

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Allison M. Macfarlane, Chairman
Kristine L. Svinicki
George Apostolakis
William D. Magwood, IV
William C. Ostendorff

In the Matter of)

EXELON GENERATION COMPANY, LLC)

(Limerick Generating Station, Units 1 and 2))

) Docket Nos. 50-352-LR &
) 50-353-LR
)

CLI-13-07

MEMORANDUM AND ORDER

The Licensing Board has referred to us its ruling denying Natural Resources Defense Council's (NRDC) petition to waive a provision of our regulations.¹ For the reasons set forth below, we take review of the referred ruling. We find that the Board erred in its reasoning for denying NRDC's waiver petition, but we affirm the Board's decision on a different ground.

I. BACKGROUND

Exelon Generation Company, LLC, has applied to renew its operating licenses for Limerick Generating Station, Units 1 and 2, for an additional twenty years. NRDC requested a hearing on Exelon's license renewal application, proposing four contentions.² Of those

¹ LBP-13-1, 77 NRC 57 (2013).

² *Natural Resources Defense Council Petition to Intervene and Notice of Intention to Participate* (Nov. 22, 2011).

contentions, the Board admitted only one—a narrowed version of Contention 1-E, which claimed that Exelon’s Environmental Report failed to include new and significant information relating to severe accident mitigation.³

Exelon and the NRC Staff appealed the Board’s contention admissibility ruling.⁴ Both Exelon and the Staff argued that Contention 1-E constituted a collateral attack on 10 C.F.R. § 51.53(c)(3)(ii)(L).⁵ The rule exempts Exelon from including in its Environmental Report a site-specific severe accident mitigation alternatives (SAMA) analysis because the Staff previously considered severe accident mitigation design alternatives (SAMDA) in the Final Environmental Statement supporting issuance of the Limerick operating licenses.⁶ We agreed that the contention impermissibly challenged section 51.53(c)(3)(ii)(L).⁷

³ See LBP-12-8, 75 NRC 539, 561-62 (2012). NRDC’s motion to admit a new waste-confidence-related contention currently is pending before the Board; the Board is holding that contention in abeyance in accordance with our direction in CLI-12-16. See Memorandum (Clarifying the Board’s July 12, 2013 Order) (Aug. 6, 2013), at 2 (unpublished) (Board Clarification Order); Order (Suspending Procedural Date Related to Proposed Waste Confidence Contention) (Aug. 8, 2012), at 3 (unpublished) (citing *Calvert Cliffs Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63 (2012)); *NRDC’s Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Limerick* (July 9, 2012); *Natural Resources Defense Council’s Resubmission of Contentions in Response to Staff’s Supplemental Draft Environmental Impact Statement* (May 30, 2013), at 2-3 (Resubmitted Contentions).

⁴ *Exelon’s Notice of Appeal of LBP-12-08* (Apr. 16, 2012); *Exelon’s Brief in Support of the Appeal of LBP-12-08* (Apr. 16, 2012) (Exelon Appeal); *NRC Staff’s Notice of Appeal of LBP-12-08* (Apr. 16, 2012); *NRC Staff’s Appeal of LBP-12-08* (Apr. 16, 2012) (Staff Appeal).

⁵ See Exelon Appeal at 6-7; Staff Appeal at 5-6.

⁶ See *generally* “Final Environmental Statement Related to the Operation of Limerick Generating Station, Units 1 and 2,” NUREG-0974 Supplement (Aug. 1989) (ADAMS accession no. ML11221A204) (1989 SAMDA Analysis). The 1989 analysis considered SAMDAs, a subset of mitigation alternatives that are based on a plant’s design. See CLI-12-19, 76 NRC 377, 382 (2012).

⁷ CLI-12-19, 76 NRC at 386.

Nonetheless, in light of an apparent ambiguity in our license renewal regulations—which, on the one hand exempt Exelon and similarly-situated license renewal applicants from including a SAMA analysis in their environmental reports, but on the other hand require an applicant to identify “any new and significant information of which it is aware”—we invited NRDC to submit a petition to waive the SAMA-analysis exception.⁸ We likened the regulatory conflict to other instances in our license renewal adjudications where a petitioner claimed that purported “new and significant information” called into question a “Category 1,” or broadly-applicable, environmental-impact finding codified in 10 C.F.R. Part 51.⁹ Challenges to Category 1 findings based on new and significant information require a waiver of 10 C.F.R. Part 51, Subpart A, Appendix B, in order to be litigated in a license renewal adjudication.¹⁰ We held that “the exception in section 51.53(c)(3)(ii)(L) operates as the functional equivalent of a Category 1 issue, removing SAMAs from litigation in this, as well as certain other, case-by-case license

⁸ See *id.* at 385-86, 388.

⁹ See *id.* at 386. “Category 2” issues, on the other hand, require a site-specific analysis for the plant whose license is up for renewal. “Severe accidents” is a Category 2 site-specific issue in 10 C.F.R. Part 51, Subpart A, Appendix B. Our remand decision provides a brief discussion of Category 1 and Category 2 issues. See CLI-12-19, 76 NRC at 381-82. The Generic Environmental Impact Statement for License Renewal (GEIS) provides the environmental analysis that supports our “Category 1” and “Category 2” findings. See “Generic Environmental Impact Statement for License Renewal of Nuclear Plants—Main Report” (Final Report), NUREG-1437, Vol. 1 (May 1996) (ML040690705) (GEIS); “Generic Environmental Impact Statement for License Renewal of Nuclear Plants—Main Report” (Final Report), NUREG-1437, Rev. 1, Vol. 1 (June 2013) (ML13106A241) (GEIS Rev. 1). See *generally* Final Rule, Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37,282 (June 20, 2013) (GEIS Revisions). In our recent revisions to the GEIS, we did not change the Category 2 status of severe accidents or the exception in 10 C.F.R. § 51.53(c)(3)(ii)(L). See GEIS Revisions, 78 Fed. Reg. at 37,289-90.

¹⁰ See *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, 17, 20 (2007) (Vermont Yankee/Pilgrim).

renewal adjudications.”¹¹ Accordingly, we remanded the case to the Board for the limited purpose of permitting NRDC to file a waiver petition.¹² We included in the remand all of NRDC’s SAMA-related contentions, Contentions 1-E, 2-E, and 3-E, to the extent the Board denied them as challenges to section 51.53(c)(3)(ii)(L).¹³

NRDC thereafter filed a waiver petition that again raised the issues that the Board originally had admitted in Contention 1-E, as well as an issue in Contention 3-E that the Board originally had rejected.¹⁴ With regard to Contention 1-E, NRDC sought to litigate its claims that: (1) “Exelon has omitted from its [Environmental Report] a required analysis of new and significant information regarding potential new [SAMAs] previously considered for other [Mark II

¹¹ CLI-12-19, 76 NRC at 386.

¹² *Id.* at 388.

¹³ We did not include in the remand NRDC’s remaining contention, Contention 4-E, which challenged the Environmental Report’s discussion of the “no-action alternative,” an unrelated issue. See *id.* at 388 & n.58. The Board rejected Contention 4-E as inadmissible. See LBP-12-8, 75 NRC at 570.

¹⁴ *Natural Resources Defense Council’s Petition, By Way of Motion, for Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L) as Applied to Application for Renewal of Licenses for Limerick Units 1 and 2* (Nov. 21, 2012) (Waiver Petition). NRDC attached two declarations in support of its waiver petition. *Declaration of Christopher J. Weaver, Ph.D., on Behalf of the Natural Resources Defense Council in Support of Motion for Waiver* (Nov. 21, 2012) (Weaver Declaration); *Declaration of Geoffrey H. Fettus, Counsel for the Natural Resources Defense Council (NRDC), Regarding Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L) as Applied to Application for Renewal of Licenses for Limerick Units 1 and 2* (Nov. 21, 2012) (Fettus Declaration).

NRDC continues to assert its disagreement with our determination in CLI-12-19 that a waiver is required. See *Natural Resources Defense Council’s Brief in Support of Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L) as Applied to Application for Renewal of Licenses for Limerick Units 1 and 2* (Mar. 13, 2013), at 28 (NRDC Initial Brief); Waiver Petition at 13. To the extent that NRDC’s claim is, in substance, a motion for reconsideration of our determination in CLI-12-19, its request is procedurally defective, out of time, and fails to assert compelling circumstances justifying reconsideration. See 10 C.F.R. § 2.323(e); *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-10-9, 71 NRC 245, 252 (2010).

boiling water reactors]”; and (2) “Exelon’s reliance on data from Three Mile Island . . . in its analysis of the significance of new information regarding economic cost risk constitutes an inadequate analysis of new and significant information.”¹⁵ With regard to Contention 3-E, NRDC sought to litigate the claim that Exelon must use “modern techniques for assessing whether the newly considered [SAMAs] are cost-beneficial.”¹⁶ Exelon and the Staff opposed NRDC’s waiver petition, arguing that it failed to satisfy our waiver standard in 10 C.F.R. § 2.335(b).¹⁷

We review waiver petitions under section 2.335, as well as our case law.¹⁸ In interpreting section 2.335, we identified four factors—often referred to as the “*Millstone* factors”—that waiver petitioners must satisfy. The Board’s analysis began and ended with the first *Millstone* factor—a demonstration that applying the rule would not serve its intended purpose.¹⁹ The Board determined that the purpose of the exception in section 51.53(c)(3)(ii)(L)

¹⁵ Waiver Petition at 3.

¹⁶ *Id.*

¹⁷ *Exelon’s Response Opposing NRDC’s Petition for Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L)* (Dec. 14, 2012), at 3-4 (Exelon Answer); *Exelon’s Counter Affidavit Supporting Exelon’s Response Opposing NRDC’s Petition for Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L)* (Dec. 14, 2012) (Exelon Affidavit); *NRC Staff Answer to Natural Resources Defense Council Petition for Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L)* (Dec. 14, 2012), at 1 (Staff Answer). NRDC replied. *Reply of Natural Resources Defense Council in Support of Petition, By Way of Motion, for Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L) as Applied to Application for Renewal of Licenses for Limerick Units 1 and 2* (Dec. 21, 2012).

¹⁸ See generally *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 & nn.29-34 (2005).

¹⁹ See LBP-13-1, 77 NRC at 66; *Millstone*, CLI-05-24, 62 NRC at 560; 10 C.F.R. § 2.335(b). In denying NRDC’s waiver petition, the Board declined to apply the *Millstone* test, opining that it “establishes an appreciably higher burden for . . . waiver seekers than does [section 2.335(b)].” LBP-13-1, 77 NRC at 64. According to the Board, only the first two *Millstone* factors are consistent with the requirements of section 2.335(b). *Id.* We disagree. The *Millstone* decision, which aggregates cases interpreting the waiver standard, is an example of a uniform, permissible interpretation of our regulations. See *U.S. Steel Mining Co., LLC v. Director*, (continued . . .)

“is to exempt those plants that have already performed SAMA analyses from considering [SAMAs] at license renewal.”²⁰ The Board then reasoned that the purpose of the SAMA-analysis exception “will always be met if no further analysis is required or submitted by the applicant.”²¹ Based on its interpretation of the rule, the Board therefore concluded that the exception in section 51.53(c)(3)(ii)(L) is “unwaivable.”²² Accordingly, the Board denied the waiver petition. Finding our remand of the proceeding incompatible with its own finding that waiver of section 51.53(c)(3)(ii)(L) is an “impossibility,” however, the Board referred to us its ruling, seeking a clarification of the interplay between section 51.53(c)(3)(ii)(L) and our waiver criteria in section 2.335(b).²³ The parties have filed initial and response briefs to offer their views on the Board’s decision.²⁴

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OWCP, 386 F.3d 977, 985 (11th Cir. 2004). All four of the *Millstone* requirements derive from the language and purpose of section 2.335(b). Further, a licensing board may not disregard binding Commission case law. *Cf. Nat’l Fed’n of Federal Employees v. FLRA*, 412 F.3d 119 (D.C. Cir. 2005) (“[A]gencies act arbitrarily and capriciously when they ‘ignore [their] own relevant precedent.’” (quoting *BB&L, Inc. v. NLRB*, 52 F.3d 366, 369 (D.C. Cir. 1995))). *Accord Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-09-4, 69 NRC 170, 184 (2009), *aff’d*, CLI-09-20, 70 NRC 911, 917-18, 924 (2009) (acknowledging that a licensing board is bound by Commission precedent; “it is for the Commission, not licensing boards, to revise its rulings”).

²⁰ LBP-13-1, 77 NRC at 66.

²¹ *Id.* (emphasis omitted).

²² *Id.*

²³ *Id.* at 69. See 10 C.F.R. § 2.323(f)(1).

²⁴ NRDC Initial Brief; *Exelon’s Initial Brief in Response to the Referral of LBP-13-1 to the Commission* (Mar. 13, 2013); *NRC Staff’s Brief on the Board’s Referred Ruling in LBP-13-1* (Mar. 13, 2013); *Natural Resources Defense Council’s Response Brief in Support of Waiver of 10 C.F.R. § 51.53(c)(3)(ii)(L) As Applied to Application for Renewal of Licenses for Limerick Units 1 and 2* (Mar. 20, 2013); *Exelon’s Reply Brief in Response to the Referral of LBP-13-1 to the Commission* (Mar. 20, 2013); *NRC Staff’s Reply on the Board’s Referred Ruling in LBP-13-1* (Mar. 20, 2013). See generally *Unopposed Motion Requesting Briefing* (Feb. 19, 2013); Order (continued . . .)

As discussed below, we take review of the Board's referred ruling, and find that the Board erred in concluding that it is impossible to waive the exception in section 51.53(c)(3)(ii)(L). Nevertheless, we affirm, on different grounds, the Board's denial of the waiver petition.

II. DISCUSSION

Although we disfavor piecemeal review of licensing board decisions, boards may refer rulings that, although interlocutory, raise "significant and novel legal or policy issues" or require our "resolution . . . to materially advance the orderly disposition of the proceeding."²⁵ We find that the Board has raised a significant and novel issue that warrants our attention. The Board's referral questions the applicability of one of our basic rules of practice, and it could have broad-reaching implications in future license renewal proceedings.²⁶ We therefore take review of the Board's referred ruling. We begin with an overview of our waiver criteria in section 2.335(b).

Section 2.335(b) provides a limited exception to our general prohibition against challenges to NRC rules or regulations in adjudicatory proceedings.²⁷ To litigate an issue that

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(Feb. 26, 2013) (unpublished) (granting unopposed motion requesting briefing and setting briefing schedule).

²⁵ 10 C.F.R. § 2.341(f)(1). We revised Part 2 of our rules of practice last year, including section 2.341(f)(1). Prior to the rule revision, section 2.341(f)(1) required that the referred ruling raise a "significant and novel legal or policy issue" and necessitate "resolution . . . to materially advance the orderly disposition of the proceeding." Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,576 (Aug. 3, 2012). See also *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-12-13, 75 NRC 681, 686 (2012).

²⁶ For example, the provision in section 51.53(c)(3)(ii)(L) could come into play in a proceeding on an application for a second license renewal term under 10 C.F.R. § 54.31(d), or for the renewal of a license issued under 10 C.F.R. Part 52. Staff Answer at 35. See *infra* note 83 and accompanying text.

²⁷ Compare 10 C.F.R. § 2.335(b), with *id.* § 2.335(a).

otherwise would be outside the scope of an adjudication, a petitioner must file a petition for waiver showing that “special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which . . . [it] was adopted.”²⁸ The waiver petitioner must include an affidavit that states “with particularity” the special circumstances that justify waiver of the rule.²⁹

Our waiver standard is stringent by design. The NRC has discretion to transact its business broadly, through rulemaking, or case-by-case, through adjudication.³⁰ When we engage in rulemaking, we are “carving out”³¹ issues from adjudication for generic resolution.³² Therefore, to challenge the generic application of a rule, a petitioner seeking waiver must show that there is something extraordinary about the subject matter of the proceeding such that the rule should not apply.³³

²⁸ *Id.* § 2.335(b).

²⁹ *Id.*

³⁰ See *Balt. Gas & Electric Co. v. Natural Res. Def. Council*, 462 U.S. 87, 101 (1983).

³¹ *Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2)*, CLI-88-10, 28 NRC 573, 596 (1988).

³² See Restructuring of Facility License Application Review and Hearing Processes, 37 Fed. Reg. 15,127, 15,129 (July 28, 1972) (Waiver Standard) (creating general prohibition on challenges to NRC rules and regulations with limited exceptions “[i]n view of the expanding opportunities for participation in Commission rulemaking proceedings and increased emphasis on rulemaking proceedings as the appropriate forum for settling basic policy issues”). *Accord Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999); *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974).

³³ See 10 C.F.R. § 2.335(b). See also, e.g., *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-6, 75 NRC 352, 364-65 (2012); *Seabrook*, CLI-88-10, 28 NRC at 596.

The waiver standard in section 2.335(b) has remained virtually unchanged since its codification in 1972.³⁴ Since that time, our case law has given meaning to the “special circumstances” requirement.³⁵ In 2005, in the *Millstone* license renewal proceeding, we compiled the waiver case law to reflect the four-part test that we have long used.³⁶ To set aside a Commission rule or regulation in an adjudicatory proceeding, a petitioner must demonstrate that:

- (i) the rule’s strict application would not serve the purposes for which it was adopted;
- (ii) special circumstances exist that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived;
- (iii) those circumstances are unique to the facility rather than common to a large class of facilities; and
- (iv) waiver of the regulation is necessary to reach a significant safety problem.³⁷

All four *Millstone* factors must be met to justify a rule waiver.³⁸ The waiver petitioner faces a

³⁴ See Waiver Standard, 37 Fed. Reg. at 15,136 (adding then-section 2.758 to permit waiver of a Commission rule or regulation in special circumstances); Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2224 (Jan. 14, 2004) (Part 2 Amendments) (moving section 2.758 to section 2.335 without substantive change).

³⁵ See, e.g., *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-20, 30 NRC 231, 235 (1989); *Seabrook*, CLI-88-10, 28 NRC at 596-97; *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-80-16, 11 NRC 674, 675 (1980).

³⁶ See *Millstone*, CLI-05-24, 62 NRC at 559-60. We issued *Millstone* over a year after a major restructuring of our 10 C.F.R. Part 2 rules of practice, thus demonstrating the continued applicability of our waiver case law. See Part 2 Amendments, 69 Fed. Reg. at 2182.

³⁷ *Millstone*, CLI-05-24, 62 NRC at 559-60.

³⁸ See *id.* at 560.

substantial burden,³⁹ but not an impossible one.

The *Millstone* factors are derived from the language and purpose of section 2.335. The first two factors, as the Board observed, closely track the plain language of section 2.335(b).⁴⁰ The second two factors interpret section 2.335(b) in accordance with the provision's underlying purpose.

A showing of "uniqueness," the third *Millstone* factor, is necessary to justify our setting aside that regulation for the purposes of a specific proceeding.⁴¹ This reflects our view that, in general, challenges to regulations are best evaluated through generic means.⁴² Only where a particular challenge to a regulation rests on issues that are legitimately unique to the proceeding and do not imply broader concerns about the rule's general viability or appropriateness would it make sense to resolve the matter through site-specific adjudication. To be sure, if an issue were "common to a large class of facilities," then it would be appropriate for us to address the issue through rulemaking. And in view of the fact that we will not set aside a duly-promulgated regulation lightly, the fourth *Millstone* factor requires a showing that the requested waiver is

³⁹ Cf. *Long Island Lighting Co.* (Shoreham Nuclear Power Station), CLI-85-1, 21 NRC 275, 280 (1985) (Separate Views of Commissioner Asselstine).

⁴⁰ LBP-13-1, 77 NRC at 64. See 10 C.F.R. § 2.335(b) ("The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted.").

⁴¹ See *Seabrook*, CLI-88-10, 28 NRC at 597-98.

⁴² If a petitioner's challenge to an agency rule or regulation relates to an issue of broader significance, then filing a petition for rulemaking under 10 C.F.R. § 2.802 is the better approach. See 10 C.F.R. § 2.802(a) ("Any interested person may petition the Commission to issue, amend or rescind any regulation."). See also *Waiver Standard*, 37 Fed. Reg. at 15,129; *Pilgrim*, CLI-12-6, 75 NRC at 364-65; *Vermont Yankee/Pilgrim*, CLI-07-3, 65 NRC at 20-21.

necessary to address an issue of some significance. The rationale that we provided over twenty years ago holds true today: our “agenda is crowded with significant regulatory matters It would not be consistent with [our] statutorily mandated responsibilities to spend time and resources on matters that are of no substantive regulatory significance.”⁴³

The underlying issue in *Millstone* related to safety, as did the issue in the *Seabrook* proceeding referenced therein.⁴⁴ Since our decision in *Millstone*, we have not stated expressly whether “significance” would apply to an environmental question, but we have implied in other cases, including this one, that a waiver could be obtained for an environmental contention as well.⁴⁵ We clarify now that the fourth *Millstone* factor also may apply to a significant environmental issue.

A. The Referred Ruling

Here, presented with the perceived “impossibility” of finding a prima facie case for waiver, the Board referred to us the Board’s denial of NRDC’s waiver petition, asking us to explain the interplay between 10 C.F.R. § 51.53(c)(3)(ii)(L) and 10 C.F.R. § 2.335(b).⁴⁶ The Board focused on the language of section 51.53(c)(3)(ii)(L) and determined that the purpose of the provision is to exempt license renewal applicants from considering SAMAs if they have been

⁴³ *Seabrook*, CLI-88-10, 28 NRC at 597.

⁴⁴ See *Millstone*, CLI-05-24, 62 NRC at 555 (emergency planning); *Seabrook*, CLI-88-10, 28 NRC at 600 (financial qualifications).

⁴⁵ See, e.g., CLI-12-19, 76 NRC at 388; *Pilgrim*, CLI-12-6, 75 NRC at 365. Although we need not reach the fourth *Millstone* factor today (as discussed *infra*), we provide clarification on this point to reinforce that waiver of a rule pertaining to the agency’s environmental responsibilities is possible.

⁴⁶ LBP-13-1, 77 NRC at 69.

considered already.⁴⁷ The source of the Board's confusion is its notion of the purpose of the exception in section 51.53(c)(3)(ii)(L).⁴⁸ Exempting certain applicants from providing a SAMA analysis at the license renewal stage is certainly the intended effect of the rule, but the rule's underlying purpose is more complex than that. Rather than assuming that a rule's purpose is simply to achieve its stated effect, one must "look further."⁴⁹

Like all of our environmental regulations in 10 C.F.R. Part 51, section 51.53(c)(3)(ii)(L) is aimed at satisfying the NRC's obligations under the National Environmental Policy Act (NEPA).⁵⁰ NEPA requires the NRC to prepare a "detailed statement," i.e., an environmental impact statement (EIS), discussing the environmental impacts, alternatives, and mitigation measures for any "major Federal action[] significantly affecting the quality of the human environment."⁵¹ To assist us in the preparation of a supplemental EIS, we require license renewal applicants to prepare an environmental report.⁵² Among other Part 51 provisions, section 51.53(c)(3)(ii) describes the types of information that an environmental report must

⁴⁷ *Id.* at 66.

⁴⁸ *See id.* at 69.

⁴⁹ *Seabrook*, CLI-88-10, 28 NRC at 599. The *Seabrook* case is instructive. In *Seabrook*, we recognized that a superficial reading of the rule sought to be waived—there, a rule that exempted electric utilities from a financial qualifications review at the operating license stage—would lead to a waiver "impossibility" result. *See id.* We explained that "[t]he purpose of the . . . rule sought to be waived is elimination of case-by-case financial qualifications reviews. If we go no further than the . . . rule, no waiver could ever be granted because any waiver, by its nature, would defeat rather than advance the rule's purpose." *Id.* (emphasis omitted). Recognizing that waivers were "clearly contemplated," we reasoned that we must look further than the rule language, by examining "the underlying purpose of the requirement that there be a financial qualifications review." *Id.* at 599-600 (emphasis omitted).

⁵⁰ *See* 10 C.F.R. § 51.10.

⁵¹ NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C).

⁵² *See* 10 C.F.R. §§ 51.41, 51.45(a), 51.95(c).

contain.⁵³ Section 51.53(c)(3)(ii)(L), in particular, requires that an environmental report include a discussion of SAMAs if the NRC has not considered them previously for the applicant's plant.⁵⁴ As we explained in the Statements of Consideration adopting section 51.53(c)(3)(ii)(L), we did not require license renewal applicants for whom SAMAs were considered previously to provide a supplemental SAMA analysis because we determined that one SAMA analysis would uncover most cost-beneficial measures to mitigate both the risk and the effects of severe accidents, thus satisfying our obligations under NEPA.⁵⁵ Putting all of this together, the purpose of the supplemental-SAMA-analysis exception in section 51.53(c)(3)(ii)(L), then, is to reflect our view that one SAMA analysis, as a general matter, satisfies our NEPA obligation to consider measures to mitigate both the risk and the environmental impacts of severe accidents.

That said, even at that time, we did not foreclose the possibility that cost-beneficial mitigation measures might be identified in future license-application reviews.⁵⁶ Indeed, we acknowledged that we are required under NEPA to consider new and significant information in our environmental analyses.⁵⁷ Therefore, when promulgating the final Part 51 rule, we included section 51.53(c)(3)(iv), which requires a license renewal applicant to identify in its environmental

⁵³ *Id.* § 51.53(c)(3)(ii). See generally *id.* §§ 51.45(a), 51.53.

⁵⁴ *Id.* § 51.53(c)(3)(ii)(L).

⁵⁵ See Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,481 (June 5, 1996) (Part 51 Amendments) (“The Commission believes it unlikely that any site-specific consideration of [SAMAs] for license renewal will identify major plant design changes or modifications that will prove to be cost-beneficial for reducing severe accident frequency or consequences.”).

⁵⁶ See *id.* (noting possible cost-beneficial “procedural and programmatic fixes”).

⁵⁷ *Id.* at 28,468. See *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 373-74 (1989).

report any “new and significant information of which the applicant is aware” to assist in the preparation of our own new-and-significant-information analysis.⁵⁸

“New and significant information” related to SAMAs could undermine the purpose of the exception in section 51.53(c)(3)(ii)(L). If new and significant information is available, then the original SAMA analysis may be inadequate to satisfy NEPA at the license renewal stage, and may require supplementation.⁵⁹ Our rules provide a mechanism for supplementing an original NEPA analysis.⁶⁰ But our rules do not guarantee a hearing,⁶¹ nor is a hearing necessary to satisfy our NEPA obligations.⁶²

As we explained in CLI-12-19, if a petitioner wishes to litigate the adequacy of a previously-conducted SAMA analysis in a license renewal adjudication, a waiver of section 51.53(c)(3)(ii)(L) would be required. The environmental analysis of severe accidents is designated as a “Category 2” site-specific issue for license renewal, and therefore the SAMA

⁵⁸ See 10 C.F.R. § 51.95(c)(4); Part 51 Amendments, 61 Fed. Reg. at 28,468, 28,488.

⁵⁹ See *Marsh*, 490 U.S. at 374 (“If there remains ‘major Federal actio[n]’ to occur, and if the new information is sufficient to show that the remaining action will ‘affec[t] the quality of the human environment’ in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared.” (alterations in original)). As we stated earlier in this case, “[w]e would expect that, if the Staff had in hand new information that could render invalid the original site-specific analysis, then such information should be identified and evaluated by the Staff for its significance, consistent with our NEPA requirements.” CLI-12-19, 76 NRC at 386-87 n.54.

⁶⁰ See, e.g., 10 C.F.R. §§ 51.73, 51.95(c)(3), (c)(4).

⁶¹ See, e.g., *id.* §§ 2.309(f)(1), 2.335(b).

⁶² See *Blue Ridge Environmental Defense League v. NRC*, 716 F.3d 183, 196 (D.C. Cir. 2013) (deferring to NRC’s decision not to admit petitioners’ NEPA contentions for hearing where NRC found the contentions did not satisfy 10 C.F.R. Part 2 contention admissibility requirements). See also *Massachusetts v. NRC*, 708 F.3d 63, 78 (1st Cir. 2013); *Vermont Yankee/Pilgrim*, CLI-07-3, 65 NRC at 22.

analysis normally is subject to challenge in a license renewal adjudicatory proceeding.⁶³ Thus, as a general matter, a petitioner may raise a SAMA-related contention in a license renewal adjudication if it satisfies our general contention admissibility criteria in section 2.309(f)(1).⁶⁴ In CLI-12-19, however, we explained that the exception in section 51.53(c)(3)(ii)(L) operates as the “functional equivalent” of a Category 1 designation “[f]or Limerick and similarly-situated plants for which SAMAs were already considered in an Environmental Impact Statement or Environmental Assessment.”⁶⁵ For Limerick and certain other plants, “the SAMA issue has been resolved by rule,” which means that the issue has been carved out from adjudication.⁶⁶ Consequently, to litigate a SAMA-related contention in this, as well as other adjudicatory proceedings where the SAMA-analysis exception applies, a petitioner must obtain a waiver by satisfying the requirements in section 2.335(b), in addition to satisfying the contention admissibility criteria in section 2.309(f)(1).⁶⁷ Alternatively, a petitioner may submit to the Staff any information that it believes to be new and significant by participating in our parallel NEPA

⁶³ See 10 C.F.R. § 51.53(c)(3)(ii)(L); 10 C.F.R. pt. 51, subpt. A, app. B; CLI-12-19, 76 NRC at 386. See, e.g., *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-1, 75 NRC 39 (2012).

⁶⁴ See, e.g., *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 406-18 (2012); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 322-37 (2012).

⁶⁵ CLI-12-19, 76 NRC at 386.

⁶⁶ *Id.* License renewal applicants whose facilities qualify for the SAMA-analysis exception are exempt from addressing severe accident mitigation in their environmental reports, just as they would be exempt from addressing Category 1 issues. Compare 10 C.F.R. § 51.53(c)(3)(i), with *id.* § 51.53(c)(3)(ii)(L).

⁶⁷ CLI-12-19, 76 NRC at 386.

process. Among other things, the Staff provides an opportunity for public comment on the draft supplemental EIS.⁶⁸

The operation of the SAMA-analysis exception here is analogous to the Board's example of the waiver process relative to bird collisions with cooling towers,⁶⁹ which is analyzed in the license renewal Generic Environmental Impact Statement (GEIS) and designated as a "Category 1" issue.⁷⁰ As the Board observed, we determined that bird collisions "have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term."⁷¹ Because this issue has been designated Category 1, it reflects the NRC's expectation that our NEPA obligations have been satisfied with reference to

⁶⁸ See 10 C.F.R. §§ 51.73, 51.74. On April 30, 2013, the Staff published the Limerick draft supplemental EIS for public comment. "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants Regarding Limerick Generating Station, Units 1 and 2" (Draft Report for Comment), NUREG-1437, Supplement 49 (Apr. 30, 2013) (ML13120A078) (Limerick Draft SEIS). Thereafter, NRDC re-filed all four of its original contentions, as well as its pending waste confidence contention, *see supra* note 3, to apply them to the draft supplemental EIS, and to preserve its "rights to appeal either by a timely motion for reconsideration or to the Commission or an appellate court." Resubmitted Contentions at 2. In addition, NRDC filed comments on the draft supplemental EIS. *See* Fettus, Geoffrey H., et al., Natural Resources Defense Council, Letter to Cindy Bladey, NRC (June 27, 2013) (ML13189A129). The Board tolled the time for NRDC to resubmit the contentions associated with its waiver request until we issued a decision addressing the Board's referred ruling in LBP-13-1, but denied NRDC's request to resubmit its remaining contentions. *See* Memorandum and Order (Ruling on Resubmission of Contentions) (July 12, 2013), at 1 (unpublished); Board Clarification Order at 1-2. (The Board continues to hold the waste confidence contention in abeyance. *See supra* note 3.) Our decision today renders moot the need to toll the deadline for resubmitting the contentions associated with NRDC's waiver petition.

⁶⁹ *See* LBP-13-1, 77 NRC at 67.

⁷⁰ *See* GEIS at 4-45 to 4-48; GEIS Rev. 1, at 4-70 to 4-74.

⁷¹ LBP-13-1, 77 NRC at 67 (quoting 10 C.F.R. pt. 51, subpt. A, app. B, tbl. B-1)). *See also* GEIS Revisions, 78 Fed. Reg. at 37,320 ("Bird collisions with cooling towers and other plant structures and transmission lines occur at rates that are unlikely to affect local or migratory populations and the rates are not expected to change.").

our previously-conducted environmental analysis in the GEIS.⁷² And because it is a Category 1 issue, a license renewal applicant need not address bird collisions in its environmental report unless it is aware of relevant new and significant information.⁷³

Continuing with the Board's example, if new and significant information showed that "changes in the migratory habits of a certain bird . . . led to a large number of collisions with the cooling towers at a specific plant," then "a petitioner might well be able to satisfy . . . [our waiver criteria] and, therefore, challenge [an] applicant's lack of consideration of bird collisions with cooling towers" in a license renewal adjudicatory proceeding.⁷⁴ In other words, the petitioner must show that new and significant information, unique to a particular plant, exists with regard to bird collisions, such that the Category 1 finding in 10 C.F.R. Part 51, Subpart A, Appendix B should be waived to litigate the issue in a site-specific proceeding. Likewise, the focus in this case is whether there is new and significant information, unique to Limerick, pertaining to the 1989 SAMDA analysis for Limerick's original operating licenses, such that the exception in section 51.53(c)(3)(ii)(L) should be waived to litigate NRDC's claims in this proceeding.⁷⁵

B. NRDC's Waiver Petition

With this framework in mind, we turn to NRDC's waiver petition. As discussed above, NRDC raised three challenges to Exelon's Environmental Report, claiming that Exelon (and,

⁷² See GEIS at 1-7 to 1-11, 4-45 to 4-48; GEIS Rev. 1, at 1-16 to 1-19, 4-70 to 4-74.

⁷³ See 10 C.F.R. §§ 51.53(c)(3)(i), 51.53(c)(3)(iv). But even then, a waiver would be necessary to litigate the issue of potentially new and significant information pertaining to bird collisions in an adjudicatory proceeding. See *Vermont Yankee/Pilgrim*, CLI-07-3, 65 NRC at 20-21.

⁷⁴ LBP-13-1, 77 NRC at 67.

⁷⁵ See CLI-12-19, 76 NRC at 386-87. See generally 1989 SAMDA Analysis.

ultimately, the NRC in the supplemental EIS)⁷⁶ must: (1) consider potential new SAMAs that have been considered for other Mark II boiling water reactors; (2) use economic cost information specific to Limerick, rather than Three Mile Island; and (3) use “modern techniques for assessing whether the newly considered [SAMAs] are cost-beneficial.”⁷⁷

Exelon and the Staff argued that NRDC’s waiver petition failed to meet any of the four *Millstone* factors.⁷⁸ Based on our review of NRDC’s petition, we find that a waiver is not warranted here. We agree with Exelon and the Staff that NRDC has not shown that the issues it raises are unique to Limerick.⁷⁹

NRDC’s witnesses, Dr. Weaver and Mr. Fettus, claimed that Limerick is unique because it will be the only boiling water reactor not to update its SAMA analysis with the potentially new and significant information that NRDC identifies.⁸⁰ But at bottom, NRDC’s challenge to Exelon’s Environmental Report amounts to a general claim that could apply to any license renewal applicant for whom SAMAs already were considered. Due to the nature of the rule, twenty or more years may pass between an original SAMA analysis and the submission of a license

⁷⁶ See 10 C.F.R. § 2.309(f)(2) (“On issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant’s environmental report.”).

⁷⁷ Waiver Petition at 3 & n.3. See also Fettus Declaration; Weaver Declaration. Exelon asserts that the Weaver Declaration is deficient because it is a revised version of the declaration that NRDC submitted with its hearing request that is signed only by Dr. Weaver, and therefore apparently lacks the approval of two of its original signatories. See Exelon Answer at 43. We need not address that issue. As discussed below, viewing NRDC’s waiver petition and supporting documentation in the light most favorable to NRDC, we find that NRDC has not shown that a waiver is appropriate here.

⁷⁸ Exelon Answer at 3-4; Staff Answer at 1.

⁷⁹ Because NRDC’s claims fail to satisfy the “uniqueness” factor, we need not, and do not, reach the other *Millstone* factors in today’s decision.

⁸⁰ See Fettus Declaration ¶ 4; Weaver Declaration ¶ 9.

renewal application for most, if not all applicants that qualify for the SAMA-analysis exception in section 51.53(c)(3)(ii)(L).⁸¹ For example, if the licensees for Comanche Peak Units 1 and 2, and Watts Bar Unit 1—whose plants also qualify for the SAMA-analysis exception—apply to renew their operating licenses, they may face the same criticism: essentially, that the passage of time between original licensing and renewal has rendered their SAMA analysis out-of-date.⁸² Similarly, plants for which a SAMA analysis was conducted for the first time under section 51.53(c)(3)(ii)(L) may face this general criticism upon application for a subsequent renewal term.⁸³ As the Staff points out, waiver of the provision in section 51.53(c)(3)(ii)(L) based on NRDC's proffered new information alone would create an exception to litigate SAMAs in the

⁸¹ In other words, this time frame is inherent in our regulatory scheme, which provides for a forty-year license term, with the possibility of license renewal for an additional twenty-year period. See, e.g., 10 C.F.R. §§ 2.109(b), 50.51(a), 54.17(c). The earliest a license renewal application may be submitted is twenty years before the expiration date of the operating license in effect. *Id.* § 54.17(c).

⁸² See Part 51 Amendments, 61 Fed. Reg. at 28,481 (“NRC staff considerations of [SAMAs] have already been completed and included in an EIS or supplemental EIS for Limerick, Comanche Peak, and Watts Bar. Therefore, [SAMAs] need not be reconsidered for these plants for license renewal.”). Although Comanche Peak Units 1 and 2 and Watts Bar Unit 1 are not boiling water reactors, additional SAMAs have been considered for other license renewal applications since they received their operating licenses. In addition, Comanche Peak and Watts Bar received their operating licenses prior to the release of the MACCS2 code. See Staff Answer at 29-30; Exelon Answer at 35. As we explained in the Statements of Consideration regarding section 51.53(c)(3)(ii)(L), we did not mandate a specific approach to SAMA analyses; instead, we stated that we would review “each severe accident mitigation consideration provided by a license renewal applicant on its merits and determine whether it constitutes a reasonable consideration of [SAMAs].” Part 51 Amendments, 61 Fed. Reg. at 28,481-82.

⁸³ See 10 C.F.R. § 54.31(d). This also could be the case for new plants licensed under 10 C.F.R. Part 52. See, e.g., *South Carolina Electric & Gas Co. and South Carolina Public Service Authority (also referred to as Santee Cooper)* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-12-9, 75 NRC 421 (2012); *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-12-2, 75 NRC 63 (2012).

Limerick proceeding that would “necessarily swallow the rule in [section] 51.53(c)(3)(ii)(L).”⁸⁴ Accordingly, “[t]he rulemaking process, as opposed to a site-specific licensing proceeding, is the appropriate venue for such a far-reaching challenge.”⁸⁵

That is not to say that a challenge based on new and significant information cannot overcome the “uniqueness” factor of our waiver standard. Here, however, NRDC offers little to show how the information it provides sets *Limerick* apart from other plants undergoing license renewal whose previous SAMA analyses purportedly also would be in need of updating. For example, some of NRDC’s proposed SAMAs could be used for any boiling water reactor, not just those with Mark II containments.⁸⁶ And NRDC’s argument that a new SAMA analysis should be performed because a newer methodology is available could apply to two other plants now (Comanche Peak and Watts Bar),⁸⁷ and presumably to other plants in the future whenever further developments occur regarding other methods of SAMA analysis.

Additionally, with regard to economic cost, NRDC provides data that is specific to *Limerick* and the surrounding area, but fails to make a sufficient connection between this data and the 1989 SAMDA analysis for *Limerick*.⁸⁸ Instead, Dr. Weaver concludes, without support, that “[n]ew information pertaining to economic risk could plausibly cause materially different results in the assessment of impacts of an accident at *Limerick*, and materially different cost-

⁸⁴ Staff Answer at 35. See also *id.* at 27.

⁸⁵ *Id.* at 35.

⁸⁶ See Exelon Answer at 34; Exelon Affidavit ¶ 31, tbl. A.

⁸⁷ See Exelon Answer at 35.

⁸⁸ See Weaver Declaration ¶¶ 14-24.

benefit results in a new SAMA analysis for Limerick.”⁸⁹ Similarly, Dr. Weaver asserts, without more, that use of the MACCS2 code or similar methodology would be “specific” to Limerick, and could show that additional mitigation alternatives are cost-beneficial.⁹⁰ In other words, NRDC offers new information, but makes no attempt, other than concluding that a change in the SAMA analysis is “plausible,” to discuss its potential significance to Limerick.⁹¹ To litigate SAMA-related issues in an adjudicatory proceeding, however, we require the demonstration of “a potentially significant deficiency” in the SAMA analysis—“that is, a deficiency that credibly could render the SAMA analysis unreasonable under NEPA standards.”⁹² Otherwise, “[i]t always will be possible to conceive of yet another input or methodology that could have been used in the SAMA computer modeling, and many different inputs and approaches may all be reasonable choices.”⁹³ Given that similar updated information could be used for other plants that qualify for the SAMA-analysis exception, there is nothing unique about the information that NRDC identifies to justify waiving the rule for this particular adjudicatory proceeding.

We therefore find that NRDC has not shown that a waiver of section 51.53(c)(3)(ii)(L) is appropriate here. Fundamentally, NRDC claims that the SAMA analysis must be redone due to the passage of time between initial licensing and Exelon’s submittal of its license renewal

⁸⁹ *Id.* ¶ 17.

⁹⁰ *Id.* ¶ 4, 9, 13.

⁹¹ *See id.* ¶ 17.

⁹² *Pilgrim*, CLI-12-1, 75 NRC at 57 (emphasis omitted).

⁹³ *Id.* *See also Seabrook*, CLI-12-5, 75 NRC at 323 (“[T]he proper question is not whether there are plausible alternative choices for use in the analysis, but whether the analysis that was done is reasonable under NEPA. We have long held that contentions admitted for litigation must point to a deficiency in the application, and not merely ‘suggestions’ of other ways an analysis could have been done, or other details that could have been included.”).

application. If our waiver standard is to operate as intended, we decline to set aside the rule based merely on a claim of new and significant information, without the support necessary to show that it is unique to Limerick.⁹⁴ For these reasons, we deny NRDC's waiver request.

Nonetheless, we recognize the NRC's continuing duty to take a "hard look" at new and significant information for each "major federal action" to be taken.⁹⁵ The issues that NRDC raises are not appropriate for litigation in a site-specific proceeding due to NRDC's failure to demonstrate the need for a rule waiver. We find, however, that NRDC has identified information that bears consideration in our environmental review of Exelon's application outside of the adjudicatory process.⁹⁶ Therefore, we refer NRDC's waiver petition to the Staff as additional comments⁹⁷ on the Limerick draft supplemental EIS for the Staff's consideration and response.⁹⁸

⁹⁴ Cf. *Vermont Yankee/Pilgrim*, CLI-07-3, 65 NRC at 21 ("Adjudicating Category 1 issues site by site based merely on a claim of 'new and significant information,' would defeat the purpose of resolving generic issues in a GEIS.").

⁹⁵ See *Marsh*, 490 U.S. at 374.

⁹⁶ We disagree with NRDC's assertion, see Waiver Petition at 15, that obtaining a waiver and litigating a previously-considered environmental issue is the only way to consider new and potentially significant information regarding that issue. See CLI-12-19, 76 NRC at 387 (noting NRDC's option to participate outside of the adjudication by submitting comments on the draft supplemental EIS); Part 51 Amendments, 61 Fed. Reg. at 28,470 (noting that the NRC will consider all comments on the draft supplemental EIS "regardless of whether the comment is directed to impacts in Category 1 or 2"). *Accord Massachusetts*, 708 F.3d at 74.

⁹⁷ See *supra* note 68.

⁹⁸ Cf. *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), CLI-10-29, 72 NRC 556, 563 (2010) (directing the Staff to consider new information regarding need for power and alternative sources of energy).

We expect that the Staff will incorporate any new SAMA-related information that it finds to be significant in the final supplemental EIS.⁹⁹

III. CONCLUSION

For the reasons set forth above, we *review* the Board's referred ruling, and *find* that the Board erred in interpreting the purpose of the SAMA-analysis exception in 10 C.F.R. § 51.53(c)(3)(ii)(L). We *affirm* the Board's denial of NRDC's waiver petition because NRDC has not shown that the issues it seeks to litigate are unique to Limerick and thereby justify waiver of the rule to permit litigation in this adjudatory proceeding. Without a waiver, NRDC's SAMA-related contentions impermissibly challenge section 51.53(c)(3)(ii)(L). Nevertheless, we *direct* the Staff to review the significance of any new SAMA-related information in its environmental review of Exelon's license renewal application, including the information presented in NRDC's waiver petition, and to discuss its review in the final supplemental EIS.

IT IS SO ORDERED.

For the Commission

NRC SEAL

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 31st day of October, 2013.

⁹⁹ See *Marsh*, 490 U.S. at 374; *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1024 (9th Cir. 1980). See also *Watts Bar*, CLI-10-29, 72 NRC at 563; Part 51 Amendments, 61 Fed. Reg. at 28,470. In the Limerick draft supplemental EIS, the Staff already has considered some new information beyond what Exelon included in its Environmental Report, including whether to incorporate potentially cost-beneficial SAMAs identified at other plants, as well as the practicality of using state-of-the-art SAMA methodology. See Limerick Draft SEIS at 5-7, 5-11 to 5-13.