

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENERGY NORTHWEST)	Docket No. 50-397-LR
)	
(Columbia Generating Station))	
)	

NRC STAFF'S ANSWER TO PETITION FOR HEARING AND LEAVE TO INTERVENE

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September 15, 2011

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
BACKGROUND	2
DISCUSSION.....	4
I. Standing to Intervene	4
A. Applicable Legal Standards.....	4
B. Northwest Environmental Advocates Have Established Standing to Intervene	6
II. Requirements for the Admission of Non-Timely Filings and Late-Filed Contentions	7
A. Applicable Legal Standards.....	7
B. NWEA Does Not Meet the Late-Filing Standards of 10 C.F.R. § 2.309(f)(2)	10
C. NWEA Does Not Meet the Late-Filing Standards of 10 C.F.R. § 2.309(c)	13
1. NWEA Has Not Demonstrated “Good Cause” for Failure to File on Time.....	13
2. NWEA Has Other Means By Which It Can Protect Its Interest.....	17
3. NWEA’s Petition Will Broaden the Issues and Delay the Proceedings ...	18
4. NWEA’s Participation in the Proceeding Cannot Reasonably Be Expected to Contribute to a Sound Record.....	19
5. The Balance of Factors in 10 C.F.R. § 2.309(c) Does Not Weigh in Favor of Admitting NWEA’s Untimely Petition.....	21
III. Admissibility of Contentions	21
IV. Petitioner’s Contention Raises Issues Beyond the Scope of This Proceeding	24
A. The Petition is Beyond the Scope of this Proceeding Because It Raises Issues that may be Addressed by the Commission Generically.....	25
B. The Petition is Beyond the Scope of the Proceeding Because it Challenges the Commission’s Generic Determinations in Table B-1 on the Environmental Impacts of Design Basis and Severe Accidents	26
C. The Petition is Beyond the Scope of this Proceeding Because it Challenges the Commission’s Regulations in 10 C.F.R. §§ 51.45(c) and 51.53(c).....	28

D.	Emergency Planning Issues Raised by the Petition are Beyond the Scope of This Proceeding	29
E.	The Petition is Beyond the Scope of the Proceeding Because it is a Generalized Attack on the Commission’s Safety Regulations and the Adequacy of CGS’s Current Licensing Basis	29
V.	The Petition Does Not Raise a Material Issue	32
A.	The Task Force Report Makes Safety Recommendations That Do Not Relate to the Petition’s Environmental Concerns	32
B.	The Petition Does Not Identify the Specific Portions of the Application It Challenges	34
C.	The Petition Does Not Raise a Material Dispute with Respect to Severe Accidents	36
D.	The Petition Does Not Raise a Material Challenge to the SAMA Analysis.....	39
1.	NEPA Does Not Require Implementation of Mitigation Measures.....	39
2.	The Petition Does Not Raise a Material Dispute on any Specific SAMA	41
E.	The Petition Does Not Raise a Material Claim with Respect for Need for Power	43
VI.	The Petition Does Not Rely on an Adequate Factual Basis	45
A.	None of the TFR’s Recommendations Relate to SAMAs	46
B.	Dr. Makhijani’s Declaration Does Not Support the Petition’s Claims.....	47
C.	The TFR Does Not Question Whether the NRC Can Continue to License Reactors	49
D.	Petitioner’s Reliance on <i>Marsh v. Oregon</i> is Misplaced	50
E.	Conclusion.....	51
VII.	Suspension Request	52
	CONCLUSION	53

September 16, 2011

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INTRODUCTION

On August 22, 2011, Petitioner Northwest Environmental Advocates ("NWEA" or "Petitioner") filed a petition to intervene and hearing request ("Petition") for the license renewal application of Columbia Generating Station.¹ Pursuant to 10 C.F.R. § 2.309(h), the Staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby files its answer.

While the Staff does not oppose the standing of the Petitioner, the Staff opposes granting party status to the Petitioner because of the impermissibly late filing and submission of an inadmissible contention by Petitioner. Moreover, the contention raises issues that are outside the scope of this license renewal proceeding, is not material, and is not supported by an adequate factual basis. Therefore, NWEA's Petition should be denied.

¹ See Petition for Hearing and Leave to Intervene in Operating License Renewal for Energy Northwest's Columbia Generating Station (Aug. 22, 2011) ("Petition") (Agency Documents Access and Management System ("ADAMS") Accession No. ML11234A532).

BACKGROUND

This proceeding arises out of the application of Energy Northwest (“Applicant”) dated January 19, 2010, to renew its operating license for Columbia Generating Station (“CGS”).² The unit is located in Benton County, approximately 12 miles north of Richland, Washington and employs a boiling water reactor designed by General Electric Company. The current license for CGS expires December 20, 2023. Energy Northwest’s license renewal application seeks authorization to operate CGS for an additional 20 years beyond the period specified in the current license.³ Pursuant to 10 C.F.R. § 51.45, Appendix E of the LRA contained an Environmental Report (“ER”) that assessed the environmental impacts of license renewal.⁴

On February 2, 2010, the U.S. Nuclear Regulatory Commission (“NRC”) published a Notice of Receipt and Availability of Application.⁵ On March 11, 2010, the NRC published a Notice of Opportunity for Hearing on the LRA, which stated that written petitions for leave to intervene and requests for hearing were due to be filed within 60 days.⁶ Pursuant to that Notice, requests for a hearing and petitions to intervene were due by May 10, 2010.⁷

² Letter from WS Oxenford, Vice President, Nuclear Generation & Chief Nuclear Officer, dated January 19, 2010, transmitting application for license renewal for CGS, operating license NPF-21 (ADAMS Accession No. ML100250656) (“LRA” or “Application”).

³ LRA at 1.1.5.

⁴ Appendix E, Applicant’s Environmental Report Operating License Renewal Stage (Jan. 19, 2010) (ADAMS Accession No. ML100250666). Pursuant to 10 C.F.R. § 2.309(f)(2), before the NRC publishes its draft and final environmental impact statements, petitioners must file contentions based on the information in the ER.

⁵ *Energy Northwest; Notice of Receipt and Availability of Application for Renewal of Columbia Generating Station Facility Operating License No. NPF-21 for an Additional 20-Year Period*, 75 Fed. Reg. 5353 (February 2, 2010).

⁶ *Notice of Acceptance for Docketing of the Application, Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. NPF-21 for an Additional 20-Year Period Energy Northwest, Columbia Generating Station*, 75 Fed. Reg. 11,572 (March 11, 2010).

⁷ See *id.*

Almost a year later, Japan experienced an earthquake followed by a tsunami, which damaged four reactors located at the Fukushima Dai-ichi site. On April 14, 2011, multiple intervenors in numerous NRC proceedings, including NWEA, asked the Commission to stay all reactor licensing decisions, pending consideration of the Fukushima events.⁸ In the interim, the near-term task force, a senior-level agency group tasked with studying the immediate safety impacts of the Fukushima accident, issued its report titled “Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident” (“TFR”) on July 12, 2011.⁹ On September 9, 2011, the Commission denied the request to stay the licensing decisions.¹⁰

On August 12, 2011, petitioners in approximately twenty other proceedings filed petitions based on the TFR recommendations. Ten days later, on August 22, 2011, NWEA filed their petition for leave to intervene based on the information in the TFR.¹¹ NWEA seeks representational standing on behalf of three members: Tom Bailie, Bruce Smartlowit, and Scott Madison.¹²

The contention states:

The ER for the CGS license renewal fails to satisfy the requirements of NEPA because it does not address the new and significant environmental implications of the findings and recommendations raised by the NRC’s Fukushima Task Force

⁸ Emergency Petition To Suspend All Pending Reactor Licensing Decisions And Related Rulemaking Decisions Pending Investigation Of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident (“Emergency Petition”) (April 14, 2011) (ADAMS Accession No. ML111080866).

⁹ Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force review of Insights from the Fukushima Dai-ichi Accident (July 12, 2011) (ADAMS Accession No. ML111861807).

¹⁰ *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2) et al., CLI-11-05, 74 NRC ____ (Sep. 9, 2011) (slip op. at 3) (ADAMS Accession No. ML11252A535) (“Suspension Order”).

¹¹ See Petition at 1.

¹² *Id.* at 3-5.

Report. As required by NEPA and the NRC regulations, these implications must be addressed in the ER.¹³

On September 6, 2011, an Atomic Safety and Licensing Board ("Board") was established to rule on petitions for leave to intervene and hearing requests, and to preside over any proceeding that may be held in this matter.¹⁴ For the reasons discussed below, this petition is inadmissible.

DISCUSSION

I. Standing to Intervene

A. Applicable Legal Standards

The Commission's rules of practice provide:¹⁵ "[a]ny person¹⁶ whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene and a specification of the contentions which the person seeks to have litigated in the hearing." 10 C.F.R. § 2.309(a). In accordance with the regulations, the Board "will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of [10 C.F.R. § 2.309(f)]." *Id.* A request for hearing or petition for leave to intervene must state:

(i) The name, address, and telephone number of the requestor or petitioner;

(ii) The nature of the requestor's/petitioner's right under [the Atomic Energy Act of 1954, as amended,] to be made a party to the proceeding;

¹³ Petition at 20.

¹⁴ Energy Northwest; Establishment of Atomic Safety and Licensing Board, 76 Fed. Reg. 56242 (Sep. 12, 2011) (ADAMS Accession No. ML11249A142).

¹⁵ See "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," 10 C.F.R. Part 2.

¹⁶ "Person" is defined as "(1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission ... any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing." 10 C.F.R. § 2.4.

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and

(iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1).

The Commission has observed, “[a]t the heart of the standing inquiry is whether the petitioner has ‘alleged such a personal stake in the outcome of the controversy’ as to demonstrate that a concrete adverseness exists which will sharpen the presentation of the issues.” *Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994) (citation and quotation omitted). The Commission explained that in order to determine whether a petitioner has demonstrated a personal stake in the outcome,

the Commission applies contemporaneous judicial concepts of standing. Accordingly, a petitioner must (1) allege an “injury in fact” that is (2) “fairly traceable to the challenged action” and (3) is “likely” to be redressed by a favorable decision.”

Id. at 71–72 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)).

In license renewal proceedings, standing may be based on a petitioner's proximity to the facility at issue. See, e.g., *Entergy Nuclear Operations, Inc.*, (Indian Point, Units 2 & 3), LBP-08-13, 68 NRC 43, 60 (2008). Accordingly, “a petitioner is presumed to have standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within 50 miles of the nuclear power reactor.” *Id.* (citing *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-01-06, 53 NRC 138, 146 (2001), *aff'd on other grounds*, CLI-01-17, 54 NRC 3 (2001)).

An organization may establish its standing to intervene based on organizational standing (showing that its own organizational interests could be adversely affected by the proceeding), or representational standing (based on the standing of its members). *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-91-13, 34 NRC 185, 187 (1991). To show organizational standing, an organization must show a discrete institutional injury to itself,

not just a general environmental or policy interest. *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001). When an organization seeks to establish representational standing, it must identify a member by name and address, and it must show that the member “has authorized the organization to represent him or her and to request a hearing on his or her behalf.” See, e.g., *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 409 (2007); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-07, 63 NRC 188, 195 (2006) (citing *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 202 (2000)). Further, for the organization to establish representational standing, the member seeking representation must qualify for standing in his or her own right, the interests that the organization seeks to protect must be germane to its own purpose, and neither the asserted claim nor the requested relief must require an individual member to participate in the organization’s legal actions. *Palisades*, CLI-07-18, 65 NRC at 409; *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 323 (1999) (citing *Hunt v. Wash. State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977)).

B. Northwest Environmental Advocates Have Established Standing to Intervene

NWEA seeks representational standing in this proceeding. Petition at 3. NWEA states that it is an organization that seeks to protect environmental quality of the Pacific Northwest. *Id.* at 4-8. NWEA submitted affidavits from three members providing the address of each member and authorizing NWEA to represent the member. *Id.* at 4-5. However, as NWEA acknowledges, of the three affiants, only Tom Bailie lives within 50 miles of Columbia Generating Station and is entitled to the presumption of standing. *Id.* at 4-5. The other two members, Scott Madison and Bruce Smartlowit, do not reside within 50 miles of the Columbia Generating Station. NWEA argues that they may rely on members who reside outside of the 50 mile radius because the Fukushima accident demonstrated that effects of an accident may occur outside of the 50 mile radius. Petition at 5-7. The Commission has not expanded the rules governing its standing

presumption in response to the Fukushima event. But, the argument is superfluous in this situation since one member proffered by NWEA to establish representational standing does reside within the 50 mile radius. The Staff agrees that the affidavit of Tom Bailie is sufficient to confer representational standing on NWEA based on the presumption of standing.

The affidavit of Tom Bailie contains his name and address and authorizes NWEA to represent him.¹⁷ The affidavit states that the “continued operation of Columbia Generating Station for 20 additional years beyond its current license for 40 years of operation increases the risk to my health and safety, my family, and my land” and that if the safety and environmental concerns are not addressed in the license renewal, he may be subject to illness or death from atmospheric release of radiological material in an accident.¹⁸ Accordingly, NWEA provided sufficient information to show representational standing based on member Tom Bailie’s affidavit.

II. Requirements for the Admission of Non-Timely Filings and Late-Filed Contentions

A. Applicable Legal Standards

Intervenors who file late must satisfy not only the Commission's requirements to demonstrate standing (10 C.F.R. § 2.309(d)) and submit at least one admissible contention (10 C.F.R. § 2.309(f)(1)), but also the Commission's stringent requirements for untimely filings (10 C.F.R. § 2.309(c)) and late-filed contentions (10 C.F.R. § 2.309(f)(2)). *Florida Power & Light Co., FPL Energy Seabrook, LLC, FPL Energy Duane Arnold, LLC, Constellation Energy Group, Inc.* (Calvert Cliffs Nuclear Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plants, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1

¹⁷ Tom Bailie’s affidavit does not list his telephone number which is required by 10 C.F.R. § 2.309(d)(1)(i) to establish standing. In order to establish representational standing, a member must show that he has standing in his own right, which under the regulations requires that he provide his telephone number. In the event that the Board admits the contention, the Staff requests that Mr. Bailie provide his telephone number.

¹⁸ Declaration of Standing of Tom Bailie at 1-2.

and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 NRC 30, 33 (2006) (holding that failure to comply with pleading requirements for late filings constitutes sufficient grounds for rejecting intervention and hearing requests submitted three months late).

First, a late-filed contention may be admitted as a timely new contention if it meets the requirements of 10 C.F.R. § 2.309(f)(2). Under this provision, a contention filed after the initial filing period may be admitted with leave if it meets the following requirements:

(2) . . . The petitioner may amend those [timely filed] contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that –

(i) The information upon which the amended or new contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2).

Second, a contention that does not meet the requirements of 10 C.F.R. § 2.309(f)(2) may be admissible under the provisions governing nontimely contentions, set forth in 10 C.F.R. § 2.309(c)(1). Nontimely filings may only be entertained following a determination by the Board that a balancing of the eight factors in 10 C.F.R. § 2.309(c) weigh in favor of admission. The eight factors listed at § 2.309(c)(1) are as follows:

(i) Good cause, if any, for the failure to file on time;

(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;

(iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;

(v) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(vi) The extent to which the requestor's/ petitioner's interests will be represented by existing parties;

(vii) The extent to which the requestor's/ petitioner's participation will broaden the issues or delay the proceeding; and

(viii) The extent to which the requestor's/ petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. § 2.309(c)(1); *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009); *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-22, 64 NRC 229, 234 n.7 (2006). The requirements for untimely filings and late-filed contentions are “stringent.”¹⁹ All eight factors must be addressed by the petitioner.²⁰ Failure to comply with the pleading requirements is sufficient grounds for denial of the motion to amend or admit a new contention.²¹

While petitioners must show a “favorable balance among the [eight] factors,” good cause is given the most weight.²² “Good cause has long been interpreted to mean that the information on which the proposed new contention is based was not previously available.”²³ To show good

¹⁹ *Oyster Creek*, CLI-09-7, 69 NRC at 260. See also *Nuclear Management Co., LLC*. (Palisades Nuclear Power Plant), CLI-06-17, 63 NRC 727, 732 (2006).

²⁰ *Oyster Creek*, CLI-09-07, 69 NRC at 260.

²¹ *Id.* at 260-61.

²² *Id.* at 261; *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-09-05, 69 NRC 115, 125-26 (2009); *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-05-32, 62 NRC 813 (2005) (citing *State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993)); *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 581 (2006).

cause for late filing under 10 C.F.R. § 2.309(c)(1), "a petitioner must show that the information on which the new contention is based was not *reasonably available to the public*, not merely that the *petitioner* recently found out about it."²⁴ If a petitioner cannot show good cause, the balance of the other factors must be "compelling."²⁵

The due date for filing timely petitions to intervene was May 10, 2010. By filing its Petition on August 22, 2011, over 15 months late, NWEA failed to meet the deadline for filing a timely petition to intervene and must address the standard for new contentions under 10 C.F.R. § 2.309(f)(2). Because it fails to meet this standard, the Petition must also address the factors for untimely filings under 10 C.F.R. § 2.309(c).

B. NWEA Does Not Meet the Late-Filing Standards of 10 C.F.R. § 2.309(f)(2)

In order to admit its new contention under 10 C.F.R. § 2.309(f)(2), NWEA must show that the information upon which the contention is based was not previously available, that such information is materially different than information previously available, and that they submitted the contention in a timely fashion based on the availability of the information.

In this case, the Petitioner asserts that the late-filed contention based on the information contained in the TFR is timely because prior to the publication of the TFR, "the information material to the contention was simply unavailable." Petition at 11. However, NWEA's own declarant, Dr. Makhijani, contradicts this argument by stating that the Task Force Report "provides further support for my opinions...."²⁶ Dr. Makhijani has previously provided his opinions to the Commission in support of a request in which the Petitioner jointly filed to

²³ *Millstone*, CLI-09-05, 69 NRC at 125-26.

²⁴ *Id.* at 126, emphasis in original.

²⁵ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 565 (2005); *Tennessee Valley Authority* (Watts Bar Nuclear Unit 2), CLI-10-12, 71 NRC ___, (Mar. 26, 2010) (slip op. at 4).

²⁶ Declaration of Dr. Arjun Makhijani Regarding Safety and Environmental Significance of NRC Task Force Report Regarding Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident (Aug. 22, 2011) ("Makhijani Declaration") (ADAMS Accession No. ML11234A53) at ¶ 6.

suspend licensing proceedings on April 19, 2011,²⁷ more than four months prior to his most recent declaration.²⁸

NWEA maintains further that the information on which the contention is based “is materially different than information previously available” and “materially different from the information upon which the ER was based” because the Fukushima accident had not taken place and the TFR had not been published at the time. Petition at 11-12. But the Petition only asserts that the TFR refutes the concept that “compliance with existing NRC safety regulations is sufficient to ensure that the environmental impacts of accidents are acceptable,” and “fundamentally question[s] the adequacy of the current level of safety provided by the NRC’s program for nuclear reactor regulation.” *Id.* at 12. In support, Dr. Makhijani states that “integration of the Fukushima data into NRC analyses of risks could lead to significant changes in design of new reactors and ... modifications at existing reactors as would be required for protection of public health and safety”²⁹ Dr. Makhijani concludes that “[i]n the environmental and health arenas, consideration of this significant new information is likely to result in higher accident probability estimates, new accident mechanisms for spent fuel pools, higher accident costs estimates, and higher estimates of the health risk posed by light water reactor accidents.”³⁰ However, Dr. Makhijani’s affidavit supporting the Emergency Petition focused on these issues over four months ago.³¹

²⁷ Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (April 18, 2011) (“Emergency Petition”) (ADAMS Accession No. ML111080866).

²⁸ Declaration of Dr. Arjun Makhijani in Support of Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons learned from Fukushima Daiichi Nuclear Power Station Accident (April 19, 2011) (“April Makhijani Declaration”)(ADAMS Accession No. ML111101283).

²⁹ Makhijani Declaration. at ¶ 24.

³⁰ *Id.* at ¶ 35. See also *id.* at ¶¶ 29, 34, and 36.

³¹ April Makhijani Declaration at ¶¶ 5, 16, and 24.

NWEA does not otherwise assert that the information in the TFR is materially different from the information previously available, except to maintain that the NRC Staff assembled the information into a report in that time. See Petition at 11. However, a petitioner may not delay filing on this basis. As the Commission recently emphasized in *Prairie Island*, petitioners may not justify an untimely contention as a consequence of having waited for the NRC Staff to compile available information into a convenient format and make it easier for petitioners to understand.³²

NWEA additionally asserts that its filing “within weeks of publication of the TFR” was timely and prompt. Petition at 12. However, the Petitioner failed to file promptly in this case after the information became available. NWEA filed its Petition on August 22, 2011, more than 30 days after the release of the Task Force Report on July 12, 2011, and more than five months after the Fukushima accident. Additionally, NWEA filed this Petition more than a week after the petitioners in other proceedings filed similar TFR contentions. Although the Commission’s regulations do not define “timeliness,” new or amended contentions and motions are generally deemed timely if filed within 30 days of the availability of the new information supporting the new or amended contention or motion to reopen. See, e.g., *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 669-70 n.44 (finding motion to reopen and add new contention filed within 30 days of new information timely); *Oyster Creek II*, CLI-09-7, 69 NRC 235, 288 (2009) (finding motion to reopen filed within 30 days of new information timely); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 485-68 (2008) (finding motion to reopen based on document that had been available for four months untimely); *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC ___ (Sep. 30, 2010) (slip op. at 15)

³² See, e.g., *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC ___ (Sep. 30, 2010)(slip op. at 18) (ADAMS Accession No. ML1027307791).

(ADAMS Accession No. ML1027307791) (finding a contention untimely where information had been available for two months). These timeliness requirements are not simply a matter of legal rules, but rather of practicality. As the Commission pointed out in *Oyster Creek*, “[t]here simply would be ‘no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements and add new contentions at their convenience.’” *Oyster Creek*, CLI-09-7, 69 NRC at 272.

The issues presented here in the proffered contention were readily available and discussed by Petitioner’s expert more than four months ago. At that time, Petitioner chose to forgo filing a petition. Moreover, even if the TFR constituted new information, the Petition still does not meet the requirements of section 2.309(f)(2) because NWEA waited more than 30 days before filing the Petition. As such, the late filed petition is not timely and should be denied.

C. NWEA Does Not Meet the Late-Filing Standards of 10 C.F.R. § 2.309(c)

Because NWEA does not meet the standard for a new contention in 10 C.F.R. § 2.309(f)(2), the Petition must address the late-filing factors of 10 C.F.R. § 2.309(c). Although NWEA attempts to address each of the eight factors, the Petition should be denied because the requirements do not balance in favor of admission.³³

1. NWEA Has Not Demonstrated “Good Cause” for Failure to File on Time

NWEA first contends that it has good cause for failing to file a timely petition because the NRC and the licensee did not provide NWEA with notice of the Columbia Generating Station’s application for the license renewal separate from the publication of the *Federal Register* Notice of Opportunity for Hearing dated March 11, 2010. Petition at 10. NWEA maintains that because

³³ The Staff does not contest NWEA’s arguments regarding 10 C.F.R. § 2.309(c)(1)(ii)–(iv) requirements as Boards have previously found these criteria to be “not particularly ‘applicable’ given that they focus on the status of the requestor/petitioner seeking admission to a proceeding (e.g., standing, nature of the requestor/petitioner’s affected interest) rather than on new contentions submitted by admitted parties.” *Vermont Yankee*, LBP-06-14, 63 NRC at 581. Further, the Staff does not contest NWEA on § 2.309(c)(1)(vi) because it has shown that its “interests are not adequately represented by the other parties” because there is no proceeding and therefore no “existing parties”. *State of New Jersey* (Department of Law and Public Safety’s Requests Dated October 8, 1993), CLI-93-25, 38 NRC 289, 296 (1993).

of its previous participation in regulatory proceedings regarding commercial nuclear reactors in Washington State, it assumed that it would specifically be provided separate, physical notice of the filing of the LRA by the NRC or the Applicant. *Id.*

Petitioners are not entitled to individual notice of a license renewal application. The Commission has held *Federal Register* publication of a notice of hearing opportunity is legally adequate notice for a license renewal application. *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 565 (2005). Moreover, “[p]ublication in the *Federal Register* is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance, except those who are legally entitled to personal notice.” *Id.* at 565 n. 60, citing *California v. Federal Energy Regulatory Commission*, 329 F.3d 700, 707 (9th Cir. 2003). Accordingly, the lack of actual notice does not constitute “good cause.” *Id.* at 565. Additionally, as the Commission has noted, its own regulations repeatedly provide for notice via the *Federal Register*,³⁴ and NWEA’s previous participation in NRC proceedings should have made it aware that any licensing action would be noticed in the *Federal Register*. Finally, the NRC published three separate notices in two local papers about the local public meeting regarding the CGS LRA that took place on April 6, 2010, well within the filing deadline.³⁵ Therefore, NWEA cannot show good cause resulting from its ignorance of the existence of the LRA, having been noticed for more than 17 months.

NWEA next contends that good cause exists for its failure to timely file because “new developments and the availability of new information support late-filed motions to intervene.”

³⁴ *Millstone*, CLI-05-24, 62 NRC at 565 n. 60 (“The Commission’s own regulations repeatedly provide for notice via the *Federal Register*.”).

³⁵ The NRC published notices of the April 6, 2010 public meeting regarding the CGS LRA on March 30, 2010, April 3, 2010, and April 5, 2010 in both the *Seattle Times* and the *Tri-City Herald*. In addition, the NRC Staff met with the editorial boards of both the *Seattle Times* and the *Tri-City Herald* to answer questions regarding the CGS license renewal. Both the *Tri-City Herald* and the *Seattle Times* published articles the day following the public meeting with information regarding the CGS license renewal process. Cary, Annette, “Hanford Nuclear Plant Relicensing Endorsed,” *Seattle Times* (Apr. 7, 2010); Cary, Annette, “Energy NW Gets Support for Nuclear Plant Relicensing,” *Tri-City Herald* (Apr. 7, 2010);

Petition at 11. The Petitioner alleges that its contentions are based upon new information resulting from the occurrence of the Fukushima Dai-ichi accident on March 11, 2011, which had not taken place at the time of the expiration of the deadline for filing a petition to intervene.

Petition at 10-11.

First, as the Commission has emphasized, “[g]ood cause has long been interpreted to mean that the information on which the proposed new contention is based was not previously available.” *Millstone*, CLI-09-05, 69 NRC at 125-26. The accident occurred on March 11, 2011 and NWEA did not file its Petition until August 22, 2011, more than five months later. Approximately four months earlier, on April 18, 2011, NWEA, along with over a dozen other public interest groups, jointly filed the Emergency Petition to suspend pending reactor licensing decisions based on information from the Fukushima accident.³⁶ NWEA provides no explanation as to why it waited four more months to file a petition to intervene when it clearly believed it had sufficient information to file the Emergency Petition only one month after the accident. Moreover, NWEA does not assert that information regarding the Fukushima accident was publicly unavailable after the accident. Because intervenors have an “iron-clad obligation to examine the publicly available documentary material ... with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention,”³⁷ NWEA’s failure to do so means that they cannot establish good cause.

NWEA next asserts that it can show good cause for untimely filing because of new information resulting from the release of the Task Force Report. Petition at 12. NWEA argues

³⁶ Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (Apr. 18, 2011) (“Emergency Petition”) (ADAMS Accession No. ML111080866).

³⁷ *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 147 (1993) (internal quotation marks and footnote omitted). *Accord Shaw Areva MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), CLI-09-2, 69 NRC 55, 65 n.47 (2009); *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 386 (2002); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 24-25 (2001).

that it “could not have proposed a contention based on the Fukushima accident based on news accounts alone immediately after the accident, but rather, was required to wait until some reputable entity, such as the U.S. NRC, issued technical findings.” Petition at 11. Furthermore, NWEA contends its action within weeks of publication of the Task Force Report was timely and prompt. Petition at 12.

A petitioner cannot establish good cause for untimely filing by arguing that the NRC Staff had not yet compiled the information into a document “that collects, summarizes and places into context the facts supporting that contention.”³⁸ Most recently in *Prairie Island*, the Commission stated that “[b]y permitting [intervenors] to wait for the Staff to compile all relevant information in a single document, the Board improperly ignored [intervenors’] obligation to conduct its own due diligence.”³⁹ Additionally, NWEA’s argument that it was “required to wait” to propose contentions until after the NRC issued technical findings is incorrect. Neither NRC regulations nor case law imposes such a requirement on prospective intervenors. Consequently, NWEA cannot show good cause for failure to file a timely petition based on new information.

Even if the Task Force Report or the Fukushima accident were to constitute new information, the Petitioner still failed to file promptly after the availability of the information. “To demonstrate good cause, a petitioner must show not only why it could not have filed within the time specified in the notice of opportunity for hearing, but also that it filed as soon as possible thereafter.” *Millstone*, CLI-05-24, 62 NRC at 564-565; 10 C.F.R. § 2.309(f)(2)(iii). NWEA filed its Petition on August 22, 2011, more than 30 days after the release of the Task Force Report on July 12, 2011 and more than five months after the Fukushima accident. Moreover, numerous other petitioners filed their new contentions based on the TFR ten days before NWEA.

³⁸ See, e.g., *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC __ (Sep. 30, 2010)(slip op. at 18) (ADAMS Accession No. ML1027307791).

³⁹ See *id.*

Accordingly, NWEA failed to file promptly or “as soon as possible thereafter” in accordance with Commission findings regarding timeliness. *Id.*; see *supra*, Discussion Section II.B.

Consequently, NWEA fails to show “good cause,” the most important of the eight factors in 10 C.F.R. § 2.309(c) that must be addressed in order to justify untimely filing. Accordingly, the Petitioner’s showing on the remaining seven factors must be “compelling.” *Millstone*, CLI-05-24, 62 NRC at 565; *Tennessee Valley Authority* (Watts Bar Nuclear Unit 2), CLI-10-12, 71 NRC ___, slip op. at 4 (Mar. 26, 2010).

2. NWEA Has Other Means By Which It Can Protect Its Interest

NWEA contends that “no other means exist” by which it can protect its interests under 10 C.F.R. § 2.309(c)(v). Petition at 13. However, as NWEA acknowledges, the generic nature of its concerns means that it “may be more appropriate for the NRC to consider them in generic rather than site-specific environmental proceedings.” Petition at 19. If the Commission takes action on the Task Force Recommendations, which it has already sent to the Staff for a feasibility review, some of the recommendations are likely to be implemented through generic rulemaking.⁴⁰ In that situation, the Petitioner would be able to comment on the rule and the environmental impact statement resulting from such rules. Suspension Order at 32; 10 C.F.R. § 51.85. Additionally, the Petitioner has already been given the opportunity to comment on the TFR recommendations at a public meeting held on August 31, 2011.⁴¹

⁴⁰ As the Commission noted in the *Suspension Order*, other actions on the TFR recommendations have been taken, including “review and assessment, with stakeholder input, of the Task Force recommendations; provision of a draft charter for assessing the Task Force recommendations and conducting the agency’s longer-term review; preparation of a notation vote paper that identifies recommended short-term actions; preparation of a notation vote paper that sets recommended priorities for the Task Force recommendations; and formal review of the Task Force recommendations by the Advisory Committee on Reactor Safeguards.” Suspension Order at 6. Additionally, the Commission noted that the Staff has undertaken several actions to address issues arising from the Fukushima accident. *Id.* at 6-8.

⁴¹ See Summary of August 31, 2011 Public Meeting to Solicit Comments on Near-Term Task Force Report (Aug. 31, 2011) (ADAMS Accession No. ML112490361) (“The purpose of this meeting was to solicit public comments on actions the NRC staff is considering taking to address the *Near-Term Task*

Moreover, there are several other avenues by which NWEA could pursue its interests, some of which NWEA is already engaged in. See Petition at 19. If it is dissatisfied with the Commission's approach to responding to the generic TFR recommendations, NWEA could, under 10 C.F.R. § 2.802, file a petition for rulemaking. Alternatively, if NWEA believed that the operation of CGS could constitute a safety hazard, NWEA could file a petition under § 2.206 requesting the NRC Staff take enforcement or other action with regard to the Petitioner's concerns regarding the CGS facility. Finally, NWEA may address its environmental concerns by submitting comments on the draft SEIS for CGS that was noticed in the *Federal Register* on September 1, 2011, and remains open for comments until November 11, 2011.⁴²

3. NWEA's Petition Will Broaden the Issues and Delay the Proceedings

NWEA's petition would necessarily broaden the issues and delay the proceedings under 10 C.F.R. § 2.309(c)(vii) because there is currently no proceeding. "Obviously, while one perhaps cannot meaningfully 'delay' a hearing that never began, convening a hearing at this late date would 'delay' final resolution" of the proceeding and "'broaden' the issues by creating litigation where none existed." *State of New Jersey* (Department of Law and Public Safety), CLI-93-25, 38 NRC 289, 296 (1993); *see also Millstone*, CLI-05-24, 62 NRC at 566-67. Where this is the case, as here, this factor weighs against the petitioner. *See id.*

Moreover, in license renewal cases, the Commission places significant weight on whether the late filing will broaden or delay the proceeding. *Millstone*, CLI-05-24, 62 NRC at 560-61, 566-67. First, because the Commission has emphasized that the issues in a license renewal are limited in scope to age-related degradation, admission of the petition containing a single generic environmental contention would impermissibly broaden the scope of the

Force (NTTF) Recommendations for Enhancing Reactor Safety in the 21st Century report, issued July 12, 2011.")

⁴² Energy Northwest, Columbia Generating Station; Notice of Availability of Draft Supplement 47 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants and Public Meetings for License Renewal of Columbia Generating Station, 76 Fed. Reg. 54,502 (Sep. 1, 2011).

proceeding. See *Millstone*, CLI-05-24, 62 NRC at 560-61, 566-67; see *infra* Discussion Section IV (regarding scope of contention). Second, the Commission assigns significant import to the delay in the proceedings resulting from late petitions in license renewal cases because of the policy of expediting the handling of such applications. *Millstone*, CLI-05-24, 62 NRC at 566-67. NWEA contends that its participation will not delay the proceeding because the final decision on the license renewal is more than twelve years before the expiration of the CGS license. Petition at 14. However, the Commission rejected this argument in *Millstone*, noting that even though “the Staff’s safety review will not be issued for several more months and the license renewal would itself not take effect for about a decade,” this “line of reasoning ignores our policy of expediting the handling of license renewal applications – which rests on the lengthy lead time necessary to plan available sources of electricity.” *Millstone*, CLI-05-24, 62 NRC at 566-67. Therefore, this factor heavily weighs against admission of the Petition because it would both broaden the scope of and delay the proceedings.

4. NWEA’s Participation in the Proceeding Cannot Reasonably Be Expected to Contribute to a Sound Record

In balancing the late-filed contention factors, the Commission grants considerable weight to the ability of the petitioner to contribute to a sound record. “We regard as highly important the intervenor’s ability to contribute to the development of a sound record on a particular contention.” *Consumers Power Co.* (Midland Plant, Units 1 and 2) LBP-82-63, 16 NRC 571, 577 (1982) (citations omitted), citing *South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887-91 (1981). See also *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 246-47 (1986). In order to comply with 10 C.F.R. § 2.309(c)(viii), “a petitioner must provide more than vague assertions that it will be able to assist in developing the record.” *Tennessee Valley Authority* (Watts Bar Nuclear Unit 2), CLI-10-12, 71 NRC __ (Mar. 26, 2010) (slip op. at 10). “When a petitioner addresses this ... criterion it should set out with as much particularity as possible the

precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony.” *Id.* NWEA references its environmental litigation experience and states that their contention is supported by an expert, Dr. Arjun Makhijani, to establish its ability to contribute to a sound record. Petition at 16-17.

However, because NWEA’s single, broad, generic environmental contention is outside the limited scope of a license renewal proceeding, their contention, even if supported by expert opinion, cannot contribute to the development of a sound record in this proceeding. Moreover, Dr. Makhijani’s August 22, 2011 Declaration is the same declaration filed by intervenors in several other adjudicatory proceedings⁴³ and contains no references to the CGS LRA. Rather, the declaration focuses on the generic impact of the TFR recommendations on all nuclear plants⁴⁴ and contains only the sort of “broad assertions” that the Commission has held are inadequate to contribute to a sound record. Suspension Order at 28; *see also Tennessee Valley Authority* (Watts Bar Nuclear Unit 2), CLI-10-12, 71 NRC ___, slip op. at 10 (Mar. 26, 2010) (finding “vague statements” to be inadequate). Moreover, in the *Suspension Memorandum and Order*, the Commission found that the content of Dr. Makhijani’s similar declaration accompanying the Emergency Petition “provides mostly speculation, not facts or evidence, on potential implications for U.S. facilities.” Suspension Order at 27. Like the previously filed declaration, the Makhijani Declaration that accompanies the Petition largely relies on speculation and vague assertions. For this reason, NWEA’s petition is unlikely to contribute to the development of a sound record in the limited license renewal proceeding because they do not point to any specific deficits or issues in the LRA for CGS.

⁴³ Multiple petitioners filed the same generic declaration authored by Dr. Makhijani. *See, e.g.*, Declaration of Dr. Arjun Makhijani In Support of Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident (Apr. 19, 2011) (ADAMS Accession Nos. ML111091167, ML111091181, ML111091185, ML111091189, ML111101075, and ML11101285).

⁴⁴ Makhijani Declaration at 3-8.

5. The Balance of Factors in 10 C.F.R. § 2.309(c) Does Not Weigh in Favor of Admitting NWEA's Untimely Petition

NWEA cannot show good cause for its failure to file a timely petition, the most important factor. Moreover, the Commission gives significant weight to factors seven and eight, both of which weigh against the Petitioner regarding delay of the proceedings and the ability of the Petitioner to contribute to the development of a sound record.⁴⁵ Additionally, because the Petitioner has many other means by which to pursue its generic interest, factor five also counts against the Petitioner. Consequently, because the Petitioner cannot show good cause and the balance of the remaining factors in 10 C.F.R. § 2.309(c)(i)-(viii) does not weigh in favor of the Petitioner, the request for hearing should be denied because the Petition is impermissibly late.

III. Admissibility of Contentions

The legal requirements governing the admissibility of contentions are well established, and are currently set forth in 10 C.F.R. § 2.309(f). In brief, the regulations require that a contention must satisfy the following requirements in order to be admitted:

- (f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition 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;

⁴⁵ "We regard as highly important the intervenor's ability to contribute to the development of a sound record on a particular contention. We also are giving significant weight to the potential delay, if any, which might ensue from admitting a particular contention." *Consumers Power Co.* (Midland Plant, Units 1 and 2) LBP-82-63, 16 NRC 571, 577 (1982) (citations omitted), *citing South Carolina Electric & Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887-91 (1981). *See also Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 246-47 (1986).

(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 requestor's/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 requestor/petitioner intends to rely to support its position on the issue;

(vi) . . . provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) 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

10 C.F.R. § 2.309(f)(1)(i) – (vi).

The purpose of the contention admissibility rule § 2.309(f)(1) is to "focus litigation on concrete issues and result in a clearer and more focused record for decision." *Calvert Cliffs 3 Nuclear Project, LLC, And Unistar Nuclear Operating Services, LLC* (Combined License Application for Calvert Cliffs Unit 3), LBP-09-04, 69 NRC 170, 189 (2009) (*quoting Changes to Adjudicatory Process*, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004)). The Commission has written that it "should not have to expend resources to support the hearing process unless there is an issue that is appropriate for, and susceptible to, resolution in an NRC hearing." *Id.* at 21. The contention admissibility rules are "strict by design." *Id.*

Conclusory assertions and speculation in pleadings are insufficient to support the admission of a contention. *See Indian Point*, LBP-08-13, 68 NRC at 200 and cases cited therein. Failure to comply with any of these requirements is grounds for the dismissal of a contention. *Florida Power & Light Company* (St. Lucie Nuclear Power Plant, Units 1 and 2), LBP-08-14, 68 NRC 279, 287-288 (2008) (*citing* 69 Fed. Reg. at 2221; *see also Private Fuel*

Storage, LLC. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999)).

Moreover, the Commission's regulations in 10 C.F.R. Part 54⁴⁶ limit the scope of a license renewal proceeding to the specific matters that must be considered for the license renewal application to be granted. 10 C.F.R. § 54.29⁴⁷ and other regulations in 10 C.F.R. Part 54, and the environmental regulations related to license renewal set forth in 10 C.F.R. Part 51 and Appendix B thereto, establish the scope of issues that may be considered in a license renewal proceeding. A proposed contention must demonstrate that the issue it raises is within the scope of the proceeding or there are grounds for its dismissal. 10 C.F.R. § 2.309(f)(1)(iii); *Millstone*, CLI-05-24, 62 NRC at 567.

⁴⁶ See generally Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943 (Dec. 13, 1991) ("1991 License Renewal Rule"); Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461 (May 8, 1995) ("1995 License Renewal Rule").

⁴⁷ The Commission considers the following standards in determining whether to grant a renewed license:

A renewed license may be issued by the Commission up to the full term authorized by § 54.31 if the Commission finds that:

- (a) Actions have been identified and have been or will be taken with respect to the matters identified in Paragraphs (a)(1) and (a)(2) of this section, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB, and that any changes made to the plant's CLB in order to comply with this paragraph are in accord with the Act and the Commission's regulations. These matters are:
 - (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under § 54.21(a)(1); and
 - (2) time-limited aging analyses that have been identified to require review under § 54.21(c).
- (b) Any applicable requirements of Subpart A of 10 C.F.R. Part 51 have been satisfied.
- (c) Any matters raised under § 2.335 have been addressed.

The Commission has provided guidance for license renewal adjudications regarding which safety and environmental issues fall within or beyond its license renewal requirements. *See Turkey Point*, CLI-01-17, 54 NRC at 6; *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC___, (June 17, 2010) (slip op. at 4-8) (ADAMS Accession No. ML101680369). With respect to the safety review, the Commission provided significant guidance on the structures, systems, components, within the scope of license renewal, as well as the intended functions of those structures, systems, and components that require aging management review in CLI-10-14. *See Pilgrim*, CLI-10-14, 71 NRC___, (slip op. at 4-8). In addition to its safety review, the NRC performs an environmental review pursuant to 10 C.F.R. Part 51 to assess the potential environmental impacts of twenty additional years of operation. *Turkey Point*, CLI-01-17, 54 NRC at 6-7. Contentions raising environmental issues in a license renewal proceeding are similarly limited to those issues which are affected by license renewal and have not been addressed by rulemaking or on a generic basis. *Turkey Point*, CLI-01-17, 54 NRC at 11-12.

IV. Petitioner's Contention Raises Issues Beyond the Scope of This Proceeding

Petitioner has not demonstrated that the issues raised by their Petition are within the scope of this proceeding, as required by 10 C.F.R. § 2.309(f)(1)(iii). Instead, Petitioner proffers, in a single sentence, a generalized claim that the Petition is within scope because it requests compliance with the National Environmental Policy Act (NEPA) and NRC regulations implementing NEPA. Petition at 20. As explained in detail below, the Petition raises issues that are outside the scope of this proceeding and thus must be rejected. *Millstone*, CLI-05-24, 62 NRC at 567. Specifically, the Petition (1) seeks to litigate in an individual proceeding the TFR's recommendations, which are being addressed by the Commission generically; (2) impermissibly challenges the generic determinations in Table B-1 of Appendix B to Part 51 (that the environmental consequences of design basis and severe (i.e., beyond design basis) accidents are small) without requesting a waiver; (3) challenges the Commission's regulations in 10

C.F.R. §§ 51.45 and 51.53(c); (4) raises emergency planning issues, which are outside the scope of license renewal; and (5) is a generalized attack on the Commission's safety regulations. Consequently, the Petition is inadmissible.

A. The Petition is Beyond the Scope of this Proceeding Because It
Raises Issues that may be Addressed by the Commission Generically

The Petitioner asserts that their Petition is based upon the TFR's findings and recommendations and concedes that their Petition would be moot if the Commission adopted all of the TFR's recommendations. Petition at 20, 31. The Petitioner does not, however, assert that these recommendations must be resolved in individual proceedings and, in fact, the Petitioner acknowledges that generic resolution may be more appropriate. See Petition at 19.

By their terms, however, the TFR's recommendations are intended to apply to all existing plants, regardless of renewal status. TFR at ix. Only recommendation 5 is limited to plants with specific containment types – BWR Mark I and Mark II containments, such as the CGS reactor. *Id.* The TFR also outlines a suggested approach to implement its recommendations. TFR at Appendix A. The TFR envisions that many of its recommendations will ultimately be implemented via the rulemaking process using orders to implement new requirements while the rulemaking process is ongoing. *Compare* TFR Appendix A at 73 “Recommended Rulemaking Activities” *with* TFR Appendix A at 74-75 “Recommended Orders.” Currently the TFR's recommendations are being considered by the Commission for application to all operating plants. See Staff Requirements Memorandum SECY-11-0093, Near-Term Report and Recommendations for Agency Actions Following the Events in Japan, Aug. 18, 2011 (ADAMS Accession No. ML112310021).

In accordance with long-standing NRC policy, licensing boards are not to entertain contentions on topics that are or are likely to become the subject of general rulemaking. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), CLI-10-19, 72 NRC__ (Jul. 8, 2010) (slip op. at 2-3) (ADAMS Accession No. ML101890873). Further, if a

party is not satisfied with the Commission's generic resolution of an issue, the remedy lies in the rulemaking process, not in an individual adjudicatory proceeding. *Id.* at 3. Because the TFR recommendations are generic in nature and, if adopted by the Commission will likely become the topic of orders and general rulemaking, the Petition is not within the scope of any individual proceeding.

B. The Petition is Beyond the Scope of the Proceeding Because it Challenges the Commission's Generic Determinations in Table B-1 on the Environmental Impacts of Design Basis and Severe Accidents

NWEA's Petition is a direct attack on the Commission's generic determinations in 10 C.F.R Part 51 Appendix A, Table B-1 ("Table B-1") that the environmental impacts of design basis and severe accidents are small. Specifically, the Petitioner asserts that the TFR "calls into question whether [the conclusions in Table B-1] represent a full, accurate description and examination of all the design basis accidents having the potential for releases to the environment." Petition at 26. The petition for rulemaking accompanying the petition provides further indication that the Petition is intended to challenge the Commission's generic determinations in Table B-1. The petition for rulemaking specifically requests that the Commission "rescind regulations in 10 C.F.R. Part 51 that make generic conclusions about the environmental impacts of severe reactor accidents and spent fuel pool accidents and that preclude consideration of those issues in individual licensing proceedings."⁴⁸ Rulemaking Petition at 1.

⁴⁸ Rulemaking Petition to Rescind Prohibition Against Consideration of Environmental Impacts of Severe Reactor and Spent Fuel Pool Accidents and Request to Suspend Licensing Decision (Aug. 22, 2011) ("Rulemaking Petition") (ADAMS Accession No. ML11234A528). The Staff does not view the Petition for Rulemaking as a request for waiver pursuant to 10 C.F.R. § 2.335. The Petition for Rulemaking clearly requests that the Commission rescind, not waive, regulations in Part 51. Furthermore, the Petition for Rulemaking makes no attempt to address the *Millstone* factors for waiver of generic environmental findings in license renewal proceedings. *Millstone*, CLI-05-24, 62 NRC at 559-60. The four *Millstone* factors are: (i) the rule's strict application "would not serve the purposes for which [it] was adopted;" (ii) the movant has alleged "special circumstances" 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) a waiver of the regulation is necessary to reach a "significant safety problem." *Id.*

The Commission has limited contentions raising environmental issues in license renewal proceedings to those issues that are affected by license renewal and have not been addressed by rulemaking or on a generic basis. *Turkey Point*, CLI-01-17, 54 NRC at 11, 16. While “severe accident mitigation alternatives” is a Category 2 issue, i.e., requires site-specific review, the Commission has made a generic determination that environmental impacts for both design basis and severe (i.e., beyond design basis) accidents are small for all plants. See 10 C.F.R. Part 51 Appendix A, Table B-1. With respect to spent fuel pools, the Commission has generically determined that the environmental impacts of spent fuel storage are small. *Id.* Furthermore the Commission has specifically stated, “[B]ecause onsite storage of spent fuel during the license renewal term is a Category 1 issue, and as such explicitly has been found not to warrant any additional site-specific analysis of mitigation measures, the required severe accident mitigation alternatives (“SAMA”) analysis for license renewal is intended to focus on reactor accidents.” *Pilgrim*, CLI-10-14, 71 NRC ___ (slip op. at 32). The Commission further explained, “a SAMA that addresses [spent fuel pool] accidents would not be expected to have a significant impact on total risk for the site because the spent fuel pool accident risk level is less than that for a reactor accident.” *Id.* at 37 (quotations omitted and alteration in original). Thus, these generic findings, codified in NRC regulations, are not subject to challenge absent a waiver of their application in a particular adjudicatory proceeding. See 10 C.F.R. § 2.335(a); *Turkey Point*, CLI-01-17, 54 NRC at 11, 16. The Petitioner has not petitioned for a waiver of the generic determinations in Table B-1 in this proceeding. Therefore, this argument is outside the scope of the proceeding and does not support the admissibility of the Petition.

Thus, even if the Petition for Rulemaking on its own or in combination with the Petition is viewed as a request for waiver, Petitioner has not demonstrated, inter alia, “special circumstances” that are unique to CGS. In fact, Petitioner admits that “it may be more appropriate for the NRC to consider [the TFR’s conclusions and recommendations] in generic rather than site-specific environmental proceedings.” Petition at 19.

C. The Petition is Beyond the Scope of this Proceeding Because it Challenges the Commission's Regulations in 10 C.F.R. §§ 51.45(c) and 51.53(c)

NWEA's Petition is beyond the scope of this proceeding because it impermissibly challenges the Commission's regulations in 10 C.F.R. §§ 51.45(c) and 51.53(c)(2). Citing 10 C.F.R. § 51.45(c), Petitioner asserts that the CGS's ER must "include consideration of the economic, technical, and other benefits and costs of the proposed actions and its alternatives." Petition at 24. Petitioner then asserts, based on their reading of the TFR's recommendations, that severe accidents must be considered design basis accidents and all severe accident mitigation measures must be implemented without regard to cost. Petition at 27. Petitioner claims, based on Dr. Makhijani's declaration, that the cost of implementing severe accident mitigation measures could be so significant that "other alternatives such as the no-action alternative and other alternative electricity production sources may be more attractive" and that these costs must be considered pursuant to 10 C.F.R. § 51.45(c). *Id.* at 28. Petitioner's assertions, however, are not supported under 10 C.F.R. § 51.45(c) because the portion of § 51.45(c) the Petitioner relies upon does not apply to license renewal.

Section 51.45(c) clearly states: "Environmental reports prepared at the license renewal stage "need not discuss the economic or technical benefits and costs of either the proposed action or alternatives" Section 51.45(c) further states: "environmental reports prepared under § 51.53(c) [i.e., at the license renewal stage] need not discuss issues not related to the environmental effects of the proposed action and its alternatives." Section 51.53(c)(2) reiterates this, stating:

The report is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. The environmental report need not discuss other issues not related to the environmental effects of the proposed action and the alternatives.

Thus, the Petitioner is requesting that CGS's ER and the NRC's SEIS consider matters they are not required by the regulations to consider. Thus, rather than the rule supporting the Petitioner's claims, Petitioner is in fact challenging the rule, something they cannot do, absent a waiver, in an individual licensing proceeding. 10 C.F.R. § 2.335. Consequently, the Petition is beyond the scope of this proceeding.

D. Emergency Planning Issues Raised by the Petition are Beyond the Scope of This Proceeding

The statement of the Petition asserts that the CGS ER fails to satisfy NEPA because it does not address the environmental implications of the TFR's recommendations. Later in the Petition, however, Petitioner asserts that their Petition would be moot if all of the TFR's recommendations are adopted by the Commission. Petition at 31. Recommendations 9-11 in the TFR are related to emergency planning. TFR at ix. The Commission has clearly stated that emergency planning issues are not within the scope of license renewal proceedings. *Turkey Point*, CLI-01-17, 54 NRC at 9. Therefore, to the extent the Petition seeks implementation of TFR recommendations related to emergency planning, it is inadmissible.

E. The Petition is Beyond the Scope of the Proceeding Because it is a Generalized Attack on the Commission's Safety Regulations and the Adequacy of CGS's Current Licensing Basis

Although the statement of the Petition focuses on compliance with NEPA, there are a number of assertions in the Petition generally challenging the adequacy of the Commission's safety regulations and thus the adequacy of CGS's current licensing basis (CLB). These matters are beyond the scope of this license renewal proceeding. Petitioner asserts, based upon their reading of the TFR and its recommendations, that the Commission's current regulatory requirements do not provide reasonable assurance of adequate protection because the Commission's regulations do not include "mandatory requirements on severe accidents."

Petition at 22.⁴⁹ NWEA asserts that the Commission's current regulatory scheme "requires significant re-evaluation and revision in order to expand or upgrade the design basis for reactor safety recommended by the Task Force Report." Petition at 23. NWEA does not, however, assert that the TFR's recommendations involve aging management of structures, systems, or components within the scope of license renewal review. NWEA's assertion that the "Commission could moot the contention by adopting all of the Task Force's Recommendations" further indicates that Petitioner is, nevertheless, challenging the general adequacy of the Commission's safety regulations, and not simply seeking compliance with NEPA's procedural requirements. Petition at 31.

Pursuant to 10 C.F.R. § 2.335(a), petitions challenging the adequacy of the Commission's regulations are beyond the scope of individual adjudicatory proceedings unless a waiver is requested and granted. "[A] petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies." *Duke Energy Corp* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (1999). Further, the scope of the license renewal safety review is narrow; it is limited to "plant structures and components that will require an aging management review for the period of extended operation and the plant's systems, structures and components that are subject to an evaluation of time-limited aging analyses." *Duke Energy Corp.*, (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-01-20, 54 NRC 211, 212 (2001). For each structure or component requiring an aging management review, a license renewal applicant must demonstrate that the "effects of aging will be adequately managed so

⁴⁹ This statement is not accurate. As the TFR states, the Commission has regulatory requirements for some beyond-design basis accidents in 10 C.F.R. § 50.63, Loss of All Alternating Current Power," 10 C.F.R. § 50.62 "Requirements for Reducing the Risk from Anticipated Transients without Scram (ATWS) for Light-Water-Cooled Nuclear Power Plants," and 50.54(hh), requiring procedures for mitigating beyond-design basis fires and explosions. See TFR at 16-17.

that the intended function(s) will be maintained consistent with the [current licensing basis (“CLB”)] for the period of extended operation.” *Pilgrim*, CLI-10-14, 71 NRC__ (slip op. at 4-8).

Challenges to the adequacy of a plant’s CLB, however, are beyond the scope of license renewal. See *Turkey Point*, CLI-01-17, 54 NRC at 8-9 (stating the Commission’s on-going regulatory oversight ensures the adequacy of the plant’s current licensing basis, thus there is no reason to reanalyze the adequacy of the CLB for license renewal). As the Commission recently emphasized in its ruling on the Emergency Petition, the TFR findings are unlikely to fall within the limited scope of license renewals:

It is not clear whether any enhancements or changes considered by the Task Force will bear on our *license renewal* regulations, which encompass a more limited review. The NRC’s ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its “current licensing basis,” which can be adjusted by future Commission order or by modification to the facility’s operating license outside the renewal proceeding (perhaps even in parallel with the ongoing license renewal review).

Suspension Order at 26. As stated above, Petitioner does not assert that the TFR’s recommendations are related to aging management. Thus, to the extent that the Petition seeks to challenge the adequacy of the Commission’s safety regulations and the adequacy of CGS’s CLB to provide reasonable assurance of adequate protection of public health and safety, it is beyond the scope of this proceeding and must be rejected.

Moreover, as noted above, the TFR contains a series of recommendations including proposed rulemakings and orders, which could in turn lead to license amendments. TFR at Appendix A. Therefore, many of these recommendations would require the NRC to conduct a NEPA review before implementing them. 10 C.F.R. §§ 51.85, 51.95. Consequently, in the event the Commission ultimately adopts any of the recommendations in the TFR, the agency will have an opportunity to fully consider the environmental impacts of those actions at that time.

Suspension Order at 30-31.

V. The Petition Does Not Raise a Material Issue

A. The Task Force Report Makes Safety Recommendations That Do Not Relate to the Petition's Environmental Concerns

Pursuant to 10 C.F.R. § 2.309(f)(1)(iv), an admissible contention must “[d]emonstrate 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.” See *also* 10 C.F.R. § 2.309(f)(1)(vi) (stating that a contention must “provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact”). As discussed above, the Petition raises several challenges to the environmental review of the impacts of relicensing under NEPA. Petition at 17-31. The Petition rests its claim on the recently published TFR, stating that the “The ER for the CGS license renewal fails to satisfy the requirements of NEPA because it does not address the new and significant environmental implications of the findings and recommendations raised by the NRC’s Fukushima Task Force Report.” Petition at 20. The Petition claims that the TFR is significant “because it raises an extraordinary level of concern regarding the manner in which the proposed renewed operation of CGS impacts public health and safety.” *Id.* at 25 (quotations omitted). Essentially, Petitioner argues that the information in TFR refutes the assumption that “compliance with existing NRC safety regulations is sufficient to ensure that the environmental impacts of accidents are acceptable” and “demand[s] that the NRC comply with NEPA by addressing the lessons of the Fukushima accident in its environmental analyses for licensing decisions.” *Id.* at 12, 19.

But, the Petition does not raise a material dispute with the environmental portions of the application because it relies on the TFR, which makes safety recommendations to the Commission. While the recommendations in the TFR represent a step in the NRC’s response to the Fukushima accident, they do not have any particular relevance to the Staff’s environmental review. The Atomic Energy Act of 1954 (“AEA”) requires the NRC to ensure the safe operation of nuclear power plants. *Union of Concerned Scientists v. NRC*, 824 F.2d 108,

109 (D.C. Cir. 1987). Under Section 182.a of the AEA, the Commission must ensure that “the utilization or production of special nuclear material will . . . provide adequate protection to the health and safety of the public.” *Id.* (quoting 42 U.S.C. § 2232(a)) (alterations in original). In contrast, NEPA requires that “agencies take a hard look at environmental consequences” of major federal actions. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (internal quotations omitted). While the NRC may review similar topics under the two acts, the NRC’s reviews under the two acts are distinct from each other. *Limerick Ecology Action, Inc. v. NRC*, 869 F.2d 719, 730-31 (3d Cir. 1989). Thus, the NRC’s evaluation of an issue under one act will not necessarily impact the agency’s consideration of the issue under the other. *Id.*

The Commission established the Task Force following the Fukushima Dai-ichi accident to “conduct a methodical and systematic review of the NRC’s process and regulations to determine whether the agency should make additional improvements to its regulatory system and to make recommendations to the Commission for its policy direction.” TFR at 1. The Task Force first concluded that “a sequence of events like the Fukushima accident is unlikely to occur in the United States[.] Therefore, continued operation and continued licensing activities do not pose an imminent risk to public health and safety.” TFR at vii. Nonetheless, the Task Force chose to recommend “significant reinforcements to NRC requirements and programs.” *Id.* at 5. Consequently, the Task Force proposed to “redefine what level of protection of the public health is regarded as adequate.” *Id.* at 4. In addition, the Task Force proposed a list of safety enhancements to reinforce the NRC’s existing regulatory structure. *Id.* at ix. Therefore, while the Task Force made extensive findings and recommendations under the AEA, the Task Force did not find that Fukushima would have a direct impact on the NRC’s environmental reviews of current licensing activities under NEPA or recommend that the NRC alter those reviews to account for Fukushima.

Thus, the TFR’s findings are directed towards improving the NRC’s regulatory framework for providing reasonable assurance that existing reactors will operate safely under

the AEA. But, NEPA, the statute governing the Staff's environmental licensing review, contains a very different standard: it only requires agencies to take a "hard look" at the environmental consequences of their actions. *Methow Valley*, 490 U.S. at 350. The TFR's recommendations that the NRC take additional steps to ensure adequate protection do not have any bearing on whether the agency has fully considered environmental impacts in this proceeding. As a result, the conclusions in the TFR are immaterial to the NRC Staff's environmental review, and therefore the Board should deny admission of this contention, which is based exclusively on those findings. 10 C.F.R. § 2.309(f)(1)(iv), (vi).

Moreover, to the extent the TFR considers environmental consequences, that consideration supports the reasonableness of existing environmental reviews. The TFR states, "The current NRC approach to land contamination relies on preventing the release of radioactive material through the first two levels of defense-in-depth, namely protection and mitigation." TFR at 21. The TFR observes that land contamination cannot occur in the absence of a release of radioactive materials and concludes that "the NRC's current approach to the issue of land contamination from reactor accidents is sound." *Id.* Additionally, the TFR concludes that the defense-in-depth philosophy should occupy a central place in the future regulatory framework. *Id.* at 20. Therefore, if anything, the recommendations in the TFR support the NRC's past approach to considering environmental impacts.

B. The Petition Does Not Identify the Specific Portions of the Application It
 Challenges

Pursuant to 10 C.F.R. § 2.309(f)(vi), a proffered contention must "provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application . . . that the petitioner disputes" or reasons why the application omits required information. "On environmental matters this showing must include a reference to the specific portion of the applicant's environmental report that the petitioner believes inadequate." *Sacramento Municipal*

Utility District (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 NRC 355, 363 (1993).

If the Staff has published its own environmental documents, and the data and conclusions in those documents significantly differ from the information in the environmental report, then the Petitioner may also base a contention on errors or omissions in the Staff's environmental documents. *Id.* One purpose of these strict admissibility rules is to "put other parties sufficiently on notice of the issues so that they will know generally what they will have to defend against or oppose." *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20 (1974).

The Petitioner's claims fail to reference the specific portion of the application they dispute beyond simply identifying the section that discusses SAMAs. The Petition raises claims challenging the analysis of severe accidents generically, Petition at 27-28, the requirement that only cost beneficial SAMAs be implemented, Petition at 27, the need for power, Petition at 28, and the reliability of the site specific analysis of SAMAs on certain issues raised by the TFR, Petition at 27. The only reference to the LRA is to a single broad section of the ER which summarizes the Applicant's SAMA analysis. The Petitioner alleges that "the values assigned to the cost-benefit analysis for CGS SAMA's, as described in Section 4.20 of the ER, must be reevaluated in light of the Task Force's conclusion that the value of SAMAs is so high that they should be elected as a matter of course." Petition at 27. The Petition's vague reference to the section of the ER that provides an overview of the SAMA analysis provides no real insight into what portions of the analysis the Petition seeks to challenge. Rather, the Petition requires the Board, Staff, and Applicant to guess how the safety recommendations in the TFR specifically impact the environmental analysis of SAMAs. Therefore, the Petition does not put other parties to this proceeding on sufficient notice of the issues it seeks to litigate. *Peach Bottom*, ALAB-216, 8 AEC at 20.

Consequently, the Petition does not provide sufficiently specific references to the portions of the application or Staff environmental documents that it seeks to contest. 10 C.F.R.

§ 2.309(f)(1)(iv). Instead, it refers to the section of the ER that describes the SAMA analysis, not any particular issue with the SAMA analysis. As a result, the Petition only vaguely suggests how the conclusions in the TFR, which as discussed above are safety recommendations with no inherent connection to environmental concerns, impact the environmental analysis.⁵⁰ Hence, it does not raise a material dispute. 10 C.F.R. § 2.309(f)(1)(vi).

C. The Petition Does Not Raise a Material Dispute with Respect to
Severe Accidents

The Petition claims that the recommendations in the TFR question the determination that “the environmental impacts of both design basis accidents and severe accidents are small” in Appendix B to 10 C.F.R. Part 51 (“Appendix B”). Petition at 26. The Petition argues that because the TFR suggests that the Commission should expand the design basis of existing reactors to include additional accident scenarios, the existing analysis of accidents from an environmental perspective must be deficient. *Id.* at 26-27 (quoting Makhijani Declaration, pars. 7-10). As discussed above, this challenge to the Commission’s regulations is outside the scope of this proceeding. *See infra*, Discussion Section IV.B. Moreover, even if this claim were within the scope of this license renewal proceeding, it is not material.

The conclusions in Appendix B rest on the data and analysis in the GEIS. The GEIS examines both design-basis accidents and severe accidents. GEIS at 5-11. “[D]esign-basis accidents are those that both the licensee and the NRC staff evaluate to ensure that the plant meets acceptable performance criteria.” *Id.* In contrast, severe accidents include those accidents “involving multiple failures of equipment or function and, therefore, whose likelihood is

⁵⁰ A number of intervenors in other cases filed requests containing “substantially similar” claims to those in the Petition. Petition at 18. The filing of substantially similar contentions in numerous proceedings does not satisfy an intervenor’s obligation to comply with the Commission’s strict requirement for specificity in pleading. *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 241 (1989) (“The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may be in a haystack.”).

generally lower than the design-basis accidents but where the consequences may be higher.”

Id. at 5-1.

The TFR does recommend “formally establishing, in the regulations, an appropriate level of defense-in-depth to address requirements for ‘extended’ design-basis events.” TFR at 20. But, as discussed above, the purpose of the NRC’s review under NEPA is to simply consider the environmental impacts of the particular proposed licensing action, not form conclusions under the AEA. *Methow Valley*, 490 U.S. at 350. As currently written, the GEIS, which supports the NRC’s determination on the environmental impacts of accidents in Appendix B, considers the environmental impacts of both design-basis accidents and severe accidents, or beyond design-basis accidents. GEIS at 5-11. The TFR recommends expanding the scope of accidents explicitly considered in the regulations. TFR at 20. These recommendations include measures related to seismic events, floods, station blackouts, and spent fuel pools. TFR at ix. But the Petition does not allege that the TFR identifies a fundamentally new type of accident or consequence from already-considered accidents. Petition at 17-31. In fact the GEIS explicitly considered seismic events, flooding, station blackout, and spent fuel pools in its analysis of severe accidents. GEIS at 5-17 to 5-18, 5-9, 5-100. Therefore, regardless of whether a given accident is classified as severe or design-basis, the NRC has already considered its environmental impacts in the GEIS for NEPA purposes. GEIS at 5-11. The recommendations in the TFR that the NRC expand the scope of design-basis accidents are not material to this environmental consideration.

In a related claim, the Petition asserts that “the risks of operating CGS under a renewed license are higher than estimated in the ER.” Petition at 18. Additionally, the Petitioner claims that the TFR indicates that the NRC must reevaluate the “seismic and flooding hazards at the CGS site.” Petition at 29. In support, the Makhijani declaration asserts that the TFR “indicates that seismic and flooding risks as well as risks of seismically-induced fires and floods may be greater than previously understood.” Makhijani Declaration, par. 11. “Therefore in its

environmental analyses, the NRC would have to revise its analysis to reflect the new understanding that the risks and radiological impacts of accidents are greater than previously thought.” *Id.*

As discussed above, the NRC made a generic conclusion regarding the environmental impacts of accidents in Appendix B and these determinations cannot be challenged in individual proceedings absent a waiver. 10 C.F.R. § 2.335. The GEIS supports the conclusions in Appendix B. However, in considering the environmental impacts of severe accidents caused by external events, the GEIS did not rely on a quantitative assessment that was specific to external events. GEIS at 5-18. The GEIS noted that externally-initiated severe accidents “have not traditionally been discussed in quantitative terms.” GEIS at 5-17. But, the GEIS noted that where the NRC had evaluated severe accidents generated by external events, the “risks were determined to be comparable to internal event risks.” *Id.* Thus, the GEIS found that “[s]evere accidents initiated by external phenomena such as tornadoes, floods, earthquakes, fires, and sabotage” were “adequately addressed by generic consideration of internally initiated severe accidents.” GEIS at 5-18 to 5-19. In essence, whether a man-made event or an act of God results in a severe accident, the environmental impact is the same. Finally, the Commission noted that it would continue to evaluate methods “to reduce the risk from nuclear power plants from external events.” *Id.*

Therefore, the conclusions in the TFR questioning the frequency of some externally-generated accident scenarios, such as earthquakes and flooding, do not raise a material dispute with the conclusions in the GEIS. The TFR based its recommendations on whether existing regulations ensure adequate protection under the AEA. The GEIS, which does not consider adequate protection but simply takes a hard look at environmental impacts, did not rely on a quantitative assessment of the risks posed by seismic and flooding events. Consequently, recommendations in the TFR regarding the frequencies of those events cannot undermine the conclusions in the GEIS on those topics. Moreover, the GEIS contemplated that the NRC would

continue to study, and reduce, the risk from external events. The TFR does precisely that. Therefore, the conclusions in the TFR do not dispute the conclusions in the GEIS but fulfill them. As a result, the Board should reject the arguments in the Petition that challenge the determination in the GEIS that the environmental impacts of accidents will be small because those arguments do not raise a material dispute with the GEIS's analysis. 10 C.F.R. § 2.309(f)(1)(iv), (vi).

D. The Petition Does Not Raise a Material Challenge to the SAMA Analysis

1. NEPA Does Not Require Implementation of Mitigation Measures

Next, the Petition claims that the TFR “recommends that severe accident mitigation measures should be adopted into the design basis . . . *without regard to their cost.*” Petition at 27 (emphasis added). “Thus, the values assigned to the cost-benefit analysis for CGS SAMAs, as described in Section 4.20 of the ER, must be re-evaluated in light of the Task Force’s conclusion that the value of SAMAs is so high that they should be elected as a matter of course.” *Id.* As a result, the Petition appears to assert that SAMAs should be “imposed as mandatory measures.” *Id.*

As discussed below, the Staff does not concur with the Petition’s assessment that the TFR actually recommends that the Commission should require licensees to implement all SAMAs, regardless of cost-benefit.⁵¹ Moreover, even if the TFR reached that conclusion, this claim would still be immaterial to the proceeding. While the TFR reached conclusions regarding additional steps the NRC can undertake to improve safety, these conclusions were part of the TFR’s safety evaluation. Thus, the TFR based its proposals on redefining “what level of protection of the public health is regarded as adequate.” 10 C.F.R. § 50.109(a)(4)(iii).

To be sure, in the event that the Commission should determine to expand the scope of design basis accidents to provide reasonable assurance of adequate protection, it would do so

⁵¹ In fact, the TFR does not mention the term SAMA.

without regard to cost considerations. SAMAs, however, are different. The NRC conducts its evaluation of an applicant's SAMA analysis to satisfy the requirements of NEPA, not the AEA. 10 C.F.R. § 51.53(c)(3)(ii)(L); *Limerick*, 869 F.2d at 730-31. In contrast to "adequate protection" requirements, an analysis of costs and benefits is an integral part of a SAMA evaluation. Nonetheless, the outcome of a SAMA cost-benefit analysis does not mandate the adoption of a SAMA. The Supreme Court directly considered whether NEPA requires mitigation in *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989). The Court noted that while NEPA announced sweeping policy goals, "NEPA itself does not mandate particular results, but simply prescribes the necessary process." *Id.* at 350 (*citing Stryker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227-28(1980) and *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 558 (1978)). "If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Id.* (*citing Stryker's Bay Neighborhood Council*, 444 U.S. at 227-28, (*quoting Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976))). In light of these principles, the Court found a

fundamental distinction ... between a requirement that mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated on the one hand, and a substantive requirement that a complete mitigation plan be actually formulated and adopted on the other.

Id. at 352. Thus, the Court concluded that the lower court erred in "in assuming that NEPA requires that action be taken to mitigate the adverse effects of major federal actions." *Id.* at 353 (internal quotations omitted). As a result, contrary to the Petition's assertions, NEPA imposes no obligation on the NRC to require mitigation.

Consequently, to the extent the Petition claims that the current SAMA analysis is inadequate because it does not require the Applicant to implement all of the identified mitigation measures regardless of cost, the Petition does not raise a material dispute. Therefore, the claim that the SAMA analysis must require mitigation of all identified SAMAs is not material to the

NRC's review under NEPA, because NEPA contains no requirement that the agency impose mitigation.

2. The Petition Does Not Raise a Material Dispute on Any Specific SAMA

Next, the Petition asserts that the SAMA analysis should consider "what, if any, design measures could be implemented (i.e. through NEPA's requisite 'alternatives' analysis) to ensure that the public is adequately protected from" seismic and flooding risks. Petition at 29.

Additionally, the Petition asserts that the SAMA analysis should consider additional mitigation measures discussed by the TFR. *Id.* at 30. These mitigation measures include "strengthening SBO mitigation capability," installing hardened vent designs at facilities with BWR Mark I and Mark II containments, "enhancing spent fuel pool makeup capability and instrumentation for the spent fuel pool," improving emergency response capabilities, and "addressing multi-unit accidents." *Id.*

But, the Commission has stressed, the "ultimate concern" for a SAMA analysis "is whether any additional SAMA should have been identified as potentially cost beneficial, not whether further analysis may refine the details in the SAMA NEPA analysis." *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-09-11, 69 NRC 529, 533 (2009). "Unless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for the SAMA candidates evaluated, no purpose would be served to further refine the SAMA analysis, whose goal is only to determine what safety enhancements are cost-effective to implement." *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Station), CLI-10-11, 71 NRC __ (Mar. 26, 2010) (slip op. at 39) (ADAMS Accession No. ML100880136).

When petitioners propose consideration of an additional mitigation measure, the Commission has required the petitioners to provide a "ballpark figure for what the cost of implementing this SAMA might be." *Duke Energy Corporation* (McGuire Nuclear Station, Units

1 and 2, Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 12 (2002). The Commission is unwilling “to throw open its hearing doors to Petitioners who have done little in the way of research or analysis, provide no expert opinion, and rest merely on unsupported conclusions about the ease and viability of their proposed SAMA.” *Id.* Thus, the Commission has found that a “conclusory statement that an envisioned SAMA ‘would not pose a great challenge’ is insufficient.” *Id.* Such a statement provides no indication of “what logistical or technical concerns might be involved in implementing” the proposed SAMA. *Id.* In light of this holding, the Board in the *Indian Point* license renewal proceeding denied admission of a contention requesting consideration of a fire protection SAMA because the petitioner had not “provided any information indicating the potential costs associated with the upgrade in fire protection.” *Indian Point*, LBP-08-13, 68 NRC at 104.

In this case, the Petition relies on the Makhijani Declaration to support its request that the SAMA analysis “consider the use of these additional mitigation measures to reduce the project’s environmental impacts.” Petition at 30. But, the Makhijani Declaration only provides vague estimates on the cost of these potential SAMAs. With respect to seismic and flooding issues, the Makhijani Declaration states that a reassessment of those concerns “may also involve increased costs due to required backfits.” Makhijani Declaration at par. 19. Next, the Makhijani Declaration concludes that the TFR’s recommendation to further analyze station blackout events “could result in the imposition of costly prevention or mitigation measures.” *Id.* at ¶ 20. With regard to hardened vents for the BWR Mark I and II reactors, the declaration speculates that the cost of such improvements is “likely to be substantial.” *Id.* at ¶ 21. Last, the declaration finds that implementing mitigation measures for multi-unit accidents “could be significant.” *Id.* at ¶ 24.

Thus, the Petition and Makhijani Declaration do not raise a material SAMA contention, because the Petition asks the NRC to consider additional SAMAs without providing an adequate indication of what the additional SAMAs may cost. Rather, the Makhijani Declaration relies on

vague assertions that the cost of certain mitigation measures may be significant. But, such conclusory statements do not amount to a “ballpark figure” for what the proposed SAMAs may cost. *McGuire/Catawba*, CLI-02-17, 56 NRC at 12. Rather, they are akin to the claims that a given SAMA “would not pose a great challenge,” which the Commission explicitly rejected. *Id.* Consequently, the statements do not provide sufficient support to show that the Petition’s SAMA claim raises a material issue because they do not provide an adequate indication of what the cost of the mitigation measures may be. Without a quantitative estimate of the costs of a given SAMA, conducting a meaningful cost-benefit analysis of the SAMA under NEPA is impossible. Moreover, the claims in the Petition and Makhijani Declaration do not specifically address any current SAMAs, let alone explain how the information in the TFR could lead to one of them becoming cost-beneficial.⁵² Because these claims do not provide sufficient information to demonstrate materiality, the Board should decline to admit them. 10 C.F.R. § 2.309(f)(1)(iv), (vi).

E. The Petition Does Not Raise a Material Claim with Respect to
Need for Power

Last, the Petition alleges that “consideration of the costs of mandatory mitigative measures could affect the overall cost-benefit analysis for the reactor” because “these costs may be significant, showing that other alternatives such as the no-action alternative and other alternative electricity production sources may be more attractive.” Petition at 28. As discussed above, these claims are outside the scope of license renewal. *See supra*, Discussion Section IV. Even if this claim was within the scope, it would still not raise a material issue. If the NRC concludes that proposed mitigation measures in the TFR are necessary to provide a reasonable assurance of adequate protection, the NRC will require licensees to implement them as part of

⁵² Another licensing board has rejected two SAMA contentions based on the Fukushima accident that also did not clearly demonstrate how information from that event would lead to the identification of another cost beneficial SAMA. *Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-11-23 75 NRC __ (Sep. 8, 2011) (slip op. at 20-22, 36-38) (ADAMS Accession No. ML11251A206).

its ongoing oversight review of operating reactors. These measures will apply to all facilities regardless of whether they are currently the subject of a pending license renewal application. As a result, the costs associated with complying with any TFR recommendations are immaterial to the decision of renewing an existing license.

Further, the fact that a license renewal proceeding is in progress does not render these issues admissible. In defining the scope of the license renewal rule, the Commission has previously explained, “[i]t is not necessary for the Commission to review each renewal application against standards and criteria that apply to newer plants or future plants in order to ensure that operation during the period of extended operation is not inimical to the public health and safety.” Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,945 (Dec. 13, 1991). “Ongoing regulatory processes provide reasonable assurance that, as new issues and concerns arise, measures needed to ensure that operation is not inimical to the public health and safety and common defense and security are ‘backfitted’ onto the plants.” *Id.*

As discussed above, the TFR includes several recommendations to enhance safety at existing and proposed nuclear reactors that relate to redefining the level of adequate protection. *See supra*, Discussion Section IV.A. (*citing* TFR at ix). Consequently, to the extent the NRC ultimately adopts any specific recommendations from the TFR, it will do so under its ongoing reactor regulatory oversight and rulemaking processes. Any such action would apply to both existing and renewed operating licenses. As the Commission confirmed in *Suspension Memorandum and Order*, the NRC “will use the information from [reviews of the Fukushima accident] to impose any requirements it deems necessary, irrespective of whether a plant is applying for or has been granted a renewed operating license.” Suspension Order at 26-27.

Therefore, the Petition’s claim that compliance with the TFR recommendations could change the cost-benefit analysis underlying the need for power analysis is not material to this proceeding. As discussed above, the NRC must have reasonable assurance of adequate protection for existing reactors. 42 U.S.C. § 2232(a). If the NRC changes the regulatory

process to redefine the level of adequate protection, then the NRC will make those changes as part of its ongoing oversight of operating reactors. 10 C.F.R. § 50.109. Consequently, licensees must address those changes regardless of whether the NRC grants or denies their applications for license renewal or has already granted a renewed license. As a result, the costs of complying with any proposal in the TFR are irrelevant to the decision to renew the license. Therefore, even if this claim were within scope of this proceeding, it is immaterial. The Board should reject it. 10 C.F.R. § 2.309(f)(1)(iv)(vi).

VI. The Petition Does Not Rely on an Adequate Factual Basis

The Petitioner's contention is inadmissible because it lacks an adequate factual basis. The Petition makes numerous misrepresentations of the TFR, including, *inter alia*, implying that the TFR questions whether the NRC can conduct reactor licensing activities in a manner that maintains public health and safety, claiming that the TFR effectively recommends that the process for considering SAMAs be overhauled, and that all SAMAs be incorporated regardless of cost. Nowhere does the TFR make these recommendations, nor does the Petitioner point to any specific language in the TFR to support their claims. Additionally, although the Petition frequently refers to the accompanying Makhijani Declaration, that document does not provide sufficient information to support the Petition's claims. Finally, the Petition also misstates the standard for examining new information under the Supreme Court ruling in *Marsh v. Oregon*.

To present an admissible contention, the Petitioner must:

[p]rovide a concise statement of the alleged facts or expert opinions which support the requestor's/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 requestor/petitioner intends to rely to support its position on the issue[.]

10 C.F.R. § 2.309(f)(1)(v). The Commission has stated that "[m]ere 'notice pleading' is insufficient under these standards." *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). A petitioner meets its pleading burden by providing "plausible and adequately supported claims." *Id.* While the Commission does not "expect a petitioner to prove

its contention at the pleading stage,” the Commission does require a petitioner to “show a genuine dispute warranting a hearing.” *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 139 (2004). Thus, a petitioner, and its expert, must demonstrate how the relied-upon facts support its contention. *See id*; *see also USEC Inc.* (American Centrifuge Plant), CLI-06-09, 63 NRC 433, 442-43 (2006) (dismissing as inadequate support expert testimony that merely outlined future research and did not describe any facts on a project’s impacts to support an “impacts” contention); *S. Carolina Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 & 3), CLI-10-01, 71 NRC 1, 18 n. 84 (2010) (finding an expert opinion offering “unsupported assertions” and failing to provide a specific challenge to the applicant’s analysis insufficient for admissibility purposes).

A. None of the TFR’s Recommendations Relate to SAMAs

The Petitioner claims that the TFR effectively recommends overhauling how the NRC considers SAMAs. Petition at 22. However, the TFR makes no reference whatsoever to SAMAs. The TFR does make reference to probable risk assessments (PRA), but that discussion does not reference PRA levels in the SAMA context. TFR at 21-22. As NRC Staff experts have explained in other license renewal proceedings, PRAs have traditionally been divided into three levels: level 1 is the evaluation of the combinations of plant failures that can lead to core damage; level 2 is the evaluation of core damage progression and possible containment failure resulting in an environmental release for each core-damage sequence identified in level 1; and level 3 is the evaluation of the consequences that would result from the set of environmental releases identified in level 2.⁵³ All three levels of the PRA are required to perform a SAMA analysis. Bixler and Ghosh Testimony at 8. The TFR states that their framework of recommendations “could be implemented on the basis of full-scope Level 1 core

⁵³ NRC Staff Testimony of Nathan E. Bixler and S. Tina Ghosh Concerning the Impact of Alternative Meteorological Models on the Severe Accident Mitigation Alternatives Analysis, at 78 (Jan. 3, 2011) (ADAMS Accession No. ML110030966) (“Bixler and Ghosh Testimony”).

damage assessment PRAs and Level 2 containment performance assessment PRAs.” TFR at 21. However, the TFR “has not recommended including Level 3 PRA as a part of a regulatory framework.” *Id.* at 22. Moreover, the Task Force specifically disclaimed any intent to require a Level 3 PRA as part of its recommendations at a subsequent public meeting with the Commission. Briefings on the Task Force Review of NRC Processes and Regulations Following the Events in Japan at 48 (Jul. 19, 2011) (ADAMS Accession No. ML112020051). Since the TFR does not recommend a Level 3 PRA analysis and the Task Force specifically rejected the idea during their presentation to the Commission, SAMAs are not a part of their recommendations.

Petitioner also claims, based on the TFR, that all SAMAs should be implemented regardless of cost. Petition at 18. As discussed above, the Task Force specifically excluded Level 3 PRAs from its recommendations. The TFR does make some discrete recommendations, but none of those come close to recommending that all SAMAs be implemented regardless of cost. Petitioner supports their claim by stating that they would be required to meet adequate health and safety requirements under the AEA. Petition at 18. As discussed above, this justification is inaccurate because the requirements for meeting the AEA’s requirements for health and safety are distinct from NEPA’s hard look requirements. *See supra*, Discussion Section V.A.

B. Dr. Makhijani’s Declaration Does Not Support the Petition’s Claims

In addition to relying on the TFR, the Petition also makes several references to a declaration from Dr. Makhijani. However, careful review of Dr. Makhijani’s declaration reveals no discussion of the Applicant’s environmental report and no evidence that the CGS site is particularly vulnerable to the types of risks identified in the TFR. In regards to a similar declaration of Dr. Makhijani that Petitioner and others filed in support of the Emergency Petition, the Commission found that Dr. Makhijani’s affidavit in support of the suspension proceedings was lacking because it failed to provided information showing that any plants are “vulnerable to

the type of accident scenarios that occurred at Fukushima Daiichi” and made “no showing that tsunami or station blackout risk at these plants is higher than previously assumed.” Suspension Order at 27. Essentially, the Commission found that the affidavit was “mostly speculation, not facts or evidence, on potential implications for U.S. facilities.” *Id.* The Makhijani Declaration filed by NWEA in support of their contention contains similar failings, as it does not even mention CGS nor does it identify any specific vulnerability at CGS addressed by the TFR.

In his Declaration, Dr. Makhijani expresses his agreement with the TFR's conclusions regarding the need to expand the design basis accident requirements for reactors. Makhijani Declaration at 3, 4. He sees the NRC's regulations as inadequate. *Id.* But, his concerns with the NRC's safety rules and his desire that the safety rules be changed are too far removed from the content of the Applicant's environmental report or the NRC's site-specific environmental impact statement to support an admissible contention. Dr. Makhijani opines about the potential effects of the TFR's recommendations upon environmental analyses for new reactors, existing reactor license renewal, and standardized design certification. Makhijani Declaration at 4. He claims that if the TFR's recommendations became requirements, then reactor designs would change and environmental analyses would change. *Id.* However, these statements are irrelevant to the proffered contention. Stating that under a different regulatory scheme, a different NEPA result may occur simply does not provide support for a claim that the environmental review at hand is deficient under the existing regulatory scheme.

Dr. Makhijani also states that the TFR finds that earthquake and flood risks might be greater than previously thought. Makhijani Declaration at 4. From this, he concludes that if the risks are found to be different, then the environmental documents must change. *Id.* But, this assertion amounts to speculation. The assertion is too far removed from the environmental documents at issue to provide support for the Petition. Moreover, even if the TFR's safety recommendations did affect the analysis in the environmental documents, nothing in the declaration suggests that change would be large enough to alter any of the existing conclusions

on the environmental impacts of relicensing.

Dr. Makhijani asserts that in the event the Commission adopts the recommendations in the TFR, reactor site selection and cost-benefit analysis could be affected. *Id.* at 4-5. Again, these forward looking statements are irrelevant to the proffered environmental contention; there are no new requirements that would impact site selection at this time. Further, consideration of alternative sites is not required in the environmental documents for license renewal. 10 C.F.R. § 51.53(c)(2).

Finally, in some instances, Dr. Makhijani appears unfamiliar with the NRC's environmental review policy. For example, where Dr. Makhijani states that the NRC effectively disregarded a 1980 recommendation to modify the NRC's philosophy about reactor design and "Class Nine Accidents" (*id.* at 3-4), the declaration appears unaware that of the fact that later in June, 1980, the NRC explicitly withdrew the previously proposed "Class Nine Accident" philosophy for environmental reviews,⁵⁴ and announced that the agency's environmental assessments would include consideration of both the probability and consequences of radioactive releases associated with severe accidents, as described in the Commission's Statement of Interim Policy, Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969, 45 Fed. Reg. 40101 (June 13, 1980). The Interim Policy withdrew the generic treatment of "Class Nine" accidents. *Id.* at 40103. Consequently, the Makhijani declaration does not form a sufficient basis for the Petition's claims.

C. The TFR Does Not Question Whether the NRC Can Continue to License Reactors

Petitioner states, as general support for their petition, that the Applicant's ER must consider recommendations by the TFR because the TFR does not "report a conclusion that

⁵⁴ As discussed in the Commission's Interim Policy Statement, a proposed Annex to 10 C.F.R. Part 50 Appendix D, published for comment on December 1, 1971, would have included consideration of Class 8 (design basis) accidents, and omitted consideration of Class 9 accidents in NRC environmental assessments. See Interim Policy Statement, 45 Fed. Reg. at 40102.

licensing of reactors would not be ‘inimical to public health and safety,’” whereas the TFR makes a finding that continued license activities “are not inimical to the common defense and safety.” *Id.* at 20 (quoting TFR at 18). On this issue, Petitioner is mistaken. The TFR explicitly states “the Task Force concludes that continued operation and continued licensing activities do not pose an imminent risk to the public health and safety and are not inimical to the common defense and security.” TFR at 18. The Petitioner bases their argument on the TFR’s use of the term “imminent risk” as opposed to “not inimical.” However, there is nothing in the report that implies anything other than the intent that continued operation is and continued licensing activities are not inimical to the public health and safety. Therefore, Petitioner’s argument that the TFR did not make the requisite finding of ‘not inimical to the public health and safety’ is inconsistent with the TFR.

D. Petitioner’s Reliance on *Marsh v. Oregon* is Misplaced

Finally, Petitioner’s reliance on *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989) to justify admission of their petition is incorrect. While the Supreme Court in *Marsh* established that an agency must take a “hard look” at significant new information, the Court also stated that “an agency need not supplement an EIS every time new information comes to light after the EIS is finalized.” *Marsh*, 490 U.S. at 392. Such a requirement “would render agency decision making intractable, always awaiting updated information only to find the new information outdated by the time a decision is made.” *Id.* at 373.

The D.C. Circuit further explained that “if new information shows that the remaining action will affect the quality of the environment in a significant manner or to a significant extent *not already considered*, a supplemental EIS must be prepared.” *Nat’l Comm. for the New River v. FERC*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (emphasis added) (internal quotes and citations omitted). However, “a supplemental EIS is only required where new information “provides a seriously different picture of the environmental landscape.” *Id.* (quoting *City of Olmsted Falls v. FAA*, 292 F.3d 261, 274 (D.C. Cir. 2002)). The Commission adopted this standard in *Hydro*

Resources, Inc. (P.O. Box 15910, Rio Rancho, NM 15910), CLI-01-04, 53 NRC 31, 52 (2001), stating “[t]he new circumstance must reveal a seriously different picture of the environmental impact of the proposed project.” The Commission recently affirmed this standard in the *Suspension Memorandum and Order*, holding that the recommendations in the TFR and other information regarding the Fukushima accident did not provide a “seriously different picture of the environmental landscape” and therefore a supplemental EIS was not required. *Suspension Order* at 31. Moreover, “[t]o merit additional review, information must be both ‘new’ and ‘significant’ and it must bear on the proposed action or its impacts.” *Id.* at 31.

In attempting to use *Marsh* to justify admission of its contention, Petitioner is in effect claiming that the petition involves information that has not already been considered and provides a seriously different picture of the environmental landscape. As discussed above, the TFR is in essence a safety report, and does not deal with environmental recommendations. *See supra*, Discussion Section IV.A. Since the Task Force does not purport to make environmental recommendations, the TFR does not change the environmental landscape. Therefore, the information does not satisfy the standard under *Marsh*.

Nor does the Petitioner present facts or expert opinion that a Fukushima type of event will occur at the licensing site or whether its impact will be the same or greater than that already considered in the GEIS. As the Commission emphasized in the *Suspension Order*, Section 51.72(a) requires that the new and significant information “[bear] on the proposed action or its impacts.” *Suspension Order* at 31, emphasis in original. Petitioner has not shown what particular bearing the TFR would have on the CGS LRA.

E. Conclusion

As discussed above, the quotations from the TFR and Makhijani declaration do not provide sufficient support for the claims in the Petition. The recommendations in the TFR do not relate to the NRC’s environmental reviews in general or SAMA analyses in particular. The Makhijani declaration is too speculative and general to provide a sufficient factual basis for the

proffered petition. In its *Suspension Memorandum and Order*, the Commission found that a similar declaration from Dr. Makhijani attached to the Emergency Petition “provides mostly speculation, not facts or evidence, on potential implications for U.S. facilities.” Suspension Order at 27. The declaration attached to the instant Petition provides similar speculation. As a result, the Board should find the proposed contention inadmissible. 10 C.F.R. § 2.309(f)(1)(v).

VII. Suspension Request

Additionally, the Petition notes that the Petitioner also filed a rulemaking petition “seeking to suspend any regulations that would preclude full consideration of the environmental implications of the Task Force Report.” Petition at 19. The rulemaking petition states that “the NRC has a non-discretionary duty to suspend the relicensing proceeding while it considers the environmental impacts of that decision, including the environmental implications of the Task Force report with respect to severe reactor and spent fuel pool accidents.” Rulemaking Petition at 3-4. Petitioner filed the rulemaking petition before the Board and the Commission. *Id.* On September 9, 2011, the Commission rejected the Petitioner’s petition to suspend the regulations, stating “the rulemaking petitioners’ request does not support suspension of the named proceedings at this time.” Suspension Order at 32. Therefore, the suspension request is no longer before the Board.

CONCLUSION

For the foregoing reasons, the Board should deny the Petition. The Petition is late, raises claims that are outside the scope of this license renewal proceeding, does not raise a material issue, and lacks an adequate factual basis.

Respectfully submitted,

/Signed (electronically) by/

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
ENERGY NORTHWEST)	Docket No. 50-397-LR
)	
(Columbia Generating Station))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S ANSWER TO PETITION FOR HEARING AND LEAVE TO INTERVENE" in the above captioned proceeding have been served upon the following by the Electronic Information Exchange, this 15th day of September, 2011:

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