

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)

VIRGINIA ELECTRIC AND POWER COMPANY)
and OLD DOMINION ELECTRIC COOPERATIVE)

(North Anna Power Station, Units 1 and 2))

Docket Nos. 50-338-SLR-2 and
50-339-SLR-2

May 6, 2024

**APPLICANTS' ANSWER TO THE HEARING REQUEST AND PETITION TO
INTERVENE AND MOTION FOR LEAVE TO AMEND CONTENTION 3 FILED BY
BEYOND NUCLEAR AND SIERRA CLUB**

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1) and the Atomic Safety and Licensing Board’s (“Board”) Amended Initial Prehearing Order,¹ Virginia Electric and Power Company, on behalf of itself and Old Dominion Electric Cooperative (collectively, “Applicants”), submit this Answer to the Hearing Request and Petition to Intervene filed on March 28, 2024 (“Petition”),² and the Motion to Amend Contention 3 filed on April 11, 2024 (“Motion”),³ by Beyond Nuclear and Sierra Club (“Petitioners”). Petitioners seek to intervene in the above-captioned proceeding and request a hearing to challenge the draft Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Subsequent License Renewal for North Anna Power Station Units 1 and 2, Supplement 7a, issued on December 28, 2023 (“2023 DSEIS”).⁴ As explained below, the Petition should be denied because Petitioners have not submitted an admissible contention as required by 10 C.F.R. § 2.309(a), and the Motion should be denied because it does not satisfy the requirements in 10 C.F.R. § 2.309(c) for out-of-time contentions.

In the Petition, Petitioners propose contentions on the following three topics: (1) the 2011 Mineral earthquake,⁵ (2) severe accidents, and (3) climate change and its impacts on accident risk. But as discussed in Section III below, none of the contentions are admissible. As a general matter,

¹ Memorandum and Order (Initial Prehearing Order (amended)) at 2 (Apr. 15, 2024) (unpublished) (ML24107A696).

² Beyond Nuclear and Sierra Club’s Hearing Request and Petition to Intervene (March 28, 2024) (ML24088A028).

³ Motion by Beyond Nuclear and the Sierra Club to Amend Their Contention 3 Regarding Failure to Consider Environmental Impacts of Climate Change (Apr. 11, 2024) (ML24102A199) (“Motion”).

⁴ NUREG-1437, Supp. 7a, Second Renewal, “Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 7a, Second Renewal, Regarding Subsequent License Renewal for North Anna Power Station Units 1 and 2, Draft Report for Comment” (Dec. 2023) (ML23339A047) (“2023 DSEIS”).

⁵ “The earthquake in question, which the United States Geological Survey reported as having a Richter scale magnitude of 5.8, occurred on August 23, 2011, with its epicenter near Mineral, Virginia, approximately 10 miles from the North Anna facility.” *Va. Elec. and Power Co.* (North Anna Power Station, Units 1 and 2), LBP-21-4, 93 NRC 179, 193 (2021).

all three contentions are exceedingly vague and fail to articulate their respective challenges with the requisite specificity for an admissible contention. Another common theme is Petitioners' desire to use this limited-scope license renewal proceeding to litigate the sufficiency of North Anna's current licensing basis ("CLB"), which is squarely beyond the scope of this proceeding. Furthermore, many of Petitioners' claims are riddled with factual inaccuracies or rely on demonstrably incorrect readings of the relevant documents and analyses. Ultimately, none of the contentions allege adequate support, none demonstrate a genuine dispute on a material issue of law or fact, and none satisfy all six admissibility criteria in 10 C.F.R. § 2.309(f)(1).

Separately, the Motion proposes to amend Proposed Contention 3 to add certain assertions from a recent U.S. Government Accountability Office ("GAO") report as additional bases for the contention. However, the Motion should be denied because it fails to satisfy the relevant criteria for late-filed contention amendments, namely because the cited GAO report is merely a compendium of information that has long been publicly available, rather than a source of materially new information. Alternatively, even if those threshold criteria have been satisfied, the Motion still should be denied for the separate reason that Proposed Contention 3 remains inadmissible even with the addition of those new bases.

Accordingly, the Board should DENY the Motion, DENY the Petition, and TERMINATE the proceeding.

II. BACKGROUND

A. License Renewal Reviews

The Nuclear Regulatory Commissions ("NRC") license renewal reviews consist of two parts: (1) a safety review governed by 10 C.F.R. Part 54, and (2) an environmental review governed by 10 C.F.R. Part 51.

1. Safety Review

The objective of the NRC's license renewal safety review is limited. Namely, it "is to ensure that the licensee can successfully manage the detrimental effects of aging" during the period of extended operations.⁶ Thus, the NRC's "license renewal regulations in 10 C.F.R. Part 54 focus on whether the licensee can manage the effects of aging on certain long-lived, passive components that are important to safety."⁷ To do so, applicants must include descriptions of their aging management programs ("AMPs") for affected components in their subsequent license renewal applications ("SLRAs").⁸ These AMPs are at the core of the NRC's license renewal safety framework. NRC guidance (known as the "GALL Report") analyzes aging management issues generically and contains AMPs that applicants may use to satisfy the aging management requirements in Part 54.⁹

It is unequivocal that the NRC's safety review "is not intended to duplicate the NRC's ongoing oversight of operating reactors."¹⁰ The NRC's safety review is therefore not an opportunity to re-examine a plant's CLB, which the Commission has chosen, as a policy matter, to exclude from the scope of its license renewal proceedings:

In establishing its license renewal process, the Commission did not believe it necessary or appropriate to throw open the full gamut of provisions in a plant's [CLB] to re-analysis during the license renewal review. The [CLB] represents an evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety. It is effectively addressed and maintained by ongoing agency oversight, review, and enforcement. Just as these oversight programs help ensure compliance with the [CLB] during the original

⁶ *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 347 (2015).

⁷ *Id.*; see also 10 C.F.R. §§ 54.21, 54.29(a).

⁸ *Indian Point*, CLI-15-6, 81 NRC at 348; see also 10 C.F.R. § 54.21(a)(3).

⁹ See NUREG-1801, Rev. 2, Generic Aging Lessons Learned (GALL) Report (Dec. 2010) (ML103490041) ("GALL Report").

¹⁰ *Indian Point*, CLI-15-6, 81 NRC at 347.

license term, they likewise can reasonably be expected to fulfill this function during the renewal term.¹¹

In short, ongoing agency oversight and a plant's CLB¹² are beyond the limited scope of license renewal and beyond challenge in a license renewal adjudicatory proceeding.¹³ The Commission long ago determined that it would be "unnecessary and wasteful"¹⁴ to permit such challenges.

2. Environmental Review

The objective of the NRC's environmental review is to analyze the "potential [environmental] impacts of an additional 20 years of nuclear power plant operation[s]."¹⁵ For license renewal, the NRC's environmental regulations in Part 51 are based, in large part, on the Generic Environmental Impact Statement for License Renewal of Nuclear Plants ("GEIS"), which summarizes the findings of a systematic inquiry (accomplished through notice and comment rulemaking) into the potential environmental consequences of license renewal.¹⁶ Based on these analyses, the GEIS delineates two types of environmental issues:

- Generic "Category 1" issues, for which the NRC made "generic conclusions applicable to all existing nuclear power plants";¹⁷ and
- Plant-Specific "Category 2" issues, for which site-specific analyses are required for each individual license renewal proceeding.¹⁸

¹¹ *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8–9 (2001) (citation omitted).

¹² *See* 10 C.F.R. § 54.3 (defining the CLB).

¹³ *Turkey Point*, CLI-01-17, 54 NRC at 7–9.

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ *See* NUREG-1437, Rev. 0, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (May 1996) (Vol. 1, ML040690705) ("1996 GEIS"); NUREG-1437, Rev. 1, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (June 2013) (Vol. 1, ML13106A241) ("GEIS"). As used in this brief, "GEIS" refers to Rev. 1 unless otherwise noted. The NRC is now working on Rev. 2 of the GEIS and corresponding changes to 10 C.F.R. Part 51, but that effort is only at the proposed rule stage and imposes no requirements here.

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

¹⁸ *See id.* at 11–12 (discussing Category 2 issues).

In 2022, the Commission determined that the GEIS and associated regulations in Part 51 applied only to *initial* license renewal and not SLR.¹⁹ The NRC staff is now engaged in an effort to revise the GEIS and update its Part 51 regulations to apply to one term of SLR.²⁰ Petitioners submitted comments on the proposed rule and draft GEIS.²¹ Petitioners' comments included a report by and comments from Jeffrey T. Mitman whom they also rely on to support their Petition.²² While the NRC staff have submitted the proposed final rule to Commission for approval,²³ the updated GEIS and rule are not yet final and do not apply here.

3. Consideration of Environmental Influences on Plant Safety

As explained in the GEIS:

The NEPA process focuses on environmental impacts rather than on issues related to safety. Safety issues become important to the environmental review when they could result in environmental impacts, which is why the environmental effects of **postulated accidents** are considered in the GEIS and in plant-specific supplements to the GEIS. Since NEPA regulations do not provide for a safety review, the license renewal process includes an environmental review that is distinct and separate from the safety review. Since the two reviews are separate, operational safety issues and safety issues related to nuclear power plant aging are considered **outside the scope for the environmental review**, just as the environmental issues are not considered as part of the safety review.²⁴

¹⁹ See *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-22-2, 95 NRC 26 (2022).

²⁰ See generally NRC License Renewal Generic Environmental Review, <https://www.nrc.gov/reactors/operating/licensing/renewal/sled.html>; see also *Renewing Nuclear Power Plant Operating Licenses—Environmental Review*; Proposed rule, 88 Fed. Reg. 13,329 (Mar. 3, 2023).

²¹ Comment (0043) from Diane Curran on Behalf of Beyond Nuclear and the Sierra Club on PR-51 – Renewing Nuclear Power Plant Operating Licenses – Environmental Review (May 19, 2023) (ML23139A275).

²² See *id.* Attach. 1; Petition, Attach. 1.

²³ See SECY-24-0017, Final Rule – Renewing Nuclear Power Plant Operating Licenses – Environmental Review (RIN3150-AK32; NRC-2018-0296) (Mar. 6, 2024) (ML23202A179).

²⁴ GEIS at 1–8 (emphasis added); see also NUREG-1437, Rev. 2, Generic Environmental Impact Statement for License Renewal of Nuclear Plants at 1-9 to 1-10 (Feb. 2024) (Vol. 1, ML23201A224) (Rev. 2 is awaiting final Commission approval).

In other words, the *safety* aspects of environmental influences that may act upon a plant are evaluated as a matter of ongoing regulatory compliance, far beyond the limited scope of a license renewal proceeding. Whereas, the *environmental impacts* of hypothetical accidents *resulting from* such environmental influences *are* evaluated in license renewal proceedings under the topic of Postulated Accidents. The NRC has long used a two-pronged approach to evaluate the potential environmental impacts of postulated accidents.²⁵

Design Basis Accidents: 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.”²⁶ Before the NRC issues an operating license, an applicant must demonstrate the ability of the proposed reactor to “withstand all design-basis accidents.”²⁷ After licensing, the licensee must maintain acceptable design and performance criteria throughout the operating life of the nuclear plant, “including any license-renewal periods of extended operations.”²⁸ In other words, a plant’s defined design basis is evaluated during initial licensing and re-evaluated, as necessary, during the life of the plant.

License renewal and SLR applicants are required to take “adequate steps to account for aging during the period of extended operations” through time-limited aging analyses or aging management plans. Because of these activities to manage aging, the NRC expects operations during an SLR term will “continue to provide a level of safety equivalent to that provided during the initial operating license period.”²⁹ Similarly, because a licensee must meet the existing design basis

²⁵ 2023 DSEIS at 3-169, F-1.

²⁶ *Id.* at F-1

²⁷ *Id.* at F-2.

²⁸ *Id.* at F-2.

²⁹ *Id.* at F-3.

and manage aging, the NRC has long concluded that the environmental impacts of design-basis accidents “should not differ significantly” from the initial operating period.³⁰

Severe Accidents: Severe accidents captures all other types of accidents—*i.e.*, those that are “beyond” the plant’s designed defined design basis. Although severe accidents could result in more significant consequences, their potential environmental impact is tempered by their extremely low probability of occurrence. In addition to evaluating probability-weighted impacts, the NRC requires all plants to perform a site-specific analysis of potential mitigation measures (severe accident mitigation alternatives or “SAMAs”) that could further reduce the hypothetical impacts.³¹

B. Procedural History

The Subsequent License Renewal Application: Applicants filed their SLRA with the NRC on August 24, 2020, to renew North Anna’s operating licenses for an additional 20-year period.³² As part of the SLRA, Applicants submitted an environmental report (“ER”) that considered the potential environmental impacts of the requested extension.³³ Under the prevailing interpretation of the NRC’s regulations before February 2022, SLR applicants could rely on the GEIS’s analyses of Category 1 issues in an environmental report.³⁴ More specifically, in April 2020, in a separate SLR proceeding for a different plant, the Commission held that the NRC staff and SLR applicants could rely on the GEIS and its corresponding generic impact conclusions for Category 1 issues as codified

³⁰ *Id.* at F-3.

³¹ *Id.* at F-6.

³² *See* North Anna Power Station Units 1 and 2 Application for Subsequent License Renewal (Aug. 24, 2020) (ML20246G696) (“SLRA”).

³³ *See* SLRA, Appendix E (ML20246G698) (“ER”).

³⁴ *See* 10 C.F.R. § 51.53(c)(3)(i) (“The environmental report for the operating license renewal stage is not required to contain analyses of the environmental impacts of the license renewal issues identified as Category 1 issues in appendix B [to Part 51].”). *See id.* § 51.53(a) (expressly authorizing environmental reports to incorporate GEIS analyses and conclusions by reference).

in 10 C.F.R. Part 51.³⁵ Consistent therewith, Applicants’ ER relied on the GEIS for all applicable Category 1 issues and provided site-specific analyses for all applicable Category 2 issues.³⁶

Adjudication of Initial Hearing Requests: In October 2020, the NRC published a notice in the *Federal Register* docketing the North Anna SLRA and providing an opportunity for interested persons to request a hearing.³⁷ Beyond Nuclear, the Sierra Club, and the Alliance for Progressive Virginia (“Joint Petitioners”) filed a petition seeking to intervene and proposed one contention that claimed Applicants did not consider the “risk of an earthquake that exceeds the design basis for the reactors.”³⁸ Because their claim challenged a Category 1 issue, Joint Petitioners also sought a waiver to challenge NRC regulations.³⁹ The Board denied the waiver request because it did not meet the applicable waiver standards.⁴⁰ And the Board separately held that the proposed contention itself was inadmissible “even if Petitioners’ waiver request were found sufficient.”⁴¹ Accordingly, the Board denied the Petition and terminated the proceeding.⁴² Joint Petitioners appealed the denial of their Petition to the Commission.⁴³

³⁵ *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-20-3, 91 NRC 133 (2020).

³⁶ See 10 C.F.R. §§ 51.41, 51.45, 51.53(c)(3)(ii); see also generally ER.

³⁷ See Virginia Electric and Power Company; North Anna Power Station, Units 1 and 2; Subsequent License Renewal Application; Opportunity to Request a Hearing and to Petition for Leave to Intervene, 85 Fed. Reg. 65,438 (Oct. 15, 2020).

³⁸ See 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 at 28 (Dec. 14, 2020) (ML20349D952).

³⁹ See *id.* at 30–37.

⁴⁰ *North Anna*, LBP-21-4, 93 NRC at 199–208.

⁴¹ *Id.* at 208–212.

⁴² *Id.* at 213.

⁴³ Notice of Appeal of LBP-21-04 by Beyond Nuclear, Sierra Club, and Alliance for Progressive Virginia (Apr. 23, 2021) (ML21113A316); Brief on Appeal of LBP-21 by Beyond Nuclear, Sierra Club, and Alliance for Progressive Virginia (April 23, 2021) (ML21113A317).

Orders Regarding Applicability of GEIS to SLR: In August 2021, the NRC staff published the Draft Supplemental Environmental Impact Statement for the North Anna SLRA (“2021 DSEIS”).⁴⁴ Like the ER, the 2021 DSEIS relied on the GEIS and Part 51 for all Category 1 issues. But, in February 2022, the Commission issued two decisions that reversed the agency’s course on this issue. In the first order (CLI-22-2), the Commission overturned its prior decision and held that 10 C.F.R. § 51.53(c)(3) only applies to *initial* license renewal and thus the GEIS did not address environmental impacts for SLR.⁴⁵ In the second order (CLI-22-3), the Commission stated that it would not issue any licenses for subsequent renewal terms until the NRC staff completed an adequate environmental review for each application.⁴⁶ The Commission also directed the NRC staff to “review and update” the GEIS “so that it covers operation during the subsequent license renewal period.”⁴⁷

The Commission also recognized that SLR applicants may not want to postpone their applications until completion of the multi-year GEIS update proceeding. It thus gave applicants an option to “submit a revised environmental report providing information on environmental impacts during the subsequent license renewal period,”⁴⁸—*i.e.*, an ER supplement with *site-specific* analyses of issues that previously had been analyzed generically as Category 1 issues in the GEIS. In those cases, the Commission stated that interested parties would “be given an opportunity to submit new or amended contentions based on *new information in the revised site-specific environmental impact*

⁴⁴ See generally NUREG-1437, Supp. 7, Second Renewal, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Subsequent License Renewal for North Anna Power Station Units 1 and 2, Draft Report for Comment” (Aug. 2021) (ML21228A084) (“2021 DSEIS”).

⁴⁵ *Turkey Point*, CLI-22-2, 95 NRC at 26.

⁴⁶ *Va. Elec. and Power Co.* (North Anna Power Station, Units 1 and 2), CLI-22-3, 95 NRC 40 (2022).

⁴⁷ *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-22-3, 95 NRC 40, 41 (2022).

⁴⁸ *Id.*

statement.”⁴⁹ Specifically as to the initial *North Anna* proceeding, the Commission dismissed the Joint Petitioners’ pending appeal (of the Board’s denial of their petition) and terminated the adjudicatory proceeding.⁵⁰

ER Supplement: Consistent with the option provided by the Commission, Applicants filed a supplemental ER on September 28, 2022.⁵¹ The NRC then issued a draft Site-Specific Environmental Impact Statement in December 2023 (“2023 DSEIS”).⁵² The 2023 DSEIS “(1) addresses, on a site-specific basis, the issues that were previously treated as generic ‘Category 1’ issues in the 2021 DSEIS, and (2) updates and revises the evaluation of site-specific ‘Category 2’ issues in the 2021 DSEIS.”⁵³ After publication of the 2023 DSEIS, the NRC published a new hearing opportunity notice in the *Federal Register*.⁵⁴ Petitioners filed the instant Petition in response thereto.

III. THE PETITION SHOULD BE DENIED BECAUSE PETITIONERS HAVE NOT SUBMITTED AN ADMISSIBLE CONTENTION

A. Legal Standards for Hearing Requests and Contention Admissibility

Pursuant to 10 C.F.R. § 2.309(a)(1), a hearing request and petition to intervene may be granted only if the presiding officer determines that the petitioner has established standing⁵⁵ and has

⁴⁹ *Id.* at 41–42 (emphasis added).

⁵⁰ *Id.* at 43.

⁵¹ Letter from J. Holloway, Virginia Electric and Power Co. to NRC, Virginia Electric and Power Company, North Anna Power Station (NAPS Units 1 and 2, Subsequent License Renewal Application for Facility Operating Licenses NPF-4 and NPF-7, Appendix E Environmental Report Supplement 1 (Sept. 28, 2022) (ML22272A041) (“Supp. ER”).

⁵² *See generally* 2023 DSEIS.

⁵³ 2023 DSEIS at iv.

⁵⁴ Virginia Electric and Power Company; North Anna Power Station, Units 1 and 2; Draft Environmental Impact Statement; Request for Comment; Public Comment Meetings; Opportunity to Request a Hearing and Petition for Leave to Intervene, 89 Fed. Reg. 960 (Jan. 8, 2023).

⁵⁵ Applicants do not contest Petitioners’ claim of administrative standing based on the Commission’s “proximity presumption.”

proposed at least one admissible contention that meets all six of the threshold admissibility criteria in 10 C.F.R. § 2.309(f)(1).⁵⁶ Failure to satisfy any one of these six admissibility criteria requires that a proposed contention be rejected.⁵⁷ These criteria are “strict by design.”⁵⁸ The rules were “toughened . . . in 1989 because in prior years ‘licensing boards had admitted and litigated numerous contentions that appeared to be based on little more than speculation.’”⁵⁹ The petitioner alone bears the affirmative burden to satisfy these criteria.⁶⁰ Thus, where a petition fails to do so on its face, the Board may not cure a deficiency or fill a gap by supplying the information that is lacking or making factual assumptions that favor the petitioner.⁶¹ Key aspects of the admissibility criteria are summarized below.

1. Issues Must Be Within the Scope of the Proceeding

The subject matter of all contentions is limited to the scope of the proceeding delineated by the Commission in its hearing notice and referral order delegating to the Licensing Board the

⁵⁶ A proposed contention must: “(i) [p]rovide a specific statement of the issue of law or fact to be raised or controverted;” “(ii) [p]rovide a brief explanation of the basis for the contention; (iii) [d]emonstrate that the issue raised is within the scope of the proceeding; (iv) [d]emonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (v) [p]rovide a concise statement of the alleged facts or expert opinions,” including references to the specific sources and documents that support the petitioner’s position and on which the petitioner intends to rely; and (vi) “provide sufficient information to show that a genuine dispute exists with the [applicant] on a material issue of law or fact.” *Id.* § 2.309(f)(1).

⁵⁷ *See id.*; Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2,182, 2,221 (Jan. 14, 2004); *see also Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

⁵⁸ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001).

⁵⁹ *Id.* (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)).

⁶⁰ *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 325, 329 (2015) (“The proponent of a contention is responsible for formulating the contention and providing the necessary support to satisfy the contention admissibility requirements” and “it is Petitioners’ responsibility, not the Board’s, to formulate contentions and to provide the necessary information to satisfy the basis requirement for admission”) (citation omitted); *see also DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 149 (2015) (“[T]he Board may not substitute its own support for a contention or make arguments for the litigants that were never made by the litigants themselves.”).

⁶¹ *See Fermi*, CLI-15-18, 82 NRC at 149.

authority to conduct the proceeding.⁶² Challenges to NRC rules are prohibited as outside the scope of a proceeding because, absent a waiver, “no rule or regulation of the Commission . . . is subject to attack . . . in any adjudicatory proceeding.”⁶³ In license renewal proceedings, out-of-scope challenges include those directed at a plant’s CLB.⁶⁴

2. Disputes Must Be Pled in Sufficient Detail to Show That They Are Both Genuine and Material

The NRC’s contention admissibility criteria at 10 C.F.R. § 2.309(f)(1)(vi) require that a proposed contention provide “sufficient information” to demonstrate the existence of a genuine dispute on a material issue of law or fact.⁶⁵ This requires pleading specificity, a reasoned explanation, and a demonstration of materiality.

Pleading Specificity: As provided in the regulations:

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 . . .⁶⁶

That is because the parties are “entitled to be told at the outset, *with clarity and precision*, what arguments are being advanced and what relief is being” sought.⁶⁷ The contention admissibility

⁶² *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-00-23, 52 NRC 327, 329 (2000); *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-825, 22 NRC 785, 790 (1985).

⁶³ 10 C.F.R. § 2.335(a).

⁶⁴ *See supra* Section II.A.1.

⁶⁵ 10 C.F.R. § 2.309(f)(1)(vi).

⁶⁶ *Id.* (emphasis added).

⁶⁷ *Kan. Gas & Elec. Co.* (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 576 (1975) (emphasis added).

requirements cannot be satisfied through “mere notice pleading.”⁶⁸ Thus, petitioners must set forth their contentions “with particularity.”⁶⁹

Reasoned Explanation: The Commission has stated that petitioners must “read the pertinent portions of the license application . . . state the applicant’s position and the petitioner’s opposing view,” and then *explain* why the petitioner disagrees with the applicant.⁷⁰ In other words, a contention of sufficiency that does not directly controvert specific text within the application is subject to dismissal.⁷¹ And for contentions of omission, the petitioner must explain *why* the applicant allegedly had a legal obligation to provide such information, and then show that such information is, in fact, absent from the application.⁷² As particularly relevant here, conclusory assertions are not enough. Presiding officers must scrutinize pleadings, including the specifically-referenced portions of expert opinions and other documents, to confirm that they support a proposed contention and articulate a specific dispute.⁷³ A petitioner’s imprecise reading of a document cannot support a litigable contention.⁷⁴ Likewise, a pleading or expert opinion that merely states a conclusion, “without providing a reasoned basis or explanation for that conclusion,” cannot satisfy

⁶⁸ *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016) (cleaned up and citations omitted).

⁶⁹ *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-15, 71 NRC 479, 482 (2010) (citation omitted).

⁷⁰ Rules of Practice for Domestic Licensing Proceedings; Procedural Changes in the Hearing Process; Final Rule, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989) (“Procedural Changes”); *see also Millstone*, CLI-01-24, 54 NRC at 358.

⁷¹ *See, e.g., S.C. Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 & 3), CLI-10-1, 71 NRC 1, 21–22 (2010) (licensing board did not err in excluding portion of contention where expert report did not “specifically challenge” or “expressly challenge” the text of the relevant analysis).

⁷² *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), LBP-04-15, 60 NRC 81, 95 (2004) (explaining that if the allegedly missing information is indeed in the license application, then the contention does not raise a genuine dispute).

⁷³ *See Vt. Yankee Nuclear Power Corp.* (Vt. Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48–49 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).

⁷⁴ *See Ga. Inst. of Tech.* (Ga. Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300 (1995).

this criterion.⁷⁵ In sum, “bare assertions and speculation,” even by experts, are incapable of providing the requisite support to demonstrate the existence of a genuine dispute.⁷⁶

Materiality: The purpose of an adjudicatory hearing is not to “flyspeck” documents.⁷⁷ Thus, the admissibility criteria place the burden on the petitioner to demonstrate, as a threshold matter in the pleading, that the alleged dispute relates to a material issue of fact or law. A dispute is material only if it would “make a difference in the outcome of the licensing proceeding.”⁷⁸ Mere “‘suggestions’ of other ways an analysis could have been done” do not provide this demonstration.⁷⁹

B. Proposed Contention 1 (2011 Mineral Earthquake) Is Inadmissible

Proposed Contention 1 alleges that the 2023 DSEIS “fails to satisfy NEPA or NRC implementing regulations at 10 C.F.R. § 51.71 because it does not address the environmental significance of the 2011 Mineral Earthquake.”⁸⁰ The proposed contention is inadmissible on multiple grounds. First, the claims presented in the Petition are simply too vague to satisfy the specificity requirements for an admissible contention. Second, Petitioners have framed their challenge as a contention of omission; but it is inadmissible because the allegedly missing information is, in fact, provided in the 2023 DSEIS.⁸¹ Finally, even if the Board disagrees with these first two reasons to reject the contention (and finds that the challenge was pled with clarity and precision, and is a contention of sufficiency rather than omission), it remains inadmissible for

⁷⁵ See *USEC Inc. (Am. Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 472 (2006).

⁷⁶ *Fansteel, Inc. (Muskogee, Okla. Site)*, CLI-03-13, 58 NRC 195, 203 (2003) (quoting *GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station)*, CLI-00-6, 51 NRC 193, 208 (2000)).

⁷⁷ *System Energy Res., Inc. (Early Site Permit for Grand Gulf ESP Site)*, CLI-05-4, 61 NRC 10, 13 (2005).

⁷⁸ *Oconee*, CLI-99-11, 49 NRC at 333–34 (citation omitted).

⁷⁹ *NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1)*, CLI-12-5, 75 NRC 301, 323 (2012) (quoting *USEC*, CLI-06-10, 63 NRC at 447).

⁸⁰ Petition at 9.

⁸¹ See *Millstone*, LBP-04-15, 60 NRC at 95.

two additional reasons: (1) because Petitioners’ desire to litigate the sufficiency of the plant’s CLB is beyond the scope of this proceeding and (2) because Petitioners’ remaining commentary identifies no material defect in the Staff’s analysis. Thus, the proposed contention fails to satisfy one or more of the admissibility criteria in 10 C.F.R. § 2.309(f)(1)(iii), (v), and (vi).

1. Proposed Contention 1 Lacks the Requisite Specificity for an Admissible Contention

Petitioners cite NEPA and 10 C.F.R. § 51.71 as the authorities allegedly giving rise to their contention. However, these are broad legal constructs with multiple subparts imposing various obligations and requirements. NEPA is primarily codified in Chapter 55 of Title 42 of the United States Code, which contains four subchapters and dozens of code sections. And Section 51.71 of the NRC’s NEPA implementing regulations globally prescribes the content for the entirety of a draft environmental impact statement; it contains six subsections that collectively cross-reference fifteen other sections of Part 51. Yet, nowhere in the remainder of Proposed Contention 1 (pages 9 through 12 of the Petition) do Petitioners offer any elaboration on which *specific* NEPA provision, or which *specific* requirement in Section 51.71, they allege is unmet here. The Board and the other parties are not required to “guess” which provisions are being invoked in Petitioners’ vague arguments.

Likewise, the Petition does not explain what portion of the 2023 DSEIS allegedly is required (by some unspecified requirement) to “address the environmental significance of the 2011 Mineral earthquake.”⁸² Once again, the Board and the other parties are not required to “guess” which

⁸² In a single footnote, Petitioners cite a paragraph in the Mitman Declaration for the limited proposition that an assumption regarding North Anna’s ability to operate safely can be “found” in the 2023 DSEIS. Petition at 9 n.16. Therein, Mr. Mitman references certain pages of the 2023 DSEIS. Petition, Attach. 1, ¶ 25 (“Mitman Decl.”). However, it is unclear whether those are the same discussions that, in Petitioners’ view, are required to “address the environmental significance of the 2011 Mineral earthquake.”

portion of the 2023 DSEIS is being challenged. That is a pleading burden that falls on Petitioners.⁸³ And it remains unmet here.

Vague, unexplained challenges such as this are facially inadmissible because, to demonstrate a genuine dispute, a petition “*must include references to specific portions*” of the document being disputed and must detail the “supporting reasons” (including citations to specific legal authorities and explanations of how they support the arguments) for each and every dispute.⁸⁴ Simply put, Proposed Contention 1 lacks the requisite “clarity and precision”⁸⁵ for an admissible contention. And it should be rejected for that reason alone.

2. The Allegedly Omitted Analysis Is Presented in the 2023 DSEIS

The central thrust of the proposed contention is Petitioners’ incorrect assertion that the 2023 DSEIS “*does not address* the environmental significance of the 2011 Mineral Earthquake” or its impact on the design basis for the North Anna reactors.⁸⁶ As framed by Petitioners, this is a contention of omission. But the fundamental assertion is simply untrue. The 2023 DSEIS plainly discusses the 2011 Mineral earthquake, and the extensive regulatory reviews that followed, in Section 3.4.4. Moreover, the 2011 Mineral earthquake was expressly considered in the NRC’s evaluation of the “environmental significance” of postulated severe accidents in Appendix F. Because the allegedly omitted information is, in fact, provided, the contention is inadmissible.

More specifically, Section 3.4.4 of the 2023 DSEIS discusses the location and strength of the 2011 Mineral earthquake, the aftershocks that followed, and the earthquake’s immediate effect

⁸³ *Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 331 (1983).

⁸⁴ 10 C.F.R. § 2.309(f)(1)(vi).

⁸⁵ *Wolf Creek*, ALAB-279, 1 NRC at 576 (emphasis added).

⁸⁶ Petition at 9–10 (emphasis added).

on North Anna.⁸⁷ At the time of the earthquake, both North Anna units were operating at full power; thus, as expected, the plant’s safety systems immediately shut down the reactors.⁸⁸ The plant was then placed into a safe shutdown condition and, as required by NRC regulations, it remained in that state until the NRC confirmed there had been no functional damage to plant features necessary for continued safe operation.⁸⁹

The 2023 DSEIS further describes the inspections, testing, and analysis performed after the earthquake to verify the lack of functional damage and show that North Anna could “operate without undue risk to the health and safety of the public.”⁹⁰ The NRC also performed “independent technical evaluations” to confirm that North Anna could operate safely before approving the restart of both units.⁹¹ The 2023 DSEIS also states that, after restart, Dominion implemented a “long-term seismic margin management plan” as an additional measure to ensure the plant could operate safely and without undue risk if another earthquake occurred.⁹² In addition, the 2023 DSEIS discusses the specific steps the NRC took in response to the Fukushima earthquake (which occurred before the Mineral earthquake) and explains that North Anna implemented all mandated safety enhancements.⁹³

Moreover, the 2011 Mineral earthquake was expressly considered in the NRC’s evaluation of the “environmental significance” of postulated severe accidents in the 2023 DSEIS.⁹⁴ Appendix

⁸⁷ See 2023 DSEIS § 3.4.4

⁸⁸ *Id.* at 3-24.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* (discussing NRC orders EA-12-049, EA-12-050, and EA-12-05).

⁹⁴ See generally *id.* at App. F.

F includes an evaluation of both design-basis accidents and severe (i.e., beyond-design-basis) accidents. The 2011 Mineral earthquake was a beyond-design-basis event and was thus analyzed under the severe accidents topic. In the 2023 DSEIS, the NRC noted that the Applicants used a probabilistic model (North Anna-R07i) to determine the significance of new information regarding external events like earthquakes.⁹⁵ This model includes a “Seismic [Probabilistic Risk Assessment (“PRA”)], which *takes into account the 2011 Mineral, Virginia, earthquake.*”⁹⁶ The 2023 DSEIS then discusses the NRC’s review of the PRA and the NRC’s conclusion that “the results and risk insights provided by the Seismic PRA” supported its “determination that no further response or regulatory action” was required at North Anna in response to the Mineral earthquake.⁹⁷ Overall, the NRC concluded that the “probability-weighted offsite consequences of severe accidents initiated by external events during the SLR term would not exceed” those reported in the 1996 GEIS and 2013 GEIS and would be SMALL during the SLR term.⁹⁸

In sum, the above shows that the 2023 DSEIS contains the very analysis Petitioners claim is missing. The 2023 DSEIS discusses, at length, both the 2011 Mineral earthquake and the steps the NRC took to confirm that North Anna remained in compliance with all regulatory requirements. The 2023 DSEIS also discusses the process by which the NRC evaluated the probability-weighted consequences of a postulated severe accident (including one initiated by an earthquake) and confirms that the probabilistic modeling expressly “takes into account” the 2011 Mineral earthquake. “A contention of omission may be summarily rejected as inadmissible if . . . the topic

⁹⁵ *Id.* at F-10.

⁹⁶ *Id.* (emphasis added).

⁹⁷ *Id.* at F-11.

⁹⁸ *Id.* at F-11 to F-12.

that allegedly is omitted is, in fact, included” in the document being challenged.⁹⁹ Because that is the case here, Proposed Contention 1 should be summarily rejected.

3. Petitioners’ Claims Regarding the Acceptability of the North Anna Design Basis Are Illogical, Counterfactual, and Beyond the Scope of This Proceeding

Petitioners argue that the 2023 DSEIS must analyze a scenario in which North Anna operates “in non-compliance with its design basis for an additional twenty years.”¹⁰⁰ That argument is based on an illogical claim that the mere occurrence of the 2011 Mineral earthquake somehow proves that North Anna cannot “be operated safely and without significant adverse environmental impacts.”¹⁰¹ But that claim is irreconcilable with well-documented facts. As noted above, even though the 2011 Mineral earthquake exceeded North Anna’s design basis, the safety features of the plant performed as expected, the plant achieved safe shutdown, and there were no environmental impacts associated with the event. As a practical matter, if the 2011 Mineral earthquake demonstrates anything, it is that North Anna *can* be operated safely and without adverse environmental impacts even under beyond-design-basis circumstances—in other words, the *exact opposite* of what Petitioners are claiming (without any factual basis) here. Because this line of argument is wholly unsupported, it provides no basis for an admissible contention.

Further, as the licensing board in the initial phase of this proceeding explained, the NRC’s formal conclusion following its extensive technical and regulatory assessment of the 2011 Mineral earthquake was that “the design basis for the facility remained suitable to support continued

⁹⁹ *Fla. Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 6 and 7)*, LBP-11-6, 73 NRC 149, 234-235 (2011) (citing *USEC, CLI-06-10*, 63 NRC at 456).

¹⁰⁰ Petition at 10.

¹⁰¹ *Id.* at 9.

operation.”¹⁰² To the extent Petitioners seek an evidentiary hearing for the purpose of challenging that conclusion,¹⁰³ they are raising their claim in the wrong forum.

It is settled law that a contention challenging a plant’s CLB is outside the limited scope of a license renewal proceeding, as codified in 10 C.F.R. Part 54.¹⁰⁴ The Commission long ago determined that a reassessment of CLB safety issues at the license renewal stage would be “unnecessary and wasteful”¹⁰⁵ because those issues are “effectively addressed and maintained by ongoing agency oversight, review, and enforcement.”¹⁰⁶ The NRC has long considered its safety assessment of seismic hazards for existing nuclear power plants to be a “separate and distinct” process from license renewal.¹⁰⁷ More broadly, “[s]eismic conditions are attributes of the geologic environment that are not affected by continued plant operations.”¹⁰⁸ When new seismic hazard information becomes available, the NRC evaluates the new data and models to determine whether any changes to the plant or its licensing basis are needed under the Atomic Energy Act (“AEA”).¹⁰⁹ As a *safety* matter, such issues are addressed on an ongoing basis as part of the plant’s CLB, which is beyond the limited scope of license renewal under 10 C.F.R. Part 54.¹¹⁰

¹⁰² *North Anna*, LBP-21-4, 93 NRC at 206.

¹⁰³ *See, e.g.*, Petition at 10 (suggesting that North Anna’s safety systems are assumed to survive a beyond-design-basis earthquake “only once”).

¹⁰⁴ *Turkey Point*, CLI-01-17, 54 NRC at 7–9.

¹⁰⁵ *Id.* at 7.

¹⁰⁶ *Dominion Nuclear CT, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-04-36, 60 NRC 631, 638 (2004) (citation omitted).

¹⁰⁷ GEIS at 1-21 (“reactor oversight process, which includes seismic safety, remains separate from license renewal”); 2023 DSEIS at 3-26 (“Reactor Oversight Process, which considers seismic safety, is separate and distinct from the NRC staff’s license renewal environmental review.”).

¹⁰⁸ GEIS at 1-22.

¹⁰⁹ *See id.* at 1-21; 2023 DSEIS at 3-26 (“When new seismic hazard information becomes available, the NRC evaluates the new information to determine if any changes are needed at existing nuclear power plants.”).

¹¹⁰ *See* GEIS at 1-21.

Thus, absent a waiver from the Commission,¹¹¹ the acceptability of North Anna’s seismic design basis is beyond the scope of this proceeding. Petitioners never requested, and certainly have not received, any such waiver. And even if Petitioners had requested such a waiver, that request almost certainly would have been denied. As the Commission explained when affirming a licensing board rejection of a waiver request under nearly-identical circumstances:

our rules provide other mechanisms . . . to raise [] concerns that would not require us to redefine the scope of this proceeding. In particular, [a petitioner] “may file a request to institute a proceeding . . . to modify, suspend, or revoke a license, or for any other action that may be proper,” if it believes that [the licensee’s] *seismic design and licensing basis is now invalid and that safe operation of the plant can no longer be assured*. [A petitioner] also may file a petition for rulemaking to expand the scope of our license renewal regulations. We decline to set aside our license renewal regulations to conduct what would be an *entirely different proceeding* when there are more appropriate avenues available for [a petitioner] to seek relief.¹¹²

Likewise, there is no reason to transform this proceeding into something “entirely different” by litigating the acceptability of North Anna’s design basis; and, in any event, doing so would require a waiver that Petitioners have not obtained.

Third, just as the licensing board in the initial phase of this proceeding held, the precise contours of North Anna’s seismic design basis are not material to the evaluation of earthquake-related environmental impacts. In that proceeding, the licensing board noted that the petitioners’ contrary argument “misinterpret[ed]” the environmental evaluation in the GEIS as being “based solely on the plant’s design basis.”¹¹³ As the licensing board correctly explained, the evaluation, in fact, “span[s] both design-basis *and* severe accidents.”¹¹⁴ In other words, it is irrelevant whether a

¹¹¹ See 10 C.F.R. § 2.335 (prohibiting challenges to NRC regulations, including the scope limitations in Part 54, absent a waiver, and prescribing the process for obtaining such waiver).

¹¹² *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-15-21, 82 NRC 295, 307–08 (2015) (citations omitted).

¹¹³ *North Anna*, LBP-21-4, 93 NRC at 205.

¹¹⁴ *Id.* (emphasis added).

given postulated seismic event is within or without the plant’s design basis because the environmental analysis covers *both* scenarios. That is also true as to the site-specific analysis of earthquake-related impacts in the 2023 DSEIS. Just as before, the proposed contention is inadmissible for the simple reason that Petitioners fail to identify *any* unanalyzed environmental impacts from the 2011 Mineral Earthquake—much less, any that would materially undermine the seismic impact conclusions in the 2023 DSEIS.

4. Petitioners’ Miscellaneous Commentary Fails to Support an Admissible Contention

The statement of the contention contains miscellaneous assertions on two other topics. It is not entirely clear how those assertions support, or even relate to, the fundamental challenge in Proposed Contention 1 (that the 2023 DSEIS fails to address the environmental significance of the 2011 Mineral Earthquake). Nevertheless, the discussion below explains why they fail to support an admissible contention.

First, Petitioners complain that “the NRC fails to acknowledge it [sic] or explain the fundamental difference between a finding of no significant or small impact that is based on a deterministic analysis and a finding of no significant impact that is based on a probabilistic analysis.”¹¹⁵ They also mention Mr. Mitman’s opinion that “deterministic analysis is more conservative” than probabilistic analysis and his view that the 2023 DSEIS “should” explain the difference.¹¹⁶ The purpose of this comment is unclear. Petitioners:

- provide no indication in what context this opinion is offered;
- identify no particular discussion in the 2023 DSEIS where this opinion allegedly is relevant; and

¹¹⁵ Petition at 10.

¹¹⁶ *Id.*

- offer no demonstration as to why it somehow raises a material dispute on some unidentified issue.

As a general matter, the Commission long-ago explained that the NRC’s small impacts conclusion on the Design Basis Accidents issue is based on the largely *deterministic* conclusion that “nuclear plants are designed and operated to successfully withstand design basis accidents,” whereas, for the Severe Accidents issue, the Commission reached its small impacts conclusion because “the *probability* of severe accidents is so low.”¹¹⁷ The same framework is presented in the 2023 DSEIS. Mr. Mitman’s vague opinion, and unexplained conclusion about what the 2023 DSEIS “should” discuss, offers nothing to dispute that explanation or show why anything more is required here.

Second, Petitioners claim that the NRC “should” explain the reason for an alleged “disparity” between the seismic risk analyses for North Anna Units 1 and 2 (the units that are the subject of this proceeding) versus those for Unit 3 (which was the subject of a different proceeding, under different regulatory requirements, and which was never built).¹¹⁸ But, yet again, they offer zero explanation as to why such an explanation is required here, what alleged requirement imposes such an obligation, or why the absence of that explanation is somehow material to the sufficiency of the 2023 DSEIS here.

Neither of these miscellaneous comments provide the requisite demonstration of an adequately supported genuine dispute on a material issue, contrary to 10 C.F.R. § 2.309(f)(1)(v)-(vi).

* * *

¹¹⁷ *Indian Point*, CLI-15-6, 81 NRC at 372 (emphasis added).

¹¹⁸ Petition at 10.

At bottom, Petitioners’ speculative, conclusory, and objectively incorrect claims are unsupported, immaterial, out-of-scope, and fail to demonstrate a genuine dispute with the 2023 DSEIS, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi). Accordingly, Proposed Contention 1 is inadmissible.

C. Proposed Contention 2 (Severe Accidents) Is Inadmissible

Proposed Contention 2 challenges the analysis of postulated severe accidents in the 2023 DSEIS.¹¹⁹ In general terms, Petitioners allege that the 2023 DSEIS “does not contain a complete or adequately rigorous evaluation of accident risks because essential data are missing and important analytical assertions are erroneous or misleading.”¹²⁰ More specifically, Petitioners proffer a bulleted list of nine alleged deficiencies.¹²¹ Petitioners claim that these alleged deficiencies deprive the 2023 DSEIS of an adequate basis to conclude “that the environmental impacts of [severe] accidents during a license renewal term are ‘SMALL.’”¹²²

As a general matter, none of these allegations are new. Every topic was addressed in Mr. Mitman’s written comments (styled as a “Technical Review”) on the 2023 DSEIS in February 2024 (the “Mitman DSEIS Comments”).¹²³ And some topics were also addressed in Mr. Mitman’s comments (also styled as a “Technical Review”) on the draft GEIS update in May 2023 (the

¹¹⁹ *Id.* at 12; Mitman Decl. § C.2 (Inadequate support for finding that *Severe Accident* impacts are Small) (emphasis added).

¹²⁰ Petition at 12.

¹²¹ *Id.* at 13-14; Mitman Decl. § C.2.

¹²² Petition at 9.

¹²³ Jeffrey T. Mitman, Technical Review of U.S. Nuclear Regulatory Commission’s Draft Site-Specific Environmental Impact Statement for Subsequent License Renewal of North Anna Power Station Units 1 and 2 With Respect to Accident Analysis (Feb. 22, 2024) (ML24054A091) (“Mitman DSEIS Comments”).

“Mitman GEIS Comments”).¹²⁴ As described below, none of these comments support an admissible contention.

1. Petitioners’ Incorporation by Reference of Mr. Mitman’s Declaration Is Improper and Insufficient to Demonstrate an Admissible Contention

The first defect in the proposed contention is Petitioners’ attempt to incorporate an entire section of Mr. Mitman’s Declaration, without further elaboration on any legal theories, and without any further explanation of how or why the cited content somehow satisfies the admissibility criteria in 10 C.F.R. § 2.309.¹²⁵ In contrast, the Commission has squarely held that perfunctory pleadings such as this are insufficient in NRC adjudicatory proceedings. Accordingly, Proposed Contention 2 should be summarily rejected as a threshold matter.

Instead, Petitioners simply proffer nine bullets that purport to provide one- or two-sentence summaries of Section C.2 of Mr. Mitman’s Declaration.¹²⁶ However, those bullets do not identify which one or more of the 17 paragraphs in Section C.2 they claim as support. And many of those 17 paragraphs, themselves, further cross-reference pages from Mr. Mitman’s 2023 DSEIS Comments.¹²⁷ Yet, the pages of those 2023 DSEIS Comments contain multiple paragraphs with various claims, assertions, and subject matters; and the specific content being cross-referenced is not always apparent. Simply put, Petitioners’ arguments are unclear, confusing to follow, and occasionally indecipherable.

¹²⁴ Jeffrey T. Mitman, “Technical Review of U.S. Nuclear Regulatory Commission’s Draft License Renewal GEIS With Respect to Section 4.9.1.2 (Environmental Consequences of Postulated Accidents) and Appendix E (Environmental Impact of Postulated Accidents)” at 8 (May 2, 2023) submitted with Comments by Beyond Nuclear and the Sierra Club on Proposed Rule and Draft Generic Environmental Impact Statement for Renewing Nuclear Power Plant Licenses (May 2, 2023 and corrected on May 19, 2023) (ML23139A275) (“Mitman GEIS Comments”).

¹²⁵ Petition at 12.

¹²⁶ Compare Petition at 13–14 with Mitman Decl. at §C.2.

¹²⁷ See Comments by Beyond Nuclear and the Sierra Club on Proposed Rule and Draft Generic Environmental Impact Statement for Renewing Nuclear Power Plant Licenses (May 2, 2023) (ML23123A411), corrected on May 19, 2023 (ML23139A275) (“Mitman 2023 DSEIS Comments”).

This is the exact scenario the Commission seeks to avoid by requiring that the parties and the Board “be told at the outset, *with clarity and precision*, what arguments are being advanced.”¹²⁸

It is also why the Commission prohibits wholesale incorporation of more detailed analyses as alleged support for contention admissibility.¹²⁹ As a matter of law, the Commission has held that this approach is insufficient to satisfy a petitioner’s pleading burden:

a wholesale incorporation by reference does not serve the purposes of a pleading. . . . The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may be in a haystack.¹³⁰

Moreover, providing a document or an expert opinion “as the foundation for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of a contention.”¹³¹ In short, the Commission has repeatedly refused to allow petitioners to shift their pleading burden to the presiding officer and other parties by requiring them to examine multiple overlapping expert affidavits or other attachments to identify potential threshold admissibility arguments for a contention when those arguments are not otherwise advanced in the petition. Accordingly, Proposed Contention 2 is inadmissible for failing to satisfy these bare minimum pleading requirements.

2. Petitioners’ Nine Bullets Do Not Demonstrate an Admissible Contention

Even assuming the Board and the parties were obligated to search for the “needle that may be in a haystack” (they are not), they will find no such “needle” here. At best, Mr. Mitman

¹²⁸ *Wolf Creek*, ALAB-279, 1 NRC at 576 (emphasis added).

¹²⁹ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 100 (2022) (citing *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240–41 (1989)).

¹³⁰ *Seabrook*, CLI-89-3, 29 NRC at 240–41.

¹³¹ *S.C. Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-10-6, 71 NRC 350, 361 (2010) (citing *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 63 (2008); *Fansteel*, CLI-03-13, 58 NRC at 204).

flyspecks the NRC Staff’s analysis of Severe Accidents, but fails to articulate any reason *why* the 2023 DSEIS falls short of some unexplained legal or regulatory obligation or *how* any alleged deficiency renders the NRC’s analysis materially inadequate. To be clear, Mr. Mitman is not an attorney, does not claim to be an environmental expert, and professes no particular expertise in the requirements of NEPA, 10 C.F.R. Part 51, or NRC contention admissibility criteria.¹³² Indeed, his declaration mentions none of these things. Given that the discussion of Proposed Contention 2 in the Petition, itself, also is devoid of any meaningful engagement with NEPA, 10 C.F.R. Part 51, or NRC contention admissibility criteria, it is unclear how the Board could conclude that Petitioners have made an affirmative demonstration of admissibility, as required by 10 C.F.R. § 2.309(f)(1).

As detailed below, the conclusory statements offered in the nine bullets on pages 13 to 14 of the Petition, even taken at face value, fail to identify any material defect, deficiency, or omission in the 2023 DSEIS’s analysis of Severe Accidents. Generally speaking, Petitioners fail to acknowledge the full extent of the Severe Accidents analysis. And contrary to the threshold materiality requirement for admissible contentions, Petitioners fail to show how these comments would result in any change to the NRC’s probability-weighted *conclusion* regarding Severe Accidents as applied to North Anna. And many of the bullets and underlying comments make demonstrably incorrect factual assertions, rely on demonstrably incorrect readings of source documents, or disregard publicly available information that resolves the alleged concern. Thus, Petitioners have not identified, with the requisite particularity, any material insufficiency in the NRC’s analysis.

First Bullet: Petitioners claim that the 2023 DSEIS is inadequate “as a general matter” because it allegedly includes “broad generalizations about external event core damage frequency

¹³² See Mitman Decl. ¶ 1.

(“CDF”) based on extrapolations from internal event CDF values and limited actual plant-specific values for external event CDF.”¹³³ However, Petitioners do not identify any specific alleged “generalizations” they seek to challenge; do not explain any reason this vague criticism raises a material issue; and do not cite any supporting source material.

To the extent that this statement is intended to criticize the longstanding framework in which the risks of severe accidents initiated by internal events have been found to bound the risks of severe accidents initiated by external events,¹³⁴ it fails to demonstrate a material dispute. Petitioners offer no explanation as to why that approach falls short of some unspecified legal or regulatory requirement. Moreover, the Commission itself has endorsed this exact approach in two prior rulemakings to codify the analyses and conclusions in the GEIS regarding severe accidents.¹³⁵ Far more than Petitioners’ unexplained conclusory statement is required to show a genuine dispute.

Second Bullet: Petitioners claim that the 2023 DSEIS ignores “data regarding seismic and fire core damage frequency (CDF).”¹³⁶ However, they do not identify any particular “data” that allegedly has been disregarded; do not point to any specific portion of any analysis where that unidentified data should be considered; and do not explain why this vague circumstance somehow creates a material deficiency in that unidentified analysis. And Petitioners cite no supporting authority for this bare assertion.

To the extent that Petitioners’ assertion is based on paragraph 32 of Mr. Mitman’s Declaration, that also fails to support an admissible contention. That paragraph, in turn, cross-

¹³³ Petition at 13.

¹³⁴ See, e.g., 2023 DSEIS at F-10 (summarizing the 1996 LR GEIS and 2013 LR GEIS treatment of this issue).

¹³⁵ See generally Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Final rule, 61 Fed. Reg. 28,467, 28,480 (June 5, 1996); Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Final rule, 78 Fed. Reg. 37,282, 37,289 (June 20, 2013).

¹³⁶ Petition at 13.

references page 5 of Mr. Mitman’s 2023 DSEIS Comments. However, the cross-referenced page does not, on its face, appear to contain a discussion of either fire CDF or seismic CDF.

Petitioners also claim that it is a “fact that the occurrence of the 2011 Mineral Earthquake, by itself, increased the risk of an earthquake severe enough to damage safety equipment.”¹³⁷ They also criticize the 2023 DSEIS for disregarding this alleged “fact.”¹³⁸ But no further explanation is provided. Frankly, the logic for this seemingly circular assertion—that the occurrence of an earthquake *per se* “increases the risk” of an earthquake—is not at all clear. In any event, conclusory assertions such as this are facially insufficient for an admissible contention.

Third Bullet: Petitioners criticize as “erroneous” the statement on page F-26 of the 2023 DSEIS that there has been “a substantial decrease in internal event CDF.”¹³⁹ The full statement from that page of the 2023 DSEIS references the “substantial decrease in internal event CDF at North Anna *from the previous SAMA analysis.*”¹⁴⁰ That decrease is further detailed on page F-9 of the 2023 DSEIS, which explains that:

The North Anna internal events CDF in the initial license renewal SAMA was approximately 3.50×10^{-5} /year (VEPCO 2001-TN8297). The current North Anna internal events PRA model of record has a CDF of approximately 1.36×10^{-6} /year (VEPCO 2020-TN8099). This change represents a 96-percent reduction or a factor of 25 reduction in CDF for each unit.¹⁴¹

Based on a brief review of the source documents cited therein,¹⁴² this statement is accurate on its face. Petitioners do not explain why the statement on page F-26, regarding the “substantial

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ 2023 DSEIS at F-26 (emphasis added).

¹⁴¹ *Id.* at F-9.

¹⁴² See 2023 DSEIS at F-31, F-32 (showing “VEPCO 2001-TN8297” and “VEPCO 2020-TN8099” correspond to the environmental reports for North Anna’s initial license renewal and SLR, respectively); VEPCO, North Anna Power Station, Units 1 and 2, Appendix E – Applicant’s Environmental Report, Operating License Renewal Stage

decrease in internal event CDF” is allegedly “erroneous” in any way. This counterfactual claim cannot sustain an admissible contention.

Fourth Bullet: Petitioners allege that the 2023 DSEIS “fails” to consider “external flooding risk with subsequent ingress of water into the turbine building.”¹⁴³ Again, the Petition provides no further explanation, context, or citation to supporting authority for this statement. And as a general matter, this statement ignores the robust discussion in the 2023 DSEIS regarding the NRC-required enhancements in the wake of Fukushima to address external flooding risks.¹⁴⁴ There is thus no basis for the claim that an analysis of external flooding risk was somehow *omitted* from the 2023 DSEIS.

To the extent that this assertion is derived from paragraphs 34 and 35 of Mr. Mitman’s Declaration, it fares no better. Mr. Mitman points to an observation in a footnote in a 2015 NRC Staff assessment noting that a local intense precipitation (“LIP”) event could cause water to enter the Turbine Building.¹⁴⁵ However, Mr. Mitman disregards the very next sentence in that footnote indicating the issue would be “addressed in the focused evaluation.”¹⁴⁶ Indeed, that issue was addressed in the licensee’s “focused evaluation.” Yet, Mr. Mitman entirely disregards that “focused evaluation” and the NRC Staff’s assessment thereof, in which the agency “concluded that the licensee has demonstrated that effective flood protection exists for the LIP . . . during a beyond-design-basis external flooding event at North Anna, assuming appropriate implementation of the

at G-27 (May 29, 2001) (ML011500475) (showing “a base CDF of 3.5E-5/year from the internal events model”); ER at E-4-100, tbl. E4.15-2 (showing the “Base Model Result” for “Internal Events” CDF is “1.36E-06”).

¹⁴³ Petition at 13.

¹⁴⁴ 2023 DSEIS at 3-24 to 3-26 and F-21 (discussing post-Fukushima-required flooding re-evaluations).

¹⁴⁵ Mitman Decl. ¶ 35 (citing Staff Assessment Related to Flooding Hazard Reevaluation Report Near-Term Task Force Recommendation 2.1 Related to the Fukushima Dai-ichi Accident North Anna, Units 1 and 2, tbl. 4.0-2, n.3 (Sept. 25, 2015) (ML15238A844)).

¹⁴⁶ *Id.* at 11, tbl. 4.0-2 n.3.

regulatory commitments identified in the licensee’s [focused evaluation].”¹⁴⁷ Mr. Mitman’s incomplete review of, and selective citations to, the relevant regulatory history falls far short of demonstrating a genuine dispute.

Fifth Bullet: Petitioner claims the 2023 DSEIS makes “misleading statements” regarding “Fukushima-related information relevant to North Anna.”¹⁴⁸ The Petition provides no further explanation for this claim and no citation or reference to any supporting material.

To the extent this claim corresponds to paragraph 39 of Mr. Mitman’s declaration, which nit-picks the Staff’s characterization of the Fukushima “close-out” letter for North Anna,¹⁴⁹ it fails to articulate a genuine material dispute. As summarized in the 2023 DSEIS, that letter confirmed that the NRC completed its review of North Anna’s Fukushima-related information and “concluded that no further regulatory actions were needed to ensure adequate protection or compliance with regulatory requirements, thereby reconfirming the acceptability of North Anna’s design basis.”¹⁵⁰ Mr. Mitman claims this statement is “grossly misleading” because the letter makes no reference to “adequate protection” or “confirming the design basis.”¹⁵¹ But Mr. Mitman provides no explanation of why the summary is, in any way, misleading, much less how the NRC’s specific language in that letter is in any way material to this proceeding. Nevertheless, the Staff’s summary is wholly accurate. As a general matter, “there is reasonable assurance of adequate protection when a licensee

¹⁴⁷ Letter from F. Vega, NRC, to D.G. Stoddard, Innsbrook Technical Center, Dec. 15, 2017, regarding “North Anna Power Station, Units 1 And 2—Staff Assessment of Flooding Focused Evaluation (CAC Nos. MF9916 and MF9917; EPID L-2017-JLD-0046)” at 2 (Dec. 15, 2017) (ML17325B644).

¹⁴⁸ Petition at 13; Mitman Decl. ¶ 39; Mitman DSEIS Comments at 2.

¹⁴⁹ Letter from R.J. Bernardo, NRC, to D.G. Stoddard, VEPCO, June 9, 2020, regarding “North Anna Power Station, Units 1 And 2—Documentation of the completion of required actions taken in response to the lessons learned from the Fukushima Dai-Ichi accident” (June 9, 2020) (ML20139A077).

¹⁵⁰ 2023 DSEIS at F-3.

¹⁵¹ Mitman Decl. ¶ 39.

demonstrates compliance with the Commission’s regulations.”¹⁵² Moreover, in rejecting similar claims by Mr. Mitman related to alleged “wording . . . distinctions”¹⁵³ in a different proceeding, a licensing board explained that the sequence of events culminating in Fukushima “close-out” letters to licensees (such as the one referenced above):

were part of a major, agency order-instituted post-Fukushima effort intended to ensure “that the NRC can continue to have *reasonable assurance of adequate protection of public health and safety* in mitigating the consequences of a beyond-design-basis external event.” This included the related Commission-endorsed effort initiated by the March 2012 NRC Fukushima Section 50.45(f) Letter . . . to use current scientific methodologies and agency regulatory guidance to identify and mitigate seismic and flooding hazards.¹⁵⁴

In other words, notwithstanding the absence of the “magic words” demanded by Mr. Mitman, the legal effect of the Fukushima “close-out” letter for North Anna is precisely as described in the 2023 DSEIS, and Staff’s characterization is not misleading in any way.

Additionally, Petitioners claim that the 2023 DSEIS is “misleading” regarding “risk improvements obtained by NRC and license [sic] efforts after September 2001.”¹⁵⁵ This, too, is entirely unexplained and unaccompanied by any alleged support. To the extent this assertion invokes paragraph 41 of Mr. Mitman’s Declaration, it still does not support an admissible contention. Therein, Mr. Mitman speculates that “the PRA for NAPS that was prepared in 2020” may have “captured” some unspecified “measures”; as a result, Mr. Mitman further speculates that some unspecified portion of the 2023 DSEIS somehow “double-count[s]” those measures.¹⁵⁶

¹⁵² *FirstEnergy Nuclear Op. Co.* (Davis-Besse Nuclear Power Station, Unit 1), DD-04-1, 59 NRC 215, 221 (2004).

¹⁵³ *Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-22-1, 95 NRC 49, 91 (2022).

¹⁵⁴ *Id.* at 90.

¹⁵⁵ Petition at 13.

¹⁵⁶ Mitman Decl. ¶ 41.

Speculation is never a sufficient basis for an admissible contention; and that is doubly true for the vague, layered speculation proffered here.¹⁵⁷

Sixth Bullet: Petitioners claim the 2023 DSEIS “takes inappropriate credit for reductions in environmental risk that are not reflected in the PRA for NAPS.”¹⁵⁸ As with all of the other bullets, no explanation or citation to source material is provided.

To the extent this assertion pertains to paragraph 42 of Mr. Mitman’s Declaration, it still does not support the proposed contention. Therein, Mr. Mitman suggests that Section F.4.1 of the 2023 DSEIS indicates that, even though the NAPS PRA does not include a quantification of baseline security risk, it nevertheless takes inappropriate credit for *reductions* in such risk.¹⁵⁹ But Mr. Mitman simply misreads that portion of the 2023 DSEIS. It does not state or imply the use of any quantified consideration of *security* risk (baseline or reduction) in the PRA. Rather, this discussion notes that certain actions taken at North Anna for the primary purpose of complying with NRC security requirements also have a *secondary or tertiary* beneficial effect on plant *accident* risk.¹⁶⁰ Mr. Mitman identifies no reason why that practical acknowledgement is, in any way, “inappropriate.” And his misreading of the relevant document cannot support an admissible contention.¹⁶¹

¹⁵⁷ *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-15-1, 81 NRC 15, 38–39 (2015) (citations omitted) (“Neither mere speculation nor bare or conclusory assertions, even by an expert, alleging that a matter should be considered will suffice to allow the admission of a proffered contention.”).

¹⁵⁸ Petition at 13.

¹⁵⁹ Mitman Decl. ¶ 42.

¹⁶⁰ *E.g.*, 2023 DSEIS at F-20 (noting that “measures adopted to comply with [certain security requirements] also have a beneficial impact on the level of risk evaluated in a SAMA analysis.”).

¹⁶¹ *Interim Storage Partners, LLC* (WCS Consol. Interim Storage Facility), CLI-20-14, 92 NRC 463, 477–78 (2020) (“misreading” a document is not adequate support); *Ga. Tech.*, LBP-95-6, 41 NRC at 300 (“A petitioner’s imprecise reading of a document cannot” support a litigable contention).

Seventh Bullet: Petitioners argue that the 2023 DSEIS “fails” to consider “uncertainties” in its evaluation of severe accident impacts.¹⁶² Again the Petition is devoid of an explanation or other supporting references. And, on its face, this claim of omission is demonstrably untrue. The 2023 DSEIS analysis of postulated accidents contains an *entire section*, F.3.9, devoted *solely* to the topic of “Uncertainties.”¹⁶³ Neither Petitioners nor Mr. Mitman acknowledge, reference, or dispute even a single word of the relevant discussion.¹⁶⁴ Thus, this counterfactual bullet cannot support an admissible contention.

Eighth Bullet: Next, Petitioners claim that the 2023 DSEIS “does not address the environmental impacts of concurrent multi-unit accidents.”¹⁶⁵ However, the assertion that the 2023 DSEIS entirely omits any consideration of this issue is inaccurate. As the NRC Staff recently explained, “SAMA analyses *do* address multi-unit risk.”¹⁶⁶ Thus, the 2023 DSEIS indeed addresses this issue.

Moreover, Petitioners offer no explanation as to why further consideration of multi-unit risk in some other (unspecified) context would be material to NEPA compliance. As the NRC Staff explained in response to this comment in the context of the GEIS, “[w]hile multi-unit risk may result in modest increases in severe accident risk, other new information regarding these factors suggests that the probability-weighted environmental consequences of severe accidents may be, on

¹⁶² Petition at 13; Mitman Decl. ¶ 43; Mitman 2023 DSEIS Comments at 2–4.

¹⁶³ 2023 DSEIS at § F.3.9.

¹⁶⁴ Mr. Mitman’s commentary on this issue invokes NRC guidance related to the use of PRAs in safety-related decisionmaking under the Atomic Energy Act. Mitman Decl. ¶¶ 43-44. However, that guidance is inapplicable to environmental reviews under NEPA, which imposes an entirely different legal standard.

¹⁶⁵ Petition at 14; Mitman Decl. ¶ 45; Mitman 2023 DSEIS Comments at 15–16; Mitman GEIS Comments at 15–16.

¹⁶⁶ NUREG-1437, Rev. 2, Generic Environmental Impact Statement for License Renewal of Nuclear Plants; Vol. 2, Comment Response Document at A-190 (Mar. 6, 2024) (ML23201A225) (citing NEI-05-01, “Severe Accident Mitigation Alternatives (SAMA) Analysis Guidance Document, Revision A” (2005)).

average, *substantially lower* than previously estimated.”¹⁶⁷ Petitioners do not acknowledge or grapple with this other new information, and do not attempt to explain why or how some (unspecified) information regarding “multi-unit accidents” would materially alter the ultimate conclusion regarding the probability-weighted environmental consequences of severe accidents.¹⁶⁸ That is an unmet *pleading* burden, not an evidentiary one. And it falls squarely on Petitioners. But they have not satisfied it here.

Ninth Bullet: Petitioners allege that the SAMA analysis in the 2023 DSEIS is deficient because it “fail[s] to consider SAMAs that meet criteria for consideration,” and because it “fail[s] to provide documentation of an NRC audit.”¹⁶⁹ These statements are equally as conclusory as the previous eight bullets and are accompanied by no explanation or authority citation. To the extent these conclusory assertions were intended to reference paragraph 46 of Mr. Mitman’s Declaration, which, in turn, cross-references page 7 of his comments on the 2023 DSEIS, they still fail to support an admissible contention.

As to the comment regarding audit documentation, these materials offer no explanation of what legal authority allegedly requires “documentation of an NRC audit” to be included in the 2023 DSEIS or why its alleged absence would be a material omission. Moreover, this claim is rooted in a misreading of the 2023 DSEIS. Specifically, Mr. Mitman points to a reference citation in the 2023 DSEIS that reads “(NRC 2020-TN8100 see Appendix D).”¹⁷⁰ Reference NRC 2020-TN8100 corresponds to a document with an ADAMS Accession Number of ML20351A388.¹⁷¹ Because that

¹⁶⁷ *Id.*

¹⁶⁸ *See* 2023 DSEIS § F.2.

¹⁶⁹ Petition at 14; Mitman Decl. ¶ 46; Mitman 2023 DSEIS Comments at 7.

¹⁷⁰ Mitman DSEIS Comments at 7 (citing 2023 DSEIS at F-25 (lines 7–8)).

¹⁷¹ *Id.*

document (a four-page letter documenting the audit) contains no “Appendix D,” Mr. Mitman leaps to the conclusion that Appendix D of that document has been improperly omitted from the public record. But that claim does not survive even minimal scrutiny. The four-page letter references a single enclosure which is plainly included in the document itself, and the letter does not otherwise reference any “appendices.”¹⁷² Thus, the more logical reading of the reference citation is that it is an internal cross-reference to Appendix D of the 2023 DSEIS, which *does* include an Appendix D.¹⁷³ And that appendix provides a chronology of the environmental review correspondence—including the referenced 4-page letter.¹⁷⁴ Mr. Mitman’s misreading of the reference citation provides no basis for a contention.

Petitioners’ comment regarding consideration of SAMAs, too, is based on a misreading of a document by Mr. Mitman. Specifically, he challenges the 2023 DSEIS conclusion that no SAMAs were found to “reduce the maximum benefit by 50 percent or more.”¹⁷⁵ The basis for his challenge is that the applicant found a “SAMA with a Phase 1 risk reduction of 57%.”¹⁷⁶ The relevant text of the 2023 DSEIS states that the applicant identified a SAMA case that:

yielded an internal events[] LLRF (Large Late Release Frequency) reduction of 57 percent. However, Dominion explained that the total change in the Maximum Benefit for [that] case is well below 50 percent.¹⁷⁷

¹⁷² Letter from R.B. Elliott, NRC, to D.G. Stoddard, Innsbrook Technical Center, Dec. 17, 2020, regarding “North Anna Power Station, Units 1 and 2 – Summary of the Subsequent License Renewal Serve Accident Mitigation Alternatives Audit (EPID Number: L-2020-SLE-0000) (Docket: 50-338 AND 50-339)” (Dec. 17, 2020) (ML20351A388).

¹⁷³ 2023 DSEIS at App. D.

¹⁷⁴ *Id.* at D-2.

¹⁷⁵ Mitman DSEIS Comments at 7

¹⁷⁶ *Id.*

¹⁷⁷ 2023 DSEIS at F-24 to F-25.

Risk and *maximum benefit* are entirely different concepts in the context of SAMA analysis.¹⁷⁸ And Mr. Mitman obviously conflates those two issues here. Simply put, the 2023 DSEIS observation that no SAMAs were found to “reduce the maximum benefit by 50 percent or more” is entirely accurate. And Mr. Mitman’s misreading of the document does not support an admissible contention.

* * *

Ultimately, these nine bullets do not, individually or collectively, support an admissible contention. First, many of the statements are conclusory and unsupported. Second, several statements fail to provide any rationale as to why the alleged deficiency would change the conclusions in the 2023 DSEIS. And finally, several of the statements are plainly contradicted by information in the 2023 DSEIS. Accordingly, Proposed Contention 2 is unsupported and does not demonstrate a genuine dispute on a material issue, as required by 10 C.F.R. § 2.309(f)(1)(v)-(vi).

D. Proposed Contention 3 (Climate Change / Accident Risk) Is Inadmissible

In Proposed Contention 3, Petitioners allege that the 2023 DSEIS does not satisfy NEPA or 10 C.F.R. § 51.71 “because it does not address the effects of climate change on accident risk.”¹⁷⁹ But the Petition’s scant discussion of the issue fails to challenge a *single word* of the relevant analysis in the 2023 DSEIS, which is considered in the “Postulated Accidents” portion of the 2023 DSEIS. Rather than engage with this analysis, Petitioners make an opaque references to climate change and speculative impacts on accident risk.¹⁸⁰ As discussed below—and as another licensing

¹⁷⁸ See generally NEI 05-01, Rev. A, Severe Accident Mitigation Alternative (SAMA) (Dec. 28, 2005) (ML053500423).

¹⁷⁹ Petition at 15.

¹⁸⁰ See *id.* at 15–16.

board held a few months ago on a nearly identical proposed contention supported by matching assertions from Mr. Mitman—far more is required for an admissible contention.¹⁸¹

1. Petitioners’ Vague Claims Fail to Demonstrate a Genuine Material Dispute

The potential environmental impacts of postulated accidents (including the risk of such accidents) are evaluated under the “Postulated Accidents” issue, which is divided into three distinct sub-issues: (1) Design Basis Accidents, (2) Severe Accidents, and (3) SAMAs. For North Anna, relevant information is spread across multiple environmental documents including the 2002 EIS for North Anna’s initial license renewal (which contains the original SAMA analysis),¹⁸² the 1996 and 2013 GEIS (presenting extensive generic analyses of Design Basis Accidents and Severe Accidents), the 2021 DSEIS (including an updated SAMA analysis and consideration of possible new and significant information on Design Basis Accidents and Severe Accidents), and the 2023 DSEIS (which presents another site-specific analysis of all three sub-issues). Despite the comprehensive evaluation provided across many pages of environmental documents, Petitioners do not engage with or attempt to dispute any *specific* risk evaluation that it claims is inadequate. Indeed, it is not apparent which one (or more) of the sub-issues (Design Basis Accidents, Severe Accidents, or SAMAs) Petitioners dispute. The proposed contention should be rejected for that reason alone.

The Commission has long held that parties are “entitled to be told at the outset, *with clarity and precision*, what arguments are being advanced.”¹⁸³ And the codified admissibility criteria specify that a contention “*must include references to specific portions*” of the analysis being

¹⁸¹ See *Fla. Power & Light Co.* (Turkey Point Generating Station Units 3 and 4), LBP-24-3, 99 NRC __, __ (Mar. 7, 2024) (slip op. at 31–34).

¹⁸² See generally NUREG-1437, Supp. 7, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 7, Regarding North Anna Power Station, Units 1 and 2, Final Report” § 5.2 (Nov. 2002).

¹⁸³ *Wolf Creek*, ALAB-279, 1 NRC at 576 (emphasis added).

challenged.¹⁸⁴ But rather than engage with any “specific portion” of the analysis (in one or more unspecified sub-issue), Petitioners merely offer the vague assertion that the “failure to address climate change impacts on accident risk constitutes a significant deficiency” in some unspecified aspect of the Postulated Accidents analysis because it “demonstrably affects the frequency and intensity of some external events.”¹⁸⁵ Despite their use of the term “demonstrably,” Petitioners offer no corresponding demonstration. And they certainly do not take the next step to explain why the Postulated Accidents analysis somehow is *materially* deficient without the further information they demand. In fact, it is not even clear what, specifically, they are demanding.

At best, Petitioners offer a single generalized “illustration” from Mr. Mitman.¹⁸⁶ But even that offers no support for an admissible contention. Therein, Mr. Mitman alleges that an “example” of the alleged deficiency is the LIP event described in paragraphs 34-37 of his Declaration. But, as explained above in Section III.C.2 (Fourth Bullet), Mr. Mitman’s discussion of that event is wholly unsupported because he failed to review or evaluate the complete regulatory history of that issue, which undermines the entire basis for his purported analysis of that information.

This potpourri of vague assertions, speculative claims, and factual inaccuracies “deprives the Board of the ability to make the necessary, reflective assessment” of Petitioners’ claim.¹⁸⁷ Whereas, far more is required for an admissible contention.

¹⁸⁴ 10 C.F.R. § 2.309(f)(1)(vi) (emphasis added).

¹⁸⁵ Petition at 16.

¹⁸⁶ *Id.* at 16.

¹⁸⁷ *Palisades*, CLI-15-23, 82 NRC at 328 (citation omitted).

2. Petitioners' Reliance on *New York v. NRC* Does Not Provide a Basis For an Admissible Contention on Climate Change

Petitioners argue that the decision by the D.C. Circuit in *New York v. NRC*¹⁸⁸ requires the NRC to consider climate change impacts on accident risk in some unspecified way.¹⁸⁹ According to Petitioners, the *New York* decision requires the NRC to evaluate the effects of climate change unless it can show those effects “are so small as to be ‘remote and speculative.’”¹⁹⁰ Petitioners also claim that the NRC’s reliance on its “ongoing oversight” to address climate risks is the “blinded reasoning” rejected in that decision.¹⁹¹ However, Petitioners’ stretch the *New York* decision far beyond its actual holding.

As brief background, in *New York*, several states, environmental groups, and a Native American community challenged the NRC’s *rulemaking* to update its Waste Confidence Decision (“WCD”).¹⁹² The specific issue decided was whether the rulemaking was a “major federal action” under NEPA and whether there was sufficient evidence for the NRC’s conclusion that a permanent repository would be available “when necessary.” On whether the NRC’s conclusion was sufficiently supported, the court held that it was not. In particular, the court held that the NRC “failed to examine the environmental consequences of failing to establish a repository when one is needed” because the “likelihood of nonavailability” was not “remote and speculative.”¹⁹³

Returning to North Anna and the 2023 DSEIS, the NRC is not claiming that the impacts of climate change are “remote and speculative” and thus need not be analyzed in an EIS. Rather, the

¹⁸⁸ *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)

¹⁸⁹ Petition at 15–16.

¹⁹⁰ *Id.* at 16 (citing *New York*, 681 F.3d at 478).

¹⁹¹ *Id.* at 15–16.

¹⁹² *New York*, 681 F.3d at 473.

¹⁹³ *Id.* at 479.

NRC notes that each plant’s CLB requires it to be able to “withstand the effects of natural phenomena, such as flooding, without loss of capability to perform *safety* functions.”¹⁹⁴ The NRC ensures compliance with this requirement through its ongoing oversight and its safety reviews of proposed operational changes.¹⁹⁵ In other words, the radiological safety of a plant in light of natural phenomena is ensured through the NRC’s continual and rigorous oversight of plant operations.

Separately, the NRC squarely considers the environmental effects of climate change across the full spectrum of environmental issues. The term “climate change” appears 77 times in the 2023 DSEIS. It contains an entire section devoted solely to a discussion of climate change.¹⁹⁶ It discusses observed trends in climate change indicators.¹⁹⁷ It evaluates climate change projections.¹⁹⁸ And it provides specific discussions of climate change in the context of air quality and surface water resources.¹⁹⁹ Furthermore, “Postulated Accidents” (whether caused by climatological phenomena or otherwise) are fully evaluated in the 2023 DSEIS.²⁰⁰ There simply is no basis for Petitioners to allege that the NRC is eschewing an analysis of climate change by claiming its effects “are so small as to be ‘remote and speculative.’”²⁰¹ Taken together, Petitioners’ misplaced reliance on *New York v. NRC* does not demonstrate the existence of a genuine dispute as required by 10 C.F.R. § 2.309(f)(1)(vi).

¹⁹⁴ 2023 DSEIS at 3-194 (emphasis added).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* § 3.14.3.2.

¹⁹⁷ *Id.* at 3-192 to 3-193.

¹⁹⁸ *Id.* at 3-194 to 3-195

¹⁹⁹ *Id.* at 3-195.

²⁰⁰ *Id.* at App. F.

²⁰¹ Petition at 16.

3. Petitioners’ Collateral Attack on Part 54 Is Beyond the Scope of This Proceeding

Lastly, Petitioner cites, and purports to challenge, a passage from the 2023 DSEIS explaining that the “[t]he effects of climate change [on North Anna structures, systems, and components] are outside the scope of the NRC staff’s SLR” environmental review.²⁰² The license renewal safety review has long been limited to certain aging management matters under codified scope limitations in 10 C.F.R. Part 54.²⁰³ CLB safety issues are beyond that codified scope.²⁰⁴ Accordingly, to the extent that Petitioner is demanding the ability to challenge CLB safety issues—such as the integrity of plant systems, structures, and components or their ability to withstand certain meteorological conditions—in this license renewal proceeding, its demand amounts to an impermissible collateral attack on NRC regulations.²⁰⁵ Such attacks are beyond the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii).

Ultimately, Proposed Contention 3 is outside the scope of this proceeding and does not raise a genuine dispute on a material issue, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iii) and (vi).

IV. PETITIONERS’ MOTION FOR LEAVE TO AMEND PROPOSED CONTENTION 3 SHOULD BE DENIED

On April 11, 2024, Petitioners filed the Motion seeking leave to amend Proposed Contention 3 to add a recent report from the GAO as an additional basis for Proposed Contention 3. The GAO’s report, entitled “Nuclear Power Plants: NRC Should Take Actions to Fully Consider the

²⁰² Petition at 15.

²⁰³ 10 C.F.R. §§ 54.21, 54.29(a); *see also Turkey Point*, CLI-01-17, 54 NRC at 7–8.

²⁰⁴ The Commission determined that re-assessments of CLB safety issues at the license renewal stage would be “unnecessary and wasteful” because they are “effectively addressed and maintained by ongoing agency oversight, review, and enforcement.” *Turkey Point*, CLI-01-17, 54 NRC at 7–8; *Millstone*, CLI-04-36, 60 NRC at 638 (citation omitted).

²⁰⁵ 10 C.F.R. § 2.335(a).

Potential Effects of Climate Change” (“GAO Report”),²⁰⁶ was developed in response to a Congressional request for the GAO to review the climate resilience of energy infrastructure.²⁰⁷

While the GAO Report was issued after Petitioners filed their Petition, it contains no information that is materially different from information that has long been available to the public. Petitioners therefore cannot meet the Commission’s “good cause” standard to amend a contention and the Motion should be denied.

A. The Commission Requires a Showing of “Good Cause” for Amended Contentions

Because the initial deadline for filing contentions in this proceeding—as extended by the Secretary—has passed, Petitioners must meet the “good cause” standard in 10 C.F.R. § 2.309(c)(1) to amend Proposed Contention 3. To meet this good cause standard, Petitioners must show that: (i) the information upon which the amended or new contention is based was not previously available; (ii) “[t]he information upon which the filing is based is *materially different* from information previously available; and (iii) [t]he filing has been submitted in a timely fashion based on the availability of the subsequent information.”²⁰⁸ If Petitioners cannot meet this good cause standard, then NRC rules state that their proposed amended contention should “not be entertained.”²⁰⁹

²⁰⁶ *Id.*, Attach. A (April 2024) (“GAO Report”) (Government Accountability Office, GAO-24-106326, Nuclear Power Plants: NRC Should Take Actions to Fully Consider the Potential Effects of Climate Change).

²⁰⁷ GAO Report at 2.

²⁰⁸ 10 C.F.R. § 2.309(c)(1) (emphasis added).

²⁰⁹ *Id.*

B. The GAO Report Does Not Contain Any Information Materially Different From Information Previously Available

Petitioners make little effort to explain why the amended proposed contention meets the good cause standard in 10 C.F.R. § 2.309(c)(1).²¹⁰ Applicants do not dispute that the GAO Report was unavailable when the Petition was filed, nor that Petitioners filed their Motion in a timely manner.²¹¹ But Petitioners must also show that “the information upon which the filing is based is *materially different* from information previously available.”²¹² They have not done so here.

The materiality requirement is a crucial element of the good cause standard and serves “as a check to prevent petitioners from filing new contentions based on new information that is insignificantly different from previously available information.”²¹³ Thus, “[p]reviously available information that is newly acquired by the petitioner does not constitute good cause, as ‘new and amended contentions must be based on *new facts* not previously available.’”²¹⁴ As the Commission put it, to conclude otherwise “would effectively allow a petitioner or intervenor to delay filing a contention until a document becomes available that collects, summarizes and places into context the facts supporting that contention,” and “turn on its head the regulatory requirement that new contentions be based on ‘information . . . not previously available.’”²¹⁵

²¹⁰ As to the first and third criteria in 10 C.F.R. § 2.309(c)(1), Applicants do not dispute that the GAO Report was unavailable when the Petition was filed nor dispute that Petitioners filed the Motion in a “timely fashion” after the GAO Report was published.

²¹¹ 10 C.F.R. § 2.309(c)(1)(i), (iii).

²¹² *Id.* § 2.309(c)(1)(ii).

²¹³ *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 6 & 7), LBP-17-6, 86 NRC 37, 48 n.9 (2017).

²¹⁴ *Holtec Int’l* (HI-STORE Consol. Interim Storage Facility), LBP-19-4, 89 NRC 353, 374 (2019) (citing *Kan. Gas & Elec. Co.* (Wolf Creek Generating Station, Unit 1), LBP-84-17, 19 NRC 878, 886 (1984) and quoting *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 493 n.70 (2012) (emphasis in original)); *see also DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-1, 81 NRC 1, 7 (2015) (requiring “a material difference between the information on which the contention is based and the information that was previously available”).

²¹⁵ Amendments to Adjudicatory Process Rules and Related Requirements; Final Rule, 77 Fed. Reg. 46,562, 46,566 (Aug. 3, 2012) (quoting *N. States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 496 (2010)) (“2012 Part 2 SOC”). Moreover, it would be “inconsistent with [the Commission’s]

A brief review of the GAO Report shows that the information therein is neither new nor materially different from information that has long been available to the Petitioners. Petitioners even concede that the GAO Report is “[b]ased on available data.”²¹⁶ And the GAO Report states upfront that it is based on several publicly available data sources.²¹⁷ In short, the GAO Report merely “collects, summarizes and places into context” already-available information, which the Commission has expressly held to be insufficient to satisfy Section 2.309(c)(1)(ii).²¹⁸

Tellingly, Petitioners do not point to any data or information in the GAO report that was previously unavailable to them. Instead, they merely allege that they were “unaware of any previous review by a federal government agency”²¹⁹ compiling such information, and allege that this compilation “confirms” their views.²²⁰ But those allegations, even if true, are irrelevant to the question of whether Section 2.309(c)(1)(ii) has been satisfied here. Ultimately, while it may be a new *compilation* of information that has long been publicly available, Petitioners have not shown that the GAO Report contains any materially different information that first became available on April 2, 2024. Accordingly, the Motion should be denied.

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.’” *Id.*

²¹⁶ Motion at 4.

²¹⁷ GAO Report at 2-4 (citing: (i) “36 articles” identified through “a literature review”; (ii) the most recent National Climate Assessment (NCA); (iii) relevant laws and NRC regulations; (iv) NRC guidance; (v) the NRC’s 2022-2026 Strategic Plan; (vi) NRC office instructions; and (vii) the NRC Inspection Procedure 71111); *see also* GAO Report App. I “Objectives, Scope, and Methodology”; App. II “Available Federal Data on Heat, Cold, Wildfires, Flooding, Storm Surge, and Sea Level Rise.”

²¹⁸ 2012 Part 2 SOC, 77 Fed. Reg. at 46,566; *accord Interim Storage Partners LLC* (WCS Consol. Interim Storage Facility), LBP-19-11, 90 NRC 358, 362 (2019) (report relying on 150 earlier references but providing no new scientific or engineering research cannot support a finding of good cause for an amended contention).

²¹⁹ Motion at 6–7.

²²⁰ *Id.* at 4–5 (repeatedly claiming that GAO-106325 “confirms Petitioners’ assertion”).

C. Proposed Amended Contention 3 Is Still Inadmissible

The Motion proposes to append a series of additional assertions from the GAO Report to the basis statement for Proposed Contention 3.²²¹ But, even with these additional bases, the proposed contention still fails to challenge a *single word* of the relevant analysis in the 2023 DSEIS. Indeed, the GAO Report has no apparent connection to the 2023 DSEIS at all. Accordingly, even if the Motion had satisfied the “good cause” standard to amend the contention (it did not), that amendment would not rectify the multiple deficiencies that render Proposed Contention 3 inadmissible.

Appending a discussion of the GAO Report would do nothing to cure the fundamental failure of original Proposed Contention 3 to proffer a challenge that demonstrates a genuine dispute with the 2023 DSEIS. Not a single one of the new basis statements purports to engage with or attempts to dispute any *specific* portion of the 2023 DSEIS. Instead, many of those bases invoke generalized discussions of climate-change-driven extreme weather in the GAO Report.²²² Not only do these assertions fail to dispute the 2023 DSEIS, they appear generally consistent with the discussion therein.²²³ Furthermore, the GAO Report pertains to CLB safety issues that are beyond the scope of this proceeding. As Petitioners admit, the GAO Report is framed “in terms of reactor safety rather than environmental impacts.”²²⁴ Collectively, nothing in the new proffered basis statements identifies a dispute with the 2023 DSEIS—much less a material one. Thus, Proposed Amended Contention 3 is still inadmissible.

²²¹ See generally *id.*

²²² *Id.* at 4.

²²³ Compare, e.g., *id.* at 4 (discussing hurricane hazards and changing weather patterns over the past 4 decades) with 2023 DSEIS at 3-193 (“Since the 1980s, the intensity, frequency, and duration of North Atlantic hurricanes have increased.”).

²²⁴ Motion at 6.

At best, the GAO Report presents little more than a generalized discussion of *potential* gaps in and dissatisfaction with the NRC’s regulatory *regime* regarding climate change. But this sort of generalized discussion, that presents no criticisms specific to the 2023 DSEIS, falls well short of satisfying the admissibility requirements.²²⁵ Instead, Petitioners seek to use the GAO Report to shoehorn North Anna’s CLB into this proceeding and to attack the sufficiency of the NRC’s environmental and safety regulations, both of which are improper. Thus, the addition of the GAO Report to the “Basis Statement” does not support the admission of the proposed contention.

In past adjudicatory proceedings, petitioners have cited GAO reports as purported bases for proposed contentions. Presiding officers have often found that such reports do not provide an independent basis for the admission of a contention because they do not pertain directly to the application being considered. For example, one licensing board found that a GAO report provided useful “background” on issues raised in a petition.²²⁶ But the board did not rely on the GAO report to admit a contention.²²⁷ The Commission has also not accorded much weight to generalized conclusions in GAO reports or claims extrapolated from these generalized conclusions. For example, in the recent license transfer proceeding for the Palisades Nuclear Power Plant, the Commission found that petitioners’ costs estimates, which were derived from industry-wide cost estimates in a GAO report, were too general to support an admissible contention.²²⁸ Moreover,

²²⁵ See *Tenn. Valley Auth.* (Bellefonte Nuclear Power Plant), LBP-08-16, 68 NRC 361, 388 (2008) (denying admission of a contention that relied on a GAO report because the contention failed “to provide any evidence of environmental or safety concerns” specific to the application and constituted “no more than an inadmissible generalized grievance regarding NRC’s enforcement and regulatory policies.”).

²²⁶ *Va. Elec. & Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 312 n.82 (2008) (discussing a GAO report on the status of low-level radioactive waste disposal availability and the pending closure of the Barnwell, South Carolina facility to non-Atlantic Compact states).

²²⁷ See *id.* at 293-325 (admitting a safety contention as a contention of omission but denying the environmental portion of the contention related to storage and disposal of low-level radioactive waste).

²²⁸ *Palisades*, CLI-22-8, 96 NRC 1. “While the GAO table is broadly cited as support for Joint Petitioners’ ultimate estimate . . . none of these categories are specifically identified as forming the basis for the . . . estimate developed by Joint Petitioners.” *Id.* at 84.

when, as here, petitioners seek to use a GAO report to raise a “generalized grievance” about the “NRC’s enforcement and regulatory policies” without “specific disputed facts” relevant to the license application, the contention is inadmissible.²²⁹

In amending the proposed contention’s basis to include the GAO report, Petitioners are attempting, improperly, and yet again, to reopen North Anna’s CLB in this license renewal proceeding. To do so, Petitioners rely on the GAO Report’s statement that climate-related risks have changed since nearly every plant’s construction and that North Anna is among 47 plants the GAO Report identified as having an increased flood hazard risk.²³⁰ The subtext of these claims is that North Anna’s CLB is insufficient to address climate-change related flooding risks. But as discussed above, a plant’s CLB is beyond the scope of a license renewal proceeding and therefore, Petitioners’ attempt to reopen North Anna’s CLB here must be rejected.²³¹

Petitioners also rely on GAO Report to challenge the sufficiency of the NRC’s environmental and license renewal regulations, despite not having received a waiver to do so.²³² Petitioners claim that the GAO report “confirms” their assertion that the NRC “did not ‘fully consider’ the effects of climate change” in its post-Fukushima safety reviews.²³³ Petitioners also claim that the NRC’s failure to “fully address the effects of climate change on reactor safety” casts doubt on whether the NRC’s “licensing and oversight processes” are adequate to address climate-related risks.²³⁴ In other words, Petitioners imply that the NRC’s current regulations are insufficient

²²⁹ *Bellefonte*, LBP-08-16, 68 NRC at 388.

²³⁰ Motion at 4 (citing GAO Report at 19, 39).

²³¹ *Turkey Point*, CLI-01-17, 54 NRC at 8–9; *see also* GAO Report at 36, n.53 (“Licensees are not required to reevaluate their plant’s design basis pertaining to natural hazards as part of the license renewal process.”).

²³² 10 C.F.R. § 2.335.

²³³ Motion at 5 (citing GAO Report at 36).

²³⁴ *Id.* (citing GAO Report at 39).

and seek to rely on the GAO Report as support. But without a waiver from the Commission to challenge NRC regulations, such claims are outside the scope of an adjudicatory proceeding.²³⁵

Moreover, Petitioners' assertions about the findings in the GAO Report go well beyond what the text of that document will bear. To be clear, the GAO Report did not conclude that there are any gaps, shortcomings, or insufficiencies in the NRC's existing regulatory framework. It simply suggests that the agency should conduct a self-assessment to determine "whether" its licensing and oversight processes are adequate.²³⁶

Taken together, the GAO Report's general recommendations are insufficient to support an admissible contention and do nothing to cure the admissibility defects in the original Proposed Contention 3. Moreover, Petitioners' attempt to use the GAO Report to reexamine North Anna's CLB and criticize the NRC's regulatory regime is improper and seeks to raise issues that are outside the scope of this proceeding.

Accordingly, Proposed Amended Contention 3 is inadmissible because it fails to satisfy 10 C.F.R. § 2.309(f)(1)(iii), (v), and (vi).

* * *

The Motion should be denied because Petitioners have not shown "good cause" to amend Proposed Contention 3, or because Proposed Amended Contention 3 is inadmissible, or for both of these reasons.

V. CONCLUSION

As established above, the Board should DENY the Motion, DENY the Petition, and TERMINATE the proceeding.

²³⁵ 10 C.F.R. § 2.335.

²³⁶ GAO Report at 40.

Respectfully submitted,

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Dated in Washington, DC
this 6th day of May 2024

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)

VIRGINIA ELECTRIC AND POWER COMPANY)
and OLD DOMINION ELECTRIC COOPERATIVE)

(North Anna Power Station, Units 1 and 2))
_____)

) Docket Nos. 50-338-SLR-2 and
) 50-339-SLR-2

) May 6, 2024

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing
“APPLICANTS’ ANSWER TO THE HEARING REQUEST AND PETITION TO
INTERVENE AND MOTION FOR LEAVE TO AMEND CONTENTION 3 BY BEYOND
NUCLEAR AND SIERRA CLUB” was served upon the Electronic Information Exchange (the
NRC’s E-Filing System), in the above-captioned docket.

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