UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket No. 50-335-LA
	)	
(St. Lucie Plant, Unit 1)	)	ASLB No. 11-911-01-LA-BD01
	)	

NRC STAFF'S ANSWER TO SAPRODANI ASSOCIATES' PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING

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September 2, 2011

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), the U.S. Nuclear Regulatory Commission Staff (Staff) hereby files its answer to the request for hearing and petition to intervene filed by Saprodani Associates (Petitioner).[1] For the reasons set forth below, Petitioner has not submitted sufficient information to establish standing, and has not submitted a contention that satisfies the Commission's contention admissibility standards. Petitioner also inappropriately challenges the adequacy of the Staff's review of the license application. Petitioner's intervention request should therefore be denied.

BACKGROUND

On November 22, 2010, Florida Power & Light (FPL or Applicant) filed an application to amend the operating license to increase thermal power to St. Lucie Plant Unit 1.[2] The proposed amendment to the FPL operating license would increase the maximum authorized power level

[1] *See* Saporodani Associates' Petition for Leave to Intervene and Request for Hearing, August 8, 2011 (Petition).

[2] License Amendment Request for Extended Power Uprate (Nov. 22, 2010) (ADAMS Accession No. ML103560419).

from 2700 megawatts thermal (MWt) to 3020 MWt. This requested amendment, designated an "extended power uprate" (EPU),[3] represents an increase of approximately 12 percent above the current maximum authorized power level. The proposed amendment would also change the FPL technical specifications to provide for implementing uprated power operation. On June 9, 2011, the NRC published a notice of consideration of issuance of the proposed amendment and opportunity for hearing.[4] In response to this notice, by letter dated August 8, 2011, Petitioner filed his Petition.

DISCUSSION

I. Standing to Intervene

A. Applicable Legal Requirements

In accordance with the Commission's Rules of Practice,[5] "[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing." 10 C.F.R. § 2.309(a). The regulations further provide that the "Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has

[3] Power uprates are categorized based on the magnitude of the power increase and the methods used to achieve the increase. "Measurement uncertainty recapture" uprates result in power level increases that are generally less than 2 percent and are achieved by implementing enhanced techniques for measuring reactor power. "Stretch power" uprates typically result in power level increases that are up to 7 percent and do not generally involve major plant modifications. EPUs result in power level increases that are greater than stretch power uprates and may involve significant modifications to major balance-of-plant equipment such as the high pressure turbines, condensate pumps and motors, main generators, and/or transformers. *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 & 2), LBP-07-10, 66 NRC 1, 12 (2007) *aff'd on other grounds*, CLI-07-25, 66 NRC 101 (2007); SECY-11-0071, Status Report on Power Uprates, Enclosure, at 1 (May 25, 2011) (ML110470147).

[4] *See* Florida Power and Light Company, St. Lucie Plant, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, and Opportunity for a Hearing and Order Imposing Procedures for Document Access to Sensitive Unclassified Non-Safeguards Information (76 Fed. Reg.33789) (Jun. 9, 2011).

[5] *See* "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," 10 C.F.R. Part 2.

standing … and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section." *Id.*

Under the general standing requirements set forth in 10 C.F.R. § 2.309(d)(1), a request for hearing or petition for leave to intervene must state:

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

The Commission traditionally looks to judicial concepts of standing when determining whether a petitioner has established the necessary "interest," as required under § 2.309(d)(iv). *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318,322-23 (1999) (*PFS*); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) *(Yankee Rowe); Entergy Nuclear Vermont Yankee* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 552 (2004).

Federal jurisprudence requires the petitioner to demonstrate that: (1) he or she has suffered a distinct and palpable harm that constitutes injury–in-fact within the zone of interests arguably protected by the governing statute[6]; (2) the injury can be fairly traced to the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *See, e.g., Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 103-04 (1998); *Kelley v. Selin,* 42 F.3d 1501, 1508 (6th Cir. 1995), *Yankee Entergy*, LBP-04-28, 60 NRC at 553. The injury-in-fact must also be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992). A petitioner must have a "real stake" in the outcome of the proceeding, and while this stake need not be "substantial," it must be "actual,"

[6] In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act ("NEPA"). *Quivira Mining Co.* (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998).

"direct," or "genuine." *Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 447-48 (1979), *aff'd* ALAB-549, 9 NRC 644 (1979).

B. Representational and Organizational Standing

An organization may establish standing in two ways: basing it either upon the interest of at least one of its members who has authorized the organization to represent him or her *(i.e.,* representational standing) or upon the licensing action's effect upon the interest of the petitioning organization itself *(i.e.,* organizational standing). *See Yankee Rowe,* CLI-98-21, 48 NRC at 195. When an organization asserts a right to represent the interests of its members, judicial concepts of standing require a showing that: (1) its member(s) would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization's lawsuit. *See PFS,* CLI-99-10, 49 NRC at 323, citing *Hunt v. Washington State Apple Advertising Comm'n,* 432 U.S. 333, 343 (1977).

The Commission also requires that the organization: (1) identify at least one of its members by name and address; (2) demonstrate how that member may be affected by the licensing action; and (3) show that at least one of its members has authorized it to represent the member's interest. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-98-12, 47 NRC 343, 354, *aff'd in part, rev'd in part,* CLI-98-21, 48 NRC 185 (1998). An organization seeking to intervene in its own right *(i.e.,* based on organizational standing) must demonstrate a palpable injury-in-fact to its organizational interests that is within the zone of interests protected by the AEA or the NEPA. *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 528-30 (1991).

C. Proximity to the Facility

In addition, in cases involving the possible construction or operation of a nuclear power reactor, the Commission has recognized standing based on a petitioner’s proximity to the facility

at issue. *See Tenn. Valley Auth.* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 23 (2002); *Susquehanna*, LBP-07-10, 66 NRC at 14. This recognition "presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity." *Sequoyah*, LBP-02-14, 56 NRC at 23*,* citing *Florida Power & Light Co.,* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-06, 53 NRC 138,146 (2001), *aff'd on other grounds,* CLI-01-17, 54 NRC 3 (2001). In construction permit and operating license proceedings, the presumption generally applies to petitioners residing within fifty miles of a reactor. *See Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n. 22 (1994).

In a license amendment proceeding, a petitioner cannot base his or her standing on proximity unless the proposed action quite "obvious[ly]" entails an increased potential for offsite consequences. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units I & 2), CLI-99-4, 49 NRC 185, 191 (1999), *pet. for rev. denied sub nom. Dienethal v. NRC,* 203 F.3d 52 (D.C. Cir. 2000); *see also Florida Power & Light Co*. (Turkey Point Nuclear Plant, Units 3 and 4), LBP-08-18, 68 NRC 533, 539 (2008); *Susquehanna*, LBP-07-10, 66 NRC at 15 . To determine whether the petitioner is within the potential zone of harm of the proposed action, the nature of the proposed action and the significance of the radioactive source must be examined. *See Sequoyah/Watts Bar,* LBP-02-14, 56 NRC at 23; *Susquehanna*, LBP-07-10, 66 NRC at 15. This demonstration must be determined on a case-by-case basis by examining the significance of the radioactive source in relation to the distance involved and the type of action proposed. *See Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12,42 NRC 111, 116-17, citing *Sequoyah Fuels,* CLI-94-12, 40 NRC at 75 n.22; *see also Consumers Energy Co.* (Big Rock Point ISFSI), CLI-07-21, 65 NRC 519, 523-524 (2007) (difference in potential risk between independent spent fuel storage installation (ISFSI) and operating reactor

justifies treating ISFSI and license transfer cases differently in terms of potential proximity presumption).

II. Saprodani Associates' Organizational and Representational Standing

Petitioner lacks standing because he establishes neither organizational nor representational standing. Petitioner does not establish that Saprodani Associates suffers any concrete injury-in-fact sufficient to satisfy the Commission's standing requirements for organizational standing. Petitioner additionally does not establish that its sole member, Mr. Saporito, would have standing in this case, and is thereby unable to establish representational standing. Additionally, Petitioner's claim of discretional standing is inappropriate because there is currently no hearing and no contentions are admitted. Saprodani Associates, therefore, does not have standing to appear in this case.

A. Organizational Standing

While the Petitioner's interest is arguably within the "zone of interest" covered by the Atomic Energy Act (AEA) and the National Environmental Policy Act (NEPA), Petitioner fails to show that it would suffer a palpable injury-in-fact from the issuance of the license amendment.[7] Petitioner seeks to establish its injury by making numerous unsubstantiated statements; including, *inter alia*, that Saprodani Associates members "will suffer actual, concrete, particularized and imminent injuries directly resulting from granting the challenged licensed (sic) amendment," and that "granting the license amendment will result in adverse health and safety risks to Saprodani Associates and at least one of its members and the general public from emissions of radioactive materials and fission products; and from increased heat removal from the nuclear reactor core." Petition at 4. The Petitioner does not supplement these broad claims with adequate support to illustrate how the amendment would result in radioactive emissions or

[7] The Petitioner characterizes this "zone of interest" as meeting prudential standing requirements. Petition at 8-9.

increased heat removal from the core, let alone how any this could harm Petitioner's plan to obtain a business license in order to provide consultation services in Florida. Petition at 6.

Petitioner is correct that proving the merits of its contentions at this stage in the proceedings is not required. Petition at 13. But the Commission's contention admissibility rules require that the Petitioner must provide sufficient factual support or expert testimony to establish the validity of its contentions. *See AmerGen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-19 (2006) (footnotes omitted); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-14, 55 NRC 278, 289 (2002); *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20 (1974); *see also Arizona Public Service Co.* (Palo Verde Nuclear Station, Unit Nos. 1, 2 and 3), LBP-91-19, 33 NRC 397, 400 (1991). Petitioner's unsubstantiated claims fail to provide any factual support to show that these alleged injuries are anything more than speculative.

To constitute an adequate showing of injury-in-fact within a cognizable sphere of interest, "pleadings must be something more than in ingenious academic exercise in the conceivable. A plaintiff must allege that he has or will in fact be perceptibly harmed by the challenged agency action, not that he can imagine circumstances in which he could be affected by the agency's action." *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill) LBP-01-15, 53 NRC 344, 349 (2001) (*citing United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 688-89 (1973); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-08-18, 68 NRC 533, 538 (2008)). Petitioner fails to provide adequate detail to support its claims.

Petitioner points to a previous licensing board case that stated "even minor radiological exposures resulting from a proposed licensee activity can be enough to create the requisite injury-in-fact." Petition at 5 (*quoting Gen. Pub. Utilities Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 158 (1996)). Petitioner, however, provides no information

nor reference to establish that the proposed license amendment would result in "even minor radiological exposures." Since unsubstantiated speculative statements do not provide adequate support to show injury-in-fact, Petitioner does not succeed in establishing organizational standing.

B. Representational Standing

Petitioner similarly fails to establish representational standing through one of its members. Mr. Saporito does not attempt to establish individual standing, but rather seeks to establish Saprodani Associates' representational standing. Since Mr. Saporito is the only member of Saprodani Associates, Petitioner must establish that Mr. Saporito, as a, member has standing in order to establish representational standing. *See PFS*, CLI-99-10, 49 NRC at 323. Petitioner does not satisfy this requirement by failing to establish that Mr. Saporito would suffer a concrete injury-in-fact. In his declaration, Mr. Saporito provides the unsubstantiated claim that the license amendment "would endanger my health and safety and that of my family and friends should radioactive particles be released from the nuclear plant." Saporito Declaration at 1. Mr. Saporito provides no further factual support for this claim. Unsubstantiated statements do not provide the detail required to establish a concrete harm and are therefore insufficient to show injury-in-fact.

Petitioner additionally fails to show a nexus between the proposed license amendment and any potential injury to Mr. Saporito. The Commission has stated that it is "incumbent upon [Petitioner] to provide . . . some plausible chain of causation, some scenario suggesting how these particular license amendments would result in a distinct new harm or threat to him." *Zion*, CLI-99-4, 49 NRC at 191, *pet. for rev. denied sub nom. Dienethal v. NRC,* 203 F.3d 52 (D.C. Cir. 2000). Mr. Saporito claims that the health and safety of himself and his family would be endangered "should radioactive particles be released," Saporito Declaration at 1, but provides no further connection to the license amendment as required by the Commission. He additionally provides no factual support or expert testimony to show how the alleged harm or

threat would in some way be different or new from that in existence under normal operation of the St. Lucie power plant. The Commission has held that in the case of an amendment to an existing and already licensed facility with ongoing operations, a petitioner's challenge must show how that amendment will cause a distinct new harm or threat that is separate and apart from already licensed activities. *Intl. Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001), *citing Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-18, 54 NCR 27 (2000). Petitioner fails to make such a showing and therefore does not establish a sufficient nexus between the license amendment and Mr. Saporito's alleged injuries.

Finally, Petitioner claims that since Mr. Saporito lives within 50 miles of the reactor, he is presumed to have standing under the Commission's proximity presumption. Saporito Declaration at 2. While the Commission has recognized a presumption of standing in operating license proceedings for a petitioner that resides within 50 miles of the facility, s*ee Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994), in an operating license amendment proceeding, a petitioner cannot base his or her standing on proximity unless the proposed action quite "obvious[ly] entails an increased potential for offsite consequences." *Zion*, CLI-99-4, 49 NRC at 191, *pet. for rev. denied sub nom. Dienethal v. NRC,* 203 F.3d 52 (D.C. Cir. 2000). Petitioner fails to provide any information other than base contentions that certain events are bound to happen due to the power uprate. There is no factual support provided for these assertions to support a finding that these offsite consequences are quite obvious. Since Petitioner fails to meet this standard, the 50-mile presumption does not apply and standing cannot simply be established based on Petitioner's proximity to the facility.[8]

[8] Petitioner also seeks standing under the doctrine of prudential standing. *See Bennett v. Spear*, 520 U.S. 154, 162 (1997). Prudential standing is not an independent basis from which to grant standing. Instead, prudential requirements are "judicially self-imposed limits on the exercise of federal jurisdiction." *Id.*, *citing Allen v. Wright*, 468 U.S. 737, 751 (1984). Prudential standing requires that the plaintiff's interests fall within the "zone of interests" of the applicable statute. *Id.* The NRC has incorporated this

C. Discretional Standing

In its Petition, Saprodani Associates also seeks discretionary intervention in the event standing as a matter of right is not established. Petition at 7-8. Petitioner should not be granted discretionary intervention because there is currently no hearing and no admitted contentions. Pursuant to 10 C.F.R. § 2.309(e), discretionary intervention can be granted only when "at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held." *See also* 69 Fed. Reg. at 2,189 ("Discretionary Intervention, however, will not be allowed unless at least one other petitioner has established standing and at least one admissible contention."). There have been no other contentions admitted nor hearing granted in this proceeding; therefore, Petitioner's request for discretionary intervention should be denied.

III. Legal Standards Governing the Admission of Contentions

To gain admission to a proceeding as a party, a petitioner must submit at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f). This regulation provides:

> (f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:
>
> (i) Provide a specific statement of the issue of law or fact to be raised or controverted, . . . ;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

"zone of interests" test into its standing requirements. As such prudential standing is inappropriate to use as a separate basis for standing.

> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;
>
> (vi) In a proceeding other than one under 10 C.F.R. § 52.103, 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;…

10 C.F.R. § 2.309(f)(1). The Commission has emphasized that its rules on contention admissibility establish an evidentiary threshold more demanding than a mere pleading requirement and are "strict by design." *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied,* CLI-02-1, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for dismissing a contention. *See PFS,* CLI-99-10, 49 NRC at 325.

The contentions should refer to the specific documents or other sources of which the petitioner is aware and upon which he or she intends to rely on in establishing the validity of the contentions. *Millstone,* CLI-01-24, 54 NRC at 358, citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 333 (1999).

The petitioner must submit more than "bald or conclusory allegation[s]" of a dispute with the applicant. *Id.* Finally, "it has been recognized that '[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases.'" *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-04-19, 60 NRC 277 (Aug. 6, 2004), citing *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), ALAB-899, 28 NRC 93, 97 (1998), *aff'd sub nom.*

Massachusetts v. NRC, 924 F.2d 311 (D.C. Cir.), *cert. denied,* 502 U.S. 899 (1991); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 379 (2002).

Additionally, contentions alleging an error or omission in an application must establish some significant link between the claimed deficiency and protection of the health and safety of the public or the environment.[9] Furthermore, 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.[10]

A. Contention SA-1 (NEPA and Vessel Cracking):

> The NRC and the licensee failed to adequately consider and address the impacts of increased stress to the reactor vessel with respect to imbrittlement of the reactor vessel to date; and the consequences of the reactor vessel cracking or shattering as a result of increasing the licensed core thermal power level for Unit 1.[11]

Petition at 14.

Petitioner states that the Applicant's Environmental Report[12] (ER) fails to provide an adequate assessment of new and significant information concerning the impacts of radioactive substances which could be released into the environment. *Id.* at 14. Petitioner states that increased stresses from the uprate could cause the reactor vessel to crack or shatter, and that

[9] *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-15, 60 NRC 81, 89, *aff'd*, CLI-04-36, 60 NRC 631 (2004).

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

[11] As a preliminary note, the references to "the NRC" in these contentions are not admissible contentions since the review of Staff actions are not the proper basis or scope for contentions.

[12] Florida Power & Light included, as attachment 2 to its license amendment request for an extended power uprate, a "Supplemental Environmental Report." (Dec. 15, 2010) (ADAMS Accession No. ML103560435).

such an accident would cause the containment building to explode and release fission products into the environment, and that FPL's failure to address these risks violates NEPA. *Id.* at 14, 15.

B. NRC Staff Response to SA-1

The Staff opposes admission of Contention SA-1 because, *inter alia*, the proffered contention does not meet the requirements to support the contention, and does not show an omission of required information from the application, thus failing to meet 10 C.F.R. § 2.309(f)(1)(v) & (vi).

The Petition refers to "serious factual differences" regarding a loss-of-coolant accident (LOCA) due to vessel failure (*id.* at 15), but the Petition does not specify these differences. The Commission has explained that 2.309(f) does "not allow mere 'notice pleading;'" and that "the Commission will not accept the filing of a vague, unparticularized issue, unsupported by alleged fact or expert opinion and documentary support." *Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant and Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000); *see also Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 505 (2001) ("where federal courts permit considerably less-detailed 'notice pleading,' *the Commission requires far more* to plead a contention." (emphasis added)). Therefore, §§ 2.309(f)(v) & (vi), as interpreted through the Commission's well-settled prohibition on notice pleading, require that a petitioner allege enough facts or law to show that a genuine dispute exists. In this instance, the Petition's non-specific conclusory referral to "factual differences" fails to meet these requirements. Furthermore, the Petition offers no expert opinions or documentary support to clarify the issues of concern.

Contention SA-1 is inadmissible for additional reasons. The Contention claims in part that the NRC has failed to consider vessel cracking, but this portion of the claim does not satisfy the basic admissibility requirement to show a dispute with the contents of the *application*. 10 C.F.R. § 2.309(f)(1)(vi).

Contention SA-1 is also inadmissible because the Petitioner's concern about a lack of information about vessel cracking in the ER fails to show an omission of any required information. In fact, contrary to Petitioner's claim, the Commission's regulations do not automatically *require* operating reactor licensees to submit a supplemental environmental report as part of a license amendment request for a power uprate. Petition at 11. Instead, the Commission may require an applicant for a license amendment to submit such information to the Commission as may be useful in aiding the Commission in complying with section 102(2) of NEPA. *Compare* 10 C.F.R. § 51.41 (requiring applicant to submit useful information upon request)[13] *with* 10 C.F.R. § 51.53(c) (requiring submission of an ER for license renewal). Because there is no *requirement* for a power uprate applicant to submit a supplemental ER,[14] it cannot be argued that the ER failed to contain or omitted information on vessel cracking as required by law. Thus, Contention SA-1 does not satisfy 10 C.F.R. § 2.309(f)(1)(vi).

Lastly, regarding the claim that FPL has violated NEPA (Petition at 15), that claim fails to recognize that NEPA's burdens and requirements are upon the NRC, not FPL. *See* 10 C.F.R. § 51.41 ("The Commission will independently evaluate and be responsible for the reliability of any information which it uses.").

In sum, Petitioner has failed to proffer an admissible contention.

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[13] When discussing § 51.41, the Commission observed that one cannot automatically conclude that because an environmental report has been filed or an environmental assessment or environmental impact statement has been completed, that no more environmental data or analysis will be required. Final Rule, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments, 49 Fed. Reg. 9352, 9361 (March 12, 1984).

[14] Of course, here the Applicant did submit a supplemental ER; the Applicant stated that it provided the supplemental environmental report pursuant to 10 C.F.R. § 51.41. (EPU LAR at Att. 2-4). While it is true that during a public meeting the NRC staff asked the licensee to provide information on environmental justice when providing information for an environmental assessment ("Summary of August 25, 2009, Meeting with Florida power & Light Company, on Upcoming Extended Power Uprate Submittal" (Sept. 4, 2009) (ML092430038)), the Staff did not formally request that FPL provide additional environmental information regarding reactor vessel cracking.

C. Contention SA-2 (Evacuation Plan)

> The NRC and the licensee failed to adequately consider and address the significant increase in population within a 50-mile area of the SLNP; and the impacts that a serious nuclear accident would have on the inability of the increased populace to timely evacuate from a 50-mile area of the SLNP in connection with increasing the licensed core thermal power level for Unit 1.

Petition at 15.

Petitioner states that the Applicant's ER fails to consider the health and safety impacts of the license amendment on the increased population surrounding Applicant's facility. *Id.* at 16. Petitioner claims that the current emergency plans are inadequate because Applicant's evacuation plan has not been updated to consider the public's ability to timely and safely evacuate from the immediate area around the facility. *Id.* at 17.

D. NRC Staff Response to SA-2

The Staff opposes admission of Contention SA-2 on the grounds that it raises issues that are outside the scope of the proceeding, does not raise a material issue, does not provide sufficient information of a genuine dispute of a material issue of law or fact, and is not supported by adequate factual information or expert opinion. 10 C.F.R. § 2.309(f)(1)(iii), (iv), and (v).

In a license amendment proceeding, a petitioner's contentions must be within the scope of issues identified in the Notice of Hearing, the amendment application, or the Staff's environmental responsibilities relating to the application. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-39, 34 NRC 273, 282 (1991). Petitioner claims that the license amendment application should have considered the facility's emergency plans, specifically its local evacuation plan. Past licensing boards have held that emergency plans are part of the ongoing regulatory oversight process.[15] The Commission's regulations also state

[15] *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-08-13, 68 NRC 43, 73-74 (2008).

that emergency plans must be considered prior to issuance of an *initial* operating license, but that "[n]o finding under this section is necessary for issuance of a renewed nuclear power reactor operating license." 10 C.F.R. § 50.47(a)(1)(i). Likewise, there is no requirement for the NRC Staff to examine emergency plans as part of its environmental responsibilities during the course of a license amendment evaluation. *c.f* 10 C.F.R. § 50.47; 10 C.F.R. § 50.54(q) & (s); 10 C.F.R. Part 50 App. E.[16]

Petitioner has not provided sufficient support for the argument that the Applicant's emergency plan is inadequate. The Commission has held that an admissible contention challenging the adequacy of an applicant's emergency plan must cite specific portions of the emergency plan and explain how they are inadequate.[17] Petitioner did not reference specific portions of Applicant's emergency plan nor did he explain how those sections are inadequate. Petitioner fails to point to any authority which requires the Applicant to evaluate and consider emergency planning for the license amendment. Since Petitioner seeks to include an issue not affected by and not within the scope of the proceeding, Contention SA-2 is inadmissible. *See Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-04, 62 NRC 551, 567 (2005) (stating that the failure to meet any of the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1) is grounds to for dismissal of the contention.).

Petitioner's concerns about the Applicant's emergency plan are also not material to the findings the NRC must make on the Applicant's license amendment request. The Commission has stated that "[t]he dispute at issue is 'material' if its resolution would 'make a difference in the outcome of the licensing proceeding.'" *Oconee*, CLI-99-11, 49 NRC at 333-34; *see also* Rules of

[16] Licensees are required to maintain and implement offsite emergency planning procedures as a license condition. 10 C.F.R. § 50.54(q), (s); 10 C.F.R. Part 50 App. E. They are part of a licensee's continuing operations, and if deficiencies are discovered in the licensee's offsite emergency plan then they will be addressed immediately. *Id.* As such, contentions regarding offsite emergency planning are outside the scope of license amendment proceedings.

[17] *See Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 & 3), CLI-10-09, 71 NRC __ (Mar. 3, 2010)(slip op. at 37) (ADAMS Accession No. ML100700295).

Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989). The license amendment has no direct bearing on the evacuation plan. If the Applicant's evacuation plan is faulty, as Petitioner alleges, it was faulty prior to the amendment request and would remain so after issuance of the amendment. Since the license amendment would have no impact on the evacuation plan, it is not material to this proceeding.

Petitioner also fails to illustrate a genuine dispute on a material issue. Petitioners are required to provide "a detailed, fact-based showing that a genuine and material dispute of law or fact exists." *McGuire/Catawba*, CLI-02-14, 55 NRC at 289. A previous Licensing Board defined the failure to demonstrate the existence of a genuine dispute on a material issue of fact as a failure to provide any factual evidence or supporting documents that produce some doubt about the adequacy of a specified portion of applicant's license amendment request. See *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-90-16, 31 NRC 509, 515, 521 & n.12 (1990) *citing* 10 C.F.R. §§ 2.309(f)(1)(v)-(vi). Petitioner does not reference any specific portion of the application that is deficient, nor give any supporting reasons as to why the application is deficient.

Finally, Petitioner provides no factual support or expert opinion. The Petitioner is obligated "to provide the [technical] analyses and expert opinion" or other information "showing why its bases support its contention." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305 (1995), *vacated in part and remanded on other grounds,* CLI-95-10, 42 NRC *1, affd in part,* CLI-95-12, 42 NRC 111 (1995). Petitioner provides no substantiation for its argument that the evacuation plan is faulty, other than reference to an Associated Press study that claimed evacuation plans at some of the nation's 104 operating nuclear reactors have not been updated in decades. Petition at 16. Petitioner does not specify whether St. Lucie is included in that generalization, and provides no factual data to support such a claim. While Petitioner states that he is not required to "prove its

contention" at this stage of the proceeding, Petition at 13, the Commission has stated "[m]ere 'notice pleading' does not suffice." *Oyster Creek*, CLI-06-24, 64 NRC at 118-19. Petitioner "is obligated to provide the analyses and expert opinion showing why its bases support its contention." *Georgia Tech,* LBP-95-6, 41 NRC at 305. Contention SA-2 provides no factual support or expert analysis other than a general reference to an associated press article.

For the reasons stated above, Contention SA-2 is inadmissible because it raises issues that are outside the scope of the proceeding, does not raise a material issue, does not provide sufficient information to demonstrate a genuine dispute of a material issue of law or fact, and is not supported by adequate factual information or expert opinion.[18]

E. Contention SA-3 (Heat Generation):

Contention SA-3:

> The NRC and the licensee failed to adequately consider and address the significant increase in heat generated by the SLNP and discharged into the environment via the surrounding waters of the SLNP; and the harmful affects on marine life and vegetation in connection with increasing the licensed core thermal power level for Unit 1.

Petition at 17.

Petitioner asserts that FPL's ER does not satisfy NEPA because its methodology is flawed and its analysis is incomplete and limited to questionable interpretations and presentation of data. Petitioner alleges that the ER fails to adequately assess the impacts on the marine life and the anglers (environmental justice) who fish around the plant as a result of

[18] On August 30, 2011 the Commission approved a final rule regarding emergency preparedness that, *inter alia*, requires licensees to provide updated estimates every ten years of local evacuation plans. Press Release, U.S. Nuclear Regulatory Commission, Commission Approves Emergency Preparedness Regulations for Nuclear Power Plants, Other Facilities (August 30, 2011) *available at* http://www.nrc.gov/reading-rm/doc-collections/news/2011/11-162.pdf; SECY-11-0053, Final Rule: Enhancements to Emergency Preparedness Regulations (10 C.F.R. Part 50 and 10 C.F.R. Part 52) (April 8, 2011) (ML102150182). While the new rule changes the manner in which the licensee is required to implement its emergency plan, it does not alter the arguments that emergency planning is outside the scope and immaterial to this proceeding.

the adverse affects of an increase in heat released into those waters from the discharge area at the SLNP Unit 1 as a result of the EPU. Petition at 17-18.

F. NRC Staff Response to SA-3

The Staff opposes admission of Contention SA-3 because the proffered contention does not meet the requirements to support a contention, thus failing to meet 10 C.F.R. § 2.309(f)(1)(v) & (vi). Contention SA-3 is not supported with any facts or expert opinions, does not raise a material issue and fails to provide sufficient information to show that a genuine dispute exists. As the Commission has observed, "[t]he dispute at issue is 'material' if its resolution would 'make a difference in the outcome of the licensing proceeding.'"[19]

Petitioner alleges that FPL's ER fails to consider the lack of fish consumption advisories or the awareness of associated risks among the minority and low-income populations. Petition at 18. Mere allegations that there has not been any educational campaign or warning signs to inform recreational anglers not to eat fish which may contain radioactive isotopes does not support its claim nor does it raise a material issue.

Allegations that there is a danger to young children, because radioactive isotopes like strontium act like calcium in bone formation and has a half-life of approximately 30-years, do not show how or why the uprate itself would cause any harm. Petitioner, without any support, claims that this may happen as a result of a nuclear accident stemming from an increased core thermal power level if the uprate is granted. *Id.* at 18. Petitioner does not provide support for why it believes this could happen, nor does he cite an expert opinion or report. Therefore the contention does not meet the pleading requirements of 10 C.F.R. § 2.309(f)(1)(v).

Petitioner's contention does not proffer any support for its assertion that SLNP's heat generation will be in violation of its water discharge permit, or that any discharges will be in violation of any other state or federal laws if the license amendment is granted. The effects of

[19] *Oconee*, CLI-99-11, 49 NRC at 333-34; *see also* 54 Fed. Reg. at 33,172.

the discharge of cooling water via the discharge structures, including the temperature rise and the effect on aquatic life, were evaluated as part of the plant's industrial wastewater facility permit issued by the State, and are referenced in the Supplemental ER at Reference 7.2. [20] Therefore the Petitioner has provided no legal or factual support for its assertion that the increased heat generation from the uprate will have significant impact on the environment. Moreover, compliance with applicable Clean Water Act (CWA) permits is a continuing obligation, regardless of changes to the plant's systems.

Petitioner has not provided support to its assertion that "[t]he NRC must prepare an environmental impact statement before making its decision of FPL's license Amendment Request." Petition at 11. Typically an Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI) would fulfill the NRC's NEPA requirement for an uprate.[21] Under NEPA, the NRC, or any other similarly situated federal agency, need only take a hard look at the environmental impacts of its actions. NEPA does not require a specific outcome or mandate a course requiring the mitigation of potential impacts. [22] The Supreme Court in *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989) noted that while NEPA announced sweeping policy goals, "NEPA itself does not mandate particular results, but simply prescribes the necessary process." *Id.* at 350 (citing *Stryker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227-28(1980) and *Vermont Yankee Nuclear Power Corp. v. Natural Resources*

[20] Attachment 2 – Reference 7.2 which addresses the wastewater facility permit

[21] *See, e.g,* Point Beach Nuclear Plant, Units 1 and 2 - Extended Power Uprate Amendment (TAC Nos. ME1044 and ME1045) (ADAMS Accession No. ML111170513) (May 9, 2011); Hope Creek Generating Station - Issuance of Amendment Re: Extended Power Uprate (TAC MD3002) (ADAMS Accession No. ML081230540) (Jun. 4, 2008); and Susquehanna Steam Electric Station, Units 1 And 2- Corrections To Amendment Nos. 246 And 224 Regarding The 13 Percent Extended Power Uprate (TAC Nos. MD3309 And MD3310) (ADAMS Accession No. ML081050530) (Jun. 19, 2008); *see also* 10 C.F.R. 51.21 and 10 C.F.R. 51.20 (b).

[22] *See, e.g., Baltimore Gas and Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983) (*quoting Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)) (stating that NEPA requires "only that the agency take a 'hard look' at the environmental consequences before taking a major action").

Defense Counsel, 435 U.S. 519, 558 (1978)). Therefore, Petitioner's assertion that FPL's ER is lacking and does not satisfy NEPA is incorrect

For the reasons stated above, Contention SA-3 is inadmissible because it is not supported with any facts or expert opinions, does not raise a material issue and fails to provide sufficient information to show that a genuine dispute exists.

G. Contention SA-4 (Failure to Adequately Assess Renewable Energy and Energy Conservation as an Alternative):

> The NRC and the licensee failed to adequately consider and Address the alternatives to the license amendment request to offset the need for Increased output capacity of the SLNP Unit 1, through energy conservation, Installation of energy efficient appliances, and renewable energy sources.

Petition at 19.

Petitioner alleges that FPL's license amendment request does not comply with NEPA in that the ER fails to adequately assess the potential for renewable energy and energy efficiency and conservation as an alternative and cites 10 C.F.R. §51.53(c)(3). Petitioner alleges that there have been remarkable increases in the efficiency of solar energy systems and wind energy systems to power entire homes and to generate excess electric power back to the FPL electric grid. This, the Petitioner alleges, will cause reduced energy demand, causing FPL's shut-down of existing power plants for lack of need.

H. NRC Staff Response to SA-4:

Proposed Contention SA-4 is not supported by bases that satisfy the contention admissibility requirements of 10 C.F.R. § 2.309(f). Petitioner's reliance on 10 C.F.R. § 51.53(c)(3)(iv) as the basis for the ER to assess renewable energy and energy conservation as an alternative is not within the scope of this proceeding. Petitioner's reliance on vague data regarding the grid, generic assumptions and references to the anticipated energy usage patterns and consumption do not provide sufficient information to show that there are material issues of fact in dispute. Lastly, Petitioner's asserted bases for Proposed Contention SA-4 lack

sufficient facts and contain no reliable supporting expert opinion to satisfy 10 C.F.R. § 2.309(f)(1)(v).

Petitioner cites 10 C.F.R. § 51.53(c)(3)(iv) as its basis for the ER's failure to comply with NEPA. This regulation deals with environmental reports for license renewal applications and not general license amendments and therefore is not within scope of the proceeding. In a license amendment proceeding, a petitioner's contentions must remain within the scope of issues identified in the Notice of Hearing, the amendment application, and the Staff's environmental responsibilities relating to the application. *Shoreham*, LBP-91-39, 34 NRC at 282. Consequently, a regulation that is inapplicable to this proceeding cannot provide a basis for a contention.

Petitioner fails to establish the relevance of the report on which it relies. Petition at 19. The sole report that Petitioner relies on deals with on-demand hot water systems. The Petitioner does not explain how this report shows that reduced demands for power through energy conservation could be an alternative to granting the uprate. The report proffered has no apparent relevance or significance to the issues in this proceeding. Thus it does not support the Petitioner's conclusion and does not provide sufficient information to show that there are material issues of fact in dispute.

The Petitioner has supplied no expert opinion regarding the assumption that the potential for renewable energy and energy efficiency and conservation would be an alternative to granting the uprate. Petitioner poses numerous, vague assumptions regarding energy efficiency, but does not provide factual support for why those assumptions must be addressed in this proceeding. Petition at 19-20. It is impermissible for Petitioner to rely on generalized suspicions and vague references to alleged events and equally unparticularized portions of general studies/assumptions for providing a factual basis. 10 C.F.R. § 2.309(f)(1)(v); *Millstone*, CLI-01-24, 54 NRC at 363. Additionally, the Board for the *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 1 & 2) license renewal proceeding dismissed a

similar contention because the Petitioner did not meet its burden of proving alleged facts or providing expert opinion sufficient to establish a genuine dispute of material fact or law with the license application. *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 1 & 2), LBP-11-21, 74 NRC __ (Aug. 26, 2011)(slip op. at 26). Thus, Petitioner has not provided a concise statement of the alleged facts or expert opinions which would support its position.

In sum, Petitioner has failed to proffer an admissible contention.

I. Inappropriate Challenge to Staff's Review

Each contention is also an inappropriate challenge to the Staff's review of the license application. The Commission has clearly stated that the adequacy of the Staff's review is not litigable in adjudicatory proceedings. *Curators of the University of Missouri* (Trump-S Project), CLI-95-1, 41 NRC 71, 121-22, *aff'd on motion for reconsid.*, CLI-95-8, 41 NRC 386, 403 (1995); *Pa'ina Hawaii LLC* (Materials License Application), CLI-08-03, 67 NRC 151, 169 (2008); *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 & 2; Watts Barr Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 37 (2002). By stating "[t]he NRC and the licensee failed to adequately consider . . ." at the beginning of each contention, Petitioner includes the Staff's review into its challenge and directly questions its adequacy. Petition at 2. Since a challenge to the adequacy of the Staff's review is not litigable within an adjudicatory proceeding, the contentions should be dismissed.

CONCLUSION

To be admitted as a party to an NRC proceeding, a petitioner must demonstrate standing and proffer at least one admissible contention. 10 C.F.R. § 2.309(a). Petitioner has failed to establish organizational, representational, prudential or discretionary standing in their Petition. 10 C.F.R. § 2.309(d)-(e). Petitioner has also failed to provide an admissible contention in accordance with NRC regulation in 10 C.F.R. § 2.309(f). Contentions SA-1, SA-2, SA-3 and SA-4 are not supported by sufficient documentation, do not raise a genuine dispute with the

application, are not in scope and are not material to the findings in this proceeding. As a result, the Board should deny the request for hearing.

Respectfully submitted,

/Signed (electronically) by/

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket No. 50-335-LA
	)	
(St. Lucie Plant, Unit 1)	)	ASLB No. 11-911-01-LA-BD01
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO SAPRODANI ASSOCIATES' PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING" dated September 2, 2011, have been served upon the following by the Electronic Information Exchange, this 2nd day of September, 2011:

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