

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361-LA & 50-362-LA
	)	
(San Onofre Nuclear Generating Station,	)	November 13, 2012
Units 2 and 3)	)	
	)	

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**SOUTHERN CALIFORNIA EDISON COMPANY'S ANSWER OPPOSING PETITION  
TO INTERVENE AND REQUEST FOR HEARING BY CITIZENS OVERSIGHT**

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**I. INTRODUCTION**

Pursuant to 10 C.F.R. § 2.309(i), Southern California Edison Company (“SCE”) submits this Answer opposing the “Petition to Intervene and Request for Hearing” (“Hearing Request”) submitted by Citizens Oversight, Inc. (or Citizens Oversight Projects, “COPS”) to the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) on October 17, 2012. COPS submitted the Hearing Request to challenge SCE’s July 29, 2011 License Amendment Request (“LAR”) that would convert the Current Technical Specifications (“CTS”) for San Onofre Nuclear Generating Station (“SONGS”) Units 2 and 3 to Improved Technical Specifications (“ITS”). The changes requested in the LAR primarily reflect developments in the updated Improved Standard Technical Specifications (“ISTS”) for Combustion Engineering plants. COPS submitted its Hearing Request under 10 C.F.R. § 2.309 and included three proposed contentions regarding (1) movement of certain Technical Specification surveillance frequencies to a licensee-controlled document; (2) alleged errors in the LAR; and (3) the possible use of the LAR proceeding to support restart of SONGS Unit 2 following steam generator degradation issues.

As explained below, the Hearing Request is untimely, COPS has not demonstrated standing to intervene, and COPS has not submitted an admissible contention. Therefore, the Hearing Request should be rejected in its entirety.

## **II. SUMMARY OF ARGUMENT**

The Hearing Request suffers from multiple, independent, fatal deficiencies. First, COPS filed the Hearing Request two days late. The *Federal Register* notice that provided the opportunity to request a hearing clearly stated that a request for hearing must be filed by October 15, 2012. COPS did not do so, but instead filed the Hearing Request on October 17, 2012—two days late. COPS has provided no explanation, much less justification, for the late filing under 10 C.F.R. §§ 2.307 or 2.309(c). Therefore, the Hearing Request is untimely and should be rejected.

Second, COPS lacks standing to file the Hearing Request. COPS seeks to participate in the hearing process based on the standing of one of its members, Mr. Raymond Lutz. Mr. Lutz does not have standing based on geographical proximity to SONGS or traditional concepts of standing in his own right. Therefore, COPS has not demonstrated representational standing to participate in this LAR proceeding. This lack of standing provides an independent basis for rejecting the Hearing Request.

Third, COPS has not submitted a proposed contention that satisfies the admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1). As discussed in more detail below, the three contentions proposed by COPS are outside the scope of this LAR proceeding, are not material to findings the NRC must make, do not provide the requisite alleged facts or expert opinion, or do not show a genuine dispute with the LAR on a material issue of law or fact. Because the Hearing Request lacks an admissible contention, it must be rejected.

### III. BACKGROUND

SONGS is located near San Clemente, California. SONGS Unit 1 ceased operation in 1992 and has since been decommissioned. SONGS Units 2 and 3 are pressurized water reactors using a Combustion Engineering design. SCE is the operator of SONGS Units 2 and 3.

On July 29, 2011, SCE submitted the LAR pursuant to 10 C.F.R. § 50.90 to modify the CTS for SONGS Units 2 and 3.<sup>1</sup> In the early 1990s, SONGS was the lead Combustion Engineering plant to convert to ITS based on the initial draft of ISTS in NUREG-1432, “Standard Technical Specifications, Combustion Engineering Plants.”<sup>2</sup> In 1996, the NRC approved the SONGS Units 2 and 3 conversion to the ITS.<sup>3</sup> The ISTS in NUREG-1432 have evolved since their initial issuance. The 2011 LAR was based on Revision 3 of NUREG-1432, along with adoption of recent Technical Specification Task Force (“TSTF”) travelers that were expected to be included in Revision 4 of NUREG-1432.<sup>4</sup> In summary, the LAR seeks to revise the SONGS Units 2 and 3 CTS to include improvements from the most recent revision of the ISTS in NUREG-1432 and additional approved TSTF travelers.<sup>5</sup>

Although COPS purports to challenge the LAR, it also raises unrelated challenges concerning the SONGS Units 2 and 3 steam generators. SCE replaced the Unit 2 steam generators in January 2010, and the Unit 3 steam generators in January 2011.<sup>6</sup> SCE requested

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<sup>1</sup> See Letter from D. Bauder, SCE, to NRC, License Amendment Requests (LAR) 260 and 246, Technical Specifications Conversion to NUREG-1432, Rev. 3.0 Plus Selected Approved Travelers (July 29, 2011), available at ADAMS Accession No. ML112510214 (“LAR”).

<sup>2</sup> *Id.*, Cover Letter, at 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* TSTF travelers are approved standard Technical Specification changes that have not yet been incorporated into the next revision of the ISTS.

<sup>5</sup> Throughout this Answer, “CTS” refers to the SONGS Technical Specifications in place prior to the LAR; “ITS” refers to the SONGS Technical Specifications following the LAR; and “ISTS” refers to the standard Combustion Engineering Technical Specifications set forth in NUREG-1432, including any TSTF travelers.

<sup>6</sup> See Letter from E. Collins, NRC, to P. Dietrich, SCE, Confirmatory Action Letter – San Onofre Nuclear Generating Station, Units 2 and 3, Commitments to Address Steam Generator Tube Degradation, CAL 4-12-001, at 3 (Mar. 27, 2012) (“CAL”), available at ADAMS Accession No. ML12087A323.

and obtained a license amendment in 2009 for certain issues related to the SONGS Units 2 and 3 steam generator replacement (*e.g.*, changes to Technical Specifications for steam generator tube integrity).<sup>7</sup>

On January 31, 2012, SCE identified a leak in a tube in one of the SONGS Unit 3 steam generators.<sup>8</sup> This leak was well below allowable limits in the Technical Specifications, and presented no hazard to the public health and safety.<sup>9</sup> Pursuant to established procedures, SCE shut down Unit 3.<sup>10</sup> At the time, SONGS Unit 2 was already shutdown and undergoing a refueling outage.<sup>11</sup> SCE initiated an investigation into the cause of the leakage at Unit 3.

On March 23, 2012, SCE sent a letter to the NRC committing to take certain actions to determine and address the causes of the leak and identified instances of tube wear prior to restart of the SONGS units.<sup>12</sup> The NRC memorialized its understanding of the actions planned by SCE in a March 27, 2012 Confirmatory Action Letter (“CAL”), which confirmed the actions to be taken prior to restarting either unit.<sup>13</sup>

SCE currently is in the process of implementing these actions. SCE has not requested any license amendment to support restart of the SONGS units. The current licenses for the SONGS units continue to apply, and neither the NRC nor SCE has initiated a proceeding under Part 2 of the Commission’s regulations with respect to restart of the SONGS units. If SCE

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<sup>7</sup> Letter from J. Hall, NRC, to R. Ridenoure, SCE, San Onofre Nuclear Generating Station, Units 2 and 3 – Issuance of Amendments Re: Technical Specification Changes in Support of Steam Generator Replacement (TAC Nos. MD9160 and MD 9161), at 1 (June 25, 2009), *available at* ADAMS Accession No. ML091670298.

<sup>8</sup> Letter from P. Dietrich, SCE, to E. Collins, NRC, Steam Generator Return-to-Service Action Plan, San Onofre Nuclear Generating Station, at 1 (Mar. 23, 2012), *available at* ADAMS Accession No. ML12086A182.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 2-3; *id.*, Attachment 1.

<sup>13</sup> *See* CAL at 1-3. The CAL also stated that permission for the SONGS units to resume power operations would be provided by the NRC in writing. *Id.* at 2.

concludes that a license amendment is required for restart, then it will seek one in the future. Accordingly, the LAR at issue in the current proceeding is unrelated to plant restart or the issues involving the steam generator tube leak.

The NRC published the Hearing Notice for the LAR in the *Federal Register* on August 16, 2012.<sup>14</sup> The Hearing Notice provided interested parties until October 15, 2012 to request a hearing.<sup>15</sup> COPS submitted its Hearing Request on October 17, 2012.

#### IV. LEGAL STANDARDS

##### A. Timeliness

The NRC Rules of Practice, 10 C.F.R. § 2.309(b)(3), state that for proceedings with a *Federal Register* notice, a hearing request and petition to intervene must be filed within the time specified in a notice of hearing. Hearing requests and petitions to intervene submitted after the deadline established by Section 2.309(b) are considered untimely and the petitioner must justify their untimely filing. A petitioner bears the burden of successfully addressing the “stringent” late-filing standards.<sup>16</sup>

The NRC recently revised 10 C.F.R. Part 2, including revisions to the requirements for untimely filings.<sup>17</sup> These revisions went into effect on September 4, 2012, and therefore apply to this Hearing Request.<sup>18</sup>

Under the current Part 2 rules, the evaluation of whether a hearing request and petition to intervene filed after the *Federal Register* deadline should be considered depends on whether the

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<sup>14</sup> Southern California Edison, San Onofre Nuclear Generating Station, Units 2 and 3; Application and Amendment to Facility Operating License Involving Proposed No Significant Hazards Consideration Determination, 77 Fed. Reg. 49,463 (Aug. 16, 2012) (“Hearing Notice”).

<sup>15</sup> *Id.* at 49,463.

<sup>16</sup> *See, e.g., AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260-61 (2009).

<sup>17</sup> Final Rule, Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2012) (“Part 2 Revisions”).

<sup>18</sup> *Id.* at 46,562.

untimely filing is related to the substance of the filing. Specifically, under 10 C.F.R. § 2.309(c)(1), if the reason for an untimely filing relates to the substance of the filing (*e.g.*, new document related to proposed contentions), then the untimely filing *will not* be entertained by the presiding officer unless the petitioner demonstrates “good cause” by showing that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

Section 2.309(c)(2)(i) explains further that “Section 2.307 applies to requests to change a filing deadline (requested before or after that deadline has passed) based on reasons not related to the substance of the filing.”

Section 2.307(a) states:

Except as otherwise provided by law, the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time, may be extended or shortened either by the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer.

A petitioner “may file such a request under § 2.307 in advance of a deadline—for example, if the participant is unable to meet a deadline because of health issues” or “shortly after a deadline—for example, if unanticipated events, such as a weather event or unexpected health issues, prevented the [petitioner] from filing for a reasonable period of time after the deadline.”<sup>19</sup> Since “good cause” is not defined in NRC regulations, it is ultimately up to the presiding officer to determine on a case-by-case basis whether a petitioner has demonstrated good cause.<sup>20</sup>

Under the old Part 2, a nontimely hearing request and petition to intervene would only be considered if the presiding officer determined that the nontimely filing satisfies the eight-factor

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<sup>19</sup> *Id.* at 46,571.

<sup>20</sup> *Id.* at 46,572.



balancing test in the old 10 C.F.R. § 2.309(c)(1).<sup>21</sup> The eight factors in Section 2.309(c)(1) were not assigned equal weight. The first factor, whether “good cause” exists for the failure to file on time, was entitled to the most weight.<sup>22</sup> The burden was on the petitioner to demonstrate “that a balancing of these factors weigh[ed] in favor of granting the petition.”<sup>23</sup>

## **B. Standing**

Section 189(a) of the Atomic Energy Act of 1954, as amended (“AEA”), states that “the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding.”<sup>24</sup> The Commission’s regulations implementing this requirement include the standing requirements in 10 C.F.R. § 2.309(d)(1). In order to demonstrate standing, Section 2.309(d)(1) requires, among other things, a petitioner provide: (1) the nature of the petitioner’s right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on the petitioner’s interest.

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<sup>21</sup> These factors are: (i) Good cause, if any, for the failure to file on time; (ii) The nature of the requestor’s/petitioner’s right under the Act to be made a party to the proceeding; (iii) The nature and extent of the requestor’s/petitioner’s property, financial or other interest in the proceeding; (iv) The possible effect of any order that may be entered in the proceeding on the requestor’s/petitioner’s interest; (v) The availability of other means whereby the requestor’s/petitioner’s interest will be protected; (vi) The extent to which the requestor’s/petitioner’s interests will be represented by existing parties; (vii) The extent to which the requestor’s/petitioner’s participation will broaden the issues or delay the proceeding; and (viii) The extent to which the requestor’s/petitioner’s participation may reasonably be expected to assist in developing a sound record.

<sup>22</sup> *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-12-15, 75 NRC \_\_\_, slip op. at 25 n.96 (June 7, 2012) (“The factor given the most weight is whether there is ‘good cause’ for the failure to file on time.”); *see also Dominion Nuclear Conn., Inc. (Millstone Power Station, Unit 3)*, CLI-09-5, 69 NRC 115, 125-26 (2009).

<sup>23</sup> *Tex. Utils. Elec. Co. (Comanche Peak Steam Electric Station, Units 1 & 2)*, CLI-88-12, 28 NRC 605, 609 (1988).

<sup>24</sup> 42 U.S.C. § 2239(a)(1)(A).

In assessing these factors, the NRC applies “contemporaneous judicial concepts of standing.”<sup>25</sup> Thus, to demonstrate standing, a petitioner must show: (1) an actual or threatened, concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision.<sup>26</sup> These three criteria are referred to as injury-in-fact, causation, and redressability, respectively. Under some circumstances, a petitioner may be presumed to have fulfilled the judicial standards for standing based on his or her geographic proximity to a facility or source of radioactivity.<sup>27</sup> These standing concepts are discussed further below.

### **1. Standing Based on Geographic Proximity**

Under some circumstances, standing is presumed based on the petitioner’s geographical proximity to the nuclear power plant.<sup>28</sup> In proceedings involving power reactors, “proximity” standing has been found for petitioners who reside within 40 to 50 miles of the facility in question.<sup>29</sup> The Commission has explained, however, that this proximity presumption only applies to certain types of proceedings, including those for a “construction permit, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool.”<sup>30</sup> The presumption applies because “those cases involved the construction or operation of the reactor itself, with clear implications for the offsite environment, or major alterations to the

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<sup>25</sup> *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 914-16 (2009) (internal citation omitted); *see also Nuclear Mgmt. Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 163 (2006).

<sup>26</sup> *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

<sup>27</sup> *See Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-05-26, 62 NRC 577, 579-83 (2005).

<sup>28</sup> *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-6, 53 NRC 138, 146 (2001), *aff’d on other grounds*, CLI-01-17, 54 NRC 3 (2001).

<sup>29</sup> *See, e.g., Calvert Cliffs*, CLI-09-20, 70 NRC at 916.

<sup>30</sup> *Fla. Power & Light Co.* (St. Lucie, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989) (citing *Va. Elec. Power Co.* (North Anna Nuclear Power Station, Units 1 & 2), ALAB-522, 9 NRC 54 (1979)).

facility with a clear potential for offsite consequences.”<sup>31</sup> Thus, in license amendment proceedings, absent an “obvious potential for offsite consequences,” a petitioner must satisfy the traditional standing requirements.<sup>32</sup>

## 2. Traditional Standing

First, a petitioner’s injury-in-fact showing “requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.”<sup>33</sup> The injury must be “concrete and particularized,” not “conjectural” or “hypothetical.”<sup>34</sup> As a result, standing will be “denied when the threat of injury is too speculative.”<sup>35</sup> Additionally, the alleged “injury-in-fact” must lie within “the zone of interests” protected by the statutes governing the proceeding—either the AEA or the National Environmental Policy Act of 1969, as amended (“NEPA”).<sup>36</sup> The injury-in-fact, therefore, must generally involve potential radiological or environmental harm.<sup>37</sup> The Commission has further explained 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.”<sup>38</sup>

Second, a petitioner must establish that the injuries alleged are “fairly traceable to the proposed action,”<sup>39</sup> which in this case is the updating of the SONGS CTS to the most recently approved version of the ISTS for Combustion Engineering plants. Although petitioners are not

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<sup>31</sup> *St. Lucie*, CLI-89-21, 30 NRC at 329.

<sup>32</sup> *Id.* at 329-30; *see also* *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-04, 49 NRC 185, 191 (1999); *Fla. Power & Light Co.* (Turkey Point Nuclear Plant, Units 3 & 4), LBP-08-18, 68 NRC 533, 539 (2008).

<sup>33</sup> *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972).

<sup>34</sup> *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994) (citations omitted).

<sup>35</sup> *Id.*

<sup>36</sup> *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, N.M.), CLI-98-11, 48 NRC 1, 5 (1998).

<sup>37</sup> *See Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 336 (2002).

<sup>38</sup> *Zion*, CLI-99-04, 49 NRC at 188.

<sup>39</sup> *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75.

required to show that “the injury flows directly from the challenged action,” they must nonetheless show that the “chain of causation is plausible.”<sup>40</sup> The relevant inquiry is “whether a cognizable interest of the petitioner might be adversely affected” by one of the possible outcomes of the proceeding.<sup>41</sup> The Commission has explained that “[a] petitioner cannot seek to obtain standing in a license amendment proceeding simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences.”<sup>42</sup>

Finally, each petitioner is required to show that “its actual or threatened injuries can be cured by some action of the [NRC].”<sup>43</sup> In other words, each petitioner must demonstrate that the injury can be “redressed” by a favorable decision in this proceeding. Furthermore, “it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.”<sup>44</sup>

### **3. Standing of Organizations**

An organization that wishes to intervene in a proceeding may do so either in its own right (by demonstrating injury to its organizational interests), or in a representative capacity (by demonstrating harm to the interests of its members).<sup>45</sup> To establish representational standing, as COPS seeks to do in the Hearing Request, an organization must: (1) show that at least one of its members has standing in his or her own right; (2) identify that member; and (3) show,

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<sup>40</sup> *Id.*

<sup>41</sup> *Nuclear Eng'g Co., Inc.* (Sheffield, Ill., Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978).

<sup>42</sup> *Zion*, CLI-99-04, 49 NRC at 192.

<sup>43</sup> *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001).

<sup>44</sup> *Sequoyah Fuels*, CLI-94-12, 40 NRC at 76 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotations omitted)).

<sup>45</sup> *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (citing *Ga. Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995)).

“preferably by affidavit,” that the organization is authorized by that member to request a hearing on behalf of the member.<sup>46</sup>

### C. Contention Admissibility

In addition to demonstrating standing, a hearing request also must include an admissible contention. The contention admissibility requirements are set forth in 10 C.F.R. § 2.309(f)(1). Specifically, under Section 2.309(f)(1), a petitioner “must set forth with particularity the contentions sought to be raised.” The regulation specifies that each contention must:

- (1) provide a specific statement of the legal or factual issue sought to be raised;
- (2) provide a brief explanation of the basis for the contention;
- (3) demonstrate that the issue raised is within the scope of the proceeding;
- (4) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (5) 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
- (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact.<sup>47</sup>

As the Commission has explained, failure to comply with any one of the six admissibility criteria is grounds for rejection.<sup>48</sup> The Commission further explained that its “strict contention rule is designed to avoid resource-intensive hearings where petitioners have not provided

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<sup>46</sup> *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 408-10 (2007); *see also N. States Power Co.* (Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 & 2; Prairie Island Indep. Spent Fuel Storage Installation), CLI-00-14, 52 NRC 37, 47 (2000); *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000).

<sup>47</sup> 10 C.F.R. § 2.309(f)(1)(i)-(vi).

<sup>48</sup> *See, e.g., FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-08, 75 NRC \_\_\_, slip op. at 3 (Mar. 27, 2012) (stating that proposed contentions “must satisfy all six of the [admissibility] requirements”); *see also* Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004).

sufficient support for their technical claims, and do not demonstrate a potential to meaningfully participate and inform a hearing.”<sup>49</sup> As the Commission has stated:

Nor does our practice permit “notice pleading,” with details to be filled in later. Instead, we require parties to come forward at the outset with sufficiently detailed grievances to allow the adjudicator to conclude that genuine disputes exist justifying a commitment of adjudicatory resources to resolve them.<sup>50</sup>

The NRC specifically revised the admissibility rules in 1989 “to prevent the admission of ‘poorly defined or supported contentions,’ or those ‘based on little more than speculation.’”<sup>51</sup>

For license amendment proceedings, such as this one, the requirement in 10 C.F.R. § 2.309(f)(1)(iii) that contentions raise issues within the scope of the proceeding is particularly important. The Hearing Notice explains: “Contentions shall be limited to matters within the scope of the amendment under consideration.”<sup>52</sup> The scope of a proceeding is defined by the Commission’s notice of opportunity for a hearing.<sup>53</sup> Moreover, contentions are necessarily limited to issues that are germane to the specific application pending before the licensing board.<sup>54</sup> The Commission has explained that “the scope of any hearing should include the proposed license amendments, and any health, safety or environmental issues fairly raised by them.”<sup>55</sup> Any contention that falls outside the specified scope of the proceeding must be

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<sup>49</sup> *Davis-Besse*, CLI-12-08, slip op. at 31; *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001) (explaining that the Commission’s rules on contention admissibility are “strict by design”).

<sup>50</sup> *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999).

<sup>51</sup> *Davis-Besse*, CLI-12-08, slip op. at 3-4 (citations omitted) (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 334 (1999)).

<sup>52</sup> Hearing Notice, 77 Fed. Reg. at 49,471.

<sup>53</sup> *See Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-825, 22 NRC 785, 790-91 (1985).

<sup>54</sup> *See Yankee*, CLI-98-21, 48 NRC at 204.

<sup>55</sup> *Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 624 (1981); *see also Wis. Elec. Power Co.* (Point Beach Nuclear Plant, Units 1 & 2), LBP-82-88, 16 NRC 1335, 1342 (1982) (holding that it is not “appropriate to permit an intervenor to question the original design of the reactor or the systems not directly involved in [the license amendment] application”).

rejected.<sup>56</sup> In that regard, contentions that challenge the current licensing basis, rather than the proposed amendment, are not admissible in a license amendment proceeding.<sup>57</sup>

## V. THE HEARING REQUEST SHOULD BE REJECTED

### A. The Hearing Request Is Untimely

As explained above, a request for hearing and petition to intervene must be filed by the date specified in the *Federal Register* notice.<sup>58</sup> The *Federal Register* notice for SCE's LAR clearly states: "A request for a hearing must be filed by October 15, 2012."<sup>59</sup> COPS filed its Hearing Request on October 17, 2012—*two days late*. COPS does not specifically acknowledge that the Hearing Request was late, or provide any explanation for why it was late, but COPS concedes it was late by including Section III of the Hearing Request, which attempts to justify the late filing by addressing *some* of the untimely filing criteria in the old 10 C.F.R. § 2.309(c). Thus, there appears to be no dispute that the Hearing Request was filed late.

Because the Hearing Request was late, COPS was required to seek an extension of the deadline or justify the untimely filing.<sup>60</sup> As explained above, under the current Part 2 rules, an untimely filing is evaluated under 10 C.F.R. § 2.309(c)(1) if the reason for the untimely filing is related to the substance of the filing. COPS has identified nothing related to the substance of the filing, such as a newly-available document, that would explain why it filed the Hearing Request two days late. Therefore, according to 10 C.F.R. § 2.309(c)(2)(i), the untimely Hearing Request

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<sup>56</sup> 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).

<sup>57</sup> *Point Beach*, LBP-82-88, 16 NRC at 1242.

<sup>58</sup> See 10 C.F.R. § 2.309(b)(3).

<sup>59</sup> Hearing Notice at 49,463. The Hearing Notice also states that a hearing request or petition to intervene must be filed "[w]ithin 60 days after the date of publication of this notice" and "60 days from August 16, 2012." *Id.* at 49,471-472. All of these statements point to the deadline of October 15, 2012.

<sup>60</sup> COPS filed the Hearing Request on October 17, 2012, well after the September 4, 2012 effective date of the recent 10 C.F.R. Part 2 revisions. Part 2 Revisions at 46,562. Therefore, the new Part 2 requirements apply.

must be evaluated according to 10 C.F.R. § 2.307. COPS, however, has not made a request under 10 C.F.R. § 2.307 for an extension of the filing deadline, nor has it attempted to provide good cause for the untimely filing.<sup>61</sup> Indeed, COPS provides no explanation whatsoever for its late filing, much less justification for good cause under Section 2.307. For these reasons, the Hearing Request is untimely under the current Part 2 rules, and should be rejected.

The LAR Hearing Notice may have introduced some confusion about the applicable rules for justifying untimely filings, by stating: “Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).”<sup>62</sup> This statement appears to apply the requirements under the old Part 2. Nonetheless, even under the old Part 2, COPS fails to justify why its untimely hearing request should be entertained.

As discussed above, of the eight factors set forth in the old 10 C.F.R. § 2.309(c), the first factor, good cause for the failure to file on time, is given the most weight. “It would be a rare case where [the Commission] would excuse a non-timely petition absent good cause.”<sup>63</sup> Importantly, COPS does not provide a single reason why it was unable to file its Hearing Request by the October 15, 2012 deadline. Instead, COPS focuses on other issues *unrelated to good cause* for the untimely filing, such as an “interest in the outcome of the proceeding” and Mr. Lutz’s background to “provide important expert assistance.”<sup>64</sup> Thus, COPS has not demonstrated good cause for the late Hearing Request.

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<sup>61</sup> The Hearing Request at 3 addresses whether COPS has good cause “to become a party,” not good cause for the untimely filing.

<sup>62</sup> Hearing Notice at 49,472.

<sup>63</sup> *Tenn. Valley Auth.* (Watts Bar Nuclear Plant, Unit 2), CLI-10-12, 71 NRC 319, 323 (2010).

<sup>64</sup> *See* Hearing Request at 3.



Absent a showing of good cause for the failure to file on time, an untimely hearing request will only be entertained if the petitioner makes “a compelling showing on the remaining factors.”<sup>65</sup> COPS does not satisfy this standard. COPS’ discussion is limited to five of the remaining seven factors and is cursory at best. For example, in discussing the nature and extent of the petitioner’s property, financial, or other interest in the proceeding (factor three), COPS states that its interests are fully described in an attached declaration.<sup>66</sup> But COPS provided no such declaration. Additionally, the late Hearing Request would broaden the scope of and delay the current proceeding (factor seven), because COPS is the only petitioner in this proceeding. Moreover, COPS provides no indication that its participation on these technical issues would contribute to the development of a sound record (factor eight). Instead, COPS merely provides general information about Mr. Lutz’s background, with no indication that he has any expertise regarding nuclear plant Technical Specifications or any issues raised in the LAR.<sup>67</sup> Accordingly, a balancing of the factors under 10 C.F.R. § 2.309(c)(1) demands rejection of the late arguments.<sup>68</sup>

In summary, the Hearing Request was filed two days late. Whether evaluated under the old or current Part 2 rules, COPS has not sought an extension or justified its untimely filing. For this reason alone, the Hearing Request should be rejected.

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<sup>65</sup> *Pilgrim*, CLI-12-15, slip op. at 26 n.96; see also *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 & 2), CLI-86-8, 23 NRC 241, 244 (1986).

<sup>66</sup> Hearing Request at 4.

<sup>67</sup> *Id.* at 3-4.

<sup>68</sup> The other factors in 10 C.F.R. § 2.309(c)(1) are less important and do not outweigh COPS’ failure to demonstrate good cause or meet factors seven and eight. See, e.g., *Pac. Gas & Elec. Co.* (Diablo Canyon Power Plant Indep. Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 8 (2008); *Tex. Utils. Elec. Co.* (Comanche Peak Steam Elec. Station, Unit 2), CLI-93-4, 37 NRC 156, 165 (1993). Factors two through four speak towards standing. As discussed below, COPS has not demonstrated standing to intervene; therefore, these factors weigh against COPS. Factors five (availability of other means) and six (interests represented by other parties) are entitled to the least weight. See *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), LBP-00-8, 51 NRC 146, 154 (2000) (citing *Braidwood*, CLI-86-8, 23 NRC at 244-45).

## **B. COPS Has Not Demonstrated Standing**

COPS seeks to participate in the hearing process based on the standing of one of its members, Mr. Raymond Lutz, who also is the COPS' representative that submitted the Hearing Request.<sup>69</sup> To establish representational standing, COPS must show that Mr. Lutz has standing in his own right. It has not done so. As discussed below, Mr. Lutz does not have standing under either a proximity presumption or based on evaluation of the traditional standing requirements.

Mr. Lutz, and thus COPS, does not have standing based on geographic proximity. For license amendment proceedings, the proximity presumption only applies if the amendment results in an "obvious potential for offsite consequences."<sup>70</sup> The LAR simply revises the SONGS CTS to incorporate changes from the ISTS for Combustion Engineering plants; this does not present an obvious potential for offsite consequences, and COPS has not argued nor demonstrated otherwise. Furthermore, the LAR does not involve any physical alterations to the facility. Thus, the LAR does not identify a clear potential for offsite consequences, which is necessary for application of the proximity presumption.<sup>71</sup>

Nonetheless, even if the proximity presumption were applied, Mr. Lutz does not satisfy it. Mr. Lutz does not reside within 40 or 50 miles of SONGS, nor has he provided any indication of other activities within this geographical proximity. In particular, Mr. Lutz states that he resides at 1010 Old Chase Ave, El Cajon, CA 92020, which is located at coordinates (32.7797, -116.9474).<sup>72</sup> The corner of the SONGS plant closest to Mr. Lutz's residence is approximately located at coordinates (33.3652, -117.5485). The distance between Mr. Lutz's residence and the

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<sup>69</sup> Hearing Request at 2.

<sup>70</sup> See *St. Lucie*, CLI-89-21, 30 NRC at 329-30; *Zion*, CLI-99-04, 49 NRC at 191.

<sup>71</sup> See *St. Lucie*, CLI-89-21, 30 NRC at 329-30; *Zion*, CLI-99-04, 49 NRC at 191.

<sup>72</sup> Hearing Request at 2.

SONGS plant boundary is over 53 miles.<sup>73</sup> Therefore, COPS cannot establish standing based upon the location of Mr. Lutz's residence.

Because there is no proximity presumption, COPS must demonstrate Mr. Lutz's standing using traditional standing rules. Under traditional rules of standing, COPS must demonstrate injury-in-fact, causation, and redressability. It has not done so. COPS only indirectly addresses injury-in-fact and completely fails to address causation and redressability in its standing argument.

With respect to injury-in-fact, COPS claims that Mr. Lutz is a "ratepayer of the San Diego Gas and Electric, a unit of Sempra Energy, which is 20% owner of SONGS."<sup>74</sup> Economic interests of ratepayers, however, are not within the zone of interests protected by the AEA, and cannot support Mr. Lutz's standing.<sup>75</sup> The Hearing Request also states that "Mr. Lutz is concerned about the safety of the plant, particularly in light of the continuing plant shutdown after the emergency shutdown on January 31, 2012, apparently due to design errors of SCE and Mitsubishi Heavy Industries, and is still being investigated."<sup>76</sup> Contrary to the Commission's requirements, these general objections to SONGS cannot satisfy the injury-in-fact requirement because they are unrelated to the LAR at issue in this proceeding.<sup>77</sup> Furthermore, a general allegation of safety without any support cannot support standing.<sup>78</sup>

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<sup>73</sup> See, e.g., Google Maps Distance Calculator, <http://www.daftlogic.com/projects-google-maps-distance-calculator.htm>.

<sup>74</sup> Hearing Request at 2.

<sup>75</sup> *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610, 614 (1976).

<sup>76</sup> Hearing Request at 2.

<sup>77</sup> See *Zion*, CLI-99-04, 49 NRC at 188.

<sup>78</sup> See *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001) (requiring a petitioner to "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.").

Moreover, general concerns about the safety of SONGS due to the current shutdown do not support the causation prong of standing, because these concerns are not “traceable to the proposed action”<sup>79</sup> which relates only to updating the SONGS CTS to the most recently approved version of the ISTS for Combustion Engineering plants. Indeed, COPS itself concedes that the LAR is distinct from the recovery from the current shutdown.<sup>80</sup> As a result, these issues are outside the scope of the LAR and cannot be used as a basis for standing in this proceeding.

Finally, COPS’ concerns about the safety of SONGS due to the current shutdown cannot be redressed in this proceeding, because this proceeding only relates to updating the SONGS CTS, not the restart of the SONGS units. In other words, there is no remedy in this proceeding that would redress COPS’ concerns about the safety of SONGS due to the current shutdown.

In summary, Mr. Lutz does not have standing based on geographical proximity to SONGS or traditional standing in his own right. As a result, COPS has not demonstrated representational standing to participate in the LAR proceeding.

### **C. COPS Has Not Submitted an Admissible Contention**

COPS proposed three contentions as part of its Hearing Request. As demonstrated below, all of these proposed contentions fail to satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1), and should be rejected.

#### **1. Contention 1 (Surveillance Frequency) Is Inadmissible**

COPS’ Contention 1 states: “Petitioner contends that removing surveillance frequencies from the operating license document obfuscates the minimum requirements, may introduce human error, and limits review by the public.”<sup>81</sup>

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<sup>79</sup> *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75.

<sup>80</sup> *See* Hearing Request at 16 (“The matter of operating Unit 2 or Unit 3 after the emergency shutdown on January 31, 2012, and after the discovery of severe steam generator tube wear is distinct from the changes proposed in the current LAR.”).

<sup>81</sup> *Id.* at 5.

By way of background, the LAR adopts TSTF-425-A, Rev. 3, “Relocate Surveillance Frequencies to Licensee Control - RITSTF Initiative 5b.”<sup>82</sup> This change affects multiple sections in the SONGS Technical Specifications, and relocates certain surveillance frequencies specified in the CTS to a licensee-controlled document as part of a Surveillance Frequency Control Program (“SFCP”).<sup>83</sup> For example, COPS identifies an example in which the LAR changes the surveillance requirement (for verifying that primary to secondary leakage is  $\leq 150$  gallons per day from any one steam generator) from 72 hours to “[i]n accordance with the Surveillance Frequency Control Program.”<sup>84</sup> Contention 1 challenges use of the SFCP.

The TSTF is an industry group that develops generic industry positions on Technical Specifications. The TSTF works with the industry Risk Informed Technical Specification Task Force (“RITSTF”) to create travelers to implement risk-informed initiatives. The TSTF prepared TSTF-425-A in cooperation with the RITSTF. The TSTF describes TSTF-425-A as follows: “The proposed change relocates all periodic Surveillance Frequencies to licensee control. Revisions to the Surveillance Frequencies will be made in accordance with a new program, the Surveillance Frequency Control Program, which is added to the Administrative Controls.”<sup>85</sup>

TSTF-425-A requires the application of NEI 04-10, Rev. 1, “Risk-informed Technical Specifications Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies.” The NEI 04-10 methodology uses a risk-informed, performance based approach for establishing surveillance frequencies.<sup>86</sup> NEI 04-10 has been approved by the NRC Staff.<sup>87</sup>

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<sup>82</sup> LAR, Enclosure 3, at 2.

<sup>83</sup> *Id.*

<sup>84</sup> LAR, Att. 1, Vol. 7, at 347, 349.

<sup>85</sup> Letter from TSTF, to NRC, Transmittal of TSTF-425, Revision 3, “Relocate Surveillance Frequencies to Licensee Control – RITSTF Initiative 5b,” Enclosure, § 1.0 (Mar. 18, 2009), *available at* ADAMS Accession No. ML090850627.

<sup>86</sup> NEI 04-10, Risk-informed Technical Specifications Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies, at 1 (Rev. 1, Apr. 2007), *available at* ADAMS Accession No. ML071360456.

The NRC Staff reviews TSTF travelers and coordinates with the TSTF to revise them as necessary. The Staff then announces the availability of a model license amendment request, model safety evaluation, and model no significant hazards consideration determination for use by licensees. For example, the Staff issued a *Federal Register* notice on July 6, 2009 endorsing the use of TSTF-425-A.<sup>87</sup>

As discussed below, COPS' Contention 1 is inadmissible because it is outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii); it does not identify any issue that is material to this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iv); it is not adequately supported, contrary to 10 C.F.R. § 2.309(f)(1)(v); and it does not raise a genuine dispute, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

**a. Contention 1 Does Not Raise a Material Issue**

Contention 1 does not demonstrate that the “issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding,” as required by 10 C.F.R. § 2.309(f)(1)(iv).

Contention 1 challenges the removal of portions of the Technical Specifications to a licensee-controlled document—here, the SFCP. COPS states that the LAR will “remove surveillance frequency specifications (typically specified by the maximum time between inspections) from the operating license document and instead refer to a companion document, which is under the control of the licensee.”<sup>88</sup> Therefore, rather than challenge specific surveillance frequencies being moved to the SFCP, or specific attributes of the SFCP, COPS generally challenges the concept of the SFCP.

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<sup>87</sup> Notice of Availability of Technical Specification Improvement to Relocate Surveillance Frequencies to Licensee Control—Risk-Informed Technical Specification Task Force (RITSTF) Initiative 5b, Technical Specification Task Force—425, Revision 3, 74 Fed. Reg. 31,996, 31,996 (July 6, 2009).

<sup>88</sup> *See id.*

<sup>89</sup> Hearing Request at 5.

This generalized challenge is not material to any required finding in this proceeding. The content of Technical Specifications is governed by AEA Section 182(a) and 10 C.F.R. § 50.36. Neither requires that surveillance frequencies be specified in the Technical Specifications or precludes use of an SFCP. Additionally, in a 1993 policy statement on improvements to Technical Specifications, the Commission acknowledged the development of ISTS and encouraged licensees to use the ISTS as the basis for plant-specific Technical Specifications.<sup>90</sup> Furthermore, the NRC has approved requests by other nuclear power plants to relocate surveillance frequencies to a licensee-controlled document.<sup>91</sup> The LAR follows the Commission's policy statement to revise the SONGS CTS to match the ISTS and TSTF travelers, and the proposed relocation of the surveillance frequencies implements TSTF-425-A, which has been explicitly endorsed by the NRC Staff.

COPS further "claims that moving surveillance frequency specifications completely out of the Technical Specification document makes it difficult for the public and other organizations to review the surveillance frequencies in use and to provide useful feedback to correct assumptions made by operators."<sup>92</sup> The Commission, however, has previously rejected claims similar to these. In *Millstone*, the Commission upheld rejection of a contention challenging the removal of details from the licensee's Technical Specifications to a licensee-controlled document.<sup>93</sup> The Commission rejected an argument that the removal of these details from the Technical Specifications would result in loss of future opportunities to challenge licensee-initiated changes to these details, concluding that "the Petitioners may not simply complain

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<sup>90</sup> See Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, 58 Fed. Reg. 39,132, 39,136 (July 22, 1993).

<sup>91</sup> See, e.g., Biweekly Notice, Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 77 Fed. Reg. 43,374, 43,381 (July 24, 2012) (issuing amendment regarding TSTF-425 for Comanche Peak Units 1 & 2).

<sup>92</sup> Hearing Request at 6.

<sup>93</sup> See *Millstone*, CLI-01-24, 54 NRC 349.

generally of lost hearing opportunities causing future safety risks.”<sup>94</sup> The Commission continued: “The Petitioners do not have a ‘right’ to intervene in possible future changes to effluent monitoring details if no safety or legal reason compels their retention in the . . . license.”<sup>95</sup> COPS has provided no safety or legal reason for rejecting the SFCP, and therefore their arguments must fail.

In summary, COPS has not identified any violation of any legal requirement as part of Contention 1, and the NRC has approved the relocation of surveillance frequencies from the Technical Specifications to licensee-controlled documents for other nuclear plants. Therefore, to the extent that COPS is raising a general challenge to the relocation of surveillance frequencies to a licensee-controlled document, there is no legal basis for such a challenge. Such a challenge is not material to a finding that is required to be made in this proceeding and is inadmissible under Section 2.309(f)(1)(iv).

**b. Contention 1 Does Not Raise a Genuine Dispute**

Contention 1 does not “provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact,” as required by 10 C.F.R. § 2.309(f)(1)(vi). Section 2.309(f)(1)(vi) requires that a proposed contention “include references to specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute.” Except for one instance, Contention 1 provides no references to specific portions of the application, but instead provides generalized statements about the LAR. The one instance is a reference to LAR Attachment 1, Volume 7 (Chapter 3.4 Reactor Coolant System (RCS)) and the surveillance

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<sup>94</sup> *Id.* at 359.

<sup>95</sup> *Id.* at 360.



requirement for steam generator primary to secondary leakage.<sup>96</sup> This reference, however, only identifies the *current* surveillance frequency of “verifying that primary to secondary LEAKAGE is  $\leq$  150 gallons per day through any one SG every 72 hours.”<sup>97</sup> COPS challenges this current surveillance, not any change to it.<sup>98</sup> Indeed, COPS claims that the current surveillance is “ridiculously infrequent.”<sup>99</sup> Because this argument contests the CTS and not the proposed Technical Specifications, it does not demonstrate a genuine dispute with respect to the LAR.<sup>100</sup>

To the extent COPS is generally challenging use of the SFCP, the LAR provides a thorough and clear discussion of why it is not hazardous to public health and safety. For example, for the movement of the current primary to secondary leakage surveillance identified by COPS, the LAR provides a detailed justification for use of the SFCP.<sup>101</sup> The justification describes the SFCP and corresponding controls, and explains that the proposed change meets the current regulations, is consistent with the defense-in-depth philosophy, maintains sufficient safety margins, results in small changes to core damage frequency consistent with the intent of the Commission’s Safety Goal Policy Statement, and will be monitored using performance management strategies.<sup>102</sup> This explanation has not been challenged by COPS. Similarly, the LAR provides a discussion of the determination of no significant hazards considerations for removing details from the CTS into other documents, such as the SFCP,<sup>103</sup> but COPS has not

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<sup>96</sup> Hearing Request at 8.

<sup>97</sup> *Id.*; LRA, Att. 1, Vol. 7, at 351.

<sup>98</sup> Hearing Request at 8-9.

<sup>99</sup> *Id.* at 9.

<sup>100</sup> Additionally, because this argument challenges the CTS, it is outside the scope of this proceeding and therefore is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii). Challenges to the CTS must be raised in accordance with 10 C.F.R. § 2.206, not a hearing request under 10 C.F.R. § 2.309. *See, e.g., Point Beach*, LBP-82-88, 16 NRC at 1242.

<sup>101</sup> *See* LAR, Att. 1, Vol. 7, at 351-53.

<sup>102</sup> *Id.* at 352-53.

<sup>103</sup> *See* LAR, Att. 1, Vol. 15, at 8-9.

challenged this discussion either. A contention that does not directly controvert a position taken by the applicant in the application is subject to dismissal.<sup>104</sup>

COPS also alleges that the relocation of the surveillance frequencies to a licensee-controlled document will allow the “licensee free-rein to reduce the surveillance frequencies.”<sup>105</sup> However, this allegation mischaracterizes the LAR. In relocating the surveillance frequencies to a licensee-controlled document, SCE will not have “free-rein” to reduce those frequencies. Instead, as described in the LAR, the surveillance frequencies will be identified and controlled in accordance with specific criteria in the SFCP, which will be required as Section 5.5.2.18 of the ITS.<sup>106</sup> In particular, changes to the surveillance frequencies can only be made in accordance with the provisions in NEI 04-10, Rev. 1. As the LAR states:

The referenced document, NEI 04-10, Rev. 1, provides a detailed description of the process to be followed when considering changes to a Surveillance Frequency. NEI 04-10, Rev. 1, has been reviewed and approved by the NRC.<sup>107</sup>

SCE will only be allowed to change the surveillance frequencies in accordance with an NRC-approved document. NEI 04-10 also explains that any changes to surveillance frequencies are to be documented for future audits by the NRC.<sup>108</sup> Thus, Contention 1 mischaracterizes the LAR. A mischaracterization of an application does not establish a genuine dispute with the application.<sup>109</sup> Therefore, COPS’ claims regarding SCE’s alleged “free-reign” to change the surveillance frequencies also should be rejected as a basis for Contention 1.

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<sup>104</sup> See *S.C. Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 & 3), CLI-10-1, 71 NRC 1, 21-22 (2010).

<sup>105</sup> Hearing Request at 7.

<sup>106</sup> LAR, Att. 1, Vol. 14, at 83.

<sup>107</sup> LAR, Att. 1, Vol. 4, at 10.

<sup>108</sup> NEI 04-10, at 27.

<sup>109</sup> See, e.g., *Tenn. Valley Auth.* (Bellefonte Nuclear Power Plant Units 3 & 4), LBP-08-16, 68 NRC 361, 401 (2008) (proposed contentions that mischaracterize the application run afoul of 10 C.F.R. § 2.309(f)(1)(vi)).

**c. Contention 1 Is Outside the Scope of this Proceeding**

Rather than challenging the contents of the LAR, a number of arguments in Contention 1 involve unauthorized challenges to the SONGS CTS. For example, COPS claims that current surveillances “must be split into two major categories, and the surveillance frequencies increased (less time delay) for critical operational parameters.”<sup>110</sup> COPS identifies a “CLASS 1: Measurements of critical operational parameters to allow the Nuclear Power Plant (“NPP”) to continue to safely operate,” and a “CLASS 2: Tests of backup and safety equipment that is not necessary for the normal operation of the plant but are standing ready in case an emergency might unfold.”<sup>111</sup> COPS’ attempts to challenge and essentially rewrite the CTS are outside the scope of this proceeding.

As discussed above, the scope of this proceeding is defined by the Hearing Notice, and any contention that falls outside that scope must be rejected.<sup>112</sup> The scope of this proceeding is limited to the changes requested as part of the LAR. COPS’ efforts to impose further changes to the CTS are outside the scope of this proceeding.<sup>113</sup> Therefore, Contention 1 should be denied pursuant to 10 C.F.R. § 2.309(f)(1)(iii).

**d. Contention 1 Is Not Adequately Supported**

Contention 1 is not adequately supported, because COPS has not provided the alleged facts and expert opinion required by 10 C.F.R. § 2.309(f)(1)(v).

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<sup>110</sup> Hearing Request at 8.

<sup>111</sup> *Id.*

<sup>112</sup> *See Catawba*, ALAB-825, 22 NRC at 790-91; *Yankee*, CLI-98-21, 48 NRC at 204; *Trojan*, ALAB-534, 9 NRC at 289 n.6.

<sup>113</sup> *See, e.g., Dresden*, CLI-81-25, 14 NRC at 624 (holding that “the scope of any hearing should include the proposed license amendments, and any health, safety or environmental issues fairly raised by them”); *see also Point Beach*, LBP-82-88, 16 NRC at 1342 (holding that it is not “appropriate to permit an intervenor to question the original design of the reactor or the systems not directly involved in [the license amendment] application”).

COPS references what it characterizes as “recent nuclear power plant surveys,” and states that “maintenance-related omissions constitute a substantial proportion of the human failure root causes in significant event reports.”<sup>114</sup> COPS’ discussion of maintenance errors is completely irrelevant to the subject of Contention 1, which is whether surveillance frequencies should be moved to a separate licensee-controlled document. Surveillance requirements are defined in 10 C.F.R. § 50.36(c)(3) as “requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met.” These requirements do not constitute maintenance. Furthermore, COPS provides no basis for believing that purported errors by maintenance workers have any relevance to the determination of surveillance frequencies under the risk-informed provisions of the SFCP and NEI 04-10. Additionally, COPS’ vague references to nuclear plant surveys without citations to specific portions of those surveys would be inappropriate even if the documents were germane to Contention 1.<sup>115</sup>

Other than these irrelevant references, Contention 1 is based entirely on speculation. For example, COPS states that “there is a concern that the operators will opt to decrease the surveillance frequencies (increase the time between surveillances) to reduce cost while ignoring the fact that many surveillances will be omitted or incorrectly performed by leaving out necessary steps.”<sup>116</sup> COPS makes other unsupported statements about SCE personnel being “overconfident in evaluating the correctness of their knowledge,” underestimating risk, and increasing the complexity of the surveillance program.<sup>117</sup> COPS provides no support for these statements, only gross speculation. In that regard, COPS cites very general statements in surveys

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<sup>114</sup> Hearing Request at 6.

<sup>115</sup> *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-3, 29 NRC 234, 240-41 (1989).

<sup>116</sup> Hearing Request at 6.

<sup>117</sup> *Id.* at 7, 9.

and articles regarding personnel errors and failure scenarios,<sup>118</sup> without showing that such information has any applicability to the determination of surveillance frequencies pursuant to a program such as NEI 04-10 or the SFCP. The Commission has explained that a contention “will be ruled inadmissible if the petitioner ‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation.’”<sup>119</sup> COPS’ bare assertions and speculation here cannot support an admissible contention. Therefore, Contention 1 should be denied pursuant to 10 C.F.R. § 2.309(f)(1)(v).

To the extent that COPS may be relying upon the experience of Mr. Lutz as support for such statements, Mr. Lutz has no demonstrated expertise in these areas. COPS states that “Mr. Lutz is an electrical engineer with Master’s degree from San Diego State University, and has also has run quality assurance departments in private industry related to electromechanical systems similar in nature to the vast majority of devices at SONGS.”<sup>120</sup> However, the Hearing Request does not indicate that Mr. Lutz has any experience with nuclear plants, with the Technical Specifications for nuclear plants, with licensee-controlled documents governing surveillance frequencies, or with implementation of the Technical Specifications by operators, which are the topics of the allegations in Contention 1. As a result, unsupported statements by Mr. Lutz, as discussed in the Hearing Request, are not sufficient to support the allegations in Contention 1.<sup>121</sup>

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<sup>118</sup> *Id.* at 6-7.

<sup>119</sup> *Fansteel* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *Oyster Creek*, CLI-00-6, 51 NRC at 208).

<sup>120</sup> Hearing Request at 3.

<sup>121</sup> *See, e.g., Progress Energy Fla., Inc.* (Combined License Application, Levy Cnty. Nuclear Power Plant, Units 1 & 2), CLI-10-02, 71 NRC 27, 40 (2002) (“At the contention admissibility stage, a Board may consider a proffered expert’s qualifications in evaluating whether a contention is adequately supported.”). In that regard, the party sponsoring an expert has the burden of showing that the expert is properly qualified. *See Duke Energy Corp.* (Catawba Nuclear Station, Units 1 & 2), CLI-04-21, 60 NRC 21, 27-28 (2004) (holding that the burden of demonstrating that a witness is qualified to be an expert falls on the party offering the witness); *Duke Power Co.* (William B. McGuire Nuclear Station, Units 1 & 2), ALAB-669, 15 NRC 453, 475 (1982) (holding that experts must possess “the knowledge, skill, experience, training, or education” to be qualified to provide expert testimony, and that expertise must be in the field in which they provide testimony).

## 2. Contention 2 (Alleged Mistakes) Is Inadmissible

COPS' Contention 2 states: "Petitioner contends there are a number of mistakes and other problems in the LAR."<sup>122</sup> Contention 2 raises five separate issues, which are each discussed below. As discussed below, the mistakes alleged by COPS are based on its own misunderstanding of the LAR, or otherwise do not satisfy the contention admissibility requirements. Accordingly, whether evaluated individually or together, these five issues do not support admission of Contention 2.

### a. Steam Generator Level

COPS alleges that SCE proposes to reduce steam generator level from 25% to 20%.<sup>123</sup>

The paragraph at issue here states:

Each OPERABLE loop consists of two RCPs providing forced flow for heat transport to an SG that is OPERABLE. SG, and hence RCS loop, OPERABILITY with regard to SG water level is ensured by the Reactor Protection System (RPS) in MODES 1 and 2. A reactor trip places the plant in MODE 3 if any SG level is  $\leq$  [25]% as sensed by the RPS. The minimum water level to declare the SG OPERABLE is [25]%.<sup>124</sup>

The LAR changes the bracketed values from 25% to 20%.<sup>125</sup> COPS claims that this is a mistake because most of the changes proposed in the LAR go from 25% to 50%.<sup>126</sup> COPS concludes: "This proposed change is a reduction of the level of water in the steam generator to allow the reactor to run. COPS objects to this loosening of licensee requirement and puts the plant in severe danger."<sup>127</sup>

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<sup>122</sup> Hearing Request at 9.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 10; LAR, Att. 1, Vol. 7, at 99.

<sup>125</sup> LAR, Att. 1, Vol. 7, at 99.

<sup>126</sup> *Id.*

<sup>127</sup> Hearing Request at 9.

As a preliminary matter, COPS misunderstands the LAR. Both COPS' claim that SCE proposes to reduce steam generator level from 25% to 20% and its claim that this change is a mistake are *factually incorrect*. The paragraph at issue does not reflect a change to the CTS for SONGS Units 2 and 3; rather, it is a markup of the corresponding ISTS bases from NUREG-1432.<sup>128</sup> This section of the LAR is correctly identified as "Improved Standard Technical Specifications (ISTS) Bases Markup and Bases Justification for Deviations (JFDs)."<sup>129</sup> The markup provides a "2" annotation for the change from 25% to 20%.<sup>130</sup> The markup explains the "2" annotation as follows:

The ISTS Bases contains bracketed information and/or values that are generic to all Combustion Engineering vintage plants. The brackets are removed and the proper plant specific information/value is provided. This is acceptable since the information/value is changed to reflect the current licensing basis.<sup>131</sup>

Therefore, SCE has not changed the steam generator level from 25% to 20%; the value of 20% is part of the current licensing basis.<sup>132</sup> The markup challenged by COPS simply shows a change from the bracketed value in the ISTS to the SONGS-specific value. This is clearly not a mistake, but reflects the status quo.

As discussed above, the scope of this proceeding is defined by the Hearing Notice, and any contention that falls outside that scope must be rejected.<sup>133</sup> The scope of this proceeding is the changes to the CTS for SONGS Units 2 and 3 set forth in the LAR, not a determination of the appropriate steam generator water level for inducing a reactor trip, which SCE does not propose

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<sup>128</sup> LAR, Att. 1, Vol. 7, at 97, 99.

<sup>129</sup> *Id.* at 97.

<sup>130</sup> *Id.* at 99.

<sup>131</sup> *Id.* at 102.

<sup>132</sup> *See, e.g.*, LAR, Att. 1, Vol. 6, at 14, 25 (identifying the allowable value for steam generator level as  $\geq 20\%$ ).

<sup>133</sup> *See Catawba*, ALAB-825, 22 NRC at 790-91; *Yankee*, CLI-98-21, 48 NRC at 204; *Trojan*, ALAB-534, 9 NRC at 289 n.6.

to change. Because SCE is not changing the steam generator level for reactor trip, a challenge to this level is outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).<sup>134</sup>

Additionally, COPS fails to provide the required “alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue,” contrary to 10 C.F.R. § 2.309(f)(1)(v). It has provided absolutely no support for why the steam generator reactor trip level should be 25% or 50%.<sup>135</sup> For similar reasons, COPS has not identified a “genuine dispute with the applicant/licensee on a material issue of law or fact,” contrary to 10 C.F.R. § 2.309(f)(1)(vi).

#### **b. Pressure Boundary Leakage**

COPS next alleges that there is a “severe internal inconsistency” in the SONGS Technical Specifications.<sup>136</sup> COPS claims that the requirement of “No pressure boundary LEAKAGE” is inconsistent with the requirement that Reactor Coolant System (“RCS”) operational leakage be limited to “150 gallons per day primary to secondary LEAKAGE through any one Steam Generator (SG).”<sup>137</sup> COPS concludes that these requirements must be improved, and provides suggested alternative wording.<sup>138</sup>

COPS’ arguments about pressure boundary leakage do not support an admissible contention. First, the arguments are outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii). As shown in the LAR, the requirements challenged by COPS already exist in

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<sup>134</sup> See, e.g., *Dresden*, CLI-81-25, 14 NRC at 624 (holding that “the scope of any hearing should include the proposed license amendments, and any health, safety or environmental issues fairly raised by them”); see also *Point Beach*, LBP-82-88, 16 NRC at 1342 (holding that it is not “appropriate to permit an intervenor to question the original design of the reactor or the systems not directly involved in [the license amendment] application”).

<sup>135</sup> Although COPS suggests that the lower trip level “puts the plant in severe danger,” it provides no support for this conclusion, contrary to 10 C.F.R. § 2.309(f)(1)(v).

<sup>136</sup> Hearing Request at 10.

<sup>137</sup> *Id.* at 10-11.

<sup>138</sup> *Id.* at 12-13.



the SONGS CTS, and SCE is not proposing to modify them in any manner.<sup>139</sup> Because SCE is not proposing to change these requirements, they cannot be challenged by COPS in this proceeding.<sup>140</sup> Similarly, COPS' suggestions for improving the CTS are outside of scope and should be rejected.

Additionally, COPS misunderstands the purposes of these two distinct requirements. The requirement for no pressure boundary leakage is explained in the LAR as follows:

No pressure boundary LEAKAGE is allowed, being indicative of material deterioration. LEAKAGE of this type is unacceptable as the leak itself could cause further deterioration, resulting in higher LEAKAGE. Violation of this LCO could result in continued degradation of the RCPB. LEAKAGE past seals and gaskets is not pressure boundary LEAKAGE.<sup>141</sup>

As is explained in the LAR, that requirement is based upon the following:

The safety significance of RCS LEAKAGE varies widely depending on its source, rate, and duration. Therefore, detecting and monitoring reactor coolant LEAKAGE into the containment area is necessary. Quickly separating the identified LEAKAGE from the unidentified LEAKAGE is necessary to provide quantitative information to the operators, allowing them to take corrective action should a leak occur detrimental to the safety of the facility and the public. . . .

This LCO deals with protection of the reactor coolant pressure boundary (RCPB) from degradation and the core from inadequate cooling, in addition to preventing the accident analysis radiation release assumptions from being exceeded. The consequences of violating this LCO include the possibility of a loss of coolant accident (LOCA).<sup>142</sup>

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<sup>139</sup> LAR, Att. 1, Vol. 7, at 346, 348.

<sup>140</sup> See, e.g., *Dresden*, CLI-81-25, 14 NRC at 624 (holding that “the scope of any hearing should include the proposed license amendments, and any health, safety or environmental issues fairly raised by them”); see also *Point Beach*, LBP-82-88, 16 NRC at 1342 (holding that it is not “appropriate to permit an intervenor to question the original design of the reactor or the systems not directly involved in [the license amendment] application”).

<sup>141</sup> LAR, Att. 1, Vol. 7, at 361.

<sup>142</sup> *Id.* at 360.

The requirement regarding primary to second leakage through the steam generators, on the other hand, is described in the LAR as follows:

The limit of 150 gallons per day per SG is based on the operational LEAKAGE performance criterion in NEI 97-06, Steam Generator Program Guidelines (Ref. 4). The Steam Generator Program operational LEAKAGE performance criterion in NEI 97-06 states, “The RCS operational primary to secondary leakage through any one SG shall be limited to 150 gallons per day.” The limit is based on operating experience with SG tube degradation mechanisms that result in tube leakage. The operational leakage rate criterion in conjunction with the implementation of the Steam Generator Program is an effective measure for minimizing the frequency of steam generator tube ruptures.<sup>143</sup>

As explained in the quoted material above, the limit on steam generator tube leakage is imposed as a mechanism for minimizing the frequency of steam generator tube ruptures (“SGTRs”), and is distinct and separate from the limit on pressure boundary leakage which pertains to the potential for a LOCA in the containment. Therefore, the two requirements have two distinct and non-contradictory purposes. Indeed, the definition of “Pressure Boundary LEAKAGE” in the Technical Specifications specifically excludes “Primary to Secondary LEAKAGE.”<sup>144</sup>

In that regard, the events in question have different consequences and are treated differently under NRC’s regulatory scheme. In particular, NRC’s Standard Review Plan has different sections for SGTRs and LOCAs, and the dose limits for SGTRs are significantly less than the dose limits for LOCAs (a factor of ten less).<sup>145</sup> Given the significantly lower consequences of a SGTR vis-à-vis a LOCA, there is no inconsistency in treating degradation of a steam generator tube differently than degradation of a reactor coolant system pipe.

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<sup>143</sup> *Id.* at 362.

<sup>144</sup> LAR, Att. 1, Vol. 1, at 9, 86.

<sup>145</sup> Compare NUREG-0800, Standard Review Plan, § 15.6.3, Radiological Consequences of Steam Generator Tube Failure (PWR) (Rev. 2, July 1981), with NUREG-0800, Standard Review Plan, § 15.6.5, Loss-of-Coolant Accidents Resulting from Spectrum of Postulated Piping Breaks Within the Reactor Coolant Pressure Boundary (Rev. 3, Mar. 2007).

COPS also improperly challenges the NRC Staff's Augmented Inspection Team ("AIT") Report that the Staff prepared as part of its review of the steam generator degradation events at SONGS Units 2 and 3.<sup>146</sup> This issue also is outside the scope of this proceeding, and it is well established that contentions concerning the adequacy of the Staff's actions are inadmissible in licensing hearings.<sup>147</sup> The Commission has stated that "[a]s a general matter, the Commission's licensing boards and presiding officers have no authority to direct the Staff in the performance of its safety reviews."<sup>148</sup> Thus, COPS' challenges regarding the NRC's performance during the AIT activities are impermissible.

Furthermore, COPS fails to provide "alleged facts or expert opinions which support the requestor's/petitioner's position on the issue," contrary to 10 C.F.R. § 2.309(f)(1)(v).<sup>149</sup> The LAR contains no citation or reference to any material as support for its factual or technical allegations. As discussed above, to the extent that COPS may be relying on the experience of Mr. Lutz, the Hearing Request provides no indication that Mr. Lutz has any expertise with nuclear plants, requirements on pressure boundary leakage, or steam generators.<sup>150</sup>

Finally, COPS has not identified a "genuine dispute with the applicant/licensee on a material issue of law or fact," contrary to 10 C.F.R. § 2.309(f)(1)(vi). Indeed, the differences

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<sup>146</sup> Hearing Request at 12.

<sup>147</sup> Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,171 (Aug. 11, 1989) ("With the exception of NEPA issues, the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than the adequacy of the NRC staff performance."); *see also Curators of the Univ. of Mo.* (TRUMPS-S Project), CLI-95-8, 41 NRC 386, 396 (1995) ("[I]n adjudications, the issue for decision is not whether the Staff performed well, but whether the license application raises health and safety concerns."); *see also Curators of the Univ. of Mo.* (TRUMPS-S Project), CLI-95-1, 41 NRC 71, 121-22, 121 n.67 (1995) (citing reactor cases in which this principle has been applied).

<sup>148</sup> *TRUMPS-S Project*, CLI-95-1, 41 NRC at 121; *see also Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), CLI-93-5, 37 NRC 168, 170 (1993); *Northeast Nuclear Energy Co.* (Montagne Nuclear Power Station), LBP-75-19, 1 NRC 436, 437 (1975).

<sup>149</sup> Although COPS suggests that "[t]o allow any leakage from these tubes as a part of standard operating procedure is patently unsafe," it provides no support for this conclusion, contrary to 10 C.F.R. § 2.309(f)(1)(v).

<sup>150</sup> *See, e.g., Levy Cnty.*, CLI-10-02, 71 NRC at 40 ("At the contention admissibility stage, a Board may consider a proffered expert's qualifications in evaluating whether a contention is adequately supported.").

between the two requirements are clearly detailed in the LAR,<sup>151</sup> and were not challenged by COPS. A contention that does not directly controvert a position taken by the applicant in the application is subject to dismissal.<sup>152</sup>

**c. Atmospheric Dump Valve**

COPS states that it objects to a change that “incorrectly allows a single Atmospheric Dump Valve (ADV).”<sup>153</sup> The paragraph from the LAR at issues states:

The ISTS LCO 3.7.4 is being changed from “Two ADV lines shall be OPERABLE” to “One ADV line per required steam generator shall be OPERABLE.” The ISTS is written such that there are two ADV lines per SG. SONGS has just one ADV line per SG and in MODE 4 SONGS could have one SG being utilized for heat removal. If the LCO required two ADV lines to be OPERABLE, SONGS would be in an ACTION unnecessarily. Therefore, the LCO was changed to require one ADV line per required steam generator. Also, due to SONGS just having one ADV line per steam generator, the Completion Time for ACTION A was changed from 7 days to 72 hours. These changes are also consistent with the SONGS Units 2 and 3 CTS.<sup>154</sup>

COPS then states that it objects to this “design deficiency in the SONGS plant.”<sup>155</sup>

COPS again misunderstands the LAR. COPS implies that SCE is reducing the number of ADVs as part of the LAR. That is not correct. This is clear from the paragraph quoted above, and also from the CTS pages provided with the LAR which state that “One ADV per required Steam generator (SG) shall be OPERABLE.”<sup>156</sup> Thus, the number of ADVs is not changing. Instead, the paragraph quoted by COPS identifies differences between the ISTS and the proposed Technical Specifications for SONGS, not between the current and proposed Technical

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<sup>151</sup> See LAR, Att. 1, Vol. 7, at 360-62.

<sup>152</sup> See *Summer*, CLI-10-1, 71 NRC at 21-22.

<sup>153</sup> Hearing Request at 13.

<sup>154</sup> *Id.*; LAR, Att. 1, Vol. 10, at 99.

<sup>155</sup> Hearing Request at 13-14.

<sup>156</sup> LAR, Att. 1, Vol. 10, at 83-86.

Specifications.<sup>157</sup> This section of the LAR clearly refers to the “Improved Standard Technical Specifications (ISTS) Markup and Justification for Deviations (JFDs).”<sup>158</sup>

COPS’ reliance on two deletions from the ISTS bases about two ADV lines per steam generator likewise is misplaced.<sup>159</sup> The LAR’s explanation for these changes states: “Changes are made (additions, deletions, and/or changes) to the Improved Standard Technical Specification (ISTS) Bases which reflect the plant specific nomenclature, number, reference, system description, analysis, or licensing basis description.”<sup>160</sup> Again, SCE has not changed the number of ADVs. The markup and explanation challenged by COPS simply showed a change from the ISTS to the current SONGS-specific value. Contrary to COPS’ allegations, this is not a mistake, but simply reflects the status quo.

For these reasons, COPS’ arguments about the number of ADVs installed in the plant do not support an admissible contention. Those arguments are outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii). The scope of this proceeding as defined in the Hearing Notice<sup>161</sup> is the changes to the CTS for SONGS Units 2 and 3 set forth in the LAR, not the existing number of ADVs installed at SONGS. Because SCE is not changing the number of ADVs as part of the LAR, a challenge to the number is outside the scope of this proceeding.<sup>162</sup>

Additionally, COPS fails to provide the required “alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue,” contrary to 10 C.F.R. § 2.309(f)(1)(v).

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<sup>157</sup> *Id.* at 95-96, 99.

<sup>158</sup> *Id.* at 95.

<sup>159</sup> Hearing Request at 14.

<sup>160</sup> LAR, Att. 1, Vol. 10, at 107.

<sup>161</sup> *See Catawba*, ALAB-825, 22 NRC at 790-91; *Yankee*, CLI-98-21, 48 NRC at 204.

<sup>162</sup> *See, e.g., Dresden*, CLI-81-25, 14 NRC at 624 (holding that “the scope of any hearing should include the proposed license amendments, and any health, safety or environmental issues fairly raised by them”); *see also Point Beach*, LBP-82-88, 16 NRC at 1342 (holding that it is not “appropriate to permit an intervenor to question the original design of the reactor or the systems not directly involved in [the license amendment] application”).

COPS has provided no support for its allegation that additional ADVs are needed. As discussed above, to the extent that COPS may be relying on the experience of Mr. Lutz, the Hearing Request provides no indication that Mr. Lutz has any expertise with nuclear plants or ADVs.<sup>163</sup>

**d. Exclusion Area**

COPS “contends the exclusion area specified in the technical specifications is insufficiently protected.”<sup>164</sup> COPS states that SCE should install gates and turn-arounds on the freeway near the plant, should modify calculations regarding likely exposure to the public to reflect the “worst case likely scenario,” and should place “signage” at the boundary of the exclusion area on all public roads and along the beach.<sup>165</sup> For the reasons discussed below, these arguments do not support an admissible contention.

As discussed above, the scope of this proceeding is defined by the Hearing Notice, and any contention that falls outside that scope must be rejected.<sup>166</sup> This proceeding relates to the LAR submitted by SCE on July 29, 2011.<sup>167</sup> The LAR does not encompass the adequacy of the exclusion area and related controls. Therefore, COPS’ arguments are outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii). Furthermore, license amendment proceedings are not the appropriate forum for challenging existing licensing provisions, such as the exclusion area for SONGS.<sup>168</sup>

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<sup>163</sup> See, e.g., *Levy Cnty.*, CLI-10-02, 71 NRC at 40 (“At the contention admissibility stage, a Board may consider a proffered expert’s qualifications in evaluating whether a contention is adequately supported.”).

<sup>164</sup> Hearing Request at 14.

<sup>165</sup> *Id.* at 15.

<sup>166</sup> See *Catawba*, ALAB-825, 22 NRC at 790-91; *Yankee*, CLI-98-21, 48 NRC at 204; *Trojan*, ALAB-534, 9 NRC at 289 n.6.

<sup>167</sup> Hearing Notice, 77 Fed. Reg. at 49,464.

<sup>168</sup> See, e.g., *Dresden*, CLI-81-25, 14 NRC at 624 (holding that “the scope of any hearing should include the proposed license amendments, and any health, safety or environmental issues fairly raised by them”); see also *Point Beach*, LBP-82-88, 16 NRC at 1342 (holding that it is not “appropriate to permit an intervenor to question the original design of the reactor or the systems not directly involved in [the license amendment] application”).

Additionally, to raise a *genuine* dispute admissible under Section 2.309(f)(1)(vi), a petitioner must “read the pertinent portions of the license application, . . . state the applicant’s position and the petitioner’s opposing view,” and explain why it disagrees with the applicant.<sup>169</sup> A contention that does not directly controvert a position taken by the applicant in the application is subject to dismissal.<sup>170</sup> Section 2.309(f)(1)(vi) also requires that a proposed contention “include references to specific portions of the application (including the applicant’s environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute.” Because COPS has not identified, much less directly controverted, any information in the LAR, COPS has not identified a “genuine dispute with the applicant/licensee on a material issue of law or fact,” contrary to 10 C.F.R. § 2.309(f)(1)(vi).

**e. Steam Generator Tube Plugging**

COPS identifies a paragraph in Section B.3.4.17 (Steam Generator Tube Integrity) of the Technical Specifications that states:

During an SG inspection, any inspected tube that satisfies the Steam Generator Program repair criteria is removed from service by plugging. If a tube was determined to satisfy the repair criteria but was not plugged, the tube may still have tube integrity.<sup>171</sup>

COPS states that this “paragraph doesn’t make much sense” and “[w]hy would any tube that satisfies the repair criteria not be plugged.”<sup>172</sup> COPS then “suggests that the second sentence in this paragraph be deleted.”<sup>173</sup>

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<sup>169</sup> Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170; *see also Millstone*, CLI-01-24, 54 NRC at 358.

<sup>170</sup> *See Summer*, CLI-10-1, 71 NRC at 21-22.

<sup>171</sup> Hearing Request at 16; LAR, Att. 1, Vol. 7, at 510.

<sup>172</sup> Hearing Request at 16.

<sup>173</sup> *Id.*

COPS misunderstands the purpose of the sentence that it suggests should be deleted. LCO 3.4.17 requires that “SG tube integrity shall be maintained. AND All SG tubes satisfying the tube repair criteria shall be plugged in accordance with the Steam Generator Program.”<sup>174</sup> Action A identifies the following Condition: “One or more SG tubes satisfying the tube repair criteria and not plugged in accordance with the Steam Generator Program.”<sup>175</sup> Required Action A.1 is to “Verify tube integrity of the affected tube(s) is maintained until the next refueling outage or SG tube inspection.” This evaluation must be completed within seven days.<sup>176</sup> Required Action A.2, which also must be performed, is to “[p]lug the affected tube(s) in accordance with the Steam Generator Program.” This must be completed prior to entering Mode 4 following the next refueling outage or SG tube inspection.<sup>177</sup> Therefore, COPS’ misunderstanding is an issue of timing. If a tube satisfies the tube repair criteria, then it must be plugged. However, if an evaluation shows that the tube integrity is maintained until the next refueling outage or tube inspection, then the plugging can wait until that time. The sentence COPS suggested to be deleted explains this principle that if a tube meets the repair criteria but was not plugged, it may still have tube integrity, and will be plugged at the next refueling outage. This explanation is provided in the LAR.<sup>178</sup> COPS’ arguments do not demonstrate a genuine dispute with the LAR, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

Additionally, COPS fails to provide the required “alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue,” contrary to 10 C.F.R. § 2.309(f)(1)(v). COPS has not provided sufficient support for its position. To the extent that COPS may be

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<sup>174</sup> LAR, Att. 1, Vol. 7, at 505.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*; *see also id.* at 512-13.



relying upon the experience of Mr. Lutz, the Hearing Request does not identify any expertise of Mr. Lutz with respect to nuclear plants or Technical Specifications for steam generator plugging.<sup>179</sup>

### **3. Contention 3 (Steam Generators) Is Inadmissible**

COPS' Contention 3 states in its entirety:

Petitioner contends that the licensee *may* attempt to claim that the current LAR also applies to the recent request by licensee to operate SONGS Unit 2 at reduced power output (70%) to avoid fluid-elastic instability and excessive steam velocity that resulted from design changes to the steam generators during the steam generator replacement project. The matter of operating Unit 2 or Unit 3 after the emergency shutdown on January 31, 2012, and after the discovery of severe steam generator tube wear is distinct from the changes proposed in the current LAR and the scope of the LAR must not be allowed to encompass those very important concerns. Petitioner further contends that a new LAR must be processed to allow the plant to operate in a reduced-power configuration so that the NRC and the public can review their proposal in detail.<sup>180</sup>

Thus, COPS argues that SCE somehow will attempt to use this proceeding to seek approval of issues related to operation at 70% power.

As discussed below, COPS' Contention 3 is inadmissible because it is outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii); not material, contrary to 10 C.F.R. § 2.309(f)(1)(iv); not adequately supported, contrary to 10 C.F.R. § 2.309(f)(1)(v); and does not raise a genuine dispute, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

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<sup>179</sup> See, e.g., *Levy Cnty.*, CLI-10-02, 71 NRC at 40 (“At the contention admissibility stage, a Board may consider a proffered expert’s qualifications in evaluating whether a contention is adequately supported.”).

<sup>180</sup> Hearing Request at 16 (emphasis added).

**a. Contention 3 Is Outside the Scope of this Proceeding**

As discussed above, the scope of this proceeding is defined by the Hearing Notice, and any contention that falls outside that scope must be rejected.<sup>181</sup> This proceeding relates to the LAR submitted by SCE on July 29, 2011.<sup>182</sup> The Hearing Notice explains that the LAR requested “approval to convert the Current Technical Specifications (CTS) to be consistent with the most recently approved version of the Standard Technical Specifications (STS) for Combustion Engineering Plants, NUREG-1432.”<sup>183</sup> Contention 3 is unrelated to the LAR, and is therefore outside the scope of this proceeding.

Rather than addressing the LAR, COPS raises separate issues related to a recent letter from SCE to the NRC explaining that SCE had completed the CAL actions related to recent steam generator degradation issues at SONGS Unit 2, and that SCE would like to operate Unit 2 at reduced power.<sup>184</sup> Specifically, the letter explains that SCE would administratively limit Unit 2 to 70% reactor power prior to a mid-cycle shutdown, which would eliminate the thermal hydraulic conditions that cause fluid elastic instability that caused vibration of the steam generator tubes.<sup>185</sup> These issues are entirely unrelated to the LAR at issue in this proceeding. COPS’ attempt to bootstrap new issues into this LAR proceeding raises issues outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).<sup>186</sup>

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<sup>181</sup> See *Catawba*, ALAB-825, 22 NRC at 790-91; *Yankee*, CLI-98-21, 48 NRC at 204; *Trojan*, ALAB-534, 9 NRC at 289 n.6.

<sup>182</sup> Hearing Notice, 77 Fed. Reg. at 49,464.

<sup>183</sup> *Id.*

<sup>184</sup> Letter from P. Dietrich, SCE, to E. Collins, NRC, Confirmatory Action Letter – Actions to Address Steam Generator Tube Degradation, at 1 (Oct. 3, 2012), available at ADAMS Accession No. ML12285A263.

<sup>185</sup> *Id.* at 3.

<sup>186</sup> See, e.g., *Dresden*, CLI-81-25, 14 NRC at 624 (holding that “the scope of any hearing should include the proposed license amendments, and any health, safety or environmental issues fairly raised by them”); see also *Point Beach*, LBP-82-88, 16 NRC at 1342 (holding that it is not “appropriate to permit an intervenor to question the original design of the reactor or the systems not directly involved in [the license amendment] application”).

**b. Contention 3 Is Not Material**

A petitioner must demonstrate “that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.”<sup>187</sup> This LAR proceeding relates to SCE’s request to convert the SONGS CTS to the ISTS in NUREG-1432.<sup>188</sup> Issues related to temporary operation at 70% power, or whether a separate amendment is needed for operation at 70% power, have no bearing on the outcome of this LAR proceeding.<sup>189</sup> Therefore, COPS has failed to show that Contention 3 is material to the current proceeding, and has not satisfied 10 C.F.R. § 2.309(f)(1)(iv).

**c. Contention 3 Is Not Adequately Supported**

Contention 3 is devoid of any supporting alleged facts or expert opinions. Instead, COPS provides only speculation that “the licensee *may* attempt to claim that the current LAR also applies to the recent request by licensee to operate SONGS Unit 2 at reduced power output.”<sup>190</sup> COPS provides no basis for this statement. In fact, COPS identifies no facts or support whatsoever for its allegations. The Commission has explained that a contention “will be ruled inadmissible if the petitioner ‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation.’”<sup>191</sup> COPS’ bare assertions and speculation here cannot support an admissible contention. Therefore, Contention 3 should be denied pursuant to 10 C.F.R. § 2.309(f)(1)(v).

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<sup>187</sup> 10 C.F.R. § 2.309(f)(1)(iv).

<sup>188</sup> See LAR at 1.

<sup>189</sup> As the Commission has observed, “[t]he dispute at issue is ‘material’ if its resolution would ‘make a difference in the outcome of the licensing proceeding.’” *Oconee*, 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).

<sup>190</sup> Hearing Request at 16.

<sup>191</sup> *Fansteel*, CLI-03-13, 58 NRC at 203 (quoting *Oyster Creek*, CLI-00-6, 51 NRC at 208).

**d. Contention 3 Does Not Raise a Genuine Dispute**

To raise a *genuine* dispute admissible under Section 2.309(f)(1)(vi), a petitioner must “read the pertinent portions of the license application, . . . state the applicant’s position and the petitioner’s opposing view,” and explain why it disagrees with the applicant.<sup>192</sup> COPS fails to meet this burden. Nowhere in Contention 3 does COPS identify a part of the LAR that it believes is deficient.<sup>193</sup> COPS instead raises issues related to operation of SONGS Unit 2 at reduced power output, which is entirely unrelated to the LAR. For these reasons, Contention 3 does not raise the genuine dispute required by 10 C.F.R. § 2.309(f)(1)(vi).

**VI. CONCLUSIONS**

For the numerous reasons discussed above, the Hearing Request is untimely, COPS has not demonstrated standing, and COPS has not submitted an admissible contention. Therefore, the Hearing Request should be rejected by the Board.

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<sup>192</sup> Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170; *see also Millstone*, CLI-01-24, 54 NRC at 358.

<sup>193</sup> *See* Hearing Request at 16.

Respectfully submitted,

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

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*Counsel for Southern California Edison Company*

Dated in Washington, DC  
this 13th day of November 2012

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of	)	
	)	
SOUTHERN CALIFORNIA EDISON COMPANY	)	Docket Nos. 50-361-LA & 50-362-LA
	)	
(San Onofre Nuclear Generating Station,	)	November 13, 2012
Units 2 and 3)	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, a copy of “Southern California Edison Company’s Answer Opposing Petition to Intervene and Request for Hearing by Citizens Oversight” was filed through the E-Filing system.

*Signed (electronically) by Stephen J. Burdick*

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