

October 25, 2021

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

VIRGINIA ELECTRIC AND POWER
COMPANY

(North Anna Power Station, Units 1 and 2)

Docket Nos. 50-338-SLR
50-339-SLR

NRC STAFF'S RESPONSE TO
PETITIONERS' MOTION TO AMEND CONTENTION
OUT OF TIME AND MOTION TO RE-OPEN THE RECORD

INTRODUCTION

The staff of the U.S. Nuclear Regulatory Commission hereby responds to the motions filed by Beyond Nuclear, Inc., Sierra Club, Inc., and Alliance for Progressive Virginia, Inc. (collectively, Petitioners) on September 29, 2021,¹ seeking to reopen the adjudicatory record and to amend their contention, which the Atomic Safety and Licensing Board had rejected in LBP-21-4.² For the reasons set forth below, the Staff submits that the Petitioners' Motion fails to satisfy the Commission's standards governing the admission of late-filed contentions and reopening a closed adjudicatory record, and their Motion should therefore be denied.

BACKGROUND

This proceeding concerns the subsequent license renewal application (SLRA) submitted by Virginia Electric and Power Company (VEPCO or Applicant) for Renewed Facility Operating

¹ Motion to Amend Contention Out of Time and Motion to Re-Open the Record by Beyond Nuclear, Sierra Club, and Alliance for Progressive Virginia (Sept. 29, 2021) (Motion).

² *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), LBP-21-4, 93 NRC 179 (2021), *petition for review pending*.

License Nos. NPF-4 and NPF-7, to permit an additional 20 years of operation for North Anna Units 1 and 2.³ The NRC published a notice of opportunity to request a hearing and to petition for leave to intervene on October 15, 2020.⁴ On December 14, 2020, the Petitioners filed a request for hearing and petition for leave to intervene, along with a petition for waiver of the Commission's regulations determining the environmental impacts of license renewal with respect to generic "Category 1" issues.⁵ Responses to the petitions were filed by VEPCO and the Staff,⁶ and a reply was then filed by the Petitioners.⁷ On February 4, 2021, the Board conducted oral argument on the petition to intervene and petition for waiver.⁸

On March 29, 2021, the Board issued LBP-21-4. In its decision, the Board found that the Petitioners had failed to demonstrate that their proposed contention and petition for waiver met the applicable Commission requirements, and the Board therefore denied their intervention and waiver petitions and terminated the proceeding. Subsequently, the Petitioners filed a petition for review of the Board's decision.⁹ On May 16, 2021, the Staff and VEPCO filed briefs in

³ North Anna Power Station Units 1 and 2, Application for Subsequent License Renewal (August 2020) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20246G696) (SLRA). The application includes "Appendix E, Applicant's Environmental Report, Subsequent Operating License Renewal Stage, North Anna Power Station Units 1 and 2" (ER) (ML20246G698).

⁴ North Anna Power Station, Units 1 and 2, 85 Fed. Reg. 65,438 (Oct. 15, 2020).

⁵ Hearing Request and Petition to Intervene by Beyond Nuclear, Sierra Club, and Alliance for Progressive Virginia and Petition for Waiver of 10 C.F.R. §§ 51.53(c)(3)(i), 51.71(d), and 51.95(c)(1) to Allow Consideration of Category 1 NEPA Issues (Dec. 14, 2020) (Hearing Request).

⁶ Applicant's Answer Opposing Request for Hearing, Petition to Intervene, and Petition for Waiver Submitted by Beyond Nuclear, Sierra Club, and Alliance for Progressive Virginia, (Jan. 8, 2021); NRC Staff Answer to Hearing Request, Petition to Intervene, and Petition for Waiver Filed by Beyond Nuclear, Sierra Club, and Alliance for Progressive Virginia, (Jan. 8, 2021). Neither VEPCO nor the Staff contested the Petitioners' standing to intervene.

⁷ Reply by Beyond Nuclear, Sierra Club, and Alliance for Progressive Virginia to Oppositions to Hearing Request and Waiver Petition, (Jan. 15, 2021).

⁸ See *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), Official Transcript of Proceedings, at 1-98 (Feb. 4, 2021); see also Licensing Board Memorandum and Order (adopting Transcript Corrections for Initial Prehearing Conference) (Feb. 25, 2021) (unpublished).

⁹ Notice of Appeal and Brief on Appeal of LBP-21-4 by Beyond Nuclear, Sierra Club, and Alliance for Progressive Virginia (Apr. 23, 2021), as corrected (Apr. 28, 2021).

opposition to the petition for review, and the Petitioners' appeal is now pending before the Commission.¹⁰

On August 25, 2021, the Staff published a Notice in the *Federal Register*,¹¹ informing members of the public that it had issued for public comment a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants,¹² regarding the subsequent license renewal of North Anna Power Station, Unit Nos. 1 and 2.¹³ The North Anna Draft SEIS evaluated the site-specific impacts of subsequent license renewal for North Anna, along with any new and significant information on generic Category 1 issues. On September 29, 2021, the Petitioners filed the instant Motion seeking to reopen the adjudicatory proceeding and to amend the contention that the Board rejected in LBP-21-4.¹⁴

DISCUSSION

I. Applicable Legal Standards.

As the Commission recently observed, a "motion to reopen the record to admit a new contention must satisfy both the standards of 10 C.F.R. § 2.326 relating to motions to reopen and the standards of 10 C.F.R. § 2.309(c) for admitting new contentions filed after the deadline stated in

¹⁰ On May 25, 2021, the Petitioners filed a motion for leave to reply to the Applicant's and Staff's briefs on appeal; the Staff and Applicant filed answers in opposition to that motion on May 28 and June 1, 2021, respectively. The Petitioners' motion for leave to reply is currently pending before the Commission.

¹¹ Virginia Electric and Power Company; Dominion Energy Virginia; North Anna Power Station, Unit Nos. 1 and 2, Draft Supplemental Environmental Impact Statement; Request for Comment, 86 Fed. Reg. 47,525 (Aug. 25, 2021).

¹² NUREG-1437, Rev. 1, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Final Report, (June 2013) (2013 GEIS) (ML13106A241). The 2013 GEIS revised the previous GEIS. See NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Main Report, Final Report (May 1996) (1996 GEIS) (ML040690705, ML040690738).

¹³ NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Draft Supplement 7, Second Renewal, Draft Report for Comment (hereafter referred to as the "Draft Supplemental Environmental Impact Statement" (Draft SEIS)) (ML21228A084).

¹⁴ The Motion discusses Petitioners' standing and attaches the "Second Declarations" of eight individuals who authorize the Petitioners to represent them in this proceeding. Motion at 12-14 and Attachments 1-8. Those statements, however, are immaterial, inasmuch as the Petitioners' standing is not at issue here. See, e.g., LBP-21-4, 93 NRC at 197.

the notice of opportunity to request a hearing.”¹⁵ Section 2.326 provides that “[a] motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied”:

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

(2) The motion must address a significant safety or environmental issue; and

(3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.¹⁶

It is well established that the proponent of a motion to reopen bears a heavy burden.¹⁷ It is not sufficient that a motion to reopen merely rest upon new information; rather, “the information must be significant and plausible enough to require reasonable minds to inquire further,”¹⁸ and must be “likely” to trigger a “different result.”¹⁹

In addition, where, as here, an amended or new contention is filed after the time specified for the filing of initial contentions, 10 C.F.R. § 2.309(c) provides that “motions for leave

¹⁵ *Holtec International* (HI-STORE Consolidated Interim Storage Facility), CLI-21-7, 93 NRC 215, 221 (2021); cf. *Interim Storage Partners LLC* (WCS Consolidated Interim Storage Facility), CLI-21-9, 93 NRC 244, 247 (2021) (“Together, these requirements impose a higher standard for admitting a new contention after the Board has terminated a proceeding than would otherwise apply.”).

¹⁶ Further, a motion to reopen “must be accompanied by one or more affidavits which set forth the factual and/or technical bases for the movant’s claim that the criteria of [§ 2.734(a)] have been satisfied.” Such affidavit(s) “must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. 10 C.F.R. § 2.326(b). Here, the Petitioners did not file affidavits as required by the rule; rather, the Motion included a statement by Petitioners’ Counsel that to the best of her knowledge and understanding, the Motion’s statements are correct (Motion at 12). Because the Motion appears to be based solely upon the Petitioners’ (incorrect) reading of NRC regulations and environmental documents, the lack of supporting affidavits appears to be immaterial.

¹⁷ See, e.g., *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 668-69 (2008).

¹⁸ *Id.*

¹⁹ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-12, 61 NRC 345, 350, and n.18 (2005) (citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 554-55 (1978) (“Obviously, ‘there would be little hope’ of completing administrative proceedings if each newly arising allegation required an agency to reopen its hearings.”)).

to file new or amended contentions filed after the deadline in [§ 2.309(b)] *will not be entertained*” absent a determination by the presiding officer that the petitioner has demonstrated “good cause” by showing 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.²⁰

Finally, the petitioner must satisfy the criteria governing contention admissibility set forth in 10 C.F.R. § 2.309(f),²¹ including the requirement that it “provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.”²²

II. The Petitioners’ Motion Should Be Denied.

The Petitioners’ Motion is based on a mischaracterization of the Draft SEIS, and their proffered amended contention neither raises an issue that is material to the findings the NRC must make in this license renewal proceeding nor demonstrates a genuine issue with the applicant on a material issue of law or fact. Accordingly, the amendment fails to satisfy the criteria specified in 10 C.F.R. § 2.309(f)(1)(iv) and (vi). Moreover, the Petitioners have not demonstrated good cause for their filing of this proposed amendment out of time, or that the statement upon which their Motion is based “was not previously available,” “is materially different from information previously available,” or that their filing was submitted in a timely fashion,” as required by 10 C.F.R. § 2.309(c). Similarly, the Petitioners’ assertion that the Board

²⁰ See, e.g., *Holtec*, CLI-21-7, 93 NRC at 221 (“our regulations specify that participants ‘shall file [environmental] contentions based on the applicant’s environmental report’ and that new or amended environmental contentions may be filed on a DEIS where that document contains information that is ‘materially different from information previously available.’”).

²¹ See 10 C.F.R. § 2.309(c)(4) (“A new or amended contention . . . must also meet the applicable contention admissibility requirements in paragraph (f) of this section.”).

²² 10 C.F.R. § 2.309(f)(1)(vi).

conflated design basis events with anticipated operational occurrences and their criticism of the Board's treatment of such events in LBP-21-4 are not based upon the Draft SEIS and are untimely. Finally, the Petitioners have not shown that a materially different result would be or would have been likely if their amended basis statement had been considered by the Board initially, as required by 10 C.F.R. § 2.326(a)(3). The motion should therefore be rejected.

A. The Board Correctly Rejected the Petitioners' Original Contention.

In their original contention, the Petitioners asserted that the Applicant's SLRA violated the National Environmental Policy Act ("NEPA") and 10 C.F.R. Part 51, by failing to address the environmental significance of the August 23, 2011, beyond-design-basis earthquake that occurred in Mineral Virginia (the "Mineral Earthquake").²³ The contention asserted that the Mineral Earthquake fatally undermined previous NRC generic environmental findings, "that the environmental impacts of operating North Anna Units 1 and 2 are small because the reactors will operate within their design bases."²⁴ In addition, the Petitioners asserted that the Applicant must address "the probability and consequences of accidents caused or contributed to by earthquakes during a second license renewal term" – and, they requested a waiver of the NRC's regulations in 10 C.F.R. §§ 51.53(c)(3)(i), 51.71(d) and 51.95(c)(1), to allow the litigation of the NRC's generic findings in the GEIS regarding the environmental impacts of design-basis accidents and severe accidents, including accidents caused or contributed to by earthquakes.²⁵

In LBP-21-4, the Board rejected the Petitioners' contention. The Board found, in part, that: (1) VEPCO and the Staff had fully assessed the safety impact of the 2011 Mineral

²³ Motion at 2 (citing Hearing Request at 13-30).

²⁴ *Id.*

²⁵ *Id.* at 3; Hearing Request at 30. The Petitioners did not, however, request a waiver from Table B-1 in 10 C.F.R. Part 51, Appendix B, which codifies the generic Category 1 findings which the Petitioners sought to waive regarding design-basis accidents and severe accidents; a waiver from Table B-1 would have been required for the Petitioners to be allowed to litigate these issues in the North Anna SLR proceeding.

Earthquake; (2) the GEIS (both in 1996 and 2013) looked at design-basis and severe accidents broadly and determined that their environmental impacts were SMALL; (3) VEPCO concluded in its Environmental Report (ER) that there is no new and significant information regarding design-basis accidents and severe accidents relative to the 2013 GEIS and North Anna's SAMA analysis; and (4) the Petitioners had provided no technical analysis or other relevant supporting information questioning the efficacy of VEPCO's and the Staff's evaluations, including the GEIS analyses.²⁶

B. The Petitioners' Proposed Amended Basis Statement.

The Petitioners seek to amend the basis for their original contention, purportedly based upon the Staff's August 2021 issuance of the North Anna Draft SEIS. In particular, the Petitioners point to the following statement that appears in Appendix F ("Environmental Impacts of Postulated Accidents"), Section F.1.1 ("Design-Basis Accidents") of the Draft SEIS:

Design-basis accidents are postulated accidents that a nuclear facility must be designed and built to withstand without loss to the systems, structures, and components necessary to ensure public health and safety. Planning for design-basis accidents ensures that the proposed plant can withstand normal transients (e.g., rapid changes in the reactor coolant system temperature or pressure, or rapid changes in reactor power), as well as a broad spectrum of postulated accidents without undue hazard to the health and safety of the public. *Many of these design-basis accidents may occur, but are unlikely to occur, even once during the life of the plant;* nevertheless, carefully evaluating each design-basis accident is crucial to establishing the design basis for the preventive and mitigative safety systems of the proposed nuclear power plant. [10 CFR] Part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR Part 100, "Reactor Site Criteria," describe the NRC's acceptance criteria for design-basis accidents.²⁷

According to the Petitioners, this statement is the "first iteration of the License Renewal GEIS" in which the Staff has stated that "design-basis accidents 'may occur' during the life of

²⁶ LBP-21-4, 93 NRC at 204-10. The merits of the Board's decision have been addressed by the Petitioners, Staff and Applicant in their briefs on appeal, and are not addressed herein.

²⁷ Motion at 5 (citing Draft SEIS at F-1 – F-2 (emphasis by the Petitioners)).

a nuclear reactor, i.e., they are expected to occur.”²⁸ The Petitioners seek to amend the basis of their contention, “to address a new assertion, which did not appear in the Environmental Report but now appears in the [Draft SEIS]. . . that the NRC expects design-basis accidents to occur during the life of a reactor.”²⁹ Further, they state that they would only change their contention “to now confirm that the [Draft SEIS] has not changed the deficiencies in the Environmental Report that were identified in [their original] contention.”³⁰

In addition, the Petitioners present a three-page “Amended Basis Statement” which they seek to litigate as part of their original contention.³¹ The Amended Basis Statement (a) criticizes the Board’s treatment of the Mineral Earthquake as a “happenstance,” because the potential for a design basis earthquake³² to occur is inherent in reactor licensing;³³ (b) alleges that the Staff’s North Anna Draft SEIS statement “means that the NRC anticipates that a design-basis accident – such as a design-basis earthquake – may occur more than once at a single reactor, without safety or environmental concerns,” in contravention of NRC regulatory principles;³⁴ (c) alleges that the Board “confused design basis accidents with anticipated operational occurrences”;³⁵ and (d) alleges that the Staff’s Draft SEIS “attempt[s] to insert a new and unlawful analytical concept into its description of a

²⁸ *Id.* at 5.

²⁹ *Id.* at 6 (emphasis added).

³⁰ *Id.*

³¹ *Id.* at 7-9; this portion of the Petitioners’ Amended Basis Statement is not based upon the Staff’s Draft SEIS, but instead constitutes an impermissibly late challenge to the Board’s decision in LBP-21-4.

³² The Staff notes that the “design-basis earthquake” is equivalent to the “safe-shutdown earthquake.” See 10 C.F.R. Part 50, App. A, GDC 2 (“Design Bases for Protection Against Natural Phenomena”), 10 C.F.R. § 100.3 (“*Safe Shutdown Earthquake Ground Motion*”), and 10 C.F.R. Part 100, App. A, § III(c) (“*Safe Shutdown Earthquake*”). In determining the design basis for vibratory ground motion, “[t]he earthquake which could cause the maximum vibratory ground motion at the site should be designated the Safe Shutdown Earthquake.” 10 C.F.R. Part 100, App. A, § V(a).

³³ Motion at 7.

³⁴ *Id.* (emphasis added).

³⁵ *Id.* at 8; this portion of the Petitioners’ Amended Basis Statement is not based upon the Staff’s Draft SEIS; rather, it constitutes an impermissibly late challenge to the Board’s decision in LBP-21-4.

well-established and long-standing environmental analysis, as if it had always been there,” in contravention of NEPA.³⁶

C. The Petitioners’ Motion Should Be Rejected.

The Petitioners’ Motion should be rejected for several reasons. First, the Petitioners mischaracterize the actual statement that was made in the Draft SEIS. Contrary to the Petitioners’ understanding, the Draft SEIS did not say that “the NRC expects design-basis accidents to occur during the life of a reactor.” Rather, the actual statement in the Draft DSEIS reads, “[m]any of these design-basis accidents may occur, but are unlikely to occur, even once during the life of the plant.”³⁷ This statement is consistent with the NRC’s treatment of such accidents.³⁸ Nor did the Draft SEIS “suggest,” as alleged by Petitioners, that “the NRC anticipates that a design-basis accident—such as a design-basis earthquake—may occur more than once at a single reactor, without raising safety or environmental concerns.”³⁹ Accordingly, the amendment fails to satisfy the criteria specified in 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

Nor is there any merit in the Petitioners’ assertions that the Draft DSEIS deviates from established regulatory principles. In this regard, the regulations in 10 C.F.R. § 54.4 (“Scope”)

³⁶ *Id.* at 9.

³⁷ Draft SEIS (ML21228A084) at F-1; see Draft SEIS (, § 3.11.6.4 (“Environmental Consequences of Postulated Accidents”), at 3-139 (citing the definitions of “design-basis accidents” and “severe accidents” in the 2013 GEIS); accord, Draft SEIS (ML21228A084), App. F. (“Environmental Impacts of Postulated Accidents”), at F-1; see also 2013 GEIS (NUREG-1437, Rev. 1) (ML13106A241), at 7-15 (defining “design-basis accident” as “[a] postulated accident that a nuclear facility must be designed and built to withstand without loss to the systems, structures, and components necessary to ensure public health and safety.”).

³⁸ The NRC defines a “design-basis accident” as “A postulated accident that a nuclear facility must be designed and built to withstand without loss to the systems, structures, and components necessary to ensure public health and safety.” See <https://www.nrc.gov/reading-rm/basic-ref/glossary/design-basis-accident.html> (last visited Oct. 12, 2021). In contrast, “beyond design-basis accidents” are defined as “accident sequences that are possible but were not fully considered in the design process because they were judged to be too unlikely. (In that sense, they are considered beyond the scope of design-basis accidents that a nuclear facility must be designed and built to withstand.)” <https://www.nrc.gov/reading-rm/basic-ref/glossary/beyond-design-basis-accidents.html> (last visited Oct. 12, 2021).

³⁹ Motion at 7.

establish that systems, structures, and components (SSCs) within the scope of license renewal are those SSCs which are "relied upon to remain functional during and following design-basis events (as defined in 10 CFR 50.49 (b)(1))" to ensure the performance of certain specified functions.⁴⁰ In turn, Section 50.49(b)(1)(ii), defines design basis events as follows:

Design basis events are defined as conditions of normal operation, including anticipated operational occurrences, design basis accidents, external events, and natural phenomena for which the plant must be designed to ensure functions (b)(1)(i) (A) through (C) of this section."⁴¹

These regulations demonstrate that design-basis accidents are within the range of events that must be designed against due to their potential to occur, even if unlikely. Nothing in the Draft SEIS statement cited by the Petitioners is inconsistent with these regulatory statements.

Second, the Petitioners fail to recognize that the Draft SEIS is, in fact, fully consistent with the GEIS. For example, the 1996 GEIS, in § 5.2.1 ("General Characteristics of Accidents") states as follows:

The term "accident" refers to any unintentional event outside the normal plant operational envelope that results in a release or the potential for release of radioactive materials into the environment. Generally, the U.S. Nuclear Regulatory Commission (NRC) categorizes accidents as "design basis" (i.e., the plant is designed specifically to accommodate these) or "severe" (i.e., those involving multiple failures of equipment or function and, therefore, whose likelihood is generally lower than design-basis accidents but where consequences may be higher), for which plants are analyzed to determine their response.⁴²

⁴⁰ 10 C.F.R. § 54.4 (emphasis added).

⁴¹ 10 C.F.R. § 50.49(b)(1) (emphasis added). The rule cited here (§ 50.49(b)(1)(i)(A)-(C)) identifies certain equipment that is "relied upon to remain functional during and following design basis events." *Cf.* Final Rule, "Nuclear Power Plant License Renewal, Revisions," 60 Fed. Reg. 22,461, 22,475, 22,486 (May 8, 1995) (discussing safety systems that could be impacted by "the occurrence of a design-basis seismic event.").

⁴² NUREG-1437, GEIS (1996) (ML040690705), § 5.2.1 at 5-1 (emphasis added). *Cf. id.*, § 5.3.2 at 5-11 ("design-basis accidents are those that both the licensee and the NRC staff evaluate to ensure that the plant meets acceptable design and performance criteria.").

Nothing in the Petitioners' Motion establishes any departure from these well-established regulatory standards discussed in the GEIS, nor have they presented any new and material information that would warrant an amendment to their previously filed contention.

Accordingly, their Motion should be rejected pursuant to 10 C.F.R. § 2.309(c).

Third, the Petitioners are incorrect in asserting that the North Anna Draft SEIS "is the first iteration of the License Renewal GEIS" containing the statement upon which they rely, which they characterize as a statement that design-basis accidents "are expected to occur" during the life of a nuclear reactor.⁴³ Notwithstanding their assertions, the statement that appears in the North Anna Draft SEIS is fully consistent with statements made in other license renewal environmental review documents that were issued previously. Thus, a quick review of recent supplemental EISs for license renewal reveals that the very same statement that forms the basis for Petitioners' Motion, was made in the SEIS issued for subsequent license renewal of at least several other plants, including Turkey Point, Surry, and Peach Bottom.⁴⁴ Accordingly, the statement cited by the Petitioners as the sole premise for their proposed amendment does not constitute new and material information. The Petitioners, therefore, have failed to satisfy 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

Likewise, nothing in the Petitioners' Amended Basis Statement warrants reopening and the admission of that Statement, which they seek to litigate as part of their original contention.⁴⁵ In this regard, the Amended Basis Statement's criticism of the Board's

⁴³ Motion at 5 (emphasis added).

⁴⁴ See, e.g., (1) NUREG-1437, Final Supplement 5, Second Renewal (Oct. 2019) (Turkey Point) (ML19290H346), § E.1.1 ("Design-Basis Accidents"), at E-1 ("Many of these design-basis accidents may occur, but are unlikely to occur even once during the life of the plant; . . ."); (2) NUREG-1437, Draft Supplement 6, Second Renewal (Oct. 2019) (Surry) (ML19274C676), § F.1.1 ("Design-Basis Accidents") at F-1 ("Many of these design-basis accidents may occur but are unlikely to occur even once during the life of the plant"); and (3) NUREG-1437, Draft Supplement 10, Second Renewal (July 2019) (Peach Bottom) (ML19210D453), § E.1.1 ("Design-Basis Accidents") at E-1 ("Many of these design-basis accidents may occur, but are unlikely to occur even once during the life of the plant").

⁴⁵ Motion at 7-9; this portion of the Petitioners' Amended Basis Statement is not based upon the Staff's Draft SEIS, but instead constitutes an impermissibly late challenge to the Board's decision in LBP-21-4.

decision in LBP-21-4 as having treated the Mineral Earthquake as a “happenstance,” and as having “confused design basis accidents with anticipated operational occurrences” constitute impermissibly late challenges to the Board’s March 2021 decision in LBP-21-4 rather than the Staff’s Draft SEIS. Accordingly, those assertions should be rejected as untimely.⁴⁶

Further, the Amended Basis Statement’s claim that the Draft SEIS statement “means that the NRC anticipates that a design-basis accident – such as a design-basis earthquake – may occur more than once at a single reactor, without safety or environmental concerns,” constitutes an incorrect “strawman argument” that lacks any basis in fact. Nowhere in the Staff’s Draft SEIS did the Staff make any statement that resembles, even slightly, the Petitioners’ characterization of the Staff’s statements; inasmuch as the Amended Basis Statement is legally and factually incorrect, it is not “material to the findings the NRC must make.” Moreover, as discussed above, the Staff’s Draft SEIS is entirely consistent with the NRC’s established regulatory standards and previous license renewal environmental analyses and it in no way represents an “attempt to insert a new and unlawful analytical concept” into those “long-standing” principles “in contravention of NEPA.”⁴⁷

Nor have the Petitioners demonstrated good cause for their filing of this proposed amendment out of time, in that they have not shown that the statement upon which their Motion is based “was not previously available,” “is materially different from information previously available,” or that their filing was timely, as required by 10 C.F.R. § 2.309(c).

Finally, the Petitioners have not shown that a materially different result would be or would have been likely if their (legally and factually incorrect) amended basis statement had

⁴⁶ Similarly, the Petitioners’ assertion that the Board conflated design basis events with anticipated operational occurrences and their criticism of the Board’s treatment of such events (Motion at 7-8) should be rejected. These challenges to the Board’s decision should have been presented, if at all, in their petition for review. Moreover, those assertions are not based upon the Staff’s issuance of the DSEIS and have not been shown to be “timely,” as required by 10 C.F.R. §§ 2.309(b), 2.309(c), and 2.326.

⁴⁷ *Id.* at 9. Given the lack of any basis for the Petitioners’ assertions regarding the statements contained in the Staff’s Draft SEIS, the judicial cases cited by Petitioners are wholly inapposite. See Motion at 9.

been considered by the Board, as required by 10 C.F.R. § 2.326(a)(3). Nowhere does the Petitioners' Motion present any information that is "significant and plausible enough to require reasonable minds to inquire further," or show that the information, if it had been considered by the Board, would have been "likely" to trigger a "different result."⁴⁸ In sum, the Motion fails to satisfy the Commission's requirements for reopening, as set forth in 10 C.F.R. § 2.326, and it should therefore be denied.

CONCLUSION

The Petitioners have failed to satisfy the requirements for the admission of amended contentions set forth in 10 C.F.R. §§ 2.309(c) and 2.309(f)(1) and failed to satisfy the requirements for reopening set forth in 10 C.F.R. § 2.326. For these reasons, as more fully discussed above, their Motion should be denied.

/Signed (electronically) by/
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Dated at Rockville, MD
this 25th day of October, 2021

⁴⁸ PFS, CLI-05-12, 61 NRC at 350.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMPANY

(North Anna Power Station, Units 1 and 2)

Docket Nos. 50-338-SLR
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Certificate of Service

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO PETITIONERS' MOTION TO AMEND CONTENTION OUT OF TIME AND MOTION TO RE-OPEN THE RECORD," dated October 25, 2021, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the captioned proceeding, this 25th day of October 2021.

/Signed (electronically) by/

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Dated at Rockville, MD
this 25th day of October 2021