

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:

LONG MOTT ENERGY, LLC

(Long Mott Generating Station)

Docket No. 50-614-CP

August 14, 2026

**LONG MOTT ENERGY, LLC'S ANSWER OPPOSING
SAN ANTONIO BAY ESTUARINE WATERKEEPER'S
PETITION FOR DISCRETIONARY REVIEW**

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE COMMISSION SHOULD DENY THE PETITION	2
A.	Waterkeeper Identifies No “Substantial Question” on the Safety Rulings.....	4
1.	Holding That Fuel Testing Claims in Contention 1 Were Inadmissible	4
2.	Denying Motion for Leave to Amend Contention 1	8
3.	Denying Motion for Leave to File New Contention 6	9
B.	Waterkeeper Identifies No “Substantial Question” on the Financial Rulings	13
1.	Granting Motion to Dismiss Contention 3A as Moot.....	15
2.	Denying Motion for Leave to File New Contention 3C	17
3.	Reformulating Contention 3B.....	19
4.	Granting Motion to Dismiss Contention 3B as Moot	21
5.	Denying Motion for Leave to Amend Contention 3B	23
III.	CONCLUSION.....	25

TABLE OF AUTHORITIES

NRC Cases

<i>Amergen Energy Co., LLC</i> (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658 (2008)	12
<i>AmerGen Energy Co., LLC</i> (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235 (2009)	3
<i>Carolina Power & Light Co.</i> (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370 (2001)	13
<i>Commonwealth Edison Co.</i> (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185 (1999)	7
<i>Crow Butte Res., Inc.</i> (Marsland Expansion Area), CLI-14-2, 79 NRC 11 (2014)	3
<i>Crow Butte Res., Inc.</i> (N. Trend Expansion Project), CLI-09-12, 69 NRC 535 (2009)	20
<i>Dominion Nuclear Conn., Inc.</i> (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349 (2001)	2
<i>Duke Energy Corp.</i> (McGuire Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373 (2002)	2
<i>Duke Energy Corp.</i> (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328 (1999)	17
<i>Duke Power Co.</i> (Catawba Nuclear Station, Units 1 & 2), ALAB-813, 22 NRC 59 (1985)	7
<i>Entergy Nuclear Generation Co.</i> (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287 (2010)	23
<i>Entergy Nuclear Generation Co.</i> (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704 (2012)	12
<i>Entergy Nuclear Operations, Inc.</i> (Palisades Nuclear Plant), CLI-15-22, 82 NRC 310 (2015)	25
<i>Fla. Power & Light Co.</i> (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521 (1991)	3, 12
<i>Fla. Power & Light Co.</i> (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-91-13, 34 NRC 185 (1991)	3
<i>Hydro Res., Inc.</i> (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31 (2001)	7
<i>Interim Storage Partners, LLC</i> (WCS Consol. Interim Storage Facility), CLI-20-15, 92 NRC 491 (2020)	3
<i>Interim Storage Partners, LLC</i> (WCS Consol. Interim Storage Facility), LBP-19-9, 90 NRC 181 (2019).....	22
<i>Kan. Gas & Elec. Co.</i> (Wolf Creek Generating Station, Unit 1), ALAB-279, 1 NRC 559 (1975)	7

<i>La. Energy Servs. L.P.</i> (Nat'l Enrichment Facility), CLI-04-25, 60 NRC 223 (2004)	9
<i>La. Energy Servs., L.P.</i> (Nat'l Enrichment Facility), CLI-04-35, 60 NRC 619 (2004)	19
<i>Long Mott Energy, LLC</i> (Long Mott Generating Station) CLI-26-10, 104 NRC __ (Aug. 7, 2026) (slip op.)	14
<i>Long Mott Energy, LLC</i> (Long Mott Generating Station), LBP-26-1, 103 NRC __ (Jan. 22, 2026) (slip op.).....	passim
<i>Long Mott Energy, LLC</i> (Long Mott Generating Station), LBP-26-2, 103 NRC __ (Jan. 22, 2026) (slip op.).....	1
<i>Long Mott Energy, LLC</i> (Long Mott Generating Station), LBP-26-3, 103 NRC __ (Apr. 6, 2026) (slip op.).....	1
<i>Long Mott Energy, LLC</i> (Long Mott Generating Station), LBP-26-4, 103 NRC __ (June 25, 2026) (slip op.).....	1, 21, 22, 23
<i>Long Mott Energy, LLC</i> (Long Mott Generating Station), LBP-26-5, 103 NRC __ (June 25, 2026) (slip op.).....	1, 17, 18
<i>NextEra Energy Seabrook, LLC</i> (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301 (2012)	12
<i>NextEra Energy Seabrook, LLC</i> (Seabrook Station, Unit 1), CLI-18-4, 87 NRC 89 (2018)	20
<i>Nuclear Innovation N. Am., LLC</i> (S. Tex. Project Units 3 & 4), CLI-16-2, 83 NRC 13 (2016)	13
<i>Nuclear Management Co., LLC</i> (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727 (2006)	18
<i>Private Fuel Storage, L.L.C.</i> (Indep. Spent Fuel Storage Installation), CLI-05-1, 61 NRC 160 (2005)	24
<i>Private Fuel Storage, L.L.C.</i> (Indep. Spent Fuel Storage Installation), CLI-05-16, 62 NRC 1 (2005)	2
<i>Pub. Serv. Co. of N.H.</i> (Seabrook Station, Units 1 & 2), CLI-89-3, 29 NRC 234, 241 (1989)	7
<i>Shieldalloy Metallurgical Corp.</i> (Newfield, N.J. Facility), CLI-07-20, 65 NRC 499 (2007)	3
<i>USEC Inc.</i> (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451 (2006)	3, 25
<i>USEC Inc.</i> (Am. Centrifuge Plant), CLI-06-9, 63 NRC 433 (2006)	2
<i>Va. Elec. & Power Co.</i> (N. Anna Power Station, Unit 3), LBP-10-17, 72 NRC 501 (2010).....	16

Other Authorities

NRC, Financial Qualifications for Reactor Licensing Rulemaking; Regulatory Basis Document; Final (Oct. 2016) (ML15322A185)	14, 24
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NRC, Response to Comments on 10 CFR Part 53, Vol. I (Mar. 2026) (ML26042A229)	13
Transcript of Long Mott Energy, Inc., Hearing (Feb. 26, 2026) (ML26068A104).....	11
Transcript of Long Mott Energy, LLC, Hearing (May 12, 2026) (ML26139A231, non-public; ML26176A352, public).....	21

NRC Regulations

10 C.F.R. § 2.1210	12
10 C.F.R. § 2.309	passim
10 C.F.R. § 2.311	2, 3
10 C.F.R. § 2.319	17
10 C.F.R. § 2.341	passim
10 C.F.R. § 50.12	15
10 C.F.R. § 50.33	13
10 C.F.R. § 50.34	passim
10 C.F.R. § 50.35	8, 9
10 C.F.R. § 53.1306	14
10 C.F.R. § 70.23	13
10 C.F.R. Part 50, Appendix C	13, 24

Unpublished NRC Orders

Memorandum & Order (Denying Intervenor’s December 5, 2025 Motion to Amend Contention 1) (Mar. 18, 2026) (unpublished).....	1, 6, 8, 9
Memorandum & Order (Denying Motion to Correct Pleading and Addressing other Administrative Matters) (Apr. 17, 2026) (unpublished).....	18
Memorandum & Order (Denying Petitioner’s December 31, 2025 Motion to Add a New Contention 6 and Amend Contention 4) (Apr. 13, 2026) (unpublished).....	1, 10, 12, 13
Memorandum & Order (Granting Applicant’s Motion to Dismiss Contention 3A as Moot) (Mar. 20, 2026) (unpublished).....	1, 15, 16, 17

Federal Register Notices

Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors; Final Rule, 91 Fed. Reg. 15,696 (Mar. 30, 2026).	13
Rules of Practice for Domestic Licensing Proceedings — Procedural Changes in the Hearing Process; Final Rule, 54 Fed. Reg. 33,168 (Aug. 11, 1989)	17

Federal Court Cases

<i>Carney v. Am. Univ.</i> , 151 F.3d 1090 (D.C. Cir. 1998)	24
<i>Hertz v. Luzenac Am., Inc.</i> , 370 F.3d 1014 (10th Cir. 2004)	24

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.341(b)(3) Long Mott Energy, LLC (“LME”) submits this Answer Opposing San Antonio Bay Estuarine Waterkeeper’s (“Waterkeeper’s”) petition seeking discretionary Commission review of multiple decisions of the Atomic Safety and Licensing Board (“Board”).¹ This proceeding pertains to LME’s Construction Permit Application (“CPA”), which seeks approval from the U.S. Nuclear Regulatory Commission (“NRC”) to construct a reactor facility known as the Long Mott Generating Station (“LMGS”). Waterkeeper requested a hearing and initially proposed four contentions purporting to challenge the CPA on a range of safety, financial, and environmental grounds.² The Board initially granted Waterkeeper’s request for a hearing on two narrow financial claims in Contention 3 but held that all remaining contentions were inadmissible.³ Prior to the hearing, LME submitted various CPA supplements that Waterkeeper attempted to challenge via new or amended contentions. Ultimately, the Board found those contentions inadmissible; held that LME’s supplements cured the two narrow financial claims admitted for hearing, which it dismissed as moot; and terminated the proceeding.⁴ The Petition seeks Commission review of several Board decisions. As

¹ [Waterkeeper]’s Petition for Review (July 20, 2026) (ML26201A348, non-public; ML26215A495, public) (“Petition”).

² [Waterkeeper]’s Petition to Intervene and Request for Hearing (Aug. 11, 2025) (ML25223A335) (“Hearing Request”).

³ *Long Mott Energy, LLC* (Long Mott Generating Station), LBP-26-1, 103 NRC __ (Jan. 22, 2026) (slip op.) (ML26022A317).

⁴ *Long Mott Energy, LLC* (Long Mott Generating Station), LBP-26-2, 103 NRC __ (Jan. 22, 2026) (slip op.) (ML26022A324); Memorandum & Order (Denying Intervenor’s December 5, 2025 Motion to Amend Contention 1) (Mar. 18, 2026) (unpublished) (ML26077A214) (“Mar. 18 Order”); Memorandum & Order (Granting Applicant’s Motion to Dismiss Contention 3A as Moot) (Mar. 20, 2026) (unpublished) (ML26079A162) (“Mar. 20 Order”); *Long Mott Energy, LLC* (Long Mott Generating Station), LBP-26-3, 103 NRC __ (Apr. 6, 2026) (slip op.) (ML26096A411); Memorandum & Order (Denying Petitioner’s December 31, 2025 Motion to Add a New Contention 6 and Amend Contention 4) (Apr. 13, 2026) (unpublished) (ML26103A283) (“Apr. 13 Order”); *Long Mott Energy, LLC* (Long Mott Generating Station), LBP-26-4, 103 NRC __ (June 25, 2026) (slip op.) (ML26176A466, non-public; ML26211A346, public) (dismissing Contention 3B); *Long Mott Energy, LLC* (Long Mott Generating Station), LBP-26-5, 103 NRC __ (June 25, 2026) (slip op.) (ML26176A475, non-public; ML26211A352, public).

explained below, the Commission should DENY the Petition because it fails to identify a “substantial question” warranting discretionary review. Alternatively, if the Commission grants the Petition and reviews those rulings (which are entitled to “substantial deference”), it should AFFIRM each because Waterkeeper identifies no error of law or abuse of discretion therein.

II. THE COMMISSION SHOULD DENY THE PETITION

The Petition seeks review of three types of rulings: (1) contention admissibility determinations,⁵ (2) rulings on motions for new or amended contentions,⁶ and (3) rulings on motions to dismiss mooted contentions.⁷ Unlike appeals as-of-right under 10 C.F.R. § 2.311, the Commission is not obliged to review licensing board rulings under § 2.341; the decision to do so is “in the discretion of the Commission.”⁸ Section 2.341 petitions “must” contain certain information, including record citations “where the matters of fact or law raised in the petition for review were previously raised before the presiding officer.”⁹ Petitioners bear the burden to demonstrate the existence of a “substantial question”¹⁰ with respect to the five enumerated considerations in § 2.341(b)(4).¹¹

⁵ To be admissible for hearing, contentions must meet “strict by design” admissibility criteria in 10 C.F.R. § 2.309(f)(1). *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001). Among other requirements, contentions must raise a genuine dispute with the license application, identify underlying factual or legal support, and demonstrate that the issue raised is material to the findings that the NRC must make. 10 C.F.R. § 2.309(f)(1)(iv)–(vi).

⁶ New or amended contentions filed after the initial hearing request deadline must be based on information that is both new and materially different from previously available information. 10 C.F.R. § 2.309(c).

⁷ When the information challenged in a contention is “superseded” by new information (e.g., via application supplements) the contention is moot and “must be disposed of or modified.” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 382 (2002); *see also USEC Inc.* (Am. Centrifuge Plant), CLI-06-9, 63 NRC 433, 444 (2006).

⁸ 10 C.F.R. § 2.341(b)(4).

⁹ *Id.* § 2.341(b)(2).

¹⁰ *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-05-16, 62 NRC 1, 3 (2005).

¹¹ The considerations are as follows: (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding; (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law; (iii) A substantial and important question of law, policy, or discretion has been raised; (iv) The conduct of the proceeding involved a prejudicial procedural error; or (v) Any other consideration which the Commission may deem to be in the public interest. 10 C.F.R. § 2.341(b)(4).

Even if review is granted, the Commission affords licensing board rulings “substantial deference.”¹² The Commission will affirm challenged rulings absent an error of law or abuse of discretion.¹³ The Commission will “reverse a licensing board’s legal rulings if they are ‘a departure from or contrary to established law.’”¹⁴ An abuse of discretion claim requires a showing “that a reasonable mind could reach no other result.”¹⁵ Merely restating prior arguments,¹⁶ or presenting entirely new ones,¹⁷ is insufficient to obtain reversal.

As a preliminary matter, the Petition fails to engage with the review considerations in § 2.341(b)(4) in any meaningful way.¹⁸ Instead of confronting the relevant considerations, Waterkeeper largely skips this step and asserts “errors of law.” But Waterkeeper is not entitled to an appeal as-of-right under § 2.311.¹⁹ Before conducting a review (to determine the existence of an “error of law” or “abuse of discretion”), the Commission must *first* determine whether a “substantial question” warrants such review. Even so, the Petition does not appear to confront any *actual* legal conclusions. These arguments do not contest *which* law was applied (e.g., admissibility criteria in § 2.309(f)(1)). Instead, they express disagreement with the *outcome* of the Board’s rulings (applying the correct law to the issues at hand). Mere displeasure with the *result* is not enough to obtain review *or* reversal. As further explained below, the Petition

¹² *Crow Butte Res., Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 26 (2014).

¹³ *Interim Storage Partners, LLC* (WCS Consol. Interim Storage Facility), CLI-20-15, 92 NRC 491, 494 (2020) (citing *Crow Butte*, CLI-14-2, 79 NRC at 26).

¹⁴ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 259 (2009) (citation omitted).

¹⁵ *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-952, 33 NRC 521, 532 (1991), *aff’d*, CLI-91-13, 34 NRC 185 (1991) (internal citation omitted).

¹⁶ *Shieldalloy Metallurgical Corp.* (Newfield, N.J. Facility), CLI-07-20, 65 NRC 499, 503–05 (2007).

¹⁷ *USEC Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 458 (2006) (quotations and citation omitted). The purpose of an appeal “is to point out errors made in the Board’s decision,” not to present “arguments and evidence never provided to the Board.” *Id.* (quotations and citation omitted).

¹⁸ Waterkeeper *cites* § 2.341(b)(4) in three of its arguments but does not engage with the *text* of those considerations to explain why they allegedly apply; most other arguments fail to cite § 2.341(b)(4) *at all*.

¹⁹ Appeals as of right are available solely with respect to rulings on information access issues or initial hearing requests and petitions to intervene. 10 C.F.R. § 2.311(a).

identifies no “substantial question” related to either the safety contentions (Section II.A) or the financial ones (Section II.B). Accordingly, the Commission should deny the Petition.

A. Waterkeeper Identifies No “Substantial Question” on the Safety Rulings

As relevant here, Waterkeeper proffered two contentions purporting to challenge LME’s Preliminary Safety Analysis Report (“PSAR”). In Contention 1, Waterkeeper argued that aspects of “LME’s proposed functional containment” fail to satisfy certain alleged requirements.²⁰ In Contention 6, Waterkeeper attempted to challenge certain analyses of hypothetical flooding scenarios in LME’s PSAR.²¹ As explained below, the Petition seeks review of, but does not identify a “substantial question” as to, the Board’s decisions: holding that Waterkeeper’s fuel testing claims in Contention 1 were inadmissible (Section II.A.1); denying Waterkeeper’s motion for leave to amend that claim (Section II.A.2); and denying Waterkeeper’s motion for leave to submit new Contention 6 (Section II.A.3).

1. Holding That Fuel Testing Claims in Contention 1 Were Inadmissible

One proposed basis for Contention 1 alleged that “LME’s proposal to conduct fuel testing in the future does not comply with the requirements of 10 C.F.R. § 50.34(a)(4) and (a)(8).”²² The former regulation requires submission of “[a] preliminary analysis and evaluation of the design and performance of structures, systems, and components of the facility.” The latter requires identification of items requiring confirmatory research and development (“R&D”), a description of the R&D program, and a schedule leading to completion thereof by the latest date for completion of construction. Under this proposed basis, Waterkeeper presented only three things: (1) block quotes of those regulations; (2) a conclusion that the CPA “fails to satisfy these

²⁰ Hearing Request at 12.

²¹ [Waterkeeper]’s Motion to Add a New Contention and Amend Contention 4 Based on [LME]’s Supplements to the PSAR at 2–9 (Dec. 31, 2025) (ML25365B107) (“Waterkeeper Dec. 31 Motion”).

²² Hearing Request at 20–21.

requirements”; and (3) the following *two-sentence* explanation:

This is because the latest date for completion of construction cited in the LM-CPA is 2033. As explained above, and in Dr. Lyman’s Declaration, X-Energy is unlikely to be able to conduct the necessary testing and obtain all results by then; LME has not demonstrated otherwise.²³

Initially, the CPA did not include any information aimed at § 50.34(a)(8). After Contention 1 was filed, but before the Board ruled on its admissibility, LME submitted a CPA supplement (“PSAR Supplement 1”) providing the information prescribed by § 50.34(a)(8).²⁴ In ruling on Contention 1, the Board held that, to the extent it alleged a contention of omission related to the absence of such information, that omission was resolved by PSAR Supplement 1.²⁵

But the Board did not stop there; it went on to evaluate “two remaining aspects of Waterkeeper’s section 50.34(a)(8) claim.”²⁶ First, the Board evaluated Waterkeeper’s unexplained assertion that it would be “impossible” to complete fuel testing before 2033. The Board ruled that claim inadmissible because speculation is insufficient to demonstrate a genuine dispute.²⁷ Second, the Board evaluated Waterkeeper’s unexplained assertion that testing of “as-manufactured” fuel from a commercial facility (as opposed to representative test fuel) was required to satisfy § 50.34(a)(8). The Board ruled that claim inadmissible because Waterkeeper failed to explain why quality control testing of fuel manufactured at an entirely different facility, under a separate NRC license, was somehow within the scope of this proceeding on the CPA.²⁸

In its Petition, Waterkeeper claims “the Board made an error of law by viewing the

²³ *Id.* The latter sentence did not cross reference a specific point in either the pleading or the declaration.

²⁴ Letter from C. O’Connor, LME, to Document Control Desk, NRC, “Supplement #1 to the [PSAR] for the [LMGS] [CPA]” (Sept. 26, 2025) (Package ML25269A125) (identifying the reactor fuel as being subject to a testing program, describing that program, and providing a schedule showing completion by 2030, three years before the latest date for completion of construction of LMGS).

²⁵ *Long Mott*, LBP-26-1, 103 NRC at __ (slip op. at 29).

²⁶ *Id.* at __ (slip op. at 29).

²⁷ *Id.* at __ (slip op. at 29–30).

²⁸ *Id.* at __ (slip op. at 30–31).

contention as one of omission about an absent testing schedule,” whereas “its contention related to 50.34(a)(8) presented a contention of adequacy (plus one of omission), and so was not mooted by [PSAR Supplement 1].”²⁹ That argument is unpersuasive. On its face, the challenged ruling clearly shows that the Board *did not* view Waterkeeper’s § 50.34(a)(8) arguments as presenting *only* a single claim of omission. In addition to the alleged omission, the Board plainly evaluated “two remaining aspects of Waterkeeper’s section 50.34(a)(8) claim.”³⁰ The Petition overlooks the Board’s ruling on those issues. As the Board itself explained, it evaluated Waterkeeper’s § 50.34(a)(8) claims under *both potential theories*—omission and inadequacy.³¹ Waterkeeper’s misreading of the challenged ruling provides no basis for discretionary review.

As to the other part of Waterkeeper’s “fuel testing” claims, alleging nonsatisfaction of § 50.34(a)(4), the Board earnestly considered the two-sentence explanation in the Hearing Request but found that Waterkeeper “did not explain the basis for . . . any contention based on 50.34(a)(4).”³² Thus, the Board ruled it inadmissible under 10 C.F.R. § 2.309(f)(1)(ii).³³ In its Petition, Waterkeeper fails to confront the Board’s reasoning. The Petition does not acknowledge the criterion in § 2.309(f)(1)(ii); does not confront its requirements; does not cite any case law interpreting it; and articulates no legal error in the Board’s reliance on that unacknowledged criterion to reject that part of Contention 1.

Instead of confronting the Board’s reasoning, Waterkeeper complains that the Board “fail[ed] to recognize how the schedule informs 50.34(a)(4) requirements.”³⁴ But Waterkeeper

²⁹ Petition at 3, 6.

³⁰ *Long Mott*, LBP-26-1, 103 NRC at __ (slip op. at 29).

³¹ Mar. 18 Order at 9–10.

³² *Long Mott*, LBP-26-1, 103 NRC at __ (slip op. at 28 n.114).

³³ *Id.*

³⁴ Petition at 6.

identifies no point in the record where it allegedly *presented or explained* such a theory.³⁵ Nor could it—because Waterkeeper did not do so. Petitions for review are facially invalid without such “record citation[s].”³⁶ The Petition cites a *new* document to argue that it “validat[es]” its unrepresented theory.³⁷ But Waterkeeper never amended its contention based on that document. Arguments never raised before the Board, such as this, provide no basis for review.³⁸

To the extent Waterkeeper complains that the Board misunderstood its two-sentence explanation, that is Waterkeeper’s fault; *petitioners* bear responsibility for any misunderstanding of their claims.³⁹ If Waterkeeper is arguing the Board should have “recognize[d]” Waterkeeper’s intended (but unstated) theory *sua sponte*, its demand is contrary to law. The Board had no duty to supply the missing pieces of an argument that Waterkeeper, itself, failed to advance with “clarity and precision.”⁴⁰ The Board is not required to “sift through” regulations and attachments in search of “a needle that may be in a haystack” to “speculate” about potential theories “not advanced by litigants themselves.”⁴¹ In sum, the Petition states no basis for review.

³⁵ Waterkeeper suggests the Board should have *deduced* its intended argument by stitching together two separate statements, several pages apart, in an attachment. Petition at 4 (citing Lyman Decl. at 3 ¶ 9 & 12–13 ¶ 38). But Waterkeeper did not identify these specific assertions in its Hearing Request. Nor is it apparent, even now, how these statements allegedly supply the basis for Waterkeeper’s claim, given that neither engages with the text of Section 50.34(a)(4) to articulate a particular argument of omission or insufficiency. Waterkeeper also claims the Staff’s answer pleading supports its criticism. Petition at 5 (citing NRC Staff’s Answer to [Waterkeeper’s] [Hearing Request] (Sept. 5, 2025) at 12–15 (ML25249A000) (“Staff Ans.”)). However, the Staff reached the *exact opposite* conclusion from what Waterkeeper advocates here. See Staff Ans. at 18 (Waterkeeper “fails to provide an adequate basis for its arguments that LME does not meet 10 C.F.R. § 50.34(a)(4).”).

³⁶ 10 C.F.R. § 2.341(b)(2)(ii).

³⁷ Petition at 6 (citing XE-100 Topical Report, Xe-100 TRISO Pebble Fuel Qualification Methodology, Rev. 4 (May 2, 2026) (ML26131A069)).

³⁸ See also *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-813, 22 NRC 59, 82–83 (1985) (an appeal may not be based on new arguments not raised before the licensing board).

³⁹ *Hydro Res., Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-4, 53 NRC 31, 46 (2001).

⁴⁰ *Kan. Gas & Elec. Co.* (Wolf Creek Generating Station, Unit 1), ALAB-279, 1 NRC 559, 576 (1975).

⁴¹ *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 194 (1999); *Wolf Creek*, ALAB-279, 1 NRC at 576; *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-3, 29 NRC 234, 241 (1989).

2. Denying Motion for Leave to Amend Contention 1

Following LME's submission of PSAR Supplement 1, Waterkeeper filed a motion to amend Contention 1.⁴² Amended Contention 1 purported to challenge the fuel testing details and schedule in PSAR Supplement 1 on the same grounds presented (and ruled inadmissible) in original Contention 1 (i.e., alleging non-satisfaction of § 50.34(a)(8) because testing of "as-manufactured" fuel allegedly was required but would be impossible to complete prior to the completion of construction). Notably, Amended Contention 1 relied on the *same* declaration that was attached to the original Hearing Request. The main change in Amended Contention 1 was the proposed addition of a new legal basis (for the recycled challenge) alleging nonsatisfaction of an additional regulation, 10 C.F.R. § 50.35(a).⁴³ The Board denied Waterkeeper's motion. The Petition seeks review thereof but finds no "substantial question."

On Waterkeeper's belated attempt to add a new regulatory basis, the Board held that Waterkeeper failed to show "good cause."⁴⁴ Although the fuel testing schedule and details in PSAR Supplement 1 were new and materially different, Waterkeeper made no attempt to explain how its allegation of nonsatisfaction of a new regulation was somehow "based on" *that* information. As the Board held, "the factual and legal basis for Waterkeeper to assert a violation of section 50.35(a) was also present when Waterkeeper filed its [Hearing Request]."⁴⁵

In its Petition, Waterkeeper asserts that the Board committed an "error of law" because "Waterkeeper presented good cause for a new contention based on [PSAR Supplement 1]'s

⁴² [Waterkeeper]'s Motion to Amend Contention 1 Based on [PSAR Supplement 1] (Dec. 5, 2005) (ML25339A186).

⁴³ *Id.* at 5–8.

⁴⁴ Mar. 18 Order at 6–8.

⁴⁵ *Id.* at 7. Waterkeeper claims that its declarant "explained why LME's proposed timeline could not plausibly yield results sufficient to satisfy the requirements of 50.34(a)(8) and 50.35(a)." Petition at 5 (citing Lyman Decl. at ¶16). But that is inaccurate. The declaration does not mention or engage with § 50.35(a) at all.

failure to comply with 50.35.”⁴⁶ But Waterkeeper does not advance *one single argument* in support of that claim. It does not confront or engage with the Board’s analysis at all. Nor does it refute the Board’s observation that the factual and legal basis to assert a violation of § 50.35(a) was previously available. As an objective legal matter, the Board was manifestly correct in disallowing a new legal theory that simply did not occur to Waterkeeper at the outset.⁴⁷

As to Waterkeeper’s recycled arguments, the Board ruled those inadmissible for many of the same reasons as original Contention 1.⁴⁸ Waterkeeper does not confront or dispute the Board’s reasoning here either.⁴⁹ Nor does it explain how or why the proposed amendment allegedly cured any of those original defects. Likewise, Waterkeeper does not confront the Board’s observation that Amended Contention 1 relied on an unchanged declaration prepared *before* PSAR Supplement 1 existed—and was *not updated* afterwards to confront its contents. Waterkeeper simply desires a different outcome. But that is not enough to show a “substantial question” as to the Board’s denial of Waterkeeper’s motion to amend Contention 1.

3. Denying Motion for Leave to File New Contention 6

As part of its preliminary safety analysis, LME used state-of-the-art computational modeling and data to analyze multiple hypothetical flooding scenarios.⁵⁰ The scenario that resulted in the highest value (a highly conservative hurricane storm surge scenario) predicted a

⁴⁶ Petition at 3.

⁴⁷ *La. Energy Servs. L.P.* (Nat’l Enrichment Facility), CLI-04-25, 60 NRC 223, 225 (2004) (licensing boards cannot allow petitioners to “‘disregard our timeliness requirements’ and add new bases or new issues that ‘simply did not occur to [them] at the outset.’”).

⁴⁸ Mar. 18 Order at 11–15.

⁴⁹ Waterkeeper includes a sentence asserting “the Board erred in finding that LME’s bare assertion that it would test ‘representative fuel’ was adequate [] under the rules.” Petition at 6. But that assertion is unaccompanied by any citations or explanation, so it provides no basis for review. To the extent this sentence was aimed at the Mar. 18 Order at 7–8, Waterkeeper again misreads the relevant discussion. The Board said nothing about the adequacy of the CPA; it said Waterkeeper failed to confront the relevant CPA information on this topic.

⁵⁰ See *generally* PSAR §§ 2.4.2–2.4.10 and revisions thereto.

flood height of 46.49 ft.⁵¹ That bounding flood height of 46.49 ft. corresponds to the Design Basis Hazard Level (“DBHL”)⁵² for flooding at LMGS—essentially, the minimum flood height that the plant will be designed to safely withstand.⁵³

In Contention 6, Waterkeeper criticized a few aspects of LME’s flooding analyses.⁵⁴ Notably, Waterkeeper did not challenge the analysis of the *bounding* flooding scenario. Nor did it mention or engage with either the DBHL *concept* or the *numerical value* specified as the flooding DBHL for LMGS. Instead, Waterkeeper attempted to nitpick LME’s analyses of *other* (non-bounding) flooding scenarios by proffering “question[s]”⁵⁵ and proposing alternative inputs and methodologies. But Waterkeeper went no further. It did not explain why—and *did not even allege*—that, if its alternative inputs and methodologies were adopted, the updated result plausibly could exceed 46.49 ft. As a safety matter, because the plant is designed to withstand floods up to that level, “disputes about floods less than that level are not material to the Staff’s findings on the CP Application.”⁵⁶ Accordingly, because Waterkeeper *wholly glossed over* the contention materiality requirement, the Board correctly ruled Contention 6 inadmissible.⁵⁷ The Petition seeks review of that ruling because the Board allegedly (1) applied a merits standard, and (2) committed “factual error.” As shown below, neither assertion is valid.

First, the Petition argues that the Board improperly faulted Waterkeeper for not presenting its own “computer models,” not providing a “definitive assessment,” or not otherwise

⁵¹ Letter from C. O’Connor, LME, to NRC Document Control Desk, Encl. 4 (Nov. 20, 2025) (ML25324A311) (PSAR § 2.4.5 at 2.4.5-13).

⁵² See Letter from C. O’Connor, LME, to NRC Document Control Desk, “Supplement #5 to the [PSAR] for the [LMGS CPA],” Encl. 1 (Dec. 17, 2025) (ML25351A149) (DBHL for “External Floods”).

⁵³ See *generally* PSAR § 2.4.10, “Flooding Protection Requirements” (ML25090A061) and revisions thereto.

⁵⁴ Waterkeeper Dec. 31 Motion at 2–9.

⁵⁵ Petition at 26.

⁵⁶ Apr. 13 Order at 12.

⁵⁷ *Id.* at 10–12.

proving that its preferred analysis methods would yield a materially different result. According to Waterkeeper, the Board imposed a “merits” standard at the contention admissibility stage.⁵⁸ But it identifies no record support for that claim. The challenged ruling itself says nothing about evidentiary proof, the absence of competing computer models, or the need for a “definitive” demonstration. The ruling turns on one simple fact: Waterkeeper’s *unequivocal failure to confront* the materiality threshold, which Waterkeeper never “put at issue.” That is a textbook *admissibility* defect, not a merits conclusion.

Conspicuously, the Petition does not refute the Board’s essential finding that Waterkeeper wholly ignored the materiality requirement. Waterkeeper’s motion did not invoke, cite, or discuss *any* of the admissibility criteria; did not acknowledge the need to address materiality; and offered no assertions about what flood heights *might be plausible* if analyses were conducted using its preferred methods. Simply put, the Board did not fault the sufficiency of Waterkeeper’s materiality arguments; it faulted Waterkeeper’s failure to present any at all.

To be sure, Waterkeeper in the instant Petition makes assertions that such analyses “could” lead to a materially different result.⁵⁹ But those assertions *were not presented* in the original pleadings or attachments.⁶⁰ Waterkeeper cannot correct its pleading failure through untimely new assertions. Even if it could, those assertions still would not cure the deficiency because they are not accompanied by any supported explanation of why a materially different outcome is *credible*, not just theoretically *conceivable*.⁶¹ The Commission has explained (in the

⁵⁸ Petition at 29.

⁵⁹ *E.g.*, Petition at 25–26 (“could also lead to a scenario in which there would need to be revisions to the safety design”); *id.* at 30 (“could exceed the existing bounding scenario”).

⁶⁰ After the pleading deadlines had expired, Waterkeeper’s counsel made a brief, conclusory statement at oral argument speculating about potential materiality. Tr. at 317–18. But that statement was untimely, unaccompanied by explanation, and pointed to no timely explanation in prior pleadings.

⁶¹ Waterkeeper admits that it, even if its “embankment” claims were taken at face value, it could only speculate about whether *any* water would “reach the LME site” at all. *See* Petition at 29 n.128. Any further conjecture about the potential for such water to exceed the DBHL is *layered* speculation—and cannot support a contention.

exact cases cited by Waterkeeper) that a hearing cannot be “triggered merely by suggesting alternative inputs and methodologies that *conceivably could* alter the [] conclusions”;⁶² rather, “[u]nless a contention, with support, raises a *credible* potential *material* deficiency in the analysis, there is no genuine dispute.”⁶³ Credibility is key. The Commission has long held that “[b]are assertions and speculation,” such as those belatedly offered by Waterkeeper here, “are insufficient to trigger a full adjudicatory proceeding.”⁶⁴ Waterkeeper certainly was not required to prove its case at the admissibility stage; but the Board did not err in holding that § 2.309(f)(1) required it, at a minimum, to *address* each criterion.

Second, Waterkeeper alleges that a portion of the Board’s ruling rests on “factual error.”⁶⁵ This appears to invoke the discretionary review consideration in § 2.341(b)(4)(i), i.e., that “a finding of material fact is clearly erroneous.”⁶⁶ But Waterkeeper suggests the Board “misread” a *pleading*, which is not a “finding of material fact.”⁶⁷ Waterkeeper quibbles with the Board’s statement that LME “disputed” Waterkeeper’s allegation that the flood models “contain a gap.”⁶⁸ Yet, Waterkeeper makes no showing that the Board’s reading was unreasonable.⁶⁹ LME’s answer clearly states “[t]here is no ‘gap.’”⁷⁰ It is unclear how any reasonable mind could read that diametric statement as *something other* than a “dispute.”

⁶² *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 323 (2012) (emphasis added).

⁶³ *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012) (first emphasis added, second emphasis in original).

⁶⁴ *Id.* (citing *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 674 (2008)).

⁶⁵ Petition at 27–28.

⁶⁶ See Petition at 25 (referencing 10 C.F.R. § 2.341(b)(4)(i)).

⁶⁷ Findings of material fact are rendered in initial decisions on the merits after an adjudicatory hearing. See 10 C.F.R. § 2.1210(c)(1).

⁶⁸ Apr. 13 Order at 12 n.46.

⁶⁹ *Turkey Point*, ALAB-952, 33 NRC at 532 (“a reasonable mind could reach no other result”).

⁷⁰ [LME]’s Answer to Waterkeeper’s December 31, 2025 Motion for New and Amended Contentions (Jan. 14, 2026) at 9 (ML26014A277). Waterkeeper claims LME “could not dispute” its claim. Petition at 27. But LME obviously did. Waterkeeper appears to have misread the pleading.

Likewise, to the extent Waterkeeper attempts to confront the substance of LME’s answer regarding the *existence* of a “gap,” its opportunity to do so was in a reply brief. But Waterkeeper failed to file a timely reply, thus waiving its response opportunity.⁷¹ That “error” is not attributable to the Board. Alternatively, if Waterkeeper reads the decision as having rejected Contention 6 for lack of *support* regarding the existence of a “gap,” then it is Waterkeeper who misreads the relevant document. The Board rejected that claim solely on “materiality” grounds.⁷² At bottom, the Board did not err in requiring Waterkeeper to at least *address* materiality; and the Petition identifies no “substantial question” related to Contention 6.

B. Waterkeeper Identifies No “Substantial Question” on the Financial Rulings

NRC financial requirements in Part 50 require CP applicants to demonstrate available funding to cover 100% of construction costs upfront (“Old FQ Standard”).⁷³ When originally promulgated, such stringent requirements were thought necessary to protect public health and safety. But many decades of experience have shown otherwise. Thus, in its recently promulgated Part 53 regulations,⁷⁴ the Commission concluded that a more lenient “appears to be financially qualified” standard (“New FQ Standard”), long used for materials licensees under Part 70,⁷⁵ was appropriate for reactor licensees and “would not compromise public health and safety.”⁷⁶ While the Commission has not yet updated the corresponding provisions in Part 50, it has highlighted the availability of the regulatory exemption process in the meantime.⁷⁷

⁷¹ *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 383 (2001) (arguments not raised before Board are deemed waived). So, too, regarding Waterkeeper’s claim that LME’s answer pleading is “incorrect” as to an embankment location. Petition at 28 n.126. Even if Waterkeeper had presented that footnote in a timely reply (it did not), it identifies nothing incorrect in LME’s answer.

⁷² Apr. 13 Order at 12 n.46.

⁷³ 10 C.F.R. § 50.33(f)(1); Appendix C to 10 C.F.R. Part 50.

⁷⁴ Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors; Final Rule, 91 Fed. Reg. 15,696 (Mar. 30, 2026).

⁷⁵ 10 C.F.R. § 70.23(a)(5).

⁷⁶ NRC, Response to Comments on 10 CFR Part 53, Vol. I at 230 (Mar. 2026) (ML26042A229).

⁷⁷ *Nuclear Innovation N. Am., LLC* (S. Tex. Project Units 3 & 4), CLI-16-2, 83 NRC 13, 31 (2016).

LME submitted with its CPA an Exemption Request, seeking to be exempt from the Old FQ Standard and proposing, instead, that its CPA be evaluated against the New FQ Standard.⁷⁸ The New FQ Standard calls for a demonstration that more than 50% of funding is available upfront (or less, with license conditions).⁷⁹ LME's Financial Capacity Plan ("FCP") identified two sources of construction funding: an intercompany agreement between LME and its parent (The Dow Chemical Company ("TDCC")); and an award from the U.S. Department of Energy ("DOE") under its Advanced Reactor Demonstration Program ("ARDP"), which LME explained "provides a 50 percent DOE/private sector cost share on all projected costs to deliver LMGS." The FCP did not state dollar amounts or attach the instruments for either source.

In Contention 3, Waterkeeper purported to challenge LME's financial qualifications. The Board initially held that two narrow issues were admissible and could proceed to a hearing, which it reformulated as Contention 3A (related to the Exemption Request) and Contention 3B (related to satisfaction of the New FQ Standard). But, prior to the hearing, LME submitted CPA supplements that rendered both contentions moot. Thus, the Board granted LME's motions to dismiss them.⁸⁰ Waterkeeper had the opportunity to (and did) move to update its challenges to confront the as-supplemented Exemption Request (new Contention 3C) and FCP (Amended Contention 3B). However, the Board denied those motions on various grounds.

As explained in the corresponding Sections below, the Petition seeks review of, but does not identify a "substantial question" as to, the Board's decisions: granting LME's motion to dismiss Contention 3A as moot (Section II.B.1); denying Waterkeeper's motion for leave to file

⁷⁸ Specifically, the Exemption Request proposes application of § 70.23(a)(5) *as further defined* in the corresponding NRC regulatory basis document. See NRC, Financial Qualifications for Reactor Licensing Rulemaking; Regulatory Basis Document; Final (Oct. 2016) (ML15322A185) ("RBD").

⁷⁹ See 10 C.F.R. § 53.1306(a); RBD at 19–21.

⁸⁰ The Commission recently dismissed as moot LME's appeal of LBP-26-1 in light of this decision. *Long Mott Energy, LLC* (Long Mott Generating Station), CLI-26-10, 104 NRC __ (Aug. 7, 2026) (slip op.).

new Contention 3C (Section II.B.2); reformulating Contention 3B (Section II.B.3); granting LME’s motion to dismiss Contention 3B as moot (Section II.B.4); or denying Waterkeeper’s motion for leave to file Amended Contention 3B (Section II.B.5).

1. Granting Motion to Dismiss Contention 3A as Moot

The Board admitted Contention 3A as a challenge to the “special circumstances” portion of the Exemption Request.⁸¹ Shortly thereafter, LME revised that portion of the Exemption Request to address the perceived deficiencies raised by Waterkeeper via an application supplement (“Exemption Supplement”).⁸² The Exemption Supplement superseded the challenged portion of the original Exemption Request, making it the “official” version under review by the NRC as of the date of submission. Accordingly, Contention 3A, which presented a challenge to an outdated version of the Exemption Request that was *no longer pending before the NRC*, ceased to present a “live issue” for litigation. LME filed a motion to dismiss Contention 3A as moot, which the Board granted. Waterkeeper seeks review of that ruling but identifies no “substantial question” related to it.

First, Waterkeeper asserts that the Board erred by not converting the motion to dismiss into one for summary disposition. In opposing dismissal, Waterkeeper argued that dismissal is available only for contentions of omission. Despite Waterkeeper’s claim, here, that the Board “did not engage with” and “brushed over” this argument, the ruling clearly shows that the Board squarely confronted it.⁸³ And the Petition identifies no authority imposing the distinction

⁸¹ To grant a regulatory exemption, the NRC must find that “special circumstances are present.” 10 C.F.R. § 50.12(a)(2).

⁸² Letter from C. O’Connor, LME, to NRC Document Control Desk, “Supplement # 1 to Part V of the [LMGS],” Encl. 1 (March 3, 2026) (ML26062A259) (“Exemption Supplement”).

⁸³ See Mar. 20 Order at 7 (“[w]hile we broadly agree with Waterkeeper that motions to dismiss for mootness are usually directed at contentions of omission, we do not find that they are appropriate only for such contentions.”).

Waterkeeper desires.⁸⁴ Contentions of inadequacy obviously can be dismissed.⁸⁵ And the Board expressly cited such precedent, which involved an application that was revised “to no longer include the statement on which the admitted contention [of inadequacy] was based.”⁸⁶ The Board characterized that circumstance as “functionally identical” to the situation here, where the Exemption Supplement presented a substantial re-write of the originally challenged application content.⁸⁷ In essence, Waterkeeper disagrees with that characterization for one reason: because the Exemption Supplement cited the same guidance and aimed to satisfy the same regulation as the original Exemption Request. But those observations are unremarkable. Waterkeeper cites no authority for the proposition that dismissal is procedurally unavailable for contentions mooted by application supplements *unless* those supplements aim to satisfy different regulations or rely on different guidance. Nor does any such authority exist.

Furthermore, the cited precedent invoked the Commission’s holding in *McGuire*, which provides that contentions “superseded by the subsequent issuance of licensing-related documents . . . must be disposed of or modified.” There can be no dispute that the original Exemption Request was “superseded” by the Exemption Supplement. Waterkeeper quibbles that some echoes of the original Exemption Request may be found in the Supplement; but it fails to explain why that matters under the law. Waterkeeper does not allege that the Exemption Supplement was devoid of new information. Nor does it explain why the Board was required to adjudicate an imaginary circumstance in which the Exemption Request *did not contain* that new information.

⁸⁴ Waterkeeper’s use of “hedging” language underlines this deficiency. *See, e.g.*, Petition at 8 “[t]he proper procedural lens under these circumstances *could* have been via summary disposition” (emphasis added)).

⁸⁵ *See* Mar. 20 Order at 6 n.23 (citing *Va. Elec. & Power Co.* (N. Anna Power Station, Unit 3), LBP-10-17, 72 NRC 501, 506–08 (2010) (dismissing a contention of adequacy as moot after the application was revised)).

⁸⁶ *Id.*

⁸⁷ *See* Exemption Supplement (redlines showing only about 15% of original text unchanged); [LME’s] Motion to Dismiss Contention 3A as Moot at 3–5, (Mar. 6, 2026) (ML26065A302) (summarizing the bases for the admitted contention and describing the new and materially different information in the Exemption Supplement that addresses each).

The Board recognized that adjudicating an outdated version of the application “that is no longer before the NRC” would be meaningless.⁸⁸ That is prudent case management, not legal error.

Second, Waterkeeper argues that the alleged procedural error (which is not an error at all) was prejudicial, claiming that its “procedural rights were harmed” by the Board’s decision to disallow a mooted contention to proceed through litigation. But those arguments fare no better. As a fundamental matter, the dismissal in no way impaired Waterkeeper’s ability to *update* its challenge to address the Exemption Supplement (i.e., the “live” version of the Exemption Request). In fact, Waterkeeper did exactly that. Given this full and fair opportunity to present its case, no procedural injury is apparent, and Waterkeeper identifies none.⁸⁹ Waterkeeper merely argues that it had a right to engage in discovery *even in the absence of a live case or controversy*. But Waterkeeper supplies no support for that allegation, which squarely conflicts with the Commission’s pronouncement that its contention framework is designed to prevent litigants from “using discovery . . . as a fishing expedition....”⁹⁰ As a matter of law, Waterkeeper had no procedural “right” to continued discovery on a moot claim. These arguments identify no “substantial question” related to the Board’s dismissal of Contention 3A.⁹¹

2. Denying Motion for Leave to File New Contention 3C

After LME submitted the Exemption Supplement, Waterkeeper moved for the admission

⁸⁸ Mar. 20 Order at 4.

⁸⁹ Waterkeeper implies that it was harmed because its subsequent motion was required to satisfy an additional requirement in § 2.309(c)(1) to identify “new and materially different information.” Petition at 9. But Waterkeeper’s motion easily satisfied that requirement. *Long Mott*, LBP-26-5, 103 NRC at __ (slip op. at 4).

⁹⁰ *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 335 (1999) (quoting 54 Fed. Reg. at 33,171).

⁹¹ Waterkeeper says the Board “should have” ruled on the dismissal of Contention 3A and new contention 3C simultaneously. Petition at 10 n.52. But Waterkeeper neither confronts the Board’s reasoning for declining to do so (Mar. 20 Order at 6–7) nor identifies any legal requirement compelling that result. The Board has broad authority to “control the prehearing process” and “avoid delay.” 10 C.F.R. § 2.319.

of a new Contention 3C challenging the Exemption Request, as revised.⁹² That motion relied “heavily” on two cross-referenced declarations that Waterkeeper, due to its own carelessness, failed to attach to the motion. As the Board explained, without those declarations, the motion was largely unsupported and insufficient to frame an admissible contention.⁹³

Waterkeeper tried repeatedly to avoid the consequences of its mistake. Six days after the filing deadline (and without prior leave of the Board), Waterkeeper filed a 92-page document, captioned as a “corrected” version of its original 16-page motion, that included the untimely declarations. Six days after that, Waterkeeper filed a procedural motion asking the Board to accept that filing and “deem” it to be timely. The Board denied that request because Waterkeeper had no valid excuse. Undeterred, Waterkeeper tried again to dodge responsibility for its mistake by attaching the declarations to its reply. The Board held that doing so was impermissible. Waterkeeper claims that conclusion rests on “legal error.”

In the challenged ruling, the Board held that it could not consider the untimely declarations because, as explained in the *Palisades* case, “it is well established that if a contention ‘as originally pled did not cite adequate documentary support, a petitioner cannot remediate the deficiency by introducing in the reply documents that were available to it during the time frame for initially filing contentions.’”⁹⁴ Waterkeeper neither disputes that statement of controlling law nor the prior availability of the declarations. Instead, it provides three comments intended to “contrast” this case from *Palisades*; but none identify legal error here.

⁹² [Waterkeeper’s] Motion for Leave to File New Contention (Apr. 2, 2026) (ML26092A417, non-public; ML26106A364, public).

⁹³ *Long Mott*, LBP-26-5, 103 NRC at ____ (slip op. at 5–6); see also Memorandum & Order (Denying Motion to Correct Pleading and Addressing other Administrative Matters) at 4 n.20 (unpublished) (ML26107A252) (“Apr. 17 Order”) (“the absent declarations were referred to dozens of times and were the central support for Waterkeeper’s motion. While some of Waterkeeper’s arguments may stand without the need for a supporting declaration, others are entirely dependent on the reader being able to refer to the cited declaration.”).

⁹⁴ *Long Mott*, LBP-26-5, 103 NRC __ (slip op. at 6) (citing *Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 732 (2006)).

First, Waterkeeper argues that its motion was more “specific” than the one at issue in *Palisades*. But Waterkeeper does not explain why its subjective characterization somehow identifies an error of law. Second, Waterkeeper also notes that participants in the *Palisades* case “moved to strike” the untimely material, whereas none did so here. But Waterkeeper cites no authority for the proposition that motions to strike are mandatory or that the absence of one somehow requires the Board to ignore the Commission’s timeliness requirements. Third, it claims that the *Palisades* case involved an attempt to raise “new contentions or new issues,” apparently seeking to distinguish its actions here, seeking only to provide new *support*. But that argument is unavailing. As the Commission has explained, “[w]hat our rules do not allow is using reply briefs to provide, for the first time, the necessary *threshold support* for contentions; such a practice would effectively bypass and eviscerate our rules governing timely filing.”⁹⁵ Bypassing the timeliness requirements is *precisely* what Waterkeeper tried to do here, repeatedly. The Board correctly held that the Commission’s rules do not allow that. In sum, the Petition identifies no “substantial question” related to that (or any other) holding on Contention 3C.

3. Reformulating Contention 3B

The Board reformulated Contention 3B (which assumes that the Exemption Request is granted) as a challenge to LME’s satisfaction of the New FQ Standard and admitting one basis: “Waterkeeper has provided a sufficient factual basis to create a genuine dispute over the amount of ARDP funding available to LME for construction costs.”⁹⁶ The Board concluded that the *remainder* of Waterkeeper’s proposed bases were “inadmissible.”⁹⁷ In its Petition, Waterkeeper argues that the Board “impermissibly reformulated” Contention 3B, alleging an “abuse of

⁹⁵ *La. Energy Servs., L.P.* (Nat’l Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004).

⁹⁶ *Long Mott*, LBP-26-1, 103 NRC at __ (slip op. at 42).

⁹⁷ *Id.* (slip op. at 60).

discretion and error of law.” The “key limitation” on reformulation authority is a prohibition against *adding* new information to render a contention admissible.⁹⁸ Here, Waterkeeper argues the opposite—that the reformulation was too narrow. As explained below, this argument rests on Waterkeeper’s mistaken belief that the Board had a legal obligation to admit for hearing *each and every* proposed basis for the contention, regardless of the admissibility of those proposed bases. That is legally erroneous. Waterkeeper’s misunderstanding provides no basis for review.

Waterkeeper challenges the reformulation on essentially one ground: because “Waterkeeper’s proposed contention was not so narrow.”⁹⁹ Waterkeeper devotes its argument to rehashing multiple assertions presented in its Hearing Request. Waterkeeper then faults the Board for not treating those claims as part and parcel of Contention 3B. But the *mere presentation* of arguments does not make them admissible. In the context of reformulation authority, the Commission has clearly explained that licensing boards must distinguish proposed contention bases that are admissible from those that are not (and may only admit the admissible ones for hearing).¹⁰⁰ Waterkeeper’s claim that every basis presented in the Hearing Request should have been admitted—merely because Waterkeeper *presented* it—is legally erroneous.

From that misunderstanding, Waterkeeper then misconstrues the narrow contention as “essentially determin[ing]” that LME had *met* the other aspects of the New FQ Requirements except the one left to be resolved at a hearing (regarding the 50% threshold). But that is not true. The Board merely found that Waterkeeper failed to raise an *admissible challenge* on any other aspect. Waterkeeper does not confront—much less, identify some error in—the Board’s conclusion that the remaining proposed bases were *inadmissible*. Waterkeeper supplies string

⁹⁸ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-18-4, 87 NRC 89, 98 (2018).

⁹⁹ Petition at 11.

¹⁰⁰ *See, e.g., Crow Butte Res., Inc.* (N. Trend Expansion Project), CLI-09-12, 69 NRC 535, 553–54 (2009).

citations to those other proposed bases; but it offers zero explanation of why they were admissible.¹⁰¹ By failing to confront the admissibility criteria, Waterkeeper has not shown any error in the Board’s conclusion that the other proposed bases were inadmissible. This reflects Waterkeeper’s own misunderstanding of the contention framework, not an error of law or abuse of discretion by the Board—and certainly not a “substantial question” warranting review.

4. Granting Motion to Dismiss Contention 3B as Moot

As noted above, the original FCP did not specify dollar amounts for either funding source; and Contention 3B contemplated an evidentiary hearing to determine whether the dollar amount of the ARDP award was greater than 50% of the estimated construction cost for LMGS (i.e., whether financial conditions are necessary). LME subsequently amended the FCP to include one of the financial instruments (specifying an exact dollar amount) as an attachment: an intercompany agreement between LME and its parent company TDCC (“FCP Supplement”). The FCP Supplement identified a funding source in an amount greater than 50% of the estimated construction cost for LMGS as stated in the CPA. Thus, the narrow original question intended to be resolved at a hearing on Contention 3B—i.e., the dollar amount of the *other* funding source (the ARDP award)—became moot,¹⁰² because it would make no difference as to the need for permit conditions. LME moved to dismiss the original Contention 3B (without prejudice to Waterkeeper’s ability to challenge the updated FCP), and the Board properly granted that motion. Here, Waterkeeper criticizes the Board’s dismissal order on two primary grounds. As explained below, neither identifies a “substantial question” warranting review.

¹⁰¹ The closest Waterkeeper comes is its conclusory assertion that “Waterkeeper presented a genuine dispute challenging each aspect of LME’s FCP.” Petition at 14. But, even if the Commission were required to take Waterkeeper’s conclusory “genuine dispute” assertion at face value (it is not), Waterkeeper still fails to confront the other five admissibility criteria in § 2.309(f)(1).

¹⁰² *Long Mott*, LBP-26-4, 103 NRC at __ (slip op. at 24) (citing Tr. at 404–05) (“Waterkeeper agreed that resolving the factual dispute about the amount of the ARDP award was no longer relevant”).

First, Waterkeeper argues that dismissal was the improper procedural vehicle for disposing of the mooted contention; rather, the Board should have converted LME’s motion into one seeking summary disposition. But it identifies no law compelling that result. As with its meritless arguments on dismissal of Contention 3A, Waterkeeper says dismissal is “usually directed at contentions of omission.” But “usually” does not mean “exclusively.”¹⁰³ Waterkeeper also quibbles that the FCP Supplement “*added* a document” rather than modifying text in the body of the application. But it fails to explain why that matters either. As LME explained in the proceeding before the Board, precedent exists for that circumstance too.¹⁰⁴ Waterkeeper fails to acknowledge or confront that precedent here. Next, Waterkeeper faults the Board for not “questioning the reliability” of the construction cost estimate in the CPA or TDCC’s “ability to comply” with the terms of the FCP Supplement. But the obligation to frame admissible challenges was *Waterkeeper’s* job—not the Board’s.¹⁰⁵ Waterkeeper’s failure in that regard does not conjure procedural error.

Second, Waterkeeper argues that the FCP Supplement did not moot Contention 3B. But that argument rests on Waterkeeper’s continued misunderstanding of the scope of the contention.¹⁰⁶ In simple terms, Waterkeeper relies solely on the “plain language” of Contention 3B to argue that its scope included any *conceivable* basis for why LME allegedly “does not meet the [New FQ Standard].”¹⁰⁷ Under that lens, Waterkeeper asserts that the FCP Supplement did

¹⁰³ See *supra* § II.B.1.

¹⁰⁴ [LME]’s Supplemental Brief Regarding Its Dispositive Motion on Contention 3B at 4–5 (Apr. 8, 2026) (ML26084A566, non-public; ML26098A330, public) (“LME Supp. Brief”) (citing *Interim Storage Partners, LLC* (WCS Consol. Interim Storage Facility), LBP-19-9, 90 NRC 181, 184 (2019)).

¹⁰⁵ Waterkeeper could have reviewed the cost estimate in the CPA at the outset of the proceeding, but it never asked to do so. See *Long Mott*, LBP-26-1, 103 NRC at __ (slip op. at 40). Even after Waterkeeper received that information during discovery, it raised no challenge confronting it. See *Long Mott*, LBP-26-4, 103 NRC at __ (slip op. at 9–11).

¹⁰⁶ See *supra* § II.B.3.

¹⁰⁷ Petition at 17–18.

not address every such conceivable basis; therefore, it did not moot the contention; therefore, the Board’s opposite conclusion on mootness reflects a determination that the FCP Supplement “*ipso facto*, established compliance with [the New FQ Standard].” But that logic is defective.

The *terms* of a contention (i.e., its “plain language”) do not provide the exclusive measure of its scope, as Waterkeeper erroneously believes. The Commission has repeatedly explained that the “reach of a contention necessarily hinges upon its terms *coupled with* its stated bases.”¹⁰⁸ Notwithstanding the basic *terms* of Contention 3B, the Board admitted only *one single basis*, regarding the amount of the ARDP award.¹⁰⁹ The Board’s decision explains this scope limitation,¹¹⁰ which Waterkeeper neither confronts nor disputes here.

Finally, Waterkeeper claims that a genuine dispute “continued to exist” notwithstanding the additional information in the FCP Supplement.¹¹¹ But the original Contention 3B presented an outdated challenge (on one specific basis) to the prior version of the FCP *without* the FCP Supplement. A hearing on the old version of the application would serve no purpose. To be clear, Waterkeeper had the opportunity to—and *actually did*—present an updated challenge to confront the revised version of the FCP *with* the FCP Supplement (see Section II.B.5, below). To the extent Waterkeeper alleges prejudicial procedural error, this circumstance defeats its allegation. Ultimately, none of these claims raise a “substantial question” on this ruling.

5. Denying Motion for Leave to Amend Contention 3B

Waterkeeper’s proposed amendment to Contention 3B attempted to dispute TDCC’s

¹⁰⁸ *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 (2010) (emphasis in original).

¹⁰⁹ *Long Mott*, LBP-26-1, 103 NRC at __ (slip op. at 42) (“Waterkeeper has provided a sufficient factual basis to create a genuine dispute over the amount of ARDP funding available to LME for construction costs.”).

¹¹⁰ *Long Mott*, LBP-26-4, 103 NRC at __ (slip op. at 23–25).

¹¹¹ Petition at 19, 20.

financial capability to fulfill its commitments under the FCP Supplement.¹¹² Waterkeeper’s theory was that TDCC had already committed to fund *other* capital projects between now 2030, which the declarant assumed as the date for commercial operation of LMGS. The declarant concluded that TDCC’s capital budget would be largely consumed by the other projects in that time period, leaving insufficient funds for LMGS. As the Board noted, the declarant misread the CPA, which states the latest date for completion of construction is 2033. Waterkeeper thus failed to explain any theory of why TDCC would not have room in its capital budget for LMGS in those later years (2031, 2032, and 2033). The Board concluded that this misreading of the CPA, and the logical gap it left in Waterkeeper’s argument, did not show a genuine dispute.

In its Petition, Waterkeeper acknowledges its “error” and proffers a token “explanation.”¹¹³ But that cannot provide a basis for review because it was not presented to the Board.¹¹⁴ Waterkeeper also claims the Board improperly held that Waterkeeper “failed to *prove*” its case on the merits.¹¹⁵ But the Board did no such thing. The Board held that Waterkeeper’s argument was “not a *genuine* dispute” and “is not material,” both of which correspond to

¹¹² There also was a simpler reason to reject this claim: because, under the New FQ Standard, parent companies are *not required* to demonstrate “financial capability” to meet funding commitments. The NRC imposes that requirement under the Old FQ Standard. 10 C.F.R. Part 50, App. C § 2.A.2. (“If the sources of funds relied upon include parent companies or other corporate affiliates, information to support the financial capability of each such company or affiliate to meet its commitments to the applicant should be set forth in the application.”). But the review guidance for the New FQ Standard (i.e., the RBD, which the Exemption Request proposes for use in evaluating LME’s FQ) *expressly declines* to require “detailed financial analyses as currently required by Appendix C to 10 CFR Part 50,” concluding that doing so would “go well beyond [the NRC’s] mandate of ensuring safety.” RBD at 16. As LME explained, Waterkeeper’s attempt to impose the *wrong standard* is not a material issue. LME Supp. Brief at 8–9. Acting as an appellate body, the Commission is free to affirm a licensing board decision on any ground finding support in the record, whether previously relied on or not. *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-05-1, 61 NRC 160, 166 (2005) (citing *Hertz v. Luzenac Am., Inc.*, 370 F.3d 1014, 1017 (10th Cir. 2004); *Carney v. American Univ.*, 151 F.3d 1090, 1096 (D.C. Cir. 1998)).

¹¹³ Petition at 21–22.

¹¹⁴ 10 C.F.R. § 2.341(b)(2)(ii) (requiring record citation to where arguments were raised in earlier proceedings). *See also* Petition at 22 & n.94 (citing a document dated Apr. 23, 2026, as the *post hoc* justification for the error in the declaration dated Apr. 2, 2026 (*see* [Waterkeeper’s] Motion for Leave to Amend Contention 3B, Encl. A (Apr. 13, 2026) (ML26103A348, non-public; ML26117A385, public))).

¹¹⁵ Petition at 22 (emphasis in original).

admissibility criteria.¹¹⁶ Waterkeeper confronts neither conclusion. Nor does it identify any authority for the proposition that counterfactual assertions must be accepted, uncritically, as providing the requisite “reasoned basis” for a contention.¹¹⁷ To the contrary, even at the admissibility stage, “licensing boards are *expected* ‘to examine cited materials to verify that they do, in fact, support a contention.’”¹¹⁸ That is exactly what the Board did here. Waterkeeper identifies no “substantial questions” in the Board’s denial of Amended Contention 3B.¹¹⁹

III. CONCLUSION

As established above, Waterkeeper has not identified a “substantial question,” as required by 10 C.F.R. § 2.341(b)(4). Accordingly, the Commission should DENY the Petition. Alternatively, if the Commission grants the Petition for Review, it should AFFIRM the Rulings because Waterkeeper failed to demonstrate any error of law or abuse of discretion. Because the NRC Staff expects to complete its review of the CPA in November 2026, the Commission should rule on the Petition expeditiously to avoid potential delay or uncertainty in this case.

Respectfully submitted,

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Dated in Washington, DC

This 14th day of August 2026

¹¹⁶ See 10 C.F.R. § 2.309(f)(1)(iv), (vi).

¹¹⁷ USEC, CLI-06-10, 63 NRC at 472.

¹¹⁸ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-22, 82 NRC 310, 320 n.68 (2015) (quoting USEC, CLI-06-10, 63 NRC at 457) (emphasis added).

¹¹⁹ Waterkeeper also adds a vague assertion that “[t]he Board refused to engage with all bases offered.” Petition at 23. But it does not specifically identify any “bases” that allegedly were not addressed somewhere in the Board’s 16-page discussion of the motion, nor does it attempt to explain why those unspecified “bases” allegedly satisfied any (much less all) criteria in § 2.309(f).

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:

LONG MOTT ENERGY, LLC

(Long Mott Generating Station)

Docket No. 50-614-CP

August 14, 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 ANSWER OPPOSING SAN ANTONIO BAY ESTUARINE WATERKEEPER’S PETITION FOR DISCRETIONARY REVIEW” was served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty

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