

May 21, 2021

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

NEXTERA ENERGY POINT BEACH, LLC

Docket Nos. 50-266 & 50-301-SLR

(Point Beach Nuclear Plant, Units 1 and 2)

NRC STAFF'S ANSWER TO PHYSICIANS FOR SOCIAL RESPONSIBILITY WISCONSIN'S
MOTION FOR LEAVE TO FILE AMENDED PROPOSED CONTENTION 2

INTRODUCTION

In accordance with 10 C.F.R. § 2.309(i), the U.S. Nuclear Regulatory Commission Staff files this answer to Physicians for Social Responsibility Wisconsin's (Petitioner) motion for leave to file amended proposed Contention 2 after the deadline in 10 C.F.R. § 2.309(b).¹ The Motion seeks to add to the statement of the original proposed Contention 2 and to provide additional and updated bases for the contention. The amended contention continues to challenge NextEra Energy Point Beach, LLC's (NextEra) subsequent license renewal application (SLRA) for Point Beach Nuclear Plant, Units 1 and 2 (Point Beach).² The Staff does not oppose the Motion

¹ Physicians for Social Responsibility Wisconsin's Motion to Amend Contention 2 (Inadequately Tested Reactor Coolant Pressure Boundary) (April 26, 2021) (ML21116A577) (Motion).

Attached to Motion is Supplemental Declaration of Arnold Gundersen, Nuclear Engineer (April 26, 2021).

Although Motion is styled as a motion to amend proposed Contention 2, the Staff understands it to be a motion under 10 C.F.R. § 2.309(c) for leave to file amended proposed Contention 2 after the deadline in 10 C.F.R. § 2.309(b).

² Letter from Michael Strobe, Site Vice President, NextEra, to NRC, Application for Subsequent Renewed Facility Operating Licenses (Nov. 16, 2020) (ML20329A292).

The enclosures to this letter include: Encl. 3, Att. 1, Point Beach Nuclear Plant Units 1 and 2 Subsequent License Renewal Application (Public Version) (Nov. 2020) (ML20329A247) (SLRA); Encl. 3, Att. 2, Appendix E Applicant's Environmental Report Subsequent Operating License Renewal Point Beach Nuclear Plant Units 1 and 2 (Nov. 2020) (ML20329A248) (Environmental Report).

because the Staff does not dispute the Petitioner's demonstration of good cause for filing after the deadline in 10 C.F.R. § 2.309(b). However, the Staff opposes the admission of the amended contention because it does not satisfy the requirements for an admissible contention. As an initial matter, the new information in the amended contention does not satisfy 10 C.F.R.

§ 2.309(f)(1)(iv) because it is not material to the findings the NRC must make on the SLRA and does not satisfy 10 C.F.R. § 2.309(f)(1)(v) because it does not support the Petitioner's position. Nor does the amended contention satisfy 10 C.F.R. § 2.309(f)(1)(vi) because it does not raise a genuine dispute with the SLRA; does not satisfy 10 C.F.R. § 2.335 because it challenges the NRC's regulations without a waiver; and does not satisfy 10 C.F.R. § 2.309(f)(1)(iii) because it raises issues that are not within the scope of this proceeding. For these reasons, although the Staff does not oppose granting the Motion, amended proposed Contention 2 should be denied.

BACKGROUND

By letter dated November 16, 2020, NextEra submitted the SLRA to renew the Point Beach operating licenses for an additional 20 years, which would extend the Unit 1 license to October 5, 2050 and the Unit 2 license to March 8, 2053.³ On January 22, 2021, the NRC published a notice of opportunity to petition for leave to intervene on the SLRA, which set March 23, 2021 as the deadline for such filings.⁴ In response, the Petitioner submitted a petition for leave to intervene, which included four proposed contentions.⁵ The Staff and NextEra filed

³ See SLRA at 1-3.

⁴ NextEra Energy Point Beach, LLC; Point Beach Nuclear Plant, Units 1 and 2, 86 Fed. Reg. 6684 (Jan. 22, 2021).

⁵ Petition of Physicians for Social Responsibility Wisconsin for Leave to Intervene in Point Beach Nuclear Plant, Units 1 and 2 Subsequent License Renewal Proceeding, and Requesting an Adjudicatory Hearing (Mar. 23, 2021) (ML21082A530) (Petition).

Attached to Petition are: Declarations in Support of Petition of Physicians for Social Responsibility Wisconsin for Leave to Intervene (Mar. 23, 2021) (ML21082A531); Declaration of Arnold Gundersen (Mar. 23, 2021) (ML21082A532); Declaration of Alvin Compaan, Ph.D (Mar. 23, 2021) (ML21082A533); Declaration of Mark Cooper, Ph.D (Mar. 23, 2021) (ML21082A534).

answers in opposition to the Petition, arguing that none of the proposed contentions were admissible; the Petitioner replied.⁶

Contemporaneously with the filing of its Reply, and after the March 23 filing deadline, the Petitioner filed the instant motion. As explained in the Reply and the Motion, the Petitioner seeks to update and add to the basis for proposed Contention 2 and to amend the contention.⁷ Primarily, the Petitioner seeks to include in the proposed contention a discussion of a letter from the Electric Power Research Institute (EPRI) to the NRC, dated March 22, 2021.⁸ The letter concerns “a potential non-conservatism in Boiling Water Reactor Vessel and Internals Project (BWRVIP) guidance on fracture toughness values for evaluation of irradiated stainless steel reactor internals components” contained in EPRI report BWRVIP-100, Revision 1-A.⁹ Attached to the letter are two earlier letters from EPRI to EPRI members discussing this issue.¹⁰ Based on the EPRI Letter, the Petitioner seeks to amend proposed Contention 2 to state:

Point Beach’s continued operation violates 10 [C.F.R.] Part 50, Appendix A, [General Design] Criterion [(GDC)] 14 because the reactor coolant pressure boundary has not been tested so as to have an extremely low probability of abnormal leakage, of rapidly propagating failure, and of gross rupture, and the aging management plan does not provide the requisite reasonable assurance. The [EPRI] has recently admitted that its computer

⁶ NRC Staff’s Answer Opposing Physicians for Social Responsibility Wisconsin’s Petition to Intervene (April 19, 2021) (ML21109A387) (Staff Answer); NextEra Energy Point Beach, LLC’s Answer Opposing the Physicians for Social Responsibility Wisconsin’s Petition for Leave to Intervene and Request for Hearing (April 19, 2021) (ML21109A133); Physicians for Social Responsibility Wisconsin’s Reply in Support of Petition for Leave to Intervene in Point Beach Nuclear Plant, Units 1 and 2 Subsequent License Renewal Proceeding, and Requesting an Adjudicatory Hearing (April 26, 2021) (ML21116A578) (Reply).

⁷ See Reply at 8; Motion at 1–2.

⁸ Letter from Nathan Palm, EPRI, to Hipolito Gonzalez, NRC, Potential Non-Conservatism in EPRI Report, BWRVIP-100, Rev. 1-A, 3002008388 and Impacted BWRVIP Reports (Mar. 22, 2021) (ML21084A164) (EPRI Letter).

Attached to EPRI Letter are: Letter from Rick Way, EPRI, 10 CFR Part 21—Transfer of Information Notice—Potential Non-Conservatism in EPRI Software, BWRVIP-235, 1018251 (Feb. 19, 2021); Letter from Rick Way, EPRI, Update Regarding 10 CFR Part 21 Transfer of Information Notice—Potential Non-Conservatism in EPRI Software (BWRVIP-235) and Inspection and Evaluation Guidance for the BWR Core Shroud (BWRVIP-76 Revision 1-A, BWRVIP-76 Revision 2, and BWRVIP letter 2016-030) (Mar. 19, 2021).

⁹ EPRI Letter at 1.

¹⁰ See *id.* at 1–2.

software for predicting embrittlement in boiling water reactors is “nonconservative.” Physical specimens and coupons at Point Beach may indeed prove that embrittlement calculations made at Point Beach are not conservative. Without testing the physical specimens and coupons at Point Beach, NextEra is severely risking public safety.¹¹

As discussed in detail in the Staff Answer,¹² proposed Contention 2 concerns reactor pressure vessel neutron embrittlement and pressurized thermal shock.¹³ These issues are addressed by the NRC’s regulations at 10 C.F.R. § 50.61 and 10 C.F.R. Part 50, Appendices G and H,¹⁴ which “provide the criteria and methods needed to estimate the extent of [neutron] embrittlement, to evaluate the consequences of [neutron] embrittlement in terms of the structural integrity of the [reactor pressure vessel], and to provide methods to mitigate the deleterious effects of [neutron] embrittlement.”¹⁵

DISCUSSION

I. Legal Standards

Under the Commission’s Rules of Practice and Procedure in 10 C.F.R. Part 2, any person whose interest may be affected by a proceeding and who desires to participate as a party must file a petition for leave to intervene no later than the time specified in the notice of hearing.¹⁶ The petition must include the contentions that the petitioner seeks to have litigated in

¹¹ Motion at 7.

¹² See Staff Answer at 30.

¹³ Reactor pressure vessel neutron embrittlement is the reduction in the fracture toughness of the vessel due to neutron irradiation during reactor operation, which could lead to the brittle failure of the vessel. See NUREG-2192, Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants, 4.2-1 (July 2017) (ML17188A158) (SRP-SLR). Pressurized thermal shock is “an event or transient in pressurized water reactors (PWRs) causing severe overcooling (thermal shock) concurrent with or followed by significant pressure in the reactor vessel.” 10 C.F.R. § 50.61(a)(2).

¹⁴ Generally, 10 C.F.R. Part 50, Appendix H requires obtaining fracture toughness test data from capsules, either at the facility or at other facilities, and 10 C.F.R. Part 50, Appendix G and 10 C.F.R. § 50.61 describe the use of these fracture toughness data to ensure adequate margins of safety during operation.

¹⁵ Fracture Toughness Requirements for Light Water Reactor Pressure Vessels, 60 Fed. Reg. 65,456, 65,456 (Dec. 19, 1995) (final rule).

¹⁶ 10 C.F.R. § 2.309(a); 10 C.F.R. § 2.309(b)(3).

the hearing.¹⁷ The presiding officer will grant the petition if it determines that the petitioner has standing under 10 C.F.R. § 2.309(d) and has proposed at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f).¹⁸ A motion for leave to file an amended contention after the deadline in 10 C.F.R. § 2.309(b) must also satisfy the requirements of 10 C.F.R. § 2.309(c).

A. Good Cause Requirement

New or amended contentions filed after the deadline in 10 C.F.R. § 2.309(b) must meet the requirements of 10 C.F.R. § 2.309(c)(1). To do so, a participant must demonstrate good cause by showing that the following three conditions are met:

- (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.¹⁹

Even if the good cause requirement is met, new or amended contentions still must meet the contention admissibility requirements in 10 C.F.R. § 2.309(f).²⁰

B. Contention Admissibility Requirements

To be admitted for hearing, a proposed contention must (i) provide a specific statement of the issue to be raised; (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)

¹⁷ 10 C.F.R. § 2.309(a).

¹⁸ *Id.*

¹⁹ Although “timely” is not expressly defined, the Commission and licensing boards “typically consider 30 to 60 days from the initiating event a reasonable deadline for proposing new or amended contentions.” *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-21, 76 NRC 491, 499 (2012); see *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 218 n.8 (2011) (“A 30-day window [for filing new contentions] is in line with our general practice....”).

²⁰ 10 C.F.R. § 2.309(c)(4); see also *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 261 (2009).

demonstrate that the issue raised in the contention is material to the findings the NRC must make; (v) provide a concise statement of the facts or expert opinions that support the contention; and (vi) provide sufficient information to show that a genuine dispute exists on a material issue.²¹ Additionally, under the Commission's caselaw, absent a waiver, a contention must be rejected if it challenges applicable statutory requirements, regulations, or the basic structure of the Commission's regulatory process.²² A full discussion of these contention-admissibility requirements and their applicability to subsequent license renewal proceedings is presented in the Staff Answer.²³

II. The Staff Does Not Oppose the Motion Because the Staff Does Not Dispute the Petitioner's Demonstration of Good Cause for Filing after the Deadline in 10 C.F.R. § 2.309(b)

As noted above, after the deadline in 10 C.F.R. § 2.309(b) has passed, 10 C.F.R. § 2.309(c)(1) requires petitioners to demonstrate good cause for amending a contention. Petitioners demonstrate good cause by showing that the information upon which the amended contention is based was not previously available and is materially different from information previously available and that the amended contention was submitted in a timely fashion based on the availability of the information.²⁴

The EPRI Letter that provides the allegedly new information that is the basis for the Motion became publicly available in the NRC's Agencywide Documents Access and Management System on April 2, 2021,²⁵ which is after the March 23, 2021 deadline for filing

²¹ See 10 C.F.R. § 2.309(f)(1)(i)–(vi).

²² As set forth in 10 C.F.R. § 2.335(a), "no rule or regulation of the Commission ... is subject to attack ... in any adjudicatory proceeding" in the absence of a waiver petition granted by the Commission. See also *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 218 (2003). Accordingly, any contention that amounts to an attack on applicable statutory requirements or represents a challenge to the basic structure of the Commission's regulatory process without a waiver must be rejected. *Id.*

²³ See Staff Answer at 7–18.

²⁴ 10 C.F.R. § 2.309(c)(1)(i)–(iii).

²⁵ Motion at 1–2.

petitions in this proceeding.²⁶ Additionally, the EPRI Letter appears to be materially different from information previously available.²⁷ Finally, the Petitioner filed the Motion on April 26, 2021, which is less than 30 days from the public availability of the EPRI Letter.²⁸ Therefore, the Staff does not dispute the Petitioner's demonstration of good cause and, accordingly, does not oppose the Motion.

III. The Staff Opposes the Admission of Amended Proposed Contention 2 Because it Does Not Satisfy the Requirements for an Admissible Contention

Although the Staff does not oppose the Motion, it does oppose the admission of amended proposed Contention 2 because it does not satisfy the contention-admissibility requirements. As an initial matter, the new information in the amended contention does not satisfy 10 C.F.R. § 2.309(f)(1)(iv) because it is not material to the findings the NRC must make on the SLRA; nor does it satisfy 10 C.F.R. § 2.309(f)(1)(v) because it does not support the Petitioner's position. Further, amended proposed Contention 2 does not satisfy 10 C.F.R. § 2.309(f)(1)(vi) because it does not raise a genuine dispute with the SLRA; does not satisfy 10 C.F.R. § 2.335 because it challenges the NRC's regulations without a waiver; and does not satisfy 10 C.F.R. § 2.309(f)(1)(iii) because it raises issues that are not within the scope of this proceeding. For these reasons, the amended contention should be denied.

A. Amended Proposed Contention 2 Is Not Admissible

1. The New Information Is Not Material to the Findings the NRC Must Make in this Proceeding and Fails to Support Amended Proposed Contention 2

The EPRI Letter concerns EPRI reports related to "evaluating flaws in [boiling-water reactor (BWR)] core shrouds and reactor internal piping components" made out of stainless

²⁶ 86 Fed. Reg. at 6684.

²⁷ Although attached to the EPRI Letter are two previous letters that predate the March 23, 2021 filing deadline, neither of these letters appears to have been made publicly available prior to the public availability of the EPRI Letter.

²⁸ See *Vogtle*, CLI-11-8, 74 NRC at 218 n.8 ("A 30-day window [for filing new contentions] is in line with [the Commission's] general practice....").

steel.²⁹ But these reports are not material to the findings the NRC must make on the SLRA for Point Beach because Point Beach is a pressurized-water reactor (PWR),³⁰ not a BWR. Nor are the reports material to the findings the NRC must make on the SLRA's discussions of reactor pressure vessel neutron embrittlement and pressurized thermal shock, which have to do with postulated flaws in the low-alloy carbon steel reactor pressure vessel,³¹ not existing flaws in stainless steel reactor internals.

In fact, the Petitioner does not demonstrate how these reports provide any support for the arguments in amended proposed Contention 2 regarding pressurized thermal shock because, as defined in 10 C.F.R. § 50.61, pressurized thermal shock is unique to PWRs; the reports, however, have to do with BWRs. Finally, there is no reliance in the SLRA on the reports identified in the EPRI Letter;³² the aging management programs (AMPs) and time-limited aging analyses (TLAAs) for reactor pressure vessel neutron embrittlement and pressurized thermal shock in the SLRA rely upon different reports that are relevant to PWRs.³³

The Petitioner also raises the new claim that the “replacement of almost 200 baffle-former bolts ... more than 20 years ago” should have led to the “[t]esting [of] the baffle-former plates ... at Point Beach.”³⁴ The Petitioner, though, does not demonstrate how this claim provides any support for amended proposed Contention 2, which argues that “the reactor coolant pressure boundary has not been tested so as to have an extremely low probability of

²⁹ EPRI Letter at Att. 1.

³⁰ See Environmental Report at 2-2.

³¹ See e.g., SLRA at 4.2-12–4.2-14; SLRA at 2.3-4 (“The body of the reactor vessels is low-alloy carbon steel....”).

³² The only time that the SLRA discusses the BWRVIP is in quotations from the SRP-SLR, which the SLRA then explains are not applicable to Point Beach because Point Beach is a PWR. SLRA at 3.1-19–3.1-21 (quoting SRP-SLR at 3.1-10–3.1-11).

³³ See, e.g., SLRA at B-29–B-30 (providing that the Neutron Fluence Monitoring AMP relies, in part, on reports WCAP-16083-NP-A and WCAP-18124-NP-A); SLRA at 4.2-2–4.2-3, 4.2-6, 4.2-10, and 4.2-12 (providing that the Reactor Vessel Neutron Embrittlement TLAAs rely, in part, on reports WCAP-18124-NP-A, WCAP-18555-NP, BAW-2222, BAW-2192PA, BAW-2178PA, and ANP-3886P/NP).

³⁴ Reply at 11.

abnormal leakage, of rapidly propagating failure, and of gross rupture....”³⁵ Notably, whereas the contention has to do with the “pressure boundary” function of reactor pressure vessels, baffle-former bolts and baffle-former plates have the separate functions of “[s]tructural support [and] [f]low distribution.”³⁶

The Petitioner’s newly added discussions of the EPRI Letter and baffle-former bolts and plates do not satisfy 10 C.F.R. § 2.309(f)(1)(iv) and (v) because they are not material to the findings the NRC must make on the SLRA and do not support the Petitioner’s position in the contention.

2. Amended Proposed Contention 2 Suffers from the Same Defects Identified in the Staff Answer

The Motion and Reply also update the Petitioner’s arguments in original proposed Contention 2; however, even as amended, proposed Contention 2 cannot overcome the defects identified in the Staff Answer.³⁷

First, the Petitioner argues that the SLRA is deficient with respect to the issues of neutron embrittlement and pressurized thermal shock because it doesn’t consider the testing of capsules at Point Beach and other facilities.³⁸ But the proposed contention does not reference specific portions of the SLRA, as required by 10 C.F.R. § 2.309(f)(1)(vi).³⁹ And, in fact, the SLRA

³⁵ Motion at 7.

³⁶ See SLRA at 2.3-3–2.3-8 (providing that the component intended function of the reactor vessel is “[p]ressure boundary” and that the component intended functions of the baffle-former bolts and plates are “[s]tructural support [and] [f]low distribution”).

³⁷ See Staff Answer at 29–35.

³⁸ See, e.g., Motion at 5 (“[T]here is no scientific basis by which the Point Beach reactors should continue operating unless there is a complete physical analysis of the coupons from its reactors and the five other reactors that are its embrittled cohorts.”); Reply at 7 (There are “inadequate physical samples in the form of metal capsules/coupons to enable metallurgical testing through 80 years of operation.”).

³⁹ The SLRA identified several AMPs and TLAAAs that address neutron embrittlement and pressurized thermal shock. See SLRA at 3.1-1–3.1-2, 3.1-9, and 3.1-29–3.1-30. In total, the “Reactor Vessel Neutron Embrittlement” TLAAAs are discussed in Section 4.2 of the SLRA (pages 4.2-1–4.2-24), the capsule withdrawal schedule and reactor vessel neutron embrittlement and the associated licensee commitments are discussed in Appendix A of the SLRA (pages A-25–A-26, A-45–A-51, A-64, and A-84), and the “Neutron Fluence Monitoring” and “Reactor Vessel Material Surveillance” AMPs are discussed in Appendix B of the SLRA (pages B-29–B-33 and B-148–B-151).

includes NextEra's commitment to withdraw and test "Supplemental 'A' surveillance capsule" at Point Beach Unit 2 and to use as supplemental data the data from capsules irradiated at other facilities.⁴⁰

In its Reply,⁴¹ the Petitioner now acknowledges NextEra's plans to withdraw the Supplemental "A" surveillance capsule.⁴² The Petitioner criticizes this plan by pointing to the time between the withdrawal of the capsule and the end of the subsequent license renewal period.⁴³ But the Petitioner fails to explain why this elapsed time is relevant when the SLRA states that the pertinent consideration is that the capsule will receive between one and two times the peak reactor vessel neutron fluence at the end of the subsequent license renewal period.⁴⁴ The Petitioner also renews their insistence that a capsule be removed from Point Beach Unit 1,⁴⁵ but they do not explain why this would be necessary in light of the withdrawal of the Supplemental "A" surveillance capsule.⁴⁶ Similarly, the Petitioner asserts that "[m]athematical modeling of neutron embrittlement is prone to errors and is frequently incorrect,

⁴⁰ SLRA at B-148–B-150; *see also id.* at A-84.

⁴¹ New arguments presented for the first time in a reply should be disregarded by the Board. *See USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 476 (2006) (explaining that petitioners cannot cure a deficient contention with new arguments not presented in the initial petition); *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004) (explaining that petitioners cannot rely on "a late attempt to reinvigorate thinly supported contentions by presenting entirely new arguments in the reply briefs").

⁴² Reply at 12.

⁴³ *Id.* Although the Petitioner states that the capsule will be withdrawn in 2024, the SLRA states that the capsule will be withdrawn in 2035. SLRA at A-158.

⁴⁴ SLRA at B-148.

⁴⁵ Reply at 12–13.

⁴⁶ *See, e.g.,* NUREG-1839, Safety Evaluation Report Related to the License Renewal of the Point Beach Nuclear Plant, Units 1 and 2, 3-97 (2005) (ML053420134 and ML053420137) (cited as a "general reference" in SLRA at 1-13) ("A replacement surveillance capsule containing materials closely matching the limiting materials for both Units 1 and 2 was installed in the Unit 2 [reactor vessel] during the 2002 refueling outage."); SLRA at A-84 (stating that NextEra has committed in the Reactor Vessel Material Surveillance AMP to "[c]ontinue the existing [Point Beach] Reactor Vessel Material Surveillance AMP" and to "[f]ollow the plan for the Supplemental 'A' surveillance capsule in accordance with the NRC approved withdrawal schedule").

creating unsafe conditions”;⁴⁷ and that “the physical specimens and coupons at Point Beach may indeed identify that embrittlement calculations made at Point Beach are not conservative.”⁴⁸ But the Petitioner doesn’t point to any discussion of mathematical modeling or embrittlement calculations in the SLRA. In each of these instances, the Petitioner has not provided sufficient information to show that a genuine dispute exists with the applicant on a material issue. Because amended proposed Contention 2 does not genuinely dispute the discussions in the SLRA regarding neutron embrittlement, pressurized thermal shock, the testing of capsules, or the consideration of capsule data from other facilities, the proposed contention does not meet 10 C.F.R. § 2.309(f)(1)(vi).

Second, amended proposed Contention 2 does not satisfy 10 C.F.R. § 2.335 because it challenges the NRC’s regulations without a waiver. The NRC’s regulations at 10 C.F.R. § 50.61 and 10 C.F.R. Part 50, Appendices G and H address the integrity of reactor pressure vessels in light of neutron embrittlement.⁴⁹ For example, 10 C.F.R. Part 50, Appendix H requires licensees to monitor changes in reactor vessel fracture toughness through capsules located in the facility’s reactor or in another facility’s reactor. And the NRC guidance supporting subsequent license renewal explains that 10 C.F.R. § 50.61 and 10 C.F.R. Part 50, Appendices G and H can be addressed for the subsequent license renewal period by the “Neutron Fluence Monitoring” AMP, the “Reactor Vessel Material Surveillance” AMP, and the “Reactor Vessel Neutron Embrittlement” TLAA’s.⁵⁰ Among other things, these programs involve the withdrawal and testing of “at least one capsule that has attained ... neutron fluence between one and two times

⁴⁷ Motion at 5; *see also* Reply at 9 (“[T]he sole use of computerized modeling for embrittlement analysis, has deprived the NRC of a scientific basis to justify the continued operations of the Point Beach reactors....”).

⁴⁸ Reply at 5.

⁴⁹ *See* 60 Fed. Reg. at 65,456. Therefore, these regulations address the Petitioner’s concern that “if embrittlement becomes extensive, the dense metallic nuclear reactor can shatter like glass....” Motion at 2.

⁵⁰ *See* NUREG-2191, Vol. 2, Generic Aging Lessons Learned for Subsequent License Renewal (GALL-SLR) Report, X.M2 and XI.M31 (July 2017) (ML17187A204) (GALL-SLR Report); SRP-SLR at 4.2.

the peak reactor vessel wall neutron fluence of interest at the end of the” subsequent license renewal period and that this capsule could come from either the facility’s reactor or, if the facility is part of an integrated surveillance program, another host reactor.⁵¹ Instead of arguing how the SLRA might fail to meet these requirements or address the relevant guidance during the subsequent license renewal period, the Petitioner repeatedly criticizes the regulations themselves and insists that NextEra must do more than is required by them.⁵² Generalized grievances with the NRC’s regulations amount to a collateral attack on the regulations, which is barred absent a waiver under 10 C.F.R. § 2.335.⁵³ And the Petitioner has not requested a waiver here. Therefore, amended proposed Contention 2 should be denied as an attack without a waiver on the NRC’s regulations.⁵⁴

Third, amended proposed Contention 2 does not satisfy 10 C.F.R. § 2.309(f)(1)(iii) because it challenges Point Beach’s compliance with its current licenses, which is outside the

⁵¹ GALL-SLR Report at XI.M31-4–XI.M31-5 (“For an [integrated surveillance program], in some cases the plant Reactor Vessel Material Surveillance program may result in no surveillance capsules being irradiated in the plant’s reactor vessel, with the plant relying on data from testing of the [integrated surveillance program] capsules from the host plants of the capsules.”).

⁵² See, e.g., Motion at 2–3 (“Analysis of capsules/coupons from [Point Beach], as well as other embrittled reactors should be conducted in order to assess whether to allow the Point Beach reactors to continue operations.”); *id.* at 5 (“There is no substitute for using frequent real-world material samples to determine the actual degraded condition of a reactor’s internals subject to high neutron fluence levels.”); *id.* at 6 (“It is imperative and prudent for public safety with such an old and degraded reactor that NextEra determines through the physical sampling and testing of coupons if Point Beach may operate safely for the proposed extension.”); *id.* at 8 (“[E]ach reactor still contains a Capsule ‘N’ inside the two reactor units, noted as being held on ‘standby.’ These ‘N’ capsules should be analyzed to provide actual physical data to test NextEra’s optimistic hypotheses.”).

⁵³ See *Millstone*, CLI-03-14, 58 NRC at 218 (quoting *Oconee*, CLI-99-11, 49 NRC at 334); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 314–15 (2012).

⁵⁴ The Petitioner also challenges various alleged NRC actions and inactions. See, e.g., Motion at 2 (“[T]he NRC has systematically removed conservative calculational aspects of the embrittlement process to allow continued operation by not removing coupons/capsules from reactor pressure vessels in order to metallurgically analyze and develop actual data on the true state of embrittlement.”); *id.* at 3 (“For decades, the NRC has not required Point Beach and its cohorts to examine available coupons/capsules, which has deprived the NRC and the public of significant scientific data on which to justify continued reactor operations—or their termination.”); Reply at 12 (“The NRC has failed to require timely destructive testing of capsules/coupons from [Point Beach] for years.”). But alleged NRC actions and inactions are not within the scope of licensing board proceedings. *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004) (citing *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 349 (1998); *Curators of the University of Missouri*, CLI-95-1, 41 NRC 71, 121 (1995)). Therefore, these arguments are not admissible.

scope of the NRC's review of the SLRA. In this proposed contention, the Petitioner asserts that: (1) there are problems with the "existing" conditions of the internal core structures at Point Beach because the baffle-former plates have not been tested;⁵⁵ (2) there is a "lack of adequate samples to determine the embrittlement of the vessel and vessel internal structures within the current license extension period";⁵⁶ and (3) Point Beach "is violating [GDC] 14 because of the lack of adequate samples to determine the embrittlement of the vessel and vessel internal structures within the current license extension period...."⁵⁷ To the extent that these arguments assert that Point Beach is not in compliance with its current licenses, they do not satisfy the scope requirement of 10 C.F.R. § 2.309(f)(1)(iii)⁵⁸ and are not admissible.

Because amended proposed Contention 2 does not raise a genuine dispute with the SLRA, challenges the NRC's regulations without a waiver, and raises issues that are not within the scope of this proceeding, it does not satisfy 10 C.F.R. § 2.309(f)(1)(vi), 10 C.F.R. § 2.335, or 10 C.F.R. § 2.309(f)(1)(iii). Therefore, the proposed contention should be denied.

CONCLUSION

For the above reasons, although the Staff does not oppose granting the Motion, amended proposed Contention 2 should be denied.

⁵⁵ Motion at 5.

⁵⁶ Reply at 7.

⁵⁷ *Id.*

⁵⁸ See 10 C.F.R. § 54.30(b) ("The licensee's compliance with the obligation ... to take measures under its current license is not within the scope of the license renewal review."); *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 10 (2001) ("Adjudicatory hearings in individual license renewal proceedings will share the same scope of issues as our NRC Staff review, for our hearing process (like our Staff's review) necessarily examines only the questions our safety rules make pertinent.").

Respectfully submitted,

/Signed (electronically) by/

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Executed in Accord with 10 CFR 2.304(d)

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Dated this 21st day of May 2021

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

NEXTERA ENERGY POINT BEACH, LLC

(Point Beach Nuclear Plant, Units 1 and 2)

Docket No. 50-266 & 50-301-SLR

Certificate of Service

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing “NRC STAFF’S ANSWER TO PHYSICIANS FOR SOCIAL RESPONSIBILITY WISCONSIN’S MOTION FOR LEAVE TO FILE AMENDED PROPOSED CONTENTION 2,” dated May 21, 2021, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the captioned proceeding, this 21st day of May 2021.

/Signed (electronically) by/

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