

35YUNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**BEFORE THE COMMISSION**

In the Matter of

VIRGINIA ELECTRIC AND POWER COMPANY

(North Anna Power Station, Units 1 and 2)

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

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**NRC STAFF BRIEF IN RESPONSE TO THE APPEAL  
FILED BY BEYOND NUCLEAR INC. AND SIERRA CLUB, INC. FROM  
THE ATOMIC SAFETY AND LICENSING BOARD'S DECISION IN LBP-24-07**

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August 30, 2024

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**INTRODUCTION**

Pursuant to 10 C.F.R. 2.311(b), the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby responds to the appeal filed by Beyond Nuclear Inc. and Sierra Club, Inc. (collectively, Petitioners) on August 5, 2024,<sup>1</sup> seeking review of the Atomic Safety and Licensing Board's (Board) decision in LBP-24-07.<sup>2</sup> In that decision, the Board found that the Petitioners had not shown that their March 28, 2024 petition to intervene<sup>3</sup> presented at least one admissible

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<sup>1</sup> Notice of Appeal of LBP-24-07 by Beyond Nuclear and the Sierra Club (Aug. 5, 2024) (Notice) (ML24218A285); Brief by Beyond Nuclear and the Sierra Club on Appeal of LBP-24-07 (Aug. 5, 2024) (Pet. Brief) (ML24218A287).

<sup>2</sup> *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), LBP-24-07, 100 NRC \_\_\_\_ (July 10, 2024) (slip op.).

<sup>3</sup> See (1) Hearing Request and Petition to Intervene by Beyond Nuclear and the Sierra Club (Mar. 28, 2024) (Petition) (ADAMS Accession No. ML24088A028); (2) Hearing Request and Petition to Intervene by Beyond Nuclear and the Sierra Club (Mar. 28, 2024, corrected Apr. 8, 2024) (Corrected Petition) (ML24099A146); and (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) (Amended Contention) (ML24102A199).

contention, and it therefore denied the Petition and terminated the proceeding.<sup>4</sup> As discussed below, the Staff submits that the Petitioners have not shown that the Board committed any error of law or abuse of discretion in its decision. Accordingly, Petitioners' appeal should be denied.<sup>5</sup>

In the following discussion, the Staff (1) summarizes the background of this proceeding; (2) discusses the applicable legal principles; and (3) demonstrates that the Board correctly denied each of the Petitioners' three contentions.

### **BACKGROUND**

This proceeding concerns the application submitted by Virginia Electric and Power Company (Dominion or Applicant) in August 2020 for the subsequent license renewal of Renewed Facility Operating License Nos. NPF-4 and NPF-7,<sup>6</sup> to permit an additional 20 years of operation of North Anna Units 1 and 2 until April 1, 2058, and August 21, 2060, respectively.<sup>7</sup> North Anna Units 1 and 2 are located on an 1,803-acre (730-hectare) site in Louisa County, Virginia, adjacent to Lake Anna in northeastern Virginia, approximately 40 miles (64 km) northwest of Richmond and seven miles (11 km) northeast of Mineral, Virginia.<sup>8</sup>

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<sup>4</sup> The Board's decision was joined in by Administrative Judges Dr. Arnold and Trikouros. Administrative Judge Gibson filed a separate opinion, in which he concurred in the Board majority's rulings on standing and the admissibility of Contentions 1 and 2 but dissented from the majority's ruling on Contention 3.

<sup>5</sup> On August 28, 2024, the NRC Staff issued the North Anna subsequent renewed licenses. See Letter from Michele Sampson (Director, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation) to Eric S. Carr (President, Nuclear Operations and Chief Nuclear Officer), Subject: Issuance of Subsequent Renewed Facility Operating License Nos. NPF-4 and NPF-7 for North Anna Power Station, Units 1 and 2 (Aug. 28, 2024) (ML24215A262).

<sup>6</sup> North Anna Power Station Units 1 and 2, Application for Subsequent License Renewal (August 2020) (ML20246G696) (SLRA). The SLRA included an environmental report that relied, in part, on the generic determinations for "Category 1" issues identified in 10 C.F.R. Part 51, Appendix B, Table B-1, and NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," Rev. 1 (June 2013) (2013 GEIS) (ML13107A023) (ADAMS Package). See "Appendix E, Applicant's Environmental Report, Subsequent Operating License Renewal Stage, North Anna Power Station Units 1 and 2" (ML20246G698) (2020 ER).

<sup>7</sup> See SLRA at 1-7. The current renewed operating licenses for Units 1 and 2 were issued in March 2003 and expire at midnight on April 1, 2038 and August 21, 2040, respectively. See North Anna Power Station, Unit No. 1, Renewed Facility Operating License No. NPF-4 at 9 (ML052990145); North Anna Power Station, Unit No. 2, Renewed Facility Operating License No. NPF-7 (ML052990147).

<sup>8</sup> ER at E-3-1, E-3-2. A portion of the site extends into Spotsylvania County, VA. *Id.*

Commencement of the North Anna SLR Proceeding

The NRC published a notice of receipt of the North Anna SLRA on September 21, 2020.<sup>9</sup> On October 15, 2020, the Staff determined that the application was acceptable for docketing, and published a notice of opportunity to request a hearing and petition for leave to intervene.<sup>10</sup> On December 14, 2020, three organizations (including the Petitioners) filed (1) a request for hearing and petition to intervene, in which they proffered a single contention challenging the Environmental Report's alleged failure to consider the environmental significance of a beyond-design-basis magnitude 5.8 earthquake that took place in Mineral, Virginia on August 23, 2011,<sup>11</sup> and (2) a petition for waiver of certain rules in 10 C.F.R. Part 51, to allow them to challenge the NRC's determinations on "Category 1" environmental issues.<sup>12</sup>

An Atomic Safety and Licensing Board was established on December 21, 2020, to preside over the proceeding.<sup>13</sup> On January 8, 2021, the Applicant and Staff filed responses to the petitions, to which the Petitioners replied. Oral argument on the petitions and contentions was held on February 4, 2021. On March 29, 2021, the Board issued LBP-21-4, in which it denied the intervention and waiver petitions and terminated the proceeding.<sup>14</sup> The

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<sup>9</sup> North Anna Power Station, Units 1 and 2, Subsequent license renewal application; receipt, 85 Fed. Reg. 59,334 (Sep. 21, 2020).

<sup>10</sup> 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).

<sup>11</sup> For a summary of the design-basis earthquake and the NRC's oversight activities related to seismic conditions at North Anna following the 2011 Mineral earthquake, see *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), LBP-21-4, 93 NRC 179, 192-96 (2021), *dismissed without prejudice sub nom, Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-22-3, 95 NRC 40 (2022).

<sup>12</sup> Hearing Request and Petition to Intervene by Beyond Nuclear, Sierra Club, and Alliance for Progressive Virginia and Petition for Waiver of 10 C.F.R. §§ 51.53(c)(3)(i), 51.71(d), and 51.95(c)(1), to Allow Consideration of Category 1 NEPA Issues" (Dec. 20, 2020) (ML20349D952).

<sup>13</sup> *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), Establishment of Atomic Safety and Licensing Board (Dec. 21, 2020) (ML20356A175).

<sup>14</sup> *North Anna*, LBP-21-4, 93 NRC 179 (2021).

petitioners filed a petition for Commission review of the Board's decision, and they filed a motion to reopen the proceeding and amend the contention to challenge the Staff's August 2021 Draft Supplemental Environmental Impact Statement (Draft SEIS or DSEIS).

*Issuance of the Commission's February 2022 Decisions*

On February 24, 2022, the Commission issued two seminal decisions regarding the environmental impacts of subsequent license renewal. First, in the *Turkey Point* proceeding, the Commission issued CLI-22-2.<sup>15</sup> In that decision, the Commission reversed its previous decision in CLI-20-3,<sup>16</sup> and held that 10 C.F.R. § 51.53(c)(3) does not apply to SLR applications; that the 2013 GEIS and Table B-1 to 10 C.F.R. Part 51, Appendix B, did not address SLR; and that the Staff's environmental evaluation of the Turkey Point SLR application was therefore incomplete.<sup>17</sup>

Second, the Commission issued CLI-22-3 in the *North Anna, Oconee, Peach Bottom, Point Beach, and Turkey Point* SLR proceedings.<sup>18</sup> In that decision, the Commission (a) stated that it will not issue any further licenses for an SLR term until the Staff has completed "an adequate NEPA review for each application;"<sup>19</sup> (b) directed the Staff "to review and update the 2013 GEIS so that it covers operation during the subsequent license renewal period;"<sup>20</sup> (c) directed the Staff to evaluate Category 1 impacts on a site-specific basis in its

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<sup>15</sup> *Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)*, CLI-22-2, 95 NRC 26 (2022) (majority decision). Recognizing that the Staff had already issued the subsequent renewed licenses for Turkey Point, the Commission left the licenses in place "but with shortened terms to match the end dates of the previous licenses . . . until completion of the NEPA analysis." Commissioner Wright dissented from the majority's decision, except with respect to "the status of the licenses and the path forward to resolve the purported NEPA deficiency." *Id.* at 38.

<sup>16</sup> *Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)*, CLI-20-3, 91 NRC 133 (2020), *rev'd*, CLI-22-2, 95 NRC 26 (2022).

<sup>17</sup> *Turkey Point*, CLI-22-2, 95 NRC at 27, 31.

<sup>18</sup> *Duke Energy Carolinas, LLC (Oconee Nuclear Station, Units 1, 2, and 3)*, CLI-22-3, 95 NRC 40 (2022).

<sup>19</sup> *Id.*, 95 NRC at 41.

<sup>20</sup> Also on February 24, 2022, the Commission issued a decision in the *Peach Bottom* proceeding and a Staff Requirements Memorandum instructing the Staff to submit a rulemaking plan to update 10 C.F.R. (continued. . .)

EISs, pending the issuance of a revised GEIS; and (d) dismissed the environmental contentions, motions and appeals that were pending in those proceedings.<sup>21</sup>

In CLI-22-3, the Commission provided two possible paths forward for the North Anna and other SLR proceedings. The Commission observed that “the most efficient way to proceed is to direct the Staff to review and update the 2013 GEIS,” and to then update the plants’ EISs to consider the environmental impacts of SLR.<sup>22</sup> But the Commission also provided an alternative: It afforded applicants an opportunity to submit a revised environmental report providing information on the site-specific environmental impacts of SLR for their plants and stated that “[a]fter each site-specific review is complete, a new notice of opportunity for hearing, *limited to contentions based on new information in the site-specific environmental impact statement*, will be issued.”<sup>23</sup>

#### *The NRC Staff’s Environmental Evaluations*

On August 25, 2021, the Staff published a Notice in the *Federal Register*,<sup>24</sup> informing the public that it had issued for comment a draft supplement (Draft SEIS) to the 2013 GEIS,<sup>25</sup> evaluating the environmental impacts of SLR for North Anna Units 1 and 2.<sup>26</sup> Consistent with

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Part 51 and the 2013 GEIS to address the environmental impacts of SLR. See (1) *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-22-4, 95 NRC 44 (2022); and (2) Staff Requirements --SECY-21-0066 —“Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses – Environmental Review (RIN 3150-AK32; NRC-2018-0296)” (Feb. 24, 2022) (ML22053A308).

<sup>21</sup> *Oconee*, CLI-22-3, 95 NRC at 42. The Commission observed that “because the NRC will be updating the GEIS and site-specific environmental analyses, it would be inefficient to continue litigating any of the pending environmental contentions based on environmental information that may change.” *Id.* at 42 n.6.

<sup>22</sup> *Id.*, 95 NRC at 41.

<sup>23</sup> *Id.*, 95 NRC at 42 (emphasis added).

<sup>24</sup> Virginia Electric and Power Company; Dominion Energy Virginia; North Anna Power Station, Unit Nos. 1 and 2, Draft Supplemental Environmental Impact Statement; Request for Comment, 86 Fed. Reg. 47,525 (Aug. 25, 2021).

<sup>25</sup> NUREG-1437, Rev. 1, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Final Report, (June 2013) (2013 GEIS) (ML13107A023) (ADAMS Package). The 2013 GEIS revised the 1996 GEIS. NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Main Report, Final Report (May 1996) (1996 GEIS) (ML040690705, ML040690738).

<sup>26</sup> NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Draft Supplement 7, Second Renewal, Draft Report for Comment (Aug. 2021) (Draft SEIS) (ML21228A084).

prior practice, the Draft SEIS relied upon the determinations for Category 1 generic issues contained in the 2013 GEIS, evaluated any new and significant information that was identified on Category 1 issues, and evaluated the site-specific (“Category 2”) impacts of SLR for North Anna.

On September 28, 2022, following the Commission’s issuance of CLI-22-2 and CLI-22-3, the Applicant submitted a site-specific Environmental Report, replacing its previous ER for North Anna SLR, in which it sought a site-specific evaluation of the environmental impacts of SLR for North Anna.<sup>27</sup> The Staff then published a notice of intent to conduct scoping and to prepare a site-specific EIS,<sup>28</sup> and in December 2023, the Staff issued a site-specific Draft Environmental Impact Statement (DEIS or Draft EIS) for comment, which superseded the August 2021 Draft SEIS.<sup>29</sup> The DEIS presented a site-specific evaluation of all environmental issues that had been treated as generic “Category 1” issues in the 2013 GEIS; in addition, the DEIS reproduced the Staff’s evaluations of “Category 2” issues that had appeared in the 2021 DSEIS, revised and updated to consider new information. In accordance with CLI-22-3, the Staff published a notice of opportunity for hearing, limited to “new information discussed in the DEIS.”<sup>30</sup>

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<sup>27</sup> Letter from James E. Holloway (Vice President- Nuclear Engineering and Fleet Support) to NRC Document Control Desk, Subject: 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).

<sup>28</sup> Virginia Electric and Power Co., North Anna Power, Units 1 and 2; Notice of Intent to Conduct Scoping Process and Prepare Supplement to Draft Environmental Impact Statement, 87 Fed. Reg. 68522 (Nov. 15, 2022). The Notice stated, in part, that the DEIS “supersedes” the August 2021 Draft SEIS, evaluates the environmental impacts of SLR on a site-specific basis for issues considered as Category 1 issues in the 2021 DSEIS, and considers any significant new information that would change the Staff’s conclusions.

<sup>29</sup> NUREG-1437, Supplement 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).

<sup>30</sup> Virginia Electric and Power Co.; North Anna Power Station Units 1 and 2; Draft Environmental Impact Statement; Request for comment; public comment meetings; opportunity to request a hearing and to petition for leave to intervene, 89 Fed. Reg. 960, 961 (Jan. 8, 2024). The Commission later upheld the Staff’s publication of the notice of opportunity for hearing upon issuance of the DEIS, as a reasonable interpretation of CLI-22-3. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI-24-1, 99 NRC 33, 34 (2024); *accord*, *Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), Order of the Secretary (Mar. 13, 2024) (unpublished).

*The Petitioners' Second Petition to Intervene*

In response to the Staff's second notice of opportunity for hearing, the Petitioners filed a petition to intervene on March 28, 2024, as later corrected and amended. In their Petition, the Petitioners presented three contentions challenging the analyses discussed in the December 2023 site-specific Draft EIS. Answers to the Petition were filed by the Applicant and Staff,<sup>31</sup> to which the Petitioners replied.<sup>32</sup> An Atomic Safety and Licensing Board was established to preside in this proceeding.<sup>33</sup> The Board then issued a series of Orders in which it, *inter alia*, (1) established general procedural requirements for the proceeding;<sup>34</sup> (2) scheduled oral argument on the Petition;<sup>35</sup> (3) granted the Petitioners' motion to amend Contention 3;<sup>36</sup> and (4) requested the parties' views<sup>37</sup> on the effect of the Commission's May 16, 2024 adoption of a final rule revising 10 C.F.R. Part 51 and Appendix B, Table B-1 and its approval of a revision of the 2013 GEIS.<sup>38</sup>

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<sup>31</sup> See (1) Applicant's Answer to the Hearing Request and Petition to Intervene and Motion for Leave to Amend Contention 3 Filed by Petitioners (May 6, 2024) (ML24127A220); and (2) NRC Staff Answer in Opposition to Petition for Leave to Intervene Filed by Petitioners (May 6, 2024) (Staff Answer) (ML24127A233). The Staff filed a "Compare Document" with its Answer, providing a redline/strikeout comparison of relevant portions of the Draft EIS to the previous (August 2021) Draft SEIS. See Attachment 1 to Staff Answer (May 6, 2024) (ML24127A234).

<sup>32</sup> See Reply by Petitioners to Oppositions to Their Hearing Request and Petition to Intervene (May 20, 2024) (ML24141A287).

<sup>33</sup> *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), Establishment of Atomic Safety and Licensing Board (Apr. 3, 2024) (ML24094A097).

<sup>34</sup> *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), Memorandum and Order (Initial Prehearing Order) (Apr. 4, 2024), as amended and corrected April 15, 2024 (unpublished).

<sup>35</sup> *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), Memorandum and Order (Scheduling Initial Prehearing Conference) (Apr. 10, 2024), as amended April 15, 2024 (unpublished).

<sup>36</sup> *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), Memorandum and Order (Granting Joint Intervenors' Motion to Amend Contention 3) (May 7, 2024), as corrected May 8, 2024 (unpublished).

<sup>37</sup> *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), Memorandum and Order (Request to Address Contention Admissibility and Impacts of Final Rule Applying Generic Environmental Impact Statement to Subsequent License Renewal Period) (May 21, 2024) (unpublished).

<sup>38</sup> See Memorandum from Carrie M. Safford (NRC Secretary) to Raymond V. Furstenu (Acting Executive Director for Operations), Subject: Affirmation Session - SECY-24-0017: Final Rule - Renewing Nuclear Power Plant Operating Licenses - Environmental Review (RIN 3150-AK32; NRC-2018-0296) (SRM) (May 16, 2024) (ML24137A164).

Oral argument on contention admissibility was held on June 3, 2024.<sup>39</sup>

On July 10, 2024, the Board issued its decision in LBP-24-07. In its decision, the Board (in a 2-1 decision) found that the Petitioners had established their standing to intervene,<sup>40</sup> but did not show that at least one of their contentions satisfied the requirements for contention admissibility.<sup>41</sup> The Board therefore denied the Petition and terminated the proceeding.<sup>42</sup>

## **DISCUSSION**

In their petition to intervene, the Petitioners presented three contentions, each of which was rejected by the Board for failing to satisfy the Commission's contention admissibility requirements. On appeal, the Petitioners challenge the Board's determination that their proposed contentions were inadmissible. In the following discussion, the Staff presents, first, a summary of (a) the legal principles applicable to Commission review of the Board's decision, (b) the standards governing the admissibility of contentions, and (c) the environmental evaluation required under NEPA for the review of an SLR application. Second, the Staff provides an analysis showing that the Board correctly held that the Petitioners had not shown that their proposed contentions were admissible.

### **I. Applicable Legal Standards**

#### **A. Standards for Commission Review**

In accordance with 10 C.F.R. § 2.311(c), a Licensing Board decision denying a petition to intervene and/or request for hearing "is appealable by the requestor/petitioner on the question as to whether the request and/or petition should have been granted." As stated in § 2.311(b),

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<sup>39</sup> See *Virginia Elec. & Power Co.* (North Anna Power Station, Units 1 and 2), Official Transcript of Proceedings (June 3, 2024) (ML24157A311).

<sup>40</sup> *North Anna*, LBP-24-07, slip op at 5-8. As the Board noted, the Petitioners' standing to intervene was not contested by the Applicant or Staff. *Id.*, slip op. at 5.

<sup>41</sup> *Id.* at 13-25.

<sup>42</sup> *Id.* at 26.



the appeal must be initiated by filing a notice of appeal and supporting brief and must conform to the requirements of 10 C.F.R. § 2.341(c)(3).

In reviewing a licensing board's decision, the Commission generally defers to the board's threshold rulings on standing and contention admissibility unless it finds an "error of law or abuse of discretion,"<sup>43</sup> and leaves to the board's judgment a determination whether a proposed contention has a sufficient factual basis to be admitted for hearing.<sup>44</sup> Therefore, an appeal from a board's threshold determination on contention admissibility that does not point to an error of law or abuse of discretion by the board, but simply restates the appellant's prior positions and its general disagreement with the board's decision, with or without additional support, will not be granted.<sup>45</sup> For questions of law, the Commission's review is *de novo*.<sup>46</sup> The Commission may affirm a board's decision on any ground supported in the record, whether previously relied upon or not.<sup>47</sup>

## **B. Standards Governing Contention Admissibility**

The requirements governing the admissibility of contentions are set forth in 10 C.F.R. § 2.309(f)(1)-(2). Specifically, a petitioner must "set forth with particularity" the contentions that the petitioner seeks to raise and, for each contention, the petitioner must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;

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<sup>43</sup> See, e.g., *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 710 (2012); see also *Calvert Cliffs Nuclear Project, LLC* and *UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 914 (2009) ("We give substantial deference to our boards' determinations on threshold issues, such as standing and contention admissibility, and we will affirm decisions on the admissibility of contentions where the appellant points to no error of law or abuse of discretion.") (internal quotation marks omitted).

<sup>44</sup> *Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), CLI-16-13, 83 NRC 566, 574 (2016).

<sup>45</sup> *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NR 499, 503-05 (2007); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 NRC 215, 219 (2017).

<sup>46</sup> See, e.g., *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI-16-18, 84 NRC 167-171 (2016).

<sup>47</sup> *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-05-1, 61 NRC 160, 166 (2005).

- (ii) Provide a brief explanation of the basis for the contention;<sup>48</sup>
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;<sup>49</sup>
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action involved in the proceeding;<sup>50</sup>
- (v) Provide a concise statement of the alleged facts or expert opinions that support the petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely;<sup>51</sup> and
- (vi) Provide sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact.<sup>52</sup>

Further, "contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document . . . or otherwise available to a petitioner."<sup>53</sup>

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<sup>48</sup> Contentions cannot be based on speculation and must have "some reasonably specific factual or legal basis." *Entergy Nuclear Vt. Yankee, LLC and Entergy Nuclear Operations, Inc.*, (Vermont Yankee Nuclear Power Station), CLI-15-20, 82 NRC 211, 221 (2015).

<sup>49</sup> The scope of the proceeding is defined by the Commission in its initial hearing notice and order referring the proceeding to the licensing board. See *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000). Any contention that falls outside the specified scope of the proceeding must be rejected. See *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 435-36 (2011).

<sup>50</sup> "A dispute at issue is material if its resolution would make a difference in the outcome of the licensing proceeding." *Holtec International* (Hi-STORE Consolidated Interim Storage Facility), CLI-20-4, 91 NRC 167, 190 (2020) (internal quotations omitted).

<sup>51</sup> See *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006) (it is the petitioner's responsibility to satisfy the basic contention admissibility requirements; boards should not have to search through a petition to "uncover" arguments and support for a contention, and "may not simply 'infer' unarticulated bases of contentions"); see also *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149, 155 (1991).

<sup>52</sup> To show that a genuine dispute exists, the contention "must include references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute"; if the petitioner believes that the application fails to contain information on a relevant matter, "the contention must identify each failure and the supporting reasons for the petitioner's belief." *Exelon Generation Co., LLC.* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-20-11, 92 NRC 335, 342 (2020).

<sup>53</sup> 10 C.F.R. § 2.309(f)(2). As a general rule, for issues arising under the National Environmental Policy Act of 1969 (NEPA), "the petitioner shall file contentions based on the applicant's environmental report." *Id.* This general rule is not applicable here, as the Commission directed in CLI-22-3 that contentions are to be filed upon completion of the Staff's environmental evaluation.

The NRC's regulations governing contention admissibility are intended to "focus litigation on concrete issues and result in a clearer and more focused record for decision."<sup>54</sup> The Commission has explained that the contention admissibility rules are "strict by design."<sup>55</sup> "Failure to satisfy any of the six pleading requirements renders a contention inadmissible."<sup>56</sup> The rules require "a clear statement as to the basis for the contentions and the submission of ... supporting information and references to specific documents and sources that establish the validity of the contention."<sup>57</sup> The "basis" requirements are intended to: (1) ensure that the contention raises a matter appropriate for adjudication in a particular proceeding; (2) establish a sufficient foundation for the contention to warrant further inquiry into the assertion; and (3) put other parties sufficiently on notice of the issues to be litigated.<sup>58</sup> Although a petitioner does not have to prove its contention at the admissibility stage,<sup>59</sup> the contention admissibility standards are meant to afford hearings only to those petitioners who "proffer at least some minimal factual and legal foundation in support of their contentions."<sup>60</sup> The petitioner must provide some

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<sup>54</sup> See, e.g., *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), LBP-20-8, 92 NRC 28, 46 (2020) (quoting "Changes to Adjudicatory Process; final rule," 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004)); *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, NE), LBP-15-15, 81 NRC 598, 601 (2015).

<sup>55</sup> *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2) CLI-16-5, 83 NRC 131, 136 (2016) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001) and *South Carolina Electric & Gas Co. and South Carolina Public Service Authority* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010)). The Commission has stated that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing." Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

<sup>56</sup> *Indian Point*, CLI-16-5, 83 NRC at 136; see also *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334-35 (1999) (the heightened contention admissibility rules are designed to preclude contentions "based on little more than speculation").

<sup>57</sup> *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-19 (2006).

<sup>58</sup> *Oconee*, CLI-99-11, 49 NRC at 333-34; see also *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

<sup>59</sup> *Private Fuel Storage L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004).

<sup>60</sup> *Oconee*, CLI-99-11, 49 NRC at 334.

support for the contention, either in the form of facts or expert testimony, and failure to do so requires that the contention be rejected.<sup>61</sup> Any supporting material provided by the petitioner is subject to scrutiny by the presiding officer,<sup>62</sup> who must confirm that the proffered material provides adequate support for the contention.<sup>63</sup>

If a petitioner neglects to provide the requisite support for its contentions, the presiding officer should not make assumptions of fact that favor the petitioner or search for or supply information that is lacking.<sup>64</sup> Moreover, providing any material or document as a basis for a contention without explaining its significance is grounds for the presiding officer to reject the contention.<sup>65</sup> In sum, the information, facts, and expert opinions provided by the petitioner must be examined by the presiding officer to determine whether they provide adequate support for the proffered contentions.<sup>66</sup>

The Commission has held that, absent a waiver, a contention must be rejected if it challenges applicable statutory requirements, regulations, or the basic structure of the Commission's regulatory process.<sup>67</sup> Further, contentions that are nothing more than a generalization providing the petitioner's view of what applicable policies ought to be must also be rejected.<sup>68</sup> And attempts to advocate for requirements stricter than those imposed by

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<sup>61</sup> *Palo Verde*, CLI-91-12, 34 NRC at 155; *accord*, *Indian Point*, CLI-16-5, 83 NRC at 136.

<sup>62</sup> See *Vermont Yankee Nuclear Power Co.* (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990).

<sup>63</sup> *Vermont Yankee*, ALAB-919, 30 NRC at 48.

<sup>64</sup> See *American Centrifuge Plant*, CLI-06-10, 63 NRC at 457.

<sup>65</sup> See *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 205 (2003).

<sup>66</sup> *American Centrifuge Plant*, CLI-06-10, 63 NRC at 457; see *Bellefonte*, LBP-10-7, 71 NRC at 421.

<sup>67</sup> As set forth in 10 C.F.R. § 2.335(a), "no rule or regulation of the Commission ... is subject to attack ... in any adjudicatory proceeding," in the absence of a waiver petition granted by the Commission. Further, any contention that amounts to an attack on applicable statutory requirements or represents a challenge to the basic structure of the Commission's regulatory process must be rejected. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 218 (2003).

<sup>68</sup> *Millstone*, CLI-03-14, 58 NRC at 218.

regulation constitute collateral attacks on the NRC's rules and are therefore inadmissible.<sup>69</sup>

### C. Requirements for Environmental Review of License Renewal Applications

Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. § 4321 *et seq.*,<sup>70</sup> requires federal agencies to include in any recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

- (i) The reasonably foreseeable environmental impact of the proposed agency action;
- (ii) Any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;
- (iii) A reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;
- (iv) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
- (v) Any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.

In accordance with its NEPA responsibilities, the NRC is required to take a “hard look” at the environmental impacts of a proposed major federal action that could significantly affect the environment, as well as reasonable alternatives to that action.<sup>71</sup> This “hard look” is tempered “by a ‘rule of reason’—consideration of environmental impacts need not address ‘all theoretical

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<sup>69</sup> *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 315 (2012) (citations omitted); see *Peach Bottom*, ALAB-216, 8 AEC at 20-21 (explaining that a contention that seeks to raise an issue that is not proper for adjudication in the proceeding or that does not apply to the facility in question, or seeks to raise an issue that is not concrete or litigable must also be rejected).

<sup>70</sup> National Environmental Policy Act of 1969 (NEPA), Section 102(2)(C), 42 U.S.C. § 4332, as amended by the Fiscal Responsibility Act of 2023.

<sup>71</sup> See *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1998); *Crow Butte Resources, Inc.* (Marsland Expansion Area), LBP-19-2, 89 NRC 18, 40 (2019).

possibilities,' but rather only those that have 'some possibility' of occurring."<sup>72</sup> An agency thus need only address impacts that are reasonably foreseeable; the "agency need not perform analyses concerning events that would be considered 'worst case' scenarios ... or those considered 'remote and highly speculative.'"<sup>73</sup> NEPA "does not call for certainty or precision, but an *estimate* of anticipated (not unduly speculative) impacts."<sup>74</sup> And NEPA gives agencies "broad discretion 'to keep their inquiries within appropriate and manageable boundaries.'"<sup>75</sup> As the Commission has observed, "NEPA requires consideration of 'reasonable' alternatives, not all conceivable ones."<sup>76</sup>

The regulations in 10 C.F.R. Part 51 establish the NRC's requirements for compliance with NEPA, including the environmental review of license renewal applications. As set forth in 10 C.F.R. § 51.20(b)(2), an environmental impact statement is required for "[i]ssuance or renewal of a full power or design capacity license to operate a nuclear power reactor." The requirements for preparation and distribution of draft and final EISs are set forth in 10 C.F.R. § 51.70 *et seq.*, and § 51.90 *et seq.*, respectively. Specific requirements for environmental evaluations of license renewal applications are included in 10 C.F.R. Part 51.<sup>77</sup>

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<sup>72</sup> *Crow Butte Resources, Inc.*, LBP-19-2, 89 NRC at 40 (quoting *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-156, 6 AEC 831, 836 (1973)).

<sup>73</sup> *Holtec International* (HI-STORE Consolidated Interim Storage Facility), LBP-19-4, 89 NRC 353, 357 (2019) (quoting *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 754-55 (3d Cir. 1989)).

<sup>74</sup> *Crow Butte Resources*, LBP-19-2, 89 NRC at 40 (quoting *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005)).

<sup>75</sup> *Crow Butte Resources*, LBP-19-2, 89 NRC at 40 (quoting *Claiborne Enrichment Center*, CLI-98-3, 47 NRC at 103).

<sup>76</sup> *Seabrook*, CLI-12-5, 75 NRC at 338. Further, an EIS "need only discuss those alternatives that ... will bring about the ends of the proposed action—a principle equally applicable to Environmental Reports." *Id.* at 339 (footnotes and quotation marks omitted).

<sup>77</sup> See, e.g., 10 C.F.R. §§ 51.71(d) & 51.95(c). 10 C.F.R. Part 51, Appendix B, Table B-1, sets forth a list of findings on NEPA issues for license renewal. As noted *supra* at 8, the Commission recently adopted revisions to 10 C.F.R. Part 51 and Appendix B, Table B-1, and approved a 2024 revision of the 2013 GEIS, addressing the environmental impacts of initial license renewal and one SLR term. The revised rule becomes effective on September 5, 2024; compliance by SL applicants is not required until one year from the date of publication. See Final rule and guidance; issuance, *Renewing Nuclear Power Plant Operating Licenses—Environmental Review*, 89 Fed. Reg. 64166 (Aug. 6, 2024).

**II. The Board Correctly Held That the Petitioners Failed to Present at Least One Admissible Contention as Required by 10 C.F.R. §§ 2.309(a) and (f)(1).**

In their brief on appeal, the Petitioners contend that the Board erred in rejecting their three contentions. As more fully set forth below, the Staff submits that the Board correctly rejected all three of the contentions, and the Petitioners have not shown that the Board committed any error or abuse of discretion in doing so. The Board's decision in LBP-24-07 should therefore be affirmed.

**A. Contention 1 Failed to Demonstrate a Genuine Dispute, Lacked Specificity, and Raised Safety Issues Concerning North Anna's Seismic Design Basis That Are Beyond the Scope of This Proceeding**

In Contention 1, the Petitioners asserted that the Draft EIS "fails to address [the] environmental significance of the 2011 Mineral Earthquake."<sup>78</sup> The Petitioners claimed that the "Draft SEIS"<sup>79</sup> fails to address "the environmental significance of the 2011 Mineral Earthquake, whose epicenter was a short distance from the two reactors and whose ground motion exceeded the design basis levels for both reactors."<sup>80</sup> While the Petitioners described this as an "environmental" contention, the contention actually raises a safety issue, claiming as follows:

By exceeding the reactors' design basis, the earthquake disproved the assumption underlying the NRC's issuance of operating licenses in 1978 (for Unit 1) and 1980 (for Unit 2) and renewal of those licenses [in] 2003, that the reactors could be operated safely and without significant adverse environmental impacts because their SSCs were built to a design basis of sufficient rigor to protect against likely earthquakes. This assumption can also be found in the 2013 License Renewal GEIS and the Draft SEIS for the North Anna SLR application.<sup>81</sup>

The Petitioners asserted that "the NRC must explicitly address . . . whether the environmental

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<sup>78</sup> Corrected Petition at 9 (capitalization omitted).

<sup>79</sup> The Petitioners' contentions incorrectly refer to the Staff's December 2023 site-specific Draft EIS as a "Draft SEIS" or "DSEIS." That Draft EIS, however, was a site-specific EIS, published in accordance with the Commission's decision in CLI-22-3, and was not published as a "supplement" to any previous EIS.

<sup>80</sup> Corrected Petition at 9.

<sup>81</sup> *Id.* at 9-10.

impacts of operating North Anna Units 1 and 2 in noncompliance with its design basis for an additional twenty years will have significant impacts,” and they cited the Declaration of their expert, Mr. Jeffrey Mitman, in support of various claims challenging the adequacy of the Staff’s previous safety analyses of the 2011 Mineral, VA Earthquake, and the sufficiency of actions taken by the NRC in response to the March 2011 Fukushima earthquake and tsunami.<sup>82</sup>

In LBP-24-07, the Board observed that Contention 1 could be viewed as a “contention of omission,” insofar the Petitioners’ claimed that the Draft EIS fails to address “the question of whether the environmental impacts of operating North Anna Units 1 and 2 in noncompliance with its design basis for an additional twenty years will have significant impacts.”<sup>83</sup> The Board correctly found, however, that Contention 1 is inadmissible because “the Draft EIS in Section 3.4.4 does indeed discuss the 2011 Mineral earthquake and the extensive regulatory review that followed it,” and “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.” Accordingly, the Board held that the Petitioners failed to show a genuine dispute with the Draft EIS on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).<sup>84</sup>

The Board also identified a second reason for rejecting Contention 1. Citing the contention’s failure to point to specific requirements that were allegedly left unsatisfied by the Draft EIS, the Board correctly concluded that “Contention 1 is also inadmissible because it is so vague and unparticularized that it fails to provide a specific statement of fact to be raised as required by 10 C.F.R. § 2.309(f)(1)(i).”<sup>85</sup>

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<sup>82</sup> *Id.* at 9-11. The Staff notes that the Board addressed those matters at length in LBP-21-4, in rejecting the Petitioners’ previous contention concerning the Mineral Earthquake. See *North Anna*, LBP-21-4, 93 NRC at 204-08 and 209-12.

<sup>83</sup> LBP-24-07, slip op. at 13.

<sup>84</sup> *Id.*, slip op. at 14.

<sup>85</sup> *Id.*, slip op. at 14-15.



Finally, and more fundamentally, the Board recognized that Contention 1 was inadmissible as a “contention of adequacy” (claiming that the Draft EIS’s discussion of a particular issue is inadequate), in that the issue raised in the contention concerned the sufficiency of North Anna’s seismic design basis – a safety issue that is beyond the permissible scope of issues that can be considered in a license renewal proceeding. The Board observed that the NRC considers the effect of seismic hazards on plant safety for existing nuclear power plants to be a “separate and distinct” process from license renewal, whereby such safety issues are addressed “on an ongoing basis as a part of the plant’s current licensing basis.”<sup>86</sup> In addition, the Board took note of the previous Board’s decision in LBP-21-4, which held that the Petitioners’ “nearly identical contention concerning this 2011 earthquake” was inadmissible under the 10 C.F.R. § 2.309(f)(1) criteria.<sup>87</sup>

In their brief on appeal, the Petitioners assert, first, that the Board erroneously rejected Contention 1 as a “contention of omission,” claiming that the Board relied on risk evaluations in the Draft EIS and the Applicant’s submittals that are “*exclusively probabilistic*.”<sup>88</sup> However, the Petitioners’ own argument demonstrates that the Draft EIS did, in fact, address the Mineral Earthquake. Accordingly, as the Board found, Contention 1 should be rejected as a “contention of omission” for failing to show a genuine dispute exists with the Draft EIS on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).<sup>89</sup>

Second, the Petitioners claim that the Board erred in finding that Contention 1 is “broad and unparticularized.”<sup>90</sup> In their view, Contention 1 had adequately identified “the location in the Draft EIS” of “the incorrect assumption on which the Draft EIS relies,” and had explained the

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<sup>86</sup> LBP-24-07, slip op. at 15.

<sup>87</sup> *Id.*

<sup>88</sup> Pet. Br. at 17; emphasis is original.

<sup>89</sup> LBP-24-07, slip op. at 14.

<sup>90</sup> Pet. Br. at 18.

environmental significance of relying on a probabilistic risk assessment rather than a deterministic judgment.<sup>91</sup> The Petitioners' conclusory assertions do not overcome the fact that Contention 1 lacked the requisite specificity to be admissible. Thus, while Contention 1, itself, does not point to any alleged deficiencies in the Staff's DEIS, it cites and relies upon Sections B and C.1 of Mr. Mitman's Declaration,<sup>92</sup> in which he presented concerns for the seismic safety of North Anna Units 1 and 2, citing a technical report he had authored.<sup>93</sup> Significantly, nowhere in his Declaration or Report did Mr. Mitman identify any specific deficiencies in the DEIS. Instead, his claims were general in nature, without reference to any specific assumption, input, calculation, or methodology in the DEIS that he believes to be inadequate; nor did he provide any specific assumption, input, calculation or methodology of his own, which he believed would lead to a result different from the DEIS conclusions.<sup>94</sup> And, nowhere did he provide any analysis to support his claims that the Staff erred in concluding (a) that the environmental impacts of design basis accidents are SMALL;<sup>95</sup> (b) that the probability-weighted consequences of severe accidents are SMALL;<sup>96</sup> (c) that there are no additional SAMAs that warrant imposition;<sup>97</sup> or

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<sup>91</sup> *Id.*

<sup>92</sup> Corrected Petition at 11; See Mitman Declaration, §§ B and C.1 (¶¶ 8-30), at 3-8.

<sup>93</sup> In support of his Declaration, Mr. Mitman cited and relied, in part, upon a technical report attached to his Declaration. See "Technical Review of [NRC'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 Submitted by Jeffrey T. Mitman to the [NRC] on behalf of Beyond Nuclear, Inc." (Feb. 22, 2024) (Mitman Report).

<sup>94</sup> For example, Mr. Mitman opined that some type of deterministic analysis should be performed – but he did not perform his own deterministic analysis, did not show that such an analysis would produce results different from those relied upon in the DEIS, and did not show how a deterministic analysis would apply to the Staff's customary probabilistic evaluation of severe accident mitigation alternatives. Nor did Mr. Mitman establish that a deterministic evaluation of seismic hazards is required to satisfy the Commission's safety standards for license renewal in 10 C.F.R. Part 54. Similarly, while Mr. Mitman questioned why the Staff treated the seismic hazard for North Anna Units 1 and 2 differently than the seismic hazard for a proposed Unit 3, Pet. Br. at 18, they point to no flaw in the Staff's analyses; and fail to establish that the design and seismic hazards for all three plants are identical.

<sup>95</sup> DEIS, Appendix F, at F-5

<sup>96</sup> *Id.* at F-18.

<sup>97</sup> *Id.* at F-26 - F-27.

(4) that the DEIS's determination of "SMALL" impact "lacks adequate supporting factual data and/or qualitative information and does not reflect the use of sufficiently rigorous or up-to-date analytical methods with respect to . . . the 2011 Mineral Earthquake."<sup>98</sup> Accordingly, the Board correctly held that Contention 1 should be rejected in accordance with 10 C.F.R. § 2.309(f)(1)(i).

Finally, the Petitioners dispute the Board's finding that Contention 1 was inadmissible in that it raised a safety issue that is outside the scope of license renewal.<sup>99</sup> Significantly, they do not dispute the Board's finding that the contention raised a safety issue, or even that seismic design basis concerns are beyond the scope of license renewal. Moreover, Contention 1 did not challenge the Staff's evaluation of the environmental impacts of either a design-basis earthquake or a beyond-design-basis earthquake such as the 2011 Mineral Earthquake; rather, Contention 1 challenged the Staff's seismic safety determinations – which were made years ago concerning the safety of continued operation of the facility and which are wholly beyond the scope of subsequent license renewal<sup>100</sup> – and failed to confront the Staff's December 2023 DEIS evaluation of new and significant information that could affect its previous determinations regarding accidents that might occur due to either design-basis or beyond-design basis events.

In their brief, the Petitioners make the unsupported assertion that the Board erroneously "assum[ed]" that "the concerns of NEPA and the Atomic Energy Act are completely separate."<sup>101</sup> The Petitioners then argue that the two statutes "overlap; and indeed, NEPA encompasses

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<sup>98</sup> Mitman Declaration ¶ 24, at 7-8.

<sup>99</sup> Pet. Br. at 19-20.

<sup>100</sup> To be admissible for litigation in a license renewal proceeding, safety contentions must address the applicant's compliance with the safety standards for license renewal, as set forth in 10 C.F.R. § 54.29; these include (1) managing the effects of aging on the functionality of structures, systems and components within the scope of the rule, and (2) time-limited aging analyses. Issues concerning the safety of continued operation that are not unique to license renewal, are addressed as part of the NRC's oversight of operating reactors and are beyond the scope of the license renewal proceeding. See *generally*, Final rule; Nuclear Power Plant License Renewal; Revisions, 88 Fed. Reg. 22461, 22464-65 (May 8, 1995). *Cf. Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 637-38 (2004); *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 6–10 (2001).

<sup>101</sup> Pet. Br. at 19.

Atomic Energy Act-based safety concerns.”<sup>102</sup> Notwithstanding the novelty of their argument, the Petitioners fail to show that the Board misunderstood both the proper scope of safety issues for subsequent license renewal and the NRC’s obligation to consider the environmental impacts of SLR. Indeed, the Commission’s dual obligations to consider both the safety and environmental impacts of its license renewal decisions are well defined in 10 C.F.R. Part 54 and 10 C.F.R. Part 51, respectively, and the Petitioners’ attempt to fuse the regulatory framework for safety reviews with the framework for environmental reviews should be rejected. Moreover, the Petitioners fail to provide any reason to believe that the Board erred in holding that Contention 1’s challenge to the adequacy of the North Anna seismic design basis is not subject to adjudication in a license renewal proceeding and is not material to the findings that the NRC must make for SLR, as required by 10 C.F.R. § 2.309(f)(1)(iii) & (iv). For all the above reasons, the Board’s determination that Contention 1 was inadmissible should be affirmed.

**B. Contention 2 Failed to Challenge the Staff’s Evaluation of New and Significant Information Regarding North Anna’s Severe Accident Mitigation (SAMA) Analysis in the Draft EIS**

In Contention 2, the Petitioners asserted that the Draft EIS “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,” and that the Staff therefore lacks “an adequate basis for concluding that the environmental impacts of accidents during a license renewal term are “SMALL.”<sup>103</sup> The Petitioners then proffered nine assertions, set out in bullet points in Section C.2 of Mr. Mitman’s Declaration, to support of this contention.<sup>104</sup>

In LBP-24-07, the Board considered each of the claims presented by the Petitioners, and correctly concluded that Contention 2 “falls short for (1) its failure to ‘set forth with particularity the [contention] sought to be raised,’ and (2) its failure to show that a genuine dispute exists

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<sup>102</sup> *Id.*

<sup>103</sup> Corrected Petition at 12.

<sup>104</sup> *Id.* at 12 and 13-14. See Mitman Declaration, § C.2, ¶¶ 31-47, at 9-14.

with the Draft EIS on a material issue of law or fact.”<sup>105</sup> With respect to the first issue, the Board observed that the Petitioners sought to incorporate by reference Mr. Mitman’s Declaration, but failed to explain “the significance or relevance” of his nine bullet points, contrary to the Commission’s expectation that parties “‘clearly identify the matters on which they intend to rely with reference to a specific point,’ rather than forcing the Board itself to search for a needle that may be in a haystack.”<sup>106</sup> Thus, the Board correctly concluded that the Petitioners had failed to set forth their contentions with particularity.<sup>107</sup>

In finding that the Petitioners failed to meet their obligation to demonstrate that a genuine dispute exists with the Draft EIS on a material issue of law or fact, the Board properly applied the Commission’s prior decisions that held that “an expert opinion that ‘merely states a conclusion (e.g., the application is ‘deficient,’ ‘inadequate,’ or ‘wrong’) without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion.”<sup>108</sup> The Board examined the Petitioners’ summaries of Mr. Mitman’s Declaration, and correctly found that they “fail to articulate any reason why the Draft EIS falls short of any legal or regulatory obligations or how this alleged deficiency renders the Draft EIS materially inadequate.”<sup>109</sup>

With respect to the Petitioners’ nine bullet points, the Board found multiple reasons why they failed to support admission of the contention. For example, the Board found that they presented “broad generalizations”; did not establish a failure to meet a statutory or regulatory obligation; did not “identify the ‘data’ that the NRC allegedly ignores” or explain why such data is

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<sup>105</sup> LBP-24-07, slip op. at 16, *citing* 10 C.F.R. §§ 2.309(f)(1), (f)(1)(vi).

<sup>106</sup> *Id.*, *citing* *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 100 (2008); *Pub. Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240–41 (1989).

<sup>107</sup> *Id.*, *citing* 10 C.F.R. § 2.309(f)(1).

<sup>108</sup> *Id.*, at 16-17, *citing* *American Centrifuge Plant*, CLI-06-10, 63 NRC at 472 (*quoting* *Private Fuel Storage, LLC.* (Indep. Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998)).

<sup>109</sup> *Id.*, at 17.

required; did not support their assertion; did not explain why the Draft EIS statements were “erroneous”; did not confront statements in the Draft EIS that considered risks which they claimed had been overlooked; did not explain how the Draft EIS was “misleading”; did not explain why a Draft EIS discussion was incorrect or rendered the Draft EIS deficient; did not identify the “uncertainties” that were not analyzed correctly, and did not confront the Draft EIS discussion of uncertainties; did not acknowledge that the SAMA analysis challenged in the contention had been performed for initial license renewal; and did not provide support for their claim regarding a Staff audit or say which SAMA was not evaluated properly.<sup>110</sup> For all of these reasons, the Board appropriately held that “Contention 2 is inadmissible because it is out of scope, fails to provide support for its assertions, and to demonstrate a genuine dispute with the Draft EIS on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(iii)-(vi).”<sup>111</sup>

On appeal, the Petitioners assert that the Board erred in holding that Contention 2 was deficient for seeking to incorporate a large volume of information contained in Mr. Mitman’s Declaration, rather than stating their claims within the contention.<sup>112</sup> The Petitioners’ argument is without merit. A cursory examination of the Petition reveals that the Board described the contention’s shortcomings correctly. Rather than lay out the bases for the contention and “the significance or relevance” of Mr. Mitman’s assertions, the Petition generally directs the reader to examine Mr. Mitman’s Declaration – which, in turn, directs the reader to Mr. Mitman’s technical report. The Board was therefore justified in finding that the Petitioners had forced the Board to search for a needle in a haystack,<sup>113</sup> instead of clearly stating the bases for their contention.

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<sup>110</sup> See *id.*, at 17-19.

<sup>111</sup> *Id.*, at 20.

<sup>112</sup> Pet. Br. at 21.

<sup>113</sup> Nor is there merit in the Petitioners’ effort to distinguish the Commission’s decision in *Seabrook*. See Pet. Br. at 21, discussing LBP-24-07, slip op. at 16 (*citing Seabrook*, CLI-89-3, 29 NRC at 240-41 (rejecting a party’s incorporation by reference of “massive documents” into a pleading)). Contrary to the Petitioners’ claim (Pet. Br. at 20), Contention 2 did, in fact, attempt to incorporate a large amount of material from other documents, including “five pages of points made by Mr. Mitman in . . . his declaration,” (continued. . .)

The Petitioners were obliged to set forth the bases for their contention, with specificity, as is unambiguously required in 10 C.F.R. § 2.309(f)(1)(i), (ii) & (v). And, it is well established that a Board should not have to search through a petition to “uncover” arguments and support for a contention, nor may a Board “simply ‘infer’ unarticulated bases of contentions.”<sup>114</sup> While the Petitioners claim that Contention 2 was adequately framed because it provides “a bulleted summary of the points made in the five pages of Section C.2 of Mr. Mitman’s Declaration,” they ignore the fact that Mr. Mitman’s Declaration, itself, relies upon lengthy portions of his technical report, rendering it difficult to understand the precise bases for the claims in his Declaration. Accordingly, the Petitioners’ challenge to the Board’s finding that the contention failed to meet the contention basis and specificity requirements in 10 C.F.R. § 2.309(f)(1) should be rejected.

Second, the Petitioners challenge the Board’s determination “that Mr. Mitman’s declaration was conclusory and failed to prov[id]e a ‘reasoned basis or explanation’ for his conclusions.”<sup>115</sup> However, the Petitioners misstate the Board’s decision: The Board did not find that Mr. Mitman lacked a “reasoned basis or explanation for his conclusions,” as the Petitioners would infer; rather, the Board quoted this language from another NRC decision, finding that Mr. Mitman’s Declaration was inadequate insofar as it failed “to articulate any reason why the Draft EIS falls short of any legal or regulatory obligations or how this alleged deficiency renders the Draft EIS materially inadequate.”<sup>116</sup> Rather than point to any legal error or abuse of discretion by the Board, the Petitioners argue that they had presented “the reasoned opinion of

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and many pages from his technical report – as the Petitioners concede. See Pet. Br. at 20. Nor did the Board require the Petitioners to “paste the entirety of Mr. Mitman’s Section C.2 into the body of Contention 2,” thus “exalt[ing] form over substance.” *Id.* at 21. Rather, the Board properly held that the Petitioners are responsible for explaining the bases for their contention without requiring the Board to sift through numerous pages of other documents to discern the contention’s bases.

<sup>114</sup> *American Centrifuge Plant*, CLI-06-10, 63 at 457.

<sup>115</sup> Pet. Br. at 22, *citing* LBP-24-07, slip op. at 16.

<sup>116</sup> LBP-24-07, slip op. at 16-17, *citing American Centrifuge Plant*, CLI-06-10, 63 NRC at 472 (*quoting Private Fuel Storage*, LBP-98-7, 47 NRC at 181).

a qualified expert,” which should have sufficed for admission of the contention.<sup>117</sup> However, the Board examined each of Mr. Mitman’s bullet points, and found them inadequate for many reasons – none of which included the merits of Mr. Mitman’s views or the sufficiency of his technical expertise.<sup>118</sup> The Petitioners’ argument should therefore be rejected.

Third, the Petitioners argue that the Board rejected their nine bullet points “because the details are found in Mr. Mitman’s Declaration rather than the text of the contention itself,” which they claim “erroneously ‘exalt[ed] form over substance.”<sup>119</sup> This claim should be rejected. The Board rejected Mr. Mitman’s claims, in general, because they lacked specificity and failed to establish a genuine dispute with the Draft EIS – deficiencies that precluded admission of the contention, regardless of where those claims were presented.<sup>120</sup>

Finally, the Petitioners argue that for each point, “Mr. Mitman identified a deficiency in the Draft EIS with specificity and also explained how and why the deficiency resulted in an underestimate of accident risk to NAPS.”<sup>121</sup> These conclusory assertions ignore the fact that the

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<sup>117</sup> Pet. Br. at 22

<sup>118</sup> See discussion *supra*, at 21-22.

<sup>119</sup> Pet. Br. at 22-23.

<sup>120</sup> The Board also rejected one of Mr. Mitman’s claims (in Bullet 8 of his Declaration) because it challenged the adequacy of the 2002 initial license renewal SAMA analysis’ treatment of “multi-unit accidents,” which the Board held was “outside the scope of the current relicensing proceeding, failing to meet the contention admissibility criterion of 10 C.F.R. § 2.309(f)(1)(iii).” LBP-24-07, slip op. at 19. The Petitioners do not appeal this portion of the Board’s decision.

Indeed, the Board could have rejected Contention 2, in its entirety, on the grounds that it challenged North Anna’s SAMA analysis for initial license renewal – an issue that is beyond the scope of this SLR proceeding and the notice of hearing opportunity published for this proceeding. Under 10 C.F.R. § 51.53(c)(3)(ii)(L), a SAMA analysis is not required if the Staff previously considered a SAMA analysis for the facility – which the Staff did, for North Anna initial license renewal. See NUREG-1437, Supp. 7, Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding North Anna, Units 1 and 2, Final Report (Nov. 2002) (ML023380542 and ML023380567), at 5-4 to 5-28. For SLR, the Staff considered any new and significant information that could affect its previous evaluation, consistent with 10 C.F.R. §§ 51.53(c)(3)(ii)(L) and 51.53(c)(3)(iv). See Draft SEIS (Aug. 2021) at F-18; Draft EIS (Dec. 2023) at F-18 – F-22. In sum, Contention 2 impermissibly challenged the SAMA analysis conducted for initial license renewal rather than the DSEIS’s evaluation of “new and significant” information for SLR. Thus, the Commission could affirm the Board’s rejection of Contention 2 for this reason, as well. See *Private Fuel Storage*, CLI-05-1, 61 NRC at 166.

<sup>121</sup> Pet. Br. at 23.



Board considered each of Mr. Mitman's points and found them inadequate to support the contention. While the Petitioners disagree with the Board's findings, they do not show any legal error or abuse of discretion by the Board.<sup>122</sup> Their arguments should therefore be rejected.<sup>123</sup>

**C. Contention 3 Failed to Identify Any Specific Deficiency in The Staff's Evaluation of Climate Change in the Draft EIS**

In Contention 3, as amended, the Petitioners asserted that the Draft EIS "fails to address the effects of climate change on accident risk."<sup>124</sup> Further, the Petitioners claimed that "[n]o such discussion can be found in Section 3.11.6.9 or Appendix F [of the Draft EIS]. To the contrary, the NRC asserts that 'the effects of climate change are outside the scope of the NRC staff's SLR review.'"<sup>125</sup> Further, they asserted that the Council on Environmental Quality (CEQ) and other federal agencies recognized that "climate change poses a current and future threat to critical infrastructure that should be addressed"; and they cited Mr. Mitman's claims that the DEIS's purported "failure to address climate change impacts on accident risk constitutes a significant deficiency," "the frequency and intensity of climate change effects are increasing over time," and an increase in accident risk "can be reasonably expected due to climate change."<sup>126</sup>

In LBP-24-07, the Board majority (referred to here as the Board) held that Contention 3 was inadmissible, "because it is out of scope, based on speculation, and lacks the requisite specificity to provide other parties with notice of what they would have to defend against at

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<sup>122</sup> See *id.*, at 22-23.

<sup>123</sup> See, e.g., *Strata Energy*, CLI-16-13, 83 NRC at 574.

<sup>124</sup> Corrected Petition at 15-17. Contention 3 stated that it relies upon Mr. Mitman's Declaration, generally, and without specifying which of his statements it relies upon other than ¶¶ 48 and 51. See Corrected Petition at 16 and 17. The Staff assumes, however, that Contention 3 relies upon Section C.3 of the Declaration ("Inadequate Discussion [of the] Effects of Climate Change on Accident Risk").

<sup>125</sup> Amended Contention (Apr. 11, 2024), at 2. Significantly, the Petitioners' quotation omitted important text from the DEIS; the complete statement in the DEIS was: "The effects of climate change on North Anna structures, systems, and components are outside the scope of the NRC staff's environmental review." DEIS at 3-194 (emphasis added); the Corrected Petition (at 16) omitted the underlined language, which clearly indicated that the effects of climate change on plant safety are outside the scope of the NRC's environmental review.

<sup>126</sup> *Id.* at 2-3 (footnotes omitted).

hearing.<sup>127</sup> First, with respect to “scope,” the Board observed that the *Federal Register* notice of opportunity for hearing limited the scope of this proceeding to “contentions based on new information in the DEIS.”<sup>128</sup> The Board noted that although the Petitioners claimed Contention 3 “concerns a new reactor-specific accident analysis” in the Draft EIS, they “failed to identify that analysis, explain how it is ‘new information in the DEIS,’ or how it differs from previously available information.”<sup>129</sup> The Board then rejected the Petitioners’ attempt to expand the scope of this proceeding, their claim that they need not demonstrate their issues are within the scope of the proceeding, and their claim that the DEIS presented a new analysis that had not been presented previously.<sup>130</sup>

Second, with respect to the contention’s “speculation,” the Board correctly found that while Mr. Mitman provided “numerous examples of how climate effects could impact” the results of the North Anna PRA, “he never addressed whether expected climate change effects near North Anna were sufficient to actually affect North Anna accident risk.”<sup>131</sup> In addition, the Board observed that “neither the Petition itself nor Petitioners’ expert engages with the climate change projections provided in Section 3.14.3.2 of the Draft EIS. Absent such an analysis, the contention did not present a “seriously” different picture of the environmental impact, which the

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<sup>127</sup> LBP-24-07, slip op. at 21,

<sup>128</sup> *Id.*, citing 89 Fed. Reg at 962. The Board observed that the language in the Notice was consistent with the language in CLI-22-3, 95 NRC 40, 42 (2022) (“After each site-specific review is complete, a new notice of opportunity for hearing —limited to contentions based on new information in the site-specific environmental impact statement — will be issued.”). *Id.* at 21 n.109.

<sup>129</sup> *Id.* at 21.

<sup>130</sup> *Id.* at 22. The Board observed, in part, that during oral argument, the “Petitioners established that the “new information” referenced in Petitioners’ scope statement was the Probabilistic Risk Assessment (PRA) that was used to evaluate accident risk; the Board found, however, that the referenced PRA was also outside the scope of this proceeding, as it was part of the SAMA analysis performed for North Anna’s initial license renewal “and is not at this time new information. The actual new analysis in the Draft EIS was an evaluation finding that no new information required reevaluation of the SAMA.” *Id.* Moreover, the Board found that the Petitioners could have challenged the “new evaluation of new information relative to the SAMA analysis, contained in section F.3 of the Draft EIS, . . . but they did not.” *Id.* at 22 n.117.

<sup>131</sup> *Id.* at 22-23.

Commission has held is necessary to provide grounds for an admissible Contention.<sup>132</sup> The Board correctly concluded that while the Petitioners “provided reasonable support for the proposition that climate change effects can alter accident risk, they have provided no factual or expert opinion support for the assertion that climate change effects will affect accident risk at North Anna in a way that provides the requisite ‘seriously different picture’ of environmental impacts. As such, Petitioners have not established that their contention raises a genuine dispute on a material issue.”<sup>133</sup>

Finally, with respect to the lack of “specificity,” the Board conducted a detailed examination of the Petition and Mr. Mitman’s Declaration, and appropriately found that while the Petition claims that Mr. Mitman’s Declaration provided the contention’s specific bases, “it generally does so without specifying exactly what part of the declaration provides the required information.”<sup>134</sup> The Board also observed that “providing a myriad of related information in a declaration in a manner requiring the Board to root through that information to satisfy admissibility criteria is not adequate.”<sup>135</sup> Further, the Board correctly found that although one “could, from the plethora of information provided by Mr. Mitman, retrieve and arrange information that appears to meet admissibility requirements,” it could not guarantee that the result would be what the Petitioners had intended.<sup>136</sup> Accordingly, the Board held that

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<sup>132</sup> *Id.* at 23.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 23-24. The Board provided examples of the problems it encountered in the Petition, including the lack of a “concise statement of the alleged facts or expert opinions,” in that the Petition lacked such details and the Mitman Declaration it relied upon “consists of 37 dense pages of information and opinions.” The Board found that “the petition improperly leaves it to the Board to determine what parts support the petition and how they do so,” and concluded that the Board had no duty to do so, *Id.* at 24-25, *citing American Centrifuge Plant*, CLI-06-10, 63 NRC at 457 (“boards may not simply infer unarticulated bases of contentions. It is a contention’s proponent, not the licensing board, that is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement.”).

Contention 3 failed to satisfy 10 C.F.R. § 2.309(f)(1)(ii), (iii), (v), and (vi).<sup>137</sup>

On appeal, the Petitioners assert that the Board's decision is "erroneous," and they state that they "rely on and incorporate by reference Judge Gibson's dissenting opinion on Contention 3."<sup>138</sup> First, they claim that Contention 3 is within scope, because it concerns "new information," which they describe as the "new reactor-specific accident analysis" in the Draft EIS . . . prepared in response to CLI-22-02 and CLI-22-03."<sup>139</sup> However, they do not identify what analysis they are referring to, even though they acknowledge that "the board faults Petitioners for failing to 'identify that analysis, explain how it is 'new information in the DEIS,' or how it differs from previously available information."<sup>140</sup> Instead, they argue that "any information" in the Draft EIS is new, if it pertains to Category 1 issues, and claim "the environmental impacts of reactor accidents . . . are designated as Category 1 issues in NRC regulations."<sup>141</sup> Contrary to the Petitioners' claims, SAMA analyses (the subject of Contention 3) are treated as Category 2 issues by the NRC, and were evaluated as such by the Staff.<sup>142</sup>

Moreover, while Contention 3 challenged the adequacy of the Staff's evaluation of accident risk resulting from climate change, the North Anna SAMA analysis was conducted over 20 years ago, considered the contribution to risk from external hazards,<sup>143</sup> and was addressed in the Staff's evaluation of that analysis for initial license renewal.<sup>144</sup> Indeed, the only new analysis performed for severe accidents in the Draft EIS (and thus, the only issue within the scope of this

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<sup>137</sup> *Id.* at 25.

<sup>138</sup> Pet. Br. at 24.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 24-25, *citing* LBP-24-07, slip op. at 21.

<sup>141</sup> Pet. Br. at 25; emphasis added.

<sup>142</sup> *See, e.g.*, 10 C.F.R. §§ 51.53(c)(2), 51.53(c)(3)(ii)(L) & Appendix B, Table B-1, "Postulated Accidents"; Draft EIS, § 3.11.6.9 at 3-170, and Appendix F, *passim*.

<sup>143</sup> *See generally*, 10 C.F.R. Part 50, Appendix A, General Design Criterion (GDC) 2.

<sup>144</sup> *See, e.g.*, Draft EIS Appendix F, at F-7 – F-8, discussing the Applicant's 2001 SAMA analysis and the Staff's evaluation thereof for initial license renewal.

proceeding) was the Staff's "review and evaluation of Dominion's analysis of new and potentially significant information regarding SAMAs and the staff's independent analyses as documented in Appendix F of this [2023 Draft] EIS"<sup>145</sup> – which Contention 3 altogether failed to challenge. Moreover, the Petitioners did not identify any specific assumption, input, methodology, or analysis that inadequately addressed the effects of climate change on accident risk, either in the 2002 EIS for initial license renewal or in the Staff's DEIS for SLR – and they did not show that the accident risk posed by climate change constitutes new information that exceeds the risk evaluated in the initial license renewal SAMA analysis.<sup>146</sup> Thus, the contention did not provide the requisite basis or identify a genuine dispute with the DEIS on a material issue, as required by 10 C.F.R. § 2.309(f)(1)(v)-(vi) and the Board correctly rejected it.<sup>147</sup>

The Petitioners' attempt to "incorporate by reference" Administrative Judge Gibson's dissenting opinion<sup>148</sup> does not satisfy their obligation to show that the Board's decision was erroneous.<sup>149</sup> Moreover, they fail to note that the dissenting opinion (a) would have improperly admitted an out-of-scope safety issue (the risk of local intense precipitation-induced flooding of the turbine building) in this Part 54 SLR proceeding,<sup>150</sup> (b) did not recognize that the existing SAMA analysis considered the contribution to risk posed by external hazards,<sup>151</sup> and (c) failed to recognize that the contention did not show that the risk posed by climate change exceeded the

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<sup>145</sup> *Id.*; *cf.* Draft EIS, Appendix F, at F-6; *see id.* at F-8 – F-27.

<sup>146</sup> *See, e.g.*, Mitman Declaration, Section C.2, at 15-17.

<sup>147</sup> *See* Corrected Petition at 16. Contention 3 raised numerous claims concerning plant safety, none of which addressed the requirements in 10 C.F.R. Part 54. Further, their safety claims were outside the scope of the *Federal Register* Notice establishing the limited scope of this proceeding in accordance with CLI-22-03 (requiring contentions to be "based on new information in the site-specific [EIS]") and, indeed, were outside the scope of any license renewal proceeding – notwithstanding the Petitioners' apparent interpretation of Administrative Judge Gibson's dissenting opinion to the contrary. *See* Pet. Br. at 27.

<sup>148</sup> Pet. Br. at 24.

<sup>149</sup> 10 C.F.R. §§ 2.311(b); 2.341(b)(2)(ii)-(iii). Moreover, the Petitioners' attempt to incorporate the dissenting opinion by reference would cause their appeal brief (currently 28 pages long) to swell to 51 pages – far in excess of the 30-page limit mandated by 10 C.F.R. § 2.341(c)(3), as applied in § 2.311(b).

<sup>150</sup> *See* Dissenting Opinion, slip op. at 18-22.

<sup>151</sup> *See id.*, slip op. at 14, 16, 21.

accident risks considered in the SAMA analysis.<sup>152</sup> Further, their reliance on the 2024 GAO Report<sup>153</sup> is misplaced, because the GAO Report focused on the safety impacts posed by climate change,<sup>154</sup> did not address SAMA evaluations or mitigating factors or measures,<sup>155</sup> and did not provide a reason to believe the Draft EIS was deficient.<sup>156</sup> For all of these reasons, the Board's ruling that Contention 3 is inadmissible should be affirmed.

### **CONCLUSION**

For the reasons set forth above, the Staff submits that the Board correctly denied the Petitioners' petition to intervene, for failing to proffer at least one admissible contention. The Petitioners' appeal from the Board's decision in LBP-24-07 should therefore be denied.

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 30<sup>th</sup> day of August 2024

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<sup>152</sup> *Id.* at 3-4, 13-16.

<sup>153</sup> Pet. Br. at 12-15 and 26, *citing* GAO-106326, "Nuclear Power Plants: NRC Should Take Actions to Fully Consider the Potential Effects of Climate Change" (April 2024) (GAO Report).

<sup>154</sup> See, e.g., Amended Contention at 6 ("GAO-106326 describes this concern in terms of reactor safety rather than environmental impacts").

<sup>155</sup> The GAO Report expressly states multiple times that "[t]his analysis does not account for any protective measures plants may have taken to mitigate the risk of selected natural hazards." GAO Report at 17, 20, 22, 24.

<sup>156</sup> Nor is there any merit in the Petitioners' claim that, in ruling that Contention 3 lacks specificity, the Board erroneously considered Mr. Mitman's expertise or the substance of his views. Pet. Br. at 28-29. See discussion *supra*, at 22-25.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**BEFORE THE COMMISSION**

In the Matter of

VIRGINIA ELECTRIC AND POWER  
COMPANY

(North Anna Power Station, Units 1 and 2)

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

**Certificate of Service**

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing “NRC STAFF BRIEF IN RESPONSE TO THE APPEAL FILED BY BEYOND NUCLEAR INC. AND SIERRA CLUB, INC. FROM THE ATOMIC SAFETY AND LICENSING BOARD’S DECISION IN LBP-24-07,” dated August 30, 2024, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the captioned proceeding, this 30<sup>th</sup> day of August, 2024.

**/Signed (electronically) by/**

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Dated at Rockville, MD  
this 30<sup>th</sup> day of August 2024