

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of	)	
	)	
Exelon Generation Company, LLC	)	Docket Nos. 50-277-SLR
	)	50-278-SLR
Peach Bottom Atomic Power Station,	)	
Units 2 and 3	)	

**EXELON’S ANSWER OPPOSING BEYOND NUCLEAR’S MOTION FOR  
LEAVE TO FILE A NEW CONTENTION AND MOTION TO REOPEN THE RECORD**

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## TABLE OF CONTENTS

I. Introduction.....	1
II. Background.....	2
III. Legal Standards.....	8
A. Requirements to Reopen Record (10 C.F.R. § 2.326) .....	8
B. Standards for Late-filed Contentions (10 C.F.R. § 2.309(c)(1)).....	10
C. Substantive Requirements for Petition to Intervene (10 C.F.R. § 2.309(f)(1)) .....	11
IV. Beyond Nuclear’s Motions and New Contention Should Be Rejected by the Commission for Failing to Meet the Reopening, Timeliness and Admissibility Standards. ....	14
A. Beyond Nuclear Has Failed to Meet the Standards for Reopening a Closed Record. ....	14
B. Beyond Nuclear Does Not Meet the Timeliness Standards for a New Contention. ....	18
C. Beyond Nuclear Does Not Demonstrate That New Contention 3 Meets the Contention Admissibility Standards Under 10 C.F.R. § 2.309(f)(1). ....	22
1. Contention 3 Impermissibly Challenges the NRC Rules.....	22
2. Contention 3 Is Not Supported by Information Demonstrating a Material Issue or Genuine Material Dispute.....	29
V. Conclusion .....	35

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**I. Introduction**

Pursuant to 10 C.F.R. § 2.309(i)(1), Exelon Generation Company, LLC (“Exelon”) submits this Answer opposing Beyond Nuclear, Inc.’s Motion for Leave to File a New Contention<sup>1</sup> (“Motion”) and the associated, late-filed Motion to Reopen the Record.<sup>2</sup> The Motion should be denied because it failed to address or satisfy the standards for reopening the record under 10 C.F.R. § 2.326, and this failure is not cured by the Motion to Reopen, which should be rejected as both untimely and insufficient. The Motion should also be denied because Beyond Nuclear has failed to satisfy the requirements for late-filed contentions under 10 C.F.R. § 2.309(c)(1)(i)-(iii), and the criteria for an admissible contention under 10 C.F.R. § 2.309(f)(1).

In particular, Beyond Nuclear’s Motion made no attempt to address the standards for reopening a closed record, which by itself requires denial of the Motion. Beyond Nuclear’s

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<sup>1</sup> Beyond Nuclear, Inc.’s Motion for Leave to File a New Contention Based on Draft Supplement 10 to Generic Environmental Impact Statement for Subsequent License Renewal of Peach Bottom Operating License (Sept. 3, 2019) (ADAMS Accession No. ML19248D095) (“Motion”). Included in the Motion is Beyond Nuclear’s Contention 3 (the “New Contention” or “Contention 3”).

<sup>2</sup> Beyond Nuclear Inc.’s Motion to Reopen the Record for Purposes of Considering and Admitting a New Contention Based on Supplement 10 to Generic Environmental Impact Statement for Subsequent License Renewal of Peach Bottom Operating License and Request for Consideration of Some Elements of the Motion Out of Time (Sept. 23, 2019) (ADAMS Accession No. ML19265A006) (“Motion to Reopen”).

Motion to Reopen, filed three weeks after the Motion, does not cure this failure because it is untimely, unsupported by a showing of good cause supporting the late-filing, and still deficient in failing to meet the reopening standards.

In addition, Beyond Nuclear does not meet the standards for a late contention, as the discussion of design-basis accidents that it now seeks to challenge is not materially different from the conclusions that were previously incorporated by reference in Exelon’s Environmental Report (“ER”); and indeed, the New Contention (Contention 3) seeks to raise essentially the same issue as that alleged in the previously rejected contention challenging the ER in this proceeding. Further, Beyond Nuclear’s new contention impermissibly challenges NRC rules generically evaluating the impacts of design-basis accidents, and remarkably, Beyond Nuclear fails to mention that its arguments to the contrary were rejected in a majority decision in the Turkey Point license renewal proceeding.<sup>3</sup> And even if that generic assessment could be challenged without a petition for waiver (which Beyond Nuclear has not provided), Beyond Nuclear provides no expert opinion or other support showing that the impacts of design-basis accidents are anything other than small, as the Supplement to the Generic Environmental Impact Statement concludes.

## **II. Background**

This proceeding involves Exelon’s application dated July 10, 2018, requesting the subsequent (*i.e.*, second) license renewal (“SLR”) of the renewed facility operating licenses for the Peach Bottom Atomic Power Station, Units 2 and 3 (“Peach Bottom”). The application

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<sup>3</sup> *Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)*, LBP-19-3, slip op. at 9-30 (Mar. 7, 2019).

includes an environmental report<sup>4</sup> that analyzes applicable issues that have been determined to require further site-specific analysis (termed “Category 2” issues) by the NRC’s Generic Environmental Impact Statement on license renewal.<sup>5</sup> With respect to those issues that are designated as “Category 1” issues in the GEIS<sup>6</sup> (which include design-basis accidents), the ER identifies the issues and findings that apply to Peach Bottom, addresses whether new and significant information exists, and, in the absence of any identification of new and significant information, incorporates the GEIS conclusions by reference.<sup>7</sup>

Beyond Nuclear petitioned for leave to intervene in this proceeding, requesting a hearing on two contentions.<sup>8</sup> Contention 2, the predecessor of Contention 3, alleged that Exelon’s ER violates the National Environmental Policy Act (“NEPA”) and 10 C.F.R. § 51.53(c)(2) by failing to address the risk of design-basis accidents at Peach Bottom posed by operating aging reactor equipment. Contention 2 argued that because 10 C.F.R. § 51.53(c)(3) applies only to applicants seeking an initial renewed license, it does not exempt Exelon from considering the Category 1 issue of design-basis accidents in this proceeding, and alleged that Exelon was violating NEPA by not reviewing the existing body of literature regarding reactor aging phenomena, including

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<sup>4</sup> Applicant’s Environmental Report – Operating License Renewal Stage – Subsequent License Renewal, Peach Bottom Atomic Power Station, Units 2 and 3 (July 2018) (ADAMS Accession No. ML18201A219).

<sup>5</sup> NUREG-1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants,” Rev. 1 (June 2013) (ADAMS Accession Nos. ML13106A241, ML13106A242, and ML13106A244) (“2013 GEIS”).

<sup>6</sup> Findings on Category 1 issues are codified in 10 C.F.R. Part 51, App. B, Table B-1 (“Table B-1”). Issues are designated as Category 1 issues if analysis in the GEIS has shown that: (1) the environmental impacts associated with the issue have been determined to apply to all plants or plants with a specified characteristic, (2) a single significance level (*i.e.* small, moderate, or large) has been assigned to the impacts, and (3) mitigation of adverse impacts associated with the issue have been considered and additional plant-specific mitigation has been determined not likely to be sufficiently beneficial to warrant implementation. *Id.*, n.2.

<sup>7</sup> *See generally* ER at 4-2, 4-4. *See also* ER at 4-69 (incorporating by reference the 2013 GEIS conclusions on design-basis accidents).

<sup>8</sup> Beyond Nuclear Inc.’s Hearing Request and Petition to Intervene (Nov. 19, 2018) (ADAMS Accession No. ML18323A750) (“BN Hearing Request”).

the Expanded Materials Degradation Assessment (“EMDA”)<sup>9</sup> and SECY-14-0016, Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal (Jan. 31, 2014), and other references in a report prepared by David Lochbaum, as well as the significance of an alleged decrease in operating experience.<sup>10</sup>

Both Exelon and the NRC Staff answered opposing Beyond Nuclear’s hearing request for failure to plead an admissible contention.<sup>11</sup> With respect to Contention 2, both Exelon and the NRC Staff responded that the Contention impermissibly challenged the NRC’s rules, including the generic findings on Category 1 issues codified in Table B-1.<sup>12</sup> Both Exelon and the NRC Staff also responded that the NRC rules at 10 C.F.R. § 51.53(a) permit an applicant to incorporate into its ER information from NRC Staff prepared generic environmental impact statements,<sup>13</sup> that Exelon had done so,<sup>14</sup> and that Beyond Nuclear provided no basis for any claim that impacts of design-basis accidents would be significantly different during the renewal term.<sup>15</sup> As the NRC Staff observed: “The Lochbaum Report contains no discussion of environmental consequences of SLR. Petitioner’s brief reference to studies listed in the Lochbaum Report, and the incorporation by reference of that report, fails to disclose new and

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<sup>9</sup> NUREG/CR-7153, Expanded Material Degradation Analysis (Oct. 2014).

<sup>10</sup> BN Hearing Request at 7-8.

<sup>11</sup> Exelon’s Answer Opposing Beyond Nuclear Inc.’s Hearing Request and Petition to Intervene (Dec. 14, 2018) (“Exelon Answer”) (ADAMS Accession No. ML18348B049); NRC Staff Answer to Beyond Nuclear Inc.’s Hearing Request and Petition to Intervene (Dec. 14, 2018) (ADAMS Accession No. ML18355B014) (“NRC Staff Answer”).

<sup>12</sup> Exelon Answer at 29-36; NRC Staff Answer at 29-37.

<sup>13</sup> Exelon Answer at 31; NRC Staff Answer at 56-7, 58.

<sup>14</sup> Exelon Answer at 29-30; NRC Staff Answer at 60 n.249.

<sup>15</sup> Exelon Answer at 38-40; NRC Staff Answer at 58-59.

significant information concerning the environmental impacts of design-basis accidents or the risk of such accidents.”<sup>16</sup> Similarly, Exelon observed:

[E]ven if accident risk were not resolved generically . . . , Contention 2 would still be inadmissible, because Beyond Nuclear has provided no information indicating that the NRC Staff’s previous identification of research topics or the vague and speculative concern regarding the sufficiency of future operating experience would result in any significant increase in the consequences of design basis accidents (or the probability-weighted consequences of severe accidents). Beyond Nuclear provides no basis to dispute the assessment in the 2013 GEIS that additional experience has contributed to improved plant performance (*e.g.*, as measured by trends in plant-specific performance indicators), a reduction in operating events, and lessons learned that improve the safety of all of the operating nuclear power plants. NUREG-1437, Rev. 1, Vol. 3, App. E at E-3.

\* \* \*

Here, Beyond Nuclear has not made any showing that accident risk has or will increase as Peach Bottom continues to operate. It has not pointed to any data suggesting any increase in accident risk or consequences. Therefore, in addition to rejecting Contention 2 as an impermissible challenge to the NRC rules generically assessing accident risk, the Board should also rule that Beyond Nuclear has failed to demonstrate any genuine material dispute with the assessment of accident risk in the GEIS, which the ER has incorporated by reference. In sum, even if a challenge to this assessment were permissible . . . , Contention 2 would be inadmissible for lack of basis, failure to demonstrate an issue material to the findings that the NRC must make, and failure to demonstrate a genuine dispute with the application on a material issue, as required by 10 C.F.R. §§ 2.309(f)(1)(ii), (iv), and (iv).<sup>17</sup>

Beyond Nuclear’s reply<sup>18</sup> remained essentially devoted to the argument that 10 C.F.R. § 51.53(c)(3) does not apply to a subsequent license renewal application. Beyond Nuclear did not dispute that the GEIS findings could be incorporated by reference. As Beyond Nuclear admitted on reply, “*the NRC may still refer to the environmental findings of the 2013 Revised*

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<sup>16</sup> NRC Staff Answer at 58.

<sup>17</sup> Exelon Answer at 38-40 (footnotes omitted).

<sup>18</sup> Beyond Nuclear Inc.’s Reply to Exelon and NRC Staff’s Oppositions to Hearing Request and Petition to Intervene (Dec. 21, 2018) (ADAMS Accession No. ML18355B014) (“BN Reply”).

*GEIS in a subsequent license renewal review, but NEPA prohibits the NRC from codifying those findings for purposes of a subsequent license renewal review.”*<sup>19</sup>

The Board held oral argument on Beyond Nuclear’s hearing request addressing the admissibility of both proposed contentions. Thereafter, in LBP-19-05, the Board denied Beyond Nuclear’s hearing request because Beyond Nuclear had not proffered an admissible contention.<sup>20</sup> With respect to Contention 2, the Board found it unnecessary to determine the applicability of 10 C.F.R. § 51.53(c)(3) to subsequent license renewal applications or whether Contention 2 represented an impermissible challenge to Table B-1.<sup>21</sup> Instead, the Board concluded that 10 C.F.R. § 51.53(a) permits an ER to incorporate GEIS analyses,<sup>22</sup> Exelon’s ER incorporated the conclusions from the GEIS on design-basis accidents,<sup>23</sup> Beyond Nuclear offered no explanation why Section 51.53(a) would not permit Exelon to utilize the GEIS in its application,<sup>24</sup> and Mr. Lochbaum’s report provided no support for Beyond Nuclear’s position that the GEIS analysis was deficient or could not be applied.<sup>25</sup> The Board therefore found no support for the allegation that Exelon failed to address accident risks.<sup>26</sup> The Board also found no basis for Beyond Nuclear’s allegation that the ER violates NEPA by failing to take into account the body of literature concerning aging, including the EMDA, literature referenced in Mr. Lochbaum’s report, and issues raised in SECY-14-0016.<sup>27</sup> In particular, the Board found that Beyond Nuclear did not identify the specific documents in Mr. Lochbaum’s report that should have been

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<sup>19</sup> *Id.* at 28-29 (emphasis in original).

<sup>20</sup> LBP-19-05, slip op. at 1 (June 20, 2019).

<sup>21</sup> *Id.* at 18-19.

<sup>22</sup> *Id.* at 19.

<sup>23</sup> *Id.* at 19-20.

<sup>24</sup> *Id.* at 20.

<sup>25</sup> *Id.* at 21 and n.98.

<sup>26</sup> *Id.* at 19-20.

<sup>27</sup> *Id.* at 21-22.

reviewed and evaluated, let alone any evidence that NEPA mandates such review.<sup>28</sup> The Board also agreed that “Beyond Nuclear has provided no information indicating that . . . the vague and speculative concern regarding the sufficiency of future operating experience would result in any significant increase in the consequences of design-basis accidents (or the probability-weighted consequences of severe accidents).”<sup>29</sup>

Beyond Nuclear appealed this Board decision by arguing—improperly, for the first time on appeal<sup>30</sup>—that Exelon’s ER failed to properly incorporate by reference the GEIS findings on design-basis accidents.<sup>31</sup> Exelon and the NRC Staff have both opposed Beyond Nuclear’s Appeal, including the improper attempt to introduce a new argument for the first time on appeal.<sup>32</sup>

Beyond Nuclear now moves to file Contention 3 alleging that the discussion of design-basis accidents in the NRC Staff’s Draft Supplement to the Generic Environmental Impact Statement<sup>33</sup> for Peach Bottom (“DSGEIS”) violates NEPA and 10 C.F.R. § 51.71.<sup>34</sup> Beyond Nuclear again argues that Category 1 determinations do not apply to subsequent license renewal and that the Category 1 determinations on design-basis accidents were not properly incorporated

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<sup>28</sup> *Id.* at 22.

<sup>29</sup> *Id.* at 23 (quoting Exelon Answer at 38).

<sup>30</sup> *See, e.g.*, Exelon’s Brief in Opposition to Beyond Nuclear’s Appeal of LBP-19-05 (Aug. 9, 2019) (“Exelon Brief on Appeal”) at 8-11; NRC Staff Brief in Opposition to Beyond Nuclear Appeal of LBP-19-05 (Aug. 9, 2019) (“NRC Brief on Appeal”) at 12.

<sup>31</sup> *See, e.g.*, Beyond Nuclear’s Notice of Appeal of LBP-19-05 (July 15, 2019) (ADAMS Accession No. ML19196A371); Beyond Nuclear’s Brief on Appeal of LBP-19-05 (July 15, 2019) (ADAMS Accession No. ML19196A372) (hereinafter “BN Appeal”); Beyond Nuclear, Inc.’s Reply Brief on Appeal of LBP-19-05 (Aug. 19, 2019) (“BN Appeal Reply”).

<sup>32</sup> *See, e.g.*, Exelon’s Brief in Opposition to Beyond Nuclear’s Appeal of LBP-19-05 (Aug. 9, 2019) (“Exelon Brief on Appeal”); NRC Staff Brief in Opposition to Beyond Nuclear Appeal of LBP-19-05 (Aug. 9, 2019) (“NRC Brief on Appeal”).

<sup>33</sup> Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 10, Second Renewal, Regarding Subsequent License Renewal for Peach Bottom Atomic Power Station, Units 2 and 3 (NUREG-1437, Supp. 10, Second Renewal, Draft Report for Comment) (July 2019) (ADAMS Accession No. ML19210D453).

<sup>34</sup> Motion at 2.

by reference into the DSGEIS.<sup>35</sup> Beyond Nuclear once again claims that the “environmental implications of reactor aging issues identified by the NRC Staff in SECY-14-0016” and “knowledge deficiencies” in the EMDA must be addressed.<sup>36</sup> Beyond Nuclear essentially restates its arguments from Contention 2 and its Appeal and redirects them towards the Staff’s DSGEIS in Contention 3. In addition, Beyond Nuclear adds an untimely new argument challenging the 1996 GEIS<sup>37</sup> and 2013 GEIS<sup>38</sup> consideration of regulatory requirements in concluding that design-basis impacts will be small.<sup>39</sup>

### III. Legal Standards

#### A. Requirements to Reopen Record (10 C.F.R. § 2.326)

In this proceeding, the Board denied the sole petition to intervene,<sup>40</sup> and therefore, the record is closed and jurisdiction now lies with the Commission.<sup>41</sup> To submit a new or amended contention at this juncture, Beyond Nuclear *must* file a motion to reopen the record and address

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<sup>35</sup> Compare Motion at 3, 8-12 with BN Hearing Request at 7, 11-12; BN Appeal at 6-8.

<sup>36</sup> Compare Motion at 4-5 with BN Hearing Request at 7-8.

<sup>37</sup> “The licensee is required to maintain these acceptable design and performance criteria throughout the life of the plant, including any extended-life operation. The consequences for these events are evaluated for the hypothetical maximum exposed individual; as such, changes in the plant environment will not affect these evaluations. Because of the requirements that continuous acceptability of the consequences and aging management programs be in effect for license renewal, the environmental impacts as calculated for design-basis accidents should not differ significantly from initial licensing assessments over the life of the plant, including the license renewal period.” NUREG-1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (May 1996) at 5-11 to 5-12 (ADAMS Accession No. ML040690705) (“1996 GEIS”).

<sup>38</sup> “As stated in Section 5.3.2, the environmental impact from design-basis accidents was assessed in the individual plant-specific EISs at the time of the initial license application review. Since the licensee is required to maintain the plant within acceptable design and performance criteria, including during any license renewal term, these impacts are not expected to change. Therefore, additional assessment of the environmental impacts from design-basis accidents is not necessary . . .” 2013 GEIS at E-5 to E-6.

<sup>39</sup> Motion at 5-7 (challenging the DSGEIS conclusion that “[s]ince the licensee is required to maintain the plant within acceptable design and performance criteria . . . the NRC staff would not expect environmental impacts to change significantly”).

<sup>40</sup> LBP-19-05, slip op. at 1.

<sup>41</sup> *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 N.R.C. 115, 120 (2009) (“Generally, once there has been an appeal or petition to review a Board order ruling on intervention petitions . . . jurisdiction passes to the Commission, including jurisdiction to consider any motion to reopen.”); *Virginia Elec. and Power Co.* (North Anna Power Station, Unit 3), CLI-12-14, 75 N.R.C. 692, 699-701 (2012) (“once all contentions have been decided, the contested proceeding is terminated.”).

the standards for such a motion under 10 C.F.R. § 2.326.<sup>42</sup> This is true notwithstanding the appeal pending before the Commission.<sup>43</sup>

The Commission considers “reopening the record for any reason to be ‘an ‘extraordinary’ action,’”<sup>44</sup> and places “an intentionally heavy burden on parties seeking to reopen the record.”<sup>45</sup> Indeed, “a party seeking to reopen a closed record to raise a new matter faces an elevated burden to lay a proper foundation for its claim. Commission practice holds that the standard for admitting a new contention after the record is closed is higher than for an ordinary late-filed contention.”<sup>46</sup> “Obviously, ‘there would be little hope’ of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings.”<sup>47</sup> A party seeking to reopen the record must include a motion that:

(1) is timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;

(2) addresses a significant safety or environmental issue; and

(3) demonstrates that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.<sup>48</sup>

The motion must also be accompanied by an affidavit that separately addresses each of the applicable criteria in Section 2.326(a), with a specific explanation of why each criterion has been

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<sup>42</sup> *Millstone*, CLI-09-5, 69 N.R.C. at 120 (“The Board correctly determined that because it had already denied the intervention petition, a motion to file new or amended contentions must address the motion to reopen standards.” (quotations omitted)); *North Anna*, CLI-12-14, 75 N.R.C. at 700 & n.54 (“to admit a new contention after the contested proceeding has terminated, a petitioner must meet the three criteria [in 10 C.F.R. § 2.326].”).

<sup>43</sup> *Millstone*, CLI-09-5, 69 N.R.C. at 120.

<sup>44</sup> *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), CLI-15-19, 82 N.R.C. 151, 156 (2015).

<sup>45</sup> *Id.* at 155.

<sup>46</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 N.R.C. 345, 350 (2005) (citing *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523-24 (1973)).

<sup>47</sup> *PFS*, CLI-05-12, 61 N.R.C. at 350 n.18 (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 555 (1978)).

<sup>48</sup> 10 C.F.R. § 2.326(a).

satisfied for each of petitioner’s allegations.<sup>49</sup> In addition, a motion to reopen that relates to a new contention must also satisfy the 10 C.F.R. § 2.309(c) standards for a new or amended contention.<sup>50</sup>

**B. Standards for Late-filed Contentions (10 C.F.R. § 2.309(c)(1))**

The Commission’s regulations explicitly prohibit the consideration of contentions filed after the initial deadline, absent a finding of good cause for the late filing. Contentions filed after the intervention deadline “*will not be entertained* absent a determination by the presiding officer that a participant has demonstrated good cause” for the late filing.<sup>51</sup> The good cause demonstration requires a petitioner to show that:

- (i) The information upon which the filing is based was not previously available;
- (ii) The information upon which the filing is based is materially different from information previously available; and
- (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.<sup>52</sup>

This means that “previously available information cannot be used as the basis for a new or amended contention filed after the deadline,” including previously available information that is compiled for the first time in a new document.<sup>53</sup> A document that collects, summarizes, and places into context previously available information does not make that information new or materially different.<sup>54</sup> “To conclude otherwise would turn on its head the regulatory requirement

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<sup>49</sup> 10 C.F.R. § 2.326(b).

<sup>50</sup> 10 C.F.R. § 2.326(d).

<sup>51</sup> 10 C.F.R. § 2.309(c)(1) (emphasis added).

<sup>52</sup> 10 C.F.R. § 2.309(c)(1)(i)-(iii).

<sup>53</sup> Final Rule, Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,566 (Aug. 3, 2012).

<sup>54</sup> *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 N.R.C. 481, 496 (2010) (footnote omitted).

that new contentions be based on information . . . *not previously available*,”<sup>55</sup> and also be “inconsistent with [the Commission’s] longstanding policy that a petitioner has an *iron-clad obligation* to examine the publicly available documentary material . . . with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention.”<sup>56</sup> “There simply would be no end to NRC licensing proceedings if petitioners could disregard [the Commission’s] timeliness requirements and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding.”<sup>57</sup>

**C. Substantive Requirements for Petition to Intervene (10 C.F.R. § 2.309(f)(1))**

Even if a petitioner is able to show the requisite good cause for the late filing, the late-filed contentions must still meet the Commission’s admissibility requirements set forth in 10 C.F.R. § 2.309(f)(1). Specifically, contentions must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor’s/petitioner’s position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

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<sup>55</sup> *Id.* (quotation omitted) (emphasis in original).

<sup>56</sup> *Id.* (emphasis added) (quotation and footnote omitted).

<sup>57</sup> *Id.* (quoting *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 271-72 (2009) (footnotes and internal quotation marks omitted)).

(vi) In a proceeding other than one under 10 CFR 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.<sup>58</sup>

These standards are enforced rigorously. "If any one . . . is not met, a contention must be rejected."<sup>59</sup> A licensing board is not to overlook a deficiency in a contention or assume the existence of missing information. Under these standards, a petitioner "is obligated to provide the [technical] analyses and expert opinion showing why its bases support its contention."<sup>60</sup> Where a petitioner has failed to do so, "the [Licensing] Board may not make factual inferences on [the] petitioner's behalf."<sup>61</sup>

Further, admissible contentions "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]."<sup>62</sup> In particular, this explanation must demonstrate that the contention is "material" to the NRC's findings and that a genuine dispute on a material issue of law or fact exists.<sup>63</sup> The Commission has defined a "material" issue as

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<sup>58</sup> 10 C.F.R. § 2.309(f)(1)(i)-(vi).

<sup>59</sup> *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) (citation omitted); *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006) ("These requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements." (footnotes omitted)).

<sup>60</sup> *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 N.R.C. 1 (1995), *aff'd in part*, CLI-95-12, 42 N.R.C. 111 (1995).

<sup>61</sup> *Id.* (citing *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149 (1991)). *See also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 180 (1998) (explaining that a "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion . . . to show why the proffered bases support [a] contention" (citations omitted)).

<sup>62</sup> *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 359-60 (2001).

<sup>63</sup> 10 C.F.R. § 2.309(f)(1)(iv), (vi).

meaning one where “resolution of the dispute *would make a difference in the outcome* of the licensing proceeding.”<sup>64</sup>

Furthermore, a statement “that simply alleges that some matter ought to be considered” does not provide a sufficient basis for a contention.<sup>65</sup> Similarly, “[m]ere reference to documents does not provide an adequate basis for a contention.”<sup>66</sup> Rather, NRC’s pleading standards require a petitioner to read the pertinent portions of the license application, including the safety analysis and the environmental report, state the applicant’s position and the petitioner’s opposing view, and explain why it has a disagreement with the applicant.<sup>67</sup> If the petitioner does not believe these materials address a relevant issue, the petitioner is “to explain why the application is deficient.”<sup>68</sup> “[A]n allegation that some aspect of a license application is ‘inadequate’ or ‘unacceptable’ does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect.”<sup>69</sup> Likewise, mere speculation is not sufficient to raise a genuine dispute with the application.<sup>70</sup>

Finally, Commission regulations expressly provide that contentions “*must* be based on documents or other information available at the time the petition is to be filed, such as the

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<sup>64</sup> Final Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (emphasis added).

<sup>65</sup> *Sacramento Mun. Util. Dist.* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 N.R.C. 200, 246 (1993), *review declined*, CLI-94-2, 39 N.R.C. 91 (1994).

<sup>66</sup> *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 348 (1998).

<sup>67</sup> Final Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170-171 (Aug. 11, 1989); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001).

<sup>68</sup> 54 Fed. Reg. at 33,170. *See also Palo Verde*, CLI-91-12, 34 N.R.C. at 156.

<sup>69</sup> *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 358 (2006) (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 N.R.C. 509, 521 & n.12 (1990)).

<sup>70</sup> *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 N.R.C. 215, 225 (2017).

application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee . . . .”<sup>71</sup>

**IV. Beyond Nuclear’s Motions and New Contention Should Be Rejected by the Commission for Failing to Meet the Reopening, Timeliness and Admissibility Standards.**

To successfully introduce a new contention at this late stage, Beyond Nuclear must meet the requirements of 10 C.F.R. §§ 2.326, 2.309(c)(1) and 2.309(f)(1). Beyond Nuclear fails to meet any of these requirements, let alone all three as is required.

**A. Beyond Nuclear Has Failed to Meet the Standards for Reopening a Closed Record.**

When it first submitted its Motion seeking admission of Contention 3, on September 3, Beyond Nuclear entirely ignored the requirements of 10 C.F.R. § 2.326 and did not even attempt to justify reopening the record. The Commission has ruled that after a petition to intervene has been denied, “a motion to file new or amended contentions *must* address the motion to reopen standards.”<sup>72</sup> Beyond Nuclear’s Motion made no attempt to address any of the factors in 10 C.F.R. § 2.326, nor did it include the required affidavit in support.<sup>73</sup> This failure alone is sufficient reason for the Commission to deny the Motion and reject Contention 3.<sup>74</sup>

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<sup>71</sup> 10 C.F.R. § 2.309(f)(2) (emphasis added).

<sup>72</sup> *Millstone*, CLI-09-5, 69 N.R.C. at 120 (emphasis added) (quotations omitted).

<sup>73</sup> 10 C.F.R. § 2.326(b). *See also Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-3, 75 N.R.C. 132, 138 (2012). While Beyond Nuclear includes an affidavit in its Motion to Reopen, that affidavit does not even attempt to make the required *prima facie* showing of a deficiency. *See AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), LBP-08-12, 68 N.R.C. 5, 17 (2008) (“[The] affidavit must support sufficient information to support a *prima facie* showing.”).

<sup>74</sup> *See Millstone*, CLI-09-5, 69 N.R.C. at 124 (“Even had [petitioner’s] contentions passed muster under 10 C.F.R. § 2.309(f)(1), *its motion would still fail for failing to address, let alone meet, our reopening standards.*” (emphasis added)).

Beyond Nuclear's late-filed Motion to Reopen does not cure this failure. In addition to being inexcusably untimely, the Motion to Reopen still fails to meet the standards for reopening a closed record.

First, Beyond Nuclear's late-filed Motion to Reopen is untimely, having been filed seven weeks after the DSGEIS was made publicly available, thus contravening the requirement in 10 C.F.R. § 2.236(a)(1) that motions to reopen be timely; and Beyond Nuclear provides no good cause to excuse its late filing. Beyond Nuclear argues that it was not clear that the Licensing Board's jurisdiction had terminated under 10 C.F.R. § 2.318, and that Beyond Nuclear's counsel has only now researched the issue and determined that it must file a motion to reopen the record.<sup>75</sup> Contrary to Beyond Nuclear's claim, there is clear precedent that 10 C.F.R. § 2.318 does not extend the Board's jurisdiction,<sup>76</sup> and therefore no basis for any confusion on Beyond Nuclear's part. Further, Beyond Nuclear is represented by experienced nuclear counsel and should have performed any necessary research in the month preceding the filing of its new contention, not three weeks afterwards. Lawyers in NRC proceedings are obligated to familiarize themselves with the NRC rules,<sup>77</sup> and failure to understand those rules does not constitute good cause for an untimely filing.<sup>78</sup> Moreover, Beyond Nuclear cannot claim that it was unaware of the requirement to reopen the record at this stage, as its counsel has moved to reopen the record in other proceedings after termination of a Licensing Board's jurisdiction

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<sup>75</sup> Motion to Reopen at 11-12, 2-3.

<sup>76</sup> *North Anna*, CLI-12-14, 75 N.R.C. at 701.

<sup>77</sup> *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 N.R.C. 350, 352 (1980); *Houston Lighting and Power* (Allens Creek Nuclear Station, Unit 1) ALAB-609, 12 N.R.C. 172, 173 n.1 (1980).

<sup>78</sup> *Florida Power & Light Co. et al.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs ISFSI; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 N.R.C. 30, 33 (2006); *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1). CLI-99-6, 49 N.R.C. 201, 223 (1999).

following dismissal of contentions.<sup>79</sup> Therefore, Beyond Nuclear’s Motion to Reopen should be rejected for not meeting the timeliness requirement in 10 C.F.R. § 2.326(a)(1).

Second, even if Beyond Nuclear’s Motion to Reopen were timely (which it obviously is not), it fails to meet the other standards for reopening. Rather than demonstrating that it meets the standards in 10 C.F.R. § 2.326, Beyond Nuclear impermissibly challenges that rule by arguing that a new contention contesting an NRC Staff NEPA document must be admitted if it meets the requirements of 10 C.F.R. § 2.309(c), even if the record has closed. Further, Beyond Nuclear bases this position on reasoning that has been rejected by the Commission. Beyond Nuclear argues that under *Union of Concerned Scientists v. NRC*, 735 F.2d 1437 (D.C. Cir. 1984), the NRC may not establish a regulation denying its right to hearing on an issue deemed necessary to a licensing determination, and therefore under *Union of Concerned Scientists v. NRC*, 920 F.2d 50 (D.C. Cir. 1990) (“UCS II”), the NRC may not erect barriers to the admission of new contentions on new issues.<sup>80</sup> Contrary to this argument, the Commission has specifically “reject[ed] the . . . reasoning that applying the reopening standards to a new contention is tantamount to denying [a petitioner] its right to a hearing under the AEA.”<sup>81</sup> “The courts of appeals have repeatedly approved our practice of closing the hearing record after resolution of the last ‘live’ contention, and of holding new contentions to the higher ‘reopening’ standard.”<sup>82</sup> Citing UCS II, the Commission explained, “[t]he D.C. Circuit has considered and rejected the argument that applying heightened late-filing standards to contentions triggered by the Staff’s

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<sup>79</sup> See Southern Alliance For Clean Energy’s Motion for Leave to File a New Contention Concerning TVA’s Failure to Comply with 10 C.F.R. § 50.34(b)(4) (Feb. 5, 2015) (ADAMS Accession No. ML15037A318).

<sup>80</sup> Motion to Reopen at 9-10.

<sup>81</sup> *North Anna*, CLI-12-14, 75 N.R.C. at 700 (rejecting the same reasoning in LBP-11-22, 74 N.R.C. 259, 281-82).

<sup>82</sup> *Id.*, citing *New Jersey Environmental Federation v. NRC*, 645 F.3d 220, 232-33 (3d Cir. 2011); *State of Ohio v. NRC*, 814 F.2d 258, 262-64 (6th Cir. 1987); *Oystershell Alliance v. NRC*, 800 F.2d 1201, 1207-08 (D.C. Cir. 1986).

review documents violates a petitioner’s AEA hearing rights.<sup>83</sup> The Commission also observed that the Third Circuit has expressly found the NRC’s approach to reopening consistent with the AEA’s hearing requirement.<sup>84</sup>

Third, Contention 3 does not seek to raise a “new issue” that could not have been raised earlier. To the contrary, it simply repeats the claims previously raised in Contention 2 that Category 1 findings do not apply to subsequent license renewal and the discussion of design-basis accidents must address EMDA and SECY-14-0016.

Accordingly, the reopening standards may not be ignored. To successfully reopen the record, Beyond Nuclear’s Motion to Reopen must be timely or exceptionally grave; raise a “significant safety or environmental issue;”<sup>85</sup> and show that the “evidence supporting their contention would likely have materially affected the outcome of the licens[ing] proceeding.”<sup>86</sup> The factual and technical bases for Beyond Nuclear’s claims with respect to each of these criteria must be supported by an affidavit of a competent individual with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised.

For numerous reasons, Beyond Nuclear’s Motion to Reopen meets none of these requirements. While Beyond Nuclear asserts that the affidavit requirement in 10 C.F.R. § 2.326(b) is met by the two-sentence declaration of its counsel provided at the end of the Motion to Reopen,<sup>87</sup> that declaration is not provided by an individual or expert competent to opine on the

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<sup>83</sup> *Id.* (citing *UCS II*, 920 F.2d at 55 (“Petitioner also is mistaken in reading *UCS I* to require that a licensing hearing embrace *anything* new revealed in the SER or the NEPA documents . . .” (emphasis in original))).

<sup>84</sup> *Id.* (citing *N.J. Env’tl. Fed’n v. NRC*, 645 F.3d at 232-33).

<sup>85</sup> 10 C.F.R. § 2.326(a)(2).

<sup>86</sup> *Oyster Creek*, LBP-08-12, 68 N.R.C. at 22 (“That is, they must show a likelihood that their contention would be resolved in their favor such that [the Application] would be denied or conditioned.” (citing *PFS*, CLI-05-12, 61 N.R.C. at 350 (to reopen a closed record to introduce a new issue, the movant has the burden of “showing that the new information will ‘likely’ trigger a ‘different result’”))).

<sup>87</sup> Motion to Reopen at 11.

environmental impacts of design-basis accidents, or the environmental implications of the EMDA and SECY-14-0016 with respect thereto. Further, neither the Motion to Reopen nor counsel's declaration attempts to show that Contention 3 raises a significant environmental issue or that it would materially change the environmental impact determination in the DSGEIS. Indeed, Beyond Nuclear does nothing to challenge the consequences of design-basis accidents or to demonstrate that the environmental impacts would be anything but small. Instead, Contention 3 essentially amounts to no more than an improper attempt to "flyspeck" the NRC Staff's environmental document and the manner in which Category 1 findings on design-basis accidents are incorporated into the document, without alleging any potential change in environmental impact.<sup>88</sup>

**B. Beyond Nuclear Does Not Meet the Timeliness Standards for a New Contention.**

In addition to failing to even address the standard for reopening the record, Beyond Nuclear's Motion also fails to meet the requirements for late-filed contentions. To determine if a filing is timely, the Commission looks at "whether the contention could have been raised earlier—that is, whether the information on which it is based was previously available or whether it is materially different from what was previously available, and whether it has been submitted in a timely fashion based on the information's availability."<sup>89</sup> As the Commission has stressed, "proceedings would be incapable of attaining finality if contentions—that could have been raised at the outset—could be added later at will, regardless of the stage of the proceeding."<sup>90</sup> Additionally, the Commission has explained that "a petitioner must show that the

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<sup>88</sup> *Exelon Generation Co.* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 N.R.C. 801, 811 (2005).

<sup>89</sup> *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 N.R.C. 491, 498 (2012).

<sup>90</sup> *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 N.R.C. 479, 483 (2012).

information on which the new contention is based was not reasonably available to the public, not merely that the petitioner recently found out about it.”<sup>91</sup>

Beyond Nuclear claims that Contention 3 is timely because it is based on the DSGEIS, which was only recently released.<sup>92</sup> However, Beyond Nuclear *already put forth this same contention* directed at the ER in Contention 2 and on Appeal, belying its claim of timeliness at this stage.<sup>93</sup> If Beyond Nuclear previously pled essentially the same contention, the gravamen of both Contention 2 and Contention 3 being that EMDA and SECY-14-0016 should be addressed in the discussion of the impacts of design-basis accidents, it cannot now claim that Contention 3 could not have been raised earlier. This very issue *was* in fact raised earlier in this proceeding, and it was *rejected* by the Board.<sup>94</sup>

Beyond Nuclear argues that the DSGEIS and the ER are materially different because they “rely on different regulations to justify the applicability of Table B-1; and because the [DSGEIS] contains a discussion of environmental impacts that did not appear in the Environmental Report.”<sup>95</sup> But the Commission has upheld decisions finding no material difference where “[t]he Board was ‘satisfied that each of the issues that comprise the subject matter of the contention was discussed in the [Environmental Report],’”<sup>96</sup> and where the Board found that the issues and impacts were already discussed in the ER.<sup>97</sup> Beyond Nuclear does not point to any change in the issues or impacts here. Indeed, the design-basis accident analysis and its environmental impacts

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<sup>91</sup> *Millstone*, CLI-09-5, 69 N.R.C. at 126.

<sup>92</sup> Motion at 14-15.

<sup>93</sup> *See supra* at 3.

<sup>94</sup> LBP-19-05, slip op. at 19-20, 22.

<sup>95</sup> Motion at 15.

<sup>96</sup> *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-1, 81 N.R.C. 1, 8 (2015) (citing *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-12, 75 N.R.C. 742, 775-776 (2012)).

<sup>97</sup> *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-12, 75 N.R.C. at 775-776.

have not changed between the ER and the DSGEIS. While Beyond Nuclear argues that the DSGEIS contains a different discussion of environmental impacts than the Environmental Report, the differences are based on how the GEIS is incorporated into the document, and not on any differences in the conclusions regarding the impacts of design-basis accidents.

Indeed, one of the enduring flaws in Contention 3 (and Contention 2 before it) is that the contention does not address the environmental impact of design-basis accidents. Nor could it, as both the 1996 GEIS and the DSGEIS explained, “[t]he consequences for these events are evaluated for the hypothetical maximum exposed individual; as such, *changes in the plant environment will not affect these evaluations.*”<sup>98</sup> Thus, none of the allegedly “unresolved” age-related issues alleged by Beyond Nuclear<sup>99</sup> is even capable of changing the environmental impacts as they were calculated in the GEIS.

Beyond Nuclear’s claim that the DSGEIS and the ER are materially different because they “rely on different regulations to justify the applicability of Table B-1”<sup>100</sup> is also unavailing. The ER and DSGEIS naturally rely on different regulations because different regulations apply to the Applicant’s environmental report and the NRC Staff’s NEPA documents. If this difference were grounds to call a new contention “timely,” *any contention* newly filed on a Staff NEPA document would be so. This would effectively gut the NRC’s timeliness requirements.

As the Commission stated when promulgating the requirements of 10 C.F.R. § 2.309(c)(1):

[T]he NRC wants to make it clear to participants in its adjudicatory proceedings that when a draft or final NRC NEPA document contains information that was previously available and that is not significantly different from information in the applicant's environmental report, there is a presumption that the participant could

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<sup>98</sup> 1996 GEIS at 5-11 to 5-12; DSGEIS at E-2.

<sup>99</sup> Motion at 12-13.

<sup>100</sup> Motion at 15.

have used that information to support a contention challenging the environmental report.<sup>101</sup>

A change in the governing regulation does not make it *different* information from that which was previously available. Thus, it is not timely.

Beyond Nuclear also argues that the “[DSGEIS] contains a discussion of environmental impacts that did not appear in the Environmental Report.”<sup>102</sup> While it is not clear from Beyond Nuclear’s Motion,<sup>103</sup> the only discussion mentioned anywhere in the Motion is the following statement from Appendix E of the DSGEIS:

As stated in Section 5.3.2 of the 1996 GEIS, the NRC staff assessed the environmental impact from design-basis accidents in the individual plant-specific EISs at the time of the initial license application review. Since the licensee is required to maintain the plant within acceptable design and performance criteria, including during any license renewal term, the NRC staff would not expect environmental impacts to change significantly. Therefore, additional assessment of the environmental impacts from design-basis accidents is not necessary (NRC 2013a).<sup>104</sup>

This statement is not materially different from information previously available, as nearly identical statements are contained in the 2013 GEIS.<sup>105</sup> Further, the conclusions in the 2013 GEIS on the environmental impacts of design-basis accidents are incorporated by reference into

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<sup>101</sup> Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,566 (2012).

<sup>102</sup> Motion at 15.

<sup>103</sup> The only other section of the DSGEIS referenced in the Motion is a basic description of the 2013 GEIS. Motion at 3. It is difficult to see how a one-sentence summary of the 2013 GEIS, a document which is already incorporated by reference into the ER, could be considered “materially different.”

<sup>104</sup> Motion at 4 (quoting DSGEIS at E-2). Beyond Nuclear suggests that this is the only statement discussing the finding on the impacts of design-basis accidents (Motion at 4), but the discussion in Sections E.1 and E.2 of the DSGEIS shows that Beyond Nuclear is incorrect.

<sup>105</sup> 2013 GEIS at S-17, E-5 to E-6. This statement was in fact discussed in Exelon’s response to Contention 2 and during the oral argument. See Exelon’s Answer at 35 n.32 (quoting 2013 GEIS at S-17). See also Tr. 195-96 (quoting 2013 GEIS at E-5 to E-6).

the Applicant’s ER,<sup>106</sup> as the Board already found and is the law of the case.<sup>107</sup> Thus, there is no difference between the conclusions in the DSGEIS and those incorporated into the ER.

**C. Beyond Nuclear Does Not Demonstrate That New Contention 3 Meets the Contention Admissibility Standards Under 10 C.F.R. § 2.309(f)(1).**

In addition to not meeting the reopening standards or the criteria for a late-filed contention, Beyond Nuclear’s proposed Contention 3 also fails to meet the basic contention admissibility requirements in 10 C.F.R. § 2.309(f)(1), much like its predecessor Contention 2. Indeed, Contention 3 impermissibly challenges the Category 1 findings on design-basis accidents and the NRC rules requiring the NRC Staff to rely on those findings. Beyond Nuclear also has not demonstrated a genuine material dispute with the Application, as it does not show that the environmental impact of a design-basis accident would be anything other than small, nor has it provided sufficient expert or factual support given the absence of any supporting information even addressing the environmental impacts of a design-basis accident.

**1. Contention 3 Impermissibly Challenges the NRC Rules.**

Beyond Nuclear once again argues that Category 1 findings cannot be used for a subsequent license renewal.<sup>108</sup> Beyond Nuclear also challenges language that is taken directly from the 2013 GEIS—that the NRC does not expect a change in environmental impacts when the licensee is required to maintain the plant within acceptable design and performance criteria.<sup>109</sup> Both of these arguments are an impermissible challenge to the Category 1 findings on design-basis accidents in Table B-1, which codifies the 2013 GEIS and explicitly applies to the renewal of “any operating license.” It also impermissibly challenges 10 C.F.R. §§ 51.71(d) and 51.95(c),

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<sup>106</sup> ER at 4-69.

<sup>107</sup> LBP-19-05, slip op. at 19-20.

<sup>108</sup> Motion at 9-12.

<sup>109</sup> Compare DSGEIS at E-2, with 2013 GEIS at E-5 to E-6.

which require the NRC Staff to rely on and integrate Category 1 findings absent new and significant information. Any challenge to these generic findings codified in the NRC rules is barred by 10 C.F.R. § 2.335. They are also contrary to Beyond Nuclear’s own admission on reply that “*the NRC may still refer to the environmental findings of the 2013 Revised GEIS in a subsequent license renewal review.*”<sup>110</sup>

Beyond Nuclear’s claim that Category 1 findings in Table B-1 apply only to initial license renewal is just as incorrect as it was when Beyond Nuclear first argued it in its Petition to Intervene, and Exelon has already responded to this argument at length.<sup>111</sup> Beyond Nuclear’s claim appears largely predicated on the language in 10 C.F.R. § 51.53(c)(3),<sup>112</sup> but that rule does not even apply to the documents prepared by the NRC Staff. The regulations applicable to the NRC Staff do not distinguish between initial and subsequent license renewals in the treatment of Category 1 issues.<sup>113</sup>

In its third bite at the apple, however, Beyond Nuclear attempts to add new support for its argument by claiming that the 2009 proposed amendment<sup>114</sup> and the 2013 final amendment<sup>115</sup> to the 1996 Final Rule<sup>116</sup> (and the 2013 GEIS) do not “mention subsequent license renewal.”<sup>117</sup> While Table B-1 itself may not specifically “mention subsequent license renewal,” it also does

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<sup>110</sup> *Id.* at 28-29 (emphasis in original).

<sup>111</sup> Exelon Answer at 30-34.

<sup>112</sup> Motion at 8-9.

<sup>113</sup> *E.g.*, 10 C.F.R. § 51.71(d) (“The draft supplemental environmental impact statement for license renewal prepared under § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in appendix B to subpart A of this part.”); 10 C.F.R. § 51.95(c).

<sup>114</sup> Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Proposed Rule, 74 Fed. Reg. 38,117, 38,119 (July 31, 2009).

<sup>115</sup> Final Rule, Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37,282 (June 20, 2013).

<sup>116</sup> Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467 (June 5, 1996).

<sup>117</sup> Motion at 10-11.

not limit itself to initial license renewals. To the contrary, Table B-1 applies on its face to “renewal of any operating license.” In addition, the 2013 GEIS, containing the current generic findings codified in Table B-1, explicitly defines the evaluated “license renewal term” as “[t]hat period of time past the original *or current license term* for which the renewed license is in force”<sup>118</sup> and the 2013 amendments to the license renewal rules were intended to codify these findings. Further, the regulatory analysis referenced in the statement of considerations<sup>119</sup> and evaluating the benefit of the 2013 final rule indicates that the 2013 amendments *are* intended to apply to second license renewal applications.<sup>120</sup> In addition, the NRC’s scoping report for the update to the GEIS, referenced in the proposed 2009 update to the rule,<sup>121</sup> also stated: “The NRC’s current plan is to apply the revised GEIS to *all* license renewal applications submitted after the date the Record of Decision for the revised GEIS is printed in the Federal Register.”<sup>122</sup>

Still, Beyond Nuclear reiterates its prior claim that the 2013 GEIS does not apply to subsequent license renewals because the GEIS as originally issued in 1996 “allow[s] nuclear power plants to operate ‘for a maximum of 20 years past the terms of their original 40-year

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<sup>118</sup> 2013 GEIS at 7-27 (emphasis added). This same definition was included in the draft revision to the GEIS. See NUREG-1437, Rev. 1, Draft Report for Comment (July 2009), Vol. 1 at 7-26 (ADAMS Accession No. ML091770049).

<sup>119</sup> 78 Fed. Reg. at 37,314, 37,316.

<sup>120</sup> See Regulatory Analysis, Final Rule Revisions to 10 CFR Part 51, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses (June 20, 2013) at 25 (ADAMS Accession No. ML13029A471) (“The NRC estimates that a total of 27 license renewal applications (including applications for a second license renewal) will be received in the 9 years following the compliance date of the rule.”). Shortly after the completion of the 2013 rulemaking, and reinforcing the understanding of its intent, the NRC Staff informed the Commission that in preparation of second license renewal applications, “[t]he Staff does not recommend updating the environmental regulatory framework under 10 CFR Part 51 . . . , because environmental issues can be adequately addressed by the existing GEIS and through future GEIS revisions.” SECY-14-0016, at 5.

<sup>121</sup> See Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Proposed Rule, 74 Fed. Reg. 38,117, 38,119 (July 31, 2009). In addition, the Statement of Considerations for the final rule states that the proposed amendments to Part 51 were based on consideration of the comments received during the public scoping process. 78 Fed. Reg. at 37,284.

<sup>122</sup> Environmental Impact Statement Scoping Process, Summary Report, Update of the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (May 2009) at 67 (ADAMS Accession No. ML082960910) (emphasis added).

operating licenses,”<sup>123</sup> and the revised 2013 GEIS does not refer to subsequent license renewal.<sup>124</sup> As described previously in Exelon’s Answer,<sup>125</sup> Beyond Nuclear’s assertion mischaracterizes both the 1996 GEIS and the 2013 GEIS. The statement in the 1996 GEIS cited by Beyond Nuclear is describing the license renewal rule in 10 C.F.R. Part 54, and states “[u]nder the license renewal rule (10 CFR Part 54), nuclear power plant licensees would be allowed to operate their plants for a maximum of 20 years past the terms of their original 40-year operating licenses provided that certain requirements are met. . . .”<sup>126</sup> Section 1.2 of the 1996 GEIS states “[o]perating licenses may be renewed for up to 20 years beyond the 40-year term of the initial license. *No limit on the number of renewals is specified.*”<sup>127</sup> Section 1.3 of the 1996 GEIS states that “[t]he 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. . . .”<sup>128</sup> More importantly, Beyond Nuclear does not explain why the assessment of the incremental environmental impacts for an additional 20-year period of extended operation would be any different in a first or second renewal period.

Moreover, Beyond Nuclear ignores the description of the proposed action in the 2013 GEIS. The 2013 GEIS states that “[t]he proposed action is the renewal of commercial nuclear plant operating licenses.”<sup>129</sup> The purpose and need of the proposed action is to provide an option

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<sup>123</sup> Motion at 10 (citing 1996 GEIS at 2-28 – 2-29); BN Hearing Request at 11-12.

<sup>124</sup> Motion at 10-11.

<sup>125</sup> Exelon Answer at 34-36.

<sup>126</sup> Motion at 11 (citing 1996 GEIS at 2-28 – 2-29).

<sup>127</sup> 1996 GEIS at 1-1.

<sup>128</sup> *Id.* at 1-2.

<sup>129</sup> 2013 GEIS at S-3. *See also id.* at 1-3 (“The Proposed Action [-] To renew commercial nuclear power plant operating licenses”).

to continue plant operations “*beyond the current licensing term.*”<sup>130</sup> “The decisions to be supported by the GEIS are whether or not to renew the operating licenses of individual commercial nuclear power plants for an additional 20 years.”<sup>131</sup> The 2013 GEIS observes that “[t]here are no specific limitations in the Atomic Energy Act or the NRC’s regulations restricting the number of times a license may be renewed.”<sup>132</sup> And the 2013 GEIS clearly indicates that it assesses impacts for a 20-year period beyond the “*current license term.*”<sup>133</sup>

In addition, the 2013 GEIS states that the proposed action includes the activities associated with the “license renewal term”<sup>134</sup> and this term is used throughout the GEIS in assessing the impacts of these activities,<sup>135</sup> as well as in various impact findings codified in Table B-1. As previously stated, the 2013 GEIS explicitly defines the “license renewal term” as “[t]hat period of time past the original *or current license term* for which the renewed license is in force.”<sup>136</sup> Thus, the 2013 GEIS explicitly evaluates the environmental impacts associated with a 20-year period of extended operation, regardless of whether this period follows the original license or a current renewed license; and the 2013 revisions to the Part 51 rules codify in Table

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<sup>130</sup> *Id.* at S-3, 1-3 (emphasis added).

<sup>131</sup> *Id.* at 1-7.

<sup>132</sup> *Id.* at S-1.

<sup>133</sup> *See id.* at S-4 (“The GEIS documents the results of the systematic approach NRC used to evaluate the environmental consequences of renewing the licenses of commercial nuclear power plants and operating the plants for an additional 20 years *beyond the current license term.*”) (emphasis added). *See also id.* at 1-2 (“The GEIS for license renewal of nuclear power plants assesses the environmental impacts that could be associated with license renewal and an additional 20 years of power plant operation.”).

<sup>134</sup> *Id.* at 4-2.

<sup>135</sup> As an example relevant to Beyond Nuclear’s contention, the finding in the 2013 GEIS on the impacts of design-basis accidents states:

The environmental impacts of design-basis accidents are SMALL for all nuclear plants. Due to the requirements for nuclear plants to maintain their licensing basis and implement aging management programs during the license renewal term, the environmental impacts *during a license renewal term* should not differ significantly from those calculated for the design-basis accident assessments conducted as part of the initial plant licensing process. This is a Category 1 issue.

2013 GEIS at S-17 (emphasis added).

<sup>136</sup> 2013 GEIS at 7-27 (emphasis added).

B-1 the findings from the 2013 GEIS on the impacts associated with the “license renewal term.”<sup>137</sup>

Consequently, Beyond Nuclear’s assertions that the 2013 GEIS does not expand the temporal scope of the environmental analysis and “simply reviews and reevaluates the findings” in the 1996 GEIS<sup>138</sup> is specious. The 2013 GEIS clearly and explicitly assesses the impacts of operating a nuclear plant for an additional 20 years beyond its current license term.<sup>139</sup> Further, the 2013 GEIS took a hard look at these impacts.

This GEIS reviews and reevaluates the issues and findings of the 1996 GEIS in compliance with the requirement to review the material in Appendix B to Subpart A of 10 CFR Part 51 and update it on a 10-year cycle, if necessary. Lessons learned and knowledge gained during previous license renewal reviews provided a significant source of new information for this review. Public comments received during previous license renewal environmental reviews were re-examined to validate existing environmental issues and identify new ones. Since 1996, over 40 commercial nuclear power plants have undergone a license renewal environmental review. The purpose of the review for this GEIS was to determine if the findings presented in the 1996 GEIS remain valid. In doing so, the NRC considered the need to modify, add, group, or delete any of the 92 environmental

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<sup>137</sup> This same definition of the “license renewal term” was included in the draft revision to the GEIS. *See* NUREG-1437, Rev. 1, Draft Report for Comment (July 2009), Vol. 1 at 7-26, available at ADAMS Accession No. ML091770049. Therefore, while Beyond Nuclear asserts that the 2009 proposed rule did not specifically mention subsequent license renewal (a term not yet coined), the proposed rule proposed codifying findings from the 2009 draft GEIS that explicitly applied to the period of time after the original or the current license term.

<sup>138</sup> Motion at 10-11.

<sup>139</sup> In its Reply regarding Contention 2, Beyond Nuclear also cited to four points in the 2013 GEIS to belatedly claim that the 2013 GEIS assumes only a 60-year timeframe. *See* Beyond Nuclear Reply at 21-23. Exelon addressed these points at the oral argument. *See* Tr. 167-172 (Lewis). In summary, Beyond Nuclear’s examples, referencing only five pages out of the whole 1500 pages of the 2013 GEIS, are not representative of the full analysis and scope of the 2013 GEIS. In fact, three out of the four examples (2013 GEIS at 4-138 to 4-139, 4-145, 4-217), compare the doses received by a plant worker or a maximally exposed individual during an incremental 20-year period of operation to those received during the initial 40-year term. This comparison does not alter the impact of the incremental exposure, nor is there any credible scenario where such individuals could receive an 80-year cumulative exposure. *See* Tr. 167-172 (Lewis). The final example points to a calculation of the buildup of radioactive material (2013 GEIS at 4-144) that does not appear to be otherwise used to support the findings in the 2013 GEIS—particularly those on the impacts of design-basis accidents. The dissenting opinion in the Turkey Point SLR proceeding identified a statement in Appendix E of the 2013 GEIS indicating that its assessment of severe accident risk only covered one license renewal period. *Turkey Point*, LBP-19-3, dissenting op. at 7-8 (citing 2013 GEIS at E-2). This potential limitation on the assessment of severe accident risk in the Appendix has no bearing on whether the impacts of design-basis accidents will be anything other than small and does not alter the fact that the remainder of the 2013 GEIS evaluated the incremental impact of a 20-year period of extended operation beyond the original or current license term.

impact issues evaluated in the 1996 GEIS. In addition, new research, findings, and other information were considered when the significance of impacts associated with license renewal was being evaluated.<sup>140</sup>

Thus, Beyond Nuclear's attempt to dismiss the 2013 GEIS is baseless.

Beyond Nuclear refers to a statement in the supplemental information published with the 1991 *proposed* rule that "the part 51 amendments apply to one renewal of the initial license for up to 20-years beyond the expiration of the initial license."<sup>141</sup> The statement of considerations for the *final rule* did not include this statement.<sup>142</sup> Nor were the provisions of the final rule the same as those initially proposed. Instead, the Commission made several changes in the final rule that for all intents and purposes eliminated the need to limit the applicability of the rule to an initial application. These changes included (1) committing to review the material in Appendix B of Part 51 (*i.e.*, the codified generic findings) on a 10-year cycle and update it if necessary;<sup>143</sup> (2) preparing a supplemental environmental impact statement (rather than an environmental assessment as originally proposed) for each license renewal application, as a supplement to the GEIS and addressing public comments;<sup>144</sup> and (3) providing a framework in each license renewal proceeding for consideration of new and significant information that might alter the conclusions on Category 1 issues.<sup>145</sup> Further, the provisions in 10 C.F.R. §§ 51.71(d) and 51.95(c) governing the scope of the NRC's draft and final supplemental environmental impact

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<sup>140</sup> 2013 GEIS at 1-7.

<sup>141</sup> Motion at 9 (citing Proposed Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 56 Fed. Reg. 47,016, 47,017 (Sept. 17, 1991)).

<sup>142</sup> See Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467 (June 5, 1996).

<sup>143</sup> *Id.* at 28,468, 28,490.

<sup>144</sup> *Id.* at 28,468, 28,470-71.

<sup>145</sup> *Id.* Indeed, in this case the NRC determined that there was no new and significant information that would alter its conclusions regarding the environmental impacts of design-basis accidents. DSGEIS at E-3.

statements, and requiring reliance on Category 1 findings, were also added as part of the final rule.

**2. Contention 3 Is Not Supported by Information Demonstrating a Material Issue or Genuine Material Dispute.**

Even if Category 1 findings could be permissibly challenged without a petition for waiver (which as discussed above, they cannot), Contention 3 is inadmissible because it is not supported by a demonstration that the issue is material to the findings that the NRC Staff must make, as required by 10 C.F.R. § 2.309(f)(1)(iv), by alleged facts or opinions as required by 10 C.F.R. § 2.309(f)(1)(v), or by sufficient information showing a genuine dispute on a material issue as required by 10 C.F.R. § 2.309(f)(1)(vi).

Beyond Nuclear alleges that the DSGEIS does not address significant developments that have occurred since the 2013 GEIS was issued by, once again, pointing to topics for further research identified in the EMDA and SECY-14-0016.<sup>146</sup> However, Beyond Nuclear has provided no information indicating that the previous identification of research topics, which was subsequently used to develop aging management programs acceptable for subsequent license renewal,<sup>147</sup> would result in any significant increase in the consequences of design-basis accidents. Other than an unsupported assertion that “Beyond Nuclear is aware of no determination that these issues have been resolved,”<sup>148</sup> Beyond Nuclear provides no information

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<sup>146</sup> SECY-14-0016, Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal (Jan. 31, 2014), available at ADAMS Accession No. ML14050A306 (“SECY-14-0016”).

<sup>147</sup> NUREG-2191, “Generic Aging Lessons Learned for Subsequent License Renewal Report” (July 2017) (ADAMS Accession Nos. ML17187A031 and ML17187A204) (“GALL-SLR”), Vol. 1 at xxvii (“The NRC Staff used the results of the [2014] EMDA report to identify gaps in current technical knowledge or issues not being addressed by planned industry or DOE research, and to identify aging management programs that will require modification for SLR.”).

<sup>148</sup> Motion at 5. Contrary to this claim, the NRC Staff informed the Commission in a 2017 briefing:

[S]ince that [2014] SRM, the staff has made progress in conducting research to resolve the key technical issues.

indicating that the aging management programs developed in the GALL-SLR Report will be ineffective.<sup>149</sup> Similarly, Beyond Nuclear provides no basis to dispute the assessment in the DSGEIS that “[a]dditional experience at nuclear power plants has contributed to improved plant performance (e.g., as measured by trends in plant-specific performance indicators), a reduction in adverse operating events, and new lessons learned that improve the safety of all the operating nuclear power plants.”<sup>150</sup> As the DSGEIS states, “the performance and safety record of nuclear power plants operating in the United States, including Peach Bottom, continues to improve. *This improvement is also confirmed by analysis which indicates that, in many cases, improved plant performance and design features have resulted in reductions in initiating event frequency, core damage frequency, and containment failure frequency.*”<sup>151</sup> Beyond Nuclear provides no information disputing the observation in the DSGEIS (like the ER) that estimated core damage frequencies from internal events have followed a decreasing trend at both Peach Bottom units.<sup>152</sup>

Beyond Nuclear also provides no information disputing the conclusion in the DSGEIS that “[t]he consequences for design-basis accidents are evaluated for the hypothetical maximum-exposed individual; as such, changes in the plant environment will not affect these

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This progress has been accomplished through a staff research coordination with DOE and EPRI through deep-dive meetings and other meetings on electrical cable aging, concrete degradation, and vessel internals. *The progress resulted in enhanced aging management programs which are addressed in the subsequent license renewal guidance documents.*

Briefing on Status of Subsequent Licensing Renewal Preparations (Apr. 26, 2017) (ADAMS Accession No. ML17118A300) at 73 (emphasis added).

[W]e have confidence that the framework used for license renewal remains sound and is sufficient to facilitate successful subsequent license renewal application reviews.

*Id.* at 78.

<sup>149</sup> As the Commission has stated, use of an AMP consistent with the GALL Report constitutes reasonable assurance that the targeted aging effect will be adequately managed during the renewal period. *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 N.R.C. 461, 468 (2008).

<sup>150</sup> DSGEIS at E-18.

<sup>151</sup> *Id.*

<sup>152</sup> DSGEIS at E-7. *See also* ER at 4-70.

evaluations.”<sup>153</sup> It also provides no expert opinion or alleged facts disputing the DSGEIS conclusion that “[s]ince the licensee is required to maintain the plant within acceptable design and performance criteria, including during any license renewal term, the NRC staff would not expect environmental impacts to change significantly.”<sup>154</sup>

To demonstrate a genuine, material dispute, Beyond Nuclear must present some plausible support or argument that such consequences are significant enough to require inclusion in the ER and DSGEIS, as NEPA requires discussion of the impacts of a proposed action that significantly affect the environment (42 U.S.C. § 4332(2)(C)(i)), and 10 C.F.R. § 51.45(b)(1) only requires impacts to be discussed in proportion to their significance.<sup>155</sup> If there are alleged errors or omissions in the environmental analysis, it is the petitioner’s burden to show their significance and materiality.<sup>156</sup> “NEPA is, after all, governed by a ‘rule of reason,’ which frees the agency from pursuing unnecessary or fruitless inquiries.”<sup>157</sup>

Here, Beyond Nuclear has not made any showing that accident risk has or will increase as Peach Bottom continues to operate. It has not pointed to any data suggesting any increase in accident risk or consequences. Nor has it even addressed the NRC Staff’s determination that there is no new and significant information and the 2013 GEIS remains applicable.<sup>158</sup> Therefore, in addition to rejecting Contention 3 as an impermissible challenge to the NRC rules generically

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<sup>153</sup> DSGEIS at E-2.

<sup>154</sup> *Id.*

<sup>155</sup> *See, e.g., Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LPB-09-10, 70 N.R.C. 51, 105 (2009) (rejecting a contention because petitioners failed to present any plausible support or argument that impacts would be significant enough to require inclusion in the ER); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-6, 73 N.R.C. 149, 198 (2011) (rejecting a contention because petitioners did not explain why impacts would be so potentially significant as to warrant analysis in the ER).

<sup>156</sup> *Exelon Generating Co.* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 N.R.C. 801, 811 (2005).

<sup>157</sup> *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 N.R.C. 125, 139 (2004).

<sup>158</sup> DSGEIS at E-3.

assessing accident risk, the Commission should also rule that Beyond Nuclear has failed to demonstrate any genuine material dispute with the assessment of accident risk in the GEIS, which the ER has incorporated by reference and the DSGEIS subsequently addressed.<sup>159</sup>

Beyond Nuclear provides no factual or expert support for Contention 3, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(v). Beyond Nuclear claims to rely on SECY-14-0016 and the EMDA report as support for Contention 3.<sup>160</sup> However, neither document supports finding a greater than small environmental impact from design-basis accidents. Nor does either document support a challenge to the design basis and aging management plans described in the Staff's DSGEIS as the reason why the impacts of design-basis accidents will remain small.<sup>161</sup> For example, Beyond Nuclear makes a bare claim that "electrical cable qualification and condition assessment" is one of "the most significant technical issues challenging reactor operation beyond 60 years," but completely fails to address the Peach Bottom aging management programs regarding cable qualification and assessment.<sup>162</sup> Beyond Nuclear also calls out reactor pressure vessel embrittlement as a "technical issue," but then ignores the aging management program that directly monitors and manages this issue.<sup>163</sup> Beyond Nuclear may be raising

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<sup>159</sup> DSGEIS at E-3 ("In its environmental report for the Peach Bottom subsequent license renewal application, Exelon Generation Company, LLC (Exelon) did not identify any new and significant information related to design-basis accidents at Peach Bottom (Exelon 2018a). The NRC staff also did not identify any new and significant information related to design-basis accidents during its independent review of Exelon's environmental report, through the scoping process, or in its evaluation of other available information. Therefore, the NRC staff concludes that there are no environmental impacts related to design-basis accidents at Peach Bottom during the subsequent license renewal period beyond those already discussed generically for all nuclear power plants in the GEIS.").

<sup>160</sup> Motion at 14.

<sup>161</sup> DSGEIS at E-2 ("[B]ecause of the requirements that the existing design basis and aging management programs be in effect for license renewal, the environmental impacts of design-basis accidents as calculated for the original operating license application should not differ significantly from the environmental impacts of design-basis accidents at any other time during plant operations, including during the initial license renewal and subsequent renewal periods.").

<sup>162</sup> See SLR Application, Appendix B, Aging Management Programs, at B-219 to B-246.

<sup>163</sup> See SLR Application, Appendix B, Aging Management Programs, at B-118 to B-123.

“issues,” but it does not even attempt to apply them to the specific facility in this case, nor does it attempt to link these “issues” to a change in the environmental impacts of design-basis accidents. Indeed, Contention 3 is no more than a generalized concern about the status of research topics, unsupported by any expert opinion or other support regarding the environmental impacts of design-basis accidents. It must be rejected as such.

Rather than providing any information suggesting that the environmental impacts of design-basis accidents will be anything other than small, Beyond Nuclear makes two meritless arguments, neither of which demonstrates a genuine material dispute. First, Beyond Nuclear cites *Limerick Ecology Action v. NRC*<sup>164</sup> for the proposition that the NRC may not rely on regulatory requirements for safe operation in concluding that the impacts of design-basis accidents will be small. *Limerick*, however, held that the NRC could not exclude severe accident mitigation design alternatives from environmental review under NEPA based on a policy statement determining that such alternatives need not be considered under the Atomic Energy Act. The Court distinguished this policy statement from permissible use of a rulemaking to evaluate environmental impacts that are generic.<sup>165</sup> Here, the findings in Table B-1 are the result of such a rulemaking. Moreover, the NRC has not avoided consideration of accident impacts, but instead has evaluated such impacts both in the 2013 GEIS and the DSGEIS. Nothing in the *Limerick* decision suggests that the Commission must ignore the facility’s design features and regulatory programs in assessing the magnitude of such impacts.

Second, Beyond Nuclear argues that the DSGEIS does not claim to have incorporated the 2013 GEIS by reference and cannot do so without (1) making specific reference to the material

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<sup>164</sup> 869 F.2d 719, 729 (3rd Cir. 1989).

<sup>165</sup> *Id.* at 723.

incorporated, (2) considering environmental changes that occurred after the incorporated study was prepared, and (3) considering the environmental effects of the specific license at issue.<sup>166</sup> 10 C.F.R. § 51.71(d), however, provides that “[t]he draft supplemental environmental impact statement for license renewal prepared under § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in appendix B to subpart A of this part.” The DSGEIS has fully complied with this provision by (1) identifying the Category 1 finding and the corresponding 2013 GEIS section,<sup>167</sup> (2) integrating the GEIS conclusions in Sections E.1.1 and E.1.2 of the DSGEIS, (3) stating that neither Exelon nor the NRC Staff have identified any new and significant information,<sup>168</sup> and (4) therefore concluding that there are no environmental impacts of design-basis accidents beyond those discussed generically in the 2013 GEIS.<sup>169</sup> Beyond Nuclear provides no explanation why this discussion does not meet the NRC’s rules.

In summary, Beyond Nuclear’s Contention 3 fails to meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1) and must be rejected.

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<sup>166</sup> Motion at 3-4 (citing *Florida Power & Light Co. (Turkey Point Nuclear Generating, Units 3 and 4)*, LBP-16-08, 83 N.R.C. 417, 432 and n. 98 (2016), *aff’d on other grounds*, CLI-16-18, 84 N.R.C. 167 (2016)). It should be noted that this licensing board decision does not state that information incorporated by reference must consider the environmental effects of the specific license at issue, as Beyond Nuclear inaccurately asserts, but rather the specific licensing action (in this case, license renewal).

<sup>167</sup> DSGEIS at 4-4.

<sup>168</sup> *Id.* at E-3.

<sup>169</sup> *Id.*

**V. Conclusion**

For the reasons set forth above, Beyond Nuclear's Motion for Leave to File a New Contention and Motion to Reopen should both be denied.

Respectfully submitted,

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October 3, 2019

Counsel for Exelon

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of	)	
	)	
Exelon Generation Company, LLC	)	Docket Nos. 50-277-SLR
	)	50-278-SLR
Peach Bottom Atomic Power Station,	)	
Units 2 and 3	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Exelon’s Answer Opposing Beyond Nuclear’s Motion for Leave to File a New Contention and Motion to Reopen the Record has been served through the E-Filing system on the participants in the above-captioned proceeding this 3rd day of October, 2019.

/signed electronically by Anne R. Leidich/

Anne R. Leidich