September 2, 2011

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-OLA
	)	
(St. Lucie Plant, Unit 1)	)	
	)	ASLBP No. 11-911-01-LA-BD01
(Extended Power Uprate)	)	

Florida Power & Light Company's Answer Opposing the Petition to Intervene and Request for Hearing of Saprodani Associates

I. INTRODUCTION

Florida Power & Light Company ("FPL") hereby submits this answer ("Answer") opposing the "Petition for Leave to Intervene and Request for Hearing" ("Petition") filed by Saprodani Associates ("Petitioner") in this proceeding on August 8, 2011. The Petition should be denied because Petitioner has failed to demonstrate standing or to propose an admissible contention.

Nuclear Regulatory Commission ("NRC" or "Commission") regulations and case law clearly set forth the requirements that a petitioner must satisfy in order to propose an admissible contention. As this Answer describes more fully below, the Commission's current pleading standards were designed to raise the threshold for the admission of contentions. The purpose of these intentionally strict admissibility requirements is to ensure that hearings, if required, would focus on concrete issues that are relevant to the proceeding and that are supported by some factual and legal foundation. Petitioner's

contentions fail to reach the required threshold, falling short of any number of the applicable pleading standards. Accordingly, the Board should reject the contentions and deny Petitioner's request for hearing.

II. BACKGROUND

A. Procedural History

By letter dated November 22, 2010, FPL submitted a request to amend Renewed Operating License No. DPR-67 for St. Lucie Nuclear Plant, Unit 1 ("St. Lucie") (the License Amendment Request or "LAR").[1] The amendment would increase the licensed core power level from 2700 MWt to 3020 MWt, an increase of approximately 12 percent over the current licensed core thermal power level, including a 10 percent power uprate and a 1.7 percent measurement uncertainty recapture. This is categorized as an extended power uprate ("EPU"). The proposed amendment would modify the operating license and technical specifications to support operation at the uprated power level.

The NRC Staff published a notice of an opportunity for hearing in the Federal Register. "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. 33,789 (June 9, 2011) ("Hearing Notice"). The Hearing Notice permitted any person whose interest may be affected to file a request for hearing and petition for leave to intervene by August 8, 2011. *Id*. The Petition was timely filed.

The Hearing Notice directs that any petition shall set forth with particularity the interest of the petitioner and how that interest may be affected, and must also set forth the

[1] A package containing the LAR and its various attachments is available in the NRC's Agencywide Document Access and Management System ("ADAMS") system at Accession No. ML103560415.

specific contentions sought to be litigated. *Id*. at 33,790. To be admitted as a party to this proceeding, petitioners must demonstrate standing and submit at least one admissible contention. 10 C.F.R. § 2.309(a). As discussed below, Petitioner has not demonstrated standing or proposed any admissible contentions. Therefore, the Petition should be denied.

B. Environmental Review of License Amendments

In its LAR, FPL provided a Supplemental Environmental Report ("ER") to aid the NRC in preparing its Environmental Assessment ("EA") of the license amendment request under 10 C.F.R. § 51.30.[2] *See* Suppl. ER (LAR Att. 2) at 2-2. The NRC will rely upon its EA to determine whether the proposed action will have a significant impact on the environment and thus would require the preparation of an environmental impact statement ("EIS"). 10 C.F.R. § 51.31; *see also Curators of the University of Missouri*, CLI-95-8, 41 NRC 386, 396 (1995). The proposed action is FPL's requested license amendment that would authorize operation at a higher core thermal power level. The NRC is required under the National Environmental Policy Act ("NEPA") to consider "the extent to which the action under the proposed amendment will lead to environmental impacts beyond those previously evaluated." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-81-14, 13 NRC 677, 684-685 (1981) (citing *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB–455, 7 NRC 41, 46 n.4 (1978)). In other words, the NRC's EA need not consider

[2] An EA is a concise public document for which the Commission is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid the Commission's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of an environmental impact statement when one is necessary.

10 C.F.R. § 51.14(a).

the environmental impact of operation of the plant under its current operating license, but instead will consider the incremental impact caused by the increase in licensed thermal power under the uprate:

> 'Nothing in NEPA or in those judicial decisions to which our attention has been directed dictates that the same ground be wholly replowed in connection with a proposed [license] amendment. . . . Rather, it seems, manifest to us that all that need be undertaken is a consideration of whether the amendment itself would bring about significant environmental consequences beyond those previously assessed and, if so, whether those consequences (to the extent unavoidable) would be sufficient on balance to require a denial of the amendment application.

Prairie Island, ALAB–455, 7 NRC at 46 fn. 4.

FPL's Supplemental ER is intended to provide sufficient information about the environmental impacts of the proposed EPU to allow the NRC to make an informed decision regarding the proposed action. Suppl ER. at 2-5. It does not reassess the environmental impacts of operating at the current licensed reactor core thermal power level but instead demonstrates that the effects of operating under EPU conditions are bounded by the original analyses documented in the NRC's original Final Environmental Impact Statement for St. Lucie, the Supplemental Environmental Impact Statement for St. Lucie license renewal, or by current regulatory limits. *Id*.

C. Saprodani Associates is a Fictitious Front Group for Thomas Saporito

Saprodani Associates is not currently a registered business in the State of Florida,[3] and is simply yet another in a long line of aliases and fictitious organizations used by Thomas Saporito in legal filings meant to harass FPL and other NRC licensees.[4] For

[3] *See* Pet. at 6. *See also* http://ccfcorp.dos.state.fl.us/search.html

[4] *See*, e.g., *Florida Power & Light Co.* (St. Lucie, Units 1 and 2), CLI–89–21, 30 NRC 325 (1989) (**"Advanced Electronics Corporation"**); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), DD-96-8, 43 NRC 344 (1996) (**"Florida Energy Consultants"**); *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2; Turkey Point Nuclear Generating Plant, Units 3

years Saporito has abused the NRC's notably open administrative processes, filing unsupported hearing requests[5] and petitions for enforcement action under 10 C.F.R. § 2.206.[6] In 2008, after dealing with four meritless requests for hearing from "Saporito Energy Consultants," the Licensing Board denied FPL's motion to sanction Saporito, but

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and 4), DD-97-20, 46 NRC 96, (1997) (**"National Litigation Consultants"**); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Unit 1), Order (Regarding APS Motion and November 25, 2002, Status Conference), 2002 WL 31688821 (Nov. 22, 2002) (**"National Environmental Protection Center"**); *Point Beach,* 68 NRC 545 (**"Saporito Energy Consultants"**).

[5] *See,* e.g., *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-91-2, 33 NRC 42 (1991)(Licensing Board denies a petition to intervene because Saporito failed to demonstrate that he resides and/or works in the vicinity of the plant in question) *aff'd* CLI-91-5, 33 NRC 238 (1991) (Saporito's appeal dismissed for failure to file a timely brief); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-5, 31 NRC 73 (1990)(Licensing Board denies Saporito's Petition to Intervene filed eleven months after the close of the time specified in the Notice of Opportunity for Hearing as inexcusably late); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509 (1990) (Admitted to the proceeding), *but see* LBP-90-24, 32 NRC 12 (1990) (Saporito dismissed from proceeding based upon lack of standing due to changed circumstances) *aff'd* ALAB-952, 33 NRC 521 (1991) *aff'd* CLI-91-13, 34 NRC 185 (1991); *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325 (Commission finds that Saporito's request to intervene on an exemption request fails to meet the regulatory threshold).

[6] *See, e.g.*, Letter from Samson S. Lee, Deputy Director Division of Risk Assessment, NRR to T. Saporito, dated August 29, 2011 (rejecting a 2.206 petition involving St. Lucie based on prior NRC enforcement action) (ML11237A080); Letter from Theodore R. Quay, Deputy Division Director Division of Policy and Rulemaking, NRR to T. Saporito, dated March 11, 2011 (rejecting a 2.206 petition involving weld conditions at the Duane Arnold Energy Center) (ML110620471); Letter from Thomas Blount, Deputy Director Division of Policy and Rulemaking, NRR, to T. Saporito, dated June 3, 2009 (rejecting two 2.206 petitions involving Turkey Point) (ML091500002); Letter from T. Blount, NRR, to T. Saporito, dated January 26, 2009 (rejecting a 2.206 petition involving a settled DOL case involving another individual) (ML090210090); Letter from T. Blount, NRR, to T. Saporito, dated December 5, 2008 (rejecting three 2.206 petitions including one seeking the imposition of civil penalties on FPL counsel) (ML083370132); Letter from T. Blount, NRR, to T. Saporito, dated November 20, 2008 (rejecting a 2.206 petition involving security at Turkey Point) (ML083110305); Letter from T. Blount, NRR, to T. Saporito, dated October 27, 2008 (rejecting a 2.206 petition raising claims related to his 1988 termination) (ML082680016); Letter from Mark Maxin, Acting Deputy Director Division of Policy and Rulemaking, NRR, to T. Saporito, dated August 4, 2008 (rejecting a 2.206 petition alleging a refusal to rehire) (ML082110535); Letter from Joseph G. Giitter, Director Division of Operating Reactor Licensing, NRR to T. Saporito, dated July, 7, 2008 (rejecting a 2.206 petition related to an NRC Notice of Violation) (ML081750713). *See also Florida Power & Light Co.*, (St. Lucie Nuclear Power Plant Units 1 and 2; Turkey Point Nuclear Generating Plant Units 3 and 4) DD-98-10, 48 NRC 245 (1998); *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant Units 1 and 2; Turkey Point Nuclear Generating Plant Units 3 and 4), DD-97-20, 46 NRC 96 (1997); *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant Units 1 and 2), DD-96-19, 44 NRC 283 (1996); *All Licensees*, DD-95-8, 41 NRC 346 (1995); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant Units 3 and 4; St. Lucie Nuclear Power Plant Units 1 and 2), DD-95-7, 41 NRC 339 (1995); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant Units 3 and 4), DD-90-1, 31 NRC 327 (1989); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant Units 3 and 4), DD-89-8, 30 NRC 220 (1989); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant Units 3 and 4), DD-89-5, 30 NRC 73 (1989).

explained that he "should be aware, however, that repeated filings of meritless petitions may result in summary denials of such petitions." *Florida Power & Light Co*. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-08-18, 68 NRC 533, 543 (2008). *See also Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), LBP-08-14, 68 NRC 279 (2008); *FPL Energy Point Beach, LLC* (Point Beach Nuclear Plant, Unit 1), LBP-08-19, 68 NRC 545 (2008); *FPL Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-08-20, 68 NRC 549 (2008).

Saporito has also abused the U.S. Department of Labor's ("DOL") administrative procedures available for whistleblower protection.[7] The years of abuse recently resulted in the imposition of sanctions against Saporito. In a decision that consolidated and rejected *four* Saporito appeals of ALJ decisions dismissing complaints seeking to relitigate the 1988 termination of his employment, the DOL Administrative Review Board ("ARB") explained:

> [T]he record justifies the imposition of filing restrictions related to FPL *due to Saporito's string of vexatious, harassing, and duplicative complaints against FPL*, without good faith expectation of prevailing, and duplicative complaints against FPL that are wholly without merit, causing

[7] Saporito's employment with FPL was terminated for cause in 1988 for multiple acts of insubordination. Saporito's allegations that FPL's 1988 termination violated the Energy Reorganization Act of 1974 have been consistently rejected by DOL and by the federal courts over the past 23 years. *Saporito v. Florida Power & Light Co.*, 1989-ERA-007, 1989-ERA-017 (Administrative Law Judge ("ALJ") Oct. 15, 1997) (holding that there was "overwhelming" evidence that Complainant was repeatedly insubordinate, "insolent," "*blatantly lied*" and "*clearly lied*" to management, and engaged in a "mockery of management's role" when he was terminated from employment from FPL in 1988), *aff'd*, DOL Administrative Review Board ("ARB") Case No. 98-008 (Aug. 11, 1998); *aff'd sub nom Saporito v. DOL*, 192 F.3d 130 (11th Cir. 1999) (*per curiam*), *reh'g en banc denied*, 210 F.3d 395 (11th Cir. 2000) (unpublished table decision); *see also Saporito v. Florida Power & Light Co.*, ARB Case No. 04-079 (Dec. 17, 2004); *aff'd sub nom*, *Saporito v. DOL*, No. 05-10749-DD slip op. (11th Cir. June 2, 2005), *reh'g denied*, slip op. (11th Cir. July 21, 2005), *cert. denied*, slip op. (Jan. 23, 2006); *Saporito v. Florida Power & Light Co.*, 1990-ERA-027, -047 (Sec'y Aug. 8, 1994); *Saporito v. Florida Power & Light Co.*, 1993-ERA-023 (Sec'y Sept. 7, 1995); *Saporito v. Florida Power & Light Co.*, 1994-ERA-035 (ARB Jul. 19, 1996) (complaint dismissed as "frivolous")).

> unnecessary expense to FPL and placing a needless burden on the dockets of the OALJ and the Board.[8]

Under the Order, Saporito may not petition the ARB unless he is represented by counsel and affirms under oath that his petition does not relitigate previous claims brought against FPL. *Id*. at 8. *See also Saporito v. NextEra Energy*, 2011-ERA-0007 "Decision and Order Dismissing Complaint" (Mar. 9, 2011), at 11 ("any complaints filed by the Complainant against the Respondent for failing to hire him are frivolous, will subject him to sanctions under FRCP Rule 11, may subject him to referral to the U.S. District Court for the Southern District of Florida for sanctions, and may subject him to referral to the U.S. Attorney for felony criminal prosecution for violation of 18 USC §1505"). Saporito has not limited this abuse to FPL, directing his vexatious administrative litigation before DOL at a host of companies.[9]

III. PETITIONER FAILED TO ESTABLISH STANDING

Petitioner has failed to establish standing and so its request for hearing must be denied. Petitioner's attempt to show standing is based solely on the residence of Thomas Saporito in Jupiter, Florida, approximately 30 miles from St. Lucie. *See* "Declaration of

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[8] *Saporito v. Florida Power & Light Company*, ARB Case No. 09-072; *Saporito Energy Consultants, Inc. v. Florida Power & Light Company*, ARB Case No. 09-128; *Saporito v. Florida Power & Light Company*, ARB Case No. 09-129; *Saporito Energy Consultants, Inc. v. Lewis Hay, III*, ARB Case No. 09-141, "Order of Consolidation and Final Decision and Order" (Apr. 29, 2011) at 6 [emphasis added]; *see also Saporito v. Florida Power & Light Company*, ARB Case No. 10-118, "Final Decision and Order Dismissing Complaint" (June 29, 2011) (dismissing a fifth complaint seeking to relitigate the 1988 termination of Saporito's employment). Among these consolidated cases was a claim brought by Saporito against FPL's counsel as named respondents for allegedly retaliating against Saporito by filing Answers to his 2008 NRC hearing requests and seeking sanctions from the Licensing Board. *See*, e.g., *Turkey Point*, LBP-08-18, 68 NRC at 543.

[9] *See Saporito v. Publix Super Markets, 2010-CPS-00001; Saporito v. FedEx Kinkos Office and Print Services, Inc.*, 2005-CAA-18; *Saporito v. Central Locating Services, Ltd., et al*., 2005-CAA-13; *Saporito v. GE Medical Systems, et al*., 2005-CAA-7; *Saporito v. Central Locating Services, Ltd., et al*., 2004-CAA-13; *Saporito v. Quarles & Brady et al*., 2004-CAA-9; *Saporito v. BellSouth*, 2004-CAA-8; *Saporito v. Dep't of Labor*, 2003-CAA-9; *Saporito v. GE Medical Systems, et al*., 2003-CAA-2; *Saporito v. GE Medical Systems, et al*., 2003-CAA-1; *Saporito v. Houston Lighting & Power Co., et al*., 92-ERA-45; and *Saporito v. Houston Lighting & Power Co., et al*., 92-ERA-38.

Thomas Saporito." As discussed below, in this case the NRC's proximity presumption should not apply at such a great distance from the site. Petitioner has made no other attempt to establish standing and so his request for hearing must be denied.

A. NRC Standing Requirements

In order to obtain a hearing before the NRC, a petitioner must demonstrate its standing and file at least one admissible contention. *See* Atomic Energy Act § 189a, 42 U.S.C. § 2239 (a) ("Act" or "AEA") (stating "In any proceeding under this Act, for the granting, suspending, or amending of any license . . ., the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding."). To establish standing, a petitioner must plead "the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding[,] . . . the nature and extent of [the petitioner's] property, financial or other interest in the proceeding; and [t]he possible effect of any decision or order that may be issued in the proceeding on the [petitioner's] interest." 10 C.F.R. § 2.309(d)(1).

The petitioner bears the burden to provide facts sufficient to establish standing. *U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001) In determining whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing. *See, e.g., Gulf States Utilities Co.* (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994). The petitioner must establish; (a) that he personally has suffered or will suffer a "distinct and palpable" harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be

redressed by a favorable decision in the proceeding. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) (citing *Steel Co. v. Citizens for a Better Environment,* 523 U.S. 83, 101 (1998)); *Dellums v. NRC,* 863 F.2d 968, 971 (D.C. Cir. 1988).

B. Petitioner Has Not Met Its Burden to Establish Standing

The Commission in *Zion* explained that a "petitioner cannot seek to obtain standing in a license amendment proceeding simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences." *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 192 (1999). But that is exactly what Petitioner seeks to accomplish here. The Petition is long on conclusory assertions regarding standing and short on discussions of any actual injury, much less causation or redressability. The Petition asserts:

> The instant petition demonstrates that Saprodani Associates and at least one of its members, will suffer actual, concrete, particularized and imminent injuries directly resulting from granting the challenged licensed amendment, and that the injuries are likely to be prevented by a decision favorable to Saprodani Associates. The instant petition demonstrate, inter alia, that granting the license amendment request 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.

Pet. at 4. However, despite Petitioner's promises, the Petition does not ever attempt to actually demonstrate any of these allegations.

Instead, Petitioner seeks to take advantage of the NRC's "proximity presumption." *See* Pet. at 5. The proximity presumption, which the NRC applies as a shortcut for determining standing in certain cases, rests on an NRC finding that persons

living close to a facility "face a realistic threat of harm" if a release from the facility of radioactive material were to occur. *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs, Unit 3), CLI-09-20, 70 NRC __ (Oct. 13, 2009) (slip op.at 6-7). In *Calvert Cliffs*, the Commission approvingly quoted the Licensing Board's description of the presumption:

> [T]he "common thread" in the [NRC] decisions applying the 50-mile presumption "is a recognition of the potential effects at significant distances from the facility of the accidental release of fissionable materials." The NRC's regulations also recognize that an accidental release has potential effects within a 50-mile radius of a reactor. The Commission . . . has applied its expertise and concluded that persons living within a 50-mile radius of a proposed new reactor face a realistic threat of harm if a release of radioactive material were to occur from the facility. . . . The *non-trivial increased risk constitutes injury-in-fact*, is traceable to the challenged action (the NRC's licensing of a new nuclear reactor), and is likely to be redressed by a favorable decision that either denies a license or mandates compliance with legal requirements that protect the interests of the petitioners.

Id. at 7 (emphasis added).

But as the Commission explained, this presumption is generally applied only in construction permit and operating license cases, which involve a new risk of accidental releases from a wholly new reactor. *See id*. at 6-7. However, in licensing cases without an "obvious potential for offsite consequences," a petitioner must allege some specific injury in fact. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989). *See also Zion*, CLI-99-4, 49 NRC at 188, 191-92 (For license amendment requests without an obvious potential for offsite consequences, petitioners must assert an injury tied to the effects of the proposed LAR, not simply a general objection to the proposed action). A petitioner in that type of case

must show a plausible chain of events that would result in offsite radiological consequences posing a distinct new harm to the petitioner. *Id*. at 192.

The first question facing this Board is whether the proposed EPU is the type of licensing action with obvious potential for offsite consequences for which a proximity presumption should apply. Then, if the Board determines that the EPU would have obvious offsite consequences, the Board must determine how large an area should be included within the proximity presumption. As the Commission explained in *Calvert Cliffs*, the presumption can extend up to 50 miles when based on the potential for accidental releases of radioactivity because NRC regulations recognize potential impacts from such an event within a 50-mile radius. CLI-09-20 (slip op. at 7). However, that particular radius may be refuted by evidence to show that the area impacted would be smaller. *Id*. (slip op. at 8).

The Licensing Board in the *Susquehanna* EPU proceeding accurately summarized the steps necessary to apply the proximity presumption in a license amendment proceeding:

> The relevant concern in this instance thus is whether the record reflects information that adequately demonstrates (1) the obvious potential for offsite consequences such that a proximity presumption would be applicable in this EPU proceeding; (2) the scope of the area within which the presumption would apply; and (3) whether [Petitioner] has shown he has sufficient contacts within that area to establish the applicability of the presumption.

PPL Susquehanna, LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 18 (2007), *aff'd on other grounds*, CLI-07-25, 66 NRC 101 (2007).

Several Licensing Boards have applied the proximity presumption in uprate cases. *See Susquehanna*, LBP-07-10, 66 NRC at 18; *Dominion Nuclear Connecticut, Inc*.

(Millstone Power Station, Unit 3), LBP-08-09, 67 NRC 421, 427 (2008), *aff'd on other grounds*, CLI-08-17, 68 NRC 231 (2008); *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 553-54 (2004). The Board in *Susquehanna* found an obvious potential for offsite consequences from that uprate, relying on statements in the applicant's ER that the calculated offsite dose from normal operations, while still far below regulatory standards, would increase by approximately 20 percent. *Id*. Similarly, the Board in *Millstone* relied upon the affidavit of a resident who lived 10 miles from the facility, which stated that "[a]ccording to Dominion's own projections, the license amendment, if granted, will result in an estimated 9 per cent increase in radionuclide releases to the environment, including the air I and my family and friends and neighbors breathe, and such releases will increase health risks by the same proportion." LBP-08-09, 67 NRC at 428. As in *Millstone* and *Susquehanna*, FPL's Supplemental ER explains that the calculated offsite public dose from normal operation would increase by approximately the same percentage as the uprate (12-14%). *See* Suppl. ER at 2-28 - 2-30.

Assuming, arguendo, that the proximity presumption should apply based solely on this increased public dose rate as in *Millstone* and *Susquehanna*, its radius must be proportional to the size of the area affected by the potential injury-in-fact. The injury-in-fact underlying the proximity presumption is the "non-trivial increased risk." *Calvert Cliffs*, CLI-09-20, (slip op. at 7). Accordingly, as the Board in *Millstone* recognized, the radius in which the presumption applies must be "judged on a case by case basis, taking into account the nature of the proposed action and the significance of the radioactive source." 67 NRC at 427 (citing *Georgia Institute of Technology* (Georgia Tech Research

Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-117 (1995)). *See also Calvert Cliffs*, CLI-09-20 (slip op. at 8) (size of proximity presumption can be reduced to correspond to area of risk). In this case, Petitioner not only failed to cite this increased offsite public dose rate (the basis upon which the *Susquehanna* and *Millstone* Boards applied the proximity presumption), it also failed to allege that this increase would have a measurable impact 30-50 miles from the St. Lucie site. In order for the proximity presumption to extend the 30 miles necessary to encompass Saporito, it cannot be based simply on the increased localized offsite public dose rate, but must instead be based on a finding of new or increased risk of accidental releases arising out of the EPU amendment – a potential injury that could theoretically affect someone living 30 miles away.

Demonstrating standing is Petitioner's burden. But here, the only reference in the Saporito Declaration to any risk associated with the EPU is a bald unsupported assertion that it "would endanger my health and safety and that of my family and friends should radioactive particles be released from the nuclear plant stemming from a nuclear accident caused by FPL's proposed [LAR]." Saporito Decl. at 1. Because Petitioner did not provide any evidence in the record to support a finding of increased offsite risk associated with the LAR that would have an appreciable impact 30 miles away, it has not met its burden of establishing standing though the application of the proximity presumption.

Because the proximity presumption should not extend 30 miles, Petitioner must show how this "particular license amendment[] would result in a *distinct new harm* or threat" to Petitioner. *Zion*, CLI-99-4, 49 NRC at 192 (emphasis added). Petitioner has not attempted to make this showing. In fact, Petitioner admits that its true concern is the regular operation of the plant, which is outside the scope of this proceeding and cannot be

relied upon to demonstrate standing. Pet. at 5 ("even regular operation of the SLNP, let alone negligent operation or intentional attacks, results in radioactive emissions, and leaks that may be harmful to Saprodani Associates, its employees, volunteers and members").

C. Petitioner Has Not Demonstrated Organizational or Representational Standing

An organization may base its standing either on injury to its organizational interests, or to the interests of identified members. *Georgia Tech*, CLI-95-12, 42 NRC at 115. Petitioner asserts that it has both "organizational standing" and "representational standing." Pet. at 4. Assuming that Saporito individually has standing under the proximity presumption, Petitioner has nevertheless failed to demonstrate that Saprodani Associates has standing under either option. To demonstrate organizational standing, the petitioner must show "injury-in-fact" to the interests of the organization itself. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). But the Petition does not describe any interests of Saprodani Associates – much less any interests that may be injured by the license amendment – other than general environmental and policy interests of the sort the NRC has found insufficient for organizational standing. *See Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 411 (2007).

It is clear that Saprodani Associates is not a real organization and thus has no organizational interests that may be injured.[10] The Licensing Board should not encourage

[10] The NRC allows unincorporated associations to participate in its adjudicatory process. *See* 10 C.F.R. § 2.314(b). However, even an unincorporated association must actually exist outside of a single website and have real identified interests in order to demonstrate organizational standing. The Petition contains no description of the purported purpose of Saprodani Associates, and no evidence that Saprodani Associates has any members, employees, or associates. *See* Pet. at 6 ("Saprodani Associates is a membership

this continuing charade by recognizing Saprodani Associates as an organization with interests that may be affected by the amendment of the operating license for St. Lucie Unit 1. In any case, Petitioner wholly failed to identify what those organizational interests may be, and so failed to meet its burden to demonstrate organizational standing.

An organization may also seek representational standing but to do so "must demonstrate how at least one of its members may be affected by the licensing action (as a result of the member's activities on or near the site), must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member." *Vermont Yankee Nuclear Power Corp. & Amergen Vermont, LLC* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000) (citing *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000)). While Petitioner has provided a "Declaration of Thomas Saporito," the declaration is insufficient to demonstrate representational standing because it fails to authorize Saprodani Associates to request a hearing on Saporito's behalf. Whether an individual must authorize his own fictitious organization to represent his interests in a licensing proceeding appears to be a question of first impression. However, the Board need not address that issue because, as discussed above, the Petition fails to specify any injury fairly traceable to the challenged license amendment upon which Saporito himself would have standing.[11]

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organization at the present with Thomas Saporito as its single member and Senior Consultant at this time.").

[11] Petitioner also requests in the alternative that the Licensing Board grant it "discretionary intervention" under 10 C.F.R § 2.309(e). Pet. at 7-8. But that provision may only be invoked 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." *Entergy Nuclear Operations, Inc. and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 267 (2008). As there were no other hearing requests filed in this proceeding, this relief is unavailable.

IV. PETITIONER HAS NOT SUBMITTED ANY ADMISSIBLE CONTENTIONS

In addition to demonstrating standing, a petitioner must plead at least one admissible contention to be admitted as a party in this proceeding. 10 C.F.R. § 2.309(a). As set forth below, Petitioner has not proffered any admissible contentions and therefore its Petition should be denied.

A. Legal Standards for Contention Admissibility

The Commission's contention admissibility rules are "strict by design". *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001) (citing *Duke Energy Corp*. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)). While "federal courts permit considerably less-detailed 'notice pleading', the Commission requires far more to plead a contention." *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-39, 54 NRC 497, 505 (2001); *see also Fansteel, Inc.* (Muskogee, Oklahoma Site) CLI-03-13, 58 NRC 195, 203 (2003). 10 C.F.R. § 2.714 (now § 2.309) was amended in 1989 "to raise the threshold for the admission of contentions." Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168 (Aug. 11, 1989) ("Final Rule"). These rules were "toughened . . . because in prior years 'licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'" *Millstone*, CLI-01-24, 54 NRC at 358. Under the NRC's Rules of Practice, "a protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that such a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in

depth' is appropriate." 54 Fed. Reg. at 33,171 (quoting *Conn. Bankers Ass'n v. Bd. of Governors*, 627 F.2d 245, 251 (D.C. Cir. 1980)).

Accordingly, a petition "must set forth with particularity the contentions sought to be raised." 10 C.F.R. § 2.309(f)(1). Petitioners must provide "a clear statement as to the basis for the contentions and [submit] supporting information and references to specific documents and sources that establish the validity of the contention." *USEC, Inc*. (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006) (citing *Arizona Public Service Co*. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991)). Specifically, "for each contention," the 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;
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
> (vi) [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

10 C.F.R. § 2.309(f)(1). Contentions that do not satisfy each of these six requirements must be rejected. *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 324 (2009).

The petitioner bears the burden of proffering contentions that meet the NRC's pleading requirements. *See Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1998). Licensing boards are not to

overlook deficiencies in contentions or to assume the existence of missing information. *Palo Verde*, CLI-91-12, 34 NRC at 155. In other words, "[a] contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions." Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22 (1998) ("1998 Policy Statement"). The requirements are discussed in detail below.

1. Petitioner Must Specifically State the Issue of Law or Fact to Be Raised

Each contention must provide "a specific statement of the issue of law or fact to be raised or controverted." 10 C.F.R. § 2.309(f)(1)(i). To be admissible, a "contention must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]." *Millstone,* CLI-01-24, 54 NRC at 359-60. Moreover, the Commission has explained that Petitioners "must articulate at the outset the specific issues they wish to litigate as a prerequisite to gaining formal admission as parties." *Oconee*, CLI-99-11, 49 NRC at 338.

2. Petitioner Must Explain the Basis for the Contention

In addition, petitioners must provide "a brief explanation of the basis for the contention." 10 C.F.R. § 2.309(f)(1)(ii). A petitioner must provide the licensing board with "sufficient foundation" to "warrant further exploration." *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), ALAB-942, 32 NRC 395, 428 (1990) (footnote omitted). In other words, a petitioner must "provide some sort of minimal basis indicating the potential validity of the contention." 54 Fed. Reg. at 33,170. While licensing boards generally admit "contentions" for litigation rather than "bases," the Commission has recognized that "[t]he reach of a contention necessarily hinges upon its

terms coupled with its stated bases." *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.*, (Pilgrim Nuclear Power Station) CLI-10-11, 71 NRC __, __ (slip op. at 28) (2010) (emphasis in original) (citing *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff'd sub nom. Mass. v. NRC*, 924 F.2d 311 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991)). Therefore, the lack of an adequate basis is sufficient grounds for rejecting a proposed contention.

3. Contentions Must Be Within the Scope of the Proceeding

Petitioners must also demonstrate "that the issue raised in the contention is within the scope of the proceeding." 10 C.F.R. § 2.309(f)(1)(iii). The scope of this proceeding for which this licensing board has been delegated jurisdiction was set forth in the Commission's Hearing Notice. *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). Licensing boards "are delegates of the Commission" and so may "exercise only those powers which the Commission has given [them]." *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170 (1976) (footnote omitted); *accord Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979). Any contention that falls outside the specified scope of this proceeding is inadmissible.

Any contention that challenges an NRC rule is outside the scope of the proceeding because "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding." *See* 10 C.F.R. § 2.335(a); *see also Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station); *Entergy Nuclear Generation Company & Entergy Nuclear*

Operations, Inc. (Pilgrim Nuclear Power Station), CLI-07-3, 65 NRC 13, 18 n.15 (2007). Petitioners "may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies." *Oconee*, CLI-99-11, 49 NRC at 334.

4. Contentions Must Raise a Material Issue

Petitioners must further 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." 10 C.F.R. § 2.309(f)(1)(iv). Admissible contentions "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]." *Millstone*, CLI-01-24, 54 NRC at 359-60. The Commission has defined a "material" issue as one where "resolution of the dispute *would make a difference in the outcome* of the licensing proceeding." 54 Fed. Reg. at 33,172 (emphasis added).

5. Contentions Must Be Supported by Adequate Factual Information or Expert Opinion

Each contention must also "[p]rovide a concise statement of the alleged facts or expert opinions which support [the 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 petitioner] intends to rely to support its position in the issue." 10 C.F.R. § 2.309 (f)(1)(v). The petitioner bears the burden of coming forward with a sufficient factual basis "indicating that a further inquiry is appropriate." *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 249 (1996) (citing Final Rule, 54 Fed. Reg. at 33,171 (requiring "some factual basis" for the contention)).

Under this standard, a 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, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *aff'd in part*, CLI-95-12, 42 NRC 111 (1995). Where a petitioner has failed to do so, "the [Licensing] Board may not make factual inferences on [the] petitioner's behalf." *Id*. (citing *Palo Verde*, CLI-91-12, 34 NRC at 149). *See also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 180 (1998) (a "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion" to support a contention's "proffered bases") (citations omitted). A mere reference to documents does not provide an adequate basis for a contention. *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 348 (1998). A petitioner's failure to present the factual information or expert opinions necessary to support its contention adequately requires that the contention be rejected. *Yankee*, CLI-96-7, 43 NRC at 262; *Palo Verde*, CLI-91-12, 34 NRC at 155.

This requirement must be met at the outset. A contention is not to be admitted "where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts." 54 Fed. Reg. at 33,171. The Rules of Practice bar contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. *Duke Energy Corp.* (McGuire

Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 424 (2003).

6. Contentions Must Raise a Genuine Dispute of Material Law or Fact

Finally, each contention must "provide sufficient information to show that a genuine dispute exists with the applicant . . . on a material issue of law or fact." 10 C.F.R. § 2.309 (f)(1)(vi). The NRC's pleading standards require a petitioner to read the pertinent portions of the combined license application and supporting documents, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant. 54 Fed. Reg. at 33,171; *Millstone*, CLI-01-24, 54 NRC at 358. Contentions must be based on documents or other information available at the time the petition is filed. 10 C.F.R. § 2.309(f)(2). Indeed, a petitioner

> has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that could serve as the foundation for a specific contention. Neither Section 189a of the Atomic Energy Act nor [the corresponding Commission regulation] permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or Staff.

54 Fed. Reg. at 33,170 *(*quoting *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983)). The obligation to make specific reference to relevant facility documentation applies with special force to an applicant's safety analysis and ER, and a contention should be rejected if it inaccurately describes an applicant's proposed actions or ignores or misstates the content of the licensing documents. *See, e.g., Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16

NRC 2069, 2076 (1982); *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-82-107A, 16 NRC 1791, 1804 (1982); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1504-05 (1982).

If the petitioner does not believe that a licensing request and supporting documentation addresses a relevant issue, the petitioner is "to explain why the application is deficient." 54 Fed. Reg. at 33,170; *Palo Verde,* CLI-91-12, 34 NRC at 156. A contention that does not directly controvert a position taken by the applicant in the application is subject to dismissal. *See Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992). An allegation that some aspect of a application is inadequate 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. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 521 & n.12 (1990).

As set forth below, the Petitioner's contentions fail to comply with the Commission's standards.

B. Petitioner's Contentions are Inadmissible

At the outset, none of Petitioner's four proffered contentions are admissible because the Petition consistently fails to cite to, reference, or challenge the relevant portions of FPL's LAR and fails to provide any factual or expert support for its allegations. Therefore, none of the contentions can demonstrate the existence of a genuine dispute with the LAR on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). These four contentions present exactly the sort of "notice pleading" that the NRC's 1989 revisions to Part 2 were intended to preclude. *See* Final Rule, 54

Fed. Reg. at 33,168; *Fansteel,* CLI-03-13, 58 NRC at 203. For these reasons, Petitioner's contentions are not admissible.

1. Contention 1 is Inadmissible

Contention 1 alleges:

> The NRC and the licensee failed to adequately consider and address the impacts of increased stress to the reactor vessel with respect to imbrittlement [*sic*] 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.

Pet. at 14.

a. *Contention 1 is Inadmissible as a Safety Contention*

It appears (but it is by no means clear) that Contention 1 is concerned with pressurized thermal shock ("PTS") and reactor vessel embrittlement. But Petitioner fails to address the portions of FPL's LAR where these issues are addressed, and certainly does not challenge FPL's conclusions that it will continue to meet NRC regulations and comply with its licensing basis as to these issues. Because Petitioner has neither referenced nor challenged this portion of the LAR, Contention 1 is inadmissible to the extent it is framed as a safety contention challenging the LAR's consideration of PTS or reactor vessel embrittlement. 10 C.F.R. § 2.309(f)(1)(vi).

PTS is an "event or transient in pressurized water reactors (PWRs) causing severe overcooling (thermal shock) concurrent with or followed by significant pressure in the reactor vessel." 10 C.F.R. § 50.61(a)(2). NRC regulations at 10 C.F.R. § 50.61 provide fracture toughness requirements for protection against PTS events and General Design Criteria ("GDC") 14 and 31 provide requirements for the adequacy of the reactor coolant pressure boundary. Attachment 5, "Licensing Report," to FPL's LAR explains that FPL

has adequately addressed changes in neutron fluence associated with the proposed EPU and their effects on PTS and concludes that St. Lucie will continue to meet its current licensing basis with respect to the requirements of GDC-14, GDC-31, and 10 C.F.R. § 50.61 following implementation of the proposed EPU. Licensing Report at 2.1.3-8. Petitioner neither references nor challenges this aspect of the LAR.

Reactor vessel embrittlement is also addressed in FPL's Licensing Report, which establishes pressure-temperature ("P-T") limits to ensure the structural integrity of the ferritic components of the reactor coolant pressure boundary. Licensing Report at 2.1.2-1. The Licensing Report demonstrates that excessive embrittlement of the reactor vessel material due to neutron radiation is prevented by providing an annulus of coolant water between the reactor core and the vessel. *Id*. at 2.1.2-2. FPL's Licensing Report evaluates the effects of the proposed EPU on the P-T limit curves and concludes that the proposed P-T limits for operation under the proposed EPU conditions are valid and FPL will continue to meet all relevant regulatory requirements following implementation of the proposed EPU. *Id*. at 2.1.2-6. Again, Petitioner neither references nor challenges this aspect of the LAR.

Accordingly, Petitioner's claims regarding PTS and reactor vessel embrittlement are inadmissible because they do not demonstrate the existence of a genuine dispute with the LAR by citing and challenging specific portions of the LAR. 10 C.F.R. § 2.309(f)(1)(vi). In any case, Petitioner's allegation that the "increased stresses due to the license amendment request could cause the vessel to crack or shatter" (Pet. at 14-15) is totally unsupported by facts, expert opinion, or any reasoned statement of why the LAR is unacceptable in some material respect. 10 C.F.R. § 2.309(f)(1)(v) and (vi).

b. *Contention 1 is Inadmissible as an Environmental Contention*

Judging by the caption, the contention appears to focus on safety issues with the LAR. However, the body of the contention raises claims about the adequacy of the environmental review of the allegedly increased risk of offsite consequences caused by Petitioner's unsubstantiated safety allegations. *See* Pet. at 14. As to its claims about the adequacy of the environmental review, Contention 1 is inadmissible because it fails to demonstrate the existence of a genuine dispute with FPL regarding any specific portions of the Supplemental ER and fails to provide the facts or expert opinion necessary to support its position. 10 C.F.R. §§ 2.309(f)(1)(v) and (vi). Ultimately, Petitioner has not provided any support for its allegation that "increased stresses due to the license amendment request could cause the vessel to crack or shatter" (Pet. at 14-15), and so Contention 1 fails also to provide any support for its assertion that a "nuclear core-meltdown" would be a reasonably foreseeable consequence of the increased thermal power level authorized by the EPU that the NRC must address in its EA. Accordingly, Contention 1 is inadmissible as an environmental contention.

2. Contention 2 is Inadmissible

Contention 2 alleges:

> 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.

Pet. at 15.

a. *Contention 2 Is Not Supported by Fact or Expert Opinion*

In Contention 2, Petitioner argues that FPL's Supplemental ER fails to account for the increased population growth around the St. Lucie site. Pet. at 16. In apparent support for the contention, Petitioner quotes, but does not cite, a TCPalm.com article summarizing an Associated Press ("AP") investigation, which asserts that "some estimates of evacuation times have not been updated in decades, even as the population has increased . . ."[12] Pet. at 16. The article quoted by Petitioner does refer to population growth around St. Lucie, but does not provide any support for the assertion that the St. Lucie evacuation time estimate ("ETE") or emergency plan has not been updated. *See* Attachment 1. In fact, the article disputes Petitioner's allegation. Quoting the emergency management coordinator for St. Lucie County, the article explains that the offsite emergency plan, for which the evacuation time estimate is intended to be an aide, "changed considerably over the years" and is "ever-evolving." *Id*. The article also cites an explanation by the St. Lucie County emergency management coordinator that the most recent evacuation plan is based on a population of 268,000 within the 10-mile radius of the nuclear plant, about 66,000 more people than live in the area. *Id*.

Petitioner bears the burden of coming forward with a sufficient factual basis "indicating that a further inquiry is appropriate." *Yankee Atomic*, 43 NRC at 249. Here, Petitioner assumes, without demonstrating, that there is a deficiency in the ETE for St. Lucie and assumes, without demonstrating, that the allegedly deficient ETE would have a

[12] Petitioner's discussion of the AP investigation on page 16 of the Petition is copied, nearly verbatim, from the TCPalm.com article. TCPalm.com is the website for several Scripps newspapers in and around Florida's Treasure Coast. Petitioner did not provide a reference for this article, but a copy is included herein as Attachment 1. As Petitioner has implicitly put this article before the Board, the entire article is subject to scrutiny, both as to those portions that support Petitioner's assertions and those that do not. *See, e.g., Southern Nuclear Operating Co.* (Vogtle ESP), LBP-07-3, 65 NRC 237, 254 (2007).

noticeable impact on the successful implementation of the offsite emergency plan by State and local officials. Without providing factual support for these assertions, Petitioner's Contention 2 is inadmissible. 10 C.F.R. § 2.309(f)(2).

b. *Contention 2 Raises Issues That are Immaterial and Beyond the Scope of this Proceeding*

Like Contention 1, this contention rests on Petitioner's unsupported allegation that the "nuclear reactor vessel [may] crack[] or shatter[] due to high operational stresses brought by the proposed license amendment request." Pet. at 16. And as explained in the response to Contention 1, Petitioner has offered no support for this allegation. The purpose of the Supplemental ER is to provide the NRC with sufficient information to determine in its EA whether the proposed license amendment would have a significant impact on the environment. Therefore, assuming Petitioner's allegations regarding the efficacy of the emergency planning procedures were adequately supported (which they are not), in order for those concerns to be considered material to the NRC's environmental review of the EPU amendment, the underlying safety allegations regarding the increased risk that the reactor vessel may crack or shatter as a result of the EPU must also be supported. Because Petitioner has offered no support for its claims regarding the increased risk of accidents, it cannot meet its burden of demonstrating that the environmental impacts associated with the adequacy of the public response to such an accident would be material to the findings the NRC must make in order to issue the requested amendment. 10 C.F.R. § 2.309(f)(1)(iv).

c. *Contention 2 is an Impermissible Challenge to NRC Regulations*

NRC emergency preparedness regulations at 10 C.F.R. § 50.47(b)(10) and Part 50, Appendix E, Sections II.G, III, and IV, require applicants for nuclear power plant

operating licenses to provide ETEs for the public located in the plume exposure pathway emergency planning zone ("EPZ"). Generally, the plume exposure pathway EPZ for nuclear power plants consists of an area about 10 miles in radius and the ingestion pathway EPZ consists of an area about 50 miles in radius. 10 C.F.R. § 50.47(c)(2). ETEs are used in the planning process to identify potential challenges to efficient evacuation, such as traffic constraints, and, in the event of an accident, to assist the onsite and offsite emergency response managers in making appropriate decisions regarding the protection of the public. Applicants include the results of the ETE analysis in the onsite emergency plan and in the emergency plan implementing procedures for protective action recommendations. The ETEs are also used in the offsite emergency plans for the State and local governments within the plume exposure pathway EPZ.

Current NRC regulations do not require any review or revision of ETEs following the initial licensing of the plant. To the extent that Petitioner argues that licensees must or should be required to update ETEs following the initial licensing of the plant, this argument impermissibly challenges NRC regulations. Petitioners "may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999). *See also* 10 C.F.R. § 2.336.

In an affirmation session held on August 30, 2011, the Commission voted to approve a Final Rule that would require licensees to update ETEs following each decennial census and annually, if a population increase causes the longest ETE values to increase by 30 minutes or by 25 percent, whichever is less from the licensee's currently

NRC-approved or updated ETE, NRC Press Release No. 11-162 "Commission Approves Emergency Preparedness Regulations for Nuclear Power Plants, Other Facilities" (August 30, 2011); Memorandum from R.W. Borchardt, EDO, to the Commissioners, SECY-11-0053, Final Rule: Enhancements to Emergency Preparedness Regulations (Apr. 8, 2011). Thus, the NRC will soon require periodic updating of ETEs to account for population growth, effectively mooting that aspect of Contention 2. However, the rule will not be effective until 30 days after its publication in the *Federal Register*. SECY-11-0053, Enclosure 3, at 1. Therefore, the contention still impermissibly challenges current NRC regulations. The Commission has long instructed licensing boards to "not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission." *Oconee*, 49 NRC at 345 (quoting *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974)). To the extent Contention 2 seeks to litigate whether a licensee must update its ETE, it is simply not admissible.

Moreover, Petitioner argues that the Supplemental ER must address population growth out to 50 miles in order to provide for evacuation of a 50-mile EPZ. Pet. at 15. By implying that evacuation planning is required beyond the 10-mile Plume Exposure Pathway EPZ, Petitioner is collaterally attacking the Commission's regulations. *See Shoreham*, CLI-87-12, 26 NRC at 394-95 (1987) (10 C.F.R. § 50.47(c)(2) precludes adjustments on safety grounds to the size of an EPZ that is "about 10 miles in radius"); *Citizens Task Force of Chapel Hill*, DPRM-90-1, 32 NRC 281, 290-92 (1990) (rejecting petition to expand EPZ from 10 to 20 miles in radius). To the extent Contention 2 seeks

to litigate whether emergency plans must account for evacuation of a 50 mile radius, it is also not admissible.

3. Contention 3 is Inadmissible

Contention 3 alleges:

> 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.

Pet. at 17.

a. *Petitioner's Claims Regarding Thermal Impacts Fail To Show That A Genuine Dispute Exists With The LAR On A Material Issue Of Fact Or Law*

Contention 3 alleges that the ER "fails to acknowledge or describe potential impacts upon the marine life and vegetation in connection with increasing the licensed core thermal power level for Unit 1." Pet. at 17. To the extent Contention 3 is a contention of omission, it must be rejected because the allegedly missing analysis is included in the Supplemental ER. *See* Suppl. ER at §§ 7.2 and 7.3. Accordingly, the contention fails to raise a genuine dispute with the LAR. 10 C.F.R. § 2.309(f)(1)(vi).

The NRC's regulations require petitioners to cite to specific portions of an application (including the environmental report) that the Petitioner disputes. 10 C.F.R. § 2.309(f)1)(vi). But Petitioner ignores the portions of the Supplemental ER that specifically address the thermal impact to marine life in Sections 7.2 and 7.3:

> The location of St. Lucie Units 1 and 2 on Hutchinson Island places it between two major aquatic ecosystems: the Atlantic Ocean to the east and the Indian River Lagoon to the west. The plant uses a once-through cooling system that uses water from the Atlantic Ocean to remove heat from the main (turbine) condensers via the circulating water system (CWS), and to remove heat from other auxiliary equipment via the intake

cooling water system (ICWS). The majority of the cooling water is used for the CWS.

* * *

The cooling water discharge canal is a trapezoidal channel approximately 2200 ft long, 200 ft wide, and 30 ft deep at normal water levels. The discharge canal transports the heated cooling water beneath the beach and dune system to two discharge pipes at its eastern terminus in the Atlantic Ocean. One of the pipes, completed in 1975 to serve St. Lucie Units 1, is 12 ft in diameter and extends approximately 1500 ft offshore, terminating in a two-port "Y" diffuser. The other pipe, installed in 1981 for two unit operation, is 16 ft in diameter, extends approximately 3400 ft offshore, and features a multiport diffuser. This diffuser consists of fifty-eight 16-inch diameter ports located 24 feet apart on the easternmost 1400 feet of the pipe. The discharge of heated water through the Y-port and multiport diffusers ensure distribution over a wide area and rapid and efficient mixing with ambient waters.

The effects of the discharge of cooling water via these discharge structures were evaluated and mixing zones were established as a part of the Plant's Industrial Wastewater Facility Permit (Reference 7.2). St. Lucie Units 1 and 2 will continue to operate post EPU in full compliance with the requirements of the Industrial Wastewater Facility Permit.

* * *

There are a number of aquatic species that could be deemed sensitive to any potential changes. These primarily include five sea turtle species known to nest on Hutchinson Island beaches. These sea turtle species are protected and considered either threatened or endangered species. Further discussion pertaining to threatened and endangered species can be found in Section 7.4.

The effects on marine biota of increasing the T from 26°F to 28°F (and higher) were evaluated by FPL prior to St. Lucie Unit 2 becoming operational (ABI, 1980 as cited in Reference 7.1). This marine biota assessment concluded that mobile aquatic organisms would avoid the higher thermal regimes near the discharge and increasing this area would not result in measurable biological impacts. Based on the thermal modeling, after completion of the project, St. Lucie Units 1 and 2 are predicted to have a slightly larger mixing zone than pre-uprate conditions during full flow and capacity. This increase in mixing zone volume is less than 5 percent of the volume. Based on the dimensions of the receiving water (Atlantic Ocean), this increase in area of elevated temperature would not result in a measurable biological impact.[13]

[13] FPL's Industrial Wastewater Facility Permit is issued by the Florida Department of Environmental Protection and is the equivalent of the National Pollutant Discharge Elimination System (NPDES) Permit, issued under authority delegated to the State of Florida by the U.S. Environmental Protection Agency.

Suppl. ER. at 2-19 – 2-20.

FPL's Supplemental ER clearly describes the potential thermal impacts to marine life. Accordingly, Petitioner's assertion that the Supplemental ER omits such analysis is simply incorrect and so fails to demonstrate the existence of a genuine dispute with the LAR on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). *See also Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3) CLI-08-17, 68 NRC 231, 244 (2008) (Contention challenging discussion of thermal impacts in Supplemental ER for power uprate amendment must include specific reference to the analysis of thermal impacts in the Supplemental ER and provide support for its allegations regarding the environmental consequences of the uprate). Petitioner has not met its "ironclad obligation" to examine all documentation (such as Supplemental ER §§ 7.2 and 7.3) relating to the LAR. *See Duke Energy Corp*. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 386 (2002); *Catawba*, ALAB-687, 16 NRC at 468.

Contrary to the body of Contention 3, its caption seems to acknowledge that FPL addressed thermal impacts but alleges that FPL's analysis was inadequate. Pet. at 17. Aside from vague claims that FPL used flawed methodology or questionable interpretations of data, Contention 3 does not explain how or why the Applicant's analysis, which it did not cite, is insufficient. A petitioner is required to state the applicant's position and its opposing view, and explain why it has a disagreement with the applicant. Final Rule, 54 Fed. Reg. at 33,170; *Millstone*, CLI-01-24, 54 NRC at 358. Petitioner has failed to meet this elementary criterion and so its contention is

inadmissible, whether viewed as a contention of omission, or a contention of inadequacy. 10 C.F.R. § 2.309(f)(1)(vi).

b. *Contention 3 Lacks Support*

Petitioner fails to provide any "supporting reasons" showing that there is a genuine dispute as to a material issue of law or fact. 10 C.F.R. § 2.309(f)(1) (v) and (vi). Contention 3 claims without explanation that the ER uses flawed methodology, an incomplete analysis, and questionable interpretations and presentations of data. Pet. at 17. But Petitioner provides no facts or expert opinion or specificity that would show that any of FPL's methodology is insufficient or that its representations of data are inadequate in any way. Allegations that an application is deficient do not give rise to a genuine dispute unless the allegations are supported by facts and a reasoned statement of why the application is unacceptable. *Turkey Point*, LBP-90-16, 31 NRC at 521 & n.12.

Contention 3 also includes claims unrelated to thermal effluents, namely assertions that the Supplemental ER is inadequate for failure to consider fish consumption advisories or to consider the impact on minority and low-income populations who may catch fish containing radioactive isotopes. Pet. at 18. In addition to being completely unrelated to the issue of thermal impacts that is ostensibly the subject of the contention, Petitioner provides no support for these claims, each of which rely on the idea that FPL may "fail[] to properly prevent the release of radioactive products into the environment . . . as a result of a nuclear accident stemming from an increased core thermal power level sought through the license amendment request." *Id*. at 18-19. Once more, in order to give rise to a genuine dispute, Petitioner must support his allegations

with facts or expert opinion. 10 C.F.R. § 2.309(f)(1)(v) and (vi). *See also Millstone*, CLI-08-17, 68 NRC at 244. He has failed to do so.[14]

4. Contention 4 is Inadmissible

Contention 4 alleges:

> 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.

Pet. at 19.

In Contention 4, Petitioner fails to reference the portion of the LAR that describes energy efficiency and renewable energy sources. 10 C.F.R. § 2.309(f)(1)(vi). Petitioner also fails to provide any factual or expert support for its claims. 10 C.F.R. § 2.309(f)(1)(v). Contention 4 is wholly inadmissible.

Where, as in this case, the NRC will prepare an EA, it is not obligated to consider alternatives to as a great a degree as it would under an EIS. *Pa'ina Hawaii, LLC* (Materials License Application), CLI-10-18, 72 NRC __(2010) (slip op. at 22). When preparing an EIS, the NRC must "[r]igorously explore and objectively evaluate all reasonable alternatives." *Id*. at 22-23 (citing *N. Idaho Cmty. Action Network v. U.S. Dept. of Transp.*, 545 F.3d 1147, 1153 (9th Cir. 2008)). On the other hand, in an EA, it must only "include a brief discussion of reasonable alternatives." *Id*. at 23 (citing *N. Idaho*, 545 F.3d at 1153). Thus, it is to be expected that the depth of the consideration and the level of detail regarding alternatives in an EA (or in a supplemental ER intended

[14] Further, as with Contention 2, Petitioner's arguments regarding accident consequences could only be material to the NRC's findings if Petitioner provided support for the underlying claim of increased accident risk arising out of the EPU amendment. Without any such support, these claims are immaterial and inadmissible. 10 C.F.R. § 2.309(f)(1)(iv).

to aide the NRC in the development of an EA) will be less than that typically provided in an EIS. *Id*.

FPL provided the NRC with a discussion of the reasonableness of energy efficiency and renewable generation as alternatives in Section 3.2 of its Supplemental ER, which addresses the need for this additional power.[15] That section references the Florida Public Service Commission's ("FPSC") evaluation of the proposed St. Lucie EPU, which included an analysis of energy efficiency programs and the potential for whether additional renewable energy sources could serve as reasonable alternatives to the uprate. Suppl. ER at 2.6 – 2.7 (citing FPSC Order PSC-08-0021-FOF-EI, Jan. 7, 2008). The Supplemental ER explains that FPL submitted a Petition to Determine Need for Expansion of Electrical Power Plants, including St. Lucie Units 1 and 2, to the FPSC, which addressed, *inter alia*, whether the project is the most cost-effective alternative available and whether there is energy conservation available to mitigate the need for all or a portion of the project. Supp. ER at 2-6. The Supplemental ER also explains that the FPSC held a hearing on and approved FPL's Petition. *Id*. at 2-7 (citing FPSC Order PSC-08-0021-FOF-EI, Jan. 7, 2008).

The FPSC Order, which is referenced in the Supplemental ER and is publicly available, clearly considered the issues Petitioner alleges that the Supplemental ER inadequately addressed, in a section entitled: "No Mitigating Renewable Energy Sources and Technologies or Conservation Measures."

> *There are no renewable energy sources and technologies or conservation measures taken by or reasonably available to FPL which might mitigate*

[15] Petitioner's claim that the ER must consider such alternatives as energy conservation (demand side management) essentially equates to a demand for a "need for power" analysis. *See Exelon Generation Company, LLC,* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 245 (2004), *aff'd Environmental Law and Policy Center v. NRC,* 470 F.3d 676 (7th Cir. 2006).

> *the need for the proposed expansion of the Turkey Point and St. Lucie nuclear power plants*. FPL's forecasted need already accounts for all of the cost-effective [Demand-Side Management ("DSM")] identified through the year 2014, plus a projection of continued DSM for the years 2015-2020. This DSM includes FPL's current Commission-approved DSM goals and a significant amount of additional DSM that FPL has identified as cost-effective, and we have since approved, since the current DSM goals were approved. *Additional conservation measures cannot be implemented to eliminate the need for the PTN and PSL uprates*.
>
> For purposes of analysis, FPL's forecast assumed successful contracting for and delivery of 144 MW of renewable firm capacity bid in response to its 2007 request for proposals for renewable energy, and successful extension of 143 MW of renewable firm capacity from three expiring municipal waste-to-energy contracts. *There are not sufficient additional renewable energy options to mitigate the need for the 414 MW of nuclear baseload capacity that will be provided by the uprates.* The table previously shown in this Order shows the need for additional capacity even after including DSM and purchased power from renewable energy sources.

FPSC Order PSC-08-0021-FOF-EI at 4 (emphases added).[16]

These findings contradict the unsupported allegation in Contention 4 that DSM or renewable alternatives could "serve to reduce the energy demands on FPL's electric grid, so much so, that implementation of these renewal energy systems and energy conservation would actually reduce the load-demand on FPL's electric grid to the extent that FPL would be forced to shut-down existing power plants for lack of need." *See* Pet. at 19-20. The "concept of alternatives must be bounded by some notion of feasibility." *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551 (1978). NEPA's "rule of reason" requires that in the context of alternatives analyses, "[a]gencies need

[16] The NRC has traditionally placed heavy reliance on a state's determinations regarding need for power, because states "are charged with the duty of insuring that the utilities within their jurisdiction fulfill the legal obligation to meet customer demands." *Carolina Power and Light Co.* (Shearon Harris Nuclear Plant, Units 1, 2, 3, 4), ALAB-490, 8 NRC 234, 241 (1978). In fact, the Supreme Court has held that "[t]here is little doubt that under the Atomic Energy Act of 1954, State public utility commissions or similar bodies are empowered to make the initial decision regarding the need for power." *Vermont Yankee*, 435 U.S. at 550 (1978) (citation omitted); *see also Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*., 461 U.S. 190, 205-208 (1983).

only discuss those alternatives that are reasonable and 'will bring about the ends' of the proposed action." *Hydro Resources*, Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001). Thus, relying upon the FPSC's need determination, FPL concluded that DSM and renewable generation were not reasonable alternatives to the St. Lucie EPU and did not further consider those alternatives in the Supplemental ER.[17] As the U.S. Supreme Court ruled in *Vermont Yankee*, infeasible alternatives need not be further considered. *See* 435 U.S. at 551.

In Contention 4, Petitioner completely fails to refer to or challenge the specific portion of FPL's Supplemental ER that describes the subject matter of its contention, contrary to 10 C.F.R. § 2.309(f)1)(vi). Accordingly, Petitioner cannot demonstrate the existence of a genuine dispute with the LAR. 10 C.F.R. § 2.309(f)1)(vi).

Moreover, Petitioner has offered no support, other than mere allegations, for its position that, contrary to the findings of the FPSC, energy efficiency or renewable generation are viable substitutes for the EPU that should have been further considered in the Supplemental ER. In fact, the sole citation included in Contention 4 is a link to Petitioner's own website, which presents only a short promotional video for tankless water heaters.[18] Of course, the mere existence of tankless water heaters cannot by itself disprove the findings of the FPSC regarding the availability of additional DSM measures across FPL's service territory.

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[17] Section 6.0 of the Supplemental ER compares the environmental impacts of the proposed EPU against the viable alternatives, coal-fired, oil-fired, and natural gas-fired power plants, and notes that the EPU would result in a comparatively smaller amount of air pollutants and would not contribute to greenhouse gas emissions. Suppl. ER at 2-16.

[18] Pet. at 19 (citing http://saprodani-associates.com/On-Demand Hot Water Systems.html). Accessed on September 1, 2011. In addition, the only citation to a substantive NRC regulation in Contention 4 is a misplaced reference to 10 C.F.R. § 51.53(c)(3)(iv), a requirement that *license renewal* applicants identify new and significant information of which they are aware.

The Licensing Board in the *South Texas Project* license renewal proceeding recently rejected a similar contention on this same ground. *South Texas Project Nuclear Operating Company* (South Texas Project, Units 1 and 2), LBP-11-21, 74 NRC __, (Aug. 26, 2011). There, the petitioner challenged the ER's conclusion that additional DSM measures were unlikely to offset the power generated by the reactors. *Id*. (slip op. at 24). The Board explained that if the petition had "provided factual support for this theory, it might have established a genuine dispute of material fact." *Id*. (slip op. at 25). But since the petitioner offered no support for its DSM claim other than statements made "on information and belief," it was insufficient to satisfy the NRC's pleading requirements. *Id*. Likewise, Petitioner's failure to present the factual information or expert opinions necessary to adequately support its contention requires that it be rejected. *Yankee*, CLI-96-7, 43 NRC at 262. Accordingly, Contention 4 is inadmissible. 10 C.F.R. § 2.309(f)(1)(v) and (vi).

V. SELECTION OF HEARING PROCEDURES

Commission rules require the Atomic Safety and Licensing Board designated to rule on a petition to intervene to "determine and identify the specific procedures to be used for the proceeding" pursuant to 10 C.F.R. §§ 2.310 (a)-(h). 10 C.F.R. § 2.310. The regulations are explicit that "proceedings for the . . . amendment . . . of licenses subject to [10 C.F.R. Part 50] may be conducted under the procedures of subpart L." 10 C.F.R. § 2.310(a). The regulations permit the presiding officer to use the procedures in 10 C.F.R. Part 2, Subpart G ("Subpart G") in certain circumstances. 10 C.F.R. § 2.310(d). It is the proponent of the contentions, however, who has the burden of demonstrating "by reference to the contention and bases provided and the specific

procedures in subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures." 10 C.F.R. § 2.309(g). Petitioner did not address the selection of hearing procedures in its Petition and, therefore, did not satisfy its burden to demonstrate why Subpart G procedures should be used in this proceeding. Accordingly, while FPL maintains that no hearing should be granted in this case, any hearing arising from the Petition should be governed by the procedures of Subpart L.

VI. CONCLUSION

For all of the foregoing reasons, the Petition should be denied.

Respectfully Submitted,

/Signed (electronically) by Steven Hamrick/

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September 2, 2011

Attachment 1

TCPALM
FLORIDA'S TREASURE COAST AND PALM BEACHES

Printer-friendly story
Read more at tcpalm.com

Population around St. Lucie Nuclear Plant fastest growing in nation

By Tyler Treadway

Originally published 06:52 a.m., August 4, 2011
Updated 11:04 p.m., August 6, 2011

HUTCHINSON ISLAND — In 1968, the Sunshine News Service reported: "On Hutchinson Island, 11 miles northeast of Stuart as the osprey might fly, lies a tract of remote wilderness which will become home for (the Florida Power & Light Co.'s) newest power plant, an 850,000 kilowatt nuclear unit."

"Wilderness" may have been a bit hyperbolic; but in 1980, four years after Unit 1 of the nuclear plant was commissioned in 1976 and three years before Unit 2 was commissioned in 1983, there were just 43,332 people living with a 10-mile radius of the site, which includes parts of St. Lucie and Martin counties.

By 2010, that area's population had ballooned to 202,010; and the 366 percent increase is the most explosive growth rate around any nuclear plant in the country, according to The Associated Press.

The AP's National Investigative Team reports that government agencies and the nuclear power industry have paid little heed to the population growth around the country's 104 nuclear reactors, "even as plants are running at higher power and posing more danger in the event of an accident."

The AP investigation found that "some estimates of evacuation times have not been updated in decades, even as the population has increased more than ever imagined. Emergency plans direct residents to flee on antiquated, two-lane roads that clog hopelessly at rush hour."

Tom Daly, emergency management coordinator for the St. Lucie County Department of Public Safety and Communications, said the local evacuation plan has "changed considerably over the years. It's ever-evolving. We sit down every year and plot it out, right down to every intersection that needs to be manned or monitored."

Daly said plans also take into account the time of year — whether snowbirds are in the area for winter — and time of day — whether streets are jammed for rush hour or vacant in the middle of the night.

"Yes, there's been an influx of people (to the area)," Daly said, "but our roads and highway system have changed dramatically over the years, too. U.S. 1 has been widened; much of the Crosstown Parkway (in Port St. Lucie) is in place; and there have been improvements to major intersections and (Interstate) 95 both on the Treasure Coast and in Palm Beach County."

Basically, the evacuation plan calls for residents in the evacuation zone living south of Port St. Lucie's Prima Vista Boulevard to head to sites in Palm Beach County, and for those living north of Prima Vista to go north to Indian River and Brevard counties.

The most recent evacuation plan, Daly said, is based on a population of 268,000 within the 10-mile radius of the nuclear plant, about 66,000 more people than live in the area.

"So, following logic, it should take less time to evacuate than the current estimates," he said.

Daly said the plan calls for the 10-mile radius to be evacuated in about 10 hours after the announcement of a general emergency, meaning a radioactive release is in progress or is imminent.

He added that personnel start mobilizing and some evacuations are expected during the several hours before that, after a site area emergency is announced, "and that should make the evacuation even quicker."

But is that quick enough?

According to the Associated Press report, the NRC and the Federal Emergency Management Agency acknowledge that radiation releases can happen within a half hour of an accident.

Daly said the issue "is whether people will be in the area long enough to get a life-threatening dose of radiation, a dose that could cause cancer that would end their life 10 to 20 years down the road. In Japan, the first dose (of radiation) off the plant property was reported at 14 hours after a general emergency was declared. That's a long time after all the systems failed. And you have to remember that in Japan, the containment building was metal; in the U.S. the buildings are 4-foot-thick reinforced concrete. Remember that at Three Mile Island, when the core melted, the containment held."

According to the AP, about 90 percent of the nation's operating reactors have been allowed by the Nuclear Regulatory Commission to run at higher power levels for many years, raising the radiation risk in a major accident.

Doug Andrews, communications supervisor at the St. Lucie Nuclear Power Plant, said the utility received approval from the NRC to add 12 megawatts to Unit 1 in 1981 and 2 megawatts to Unit 2 in 1985.

The plant is in the process of seeking permission from the NRC to increase its electrical power output for each unit by about 103 megawatts from about 1,678 megawatts to 1,884.

"As part of the NRC's review of this project, FPL submitted extensive engineering and safety analyses that demonstrate that the proposed plant configurations maintain adequate safety margin to continue to protect public health and safety and the environment at the higher power levels," Andrews wrote in response to submitted questions. "To prove this to the NRC, we have conducted extensive engineering analyses. The need for the additional power from this (increase) was also approved by the Florida Public Service Commission in December 2007."

Andrews said FPL is replacing many plant components such as pipes, valves, pumps, heat exchangers, electrical transformers and generators to accommodate the conditions that would exist at higher power levels.

The AP also reported that because the federal government has failed to find a location for permanent storage of spent fuel, thousands of tons of highly radioactive used reactor rods are kept in pools onsite — and more is stored there all the time.

During planned refueling outages, about a third of the fuel bundles from each reactor at the St. Lucie plant are placed in used fuel pools. Used fuel also is stored in stainless steel canisters placed inside solid concrete structures.

Andrews said the plant has "enough room to safely store all of the site's used fuel onsite through the life of the plant. St. Lucie's operating licenses expire in 2036 for Unit 1 and 2043 for Unit 2."

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-OLA
	)	
(St. Lucie Plant, Unit 1)	)	
	)	ASLBP No. 11-911-01-LA-BD01
(Extended Power Uprate)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Florida Power & Light Company's Answer Opposing the Petition to Intervene and Request for Hearing of Saprodani Associates," were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 2nd day of September, 2011.

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