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, and	)	ASLBP No. 13-929-02-LR-BD01
Braidwood Nuclear Station, Units 1 and 2)	)	

NRC STAFF ANSWER TO ENVIRONMENTAL LAW AND POLICY CENTER HEARING REQUEST AND PETITION TO INTERVENE

Mitzi A. Young
Anita Ghosh
Counsel for NRC Staff

October 28, 2013

TABLE OF CONTENTS

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, and Braidwood Nuclear Station, Units 1 and 2)	)	ASLBP No. 13-929-02-LR-BD01
	)	

NRC STAFF ANSWER TO ENVIRONMENTAL LAW AND POLICY CENTER HEARING REQUEST AND PETITION TO INTERVENE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1) and the eight day extension granted by the Commission due to the Government shutdown,[1] the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) hereby answers the petition for leave to intervene and request for hearing filed by the Environmental Law and Policy Center (ELPC or Petitioner). *See* Hearing Request and Petition to Intervene by the Environmental Law and Policy Center (Sept. 23, 2013) (Petition).

As discussed in more detail below, ELPC has established standing to intervene based on authorized representation of the interests of ELPC members that reside near the above-captioned facilities and proffers two contentions raising environmental issues related to those facilities. Specifically, Petitioner seeks admission of issues related to the environmental analysis required by the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et seq.* (NEPA). Specifically, Petitioner challenges (1) whether the Byron and Braidwood Environmental Reports (ERs) contain a "rigorous exploration . . . of all reasonable alternatives

[1] *See Aerotest Operations, Inc.* (Aerotest Radiography & Research Reactor) *et. al,* Notice (Oct. 17, 2013) (unpublished).

[including renewal energy, energy efficiency and "clean coal" alternatives], asserting that 10 C.F.R. 51.53(c)(2) violates NEPA by stating no need for power analysis is needed and (2) whether submission of a License Renewal Application (LRA) 11 to 14 years in advance of license expiration dates is appropriate and reasonable under NEPA, asserting that timing of the EIS and the failure of the ER and EIS to analyze the need for the facility will make the EIS stale since future changes in the "energy generation landscape" will result in significant new circumstances or information requiring supplementation. *See* Petition at 3-4; Petition, Exhibit 4 at 6.

These contentions, however, (1) raise impermissible challenges to NRC regulations that are outside the scope of this licensing renewal proceeding, and (2) are immaterial, unsupported, and fail to identify a genuine dispute with the Applicant on a material issue of law or fact. Because neither contention is admissible under 10 C.F.R. § 2.309(f)(1) and NRC caselaw, the Atomic Safety and Licensing Board (Board) should deny the Petition.

BACKGROUND

This proceeding concerns the May 29, 2013, application of the Exelon Generation Company, LLC, (Exelon or the Applicant) to renew the operating licenses for the Byron Nuclear Station, Units 1 and 2 (Byron), and Braidwood Nuclear Station, Units 1 and 2 (Braidwood), for an additional 20 years.[2] The operating licenses for Byron Unit 1 and Unit 2 expire on October 31, 2024, and November 6, 2026, respectively, and the operating licenses for Braidwood Unit 1 and Unit 2 expire on October 17, 2026, and December 18, 2027, respectively.

[2] License Renewal Application [LRA or Application], Byron and Braidwood Stations, Units 1 and 2, Facility Operating License Nos. NPF-37 (Byron Unit 1), NPF-66 (Byron Unit 2), NPF-72 (Braidwood Unit 1), and NPF-77 (Braidwood Unit 2) (May 29, 2013) (Agencywide Documents Access and Management System (ADAMS) Package Accession No. ML131550528, which includes the LRA (ML13155A420, ML13155A421), an May 2013 Environmental Report (ER) for Byron (labeled LRA Appendix E, Item 1) (ML13155A422, ML13155A423) and a May 2013 ER for Braidwood (labeled LRA Appendix E, Item 2) (ML13155A424, ML13155A426). LRA cites below are to ML13161A223. Cites to the Byron ER and Braidwood ER are to ML13155A422 and ML13155A424, respectively.

LRA at 1-3. Byron is located in north central Illinois, near the town of Byron and the Rock River. *Id.* at 1-6. Braidwood is located in northeastern Illinois, near the town of Braidwood and the Kankakee River. *Id.* Each unit has a Westinghouse Electric Corporation four loop pressurized water reactor. *Id.*

Notice of receipt of the Application was published in the *Federal Register* on June 13, 2013.[3] On July 24, 2013, the NRC published a notice of docketing and notice of opportunity for hearing in the *Federal Register*, indicating an intervention petition deadline of September 23, 2013.[4] After EPLC timely filed the instant Petition, an Atomic Safety and Licensing Board (Board) was established to preside over the above-captioned proceeding. Establishment of Atomic Safety and Licensing Board (Oct. 8, 2013) (ML13281A798); 78 Fed. Reg. 64,255 (Oct. 28, 2013).

DISCUSSION

I. Legal Standards for Intervention Petition

A. Standing

Under 10 C.F.R. § 2.309(a), "[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing."[5] In accordance with the regulations, the Board "will grant the request/petition [to intervene] if it

---

[3] Byron Nuclear Station, Units 1 and 2, and Braidwood Nuclear Station, Units 1 and 2 [Notice of LRA receipt and availability], 78 Fed. Reg. 35,646 (Jun. 13, 2013).

[4] Byron Nuclear Station, Units 1 and 2, and Braidwood Nuclear Station, Units 1 and 2; Exelon Generation Company, LLC [Notice of LRA docketing and hearing opportunity], 78 Fed. Reg. 44,603 (July 24, 2013).

[5] "Person" is defined as "(1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission . . . any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing." 10 C.F.R. § 2.4.

determines that the requestor/petitioner has standing under the provisions of [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of [10 C.F.R. § 2.309(f)]."[6] A request for hearing or petition for leave to intervene must state the following:

> (i) The name, address, and telephone number of the requestor or petitioner;
>
> (ii) The nature of the requestor's/petitioner's right under [the Atomic Energy Act of 1954, as amended] 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; and
>
> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1).

In license renewal proceedings, standing may be based upon a petitioner's proximity to the facility at issue such that "a petitioner is presumed to have standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor."[7]

An organization may establish its standing to intervene based on organizational standing (showing that its own organizational interests could be adversely affected by the proceeding), or representational standing (based on the standing of its members). Where an organization seeks to establish "representational standing," it must identify at least one member of the organization by name and address who would qualify for standing, show that the member has

---

[6] 10 C.F.R. § 2.309(a).

[7] *Entergy Nuclear Operations, Inc*. (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43, 60 (2008) (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-06, 53 NRC 138, 146 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)). *See Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 917 (2009).

authorized the organization to represent his or her interests, and demonstrate that the interest the organization seeks to protect is germane to his or her own purposes.[8]

B. Contention Admissibility

1. General Requirements for Admissibility

The NRC "reserve[s its] hearing process for genuine, material controversies between knowledgeable litigants." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 219 (2003) (footnote omitted). A proffered contention is admissible under 10 C.F.R.§ 2.309(f)(1) only if it:

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

10 C.F.R. § 2.309(f)(1). The contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) are intended to "focus litigation on concrete issues and result in a clearer and more focused record

---

[8] *See, e.g.*, *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 409 (2007); *Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-10-15, 72 NRC 257, 276 (2010).

for decision."[9] The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing" as indicated by a proffered contention that satisfies all of the 10 C.F.R. § 2.309(f)(1) requirements.[10] Thus, the Commission has emphasized that the 10 C.F.R. § 2.309(f)(1) requirements are "strict by design."[11] Failure to comply with any one of the 10 C.F.R. § 2.309(f)(1) requirements is grounds for the dismissal of a contention[12] and attempting to satisfy these requirements by "[m]ere 'notice pleading' does not suffice."[13]

In addition, a contention is inadmissible if (1) it constitutes an attack on applicable statutory requirements; (2) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations; (3) it is nothing more than a generalization regarding the petitioner's view of what applicable policies ought to be; (4) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or (5) it seeks to raise an issue which is not concrete or litigable.[14]

A contention need not be proven at the pleading stage.[15] Nevertheless, an intervention petitioner must present factual information or expert opinions necessary to support its

---

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

[10] *Id*.

[11] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *petition for reconsideration den'd*, CLI-02-01, 55 NRC 1 (2002).

[12] *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

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

[14] *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20-21 (1974).

[15] *See Philadelphia Elec. Co.* (Limerick Generating Station, Units 1 & 2, ALAB-806, 21 NRC 1183, 1193 n. 39 (citing *Houston Lighting & Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), (…footnote continued)

contentions. *See Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlantic, Georgia), LBP-95-6, 41 NRC 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 NRC 1, *and aff'd in part*, CLI-95-12, 42 NRC at 124 (1995). Neither mere speculation nor bare or conclusory assertions suffice to support admission of a proffered contention. *See Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003).

A disputed issue is material if it would make a difference in the outcome of the proceeding. *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 333-34 (1999). General concerns are not sufficient to gain admission in this proceeding. *See Oconee*, CLI-99-11, 49 NRC at 334. Thus, contentions that are vague or unparticularized are not permitted. *Id. at* 338 (citing *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999)).

In addition, a hearing petitioner may not demand a hearing to "attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies." *Oconee,* CLI-99-11, 49 NRC at 334 (citing *North Atl. Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 217 n.8 (1999); *Peach Bottom*, ALAB-216, 8 AEC at 20-21 n.33. Absent the grant of a petition for exception or waiver, no Commission rule or regulation can be attacked in an adjudicatory proceeding. 10 C.F.R. § 2.335(a);[16] *Carolina Power & Light*

(footnote continued…)

ALAB-590, 11 NRC 542, 547-49 (1980)).

[16] Specifically, no rule or regulation of the Commission can be attacked in a adjudicatory proceeding unless (1) a presiding officer determines that a waiver petition by an adjudicatory proceeding participant makes a prima facie showing of special circumstances as to the subject matter of the proceeding (i.e., that the application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted) and (2) the Commission determines that the rule or regulation should be waived or an exception made. 10 C.F.R. § 2.335(a) - (d). "Special circumstances are present only if the petition properly pleads one or more facts, not common to a large class of applicants or facilities, that were not considered either explicitly or by necessary implication in the proceeding leading to the rule sought to be waived," and those circumstance must undercut the rationale for the rule sought to be waived. *Pub. Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), CLI-88-10, 28 NRC 573, 597 (1988), *reconsid. den'd*, CLI-89-3, 29 NRC 234, 242 (1989).
(…footnote continued)

Co. (Shearon Harris Nuclear Power Plant, Unit 1), LBP-07-11, 66 NRC 41, 57-58. Thus, contentions or petitioner arguments attacking NRC license renewal regulations have been rejected. [17]

2. The Scope of License Renewal Proceedings

The scope of a license renewal proceeding is limited to matters prescribed by 10 C.F.R. Part 54, which focuses "'on plant systems, structures and components for which current [regulatory] activities and requirements *may not* be sufficient to manage the effects of aging in the period of extended operation.[18]

Contentions raising environmental issues in a license renewal proceeding are limited to those issues that are affected by license renewal and have not been addressed by rulemaking or on a generic basis.[19] The Commission's environmental protection regulations in 10 C.F.R. Part 51 reflect focused and efficient license renewal requirements by providing generic conclusions applicable to nuclear power plants and limiting plant-specific evaluations of

---

(footnote continued…)

A participant in a licensing renewal proceeding may also file a petition for rulemaking under 10 C.F.R. § 2.802. 10 C.F.R. § 2.335(e).

[17] *See, e.g., Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station);*Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-07-3, 65 NRC 13, 17-18 (citing 10 C.F.R. 2.335(a) and (b); *Millstone,* CLI-01-24, 54 NRC at 364) (contention impermissibly challenged the NRC regulation's generic finding of spent fuel storage impacts in the license renewal GEIS that is not subject to challenge litigation unless the rule is waived by the Commission for a particular proceeding or the rule itself is suspended or altered in a rulemaking proceeding), *reconsid. den'd*, CLI-07-13, 65 NRC 211, 215 (2007). *See also Turkey Point*, CLI-01-17, 54 NRC at 7-8, 21-23; *Entergy Nuclear Vermont Yankee, LLC, & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 383 (2007) (petitioners' argument that the Commission cannot rely on a state permit that expires five years into the 20-year renewal period is a *de facto* collateral attack on part 51 requirement that an applicant submit an EPA section 316(a) variance or an equivalent state document).

[18] *Turkey Point*), CLI-01-17, 54 NRC at 10, 7-9 (citing 60 Fed. Reg. at 22, 469 (emphasis added)).

[19] *Id.* at 11-13.

environmental impacts to non-generic issues.[20] NUREG-1437, "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," contains analyses (generally applicable to all plants) of "Category 1" issues for which the NRC has reached generic conclusions regarding license renewal.[21] Applicants for license renewal do not need to submit analyses of Category 1 issues in their Environmental Reports.[22] They may reference and adopt these findings.[23] Category 1 issues "are not subject to site-specific review and thus fall beyond the scope of individual license renewal proceedings" unless the Commission grants a waiver of the rule.[24] Applicants, however, must provide a plant-specific review of the non-generic issues,

---

[20] *Id.* at 11. *See, e.g.,* 10 C.F.R. §§ 51.95(c)(4) (conclusions on Category 1 and 2 issues), 51.45(c)(3)(i) (environmental report not required to analyze Category 1 issues listed in 10 C.F.R. Part 51, Appendix A).

[21] *Id.* (citing NUREG-1437, Vol. 1 *Generic Environmental Impact Statement for License Renewal of Nuclear Plants*, Main Report, Final Report, (May 1996) (ML040690705) (GEIS)). *See Pac. Gas & Elec. Co* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-11-11, 74 NRC 427, 444-45 (2011). The Staff's and the Commission's environmental review is "guided largely" by the GEIS. *Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 305 (2012).

Although not final at the time Exelon submitted its LRA, the recently issued GEIS, Revision 1, reflects the technical basis for amending 10 C.F.R. Part 51. License Renewal of Nuclear Power Plants; Generic Environmental Impact Statement and Standard Review Plans for Environmental Reviews [Notice of Issuance], 78 Fed. Reg. 37,325 (June 20, 2013). The ADAMS package number for GEIS, Revision 1, is ML13107A023, consisting of Volume 1: Main Report (ML13106A241), Volume 2: Public Comments (ML13106A242), and Volume 3: Appendices (ML13106A244). The revised GEIS (published in draft in 2009) "evaluates a full range of alternatives to the proposed action." 78 Fed. Reg. at 37,325.

[22] *Diablo Canyon*, CLI-11-11, 74 NRC at 444-45 (citing 10 C.F.R. § 51.53(c)(3)(i)); *Vermont Yankee* & *Pilgrim*, CLI-07-3, 65 NRC at 17 (citing 10 C.F.R. § 51.53(c)(3)(i)).

[23] *Turkey Point*, CLI-01-17, 54 NRC at 11.

[24] *Turkey Point,* CLI-01-17, 54 NRC at 16, 17, 12; *see* 10 C.F.R. § 51.53(c)(3)(i)-(ii). The Commission recognized that "generic findings sometimes need revisiting in particular contexts" and that there are "opportunities for individuals to alert the Commission to new and significant information" that might invalidate a generic finding since (1) [i]n the hearing process,[] petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule," (2) petitioners with evidence that a generic finding is incorrect for all plants may petition the Commission to initiate a fresh rulemaking, and (3) petitioners may use the SEIS notice and comment process to ask the NRC to forego suspect findings and to suspend license renewal proceedings, pending a rulemaking or updating of the GEIS. *Turkey Point*, CLI-01-17, 54 NRC at 12 (citations omitted). "[Q]uite apart from individual license renewal proceedings, the Commission itself will review (and revise as needed) the license renewal rules and GEIS environmental analyses every 10 years." *Id.* (citing 61 Fed. Reg. 28,468).

i.e. "Category 2" issues.[25] Ultimately, information in the plant-specific EIS supplement to the GEIS will be used for the required determination of whether or not the adverse impacts of renewal "are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable." 10 C.F.R. § 51.95(c)(4).

3. Consideration of Alternatives in License Renewal Proceedings

NRC regulations implementing NEPA are in 10 C.F.R. Part 51. Under NEPA, the NRC is required to take a "hard look" at the environmental impacts of a proposed action, as well as reasonable alternatives to that action, using the best information available at the time the assessment is performed. *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 315 (2010) (citing *Town of Winthrop v. FAA*, 535 F.3d 1, 11-13, 16 (1st Cir. 2008)). This "hard look" is tempered by a "rule of reason" that requires agencies to address only impacts that are reasonably foreseeable – not remote and speculative. *See, e.g., Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-156, 6 AEC 831, 836 (1973). In performing an alternatives analysis, the applicant and the agency are limited by the information that is reasonably available in preparing the environmental review documents. *Seabrook,* CLI-12-5, 75 NRC at 342.

Pursuant to 10 C.F.R. § 51.53(c)(2), license renewal applicants are required to address in the environmental report, the environmental impacts of the proposed action and to compare them to the impacts of alternative actions.[26] "NEPA requires consideration of 'reasonable' alternatives, not all conceivable ones." *Seabrook*, CLI-12-5, 75 NRC at 338 (quoting *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 834, 837, 838 (D.C. Cir. 1972)).

For a contention on energy alternatives to be admissible in a license renewal

---

[25] *Id.* at 11.

[26] The range of alternatives are the reasonable alternatives to the proposed action. *See Dubois v. USDA*, 102 F.3d 1273, 1293 (1st Cir. 1996); *NRDC v. Morton*, 458 F.2d 827 (D.C. Cir. 1972).

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 a commercially viable alternate technology (or combination of technologies) is available now, or will become so in the near future, to supply baseload power. *Seabrook*, CLI-12-5, 75 NRC at 342 (citing *Roosevelt Campobello Int'l Park Comm. v. EPA*, 684 F.2d 1041, 1047 (1st Cir. 1982)); *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 397 (2012). Thus, 10 C.F.R. § 51.53(c)(3) requires that an applicant discuss nonspeculative and reasonably feasible alternatives to the proposed action. *See Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 551 (1978) (only alternatives that are not considered remote and speculative possibilities need be considered).

A "reasonable" energy alternative—one that must be assessed in the environmental review associated with a license renewal application—is one that is currently commercially viable, or will become so in the near term.[27] *Id.* Additionally, the Commission stated that the environmental report and EIS "'need only discuss those alternatives that . . . 'will bring about the ends' of the proposed action.'" *Seabrook*, CLI-12-5, 75 NRC at 339. In determining the ends of the proposed action, the Commission gives substantial weight to the preference of the applicant. *Id.* at 339.

The range of alternatives considered need only be those that are capable of achieving the goals of the proposed action. *Hydro Res., Inc*. (P.O. Box 15910, Rio Rancho, New Mexico 87174), CLI-01-4, 53 NRC 31, 55 (2001) (citing *Citizens Against Burlington v. Busey*, 938 F.2d 190, 195) (D.C. Cir.), *cert. den'd*, U.S. 502, U.S. 994 (1991); *Sacramento Mun. Util. Dist.*

---

[27] In *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1) CLI-12-8, 75 NRC 393, 397-98 (2012) the Commission noted that the Board determined, and no party disputed, that "any reasonable alternative to be evaluated in depth must be an alternative that is available now or in the near future and in any event no later than . . . the expiration date of the current license." CLI-12-8, 75 NRC 393, 397-98 (2012).

(Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 144-45 (1993) (citing *Process Gas Consumers Group v. USDA*, 694 F.2d 728, 769 (D.C. Cir. 1981); *Seabrook*, CLI-12-5, 75 NRC at 339 (ERs and EISs need only discuss alternatives that would bring about the ends of the proposed action). Guidance in the License Renewal GEIS indicates "'that a reasonable set of alternatives should be limited to analysis of single, discrete electric generation sources . . . that are technically feasible and commercially viable.'" *Seabrook*, CLI-12-5, 75 NRC 301, 338 (2012) (citing License Renewal GEIS, Vol. 1, § 8.1 at 8-1).

4. Need for Power and License Renewal

Neither a renewal applicant's environmental report nor the NRC supplemental environmental impact statement for license renewal is required to include a need for power discussion. 10 C.F.R. §§ 51.45(c)(2); 51.95(c)(2). Specifically, 10 C.F.R. § 51.53(c)(2) states, in part:

> The [environmental] report is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation.

See also 10 C.F.R. § 51.95(c)(2) (stating that the supplemental environmental impact statement (SEIS) for license renewal also is not required to discuss need for power or the cost/benefits of the proposed action).

In issuing its 1996 License Renewal Rule (Environmental Review), the Commission stated that (1) "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." and (2) the GEIS would state:

> The purpose and need for the proposed action (renewal of an operating license) is to provide an option that allows for power generation capability beyond the term of a current nuclear power plant operating license to meet future system generating needs, as such needs may be determined by State, utility, and, where authorized, Federal (other than NRC) decisionmakers.

[Final Rule] Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,472 (June 5, 1996) (1996 Rule).[28] The GEIS definition of purpose and need reflects the Commission's determination that, absent safety or NEPA findings that would cause NRC to reject a renewal application, "the NRC has no role in the energy planning decisions of State regulators and utility officials." *Id*. at 28,472.

The NRC excluded an analysis of the need for power from the scope of license renewal because "the issues of need for power and utility economics should be reserved for State and utility officials to decide."[29] In doing so, the Commission recognized that, "absent findings in the safety review required by the Atomic Energy Act of 1954, as amended, or in the NEPA environmental analysis that would lead the NRC to reject a license renewal application, the NRC has no role in the energy planning decisions of State regulators and utility officials." 61 Fed. Reg. at 28,472.

The Commission also explained that the NRC "has eliminated the use of cost-benefit analysis and consideration of utility economics in its NEPA review of a license renewal application except when such benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation." *Id.* at 28,471. Like need for power, the Commission excluded this cost/benefit analysis from license renewal recognizing that "the determination of the economic viability of continuing the operation of a nuclear power plant is an issue that should be left to appropriate State regulatory and utility officials." *Id.* at 28,471.

Moreover, the determination of which alternatives to include in the ER analysis is based

---

[28] GEIS, Revision 1 (at 1-3 to 1-4), with minor modifications, repeats this statement.

[29] GEIS § 1.7.1. Additionally, as stated in GEIS, Revision 1, "the regulatory authority over licensee economics (including the need for power) falls within the jurisdiction of the States and, to some extent, within the jurisdiction of the Federal Energy Regulation Commission (FERC)." GEIS, Revision 1 § 1.7.5.

on economic benefits and costs – not need for power. This is supported by the plain language of the regulation at 10 C.F.R. § 51.53(c)(2) – which states that the ER is not required to analyze the need for power or the economic costs and benefits of license renewal or alternatives to license renewal "except insofar as such costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation." 10 C.F.R. § 51.53(c)(2). The "except insofar as" language covers only "benefits and costs." In addition, the regulatory history shows that the "except insofar as" language only attaches to economic benefits and costs, and not to need for power:

The statement that the use of economic costs will be eliminated in this approach refers to the ultimate NEPA decision regarding the comparison of alternatives and the proposed action. This approach does not preclude a consideration of economic costs if these costs are essential to a determination regarding the inclusion of an alternative in the range of alternatives considered (i.e., an alternative's exorbitant cost could render it nonviable and unworthy of further consideration) or relevant to mitigation of environmental impacts. 61 Fed. Reg. at 28,472.

Contentions asserting that need for power must be analyzed for license renewal are not admissible. *See NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-2. 73 NRC 28, 53 (2011) (contention alleging failure to discuss need for power is outside the scope of a renewal proceeding), *rev'd on other grounds*, *Seabrook*, CLI-12-5, 75 NRC at 303.

5. Supplementation of an EIS

An EIS, and its analysis of alternatives, must be prepared when a project is proposed. *See, e.g., Kleppe v. Sierra Club,* 427 U.S. 390, 405-06 (1976). NRC regulations require that, "[i]f the proposed action has not been taken," a supplement will be prepared for an EIS for which a notice of availability has been published in the *Federal Register* "if: (1) [t]here are substantial changes in the proposed action that are relevant to environmental concerns; or (2) [t]here are new and significant circumstances or information relevant to environmental concerns and

bearing on the proposed action or its impacts." 10 C.F.R. § 51.92(a).

An EIS supplement "is not necessary 'every time new information comes to light after the EIS is finalized.'"[30] The "new information must present 'a seriously different picture of the environmental impact of the *proposed* project from what was previously envisioned.'" *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999) (quoting *Sierra Club v. Froehlke*, 816 F2d 205, 210 (5th Cir. 1987)) (emphasis added).[31] *See also Wisconsin v. Weinberger*, 745 F.2d 412, 417-18 (7th Cir. 1984) (an agency's failure to prepare an EIS supplement is not arbitrary or capricious under section 706(2)(A) of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) unless new information provides a seriously different picture of the environmental landscape as of time of making the decision).

II. Petitioner Has Shown Standing to Intervene

ELPC, a "not-for profit environmental quality and economic advocacy organization," seeks representational standing based on harm to the interests of its members. Petition at 3.[32] ELPC states that the advocacy organization works to reduce pollution, and since its founding in 1993, has been active in environmental issues. Petition at 2. Appended as Exhibits 1-3 to the Petition, are respective ELPC member affidavits by Gerald Paulson (for Byron), Jim Slama (for Braidwood), and Jesse Auerbach (for Braidwood) that state the member's name and address, authorize ELPC to represent the named member in this proceeding by opposing the issuance of

---

[30] *Hydro Resources, Inc.*, 50 NRC at 14 (citing *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989));

[31] This language is also quoted in *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 167-68 (2011) (citations omitted).

[32] ELPC has been granted representational standing in another NRC proceeding. *See, e.g., Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 239 (2004).

license renewal, and state concerns that are germane to ELPC's purposes.[33] The address provided by Gerald Paulson is within 50 miles of Byron and the address for Jesse Auerbach is within 50 miles of Braidwood. Therefore, these members' residence meet the proximity presumption for standing and statements in the Petition and these member affidavits show ELPC has standing to intervene. However, Jim Slama's address is outside the 50 mile radius from Braidwood that would support a presumption of standing. Mr. Slama's affidavit does not provide evidence that (1) he has suffered or will suffer an injury-in-fact, (2) the injury can be fairly traced to the challenged action, and (3) the injury is likely to be redressed by a favorable decision.[34] Mr. Slama has not established standing[35] Thus, the Petition provides sufficient information to support ELPC's claim of representational standing to intervene in this proceeding based on the affidavits of Gerald Paulson for Byron and Jesse Auerbach for Braidwood.[36]

---

[33] Petition at 3, Standing Declarations submitted as Exhibits 1-3 (Gerald Paulson, Jim Slama, and Jesse Auerbach). Each member affidavit (at paragraph 3) states a concern about harm from accidental radiological releases.

[34] *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29 (1999). *See also Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983) (*citing Portland General Elec. Co.* (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610 (1976)).

[35] *See Yankee Atomic Electric Co*. (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994) (member and organization addresses located more than 50 miles from the site are outside the radius within "which we normally presume standing for those actions that may have significant offsite consequences at plants that are operating at full power.").

[36] ELPC's representational standing based on the interests of one member residing within a 50 mile radius of each facility could be jeopardized if these members move away or withdraw from this proceeding. *Cf. Washington Pub. Power Supply System* (WPPS Nuclear Project No. 1), LBP-83-59, 18 NRC 667, 669 (1983) (accepting a member affidavit to replace that of previously identified (but withdrawing) single member upon which organizational derivative standing rested; presuming that after petition is granted, there is continued standing; opining that death or relocation outside the geographic zone of interest would not defeat the presumption and require further showing of standing).

III. Petitioner Has Not Proffered an Admissible Contention

A. Contention 1

Contention 1 states:

> Contention 1: Failure to Include Need for Power Analyses in the Braidwood and Byron Environmental Reports
>
> The Environmental Reports ("ERs") for Braidwood and Byron claim that Exelon satisfies 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 [NEPA]. Braidwood ER at 7-3; Byron ER at 7-3. Exelon's analysis, however, is premised on material legal flaws that lead it to improperly reject potentially better, lower-cost, safer and environmentally preferable energy efficiency, renewable energy resource, and distributed generation resource alternatives. Exelon's Braidwood and Byron ERs, therefore, do not provide the basis for the rigorous exploration and objective evaluation of all reasonable alternatives to the relicensings that NEPA requires.

Petition, Exhibit 4, at 1-2. ELPC states that the subject matter as to which it seeks to intervene is:

> Whether Exelon's Environmental Report and the NRC have failed to provide a rigorous exploration and objective evaluation of all reasonable renewable energy resource and energy efficiency alternatives, and 'clean coal' alternatives, in the form of a need for power analysis, to the granting of the requested License Renewals for Byron and Braidwood, as required by the NEPA, 42 U.S.C. § 4321 *et seq.*

Petition at 3-4. ELPC also asserts that the NRC will need to determine whether, in light of the balance of environmental impacts of the proposed action and reasonable alternatives, "the appropriate action will be to require a need for power analysis in the Environmental Report and/or to deny the requested License Renewals. Petition at 4.

ELPC contends the Commission should require Exelon to conduct need for power analyses for the Byron and Braidwood facilities before issuing license renewals. Petition, Exhibit 4, at 3-4. ELPC asserts that Exelon's evaluation of reasonable alternatives for the Byron and Braidwood license renewals "is deficient because it is improperly constrained by 10 CFR 51.53(c)(2), which provides in clear violation of NEPA," that need for power need not be

analyzed, thus leading Exelon to reject "potentially better, lower-cost, safer and environmentally preferable energy efficiency, renewable energy resource, and distributed generation resource alternatives." Petition, Exhibit 4, at 2. ELPC claims that an examination of the actual need for power could lead to "significantly different conclusions" regarding the future need for Byron and Braidwood and that the Byron and Braidwood ERs do not provide a basis for the "rigorous exploration and objective evaluation of all reasonable alternatives to relicensing that NEPA requires." Petition, Exhibit 4, at 2-4.

ELPC, however, does not challenge or even mention the substantial analysis already contained in the Byron and Braidwood ERs analyzing renewable energy resources and energy efficiency (Demand Side Management) alternatives. Byron ER at 7-21 – 7-23, 7-35 – 7-41; Braidwood ER at 7-21 – 7-22, 7-34 – 7-40. It is incumbent on ELPC to identify some flaw or failure with the substantial discussion contained in each environmental report instead of relying on a vague concern that the information may change in the future.

For the reasons discussed below, Contention 1 is inadmissible because it impermissibly challenges the Commission's regulations regarding need for power in a license renewal environmental review, raises issues that are beyond the scope of this proceeding, is immaterial, unsupported, and fails to raise a genuine material dispute with the Applicant, in contravention of 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), and (vi).

1. Contention 1 Impermissibly Attacks NRC Regulations Regarding Need for Power and Raises Issues Out of Scope

In Contention 1, ELPC contends that the Commission should require Exelon to conduct need for power analyses for the Braidwood and Byron facilities before issuing license renewals for Byron and Braidwood to satisfy NEPA's cost/benefit analysis requirement and that the NRC regulation that excludes a cost/benefit analysis in the form of a need for power analysis violates NEPA. Petition, Exhibit 4, at 3-4.

ELPC's claim that the Byron and Braidwood ERs must analyze need for power falls

outside the scope of license renewal review and is an impermissible challenge to the Commission's regulations. ELPC challenges 10 C.F.R. § 51.53(c)(2), which excludes need for power and cost/benefit analyses from NEPA reviews for license renewal. Specifically, the regulation states, in part, that the ER "is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action . . . .[37] 10 C.F.R. § 51.53(c)(2).

In the Statement of Consideration for the 1996 Rule, the Commission explained 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." 61 Fed. Reg. at 28,472. In doing so, the Commission recognized that, "absent findings in the safety review required by the Atomic Energy Act of 1954, as amended, or in the NEPA environmental analysis that would lead the NRC to reject a license renewal application, *the NRC has no role in the energy planning decisions of State regulators and utility officials*." *Id.* (emphasis added). The Commission similarly excluded this cost/benefit analysis from license renewal recognizing that "the determination of the economic viability of continuing the operation of a nuclear power plant is an issue that should be left to appropriate State regulatory and utility officials." *Id.* at 28,471.

*C*ontentions raising environmental issues in a license renewal proceeding are limited to those issues that are affected by license renewal and have not been addressed by rulemaking on a generic basis. *See, e.g., Turkey Point*, CLI-01-17, 54 NRC at 11-13. The regulation at 10 C.F.R. § 51.53(c)(2) specifically excludes need for power and cost/benefit analyses from NEPA reviews for license renewal. Thus, ELPC's assertion that a cost/benefit analysis in the form of a need for power analysis should be required for Byron and Braidwood before issuing license

---

[37] *See also* 10 C.F.R. § 51.95(c)(2) (stating that the supplemental environmental impact statement (SEIS) for license renewal also is not required to discuss need for power or the cost/benefits of the proposed action).

renewals falls outside the scope of this license renewal proceeding.[38]

ELPC further asserts that "[t]he NRC must determine how to apply its regulations in a manner that complies with NEPA," "revisit its regulations," or take other necessary actions so that the ER and EIS processes are conducted in compliance with NEPA. Petition, Exhibit 4, at 2. A contention is inadmissible if it challenges "the basic structure of the Commission's regulatory process" or is "an attack" on the regulations. *Peach Bottom,* ALAB-216, 8 AEC at 20-21. Moreover, a hearing petitioner may not demand a hearing to "attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies." *Oconee,* CLI-99-11, 49 NRC at 334 (citation omitted). Therefore, to the extent ELPC alleges NRC regulations violate NEPA and are contrary to the express provisions of section 51.53 that analysis of need for power and cost/benefit is required, ELPC's assertions are out of scope because they impermissibly attack NRC regulations.[39]

Absent the grant of a petition for exception or waiver, no Commission rule or regulation can be attacked in an adjudicatory proceeding. 10 C.F.R. § 2.335(a). A party may petition for a waiver of the application of a regulation under 10 C.F.R. § 2.335, but the sole reason for granting a waiver is "special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted." 10 C.F.R. § 2.335(b). Here, ELPC's assertion that 10 C.F.R. § 51.53(c)(2) "is in clear violation of NEPA" and suggestion that the NRC "revisit its regulations,"[40] is not a petition for waiver of 10 C.F.R. § 51.53(c)(2), nor

---

[38] *See, e.g., Davis Besse*, CLI-12-8, 75 NRC at 399 n. 35 (licensing board excluded need for power as out of scope) ; *Shearon Harris,* LBP-07-11, 66 NRC at 57-58; *Vermont Yankee/Pilgrim*, CLI-07-3, 65 NRC 13, 17-18. *See also Turkey Point*, CLI-01-17, 54 NRC at 7-8, 21-23.

[39] *See* Petition, Exhibit 4, at 3-4

[40] Petition, Exhibit 4, at 2.

does it cite 10 C.F.R. § 2.335 or show any special circumstances unique to Byron and/or Braidwood that were not previously considered in the rulemaking.[41] Therefore, Contention 1 is inadmissible because it amounts to an impermissible attack on the Commission's regulations. *Peach Bottom*, ALAB-216, 8 AEC at 20-21.

For the reasons stated above, ELPC's assertions that NRC regulations violate NEPA and a cost/benefit analysis in the form of a need for power analysis is required in the Byron and Braidwood ERs fall outside the scope of this license renewal proceeding as it constitutes an impermissible attack to the Commission's regulations. Accordingly, Contention 1 is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii).

2. Contention 1 Is Immaterial, Unsupported, and Fails to Raise a Genuine Dispute with the Applicant

As discussed below, to the extent ELPC challenges the adequacy of the Applicant's evaluation of alternatives, Contention 1, it is inadmissible under 10 C.F.R. § 2.309(f)(1)(iv), (v), and (vi), because it is immaterial, unsupported, and otherwise fails to demonstrate a genuine dispute with the application.

In Contention 1, ELPC asserts that Exelon's evaluation of reasonable alternatives for the Byron and Braidwood license renewals is deficient because it is, "improperly constrained by 10 CFR 51.53(c)(2), which provides, in clear violation of NEPA, that the application need not analyze the 'need for power' at the stations." Therefore, ELPC contends that there is a

[41] To grant a waiver of a Commission rule or regulation, the Commission must conclude that: 1) the rule's strict application "would not serve the purposes for which [it] was adopted;" 2) the movant has alleged "special circumstances" that were "not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived;" 3) those circumstances are "unique" to the facility rather than "common to a large class of facilities;" and 4) a waiver of the regulation is necessary to reach a "significant safety problem." *Dominion Nuclear Connecticut, Inc*. (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 559-60 (2005). Although the *Millstone* decision addressed an alleged safety problem, a licensing board has stated that the reasoning underlying the *Millstone* holding is also applicable to environmental issues. *Tennessee Valley Authority* (Watts Bar Unit 2), LBP-10-12, 71 NRC 656, 661 n.8 (2010).

The rules expressly provide that participants in a licensing renewal proceeding may also file a petition for rulemaking under 10 C.F.R. § 2.802. 10 C.F.R. § 2.335(e).

"'germane dispute' with Exelon 'on a material issue of law' under 10 C.F.R. § 2.309(f)(1)(vi)." Petition, Exhibit 4, at 2. However, as explained above, NRC regulations state that the ER "is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action . . . ." 10 C.F.R. § 51.53(c)(2). Therefore, to the extent ELPC challenges the sufficiency of Exelon's alternatives analysis in the Byron and Braidwood ERs for not considering the need for power, Contention 1 is inadmissible because it does not demonstrate "that the issue raised in the contention is material to the findings the NRC must make" to support the proposed action. *See* 10 C.F.R. § 2.309(f)(1)(iv).

ELPC also asserts that an examination of the actual need for power could lead to "significantly different conclusions regarding the need for Braidwood and Byron in the future and the environmental impacts that alternatives would have as compared to the continuing operation of the units." Petition, Exhibit 4, at 4. As an example, ELPC suggests that "if Illinois actually needs additional peak-load capacity, then alternative resources such as solar power would fare much better." *Id.* ELPC, however, provides no support or expert opinion for its claims that solar power "would fare much better," nor does it specify which conclusions in the Byron and Braidwood ERs could significantly change or why they would change. Moreover,

ELPC's attempt to redefine the purpose and need of the proposed action from baseload energy generation to "peak-load" energy generation is not permissible or material. In its recent decisions on energy alternatives, the Commission held that only economically and technically viable alternatives that produce baseload power constitute reasonable alternatives to license renewal.[42] An ER "need only discuss those alternatives that . . . 'will bring about the ends' of the proposed action," giving substantial weight to the preference of the applicant.[43] Like the

---

[42] *Seabrook*, CLI-12-5, 75 NRC at 342; *Davis-Besse*, CLI-12-8, 75 NRC at 397.

[43] *Seabrook*, CLI-12-5, 75 NRC at 339 (citing *Hydro Resources, Inc.*, CLI-01-04, 53 NRC at 55)).

Seabrook and *Davis-Besse* applicants, Exelon's stated purpose for consideration of alternatives to the proposed action for Byron and Braidwood is the production of power sufficient to replace the baseload capacity of the nuclear power plant at issue.[44] Therefore, ELPC's assertions regarding consideration of peak-load capacity in the alternatives analysis are unsupported, immaterial, and do not raise a genuine dispute on a material issue of law or fact.

Further, ELPC does not identify or provide any support to suggest that Exelon's discussion of solar generation as a reasonable alternative or combination alternative to license renewal in the Byron and Braidwood ERs[45] is deficient. ELPC also does not point to any purported deficiency in Exelon's discussion of solar generation as an alternative or as part of a combination alternative other than to speculate that conclusions regarding alternative energy sources could differ in the future. *See* Petition, Exhibit 4, at 4. Neither mere speculation nor bare or conclusory assertions suffice to support admission of a proffered contention. *See Fansteel, Inc.*, CLI-03-13, 58 NRC at 203. Therefore, to the extent ELPC asserts that Exelon's discussion of solar power as a reasonable alternative or as part of a combination alternative to license renewal in the Byron and Braidwood ERs is deficient, Contention 1 is unsupported and fails to raise a genuine dispute on a material issue of law or fact.

Additionally, ELPC asserts that Exelon's alternatives analysis is premised on material legal flaws that lead it to improperly reject potentially better, lower-cost, safer and

---

[44] *See* Byron ER at 1-3, 7-7, 7-8; Braidwood ER at 1-3, 7-7, 7-8.

[45] Both the Byron and Braidwood ERs contain an in-depth discussion of solar generation as a reasonable alternative to license renewal of Byron and Braidwood, assuming that "future technological advances may occur such that . . . pure solar generation could, by [2024 for Byron and 2026 for Braidwood], become reasonable base-load generation alternatives." *See, e.g.*, Byron ER at 7-8, 7-9, 7-18, 7-19; Braidwood ER at 7-8, 7-9, 7-18. Exelon also notes, however, that given that the current intermittent nature of solar generation, it creates grid reliability issues making it unsuitable for base-load generation unless it is combined with some method of "capacity firming." Byron ER at 7-9; Braidwood ER at 7-9. Therefore the Byron and Braidwood ERs contain a separate analysis of solar generation as part of a combination alternative to license renewal. *See, e.g.*, Byron ER at 7-8, 7-9, 7-18, 7-19; Braidwood ER at 7-8, 7-9, 7-18.

environmentally preferable energy efficiency, renewable energy resource, and distributed generation resource alternatives. Petition, Exhibit 4, at 2. ELPC also assert that the Byron and Braidwood ERs fail to "provide a rigorous exploration and objective evaluation of all reasonable renewable energy resource and energy efficiency alternatives, and 'clean coal' alternatives, in the form of a need for power analysis . . . as required by NEPA." Petition at 3-4. ELPC's claims are vague and speculative and ELPC provides no support or expert opinion to support its claims regarding Exelon's alternatives analysis. For example, ELPC does not specify which "potentially better, lower-cost, safer and environmentally preferable" reasonable alternatives were purportedly omitted, rejected, or not rigorously explored in the Byron and Braidwood ERs. ELPC also does not challenge or even mention the substantial analysis already contained in the Byron and Braidwood ERs analyzing renewable energy resources and energy efficiency (Demand Side Management) alternatives.[46] Therefore, to the extent ELPC asserts that a reasonable alternative was omitted or was not sufficiently considered in the Byron and Braidwood ERs, these claims should not be admitted for lack of factual support.

Further, ELPC provides no support for its assertion that clean coal is a reasonable alternative to license renewal. As explained above, only economically and technically viable alternatives that produce baseload power constitute reasonable alternatives to license renewal.[47] To challenge the applicant's analysis of alternatives, "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 a commercially viable alternate technology (or combination of technologies) is available now, or will become so in the near future, to supply

---

[46] *See* Byron ER at 7-21 – 7-23, 7-35 – 7-41; Braidwood ER at 7-21 – 7-22, 7-34 – 7-40.

[47] *Seabrook*, CLI-12-5, 75 NRC at 342; *Davis-Besse*, CLI-12-8, 75 NRC at 397.

baseload power."[48] ELPC does not provide any support or expert opinion suggesting that "clean coal" is a commercially viable alternate technology that is available now or will become so in the near future to supply baseload power or provide evidence of unusual predictive reliability.[49] Therefore, ELPC's claims regarding clean coal should not be admitted for lack of sufficient factual support.

Accordingly, Contention 1 is inadmissible because it is immaterial, unsupported, and fails to raise a genuine dispute with the application on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(iv), (v), and (vi).

In sum, Contention 1 impermissibly challenges the Commission's need for power regulations, raises issues that are outside the scope of this license renewal proceeding, is immaterial, unsupported, and fails to raise a genuine material dispute with the Applicant. Accordingly, Contention 1 is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), and (vi).

B. Contention 2

ELPC's second proffered contention states, in relevant part, as follows:

> Contention 2: License Renewal of Braidwood and Byron Is Premature
>
> It is premature to relicense nuclear facilities with existing permits that will not expire for eleven to fourteen years. The Commission should require Exelon to wait until closer to the license expiration dates before seeking renewal.

Petition, Exhibit 4 at 4-5. In this contention and its basis, ELPC asserts that license renewal is premature because the Exelon submitted the LRA more than 10 years prior to the expiration of the Byron and Braidwood licenses and the EISs "will be stale by the time the existing licenses expire," noting that CEQ guidance indicates that an EIS more than five years old should be carefully reexamined. *Id.* at 5. (citing Forty Most Asked Questions Concerning CEQ's [NEPA] Regulations, 46 Fed. Reg. 18,026, 18,036 (Mar. 23, 1981) (CEQ Guidance)). ELPC claims that

---

[48] *Id.*

[49] In *Seabrook*, CLI-12-5, 75 NRC at 342.

Exelon's "failure to evaluate" the future need for the facilities and future regulatory changes "make it likely that the EISs will need to be supplemented closer to the expiration of the existing licenses" and that differences in the energy generation landscape will likely result in alternatives with "much different capabilities, costs and environmental impacts . . . [--] 'significant new circumstances' requiring supplementation." *Id.* at 6. ELPC states that it seeks intervention on "[w]hether Exelon's request to [sic: for] License Renewal as much as fourteen years in advance of the current expiration date of the current licenses is reasonable under NEPA and the APA." Petition at 4. [50]

For the reasons discussed below, Contention 2 is inadmissible because it impermissibly challenges the Commission's regulations (raising issues beyond the scope of this proceeding, i.e., the license renewal review), is immaterial, unsupported, and fails to raise a genuine material dispute with the Applicant, contrary to 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), and (vi) and Commission case law.

1. Contention 2 Attacks NRC Regulations Raising Issues Out of Scope

Petitioner's assertion that the license renewal application is "premature" (Petition, Exhibit 4 at 5) is an attack on NRC regulations, contrary to 10 C.F.R. § 2.309(f)(1)(iii), and thus raises an issue outside the scope of this proceeding. The contention challenges 10 C.F.R § 54.17(c), which permits the filing of a license renewal application up to 20 years prior to the expiration of a license. *See* Petition at 5 (LRA "more than 10 year in advance" will "result in EISs that are stale by the time existing licenses expire"). In addition, to the extent the contention suggests that the "need" for each facility must be evaluated by either Exelon in its ER or by the NRC in the Byron and Braidwood SEISs,[51] the Petitioner attacks 10 C.F.R.

---

[50] In its basis for Contention 2, ELPC asserts that the Commission should require Exelon to postpone its renewal request until "closer to the license expiration dates." Petition, Exhibit 4 at 5.

[51] *See* Petition, Exhibit 4 at 5-6 ("Exelon's failure to properly evaluate the need for the facilities (…footnote continued)

§§ 51.53(c)(2) and 51.95(c), which expressly provide that no discussion of need for power is required in an ER, or in an EIS that supplements the License Renewal GEIS.

With respect to need for power, the Commission explained in promulgating the 1996 Rule, "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." 1996 Rule, 61 Fed. Reg. at 28,472. The regulation reflects that the "NRC has no role in the energy planning decisions of state regulators and utility officials."). *See id.* [52] Because a hearing petitioner may not demand a hearing to "attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies," *Oconee,* CLI-99-11, 49 NRC at 334 (citation omitted), ELPC cannot attack this finding in this proceeding. Because the regulations define the scope of a license renewal review and thus, the scope of this proceeding, ELPC's challenge to NRC regulations raises issues outside the scope of this proceeding. [53]

As noted earlier, no Commission rule or regulation may be attacked in an adjudicatory proceeding unless the Commission grants a petition for waiver or exception under 10 C.F.R. § 2.335. Petitioner does not cite 10 C.F.R. § 2.335 or otherwise request a waiver.

Furthermore, ELPC's concerns about the timing of Exelon's application and NRC renewal regulations do not identify special circumstances that warrant a waiver of either the exclusion of need for power in 10 C.F.R. § 51.53(c)(2) and 51.95(b)(2) or the 20 years in

---

(footnote continued…)

going forward, as well as the planned and future [regulatory or energy generation] changes" make it likely that the alternative evaluated in the EISs and ERs will have to be supplemented).

[52] During the rulemaking, some States expressed concern about whether a meaningful analysis of need for generating capacity and alternative energy source could be undertaken 20 years ahead of time. 61 Fed. Reg. 28,472.

[53] *See, e.g., Davis Besse*, CLI-12-8, 75 NRC at 399 n. 35 (licensing board excluded need for power as out of scope); *Shearon Harris,* LBP-07-11, 66 NRC at 57-58; *Vermont Yankee & Pilgrim*, CLI-07-3, 65 NRC 13, 17-18. *See also Turkey Point*, CLI-01-17, 54 NRC at 7-8, 21-23.

advance application period in 10 C.F.R. § 51.17 in this licensing proceeding. The Petition fails to identify any information or characteristic unique to Byron or Braidwood that shows the regulations would not serve the purposes for which they were adopted.

Nor does ELPC show that its concerns about timing of the application or the ability of Exelon (or the NRC) to consider reasonable alternatives to the proposed action constitute information that the Commission has not previously considered either explicitly or by implication in promulgating its regulations.[54] Rather, ELPC merely expresses general grievances about the Commission's license renewal regulations and NEPA policies. *See* Petition at 4 and Exhibit 4 at 4-6.

Like the petitioner in *Seabrook*,[55] ELPC bases its claim that the ER is inadequate because the timing of the application prevents the applicant from adequately considering the need for and alternatives to Byron and Braidwood due to the changing circumstances during the period preceding the relicensing period. *See* Petition at 5 (the advance timing of Exelon's application "will result in an EIS that will be stale by the time the existing licenses expire"). This generalized grievance against NRC regulations, and assertion of inconsistencies with NEPA guidance, should have been raised when the NRC offered an opportunity to comment on a petition for rulemaking that alleged that the 20-year time frame in 54.17(c) conflicts with NEPA.[56] In addition, the report cited for this proposition does not contain any facts specific to the two

---

[54] *See Seabrook*, CLI-88-10, 28 NRC at 597.

[55] *See Seabrook*, CLI-12-5, 75 NRC at 337 (contention alleging SEIS improperly narrow and the need for plant must be revisited due to changing circumstances in energy regional mix during the two decades preceding the relicensing period). The *Seabrook* licensing board noted that petitioner raising this contention had separately filed a petition for rulemaking; *id*., LBP-11-2, 73 NRC at 52.

[56] *See* Earth Day Commitment/Friends of the Coast, Beyond Nuclear, Seacoast Anti-Pollution League, C-10 Research and Education Foundation, Pilgrim Watch and New England Coalition; Notice of Receipt of Petition for Rulemaking, 75 Fed. Reg. 59,158 (Sept. 27, 2010); Public Comment Matrix for Petition for Rulemaking (PRM) 54-6, License Renewal (Apr. 30, 2012) (ML113540177).

facilities in this proceeding. The report mentions "technological and economic changes" that might transform the electric utility industry, focuses on "financial risk" and strategic planning, but does not contain specific information about availability and viability of alternative energy sources in the region where Byron and Braidwood are located. *See* Petition, Attachment 2 at 1, 19. Without such specifics, the better forum for ELPC's general grievance about what NRC policies and regulations should be is to pursue consideration of need for power generically a petition for rulemaking under 10.C.F.R. § 2.802.

Notably, a petition for rulemaking challenging the timing of license renewal applications and asking that NRC regulations be revised to preclude submission of renewal applications more than 10 years prior to the expiration of license was recently denied by the Commission.[57] The Commission rejected the notion that the timeframe conflicts with NEPA and results in environmental reviews unduly limited in scope and unreasonably limits potential alternatives. PRM Denial, 77 Fed. Reg. at 28,320-21. For example, the 20-year timeframe "balance[s] the need to collect sufficient operating history data to support an LRA with a utility's need to plan for the replacement of retired nuclear power plants in the case of an unsuccessful LRA." 77 Fed. Reg. 28,322. In issuing the 1991 License Renewal Rule, the Commission had concluded that 20-year timeframe provides "a reasonable and flexible period for licensees to perform informed business planning" given the 10-14 year lead time (depending on the technology) needed to build new generating facilities (alternatives to the proposed action). *Id*.[58]

---

[57] *See* Filing a Renewed License Application, 77 Fed. Reg. 28,316 (May 14, 2012) (PRM Denial). Over six organizations, asked the NRC to amend its regulations to restrict submission of a renewal application to no sooner than 10 years before the expiration date. *Id*.

[58] *See* [Final Rule] Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,963 (Dec. 13, 1991) (1991 Rule) (10 to 12 years for fossil fuels and 12 to 14 years for nuclear and other new technologies). The Commission specifically rejected a five year or 15 year timeframe, concluding that the 20 year period would also allow time for the staff review to be completed. *Id.* at 64,963.

The Commission also found the 20 year period consistent with the NRC's AEA licensing authority that permits an activity to be licensed for up to 40 years. 77 Fed. Reg. at 28,320 (citing AEA section 103(c), 42 U.S.C. § 2133(c)). The "extent of the environmental review is not directly limited by the timing of the application submittal, nor does the NRC staff limit its analysis to the information provided in the [ER]." *Id*. Rather, the rule of reason limits NRC's analysis to "only those environmental impacts and alternatives that are reasonable foreseeable" at "the time that the renewal license is issued." *Id.* at 28,320.

Further, as the Commission noted in *Seabrook*, CLI-12-5, 75 NRC at 341, "NEPA requires a 'hard look' at the environment effect of the planned action and reasonable alternatives to that action, using the best information available at the time the assessment is performed." Thus, NEPA dictates a process regarding how agencies are to reach decisions and keep the public informed. The rule of reason enables the agency to evaluate reasonable alternatives before it decides to issue a license renewal. To the extent ELPC suggests that the application submitted consistent with the timeframe in the regulations is premature and requires a determination of need for a facility, it challenges regulations concerning the scope of the Commission's license renewal review under 10 C.F.R. Part 54 and, hence, raises an issue outside the scope of this proceeding.[59] Therefore, the contention is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii), absent the grant a petition for waiver.

2. Contention Is Immaterial, Unsupported and Does Not Raise a Genuine Dispute as to a Material Issue of Law or Fact

Even apart from the impermissible challenges to NRC regulations, Contention 2 is immaterial, unsupported and does not raise a genuine dispute with the Applicant on a material

[59] *See Davis Besse*, CLI-12-8, 75 NRC at 383 (licensing board found petitioner's need for power argument outside the scope of the proceeding).

issue of law or fact. Thus, the contention is inadmissible under 10 C.F.R. § 2.309(f)(1)(iv), (v) and (vi).

a. Need for Power

To the extent that ELPC seeks to challenge Exelon's "failure to properly evaluate the need for these facilities going forward," *see* Petition, Exhibit 4 at 5-6, consideration of need for power is not required by NRC regulations and thus the matter is not material. As discussed above, a disputed issue is material only if it would make a difference in the outcome of the proceeding. *Oconee*, CLI-99-11, 49 NRC at 333-334. Given that the analysis is not required by 10 C.F.R. §§ 51.53(c)(2) or 51.95(c)(2), which expressly provide that no discussion of need for power is required in an ER or in an EIS that supplements the License Renewal GEIS, this issue is not material as required by 10 C.F.R. § 2.309(f)(1(iv). Thus, ELPC cannot raise a genuine dispute with the Applicant regarding this issue (as required by 10 C.F.R. § 2.309(f)(1(iv)) without the grant of a petition for waiver.

b. EIS Staleness and EIS Supplementation

In addition, to the extent that Petitioner asserts that the timing of the submission of the Application under NRC regulations conflicts with CEQ supplementation guidance or regulations, *see* Petition, Exhibit 4 at 5, its contention is not supported by an adequate factual or legal basis and does not raise a genuine dispute with the applicant as required by 10 C.F.R. § 2.309(f)(1)(v) and (vi).

ELPC's concerns about the ability of an NRC to evaluate alternatives to the proposed action without the EIS becoming stale are apparently based on a misunderstanding of the NRC's license renewal process – a belief that the SEISs for Byron and Braidwood would be over five years old long "before the renewed licenses take effect." *See* Petition, Exhibit 4, at 5-6. However, renewed licenses, if granted, would become effective immediately upon issuance

(not after the current license expiration dates). *See* 10 C.F.R. § 54.31 (the fixed period of a renewed license, which is effectively immediately and supersedes the current license, is the sum of the remaining years of the original license, plus 20 years, but not to exceed a term of 40 years). Thus, ELPC's concerns about staleness are unfounded**.**

In addition, the cited CEQ guidance[60] does not support a conclusion that an EIS prepared for renewal must be supplemented due to the timing of the application. CEQ guidance recommends that an EIS older than five years should be reexamined to determine if the criteria in 40 C.F.R. § 1502.9 compel preparation of an EIS supplement, but that guidance applies to proposals that have not yet been implemented or if the EIS "concerns an ongoing program." Specifically, agencies are to "prepare supplements to either draft or final [EISs] if: (i) The agency makes substantial changes in the *proposed* action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the *proposed* action or its impacts." 40 C.F.R. § 1502.9(c)(1) (emphasis added).[61] The NRC has implemented similar provisions in 10 C.F.R. Part 51.**[62]** These regulations, like NEPA, focus on whether the action has been taken. *Luminant Generation Co., LLC, et al* (Commanche Peak Nuclear Power Plant, Units 3 & 4;

---

[60] *See* Petition, Exhibit 4 at 5 (Forty Most Asked Questions Concerning CEQs National Environmental Policy Act Regulations, 46 Fed. Reg. at 18,036 (Q & A 32).

[61] Like agencies in CEQ regulations, NRC has the discretion to supplement an EIS to further the purposes of NEPA. *Compare* 10 C.F.R. §§ 51.72(b) ("The NRC staff *may* prepare a supplement to a draft environmental impact statement when, in its opinion preparation will further the purposes of NEPA.") *with* 40 C.F.R. § 1502.9(c)(2) ("Agencies . . . (2) *May* also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.") (emphasis added).

[62] *See* 10 C.F.R. § 51.72(a) ("The NRC staff will prepare a supplement to a draft [EIS] . . . if (1) There are substantial changes in the proposed action that are relevant to environmental concerns; or (2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."); 10 C.F.R. § 51.92(a) ("If the proposed action has not been taken, the NRC staff will prepare a supplement to a final [EIS] . . . if (1)There are substantial changes in the proposed action that are relevant to environmental concerns; or (2) there are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.").

Columbia Generating Station; Vogtle Electric Generating Plant, Units 3 & 4; William States Lee II Nuclear Station, Units 1 & 2), CLI-12-7, 75 NRC 379, 388, 391-92 (2012) ("an application-specific NEPA review is a snapshot in time . . .with the best information available today") (citations omitted).

The proposed action here is the issuance of renewed licenses which would authorize operation for an additional 20 years from the current expiration dates of the Byron and Braidwood licenses, effective as of the date of issuance. *See* 10 C.F.R. § 54.31. ELPC provides no information to suggest that once a renewed license is issued, there is a continuing NRC program or that the proposed action has not been taken. *See* 40 C.F.R. §1502.9(b). Thus, neither the cited CEQ regulations nor guidance would require supplementation of a license renewal EIS after issuance of renewed licenses for Byron and Braidwood if the license has issued.

Neither ELPC's misapprehension of the effectiveness of a renewed license or its misreading of this CEQ regulation is sufficient to support its contention. An imprecise reading of NRC regulations cannot support an admissible contention. *See Georgia Inst. of Technology*, LBP-95-6, 41 NRC at 300 (1995) (imprecise reading of a document cannot generate an issue suitable for litigation). Similarly, proposed contentions based on factually inaccurate assertions are not admissible. *See Private Fuel Storage*, *L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-4-22, 60 NRC 125, 136 (2004).

Further, as an independent agency, the NRC is bound by CEQ NEPA regulations "only insofar as those regulations are procedural or ministerial in nature" and "is not bound by those portions of CEQ's regulations which have a substantive impact on the way in which the Commission performs its regulatory functions."[63] NRC regulations only require an EIS

[63] [Final Rule] Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments, 49 Fed Reg. 9,352 (Mar. 12, 1984**);** *Diablo* (…footnote continued)

supplement "[i]f the proposed action has not been taken" and a notice of availability has been published in the *Federal Register* if (1) there are substantial changes in the proposed action or (2) if there are new and significant circumstances or information relevant to environmental impacts. 10 C.F.R. § 51.92(a).

This is consistent with NEPA law. An EIS, an analysis of alternatives, must be prepared when a project is proposed. *See, e.g., Kleppe v. Sierra Club,* 427 U.S. 390, 405-06 (1976). Section 102(2)(C) of NEPA repeatedly prescribes obligation of federal agencies in terms of "proposed" actions.[64] An EIS must make reasonable forecasts of the future with regard to the effects of the action. *Prairie Island*, ALAB-455, 7 NRC 41, 48 (1978). Agencies can conduct their review with the best information available today[65] and "'have the discretion to draw the line and move forward with decisonmaking.'" *Pilgrim*, CLI-10-11, 71 NRC at 315 (quoting *Town of Winthrop v. FAA*, 535 F.3d 1, 11-13 (1st Cir. 2008)).

(footnote continued…)

Canyon, CLI-11-11, 74 NRC at 444.

[64] As pertinent here, NEPA section 102(2)(C) requires a detailed statement on:

(i) the environmental impact of the *proposed* action,

(ii) any adverse environmental effects which cannot be avoided should the *proposal* be implemented

(iii) alternatives to the *proposed* action

(iv) * * *, and

(v) any irreversible or irretrievable commitments of resources which would be involved in the *proposed* action should it be implemented.

42 U.S.C. § 4332(2)(C) (emphasis added).

[65] *Comanche Peak*, CLI-12-7, 75 NRC at 391-92.

An EIS supplement "is not necessary 'every time new information comes to light after the EIS is finalized."[66] The "new information must present 'a seriously different picture of the environmental impact of the *proposed* project from what was previously envisioned.'" *Hydro Resources, Inc.*, CLI-99-22, 50 NRC at 14 (quoting *Sierra Club v. Froehlke*, 816 F2d 205, 210 (5th Cir. 1987)).[67] *See also Wisconsin v. Weinberger*, 745 F.2d 412, 417-18 (7th Cir. 1984) (an agency's failure to prepare an EIS supplement is not arbitrary or capricious under section 706(2)(A) of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) unless new information provides a seriously different picture of the environmental landscape as of the time of making the decision).

The Petition provides no information that arguably shows that issuance of a supplement to the Byron and Braidwood license renewal SEISs would be required after issuance of the renewed licenses. It provides no information showing a seriously different picture of environmental impacts or of alternatives. ELPC merely cites general statement in the report and speculates that the future energy generation landscape changes would require supplementation. *See* Petition, Exhibit 4 at 5-6. Such speculation is not sufficient to support admission of the contention. *See Fansteel, Inc.,* CLI-03-13, 58 NRC at 196, 203.

Similarly, Petitioner's speculation about changes in energy alternatives is not sufficient to raise a genuine dispute regarding a material issue of law or fact concerning the adequacy of the ER. ELPC provides no specific information that supports a conclusion that alternatives evaluated in the ER are inadequate. Contention 2 neither presents specifics about a reasonable energy alternative –one that is currently commercially viable, or will become so in

---

[66] *Hydro Resources, Inc.*, 50 NRC at 14 (citing *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989));

[67] This language is also quoted in *Union Elec. Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2, *et. al*), CLI-11-5, 74 NRC 141, 167-68 (2011) (citations omitted).

the relatively near term, *see Seabrook*, 75 NRC at 342, –nor does the Contention identify any alternatives that were not considered in the ER. Thus, the contention is not supported and does not satisfy the requirement of 10 C.F.R. § 2.309(f)(1)(v) and (vi).

c. ER Analysis of Alternatives

In addition, to the extent the Contention 2 challenges the adequacy of the evaluation of alternatives in the ER, *see* Petition, Exhibit 4 at 5, the contention is not supported and does not raise a genuine dispute as required by 10 C.F.R. 2.309(f)(1)(v) and (vi). As noted previously, an admissible contention on the analysis of license renewal energy alternatives 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 alternative technology (or combination of technologies) is available now or will become so in the near future, to supply baseload power. *Seabrook*, *75 NRC* at 342 (citing *Roosevelt Campobello Int'l Park Comm. v. EPA*, 684 F.2d 1041, 1047 (1st Cir. 1982)). General concerns are not sufficient to gain admission in this proceeding. *See Oconee*, CLI-99-11, 49 NRC at 334. Contentions that are vague or unparticularized are not permitted. *Oconee*, 49 NRC at 338 (citing *North Atlantic Energy Services Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999)).

Under 10 C.F.R. § 51.53(c), Exelon need only discuss, nonspeculative, and reasonably feasible alternatives (capable of achieving the goals of the proposed action).[68] Moreover, NRC regulations specifically provide that "if the proposed action has not been taken," a supplement will be prepared if new and significant information comes to light -- criteria consistent with 40 C.F.R. 1502.9(c). *See* 10 C.F.R. § 51.92(a) (emphasis added). Thus, the alleged need to

[68] *See Indian Point*, LBP-08-13, 68 NRC at 90, 92 (citing Shoreham, CLI-91-2, 33 NRC at 65; *Hydro Res., Inc.*, CLI-01-4, 53 NRC at 55 (other citations omitted)). *See also Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 551 (1978) (only alternatives that are not considered "remote and speculative possibilities' need be considered").

supplement an EIS that becomes "stale" after issuance of a renewed license is not supported and ELPC has not identified a dispute on a material issue of law or fact.

Petitioner's states conclusory "reasons" for its assertion that renewal applications 11 and 14 years in advance of license expiration dates are not reasonable under NEPA. It provides no cites or arguments to support its belief that renewal is unreasonable under the APA. *See* Petition at 4. It relies on the potential that the analysis of alternatives will need supplementation, but does not identify what required information the application fails to contain. Petitioner's complaint that the timing of the application led Exelon to "fail[] to properly evaluate the need for [the] facilities" (a repeat of the issue raised in Contention 1) is based on its claim that the "energy generation landscape will most likely be different from today." Petition, Exhibit 4, at 5-6. But such vague and speculative assertions do not raise a genuine dispute with the Applicant on a material issue (i.e., the analysis of alternatives to the proposed action).[69]

Petitioner cites an Edison Electric Institute Report[70] for the proposition that "electricity generation and planning has been, and will likely continue to be, a rapidly changing area."[71] The report discusses "possible strategic responses to competitive threats in order to protect investors and capital availability" as part of efforts to "benefit customers, long-term economic growth, and investors."[72] It does not contain information that provides an arguable basis to conclude that Exelon has failed to consider reasonable alternative sources of future baseload

---

[69] *Fansteel, Inc.,* CLI-03-13, 58 NRC at 203; *Oconee,* CLI-99-11, 49 NRC at 338.

[70] "Disruptive Challenges: Financial Implications and Strategic Responses to a Changing Retail Electric Business" (Jan. 2013) (Petition, Exhibit 4, Attachment 2).

[71] Petition, Exhibit 4 at 6.

[72] Petition, Exhibit 4, Attachment 2 at 2, 3. The report authors state that they cannot layout an exact roadmap or timeline for the impact of disruptive forces. *Id*. at 3.

power generation or evidence of unusual predictive reliability. *See Seabrook*, CLI-12-5, 75 NRC at 342.[73]

Because Petitioner misapprehends supplementation guidance and requirements, and fails to provide sufficient legal or factual basis for its assertion that the consideration of alternatives is inadequate due to the timing of the application, the contention is not supported and fails to raise a genuine dispute with the Applicant on a material issue. Thus, Contention 2 is inadmissible under 10 C.F.R. § 2.309(f)(1)(v) and (vi).

In sum, Contention 2 is inadmissible because, contrary to 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), and (vi), it challenges NRC regulations thereby raising issues outside the scope of the proceeding, is immaterial, unsupported, and fails to raise a genuine dispute with the Applicant on a material issue of law or fact.

[73] Nor does Petitioner dispute Exelon's stated purpose for license renewal, which is parrots the statement in the 1996 GEIS (*i.e.*, to "provide an option that allows for power generation capability beyond the term of a current nuclear power plant operating license to meet future system generating needs, as such needs may be determined…"). Bryon ER at 1-3; Braidwood ER at 1-3.

CONCLUSION

As discussed above, ELPC has established derivative standing (based on the interests of a member that resides near each of the above-captioned facilities), but neither of its proffered contentions are admissible under 10 C.F.R. § 2.309. Therefore, the Petition should be denied.

Respectfully submitted,

/Signed (electronically) by/

Mitzi A. Young
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15-D21
Washington, DC 20555-0001
Telephone: (301) 415-3830
E-mail: Mitzi.Young@nrc.gov

Executed in Accord with 10 CFR 2.304(d)

Anita Ghosh
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15-D21
Washington, DC 20555-0001
Telephone: (301) 415-4113
E-mail: Anita.Ghosh@nrc.gov

Dated at Rockville, Maryland
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, and	)	ASLBP No. 13-929-02-LR-BD01
Braidwood Nuclear Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF ANSWER TO ENVIRONMENTAL LAW AND POLICY CENTER HEARING REQUEST AND PETITION TO INTERVENE," dated October 28, 2013, have been served upon the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 28th day of October, 2013.

/Signed (electronically) by/

Mitzi A. Young
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15-D21
Washington, DC 20555-0001
Telephone: (301) 415-3830
E-mail: Mitzi.Young@nrc.gov