of the plant,” and “does not describe the means . . . to determine radiation exposures,” and “does not describe the means that it will use to protect LOLA responders from excessive radiation exposures,” SEED Coalition presents a de

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<sup>100</sup> Turkey Point, CLI-01-17, 54 NRC at 11.

<sup>101</sup> 10 C.F.R. §51.53(c)(3)(ii).

<sup>102</sup> Id. § 51.53(c)(3)(iii).

<sup>103</sup> Id. § 51.53(c)(3)(ii)(L).

<sup>104</sup> 10 C.F.R. Part 51, subpt. A, app. B, n.2.

<sup>105</sup> South Texas Project, Applicant’s Environmental Report—Operating License Stage South Texas Project, Units 1 & 2 (2010), sec. 4.20 (ER).

<sup>106</sup> 74 Fed. Reg. at 13,957.

facto challenge to the ER's SAMA analysis and conclusions.<sup>107</sup> Nevertheless, SEED Coalition's challenge falls short of presenting an admissible contention.

Contentions 1, 2, and 3 fail because the Commission's rules of procedure do not permit the filing of notice pleadings—general, vague, or unsupported claims intended to act as placeholders for later elaboration.<sup>108</sup> Instead, at the pleading stage of an NRC adjudication parties must come forward with sufficiently detailed grievances to allow a board to conclude that genuine disputes exist justifying a commitment of adjudicatory resources.<sup>109</sup> SEED Coalition premises its contentions on its own "information and belief," but SEED Coalition provides no indication as to what the information is or why it holds its beliefs. Such "bare assertions and speculation" do not meet the Commission's standard of "a concise statement of the alleged facts or expert opinions . . . together with references to the specific sources and documents" upon which the petitioner relies.<sup>110</sup> Accordingly, Contentions 1, 2, and 3 fail to satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v).

Second, Contentions 1, 2, and 3 do not raise a genuine dispute of fact or law with the ER. Although we have construed the Contentions as a de facto challenge to the ER's SAMA analysis and conclusions, the Contentions fail to identify any specific deficiency, inadequacy or omission in STPNOC's analysis or conclusions. For example, SEED Coalition fails to identify any specific SAMA that should have been considered but was not, nor does it identify any error

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<sup>107</sup> See Petition at 4-6.

<sup>108</sup> See, e.g., Millstone, CLI-09-5, 69 NRC 115, 120, 122-23 (2009). Yet this is exactly what SEED Coalition has attempted to do by submitting its Amended Pleading. Nearly two months after filing its Petition, SEED Coalition amended its pleading and for the first time offered legal and factual support for its contentions. See Amended Petition at 4 n.1, 5 n.2, 6 n.3.

<sup>109</sup> See, e.g., North Atlantic Energy Service Corp. (Seabrook Station, Unit 1) CLI-99-6, 49 NRC 201, 219 (1999).

<sup>110</sup> 10 C.F.R. § 2.309(f)(1)(v); Fansteel, CLI-03-13, 58 NRC at 203 (citing GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 208 (2000)).

in STPNOC's calculations of costs and benefits. Thus, the Contentions fail to satisfy the requirement of 10 C.F.R. § 2.309(f)(1)(vi).

Finally, SEED Coalition's attempt to clarify its position in its Amended Petition only muddies the water further. On May 11, 2011, nearly two months after filing its Petition, SEED Coalition filed an Amended Petition. Although SEED Coalition did not file a corresponding motion for leave to file the amendment, explain what changes were made, or justify the late filing,<sup>111</sup> it appears that several footnotes were added as legal support.<sup>112</sup> For proposed Contentions 1, 2, and 3, SEED Coalition added references to several nonpublic documents in the Comanche Peak COL proceeding, as well as the dissent to LBP-10-05.<sup>113</sup> But, aside from indicating its reliance, SEED Coalition offers no explanation as to which arguments it relies upon or how those arguments relate to this proceeding. Thus, the Amended Petition adds nothing helpful to SEED Coalition's original Petition,<sup>114</sup> even if we could consider the Amended Petition despite its untimeliness.

We therefore will not admit Contentions 1, 2, and 3.<sup>115</sup>

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<sup>111</sup> Based on their respective dates, SEED Coalition could have included each of the amended references in its original Petition. Instead, SEED Coalition waited nearly two months to proffer the references as support for its contentions. As a result, the amendment is late and SEED Coalition did not seek to justify the late filing even though it bears the burden of doing so. See, e.g., Millstone, CLI-09-5, 69 NRC at 126 ("The Board correctly found that failure to address the requirements [of 10 C.F.R. §§ 2.309(c) and (f)(2)] was reason enough to reject the proposed new contentions.").

<sup>112</sup> See Amended Petition at 4, 5.

<sup>113</sup> See id. at 4-5, n.1, 2. The documents which SEED Coalition references are non-public documents, held as Sensitive Unclassified Non-Safeguards Information under 10 C.F.R. § 2.390 and a July 1, 2009 protective order in the Comanche Peak COL proceeding.

<sup>114</sup> 10 C.F.R. § 2.309(f)(1)(iv).

<sup>115</sup> As several of SEED Coalition's proposed contentions fall within the facility's CLB, it may seek action on its concerns by either filing a petition for rulemaking under 10 C.F.R. § 2.802 or submitting an enforcement petition under 10 C.F.R. § 2.206. See, e.g., Florida Power and Light Co. v. Lorion, 470 U.S. 729, 731 (1985); Riverkeeper, Inc. v. Collins, 359 F.3d 156, 158 (2d Cir. 2004); Union of Concerned Scientists v. NRC, 920 F.2d 50, 55 n.4 (D.C. Cir. 1990); Massachusetts v. NRC, 878 F.2d 1516, 1520 (1st Cir. 1989); see also Carolina Power & Light

## B. Proposed Contention 4

Contention 4 states,

The Applicant's License Renewal Application is deficient because it does not determine the projected decline in demand for electricity attributable to adoption of [an] energy efficient building code in Texas.<sup>116</sup>

### 1. Parties' Positions

Contention 4 alleges that provisions of the Texas Building code mandating energy efficiency will produce enough reduction in power demand to render renewal of the licenses for STP Units 1 and 2 unnecessary. SEED Coalition states that this issue is material "because the Applicant is required to consider alternatives under the requirements of [NEPA], 42 U.S.C. § 4332(c)(iii)."<sup>117</sup> Petitioner acknowledges that the Applicant's ER, at section 7.2.1.4, discusses demand side management as an alternative to relicensing, but alleges that the ER fails to specify the estimated diminished demand anticipated from adoption of the energy efficient building code. SEED Coalition states, again "[o]n information and belief," that the energy efficient building code "will result in energy savings of approximately 2,362 MW by 2023. Such savings would nearly offset the net electrical output of 2,500 MW from STP Units 1 and 2."<sup>118</sup>

The Staff argues that Contention 4 challenges the need for power from STP Units 1 and 2 and is, therefore, outside the scope of license renewal. Moreover, according to the Staff, to the extent that Contention 4 could be viewed as an alternatives contention, Contention 4 does not raise a material dispute with the Application because it does not challenge the ER's

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Co. (Shearon Harris Nuclear Power Station, Units 1; H.B. Robinson Plant, Unit 2), DD-06-1, 63 NRC 133, 140 (2006) (granting a 10 C.F.R. § 2.206 petition on fire protection).

<sup>116</sup> Petition at 6.

<sup>117</sup> Id.

<sup>118</sup> Id.

conclusion that additional, un-enacted demand side management (DSM) measures would be unlikely to produce sufficient energy savings to replace the power from STP Units 1 and 2. Finally, the Staff observes that Petitioner provides no factual support for Contention 4.<sup>119</sup>

Similarly, STPNOC argues that proposed Contention 4 is outside the scope of the proceeding, is not supported by alleged facts or expert opinions, and fails to raise a genuine dispute of material law or fact with the Application.<sup>120</sup> STPNOC further argues that Petitioner fails to challenge the information in the ER on the very subject of its contention, and therefore fails to demonstrate a genuine dispute.

## 2. Board Ruling

We will not admit Contention 4 because it fails to provide alleged facts or expert opinion sufficient to demonstrate a genuine dispute of material law or fact on the issue whether DSM is a reasonable alternative to license renewal.<sup>121</sup>

If Contention 4 were based solely on the ER's failure to discuss the need for power, we would agree with the argument of the Staff and STPNOC that Contention 4 is outside the scope of the proceeding. The regulations state that a license renewal ER "is not required to include discussion of need for power."<sup>122</sup> But, we understand Contention 4 to challenge to the adequacy of the analysis of alternatives in the ER, not to the lack of analysis of the need for power. Petitioner states that Contention 4 "is within the scope of this proceeding because it relates to the Applicant's abilities to meet its obligations under 10 C.F.R. 51.53(c)(2) because the costs and benefits of the energy efficient building code are essential to determine whether

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<sup>119</sup> Staff Answer at 25-26.

<sup>120</sup> STPNOC Answer at 12.

<sup>121</sup> 10 C.F.R. § 2.309(f)(1)(v), (vi).

<sup>122</sup> Id. § 51.53(c)(2). Under 10 C.F.R. § 2.335(a), this and other rules and regulations of the Commission are not subject to challenge in any adjudicatory proceeding in the absence of a waiver. Petitioner has neither sought nor received a waiver of section 51.53(c)(2).

the adoption of an energy efficient building code should be included as an alternative under 10 C.F.R. 51.53(b)(2).<sup>123</sup> Under section 51.53(c)(2), a discussion of the economic costs and benefits of the proposed action and alternatives is required if “such costs and benefits are . . . essential for a determination regarding the inclusion of an alternative in the range of alternatives considered . . . .” Viewed as a challenge to the alternatives analysis in the ER, Contention 4 is within the scope of the proceeding.

We therefore turn to the ER’s discussion of DSM as an alternative to license renewal. The ER discusses various DSM strategies, and notes that “[t]he Texas legislature is currently considering several bills that would increase demand-reduction mandates in [the Electric Reliability Council of Texas region] (ERCOT) and other regions of Texas.”<sup>124</sup> The ER concludes, however, that “it is unlikely that implementation of additional DSM measures in the CPS Energy and Austin Energy service areas could offset the electricity generated by STP Units 1 & 2.”<sup>125</sup> SEED Coalition challenges this claim. Petitioner states that “Applicant’s ER at section 7.2.1.4 discusses demand side management as an alternative to relicensing but fails to specify the estimated diminished demand anticipated from adoption of the energy efficient building code. On information and belief, Petitioner alleges that the energy efficient building code will result in energy savings of approximately 2,362 MW by 2023. Such savings would nearly offset the net electrical output of 2,500 MW from STP Units 1 and 2.” Thus, according to SEED Coalition, had the ER acknowledged the energy saving potential of the energy efficient building code, the ER would have supported their position that DSM is a reasonable alternative

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<sup>123</sup> Petition at 6. We assume Petitioner intended to cite 10 C.F.R. § 51.53(c)(2), not 10 C.F.R. § 51.53(b)(2).

<sup>124</sup> ER sec. 7.2.1.4.

<sup>125</sup> Id. CPS Energy and Austin Energy are the only owners of STP Units 1 and 2 that are regulated utilities and therefore have some ability to engage in DSM. STPNOC Answer at 9 (citing ER ch. 7, at 9). The areas served by those utilities are therefore the relevant service areas for analyzing DSM as a reasonable alternative to license renewal.

to license renewal because DSM would offset most or all of the electricity generated by STP Units 1 and 2.

Had SEED Coalition provided factual support for this theory, it might have established a genuine dispute of material fact with the ER's analysis of DSM as an alternative to license renewal. An ER that contains an incomplete or misleading discussion of an alternative to the proposed action would likely not comply with the requirement of section 51.53(c)(2) that the ER discuss the environmental impacts of alternatives.<sup>126</sup> Thus, the question whether the ER adequately assesses the energy savings potential of DSM is material to the licensing decision.

Once again, however, the information SEED Coalition relies on is provided entirely "[o]n information and belief."<sup>127</sup> For reasons we have already explained, this is insufficient to satisfy the NRC's pleading requirements.

STPNOC points out, moreover, that the stated purpose of and need for STP Units 1 and 2 is to provide 2,560 MW of baseload generating capability.<sup>128</sup> Petitioner has not challenged this statement of purpose and need. And the Commission has held that "reasonable alternatives" are limited to those alternatives that "will bring about the ends" of the proposed action.<sup>129</sup> Thus, only an alternative that will provide a reduction in the need for baseload power in the relevant service areas would satisfy the purpose and need of the proposed action and constitute a reasonable alternative to license renewal. Accordingly, the energy savings of

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<sup>126</sup> The agency's regulations require that an ER provide sufficient information about alternatives to enable the NRC Staff to prepare an Environmental Impact Statement in compliance with NEPA. See 10 C.F.R. § 51.45(b)(3). An ER that provides an incomplete or misleading picture of an alternative would fail in that essential purpose. See Animal Defense Council v. Hodel, 840 F.2d 1432, 1439 (9th Cir. 1988) (an EIS that contains an incomplete or misleading comparison of alternatives is deficient).

<sup>127</sup> Petition at 6.

<sup>128</sup> STPNOC Answer at 16 (citing ER Ch. 7, at 10-11).

<sup>129</sup> Hydro Res. Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (citing Citizens Against Burlington v. Busey, 938 F.2d 190, 195-96 (D.C. Cir. 1991) and City of Grapevine v. Dep't of Transp., 17 F.3d 1502, 1506 (D.C. Cir.1994)).

approximately 2,362 MW to which SEED Coalition refers is only relevant if it represents a savings in baseload power demand during the license renewal period in the CPS Energy and Austin Energy service areas.

We cannot determine, given the lack of information before us, whether the energy savings SEED Coalition claims will result from an energy efficient building code represents savings in peak power demand or baseload power demand. We also cannot determine whether the estimated energy savings is projected to occur in the CPS Energy and Austin Energy service areas, in the entire State of Texas, or in some other geographic area. SEED Coalition has therefore failed to establish a genuine dispute with the ER's conclusion that DSM is not a reasonable alternative to license renewal. Because the Petitioner has the burden to provide alleged facts or expert opinion sufficient to establish a genuine dispute of material fact or law with the license application, Contention 4 must fail.<sup>130</sup>

We therefore will not admit Contention 4.

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<sup>130</sup> 10 C.F.R. § 2.309(f)(1)(v), (vi).

V. CONCLUSION

For the reasons stated in this Order, SEED Coalition's Petition is denied. SEED Coalition may file an appeal of this Order to the Commission pursuant to 10 C.F.R. § 2.311 within ten (10) days after service of the Order.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD  
*/RA/*

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Ronald M. Spritzer, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Nicholas G. Trikouros  
ADMINISTRATIVE JUDGE

*/RA/*

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Larry R. Foulke  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
August 26, 2011

Licensing Board Statement Regarding 10 C.F.R. § 50.54(hh)(2)

Although we find that as it relates to 10 C.F.R. § 50.54(hh)(2), Petitioner's proposed Contention 1 falls outside the scope of this license renewal proceeding, we include this separate statement regarding section 50.54(hh)(2) to highlight an apparent gap in the Commission's regulations. This is an issue the Commission might want to consider as it reviews the agency's regulatory program in light of the Fukushima I events.

Section 50.54(hh)(2) requires licensees to develop and to implement severe accident mitigation strategies for events associated with a loss of large areas of the plant (LOLAs). Commission regulations and case law dictate that compliance with section 50.54(hh)(2) is part of a facility's Current Licensing Basis (CLB). As part of the CLB, compliance is ensured by the NRC's operational oversight programs so that challenges to compliance are inadmissible in a license renewal proceeding.

Given that compliance with section 50.54(hh)(2) is part of a facility's CLB, section 50.54(hh)(2) only directs licensees to "develop and implement guidance and strategies...." A licensee's duties under section 50.54(hh)(2) then appear to expire once it has finished developing and implementing. Section 50.54(hh)(2) does not compel licensees to ensure such guidance and strategies are effective or remain effective for any length of time. Section 50.54(hh)(2) neither mandates licensees to routinely inspect systems, structures, or components (SSCs) that may be initially implemented because of the regulation, nor does it mandate licensees to ensure operability of SSCs later in life. Section 50.54(hh)(2) indicates that compliance only entails initial development and implementation, not ongoing inspection and maintenance. It would appear then that inspection and maintenance of section 50.54(hh)(2)-related SSCs are not part of a facility's CLB.

At the same time, the passive SSCs a licensee develops or implements to comply with section 50.54(hh)(2) are not included within the scope of license renewal review. Section 54.4 identifies the SSCs subject to license renewal review. To be within the scope of license renewal

review, SSCs must either be safety-related under section 54.4(a)(1), support safety-related functions under section 54.4(a)(2), or relate to one of the sui generis regulated events identified in section 54.4(a)(3). Section 50.54(hh)(2)-related SSCs do not fall within any of these categories. Therefore, the Commission's license renewal rules do not require an aging management review of section 50.54(hh)(2)-related passive SSCs. But, as a practical matter, passive SSCs developed and implemented to comply with section 50.54(hh)(2) may be subject to the same age-related degradation mechanisms that underpin the NRC's license renewal review generally. Moreover, section 50.54(hh)(2) passive SSCs provide at least as much "additional protection to the public health and safety" in case of a LOLA event as the other regulated events identified in section 54.4(a)(3).<sup>131</sup>

The agency is, therefore, left with a gap in the regulations.<sup>132</sup> Section 50.54(hh)(2) SSCs are neither evaluated as part of NRC operational oversight of the CLB nor evaluated as part of a license renewal aging management review. It is not within the Board's authority to address this regulatory gap. Under 10 C.F.R. § 2.335(a), rules and regulations of the Commission are not subject to challenge in an adjudicatory proceeding in the absence of a waiver. No waiver has been sought on this issue, and even if a waiver had been sought, it seemingly could not have

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<sup>131</sup> See Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,465 (May 8, 1995).

<sup>132</sup> This regulatory gap may help explain the inspection results from Temporary Instruction 2515/183, "Followup to the Fukushima Daiichi Fuel Damage Event." Temporary Instruction 2515/183 directed NRC inspection staff to assess licensee readiness to respond to an event similar to the Fukushima Daiichi nuclear plant fuel damage event. Although none of the observations obtained under that temporary instruction constituted a significant safety issue, the Staff acknowledged that the observations indicated a "potential trend of failure to maintain equipment and strategies required to mitigate some design and beyond design basis events." Summary of Observations, Temporary Instruction 2515/183, "Followup to the Fukushima Daiichi Fuel Damage Event," available at <http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/follow-up-rpts.html> (Summary of TI 2515/183 Observations). For section 50.54(hh)(2) observations in particular, inspectors observed that "[s]ome equipment (mainly pumps) would not operate when tested or lacked test acceptance criteria," "[s]ome equipment was missing or dedicated to other plant operations," "[i]n some cases plant modifications had rendered strategies unworkable," and "[f]uel for pumps [were] not always readily available." Id.

been granted because the regulatory gap pertains to license renewal generally, not just to the subject matter of this license renewal proceeding.<sup>133</sup> The issue could, however, be addressed by the Commission in its review of the agency's regulations.

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<sup>133</sup> See 10 C.F.R. § 2.335(b).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
STP NUCLEAR OPERATING COMPANY	)	Docket Nos. 50-498-LR and 50-499-LR
	)	
	)	
(South Texas Project Electric Generating Station	)	
Units 1 and 2)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (RULING ON PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING)** have been served upon the following persons by the Electronic Information Exchange.

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Docket Nos. 50-498-LR and 50-499-LR

**MEMORANDUM AND ORDER (RULING ON PETITION FOR LEAVE TO INTERVENE  
AND REQUEST FOR HEARING)**

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Dated at Rockville, Maryland  
this 26<sup>th</sup> day of August 2011