September 6, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	
PPL BELL BEND, LLC	)	Docket No. 52-039
	)	
(Bell Bend Nuclear Power Plant)	)	

APPLICANT'S RESPONSE TO MOTION TO REOPEN AND ADMIT NEW CONTENTION

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this 6th day of September 2011

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h), PPL Bell Bend, LLC ("PPL" or "Applicant") hereby responds to the "Motion to Reopen the Record and Admit Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-ichi Accident" ("Motion to Reopen") and the "Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report" ("New Contention") filed by Mr. Gene Stilp, as a *pro se* petitioner, on August 10, 2011 (together, the "Motion"). The Motion was accompanied by a "Declaration of Standing," dated August 10, 2011, and the "Declaration of Dr. Arjun Makhijani Regarding Safety and Environmental Significance of NRC Task Force Report Regarding Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident," dated August 8, 2011 ("Makhijani Declaration"). Collectively, Mr. Stilp seeks to reopen this proceeding to admit the New Contention for a hearing in connection with the application for a combined license ("COL") for the proposed Bell Bend Nuclear Power Plant ("Bell Bend").[1]

[1] Given that Mr. Stilp has proffered a New Contention, 10 C.F.R. § 2.309(h) provides for a response from the Applicant within 25 days. As discussed below, a new contention at

For the reasons discussed below, the New Contention should not be admitted for hearing. The Motion to Reopen and New Contention are specifically based on the generic recommendations of the NRC's Near-Term Task Force on the Fukushima event, as presented in a report issued on July 12, 2011 ("Task Force Report"). The Task Force recommendations are not appropriate for resolution in a site-specific COL proceeding and do not support reopening a terminated proceeding. NRC regulations provide alternative means for public participation in connection with agency actions, such as any future rulemakings, related to enhancements stemming from the NRC's reviews of the events at Fukushima. The New Contention purports to be an environmental contention under the National Environmental Policy Act ("NEPA"). However, the proposed New Contention fails to demonstrate a genuine dispute with the COL application on a material environmental issue and fails to identify any specific significant new environmental information germane to Bell Bend. Likewise, Mr. Stilp has not satisfied the criteria for granting a hearing on a late-filed petition or for admitting a late-filed proposed contention.

BACKGROUND

On October 10, 2008, PPL submitted a COL application for Bell Bend. The COL application references the application for certification of the U.S. EPR design, which was initially submitted to the NRC on December 11, 2007. The U.S. EPR design is the subject of an ongoing design certification review, which will lead to a design certification rulemaking in accordance with 10 C.F.R. Part 52.

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this stage of a proceeding must address, among other criteria, the standards for reopening the hearing process. However, Mr. Stilp's characterization of the request for admission of a new contention as a "motion to reopen" does not change either the nature of the request or the response date under the rules.

The NRC issued a notice of opportunity for hearing on the Bell Bend COL application on March 18, 2009.[2] Mr. Stilp, on his own behalf and on behalf of Taxpayers and Ratepayers United ("TRU"), filed a timely hearing request and petition to intervene on May 18, 2009. In LBP-09-18, dated August 10, 2009, the Atomic Safety and Licensing Board ("Licensing Board") found that Mr. Stilp and TRU had standing to intervene,[3] but concluded that the petitioners did not proffer an admissible contention. The Licensing Board denied the hearing request and terminated the proceeding.[4] Since then, the NRC Staff has continued its review of the Bell Bend COL application. At present, there is no estimated date for issuing the Final Environmental Impact Statement ("FEIS"). The Final Safety Evaluation Report ("FSER") is currently scheduled for completion in August 2012.

On April 14, 2011, Mr. Stilp, along with several other petitioners in other proceedings, filed an "Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident" ("Emergency Petition"). The Emergency Petition requested, as relevant to Bell Bend, that the Commission (1) "suspend all decisions" regarding the issuance of combined licenses and promulgation of design certification rules, pending completion by the NRC's near-term and long-term lessons learned investigations of the Fukushima accident and any regulatory actions and/or environmental analyses related to those issues; and (2) establish procedures for raising new issues relevant to the Fukushima accident in

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2 74 Fed. Reg. 11,606 (Mar. 18, 2009).

3 As noted above, Mr. Stilp included a Declaration of Standing with his motion. The Applicant has no objection to Mr. Stilp's standing given the law of this case.

4 Neither Mr. Stilp nor TRU sought review of LBP-09-18. The decision was upheld by the Commission with respect to a separate appeal. *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, ___ NRC ___ (January 7, 2010).

pending licensing proceedings, while suspending requirements to justify the late-filing of new issues if their relevance to the Fukushima accident can be demonstrated. Emergency Petition, at 1-3. PPL and the NRC Staff, and other applicants in other proceedings, filed responses opposing the Emergency Petition on May 2, 2011. The Commission has not ruled on the Emergency Petition. Accordingly, no specific procedures are in place for addressing issues related to the Fukushima event in individual licensing cases, and the NRC's Rules of Practice and related precedent continue to apply.

APPLICABLE LEGAL STANDARDS

The proceeding on the Bell Bend COL has been terminated. For the Motion to be granted and the New Contention admitted for a hearing, the petitioner would need to overcome several significant hurdles. The Motion would need to satisfy: (1) the standards in 10 C.F.R. § 2.326 for reopening a proceeding; (2) the criteria of 10 C.F.R. §§ 2.309(c) and 2.309(f)(2) pertaining to new or amended contentions; and (3) the requirements in 10 C.F.R. § 2.309(f)(1), which are applicable to all proposed contentions.

A. Motion to Reopen

Under 10 C.F.R. § 2.326(a), a motion to reopen a closed record to consider additional evidence[5] will not be granted unless the following criteria are satisfied:

- The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented.
- The motion must address a significant safety or environmental issue.
- The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

[5] Strictly speaking, there never was a record in this proceeding because no contentions were admitted for hearing.

Reopening a closed proceeding is an extraordinary action. The proponent of a motion to reopen the record has a heavy burden to bear. *Amergen Energy Company LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 668, 675 (2008). Stringent criteria must be met in order for the record to be reopened. *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-94-9, 39 NRC 122, 123 (1994); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 25 (2006) ("Agencies need not reopen adjudicatory proceedings merely on a plea of new evidence."). Even though a matter is timely raised and involves significant safety or environmental considerations, no reopening of the evidentiary hearing will be required if the asserted safety or environmental issue does not exist, has been resolved, or for some other reason will have no effect upon the outcome of the licensing proceeding. *Commonwealth Edison Co.* (Byron Nuclear Power Station, Units 1 and 2), LBP-83-41, 18 NRC 104, 109 (1983).

B. New or Amended Contentions

A proposed contention addressing a matter not previously in controversy among the parties must satisfy the standards governing the admissibility of contentions found in 10 C.F.R. Part 2. *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-09-05, 69 NRC 115, 124 (2009). The New Contention in the present case is based on the Task Force Report rather than any NRC Staff review document. Therefore, pursuant to 10 C.F.R. § 2.309(f)(2), the New Contention may be considered only if: (1) the information upon which the contention is based was not previously available; (2) the information upon which the contention is based is materially different from information previously available; and (3) the contention has been submitted in a timely fashion based on the availability of subsequent information. 10

C.F.R. § 2.309(f)(2)(i)-(iii). Meeting these criteria is not sufficient to warrant admission of a new contention. The petitioner must also address the criteria in 10 C.F.R. § 2.309(c)(1).[6]

Under Section 2.309(c)(1), the presiding officer must weigh five factors: (1) good cause, if any, for the failure to file on time;[7] (2) the availability of other means whereby the requestor's interest will be protected; (3) the extent to which the requestor's interests will be represented by existing parties; (4) the extent to which the requestor's participation will broaden the issues or delay the proceeding; and (5) the extent to which the requestor's participation may reasonably be expected to assist in developing a sound record. *See* 10 C.F.R. § 2.309(c)(1)(i), (v)-(viii). The first factor, good cause for lateness, carries the most weight in the balancing test, and the lack thereof requires the petitioner to make a "compelling case" relative to the remaining factors. *See State of New Jersey* (Department of Law and Public Safety's Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289, 296 (1993) (citations omitted). Even though the good cause factor is met in cases where contentions are filed late only because the information on which they are based was not available until after the filing deadline, the other factors may permit the denial of the contention. *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045-50 (1983); *see also Union of Concerned Scientists v. NRC*, 920 F.2d 50, 52 (D.C. Cir. 1990).

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[6] The requirement to apply the factors in 10 C.F.R. § 2.309(c) did not change with the promulgation of the revised 10 C.F.R. Part 2, which introduced the "timeliness" factors in 10 C.F.R. § 2.309(f)(2). *See* "Changes to Adjudicatory Process; Final Rule," 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) ("If information in [a new document] bears upon an existing contention or suggests a new contention, it is appropriate for the Commission to evaluate under § 2.309(c) the possible effect that the admission of amended or new contentions may have on the course of the proceeding.").

[7] The criteria in Section 2.309(f)(2), in effect, codify the test for establishing "good cause."

C. Contention Admissibility

Any new or amended contentions must meet the admissibility standards that apply to all contentions. As set forth in 10 C.F.R. § 2.309(f)(1), a proposed contention must contain: (1) a specific statement of the issue of law or fact raised; (2) a brief explanation of the basis for the contention; (3) a demonstration that the issue is within the scope of the proceeding; (4) a demonstration that the issue is material to the findings that the NRC must make regarding the action which is the subject of the proceeding; (5) a concise statement of the alleged facts or expert opinions supporting the contention; and (6) sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

DISCUSSION

A. The Issues Raised by the Motion Impermissibly Challenge NRC Regulations

The issues raised in the New Contention are generic issues challenging the adequacy of the Commission's existing regulations and requirements. Although styled as an environmental contention under NEPA, the primary focus of the New Contention is on the Task Force recommendations for changes to the NRC's regulatory program and to the safety requirements applicable to the design and operation of operating and new reactors. The supporting Declaration states generally that Dr. Makhijani has read the Task Force Report and agrees with the recommendations. But the Motion to Reopen, the New Contention, and the Declaration do not offer any evidence to support a conclusion that the lessons learned from the Fukushima event have any unique applicability to the U.S. EPR or to Bell Bend. The Fukushima issues can and will be addressed — to the extent necessary for new plants — through regulatory processes such as rulemakings (including the ongoing U.S. EPR design certification technical review and rulemaking). For this reason, the Motion and New Contention should be rejected for consideration in a site-specific hearing.

Longstanding NRC precedent provides that issues that are or are about to become the subject of general rulemaking should not be accepted in individual licensing matters.[8] An interested person can seek changes in the regulations by a petition for rulemaking in accordance with 10 C.F.R. § 2.802. Petitioners may not, however, challenge the adequacy of the Commission's existing regulatory scheme through individual adjudications.[9] Indeed, the Commission's Rules of Practice are specifically designed to preclude consideration of generic issues in individual licensing proceedings. 10 C.F.R. § 2.335(a). The Rules of Practice and agency precedent assure efficiency and consistency in addressing and resolving issues that impact a number of applicants, while preserving ample opportunity for stakeholder participation.

The Motion to Reopen and the New Contention are predicated on a perception that the Task Force Report demonstrates the need for changes to NRC regulations governing, among other things, severe accidents, external events (*e.g.*, seismic and flooding), station blackout, hardened vents, enhanced spent fuel pool backup capability and instrumentation, and emergency response procedures. For example, Mr. Stilp argues that "the NRC's current regulatory scheme requires significant re-evaluation and revision in order to expand or upgrade the design basis for reactor safety as recommended by the Task Force Report." New Contention at 8. Mr. Stilp also states that "the great majority of the NRC's current regulations do not impose mandatory safety requirements on severe accidents, and severe accident measures are adopted

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8 *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 816 (1981).

9 *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982), *citing Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974) (explaining that a contention must be rejected where it challenges the basic structure of the Commission's regulatory process and is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be).

only on a 'voluntary' basis or through a 'patchwork' of requirements" and therefore argues that the design basis should be upgraded to include severe accidents." *Id*. at 7-8. The proposed New Contention also argues that "the regulatory system on which the NRC relies to make the safety findings that the [AEA] requires for licensing of reactors must be strengthened." *Id*. at 5. Even assuming that the Motion and New Contention present an accurate characterization of the Task Force Report, Mr. Stilp is quite clearly attempting to challenge the adequacy of the Commission's existing regulatory scheme and to raise generic safety issues in this adjudicatory proceeding. This is not permitted in individual adjudications.[10]

The Task Force recommendations are under active consideration by the NRC Staff and the Commission,[11] and Mr. Stilp himself implicitly recognizes that his concerns are best addressed through alternative regulatory processes. For example, Mr. Stilp already filed an Emergency Petition with the Commission seeking *generic action* regarding lessons learned from Fukushima. And, as part of his proposed New Contention, Mr. Stilp acknowledges that the issues raised are generic in nature and therefore appropriate for resolution via rulemaking. *See* New Contention at 3 ("[T]he Petitioner has joined with other individuals and organizations in a rulemaking petition seeking to suspend any regulations that would preclude full consideration of the environmental implications of the Task Force Report."); *id*. at 4 (recognizing that "given the

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10 *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 387, 395 (finding that a contention presents an impermissible challenge to the Commission's regulations where it seeks to impose requirements in addition to those set forth in the regulations); *Fla. Power & Light Co.* (Turkey Point Nuclear Generating. Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, *159, aff'd*, CLI-01-17, 54 NRC 3 (2001) (explaining that contentions advocating stricter requirements than agency rules impose are inadmissible).

11 *See, e.g.*, Staff Requirements Memorandum, SECY-11-0093, "Near-Term Report and Recommendations for Agency Action Following the Events in Japan," dated August 19, 2011 (ADAMS Acc. No. ML112310021).

sweeping scope of the Task Force conclusions and recommendations, it may be more appropriate for the NRC to consider them in generic rather than site-specific environmental proceedings"). Further, the Task Force also concluded that its various recommendations for rulemaking "would be equally applicable to new reactors." Task Force Report at 71. The U.S. EPR design certification review is ongoing and the design certification is not yet in the rulemaking process. The design certification process, rather than the COL process, is a more appropriate process to address plant and procedure issues under 10 C.F.R. Part 52. There is no reason that the Task Force recommendations — to the extent applicable — cannot, or should not, be addressed in issue-specific rulemakings or in the U.S. EPR design certification process.

B. The Motion Does Not Meet the Criteria to Reopen a Proceeding

As discussed above, the issues raised in the Motion to Reopen and the New Contention are under active consideration by the Commission as part of the Fukushima Task Force review. But, the mere possibility of future regulatory changes is not sufficient to satisfy the requirements in 10 C.F.R. § 2.326 that a movant demonstrate that there is a significant safety or environmental issue that must be considered, and that a materially different result would be or would have been likely had the newly proffered evidence been considered initially. "The possibility of a materially different result is insufficient. The movant must show that it is likely that the result would have been materially different, *i.e.*, that it is more probable than not."[12] In *Vermont Yankee*, the Commission stated further: "Certainly, if the Board had admitted [a contention] and if the Board had ruled in [the petitioner's] favor on the merits of [the contention], then the result would have been materially different (*e.g.*, some additional conditions would have been imposed . . . But [the petitioner] has not demonstrated that it is likely

[12] *Entergy Nuclear Vermont Yankee* (Vermont Yankee Nuclear Power Station), LBP-10-19, __ NRC __ (Oct. 28, 2010), slip op. at 26, *aff'd* CLI-11-02.

that it would have prevailed on the merits . . . A motion to reopen requires more than a possibility. It requires a demonstration that the petitioner is likely to succeed." *Id*. at 27.

The Motion to Reopen, New Contention, and Declaration assert that they address a significant *environmental* issue. The assertion is made that the Task Force Report recommendations (including the recommendations to incorporate certain severe accidents into the plant design basis) compel additional environmental analyses under NEPA, and that these analyses may lead to a different conclusion with respect to environmental risks and the cost-benefit analysis for the project. However, Mr. Stilp provides no basis on which to conclude that there are specific environmental issues that have not already been considered or that will not be addressed as part of the agency's generic review of the Task Force recommendations. Any regulatory actions that result from the recommendations will address not only the safety concerns identified by the Task Force, but any related environmental impact concerns. The NRC can meet any NEPA obligation in promulgating any new regulations or taking other regulatory actions.[13]

Neither Mr. Stilp nor Dr. Makhijani have specifically pointed to any new environmental impact that is unique for the U.S. EPR or to Bell Bend. Mr. Stilp has not, for example, identified any new seismic or flooding risks at Bell Bend. Nor has Mr. Stilp challenged any of the specific severe accident mitigation design alternatives ("SAMDAs") or severe accident mitigation alternatives ("SAMAs") in the U.S. EPR design certification application or the Bell Bend COL application. In fact, the Makhijani Declaration on which Mr. Stilp relies (Motion to Reopen at 5) never once mentions Bell Bend or the U.S. EPR. *See*

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[13] Generic analysis "is clearly an appropriate method of conducting the hard look required by NEPA." *Baltimore Gas and Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 101 (1983) (internal quotation marks omitted); *see also Public Citizen, et al. v. Nuclear Regulatory Commission*, 573 F.3d 916, 928-29 (9th Cir. 2009) (concluding that the NRC met its NEPA obligations in connection with the risk of air-based terrorist threats in promulgating the design basis threat rule).

Makhijani Declaration at ¶¶ 16-18.[14] Affidavits submitted in support of a motion to reopen that contain only bare assertions or speculation and that lack technical details or analysis are insufficient to demonstrate that a materially different result is likely. *See*, *e.g.*, *AmerGen Energy Co., Inc.* (Oyster Creek Nuclear Generating Station), LBP-08-12, 68 NRC 5, 22, *aff'd* CLI-08-28, 68 NRC 658 (2008).

Mr. Stilp is also incorrect in his characterization of the Task Force Report. Mr. Stilp cites the Task Force Report for the proposition that current regulatory requirements are inadequate and that additional requirements are needed for new reactors such as Bell Bend. Specifically, Mr. Stilp states that:

> In particular, the Task Force found that "the NRC's safety approach is incomplete without a strong program for dealing with the unexpected, including severe accidents." [Task Force Report] at 20. Therefore, the Task Force recommended that the NRC incorporate severe accidents into the "design basis" and subject it to mandatory safety regulations.

New Contention at 5-6. However, in fact, the Task Force discussion cited by Mr. Stilp relates only to operating reactors. The full paragraph in the Task Force Report stated that:

> The Task Force concludes that the NRC's safety approach is incomplete without a strong program for dealing with the unexpected, including severe accidents. Continued reliance on industry initiatives for a fundamental level of defense-in-depth similarly would leave gaps in the NRC regulatory approach. The Commission has clearly established such defense-in-depth severe accident requirements for new reactors (in 10 CFR 52.47(23), 10 CFR 52.79(38), and each design certification rule), thus bringing unity and completeness to the defense-in-depth concept.

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[14] It is clear that the Motion to Reopen and the New Contention are not directed specifically to Bell Bend COL application or the U.S. EPR design certification. For example, Mr. Stilp states that "[i]n the EIS, the Commission assumed that compliance with existing NRC safety regulations was sufficient to ensure that the environmental impacts of accidents were acceptable" and asserts that "[t]he information in the Task Force Report refutes this assumption and is materially different from the information upon which the EIS was based." Motion to Reopen at 4. However, no EIS on Bell Bend has yet been issued. This text is simply not relevant to the Bell Bend application, demonstrating that the issues are generic in nature and should be addressed as such.

> Taking a similar action, within reasonable and practical bounds appropriate to operating plants, would do the same for operating reactors.

Task Force Report at 20 (emphasis added). Thus, contrary to Mr. Stilp's arguments, the Task Force Report actually agrees that the NRC's severe accident defense-in-depth for new reactors such as Bell Bend is adequate. *See, e.g.*, Task Force Report at 73-75.

The discussion of other Task Force recommendations also does not identify significant issue at Bell Bend. *See* New Contention at 17. With respect to design-basis seismic and flooding analysis issues (Recommendation 2.1), the Task Force concluded that "current COL and design certification applicants are addressing them adequately in the context of the updated state-of-the-art and regulatory guidance used by the staff in reviews." Task Force Report at 71. The Task Force concluded that Recommendation 4 (new requirements for prolonged station blackout mitigation) and Recommendation 7 (spent fuel makeup capability and instrumentation) should apply to design certification and COLs under active review prior to licensing. *Id*. There is no suggestion, however, that Bell Bend poses any unique issues or that the issues cannot be addressed before operation of the new plants under review. Reopening an individual licensing proceeding is not warranted where, as here, the Commission is actively considering taking action on the issues of concern that would render moot on a specific docket the issues in the contention.

At bottom, the topics mentioned in the Motion to Reopen and New Contention — flooding and seismic events, station blackout, severe accidents, environmental risks — all should be (and will be) addressed through generic regulatory processes. The Commission can modify requirements applicable to Bell Bend or the U.S. EPR at any time. The safety-related issues raised by the Fukushima Task Force Report can (and will) be addressed as necessary long before the proposed Bell Bend unit goes into operation. And, the environmental impacts associated with any changes will be addressed at that time. Accordingly, there is no basis on which to

conclude that a significant environmental issue is being ignored, or that a materially different result would be likely in a site-specific adjudication.

C. The Proposed New Contention Fails To Demonstrate A Genuine Dispute With The COL Application On A Material Issue

The proposed New Contention is also inadmissible under the criteria for admissibility of contentions in 10 C.F.R. § 2.309(f)(1). The New Contention fails to establish a genuine dispute with the Bell Bend application on a material environmental issue.

1. The New Contention Lacks Sufficient Factual Support

Mr. Stilp argues that the Task Force Report "raises significant environmental concerns in this proceeding, including that (1) the risks of operating the proposed Bell Bend reactor are higher than estimated in the Environmental Report for the proposed Bell Bend reactor and (2) the . . . previous [Bell Bend] environmental analysis of the relative costs and benefits of severe accident mitigation alternatives ('SAMAs') is fundamentally inadequate because those measures are, in fact, necessary to assure adequate protection of the public health and safety and, therefore, should be imposed without regard to their cost." New Contention at 2. The New Contention, however, does not challenge any specific portion of the COL application, including the Environmental Report ("ER") for the Bell Bend COL, or the Design Certification application for the U.S. EPR, which is incorporated by reference into the Bell Bend COL application. Accordingly, there is no showing of a genuine dispute on a material environmental issue.

Both the Bell Bend ER and the Design Certification ER discuss design basis and severe accident risks and impacts. The severe accident evaluations include evaluations of SAMDAs and SAMAs. *See* ER at Chapter 7; *see also* U.S. EPR DC at Chapters 15 and 19; U.S. EPR Environmental Report, ANP-10290, Revision 1 (ADAMS Accession No. ML092650775)

("U.S. EPR ER").[15] Mr. Stilp does not identify any specific dispute with the specific information in the application or the referenced DC application. The text of the New Contention and the bases for it do not contain any substantive citations to the Bell Bend COL application.[16] A contention that does not directly controvert a position taken by the applicant in the application is subject to dismissal. *See Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992). Mr. Stilp's generalized assertions that the Task Force Report raises a "concern" regarding the manner in which the proposed operation of Bell Bend impacts public health and safety (New Contention at 11) and "calls into question" whether the ER discussion of design basis accidents represents a complete examination of design basis accidents (*id*. at 12-13) are too vague and insufficient to support an admissible contention.

Mr. Stilp bears the burden to present adequate factual information or expert opinions necessary to support a contention and must also explain the significance of any factual information upon which he relies. 10 C.F.R. § 2.309(f)(1)(v); *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 204-05 (2003). Here, Mr. Stilp simply cuts and pastes statements from the Task Force Report, but never explains how that report would lead to different conclusions than those presented in the ER. The proposed New Contention is therefore inadmissible for failing to demonstrate a genuine dispute with the application on a material issue. 10 C.F.R. § 2.309(f)(1)(vi).

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15 Chapter 7 of the ER addresses design basis accidents (Section 7.1), severe accidents (Section 7.2), and severe accident mitigation alternatives (Section 7.3). Chapter 15 of the U.S. EPR DC addresses transient and accident analyses, and Chapter 19 includes the probabilistic risk assessment and severe accident evaluation. The U.S. EPR ER addresses SAMDAs.

16 There is only a single reference to the Bell Bend application. Mr. Stilp simply notes the section of the ER that addresses accidents (Chapter 7). New Contention at 12. Mr. Stilp does not challenge any specific portion of the Chapter 7.

The Commission has previously observed that, for any severe accident concern, there are likely to be numerous conceivable SAMAs and thus it will always be possible to come up with some type of mitigation alternative that has not been addressed. *Duke Energy*, CLI-02-17, 56 NRC at 11-12. In the end, however, whether a SAMA is worthy of more detailed analysis in an ER hinges upon whether it may be cost-beneficial to implement. *Id*. Under the rule of reason governing NEPA, "[t]o make an impact statement something more than an exercise in frivolous boilerplate the concept of alternatives must be bounded by some notion of feasibility." *Id*. *citing Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc*., 435 U.S. 519, 551 (1978). It would be unreasonable to trigger a full adjudicatory proceeding where a proposed contention does nothing to identify a SAMA or indicate the approximate relative cost and benefit of the SAMA. A conclusory statement, based on NRC Staff work in a different context, that additional SAMAs "should be considered" is insufficient.[17]

2. There is No Demonstration of Significant New Environmental Information

The New Contention also asserts that the ER must be supplemented in light of the significant new environmental information inherent in the Task Force Report recommendations. Under 10 C.F.R. § 51.92(a), supplementation is necessary only if there are (1) substantial

[17] Mr. Stilp wants PPL to "do more" without providing any information to suggest that "more" is needed or would lead to different results. According to the Commission, a petitioner must approximate the relative cost and benefit of a challenged SAMA in order to get an adjudicatory hearing. *Duke Energy Corporation* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 11-12 (2002). A petitioner must at least present some notion of a difference in the results and provide at least some ballpark consequence and implementation costs should the SAMA be performed. *See Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 2 and 3), LBP-08-13, 68 NRC __ (slip op. July 30, 2008) at 67-68; *see id*. at 74-75 (rejecting a proposed contention, in part, because the Petitioner failed to explain why the allegedly new information was sufficiently different from the earlier data to make a material change in the conclusions of the SAMA, failed to suggest feasible alternatives to address risks posed by the new data, and failed to estimate the cost of the increased margin of safety that would result from any severe accident mitigation action).

changes in the proposed action that are relevant to environmental concerns, or (2) significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. To be significant, "new information must present 'a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.'" *Hydro Res., Inc.* (2929 Coors Rd., Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999). Mr. Stilp argues that the Task Force Report's findings point to a need for a reevaluation of the environmental consequences of severe accidents. However, the New Contention and the Makhijani Declaration do not establish that the assessments of environmental impacts will change in any adverse way. Mr. Stilp's generalized assertions that the Task Force Report raises a "concern" regarding environmental impacts (New Contention at 11) and "calls into question" whether the ER discussion represents a complete examination of "all the design basis accidents having the potential for releases to the environment" (*id*. at 12-13) do not present a different picture of the environmental impacts of the proposed Bell Bend plant. In fact, the Task Force Report does not discuss environmental impacts at all.

The New Contention simply presumes, without demonstrating it to be the case, that Fukushima-type releases could occur at Bell Bend, and that the environmental consequences would be worse than previously analyzed for severe accidents.[18] In particular, the New Contention does not present <u>any</u> new information regarding flooding or seismic risk at Bell Bend. Nor does it discuss any specific environmental consequences at the Bell Bend site.[19]

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[18] Similar issues regarding the need for supplementation were raised following Three Mile Island. The D.C. Circuit explained that "the fact that the accident occurred does not establish that accidents with significant environmental impacts will have significant probabilities of occurrence." *San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287, 1301 (D.C. Cir. 1984), *aff'd en banc,* 789 F.2d 252 (D.C. Cir. 1986).

[19] As noted above, the issues raised in the proposed new contention and supporting declaration are generic issues that are not specific to either Bell Bend or the U.S. EPR. A

Again, there is neither factual information nor expert support to suggest that risks of a design basis accident or severe accident at Bell Bend would differ from those described in the ER, based on any insights from Japan.[20]

The Task Force Report recommendations are not, in and of themselves, "new and significant information" that warrant NEPA supplementation. Simply because an event is newsworthy, does not mean it is substantively significant for NEPA purposes. The Commission is still assessing the lessons from Fukushima and has, to date, made no determination that Fukushima constitutes new or significant environmental information regarding the environmental impacts associated with a new reactor. Mr. Stilp argues that the ER must be supplemented to address the Task Force's recommendation to incorporate severe accidents into the design basis. But, the ER already considers both design basis and "beyond-design-basis" (*i.e.*, severe) accidents. *See* ER at Chapter 7; *see also* U.S. EPR DC at Chapters 15 and 19; U.S. EPR ER. And, as noted above, Mr. Stilp has not demonstrated that any information is missing from the ER (or from the U.S. EPR DC). In the absence of any specific alleged omission or inaccuracy in the ER, supplementation is not warranted.

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contention stating a generic issue cannot be admitted absent a specific nexus between the contention and the specific facility that is the subject of the proceeding. *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), LBP-82-15, 15 NRC 555, 558-59 (1982).

[20] In essence, the New Contention and supporting Declaration simply "piggy-back" the Fukushima Task Force Report. In this regard, they are an attempt to leverage the NRC Staff's generic reviews into the site-specific adjudicatory process. This is akin to basing a contention on the mere fact that the NRC Staff has issued a Request for Additional Information ("RAI") during its license application review, which has been held to be insufficient for an admissible contention. *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 336 (1999) (rejecting contention based solely on the existence of NRC Staff RAIs). The Fukushima Task Force review, analogous to the Staff's application review, is part of the ongoing review of Fukushima lessons learned. But, the existence of recommendations for future actions, without more, does not support reopening of the proceeding and admitting a new contention.

The New Contention also argues that Task Force Report suggests the need for additional severe accident mitigation measures, including measures to strengthen station blackout mitigation capability for design basis and beyond-design-basis external events, require hardened vent designs (applicable only to BWR facilities with Mark I and Mark II containments), enhance spent fuel pool makeup capability and instrumentation, and strengthen and integrate onsite emergency response capabilities. New Contention at 16-17. As already discussed, Mr. Stilp makes no attempt to show that these issues have not been considered in the U.S. EPR design or in the Bell Bend COL, or even to detail what additional specific mitigation measures might be available. The U.S. EPR design certification ER includes an evaluation of a number of mitigation measures related to loss of power and station blackout.[21] The COL application also addresses the Emergency Operating Procedures ("EOPs"), Severe Accident Management Guidelines ("SAMGs"), and Extensive Damage Mitigation Guidelines ("EDMGs")

[21] For example, the U.S. EPR ER includes SAMDA AC/DC-01, which would ensure longer battery life during a station blackout ("SBO") and consequently reduce the plant exposure to long term SBO sequences. The ER also considered AC/DC-02 (Replace lead-acid batteries with fuel cells), AC/DC-04 (Improve DC bus load shedding), AC/DC-09 (Provide an additional diesel generator), AC/DC-13 (Install an additional, buried off-site power source), AC/DC-14 (Install a gas turbine generator), AC/DC-22 (In training, emphasize steps in recovery of off-site power after an SBO), AC/DC-24 (Bury off-site power lines), CC-02 (Provide an additional high pressure injection pump with independent diesel), CC-16 (Provide capability for remote, manual operation of secondary side pilot-operated relief valves in an SBO), CW-13 (Install an independent RCP seal injection system, with dedicated diesel), EPR-07 (Provide operator training to cross-tie Division 1 to Division 2 or Division 4 to Division 3 during both an SBO and non-SBO event), FW-03 Install an independent diesel for the condensate storage tank makeup pumps), FW-08 (Modify the turbine-driven auxiliary feedwater pump to be self-cooled), FW-09 (Proceduralize local manual operation of auxiliary feedwater system when control power path is lost), FW-14 (Modify the startup feedwater pump so that it can be used as a backup to the emergency feedwater system (EFWS), including during an SBO scenario), HV-05 (Create ability to switch emergency feedwater (EFW) room fan power supply to station batteries in an SBO), and IA-04 Install nitrogen bottles as backup gas supply for safety relief valves (SRV)).

mentioned in the New Contention.[22] Mr. Stilp has not raised any dispute with these portions of the application that would warrant supplementation of the ER.

Moreover, additional mitigation measures that may result from the Fukushima review process would not materially impact the environmental analysis in the ER. If the Task Force Report recommendations become regulatory requirements, the environmental impacts would necessarily be less than the impacts described currently. Thus, the current environmental analysis is conservative. A supplemental NEPA document is not necessary where a change will result in less environmental impact.[23] Likewise, severe accident mitigation measures would no longer be "alternatives" under NEPA if the NRC changed its regulations to mandate implementation of design or procedural modifications that mitigate severe accidents.

For all of these reasons, the New Contention does not satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1).

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22 *See, e.g*, FSAR §§ 6.2 (incorporating U.S. EPR DCD § 6.2.5 addressing combustible gas control in containment), 8.4 (incorporating DCD § 8.4 addressing station blackout), 9.1 (incorporating DCD § 9.1 addressing spent fuel storage), 13.5 (incorporating DCD § 13.5.2.1 addressing emergency operating procedures), 19.2 (incorporating DCD § 19.2.3 addressing SAMGs).

23 *See, e.g.*, *Alliance to Save the Mattaponi v. U.S. Army Corps of Eng'rs*, 606 F. Supp. 2d 121, 137-138 (D.D.C. 2009) ("When a change reduces the environmental effects of an action, a supplemental EIS is not required."); *Concerned Citizens on I-190 v. Sec'y of Transp.*, 641 F.2d 1, 6 (1st Cir. 1981) (adopting a new environmental protection "statute or regulation clearly does not constitute a change in the proposed action or any 'information' in the relevant sense"); *New Eng. Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 94 (1st Cir. 1978) (concluding that a supplemental EIS is not needed, even though the EIS did not discuss the new cooling intake location, because the change "would have a smaller impact on the aquatic environment than would the original location"); *So. Trenton Residents Against 29 v. Fed. Highway Admin.*, 176 F.3d 658, 663-668 (3d Cir. 1999) (holding that design changes that cause less environmental harm do not require a supplemental EIS).

D. The Proposed New Contention Is Untimely And Does Not Satisfy The Factors For Consideration of New or Amended Contentions

The only basis offered for filing the New Contention at this time is the issuance of the Task Force Report. However, contentions related to the adequacy of the ER discussions of design basis accidents or severe accidents, or the adequacy of SAMDAs considered in the U.S. EPR design, could (and should) have been submitted as part of an initial petition to intervene. In order for a proposed contention to be timely, the information upon which the new contention is based must be materially different from information previously available. 10 C.F.R. § 2.309(f)(2)(ii).[24] Here, the New Contention is based only on speculation regarding the outcome of the NRC's ongoing reviews of the Fukushima accident, possible future changes to NRC regulations, and supposition regarding the impacts of those reviews on the Bell Bend application (and the U.S. EPR design certification). As noted above, the Task Force Report does not directly contradict the conclusions in the Bell Bend COL ER or the U.S. EPR design certification ER — that is, it does not provide any new or materially different information on environmental issues.[25]

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[24] If a petitioner files a contention at the outset of a proceeding, based solely on guesswork regarding possible future changes to NRC regulations, the contention would be inadmissible. *See*, *e.g.*, *AmerGen Energy Co., Inc.* (Oyster Creek Nuclear Generating Station), LBP-08-12, 68 NRC 5, 22 *aff'd* CLI-08-28, 68 NRC 658 (2008) (concluding that affidavits containing bare assertions or speculation and lacking technical details or analysis are insufficient to demonstrate that a materially different result is likely). The outcome should be the same for a late-filed contention.

[25] The applicable regulations and approach to treatment of design basis accidents, severe accidents, and SAMAs also has not changed in a material way since the Bell Bend application was filed or since the Fukushima accident. Thus, to the extent the contention is predicated on alleged inadequacies in the NRC's regulations governing consideration of design basis or severe accidents and SAMAs, it should have been filed at the outset of the proceeding, along with a request for a waiver under 10 C.F.R. § 2.335(b). This further demonstrates that the New Contention is untimely.

The New Contention also fails to satisfy the late-filed factors in 10 C.F.R. § 2.309(c)(1)(i), (v)-(viii). As discussed above, a contention challenging the discussion of accidents or SAMAs in the ER, or in the U.S. EPR design certification application, could have been raised at the outset of the proceeding. The proposed New Contention has not linked the Task Force Report recommendations to any specific deficiency in the Bell Bend COL application or the U.S. EPR design certification application.

As also discussed above, there are other, more appropriate forums for Mr. Stilp to address his concerns. The generic safety and environmental issues raised in the New Contention are being addressed in conjunction with the Commission's ongoing Fukushima lessons learned reviews. The NRC will provide for appropriate public participation (*e.g.*, notice and comment rulemaking) in connection with those reviews.

Mr. Stilp's proposed New Contention would clearly broaden this previously terminated proceeding. Not only would the matter be reopened, it would be expanded to encompass generic concerns with the NRC's overall regulatory program — issues that are best addressed in alternative regulatory processes, such as rulemaking.

Finally, there is no basis for concluding that Mr. Stilp will assist in developing a sound record. Mr. Stilp has not demonstrated an ability to provide independent technical expertise on design basis and severe accidents, or on the resulting environmental impacts. Although his proposed contention was accompanied by Dr. Makhijani's declaration, that declaration did not mention Bell Bend or the U.S. EPR. Thus, there is no basis for concluding that the petitioner can assist in developing a site-specific sound record.

CONCLUSION

For the foregoing reasons, the Presiding Officer should deny the Motion to Reopen, reject the proposed New Contention, and deny the renewed request for hearing. The

issues raised in the Motion are generic in nature and will be addressed by rulemaking, design certification review, or other regulatory processes outside individual licensing proceedings — all with opportunities for public participation. The Motion does not satisfy the Commission's criteria for reopening a proceeding, for an admissible contention, or for consideration of a late-filed contention.

Respectfully submitted,

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Dated at Washington, District of Columbia
this 6th day of September 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	
PPL BELL BEND, LLC	)	Docket No. 52-039
	)	
(Bell Bend Nuclear Power Plant, Unit 1)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANT'S RESPONSE TO MOTION TO REOPEN AND PROPOSED NEW CONTENTION" in the captioned proceeding have been served via the Electronic Information Exchange ("EIE") this 6th day of September 2011, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

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