

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:

Long Mott Energy, LLC

(Long Mott Generating Station)

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Docket No. 50-614-CP

ASLBP No. 25-991-01-CP-BD01

August 24, 2026

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

Date: August 24, 2026

Respectfully submitted,

Signed (electronically) by Marisa Perales

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San Antonio Bay Estuarine Waterkeeper (“Waterkeeper”) submits this Reply to Long Mott Energy, LLC’s (“LME”) Answer to Waterkeeper’s July 20, 2026 Petition for Review (“Petition”).¹ The Petition raised substantial questions under 10 C.F.R. § 2.341(b)(2), (4),² and the Commission may grant review based on “any other consideration which the Commission may deem to be in the public interest” under § 2.341(b)(4)(v). Here, review and reversal is proper on all issues raised.

As to Contention 1, LME’s Construction Permit Application (“CPA”) proposes a modular reactor facility consisting of four-unit, high-temperature gas-cooled, pebble bed reactors. The proposed reactors would not only be some of the first of their kind internationally, but the proposed facility would be the first grid-scale advanced nuclear facility at an industrial site in North America. LME’s CPA proposes a functional containment in lieu of a conventional containment structure—a novel design that has not yet been subject to a contested adjudicatory hearing. These facts present public interest considerations warranting discretionary review.

As to the Motion to Amend: LME now concedes that its CPA did not initially include “any information aimed at § 50.34(a)(8)”;³ it was only submitted after PSAR Supplement 1 was filed (and after Contention 1).³ Yet, LME claims there was no good cause to amend Contention 1, and so, the Board correctly denied the motion.⁴ But if there was no research and development program in the CPA until LME submitted Supplement 1, as LME admits, then, Waterkeeper had good cause to both amend based on this new information, and to argue that it did not comply with § 50.35.⁵

¹ See 10 C.F.R. § 2.341(b)(3).

² Contrary to LME’s arguments. See LME’s Answer Opposing San Antonio Bay Estuarine Waterkeeper’s Petition for Discretionary Review (Aug. 14, 2026) (ML26226A279), at 2 [hereinafter LME Ans.].

³ *Id.* at 5. This is a new characterization by LME of Supplement 1. LME previously argued that 10 C.F.R. § 50.34(a)(8) did not require this information because the proposed testing does not fall within the definition of “research and development” under § 50.2. See LME Cover letter to Supp. 1 to PSAR (Sept. 26, 2025) (ML25269A126).

⁴ LME Ans., at 8-9.

⁵ 10 C.F.R. § 2.309(c)(i)-(iii); see also *id.* § 50.35 (“the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such [safety] features or components” and that “there is reasonable assurance that, (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility”).

Furthermore, LME is wrong to complain that the Motion to Amend relied on the same declaration that was attached to the initial hearing request.⁶ The declarant explained that the scope and schedule for LME's testing program were not available to the public; however, at an ACRS meeting, *X-Energy* described the proposed fuel testing in part, and this served as the basis for many of the declarant's critiques of the adequacy of any proposed testing by *LME*.⁷ LME had an obligation to comply with 50.34(a)(8) and 50.35; it failed to do so with its initial CPA, even though X-Energy had publicly acknowledged that a fuel testing program was contemplated. Thus, while the PSAR supplement provided good cause for a contention challenging the adequacy of the testing based on 50.34(a)(8) and 50.35,⁸ there was no need for a new declaration, because none of the declarant's critiques had been addressed. There is no legal basis for denying a timely motion to amend that is based on new CPA information simply because the attached declaration was based on information that LME *should have included* in its initial CPA, but did not include until it supplemented its PSAR. This presents a substantial question.⁹

Finally, LME argues that the Board evaluated the 50.34(a)(8) claims as both contentions of omission and adequacy.¹⁰ But the Board failed to address the full scope Waterkeeper's challenges, which was prejudicial error.¹¹ Indeed, as Waterkeeper pointed out, Staff understood the contention to include a substantive challenge (not simply the omission of a schedule)—even if

⁶ LME Ans., at 8. The Board also ruled that no good cause was present because Waterkeeper's reliance on the same declaration indicated that it could have and did raise its critiques regarding LME's proposed fuel testing, or lack thereof, in its initial Petition to Intervene. Memorandum and Order (Denying Intervenor's Motion to Amend Contention 1) (Mar. 18, 2026) (ML26077A214), at 10.

⁷ See [Waterkeeper's] Petition to Intervene (Aug. 11, 2025) (ML25223A335), Ex. E (Decl. of Dr. Lyman), at 12.

⁸ And as Waterkeeper explained, "the requirements of Rule 50.34(a)(4) cannot be satisfied without the information required by (a)(8). The information required by (a)(8) informs the evaluation required by (a)(4). Without it, LME cannot demonstrate that the SSCs are adequate, under (a)(4)." [Waterkeeper's] Reply in Support of Petition to Intervene (September 12, 2025) (ML25258A244), at 17.

⁹ See 10 C.F.R. § 2.341(b)(4)(iii), (iv).

¹⁰ LME Ans., at 6.

¹¹ See *In the Matter of Union Elec. Co.* (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 366 (1983) (explaining that "a decisionmaking body must confront the facts and legal arguments presented by the parties and articulate the reasons for its conclusions on disputed issues").

Staff thought it was inadmissible.¹² But the Board focused only on the proposed testing schedule—if it would be complete before 2033 and if the testing must be performed on as-manufactured fuel.

As to Contention 3A, LME argues that its dismissal as moot was proper because it would have been meaningless to adjudicate an outdated version of the CPA.¹³ But LME’s Exemption Supplement provided additional *argument*, not new information or new bases that supplanted those in its original request, and thus did not moot the contention.¹⁴ LME argues that no procedural injury resulted from the contention’s dismissal because Waterkeeper had no right to go “fishing” in discovery.¹⁵ But Waterkeeper was entitled to discovery on its admitted Contention 3A—and discoverable information relevant to Contention 3A remained relevant even after the supplement, because the material dispute remained essentially the same. There was no fishing expedition.

As to Contention 3C, LME focuses on the length of declarations¹⁶ that were attached to Waterkeeper’s Reply and on its efforts to correct its initial Motion—arguing that the Board correctly disregarded them. But LME does not state that it was prevented from addressing new legal arguments raised for the first time in reply,¹⁷ because the declarations appended to the reply supported claims *already raised in the motion*; indeed the declarations were quoted extensively.

¹² NRC Staff Answer to Petition at 13-14 (“Waterkeeper relies on the expert testimony of Dr. Edward [sic] Lyman, who cites and references specific portions of the Application and other documents that LME relies on to identify specific omissions and assert that the LME’s [MST] methodology insufficiently analyzes the safety of LME’s functional containment.... Waterkeeper’s seven additional asserted deficiencies all relate to claims of insufficient and inadequate data, or data that is not yet available due to testing that has not been done or has an uncertain end date.”).

¹³ LME Ans., at 16-17.

¹⁴ LME continued to rely on information that was already referenced in its CPA in support of its exemption request, including a regulatory basis document prepared in support of an abandoned rulemaking and other licensing decisions. See Supplement #1 to Part V of the LMGS CPA (ML26062A257) (Mar. 3, 2026) (citing LME’s “Reference [5],” which is NRC, Financial Qualifications for Reactor Licensing Rulemaking, Regulatory Basis Document (Oct. 2016) (ML15322A185)). LME misleadingly claims it requested that its CPA be evaluated against the “New FQ Standard.” The new FQ Standard had not yet been adopted. LME relied on an old Staff RBD developed for an abandoned rulemaking. During the proceeding, the new FQ Standard was adopted, and LME told the Board that the new FQ standard did not apply; it would rely on the existing rules, instead of revising its CPA to rely on the new rules.

¹⁵ LME Ans., at 17.

¹⁶ LME counts 92-pages. LME Ans., at 18. But the exhibits totaled 75 pages, 48 of which are declarants’ resumes.

¹⁷ *USEC Inc. (Am. Centrifuge Plant)*, CLI-06-09, 63 NRC 433, 439 (2006) (“The Commission will not permit, in a reply, the filing of new arguments or new legal theories that opposing parties have not had an opportunity to address.”).

While inadvertently omitted from the motion,¹⁸ they were legitimate amplifications of a timely filed contention, which LME had an opportunity to address.¹⁹ This may explain why LME did not move to strike the declarations.²⁰ But the Board essentially struck them anyway (and struck quotes from them that were in the motion itself) by refusing to consider the declarations. This was error.

The Board's reformulation of **Contention 3B** disregarded the genuine material dispute raised regarding LME's ability to comply with 70.23 financial qualifications, which challenged both bases included in the CPA's FCP—X-Energy's ARDP award and the purported agreement with Dow. LME suggests that challenges to the Dow agreement were not admissible, but does not explain why.²¹ And neither did the Board.²² The dismissal as moot was based on the Board's reformulation of the Contention, not on the FCP supplement. In fact, LME did not revise any FCP language; nor did it purport to replace the Dow agreement cited in the FCP.²³ The supplement simply added a newly created document. The Board erred in dismissing the challenge to LME's FQ showing as moot based on this new document; this error prejudiced Waterkeeper.

¹⁸ LME emphasizes that it was several days before Waterkeeper corrected its error. What LME does not explain is that during a talk with Staff and LME's counsel, it became apparent that Waterkeeper was unaware that the declarations were missing; Staff pointed this out. And Staff did not oppose efforts to remedy the error, if Waterkeeper would agree to more time for parties to respond. LME, however, laid behind the log—it did not mention that the declarations were missing during talks with counsel, and waited several days before announcing it was opposed to the corrective motion.

¹⁹ *Contrast with La. Energy Servs. L.P.* (Nat'l Enrichment Facility), CLI-04-25, 60 NRC 223, 224 (2004), *recons. denied*, CLI-04-35, 60 NRC 619 (2004) (reply briefs presented entirely new arguments and even new contentions).

²⁰ In contrast, LME had moved to strike an earlier reply on the grounds it expanded the petition's claims, but did not for the declarations in Contention 3C. *See* [LME's] Motion to Strike Portions of [Waterkeeper's] September 12, 2025 Reply (Sept. 22, 2025) (ML25265A239).

²¹ LME Ans., at 20-21.

²² *See Long Mott Energy, LLC*, LBP-26-1, 103 NRC ____ (Jan. 22, 2026) (slip op. at 38-42).

²³ In fact, there was no Dow agreement included in the FCP, and LME initially refused to disclose the referenced agreement, until the Board compelled it. *See* Apr. 21, 2026 status conf. transcript (ML26114A190), at 384:9-11. Still, it remained unclear which document among the disclosed documents was the agreement referenced in the FCP.

As to Contention 6, Waterkeeper raised a material dispute. It identified inadequacies in LME’s PMF, PMP and dam failure analyses that rendered them unreliable,²⁴ therefore rendering unreliable LME’s determination the LMGS had been designed to withstand the design basis flood, a determination that is material to the application’s sufficiency as to safety under 10 C.F.R. § 50.34(a)(4).²⁵ In other words, given that LME must show that the LMGS is protected from flooding, the significant defects that Waterkeeper identified are material. And contrary to the Board’s conclusions, a modelling gap exists²⁶ that is material to whether the LMGS is safe as designed.²⁷ More precision in Waterkeeper’s assessment of what flood heights would be if LME remedied these errors would have required computer modelling, which is not Petitioner’s burden at the admissibility stage. Instead, Contention 6 raised “something to litigate”²⁸ that is fact-specific and tethered to the models LME relied on to show the safety of its design. The Board’s error in dismissing Contention 6 presents a substantial question warranting review under § 2.341(b)(4).

²⁴ LME did not provide the models, inputs, and assumptions necessary to investigate the results directly; thus, the analysis was based on the PSAR and supplements’ descriptions, which Waterkeeper’s expert definitively concluded “do[] not support a conclusion that the plant as currently designed is adequately safe.” Pet. at 26 nn. 114 & 115.

²⁵ See also Pet. at 26-27 & 27 n. 116.

²⁶ LME only addressed whether Green Lake was included, not the remaining land east of the Guadalupe and west of the LMGS. Compare [LME’s] Ans. to Waterkeeper’s Dec. 31, 2025 Motion for New and Amended Contentions (Jan. 14, 2026) at 9 (ML26014A277), with Petition at 27-28 & 28 n.123 (citing 2026.04.13 Order at 12 n.46 (discounting Waterkeeper’s “argument, disputed by LME, that the flood models employed by LME contain a gap when evaluating two different basins (the Guadalupe River and the Coloma Canal) as demonstrated by the absence of Green Lake (which sits between the two systems) from the models” by incorrectly reading LME’s 2026.01.14 Answer (at 9) to state that LME “expressly considered potential connections [between the Guadalupe River and Coloma Creek] across Green Lake”). But LME only cited support that it had connected the *riverine* models; LME never refuted Waterkeeper’s point that a gap existed between the *Coloma Creek model* and the riverine models). LME Ans. at 9 n.45 (citing “Encl. 2 at 2.4.3-17 (“The first analysis is the PMF over Guadalupe River Basin combined with 500-year flow from San Antonio River Basin. The second analysis is the PMF over San Antonio River Basin combined with 500-year flow from Guadalupe River Basin.”)).

²⁷ LME unpersuasively claims that a “reasonableness” standard applies; in the case cited, a **Board** considered **discretionary** intervention standards, quoting a **Commission** decision on timeliness, not substance. LME Ans. at 12 & 12 n.69 (citing *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 &4), ALAB-952, 33 NRC 521, 532 (quoting *Washington Public Power Supply System* (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1171 (1983))).

²⁸ *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 416 (2012). Waterkeeper gave more than “some indication” of the flaws in LME’s models, as *Davis-Besse* would have required of petitioners, engaging meaningfully with the site-specifics up to the limits of the precision possible without modeling. See *id.* at 415-16 (also contrasting admitted contentions in other cases that did grapple with site-specifics).

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that, on August 24, 2026, copies of the foregoing “San Antonio Bay Estuarine Waterkeeper’s Reply to Long Mott Energy, LLC’s Answer to San Antonio Bay Estuarine Waterkeeper’s Petition for Review” were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

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