

May 6, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
EXELON GENERATION COMPANY, LLC.	)	Docket No. 52-007-ESP
	)	
(Early Site Permit for Clinton ESP Site)	)	ASLBP No. 04-821-01-ESP

NRC STAFF ANSWER TO INTERVENORS' MOTION TO AMEND CONTENTION 3.1

INTRODUCTION

Pursuant to the Atomic and Safety and Licensing Board's ("Board") Order (Schedule for Responses to Motion To Amend Contention 3.1) dated April 25, 2005 and Memorandum (Clarifying the Board's April 25, 2005 Order) dated May 4, 2005, the staff of the Nuclear Regulatory Commission ("Staff") hereby answers the April 22, 2005, Motion to Amend Contention 3.1 ("Intervenors' Motion") submitted by the Environmental Law and Policy Center, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, Nuclear Energy Information Service, and Public Citizen (collectively, "Intervenors"). For the reasons set forth below, Contention 3.1, as amended, should not be admitted for litigation in this proceeding.

BACKGROUND

On December 12, 2003, the Commission published a notice announcing the opportunity to petition to intervene in a hearing on an application for an early site permit ("ESP") submitted by Exelon. On January 12, 2004, Intervenors timely sought to intervene in the hearing. Intervenors supplemented their initial request for a hearing on May 3, 2004 by submitting a specification of the contentions that they sought to have litigated.

In its Memorandum and Order (Ruling on Standing and Contentions) of August 6, 2004, the Board ruled that the Intervenors had established the requisite standing to intervene in the

proceeding and admitted one contention concerning the ESP application, designated as Environmental Contention (“EC”) 3.1 - The Clean Energy Alternative Contention.<sup>1</sup> Based on Contention 3.1, the NRC Staff issued Request for Additional Information (“RAI”) E9.2-1, which was subsequently answered by Exelon.<sup>2</sup> In its response, Exelon provided a detailed analysis of wind power and solar power, which included combinations of these alternatives with coal and natural gas fired power generation. On March 2, 2005, the NRC Staff issued NUREG-1815, “Draft Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site” (“DEIS”). Subsequently, on March 17, 2005, Exelon moved for summary disposition of Contention 3.1 and both the NRC Staff and Intervenors answered the motion.<sup>3</sup>

On April 4, 2005, the Board held a conference call to discuss the hearing schedule, among other items. In a subsequent memorandum, which, in part, memorialized the April 4th conference

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<sup>1</sup> As admitted, Environmental Contention (“EC”) 3.1 states:

The Environmental Review fails to rigorously explore and objectively evaluate all reasonable alternatives. In Section 9.2 of the Environmental Report, Exelon claims to satisfy 10 C.F.R. § 51.45(b)(3), which requires a discussion of alternatives that is “sufficiently complete to aid the Commission in developing and exploring” “appropriate alternatives ... concerning alternative uses of available resources,” pursuant to the National Environmental Policy Act. However, Exelon’s analysis is premised on several material legal and factual flaws that lead it to improperly reject the better, lower-cost, safer, and environmentally preferable wind power and solar power alternative, and fails to address adequately a mix of these alternatives along with gas-fired generation and “clean coal” resource alternatives. Therefore, Exelon’s ER does not provide the basis for the rigorous exploration and objective evaluation of all reasonable alternatives to the ESP that is required by NEPA.

LBP-04-17, 60 NRC 229, 252 (2004).

<sup>2</sup> Letter from Marilyn C. Kray, Vice President, Project Development, Exelon Nuclear, to NRC, “Exelon Generation Company, LLC (EGC), Response to Request for Additional Information (RAI) regarding the Environmental Portion of the Application for an Early Site Permit (ESP) (TAC NO. MC1125)” (September 23, 2004) ADAMS Accession No. ML042730012. [hereinafter “Exelon’s Response to RAI”].

<sup>3</sup> The Board has not yet ruled on Exelon’s Motion for Summary Disposition of Contention 3.1 (“Exelon’s Motion”).

call, the Board noted that any petition to amend an existing contention or file a new contention “will not be deemed untimely if it is filed within 45 days of the issuance of the DEIS (i.e., on or before April 22, 2005).”<sup>4</sup> The Board also indicated that a newly-filed contention or an amendment to an existing contention must satisfy the general contention admissibility standards of 10 C.F.R. § 2.309(f).<sup>5</sup> On April 22, 2005, pursuant to 10 C.F.R. § 2.309(f), the Intervenor filed a Motion to Amend Contention 3.1.

### DISCUSSION

#### I. Legal Standards for the Admission of Amended Contentions

Under Commission regulations, a contention may be amended after the initial filing only in two circumstances. First, a contention may be amended “if there are data or conclusions in the NRC draft or final environmental impact statement [(“EIS”)], environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant’s documents.” 10 C.F.R. § 2.309(f)(2). If this first scenario is not satisfied, § 2.309(f)(2)(i)-(iii) provides that a contention may be amended only with leave granted by the presiding officer upon a showing that the following criteria have been met:

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

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<sup>4</sup> Memorandum (Clarifying March 30 Memorandum and Order; Memorializing April 4 Conference Call) (April 6, 2005) at 3 (emphasis in original). Because the Board stated that the Intervenor’s amended contention would be timely if filed by April 22, 2005, the Staff does not address the late-filed contention standards under 10 C.F.R. § 2.309(c) nor does the Staff address the timeliness requirement of amended or new contentions under 10 C.F.R. § 2.309(f)(2)(iii). However, the Staff does not concede that the Intervenor’s amended contention is timely.

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

In addition to fulfilling the requirements of 10 C.F.R. § 2.309(f)(2), a petitioner must also show that the late-filed contention meets the Commission's contention admissibility requirements of 2.309(f)(1)(i-vi). See *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355, 362-63 (1993).<sup>6</sup> Pursuant to the regulation, a petitioner must:

- (i) provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) provide a brief explanation of the basis for the contention;
- (iii) demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
- (vi) provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(1). The Commission has emphasized that its rules on admission of contentions establish an evidentiary threshold more demanding than a mere pleading requirement and are "strict by design." *Dominion Nuclear Conn., Inc.* (Millstone Power Station, Units 2 & 3),

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<sup>6</sup> The Staff notes that the standards governing the admissibility of contentions remain substantively unchanged from those that existed before the effective date of New Part 2. See Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2220-21 (Jan.14, 2004).

CLI-01-24, 54 NRC 349, 358 (2001). Under the rule, a petitioner “must do more than submit ‘bald or conclusory’ allegation[s] of a dispute with the applicant. *Id.* Rather, the petitioner must “read the pertinent portions of the license application, . . . state the applicant’s position and the petitioner’s opposing view.” *Id.* Moreover, a petitioner must provide a “clear statement as to the basis for the contentions and the submission of . . . supporting information and references to specific documents and sources that establish the validity of the contention.” *Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 & 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

Additionally, although the focal point of an NRC adjudication is on contentions rather than the underlying bases, the Commission recently reiterated that it is appropriate to refer to the bases provided in support of a contention in order to define the scope of the contention. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002) (citations omitted). Further, as the Appeal Board observed years ago, “[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases.” *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), *aff’d sub nom. Massachusetts v. NRC*, 924 F.2d 311 (D.C. Cir.), *cert. denied*, 502 U.S. 899 (1991). Accordingly, the scope of a contention in litigation is determined by the bases submitted in support of the contention.

## II. Admissibility of Intervenors’ Contention

The Staff respectfully submits that a review of the amended contention filed by the Intervenors in this proceeding, in light of the established requirements set forth above, demonstrates that the amended contention should not be admitted. Amended Contention 3.1 states as follows:

### **Amended Contention 3.1:** The Clean Energy Alternatives Contention

The Draft Environmental Impact Statement and additional filings by Exelon fail to rigorously explore and objectively evaluate all reasonable alternatives.

Basis: There are several serious shortcomings in the discussion of alternatives provided in the Draft EIS and Exelon filings. First, the discussions are flawed because they accept a project purpose - the creation of baseload power - that has not been evaluated and that improperly excludes reasonable energy efficiency alternatives. Second, the Draft EIS and Exelon filings overestimate the environmental impacts of clean energy alternatives and underestimate the impacts of new nuclear power to incorrectly conclude that clean energy alternatives are not environmentally preferable to nuclear power. Third, the Exelon filings, which the Draft EIS heavily relies on, improperly conclude that new nuclear power would be less costly than clean energy alternatives. Fourth, the Draft EIS and Exelon filings fail to adequately analyze clean energy sources in combination and instead provide an analysis that is unfairly biased in favor of nuclear power and overstates the impacts of combinations of alternatives.

Intervenors' Motion at 2-3. The proposed amended contention and its bases are discussed in turn below.

A. Purpose of the Project

The Intervenors claim that the discussions of alternatives in the DEIS and Exelon filings are flawed because they "improperly set forth as the purpose for this project the production of 'baseload power for sale on the wholesale market.'" Intervenors' Motion at 8 (citations omitted). The Intervenors further assert that this purpose is "arbitrary and capricious" because the DEIS and Exelon filings do not evaluate the need for additional baseload power.<sup>7</sup> The Intervenors, however, do not satisfy the Commission's regulations for the admission of amended contentions, and thus, this basis should not be admitted to amend contention 3.1.<sup>8</sup>

As discussed above, a contention arising under NEPA may be amended if there are data or conclusions in the DEIS that differ significantly from those in the applicant's documents.

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<sup>7</sup> *Id.* at 9. Intervenors recognize that the Board has previously rejected this argument, See LBP-04-17, 60 NRC at 245-46, but because they raise the issue once again in the Motion to Amend, the Staff will briefly address it.

<sup>8</sup> Intervenors must also satisfy the standard admissibility requirements for contentions set forth at 10 C.F.R. § 2.309(f)(1)(I)-(vi). The Staff will not address these requirements in detail (except for § 2.309(f)(1)(vi), discussed briefly below) because the Intervenors' proposed basis is inadmissible under the requirements to amend a contention set forth at § 2.309(f)(2).

10 C.F.R. § 2.309(f)(2). The project's purpose is set forth in the DEIS and Exelon filings as the production of "baseload power for sale on the wholesale market," and does not amount to data or conclusions that differ significantly from what is stated in Exelon's Environmental Report ("ER"). Section 9.2.2 of the ER clearly states that the "ESP application is premised on the installation of a facility that would primarily serve as a large base-load generator and that any feasible alternative would also need to be able to generate base-load power."<sup>9</sup> Section 1.1 of the Administrative Information portion of Exelon's ESP Application also states that the purpose of the Application is "to set aside the proposed site for future energy generation and sale on the wholesale energy market." The DEIS and subsequent Exelon filings simply reiterate language that was previously set forth in the ESP Application, including the ER, which was filed in September 2003.<sup>10</sup>

In the alternative, § 2.309(f)(2) requires that three criteria (discussed above) be satisfied when filing an amended contention. First, Intervenor's fail to show that the information upon which their amended contention is based was not previously available. 10 C.F.R. § 2.309(f)(2)(I). As discussed above, the statement regarding the project's purpose as the production of baseload power is not new to the DEIS or recent Exelon filings because it was established in the Applicant's ER. In fact, Intervenor's original contention, as admitted, even cites to the section of the ER, § 9.2, which describes baseload power. Surely Intervenor's are thus precluded from arguing as a basis for amending a contention that this information was not previously available when their original contention references the same document where this very information is found.

10 C.F.R. § 2.309(f)(2)(ii) also requires that the information upon which an amended contention is based be materially different from information previously available. The information that was previously available in the ER regarding baseload power is not materially different from

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<sup>9</sup> Environmental Report for the EGC Early Site Permit, September 25, 2003 ("ER"), at 9.2-6.

<sup>10</sup> See, e.g., DEIS, at 8-15.

the statements in the DEIS and subsequent Exelon filings upon which the Intervenor base their amended contention. In support of their argument, Intervenor cite to the DEIS and Exelon's Motion for Summary Disposition. Intervenor's Motion at 8-9. The statements cited at page 8-15 of the DEIS and page 9 of Exelon's Motion are specifically derived from pages 9.2-1 and 9.2-6 of the ER, and repeat the ER's language virtually verbatim.<sup>11</sup> Intervenor fail to establish that the information in the DEIS and Exelon filings is materially different from information previously available in the ER, and therefore do not satisfy § 2.309(f)(2)(ii).

Beyond the Intervenor's failure to meet Commission requirements for amending contentions, the substance of their argument is contrary to established case precedent. Intervenor allege that it is improper for the DEIS to accept the purpose as "baseload power for sale on the wholesale market," which allegedly "constrains the alternatives in the analysis in violation of NEPA by improperly rejecting reasonable energy efficiency alternatives." Intervenor's Motion at 8-9.<sup>12</sup> Intervenor provide no authority for this statement and, in fact, case law is directly contrary. See *Citizens Against Burlington v. Busey*, 938 F.2d 190, 199 (D.C. Cir. 1991), *cert. denied*, 502 U.S. 994 (1991) ("An agency cannot redefine the goals of the proposal that arouses the call for action. . . Congress did not expect agencies to determine for the applicant what the goals of the applicant's proposal should be."); *Louisiana Wildlife Fed'n, Inc. v. York*, 761 F.2d 1044,

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<sup>11</sup> Page 8-15 of the DEIS states that "[a] new nuclear plant unit at the ESP site would be a baseload generator and merchant plant. Any feasible alternative to this facility would need to generate baseload power." Page 9 of Exelon's Motion similarly states that "[t]he stated purpose of the EGC ESP facility is to be a merchant generator to produce baseload power for sale on the wholesale market." The language in the DEIS and Exelon's Motion is virtually identical to that of the ER, which states that the ESP facility would be "referred to as a 'merchant plant'" (p. 9.2-1), "would primarily serve as a large base-load generator" (p. 9.2-6), and that "any feasible alternative would also need to be able to generate base-load power" (p. 9.2-6).

<sup>12</sup> A distinction should be made between Exelon's purpose for the project and the NRC's purpose. The NRC's purpose is shaped by its function as a regulatory agency and, from its perspective, the purpose and need for the proposed action (issuance of the ESP) "is to provide stability in the licensing process by addressing safety and environmental issues before plants are built, rather than after construction is completed." See DEIS, at 1-6.

1048 (5th Cir. 1985) (“[I]t would be bizarre if the [agency] were to ignore the purpose for which the applicant seeks a permit and to substitute a purpose it deems more suitable.”).

Similarly, this basis is also inadmissible for failing to limit the alternatives analysis to those that can reasonably achieve the goals of the project. *Busey*, 938 F.2d at 198 (“The goals of an action delimit the universe of the action’s reasonable alternatives.”). An agency need not discuss alternatives that will not bring about the ends of the proposed action. *Hydro Resources, Inc.*, CLI-01-04, 53 NRC 31, 55 (2001) (“When the purpose is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved. . . .”); *Busey*, 938 F.2d at 198 (holding that consideration of alternative sites was unnecessary where those alternatives would not accomplish the purpose defined by agency). The Intervenor cannot redefine the purpose of Exelon’s proposed action to broaden the scope of the alternatives and then claim that the DEIS and Exelon filings fail to address the redefined purpose.<sup>13</sup> *Id.* at 199 (“An agency. . . must evaluate alternative ways of achieving its goals, shaped by the application at issue and by the function that the agency plays in the decisional process.”). Furthermore, to the extent the subject contention is based on a purpose for the Clinton ESP other than that articulated by the Applicant, the amended contention fails to demonstrate a genuine dispute on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi).

B. Clean Energy Alternatives

As the second basis for their contention, Intervenor asserts that the “Draft EIS and Exelon filings overestimate the environmental impacts of clean energy alternatives and underestimate the impacts of new nuclear power to incorrectly conclude that clean energy alternatives are not environmentally preferable to nuclear power.” Intervenor’s Motion at 2. Contrary to the Intervenor’s assertions, the NRC staff does not reject clean energy alternatives on the basis of environmental

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<sup>13</sup> Although energy efficiency alternatives were not discussed in depth, they were considered. See ER at § 9.2.1; see also DEIS at § 8.2.3.

impacts. Rather, the Staff rejects clean energy alternatives based on its independent assessment that clean energy alternatives alone are not a viable source of baseload power. Therefore, for the reasons discussed below, to the extent that the amended contention is based on the Staff's rejection of clean energy alternatives, the contention is inadmissible since it fails to demonstrate a genuine dispute on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi).<sup>14</sup>

As discussed above, the purpose and need of Exelon's application is to designate the proposed site for future energy generation and sale on the wholesale market. ESP Application, Administrative Information, § 1.1. A new nuclear unit at the existing Clinton ESP site would be constructed and operated as a merchant power producer of baseload power. The applicant indicated, and the Staff appropriately agreed, that any feasible alternative to the proposed action would also need to generate baseload power. See ER at 9.2-6 and DEIS at 8-15. It is well established that "[if], therefore, the consideration of alternatives is to inform both the public and the agency decisionmaker, the discussion must be moored to 'some notion of feasibility.'" *Busey*, 938 F.2d at 195, citing *Vermont Yankee Nuclear Power Corp v. NRDC*, 435 U.S. 519, 551, 98 S.Ct. 1197, 1215, 55 L.Ed.2d 460 (1978) (footnote omitted).

Intervenors assert that the DEIS and Exelon's filings incorrectly conclude that clean energy alternatives are not environmentally preferable to nuclear power. Intervenors' Motion at 10. In addition, the Intervenors take issue with the number of categories<sup>15</sup> and analysis of impacts of clean energy alternatives compared to those of nuclear power. Intervenors' Motion at 11-12. Specifically, the Intervenors focus on wind power and allege various deficiencies in the Staff's and

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<sup>14</sup> Intervenors' arguments regarding clean energy alternatives in combination are addressed *infra*.

<sup>15</sup> Intervenors make the argument that because more environmental impact categories are discussed for nuclear power than for wind power, the environmental impacts of nuclear power are greater than those of wind power. This argument has no basis in fact; moreover, as discussed, the *number* of impacts is irrelevant. Again, the staff rejects clean energy alternatives because they are not a sufficient source of baseload power.

Exelon's discussion of impacts. *Id.* at 12-14. Intervenor's fail to recognize that the Staff's findings regarding clean energy alternatives are not based on environmental impacts but on resource reliability. The DEIS rejects clean energy alternatives because they are not a viable, stand-alone alternative source of baseload power. The various impacts of wind power, for example, are immaterial because, based on the intermittent nature of the wind resource, wind power is not a suitable source of baseload capacity. See DEIS at 8-17. Therefore, to the extent that the amended contention is based on the Staff's rejection of clean energy alternatives, the contention fails to demonstrate a genuine dispute on a material issue of law or fact and is inadmissible. 10 C.F.R. § 2.309(f)(1)(vi).

C. Cost Analysis

Intervenor's third basis for the proposed amendment to Contention 3.1 lies with Exelon's finding that no clean energy alternatives (or combination of such alternatives) would be cost competitive with nuclear power.<sup>16</sup> The Intervenor's allege that this finding is "plainly erroneous," while also noting that the DEIS does not discuss costs in analyzing various clean energy alternatives.<sup>17</sup> Although the Intervenor's are correct in their assertion that the DEIS does not address costs, this basis cannot support the contention, as it fails to meet the standard contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). The allegation that Exelon's cost calculations are erroneous does not raise a genuine dispute on a material issue of law or fact because this issue is immaterial to the proceeding.<sup>18</sup> The Staff does not consider economic costs in assessing alternatives (or combinations of alternatives) to new nuclear power plants for early site permits.<sup>19</sup>

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<sup>16</sup> Intervenor's Motion at 15.

<sup>17</sup> *Id.*

<sup>18</sup> 10 C.F.R. § 2.309(f)(1)(vi).

<sup>19</sup> See NRR Review Standard RS-002, "Processing Applications for Early Site Permits," May 3, 2004, ADAMS Accession No.: ML040700094, at Attachment 3, p.13.

Therefore, the Intervenor's arguments regarding erroneous cost calculations

are not material issues in the case at hand. To the extent that the contention is based on a cost analysis, the contention is inadmissible.

D. Energy Alternatives in Combination

As the final basis for their contention, Intervenor's assert that "the Draft EIS and Exelon filings fail to adequately analyze clean energy sources in combination and instead provide an analysis that is unfairly biased in favor of nuclear power and overstates the impacts of combinations of alternatives." Intervenor's Motion at 3. Intervenor's further argue that "[i]n addition to the erroneous analyses of impacts and costs that Exelon and the NRC Staff use to justify rejecting combinations of alternatives, the discussions found in both the Exelon filings and the DEIS are flawed because they fail to provide a large enough role for wind power." *Id.* at 18-19. For the reasons discussed below, this basis cannot support the contention because the Intervenor's fail to demonstrate a genuine dispute on a material issue of fact or law. 10 C.F.R. § 2.309(f)(1)(vi).

With regard to the impact of energy alternatives in combination, the Intervenor's argue that Exelon's filings and the DEIS "overstate the impacts of wind and natural gas, and understate the impacts of new nuclear power." Intervenor's Motion at 18. Further, Intervenor's argue that "nuclear power is not environmentally preferable because it has impacts to more resources ... than wind or natural gas." *Id.* In its DEIS, the Staff assumed a combination of alternatives that was composed of 1,650 MW(e) of natural gas, combined-cycle generation and 550 MW(e) of clean energy generation. DEIS at 8-21. All of the environmental impacts of the combination were assumed to be associated with the natural gas generation; none were associated with clean energy alternatives. *Id.* at 8-22, 8-23. The staff assumed 60 MW(e) of wind power in the combination. *Id.* at 21. While the wind power component could be increased from 60 MW(e) to 550 MW(e), the environmental impacts or the conclusion in the DEIS would not change, because they are based

on the impacts associated with natural gas generation. It stands to reason that the DEIS does not overstate the impacts of wind power in favor of nuclear power because the DEIS assumes *no* impacts from clean energy alternatives in combination with natural gas.<sup>20</sup> Therefore, the Intervenor's basis for the amended contention fails to demonstrate that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi).

In terms of the number of impacts to resources from new nuclear power as compared to the number of resource impacts of alternatives in combination, Intervenor's again confuse the *number* of impact categories with the *significance* of impacts.<sup>21</sup> The fact that there are a larger number of impact categories associated with nuclear power (*e.g.*, accident impacts) does not lead to the conclusion that the impacts of nuclear power generation are greater than those of the alternatives or alternatives in combination. Once again, the Intervenor's basis for the amended contention fails to demonstrate that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi).

Lastly, Intervenor's assert that the DEIS is flawed because it does not "provide a large enough role" for wind power generation. Intervenor's Motion at 18-19. To that end, Intervenor's argue that the staff's analysis "gives short shrift to the combination of alternatives by including only 60 MW of wind power in the combination." *Id.* at 20. Intervenor's erroneously maintain that "more wind power should be included in any combination of alternatives in order to minimize the environmental impacts from such alternative." *Id.* Intervenor's baldly assert that wind power should play a larger role in the combination of alternatives without discussing the extent to which wind power should be considered. Moreover, Intervenor's again fail to appreciate that the DEIS *assumes*

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<sup>20</sup> As the document states, "The impacts associated with the combined-cycle natural gas-fired units would be the same as shown in Table 8-2 ["Summary of Environmental Impacts of Natural Gas-Fired Power Generation-2200 MW(e)] with magnitudes scaled for reduction in capacity from 2200 MW(e) to 1650 MW(e). DEIS at 8-22.

<sup>21</sup> See n.8, *supra*.

*no* impacts from clean energy alternatives in combination with natural gas. DEIS at 8-22, 8-23. Increasing the wind power component from 60 MW(e) to the full 550 MW(e) (the number assumed for all clean energy alternatives in combination) would not change the environmental impacts associated with natural gas power generation.<sup>22</sup> Therefore, this basis for the contention should be rejected for failure to demonstrate that a genuine dispute exists on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi).

### CONCLUSION

For all the reasons discussed above, Intervenor's amended contention is inadmissible. Therefore, the Board should deny the Intervenor's Motion.

Respectfully submitted,

*/RA/*  
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Counsel for NRC Staff

*/RA/*  
Darani M. Reddick  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 6<sup>th</sup> day of May, 2005

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<sup>22</sup> Increasing the amount of wind power considered for clean energy alternatives in combination would, however, reduce the likelihood that the full 550 MW(e) of power from clean energy sources would be available at any given time because wind power is not a reliable resource for baseload generation.

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(Early Site Permit for Clinton ESP Site) ) ASLBP No. 04-821-01-ESP

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

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Respectfully submitted,

*/RA/*

Darani M. Reddick  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 6<sup>th</sup> day of May 2005

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO THE INTERVENORS' MOTION TO AMEND CONTENTION 3.1," and "NOTICE OF APPEARANCE OF DARANI M. REDDICK", in the captioned proceeding have been served on the following through electronic mail, with copies to follow by deposit in the NRC's internal mail system as indicated by a single asterisk, or through electronic mail, with copies to follow by deposit in the U.S. Mail, first class, as indicated by a double asterisk, this 6th day of May, 2005:

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Administrative Judge  
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