

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENTERGY NUCLEAR OPERATIONS, INC.)	Docket Nos. 50-286 and 50-333
)	
(Indian Point Nuclear Generating Unit No. 3;)	
James A. FitzPatrick Nuclear Power Plant))	

NRC STAFF ANSWER TO HEARING REQUEST

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NRC STAFF ANSWER TO HEARING REQUEST

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) files this answer opposing the “Request for Public Hearing on Indian Point [3] License Amendment: Docket ID NRC-2015-0038” (Petition)¹ filed by Ms. Susan H. Shapiro, on behalf of Indian Point Safe Energy Coalition, Hudson River Sloop Clearwater, Council on Intelligent Energy & Conservation Policy, Sierra Club Hudson Valley, Nuclear Information and Resource Service, Alliance for Green Economy, and Radiation and Public Health Project (collectively, Petitioners). The Petition does not demonstrate that the Petitioners have standing and does not propose at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f). Specifically, the Petition does not satisfy its burden to demonstrate standing because it does not provide evidence to support its standing argument, it does not demonstrate that the proposed license amendment raises an obvious potential for offsite radiological consequences, and it does not demonstrate a specific and plausible means by which the proposed license amendment may harm the Petitioners. Additionally, none of the arguments in

¹ Letter from Susan H. Shapiro to NRC, Request for Public Hearing on Indian Point 2 [sic] License Amendment: Docket ID NRC-2015-0038 (dated Sept. 15, 2016; filed Nov. 1, 2016) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16306A258) (Petition).

the Petition amount to an admissible contention because they are unsupported by alleged facts or expert opinions, simply erroneous, or constitute challenges to the Commission's regulations and thus raise issue that are beyond the scope of this license amendment proceeding. For these reasons, this Atomic Safety and Licensing Board (Board) should deny the Petition. Moreover, the Staff requests, consistent with Commission direction,² that the Board rule expeditiously because the license amendment request at issue in this proceeding is a precondition to the separate, time-sensitive request to transfer the operating license for the James A. Fitzpatrick Nuclear Power Plant to Exelon Generation Company, LLC.³

BACKGROUND

On November 9, 2000, the NRC issued orders approving the transfers of the operating licenses for Indian Point Nuclear Generating Unit No. 3 (IP3) and James A. FitzPatrick Nuclear Power Plant (FitzPatrick) from the Power Authority of the State of New York (PASNY) to Entergy Nuclear Indian Point 3, LLC (ENIP3) and Entergy Nuclear Operations, Inc. (ENO) and to Entergy Nuclear FitzPatrick, LLC (ENF) and ENO, respectively (collectively, 2000 Orders).⁴ Although the operating licenses were transferred, the decommissioning trust funds associated with the operating licenses, which are governed by a single Master Decommissioning Trust

² See, e.g., Streamlined Hearing Process for NRC Approval of License Transfers, 63 Fed. Reg. 66721, 66721-22 (Dec. 3, 1998) (explaining that "[b]ecause of the need for expeditious decisionmaking from all agencies, including the Commission, for [license transfers], timely and effective resolution of requests for transfers on the part of the Commission is essential" and that "time-sensitivity [is] normally present in transfer cases").

³ See Application for Order to Transfer Master Decommissioning Trust from PASNY to ENO, Consenting to Amendments to Trust Agreement, and Approving Proposed License Amendments to Modify and Delete Decommissioning Trust License Conditions Upon the Transfer of Trust Funds, at 3 (Aug. 16, 2016) (ADAMS Accession No. ML16230A308) (LAR).

⁴ See Indian Point Nuclear Generating Unit No. 3 - Order Approving Transfer of License from the Power Authority of the State of New York to Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc. and Approving Conforming Amendment (TAC No. MA8948) (Nov. 9, 2000) (ADAMS Accession No. ML003767953) (IP3 2000 Order); James A. FitzPatrick Nuclear Power Plant - Order Approving Transfer of License from the Power Authority of the State of New York to Entergy Nuclear FitzPatrick, LLC, and Entergy Nuclear Operations, Inc. and Approving Conforming Amendment (TAC No. MA8949) (Nov. 9, 2000) (ADAMS Accession No. ML003768011) (FitzPatrick 2000 Order).

Agreement, dated July 25, 1990 (Master Trust Agreement),⁵ were retained by PASNY.⁶ As a result, PASNY is solely responsible for holding and disbursing funds from the Master Trust for the decommissioning of IP3 and FitzPatrick, ENIP3 and ENO are solely responsible for the physical decommissioning of IP3, and ENF and ENO are solely responsible for the physical decommissioning of FitzPatrick.⁷ The 2000 Orders provide for the possibility of transferring the decommissioning trust fund for IP3 to ENIP3 and for transferring the decommissioning trust fund for FitzPatrick to ENF;⁸ however, they do not explicitly provide for the possibility of transferring these decommissioning trust funds to ENO. The conditions of the 2000 Orders, including the division of responsibility between PASNY and ENIP3, ENF, and ENO regarding decommissioning, were subsequently incorporated into the IP3 and FitzPatrick operating licenses.⁹ The 2000 license transfers also involved an amendment to the Master Trust Agreement (First Amendment to the Master Trust Agreement) specifying that beneficial

⁵ See Power Authority of the State of New York, Entergy Nuclear Indian Point 3, LLC, and Entergy Nuclear Operations, Inc., Indian Point 3 Nuclear Power Plant, Docket No. 50-286, License No. DPR-64, Transfer of Facility Operating License and Proposed License Amendment, at Enclosure 5 (May 11, 2000) (ADAMS Accession No. ML003719034) (2000 License Transfer Application).

⁶ In its Safety Evaluation for the 2000 license transfers, the Staff concluded that PASNY had retained “responsibilities [for] holding and disbursing decommissioning trust funds with the apparent purpose of attempting to limit any adverse Federal income tax consequences to the decommissioning funds.” IP3 2000 Order at Enclosure 3, p.8 n.2; FitzPatrick 2000 Order at Enclosure 3, p.8 n.2.

⁷ See IP3 2000 Order at Enclosure 1, p.2, 5; FitzPatrick 2000 Order at Enclosure 1, p.2, 5. See also Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3 Facility Operating License, at 6 (IP3 License); Entergy Nuclear Fitzpatrick, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-333, James A. Fitzpatrick Nuclear Power Plant Renewed Facility Operating License, at 7 (FitzPatrick License).

⁸ IP3 2000 Order at Enclosure 1, p.7-8; FitzPatrick 2000 Order at Enclosure 1, p.7-8 (stating that PASNY “remain[s] subject to the Commission’s jurisdiction . . . regarding the disposition and use of the amounts accumulated in the decommissioning trust fund[s] and retained by [PASNY], until such time as [it] transfers the decommissioning trust fund [for IP3 to ENIP3 or transfers the decommissioning trust fund for FitzPatrick to ENF] or the decommissioning of [IP3 or FitzPatrick, respectively] has been completed in accordance with NRC regulations and guidance, whichever occurs first.”).

⁹ See IP3 License at 6; FitzPatrick License at 7 (“[ENIP3/ENF] shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for the transfer of this license to [ENIP3/ENF] and ENO and the requirements of the order approving the transfer, and consistent with the safety evaluation supporting such order.”).

ownership of the Master Trust remained with PASNY and that PASNY has the right to assign this interest to the owners of IP3 and FitzPatrick.¹⁰

Now, the parties to the 2000 license transfers wish to transfer from PASNY to ENO the beneficial interest in the Master Trust, including all rights and obligations thereunder, held by PASNY for IP3 and FitzPatrick.¹¹ The parties state that this is a precondition to the separate, proposed transfer of the FitzPatrick operating license to Exelon Generation Company, LLC.¹² In order to accomplish the transfer of the control of the Master Trust, on August 16, 2016, on behalf of itself, ENIP3, ENF, and PASNY, ENO requested that the NRC issue an order directing the transfer of the Master Trust to ENO, consenting to an amendment to the Master Trust Agreement authorizing the transfer of the Master Trust to ENO (Second Amendment to the Master Trust Agreement), and approving license amendments to be issued in connection with the transfer of the Master Trust to ENO.¹³ The requested license amendments would do the following to existing license conditions that were added to the licenses as part of the 2000 license transfers: (1) modify those that refer to PASNY as the holder of the decommissioning trust funds such that they refer to ENO instead and (2) delete those that impose facility-specific requirements on decommissioning trust agreements, such that IP3 and FitzPatrick would, instead, be subject to the Commission's generic regulations governing decommissioning trust agreements at 10 C.F.R. § 50.75(h)(1)-(3).¹⁴

¹⁰ 2000 License Transfer Application at Enclosure 4, Exhibit P.

¹¹ LAR at 1-2.

¹² *Id.* at 3.

¹³ *Id.* at 2.

¹⁴ *Id.* at 3. See 10 C.F.R. § 50.75(h)(5) (providing that a licensee may either maintain any existing facility-specific decommissioning trust license conditions that pre-date the effectiveness of the generic decommissioning trust requirements at 10 C.F.R. § 50.75(h)(1)-(3) or comply with 10 C.F.R. § 50.75(h)(1)-(3)).

On September 15, 2016, Ms. Shapiro submitted the Petition challenging ENO's August 16, 2016 license amendment request via email to the NRC Office of the Secretary.¹⁵ In response, the Secretary stated that, in a previous decision, the Commission had instructed the Secretary to "summarily reject any nonconforming pleadings filed by Ms. Shapiro."¹⁶ Based on this direction and on the fact that the Petition had not been filed through the NRC's Electronic Information Exchange system (EIE), as is required by the NRC's E-filing requirement set forth in 10 C.F.R. § 2.302(a), the Secretary dismissed the Petition without prejudice.¹⁷

On September 27, 2016, the NRC published in the Federal Register a notice of opportunity to request a hearing and petition for leave to intervene on ENO's August 16, 2016 license amendment request.¹⁸

On November 1, 2016, Ms. Shapiro re-filed the Petition via the EIE. The Petition asserted that the Petitioners reside within 50 miles of IP3 or FitzPatrick and, thus, have the "right[] to . . . request a public hearing"¹⁹ The Petition challenged ENO's request to transfer the control of the IP3 and FitzPatrick decommissioning trust funds from PASNY to ENO for various reasons.²⁰ First, the Petition stated that, "ENO is neither the reactor operator nor licensee, and, upon information and belief, is [a] corporate subsidiary with no tangible assets, essentially a shell corporation."²¹ Second, the Petition stated that the transfer of control of the

¹⁵ See Order, at 1 (Oct. 3, 2016) (unpublished) (ADAMS Accession No. ML16277A605).

¹⁶ *Id.* (citing *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-08-29, 68 NRC 899, 903 (2008)).

¹⁷ *Id.* at 1-2.

¹⁸ Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 81 Fed. Reg. 66301, 66305-06 (Sept. 27, 2016).

¹⁹ Petition at 2 (unnumbered).

²⁰ *Id.*

²¹ *Id.*

IP3 and FitzPatrick decommissioning trust funds from PASNY to ENO would “significantly increase[] risk to New York State resources and residents” and “significantly increase[] the hazards to New York State resources and is hardly in the interest of the citizens of New York” and “significantly reduce the margin of public safety and trust” because, as alleged by the Petition, ENO’s “primary concern is corporate profits, not public health and safety” and, thus, ENO “would not have incentive to expend all necessary funds to remediate to the highest standards, instead of cutting corners to insure profit to the shareholders” and would “spend decommissioning funds on legal and accounting services aimed at helping Entergy evade expenditures and fight New York State in court”²² Third, the Petition stated that the “Decommissioning Agreement dated November 21, 2000, guaranteed to the public that [PASNY] would maintain the decommissioning trust funds for IP3 and FitzPatrick in a Master Trust.”²³ Fourth, the Petition challenged the ENO proposal to delete the facility-specific decommissioning trust license conditions and, instead, make IP3 and FitzPatrick subject to the Commission’s generic decommissioning trust requirements at 10 C.F.R. § 50.75(h)(1)-(3).²⁴ Fifth, the Petition stated that any amendments to the operating license for IP3 are “procedurally defective” because the license is “expired.”²⁵

²² *Id.* at 2-3 (unnumbered) (emphasis omitted).

²³ *Id.* at 2 (unnumbered).

²⁴ *Id.* at 2-3 (unnumbered).

²⁵ *Id.* at 3 (unnumbered).

On November 15, 2016, the Secretary referred the Petition to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel²⁶ who, in turn, established this Board to address the matter.²⁷

DISCUSSION

I. Legal Standards

Pursuant to 10 C.F.R. § 2.309(a), the Board will grant a hearing request if it determines that the petitioner has standing under the provisions of 10 C.F.R. § 2.309(d) and has proposed at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f).

A. Standing Requirements

Standing under 10 C.F.R. § 2.309(d) is typically determined according to “contemporaneous judicial concepts of standing.”²⁸ Contemporaneous judicial concepts of standing require that the petitioner provide a “sufficiently particularized”²⁹ pleading of “(1) [an alleged] injury in fact that is (2) fairly traceable to the challenged action, and (3) is likely to be redressed by a favorable decision.”³⁰ The injury-in-fact pleading requirement must be satisfied by “something more than an ingenious academic exercise in the conceivable.”³¹ Thus, the

²⁶ Memorandum from Annette Vietti-Cook, Secretary, NRC, to E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Indian Point Nuclear Generating Unit No. 3 and James A. Fitzpatrick Nuclear Power Plant, Request for Hearing Regarding Entergy Nuclear Operations, Inc.’s Amendment Request (Docket Nos. 50-286 And 50-333) (Nov. 15, 2016) (ADAMS Accession No. ML16320A205).

²⁷ Order (Establishment of Atomic Safety and Licensing Board) (Nov. 18, 2016) (unpublished) (ADAMS Accession No. ML16323A322) (Establishment Order).

²⁸ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015).

²⁹ *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976).

³⁰ *Turkey Point*, CLI-15-25, 82 NRC at 394 (citing *Sequoyah Fuels Corp. & General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71-72 (1994); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

³¹ *Nuclear Fuel Services, Inc.* (Erwin, Tennessee), CLI-04-13, 59 NRC 244, 248 (2004) (citing *United States v. Students Challenging Regulatory Agency Procedures* (SCRAP), 412 U.S. 669, 688-89 (1973)).

petitioner “must allege that he has been or will in fact be perceptibly harmed by the challenged agency action, not that he can imagine circumstances in which he could be affected by the agency’s action.”³² Furthermore, injury-in-fact does not include a “‘generalized grievance’ shared in substantially equal measure by all or a large class of citizens will not result in a distinct and palpable harm sufficient to support standing.”³³

Regarding standing specifically in license amendment proceedings, the Commission has held that “a petitioner seeking to intervene in a license amendment proceeding must assert an injury-in-fact associated with *the challenged license amendment*, not simply a general objection to the facility.”³⁴ Similarly, the Commission has stated that, “[s]ince a license amendment involves a facility with ongoing operations, a petitioner’s challenge must show that the amendment will cause a distinct new harm or threat apart from the activities already licensed. Conclusory allegations about potential radiological harm from the facility in general, which are not tied to the specific amendment at issue, are insufficient to establish standing.”³⁵ Although the cause of the injury need not flow directly from the challenged action, “the chain of causation must be plausible.”³⁶

While the Commission has recognized a “proximity presumption” of standing for those individuals that live within, or otherwise have frequent contacts within, approximately 50 miles of

³² *International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-15, 53 NRC 344, 349 (2001) (quoting *United States v. SCRAP*, 412 U.S. at 688-89).

³³ *U.S. Enrichment Corp.* (Paducah, Kentucky), CLI-01-23, 54 NRC 267, 272 (2001) (quoting Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 333 (1983)). See also *Envirocare of Utah, Inc.* (Byproduct Material Waste Disposal License), LBP-92-8, 35 NRC 167, 174 (1992).

³⁴ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, 49 NRC 185, 188 (1999).

³⁵ *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001) (citation and internal quotation marks omitted).

³⁶ *Turkey Point*, CLI-15-25, 82 NRC at 394.

a facility in a construction permit, operating license, or license renewal proceeding,³⁷ a petitioner in a license amendment proceeding cannot base standing solely on proximity unless the petitioner demonstrates that the proposed amendment “quite obviously” entails an increased potential for offsite consequences.³⁸ If the petitioner fails to show that a particular licensing action raises an obvious potential for offsite consequences, then it is the petitioner's burden to show a specific and plausible means by which the license amendment may harm him or her;³⁹ simply enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences is not sufficient.⁴⁰

An organization may establish standing under 10 C.F.R. § 2.309(d) based on harm to its own organizational interests (*i.e.*, organizational standing) or based on harm to the interests of its members (*i.e.*, representational standing). When an organization asserts organizational standing, it must demonstrate “immediate or threatened injury to its organizational interests.”⁴¹ When an organization asserts representational standing, it must demonstrate that: (1) its member(s) would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization's lawsuit; and (4) at least one of its members has authorized it to represent the member's interests.⁴² Thus,

³⁷ *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-916 (2009) (citing *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426 (2007)).

³⁸ *Zion*, CLI-99-04, 49 NRC at 191 (internal quotation marks omitted).

³⁹ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 268-69 (2008).

⁴⁰ *Zion*, CLI-99-04, 49 NRC at 192.

⁴¹ *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

⁴² See *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999) (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

for representational standing, the organization must demonstrate, in part, “how at least one of its members may be affected by the licensing action, must identify the member, and must show that the organization is authorized to represent that member.”⁴³

B. Contention Admissibility Requirements

A petitioner cannot be admitted as a party to a proceeding unless it “sets forth with particularity” at least one admissible contention (*i.e.*, a contention that meets the requirements in 10 C.F.R. § 2.309(f)).⁴⁴ A proposed contention is admissible under 10 C.F.R. § 2.309(f) only if it:

- (i) Provide[s] a specific statement of the issue of law or fact to be raised or controverted . . . ;
- (ii) Provide[s] a brief explanation of the basis for the contention;
- (iii) Demonstrate[s] that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate[s] that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide[s] a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; [and]
- (vi) . . . provide[s] sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application^[45]

The contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) are intended to “ensure that NRC hearings serve the purpose for which they are intended: to adjudicate

⁴³ *White Mesa*, CLI-01-21, 54 NRC at 250; *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 202 (2000).

⁴⁴ 10 C.F.R. § 2.309(a), (f).

⁴⁵ 10 C.F.R. § 2.309(f)(1).

genuine, substantive safety and environmental issues placed in contention by qualified intervenors”⁴⁶ and to “focus litigation on concrete issues and result in a clearer and more focused record for decision.”⁴⁷ 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” as indicated by a proposed contention that satisfies all of the 10 C.F.R. § 2.309(f)(1) requirements.⁴⁸ This position “reflects a deliberate effort to prevent the major adjudicatory delays caused in the past by ill-defined or poorly supported contentions that were admitted for hearing although ‘based on little more than speculation.’”⁴⁹ Thus, the Commission has consistently emphasized that the 10 C.F.R. § 2.309(f)(1) requirements are “strict by design.”⁵⁰ The failure to comply with any one of the 10 C.F.R. § 2.309(f)(1) requirements is grounds for the dismissal of a contention⁵¹ and attempting to satisfy these requirements by “[m]ere ‘notice pleading’ does not suffice.”⁵²

Pursuant to 10 C.F.R. § 2.309(f)(1)(iii), a proposed contention must be rejected if it raises issues beyond the scope of the proceeding as dictated by the Commission’s hearing notice.⁵³ Thus, a proposed contention that challenges a license amendment must confine itself

⁴⁶ *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-08, 81 NRC 500, 504 (2015) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003) (internal quotation marks omitted).

⁴⁷ Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) (Final rule).

⁴⁸ *Id.*

⁴⁹ *Susquehanna*, CLI-15-08, 81 NRC at 504 (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)).

⁵⁰ *Id.*

⁵¹ *Private Fuel Storage*, CLI-99-10, 49 NRC at 325; *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010).

⁵² *Amergen Energy Co., L.L.C.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (quoting *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 808 (2005)).

⁵³ See *Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790 (1985).

to “health, safety or environmental issues fairly raised by [the license amendment].”⁵⁴

Additionally, a proposed contention must be rejected if it challenges NRC regulations because such a challenge is necessarily beyond the scope of the proceeding⁵⁵ unless (1) the proponent of the contention petitions for the waiver of the rule in the particular proceeding, (2) the presiding officer determines that the waiver petition has made a *prima facie* showing that the application of the specific rule would not serve the purposes for which the rule was adopted and then certifies the matter directly to the Commission, and (3) the Commission makes a determination on the matter.⁵⁶

Pursuant to 10 C.F.R. § 2.309(f)(1)(v), a proposed contention must be rejected if it does not provide a concise statement of the facts or expert opinions that support the proposed contention together with references to specific sources and documents. To warrant an adjudicatory hearing, contentions need to have “some reasonably specific factual or legal basis.”⁵⁷ Neither mere speculation nor bare or conclusory assertions, even by an expert, suffices to allow the admission of a proposed contention.⁵⁸ While a Board may view a petitioner's supporting information in a light favorable to the petitioner, if a petitioner neglects to provide the requisite support for its contentions, it is not within the Board's power to make

⁵⁴ *Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 624 (1981).

⁵⁵ See *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-22, 82 NRC 310, 318 (2015); *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-07, 78 NRC 199, 206-09 (2013); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 448-49 (2011). See also 10 C.F.R. § 2.335.

⁵⁶ 10 C.F.R. § 2.335.

⁵⁷ *Susquehanna*, CLI-15-08, 81 NRC at 504-06 (quoting *Millstone*, CLI-03-14, 58 NRC at 213).

⁵⁸ See *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 558 (2016); *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006); *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003).

assumptions or draw inferences that favor the petitioner, nor may the Board supply the information that a contention is lacking.⁵⁹

II. The Board Should Deny the Petition Because it Does Not Demonstrate that the Petitioners Have Standing under 10 C.F.R. § 2.309(d)

In support of the standing of the Petitioners, the Petition only asserts that the Petitioners “are residents of the Indian Point and FitzPatrick Reactor Communities residing within 50 miles of Indian Point 3 or FitzPatrick and are exercising [their] rights to object to and request a public hearing in New York on the proposed license amendments”⁶⁰ This assertion alone, though, is not sufficient to demonstrate standing in this proceeding and, therefore, the Board should deny the Petition.

A. The Petition Does Not Provide Evidence to Support its Standing Argument

It is unclear whether the Petition is basing its standing argument on organizational standing or on representational standing. To the extent that the Petition is basing its standing argument on organizational standing, it is deficient because it does not provide any evidence of an immediate or threatened injury to the named organizations’ organizational interests from the proposed license amendment.⁶¹ To the extent that the Petition is basing its standing argument on representational standing, it is deficient because it does not state how at least one of the Petitioners’ members may be affected by the proposed license amendment, it does not identify the member, and it does not show that the organization is authorized to represent that member.⁶² Additionally, regardless of whether the Petition is basing its standing argument on organizational standing or representational standing, the Petition appears to be asserting that

⁵⁹ See *Crow Butte Res., Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 553-54 (2009); *Arizona Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3), CLI 91-12, 34 NRC 149, 155 (1991).

⁶⁰ Petition at 2 (unnumbered).

⁶¹ *Georgia Tech Research Reactor*, CLI-95-12, 42 NRC at 115.

⁶² *White Mesa*, CLI-01-21, 54 NRC at 250; *Oyster Creek*, CLI-00-06, 51 NRC at 202.

radiological harm should be presumed as a result of the proposed license amendment because either the Petitioners themselves or an unnamed member of the Petitioners reside within 50 miles of IP3 or FitzPatrick. In proceedings before the NRC, however, petitioners are expected to submit affidavits or other evidence in order to provide the factual basis for such claims of proximity presumption.⁶³ Because the Petition does not provide any factual basis to support its standing argument, the Board should, for this reason alone, deny it.

B. The Petition Does Not Demonstrate that the Proposed License Amendment Raises an Obvious Potential for Offsite Consequences

Even if the Petition had provided the requisite evidence to support its standing argument, its claim of proximity presumption would still fail because the Petition does not satisfy its burden to demonstrate that the proposed amendment “quite obviously” entails an increased potential for offsite radiological consequences.⁶⁴

In license amendment proceedings, such as the instant proceeding, a petitioner cannot base his or her standing simply upon a residence or frequent contacts within the vicinity of a facility.⁶⁵ Instead, the petitioner must also show that the proposed license amendment “quite obviously” entails an increased potential for offsite radiological consequences.⁶⁶ In this case, though, the Petition makes no such showing. Not only that, but it would seem that the proposed action of transferring the control of the IP3 and FitzPatrick decommissioning trust funds from PASNY to ENO would not obviously entail an increased potential for offsite radiological consequences because the Commission’s regulations are specifically designed to ensure that

⁶³ See, e.g., *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409-410 (2007) (denying standing to petitioners that did not provide supporting affidavits or other evidence to prove that individuals had in fact authorized the petitioners to represent them and to prove where these individuals resided in relation to the facility).

⁶⁴ *Zion*, CLI-99-04, 49 NRC at 191 (internal quotation marks omitted).

⁶⁵ *Id.*

⁶⁶ *Id.*

an adequate amount of decommissioning funds will be available for their intended purpose regardless of whether the licensee is an electric utility.⁶⁷ Therefore, the Petition has not satisfied its burden to demonstrate that the proposed license amendment raises an obvious potential for offsite radiological consequences and, thus, it should be denied.

C. The Petition Does Not Demonstrate a Specific and Plausible Means by which the Proposed License Amendment May Harm the Petitioners

In the absence of a presumption of standing based on a petitioner's demonstration of both proximity and an obvious potential for offsite radiological consequences, it is the petitioner's burden to show a specific and plausible means by which the license amendment may harm him or her.⁶⁸ Although the cause of the alleged injury need not flow directly from the challenged action, "the chain of causation must be plausible."⁶⁹ In this case, though, the Petition does not specifically demonstrate how the proposed transfer of control of the IP3 and FitzPatrick decommissioning trust funds from PASNY to ENO is plausibly causally connected to a radiological harm to either the Petitioners or members of the Petitioners and, therefore, it should be denied.

First, the Petition asserts that the transfer of control of the IP3 and FitzPatrick decommissioning trust funds from PASNY to ENO would significantly increase "risk" and "hazards" and would significantly "reduce the margin of public safety and trust."⁷⁰ These bare assertions of harm are not sufficient to satisfy standing. As the Commission has stated, "[a]

⁶⁷ See 10 C.F.R. § 50.75(h); Decommissioning Trust Provisions, 67 Fed. Reg. 78332, 78332 (Dec. 24, 2002) (Final rule) ("For licensees that are no longer rate-regulated, or no longer have access to a non-bypassable charge for decommissioning, the NRC is requiring that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. Until recently, direct NRC oversight of the terms and conditions of the decommissioning trusts was not necessary because rate regulators typically exercised this type of oversight authority. With deregulation, this oversight may cease and the NRC needs to take a more active oversight role.").

⁶⁸ *Palisades*, CLI-08-19, 68 NRC at 268-69.

⁶⁹ *Turkey Point*, CLI-15-25, 82 NRC at 394.

⁷⁰ Petition at 2-3 (unnumbered).

petitioner cannot seek to obtain standing in a license amendment proceeding simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences.”⁷¹

Second, the Petition asserts that the proposed transfer of control would result in remediation that is not “to the highest standards” and in ENO “spend[ing] decommissioning funds on legal and accounting services aimed at helping [ENO] evade expenditures and fight New York State in court.”⁷² These assertions of harm are not sufficient to satisfy standing because they appear to assume that ENO will violate the Commission’s regulations at 10 C.F.R. § 50.82(a)(11), which provide that the Commission shall terminate a license only if it determines that the licensee has demonstrated that the facility and site have met the criteria for decommissioning, and at 10 C.F.R. § 50.75(h)(1)(iv) and 10 C.F.R. § 50.82(a)(8), which restrict disbursements from decommissioning trust funds to decommissioning expenses. The Petition makes this assumption explicit when it asserts that ENO will “cut[] corners to insure profit to [its] shareholders.”⁷³ The Petition, though, does not provide any evidence for this assumption of wrongdoing besides the fact that ENO is a private entity.⁷⁴ Since, in the absence of evidence to the contrary, the Commission assumes that its licensees will comply with its regulations,⁷⁵ the Petition’s arguments fail to satisfy the standing requirement of 10 C.F.R. § 2.309(d) and, thus, the Board should deny the Petition.⁷⁶

⁷¹ *Zion*, CLI-99-04, 49 NRC at 192.

⁷² Petition at 2-3 (unnumbered) (emphasis omitted).

⁷³ *Id.* at 3 (unnumbered).

⁷⁴ *Id.* at 2-3 (unnumbered).

⁷⁵ See *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 29 (2003); *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-01-9, 53 NRC 232, 235 (2001).

⁷⁶ If, at any time, the Petitioners believe that there is a current or ongoing violation of NRC regulations at the facilities, then they may request via the NRC’s 10 C.F.R. § 2.206 petition process that the NRC institute a proceeding to take such actions as may be proper against the licensees for the alleged violations. See, e.g., *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power

III. The Board Should Deny the Petition Because it Does Not Propose at Least One Admissible Contention that Meets the Requirements of 10 C.F.R. § 2.309(f)

The Board should also deny the Petition because none of its arguments satisfy the contention admissibility standards of 10 C.F.R. § 2.309(f).

A. The Petition's Arguments that ENO Is Neither the Reactor Operator Nor the Licensee and that ENO Is a Shell Corporation Are Not Supported by Alleged Facts or Expert Opinions

The Petition appears to base its assumption that ENO will violate the Commission's regulations on its assertions that "ENO is neither the reactor operator nor the licensee" and that ENO is "a shell corporation."⁷⁷ However, these assertions alone are unavailing because, not only are they unsupported by alleged facts or expert opinions, contrary to 10 C.F.R. § 2.309(f)(1)(v), but the record also demonstrates, on its face, that ENO is the operator of and licensee for IP3 and FitzPatrick. For example, the 2000 Orders approving the transfers of the IP3 and FitzPatrick operating licenses explicitly state that ENO is to be the operator of the facilities.⁷⁸ Furthermore, the current operating licenses for IP3 and FitzPatrick list "Entergy Nuclear Operations, Inc." as the licensee along with ENIP3 and ENF, respectively,⁷⁹ and state that, on November 21, 2000, the licenses were transferred to ENO and ENIP3 and ENO and ENF, respectively.⁸⁰ Finally, the licenses provide that the facilities are "operated by ENO" and that ENO is licensed to "possess, use and operate, the facility"⁸¹ Therefore, the argument

Station), CLI-16-17, 84 NRC __, __ (Oct. 27, 2016) (slip op. at 15-16); *Susquehanna*, CLI-15-08, 81 NRC at 508 n.62.

⁷⁷ Petition at 2 (unnumbered).

⁷⁸ IP3 2000 Order at Enclosure 1, p.2; FitzPatrick 2000 Order at Enclosure 1, p.2.

⁷⁹ IP3 License at 1; FitzPatrick License at 1.

⁸⁰ IP3 License at 2; FitzPatrick License at 2.

⁸¹ *Id.* See also IP3 License at 3; FitzPatrick License at 3 ("ENO is authorized to operate the facility" and "ENO shall operate the facility in accordance with the Technical Specifications.").

that ENO is neither the reactor operator nor the licensee is both unsupported and potentially unsupportable.

The only support that the Petition provides for its assertion that ENO is a shell corporation is that this assertion was made “upon information and belief.”⁸² Such a statement made by counsel for the Petitioners, who has not presented herself as an expert in any relevant field, does not satisfy the level of support required by 10 C.F.R. § 2.309(f)(1)(v).⁸³

For these reasons, the Petition’s arguments that ENO is a “shell corporation” that is “neither the reactor operator nor licensee” cannot amount to an admissible contention.

B. The Argument that ENO Will Violate the Commission’s Regulations Is Not Admissible

The Petition states that the transfer of the control of the IP3 and FitzPatrick decommissioning trust funds from PASNY to ENO “significantly increases risk to New York State resources and residents” and “significantly increases the hazards to New York State resources and is hardly in the interest of the citizens of New York” and “significantly reduce[s] the margin of public safety and trust” because, as alleged by the Petition, ENO’s “primary concern is corporate profits, not public health and safety” and, thus, ENO “would not have incentive to expend all necessary funds to remediate to the highest standards, instead of cutting corners to insure profit to the shareholders” and would “spend decommissioning funds on legal and accounting services aimed at helping Entergy evade expenditures and fight New York State in court”⁸⁴ None of these arguments amount to an admissible contention because they are premised on the unsubstantiated assumption and speculative assertion that ENO will violate the Commission’s regulations.

⁸² Petition at 2 (unnumbered).

⁸³ See *USEC*, CLI-06-10, 63 NRC at 472 (conclusory statements, even if made by an expert, are not sufficient support for a contention).

⁸⁴ Petition at 2-3 (unnumbered) (emphasis omitted).

The Petition's concerns are already addressed by the Commission's regulations. For instance, the Petition's argument that ENO will not properly complete decommissioning is refuted by the Commission regulation that provides that decommissioning is only complete when the licensee demonstrates that the facility and site meet the criteria for decommissioning in 10 CFR Part 20.⁸⁵ Similarly, the Petition's argument that ENO will endanger the public health and safety by improperly using decommissioning trust funds is refuted by the Commission's regulations that restrict disbursements from decommissioning trust funds to decommissioning expenses.⁸⁶ The overarching concern that ENO, as a non-electric utility, will not maintain an adequate amount of decommissioning funds for their intended purpose is addressed by the Commission's regulations at 10 C.F.R. § 50.75(h), which were specifically developed for this purpose.⁸⁷

Because of the existence of these on-point regulations, it appears that the Petition is assuming that ENO will violate these regulations. In fact, the Petition makes this assumption explicit when it asserts that ENO will "cut[] corners to insure profit to [its] shareholders."⁸⁸ The Commission, however, assumes that, in the absence of evidence to the contrary, its licensees will comply with its regulations⁸⁹ and the Petition does not provide any reason to question this assumption in this case because the Petition rests its arguments simply on the fact that ENO is

⁸⁵ 10 C.F.R. § 50.82(a)(11).

⁸⁶ 10 C.F.R. § 50.75(h)(1)(iv); 10 C.F.R. § 50.82(a)(8).

⁸⁷ See 67 Fed. Reg. at 78332.

⁸⁸ Petition at 3 (unnumbered).

⁸⁹ *Diablo Canyon*, CLI-03-2, 57 NRC at 29; *PFS*, CLI-01-9, 53 NRC at 235.

a private entity.⁹⁰ Therefore, the Petition does not propose an admissible contention and should be denied.⁹¹

C. The Argument Regarding the Decommissioning Agreement Is Not Supported by Alleged Facts or Expert Opinions

The Petition argues that the “Decommissioning Agreement dated November 21, 2000, guaranteed to the public that [PASNY] would maintain the decommissioning trust funds for IP3 and FitzPatrick”⁹² This argument does not amount to an admissible contention because, contrary to 10 C.F.R. § 2.309(f)(1)(v), it is not supported by alleged facts or expert opinions. Specifically, the Petition does not provide any additional information to support this bare assertion.⁹³ Therefore, the Board should not admit this unsupported argument as a contention.

D. The Arguments Against the Deletion of the IP3 and FitzPatrick Facility-Specific Decommissioning Trust License Conditions Are Inadmissible

The 2000 license transfers added various license conditions to the IP3 and FitzPatrick operating licenses, including conditions governing the treatment of decommissioning trust funds.⁹⁴ With its license amendment request, ENO seeks, in part, to delete certain of these facility-specific decommissioning trust license conditions so as to make IP3 and FitzPatrick subject to the generic decommissioning trust requirements at 10 C.F.R. § 50.75(h)(1)-(3)

⁹⁰ See Petition at 2-3 (unnumbered).

⁹¹ Additionally, to the extent that the Petition is challenging the regulations that it is assuming that ENO will violate without requesting a waiver of these regulations in this proceeding, it is contrary to 10 C.F.R. § 2.335 and, therefore, should be denied.

⁹² Petition at 2 (unnumbered).

⁹³ Additionally, it appears that this assertion is contradicted by the First Amendment to the Master Trust Agreement, which states that “[t]he beneficial ownership of the Funds shall, subject to the purpose of the Master Trust, be at all times in [PASNY]; provided, however, [PASNY] shall have the right by written notice to the Trustee to assign its beneficial interest hereunder to the owner(s) of the Units” See 2000 License Transfer Application at Enclosure 4, Exhibit P.

⁹⁴ Compare IP3 2000 Order at Enclosure 1, p.5-7 with IP3 License at 5-6; Compare FitzPatrick 2000 Order at Enclosure 1, p.5-7 with FitzPatrick License at 6-7.

instead.⁹⁵ The Petition appears to challenge some aspects of this request. However, as explained below, the Petition's arguments either misunderstand the Commission's regulations or challenge the Commission's regulations themselves and, therefore, the Board should deny these arguments.

1. The History of 10 C.F.R. § 50.75(h)

Prior to the December 24, 2002 promulgation and the December 24, 2003 effectiveness of 10 C.F.R. § 50.75(h), the Commission had imposed facility-specific decommissioning trust license conditions on licensees that were not electric utilities so that the Commission would be able to find reasonable assurance that these licensees would have the funds available for the decommissioning process.⁹⁶ Thus, in 2000, when the rate-regulated PASNY sought to transfer the IP3 and FitzPatrick operating licenses to ENO, which is not an electric utility, the NRC required the addition of facility-specific decommissioning trust license conditions to ensure that decommissioning funding would be provided.⁹⁷

On December 24, 2002, based on the belief that it is preferable and more efficient to adopt standard rules, as opposed to applying facility-specific license conditions on a case-by-case basis, the Commission promulgated generic decommissioning trust regulatory requirements at 10 C.F.R. § 50.75(h)(1)-(3).⁹⁸ However, one commenter on this proposed rule stated that, "it is not clear whether provisions in the proposed rule will supersede license conditions previously imposed in license transfer proceedings, or whether licensees with existing license conditions governing decommissioning trusts must apply to amend their

⁹⁵ LAR at 2. Specifically, ENO proposes to delete license conditions 2.Q – 2.V of the IP3 operating license and license conditions 2.H – 2.O of the FitzPatrick operating license. See LAR at Attachment 4 and Attachment 3.

⁹⁶ See 67 Fed. Reg. at 78332-33.

⁹⁷ IP3 2000 Order at Enclosure 3, p.12-14; FitzPatrick Order at Enclosure 3, p.12-14.

⁹⁸ 67 Fed. Reg. at 78334.

licenses and whether these amendment applications would then be subject to hearings.”⁹⁹ In response, the Commission stated that, “licensees will have the option of maintaining their existing license conditions or submitting to the new requirements.”¹⁰⁰

The question regarding the interaction between the pre-existing facility-specific decommissioning trust license conditions and the generic decommissioning trust regulations persisted, though, with the Nuclear Energy Institute writing to the NRC after the promulgation of the rule, in part, that “the rule language does not reflect the intent of the Commission that individual licensees should have the option of retaining their existing license conditions.”¹⁰¹ The Commission agreed with this comment and addressed it through a direct final rule, less than a year after the original rulemaking, by adding to the regulations 10 C.F.R. § 50.75(h)(5), which clarified that licensees had “the option of maintaining existing license conditions or following the new requirements [at 10 C.F.R. § 50.75(h)].”¹⁰²

Based on this regulatory history, the regulations at 10 C.F.R. § 50.75(h) function to allow a licensee with pre-existing facility-specific decommissioning trust license conditions to either maintain those license conditions, in which case the generic requirements at 10 C.F.R. § 50.75(h)(1)-(3) do not apply to the licensee, or, instead, elect to follow the generic requirements at 10 C.F.R. § 50.75(h)(1)-(3).

2. The Petition’s Arguments Misunderstand 10 C.F.R. § 50.75(h)

The Petition argues against the proposed deletion of the IP3 and FitzPatrick facility-specific decommissioning trust license conditions. The Petition states that, if these license conditions are deleted, then, in part, the language, “[a]fter decommissioning has begun and

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 78335.

¹⁰¹ Minor Changes to Decommissioning Trust Fund Provisions, 68 Fed. Reg. 65386, 65387 (Nov. 20, 2003) (Final rule).

¹⁰² *Vermont Yankee*, CLI-16-17, 84 NRC at __ (slip op. at 5-6).

withdrawals from the decommissioning fund are made under [10 C.F.R.] § 50.82(a)(8), no further notification need be made to the NRC,” would apply to IP3 and FitzPatrick.¹⁰³ The Petition then asserts that the application of this language to IP3 and FitzPatrick would “allow the Master Trust Agreement to be materially modified without further license amendments, or state and public notification.”¹⁰⁴ This assertion, though, (1) is not correct and (2) amounts to a challenge to the Commission’s regulations and, therefore, the Board should not admit it as a contention.

The language from 10 C.F.R. § 50.75(h)(1)(iv) that is quoted by the Petition only relates to written notifications to the NRC regarding intentions to make disbursements from a decommissioning trust; it does not, as the Petition mistakenly asserts, relate to written notifications to the NRC regarding changes to decommissioning trust agreements. Notifications regarding changes to decommissioning trust agreements are, instead, addressed by 10 C.F.R. § 50.75(h)(1)(iii). Unlike the requirement for disbursement notifications under 10 C.F.R. § 50.75(h)(1)(iv), the requirement for trust agreement change notifications under 10 C.F.R. § 50.75(h)(1)(iii) does not end after decommissioning has begun. Therefore, to the extent that the Petition is arguing that the proposed license amendment will result in the licensee not having to notify the NRC of material changes to the decommissioning trust agreements after decommissioning has begun, it is erroneous, contrary to the Commission’s regulations, and inadmissible.

10 C.F.R. § 50.75(h)(1)(iii) requires that decommissioning trusts “not be amended in any material respect without written notification to the [NRC] . . . at least 30 working days before the proposed effective date of the amendment” and that the decommissioning trusts “may not be amended if the person responsible for managing the trust . . . receives written notice of

¹⁰³ Petition at 2 (unnumbered) (quoting 10 C.F.R. § 50.75(h)(1)(iv)).

¹⁰⁴ Petition at 2 (unnumbered).

objection from the [NRC] . . . within the notice period.” To the extent that the Petition wants this regulation to require more (*i.e.*, license amendment and “state and public notification”),¹⁰⁵ the Petition is a challenge to the Commission’s regulations and, since the Petition did not petition for a waiver of the application of this regulation in this proceeding, this challenge is inadmissible.¹⁰⁶

The Petition also argues that “the proposed amendment changes the language for License Conditions to include, ‘legal and accounting expenses’ as allowable disbursements or payments from the [decommissioning] trust and will allow ENO to spend decommissioning funds on legal and accounting services aimed at helping [ENO] evade expenditures and fight New York State in court”¹⁰⁷ The Petition does not explicitly explain how such expenses would be allowable as a result of the license amendment request or how its objection to such expenses is within the scope of this license amendment proceeding and, thus, this argument fails to satisfy 10 C.F.R. § 2.309(f)(1)(ii) and should be rejected for this reason alone.¹⁰⁸

Additionally, to the extent that the Petition is arguing against the application of 10 C.F.R. § 50.75(h)(1)(iv) to IP3 and FitzPatrick as a result of the proposed deletion of the facility-specific decommissioning trust license conditions, this argument is inadmissible. 10 C.F.R. § 50.75(h)(1)(iv) includes the terms “legal” and “accounting” in stating that disbursements from decommissioning trusts are restricted to decommissioning expenses except for “incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund.” To the extent that the Petition is challenging this regulatory language without requesting a waiver of this regulatory language, it is inadmissible.¹⁰⁹

¹⁰⁵ *Id.*

¹⁰⁶ See 10 C.F.R. § 2.335.

¹⁰⁷ Petition at 3 (unnumbered) (emphasis omitted).

¹⁰⁸ See, *e.g.*, *Palo Verde*, CLI 91-12, 34 NRC at 155 (providing that a basis should not be inferred where one is not stated explicitly).

¹⁰⁹ See 10 C.F.R. § 2.335.

To the extent that the Petitioners are concerned that any individual withdrawal of funds from the IP3 and FitzPatrick decommissioning trusts is not authorized by the license or applicable regulations, they may challenge it via the 10 C.F.R. § 2.206 process.¹¹⁰ To the extent that the Petitioners disagree with the language of 10 C.F.R. § 50.75(h)(1)(iv), they may file a petition for rulemaking.¹¹¹

E. The Argument that the IP3 License Is “Expired” Is Inadmissible

The Petition states that it would be “procedurally defective” to amend the operating license for IP3 because the license is “expired.”¹¹² This statement does not meet the contention admissibility requirements because, contrary to 10 C.F.R. § 2.309(f)(1)(v), it is unsupported by alleged facts or expert opinions. Additionally, according to the Commission’s regulations at 10 C.F.R. § 2.109(b),

If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

The Staff has determined that a sufficient application for the renewal of the operating license for IP3 was filed at least 5 years before the expiration of the existing license¹¹³ and the Petition does nothing to dispute this. Therefore, by operation of regulation, the IP3 license is not expired and, consequently, the Petition’s argument to the contrary is without basis.

¹¹⁰ *Vermont Yankee*, CLI-16-17, 84 NRC at ___ (slip op. at 15-16) (stating that such a challenge “must identify a particular disbursement and explain why it contravenes applicable requirements.”).

¹¹¹ See 10 C.F.R. § 2.802.

¹¹² Petition at 3 (unnumbered).

¹¹³ See, e.g., <http://www.nrc.gov/info-finder/reactors/ip/ip-timely-renewal.html>. See also *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 343 n.2 (2015) (stating that “[b]ecause the license renewal application was filed at least 5 years before the scheduled expiration date of the [Indian Point Nuclear Generating Unit No. 2] operating license, Unit 2 is in timely renewal; the existing license will not be deemed to have expired until the license renewal application has been finally determined.”).

CONCLUSION

For the reasons stated above, the Board should deny the Petition.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 28th day of November, 2016

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENTERGY NUCLEAR OPERATIONS, INC.)	Docket Nos. 50-286 and 50-333
)	
(Indian Point Nuclear Generating Unit No. 3;)	
James A. FitzPatrick Nuclear Power Plant))	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF ANSWER TO HEARING REQUEST," dated November 28, 2016, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 28th day of November, 2016.

/Signed (electronically) by/

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Dated at Rockville, Maryland
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