

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

LONG MOTT ENERGY, LLC

(Long Mott Generating Station)

Docket No. 50-614-CP

March 6, 2026

LONG MOTT ENERGY, LLC’S MOTION TO DISMISS CONTENTION 3A AS MOOT

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(a), Long Mott Energy, LLC (“LME”) hereby moves the Atomic Safety and Licensing Board (“Board”) to dismiss Contention 3A as moot. As reformulated and admitted by the Board, Contention 3A challenges certain information in Part V of LME’s construction permit (“CP”) application (“CPA”).¹ Specifically, Contention 3A alleges:

LME’s CP application relies upon but does not meet the 10 C.F.R. § 50.12(a)(2)(ii), (vi) requirements for an exemption to the financial qualifications requirements in 10 C.F.R. § 50.33(f).

But after that contention was admitted, LME submitted to the U.S. Nuclear Regulatory Commission (“NRC”) Supplement # 1 to Part V of the CPA (the “Supplement”).² That Supplement materially altered—and largely replaced—the original text of the CPA that was the target of San Antonio Bay Estuarine Waterkeeper’s (“Waterkeeper”) challenge in Contention 3A. As a result, Contention 3A does not pose a live dispute with the *current* text of the CPA; and its dispute with the *prior* text is not material. Thus, Contention 3A is now moot and should be dismissed.

¹ *Long Mott Energy, LLC* (Long Mott Generating Station), LBP-26-1, 103 NRC __ (Jan. 22, 2026) (slip op. at 38).

² Letter from C. O’Connor, LME, to NRC Document Control Desk, “Supplement # 1 to Part V of the Long Mott Generating Station” (March 3, 2026) (cover letter, ML26062A258; Encl. 1, ML26062A259) (“Supplement”).

II. LEGAL STANDARDS

A case or controversy becomes moot when “the issues are no longer ‘live’” or “subsequent events outrun the controversy.”³ Mootness can arise when the information challenged in a contention is “superseded” by new information (e.g., via application supplements or NRC Staff environmental documents) that differs materially from the previously challenged information.⁴ In considering whether new information is material to an admitted contention, licensing boards consider the scope of the contention, which is defined both by its terms and its bases.⁵

In such circumstances, “the contention must be disposed of or modified.”⁶ That is because contentions do not automatically “migrate” to cover new and materially different information.⁷ If a petitioner wishes to challenge such new information, it must propose a new or amended contention—with new or amended *bases*—even if the language of the contention itself would remain the same.⁸ When admitted contentions are superseded by new application content or environmental documents, dismissal is the appropriate remedy.⁹ Licensing boards routinely dismiss mooted contentions promptly, without waiting to adjudicate any new or amended contentions.¹⁰

³ *Exelon Generation Co. LLC* (Dresden Nuclear Power Station, Units 2 & 3), CLI-06-16, 83 NRC 147, 153 (2016) (citations omitted).

⁴ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 382 (Dec. 18, 2002) (citation omitted); *USEC Inc.* (Am. Centrifuge Plant), CLI-06-9, 63 NRC 433, 444 (2006) (citations omitted).

⁵ *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 308–09 (2010).

⁶ *McGuire*, CLI-02-28, 56 NRC at 382; *USEC*, CLI-06-9, 63 NRC at 444.

⁷ *See, e.g., Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-13-10, 78 NRC 117, 133 (2013) (describing a limited exception, known as the NEPA “migration tenet,” whereby contentions may migrate from an applicant’s environmental report to the NRC Staff’s environmental document without additional filings, but *only* if the information is “sufficiently similar to the information in the ER,” *i.e.*, essentially *in pari materia* with the ER.”) (citing several other cases for these propositions) (citations omitted).

⁸ *Id.* (noting that a new contention is required if the new document or information is “sufficiently different” from the prior information challenged in the original contention).

⁹ *See, e.g., Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), Licensing Board Memorandum & Order (May 9, 2024) (unpublished) (ML24130A205) (granting motion to dismiss admitted contention as moot based on subsequent information); *Interim Storage Partners LLC* (WCS Consol. Interim Storage Facility), LBP-19-9, 90 NRC 181 (2019) (same).

¹⁰ *See, e.g., Long Mott*, LBP-26-1, 103 NRC at __ (slip op. at 53–55 & n.233) (holding the Spent Fuel Storage portion of Contention 4 was moot and noting that Waterkeeper’s pending motion to amend that claim would be addressed “in a separate decision”).

III. CONTENTION 3A SHOULD BE DISMISSED AS MOOT

Pursuant to 10 C.F.R. § 50.12(a)(2), “[t]he Commission will not consider granting an exemption unless special circumstances are present.” In Section 2.2.1.5.2 of CPA Part V, as originally filed, LME asserted the existence of two types of special circumstances, specifically, those in 10 C.F.R. § 50.12(a)(2)(ii) and (vi). In LBP-26-1, the Board admitted Contention 3A as a challenge to LME’s discussions of both special circumstances. As explained below, the Supplement materially modifies Section 2.2.1.5.2 of CPA Part V as to both discussions. Accordingly, the CPA content challenged in Contention 3A has been superseded, and the contention is now moot and should be dismissed.

A. The Supplement Contains New and Materially Different CPA Content Regarding LME’s Satisfaction of 10 C.F.R. § 50.12(a)(2)(ii)

In Section 2.2.1.5.2 of CPA Part V, as originally submitted,¹¹ LME asserted that special circumstances under 10 C.F.R. § 50.12(a)(2)(ii) exist because “[a]pplication of the [Part 50 financial qualification standard] in the particular circumstances . . . is not necessary to achieve the underlying purpose of the rule.” In LBP-26-1, the Board explained that its basis for admitting Waterkeeper’s challenge to this assertion was that LME’s discussion relied too heavily on NRC Staff conclusions and generally applicable circumstances, whereas, “[f]or the most part, LME does not claim that *its specific* circumstances warrant relief from section 50.33(f).”¹² As relevant here, LME’s Supplement revised Section 2.2.1.5.2 of CPA Part V to set forth—clearly and expressly—various LME-specific or generally uncommon circumstances applicable to LME’s CPA that establish special circumstances under 10 C.F.R. § 50.12(a)(2)(ii).¹³

¹¹ CPA, Part V, “Non-Applicabilities and Exemptions,” at V-XVI (Mar. 31, 2025) (ML25090A065).

¹² *Long Mott*, LBP-26-1, 103 NRC at __ (slip op. at 34–35) (emphasis added).

¹³ *See, e.g.*, Supplement, Encl. 1 at [PDF p. 1] (discussing LME’s participation in the U.S. Department of Energy’s Advanced Reactor Demonstration Program and financial support from The Dow Chemical Company).

To the extent Section 2.2.1.5.2 of Part V of the CPA, as originally submitted, was viewed as lacking LME-specific facts relevant to satisfaction of 10 C.F.R. § 50.12(a)(2)(ii), the same cannot be said of Section 2.2.1.5.2 of Part V of the CPA as modified by the Supplement. More broadly, the pertinent CPA cited in the basis of the original contention has been revised and expanded such that it materially differs from the prior text. The CPA text that was challenged in Contention 3A is no longer present in the CPA—thus, the original dispute is no longer a live one. That renders this aspect of Contention 3A moot. To the extent Waterkeeper wishes to dispute the new text, it must seek leave to file a new or amended contention.

B. The Supplement Contains New and Materially Different CPA Content Regarding LME’s Satisfaction of 10 C.F.R. § 50.12(a)(2)(vi)

Section 2.2.1.5.2 of CPA Part V, as originally submitted,¹⁴ also asserted that special circumstances under 10 C.F.R. § 50.12(a)(2)(vi) are present because there exist “other material circumstance[s] not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.” In LBP-26-1, the Board explained that it read this portion of the CPA to assert that an “attempted rulemaking” was the unconsidered material circumstance that LME put forth as a special circumstance.¹⁵ The Board admitted Waterkeeper’s challenge thereto based, in part, on the Board’s lack of clarity as to whether “this attempted rulemaking effort qualifies as an unconsidered ‘material circumstance.’”¹⁶ LME did not intend this reading of its original discussion. Thus, LME’s Supplement revised Section 2.2.1.5.2 of CPA Part V to clearly and expressly set forth the multiple unconsidered material circumstances that establish special circumstances under 10 C.F.R. § 50.12(a)(2)(vi), none of which is an attempted rulemaking.¹⁷

¹⁴ CPA, Part V, “Non-Applicabilities and Exemptions,” at V-XVI to V-XVII (Mar. 31, 2025) (ML25090A065).

¹⁵ *Long Mott*, LBP-26-1, 103 NRC __ (slip op. at 36) (emphasis added).

¹⁶ *Id.*

¹⁷ *E.g.*, Supplement, Encl. 1 at [PDF p. 3] (discussing deregulation of the utility industry and decades of accumulated operating experience).

To the extent Section 2.2.1.5.2 of Part V of the CPA, as originally submitted, could be read to assert that an “attempted rulemaking effort” itself was the material unconsidered circumstance under 10 C.F.R. § 50.12(a)(2)(vi), Section 2.2.1.5.2 of Part V of the CPA, as modified by the Supplement, now clearly lacks any such assertion. In fact, the discussion in this section has been revised and replaced almost entirely. As such, the CPA text that was challenged in Contention 3A no longer exists and the original dispute is no longer a live one. That renders this second part of Contention 3A moot as well. And, again, any potential challenge to the new text must be proposed as a new or amended contention.

* * *

Both prongs of Contention 3A, as to special circumstances under 10 C.F.R. § 50.12(a)(2)(ii) and (vi), have been mooted by the Supplement because the pertinent CPA content has been superseded. Thus, Contention 3A should be dismissed. Moreover, even if the Board concludes that only one prong was mooted by the Supplement, the result should be the same.¹⁸

IV. CONCLUSION

The Board should dismiss Contention 3A as moot.¹⁹ LME respectfully requests the Board to resolve this Motion expeditiously on the pleadings, without oral argument. Relatedly, an order dismissing Contention 3A would terminate any mandatory disclosure or hearing file obligations associated therewith.²⁰ Thus, if the Board anticipates that it will be unable to rule on this Motion by

¹⁸ See *Long Mott*, LBP-26-1, 103 NRC at __ (slip op. at 32) (“Because LME only needs one special circumstance (a disjunctive requirement), a challenge to LME’s exemption request must show a genuine dispute of a material issue of law or fact as to *each* special circumstance raised by LME.”) (emphasis in original).

¹⁹ Pursuant to 10 C.F.R. § 2.323(b), counsel for LME certifies that LME made a sincere effort to contact the other party in this proceeding, Waterkeeper, to resolve the issue raised in the motion, and that LME’s efforts to resolve this issue have been unsuccessful. Waterkeeper declined to join and opposes the motion. As requested by the Board, the NRC Staff, which has opted to not participate as a party at this time, was copied on all communications related to these consultations.

²⁰ See 10 C.F.R. § 2.336(d).

March 20, 2026, *i.e.*, three (3) business days before the current discovery deadline,²¹ then LME respectfully requests the Board to issue a separate order tolling that deadline until five (5) business days after such ruling is issued. Good cause supports this request due to the proximity of the current discovery deadline to the anticipated ruling on this motion, the brief duration of the potential tolling period, and the meaningful efficiency that may be achieved as a result.²²

Respectfully submitted,

Signed (electronically) by Ryan K. Lighty
RYAN K. LIGHTY, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5274
ryan.lighty@morganlewis.com

Executed in Accord with 10 C.F.R. § 2.304(d)
ALEX S. POLONSKY, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5830
alex.polonsky@morganlewis.com

Counsel for Long Mott Energy, LLC

Dated in Washington, DC
this 6th day of March 2026

²¹ See Licensing Board Order (Granting Joint Motion Regarding Mandatory Disclosures) at 1 (Feb. 17, 2026) (ML26048A334) (unpublished).

²² Just a few days ago, the Commission itself touted the prudence of brief delays to facilitate resolution of motions to dismiss admitted contentions. See Streamlining Contested Adjudications in Licensing Proceedings; Proposed rule, 91 Fed. Reg. 10,450, 10,462 (Mar. 3, 2026) (explaining that, even in the context of an accelerated hearing framework, it is beneficial to delay the commencement of an evidentiary hearing if “an applicant seek[s] to dismiss a contention because the process for seeking dismissal is quicker and less resource-intensive than an evidentiary hearing; thus, the dismissal process may be a more efficient way of resolving a contention.”).

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

LONG MOTT ENERGY, LLC

(Long Mott Generating Station)

Docket No. 50-614-CP

March 6, 2026

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing “Long Mott Energy, LLC’s Motion to Dismiss Contention 3A as Moot” was served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty

RYAN K. LIGHTY, Esq.

MORGAN, LEWIS & BOCKIUS LLP

1111 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

(202) 739-5274

ryan.lighty@morganlewis.com

Counsel for Long Mott Energy, LLC