**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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| In the Matter of: | ) | Docket Nos. 50-454-LR |
| | ) | 50-455-LR |
| EXELON GENERATION COMPANY, LLC | ) | 50-456-LR |
| | ) | 50-457-LR |
| (Byron Nuclear Station, Units 1 and 2; | ) | |
| Braidwood Nuclear Station, Units 1 and 2) | ) | October 28, 2013 |

# EXELON'S ANSWER OPPOSING THE HEARING REQUEST AND PETITION TO INTERVENE FILED BY THE ENVIRONMENTAL LAW AND POLICY CENTER


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## TABLE OF CONTENTS

**Page**

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| | | |
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## I. INTRODUCTION AND SUMMARY

In accordance with 10 C.F.R. § 2.309(i)(1), Exelon Generation Company, LLC ("Exelon") submits this timely Answer opposing the Hearing Request and Petition to Intervene ("Petition"), filed by the Environmental Law and Policy Center ("ELPC") on September 23, 2013.[1] The Petition proffers two contentions challenging the Environmental Reports ("ERs") filed by Exelon as part of its license renewal application ("LRA") for Byron Station, Units 1 and 2 ("Byron") and Braidwood Station, Units 1 and 2 ("Braidwood"), and alleging violations of the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA").[2]

To be granted a hearing in this proceeding, ELPC must demonstrate standing and submit at least one admissible contention.[3] The Board must deny ELPC's Petition because it has failed

[1] Under 10 C.F.R. § 2.309(i)(1), this Answer was originally due 25 days after service of ELPC's Petition, or by October 18, 2013. Due to the federal government shutdown, the Secretary of the Commission extended all filing deadlines in this and other matters by eight days. *See Aerotest Operations, Inc.* (Aerotest Radiography and Research Reactor), *et al.*, Notice (unpublished) (Oct. 10, 2013); *Aerotest Operations, Inc.* (Aerotest Radiography and Research Reactor), *et al.*, Notice (unpublished) (Oct. 17, 2013). Under these notices and 10 C.F.R. § 2.306(a), the deadline for this Answer is Monday, October 28, 2013.

[2] ELPC never identifies what provision or requirement of the APA is allegedly violated in Exelon's LRA.

[3] *See* 10 C.F.R. § 2.309(a).

to proffer the requisite admissible contention.[4] Specifically, Contention 1 asserts that Exelon failed to include a "need for power" analysis in the Byron and Braidwood ERs,[5] but this analysis is not required under 10 C.F.R. § 51.53(c)(2). In addition, Contention 2 asserts that Exelon filed its LRA too early,[6] but 10 C.F.R. § 54.17(c) explicitly allows Exelon to submit its LRAs up to twenty years before expiration of the operating licenses. The Byron and Braidwood LRA is therefore by no means premature. Thus, both of ELPC's contentions are outside the scope of this license renewal proceeding because they directly challenge existing NRC regulations contrary to 10 C.F.R. §§ 2.309(f)(1) and 2.335. Furthermore, neither contention contains sufficient support to raise a genuine dispute with Exelon's LRA on a material issue of law or fact. Thus, ELPC's Petition must be denied in its entirety.

## II. PROCEDURAL BACKGROUND

Byron is located in north-central Illinois, approximately 90 miles west-northwest of Chicago, and generates approximately 2,336 MWe of baseload electrical power, on an annual average net capacity basis.[7] Braidwood is located in northeastern Illinois, approximately 60 miles southwest of Chicago, and generates approximately 2,360 MWe of baseload electrical power annually.[8]

On May 29, 2013, Exelon submitted its LRA to the NRC seeking to renew the Byron and Braidwood operating licenses for an additional twenty years (*i.e.*, until midnight on October 31, 2044 for Byron Unit 1, midnight on November 6, 2046 for Byron Unit 2, midnight on

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4 *See id.* § 2.309(f)(1).

5 *See* Petition, Exhibit 4, Contentions Included with Petition to Intervene by the Environmental Law and Policy Center at 1 ("Contentions").

6 *See* Contentions at 4.

7 Applicant's Environmental Report – Operating License Renewal Stage, Byron Station, Units 1 and 2, at 2-3, 7-7 (May 2013) ("Byron ER"), *available at* ADAMS Accession No. ML13162A372.

8 Applicant's Environmental Report – Operating License Renewal Stage, Braidwood Station, Units 1 and 2, at 2-3, 7-7 (May 2013) ("Braidwood ER"), *available at* ADAMS Accession No. ML13162A365.

October 17, 2046 for Braidwood Unit 1, and midnight on December 18, 2047 for Braidwood Unit 2).[9] The NRC accepted the LRA for docketing and published a Notice of Opportunity to Request a Hearing in the *Federal Register* on July 24, 2013.[10] That notice stated that any person whose interest may be affected by this proceeding, and who wishes to participate as a party, must file a petition for leave to intervene within 60 days of the Notice of Opportunity to Request a Hearing (*i.e.*, by September 23, 2013) in accordance with 10 C.F.R. § 2.309.[11] On September 23, 2013, ELPC filed its Petition.[12]

## III. ANALYSIS OF ELPC'S STANDING

ELPC asserts standing in a representational capacity on behalf of its members.[13] Mr. Gerald Paulson and Mr. Jesse Auerbach state that they are members of ELPC and that they authorize ELPC to represent them in this proceeding.[14] ELPC never asserts that it is relying on the "proximity presumption" as the basis for its standing, but Messrs. Paulson and Auerbach assert that they live within 50 miles of Byron and Braidwood, respectively.[15] Based on the

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9 *See* Byron Nuclear Station, Units 1 and 2, and Braidwood Nuclear Station, Units 1 and 2; Exelon Generation Company, 78 Fed. Reg. 44,603 (July 24, 2013) ("Notice of Opportunity to Request a Hearing").

10 *See id*. at 44,603-06.

11 *Id*. at 44,604.

12 As a threshold matter, the Petition is subject to dismissal because ELPC's representatives have not filed a Notice of Appearance and, as a result, there is no showing that the individuals who signed the Petition are authorized to represent the Petitioner, contrary to 10 C.F.R. § 2.314(b). ELPC bears the burden of demonstrating that it has authorized its representatives appearing in the proceeding. *See Ga. Power Co.* (Vogtle Elec. Generating Plant, Units 1 and 2), LBP-90-29, 32 NRC 89, 92 (1990). An attorney's Notice of Appearance can meet this requirement, *see N. States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), LBP-08-26, 68 NRC 905, 913 (2008), but no attorney has submitted a Notice of Appearance on behalf of ELPC.

13 *See* Petition at 3.

14 *See id*., Exhibit 1, Declaration of Gerald A. Paulson (Sept. 20, 2013) ("Paulson Declaration"); *id*., Exhibit 3, Declaration of Jesse Auerbach (Sept. 23, 2013) ("Auerbach Declaration").

15 *See* Paulson Declaration; Auerbach Declaration.

representations of these two individuals, Exelon does not object to ELPC's standing in this proceeding.[16]

## IV. ELPC'S CONTENTIONS ARE INADMISSIBLE

### A. Standards for Contention Admissibility

Under 10 C.F.R. § 2.309(f)(1), a hearing request "must set forth with particularity the contentions sought to be raised." Further, 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.[17]

The purpose of these six criteria is to "focus litigation on concrete issues and result in a clearer and more focused record for decision."[18] The NRC's contention admissibility rules are "strict by design."[19] The rules were "toughened . . . in 1989 because in prior years 'licensing

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[16] ELPC provides a third declarant, Mr. Slama, to support ELPC's standing for Braidwood. *See* Exhibit 2, Declaration of Jim Slama. Based on an Internet search, Mr. Slama appears to live more than 50 miles from Braidwood. Using a Google Maps' "as the crow flies" distance calculator (www.daftlogic.com/projects-google-maps-distancecalculator.htm), the distance from 171 North Humphrey Avenue in Oak Park, Illinois to Braidwood is 50.409 miles. Therefore, Mr. Slama's declaration does not support ELPC's standing in this proceeding.

[17] S*ee* 10 C.F.R. § 2.309(f)(1)(i)-(vi). The seventh contention admissibility requirement—10 C.F.R. § 2.309(f)(1)(vii)—is only applicable in proceedings arising under 10 C.F.R. § 52.103(b) and, therefore, has no bearing on the admissibility of the proposed contentions in this proceeding.

[18] Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

[19] *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for recons. denied*, CLI-02-1, 55 NRC 1 (2002).

boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.'"[20] Failure to comply with any one of the six admissibility criteria is grounds for rejecting a proposed contention.[21] As the Commission has recently held, an admitted contention is defined by its stated bases, and licensing boards must "specify each basis relied upon for admitting a contention."[22]

Of particular relevance to ELPC's Petition is the longstanding principle that a contention that challenges an NRC rule is outside the scope of the proceeding under 10 C.F.R. § 2.309(f)(1)(iii) and, therefore, inadmissible. This is because, absent a waiver, "no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding."[23] This includes contentions that advocate stricter requirements than agency rules impose, or that otherwise seek to litigate a generic determination established by a Commission rulemaking.[24] Thus, environmental contentions that seek to raise any issue excluded by regulation from the Staff's license renewal environmental review are inadmissible.[25]

Also critical to the analysis of ELPC's Petition are two other principles governing the admissibility of contentions. First, the petitioner bears the burden to present the factual information or expert opinions necessary to support its contention adequately, and failure to do so requires the Board to reject the contention under 10 C.F.R. § 2.309(f)(1)(v).[26] Second, to raise

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20 *Id. (quoting Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (1999)).

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

22 *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 310 n.50 (2012).

23 10 C.F.R. § 2.335(a).

24 *See Exelon Generation Co. LLC* (Limerick Generating Station, Units 1 & 2), CLI-12-09, 76 NRC __, slip op. at 14 (Oct. 23, 2012).

25 *See*, *e.g.*, *id.*, slip op. at 10-11; *Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), CLI-07-03, 65 NRC 13, 21 (2007).

26 *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 262 (1996).

a sufficiently-supported genuine dispute on a material issue of law or fact under 10 C.F.R. § 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.[27] If a petitioner believes the license application fails to adequately address a relevant issue, then the petitioner is to "explain why the application is deficient."[28] This is because the Commission "reserve[s] [its] hearing process for genuine, material controversies between knowledgeable litigants."[29]

As explained below, under these standards, both of ELPC's proposed contentions are deficient on multiple grounds.

**B. ELPC's "Need for Power" Contention Is Inadmissible**

Contention 1 is a contention of omission. ELPC asserts that the ERs for Byron and Braidwood are deficient because they do not include a "need for power analysis."[30] ELPC claims that 10 C.F.R. § 51.53(c)(2)—which explicitly states that an ER for license renewal is *not* required to discuss the need for power—has "improperly constrained" the consideration of energy alternatives in Exelon's ERs.[31] According to ELPC, the NRC should either "reinterpret" its regulation in a manner that is contrary to its plain text, or "revisit" it.[32]

As demonstrated below, Contention 1 is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii) because it challenges a regulation, thereby rendering the contention outside the scope of this

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27 Final Rule, Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989); *Millstone*, CLI-01-24, 54 NRC at 358.

28 Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170; *see also Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, & 3), CLI-91-12, 34 NRC 149, 156 (1991).

29 FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-08, 75 NRC __, slip op. at 4 (Mar. 27, 2012) (internal citations and quotations omitted).

30 Petition at 4; *see also* Contentions at 4.

31 Contentions at 2.

32 *Id*.

proceeding. Contention 1 also is unsupported and fails to raise a genuine dispute on a material issue of law or fact, contrary to 10 C.F.R. §§ 2.309(f)(1)(v) and (vi).

1. The Commission's Regulations Exclude "Need for Power" from the License Renewal Environmental Analysis

Section 51.53(c)(2) clearly states that a license renewal ER "is not required to include discussion of need for power . . . ." ELPC acknowledges this.[33] As the Board in the *Davis-Besse* proceeding recently determined, contentions demanding a "need for power" analysis for license renewal are impermissible challenges to NRC regulations.[34] A contention is simply not the proper vehicle to request that the Commission "revisit" its regulations, as ELPC does.[35] Accordingly, the Board must reject proposed Contention 1 in its entirety.

2. The Commission's Rules Are Consistent with NEPA

While acknowledging that Contention 1 directly challenges the NRC's rules in Part 51—and therefore the Commission's established interpretation of NEPA—ELPC asserts that a failure of the NRC to require a "need for power" analysis is a "clear violation" of NEPA.[36] This is incorrect. The Commission fully meets its NEPA obligations for license renewal without an inquiry into the "need for power."

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[33] *See* Contentions at 2 ("10 C.F.R. § 51.53(c)(2) . . . provides . . . that the application need not analyze the 'need for power' . . ."), 3 ("NRC regulations purport to foreclose an analysis of the need for power").

[34] *See*, *e.g.*, *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-13, 73 NRC 534, 556-557 (2011) ("The Joint Petitioners' argument about the need for power from Davis-Besse during the license renewal period is outside the scope of this proceeding and inadmissible under 10 C.F.R. § 2.309(f)(1)(iii) because it challenges 10 C.F.R. § 51.53(c)(2), which states that a license renewal ER 'is not required to include discussion of need for power.'"), *rev'd in part on other grounds*, CLI-12-08, 75 NRC 393 (2012); *see also Entergy Nuclear Operations, Inc.* (Indian Point Units 2 & 3), LBP-08-13, 68 NRC 43, 92-99 (2008) (rejecting or limiting three contentions that raised issues related to the need for power in a license renewal proceeding).

[35] 10 C.F.R. § 2.335(a); *see also*, *e.g.*, *Conn. Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-03-7, 58 NRC 1, 8 (2003) ("Adjudications do not provide a forum to consider rule changes"). Within the adjudicatory context, a petitioner may submit a request for waiver of a rule under 10 C.F.R. § 2.335(b). Conversely, outside the adjudicatory context, a petitioner may file a petition for rulemaking under 10 C.F.R. § 2.802. ELPC has filed neither.

[36] Contentions at 2.

*a. Under NEPA, the Commission Need Not Revisit the Need for Power Inquiry at the License Renewal Stage*

NEPA requires federal agencies like the NRC to prepare an environmental impact statement ("EIS") for every major federal action that may significantly affect the quality of the human environment.[37] NEPA does not mandate substantive results; rather, it imposes procedural restraints on agencies, requiring them to take a "hard look" at a proposed action's environmental impacts and reasonable alternatives to that action.[38]

The NRC's issuance of a renewed operating license is a major federal action under NEPA, requiring the preparation of an EIS.[39] To assist the Commission in this task, 10 C.F.R. § 51.45 outlines the general requirements for an applicant's ER. This regulation requires the ER to consider reasonable alternatives to the proposed action.[40]

In 1996, the Commission amended Part 51 to specifically address the license renewal environmental review.[41] As part of this rulemaking, the Commission promulgated 10 C.F.R. §§ 51.53(c)(2) and 51.95(c)(2), the regulations that exclude need for power from the license renewal environmental review.[42] In promulgating these regulations, the Commission determined

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37 *See* 42 U.S.C. § 4332(2)(C).

38 *See La. Energy Servs., L.P.* (Claiborne Enrichment Ctr.), CLI-98-3, 47 NRC 77, 87-88 (1998); *see also Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97-98 (1983) (NEPA requires agency to take a "hard look" at environmental consequences prior to taking a major action).

39 *See* Final Rule, Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37,282, 37,282 (June 20, 2013).

40 10 C.F.R. § 51.45(b)(3); *see also id.* § 51.71(f).

41 *See* Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467 (June 5, 1996).

42 *Id.* at 28,487, 28,489.

that "the NRC will neither perform analyses of the need for power nor draw any conclusions about the need for generating capacity in a license renewal review."[43]

This is because, unlike for a new plant, "the significant environmental impacts associated with the siting and construction of a nuclear power plant have already occurred by the time a licensee is seeking a renewed license."[44] Because the impacts for license renewal are more limited, the NRC determines only "whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable."[45] That determination involves a comparison between the impacts of license renewal and its alternatives, but does not include a "need for power" analysis. In addition, the "underlying need that will be met by the continued availability of the nuclear plant is defined by various operational and investment objectives of the licensee."[46]

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[43] Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. at 28,472. The recently-revised NUREG-1437, Revision 1, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (June 2013) ("GEIS") continues to rely on this exclusion. *See* GEIS at 1-15 to -16.

[44] Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,905, 55,910 (Dec. 5, 2008); *accord Calvert Cliffs Coordinating Committee, Inc. v. AEC*, 449 F.2d 1109, 1128 (D.C. Cir. 1971) (recognizing that after a construction permit is issued, irreversible and irretrievable commitments of resources may already have been made).

[45] 10 C.F.R. §§ 51.95(c)(4), 51.103(a)(5); *see also* Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. at 55,910. The Commission has explained the "unreasonable to preserve the option" standard and its basis as follows:

> Given the uncertainties involved and the lack of control that the NRC has in the choice of energy alternatives in the future, the Commission believes that it is reasonable to exercise its NEPA authority to reject license renewal applications only when it has determined that the impacts of license renewal sufficiently exceed the impacts of *all or almost all of the alternatives* that preserving the option of license renewal for future decision makers would be unreasonable.

Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,473 (June 5, 1996) (emphasis added).

[46] Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. at 28,472.

For these reasons, the Commission has determined that its NEPA responsibilities to consider reasonable alternatives to the proposed action at the license renewal stage can be fully met without an inquiry into the need for power.

*b. ELPC Cannot, to Suit Its Purposes, Redefine the Purposes of Exelon's LRA and the NRC's Proposed Action*

By seeking an analysis of the "need for power," ELPC also is seeking to have the NRC redefine the purpose of the proposed action in a manner that suits ELPC's purposes. ELPC would have the NRC dispense with Exelon's stated purpose and with the NRC's own well-established definition of the purpose of license renewal—which is to provide an option for baseload power generation—and replace it with an undefined standard that would include consideration of the need for power.[47] Binding Commission-level and judicial case law forecloses this tactic.

As previously noted, under NEPA, a federal agency need only consider reasonable alternatives.[48] What is "reasonable" is bounded by the purpose of the proposed licensing action, and neither the agency nor the applicant is required to "consider any alternative that does not 'bring about the ends' of the proposed action."[49] If an applicant states that its purpose in seeking a renewed license is to generate baseload electric power, then the Commission will accord that preference substantial weight in defining the proposed federal agency action.[50] Exelon states that the purpose in seeking the Byron and Braidwood renewed licenses—the proposed agency action

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47 *See* Contentions at 3.

48 10 C.F.R. § 51.71(f).

49 *Seabrook*, CLI-12-5, 75 NRC at 343 (*citing Hydro Res., Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 55 (2001) and *Envtl. Law & Policy Ctr. v. NRC*, 470 F.3d 676, 683-84 (7th Cir. 2006)).

50 *See Seabrook*, CLI-12-5, 75 NRC at 343; *Exelon Generation Co., LLC* (Early Site Permit for the Clinton ESP Site), CLI-05-29, 62 NRC 801, 806-08 (2005), *aff'd sub nom., Envtl. Law & Policy Ctr. v. NRC*, 470 F.3d at 676.

in this proceeding—is to generate baseload electric power.[51] The NRC recognizes this to be an appropriate purpose for seeking license renewal.[52]

ELPC, however, seeks to redefine the alternatives analysis to consider its own, broader purposes such as the consideration of "energy efficiency,"[53] and the potential for solar power to meet "peak-load capacity" needs.[54] In so doing, ELPC would have the NRC disregard Exelon's purpose in seeking license renewal, and instead engage in a broad-ranging inquiry into topics of apparent interest to ELPC.

ELPC has tried to do this before. In the proceeding challenging Exelon's application for an Early Site Permit ("ESP") at the site of the existing Clinton Power Station, ELPC filed contentions challenging Exelon's analysis of alternatives to the proposed action.[55] In its ESP application, Exelon chose to provide an analysis of energy alternatives, including the no-action alternative.[56] As in license renewal proceedings, the environmental analysis for an ESP need not—and Exelon's application did not—include a discussion of need for power.[57] Two different

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51 *See* Byron ER at 7-5, 8-3; Braidwood ER at 7-5, 8-3.

52 *See* GEIS at 1-3 to 1-4 ("The purpose and need for the proposed action (issuance of a renewed license) is to provide an option that allows for baseload power generation capability beyond the term of the current nuclear power plant operating license to meet future generating system needs. Such needs may be determined by other energy-planning decision-makers, such as State, utility, and where authorized, Federal agencies (other than the NRC).").

53 Petition at 4; Contentions at 2.

54 Contentions at 4.

55 *See Clinton ESP*, CLI-05-29, 62 NRC at 803-804; *see also Exelon Generation Co., LLC* (Early Site Permit for the Clinton ESP Site), LBP-05-19, 62 NRC 134, 154-60 (2005). Indeed, although ELPC's Petition does not cite to any of the *Clinton ESP* decisions, Contention 1 borrows the terminology and legal theories ELPC used in that case. *Compare* Contentions at 2 ("Exelon's evaluation of reasonable alternatives for Braidwood's and Byron's license renewals is deficient because it is improperly constrained by 10 C.F.R. § 51.53(c)(2)" *with* LBP-05-19, 62 NRC at 158 (quoting ELPC's contention as criticizing the exclusion of need for power because it "allegedly 'constrains the alternatives in the analysis in violation of NEPA'").

56 *See Clinton ESP*, CLI-05-29, 62 NRC at 803-804. An ESP applicant need not provide an energy alternatives analysis, but may choose to do so at the ESP stage rather than the combined license ("COL") stage. *See id*. at 806 n.24.

57 *See id*. at 803 (*citing* 10 C.F.R. § 52.17(a)(2)). Although need for power is excluded from consideration in both ESP and license renewal proceedings, the reasons for the exclusions are different. While in an ESP the

Boards excluded ELPC's claims that Exelon should consider energy conservation or efficiency because they would essentially equate to a "need for power" analysis, which was outside the scope of the proceeding.[58]

The Commission upheld the decisions below, finding that energy conservation was a surrogate for a need for power analysis that was excluded by regulation, and further noting that it was appropriate for the Board to adopt Exelon's stated purpose for the proposed project—which was to generate baseload power.[59] ELPC appealed to the U.S. Court of Appeals for the Seventh Circuit, which also upheld the Board's ruling, finding that because Exelon was engaged in generating energy for the wholesale market, the Board's adoption of Exelon's purpose of baseload energy generation was reasonable.[60] This purpose was also appropriate because it was broad enough to allow for consideration of a host of generating alternatives, and because Exelon, as a merchant generator, was in no position to implement conservation measures.[61]

So too here. Exelon is still a merchant generator.[62] The generation of baseload energy is a sufficiently broad purpose for the proposed action to allow for the consideration of a wide range of alternatives, as shown by the extensive alternatives analysis in Exelon's ERs.[63] In this

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need for power analysis is being deferred to a later stage (the COL proceeding), *see Envtl. Law & Policy Ctr. v. NRC*, 470 F.3d at 684, in license renewal, the need for power analysis has already been performed prior to most significant environmental impacts of siting and construction, and a new need for power analysis is unnecessary under the relevant decisionmaking standard. *See* Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. at 55,910 (discussed in Section IV.B.2.a, *supra*).

58 *See Clinton ESP*, CLI-05-29, 62 NRC at 803-05 (*citing* LBP-04-17, 60 NRC 229, 245-46 (2004); LBP-05-19, 62 NRC at 156-60)).

59 *See id*. at 805-06.

60 *Envtl. Law & Policy Ctr. v. NRC*, 470 F.3d at 684.

61 *See id*. The court also upheld the Commission's exclusion of need for power from the ESP analysis. *See id*.

62 *See* Byron ER at 7-21 to 7-22; Braidwood ER at 7-21 to 7-22.

63 *See generally* Byron ER, Chapters 7 and 8; Braidwood ER, Chapters 7 and 8. Both the Byron and Braidwood ERs consider the no-action alternative and demand-side management, along with a full range of replacement power alternatives and combinations of alternatives, consistent with the revised GEIS. *See* GEIS at 2-1, 2-18. Exelon's evaluation of alternatives for each plant runs to nearly fifty pages of detailed and thoroughly cited

proceeding, as in *Clinton ESP*, the applicant's energy alternatives analysis need not include an evaluation of need for power.[64] By claiming that the energy alternatives analyses in Exelon's ERs for Byron and Braidwood are deficient because they fail to consider the need for power, ELPC is essentially making the same argument that was rejected by the Board, Commission, and U.S. Court of Appeals in the *Clinton ESP* proceeding.[65]

While ELPC may argue that its Petition suggests that Exelon has opened the door to a "need for power" contention by identifying such a need in the ERs and then "us[ing it] to reject alternatives,"[66] the *Clinton ESP* precedent directly rejects this theory. In an ESP proceeding, both energy alternatives and need for power are voluntary analyses that an applicant may provide at its discretion.[67] As explained above, in the Clinton ESP application, Exelon chose to evaluate energy alternatives, but not the need for power.[68] The Board, Commission, and Court all held that the submission of a voluntary energy alternatives analysis did *not* open the door to a need for power contention.[69] In this proceeding, Exelon was *required* to consider energy alternatives in

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information and analysis. ELPC completely ignores and makes no attempt to controvert the substance of Exelon's ER.

64 *See* 10 C.F.R. §§ 51.53(c)(2), 51.95(c)(2) (governing license renewal); *id*. §§ 51.50(b)(2) and 51.75(b) (governing ESPs).

65 While ELPC cites certain Commission and judicial decisions on page 3 of its Contentions, none of these decisions provide any meaningful interpretation of the license renewal environmental analysis or the Commission's decision to exclude need for power from consideration at the license renewal (or ESP) stage. Instead, these decisions stand for the principle that "NEPA is generally regarded as calling for some sort of a weighing of the environmental costs against the economic, technical, or other public benefits of a proposal." *Claiborne*, CLI-98-3, 47 NRC at 88. As explained above, this principle is not violated by the Commission's regulations, as applied here or in the *Clinton ESP* proceeding. *See also* Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. at 55,909 (explaining that there may be multiple benefits of a proposed action, in addition to meeting a need for power, such as enhanced competition in the market, reducing greenhouse gases and other air pollutants and increasing energy efficiency by allowing the retirement of older, less efficient units).

66 Contentions at 3.

67 *See Clinton ESP*, CLI-05-29, 62 NRC at 803.

68 *See id*.

69 *See id*.; *Envtl. Law & Policy Ctr. v. NRC*, 470 F.3d at 684.

its LRA, but not the need for power.[70] If submitting a voluntary energy alternatives analysis does not open the door to a contention on excluded issues, then the submission of a mandatory energy alternatives analysis certainly does not. In other words, the logic of the *Clinton ESP* precedent is even more compelling in this license renewal proceeding.

The Board must therefore reject Contention 1 in its entirety as an impermissible challenge to the Commission's regulations that is outside the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

3. Contention 1 Is Unsupported and Fails to Raise A Genuine Dispute

The Board also must reject Contention 1 because ELPC's challenges to Exelon's ERs are vague, conclusory, and unsupported. Therefore, Contention 1 fails to raise a genuine dispute on a material issue of law or fact.

ELPC baldly asserts that without a consideration of "need for power," Exelon's energy alternatives analyses are deficient, and ELPC speculates that an examination of the "need for power" "*could* lead to significantly different conclusions."[71] Conclusory statements do not provide sufficient support for a contention—even if they are made by an expert.[72] But ELPC's suggestions are not supported by an expert, so its generalized criticism of Exelon's alternatives analyses is demonstrably insufficient under the contention admissibility rules.

ELPC likewise presents no expert opinion—or any other support—for its claim that "it is impossible to engage in the rigorous and objective evaluation of alternatives required by NEPA without first analyzing the need for power."[73] ELPC provides no support for its suppositions that

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70 *See* 10 C.F.R. § 51.53(c)(2).

71 Contentions at 4 (emphasis added).

72 *USEC, Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006).

73 Contentions at 2. ELPC's claim certainly fails to identify any way in which Exelon's analysis fails to meet a regulatory requirement, as the Commission's rules contemplate and authorize an evaluation of alternatives

a need for power analysis would reveal the need for peak-load capacity rather than baseload.[74] It provides no examples where this has occurred in Illinois or anywhere else in the world, and it provides no expert opinion asserting that this would be the case.[75] Similarly unsupported is the statement that "if Illinois actually needs additional peak-load capacity, then alternative resources such as solar power would fare much better."[76] The Board is left to guess why this would be the case, because ELPC says nothing more.

The required "hard look" at energy alternatives under NEPA, moreover, requires consideration of reasonable alternatives using the "best information available at the time the assessment is performed."[77] As the Commission only last year summarized:

> to submit an admissible contention on energy alternatives in a license renewal proceeding, a petitioner ordinarily must provide "alleged facts or expert opinion" sufficient to raise a genuine dispute as to whether the best information available today suggests that commercially viable alternate technology (or combination of technologies) is available now, or will become so in the near future, *to supply baseload power*. As a general matter, a "reasonable" energy alternative—one that must be assessed in the environmental review associated with a license renewal

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without considering the need for power. *See* 10 C.F.R. § 51.53(c)(2); *see also* Sections IV.B.1 & IV.B.2, *supra*.

74 Contentions at 4.

75 *See Davis-Besse*, CLI-12-08, slip op. at 10-12 (finding a contention alleging that "offshore baseload wind" was a reasonable alternative to license renewal to be unsupported because the technology was theoretical).

76 Contentions at 4. ELPC's speculation about the need for peak power also is irrelevant, because the purpose of the proposed action is to provide an option for continued *baseload* power generation. *See* Section IV.B.2.b, *supra*. Another irrelevant issue is ELPC's reference to potential uprates at Byron and Braidwood. Contentions at 4. The proposed action is the renewal of the existing plant licenses; the NRC reviews and approves a measurement uncertainty recapture ("MUR") uprate as a separate license amendment. *See* Braidwood Station, Units 1 & 2, Byron Station, Units 1 & 2, Request for License Amendment Regarding Measurement Uncertainty Recapture (MUR) Power Uprate (June 23, 2011), *available at* ADAMS Accession No. ML111790030.

77 *Seabrook*, CLI-12-05, 75 NRC at 341; *see also Davis-Besse*, CLI-12-08, slip op. at 5; Rulemaking Denial, 77 Fed. Reg. at 28,320 (explaining that NEPA requires the NRC to consider reasonably foreseeable environmental impacts at the time of the proposed federal action, but it does not require the NRC to "analyze every possible future or speculative development," such as speculative technological advances in alternative energy sources that may take place after the proposed action is taken).

> application—is one that is currently commercially viable, or will become so in the near term.[78]

Under this standard, ELPC presents nothing of substance to challenge the robust analysis of alternatives in Exelon's ERs. ELPC has not stated the applicant's position and its opposing view, and explained why it disagrees with Exelon,[79] or why Exelon's LRA fails to meet a statutory or regulatory requirement.[80] In other words, Contention 1 simply does not raise the requisite genuine, material controversy.[81]

Given the lack of support for Contention 1 and ELPC's failure to identify any specific deficiency in Exelon's ER, the Board must dismiss Contention 1 for inadequate support and for failure to raise a genuine dispute on a material issue of law or fact under 10 C.F.R. §§ 2.309(f)(1)(v) and (vi).

**C. ELPC's Contention that the LRA Is Premature Is Inadmissible**

In Contention 2, ELPC claims that it is inappropriate and unreasonable for Exelon to request license renewal now, when the current Byron and Braidwood operating licenses will not expire until 11 to 14 years from now.[82] ELPC asserts that because Exelon has requested license renewal more than ten years before the expiration of the existing licenses, the resulting EISs "will be stale by the time the existing licenses expire."[83] According to ELPC, certain Council on Environmental Quality ("CEQ") guidance and regulations suggest that under NEPA, an agency

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78 *Seabrook*, CLI-12-05, 75 NRC at 344 (emphasis added).

79 Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. at 33,170; *Millstone*, CLI-01-24, 54 NRC at 358.

80 *See Davis-Besse*, CLI-12-08, slip op. at 4.

81 *See id*.

82 *See* Petition at 4.

83 Contentions at 5.

should supplement an EIS that is more than five years old.[84] ELPC further vaguely points to "the Commission's 'Lessons Learned from Fukushima' initiative," and a report on the changing retail electric business by the Edison Electric Institute ("EEI"), to conclude that the NRC should require Exelon to seek renewal closer to the expiration date of the existing Byron and Braidwood licenses.[85]

Contention 2, however, is inadmissible for the same reasons as Contention 1; namely that: (1) it is an attack on a Commission rule and, therefore, is outside the scope of this proceeding under 10 C.F.R. § 2.309(f)(1)(iii); and (2) it is unsupported and fails to raise a genuine dispute on a material issue of law or fact, contrary to 10 C.F.R. §§ 2.309(f)(1)(v) and (vi).

1. Exelon's LRA Was Submitted Within the Time Allowed Under the Commission's Regulations

Contention 2 is foreclosed by 10 C.F.R. § 54.17(c), which explicitly allows a license renewal applicant to submit its application up to 20 years before the expiration of its operating licenses.[86] ELPC does not even mention or acknowledge this controlling regulation. Because it challenges a Commission rule, Contention 2 is outside the scope of this proceeding and inadmissible.

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84 *See id*. (*citing id*., Attachment 1, Forty Most Asked Questions Concerning CEQ NEPA Regulations, 46 Fed. Reg. 18,026, 18,036 (Mar. 23, 1981) ("CEQ Guidance"))

85 *See id*. at 6 (*citing* Petition, Attachment 2, Edison Electric Institute, Peter Kind, "Disruptive Challenges: Financial Implications and Strategic Responses to a Changing Retail Electric Business" (Jan. 2013) ("EEI Report")).

86 Specifically, the regulation states: "An application for a renewed license may not be submitted to the Commission earlier than 20 years before the expiration of the operating license or combined license currently in effect."

The Commission reconsidered this rule last year in response to a petition for rulemaking.[87] Specifically, various stakeholders requested that the NRC amend its regulations to accept a license renewal application no sooner than ten years before the expiration of the current license, rather than the specified 20 years.[88] The petitioners claimed that the existing rule was outdated, inadequate under the Atomic Energy Act ("AEA"), and violated NEPA by, among other things, unreasonably limiting the scope of alternatives considered.[89]

The Commission denied the petition.[90] In so doing, the Commission fully re-affirmed 10 C.F.R. § 54.17(c) under both the AEA and NEPA, and provided a detailed explanation of the basis for the rule.[91] ELPC does not even mention the Rulemaking Denial; much less explain any disputes with the analysis in it.

As the Commission explained in the Rulemaking Denial, the AEA authorizes the NRC to issue and renew operating licenses for a period of up to forty years.[92] Consistent with the AEA, NRC regulations allow for a renewed license covering up to 40 years of operation (*i.e.*, up to 20 years of the original license plus 20 years of extended operation).[93] The Commission determined that the "20-year application timeframe provided a reasonable and flexible period for licensees to perform informed business planning."[94]

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87 *See* Denial of Petition for Rulemaking, Filing a Renewed License Application, 77 Fed. Reg. 28,316 (May 14, 2012) ("Rulemaking Denial").

88 *See id*. at 28,316.

89 *See id*.

90 *See id*.

91 *See id*. at 28,316-28.

92 *See id*.

93 *See id*.; *see also* 10 C.F.R. § 54.31(b) ("The term of any renewed license may not exceed 40 years.").

94 *See* Rulemaking Denial, 77 Fed. Reg. at 28,320.

For NEPA purposes, the proposed federal action for license renewal, therefore, is "the issuance of a new and superseding license that allows operation for up to 40 years . . . ."[95] The federal action takes place at the time of the issuance of the *renewed* operating license, not when the existing license expires, as ELPC suggests.[96] The suggestion that the federal action takes place at the start of the period of extended operation ("PEO") is a fundamental misconception by ELPC. Thus, the Rulemaking Denial fully explains why there is simply no requirement to conduct a NEPA analysis "closer in time" to the expiration of the original license.

To support its argument, ELPC first interprets 40 C.F.R. § 1502.9(c) as "requir[ing]" the NRC to "prepare supplements to either draft or final environmental impact statements if . . . there are significant new circumstances or information relevant to environmental concerns and bearing on that proposed action or its impacts."[97] But ELPC is confusing the completion of the NRC's action on Exelon's LRA by the issuance of a new and superseding license—which is the definitive end of the NEPA process—with the plants' entry into the PEO, which typically takes place years thereafter. The supplementation of a prior environmental NEPA analysis is only required where "there remains major Federal action to occur."[98] Contrary to this Supreme Court precedent, ELPC would have the NRC supplement its NEPA analyses *after final action* is taken. Given that the CEQ guidelines are intended to guide agency decisionmaking,[99] it makes no sense

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95 *Id*.

96 *See* Contentions at 5.

97 *Id*.

98 *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 73 (2004) (internal quotations omitted) (rejecting petitioner's claim that the Bureau of Land Management failed to fulfill its NEPA obligations by declining to supplement an EIS where its land use plan for wilderness study areas was approved and therefore the federal action was completed); *see also Mass. v. NRC*, 708 F.3d 63, 68 (1st Cir. 2013) (noting that the emergence of new information will require NRC to supplement a license renewal EIS if "the relicensing has not yet occurred").

99 *See* 40 C.F.R. § 1500.1(c).

to interpret Section 1502.9(c) to mandate supplementation of an EIS *after* the agency's final decision.[100]

The Commission, moreover, has its own regulations in 10 C.F.R. §§ 51.72 and 51.92 regarding supplementing draft and final EISs. Crucially, the requirement to supplement final EISs applies only "[i]f the proposed action has not yet been taken . . . ."[101] ELPC's theory therefore is not only contrary to NEPA, but to the Commission's specific and controlling rules.

Next, ELPC quotes a portion of a sentence from a 32-year old CEQ guidance document titled "Forty Most Asked Questions on CEQ NEPA Regulations." This guidance actually supports Exelon's position. As selectively quoted by ELPC, the CEQ Guidance states that "EISs more than five years old should be carefully re-examined . . . ."[102] ELPC presents only a partial quotation, however, omitting the crucial text that undermines its argument. The full sentence states, "As a rule of thumb, *if the proposal has not yet been implemented*, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement."[103] The Commission's rule in 10 C.F.R. § 51.92(a) is fully consistent with this CEQ Guidance.

In sum, Contention 2 is an impermissible collateral attack on 10 C.F.R. § 54.17(c), a rule that the Commission has very recently reconsidered and re-affirmed. Because the contention

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100 In any event, CEQ regulations such as this one are not binding upon the NRC if the NRC has not expressly adopted them. *See Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348 n.22 (2002) ("the Commission is not bound by CEQ regulations that it has not expressly adopted"); *see also Dominion Nuclear N. Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 222 n.21 (2007) ("CEQ's guidance does not bind us"); *Clinton ESP*, LBP-05-19, 62 NRC at 154, *aff'd on other grounds,* CLI-05-29, 62 NRC at 801, *Envtl. Law & Policy Ctr. v. NRC*, 470 F.3d at 676.

101 10 C.F.R. § 51.92(a).

102 Contentions at 5 (*citing* CEQ Guidance, 46 Fed. Reg. at 18,036.

103 CEQ Guidance, 46 Fed. Reg. at 18,036 (emphasis added).

challenges this rule, it is outside the scope of this proceeding and inadmissible under to 10 C.F.R. § 2.309(f)(1)(iii).

2. Contention 2 Is Unsupported and Fails to Raise A Genuine Dispute

As with Contention 1, Contention 2 relies exclusively on vague speculation, rather than alleged facts or expert opinion. So again, even if one overlooks the Commission's regulation explicitly allowing Exelon to submit its LRA at this time, Contention 2 would still be inadmissible.

A petitioner must explain the significance of any factual information upon which it relies.[104] "[T]he Board is not to accept uncritically the assertion that a document or other factual information or an expert opinion supplies the basis for a contention."[105] The Board will examine documents to confirm that they support the proposed contentions.[106] In short, 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.'"[107] Contention 2 is inadmissible under these standards.

As factual "support" for Contention 2, ELPC first speculates that changes in safety regulations as a result of lessons learned from Fukushima will "make it likely" that the EISs will

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104 *See Fansteel, Inc.* (Muskogee, Okla. Site), CLI-03-13, 58 NRC 195, 204-05 (2003).

105 *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998).

106 *See Vt. Yankee Nuclear Power Corp.* (Vt. Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990). Any supporting material provided by a petitioner, including those portions thereof not relied upon, is therefore subject to Board scrutiny "both for what it does and does not show." *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90, *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). Thus, a petitioner's imprecise reading of a document cannot be the basis for a litigable contention. *Ga. Inst. of Tech.* (Ga. Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300 (1995), *vacated and remanded on other grounds*, CLI-95-10, 42 NRC 1 (1995).

107 *Fansteel,* CLI-03-13, 58 NRC at 203 (*quoting GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)).

need to be supplemented.[108] This conjecture is unsupported by references to any alleged facts or expert opinion, or any documents whatsoever.[109] The Commission has rejected such attempts to litigate vague, unsupported contentions as mere "notice pleading," stating that "[g]eneral assertions or conclusions will not suffice."[110] ELPC's argument is also illogical because it fails to explain why potential changes in *safety* regulations emanating from Fukushima lessons-learned will lead to the need to supplement the *environmental* analyses that it is purportedly concerned about in this contention.

Second, ELPC generally cites to the EEI Report, which discusses the apparently-changing retail electric business, asserting that this report shows that electricity generation and planning "will very likely continue to be a rapidly changing area."[111] Based on this, ELPC vaguely speculates that the electric generation landscape will be different in eleven to fourteen years, when the renewed operating licenses are to "take effect."[112] Such bare assertions and speculation are insufficient basis for a contention and do not raise a genuine dispute with the environmental analyses for the Byron and Braidwood LRAs.[113]

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108 Contentions at 6.

109 ELPC may be referring to "Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term, Task Force Review of Insights from the Fukushima Dai-ichi Accident" (July 12, 2011), *available at* ADAMS Accession No. ML111861807, but this is unclear.

110 *Consumers Energy Co., et al.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 414 (2007) (*quoting Power Auth. of the State of N.Y., et al.* (James A. FitzPatrick Nuclear Power Plant & Indian Point Nuclear Generating Unit No. 3), CLI-00-22, 52 NRC 266, 295 (2000)); *see also S. Nuclear Operating Co.* (Vogtle Elec. Generating Plant, Units 3 & 4), LBP-09-3, 69 NRC 139, 158 (2009) (rejecting "open-ended, placeholder contentions" that are not based on "documentary material or expert analysis").

111 Contentions at 6.

112 *Id*. As explained in the previous Section, however, the renewed licenses will supersede the existing licenses upon issuance, and will "take effect" immediately.

113 *See*, *e.g.*, *Fansteel,* CLI-03-13, 58 NRC at 203. ELPC certainly does not explain how the electric generation landscape will change so dramatically in the next one to four years, which is apparently when ELPC thinks it would be appropriate for Exelon to submit its LRA. *See* Contentions at 5.

To the extent these claims are interpreted as attempts to raise questions about the energy alternatives analyses in the Byron and Braidwood ERs by identifying potential future changes to the electricity generation business, they are foreclosed by very recent decisions in the *Seabrook* and *Davis-Besse* license renewal proceedings. In those decisions the Commission held that a "reasonable" energy alternative (*i.e.*, one which must be evaluated), "is one that is currently commercially viable, or will become so in the near term."[114] An EIS (or an ER) "is not intended to be a research document, reflecting the frontiers of scientific methodology, studies, and data."[115] Under this precedent, ELPC's claims that Exelon's ERs should have considered vaguely-defined future developments in the electrical generation landscape are simply inadmissible.

The EEI Report, moreover, explicitly states that the timing of the anticipated "transformative changes" to the retail electric industry—such as developments in distributed generation, solar photovoltaic technology, and customer, regulatory, and political interest in demand-side management—is "unclear."[116] Such information demonstrably fails to meet the standards set by the Commission in *Davis-Besse* and *Seabrook* for challenges to the energy alternatives analysis in a license renewal proceeding.

Thus, as with Contention 1, Contention 2 must be dismissed under 10 C.F.R. § 2.309(f)(1)(v) and (vi) for inadequate support and for failure to raise a genuine dispute on a material issue of law or fact.

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114 *Davis-Besse*, CLI-12-08, slip op. at 6 (*quoting Seabrook*, CLI-12-05, 75 NRC at 341).

115 *Seabrook*, CLI-12-05, 75 NRC at 341.

116 EEI Report at 1; *see also id.* at 19 (concluding that the threat of disruptive forces on the retail utility industry has been limited to date). In any event, Exelon's ERs evaluate all of these topics, and ELPC raises no specific disputes with Exelon's analysis. *See generally* Byron ER, Chapter 7, Braidwood ER, Chapter 7.

## V. CONCLUSION

For reasons discussed above, both of ELPC's contentions are foreclosed by rule, and in addition, neither contains sufficient support to raise a genuine dispute with Exelon's LRA. As a result, the Board must deny the Petition in its entirety for failure to proffer an admissible contention in accordance with 10 C.F.R. § 2.309(f)(1).

Respectfully submitted,

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

*Signed (electronically) by Raphael P. Kuyler*

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Dated in Washington, D.C.
this 28th day of October 2013

**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

| | | |
|---|---|---|
| In the Matter of: | ) | Docket Nos. 50-454-LR |
| | ) | 50-455-LR |
| EXELON GENERATION COMPANY, LLC | ) | 50-456-LR |
| | ) | 50-457-LR |
| (Byron Nuclear Station, Units 1 and 2; | ) | |
| Braidwood Nuclear Station, Units 1 and 2) | ) | October 28, 2013 |

## CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (as revised), I certify that on this date, copies of "Exelon's Answer Opposing the Hearing Request and Petition to Intervene Filed by the Environmental Law and Policy Center" were served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding.

*Signed (electronically) by Raphael P. Kuyler*
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