UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	Docket No. 50-271-LA-3
ENTERGY NUCLEAR VERMONT YANKEE, LLC AND ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	May 15, 2015
(Vermont Yankee Nuclear Power Station)	)	

ENTERGY'S ANSWER OPPOSING STATE OF VERMONT'S PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST

Susan H. Raimo, Esq.
Entergy Services, Inc.
101 Constitution Avenue, N.W.
Washington, D.C. 20001
Phone: (202) 530-7330
Fax: (202) 530-7350
E-mail: sraimo@entergy.com

Paul M. Bessette, Esq.
Stephen J. Burdick, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5796
Fax: (202) 739-3001
E-mail: pbessette@morganlewis.com
E-mail: sburdick@morganlewis.com

Counsel for Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.

TABLE OF CONTENTS

Page

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	Docket No. 50-271-LA-3
ENTERGY NUCLEAR VERMONT YANKEE, LLC AND ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	May 15, 2015
(Vermont Yankee Nuclear Power Station)	)	

ENTERGY'S ANSWER OPPOSING STATE OF VERMONT'S PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i), Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively, "Entergy") submit this Answer opposing the Petition for Leave to Intervene and Hearing Request ("Petition") filed on April 20, 2015 by the State of Vermont ("State").[1] As explained below, the Atomic Safety and Licensing Board ("Board") should deny the Petition because the proposed contentions are inadmissible.

On February 17, 2015, the U.S. Nuclear Regulatory Commission ("NRC") published in the *Federal Register* a notice of opportunity to request a hearing ("Hearing Notice")[2] on Entergy's September 4, 2014 license amendment request ("LAR")[3] for the Vermont Yankee

---

1 The State attached six documents to the Petition, two of which it labels "exhibits": Exhibit 1, Comments of the State of Vermont (Mar. 6, 2015); Exhibit 2, Entergy Nuclear Vermont Yankee, LLC Master Decommissioning Trust Agreement for Vermont Yankee Nuclear Power Station (July 31, 2002); Declaration of Anthony R. Leshinskie (Apr. 20, 2015) ("Leshinskie Declaration"); *Curriculum Vitae* of Anthony R. Leshinskie; Declaration of William Irwin, Sc.D, CHP (Apr. 20, 2015) ("Irwin Declaration"); and *Curriculum Vitae* of William E. Irwin, Sc.D., CHP.

2 Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 80 Fed. Reg. 8355, 8359 (Feb. 17, 2015).

3 BVY 14-062, Letter from C. Wamser to NRC Document Control Desk, Proposed Change No. 310 – Deletion of Renewed Facility Operating License Conditions Related to Decommissioning Trust Provisions (Sept. 4, 2014), *available at* ADAMS Accession No. ML14254A405.

Nuclear Power Station ("Vermont Yankee"). The LAR seeks NRC approval to exercise the option authorized in 10 C.F.R. § 50.75(h)(5) allowing licensees to delete certain license conditions related to nuclear decommissioning trust ("NDT") funds and, instead, be governed by the NDT provisions in the NRC regulations at 10 C.F.R. §§ 50.75(h)(1)-(3).[4]

In its Petition, the State proffers four contentions. Contention I alleges that the LAR involves a significant hazard, fails to demonstrate compliance with NRC regulations, and fails to demonstrate adequate protection for public health and safety.[5] Contention II alleges that the LAR is untimely.[6] Contention III alleges that a separate request for an exemption, submitted by Entergy on January 6, 2015 ("Exemption Request"),[7] related to the use of NDT funds for spent fuel management, must be considered as part of the LAR.[8] Contention IV alleges that Entergy should have submitted an Environmental Report for the LAR, and the LAR is not categorically excluded from environmental review.[9]

All of the proposed contentions should be rejected for failure to satisfy the Commission's contention admissibility requirements in 10 C.F.R. § 2.309(f). Contrary to 10 C.F.R. § 2.335, the vast majority of the State's claims are impermissible challenges to the NRC's regulations and regulatory process, and thus outside the scope of this proceeding under 10 C.F.R. § 2.309(f)(1)(iii). In this regard, the State challenges 10 C.F.R. § 50.75(h), and the Commission's generic findings in the 2002 Decommissioning Trust Provisions rulemaking ("NDT Rulemaking"), which explicitly permit deletion of NDT license conditions in place of

---

4 *Id*. at 1.

5 *See* Petition at 3.

6 *See id*. at 17.

7 BVY 15-002, Letter from C. Wamser to NRC Document Control Desk, Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) (Jan. 6, 2015) ("Exemption Request"), *available at* ADAMS Accession No. ML15013A171.

8 Petition at 20.

9 *See id*. at 26.

compliance with the Section 50.75(h) NDT provisions. The State further challenges 10 C.F.R. §§ 50.75(h) and 50.90 by attempting to impose a timing requirement when no such requirement exists.

The State also impermissibly attempts in Contentions I and III to bring the separate and distinct Exemption Request into the scope of this narrow LAR proceeding. The Commission's long-standing regulatory framework establishes a clear distinction between exemptions and license amendments. The two regulatory actions are governed by separate regulations, subject to separate regulatory reviews, and are evaluated using separate standards and separate processes for public participation. Here, the LAR is the subject of this proceeding; the Exemption Request is not. In fact, the LAR is not dependent upon, nor does it even mention, the Exemption Request. The State seeks to impermissibly blur that regulatory distinction and expand this LAR proceeding into a consideration of the merits of Entergy's Exemption Request. The State's claims are outside the scope of this proceeding, and therefore inadmissible under 10 C.F.R. § 2.309(f)(1)(iii).

Even beyond these threshold legal hurdles, the proposed contentions are inadmissible for numerous additional reasons. First, the proposed contentions raise issues outside the scope of this proceeding, including the State's earlier comments on the Post-Shutdown Decommissioning Activities Report ("PSDAR"), which Entergy separately submitted to the NRC for review on December 19, 2014.[10] Second, they raise issues that are not material to the findings that the NRC must make to issue the requested license amendment, such as Entergy's obligations under Vermont Public Service Board ("PSB") orders. Third, they do not include the requisite facts or expert opinion, but instead rely upon speculation and unsupported allegations. Finally, they do

[10] BVY 14-078, Letter from C. Wamser, Entergy, to NRC Document Control Desk, Post Shutdown Decommissioning Activities Report (Dec. 19, 2014) ("Vermont Yankee PSDAR"), *available at* ADAMS Accession No. ML14357A110.

not demonstrate a genuine dispute on a material issue of fact or law with the LAR, but rather, provide general assertions that largely fail to address the content of the LAR. The State's proposed contentions are therefore also inadmissible pursuant to 10 C.F.R. §§ 2.309(f)(1)(iii), (iv), (v), and (vi).[11]

For these many reasons, all of the proposed contentions are inadmissible, and the Petition should be denied in its entirety.

II. REGULATORY AND PROCEDURAL BACKGROUND

A. Brief Overview of Decommissioning Requirements

Under NRC regulations, decommissioning a nuclear reactor means to safely remove the facility from service, reduce residual radioactivity to a level that allows releasing the property for unrestricted use (or restricted use subject to conditions), and terminate the license.[12] During the operating life of a plant, NRC regulations require that a licensee maintain financial assurance for decommissioning.[13] Licensees report on the status of decommissioning funding at least once every two years.[14]

Once a licensee decides to cease operations permanently, NRC regulations impose additional requirements that govern three sequential phases for decommissioning activities: (1) initial activities; (2) major decommissioning and storage activities; and (3) license termination activities. The following are the key activities and filings that a licensee must undertake:

---

[11] The Petition also suffers from a threshold deficiency. The State's counsel has not filed a Notice of Appearance, contrary to 10 C.F.R. § 2.314(b). The State bears the burden of demonstrating that it has authorized its representative appearing in the proceeding. *See Ga. Power Co.* (Vogtle Elec. Generating Plant, Units 1 & 2), LBP-90-29, 32 NRC 89, 92 (1990). An attorney's Notice of Appearance can meet this requirement, *see N. States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), LBP-08-26, 68 NRC 905, 913 (2008), but no attorney has submitted a Notice of Appearance on behalf of the State in this proceeding.

[12] 10 C.F.R. § 50.2.

[13] 10 C.F.R. § 50.75(c).

[14] 10 C.F.R. § 50.75(f).

1. Certification of Permanent Cessation of Operations (within 30 days of public announcement of decision regarding permanent cessation)[15]

2. Certification of Permanent Removal of Fuel (once fuel has been permanently removed from the reactor vessel)[16]

3. Post-Shutdown Decommissioning Activities Report ("PSDAR"), including a description of planned decommissioning activities (within two years of permanently ceasing operations)[17]

4. Irradiated Fuel Management Program ("IFMP") (within two years of permanently ceasing operations)[18]

5. Site-Specific Decommissioning Cost Estimate (within two years of permanently ceasing operations)[19]

6. Status Reports on Decommissioning Funding Assurance, Expenditures, and Remaining Costs (annually following the Decommissioning Cost Estimate)[20]

7. License Termination Plan (at least two years prior to license termination)[21]

B. Initial NDT Requirements for Vermont Yankee and Subsequent Rulemaking

On May 17, 2002, the NRC issued an Order approving the transfer of the Vermont Yankee operating license, DPR-28 ("Vermont Yankee License"), from Vermont Yankee Nuclear Power Corporation to Entergy ("Transfer Order").[22] The Transfer Order required the NDT to be "subject to or consistent with" the following requirements:

---

15 10 C.F.R. § 50.82(a)(1)(i).

16 10 C.F.R. § 50.82(a)(1)(ii).

17 10 C.F.R. § 50.82(a)(4)(i).

18 10 C.F.R. § 50.54(bb).

19 10 C.F.R. §§ 50.82(a)(4)(i), (a)(8)(iii).

20 10 C.F.R. §§ 50.75 (f)(2), 50.82(a)(8)(v).

21 10 C.F.R. § 50.82(a)(9).

22 Letter from R. Pulsifer to R. Barkhurst and M. Kansler, Order Approving Transfer of License for Vermont Yankee Nuclear Power Station from Vermont Yankee Nuclear Power Corporation to Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., and Approving Conforming Amendment (May 17, 2002) ("Transfer Order"), *available at* ADAMS Accession No. ML020390198; *see also* Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Order Approving Transfer of License and Conforming Amendment, 67 Fed. Reg. 36,269 (May 23, 2002) ("Transfer Order Notice").

(i) The decommissioning trust agreement must be in a form acceptable to the NRC.

(ii) With respect to the decommissioning trust funds, investments in the securities or other obligations of Entergy Corporation and its affiliates, successors, or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(iii) The decommissioning trust agreement must provide that no disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.

(iv) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(v) The appropriate section of the decommissioning trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations. . . .

Entergy Nuclear VY shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application and the requirements of this Order, and consistent with the safety evaluation supporting this Order. . . .[23]

On July 31, 2002, the NRC issued a conforming amendment to the Vermont Yankee License incorporating each of these requirements as part of a condition on the license ("Condition 3.J.").[24]

In the NDT Rulemaking in late 2002, following the amendment incorporating Condition 3.J. into the Vermont Yankee License, the NRC amended its regulations to add a new provision

---

[23] Transfer Order Notice, 67 Fed. Reg. at 36,270.

[24] Letter from R. Pulsifer to M. Balduzzi, Vermont Yankee Nuclear Power Station - Issuance of Amendment re: Transfer of Ownership and Operating Authority under Facility Operating License from Vermont Yankee Nuclear Power Corporation to Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Enclosure 1, Amendment No. 208 to License No. DPR-28 at 8 (July 31, 2002), *available at* ADAMS Accession No. ML022100395.

at 10 C.F.R. § 50.75(h) governing NDT agreements.[25] The new regulations specify requirements very similar to those in Condition 3.J. with one exception raised by the State. Unlike Condition 3.J., the regulations do not require "30 days prior written notice" for all disbursements from the NDT. In the NDT Rulemaking, the Commission generically determined that, for "licensees who have complied with 10 CFR 50.82(a)(4)," *i.e.*, have submitted a PSDAR, the requirement for a "30-day disbursement notice" would cause "problems . . . for licensees during the process of decommissioning," and "would not add *any* assurances that funding is available and would duplicate notification requirements at § 50.82."[26] Accordingly, the regulations at 10 C.F.R. §§ 50.75(h)(1) and (2) except withdrawals being made under 10 C.F.R. § 50.82(a)(8) from the 30-day disbursement notice requirement, and specify that "[a]fter decommissioning has begun and withdrawals from the decommissioning fund are made under § 50.82(a)(8), no further notifications need be made to the NRC."[27]

The Commission also explicitly stated in the NDT Rulemaking that "licensees will have the option of maintaining their existing license conditions or submitting to the new requirements,"[28] and "will be able to decide *for themselves* whether they prefer to keep or eliminate their specific license conditions."[29] But, the Commission also expressed its preference that licensees would adopt the standardized approach in the regulations because "the NRC has always believed that it is preferable and more efficient to adopt standard rules, as opposed to applying specific license conditions on a case-by-case basis."[30]

---

25 Decommissioning Trust Provisions, 67 Fed. Reg. 78,332 (Dec. 24, 2002).

26 *Id*. at 78,336 (emphasis added).

27 10 C.F.R. § 50.75(h)(1)(iv).

28 Decommissioning Trust Provisions, 67 Fed. Reg. at 78,335.

29 *Id*. at 78,339 (emphasis added).

30 *Id*. at 78,334.

To support the option to amend and eliminate these license conditions, the Commission made a generic determination in 10 C.F.R. § 50.75(h)(4) that a license amendment which "does no more than delete specific license conditions relating to the terms and conditions of decommissioning trust agreements involves 'no significant hazards consideration.'"[31] The Commission explained that, "[b]ecause these changes would be to conditions that resulted from license amendments (*i.e.*, license transfers) that *already* generically involve 'no significant hazards' considerations, any amendments to conform or eliminate these conditions would likewise involve 'no significant hazards.'"[32] In November 2003, the NRC promulgated a minor amendment to add a new section 10 C.F.R. § 50.75(h)(5) clarifying the NRC's original intention of allowing licensees to choose to either maintain their existing license conditions or eliminate them in favor of complying with the new regulatory requirements.[33] Notably, the Commission did not establish, or even suggest, a deadline for licensees to submit such requests. As discussed below, Entergy has decided to exercise this regulatory option and seek an amendment to remove the portions of Condition 3.J. that impose specific requirements on the NDT from the Vermont Yankee License and comply with the Section 50.75(h) NDT requirements. The LAR does nothing more.

C. Vermont Yankee Decommissioning

By letter dated September 23, 2013, Entergy informed the NRC that Vermont Yankee would permanently cease operations at the end of the operating cycle.[34] Entergy ceased power operations at Vermont Yankee on December 29, 2014, and subsequently submitted its

---

31 10 C.F.R. § 50.75(h)(4).

32 Decommissioning Trust Provisions, 67 Fed. Reg. at 78,339 (emphasis added).

33 Minor Changes to Decommissioning Trust Fund Provisions, 68 Fed. Reg. 65,386, 65,387 (Nov. 20, 2003); *see also* 10 C.F.R. § 50.75(h)(5).

34 BVY 13-079, Letter from C. Wamser, Entergy, to NRC Document Control Desk, Notification of Permanent Cessation of Power Operations (Sept. 23, 2013), *available at* ADAMS Accession No. ML13273A204.

certifications of permanent cessation of power operations and permanent removal of fuel from the reactor vessel to the NRC on January 12, 2015.[35]

In the interim, Entergy also submitted (1) an update to the Vermont Yankee IFMP,[36] and (2) the Vermont Yankee PSDAR with the site-specific Decommissioning Cost Estimate.[37] Among other things, the PSDAR explains that Entergy will utilize the NRC-authorized "SAFSTOR" decommissioning approach under which the facility is placed in a safe and stable condition and maintained in that state to allow levels of radioactivity to decrease through radioactive decay, followed by decontamination and dismantlement.[38]

To support its decommissioning plans for Vermont Yankee, Entergy has submitted other separate licensing action requests. As one example, Entergy is seeking an exemption from 10 C.F.R. § 50.82(a)(8)(i)(A) to use a portion of the funds from the Vermont Yankee decommissioning trust fund for the management of irradiated fuel, which is consistent with the updated IFMP and the PSDAR and 10 C.F.R. § 50.75(h)(1)(iv) to allow trust fund disbursements for irradiated fuel management activities to be made without prior notice.[39] Such exemption requests are consistent with filings from other recently shutdown plants, including Crystal River

---

35 BVY 15-001, Letter from C. Wamser, Entergy, to NRC Document Control Desk, Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel (Jan. 12, 2015), *available at* ADAMS Accession No. ML15013A426.

36 BVY 14-085, Letter from C. Wamser, Entergy, to NRC Document Control Desk, Update to Irradiated Fuel Management Program Pursuant to 10 CFR 50.54(bb) (Dec. 19, 2014), *available at* ADAMS Accession No. ML14358A251.

37 Vermont Yankee PSDAR.

38 *Id.*, Attachment, at 4.

39 Exemption Request at 1. This is the Exemption Request that the State seeks to challenge in this LAR proceeding.

Unit 3,[40] Kewaunee,[41] and San Onofre Units 2 and 3.[42] Entergy also has submitted other amendment requests,[43] including the NDT LAR that is the subject of the Petition.

D. NDT LAR

On September 4, 2014, Entergy submitted the LAR, seeking NRC approval to exercise its option to eliminate portions of Condition 3.J. from the Vermont Yankee License in favor of complying with the regulatory requirements in 10 C.F.R. § 50.75(h).[44] To be clear, the LAR does not relate to, nor seek any authority with regard to, the *purposes* for which NDT funds may be used. The LAR explains that the request is permitted by the NRC regulations at 10 C.F.R. §§ 50.75(h)(4) and (h)(5) and the Commission's stated intent in the NDT Rulemaking.[45] The LAR also includes a table that identifies the provisions of Condition 3.J. at issue, and compares them to the regulatory requirements of 10 C.F.R. § 50.75(h).[46] That table shows that the requirements of Condition 3.J. and the regulations are substantially similar. For this and other reasons, Entergy concluded that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 C.F.R. § 50.92(c).

---

40 Letter from M. Orenak to T. Hobbs, Crystal River Unit 3 Nuclear Generating Plant - Exemptions from the Requirements of 10 CFR Part 50, Sections 50.82(a)(8)(i)(A) and 50.75(h)(2) (TAC No. MF3875) (Jan. 26, 2015), *available at* ADAMS Accession No. ML14247A545.

41 Letter from C. Gratton to D. Heacock, Kewaunee Power Station - Exemptions from the Requirements of 10 CFR Part 50, Section 50.82(a)(8)(i)(A) and Section 50.75(h)(1)(iv) (TAC No. MF1438) (May 21, 2014), *available at* ADAMS Accession No. ML13337A287.

42 Letter from T. Wengert to T. Palmisano, San Onofre Nuclear Generating Station, Units 2 and 3 - Exemptions from the Requirements of 10 CFR Part 50, Sections [sic] 50.82(a)(8)(i)(A) and Section 50.75(h)(2) (TAC Nos. MF3544 and MF3545) (Sept. 5, 2014), *available at* ADAMS Accession No. ML14101A132.

43 The State has challenged these other license amendment requests as well. *See Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-15-4, 81 NRC ___ (Jan. 28, 2015) (denying the State's contention on Entergy's license amendment request related to emergency planning); *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), State of Vermont's Petition for Leave to Intervene, and Hearing Request (Feb. 9, 2015) (Docket No. 50-271-LA-2) (challenging Entergy's license amendment request related to the permanently defueled emergency plan and emergency action level scheme) (still pending before the Board).

44 *See* LAR at 1.

45 *See id.*, Attachment 1, at 1.

46 *See id.*, Attachment 1, at 3-6.

In accordance with 10 C.F.R. § 50.91(b)(1), Entergy provided a copy of the LAR to the State of Vermont, Department of Public Service.[47] The NRC accepted the LAR for docketing, and issued the Hearing Notice on February 17, 2015, setting a deadline of April 20, 2015 to request a hearing challenging the proposed amendment.[48] On April 20, 2015, the State filed the Petition proposing four contentions.[49]

III. LEGAL STANDARDS

Under 10 C.F.R. § 2.309(f)(1), a hearing request "must set forth with particularity the contentions sought to be raised." Section 2.309(f)(1)(i) through (vi) identifies the six admissibility criteria for each proposed contention.[50] Failure to comply with any one of the six admissibility criteria is grounds for rejecting a proposed contention.[51] The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing."[52]

Of particular relevance here is the longstanding principle that a contention challenging an NRC rule or the basic structure of the Commission's regulatory process is outside the scope of the proceeding under 10 C.F.R. § 2.309(f)(1)(iii) and, therefore, inadmissible.[53] "This includes

---

47 *See id.* at 2.

48 *See* Hearing Notice, 80 Fed. Reg. at 8355.

49 *See* Petition.

50 Those criteria are: (i) provide a specific statement of the legal or factual issue sought to be raised; (ii) provide a brief explanation of the basis for the contention; (iii) demonstrate that the issue raised is within the scope of the proceeding; (iv) demonstrate that the issue raised 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, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and (vi) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.

51 *See* Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004); *see also Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

52 Changes to Adjudicatory Process, 69 Fed. Reg. at 2202.

53 *Phila. Elec. Co.* (Peach Bottom Atomic Power Station), ALAB-216, 8 AEC 13, 20, *aff'd in part on other grounds*, CLI-74-32, 8 AEC 217 (1974); *see also* 10 C.F.R. § 2.335(a) (absent a waiver, "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding").

contentions that advocate stricter requirements than agency rules impose, or that otherwise seek to litigate a generic determination established by a Commission rulemaking."[54] "Additionally, the adjudicatory process is not the proper venue to hear any contention that merely addresses petitioner's own view regarding the direction regulatory policy should take."[55]

For license amendment proceedings, such as this one, the scope of a proceeding is defined by and restricted to the Commission's notice of opportunity for a hearing.[56] The Hearing Notice for this proceeding states that: "Contentions shall be limited to matters within the scope of the amendment under consideration."[57] Any contention that falls outside the specified scope of the proceeding must be rejected.[58] Therefore, contentions that challenge separate licensing actions and submittals, such as the Exemption Request and PSDAR, are not admissible in this proceeding.

With respect to factual information or expert opinion proffered in support of a contention, "the Board is not to accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention."[59] "[A]n expert opinion that merely states a conclusion (*e.g.*, the application is 'deficient,' 'inadequate,' or 'wrong') without providing *a reasoned basis or explanation* for that conclusion is inadequate because it deprives

---

54 *Crow Butte Res., Inc.* (Marsland Expansion Area), LBP-13-6, 77 NRC 253, 284 (2013), *aff'd*, CLI-14-2, 79 NRC 11 (2014) (citing several previous decisions holding the same).

55 *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-08-9, 67 NRC 421, 431 (2008) (citing *Peach Bottom*, ALAB-216, 8 AEC at 21 n.33).

56 *See Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-825, 22 NRC 785, 790-91 (1985).

57 Hearing Notice, 80 Fed. Reg. at 8357.

58 *See Portland Gen. Elec. Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979) (affirming the board's rejection of issues raised by intervenors that fell outside the scope of issue identified in the notice of hearing); *see also Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 204 (1998).

59 *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998), *aff'd*, CLI-98-13, 48 NRC 26, 37 (1998).

the Board of the ability to make the necessary, reflective assessment of the opinion" as it is alleged to provide a basis for the contention.[60]

Any supporting material provided by a petitioner, including those portions not relied upon, is subject to Board scrutiny, "both for what it does and does not show."[61] The Board will examine documents to confirm that they support the proposed contentions.[62] A petitioner's imprecise reading of a document cannot be the basis for a litigable contention.[63] Moreover, vague references to documents do not suffice—the petitioner must identify specific portions of the documents on which it relies.[64]

IV. THE STATE'S CONTENTIONS ARE INADMISSIBLE

As demonstrated below, each of the State's four proposed contentions is inadmissible under 10 C.F.R. § 2.309(f) for multiple, independent reasons.

A. Contention I Is Inadmissible

Contention I alleges that:

> Entergy's LAR involves a potential significant safety and environmental hazard, fails to demonstrate that it is in compliance with 10 C.F.R. §§ 50.75(h)(1)(iv) and 50.82(8)(I)(B) and (C) [sic], and fails to demonstrate that there will be reasonable assurance of adequate protection for the public health and safety as required by section 182(a) of the Atomic Energy Act (42 U.S.C. § 2232(a)) if the proposed amendment is approved.[65]

---

60 *USEC, Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) (emphasis added) (quoting *Private Fuel Storage*, LBP-98-7, 47 NRC at 181).

61 *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996).

62 *See Vt. Yankee Nuclear Power Corp.* (Vt. Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).

63 *See Ga. Inst. of Tech.* (Ga. Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300 (1995), *aff'd*, CLI-95-12, 42 NRC 111, 124 (1995).

64 *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-3, 29 NRC 234, 240-41 (1989).

65 Petition at 3.

The State's primary claim is that eliminating the 30-day notice requirement would create a public health and safety risk because it would impair the NRC's ability to ensure proper use of NDT funds and risk depletion of the funds before Entergy has safely decommissioned the site.[66]

Such claims amount to impermissible attacks on Commission regulations, and are therefore outside the scope of this proceeding. In addition, these claims are unsupported, immaterial, and fail to raise a genuine dispute on a material issue of law or fact. Therefore, Contention I is inadmissible pursuant to 10 C.F.R. §§ 2.309(f)(1)(iii)-(vi).

1. Contention I Is an Impermissible Challenge to NRC Regulations

The State claims that the 30-day advance notice requirement in Condition 3.J. is necessary to protect the public health and safety and, therefore, the LAR must be rejected.[67] But the NRC reached the opposite conclusion on a generic basis, and explicitly afforded licensees the option to seek removal of such license conditions.[68] In particular, the LAR's request to delete portions of Condition 3.J. is entirely consistent with 10 C.F.R. § 50.75(h).[69] Indeed, Sections 50.75(h)(4) and (5) state that licensees may elect to amend NDT license conditions to be consistent with Section 50.75(h), and if a licensee does no more than delete those conditions, then the Commission has determined that the amendment involves "no significant hazards consideration." The plain language of Section 50.75(h) and the Statement of Considerations for the Section 50.75(h) rulemaking do not identify any limitations on that action for the reasons

---

66 *See id.* at 3-17.

67 *Id*. at 5.

68 Decommissioning Trust Provisions, 67 Fed. Reg. at 78,336.

69 *See* LAR at 1.

proffered by the State.[70] Thus, the State's claims in this regard are impermissible attacks on Commission regulations.

The State makes numerous other assertions in the Petition that challenge Section 50.75(h) and the Commission's generic determinations on this topic:

- the 30-day notice is "essential . . . to prevent depletion of the NDT Fund"[71];
- the 30-day notice "serves an important safety function by safeguarding the NDT Fund from depletion"[72];
- the 30-day notice "is needed to allow time for Vermont, the public, and NRC to analyze" the proposed withdrawals[73]; and
- granting the LAR would "directly impair the NRC's ability to ensure compliance with its regulations, and thus place the public at risk that Entergy will deplete the NDT Fund."[74]

These claims directly attack the Commission's regulations and are, therefore, outside the scope of this proceeding. In the 2002 rulemaking, the Commission determined that 30-day advance notice of NDT withdrawals was burdensome and unnecessary for plants, such as Vermont Yankee, that have submitted a PSDAR.[75] The Commission even provided an explicit exception to the advance notice requirement for decommissioning plants,[76] having found that such notice

---

70 *See* Decommissioning Trust Provisions, 67 Fed. Reg. 78,332; Minor Changes to Decommissioning Trust Fund Provisions, 68 Fed. Reg. 65,386. With respect to NDT license conditions, the Commission stated that "the NRC has always believed that it is preferable and more efficient to adopt standard rules, as opposed to applying specific license conditions on a case-by-case basis." Decommissioning Trust Provisions, 67 Fed. Reg. at 78,334.

71 Petition at 5.

72 *Id*. at 6.

73 *Id*. at 4.

74 *Id*.

75 Decommissioning Trust Provisions, 67 Fed. Reg. at 78,336.

76 "After decommissioning has begun and withdrawals from the decommissioning fund are made under § 50.82(a)(8), no further notifications need be made to the NRC." 10 C.F.R. § 50.75(h)(1)(iv). *See also* Regulatory Guide 1.159, Assuring the Availability of Funds for Decommissioning Nuclear Reactors, Rev. 2 at 16 (Oct. 2011).

"would not add *any* assurances that funding is available and would duplicate notification requirements at § 50.82."[77]

As provided in 10 C.F.R. § 2.335(a), a proposed contention that challenges an NRC rule is outside the scope of this proceeding because, absent a waiver, "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding." The State has not requested a waiver, much less satisfied the stringent requirements governing such a waiver request.[78]

In summary, Contention I directly challenges the NRC regulations at 10 C.F.R. § 50.75(h) for license amendments related to NDT provisions and, as such, should be rejected as outside the scope of this proceeding in accordance with 10 C.F.R. §§ 2.309(f)(1)(iii) and 2.335(a). The Commission has very recently confirmed that "a contention that challenges an agency regulation does not raise an issue appropriately within the scope of this individual licensing proceeding and is not admissible absent a waiver."[79]

2. Contention I Raises Additional Issues Outside the Scope of this Proceeding

Beyond the impermissible challenge to the NRC regulations discussed above, the State raises other issues that are outside the scope of this narrow LAR proceeding. The scope of the LAR, as defined in the Hearing Notice, is limited to the deletion of portions of Condition 3.J. on the basis that the provisions of 10 C.F.R. § 50.75(h) would apply in their place.

---

77 Decommissioning Trust Provisions, 67 Fed. Reg. at 78,336 (emphasis added).

78 These requirements include the submission of a petition and affidavit demonstrating "special circumstances." 10 C.F.R. § 2.335(b). NRC precedent dictates that a Section 2.335 petition can only be granted in "unusual and compelling circumstances." *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), ALAB-895, 28 NRC 7, 16 (1988), *aff'd*, CLI-88-10, 28 NRC 573, 597 (1988), *recons. denied*, CLI-89-3, 29 NRC 234 (1989) (citation omitted). The State has not submitted such an affidavit, has not identified any "special circumstances," and has not identified "unusual and compelling circumstances." *See also Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005) (citing *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-20, 30 NRC 231, 235 (1989)).

79 *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC __, slip op. at 4 (Apr. 23, 2015).

Contrary to these requirements, the State repeatedly mentions the PSDAR and the pending Exemption Request,[80] and argues that these documents are "inextricably intertwined" with the LAR.[81] The PSDAR, the Exemption Request, and the overall adequacy of decommissioning funding under 10 C.F.R. § 50.82(a)(8), however, are entirely separate matters and are not within the scope of the instant proceeding.

Moreover, the PSDAR is the subject of a separate process, separately noticed by the NRC in the *Federal Register*, and subject to separate consideration and action by the NRC.[82] NRC regulations do not provide for a formal hearing on the PSDAR, but do require a public meeting and provide an opportunity for public comments.[83] The NRC has explained that it "will consider public health and safety comments raised by the public" regarding a PSDAR to guide its exercise of ongoing oversight.[84] However, the Commission concluded that a hearing and intervention opportunity is not appropriate at the PSDAR stage of decommissioning because "initial decommissioning activities . . . are not significantly different from routine operational activities . . . [and] do not present significant safety issues."[85]

---

80 *See, e.g.*, Petition at 3 (characterizing the Exemption Request as an attempt by Entergy to "try to use the NDT Fund for expenses that are not allowed under applicable NRC regulations," which, if granted, would constitute an "improper use of the NDT Fund"); *see also id*. at 6, 9-10.

81 *Id*. at 6-7.

82 *See* Entergy Nuclear Operations, Inc., Vermont Yankee Nuclear Power Station Post-Shutdown Decommissioning Activities Report, 80 Fed. Reg. 1975 (Jan. 14, 2015) ("PSDAR Notice"); *see also* 10 C.F.R. § 50.82(a)(4) (describing the PSDAR submission and public participation process).

83 10 C.F.R. § 50.82(a)(4)(ii). The public meeting for the Vermont Yankee PSDAR was held on February 19, 2015. *See* PSDAR Notice. The State also submitted comments to the NRC on the Vermont Yankee PSDAR. *See* Petition, Exhibit 1.

84 Decommissioning of Nuclear Power Reactors, 61 Fed. Reg. 39,278, 39,284 (July 29, 1996).

85 *Id*.

Here, the State is attempting to use the LAR as an end-run around the regulations to obtain a hearing on the PSDAR.[86] Thus, to the extent the State is challenging the Commission's generic determination (that a hearing and intervention opportunity on a PSDAR is improper), the State's PSDAR-related claims also are impermissible attacks on the Commission's regulations under 10 C.F.R. § 2.335, and therefore outside the scope of the instant proceeding.[87] Additionally, the PSDAR was not noticed as part of this proceeding in the Hearing Notice. Therefore, the State's PSDAR-related claims are outside the scope of the proceeding and inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(iii).

Contention I raises numerous other issues outside the scope of this proceeding. These include the State's claims that: (1) the LAR "ignores the binding" Master Trust Agreement ("MTA") and "ignores" Entergy's obligations to the Vermont Public Service Board to seek approval before using NDT funds for purposes not permitted under the MTA;[88] (2) Entergy's IFMP is inadequate, including that withdrawals of funds for irradiated fuel management would be inappropriate;[89] and (3) unspecified future NDT withdrawals would still require a 30-day notice under 10 C.F.R. § 50.75(h)(1)(iv), even if the LAR is granted, because they would not satisfy the criteria in 10 C.F.R. §§ 50.82(a)(8)(i)(B) and (C).[90]

---

86 *See* Petition, Exhibit 1, at 4-5 ("Many of Entergy's specific requests for exemptions, License Amendment Requests, and its December 19, 2014 filings, including the PSDAR and Decommissioning Cost Estimate, are interrelated, amend the terms of their license, and should be addressed comprehensively in an adjudicatory hearing. . . . The public interest requires a full adjudicatory hearing to address the concerns expressed in these [PSDAR] Comments.").

87 *See Fermi*, CLI-15-12, slip op. at 4.

88 *See* Petition at 4, 7, 9, 11, 13-15; Exhibit 2.

89 *See id*. at 5-6, 13-17.

90 *See id*. at 5-6.

The scope of this proceeding does not include, and is not required to include, approval of the entire decommissioning project.[91] In this regard, the LAR does not address, and does not need to address, the adequacy of the IFMP, the speculative potential necessity for future approvals under the MTA, or future satisfaction of 10 C.F.R. §§ 50.82(a)(8)(i)(B) and (C). The scope of the LAR, as defined in the Hearing Notice, is limited to the deletion of portions of Condition 3.J. Therefore, these other issues are not within the narrow scope of the LAR.

Finally, Contention I claims that "Entergy's LAR involves a potential significant safety and environmental hazard . . . ."[92] However, in the Hearing Notice, the NRC Staff "propose[d] to determine that the [LAR] involves no significant hazards consideration."[93] To the extent Contention I challenges the NRC Staff's proposed "No Significant Hazards Consideration" ("NSHC") determination, it is outside the scope of the proceeding. Such challenges are impermissible under 10 C.F.R. § 50.58(b)(6), which states that "[n]o petition or other request for review of or hearing on the Staff's significant hazards consideration determination will be entertained by the Commission." Section 50.58(b)(6) has long been held to be a jurisdictional bar to intervenor challenges regarding NSHC determinations.[94] Thus, the Staff's proposed NSHC determination is not subject to challenge, and the State's claims in this regard are outside the scope of this proceeding.

---

91 *See generally* LAR.

92 Petition at 3; *see also id.* at 17 (discussing "significant radiation hazards").

93 Hearing Notice, 80 Fed. Reg. at 8360.

94 *See, e.g.*, *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-7, 53 NRC 113, 118 (2001) (quoting 10 C.F.R. § 50.58(b)(6)); *Vt. Yankee Nuclear Power Corp.* (Vt. Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 90-91 (1990) ("The issue of whether the proposed amendment does or does not involve a significant hazards consideration is not litigable in any hearing") (citing *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-86-12, 24 NRC 1, 6 n.3 (1986), *rev'd and remanded on other grounds sub nom. San Luis Obispo Mothers for Peace v. NRC*, 799 F.2d 1268 (9th Cir. 1986)); *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-89-15, 29 NRC 493, 495-96 (1989).

For these reasons, Contention I fails to satisfy the Commission's contention admissibility requirements in 10 C.F.R. § 2.309(f)(1)(iii) and should be denied in its entirety.

3. Contention I Is Unsupported, Immaterial, and Fails to Raise a Genuine Dispute

Contention I raises issues, including those discussed above, that are not material to the findings the NRC must make to support the action at issue in this proceeding—granting the LAR—because they do not address the NRC's required finding that the health and safety of the public will not be endangered by granting the license amendment.[95] These claims also fail to demonstrate that a genuine dispute exists with regard to a material issue of law or fact, and fail to provide the requisite support for an admissible contention. Thus, these issues are inadmissible under 10 C.F.R. §§ 2.309(f)(1)(iv)-(vi).

First, the State's PSDAR-related claims[96] have no bearing on whether the health and safety of the public would be endangered by granting the LAR, and do not identify, with specificity, any dispute with the LAR. Accordingly, these claims are immaterial and fail to raise a genuine dispute, contrary to 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

The State attempts to include the Irwin and Leshinskie Declarations, discussing the PSDAR, as "additional support" for Contention I,[97] and to "incorporate[] in [its] entirety," a 77-page document containing the State's comments on the PSDAR.[98] It also suggests that the content of that same document is "deemed repeated verbatim [on page 7 of the Petition] as supporting evidence." The State's PSDAR comments address a wide range of decommissioning-

---

95 *See* 10 C.F.R. §§ 50.40, 50.92(a); *N. States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-455, 7 NRC 41, 44 (1978).

96 *See, e.g.*, Petition at 6, 9-10.

97 *Id.* at 17.

98 *Id.* at 9.

related issues that have nothing to do with the LAR or even the NDT.[99] Moreover, the State fails to identify the specific portions of these documents on which it relies. These efforts fall far short of satisfying the requirements of 10 C.F.R. § 2.309(f)(1)(v). It is neither the Board's nor the applicant's responsibility to search through attached materials to uncover arguments and support never advanced by the petitioners themselves.[100] The State simply cannot incorporate massive documents by reference.[101] Accordingly, none of these documents satisfies the requirements of 10 C.F.R. § 2.309(f)(1)(v).[102]

Second, the State claims that the LAR "ignores the binding MTA,"[103] and "ignores the obligation in Vermont Public Service Board ("PSB") Orders" to seek approval before using NDT funds for purposes not permitted under the MTA .[104] However, the State is merely suggesting that, if the (separate and unrelated) Exemption Request is granted, Entergy may also need to amend the MTA in order to implement the NRC-approved changes regarding the use of decommissioning funds.[105] But, even assuming *arguendo* that the State's suggestion is a valid interpretation of the MTA and PSB Orders, the question of whether a separate amendment of the MTA would be required following a separate licensing action is not material to the NRC's

---

99 *See, e.g.*, Petition, Exhibit 1, at 9-19 (discussing need for additional radiological and non-radiological site characterization), 19-23 (comments on the Department of Energy's anticipated performance under the Standard Contract), 23-24 (comments on site restoration costs), 40-54 (comments on NRC's NEPA obligations related to review of decommissioning plans), 54-59 (comments on emergency planning).

100 *See USEC*, CLI-06-10, 63 NRC at 457; *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 & 2), LBP-07-4, 65 NRC 281, 304-05 (2007); *Shieldalloy Metallurgical Corp.* (Amendment Request for Decommissioning of the Newfield, New Jersey Facility), LBP-07-5, 65 NRC 341, 347 (2007).

101 *Seabrook*, CLI-89-3, 29 NRC at 240-41; *Tenn. Valley Auth.* (Browns Ferry Nuclear Plant, Units 1 & 2), LBP-76-10, 3 NRC 209, 216 (1976).

102 In any event, these declarations discuss the PSDAR, not the LAR, and are outside the scope of this proceeding. *See* Leshinskie Declaration; Irwin Declaration.

103 Petition at 4; *see also id*. at 7, 9, 11, 13-15.

104 *Id*. at 4; *see also id*. at 11-12.

105 *See, e.g.*, *id*. at 4 (referencing the obligation to seek PSB approval to use NDT funds "in ways that are not allowed under the binding MTA").

consideration of this LAR and does not raise a genuine dispute with the LAR. Therefore, these irrelevant claims are inadmissible under 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

To the extent the State suggests that granting the LAR would somehow sanction evasion of Entergy's "legitimate obligations under state law, including the MTA and PSB Orders,"[106] this claim is absurd and unsupported. Entergy remains committed to full compliance with its legal obligations under the MTA, relevant PSB Orders, and all other state and Federal laws. The State identifies no evidentiary support or expert opinion for this gross speculation suggesting Entergy would elect to engage in unlawful conduct. It is contrary to NRC policy to assume that a licensee will intentionally violate its legal obligations.[107] Accordingly, this claim also is inadmissible for failure to provide the necessary support under 10 C.F.R. § 2.309(f)(1)(v).

Third, the State's claim that the 30-day notice provision is safety-related and necessary to prevent depletion of the NDT is entirely unsupported. In the "Supporting Evidence" section, the State offers the Transfer Order, the Transfer Order's safety evaluation, and Condition 3.J. for the proposition that the 30-day notice requirement is necessary to ensure the adequate protection of public health and safety.[108] However, these documents pre-date the NDT Rulemaking in which the Commission made an *explicit* finding to the contrary.[109] And yet, the State fails to provide "a

---

106 *Id.*

107 *See, e.g.*, *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-03-2, 57 NRC 19, 29 (2003).

108 Petition at 7-9.

109 The Transfer Order and associated safety evaluation were issued May 17, 2002. *See* Transfer Order. The conforming license amendment was issued July 31, 2002. *See* Conforming Amendment. The final rule and generic determination regarding the 30-day notification were issued December 24, 2002. Decommissioning Trust Provisions, 67 Fed. Reg. at 78,332.

reasoned basis or explanation"[110] for its contrary conclusory assertion. This failure renders these claims insufficiently supported under 10 C.F.R. § 2.309(f)(1)(v).

To the extent the State claims entitlement to an "opportunity" to "prevent depletion" of the NDT,[111] it appears to misapprehend its authority. The NRC, not the State, regulates the NDT. Under its ongoing Part 50 regulatory authority, the NRC requires Entergy to provide annual NDT status updates under 10 C.F.R. §§ 50.75(f)(2) and 50.82(a)(8)(v). The NRC Staff independently analyzes these annual reports to determine whether the agency has reasonable assurance that licensees are providing sufficient funding for radiological decommissioning of the reactor.[112] The State also cites no authority for the proposition that a 30-day notice is "legally required" outside of Condition 3.J., or that granting the LAR would be contrary to law.[113] The State has the burden of coming forward with factual issues, not merely conclusory statements and vague allegations.[114] Accordingly, this unsupported assertion does not satisfy 10 C.F.R. § 2.309(f)(1)(v).

Fourth, the State asserts that "[t]he proposed amendment would allow Entergy to gain unlimited access to the NDT" and identifies various costs that it believes cannot be reimbursed from the NDT.[115] However, these statements conflate the LAR with the Exemption Request and other concerns the State has with Entergy's use of the NDT that are being considered

---

110 *See USEC*, CLI-06-10, 63 NRC at 472 (emphasis added) (quoting *Private Fuel Storage*, LBP-98-7, 47 NRC at 181).

111 Petition at 5.

112 *See* Decommissioning Funding Status Reports, NRC, http://www.nrc.gov/waste/decommissioning/finan-assur/bi-decom-reports.html (last visited May 12, 2015).

113 *Id*.

114 *See Ne. Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-01-3, 53 NRC 22, 27 (2001).

115 Petition at 4, 9-10.

elsewhere.[116] The LAR has no bearing, whatsoever, on the *types* of disbursements that can be made from the NDT. A petitioner's imprecise reading of a document cannot be the basis for a litigable contention.[117] Thus, the State's mischaracterization of the LAR (and the Exemption Request) is insufficient support for an admissible contention under 10 C.F.R. § 2.309(f)(1)(v). Moreover, the State's claims on these topics do not demonstrate a genuine dispute with the LAR and are not adequately supported.

Fifth, the State makes numerous claims regarding the IFMP, which is subject to a separate and unrelated NRC review and approval process pursuant to 10 C.F.R. § 50.54(bb). For example, the State alleges that:

- Entergy's IFMP cost estimates are based on "indefensible and undefended assumptions";[118]
- Entergy's IFMP does not account for "unforeseen conditions or expenses";[119] and
- "Entergy has not demonstrated that [future] withdrawals of funds for irradiated fuel management" would comport with NRC regulations.[120]

Yet, the State does not identify any regulatory provision that would require the NRC to assess the IFMP to approve the LAR. The LAR merely seeks permission to switch from the existing NDT provisions in the Vermont Yankee License to the standardized NDT provisions in Commission regulations.[121] As discussed in response to Contention III, the Exemption Request, which would allow the NDT to be used for irradiated fuel management purposes, is subject to a

---

116 For example, the costs that the State "believes fail to meet the NRC's definition of decommissioning," Petition at 9-10, are copied directly from comments the State submitted to the NRC in response to the opportunity to comment on the Vermont Yankee PSDAR. *See* Petition, Exhibit 1, at 37.

117 *See Ga. Tech.*, LBP-95-6, 41 NRC at 300.

118 Petition at 5.

119 *Id.*

120 *Id.* at 6.

121 *See generally* LAR; Hearing Notice.

separate proceeding and is outside the scope of this proceeding.[122] Ultimately, these claims also are immaterial to any finding the NRC must make to grant the LAR.

The State's IFMP-related claims also have no bearing on whether the health and safety of the public would be endangered by permitting the Vermont Yankee NDT to be regulated under 10 C.F.R. § 50.75(h) instead of Condition 3.J. As explained above, the terms of 10 C.F.R. § 50.75(h) and Condition 3.J. at issue in the LAR are nearly identical, except for the 30-day notice requirement.[123] And, as to the 30-day notice requirement, the Commission has generically determined that it has no bearing on funding adequacy.[124] This leaves no discernible claim that the IFMP is somehow material to any finding the NRC must make to support the license amendment action at issue in this proceeding. Additionally, the State fails to explain how its objections to the IFMP undercut any findings in the LAR, and the State's claim that "unforeseen conditions or expenses" could deplete the NDT[125] is entirely speculative and unsupported. Ultimately, the State's bare, unsupported assertions in this regard are inadmissible under 10 C.F.R. §§ 2.309(f)(1)(iv)-(vi).

Finally, the State claims that unspecified future NDT withdrawals would still require a 30-day notice, even if the LAR is granted, because the withdrawals would not satisfy the criteria in 10 C.F.R. §§ 50.82(a)(8)(i)(B) and (C).[126] But the assertion that speculative future withdrawals would require notice is simply not material to the question of whether the LAR would endanger the health and safety of the public, and does not pertain to, much less undercut,

---

122 *See infra* Section IV.C.2.

123 *See supra* Section II.B.

124 Decommissioning Trust Provisions, 67 Fed. Reg. at 78,336. Additionally, Entergy's PSDAR contains a commitment to provide an additional parent company guaranty in the event of any future decommissioning funding shortfall. *See* Vermont Yankee PSDAR, Attachment 1 at 1. This provides further assurance of sufficient decommissioning funding.

125 Petition at 5.

126 *Id.* at 5, 6.

any findings or analyses in the LAR. Thus, these claims also are inadmissible under 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

B. Contention II Is Inadmissible

Contention II states in its entirety: "Entergy's proposed amendment is untimely."[127] The State argues that the LAR is late because Entergy has waited over 12 years after being on notice of the *option* to amend the Vermont Yankee License in accordance with 10 C.F.R. § 50.75(h).[128] The State further claims that it has relied upon the license condition, and therefore the changes requested in the LAR are prejudicial to the State.[129] Finally, the State claims that Entergy should have sought reconsideration of the May 17, 2002 license transfer order, including demonstration of the factors in 10 C.F.R. § 2.309(c) for filings after the deadline.[130]

These claims amount to an impermissible challenge to the NRC's regulations and are outside the scope of this proceeding. The State's arguments also are immaterial, unsupported, and do not demonstrate a genuine dispute with the applicant on a material issue of fact or law. Therefore, Contention II is inadmissible pursuant to 10 C.F.R. §§ 2.309(f)(1)(iii)-(vi).

1. Contention II Impermissibly Challenges NRC Regulations

There is no deadline for Entergy to submit the LAR, and the State's claim to the contrary impermissibly challenges NRC regulations, contrary to 10 C.F.R. § 2.335. Entergy submitted the LAR in accordance with 10 C.F.R. § 50.90,[131] which states that "[w]henever a holder of a license, including a[n] . . . operating license under this part . . . desires to amend the license . . ., application for an amendment must be filed with the Commission." As is clear from the use of

---

127 *Id.* at 17.

128 *Id.* at 17-18.

129 *Id.* at 18.

130 *Id.*

131 *See* LAR at 1.

the term "whenever," Section 50.90 does not include any timeliness requirements, and the State has not identified any.

Moreover, as discussed above, the LAR's request to delete portions of Condition 3.J. is entirely consistent with a second NRC regulation: 10 C.F.R. § 50.75(h).[132] Section 50.75(h) also does not include any deadlines for deleting license conditions, and once again, the State has not identified any. The Statement of Considerations for the Section 50.75(h) rulemaking likewise does not identify any deadlines for the request made by Entergy in the LAR.[133]

In summary, Contention II, by its terms, challenges the adequacy of the NRC regulations at 10 C.F.R. §§ 50.90 and 50.75(h) for license amendments related to NDT provisions and, as such, should be rejected as outside the scope of this proceeding in accordance with 10 C.F.R. §§ 2.309(f)(1)(iii) and 2.335(a).[134]

2. Contention II Does Not Satisfy Other Admissibility Requirements

Beyond being outside the scope of this proceeding, Contention II relies on inapplicable NRC regulations and case law and irrelevant statements in the rulemaking documents for 10 C.F.R. § 50.75(h).

The State references "10 C.F.R. § 2.245" and claims that "NRC regulations specify that a petition to reconsider a final decision, like the decision issued on May 17, 2002, approving the license transfer to Entergy and imposing the NDT related license conditions, must be made within 10 days of the final decision."[135] Entergy, however, is not seeking reconsideration of the

---

132 *See id*.

133 *See* Decommissioning Trust Provisions, 67 Fed. Reg. 78,332; Minor Changes to Decommissioning Trust Fund Provisions, 68 Fed. Reg. 65,386.

134 *See Fermi*, CLI-15-12, slip op. at 4 ("[A] contention that challenges an agency regulation does not raise an issue appropriately within the scope of this individual licensing proceeding and is not admissible absent a waiver."). Here again, the State has failed to submit a waiver.

135 Petition at 18. The State appears to have intended to reference 10 C.F.R. § 2.345, because there is no Section 2.245 and Section 2.345 refers to petitions for reconsideration.

May 17, 2002 order. Rather, Entergy is seeking an amendment to the Vermont Yankee License in accordance with 10 C.F.R. § 50.90.[136] If the State's logic were to apply, then all license amendments would require a reconsideration request under Section 2.345, because all licenses are issued by order. That is simply not the case.

The State also references a 2005 unpublished decision from an earlier Vermont Yankee license amendment proceeding in an apparent attempt to support its claim that the current LAR is untimely.[137] In that decision, however, the Atomic Safety and Licensing Board referenced 10 C.F.R. § 2.323(a) and made the non-controversial statement that the regulation "requires that motions be made no later than 10 days after the occurrence or circumstance from which the motion arises."[138] The State's reliance on this decision fails, because Entergy has not submitted a motion; instead, it has submitted a license amendment request under 10 C.F.R. § 50.90. Section 2.323 and the referenced 2005 decision do not apply to Entergy's LAR.

The State further quotes from the Statement of Considerations for a rulemaking for 10 C.F.R. § 50.75(h) and concludes that the Commission "clearly did not contemplate" that a licensee could wait 12 years to eliminate the license conditions in place of the Section 50.75(h) requirements.[139] The quoted language, however, does not discuss the timing of an amendment to remove the conditions and does not support the State's position. Instead, it refers to the "intent of the Commission that individual licensees should have the option of retaining their existing

---

136 For these same reasons, the State's reference and discussion of the factors in 10 C.F.R. § 2.309(c) for filings after the deadline are not applicable to these circumstances. *Id.* Because Section 2.325 does not apply, there is no need to consider a filing after the deadline.

137 *Id.* at 19 (citing *Entergy Nuclear Vermont Yankee L.L.C. & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), Memorandum and Order (Denying Incorporation by Reference and Additional Discovery Disclosure), Docket No. 50-271-OLA (Feb. 16, 2005) (unpublished Licensing Board Order) ("2005 Decision"), *available at* ADAMS Accession No. ML050470487).

138 2005 Decision at 3.

139 *See* Petition at 19-20 (quoting 68 Fed. Reg. at 65,387).

license conditions" and then quotes the specific language in Section 50.75(h)(5).[140] Thus, the State's argument regarding the Statement of Considerations is unsupported and does not raise a dispute with Entergy's actions.

For the above reasons, the NRC regulations, NRC case law, and portions of the Statement of Considerations for a Section 50.75(h) rulemaking referenced by the State do not impose a deadline for Entergy's LAR and are either inapplicable to the present circumstances or do not support the State's arguments. In this regard, these references do not raise an issue that is material to the findings the NRC must make, do not provide support for the State's position, and do not demonstrate a genuine dispute on a material issue of law or fact with the LAR, contrary to 10 C.F.R. §§ 2.309(f)(1)(iv), (v), and (vi). Therefore, Contention II should be rejected.

C. Contention III Is Inadmissible

Contention III alleges that:

> Entergy's proposed amendment must be considered in conjunction with a directly related exemption request because if the exemption request is granted there will not be reasonable assurance of adequate protection of the public health and safety as required by section 182(a) of the Atomic Energy Act (42 U.S.C. § 2232(a)).[141]

Although the State labels this as a "contention," it is in fact a legal argument about the scope of the *proceeding*—it does not raise any genuine dispute with the LAR or with any findings the NRC must make to support granting the LAR. Therefore, it is inadmissible under 10 C.F.R. §§ 2.309(f)(1)(iv) and (vi).

---

[140] *Id.* at 19. The State implies that Entergy somehow avoided "the restrictions imposed by 10 C.F.R. § 50.75(h)" for 12 years and then is now trying to "switch over to those regulatory provisions at the very moment they became more lenient than the license conditions." Petition at 20. The State fails to identify any restrictions that have been avoided for 12 years. As shown in the LAR, Section 50.75(h) includes substantially similar NDT provisions as in the Vermont Yankee License. *See* LAR, Attachment 1, at 2-6. Moreover, the State fails to explain why now, when Entergy is beginning decommissioning, is not the appropriate time for the LAR.

[141] Petition at 20.

As to the legal argument, the State only offers its conclusory assertion that the LAR is "inextricably intertwined" with the Exemption Request, and therefore, the State is entitled to raise its objections to the Exemption Request in the instant LAR proceeding.[142] This conclusory assertion, however, is also unsupported by fact or expert opinion, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(v). In addition, the State's attempt to litigate the Exemption Request in this proceeding, which is limited to the narrow issue of the LAR, is an impermissible attack on Commission regulations and is outside the scope of this proceeding. Therefore, Contention III also is inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(iii).[143]

1. Contention III Is Immaterial to this Proceeding and Fails to Raise a Genuine Dispute with the LAR

For Contention III, the State merely offers a legal conclusion about the scope of the instant proceeding, claiming that "Entergy's proposed amendment must be considered in conjunction with a directly related exemption request. . . ."[144] Rather than provide any explanation for this conclusion, the State simply cites another legal conclusion, regarding the adequacy of the Exemption Request, as the basis for its first conclusion: " . . . because if the exemption request is granted there will not be reasonable assurance of adequate protection of the public health and safety as required by section 182(a) of the Atomic Energy Act (42 U.S.C. § 2232(a))."[145] This claim entirely fails to dispute the LAR.

The Commission's contention admissibility regulations require that petitioners "demonstrate that the issue raised is material to the findings the NRC must make to support the

---

142 *E.g.*, *id*.

143 In addition, to the extent Contention I is based on claims related to the Exemption Request, and the State claims that it is entitled to raise those claims in this proceeding, those claims also are inadmissible pursuant to 10 C.F.R. §§ 2.309(f)(1)(iii)-(vi) for the reasons explained in this section.

144 Petition at 20.

145 *Id*.

action that is involved in the proceeding."[146] As discussed earlier in response to Contention I, the Commission must find that the health and safety of the public will not be endangered by granting the *license amendment*.[147] However, Contention III, by its own language, attacks the Exemption Request, not the LAR: "if the *exemption request* is granted there will not be reasonable assurance . . . ."[148] Therefore, the State's Contention III is inadmissible under 10 C.F.R. § 2.309(f)(1)(iv).

In addition, the regulations require proposed contentions to demonstrate that "a genuine dispute exists with the applicant/licensee on a material issue of law or fact."[149] Here, the State points to a statement in the LAR, noting that the 30-day notice provision is "addressed in section 50.75(h)."[150] That is a correct statement[151]—there is no dispute here. The State then makes a generalized, illogical assertion that "the LAR cannot rely on" this statement because Entergy subsequently submitted the Exemption Request.[152] However, the State offers no explanation, whatsoever, for its assertion, and makes no "effort to show *why* the assertion[] undercut[s] findings or analyses in the [application]."[153] The State has simply failed to satisfy its burden to raise a genuine dispute with the LAR. Thus, Contention III also is inadmissible under 10 C.F.R. § 2.309(f)(1)(vi).

---

146 10 C.F.R. § 2.309(f)(1)(iv).

147 *See* 10 C.F.R. § 50.40; *Prairie Island*, ALAB-455, 7 NRC at 44.

148 Petition at 20.

149 10 C.F.R. § 2.309(f)(1)(vi). The Commission has stated that "general assertions, without some effort to show why the assertions undercut findings or analyses in the [application], fail to satisfy the requirements of Section 2.309(f)(1)(vi)." *See S.C. Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 & 3), CLI-10-1, 71 NRC 1, 21-22 (2010).

150 Petition at 24 (citing LAR, Attachment 1, at 3-4).

151 *See* 10 C.F.R. § 50.75(h)(1)(iv).

152 *Id*.

153 *Summer*, CLI-10-1, 71 NRC at 21-22 (emphasis added).

2. Contention III Is Unsupported, Impermissibly Attacks Commission Regulations, and Is Outside the Scope of this Proceeding

Entergy's Exemption Request and LAR are separate licensing actions, and are subject to distinct review processes and standards. The Commission has the discretion to regulate through adjudication, rulemaking or through the granting of exemptions to otherwise generally-applicable rules.[154] With limited exceptions, challenges to separate licensing matters—even if allegedly connected in some fashion—are outside the scope of this proceeding.[155] The Commission has not delegated to the Board jurisdiction over the Exemption Request. Accordingly, Contention III is outside the scope of this proceeding and inadmissible under 10 C.F.R. § 2.309(f)(1)(iii).

Under the Atomic Energy Act ("AEA") and longstanding Commission practice, there is no right to an adjudicatory hearing on an exemption request.[156] For example, in a decision involving the Zion plant, the Commission denied petitions to intervene challenging an exemption from physical security-related regulations to reflect the permanently shut down status of the plant.[157] The Commission held that the exemption request was not effectively an amendment of the facility's license and, as such, "there is no right to request a hearing in this case because the

---

154 *See, e.g.*, *All Power Reactor Licensees and Research Reactor Licensees who Transport Spent Nuclear Fuel*, CLI-05-6, 61 NRC 37, 40 (2005).

155 *See Prairie Island*, LBP-08-26, 68 NRC at 922-23 (rejecting a contention alleging a connection between the proposed license renewal and a later potential expansion of the ISFSI to accommodate additional spent fuel, because the ISFSI expansion was "a separate project, subject to a separate proceeding"); *Nuclear Mgmt. Co. LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 733 (2006) ("The current proceeding concerns the renewal of the reactor operating license pursuant to 10 C.F.R. Parts 51 and 54, and not the ISFSI, which is licensed pursuant to 10 C.F.R. Part 72.").

156 *See Kelley v. Selin*, 42 F.3d 1501, 1517 (6th Cir. 1995) ("[T]he grant of an exemption from a generic requirement does not constitute an amendment to the reactor's license that would trigger hearing rights."); 10 C.F.R. § 2.1 (limiting the scope of Part 2 to proceedings involving granting, suspending, revoking, amending, or "taking other action with respect to any license . . ." and specified other proceedings, but not the review of exemptions from regulations).

157 *See Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-00-5, 51 NRC 90 (2000). The Commission may exercise its own discretion to allow limited exceptions to this rule, but it has not done so in this proceeding.

action involves an exemption from NRC regulations and not one of those actions for which section 189a. of the AEA provides a right to request a hearing."[158]

The Commission's legal authority to distinguish between exemptions and licensing proceedings is well settled, and subject to only very limited exceptions. For a hearing right to attach to an exemption request, it must be *part of* a licensing proceeding[159]—not merely "connected" to that proceeding, as the State asserts.[160] The State cites the *Private Fuel Storage* ("*PFS*") Independent Spent Fuel Storage Installation ("ISFSI") proceeding in support of its claim.[161] There, the Commission chose to permit an exemption request to be adjudicated in an ongoing, contested initial licensing proceeding where the exemption request "directly affect[ed] the licensability" of the facility.[162] The facts at issue in *PFS*, however, are starkly different from those at issue in this proceeding.

First, in *PFS*, the Commission only permitted the exemption request to be litigated in the initial licensing proceeding because it was "*not* an already-licensed facility asking for relief from

---

158 *Id*. at 98; *see also id*. at 96-97. There are, however, opportunities for public participation in the exemption process. Entergy served a copy of the Exemption Request on the State when it submitted the request to the NRC in January 2015. *See* Exemption Request at 3. The State can choose to submit comments to the NRC on the Exemption Request. For example, in 2011, the State of New York submitted comments opposing an exemption request filed by Entergy regarding the Indian Point facility. The NRC Staff provided a detailed response to New York's comments. *See* Response to New York State Comments on the Fire Protection Exemption Requests for the Indian Point Nuclear Generating Unit Nos. 2 and 3 (Feb. 1, 2012), *available at* ADAMS Accession No. ML112991557. In addition, the NRC recently requested public comments on its draft environmental assessment and finding of no significant impact on a separate Vermont Yankee exemption request. *See* Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station, 80 Fed. Reg. 24,291 (Apr. 30, 2015).

159 *See Honeywell Int'l, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 10 (2013) ("An exemption standing alone does not give rise to an opportunity for hearing under our rules. But when a licensee requests an exemption *in* a related license amendment application, we consider the hearing rights on the amendment application to encompass the exemption request as well.") (emphasis added); *Zion*, CLI-00-5, 51 NRC at 96, 98 ("there is no right to request a hearing" on an exemption unless the exemption is "in effect an amendment of the facility license").

160 Petition at 20.

161 *Id*. at 26.

162 *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 467 (2001) ("PFS").

performing a duty imposed by NRC regulations," and noted that "exemptions of that kind ordinarily do *not* trigger hearing rights."[163] Here, Vermont Yankee *is* an already-licensed facility asking for relief from performing a duty imposed by NRC regulations.

Second, the Commission viewed the exemption request in *PFS* as an attempt to "*remove* a matter germane to a licensing proceeding *from* consideration in a hearing . . . merely on the basis of an 'exemption' label."[164] Here, the situation is quite the opposite. The State is attempting to *insert* the exemption request *into* a distinct LAR proceeding. Furthermore, in *PFS*, the applicant was required to demonstrate, in the licensing proceeding, that it either (a) satisfied regulatory requirements or (b) had an exemption from those requirements.[165] Thus, the exemption was a direct part of the licensing action. That is simply not the case here—Entergy need not demonstrate that the Exemption Request has been or will be granted in order for the Commission to grant the LAR.[166] The LAR stands alone.

The State dismisses the LAR as "meaningless unless the exemption request is granted,"[167] but this statement is both unsupported and irrelevant. Assuming the Exemption Request was denied and the LAR was granted, Entergy would still be relieved, pursuant to NRC's regulations, from the significant burden of certain reporting requirements. The State offers no facts, expert opinions, or other support for its baseless assertion that this would be "meaningless."

---

163 *Id*. (emphasis added).

164 *Id*. (emphasis added).

165 *Id*. at 467.

166 Similarly, the LAR need not be granted to satisfy the purpose of the Exemption Request, which is "to allow use of a portion of the funds from the VYNPS decommissioning trust fund (trust fund) for the management of irradiated fuel, consistent with the VYNPS updated Irradiated Fuel Management Program and Post-Shutdown Decommissioning Activities Report (PSDAR)." Exemption Request at 1.

167 Petition at 20.

The State also attempts to "incorporate[] by reference and deem[] repeated verbatim," "all the evidence supporting Contention I," apparently including the Irwin Declaration, the Leshinskie Declaration, and the 77-page document containing the State's comments on the PSDAR.[168] Again, the State fails to identify the specific portions of these documents on which it relies. The State also simply cannot incorporate lengthy documents by reference.[169] The State's attempt in this regard does not satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v).[170]

Finally, the State derisively suggests that "Entergy should seek to amend the regulation, not be exempted from it."[171] The State observes that "[p]arties are regularly reminded in NRC decisions that if they do not like the rules, they should petition for a rule change and not use the hearing process to accomplish their goal."[172] This observation simply misses the mark. First, Entergy is not attempting to "use the hearing process" here—the State is the party requesting a hearing.[173] Second, the State is comparing apples to oranges when it attempts to analogize an exemption request—expressly permitted by Commission regulations[174]—with a challenge to a

---

168 *Id.* at 24.

169 *Seabrook*, CLI-89-3, 29 NRC at 240-41; *Browns Ferry*, LBP-76-10, 3 NRC at 216.

170 In any event, these documents discuss the PSDAR, not the LAR, and are outside the scope of this proceeding. *See* Leshinskie Declaration; Irwin Declaration; Petition, Exhibit 1; *supra* Section IV.A.2.

171 Petition at 25.

172 *Id.* (citing *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 10 n.37 (2010)).

173 *See* Petition at 1.

174 *See* 10 C.F.R. § 50.12 ("[t]he Commission may, upon application by any interested person . . . grant exemptions from the requirements of the regulations").

rule in an adjudicatory proceeding—which is expressly prohibited by Commission regulations.[175] As such, this claim is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii) and (v).[176]

D. Contention IV Is Inadmissible

Contention IV alleges that:

> The proposed amendment should be denied because Entergy has not submitted an Environmental Report as requ[i]red by 10 C.F.R. §§ 51.53(d) and 51.61 and it has not undergone the required NRC staff environmental review pursuant to 10 C.F.R. §§ 51.20, 51.70 and 51.101 and, despite Entergy's claim to the contrary, is not categorically excluded from that review under 10 C.F.R. § 51.22(c).[177]

As demonstrated below, Contention IV is inadmissible for multiple reasons. First, it raises numerous issues (*e.g.*, irradiated fuel management) that are outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii). Second, it fails to demonstrate a genuine dispute on a material issue of fact or law with the LAR, contrary to 10 C.F.R. § 2.309(f)(1)(vi), because there is no requirement for Entergy to submit an Environmental Report and the State's conclusory statements to the contrary do not support its claims. Third, Contention IV does not raise issues that are material to the findings that the NRC must make to issue the requested license amendment, contrary to 10 C.F.R. § 2.309(f)(1)(iv), because it does not identify any applicable requirement that Entergy has failed to satisfy with respect to the environmental review. Finally, Contention IV is not adequately supported, but consists of speculation and baseless allegations, contrary to 10 C.F.R. § 2.309(f)(1)(v).

---

175 *See* 10 C.F.R. § 2.335(a) ("no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding").

176 The State raises numerous other issues that are outside the scope of this narrow LAR proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii), including use of NDT funds, potential additional decommissioning costs, strontium, and compliance with 10 C.F.R. §§ 50.82(a)(8)(i)(B)-(C). *See* Petition at 20-26.

177 *Id*. at 26.

1. Contention IV Raises Issues that Are Immaterial and Outside the Scope of this Proceeding

As noted above, the LAR does not include, and is not required to include, approval of the entire decommissioning project.[178] Nor is the LAR seeking any particular authority regarding the *use* of NDT funds. Any proposed contentions challenging issues unrelated to the narrow scope of the LAR are outside the scope of this proceeding and must be rejected for failing to satisfy 10 C.F.R. § 2.309(f)(1)(iii).[179]

In this regard, several of the issues raised by the State in Contention IV are outside the scope of this proceeding: compliance with 10 C.F.R. § 51.53(d) (approval of decommissioning activities);[180] compliance with 10 C.F.R. § 51.61 (approval of ISFSI);[181] content of the PSDAR and the State's 2015 PSDAR comments;[182] appropriate use of decommissioning trust funds, including compliance with 10 C.F.R. § 50.82(a)(8)(i);[183] the Exemption Request regarding irradiated fuel management;[184] and compliance with the MTA.[185] All of these issues are unrelated to the LAR at issue in this proceeding, including the environmental impacts stemming from the LAR that are the alleged subject of Contention IV. These generalized challenges also are not material to any required finding in this proceeding related to the LAR.[186]

---

178 *See generally* LAR.

179 *See, e.g.*, *Trojan*, ALAB-534, 9 NRC at 289 n.6.

180 Petition at 26.

181 *Id.*

182 *Id.* at 27-28.

183 *Id.*

184 *Id.* at 28.

185 *Id.*

186 *See Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC at 333-34 (citing Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,172).

Additionally, the underlying premise of Contention IV is the State's claim that Entergy was required to submit an Environmental Report with the LAR.[187] As discussed in the next section, however, none of the regulations identified by the State requires an Environmental Report under these circumstances, even if a categorical exclusion does not apply. Thus, the State's claim is an impermissible challenge to the NRC's environmental regulations in 10 C.F.R. Part 51, as the State has not sought a waiver to challenge them.

2. Contention IV Does Not Demonstrate a Genuine Dispute with the Applicant

Contention IV further fails because the State has not demonstrated a genuine dispute on a material issue of law or fact with the applicant as required by 10 C.F.R. § 2.309(f)(1)(vi). For a claim of omission, Section 2.309(f)(1)(vi) requires that "if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief" must be provided. The State has failed to satisfy these requirements.

By way of background, Entergy's LAR voluntarily provided information related to the environmental considerations for the license amendment. In that regard, Entergy concluded:

> The proposed amendment is confined to administrative changes for providing consistency with existing regulations. Accordingly, the proposed amendment meets the eligibility criterion for categorical exclusion set forth in 10 CFR 51.22(c)(10). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the proposed amendment.[188]

Contention IV claims that Entergy should have submitted an Environmental Report for the LAR, and that the LAR has not undergone the required National Environmental Policy Act

---

187 Petition at 26.

188 LAR, Attachment 1, at 8.

("NEPA") review.[189] That is incorrect. Entergy was not required to provide any environmental analysis as part of the LAR, much less an Environmental Report, and the State has not identified any applicable requirement to do so. Neither the license amendment regulations in 10 C.F.R. Part 50, nor the environmental regulations in 10 C.F.R. Part 51, impose any requirement on a licensee to discuss environmental considerations in a license amendment request, much less provide an Environmental Report.[190] A license amendment applicant need only submit environmental information if directed to do so pursuant to 10 C.F.R. § 51.41, which has not occurred for the current LAR. The NEPA obligations for license amendment requests reside primarily with the NRC.[191] For these reasons, the State has failed to identify any requirement for Entergy to submit an Environmental Report and does not demonstrate a genuine dispute on a material issue of law with the LAR.

Similarly, the regulations identified by the State in Contention IV do not support its arguments. The State cites to 10 C.F.R. § 51.53(d),[192] but that regulation applies to a license amendment "authorizing decommissioning activities," "approving a license termination plan or decommissioning plan under § 50.82," or "to store spent fuel at a nuclear power reactor after expiration of the operating license." The LAR does not request an amendment related to any of those activities. The State also cites to 10 C.F.R. § 51.61, but that regulation applies to an application for issuance of a license for storage of spent fuel in an ISFSI or storage of spent fuel

---

189 *See* Petition at 26.

190 *See also* LIC-101, Rev. 4, App. B, Guide for Processing License Amendment Requests at 5 (May 2012), *available at* ADAMS Accession No. ML113200053 ("Although licensees are not required to discuss environmental considerations in their license amendment application, the NRC may require the licensee to subsequently submit environmental information pursuant to 10 CFR 51.41 (aids the Commission to comply with National Environmental Policy Act (NEPA) requirements).").

191 *See, e.g.*, *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041, 1049 (1983) ("It is . . . settled that *the NRC* has the burden of complying with NEPA" (emphasis added)).

192 Petition at 26.

in a monitored retrievable storage installation ("MRS") under 10 C.F.R. Part 72. The LAR does not request approval to store spent fuel in an ISFSI or an MRS.

The State's reference to NRC regulations for the Staff's environmental review likewise does not support Contention IV. The State references 10 C.F.R. §§ 51.20, 51.70, and 51.101,[193] but those regulations address licensing actions that require Environmental Impact Statements ("EISs"), preparation of draft EISs, and limitations on actions until the environmental review is complete, respectively. Those regulations do not pertain to Entergy's obligations related to the LAR itself. The State also has not provided any justification for the need for an EIS. Moreover, the Staff's environmental review has not been completed. Section 2.309(f)(2) requires that a contention be based on documents available at the time the petition to intervene is submitted. Because the Staff has not yet issued any environmental analysis, be it a categorical exclusion determination or otherwise, Contention IV cannot challenge that non-existent analysis.

Additionally, although the State makes the conclusory statement that the LAR is not categorically excluded, it provides no explanation for this determination.[194] Indeed, the State simply concludes that the "LAR is not a change to an administrative procedure,"[195] without any explanation of why the requested changes in the LAR are not administrative or do not fall within one of the other categorical exclusions.[196] The Commission has ruled that "general assertions,

---

193 *Id.*

194 *See id*. at 26-27.

195 *Id.* at 27.

196 In this regard, the State cites to statements from NEPA itself, implementing regulations, and case law to claim that more environmental review is needed. *See* Petition at 29-31. These citations, however, do not support the State's position, because they ignore the option of a categorical exclusion. If a categorical exclusion applies, then an applicant need not submit an Environmental Report and the NRC Staff need not prepare an environmental assessment or an EIS. *See Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 396 (1995) ("Where (as here) Staff is categorically excused from preparing an EA or EIS, a licensee need not submit an environmental report."); 10 C.F.R. § 51.22(b) ("[A]n environmental assessment or an environmental impact statement is not required for any action within a category of actions included in the list of categorical exclusions set out in paragraph (c) of this section.").

without some effort to show why the assertions undercut findings or analyses in the [application], fail to satisfy the requirements of Section 2.309(f)(1)(vi)."[197]

The State's arguments also are flawed given the nature of the amendment identified in the LAR. The amendment is fully consistent with the definition of categorical exclusion in 10 C.F.R. § 51.14(a):

> *Categorical Exclusion* means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which the Commission has found to have no such effect in accordance with procedures set out in § 51.22, and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

The LAR's deletion of portions of Condition 3.J. in place of complying with the NRC regulations, which have only minor differences in administrative requirements, cannot be considered to have a "significant effect on the human environment." In fact, the broader agency action that inserted Condition 3.J. into the Vermont Yankee License in the first place—the 2002 license transfer—was deemed by the Commission to be subject to a categorical exclusion.[198]

Moreover, the LAR is similarly consistent with the categories of actions identified as categorical exclusions in 10 C.F.R. § 51.22(c)(10):

> Issuance of an amendment to a permit or license issued under this chapter which—
> (i) Changes surety, insurance and/or indemnity requirements;
> (ii) Changes recordkeeping, reporting, or administrative procedures or requirements; . . .

Because the deletion of portions of Condition 3.J. would result in changes to certain reporting requirements or other administrative procedures, the LAR falls within the categorical exclusion category in Section 51.22(c)(10)(ii). Indeed, the State itself characterizes the LAR as a

---

197 *Summer*, CLI-10-1, 71 NRC at 22.

198 Transfer Order, Enclosure 3, at 13.

proposal "to be relieved of reporting."[199] Moreover, changes related to decommissioning trust funds are similar to changes for surety, insurance, and indemnity requirements identified above in Section 51.22(c)(10)(i), providing another reason why the LAR should be categorically excluded. The State has not argued to the contrary. As one licensing board explained, an interpretation of a regulation that conflicts with its plain meaning fails "to present a genuine dispute of fact or law . . . as required by NRC regulations."[200] In this case, the State ignores the plain meaning of the categorical exclusion regulations.

For these many reasons, Contention IV does not demonstrate a genuine dispute on a material issue of law or fact with the LAR, and the proposed contention must be rejected.

3. Contention IV Is Unsupported

Contention IV also fails because the State has not provided the alleged facts or expert opinion required by 10 C.F.R. § 2.309(f)(1)(v) to support the proposed contention.

The State makes the conclusory statement that the LAR is not "confined to administrative changes," and therefore claims that it does not support a categorical exclusion under 10 C.F.R. § 51.22(c)(10).[201] But the State only speculates as to the nature and effect of the LAR.[202] In this regard, the State claims that the removal of the 30-day notice requirements "hinders the NRC's and the State's ability to ensure that the NDT Fund remains adequate to cover the radiological decommissioning that is necessary to protect public health, safety, and the environment" and

---

199 Petition at 29.

200 *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 & 2), LBP-12-8, 75 NRC 539, 566 (2012).

201 Petition at 27.

202 *See USEC*, CLI-06-10, 63 NRC at 472 ("[A]n expert opinion that merely states a conclusion (e.g., the application is 'deficient,' 'inadequate,' or 'wrong') without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion . . . ."). Some further examples of this speculation include the State's claims about the "possibility of substantial environmental damage from an inadequately decommissioned site" and "Entergy would be unable to complete decommissioning, and the site would be left with substantial radiation hazards." Petition at 28.

"Entergy may deplete the NDT Fund before the site is radiologically decontaminated."[203] The State does not provide any support for these conclusions, nor could it. The State also ignores numerous other NRC regulations, which are not impacted by the LAR, that are in place to ensure sufficient funds for decommissioning.[204]

For the above reasons, Contention IV should be denied for failing to satisfy 10 C.F.R. § 2.309(f)(1)(v).

---

[203] Petition at 27. The State also appears to assume that Entergy will somehow violate NRC requirements in the future. It is contrary to NRC policy, however, to assume that a licensee will intentionally violate its licensing conditions and commitments. *See, e.g.*, *Diablo Canyon*, CLI-03-2, 57 NRC at 29.

[204] *See, e.g.*, 10 C.F.R. § 50.75(a) ("This section establishes requirements for indicating to NRC how a licensee will provide reasonable assurance that funds will be available for the decommissioning process. For power reactor licensees . . . , reasonable assurance consists of a series of steps as provided in paragraphs (b), (c), (e), and (f) of this section."); 10 C.F.R. § 50.82(a)(8) (governing the use of NDT funds, and ensuring in Section 50.82(a)(8)(i)(B) that "[t]he expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise").

V. CONCLUSION

As demonstrated above, the State's Petition must be dismissed because it proffers no contention satisfying the admissibility requirements in 10 C.F.R. § 2.309(f)(1). The State challenges the NRC regulations, contrary to 10 C.F.R. § 2.335, and fails to raises issues that are within the scope of this proceeding, are material to the findings the NRC must make to issue the requested license amendment, are sufficiently supported, and demonstrate a genuine dispute on a material issue of law or fact with the LAR, as required by 10 C.F.R. § 2.309(f)(1).

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

Susan H. Raimo, Esq.
Entergy Services, Inc.
101 Constitution Avenue, N.W.
Washington, D.C. 20001
Phone: (202) 530-7330
Fax: (202) 530-7350
E-mail: sraimo@entergy.com

Paul M. Bessette, Esq.
Stephen J. Burdick, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5796
Fax: (202) 739-3001
E-mail: pbessette@morganlewis.com
E-mail: sburdick@morganlewis.com

Counsel for Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.

Dated in Washington, DC
this 15th day of May 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	Docket No. 50-271-LA-3
ENTERGY NUCLEAR VERMONT YANKEE, LLC AND ENTERGY NUCLEAR OPERATIONS, INC.	)	
	)	May 15, 2015
(Vermont Yankee Nuclear Power Station)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of the foregoing "Entergy's Answer Opposing State of Vermont's Petition for Leave to Intervene and Hearing Request" were served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Ryan K. Lighty

Ryan K. Lighty, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5274
Fax: (202) 739-3001
E-mail: rlighty@morganlewis.com