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January 1, 2025 – June 30, 2025

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PREFACE

This is the one hundred and first volume of issuances (1–254) of the Nuclear Regulatory Commission and its Atomic Safety and Licensing Boards, Administrative Law Judges, and Office Directors. It covers the period from January 1, 2025, to June 30, 2025.

Atomic Safety and Licensing Boards are authorized by Section 191 of the Atomic Energy Act of 1954. These Boards, comprised of three members, conduct adjudicatory hearings on applications to construct and operate nuclear power plants and related facilities and issue initial decisions which, subject to internal review and appellate procedures, become the final Commission action with respect to those applications. Boards are drawn from the Atomic Safety and Licensing Board Panel, comprised of lawyers, nuclear physicists and engineers, environmentalists, chemists, and economists. The Atomic Energy Commission (AEC) first established Licensing Boards in 1962 and the Panel in 1967.

Between 1969 and 1990, the AEC authorized Atomic Safety and Licensing Appeal Boards to exercise the authority and perform the review functions which would otherwise have been exercised and performed by the Commission in facility licensing proceedings. In 1972, that Commission created an Appeal Panel, from which were drawn the Appeal Boards assigned to each licensing proceeding. The functions performed by both Appeal Boards and Licensing Boards were transferred from the AEC to the Nuclear Regulatory Commission by the Energy Reorganization Act of 1974. Appeal Boards represented the final level in the administrative adjudicatory process to which parties could appeal. Parties, however, were permitted to seek discretionary Commission review of certain board rulings. The Commission also could decide to review, on its own motion, various decisions or actions of Appeal Boards.

On June 29, 1990, however, the Commission voted to abolish the Atomic Safety and Licensing Appeal Panel, and the Panel ceased to exist as of June 30, 1991. Since then, the Commission itself reviews Licensing Board and other adjudicatory decisions, as a matter of discretion. *See* 56 FR 29403 (1991).

The Commission also may appoint Administrative Law Judges pursuant to the Administrative Procedure Act, who preside over proceedings as directed by the Commission.

The six-month compilation edition of the Nuclear Regulatory Commission Issuances is a final compilation of the monthly issuances. It includes all of the legal precedents for the agency within a six-month period. Any opinions, decisions, denials, memoranda and orders of the Commission inadvertently omitted from the monthly editions and any corrections submitted by the NRC legal staff to the monthly issuances are contained in the six-month compilation edition. Cross references in the text and indexes are to the NRCI page numbers which are the same as the page numbers in this publication.

Issuances are referred to as follows: Commission (CLI), Atomic Safety and Licensing Boards (LBP), Administrative Law Judges (ALJ), Directors' Decisions (DD), and Decisions on Petitions for Rulemaking (DPRM).

The summaries and headnotes preceding the opinions reported herein are not to be deemed a part of those opinions or to have any independent legal significance.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

G. Paul Bollwerk, III, Chair
Dr. Sue H. Abreu
Dr. Arielle J. Miller

In the Matter of **Docket Nos. 50-269-SLR-2**
50-270-SLR-2
50-287-SLR-2
(ASLBP No. 24-985-03-SLR-BD01)

DUKE ENERGY CAROLINAS, LLC
(Oconee Nuclear Station, Units 1, 2, and 3)

January 17, 2025

In this proceeding concerning a subsequent license renewal (SLR) application by Duke Energy Carolinas, LLC, seeking an additional twenty-year term for the 10 C.F.R. Part 50 operating licenses for the Oconee Nuclear Station, Units 1, 2, and 3 (ONS), the Licensing Board concludes that while petitioners Beyond Nuclear, Inc., and Sierra Club, Inc. (collectively Petitioners) have established their standing to intervene, it denies their hearing request, determining that they have failed to meet the contention admissibility standards of 10 C.F.R. § 2.309(f)(1) for their three contentions alleging (1) deficiencies in the Nuclear Regulatory Commission Staff's National Environmental Policy Act (NEPA) draft site-specific supplemental environmental impact statement regarding the adequacy of the risk analysis associated with a failure of the Jocassee Dam upstream from the ONS facility; (2) the failure of various other ONS-associated risk assessments to meet NEPA requirements; and (3) the failure to address the effects of climate change on ONS accident risk.

RULES OF PRACTICE: STANDING TO INTERVENE (REQUIREMENT FOR INDEPENDENT PRESIDING OFFICER DETERMINATION)

Although Petitioners' assertion that they should be afforded representational standing was not contested, an independent Board determination is required regarding whether each petitioner has met the standing requirements. *See* 10 C.F.R. § 2.309(d)(2); *see also Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 491 (2019), *aff'd on other grounds,* CLI-20-11, 92 NRC 335 (2020).

RULES OF PRACTICE: STANDING TO INTERVENE (REQUIREMENT THAT PRESIDING OFFICER DETERMINATION BE BASED ON INFORMATION IN CURRENT CASE)

The fact that the petitioning organizations are the same in both a prior proceeding, in which they were found to have standing, and this proceeding does not relieve the Board of its responsibility to make a standing determination based on the information provided by Petitioners in this case. *See PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010) (stating "petitioner must make a fresh standing demonstration in *each* proceeding in which intervention is sought because a petitioner's circumstances may change from one proceeding to the next.").

RULES OF PRACTICE: STANDING (REPRESENTATIONAL)

To obtain standing, an organization must identify itself and its interest in the proceeding by providing the information required by 10 C.F.R. § 2.309(d)(1). *See* 10 C.F.R. § 2.309(d)(1)(i)-(iv) (requiring that a hearing petition include a petitioner's name, address, and phone number; a showing regarding the petitioner's right under the Atomic Energy Act to be a party; a showing of the petitioner's interest in the proceeding; and a demonstration of the possible effect of any determination in the proceeding on the petitioner's interest). Further, as it seeks to establish representational standing to champion the interests of its members, an organization must demonstrate that (1) the interests it seeks to protect in the proceeding are germane to its purpose; (2) neither the asserted claim nor the requested relief require that an individual member participate in the organization's legal action; and (3) "at least one member has standing and has authorized the organization to represent [the member] and to request a hearing on [the member's] behalf." *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237-38 (2020); *see Private*

Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

RULES OF PRACTICE: STANDING (PROXIMITY PRESUMPTION)

As applied recently by several licensing boards in initial and SLR proceedings, this presumption excuses a petitioner otherwise meeting the requirements for standing from having to make a specific showing of injury in fact so long as that petitioner resides, works, or otherwise has regular contacts within a 50-mile radius of the reactor facility in question. *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-24-3, 99 NRC 39, 51-52 (2024); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 23 n.93 (2024), *appeal pending*; *Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), LBP-24-7, 100 NRC 52, 58-59 (2024), *appeal pending*.

RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)

For a petitioner's contention to be considered admissible for further litigation in a licensing proceeding, the contention must satisfy the six admissibility factors set forth in section 2.309(f)(1). Those factors require the proponent of a contention to

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing . . . ; [and]
>
> (vi) [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

10 C.F.R. § 2.309(f)(1)(i)-(vi). These six criteria aim to "focus litigation on concrete issues and result in a clearer and more focused record for decision." Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) [hereinafter 2004 Part 2 Changes].

RULES OF PRACTICE: CONTENTIONS (BURDEN TO SATISFY ADMISSIBILITY CRITERIA); INTERVENTION PETITION (PLEADING REQUIREMENTS)

The petitioner bears the burden to satisfy each of the admissibility criteria, *see Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) ("[I]t is Petitioners' responsibility, not the Board's, to formulate contentions and to provide 'the necessary information to satisfy the basis requirement' for admission." (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings,* CLI-98-12, 48 NRC 18, 22 (1998))), and a failure to comply with any of the requirements constitutes grounds for rejecting a proposed contention, *see* 2004 Part 2 Changes, 69 Fed. Reg. at 2221; *see also Private Fuel Storage,* CLI-99-10, 49 NRC at 325. Moreover, when a petitioner neglects to provide the requisite support for its contentions, a board may not cure the deficiency by supplying that information. *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

RULES OF PRACTICE: PRECEDENTIAL EFFECT OF BOARD DECISIONS

Although a licensing board's decision was dismissed without review, and thus is not binding in this proceeding, as it may be relevant in this proceeding, that board's discussion can be viewed as persuasive. *See Turkey Point,* LBP-24-3, 99 NRC at 50 (citing *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 558 (2013) ("Unreviewed Board decisions do not create binding legal precedent.")).

NRC: AUTHORITY TO REQUEST INFORMATION (10 C.F.R § 50.54(F) REQUEST FOR INFORMATION TO LICENSEE; REQUESTS FOR ADDITIONAL INFORMATION TO LICENSE APPLICANT)

Under the heading "Conditions of licenses," section 50.54(f) authorizes the agency to request that a licensee submit a written statement that enables the agency to determine whether a license should be "modified, suspended, or revoked." 10 C.F.R. § 50.54(f). Unless the information is being sought to verify licensee compliance with a facility's current licensing basis, the agency must prepare an Executive Director for Operations-approved statement of reasons justifying the burden imposed in responding to the information request in view of the potential safety significance of the issue being addressed in the requested information. *See id.* A section 50.54(f) request for information (RFI) can be con-

trasted with Staff-generated requests for additional information (RAIs), which "are a routine means for our staff to request clarification or further discussion of particular items in the application." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-1, 49 NRC 328, 336 (1999).

NEPA: ENVIRONMENTAL IMPACTS ANALYSIS (CATEGORIZATION OF IMPACTS)

Table B-1 defines the significance level of a "SMALL" impacts designation for a NEPA issue as

> environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered SMALL as the term is used in this table.

10 C.F.R. pt. 51, subpart A, app. B, tbl.B-1 n.3. This can be contrasted with significance level "MODERATE," for which "environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource" and significance level "LARGE," for which "environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource." *Id.*

RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY OF LEGAL CONTENTION)

Allowing additional briefing on a legal matter, a recognized benefit of admitting a legal contention, *see U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 590-91 (2009), would not be of assistance when a particular argument has been extensively aired twice, once before a prior licensing board and now again before this licensing board.

RULES OF PRACTICE: CONTENTIONS (SUPPORTING INFORMATION OR EXPERT OPINION)

Given that attempt to justify imprecision in report supporting contention as owing to a lack of access to necessary information also lacks any explanation about what information was unavailable or why it was not available, the proffered analysis does not provide the grounds for an admissible contention. *See Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-22-1, 95 NRC 49, 91 n.89 (2022) (indicating that petitioners' explanation

that their lack of engagement with post-Fukushima Duke and Staff evaluation documents was caused by a significant portion of those documents having excised information did not relieve petitioners of responsibility to address, to the extent possible, the adequacy of those evaluation documents based on whatever relevant public information was available).

RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)

Expert speculation is not a permissible basis for an admissible contention. *See USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) ("[A]n expert opinion that merely states a conclusion . . . 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 . . . ." (quoting *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181, *aff'd,* CLI-98-13, 48 NRC 26 (1998))); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 253 (2007)) ("[N]either mere speculation nor bare or conclusory assertions, even by an expert, . . . will suffice to allow the admission of a proffered contention.").

RULES OF PRACTICE: CONTENTIONS (SUPPORTING DOCUMENTATION)

The Commission has made clear that it expects a licensing board "to review the material offered by a petitioner as support for a contention," which should be scrutinized "'both for what it does and does not show.'" *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-18-4, 87 NRC 89, 107 & n.131 (2018) (quoting *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90, *rev'd in part on other grounds,* CLI-96-7, 43 NRC 235 (1996)).

RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)

Generally, simply suggesting additional information or inputs that must be introduced into an existing analytical framework is insufficient to support contention admissibility without also identifying a deficiency in the analysis. *See NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323 (2012) ("Given the quantitative nature of the SAMA analysis, where the analysis rests largely on selected inputs, it may always be possible to conceive of alternative and more conservative inputs, whose use in the analysis could result in greater estimated accident consequences . . . . We have long

held that contentions admitted for litigation must point to a deficiency in the application, and not merely 'suggestions' of other ways an analysis could be done, or other details that could have been included.").

RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)

A contention seeking to substitute a different approach to that taken in an environmental impact analysis must show that the analysis being utilized is not "reasonable under NEPA." *Seabrook,* CLI-12-5, 75 NRC at 323.

RULES OF PRACTICE: PRECEDENTIAL EFFECT OF BOARD DECISIONS

While previous licensing boards' rulings pending before the Commission on appeal are not binding, a licensing board nonetheless can refer to or rely upon them if it finds the boards' reasoning and analyses persuasive. *See Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-10, 78 NRC 563, 569 n.42 (2013) ("Unreviewed board decisions are not binding on future boards" although they may be referenced "as persuasive authority.").

NEPA: COUNCIL ON ENVIRONMENTAL QUALITY REGULATIONS AND GUIDANCE

The Commission's longstanding position has been that as an independent regulatory agency the NRC is not bound by Council on Environmental Quality (CEQ) regulations or guidance that would "have a substantive impact on the way in which the Commission performs its regulatory functions." *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011) (quoting Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments, 49 Fed. Reg. 9352, 9352 (Mar. 12, 1984)). The Commission nonetheless has indicated it will take into consideration such CEQ issuances as "guidance in carrying out our NEPA responsibilities," particularly in determining what actions are reasonable under NEPA. *Powertech (USA) Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-20-9, 92 NRC 295, 299 (2020), *petition for review denied,* 45 F.4th 291 (D.C. Cir. 2022).

LICENSING BOARD(S): DISMISSAL OF PROCEEDINGS

RULES OF PRACTICE: DISMISSAL OF PROCEEDINGS

In accordance with the provisions of 10 C.F.R. § 2.311, any appeal to the Commission from a licensing board decision ruling upon an intervention petition must be taken within twenty-five (25) days after that issuance is served on the participant lodging the appeal.

RULES OF PRACTICE: PROTECTIVE ORDER(S); REDACTION OF NONPUBLIC INFORMATION FROM LICENSING BOARD DECISION

When nonpublic information has become part of the adjudicatory record, it is the usual practice when issuing a decision that might involve such information for a licensing board post-issuance to make its ruling available to the participants for their review and input concerning possible redactions. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-6, 51 NRC 101, 135, *aff'd in part and rev'd in part on other grounds,* CLI-00-13, 52 NRC 23 (2000); *see also AREVA Enrichment Services, LLC* (Eagle Rock Enrichment Facility), LBP-11-11, 73 NRC 455, 525 n.36 (2011). An already-in-place protective order generally governs participant access to, and responsibility concerning, the decision during the nonpublic review process. *See Eagle Rock,* LBP-11-11, 73 NRC at 525 n.36; *see also Private Fuel Storage,* LBP-00-6, 51 NRC at 134-35. Thereafter, when the review process is completed, a version of the decision containing any redactions is released for the public record.

RULES OF PRACTICE: APPEAL TIME LIMITS; EXTENSIONS OF TIME

Only the Commission can extend the time for filing an appeal under 10 C.F.R. § 2.311 from a licensing board decision granting or denying a hearing request. *See Consolidated Edison Co. of New York, Inc.* (Indian Point Station, Unit No. 3), ALAB-281, 2 NRC 6, 7 (1975).

MEMORANDUM AND ORDER
(Ruling on Intervention Petition)

For a second time, the June 2021 subsequent license renewal (SLR) application of Duke Energy Carolinas, LLC (Duke) seeking an additional twenty-year term for the 10 C.F.R. Part 50 operating licenses for Oconee Nuclear Station (ONS) Units 1, 2, and 3 is pending before a Nuclear Regulatory Commission

(NRC) Atomic Safety and Licensing Board.[1] In this instance, Licensing Board consideration was triggered by an April 29, 2024 hearing request (as corrected on May 1, 2024) filed by petitioners Beyond Nuclear, Inc. (Beyond Nuclear) and the Sierra Club, Inc. (Sierra Club) (collectively Petitioners).[2] Their intervention petition challenges the adequacy of several aspects of the NRC Staff's February 2024 National Environmental Policy Act (NEPA) draft site-specific supplemen-

[1] *See* Letter from Steven M. Snider, Site Vice President, ONS, to NRC Document Control Desk (June 7, 2021) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21158A194). The Duke SLR application seeks to extend the operating terms of ONS Units 1, 2, and 3, to February 6, 2053, October 6, 2053, and July 19, 2054, respectively. *See id.* at 1.

[2] *See* Hearing Request and Petition to Intervene by [Petitioners] (Apr. 29, 2024) (redacted version) [hereinafter Redacted Hearing Request]; Hearing Request and Petition to Intervene by [Petitioners] (Apr. 29, 2024; corrected May 1, 2024) (redacted version) [hereinafter Redacted Corrected Hearing Request]; Errata to Hearing Request and Petition to Intervene by [Petitioners] (May 1, 2024) at 1. Regarding the May 1 corrected hearing petition, in the Board's initial prehearing order, we indicated that the non-substantive nature of the changes did not provide a basis for extending the previously established deadline for answers to Petitioners' hearing request. *See* Licensing Board Memorandum and Order (Initial Prehearing Order) (May 8, 2024) at 1 n.1 (unpublished) [hereinafter Initial Prehearing Order].

Additionally, we indicated that going forward we would reference the May 1, 2024 corrected version of Petitioners' hearing petition in this proceeding. *See id.* Although the NRC Staff subsequently removed the petition from the public record pending a determination whether that hearing request contained nonpublic Sensitive Unclassified Non-Safeguards Information (SUNSI), a redacted version of this pleading recently was placed into this proceeding's public docket. *See* Licensing Board Memorandum and Order (Rulings Regarding Protective Order Reconsideration/Clarification Motions and Submissions Concerning Public Release of Redacted Versions of June 24, 2024 Initial Prehearing Conference Transcript, Four Filings by Petitioners, and Ex Parte/Separation of Functions Communications; Establishing Briefing Schedule for Challenging Withholding of Redacted Information) (Dec. 2, 2024) at 14-15 (unpublished) [hereinafter Board Decision Regarding Public Release of Redacted Documents]. The redacted version is the one we reference in this decision.

Also, on May 15, 2024, Petitioners submitted a corrected version of the second exhibit to the Declaration of Jeffery T. Mitman, which was included as attachment 1 to their original hearing request. *See* Errata to Expert Report by Jeffrey T. Mitman (May 15, 2024) at 1. We again advised the participants that these changes would not affect the deadline for filing answers to Petitioners' hearing request. *See* Licensing Board Memorandum and Order (Regarding Corrected Exhibit to Hearing Request) (May 16, 2024) at 1 (unpublished). And for citation purposes we will treat that corrected exhibit as a separate filing. *See* Jeffrey T. Mitman, NRC Relicensing Crisis at [ONS]: Stop Duke from Sending Safety Over the Jocassee Dam (Apr. 2024; corrected May 15, 2024) (redacted version) [hereinafter Redacted Corrected Mitman Report]. This report likewise was withdrawn from and then reinstated into the public record with SUNSI redactions. *See* Board Decision Regarding Public Release of Redacted Documents at 14-15. We reference that redacted version in this issuance.

Finally, we note that because the other four attachments provided by Petitioners in support of their intervention request were only filed with their original April 29, 2024 hearing petition, in referencing those attachments we will cite to the initial version of their hearing petition, albeit the version redacted to remove nonpublic SUNSI. *See id.*

tal environmental impact statement (DSSEIS) that assesses the impacts of the proposed SLR for the ONS facility as well as the alternatives to SLR.[3]

For the reasons set forth below, we conclude that Petitioners have established their standing to intervene in this proceeding. As for their three contentions, Petitioners allege deficiencies in the DSSEIS regarding the adequacy of the risk analysis associated with a failure of the Jocassee Dam upstream from the ONS facility (Contention 1), the failure of various other ONS-associated risk assessments to meet NEPA requirements (Contention 2), and the failure to address the effects of climate change on ONS accident risks (Contention 3). Because we determine that each contention has not met the contention admissibility standards of 10 C.F.R. § 2.309(f)(1), we deny Petitioners' hearing request and, following completion of a process for review of this decision for nonpublic information, terminate this proceeding.

I. BACKGROUND

A. Prior Commission and Licensing Board SLR Proceedings Associated with ONS

Given that "[w]hat is past is prologue,"[4] to provide a clear understanding of why the ONS SLR application is again before this Licensing Board, we begin with a review of the circumstances under which the SLR for the ONS facility previously was the subject of licensing board consideration.

The Commission's first adjudicatory review of a license renewal application seeking authorization for reactor operation during the SLR period (i.e., for reactor operating years sixty through eighty) concerned the Turkey Point facility. In an April 2020 decision, the Commission rejected arguments that 10 C.F.R. § 51.53(c)(3), 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1, and the agency's 2013 Generic Environmental Impact Statement (GEIS) for nuclear plant license renewal encompassed only the initial renewal period (i.e., for

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[3] *See* Redacted Corrected Hearing Request at 1-2; *see also* Office of Nuclear Material Safety and Safeguards (NMSS), NRC, NUREG-1437, Site-Specific [EIS] for License Renewal of Nuclear Plants, Supp. 2, Second Renewal, Regarding [SLR] for [ONS] at iii (drft. Feb. 2024) (redacted version) (ADAMS Accession No. ML24033A298) [hereinafter DSSEIS]. On a cover sheet to the current publicly available version of this document, the Staff notes that in September 2024 the DSSEIS was redacted to remove Critical Energy/Electric Infrastructure Information (CEII), a type of SUNSI. *See id.* at Portable Document Format (PDF) p. 1. All the citations in this decision to the DSSEIS are to the redacted version. And for clarity, any other redacted document cited in this decision will be identified as such. *See supra* note 2.

[4] William Shakespeare, The Tempest act 2, sc.1, l. 261.

reactor operating years forty through sixty).[5] The Commission instead concluded that for evaluating environmental impacts for the SLR period the NRC Staff (and SLR applicants submitting an environmental report (ER) for Staff consideration in preparing the agency's NEPA analysis) could (1) rely on the 2013 GEIS; and (2) employ the various issue categories embodied in Table B-1, including those pertaining to the Category 1 issues that had been determined not to require the plant-specific NEPA analysis mandated for issues designated as Category 2. *See Turkey Point,* CLI-20-3, 91 NRC at 155. In addition, this ruling directed that to litigate a contention seeking a plant-specific NEPA analysis regarding a Category 1 issue, a petitioner was obligated to submit a 10 C.F.R. § 2.335(b) rule waiver petition. *See id.*

Thereafter, in a February 2022 decision regarding the same Turkey Point facility, the Commission reversed this earlier pronouncement, concluding that section 51.53(c)(3), Table B-1, and the 2013 GEIS applied only to the initial renewal period and mandating that the NRC Staff reevaluate the subsequent renewal period environmental impacts for each then-pending SLR application.[6] This reversal of its earlier ruling on the applicability of section 51.53(c)(3), Table B-1, and the 2013 GEIS to the SLR term of facility operation also led the Commission in a separate contemporaneous issuance to (1) take sua sponte review of a February 2022 licensing board determination finding inadmissible the three contentions filed by the same petitioners now before us in which they contested the adequacy of the ER associated with Duke's June 2021 ONS SLR application; and (2) dismiss the three contentions without prejudice and terminate the proceeding.[7]

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[5] *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI-20-3, 91 NRC 133, 134, 155 (2020) (citing 10 C.F.R. § 51.53(c)(3); 10 C.F.R. pt. 51, subpart A, app. B, tbl.B-1 [hereinafter Table B-1]; 1 Office of Nuclear Reactor Regulation (NRR), NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Main Report, Final Report (rev. 1 June 2013) (ADAMS Accession No. ML13106A241) [hereinafter 2013 GEIS Vol. 1]).

[6] *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI-22-2, 95 NRC 26, 27 (2022).

[7] *See Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-22-3, 95 NRC 40, 43 (2022). The licensing board decision under sua sponte review had terminated the ONS SLR proceeding, concluding relative to Petitioners' three environmental contentions that (1) based on the Commission's 2020 *Turkey Point* decision, for contention 1 regarding the applicability of the section 51.53(c)(3) and the 2013 GEIS to SLR applications, Petitioners failed to fulfill the admissibility standards of 10 C.F.R. § 2.309(f)(1); and (2) for contentions 2 and 3, which sought to contest Table B-1 Category 1 issues concerning the impacts caused by a dam failure-related severe accident and the need to consider severe accident mitigation alternatives (SAMAs) associated with such an event, Petitioners did not meet the section 2.335 requirements for seeking a waiver so as to permit site-specific consideration of those contentions. *See Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, and 3), LBP-22-1, 95 NRC 49, 94 (2022).

In doing so, the Commission also explained that in light of its 2022 *Turkey Point* determination, Duke and other similarly-situated SLR applicants would have the option of either (1) awaiting the completion of the NRC Staff's generic reevaluation of the impacts of the SLR period and the associated rulemaking establishing the legal and technical basis for a revised GEIS covering that period; or (2) providing site-specific information (in the form of a revised ER or responses to Staff additional information requests) on facility-related environmental impacts during the SLR period. *See Oconee,* CLI-22-3, 95 NRC at 41-42. Further, the Commission declared that in the latter instance, once the Staff reviewed the applicant's site-specific information and issued a site-specific environmental impact statement (EIS), petitioners would be given an opportunity to submit new or amended contentions based on new information in that impact statement without the necessity of meeting the 10 C.F.R. § 2.309(c) heightened pleading requirements for newly filed or refiled contentions. *See id.* at 41-42.

B. Current Licensing Board Proceeding Regarding SLR for ONS

In response to this Commission decision, in November 2022 Duke submitted a supplemental ER that (1) addressed the plant-specific impact of any relevant new information on the environmental consequences of Table B-1 Category 1 issues arising during the SLR period; and (2) indicated that its additional review of other environmental issues discussed in its initial ER had not identified any new and significant information arising since that report was submitted to the agency.[8] In February 2024, the NRC Staff issued its DSSEIS regarding the ONS SLR application along with a *Federal Register* notice requesting public comment on that DSSEIS and providing an opportunity to request a hearing and to petition for leave to intervene regarding the DSSEIS.[9] On March 18, 2024, Petitioners asked to extend by two weeks the time for filing their intervention petition until April 29, 2024, a request the Secretary of the Commission granted on March 28.[10] Petitioners then filed their pending hearing request on the extended date, which included three contentions challenging various aspects of the NRC Staff's DSSEIS. *See* Redacted Corrected Hearing Request at 5-19.

By memorandum dated May 1, 2024, the Secretary of the Commission referred the intervention petition to the Chief Administrative Judge,[11] who, in turn,

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[8] *See* Letter from Steven M. Snider, Site Vice President, ONS, to NRC Document Control Desk at 2 (Nov. 7, 2022) (ADAMS Accession No. ML22311A036).

[9] *See* [Duke], [ONS]; Draft Supplemental [EIS], 89 Fed. Reg. 10,107, 10,107-08 (Feb. 13, 2024).

[10] *See* Motion by [Petitioners] for Extension of Time to Submit Hearing Request (Mar. 18, 2024) at 1; Secretary of the Commission Order (Mar. 28, 2024) at 3 (unpublished).

[11] *See* Memorandum from Carrie M. Safford, NRC Secretary, to E. Roy Hawkens, Chief Administrative Judge (May 1, 2024).

on May 2, 2024, assigned Petitioners' hearing request to this Licensing Board to rule on standing and contention admissibility matters and to preside at any hearing.[12] The Board then issued its initial prehearing order on May 8, 2024, in which it advised the participants that it was considering whether to conduct an initial prehearing conference in this proceeding and set out a process by which they could provide input on their availability for such a session in late June or early July 2024. *See* Initial Prehearing Order at 6-7.

Meanwhile, on May 16, 2024, the Commission adopted a final rule amending section 51.53(c)(1) and Table B-1 to make an agency generic environmental analysis applicable to both the initial renewal and first SLR periods for nuclear power plants.[13] And in support of this rule, the NRC Staff updated the 2013 GEIS.[14] In response, the Board on May 21, 2024, issued an order requesting that the participants, as part of their upcoming answer and reply pleadings, address several questions seeking information about the applicability of the new rule and the impact of its adoption on this proceeding.[15]

Duke and the NRC Staff filed their answers to Petitioners' hearing request on May 31, 2024, in which they (1) did not contest Petitioners' standing to intervene; (2) opposed the admission of all three of their proffered contentions; and (3) responded to the Board's questions about the impacts of the 2024 rule.[16] Petitioners submitted a reply to those answers on June 7, 2024, defending the admissibility of their contentions and responding to the Board's 2024 rule impact questions.[17]

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[12] *See* [Duke], Establishment of Atomic Safety and Licensing Board, 89 Fed. Reg. 38,926, 38,926 (May 8, 2024).

[13] *See* Memorandum from Carrie M. Safford, NRC Secretary, to Raymond V. Fursteneau, Acting Executive Director for Operations (EDO), NRC, at 1 (May 16, 2024) (ADAMS Accession No. ML24137A164).

[14] *See id.* In adopting the final rule, the Commission referenced a version of the GEIS issued in February 2024. *See id.*; *see also* 1 NMSS, NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Main Report, Final Report (rev. 2 Feb. 2024) (ADAMS Accession No. ML23201A224). Just prior to the final rule becoming effective, however, another version of the GEIS was issued, different portions of which are referenced in this decision. *See* 1 NMSS, NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Main Report, Final Report (rev. 2 Aug. 2024) (ADAMS Accession No. ML24086A526); *see also infra* notes 56, 59.

[15] *See* Licensing Board Memorandum and Order (Request to Address Impacts of Final Rule Applying [GEIS] to [SLR]) (May 21, 2024) at 3-4 (unpublished).

[16] *See* [Duke] Answer Opposing the Hearing Request and Petition to Intervene Filed by [Petitioners] (May 31, 2024) at 1 n.2, 12-54 [hereinafter Duke Answer]; NRC Staff Answer to Hearing Request and Petition to Intervene by [Petitioners] (May 31, 2024) at 11-45 [hereinafter Staff Answer]; *id.* attach. A at 48-53 (Response to May 21, 2024 Licensing Board Order).

[17] *See* Reply by [Petitioners] to Oppositions to Their Hearing Request and Petition to Intervene (June 7, 2024) at 3-28 (redacted version) [hereinafter Petitioners Redacted Reply]. As was the case

(Continued)

After reviewing these pleadings and the participants' input regarding a possible initial prehearing conference schedule, in a June 12, 2024 issuance the Board established June 24, 2024, as the date for an initial prehearing conference.[18] In doing so, the Board outlined the procedures that would govern the conference and noted that the conference would be limited to the issue of the admissibility of Petitioners' three contentions given that Petitioners' standing was not contested by either the NRC Staff or Duke.[19] The conference was conducted on that date, with counsel for each of the participants providing an oral presentation outlining their position on, and answering Board questions concerning, the admissibility of Petitioners' three contentions.[20]

II. STANDING

When the Oconee SLR application was first before a licensing board, Petitioners' assertion that they should be afforded representational standing was not contested. *See Oconee,* LBP-22-1, 95 NRC at 77. The same is true in this proceeding. *See* Staff Answer at 12; Duke Answer at 1 & n.2 (recognizing Petitioners' standing showing but raising no objection to the sufficiency of that showing). Yet, as was the case previously, *see Oconee,* LBP-22-1, 95 NRC at 77, an independent Board determination is required regarding whether each petitioner has met the standing requirements.[21] Nor does the fact that the petitioning

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with Petitioners' hearing request, *see supra* note 2, this pleading also was withdrawn from and then restored to the public record of this proceeding with SUNSI redactions. *See* Board Decision Regarding Public Release of Redacted Documents at 14-15. The redacted version of this document also is the one referenced in this ruling.

[18] *See* Licensing Board Order (Scheduling Initial Prehearing Conference) (June 12, 2024) at 2 (unpublished) [hereinafter Initial Conference Scheduling Order].

[19] *See id.* at 2-3 & n.4. In limiting the prehearing conference agenda only to contention admissibility, the Board also noted that, consistent with the 10 C.F.R. § 2.309(j) schedule for Board rulings on hearing petitions, a Board determination on the viability of Petitioners' hearing request would need to be issued well before the September 2024 time frame in which the Staff had represented that the 2024 rule likely would become effective. *See id.* at 3 n.4. As it turned out, that was not the case because of a series of events that were initiated when the NRC Staff subsequently identified nonpublic information in the transcript of the June 24, 2024 initial prehearing conference and four of Petitioners' submissions. *See* Licensing Board Memorandum (Notice Regarding Issuance of Decision) (Aug. 8, 2024) at 1 (unpublished).

[20] *See* Tr. at 1-149 (redacted version) [hereinafter Redacted Tr.]. This initial prehearing conference transcript also was subject to NRC Staff review for nonpublic SUNSI and a redacted version of the transcript now is in the public record of this proceeding. *See* Board Decision Regarding Public Release of Redacted Documents at 14. We reference the redacted version of that transcript in this decision.

[21] *See* 10 C.F.R. § 2.309(d)(2); *see also Exelon Generation Co., LLC* (Peach Bottom Atomic Power *(Continued)*

organizations are the same in both the prior proceeding and this proceeding relieve the Board of its responsibility to make a standing determination based on the information provided by Petitioners in this case.[22]

To obtain standing, an organization must identify itself and its interest in the proceeding by providing the information required by 10 C.F.R. § 2.309(d)(1).[23] Further, as it seeks to establish representational standing to champion the interests of its members, an organization must demonstrate that (1) the interests it seeks to protect in the proceeding are germane to its purpose; (2) neither the asserted claim nor the requested relief require that an individual member participate in the organization's legal action; and (3) "at least one member has standing and has authorized the organization to represent [the member] and to request a hearing on [the member's] behalf."[24]

In this instance, to establish the standing of the individual members they seek to represent, Petitioners here rely on the proximity presumption. *See* Redacted Corrected Hearing Request at 3. As applied recently by several licensing boards in initial and SLR proceedings, this presumption excuses a petitioner otherwise meeting the requirements for standing from having to make a specific showing of injury in fact so long as that petitioner resides, works, or otherwise has regular contacts within a 50-mile radius of the reactor facility in question.[25]

Besides meeting the general requirements of section 2.309(d)(1), Petitioners' hearing request and the member affidavits supplied with their intervention pe-

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Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 491 (2019), *aff'd on other grounds,* CLI-20-11, 92 NRC 335 (2020).

[22] *See PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010) (stating "petitioner must make a fresh standing demonstration in *each* proceeding in which intervention is sought because a petitioner's circumstances may change from one proceeding to the next").

[23] *See* 10 C.F.R. § 2.309(d)(1)(i)-(iv) (requiring that a hearing petition include a petitioner's name, address, and phone number; a showing regarding the petitioner's right under the Atomic Energy Act (AEA) to be a party; a showing of the petitioner's interest in the proceeding; and a demonstration of the possible effect of any determination in the proceeding on the petitioner's interest).

[24] *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237-38 (2020); *see Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999). Recently, based on its review of Commission caselaw going back to the late 1990s, the licensing board in the *Diablo Canyon* initial license renewal case raised the question whether the required showing to establish representational standing includes the "germane to its purpose" and "need for member participation" elements set forth above. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 17-19 (2024), *appeal pending.* Like the *Diablo Canyon* licensing board, *see id.* at 23-24, we include both of these items in assessing whether Petitioners have fulfilled the requirements to establish their representational standing.

[25] *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-24-3, 99 NRC 39, 51-52 (2024); *Diablo Canyon,* LBP-24-6, 100 NRC at 23 n.93; *Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), LBP-24-7, 100 NRC 52, 58-59 (2024), *appeal pending.*

tition show that each has at least one member residing within 50 miles of the ONS facility who has met the other standing requirements specified above.[26] Additionally, in seeking to have the NRC Staff fix its allegedly "inadequate" NEPA analysis of the environmental impacts associated with the SLR term for ONS, Redacted Corrected Hearing Request at 1-2, the direct participation of Petitioners' members is not required. Finally, the uncontested description of the purpose of each intervening organization in their hearing petition is sufficient to establish that the interests each seeks to protect in the proceeding are germane to that purpose.[27]

We thus conclude that each of the Petitioners has established its representational standing to intervene in this proceeding.

III. ADMISSIBILITY OF PETITIONERS' CONTENTIONS

A. Contention Admissibility Standards Under 10 C.F.R. § 2.309(f)(1)

For a petitioner's contention to be considered admissible for further litigation in a licensing proceeding, the contention must satisfy the six admissibility factors set forth in section 2.309(f)(1). Those factors require the proponent of a contention to

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
>
> (ii) Provide a brief explanation of the basis for the contention;

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[26] *See* Redacted Corrected Hearing Request at 3-4 (indicating Beyond Nuclear and Sierra Club have longstanding interests in nuclear safety and preventing environmental harm and, to protect their members' health and safety and the environment, wish to ensure that ONS facility operation is not approved for a second renewal term until Duke demonstrates full compliance with NEPA's requirements); Redacted Hearing Request, attachs. 2A through 2C (affidavits of Beyond Nuclear members residing less than 15 miles from the ONS facility); *id.* attach. 2D (affidavit of Beyond Nuclear and Sierra Club member residing approximately two miles from the ONS facility); *id.* attachs. 2E through 2G (Sierra Club members residing less than 25 miles from the facility). The distance measurements provided above are Google Maps-based calculations. We note as well that the standing declaration in attachment 2H to the hearing petition appears to be a duplicate of attachment 2D.

[27] *See* Redacted Corrected Hearing Request at 3-4 (describing Beyond Nuclear as "a nonprofit, nonpartisan membership organization that aims to educate and activate the public about the connections between nuclear power and nuclear weapons and the need to abolish both to protect public health and safety, prevent environmental harms, and safeguard our future."); *id.* at 4-5 (indicating that "[t]he purposes of the Sierra Club are to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment").

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing . . . ; [and]

(vi) [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

10 C.F.R. § 2.309(f)(1)(i)-(vi).

These six criteria aim to "focus litigation on concrete issues and result in a clearer and more focused record for decision."[28] The petitioner bears the burden to satisfy each of the criteria,[29] and a failure to comply with any of the requirements constitutes grounds for rejecting a proposed contention.[30] Moreover, when a petitioner neglects to provide the requisite support for its contentions, a board may not cure the deficiency by supplying that information.[31]

B. Analysis of Petitioners' Three Contentions Shows Each One Is Inadmissible

1. Petitioners' Contention 1

a. Background

The focus of Petitioners' first contention is the purported inadequacy of the NRC Staff's DSSEIS discussion about whether Duke has provided "adequate protection" for the ONS units such that the environmental impacts of an accident arising from a failure of the Jocassee Dam upstream of the ONS facility can be considered insignificant. *See* Redacted Corrected Hearing Request at 5. And a principal component of their argument is that the DSSEIS fails to account for the environmental significance of what they assert is a never-repudiated 2011 Staff Safety Evaluation. Petitioners contend this evaluation made safety findings

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[28] Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) [hereinafter 2004 Part 2 Changes].

[29] *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) ("[I]t is Petitioners' responsibility, not the Board's, to formulate contentions and to provide 'the necessary information to satisfy the basis requirement' for admission." (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings,* CLI-98-12, 48 NRC 18, 22 (1998))).

[30] *See* 2004 Part 2 Changes, 69 Fed. Reg. at 2221; *see also Private Fuel Storage,* CLI-99-10, 49 NRC at 325.

[31] *See Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

calling for the establishment of various still-unimplemented measures to provide "adequate protection" against a flood caused by a Jocassee Dam failure.[32]

As the participants' filings reflect,[33] in considering this contention's allegations, we do not necessarily write on a clean slate. Indeed, as we noted above, *see supra* section I.A, in assessing the sufficiency of a section 2.335 waiver petition seeking consideration of a contention not dissimilar from Petitioners' Contention 1 in this proceeding, in 2022 another licensing board provided an extensive discussion (with supporting references to Duke and NRC regulatory documents) outlining both the events leading up to the January 2011 Safety Evaluation and the measures taken by the NRC Staff and Duke in the wake of the March 2011 Fukushima Dai-ichi accident to address concerns about potential flooding impacts on the ONS facility.[34] Although that licensing board's decision was dismissed without review in the wake of the Commission's 2022 *Turkey Point* decision, and thus is not binding in this proceeding, as it may be relevant here, that board's discussion can be viewed as persuasive.[35] And because we find particularly instructive here the 2022 licensing board's extended examination of the historical circumstances surrounding the assessment of the risk associated with the possible failure of the Jocassee Dam upstream of the ONS facility and any concurrent flooding, which is the renewed focus of Petitioners' Contention 1 in this proceeding, below we provide a synopsis of that discussion.

Noting that "[a] breach of the Jocassee Dam and the impact on ONS of a resulting flood has been a matter of evolving regulatory concern," the 2022 licensing board described how such a dam failure was not considered a credible event based on dam design and construction when ONS was first licensed in

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[32] *See* Redacted Corrected Hearing Request at 6-7 (citing Redacted Corrected Mitman Report § 2.6.4 and Letter from Eric J. Leeds, Director, NRC NRR, to Preston Gillespie, Site Vice President, ONS, encl. (Jan. 28, 2011) (Safety Evaluation by [NRR] Related to [Duke] Confirmatory Action Letter — Commitments to Address External Flooding Concerns, Closure of Inundation Site Results [ONS], Docket Nos. 50-269, 50-270, and 50-287) (ADAMS Accession No. ML110280153) [hereinafter January 2011 Safety Evaluation]).

We note that although the January 2011 Safety Evaluation, which was previously publicly released pursuant to a Freedom of Information Act request, is now considered a nonpublic document, the ADAMS accession number cited above is part of the public record of this proceeding. *See* Redacted Corrected Mitman Report at 1 n.2.

[33] *See* Redacted Corrected Hearing Request at 7 n.8; Staff Answer at 4-5, 18-19, 25-29; Duke Answer at 26-29.

[34] *See Oconee,* LBP-22-1, 95 NRC at 65-77. Although Administrative Judge Bollwerk also chaired that licensing board, the other two board members were Administrative Judges Trikouros and Arnold. *See id.* at 95.

[35] *See Turkey Point,* LBP-24-3, 99 NRC at 50 (citing *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 558 (2013) ("Unreviewed Board decisions do not create binding legal precedent.")).

the early 1970s and so was not made a part of the facility's current licensing basis (CLB).[36] Then, in the early 1980s, Duke built a Standby Shutdown Facility (SSF) with subsystems as an independent means to achieve and maintain safe shutdown of the ONS units under certain postulated scenarios that included turbine building floods. *See Oconee,* LBP-22-1, 95 NRC at 66. The SSF subsystems provide reactor coolant makeup, auxiliary service water for steam generator injection, electrical power via a diesel generator and batteries, and support systems. *See id.* And Duke's SSF was further enhanced with a doorway barrier to address possible above plant-yard grade flooding identified in a 1983 Duke/Electric Power Research Institute probabilistic risk assessment (PRA) that posited various Jocassee Dam failure modes. *See id.* Over the next nearly two decades, the issues of estimated flood height relative to the SSF and the ONS site in general as well as dam-failure risk were considered in several contexts. *See id.* at 66-72. This included a June 2010 NRC Staff confirmatory action letter (CAL) requiring Duke, in addition to implementing compensatory measures, to provide a site inundation bounding analysis, which was, in turn, the subject of a January 2011 Staff assessment and the accompanying Safety Evaluation that is at the heart of Petitioners' Contention 1 claims. *See id.* at 70-72.

Concerns about Jocassee Dam failure risk and ONS site inundation then became a part of the agency's response to the March 2011 severe accident at the Fukushima Dai-ichi facility in Japan caused by an earthquake and tsunami. As outlined in the 2022 licensing board decision, in March 2012 the agency issued a 10 C.F.R. § 50.54(f) request for information (RFI) to all power reactor licensees to provide reevaluations of seismic hazard and external flooding sources at their facilities to aid the NRC Staff in evaluating the need for additional regulatory action regarding seismic and flooding design.[37] In September 2012, under the aegis of the June 2010 CAL, the Staff accepted Duke's proposal to design and construct Jocassee Dam failure inundation mitigation structures, but also

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[36] *Oconee,* LBP-22-1, 95 NRC at 65-66. The 2022 licensing board's decision contains a description of the Jocassee Dam and its location relative to the ONS facility. *See id.* at 65.

[37] *See id.* at 73. Under the heading "Conditions of licenses," section 50.54(f) authorizes the agency to request that a licensee submit a written statement that enables the agency to determine whether a license should be "modified, suspended, or revoked." 10 C.F.R. § 50.54(f). Unless the information is being sought to verify licensee compliance with a facility's CLB, the agency must prepare an EDO-approved statement of reasons justifying the burden imposed in responding to the information request in view of the potential safety significance of the issue being addressed in the requested information. *See id.* A section 50.54(f) RFI can be contrasted with Staff-generated requests for additional information (RAIs), which "are a routine means for our staff to request clarification or further discussion of particular items in the application." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-1, 49 NRC 328, 336 (1999).

indicated that the CAL would remain active until it could be superseded by regulatory action related to the section 50.54(f) responses. *See id.* at 73.

Duke responded to the March 2012 RFI with a March 2015 updated flood hazard reevaluation report (FHRR) addressing both design-basis and beyond-design-basis events. *See id.* Thereafter, as part of a series of Duke and Staff interactions regarding the Staff's analysis of the March 2015 updated FHRR, the Staff issued a September 2015 letter concluding that the FHRR used suitable input values associated with flood hazard mechanisms that should be employed to support Duke's preparation and submission of an additional flood-focused hazard evaluation. *See id.* at 73-74. Furthermore, in June 2016 the Staff issued a report indicating that (1) because Duke's completed 2010 CAL-related compensatory measures provided adequate assurance that the required terms of the 2010 CAL had been satisfied, the 2010 CAL was closed; and (2) the Staff would be addressing ONS flooding issues in the context of a recommendation issued by the agency's Fukushima Near-Term Task Force in July 2011, Recommendation 2.1, which directed that a licensee use present-day methodologies and regulatory guidance applicable to 10 C.F.R. Part 52 licenses to assess all flood-causing mechanisms. *See id.* at 75-76, 87-88. Duke submitted its additional ONS flood hazard evaluation in July 2017, which the Staff concluded in a June 2018 assessment demonstrated effective flood protection mechanisms for a beyond-design-basis external flooding event. *See id.* at 76. Finally, in a November 2020 letter, the Staff advised Duke that it had provided the information requested by the March 2012 Fukushima-related RFI and had completed all actions required for ONS by NRC's post-Fukushima orders. *See id.* at 76-77.

Against this backdrop, we turn to our consideration of Petitioners' Contention 1.

b. Petitioners Position

Petitioners' first contention is titled "Erroneous, Incomplete and Misleading Information Regarding Whether Duke Has Provided the Oconee [R]eactors with 'Adequate Protection' From Failure of the Upstream Jocassee Dam." Redacted Corrected Hearing Request at 5. The focus of this issue statement under its subpart A, which is labeled as "Statement of Contention," is the NRC Staff's DSSEIS conclusion that the environmental impacts from ONS "design-basis accidents" during the SLR period will be "insignificant, i.e., 'SMALL.'" *Id.* (citing DSSEIS at F-5). Petitioners claim this DSSEIS determination is based on the erroneous assertion that Duke has provided the ONS reactors "with 'adequate protection' from accident risks caused by 'external events,' such as failure of

the upstream Jocassee Dam."[38] *Id.* According to Petitioners, "[i]n support of this assertion, the [DSSEIS] relies heavily on a description of the scope, nature and outcome of the NRC Staff's review of seismic and flooding risks (*i.e.,* 'external hazards') to [ONS], conducted between 2012 and 2020 in response to the catastrophic 2011 Fukushima Dai-ichi accident in Japan." *Id.* Further, in subparts A.1 and A.2, Petitioners' Contention 1 makes the claim that this DSSEIS assertion (1) relies on "erroneous, incomplete and misleading information"; and (2) omits the "discussion of [a] relevant factor affecting [the] outcome of [the] environmental analysis," namely "abandonment of [the] 2011 Safety Evaluation without making new adequate protection findings."[39] *Id.* at 6, 15. And in support of these assertions, in subparts B and E, titled respectively "Basis Statement" and "Concise Statement of the Facts or Expert Opinion Supporting the Contention, Along with Appropriate Citations to Supporting Scientific or Factual Materials," Petitioners indicate that the support for this contention can be found in the eleven-page subpart A "Statement of Contention," in the report of their expert Jeffrey Mitman attached to their hearing petition, and in the various documents cited in the "Statement of Contention" and the Mitman report. *See id.* at 16.

Looking to the particulars of Petitioners' claims regarding the failure of the NRC Staff's DSSEIS to satisfy NEPA, according to their "Statement of Contention" the DSSEIS "omits any discussion of the environmental significance of an outstanding [January] 2011 Safety Evaluation establishing a minimum flood height that safety equipment must be protected against and also prescribed measures for providing adequate protection against a flood caused by failure of the Jocassee Dam."[40] Petitioners characterize AEA section 182's direction to the

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[38] Table B-1 defines the significance level of a "SMALL" impacts designation for a NEPA issue as

> environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered SMALL as the term is used in this table.

Table B-1 n.3. This can be contrasted with significance level "MODERATE," for which "environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource" and significance level "LARGE," for which "environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource." *Id.*

[39] As it is quoted and reproduced in Petitioners' reply, Contention 1 encompasses pages five through fifteen of their hearing petition. *See* Petitioners Redacted Reply at 4-11.

[40] Redacted Corrected Hearing Request at 6-7 (citing Redacted Corrected Mitman Report § 2.6.4 and January 2011 Safety Evaluation); *see also* Petitioners Redacted Reply at 12 (indicating Duke and NRC Staff attempts in their answers to discount and disparage the January 2011 Safety Evaluation establish a genuine and material legal and factual dispute).

NRC to ensure production and utilization facilities like ONS provide "adequate protection to the health and safety of the public" as being the agency's "primary statutory standard . . . to ensure safe operation of nuclear power plants."[41] And on the basis of that characterization, Petitioners assert that the absence of "adequate protection" language in subsequent Staff safety analyses of Jocassee Dam flooding risks means that the agency has failed to make a finding concerning the possibility that those "accident risks have been reduced to a level that is both acceptable under the [AEA] and insignificant or 'SMALL' under NEPA." Redacted Corrected Hearing Request at 8. Petitioners point specifically to the Staff's claim that the issues raised by the January 2011 Safety Evaluation are closed by the Staff's June 2016 CAL termination letter, arguing that document does not use the "adequate protection" language needed to demonstrate that the agency has concluded that public health and safety is appropriately protected in the absence of the flood protection requirements set out in the January 2011 evaluation.[42] Petitioners maintain the same is true for the Staff's November 2020 section 50.54(f) letter, as well as the Staff reference documents cited in that letter.[43] Petitioners assert that this letter and the referenced documents are relied

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[41] Redacted Corrected Hearing Request at 7-8 (quoting 42 U.S.C. § 2232(a); *Union of Concerned Scientists v. NRC,* 824 F.2d 108, 109 (D.C. Cir. 1987)).

[42] *See id.* at 6-7 (citing Letter from Catherine Haney, Regional Administrator, NRC Region II, to Scott Batson, Site Vice President, ONS, at 1 (June 16, 2016) (ADAMS Accession No. ML16168A-176)).

[43] *See id.* at 9-12 (citing Letter from Robert J. Bernardo, Project Manager, NRC NRR, to J. Ed Burchfield, Jr., Site Vice President, ONS (Nov. 17, 2020) (ADAMS Accession No. ML20304A369); Letter from Juan F. Uribe, Project Manager, NRC NRR, to Ed Burchfield, Jr., Site Vice President, ONS, encl. 2, at 10 (June 18, 2018) (Staff Assessment by [NRR] Related to the Focused Evaluation for ONS, Units 1, 2, and 3 as a Result of the Reevaluated Flood Hazard Near-Term Task Force Recommendation 2.1 — Flooding (CAC Nos. MG0265, MG0266, MG0267, and EPID L-2017-JLD-0029) (redacted version) (ADAMS Accession No. ML18141A755); Letter from Mary Jane Ross-Lee, Acting Division Director, NRC NRR, to The Licensees of Operating Reactors on the Enclosed List, encl. 1, at 4 (Aug. 20, 2019) (Treatment of Reevaluated Flooding Hazard Information) (ADAMS Accession No. ML19067A247)).

In challenging the admissibility of Contention 1 the Staff calls out Petitioners' failure to contest "new information," Staff Answer at 18, which presumably is a reference to the Commission's *Oconee* decision that indicated any additional hearing relative to those SLR proceedings, like *Oconee,* that were impacted by the Commission's reversal of its earlier *Turkey Point* decision would be "limited to contentions based on new information in the site-specific [EIS]," Staff Answer at 7 (quoting *Oconee,* CLI-22-3, 95 NRC at 42). While we find ourselves in agreement with the recent *Turkey Point* decision in which the licensing board indicated that, in this context, an asserted lack of "new information" is more a matter of materiality than scope under the section 2.309(f)(1)(iii) contention admissibility standard, *see Turkey Point,* LBP-24-3, 99 NRC at 55-56 & nn.82-83, any admissibility claim based on a lack of "new information" is not applicable to this particular aspect of Petitioners' Contention 1 given it is based on the Staff's characterization of its November 2020 close-out letter in its recently-minted DSSEIS.

upon by the Staff in the DSSEIS as evidence of a post-Fukushima "design-basis" review regarding ONS external flooding events to support its conclusion that "no further regulatory actions were needed to ensure adequate protection or compliance with regulatory requirements, including site-specific external hazards information, re-confirming the acceptability of Oconee Station's design basis." *Id.* at 9 (quoting DSSEIS at F-4). But according to Petitioners, "in the entire post-Fukushima review record for Oconee, no NRC document can be found that makes adequate protection findings with respect to the risk of flooding from failure of the Jocassee Dam or measures necessary to provide adequate protection from those risks," with any such findings limited only "to the adequacy of mitigation measures."[44]

Petitioners also assert that the NRC Staff has disregarded important facts and legal determinations relevant to ONS subsequent license renewal. Petitioners claim this includes the Staff not adequately accounting for (1) the failure of Duke and the NRC in the ONS initial licensing process to consider Jocassee Dam failure as a credible event requiring appropriate safety equipment protection; *see* Redacted Corrected Hearing Request at 12-13 (citing Redacted Corrected Mitman Report § 2.3.2); (2) the importance of NRC's August 2008 action issuing a section 50.54(f) letter to Duke regarding the adequacy of its SSF to protect against floods in light of a 1992 Federal Energy Regulatory Commission (FERC) flood inundation study;[45] (3) the significance of an April 2009 NRC letter to Duke questioning Duke's failure to demonstrate deterministically that the ONS facility would be adequately protected from the credible event of a Jocassee Dam failure;[46] (4) the import of the January 2011 Safety Evaluation's "adequate protection" conclusions about the appropriate flood depth to be used for evaluating the suitability of ONS flood protection mechanisms, *see id.* at 13 (citing Redacted Corrected Mitman Report § 2.6.4); and (5) the insufficiency of the NRC's post-Fukushima review that lowered the estimated flood depth associated with inundation events without an "adequate protection" finding.[47] According to Petitioners, these items illustrate that the Staff has improperly

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[44] *See* Redacted Corrected Hearing Request at 12; *see also* Petitioners Redacted Reply at 11-12 (asserting that in their answers neither Duke nor the Staff cite any "adequate protection" finding indicating ONS reactors are adequately protected from flood risk).

[45] *See* Redacted Corrected Hearing Request at 13 (citing Letter from Joseph G. Giitter, Division Director, NRC NRR, to Dave Baxter, Vice President, ONS at 2 (Aug. 15, 2008) (redacted version) (ADAMS Accession No. ML081640244); Redacted Corrected Mitman Report § 2.6.2)).

[46] *See id.* (citing Letter from Joseph G. Giitter, Division Director, NRC NRR, to Dave Baxter, Vice President, ONS at 2 (Apr. 30, 2009) (ADAMS Accession No. ML090570779)). Although the cited letter currently has a nonpublic status, the discussion of and citation to this letter has not been redacted from Petitioners' hearing request. *See id.*

[47] *See id.* at 14 (citing Letter from Scott L. Batson, Vice President, ONS, to NRC Document Control Desk (Mar. 6, 2015) (ADAMS Accession No ML15072A106)).

relied on purported "adequate protection" findings to justify an environmental impact of "SMALL" when no such findings have been made.[48]

Finally, Petitioners maintain the DSSEIS fails to satisfy NEPA because it does not contain any discussion of the 2011 Safety Evaluation's environmental significance as it established a minimum flood height for protecting safety equipment and prescribed measures for "adequate protection" against a Jocassee Dam failure flood. *See* Redacted Corrected Hearing Request at 15. Declaring that because the NRC has not repudiated the 2011 Safety Evaluation's findings and requirements or made additional "adequate protection" findings to support reduced flood height and altered reduced height flood response measures, Petitioners maintain that the January 2011 Safety Evaluation remains "an open and unresolved safety issue" that creates a "significant gap or deficit" in the NRC's safety-based regulatory program and in its ability to make a DSSEIS finding of "SMALL" environmental impacts associated with reactor accidents. *Id.*

c. Licensing Board's Analysis

In our view, Petitioners' "adequate protection"-footed claim regarding the insufficiency of the NRC Staff's post-2011 Safety Evaluation/Fukushima-related

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[48] *See id.*; *see also* Petitioners Redacted Reply at 12-14 (asserting that the Staff's failure to provide any follow-up safety evaluation and findings supporting a post-2011 Safety Evaluation change in position regarding the flood height applicable to the ONS facility deprives the DSSEIS of grounds for a "SMALL" environmental impacts finding regarding external flooding risk).

Also in support of these various claims, Petitioners assert generally that "[a]s discussed in the attached Mitman Declaration, these errors, omissions, and misleading statements have enormous safety and environmental significance because they obscure the fact that the NRC has failed to provide the basic level of protection to the Oconee reactors that is required by the [AEA]." Redacted Corrected Hearing Request at 14. This is accompanied by a citation to the Mitman report introduction and sections 2, 3.1 and 4, which provide a background discussion, an ONS facility flooding risk analysis, and a conclusion, respectively, encompassing some 35 of the 46 pages of the report. *See id.* at 14 & n.33; *see also* Redacted Corrected Mitman Report at 1-34, 45-46. Such a reference seemingly runs afoul of the general proscription on incorporation by reference. *See infra* note 55. And this is particularly so with regard to section 3.1, entitled "Failure to Ensure Adequate Protection from Failure of the Jocassee Dam or to Adequately Evaluate Environmental Flooding Risks," *see* Redacted Corrected Mitman Report at 23-34, which is only cited this once without any discussion regarding its contents or substance. Moreover, even assuming that this risk analysis does not constitute an impermissible attempt to litigate a safety issue otherwise outside the scope of this license renewal proceeding, *see* NRC Staff Answer at 21-24 (citing *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), LBP-13-8, 78 NRC 1, 11-12 (2013)), it provides the sort of alternative analysis of flooding risks that the Commission has found inadequate to support an admissible contention absent a discussion addressing the substance of the regulatory analysis made in support of the agency's NEPA determination, which is the agency's post-2011 Safety Evaluation Fukushima-related review. *See NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323-24 (2012).

efforts to assess ONS flood hazard risks fails as the basis for an admissible contention under section 2.309(f)(1) for precisely the same reasons outlined by the prior licensing board in its 2022 decision rejecting Petitioners' section 2.335 waiver petition. In asserting that the Staff must invoke these missing words to support its findings regarding ONS flood hazard risks,[49] Petitioners again fail to acknowledge or address pertinent events following the January 2011 Safety Evaluation,[50] which led the prior licensing board to conclude this wording distinction failed to "carry the regulatory significance" assigned by Petitioners. *Oconee,* LBP-22-1, 95 NRC at 91. We note that per that licensing board's discussion in LBP-22-1, 95 NRC at 87-93, this encompasses, among other things, Petitioners' failure to engage with the substance of two separate documents that were central to the NRC Staff's post-Fukushima analysis and conclusions regarding the sufficiency of ONS flood protection measures. One is the March 2015 FHRR, which includes Duke's compensatory measures to address possible dam-break related flooding and which served as a basis for the Staff's June 2016 letter closing the June 2010 Staff CAL. *See id.* at 87. The other is an addendum to the Staff's April 2016 final FHRR assessment that compared the differing circumstances associated with the Staff's January

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[49] In response to a Board question during the initial prehearing conference discussion about the admissibility of Petitioners' contention, Petitioners' counsel indicated that if in any of its post-January 2011 Safety Evaluation assessments of ONS flood hazards the NRC Staff had employed the term "adequate protection," that likely would have addressed the "missing wording" concern embodied in Contention 1. *See* Redacted Tr. at 97-98 (Curran). Also in this regard, responding to a Board question Petitioners' counsel indicated that the missing words component of Contention 1 likely would constitute a legal contention. *See* Redacted Tr. at 98 (Curran). While this contention's "hodge podge of claims," as Duke's counsel characterized them, Redacted Tr. at 100 (Lighty), weighs against admitting Contention 1 on this basis, we also conclude that allowing additional briefing on this matter, a recognized benefit of admitting a legal contention, *see U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 590-91 (2009), would not be of assistance here given that this particular argument has now been extensively aired twice, once in 2022 before the prior licensing board and now again before this Board.

[50] As Duke points out, *see* Duke Answer at 19, an attachment to a 2020 NRR memorandum providing Commission-directed guidance on the post-Fukushima process for reevaluating flooding and seismic hazards at operating nuclear power plants states that if the response to a section 50.54(f) RFI indicated an undue level of risk to the public, consideration will be given to "regulatory actions to maintain or restore adequate protection" if supported by a 10 C.F.R. § 50.109 backfit analysis. Memorandum from Craig G. Erlanger, Division Director, NRC NRR, to Ho K. Nieh, Director, NRC NRR, encl. at 8 (Mar. 2, 2020) (NRC Staff Guidance, Revision to the Regulatory Decision-Making Process for Reevaluated Flooding and Seismic Hazards for Operating Nuclear Power Plants) (ADAMS Accession No. ML20043D958). Duke makes the point, not unpersuasively, that this provides an "adequate protection" basis for the post-Fukushima section 50.54(f) process, which in turn would make the DSSEIS-cited November 2020 Fukushima review close-out letter disparaged by Petitioners the functional equivalent of an "adequate protection" finding relative to the matter of ONS flooding risk. *See* Duke Answer at 19-20.

2011 safety evaluation and its September 2015 evaluation conducted consistent with the agency's post-Fukushima directions and 10 C.F.R. Part 52 regulatory guidance. *See id.* at 87-88.

Petitioners' continuing lack of engagement with the substance of the post-January 2011 Safety Evaluation regulatory history associated with the NRC Staff's assessment of ONS flood risk,[51] particularly in the context of the Fukushima-related section 50.54(f) process for evaluating the need for potential licensing revisions regarding flooding and other external hazards, *see supra* pp. 19-20, likewise leads us to conclude that Contention 1 is not litigable. In this instance the contention cannot be admitted because it fails to establish the existence of a genuine dispute on a material issue of law or fact as required for admission under section 2.309(f)(1)(vi).

Nor do Petitioners' claims of various errors, omissions, and misleading statements lend any meaningful support to their contention admissibility argument that the DSSEIS discussion of flood hazards is deficient. Petitioners assert that the initial ONS licensing process was deficient because the NRC and Duke failed to consider a Jocassee Dam failure credible and therefore did not act to protect the reactors' safety equipment from floods. *See* Redacted Corrected Hearing Request at 12-13. That argument, however, amounts to an AEA design-basis safety challenge that is outside the scope of this SLR proceeding and so fails to satisfy section 2.309(f)(1)(iii).[52] In addition, Petitioners' claims involving an August 2008 Staff section 50.54(f) letter concerning SSF flood protection adequacy and an April 2009 Staff letter regarding the need for Duke to address Jocassee Dam failures deterministically, *see id.* at 13, do not demonstrate a genuine dispute on a material legal or factual issue in the face of Petitioners' utter failure to engage with the substance of the agency's years of post-Fukushima review of ONS flooding hazards that came well after these two documents.[53] And likewise

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[51] About the closest Petitioners come in this regard is their assertion that, notwithstanding any later regulatory developments, because of the findings made and the measures prescribed in the 2011 Safety Evaluation, the "environmental significance" of that document should have been discussed in the DSSEIS. *See* Redacted Corrected Hearing Request at 6-7, 15. But given Petitioners' failure to explain exactly why the substance of the subsequent regulatory analyses and determinations were inadequate (other than the lack of an "adequate protection" finding denominated as such), this is nothing more than a variation on the "alternative input" approach that the Commission has found wanting as the basis for an admissible contention. *See Seabrook,* CLI-12-5, 75 NRC at 323-24.

[52] *See Sequoyah,* LBP-13-8, 78 NRC at 11-13 (citing 10 C.F.R. 54.30(b); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8-9 (2001)).

[53] Petitioners' reliance on both these items also highlights their continued misapprehension of the regulatory significance of certain NRC Staff issuances, further undercutting their referenced support for Contention 1. As part of a process that the NRC can employ to bring a facility into compliance with the agency's regulatory requirements, a section 50.54(f) RFI and any resulting

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unavailing is Petitioners' challenge to the DSSEIS statement about the nature of its post-Fukushima review of ONS facility flooding hazards as containing the incorrect claim that the Staff's November 2020 letter constituted a "design basis review." *See supra* note 43 and accompanying text (citing DSSEIS at F-4). While Petitioners maintain that the Staff wrongly characterizes its November 2020 close-out letter as constituting an ONS design-basis review, *see id.,* as Duke points out that assertion fails to account for the language in the March 2012 section 50.54(f) RFI indicating that a reevaluation of the licensees' design basis for external hazards was exactly what was contemplated.[54]

In sum, we conclude that Petitioners' Contention 1 does not meet one or more of the contention admissibility precepts set forth in section 2.309(f)(1) and thus cannot be accepted as a litigable issue in this proceeding.

2. Petitioners' Contention 2

In Contention 2, titled "[DSSEIS] Risk Estimates Fail to Meet NEPA Requirements for Rigor, Accuracy, Completeness, and Consideration of Uncertainties," Petitioners maintain that the DSSEIS "is deficient in other signifi-

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Staff evaluation of the information received provide the basis for further agency action to obtain such compliance, e.g., a CAL or a section 2.202 enforcement order. In this regard, as the previous *Oconee* licensing board observed, the April 2009 letter, in conjunction with another 2010 document cited in Mr. Mitman's report in that proceeding (though not referenced in his report submitted in this proceeding), appear to be part of a Staff effort to set the stage for a possible enforcement order regarding ONS flood protection measures that ultimately was not issued. *See Oconee,* LBP-22-1, 95 NRC at 91-92. Instead, the Staff turned to the June 2010 CAL, a Duke response to which was the subject of the January 2011 Safety Evaluation and its appendix with the "adequate protection" reference that is the focus of Contention 1. *See id.* at 92. Moreover, as the 2022 licensing board noted there, *see id.* at 92-93, and as Duke reiterates here, *see* Duke Answer at 29-30, the regulatory significance of any "safety findings" in such a document is not readily apparent.

[54] *See* Duke Answer at 22-23 (citing Letter from Eric J. Leeds, Director, NRC NRR, and Michael R. Johnson, Director, Office of New Reactors, NRC, to All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status at 2 (Mar. 12, 2012) (ADAMS Accession No. ML12053A340)).

Likewise gaining no purchase is Petitioners' assertion that this DSSEIS provision made the incorrect claim that the March 2012 50.45(f) letter "ordered" the submittal of external event hazards information. *See* Redacted Corrected Hearing Request at 9. Even assuming the materiality of Petitioners' argument, *but see* Duke Answer at 21, it nonetheless is based on a misreading of section 50.54(f) (by perhaps misinterpreting courtesy as a lack of authority), which indicates that a licensee "shall . . . upon request" submit to the agency any information being sought, a clear directive that such information is required, *id.* at 21-22 (quoting 10 C.F.R. § 50.54(f)); *see General Public Utilities Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-97-1, 45 NRC 7, 14 n.10 (1997) (observing that section 50.54(f) reporting requirement in generic letter would constitute a requirement, in contrast with a compliance request to conform with guidance recommendations on handling heavy loads using cranes).

cant respects, which result in the significant understatement of accident risk." Redacted Corrected Hearing Request at 16. Under its subpart A heading "Statement of Contention," citing sections 3.2 and 3.3 of the report submitted by their expert Jeffrey Mitman, Petitioners assert that these deficiencies include (1) an inaccurate all-hazards core damage frequency (CDF) estimate (§ 3.2.1); (2) the significantly underestimated probability of a fire-induced large containment failure (§ 3.2.2); (3) an unsupported assumption regarding the seismic event-associated population dose margin (§ 3.2.3); (4) an underestimated assessment of risk resulting from a failure to aggregate risk changes (§ 3.2.4); (5) reliance on an invalid assumption that boiling water reactor (BWR) and Westinghouse pressurized water reactor (PWR) studies are applicable to the ONS reactors (§ 3.2.5); and (6) the failure of the DSSEIS to address uncertainties in violation of NEPA and NRC PRA guidance (§ 3.3). *See id.* at 16-17. In support of these assertions, under the subparts B and E headings of "Basis Statement" and "Concise Statement of the Facts or Expert Opinion Supporting the Contention, Along with Appropriate Citations to Supporting Scientific or Factual Materials," Petitioners rely principally on the one-page subpart A "Statement of Contention" and the Mitman report's section 3.4. *See id.* at 17.

Below we address the efficacy of each of these six claims as support for the admission of Contention 2.[55]

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[55] In challenging this contention's admissibility, as well as the admissibility of Contention 3, Duke interposes an initial, threshold concern about the efficacy of the hearing petition, asserting that Commission precedent establishes that the petition's wholesale incorporation of several sections of the Mitman report without elaborating on any legal theories or otherwise explaining why they meet the section 2.309(f)(1) contention admissibility standards requires rejection of the contention at the outset. *See* Duke Answer at 31-33, 48-49 (citing *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 21-22 (2010); *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 100 (2022); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989)). In their reply, Petitioners seek to distinguish the applicability of the cited Commission cases. *See* Petitioners Redacted Reply at 15-16.

The *North Anna* licensing board recently addressed the "wholesale incorporation" issue and rejected the admission of a contention on that basis. *See North Anna,* LBP-24-7, 100 NRC at 66-67; *see also id.* at 72-73 (faced with the hearing petition's incorporation by reference of a 37-page report, indicating that it is "neither the Board's place nor the Board's duty" to collate the information and assemble a cohesive argument). While Petitioners appear to take a somewhat similar approach here for both Contentions 2 and 3, *compare* Redacted Corrected Hearing Request at 16-19 (supporting each contention's admissibility with less than two pages of double-spaced text), *with* Redacted Corrected Mitman Report at 34-45 (supporting each contention's admissibility with five and six-and-a-half pages of single-spaced text, respectively), we nonetheless deal with the substance of the claims in the Mitman report.

a. All-Hazards CDF Comparison

i. PETITIONERS' POSITION

As the basis for Petitioners' initial Contention 2 claim that the all-hazards CDF estimate utilized in the Staff's DSSEIS is inaccurate, the Mitman report challenges the adequacy of the discussion accompanying Table F-4 of DSSEIS section F.3.2, which compares the value of the latest available ONS all-hazards (internal plus external events) CDF and the highest estimated internal events CDF under the 1996 GEIS (as associated with Indian Point Unit 2). *See* Redacted Corrected Mitman Report at 34. The Staff's discussion, according to the Mitman report, shows that the ONS value remains less than the benchmark 1996 GEIS internal events figure and so the probability-weighted consequences of severe accidents remains "SMALL." *See id.* (citing DSSEIS at F-15). The Mitman report asserts, however, that the DSSEIS "significantly understates accident risks" because the "latest available information" set forth in the 2024 GEIS is not used.[56]

ii. LICENSING BOARD'S ANALYSIS

As reflected in the Mitman report, at the root of Petitioners' concern in this portion of Contention 2 is whether the NRC Staff's use of the benchmark 1996 GEIS internal events figure to bound the probability-weighted consequences of a severe accident at ONS is sufficient to fulfill the agency's responsibility to take the NEPA-required hard look at the environmental impacts of such an accident. In this regard, relative to external events, the DSSEIS provides the following explanation of the analytical methodology employed in the 1996 GEIS:

> For its severe accident environmental impact analysis for each nuclear power plant, the 1996 [license renewal (LR)] GEIS used very conservative 95th-percentile upper-confidence bound (UCB) estimates for environmental impact whenever a-

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[56] Redacted Corrected Mitman Report at 34. In this regard, the Mitman report cites two values, 6.1E-5 and 6.6E-5, in reference to the PWR and BWR mean and median CDF values. *See id.* (citing 3 NMSS, NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Technical Apps., Final Report at E-36, tbl.E.3-12 (rev. 2 Feb. 2024) ([PWR] and [BWR] All Hazards (Full Power) [CDF] Comparison) (ADAMS Accession No. ML23201A226) [hereinafter February 2024 GEIS Vol. 3]).

Although, in conjunction with issuance of the final rule that the updated GEIS supports, the agency in August 2024 republished the February 2024 NUREG-1437 technical appendices volume that is referenced in the Mitman report, the cited Table E.3-12 appears to be unchanged. *Compare* February 2024 GEIS Vol. 3, at E-36, tbl.E.3-12, *with* 3 NMSS, NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Apps. B-J, Final Report at E-36, tbl.E.3-12 (rev. 2 Aug. 2024) ([PWR] and [BWR] All Hazards (Full Power) [CDF] Comparison) (ADAMS Accession No. ML24086A528) [hereinafter August 2024 GEIS Vol. 3].

> vailable. When dealing with risk assessment, use of 95th percentile values provides a more conservative estimate than 50th percentile or mean values. Using the 95th percentile value reduces the likelihood of underestimating risk. This 95th percentile approach provides conservatism to cover uncertainties, as described in Section 5.3.3.2.2 of the 1996 LR GEIS. The 1996 LR GEIS concluded that the probability-weighted consequences of severe accidents, as related to LR are SMALL compared to other risks to which the populations surrounding nuclear power plants are routinely exposed.

DSSEIS at F-6 to -7 (citation omitted). The 1996 GEIS thus "only considered internal events" on a quantitative basis but included a "qualitative assessment of the environmental impacts of accidents initiated by external events" in reaching this impacts conclusion.[57]

But as the DSSEIS acknowledges, "since issuing the 1996 LR GEIS, the NRC's understanding of severe accident risk has continued to evolve." DSSEIS at F-7. In this regard, the DSSEIS section on external events information, which also includes the NRC Staff's analysis of the all-hazards (or total plant) CDF for ONS, indicates that the 2013 GEIS "expanded the scope of the evaluation in the 1996 LR GEIS and used more recent technical information that included both internally and externally initiated event [CDFs]." *Id.* at F-14. The DSSEIS notes as well that the information used in its external events assessment came from multiple sources, including (1) the 1998 Oconee PRA Level 3-based SAMA analysis generated to support the ONS initial license renewal ER;[58] (2)

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[57] DSSEIS at F-14. Internal event-initiated accidents are those initiated by the failure of plant systems or operator actions. *See* August 2024 GEIS Vol. 3, at E-17 n.15.

[58] As explained on the NRC's website:

> PRAs for nuclear power plants can estimate risk measures at three different levels of characterization using sequential analyses in which the output from one level serves as a conditional input to the next. Using event trees and fault trees, a Level 1 PRA models various plant and operator responses to initiating events that challenge plant operation to identify accident sequences that result in reactor core damage. The estimated frequencies for all core damage accident sequences are summed to calculate the total [CDF] for the analyzed plant.
>
> A Level 2 PRA models and analyzes the progression of "severe accidents" — those Level 1 PRA accident sequences that result in reactor core damage — by considering how the reactor coolant and other relevant systems respond, as well as how the containment responds to the accident . . . .
>
> A Level 3 PRA models the release and transport of radioactive material in a severe accident and estimates the health and economic impact in terms of different offsite consequence measures, for example: (1) early fatalities and injuries and latent cancer fatalities resulting from the radiation doses to the surrounding population, and (2) economic costs associated with evacuation, relocation, property loss, and decontamination. Offsite consequences are estimated based on the Level 2 PRA source term characteristics, and on several other factors

(Continued)

the Staff's plant-specific supplemental EIS for the ONS initial license renewal; and (3) the all-hazard CDF values provided by the March 2021 ONS ER for its SLR application, as supplemented in November 2022. *See id.* Relying on this information, the Staff states in the DSSEIS:

> Although the Combined CDF (All Hazards) increased to 1.26×10^{-4} per reactor-year, the Oconee Station All Hazards CDF is still less than the highest estimated internal events CDF (Indian Point 2 is 3.5×10^{-4} per reactor-year) used in the 1996 LR GEIS. Accordingly, the likelihood of an accident that leads to core damage, including accounting for the contribution from external events, is less for Oconee Station than the highest estimated internal events CDF from the values which were used as the basis for the 1996 LR GEIS.

Id. at F-15. This, in turn, led the Staff to determine that

> the sum of the Oconee Station external events CDFs was within the range of PWR internal event CDFs that formed the basis for the 1996 LR GEIS. Therefore, the NRC staff concludes that the probability-weighted offsite consequences of severe accidents initiated by external events during the SLR term would not exceed the probability-weighted consequences predicted in the 1996 or 2013 LR GEIS. For these issues, the 1996 and 2013 LR GEIS predicted that the probability-weighted consequences of severe accidents would be SMALL for all nuclear plants. The NRC staff identified no new and significant information regarding external events during its review of Duke Energy's ER, during the SAMA audit, through the [EIS] scoping process, or through the evaluation of other available information. Thus, the NRC staff finds [Duke's] conclusion acceptable that no new and significant information exists for Oconee Station concerning offsite probability-weighted consequences of severe accidents initiated by external events that would alter the conclusions that for Oconee Station, the probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic impacts from severe accidents remains SMALL for the SLR period.

Id. at F-17.

This NRC Staff finding is consistent with the agency's approach, set forth in both the 2013 and 2024 GEISs, of utilizing the highest estimated internal events

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> affecting the transport and impact of the radioactive material, including meteorology, demographics, emergency response, and land use. Combining the results of the Level 1 and Level 2 PRAs with the results of this consequence analysis, only the Level 3 PRA estimates the integrated risk (likelihood times consequences) to the public for the analyzed nuclear power plant.

Level 3 PRA Project, NRC (Oct. 11, 2022), https://www.nrc.gov/about-nrc/regulatory/research/level3-pra-project.html.

CDF from the 1996 GEIS as a bounding measure in determining for a license renewal term of operation whether the probability-weighted consequences of severe accidents remain SMALL.[59] In contrast, the Mitman report urges the adoption of a different methodology comparing the ONS all-hazards CDF with the PWR and BWR all-hazards mean and medium values set forth in the recently adopted 2024 GEIS, which purportedly will show that the DSSEIS approach "significantly understates accident risks." Redacted Corrected Mitman Report at 34. But it is not enough merely to imply that additional or different information should be considered. Lacking in Petitioners' claim is engagement with the critical parallel point of why the bounding analysis employed by the Staff is insufficient as an appropriate line of demarcation for assessing accident risk and its impacts, and particularly why the finding of SMALL impacts associated with this methodology is not reasonable. *See Seabrook,* CLI-12-5, 75 NRC at 323-24. The Mitman report thus provides the type of alternative analysis that the Commission has indicated does not meet the standard for establishing a section 2.309(f)(i)(vi) genuine dispute on a material legal or factual issue.

b. Multiplier for Externally Initiated Fire Events

i. PETITIONERS' POSITION

In support of the second portion of Petitioners' Contention 2, referencing

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[59] *See* 3 NRR, NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Apps., Final Report at E-24 (rev. 1 June 2013) (Table E-19 (Summary of Conclusions) (ADAMS Accession No. ML13106A244) [hereinafter 2013 GEIS Vol. 3]) ("[T]he CDFs from severe accidents initiated by external events . . . are comparable to those from accidents initiated by internal events but lower than the CDFs that formed the basis for the 1996 GEIS."); August 2024 GEIS Vol. 3, at E-23 to -24 (indicating that based on an analysis of the all-hazards CDF from the SAMA analyses for the 28 PWRs and BWRs considered in the 1996 GEIS, "the likelihood of an accident that leads to core damage, including accounting for the contribution from external events, is generally less for both PWRs and BWRs than the likelihood used as the basis for the 1996 LR GEIS, and all are appreciably less than the highest estimated CDF used in the 1996 LR GEIS."); *see also* 2 NMSS, NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, App. A, Final Report at A-137 to -138 (rev. 2 Aug. 2024) (noting in response to Petitioners' rulemaking comment that, on a generic basis, a Table E.3-12 comparison of the CDF mean values for the 28 plants analyzed for the 1996 GEIS showing those facilities' recent plant-specific SAMAs and risk-informed license amendment requests reflected a 35 percent increase that "cannot reasonably be considered small, given that this presumably will lead to a comparable increase in fatalities and land contamination" and that "[t]he 1996 LR GEIS based the determination that the impact of severe accidents is SMALL on estimates for probability-weighted consequences to the environment, not CDFs. Furthermore, the LR GEIS is not a plant-specific assessment but rather draws its conclusions based on available plant-specific information and other relevant information. Specifically, the probability-weighted consequences estimated in the 1996 LR GEIS remain bounding after consideration of new and applicable plant-specific information and other relevant information.") (ADAMS Accession No. ML24086A527) [hereinafter August 2024 GEIS Vol. 2].

DSSEIS section F.3.2.1 concerning fire event consequences, the Mitman report claims that Duke's use of an external events multiplier underestimates the impact of a "significantly larger containment failure probability for fire," which is the largest external event contributor to risk. Redacted Corrected Mitman Report at 34-35. The report asserts that this underestimate leads to a significantly underrepresented population dose risk (PDR). *See id.* at 35. And to confirm why aggregating all the external hazards together underestimates the PDR, the Mitman report compares the DSSEIS external events multiplier methodology with a proposed alternative that uses only the external fire hazard to determine the PDR.[60] The Mitman report asserts that using the external events multiplier method is inadequate because it underestimates the PDR by aggregating the external hazards. *See id.* According to the Mitman report, the alternative external fire risk approach is better because the higher calculated PDR is an appropriate reflection of the impact of a significantly larger containment failure probability for fire. *See id.*

ii. LICENSING BOARD'S ANALYSIS

As explained by the NRC Staff in the DSSEIS, the 1998 ONS Level 3 PRA PDR calculated in conjunction with Duke's initial license renewal application included the quantitative contribution from internal event-initiated severe accidents. *See* DSSEIS at F-18. And to account for externally initiated events as well, a multiplier was used that consisted of the ratio of the total plant CDF (for both externally and internally initiated events) to the internally initiated events CDF. *See id.* at F-19. This figure, in turn, is multiplied by the estimated PDR for internally initiated events to develop the total plant PDR estimate used in the 1998 Level 3 PRA analysis for the ONS initial license renewal. *See id.* But, as the Staff observes in the DSSEIS, using the higher external event multipliers associated with the more recent increased fire core damage values in the March 2021 ONS SLR ER's external events PRA, a significant margin still exists between the cumulative population dose results from the 1998 ONS

[60] *See* Redacted Corrected Mitman Report at 34-35. According to the Mitman report, the external events multiplier is obtained by dividing the all-hazards CDF by the internal events CDF. *See id.* (citing DSSEIS at F-19). The Mitman report's alternative method is based on the large early release frequency (LERF) data in Table 4.15-2 of the March 2021 initial ER supporting the ONS SLR application, which the report asserts shows that LERF values for externally initiated fire events are disproportionately larger than LERF values for internal events, which can be seen by deriving the conditional containment failure probability (CCFP). *See id.* (citing Oconee SLR Application, encl. 3, attach. 2 (Appendix E, Applicant's [ER], Subsequent Operating License Renewal Stage, [ONS] Units 1, 2, and 3, at 4-89 to -109, tbl.4.15-2 (Mar. 2021) (Bounding Quantitative Reduction of CDF and Significant [Source Term Category] Group Frequencies)) (ADAMS Package Accession No. ML21158A193); Redacted Corrected Mitman Report at 31, tbl.5 (LERF and CCFP from 2021 SAMA) (providing data extracted from 2021 ER's table 4.15-2)).

license review SAMA analyses and the cumulative 95th percentile UCB population dose results from the 1996 GEIS. *See id.* The Staff thus concluded that the increased external event values in the March 2021 ER did not undermine the use of the 95th percentile estimates in the 1996 LR GEIS as a basis for the finding that environmental impacts of a severe accident will be SMALL.[61]

As was the case concerning Petitioners' arguments regarding the all-hazards CDF comparison, Petitioners provide an alternative analysis without directly challenging the reasonableness of the NRC Staff's central assertion that the 1996 GEIS bounding analysis provides an appropriate measure for assessing accident risk and its environmental impacts, which would be SMALL. *See supra* section III.B.2.a.ii. Accordingly, Petitioners' concern about the sufficiency of the fire event multiplier likewise is inadequate to establish the section 2.309(f)(1)(vi) genuine dispute on a material legal or factual issue necessary for an admissible contention.

c. Seismic Events Multiplier

i. PETITIONERS' POSITION

In support of this claim about the seismic events multiplier employed by the Staff, the Mitman report references DSSEIS section F.3.2.2. *See* Redacted Corrected Mitman Report at 35. There the Staff's discussion indicates that the significant margin existing between cumulative population dose results from the 1998 SAMA analysis associated with ONS initial license renewal and the cumulative 95th percentile UCB population risk results from the 1996 GEIS does not undercut the 1996 GEIS population risk estimates as an appropriate accident risk bounding analysis. *See id.* The Mitman report presumes that this comparison relies on the same external event multiplier employed to assess fire

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[61] *See* DSSEIS at F-19; *see also* August 2024 GEIS Vol. 2, at A-139 (in response to Petitioners' rulemaking comment that external event multipliers are a source of non-conservatism, referencing footnote 15 of the 2024 GEIS appendix E as explaining why this non-conservatism is unlikely to affect overall appendix E conclusions regarding accident risk and impacts); August 2024 GEIS Vol. 3, at E-12 n.12 ("Information from several of the SAMA analyses (i.e., for the Oconee, McGuire, Catawba, and Columbia plants) show that the PDR for different hazards is not linear relative to their contribution to CDF. For example, these analyses show that the relative contribution to total plant PDR is somewhat higher than the relative contribution to total plant CDF for seismic events and is somewhat lower for internal events. This result is consistent with NRC staff experience with the risk results from plant-specific seismic PRAs where the contribution to large early release is generally higher than the corresponding results from internal events PRAs. However, this non-linear relationship likely introduces a small non-conservatism in the total plant PDR. This non-conservatism is not significant to the conclusions of this LR GEIS supplement because of the significant conservatism in the 1996 LR GEIS analyses.").

events.[62] As a consequence, the report claims that the "same fallacy" would exist with this seismic analysis as with the report's fire results concern, arguing that the seismic CDF values relied upon for calculating the multiplier fail to incorporate the difference in CCFPs and make it "far from clear" that the assumed population dose margin exists. *Id.*

ii. LICENSING BOARD'S ANALYSIS

We find ourselves in agreement with Petitioners' acknowledgment in their reply that their claim contesting the propriety of the use of an external events multiplier for assessing the seismic event-initiated severe accident impacts parallels their allegation concerning the adequacy of using such a multiplier for evaluating fire event impacts. *See* Petitioners Redacted Reply at 20; *see also supra* section III.B.2.b.i. And we similarly conclude that because Petitioners provide an alternative approach without directly challenging the reasonableness of the NRC Staff's pivotal premise that the 1996 GEIS bounding analysis provides an appropriate measure for assessing accident risk and its environmental impacts, which would be SMALL, their concern about the adequacy of the seismic events multiplier necessarily fails to establish the requisite section 2.309(f)(1)(vi) genuine dispute on a material legal or factual issue needed to obtain this contention's admission. *See Seabrook,* CLI-12-5, 75 NRC at 323-24.

d. Risk Aggregation

i. PETITIONERS' POSITION

Citing the DSSEIS evaluation concerning how the 1996 GEIS's accident risk conclusions might be affected by changes between the 1996 GEIS and the 1998 ONS initial license renewal SAMA analysis (such as changes in fire or seismic CDF values) for various accident/risk scenario impacts, the Mitman report maintains that the DSSEIS's approach to risk aggregation has a "fundamental problem." Redacted Corrected Mitman Report at 35-36 (citing DSSEIS at F-21). According to the report, that approach, in which each accident/risk scenario is viewed in isolation without compounding their effects on each other, causes a serious underestimation of the total risk increase associated with operations during the SLR term. *See id.* at 36. The report then seeks to demonstrate the parameters of this deficiency by providing a table in which the risks associ-

[62] *See* Redacted Corrected Mitman Report at 35 (citing DSSEIS at F-19). As Duke observes, the DSSEIS quotation and citation set out in the Mitman report refer to a discussion of fire, not seismic, risk. *See* Duke Answer at 38. But as Petitioners note in their reply, a substantially similar quote is found in the DSSEIS seismic risk analysis. *See* Petitioners Redacted Reply at 20 n.38 (citing DSSEIS at F-21).

ated with six accident scenarios are aggregated. *See id.* tbl.6 (Aggregation of Changes in Risk) [hereinafter Redacted Corrected Mitman Report Table 6]. The result of this aggregation, according to the Mitman report, is a risk factor that "swamps" the individual scenario risk factors. *Id.* at 36-37. While recognizing that its own mathematical aggregation method, i.e., multiplying the individual risk factors, "is inaccurate," the Mitman report nonetheless asserts that this approach is legitimate because (1) it illustrates "the scale on which the NRC is underestimating the effect of individual CDF changes on overall risk"; and (2) using multiplication was the only option available given that publicly available data from ONS-related sources are "insufficient to the task" of conducting a mathematically correct aggregation. *Id.* at 37. Instead, according to the report, "[t]he NRC should provide the necessary data and conduct the analysis in order to provide a reasonable estimate of how changes in CDF estimates for multiple scenarios affect overall risk." *Id.*

ii. LICENSING BOARD'S ANALYSIS

In claiming a DSSEIS deficiency based on the NRC Staff's failure to aggregate severe accident scenario impacts, the Mitman report does not raise a cognizable NEPA deficiency but rather merely offers an alternative approach that may be no more meaningful than the analysis the Staff has provided. Moreover, the report does so using information that is highly suspect, if not wholly speculative. As Duke points out, the report's table, which purports to show the impact of the aggregation of change in risk, is a "hodge-podge" of figures. Duke Answer at 40. As the table reflects, some items are based on event frequencies and others on conditional consequence measures of PDR, while ONS-specific scenarios (e.g., ONS PRA-associated seismic and fire CDFs) are listed with generic evaluations (e.g., 2013 GEIS power uprate and higher burnup fuel scenarios), all without any attempt to explain how or why these are compatible or interchangeable. *See* Redacted Corrected Mitman Report Table 6. And added to this is the report's methodology of multiplying rather than adding the risk factors, an approach that NRC guidance indicates is mathematically suspect.[63] While acknowledging that the table's mathematical aggregation of risks is "inaccurate" given that the risks relate to different risk analysis elements that "may not" be directly compared to achieve "an accurate result," the report seeks to justify this imprecision as owing to a lack of access to the necessary infor-

[63] *See* Regulatory Guide 1.174, An Approach for Using [PRA] in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis at 23 (rev. 3 Jan. 2018) ("Because the hazards and plant operating states are independent, addition of the mean value risk results (also referred to as 'aggregation' of the results) of the contributions is mathematically correct.") (ADAMS Accession No. ML17317A256) [hereinafter Regulatory Guide 1.174].

mation. *Id.* at 37. Yet, lacking any explanation about what information was unavailable or why it was not available, we are unable to find the proffered analysis (which the Mitman report acknowledges is otherwise mathematically challenged) provides the grounds for an admissible contention.[64]

Given all this, as well as the complete absence of any showing that this aggregation claim would lead to the conclusion that the severe accident environmental impacts would be something other than SMALL, this Contention 2 subpart does not meet the material dispute standard of section 2.309(f)(1)(vi).[65]

e. Applicability of BWR and PWR Studies to ONS

i. PETITIONERS' POSITION

The DSSEIS section F.3.2.2 discussion of the State-of-the-Art Reactor Consequence Analysis (SOARCA) regarding the consequences of a seismically-initiated severe accident is deficient, the Mitman report maintains, because the SOARCA work was on a General Electric BWR and two Westinghouse PWRs. *See* Redacted Corrected Mitman Report at 37. The report describes the ONS reactors as Babcock and Wilcox PWRs with once-through steam generators, which makes them significantly different from the SOARCA facilities that employ the more common u-tube steam generators. According to the Mitman report, this difference in design, as well as other ONS-unique features such as the lack of reliance on emergency diesel generators as the required source of onsite emergency power in the event of loss of offsite power (LOOP) and the absence of main steam isolation valves (MSIV) between its steam generators and turbines, could impact population dose and makes it "unclear how . . . useful" SOARCA

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[64] *See Oconee,* LBP-22-1, 95 NRC at 91 n.89 (indicating that petitioners' explanation that their lack of engagement with post-Fukushima Duke and Staff evaluation documents was caused by a significant portion of those documents having excised information did not relieve petitioners of responsibility to address, to the extent possible, the adequacy of those evaluation documents based on whatever relevant public information was available).

[65] Nor do we find persuasive the assertion in Petitioners' reply that the Mitman report put forth the Table 6 information only "to illustrate" the seriousness of NRC's underestimation of the compounding of accident risks, Petitioners Redacted Reply at 21, which seems an attempt to justify what is little more than the type of expert speculation that is not a permissible basis for an admissible contention. *See USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) ("[A]n expert opinion that merely states a conclusion . . . 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 . . . ." (quoting *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181, *aff'd,* CLI-98-13, 48 NRC 26 (1998))); *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 253 (2007)) ("[N]either mere speculation nor bare or conclusory assertions, even by an expert, . . . will suffice to allow the admission of a proffered contention.").

report insights are absent additional NRC Staff analysis about the relevance of a SOARCA report to ONS. *Id.*

ii. LICENSING BOARD'S ANALYSIS

As Duke notes, the SOARCA project is an agency attempt to "develop the best estimates of the offsite radiological health consequences for potential severe reactor accidents based on a review of certain pilot plants," the published results of which are discussed in DSSEIS section F.3.2.2 relative to seismic events. Duke Answer at 42. The SOARCA studies analyzing the consequences of seismically-initiated station blackout/LOOP severe accident scenarios at the Surry (Westinghouse PWR), Peach Bottom (General Electric BWR), and Sequoyah (Westinghouse PWR) facilities recognize that their general application must take into consideration the "differences [that] exist in plant-specific designs, procedures, and emergency response characteristics."[66] The Mitman report, however, fails to provide any information about how the differences it identifies in the ONS design (Babcock & Wilcox PWR) relative to the comparative plants undermine in any material way the NRC Staff's observation that these studies show that the station-blackout/LOOP severe accident scenarios, even when not mitigated to avoid core damage and the release of radioactive material to the environment, nonetheless would result in "essentially zero risk . . . of early fatality for an individual." DSSEIS at F-22.

While asserting that because the ONS design lacks emergency diesel generators the station-blackout/LOOP is a dominant contributor to population dose that must be accounted for in determining a SOARCA report's applicability to ONS, the Mitman report does not account for the fact that the 2022 Surry SOARCA report discussed in the DSSEIS (at F-22) assumes that an unmitigated "seismic event causes a loss of offsite power and failure of onsite emergency AC power resulting in a [station blackout] where neither onsite nor offsite AC power are re-

[66] Office of Nuclear Regulatory Research (RES), NRC, NUREG-1935, [SOARCA] Report at xi (Nov. 2012) (ADAMS Accession No. ML12332A057); *see* RES, NRC, NUREG/CR-7262, [SOARCA] Project, Uncertainty Analysis of the Unmitigated Short-Term Station Blackout of the Surry Power Station at 7-1 (Dec. 2022) ("The SOARCA analyses were completed for specific accident scenarios at specific plants. Thus, the application of results must be tempered with the understanding of the reactor type, scenario for which results were produced, and site-specific characteristics.") (ADAMS Accession No. ML22194A066) [hereinafter Surry Unmitigated SOARCA Report]; *see also* RES, NRC, NUREG/CR-7245, [SOARCA] Project, Sequoyah Integrated Deterministic and Uncertainty Analyses at xxiii (Oct. 2019) ("Rare reactor accidents can involve reactor fuel melting, a failure of the reactor coolant system, and challenges to the containment structure and its function as a barrier to the release of radioactive materials. The challenges to the containment function vary with containment designs, the specific scenario, and the associated accident progression phenomena posing that challenge. For this reason, the NRC has chosen to study challenging severe accident scenarios for a variety of containment design approaches.") (ADAMS Accession No. ML19296B786).

coverable." Surry Unmitigated SOARCA Report at 2-1. Likewise, the statement from the 2022 Surry SOARCA report that "[o]nce there is a [steam generator tube rupture], MSIV leakage is the primary environment bypass leakage path," *id.* at 6-25, appears to be in line with the Mitman report's observation that the lack of MSIVs between the ONS steam generator and the turbine "[has] an impact on population dose," Redacted Corrected Mitman Report at 37. Nor does the Mitman report provide any analysis explaining how the releases from the Sequoyah SOARCA station blackout/LOOP accident scenario associated with MSIV leakage differ from any purported station blackout/LOOP-related releases from ONS.

The Commission has made clear that it expects a licensing board "to review the material offered by a petitioner as support for a contention," which should be scrutinized "'both for what it does and does not show.'"[67] Relative to the SOARCA reports referenced by the Mitman report and the information those documents contain as outlined above, the Mitman report has not provided any analysis that would frame a genuine dispute with the DSSEIS conclusion that while "the reevaluated [ONS seismic PRA seismic CDF] for SLR is higher than the [ONS seismic PRA seismic CDF] value during initial license renewal, this increase does not challenge the 95th percentile UCB for population dose estimates used in the 1996 LR GEIS." DSSEIS at F-23. Thus, the Mitman report contains no significant new information regarding the probability-weighted consequences to the environment of seismic external events. This Contention 2 subpart's concern regarding the relevance of these SOARCA documents to ONS (which the Mitman report only categorizes as being "unclear" in terms of the insights they afford, Redacted Corrected Mitman Report at 37) therefore fails to establish the requisite 2.309(f)(1)(vi) genuine dispute on a material legal or factual issue needed for its admission.

f. Uncertainties

i. PETITIONERS' POSITION

Petitioners claim that the DSSEIS fails to address uncertainties as required under NEPA and NRC guidance, citing the decision of the United States Court of Appeals for the Third Circuit in *Limerick Ecology Action, Inc. v. NRC,* 869 F.2d 719, 744 (3d Cir. 1989), and Mitman report section 3.3. *See* Redacted Corrected Hearing Request at 17. The Mitman report expresses a concern about DSSEIS section F.3.9 and its discussion of uncertainties associated with the

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[67] *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-18-4, 87 NRC 89, 107 & n.131 (2018) (quoting *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90, *rev'd in part on other grounds,* CLI-96-7, 43 NRC 235 (1996)).

1996 GEIS. Specifically, the Mitman report argues that the DSSEIS' reliance on the "very conservative 95th percentile, UCB estimates for environment[al] impact" does not constitute a "comprehensive uncertainty analysis" because they are estimates of total population dose.[68] Citing the agency's 1995 PRA policy statement and 2017 guidance on the treatment of PRA-associated uncertainties in risk-informed decision-making, the Mitman report asserts that the NRC's regulatory judgments must include appropriate consideration of uncertainties to demonstrate the agency's degree of confidence in its predictions.[69]

The Mitman report also maintains that, like the need for PRAs for reactor risk analysis, an uncertainty analysis is equally important in agency NEPA assessments.[70] The Mitman report asserts that the Duke SAMA analysis CDF of 1.2E-4 (as reflected in the Mitman report's Table 1) as well as the ONS LERF values of 1.9E-5 (for units 1 and 2) and 1.75E-5 (for unit 3) exceed the NRC Regulatory Guide thresholds and so require serious consideration of uncertainty information.[71] Providing a proposed methodology for undertaking such an analysis,[72] the Mitman report concludes that not having done anything like this, the DSSEIS is "deficient and unacceptable as it never calculates probabilistic uncertainties" and therefore does not provide a basis for confidence in its risk

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[68] Redacted Corrected Mitman Report at 37-38 (quoting DSSEIS at F-29). We note that the quoted language does not come from DSSEIS section F.3.9 concerning uncertainties, but rather from section F.4 regarding population sensitivity. *See* DSSEIS at F-28 to -29.

[69] *See* Redacted Corrected Mitman Report at 38 (citing Final Policy Statement, Use of PRA Methods in Nuclear Regulatory Activities, 60 Fed. Reg. 42,622 (Aug. 16, 1995); RES, NRC, NUREG-1855, Guidance on the Treatment of Uncertainties Associated with PRAs in Risk-Informed Decisionmaking (rev. 1 Mar. 2017) (ADAMS Accession No. ML17062A466)).

[70] *See id.* (citing NMSS, NRC, NUREG-1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supp. 1: Operating License Renewal at 5-3, 5-5, 5-7 (drft. rev. 2 Feb. 2023) (ADAMS Accession No. ML22165A070)).

[71] *See id.* at 38-39 (citing Redacted Corrected Mitman Report at 10, tbl.1 ([CDF] for External Events)). In this regard, NRC Regulatory Guide 1.174 includes a discussion indicating that a total CDF and an LERF "considerably" higher than the thresholds of 1E-4 and 1E-5 per reactor-year, respectively, should place the focus "on finding ways to decrease rather than increase risk." Regulatory Guide 1.174, at 28; *see also id.* at 32 (stating that if CDF and LERF should "considerably" exceed the respective 1E-4 and 1E-5 limits, "the licensee may need to show why steps should not be taken to reduce CDF or LERF.")

[72] *See* Redacted Corrected Mitman Report at 39 ("An adequate probabilistic risk analysis would include parametric uncertainty data on all input parameters and calculate the corresponding CDF and LERF with uncertainty bounds (e.g. a CDF or LERF of 1E-5 per year with a 90% confidence band of 1E-6 to 5E-5 per year). The analysis would then propagate those CDF and LERF values with their uncertainty bands through the Level 2 and Level 3 PRA evaluations ending with estimates of both prompt and latent cancer fatalities with uncertainty bands. Finally, the analysis would compare [those] calculated values with their corresponding uncertainties against the decision thresholds, i.e., safety goals.").

estimates to allow an assessment of environmental risk or safety goal compliance. Redacted Corrected Mitman Report at 39.

ii. LICENSING BOARD'S ANALYSIS

On its face, Petitioners' "adequate probabilistic analysis" is an alternative analysis. Generally, simply suggesting additional information or inputs that must be introduced into an existing analytical framework is insufficient to support contention admissibility without also identifying a deficiency in the analysis.[73] Petitioners go further, however, to criticize the DSSEIS-endorsed evaluation of uncertainty based on the 1996 GEIS bounding analysis that "provides conservatism to cover uncertainties" by employing the 95th percentile UCB estimates of severe accident environmental impacts. DSSEIS at F-28. What Petitioners offer through the Mitman report is an entirely different approach based on an agency guidance statement. The purpose of that guidance statement is to outline an NRC Staff-acceptable approach for an applicant's use of PRAs "for developing risk-informed applications for a licensing basis change that considers engineering issues and applies risk insights." Regulatory Guide 1.174, at 1. Here, however, no licensing basis change is proposed by the applicant (nor could any licensing basis issues be the subject of review in this proceeding, *see* 10 C.F.R. § 54.30).

A contention seeking to substitute a different approach to that taken in an environmental impact analysis must show that the analysis being utilized is not "reasonable under NEPA." *Seabrook,* CLI-12-5, 75 NRC at 323. Simply asserting that the NRC Staff's analysis "using the 95th percentile of the final results does not constitute comprehensive uncertainty analysis," as the Mitman report does, Redacted Corrected Mitman Report at 38, fails to address the reasonableness of the analysis the Staff performed. Both the 2013 and 2024 versions of NUREG-1437 provide the technical basis for the final GEIS rule by which the agency periodically seeks to account for and address the generic environmental impacts of both initial and subsequent license renewals.[74] And as is evident in both, the significance and applicability of the "very conservative" 95th percentile benchmark first adopted in the context of the 1996 GEIS has been consistently recognized as appropriate for assessing both the impacts associated with individ-

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[73] *See Seabrook,* CLI-12-5, 75 NRC at 323 ("Given the quantitative nature of the SAMA analysis, where the analysis rests largely on selected inputs, it may always be possible to conceive of alternative and more conservative inputs, whose use in the analysis could result in greater estimated accident consequences. . . . We have long held that contentions admitted for litigation must point to a deficiency in the application, and not merely 'suggestions' of other ways an analysis could be done, or other details that could have been included.").

[74] *See* Renewing Nuclear Power Plant Operating Licenses — Environmental Review, 89 Fed. Reg. 64,166, 64,166 (Aug. 6, 2024) [hereinafter 2024 GEIS Rulemaking].

ual severe accident initiating events and impact estimate uncertainties.[75] While Petitioners have expressed a pronounced preference for what they consider a more "comprehensive uncertainty analysis," Redacted Corrected Mitman Report at 38, nothing they have provided suggests that the agency's longstanding conservatism-based approach is in any way unreasonable under NEPA.

We thus find Petitioners' challenge to the DSSEIS discussion of impact uncertainties is not a basis for admitting Contention 2 because it fails to frame a genuine dispute on a material legal or factual issue.[76] *See* 10 C.F.R. § 2.309(f)(1)(vi).

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[75] *See* August 2024 GEIS Vol. 3, at E-37 (in analyzing impacts of severe accidents initiated by external events, concluding "that the new information from the external events PRAs is not significant for the purposes of this LR GEIS revision, that external event risk is being effectively addressed and reduced by the various NRC Orders and other initiatives, and therefore, external event risk is not expected to challenge the 1996 LR GEIS 95th percentile UCB risk metrics during the initial LR or SLR time period."); *id.* at E-93 (in summarizing uncertainties in estimated impacts of severe accidents, indicating that "the 1996 LR GEIS contained an assessment of uncertainties in the information used to estimate the environmental impacts. Section 5.3.4 of the 1996 LR GEIS discusses the uncertainties and concludes that they could cause the impacts to vary anywhere from a factor of 10 to a factor of 1,000. This range of uncertainties bounds the uncertainties discussed in Section E.3.9 [of this GEIS], as well as the uncertainties brought in by the other sources of new information, by one or more orders of magnitude."); 2013 GEIS Vol. 3, at E-24 (in analyzing impacts of severe accidents initiated by external events, concluding "that the CDFs from severe accidents initiated by external events . . . are comparable to those from accidents initiated by internal events but lower than the CDFs [generated using 95th percentile [UCB] estimates] that formed the basis for the 1996 GEIS. The environmental impacts from externally initiated events are generally significantly lower (one or more orders of magnitude) than those used in the 1996 GEIS."); *id.* at E-47 (in summarizing impacts uncertainties in estimated impacts of severe accidents, stating that "the 1996 GEIS contained an assessment of uncertainties in the information used to estimate the environmental impacts. Section 5.3.5 of the 1996 GEIS discusses the uncertainties and concludes that they could cause the impacts to vary anywhere from a factor of 10 to a factor of 1,000. This range of uncertainties bounds the uncertainties discussed in Section E.3.9 [of this GEIS], which ranged from a factor of 3 to 10, as well as the uncertainties brought in by the other sources of new information."); *see also* August 2024 GEIS Vol. 2, at A-188 (noting in response to Petitioners' rulemaking comment regarding a lack of detailed uncertainty analysis in the draft GEIS that "[i]n the 1996 LR GEIS, because limited information was available, very conservative 95th percentile UCB values were used to account for uncertainty for determining the probability-weighted consequences to the public and environment. There was still a large margin compared to the NRC safety goals. The SOARCA uncertainty analyses also identified a large margin compared to the [quantitative health objective] limits (for the important class of [station blackout] scenarios studied), which confirms the 1996 LR GEIS determination. No changes were made in the LR GEIS, final rule, or guidance as a result of these comments.").

[76] As we noted above, *see supra* p. 39, Petitioners cite the Third Circuit's decision in *Limerick Ecology Action,* 869 F.2d at 744, as supporting their claim that the NRC violated NEPA with the DSSEIS's failure to address uncertainties, albeit without providing any analysis or explanation as to why the case supports that assertion. *See* Corrected Hearing Request at 17. We note, however, that the cited portion of the decision appears to be inapplicable here because it deals with an agency

(Continued)

3. Petitioners' Contention 3

a. Petitioners' Position

As set forth in its subpart A "Statement of Contention," this contention, titled "[DSSEIS] fails to address the effects of climate change on accident risk," challenges the purported failure of the DSSEIS to acknowledge the "increased frequency and severity of extreme weather events" due to climate change that "inevitably affect the likelihood and severity of reactor accidents." Redacted Corrected Hearing Request at 18. Further, according to Contention 3, "[c]onsideration of climate change effects is particularly important for Oconee, which was never designed to withstand a significant flood from failure or overtopping of the Jocassee Dam." *Id.* Petitioners also contend that because climate change effects are "reasonably foreseeable and potentially significant," these effects must be considered now for the SLR term, not later, as the DSSEIS indicates. *Id.* (citing DSSEIS at 3-35 to -36). According to Petitioners, such possible future action does not excuse the agency from analyzing these effects now unless there is a showing, which Petitioners maintain was not made here, that the effects are "so small as to be remote and speculative." *Id.* And in support of these assertions, in subparts B and E providing, respectively, a "Basis Statement" and a "Concise Statement of the Facts or Expert Opinion Supporting the Contention, Along with Appropriate Citations to Supporting Scientific or Factual Materials" for the contention, Petitioners again indicate that the support for this contention can be found chiefly in the contention's one-page subpart A "Statement of Contention" and section 3.4 of the Mitman report. *See id.* at 18, 19.

Regarding Contention 3, the Mitman report asserts that the various 1980s and early 1990s FERC and NRC Oconee-related external risk evaluations, including flooding risks, referenced and discussed in section 2.4 of the Mitman report, were done without any consideration of the then largely-unanticipated impacts of climate change on the likelihood and severity of extreme weather events that are not only apparent today, but are likely to increase with the passage of time. *See* Redacted Corrected Mitman Report at 39. At the same time, the report challenges the NRC Staff's DSSEIS assertion that the impacts of natural phenomena, such as earthquakes and intense or prolonged precipitation-induced flooding, whether attributable to climate change or otherwise, are outside the scope of the NRC's license renewal environmental review because they involve plant systems, structures, and components that are assessed as a safety rather than an environmental matter. *See id.* at 39-40 (citing DSSEIS at 3-30); *see also* DSSEIS at 3-208. According to the Mitman report, this runs counter to both

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determination to exclude a subject (i.e., sabotage risk) from NEPA consideration, not an instance such as this one in which the agency has addressed a subject, but a different analytical approach for doing so has been proposed.

2023 Council on Environmental Quality (CEQ) guidance and a 2024 Government Accountability Office (GAO) report that indicate NEPA requires agencies and, in the case of the GAO report, the NRC in particular, to consider the impact on proposed federal actions, such as the approval of reactor license renewals, of climate change-exacerbated natural hazards such as floods, hurricanes, and wildfires.[77]

The Mitman report also maintains that the GAO report is not strong enough because that report failed to reference the dangers of climate change-enhanced high-wind and tornado hazards. *See* Redacted Corrected Mitman Report at 41. This, according to the Mitman report, is a significant phenomenon also not assessed in the DSSEIS notwithstanding the fact that for ONS high-wind hazards are more than 50 percent of the external CDF according to the calculation provided in Table 1 of the report. *See id.* The Mitman report claims as well that the DSSEIS fails to provide the necessary NEPA impacts analysis despite the fact that the NRC, and the federal government generally, already are well aware of these potential climate change impacts. *See id.* at 42. And as the basis for this assertion, the report references (1) the NRC's post-Fukushima assessments of external hazards such as high winds and flooding; (2) presentations at the agency's yearly Regulatory Information Conference (RIC); (3) incidents such as the 2020 derecho-associated LOOP event at the Duane Arnold facility that caused the facility to be permanently shut down; and (4) the NRC's participation in National Oceanic and Atmospheric Administration (NOAA)-sponsored projects to modernize the methodology for assessing probable maximum precipitation (PMP) estimates, which are a significant input in calculating the probable maximum flood and local intense precipitation values that are important in NRC's evaluations of Oconee flooding events. *See id.* at 42-44.

Additionally, the Mitman report claims that the DSSEIS fails to assess Duke's own 2015 FHRR that highlighted flood threats associated with climate change and precipitation events.[78] Similarly, the Mitman report criticizes the NRC's failure to assess the impacts of climate change on ONS in the context of the critical "cliff-edge" effect, in which small flooding-related hazard increases can cause a dramatic and overwhelming structural impact. *See* Redacted Corrected Mitman Report at 43. This effect, according to the Mitman report, is unlike other

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[77] *See* Redacted Corrected Mitman Report at 40-41 (referencing [NEPA] Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1208-09 (Jan. 9, 2023); U.S. Gov't Accountability Off., GAO-24-106326, Nuclear Power Plants, NRC Should Take Actions to Fully Consider the Potential Effects of Climate Change at 1, 13 n.21, 34, 39 (Apr. 2024) (https://www.gao.gov/assets/gao-24-106326.pdf) [hereinafter 2024 GAO Report]).

[78] *See id.* at 41-42 (citing HDR Engineering, Inc. of the Carolinas, Flooding Hazard Reevaluation Report, ONS, at 58, tbl.13 (rev. 1 Jan. 29, 2015) (Current licensing basis and reevaluation flood evaluations) (ADAMS Accession No. ML16272A217)).

hazards in which the stress on a system is increased somewhat proportionally to the increase in the hazard. *See id.* In the case of ONS, the Mitman report asserts that climate-change-exacerbated flooding can induce such "cliff-edge" effects, including (1) above-grade flooding that will enter the turbine building and its lower levels, putting at risk significant safety-related equipment such as the high- and low-pressure service water and the emergency feedwater system; (2) an above-grade rise that will disable the emergency distribution system and the entire alternating current-driven emergency core cooling system; and (3) a water level that overtops the wall protecting the SSF, thus disabling the last line of permanently-installed equipment capable of dealing with the impacts of flooding on safe shutdown. *See id.* at 44. In addition, the report questions whether the current "freeboard" or margin that exists between the estimated maximum flood elevation behind the Jocassee Dam and the elevation of the top of the dam is sufficient in the face of a climate-change-exacerbated PMP. *See id.*

In sum, the Mitman report claims the DSSEIS "does not reflect a complete or adequately rigorous evaluation of all external hazards, does not consider uncertainties and does not address the reasonably foreseeable effects of Climate Change on the risks of accidents at Oconee" to "perform the NEPA required hard look at environmental impacts." Redacted Corrected Mitman Report at 45. The report thus indicates its agreement with what it asserts is a similar conclusion in the GAO report such that the NRC "cannot claim to have a reasonable basis for concluding that the environmental impacts of accidents during a license renewal term are 'SMALL.'" *Id.*

b. Licensing Board's Analysis

In considering this contention's admissibility, we again acknowledge at the outset that we do not write on an entirely clean slate. Very recently, the admissibility of three contentions similar in many respects to Petitioners' Contention 3, each of which asserts that climate change brings an increased risk of accidents due to the increased frequency and intensity of weather events, has been the subject of consideration by two different licensing boards.[79] And while those boards' rulings, two of which are pending before the Commission, are not binding on us, we nonetheless can refer to or rely upon them if we find the boards' reasoning and analyses persuasive.[80]

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[79] *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), LBP-24-8, 100 NRC 95, 125-29 (2024), *appeal pending*; *North Anna,* LBP-24-7, 100 NRC at 69-73; *Turkey Point,* LBP-24-3, 99 NRC at 67-69.

[80] *See Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), *(Continued)*

Relative to the Mitman report, which contains the sum and substance of the support provided by Petitioners for Contention 3, we begin by noting that it contains several general assertions Mr. Mitman previously made in support of similar climate change contentions in the *Turkey Point* and *North Anna* SLR proceedings. These include claims regarding NRC awareness of potential climate change impacts relative to its post-Fukushima assessments of external hazards, RIC presentations, the 2020 Duane Arnold facility LOOP event, and NOAA-sponsored PMP estimate methodology modernization efforts.[81] Also presented previously were concerns about the cliff-edge effect. *See* Mitman Turkey Point Declaration at 3; Mitman North Anna Declaration at 17. In both instances, however, these claims were found to lack sufficient support for an admissible contention because they were either too speculative or lacked sufficient information to establish a genuine, material factual dispute with the draft SEIS at issue in those proceedings. *See Turkey Point,* LBP-24-3, 99 NRC at 68-69 (citing 10 C.F.R. § 2.309(f)(1)(v)-(vi)); *North Anna,* LBP-24-7, 100 NRC at 71-72. For the same reasons, we agree.

Additionally, to the extent the Mitman report raises issues regarding ONS-specific climate-change-associated impacts, these appear to rely on the basic premise that the DSSEIS "is already inadequate as a general matter for making broad generalizations about external event CDF based on extrapolations from internal event CDF values and limited actual plant-specific values for external event impact on population dose." Redacted Corrected Mitman Report at 42. Yet, this concern about the ONS external hazards analysis fails to address the fact that the 1996 GEIS, as reaffirmed in the 2013 and 2024 GEISs, concludes that the impacts from external events are comparable to those from internal events.[82] Accordingly, as was the case with several of the claims posited in

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CLI-13-10, 78 NRC 563, 569 n.42 (2013) ("Unreviewed board decisions are not binding on future boards" although they may be referenced "as persuasive authority").

[81] *See* Request for Hearing and Petition to Intervene Submitted by Miami Waterkeeper, *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), Dkt. Nos. 50-250-SLR-2/50-251-SLR-2 (Nov. 27, 2023), ex. 18, at 2-4 (Decl. of Jeffrey T. Mitman (Nov. 27, 2023)) [hereinafter Mitman Turkey Point Declaration]; Hearing Request and Petition to Intervene by Beyond Nuclear and the Sierra Club, *Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), Dkt. Nos. 50-338-SLR-2/50-339-SLR-2 (Mar. 28, 2024), attach. 1, at 15-16, 17 (Decl. of Jeffrey T. Mitman (Mar. 27, 2024)) [hereinafter Mitman North Anna Declaration].

[82] *See* 1 RES, NRC, [GEIS] for License Renewal of Nuclear Plants, NUREG-1437, Main Report, Final Report at 5-18 (May 1996) (concluding that "the risk from sabotage and beyond-design-basis earthquakes at existing nuclear power plants is small and additionally, that the risks [from] other external events, are adequately addressed by a generic consideration of internally initiated severe accidents") (ADAMS Accession No. ML040690705); 2013 GEIS Vol. 3, at E-47, tbl.E-19 (Summary of Conclusions) (stating "[t]he 1996 GEIS did not quantitatively consider severe accidents

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connection with Contention 2, *see supra* section III.B.2, this asserted basis for Contention 3 does not identify any legal or regulatory noncompliance with the GEIS conclusion and therefore does not establish a litigable genuine dispute.

Finally, the Mitman report maintains that the NRC's approach to climate change consideration is contrary both to the conclusions reached in a 2024 GAO report and to 2023 CEQ guidance on NEPA consideration of climate change. Regarding the Mitman report's assertion that the recent GAO report concerning NRC's consideration of climate change provides a sufficient basis for Contention 3, we are persuaded by the *Turkey Point* licensing board's recent analysis of whether that same report provided an adequate basis for a contention seeking an enhanced NRC climate-change assessment. The *Turkey Point* board observed that the GAO report, which focused on the NRC's failure to use climate projection data in conducting its nuclear power plant application safety reviews, recommended that the agency assess whether climate change-related gaps existed in its analyses with the goal of addressing any gaps identified. *See Turkey Point,* LBP-24-8, 100 NRC at 127. The board also noted that the GAO report did not determine that any operating plants were unsafe or lacked measures to address climate change impact-associated risks. *See id.* at 128. Instead, according to the board, the report provided examples of measures being used at operating plants, such as flood protection barriers and steam generator backup pumps at the Turkey Point facility, to address external events as well as acknowledged instances, including in the license renewal context, where the agency already considers climate change as part of its environmental review.[83] *See id.* Given the GAO report's particular focus, and the intervening party's

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initiated by external events in assessing environmental impacts. When the environmental impacts of external events are considered, they can be comparable to those from internal events; however, they are generally lower than the estimates used in the 1996 GEIS for internal events"); August 2024 GEIS Vol. 3, at E-94, tbl.E.5-1 (Summary of Conclusions) (indicating "[n]ew information from the NUREG-1437 supplements about the risk and environmental impacts of severe accidents caused by both internal and external events . . . indicates that total PWR and BWR CDFs for all hazards are, on average, about the same as those forming the basis" of the 1996 GEIS).

[83] Although the GAO visited the Turkey Point and Palo Verde facilities "because of their exposure to a variety of natural hazards that may be exacerbated by climate change and regional diversity" and then used information gathered to illustrate potential heat, drought, and flooding impacts, 2024 GAO Report at 2, 15, 19, the GAO report was still found by the *Turkey Point* licensing board to be insufficient to support a climate-change contention regarding that facility, *see Turkey Point,* LBP-24-8, 100 NRC at 128-29. In contrast, the report's only mention of the ONS facility is in a GAO-generated table outlining the exposure of all operating domestic nuclear power plants to what were identified in the 2018 and 2023 editions of the National Climate Assessment as six natural hazards likely to be exacerbated by climate change, i.e., flooding, hurricane storm surge, wildfire, sea level rise, heat, and cold. *See* 2024 GAO Report at 3 & nn.2-3, 59 (Appendix III: Nuclear Power Plant Exposure to Selected Natural Hazards). This table listing for ONS does nothing to bolster Petitioners' case for the admissibility of Contention 3.

failure to make any link between the report and the purported gaps in the NRC Staff's environmental analysis, the *Turkey Point* licensing board concluded that, in and of itself, the GAO report was insufficient to raise a genuine dispute with the NRC Staff's final supplemental EIS. *See id.* at 128-29 (citing 10 C.F.R. § 2.309(f)(1)(vi)). We conclude that Petitioners' reliance on the GAO report in this instance has the same shortcomings.

Relative to the 2023 CEQ guidance, we note that the Commission's long-standing position has been that as an independent regulatory agency the NRC is not bound by CEQ regulations or guidance that would "have a substantive impact on the way in which the Commission performs its regulatory functions."[84] The Commission nonetheless has indicated it will take into consideration such CEQ issuances as "guidance in carrying out our NEPA responsibilities," particularly in determining what actions are reasonable under NEPA.[85] Putting aside the question whether this CEQ guidance, which the Commission has not adopted as binding,[86] would have a substantive impact on the agency's regulatory functions so as not to provide a suitable basis for Contention 3,[87] this CEQ guidance

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[84] *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011) (quoting Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments, 49 Fed. Reg. 9352, 9352 (Mar. 12, 1984)).

[85] *Powertech (USA) Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-20-9, 92 NRC 295, 299 (2020), *petition for review denied, Oglala Sioux Tribe v. NRC,* 45 F.4th 291 (D.C. Cir. 2022).

[86] Because this clearly is the case here, we need not reach the question whether the recent holding of the United States Court of Appeals for the District of Columbia Circuit in *Marin Audubon Soc. v. FAA,* 121 F.4th 902, 914 (D.C. Cir. 2024), that the CEQ has no lawful authority to issue regulations would have any impact on an instance in which an agency, such as the NRC in issuing its NEPA requirements in 10 C.F.R. Part 51, has adopted a CEQ regulation or incorporated the regulation by reference.

[87] The NRC Staff asserts, and Duke supports the notion, that Contention 3 is inadmissible as outside the scope of this proceeding because with Contention 3 Petitioners are concerned about the effects of climate change on the ONS facility. *See* Staff Answer at 40-41 (arguing that Contention 3 is simply a CLB issue outside the scope of a license renewal proceeding because a nuclear plant's ability to cope with natural phenomena hazards is an ongoing operational issue, with information on changing environmental conditions being taken into account to determine whether safety-related changes are needed to ensure safe operations, that lacks any connection to the permissible safety-related issues of aging management programs and time-limited aging analyses); Duke Answer at 51 (maintaining the Mitman report erroneously asserts that the NRC is arbitrarily attempting to exclude from the scope of license renewal environmental reviews challenges to a facility's CLB because that scope limitation has been adopted through the rulemaking process and is expressly included in the DSSEIS).

We find this claim troubling for many of the reasons expressed by the *Turkey Point* licensing board and the dissent in the *North Anna* case regarding the climate-change-associated contentions

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fails as the basis for an admissible contention in that, as was the case with the GAO report, both the CEQ guidance and the Mitman report in referencing that document lack any explanation that would support Petitioners' claim that the Staff's DSSEIS discussion of climate change is inadequate.

Thus, we conclude that Petitioners' showing in support of Contention 3 is insufficient to establish its admissibility under section 2.309(f)(1)(v)-(vi).

IV. CONCLUSION

As we explain in section II above, Petitioners have made the requisite showing to establish their representational standing in this proceeding regarding Duke's SLR application for the ONS facility. Nonetheless, for the reasons set forth in section III above, we conclude Petitioners have failed to meet one or more of the standards in 10 C.F.R. § 2.309(f)(1) that all must be fulfilled to permit the admission of their Contention 1 (Erroneous, Incomplete and Misleading Information Regarding Whether Duke Has Provided the Oconee reactors with "Adequate Protection" From Failure of the Upstream Jocassee Dam), Contention 2 ([DSSEIS] Risk Estimates Fail to Meet NEPA Requirements for Rigor, Accuracy, Completeness, and Consideration of Uncertainties), and Contention 3 ([DSSEIS] fails to address the effects of climate change on accident risk). Consequently, we must deny their hearing request.

For the foregoing reasons, it is this seventeenth day of January 2025, ORDERED, that:

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before them. *See Turkey Point,* LBP-24-8, 100 NRC at 131 n.204; *North Anna,* LBP-24-7, 100 NRC at 88-89 (Gibson, A.J., concurring in part and dissenting in part); *Turkey Point,* LBP-24-3, 99 NRC at 68 n.173. Nonetheless, we note as well the apparent endorsement of the NRC Staff's "scope" position in the context of the now-effective final rule governing the generic environmental review of initial and subsequent license renewal applications. *See* August 2024 GEIS Vol. 2, at A-220 to -222 (in response to Petitioners' rulemaking comment concerning the need for NEPA consideration of the effects of climate change on accident impacts, stating that "NRC disagrees that impacts of future climate change and mitigation should be considered for postulated accidents. The impacts of future changing natural phenomena on nuclear power plant postulated accidents are outside the scope of this [license renewal] GEIS and rulemaking."); *see also* 2024 GEIS Rulemaking, 89 Fed. Reg. at 64,167 (indicating updated license renewal GEIS, NUREG-1437, documents the NRC systematic approach to evaluating renewed nuclear facility operating license's environmental impacts and provides the technical basis for Table B-1); *id.* at 64,182 (describing volume 2 of 2024 GEIS as "NRC's analysis of and response to public comments" on the proposed GEIS); Letter from Christopher T. Hanson, Chair, NRC, to Frank Russo, Director, Natural Resources and Environment, GAO at 1 (Sept. 27, 2024) ("[C]onsidering the conservatisms, safety margins, and depth-in-defense policies described in the [April 2, 2024 GAO] report, the NRC does not agree with the conclusion that the agency does not address the impacts of climate change.") (ADAMS Accession No. ML24274A001).

1. The April 29, 2024 hearing request of petitioners Beyond Nuclear, Inc., and the Sierra Club, Inc., as corrected on May 1, 2024, is *denied* and this proceeding will be *terminated* before the Licensing Board upon the completion of the activities outlined in paragraphs 3 and 4 below.

2. In accordance with the provisions of 10 C.F.R. § 2.311, as this memorandum and order rules upon an intervention petition, any appeal to the Commission from this memorandum and order must be taken within twenty-five (25) days after this issuance is served on the participant lodging the appeal.

3. Because a nonpublic NRC Staff review of this decision is required to identify and redact any SUNSI it may contain,[88] the decision will be treated as a nonpublic issuance identified as subject to previously issued Protective Order A.[89] And because they have access to the nonpublic portion of the docket of this proceeding, Duke and the NRC Staff will be served with this decision.[90]

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[88] As we have noted previously, *see supra* notes 2, 20, the June 24, 2024 initial prehearing conference transcript and several of Petitioners' submissions have been identified by the NRC Staff as containing nonpublic SUNSI. Based on our review of the redacted versions of the initial prehearing conference transcript and Petitioners' filings, we have endeavored in this decision to avoid using any such nonpublic information.

Nonetheless, the possibility exists that our efforts in that regard may not have been fully successful, particularly given that the 2022 licensing board's decision in LBP-22-1, which we have cited extensively in this decision, *see supra* section III.B.1.a, has apparently been removed from the public record for redaction and re-release at some currently unknown point in the future. *See* Board Decision Regarding Public Release of Redacted Documents at 15 n.12.

[89] *See* Licensing Board Memorandum and Order (Protective Order A Governing Specific [SUNSI]) (Aug. 19, 2024) ¶ 1 (unpublished) [hereinafter Protective Order A]; *see also* Licensing Board Memorandum and Order (Regarding Nondisclosure Declaration Filings, Reconsideration/Clarification Motions, Nonpublic Document Redaction, and Marking Nonpublic Documents) (Aug. 26, 2024) at 5 (designating August 19, 2024 SUNSI protective order as Protective Order A) (unpublished). In placing this decision into the nonpublic docket of this proceeding, the Board has provided an appropriate header identifying the decision as subject to Protective Order A. *See* Protective Order A ¶ 6.

[90] When, as here, nonpublic information has become part of the adjudicatory record, it is the usual practice when issuing a decision that might involve such information for a licensing board post-issuance to make its ruling available to the participants for their review and input concerning possible redactions. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-6, 51 NRC 101, 135, *aff'd in part and rev'd in part on other grounds,* CLI-00-13, 52 NRC 23 (2000); *see also AREVA Enrichment Services., LLC* (Eagle Rock Enrichment Facility), LBP-11-11, 73 NRC 455, 525 n.36 (2011). An already-in-place protective order generally governs participant access to, and responsibility concerning, the decision during the nonpublic review process. *See Eagle Rock,* LBP-11-11, 73 NRC at 525 n.36; *see also Private Fuel Storage,* LBP-00-6, 51 NRC at 134-35. Thereafter, when the review process is completed, a version of the decision containing any redactions is released for the public record.

In this instance, however, this protocol was unavailable because Petitioners declined to become parties to the protective order governing the handling and protection of Staff-identified nonpublic

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Further, so the Board can monitor the progress of the Staff's SUNSI review of this decision, beginning on *Friday, January 24, 2025,* the Staff shall provide for the public docket of this proceeding a weekly status report on its review effort that includes a good faith estimate of the specific date by which that process will be completed. This weekly reporting obligation will continue until the Staff provides for the public record of this proceeding the Board notification set forth in paragraph 4 below.

4. When the NRC Staff has completed its SUNSI review of this decision, as

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information in this proceeding. *See* Board Decision Regarding Public Release of Redacted Documents at 17 & n.15. This, in turn, raised the possibility that Petitioners' ability under section 2.311 to seek timely review of an adverse Board determination regarding their hearing petition could be impinged because of the need to await the completion of the Staff's SUNSI review to examine the decision in full.

Seeking to mitigate this circumstance, we considered requesting that the Commission appoint a representative to aid the Board in identifying any nonpublic information for redaction prior to decision issuance, as has been done in other adjudicatory proceedings. *See* Licensing Board Request to Commission (Seeking Designation of Representative to Advise and Assist Licensing Board With Respect to Classification of Information and Safeguards to Be Observed), *GE-Hitachi Global Laser Enrichment LLC* (GLE Enrichment Facility), Dkt. No. 70-7016-ML (Aug. 25, 2010) at 1 (unpublished) (citing 10 C.F.R. § 2.904). In this instance, however, because the SUNSI at issue has been identified as CEII, another federal agency, FERC, would likely need to be involved in such a review to aid the Commission-appointed NRC representative. Given this would have allowed for review of the Board's draft decision by FERC personnel, who would not be subject to NRC or Board authority, the Board declined to adopt this approach.

Thus, this decision is being provided immediately to the NRC Staff, and to Duke as a party to Protective Order A, for a prompt Staff nonpublic information review under Protective Order A. The Board, however, will not serve the decision upon Petitioners. Bearing in mind that only the Commission can extend the time for filing an appeal under 10 C.F.R. § 2.311 from a licensing board decision granting or denying a hearing request, *see Consolidated Edison Co. of New York, Inc.* (Indian Point Station, Unit No. 3), ALAB-281, 2 NRC 6, 7 (1975), Petitioners nonetheless will have the full 25-day period within which to submit any appeal beginning when they are served with the Board's decision (with or without redactions) upon completion of the Staff's SUNSI review process. *See* 10 C.F.R. § 2.311(b).

Of course, if Petitioners believe any aspect of this document review procedure will not afford them a fair opportunity to file a timely appeal, they can seek an appropriate extension of time from the Commission.

Finally, and consistent with prior practice, *see Private Fuel Storage,* LBP-00-6, 51 NRC at 138 n.14; *see also* Licensing Board Memorandum (Notice Regarding Issuance of Partial Initial Decision on Safety Related Contentions), *La. Energy Servs. L.P.* (National Enrichment Facility), Dkt. No. 70-3103-ML (May 31, 2006) (unpublished), in a separate issuance this date the Board is providing a synopsis of this ruling so that the public (and Petitioners) will be aware of the general nature of the Board's determination and the post-issuance conventions we establish for the NRC Staff's SUNSI review and for service of this decision. *See* Licensing Board Memorandum (Notice Regarding Issuance of Decision on Intervention Petition) (Jan. 17, 2025) (unpublished).

it has done previously in similar circumstances,[91] it shall notify the Board that (1) it has placed a redacted version of this decision into the nonpublic record of this proceeding that can be made publicly available; or (2) the unredacted version of the decision previously provided in the nonpublic portion of the docket for its review now can be placed into the public record. Thereafter, the Board will ensure that its decision is placed on the public docket of this proceeding docket and served on all the participants to this proceeding, thereupon terminating the proceeding before the Board.

THE ATOMIC SAFETY AND
LICENSING BOARD

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

Dr. Sue H. Abreu
ADMINISTRATIVE JUDGE

Dr. Arielle J. Miller
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 17, 2025

[91] *See* NRC Staff Notification Regarding December 5, 2024, Ex Parte/Separation of Functions Communication Memorandum and Order (Dec. 12, 2024) at 2; NRC Staff Motion Requesting That the Licensing Board Accept the Redacted Documents Identified as Non-Public Attachments A-D to This Motion for Inclusion on the Public Docket (Nov. 21, 2024) at 2.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

G. Paul Bollwerk, III, Chair
Dr. Sue H. Abreu
Dr. Arielle J. Miller

In the Matter of **Docket Nos. 50-269-SLR-2**
50-270-SLR-2
50-287-SLR-2
(ASLBP No. 24-985-03-SLR-BD01)

DUKE ENERGY CAROLINAS, LLC
(Oconee Nuclear Station, Units 1, 2, and 3)

January 22, 2025

In this proceeding concerning a subsequent license renewal application by Duke Energy Carolinas, LLC, seeking an additional twenty-year term for the 10 C.F.R. Part 50 operating licenses for the Oconee Nuclear Station, Units 1, 2, and 3, relative to the Licensing Board's decision, LBP-25-1, 101 NRC 1 (2025), denying the April 29, 2024 hearing request (as amended May 1, 2024) of petitioners Beyond Nuclear, Inc., and the Sierra Club, Inc., for failing to proffer an admissible contention, after being informed by the Nuclear Regulatory Commission Staff that the decision does not contain any nonpublic Sensitive Unclassified Non-Safeguards Information (SUNSI) and so can be placed on the public record of the proceeding, the Board takes several actions associated with docketing and service of that issuance and, in accordance with LBP-25-1, 101 NRC at 52, terminates the proceeding before the Licensing Board.

LICENSING BOARD(S): DISMISSAL OF PROCEEDINGS

RULES OF PRACTICE: DISMISSAL OF PROCEEDINGS

With E-Filing system service upon the participants of a licensing board deci-

sion denying a hearing request and the decision's placement in the proceeding's public docket, the proceeding is terminated before the licensing board. *See* LBP-25-1, 101 NRC at 52.

MEMORANDUM AND ORDER
(Serving and Placing Unredacted Version of LBP-25-1 into the Public Record and Terminating Proceeding)

This proceeding concerns the June 2021 subsequent license renewal (SLR) application of Duke Energy Carolinas, LLC, seeking an additional twenty-year term for the 10 C.F.R. Part 50 operating licenses for Oconee Nuclear Station (ONS) Units 1, 2, and 3. In its January 17, 2025 decision in LBP-25-1, the Licensing Board determined that petitioners Beyond Nuclear, Inc., and the Sierra Club, Inc. (collectively Petitioners), in their April 29, 2024 hearing petition (as amended May 1, 2024) had established their standing to intervene in this proceeding. *See* LBP-25-1, 101 NRC 1, 49 (2025). Additionally, the Board found inadmissible each of Petitioners' three contentions challenging the adequacy of the Nuclear Regulatory Commission (NRC) Staff's February 2024 National Environmental Policy Act draft site-specific supplemental environmental impact statement assessing the impacts of the ONS facility's proposed SLR. *See id.* at 49. Because of the possibility that the Board's decision might contain Sensitive Unclassified Non-Safeguards Information (SUNSI), the Board placed that decision into the nonpublic portion of this proceeding's docket pending NRC Staff review to determine whether any redactions were necessary. *See id.* at 50-52.

On January 17, 2025, the NRC Staff informed the Board that, based on its review, LBP-25-1 does not contain any nonpublic information so the decision can be placed in the public portion of this proceeding's docket.[1] As a result, the Board has provided its LBP-25-1 decision to the Office of the Secretary (SECY) for E-Filing system service and placement in the proceeding's public docket without the header "CONTAINS PROTECTED INFORMATION — SUBJECT TO PROTECTIVE ORDER A" that the Board placed on the document to indicate its nonpublic status while it was under SUNSI review by the NRC Staff.

Additionally, contemporaneous with this issuance, the Board has provided SECY with a file containing the LBP-25-1 decision that was placed in the nonpublic docket of the proceeding and served on the NRC Staff for its SUNSI

[1] *See* NRC Staff Notification Regarding Review of the Licensing Board's January 17, 2025, Nonpublic Decision (Jan. 17, 2025) at 1. The Board appreciates the NRC Staff's prompt action in reviewing the Board's decision and providing notice of the results of that review.

review from which the header "CONTAINS PROTECTED INFORMATION — SUBJECT TO PROTECTIVE ORDER A" has been stricken. That file will replace the file now residing in the nonpublic portion of this proceeding's docket. The lined-out header signifies that the information in the document is no longer nonpublic, thereby avoiding viewer uncertainty about the status of the information in the document as well as questions regarding its availability status during any future document repository reviews or scans. The availability status of that document also will be changed by SECY from "Non-Publicly Available" to "Publicly Available" so that the document will appear in the public portion of this proceeding's docket. Moreover, the following comment will be added to the Agencywide Documents Access and Management System (ADAMS) metadata for that file:[2] Pursuant to the January 22, 2025 Atomic Safety and Licensing Board Memorandum and Order, LBP-25-2 (MLXXXXXXXXX), the header "CONTAINS PROTECTED INFORMATION — SUBJECT TO PROTECTIVE ORDER A" has been stricken from this document to reflect that the information in this document is no longer considered nonpublic and its availability status has been changed from "Non-Publicly Available" to "Publicly Available."

Finally, in accordance with LBP-25-1, 101 NRC at 52, with E-Filing system service of that issuance upon the participants to this proceeding and its placement in the proceeding's public docket, this proceeding is *terminated* before the Licensing Board.

It is so ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

Dr. Sue H. Abreu
ADMINISTRATIVE JUDGE

Dr. Arielle J. Miller
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 22, 2025

[2] The ADAMS accession number for this issuance will be incorporated into the metadata comment field once that number is assigned as part of the agency's document processing regimen.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Jeremy A. Mercer, Chair
Nicholas G. Trikouros
Dr. Gary S. Arnold

In the Matter of **Docket No. 40-9075-LR**
(ASLBP No. 25-987-01-LR-BD01)

POWERTECH (USA) INC.
(Dewey-Burdock In Situ Uranium Recovery Facility)

January 31, 2025

RULES OF PRACTICE: STANDING TO INTERVENE

The Board has an independent obligation to ensure a petitioner has standing, even if no participant objects on standing grounds. 10 C.F.R. § 2.309(d)(2) ("In ruling on a request for hearing or petition for leave to intervene, [the Board] must determine, among other things, whether the petitioner has an interest affected by the proceeding . . . .") (emphasis added); *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 391 (1979) ("[I]n determining the Guild's standing, the Licensing Board was not merely entitled but obligated to satisfy itself that there was at least one member of the Guild with a particularized interest which might be affected by the outcome of the proceeding . . . .").

RULES OF PRACTICE: STANDING TO INTERVENE; BURDEN OF PROOF

"The petitioner bears the burden to provide facts sufficient to establish stand-

ing." *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010).

RULES OF PRACTICE: STANDING TO INTERVENE; CONTENTIONS, ADMISSIBILITY

Because the Commission has refused to employ a "contention-based standing" concept, once an intervenor has established it has an injury to a protectable interest that can be alleviated by the denial of the licensing request, the intervenor can prosecute any admissible contention that would result in the denial of that requested licensing action. *Calvert Cliffs 3 Nuclear Project, LLC, and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 918 n.28 (2009).

RULES OF PRACTICE: STANDING TO INTERVENE; ZONE OF INTERESTS

The Commission requires petitioners to allege a particularized injury that is within the zone of interests protected by the statute governing the proceeding, fairly traceable to the challenged action, and likely to be redressed by a favorable decision. *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998). To assess whether an interest falls within the "zone of interests," it is necessary to "first discern the interests 'arguably . . . to be protected' by the statutory provision at issue," and "then inquire whether the [petitioner's] interests affected by the agency action are among them." *U.S. Enrichment Corp.* (Paducah, Kentucky gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272-73 (2001), (quoting *Nat'l Credit Union Admin. v. First Nat'l Bank,* 522 U.S. 479, 492 (1998)).

RULES OF PRACTICE: STANDING TO INTERVENE, ORGANIZATIONAL; STANDING TO INTERVENE, REPRESENTATIONAL

While an individual must establish standing by satisfying the above criteria, an organization may demonstrate standing in two ways: organizational standing or representational standing. *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995). Organizational standing involves alleged harm to the organization itself, while representational standing involves alleged harm to an organization's members. *Id.*; *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 16 n.66 (2024) (citing cases), *appeal pending.*

RULES OF PRACTICE: STANDING TO INTERVENE, ORGANIZATIONAL; ZONE OF INTERESTS

An organization seeking to establish organizational standing must satisfy the same standing requirements as an individual. *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 411 (2007). The organization must show that (1) the action at issue will cause an injury-in-fact to the organization's interests; and (2) the injury is within the zone of interests protected by the relevant statute. *Sierra Club v. Morton,* 405 U.S. 727, 739 (1972); *Georgia Tech,* CLI-95-12, 42 NRC at 115; *Yankee Nuclear,* CLI-98-21, 48 NRC at 195-96.

RULES OF PRACTICE: STANDING TO INTERVENE, REPRESENTATIONAL

An organization also may obtain standing as a representative of one or more individual members. *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 18 (2014); *Entergy Nuclear Operations, Inc., and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 266, 268 (2008); *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007). A recent licensing board decision noted two divergent tests for representational standing employed in recent Commission decisions. *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 17-20 (2024) (citing cases), *appeal pending.* Under the first formulation of that test, a three-element test, entities "must show one of its members has standing, must identify that member by name and address, and must show, preferably by affidavit, the organization is authorized to request a hearing on behalf of that member." *Id.* at 17-18 (citations omitted). Under the second formulation of that test, a five-element test, an entity must meet the aforementioned three-element test and also show that (1) the interests that the entity seeks to protect are germane to its purpose; and (2) neither the claim asserted nor the relief requested requires an individual member to participate in the entity's lawsuit. *Id.* at 18-20 (citations omitted).

RULES OF PRACTICE: STANDING TO INTERVENE, REPRESENTATIONAL

Representational standing requires a showing that at least one member has standing and has authorized the entity to represent that member's interest in the proceeding.

RULES OF PRACTICE: WAIVER OF RULE

Absent a waiver petition, granted by the Commission, this Board is without the authority to consider a challenge to NRC regulations and must enforce and apply the regulations. *See Nuclear Fuel Services, Inc.* (License Amendment Application), CLI-23-3, 98 NRC 33, 49 & n.105 (2023) (affirming restriction in 10 C.F.R. § 2.335 preventing licensing board from considering challenges to regulations absent a waiver from Commission); *Union Electric Co.* (Callaway Plant, Units 1 and 2), ALAB-347, 4 NRC 216, 218 (1976) ("[T]he Commission . . . withheld jurisdiction from the licensing boards to entertain attacks on the validity of Commission regulations in individual licensing proceedings except in certain 'special circumstances.'"); *New Jersey Dep't of Env't Prot. v. NRC,* 561 F.3d 132, 135 (3d Cir. 2009) ("Unless a party obtains a waiver from the NRC, regulations are not 'subject to attack' during adjudications."); 10 C.F.R. § 2.335(d); *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-03-7, 58 NRC 1, 6-9 (2003); *see also Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974) (even assuming a specified regulation may be contrary to the Atomic Energy Act, the licensing board "is not the proper forum for consideration of such matters.").

RULES OF PRACTICE: STANDING TO INTERVENE, REPRESENTATIONAL

An Atomic Safety and Licensing Appeal Board upheld a licensing board's decision that an organization's refusal to provide the name and address of a member with standing was sufficient reason to deny the organization's intervention petition. *Allens Creek,* ALAB-535, 9 NRC at 389-94. The Appeal Board noted the name and address of the member with standing serves an important and substantive role — it allows the licensing board to engage in the fact finding necessary to determine independently whether a member truly could establish standing. *Id.* at 393-94.

RULES OF PRACTICE: STANDING TO INTERVENE, REPRESENTATIONAL

Commission caselaw holds that providing the address of a petitioning organization but not a residential address of any member of that organization fails to provide a basis for standing for both the organization and the individual. *International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-97-12, 46 NRC 1, 8 (1997), *aff'd,* CLI-98-6, 47 NRC 116 (1998) (holding that a petitioner who "writes from a post office box and does not provide his residential home

address" and another who uses the address of a historical foundation without providing a residential address of any member of the historical foundation fails to provide a basis for standing).

RULES OF PRACTICE: STANDING TO INTERVENE, ORGANIZATIONAL; SUPREME COURT

To satisfy the requirements for organizational standing, an entity "must establish a discrete institutional injury to the [entity's] interests, which must be based on something more than a general environmental or policy interest in the subject matter of the proceeding." *Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-12-3, 75 NRC 164, 177, *aff'd,* CLI-12-12, 75 NRC 603 (2012) (affirming licensing board's standing determination but declining to consider remaining claims). The Commission has found recreation, aesthetic, and other interests sufficient to demonstrate standing, especially when petitioners assert they "actually use the geographical areas which they claim to be associated with their purported aesthetic, recreational, and environmental/conservation interests" because this shows they will be "personally and individually injured." *Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 356 (1999); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323-24 (1999) (finding that "hiking, camping, birdwatching, study[ing], contemplation, solitude, photography, and other activities" are a "significant and genuine personal attachment to the affected area" sufficient to constitute standing); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150 (2001), *aff'd,* CLI-01-17, 54 NRC 3 (2001) (finding standing where petitioner uses "the South Florida ecosystem for hiking, boating, bird watching, fishing, contemplation, and observation of the diverse plant and animal species that frequent the ecosystem."). These Commission decisions are consistent with rulings from the Supreme Court that an injury in fact may be established where "scenery, natural and historic objects and wildlife" may be adversely affected, although the party seeking review must "be himself among the injured." *Sierra Club v. Morton,* 405 U.S. 727, 734-35 (1972).

RULES OF PRACTICE: STANDING TO INTERVENE, ORGANIZATIONAL; SUPREME COURT

In line with the Supreme Court's holding, an entity may obtain organizational standing where the entity at issue submits an affidavit or declaration that the planned development at issue would affect the activities or pastimes of the entity or its members. *Sierra Club v. Morton,* 405 U.S. 727, 735 (1972). The failure to

submit that affidavit or declaration can be fatal to establishing standing. *Id.* (the entity at issue failed to submit an affidavit or declaration that "it or its members would be affected in any of their activities or pastimes by the . . . development. Nowhere in the pleadings or affidavits did the Club state that its members use [the area] for any purpose, much less that they use it in any way that would be significantly affected by the proposed actions of the respondents."); *see also Sierra Club v. U.S. Army Corps of Eng'rs,* 645 F.3d 978, 989 (8th Cir. 2011) (upholding standing of Sierra Club and other entities in light of testimony from members that they took pictures in the area, hunted in the area, and studied history and archaeology of the area). In the *Sierra Club* decision, the Supreme Court rejected the Sierra Club's argument that it had organizational standing solely because its interest in environmental issues were impacted directly by the project at issue, without needing to submit any affidavits or declarations of an actual impact to the organization or the members of the organization. *Sierra Club,* 405 U.S. 734-39; *id.* at 735 ("The Sierra Club failed to allege that it or its members would be affected in any of their activities or pastimes by the Disney development."); *id.* at 736 ("The Club apparently regarded an allegation[ ] of individualized injury as superfluous, on the theory that this was a 'public' action involving questions as to the use of natural resources, and that the Club's longstanding concern with and expertise in such matters were sufficient to give it standing as a 'representative of the public.' This theory reflects a misunderstanding of our cases involving so-called 'public actions' in the area of administrative law."). By implication, then, the submission of such declarations or affidavits would have established standing.

RULES OF PRACTICE: STANDING TO INTERVENE; PROXIMITY PRESUMPTION; SOURCE MATERIAL

The Commission has held that proximity alone is not sufficient to establish standing in source material proceedings. *Cogema Mining, Inc.* (Irigaray and Christensen Ranch Facilities), LBP-09-13, 70 NRC 168, 177 (2009) (citing *USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311-12 (2005)).

RULES OF PRACTICE: STANDING TO INTERVENE, INJURY IN FACT; IN SITU LEACH MINING

But in in-situ leach ("ISL") mining cases, the use of a substantial quantity of water "from a source that is reasonably contiguous to either the injection or processing sites" is sufficient to demonstrate an injury in fact. *Hydro Resources,*

Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 275, *rev'd in part on other grounds,* CLI-98-16, 48 NRC 119 (1998).

RULES OF PRACTICE: CONTENTIONS, ADMISSIBILITY

Petitioners are not required to prove their contentions at the admissibility determination stage and "we do not consider the merits of [petitioners'] arguments" at this stage. *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443 (2011); *Southern Nuclear Operating Co.* (Vogtle Elec. Generating Plant, Units 3 & 4), CLI-11-8, 74 NRC 214, 221 (2011); *U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 591 (2009) (noting merits are to be considered at a phase other than contention admissibility); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004) ("[W]e do not expect a petitioner to prove its contention at the pleading stage . . . ."). "While the Board appropriately may view Petitioners' support for its contention in a light that is favorable to the Petitioner, it cannot do so by ignoring the [contention admissibility] requirements . . . ." *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

RULES OF PRACTICE: NATIONAL HISTORIC PRESERVATION ACT; ENVIRONMENTAL REVIEW

The Commission has held, repeatedly and expressly, that claims of a violation of the consultation requirement under the NHPA may be interposed only after the Staff has issued its draft environmental review document. *Marsland,* CLI-14-2, 79 NRC at 20 n.49; *Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 565-66 (2009); *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 350-51 (2009). "The agency granting the license, here the NRC, has the obligation to comply with the NHPA." *USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 447 (2006).

RULES OF PRACTICE: NATIONAL ENVIRONMENTAL POLICY ACT; NATIONAL HISTORIC PRESERVATION ACT

NEPA: ENVIRONMENTAL REPORT

Unlike NHPA consultation, where contentions must await issuance of the Staff's draft NEPA document, the Commission has stated unequivocally that its "regulations provide that for issues arising under NEPA, a petitioner must

file contentions based on the applicant's environmental report." *American Centrifuge,* CLI-06-9, 63 NRC at 444; *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-16-20, 84 NRC 219, 231 (2016) ("Insofar as it could be interpreted as implying that the Tribe was premature in filing its environmental contentions on the application, the Board's decision was incorrect. Although it is true that 'the ultimate burden with respect to NEPA lies with the NRC Staff,' our regulations require that intervenors file environmental contentions on the applicant's environmental report."). The Commission's "regulations do not contemplate a petitioner waiting for the Staff to perform its responsibilities under the NHPA before the petitioner raises environmental contentions." *Marsland,* CLI-14-2, 79 NRC at 21. Moreover, the "fact that the Staff will develop additional information relevant to cultural resources, as part of its NHPA review, does not preclude a challenge to the completeness of the cultural resources information in the application." *Id.* at 21-22.

RULES OF PRACTICE: INTERPRETATION

The Commission has recognized that the location of text in decisions can impact the import of that text. *Shieldalloy,* CLI-99-12, 49 NRC at 357 ("The Presiding Officer's discussion of the entry of appearance and identification of clients is found not in the 'Analysis' section of LBP-99-12 but rather in a footnote attached to the 'Conclusion' section. Thus, it does not form a basis for the Presiding Officer's ruling on standing.").

RULES OF PRACTICE: NATIONAL ENVIRONMENTAL POLICY ACT; NATIONAL HISTORIC PRESERVATION ACT

NEPA: ENVIRONMENTAL REVIEW

"While agencies may coordinate their NEPA and NHPA reviews, the reviews remain separate, and the regulations associated with each Act must be independently satisfied — 'coordination' does not mean that NEPA regulations govern NHPA analysis or vice versa." *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-11, 63 NRC 483, 493 (2006); *see also Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-16-20, 84 NRC 219, 248 (2016) ("Federal case law supports the legal principle that NHPA and NEPA compliance do not necessarily mirror one another.").

RULES OF PRACTICE: NATIONAL ENVIRONMENTAL POLICY ACT

The Commission's regulations in Part 51 implement NEPA's requirements. 10 C.F.R. § 51.1.

RULES OF PRACTICE: GENERIC ENVIRONMENTAL IMPACT STATMENT

Although not binding, the Commission considers a GEIS as carrying "special weight as a guidance document that has been approved by the Commission." *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 338 (2012).

RULES OF PRACTICE: STANDARD REVIEW PLANS

"While recognizing the 'guidance' nature of such review plans, the Commission has also indicated that, having been developed to assist an applicant in complying with applicable regulations, such plans are entitled to 'special weight.'" *Crow Butte Resources, Inc.* (Marsland Expansion Area), LBP-19-2, 89 NRC 18, 39 n.54 (2019) (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001)).

RULES OF PRACTICE: REGULATIONS, INTERPRETATION; CONSTRUCTION OF TERMS; STATUTORY CONSTRUCTION

The use of different terminology in the same section generally is interpreted to mean different things. *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-7, 61 NRC 188, 195 (2005) ("In conformity with the general rules of construction for statutory and regulatory provisions, these are different terms and thus should be accorded different meanings . . . ."); *cf. Sosa v. Alvarez-Machain,* 542 U.S. 692, 711 n.9 (2004) (noting, as a "usual rule", "when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended."); *Nat'l Insulation Transp. Comm. v. ICC,* 683 F.2d 533, 537 (D.C. Cir. 1982) ("presum[ing] that the use of different terminology within a statute indicates that Congress intended to establish a different meaning.").

RULES OF PRACTICE: CONTENTIONS, NEW ARGUMENTS

We agree with another licensing board that held, when faced with a similar attempt by the Staff and a licensee, "[t]o permit [Powertech] and the NRC

Staff to blindside [Organizational Petitioners] with this new argument would violate case law and implicate due process concerns." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-16-3, 83 NRC 169, 180 (2016) (citing *United States v. Almaraz,* 306 F.3d 1031, 1041 (10th Cir. 2002)). The Commission has found that new arguments raised by petitioners during a prehearing conference are "barred on lateness grounds" because the other participants did not have the chance to consider and address these arguments in their answers. *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 476 (2006).

RULES OF PRACTICE: CHANGED CIRCUMSTANCES

The licensing board determined the recommendation for listing of a property in the National Register of Historic Places was "a sufficiently significant change since the time the construction permit was issued that it merits present consideration." *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1483 (1982); *see also id.* at 1485 (noting the SHPO recommendation was "potentially significant"). After the licensing board reconsidered that decision and dismissed the contention, the Appeal Board reversed the dismissal, agreeing with the original decision that the recommended NRHP listing was "a significant change in circumstances that . . . warrant[ed] consideration in the . . . proceeding." *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 875 (1984).

RULES OF PRACTICE: STARE DECISIS

Stare decisis requires the other decision to be "binding authority." *Indep. Petroleum Ass'n of Am. v. Babbitt,* 92 F.3d 1248, 1257-58 (D.C. Cir. 1996); *Hudson v. Md. Cas. Co.,* 22 F.2d 791, 792 (8th Cir. 1927).

RULES OF PRACTICE: NATIONAL ENVIRONMENTAL POLICY ACT, CUMULATIVE EFFECTS, REASONABLY FORESEEABLE

The United States Court of Appeals for the District of Columbia Circuit stated that an effect was reasonably foreseeable if it was "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision." *EarthReports, Inc. v. FERC,* 828 F.3d 949, 955 (D.C. Cir. 2016). The Eighth Circuit has held similarly. *Mid States Coal. for Progress v. Surface Transp. Bd.,* 345 F.3d 520, 549 (8th Cir. 2003); *see also Crow Butte Resources, Inc.* (License Renewal for the In Situ Leach Facility, Crawford, Nebraska), CLI-19-5, 89 NRC 329, 347 (2019) (Comm'r Baran, dissenting) ("Under NEPA, an

environmental impact is 'reasonably foreseeable' if it is 'sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.' Whether an impact is reasonably foreseeable, or whether a person of ordinary prudence would consider it, is a question of fact.").

NATIONAL ENVIRONMENTAL POLICY ACT

The Commission "held that a possible future action must 'be in a sufficiently advanced stage to be considered a "proposal" for action that "bring[s] NEPA into play." *Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-16-13, 83 NRC 566, 577 (2016); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 295 (2002).

RULES OF PRACTICE: CONTENTIONS, ADMISSIBILITY, REASONABLY FORESEEABLE

Whether a person of ordinary prudence would do something or take something into account is a factual determination. *Pa'ina Hawaii, LLC,* CLI-10-18, 72 NRC 56, 90 (2010) ("The scope and severity of such impacts, and whether they are reasonably foreseeable in the first instance, involve questions of fact that are at the very heart of the contested issue."). *Bennie v. Munn,* 822 F.3d 392, 398 n.2 (8th Cir. 2016) (noting that "what would a person of ordinary prudence have done in certain circumstances" is a factual question); *cf.* 3B Fed. Jury Prac. & Instr. § 162:300 (6th ed.) ("Plaintiff __ must prove by a preponderance of the evidence the injury alleged by plaintiff __ was the direct and reasonably foreseeable result of defendant's alleged [misrepresentations][omissions].") (blanks, brackets, and italics in original).

RULES OF PRACTICE: CUMULATIVE IMPACTS ANALYSIS

"In more recent decisions, however, the Commission has acknowledged that cumulative impact analysis is required for actions covered by CEQ regulation 40 C.F.R. § 1508.7 — that is, reasonably foreseeable future actions — without suggesting that the test for connected actions in CEQ regulation 40 C.F.R. § 1508.25 must be satisfied." *Northern States Power Co.* (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), LBP-14-6, 79 NRC 404, 423 (2014).

RULES OF PRACTICE: LICENSING BOARDS; AUTHORITY; LOCAL GOVERNMENTAL BODIES; WAIVER

The Commission has instructed its licensing boards that a proceeding before them is not the appropriate forum in which to consider the impacts of a local regulation or whether a regulatory waiver or a non-NRC permit may be required for a project to move forward. *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121, 122 n.3 (1998).

RULES OF PRACTICE: NUCLEAR REGULATORY COMMISSION; AUTHORITY; STATE GOVERNMENT; LOCAL GOVERNMENTAL BODIES; SUPREME COURT

The Supreme Court recognized that the NRC was authorized to regulate in the area of radiological safety but that states (and by implication, local governments) retain their traditional responsibilities outside that field of regulation. *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n,* 461 U.S. 190, 205 (1983).

RULES OF PRACTICE: REPLY BRIEF

Commission case law precludes a petitioner from expanding or changing the scope of a contention via a reply. *E.g., Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004) (indicating reply briefs are not the place to "attempt to reinvigorate thinly supported contentions by presenting entirely new arguments" or "what effectively amount to entirely new *contentions.*") (italics emphasis in original). Instead, a "reply brief should be 'narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer.'" *Id.* at 225. "There simply would be 'no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements' and add new bases or new issues that 'simply did not occur to [them] at the outset.'" *Id.* (brackets in original); *Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) ("Allowing new claims in a reply not only would defeat the contention-filing deadline, but would unfairly deprive other participants of an opportunity to rebut the new claims.").

RULES OF PRACTICE: CONTENTIONS, ADMISSIBILITY; BURDEN OF PROOF

"While a board may view a petitioner's supporting information in a light favorable to the petitioner . . . . the petitioner (not the board) [is required] to

supply all of the required elements for a valid intervention petition." *AmerGen Energy Co., LLC* (Oyster Creek Generating Station), CLI-09-7, 69 NRC 235, 260 (2009).

MEMORANDUM AND ORDER
(Granting, in Part, Organizational Petitioners' Request for Hearing and Denying Henderson's Request for Hearing)

Whether one views history from the perspective of John Jay Chapman,[1] Henry Ford[2] or some other on the vast continuum between, the related obligations of license renewal applicants before the Nuclear Regulatory Commission to identify and conserve cultural and historical resources is just one of the issues that looms large in this proceeding.

We address two intervention petitions filed in opposition to Powertech (USA) Inc.'s ("Powertech") application for a 20-year renewal of its operating license for a yet-to-be-constructed in-situ uranium recovery facility ("Dewey-Burdock Project") in western South Dakota.[3] Those petitions raise a total of seven contentions, including claims that Powertech has not met its cultural and historical resource identification or preservation obligations under two federal statutes and Nuclear Regulatory Commission ("NRC" or "Commission") regulations and claims of its failure to analyze cumulative effects, as well as claims concerning water quantity and quality. In this Order, we determine that all the petitioners have standing and that two contentions are admissible, in part, as reformulated below.

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[1] "One of the deepest impulses in man is the impulse to record, — to scratch a drawing on a tusk or keep a diary, to collect sagas and heap cairns. This instinct as to the enduring value of the past is, one might say, the very basis of civilization." https://libquotes.com/john-jay-chapman/quote/lbz8u5e (last accessed Jan. 21, 2025).

[2] "I don't know much about history, and I wouldn't give a nickel for all the history in the world. History is more or less bunk. It is a tradition. We want to live in the present, and the only history that is worth a tinker's damn is the history we make today." https://www.age-of-the-sage.org/quotations/henry_ford_history_bunk.html (last accessed Jan. 21, 2025).

[3] 89 Fed. Reg. 65,401 (Aug. 9, 2024). The Powertech license renewal application ("LRA") was submitted in March 2024. *See* Letter from Peter Luthiger, Chief Operating Officer, Powertech, to Director, Office of Nuclear Materials Safety and Safeguards (NMSS) (Mar. 4, 2024) (ADAMS Accession No. ML24081A103). One of the enclosures to the LRA is a combined technical/environmental report. *See id.* unnumbered encl., Powertech, Dewey-Burdock Project, [LRA] for SUA-1600 Fall River and Custer Counties, South Dakota, Combined Technical Report/Environmental Report (Mar. 2024) (ADAMS Accession No. ML24082A062). Because this report includes both technical/safety and environmental information supporting the application, we will refer to it in this decision as "Combined TR/ER."

I. BACKGROUND

A. Procedural Background and Filings

For a description of the in-situ leach ("ISL") recovery process, we refer the reader to the cogent, detailed, and informative description by a prior licensing board in its decision on Powertech's initial license application.[4] Most importantly for this proceeding, Powertech's planned uranium recovery process will involve the infusion of a lixiviant (an aqueous solution) into the Inyan Kara geologic formation to dissolve the uranium from the rock into the surrounding groundwater of "the Fall River Formation and the Chilson Member of the Lakota Formation," extraction of that uranium-laden water, and processing out the uranium.[5] Susan Henderson, one of the petitioners, claims that her drinking water is supplied from the Lakota Sandstone (in the Inyan Kara geologic formation), proximate to the planned project area.[6]

Powertech submitted its LRA to the NRC on March 4, 2024.[7] The NRC Staff ("Staff") accepted the application for docketing and issued a Notice in the *Federal Register* setting October 8, 2024, as the deadline for interested persons to submit petitions to intervene.[8] Two such petitions were filed.

The Oglala Sioux Tribe ("Oglala Sioux" or "Tribe"), the Black Hills Clean Water Alliance ("Alliance"), and the NDN Collective ("Collective") (together, the "Organizational Petitioners") timely filed a petition, with 19 attachments, raising four contentions, discussed below.[9] Susan Henderson ("Henderson") also timely filed a petition (Henderson Petition), raising three different contentions, also discussed below.

Following the NRC Secretary's October 10, 2024 referral of the petitions to the Chief Administrative Judge for appropriate action,[10] this Board was established on October 15, 2024, to rule on, among other things, standing and contention admissibility.[11] This Board then entered its Initial Prehearing Order

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[4] *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 378-80 (2010).

[5] Combined TR/ER at 1-3 to -6.

[6] Petition for Leave to Intervene from Susan Henderson at 2 (Oct. 8, 2024) [hereinafter "Henderson Petition"] (referencing a water well in the Lakota Sandstone formation); Combined TR/ER at 2-12 fig. 2.2-3 (noting Lakota Formation is part of the Inyan Kara formation).

[7] Note 3, above.

[8] 89 Fed. Reg. 65,401 (Aug. 9, 2024).

[9] Petition to Intervene and Request for Hearing of the Oglala Sioux Tribe, Black Hills Clean Water Alliance, and NDN Collective (Oct. 8, 2024) [hereinafter "Org. Pets. Petition"].

[10] Referral Memorandum from Carrie M. Safford, NRC, Secretary, to E. Roy Hawkens, Atomic Safety and Licensing Board Panel, Chief Administrative Judge (Oct. 10, 2024).

[11] Establishment of Atomic Safety and Licensing Board (Oct. 15, 2024).

on October 17, 2024, setting an Answer deadline of November 4, 2024, and a Reply deadline of November 12, 2024.[12] Both the Staff and Powertech timely filed Answers.[13] The Staff contested the standing only of the Alliance and the Collective but contested the admissibility of all seven proffered contentions. Powertech contested the standing of all Petitioners[14] and contested the admissibility of all proffered contentions. The Organizational Petitioners timely filed a Reply.[15] Henderson did not file a Reply.

The Board held oral argument on December 3, 2024, via video conference, during which issues regarding standing and contention admissibility were addressed.[16] The Board requested supplemental briefing on two issues, with briefs due by December 17, 2024. Tr. at 141-43. Powertech, the Staff, and Organizational Petitioners timely filed supplemental briefs.[17] On December 18, 2024, the Board issued an Order concluding the initial pre-hearing conference and setting a deadline of January 31, 2025, for the issuance of this Order.[18]

B. Contentions Proposed

The Organizational Petitioners raised four joint contentions. The first addressed a claimed lack of appropriate identification of cultural and historical resources and failure to engage in required Tribal consultation. Org. Pets. Petition at 13-20. The second addressed a claimed failure to consider the cumulative effects of ISL mining in the broader area. *Id.* at 21-26. The third raised an issue of a local ordinance declaring uranium mining to be a nuisance. *Id.* at 26. And the fourth addressed a claim that certain required data in the Combined TR/ER

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[12] Licensing Board Memorandum and Order (Initial Prehearing Order) (Oct. 17, 2024) (unpublished).

[13] NRC Staff Consolidated Answer to Intervention Petition of Susan Henderson and Intervention Petition of the Oglala Sioux Tribe, Black Hills Clean Water Alliance, and NDN Collective (Nov. 4, 2024) [hereinafter "Staff Answer"]; Applicant Powertech (USA) Uranium Corporation's Response to Consolidated Petitioners' Request for a Hearing/Petition for Intervention (Nov. 4, 2024) [hereinafter "Powertech Answer"].

[14] Collectively, Organizational Petitioners and Individual Petitioner are referred to as "Petitioners."

[15] Petitioners' Consolidated Reply to NRC Staff and Powertech Responses to Petition to Intervene (Nov. 12, 2024) [hereinafter "Reply"].

[16] Licensing Board Memorandum and Order (Order Scheduling Oral Argument) (Oct. 29, 2024) (unpublished); Powertech USA, Inc., Hearing Transcript (Dec. 3, 2024) [hereinafter "Tr."].

[17] Applicant Powertech (USA) Uranium Corporation's Supplemental Response Following Oral Argument (Dec. 17, 2024) [hereinafter "Powertech Brief"]; NRC Staff Response to Board Request for Additional Briefing (Dec. 17, 2024) [hereinafter "Staff Brief"]; Organizational Petitioners' Supplemental Brief in Support of Petition to Intervene (Dec. 17, 2024) [hereinafter "Org. Pets. Brief"]. Henderson did not file a brief.

[18] Licensing Board Memorandum and Order (Order Concluding Initial Pre-hearing Conference) (Dec. 18, 2024) (unpublished).

is stale. *Id.* at 27-30. Henderson raised three contentions, each related to water quantity and/or quality. Henderson Petition at 3-7.

II. STANDING

To participate in a licensing proceeding, a petitioner first must demonstrate standing. Under Section 189a of the Atomic Energy Act ("AEA"), the NRC must provide a hearing "upon the request of any person whose interest may be affected by the proceeding."[19] The Board has an independent obligation to ensure a petitioner has standing, even if no participant objects on standing grounds.[20] As noted, the Staff conceded that the Tribe and Henderson have standing but contested the standing of Alliance and Collective. Powertech contested the standing of all Petitioners. As demonstrated below, we conclude that all Petitioners have standing.

A. Legal Requirements for Standing in NRC Proceedings

"The petitioner bears the burden to provide facts sufficient to establish standing."[21] To establish standing, NRC regulations require that a request for hearing or intervention petition include four items:

> (i) [t]he name, address and telephone number of the requestor or petitioner;
>
> (ii) [t]he nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
>
> (iii) [t]he nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
>
> (iv) [t]he possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1). Because the Commission has refused to employ a "contention-based standing" concept, once an intervenor has established it has

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[19] 42 U.S.C. § 2239(a)(1)(A).

[20] 10 C.F.R. § 2.309(d)(2) ("In ruling on a request for hearing or petition for leave to intervene, [the Board] *must* determine, among other things, whether the petitioner has an interest affected by the proceeding . . . .") (emphasis added); *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 391 (1979) ("[I]n determining the Guild's standing, the Licensing Board was not merely entitled but obligated to satisfy itself that there was at least one member of the Guild with a particularized interest which might be affected by the outcome of the proceeding . . . .").

[21] *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010).

an injury to a protectable interest that can be alleviated by the denial of the licensing request, the intervenor can prosecute any admissible contention that would result in the denial of that requested licensing action.[22]

In accord with the elements above, the Commission requires petitioners to allege a particularized injury that is within the zone of interests protected by the statute governing the proceeding, fairly traceable to the challenged action, and likely to be redressed by a favorable decision.[23] To assess whether an interest falls within the "zone of interests," it is necessary to "first discern the interests 'arguably . . . to be protected' by the statutory provision at issue," and "then inquire whether the [petitioner's] interests affected by the agency action are among them."[24] Here, the AEA, the National Environmental Policy Act ("NEPA"), and the National Historic Preservation Act ("NHPA") are the statutes at issue. The AEA "concentrates on the licensing and regulation of nuclear materials for the purpose of protecting public health and safety and the common defense and security."[25] The purpose of NEPA is to protect the environment.[26] The purpose of the NHPA is to protect tribal cultural resources and ensure tribes are consulted in accordance with section 106 of the NHPA.[27]

Injury-in-fact is "an invasion of a legally protected interest which is" (1) "concrete and particularized" and (2) "actual or imminent" and not "conjectural or hypothetical."[28] To establish causation, "a causal connection between the injury and the conduct complained of" is required and this connection must be "fairly . . . trace[able] to the challenged action of the defendant."[29] To establish redressability, it must be likely "that the injury will be redressed by a favorable decision."[30]

While an individual must establish standing by satisfying the above criteria, an organization may demonstrate standing in two ways: organizational standing or representational standing.[31] Organizational standing involves alleged harm to

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[22] *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant Unit 3), CLI-09-20, 70 NRC 911, 918 n.28 (2009).

[23] *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998).

[24] *U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272-73 (2001), (quoting *Nat'l Credit Union Admin. v. First Nat'l Bank,* 522 U.S. 479, 492 (1998)).

[25] *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 14 (1998).

[26] *Id.* at 9.

[27] *Crow Butte Resources, Inc.* (Marsland Expansion Area), LBP-13-6, 77 NRC 253, 271 (2013).

[28] *Lujan v. Def. of Wildlife,* 504 U.S. 555, 560 (1992).

[29] *Id.*

[30] *Id.* at 561.

[31] *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

the organization itself, while representational standing involves alleged harm to an organization's members.[32]

An organization seeking to establish organizational standing must satisfy the same standing requirements as an individual.[33] The organization must show that (1) the action at issue will cause an injury-in-fact to the organization's interests; and (2) the injury is within the zone of interests protected by the relevant statute.[34]

An organization also may obtain standing as a representative of one or more individual members.[35] A recent licensing board decision noted two divergent tests for representational standing employed in recent Commission decisions.[36] Under the first formulation of that test, a three-element test, entities "must show one of its members has standing, must identify that member by name and address, and must show, preferably by affidavit, the organization is authorized to request a hearing on behalf of that member."[37] Under the second formulation of that test, a five-element test, an entity must meet the aforementioned three-element test and also show that (1) the interests that the entity seeks to protect are germane to its purpose; and (2) neither the claim asserted nor the relief requested requires an individual member to participate in the entity's lawsuit.[38]

B. The Oglala Sioux Tribe Has Standing

Despite contesting the Tribe's standing, Powertech agreed at oral argument that it did not dispute the land at issue to be aboriginal land of the Oglala Sioux Tribe. Tr. at 17-18. Powertech further conceded that "federal law recognizes that Native American tribes have a protected interest in cultural resources found on their aboriginal lands." Tr. at 18.

In a similar proceeding, another licensing board determined that the Oglala Sioux Tribe had standing to intervene in an in-situ leach recovery application proceeding because (i) the in-situ recovery operations were to be conducted on aboriginal lands of the Tribe; (ii) federal law protected a tribe's interest in the

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[32] *Id.*; *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 16 n.66 (2024) (citing cases).

[33] *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 411 (2007).

[34] *Sierra Club v. Morton,* 405 U.S. 727, 739 (1972); *Ga. Tech Research Reactor,* CLI-95-12, 42 NRC at 115; *Yankee Nuclear,* CLI-98-21, 48 NRC at 195-96.

[35] *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 18 (2014); *Entergy Nuclear Operations, Inc., and Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 266, 268 (2008); *Palisades,* CLI-07-18, 65 NRC at 409.

[36] *Diablo Canyon,* LBP-24-6, 100 NRC at 17-20 (citing cases), *appeal pending.*

[37] *Id.* at 17-18 (citations omitted).

[38] *Id.* at 18-20 (citations omitted).

preservation of cultural traditions; (iii) the Tribe ascribed cultural and religious significance to the land; and (iv) it was likely that tribal artifacts would be found on the land at issue.[39] On appeal, the Commission "decline[d] to disturb the Board's ruling on this point."[40]

That same reasoning applies here given that (i) the recovery operations at the Dewey-Burdock site will be conducted on aboriginal lands of the Tribe;[41] (ii) federal law protects a tribe's interest in the preservation of cultural traditions;[42] (iii) the Tribe has ascribed cultural and religious significance to the land;[43] and (iv) the Tribe has asserted that tribal artifacts likely are to be found on the land at issue.[44] Thus, we conclude that the Tribe has established its standing.

C. The Black Hills Clean Water Alliance and the NDN Collective Have Standing

The Alliance and the Collective each claim to have both representational and organizational standing. Tr. at 12. Neither has established representational standing but both have established organizational standing.

1. Representational Standing

As noted above, regardless of which of two tests is employed, representational standing requires a showing that at least one member has standing and has authorized the entity to represent that member's interest in the proceeding. *See* Section II.A above. We conclude that neither entity has satisfied either of those elements and, thus, has not established representational standing.

a. The Alliance and the Collective Both Fail to Establish That Their Respective Proffered Members Have Standing

The Alliance and the Collective each failed to include in the Organizational Petitioner's Petition an address and telephone number for their respective mem-

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[39] *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 713-14 (2008), *aff'd in part and rev'd in part on other grounds,* CLI-09-9, 69 NRC 331, 339 (2009).

[40] *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 339 (2009).

[41] Tr. at 17-18.

[42] *Crow Butte,* LBP-08-24, 68 NRC at 713-14.

[43] Org. Pets. Petition, attach. 7, ¶¶ 5-8 (Decl. of Reno Red Cloud (Oct. 8, 2024)) [hereinafter "Red Cloud Decl."].

[44] *Id.* ¶ 8.

bers on whose behalf each seeks representational standing.[45] In the Reply, the Alliance and Collective argued that the requirement to include an address and telephone number in the petition simply was a clerical omission and included supplemental affidavits with addresses and telephone numbers for *themselves,* but not for the members on whose behalf they seek representational standing.[46] The Alliance and Collective also argued that applying the address and telephone number requirement, and other regulatory elements of standing, is *ultra vires* and extra-statutory.[47]

The standing elements the Alliance and the Collective challenge as being extra-statutory and/or *ultra vires,* though, are found in a Commission regulation.[48] And neither the Alliance nor the Collective submitted the necessary waiver request to challenge application of that regulation.[49] Therefore, this Board is without the authority to consider a challenge to the application of that regulation and must enforce and apply the regulation.[50] This Board does not read the recent Supreme Court decisions in *Loper Bright* or *Corner Post* or the recent Fifth Circuit decision in *Texas v. NRC* as providing it with the authority to review a challenge to the Commission's regulations. Any such challenge must be presented to the Commission itself.[51]

Nevertheless, even if we were to consider the argument advanced by the Organizational Petitioners, it would fail. They argue that the lack of an address and telephone number should not operate to deprive the Alliance and Collective of representational standing. Yet an Atomic Safety and Licensing Appeal Board upheld a licensing board's decision that an organization's refusal to provide the name and address of a member with standing was sufficient reason to deny

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[45] Org. Pets. Petition, attachs. 8-9 (Decl. of Dr. Lilias Jones Jarding (Oct. 6, 2024)) [hereinafter "Jarding Decl."]; (Aff. of Taylor Gunhammer (Oct. 7, 2024)) [hereinafter Gunhammer Aff.].

[46] Reply at 2; *id.* at attachs. A-B (Addendum to Decl. of Dr. Lilias Jones Jarding (Nov. 7, 2024)) [hereinafter "Jarding Addendum"]; (Addendum to Decl. of Taylor Gunhammer (Nov. 7, 2024)) [hereinafter "Gunhammer Addendum"].

[47] *Id.* at 1-5 (citing United States Supreme Court and United States Court of Appeals for the Fifth Circuit cases referenced below).

[48] 10 C.F.R. § 2.309(d)(1).

[49] 10 C.F.R. § 2.335(a).

[50] *See Nuclear Fuel Services, Inc.* (License Amendment Application), CLI-23-3, 98 NRC 33, 49 & n.105 (2023) (affirming restriction in 10 C.F.R. § 2.335 preventing licensing board from considering challenges to regulations absent a waiver from Commission); *Union Electric Co.* (Callaway Plant, Units 1 and 2), ALAB-347, 4 NRC 216, 218 (1976) ("[T]he Commission . . . withheld jurisdiction from the licensing boards to entertain attacks on the validity of Commission regulations in individual licensing proceedings except in certain 'special circumstances.'"); *New Jersey Dep't of Env't Prot. v. NRC,* 561 F.3d 132, 135 (3d Cir. 2009) ("Unless a party obtains a waiver from the NRC, regulations are not 'subject to attack' during adjudications.").

[51] 10 C.F.R. § 2.335(d).

the organization's intervention petition.[52] The Appeal Board noted the name and address of the member with standing serves an important and substantive role — it allows the licensing board to engage in the fact finding necessary to determine independently whether a member truly could establish standing.[53]

Moreover, the organizational addresses and phone numbers provided by the Alliance and the Collective in their Replies do not remedy this failure. At oral argument, counsel for the Organizational Petitioners stated that Dr. Jarding and Mr. Gunhammer "identify with, and are associated with the address submitted with the addendum[s] [to the Organizational Petitioners' Reply]. Both of those individuals are the only employees at that address for the organizations. Those addresses submitted with the addendum are the addresses for those individuals." Tr. at 14. Yet Commission caselaw holds that providing the address of a petitioning organization but not a residential address of any member of that organization fails to provide a basis for standing for both the organization and the individual.[54]

All elements of the Section 2.309(d) standing test must be met. The Alliance and the Collective failed to meet the first of those elements, even after having the opportunity in the Reply to correct their earlier omission.[55] Thus, they do not have representational standing.

b. The Alliance and the Collective Also Both Fail to Provide Written Authorization from Their Respective Members for Either Entity to Represent That Member's Interests in This Proceeding

Moreover, to satisfy the Commission's test for representational standing, an entity must include the name and address of a member who authorizes the organization to request a hearing on behalf of that member.[56] Neither of the

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[52] *Allens Creek,* ALAB-535, 9 NRC at 389-94.

[53] *Id.* at 393-94; notes 37 and 38, above, and accompanying text (citing Commission decisions requiring submission of the name and address of an organization's member to establish representational standing); note 20, above.

[54] *International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-97-12, 46 NRC 1, 8 (1997), *aff'd,* CLI-98-6, 47 NRC 116 (1998) (holding that a petitioner who "writes from a post office box and does not provide his residential home address" and another who uses the address of a historical foundation without providing a residential address of any member of the historical foundation fails to provide a basis for standing).

[55] In its Answer, the Staff specifically called out the error. Staff Answer at 11-12. While a petitioner has the opportunity in a reply to cure standing defects in the petition, failure to do so can result in the denial of standing. *Bell Bend,* CLI-10-7, 71 NRC at 139-40.

[56] Notes 37 and 38, above, and accompanying text (citing Commission decisions requiring submission of express authorization from a member that the organization may represent his or her interests).

Declarations filed by the Alliance included an authorization by Dr. Jarding for the Alliance to represent her interests in this proceeding.[57] Likewise, neither of the Declarations filed by the Collective included an authorization by Mr. Gunhammer for the Collective to represent his interests in this proceeding.[58]

The Alliance and the Collective failed to meet yet another element of the Commission's representational standing test. Accordingly, neither the Alliance nor the Collective have established representational standing in this proceeding.

2. Organizational Standing

To satisfy the requirements for organizational standing, an entity "must establish a discrete institutional injury to the [entity's] interests, which must be based on something more than a general environmental or policy interest in the subject matter of the proceeding."[59] The Commission has found recreation, aesthetic, and other interests sufficient to demonstrate standing, especially when petitioners assert they "actually use the geographical areas which they claim to be associated with their purported aesthetic, recreational, and environmental/conservation interests" because this shows they will be "personally and individually injured."[60] These Commission decisions are consistent with rulings from the Supreme Court that an injury in fact may be established where "scenery, natural and historic objects and wildlife" may be adversely affected, although the party seeking review must "be himself among the injured."[61]

In line with the Supreme Court's holding, an entity may obtain organizational standing where the entity at issue submits an affidavit or declaration that the planned development at issue would affect the activities or pastimes of the entity

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[57] Tr. at 15-16; Jarding Decl.; Jarding Addendum.

[58] Tr. at 15-16; Gunhammer Aff.; Gunhammer Addendum.

[59] *Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-12-3, 75 NRC 164, 177, *aff'd,* CLI-12-12, 75 NRC 603 (2012) (affirming licensing board's standing determination but declining to consider remaining claims).

[60] *Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 356 (1999); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323-24 (1999) (finding that "hiking, camping, birdwatching, study[ing], contemplation, solitude, photography, and other activities" are a "significant and genuine personal attachment to the affected area" sufficient to constitute standing); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150 (2001), *aff'd,* CLI-01-17, 54 NRC 3 (2001) (finding standing where petitioner uses "the South Florida ecosystem for hiking, boating, bird watching, fishing, contemplation, and observation of the diverse plant and animal species that frequent the ecosystem.").

[61] *Sierra Club v. Morton,* 405 U.S. 727, 734-35 (1972).

or its members.[62] In the *Sierra Club* decision, the Supreme Court rejected the Sierra Club's argument that it had organizational standing solely because its interest in environmental issues was impacted directly by the project at issue, without needing to submit any affidavits or declarations of an actual impact to the organization or the members of the organization.[63] By implication, then, the submission of such declarations or affidavits would have established standing.

a. The Black Hills Clean Water Alliance Has Organizational Standing

The Alliance satisfies organizational standing through the declaration of Dr. Lilias Jones Jarding, its Executive Director. Dr. Jarding describes the Rapid City, South Dakota-based Alliance as a "coalition of organizations, anglers, conservationists, scientists, and Native Americans dedicated to protecting the communities, wildlife, land, air, water and Native American resources of the Black Hills."[64] In her declaration, Dr. Jarding asserts that she and other Alliance members "view and photograph scenery and wild plant life, appreciate and value the cultural and historical resources at the site, and generally enjoy using the area of the Project for recreational, cultural, historical, conservation, and aesthetic purposes."[65] Those uses are intended to continue in the future and will be harmed by the Dewey-Burdock Project, according to Dr. Jarding.[66] As part of

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[62] *Id.* at 735. The failure to submit that affidavit or declaration can be fatal to establishing standing. *Id.* (the entity at issue failed to submit an affidavit or declaration that "it or its members would be affected in any of their activities or pastimes by the . . . development. Nowhere in the pleadings or affidavits did the Club state that its members use [the area] for any purpose, much less that they use it in any way that would be significantly affected by the proposed actions of the respondents."); *see also Sierra Club v. U.S. Army Corps of Eng'rs,* 645 F.3d 978, 989 (8th Cir. 2011) (upholding standing of Sierra Club and other entities in light of testimony from members that they took pictures in the area, hunted in the area, and studied history and archaeology of the area).

[63] *Sierra Club,* 405 U.S. 734-39; *id.* at 735 ("The Sierra Club failed to allege that it or its members would be affected in any of their activities or pastimes by the Disney development."); *id.* at 736 ("The Club apparently regarded an allegation[ ] of individualized injury as superfluous, on the theory that this was a 'public' action involving questions as to the use of natural resources, and that the Club's longstanding concern with and expertise in such matters were sufficient to give it standing as a 'representative of the public.' This theory reflects a misunderstanding of our cases involving so-called 'public actions' in the area of administrative law.").

[64] Jarding Decl. ¶ 3.

[65] Jarding Decl. ¶¶ 4-5, 10.

[66] *Id.* ¶¶ 4, 7. In its Answer, Powertech argues that Dr. Jarding's reference to returning to the property in the "Spring and Summer of 2025" is insufficient to demonstrate an injury because the project will not be commenced that early and, therefore, there will be no injury to Dr. Jarding or the Alliance in that timeframe. Powertech Answer at 14-15. That argument ignores the references in paragraph 4 of Dr. Jarding's Declaration that members of the Alliance "intend on continuing to use

(Continued)

her aesthetic enjoyment of the area, Dr. Jarding asserts that she also uses and enjoys the riparian areas, which "will suffer loss or damage due to the Project's groundwater pumping and operation."[67]

In light of (i) the Alliance's interests in "protecting the communities, wildlife, land, air, water and Native American resources of the Black Hills," that potentially may be affected significantly by the proposed Project; (ii) Dr. Jarding's declaration detailing the use of the Project site by the Alliance's members; and (iii) the above-cited Commission decisions and caselaw from the Supreme Court and the United States Court of Appeals for the Eighth Circuit, we conclude that the Alliance provided sufficient support for its alleged injury-in-fact and sufficiently demonstrated its interests fall within the scope of the AEA, NEPA, and NHPA, which govern this proceeding. Any potential harm to the uses by the Alliance is fairly traceable to the proposed Dewey-Burdock Project. This injury would be redressed by a decision favorable to the Alliance. Thus, we conclude the Alliance has established its organizational standing.[68]

b. The NDN Collective Has Organizational Standing

The Collective satisfies organizational standing through the affidavit of Taylor Gunhammer. The Collective is described as a "nonprofit corporation based in Rapid City, South Dakota that is concerned with building the collective power of Indigenous Peoples, communities, and Nations to exercise [their] inherent right to self-determination, while fostering a world that is built on a foundation of justice and equity for all people and Mother Earth."[69] In his affidavit, Mr. Gunhammer asserts that "individual members of Oceti Sakowin tribes view and photograph scenery and wild plant life, appreciate and value the cultural and historical resources at the site, and generally enjoy using the area of the Project for recreational, cultural, ceremonial, historical, conservation, food and medicinal plant harvesting, and aesthetic purposes."[70] Mr. Gunhammer also uses and enjoys the land, riparian areas, and waters near the project.[71] Mr. Gunhammer

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and value the lands near, at, and affected by the Project in future years." Jarding Decl. ¶ 4. Thus, taken as a whole, Dr. Jarding's Declaration establishes a sufficiently definitive past, present, and future use of the property at issue. *See Priv. Fuel Storage,* CLI-99-10, 49 NRC at 324-25.

[67] Jarding Decl. ¶ 6.

[68] The Board is aware of the prior *Powertech* licensing board denying the Alliance organizational standing. *See Powertech,* LBP-10-16, 72 NRC at 389. In that proceeding, though, the Alliance's environmental claims, as outlined in its Affidavit, were limited to water impacts. Moreover, the Affidavit the Alliance submitted in that proceeding did not contain the detail of impact to the organization and its members that the Jarding Declaration includes in this proceeding.

[69] Gunhammer Aff. ¶ 4.

[70] *Id.* ¶ 6.

[71] *Id.* ¶¶ 7-8.

asserts that he, along with other Collective members, intend to continue using the lands and/or waterways near the proposed project in the future.[72]

Due to the potential for the Dewey-Burdock project to affect significantly the Collective's interests as demonstrated by Mr. Gunhammer's affidavit detailing the Collective's use of the proposed site, and in light of the above-cited Commission decisions and Supreme Court and Eighth Circuit case law, the Collective has alleged sufficient injury-in-fact and sufficiently demonstrated that its interests fall within the AEA and NEPA, which govern this proceeding. Any potential harm to the uses by the Collective is fairly traceable to the proposed Dewey-Burdock project. This injury would be redressed by a decision favorable to the Collective. Thus, we conclude the Collective has established its organizational standing.

3. Susan Henderson Has Standing

Ms. Henderson lives in Edgemont, South Dakota, and is the personal representative of an 8,000-acre cattle ranch in Fall River County, South Dakota, southeast of the proposed project.[73] Ms. Henderson's property is proximate to the proposed Powertech project and her primary source of water is from a well that draws water from the Lakota Sandstone aquifer (part of the Inyan Kara formation), which flows from the proposed uranium recovery area to the area where Ms. Henderson lives and operates her ranch.[74] Powertech argues that Ms. Henderson has not established standing.[75] For the same reasons cited by the Staff in its Answer,[76] we conclude that Ms. Henderson has established standing.

In its Answer, Powertech argues that Ms. Henderson fails to provide evidence "beyond unspecified 'published scientific research' studies that the alleged indirect connections between the Dewey-Burdock ISR Project and her property via these formations will actually result in contamination."[77] Powertech also argues that Ms. Henderson does not have standing based on proximity as she failed to define the proximity of her property to the site and failed to establish "a

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[72] *Id.* ¶¶ 6, 14. Powertech makes the same argument about the timing of the Collective and Mr. Gunhammer's use of the property as it did relative to Dr. Jarding's use. Powertech Answer at 17. For the same reasons, we reject that argument. *See* note 66, above.

[73] Henderson Petition at 1. Ms. Henderson included in her petition the items required by 10 C.F.R. § 2.309(d)(1).

[74] Henderson Petition at 1-2; *Powertech,* LBP-10-16, 72 NRC at 385 (finding that Ms. Henderson used well water from the Lakota Sandstone aquifer, which is a formation in the Inyan Kara); Combined TR/ER fig.2.2.-3 at 2-12.

[75] Powertech Answer at 17-19.

[76] Staff Answer at 8-10.

[77] Powertech Answer at 18.

reasonable causal basis between the alleged harm that her well 'could be contaminated' and the activities proposed by the LRA."[78] Finally, Powertech argues that Ms. Henderson failed to provide evidence that the proposed activities will cause water contamination or that, if such contamination does occur, a "potential pathway to migrate to her property and her water sources exists."[79]

The Commission has held that proximity alone is not sufficient to establish standing in source material proceedings.[80] But in in-situ leach ("ISL") mining cases, the use of a substantial quantity of water "from a source that is reasonably contiguous to either the injection or processing sites" is sufficient to demonstrate an injury in fact.[81]

Here, Ms. Henderson asserted that her primary water well draws from the same geological formation that Powertech intends to target for its uranium recovery project.[82] Ms. Henderson also supplied the Board with information showing both the proximity of her well to the project site and a plausible flow pathway from the project site to her well.[83] Any potential harm associated with Ms. Henderson's use of well water from the Lakota Sandstone aquifer is fairly traceable to the proposed Dewey-Burdock Project.[84] We conclude that Ms. Henderson has standing.

III. ANALYSIS OF CONTENTIONS

In addition to standing, for an intervention petition to be granted, petitioners must demonstrate that they have submitted at least one admissible contention. 10 C.F.R. § 2.309(a). The Commission's six-part contention admissibility requirements are found in 10 C.F.R. § 2.309(f). It is a petitioner's obligation, not the Board's, to formulate a contention which satisfies the six criteria necessary

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[78] *Id.*

[79] *Id.* at 19.

[80] *Cogema Mining, Inc.* (Irigaray and Christensen Ranch Facilities), LBP-09-13, 70 NRC 168, 177 (2009) (citing *USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311-12 (2005)).

[81] *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 275, *rev'd in part on other grounds,* CLI-98-16, 48 NRC 119 (1998).

[82] Henderson Petition at 2.

[83] *Id.* at 1-2; note 74, above.

[84] Staff Answer at 8-10; *see also Crow Butte Resources, Inc.* (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 272-76, 278-80 (2008) (finding standing where petitioners' alleged drinking water source was some distance from project site and in a geological formation that was connected to the target formation for the uranium recovery project), *aff'd,* CLI-09-12, 69 NRC 535, 544-48 (2009). If a petitioner with a drinking water well in a formation allegedly *connected to* the target formation can be found to have standing, it defies logic not to find standing for a petitioner whose well is *in* the target formation.

for the contention's admission.[85] The failure to meet any one of the six elements for contention admissibility requires a finding that the contention is not admissible.[86]

Petitioners are not required to prove their contentions at the admissibility determination stage and "we do not consider the merits of [petitioners'] arguments" at this stage.[87] "While the Board appropriately may view Petitioners' support for its contention in a light that is favorable to the Petitioner, it cannot do so by ignoring the [contention admissibility] requirements . . . ."[88]

Applying those standards to each of the seven contentions before the Board, as explained below, we determine that the Organizational Petitioners have proffered two contentions (Contention 1 and Contention 2) that are admitted in part, as reformulated below. No other contentions are admitted.

A. *Organizational Petitioners' Contention 1* — Failure to Meet Applicable Legal Requirements Regarding Protection of Historical and Cultural Resources, and Failure to Involve or Consult the Oglala Sioux Tribe and the Interested Public as Required by Federal Law

In Contention 1, Organizational Petitioners raise two distinct issues. First, Organizational Petitioners claim the LRA lacks "an adequate description of either the affected environment or the impacts of the project on archaeological, historical, and traditional cultural resources," in violation of NRC regulations implementing NEPA.[89] Second, Organizational Petitioners claim the LRA fails to comply with the NHPA.[90] We address these issues in reverse order below and determine that a reformulated version of the first part of Contention 1 is admissible.

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[85] *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015).

[86] *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016).

[87] *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443 (2011); *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 221 (2011); *U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 591 (2009) (noting merits are to be considered at a phase other than contention admissibility); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004) ("[W]e do not expect a petitioner to prove its contention at the pleading stage . . . .").

[88] *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

[89] Org. Pets. Petition at 13; Tr. at 91-92.

[90] Org. Pets. Petition at 13; Tr. at 91-92.

1. The LRA Is not Required to Demonstrate Compliance with the NHPA

In its second part of Contention 1, the Organizational Petitioners claim a violation of the NHPA's consultation requirement.[91] But such a contention is not ripe at this point in the proceeding. The Commission has held, repeatedly and expressly, that claims of a violation of the consultation requirement under the NHPA may be interposed only after the Staff has issued its draft environmental review document.[92] "The agency granting the license, here the NRC, has the obligation to comply with the NHPA."[93]

When pressed at oral argument on these prior holdings by the Commission, counsel for the Organizational Petitioners responded that the NRC is to begin the consultation process at the earliest opportunity, and that it has not done so here. Tr. at 92-95. After the Board explained that it read Commission case law as expressly foreclosing such an argument until after the Staff issues a draft NEPA document, counsel for Organizational Petitioners admitted that he had no "contrary NRC case law." Tr. at 94.

Accordingly, the second part of Contention 1 is not admitted.

2. The LRA Arguably Fails to Comply with NRC Regulations Implementing NEPA

In the first part of Contention 1, Organizational Petitioners claim the LRA violates NRC regulations enacted to comply with NEPA "because it lacks an adequate description of either the affected environment or the impacts of the project on archaeological, historical, and traditional cultural resources." Org. Pets. Petition at 13. They assert that "[i]n this case the [Combined TR/ER] demonstrates that a significant number of archaeological, historical, and traditional cultural resources on site have not been competently evaluated; therefore, the potential impacts to these resources have not been addressed." *Id.* at 14. Moreover, Organizational Petitioners further take issue with the Combined TR/ER's unexplained conclusion that the impacts to cultural resources would be "none." *Id.* We determine that this aspect of Contention 1 is admissible, as reformulated below.

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[91] Org. Pets. Petition at 13; Tr. at 91-92.

[92] *Marsland,* CLI-14-2, 79 NRC at 20 n.49; *North Trend,* CLI-09-12, 69 NRC at 565-66; *Crow Butte,* CLI-09-9, 69 NRC at 350-51.

[93] *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 447 (2006).

a. A Contention Claiming the LRA Violates the NRC's Regulations Implementing NEPA Is not Premature

Unlike NHPA consultation, where contentions must await issuance of the Staff's draft NEPA document, the Commission has stated unequivocally that its "regulations provide that for issues arising under NEPA, a petitioner must file contentions based on the applicant's environmental report."[94] In a prior proceeding involving the Oglala Sioux Tribe and Powertech over this very uranium recovery facility, the Commission expressly noted that NEPA claims must be filed based on the contents of Powertech's environmental report.[95] Moreover, "[w]hile agencies may coordinate their NEPA and NHPA reviews, the reviews remain separate, and the regulations associated with each Act must be independently satisfied — 'coordination' does not mean that NEPA regulations govern NHPA analysis or vice versa."[96]

In its Answer and at oral argument, the Staff argued that this NEPA aspect of Contention 1 was unripe for the same reason the NHPA aspect was unripe. The sole support offered by the Staff for this position was the Commission's 2020 decision in *Crow Butte*. Staff Answer at 25-26; Tr. at 101-03, 105-06.[97] When pressed, counsel for the Staff pointed the Board to the following sentence of that decision:

> In CLI-09-9, we agreed that the contention was not ripe and reversed the Board's contention admissibility determination, given that the contention centered on claimed deficiencies (under the NHPA and NEPA) said to stem from a failure to consult the Tribe, which Crow Butte itself had no obligation under the NHPA to consult the Tribe.

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[94] *Id.* at 444.

[95] *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-16-20, 84 NRC 219, 231 (2016) ("Insofar as it could be interpreted as implying that the Tribe was premature in filing its environmental contentions on the application, the Board's decision was incorrect. Although it is true that 'the ultimate burden with respect to NEPA lies with the NRC Staff,' our regulations require that intervenors file environmental contentions on the applicant's environmental report.")

[96] *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-11, 63 NRC 483, 493 (2006); *see also Powertech,* CLI-16-20, 84 NRC at 248 ("Federal case law supports the legal principle that NHPA and NEPA compliance do not necessarily mirror one another."). It is important to note that the Commission made that statement in rejecting a Staff argument that sufficient identification of cultural and historic resources under the NHPA should be equated to a finding of sufficiency under NEPA as well. At oral argument here, counsel for the Staff and counsel for Powertech agreed that simply meeting an obligation under the NHPA does not mean that NEPA obligations also have been met. Tr. at 97.

[97] *See Crow Butte Resources, Inc.* (In Situ Leach Uranium Recovery Facility), CLI-20-8, 92 NRC 255 (2020).

Crow Butte, CLI-20-8, 92 NRC at 261; Tr. at 131-32, 134-37. Counsel for the Staff placed great (if not sole) reliance on the parenthetical in that sentence and the fact that the decision containing that excerpt was issued in 2020.[98] We are not persuaded that the parenthetical bears the weight the Staff places on it, for five reasons.

First, the parenthetical relied upon by the Staff is contained in the "History of Contention B" section of that 2020 decision (not the "Analysis" section, which begins two pages later)[99] and cites a 2009 Commission decision (which predates the Commission's 2014 *Marsland* decision the Board requested the participants to discuss and which we discuss below).

Second, the precedential value of the 2020 decision is limited, in that a 3-2 majority of the Commission declined to exercise its discretionary review authority and thus denied a petition for review. *Crow Butte,* CLI-20-8, 92 NRC at 271; *id.* at 281 (Additional Views of Commissioner Wright) ("I do not view this case as setting precedent for other cases and licensing boards.").

Third, a review of the 2009 Commission decision relied on in the 2020 decision reveals no mention that the contention under consideration concerned a failure to consult under NEPA. In its cultural resources discussion, the Com-

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[98] Counsel for the Staff relied on this 2020 case in response to a direction from the Board for the participants to be prepared at oral argument to discuss *Marsland,* CLI-14-2, 79 NRC at 20-21, wherein the Commission upheld the admission of a NEPA contention, worded identically to the NEPA contention here, over similar ripeness arguments.

[99] The Commission has recognized that the location of text in decisions can impact the import of that text. *Shieldalloy,* CLI-99-12, 49 NRC at 357 ("The Presiding Officer's discussion of the entry of appearance and identification of clients is found not in the 'Analysis' section of LBP-99-12 but rather in a footnote attached to the 'Conclusion' section. Thus, it does not form a basis for the Presiding Officer's ruling on standing.").

We note that in its CLI-20-8 decision, the Commission also stated in an analysis section that Contention B's "claims spanned both NHPA and NEPA issues." *Crow Butte,* CLI-20-8, 92 NRC at 266. But each time the underlying licensing board referenced an obligation that was not met, it cited Section 106 of the NHPA, not NEPA. *Crow Butte,* LBP-08-24, 68 NRC at 719-23 ("The NRC Staff concedes that section 106 of the NHPA imposes a duty, not on Crow Butte in preparation of its application, but rather on the NRC to consult with the Tribe regarding cultural resources. . . . In fact, the NRC Staff notes that 'the NRC has not yet even begun the required section 106 evaluation process.' . . . The regulations that implement NHPA require federal agencies themselves to consult with a tribe if that tribe ascribes cultural or religious significance to properties not on tribal lands. . . . Although it is permissible for a federal agency to rely upon an applicant or an applicant's contractor to collect data and make recommendations regarding cultural resources, it may not delegate its duty to consult under section 106 of the NHPA. . . . Contrary to the NRC Staff's argument, ensuring that it meets its consultation obligations under section 106 of the NHPA is indeed 'an issue material to the findings the NRC must make in support of the action involved in this proceeding.'"). Most tellingly, the licensing board noted an argument by Crow Butte that "the Tribe fails to point to any legal requirement that it consult with the Tribe." *Id.* at 719. *See also* "Third" and "Fourth" reasons below.

mission mentioned NEPA only twice — both times in reference to the agency's practice of incorporating the results of its NHPA review into its NEPA review documents.[100] Further, there is no indication that the Tribe in that case was asserting a NEPA claim in addition to an NHPA claim.[101]

Fourth, in the five pages devoted to analyzing the relevant contention in the licensing board decision underlying the 2009 Commission decision, the board mentioned the NHPA myriad times but mentioned NEPA only once — in connection with a position advanced by the Staff (not the Tribe): "However laudable the NRC Staff's assurance to the Board that it will involve the Tribe in its NEPA review of cultural resources at the Crow Butte mining site, such assurances are no substitute for enabling the Tribe to prosecute its contention here."[102] Even in the section of the licensing board's decision discussing what the Commission later identified as the board's "concern,"[103] the board did not reference NEPA. Instead, throughout the licensing board's discussion, just like that of the Commission later, the focus remained upon the Section 106 consultation requirement under the NHPA.

Fifth, in the Staff-cited 2020 decision, the Commission did not address (let alone distinguish or overrule) its earlier 2014 *Marsland* holding rejecting the same ripeness argument advanced by the Staff here. In *Marsland,* the Tribe proffered a contention that is identical to its Contention 1 in this proceeding.[104] The licensing board declined to admit the NHPA aspect of that contention (as

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[100] *Crow Butte,* CLI-09-9, 69 NRC at 349 ("The Staff argues that this contention is not ripe. Because the NHPA requires the Staff, not the Applicant, to consult with the Tribe, the issue will not ripen until the Staff completes its NEPA review, they argue."); *id.* at 351 ("As to the Board's concerns that a contention would be subject to the late-filing standards if the Tribe must defer its contention until the NEPA review is complete, our rules of procedure explicitly allow the filing of new contentions on the basis of the draft or final environmental impact statement where that document differs 'significantly' from the information that was previously available."). It is noteworthy that the Commission said in a footnote in that same decision: "The NRC implements its responsibilities under NHPA in conjunction with the NEPA process." *Id.* at 348 n.89. *See also* note 96, above, and accompanying text.

[101] *See Crow Butte,* CLI-09-9, 69 NRC at 348-51.

[102] *Crow Butte,* LBP-08-24, 68 NRC at 719-23. Nor did the licensing board discuss NEPA in the standing section devoted to the Tribe's "cultural resources claims;" but it did discuss the NHPA. *Id.* at 712-15.

[103] *Crow Butte,* CLI-09-9, 69 NRC at 351 ("As to the Board's concerns that a contention would be subject to the late-filing standards if the Tribe must defer its contention until the NEPA review is complete, our rules of procedure explicitly allow the filing of new contentions on the basis of the draft or final environmental impact statement where that document contains information that differs 'significantly' from the information that was previously available.").

[104] *Compare* Org. Pets. Petition at 13, *with Marsland,* LBP-13-6, 77 NRC at 286, *and Marsland,* CLI-14-2, 79 NRC at 20.

we do here) but did admit the NEPA aspect of that contention (also as we do here), and the Commission upheld that ruling.[105]

> The Staff's reasoning must be reconciled with the provisions in 10 C.F.R. § 2.309(f)(1) and (f)(2), requiring a petitioner to base its environmental contentions on information available at the time its intervention petition is to be filed, including the applicant's environmental report. *Our regulations do not contemplate a petitioner waiting for the Staff to perform its responsibilities under the NHPA before the petitioner raises environmental contentions.* Although our regulations do allow for contentions based upon the Staff's environmental review documents, a request to admit a new or amended contention requires a petitioner to show that the information upon which it is based was "not previously available" and "materially different from information previously available." The fact that the Staff will develop *additional* information relevant to cultural resources, as part of its NHPA review, *does not preclude a challenge to the completeness of the cultural resources information in the application.*

Marsland, CLI-14-2, 79 NRC at 21-22 (emphasis added).

The same analysis applies here. The Organizational Petitioners contend that the Combined TR/ER's identification of historic, scenic, and cultural resources is deficient. Org. Pets. Petition at 13-14. As in *Marsland,* the Organizational Petitioners include an affidavit, from the Oglala Sioux's Water Resources Director, that states:

> Since there are cultural resources identified in the license renewal application, [ ] there may well be more that only the Tribe can identify and ensure that they are properly protected . . . .
>
> . . . [T]he discovery of an Indian camp and prehistoric artifacts in the Tribe's treaty and aboriginal territory at issue in this license renewal application implicates important tribal interests such that the Tribe's rights are threatened by the Applicant's mining activity in its aboriginal territory.[106] . . .
>
> Included within the territory the Powertech application contemplates are current or extinct water resources. Such resources are known to be cultural resources themselves and have been known as favored camping sites of indigenous peoples, both historically and prehistorically, and the likelihood that cultural artifacts and evidence of burial grounds exist in these areas is strong. . . .
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> Overall, the numbers and density of cultural resources at the site proposed for mining demonstrate that the mining activity is likely to adversely impact the cultural

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[105] *Marsland,* LBP-13-6, 77 NRC at 286-88; *Marsland,* CLI-14-2, 79 NRC at 20-22.

[106] We recognize the Supreme Court decided, against the Tribe, the Tribe's claim to rights under the 1868 Fort Laramie Treaty. *Crow Butte,* CLI-09-9, 69 NRC at 336-37.

> resources of the Oglala Sioux Tribe. The failure to involve the Tribe in the analysis of these sites, or to conduct any ethnographic studies in concert with a field study further exacerbate the impacts on the Tribe's interests as a procedural matter in negatively affecting the Tribe's ability to protect its cultural resources. . . .

Red Cloud Decl. ¶¶ 5-6, 8, 15; *see also Marsland,* CLI-14-2, 79 NRC at 22. For the same reasons relied upon by the Commission in *Marsland,* given Mr. Red Cloud's status as the Tribe's Water Resources Director, and the fact that the Dewey-Burdock Project is within the Tribe's aboriginal area, we conclude that the Tribe has established a genuine dispute with the Powertech license renewal application on a material issue of fact. *See Marsland,* CLI-14-2, 79 NRC at 22.

In light of these five reasons, the Board is unwilling to ignore the express holding by the Commission that a licensing board appropriately admitted the NEPA aspect of an identically worded contention, over a similar ripeness objection, in favor of a parenthetical found in the background section of a different Commission decision not directly addressing that issue. Instead, we hold, like the Commission did in the *Marsland* proceeding, that the Commission's "regulations do not contemplate a petitioner waiting for the Staff to perform its responsibilities under the NHPA before the petitioner raises environmental contentions."[107] Moreover, the "fact that the Staff will develop additional information relevant to cultural resources, as part of its NHPA review, does not preclude a challenge to the completeness of the cultural resources information in the application."[108]

b. The Organizational Petitioners Have Identified Possible Deficiencies Under NRC Regulations Implementing NEPA, Which Require an Identification of and Description of the Impacts of the Project on Historical and Traditional Cultural Resources

In Section 102(2) of NEPA, all agencies of the federal government, which includes the NRC, must:

> (A) utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design

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[107] *Marsland,* CLI-14-2, 79 NRC at 21; *see also Powertech,* CLI-16-20, 84 NRC at 231 ("Insofar as it could be interpreted as implying that the Tribe was premature in filing its environmental contentions on the application, the Board's decision was incorrect. Although it is true that 'the ultimate burden with respect to NEPA lies with the NRC Staff,' our regulations require that intervenors file environmental contentions on the applicant's environmental report.").

[108] *Marsland,* CLI-14-2, 79 NRC at 21-22.

> arts in planning and in decisionmaking which may have an impact on man's environment;
>
> (B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this Act, which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations; [and]
>
> (C) consistent with the provisions of this chapter and except where compliance would be inconsistent with other statutory requirements, include in every 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) reasonably foreseeable environmental effects of the proposed action,
> >
> > (ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented . . . .

42 U.S.C. § 4332(2). The Commission's regulations in Part 51 implement NEPA's requirements. 10 C.F.R. § 51.1.[109]

Thus, any "application for a license to possess and use source material for uranium milling . . . shall be accompanied by any Environmental Report required pursuant to subpart A of part 51 of this chapter." *Id.* § 40.31(f). Section 51.60 then provides that an "'Applicant's Environmental Report' shall contain the information specified in § 51.45." *Id.* § 51.60(a). That cross-referenced section, in turn, requires an environmental report to include "a description of the environment affected, and discuss[ion of] the following considerations: (1) The impact of the proposed action on the environment. . . ." *Id.* § 51.45(b); *Id.* § 51.45(c) (requiring "an analysis of the cumulative impacts of the proposed action when added to the impacts of such excluded site preparation activities on the human environment."). The Commission's regulations also impose upon those seeking a materials license a requirement that all "information provided . . . by a licensee or information required by statute or by the Commission's regulations . . . shall be complete and accurate in all material respects." *Id.* § 40.9(a).

At oral argument, counsel for the Staff and counsel for Powertech agreed that an applicant has a duty to comply with the Commission's NEPA-implementing

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[109] "The NRC meets its NEPA responsibilities by complying with the NRC's regulatory requirements in 10 CFR Part 51, 'Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'" NUREG-2173, Rev. 1, Tribal Protocol Manual, at 17 (July 2018) (ADAMS Accession No. ML18214A663) [hereinafter "Tribal Protocol Manual"], 83 Fed. Reg. 42,944 (Aug. 24, 2018); *Powertech,* CLI-16-20, 84 NRC at 231 ("It is settled law that an applicant is not bound by NEPA, but by NRC regulations in Part 51.").

regulations in 10 C.F.R. Part 51. Tr. at 96-97. Counsel also agreed at oral argument that a license renewal application environmental report for an ISL facility must address cultural and historical resources. Tr. at 96.[110] We likewise agree and base that holding not only on the concessions of counsel during oral argument but our review of several Commission guidance documents.

The Generic Environmental Impact Statement for ISL facilities provides:

> As the basis for its independent evaluation, the NRC staff will rely initially on the applicant's *detailed* environmental report for information on the proposed action. *The applicant's environmental report would include detailed information about* the potential ISL facility location, the extent of proposed operations and schedule, and *the surrounding local and regional affected environment*. . . . The NRC staff will focus on the applicant's assessment of potential environmental impacts from the proposed action and the identified alternatives.[111]

Additionally, the Standard Review Plan for In-Situ Leach Uranium Extraction License Applications, cited by the Organizational Petitioners, provides that the

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[110] *See* 10 C.F.R. § 51.14(b) (noting certain Council on Environmental Quality ("CEQ") definitions are to be used in the NRC's implementation of its NEPA obligations). The NRC adopted that regulation in 1984 and it remains unchanged to this date. *Compare* Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments, 49 Fed. Reg. 9352, 9383 (Mar. 12, 1984), *with* 10 C.F.R. § 51.14(b). One of the CEQ definitions used by the NRC is "effects," which in 1984 was defined to include the following:

> Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, *historic, cultural,* economic, social, or health, whether direct, indirect, or cumulative.

40 C.F.R. § 1508.8 (1984) (emphasis added).

Given the NRC's voluntary determination to adopt certain CEQ definitions, rather than being bound to them by operation of some law or external regulation, the recent decision in *Marin Audubon Soc'y v. FAA,* 121 F.4th 902 (D.C. Cir. 2024) determining the CEQ lacked authority to issue "binding NEPA regulations" (an argument raised by counsel for Powertech at oral argument, Tr. at 139) is not relevant. *Marin Audubon Soc'y,* 121 F.4th at 914 ("If an agency adopts CEQ's rules or incorporates them by reference into its NEPA regulations, would that be a permissible exercise of its own rulemaking authority? The question is a good one, but it does not describe this case.") (footnote omitted).

[111] 1 Office of Federal and State Materials and Environmental Management Programs (FSME), NRC, et al., NUREG-1910, Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, Final Report at 1-28 (May 2009) (emphasis added) [hereinafter "ISL GEIS"] (ADAMS Accession No. ML091480244). We recognize that while a GEIS is not binding, the Commission does consider a GEIS as carrying "special weight as a guidance document that has been approved by the Commission." *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 338 (2012). The ISL GEIS "provides a starting point for NRC's NEPA analyses on site-specific license applications for new ISL facilities, as well as for applications to amend or renew existing ISL licenses." ISL GEIS at xxxv.

"staff shall review discussion of the historic, cultural, and scenic resources, if any, within the area of potential effect. Historic properties include districts, sites, buildings, structures, or objects of historical archaeological, architectural, or traditional cultural significance."[112] The ISL Review Plan also requires the "application [to] document evidence of contact with knowledgeable sources when no historic, scenic, or cultural resources are identified by the applicant within the study area." ISL Review Plan at 2-10.

As argued by the Organizational Petitioners on pages 14-15 of their Petition, the ISL Review Plan, in the "Acceptance Criteria" section, notes one element of an acceptable characterization by the applicant/licensee of regional historic, scenic, and cultural resources:

> Discussions are incorporated of the treatment of areas of historic, scenic, and cultural significance that follow guidance equivalent to that provided by the National Park Service Preparation of Environmental Statements: Guidelines for Discussion of Cultural (Historic, Archeological, Architectural) Resources (National Park Service, 1973). *Where appropriate, tribal authorities have been consulted on the likely impacts on Native American cultural resources* (White House, 2000).

ISL Review Plan at 2-11, ¶ 3 (emphasis added).[113] Later in the section entitled "South Dakota Tribal Consultation," it is noted that "*Projects proponents must,*

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[112] NMSS, NRC, NUREG-1569, Standard Review Plan for In Situ Leach Uranium Extraction License Applications, Final Report at 2-9 (June 2003) (ADAMS Accession No. ML032250177) [hereinafter "ISL Review Plan"]. We recognize that "[r]eview plans are not substitutes for the Commission's regulations, and compliance with a particular standard review plan is not required." ISL Review Plan at xviii. Yet "[w]hile recognizing the 'guidance' nature of such review plans, the Commission has also indicated that, having been developed to assist an applicant in complying with applicable regulations, such plans are entitled to 'special weight.'" *Crow Butte Resources, Inc.* (Marsland Expansion Area), LBP-19-2, 89 NRC 18, 39 n.54 (2019) (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001)). Powertech expressly stated in its Combined TR/ER that it used the ISL Review Plan to "ensure that all information is provided to allow NRC to complete their review of this amendment application." Combined TR/ER at 1-1.

Notably, as quoted in text above, the ISL Review Plan requires the Staff to "review" an applicant's cultural and historical resources discussion. The Staff cannot "review" something if the applicant does not provide it. And the information provided by the applicant must be "complete and accurate in all material respects." 10 C.F.R. § 40.9(a).

[113] Under a reasonable reading of the criterion's language, the "consulted" requirement does not mean the consultation requirement under the NHPA because this criterion is directed to review of applications and, as the Commission repeatedly has held, the NHPA consultation requirement applies only to the Staff, not to the applicant. Note 92, above. Additionally, paragraphs 4 and 5 of the ISL Review Plan's acceptance criteria begin with "[i]f delegated by NRC." ISL Review Plan at 2-11, ¶¶ 4-5. That language, notably absent from paragraph 3, can be interpreted to mean the

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however, *contact tribal cultural resources personnel* as part of the consultation process along with the South Dakota SHPO [State Historic Preservation Officer]." ISL GEIS at 3.4-68, § 3.4.8.3.1 (emphasis added).[114] Yet, the Organizational Petitioners allege, Powertech did not reach out to the Oglala Sioux Tribe in preparing the LRA to consult on resources or see if an agreement could be reached on a survey protocol. Tr. at 123; Red Cloud Decl. ¶ 14.

Thus, Organizational Petitioners' contention raising the inadequate nature of Powertech's description of the affected environment and the impacts of the project on cultural and historic resources (for example, by failing to include reference to the agreement the Tribe reached with the NRC on conducting surveys for Oglala Sioux Tribe cultural and historic resources) appears to be material and within scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii)-(iv).

c. Organizational Petitioners Advance a Reasonable Argument That an LRA Requires Inclusion of the Identified Information

At oral argument, but not in their Answers, Powertech and the Staff argued

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requirements in those paragraphs are NHPA requirements. Moreover, the "where appropriate" does not require a contrary interpretation. It simply could mean that not every ISL project will occur on land where Native American cultural resources are impacted.

[114] Under a reasonable reading on this language, the "consultation" here again does not appear to be referencing the NHPA consultation because: (i) NHPA consultation applies only to the NRC and the NRC is not a project's proponent and (ii) the language requires consultation with "tribal cultural resources personnel," not a "THPO" [Tribal Historic Preservation Officer], a position referred to by the NHPA and used later in that same section.

As to the first point, the Commission has recognized that "[o]nly when authorized by Federal statute may non-Federal entities be delegated legal responsibility for Section 106 compliance." Tribal Protocol Manual at 17-18, 83 Fed. Reg. 42,944 (Aug. 24, 2018); note 92, above. No such Federal statute exists or is cited in the ISL Review Plan that would allow the Commission to delegate the NHPA consultation process to the applicant. Moreover, the role of a proponent of nuclear projects, a role often played by the former Atomic Energy Commission, specifically was not given to the NRC at its creation fifty years ago. NUREG/BR-0175, Rev. 3, A Short History of Nuclear Regulation, 1946-2024, at 33 (July 2024) (ADAMS Accession No. ML24211A051); *compare* Atomic Energy Act of 1946, Pub. L. No. 79-585, § 1(b), 60 Stat. 755 (1946) *with* 42 U.S.C. § 5842 (1974) *and* 42 U.S.C. § 5801 (1974).

As to the second point, the use of different terminology in the same section generally is interpreted to mean different things. *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-05-7, 61 NRC 188, 195 (2005) ("In conformity with the general rules of construction for statutory and regulatory provisions, these are different terms and thus should be accorded different meanings . . . ."); *cf. Sosa v. Alvarez-Machain,* 542 U.S. 692, 711 n.9 (2004) (noting, as a "usual rule", "when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended."); *Nat'l Insulation Transp. Comm. v. ICC,* 683 F.2d 533, 537 (D.C. Cir. 1982) ("presum[ing] that the use of different terminology within a statute indicates that Congress intended to establish a different meaning.").

that, as this is a license renewal proceeding, the LRA was not required to include an updated cultural and historic resources section. We reject this argument for two independent reasons.

First, neither the Staff nor Powertech raised this argument in their respective Answers. Thus, this argument is not timely and cannot be considered. We agree with another licensing board that held, when faced with a similar attempt by the Staff and a licensee, "[t]o permit [Powertech] and the NRC Staff to blindside [Organizational Petitioners] with this new argument would violate case law and implicate due process concerns."[115]

Second, even if we were to consider the argument, it would fail. Section 51.60(a) of the Commission's regulations notes that licensees seeking a license renewal (or license amendment to authorize an expanded area of production, as in the *Marsland* proceeding) are permitted to submit an environmental report "supplement" that "*may* be limited to incorporating by reference, updating or supplementing the information *previously submitted* to reflect any significant environmental change . . . ." 10 C.F.R. § 51.60(a) (emphasis added). Here, Organizational Petitioners argue that the fact the Oglala Sioux Tribe reached agreement on the procedure for a survey that would identify and allow for evaluation of Oglala Sioux cultural and historical resources on a neighboring project (Crow Butte) qualifies as a significant environmental change that should have been incorporated into the Combined LR/ER,[116] given what the Commission has recognized as "the nature of Native American aboriginal culture."[117]

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[115] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-16-3, 83 NRC 169, 180 (2016) (citing *United States v. Almaraz,* 306 F.3d 1031, 1041 (10th Cir. 2002)). The Commission has found that new arguments raised by petitioners during a prehearing conference are "barred on lateness grounds" because the other participants did not have the chance to consider and address these arguments in their answers. *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 476 (2006). We see no reason that same logic and rationale should not apply to new arguments raised by Staff and applicants.

[116] Org. Pets. Petition at 20; Red Cloud Decl. ¶ 16. Notably, the NRC has a history of treating the Dewey-Burdock Project and the Crow Butte project in a combined manner as it relates to cultural and historical resources. *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), LBP-16-7, 83 NRC 340, 370 (2016), *review denied,* CLI-20-8, 92 NRC 255 (2020) (the Staff treated "the Crow Butte license area, the North Trend Expansion, and the Powertech projects as one unified TCP [Traditional Cultural Properties] consultation until October 31, 2012.").

[117] *Marsland,* CLI-14-2, 79 NRC at 22. As to the "nature of Native American aboriginal culture," the Commission has recognized that certain tribes have a different relationship to the earth and its resources (such as cultural resources) than other tribes may have. *See* Tribal Protocol Manual at 15 ("As is true of the overall U.S. population, religious and spiritual beliefs vary widely among Native Americans. . . . Certain Native religious and belief systems incorporate spiritual aspects that focus on the relationship of humans to the natural environment. Many Native American religious beliefs involve respect for and protection of the Earth and its resources. Some Native American Tribes

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A survey for cultural and historical resources was conducted previously of the area for the Dewey-Burdock Project. Combined TR/ER at 2-33; Red Cloud Decl. ¶¶ 9-12, 15. Yet it is undisputed that the Oglala Sioux Tribe did not participate in that prior survey. Red Cloud Decl. ¶¶ 9-10, 15. Thus, the Oglala

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believe all living things are interconnected — the spiritual world and the natural world are one. Threats to the environment are often viewed as direct threats to Tribal health, culture, and spiritual wellbeing. In addition to being a food source, plants and animals also have spiritual importance for many Tribes. Accordingly, sites known for their abundance for gathering food or medicinal plants may often be historically and culturally significant."). The Board recognizes that this Manual relates to the NHPA consultation process. But the recognition of the special relationship certain tribes have with the environment and cultural resources is not limited to just that context.

In the initial Powertech licensing proceeding, in an apparent nod to this nature of Native American aboriginal culture, a Staff witness testified that, in the NEPA context "probably the best [tribal cultural resource] survey approach is to involve Tribal Elders, wherein if it's one tribe or a group of tribes would supply elders of their choice and then there would be a facilitator, something along the lines of a cultural anthropologist who would accompany the elders and provide logistics support, documentation, recording support, report preparation if that were necessary." *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-17-9, 86 NRC 167, 199 (2017) (brackets in original); *see also Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-20-9, 92 NRC 295, 313 (2020) ("As the Board recognized in its first initial decision, a Class III survey can identify a property's eligibility to be included on the National Register of Historic Places but 'wouldn't necessarily identify all of the [Native American cultural and religious] resources primarily because some knowledge [must be] provided by the Native American groups themselves.'") (brackets in original).

The import of this was borne out by the NHPA consultation process employed by the Staff during the initial license application process for this project. Despite a "Level III" cultural resources investigation and evaluative testing report having been prepared by a consultant (the same one referenced in Powertech's LRA here — Combined TR/ER at 2-33), after the Staff engaged with individual tribes to conduct a survey in which those tribes participated (but in which the Oglala Sioux Tribe did not participate), an additional "47 new discoveries were recorded as a result of the tribal cultural survey." 1 FSME, NRC, NUREG-1910, Supp. 4, Vol. 1, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, Final Report at 3-76, 3-88 (supp. 4 Jan. 2014) (ADAMS Accession No. ML14024A477) [hereinafter "2014 EIS Vol. 1"]. Additionally, the tribal surveys "identified new artifact discoveries or cultural features of interest to tribes at 24 previously reported archaeological sites." 2 FSME, NRC, NUREG-1910, Environmental Impact Statement for the Dewey-Burdock Project in Custer and Fall River Counties, South Dakota, Supplement to the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities, Final Report app. F, at F-8 (Summary Report Regarding the Tribal Cultural Surveys Completed for the Dewey-Burdock Uranium In-Situ Recovery Project) (ADAMS Accession No. ML14024A478) [hereinafter "2014 EIS Vol. 2"]. Further in that document, the NRC noted that "Tribal survey teams recorded 81 cultural features within the boundaries of 24 known archaeological sites. Some of the cultural features recorded by tribal survey teams correspond to features identified in the archaeological surveys; however, many represent new discoveries." *Id.*; *see also* 2014 EIS Vol. 1 at 3-85 ("What is important from a tribal perspective is the interconnectedness

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Sioux contend, the prior survey does "not contain an adequate or comprehensive study identifying the Tribe's cultural resources." *Id.* ¶ 9.[118] That failure, it argues, now can be remedied, which is significant as it comes to identifying and evaluating cultural and historical resources of Indian tribes.[119] The Oglala Sioux argues, not without force, that the lack of participation of its Tribal Elders in the initial survey means the "renewal application materials do not contain an adequate or comprehensive study identifying the Tribe's cultural resources." *Id.*; *cf.* 10 C.F.R. § 40.9(a) (requiring complete and accurate information to be provided by applicants).[120] The Organizational Petitioners argue the ability to remedy that deficiency now exists, but Powertech did not account for that fact in the Combined TR/ER.

Thus, we determine the Organizational Petitioners' claim that the Combined TR/ER was required to include this information is reasonable. Support for our conclusion that the Organizational Petitioner's interpretation is reasonable can be found in (i) the NRC's requirement that an applicant provide "complete and accurate" information, 10 C.F.R. § 40.9(a); (ii) the logical implications of holding otherwise; and (iii) in the decisions in other proceedings.

If we were to adopt the approach advocated at oral argument by Powertech and the Staff, i.e., that the project at issue has not changed since the initial permit and that the Oglala Sioux had its chance to participate in the identification process at that time but did not, Tr. at 122, 126, and allow that to be the final word on whether cultural or historical sites are analyzed as required by NEPA, it could open the door to a dangerous precedent for any cultural and historical resources review, potentially locking in future litigants to outdated conclusions.[121]

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between the physical world and spiritual world. . . . *Some* tribal members are able to interpret a 'sacred' landscape or feature and recognize the same spiritual and physical features that made the place sacred to their ancestors.") (emphasis added).

[118] Nowhere in the Combined TR/ER or in its Answer does Powertech argue that the prior survey actually identified Oglala Sioux cultural and historical resources. Nor does the Staff make this claim in its Answer. *See Marsland,* CLI-14-2, 79 NRC at 20-21 ("Crow Butte's application stated that two surveys were performed on the site; these surveys found no Native American cultural sites or artifacts on the site. . . . The Board found a litigable contention (as narrowed) because the project area contains potential cultural objects and sites that were not accounted for in the application.").

[119] *See* note 117, above.

[120] "The fact that the Staff will develop additional information relevant to cultural resources, as part of its NHPA review, does not preclude a challenge to the completeness of the cultural resources information in the application." *Marsland,* CLI-14-2, 79 NRC at 21-22.

[121] For example, consider a developer who appeared to engage a tribe in efforts to identify cultural and historical resources but, at the same time, obstructed any attempt to allow for the involvement of tribal elders and/or refused to compensate the tribe for its participation beyond a meager amount.

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Concluding that the existence of the Oglala Sioux Tribe's willingness to agree to a survey protocol could be "new" or changed environmental information also is supported by a prior licensing board's determination in a power reactor operating licensing case.[122] In that proceeding, an intervenor sought the admission of two contentions supported by the fact that a recommendation for listing on the National Register of Historic Places ("NRHP") had occurred after the construction permit was issued in 1974 but prior to the 1981 operating license application. *Limerick,* LBP-82-43A, 15 NRC at 1430, 1483, 1485. Despite there being no actual change to the environment, and despite the recommendation for listing on the NRHP being simply a recommendation and not a final action,[123] the licensing board determined the recommendation was "a sufficiently significant change since the time the construction permit was issued that it merits present consideration."[124] After the licensing board reconsidered that decision and dismissed the contention, the Appeal Board reversed the dismissal, agreeing with the original decision that the recommended NRHP listing was "a significant change in circumstances that . . . warrant[ed] consideration in the . . . proceeding."[125] Thus, there is precedent for the conclusion that a change in views as to cultural and historic resources can be a "significant change." Moreover, the fact there is no guarantee an agreement will be reached between the Tribe and Powertech (just as there was no guarantee that the SHPO's recommendation would be accepted) does not undermine the potentially significant change evidenced by the agreement that the Tribe references in its petition.

That developer then continued that mode of engagement for several years, convincing the Staff and ultimately the Commission that the identification of those resources was not reasonably available from that tribe. Should that less-than-forthright engagement process be upheld when it came time for license renewal, even in light of evidence from the tribe that it was able to reach an agreement with other developers in the same area as to identification of cultural and historical resources? Wouldn't that incentivize the developer to play hardball at the beginning to reduce its costs and avoid possible development interruptions or limitations by not having to address historical or cultural resources on the project site? That cannot be what NEPA envisioned when it was passed and required government agencies to analyze impacts to those cultural and historical resources.

[122] *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423 (1982).

[123] In that instance, although the SHPO had recommended the listing in the NRHP, *id.* at 1483, under the applicable NHPA regulations, the National Park Service was responsible for making the final determination as to whether the listing would occur. [NHPA] 46 Fed. Reg. 56,183, 56,191 (Nov. 16, 1981) (text to be codified at 36 C.F.R. § 60.6(r) noting the right of the Park Service to "disapprove" an SHPO recommendation).

[124] *Limerick,* LBP-82-43A, 15 NRC at 1483; *see also id.* at 1485 (noting the SHPO recommendation was "potentially significant").

[125] *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 875 (1984).

This situation also can be compared favorably to the admissibility of a contention in the initial *Diablo Canyon* operating license renewal proceeding.[126] There, the Commission upheld a licensing board admission of a contention concerning the effect of a newly discovered offshore fault, the Shoreline Fault. There was no dispute that the physical environment had not changed, i.e., the Shoreline Fault had not formed, during the time between the initial operating license application and the license renewal at issue. But what changed was the awareness of the existence of the fault, which became available during the time between the initial application and the license renewal request at issue, allowing the effect thereof to be addressed.

A similar situation appears to exist here. The information available at the time of Powertech's initial application did not include information about the Oglala Sioux Tribe's cultural and historical resources in the project area. The Organizational Petitioners claim that the licensee now has the ability to learn of, identify, and determine the effect on those cultural and historical resources. And the Oglala Sioux Tribe's position is that Powertech is under a similar obligation to make use of its ability to attempt to identify what very likely already exists in the physical environment but is unidentified currently, i.e., Oglala Sioux Tribe cultural and historical resources in the project area. Moreover, based on this Commission precedent and agency guidance documents, we believe it reasonably could be concluded that the existence of a geologic fault is of the same import to the NRC in fulfilling its obligations under NEPA as are the cultural and historical resources of Indian tribes.[127]

Accordingly, even were we to consider the untimely argument advanced by the Staff and Powertech, we would reject it. The fact that this is a license

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[126] *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-10-15, 72 NRC 257 (2010); *Diablo Canyon,* CLI-11-11, 74 NRC 427.

[127] Powertech argues that "*stare decisis*" operates to prevent the consideration of this issue. But Powertech's argument fails to recognize that the earlier decision on this matter determined that the Oglala Sioux Tribe's cultural and historical resources identification was not available due to "the Tribe's non-cooperation." *Powertech,* CLI-20-9, 92 NRC at 306. Here, though, the Tribe is the one advancing a cultural resources survey agreement it reached with the NRC and another uranium recovery entity and noting that it "demonstrates that the information related to cultural resources is obtainable and available." Red Cloud Decl. ¶ 16. Thus, the factual situation here is demonstrably different from the prior proceeding's such that we are not precluded from considering this issue. Moreover, the case Powertech cites as being entitled to *stare decisis* is a prior licensing board decision. Powertech Answer at 20-21 (citing *Powertech (USA) Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-19-10, 90 NRC 287 (2019)). Yet, as long has been known, *stare decisis* requires the other decision to be "binding authority." *Indep. Petroleum Ass'n of Am. v. Babbitt,* 92 F.3d 1248, 1257-58 (D.C. Cir. 1996); *Hudson v. Md. Cas. Co.,* 22 F.2d 791, 792 (8th Cir. 1927). Powertech has not demonstrated that the other licensing board decision is binding on this Board.

renewal application proceeding, versus an initial license application proceeding, does not undermine the Organizational Petitioners' NEPA aspect of contention 1.

d. The LRA Also Fails to Provide an Explanation for Its Conclusion That the Project Will Have No Impacts on the Tribe's Historical or Cultural Resources

In Section 8.6 and Table 8.6-1 of the Combined TR/ER, Powertech asserts that the predicted "Historical and Cultural Impacts" of the Dewey-Burdock Project will be "none."[128] Yet, Organizational Petitioners argue in their Petition, Powertech provides no factual basis or explanation for this new conclusion in the Combined TR/ER that the cultural and historical impacts from the project will be "none," especially in light of the fact that Powertech's prior survey did not include the participation of the Oglala Sioux Tribe and, therefore, cannot include a fulsome or informed identification of the Oglala Sioux Tribe's cultural and historical resources.[129] That conclusion can be juxtaposed with the 2014 EIS Vol. 2 for the initial application of Powertech for the Dewey-Burdock Project wherein the Staff concluded that the "[i]mpact on cultural and historic resources during the ISR construction phase will be SMALL to LARGE." 2014 EIS Vol. 2 tbl.9-1, at 9.9 (Summary of Environmental Impacts of Proposed Action.[130]

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[128] Combined ER/TR tbl.8.6-1, at 8-9 (Comparison of Environmental and Socioeconomic Impacts based on Proposed Action and Alternatives).

[129] Org. Pets. Petition at 14; Red Cloud Decl. ¶ 10; *see also* note 117, above.

[130] Moreover, Powertech does not explain the contradiction between the assertion of no impact in Table 8.6-1 and the fact that Powertech entered into a Programmatic Agreement recognizing the possibility that its activities may affect archaeological or historical sites despite the cultural resources surveys already completed on its site. *Compare* Combined TR/ER at 2-33, *with Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-15-16, 81 NRC 618, 640 (2015) (indicating that a programmatic agreement may be used "in situations where the effects to historic properties cannot be fully determined prior to the approval of an undertaking . . . .") (emphasis added). Because of that unexplained dichotomy, Powertech recognizes in one section of the Combined TR/ER that it cannot fully determine the effects the Dewey-Burdock project will have on the cultural and historic resources within the project area but then, without any explanation, categorically asserts that there will be no cultural and historical impacts as a result of the Dewey-Burdock Project during the license renewal term. *Cf. Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 495 n.49 (2019) (finding that NRC regulation 10 C.F.R. § 51.45(c) requires environmental reports to "contain sufficient data to aid the Commission in its development of an independent analysis [in the 2014 EIS Vol. 1]."), *rev'd in part on other grounds,* CLI-22-4, 95 NRC 44 (2022).

We do not believe a simple reference to the Programmatic Agreement can serve as an explanation for the "none" determination, as opposed to a categorization that recognizes some possible impact. That Agreement is meant to "mitigate" impacts. Mitigation is not elimination. *Compare Mit-*

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Powertech argued in its Answer that a prior licensing board concluded that a Programmatic Agreement "will provide protection for onsite cultural resources as they may be encountered during facility construction and operation," notwithstanding the lack of a cultural resources survey that included Oglala Sioux participation.[131] Yet Powertech's argument fails to account for the "as they *may be* encountered" portion of that language, which we read as the prior licensing board recognizing that not all cultural resources of the Oglala Sioux will be recognized as such, even with the protections of the Programmatic Agreement. In fact, earlier in its decision the licensing board noted several times the need for participation by the Oglala Sioux Tribe in order for a fulsome identification of those resources to be completed.[132] Further, the quoted language does not constitute a finding that there will be "no" impact to any Oglala Sioux cultural resources, as Powertech now claims, but simply that the Programmatic Agree-

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igate, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/mitigate (last accessed January 6, 2025) ("to cause to become less harsh or hostile") *with Eliminate,* Merriam-Webster.com, https://www.merriam-webster.com/dictionary/eliminate (last accessed January 6, 2025) ("to put an end to or get rid of").

[131] Powertech Answer at 20 (quoting *Powertech,* LBP-19-10, 90 NRC at 342; Combined TR/ER at 2-33; Programmatic Agreement Among U.S. Nuclear Regulatory Commission, U.S. Bureau of Land Management, South Dakota State Historic Preservation Office, Powertech (USA), Inc., and Advisory Council on Historic Preservation Regarding the Dewey-Burdock In Situ Recovery Project Located in Custer and Fall River Counties, South Dakota (Mar. 19, 2014) (ADAMS Accession No. ML14066A347) [hereinafter "Programmatic Agreement"]. We note that under its terms the Programmatic Agreement remains in effect for 10 years from its date of execution, unless extended by agreement of the signatories. Programmatic Agreement at 14. As far as we are aware, the Programmatic Agreement has not been renewed.

[132] *Powertech,* LBP-19-10, 90 NRC at 321 ("To be sure, having one or more individuals with Tribal knowledge about cultural resources that might be found on the Powertech site would be a critical component of the survey process in properly identifying/interpreting cultural resources for protection and preservation."); *id.* at 326 ("we still find reasonable the NRC Staff's decision to provide an opportunity for Tribal elder input into the identification and interpretation of cultural resources on the Powertech site as an essential element of the NRC Staff's approach."); *id.* at 329 ("the NRC Staff developed a survey proposal that would describe the observable characteristics of sites of tribal significance in a sound manner by blending the scientific method with tribal cultural knowledge."); *id.* at 334-35 ("According to the NRC Staff, while an archaeologist with some experience dealing with Native American cultural resources, such as the NRC Staff's contractor Mr. Spangler, 'might be able to identify physical remains of certain activities, . . . only Tribal members can assign significance to those sites; and identify 'sacred locations that are intangible or not readily identifiable as archaeological sites, such as landforms or places of worship and ceremony.' . . . The NRC Staff thus concluded, and we find reasonably so, that it could not complete these elements of the March 2018 Approach without the cooperation and participation of the Oglala Sioux Tribe.") (first ellipsis in original); *id.* at 341 n.272 ("Nonetheless, given . . . the recognition that only Tribal personnel will be fully cognizant of what constitutes a Tribal cultural resource, . . . there can be no doubt that, although their significance is indeterminant, some as-not-yet identified Oglala Sioux Tribe cultural resources can be found on the Powertech site.").

ment will provide some level of protection for those cultural resources that may be identified and encountered as the project moves forward.[133] Providing protection for something does not guarantee that no harm will come to the thing being protected. History is replete with examples where protections were in place for various things or people and yet those things or people were impacted (or destroyed, injured, or killed) anyway.

Powertech relatedly argues that even without the Tribe's participation in the survey process initially, the existence of the now-expired Programmatic Agreement operates to protect the cultural and historical sites of the Oglala Sioux. Powertech Answer at 20-21. The main thrust of that argument centers on the argument that the Programmatic Agreement requires new sites to be protected from development if they are identified as the project moves forward. Combined TR/ER at 2-35. Yet neither Powertech nor the Staff even attempt to explain how protection is possible for Oglala Sioux tribal resources given those resources have not been identified in consultation with Tribal members with cultural resources identification knowledge and experience. How is Powertech to know, for example, whether sites it selects for a well, processing plant, or other infrastructure construction location have spiritual importance for the Tribe? *See* notes 117 and 132, above.

Simply put, Organizational Petitioners argue the categorical declaration by Powertech that impacts to cultural and historical resources will be "none" is not substantiated or explained by Powertech in the Combined TR/ER. That omission serves as a basis for the admission of this aspect of Contention 1.

e. The NEPA Aspect of Contention 1 Meets the Contention Admissibility Requirements

All agree the project area includes aboriginal land of the Oglala Sioux. Tr. at 18. Also undisputed, Powertech did not engage with the Oglala Sioux on the issue of cultural and historical resources prior to submitting its Combined TR/ER or include in the Combined TR/ER information about the Tribe's prior agreement with the NRC on a survey protocol. *E.g.,* Tr. at 123. Thus, the Organizational Petitioners claim that there is no complete identification in the Combined TR/ER of any historical or cultural resources of the Oglala Sioux in the project area — despite the NRC's regulations requiring such identification in the Combined TR/ER to comply with the Commission's NEPA-implementing regulations. Org. Pets. Petition at 14; Red Cloud Decl. ¶¶ 8-10; Sections III.A.2.b-c, above. Nor, they claim, does Powertech explain how it reached the conclu-

[133] Under its terms, the Programmatic Agreement is designed to "avoid, minimize, or mitigate" impacts to historic properties. Programmatic Agreement at 2, 6, 7.

sion that there would be no impacts on any previously unassessed Oglala Sioux cultural or historic resources, or even other already identified cultural and historical resources, as a result of the project. Org. Pets. Petition at 14; Red Cloud Decl. ¶¶ 13-14; Section III.A.2.d, above. Both of those failings establish the six necessary elements for contention admissibility.

First, the Organizational Petitioners have provided a specific statement of the issue of law or fact to be raised or controverted, i.e., the failure of Powertech to meet its obligations under the NRC's NEPA-implementing regulations to identify the cultural and historical resources for the uranium recovery facility operations and/or explain how it concluded there would be no impacts on those resources associated with facility construction and operation during the license renewal term. Org. Pets. Petition at 14; Red Cloud Decl. ¶¶ 8-10, 13-14. Second, the Organizational Petitioners have provided a brief explanation for the basis of the contention. Org. Pets. Petition at 14; Red Cloud Decl. ¶¶ 8-10, 13-14. Third, the Organizational Petitioners have demonstrated that the issues are within the scope of the proceeding by challenging the treatment or absence of this issue in Powertech's Combined TR/ER. Sections III.A.2.b-d, above. Fourth, the issues raised by the Organizational Petitioners are material to the findings the NRC must make to support its NEPA review in this matter. Sections III.A.2.b-d, above. Fifth, the Organizational Petitioners have provided a concise statement of the alleged facts and expert opinions that support their position and on which they intend to rely. Org. Pets. Petition at 14; Red Cloud Decl. ¶¶ 8-10, 13-14. Sixth, and finally, the Organizational Petitioners have shown that a genuine dispute exists with Powertech's Combined TR/ER on this issue. Sections III.A.2.b-d, above.

f. Reformulated Contention 1

Because Organizational Petitioners' Contention 1 alleges both NEPA and NHPA inadequacies but only the NEPA component is admissible, we admit Contention 1, reformulated as two related contentions as follows:

- Contention 1A: Powertech's Combined Technical Report and Environmental Report fails to comply with the NRC's regulations in that it contains an inadequate, inaccurate, or incomplete description of the cultural and historical resources as to the Oglala Sioux Tribe in the Dewey-Burdock Project area.
- Contention 1B: Powertech's Combined Technical Report and Environmental Report fails to explain its conclusion that the impacts of the Dewey-Burdock Project on cultural and historic resources will be "none."

B. *Organizational Petitioners' Contention 2* — Failure to Consider Cumulative Effects

In this contention, the Organizational Petitioners take issue with a purported lack of analysis or consideration in the Combined TR/ER of other uranium operations or expanded mining operations by Powertech. They claim "the LRA fails to discuss the expanded scope of the Project area, the additional processing proposals, and the current site configuration, and therefore requires additional analysis before the license can be renewed." Org. Pets. Petition at 22. According to Organizational Petitioners, Powertech included in the Combined TR/ER and in other company documents, which Organizational Petitioners attached to their Petition, information that demonstrates Powertech intends to use the facilities to be constructed at Dewey-Burdock for processing uranium from other locations but failed to include a consideration of the cumulative effects of those other uranium recovery locations in the Combined TR/ER. Org. Pets. Petition at 21-26.

Under the agency's NEPA-implementing regulations, the applicant (and ultimately the NRC) is required to consider the cumulative effects of a proposed licensing action. The relevant cumulative effects are those that result from "the incremental effects of the proposed action in conjunction with past, present, and reasonably foreseeable future actions."[134]

To support their claim that Powertech failed to consider cumulative effects, the Organizational Petitioners refer to Section 1.9 of the Combined TR/ER wherein Powertech states:

> It is likely that the CPP [central processing plant] at the Burdock site will continue

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[134] *Strata,* LBP-12-3, 75 NRC at 201 (citing 10 C.F.R. § 51.14(b); 40 C.F.R. §§ 1508.7, 1508.25(c)). As noted above, *see* note 110, relevant to Section III.B of this Order, another identified CEQ definition to be used by the NRC was "cumulative impacts":

> "Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeably future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7 (1984); *see* 10 C.F.R. § 51.14(b) (listing CEQ definitions to be used in implementation of NEPA section 102(2)). That definition is substantively identical to the CEQ's current definition of cumulative effects. 40 C.F.R. § 1508.1(i).

While the CEQ currently has a definition of "reasonably foreseeable," 40 C.F.R. § 1508.1(ii) (2024), that definition was not included in any of the CEQ definitions the Commission voluntarily agreed to apply to its proceedings, 10 C.F.R. § 51.14(b). The CEQ did not provide a definition for "reasonably foreseeable" until 2020. Update to the Regulations Implementing the Procedural Provisions of [NEPA], 85 Fed. Reg. 43,304, 43,351, 43,376 (July 16, 2020); Update to the Regulations Implementing the Procedural Provisions of [NEPA], 85 Fed. Reg. 1684, 1710 (Jan. 10, 2020).

> to operate for several years following the decommissioning of the well fields. The CPP may continue to process uranium-loaded resin from other ISL projects such as the nearby Powertech (USA) satellite ISL projects of Aladdin and Dewey Terrace planned in Wyoming, as well as possible tolling arrangements with other operators.

Combined TR/ER at 1-7. Similar language is found in Section 3.2.1 of the Combined TR/ER where it states:

> The CPP will serve production from Dewey-Burdock ISL operations, and possibly resin from other potential Powertech (USA) satellite projects in the area. In addition, depending on market conditions and regional demand for yellowcake processing, the CPP may be used for tolling arrangements with other ISL operations licensed under a different operator.

Id. at 3-63.

In combination with this language from the Combined TR/ER, the Organizational Petitioners then cite several documents from Powertech's Canadian parent, which were prepared to comply with Canadian law.[135] In those required documents, numerous excerpts reveal Powertech's planned use of the Dewey-Burdock site for operations beyond the Dewey-Burdock Project:

- In the document for the Dewey-Burdock project, a section entitled "Other Relevant Data and Information" states that "[t]here are several projects controlled by Azarga which could potentially be satellites to the Dewey-Burdock Project once a CPP is constructed. This could potentially include Azarga's Aladdin (Wyoming), Gas Hills (Wyoming), Dewey Terrace (Wyoming) and Centennial (Colorado) projects." 2019 PEA at 131. Those sites range from 10 to 250 miles from the Dewey-Burdock Project site. *Id.*
- The May 2021 document regarding the Gas Hills (Fremont and Natrona Counties, Wyoming) project states that the "[p]roduction of a final product can be achieved at existing central processing facilities of multiple companies in Wyoming under a toll milling agreement or also at Azarga's Dewey-Burdock Project should this US NRC-licensed central processing facility be constructed in time." 2021 MRR at 70.

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[135] Org. Pets. Petition at attachs. 15-17 (NI 43-101 Technical Report Preliminary Economic Assessment Dewey-Burdock Uranium ISR Project South Dakota, USA (Dec. 2019) [hereinafter "2019 PEA"]; NI 43-101 Technical Report Preliminary Economic Assessment Gas Hills Uranium Project Fremont and Natrona Counties, Wyoming, USA (June 2021) [hereinafter "2021 PEA"]; NI 43-101 Technical Report Mineral Resource Report Gas Hills Uranium Project Fremont and Natrona Counties, Wyoming, USA (March 2021) [hereinafter "2021 MRR"]). Tr. at 145-46 (explaining documents were prepared to comply with Canadian law).

- The August 2021 document regarding the Gas Hills (Fremont and Natrona Counties, Wyoming) project states that the "IX resin *will* be transported to Azarga's Dewey-Burdock Uranium Project in South Dakota for processing." 2021 PEA at 4 (emphasis added); *Id.* at 74 ("Because the [Gas Hills] Project will be a satellite facility to Azarga's Dewey-Burdock Project, only the first major solution circuit (the IX circuit) will be located at the Project. Loaded resin *will be transported to the Dewey-Burdock Project, where the uranium will be eluted, precipitated, dried, and packaged.*") (emphasis added); *id.* at 75 (diagram showing material will be transported to the Dewey-Burdock Project); Org. Pets. Petition at 23, 25.

As was evident at oral argument, the issues of what qualifies as "reasonably foreseeable" and whether the operations at other Powertech ISL facilities that will produce uranium-loaded resins that will be processed at the Dewey-Burdock facility CPP qualified as cumulative effects were significant issues with substantial divergence between the participants. *See* Tr. at 54-80. Thus, we requested supplemental briefing. Tr. at 141.

1. What Is "Reasonably Foreseeable"?

Organizational Petitioners, in their brief, cited a 2016 decision by the United States Court of Appeals for the District of Columbia Circuit wherein the court stated that an effect was reasonably foreseeable if it was "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."[136] The Eighth Circuit has held similarly.[137]

The Staff, in its brief, cited the Commission's 2002 *McGuire/Catawba* decision, which pre-dates the regulatory and judicial authority in footnotes 136 and 137 above and which appears to require a level of interrelation between the project being licensed and the other action/effect, as well as a 2016 Commission *Strata* decision in an ISL facility initial licensing proceeding.[138] In that 2016 decision, according to the Staff, the Commission "held that a possible future

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[136] Org. Pets. Brief at 2 (citing *EarthReports, Inc. v. FERC,* 828 F.3d 949, 955 (D.C. Cir. 2016)).

[137] *Mid States Coal. for Progress v. Surface Transp. Bd.,* 345 F.3d 520, 549 (8th Cir. 2003); *see also Crow Butte Resources, Inc.* (License Renewal for the In Situ Leach Facility, Crawford, Nebraska), CLI-19-5, 89 NRC 329, 347 (2019) (Comm'r Baran, dissenting) ("Under NEPA, an environmental impact is 'reasonably foreseeable' if it is 'sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.' Whether an impact is reasonably foreseeable, or whether a person of ordinary prudence would consider it, is a question of fact.").

[138] Staff Brief at 2-3 (citing *Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-16-13, 83 NRC 566, 577 (2016); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station Units 1 and 2), CLI-02-14, 55 NRC 278, 295 (2002)).

action must 'be in a sufficiently advanced stage to be considered a "proposal" for action that "bring[s] NEPA into play."'"[139]

Powertech, in its brief, argued that recent legislative amendments cabin the consideration of cumulative effects and that the other projects identified by Organizational Petitioners are not reasonably foreseeable because they do not rise to the same level found by the *Prairie Island* licensing board in a 2012 issuance.[140] Powertech distinguished that prior licensing board decision wherein the board determined that because the applicant there had applied for a state Certificate of Need particular effects were reasonably foreseeable.[141] In support of its position, Powertech submitted a Declaration of its Chief Executive Officer, who stated that the "Applicant has not applied for any licenses, permits, or amendments to licenses or sought any governmental approval in connection with" any of the projects in the materials cited by the Organizational Petitioners. Powertech Brief, attach. A, ¶ 5 (Decl. of William Paul Goranson (Dec. 17, 2024)) [hereinafter "Goranson Decl."].

After reviewing the supplemental briefing,[142] we believe the appropriate test for determining whether an action is reasonably foreseeable is whether the other action is in such a sufficiently advanced stage that a person of ordinary prudence would take it into account in reaching a decision. We believe this formulation of the "reasonably foreseeable" test appropriately distills the cited Commission and federal appeals court decisions.

2. Organizational Petitioners Have Met, for Contention Admissibility Standards, the "Reasonably Foreseeable" Test

As noted above, it is black letter law that "for the purposes of contention admissibility, we do not consider the merits of [Petitioners'] arguments," and petitioners are not required to prove their contentions at the contention admissibility stage.[143] We also keep in mind, relative to the factual determination about

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[139] *Id.* (quoting *Strata,* CLI-16-13, 83 NRC at 577 (quoting *McGuire/Catawba,* CLI-02-14, 55 NRC at 295)).

[140] Powertech Brief at 2-4 (citing *Northern States Power Co.* (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), LBP-12-24, 76 NRC 503 (2012)).

[141] The *Prairie Island* licensing board found that the application before it "strongly suggested" that the effect was reasonably foreseeable. *Id.* at 514. That board went on to say that "[a]dded to this" was that an application for an expansion of the ISFSI several years into the future would be necessary to allow the associated nuclear plant to continue operations to the end of its then-current operating license. *Id.* But the *Prairie Island* licensing board did not say, as Powertech implies in its brief, that the "added" fact was *necessary* before the effect was determined to be reasonably foreseeable.

[142] Ms. Henderson did not file a supplemental brief.

[143] Note 87, above.

the scope and severity of impacts and whether they are reasonably foreseeable,[144] the nearly universal determination that whether a person of ordinary prudence would do something or take something into account is a factual determination.[145] Here, though, Organizational Petitioners sufficiently raised a question as to whether the Gas Hills and Dewey Terrace projects they identify are "reasonably foreseeable" such that Powertech should have included a discussion of their cumulative effects in its LRA. *See* 10 C.F.R. § 2.309(f)(1)(vi).

Powertech and the Staff argue that the projects are not related or sufficiently advanced that they need to be considered because, according to Powertech, no licenses, permits, or amendments have been sought, and, according to the Staff, the projects are too inchoate because they are "merely contemplated."[146] The Organizational Petitioners counter that argument by including with their brief a Management's Discussion & Analysis document from Powertech's parent company that states:

> During the three months ended September 30, 2024, the Company conducted *resource development drilling* on its Dewey Terrace project area. The Dewey Terrace project is located across the Wyoming-South Dakota border from [the] western extent of the Dewey-Burdock ISR Uranium Project.
>
> The Company *has commenced* the initial permitting work to advance the Gas Hills Uranium Project (Gas Hills) as an ISR [*sic*] uranium recovery operation located in central Wyoming, approximately 60 miles west of Casper, WY. As part of the initial data collection for project permitting, the Company initiated core drilling during the three months ended September 30, 2024. Gas Hills has a current resource and robust economics *as described in a 2021 [Preliminary Economic Assessment].* It is ideally located in the Gas Hills Uranium Mining District, a brownfield area of extensive previous mining. *The Company has Dewey-Burdock and Gas Hills as its mid-term production assets within the planned production pipeline.*

Org. Pets. Brief, attach. 1, at 3-4 (Management's Discussion & Analysis (Nov.

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[144] *See Pa'ina Hawaii, LLC,* CLI-10-18, 72 NRC 56, 90 (2010) ("The scope and severity of such impacts, and whether they are reasonably foreseeable in the first instance, involve questions of fact that are at the very heart of the contested issue.").

[145] *Bennie v. Munn,* 822 F.3d 392, 398 n.2 (8th Cir. 2016) (noting that "what would a person of ordinary prudence have done in certain circumstances" is a factual question); *cf.* 3B Fed. Jury Prac. & Instr. § 162:300 (6th ed.) ("Plaintiff __ must prove by a preponderance of the evidence the injury alleged by plaintiff __ was the direct and reasonably foreseeable result of defendant's alleged *[misrepresentations][omissions].*") (blanks, brackets, and italics in original).

[146] Goranson Decl. ¶ 5; Staff Brief at 3.

14, 2024)) [hereinafter "Management's Discussion & Analysis"] (emphasis added).[147]

Keeping in mind we are not to resolve factual questions or issues at this stage, we conclude that Organizational Petitioners have provided the Board with sufficient information to raise a genuine dispute that the uranium recovery in the Gas Hills and Dewey Terrace are reasonably foreseeable effects that must be addressed as cumulative effects in the Combined TR/ER.[148] This issue also

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[147] We recognize this document was submitted with the supplemental briefing and not the Petition. But we find it appropriate for consideration for two reasons. First, Powertech itself submitted with its supplemental brief a declaration that was not included with its Answer and that relates to the same topic as the Management's Discussion & Analysis. Goranson Decl. ¶ 5. Second, consideration of the document meets the analogous three-part test in 10 C.F.R. § 2.309(c)(1) for consideration of petitions filed after the deadline for submitting hearing requests. The document was not available by the deadline for filing petitions in that the hearing petition filing deadline was October 8, 2024, and the document discusses activities that occurred as late as October 24, 2024. *Compare* Hearing Opportunity Notice, 89 Fed. Reg. at 65,401, *with* Management's Discussion & Analysis at 7. Moreover, the information is materially different in that, unlike the Management's Discussion & Analysis document, none of the documents attached to the hearing petition discuss actual commencement of permitting work at the Gas Hills project or drilling at the Dewey Terrace project. And the document was submitted timely, fewer than 60 days after the last date, October 24, 2024, referenced in the Management's Discussion & Analysis document.

[148] Regarding the Staff's citation to *McGuire/Catawba* as establishing a requirement of some measure of interrelation between the project being licensed and the other action/project/effect, we agree with the *Prairie Island* licensing board that "[i]n more recent decisions, however, the Commission has acknowledged that cumulative impact analysis is required for actions covered by CEQ regulation 40 C.F.R. § 1508.7 — that is, reasonably foreseeable future actions — without suggesting that the test for connected actions in CEQ regulation 40 C.F.R. § 1508.25 must be satisfied." *Northern States Power Co.* (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), LBP-14-6, 79 NRC 404, 423 (2014). But even if we were to require some level of interrelation, the materials provided by the Organizational Petitioners sufficiently raise a question of its existence.

The Dewey-Burdock Project is due east of and in the same geographic area as the Dewey Terrace and Gas Hills projects, which also are proposed to be ISR projects by the same entity. Powertech's parent company also noted in its August 2021 PEA that the "evaluation presented in this report assumes flowrates at the satellite plant/wellfield will be very similar to those in the Dewey-Burdock facility. Given the similarities in operational details[,] reagent and electricity use costs will be similar to those for the Dewey-Burdock PEA." 2021 PEA at 74 (demonstrating Powertech's parent company relies on a relationship between the Gas Hills and Dewey-Burdock Project to describe its Gas Hills project). Additionally, if more is needed, we have been provided documentation by Organizational Petitioners indicating that materials *will* be shipped from the Gas Hills project to the Dewey-Burdock Project to be eluted, precipitated, dried, and packaged, with only the ion exchange circuit located at the Gas Hills site. *Id.* at 4, 74-75; Org. Pets. Petition at 23. And even further, the PEA relied upon by Management's Discussion & Analysis, and cited by the Organizational Petitioners as Attachment 16 to their Petition, undercuts the "unrelated" argument by its very terms: "Figure 17.1 presents a simplified process flow diagram illustrating the *relationship* between the [Gas Hills] Project satellite facility and the Dewey-Burdock Project." 2021 PEA at 74 (emphasis added).

meets the other contention admissibility elements: there is a statement of the issue to be raised, Org. Pets. Petition at 21; there is a brief explanation for the basis of the contention, Org. Pets. Petition 21-26; the issue is within the scope of this proceeding, Org. Pets. Petition at 25-26; Section III.B, above; the issue is material to the findings that must be made, Org. Pets. Petition at 22-26; Section III.B, above; there is a concise statement of facts supporting the Organizational Petitioners' position (along with reference to documents), Org. Pets. Petition at 21-26; Org. Pets. Brief, attach. 1; Section III.B, above; and there is a genuine dispute with the Combined TR/ER (i.e., the cumulative effects were not addressed therein), Org. Pets. Petition at 25-26.

But as this contention of omission is overbroad as formulated by Organizational Petitioners,[149] we admit the following narrowed and reformulated version of Organizational Petitioners' Contention 2: "Powertech's License Renewal Application fails to account for, address, or analyze the cumulative effects of Powertech's uranium recovery in the Gas Hills and Dewey Terrace project areas as reasonably foreseeable effects of construction and operation of the Dewey-Burdock Project."

C. *Organizational Petitioners' Contention 3* — The Fall River County Ordinance Demonstrates that the Proposed Project Is Unlawful Under Local Laws

In their third contention, the Organizational Petitioners claim that a November 2022 ordinance in Fall River County declares uranium mining to be a nuisance and, therefore, the NRC cannot permit the project to move forward. Org. Pets. Petition at 26. They also claim that moving forward without considering the impact of this local ordinance would violate the Administrative Procedure Act as being arbitrary and capricious. *Id.* We conclude that this contention is inadmissible.

The Commission has instructed its licensing boards that a proceeding before them is not the appropriate forum in which to consider the impacts of a local regulation or whether a regulatory waiver or a non-NRC permit may be required for a project to move forward.[150] And as Powertech argued in its brief, the Supreme Court recognized that the NRC was authorized to regulate in the area of radiological safety but that states (and by implication, local governments) retain

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[149] As formulated by Organizational Petitioners, Contention 2 refers to cumulative effects of "other mining activities." Org. Pets. Petition at 21. But Organizational Petitioners have provided sufficient documentation and argument only as to ISL recovery at two sites (Gas Hills and Dewey Terrace) as possibly being cumulative effects that should be addressed.

[150] *Hydro Res.,* CLI-98-16, 48 NRC at 121, 122 n.3.

their traditional responsibilities outside that field of regulation.[151] Therefore, this issue is not within the scope of this proceeding. *See* 10 C.F.R. § 2.309(f)(1)(iii).

Moreover, beyond citing the APA generally, Organizational Petitioners have not argued that the alleged local ordinance binds the NRC or this Board.[152] Nor have they argued that a license renewal by the NRC, if issued, would restrict or prevent the local municipality in any way from attempting to enforce its ordinance. Thus, like a licensing board in 2004, we are not convinced that this issue is material to the matter pending before the NRC.[153]

Finally, aware of a Commission decision noting that local approval of certain projects may be relevant for the siting of an irradiator,[154] the Board is unaware of any similar authority for license renewals of uranium recovery facilities. When asked at oral argument whether the Organizational Petitioners were aware of any such authority, counsel was unable to provide any. Tr. at 81-82.

Thus, Organizational Petitioners' Contention 3 is not admissible.

D. *Organizational Petitioners' Contention 4* — Data Required for NRC's Endangered Species Act and National Environmental Policy Act Evaluation Is Stale or Absent

In their filings, Organizational Petitioners appear to assert two disparate but

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[151] Powertech Answer at 28 (citing *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n,* 461 U.S. 190, 205 (1983)).

[152] The documentation submitted by the Organizational Petitioners to support the existence of the nuisance ordinance does not, in fact, do so. *See* Staff Answer at 29. So even if we presume this contention is within scope, Organizational Petitioners have not demonstrated a material dispute. *See* 10 C.F.R. § 2.309(f)(1)(vi).

Nor did Organizational Petitioners address the legal effect of a local ordinance essentially outlawing a business that already was permitted (at least by the NRC) to operate prior to that local ordinance going into effect. Underscoring the limited role this Board has, resolution of that state law legal issue is better suited for a different adjudicatory body. *Cf. Hydro Res.,* CLI-98-16, 48 NRC at 120. That same rationale applies to the issue of resolving whether the purported local ordinance actually prevents the construction and operation of an ISL recovery facility (even assuming the ordinance is a valid exercise of local authority).

[153] *See Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 248 (2004) ("[T]he Clinton Petitioners do not contend that the Illinois State laws they cite bind this Board or the agency of which it is part, and the parties agree that issuance of an ESP will have no effect whatsoever on the rights of Illinois State agencies to enforce State laws restricting the issuance of construction authorizations or certificates of convenience and necessity, making the outcome of this ESP proceeding immaterial relative to the matter raised by this contention.").

[154] *Pa'ina Hawaii, LLC,* CLI-08-3, 67 NRC 151, 163 (2008) ("An entire section of the [Statement of Considerations] is devoted to the topic of 'Siting, Zoning, Land Use, and Building Code Requirements.' There, the Staff explains its view that irradiators in general are unlikely to pose a significant offsite risk, and therefore can be safely located *anywhere* local governments allow industrial facilities to be built . . . .") (italics emphasis in original).

related claims in Contention 4. First, Organizational Petitioners assert that certain information in the Combined LR/ER is outdated or stale and that the NRC employs a practice that improperly shifts the burden onto petitioners to fill in that outdated or stale data with more current information. Org. Pets. Petition at 28. Second, Organizational Petitioners vaguely allege that certain, unidentified NRC practices, policies, guidance, and/or regulations used to review/approve ISL facility licenses/renewals are illegal, allowing a challenge to them in light of the Supreme Court's recent decision in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System,* 144 S. Ct. 2440 (2024). Org. Pets. Petition at 29-30. We address these aspects of Contention 4 sequentially and conclude neither is admissible.

1. Organizational Petitioners Contend the LRA Contains Outdated or Stale Data and the NRC Improperly Shifts the Burden onto Petitioners to Update That Information

In their Petition, Organizational Petitioners essentially define this aspect of Contention 4 as follows: The Combined LR/ER lacks updated information, which means the Staff, in reviewing the Combined LR/ER, will not possess the information it needs to comply with NEPA and/or the Endangered Species Act ("ESA"). *Id.* Organizational Petitioners also claim the lack of updated information in the Combined TR/ER wrongly forces them to anticipate what that updated information will be and/or to supply the licensee's missing information. *Id.* Therefore, claims the Organizational Petitioners, the NRC cannot comply with its legal obligations. *Id.* at 28. The Organizational Petitioners then provide examples of data from the Combined TR/ER they claim to be "stale" or outdated. *Id.* at 28-29.

In describing this aspect of Contention 4 in their Reply, Organizational Petitioners claim that "[t]he question is whether or not the LRA fails to provide the necessary information required for NRC to meet its statutory duties while also requesting NRC Staff to continue its unlawful licensing practices." Reply at 12. They then assert that no data post-2008 appears in the Combined TR/ER, other than meteorological and census data, which Organizational Petitioners claim is not contested. *Id.* at 12-13.[155]

The fatal flaw in admissibility of this aspect of Contention 4, though, is that beyond referencing the dates for the information contained in the Combined TR/ER, Organizational Petitioners do nothing to show that the actual data is, in

[155] This 2008 cutoff contradicts Organizational Petitioners' assertion in their Petition that some of the Combined TR/ER data (other than meteorological and census data) is from 2010 and 2011. Org. Pets. Petition at 29.

fact, stale or outdated. They have failed to provide any information (including expert reports) showing that, or even raising a question as to whether, newer specific data is available, much less that it would be materially different.[156] That failing means Organizational Petitioners cannot meet three contention admissibility elements.

- First, Organizational Petitioners do not demonstrate that this issue is "material to the findings the NRC must make to support the action" at issue. *See* 10 C.F.R. § 2.309(f)(1)(iv). Without knowing what specific data is claimed to be outdated or stale (i.e., that changed data actually exists), Organizational Petitioners have not demonstrated that the "staleness" of the data is material. For example, assuming for purposes of argument that Organizational Petitioners are correct as to the date of data, the fact that the ecological data in the Combined TR/ER is from 2008 is immaterial if more recent ecological data is unchanged or not available.
- Second, Organizational Petitioners do not provide a concise statement of the facts or opinions on which they will rely. *See* 10 C.F.R. § 2.309(f)(1)(v). In fact, as noted above, their Petition is devoid of any facts or expert opinions showing that updated data would be available or different in any respect (other than date of collection).
- Third, Organizational Petitioners fail to "show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact." *See* 10 C.F.R. § 2.309(f)(1)(vi). Again, beyond pointing to the date of the data reported in the Combined TR/ER, Organizational Petitioners fail to demonstrate there is a genuine dispute that (i) data collected contemporaneously with the Combined TR/ER would be different in any material way from the data that is referenced in the Combined TR/ER or (ii) the data was required to be updated but was not.

The failure to meet any one contention admissibility element renders a proffered contention inadmissible. Note 96, above. But here, Organizational Petitioners failed to meet three such elements. Accordingly, this aspect of Contention 4 is inadmissible.

Nor is this aspect of the contention saved by Organizational Petitioners' argument that the NRC wrongly requires petitioners, not the applicant, to provide updated information. Organizational Petitioners fail to cite any caselaw, statutory provisions, or regulations supporting their claim that the NRC's requirements

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[156] Nor did Organizational Petitioners cite any authority, beyond the general "action forcing" nature of the ESA and NEPA, that would have required Powertech to ensure updated data was included in the Combined TR/ER. Tr. at 85-87.

are improper.[157] Organizational Petitioners also failed to submit in this adjudicatory proceeding a 10 C.F.R. § 2.335 waiver request that would allow them to challenge the agency's contention admissibility regulations as they apply in this instance.

Therefore, this aspect of Contention 4 is not admissible.

2. Organizational Petitioners Contend the NRC Employs Practices, Procedures, and Standards That Wrongfully Inhibit Petitioners' Ability to Challenge Those Practices, Procedures, and Standards in Adjudicatory Proceedings

In this aspect of Contention 4, Organizational Petitioners claim that the NRC's regulations and procedures wrongfully do not allow them to challenge, in adjudicatory proceedings, allegedly illegal practices, procedures, and standards. Org. Pets. Petition at 27, 29-30. For their legal support, Organizational Petitioners primarily rely on the Supreme Court's recent *Corner Post* decision. Org. Pets. Petition at 29.[158]

Nowhere in their Petition, though, do Organizational Petitioners identify what exactly are the allegedly illegal practices, procedures, and standards they wish to challenge. Instead, they simply make vague references to unspecified NRC "unlawful practices, policies, guidance, and regulations that allow they [*sic*] paucity of data and analysis found in the LRA documents may be shielded by NRC practices, but are raised here to provide the NRC the opportunity to address them in an attempt to reduce or avoid the need for judicial review." *Id.* at 27; *see also id.* at 29-30.[159] Thus, at the very least, Organizational Petitioners

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[157] Organizational Petitioners do cite a few cases that interpret the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and that discuss the general purpose of NEPA, but none of this caselaw establishes the proposition that the NRC has erred in placing the burden on petitioners, rather than the applicant, to provide more recent data than is contained in the Combined TR/ER.

[158] In light of the Hobbs Act's specific provision governing the timing of judicial review of agency licensing and rulemaking actions, we share the Staff's view of the inapplicability of the *Corner Post* decision as supporting this aspect of Contention 4. Staff Answer at 34-35. Organizational Petitioners cite purported additional authority for this aspect of Contention 4 in their Reply, Reply at 13-14, which we likewise find inapposite here.

[159] In their Reply, Organizational Petitioners appear to take a different tack. Reply at 13-14. But Commission case law precludes a petitioner from expanding or changing the scope of a contention via a reply. *E.g., Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004) (indicating reply briefs are not the place to "attempt to reinvigorate thinly supported contentions by presenting entirely new arguments" or "what effectively amount to entirely new *contentions.*") (italics emphasis in original). Instead, a "reply brief should be 'narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer.'" *Id.* at 225. "There simply would be 'no end to NRC licensing proceedings if petitioners could disregard

(Continued)

have not "[p]rovide[d] a specific statement of the issue of law or fact to be raised or controverted . . . ." 10 C.F.R. § 2.309(f)(1)(i). Nor have Organizational Petitioners demonstrated that this aspect of Contention 4 is within the scope of this proceeding as defined in the *Federal Register* hearing opportunity notice for this proceeding defining what can be raised in this adjudication. *See* 10 C.F.R. § 2.309(f)(1)(iii).[160]

Moreover, nowhere in their Petition do Organizational Petitioners address the NRC regulation that precludes a challenge in an adjudicatory proceeding to any Commission rule or regulation without first seeking and obtaining a waiver from the Commission. *See* 10 C.F.R. § 2.335. The Commission routinely has held that a licensing board lacks the authority to consider such challenges without a waiver being granted by the Commission.[161] Organizational Petitioners filed no such waiver petition here.[162] As such, in addition to the Organizational Petitioners' failure to meet the required contention admissibility requirements, we find we are without the authority to admit this aspect of Contention 4.[163]

E. *Henderson Contention 1* — Pollution and Depletion of Underground Water Sources

In her first contention, Ms. Henderson attempts to frame a contention that addresses both pollution of, and the depletion of, underground water sources. Henderson Petition at 3-4. We examine both aspects of this contention and determine that neither is admissible.

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our timeliness requirements' and add new bases or new issues that 'simply did not occur to [them] at the outset.'" *Id.* (brackets in original); *Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006) ("Allowing new claims in a reply not only would defeat the contention-filing deadline, but would unfairly deprive other participants of an opportunity to rebut the new claims.").

[160] Even were we to consider the expanded/changed aspect of Contention 4 in the Reply, it fails to meet either (f)(1)(i) or (iii) of the contention admissibility standards in section 2.309.

[161] *E.g., Nuclear Fuel Services,* CLI-23-3, 98 NRC at 49 & n.105 (affirming restriction in 10 C.F.R. § 2.335 preventing licensing board from considering challenges to regulations absent a waiver from Commission); *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), CLI-03-7, 58 NRC 1, 6-9 (2003); *see also Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974) (even assuming a specified regulation may be contrary to the Atomic Energy Act, the licensing board "is not the proper forum for consideration of such matters.").

[162] Nor are we aware of Organizational Petitioners having filed a rulemaking petition to address the allegedly illegal rules or regulations, which would not come before this Board in any event. *See Haddam Neck Plant,* CLI-03-7, 58 NRC at 6-8.

[163] This same result would be attained even if we were to consider the expanded/changed explication of this aspect of the contention in the Reply.

1. The Pollution Aspect of Contention 1 Is Not Admissible

One of the elements for contention admissibility is the requirement that a petitioner provide a "concise statement of the alleged facts or expert opinions which support the . . . position on the issue and on which the petitioner intends to rely at the hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue." 10 C.F.R. § 2.309(f)(1)(v). As it relates to an assertion of pollution, Ms. Henderson's petition contains only two bases, both of which are bald assertions:

> Of grave concern to me is the potential for Powertech … to pollute the aquifers by essentially dumping mining residues back into the aquifers in huge quantities. . . . My conclusion is that this project will forever pollute the aquifers with contaminants that we cannot remove from the water.

Henderson Petition at 3.

Beyond those two statements, Ms. Henderson does not provide any factual support for the potential for contamination by Powertech. At oral argument, her counsel agreed that such information was lacking. Tr. at 19-22. Therefore, this aspect of her Contention 1 fails to meet one of the required six elements for contention admissibility and is inadmissible.

2. The Depletion Aspect of Contention 1 Is Not Admissible

In the context of her depletion claim, Ms. Henderson calls out Powertech's assertion that a water well from the Madison formation, providing 500 gallons per minute, will be available for Powertech's remediation efforts. Henderson Petition at 3 ("I note that the Powertech application calls for a 500 gallon per minute well from the Madison."). But Ms. Henderson, who (i) has ranched in the area for more than 30 years and buys water from the Madison formation for her cattle; and (ii) has served for more than a decade as the Chair of the Igloo-Provo Water Project District and for a decade as the Chairwoman of the Restoration Advisory Board for the Black Hills Army Depot cleanup in Igloo, South Dakota, states that she "know[s] of no Madison water deposit in the area that would deliver such a large amount of water." *Id.*

The Combined TR/ER states that, in the case of land application for aquifer restoration, "the usage of water from the Madison Limestone or another suitable aquifer will be about 430 to 510 gpm." Combined TR/ER at 2-227. In its Table 4.2-10, the Combined TR/ER also notes that land application without groundwater sweep will require 507 gallons per minute from the Madison formation. *Id.* at tbl.4.2-10, 4-30 (Typical Project-Wide Flow Rates during Concurrent

Uranium Recovery and Aquifer Restoration). Further, in its section 4.2.2.4.2, Aquifer Restoration Water Balance, the Combined TR/ER states expressly that "[t]he total project-wide restoration extraction flow rate will be approximately 500 gpm . . . ."[164] Nowhere, though, in the Combined TR/ER does Powertech address the availability of a 500 gpm well from the Madison formation. Section 2.7.2.3 of the Combined TR/ER (the Summary of Previous Pumping Tests section) solely addresses pumping tests on wells in a formation other than the Madison formation. *Id.* at 2-214 to -223.

Thus, the 500 gpm figure of concern to Ms. Henderson does seem to be established in the Combined TR/ER. Nonetheless, and fatal to the admissibility of this aspect of the contention, is the fact that Powertech's initial application also called for 500 gpm from the Madison formation. *See* 2014 EIS Vol. 1, fig.2.1-14, at 2-36 (Typical Project Wide Flow Rates); *see also id.* at 2-38. Nothing regarding Powertech's use of 500 gpm has changed between its initial application and the Combined TR/ER. Moreover, in considering Powertech's initial application, the Staff specifically noted the need for 500 gpm from the Madison formation and conducted a "3-layer model to study the effects of a large withdrawal from the Madison formation."[165] After reviewing the results of that study, the Staff concluded that "the proposed maximum Madison withdrawals at the Dewey-Burdock project do not appear to affect water supplies in the City of Edgemont, South Dakota." *SER* at 88. Based upon that, and other evaluations, the Staff found Powertech's "water balance information," which included the need for 500 gpm from the Madison formation, to be "acceptable." *Id.* Yet the Staff went even further and noted that it

> recognizes that a significant quantity of water will be required from the Madison Aquifer, if land application is utilized. However, the staff analyzed these withdrawals and the associated effects. Based on its review of the water balance information, the staff finds that it is consistent with Section 3.1.3 of the standard review plan and complies with 10 CFR 40.32(c) and 40.41(c).

Id.; Tr. at 34-35.

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[164] Combined TR/ER at 4-31; *id.* tbl.2.7-19, at 2-230 (Net Water Usage, Land Application Option (without Groundwater Sweep)) (identifying a consumptive use need for 495 gpm from the Madison formation); *id.* tbl.2.7-19a, at 2-231 (Net Water Usage, Land Application Option (with Groundwater Sweep)) (identifying a consumptive use need for 427 gpm from the Madison formation); *id.* fig.4.2-1, at 4-29 (Typical Project-wide Flow Rates during Uranium Recovery and Aquifer Restoration) (identifying a need for 248 gpm [column G] and 248 gpm [column M] from the Madison formation for restoration operations).

[165] FSME, NRC, Safety Evaluation Report (Revised) for the Dewey-Burdock Project, Fall River and Custer Counties, South Dakota — Materials License No. SUA-1600 at 87 (April 2014) [hereinafter "SER"] (ADAMS Accession No. ML14043A347).

Given that (i) this issue already was included in Powertech's initial application and reviewed by the Staff and (ii) Ms. Henderson has not identified any changed circumstances or new information,[166] this aspect of her Contention 1 is outside the scope of this proceeding. Accordingly, this aspect of her Contention 1 fails to meet the required six elements for contention admissibility and also is inadmissible.

F. *Henderson Contention 2* — The Loss of These Shallow Wells for the Two Counties Would Impact Most Housing Developments and Small Livestock Operations, Ruining the Tax Base and Rendering Our Beautiful Area Uninhabitable

Ms. Henderson's second contention consists of only the twenty-nine words in the above heading. Henderson Petition at 4. Ms. Henderson did not provide any additional information or explanation as support for her second contention. Despite the requirements in section 2.309(f)(1), she failed to include an explanation of the basis for her contention; a statement of the facts, opinions, or documents on which the contention is based; an explanation as to how the contention is within the scope of this proceeding; an explanation as to how this issue is material to the findings the NRC must make; or an explanation as to how this shows a genuine dispute with the Combined TR/ER. This failing is fatal to the admissibility of her second contention. "While a board may view a petitioner's supporting information in a light favorable to the petitioner . . . . the petitioner (not the board) [is required] to supply all of the required elements for a valid intervention petition."[167]

Accordingly, Henderson Contention 2 fails to meet the second, third, fourth, fifth, and sixth elements of the six-part contention admissibility test. Therefore, Henderson Contention 2 is inadmissible.

G. *Henderson Contention 3* — Determination of Baseline Ground Water Quality

Ms. Henderson's third contention simply states: "Determination of Baseline Ground Water Quality." Henderson Petition at 4. She then provides approximately two-and-a-half pages of text addressing a number of issues purportedly related (some tangentially, some not at all) to water quality:

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[166] Nowhere in her petition did Ms. Henderson raise any claims that climate change or precipitation changes in the intervening years undercut the analysis conducted by the Staff 10 years ago.

[167] *AmerGen Energy Co., LLC* (Oyster Creek Generating Station), CLI-09-7, 69 NRC 235, 260 (2009).

- the underground structure of the caverns, fissures, and caves, which resemble "Swiss Cheese;"
- the Black Hills Army Depot and chemical agents dumped there, including sarin gas;
- the "inescapable conclusion" that because of the "Swiss cheese" nature of the underground terrain one "should never disturb this area with any mining" because such mining will "cause the underground structure and its contaminants to move in a wholly unpredictable fashion," including causing chemical warfare agents to reach the surface;
- Powertech's failure to consider the chemical warfare agents; "[c]ommon sense" tells us the acids and carbon dioxide to be injected by Powertech "will surely create carbonic acid which will dissolve whatever it touches" and cause unpredictable and unmanageable chemical reactions;
- the South Dakota Mining and Water Management Board's recent removal of the requirement that ISL recovery companies prove they can return ground water to its baseline condition;
- Powertech's alleged seeking of a permanent exemption from the federal Safe Drinking Water Act, which Ms. Henderson commits to fighting;
- the allegation that the foreign ownership of Powertech is seeking to locate its operations in South Dakota due to lax environmental enforcement at the state level; and
- local and national security issues due to the foreign ownership of Powertech and lack of ability to control ownership of the mined uranium once it is shipped outside the United States.[168]

Yet nowhere in her explication of Contention 3 does Ms. Henderson demonstrate how any of these concerns are within the scope of this proceeding. Nor does she demonstrate any material dispute with the Combined TR/ER. And, as to the alleged "Swiss cheese" nature of the underground geology and the potential for sarin gas (and/or other warfare chemicals) to make its way to the surface, Ms. Henderson fails to provide any scientific or other specialized knowledge beyond "common sense" or "inescapable conclusion[s]." Henderson Petition at 5.

The only item that appears to be related to the denominated Contention 3 is Ms. Henderson's assertion that the South Dakota Mining and Water Management Board recently removed the requirement that ISL recovery companies prove they can return ground water to its baseline condition. Henderson Petition at 6. Yet that is a concern that must be directed not to the NRC, but instead to another governmental agency, such as the South Dakota Mining and Water

[168] Henderson Petition at 4-7.

Management Board. As such, Ms. Henderson has failed to establish that her concern falls within the scope of this license renewal proceeding.[169]

As Henderson's Contention 3 fails to meet the required six elements for contention admissibility, it is not admitted.

IV. CONCLUSION

For the foregoing reasons, and in furtherance of our obligations under the Commission's regulations, we:

A. Conclude that all Petitioners (the Oglala Sioux Tribe, the Black Hills Clean Water Alliance, the NDN Collective, and Susan Henderson) have standing;

B. Conclude that all three of Susan Henderson's contentions are inadmissible and that her petition is denied;

C. Conclude that Contention 1 of the Organizational Petitioners (the Oglala Sioux Tribe, the Black Hills Clean Water Alliance, and the NDN Collective) is admitted as two reformulated contentions:

> Organizational Petitioners' Contention 1A: Powertech's Combined Technical Report and Environmental Report fails to comply with the NRC's regulations in that it contains an inadequate, inaccurate, or incomplete description of the cultural and historical resources as to the Oglala Sioux Tribe in the Dewey-Burdock Project area.
>
> Organizational Petitioners' Contention 1B: Powertech's Combined Technical Report and Environmental Report fails to explain its conclusion that the impacts of the Dewey-Burdock Project on cultural and historic resources will be "none."

D. Conclude that Contention 2 of the Organizational Petitioners is admitted as reformulated:

> Powertech's License Renewal Application fails to account for, address, or analyze the cumulative effects of Powertech's uranium recovery in the Gas Hills and Dewey Terrace project areas as rea-

[169] Importantly, Ms. Henderson does not allege in Contention 3 that Powertech will not be able to return the local water supply to its baseline condition. Moreover, if Powertech does seek an exemption from drinking water standards, presumably because it is not able to return the water to baseline conditions, Ms. Henderson affirmatively states that such a request will be made to an agency other than the NRC and she will fight that request before that agency.

sonably foreseeable effects of construction and operation of the Dewey-Burdock Project;

E. Conclude that Contentions 3 and 4 of the Organizational Petitioners are inadmissible;

F. Conclude that the Organizational Petitioners' Petition is granted as to reformulated Contentions 1 and 2 but denied as to Contentions 3 and 4, and that Organizational Petitioners (the Oglala Sioux Tribe, the Black Hills Clean Water Alliance, and the NDN Collective) are admitted as parties to this proceeding.

G. Select 10 C.F.R. Part 2, Subpart L as the hearing procedures to be used (10 C.F.R. § 2.310);

H. Remind the Staff of its obligation, *within 15 days of the date of this Order,* to comply with 10 C.F.R. § 2.1202(b)(2) regarding notification of its status as a party to this proceeding;

I. Order the parties to submit a joint proposed Case Scheduling and Management Order, *within 10 business days of the date of this Order,* proposing relevant dates for the remainder of this proceeding (*E.g.,* 10 C.F.R. §§ 2.332, 2.1205, 2.1207);

J. Remind the parties of their mandatory disclosure obligations, which are to occur within 30 days of the date of this Order (10 C.F.R. § 2.336(a) and (b)), subject to being adjusted in a subsequent Order based upon the joint proposed Case Scheduling and Management Order;

K. Establish the last business day of the month, beginning on March 31, 2025, as the date by which updated mandatory disclosures are to be made (10 C.F.R. § 2.336(d)), subject to being adjusted in a subsequent Order based upon the joint proposed Case Scheduling and Management Order; and

L. Remind the parties of the 15-day deadline in 10 C.F.R. § 2.1206 for submission of any joint request that an evidentiary hearing be conducted based on written submissions only.

NOTICE TO ALL PARTICIPANTS: Any appeal of this Memorandum and Order must be made in compliance with 10 C.F.R. § 2.311, including being filed no later than 25 days from the service of this Memorandum and Order. 10 C.F.R. § 2.311(b).

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Jeremy A. Mercer, Chair
ADMINISTRATIVE JUDGE

Nicholas G. Trikouros
ADMINISTRATIVE JUDGE

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 31, 2025

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

David A. Wright, Chairman
Annie Caputo
Christopher T. Hanson
Bradley R. Crowell
Matthew J. Marzano

In the Matter of **Docket No. 63-001-HLW**

U.S. DEPARTMENT OF ENERGY
(High-Level Waste Repository) **March 6, 2025**

ADJUDICATORY PROCEEDINGS

Absent extraordinary circumstances, it is the Commission's policy to promote the expeditious completion of adjudicatory proceedings.

SUBPART J PROCEEDINGS

The standards governing motions for summary disposition under Subpart J provide that these motions may be filed at any time prior to the last date set forth in the hearing schedule in Appendix D.

MEMORANDUM AND ORDER

Today we address the State of Nevada's request to lift the current suspension of the Yucca Mountain adjudicatory proceeding for the limited purpose of considering three summary disposition motions Nevada proposes to file challenging the U.S. Department of Energy's (DOE's) application for the Yucca Mountain

high-level radioactive waste repository.[1] Nevada states that lifting the suspension of this proceeding for this limited purpose is required by governing law, fundamental fairness, and Commission precedent.[2] Nevada's request is opposed by the Joint Opposing Parties,[3] the State of Washington, and the NRC Staff.[4] For the reasons discussed below, we deny Nevada's request and continue to hold this adjudication in abeyance.

I. BACKGROUND

The history of the Yucca Mountain proceeding is extensive and described fully in previous Commission and licensing board decisions.[5] As relevant to our decision today, the Staff accepted DOE's construction authorization application for review in 2008, and the related litigation in the adjudicatory proceeding resulted in the admission of fourteen parties and 288 contentions challenging DOE's application and the environmental review.[6] In March 2010, DOE filed a motion to withdraw its construction authorization application with prejudice, which the Board denied.[7] During this time period, Congress stopped appropriating funds from the Nuclear Waste Fund for the NRC's review of the application, and in 2011 we announced that the Commission was evenly divided on whether

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[1] Nevada Request to Lift the Suspension of the Adjudicatory Proceeding for Limited Purposes (Sept. 20, 2022) (Nevada Request).

[2] *Id.* at 1.

[3] The Joint Opposing Parties are the Nuclear Energy Institute; Nye County, Nevada; the National Association of Regulatory Utility Commissioners; and the State of South Carolina. *See* The Joint Opposition of the Nuclear Energy Institute; Nye County, Nevada; The National Association of Regulatory Utility Commissioners; and the State of South Carolina to the State of Nevada's Motion to Lift the Suspension of the Adjudicatory Proceeding for the Yucca Mountain Construction Authorization (Sept. 30, 2022) (Joint Opposing Parties' Answer).

[4] *See* The State of Washington's Answer Opposing Nevada's Motion to Lift the Suspension of the Adjudicatory Proceeding for the Yucca Mountain Construction Authorization (Sept. 30, 2022) (State of Washington's Answer); NRC Staff Answer in Opposition to Nevada's Request to Lift the Suspension of the Adjudicatory Proceeding for Limited Purposes (Sept. 30, 2022) (Staff's Answer). DOE, a regulatorily designated party in the adjudicatory proceeding, did not file an answer to Nevada's request.

[5] *See, e.g.,* CLI-13-8, 78 NRC 219, 221-24 (2013), *reconsideration denied,* CLI-14-1, 79 NRC 1, 4-6 (2014); LBP-11-24, 74 NRC 368 (2011); LBP-10-11, 71 NRC 609, 616 n.6 (2010) (listing relevant decisions).

[6] In addition, at the time the proceeding was suspended, two Nevada counties were participating as interested governmental participants and the Florida Public Service Commission was participating as amicus curiae. *See* LBP-11-24, 74 NRC at 369. Six licensing boards oversaw the adjudicatory proceeding in its seven-year active history. *Id.* All references hereafter to the "Board" are to the fourth Construction Authorization Board, or CAB-04.

[7] LBP-10-11, 71 NRC at 616, 649.

to take affirmative action to overturn or uphold the Board's denial of DOE's motion to withdraw its application.[8] Therefore, we directed the Board to "complete all necessary and appropriate case management activities, including disposal of all matters currently pending before it."[9] Consistent with our direction, the Board suspended the adjudicatory proceeding.[10]

In August 2013, the U.S. Court of Appeals for the District of Columbia Circuit issued a writ of mandamus ordering the NRC to "promptly continue with the legally mandated licensing process" of a high-level waste repository at Yucca Mountain, "unless and until Congress authoritatively says otherwise or there are no appropriated funds remaining."[11] In response to the writ of mandamus, we requested the views of the participants on the course of action the NRC should undertake to continue with the Yucca Mountain licensing process.[12] After considering the participants' views, we issued a decision and companion Staff Requirements Memorandum (SRM) setting forth the licensing actions we approved.[13] As we explained in CLI-13-8 and the companion SRM, these actions — completing the safety evaluation report (SER), entering the Licensing Support Network (LSN) documents in the possession of the Secretary of the Commission into the Agencywide Documents Access and Management System (ADAMS), and preparing the supplemental environmental impact statement (SEIS) — constituted the "next logical steps" in the licensing process and were "intended to advance the process 'in a manner that is constructive and consistent with the court's decision and the resources available.'"[14] Our decision not to resume the adjudicatory proceeding or to address the question of reconstituting the LSN was informed by the NRC's inability to make meaningful progress on those fronts given the limited funds available.[15] Accordingly, we continued to hold the adjudicatory proceeding in abeyance and deferred ruling on various requests relating to the adjudication.[16]

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[8] *See* CLI-13-8, 78 NRC at 222; CLI-11-7, 74 NRC 212 (2011).

[9] CLI-11-7, 74 NRC at 212.

[10] *See* LBP-11-24, 74 NRC at 370.

[11] *In re Aiken County,* 725 F.3d 255, 267 (D.C. Cir. 2013).

[12] Order of the Secretary (Soliciting Views from Participants) (Aug. 30, 2013) (unpublished).

[13] CLI-13-8, 78 NRC 219; Staff Requirements — SECY-13-0113 — Memorandum and Order Concerning Resumption of Yucca Mountain Licensing Process (Nov. 18, 2013).

[14] CLI-14-1, 79 NRC at 2-3 (quoting CLI-13-8, 78 NRC at 226). The LSN is the electronic system established by the NRC to provide the participants in the adjudication and the public with online access to documents that may be used to support the NRC's review of the Yucca Mountain construction authorization application and as evidence in the associated adjudicatory proceeding. 10 C.F.R. § 2.1001 (defining "Licensing Support Network"). The LSN was discontinued in 2011 due to lack of budgeted funds. CLI-11-13, 74 NRC 635, 636 n.2 (2011).

[15] CLI-13-8, 78 NRC at 227.

[16] *Id.* at 221, 232-37; *see also* CLI-14-1, 79 NRC at 3.

II. DISCUSSION

A. Nevada's Request to Lift the Suspension of the Adjudicatory Proceeding

Nevada requests that we lift our suspension of the proceeding for the limited purpose of ruling on three summary disposition motions Nevada is prepared to file challenging aspects of DOE's application.[17] For the reasons discussed below, we deny Nevada's request.

First, we address Nevada's claim that lifting the suspension of the proceeding to consider its summary disposition motions is required by the mandamus order issued in *Aiken County.*[18] Nevada argues that the mandamus order requires lifting the suspension of the proceeding to consider its motions because the SER and SEIS have been completed, and that the adjudicatory proceeding is the only significant part of the Yucca Mountain licensing process where no progress has been made under the order.[19] Therefore, Nevada states, because "there is little else in the 'legally mandated licensing process' to spend money on . . . the [*Aiken County* court's] mandate to continue with the legally mandated licensing process requires the Commission to spend its remaining resources to make some significant progress in the adjudicatory proceeding."[20]

Consistent with our previous decisions addressing the mandamus order, we disagree with Nevada's interpretation of the order. In CLI-13-8, we addressed Nevada's argument that *Aiken County* mandates resumption of the adjudicatory proceeding in addition to the safety and environmental licensing activities.[21] We found that reinstitution of the adjudicatory proceeding was neither compelled by federal law nor a wise use of limited resources.[22] As we explained in both

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[17] Nevada states that these summary disposition motions would relate to human-induced climate change, land ownership and controls, and military aircraft crashes. Nevada Request at 11-12 & Ex. 1. Nevada also requests that our reinstatement of the adjudicatory proceeding to consider its summary disposition motions encompass a potential subsequent Nevada motion to disapprove the issuance of the construction authorization. *Id.* at 1.

[18] *Id.* at 1.

[19] *Id.* at 4-5.

[20] *Id.* at 5.

[21] *See* CLI-13-8, 78 NRC at 226 n.29 (citing State of Nevada's Comments in Response to the Secretary's August 30, 2013 Order (Sept. 30, 2013) at 3-5).

[22] *See id.* (citing *City of Los Angeles v. Adams,* 556 F.2d 40, 49-50 (D.C. Cir. 1977) ("If Congress does not appropriate enough money to meet the needs of a class of beneficiaries prescribed by Congress, and if Congress is silent on how to handle this predicament, the law sensibly allows the administering agency to establish reasonable priorities and classifications.")). The *Aiken County* court cited *Adams* for the conclusion that an underfunded agency is required to "effectuate the original statutory scheme as much as possible, within the limits of the [budgetary] constraint." *See Aiken County,* 725 F.3d at 259 (quoting *Adams,* 556 F.2d at 50).

CLI-13-8 and CLI-14-1, "we consider the amount of funding available not as a means of determining *whether* to proceed on the license application (an inquiry that the mandamus order forecloses), but in determining *how* to proceed (an inquiry that the mandamus order does not address and that prudent fiscal management requires us to consider)."[23] Therefore, consistent with our previously stated views, we find that the court's direction in *Aiken County* allows us "broad discretion in choosing a pragmatic course of action to resume the licensing process."[24]

When we approved a course of action under *Aiken County* in 2013, approximately $11 million remained appropriated to the NRC from the Nuclear Waste Fund, and we made a prudential decision to commit the remaining Nuclear Waste Fund resources to discrete tasks, such as completing the SER, that could be fully accomplished with the limited funds available and would meaningfully advance the licensing process.[25] Our chosen course of action was informed by the adjudicatory participants' views that the SER should be completed and the Staff's assurance that the remaining funds were sufficient to carry out the directed tasks in full.[26] Conversely, we elected not to resume the adjudicatory proceeding because of the limited funding remaining and the likelihood that doing so "would result in resuspension of the case in the near term without completion of meaningful — or substantial — adjudicatory activities."[27] In addition to unresolved considerations presented by whether and how to reconstitute the LSN, our decision was based in part upon the mid-discovery posture of the paused adjudication and information that some of the participants did not, at that time, have the resources to fully participate in the adjudication.[28] Nevada does not assert that these circumstances have changed.[29] Instead, Nevada points to the

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[23] CLI-13-8, 78 NRC at 227.

[24] CLI-14-1, 79 NRC at 4 (quoting CLI-13-8, 78 NRC at 226). Moreover, we note that the *Aiken County* court's decision to grant mandamus was based in part on "the significant amount of money available for the Commission to continue the licensing process," a condition that no longer exists. *See Aiken County,* 725 F.3d at 266 n.12.

[25] *See* CLI-14-1, 79 NRC at 3-5; CLI-13-8, 78 NRC at 226-27, 231. Currently, the agency has less than $213,000 remaining in the Nuclear Waste Fund appropriation. Letter from Eugene Dacus, Director, Office of Congressional Affairs, NRC, to The Honorable Brett Guthrie, Chairman, Committee on Energy and Commerce, United States House of Representatives (Jan. 23, 2025), Encl. at 1 (ADAMS accession nos. ML24354A105, ML24354A104) (January 2025 NWF Report).

[26] *See* CLI-13-8, 78 NRC at 228-29 & n.38. In approving this course of action, we also noted that "[t]he next significant milestone in the Appendix D schedule is issuance of the SER; to conform to our regulatory scheme to the extent practicable, it makes sense to proceed with the SER as the next step in this licensing process." *Id.* at 229.

[27] *Id.* at 233.

[28] *Id.* at 232-33.

[29] Nevada acknowledges that recommencing the proceeding at the deposition discovery phase *(Continued)*

resource burdens it has incurred by maintaining its readiness to participate in the suspended proceeding and asserts that our decision in *Hydro Resources* and "fundamental fairness" require granting its request because, in Nevada's view, its motions would facilitate a merits-based resolution of the proceeding.[30]

Nevada's argument that Commission precedent and "fundamental fairness" compel granting its request rests on two premises: first, that its motions would resolve key issues and have "the potential to conclude the adjudicatory proceeding with a dispositive decision on the merits"; and second, that the amount of funds remaining is sufficient to fully consider its motions and all responses thereto, as well as its anticipated follow-on motion to dismiss the proceeding.[31] With respect to Nevada's first premise, even assuming Nevada is correct that its summary disposition motions would resolve "key issues" in the proceeding, the NRC would need to take additional actions before rendering a final decision on the construction authorization application. To begin, our regulations exclude the use of summary disposition as the means for determining whether the construction authorization should be issued.[32] And as we stated in CLI-13-8, "before a final decision approving or *disapproving* a construction authorization application may be reached, not only must the Staff complete its safety and environmental reviews but a formal hearing must be conducted, and our own review of both contested and uncontested issues must take place."[33]

Second, Nevada's claim that the remaining funds would be sufficient to fully consider its proposed motions is disputed by the Staff and other respondents to Nevada's request.[34] As we noted above, our chosen course of action to address the *Aiken County* mandamus order was predicated on the Staff's and DOE's assurances that available funds were sufficient to complete the directed tasks. No

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would not be prudent "because no meaningful progress could be made given the limited resources that are available." Nevada Request at 5 & n.6 (also noting that a new LSN rulemaking would be required if the proceeding were to resume with discovery).

[30] *Id.* at 5-6 (citing *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31 (2001)).

[31] *See id.* at 5-8.

[32] *Compare* Nevada Request at 3 ("If successful, Nevada's summary disposition motions would provide the basis for a final decision on the merits disapproving the issuance of the construction authorization . . . .") *with* 10 C.F.R. § 2.1025(c) ("[I]n any proceeding involving a construction authorization for a geologic repository operations area, the [summary disposition] procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the authorization must be issued.").

[33] CLI-13-8, 78 NRC at 226 (citing 10 C.F.R. §§ 2.101(e)(8), 2.104(a), 2.1023) (emphasis added); *see also* 10 C.F.R. Part 2, Appendix D.

[34] *See* Staff's Answer at 12-13; Joint Opposing Parties' Answer at 11-13; *see also* State of Washington's Answer at 1 ("The Yucca Mountain license adjudication has been stayed for more than a decade and cannot be resumed in any orderly manner until Congress again funds the adjudication.").

such assurances exist here. Nevada claims that with approximately $290,000 remaining in the NRC's resources appropriated from the Nuclear Waste Fund, "the NRC could spend 1000 hours reviewing, responding, and ruling on Nevada's filings without exceeding it[s] budget."[35] The Staff counters that it "cannot predict how long remaining Nuclear Waste Funds will last if the Commission grants Nevada's motion," but "it is likely that [such funds] will be insufficient to support full and fair consideration of Nevada's proposed motions . . . ."[36] As noted above, less than $213,000 currently remains available from the NRC's Nuclear Waste Fund appropriation.[37] Lifting the suspension of this proceeding to consider Nevada's summary disposition motions would require the involvement of numerous agency staff, including from the Commission, Atomic Safety Licensing Board, legal, and technical staff offices.[38]

Although Nevada asserts that its proposed motions are "simple, straightforward, and based on clearly uncontested facts," the Staff and Joint Opposing Parties challenge Nevada's characterization of the issues in its proposed motions as undisputed and appropriate for resolution without the aid of further discovery.[39] While we have previously acknowledged that summary disposition may be appropriate for certain legal contentions, our rules afford every participant in the adjudicatory proceeding the opportunity to address Nevada's motions and have their evidence and arguments fairly considered in the adjudicatory process, and we expect the disposition of these contentions will involve "a thorough and meaningful discussion of the legal issues and the bases for resolving them."[40] It would be unfair to the other parties to this adjudication to assume at the

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[35] Nevada Request at 5 n.5. Nevada bases its estimate on a $290 professional hourly rate for the NRC's review, response, and ruling on its filings.

[36] Staff's Answer at 13. The Joint Opposing Parties also challenge Nevada's assessment of the adequacy of remaining funds. *See* Joint Opposing Parties' Answer at 11, 13.

[37] *See* January 2025 NWF Report, Encl. at 1.

[38] Even if Nevada is correct that the professional hourly rate is a suitable proxy for the calculation of the costs that the agency would incur, granting Nevada's request would likely quickly deplete the remaining NRC resources appropriated from the Nuclear Waste Fund.

[39] *See* Nevada Request at 2, 5 n.6; Staff's Answer at 12 n.64; Joint Opposing Parties Answer at 12, 15-18. As the Joint Opposing Parties preview, any resumption in adjudicatory activities would likely involve contending with participants' views on the need for public access to the LSN document collection. *See* Joint Opposing Parties' Answer at 12; *see also* CLI-13-8, 78 NRC at 227 ("To be sure . . . public availability of the LSN collection would be a central consideration in the event additional funding is provided and the adjudication goes forward.").

[40] CLI-09-14, 69 NRC 580, 591 & n.65 (2009); *see* 10 C.F.R. § 2.1025(a)-(c); *cf.* § 2.710(a). Nevada's candidate issues for summary disposition are the subject of several admitted legal issue contentions and one factual safety contention. *See* Nevada Request at 2 n.1; LBP-09-6, 69 NRC 367, 481 (2009).

outset that no discovery is necessary to resolve these issues.[41] Moreover, given the length of time that the adjudicatory proceeding has been held in abeyance, there is significant uncertainty surrounding the full scope of litigation that any new dispositive filings would prompt. Therefore, Nevada's claim that full consideration of its summary disposition and related motions can be realized with available resources is unsubstantiated.[42]

In CLI-13-8, we concluded that we would likely be unable to make meaningful progress on activities other than those outlined in our decision unless Congress appropriates additional funds for the agency's review of the Yucca Mountain application.[43] Unlike the adjudicatory proceeding, none of those activities required the expenditure of funds for "orderly closure." However, we committed to reevaluating our conclusion "in the event that circumstances materially change."[44] We do not view the current circumstances as materially changed from those of 2013. Indeed, Congress has not appropriated any additional funds for the agency's Yucca Mountain review for over fifteen years. In addition, as anticipated, completion of the SER and the SEIS expended nearly all of the remaining resources appropriated to the NRC from the Nuclear Waste Fund, with a marginal amount remaining to satisfy the agency's Congressional reporting responsibilities, recordkeeping, administrative support functions, knowledge management, and litigation-related expenses.[45]

We are sensitive to the burdens that all the participants to the adjudicatory proceeding, including Nevada, may have sustained while the proceeding is held in abeyance. However, we do not find a compelling reason for elevating Nevada's claims above those of the other participants in this proceeding.[46] Our chosen course of action in response to the mandamus order took into consideration all the participants' stated views, including those advocating procedures for resuming the adjudication. In place of addressing the various motions and adjudicatory matters raised at that time, we committed to allowing participants the opportunity to resubmit their motions and requests associated with the conduct of the proceeding should the suspension be lifted in the future.[47] Restarting

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[41] We are also mindful of the burden that lifting the suspension of the proceeding would place on under-resourced participants. *See* CLI-13-8, 78 NRC at 225 n.25, 233 & n.73 (noting that some participants would not have the resources to participate fully in the adjudication in the absence of additional funding being provided through appropriations or other sources).

[42] *See* Nevada Request at 5.

[43] CLI-13-8, 78 NRC at 236.

[44] *Id.*; *see also* CLI-14-1, 79 NRC at 5.

[45] *See, e.g.,* January 2025 NWF Report, Encl. at 1.

[46] *See* CLI-13-8, 78 NRC at 233-34; *see also* CLI-11-15, 74 NRC 815 (2011) (declining to decide Timbisha Shoshone Tribal Councils petition due to suspension of the proceeding).

[47] *See* CLI-14-1, 78 NRC at 3; CLI-13-8, 78 NRC at 233-34. For example, we declined to consider

(Continued)

this adjudication to only consider Nevada's motions, while not allowing other participants the opportunity to raise their deferred concerns, would not be an equitable course of action.

Our decision in *Hydro Resources* is fully consistent with these equitable considerations. In *Hydro Resources,* we reversed the presiding officer's decision to indefinitely hold the proceeding in abeyance until the licensee determined whether it intended to proceed with operations at certain project sites.[48] Our decision in *Hydro Resources* to lift the abeyance order was based on our determination that the presiding officer's deferral to the objectives of one party, the licensee, imposed an unacceptable and unfair burden on other parties in the proceeding.[49]

Absent extraordinary circumstances, it is the Commission's policy to promote the "expeditious completion of adjudicatory proceedings."[50] The circumstances underlying our decision to hold the Yucca Mountain proceeding in abeyance are significantly different from those in *Hydro Resources.* Unlike the general case management concerns that prompted our reversal of the presiding officer's decision to indefinitely suspend the *Hydro Resources* proceeding, the current posture of this proceeding is a direct consequence of appropriations constraints.[51] As Nevada acknowledges, the relief provided in *Hydro Resources* — resumption of the adjudicatory proceeding in full — cannot be granted here.[52] Because

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the Timbisha Shoshone Tribal Councils renewed motion for recognition as the appropriate entity to represent the Tribe in this proceeding but advised that the Tribal Council may renew its filing should the adjudication be resumed in the future. *See* CLI-13-8, 78 NRC at 234; CLI-11-15, 74 NRC at 815.

[48] *See Hydro Resources,* CLI-01-4, 53 NRC at 34. The licensee, Hydro Resources, Inc. (HRI), was granted a license that authorized *in situ* uranium recovery operations at four sites in New Mexico. HRI decided to initiate operations at only one site (Section 8) and informed the presiding officer that it intended to defer its decision on whether to proceed with the other project sites to a later time. At HRIs request, the presiding officer bifurcated the proceeding to resolve only those issues concerning Section 8 and held in abeyance all issues relating to the other project sites. *Id.* at 34-36.

[49] *See id.* at 38-44.

[50] *Id.* at 38 (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings,* CLI-98-12, 48 NRC 18, 24 (1998)).

[51] Our decision to reverse the presiding officer and reinstitute the *Hydro Resources* proceeding was also influenced by the fact that the Staff had already granted the license and it would have remained in effect while the presiding officer held the proceeding in abeyance indefinitely, risking a "scenario in which a hearing on the issued license is unlikely to be resumed, let alone completed, prior to the end of the original license term."). *Id.* at 39; *see also id.* at 40 ("[A]s a matter of sound case management, we cannot abide a situation where a license is issued but contested issues lie fallow without resolution for years."). In the present case, the agency has not yet acted on DOE's construction authorization application, and the construction authorization may not be issued until the Commission issues its final decision. *See* 10 C.F.R. § 2.1023.

[52] Nevada Request at 8.

we lack assurance that existing funds would be sufficient to allow us to fairly address all participants' concerns in the adjudicatory context, we deny Nevada's request.

B. Timeliness of Nevada's Request

The foregoing reasons are a sufficient basis to deny Nevada's request. However, we find that Nevada's request is also untimely. Nevada argues that 10 C.F.R. § 2.323(a)(2), which requires that motions be made no later than ten days after the circumstance from which the motion arises, does not apply here because its request is "inextricably connected" to its contemplated motions for summary disposition, which are subject to different timeliness standards.[53] Specifically, the standards governing motions for summary disposition under subpart J provide that these motions may be filed at any time prior to the last date set forth in the hearing schedule in appendix D.[54] But Nevada's request to lift the suspension of the proceeding is separate from the filing of motions for summary disposition. As such, Nevada's request is subject to the general requirements for motions set forth in 10 C.F.R. § 2.323.[55]

Nevada does not point to any circumstance within ten days of filing to support the timeliness of its request. Instead, Nevada claims that the suspension should be lifted to allow consideration of its summary disposition motions because the indefinite suspension of the proceeding has caused an increasing "unacceptable and undue burden" on Nevada, which "cannot be decided solely by reference to some point in time, after which some ten-day clock would begin to run, or some excuse for not filing earlier would be needed."[56] Nevada also expresses concern that "waiting until still another appropriation is denied creates the risk that the NRC would have insufficient money left in its Nuclear Waste Fund appropriation to consider Nevada's motions."[57] Neither rationale justifies finding Nevada's request timely under 10 C.F.R. § 2.323(a)(2).

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[53] *Id.* at 8-9.

[54] *See* 10 C.F.R. § 2.1025(a); *id.* Part 2, Appendix D.

[55] We note that Nevada considered its request to fall within the scope of 10 C.F.R. § 2.323 for the purpose of satisfying that provision's consultation requirements. *See, e.g.,* Nevada Request at 12-13.

[56] *Id.* at 9.

[57] *Id.* Nevada states that it could not have used the passage of the relevant appropriations legislation in March 2022 as the trigger for the ten-day deadline because of its concern that filing its request at that time "could constitute a waiver of Nevada's objection to Commissioner Wright's participation on Yucca Mountain issues." *Id.* at 9 n.10. However, it is not apparent why Nevada could not have sought to preserve its recusal concerns alongside submitting its request, or why Nevada did not seek consideration of its motions any of the times during the last several years in which the membership of the Commission would obviate its quorum and recusal concerns.

III. CONCLUSION

For the foregoing reasons, Nevada's request to lift the suspension of the Yucca Mountain adjudicatory proceeding is ***denied***.

IT IS SO ORDERED.

For the Commission

Carrie M. Safford
Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of March 2025.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Emily I. Krause, Chair
Dr. Gary S. Arnold
Dr. Arielle J. Miller

In the Matter of **Docket No. 50-255-LA-3**
(ASLBP No. 24-986-01-LA-BD01)

HOLTEC DECOMMISSIONING INTERNATIONAL, LLC, AND HOLTEC PALISADES, LLC
(Palisades Nuclear Plant) **March 31, 2025**

In this proceeding concerning four requests to amend the renewed facility operating license for the Palisades Nuclear Plant and a related exemption request, the Licensing Board denies two intervention petitions for failure to propose an admissible contention.

RULES OF PRACTICE: INTERVENTION PETITIONS, TIMELINESS

Petitions filed after the deadline will not be considered absent good cause. *See* 10 C.F.R. § 2.309(c).

RULES OF PRACTICE: RESPONSIBILITIES OF COUNSEL

In contrast with *pro se* litigants, attorneys are reasonably expected to adhere to standards of clarity and precision in NRC adjudicatory proceedings. *See Public Service Electric and Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973).

ATOMIC ENERGY ACT: HEARING RIGHTS

Section 189a of the Atomic Energy Act of 1954, as amended, requires the NRC to "grant a hearing upon the request of any person whose interest may be affected by the proceeding." 42 U.S.C. § 2239(a)(1)(A).

RULES OF PRACTICE: STANDING TO INTERVENE

The Commission has established general standing criteria that require a petitioner to provide certain identifying information (name, address, and telephone number) and require a petitioner to state (1) the nature of its right under the statute governing the proceeding to be made a party; (2) the nature and extent of its property, financial, or other interest; and (3) the possible effect of any decision made in the proceeding on that interest. 10 C.F.R. § 2.309(d)(1)(i)-(iv); *see also Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009).

RULES OF PRACTICE: STANDING TO INTERVENE

The Commission and licensing boards generally look to contemporaneous judicial concepts of standing — a three-part inquiry into whether the petitioner has demonstrated (1) "an injury in fact that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision." *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015). The NRC's standing analysis also includes a "zone-of-interests" test whereby the injury must arguably be within the zone of interests protected by the governing statute." *Calvert Cliffs,* CLI-09-20, 70 NRC at 915 (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)).

RULES OF PRACTICE: STANDING TO INTERVENE, PROXIMITY PRESUMPTION

In certain licensing proceedings, the Commission has recognized a presumption of standing based on a petitioner's proximity to the facility in question. *See Calvert Cliffs,* CLI-09-20, 70 NRC at 917; *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989). In construction permit and operating license proceedings, this presumption extends to fifty miles, based on a "finding . . . that persons living within [that radius] 'face a realistic threat of harm' if a release from the facility of radioactive material were to occur." *Calvert Cliffs,* CLI-09-20, 70 NRC at 917

(quoting *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 182-83 (2009)). In other proceedings where there is likewise an "obvious potential for offsite consequences," *St. Lucie,* CLI-89-21, 30 NRC at 329-30, "[w]hether and at what distance a petitioner can be presumed to be affected" is judged case by case, "taking into account the nature of the proposed action and the significance of the radioactive source." *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17 (1995).

RULES OF PRACTICE: STANDING (REPRESENTATIONAL)

Organizations that seek to represent the interests of their members also must meet the agency's representational standing requirements. An organization must demonstrate that at least one of its members has standing and has authorized the organization to request a hearing on the member's behalf. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999). In addition, the interests that the organization seeks to protect must be germane to its purpose, and neither the asserted claim nor the requested relief must require the member's participation. *Id.*; *see also Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237-38 (2020) (citing *Turkey Point,* CLI-15-25, 82 NRC at 394).

RULES OF PRACTICE: STANDING TO INTERVENE

For the standing inquiry, the petition is construed in favor of the petitioner. *See Vogtle,* CLI-20-6, 91 NRC at 238; *see also Georgia Tech,* CLI-95-12, 42 NRC at 115.

RULES OF PRACTICE: STANDING TO INTERVENE

"[I]t is the end result of the hearing . . . that must be considered to determine whether petitioners' interests will be affected." *Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear 1), LBP-80-22, 12 NRC 191, 196, *aff'd,* ALAB-619, 12 NRC 558, 564 (1980).

RULES OF PRACTICE: STANDING TO INTERVENE

Commission case law is clear that the claimed harm in the standing analysis need not be tied to the issues raised in the contentions. *See Calvert Cliffs,* CLI-09-20, 70 NRC at 918 n.28.

RULES OF PRACTICE: ADMISSIBILITY OF CONTENTIONS

The Commission has established a multi-part test for determining the admissibility of contentions to ensure that only focused, well-defined issues are admitted for hearing. *See* Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2201-02 (Jan. 14, 2004). All of the requirements in 10 C.F.R. § 2.309(f)(1) must be met for a contention to be admitted. *See* 10 C.F.R. § 2.309(f)(1)(i)-(vi). Licensing boards must hold petitioners to their burden of meeting these requirements and may not sift through lengthy sources and supporting documents to find support for a petitioner's contentions. *See Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204 (2003); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989).

RULES OF PRACTICE: ADMISSIBILITY OF CONTENTIONS

A petitioner must provide a specific statement of the issue of law or fact it seeks to raise and a brief explanation of the basis for each contention. 10 C.F.R. § 2.309(f)(1)(i)-(ii). The petitioner must support its claims with "a concise statement . . . of alleged facts or expert opinions." *Id.* § 2.309(f)(1)(v). Further, the petitioner must reference specific sources and documents sufficient to show "that a genuine dispute exists with the applicant . . . on a material issue of law or fact" and must reference specific portions of the application in dispute or identify omitted information that should have been included as a matter of law. *Id.* § 2.309(f)(1)(v)-(vi). Conclusory statements and speculation are insufficient to trigger a contested hearing. *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000).

RULES OF PRACTICE: ADMISSIBILITY OF CONTENTIONS

The petitioner must demonstrate that the issues it seeks to raise are within the scope of the proceeding and "material to the findings the NRC must make to support the action that is involved in the proceeding." 10 C.F.R. § 2.309(f)(1)(iii)-(iv). The scope of the proceeding is defined by the notice of opportunity for hearing and the referral from the Commission. *See Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 339 (1983); *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976).

ADJUDICATORY PROCEEDINGS

An NRC adjudicatory proceeding is not a forum for challenges to the Staff's

review or for "generalized grievances about NRC policies." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 237, 242 (2008); *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999); *see also Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 & n.33 (1974). Nor may licensing boards hear challenges to NRC regulations absent a Commission-granted waiver. *See* 10 C.F.R. § 2.335(a).

LICENSING BOARDS: AUTHORITY

It is well settled that licensing boards may not direct the Staff in the performance of its administrative functions. *See Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004); *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516 (1980); *Rockwell International Corp.* (Rocketdyne Division), ALAB-925, 30 NRC 709, 721-22 (1989).

RULES OF PRACTICE: INTERVENTION PETITION (TIMELINESS)

The agency's rules of practice set forth deadlines for hearing petitions and replies and provide that "[n]o other written answers or replies will be entertained." *See* 10 C.F.R. § 2.309(b), (i)(2), (i)(3).

LICENSING BOARDS: CASE MANAGEMENT

Unlike the agency in rulemaking proceedings, licensing boards do not, as a matter of routine, collect comments and documents from participants, but rather boards operate through motions, pleadings, and — at the evidentiary hearing stage — testimony and evidence.

RULES OF PRACTICE: REPLY BRIEFS

It is well established that a reply "must focus narrowly on the legal or factual arguments" in the petition and the answers. *See Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006). To allow new claims in a reply would "unfairly deprive other participants of an opportunity to rebut the new claims." *See id.*

RULES OF PRACTICE: MOTIONS

Requests of the licensing board must come in the form of a motion rather

than a "notice." *See* 10 C.F.R. §§ 2.309(c), 2.323; *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-13, 81 NRC 555, 569 n.86 (2015).

RULES OF PRACTICE: CONTENTION ADMISSIBILITY

Licensing boards are expected to adhere to the NRC's contention admissibility standards and must dismiss contentions that fail to meet them. *See* 10 C.F.R. § 2.309(a); *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, 6 (2010) ("We generally extend some latitude to *pro se* litigants, but we are still expected to comply with our procedural rules, including contention pleading requirements.").

LICENSE AMENDMENTS

Section 50.59 serves a gatekeeping function for determining the types of changes that may be accomplished without NRC approval and the types of changes that require an NRC-approved license amendment, the request of which would give rise to its own hearing opportunity. Changes that licensees may make without requesting a license amendment, while not subject to a hearing opportunity, could be the subject of a petition under 10 C.F.R. § 2.206. *See* 10 C.F.R. § 2.206; *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 n.7 (1994).

NRC GUIDANCE DOCUMENTS

NRC guidance documents do not "carry the binding effect of regulations." *International Uranium (USA) Corp.,* CLI-00-1, 51 NRC 9, 19 (2000).

ATOMIC ENERGY ACT: HEARING RIGHTS

Exemption requests, as a general rule, do not give rise to hearing opportunities. *See* Atomic Energy Act § 189a, 42 U.S.C. § 2239(a); *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 14 (2022).

ATOMIC ENERGY ACT: HEARING RIGHTS

The Commission will allow a challenge to an exemption request in an NRC adjudication when the exemption request is "inextricably intertwined" with an action for which a hearing opportunity must be provided, such as a license

amendment request. *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 553 (2016); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 467 (2001).

EXEMPTIONS

The Commission may grant an exemption if it (1) is authorized by law, (2) will not present an undue risk to public health and safety, and (3) is consistent with common defense and security. 10 C.F.R. § 50.12(a)(1). Further, the Commission "will not consider granting an exemption" unless one or more of the special circumstances enumerated in 10 C.F.R. § 50.12(a)(2) is present. *Id.* § 50.12(a)(2).

NATIONAL ENVIRONMENTAL POLICY ACT

Under the National Environmental Policy Act (NEPA), an EIS is required for "major Federal actions significantly affecting the quality of the human environment." NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C).

CASE MANAGEMENT, MOOTNESS

The Commission has long recognized that once purportedly missing information in a contention of omission has been supplied, the contention is moot and requires dismissal. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-16-11, 83 NRC 524, 539-40 & n.106 (2016) (citing *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002)). To allow otherwise would be contrary to the principles of sound case management. *See id.*

MEMORANDUM AND ORDER
(Ruling on Intervention Petitions)

Holtec Decommissioning International, LLC (HDI), and Holtec Palisades, LLC (collectively, Applicants) are pursuing a possible restart of the Palisades Nuclear Plant in Covert Township, Michigan. As part of this effort, Applicants have filed four requests to amend the Palisades renewed facility operating li-

cense.[1] In addition, Applicants have requested an exemption from 10 C.F.R. § 50.82(a)(2), which precludes operation of a reactor or emplacement or retention of fuel in the reactor vessel after the NRC has docketed a licensee's certifications of permanent cessation of operations and permanent removal of fuel.[2]

Pending before this Licensing Board are two hearing requests and petitions to intervene: one filed by Alan Blind, on behalf of himself and Bruce Davis, Karen Davis, Jody Flynn, Thomas Flynn, Christian Moevs, Dianne Ebert, Mary Huffman, and Chuck Huffman (collectively, Joint Petitioners); and the other filed by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service (collectively, Petitioning Organizations).[3] In addition to challenging the license amendment requests, Joint Petitioners and Petitioning Organizations seek to challenge the exemption request. For the reasons set forth below, we conclude that Joint Petitioners and Petitioning Organizations have demonstrated standing to intervene, but their proposed contentions are not admissible.[4]

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[1] Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant; Applications for Amendments to Renewed Facility Operating License Involving Proposed No Significant Hazards Considerations and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information, 89 Fed. Reg. 64,486, 64,487 (Aug. 7, 2024) (License Amendment Hearing Opportunity Notice).

[2] *Id.*; 10 C.F.R. § 50.82(a)(2).

[3] *See* Establishment of Atomic Safety and Licensing Board (Sept. 17, 2024); 89 Fed. Reg. 77,546 (Sept. 23, 2024); Memorandum from Carrie M. Safford, Secretary, Office of the Secretary, to E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel (Oct. 16, 2024) (October 16 Referral Memorandum); Memorandum from Tomas E. Herrera, Acting Secretary, Office of the Secretary, to E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel (Sept. 16, 2024). In her referral memorandum, the Secretary noted that Petitioning Organizations objected to the designation of an Atomic Safety and Licensing Board to rule on their hearing petition and requested that there "be assigned a U.S. Constitution, Article III judge for purposes of all pretrial and trial activity." October 16 Referral Memorandum at 1. Finding that Petitioning Organizations had "presented no authority suggesting that the Commission may assign incoming hearing petitions to federal judges in Article III courts," the Secretary referred the petition for disposition by a licensing board in accordance with her authority under 10 C.F.R. § 2.346(i). *Id.*

[4] Petitioning Organizations filed a motion to admit new and amended contentions on March 3, 2025. Petitioning Organizations' Motion to File Amended and New Contentions (Mar. 3, 2025); Petitioning Organizations' Amended and New Contentions Based on Draft Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Power Plant (Mar. 3, 2025) (Petitioning Organizations New and Amended Contentions). Because these contentions are currently pending before us, we do not terminate the proceeding.

I. BACKGROUND

The NRC issued an operating license for the Palisades Nuclear Plant on March 24, 1971, and in 2007, the NRC granted a renewed operating license for a term ending on March 24, 2031.[5] Ten years later, Entergy Nuclear Operations, Inc. (Entergy), the licensee and operator of Palisades at that time, notified the NRC of its intent to shut down the plant before the expiration of the renewed license term.[6] Thereafter, Entergy, and later, HDI, pursued and received a series of regulatory exemptions and license amendments to reflect the reactor's shutdown and defueled status, including changes to the operating license and technical specifications, administrative controls, and site emergency plan.[7]

On June 13, 2022, Entergy certified to the NRC that it had ceased operations on May 20, 2022, and that it had removed fuel from the reactor vessel on June 10, 2022.[8] With the NRC's docketing of these certifications, and by application of 10 C.F.R. § 50.82(a)(2), the Palisades renewed operating license no longer authorized operation of the reactor or emplacement or retention of fuel in the reactor vessel.[9] Entergy transferred the license to Holtec Palisades, as the licensed owner, and HDI, as the licensed operator, on June 28, 2022, to begin the process of decommissioning the plant.[10]

HDI now is pursuing a potential restart of the Palisades Nuclear Plant on behalf of Holtec Palisades. To that end, Applicants have proposed a regula-

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[5] License Amendment Hearing Opportunity Notice, 89 Fed. Reg. at 64,487; Letter from Juan Ayala, NRC, to Paul A. Harden, Nuclear Management Company, LLC (Jan. 17, 2007) (ADAMS Accession No. ML070100476).

[6] Letter from Charles F. Arnone, Entergy, to NRC Document Control Desk (Jan. 4, 2017) (ML17004A062).

[7] *See, e.g.,* Letter from Scott P. Wall, NRC, to Vice President, Operations, Entergy (May 13, 2022) (ML22039A198) (approving amendments to operating license and technical specifications); Letter from Scott P. Wall, NRC, to Vice President, Operations, Entergy (June 4, 2018) (ML18114A410) (approving amendments to administrative controls); Letter from Tanya E. Hood, NRC, to Jean A. Fleming, Holtec International (Dec. 27, 2023) (ML23236A004) (approving amendments to site emergency plan).

[8] *See* Letter from Darrell W. Corbin, Entergy, to NRC Document Control Desk (June 13, 2022) (ML22164A067).

[9] *See* 10 C.F.R. § 50.82(a)(2).

[10] *See* Letter from Jean A. Fleming, Holtec International, to Bo Pham, NRC (Mar. 13, 2023) at 1-2 (ML23072A404) (Applicants Proposed Regulatory Path); Letter from Scott P. Wall, NRC, to Pierre Paul Oneid, Holtec International, and Kelly D. Trice, HDI (June 28, 2022) at 1-2 (ML22173A173). In March 2023, a presiding officer compiled and certified to the Commission an evidentiary record regarding issues raised in the Michigan Attorney General's challenge to the transfer from Entergy to Holtec Palisades and HDI. *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), LBP-23-5, 97 NRC 116 (2023). The certified record remains pending before the Commission.

tory roadmap, with reference to a 2021 denial of a petition for rulemaking[11] in which the Commission concluded that "the existing regulatory framework may be used" to address restart requests.[12] Thus, using the existing regulatory framework, Applicants seek to unwind the modifications that had been approved in furtherance of shutdown.[13]

In particular, Applicants seek an exemption from 10 C.F.R. § 50.82(a)(2) to allow operation of the reactor and emplacement and retention of fuel.[14] Three of Applicants' license amendment requests would, if approved, undo and revise prior amendments to the Palisades operating license and technical specifications, administrative controls, and site emergency plan.[15] The fourth license amendment request would allow the use of a particular methodology for analyzing a main steam line break.[16] Applicants also requested to transfer the Palisades operating license to a new entity that would operate the plant if restart is authorized.[17]

The NRC, for its part, established the Palisades Restart Panel to coordinate and oversee the restart project.[18] Its "primary objective is to proactively identify and promptly resolve any licensing, inspection, or regulatory challenges that concern the Palisades restart."[19] Among its tasks, the Restart Panel serves to

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[11] *See* Applicants Proposed Regulatory Path at 1-2, 4.

[12] Petition for Rulemaking, Denial, Criteria to Return Retired Nuclear Power Reactors to Operations, 86 Fed. Reg. 24,362, 24,362 (May 6, 2021) (Denial of Petition for Rulemaking); Staff Requirements — SECY-20-0110 — Denial of Petition for Rulemaking on Criteria to Return Retired Nuclear Power Reactors to Operations (PRM-50-117; NRC-2019-0063) (Apr. 1, 2021) (ML21091A228 (package)).

[13] *See* Applicants Proposed Regulatory Path at 2 ("While NRC regulations do not prescribe a specific regulatory path for reinstating operational authority following docketing of the 50.82(a)(1) certifications, the NRC has recognized that its existing regulatory framework — namely the process of reviewing and approving exemption and license amendment requests prescribed by 10 CFR 50.12 and 50.90 — provides adequate flexibility to accommodate reauthorization of operations.").

[14] Applicants Proposed Regulatory Path, Encl. 1, at 2; Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Sept. 28, 2023) (ML23271A140) (Exemption Request).

[15] Applicants Proposed Regulatory Path, Encl. 1, at 2-3; Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Dec. 14, 2023) (ML23348A148) (Operating License and Technical Specifications Amendment Request); Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Feb. 9, 2024) (ML24040A089); Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (May 1, 2024) (ML24122C666).

[16] Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (May 24, 2024) (ML24145A145).

[17] Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Dec. 6, 2023) (ML23340A161) (Restart Transfer Request).

[18] Memorandum from Andrea D. Veil and John B. Giessner, NRC, to Distribution List (Nov. 27, 2023) Encl. at 1-5 (ML23297A053) (Palisades Restart Panel Charter).

[19] *Id.* at 1.

identify "the regulatory reviews and approvals . . . necessary to return the plant to operation and plac[e] them in the appropriate sequence to facilitate implementation and oversight."[20] Applicants acknowledge that additional regulatory reviews and approvals will be necessary to return Palisades to operation, some of which are already in progress.[21]

On August 7, 2024, the NRC published in the *Federal Register* a notice of opportunity to request a hearing and petition to intervene on Applicants' four license amendment requests with an October 7, 2024 deadline for intervention petitions.[22] In that notice, the NRC also explained that it was providing a hearing opportunity on the license transfer request, but under a separate *Federal Register* notice issued the same day, with an intervention-petition deadline of August 27, 2024.[23] The NRC further stated that it was not publishing a notice of opportunity for hearing on the exemption request, but the Secretary of the Commission later clarified by order that the presiding officer of the license amendment proceeding would determine whether any challenges to the exemption request were within the license amendment proceeding's scope.[24]

On September 9, 2024, Alan Blind filed an intervention petition on behalf of Joint Petitioners, followed by eleven supplements filed before the October 7, 2024 intervention-petition deadline, with five proposed contentions, one of which Joint Petitioners subsequently withdrew.[25] Although Mr. Blind did not

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[20] *Id.* at 2.

[21] *See* Applicants Proposed Regulatory Path, Encl. 1, at 3-7.

[22] License Amendment Hearing Opportunity Notice, 89 Fed. Reg. at 64,486-93.

[23] *Id.* at 64,487; *see* Holtec Decommissioning International, LLC, Holtec Palisades, LLC, and Palisades Energy, LLC; Palisades Nuclear Plant and the Palisades Independent Spent Fuel Storage Installation; Consideration of Approval of Transfer of Licenses and Conforming Amendment, 89 Fed. Reg. 64,493 (Aug. 7, 2024) (License Transfer Hearing Opportunity Notice).

[24] License Amendment Hearing Opportunity Notice, 89 Fed. Reg. at 64,487; Order of the Secretary; Holtec Decommissioning International, LLC (Sept. 26, 2024) at 3 (unpublished) (ML24270A263) (clarifying that the *Federal Register* notice "does not categorically exclude or predetermine the admissibility of contentions that a petitioner may submit, including contentions relating to an exemption request" and that the "admissibility of such contentions will be determined by the presiding officer to the proceeding, in accordance with 10 C.F.R. § 2.309 and established Commission practice").

[25] Joint Petitioners Hearing Petition (Sept. 9, 2024); Supplemental Filing to Strengthen Standing of Petitioners in NRC Docket No. 50-255-LA-3 (dated Sept. 19, 2024; filed Sept. 20, 2024) (Supplement 1); Supplemental Submission to the Petition Regarding the Safety Impact of Steam Generator Tube Plugging at Palisades Nuclear Plant (dated Sept. 19, 2024; filed Sept. 20, 2024) (Supplement 2); Supplemental Filing to Strengthen that Holtec's Proposed Use of § 50.59 Is Within the Scope of the FRN [(Federal Register Notice)] for Requesting a Public Hearing (dated and filed Sept. 22, 2024) (Supplement 3); Part Two, Supplemental Submission to the Petition Regarding the Safety Impact of Steam Generator Tube Plugging at Palisades Nuclear Plant (dated and filed Sept. 22, 2024) (Supplement 4); Part Three, Supplemental Submission to the Petition Regarding the Safety

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name himself as a petitioner initially, he identified his interest in the proceeding and stated that Joint Petitioners had selected him to serve as their representative and point of contact.[26] Because Mr. Blind is not an attorney and because he had not identified himself as a petitioner, we provided Joint Petitioners an opportunity to address an apparent issue with their representation under 10 C.F.R. § 2.314, along with an opportunity for the other participants to respond.[27] Mr. Blind thereafter requested to be named as one of Joint Petitioners, and Joint Petitioners confirmed their wish to consolidate their petitions and have Mr. Blind serve as their designated point of contact.[28] We granted Mr. Blind's and Joint Petitioners' requests.[29]

Impact of Steam Generator Tube Plugging at Palisades Nuclear Plant: the Need for NRC to Review the Palisades Design Basis of SSCs [(Systems, Structures, and Components)] to Next Approve Accident Safety Analysis and Evaluate Steam Generator Tube Plugging Limits (dated and filed Sept. 22, 2024) (Supplement 5); Supplemental Filing to Emphasize the Importance of Transparency in NRC and Holtec's Processes: the Need for a Public Hearing (dated Sept. 23, 2024; filed Sept. 24, 2024) (Supplement 6); Supplemental, Part Two, Filing to Strengthen Standing of Petitioners in NRC Docket No. 50-255-LA-3 (dated and filed Sept. 25, 2024) (Supplement 7); Part Two: Supplemental Filing to Further Strengthen the Argument that Holtec's Proposed Use of § 50.59 Is Flawed and Requires NRC Oversight, Based on NEI [(Nuclear Energy Institute)] 96-07 Guidelines for 10 CFR 50.59 Implementation (dated and filed Sept. 27, 2024) (Supplement 8); Third Supplemental Filing to Highlight the Critical Need to Use a FSAR [(Final Safety Analysis Report)] Based on Current General Design Criteria, Unlike Holtec's Proposed Use of 50.59 to Build a FSAR: Before Analysis of the Significant Stress Corrosion Cracking (SCC) in Steam Generator Tubing Findings (dated and filed Oct. 3, 2024) (Supplement 9); Contention Five: Holtec's Exemption Request Fails to Meet Requirements for Acceptance Review, as per 10 CFR 50.12, "Specific Exemptions" (dated and filed Oct. 4, 2024) (Supplement 10); Supplemental Filing: Further Basis for Contention Five, Holtec's Proposed Sequence, Without NRC Approval, Predicate for Specific Exception Request NRC Staff Review (dated and filed Oct. 5, 2024) (Supplement 11); Petitioners' Notice of Withdrawal of Contention 4 (Jan. 31, 2025) (Withdrawal of Joint Petitioners' Contention 4).

[26] *See* Joint Petitioners Hearing Petition at 13, 15-16, 19, 72-74.

[27] Licensing Board Order (Concerning Oral Argument Scheduling and Joint Petitioners' Representation) (Nov. 14, 2024) at 2-3 (unpublished); *see* 10 C.F.R. § 2.314(b) ("A person may appear in an adjudication on his or her own behalf or by an attorney-at-law.").

[28] Joint Petitioners' Brief on Representation, Consolidation of Petitions, and Standing of Our Appointed Consolidated Point of Contact, Alan Blind (Nov. 21, 2024) at 2 (Joint Petitioners Brief on Representation Issue). Joint Petitioners supplemented their brief on December 2, 2024, within our established December 5, 2024 briefing deadline. Supplemental Filing, Harm Linkage Explanation (Dec. 2, 2024). Applicants and the Staff filed timely response briefs on December 12, 2024. Applicants' Response to Joint Petitioners' Supplemental Filings (Dec. 12, 2024) (Applicants Brief on Representation Issue); NRC Staff Answer to Joint Petitioners' Brief on Representation, Consolidation of Petitions, and Standing of Consolidated Point of Contact, Alan Blind (Dec. 12, 2024) (Staff Brief on Representation Issue).

[29] *See* Licensing Board Order (Addressing Joint Petitioners' Representation and Requesting Information on Availability for Oral Argument) (Dec. 17, 2024) at 4-5 (unpublished) (Board Order

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On October 7, 2024, Petitioning Organizations filed an intervention petition with seven proposed contentions, attaching declarations in support of their standing and the admissibility of their contentions.[30] The petition and its attachments, however, were filed on the docket for the license transfer proceeding. After the

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Addressing Representation Issue). We consider any procedural defects with Joint Petitioners' representation and compliance with the signature requirements in 10 C.F.R. §§ 2.304(d) and 2.314(b) to be cured.

[30] Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service (dated Oct. 7, 2024; filed Oct. 10, 2024) at 30-73 (Petitioning Organizations Hearing Petition). Attached to the petition are several supporting documents labeled "exhibits." See Declaration of Arnold Gundersen in Support of Petition to Intervene and Request for Adjudicatory Hearing by Michigan Safe Energy Future, Don't Waste Michigan, Nuclear Energy Information Service, Three Mile Island Alert, and Beyond Nuclear (dated Oct. 7, 2024; filed Oct. 10, 2024) (Gundersen Declaration); Arnold Gundersen, Curriculum Vitae, Chief Engineer, Fairewinds Associates, Inc. (dated Oct. 2024; filed Oct. 10, 2024); Declaration of Kevin Kamps (dated Nov. 26, 2023; filed Oct. 10, 2024) (Kamps Declaration); Declaration of Mark Z. Jacobson and Curriculum Vitae (declaration dated Sept. 10, 2024; curriculum vitae last updated Oct. 11, 2023; both filed Oct. 10, 2024) (Jacobson Declaration); Declaration of Authorized Officer of Beyond Nuclear in Support of Petition for Leave to Intervene in Palisades Nuclear Plant License Transfer, Exemption and License Amendment Request Proceedings (dated Aug. 27, 2024; filed Oct. 10, 2024); Declaration of William D. Reed in Support of Petition for Leave to Intervene in Palisades Nuclear Power Plant Exemption Proceeding (dated Aug. 27, 2024; filed Oct. 10, 2024) (Reed Declaration); Declaration of Carolyn Ferry in Support of Petition for Leave to Intervene in Palisades Nuclear Plant Exemption Proceeding (dated Aug. 25 and 27, 2024; filed Oct. 10, 2024) (Ferry Declaration); Declaration of Authorized Officer of Three Mile Island Alert in Support of Petition for Leave to Intervene in Palisades Nuclear Plant Exemption and License Amendment Request Proceeding (dated Oct. 4 and 7, 2024; filed Oct. 10, 2024); Declaration of David Staiger in Support of Petition for Leave to Intervene in Palisades Nuclear Plant License Transfer Proceeding (dated Oct. 5 and 7, 2024; filed Oct. 10, 2024) (Staiger Declaration); Declaration of Authorized Officer of Don't Waste Michigan in Support of Petition for Leave to Intervene in Palisades Nuclear Plant License Transfer, Exemption and License Amendment Request Proceedings (dated Aug. 27, 2024; filed Oct. 10, 2024); Declaration of Alice Hirt in Support of Petition for Leave to Intervene in Palisades Nuclear Power Plant Exemption Proceeding (dated Aug. 25 and 27, 2024; filed Oct. 10, 2024) (Hirt Declaration); Declaration of Joseph C. Kirk in Support of Petition for Leave to Intervene in Palisades Nuclear Power Plant Exemption Proceeding (dated Oct. 3, 2024; filed Oct. 10, 2024) (Kirk Declaration); Declaration of Authorized Officer of Michigan Safe Energy Future in Support of Petition for Leave to Intervene in Palisades Nuclear Plant License Transfer, Exemption and License Amendment Proceedings (dated Aug. 27, 2024; filed Oct. 10, 2024); Declaration of James Scott in Support of Petition for Leave to Intervene in Palisades Nuclear Plant Exemption Proceeding (dated Aug. 24 and 27, 2024; filed Oct. 10, 2024) (J. Scott Declaration); Declaration of Ann Scott in Support of Petition for Leave to Intervene in Palisades Nuclear Plant License Transfer Proceeding (dated Aug. 24 and Aug 27, 2024; filed Oct. 10, 2024) (A. Scott Declaration); Declaration of Authorized Officer of Nuclear Energy Information Service in Support of Petition for Leave to Intervene in Palisades Nuclear Plant Exemption and License Amendment Request Proceeding (dated Oct. 4 and 7, 2024; filed Oct. 10, 2024); Declaration of John Brenneman in Support of Petition for Leave to Intervene in Palisades Nuclear Plant License Transfer Proceeding (dated Oct. 4 and 7, 2024; filed Oct. 10, 2024) (Brenneman Declaration).

Office of the Secretary notified Petitioning Organizations of their filing error, they refiled the petition on the correct docket on October 10, 2024, three days after the deadline for intervention petitions.[31] Additionally, almost four months after the intervention deadline, Petitioning Organizations filed two attachments that they assert were inadvertently omitted from their petition.[32]

We established a consolidated briefing schedule for answers and replies.[33] Applicants and the Staff filed answers to the intervention petitions on November 4, 2024.[34] Joint Petitioners and Petitioning Organizations replied on November 8, 2024, and November 12, 2024, respectively.[35]

Petitioning Organizations included a supplemental declaration from one of their experts, Arnold Gundersen, with their reply.[36] Additionally, Petitioning Organizations filed a second supplemental declaration from Arnold Gundersen on November 18, 2024, correcting statements in his prior two declarations.[37]

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[31] *See* E-mail from Hearing Docket, NRC, to Wallace Taylor, Counsel for Petitioning Organizations (Oct. 8, 2024, 8:12:58 AM) (ML24289A193); E-mail from Hearing Docket, NRC, to License Transfer Proceeding Service List (Oct. 8, 2024, 2:53:52 PM) (ML24289A194); E-mail from Hearing Docket, NRC, to Wallace Taylor, Counsel for Petitioning Organizations (Oct. 9, 2024, 2:51:59 PM) (ML24289A195); E-mail from Wallace Taylor, Counsel for Petitioning Organizations, to Hearing Docket, NRC (Oct. 10, 2024, 5:11:12 PM) (ML24289A196).

[32] Notice of Filing of Inadvertently Omitted Supporting Attachments to Declaration of Mark Z. Jacobson (Feb. 1, 2025) at 1 (Notice of Filing Attachments to Jacobson Declaration).

[33] Licensing Board Order (Amending Initial Prehearing Order) (Oct. 17, 2024) at 2 (unpublished) (Amended Initial Prehearing Order).

[34] Applicants' Answer Opposing Joint Petitioners' Petition for Hearing (Nov. 4, 2024) (Applicants Answer to Joint Petitioners); Applicants' Answer Opposing Beyond Nuclear et al.'s Petition for Hearing (Nov. 4, 2024) (Applicants Answer to Petitioning Organizations); NRC Staff Answer to Hearing Request from Individual Petitioners in Palisades Restart Amendment Proceeding (Nov. 4, 2024) (Staff Answer to Joint Petitioners); NRC Staff Answer to Intervention Petition from Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service in Palisades Restart Amendments Proceeding (Nov. 4, 2024) (Staff Answer to Petitioning Organizations).

[35] Petitioner's Rebuttal: NRC Staff Answer to Hearing Request from Individual Petitioners in Palisades Restart Amendment Proceeding (dated Nov. 7, 2024; filed Nov. 8, 2024) (Joint Petitioners Reply to Staff); Petitioner's Rebuttal: Applicants' Answer Opposing Joint Petitioners' Petition for Hearing (dated Nov. 7, 2024; filed Nov. 8, 2024) (Joint Petitioners Reply to Applicants); Petitioning Organizations' Combined Reply to Answers Filed by NRC Staff and Holtec to the Petition to Intervene (Nov. 12, 2024) (Petitioning Organizations Reply).

[36] Supplemental Declaration of Arnold Gundersen in Support of Petition to Intervene and Request for Adjudicatory Hearing by Michigan Safe Energy Future, Don't Waste Michigan, Nuclear Energy Information Service, Three Mile Island Alert, and Beyond Nuclear (Nov. 12, 2024) (Supplemental Gundersen Declaration).

[37] Petitioning Organizations' Notice of Filing of Second Supplemental Declaration of Arnold Gundersen (Nov. 18, 2024); Second Supplemental Declaration of Arnold Gundersen in Support of Pe-

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Applicants filed a motion to strike portions of Petitioning Organizations' reply on November 22, 2024.[38] Petitioning Organizations oppose the motion to strike.[39]

Also pending before us are several filings from Joint Petitioners that appear to be intended either as requests to supplement their hearing petition and their reply or requests to add documents to the adjudicatory record.[40] These filings were submitted after the intervention-petition deadline, and all but one were filed after the deadline for replies. Applicants and the Staff have filed responses opposing the supplemental filings.[41]

On January 31, 2025, the Staff provided notice of its issuance of the Draft Environmental Assessment (Draft EA) and Draft Finding of No Significant Im-

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tition to Intervene and Request for Adjudicatory Hearing by Michigan Safe Energy Future, Don't Waste Michigan, Nuclear Energy Information Service, Three Mile Island Alert, and Beyond Nuclear (dated Nov. 17, 2024; filed Nov. 18, 2024) (Second Supplemental Gundersen Declaration).

[38] Applicants' Motion to Strike Portions of Beyond Nuclear et al.'s Combined Reply to Answers Filed by Applicants and NRC Staff (Nov. 22, 2024) (Motion to Strike).

[39] Petitioning Organizations' Response in Opposition to Applicants' Motion to Strike Portions of Beyond Nuclear Et Al.'s Combined Reply to Answers Filed by Applicants and NRC Staff (Dec. 2, 2024) (Petitioning Organizations Response to Motion to Strike).

[40] Request to Add Correspondence to Docket No. 50-255-LA-3 (dated Oct. 19, 2024; filed Oct. 20, 2024) (Joint Petitioners October 20 Supplement); Supplement to Petitioner's Rebuttal to NRC Staff's: Applicants' Answer Opposing Joint Petitioners' Petition for Hearing (Dec. 8, 2024) (Joint Petitioners December 8 Supplement); Rebuttal to NRC Staff's Reply with New Comments (Dec. 13, 2024) (Joint Petitioners December 13 Supplement A); Supplement Two Based on New Information, to Supplement Petitioner's Rebuttal to NRC Staff's: Applicants' Answer Opposing Joint Petitioners' Petition for Hearing (Dec. 13, 2024) (Joint Petitioners December 13 Supplement B); Ensuring a Common Understanding of NRC Terms: Design Basis, Final Safety Analysis Report (FSAR), and Technical Specifications (Dec. 16, 2024) (Joint Petitioners December 16 Supplement); Motion to Include NRC Staff LAR Reviewer Request for Additional Information Concerning Updated Operations FSAR and Holtec's Use of 10 C.F.R. § 50.59 into the Adjudication Docket (Dec. 31, 2024) (Joint Petitioners December 31 Supplement). Joint Petitioners initially requested an extension of time to file their December 31 supplement, which the Staff opposed, but Joint Petitioners withdrew the extension request. *See* Joint Petitioners' Motion for Extension of Time (Dec. 30, 2024); NRC Staff Answer to Joint Petitioners' Motion for Extension of Time (Dec. 31, 2024) at 1; Joint Petitioners December 31 Supplement at 3.

[41] *See* Applicants Answer to Joint Petitioners at 67-69; Staff Answer to Joint Petitioners at 83-84; Applicants Brief on Representation Issue at 7-9; NRC Staff Answer to Joint Petitioners' Requests to Supplement their Replies to the Answers to Joint Petitioners' Hearing Request (Dec. 18, 2024) at 1-2 (Staff December 18 Response); Applicants' Answer to Joint Petitioners' Late-Filed Pleadings (Dec. 19, 2024) at 1-2 n.1; NRC Staff Answer to Joint Petitioners' Motion to Include NRC Staff Request for Additional Information and Applicant Response into the Adjudication Docket (Jan. 8, 2025) at 1; Applicants' Opposition to Joint Petitioners' Motion to Add RAI Documents to the Adjudicatory Docket (Jan. 9, 2025) at 1-2. *But see* Staff December 18 Response at 1 n.1 (stating that the Staff was not responding to Joint Petitioners December 13 Supplement A).

pact (Draft FONSI) for the Palisades restart project.[42] We sought and received briefs from the participants on the impact of these documents on the proposed contentions.[43]

We held oral argument on February 12, 2025, to allow Joint Petitioners, Petitioning Organizations, Applicants, and the Staff to address issues raised in the intervention petitions and related filings.[44] Because we have been tasked with ruling on these petitions, we direct our focus to the requirements for intervention — timeliness, standing, and contention admissibility.[45]

II. ANALYSIS

A. Timeliness of Petitioning Organizations' Hearing Petition

We first address the threshold issue of the timeliness of Petitioning Organizations' hearing petition, since it was filed three days after the intervention petition deadline.[46] As discussed above, the Office of the Secretary created separate

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[42] Notification of Availability of Draft Environmental Assessment and Draft Finding of No Significant Impact (Jan. 31, 2025) (Staff Notification); *see* "Draft Environmental Assessment and Draft Finding of No Significant Impact for the Palisades Nuclear Plant Reauthorization of Power Operations Project" (Draft for Comment) (Jan. 2025) (ML24353A157) (Draft EA and Draft FONSI); Holtec Decommissioning International, LLC and Holtec Palisades, LLC; Palisades Nuclear Plant; Draft Environmental Assessment and Draft Finding of No Significant Impact, 90 Fed. Reg. 8721 (Jan. 31, 2025).

[43] Licensing Board Order (Scheduling Briefing Concerning the Draft Environmental Assessment and Draft Finding of No Significant Impact) (Feb. 3, 2025) (unpublished) (Order Scheduling Briefing on Draft EA/FONSI); Petitioning Organizations' Brief on Effects of Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Power Plant (Feb. 19, 2025) (Petitioning Organizations Initial Brief on Draft EA/FONSI); NRC Staff Position on the Effect of the Staff's Draft Environmental Assessment and Draft Finding of No Significant Impact on the Admissibility of Petitioning Organizations' Proposed Environmental Contentions (Feb. 19, 2025) (Staff Initial Brief on Draft EA/FONSI); Applicants' Brief in Response to Board's Order Requesting Briefing on Impact of Draft Environmental Assessment and Draft Finding of No Significant Impact (Feb. 19, 2025) (Applicants Initial Brief on Draft EA/FONSI); Petitioning Organizations' Response Brief on Effects of Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Plant (Feb. 26, 2025) (Petitioning Organizations Response Brief on Draft EA/FONSI); NRC Staff Response to Petitioning Organizations' Brief on the Effect of the Staff's Draft Environmental Assessment and Draft Finding of No Significant Impact on the Admissibility of the Proposed Environmental Contentions (Feb. 26, 2025) (Staff Response Brief on Draft EA/FONSI); Applicants' Response Brief Regarding Impact of Draft EA/FONSI (Feb. 26, 2025) (Applicants Response Brief on Draft EA/FONSI).

[44] Tr. at 1-94; Licensing Board Order (Correcting Prehearing Conference Transcript) (Mar. 13, 2025) (unpublished). In advance of the argument, Joint Petitioners filed written opening and closing statements.

[45] *See* 10 C.F.R. § 2.309(a), (b).

[46] *See id.* § 2.309(b)(3), (c).

dockets for this proceeding and the *Palisades* license transfer proceeding. Petitioning Organizations initially filed their petition on the license transfer docket. Over the course of three days, the Office of the Secretary attempted to contact counsel for Petitioning Organizations to alert them to the filing error.[47]

Counsel responded on October 10, 2024, and filed the petition on the correct docket later that day.[48] Petitioning Organizations did not amend the date of their petition, which still reads October 7, 2024, nor did they provide an explanation at that time for the three-day delay. Rather, they waited until they filed their reply on November 12, 2024, after Applicants had objected to the petition on timeliness grounds.[49]

In their reply, Petitioning Organizations state that their counsel was out of the office until October 10 and responded as soon as he returned.[50] They claim that the *Federal Register* notice for this proceeding "does not contain any reference whatever to the new number created for this docket."[51] They further assert that the emails from the Office of the Secretary make clear that their petition "was being treated as timely filed."[52] In addition, pointing to our order setting the deadline for answers at twenty-five days from the date the petition was filed on the correct docket, Petitioning Organizations claim that Applicants cannot show any prejudice from the late-filed petition.[53] Finally, Petitioning Organizations assert that Applicants have not referenced any NRC regulation or case law in support of the argument that the petition should be dismissed for late filing.[54]

Petitioning Organizations are represented by counsel who have appeared in multiple NRC adjudications. Given that experience, we find it difficult to credit their claim of surprise that there would be two different dockets when the separate *Federal Register* notices made clear that the agency treated the proceedings as distinct, with different deadlines, each with instructions for prospective petitioners to contact the Secretary in advance of filing a petition to ensure that a docket had been created for that proceeding.[55] We are also not persuaded by

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[47] *See supra* note 31.

[48] *Id.*

[49] *See* Applicants Answer to Petitioning Organizations at 2; Petitioning Organizations Reply at 8-9. The Staff does not challenge the timeliness of Petitioning Organizations' hearing petition. *See* Staff Answer to Petitioning Organizations at 1 n.1 (noting, without objecting to, the timing of Petitioning Organizations' filing).

[50] Petitioning Organizations Reply at 9.

[51] *Id.* at 8.

[52] *Id.* at 9.

[53] *Id.*

[54] *Id.*

[55] *See* Licensing Amendment Hearing Opportunity Notice, 89 Fed. Reg. at 64,488-89; License Transfer Hearing Opportunity Notice, 89 Fed. Reg. at 64,495. Because Joint Petitioners had already

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Petitioning Organizations' claim that the email communications from the Office of the Secretary indicated that the Secretary had deemed the petition to be timely filed.[56] There is nothing in the emails exchanged between the Secretary's staff and Petitioning Organizations' counsel to indicate that the filings had been accepted as timely, and we decline to assume that the Secretary took any such implied action here.[57]

Finally, the *Federal Register* notice and the NRC's rules of practice make clear that petitions filed after the deadline will not be considered absent good cause.[58] Therefore, Petitioning Organizations' counsel should have taken more care to ensure that the petition had been correctly filed. Further, counsel should have provided a justification for the late filing upon learning of their error, or they should have requested an extension of the filing deadline after the fact.[59] They did neither. Their conduct fell short of what is expected of counsel experienced in NRC adjudicatory proceedings.[60]

That said, we decline to impose the harsh result of dismissing Petitioning Organizations' hearing petition due to their counsel's inattention over three days, especially considering that we allowed Applicants and the Staff the full twenty-five days to respond to the petition from the date of its filing on the correct

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filed their petition by the time Petitioning Organizations filed theirs, the license amendment docket had already been established. Additionally, three of the Petitioning Organizations, represented by the same counsel appearing in this case, had, by that time, already filed a petition to intervene in the separate license transfer proceeding. *See* Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan and Michigan Safe Energy Future (Aug. 27, 2024) at 27 (Docket No. 50-255-LT-3) (ML24240A210).

[56] *See* 10 C.F.R. § 2.346 (setting forth the Secretary's delegation of authority to act on behalf of the Commission).

[57] Moreover, the Secretary's referral of the petition to the Atomic Safety and Licensing Board Panel "for disposition" notes the initial filing error and Petitioning Organizations' correction but provides no specific direction on that score. October 16 Referral Memorandum at 1.

[58] License Amendment Hearing Opportunity Notice, 89 Fed. Reg. at 64,488; 10 C.F.R. § 2.309(c).

[59] *See* 10 C.F.R. §§ 2.309(c)(2), 2.307(a).

[60] *See Public Service Electric and Gas Co.* (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973) (observing that, in contrast with *pro se* litigants, attorneys are reasonably expected to adhere to standards of clarity and precision). We also note that counsel filed their notices of appearance on November 5, 2024, four days after the deadline in our initial prehearing order, again without an explanation for their tardiness. *See* Licensing Board Order (Initial Prehearing Order) (Sept. 19, 2024) at 2 (unpublished) (Initial Prehearing Order) (setting forth a November 1, 2024 deadline for notices of appearance). In addition, Petitioning Organizations belatedly filed, after the intervention deadline, attachments to the Jacobson Declaration, without seeking leave of the Board or offering any justification for the nearly four-month delay other than to assert that the attachments were "inadvertently omitted." *See* Notice of Filing Attachments to Jacobson Declaration at 1. We address the propriety of this filing below.

docket.[61] We turn now to Joint Petitioners' and Petitioning Organizations' standing.

B. Joint Petitioners' and Petitioning Organizations' Standing to Intervene

Applicants argue that neither Joint Petitioners nor Petitioning Organizations have established standing to intervene in this proceeding.[62] The Staff argues that all nine Joint Petitioners have established standing, but only two of the five Petitioning Organizations have established standing — Three Mile Island Alert and Nuclear Energy Information Service.[63] We conclude that all petitioners have met the requirements for standing to intervene in this proceeding.

Section 189a of the Atomic Energy Act of 1954, as amended, requires the NRC to "grant a hearing upon the request of any person whose interest may be affected by the proceeding."[64] The Commission has established general standing criteria that require a petitioner to provide certain identifying information (name, address, and telephone number) and require a petitioner to state (1) the nature of its right under the statute governing the proceeding to be made a party; (2) the nature and extent of its property, financial, or other interest; and (3) the possible effect of any decision made in the proceeding on that interest.[65]

When determining whether a petitioner has met the agency's standing requirements, the Commission and licensing boards generally look to contemporaneous judicial concepts of standing — a three-part inquiry into whether the petitioner has demonstrated (1) "an injury in fact that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision."[66] As a shorthand for these judicial standing concepts, in certain licensing proceedings the Commission has recognized a presumption of standing based on

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[61] *See* Amended Initial Prehearing Order at 2.

[62] Applicants Answer to Joint Petitioners at 57-67; Applicants Brief on Representation Issue at 3-7; Applicants Answer to Petitioning Organizations at 73-78.

[63] Staff Answer to Joint Petitioners at 13-17; Staff Brief on Representation Issue at 13; Staff Answer to Petitioning Organizations at 9-18.

[64] 42 U.S.C. § 2239(a)(1)(A).

[65] 10 C.F.R. § 2.309(d)(1)(i)-(iv); *see also Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009).

[66] *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015). The NRC's standing analysis also includes a "zone-of-interests" test whereby the injury must arguably be within the zone of interests protected by the governing statute. *Calvert Cliffs,* CLI-09-20, 70 NRC at 915 (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)).

a petitioner's proximity to the facility in question.[67] In construction permit and operating license proceedings, this presumption extends to fifty miles, based on a "finding . . . that persons living within [that radius] 'face a realistic threat of harm' if a release from the facility of radioactive material were to occur."[68] In other proceedings where there is likewise an "obvious potential for offsite consequences,"[69] "[w]hether and at what distance a petitioner can be presumed to be affected" is judged case by case, "taking into account the nature of the proposed action and the significance of the radioactive source."[70]

Organizations that seek to represent the interests of their members also must meet the agency's representational standing requirements. An organization must demonstrate that at least one of its members has standing and has authorized the organization to request a hearing on the member's behalf.[71] In addition, the interests that the organization seeks to protect must be germane to its purpose, and neither the asserted claim nor the requested relief must require the member's participation.[72] For our standing inquiry, we construe the petitions in favor of the petitioners.[73]

1. Joint Petitioners' Standing

Each of the Joint Petitioners declared they reside within fifty miles of the Palisades reactor, in addition to providing their addresses in the petition.[74] They assert that their proximity to the plant exposes them to potential risks, "including radiological releases, contamination, and evacuation."[75] Further, they

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[67] *See Calvert Cliffs,* CLI-09-20, 70 NRC at 917; *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).

[68] *Calvert Cliffs,* CLI-09-20, 70 NRC at 917 (quoting *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 182-83 (2009)).

[69] *St. Lucie,* CLI-89-21, 30 NRC at 329-30.

[70] *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17 (1995).

[71] *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999).

[72] *Id.*; *see also Southern Nuclear Operating Co., Inc.* (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237-38 (2020) (citing *Turkey Point,* CLI-15-25, 82 NRC at 394).

[73] *See Vogtle,* CLI-20-6, 91 NRC at 238; *see also Georgia Tech,* CLI-95-12, 42 NRC at 115.

[74] *See* Joint Petitioners Hearing Petition at 72-81; Joint Petitioners Brief on Representation Issue at 16-25. As provided in our order granting Joint Petitioners' request to cure their representation, we consider Joint Petitioners' brief, their December 2 supplement, and the Staff's and Applicants' response briefs as permissible addenda to the hearing requests and answers. Board Order Addressing Representation Issue at 5.

[75] Joint Petitioners Hearing Petition at 75-81; *see also* Supplement 1, at 1-7; Supplement 7, at 1-13; Joint Petitioners Brief on Representation Issue at 18-25.

express concerns about the license amendment requests and assert that, given their proximity to the plant, they "have a vested interest in ensuring that the highest standards of safety and regulatory oversight are maintained."[76]

This proceeding, which involves the potential to restart a shutdown and defueled reactor, is the first of its kind. Thus, Commission case law does not expressly address whether the fifty-mile proximity presumption applies to a proceeding of this type. Nevertheless, taking into account the nature of the proposed action — license amendment requests and an exemption request in aid of restarting Palisades — and the significance of the radioactive source — the Palisades reactor at full-power operation — we conclude that the Commission's fifty-mile proximity presumption logically extends to this proceeding.[77] As the Staff puts it, enabling Applicants to "resume operation at full power . . . . on its face[ ] entails an obvious potential for offsite consequences."[78] Further, the "common thread" underpinning the application of the fifty-mile presumption, which recognizes "the potential effects at significant distances from the facility of the accidental release of fissionable materials," applies equally here.[79] Because Joint Petitioners all reside within fifty miles of Palisades and have expressed their concerns about restart, we conclude that they have demonstrated standing to intervene.[80]

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[76] Joint Petitioners Hearing Petition at 75-81.

[77] *See Georgia Tech,* CLI-95-12, 42 NRC at 116-17.

[78] Staff Answer to Joint Petitioners at 17. Other licensing boards have found an obvious potential for offsite consequences in license amendment proceedings with sources of similar significance to the licensing actions at issue here. *See PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 18-20 (2007) (applying the fifty-mile proximity presumption in a power uprate proceeding); *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 25 (2002) (applying the fifty-mile proximity presumption for a technical specification change that would add tens of millions of curies of radioactive gas to the core inventory).

[79] *Calvert Cliffs,* CLI-09-20, 70 NRC at 917 (quoting *Calvert Cliffs,* LBP-09-4, 69 NRC at 183) (internal quotation marks omitted).

[80] We are not persuaded by Applicants' claim that their four license amendment requests "are not in and of themselves sufficient to allow Applicants to load fuel and operate the reactor" and that there is zero risk of the harms that Joint Petitioners raise as potential consequences from restart. Applicants Answer to Joint Petitioners at 64-65; *see also* Applicants Brief on Representation Issue at 5 ("The ultimate restart of power operations at Palisades requires many approvals and processes, and NRC approval of the [license amendment requests] is necessary, but not sufficient, to restart power operations."). By acknowledging the necessity of the license amendment requests but maintaining that they do not demonstrate a plausible chain of causation or are so speculative as to result in zero harm, Applicants would have it both ways. For our standing analysis, we decline to ignore the practical effect of Applicants' license amendment requests with respect to their pursuit of restarting Palisades. *See Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear 1), LBP-80-22, 12 NRC 191, 196 (observing, in a construction permit extension proceeding, that "it is the

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2. Petitioning Organizations' Standing

Petitioning Organizations assert that they have standing to intervene in this proceeding based on the representation of their members.[81] Each organization has provided a description of its purpose as either opposing nuclear power in general or opposing the restart of the Palisades Nuclear Plant in particular.[82] Additionally, each organization has provided declarations from members who state that they reside within fifty miles of the Palisades reactor and are concerned about risks to their health and safety from a restart of the plant.[83] These members also state that they support the petition and that they have authorized the organizations to request a hearing on their behalf.[84]

The Staff maintains that three Petitioning Organizations — Beyond Nuclear, Don't Waste Michigan, and Michigan Safe Energy Future — have not demonstrated representational standing because their members' declarations do not

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end result of the hearing . . . that must be considered to determine whether petitioners' interests will be affected"), *aff'd,* ALAB-619, 12 NRC 558, 564 (1980) (reasoning that "the outcome of the [construction permit extension] proceeding will have a significant, and perhaps crucial, bearing on whether the plant will . . . be placed in operation" and is thus "within the sphere of the cognizable interest of those persons who, because they reside near the facility site, had the requisite standing to intervene in the construction permit proceeding (and will have similar standing with regard to any eventual operating license proceeding)"). Nor do we agree with Applicants to the extent they argue that, for the purposes of standing, Joint Petitioners' contentions must be linked to their claimed harm. *See* Applicants Answer to Joint Petitioners at 65-66 & n.247. Commission case law is clear that the claimed harm in the standing analysis need not be tied to the issues raised in the contentions. *See Calvert Cliffs,* CLI-09-20, 70 NRC at 918 n.28.

[81] *See* Petitioning Organizations Hearing Petition at 4-25.

[82] Beyond Nuclear describes itself as a not-for-profit organization that "advocates the immediate expansion of renewable energy sources to replace commercial nuclear power generation." *Id.* at 4. Michigan Safe Energy Future describes itself as a "grassroots association of people in western and southwestern Michigan which since 2013 has advocated for the permanent shutdown of Palisades Nuclear Plant and replacement of nuclear and natural gas power generation with safe and renewable nonnuclear energy technologies." *Id.* at 8. Don't Waste Michigan describes itself as a grassroots association that, among other objectives, works to "shut down aging, dangerous nuclear power plants in the Great Lakes Basin." *Id.* at 12. Three Mile Island Alert describes itself as a "grassroots advocacy organization opposed to commercial nuclear power for safety and economic reasons." *Id.* at 16. Nuclear Energy Information Service describes itself as a "nonprofit organization committed to ending nuclear power and advocating for sustainable ecologically sound and socially just energy solutions." *Id.* at 19.

[83] *See* Reed Declaration at 1-3; Ferry Declaration at 1-3; Staiger Declaration at 1-2; Hirt Declaration at 1-3; Kirk Declaration at 1-3; J. Scott Declaration at 1-3; A. Scott Declaration at 1-3; Brenneman Declaration at 1-2.

[84] *See* Reed Declaration at 3; Ferry Declaration at 3; Staiger Declaration at 2-3; Hirt Declaration at 2-3; Kirk Declaration at 2-3; J. Scott Declaration at 2-3; A. Scott Declaration at 2-3; Brenneman Declaration at 2-3.

specifically state that the members oppose the license amendment requests.[85] And the Staff argues that the members' express opposition to the exemption request in their declarations is insufficient to establish standing.[86] The Staff, however, views the exemption request as within the scope of this proceeding and therefore the permissible subject of proposed contentions.[87] Construing the petition and declarations in the most favorable light,[88] we conclude that the members of these organizations demonstrate their awareness of the license amendment requests, and they plainly express their opposition to any licensing action that would lead to the restart of operations at Palisades,[89] which the Staff concedes, includes the license amendment requests.[90]

Moreover, even if we agreed with the Staff's interpretation of the petition and declarations, we would find these members' stated opposition to the exemption request sufficient to establish standing. The Staff's agreement that the exemption request is within the scope of the proceeding leads to the logical conclusion that a decision in Petitioning Organizations' favor on their challenges to the exemption request would meet the judicial standing concepts incorporated into NRC adjudications — injury, causation, and redressability.[91] In other words, because the exemption request is one of the actions at issue here,[92] this proceeding's scope necessarily comprehends both the injuries that might accrue from that action and the challenges that might be addressed in an evidentiary hearing on any admitted contentions.[93] We therefore find unavailing the Staff's attempt

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[85] Staff Answer to Petitioning Organizations at 12-15.

[86] *Id.* at 14-15.

[87] *See id.* at 31.

[88] *See Georgia Tech,* CLI-95-12, 42 NRC at 115.

[89] *See* Reed Declaration at 1-3; Ferry Declaration at 1-3; Hirt Declaration at 1-3; Kirk Declaration at 1-3; J. Scott Declaration at 1-3; A. Scott Declaration at 1-3.

[90] *See* Staff Answer to Petitioning Organizations at 7 (asserting that all four license amendment requests would need to be granted for restart to be authorized). Referencing the Commission's decision in *Vogtle,* the Staff asserts that we may disregard the standing declarations for the members of these three organizations. *See id.* at 13-14 & n.62 (citing *Vogtle,* CLI-20-6, 91 NRC at 228 n.15, 238). But the Staff's reference to *Vogtle* is inapposite. In *Vogtle,* the Commission found that the petitioners had not demonstrated standing because they made no reference to standing in their petition and only referred to it in an attached declaration. *See Vogtle,* CLI-20-6, 91 NRC at 237-38. Here, in contrast, the petition discusses standing in depth. *See* Petitioning Organizations Hearing Petition at 4-25.

[91] *See* 10 C.F.R. § 2.309(d)(1)(iii)-(iv).

[92] *See infra* section II.C.1.d (concluding that the exemption request is within the scope of the proceeding).

[93] The Staff argues that contentions address "whether the proposed action should be granted" but that standing "is focused on the asserted injury that would accrue if the proposed action is granted."

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to exclude the exemption request from the standing analysis.[94]

All five Petitioning Organizations seek to represent members who have standing in their own right based on their proximity to Palisades and their concerns from potential restart. In addition, Petitioning Organizations have demonstrated that the interests they seek to protect in challenging the potential restart of Palisades are germane to their purposes.[95] Further, the issues presented in this proceeding, which involve challenges to Applicants' license amendment requests and exemption request, do not require the direct participation of Petitioning Organizations' members. Thus, we conclude that Petitioning Organizations have met the requirements for representational standing.

C. Joint Petitioners' and Petitioning Organizations' Proposed Contentions

The Commission has established a multi-part test for determining the admissibility of contentions to ensure that only focused, well-defined issues are admitted for hearing.[96] All of the requirements in 10 C.F.R. § 2.309(f)(1) must be met for a contention to be admitted.[97] We must hold petitioners to their burden of meeting these requirements and may not sift through lengthy sources and supporting documents to find support for a petitioner's contentions.[98]

Staff Answer to Petitioning Organizations at 16 (emphasis omitted). But the Staff has conceded that the granting of another proposed action — the exemption request — is sufficiently intertwined with the granting of the license amendment requests such that it is within the scope of the proceeding. *Id.* at 15-16; *see Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 551-52 (2016) (concluding that because a license amendment and exemption request were "essentially two necessary parts of the action," the exemption request was within the scope of the license amendment adjudication); *see also Bailly,* ALAB-619, 12 NRC at 564 (focusing on the outcome of a proceeding to extend a construction permit as a necessary step toward plant operation). Thus, in the circumstances presented here, the Staff raises a distinction without a difference.

[94] Applicants argue that the exemption request cannot serve as a basis for standing because it is not within the scope of the proceeding. *See* Applicants Response to Petitioning Organizations at 75-77. They also repeat their argument that the license amendment requests are "insufficient in and of themselves" to restart Palisades and assert that the concerns of Petitioning Organizations' members stemming from operation of the plant are not redressable in this proceeding. *Id.* at 77. We reject these arguments for the reasons provided above. *See supra* notes 80, 91-93 and accompanying text.

[95] *See supra* note 82 and accompanying text.

[96] *See* Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2201-02 (Jan. 14, 2004).

[97] *See* 10 C.F.R. § 2.309(f)(1)(i)-(vi).

[98] *See Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204 (2003); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989).

A petitioner must provide a specific statement of the issue of law or fact it seeks to raise and a brief explanation of the basis for each contention.[99] The petitioner must support its claims with "a concise statement of . . . alleged facts or expert opinions."[100] Further, the petitioner must reference specific sources and documents sufficient to show "that a genuine dispute exists with the applicant . . . on a material issue of law or fact"[101] and must reference specific portions of the application in dispute or identify omitted information that should have been included as a matter of law.[102] Conclusory statements and speculation are insufficient to trigger a contested hearing.[103]

Additionally, the petitioner must demonstrate that the issues it seeks to raise are within the scope of the proceeding and "material to the findings the NRC must make to support the action that is involved in the proceeding."[104] The scope of the proceeding is defined by the notice of opportunity for hearing and the referral from the Commission.[105] An NRC adjudicatory proceeding is not a forum for challenges to the Staff's review[106] or for "generalized grievances about NRC policies."[107] Nor may licensing boards hear challenges to NRC regulations absent a Commission-granted waiver.[108] And it is well settled that licensing boards may not direct the Staff in the performance of its administrative functions.[109]

In this decision we consider eleven proposed contentions — four from Joint Petitioners, and seven from Petitioning Organizations.[110] Applicants argue that

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[99] 10 C.F.R. § 2.309(f)(1)(i)-(ii).

[100] *Id.* § 2.309(f)(1)(v).

[101] *Id.* § 2.309(f)(1)(v)-(vi).

[102] *Id.* § 2.309(f)(1)(vi).

[103] *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000).

[104] 10 C.F.R. § 2.309(f)(1)(iii)-(iv).

[105] *See Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 339 (1983); *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976).

[106] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 237, 242 (2008).

[107] *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999); *see also Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 & n.33 (1974).

[108] *See* 10 C.F.R. § 2.335(a).

[109] *See Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004); *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514, 516 (1980); *Rockwell International Corp.* (Rocketdyne Division), ALAB-925, 30 NRC 709, 721-22 (1989).

[110] We will address Petitioning Organizations' new and amended contentions in a separate decision.

none of the proposed contentions are admissible.[111] In its answer, the Staff had argued that a portion of Petitioning Organizations' Contention 7 was admissible, but that all other contentions filed by Joint Petitioners and Petitioning Organizations were inadmissible.[112] The Staff now argues, however, that the portion of Contention 7 it had supported for admission became moot with the issuance of the Draft EA and Draft FONSI.[113] We conclude that none of Joint Petitioners' or Petitioning Organizations' proposed contentions meets the Commission's strict admissibility standards.

Before we turn to each of the proposed contentions, we first address Joint Petitioners' and Petitioning Organizations' supplemental filings. Joint Petitioners submitted several filings after the October 7, 2024 intervention-petition deadline.[114] In our decision addressing Joint Petitioners' representation, we emphasized the importance of adhering to the NRC's procedural rules and any deadlines set forth in licensing board and Commission orders, which Joint Petitioners acknowledged.[115] Despite this caution, Joint Petitioners submitted an additional filing on December 31, 2024.[116] It is not clear whether Joint Petitioners ask us to treat these filings as general motions under 10 C.F.R. § 2.323 or motions to amend their contentions under 10 C.F.R. § 2.309(c).[117] But under either interpretation, the filings are procedurally improper.[118] Nevertheless, because Joint

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[111] Applicants Answer to Joint Petitioners at 27-28; Applicants Answer to Petitioning Organizations at 25.

[112] Staff Answer to Joint Petitioners at 11; Staff Answer to Petitioning Organizations at 8.

[113] *See* Staff Initial Brief on Draft EA/FONSI at 1, 10-13.

[114] *See supra* note 40.

[115] *See* Board Order Addressing Representation Issue at 5-6; Joint Petitioners' Response to Memorandum and Order (Addressing Joint Petitioners' Representation and Requesting Information on Availability for Oral Argument) (Dec. 17, 2024) at 1-2.

[116] *See* Joint Petitioners December 31 Supplement.

[117] *See, e.g., id.* at 1-3, 9 (referencing sections 2.309(c) and 2.323).

[118] *See* 10 C.F.R. § 2.309(b), (i)(2), (i)(3) (setting forth the deadlines for hearing petitions and replies and that "[n]o other written answers or replies will be entertained"); *id.* § 2.309(c)(1) (requiring a demonstration of "good cause" as a prerequisite for a presiding officer to entertain a motion to admit new or amended contentions, including a material difference from information previously available); Initial Prehearing Order at 3-4; Amended Initial Prehearing Order at 2. Two of Joint Petitioners' filings request that we add documents to the docket. *See* Joint Petitioners October 20 Supplement; Joint Petitioners December 31 Supplement. Unlike the agency in rulemaking proceedings, however, licensing boards do not, as a matter of routine, collect comments and documents from participants, but rather boards operate through motions, pleadings, and — at the evidentiary hearing stage — testimony and evidence. While licensing boards might be required to place an *ex parte* or off-the-record communication on the docket in accordance with 10 C.F.R. §§ 2.347(c) and 2.348(c), those provisions are not applicable here. Nor does it appear that Joint Petitioners are seeking to provide a limited appearance statement in accordance with 10 C.F.R. § 2.315(a), which applies, in any event, to persons not participating in a proceeding.

Petitioners are not represented by counsel, we have reviewed the supplemental filings and determined that Joint Petitioners' arguments do not change our conclusion that their contentions are inadmissible.[119]

Petitioning Organizations submitted a supplemental declaration with their reply. They also filed two attachments to their intervention petition on February 1, 2025. Applicants moved to strike the supplemental declaration and portions of the reply, arguing that Petitioning Organizations had raised new arguments "exceeding the allowable scope of a reply brief."[120]

It is well established that a reply "must focus narrowly on the legal or factual arguments" in the petition and the answers.[121] The question for us, then, is whether Petitioning Organizations' reply is thus narrowly tailored. To allow new claims in a reply would "unfairly deprive other participants of an opportunity to rebut the new claims."[122]

Petitioning Organizations' supplemental declaration focuses on climate-change impacts, which Petitioning Organizations also discuss in their petition, and which Applicants and the Staff both touch on in their answers.[123] But we need not parse whether the arguments in the supplemental declaration go beyond the arguments in the petition and answers. In either case, whether or not the reply is properly scoped, our consideration of the supplemental declaration would not change our determination that Petitioning Organizations have not met the NRC's contention admissibility requirements. We therefore deny Applicants' motion to strike as moot.

With regard to the two documents that Petitioning Organizations assert were inadvertently omitted from their petition, these were filed almost four months after the intervention deadline, without sufficient explanation for the lengthy delay.[124] We would be well within our authority not to consider these docu-

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[119] *See USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 439 & n.31 (2006) (noting that the licensing board had granted a petitioner considerable leeway in reviewing out-of-process filings given the petitioner's *pro se* status).

[120] Motion to Strike at 9; *see* Supplemental Gundersen Declaration. Applicants do not appear to object to the Second Supplemental Gundersen Declaration. Because the Second Supplemental Gundersen Declaration appears to correct Mr. Gundersen's prior statements rather than introduce new arguments, we have considered it in our review of Petitioning Organizations' contentions. *See* Second Supplemental Gundersen Declaration.

[121] *See Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006).

[122] *See id.,* CLI-06-17, 63 NRC at 732.

[123] *See* Supplemental Gundersen Declaration at 5; Petitioning Organizations Hearing Petition at 57-61; Applicants Answer to Petitioning Organizations at 59-60; Staff Answer to Petitioning Organizations at 67-69.

[124] *See* Notice of Filing Attachments to Jacobson Declaration at 1. Petitioning Organizations nei-

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ments.[125] Nevertheless, we conclude that they do not support the admissibility of Petitioning Organizations' contentions.

1. Joint Petitioners' Contentions

a. Contention 1

> NRC [S]taff are proceeding with the review of license amendments, and other licensee restart actions, based on a denial of a rulemaking petition without approval from NRC General Counsel of [S]taff's interpretation of SECY-20-0110 for [Applicants'] proposed license amendments, specifically regarding which NRC rules constitute the "existing regulatory framework."[126]

In Contention 1, Joint Petitioners challenge the Staff's review of the license amendment requests and assert that the Commission's decision in an earlier denial of a petition for rulemaking to use the "existing regulatory framework" provides "no public visibility" of the rules to be used for restarting a plant that has submitted its shutdown certifications.[127] They maintain that the Staff must propose, and the General Counsel must approve, the specific rules to be used for reviewing restart requests.[128]

Additionally, Joint Petitioners argue that Applicants have proposed the use of regulations that are "outside" the existing regulatory framework — particularly, (1) the change process in 10 C.F.R. § 50.59 to reinstate the Updated Final Safety Analysis Report (UFSAR) rather than the requirements in 10 C.F.R. § 50.34 for construction permit applications; and (2) Applicants' proposal to update its decommissioning quality assurance program to cover restart activities without prior NRC approval, rather than adhering to the quality assurance requirements in 10 C.F.R. Part 50, Appendix B, for construction permit and operating license applications.[129] Joint Petitioners stress that the NRC must ensure its regulations

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ther reference, nor address, the good cause requirements for a filing submitted after the intervention-petition deadline in 10 C.F.R. § 2.309(c).

[125] *See* 10 C.F.R. §§ 2.309(c), 2.319(g), (q), (s), 2.320. We also remind Petitioning Organizations that requests of the Board must come in the form of a motion rather than a "notice." *See id.* §§ 2.309(c), 2.323; *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-13, 81 NRC 555, 569 n.86 (2015).

[126] Joint Petitioners Hearing Petition at 24-25.

[127] *Id.* at 39.

[128] *Id.* at 39-40; *see also* Supplement 6, at 8-10 (expressing concerns about a lack of transparency and asserting that it is the Staff and General Counsel, not Applicants, who must select and approve the applicable regulations).

[129] Joint Petitioners Hearing Petition at 43-46. Joint Petitioners challenge each of these proposals in Contentions 2 and 3, respectively. *See id.* at 25, 43-46.

are "objective, measurable, and uniformly applied to prevent regulatory subjectivity or inconsistency, both of which could compromise safety."[130] They also emphasize the importance of the NRC's maintaining its independence and rigorous oversight to protect against conflicts of interest and ensure that "regulations are applied solely to maintain safety, not for the convenience of licensees."[131] And they stress the need for full transparency, without which "the public cannot make informed judgments about the risks, safeguards, or adequacy of the regulatory processes being followed."[132]

Because Joint Petitioners are not represented by counsel, we accord them some leeway in our review of their petition and read their arguments in the most favorable light.[133] But for the purposes of contention admissibility, that leeway may only go so far. We are expected to adhere to the NRC's contention admissibility standards and must dismiss contentions that fail to meet them.[134]

Joint Petitioners' overarching concern appears to be with the Staff's process for reviewing the license amendment requests rather than the license amendment requests themselves.[135] Their arguments regarding which regulations the Staff should use for its review and their claim that the regulations also require General Counsel approval go to this point. In the same vein, Joint Petitioners appear to imply that there is a risk that the NRC will not objectively apply its oversight and regulatory functions in reviewing the license amendment requests in the absence of a regulatory scheme approved by the General Counsel.[136] In essence,

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[130] *Id.* at 49.

[131] *Id.*

[132] Supplement 6, at 2 (acknowledging that Applicants "may have a legally sound restart plan, and the NRC may have valid interpretations of regulatory guidelines," and arguing that full transparency is required to ensure that is the case); *see also* Joint Petitioners Reply to Staff at 8, 15, 18, 38-39. As an example of the lack of transparency, Joint Petitioners reference redacted portions of Applicants' submittals, but Joint Petitioners also state that they are not challenging the legality of the redactions in their petition. Supplement 6, at 3-6. Although it does not appear that Joint Petitioners are seeking access to this redacted material, we observe that the time to request access was in advance of the intervention-petition deadline, as specified in the notice of opportunity to request a hearing. *See* License Amendment Hearing Opportunity Notice, 89 Fed. Reg. at 64,490-92.

[133] *See USEC,* CLI-06-9, 63 NRC at 439; *Salem,* ALAB-136, 6 AEC at 489.

[134] *See* 10 C.F.R. § 2.309(a); *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, 6 (2010) ("We generally extend some latitude to *pro se* litigants, but they are still expected to comply with our procedural rules, including contention pleading requirements.").

[135] Of the four license amendment requests, Joint Petitioners expressly reference only one — the Operating License and Technical Specifications Amendment Request — but they do not specifically challenge it. *See* Joint Petitioners Hearing Petition at 20.

[136] *See id.* at 49; Supplement 6, at 2; Joint Petitioners Reply to Staff at 16, 22-24; *see also* Joint Petitioners Reply to Staff at 43 (requesting that we perform "[a]n independent assessment . . . to

(Continued)

Joint Petitioners ask us to perform a supervisory role to ensure that the Staff conducts its review in accordance with the Atomic Energy Act and the NRC's regulations.[137] But Commission case law is clear that an adjudicatory proceeding is not a forum for challenges to the Staff's review, and we may not direct the Staff in the performance of its administrative functions.[138]

We recognize, given the views expressed in the written filings and at oral argument, that Joint Petitioners have concerns about the Staff's review of this first-of-its-kind proposal to restart a shutdown nuclear plant. Although they have raised issues that are not redressable in an adjudicatory proceeding, there are other avenues available for public participation, including public meetings, petitions for action under 10 C.F.R. § 2.206, and petitions for rulemaking under 10 C.F.R. § 2.802. Indeed, outside of this proceeding, one of the Joint Petitioners, Mr. Blind, filed a petition for rulemaking to develop a process for returning decommissioning plants to operating status, which was docketed on July 23, 2024, and he has filed two petitions for agency action.[139] But Joint Petitioners have not raised any concerns specific to the adequacy of the four license amendment requests at issue here. Therefore, we must dismiss Contention 1.[140]

b. Contention 2

> [Applicants'] proposal to update the [UFSAR], now titled the Defueled Safety Analysis Report (DSAR), via the 10 [C.F.R.] 50.59 process (changes, tests, and experiments) is flawed and not consistent with a more applicable regulation within the "existing regulatory framework" as referenced in SECY-20-0110.[141]

In Contention 2, Joint Petitioners build on their concern regarding what they

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determine whether . . . OGC's involvement as both reviewer and advocate may influence the fairness of the proceedings and impact the impartial application of regulatory standards").

[137] *See* Joint Petitioners Hearing Petition at 48-49; Supplement 6, at 2, 8; Joint Petitioners Reply to Staff at 9, 16, 22-24, 41-43.

[138] *See Catawba,* CLI-04-6, 59 NRC at 74 ("The licensing boards' sole, but very important, job is to consider safety, environmental, or legal issues raised by license applications. Licensing boards simply have no jurisdiction over non[-]adjudicatory activities of the Staff that the Commission has clearly assigned to other offices unless the Commission itself grants that jurisdiction to the Board."). To the extent Joint Petitioners question the Staff's decision to docket and begin review of the license amendment requests or the Staff's application of the Commission policy that restart requests be evaluated using the existing regulatory framework, the contention likewise raises issues outside of this proceeding's scope. *See, e.g., Oconee,* CLI-99-11, 49 NRC at 334.

[139] *See* Joint Petitioners Hearing Petition at 82-85; Petition for Rulemaking, Returning a Decommissioning Plant to Operating Status, 89 Fed. Reg. 76,750, 76,750 (Sept. 19, 2024).

[140] *See* 10 C.F.R. § 2.309(f)(1)(iii).

[141] Joint Petitioners Hearing Petition at 25.

characterize as the "highly subjective" nature of applying the existing regulatory framework to restart a shutdown plant, and again assert that the General Counsel must approve the regulations that apply to Applicants' proposed restart of Palisades.[142] In particular, Joint Petitioners assert that Applicants may not use the change process in 10 C.F.R. § 50.59 to update the UFSAR because, Joint Petitioners claim, the UFSAR and the previous licensing basis ceased to exist upon the submittal of the certifications of permanent cessation of operations and permanent removal of fuel.[143] Joint Petitioners claim that Applicants must revise the FSAR in accordance with the requirements for construction permits in 10 C.F.R. § 50.34 and 10 C.F.R. Part 50, Appendix A.[144] They request that the NRC suspend its review of Applicants' restart plans until such an FSAR is submitted.[145]

In support of Contention 2, Joint Petitioners point to an NRC inspection report concerning steam generator tube degradation at Palisades and related discussions pertaining to Applicants' proposed repair strategy.[146] They assert that an NRC-approved FSAR is a prerequisite for accurately assessing the safety risks associated with steam generator tube failures[147] and, more generally, a prerequisite for performing a full safety evaluation of the plant's current condition.[148] According to Joint Petitioners, a new FSAR is necessary because the Palisades plant was originally licensed before the NRC developed the General Design Criteria (GDC) in Part 50 and the guidance in its Standard Review Plans.[149] "As a result," Joint Petitioners claim, "the plant operates with less defense-in-depth than newer, GDC-compliant plants," even after the introduction of the

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[142] *See id.* at 51.

[143] *Id.* at 52 (asserting that Applicants' proposed use of section 50.59 "is not possible because there is no current FSAR . . . to perform the required evaluation of whether the changes can be made [under that section]").

[144] *Id.*; Supplement 2, at 3-4; Supplement 4, at 7-8; Supplement 5, at 6. Joint Petitioners also reference the FSAR requirements in 10 C.F.R. § 52.157, but as this proceeding does not concern a manufacturing license, this reference appears to have been in error. *See* Supplement 8, at 2.

[145] Supplement 9, at 8.

[146] Supplement 2, at 2; Supplement 9, at 3.

[147] *See* Supplement 9, at 5.

[148] *See* Supplement 2, at 4 ("By allowing [Applicants] to proceed without submitting a [preliminary safety analysis report], and the NRC approval of the FSAR, the NRC is failing to meet its regulatory responsibilities. . . . The absence of an NRC approved FSAR further exacerbates [the safety risks that plugging limits have been exceeded], as it prevents a full safety evaluation of the plant's current condition."); Supplement 4, at 4 (asserting that the "FSAR serves as the foundation for all safety-related analyses at a nuclear power plant," including various accident scenarios that are implicated by steam generator tube plugging); *see also* Supplement 5, at 3-7; Supplement 9, at 4-8.

[149] Supplement 5, at 1-2; *see also* Supplement 9, at 5 (referring to the need for a modern FSAR).

Systematic Evaluation Program in 1985 "to address the safety gaps caused by the plant's pre-GDC design."[150]

Joint Petitioners also assert a lack of transparency in whether Applicants will use the Nuclear Energy Institute (NEI) 96-07 guidelines for implementing the section 50.59 change process.[151] According to Joint Petitioners, these guidelines "are essential to maintain consistency[ ] and the integrity of the safety framework established by the NRC, ensuring that unapproved changes do not compromise public safety."[152] They fault the NRC for not imposing the guidelines as a mandatory requirement.[153] Relatedly, Joint Petitioners argue, as they do for Contention 1, that the lack of transparency concerning the change process in section 50.59 hinders the public's ability to assess whether the "changes required for restart are being handled in compliance with [NRC regulations]."[154] They request our "intervention and oversight to ensure regulatory transparency and public accountability."[155]

Joint Petitioners assert that Contention 2 is within the scope of the proceeding because the section 50.59 process is referenced in Applicants' Operating License and Technical Specifications Amendment Request and is central to restoring plant operations.[156] But as we explained above in our ruling on Contention 1, the scope of this proceeding, as defined by the *Federal Register* notice, is limited to the adequacy of Applicants' four license amendment requests and does not include every other action that might be required for restart.[157] Joint Petitioners do not explain, beyond conclusory assertions, how Applicants' description of its proposed use of the section 50.59 process in one of the amendment requests draws that process into the scope of this license amendment proceeding.[158]

Moreover, section 50.59 serves a gatekeeping function for determining the types of changes that may be accomplished without NRC approval and the types of changes that require an NRC-approved license amendment, the request of which would give rise to its own hearing opportunity.[159] As Applicants recog-

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[150] Supplement 5, at 2; *see also* Supplement 8, at 9; Supplement 9, at 2, 4.

[151] Supplement 8, at 2-3.

[152] *Id.* at 2.

[153] *See id.* at 3 ("This represents another instance of the NRC shirking its regulatory mission by failing to establish clear rules, effectively allowing licensees like [Applicants] to select which rules to follow.").

[154] Supplement 6, at 5-6.

[155] Supplement 8, at 4.

[156] Supplement 3, at 3-4.

[157] Consistent with the Secretary's order, *see supra* note 24, in our ruling on Contention 5 we address whether Applicants' exemption request is also within this proceeding's scope.

[158] *See* Operating License and Technical Specifications Amendment Request, Encl. at 4.

[159] 10 C.F.R. § 50.59(c); *see* Atomic Energy Act § 189a, 42 U.S.C. § 2239(a).

nize, using the change process in section 50.59 might require them "to file requests for additional NRC approvals that they did not anticipate at the outset."[160] In other words, the section 50.59 change process itself is not challengeable here, but the outcome after application of that process could give rise to an action that later might be challenged. Indeed, Applicants have now filed a license amendment request to address the steam generator tubes;[161] therefore, the NRC will provide an opportunity to raise concerns specific to that amendment request.[162] To the extent Joint Petitioners imply that using the section 50.59 change process in the restart context necessarily leads to safety risks, this amounts to both an impermissible challenge to a regulation in an adjudicatory proceeding[163] and an impermissible challenge to the Commission's policy that the existing regulatory framework be used for restart requests.[164]

Regarding Joint Petitioners' claims that Applicants must file a new FSAR and that the plant operates with "less defense-in-depth" than newer plants, Joint Petitioners provide conclusory assertions without sufficient support.[165] Similarly, they do not explain why they view the UFSAR for Palisades as non-existent, when the reference to the UFSAR in the Operating License and Technical Specification Amendment Request indicates that it was revised in view of decommissioning, rather than terminated.[166] Joint Petitioners also do not explain how their claims pertain to the four license amendment requests, let alone provide specific references to the portions of the amendment requests they dispute, as required by the agency's contention admissibility rules.[167]

The remaining claims in Contention 2 challenge the Staff's review of the license amendment requests, and for that reason they are outside the scope of

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[160] Applicants Answer to Joint Petitioners at 21; *see also* Tr. at 53.

[161] *See* Tr. at 53; Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Feb. 11, 2025) (ML25043A348) (Steam Generator Tube Amendment Request).

[162] *See* Atomic Energy Act § 189a, 42 U.S.C. 2239(a). Changes that licensees may make without requesting a license amendment, while not subject to a hearing opportunity, could be the subject of a petition under 10 C.F.R. § 2.206. *See* 10 C.F.R. § 2.206; *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 n.7 (1994).

[163] *See* 10 C.F.R. § 2.335(a) (providing that agency rules are not subject to challenge in adjudicatory proceedings absent a waiver).

[164] *See Oconee,* CLI-99-11, 49 NRC at 334.

[165] *See* 10 C.F.R. § 2.309(f)(1)(v); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 216 (2003) (explaining that "a petitioner must do more than submit 'bald or conclusory allegations' of a dispute with the applicant" (quoting *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-01-24, 54 NRC 249, 358 (2001))).

[166] *See* Operating License and Technical Specification Amendment Request, Encl. at 4.

[167] *See* 10 C.F.R. § 2.309(f)(1)(vi).

the proceeding, similar to Contention 1.[168] Joint Petitioners question the Staff's application of the existing regulatory framework and request that the General Counsel establish a framework specific to restart requests. However, they seek relief that may not be granted in an NRC adjudicatory proceeding.[169] Likewise, their request that we exercise a general supervisory role to ensure the Staff is handling its review in compliance with NRC regulations and their claim that the Staff should make the guidance in NEI 96-07 a mandatory requirement may not be entertained in an NRC adjudication.[170] We therefore must dismiss Contention 2.[171]

c. Contention 3

> [Applicants'] proposal to update the HDI decommissioning Quality Assurance Program Description (QAPD) currently in effect, with appropriate quality assurance controls to cover the activities being performed at the plant during the restoration period, without prior NRC approval, is flawed and not consistent with a more applicable regulation within the "existing regulatory framework" as referenced in SECY-20-0110.[172]

In Contention 3, Joint Petitioners challenge Applicants' plans for updating the quality assurance program description for Palisades. Joint Petitioners assert that the quality assurance program description was specific to plant operation and ceased to exist upon the submittal of the certifications of permanent cessation of operations and permanent removal of fuel.[173] Therefore, Joint Petitioners argue, because the quality assurance program description "no longer exists," Applicants may not "simply update the HDI decommissioning [quality assurance program description] currently in effect."[174] Further, Joint Petitioners reference the quality assurance program requirements in 10 C.F.R. Part 50, Appendix B, and the NRC's Standard Review Plan for construction and operation of nuclear plants and suggest that this framework should be applied here.[175]

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[168] *See id.* § 2.309(f)(1)(iii); *Catawba,* CLI-04-6, 59 NRC at 74.

[169] *See Catawba,* CLI-04-6, 59 NRC at 74.

[170] *See id.*; *International Uranium (USA) Corp.,* CLI-00-1, 51 NRC 9, 19 (2000) (clarifying that NRC guidance documents do not "carry the binding effect of regulations"); *Peach Bottom,* ALAB-216, 8 AEC at 21 n.33 (explaining that adjudications are not the proper forum for advancing "views of what applicable policies ought to be").

[171] *See* 10 C.F.R. § 2.309(f)(1)(iii), (v), (vi).

[172] Joint Petitioners Hearing Petition at 25.

[173] *Id.* at 56-57.

[174] *Id.* (internal quotation marks omitted).

[175] *See id.* at 60-61.

Additionally, Joint Petitioners restate their concern about the "highly subjective" nature of using the existing regulatory framework for the restart of a shutdown nuclear power plant.[176] Joint Petitioners assert that Applicants have improperly relied on a mistaken interpretation of the NRC's "implicit approval" of their restart plans, which cannot be used as a regulatory basis for restart.[177] Joint Petitioners reiterate that the General Counsel must expressly approve the regulations used for restart because, they claim, "[i]mplicit approval and selective regulation may lead to inadequate safety measures" and "increased risks to plant operations and public safety."[178]

We conclude that Contention 3 is inadmissible on grounds similar to those provided in our ruling on Contentions 1 and 2. The scope of this proceeding concerns Applicants' four license amendment requests; it does not include every restart-related action. As the Staff explains in its answer, the "Staff typically reviews an applicant's [quality assurance] program description . . . as part of a[n] . . . application for a construction permit, operating license, or license transfer."[179] Once the NRC grants the associated licensing action, changes to the quality assurance program may be made in accordance with the process set forth in 10 C.F.R. § 50.54(a). Changes that do not reduce the commitments in the program description may be made without prior NRC approval; changes that reduce commitments require prior NRC approval.[180]

Applicants provided a proposed quality assurance program for power operations as part of their license transfer application.[181] Additionally, in accordance with section 50.54(a), Applicants submitted, and have since implemented, revisions to their current quality assurance program to cover the period from decommissioning to operation.[182] Joint Petitioners do not appear to challenge the quality assurance program submitted with the license transfer application.[183] Their contention, rather, focuses on the revisions that Applicants have made to

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[176] *Id.* at 55.

[177] *Id.* at 57, 61-62; *see also* Supplement 6, at 6 (arguing that Applicants' "approach to revising [the] Quality Assurance Program Description . . . without formal NRC review . . . exacerbates transparency concerns").

[178] Joint Petitioners Hearing Petition at 55, 62-65; *see also* Supplement 6, at 8-10.

[179] Staff Answer to Joint Petitioners at 47.

[180] 10 C.F.R. § 50.54(a)(3), (4).

[181] *See* Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (May 23, 2024) (ML24144A106).

[182] *See* Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Aug. 2, 2024) (ML24215A356) (Revised Quality Assurance Program Description).

[183] Even if they had raised such a claim, the proper forum to do so would have been in the context of the license transfer proceeding, since the quality assurance program description was provided as part of the license transfer application.

accommodate their planned transition to power operations.[184] But Joint Petitioners do not explain how their claims relate to the license amendment requests at issue here, such that they should be considered within the scope of the proceeding.

Moreover, even were we to consider these claims to be in scope, Joint Petitioners do not explain why Applicants must submit a new quality assurance program description rather than revise the existing one, except with an unsupported assertion that the program description does not exist.[185] Nor do they explain why Applicants' changes require prior NRC approval, when Applicants purport to increase, rather than decrease, their quality assurance program commitments.[186] To the extent Joint Petitioners argue that section 50.54(a) should not apply, or that the rule should be broadened to require NRC approval when commitments are increased, they raise both an impermissible challenge to an NRC regulation and an impermissible challenge to the Commission's policy that the existing regulatory framework apply to restart requests.[187]

The remaining claims in Contention 3, like Contentions 1 and 2, amount to challenges to the Staff's review, and we have no authority to address them.[188] As discussed above, there are other avenues that Joint Petitioners may pursue for relief, including the rulemaking process and petitions for action under section 2.206. One of the Joint Petitioners, Mr. Blind, is pursuing action under both avenues.[189] But we must dismiss Contention 3 because it does not meet the standards for admission in an NRC adjudication.[190]

d. Contention 5

> [The exemption request] should be denied as it fails to meet the regulatory requirements in 10 C.F.R. § 50.12. The request does not demonstrate that the exemption will not pose an undue risk to public health and safety and relies on circular logic and misapplication of proposed regulatory guidance. [Applicants] defer[ ] safety assurances to future NRC licensing actions and inspections without providing an independent and detailed plan for the safe restart of the Palisades Nuclear Plant. Additionally, [Applicants] misuse[ ] the proposed rule NRC-2015-0070 to justify

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[184] *See* Joint Petitioners Hearing Petition at 57-58.

[185] *See id.* at 56.

[186] *See* Revised Quality Assurance Program Description at 2 (stating that the transitioning quality assurance plan is "needed to address the increase in . . . commitments particular to Palisades as [the] site transitions back to an operating status").

[187] *See* 10 C.F.R. § 2.335(a); *Oconee,* CLI-99-11, 49 NRC at 334.

[188] *See Catawba,* CLI-04-6, 59 NRC at 74.

[189] *See supra* note 139 and accompanying text.

[190] *See* 10 C.F.R. § 2.309(f)(1)(iii), (v).

> [their] exemption request, further undermining its validity[,] and fail[ ] to show special circumstances.[191]

In Contention 5, Joint Petitioners argue that the exemption request is within the scope of the proceeding because an exemption must be granted to reverse the certifications of cessation of operations and removal of fuel and "allow Palisades to exit decommissioning and reauthorize power operations."[192] According to Joint Petitioners, Applicants and the NRC Staff concede that the exemption request is necessary for restart, and therefore, Joint Petitioners assert, the exemption request is "inextricably linked to the in-scope [license amendment requests] and broader licensing actions."[193] Joint Petitioners also repeat arguments presented in Contentions 1, 2, and 3. They argue for clarity on the use of existing regulations for restart and against Applicants' purported reliance on "implicit" NRC approval of their restart proposals.[194]

Joint Petitioners assert that the exemption request should be denied based on Applicants' "failure to provide sufficient safety assurances, reliance on circular logic, failure to submit a comprehensive restart plan, and misapplication of [the NRC's proposed decommissioning rule]."[195] Specifically, Joint Petitioners argue that Applicants improperly rely on the "unexpected governmental support for continued operations" as a special circumstance to justify the exemption request.[196] Joint Petitioners assert that Applicants' "own timeline . . . shows that governmental support for continued operations was present during the plant's last power operating cycle under Entergy ownership."[197] Therefore, they argue, Applicants' present ownership of a plant undergoing decommissioning is a "self-inflicted" circumstance that may not serve as the basis for an exemption.[198]

Additionally, Joint Petitioners assert that Applicants have not met the requirements for an exemption in 10 C.F.R. § 50.12(a)(2) because their "high-level plan" for restart does not provide sufficient assurance that safety will be maintained.[199] Joint Petitioners claim that Applicants must "submit a comprehensive

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[191] Supplement 10, at 2-3. Joint Petitioners withdrew Contention 4. *See* Withdrawal of Joint Petitioners' Contention 4, at 4.

[192] Supplement 10, at 1.

[193] *Id.*; *see also id.* at 3-7.

[194] *See id.* at 1; Supplement 11, at 1-9.

[195] Supplement 10, at 5. *See generally* Proposed Rule, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning, 87 Fed. Reg. 12,254, 12,254 (Mar. 3, 2022); Regulatory Basis: Regulatory Improvements for Power Reactors Transitioning to Decommissioning (Nov. 20, 2017) (ML17215A010).

[196] Supplement 10, at 8.

[197] *Id.*

[198] *Id.* at 8-9.

[199] *Id.* at 10.

and integrated restart plan for review to demonstrate how it will ensure public health and safety."[200]

Finally, Joint Petitioners disagree with Applicants' claim that 10 C.F.R. § 50.82(a)(2) enables communication about and formal entry into the decommissioning process.[201] Joint Petitioners specifically focus on Applicants' reference to the NRC's regulatory basis for the proposed decommissioning rule and assert that reliance on the proposed rule is flawed because (1) it has not been adopted as final; (2) Applicants ignore that the certifications in section 50.82 serve as a "critical regulatory safeguard" rather than mere communication; and (3) Applicants fail to provide specific language that the certifications may be rescinded when the rule "emphasizes the importance of the certification process as a permanent step, ensuring a safe transition to decommissioning."[202]

Exemption requests, as a general rule, do not give rise to hearing opportunities.[203] The Commission will allow a challenge to an exemption request in an NRC adjudication, however, when the exemption request is "inextricably intertwined" with an action for which a hearing opportunity must be provided, such as a license amendment request.[204] Joint Petitioners assert that the exemption request is "inextricably linked" to the license amendment requests because it "is necessary . . . to reverse the certifications under 10 C.F.R. § 50.82(a)(1) and allow Palisades to exit decommissioning and reauthorize power operations."[205]

The Staff agrees that the exemption request may be challenged in this proceeding because it is linked to the Operating License and Technical Specifications Amendment Request, which Joint Petitioners expressly reference in their petition.[206] The Staff asserts that the prohibition on operation and fuel load in 10 C.F.R. § 50.82(a)(2) must be removed to make the required finding that issuance of the license amendment complies with NRC regulations.[207] Thus, the Staff argues, the NRC may not grant the amendment without granting the exemption.[208]

Applicants disagree with Joint Petitioners and the Staff. Applicants assert that even though the exemption request and license amendment requests are

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[200] *Id.*

[201] *Id.* at 10-11.

[202] *Id.* at 11-12.

[203] *See* Atomic Energy Act § 189a, 42 U.S.C. § 2239(a); *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 14 (2022).

[204] *Vermont Yankee,* CLI-16-12, 83 NRC at 553; *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 467 (2001).

[205] Supplement 10, at 1; *see also id.* at 4-6 (discussing the interconnected nature of the exemption request and license amendment requests).

[206] Staff Answer to Joint Petitioners at 66 (citing Supplement 10, at 4).

[207] *Id.* at 66-67 & n.252 (citing 10 C.F.R. §§ 50.57, 50.92).

[208] *Id.* at 66-67.

"both aimed at the same ultimate objective," it "does not mean that the two are co-dependent in a manner that scopes the [exemption request] into the . . . hearing process."[209] According to Applicants, the exemption request "would only allow withdrawal of the 50.82(a)(1) certifications from the docket; it does not bear on whether the . . . [license amendment requests] should also be issued or whether those amendments satisfy the applicable regulatory criteria."[210] Applicants assert that the "NRC could accept . . . all of Joint Petitioners' arguments on the [exemption request], but doing so would not change anything" about the Staff's review of the license amendment requests.[211]

A majority of the Board agrees with Joint Petitioners and the Staff that the exemption request is within the scope of the proceeding.[212] Because section 50.82(a)(2) expressly prohibits that which Applicants seek to accomplish with the Operating License and Technical Specifications Amendment Request — power operation — an exemption from the regulation is necessary for the NRC to find that the amendment complies with NRC regulations.[213] In the circumstances presented here, the exemption is necessary to grant the license amendment and thus may be challenged as part of this proceeding.[214]

Although Joint Petitioners have demonstrated that the exemption request is within the scope of the proceeding, we conclude that the arguments they incorporate from Contentions 1, 2, and 3 regarding the need for clarity in the regulations and the need for the NRC's express approval of the regulatory framework are outside the scope of the proceeding as impermissible challenges to the Staff's review, the NRC's regulations, and Commission policy.[215] With regard to the remaining arguments in Contention 5, we conclude that Joint Petitioners have not provided sufficient support and have not demonstrated a genuine dispute with Applicants on a material issue of law or fact.[216]

The Commission may grant an exemption if it (1) is authorized by law, (2) will not present an undue risk to public health and safety, and (3) is consistent with common defense and security.[217] Further, the Commission "will not con-

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[209] Applicants Answer to Joint Petitioners at 53.

[210] *Id.* at 52; *see also id.* at 52-53 (arguing that, with the NRC's issuance of Inspection Manual Chapter 2562, the exemption request need no longer serve as the final approval vehicle for restart and "[w]hat is left is approval to rescind the certifications of shutdown and defueling").

[211] *Id.* at 53.

[212] Judge Arnold's concurring opinion is attached to this memorandum and order.

[213] *See* 10 C.F.R. §§ 50.57(a), 50.82(a)(2), 50.92(a).

[214] *See Palisades,* CLI-22-8, 96 NRC at 14; *Vermont Yankee,* CLI-16-12, 83 NRC at 551-52; *Private Fuel Storage,* CLI-01-12, 53 NRC at 470.

[215] *See* 10 C.F.R. § 2.309(f)(1)(iii).

[216] *See id.* § 2.309(f)(1)(v), (vi).

[217] *Id.* § 50.12(a)(1).

sider granting an exemption" unless one or more of the special circumstances enumerated in 10 C.F.R. § 50.12(a)(2) is present.[218] In support of their exemption request, Applicants rely on the special circumstances in subsections (a)(2)(ii) (application of the regulation does not serve its underlying purpose), (a)(2)(iii) (compliance would result in undue hardship or other costs significantly in excess of those contemplated when the regulation was adopted), and (a)(2)(vi) (any other material circumstance not considered when the regulation was adopted and for which it would be in the public interest to grant the exemption).[219]

Joint Petitioners raise concerns regarding the requirement that the exemption will not present an undue risk to public health and safety. They argue that Applicants have failed to provide substantive details on their restart plan, which "undermines safety assurances."[220] They also assert that the NRC should require Applicants to provide "a comprehensive and integrated restart plan" to provide "sufficient assurance that safety will be maintained."[221] But Joint Petitioners' claims are generalized and speculative, and therefore they are insufficient to support an admissible contention.[222] To the extent Joint Petitioners' concerns are tied to their challenges to the Staff's review process, their claims are outside the scope of the proceeding. We may not oversee the Staff's review or direct it in the performance of its administrative functions.[223]

In challenging Applicants' reliance on the special circumstances requirements in section 50.12(a)(2)(ii), (iii), and (vi), Joint Petitioners provide an alternate reading of the purpose of section 50.82(a)(1) and (2) and the underlying considerations for the rule when it was adopted. In response to Applicants' claim that the rule's purpose is "for communication and formal entering into the decommissioning process, and not to prohibit [a licensee's] rescission" of the certifications,[224] Joint Petitioners assert that "[t]he rule, in fact, emphasizes the importance of the certification process as a permanent step, ensuring a safe transition to decommissioning."[225] Joint Petitioners also take issue with Applicants' reference to the regulatory basis for the NRC's proposed decommissioning rule as support for Applicants' reading of the rule's purpose.[226]

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[218] *Id.* § 50.12(a)(2).

[219] Exemption Request, Encl. 1, at 10-12.

[220] Supplement 10, at 10.

[221] *Id.*

[222] *See* 10 C.F.R. § 2.309(f)(1)(v).

[223] *See Millstone,* CLI-08-17, 68 NRC at 237, 242; *Catawba,* CLI-04-6, 59 NRC at 74; *see also Vermont Yankee,* CLI-16-12, 83 NRC at 555 (rejecting a challenge to the timing of the Staff's review of an exemption request relative to a license amendment request).

[224] Exemption Request, Encl. 1, at 10.

[225] Supplement 10, at 12.

[226] *Id.* at 11.

But Joint Petitioners do not provide references to support their assertions, and without more, we cannot conclude that they have raised a genuine dispute with Applicants on a material issue of law or fact.[227] Moreover, Joint Petitioners' position on the rule's purpose — essentially that the certifications, once filed, are irreversible — taken to its logical conclusion would mean that the NRC would be unable to permit rescission of the section 50.82(a)(1) certifications under any circumstance. We decline to read into the rule such a prohibition on the agency's authority.[228]

Regarding Joint Petitioners' argument that Applicants' present circumstances are "self-inflicted" and should have been foreseen, Joint Petitioners do not explain how these claims require denial of the exemption request.[229] Further, the materiality of Joint Petitioners' argument is not immediately clear. The provision under which Applicants claim undue hardship requires a look back at the circumstances the NRC considered at the time the rule was adopted, not, as Joint Petitioners would have it, when an applicant first experienced the claimed hardship.[230] Because Joint Petitioners have not met the admissibility requirements in section 2.309(f)(1), we must dismiss Contention 5.[231]

2. Petitioning Organizations' Contentions

a. Contention 1

> [Applicants] seek[ ] an exemption from the requirements of 10 C.F.R. § 50.82, pursuant to 10 C.F.R. § 50.12. The proposed exemption would remove the 10 C.F.R. § 50.82(a)(2) restriction that prohibits reactor power operations and retention of fuel in the reactor vessel when the reactor is in the process of decommissioning. [Applicants'] proposed exemption does not comply with the requirements for an exemption set forth in 10 C.F.R. § 50.12. Therefore, the NRC must not allow [Applicants] to use this exemption.[232]

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[227] *See* 10 C.F.R. § 2.309(f)(1)(v), (vi).

[228] *Cf. Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency* (Shearon Harris Nuclear Power Plant), CLI-86-24, 24 NRC 769, 774 n.5 (1986) (summarily dismissing claim that the Commission has no authority to grant exemptions from its regulations) (citing Final Rule, Specific Exemptions; Clarification of Standards, 50 Fed. Reg. 50,764, 50,766-67 (Dec. 12, 1985); *United States v. Allegheny-Ludlum Steel,* 406 U.S. 742, 755 (1972); *Alabama Power Co. v. Costle,* 636 F.2d 323, 357 (D.C. Cir. 1979)).

[229] *See* Supplement 10, at 8-10.

[230] *See* 10 C.F.R. §§ 2.309(f)(1)(iv), (vi), 50.12(a)(2)(iii); *Shearon Harris,* CLI-86-24, 24 NRC at 780 (concluding that because the petitioner failed to "draw a nexus" between the claim and the exemption request at issue, the petitioner had not met the materiality standard).

[231] *See* 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v), (vi).

[232] Petitioning Organizations Hearing Petition at 30.

In Contention 1, Petitioning Organizations assert that Applicants' request for an exemption from the prohibition on fuel load and operation in section 50.82(a)(2) should be denied for failure to meet the requirements for an exemption in section 50.12.[233] As discussed above, the Commission may grant an exemption under section 50.12 if it (1) is authorized by law, (2) will not present an undue risk to public health and safety, and (3) is consistent with the common defense and security.[234] The Commission also must find that one or more of the special circumstances enumerated in 10 C.F.R. § 50.12(a)(2) is present.[235] Applicants claim the presence of special circumstances under subsections (a)(2)(ii) (application of the regulation does not serve its underlying purpose), (a)(2)(iii) (compliance would result in undue hardship or other costs significantly in excess of those contemplated when the regulation was adopted), and (a)(2)(vi) (any other material circumstance not considered when the regulation was adopted and for which it would be in the public interest to grant the exemption).[236]

Petitioning Organizations first argue that Applicants have not met section 50.12(a)(1) because Applicants do not "cite any law that authorizes the exemption."[237] Next, Petitioning Organizations rely on a declaration from their expert, Arnold Gundersen, to challenge Applicants' claim that the exemption will not present an undue risk to public health and safety and common defense and security.[238] Petitioning Organizations claim that "there were significant safety problems with the plant" prior to its shutdown, and therefore returning the plant to its pre-shutdown status will introduce undue risks to public health and safety.[239] Petitioning Organizations and their expert assert flaws in Palisades' prior maintenance and the adequacy of its safety equipment.[240] They also argue that Applicants lack experience in construction and operation of a nuclear power plant and that Applicants have underestimated the time and cost of repairs.[241]

Lastly, Petitioning Organizations argue that Applicants fail to show that special circumstances are present.[242] Although Applicants rely on three of the special circumstances criteria, Petitioning Organizations assert that Applicants have failed to satisfy any of the six special circumstances enumerated in section

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[233] *Id.*

[234] 10 C.F.R. § 50.12(a)(1).

[235] *Id.* § 50.12(a)(2).

[236] Exemption Request, Encl. 1, at 10-12.

[237] Petitioning Organizations Hearing Petition at 32.

[238] *Id.* at 33-34.

[239] *Id.* at 33.

[240] *Id.* (citing Gundersen Declaration at 8, 22).

[241] *Id.* at 33-34 (citing Gundersen Declaration at 11, 21).

[242] *See id.* at 34-40.

50.12(a)(2).[243] Petitioning Organizations concede that Applicants do not claim to satisfy subsections (a)(2)(i), (iv), and (v).[244] With regard to subsection (a)(2)(ii), Petitioning Organizations assert that Applicants have not shown that application of section 50.82(a)(2) would not meet the purpose for which it was adopted. Petitioning Organizations argue that the purpose of the regulation is to facilitate decommissioning, and they assert that the purpose is served by Applicants' continuing the decommissioning process rather than restarting Palisades.[245]

With regard to subsection (a)(2)(iii), Petitioning Organizations assert that Applicants have not shown undue hardship because they "merely [find themselves] in a difficult situation of [their] own making" after buying Palisades with knowledge that the plant would be undergoing decommissioning.[246] They also claim that the economic considerations of "a host of players" "must be taken into consideration along with those of [Applicants]."[247] And with regard to subsection (a)(2)(vi), Petitioning Organizations do not appear to commit to a position on the question whether the NRC considered the possibility of restarting a shutdown plant when it promulgated section 50.82(a)(2).[248] They do claim, however, that an exemption would not be in the public interest.[249] Relying on declarations from Arnold Gundersen, Kevin Kamps, and Mark Jacobson, Petitioning Organizations assert that the restart process will be difficult and complicated; that political support does not equate with public interest; that nuclear power contributes to global warming and air pollution and "is not the energy source of the future"; that Applicants' fixed-price power purchase agreement "may be well above comparable market prices"; and that Entergy, the prior licensee and operator, "drove Palisades into the ground before its 2022 closing."[250]

We conclude that Contention 1 is inadmissible because it lacks sufficient legal and factual support and fails to demonstrate a genuine dispute on a material issue

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[243] *Id.*

[244] *See id.* at 34, 36-37. Therefore, Petitioning Organizations raise no genuine dispute with respect to Applicants' showing of special circumstances under these subsections. *See* 10 C.F.R. § 2.309(f)(1)(vi).

[245] Petitioning Organizations Hearing Petition at 35.

[246] *Id.*

[247] *Id.* at 36.

[248] *Compare id.* at 37 (suggesting that the lack of express mention of restart requests "does not mean that NRC did not consider the possibility of restarting a reactor in decommissioning status when it promulgated the decommissioning rules"), *with id.* (asserting that "[o]n the other hand, if the NRC had considered the possibility of restarting a decommissioning reactor, it would have provided that possibility in the rules").

[249] *Id.* at 37-40.

[250] *Id.* (citing Gundersen Declaration at 13; Kamps Declaration at 4; Jacobson Declaration at 9) (internal quotation marks omitted).

of law or fact.[251] Throughout their contention, Petitioning Organizations rely on conclusory statements either in the petition itself or in declarations from their experts. But the Commission has long held that conclusory statements, even if made by an expert, are insufficient to establish the legal and factual basis for an admissible contention.[252] For example, Petitioning Organizations simply assert, without reference to legal authority, that section 50.12(a)(1) requires Applicants to demonstrate "affirmative legal authorization" for their exemption request.[253] Additionally, Petitioning Organizations and their experts make bald assertions about the safety of the Palisades Nuclear Plant, Applicants' experience in the industry, and the potential time and expense of repairs.[254]

Moreover, in their argument that section 50.82(a)(2) serves its purpose if Applicants continue to decommission Palisades, Petitioning Organizations overlook the application of the rule to the particular circumstances presented here — Applicants' plan to restart Palisades.[255] In essence, they imply that the NRC would not be able to allow an exemption from this rule under any circumstance.[256] As discussed above, we decline to read into the rule such a limitation on the agency's authority.[257] Further, Petitioning Organizations make only generalized claims about the economic burdens of others, and they do not explain how the timing of Applicants' decision to pursue restart is material to an assessment of the costs from Applicants' claimed hardship and those contemplated at the time section 50.82(a)(2) was adopted.[258] Finally, their claims that restart would not be in the public interest are conclusory and speculative, and Petitioning Organiza-

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[251] *See* 10 C.F.R. § 2.309(f)(1)(v), (vi). Petitioning Organizations state that they do not view the exemption request as within the scope of this proceeding, but they nevertheless propose Contention 1 out of an abundance of caution. *See* Petitioning Organizations Hearing Request at 30; Petitioning Organizations Reply at 11; Tr. at 15-16. A majority of the Board concludes that the exemption request is within the scope of the proceeding. *See supra* section II.C.1.d.

[252] *See Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012); *Millstone,* CLI-03-14, 58 NRC at 216; *Oyster Creek,* CLI-00-6, 51 NRC at 208.

[253] Petitioning Organizations Hearing Petition at 33.

[254] *See id.* at 33-34; Gundersen Declaration at 8, 11, 21-22.

[255] *See* 10 C.F.R. § 50.12(a)(2)(ii) (providing that special circumstances are present when "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule").

[256] *See* Petitioning Organizations Hearing Petition at 34-35.

[257] *See Shearon Harris,* CLI-86-24, 24 NRC at 774 n.5.

[258] *See* Petitioning Organizations Hearing Petition at 35-36.

tions do not link their claims to any material circumstance not considered when section 50.82(a)(2) was adopted.[259] Therefore, we must dismiss Contention 1.[260]

b. Contentions 2 and 3

> *Contention 2*: An Environmental Impact Statement (EIS), not an Environmental Assessment (EA), must be compiled for the proposed restart of the Palisades reactor. An EIS is required because of the major regulatory decision sought by [Applicants].[261]
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> *Contention 3*: Presently, pursuant to 10 C.F.R. § 50.82(a)(2), the current Palisades operating license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. What [Applicants] obtained from Entergy when [Applicants] purchased Palisades, and what [Applicants] now [have], is an operating license conditioned by the certification that nuclear fuel has permanently been removed from the core, and consequently no new fuel may be introduced into the Palisades reactor, nor may it be operated to produce electricity. In order to resume power operations at Palisades, Applicants must obtain a new operating license.[262]

Because Contentions 2 and 3 are substantially similar and share the same foundational underpinning, we consider them together.[263] In both contentions, Petitioning Organizations assert that Applicants must obtain a new operating license rather than amend their current operating license.[264] Specifically, they argue that once the agency has docketed the certifications of permanent cessation of operations and permanent removal of fuel, "there is no lawful way" to amend

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[259] *See id.* at 37-40; Gundersen Declaration at 13, Kamps Declaration at 4; Jacobson Declaration at 9. Moreover, we are not expected to search through the declarations to locate support for Petitioning Organizations' arguments. *See Fansteel,* CLI-03-13, 58 NRC at 204.

[260] *See* 10 C.F.R. § 2.309(f)(1)(iv), (v), (vi).

[261] Petitioning Organizations Hearing Petition at 40.

[262] *Id.* at 45.

[263] In their new and amended contentions, Petitioning Organizations appear to suggest that Contention 2 has been superseded by its amendment, but in contrast to their position on Contentions 5, 6, and 7, Petitioning Organizations do not claim that Contention 2 has been addressed by the Staff's issuance of the Draft EA and Draft FONSI. *See* Petitioning Organizations New and Amended Contentions at 1 (referring to "Amended and Substituted Contention 2"). To the contrary, they "deny any effect on Contention 2 as to mootness resulting from publication of [those documents]." Petitioning Organizations Initial Brief on Draft EA/FONSI at 3. Therefore, we address the admissibility of Contention 2 as originally pled, and we will address amended Contention 2 in a separate decision. We take the same approach with Contention 4 and address the original below and the amended version in a separate decision. Petitioning Organizations' initial and response briefs on the mootness issue do not discuss Contention 4.

[264] *See* Petitioning Organizations Hearing Petition at 41-43, 45-48.

the license or grant exemptions.[265] In support of their argument, Petitioning Organizations point to the lack of a provision in the Atomic Energy Act or in the NRC's regulations that expressly speaks to restarting operations for a plant in the process of decommissioning.[266] In essence, they claim that an operating license that has been amended to reflect a plant's decommissioning status is not an operating license.[267]

Additionally, in both contentions, Petitioning Organizations assert that because Applicants must obtain a new operating license, the Staff must prepare an Environmental Impact Statement (EIS), rather than an EA, in accordance with 10 C.F.R. § 51.20(b)(2).[268] They claim that given the potential costs of the project, the Palisades restart is a "major federal action" under the National Environmental Policy Act of 1969, as amended (NEPA).[269] Further, they suggest that the restart of Palisades might result in significant environmental impacts "because there is considerable evidence that safety systems and components are being altered" while the plant is decommissioning.[270] In this vein, Petitioning Organizations also assert that Applicants must submit an environmental report that meets the requirements in 10 C.F.R. § 51.53, which pertains to operating license applications, license renewal applications, and decommissioning activities, and 10 C.F.R. § 51.45, which provides general criteria for applications that require an environmental report.[271] They argue that the document the Staff is treating as Applicants' environmental report does not comply with the requirements in sections 51.45 and 51.53 and should not have been accepted by the Staff.[272]

We conclude that Contentions 2 and 3 are inadmissible because they raise issues beyond the scope of the proceeding and because they are not supported by sufficient information to raise a genuine dispute on a material issue of law or

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[265] *Id.* at 43; *see also id.* at 45 ("When those [section 50.82] certifications were submitted, [Applicants] no longer had an operating license, but instead, held an operating license conditioned by the supervening requirement that no nuclear fuel could be emplaced within the core and the reactor cannot be used to generate electricity."). Petitioning Organizations also reference their challenge to Applicants' exemption request in Contention 1. *See id.* at 47.

[266] *See id.* at 44-45.

[267] *See id.* at 43-44; *see also id.* at 46 ("Without an unconditioned operating license, [Applicants] cannot simply amend what [they] do[ ] not have."); *id.* at 47 (suggesting that the operating license has been "terminated").

[268] *Id.* at 41-48; *see* 10 C.F.R. § 51.20(b)(2) (requiring an EIS for the "[i]ssuance or renewal of a full power or design capacity license to operate a nuclear power reactor . . . under part 50 of this chapter").

[269] Petitioning Organizations Hearing Petition at 44-45.

[270] *Id.* at 47 (comparing the restart of Palisades to a license renewal proceeding).

[271] *Id.* at 43; *see* 10 C.F.R. §§ 51.45, 51.53.

[272] *See* Petitioning Organizations Hearing Petition at 43.

fact.[273] The Commission has determined that restart requests will be evaluated using the agency's existing regulatory framework, which provides for license amendment requests and requests for exemptions from regulations.[274] Therefore, Petitioning Organizations' claims that Applicants' operating license may not be amended or that Applicants may not seek exemptions from regulations amount to an impermissible challenge to agency policy and regulations.[275] Further, these claims are based on Petitioning Organizations' conclusory assertions that the operating license, which was previously amended, is now incapable of amendment. Petitioning Organizations simply state, without support, that "there is nothing to amend," even though the operating license continues to exist.[276] And they assert that the Atomic Energy Act and the NRC's regulations must specifically address restart, without reference to supporting legal authority.[277]

Petitioning Organizations' argument that the Staff must prepare an EIS in accordance with 10 C.F.R. § 51.20 is based on the claim that a new operating license must be obtained, and therefore it fails for the same reasons.[278] In addition, to the extent Petitioning Organizations claim that this license amendment proceeding is a "major federal action" requiring an EIS, they have not raised a genuine, material dispute.[279] Under NEPA, an EIS is required for "major Federal actions significantly affecting the quality of the human environment."[280] The question whether this proceeding qualifies as a "major federal action" alone is not enough to require the preparation of an EIS. There must also be a significant impact to the environment.[281] And regarding the significance of potential impacts from restart, Petitioning Organizations merely speculate that significant effects might arise from changes to safety systems and components made during the decommissioning process, which is insufficient to support an admissible contention.[282]

Finally, in Contentions 2 and 3,[283] Petitioning Organizations do not explain

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[273] *See* 10 C.F.R. § 2.309(f)(1)(iii), (v), (vi).

[274] *See* Denial of Petition for Rulemaking, 86 Fed. Reg. at 24,362; 10 C.F.R. §§ 50.12, 50.90, 50.92.

[275] *See Oconee,* CLI-99-11, 49 NRC at 334; 10 C.F.R. § 2.335.

[276] Petitioning Organizations Hearing Petition at 47.

[277] *Id.* at 44-45.

[278] *See* 10 C.F.R. § 51.20; *Oconee,* CLI-99-11, 49 NRC at 334.

[279] *See* 10 C.F.R. § 2.309(f)(1)(vi).

[280] NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C).

[281] *Id.*

[282] *See, e.g., Millstone,* CLI-03-14, 58 NRC at 216. To the extent Petitioning Organizations' new and amended contentions raise claims regarding the significance of environmental impacts, we will address them in our ruling on those contentions.

[283] Contentions 5, 6, and 7 challenge the environmental report's content, but as we explain below, these contentions are now moot.

how the document the Staff is treating as Applicants' environmental report fails to meet sections 51.45 and 51.53 — regulations that do not on their face require the preparation of an environmental report for the types of license amendments at issue here.[284] Their argument thus lacks sufficient support to demonstrate a genuine, material dispute.[285] And to the extent Petitioning Organizations argue that the Staff improperly accepted this document as an environmental report, their claim amounts to an out-of-scope challenge to the Staff's process.[286] For all of these reasons, we must dismiss Contentions 2 and 3.[287]

c. Contention 4

> [Applicants] and the NRC admit that there is no provision in law or regulation for the NRC to authorize the restart of Palisades as a closed reactor. They are cobbling together a "pathway" to restart, using a "creative" procedure based on existing regulations that they believe allows [Applicants] to bypass the requirement of compiling a new [UFSAR] in favor of returning [to] the UFSAR Revision 35, which was in place when the Palisades reactor was closed. Since there is no dedicated regulatory procedure for restarting a closed reactor, the NRC has no authority to approve the license amendments requested by [Applicants].[288]

In Contention 4, Petitioning Organizations first reiterate their claim from Contentions 2 and 3 that the NRC may not authorize the restart of Palisades without a statutory or regulatory process that expressly addresses the restart of a shutdown reactor.[289] They assert that Applicants have taken an unjustified approach to restart by requesting an exemption and license amendments.[290] And

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[284] *See* 10 C.F.R. §§ 51.45(a), 51.53(d). Petitioning Organizations' reference to these regulations appears to be an outgrowth of their claim that a new operating license is required, but as we address above, this claim is out of scope and not supported.

[285] *See* 10 C.F.R. § 2.309(f)(1)(v), (vi).

[286] *See Catawba,* CLI-04-6, 59 NRC at 74; 10 C.F.R. § 2.309(f)(1)(iii).

[287] In their response brief addressing the impact of the Draft EA and Draft FONSI on their pending contentions, Petitioning Organizations argue that a recent interim final rule from the Council on Environmental Quality (CEQ) might have the effect of making EAs a "legal nullity." Petitioning Organizations Response Brief on Draft EA/FONSI at 2-3. But the NRC has adopted its own NEPA-implementing regulations, including regulations that provide for the preparation of an EA, and Petitioning Organizations do not discuss how, given the NRC's existing NEPA rules, this change to the CEQ regulations would be material to this proceeding. *See* 10 C.F.R. §§ 2.309(f)(1)(iv), (vi), 51.21, 51.25.

[288] Petitioning Organizations Hearing Petition at 48.

[289] *See id.* at 48-49, 51.

[290] *Id.* at 48-49.

they assert that the NRC should not allow Applicants to go forward with their "creative" scheme.[291]

Petitioning Organizations reference the Supreme Court's decision in *West Virginia v. EPA*[292] and claim that the restart of a shutdown plant involves a "major question lacking clear Congressional authority," and that therefore the Staff may not use the NRC's existing regulatory framework to assess the restart of Palisades.[293] Petitioning Organizations maintain that restart is "major" because Palisades uses a "grandfathered design" that is "not licensable to 21st century standards" and because restarting a decommissioning plant is unprecedented.[294] Therefore, they argue, the NRC may not approve restart absent clear Congressional authorization.[295] Additionally, Petitioning Organizations repeat their argument from Contentions 1, 2, and 3 that, because the certifications of permanent cessation of operation and permanent removal of fuel have been docketed, 10 C.F.R. § 50.82 places an irreversible prohibition on restart.[296]

Second, Petitioning Organizations assert that Applicants may not use the change process in 10 C.F.R. § 50.59 to reinstate UFSAR Revision 35 and must instead submit a new FSAR.[297] In support of this claim, Petitioning Organizations argue that the changes required for restart exceed those that may be sought through license amendment.[298] In particular, they argue that "as a result of climate change," some of the changes to the technical specifications and operating components will "pronouncedly exceed the minimum change thresholds" for a license amendment under section 50.59(c)(2).[299] Further, they argue that section 50.59(c)(2) references changes that have been "previously evaluated" in an FSAR, and they assert that Applicants may not request license amendments

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[291] *Id.*

[292] 597 U.S. 697 (2022).

[293] Petitioning Organizations Hearing Petition at 51-55. They also assert, incorrectly, that the Commission did not approve the use of the existing regulatory framework, apparently unaware of the Commission's approval in the Staff Requirements Memorandum for SECY-20-0110. *Id.* at 51-52; *see* Denial of Petition for Rulemaking, 86 Fed. Reg. at 24,362; *supra* note 12. Additionally, they assert that the Executive Director for Operations' "hypothetical scenario" for restart — again overlooking the Commission's approval — is not entitled to deference. Petitioning Organizations Hearing Petition at 54-55 (citing *Loper Bright Enters. v. Raimondo,* 603 U.S. 369 (2024)).

[294] Petitioning Organizations Hearing Petition at 51-52.

[295] *Id.* at 53 (citing *West Virginia,* 597 U.S. at 723; *Texas v. NRC,* 78 F.4th 827, 844 (5th Cir. 2023), *reh'g en banc denied,* 95 F.4th 935 (5th Cir. 2024), *cert. granted, NRC v. Texas,* 145 S. Ct. 117; *Interim Storage Partners, LLC v. Texas,* 145 S. Ct. 119 (Oct. 4, 2024)).

[296] *See id.* at 54.

[297] *See id.* at 50 (asserting that Applicants must provide a new FSAR due to "significant safety issues").

[298] *See id.* at 55-61 (citing Gundersen Declaration at 56-58).

[299] *Id.* at 57.

for the restart process because restart "has not been previously evaluated."[300] Petitioning Organizations' expert, Arnold Gundersen, points to the replacement of the Palisades component cooling water heat exchangers, the need for steam generator tube repairs, and changes to air and water temperature in the area surrounding the Palisades site to suggest that restart will require major changes that exceed those allowable by license amendment.[301]

Third, Petitioning Organizations and Mr. Gundersen claim that Entergy engaged in a mass destruction of quality assurance records.[302] They argue that the absence of "continuity of quality assurance history . . . will pose risks that are difficult to quantify."[303] Consequently, they suggest, "restoration of operations [will be] very difficult or impossible."[304]

We conclude that Contention 4 is inadmissible because it challenges NRC regulations and policy, relies on conclusory and speculative claims, and does not otherwise raise a specific challenge to the four license amendment requests that are the subject of this proceeding.[305] First, Petitioning Organizations' argument that restart-specific statutory and regulatory provisions are necessary to allow Applicants to restart Palisades is not cognizable in this adjudicatory proceeding.[306] The Commission has determined that the agency's existing regulatory framework applies to restart requests, and a challenge to the use of this framework is a challenge to both the NRC's regulations and Commission policy.[307] Therefore, we need not decide whether restart constitutes a "major question" that requires clear Congressional approval.

In applying the contention admissibility requirements, however, we observe that the Staff's response to Petitioning Organizations' application of the major questions doctrine is not without merit.[308] As the Staff explains, "if the challenged restart requests involve an issue of such 'economic and political significance' that the 'major questions' doctrine applies, then the doctrine would appear to apply to all new reactor licensing, a result that would undermine the Court's characterization of the doctrine as one reserved for 'extraordinary

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[300] *Id.* at 58.

[301] *See id.* at 58-63 (citing Gundersen Declaration at 39-46, 56-58); *see also id.* at 61-62 ("plugging and unplugging steam generator tubes is a major engineered change" and the "proposal to unplug 600 steam generator tubes may cause additional unforeseen troubles"); Petitioning Organizations Reply at 27-28 (citing Supplemental Gundersen Declaration at 6).

[302] Petitioning Organizations Hearing Petition at 63.

[303] *Id.* (citing Gundersen Declaration at 47-48).

[304] *Id.*

[305] *See* 10 C.F.R. § 2.309(f)(1)(iii), (v), (vi).

[306] *See id.* § 2.335(a); *Oconee,* CLI-99-11, 49 NRC at 334.

[307] *See* Denial of Petition for Rulemaking, 86 Fed. Reg. at 24,362; 10 C.F.R. §§ 50.12, 50.90, 50.92.

[308] *See* Staff Answer to Petitioning Organizations at 61.

cases.'"[309] Other than conclusory assertions, Petitioning Organizations do not explain how the restart of Palisades would be of substantially more economic significance than the agency's other power reactor licensing activities, past and present.[310] Further, as the Staff points out, the "major questions" inquiry is not based on considerations of economic and political significance alone.[311] It includes a "consideration of the 'history and the breadth of the authority that [the agency] has asserted.'"[312] And beyond pointing out that this particular type of restart action has not been requested before, Petitioning Organizations do not address this consideration. In the face of the Commission's policy to use its "long-standing licensing and regulatory processes,"[313] we do not see how Petitioning Organizations have met their burden to provide sufficient support for their claim that application of the major questions doctrine forecloses the agency's review of the license amendment requests without express statutory authorization.[314]

Second, with regard to Petitioning Organizations' claim that 10 C.F.R. § 50.59 may not be used to update the UFSAR, their argument is based on a misinterpretation of that section and otherwise amounts to an impermissible challenge to a regulation.[315] This claim is substantially similar to that raised in Joint Petitioners' Contention 2, and our rationale for dismissing that claim applies equally here.[316] As we explained in response to that contention, section 50.59 provides a process for determining which types of changes applicants may make without a license amendment and which types of changes require a license amendment.[317] A challenge to the use of the process amounts to an improper challenge to an agency

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[309] *Id.* (quoting *West Virginia,* 597 U.S. at 721).

[310] *See id.* (comparing Applicants' request to reauthorize "operation of an already-built reactor at an existing site under an existing license" with "licensing construction and operation of a new power reactor, which may also involve a new site and a new licensing basis" (emphasis omitted)); *see also id.* (discussing the agency's reinstatement of the terminated construction permit for the Bellefonte nuclear plant). *Cf. Tennessee Valley Authority* (Bellefonte Nuclear Plant, Units 1 and 2), CLI-10-6, 71 NRC 113, 120 (2010) (concluding that the agency has broad authority under the Atomic Energy Act to reinstate voluntarily surrendered construction permits).

[311] Staff Answer to Petitioning Organizations at 60.

[312] *Id.* (quoting *West Virginia,* 597 U.S. at 721 (alteration in original)).

[313] *Id.* at 61; *see* Denial of Petition for Rulemaking, 86 Fed. Reg. at 24,362.

[314] *See* 10 C.F.R. § 2.309(f)(1)(v), (vi).

[315] Nor do Petitioning Organizations explain how Applicants' mention of their planned use of the section 50.59 process in the Operating License and Technical Specifications Amendment Request draws that process into the scope of this proceeding. *See* Petitioning Organizations Hearing Petition at 49.

[316] *See supra* section II.C.1.b.

[317] *See id.* § 50.59(c)(1), (c)(2).

regulation.[318] It is the outcome of the process that would be subject to challenge, and Applicants acknowledge that they might need to submit additional license amendment requests related to the restart of Palisades beyond those at issue here.[319]

In that vein, Applicants have submitted a license amendment request concerning the steam generator tubes, and therefore Petitioning Organizations will have an opportunity to raise specific concerns regarding the steam generator tubes in the context of that proceeding.[320] But to the extent Petitioning Organizations seek to leverage Applicants' need for steam generator tube repairs (along with their claims regarding increases in air temperature and water temperature from climate change), as an entrée to challenge Applicants' use of the section 50.59 process, their claims are outside the scope of this proceeding. At bottom, Petitioning Organizations appear to suggest that a license amendment would not suffice for certain updates to Palisades.[321] In essence, they seek to impose requirements on Applicants that are greater than those provided in section 50.59, without requesting a waiver of the rule.[322]

Lastly, Petitioning Organizations' arguments regarding the purported destruction of quality assurance records for Palisades are based entirely on a conclusory assertion that such destruction occurred.[323] Moreover, Petitioning Organizations do not explain how the claimed destruction of records is material to this license amendment proceeding, other than speculating about "difficult to quantify" risks.[324] Their arguments fall far short of the support necessary to raise a genuine, material dispute.[325] And to the extent Petitioning Organizations intended to challenge Applicants' quality assurance plan description for operations, that challenge should have been raised in the context of the *Palisades* license transfer proceeding.[326] For all of these reasons, we must dismiss Contention 4.[327]

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[318] *See id.* § 2.335.

[319] *See* Applicants Answer to Petitioning Organizations at 20-21. For changes that are made without a license amendment, challenges would be raised in accordance with 10 C.F.R. § 2.206(a), which allows any person to petition for the modification, suspension, or revocation of a license or any other action that may be proper. *See supra* note 162.

[320] *See* Steam Generator Tube Amendment Request at 1.

[321] *See* Petitioning Organizations Hearing Petition at 55-63; Petitioning Organizations Reply at 27-28.

[322] *See* 10 C.F.R. §§ 2.309(f)(1)(iii), 2.335.

[323] *See* Petitioning Organizations Hearing Petition at 63.

[324] *Id.*

[325] *See* 10 C.F.R. § 2.309(f)(1)(v), (vi); *Oyster Creek,* CLI-00-6, 51 NRC at 208.

[326] *See* Restart Transfer Request, Encl. 1, at 12, 19.

[327] *See* 10 C.F.R. § 2.309(f)(1)(iii), (v), (vi).

d. Contentions 5, 6, and 7

> *Contention 5*: There is no purpose and need statement appearing in the document the NRC considers to suffice for [Applicants'] Environmental Report. Pursuant to 10 C.F.R. § 51.45, an Environmental Report must contain a statement of the purpose for the project.[328]
>
> *Contention 6*: There is no presentation of alternatives, nor discussion of the no-action alternative, found in the document the NRC and Applicants claim to suffice as an Environmental Report.[329]
>
> *Contention 7*: The proposed license amendments and supporting documents, including the document that the NRC and Applicants claim to suffice as an Environmental Report, contain no meaningful identification nor discussion of the effects of [A]nthropocene climate change on the functioning and componentry of the plant, nor is there any identification or analysis of the effects that restored plant operations would have on [A]nthropocene climate change, the physical environment and public health.[330]

In Contentions 5, 6, and 7, Petitioning Organizations assert that Applicants omit a discussion of purpose and need, alternatives, and climate-change impacts, respectively, in contravention of the requirements for an Environmental Report in 10 C.F.R. § 51.45.[331] In their answers, Applicants and the Staff opposed the admission of Contentions 5 and 6.[332] Applicants also opposed the admission of Contention 7,[333] but the Staff would have supported the admission of a portion of that contention concerning the climate-change impacts of plant operation.[334] The Staff asserted that the remainder of Contention 7 was inadmissible.[335]

After Petitioning Organizations' hearing petition was fully briefed, however, the Staff provided notice of the issuance of the Draft EA and Draft FONSI

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[328] Petitioning Organizations Hearing Petition at 63-64.

[329] *Id.* at 66.

[330] *Id.* at 68.

[331] *Id.* at 63-69.

[332] *See* Applicants Answer to Petitioning Organizations at 64-72; Staff Answer to Petitioning Organizations at 74-76.

[333] *See* Applicants Answer to Petitioning Organizations at 64-72.

[334] Staff Answer to Petitioning Organizations at 77 (asserting that Applicants' environmental analysis requires a discussion of the "greenhouse gas emissions of the proposed action[,] . . . a description of how the baseline environment in the environmental review might change as a result of climate change[,] and a discussion of how proposed action impacts would either increase, decrease, or remain the same in this new baseline environment").

[335] *Id.* at 84-88. In particular, the Staff took issue with the claimed omission of a "discussion of the effects of . . . climate change on the functioning and componentry of the plant." *Id.* at 84.

for the restart of Palisades.[336] Thereafter, we invited the participants to address the impact of these documents on the pending contentions.[337] The Staff and Applicants assert that Contentions 5, 6, and 7 are moot and must be dismissed.[338] Petitioning Organizations state that the publication of the Draft EA "assuages the omissions they alleged in their Contentions 5 and 6, and the omission of [a] discussion of climate change effects claimed in Contention 7."[339] Petitioning Organizations nevertheless claim that we may not dismiss these contentions, despite their mootness, because we issued a schedule for new and amended contentions based on the Draft EA and Draft FONSI.[340] Although it is not clear, Petitioning Organizations appear to request that we wait until new and amended contentions are filed before dismissing Contentions 5, 6, and 7.

Because Petitioning Organizations agree that the claimed omissions in Contentions 5, 6, and 7 have been addressed, we must dismiss these contentions as moot.[341] Moreover, Petitioning Organizations have now filed new and amended contentions in accordance with our scheduling order;[342] therefore, their objection to the timing of our dismissal of Contentions 5, 6, and 7, is also moot.[343]

III. CONCLUSION

For the reasons set forth above, we (1) *deny* Joint Petitioners' Hearing Petition; (2) *deny* Applicants' Motion to Strike Portions of Petitioning Organizations' Reply; and (3) *deny* Petitioning Organizations' Hearing Petition. Because Petitioning Organizations' motion to admit new and amended contentions is currently pending before us, we do not terminate the proceeding.

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[336] *See* Staff Notification at 1-2.

[337] Order Scheduling Briefing on Draft EA/FONSI at 1.

[338] Staff Response Brief on Draft EA/FONSI at 1-2; Applicants Initial Brief on Draft EA/FONSI at 5-7; Applicants Response Brief on Draft EA/FONSI at 2.

[339] Petitioning Organizations Initial Brief on Draft EA/FONSI at 3.

[340] *See id.* at 2-8; Petitioning Organizations Response Brief on Draft EA/FONSI at 2-4.

[341] *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-16-11, 83 NRC 524, 539 (2016); *USEC,* CLI-06-9, 63 NRC at 444-45; *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002).

[342] *See supra* note 4.

[343] To the extent Petitioning Organizations' objection to our dismissal of their contentions has not been addressed, we find that their objection lacks merit. The Commission has long recognized that once purportedly missing information in a contention of omission has been supplied, the contention is moot and requires dismissal. *See Diablo Canyon,* CLI-16-11, 83 NRC at 539-40 & n.106 (citing *McGuire/Catawba,* CLI-02-28, 56 NRC at 383). To allow otherwise would be contrary to the principles of sound case management. *See id.*

Any appeals from this memorandum and order must be taken in accordance with 10 C.F.R. § 2.311.

It is so ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Emily I. Krause, Chair
ADMINISTRATIVE JUDGE

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Dr. Arielle J. Miller
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 31, 2025

Concurring Opinion of Judge Arnold

I concur with all the major decisions documented in this order. This includes both standing and contention admissibility. However, this order reaches a conclusion that I believe to be neither necessary nor correct. That is, the Board majority concludes that the exemption request is within the scope of this proceeding based upon its being inextricably intertwined with the four license amendment requests. I do not agree. Further, a recognition that the applications are not inextricably intertwined leads to a much simpler reason for rejecting Petitioning Organizations' Contention 1 as being simply out of scope.

The scope of this proceeding is narrowly focused upon four license amendments required by Palisades as part of Applicants' restart efforts.[1] Boards cannot lightly alter the scope of a proceeding:

> It is well settled that NRC licensing boards and administrative law judges do not have plenary subject matter jurisdiction in adjudicatory proceedings. Agency fact finders are delegates of the Commission who may exercise jurisdiction only over those matters the Commission specifically commits to them in the various hearing notices that initiate the proceedings. Thus, the scope of the proceeding spelled out in the notice of hearing identifies the subject matter of the hearing and the hearing judge can neither enlarge nor contract the jurisdiction conferred by the Commission.[2]

The Commission, however, has provided that an exemption request can come within the scope of a hearing "when an exemption request is inextricably intertwined with a licensing action triggering the opportunity to request a hearing."[3] This is a proceeding where the "inextricabl[e] intertwining" of pending amendment applications with an exemption request must be carefully evaluated to correctly determine the scope of the proceeding.

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[1] License Amendment Hearing Opportunity Notice, 89 Fed. Reg. at 64,487.

[2] *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 204 (2004) (quoting *General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 1), ALAB-881, 26 NRC 465, 476 (1987)) (internal quotation marks omitted).

[3] Order of the Secretary; Holtec Decommissioning International, LLC (Dec. 18, 2023) at 2 (ML-23352A325) (unpublished) (citing *Vermont Yankee,* CLI-16-12, 83 NRC at 553; *Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 10 (2013) ("An exemption standing alone does not give rise to an opportunity for hearing under our rules. But when a licensee requests an exemption in a related license amendment application, we consider the hearing rights on the amendment application to encompass the exemption request as well."); *Private Fuel Storage,* CLI-01-12, 53 NRC at 470 ("Where the exemption . . . is a direct part of an initial licensing or licensing amendment action, there is a potential that an interested party could raise an admissible contention on the exemption, triggering a right to a hearing under the AEA.")).

Definition of Inextricably Intertwined

The word "intertwined" means more than just linked. A simple chain is linked, but the linkage is simple and orderly, with one link identical to another and with no indication of chaos or complexity. Ivy vines growing on the side of a building, however, are intertwined. Individual vines may cross others either above or below with no order, rhyme or reason. The Commission's use of "intertwined" instead of "interlinked" indicates that there must exist some degree of complexity in the relationship between intertwined components.

The word "inextricably" means in a way that is unable to be separated, released, or escaped from. When the words "inextricably" and "intertwined" are used together, the phrase signifies a very strong and inseparable connection between two or more things. It means that these two or more things are so closely connected that they are *impossible* to separate or disentangle.

Petitioning Organizations' and Applicants' Positions on Inextricably Intertwined

At oral argument, Petitioning Organizations, consistent with their reply, stated their belief that the amendments are not inextricably intertwined with the exemption request.[4] Similarly, Applicants stated that the amendments are not inextricably intertwined with the exemption request.[5] The positions of these participants require no further examination.

Joint Petitioners' Argument on Inextricably Intertwined

Joint Petitioners address the subject of intertwining of the exemption request with the amendment requests in Contention 5. First they assert:

> [Applicants'] Specific Exemption Request, submitted on September 28, 2023, . . . is inextricably linked to the in-scope [license amendment requests] and broader licensing actions discussed in the original petition. The exemption request is necessary for [Applicants] to reverse the certifications under 10 C.F.R. § 50.82(a)(1) and allow Palisades to exit decommissioning and reauthorize power operations.[6]

They claim that the exemption request is intertwined with the license amendment requests, but the basis of that claim is that the exemption is required to

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[4] Tr. at 12-13; Petitioning Organizations Reply at 10-11.

[5] Tr. at 43.

[6] Supplement 10, at 1.

allow "Palisades to exit decommissioning and reauthorize power operations."[7] This argument suggests that all actions being taken toward the restart of Palisades are inextricably intertwined with the license amendments and are thus within the scope of this proceeding. But simply being a member of a group of actions required to meet a specific goal is not sufficient to meet the definition of intertwined.

And later Joint Petitioners state:

> [Applicants'] and NRC [S]taff's own admission that the exemption is essential to the success of its licensing efforts ties the exemption to the broader licensing actions, making it subject to public hearing rights under the Atomic Energy Act and relevant NRC precedent. Petitioners, therefore, have standing to challenge the exemption as part of the [license amendment request] process and other licensing actions mentioned in the full petition.[8]

Neither of these citations explain how the exemption and amendments are intertwined or what dependencies exist between these various licensing actions. Thus, regarding Joint Petitioners' pleadings, I cannot conclude they have demonstrated that the exemption request is inextricably intertwined with the four license amendment requests.

Staff's Argument on Inextricably Intertwined

The Staff's stand on the question was first expressed in a footnote in their Answer to Petitioning Organizations:

> NRC approval of the restart-related amendment requests would, among other things, amend the license to authorize power operations at Palisades. *See, e.g.,* [Operating License and Technical Specifications Amendment Request] at 1. To grant the restart-related amendments, the NRC must find that the request complies with NRC regulations. *See, e.g.,* 10 C.F.R. §§ 50.92[,] 50.57. However, to make these findings, the prohibition on operation found in 10 C.F.R. § 50.82(a)(2) must be removed for Palisades through the exemption process.[9]

But this explanation fails to disclose the actual conflict that may occur due to incorrect sequencing of the grant of amendments. At oral argument the Staff provided the logic:

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[7] *See id.* at 1.

[8] *Id.* at 3.

[9] Staff Answer to Petitioning Organizations at 31 n.128.

> 10 CFR 50.92 governs issuance of license amendments. And in 50.92, the Commission stated that the NRC will be guided by the considerations for initial licenses which is in 10 CFR 50.57. And 50.57 states that the NRC will make a finding that the facility will operate in conformance with, among other things, the rules and regulations of the Commission.
>
> So right now, there is a rule, . . . under 50.82(a)(2)[,] that prohibits power operations at Palisades. So in order to issue those amendments and to make those findings under 50.92 and 50.57, the prohibition that exists by rule today must be removed through the exemption requests. And that's the [S]taff's position on why the exemption requests and the license amendments are inextricably intertwined.[10]

The Operating License and Technical Specifications Amendment Request includes several license condition changes. These would authorize Palisades to load fuel, attain criticality and operate at up to 100 percent power as a utilization facility.[11] What the Staff's logic boils down to is that if the prohibition on operation under 10 C.F.R. § 50.82(a)(2) still exists, they cannot approve operation of Palisades as a utilization facility at power up to 100 percent. I agree. To avoid conflicting authorizations, the exemption request to eliminate the prohibition from operation must be granted before permission to operate is granted. But I do not agree that this amounts to inextricably intertwined.

At oral argument, the Staff agreed that the NRC has the authority to approve the Operating License and Technical Specifications Amendment Request in part, reserving approval of the license conditions that would authorize critical operation until some other time (i.e., following approval by the Palisades Restart Panel).[12] This action would completely decouple the license amendments from the exemption request. The license amendments and exemption request could be approved in any order and at any time — completely unlinked, as Applicants currently believe them to be.

Concerning this approach, the Staff had two comments, (1) "[t]he NRC does have authority to grant an amendment application in part,"[13] (2) "[b]ut the staff isn't planning to do that here."[14] That is, the Staff has the authority to decouple the applications but has *chosen* a review/approval methodology that keeps them linked.

But the definition of "inextricably intertwined" includes the concept that the separation of applications is impossible. Where such separation is possible, but

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[10] Tr. at 60.

[11] *See* Operating License and Technical Specifications Amendment Request, Encl. at 9-11.

[12] Tr. at 61.

[13] *Id.*

[14] *Id.* at 62.

the Staff "chooses" not to separate them, in my view the term "inextricably intertwined" just does not apply.

The scope of this proceeding is, and should remain, limited to the four license amendment requests. The exemption request is not within the scope of the proceeding.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

David A. Wright, Chairman
Annie Caputo
Christopher T. Hanson
Bradley R. Crowell
Matthew J. Marzano

In the Matter of **Docket Nos. 50-255-LT-2**
50-155-LT-2
72-007-LT
72-043-LT-2

ENTERGY NUCLEAR OPERATIONS, INC.,
ENTERGY NUCLEAR PALISADES, LLC,
HOLTEC INTERNATIONAL, AND HOLTEC
DECOMMISSIONING INTERNATIONAL, LLC
(Palisades Nuclear Plant and
Big Rock Point Site) **April 8, 2025**

ABEYANCE

Given changed circumstances that may render moot all the financial qualifications issues litigated in this license transfer proceeding, the Commission places this proceeding in abeyance pending further Commission direction, and directs the parties to provide, in six months, their views on and interests in further proceedings in this case. The Commission notes that while all the litigated financial issues are rooted in the expectation of a permanently shutdown reactor, a new license transfer application and associated licensee actions are based on or seek restarted reactor operations.

ORDER

Our decision in CLI-22-8 granted the Attorney General of Michigan's petition for intervention and request for a hearing. The parties presented their evidence and arguments to the Presiding Officer on four discrete issues from one contention challenging the financial qualifications demonstration for Holtec Palisades, LLC, and Holtec Decommissioning International, LLC (HDI). The record has been certified to us.[1] The financial qualifications demonstration in the license transfer application was wholly based on the expectation of a permanently defueled and shut down reactor at Palisades Nuclear Plant.[2] The challenges involve cost estimates and related schedules and financial assurances that are based on a site-specific decommissioning cost estimate included with a Post-Shutdown Decommissioning Activities Report (PSDAR), and an exemption allowing use of the decommissioning trust fund for spent fuel management and site restoration. HDI has since filed a new license transfer application and several associated requests with the aim of restarting operations at Palisades.[3]

The new license transfer application involves a significantly different financial qualification demonstration that is based on an operating plant.[4] Consequently, should restart of the plant be approved, and should restart occur, essentially all arguments presented in support of or challenging the financial qualification demonstration in this particular proceeding may no longer apply. The proposed transferees for the new license transfer would be relying on a different financial qualifications demonstration than the one litigated in this

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[1] LBP-23-5, 97 NRC 116 (2023).

[2] *See* 10 C.F.R. § 50.82(a)(1).

[3] *See, e.g.,* Holtec Decommissioning International, LLC, Holtec Palisades, LLC, and Palisades Energy, LLC; Palisades Nuclear Plant and the Palisades Independent Spent Fuel Storage Installation; Consideration of Approval of Transfer of Licenses and Conforming Amendment, 89 Fed. Reg. 64,493 (Aug. 7, 2024); Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant; Applications for Amendments to Renewed Facility Operating License Involving Proposed No Significant Hazards Considerations and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information, 89 Fed. Reg. 64,486 (Aug. 7, 2024); Request for Exemption from 10 CFR 50.82(a)(2), attached to (Encl. 1) Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Sept. 28, 2023) (ML23271A140).

[4] For example, the funding assurance amount for decommissioning in this proceeding is based on a site-specific decommissioning cost estimate. But the decommissioning funding assurance amount in the new license transfer application is based on a different amount calculated for Palisades under the NRC's formula for decommissioning financial assurance in 10 C.F.R. § 50.75(c). Financial assurance for the funding of spent fuel management in this proceeding is based on an exemption allowing use of the decommissioning trust fund for spent fuel management. But in the new application, financial assurance for spent fuel management costs is based on projected plant operational revenues.

proceeding. A decision in this proceeding on the financial qualifications for a permanently defueled and shut down plant accordingly would not apply in the proposed restart scenario.

HDI also has indicated that it has and will take actions to "pursue restart in earnest," which will include departing from "the current PSDAR schedule to focus on restart efforts until such time as [Palisades] either successfully resumes operations (and thus exits decommissioning) or abandons the restart project."[5] HDI states that "[p]rior to or in parallel with reinstatement of" an operating licensing basis, it will file a notice "formally rescinding the PSDAR."[6] And it states that "alongside [a] reinstatement of" the operating licensing basis, it will docket correspondence acknowledging that the current exemption allowing use of the decommissioning trust fund for non-decommissioning expenses "has been rescinded and is no longer applicable upon withdrawal of the PSDAR."[7] In April of 2024, HDI indicated that it has begun "the process of reinstating" the Palisades operating licensing basis, and it provided notice of a change in the PSDAR's schedule for some spent fuel management activities that HDI is postponing "to allow HDI to undertake restart work and exit decommissioning."[8] Along with the restart-related requests and activities, there is a shifting landscape, including what increasingly may be different schedules, expenditures, and funding than that assumed or litigated in this proceeding.

In light of HDI's pending requests and its activities associated with the planned restart of Palisades, we hereby hold this proceeding in abeyance pend-

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[5] Application for Order Consenting to Transfer of Control of License and Approving License Amendments, at 16, attached (Encl. 1) to Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Dec. 6, 2023) (ML23340A161) (Restart-Based License Transfer Application).

[6] *Id.*

[7] *Id.* at 17 n.14.

[8] *See* Letter from Jean A. Fleming, HDI, to NRC Document Control Desk, Notification of Changes in Accordance with 10 CFR 50.82(a)(7) (Apr. 9, 2024), at 1, 3 (ML24100A689); *see also* Palisades Nuclear Plant Annual Decommissioning Funding and Spent Fuel Management Status and Financial Assurance Report, attached to (Encl. 4) Letter from Jean A. Fleming, HDI, to NRC Document Control Desk (Mar. 29, 2024) (ML24089A117). The deferred spent fuel management activities alter the original projected spent fuel management expenses. Further, in planning financially for restart, HDI states that it is managing withdrawals from the trust fund in a manner that will maintain decommissioning funding at least to the level of the NRC's minimum formula amount in 10 C.F.R. § 50.75(c), the requirement for operating plants. *See* Restart-Based License Transfer Application at 17-18. Relatedly, funding outside of the trust fund has contributed to covering project costs and HDI states that "Holtec Palisades is still carrying an accrual of decommissioning costs that have been incurred but not reimbursed" from the trust fund. *See* Restart-Based License Transfer Application at 17.

ing further direction.[9] We direct the parties in six months (October 8, 2025) to provide us their views on and interests in further proceedings in this case.

IT IS SO ORDERED.

For the Commission

Carrie M. Safford
Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of April 2025.

[9] While we have the unusual situation of two requested license transfers, one based on a permanently shutdown reactor in a decommissioning status and the other based on an operating plant, this order only pertains to the former and does not impact proceedings associated with the latter.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

David A. Wright, Chairman
Annie Caputo
Christopher T. Hanson
Bradley R. Crowell
Matthew J. Marzano

In the Matter of **Docket Nos. 50-255-LT-3**
72-007-LT-3

HOLTEC DECOMMISSIONING INTERNATIONAL, LLC, HOLTEC PALISADES, LLC, AND PALISADES ENERGY, LLC
(Palisades Nuclear Plant) **April 29, 2025**

MATERIAL FALSE STATEMENTS

Section 186 of the Atomic Energy Act of 1954, as amended, provides that a license may be revoked for a material false statement of fact in the application.

MATERIAL FALSE STATEMENTS

Petitioners did not support a claim that license applicant made a material false statement in its license transfer application when applicant changed course in its plans for the plant. License applicants' decision to pursue restart of operations after initially applying to receive a license for a shutdown plant and undertake decommissioning was not a materially false statement.

SCOPE OF PROCEEDING

A claim that license applicant made a materially false statement in prior proceeding in which applicant received license is out of the scope of a subsequent

proceeding in which license applicant seeks to transfer its license to a third party.

CONTENTIONS, FACTUAL SUPPORT

Speculation or inferences drawn from timing of events were insufficient to support a contention where other factors undermined the inference urged by Petitioners. Where Petitioners' claim was that a license applicant misrepresented its plans in its initial application, and Petitioners relied solely on the timing of applicant's decision to change plans as support, Commission reasonably considered facts that supported applicant's version of events.

CONTENTIONS, MATERIALITY

SCOPE OF PROCEEDING

Petitioners' claim that the plant was not properly "mothballed" did not relate to the technical and financial qualifications of the license transferee and was therefore outside the scope of the license transfer proceeding.

CONTENTIONS, MATERIALITY

A license applicant's business motives and strategies are not material to the NRC's license review.

RESTARTING SHUTDOWN PLANT

NRC's existing regulations would allow the holder of an operating license for a shutdown plant to apply for license amendments that could ultimately lead to restoring the plant to power operations.

MEMORANDUM AND ORDER

This order responds to the intervention petition and hearing request filed by Beyond Nuclear, Michigan Safe Energy Future, and Don't Waste Michigan (Petitioners) on August 27, 2024.[1] Because the Petitioners do not present an

[1] Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan and Michigan Safe Energy Future (Aug. 27, 2024) (Petition). *See also* NRC Staff Answer to Intervention Petition and Hearing Request in Palisades Restart License Transfer Proceeding *(Continued)*

admissible contention for hearing, we deny the petition and hearing request.

I. BACKGROUND

Petitioners challenge a December 6, 2023, license transfer request (Restart Transfer Request), which was filed by Holtec Decommissioning International, LLC (HDI); Holtec Palisades, LLC; and Palisades Energy, LLC (Applicants).[2] In May 2022, the previous license holder, Entergy Nuclear Operations, Inc. (Entergy), permanently shut down Palisades Nuclear Plant (Palisades) before it transferred the licenses to HDI and Holtec Palisades. The Applicants now seek to transfer the licenses[3] to Palisades Energy, LLC as part of their plan to restart the Palisades reactor.[4]

Palisades is a single unit pressurized water reactor that began operations in Covert, Michigan in 1971. In 2007, the NRC granted Entergy a renewed operating license for Palisades, authorizing operations through 2031.[5] Due to market conditions, however, Entergy decided in 2016 to end operations at Palisades by October 2018, which it later deferred to 2022. In 2020, Entergy and HDI's parent company, Holtec International, LLC, entered into a contract to transfer the facility and licenses to HDI, which provided that the transfer would take place "only after the permanent removal of fuel from the Palisades reactor."[6]

(Sept. 23, 2024) (Staff Answer); Applicants' Answer Opposing Beyond Nuclear et al.'s Petition for Leave to Intervene and Request for a Hearing (Sept. 23, 2024) (Applicants Answer).

[2] *See* Letter from Jean A. Fleming, Holtec International, LLC to NRC Document Control Desk (Dec. 6, 2023) (Restart Transfer Request), Encl. 1, Application for Order Consenting to Transfer of Control of License and Approving Conforming License Amendments (Application) (ADAMS accession no. ML23340A160 (package)).

[3] The Restart Transfer Request includes the license for the Palisades Nuclear Plant and the general license for the Palisades Independent Spent Fuel Storage Installation.

[4] *See* Holtec Decommissioning International, LLC, Holtec Palisades, LLC, and Palisades Energy, LLC; Palisades Nuclear Plant and the Palisades Independent Spent Fuel Storage Installation; Consideration of Approval of Transfer of Licenses and Conforming Amendment, 89 Fed. Reg. 64,493 (Aug. 7, 2024) (Palisades Transfer Notice). The NRC staff review of the transfer is ongoing. This order does not approve the proposed transfer to Palisades Energy, LLC.

[5] *See* Letter from Juan Ayala, NRC, to Paul A. Harden, Nuclear Management Company, Issuance of Renewed Facility Operating License No. DPR-20 for Palisades Nuclear Plant (Jan. 17, 2007) (ML070100476).

[6] *See* Letter from A. Christopher Bakken III, Entergy, to NRC Document Control Desk (Dec. 23, 2020), at 2 (ML20358A075) (2020 Transfer Application); *see also id.,* Encl. 1, Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments; Palisades Nuclear Plant and Big Rock Point Plant Consideration of Approval of Transfer of Control of Licenses and Conforming Amendments, 86 Fed. Reg. 8225 (Feb. 4, 2021). Big Rock Point is the site of a former boiling water reactor in Charlevoix County, Michigan, which has since been shut down and dismantled, and which is not included in the current transfer.

Entergy and Holtec International applied for NRC approval of the transfer and explained that HDI, an indirect wholly owned subsidiary of Holtec International, would take over responsibility for decommissioning the plant.[7] The 2020 license transfer application stated that "[b]ecause the transfers will not occur until after the docketing of [Entergy's] certifications of permanent cessation of operations and permanent removal of fuel from the Palisades reactor vessel . . . the Part 50 licenses will no longer authorize operation of the reactor[ ]."[8] According to the 2020 license transfer application, HDI intended to decommission and dismantle the facility, which would allow releasing the site for unrestricted use by "approximately 2041."[9] The NRC Staff approved the transfer of the operating license to HDI on December 13, 2021.[10]

Several petitioners, including the same petitioners in this proceeding, opposed the transfer to Holtec and HDI and filed hearing requests.[11] In July 2022, we granted the State of Michigan's request for a hearing on a contention challenging HDI's financial qualifications to carry out the planned decommissioning of the facility and we denied the other hearing requests.[12] Accordingly, a Presiding Officer held a two-day hearing in February 2023 and certified to the Commission an extensive record concerning HDI's and Holtec Palisades' financial ability to decommission the Palisades reactor.[13]

Entergy shut down the reactor on May 20, 2022, and on June 13, 2022, removed all fuel from the core and placed the plant into a decommissioning status.[14] The sale of Palisades from Entergy to Holtec closed on June 28, 2022.[15]

In its June 13, 2022, letter to the NRC certifying that it had permanently shut down, Entergy acknowledged that "upon docketing . . . these certifications, the [Palisades] 10 CFR Part 50 license no longer authorizes operation of the reactor

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[7] 2020 Transfer Application at 2.

[8] *Id.*

[9] *Id.* at 3.

[10] Order Approving Transfer of Licenses and Draft Conforming Administrative License Amendments (Dec. 13, 2021) (ML21292A146).

[11] *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 7 (2022).

[12] *Id.* at 7, 64-65.

[13] *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), LBP-23-5, 97 NRC 116 (2023).

[14] Application at 2; *see also* Letter from Darrell W. Corbin, Entergy Nuclear Operations, Inc., to NRC Document Control Desk (June 13, 2022) (regarding certifications of permanent cessation of power operations and permanent removal of fuel from the reactor vessel) (ML22164A067) (Certification Letter).

[15] *See* Applicants Answer at 6. Holtec International acquired the company that owns Palisades from Entergy and renamed it Holtec Palisades. *Id.* at 5-6.

or emplacement or retention of fuel in the reactor vessel."[16] The NRC issued amendments changing the operating license, which includes technical specifications, to reflect the authorities and requirements for a reactor in decommissioning status.[17] The amendments removed language from the license authorizing the licensee to operate the reactor and removed technical specifications that were not relevant to a plant undergoing decommissioning.[18]

According to the Petitioners, on July 5, 2022 — within days of the sale closing — HDI applied for federal funding from the Department of Energy (DOE) to restart Palisades.[19] Holtec was unsuccessful in that application, but it was later approved for a conditional DOE loan guarantee in March 2024 and DOE has begun disbursing funds to Holtec.[20] Between September 2023 and May 2024, HDI filed several requests for amendments to its license or exemptions from regulatory requirements related to potentially restarting the plant.[21] The Petitioners in this proceeding are among several who have petitioned for a hearing with respect to the four related license amendment requests.[22]

While our regulations do not require the NRC Staff to participate in a license transfer proceeding, the Staff chose to participate and oppose the Petition.[23] The NRC Staff argues that the Petitioners have not demonstrated standing or

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[16] Certification Letter at 1.

[17] Letter from Scott P. Wall, NRC, to Vice President for Operations, Entergy (June 4, 2018) (ML18114A410) (Defueled Administrative Controls Amendment); Letter from Scott P. Wall, NRC, to Vice President for Operations, Entergy (May 13, 2022) (ML22039A198) (Defueled TS Amendment).

[18] *See, e.g.,* Defueled TS Amendment, Encl. 2 at 14, 17, 30, 34, 36, 39-42 (discussion of changes to License Conditions 2.B.(1) and 2.C.(1) in Sections 4.2.3 and 4.2.8 of the Staff safety evaluation and discussion of changes to the TS in Section 4.3 of the Staff safety evaluation); Defueled Administrative Controls Amendment, Encl. 2 (discussion of TS changes in Section 4 of the Staff safety evaluation).

[19] Petition at 22.

[20] Applicants Answer at 15, 17-18; *see also* Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Apr. 9, 2024), at 2 (ML24100A689) (notification of changes to 2020 Post Shutdown Decommissioning Activities Report); DOE, *DOE Approves Loan Disbursement for Palisades,* https://www.energy.gov/articles/doe-approves-loan-disbursement-palisades-nuclear-plant (Mar. 17, 2025).

[21] *See* Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant; Applications for Amendments to Renewed Facility Operating License Involving Proposed No Significant Hazards Considerations and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information, 89 Fed. Reg. 64,486 (Aug. 7, 2024).

[22] *See* Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service (Oct. 7, 2024) (ML24284A364).

[23] Staff Answer at 2 n.1.

proposed an admissible contention. The Applicants also oppose the hearing request on both standing and contention admissibility grounds.

II. DISCUSSION

A. Legal Standards

To be granted a hearing, our regulations provide that a person whose interest may be affected by a proceeding must submit a request in writing that establishes their standing and offers an admissible contention.[24] A contention is a particularized statement of the dispute the petitioner has with a license application. Our regulations set forth deliberately strict requirements for a contention to be admitted for hearing to ensure that adjudicatory resources are not needlessly spent on vague or speculative claims.[25] A contention must be within the scope of the proceeding and material to the findings the Staff must make in approving the application, be set forth with particularity, and provide an explanation of its factual or expert support.[26] Moreover, the contention must show that the petitioner has a genuine dispute with the application on a material issue and include references to the "specific portions of the application."[27]

B. Contention: Misrepresentation by Holtec to Secure Initial License Transfer from Entergy

Petitioners offer a single contention that comprises two distinct claims.[28] First, Petitioners claim that HDI disingenuously acquired Palisades by representing that it intended to decommission the plant when it really intended to restart operations. Petitioners assert that this constitutes a failure to provide to the NRC "full information" concerning a license transfer as required by Section 184 of the Atomic Energy Act (AEA) and constitutes a "material false statement" under Section 186(a) of the AEA, which provides that any license may be revoked for such a statement in the application.[29] Second, Petitioners argue that the license HDI holds is a "possession-only license," and therefore it has no "operating

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[24] *See generally,* 10 C.F.R. § 2.309.

[25] *See, e.g., PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 504 (2015); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 307 (2012).

[26] 10 C.F.R. § 2.309(f)(1)(i) (specificity), (ii) (explanation of basis); (iii) (scope); (iv) (materiality); (v) (factual support or expert opinion).

[27] 10 C.F.R. § 2.309(f)(1)(vi).

[28] Petition at 20-21.

[29] *See id.* at 26; 42 U.S.C. §§ 2234, 2236(a).

license" to transfer to Palisades Energy.[30] For the reasons discussed below, we conclude that neither of these claims, taken separately or together, presents an admissible issue.

1. Claim that Applicants Made Material False Statements

AEA Section 184 provides that no license can be transferred unless "the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act."[31] AEA Section 186 provides that:

> Any license may be revoked for any material false statement in the application or any statement of fact required under section 182, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this Act or of any regulation of the Commission.[32]

Petitioners assert that the timing of events leading up to the license transfer indicates that HDI pursued the transfer from Entergy under the false pretense that it would decommission the plant rather than restart it. Petitioners claim that Holtec acquired the site so it could build two new reactors of its own design.[33] Petitioners also claim that by purchasing Palisades, Holtec gained access to the Palisades decommissioning trust fund, access to "some $1.85 billion in U.S. Department of Energy and State of Michigan bailout (taxpayer) funds," and the "benefits of a rigged, premium-priced power purchase agreement to provide a market for Palisades' above-market-price electricity."[34] Petitioners also assert that HDI's "deliberate nondisclosure of its true intentions has caused regulatory and engineering problems at the plant."[35]

The Applicants answer that the license transfer from Entergy to Holtec was contingent on Palisades being shut down and that it was Entergy's and Holtec's expectation when they signed the purchase agreement in 2018 that the plant

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[30] Petition at 21, 24-25.

[31] 42 U.S.C. § 2234.

[32] 42 U.S.C. § 2236(a).

[33] Petition at 25. Petitioners claim that Holtec plans to apply to build two SMR-300 reactors, a design that is currently in the pre-application stage. *See* NRC, *SMR-300,* https://www.nrc.gov/reactors/new-reactors/advanced/who-were-working-with/pre-application-activities/holtec/smr300.html (last visited Mar. 18, 2025).

[34] Petition at 25.

[35] *Id.* at 26.

would be shut down and defueled when the transfer took place.[36] Applicants assert that it was not until after the initial license transfer when HDI had actually gained DOE's approval for a conditional commitment of funds that it committed to the restart plan "in earnest."[37] Applicants refute Petitioners' claim that Holtec violated the AEA by "secretly" applying for DOE financing under the Civil Nuclear Credit Program and point out that the legislation creating the program directed DOE to protect confidentiality (including commercially sensitive information) and that a memorandum of understanding between NRC and DOE required DOE to consult with NRC regarding Holtec's application.[38]

As explained below, we find that Petitioners' claims do not amount to an admissible contention because they are outside the scope of the proceeding, insufficiently supported, and do not raise a material issue or genuine dispute with the Application. Because Petitioners do not present an admissible contention, we need not reach the issue of standing.[39]

a. Scope

The *Federal Register* notice of opportunity to request a hearing describes the scope of the proceeding, which in this case, entails review of a license transfer application.[40] A license transfer review is limited to specific matters, including the financial and technical qualifications of the proposed transferee.[41] Here, the *Federal Register* notice explained that the requested license transfer would be for the authority to operate Palisades, and would be conditioned on the NRC's approval of separate license amendment requests (subject to hearing requests in separate proceedings) that would be necessary prior to restoration of power operations.[42] Thus, the scope of the instant proceeding is to determine whether the proposed transferee — Palisades Energy — is technically and financially qualified to operate a nuclear power plant.

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[36] Applicants Answer at 15-16.

[37] *Id.* at 17-18.

[38] *See* 42 U.S.C. § 18753(g)(3); Memorandum of Understanding between U.S. Department of Energy and U.S. Nuclear Regulatory Commission on Civil Nuclear Credit Program (Apr. 19, 2022), Sec. IV (ML22111A275).

[39] *See, e.g., Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-23-1, 97 NRC 81, 84 n.17 (2023); *Palisades,* CLI-22-8, 96 NRC at 67; *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 364-65 (2020).

[40] *See* Palisades Transfer Notice, 89 Fed. Reg. at 64,493. *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790 (1985); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-17-7, 86 NRC 59, 97 (2017).

[41] 10 C.F.R. § 50.80(b)(1); *Exelon Generation Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-19-6, 89 NRC 465, 470-71 (2019).

[42] Palisades Transfer Notice, 89 Fed. Reg. at 64,494.

Petitioners' claims do not challenge the technical or financial qualifications of the proposed transferee to operate Palisades. Petitioners claim that Holtec made false statements or had hidden motives when it initially acquired Palisades from Entergy to decommission the plant, but these claims do not pertain to Palisades Energy's technical or financial qualifications to operate the plant if restart is approved. The claims relate instead to the prior license transfer, which the NRC Staff has already approved. None of Petitioners' claims relate to Palisades Energy's financial and technical qualifications to operate Palisades; therefore, they do not meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii) and are inadmissible.

b. Lack of Support

Petitioners' claim that Holtec deliberately misled the NRC about its initial plans to decommission Palisades is without meaningful factual support. Petitioners rely on inferences drawn from the timing of several events (including business negotiations, closing dates, licensing and loan applications, and various regulatory approvals) to state their claim.[43] But Petitioners provide no specific facts to support the inferences they urge us to draw from this timeline.[44]

Applicants respond that their plans for Palisades changed when circumstances changed, and they cite several facts in support of their position. As an initial matter, we observe that HDI is in the business of decommissioning and dismantling shutdown nuclear reactors, and it has several such projects ongoing around the country.[45] This is the reason Applicants give for wanting to transfer the operating license from HDI, which oversees decommissioning projects, to a new entity dedicated to operating Palisades so that it will be appropriately structured and staffed for power operations.[46] In addition, Applicants point out that when Holtec entered into a contract to buy Palisades in 2018, it could not have known that "future political and economic forces" would make restarting the plant a viable option.[47] Congress did not create the Civil Nuclear Credit Program — under which Holtec initially failed to obtain a loan — until 2021; and the program under which Holtec successfully secured financing for the Palisades

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[43] *See* Petition at 21-23.

[44] *See* Applicants Answer at 15-18.

[45] *See, e.g.,* Letter from Jean A. Fleming, Holtec International, to NRC Document Control Desk (Mar. 29, 2024) (ML24089A117) (report on status of decommissioning funding for reactors and independent spent fuel storage installations at Oyster Creek Nuclear Generating Station; Pilgrim Nuclear Power Station; Indian Point Nuclear Generating Stations 1, 2, and 3; Palisades Nuclear Plant and Big Rock Point).

[46] *See* Application at 2-3.

[47] Applicants Answer at 18.

restart was not created until 2022.[48] Nor could Holtec have known that the State of Michigan would appropriate funding for the project or that HDI would be able to negotiate power sales agreements to support operations.[49] Against these facts, Petitioners provide only speculation that HDI deliberately misled the NRC concerning its plans for the plant, and "[b]are assertions and speculation" are not enough to support an admissible contention.[50]

Similarly, Petitioners' assertions that HDI's nondisclosure of plans to pursue restart "may have caused the unnecessary expenditure of millions of dollars to rehabilitate the plant as a consequence of failure to properly mothball the plant," and a failure to place "[m]ajor components . . . in wet or dry layup" are unsupported.[51] Petitioners offer only speculation with these claims, and they do not explain how these claims are germane to the technical or financial qualifications of the proposed transferee in this license transfer proceeding. Therefore, these claims are inadmissible.[52]

Petitioners also ask us to "revoke the original December 2021 license transfer in its entirety."[53] Under the AEA, and apart from any hearing request, we could revoke the license or refer the matter to the NRC Staff for further investigation, at our discretion, if we found that Holtec had made material misrepresentations.[54] But because we see no factual basis for Petitioners' claim that Holtec deliberately misled the NRC, we decline to take either action.

c. Materiality

Petitioners' claims largely concern HDI's business motives in acquiring the Palisades facility. But the business motives of an applicant are generally not material to the NRC's licensing review, which is focused on whether the application demonstrates that the requested licensing action can be safely approved in accordance with pertinent technical and financial requirements set forth in NRC regulations. The NRC is "not in the business of regulating the market strategies of licensees" or "determin[ing] whether market conditions warrant commenc-

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[48] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 40323, Civil Nuclear Credit Program, 135 Stat. 429, 1019-22 (2021); Inflation Reduction Act, Pub. L. No. 117-169, § 50144, Energy Infrastructure Reinvestment Financing, 136 Stat. 1818, 2044-45 (2022).

[49] Applicants Answer at 20; *see also* Application at 4.

[50] *See Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012) (quoting *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 674 (2008)).

[51] Petition at 26.

[52] *See* 10 C.F.R. § 2.309(f)(1)(v).

[53] Petition at 26.

[54] *See* 10 C.F.R. § 50.100.

ing" operations, and we leave to licensees the "ongoing business decisions that relate to costs and profit."[55]

We have nevertheless considered Petitioners' claims regarding Holtec's motives. Petitioners claim these motives are to 1) gain a site to build "two prototype reactors" of its own design; 2) acquire Palisades' "nearly half-billion-dollar decommissioning trust fund"; 3) gain access to "$1.85 billion in U.S. Department of Energy and State of Michigan bailout (taxpayer) funds," and 4) get the benefits of "a rigged, premium-priced power purchase agreement to provide a market for Palisades above-market price electricity."[56] We find none of these claims material to the findings the NRC Staff must make regarding this Application.

Petitioners' first claim — that Holtec plans to build new prototype reactors — plainly concerns business strategy and does not pertain to Palisades Energy's financial or technical qualifications to operate the existing facility. If Holtec were to pursue this strategy, it would require NRC review and approval of new reactors in a future proceeding (to date, Holtec has not filed any application to build new reactors on the site). Petitioners' second claim is that Holtec was motivated to obtain Palisades' decommissioning trust fund. However, there is nothing improper in such a motive: Transfer of the decommissioning trust fund was a necessary element of the initial license transfer from Entergy. Regardless of whether the restart is approved, the decommissioning trust fund may only be used to decommission Palisades or other NRC-approved purposes. Petitioners' third claim relates to funding that will be used for the restart, and although the financial qualifications of the proposed license transferee are material to the findings the Staff must make, Petitioners do not claim that access to these funds would challenge those qualifications. Petitioners' fourth claim suggests that Palisades Energy will be able to overcharge for the electricity generated by Palisades; however, the NRC does not regulate prices for electricity, and the claim is immaterial to the findings required for NRC approval.

d. Genuine Dispute with the Application

A petition must refer to the "specific portions of the application" that it disputes; here the Petitioners do not cite the relevant Application in their statement of contention.[57] As both the Staff and the Applicants point out, the focus of a license transfer proceeding is the technical and financial qualifications of the

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[55] *See Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-28, 62 NRC 721, 726 (2005) (quoting *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 48-49 (2001)).

[56] Petition at 25.

[57] The Petition mentions the prior license transfer application several times. *See id.* at 20-24.

transferee.[58] The Application addresses Palisades Energy's technical qualifications, including a discussion of the credentials of senior management, its plans to retain site management and former senior operators that were employed at Palisades during operations, and its "hiring, training, and recertification plan to ensure that all positions in the operational organization are filled prior to transfer to [Palisades Energy] with individuals qualified to meet the [power operations licensing basis] requirements."[59] The Application also addresses the transferees' financial ability to run the plant, including its power purchase agreements with two customers under a "long-term, fixed price arrangement that will remain in effect for the full term of the Facility license, including any license renewal terms," and a support agreement provided by Holtec International.[60] Petitioners' contention disputes none of these representations and focuses instead on the supposed motives of the transferor in acquiring the plant in the prior license transfer. None of Petitioners' claims about Applicants' motives raises a genuine dispute with the Application on a material issue of law or fact, as required by 10 C.F.R. § 2.309(f)(1)(vi).

We also consider whether various assertions made in the standing declarations would support a contention. The declarants assert that restarting the plant would be unsafe because of alleged past safety problems.[61] They raise a safety concern with the fact that no commercial nuclear power plant in the country has ever been restored to operation after permanently shutting down.[62] Additionally, the declarants state they are concerned about "the lack of nuclear power generation experience and controversial historical performance of the parent company, Holtec International."[63]

None of these claims support an admissible contention. These assertions are outside the scope of this proceeding to the extent that they relate to license amendment applications filed in support of restart, rather than the license transfer

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[58] Staff Answer at 21-22; Applicants Answer at 11.

[59] Application at 6-12. Attachment E of Enclosure 1 of the application lists regulatory commitments, including that at least five business days before the planned transfer, HDI will provide evidence that the facility has employees to meet the staffing and qualification requirements set forth in the power operations Technical Specifications, Physical Security Plan, Emergency Plan, Quality Assurance Program Manual, and Updated Final Safety Analysis Report. *See* Application, Encl. 1, Attach. E, at 1.

[60] Application at 14-16.

[61] *See, e.g.,* Petition, Declaration of William D. Reed in Support of Petition for Leave to Intervene in Palisades Nuclear Power Plant Exemption Proceeding (Aug. 27, 2024) (Reed Declaration), ¶¶ 5-9 (alleged past safety problems). The standing declarations proffered by all three Petitioners are substantially identical.

[62] *Id.* ¶ 10.

[63] *Id.* ¶ 4.

application that is the subject of this proceeding.[64] Petitioners' claim that the plant has not or may not have been properly maintained with a view to restoring operations since its shutdown lacks both support and specificity.[65] Petitioners' claim that Holtec lacks power generation experience is outside the scope of the proceeding and immaterial because the proposed operator's qualifications, not those of the parent company, are at issue here.[66] Moreover, Petitioners do not dispute the portions of the Application that describe Palisades Energy's qualifications.[67]

2. Claim that HDI Does not Possess a Valid Operating License to Transfer

Petitioners also claim that because the license prohibits HDI from operating the plant, it "has no operating authority to transfer to Palisades Energy."[68] Petitioners assert that "as a practical matter," HDI received a "possession-only license" in the transfer from Entergy.[69] Petitioners go on to argue that Holtec does not "have a valid license to transfer to Palisades Energy."[70] We find these claims lack the sufficient support required by 10 C.F.R. § 2.309(f)(1)(v).

Although Petitioners are correct — and neither the Staff nor Applicants disagree — that HDI is not currently authorized to operate the reactor, Petitioners cite no authority for the claim that HDI holds a "possession-only license" or that Entergy did not transfer its renewed operating license to HDI.[71] On the contrary, NRC regulations specifically provide that a license "for a facility that has permanently ceased operations continues in effect beyond the expiration date to authorize ownership and possession of the production and utilization facility, until the Commission notifies the licensee in writing that the license

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[64] 10 C.F.R. § 2.309(f)(1)(iii).

[65] *See, e.g.,* Reed Declaration ¶ 10 (maintenance since shutdown and first reactor restored to operations); Petition at 26; 10 C.F.R. § 2.309(f)(1)(ii), (v).

[66] *See* 10 C.F.R. § 2.309(f)(1)(iii).

[67] *Id.* § 2.309(f)(1)(vi).

[68] Petition at 24.

[69] *Id.* at 21, 24-25.

[70] *Id.* at 21, 25. It is not clear whether Petitioners argue that HDI has no "valid" license because a "possession-only" license is not valid or if they are reiterating their claim that HDI's license is invalid because Holtec misrepresented its intentions. In either case, we find these arguments to be without merit.

[71] As the Staff points out in its brief, the "possession-only license amendment" process was eliminated in the 1996 decommissioning rule. *See* Decommissioning of Nuclear Power Reactors, 61 Fed. Reg. 39,278, 39,284, 39,290-91 (July 29, 1996) (final rule) (disagreeing with comments suggesting that the possession-only license amendment process be retained for power reactor decommissioning); Staff Answer at 25.

is terminated."[72] Thus, while HDI is not currently authorized to operate the reactor, HDI's license remains a renewed facility operating license during the decommissioning process until license termination.

In 2021, we determined that the existing regulatory framework allows an applicant to apply for the restart of a shutdown reactor that had already submitted the 10 C.F.R. § 50.82(a)(1) certifications. In denying a petition for rulemaking, the Commission stated that "the NRC may consider requests from licensees to resume operations under the existing regulatory framework."[73] We determined that no statute or regulation prohibits reauthorizing operation after the section 50.82(a)(1) certificates have been issued.[74] Petitioners do not address this determination or provide any substantive reason why we should reconsider it here.

III. CONCLUSION

For the foregoing reasons, we conclude that Petitioners have not set forth an admissible contention for hearing. Therefore, we deny the Petition and terminate this adjudicatory proceeding.

IT IS SO ORDERED.

For the Commission

Carrie M. Safford
Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of April 2025.

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[72] 10 C.F.R. § 50.51(b).

[73] Criteria to Return Retired Nuclear Power Reactors to Operations, 86 Fed. Reg. 24,362, 24,363 (May 6, 2021) (denying a petition for rulemaking).

[74] *Id.*

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Emily I. Krause, Chair
Dr. Gary S. Arnold
Dr. Arielle J. Miller

In the Matter of **Docket No. 50-255-LA-3**
(ASLBP No. 24-986-01-LA-BD01)

HOLTEC DECOMMISSIONING INTERNATIONAL, LLC, AND HOLTEC PALISADES, LLC
(Palisades Nuclear Plant) **June 20, 2025**

In this proceeding concerning four requests to amend the renewed facility operating license for the Palisades Nuclear Plant, the Licensing Board considers Petitioning Organizations' motion to admit new and amended contentions challenging the Nuclear Regulatory Commission Staff's 2025 Environmental Assessment and Finding of No Significant Impact. Because the Board determines that Petitioning Organizations failed to propose an admissible contention, the Board denies the motion and terminates the proceeding.

RULES OF PRACTICE: ADMISSIBILITY OF CONTENTIONS

Contentions must meet a multi-factor test to be admitted for hearing. For each proposed contention, petitioners must provide a specific statement of the issue of law or fact they seek to raise and a brief explanation of the contention's basis. 10 C.F.R. § 2.309(f)(1)(i)-(ii). Petitioners also must demonstrate that the issues raised are within the scope of the proceeding and material to the findings the NRC must make to support the underlying licensing action. *Id.* § 2.309(f)(1)(iii)-(iv).

ADJUDICATORY PROCEEDINGS

Adjudicatory proceedings are not a forum for challenges to agency policies or regulations. *See* 10 C.F.R. § 2.335(a); *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 329, 334 (1999); *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 & n.33 (1974).

RULES OF PRACTICE: ADMISSIBILITY OF CONTENTIONS

Petitioners' claims must be supported with "a concise statement of . . . alleged facts or expert opinions" with references to specific sources and documents. 10 C.F.R. § 2.309(f)(1)(v). Conclusory statements and speculation are not enough. *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000). Petitioners must identify specific portions of the application in dispute or information that should have been included as a matter of law, with factual support sufficient to show that a "genuine dispute exists with the applicant . . . on a material issue of law or fact." 10 C.F.R. § 2.309(f)(1)(vi).

RULES OF PRACTICE: ADMISSIBILITY OF CONTENTIONS, NATIONAL ENVIRONMENTAL POLICY ACT

With regard to contentions challenging the agency's compliance with the National Environmental Policy Act of 1969, as amended (NEPA), petitioners must demonstrate that the agency's NEPA analysis fails to include required information or that the analysis is otherwise unreasonable. *See NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323 (2012) ("[T]he proper question is not whether there are plausible alternative choices for use in the analysis, but whether the analysis that was done is reasonable under NEPA."); *see also Seven Cty. Infrastructure Coal. v. Eagle County,* No. 23-975, 605 U.S. _, slip op. at 12 (2025) ("As the Court has emphasized on several occasions, and we doubly underscore again today, 'inherent in NEPA . . . is a "rule of reason," which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.'" (quoting *U.S. Dep't of Transp. v. Pub. Citizen,* 541 U.S. 752, 767 (2004))).

RULES OF PRACTICE: ADMISSIBILITY OF CONTENTIONS, NEW OR AMENDED CONTENTIONS, GOOD CAUSE

Any contentions filed after the initial hearing petition deadline must meet the agency's timeliness requirements — i.e., establish "good cause." 10 C.F.R.

§ 2.309(c)(1), (4). Petitioners must demonstrate that the information that forms the basis for their contentions was not previously available and is materially different from information previously available. *Id.* § 2.309(c)(1)(i)-(ii). Additionally, petitioners must show that their contentions were "submitted in a timely fashion based on the availability of the . . . information." *Id.* § 2.309(c)(1)(iii).

LICENSE AMENDMENTS

An NRC regulation, 10 C.F.R. § 50.59, governs which changes require a license amendment. Challenges regarding a licensee's compliance with this provision may be filed in accordance with 10 C.F.R. § 2.206.

LICENSING BOARDS: AUTHORITY

Licensing boards have no authority to rule on challenges to the actions of states or other federal agencies. *See Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121-22 (1998) (instructing presiding officers to "narrowly construe their scope to avoid where possible the litigation of issues that are the primary responsibility of other agencies and whose resolution is not necessary to meet our statutory responsibilities").

NATIONAL ENVIRONMENTAL POLICY ACT: PURPOSE AND NEED STATEMENT

Consistent with federal case law, the Commission will "give substantial weight to a properly-supported statement of purpose and need by an applicant . . . or sponsor of a proposed project in determining the scope of alternatives to be considered by the NRC." Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,905, 55,909 (Sept. 29, 2003) (Denial of Petition for Rulemaking).

NATIONAL ENVIRONMENTAL POLICY ACT: NEED FOR POWER

Although need for power must be addressed for actions that would authorize the siting and construction of new plants, the NRC does not require a need-for-power assessment for operating license applications and license renewal applications (i.e., post-construction licensing actions). *See* Denial of Petition for Rulemaking, 68 Fed. Reg. at 55,910; 10 C.F.R. §§ 51.53, 51.95. The Commission has determined that, post-construction, any significant environmental impacts from siting and construction already would have occurred, obviating

the need to weigh the need for power against the environmental impacts of construction and operation. Denial of Petition for Rulemaking, 68 Fed. Reg. at 55,910. Further, even for those license actions that do require a need-for-power assessment, the Commission does not require extensive quantitative analysis. *See id.* (emphasizing that "such an assessment should not involve burdensome attempts to precisely identify future conditions"); *see also* NEPA §§ 106(b)(2), (b)(3)(B), 107(e), (g), 42 U.S.C. §§ 4336(b)(2), (b)(3)(B), 4336a(e), (g) (imposing page limits and time limits, as well as setting forth the expectation that an agency need not undertake new scientific or technical research unless it would be "essential to a reasoned choice among alternatives and the overall costs and time frame of obtaining it are not unreasonable").

NATIONAL ENVIRONMENTAL POLICY ACT: ENVIRONMENTAL ASSESSMENT

The alternatives analysis for an Environmental Assessment is expected to be brief. *See* NEPA § 106(b)(2), 42 U.S.C. § 4336(b)(2); 10 C.F.R. § 51.30(a)(1)(ii); *N. Idaho Cmty. Action Network v. U.S. Dep't of Transp.,* 545 F.3d 1147, 1153 (9th Cir. 2008) ("[A]n agency's obligation to consider alternatives under an EA is a lesser one than under an EIS" and "an agency only is required to include a brief discussion of reasonable alternatives." (internal quotation marks and citations omitted)).

NATIONAL ENVIRONMENTAL POLICY ACT: COUNCIL ON ENVIRONMENTAL QUALITY

The NRC has adopted its own NEPA-implementing regulations, and it has long treated CEQ regulations as non-binding. *See* 10 C.F.R. § 51.10(a) (providing that the regulations in 10 C.F.R. Part 51 implement NEPA in a manner "consistent with the NRC's domestic licensing and related regulatory authority under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the Uranium Mill Tailings Radiation Control Act of 1978, and [in a manner] which reflects the Commission's announced policy to take account of [CEQ] regulations voluntarily, subject to certain conditions"); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011) (reformulating a contention to make clear that a substantive CEQ regulation is not binding on the NRC).

MEMORANDUM AND ORDER
(Ruling on Motion for Leave to File New and Amended Contentions)

This proceeding concerns four license amendment requests filed by Holtec Decommissioning International, LLC, on behalf of Holtec Palisades, LLC (collectively, Applicants), in view of potentially restarting power operations at Palisades Nuclear Plant. Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert, and Nuclear Energy Information Service (collectively, Petitioning Organizations) have filed a motion with five proposed new and amended contentions challenging the NRC Staff's Draft Environmental Assessment (Draft EA) and Draft Finding of No Significant Impact (Draft FONSI) for the restart project.[1] For the reasons set forth below, we deny Petitioning Organizations' motion and terminate the proceeding.

I. BACKGROUND

Earlier this year, in LBP-25-4, we addressed Petitioning Organizations' petition to intervene in this license amendment proceeding.[2] We denied the petition because we concluded that although Petitioning Organizations had established standing to intervene, their seven initially proffered contentions did not meet the Commission's strict standards for admissibility.[3] We did not terminate the proceeding at that time, however, because Petitioning Organizations' proposed new and amended contentions were pending before us.

Petitioning Organizations filed their proposed new and amended contentions on March 3, 2025, thirty days after the Staff issued the Draft EA and Draft FONSI, consistent with the deadline in our order approving the participants' joint proposed schedule for new and amended contentions.[4] The Staff and Applicants

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[1] Petitioning Organizations' Motion to File Amended and New Contentions (Mar. 3, 2025) (Motion); Petitioning Organizations' Amended and New Contentions Based on Draft Environmental Assessment/Finding of No Significant Impact for Palisades Nuclear Power Plant (Mar. 3, 2025) (New and Amended Contentions).

[2] LBP-25-4, 101 NRC 133, 140, 186 (2025) (appeal pending). Our decision in LBP-25-4 provides a more detailed background on Applicants' restart project and the four license amendment requests at issue in this proceeding; therefore, we do not repeat it here. *Id.* at 141-48.

[3] In that decision, we also denied a petition to intervene filed by nine individual petitioners (collectively, Joint Petitioners), who, although they had established standing, had not proffered an admissible contention. *Id.* at 140, 186.

[4] *See* Notification of Availability of Draft Environmental Assessment and Draft Finding of No Significant Impact (Jan. 31, 2025) at 2; Licensing Board Order (Adopting Proposed Schedule for New

(Continued)

oppose the admission of the new and amended contentions on timeliness and admissibility grounds.[5] We held a prehearing conference on May 15, 2025, to provide an opportunity for Petitioning Organizations, the Staff, and Applicants to address our questions on their written filings.[6]

II. ANALYSIS

A. Legal Standards for New and Amended Contentions

As we explained in LBP-25-4, contentions must meet a multi-factor test to be admitted for hearing.[7] For each of their proposed contentions, Petitioning Organizations must provide a specific statement of the issue of law or fact they seek to raise and a brief explanation of the contention's basis.[8] Petitioning Organizations also must demonstrate that the issues raised are within the scope of the proceeding and material to the findings the NRC must make to support the underlying licensing action.[9] Adjudicatory proceedings are not a forum for challenges to agency policies or regulations.[10]

Petitioning Organizations' claims also must be supported with "a concise statement of . . . alleged facts or expert opinions" with references to specific

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and Amended Contentions) (Feb. 10, 2025) at 2 (unpublished); "Draft Environmental Assessment and Draft Finding of No Significant Impact for the Palisades Nuclear Plant Reauthorization of Power Operations Project" (Draft for Comment) (Jan. 2025) (ADAMS Accession No. ML24353A157) (Draft EA). The Staff issued the Final Environmental Assessment and Final Finding of No Significant Impact on May 30, 2025. *See* Notification (May 30, 2025) at 1; "Environmental Assessment and Finding of No Significant Impact for the Palisades Nuclear Plant Reauthorization of Power Operations Project" (May 2025) (ML25111A031) (Final EA). We reviewed the Final EA and found no material differences between the Final and Draft EA with regard to Petitioning Organizations' proposed contentions. Consistent with the participants' pleadings, however, we refer to the Draft EA in our analysis of the proposed contentions, rather than the Final EA.

[5] NRC Staff Answer to Petitioning Organizations' Motion to File Amended and New Contentions Based on Draft Environmental Assessment/Finding of No Significant Impact in the Palisades Restart Amendment Proceeding (Mar. 28, 2025) at 2 (Staff Answer); Applicants' Answer Opposing Beyond Nuclear et al.'s New and Amended Contentions (Mar. 28, 2025) at 1-2 (Applicants Answer). Petitioning Organizations replied in support of their motion on April 4, 2025. Petitioning Organizations' Reply in Support of Amended and New Contentions (Apr. 4, 2025) (Reply).

[6] Tr. at 95-168.

[7] LBP-25-4, 101 NRC at 156-57.

[8] 10 C.F.R. § 2.309(f)(1)(i)-(ii).

[9] *Id.* § 2.309(f)(1)(iii)-(iv).

[10] *See id.* § 2.335(a); *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999); *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 & n.33 (1974).

sources and documents.[11] Conclusory statements and speculation are not enough:[12] Petitioning Organizations must identify specific portions of the application in dispute or information that should have been included as a matter of law, with factual support sufficient to show that a "genuine dispute exists with the applicant . . . on a material issue of law or fact."[13] With regard to contentions challenging the agency's compliance with the National Environmental Policy Act of 1969, as amended (NEPA), Petitioning Organizations must demonstrate that the agency's NEPA analysis fails to include required information or that the analysis is otherwise unreasonable.[14]

Petitioning Organizations also must meet the agency's timeliness requirements — i.e., establish "good cause" — because their new and amended contentions were filed after the initial hearing petition deadline.[15] Petitioning Organizations must demonstrate that the information that forms the basis for their contentions was not previously available and is materially different from information previously available.[16] Additionally, Petitioning Organizations must show that their contentions were "submitted in a timely fashion based on the availability of the . . . information."[17]

B. Petitioning Organizations' New and Amended Contentions

Applicants assert that all five of Petitioning Organizations' new and amended contentions — Amended Contentions 2, 4, 5, 6, and New Contention 8 — should be dismissed for failure to meet the agency's timeliness requirements.[18] The Staff asserts that Amended Contentions 2, 4, 5, and 6 should be dismissed on timeliness grounds, but the Staff does not object to the timeliness of New

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[11] 10 C.F.R. § 2.309(f)(1)(v).

[12] *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000).

[13] 10 C.F.R. § 2.309(f)(1)(vi).

[14] *See NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323 (2012) ("[T]he proper question is not whether there are plausible alternative choices for use in the analysis, but whether the analysis that was done is reasonable under NEPA."); *see also Seven Cty. Infrastructure Coal. v. Eagle County,* No. 23-975, 605 U.S. _, slip op. at 12 (2025) ("As the Court has emphasized on several occasions, and we doubly underscore again today, 'inherent in NEPA . . . is a "rule of reason," which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.'" (quoting *U.S. Dep't of Transp. v. Pub. Citizen,* 541 U.S. 752, 767 (2004))).

[15] 10 C.F.R. § 2.309(c)(1), (4).

[16] *Id.* § 2.309(c)(1)(i)-(ii).

[17] *Id.* § 2.309(c)(1)(iii). Because we already determined that Petitioning Organizations established standing, we need not address it here. LBP-25-4, 101 NRC at 156; 10 C.F.R. § 2.309(c)(4).

[18] *See* Applicants Answer at 1, 71-72.

Contention 8.[19] The Staff and Applicants both argue, however, that all five new and amended contentions should be dismissed for failure to satisfy the admissibility requirements.[20] We need not decide whether Petitioning Organizations' new and amended contentions were timely submitted because we conclude, as discussed below, that the contentions do not satisfy the agency's admissibility requirements.[21]

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[19] *See* Staff Answer at 2, 60.

[20] *See id.* at 2; Applicants Answer at 1.

[21] Petitioning Organizations argue that the Draft EA was the first time the information underpinning their new and amended contentions became available. *See* Motion at 10-12. The Staff and Applicants assert that Petitioning Organizations' claims could have been made earlier, before the issuance of the Draft EA. For example, the Staff and Applicants argue that Applicants' response to a request for additional information (RAI) that was made publicly available on October 14, 2024, should be considered the trigger point for portions of Amended Contentions 2, 5, and 6, and that these arguments are now impermissibly late. Staff Answer at 12, 15, 22, 46, 54; Applicants Answer at 28-29, 49, 61. Although we need not address the timeliness issue, we nevertheless observe that the Commission's rules provide that new or amended environmental contentions may be filed in response to "a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents," 10 C.F.R. § 2.309(f)(2), and the Draft EA is one of the options on this list. We also acknowledge that the good-cause standard in 10 C.F.R. § 2.309(c) that Petitioning Organizations must meet is tied to the availability of the information on which the new and amended contentions are based. *See* 10 C.F.R. § 2.309(c)(1); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC 681, 686 (2012). But in the circumstances presented here, we question the application of a standard that would start the clock for new and amended environmental contentions from the date of an RAI response (or other correspondence), rather than the issuance of the Draft EA. Although the NRC's intervention requirements "demand a level of discipline and preparedness on the part of petitioners," *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428 (2003), that expectation, in our view, presupposes a process that follows the ordinary course. Here, RAIs were necessary to supplement information missing from a document that was not submitted as an environmental report, but rather as support for a categorical exclusion from the agency's NEPA review. In our view, requiring Petitioning Organizations to update their proposed contentions while the Staff obtained information that in other proceedings would have been included in an environmental report in the first instance strikes us as akin to moving the goal posts and as neither fair nor efficient. Moreover, because Applicants' restart request is divided across different licensing actions and thus different proceedings (per Commission policy to use the existing regulatory framework), this case presents the unusual circumstance where the scope of the Staff's environmental review is not coextensive with the scope of the proceeding. The Draft EA covers additional, and future, licensing actions, not only the four license amendments at issue here. *See* Draft EA at 1-3 (describing the "proposed actions" as the "decisions on whether to grant or deny [Applicants'] interdependent, connected licensing and regulatory requests[,] . . . including any revisions or supplements thereto or other regulatory or licensing requests submitted to the NRC that are necessary to reauthorize power operations of Palisades . . . ."). In other words, there is no one adjudicatory proceeding where environmental contentions might be raised challenging the Staff's review of the Palisades restart project. In this context, we question the practicality and fairness of imposing such a narrow window on the timing of the environmental contentions filed in this proceeding.

1. Amended Contention 2

> The decision to prepare an [EA and FONSI] is not supported by the facts and is arbitrary, capricious, unreasonable, and an abuse of discretion. An Environmental Impact Statement (EIS) is required. The NRC admits in the EA that the proposal to restart Palisades is a major licensing action. There are significant environmental impacts, such as the impacts of climate change, earthquake hazards, and the production of hundreds of tons of radioactive waste. Significant technical and structural repairs and replacements to the Palisades reactor complex will be necessary before Palisades could restart. Significant new physical facilities will be constructed as part of the restart. The restart is analogous in many respects to a subsequent license renewal, for which an EIS is required. The attempt to return a nuclear reactor to operational status from decommissioning status is an unprecedented action at least as significant, and clearly more so, than a license renewal.[22]

Like their original Contention 2, Petitioning Organizations argue in their amended contention that Applicants must obtain a new operating license to restart Palisades, and thus the Staff must prepare an EIS, rather than an EA.[23] They also argue that the restart of Palisades is a "major" federal action given the public funding involved.[24] And they assert that "[a] review of the [Draft] EA and [Draft] FONSI clearly shows that there are significant environmental impacts that require the preparation of an EIS."[25]

Petitioning Organizations present several challenges to the Draft EA that, in their view, support a finding of significant impacts that would need to be addressed in an EIS. Based on their reading of the Draft EA, they argue that the Staff determined that the environmental impacts from restarting Palisades would be identical to the impacts discussed in the supplemental environmental impact statement (SEIS) that was prepared in 2006 for the *Palisades* license renewal proceeding, which "alone should suffice to force an EIS."[26] Petitioning Organizations also object to the Staff's reliance on the license renewal SEIS because, they assert, the license renewal SEIS did not adequately address radioactive waste storage or the impacts of earthquakes on the plant and the independent

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[22] New and Amended Contentions at 1.

[23] *Compare* Petition to Intervene and Request for Adjudicatory Hearing by Beyond Nuclear, Don't Waste Michigan, Michigan Safe Energy Future, Three Mile Island Alert and Nuclear Energy Information Service (dated Oct. 7, 2024; filed Oct. 10, 2024) at 40-45 (Petitioning Organizations Hearing Petition), *with* New and Amended Contentions at 2-4.

[24] *See* New and Amended Contentions at 3-4; Motion at 3.

[25] New and Amended Contentions at 4.

[26] *Id.*

spent fuel storage installation.[27] Petitioning Organizations argue that, for restart, the Staff should analyze "the issue of radioactive waste" by using the baseline of Palisades' status when the plant went offline, rather than when it was in operation, and by analyzing the direct and cumulative impacts of the production of waste for the six years remaining on the current license and an additional twenty-year license renewal.[28] Regarding the impacts from earthquakes, which Petitioning Organizations assert would be significant, Petitioning Organizations argue that 10 C.F.R. Part 50, Appendix S, and 10 C.F.R. § 72.103 require an analysis of earthquake impacts.[29]

In addition, Petitioning Organizations argue that the Draft EA lacks a detailed discussion of "significant construction planned at the Palisades" site, including a Digital Staging Testing Building, a radioactive material storage building, two "Diverse and Flexible Coping Strategies" storage buildings, and the replacement of the component cooling-water heat exchangers and other equipment.[30] Finally, Petitioning Organizations object to the Staff's decision to prepare an EA rather than an EIS given the Staff's discussion of possible future climate change impacts.[31] Taken together, Petitioning Organizations argue, the Staff's decision not to prepare an EIS is "arbitrary, capricious, unreasonable, and an abuse of discretion."[32]

As an initial matter, we conclude that Petitioning Organizations' claim that Applicants must obtain a new operating license to restart Palisades fails for the reasons provided in our analysis of original Contention 2.[33] As we explained in LBP-25-4, the Commission has determined that restart requests will be evaluated using the existing regulatory framework.[34] Petitioning Organizations' argument that a new operating license is required therefore amounts to an improper, out-of-scope challenge to Commission policy and to the regulations that allow for the licensing actions necessary for the restart of Palisades to proceed under its renewed facility operating license (e.g., license amendments and exemptions).[35]

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[27] *Id.* at 4-6.

[28] *Id.* at 5.

[29] *Id.* at 5-6; *see also* Reply at 9.

[30] New and Amended Contentions at 6. Petitioning Organizations also assert that "these engineered alterations must be subjected to some form of licensing action, such as an amendment, although there is no public intention of doing so stated in the EA." *Id.* at 7.

[31] *Id.* at 7-8.

[32] *Id.* at 8.

[33] *See* LBP-25-4, 101 NRC at 178-79.

[34] *See id.*

[35] *See id.* at 178-79; 10 C.F.R. §§ 2.309(f)(1)(iii), 2.335; *see also Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), CLI-25-3, 101 NRC 197, 209-10 (2025) (concluding that

(Continued)

The remaining arguments in Amended Contention 2 fare no better. Contrary to Petitioning Organizations' view, the Staff did not conclude that the impacts from restarting Palisades would be the same as those discussed in the license renewal SEIS. Rather, the Staff separately analyzed the impacts of restart and concluded that the impacts would be "not significant" for "each potentially affected environmental resource area."[36] In any event, Petitioning Organizations' bald assertion that the Staff's reference to the 2006 SEIS means that an EIS is required for restart is insufficient to support a challenge to the Draft EA.[37]

Regarding their challenges to the Draft EA's purported lack of discussion of radioactive waste and earthquakes, Petitioning Organizations merely assert, without more, that including such a discussion will lead to a finding of significant impacts.[38] Further, they overlook analyses in the Draft EA that appear to be directly relevant to their arguments. In particular, the Draft EA includes a discussion of impacts from the uranium fuel cycle, as well as the Staff's consideration of impacts from the six years remaining on the renewed facility operating license and the cumulative impacts from a twenty-year subsequent license renewal.[39] Moreover, there appears to be no difference between the Staff's position in the Draft EA and Petitioning Organizations' claim that "the baseline for determining the environmental impact of restarting Palisades should be the status of Palisades when it went into decommissioning mode."[40] The Draft EA provides that the baseline is "the current decommissioning state at Palisades prior to implementing any of the activities related to the preparation for the resumption of power operations."[41]

The Draft EA also contains a discussion of postulated accidents.[42] Petitioning Organizations do not explain how the consideration of earthquakes would alter that discussion.[43] They point to NRC safety regulations governing seismic analyses for nuclear plants and independent spent fuel storage installations, but they

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petitioners in the *Palisades* license transfer proceeding did not address or "provide any substantive reason why [the Commission] should reconsider" its determination to apply the existing regulatory framework for restart requests). Petitioning Organizations' argument that the restart project is "major" is likewise inadmissible, as we explained in LBP-25-4, because it fails to raise a material dispute. *See* LBP-25-4, 101 NRC at 179 (citing 10 C.F.R. § 2.309(f)(1)(vi)).

[36] Draft EA at 4-1.

[37] *See* 10 C.F.R. § 2.309(f)(1)(v). To the extent Petitioning Organizations seek to litigate the contents of the 2006 SEIS, including their objections to the SEIS's discussion of radioactive waste and earthquakes, their claims are outside the scope of this proceeding. *See id.* § 2.309(f)(1)(iii).

[38] *See* New and Amended Contentions at 5-7.

[39] Draft EA at 3-63, G-1.

[40] New and Amended Contentions at 5.

[41] Draft EA at 1-6.

[42] *Id.* at 3-64 to -65.

[43] *See* New and Amended Contentions at 5-6.

do not explain the relevance of these regulations to the Staff's NEPA analysis.[44] Similarly, Petitioning Organizations make no effort to explain why additional analysis of planned construction on the Palisades site would be material to the Staff's fulfillment of its NEPA obligations.[45]

Finally, Petitioning Organizations suggest that, by deciding not to prepare an EIS, the Staff ignored its climate change analysis,[46] but the Draft EA analyzes the potential effects of climate change for all resource areas.[47] Petitioning Organizations do not provide any specific, substantive challenge to this discussion that would call into question the Staff's "not significant" finding. Consequently, they fail to demonstrate a genuine dispute with the Staff's analysis.[48] We therefore do not admit Amended Contention 2.

2. Amended Contention 4

> [Applicants] and the NRC admit that there is no provision in law or regulation for the NRC to authorize the restart of Palisades as a closed reactor. They are cobbling together a "pathway" to restart, using a "creative" procedure based on existing regulations that they believe allows [Applicants] to bypass the requirement of compiling a new Updated Final Safety Analysis Report (UFSAR) in favor of returning [to] the UFSAR Revision 35, which was in place when the Palisades reactor was closed. Since there is no dedicated regulatory procedure for restarting a closed reactor, the NRC has no authority to approve the license amendments requested by [Applicants].[49]

Amended Contention 4 is substantively, and substantially, similar to Petitioning Organizations' original contention 4.[50] As Petitioning Organizations explain, their amended contention retains "the overarching statements and arguments in

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[44] *See id.*

[45] *See id.* at 6-7. Similarly unavailing is Petitioning Organizations' concern that the Draft EA does not discuss whether Applicants intend to request license amendments for future changes to the plant. *See id.* at 7; *supra* note 30. As we explained in LBP-25-4, an NRC regulation, 10 C.F.R. § 50.59, governs which changes require a license amendment. *See* LBP-25-4, 101 NRC at 183-84. Challenges regarding a licensee's compliance with this provision may be filed in accordance with 10 C.F.R. § 2.206.

[46] *See* New and Amended Contentions at 7-8.

[47] Draft EA at F-3.

[48] *See* 10 C.F.R. § 2.309(f)(1)(vi).

[49] New and Amended Contentions at 8.

[50] *Compare* Petitioning Organizations Hearing Petition at 48-63, *with* New and Amended Contentions at 8-27. The statement of the contention itself is identical, along with the majority of its supporting content.

. . . original Contention 4."[51] For the first time in Amended Contention 4, however, Petitioning Organizations argue that the Draft EA's discussion of climate change "provides further confirmation of the statements and opinions of [their] expert, Arnold Gundersen, that the effects of climate change on the environment will affect the components and operational procedures of Palisades if it is allowed to restart."[52] Petitioning Organizations focus on the Staff's analysis of potential changes in Lake Michigan's seasonal surface water temperatures, as well as its finding that the region is likely to experience changes in precipitation and annual climatic water deficit.[53] Petitioning Organizations assert that the "Staff's climate change conclusions . . . implicate AEA considerations: that there might be 'changed impacts from the ongoing operations' or the imposition of 'operational restrictions on the site's safety and performance.'"[54]

The overarching statements and arguments in original Contention 4 were all made in support of Petitioning Organizations' view that the NRC lacks the authority to allow Applicants to restart Palisades.[55] And the statements by their expert, Mr. Gundersen, were made in support of Petitioning Organizations' view that the change process in 10 C.F.R. § 50.59 may not be used to update the UFSAR.[56] In essence, Petitioning Organizations had argued that the types of changes that would be sought by Applicants were too significant to be approved by license amendment.[57] In LBP-25-4, we concluded that these claims were inadmissible because they amounted to improper challenges to Commission policy and regulations.[58]

Petitioning Organizations have not provided anything in Amended Contention 4 that would alter that conclusion. Although Petitioning Organizations assert that the Staff's climate change analysis "confirms" the claims made in Contention 4 and "comprises evidence favorable to [its] admissibility,"[59] the deficiencies in their original contention remain. We incorporate our discussion and analysis of Contention 4 in LBP-25-4 in full, and for the same reasons, we do not admit Amended Contention 4.[60]

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[51] Reply at 10.

[52] Motion at 3.

[53] *See* New and Amended Contentions at 21-23.

[54] *Id.* at 24 (quoting Draft EA at F-1).

[55] *See* Petitioning Organizations Hearing Petition at 51.

[56] *See id.* at 58-63.

[57] *See id.* at 50, 55-63.

[58] LBP-25-4, 101 NRC at 182-84.

[59] Motion at 4.

[60] LBP-25-4, 101 NRC at 180-84; *see also Palisades,* CLI-25-3, 101 NRC at 210 (finding no reason to reconsider the determination that the existing regulatory framework may be used for

(Continued)

3. Amended Contention 5

> The purpose and need statement in the EA does not comply with the intent of NEPA. It is a self-serving statement accepting [Applicants'] unverified assertions of demand for baseload "clean" power within an undefined grid. As such, it unjustifiably limits the range of reasonable alternatives to the proposed restart of Palisades. The purpose and need statement also creates insufficient justifications for the restart of Palisades.[61]

In Amended Contention 5, Petitioning Organizations assert that the purpose and need statement in the Draft EA is "arbitrary, capricious, unreasonable, and an abuse of discretion."[62] First, they argue that the Staff "accept[ed] out of hand" Applicants' goals because the purpose and need statement is "virtually identical" to the purpose and need statement provided in Applicants' response to a Staff request for additional information.[63] Second, Petitioning Organizations argue that the purpose and need statement is impermissibly narrow and "leaves no possibility of reasonably examining" any alternative other than restarting Palisades.[64]

Third, Petitioning Organizations argue that the Staff has not produced a data-based assessment of the need for the power that would be generated from the restart of Palisades.[65] To that end, Petitioning Organizations assert that the Draft EA lacks "projections of regional demand load growth" and "forecasts of new sources of power generation."[66] Petitioning Organizations also claim that the Staff should have considered "incremental construction of alternative energy sources and implementation of industrial-scale conservation measures," rather than assuming that all "of the energy generated by Palisades would be imme-

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restart requests and that "no statute or regulation prohibits reauthorizing operation after the section 50.82(a)(1) certificates [certifying cessation of operations and removal of fuel] have been issued"). Petitioning Organizations also appear to assert a challenge to the NRC's climate-change discussion in the Draft EA, *see* New and Amended Contentions at 23-24, but their specific challenges to the Draft EA's climate-change discussion are neither clear nor well supported. *See* 10 C.F.R. § 2.309(f)(1)(v), (vi). Similarly, Petitioning Organizations' claim that the draft EA's climate change discussion "implicate[s] AEA considerations" is vague, and they do not explain what these considerations are or how they relate to the overall contention. *See* New and Amended Contentions at 24; 10 C.F.R. § 2.309(f)(1)(v), (vi).

[61] New and Amended Contentions at 27.

[62] *Id.* at 30.

[63] *Id.* at 28-29.

[64] *Id.* at 29.

[65] *Id.* at 30 (asserting that "[a]bsent any authoritative forecasts of demand for power in the region of Palisades, the so-called purpose and need statement in the EA is baseless puffery").

[66] *Id.* at 29.

diately needed."[67] Additionally, Petitioning Organizations rely on a news report about a Chinese artificial intelligence firm to argue that any assumptions involving power demand for data centers supporting artificial intelligence in the United States might be overstated.[68]

Finally, Petitioning Organizations take issue with a recently passed Michigan law that includes nuclear power among named sources of clean energy, and they challenge the Department of Energy's purpose and need statement, both of which are discussed in the Draft EA.[69] They argue that Michigan's decision was "political, not . . . science-based," and that nuclear power is not clean.[70] And they challenge the legal basis for the Department of Energy's approval of a loan guarantee for the restart of Palisades.[71]

To begin, we conclude that Petitioning Organizations' challenges to Michigan law and policy and the Department of Energy's purpose and need statement are outside the scope of this proceeding and therefore not admissible.[72] Licensing boards have no authority to rule on challenges to the actions of states or other federal agencies.[73] And, as we discuss below, their remaining claims are inadmissible because Petitioning Organizations rely on conclusory assertions, and they do not demonstrate that the issues they raise are material to the findings the Staff must make to fulfill its obligations under NEPA.[74]

Other than pointing to the similarity between the Staff's and Applicants' purpose and need statements, Petitioning Organizations provide no support for their claim that the Staff adopted Applicants' purpose and need statement without independent analysis.[75] Moreover, Petitioning Organizations overlook that consistent with federal case law, the Commission will "give substantial weight to a properly-supported statement of purpose and need by an applicant . . . or sponsor of a proposed project in determining the scope of alternatives to be considered by the NRC."[76] Thus, the similarity of the statements is an insufficient basis on

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[67] *Id.*; *see also* Reply at 19.

[68] New and Amended Contentions at 29-30.

[69] Motion at 5-6. The Department of Energy is a cooperating agency for the NEPA review of the Palisades restart project. Draft EA at 1-2 to -3.

[70] Motion at 5.

[71] *Id.* at 5-6.

[72] *See* 10 C.F.R. § 2.309(f)(1)(iii).

[73] *See Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121-22 (1998) (instructing presiding officers to "narrowly construe their scope to avoid where possible the litigation of issues that are the primary responsibility of other agencies and whose resolution is not necessary to meet our statutory responsibilities").

[74] *See* 10 C.F.R. § 2.309(f)(1)(iv), (v).

[75] *See* New and Amended Contentions at 28-29.

[76] Nuclear Energy Institute; Denial of Petition for Rulemaking, 68 Fed. Reg. 55,905, 55,909 (Sept. 29, 2003) (Denial of Petition for Rulemaking).

which to claim a NEPA deficiency. Likewise, Petitioning Organizations' claim that the purpose and need statement is too narrow to allow for the consideration of alternatives to restarting Palisades lacks support and is directly contradicted by the four alternatives the Staff considered in the Draft EA: (1) the no-action alternative; (2) replacing the Palisades reactor with a new onsite reactor; (3) replacing the Palisades reactor with other power generation technologies either on the Palisades site or offsite; and (4) installing system design alternatives for use with the Palisades reactor.[77]

With regard to Petitioning Organizations' claim that the Staff must conduct a need-for-power analysis that considers regional demand forecasts, power from other sources, energy conservation measures, implementation timing, and energy needs for artificial intelligence, Petitioning Organizations do not explain why such an assessment is required, and thus why it would be material to the findings the Staff must make.[78] Significantly, although need for power must be addressed for actions that would authorize the siting and construction of new plants, the NRC does not require a need-for-power assessment for operating license applications and license renewal applications (i.e., post-construction licensing actions).[79] The Commission has determined that, post-construction, any significant environmental impacts from siting and construction already would have occurred, obviating the need to weigh the need for power against the environmental impacts of construction and operation.[80]

Further, even for those licensing actions that do require a need-for-power assessment, the Commission does not require the type of detailed quantitative analysis that Petitioning Organizations appear to seek here.[81] In short, not only do their arguments lack legal support, but they also appear to run counter to legal authority arguably relevant to this proceeding. We therefore do not admit Amended Contention 5.

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[77] *See* Draft EA at 2-5 to -7.

[78] *See* 10 C.F.R. § 2.309(f)(1)(iv).

[79] *See* Denial of Petition for Rulemaking, 68 Fed. Reg. at 55,910; 10 C.F.R. §§ 51.53, 51.95.

[80] Denial of Petition for Rulemaking, 68 Fed. Reg. at 55,910.

[81] *See id.* (emphasizing that "such an assessment should not involve burdensome attempts to precisely identify future conditions"); *see also* NEPA §§ 106(b)(2), (b)(3)(B), 107(e), (g), 42 U.S.C. §§ 4336(b)(2), (b)(3)(B), 4336a(e), (g) (imposing page limits and time limits, as well as setting forth the expectation that an agency need not undertake new scientific or technical research unless it would be "essential to a reasoned choice among alternatives and the overall costs and time frame of obtaining it are not unreasonable").

4. Amended Contention 6

> The discussion of alternatives in the EA is inadequate and unsupported by any facts or credible analysis. It therefore violates NEPA.[82]

Amended Contention 6 shares several similarities with Amended Contention 5. Petitioning Organizations again claim that the Staff defined the purpose and need of the project too narrowly and that the alternatives analysis therefore has become "a foreordained formality" where only the restart of Palisades could satisfy the project's objectives.[83] Petitioning Organizations also repeat their need-for-power argument, asserting that the Staff has not provided "a significant portrayal of the energy picture."[84] Additionally, Petitioning Organizations maintain that the Staff should not have referenced Michigan's new clean energy standard in the Draft EA's purpose and need statement because, they claim, "nuclear power, contrary to the political decision made by Michigan legislators, is neither clean nor renewable."[85] These claims fail for the same reasons provided in our discussion of Amended Contention 5: they lack a legal basis, are based on conclusory assertions, and Petitioning Organizations' challenges to Michigan law and policy are outside the scope of this proceeding.[86]

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[82] New and Amended Contentions at 30.

[83] *Id.* at 34 (quoting *Citizens Against Burlington, Inc. v. Busey,* 938 F.2d 190, 196 (D.C. Cir. 1991)); *see also* Motion at 7 (asserting that the purpose and need statement should not be based on replacing Palisades' 800 megawatt capacity and should instead allow for the consideration of "building alternatives on a limited basis," including wind and solar, along with energy conservation measures).

[84] New and Amended Contentions at 32; *see also id.* (asserting that the Staff should have explained whether the "regional grid is presently burdened and needs additional baseload power" or analyzed "the prospective electricity demand situation"); Motion at 7 ("The flawed purpose and need statement is grounded on zero forecasts of near, middle and long-term demand.").

[85] New and Amended Contentions at 33 (citing Declaration of Mark Z. Jacobson and Curriculum Vitae (declaration dated Sept. 10, 2024; curriculum vitae last updated Oct. 11, 2023; both filed Oct. 10, 2024) (Jacobson Declaration)). Petitioning Organizations submitted the Jacobson Declaration as an attachment to their hearing petition. In support of Amended Contention 6, they provide two block quotes attributed to Dr. Jacobson and cite the Jacobson Declaration for both. The second quote, however, does not appear in the Jacobson Declaration. Rather, text from the second quote appears in "Attachment 2" to the Jacobson Declaration, which Petitioning Organizations filed on February 1, 2025, and which we considered in LBP-25-4, even though the attachment was not timely submitted. LBP-25-4, 101 NRC at 159-60.

[86] *See* New and Amended Contentions at 30-32; Motion at 6-7; 10 C.F.R. § 2.309(f)(1)(iii), (iv), (v); *supra* section II.B.3. To the extent Petitioning Organizations would fault the Staff for referring to a Michigan statute in the purpose and need statement, *see* New and Amended Contentions at 33, their claim fails because they do not explain why it would be unreasonable for the Staff to reference legal authority relevant to the proposed project. *See Seabrook,* CLI-12-5, 75 NRC at 337.

For the balance of Amended Contention 6, Petitioning Organizations argue that the Staff's dismissal of alternative energy sources due to a lack of space on the Palisades site is a "red herring" and "disingenuous."[87] Petitioning Organizations assert that "no one is suggesting that an alternate energy source would be located on the Palisades site or that it would have to be."[88] They also claim that Applicants' proposal to add two small modular reactors to the Palisades site indicates that there is sufficient space for alternative energy sources.[89] With regard to the construction of alternative energy sources on other sites, Petitioning Organizations assert that the Staff did not support its conclusion that construction on other sites could result in significant environmental impacts.[90] And finally, Petitioning Organizations assert that the environmental impacts of the proposed addition of two small modular reactors on the Palisades site "are being proposed as a package" with the restart and "should be recognized as cumulative impacts and dealt with in the identification of environmental effects as well as the consideration of alternatives."[91] We conclude that these claims are inadmissible because they lack specificity, are based on conclusory assertions, and, in some cases, are based on a misreading of the Draft EA.[92]

Petitioning Organizations appear to object that the Staff even considered the possibility that alternative energy sources might be built on the Palisades site.[93] At the same time, however, they assert that the Staff improperly dismissed these alternatives for lack of space.[94] Aside from the fact that their objections are contradictory and difficult to follow, Petitioning Organizations appear to have overlooked that the Staff agrees "at least some [alternative power generation facilities] could be built using other land within the Palisades site."[95] Thus, contrary to Petitioning Organizations' assertion, the Staff did not dismiss onsite alternatives out of hand.[96] Moreover, Petitioning Organizations do not identify which alternative energy sources could be built on the Palisades site or explain how consideration of these alternatives would alter an analysis that otherwise appears to be consistent with their position.

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[87] New and Amended Contentions at 32.

[88] *Id.*

[89] *Id.*

[90] *Id.* at 33.

[91] Motion at 7.

[92] *See* 10 C.F.R. § 2.309(f)(1)(v), (vi).

[93] *See* New and Amended Contentions at 32.

[94] *See id.*

[95] Draft EA at 2-7. Here, "other land" refers to land not occupied by the Palisades reactor, which would still need to undergo decommissioning under this scenario and would continue to occupy space during the decommissioning process. *Id.*

[96] *See* New and Amended Contentions at 32.

With regard to Petitioning Organizations' argument that the Staff should have considered Applicants' proposal to construct two small modular reactors on the Palisades site, Petitioning Organizations fail to acknowledge the Staff's express references to these reactors in its analysis of cumulative impacts and alternatives.[97] Moreover, contrary to Petitioning Organizations' bare assertion that the small modular reactors "are being proposed as a package" with the Palisades restart,[98] the Draft EA characterizes the addition of the small modular reactors as a possible future project.[99] Petitioning Organizations do not explain why the small modular reactors should be viewed as a package with the proposed restart, or how their consideration as a package would change the Staff's existing analysis.[100]

With regard to the Staff's consideration of alternative energy sources on other sites, the Staff concluded that new construction would lead to significant environmental impacts in the areas of "additional land use, ground disturbance, and use of construction equipment."[101] According to Petitioning Organizations, the Staff's conclusion is an "unsupported assumption[ ]."[102] But Petitioning Organizations do not explain why it would be unreasonable for the Staff to conclude that new construction on other sites could lead to significant environmental impacts.[103] NEPA is tempered by a rule of reason,[104] and the alternatives analysis for an EA is expected to be brief.[105] Without an explanation as to how the inclusion of additional (and also unspecified) information would make a material difference in the Staff's analysis, Petitioning Organizations have not met their burden to raise a genuine, material dispute.[106] We therefore do not admit Amended Contention 6.

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[97] *See* Draft EA at 2-7, G-1.

[98] Motion at 7.

[99] Draft EA at G-1.

[100] *See* Motion at 7.

[101] Draft EA at 2-7.

[102] New and Amended Contentions at 33.

[103] *See id.*

[104] *See supra* note 14.

[105] *See* NEPA § 106(b)(2), 42 U.S.C. § 4336(b)(2); 10 C.F.R. § 51.30(a)(1)(ii); *N. Idaho Cmty. Action Network v. U.S. Dep't of Transp.,* 545 F.3d 1147, 1153 (9th Cir. 2008) ("[A]n agency's obligation to consider alternatives under an EA is a lesser one than under an EIS" and "an agency only is required to include a brief discussion of reasonable alternatives." (internal quotations marks and citations omitted)).

[106] *See* 10 C.F.R. § 2.309(f)(1)(iv), (vi); *Seabrook,* CLI-12-5, 75 NRC at 341-42.

5. Contention 8

> The EA specifically incorporates previous Palisades-related documents and more general environmental documents by reference in the EA. The EA specifically states that the incorporation of other documents is based on [Council on Environmental Quality (CEQ)] regulations authorizing such incorporation. Recent court decisions have held that the CEQ regulations were propounded without legal authority and are therefore invalid. So the incorporation of other documents into the Palisades EA is invalid and invalidates the EA. Therefore, the EA must be completely redone.[107]

In Contention 8, Petitioning Organizations assert that "issuance of the EA in its current form is arbitrary, capricious, unreasonable, and an abuse of discretion" because the Staff relied on a CEQ regulation to incorporate prior environmental analyses by reference.[108] Petitioning Organizations argue that the Staff's use of incorporation by reference is no longer permissible[109] because the D.C. Circuit invalidated the CEQ's NEPA implementing regulations in *Marin Audubon Society v. FAA*.[110] Petitioning Organizations assert that because the Staff's use of incorporation by reference provides "a substantial basis" for the Draft EA's discussions and conclusions, the Draft EA is invalid as a whole.[111] Similarly, Petitioning Organizations claim that the Draft EA is potentially out of date.[112]

We conclude that Petitioning Organizations have not raised a genuine dispute with the Draft EA on a material issue of law or fact.[113] Petitioning Organizations' contention is based on the flawed premise that the Staff's ability to use incorporation by reference in its environmental analysis depends upon the validity of the CEQ regulation referenced in the Draft EA. But the NRC has adopted its own NEPA-implementing regulations, and it has long treated CEQ regulations

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[107] New and Amended Contentions at 34.

[108] *Id.* at 34, 36.

[109] *See id.* at 35 (claiming that "[o]bviously, the EA's reliance on incorporating other documents depends on the validity of the CEQ regulation").

[110] 121 F.4th 902 (D.C. Cir. 2024), *reh'g en banc denied,* No. 23-1067, 2025 WL 374897 (D.C. Cir. Jan. 31, 2025). For the same proposition, Petitioning Organizations also reference a federal district court decision applying the D.C. Circuit's analysis in *Marin Audubon. See* New and Amended Contentions at 35 (citing *Iowa v. CEQ,* 765 F. Supp. 3d 859 (D.N.D. 2025)).

[111] New and Amended Contentions at 34-36.

[112] *See* Motion at 8 ("[T]he EA is seriously flawed in relying on CEQ authority for simply incorporating previous documents instead of actually doing an up-to-date analysis.").

[113] *See* 10 C.F.R. § 2.309(f)(1)(vi).

as non-binding.[114] Further, the Staff references the CEQ regulation in the Draft EA among other NRC guidance allowing incorporation by reference, contrary to Petitioning Organizations' apparent assumption that the invalidated CEQ regulation is the sole, and binding, basis for the Staff's use of the technique.[115]

Finally, Petitioning Organizations provide a list of several sections of the Draft EA that incorporate other documents by reference.[116] But aside from their mistaken assumption that the Staff may not use incorporation by reference to conduct its NEPA analysis, Petitioning Organizations do not question the adequacy or reasonableness of the content of these sections to support their claims that the Draft EA is "possibly outdated"[117] and "must be completely redone."[118] We therefore do not admit Contention 8.[119]

III. CONCLUSION

For the reasons set forth above, we *deny* Petitioning Organizations' motion for leave to file new and amended contentions and *terminate* the proceeding. Any appeals of this memorandum and order must be filed in accordance with 10 C.F.R. § 2.341.

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[114] *See id.* § 51.10(a) (providing that the regulations in 10 C.F.R. Part 51 implement NEPA in a manner "consistent with the NRC's domestic licensing and related regulatory authority under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the Uranium Mill Tailings Radiation Control Act of 1978, and [in a manner] which reflects the Commission's announced policy to take account of [CEQ] regulations voluntarily, subject to certain conditions"); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011) (reformulating a contention to make clear that a substantive CEQ regulation is not binding on the NRC). We also observe that Petitioning Organizations base their argument on non-binding case law. *See supra* note 110; *Marin Audubon,* 2025 WL 374897, at *1 (Srinivasan, C.J., concurring) (observing that rehearing *en banc* was properly denied because "the panel majority's rejection of the CEQ's authority to issue binding NEPA regulations was unnecessary to the panel's disposition").

[115] *See* Draft EA at 1-7 (citing 40 C.F.R. § 1501.12 and NRC guidance for micro-reactors); *accord* 10 C.F.R. pt. 51, app. A (providing that the technique of incorporation by reference "may be used as appropriate to aid in the presentation of issues, eliminate repetition or reduce the size of an environmental impact statement").

[116] *See* New and Amended Contentions at 35-36.

[117] Motion at 8.

[118] New and Amended Contentions at 34; *see Seabrook,* CLI-12-5, 75 NRC at 323.

[119] *See* 10 C.F.R. § 2.309(f)(1)(v), (vi).

It is so ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Emily I. Krause, Chair
ADMINISTRATIVE JUDGE

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Dr. Arielle J. Miller
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 20, 2025

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION

Michael X. Franovich, Deputy Director

In the Matter of	**Docket Nos. 50-275** **50-323** **(License Nos. DPR-80,** **DPR-82)**
PACIFIC GAS AND ELECTRIC COMPANY **(Diablo Canyon Nuclear Power Plant, Units 1 and 2)**	**June 26, 2025**

As a result of the PRB review of the petitioners' concerns, the NRC has denied the petitioners' request. The request to shut down Diablo Canyon is denied because the PRB concludes that (1) the seismic models developed by PG&E do not neglect the potential for thrust or reverse faulting beneath Diablo Canyon, (2) the tectonic setting along central coastal California differs substantially from that for the Noto Peninsula, (3) the existence of a 70- to 100-km long "inferred" offshore thrust fault adjacent to Diablo Canyon with a slip rate greater than 2 mm/yr is highly unlikely, and (4) the return period of 715 years for seismic core damage is not justified. Therefore, there is an insufficient basis on which to take enforcement action against PG&E, and the petitioners' request is denied.

In accordance with 10 C.F.R. § 2.206(c), a copy of this director's decision will be filed with the Secretary of the Commission for Commission review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

I. INTRODUCTION

On March 4, 2024, the San Luis Obispo Mothers for Peace, Friends of the Earth, and Environmental Working Group petitioned the U.S. Nuclear Regulatory Commission (NRC) requesting that the NRC exercise its supervisory authority to order the immediate closure of Diablo Canyon Nuclear Power Plant, Units 1 and 2 (Diablo Canyon), due to "the unacceptable risk of a seismically induced severe accident" (Agencywide Documents Access and Management System Accession No. ML24067A066). On March 12, 2024 (ML24072A529), the Office of the Secretary of the Commission referred the petitioners' request to the enforcement petition process under Title 10 of the *Code of Federal Regulations* (10 C.F.R.) Section 2.206, "Requests for action under this subpart."

The basis for the petitioners' request, as included in the original petition and in the petitioners' supplements, is summarized below:

Concern 1: Thrust faulting is neglected by Pacific Gas & Electric Company's (PG&E) 2015 Seismic Source Characterization (SSC) model[1] because the model assumes that a majority of large earthquakes affecting Diablo Canyon are strike-slip and disregards the significant contribution of thrust faulting earthquake sources under the Diablo Canyon site and the adjacent Irish Hills. In addition, the hazard characterization performed by PG&E did not use a hanging-wall term for the modeling of potential ground motions from the Los Osos and San Luis Bay thrust faults.

Concern 2: The January 2024 magnitude 7.5 earthquake centered in the Noto Peninsula (Japan), with an average slip of 2 meters on the fault, is analogous to future potential thrust mechanism earthquakes beneath Diablo Canyon. Based on the slip rate of an "inferred" offshore thrust fault proposed by the petitioners, which is located beneath the Irish Hills adjacent to Diablo Canyon and the slip of the Noto earthquake, large ground motions from thrust fault earthquakes will occur, on average, every 715 years near the Diablo Canyon site.

Concern 3: PG&E's SSC model does not account for an "inferred" offshore thrust fault that has the potential for producing a magnitude 7.5 earthquake. Based on regional stratigraphy, gravity modeling and global positioning system (GPS) modeling, the total thrust faulting slip rate beneath the Irish Hills is

[1] In 2015, PG&E developed the Diablo Canyon seismic source characterization (SSC) model and the ground motion characterization (GMC) model and documented them in reports, which are referred to herein as the PG&E 2015 SSC Report and the PG&E 2015 GMC Report. These reports are available on the PG&E website https://www.pge.com/en/about/pge-systems/nuclear-power/seismic-safety-at-diablo-canyon.html#tabs-2967acbbcb-item-1b0b13e766-tab.

between 2.0 and 2.8 millimeters per year (mm/yr), which is not accounted for in PG&E's SSC model.

Concern 4: Seismic core damage frequency, estimated by PG&E in 2018 to be 3×10^{-5}, should be 1.4×10^{-3} per year (about once every 715 years) based on this higher recurrence rate for thrust earthquakes.

In accordance with the handbook for NRC Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions," dated March 1, 2019 (ML18296-A043), Section III, "Petition Review Board (PRB)," NRC staff promptly deliberated on the request for immediate action and began the screening process. On March 28, 2024 (ML24088A238), the petitioners were informed that the NRC staff concluded that no immediate action is necessary, that the concerns expressed in the petition were screened into the 2.206 process, and that a PRB would be assembled to evaluate the concerns.

In an email dated May 15, 2024 (ML24136A162), the petition manager informed the petitioners that the PRB's initial assessment was that the petition did not meet the criteria in MD 8.11 for accepting petitions under 10 C.F.R. § 2.206 because "the issues raised have previously been the subject of a facility-specific or generic NRC staff review" and the petition does not provide significant new information that the staff did not consider in a prior review.

On June 7, 2024, the petitioners submitted a supplement to the petition (ML-24162A079).

The NRC held a public meeting with the petitioners on July 17, 2024. The petitioners' presentation (ML24198A105) and the meeting transcript (ML24218-A164) are considered supplements to the petition. This supplemental information provided by the petitioners is addressed below as part of the NRC staff's response to Concern 3.

On August 27, 2024 (ML24205A066), the NRC issued an acknowledgment letter informing the petitioners that the concerns raised in the petition, as supplemented, now meet the criteria in MD 8.11 for accepting petitions under 10 C.F.R. § 2.206 and that the concerns would undergo further review by the PRB. The letter also informed petitioners that the PRB determined that there is no imminent safety concern that warrants immediate shutdown of Diablo Canyon.

On October 24, 2024, PG&E provided a voluntary submittal (ML24298A234) to the NRC related to the PRB review of the petition. On October 31, 2024, the petitioners submitted a supplement to the petition (ML24305A187) in response, in part, to the October 24, 2024, PG&E voluntary submittal.

On December 5, 2024 (ML24317A038), the NRC issued a supplemental acknowledgment letter informing the petitioners that two concerns from the October 31, 2024, supplement would be included in the ongoing PRB review. These supplemental concerns provided by the petitioners are addressed below as part of the NRC staff's response to Concern 3. The letter also informed

petitioners that the PRB determined that there is no imminent safety concern that warrants immediate shutdown of Diablo Canyon.

Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC's Library at http://www.nrc.gov/reading-rm/adams.html. Persons who do not have access to ADAMS, who encounter problems in accessing the documents located in ADAMS, or who want to inspect publicly available documents at the NRC's Public Document Room at 11555 Rockville Pike, Rockville, MD 20852 should contact the NRC's PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by email to pdr.resource@nrc.gov.

II. DISCUSSION

Concern 1: Thrust faulting is neglected by PG&E's 2015 SSC model because the model assumes that a majority of large earthquakes affecting Diablo Canyon are strike-slip and disregards the significant contribution of thrust faulting earthquake sources under the Diablo Canyon site and the adjacent Irish Hills. In addition, the hazard characterization performed by PG&E did not use a hanging-wall term for the modeling of potential ground motions from the Los Osos and San Luis Bay thrust faults.

Based on its previous review in 2016 of the seismic models developed by PG&E, which are summarized in PG&E's seismic hazard and screening report (ML15071A046), in response to the NRC's 50.54(f) request (ML12056A046), the PRB disagrees with the petitioners' claims that thrust faulting was not adequately accounted for by PG&E in its seismic source model and that a hanging-wall term was not implemented in the seismic ground motion model. The PRB supports the NRC's conclusion in 2016 (ML16341C057) that PG&E adequately accounted for reverse or thrust faulting in the alternative fault geometry models developed for the SSC model and that a hanging-wall term was implemented for the Ground Motion Characterization (GMC) model, which increased the ground motion as expected. The bases for the PRB conclusions are provided below.

Diablo Canyon is located on the southwest slope of the Irish Hills in the northern part of the San Luis Range in central coastal California. The current tectonic setting for the region around Diablo Canyon is a transform plate boundary that accommodates horizontal relative motions consisting of strike-slip faults with transpressional deformation, resulting in localized areas of uplift and folding alongside the major fault zone. Strike-slip faults display predominantly horizontal movement, usually along a nearly vertical fault surface, and transpression refers to a type of strike-slip deformation where shortening (compression) occurs perpendicular to the fault plane because of the presence of bends along the fault line. The San Luis Range in central coastal California is a topographic

and structural elevation high (maximum elevation of 1,784 meters) that formed within this region of reverse and oblique slip faults due to this transpressional deformation. A reverse fault is a fault where the upper side of the fault, called the hanging wall, moves up and over the lower or foot wall side of the fault, and an oblique slip fault is a fault in which the two sides of the fault simultaneously move both vertically and horizontally. For its SSC model, developed in response to the NRC's 50.54(f) request, PG&E modeled the uplift of the Irish Hills, located in the San Luis Range adjacent to Diablo Canyon, assuming rigid block uplift resulting from reverse faulting on the moderate to steeply dipping (45 to 80 degrees) Los Osos and San Luis Bay faults rather than from folding deformation on a low-dip angle (25 degrees) "inferred" offshore thrust fault, as postulated by the petitioners. Thrust faulting is a type of reverse faulting with a dip angle of 45 degrees or less. To develop the SSC model, PG&E used recently acquired offshore and onshore two- and three-dimensional seismic reflection data, multibeam bathymetric data, geodetic data, and an updated seismicity catalog to better define the location, geometry, and slip rate of the faults in the area around Diablo Canyon. Modeling the uplift of the Irish Hills as a rigid block is based on this extensive geologic field work and geophysical surveys, which PG&E has been supporting for many years, going back to the 1980s.

PG&E's reevaluation of the seismic hazard in response to the NRC's 50.54(f) request determined that four faults contribute to the majority of the seismic hazard at Diablo Canyon. These four faults are the Hosgri, Los Osos, San Luis Bay, and Shoreline faults. The Hosgri and Shoreline faults are near-vertical strike-slip faults, and the Los Osos and San Luis Bay faults are reverse faults that border the northeastern and southern margins of the Irish Hills, respectively. Figure 1,[2] from the PG&E 2015 SSC Report and incorporated into NUREG/KM-017, "Seismic Hazard Evaluations for U.S. Nuclear Power Plants: Near-Term Task Force Recommendation 2.1 Results" (ML21344A126), shows the location of Diablo Canyon relative to the Irish Hills and the four faults that contribute the most to the hazard.

As specified in the 50.54(f) request, PG&E implemented the SSHAC approach in NUREG-2213, "Updated Implementation Guidelines for SSHAC Hazard Studies" (ML18282A082), to develop the SSC and GMC models used to determine the seismic hazard for the Diablo Canyon site. The SSHAC approach is focused on two critical activities: evaluation and integration. The evaluation activity is defined as an assessment of the complete set of data, models, and methods that are relevant to the hazard analysis as proposed by the larger

[2] *See* the "Attachment to the Director's Decision: Figures 1 through 9" in ML25161A264 for Figures 1 through 9.

technical community, consisting of geologists and seismologists with expertise in coastal California tectonics. The SSHAC guidelines provide a method for facilitating interactions with the SSHAC team and members of the larger technical community to exchange viewpoints and to challenge proponents of differing hypotheses. The integration activity is the development of SSC and GMC models that capture all technically defensible interpretations, as informed by the evaluation activity. There are four SSHAC study levels, with the higher levels involving a greater number of participants and a longer duration to more fully assess available data, models, and methods. A key element of the SSHAC approach is participatory peer review from an outside panel (Participatory Peer Review Panel or PPRP) to ensure that the full range of data, models, and methods are considered in the evaluation phase and that the center (median), body (16th to 84th percentile), and range (5th to 95th percentile) of technically defensible interpretations are integrated into the seismic source and ground motion models to capture the uncertainty in seismic hazard as required by 10 C.F.R. § 100.23, "Geologic and seismic siting criteria."

In response to the 50.54(f) request, PG&E performed a Level 3 SSHAC study for its reevaluation of the seismic hazard for the Diablo Canyon site. Development and documentation of the source and ground motion models were performed from June 2011 to March 2015 and included three formal workshops conducted in San Luis Obispo, California, which were open to the public. Dr. Bird, expert witness for the petitioners, participated in the second public workshop in 2012 and presented his views "on both strike-slip and compressional deformation rates affecting the region" (PG&E 2015 SSC Report). Elements of Dr. Bird's views (uplift of Irish Hills due to slip on low-angle reverse or thrust faults) were incorporated into the SSC model developed by the SSHAC team; however, other alternative models were also developed by the SSHAC team in order to capture the uncertainty in the local faulting mechanisms and underlying tectonics. As observers of the three formal public workshops in 2012, the NRC staff viewed the wide range of hypotheses proposed by the experts for the current regional transpressional tectonic setting around Diablo Canyon.

To accommodate the multiple hypotheses proposed by the experts, PG&E developed three alternative fault geometry models to capture the range of potential mechanisms driving uplift of the Irish Hills. These models include the Outward-Vergent, Southwest-Vergent, and Northeast-Vergent models. The Southwest-Vergent model considers the San Luis Bay fault as a reverse or thrust fault with a dip angle of 45 degrees and incorporates aspects of theories proposed by the petitioners. In addition to the three fault geometry models, the SSC model also accounts for earthquakes potentially occurring on previously unidentified faults by developing a "background" seismic source zone surrounding Diablo Canyon. This background zone considers the possibility of low-angle (35 degrees) thrust or reverse faults with fault lengths of 50 kilometers (km) and magnitudes as

high as moment-magnitude (Mw) 7.1. In its review of the SSC model, the NRC staff concluded that PG&E adequately implemented the SSHAC process and developed multiple alternative models for the uplift of the California Coast Ranges that are based on the modeling of geological and geophysical field data (ML16341C057). This conclusion was also supported by the SSHAC PPRP in its project closure letter, which states that "the data, models, and methods within the larger technical community have been properly evaluated, and the center, body, and range of the technically defensible interpretations have been appropriately represented in the SSC model" (appendix B of the PG&E 2015 SSC Report).

In addition to stating that PG&E neglected the potential for thrust faulting, the petition claims that PG&E did not use a hanging-wall term for the modeling of potential ground motions from the Los Osos and San Luis Bay reverse faults. The "hanging-wall" effect is the increase in ground motion at a site located on top of the hanging wall side of the fault due to the site being located directly above the fault and closer to the rupture area. Based on its review of the SSHAC Level 3 GMC model (appendix C of the PG&E 2015 GMC Report), the NRC staff determined that a hanging-wall term was implemented and that this term increased the ground motion as expected (ML16341C057).

In summary, based on its previous review in 2016 of the seismic models developed by PG&E in response to the NRC's 50.54(f) request, the PRB disagrees with the petitioners' claims that thrust faulting was neglected by PG&E in its seismic source model and that a hanging-wall term was not implemented in the seismic ground motion model.

Concern 2: The January 2024 magnitude 7.5 earthquake centered in the Noto Peninsula (Japan), with an average slip of 2 meters on the fault, is analogous to future potential thrust mechanism earthquakes beneath Diablo Canyon. Based on the slip rate of the "inferred" offshore thrust fault proposed by the petitioners, which is located beneath the Irish Hills adjacent to Diablo Canyon, and the slip of the Noto earthquake, large ground motions from thrust fault earthquakes will occur, on average, every 715 years near the Diablo Canyon site.

Due to differences in the primary tectonic driving forces, the types of earthquake focal mechanisms, rate of seismic activity, and the lack of direct observations from geophysical surveys of a major "inferred" thrust fault off the coast of central California in the vicinity of Diablo Canyon, the PRB concludes that the January 2024 magnitude 7.5 Noto Peninsula earthquake is highly unlikely to be analogous to a future potential thrust mechanism earthquake beneath Diablo Canyon. The bases for the PRB conclusion are provided below.

The Noto Peninsula in Japan is located on the eastern margin of the Sea of

Japan on the west coast of Honshu (largest island of Japan) and was formed as a result of back-arc rifting arising from subduction of the Pacific Plate beneath the Eurasian plate along the Japan Trench. Back-arc rifting is a process that occurs when one tectonic plate subducts beneath another, causing the overlying plate to stretch and thin, forming a back-arc basin. Subsequent to back-arc rifting during the Pliocene Epoch (3 million years ago), the tectonic regime along the west coast of Honshu shifted to compression, which reactivated older rift faults as reverse or thrust faults, causing uplift of former basins on the peninsula. The west coast of Honshu is now a convergent boundary between the Amurian (eastern edge of the Eurasian plate) and Okhotsk microplates, with convergence rates ranging from 14 to 16.5 mm/yr.[3] Figure 2 shows the location of the Noto Peninsula relative to the boundary between the two converging microplates. Several large earthquakes and tsunamis have occurred along this convergent boundary between the two microplates including the most recent Mw 7.5 earthquake on January 1, 2024. The 2024 Noto earthquake occurred on a shallow reverse or thrust fault with the rupture extending over 100 km in length from the southwestern portion of the Noto Peninsula to Sado Island along a southeast-dipping fault.[4] Figure 3, from the U.S. Geological Survey's (USGS) website for the 2024 Noto earthquake, shows the distribution of slip based on the finite fault model developed by USGS for the 2024 Noto earthquake. According to the USGS model, slip occurred mostly beneath the peninsula with the zones of largest slip occurring to the southwest of the earthquake hypocenter and with earthquake rupture propagating from the peninsula to the seafloor.[5]

In contrast to the Noto Peninsula tectonic regime of compression, the tectonic setting for the region surrounding Diablo Canyon is a transform plate boundary that produces horizontal relative motions along strike-slip faults with transpressional deformation. The tectonic setting for the central coastal California region is roughly triangular with the San Andreas fault on the east, the San Gregorio-San Simeon-Hosgri fault on the west, and the Western Transverse Ranges on the south.[6] Figure 4, from Langenheim,[7] shows this triangular region that bounds the California Coast Range with the numerous north-northwest striking faults

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[3] Ito, C., T. Hiroaki, and O. Mako, "Estimation of convergence boundary location and velocity between tectonic plates in northern Hokkaido inferred by GNSS velocity data," *Earth, Planets and Space,* 71(1): 1-8, 2019.

[4] U.S. Geological Survey, "M 6.5 — 10 km NE of San Simeon, California." Accessed December 1, 2024. https://earthquake.usgs.gov/earthquakes/eventpage/us6000m0xl/executive.

[5] *Id.*

[6] Langenheim, V. E., R. C. Jachens, R. W. Graymer, J. P. Colgan, C. M. Wentworth, and R. G. Stanley, "Fault geometry and cumulative offsets in the central Coast Ranges, California: Evidence for northward increasing slip along the San Gregorio–San Simeon–Hosgri fault," *Lithosphere,* 5(1): 29-48, 2013.

[7] *Id.*

that cut through Cenozoic Era (approximately 66 million years ago until today) sedimentary rocks that overlie older Mesozoic Era (approximately 252 to 66 million years ago) basement rocks such as the Franciscan Complex metamorphosed rock.

Although faulting is primarily strike-slip, steady uplift over at least the past 125,000 years has occurred along a 400-km long portion of the central California coast. Along the San Gregorio-Hosgri fault system, late Quaternary age (2.6 million years ago) to modern reverse fault slip rates are on the order of 10 to 30 percent of the strike-slip fault slip rates (O'Connell and Turner, 2023[8]). Near Diablo Canyon, the San Luis Range forms the core of the San Luis-Pismo Block, a structural block that trends northwest to southeast. It is bounded by strike-slip fault zones on the west (Hosgri fault) and east (Oceanic-West Husana fault), and by a series of reverse faults to the northeast (Los Osos fault) and southwest (Southwestern Boundary Zone including the San Luis Bay fault).

Geologic field studies[9] show that the San Luis Range is uplifting at rates between 0.1 mm/yr to 0.2 mm/yr. According to PG&E's SSC model, slip rates near Diablo Canyon are estimated to be:

- Hosgri strike-slip fault: 1 to 2 mm/yr
- Los Osos reverse fault: 0.2 to 0.4 mm/yr
- San Luis Bay reverse fault: 0.1 to 0.3 mm/yr

For comparison, horizontal slip rates on the San Andreas fault in central California, located approximately 85 km northeast of Diablo Canyon, are estimated to be 25 to 36 mm/yr.

The tectonic differences between the Noto Peninsula and central coastal California are further demonstrated by the types of earthquakes in the two regions as evidenced by the focal mechanisms of the earthquakes. In the Noto Peninsula, the earthquake focal mechanisms are predominantly reverse, whereas in the vicinity of Diablo Canyon, the focal mechanisms are a mixture of strike-slip, reverse and oblique mechanisms. Figure 5 shows that the focal mechanisms for earthquakes near Diablo Canyon exhibit this mixture of different types of fault slip and orientations (PG&E 2015 SSC Report).

The other major difference between the Noto Peninsula in Japan and the Irish Hills in the western part of the San Luis Range in central coastal California is

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[8] O'Connell, D. R., and J. Turner, "Hosgri fault transpressional slip rates reproduce observed central California coast uplift rates," *The Seismic Record,* 3(3): 182-93, 2023.

[9] Hanson, K. L., J. R. Wesling, W. R. Lettis, K. I. Kelson, and L. Mezger, *Correlation, Ages, and Uplift Rates of Quaternary Marine Terraces, South-Central California,* I. I. Alterman, R. B. McMullen, L. S. Cluff, and D. B. Slemmons, eds., Seismotectonics of the Central California Coast Range, Geological Society of America Special Paper 292, pp. 45-72, 1994.

the historical earthquake recurrence rates. In addition to the 2024 Mw 7.5 Noto earthquake, several other large earthquakes have recently occurred beneath the Noto Peninsula, including an earthquake swarm for the last 3 years with the largest earthquake being a Mw 6.3 earthquake occurring on May 5, 2023. This earthquake swarm was preceded by the Mw 6.9 2007 Noto Hanto earthquake, which occurred at a depth of 10 km near the west coast of the Noto Peninsula. Similar to the Noto Peninsula, along central coastal California and in the Transverse Ranges there have been numerous earthquakes in the Mw 5 to Mw 7 range, including the 2003 Mw 6.5 San Simeon earthquake and the 1927 Mw 7.0 Lompoc earthquake. However, near Diablo Canyon, in the vicinity of San Luis Bay and the Irish Hills, McLaren and Savage[10] document only two M5 events in 1913 and 1916. Figure 6, from the PG&E 2015 SSC Report, shows the locations of historical earthquakes in central coastal California. In summary, the historical rate for large earthquakes in the vicinity of Diablo Canyon is much smaller than the rate for the Noto Peninsula.

An additional issue with the existence of the petitioners' "inferred" offshore thrust fault capable of producing an Mw 7.5 earthquake similar to the 2024 Mw 7.5 Noto Peninsula earthquake is the lack of evidence from the recently acquired offshore and onshore two- and three-dimensional seismic reflection data and multibeam bathymetric data. Based on recent fault length versus magnitude relationships for reverse or thrust faults, such as Thingbaijam et al.,[11] the length of the "inferred" offshore thrust fault would need to be on the order of 70 to 100 km. In addition, the petitioners assert, as described below in Concern 3, that the slip rate of this "inferred" offshore thrust fault is between 2.0 to 2.8 mm/yr. That a thrust fault of this length and this relatively high activity rate would go undetected considering the numerous geophysical surveys and detailed studies of the regional seismicity (e.g., Hardebeck[12]) is highly unlikely. However, to account for the possibility of earthquakes occurring on previously unidentified faults, PG&E developed a background seismic source zone for its SSC model that includes 18 virtual offshore and onshore faults with lengths of 50 km, magnitudes as high as Mw 7.1, and activity rates based on the regional seismicity catalog. The style of faulting for these virtual faults includes the possibility for both strike-slip and reverse or thrust faulting on low-angle (35 degrees) dipping faults. Figure 7, from the NRC staff's confirmatory analysis of PG&E's hazard

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[10] McLaren, M. K., and W. U. Savage. "Seismicity of south-central coastal California: October 1987 through January 1997," *Bulletin of the Seismological Society of America,* 91(6): 1,629-58, 2001.

[11] Thingbaijam, K. K. S., P. M. Mai, and K. Goda, "New empirical earthquake source?scaling laws," *Bulletin of the Seismological Society of America,* 107(5): 2225-46, 2017.

[12] Hardebeck, J. L., "Seismotectonics and fault structure of the California Central Coast," *Bulletin of the Seismological Society of America,* 100(3): 1031-50, 2010.

models, shows the Hosgri, Shoreline, Los Osos, San Luis Bay, and the 18 virtual faults used to systematically account for the possibility of earthquakes on previously unidentified faults near Diablo Canyon (ML16341C057).

In summary, due to differences in the primary tectonic driving forces, the types of earthquake focal mechanisms, rate of seismic activity, and the lack of direct observations from geophysical surveys of a major thrust fault off the coast of central California in the vicinity of Diablo Canyon, the PRB concludes that the January 2024 magnitude 7.5 Noto Peninsula earthquake is highly unlikely to be analogous to a future potential thrust mechanism earthquake beneath Diablo Canyon.

Concern 3: PG&E's SSC model does not account for an "inferred" offshore thrust fault that has the potential for producing a magnitude 7.5 earthquake. Based on regional stratigraphy, gravity modeling and global positioning system (GPS) modeling, the total thrust faulting slip rate beneath the Irish Hills is between 2.0 to 2.8 mm/yr, which is not accounted for in PG&E's SSC model.

The PRB concludes that the stratigraphic profile, gravity anomalies, and GPS modeling used by the petitioners do not provide adequate evidence to support the existence of a major "inferred" offshore thrust fault that extends beneath the Irish Hills with a fault length of 70 to 100 km and a slip rate between 2.0 to 2.8 mm/yr. The bases for the PRB conclusion are provided below.

The petitioners assert that folding beneath the Irish Hills within the San Luis-Pismo block has been ongoing for the past 5 to 6 million years due to low-angle thrust faulting and that this has resulted in the uplift of the Irish Hills. Based on this hypothesis, the petitioners estimate that there has been 1.6 to 2.2 km of vertical throw of the Obispo Formation over the past 5 million years and that this vertical offset can be used to arrive at a "minimum total thrust" fault slip rate of 1.5 to 2.1 mm/yr beneath the Irish Hills. Figure 8, from the petitioners' July 17, 2024, presentation, shows the petitioners' interpretation of the location and geometry of the faults beneath the Irish Hills in red overlain on Figure 13-17 from the PG&E 2015 SSC Report. On Figure 13-17 from the PG&E 2015 SSC Report, the petitioners have redrawn each of the more steeply dipping faults to be at 25 degrees and added the "inferred" offshore thrust fault, which extends from just offshore towards the eastern edge of the San Luis-Pismo block. The petitioners also added a vertical line in the upper left to show throw of the Obispo Formation (designated Tmo), which is depicted as the light blue layer.

The Obispo Formation is a marine deposit made up of lavas and tuffs that is about 20 million years old. The Obispo Formation is present beneath several younger rock formations in the offshore and onshore Santa Maria Basins and the onshore Pismo Basin. From the Miocene to the early Pliocene (20 to 5 million

years ago), normal faulting on the margins of these basins resulted in subsidence of the basins. The location, thickness, and offset of rock formations across these basins is highly uncertain, especially for the older formations such as the Obispo Formation. Therefore, the use of the vertical offset of the Obispo Formation across multiple basins to determine the slip rate on a previously unidentified "inferred" thrust fault beneath the Irish Hills is questionable. The petitioners relied on the use of vertical offset of a single rock layer (Obispo Formation) to support the hypothesis for low-angle thrust faulting beneath the Irish Hills at a slip rate nearly twice that of the strike-slip Hosgri fault, which is the most active fault near Diablo Canyon. In contrast, PG&E relied on several geologic studies performed in the region that use geomorphic evidence (i.e., study of landforms and landform evolution) to demonstrate that folding within the San Luis-Pismo block has ceased or continued at a very slow rate during the past half million years and that the current vertical deformation of the Irish Hills is associated with brittle failure and block uplift (Killeen,[13] and Lettis et al.[14]). Killeen states that, "marine terraces, and stream profiles show low, zero, to almost zero rates of Quaternary activity around the Pismo syncline," and "Data from paleo stream terrace gradients suggest that synclinal folding of the Pismo syncline has ceased, and that block uplift is the dominant style of deformation." The Pismo syncline forms the core of the San Luis-Pismo block. Lettis et al. state that elevations of dated marine terraces show rigid uplift at a near constant rate of 0.1 to 0.2 mm/yr during the late Quaternary in the northwestern part of the block. This geologic evidence of block uplift of the Irish Hills is not consistent with the petitioners' hypothesis of ongoing low-angle faulting over the past 5 to 6 million years on an "inferred" offshore thrust fault. However, as stated previously, the SSC model developed by the SSHAC team includes multiple alternative fault geometries to capture the range of potential mechanisms driving uplift of the Irish Hills. One of these alternative fault geometry models (Southwest-Vergent) considers the possibility of thrust faulting as the primary driving force for the uplift of the Irish Hills.

To further support the slip rate estimate for the "inferred" offshore thrust faulting beneath Diablo Canyon, the petitioners propose the use of the Airy isostatic gravity model in which the Earth's crust floats on the denser mantle with variations in crustal thickness compensating for surface topography. Under this model, mountains have thicker crustal roots extending deeper into the mantle to balance the mass of the elevated terrain. This balancing mechanism is called isostasy, with a buoyant iceberg floating in water used as an analogy for the

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[13] Killeen, K. M., "Timing of folding and uplift of the Pismo syncline, San Luis Obispo County, California," University of Nevada, Reno, 1989.

[14] Lettis, W. R., K. L. Hanson, J. R. Unruh, M. McLaren, W. U. Savage, and M. A. Keller, "Quaternary tectonic setting of south-central coastal California," U.S. Geological Survey, 2004.

Earth's crust floating on the denser mantle below. Based on a negative isostatic gravity anomaly across the Irish Hills, the petitioners assert that "the topography of the Irish Hills is not just isostatically compensated, it is over-compensated by crustal thickening." The petitioners then use an "Airy ratio of 6:1" to calculate a slip rate of 2.8 mm/yr for the "inferred" thrust fault under the Irish Hills. An Airy ratio of 6:1 implies that for every 1 meter of vertical uplift of the Irish Hills, the crustal root beneath grows downward by 6 meters. The gravity profile that the petitioners use to support their claim of an extensive crustal root beneath the Irish Hills is from an American Geophysical Union meeting abstract[15] that shows a gravity low over the Irish Hills along coastal California near Diablo Canyon. In a peer-reviewed paper published in the journal *Lithosphere,* Langenheim et al.[16] provide their interpretation for the gravity low previously shown in the gravity map at the American Geophysical Union (AGU) meeting. Langenheim et al. combine gravity data together with aeromagnetic data to conclude that the gravity low across the Irish Hills originates from rock density contrasts within the upper 10 to 15 km of the crust rather than a deep extensive crustal root extending into the mantle. Specifically, the authors conclude that the gravity low across the Irish Hills is due to the density contrast between the low density (D = 2270 kilograms per cubic meter (kg/m^3)) younger sedimentary rock that overlies the higher density (D = 2710 kg/m^3) older basement rock. This conclusion is also supported by the aeromagnetic data gathered over the Irish Hills that shows "fairly" magnetic rocks underlie the upper younger sedimentary rocks.[17] Figure 9, from Langenheim et al.,[18] shows the gravity and magnetic models across the Irish Hills along with a geologic cross-section that provides the density and magnetic susceptibility values for each of the rock units. The low likelihood of a massive crustal root beneath the Irish Hills is further supported by the conclusions of Lowry and Pérez-Gussinyé,[19] which use a coherence analysis of gravity and topography to estimate an effective elastic thickness of 10 to 15 km along central coastal California. Under the simple Airy isostatic model, the crust has no flexural rigidity, and its effective elastic thickness is assumed to be zero.

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[15] Langenheim, V. E., R. C. Jachens, R. W. Graymer, and C. M. Wentworth, "Implications for fault and basin geometry in the central California coast ranges from preliminary gravity and magnetic data," In AGU Fall Meeting Abstracts (Vol. 2008, p. GP43B-0811), 2008.

[16] Langenheim, V. E., R. C. Jachens, R. W. Graymer, J. P. Colgan, C. M. Wentworth, and R. G. Stanley, "Fault geometry and cumulative offsets in the central Coast Ranges, California: Evidence for northward increasing slip along the San Gregorio–San Simeon–Hosgri fault," *Lithosphere,* 5(1): 29-48, 2013.

[17] *Id.*

[18] *Id.*

[19] Lowry, A. R., and M. Pérez-Gussinyé, "The role of crustal quartz in controlling Cordilleran deformation," *Nature,* 471(7338): 353-57, 2011.

Finally, the petitioners use modeling of GPS data in the region to develop a third independent estimate for the total thrust fault slip rate beneath the Irish Hills. This estimate is not based on actual GPS measurements near Diablo Canyon as only the direction of shortening or compression (N15˚E) is known in the region near the site. Despite this limitation, the petitioners used deformation modeling to determine a shortening rate of 2.0 mm/yr across the Irish Hills. In their presentation to the NRC staff, the petitioners acknowledged that the deformation models rely on "low resolution" finite element grids in the Irish Hills region (ML24198A105). Despite the low resolution of the model grid, the petitioners allocate all the 2.0 mm/yr of shortening across the Irish Hills to the "inferred" offshore thrust fault to determine a total thrust fault slip rate of 2.2 mm/yr beneath the Irish Hills. The amount of shortening (2.0 mm/yr), as well as the allocation of all the shortening across the Irish Hills to a single "inferred" thrust fault, is questionable as there are other known active faults in the region that could accommodate the shortening.

The NRC staff's review of the PG&E 2015 SSC Report documented PG&E's consideration of GPS geodetic velocities useful for site-specific hazard estimation (ML16341C057). PG&E considered geodetic data and associated analyses to inform patterns and rates of deformation. Geodetic data and models were presented in 2012 at SSHAC Workshop 2 and in 2014 at SSHAC Workshop 3. The NRC staff's review concluded that the SSHAC team used available geodetic data to provide regional constraints on the slip budget available for the study region (ML16341C057). However, the SSHAC team did not use geodetic data and numerical deformation models to directly assign slip rates to specific faults or rupture sources. Instead, the SSHAC team used the numerous geologic field studies and data gathered from geophysical surveys to estimate fault slip rates. The decision to rely primarily on geologic and geophysical data for seismic source characterization and to use GPS data as a secondary source of information to constrain the slip budget in the study region is justified because of the limited number of onshore GPS stations and the lack of offshore GPS stations in the region surrounding Diablo Canyon. Johnson et al.[20] provide an overview of the deformation modeling approaches and conclude that deformation models have not reached sufficient maturity and require further research to identify uncertainties associated with these models.

In summary, the PRB concludes that the stratigraphic profile, gravity anomalies, and GPS modeling used by the petitioners do not provide adequate evidence to support the existence of a major "inferred" offshore thrust fault that extends

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[20] Johnson, K. M., W. C. Hammond, and R. J. Weldon, "Review of geodetic and geologic deformation models for 2023 US National Seismic Hazard Model," *Bulletin of the Seismological Society of America,* 114(3): 1407-36, 2024.

beneath the Irish Hills with a fault length of 70 to 100 km and a slip rate between 2.0 to 2.8 mm/yr.

Concern 4: Seismic core damage frequency, estimated by PG&E in 2018 to be 3×10^{-5}, should be 1.4×10^{-3} per year (about once every 715 years) based on this higher recurrence rate for thrust earthquakes.

Based on its assessment of the petitioners' concerns, described above in Concerns 1 to 3, the PRB concludes (1) that the seismic models developed by PG&E do not neglect the potential for thrust or reverse faulting beneath Diablo Canyon, (2) the tectonic setting along central coastal California differs substantially from that for the Noto Peninsula, and (3) the existence of a 70- to 100-km long "inferred" offshore thrust fault adjacent to Diablo Canyon with a slip rate between 2.0 to 2.8 mm/yr is highly unlikely. Therefore, the PRB concludes that a recurrence interval of 715 years for large ground motions from a Noto Peninsula type earthquake beneath Diablo Canyon and subsequent seismic core damage frequency (SCDF) of 1.4×10^{-3} per year are not credible values. The bases for the PRB conclusion are provided below.

Using an average slip of 2 m from the 2024 Mw 7.5 Noto Peninsula earthquake and slip rates ranging from 2.0 to 2.8 mm/yr for the "inferred" offshore thrust fault, the petitioners estimate a recurrence interval of between 715 to 1000 years for an analogous event beneath Diablo Canyon. Based on the assumption that peak ground accelerations would be extremely large from this earthquake at Diablo Canyon, the petitioners assume that seismic core damage would occur and, therefore, the SCDF should be 1.4×10^{-3} per year (1/715 year). This SCDF value is about 47 times higher than the SCDF value (3×10^{-5} per year) determined by PG&E (ML18120A201) from its seismic probabilistic risk assessment (SPRA), performed in response to the NRC's 50.54(f) request. The SPRA performed by PG&E used the hazard curves from its implementation of the SSHAC Level 3 SSC and GMC models in a probabilistic seismic hazard analysis (PSHA) to assess the frequency of seismic core damage at Diablo Canyon. The NRC staff reviewed the SPRA performed by PG&E and concluded that it adequately characterized the risk of seismic damage for Diablo Canyon (ML18254A040). As previously stated in the NRC staff's response to Concern 1, based on its review of the SSC and GMC models, the NRC staff concluded that PG&E adequately captured the uncertainty in the data, models, and methods through use of the structured SSHAC approach (ML16341C057). Based on its assessment of the petitioners' concerns, described above in Concerns 1 to 3, the NRC staff concludes that (1) the seismic models developed by PG&E do not neglect the potential for thrust or reverse faulting beneath Diablo Canyon, (2) the tectonic setting along central coastal California differs substantially from that

for the Noto Peninsula, and (3) the existence of a 70- to 100-km long "inferred" offshore thrust fault with a slip rate greater than 2 mm/yr is highly unlikely.

In summary, the PRB concludes that a recurrence interval of 715 years for a Noto Peninsula type earthquake beneath Diablo Canyon and subsequent SCDF of 1.4×10^{-3} per year are not credible values.

III. CONCLUSION

As a result of the PRB review of the petitioners' concerns, the NRC has denied the petitioners' request. The request to shut down Diablo Canyon is denied because the PRB concludes that (1) the seismic models developed by PG&E do not neglect the potential for thrust or reverse faulting beneath Diablo Canyon, (2) the tectonic setting along central coastal California differs substantially from that for the Noto Peninsula, (3) the existence of a 70- to 100-km long "inferred" offshore thrust fault adjacent to Diablo Canyon with a slip rate greater than 2 mm/yr is highly unlikely, and (4) the return period of 715 years for seismic core damage is not justified. Therefore, there is an insufficient basis on which to take enforcement action against PG&E, and the petitioners' request is denied.

In accordance with 10 C.F.R. § 2.206(c), a copy of this director's decision will be filed with the Secretary of the Commission for Commission review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

For the Nuclear Regulatory Commission

Michael X. Franovich, Deputy Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 26th day of June 2025.

Attachment:
Petitioners' Comments on Proposed
Director's Decision and NRC Response

ATTACHMENT

PETITIONERS' COMMENTS ON PROPOSED DIRECTOR'S DECISION AND NUCLEAR REGULATORY COMMISSION RESPONSE

By letter dated May 15, 2025 (Agencywide Documents Access and Management System Accession No. ML25136A355), the petitioners provided comments to the U.S. Nuclear Regulatory Commission (NRC) on the proposed director's decision regarding seismic core damage frequency for Diablo Canyon Nuclear Power Plant, Units 1 and 2 (Diablo Canyon), dated April 10, 2025 (ML24302A153).

The petitioners' comments do not alter the staff's conclusions in the proposed director's decision and therefore do not require modification of the final director's decision. This attachment provides the petitioners' comments on the proposed director's decision and the NRC's responses to the comments.

The NRC staff determined that most of the comments involve restatements of the petitioners' concerns or otherwise involved information considered in the development of the proposed director's decision. However, the NRC staff identified five of the petitioners' assertions associated with Concerns 1 and 3 in the proposed director's decision that are new or clarify the previous concerns. The NRC staff considered and addressed these assertions, as described below. Note that the discussion of Concern 1 in the director's decision briefly covers the regional tectonic setting encompassing Diablo Canyon, which provides useful context for the following responses.

Assertion 1 (on proposed director's decision Concern 3)

"My model of the total thrust seismicity of the Irish Hills does not depend on the existence of the Inferred Coastline thrust; the same total could be met by combined activity on the Los Osos thrust, the San Luis Bay thrust, and other unmapped and unmodelled thrust faults in the basement Franciscan Complex," and "I have proposed that the San Luis Bay thrust fault continues northwest to connect to the Hosgri fault as a blind thrust fault ('Inferred Coastline thrust'), and that these two segments would naturally rupture together in a large event."

Response to Assertion 1

The Senior Seismic Hazard Analysis Committee (SSHAC) Seismic Source Characterization (SSC) model characterizes (section 7.0 of Pacific Gas & Elec-

tric Company's (PG&E) 2015 SSC Report)[1] a number of different complex rupture events under the three fault geometry models (FGMs). These complex rupture events capture the potential for larger magnitude and longer ruptures that have historical analogs in actual earthquakes. Under the Southwest-Vergent (SW) FGM, rupture source SW-04 models an earthquake that involves both the San Luis Bay (SLB) fault and the Hosgri fault (table 9-5 of the PG&E 2015 SSC Report). Rupture source SW-04 is assigned a combined set of magnitudes (table 10-11 of the PG&E 2015 SSC Report) for a primary rupture on the Hosgri fault (M6.9, M7.5, M8.0) and a secondary rupture on the SLB fault (M6.4); the rupture source is also allocated a portion of the total slip rate (section 9.3 of the PG&E 2015 SSC Report). Most of this complex rupture source entails a near-vertical strike-slip rupture on the Hosgri fault with subsequent reverse faulting on the much shorter SLB fault. In summary, the FGMs developed as part of the SSC model include a rupture event that includes both the Hosgri and SLB faults, which the petitioners assert is the "Inferred Coastline thrust" even though the SSC model captures the majority of this rupture event as a strike-slip earthquake on a near-vertical fault.

Assertion 2 (on proposed director's decision Concern 3)

Neither the PG&E's 2015 Level 3 SSHAC SSC Report nor the 2024 Updated Level 1 SSHAC SSC Report mentions the rate of crustal shortening (compression); the reports only give the direction, and PG&E is attempting to "divert attention" from this "damning evidence."

Response to Assertion 2

Assertion (2) claims that PG&E has attempted to obfuscate the rate of shortening across the Irish Hills. However, the SW FGM captures the potential for crustal shortening across the Irish Hills in which uplift is accommodated by more gently dipping reverse (or thrust) faults. In addition, Page ES-3 within the Executive Summary of the PG&E 2015 SSC Report states the following:

> Geodetic data and inversions of earthquake focal mechanisms show that the contemporary tectonic setting of the San Luis Range and surroundings is one of transpressional dextral shear with localized areas of crustal shortening and thickening such as within the Irish Hills near Diablo Canyon. Geodetic data constrain regional

[1] In 2015, PG&E developed the Diablo Canyon seismic source characterization (SSC) model and documented it in a report, which is referred to herein as the PG&E 2015 SSC Report. This report is available on the PG&E website https://www.pge.com/en/about/pge-systems/nuclear-power/seismic-safety-at-diablo-canyon.html#tabs-2967acbbcb-item-1b0b13e766-tab.

> crustal velocities in the vicinity of Diablo Canyon to 1-3 mm/yr [millimeters per year] of dextral shear subparallel to the San Andreas fault zone, *with comparable rates of crustal shortening permissible orthogonal to the plate boundary west of the San Andreas fault zone* [emphasis added].

Section 5.2 of the PG&E 2024 Updated SSC Report (ML24298A234) describes the literature review performed by the SSHAC team to evaluate recent data and models not included in the 2015 PG&E SSC model. Specifically, the SSHAC team reviewed the five Western United States Earthquake Rupture Forecast 2023 deformation models, which developed fault slip rates based, in part, on global positioning system (GPS) geodetic data. Table 5-11 in the updated PG&E 2024 Updated SSC Report compares the fault slip rates developed by the 2015 PG&E SSC model with the 2023 GPS based fault slip rates from the deformation models (including the Shen-Bird model) showing general agreement between the older and newer estimates for the fault slip rates for the primary faults near Diablo Canyon. In summary, PG&E used GPS data to inform the development of the 2015 PG&E SSC model and to assess the continued viability of the PG&E 2024 Updated SSC model, and the analysis considered the potential for crustal shortening.

Assertion 3 (on proposed director's decision Concern 1)

"In fact, there is no geologic or geophysical evidence for strike-slip tectonics within the Irish Hills," and "The SSW-NNE direction of compressive stress (shown by the World Stress Map dataset) and of compressive strain-rate (shown by relative GPS velocities) is incompatible with strike-slip and indicates pure thrusting."

Response to Assertion 3

Assertion (3) states that there is no geological or geophysical evidence for strike-slip faulting beneath the Irish Hills and that only thrust faulting is possible. The petitioners use this assertion to support the use of the Noto Peninsula as an analog to the local tectonic setting for Diablo Canyon. However, this assertion is not supported by the earthquake focal mechanisms shown in Figures 5-24 and 13-12 of the PG&E 2015 SSC Report, which clearly show a mix of strike-slip and thrust faulting events. In summary, there are numerous strike-slip mechanisms onshore within the Irish Hills consistent with the general result that focal mechanisms in south-central coastal California are a mix of reverse and strike-slip consistent with dextral transpressional deformation and that the tectonic setting for the Noto Peninsula differs from that of coastal California near Diablo Canyon.

Assertion 4 (on proposed director's decision Concern 3)

The Local Area Source (LAS) zone modeled by PG&E to capture the potential for earthquakes occurring on faults that were not already characterized in its Seismic Source Characterization (SSC) model has three major flaws:

a) the recurrence rate for earthquakes within LAS zone is based on seismicity catalog rather than moment rates from tectonic deformation models,

b) faulting in the LAS zone should not include the possibility for strike-slip events, and

c) the maximum magnitude of the LAS zone should range from M [Magnitude] 8.07 to M8.67.

Response to Assertion 4

Assertion (4a) states that the recurrence rates for the LAS zone should be based on tectonic deformation models rather than seismicity. The use of local and regional seismicity catalogs to determine earthquake recurrence rates for seismic areal source zones is consistent with the guidance in American Nuclear Society (ANS)/American National Standards Institute 2.29, "Probabilistic Seismic Hazard Analysis," and is followed for characterizing the seismic hazards for both critical facilities and commercial facilities. Assertion (4b) states that strike-slip faulting is not possible within the Irish Hills, but this assertion is contradicted by earthquake focal mechanisms showing a mix of strike-slip and reverse faulting onshore within the Irish Hills (see the response to Assertion 3). Assertion (4c) states that the maximum magnitude for the LAS zone should be greater than M8. As described in the response to Assertion (1), the FGMs that constitute PG&E's SSC model include multiple large complex ruptures on adjoining faults that capture the potential for M8 plus events. Rather than duplicating this set of complex large-magnitude ruptures, the purpose of the LAS zone is to characterize the potential for moderate to large (M6.6 to M7.1) earthquakes on previously unmapped faults. Similarly, the maximum magnitudes for the background zone developed by the U.S. Geological Survey (USGS) National Seismic Hazard Model, which encompasses Diablo Canyon, range from M6.5 to M7.0. In addition, the use of regional seismicity catalogs to develop the recurrence rate for earthquakes within areal source zones is consistent with the standard stationarity assumption made for the probabilistic seismic hazard analysis that seismic hazard at a location remains constant over relatively shorter time periods (e.g., 50 years).

Assertion 5 (on proposed director's decision Concern 3)

"Given that Langenheim was also first-author on the high-resolution isostatic gravity anomaly map that we now rely on it is reasonable to assume that he [sic] incorporated his [sic] knowledge of low surface rock densities into that isostatic correction." Specifically, this assertion states that the gravity modeling by Langenheim et al.[2] incorporates the low surface rock densities into the isostatic correction to develop the isostatic residual gravity map; the petitioner asserts that therefore, the gravity low across the Pismo syncline, which underlies the Irish Hills, is due to crustal thickening with an Airy ratio of 6:1.

Response to Assertion 5

Assertion (5) postulates that the density contrast between the lower density (*D*) (*D* = 2,270 kilograms per cubic meter (kg/m^3)) younger sedimentary rock that overlies the higher density (*D* = 2,710 kg/m^3) older basement rock has been accounted for in the isostatic correction performed by Langenheim et al. (2013). The petitioner therefore attributes the gravity low across the Pismo syncline to crustal thickening with an Airy ratio of 6:1. However, the petitioners' conclusion is not supported by the analysis in the referenced paper. Langenheim et al. (2013) state that the gravity measurements used to create an isostatic residual gravity map were based on an isostatic correction with a sea-level crustal thickness of 25 kilometers (km), a crustal density of 2670 kg/m^3, and a mantle-crust density contrast of 400 kg/m^3 to remove the long-wavelength effect of deep crustal and/or upper mantle masses that isostatically support regional topography. Regarding the gravity low across the Pismo syncline along profile F-F", Langenheim et al. (2013) state that "Lastly, model F-F" highlights structures that bound the Irish Hills. The model crosses the Pismo syncline, *characterized by a gravity low originating in Miocene and younger sedimentary rocks* [emphasis added]." This statement by Langenheim et al. (2013) clarifies that shallow, low density material is the cause of the gravity low across the Irish Hills, and that the gravity low is not the result of a crustal root. In addition, the rapid change in gravity anomaly over a relatively short distance (10 to 15 km) from negative to positive values supports this interpretation. In addition, the SSC model developed by PG&E was informed by both gravity and magnetic field data to model the crustal structure in the Diablo Canyon area (see section 2.3.2 of the PG&E 2015 SSC Report).

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[2] Langenheim, V. E., R. C. Jachens, R. W. Graymer, J. P. Colgan, C. M. Wentworth, and R. G. Stanley, "Fault geometry and cumulative offsets in the central Coast Ranges, California: Evidence for northward increasing slip along the San Gregorio–San Simeon–Hosgri fault," *Lithosphere,* 5(1): 29-48, 2013.

Conclusion

In conclusion, based on the PRB review of the petitioners' comments on the proposed director's decision, the PRB determined that no further actions were needed, and the NRC made no changes to the final director's decision as a result of the petitioners' assertions. The SSC model developed by PG&E in response to the NRC's request under Title 10 of the *Code of Federal Regulations* (10 C.F.R.) 50.54(f) captures multiple interpretations of the local geologic setting through the use of alternative FGMs. The SSC model is based on multiple geological and geophysical field measurements and was developed, as specified in the 10 C.F.R. § 50.54(f) request, using the SSHAC approach, as described in NUREG-2213, "Updated Implementation Guidelines for SSHAC Hazard Studies," issued October 2018 (ML18282A082). The SSHAC approach focuses on two critical activities: evaluation and integration. The evaluation activity is defined as an assessment of the complete set of data, models, and methods that are relevant to the hazard analysis, and the integration activity is the development of an SSC model that captures all technically defensible interpretations, as informed by the evaluation activity. A key element of the SSHAC approach is participatory peer review from an outside panel to ensure that the full range of data, models, and methods is considered in the evaluation phase and that all technically defensible interpretations are integrated into the SSC model to capture the uncertainty in seismic hazard as required by 10 C.F.R. § 100.23, "Geologic and seismic siting criteria." Independent panels of experts in coastal California geology and seismology reviewed and approved both PG&E's 2015 SSC model and its 2024 update (ML24298A234).

In summary, the PRB concludes that the petitioners' concerns, including the assertions in its comments on the proposed director's decision, are either (1) already incorporated as one of the alternative scenarios in the SSC model, (2) technically inconsistent with available information, or (3) inconsistent with standard approaches for the seismic hazard characterization for a nuclear power plant. Therefore, the PRB determined that no further actions were needed, and the NRC made no changes to the final director's decision as a result of the petitioners' comments.

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AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 674 (2008)
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AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009)
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AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility), LBP-11-11, 73 NRC 455, 525 n.36 (2011)
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Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991)
boards appropriately may view petitioner's support for its contention in a light favorable to petitioner, but it cannot do so by ignoring contention admissibility requirements; LBP-25-3, 101 NRC 56, 82 (2025)
when petitioner neglects to provide the requisite support for its contentions, a board may not cure the deficiency by supplying that information; LBP-25-1, 101 NRC 1, 17 (2025)

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NRC has established general standing criteria in 10 C.F.R. 2.309(d)(1)(i)-(iv); LBP-25-4, 101 NRC 133, 151 (2025)

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NRC's standing analysis includes a zone-of-interests test whereby the injury must arguably be within the zone of interests protected by the governing statute; LBP-25-4, 101 NRC 133, 151 (2025)

Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 917 (2009)
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Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 182-83 (2009)

in construction permit and operating license proceedings, proximity presumption extends to 50 miles, based on a finding that persons living within that radius face a realistic threat of harm if a release from the facility of radioactive material were to occur; LBP-25-4, 101 NRC 133, 152 (2025)

Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 183 (2009)

fifty-mile presumption recognizes potential effects at significant distances from the facility if there is accidental release of fissionable materials; LBP-25-4, 101 NRC 133, 153 (2025)

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Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant), CLI-86-24, 24 NRC 769, 774 n.5 (1986)

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claim that Commission has no authority to grant exemptions from its regulations was summarily dismissed; LBP-25-4, 101 NRC 133, 173 n.228 (2025)

Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Power Plant), CLI-86-24, 24 NRC 769, 780 (1986)

petitioner failed to draw a nexus between the claim and the exemption request at issue and thus did not meet the materiality standard; LBP-25-4, 101 NRC 133, 173 n.230 (2025)

Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991)

petitioners claim that NRC Staff defined the purpose and need of the project too narrowly and that the alternatives analysis therefore has become a foreordained formality; LBP-25-5, 101 NRC 211, 227 n.83 (2025)

City of Los Angeles v. Adams, 556 F.2d 40, 49-50 (D.C. Cir. 1977)

reinstitution of the adjudicatory proceeding was neither compelled by federal law nor a wise use of limited resources; CLI-25-1, 101 NRC 121, 124 n.22 (2025)

City of Los Angeles v. Adams, 556 F.2d 40, 50 (D.C. Cir. 1977)

underfunded agency is required to effectuate the original statutory scheme as much as possible, within the limits of the budgetary constraint; CLI-25-1, 101 NRC 121, 124 n.22 (2025)

Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)

NRC's standing analysis includes a zone-of-interests test whereby the injury must arguably be within the zone of interests protected by the governing statute; LBP-25-4, 101 NRC 133, 151 (2025)

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Connecticut Yankee Atomic Power Co. (Haddam Neck Plant), CLI-03-7, 58 NRC 1, 6-8 (2003)

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Connecticut Yankee Atomic Power Co. (Haddam Neck Plant), CLI-03-7, 58 NRC 1, 6-9 (2003)

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Consolidated Edison Co. of New York, Inc. (Indian Point Station, Unit No. 3), ALAB-281, 2 NRC 6, 7 (1975)
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Consumers Energy Co. (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007)
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Consumers Energy Co. (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 411 (2007)
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Corner Post, Inc. v. Board of Governors of the Federal Reserve System, 144 S. Ct. 2440 (2024)
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Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 336-37 (2009)
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Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 339 (2009)
Native American tribe had standing to intervene in an in-situ leach recovery application proceeding; LBP-25-3, 101 NRC 56, 74 (2025)

Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 348 n.89 (2009)
NRC implements its responsibilities under the National Historic Preservation Act in conjunction with the NEPA process; LBP-25-3, 101 NRC 56, 86 n.100 (2025)

Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 348-51 (2009)
tribe was asserting a NEPA claim in addition to a National Historic Preservation Act claim; LBP-25-3, 101 NRC 56, 86 (2025)

Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 349 (2009)
National Historic Preservation Act requires NRC Staff, not applicant, to consult with a tribe; LBP-25-3, 101 NRC 56, 85-86 & n.100 (2025)

Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 350-51 (2009)
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Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 351 (2009)
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Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), CLI-19-5, 89 NRC 329, 347 (2019) (Comm'r Baran, dissenting)
under NEPA, an environmental impact is reasonably foreseeable if it is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision and is a question of fact; LBP-25-3, 101 NRC 56, 104 (2025)

Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 713-14 (2008), *aff'd in part and rev'd in part on other grounds,* CLI-09-9, 69 NRC 331, 339 (2009)
Native American tribe had standing to intervene in an in-situ leach recovery application proceeding; LBP-25-3, 101 NRC 56, 73-74 (2025)

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Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 719 (2008)
section 106 of the National Historic Preservation Act imposes a duty, not on applicant in preparation of its application, but rather on NRC to consult with the tribe regarding cultural resources; LBP-25-3, 101 NRC 56, 85 n.99 (2025)

Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), LBP-08-24, 68 NRC 691, 719-23 (2008)
ensuring that NRC Staff meets its consultation obligations under section 106 of the National Historic Preservation Act is an issue material to the findings NRC must make in support of the action involved in the proceeding; LBP-25-3, 101 NRC 56, 85 (2025)
NRC Staff's assurance that it will involve the tribe in its NEPA review of cultural resources is no substitute for enabling the tribe to prosecute its contention; LBP-25-3, 101 NRC 56, 86 (2025)
where contention spanned both National Historic Preservation Act and NEPA issues, board referenced an obligation that was not met in section 106 of the National Historic Preservation Act, not NEPA; LBP-25-3, 101 NRC 56, 85 n.99 (2025)

Crow Butte Resources, Inc. (In Situ Leach Facility, Crawford, Nebraska), LBP-16-7, 83 NRC 340, 370 (2016), *review denied,* CLI-20-8, 92 NRC 255 (2020)
NRC has a history of treating the Dewey-Burdock Project and the Crow Butte project in a combined manner as it relates to cultural and historical resources; LBP-25-3, 101 NRC 56, 93 n.116 (2025)

Crow Butte Resources, Inc. (In Situ Leach Uranium Recovery Facility), CLI-20-8, 92 NRC 255, 261 (2020)
contention centered on failure to consult the tribe was not ripe and board's admissibility determination was reversed; LBP-25-3, 101 NRC 56, 84-85 (2025)

Crow Butte Resources, Inc. (In Situ Leach Uranium Recovery Facility), CLI-20-8, 92 NRC 255, 271, 281 (2020)
precedential value of decision is limited in that a 3-2 majority of the Commission declined to exercise its discretionary review authority and thus denied a petition for review; LBP-25-3, 101 NRC 56, 85 (2025)

Crow Butte Resources, Inc. (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 18 (2014)
organization also may obtain standing as a representative of one or more individual members; LBP-25-3, 101 NRC 56, 73 (2025)

Crow Butte Resources, Inc. (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 20 n.49 (2014)
claims of violation of consultation requirement under the National Historic Preservation Act may be interposed only after NRC Staff has issued its draft environmental review document; LBP-25-3, 101 NRC 56, 83 (2025)

Crow Butte Resources, Inc. (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 20-21 (2014)
Commission upheld admission of a NEPA contention over ripeness arguments; LBP-25-3, 101 NRC 56, 85 n.98 (2025)

Crow Butte Resources, Inc. (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 20-22 (2014)
board declined to admit the National Historic Preservation Act aspect of contention but did admit the NEPA aspect of that contention; LBP-25-3, 101 NRC 56, 86-87 (2025)

Crow Butte Resources, Inc. (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 21 (2014)
NRC's regulations do not contemplate a petitioner waiting for the Staff to perform its responsibilities under the National Historic Preservation Act before the petitioner raises environmental contentions; LBP-25-3, 101 NRC 56, 88 (2025)

Crow Butte Resources, Inc. (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 21-22 (2014)
petitioner must base its environmental contentions on information available at the time its intervention petition is to be filed, including applicant's environmental report; LBP-25-3, 101 NRC 56, 87 (2025)
Staff's future development of additional information relevant to cultural resources, as part of its National Historic Preservation Act review, does not preclude a challenge to the completeness of the cultural resources information in the application; LBP-25-3, 101 NRC 56, 88, 95 n.120 (2025)

Crow Butte Resources, Inc. (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 22 (2014)
NRC has recognized that certain tribes have a different relationship to the earth and its resources such as cultural resources than other tribes may have; LBP-25-3, 101 NRC 56, 93 (2025)
project within a tribe's aboriginal area establishes that the tribe has a genuine dispute with license renewal application on a material issue of fact; LBP-25-3, 101 NRC 56, 88 (2025)

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Crow Butte Resources, Inc. (Marsland Expansion Area), LBP-13-6, 77 NRC 253, 271 (2013)
purpose of NEPA is to protect the environment; LBP-25-3, 101 NRC 56, 72 (2025)
purpose of the National Historic Preservation Act is to protect tribal cultural resources and ensure tribes are consulted in accordance with section 106; LBP-25-3, 101 NRC 56, 72 (2025)

Crow Butte Resources, Inc. (Marsland Expansion Area), LBP-13-6, 77 NRC 253, 286-88 (2013)
board declined to admit National Historic Preservation Act aspect of contention but did admit the NEPA aspect of that contention; LBP-25-3, 101 NRC 56, 86-87 (2025)

Crow Butte Resources, Inc. (Marsland Expansion Area), LBP-19-2, 89 NRC 18, 39 n.54 (2019)
having been developed to assist an applicant in complying with applicable regulations, standard review plans are entitled to special weight; LBP-25-3, 101 NRC 56, 91 n.112 (2025)

Crow Butte Resources, Inc. (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 565-66 (2009)
claims of violation of consultation requirement under National Historic Preservation Act may be interposed only after NRC Staff has issued its draft environmental review document; LBP-25-3, 101 NRC 56, 83 (2025)

Crow Butte Resources, Inc. (North Trend Expansion Project), LBP-08-6, 67 NRC 241, 272-76, 278-80 (2008), *aff'd,* CLI-09-12, 69 NRC 535, 544-48 (2009)
standing was found where petitioners' alleged drinking water source was some distance from project site and in a geological formation that was connected to the target formation for the uranium recovery project; LBP-25-3, 101 NRC 56, 81 n.84 (2025)

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-01-24, 54 NRC 249, 358 (2001)
petitioner must do more than submit bald or conclusory allegations of a dispute with the applicant; LBP-25-4, 101 NRC 133, 165 n.165 (2025)

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 216 (2003)
conclusory statements, even if made by an expert, are insufficient to establish the legal and factual basis for an admissible contention; LBP-25-4, 101 NRC 133, 176 (2025)
petitioner must do more than submit bald or conclusory allegations of a dispute with the applicant; LBP-25-4, 101 NRC 133, 165 n.165 (2025)
regarding significance of potential impacts from restart, speculation that significant effects might arise from changes to safety systems and components made during the decommissioning process is insufficient to support an admissible contention; LBP-25-4, 101 NRC 133, 179 (2025)

Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 237, 242 (2008)
NRC adjudicatory proceeding is not a forum for challenges to NRC Staff's review; LBP-25-4, 101 NRC 133, 157, 172 (2025)

DTE Electric Co. (Fermi Nuclear Power Plant, Unit 3), CLI-15-13, 81 NRC 555, 569 n.86 (2015)
requests of the board must come in the form of a motion rather than a notice; LBP-25-4, 101 NRC 133, 160 n.125 (2025)

Duke Energy Carolinas, LLC (Oconee Nuclear Station, Units 1, 2, and 3), CLI-22-3, 95 NRC 40, 41-42 (2022)
petitioners were given an opportunity to submit new or amended contentions based on new information in the revised EIS without the need to meet heightened pleading requirements for newly filed or refiled contentions; LBP-25-1, 101 NRC 1, 12 (2025)
subsequent license renewal applicants were given the option of awaiting NRC Staff's generic reevaluation of the impacts of the SLR period and the associated rulemaking or providing site-specific information on facility-related environmental impacts during the SLR period; LBP-25-1, 101 NRC 1, 12 (2025)

Duke Energy Carolinas, LLC (Oconee Nuclear Station, Units 1, 2, and 3), CLI-22-3, 95 NRC 40, 43 (2022)
sua sponte review of licensing board finding that contentions were inadmissible dismissed the contentions without prejudice and terminated the proceeding; LBP-25-1, 101 NRC 1, 11 (2025)

Duke Energy Carolinas, LLC (Oconee Nuclear Station, Units 1, 2, and 3), LBP-22-1, 95 NRC 49, 91 n.89 (2022)
failure to explain what information was unavailable or why it was not available leaves a contention inadmissible; LBP-25-1, 101 NRC 1, 37 n.64 (2025)

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Duke Energy Carolinas, LLC (Oconee Nuclear Station, Units 1, 2, and 3), LBP-22-1, 95 NRC 49, 91-92 (2022)
NRC Staff evaluation of safety information received from a petitioner provides the basis for further agency action to obtain such compliance through an enforcement order; LBP-25-1, 101 NRC 1, 27 n.53 (2025)

Duke Energy Carolinas, LLC (Oconee Nuclear Station, Units 1, 2, and 3), LBP-22-1, 95 NRC 49, 94 (2022)
petitioners did not meet section 2.335 requirements for seeking a waiver to permit site-specific consideration of its contentions; LBP-25-1, 101 NRC 1, 11 n.7 (2025)

Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004)
boards have no jurisdiction over nonadjudicatory activities of the Staff that the Commission has clearly assigned to other offices unless the Commission itself grants that jurisdiction to the board; LBP-25-4, 101 NRC 133, 162 n.138 (2025)
boards may not direct NRC Staff in the performance of its administrative functions; LBP-25-4, 101 NRC 133, 157, 172 (2025)
boards' sole job is to consider safety, environmental, or legal issues raised by license applications; LBP-25-4, 101 NRC 133, 162 n.138 (2025)
challenge to NRC Staff's review of license amendment requests is outside the scope of the proceeding; LBP-25-4, 101 NRC 133, 165-66, 168, 172 (2025)
petitioners' argument that NRC Staff improperly accepted an environmental assessment document as an environmental report amounts to an out-of-scope challenge to NRC Staff's process; LBP-25-4, 101 NRC 133, 180 (2025)

Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station Units 1 and 2), CLI-02-14, 55 NRC 278, 295 (2002)
possible future action must be in a sufficiently advanced stage to be considered a "proposal" for action that brings NEPA into play; LBP-25-3, 101 NRC 56, 105 (2025)

Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002)
once purportedly missing information in a contention of omission has been supplied, the contention is moot and requires dismissal; LBP-25-4, 101 NRC 133, 186 n.343 (2025)

Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428 (2003)
NRC's intervention requirements demand a level of discipline and preparedness on the part of petitioners; LBP-25-5, 101 NRC 211, 218 n.21 (2025)

Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999)
Commission's policy that existing regulatory framework be used for restart requests may not be challenged; LBP-25-4, 101 NRC 133, 162 n.138, 165, 168 (2025)
NRC adjudicatory proceeding is not a forum for generalized grievances about NRC policies; LBP-25-4, 101 NRC 133, 157 (2025); LBP-25-5, 101 NRC 211, 216 (2025)
NRC Staff need not prepare an EIS for a reactor restart after shutdown; LBP-25-4, 101 NRC 133, 179 (2025)
petitioners' argument that restart-specific statutory and regulatory provisions are necessary to allow applicants to restart is not cognizable in a license amendment proceeding; LBP-25-4, 101 NRC 133, 182 (2025)
petitioners' claims that applicants' operating license may not be amended or that applicants may not seek exemptions from regulations amount to an impermissible challenge to agency policy and regulations; LBP-25-4, 101 NRC 133, 179 (2025)

Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-1, 49 NRC 328, 336 (1999)
section 50.54(f) request for information is contrasted with Staff-generated requests for additional information, which are requests for clarification or further discussion of particular items in the application; LBP-25-1, 101 NRC 1, 19 n.37 (2025)

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790 (1985)
Federal Register notice of opportunity to request a hearing describes the scope of the proceeding; CLI-25-3, 101 NRC 197, 204 (2025)

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EarthReports, Inc. v. FERC, 828 F.3d 949, 955 (D.C. Cir. 2016)
an effect is reasonably foreseeable if it is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision; LBP-25-3, 101 NRC 56, 104 (2025)

Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012)
bare assertions and speculation are not enough to support an admissible contention; CLI-25-3, 101 NRC 197, 206 (2025)
conclusory statements, even if made by an expert, are insufficient to establish the legal and factual basis for an admissible contention; LBP-25-4, 101 NRC 133, 176 (2025)

Entergy Nuclear Operations, Inc. (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016)
failure to meet any of the six elements for contention admissibility requires a finding that the contention is not admissible; LBP-25-3, 101 NRC 56, 82 (2025)

Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015)
petitioner bears the burden to satisfy each of the contention admission criteria of 10 C.F.R. 2.309(f); LBP-25-1, 101 NRC 1, 17 (2025); LBP-25-3, 101 NRC 56, 81-82 (2025)
petitioner, not the board, is responsible for formulating contentions and providing necessary information to satisfy the basis requirement for admission; LBP-25-1, 101 NRC 1, 17 n.29 (2025)

Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 14 (2022)
exemption requests, as a general rule, do not give rise to hearing opportunities; LBP-25-4, 101 NRC 133, 170 (2025)
exemption that is necessary to grant the license amendment may be challenged as part of the proceeding; LBP-25-4, 101 NRC 133, 171 (2025)

Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 7, 64-65 (2022)
state's contention challenging license transferee's financial qualifications to carry out planned decommissioning was admitted; CLI-25-3, 101 NRC 197, 200 (2025)

Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 67 (2022)
if petitioners do not present an admissible contention, Commission need not reach the issue of standing; CLI-25-3, 101 NRC 197, 204 (2025)

Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant and Big Rock Point Site), CLI-22-8, 96 NRC 1, 100 (2022)
petition's wholesale incorporation by reference without elaborating on any legal theories requires rejection of the contention at the outset; LBP-25-1, 101 NRC 1, 28 n.55 (2025)

Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant and Big Rock Point Site), LBP-23-5, 97 NRC 116 (2023)
board certified to the Commission an extensive record concerning applicant's financial ability to decommission the reactor; CLI-25-3, 101 NRC 197, 200 (2025)

Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 364-65 (2020)
if petitioners do not present an admissible contention, Commission need not reach the issue of standing; CLI-25-3, 101 NRC 197, 204 (2025)

Entergy Nuclear Operations, Inc., and Entergy Nuclear Palisades, LLC (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 266, 268 (2008)
organization also may obtain standing as a representative of one or more individual members; LBP-25-3, 101 NRC 56, 73 (2025)

Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 551-52 (2016)
exemption request is sufficiently intertwined with the granting of the license amendment requests that it is within the scope of the proceeding; LBP-25-4, 101 NRC 133, 156 n.93, 171 (2025)

Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 553 (2016)
challenge to an exemption request in an NRC adjudication is allowed when the request is inextricably intertwined with an action for which a hearing opportunity must be provided, such as a license amendment request; LBP-25-4, 101 NRC 133, 170, 188 n.3 (2025)

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Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 555 (2016)
board may not consider a challenge to timing of NRC Staff's review of an exemption request relative to a license amendment request; LBP-25-4, 101 NRC 133, 172 (2025)

Exelon Generation Co., LLC (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 248 (2004)
issuance of a permit by NRC will have no effect whatsoever on the rights of state agencies to enforce state laws restricting issuance of construction authorizations or certificates of convenience and necessity; LBP-25-3, 101 NRC 56, 109 n.153 (2025)

Exelon Generation Co., LLC (Early Site Permit for Clinton ESP Site), LBP-05-7, 61 NRC 188, 195 (2005)
in conformity with general rules of construction for statutory and regulatory provisions, different terms should be accorded different meanings; LBP-25-3, 101 NRC 56, 92 n.114 (2025)
use of different terminology in the same statutory section generally is interpreted to mean different things; LBP-25-3, 101 NRC 56, 92 n.114 (2025)

Exelon Generation Co., LLC (Oyster Creek Nuclear Generating Station), CLI-19-6, 89 NRC 465, 470-71 (2019)
license transfer review is limited to specific matters, including the financial and technical qualifications of the proposed transferee; CLI-25-3, 101 NRC 197, 204 (2025)

Exelon Generation Co., LLC (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 491 (2019), *aff'd on other grounds,* CLI-20-11, 92 NRC 335 (2020)
independent board determination is required regarding whether each petitioner has met the standing requirements, even if uncontested; LBP-25-1, 101 NRC 1, 14-15 (2025)

Exelon Generation Co., LLC (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 495 n.49 (2019), *rev'd in part on other grounds,* CLI-22-4, 95 NRC 44 (2022)
section 51.45(c) requires environmental reports to contain sufficient data to aid the Commission in its development of an independent analysis; LBP-25-3, 101 NRC 56, 98 n.130 (2025)

Fansteel, Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204 (2003)
boards must hold petitioners to their burden of meeting contention pleading requirements and may not sift through lengthy sources and supporting documents to find support for a petitioner's contentions; LBP-25-4, 101 NRC 133, 156, 177 n.259 (2025)

Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989)
Commission has recognized a presumption of standing based on a petitioner's proximity to the facility in question; LBP-25-4, 101 NRC 133, 151-52 (2025)
proximity-based standing in proceedings other than construction permit and operating license is judged case by case; LBP-25-4, 101 NRC 133, 152 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 8-9 (2001)
AEA design-basis safety challenge is outside the scope of a subsequent license renewal proceeding; LBP-25-1, 101 NRC 1, 26 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015)
for standing, petitioner must demonstrate an injury in fact that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision; LBP-25-4, 101 NRC 133, 151 (2025)
interests an organization seeks to protect must be germane to its purpose, and neither the asserted claim nor the requested relief must require the member's participation; LBP-25-4, 101 NRC 133, 152 (2025)
NRC generally looks to contemporaneous judicial concepts of standing; LBP-25-4, 101 NRC 133, 151 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 150 (2001), *aff'd,* CLI-01-17, 54 NRC 3 (2001)
standing was found where petitioner uses the affected ecosystem for hiking, boating, bird watching, fishing, contemplation, and observation of the diverse plant and animal species that frequent the ecosystem; LBP-25-3, 101 NRC 56, 77 n.60 (2025)

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Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-16-3, 83 NRC 169, 180 (2016)
attempt by NRC Staff and licensee to blindside petitioners with new argument would violate case law and implicate due process concerns; LBP-25-3, 101 NRC 56, 93 n.115 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), CLI-20-3, 91 NRC 133, 134, 155 (2020)
Commission rejected arguments that regulations and 2013 Generic Environmental Impact Statement for license renewal encompassed only the initial renewal period; LBP-25-1, 101 NRC 1, 10-11 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), CLI-22-2, 95 NRC 26, 27 (2022)
section 51.53(c)(3), Table B-1, and the 2013 GEIS apply only to the initial renewal period and NRC Staff must reevaluate the subsequent renewal period environmental impacts; LBP-25-1, 101 NRC 1, 11 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), LBP-24-3, 99 NRC 39, 50 (2024)
board assesses sufficiency of a waiver petition seeking consideration of a contention addressing concerns about potential flooding impacts on a facility; LBP-25-1, 101 NRC 1, 18 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), LBP-24-3, 99 NRC 39, 51-52 (2024)
proximity presumption excuses a petitioner otherwise meeting the requirements for standing from having to make a specific showing of injury in fact so long as that petitioner resides, works, or otherwise has regular contacts within a 50-mile radius of the reactor facility in question; LBP-25-1, 101 NRC 1, 15 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), LBP-24-3, 99 NRC 39, 55-56 & nn.82-83 (2024)
lack of new information is more a matter of materiality than scope under the contention admissibility standard; LBP-25-1, 101 NRC 1, 22 n.43 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), LBP-24-3, 99 NRC 39, 67-69 (2024)
contentions asserting that climate change brings an increased risk of accidents due to the increased frequency and intensity of weather events are considered; LBP-25-1, 101 NRC 1, 45 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), LBP-24-8, 100 NRC 95, 125-29 (2024)
contentions asserting that climate change brings an increased risk of accidents due to the increased frequency and intensity of weather events are considered; LBP-25-1, 101 NRC 1, 45 (2025)

Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), LBP-24-8, 100 NRC 95, 127, 128-29 (2024)
contention that NRC failed to use climate projection data in conducting its nuclear power plant application safety reviews is inadmissible; LBP-25-1, 101 NRC 1, 47 n.83 (2025)

General Public Utilities Nuclear Corp. (Oyster Creek Nuclear Generating Station), LBP-97-1, 45 NRC 7, 14 n.10 (1997)
section 50.54(f) reporting requirement in generic letter would constitute a requirement, in contrast with a compliance request to conform with guidance recommendations; LBP-25-1, 101 NRC 1, 27 n.54 (2025)

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 1), ALAB-881, 26 NRC 465, 476 (1987)
scope of the proceeding spelled out in the notice of hearing identifies the subject matter of the hearing, and the hearing judge can neither enlarge nor contract the jurisdiction conferred by the Commission; LBP-25-4, 101 NRC 133, 188 (2025)

Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta Georgia), CLI-95-12, 42 NRC 111, 115 (1995)
for a standing inquiry, boards construe petitions in favor of the petitioners; LBP-25-4, 101 NRC 133, 152, 155 (2025)
organization may demonstrate standing by showing organizational standing or representational standing; LBP-25-3, 101 NRC 56, 72 (2025)

organization must show that the action at issue will cause an injury-in-fact to the organization's interests and the injury is within the zone of interests protected by the relevant statute; LBP-25-3, 101 NRC 56, 73 (2025)
organizational standing involves alleged harm to the organization itself, while representational standing involves alleged harm to an organization's members; LBP-25-3, 101 NRC 56, 72-73 (2025)

Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116-17 (1995)
fifty-mile proximity presumption logically extends to proceeding involving potential to restart a shutdown and defueled reactor; LBP-25-4, 101 NRC 133, 153 (2025)
proximity-based standing in proceedings other than construction permit and operating license takes into account nature of the proposed action and significance of the radioactive source; LBP-25-4, 101 NRC 133, 152 (2025)

GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)
conclusory statements and speculation are insufficient to trigger a contested hearing; LBP-25-4, 101 NRC 133, 157 (2025); LBP-25-5, 101 NRC 211, 217 (2025)
conclusory statements, even if made by an expert, are insufficient to establish the legal and factual basis for an admissible contention; LBP-25-4, 101 NRC 133, 176 (2025)
petitioners do not explain how claimed destruction of quality assurance records is material to this license amendment proceeding, other than speculating about difficult-to-quantify risks; LBP-25-4, 101 NRC 133, 184 (2025)

Holtec Decommissioning International, LLC (Palisades Nuclear Plant), CLI-25-3, 101 NRC 197, 209-10 (2025)
petitioners failed to address or provide any substantive reason why NRC should reconsider its determination to apply the existing regulatory framework for restart requests; LBP-25-5, 101 NRC 211, 220-21 n.35, 223-24 n.60 (2025)

Honeywell International, Inc. (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 10 (2013)
exemption request can come within the scope of a hearing when it is inextricably intertwined with a licensing action triggering the opportunity to request a hearing; LBP-25-4, 101 NRC 133, 188 n.3 (2025)

Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 389-94 (1979)
organization's refusal to provide the name and address of a member with standing is sufficient reason to deny the organization's intervention petition; LBP-25-3, 101 NRC 56, 75-76 (2025)

Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 391 (1979)
board has an independent obligation to ensure petitioner has standing, even if no participant objects on standing grounds; LBP-25-3, 101 NRC 56, 71 n.20 (2025)

Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94 (1979)
name and address of organization's member with standing allows the licensing board to engage in the fact finding necessary to determine independently whether a member truly could establish standing; LBP-25-3, 101 NRC 56, 76 n.53 (2025)

Hudson v. Md. Cas. Co., 22 F.2d 791, 792 (8th Cir. 1927)
stare decisis requires the other decision to be binding authority; LBP-25-3, 101 NRC 56, 97 n.127 (2025)

Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 120 (1998)
resolution of state law legal issue is better suited for a different adjudicatory body than NRC's; LBP-25-3, 101 NRC 56, 109 n.152 (2025)

Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121, 122 n.3 (1998)
NRC proceeding is not the appropriate forum in which to consider impacts of a local regulation or whether a regulatory waiver or a non-NRC permit may be required for a project to move forward; LBP-25-3, 101 NRC 56, 108 (2025)

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Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121-22 (1998)
licensing boards have no authority to rule on challenges to the actions of states or other federal agencies; LBP-25-5, 101 NRC 211, 225 (2025)
presiding officers are to narrowly construe their scope to avoid litigation of issues that are the primary responsibility of other agencies; LBP-25-5, 101 NRC 211, 225 n.73 (2025)

Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 275, *rev'd in part on other grounds,* CLI-98-16, 48 NRC 119 (1998)
in in-situ leach mining cases, use of a substantial quantity of water from a source reasonably contiguous to either the injection or processing sites is sufficient to demonstrate an injury in fact; LBP-25-3, 101 NRC 56, 81 (2025)

Hydro Resources, Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 34 (2001)
presiding officer's decision to indefinitely hold proceeding in abeyance until licensee determined whether it intended to proceed with operations was reversed; CLI-25-1, 101 NRC 121, 129 (2025)

Hydro Resources, Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 38 (2001)
absent extraordinary circumstances, it is NRC's policy to promote expeditious completion of adjudicatory proceedings; CLI-25-1, 101 NRC 121, 129 (2025)

Hydro Resources, Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 38-44 (2001)
deferral to the objectives of one party, the licensee, imposed an unacceptable and unfair burden on other parties in the proceeding; CLI-25-1, 101 NRC 121, 129 (2025)

Hydro Resources, Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 39 (2001)
where license had already been granted, holding a proceeding in abeyance indefinitely risked a scenario in which a hearing on the issued license was unlikely to be resumed, let alone completed, prior to the end of the original license term; CLI-25-1, 101 NRC 121, 129 n.51 (2025)

Hydro Resources, Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 40 (2001)
as a matter of sound case management, Commission cannot abide a situation where a license is issued but contested issues lie fallow without resolution for years; CLI-25-1, 101 NRC 121, 129 n.51 (2025)

Hydro Resources, Inc. (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 48-49 (2001)
NRC is not in the business of regulating the market strategies of licensees or determining whether market conditions warrant commencing operations; CLI-25-3, 101 NRC 197, 207 (2025)

Hydro Resources, Inc. (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-11, 63 NRC 483, 493 (2006)
agencies may coordinate their NEPA and National Historic Preservation Act reviews, but the reviews remain separate, and the regulations associated with each Act must be independently satisfied; LBP-25-3, 101 NRC 56, 84 n.96 (2025)

In re Aiken County, 725 F.3d 255, 259 (D.C. Cir. 2013)
underfunded agency is required to effectuate the original statutory scheme as much as possible, within the limits of the budgetary constraint; CLI-25-1, 101 NRC 121, 124 n.22 (2025)

In re Aiken County, 725 F.3d 255, 266 n.12 (D.C. Cir. 2013)
grant of mandamus was based in part on the significant amount of money available for NRC to continue the licensing process; CLI-25-1, 101 NRC 121, 125 n.24 (2025)

In re Aiken County, 725 F.3d 255, 267 (D.C. Cir. 2013)
writ of mandamus ordered NRC to promptly continue with legally mandated licensing process of Yucca Mountain high-level waste repository unless and until Congress authoritatively says otherwise or there are no appropriated funds remaining; CLI-25-1, 101 NRC 121, 123 (2025)

Indep. Petroleum Ass'n of Am. v. Babbitt, 92 F.3d 1248, 1257-58 (D.C. Cir. 1996)
stare decisis requires the other decision to be binding authority; LBP-25-3, 101 NRC 56, 97 n.127 (2025)

Interim Storage Partners, LLC v. Texas, 145 S. Ct. 119 (Oct. 4, 2024)
petitioners incorrectly argue that NRC may not approve restart absent clear congressional authorization; LBP-25-4, 101 NRC 133, 181 (2025)

International Uranium (USA) Corp., CLI-00-1, 51 NRC 9, 19 (2000)
NRC guidance documents do not carry the binding effect of regulations; LBP-25-4, 101 NRC 133, 166 (2025)

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International Uranium (USA) Corp. (White Mesa Uranium Mill), LBP-97-12, 46 NRC 1, 8 (1997), *aff'd,* CLI-98-6, 47 NRC 116 (1998)
providing address of a petitioning organization but not a residential address of any member of that organization fails to provide a basis for standing for both the organization and the individual; LBP-25-3, 101 NRC 56, 76 n.54 (2025)

Iowa v. CEQ, 765 F. Supp. 3d 859 (D.N.D. 2025)
petitioners assert that Staff's use of incorporation by reference renders the Draft EA flawed because it relies on a potentially out-of-date CEQ regulation; LBP-25-5, 101 NRC 211, 230 n.110 (2025)

Limerick Ecology Action, Inc. v. NRC, 869 F.2d 719, 744 (3d Cir. 1989)
applicability of decision to contention that DSSEIS fails to address uncertainties is discussed; LBP-25-1, 101 NRC 1, 42 n.76 (2025)

Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004)
reply briefs are not the place to attempt to reinvigorate thinly supported contentions by presenting entirely new arguments; LBP-25-3, 101 NRC 56, 112 n.159 (2025)

Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004)
reply brief should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer; LBP-25-3, 101 NRC 56, 112 n.159 (2025)
there simply would be no end to NRC licensing proceedings if petitioners could disregard timeliness requirements and add new bases or new issues that simply did not occur to them at the outset; LBP-25-3, 101 NRC 56, 112-13 n.159 (2025)

Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-05-28, 62 NRC 721, 726 (2005)
NRC is not in the business of regulating the market strategies of licensees or determining whether market conditions warrant commencing operations; CLI-25-3, 101 NRC 197, 207 (2025)

Lujan v. Def. of Wildlife, 504 U.S. 555, 560 (1992)
injury-in-fact is an invasion of a legally protected interest that is concrete and particularized and actual or imminent and not conjectural or hypothetical; LBP-25-3, 101 NRC 56, 72 (2025)
to establish causation, a causal connection between the injury and the conduct complained of is required and this connection must be fairly traceable to the challenged action of the defendant; LBP-25-3, 101 NRC 56, 72 (2025)

Lujan v. Def. of Wildlife, 504 U.S. 555, 561 (1992)
to establish redressability, it must be likely that the injury will be redressed by a favorable decision; LBP-25-3, 101 NRC 56, 72 (2025)

Marin Audubon Soc'y v. FAA, 121 F.4th 902 (D.C. Cir. 2024)
CEQ lacks authority to issue binding NEPA regulations; LBP-25-3, 101 NRC 56, 90 n.110 (2025)
NRC voluntarily adopts certain CEQ definitions, rather than being bound to them by operation of some law or external regulation; LBP-25-3, 101 NRC 56, 90 n.110 (2025)
petitioners assert that Staff's use of incorporation by reference renders the EA Draft flawed because it relies on a potentially out-of-date CEQ regulation; LBP-25-5, 101 NRC 211, 230 (2025)
rehearing *en banc* was properly denied because the panel majority's rejection of the CEQ's authority to issue binding NEPA regulations was unnecessary to the panel's disposition; LBP-25-5, 101 NRC 211, 231 n.114 (2025)

Marin Audubon Soc'y v. FAA, 121 F.4th 902, 914 (D.C. Cir. 2024)
if an agency adopts CEQ's rules or incorporates them by reference into its NEPA regulations, that would be a permissible exercise of its own rulemaking authority; LBP-25-3, 101 NRC 56, 90 n.110 (2025)
NRC is not bound by CEQ regulations or guidance that would have a substantive impact on the way in which the Commission performs its regulatory functions; LBP-25-1, 101 NRC 1, 48 n.86 (2025)

Mid States Coal. for Progress v. Surface Transp. Bd., 345 F.3d 520, 549 (8th Cir. 2003)
an effect is reasonably foreseeable if it is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision; LBP-25-3, 101 NRC 56, 104 (2025)

N. Idaho Cmty. Action Network v. U.S. Dep't of Transp., 545 F.3d 1147, 1153 (9th Cir. 2008)
agency's obligation to consider alternatives under an environmental assessment is a lesser one than under an environmental impact statement and only a brief discussion of reasonable alternatives is required; LBP-25-5, 101 NRC 211, 229 n.105 (2025)

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Nat'l Credit Union Admin. v. First Nat'l Bank, 522 U.S. 479, 492 (1998)
to assess whether an interest falls within the zone of interests, it is necessary to first discern the interests arguably to be protected by the statutory provision at issue and then inquire whether the petitioner's interests affected by the agency action are among them; LBP-25-3, 101 NRC 56, 72 (2025)

Nat'l Insulation Transp. Comm. v. ICC, 683 F.2d 533, 537 (D.C. Cir. 1982)
use of different terminology within a statute is presumed to indicate that Congress intended to establish a different meaning; LBP-25-3, 101 NRC 56, 92 n.114 (2025)

New Jersey Dep't of Env't Prot. v. NRC, 561 F.3d 132, 135 (3d Cir. 2009)
unless a party obtains a waiver from NRC, regulations are not subject to attack during adjudications; LBP-25-3, 101 NRC 56, 75 n.50 (2025)

NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 307 (2012)
contention admission requirements are deliberately strict to ensure that adjudicatory resources are not needlessly spent on vague or speculative claims; CLI-25-3, 101 NRC 197, 202 (2025)

NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323 (2012)
contention seeking to substitute a different approach to that taken in an environmental impact analysis must show that the analysis being utilized is not reasonable under NEPA; LBP-25-1, 101 NRC 1, 41 (2025)
contentions admitted for litigation must point to a deficiency in the application, and not merely suggestions of other ways an analysis could be done, or other details that could have been included; LBP-25-1, 101 NRC 1, 41 n.73 (2025)
petitioners must demonstrate that NRC's NEPA analysis fails to include required information or that the analysis is otherwise unreasonable; LBP-25-5, 101 NRC 211, 217 (2025)
petitioners' failure to question adequacy or reasonableness of the content of contested Draft EA sections to support their claims renders their contention inadmissible; LBP-25-5, 101 NRC 211, 231 (2025)
proper question is not whether there are plausible alternative choices for use in the environmental analysis, but whether the analysis that was done is reasonable under NEPA; LBP-25-5, 101 NRC 211, 217 (2025)

NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323-24 (2012)
alternative analysis of flooding risks is inadequate to support an admissible contention absent a discussion of the substance of NRC's regulatory analysis; LBP-25-1, 101 NRC 1, 24 n.48 (2025)
alternative input approach is wanting as the basis for an admissible contention; LBP-25-1, 101 NRC 1, 26 (2025)
contention that fails to address why NRC Staff's bounding analysis of accident risk and its impacts are wrong is inadmissible; LBP-25-1, 101 NRC 1, 32 (2025)
concern about adequacy of seismic events multiplier fails to establish a genuine dispute; LBP-25-1, 101 NRC 1, 35 (2025)

NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 337 (2012)
petitioners' claim fails because they do not explain why it would be unreasonable for NRC Staff to reference legal authority relevant to the proposed project; LBP-25-5, 101 NRC 211, 227 n.86 (2025)

NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 338 (2012)
GEIS is not binding, but carries special weight as a guidance document that has been approved by the Commission; LBP-25-3, 101 NRC 56, 90 n.110 (2025)

NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 341-42 (2012)
without an explanation as to how inclusion of additional and unspecified information would make a material difference in Staff's analysis, petitioners have not met their burden to raise a genuine, material dispute; LBP-25-5, 101 NRC 211, 229 (2025)

NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-18-4, 87 NRC 89, 107 & n.131 (2018)
licensing board must review support for a contention, both for what it does and does not show; LBP-25-1, 101 NRC 1, 39 (2025)

NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), LBP-17-7, 86 NRC 59, 97 (2017)
Federal Register notice of opportunity to request a hearing describes the scope of the proceeding; CLI-25-3, 101 NRC 197, 204 (2025)

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Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 564 (1980)
outcome of a proceeding to extend a construction permit is a necessary step toward plant operation; LBP-25-4, 101 NRC 133, 156 n.93 (2025)

Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), LBP-80-22, 12 NRC 191, 196, *aff'd,* ALAB-619, 12 NRC 558, 564 (1980)
it is the end result of the hearing that must be considered to determine whether petitioners' interests will be affected; LBP-25-4, 101 NRC 133, 153-54 n.80 (2025)

Northern States Power Co. (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), LBP-12-24, 76 NRC 503, 514 (2012)
application for an expansion of the ISFSI several years into the future would be necessary to allow the associated nuclear plant to continue operations to the end of its then-current operating license; LBP-25-3, 101 NRC 56, 105 n.141 (2025)
because applicant had applied for a state Certificate of Need, particular effects were reasonably foreseeable; LBP-25-3, 101 NRC 56, 105 n.141 (2025)

Northern States Power Co. (Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation), LBP-14-6, 79 NRC 404, 423 (2014)
cumulative impact analysis is required for reasonably foreseeable future actions, and test for connected actions in CEQ regulation 40 C.F.R. 1508.25 need not necessarily be satisfied; LBP-25-3, 101 NRC 56, 107 n.148 (2025)

Nuclear Fuel Services, Inc. (License Amendment Application), CLI-23-3, 98 NRC 33, 49 & n.105 (2023)
absent a waiver from the Commission, licensing board may not consider challenges to regulations; LBP-25-3, 101 NRC 56, 75 n.50, 113 n.161 (2025)
board is without authority to consider a challenge to application of 10 C.F.R. 2.309(d)(1) and must enforce and apply the regulation; LBP-25-3, 101 NRC 56, 75 (2025)

Nuclear Management Co., LLC (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006)
allowing new claims in a reply not only would defeat the contention-filing deadline, but would unfairly deprive other participants of an opportunity to rebut the new claims; LBP-25-3, 101 NRC 56, 112-13 n.159 (2025); LBP-25-4, 101 NRC 133, 159 (2025)
reply must focus narrowly on the legal or factual arguments in petitions and answers; LBP-25-4, 101 NRC 133, 159 (2025)

Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 205 (1983)
NRC is authorized to regulate in the area of radiological safety but states and local government retain their traditional responsibilities outside that field of regulation; LBP-25-3, 101 NRC 56, 109 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427 (2011)
awareness of the existence of a fault, which became available during the time between the initial application and the license renewal request at issue, allowed the effect thereof to be addressed; LBP-25-3, 101 NRC 56, 97 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443 (2011)
petitioners are not required to prove their contentions at the admissibility determination stage and boards do not consider the merits of petitioners' arguments at this stage; LBP-25-3, 101 NRC 56, 82 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011)
contention was reformulated to make clear that a substantive CEQ regulation is not binding on NRC; LBP-25-5, 101 NRC 211, 231 n.114 (2025)
NRC is not bound by CEQ regulations or guidance that would have a substantive impact on the way in which the Commission performs its regulatory functions; LBP-25-1, 101 NRC 1, 48 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC 681, 686 (2012)
good-cause standard is tied to the availability of the information on which new and amended contentions are based; LBP-25-5, 101 NRC 211, 218 n.21 (2025)

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Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-16-11, 83 NRC 524, 539 (2016)
because petitioners agree that claimed omissions in application have been addressed, board must dismiss their contentions as moot; LBP-25-4, 101 NRC 133, 186 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-16-11, 83 NRC 524, 539-40 & n.106 (2016)
once purportedly missing information in a contention of omission has been supplied, the contention is moot and requires dismissal; LBP-25-4, 101 NRC 133, 186 n.343 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-10-15, 72 NRC 257 (2010)
awareness of existence of a fault, which became available during the time between the initial application and the license renewal request at issue, allowed the effect thereof to be addressed; LBP-25-3, 101 NRC 56, 97 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 16 n.66 (2024)
organizational standing involves alleged harm to the organization itself, while representational standing involves alleged harm to an organization's members; LBP-25-3, 101 NRC 56, 72-73 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 17-18 (2024)
under 3-element test for representational standing, entities must show one of its members has standing, identify that member by name and address, and show, preferably by affidavit, the organization is authorized to request a hearing on behalf of that member; LBP-25-3, 101 NRC 56, 73 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 17-19 (2024), *appeal pending*
to establish representational standing, an organization must demonstrate germaneness of its interests, that an individual member is not required participate in the legal action, and that at least one member has standing and has authorized the organization to represent that member; LBP-25-1, 101 NRC 1, 15 n.24 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 17-20 (2024)
two divergent tests for representational standing have been employed in recent decisions; LBP-25-3, 101 NRC 56, 73 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 18-20 (2024)
under 5-element test for representational standing, entities must meet the three-element test and also show interests germane to its purpose and individual member is not required to participate in the entity's lawsuit; LBP-25-3, 101 NRC 56, 73 (2025)

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-24-6, 100 NRC 1, 23 n.93 (2024), *appeal pending*
proximity presumption excuses a petitioner otherwise meeting the requirements for standing from having to make a specific showing of injury in fact so long as that petitioner resides, works, or otherwise has regular contacts within a 50-mile radius of the reactor facility in question; LBP-25-1, 101 NRC 1, 15 (2025)

Pa'ina Hawaii, LLC, CLI-08-3, 67 NRC 151, 163 (2008)
irradiators in general are unlikely to pose a significant offsite risk and therefore can be safely located anywhere local governments allow industrial facilities to be built; LBP-25-3, 101 NRC 56, 109 n.154 (2025)

Pa'ina Hawaii, LLC, CLI-10-18, 72 NRC 56, 90 (2010)
scope and severity of impacts, and whether they are reasonably foreseeable in the first instance, involve questions of fact that are at the very heart of the contested issue; LBP-25-3, 101 NRC 56, 106 n.144 (2025)

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 & n.33 (1974)
adjudicatory proceedings are not a forum for challenges to agency policies or regulations; LBP-25-5, 101 NRC 211, 216 (2025)

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Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 875 (1984)
recommendation for listing on the National Register of Historic Places was a sufficiently significant change since the time the construction permit was issued that it merits present consideration; LBP-25-3, 101 NRC 56, 96 (2025)

Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1430, 1483, 1485 (1982)
recommendation for listing on the National Register of Historic Places was used as support for cultural resource contentions; LBP-25-3, 101 NRC 56, 96 (2025)

Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1483, 1485 (1982)
recommendation for listing on the National Register of Historic Places was a sufficiently significant change since the time the construction permit was issued that it merits present consideration; LBP-25-3, 101 NRC 56, 96 (2025)

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 & n.33 (1974)
NRC adjudicatory proceeding is not a forum for generalized grievances about NRC policies; LBP-25-4, 101 NRC 133, 157 (2025)

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 21 n.33 (1974)
adjudications are not the proper forum for advancing views of what applicable policies ought to be; LBP-25-4, 101 NRC 133, 166 n.170 (2025)

Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974)
even assuming a specified regulation may be contrary to the Atomic Energy Act, the licensing board is not the proper forum for consideration of such matters; LBP-25-3, 101 NRC 56, 113 n.161 (2025)

Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-16-20, 84 NRC 219, 231 (2016)
for issues arising under NEPA, petitioner must file contentions based on applicant's environmental report; LBP-25-3, 101 NRC 56, 84 n.95 (2025)

Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-16-20, 84 NRC 219, 231 (2016)
it is settled law that an applicant is not bound by NEPA, but by NRC regulations in Part 51; LBP-25-3, 101 NRC 56, 89 n.109 (2025)
ultimate burden with respect to NEPA lies with NRC Staff, but regulations require that intervenors file environmental contentions on applicant's environmental report; LBP-25-3, 101 NRC 56, 84, 88 n.107 (2025)

Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-16-20, 84 NRC 219, 248 (2016)
National Historic Preservation Act and NEPA compliance do not necessarily mirror one another; LBP-25-3, 101 NRC 56, 84 n.96 (2025)

Powertech (USA) Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-20-9, 92 NRC 295, 299 (2020), *petition for review denied, Oglala Sioux tribe v. NRC,* 45 F.4th 291 (D.C. Cir. 2022)
NRC considers CEQ issuances as guidance in carrying out its NEPA responsibilities, particularly in determining what actions are reasonable under NEPA; LBP-25-1, 101 NRC 1, 48 (2025)

Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-20-9, 92 NRC 295, 313 (2020)
a Class III cultural survey can identify a property's eligibility to be included on the National Register of Historic Places but wouldn't necessarily identify all Native American cultural and religious resources because some knowledge must be provided by the Native American groups themselves; LBP-25-3, 101 NRC 56, 95 n.118 (2025)

Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 378-80 (2010)
in-situ leach recovery process is described; LBP-25-3, 101 NRC 56, 69 (2025)

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Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-10-16, 72 NRC 361, 389 (2010)
- although organizational standing was denied in a prior proceeding, detailed impacts to the organization and its members allowed grant of standing in a subsequent proceeding; LBP-25-3, 101 NRC 56, 79 n.68 (2025)

Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-15-16, 81 NRC 618, 640 (2015)
- programmatic agreement may be used in situations where the effects to historic properties cannot be fully determined prior to the approval of an undertaking; LBP-25-3, 101 NRC 56, 98 n.130 (2025)

Powertech (USA), Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-17-9, 86 NRC 167, 199 (2017)
- in the NEPA context, best tribal cultural resource survey approach is to involve tribal elders, a facilitator, something along the lines of a cultural anthropologist; LBP-25-3, 101 NRC 56, 94 n.117 (2025)

Powertech (USA) Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-19-10, 90 NRC 287 (2019)
- boards are not precluded from considering issues considered in a prior licensing board decision; LBP-25-3, 101 NRC 56, 97 n.127 (2025)

Powertech (USA) Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-19-10, 90 NRC 287, 321, 326, 329, 334-35, 341 n.272 (2019)
- tribal participation is needed for a fulsome identification of cultural resources to be completed; LBP-25-3, 101 NRC 56, 99 n.132 (2025)

Powertech (USA) Inc. (Dewey-Burdock In Situ Uranium Recovery Facility), LBP-19-10, 90 NRC 287, 342 (2019)
- programmatic agreement will provide protection for onsite cultural resources as they may be encountered during facility construction and operation, notwithstanding the lack of a cultural resources survey that includes tribal participation; LBP-25-3, 101 NRC 56, 99 (2025)

PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010)
- fact that the petitioner is the same in both the prior and the current proceedings does not relieve the board of its responsibility to make a standing determination; LBP-25-1, 101 NRC 1, 15 (2025)
- petitioner must make a fresh standing demonstration in each proceeding in which intervention is sought because a petitioner's circumstances may change from one proceeding to the next; LBP-25-1, 101 NRC 1, 15 n.22 (2025)

PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010)
- petitioner bears the burden to provide facts sufficient to establish standing; LBP-25-3, 101 NRC 56, 71 (2025)

PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139-40 (2010)
- petitioner has the opportunity in a reply to cure standing defects in the petition, but failure to do so can result in denial of standing; LBP-25-3, 101 NRC 56, 76 n.55 (2025)

PPL Susquehanna, LLC (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 NRC 500, 504 (2015)
- contention admission requirements are deliberately strict to ensure that adjudicatory resources are not needlessly spent on vague or speculative claims; CLI-25-3, 101 NRC 197, 202 (2025)

PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 18-20 (2007)
- fifty-mile proximity presumption was applicable in a power uprate proceeding; LBP-25-4, 101 NRC 133, 153 n.78 (2025)

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999)
- organization must demonstrate that at least one of its members has standing and has authorized the organization to request a hearing on the member's behalf; LBP-25-4, 101 NRC 133, 152 (2025)
- to establish representational standing, an organization must demonstrate germaneness of its interests, that an individual member is not required participate in the legal action, and that at least one member has standing and has authorized the organization to represent that member; LBP-25-1, 101 NRC 1, 15 (2025)

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Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323-24 (1999)
hiking, camping, birdwatching, studying, contemplation, solitude, photography, and other activities are a significant and genuine personal attachment to the affected area sufficient to constitute standing; LBP-25-3, 101 NRC 56, 77 n.60 (2025)

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 324-25 (1999)
definitive past, present, and future use of the property at issue is sufficient for grant of standing; LBP-25-3, 101 NRC 56, 78-79 n.66 (2025)

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999)
failure to comply with any of the contention admission requirements constitutes grounds for rejecting a contention; LBP-25-1, 101 NRC 1, 17 (2025)

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 467 (2001)
challenge to an exemption request in an NRC adjudication is allowed when the request is inextricably intertwined with an action for which a hearing opportunity must be provided, such as a license amendment request; LBP-25-4, 101 NRC 133, 170 (2025)

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 470 (2001)
exemption that is necessary to grant the license amendment may be challenged as part of the proceeding; LBP-25-4, 101 NRC 133, 171 (2025)
where an exemption is a direct part of an initial licensing or licensing amendment action, there is a potential that an interested party could raise an admissible contention on the exemption, triggering a right to a hearing under the AEA; LBP-25-4, 101 NRC 133, 188 n.3 (2025)

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-01-22, 54 NRC 255, 264 (2001)
having been developed to assist an applicant in complying with applicable regulations, standard review plans are entitled to special weight; LBP-25-3, 101 NRC 56, 91 n.112 (2025)

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004)
petitioner is not expected to prove its contention at the pleading stage; LBP-25-3, 101 NRC 56, 82 n.87 (2025)

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181, *aff'd,* CLI-98-13, 48 NRC 26 (1998)
expert opinion that merely states a conclusion 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; LBP-25-1, 101 NRC 1, 37 n.65 (2025)

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-6, 51 NRC 101, 134-35, *aff'd in part and rev'd in part on other grounds,* CLI-00-13, 52 NRC 23 (2000)
an already-in-place protective order generally governs participant access to, and responsibility concerning, the decision during the nonpublic review process; LBP-25-1, 101 NRC 1, 50 n.90 (2025)

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-00-6, 51 NRC 101, 135, *aff'd in part and rev'd in part on other grounds,* CLI-00-13, 52 NRC 23 (2000)
when nonpublic information has become part of the adjudicatory record, a licensing board post-issuance makes its ruling available to the participants for their review and input concerning possible redactions; LBP-25-1, 101 NRC 1, 50 n.90 (2025)

Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976)
scope of the proceeding is defined by the notice of opportunity for hearing and the referral from the Commission; LBP-25-4, 101 NRC 133, 157 (2025)

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Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989)
boards must hold petitioners to their burden of meeting contention pleading requirements and may not sift through lengthy sources and supporting documents to find support for a petitioner's contentions; LBP-25-4, 101 NRC 133, 156 (2025)
petition's wholesale incorporation by reference without elaborating on any legal theories requires rejection of the contention at the outset; LBP-25-1, 101 NRC 1, 28 n.55 (2025)

Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973)
attorneys are reasonably expected to adhere to standards of clarity and precision; LBP-25-4, 101 NRC 133, 150, 161 (2025)

Quivira Mining Co. (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 14 (1998)
Atomic Energy Act concentrates on licensing and regulation of nuclear materials for the purpose of protecting public health and safety and the common defense and security; LBP-25-3, 101 NRC 56, 72 (2025)

Rockwell International Corp. (Rocketdyne Division), ALAB-925, 30 NRC 709, 721-22 (1989)
boards may not direct NRC Staff in the performance of its administrative functions; LBP-25-4, 101 NRC 133, 157 (2025)

Seven Cty. Infrastructure Coal. v. Eagle County, No. 23-975, 605 U.S. _, slip op. at 12 (2025)
NEPA's rule of reason ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process; LBP-25-5, 101 NRC 211, 217 n.14 (2025)

Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 356 (1999)
hiking, camping, birdwatching, studying, contemplation, solitude, photography, and other activities are a significant and genuine personal attachment to the affected area sufficient to constitute standing; LBP-25-3, 101 NRC 56, 77 n.60 (2025)

Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 357 (1999)
location of text in decisions can impact the import of that text; LBP-25-3, 101 NRC 56, 85 n.99 (2025)

Sierra Club v. Morton, 405 U.S. 727, 734-35 (1972)
injury in fact may be established where scenery, natural and historic objects, and wildlife may be adversely affected, although the party seeking review must be among the injured; LBP-25-3, 101 NRC 56, 77 (2025)

Sierra Club v. Morton, 405 U.S. 727, 734-39 (1972)
organizational standing argument based solely on its interest in environmental issues was rejected; LBP-25-3, 101 NRC 56, 78 n.63 (2025)

Sierra Club v. Morton, 405 U.S. 727, 735 (1972)
entity may obtain organizational standing where that entity submits an affidavit or declaration that the planned development at issue would affect the activities or pastimes of the entity; LBP-25-3, 101 NRC 56, 77-78 (2025)
standing was denied for failure to submit any affidavits or declarations of an actual impact to the organization or its members; LBP-25-3, 101 NRC 56, 78 n.63 (2025)

Sierra Club v. Morton, 405 U.S. 727, 736 (1972)
organization's longstanding concern with and expertise in environmental matters were insufficient to give it standing as a representative of the public; LBP-25-3, 101 NRC 56, 78 n.63 (2025)

Sierra Club v. Morton, 405 U.S. 727, 739 (1972)
organization must show that the action at issue will cause an injury-in-fact to the organization's interests and the injury is within the zone of interests protected by the relevant statute; LBP-25-3, 101 NRC 56, 73 (2025)

Sierra Club v. U.S. Army Corps of Eng'rs, 645 F.3d 978, 989 (8th Cir. 2011)
organizational standing of entities was established by testimony from members that they took pictures, hunted, and studied history and archaeology of the area; LBP-25-3, 101 NRC 56, 78 n.62 (2025)

Sosa v. Alvarez-Machain, 542 U.S. 692, 711 n.9 (2004)
when the legislature uses certain language in one part of a statute and different language in another, the court assumes different meanings were intended; LBP-25-3, 101 NRC 56, 92 n.114 (2025)

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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, 6 (2010)
boards generally extend some latitude to *pro se* litigants, but they are still expected to comply with procedural rules, including contention pleading requirements; LBP-25-4, 101 NRC 133, 161 n.134 (2025)

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, 21-22 (2010)
petition's wholesale incorporation by reference without elaborating on any legal theories requires rejection of the contention at the outset; LBP-25-1, 101 NRC 1, 28 n.55 (2025)

Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-9, 78 NRC 551, 558 (2013)
licensing board's decision that was dismissed without review is not binding but can be viewed as persuasive; LBP-25-1, 101 NRC 1, 18 (2025)

Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-10, 78 NRC 563, 569 n.42 (2013)
unreviewed board decisions are not binding on future boards but they may be referenced as persuasive authority; LBP-25-1, 101 NRC 1, 45-46 (2025)

Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), LBP-07-3, 65 NRC 237, 253 (2007)
neither mere speculation nor bare or conclusory assertions, even by an expert, will suffice to allow the admission of a proffered contention; LBP-25-1, 101 NRC 1, 37 n.65 (2025)

Southern Nuclear Operating Co., Inc. (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 221 (2011)
petitioners are not required to prove their contentions at the admissibility determination stage and boards do not consider the merits of petitioners' arguments at this stage; LBP-25-3, 101 NRC 56, 82 n.87 (2025)

Southern Nuclear Operating Co., Inc. (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 237-38 (2020)
interests an organization seeks to protect must be germane to its purpose, and neither the asserted claim nor the requested relief must require the member's participation; LBP-25-4, 101 NRC 133, 152 (2025)
petitioners had not demonstrated standing because they made no reference to standing in their petition and only referred to it in an attached declaration; LBP-25-4, 101 NRC 133, 155 n.90 (2025)
to establish representational standing, an organization must demonstrate germaneness of its interests, that an individual member is not required to participate in the legal action, and that at least one member has standing and has authorized the organization to represent that member; LBP-25-1, 101 NRC 1, 15 (2025)

Southern Nuclear Operating Co., Inc. (Vogtle Electric Generating Plant, Unit 3), CLI-20-6, 91 NRC 225, 238 (2020)
for a standing inquiry, boards construe petitions in favor of the petitioners; LBP-25-4, 101 NRC 133, 152 (2025)

Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22 (1998)
it is petitioner's responsibility, not the board's, to formulate contentions and to provide the necessary information to satisfy the basis requirement for admission; LBP-25-1, 101 NRC 1, 17 n.29 (2025)

Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 24 (1998)
absent extraordinary circumstances, it is the Commission's policy to promote expeditious completion of adjudicatory proceedings; CLI-25-1, 101 NRC 121, 129 (2025)

Strata Energy, Inc. (Ross In Situ Uranium Recovery Project), CLI-16-13, 83 NRC 566, 577 (2016)
possible future action must be in a sufficiently advanced stage to be considered a "proposal" for action that brings NEPA into play; LBP-25-3, 101 NRC 56, 105 (2025)

Strata Energy, Inc. (Ross In Situ Recovery Uranium Project), LBP-12-3, 75 NRC 164, 177, *aff'd,* CLI-12-12, 75 NRC 603 (2012)
for organizational standing, entity must establish a discrete institutional injury to its interests, based on more than a general environmental or policy interest in the subject matter of the proceeding; LBP-25-3, 101 NRC 56, 77 (2025)

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Strata Energy, Inc. (Ross In Situ Recovery Uranium Project), LBP-12-3, 75 NRC 164, 201, *aff'd,* CLI-12-12, 75 NRC 603 (2012)
cumulative effects are those that result from incremental effects of the proposed action in conjunction with past, present, and reasonably foreseeable future actions; LBP-25-3, 101 NRC 56, 102 (2025)

Susquehanna Nuclear, LLC (Susquehanna Steam Electric Station, Units 1 and 2), CLI-23-1, 97 NRC 81, 84 n.17 (2023)
if petitioners do not present an admissible contention, Commission need not reach the issue of standing; CLI-25-3, 101 NRC 197, 204 (2025)

Tennessee Valley Authority (Bellefonte Nuclear Plant, Units 1 and 2), CLI-10-6, 71 NRC 113, 120 (2010)
NRC has broad authority under the Atomic Energy Act to reinstate voluntarily surrendered construction permits; LBP-25-4, 101 NRC 133, 183 n.310 (2025)

Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 and 2), LBP-13-8, 78 NRC 1, 11-12 (2013)
safety issue is outside the scope of a subsequent license renewal proceeding; LBP-25-1, 101 NRC 1, 24 n.48 (2025)

Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 and 2), LBP-13-8, 78 NRC 1, 11-13 (2013)
AEA design-basis safety challenge is outside the scope of a subsequent license renewal proceeding; LBP-25-1, 101 NRC 1, 26 n.51 (2025)

Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 25 (2002)
fifty-mile proximity presumption was applicable for a technical specification change that would add tens of millions of curies of radioactive gas to the core inventory; LBP-25-4, 101 NRC 133, 153 n.78 (2025)

Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI-04-24, 60 NRC 160, 204 (2004)
scope of the proceeding spelled out in the notice of hearing identifies the subject matter of the hearing, and the hearing judge can neither enlarge nor contract the jurisdiction conferred by the Commission; LBP-25-4, 101 NRC 133, 188 (2025)

Texas v. NRC, 78 F.4th 827, 844 (5th Cir. 2023), *reh'g en banc denied,* 95 F.4th 935 (5th Cir. 2024), *cert. granted, NRC v. Texas,* 145 S. Ct. 117 (2024)
petitioners incorrectly argue that NRC may not approve restart absent clear congressional authorization; LBP-25-4, 101 NRC 133, 181 (2025)

U.S. Department of Energy (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 590-91 (2009)
benefit of admitting a legal contention would not be of assistance where the particular argument has been extensively aired twice; LBP-25-1, 101 NRC 1, 25 (2025)

U.S. Department of Energy (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 591 (2009)
merits are to be considered at a phase other than contention admissibility; LBP-25-3, 101 NRC 56, 82 n.87 (2025)

U.S. Dep't of Transp. v. Pub. Citizen, 541 U.S. 752, 767 (2004)
NEPA's rule of reason ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process; LBP-25-5, 101 NRC 211, 217 n.14 (2025)

U.S. Enrichment Corp. (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272-73 (2001)
to assess whether an interest falls within the zone of interests, it is necessary to first discern the interests arguably to be protected by the statutory provision at issue and then inquire whether petitioner's interests affected by the agency action are among them; LBP-25-3, 101 NRC 56, 72 (2025)

Union Electric Co. (Callaway Plant, Units 1 and 2), ALAB-347, 4 NRC 216, 218 (1976)
Commission withheld jurisdiction from licensing boards to entertain attacks on validity of Commission regulations in individual licensing proceedings except in certain special circumstances; LBP-25-3, 101 NRC 56, 75 n.50 (2025)

Union of Concerned Scientists v. NRC, 824 F.2d 108, 109 (D.C. Cir. 1987)
Atomic Energy Act is NRC's primary statutory standard to ensure safe operation of nuclear power plants; LBP-25-1, 101 NRC 1, 21-22 (2025)

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United States v. Allegheny-Ludlum Steel, 406 U.S. 742, 755 (1972)
claim that agency has no authority to grant exemptions from its regulations was summarily dismissed; LBP-25-4, 101 NRC 133, 173 n.228 (2025)

United States v. Almaraz, 306 F.3d 1031, 1041 (10th Cir. 2002)
attempt by NRC Staff and a licensee to blindside petitioners with new argument would violate case law and implicate due process concerns; LBP-25-3, 101 NRC 56, 93 n.115 (2025)

USEC Inc. (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311-12 (2005)
proximity alone is not sufficient to establish standing in source material proceedings; LBP-25-3, 101 NRC 56, 81 (2025)

USEC Inc. (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 439 & n.31 (2006)
boards have granted petitioners considerable leeway in reviewing out-of-process filings given the petitioner's *pro se* status; LBP-25-4, 101 NRC 133, 159 n.119, 161 (2025)

USEC Inc. (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 444 (2006)
for issues arising under NEPA, petitioner must file contentions based on applicant's environmental report; LBP-25-3, 101 NRC 56, 84 (2025)

USEC Inc. (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 444-45 (2006)
because petitioners agree that claimed omissions in application have been addressed, board must dismiss their contentions as moot; LBP-25-4, 101 NRC 133, 186 (2025)

USEC Inc. (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 447 (2006)
NRC is obliged to comply with the National Historic Preservation Act; LBP-25-3, 101 NRC 56, 83 (2025)

USEC Inc. (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006)
expert opinion that merely states a conclusion 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; LBP-25-1, 101 NRC 1, 37 n.65 (2025)

USEC Inc. (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 476 (2006)
new arguments raised by petitioners during a prehearing conference are barred on lateness grounds because the other participants did not have the chance to consider and address these arguments in their answers; LBP-25-3, 101 NRC 56, 93 n.115 (2025)

Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), LBP-24-7, 100 NRC 52, 58-59 (2024)
proximity presumption excuses a petitioner otherwise meeting the requirements for standing from having to make a specific showing of injury in fact so long as that petitioner resides, works, or otherwise has regular contacts within a 50-mile radius of the reactor facility in question; LBP-25-1, 101 NRC 1, 15 (2025)

Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), LBP-24-7, 100 NRC 52, 66-67, 72-73 (2024)
petition's wholesale incorporation by reference without elaborating on any legal theories requires rejection of the contention at the outset; LBP-25-1, 101 NRC 1, 28 n.55 (2025)

Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), LBP-24-7, 100 NRC 52, 69-73 (2024)
contentions asserting that climate change brings an increased risk of accidents due to the increased frequency and intensity of weather events are considered; LBP-25-1, 101 NRC 1, 45 (2025)

Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), LBP-24-7, 100 NRC 52, 71-72 (2024)
climate-related cliff-edge effect claims lacked sufficient support for an admissible contention because they were either too speculative or lacked sufficient information; LBP-25-1, 101 NRC 1, 46 (2025)

West Virginia v. EPA, 597 U.S. 697, 721 (2022)
history and breadth of the authority that NRC has asserted is considered; LBP-25-4, 101 NRC 133, 183 (2025)
if the challenged restart requests involve an issue of such economic and political significance that the major questions doctrine applies, then the doctrine would appear to apply to all new reactor licensing, a result that would undermine the Court's characterization of the doctrine as one reserved for extraordinary cases; LBP-25-4, 101 NRC 133, 182-83 n.309 (2025)

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West Virginia v. EPA, 597 U.S. 697, 723 (2022)
petitioners incorrectly argue that NRC may not approve restart absent clear congressional authorization; LBP-25-4, 101 NRC 133, 181 (2025)

Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 339 (1983)
scope of the proceeding is defined by the notice of opportunity for hearing and the referral from the Commission; LBP-25-4, 101 NRC 133, 157 (2025)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 101 n.7 (1994)
changes that licensees may make without requesting a license amendment, while not subject to a hearing opportunity, could be the subject of a request for action; LBP-25-4, 101 NRC 133, 165 (2025)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998)
petitioners must allege a particularized injury within the zone of interests protected by the governing statute, fairly traceable to the challenged action, and likely redressable by a favorable decision; LBP-25-3, 101 NRC 56, 72 (2025)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195-96 (1998)
organization must show that the action at issue will cause an injury-in-fact to the organization's interests and the injury is within the zone of interests protected by the relevant statute; LBP-25-3, 101 NRC 56, 73 (2025)

Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90, *rev'd in part on other grounds,* CLI-96-7, 43 NRC 235 (1996)
licensing board must review support for a contention, both for what it does and does not show; LBP-25-1, 101 NRC 1, 39 (2025)

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10 C.F.R. 2.100
Licensing Support Network is defined; CLI-25-1, 101 NRC 121, 123 n.14 (2025)
10 C.F.R. 2.101(e)(8), 2.104(a)
before a final decision on a construction authorization application can be reached, Staff must complete its safety and environmental reviews, a formal hearing must be conducted, and review of both contested and uncontested issues must take place; CLI-25-1, 101 NRC 121, 126 (2025)
10 C.F.R. 2.1023
before a final decision on a construction authorization application can be reached, Staff must complete its safety and environmental reviews, a formal hearing must be conducted, and review of both contested and uncontested issues must take place; CLI-25-1, 101 NRC 121, 126 (2025)
construction authorization may not be issued until the Commission issues its final decision; CLI-25-1, 101 NRC 121, 129 n.51 (2025)
10 C.F.R. 2.1025(a)
motions for summary disposition may be filed at any time prior to the last date set forth in the hearing schedule in Appendix D; CLI-25-1, 101 NRC 121, 130 (2025)
10 C.F.R. 2.1025(a)-(c)
summary disposition may be appropriate for certain legal contentions, but every participant in the adjudicatory proceeding is afforded the opportunity to address motions and have their evidence and arguments fairly considered in the process; CLI-25-1, 101 NRC 121, 127 n.40 (2025)
10 C.F.R. 2.1025(c)
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10 C.F.R. 2.202
NRC Staff evaluation of safety information received from a petitioner provides the basis for further agency action to obtain such compliance through an enforcement order; LBP-25-1, 101 NRC 1, 26-27 n.53 (2025)
10 C.F.R. 2.206
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changes that licensees may make without requesting a license amendment, although not subject to a hearing opportunity, could be the subject of a request for action; LBP-25-4, 101 NRC 133, 165 (2025)
other avenues are available for public participation on issues that are not redressable in an adjudicatory proceeding, including public meetings and petitions for action; LBP-25-4, 101 NRC 133, 162 (2025)
request for immediate closure of plant due to unacceptable risk of a seismically induced severe accident is denied; DD-25-1, 101 NRC 233, 234-54 (2025)
10 C.F.R. 2.206(a)
for changes that are made without a license amendment, challenges would be raised in accordance with a request for action; LBP-25-4, 101 NRC 133, 184 (2025)
10 C.F.R. 2.304(d)
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10 C.F.R. 2.307(a)
counsel should have provided justification for late filing upon learning of their error, or they should have requested an extension of the filing deadline after the fact; LBP-25-4, 101 NRC 133, 150 (2025)

10 C.F.R. 2.309
Federal Register notice does not categorically exclude or predetermine admissibility of contentions; LBP-25-4, 101 NRC 133, 143 n.24 (2025)
person whose interest may be affected by a proceeding must submit a request in writing that establishes their standing and offers an admissible contention; CLI-25-3, 101 NRC 197, 202 (2025)

10 C.F.R. 2.309(a)
boards are expected to adhere to NRC's contention admissibility standards and must dismiss contentions that fail to meet them; LBP-25-4, 101 NRC 133, 161 n.134 (2025)
intervention petitioner must demonstrate standing and submit at least one admissible contention; LBP-25-3, 101 NRC 56, 81 (2025)

10 C.F.R. 2.309(b)
deadlines for hearing petitions and replies are set and no other written answers or replies will be entertained; LBP-25-4, 101 NRC 133, 158 n.118 (2025)

10 C.F.R. 2.309(b)(3)
board addresses timeliness of hearing petition filed 3 days after the intervention petition deadline; LBP-25-4, 101 NRC 133, 148 (2025)

10 C.F.R. 2.309(c)
board addresses timeliness of hearing petition filed 3 days after the intervention petition deadline; LBP-25-4, 101 NRC 133, 148 (2025)
board is within its authority to refuse to consider documents almost 4 months after the intervention deadline, without sufficient explanation for the lengthy delay; LBP-25-4, 101 NRC 133, 159-60 & n.124 (2025)
petitioners were given an opportunity to submit new or amended contentions based on new information in the revised EIS without the need to meet heightened pleading requirements for newly filed or refiled contentions; LBP-25-1, 101 NRC 1, 12 (2025)
petitions filed after the deadline will not be considered absent good cause; LBP-25-4, 101 NRC 133, 150 (2025)
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10 C.F.R. 2.309(c)(1)
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10 C.F.R. 50.51(b)
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10 C.F.R. 50.80(b)(1)
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10 C.F.R. 51.1

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10 C.F.R. 51.10(a)

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10 C.F.R. 51.45
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cumulative impact analysis is required for reasonably foreseeable future actions, and test for connected actions in CEQ regulation 40 C.F.R. 1508.25 need not necessarily be satisfied; LBP-25-3, 101 NRC 56 (2025)
current CEQ definition of "reasonably foreseeable" is not included in any of the CEQ definitions that NRC voluntarily agreed to apply to its proceedings; LBP-25-3, 101 NRC 56 (2025)
petitioners sufficiently raise a question as to whether projects they identify are reasonably foreseeable such that applicant should have included a discussion of their cumulative effects in its license renewal application; LBP-25-3, 101 NRC 56 (2025)
plaintiff must prove by a preponderance of the evidence that the injury alleged by plaintiff was the direct and reasonably foreseeable result of defendant's alleged misrepresentations or omissions; LBP-25-3, 101 NRC 56 (2025)
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if an agency adopts CEQ's rules or incorporates them by reference into its National Environmental Policy Act regulations, that would be a permissible exercise of its own rulemaking authority; LBP-25-3, 101 NRC 56 (2025)
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NRC has adopted its own NEPA-implementing regulations, including regulations that provide for the preparation of an environmental assessment, and change to CEQ regulations would not be material to this proceeding; LBP-25-4, 101 NRC 133 (2025)
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NRC voluntarily adopts certain CEQ definitions, rather than being bound to them by operation of some law or external regulation; LBP-25-3, 101 NRC 56 (2025)
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argument that restart project is a major action is inadmissible because it fails to raise a material dispute; LBP-25-5, 101 NRC 211 (2025)
assertions are outside the scope of this proceeding to the extent that they relate to license amendment applications filed in support of restart, rather than the license transfer application that is the subject of this proceeding; CLI-25-3, 101 NRC 197 (2025)
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