UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Ho K. Nieh, Chairman
David A. Wright
Bradley R. Crowell
Matthew J. Marzano
Douglas W. Weaver

In the Matter of LONG MOTT ENERGY, LLC (Long Mott Generating Station)	Docket No. 50-614-CP

CLI-26-15

MEMORANDUM AND ORDER

This decision addresses the July 20, 2026, petition for review filed by San Antonio Bay Estuarine Waterkeeper (Waterkeeper).[1] Pursuant to 10 C.F.R. § 2.341(b), Waterkeeper seeks Commission review of several decisions by the Atomic Safety and Licensing Board that cumulatively rejected or dismissed all its contentions in this 10 C.F.R. Part 50 construction permit proceeding and resulted in the termination of the adjudicatory proceeding.[2] The NRC

[1] *San Antonio Bay Estuarine Waterkeeper's Petition for Review* (July 20, 2026) (non-public) (Petition). A publicly available redacted version of the petition was filed on August 3, 2026. Throughout this proceeding, several documents containing proprietary information were filed on the non-public docket, followed by corresponding redacted public versions. All references to documents in this order are to the publicly available redacted versions. This order does not contain any information designated as non-public within those documents.

[2] *Id.* at 1-2; LBP-26-1, 103 NRC __ (Jan. 22, 2026) (slip op.); Licensing Board Order (Denying Intervenor's December 5, 2025 Motion to Amend Contention 1) (Mar. 18, 2026) (unpublished) (March 18 Order); Licensing Board Order (Granting Applicant's Motion to Dismiss Contention 3A as Moot) (Mar. 20, 2026) (unpublished) (March 20 Order); Licensing Board Order (Denying Petitioner's December 31, 2025 Motion to Add a New Contention 6 and Amend Contention 4)

Staff and the applicant, Long Mott Energy, LLC (LME), each filed an answer opposing the petition.[3]

For the reasons provided below, we deny the petition for review.

I. BACKGROUND

This proceeding has a lengthy and complex procedural history, due to several motions from both parties to amend, dismiss, or add new contentions as new information became available. Therefore, we provide a general summary of the proceeding, for background and necessary context, followed by a discussion of Waterkeeper's petition for review that includes the specifics of the relevant pleadings, motions, and challenged Board decisions.

A. Long Mott Generating Station and Waterkeeper's Hearing Request

On March 31, 2025, LME submitted an application for a construction permit to build the Long Mott Generating Station in Calhoun County, Texas.[4] As described in the application, the proposed facility would comprise four Xe-100 small modular high-temperature gas-cooled

(Apr. 13, 2026) (unpublished) (April 13 Order); LBP-26-4, 103 NRC __ (June 25, 2026) (slip op.); LBP-26-5, 103 NRC __ (June 25, 2026) (slip op.).

[3] *NRC Staff's Answer in Opposition to San Antonio Bay Estuarine Waterkeeper's Petition for Review* (Aug. 11, 2026); *Long Mott Energy, LLC's Answer Opposing San Antonio Bay Estuarine Waterkeeper's Petition for Discretionary Review* (Aug. 14, 2026). Waterkeeper filed a reply to each answer. *Reply to NRC Staff's Answer to San Antonio Bay Estuarine Waterkeeper's Petition for Review* (Aug. 21, 2026) (Waterkeeper Reply to Staff Answer to the Petition); *San Antonio Bay Estuarine Waterkeeper's Reply to Long Mott Energy, LLC's Answer to San Antonio Bay Estuarine Waterkeeper's Petition for Review* (Aug. 24, 2026).

[4] Letter from Edward Stones, LME, to NRC Document Control Desk, "Submittal of the Long Mott Energy, LLC, Construction Permit Application for Long Mott Generating Station" (Mar. 31, 2025), at 2 (ADAMS accession no. ML25090A057 (package)) (LME Application). LME has since submitted several updates to its application, including a comprehensive revision on September 18, 2026. Letter from Charles R. O'Connor, LME, to NRC Document Control Desk, "Submittal of Revision 1 to the Long Mott Energy, LLC, Construction Permit Application for Long Mott Generating Station" (Sep. 18, 2026) (ML26261A419 (package)). All references in this order to the contents of LME's application, as supplemented throughout the proceeding, are to the version that was in effect at the time of the relevant pleading or decision.

reactors supplied by X-energy, LLC (X-energy).[5] The Xe-100 design utilizes a pebble-bed reactor technology in which heat is generated via fission within thousands of spherical, coated Tri-Structural Isotropic (TRISO) fuel particles.[6] The facility would be built on land owned by The Dow Chemical Company (Dow) for the purpose of creating and delivering steam to Seadrift Operations, an adjacent industrial facility owned and operated by a Dow affiliate.[7]

The NRC published notice of LME's application on June 10, 2025, providing the public with an opportunity to request a hearing and petition for leave to intervene in the licensing proceeding.[8] Because LME's application contained sensitive unclassified non-safeguards information (SUNSI), the notice also provided instructions for potential parties to request access to this non-public information in the development of their petitions.[9]

On June 20, 2025, Waterkeeper submitted a request for access to certain SUNSI in LME's application.[10] Waterkeeper is a non-profit organization based in Seadrift, Texas, that advocates for the preservation of local wetlands and waterways, with members that reside,

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[5] LME Application, Encl. 2a, "Preliminary Safety Analysis Report (public)," at 1.1-1 (ML25090A061) (LME PSAR).

[6] *Id.* at 1.1-1, 1.1-4, 6.4-23 fig. 6.4.2-1, "Xe-100 TRISO Particle."

[7] *Id.* at 1.1-1 to -2. LME is a wholly owned subsidiary of Dow. LME Application, Encl. 1a, "General and Financial Information (public)," at pt. I-I (ML25090A059).

[8] Long Mott Energy, LLC; Long Mott Generating Station; Construction Permit Application, 90 Fed. Reg. 24428, 24429 (June 10, 2025) (Hearing Notice). Separately, the NRC also held an uncontested (i.e., mandatory) hearing on September 22, 2026, in Port Lavaca, Texas, consistent with our recently updated procedures for mandatory hearings. Long Mott Energy, LLC; Long Mott Generating Station; Notice of Hearing, 91 Fed. Reg. 53900 (Aug. 20, 2026); *see* Policy Statement on Mandatory Hearings for Reactor Licensing, 91 Fed. Reg. 34661 (June 8, 2026).

[9] Hearing Notice, 90 Fed. Reg. at 24430-31. *See also* 10 C.F.R. § 2.307(c) (authorizing the NRC Secretary to issue orders establishing procedures and timelines for potential parties seeking access to SUNSI).

[10] Letter from Marisa Perales, Perales, Allmon & Ice, P.C., to NRC Office of the Secretary (June 20, 2025), at 1.

recreate, and work in the vicinity of the proposed facility.[11] Specifically, Waterkeeper sought access to certain non-public security-related information and figures in LME's preliminary safety analysis report (PSAR).[12] The Staff granted Waterkeeper's request, and access was provided pursuant to the terms of a Board-approved protective order.[13] Waterkeeper's request for access to SUNSI did not include any non-public financial-related information in LME's application.

On August 11, 2025, Waterkeeper filed a timely request for hearing and petition to intervene in the proceeding, supported by two expert declarations.[14] In that hearing request, Waterkeeper asserted that it had representational standing to intervene on behalf of four members who reside and have frequent contacts within a 50-mile radius of the facility's proposed location.[15] Waterkeeper opposed issuance of the construction permit and submitted four contentions asserting deficiencies with LME's application.[16] From this initial hearing

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[11] *Id.* at 1-2.

[12] *Id.* The PSAR is an early-stage safety document that an applicant for a construction permit must provide to the NRC, containing certain technical information specified by regulation. *See* 10 C.F.R. § 50.34(a).

[13] Letter from Richard Rivera, NRC, to Marisa Perales, Perales, Allmon & Ice, P.C. (June 30, 2025), at 4; Licensing Board Order (July 22, 2025) (unpublished) (issuing protective order); *Long Mott Energy, LLC's Notice of Provision of Access to Specific Sensitive Unclassified Non-Safeguards Information* (July 29, 2025).

[14] *San Antonio Bay Estuarine Waterkeeper's Petition to Intervene and Request for Hearing* (Aug. 11, 2025) (Hearing Request); *id.*, Ex. A, "Declaration of Edwin Lyman, Ph.D. in Support of Petition to Intervene and Request for Hearing by San Antonio Bay Estuarine Waterkeeper" (Lyman Declaration); *id.*, Ex. F, "Declaration of Jeffrey T. Mitman in Support of Petition to Intervene and Request for Hearing by San Antonio Bay Estuarine Waterkeeper."

[15] Hearing Request at 4-8; *see also* 10 C.F.R. § 2.309(d) (establishing general requirements for "standing" in NRC adjudicatory proceedings); *Nuclear Development, LLC* (Bellefonte Nuclear Plant, Units 1 and 2), CLI-20-16, 92 NRC 511, 514-15 (2020) (describing representational standing).

[16] *See generally* Hearing Request at 12-53; *see also* 10 C.F.R. § 2.309(f) (establishing criteria for admissible contentions).

request, only two contentions are relevant to our decision today—Contention 1 (concerning "functional containment") and Contention 3 (financial qualifications).[17]

In Contention 1, broadly speaking, Waterkeeper asserted that LME's proposed functional containment fails to meet applicable NRC standards.[18] Among other reasons, Waterkeeper asserted that it would be unlikely that necessary research and testing of the TRISO fuel for the reactors would be completed by 2033, the latest date for completion of construction cited in the application.[19] With respect to Contention 3, Waterkeeper argued that LME had failed to demonstrate that it was financially qualified to build and operate the facility.[20] Specifically, Waterkeeper took issue with LME's proposal to obtain an exemption from the applicable financial qualifications requirements for power reactors in 10 C.F.R. Part 50, and instead have its financial qualifications determined under an alternative and more lenient standard in 10 C.F.R.

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[17] In Contention 2, Waterkeeper asserted that LME had failed to include consideration of beyond-design basis events in its functional containment analysis. Hearing Request at 23-25. Waterkeeper later voluntarily withdrew this contention. *San Antonio Bay Estuarine Waterkeeper's Reply in Support of Petition to Intervene and Request for Hearing* (Sep. 12, 2025), at 20 (Waterkeeper Reply in Support of Hearing Request). In Contention 4, Waterkeeper broadly asserted that LME's environmental analysis was deficient. Hearing Request at 44-52. Although portions of this contention are related in subject matter to Contention 6, *see infra* Section I.B, Waterkeeper's petition for review does not refer to Contention 4 and thus we do not discuss it further in this decision. Waterkeeper also supplemented its hearing request with an additional Contention 5, based on SUNSI. *San Antonio Bay Estuarine Waterkeeper's Second Corrected Supplement to its Petition to Intervene and Request for Hearing Based on Sensitive Unclassified Non-Safeguards Information (Redacted)* (Sep. 9, 2025). The Board denied admission of Contention 5, which Waterkeeper does not appeal, and thus we do not address it further in this decision. *See* LBP-26-2, 103 NRC __, __ (Jan. 22, 2026) (slip op. at 2).

[18] Hearing Request at 12-22; *see also infra* note 64 and accompanying text (describing "functional containment").

[19] Hearing Request at 20-21.

[20] *Id.* at 26.

§ 70.23(a)(5).[21] LME filed an answer opposing the hearing request, while the Staff initially took the position that "narrow portions" of both contentions were admissible.[22]

B. Supplements and Motions to Add or Amend Contentions

Prior to the Board's ruling on Waterkeeper's hearing request, LME submitted two relevant supplements to its construction permit application. First, on September 26, 2025, LME supplemented its PSAR and provided a schedule and new information concerning TRISO fuel qualification and testing (PSAR Fuel Qualification Supplement).[23] And on November 20, 2025, LME submitted a second supplement, which provided new site-specific information and analyses relevant to flood protection (PSAR Hydrology Supplement).[24]

Following these submittals, Waterkeeper filed two motions to add or amend contentions based on the new information. First, on December 5, 2025, Waterkeeper submitted a motion in

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[21] *Id.* at 26, 41-43; *see also* 10 C.F.R. § 50.33(f) and 10 C.F.R. Part 50, Appendix C (providing financial qualifications and funding documentation requirements for construction permit applicants); *id*. § 70.23(a)(5) (requiring that an applicant for a license to engage in activities using special nuclear material demonstrate that they "appear[] to be financially qualified" to engage in the activity). We recently incorporated the Part 70 "appears to be financially qualified" standard into our risk-informed, technology-inclusive Part 53 regulatory framework for advanced reactors, and have issued a proposed rule that, if finalized, would incorporate the same into 10 C.F.R. Parts 50 and 52. Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors, 91 Fed. Reg. 15696, 15731 (Mar. 30, 2026); Regulatory Enhancements for Reactor Licensing, Decommissioning, and Operational Oversight, 91 Fed. Reg. 60702, 60711 (Sep. 24, 2026).

[22] *Long Mott Energy, LLC's Answer to San Antonio Bay Estuarine Waterkeeper's Hearing Request and Petition to Intervene* (Sep. 5, 2025), at 1-3 (LME Answer to Hearing Request); *NRC Staff's Answer to San Antonio Bay Estuarine Waterkeeper Petition to Intervene and Request for Hearing* (Sep. 5, 2025), at 1. The Staff later changed its position with respect to the admissibility of Contention 1 after LME supplemented its construction permit application with new information. *Notice Regarding Supplemental Information* (Dec. 3, 2025), at 1-2; *see infra* Section I.B.

[23] Letter from Charles R. O'Connor, LME, to NRC Document Control Desk, "Supplement #1 to the Preliminary Safety Analysis Report for the Long Mott Generation Station Construction Permit Application" (Sep. 26, 2025), at 1 (ML25269A126).

[24] Letter from Charles R. O'Connor, LME, to NRC Document Control Desk, "Supplement #2 to the Preliminary Safety Analysis Report for the Long Mott Generating Station Construction Permit Application" (Nov. 20, 2025), at 1-2 (ML25324A307).

which it sought to (1) clarify that LME's PSAR Fuel Qualification Supplement did not moot Contention 1, and (2) amend Contention 1 to assert the supplement failed to satisfy 10 C.F.R. § 50.35(a), a regulation not referenced in the initial hearing request.[25] And on December 31, 2025, Waterkeeper filed a motion seeking to add a new Contention 6, asserting that information in the PSAR Hydrology Supplement failed to support a conclusion that the plant's design is adequately safe from flooding.[26]

C. LBP-26-1: Ruling on Waterkeeper's Hearing Request

On January 22, 2026, the Board ruled on Waterkeeper's hearing request and determined that Waterkeeper had (1) demonstrated representational standing to intervene, and (2) proffered, in part, two admissible contentions challenging LME's financial qualifications.[27] The Board reformulated Waterkeeper's proposed financial qualifications contention into two separate contentions. The first (designated as Contention 3A) challenged whether LME satisfied the relevant criteria for an exemption from the financial qualifications requirements in 10 C.F.R.

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[25] *San Antonio Bay Estuarine Waterkeeper's Motion to Amend Contention 1 Based on PSAR Supplement 1* (Dec. 5, 2025), at 2 (Motion to Amend Contention 1). Both LME and the Staff opposed the motion. *Long Mott Energy, LLC's Answer to Waterkeeper's December 5, 2025 Motion to Amend Contention 1* (Dec. 19, 2025), at 1; *NRC Staff's Answer to San Antonio Bay Estuarine Waterkeeper's Amended Contention 1* (Dec. 19, 2025), at 2.

[26] *San Antonio Bay Estuarine Waterkeeper's Motion to Add a New Contention and Amend Contention 4 Based on Long Mott's Supplements to the PSAR* (Dec. 31, 2025), at 2-3 (Motion to Add Contention 6). The motion also sought to amend Waterkeeper's proposed Contention 4, *see supra* note 17, which is not relevant to Waterkeeper's petition for review. Both LME and the Staff opposed the motion. *Long Mott Energy, LLC's Answer to Waterkeeper's December 31, 2025 Motion for New and Amended Contentions* (Jan. 14, 2026); *NRC Staff's Answer to San Antonio Bay Estuarine Waterkeeper's New Contention and Amended Contention 4* (Jan. 14, 2026).

[27] LBP-26-1, 103 NRC at __ (slip op. at 2). LME filed an interlocutory appeal of LBP-26-1, arguing that the Board incorrectly admitted both contentions and should have denied the petition in full. *Long Mott Energy LLC's Notice of Appeal of LBP-26-1 and Brief in Support of Appeal of LBP-26-1* (Feb. 17, 2026), at 1. We later dismissed LME's interlocutory appeal as moot after the Board dismissed both contentions. CLI-26-10, 104 NRC __, __ (Aug. 7, 2026) (slip op. at 2); *see infra* Section I.E.

Part 50.[28] The other (Contention 3B) challenged whether LME could satisfy the alternative financial qualifications requirements in 10 C.F.R. § 70.23(a)(5) unless specific permit conditions were imposed.[29]

The Board found that the remainder of LME's proposed contentions were inadmissible.[30] With respect to Contention 1, the Board determined that Waterkeeper had potentially identified a contention of omission because LME's application did not initially include a schedule for fuel testing.[31] However, the Board found that LME had already cured that omission with the PSAR Fuel Qualification Supplement, which provided the schedule.[32]

D. Motions Concerning Financial Qualifications Contentions

On March 3, 2026, LME submitted two more relevant supplements to its application, each bearing directly on Contentions 3A and 3B. In one of these supplements, LME updated its application to significantly modify its original rationale for why an exemption from the 10 C.F.R. Part 50 financial qualifications requirements was warranted (Contention 3A Supplement).[33] The other supplement provided a non-public financial agreement between LME and Dow that

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[28] LBP-26-1, 103 NRC at __ (slip op. at 38) ("Contention 3A: LME's [construction permit] 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).").

[29] *Id*. at __ (slip op. at 42) ("Contention 3B: Assuming LME's request for an exemption from section 50.33(f) is granted, the [construction permit] should only be issued with permit conditions addressing financial qualifications because LME does not otherwise meet the section 70.23(a)(5) standard.").

[30] *Id.* at __ (slip op. at 2).

[31] *Id.* at __ (slip op. at 29).

[32] *Id*. The Board deferred ruling on Waterkeeper's pending motion to amend Contention 1. *Id.* at __ (slip op. at 29 n.121).

[33] *Licensing Board Notification Regarding CPA Part V Supplement #1* (Mar. 3, 2026), at 1 (citing Letter from Charles R. O'Connor, LME, to NRC Document Control Desk, "Supplement #1 to Part V of the Long Mott Generating Station Construction Permit Application" (Mar. 3, 2026) (ML26062A258)).

demonstrated a conditional commitment by Dow to fund at least 50% of the estimated construction costs of the facility (Contention 3B Supplement).[34]

Soon thereafter, LME filed two separate motions to dismiss Contention 3A and Contention 3B as moot, arguing in each motion that the supplements had materially modified the application with new superseding information.[35] LME asserted that Contention 3A was moot because the application now contained new and materially different justifications for an exemption that rendered the prior disputed justifications irrelevant.[36] LME similarly asserted that Contention 3B was moot because it had now provided affirmative documentation of a sufficient funding source, the lack of which was the basis for admitting the contention.[37] Prior to the Contention 3B Supplement, LME claimed it had obtained sufficient funding through an award from the U.S. Department of Energy's (DOE) Advanced Reactor Demonstration Program (ARDP), but the application did not include a copy of the award.[38]

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[34] *Licensing Board Notification Regarding CPA Part I Supplement #1* (Mar. 3, 2026), at 1 (citing Letter from Charles R. O'Connor, LME, to NRC Document Control Desk, "Supplement #1 to Part I of the Long Mott Generating Station Construction Permit Application" (Mar. 3, 2026) (ML26062A843)); *see also* LBP-26-4, 103 NRC at __ (slip op. at 2-3) (providing a redacted description of the agreement).

[35] *Long Mott Energy, LLC's Motion to Dismiss Contention 3A as Moot* (Mar. 6, 2026), at 3-5 (Motion to Dismiss Contention 3A); *Long Mott Energy, LLC's Motion to Dismiss Contention 3B as Moot* (Mar. 13, 2026), at 2-5 (Motion to Dismiss Contention 3B). Waterkeeper opposed both motions. *San Antonio Bay Estuarine Waterkeeper's Answer to Long Mott Energy, LLC's Motion to Dismiss Contention 3A as Moot* (Mar. 16, 2026); *San Antonio Bay Estuarine Waterkeeper's Corrected Answer to Long Mott Energy, LLC's Dispositive Motion on Contention 3B and Its Supplemental Briefing* (Apr. 29, 2026). The Staff did not file an answer, having previously informed the Board that it would not participate as a party in the proceeding with respect to Contentions 3A and 3B. *NRC Staff's Response to the Atomic Safety and Licensing Board's Order of January 22, 2026* (Feb. 2, 2026), at 2.

[36] Motion to Dismiss Contention 3A at 1.

[37] Motion to Dismiss Contention 3B at 5; LBP-26-1, 103 NRC at __ (slip op. at 41-42).

[38] LBP-26-1, 103 NRC at __ (slip op. at 39).

On April 2, 2026, Waterkeeper filed a motion to add a new Contention 3C, asserting that LME's new justifications for an exemption in the Contention 3A Supplement were inadequate.[39] On April 8, 2026, Waterkeeper filed a "corrected" version of the motion that included two expert declarations not attached to the original filing.[40] On April 14, 2026, Waterkeeper filed a motion with the Board stating that the omission of the declarations had been an unintentional "clerical error" and seeking permission to "correct" its original April 2 motion.[41] The Board denied the motion for lack of good cause, finding that Waterkeeper failed to provide sufficient explanation for its error.[42]

Waterkeeper also filed a motion on April 13, 2026, to amend Contention 3B, raising several arguments as to why the information in the Contention 3B Supplement continued to fail to demonstrate that LME satisfied the alternative financial qualification standard in 10 C.F.R. § 70.23(a)(5).[43]

E. Board Orders on Waterkeeper and LME Motions

The Board resolved the various motions to add, amend, or dismiss contentions in a series of five orders beginning in March 2026. First, on March 18, 2026, the Board denied

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[39] *San Antonio Bay Estuarine Waterkeeper's Motion for Leave to File New Contention* (Apr. 16, 2026), at 1 (Motion to Add Contention 3C). LME opposed the motion. *Long Mott Energy, LLC's Answer Opposing Waterkeeper's Motion for Leave to File New Contention 3C* (Apr. 30, 2026).

[40] *San Antonio Bay Estuarine Waterkeeper's Corrected Motion for Leave to File New Contention* (Apr. 8, 2026).

[41] *San Antonio Bay Estuarine Waterkeeper's Motion to Permit Correction of Filing* (Apr. 14, 2026), at 2.

[42] Licensing Board Order (Denying Motion to Correct Pleading and Addressing Other Administrative Matters) (Apr. 17, 2026), at 3 (unpublished).

[43] *San Antonio Bay Estuarine Waterkeeper's Motion for Leave to Amend Contention 3B* (Apr. 27, 2026). LME opposed the motion. *Long Mott Energy, LLC's Answer to Waterkeeper Motion for Leave to Amend Contention 3B* (May 11, 2026).

Waterkeeper's motion to amend Contention 1.[44] The Board determined that Waterkeeper failed to demonstrate good cause for its request to "clarify" Contention 1 or add a challenge regarding compliance with a previously uncited regulation.[45] The Board also found that Waterkeeper's asserted deficiencies with the PSAR Fuel Qualification Supplement failed to frame an admissible contention.[46]

On March 20, 2026, the Board granted LME's motion to dismiss Contention 3A. The Board agreed with LME that "by striking and replacing the relevant language in its application" with a new justification for why an exemption was warranted, there was no longer any reason to adjudicate the adequacy of the prior, superseded reasoning.[47] Thus, the Board dismissed Contention 3A as moot without opining on the adequacy of LME's new justification, which Waterkeeper remained free to challenge.[48]

On April 13, 2026, the Board denied Waterkeeper's motion to add a new Contention 6 concerning flooding risk.[49] The Board concluded that Contention 6 lacked materiality and failed to frame a genuine dispute with the application, fundamentally because Waterkeeper did not contest LME's "design basis hazard level" (DBHL) (i.e., the minimum flood height the plant must be designed to safely withstand).[50]

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[44] March 18 Order at 2.

[45] *Id.* at 6-10 (citing 10 C.F.R. § 2.309(c)).

[46] *Id.* at 11-15 (citing 10 C.F.R. § 2.309(f)).

[47] March 20 Order at 3-4.

[48] *Id.* at 5-6. As discussed above, *supra* Section I.D, Waterkeeper filed a motion to admit a new Contention 3C challenging the adequacy of the Contention 3A Supplement.

[49] April 13 Order at 2.

[50] *Id.* at 10-12.

On June 25, 2026, the Board issued LBP-26-4 and resolved the parties' dueling motions to amend/dismiss Contention 3B.[51] The Board determined that Waterkeeper did have good cause to amend Contention 3B to challenge Dow's financial capacity to fulfill the funding commitments described in LME's Contention 3B Supplement.[52] However, the Board ultimately denied the motion because Waterkeeper's amended contention relied on an incorrect construction completion date, and was thus inadmissible for failure to raise a genuine dispute.[53] The Board then dismissed Contention 3B as moot because the original factual basis for admitting the contention—a dispute over the sufficiency of the ARDP award —had become irrelevant and no longer material to the proceeding now that LME was no longer relying on the ARDP award to demonstrate funding.[54]

On the same day, the Board also issued LBP-26-5, denying Waterkeeper's motion to add a new Contention 3C.[55] Relying solely on Waterkeeper's motion and not the expert declarations that Waterkeeper had failed to include with its original filing, the Board found that Waterkeeper had not raised a genuine dispute with any of LME's justifications for an exemption.[56] With all motions and pending matters resolved, the Board terminated the proceeding.[57]

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[51] LBP-26-4, 103 NRC at __ (slip op. at 4).

[52] *Id.* at __ (slip op. at 14-17).

[53] *Id.* at __ (slip op. at 17-20).

[54] *Id.* at __ (slip op. at 23-25).

[55] LBP-26-5, 103 NRC at __ (slip op. at 2).

[56] *Id.* at __ (slip op. at 6-16).

[57] *Id.* at __ (slip op. at 16).

II. DISCUSSION

A. Standard of Review

Waterkeeper has filed a petition for review under 10 C.F.R. § 2.341(b).[58] Pursuant to that regulation, we have discretion to take review of a presiding officer's full or partial initial decision, giving due weight to whether a petitioner raises a "substantial question" with respect to the following considerations:

> (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.[59]

Whether a Board decision contains a reversible error or raises a substantial question warranting our review must necessarily be viewed through the lens of the standards the Board was tasked with applying—in this case, our contention admissibility requirements. To intervene in an NRC proceeding, our regulations require that the petitioner set forth with particularity at

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[58] Waterkeeper's petition for review is properly filed under § 2.341(b), rather than an appeal as of right under § 2.311, because its intervention petition was not wholly denied by the Board—portions of one of its contentions were admitted. *See, e.g., Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-07-2, 65 NRC 10, 11 (2007). Although Waterkeeper seeks our review of several Board orders in addition to the final decision that terminated the proceeding, its appeal of those additional orders is timely. That is because the Commission disfavors piecemeal interlocutory review of Board decisions. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 6 and 7), CLI-16-1, 83 NRC 1, 8 (citing 10 C.F.R. § 2.341(f)(2)). Absent compelling or extraordinary circumstances warranting immediate review, litigants generally must wait until the conclusion of the proceeding before seeking review of interlocutory Board decisions. *Id.* at 8-9; *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-08-2, 67 NRC 31, 34-36 (2008); *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-11-10, 74 NRC 251, 255-56 (2011).

[59] 10 C.F.R. § 2.341(b); *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-20-1, 91 NRC 79, 84-85 (2020).

least one contention that satisfies the criteria in 10 C.F.R. § 2.309(f). Specifically, the petitioner must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . .;
> (ii) Provide a brief explanation of the basis for the contention;
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
> (v) Provide a concise statement of the alleged facts or expert opinions which support the [petitioner's] position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the [petitioner] intends to rely to support its position on the issue; [and]
> (vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.[60]

When a petitioner submits a motion to file new or amended contentions after the proceeding's initial deadline for contentions has passed, the petitioner must (in addition to meeting the admissibility standards described above) demonstrate "good cause" for the untimely filing by showing that:

> (i) The information upon which the filing is based was not previously available;
> (ii) The information upon which the filing is based is materially different from information previously available; and
> (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.[61]

Our contention admissibility standards are deliberately "strict by design" so as to ensure that NRC hearings are effectively focused on "genuine and pertinent issues of concern" that have been adequately framed with specificity and support at the outset.[62] We generally provide

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[60] 10 C.F.R. § 2.309(f)(1)(i)-(vi).

[61] *Id*. § 2.309(c).

[62] *Nuclear Fuel Services, Inc.* (License Amendment Application), CLI-23-3, 98 NRC, 33, 38 n.29 (2023) (citing Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2189-90 (Jan. 14, 2004)); *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358-59 (2001)).

substantial deference to the Board on the threshold issue of contention admissibility, unless an appeal demonstrates an error of law or abuse of discretion.[63]

With these standards in mind, we turn to each of Waterkeeper's asserted errors with the Board's decisions that cumulatively resulted in the denial or dismissal of all its contentions. As discussed below, we are not persuaded that the Board committed any reversible errors of law or abused its discretion, or that Waterkeeper's petition otherwise raises a substantial question necessitating our review.

B. Contention 1 (Functional Containment)

The fundamental issue in Waterkeeper's proposed Contention 1 was whether LME sufficiently demonstrated that its proposed "functional containment" satisfies NRC regulatory requirements. "Functional containment" generally refers to a barrier, or set of barriers taken together, that effectively limits the physical transport of radioactive material into the environment.[64] In its hearing request, Waterkeeper raised several asserted deficiencies with LME's proposed functional containment, which relies in part on the retention capabilities and structural robustness of TRISO fuel to substantially prevent the release of radionuclides.[65] The Board considered these claims and largely rejected them for failing to address the contents of LME's application, failing to specify the NRC regulation allegedly violated, or conflating NRC regulations with non-binding guidance.[66]

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[63] *Crow Butte Resources, Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 26 (2014); *AmerGen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006).

[64] *Kairos Power LLC* (Hermes Test Reactor), CLI-23-5, 98 NRC 53, 71-72 (2023) (citing "Functional Containment Performance Criteria for Non-Light-Water-Reactors," Commission Paper SECY-18-0096 (Sep. 28, 2018), at 2 (ML18115A157)).

[65] LBP-26-1, 103 NRC at __ (slip op. at 21-24, 28) (citing LME PSAR at 6.4-19); LME PSAR at 1.1-5 to -6.

[66] LBP-26-1, 103 NRC at __ (slip op. at 21-24).

In its petition for review, Waterkeeper focuses on its assertion that LME's "proposal to conduct fuel testing in the future" does not comply with 10 C.F.R. § 50.34(a)(4) and (a)(8).[67] Waterkeeper first argues that the Board erred in failing to interpret this as both a contention challenging the adequacy of LME's proposed functional containment as well as a contention of omission concerning a missing fuel testing schedule.[68] Generally speaking, a contention of omission is one that alleges the application is entirely missing required information or analyses, whereas a contention of adequacy is one that identifies information within the application that is alleged to be inaccurate or insufficient.[69] Waterkeeper asserts that the Board's overly narrow interpretation allowed LME to easily moot the contention by simply supplementing its application with the missing schedule, regardless of its plausibility.[70]

We see no error with the Board's interpretation and denial of Contention 1 in LBP-26-1.[71] As the Board noted, Waterkeeper's hearing request asserted that LME's application failed to

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[67] Hearing Request at 20. The Board explained that 10 C.F.R. § 50.34(a)(4) requires the applicant to provide in its PSAR a "preliminary analysis and evaluation of the design and performance of structures, systems, and components of the facility," whereas section 50.34(a)(8) requires the applicant to identify any structures, systems, or components of the facility that "require research and development to confirm the adequacy of their design" and, if such research and development is needed, to provide a schedule "showing that such safety questions will be resolved . . . before the latest date stated in the application for completion of construction of the facility." LBP-26-1, 103 NRC at __ (slip op. at 27-28).

[68] Petition at 2-3.

[69] *See* 10 C.F.R. § 2.309(f)(1)(vi) (requiring that a contention include "references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief"); *see also Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382-83 (2002) (generally describing the difference between the two).

[70] Petition at 3-4.

[71] LBP-26-1, 103 NRC at __ (slip op. at 27-31).

satisfy both 10 C.F.R. § 50.34(a)(4) and (a)(8) "without distinguishing between the two."[72] The Board attempted to discern whether Waterkeeper's contention raised an issue of "noncompliance with section 50.34(a)(4), section 50.34(a)(8), or both."[73] Because Waterkeeper's basis for the alleged noncompliance was expressly tied to LME's date for the completion of construction (i.e., that it was unlikely that all necessary testing of the TRISO fuel would be completed before 2033), the Board determined that only section 50.34(a)(8) was relevant to the contention.[74] This determination was based on the Board's plain reading of the text of both regulations, namely, only section 50.34(a)(8) creates obligations that are tethered to a construction completion date.[75] We find the Board's reading of the contention to be reasonable. If Waterkeeper intended the reference to section 50.34(a)(4) to mean something different, the Board did not unreasonably fail to connect those dots on their behalf. Petitioners, not the Board, bear the responsibility to "formulate contentions and to provide the necessary information to satisfy the basis requirement for admission."[76]

We note that Waterkeeper also attempted during the proceeding to make the same argument that it does now concerning its preferred interpretation of Contention 1, which the Board rejected. Specifically, prior to the Board's ruling in LBP-26-1, Waterkeeper filed a motion to amend Contention 1 and "clarify" that the contention "was not one of omission, but one of

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[72] *Id.* at __ (slip op. at 27); Hearing Request at 20.

[73] LBP-26-1, 103 NRC at __ (slip op. at 27).

[74] *Id.* at __ (slip op. at 28).

[75] *Id.* at __ (slip op. at 27-28).

[76] *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) (quoting *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998)).

inadequacy."[77] In support, Waterkeeper directed the Board's attention to certain portions of Dr. Lyman's expert declaration in which he opined that LME's plans to complete fuel testing by 2033 were not "reasonably achievable," given the current unavailability of "as-manufactured" TRISO fuel and the expected length of time to conduct sufficient testing.[78] The Board denied the motion to clarify the contention because it had previously rejected this same argument from Waterkeeper—that no fuel testing schedule could possibly be completed prior to the end of construction in 2033.[79] We see no error with the Board's denial of Waterkeeper's attempt via motion to "clarify" that Contention 1 should be construed as a contention of adequacy, given that our rules of practice and procedure do not provide for such motions. Adjudicatory participants may seek leave to file "new or amended" contentions upon receiving materially new and previously unavailable information, but permitting a motion to "clarify" the meaning or scope of an existing contention after the submission deadline for contentions has expired would be contrary to our rules governing timeliness and specificity.[80]

Additionally, Waterkeeper appears to argue now that the Board should have treated this contention as one of both omission and adequacy.[81] In this case, the Board reasonably interpreted Contention 1 as a contention of omission concerning a missing fuel testing schedule, which was subsequently cured when LME provided the schedule.[82] Under our rules, this

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[77] Motion to Amend Contention 1 at 2, 5. As the Board noted, Waterkeeper itself had previously described the contention as one of omission. March 18 Order at 9 n.39 (citing Waterkeeper Reply in Support of Hearing Request at 13-14).

[78] Motion to Amend Contention 1 at 5 (citing Lyman Declaration ¶¶ 36-37).

[79] March 18 Order at 9-10 (citing LBP-26-1, 103 NRC at __ (slip op. at 29-30)).

[80] 10 C.F.R. § 2.309(b), (c), (f)(1)(i).

[81] Petition at 3 ("[Waterkeeper's] contention related to 50.34(a)(8) presented a contention of adequacy (plus one of omission) . . . .").

[82] LBP-26-1, 103 NRC at __ (slip op. at 29). *See, e.g.*, *McGuire*, CLI-02-28, 56 NRC at 382-83 (distinguishing between contentions that "merely allege an 'omission' of information" as opposed

application supplement created an opportunity for Waterkeeper to seek leave to file a new or amended contention challenging the adequacy of the schedule, which it did.[83]

In its petition for review, Waterkeeper asserts that the Board erred in finding that it lacked good cause to amend Contention 1 after LME submitted the PSAR Fuel Qualification Supplement.[84] In that motion to amend, Waterkeeper sought to add a new basis for the contention by arguing that the PSAR Fuel Qualification Supplement failed to comply with 10 C.F.R. § 50.35(a), a regulation not previously cited in the hearing request.[85] Waterkeeper asserted that the PSAR Fuel Qualification Supplement did not demonstrate compliance with this regulation because LME did not propose testing the TRISO fuel as-manufactured at a commercial scale.[86] But the Board determined that good cause to amend the contention was lacking because Waterkeeper had already made the same argument in its hearing request (i.e., that LME was required to test its fuel not just in a test environment but also as-produced in a manufacturing environment), albeit without reference to section 50.35(a).[87]

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to those that "challenge substantively and specifically how particular information has been discussed in a license application").

[83] *See McGuire,* CLI-02-28, 56 NRC at 383 (explaining that "[w]here a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant" the contention is then moot, and intervenors "must timely file a new or amended contention that addresses the [contention admissibility factors] in order to raise specific challenges regarding the new information").

[84] Petition at 3.

[85] Motion to Amend Contention 1 at 5-8. That regulation, in sum, permits the Commission to issue a construction permit even where the applicant has not yet supplied all of the necessary required technical information if, among other assurances, the Commission determines that there is a research and development program in place "reasonably designed" to "satisfactorily resolve" any remaining safety questions before the latest date of the completion of construction stated in the application. 10 C.F.R. § 50.35(a)(3), (a)(4).

[86] Motion to Amend Contention 1 at 6-7; *San Antonio Bay Estuarine Waterkeeper's Reply in Support of its Motion to Amend Contention 1* (Dec. 29, 2025), at 5-6.

[87] March 18 Order at 7 (citing 10 C.F.R. § 2.309(c)); Hearing Request at 20-21; LBP-26-1, 103 NRC at __ (slip op. at 30).

Given the distinction between contentions of adequacy versus omission discussed above, it is difficult to square the Board's conclusion that "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.[88] The factual basis for the amended contention—LME's actual fuel testing schedule—did not exist when Waterkeeper filed its hearing request.

While Waterkeeper argues the Board erred in its application of the section 2.309(c) "good cause" standard, we need not reach that question because the Board correctly concluded that Waterkeeper's motion did not frame an admissible contention under section 2.309(f) and a motion to file a new or amended contention after the initial submission deadline must satisfy both standards.[89] Specifically, the Board noted—which Waterkeeper does not grapple with in its petition for review—that the motion to amend Contention 1 repeated arguments concerning the need to test "as manufactured" fuel without specifying any regulatory basis for the claim.[90] The Board had previously determined in LBP-26-1 that Waterkeeper failed to demonstrate that this was an issue within the scope of the proceeding.[91] The Board reasonably concluded that Waterkeeper's continued reliance on this "as manufactured" argument in its motion to amend the contention, still without explaining the regulatory basis for the claim, rendered the amended contention inadmissible.[92]

We thus find no error in the Board's handling of Contention 1 warranting further review.

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[88] March 18 Order at 7.

[89] 10 C.F.R. § 2.309(c)(4).

[90] March 18 Order at 7-8, 10 (citing LBP-26-1, 103 NRC at __ (slip op. at 30-31)).

[91] LBP-26-1, 103 NRC at __ (slip op. at 30) ("[Waterkeeper] does not explain . . . how section 50.34(a)(8) requires LME, as part of a [construction permit] application, to demonstrate ongoing quality control of the 'as-manufactured' fuel constructed at a different facility. . . . Waterkeeper does not explain why regulations would also require, at the [construction permit] application stage, testing the fuel as-manufactured.").

[92] March 18 Order at 8.

C. Contentions 3A and 3C (Part 50 Exemption)

In LBP-26-1, the Board admitted Contention 3A, finding that Waterkeeper had established a genuine dispute concerning both of LME's proffered justifications for an exemption from the financial qualifications requirements in 10 C.F.R. Part 50.[93] The NRC may grant a request for an exemption from an otherwise applicable regulation if it finds, among other things, that any one of six enumerated "special circumstances" are present.[94] In its original application, LME stated that two special circumstances were applicable to its exemption request:
(1) application of the regulation "in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule," and
(2) there was a "material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption."[95] As justification, LME principally relied on a Staff analysis from 2016 that generally concluded the financial qualifications requirements codified in 10 C.F.R. Part 50 may be unnecessarily burdensome for non-utility applicants.[96] The Board admitted Contention 3A, in part because LME's justification for an exemption (i.e., that the existing 10 C.F.R. Part 50 requirements do not serve their intended

[93] LBP-26-1, 103 NRC at __ (slip op. at 38).

[94] 10 C.F.R. § 50.12(a)(2)(i)-(vi). In addition to "special circumstances," the NRC must also determine the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. *Id*. § 50.12(a)(1).

[95] LBP-26-1, 103 NRC at __ (slip op. at 32); 10 C.F.R. § 50.12(a)(2)(ii), (a)(2)(vi).

[96] LBP-26-1, 103 NRC at __ (slip op. at 33-38) (citing "Financial Qualifications for Reactor Licensing Rulemaking," Regulatory Basis Document (Oct. 2016), at 1-2 (ML15322A185) (FQ Regulatory Basis Document)). This Staff document was created to support a reactor financial qualifications rulemaking that was ultimately discontinued after the Commission directed the staff to address the issue through the Part 53 rulemaking instead. Staff Requirements—SECY-18-0026—Proposed Rule: Financial Qualifications Requirements for Reactor Licensing (RIN 3150-AJ43) (July 14, 2022) (ML22195A097). As previously noted, *supra* note 21, the Commission has issued a proposed rule that would, if finalized, replace the current 10 C.F.R. Part 50 financial qualifications standards with the same "appears to be financially qualified" standard in LME's exemption request.

purpose) would be equally applicable to all construction permit applicants and arguably not a "special circumstance."[97] LME then submitted the Contention 3A Supplement, striking its prior justification for an exemption with new, more LME-specific reasoning.[98] The Board then dismissed the contention as moot.[99]

Waterkeeper argues that the Board's dismissal was legal error.[100] In Waterkeeper's view, even though LME supplemented its application by striking and replacing its original rationale for an exemption, the supplement did not moot the contention because LME continued to rely on "similar justifications" to meet the same regulatory exemption criteria.[101] Rather than a motion to dismiss, Waterkeeper asserts that summary disposition would have been a more appropriate procedural vehicle to resolve the contention, which would have required a more robust showing from LME to carry its burden.[102] Waterkeeper also asserts that the Board's granting of the motion to dismiss deprived them of discovery on the admitted contention.[103]

We see no error with the Board's straightforward handling of LME's motion to dismiss Contention 3A. The Board reasonably determined that there was no longer any reason to adjudicate "a dispute about a portion of the [construction permit] application that is no longer before the NRC" once LME replaced its original justification that formed the basis for the

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[97] LBP-26-1, 103 NRC at __ (slip op. at 34-35).

[98] Motion to Dismiss Contention 3A at 3-5; March 20 Order at 3.

[99] Motion to Dismiss Contention 3A at 1; March 20 Order at 1.

[100] Petition at 7.

[101] *Id.*

[102] *Id.* at 8-9; *see also* 10 C.F.R. § 2.710 (directing the presiding officer to grant a motion for summary disposition where the moving party has shown "there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.").

[103] Petition at 9.

admitted contention.[104] As we have said previously, the "reach of a contention necessarily hinges upon its terms *coupled with* its stated bases."[105] And we have previously held in other contexts that when a contention is "superseded" by subsequent events (e.g., the issuance of a subsequent licensing-related document, or an applicant providing a response to a request for additional information) the contention must be "disposed of or modified."[106] The same reasoning applies in circumstances such as these, where an applicant has "removed and substantively replaced" the factual bases for the contention with new information.[107] Even though LME continued to seek an exemption under the "same two special circumstances," Waterkeeper's contention did not automatically migrate as a challenge to LME's new justification for why those circumstances were met.[108]

Waterkeeper is correct that Contention 3A was a contention of adequacy, not omission, and that motions to dismiss for mootness usually encompass the latter.[109] But that is because it is easier and more straightforward to moot a contention of omission; it is not inappropriate or

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[104] March 20 Order at 4.

[105] *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 309 (2010) (emphasis in original).

[106] *USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 444 (2006) (quoting *McGuire*, CLI-02-28, 56 NRC at 383).

[107] March 20 Order at 4.

[108] Petition at 6. In the context of contentions under the National Environmental Policy Act of 1969, as amended (NEPA), we have recognized a "migration tenet" in which a contention challenging the sufficiency of an applicant's environmental report or a Staff draft environmental review document can "migrate" as a challenge to an ensuing NEPA document if the information at issue remains "sufficiently similar." *Strata Energy, Inc.* (Ross In Situ Uranium Recovery Project), CLI-16-13, 83 NRC 566, 570 n.17 (2016). This is for case management purposes, obviating the need for an intervenor to file an "essentially identical challenge" as applied to the new document that contains the sufficiently similar information. *Id.*

[109] Petition at 7-8.

impossible to do so with a contention of adequacy if the conditions for mootness are present.[110] An applicant is free to materially supplement or revise its application at any time, even on disputed issues that are the subject of admitted contentions. Of course, such a revision can create an opportunity for a petitioner to file a new or amended contention.

Waterkeeper's assertion that a motion for summary disposition would have been more appropriate fails to recognize that a motion for summary disposition is a ruling on the *merits* of the contention, akin to a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.[111] LME did not assert that the new language in the Contention 3A Supplement *resolved* the controversy in its favor, but rather that it rendered *irrelevant* the dispute concerning the prior language. The Board correctly dismissed Contention 3A without prejudice, leaving open the possibility for Waterkeeper to challenge the adequacy of LME's new reasoning with a motion to file a new or amended contention.[112]

Waterkeeper did just that when it sought to add Contention 3C. In that motion, Waterkeeper argued that LME's new justifications for an exemption were insufficient, making numerous references to two expert declarations that were not attached to the motion.[113]

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[110] *See, e.g.*, *Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), LBP-10-17, 72 NRC 501, 506-08 (dismissing as "clearly moot" a contention of adequacy after the applicant revised its application to remove the statement that formed the basis of the contention) (citing *McGuire*, CLI-02-28, 56 NRC at 382).

[111] *See Pilgrim*, CLI-10-11, 71 NRC at 297; *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-93-22, 38 NRC 98, 102 (1993).

[112] March 20 Order at 5-6. Waterkeeper's complaint that the Board's dismissal deprived it of discovery on the contention is without merit, since the Board correctly determined that requiring the parties to continue with discovery on the contention, "even though there is nothing left to litigate," would not serve judicial economy. *Id.* at 6. Waterkeeper also suggests that dismissal of a contention for mootness in these circumstances leaves the petitioner vulnerable because a motion to file a new or amended contention must still satisfy the "good cause" requirement for "new and materially different" information. *Id.* at 9. But it is difficult to envision a scenario in which a petitioner who timely challenges the superseding information, significant enough to moot the original contention, would not satisfy this requirement.

[113] *See generally* Motion to Add Contention 3C.

Waterkeeper filed a corrected version of the motion six days later that included the missing declarations in 76 pages of enclosures.[114] Six days after that, Waterkeeper filed a motion with the Board stating that the inadvertent omission of the declarations was a "clerical error" and requesting that the Board (1) deem the corrected motion to have been timely filed; and (2) provide a commensurate extension for LME and the Staff to file their responses.[115] The Board denied Waterkeeper's motion for lack of good cause, finding that the motion was effectively an unsupported request for leave to file out of time, based on the substantive significance of the error, coupled with the length of time it took to correct the error.[116] Waterkeeper then attached the declarations again to its reply brief filed six days later,[117] which the Board expressly did not consider when denying the motion to amend the contention.[118]

In its petition for review, Waterkeeper asserts the Board committed legal error by refusing to consider the expert declarations as part of its reply brief, specifically taking issue with the Board's reliance on the Commission's prior decision in *Palisades* to reach that conclusion.[119] The Board cited *Palisades* for the proposition that "if a contention as originally pled did not cite

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[114] *San Antonio Bay Estuarine Waterkeeper's Corrected Motion for Leave to File New Contention* (Apr. 8, 2026) (non-public).

[115] *San Antonio Bay Estuarine Waterkeeper's Motion to Permit Correction of Filing* (Apr. 14, 2026), at 2. The Staff did not oppose Waterkeeper's motion, but LME did. *Id.* at 2-3; *see Long Mott Energy, LLC's Answer Partially Opposing Waterkeeper's Motion to Permit Correction of Filing* (Apr. 14, 2026).

[116] Licensing Board Order (Denying Motion to Correct Pleading and Addressing Other Administrative Matters) (Apr. 17, 2026) at 3-4 (unpublished) (April 17 Order).

[117] *San Antonio Bay Estuarine Waterkeeper's Reply in Support of Motion for Leave to File New Contention 3C* (May 7, 2026).

[118] LBP-26-5, 103 NRC at __ (slip op. at 5-6).

[119] Petition at 24; *Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727 (2006).

adequate documentary support," a petitioner cannot then remediate the deficiency by introducing previously available documents in its reply.[120]

Waterkeeper attempts to differentiate the facts of *Palisades* from the case at hand, but we see no clear error or abuse of discretion by the Board. Given the size and substance of the declarations, the Board could have reasonably concluded that their inclusion was more than a mere "amplification" of the issues originally raised in the initial motion.[121] Accepting and considering the declarations in the reply also would have been contrary to the Board's order from just days earlier declining to consider them with the initial motion, and it would have deprived the other participants an opportunity to respond.[122] We are especially reluctant to second-guess the Board in light of its observation that this was not the lone instance in which it had to enforce deadlines in the proceeding "with some vigilance."[123] We generally defer to the Board's exercise of discretion in matters of case management such as this.[124]

D. Contention 3B (Part 70 Financial Qualifications)

Waterkeeper also claims that the Board erred in its treatment of Contention 3B, concerning whether LME satisfied the more lenient financial qualifications standard codified in 10 C.F.R. § 70.23(a)(5). To demonstrate compliance with this alternative standard, LME stated in its application that its ARDP award would provide a 50% cost share on all projected costs to

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[120] LBP-26-5, 103 NRC at __ (slip op. at 6) (citing *Palisades*, CLI-06-17, 63 NRC at 732).

[121] Petition at 24.

[122] *Palisades,* CLI-06-17, 63 NRC at 732 (stating that permitting petitioners to introduce previously available documents in a reply "would unfairly deprive other participants of an opportunity to rebut" the information); *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146 (2015) ("We require adherence to the deadlines and procedures in our rules so that the other litigants are not taken by surprise and are accorded an appropriate opportunity to respond to new arguments or new information.").

[123] April 17 Order at 4.

[124] *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-07-28, 66 NRC 275, 275 (2007).

deliver the facility.[125] In its hearing request, Waterkeeper asserted that it was "misleading and inaccurate" that ARDP funding would cover 50% of the costs of construction, stating that a "more realistic" figure was 21-26%.[126] Waterkeeper referred to publicly available sources, such as press releases from DOE and X-energy, to calculate the facility's estimated construction costs and the amount of the ARDP award available for the project.[127] Waterkeeper used publicly available sources to frame its contention because it had not requested access to non-public financial information when seeking SUNSI access.[128] Waterkeeper also observed that LME did not include a copy of the ARDP award contract with its application to substantiate its claim that the award was sufficient.[129]

In LBP-26-1 the Board admitted Contention 3B, claiming it was a "close call" but finding that Waterkeeper had raised a "genuine dispute over the amount of ARDP funding available to LME for construction costs."[130]

1. Reformulation of Contention 3

In its petition for review, Waterkeeper first asserts the Board erred in admitting Contention 3B as a narrow challenge focused solely on the size and availability of the ARDP

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[125] LBP-26-1, 103 NRC at __ (slip op. at 39) (citing LME Application, Encl. 1a, "General and Financial Information (public)," pt. I-IX). The 50% figure comes from the FQ Regulatory Basis Document, *supra* note 96, in which the Staff proposed an approach that would allow an applicant with less than 50% committed funding at the time of licensing to still receive a construction permit, albeit with license conditions to facilitate verification of funding prior to the start of construction. LME Answer to Hearing Request at 64 (citing FQ Regulatory Basis Document at 19-21).

[126] Hearing Request at 26, 31.

[127] LBP-26-1, 103 NRC at __ (slip op. at 39-40) (citing Hearing Request at 31-32).

[128] *Id.* at __ (slip op. at 40).

[129] Hearing Request at 31.

[130] LBP-26-1, 103 NRC at __ (slip op. at 41-42).

award.[131] Similar to Contention 1, Waterkeeper argues that this impermissibly narrow framing enabled LME to easily moot the contention later.[132] Rather than an isolated dispute about the specifics of the ARDP award, Waterkeeper asserts that its contention "challenged LME's ability to demonstrate compliance with 10 C.F.R. § 70.23(a)(5) generally"—in other words, it was a broader challenge concerning whether LME "appears to be financially qualified" to construct the facility.[133]

We find no Board error of law or abuse of discretion in the formulation of Contention 3B. Waterkeeper's hearing request contains only a handful of discrete references to the section 70.23(a)(5) standard, and multiple are expressly made in connection with the ARDP award.[134] Other references simply criticize the length of the financial discussion in LME's application or argue that the standard should not even be considered because LME should not receive an exemption.[135] The hearing request also has a multi-page discussion explaining that the NRC in the past has relied on license conditions to effectuate the section 70.23(a)(5) standard.[136] Based on the language in Waterkeeper's hearing request, we do not believe the Board erred in interpreting and reformulating the contention the way it did—a dispute over whether the ARDP award that was not included with the application actually covered 50% of the estimated

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[131] Petition at 10-14.

[132] *Id.* at 11.

[133] *Id.*; 10 C.F.R. § 70.23(a)(5).

[134] *See, e.g.*, Hearing Request at 26 ("LME does not meet [the section 70.23(a)(5)] standard because it has failed to make a sufficient demonstration of financial commitments . . . *In fact, LME's rationale rests on the premise that ARDP funding will cover 50% of its costs,* but this is misleading and inaccurate . . . ."); *id.* at 41 ("The information provided in the [application] is insufficient to meet even [the section 70.23(a)(5)] subjective standard. . . . [B]ased on the [application] and publicly available information, *the ARDP award that LME relies on will not suffice to cover 50% of construction costs* . . . .") (emphases added).

[135] *See id.* at 28, 44.

[136] *Id.* at 42-43.

construction costs, as LME claimed it did to avoid permit conditions in its license. In fact, expanding the reach of the contention any further may have been reversible error, given that Waterkeeper was fundamentally challenging LME's ability to finance construction of the facility without having seen the actual construction cost estimate in the application.[137]

2. Dismissal of Contention 3B

Shortly after the Board admitted Contention 3B, LME supplemented its application to include a financial agreement between itself and Dow that included a conditional commitment to fund more than half of the estimated construction costs of the facility.[138] LME then moved to dismiss Contention 3B as moot, arguing that the new financial agreement provided affirmative documentation of a sufficient funding source other than the ARDP.[139] The Board granted the motion, agreeing that Contention 3B as admitted was limited to a factual dispute about the amount of the ARDP award, a dispute that was no longer relevant.[140]

Waterkeeper asserts that the Board erred in dismissing Contention 3B as moot, though it relies on arguments that have similarly been made and addressed elsewhere this decision. For example, Waterkeeper alleges that the Contention 3B Supplement mooted nothing because the contention was broader than just the narrow dispute about the ARDP award,[141] which as

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[137] *See Interim Storage Partners LLC* (WCS Consolidated Interim Storage Facility), CLI-20-15, 92 NRC 491, 502 (2020) (stating that a petitioner "cannot reasonably argue that it can proffer an admissible contention disputing portions of a license application that it has not reviewed").

[138] The agreement was submitted as a non-public document, but in LBP-26-4 the Board (after providing the parties with an opportunity to review) provided a general description of its relevant provisions, with redacted proprietary dollar amounts and contractual terms. LBP-26-4, 103 NRC at __ (slip op. at 2-3); Licensing Board Order (Notice Regarding Issuance of Decisions on Intervenor's Motion to Amend Contention 3B; Applicant's Motion to Dismiss Contention 3B; and Intervenor's Motion to Add Contention 3C) (June 25, 2026), at 2 (unpublished).

[139] Motion to Dismiss Contention 3B at 1, 5.

[140] LBP-26-4, 103 NRC at __ (slip op. at 25).

[141] Petition at 17-19.

discussed above is incorrect.[142] Once the Board reasonably determined that LME's Contention 3B Supplement rendered the ARDP dispute irrelevant (with which Waterkeeper agreed),[143] dismissal for mootness was appropriate because that was the sole basis for the admission of the contention.[144]

Similar to Contention 3A, Waterkeeper also faults the Board for granting the motion to dismiss Contention 3B, rather than treating it as a motion for summary disposition.[145] But in the case of Contention 3B, the Board did in fact contemplate whether the new financial agreement mooted the contention or "was instead merely evidence that weighed in LME's favor" on the merits.[146] The Board accepted extensive briefing on this question before reasonably determining that dismissal was the appropriate vehicle, for the reasons previously stated.[147]

Waterkeeper also asserts that dismissal of the contention was inappropriate because, in its view, the Contention 3B Supplement "offered little additional, meaningful information" to

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[142] *See supra* Section II.D.1.

[143] LBP-26-4, 103 NRC at __ (slip op. at 25) ("[B]oth parties agree that resolving a factual dispute about the amount of ARDP award is no longer relevant . . . .").

[144] *See id.* at __ (slip op. at 23) ("[A]dmitting Contention 3B did not open the door to a hearing on *any* claim that LME did not meet financial qualification requirements . . . . [I]f we proceeded to a hearing on Contention 3B, the factual dispute would have been limited to adjudicating the amount of the ARDP award."); *Pilgrim*, CLI-10-11, 71 NRC at 309 (stating that the "reach of a contention necessarily hinges upon its terms *coupled with* its stated bases") (emphasis in original); *see also supra* Section II.C.

[145] Petition at 16 (arguing that Contention 3B was a contention of adequacy and that, with "few exceptions, motions to dismiss for mootness are usually directed at contentions of omission").

[146] LBP-26-4, 103 NRC at __ (slip op. at 3-4).

[147] *See* Licensing Board Order (Establishing Schedule for Responses Associated with Applicant's March 13, 2026 Motion Regarding Contention 3B) (Mar. 16, 2026) (unpublished); *Long Mott Energy LLC's Supplemental Brief Regarding its Dispositive Motion on Contention 3B* (Apr. 8, 2026); *San Antonio Bay Estuarine Waterkeeper's Corrected Answer to Long Mott Energy, LLC's Dispositive Motion on Contention 3B and its Supplemental Briefing* (Apr. 29, 2026); *Long Mott Energy, LLC's Reply to Waterkeeper's Answer Opposing Dismissal or Summary Disposition of Contention 3B* (Apr. 24, 2026); *San Antonio Bay Estuarine Waterkeeper's Sur-Reply Regarding Dispositive Motion on Contention 3B* (May 15, 2026).

bolster LME's funding claims.[148] This argument concerning the specifics of LME's financial agreement with Dow is more relevant to (and was addressed within) the Board's consideration of Waterkeeper's motion to amend the contention, discussed below. Waterkeeper's arguments in this regard relied on specific non-public information contained within the financial agreement,[149] which the Board considered and rejected as beyond the scope of the proceeding and not material to the NRC's permitting decision.[150] We have reviewed the non-public filings and see no error with the Board's straightforward determination on this point.

3. Denial of Motion to Amend Contention 3B

In its motion to amend Contention 3B, Waterkeeper asserted that LME did not satisfy the section 70.23(a)(5) standard even with the Contention 3B Supplement, or establish that it had secured at least 50% of the estimated construction costs.[151] The Board denied the motion in the same order in which it granted LME's motion to dismiss Contention 3B, and Waterkeeper seeks our review of this decision as well.[152]

Waterkeeper asserts that the Board "improperly placed a heightened burden" upon them for admission of a new contention, "essentially requiring Waterkeeper to prove the merits" of its case.[153] But in support of this alleged error, Waterkeeper's petition for review simply aggregates and reiterates several arguments that the Board considered and rejected, without pointing to

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[148] Petition at 14-15.

[149] *See* Motion to Amend Contention 3B at 4 (redacted public version). Unlike the non-public financial information in the initial application, Waterkeeper did obtain access to the non-public financial agreement in the Contention 3B Supplement. *Licensing Board Notification Regarding Provision of Access to SUNSI in CPA Part I Supplement #1* (Mar. 12, 2026).

[150] *See* LBP-26-4, 103 NRC at __ (slip op. at 7-8).

[151] Motion to Amend Contention 3B at 3.

[152] LBP-26-4, 103 NRC at __ (slip op. at 22).

[153] Petition at 20.

any specific error. For example, Waterkeeper repeats its assertions that: LME is unlikely to enforce a financial agreement against Dow, its ultimate parent company; LME has not sufficiently explained its contractual relationship with X-energy as the supplier of its reactor; and the supplement did not make sufficient guarantees.[154] The Board's order denying Waterkeeper's motion considered and explained why each of these was not grounds for an admissible contention.[155] Petitioners seeking Commission review may not "simply repeat the arguments it made before the Board and hope for a different result," but instead must identify the specific alleged error or abuse of discretion.[156]

The Board provided extensive consideration of Waterkeeper's assertion that Dow lacked overall financial capacity to fulfill its financial commitment with LME.[157] The Board determined that Waterkeeper had good cause and was not time-barred from raising this new challenge, because Dow's financial capacity became relevant and material to the proceeding once LME relied on the company to demonstrate funding.[158] But the Board also determined that the contention was not admissible due to a critical flaw in Waterkeeper's proposed amended contention. As the Board explained, Waterkeeper obtained an expert professional opinion that it would "likely be impossible" for Dow to finance the construction of the facility "by 2030" based on the company's capital expenditures, commitments, and current financial footing.[159] But, as previously noted, the latest date for the completion of construction cited in the application is

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[154] *Id.* at 20-21.

[155] LBP-26-4, 103 NRC at __ (slip op. at 7-8, 20-22).

[156] *WCS*, CLI-20-15, 92 NRC at 498; *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 NRC 215, 219 (2017).

[157] LBP-26-4, 103 NRC at __ (slip op. at 12-17).

[158] *Id.* at 15-17.

[159] *Id.* at 17-19.

2033, not 2030. The Board thus found Waterkeeper's contention inadmissible for failure to raise a genuine and material dispute, because "concerns that Dow lacks the capacity" to finance the construction of the facility "over four years do not necessarily follow when the actual timeframe is seven years."[160] Waterkeeper asserts that its expert's "inadvertent error" was "singled out" as a reason to deny the contention,[161] but we see no error in the Board's conclusion that this was a fundamental flaw in the presentation of the contention.

Waterkeeper also asserts, without clear explanation, that the Board's denial of the contention due to a flawed underlying premise was tantamount to requiring Waterkeeper to prove a negative—that is, to "*prove* that Dow's finances would not suffice to support construction of [the facility]."[162] But we do not view the Board's decision denying the contention as requiring Waterkeeper to "prove" anything. A petitioner does not need to prove its contention at the pleading stage, but it bears the burden of formulating the contention with necessary support to demonstrate a genuine material dispute.[163] The Board reasonably determined Waterkeeper failed to do so given its expert's error.

E. Contention 6 (Flood Risk)

Finally, Waterkeeper seeks our review of the Board's ruling on Contention 6, which was submitted via motion on December 31, 2025, and challenged whether certain information and analyses in LME's PSAR Hydrology Supplement supported a conclusion that the plant is

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[160] *Id.* at 19-20.

[161] Petition at 21-22.

[162] *Id.* at 22 (emphasis in original).

[163] *Palisades*, CLI-15-23, 82 NRC at 325-26. Waterkeeper also offers a "reasonable explanation" for its expert's error, citing to a recent public regulatory filing from X-energy stating that ARDP funding is not expected to extend beyond 2030. Petition at 22. Waterkeeper's explanation was not considered by the Board so we cannot consider it here. *Private Fuel Storage*, *L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 140 (2004) (stating that the Commission will not ordinarily "consider on appeal either new arguments or new evidence supporting the contention, which the Board never had the opportunity to consider").

adequately safe from flooding.[164] The Board considered Waterkeeper's asserted flaws with LME's modeling and analyses of probable maximum precipitation events and dam failures, ultimately concluding that it had not framed a genuine or material dispute for adjudication.[165]

In its petition for review, Waterkeeper argues that the Board erred by applying too strict of a standard at the contention admissibility stage.[166] Waterkeeper asserts that the Board effectively raised the contention admissibility bar so high that it would have needed to conduct its own computer modeling to definitively prove its claims, in contravention of Commission precedent.[167] But we need not address this argument because, as explained below, the Board reasonably denied the motion for a separate, dispositive reason.

Specifically, the Board found that the "determinative" deficiency in Waterkeeper's motion was the failure to challenge LME's analysis of flooding caused by a hurricane-driven storm surge, the type of flood event that LME calculated would result in the highest flood waters and therefore established the plant's DBHL.[168] As the Board explained, the DBHL is the flood level—derived from the "most severe flood conditions that can reasonably be anticipated to occur" at the site—for which the plant is designed so that flood waters at or below the DBHL do not adversely impact the capability of safety-related systems, structures, and components.[169] In

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[164] Motion to Add Contention 6 at 1-3. Waterkeeper's Contention 6 asserted both safety and environmental concerns with respect to flood protection, though its petition for review is expressly limited to safety. Petition at 25 n.108.

[165] April 13 Order at 2, 6-10.

[166] Petition at 26.

[167] *Id.* at 25-27 (citing *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 415 (2012) (stating that the Commission does not "require petitioners to run their own computer models at the contention admissibility stage")).

[168] April 13 Order at 6, 10-12.

[169] *Id.* at 4 n.14 (citing "Design-Basis Floods for Nuclear Power Plants," Draft Regulatory Guide DG-1290, rev. 1 (July 2024), at 14, app. L at L-4 (ML23320A025)).

plain terms, LME's PSAR Hydrology Supplement established the DBHL at 46.49 feet above sea level, making this the relevant minimum flood height the plant must be designed to safely withstand.[170] As the Board succinctly put it, "any dispute regarding a flood caused by dam failure or precipitation will only be material if the flood could exceed the [DBHL]."[171] Because Waterkeeper did not put the sufficiency of the DBHL at issue, the Board reasonably found the new contention inadmissible.[172]

In its petition for review Waterkeeper acknowledges that it did not "definitively" contest the analysis that established the DBHL but argues that it did present the Board with enough alleged errors elsewhere to reasonably call the DBHL into question.[173] We do not see (nor does Waterkeeper direct us to) anywhere in the record where Waterkeeper made this "mosaic" style argument to the Board. In fact, Waterkeeper's motion did not even mention LME's analysis of

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[170] *Id.* at 4, 11-12.

[171] *Id.* at 11.

[172] *See also id.* at 12 n.47 ("As an illustrative example of why Waterkeeper has not shown that the issues it raises are material, consider the [dispute between the parties over the appropriate elevation of a canal embankment] discussed previously. With a 45 ft. flood, it matters little whether the embankment was 41 ft. or 35 ft. as the canal embankment would be overtopped in either case. But a 45 ft. flood would still be less than the design basis hazard level of the plant.")

[173] *See* Petition at 26-27 ("[C]orrected analyses could show that flood levels were higher than originally estimated and that [the facility] was in fact not designed to withstand these levels . . . ."); *id.* at 27 ("The Contention identified multiple errors that may have significantly compromised LME's conclusions on the limiting design-basis event and the [facility's] safety . . . ."); *id.* at 29 ("[W]ithout modelling, Waterkeeper could not definitively claim that a certain flood event would exceed the design basis flood LME had used. What Waterkeeper could identify were the errors described above . . . throwing LME's assurances that it had selected the correct bounding event into doubt.").

hurricane-driven storm surges or the DBHL.[174] Thus we must reject this argument for being raised for the first time on appeal.[175]

III. CONCLUSION

For the foregoing reasons, Waterkeeper's petition does not present a substantial question warranting Commission review, and we therefore *deny* the petition.

IT IS SO ORDERED.

For the Commission

JODY MARTIN Digitally signed by JODY MARTIN Date: 2026.11.06 13:49:07 -05'00'

Jody C. Martin
Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of November 2026.

[174] Waterkeeper attempted to argue in its reply brief that the asserted inadequacies with LME's analyses rendered the DBHL "unreliable and deficient," but the Board did not consider the brief because it was untimely filed. *San Antonio Bay Estuarine Waterkeeper's Motion for Leave to File Out of Time* (Jan. 22, 2026), Ex. 1 at 3-4; Licensing Board Order (Denying Motion for Leave to File Out of Time) (Feb. 13, 2026) at 3 (unpublished).

[175] *WCS*, CLI-20-15, 92 NRC at 507 n.115 (citing *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 433, 458 (2006)).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
LONG MOTT ENERGY, LLC.	)	Docket No. 50-614-CP
	)	
	)	
(Long Mott Generating Station)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-26-15)** have been served upon the following by Electronic Information Exchange.

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of November 2026.