

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	Docket No. 50-391-OL
)	
TENNESSEE VALLEY AUTHORITY)	
(Watts Bar, Unit 2))	

**TENNESSEE VALLEY AUTHORITY’S ANSWER
OPPOSING PETITION TO SUPPLEMENT REACTOR-SPECIFIC
ENVIRONMENTAL IMPACT STATEMENTS TO INCORPORATE
BY REFERENCE THE GENERIC ENVIRONMENTAL IMPACT
STATEMENT FOR CONTINUED SPENT FUEL STORAGE**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c) and the U.S. Nuclear Regulatory Commission’s (“NRC” or “Commission”) order dated January 29, 2015,¹ Tennessee Valley Authority (“TVA”) respectfully submits its answer to the “Petition to Supplement Reactor-Specific Environmental Impact Statements to Incorporate by Reference the Generic Environmental Impact Statement for Continued Spent Fuel Storage,” which the Southern Alliance for Clean Energy (“SACE” or “Petitioner”) filed in the Watts Bar Unit 2 operating license proceeding on January 28, 2015 (“Petition”). The Petition, also filed in seven other proceedings,² asserts that the NRC must issue a supplemental final environmental impact statement (“FEIS”) in this and the seven other proceedings to “incorporate by reference” the Commission’s continued storage rule GEIS,³ even though the Commission has already incorporated the GEIS by regulation in 10 C.F.R. 51.23(b).

¹ *DTE Electric Co. (Fermi Nuclear Power Plant, Unit 3), et al., CLI-15-01, ___ N.R.C. ___* (Jan. 29, 2015).

² In addition to SACE, petitions were filed by Beyond Nuclear, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and SEED Coalition in various proceedings.

³ Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157) (Sept. 30, 2014) (“GEIS” or “NUREG-2157”).

See Petition at 7-8. TVA respectfully submits that the Petition must be denied because the sole substantive argument SACE makes is wrong as a matter of law. Specifically, neither the National Environmental Policy Act (“NEPA”) nor the NRC’s Part 51 regulations require the Commission to incorporate information by reference or to supplement reactor-specific FEISs in the manner SACE contends. Moreover, the Petition should be rejected because it improperly challenges the Continued Storage Rule, and because it is procedurally defective in several respects.

II. BACKGROUND

On March 4, 2009, TVA provided an update to its original operating license application for Watts Bar Unit 2, dated June 30, 1976, as supplemented on September 15, 1976. In July 2009, SACE, the Tennessee Environmental Council, the Sierra Club, We the People, and BREDL filed a request for a hearing and petition to intervene in the Watts Bar Unit 2 operating license proceeding. In November 2009, the Atomic Safety and Licensing Board (“ASLB”) granted SACE’s request for hearing, admitted two of SACE’s seven contentions, and denied the request for hearing submitted on behalf of the other four petitioners. The ASLB subsequently dismissed one contention.

In *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012), the U.S. Court of Appeals for the District of Columbia Circuit found that the NRC had violated the National Environmental Policy Act (“NEPA”) in issuing its 2010 update to the Commission’s Waste Confidence Decision (“WCD”) and accompanying Temporary Storage Rule (“TSR”),⁴ and remanded the case for further proceedings consistent with the court’s opinion.

⁴ Final Rule, Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation, 75 Fed. Reg. 81,032 (Dec. 23, 2010); Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010) (“2010 WCD Update”).

In July 2012, SACE petitioned for the admission of a new, late-filed contention regarding waste confidence. That contention was held in abeyance pursuant to the Commission’s order in *Calvert Cliffs Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), *et al.* CLI-12-16, 76 N.R.C. 63 (2012). In July 2013, SACE filed a motion to withdraw its only other contention. The ASLB granted the motion, leaving only the waste confidence contention.

The Commission directed the NRC to develop a GEIS to support an updated waste confidence decision and rule. SACE and other petitioners fully participated in the rulemaking proceeding, which included “a robust public comment period that included an extensive campaign of public meetings across the United States.”⁵

In May 2013, the NRC Staff released and made publicly available in ADAMS the Watts Bar Unit 2 FEIS.⁶ As indicated by change bars in right margins, NUREG-0498 contains a discussion of the Continued Storage Rule rulemaking and the GEIS, concluding: “If the results of the WCD EIS identify information that requires a supplement to this FES, the NRC staff will perform any appropriate additional NEPA review for those issues before the NRC makes a final licensing decision.” NUREG-0498, Supp. 2 at 6-48 to 6-49.

After the Commission approved the new Continued Storage Rule on August 26, 2014,⁷ the Commission issued an order directing the dismissal of pending waste confidence contentions previously held in abeyance. *Calvert Cliffs 3 Nuclear Project* (Calvert Cliffs Nuclear Power

⁵ *Calvert Cliffs*, CLI-14-08, slip op. at 6. During the comment period, the NRC Staff held 13 public meetings across the country. Overall, the NRC received over 33,000 comment submissions and recorded approximately 1,600 pages of public meeting transcripts. Continued Storage Rule, 79 Fed. Reg. at 56,253; GEIS at 1-12, C-1 to C-18, D-1 to D-3. The Commission thus has concluded that the NRC Staff “amply fulfilled” the Commission’s previous assurances of public participation in the rulemaking proceedings. CLI-14-08, slip op. at 11.

⁶ Final Environmental Statement Related to the Operation of Watts Bar, Unit 2 (NUREG-0498, Supplement 2) (“NUREG-0498” or “Watts Bar Unit 2 FEIS”).

⁷ Staff Requirements –SECY-14-007 – Final Rule, Continued Storage of Spent Nuclear Fuel (Aug. 26, 2014) (ADAMS Accession No. ML14237A092).

Plant, Unit 3), CLI-14-08, 80 N.R.C. ___, slip op. at 12 (Aug. 26, 2014). As the Commission states in its order and in the GEIS, the NRC had considered addressing the environmental impacts of continued storage in site-specific reviews, but concluded that the impacts of continued storage will not vary significantly across sites and can be analyzed generically. *Id.* at 9. The Commission further states that, “[b]ecause these generic impact determinations have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual proceedings.” *Id.* CLI-14-08 further lifted the previous suspension of final licensing decisions. *Id.* at 7. In accordance with CLI-14-08, the Atomic Safety and Licensing Board dismissed the pending waste confidence contention in the Watts Bar Unit 2 operating license proceeding and terminated the proceeding. *Tennessee Valley Authority (Watts Bar Unit 2)*, LBP-14-13, 80 N.R.C. ___, slip op. (Sept. 9, 2014).

On September 19, 2014, the NRC published the final Continued Storage Rule in the Federal Register. 79 Fed. Reg. 56,238. The Continued Storage Rule states that “[t]he Commission has generically determined that the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor are those impacts identified in NUREG–2157, ‘Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel.’” 10 C.F.R. § 51.23(a). The Continued Storage Rule further states, “[t]he impact determinations in NUREG–2157 regarding continued storage shall be deemed incorporated into the environmental impact statements described in §§ 51.75, 51.80(b), 51.95, and 51.97(a).” 10 C.F.R. § 51.23(b). The environmental impact statements described in 10 C.F.R. § 51.95 include those prepared in connection with the issuance of a power reactor operating license.

As the Commission explains, the GEIS “together” with site- or reactor-specific EISs “will provide the decision-maker in a licensing proceeding with a complete environmental

analysis of the impacts associated with specific licensing decisions including the potential impacts of spent fuel storage prior to disposal in a geological repository.” 79 Fed. Reg. 56,238, 56,243 (Sept. 19, 2014). These documents also collectively inform the public and groups like SACE about the impacts of proposed licensing decisions. NEPA and its implementing regulations require nothing more.

III. DISCUSSION

A. The NRC Has Appropriately Incorporated the GEIS in NUREG-0498

SACE’s argument is based solely on the assertion that the NRC is required to supplement the plant-specific FEIS in this proceeding to comply with NEPA and 10 C.F.R. Part 51, Appendix A, Section 1(b) (Petition at 6), which states:

The techniques of tiering and incorporation by reference described respectively in 40 CFR 1502.20 and 1508.28 and 40 CFR 1502.21 of CEQ’s NEPA regulations **may be used as appropriate** to aid in the presentation of issues, eliminate repetition or reduce the size of an environmental impact statement. (Footnote omitted; emphasis added)

SACE further claims that 40 C.F.R. § 1502.21 specifies the only way in which incorporation may occur. The Commission expressly considered the approach specified in § 1502.2 and rejected it in the GEIS.

If the NRC decided not to incorporate the results of this GEIS into a revision of 10 C.F.R. 51.23, the NRC could issue this GEIS for use in support of site-specific licensing reviews. . . For particular licensing actions, the EIS or EA could incorporate by reference any finding or conclusion of the GEIS, but participants in a proceeding could still raise issues regarding continued storage.

* * *

Thus, although the “GEIS-only” approach would likely provide greater efficiencies than the site-specific option, it would eliminate some of the efficiency and time-savings that the NRC would gain through a binding generic analysis of continued storage. Adopting the generic impacts of continued storage in a rule, on the other hand, would allow the NRC and parties to its licensing proceedings to focus their limited resources on the site-specific issues that are unique to each licensing option.

GEIS at 1-8.

There is no basis in law for SACE's argument. First, SACE seems to misunderstand what the Commission's regulation at 10 C.F.R. § 51.123(b) does. It incorporates the GEIS into, among other FEISs, NUREG-0498, which is distinct from "incorporation by reference." Nothing in 10 C.F.R. Part 51, Appendix A, Section 1(b), is inconsistent with the Commission's decision to incorporate the GEIS into its rules and not to incorporate it "by reference" repeatedly into site-specific EISs by issuing supplemental EISs.

Second, the language of 10 C.F.R. Part 51, Appendix A, Section 1(b) is permissive. It expressly allows the NRC flexibility in tiering and incorporation. It does not prescribe a manner in which the NRC must incorporate generic determinations. SACE cites no NRC regulation that requires the agency to issue a supplemental FEIS to incorporate the GEIS in a particular manner.

Third, the NRC has not used "incorporation by reference" in the manner contemplated by the 10 C.F.R. Part 51 and CEQ regulations cited by Petitioners. Those regulations refer to situations in which a document is "referenced" in the FEIS and deemed incorporated by that reference. In contrast, here the NRC has used the generic rulemaking process to assess generically the impacts of continued storage of spent fuel at U.S. power reactors, codified its generic impact determinations in a rule (10 C.F.R. § 51.23) and, through that rule, incorporated those determinations into individual FEISs for pending and future reactor licensing proceedings. The NRC's authority to resolve issues generically by rule rather than through individual adjudications is well-established.⁸ Thus, contrary to SACE's argument, the NRC has not violated its own regulations.

⁸ See *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 100-01 (1983) (stating that "[t]he generic method chosen by the agency is clearly an appropriate method of conducting the hard look required by NEPA," and that "the Commission has discretion to evaluate generically the environmental effects of the fuel cycle and require that these values be 'plugged into' individual licensing decisions").

B. NEPA and NRC Regulations Do Not Require Supplementation of Site-Specific FEISs to Reflect the Issuance of the Continued Storage Rule

NEPA does not require the NRC Staff to supplement its FEIS in order to incorporate the GEIS by reference in NUREG-0498. The NRC regulations at 10 C.F.R. § 51.92(a) specify that the NRC must issue a supplemental EIS only if there are: (1) substantial changes in the proposed action that are relevant to environmental concerns, or (2) significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.⁹ SACE has not alleged, much less provided any actual support, in the instant Petition that either circumstance has occurred.¹⁰ In the GEIS, the NRC made the same, or expanded, findings that were contained in its prior Waste Confidence Decision. Thus, there is no new information that “significantly alters” the findings and conclusions in NUREG-0498,¹¹ or “paint[s] a ‘seriously different picture of the environmental landscape.’”¹² Moreover, there are no substantial changes in the proposed action or significant new circumstances or information relevant to the issuance of the Watts Bar Unit 2 operating license. Accordingly, there is no basis in law to require an FEIS supplement to be issued in this proceeding.

Moreover, the CEQ regulation at 40 C.F.R. § 1502.21 is not applicable to the situation presented in this proceeding. That regulation provides guidance for incorporating material into

⁹ 10 C.F.R. § 51.92(a)(1)-(2). 10 C.F.R. § 51.92 further states that the NRC Staff “may prepare a supplement to a [FEIS] when, in its opinion, preparation of a supplement will further the purposes of NEPA.” 10 C.F.R. § 51.92(c) (emphasis added). Thus, any decision to supplement a FEIS pursuant to Section 51.92(c) lies within the sound discretion of the NRC Staff and is not mandated by NEPA. As discussed herein, supplementation of FEISs for pending reactor licensing proceedings—including this one—would not further the purposes of NEPA, because the NRC fully ensured that NEPA’s full disclosure and public participation requirements were met through the generic rulemaking process.

¹⁰ In fact, the Petitioner fails to cite 10 C.F.R. § 51.92 or judicial and Commission case law discussing the legal standard for FEIS supplementation.

¹¹ *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, NM 87313), CLI-06-29, 64 NRC 417, 419-22 (2006).

¹² *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-06-3, 63 NRC 19, 28 (2006) (quoting *Wis. v. Weinberger*, 745 F.2d 412, 418 (7th Cir. 1984); *Nat’l Comm. for the New River, Inc. v. Federal Energy Regulatory Comm’n*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (citing *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 373 (1989)).

environmental impact statements by reference and does not address nor preclude incorporating generic EISs into the NRC's rules and into site-specific EISs. The Commission made clear that when it incorporates a GEIS into its rules, the "collective" analyses of both the GEIS and site-specific EIS serve to inform the decision maker [and the public] when acting on license requests. 79 Fed. Reg. 56,238, 56,243 (Sept. 19, 2014). Section 1502.21 also does not provide guidance for when a supplemental environmental impact statement needs to be issued. Section 1502.21 neither prohibits nor proscribes other means of complying with NEPA obligations. As discussed above, the issuance of the GEIS does not trigger any need under 10 C.F.R. § 51.92(a) to supplement the FEIS in this proceeding.

In addition, the GEIS is completely unlike the types of material contemplated by 40 C.F.R. § 1502.21 – a study conducted by an agency or a contractor or material that otherwise is not generally available for public review and analysis prior to an EIS being drafted. The GEIS was prepared as part of the Continued Storage Rulemaking and the development of both are referenced in NUREG-0498.¹³ SACE participated fully in the rulemaking process that culminated in the final Continued Storage Rule and supporting GEIS. Indeed, SACE had substantially greater opportunities to participate in the NRC's evaluation of continued spent fuel storage impacts (including opportunities to review and submit comments on the proposed rule and GEIS) than it otherwise would have received had a study or analysis merely been incorporated by reference by the method described in 40 C.F.R. § 1502.21.

As Petitioner recognizes, the NRC has promulgated 10 C.F.R. § 51.23(b), which expressly incorporates the GEIS generic impact determinations into NUREG-0498. That regulation states, in pertinent part:

¹³ NUREG-0498, Supp. 2 at 6-48 to 6-49.

The impact determinations in NUREG–2157 regarding continued storage shall be deemed incorporated into the environmental impact statements described in §§ 51.75, 51.80(b), 51.95, and 51.97(a).

10 C.F.R. § 51.23(b). Incorporation of the GEIS by rule into NUREG-0498 provides a record for the licensing of Watts Bar Unit 2 that the Commission and the public, including SACE, have readily before it. Incorporation of the GEIS by rule does not change any of the NEPA determinations that the NRC has made in NUREG-0498. In fact, NUREG-0498 expressly addressed this: “The NRC considers the WCD to be a generic issue that is best addressed through rulemaking and that the NRC rulemaking process provides an appropriate forum for public review and comment on both the draft EIS and the proposed WCD. . . The updated rule and supporting EIS will provide the necessary analyses of waste confidence-related human health and environmental issues.” NUREG-0498 at 4-69. By publishing a regulation incorporating the GEIS into the final environmental statement for the operation of Watts Bar Unit 2, the Commission has taken all steps necessary to incorporate the GEIS in NUREG-0498.¹⁴

C. The Continued Storage Rule and the GEIS Guarantee That Relevant Information is Made Available to Decision-Makers and the Public

Petitioner argues, without any factual basis, that incorporation of the GEIS through the Continued Storage Rule diminishes the completeness and accuracy of NUREG-0498. Petition at

¹⁴ In CLI-14-08, the Commission specifically directed the NRC Staff to implement the Continued Storage Rule for each of the affected applications, and to account for the results of the rulemaking proceeding before finalizing licensing decisions. *Calvert Cliffs*, CLI-14-08, slip op. at 7. The NRC Staff already has begun implementing the Commission’s directive in CLI-14-08 in individual proceedings. For example, the NRC issued the Limerick renewed licenses in October 2014 without supplementing the FEIS to incorporate by reference the GEIS. Exelon Generation Company, LLC; Limerick Generating Station, Units 1 and 2, 79 Fed. Reg. 63,650 (Oct. 24, 2014). The NRC Staff published a detailed evaluation on October 15, 2014, explaining why a supplement was unnecessary. *See* The U.S. Nuclear Regulatory Commission Staff Evaluation of the Final Rule for Continued Storage of Spent Nuclear Fuel for the License Renewal Environmental Review for Limerick Generating Station, Enclosure 1 at 1 (Oct. 15, 2014) (ADAMS Accession No. ML14281A237). Similarly, the Staff issued an evaluation on November 20, 2014, considering this same issue for the Fermi COL proceeding and concluded that a supplement was not necessary. *See* Consideration of New Information Regarding the Impacts of the Continued Storage of Spent Fuel for the Fermi Nuclear Power Plant, Unit 3, Combined License Application (ADAMS Accession No. ML14318A477).

7-8. Petitioner relies on *Pacific Rivers Council v. U.S. Forest Service*, 689 F.3d 1012 (9th Cir. 2012)¹⁵ for the proposition that:

Material may be incorporated by reference into an EIS only if it is done in a manner that ensures that ‘its omission from the EIS does not ‘imped[e] agency and public review.’” [40 C.F.R.] § 1502.21; *see also* Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026, 18033–34 (March 17, 1981) (“FAQs”).

689 F.3d at 1031. However, incorporation of the GEIS through the Continued Storage Rule does not impede agency and public review or diminish the completeness and accuracy of NUREG-0498. The GEIS, which is publicly available, was thoroughly reviewed through a rulemaking process, which included an extensive public comment period. SACE took advantage of the numerous opportunities for public involvement by participating in public meetings and submitting comments on the draft GEIS and proposed Rule.¹⁶ Thus, SACE has not been impeded in any way by the Continued Storage Rule’s incorporation of the GEIS in NUREG-0498. In fact, the Continued Storage Rule rulemaking proceeding afforded SACE with far more opportunities to inform the NRC’s analysis of continued spent fuel storage impacts than any other process or procedure cited by SACE in its Petition. Additionally, as noted in the Petition, SACE has sought judicial review of the Continued Storage Rule by the U.S. Court of Appeals for the D.C. Circuit. Petition at 11.

In addition, *Pacific Rivers Council* is based on entirely different facts than those presented in this proceeding. In that case, the U.S. Forest Service made determinations regarding potential environmental impacts on fish species based on analyses that did not fully describe and analyze such impacts. Here, in contrast, no analysis has been omitted with respect to either

¹⁵ *Pacific Rivers Council* was vacated as moot. *U.S. Forest Serv. v. Pac. Rivers Council*, 133 S. Ct. 2843 (2013); *see also Pac. Rivers Council v. U.S. Forest Serv.*, 724 F.3d 1146, 1147 (9th Cir. 2013).

¹⁶ *See, e.g.*, GEIS at DD-559 and DD-574.

NUREG-0498 or the GEIS. On the contrary, the NRC has prepared a detailed, bounding, well-reviewed, and publicly-available analysis of continued spent fuel storage impacts that satisfies NEPA's "hard look" requirement and, by rule, applies those determinations to all reactor licensing proceedings. SACE does not allege any site-specific basis in the instant Petition for disputing the adequacy of either NUREG-0498 or the GEIS. SACE plainly seeks to pursue litigation over the Continued Storage Rule in this proceeding, as evidenced by its stated intention to "lodge 'placeholder' contentions." Petition at 10. However, the Commission has already rejected SACE's attempt to litigate the adequacy of the Continued Storage Rule in this plant-specific proceeding in *Calvert Cliffs 3 Nuclear Project*, CLI-14-08, slip op. at 12. Furthermore, as discussed in the following section, Commission regulations prohibit such challenges to NRC rules in licensing proceedings.

D. The Petition Is an Impermissible Challenge to the Commission's Continued Storage Rule

Fundamentally, SACE's Petition is based on the fact that SACE does not agree with the generic determinations in the Continued Storage Rule and the conclusions of the GEIS. In the Petition, SACE complains of the NRC's regulation, 10 C.F.R. § 51.23(b), which incorporates the GEIS into NUREG-0498 (and other plant-specific FEISs). Thus, SACE is directly challenging an NRC regulation, contrary to Commission regulations that bar such challenges to the Commission's rules: 10 C.F.R. § 2.335(a) provides that "no rule or regulation of the Commission, or any provision thereof . . . is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part." In CLI-14-08, the Commission expressly barred litigation of the Continued Storage Rule in this proceeding, "[b]ecause these generic impact determinations have been the subject of extensive public participation in the rulemaking process, they are excluded from litigation in individual proceedings." *Calvert Cliffs*,

CLI-14-08, 80 NRC __ (slip op. at 9, n.27). SACE has not sought a waiver of 10 C.F.R. § 51.23(b), as required by 10 C.F.R. § 2.335.¹⁷ Nor has it submitted any rulemaking petition to revise 10 C.F.R. § 51.23(b).

Any proposed “placeholder” contention submitted by SACE in the future would likewise be an impermissible challenge of the Continued Storage Rule. SACE states that it plans to submit a “placeholder contention” in order to challenge the NRC’s reliance on the GEIS and the generic impact determinations made in the GEIS in this plant-specific licensing proceeding. Contentions challenging Commission regulations or regulatory processes are beyond the scope of NRC adjudicatory proceedings and subject to dismissal on that ground. *See, e.g., Palo Verde, LBP-91-19, 33 NRC at 400, 410, appeal granted in part, CLI-91-12, 34 NRC 149 (1991).*

E. The Petition Is Procedurally Defective

In addition to lacking substantive merit, the Petition suffers from several procedural defects. First, the Petition is untimely. Petitions to the Commission are treated as general motions under 10 C.F.R. § 2.323 (which SACE itself cites in its Petition). *See Oyster Creek, CLI-08-23, 68 N.R.C. at 476 (2008); Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 N.R.C. 230, 237 (2002).* Section 2.323 requires motions to be made no later than 10 days after the occurrence or circumstance from which the motion arises. 10 C.F.R. § 2.323(a). The Petition challenges the language of 10 C.F.R. § 51.23(b). The Continued Storage Rule was published in the *Federal Register* on September 19, 2014, more than four months prior to the filing of the Petition. SACE provides no argument for why the Petition is timely. Based on the stated basis for the Petition and the lack of

¹⁷ In issuing the Continued Storage Rule, the Commission explicitly stated that its “generic determinations will not be revisited and may not be challenged in individual licensing proceedings without the grant of a waiver under 10 CFR 2.335.” Continued Storage Rule, 79 Fed. Reg. at 56,243.

any valid explanation for why the Petition was submitted four months after the information became available, the Petition must be rejected as untimely.

Second, as stated in Section II, *supra*, this proceeding has been terminated and the hearing record is closed. SACE has not submitted a request to reopen the closed record in this proceeding to allow it to seek the relief requested in the Petition, much less satisfied the NRC's strict requirements in 10 C.F.R. § 2.326 for reopening the record.¹⁸

Third, the Petition is procedurally invalid. To the extent that SACE is concerned about the NRC's issuance of the Watts Bar Unit 2 operating license based, in part, on the Continued Storage Rule, SACE could have requested that the Commission (1) stay the effectiveness of the Rule, or (2) suspend its final licensing decision pending judicial review of the Rule. SACE did neither. Instead, SACE proposes the future filing of a "placeholder contention" that, for the reasons stated above, would be an inadmissible challenge to the Continued Storage Rule.¹⁹

Finally, even if the Petition were to be treated as a new contention, the same deficiencies would still apply. The Petition is still untimely, SACE has not moved to reopen the record with respect to the Petition, and the Petition further fails to meet the Commission's admissibility requirements. SACE's Petition is a legal challenge to the language of 10 C.F.R. § 51.23(b) that provides for the incorporation of the GEIS into NUREG-0498. The contention fails to meet the

¹⁸ 10 C.F.R. § 2.326 requires that motions to reopen the record "address a significant safety or environmental issue," show that a "materially different result would be or would have been likely had the newly proffered evidence been considered initially," be timely, and be accompanied by supporting affidavits. SACE has not addressed any of these requirements with respect to the Petition.

¹⁹ Further, the Commission and its licensing boards do not permit the use of "placeholder" motions or contentions. *See, e.g., Exelon Generation Co., LLC* (Byron Nuclear Station, Units 1 & 2; Braidwood Nuclear Station, Units 1 & 2), CLI-14-06, 80 NRC ___, slip op. at 5 (May 2, 2014) (rejecting the use of "placeholder" motions as impermissible under the NRC's hearing rules and "inconsistent with [the Commission's] longstanding interest in sound case management and regulatory finality"); *S. Nuclear Operating Co.* (Vogtle Elec. Generating Plant, Units 3 & 4), LBP-09-3, 69 NRC 139, 155-58 (2009) (rejecting proposed contentions that were "open-ended, placeholder contentions" that are not based on "documentary material or expert analysis," but on future developments); *Shaw Areva MOX* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 489-90 (2008) (rejecting a contention as a "placeholder for the future").

standards for admissibility set forth at 10 C.F.R. § 2.309(f). There is no legal basis for the contention. Therefore, it fails to meet 10 C.F.R. § 2.309(f)(1)(ii). The contention is neither within the scope of the proceeding nor material to the findings that the NRC must make, as required by 10 C.F.R. § 2.309(f)(1)(iii)-(iv), because the particular type of “incorporation by reference” that SACE seeks is not required by the NRC’s regulations nor by CEQ’s. Because SACE provides no precedent or valid support for their Petition, it fails to satisfy 10 C.F.R. § 2.309(f)(1)(vi), which requires “sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.”

IV. CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

/signed (electronically) by Scott A. Vance/

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February 12, 2015

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Tennessee Valley Authority's Answer Opposing Petition To Supplement Reactor-Specific Environmental Impact Statements To Incorporate By Reference The Generic Environmental Impact Statement For Continued Spent Fuel Storage has been served through the E-Filing system on the participants in the above-captioned proceeding, this 12th day of February, 2015.

/signed electronically by/
Blake J. Nelson