

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

EXELON GENERATION COMPANY, LLC

(Peach Bottom Atomic Power Station, Units 2 and 3)

Docket Nos. 50-277-SLR
50-278-SLR

NRC STAFF ANSWER TO BEYOND NUCLEAR INC.'S:
MOTION FOR LEAVE TO FILE NEW CONTENTION BASED ON
DRAFT SUPPLEMENT TO GENERIC ENVIRONMENTAL IMPACT
STATEMENT; AND MOTION TO REOPEN THE RECORD
AND FOR CONSIDERATION OF ARGUMENTS OUT OF TIME

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INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.309(i)(1) and 2.323, and the Order of the Secretary,¹ the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) hereby files its answer to the motion for leave to file a new contention² and motion to reopen and for consideration of arguments out of

¹ *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), Order (Granting Motions for Extension of Time) (Sept. 27, 2019) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19270G014).

² Beyond Nuclear, Inc.'s Motion for Leave to File New Contention Based on Draft Supplement 10 to Generic Environmental Impact Statement for Subsequent License Renewal of Peach Bottom Operating License (Sept. 3, 2019, as corrected Sept. 5, 2019) (Contention Motion). Beyond Nuclear states that its motion is filed pursuant to §§ 2.309(c) and 2.309(f)(2). Contention Motion at 1.

time submitted by Beyond Nuclear, Inc. (Beyond Nuclear)³ concerning the subsequent license renewal application (SLRA) submitted by Exelon Generation Company, LLC (Exelon or Applicant) for Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom). Specifically, Beyond Nuclear seeks admission of Contention 3, which challenges the adequacy of the discussion of the impacts of design basis accidents in draft Supplement 10 to NUREG-1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (Draft Supplement 10 or Draft SEIS).⁴

As discussed further below, the Commission should deny both motions because Beyond Nuclear does not meet the good cause standards under 10 C.F.R. § 2.309(c)(1), does not satisfy the standards for a motion to reopen in 10 C.F.R. § 2.326, and does not meet the contention admission standards in 10 C.F.R. § 2.309(f)(1). Contention 3 is based on information that is not materially different from previously available information, improperly challenges the Commission’s regulations, lacks sufficient support, and does not raise a genuine dispute regarding a material issue of law or fact. Moreover, Beyond Nuclear’s Motion to Reopen is an untimely supplement to its Contention Motion, does not show that the contention

³ Beyond Nuclear, Inc.’s Motion to Reopen the Record for Purposes of Considering and Admitting a New Contention Based on Draft Supplement 10 to Generic Environmental Impact Statement for Subsequent License Renewal of Peach Bottom Operating License and Request for Consideration of Some Elements of the Motion Out of Time (Sept. 23, 2019) (Motion to Reopen). Beyond Nuclear states that the Motion to Reopen, pursuant to 10 C.F.R. § 2.326, is dated September 23, but filed on Sunday, September 22 to supplement its Motion to address jurisdiction, reopening standards, and standing, and to provide a declaration of counsel. See Motion to Reopen at 1-2, 13.

⁴ Contention Motion at 1-2. See draft NUREG-1437, Supplement 10, Second Renewal, “Regarding the Subsequent License Renewal for Peach Bottom Atomic Power Station, Units 2 and 3” (ML19210D453) (July 2019) (Draft SEIS or Draft Supplement 10). The Draft SEIS includes the NRC staff’s analysis of the environmental effects of the proposed action (subsequent license renewal) and the environmental impacts of alternatives to the proposed action. See, e.g., Draft SEIS at xvi —xix. It also includes the NRC staff’s preliminary recommendation regarding the proposed licensing action. *Id.* at xix.

raises a significant or exceptionally grave issue, and should be rejected in its entirety.

Therefore, Beyond Nuclear's motions should be denied.

BACKGROUND

This proceeding concerns the application submitted by Exelon on July 10, 2018, for the renewal of Renewed Facility Operating License Nos. DPR-44 and DPR-56 to permit an additional 20 years of operation at Peach Bottom Units 2 and 3.⁵ In LBP-19-5, the Atomic Safety and Licensing Board (Board) denied Beyond Nuclear's initial intervention petition, as amended, finding that Beyond Nuclear had standing to intervene, but failed to file an admissible contention as required by 10 C.F.R. § 2.309(f)(1)(iv)–(vi).⁶ Accordingly, the Board terminated the proceeding, specifying the deadline to appeal its decision.⁷

Beyond Nuclear appealed LBP-19-5, seeking the reversal and remand of the Board's denial of Contention 2, which alleged that Exelon's Environmental Report (ER) violates the National Environmental Policy Act (NEPA) and 10 C.F.R. § 51.53(c)(2) by failing to address accident risks posed by aging equipment by incorrectly relying on the Category 1 designation for

⁵ See Letter from Michael Gallagher (Exelon) to NRC Document Control Desk (July 10, 2018) (ML18193A697); Subsequent License Renewal Application, Peach Bottom Atomic Power Station Units 2 and 3, (July 2018) (ML18193A773) (SLRA); Exelon Generation Company, LLC: Peach Bottom Atomic Power Station, Units 2 and 3, 83 Fed. Reg. 45,285 (Sept. 6, 2018) (notice of opportunity for hearing).

⁶ *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC ____ (Jun. 20, 2019) (slip op.). See also Beyond Nuclear, Inc.'s Hearing Request and Petition to Intervene (Nov. 19, 2018) (Petition).

⁷ See Slip op. at 24.

design-basis accidents by using § 51.53(c)(3).⁸ The Staff and Exelon filed briefs in opposition to the appeal.⁹ Beyond Nuclear then sought leave to file a reply to the Staff and Exelon appeal briefs, which, along with Beyond Nuclear's appeal, is still pending before the Commission.

In the instant motions, Beyond Nuclear argues that it has good cause to file Contention 3, because (1) the Staff's analysis was not previously available and did not exist until the publication of the Draft SEIS, (2) "information upon which the amendment to the contentions is based is 'materially different' from information previously available in the ER...because the SEIS contains a discussion of environmental impacts of design basis accidents that did not appear in the ER," and (3) Contention 3 was filed within 30 days of the receipt of notice of the issuance of the Draft SEIS.¹⁰ Beyond Nuclear admits that its Motion to Reopen is untimely and does not indicate that Contention 3 raises an exceptionally grave issue.¹¹ It also claims that its Contention Motion showed Contention 3 raises a significant environmental issue and materially different issue by challenging new information in the EIS, and that its Contention Motion timely

⁸ See Beyond Nuclear's Brief on Appeal of LBP-19-05 (Jul. 15, 2019) (Appeal) at 1; LBP-19-5, slip op. at 1, 24. The Board concluded that regardless of whether § 51.53(c) applies to SLR applications, Exelon permissibly incorporated by reference generic environmental impact statement (GEIS) analyses and 10 C.F.R. Part 51, Table B-1 findings concerning the impacts of design-basis accidents and that Beyond Nuclear did not raise a genuine dispute regarding use of § 51.53(a) and had not supported its position that the GEIS was deficient or inapplicable to SLR applications. Slip op. at 19-20. The Board also found that no basis had been shown to require consideration of the "Expanded Materials Degradation Assessment" (EMDA) report issues (identified a staff rulemaking paper) or of other literature identified in the report by petitioner's expert, David Lochbaum, in the ER. LBP-19-5, slip op. at 16-17.

⁹ NRC Staff Brief in Opposition to Beyond Nuclear Appeal of LBP-19-5 (Aug. 9, 2019) (Staff Appeal Brief); Exelon's Brief in Opposition to Beyond Nuclear's Appeal (Aug. 9, 2019) (Exelon Appeal Brief).

¹⁰ Contention Motion at 14-15 (citing an email dated August 2, 2019, which Beyond Nuclear's counsel states she received on August 3, 2019). Given the date of the email distribution and the Labor Day holiday, the Staff does not dispute the timeliness of Beyond Nuclear's Motion under 10 C.F.R. § 2.309(c)(2). See 10 C.F.R. § 2.306(a).

¹¹ See Contention Motion at 9-11.

addressed all reopening standards except for demonstrating standing and providing affidavits or declarations.¹²

The Staff addresses both motions, including the admissibility of Contention 3, below.

LEGAL STANDARDS

I. Motions to Reopen

After all contentions pending in a contested proceeding have been decided, the proceeding is terminated.¹³ Generally, once a licensing board proceeding is terminated and an appeal (or petition for review) is filed on a Board order that rules on an intervention petition, jurisdiction passes to the Commission to consider all further motions, including motions to reopen a closed record.¹⁴

Any new contentions submitted after the termination of a proceeding will be held to the higher standard for a motion to reopen.¹⁵ A motion to reopen “will not be granted unless the following criteria are satisfied:”¹⁶

- (1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
- (2) The motion must address a significant safety or environmental issue; and
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

¹² See Motion to Reopen at 9-12.

¹³ *Virginia Elec. & Power Company d/b/a Dominion Virginia Power & Old Dominion Electric Cooperative* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 699 (2014).

¹⁴ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-05, 69 NRC 115, 120 (2009) (citing *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-00-25, 52 NRC 355, 357 (2000); *Philadelphia Elec. Co.* (Limerick Generating Station, Units 1 and 2), ALAB-823, 22 NRC 773 (1985)).

¹⁵ *North Anna*, CLI-12-14, 75 NRC at 700.

¹⁶ 10 C.F.R. § 2.326(a).

The motion must be accompanied by affidavits that meet the criteria of 10 C.F.R. § 2.326(b), and the new material in support of a motion to reopen must be set forth with a degree of particularity in excess of the basis and specificity requirements contained in 10 C.F.R. § 2.309(f) for admissible contentions.¹⁷ Thus, the movant has a heavy burden.

Further, the Commission has noted that 10 C.F.R. § 2.326(d) makes clear that where the record is closed and the movant seeks admission of a contention not previously part of the proceeding, the requirements of 10 C.F.R. § 2.309(c) must also be satisfied.¹⁸

II. New or Amended Contentions

New or amended contentions submitted after the initial date for hearing requests must meet the following requirements set forth in 10 C.F.R. § 2.309(c)(1):

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

The Commission generally considers a new or amended contention to be timely if filed within 30 days of the availability of the new information.¹⁹ In the context of 10 C.F.R. § 2.309(c)(1), materiality generally relates to the degree or magnitude of the difference between

¹⁷ See *Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-775, 19 NRC 1361, 1366 (1984), *aff'd sub. nom., San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287 (D.C. Cir. 1984), *aff'd on reh'g en banc*, 789 F.2d 26 (D.C. Cir. 1986).

¹⁸ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 668 (2008).

¹⁹ See *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), CLI-11-8, 74 NRC 214, 218 n.8 (2011).

previously available information and currently available information.²⁰ When a draft or final document contains information that was previously available and that is not “significantly different” from information in an applicant’s ER, it is presumed “that the participant could have used that information to support a contention challenging the [ER].”²¹ As such, the information must be more than a new interpretation or restatement of previously available information.²² Rather, a new or amended contention must be based upon facts or information that were previously unavailable.²³

III. General Contention Admissibility Standards²⁴

In addition to meeting the requirements of 10 C.F.R. § 2.309(c)(1) and the motion to reopen standards in 10 C.F.R. § 2.326 discussed above, new or amended contentions must

²⁰ See Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,572 (Aug. 3, 2012) (noting that in the NEPA context “materially different” is equivalent to “differs significantly”); *Florida Power & Light Co.* (Turkey Point Units 6 & 7), LBP-17-6, 86 NRC 37, 48 (2017), aff’d, CLI-17-12, 86 NRC 215 (2017) (noting that “materially” in the context of 10 C.F.R. § 2.309(c)(1)(ii) is synonymous with, for example, “significantly,” “considerably,” or “importantly”) (citing *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-1, 71 NRC 165, 185 (2010)).

²¹ 77 Fed. Reg. at 46,566. See also *DTE Elec. Co.* (Fermi Nuclear Plant, Unit 3, CLI-15-1, 81 NRC 1, 7 (a contention raised on a later-issued staff document would be “impermissibly late” if there is no material difference between the applicant’s environmental report and the Staff’s environmental document)).

²² See *Progress Energy Fla., Inc.* (Levy Cty. Nuclear Power Plant, Units 1 & 2), LBP-09-10, 70 NRC 51, 142 (2009) (“The fact that a party integrates, consolidates, restates, or collects previously available information into a new document, does not convert it into ‘previously unavailable’ information.”); *Entergy Nuclear Vermont Yankee, L.L.C. & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-11-2, 73 NRC 333, 344 (2011) (citing *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 493-96 (2010) (“documents merely summarizing earlier documents or compiling preexisting, publicly available information into a single source do not render ‘new’ the summarized or compiled information.”)).

²³ See *Vermont Yankee*, CLI-11-2, 73 NRC at 344 (citing *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-07-10, 65 NRC 144, 146 (2007)); *Prairie Island*, CLI-10-27, 72 NRC at 496.

²⁴ Although the Staff has set forth these admissibility standards and the license renewal framework in previous filings in response to Beyond Nuclear’s intervention filings (e.g., NRC Staff Answer to Beyond Nuclear, Inc.’s Hearing Request and Petition to Intervene (Dec. 14, 2018), at 7-29), the Staff includes them again here for completeness and the convenience of the reader.

also satisfy the six contention admissibility requirements of 10 C.F.R. § 2.309(f)(1), which requires that, for each contention, the petitioner must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . .;
 - (ii) Provide a brief explanation of the basis for the contention;
 - (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
 - (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
 - (v) Provide a concise statement of the alleged facts or expert opinions which support the 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; [and]
 - (vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. 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; ...
- (2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant's environmental report.

Contention admissibility rules are “strict by design” and failure to comply with any of the requirements set forth in the regulations is grounds for the dismissal of a contention.²⁵ NRC rules require “a clear statement as to the basis for the contentions and the submission of...supporting information and references to specific documents and sources that establish the validity of the contention.”²⁶ An issue is inadmissible if the petitioner “‘has offered no tangible information, no experts, no substantive affidavits,’ but instead only ‘bare assertions and speculation,’” even if by an expert.²⁷ In framing proposed contentions, petitioners have an “ironclad obligation” to examine, with sufficient care, publicly available information.²⁸ A petitioner “must ‘read the pertinent portions of the license application, including the Safety Analysis Report and the Environmental Report.’”²⁹

All contentions must show that a “genuine dispute” exists on a material issue of law and fact regarding the license application in question, challenge and identify either specific portions of, or alleged omissions from, the application, and provide the supporting reasons for each

²⁵ *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 136 (2016) (citations omitted); *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-15-21, 82 NRC 295, 302 (2015) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001)). Only focused, well supported issues will be admitted. *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 138 (2015).

²⁶ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-119 (2006) (citations omitted).

²⁷ *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003) (citations omitted). See *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006).

²⁸ *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 NRC 1401 (1983).

²⁹ *Millstone*, CLI-01-24, 54 NRC at 358 (quoting “[Final Rule] Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process,” 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989)).

dispute.³⁰ An issue is material if it is relevant to a finding the NRC must make to support the action in the proceeding or if it will affect the outcome.³¹

Finally, pursuant to 10 C.F.R. § 2.335, “no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities...is subject to attack...in any adjudicatory proceeding” in the absence of a waiver petition granted by the Commission.”³² Thus, a contention “must be rejected where...it challenges the basic structure of the Commission’s regulatory process or is an attack on the regulations.”³³ A contention must also be rejected if it expresses generalized grievances about NRC policies.³⁴

IV. License Renewal Scope and Regulatory Framework

The regulations in 10 C.F.R. Part 54 limit the scope of the license renewal review and a license renewal proceeding to those matters that must be considered for the license renewal application to be granted and that have not been addressed by rulemaking or on a generic basis.³⁵ Under 10 C.F.R. §§ 54.29 and 54.31(b), a renewed license may be issued for up to 20 years if the Commission finds, among other things, that actions have been identified, have been

³⁰ 54 Fed. Reg. at 33,170.

³¹ *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), LBP-15-20, 81 NRC 829, 850 (2015).

³² 10 C.F.R. § 2.335 (a) – (b).

³³ *Public Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982) (citing *Peach Bottom*, ALAB-216, 8 AEC at 20-21). *See also* *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 218 (2003) (“Petitioners may not seek an adjudicatory hearing ‘to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies’”) (citing *Oconee*, CLI-99-11, 49 NRC at 334); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 303 (1995) (noting that a contention amounting to Petitioner’s differing opinion of what the regulations should require must be rejected).

³⁴ *See* *Millstone*, CLI-03-14, 58 NRC at 218.

³⁵ *Oyster Creek*, CLI-06-24, 64 NRC at 117-18. *See also* 10 C.F.R. § 54.29; *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3 at 8-10 (2001).

taken or will be taken to manage the effects of aging during the period of extended operation in accordance with 10 CFR 54.29(a) and that applicable Subpart A of 10 C.F.R. Part 51, Subpart A requirements, have been met.³⁶ Neither the Atomic Energy Act nor the Commission's regulations limit the number of times that a nuclear power plant's operating license may be renewed.^{37 38} Upon the adoption of 10 C.F.R. Part 54 in 1991, the Commission expressly provided in 10 C.F.R. § 54.31(d) that "[a] renewed license may be subsequently renewed upon expiration of the renewal term, in accordance with all applicable requirements."³⁹

The Commission also stated that the requirements applicable to renewals that extend operating licenses beyond 60 years would include Part 54 provisions "unless the Commission subsequently adopts special provisions applicable only to subsequent renewals...."⁴⁰ The Commission's later rejection of the Staff's 10 C.F.R. Part 54 rulemaking option presented in

³⁶ Section 54.29(a) requires that "there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB [current licensing basis], and that any changes made to the plant's CLB in order to comply with 54.29(a) are in accord with the Act and the Commission's regulations."

³⁷ Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2133.c (stating that each license "shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years . . . and may be renewed upon the expiration of such period."); 10 CFR 54.31(d).

³⁸ The 1996 Generic Environmental Impact Statement noted that "[o]perating licenses may be renewed for up to 20 years beyond the 40-year term of the initial license. No limit on the number of renewals is specified." "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," NUREG-1437, Vol. 1 (May 1996) (ML040690705) ("GEIS" or "1996 GEIS"), at 1-1. The 2013 GEIS similarly noted that "[t]here are no specific limitations in the Atomic Energy Act or the NRC's regulations restricting the number of times a license may be renewed" and defined the renewal term as being the time period "past the original or current license term." "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," NUREG-1437, Vol 1, Rev. 1 (June 2013) (ML13106A241) ("Revised GEIS" or "2013 GEIS"), at 1-1, 7-27.

³⁹ Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,979 (Dec. 13, 1991).

⁴⁰ *Id.*, 56 Fed. Reg. at 64,964-65.

SECY-14-0016,⁴¹ and the Commission's acceptance of the Staff's position that no changes to its environmental regulations in 10 C.F.R. Part 51 are needed,⁴² indicates that the existing regulatory framework and regulatory process for license renewals also apply to subsequent license renewals.⁴³

The National Environmental Policy Act of 1969, 42 U.S.C. § 4321–4370h, requires federal agencies to include, in any recommendation or report on proposals for major federal actions significantly affecting the quality of the human environment, a detailed statement on the environmental impacts of that action.⁴⁴ The requirement that agencies take a “hard look” at the environmental impacts of a proposed major federal action that could significantly affect the environment is tempered by a rule of reason that requires agencies to address only those impacts that are reasonably foreseeable—not remote and speculative.⁴⁵ Further, the Commission has stated that “NEPA does not call for certainty or precision, but an *estimate* of

⁴¹ Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal, SECY-14-0016 (Jan. 13, 2014) (ML14050A306) (“SECY-14-0016”). See *id.* at 5-7, 9 (Option 4, staff recommendation for rulemaking).

⁴² See “Staff Requirements – SECY-14-0016 – Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal” (Aug. 29, 2014) (ML14241A578) (SRM-SECY-14-0016) (declining rulemaking, directing the staff, *inter alia*, to update license renewal guidance as needed to provide clarity, to “address emerging technical issues and operating experience through alternative vehicles,” and to keep the Commission informed on specified matters and emphasize to industry the need for resolution of these issues prior to review of any subsequent license renewal application).

⁴³ *Id.*

⁴⁴ NEPA, section 102(2)(C), 42 U.S.C. § 4332(2)(C).

⁴⁵ See, e.g., *Long Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-156, 6 AEC 831, 836 (1973); *Louisiana Energy Servs., L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87-88 (1996); *New York v. NRC*, 681 F.3d 471, 482 (D.C. Cir. 2012).

anticipated (not unduly speculative) impacts.”⁴⁶ Neither does NEPA call for Federal agencies to do the impossible.⁴⁷ The Commission has noted that “NEPA gives agencies broad discretion to keep their inquiries within appropriate and manageable boundaries.”⁴⁸

NRC regulations in 10 C.F.R. Part 51, which implement NEPA, reflect amendments designed to improve regulatory efficiency in environmental reviews and to provide for “more focused and therefore more effective [NRC] NEPA reviews by focusing on “significant case[-]specific concerns.”⁴⁹ Since their adoption in 1996, the Commission has relied on the generic assessment of environmental impacts in NUREG-1437 (the GEIS).⁵⁰ Part 51, Subpart A, Appendix B, Table B-1, “Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants,” delineates environmental impacts to be considered in a license renewal environmental review.⁵¹ Table B-1 is based on technical data in the 2013 GEIS, which updated the Commission’s 1996 findings, redefined the number and scope of issues that must

⁴⁶ *Louisiana Energy Servs, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 536 (2005) (emphasis in original).

⁴⁷ The Supreme Court has observed that where it is not possible for an agency to analyze the environmental consequences of a proposed action or alternatives to it, requiring such analysis would have “no factual predicate.” *Kleppe v. Sierra Club*, 427 U.S. 390, 401-02 (1976). Under those circumstances an Environmental Impact Statement (“EIS”) is not required. See *id.*

⁴⁸ *Claiborne Enrichment Center*, CLI-98-3, 47 NRC at 103 (citing *South Louisiana Env’tl. Council, Inc. v. Sand*, 629 F.2d 1005, 1011 (5th Cir. 1980)).

⁴⁹ Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467 (Jun. 5, 1996); *id.*, 61 Fed. Reg. 66,537 (making minor clarifying and conforming changes and adding text omitted from Table B-1); Correction, 66 Fed. Reg. 39,277 (Jul. 30, 2001) (making further corrections to Table B-1).

⁵⁰ *Id.*

⁵¹ See *Turkey Point*, CLI-01-17, 54 NRC at 11-12.

be addressed during license renewal reviews, and incorporated lessons learned and knowledge gained during previous renewal reviews.^{52 53}

The Commission environmental regulations define the scope of applicant ERs and the Staff's review and, in Appendix B, Subpart A, Table B-1, include findings on the scope and magnitude of the environmental impacts of renewing nuclear power plant operating licenses.⁵⁴ Adjudicatory proceedings on license renewal applications are bounded by the same rules and scope applicable to the NRC's review under these regulations.⁵⁵

Appendix B states that Table B-1, which lists both Category 1 (i.e., generic) and Category 2 (i.e., site-specific) findings,⁵⁶ "represents [subject to the evaluation of Category 2

⁵² Table B-1, note 1 (citing NUREG-1437, Revision 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants (Jun. 2013) ("2013 GEIS")); Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37,282, 37,285 (Jun. 20, 2013) (describing the 2013 GEIS as being "both an update and a re-evaluation of the potential environmental impacts arising from the renewal of an operating license for...an additional 20 years").

⁵³ The draft and final versions of the Regulatory Analysis both noted that the NRC anticipated that it would receive applications for a second 20-year license renewal. See Enclosure 2, "Regulatory Analysis," to SECY-09-0034, "Proposed Rulemaking—Environmental Protection regarding the Update of the 1996 [GEIS] for Nuclear Power Plant License Renewal" (Mar. 3, 2009) (ML083460087) ("Draft Regulatory Analysis") at 15; Enclosure 2, "Regulatory Analysis," to SECY-12-0063, "Final Rule: Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses" (Apr. 4, 2012) (ML110760321) ("Final Regulatory Analysis") at 25.

⁵⁴ *Turkey Point*, CLI-01-17, 54 NRC at 10 (citation omitted).

⁵⁵ *Id.*

⁵⁶ Table B-1, note 2 states that the "Category" designations in Table B-1 mean the following:

Category 1: For the issue, the analysis reported in the [GEIS] has shown:

- (1) The environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic;

issues and possible new and significant information] *the analysis of the environmental impacts associated with renewal of any operating license* and is to be used in accordance with [10 C.F.R.] § 51.95(c) (emphasis added).” Section 51.95(c) requires the Staff to prepare (for each license renewal review) an EIS that supplements the GEIS and requires the Staff, adjudicatory officers, and the Commission to integrate the conclusions on Category 1 issues in the GEIS with information on Category 2 issues and any new and significant information.⁵⁷ Also, 10 C.F.R. § 51.71(d) requires that the draft EIS rely on conclusions as amplified by the supporting information in the GEIS. Category 1 issues “are not subject to site-specific review and thus fall beyond the scope of individual license renewal proceedings.”⁵⁸ Inasmuch as the conclusions of the 2013 GEIS have been incorporated into a regulation, “the conclusions of that analysis may

(2) A single significance level (i.e., small, moderate, or large) has been assigned to the impacts (except for Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste); and

(3) Mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are not likely to be sufficiently beneficial to warrant implementation.

Category 2 findings are defined as issues for which the GEIS analysis has shown that one or more of the criteria of Category 1 cannot be met, so that additional plant-specific review is required.

⁵⁷ The Staff conducts its environmental reviews of license renewal applications using the GEIS and NUREG-1555, Supplement 1, Revision 1, Standard Review Plans for Environmental Reviews for Nuclear Power Plants (June 2013) (ML13106A246) (“ESRP-LR”).

⁵⁸ *Turkey Point*, CLI-01-17, 54 NRC at 16; see also 10 C.F.R. § 51.53(c)(3)(i)-(ii) (2018). In *Turkey Point*, the Commission recognized that the rules “provide a number of opportunities for individuals to alert the Commission to new and significant information that might render a generic finding invalid, either with respect to all nuclear power plants or for one plant in particular. In the hearing process, for example, petitioners with new information showing that a generic rule would not serve its purpose at a particular plant may seek a waiver of the rule.” *Turkey Point*, CLI-01-17, 54 NRC at 12. Beyond Nuclear has not requested a waiver to support the admission of Contention 3.

not be challenged in litigation unless the rule is waived by the Commission for a particular proceeding or the rule itself is suspended or altered in a rulemaking proceeding.”⁵⁹

In addition, a license renewal applicant is generally not required to discuss generic Category 1 issues in its Environmental Report, but instead may reference and adopt the Commission’s generic findings set forth in 10 C.F.R. Part 51 and the Revised GEIS.⁶⁰ Also, pursuant to 10 C.F.R. § 51.53(c)(3)(iv), an applicant’s environmental report “must contain any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware.”⁶¹ Thus, an applicant must provide a plant-specific review of the non-generic Category 2 issues in its Environmental Report (ER), and must address any *new and significant* information that might render the Commission’s generic Category 1 determinations incorrect in that proceeding.⁶²

The Staff’s environmental review for a license renewal is guided by the Revised GEIS⁶³ and the ESRP-LR.⁶⁴ Like the applicant in its environmental report, the Staff is not required to address generic Category 1 impacts in its plant-specific environmental impact statement, which it publishes as a supplement to the GEIS (“SEIS”).⁶⁵ But the Staff must address any new and

⁵⁹ *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-07-03, 65 NRC 13, 17-18 (footnotes omitted), *reconsid. denied*, CLI-07-13, 65 NRC 211, 214-15 (2007). This approach has been found to comply with NEPA. *See, e.g., Massachusetts v. NRC*, 708 F.3d 63, 68-69 (1st Cir. 2013).

⁶⁰ *See Turkey Point*, CLI-01-17, 54 NRC at 11.

⁶¹ 10 C.F.R. § 51.53(c)(3)(iv) (2018).

⁶² *See, e.g., Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-07, 78 NRC 199, 212-13 (2013); *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-09-10, 69 NRC 521, 527 (2009); *Turkey Point*, CLI-01-17, 54 NRC at 11-12.

⁶³ *See* 2013 GEIS, NUREG-1437, Vols. 1-3.

⁶⁴ ESRP-LR, NUREG-1555, Supp. 1, Rev. 1.

⁶⁵ *See* 10 C.F.R. 51.95(c).

significant information of which it becomes aware that might affect the applicability of the Commission's generic Category 1 determinations in the proceeding.⁶⁶ A site-specific supplement to the GEIS needs further supplementation only "if there are 'significant new circumstances or information'...[that] paint[] a dramatically different picture of impacts compared to the description of impacts in the EIS."⁶⁷

DISCUSSION

I. Summary of Proffered Contention

Beyond Nuclear seeks admission of a new Contention that claims the Draft SEIS violates NEPA and 10 C.F.R. § 51.71 (1) because it relies on the 2013 GEIS and Table B-1 finding that the environmental impacts of design-basis accident are SMALL; (2) because it does not state that it incorporates the 1996 and 2013 GEIS by reference, and if it intended to so, it fails to follow the holding in *Turkey Point*, LBP-16-8, and NUREG-1555 guidance; and (3) because the brief discussion in Appendix E of the SEIS does not address studies that post-date the 2013 GEIS (e.g., the EMDA report referenced in SECY-14-0016) or state that the SEIS surveyed information about accident risks posed by operating reactor equipment beyond 60 years, and (4) by improperly relying on NRC safety requirements to conclude there will be no changes in the impacts of design-basis accidents despite the SECY-14-0016-identified

⁶⁶ See 10 C.F.R. § 51.95(c); 61 Fed. Reg. 28,467, 28,470 (stating that the Staff will act on new and significant information that demonstrates that a codified impact analysis is incorrect, including correcting the analysis in the SEIS, as appropriate); *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-16-8, 83 NRC 417, 439-40 (2016).

⁶⁷ *Massachusetts v. NRC*, 708 F.3d 63, 68-69 (1st Cir. 2013) (quoting *Town of Winthrop v. FAA*, 535 F.3d 1, 7, 12 (1st Cir. 2008)); accord, *Limerick*, CLI-13-07, 78 NRC at 211, 216-17. The Commission has also indicated that such information "must present 'a seriously different picture of the environmental impact of the proposed action from what was previously envisioned.'" *Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 167-68 (2011) (citing *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 871200), CLI-99-22, 50 NRC 3, 14 (1999)).

uncertainties regarding safe operation of aging reactors.⁶⁸ Beyond Nuclear also states that it is not aware of a “determination that these issues have been resolved.”⁶⁹ In essence, as it did in Contention 2, Beyond Nuclear again seeks to challenge the applicability of 10 C.F.R. § 51.53(c)(3), as well as the 2013 GEIS and Table B-1 findings to SLR.

As a basis for its contention, Beyond Nuclear notes NEPA’s hard look and public participation requirements.⁷⁰ It argues that Part 51 regulations do not allow Category 1 determinations to be applied to SLR applicants under 51.53(c)(3) and 51.45(a), that no regulations (or NEPA exemptions) apply to SLR applicants, and that the 1996 and 2013 GEIS only apply to initial renewal.⁷¹ Beyond Nuclear also alleges that because there is no indication that four technical issues that present challenges for post-60-year operation, as noted in SECY-14-0016 and the 2014 EMDA Report, have been resolved, NEPA requires the Staff to address uncertainties raised regarding the risks of design-basis accidents.⁷²

⁶⁸ Contention Motion at 3-5.

⁶⁹ *Id.* at 5.

⁷⁰ *Id.* at 5.

⁷¹ *See id.* at 7-12.

⁷² *Id.* at 12-14. Contention 3 states the four issues are reactor pressure vessel embrittlement, irradiation-assisted stress corrosion cracking of reactor internals, concrete structures and containment degradation, and electrical cable qualification and condition assessment. Contention Motion at 5.

II. The Reopening Standards Are Not Met

The Commission's rules place a "heavy burden on those filing a motion to reopen a closed record under 10 C.F.R. § 2.326."⁷³ The motion must meet the standards in 10 C.F.R. § 2.326; meet the 10 C.F.R. § 2.309(c) "good cause" standards for filings after the deadline; and show that the new contention is admissible under the strict criteria of 10 C.F.R. § 2.309(f).⁷⁴ "All of these requirements," the Commission has stated, "must be met for a motion to reopen to be granted."⁷⁵ Beyond Nuclear, however, does not address the 10 C.F.R. § 2.326(a) requirements that its motion must address a "significant safety or environmental issue" and "demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially." Instead, Beyond Nuclear relies upon caselaw to argue that "the requirements of 10 C.F.R. § 2.326 must be interpreted to be satisfied by" a showing that its contention raises new issues rather than new arguments or facts.⁷⁶ As discussed below, the case relied upon by Beyond Nuclear, *Union of Concerned Scientists v. NRC (UCS II)*,⁷⁷ does not change the applicable legal standards. Beyond Nuclear may not cherry pick which of the Commission's rules it wishes to abide by, and, in addition to 10 C.F.R. §§ 2.309(c) and (f), it is bound by 10 C.F.R. § 2.326.

⁷³ *DTE Electric Co. (Fermi Nuclear Power Plant, Unit 2)*, CLI-17-07, 85 NRC 111, 115 (2017).

⁷⁴ *Id.* at 116.

⁷⁵ *Id.*

⁷⁶ See Motion to Reopen at 2.

⁷⁷ 920 F.2d 50 (D.C. Cir. 1990).

Applying the 10 C.F.R. § 2.326 standards for motions to reopen, Beyond Nuclear concedes that its motion to reopen was not timely filed.⁷⁸ Under applicable precedent, Beyond Nuclear should have filed a motion to reopen within 30 days of the availability of the new information.⁷⁹ Beyond Nuclear states its counsel was notified of the availability of the Draft SEIS on August 3, 2019.⁸⁰ Beyond Nuclear describes its uncertainty about jurisdiction and states that it “has now researched the issue” and found that a motion to reopen is necessary.⁸¹ Beyond Nuclear claims it should be permitted to file a motion to reopen on September 22, 2019, almost three weeks after the closing of the 30-day window, because its error was “excusable” and because some aspects of its motion were satisfied by its September 3, 2019 Contention Motion.⁸²

The Staff does not agree. The requirements for a motion to reopen are not buried in caselaw; they are present in the Commission’s regulations at 10 C.F.R. § 2.326. Beyond Nuclear, as an experienced litigant, should not have been surprised by them. Further, it is unclear why Beyond Nuclear’s uncertainty about jurisdiction would have prevented timely filing, given that this issue was discussed in its previous, timely filing.⁸³ The plain language of 10 C.F.R. § 2.326(a)(1) requires motions to reopen to be timely unless they raise exceptionally grave issues. Beyond Nuclear has not done so here. While litigants may request extensions of

⁷⁸ Motion to Reopen at 11 (“Beyond Nuclear acknowledges that the last two elements of this motion were not included in its Motion to Amend Contention 3 and therefore were not timely filed...”).

⁷⁹ See *Vogtle*, CLI-11-8, 74 NRC at 218 n.8.

⁸⁰ Contention Motion at 15.

⁸¹ Motion to Reopen at 11-12.

⁸² *Id.*

⁸³ Contention Motion at 2.

applicable filing deadlines,⁸⁴ the wish to rewrite a previous motion does not justify a motion filed out of time.

For an untimely motion to reopen, the petitioner's burden is "considerably greater;"⁸⁵ it must establish that the issue it seeks to raise is "exceptionally grave."⁸⁶ The Commission has stated that the "exceptionally grave" exception was intended to address problems that present "a sufficiently grave threat to public safety."⁸⁷ The "exceptionally grave" provision is a "narrow exception" to the Commission's timeliness requirement for motions to reopen that "will be granted rarely and only in truly extraordinary circumstances."⁸⁸

But Beyond Nuclear does not argue that Contention 3 identifies an exceptionally grave issue, nor can such an issue be inferred from its filing. The crux of Contention 3 is Beyond Nuclear's disagreement with NRC regulations requiring the Staff to rely on GEIS Category 1 findings to fulfill its NEPA obligations. This disagreement over NRC's description of Category 1 issues, or Beyond Nuclear's claim that NRC did not follow the proper steps for incorporation by reference, do not create the "truly extraordinary circumstances"⁸⁹ where the "exceptionally grave" exception would apply. Furthermore, the Staff's preparation of the Draft SEIS incorporated findings in the 2013 GEIS.⁹⁰ The Commission has suggested that whether a

⁸⁴ 10 C.F.R. § 2.307(a).

⁸⁵ *Public Service Co. of New Hampshire*, (Seabrook Station, Units 1 & 2), ALAB-886, 27 NRC 74, 78 (1988).

⁸⁶ 10 C.F.R. § 2.326(a)(1).

⁸⁷ Criteria for Reopening Records in Formal Licensing Proceedings; Final Rule, 51 Fed. Reg. 19535, 19536 (May 30, 1986) (citation omitted).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Draft SEIS at 1-3 to 1-5.

document complied with applicable guidance is relevant to whether the document “credibly may be so deficient that it presents an ‘exceptionally grave’” issue.⁹¹ The motion to reopen should be rejected because it is untimely and did not present an “exceptionally grave” issue.

Although the untimeliness of Contention 3 is enough to render it inadmissible,⁹² Contention 3 also does not meet the requirement in 10 C.F.R. § 2.326(a)(3) that a materially different result would be likely if the new evidence had been considered initially. The new evidence offered in support of a motion to reopen must be “significant” so as to “materially affect[] the decision;” “simple submission of new contentions is not sufficient.”⁹³ In this case, the only new evidence that Beyond Nuclear has identified is the Draft SEIS. Specifically, Beyond Nuclear objects to the use of GEIS findings in the Draft SEIS. But the Staff’s use of GEIS findings for Category 1 issues in the Draft SEIS does not materially differ from Exelon’s use of GEIS findings for Category 1 issues in its Environmental Report. Although the two documents and their discussion of Category 1 issues are not identical, both documents refer to Table B-1 in Appendix B to Subpart A of 10 C.F.R. Part 51⁹⁴ to justify their use of the GEIS findings. Beyond Nuclear’s arguments challenging the use of GEIS findings in the Draft SEIS merely reiterate similar arguments Beyond Nuclear made before the Board in support of

⁹¹ *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.*, (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 497 (2012); *see also Entergy Nuclear Generation Co.*, (Pilgrim Nuclear Power Station), LBP-12-1, 75 NRC 1, 14-15 (2012) (“For there to be an exceptionally grave issue in this proceeding, it must relate to the [relevant] plant directly—not by speculation.”).

⁹² *See Vogtle*, CLI-11-8, 74 NRC at 232 n.44 (stating that, “when a motion to reopen is untimely, the section 2.326(a)(1) ‘exceptionally grave’ test supplants the section 2.326(a)(2) ‘significant safety or environmental issue’ test”).

⁹³ *Pacific Gas & Elec. Co.*, (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-81-5, 13 NRC 361, 362-363 (1981).

⁹⁴ *Compare* ER at 4-1 to 4-14 *with* Draft SEIS at 4-2 to 4-4.

Contention 2, and arguments Beyond Nuclear made on appeal regarding the putative deficiencies of Exelon's incorporation by reference of the GEIS.⁹⁵ Contention 3 is an attempt to rehash arguments Beyond Nuclear has already had the opportunity to present on a closely analogous issue. It therefore should be rejected as a mere new contention—not the significant new evidence likely to lead to a materially different result demanded by the standard.

Nor does the decision in *Union of Concerned Scientists (UCS) II* change this conclusion. Beyond Nuclear claims that in *UCS II* the court “found that if the contention raised a new issue that was material to the licensing decision, the NRC could not erect barriers to its admission, other than barring issues that were already being litigated by another party, or that were not truly new ‘issues’ but instead amounted only to new evidence or arguments.”⁹⁶ This reading is incorrect. Even if standing and 10 C.F.R. § 2.309(c) requirements are met, raising “new issues” is not enough to warrant admission of an EIS contention (submitted after the deadline for contentions), under *UCS II* and Commission caselaw.

In *UCS II*, UCS challenged an NRC rule for admission of contentions filed after the deadline. The DC Circuit held that NRC's rule was not in conflict with applicable legal requirements,⁹⁷ and interpreted a previous case, *UCS I*,⁹⁸ to “stand[] for the proposition that Section 189(a) [of the AEA] prohibits the NRC from preventing all parties from ever raising in a hearing on a licensing decision a specific issue *it agrees is material* to that decision.”⁹⁹ The

⁹⁵ Petition at 6-14; Appeal at 6-10.

⁹⁶ Motion to Reopen at 10.

⁹⁷ *UCS II*, 920 F.2d at 57.

⁹⁸ *Union of Concerned Scientists v. NRC*, 735 F.2d 1437 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1132, 105 S.Ct. 815 (1985).

⁹⁹ *UCS II*, 920 F.2d at 54 (emphasis added).

court also noted that “UCS I dealt with a matter *conceded by all parties* to be a material issue” [as distinguished from new evidence].”¹⁰⁰

The *UCS II* court’s language makes clear that *UCS I* only applies to issues that are material to the relevant agency action and *defined as material in NRC regulations*. Subsequent decisions by Federal Courts of Appeals and the Commission confirm this interpretation.¹⁰¹ *UCS I* “holds only that the Commission cannot exclude from a[n AEA] section 189(a) hearing issues *that its rules or regulations require it to consider* in its licensing decisions.”¹⁰² Thus, to demonstrate that it has the right to a hearing under the *UCS I* rationale, a petitioner “must show that NRC rules or regulations required the Commission to consider” that issue in its licensing decision.¹⁰³ But, as discussed above, NRC regulations explicitly allow, and in the case of the Staff, adjudicatory boards, and the Commission, *require*, environmental documents to rely on the GEIS findings when discussing Category 1 issues for subsequent license renewal.¹⁰⁴ Beyond Nuclear’s position on Category 1 issues is unsupported by NRC regulations, and, therefore, the holdings in *UCS I* and *UCS II* do not apply. Because Beyond Nuclear’s motion is untimely, does not raise an exceptionally grave issue, and does not fall under the narrow *UCS* rationale, the motion to reopen should be rejected.

¹⁰⁰ *Id.* at 55 (emphasis added).

¹⁰¹ *San Luis Obispo Mothers for Peace v. U.S. Nuclear Regulatory Comm’n*, 789 F.2d 26, 30 (D.C. Cir. 1986); *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 & 2), ALAB-940, 32 NRC 225, 233 (1990); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 36 (2000) (refusing to apply *UCS I* when no NRC rule made the issue material to licensing).

¹⁰² *Mothers for Peace*, 789 F.2d at 30 (emphasis added).

¹⁰³ *Id.* at 30.

¹⁰⁴ 10 C.F.R. § 51.71(d) requires that the NRC’s draft SEIS “prepared under § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in [Part 51, Appendix B, Table B-1],” in addition to considering applicable Category 2 issues.

III. Good Cause Requirements Are Not Met

With respect to the good cause requirements of 10 C.F.R. § 2.309(c), Staff does not dispute that Beyond Nuclear's Contention Motion was filed within 30 days of notice of the public release of the Draft SEIS.¹⁰⁵ Contrary to Beyond Nuclear's assertions, however, the information upon which the filing based is not materially different from information previously available.

As a licensing board recently stated, the legal standard in applying 10 C.F.R. § 2.309(c)(1) is "whether the factual information underpinning [a new document] was previously available."¹⁰⁶ Changes in how those facts are framed and qualitatively characterized are insufficient to show material difference.¹⁰⁷

The underlying information in the Draft SEIS was publicly available before its publication and no new or significant information on the issues raised in Contention 3 was added to the Draft SEIS. Both the Draft SEIS and the ER rely on the summary environmental findings in Part 51, Table B-1, and the GEIS for the conclusion that the impacts of design-basis accidents are SMALL.¹⁰⁸ Although the precise wording of the Draft SEIS was not previously available, Beyond Nuclear had access to Part 51, Table B-1, the GEIS, and the ER's application of those documents to Peach Bottom well before the issuance of the Draft SEIS. Thus, the Draft SEIS does not contain information that is materially different from that previously available.

¹⁰⁵ See Contention Motion at 15.

¹⁰⁶ *Holtec Int'l* (HI-STORE Consolidated Interim Storage Facility), LBP-19-4, slip op. at 65, 89 NRC ____ (May 7, 2019) (concluding that the information upon which petitioners based their amended contentions was previously available because "[t]he legal standard is not whether Holtec's RAI responses differ from the arguments it raised in its Answer to the Petition, but whether the factual information underpinning Holtec's RAI responses was previously available.").

¹⁰⁷ See *Levy Cty.*, LBP-09-10, 70 NRC at 142.

¹⁰⁸ Compare ER at 4-1 to 4-14 with Draft SEIS at 4-2 to 4-4.

As the movant, Beyond Nuclear has the burden to meet the good cause requirements of 10 C.F.R. § 2.309(c)(1). Beyond Nuclear fails to meet this burden because the Contention Motion does not identify information that is materially different from information previously available and is based solely on information that was previously available—the findings in the GEIS and Table B-1 that appear in both the ER and the Draft SEIS. For these reasons, the Contention Motion should be denied.

IV. General Contention Admissibility Requirements Are Not Met

In addition to meeting the heightened threshold for admission of a contention after the termination of a proceeding in 10 C.F.R. § 2.326(a) and the good cause requirements in 10 C.F.R. § 2.309(c)(1), Petitioner must also meet the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1).

Beyond Nuclear argues that its contention challenging the adequacy of the Draft SEIS discussion and conclusion that the impacts of design-basis accidents is SMALL raises an issue within the scope of the proceeding, demonstrates that the contention is material to findings the NRC must make, and is supported by statements of facts and opinions, including statements in SECY-14-0016 and the EMDA Report.¹⁰⁹ Beyond Nuclear, however, does not meet the standards for contention admission under 10 C.F.R. § 2.309(f)(1)(iii), (v), and (iv) because Contention 3 attacks the Commission regulations, raises an issue that is not within the scope of the proceeding, lacks sufficient foundation, and fails to raise a genuine dispute on a material issue of law or fact.

¹⁰⁹ Contention Motion at 14.

A. Contention 3 Raises Issues Beyond the Scope of this Proceeding

Because Beyond Nuclear challenges the Table B-1 designation of design-basis accident impacts as Category 1 by asserting that Table B-1 and the GEIS do not apply to SLR, and by logical extension, that the impacts of design-basis accidents are not SMALL.¹¹⁰ Its contention is beyond the scope of this proceeding and, therefore, is inadmissible.¹¹¹ Beyond Nuclear cannot challenge the adequacy of a generic environmental finding codified by rulemaking in an individual licensing proceeding without first being granted a petition for waiver or exception of the rules.¹¹² Such a petition would require a showing that there are special circumstances showing that application of the rule or regulation would not serve the purposes for which the rule or regulation was adopted.¹¹³ Beyond Nuclear has not filed such a petition.

Although Beyond Nuclear points to NRC statements about the EMDA technical issues identified in SECY-14-0016 to claim that the Draft SEIS is deficient, its generalized concerns about “uncertainties” are not raised in a manner that is appropriate for an individual licensing proceeding. Except for the brief reference to the Exelon ER in arguing that the ER cannot rely on § 51.53(c)(3), Contention 3 does not reference any information that is specific to Peach

¹¹⁰ See *id.* at 3.

¹¹¹ See *Turkey Point*, CLI-01-17, 54 NRC at 16.

¹¹² *Id.*, 54 NRC at 10.

¹¹³ 10 C.F.R. § 2.335(b). For example, the movant would have to show that the generic impact determination of SMALL is invalid to demonstrate that the generic rule would not serve its purpose at Peach Bottom. The Commission’s four-part test includes a showing that special circumstances exist that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding lead to the rule sought to be waived, those circumstances are unique to the facility rather than common to a large class of facilities; and that waiver of the regulation is necessary to reach a significant safety problem. *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199 (2013) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-24, 62 NRC 551, 559-60 (2005)).

Bottom, its aging management programs, or environmental impacts.¹¹⁴ Beyond Nuclear's attempt to attack the Commission's regulatory scheme for SLR and adequacy of the Table B-1 for all SLR applicants without the grant of a petition for waiver or exception, therefore, is impermissible.¹¹⁵

In addition, a generic assertion that the Category 1 impact determination does not apply is a matter for a rulemaking petition under 10 C.F.R. § 2.802 and not a matter for this licensing proceeding.¹¹⁶ Therefore, Contention 3 is inadmissible because it raises an issue that is beyond the scope of this license renewal proceeding absent the grant of a waiver petition¹¹⁷ and does not satisfy the requirement of 10 C.F.R. § 2.309(f)(1)(iii).

B. Contention 3 Lacks Adequate Support

Contention 3 also lacks legal and factual support. In the Contention and its basis statement, Beyond Nuclear claims that it is not aware of a determination that the four reactor aging issues identified in EMDA Report and SECY-14-0016 have been "resolved" and that, therefore, uncertainties regarding the risks of design-basis accidents must be addressed under NEPA.¹¹⁸ If Beyond Nuclear is unaware of the resolution of these issues, however, it is due to

¹¹⁴ See Contention Motion at 3-14.

¹¹⁵ *Millstone*, CLI-03-14, 58 NRC at 218 (citations omitted) ("Petitioners may not seek an adjudicatory hearing 'to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies'").

¹¹⁶ See Contention Motion at 8-12.

¹¹⁷ *Turkey Point*, CLI-01-17, 54 NRC at 19; 10 C.F.R. § 2.335(a); Policy on Conduct of Adjudicatory Proceedings; Policy Statement, 63 Fed. Reg. 41,872, 41,874 (Aug. 5, 1998).

¹¹⁸ Contention Motion at 5.

its decision to ignore events that transpired after the issuance of SECY-14-0016, as discussed in previous Staff filings.¹¹⁹

After the issuance of SECY-14-0016, the Staff addressed the technical issues identified in that document and briefed the Commission on its progress in addressing SLR issues.¹²⁰ NRC and DOE presentations indicated that research on EMDA issues did not identify any “showstoppers” to the readiness for review of SLR applications, and described revisions to aging management programs related to the four issues that were included in the GALL-SLR.¹²¹ The *Federal Register* notice of issuance of these documents indicated that guidance documents for the first license renewal (i.e., for operation from 40 to 60 years) were revised to reflect aging differences for operation from 60 to 80 years, to consider new operating experience, and to incorporate changes previously issued as Interim Staff Guidance (ISG).¹²² The GALL-SLR also stated that the results of the EMDA Report were used to identify aging management programs

¹¹⁹ See, e.g., Staff Answer at 20-21 and n. 83 (citing 2017 Commission Briefing, Tr. 7-10, 68-76). The Staff also noted that Commission correspondence to Congress described the import of the August 2019 SRM-SECY-14-0016 with respect to the status of the regulatory framework for SLR as follows:

In August 2014, the Commission affirmed that no revisions to either the safety or environmental regulations are needed to support the assessment of a SLR application. However, the Commission directed the staff to update license renewal guidance, as needed, to provide additional clarity on the implementation of the license renewal regulatory framework....

Letter from Kristine L. Svinicki (Chairman, NRC) to Hon. John A. Barrasso (Chairman, U.S. Sen. Committee on Environment and Public Works) (July 19, 2018) (ML18170A241) and Enclosure to Letter from Kristine L. Svinicki (Chairman, NRC) to Hon. John A. Barrasso (Chairman, U.S. Sen. Committee on Environment and Public Works), at 45-46 (July 19, 2018) (ML18170A284) (“Barrasso Letter Enclosure”).

¹²⁰ See, e.g., [Commission] Briefing on the Status of Subsequent Licensing Renewal Preparations (Apr. 26, 2017), Transcript (ML17118A300) (“2017 Briefing”). During the briefing Chairman Svinicki noted that in 2014 the Commission “disapproved the staff’s proposal that we undertake rulemaking...And the Commission, at that time...validated that the current framework was the right framework for follow-on...license renewal reviews.” Tr. at 52.

¹²¹ 2017 Briefing at 7-10 (Reister, DOE); 68-72 (Hiser, NRC); 73-76 (Thomas, NRC).

¹²² Final Documents for Subsequent License Renewal, 82 Fed. Reg. 32,588, 32,588 (July 14, 2017).

(AMPs) that need revision for SLR and that guidance on AMPs was modified after the issuance of SRM-SECY-14-0016 to ensure sufficient guidance was in place.¹²³

The SRM issued after the briefing did not direct any further changes to SLR guidance documents.¹²⁴ The transcript of the Commission meeting and the documents referenced in this section are publicly available.¹²⁵ Beyond Nuclear's failure to examine publicly available information regarding the status of the issues indicates that it has not meaningfully structured its participation to submit a focused and supported contention.¹²⁶

While NEPA requires the NRC to take a "hard look" at environmental impacts as a general principle, contentions raising environmental issues in a license renewal proceeding are limited to plant-specific impacts caused by license renewal.¹²⁷ Beyond Nuclear's discussion of NEPA¹²⁸ states generic propositions about acknowledging environmental harms and providing an opportunity for public participation. It does not identify any potential plant-specific environmental impacts stemming from the Peach Bottom SLRA such that a seriously different picture of impacts of design-basis accidents would be shown.¹²⁹ Similarly, its claim that the

¹²³ See, e.g., Generic Aging Lessons Learned for Subsequent License Renewal, NUREG-2191, Vols. 1 and 2 (July 2017) (ML17187A031 and ML17187A204) (GALL-SLR) at xxvii-xxix (stating that the Staff used the results of the EMDA).

¹²⁴ See Staff Requirements – Briefing on the Status of Subsequent Licensing Renewal Preparations, 9:00 A.M., Wednesday, April 26, 2017, Commissioner's Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance) (ML17128A244).

¹²⁵ 2017 Briefing; GALL-SLR; SRM-SECY-14-0016; Final Documents for Subsequent License Renewal, NUREG; issuance, 82 Fed. Reg. 32,588 (July 14, 2017).

¹²⁶ See *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-813, 22 NRC 59, 82-83 (1985).

¹²⁷ *Turkey Point*, CLI-01-17, 54 NRC at 11-12.

¹²⁸ See Contention Motion at 7-8.

¹²⁹ See *Turkey Point*, CLI-01-17, 54 NRC at 11-12; *Callaway*, CLI-11-5, 74 NRC at 167-68.

“NRC has no NEPA regulations that apply to SLR”¹³⁰ ignores the plain language of 10 C.F.R. Part 51, Subpart A, Appendix B, which states that, with the exception of Category 2 issues and evaluation of possible significant new information, Table B-1 “represents the analysis of impacts associated with the renewal of any license.” Beyond Nuclear’s focus on the word “initial” dismisses statements regarding the regulatory framework for SLR applications, including those made by the Chairman at the April 2017 Commission briefing.¹³¹ Beyond Nuclear’s unsubstantiated claims regarding SLR regulations and the status of EMDA issues are thus inadmissible under 10 C.F.R. § 2.309(f)(1)(v).

C. Contention 3 Fails to Raise a Genuine Dispute

Beyond Nuclear’s contention also fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi) in that it does not raise a genuine dispute on a material issue of law or fact.¹³²

Contention 3 claims that the Draft SEIS should incorporate information from the 1996 and 2013 GEIS material by reference under § 51.71(e).¹³³ That regulation states that a draft SEIS will rely on the conclusions as amplified by the supporting information in the GEIS for Category 1 issues. However, the Draft SEIS includes the codified findings for design-basis accidents in Table B-1, and summarizes information and references sections in the 1996 and 2013 GEISs.¹³⁴ While Beyond Nuclear may disagree that current statements in the Draft SEIS

¹³⁰ Contention Motion at 9.

¹³¹ Chairman Svinicki noted during the briefing that when the Commission disapproved the Staff’s rulemaking proposal stated in SECY-14-0016, “the Commission...validated that the current framework was the right framework for follow-on...license renewal reviews.” 2017 Briefing, Tr. at 52.

¹³² See *Palisades*, LBP-15-20, 81 NRC at 850.

¹³³ See Contention Motion at 3-4.

¹³⁴ Draft SEIS at 4-4 (citing 2013 GEIS at 4.9.1.2), 4-99 (citing 2013 GEIS Table at 4-1) and E-1 to E-3 (citing 1996 GEIS at 5.2.3).

are sufficient to “amplify” supporting information in the GEIS, it does not raise a genuine dispute as to whether reliance on Table B-1 summary findings, which represent the analysis of associated impacts, fails to satisfy the § 51.95(c)(3) and (c)(4) requirements that the SEIS consider any significant new information relevant to the proposed action and integrate the GEIS conclusions for this Category 1 issue. In addition, the cited licensing board decision, LBP-16-8, did not address, and thus did not rule, that a GEIS supplement for license renewal must incorporate by reference GEIS information in order to amplify information in the document supplemented.¹³⁵

Beyond Nuclear also challenges the Commission’s regulatory scheme for subsequent license renewal, including NRC regulations that require applicants and the agency to rely on codified Table B-1, Category 1 findings, which represent the analysis for all plants, in the absence of new and significant information.¹³⁶ From the outset, statements made by the Commission and Staff in promulgating license renewal rules (and in both the 1996 GEIS and 2013 GEIS) indicated that there was no limit on the number of renewals and that the purpose of Part 54 and Part 51 regulations is to provide for focused reviews;¹³⁷ that the 2013 GEIS, which updated and reevaluated impact findings, defines the license renewal period as the period past the original or current license term and often states that renewal is for “an additional 20 years,” or “beyond the current license term;”¹³⁸ that Table B-1 includes a finding that covers up to

¹³⁵ See LBP-16-8, 83 NRC at 429-440.

¹³⁶ See Contention Motion at 8-12 (citing 10 C.F.R. §§ 51.53(c)(3), 51.71(d), and 51.95(c)).

¹³⁷ See Section III.A, *supra*.

¹³⁸ *E.g.*, 2013 GEIS at S-4, 1-3, 7-27.

80 years,¹³⁹ and that the 2013 GEIS was developed in anticipation of SLR applications and to address renewals in 20 year increments.¹⁴⁰ Beyond Nuclear also does not address the *Turkey Point* licensing board decision, which concluded 10 C.F.R. § 51.53(c)(3), Table B-1, and the GEIS apply to SLR applications.¹⁴¹

More importantly, Contention 3 also fails to identify any information in the Draft SEIS that differs significantly from information previously available or that would paint a seriously or dramatically different picture of the environmental impacts of renewing the Peach Bottom license.¹⁴² In the context of an environmental concern, a supplemental EIS, which may necessitate reopening the record,¹⁴³ is needed where new information “raises new concerns of sufficient gravity such that another, formal in-depth look at the environmental consequences of

¹³⁹ As indicated in Volume 1 of NUREG-2157, Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (Sept. 2014), at 1-17, the Category 1 impact determination for onsite storage of spent fuel is based on two license renewals.

¹⁴⁰ See notes 53-54 *supra*.

¹⁴¹ See *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), LBP-19-3, 89 NRC __ (Mar. 7, 2019) (slip op. at 25). The Board found that the regulation is silent with respect to SLR applicants, that the Commission did not restrict the rule to initial applicants only, and that a holistic reading, including the requirement that the Staff must rely on the GEIS when preparing its EIS, supported its conclusion. *Id.* at 13-25. The Board also noted that the 2013 GEIS considered the prospect of SLR applications, that the Commission agreed with the Staff’s view (in SECY-14-0016) that no changes to environmental regulations are needed for SLR, and that a requirement that applicants address Category 1 issues on a site-specific basis would conflict with the required generic treatment in the Staff’s EIS. These rulings were referred to the Commission.

¹⁴² See *Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 566 n.141 (2009) (describing standard for filing new contention based on draft EIS when that document contains “significantly” different information).

¹⁴³ *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-06-03, 63 NRC 19, 28 (2006) (PFS) (quoting *Wisconsin v. Weinberger*, 745 F.2d 412, 418 (7th Cir. 1984)).

the proposed action is necessary.”¹⁴⁴ Significant new information with respect to an EIS must paint a seriously or dramatically different picture of environmental impacts.¹⁴⁵ Such new information must raise a previously unknown environmental concern, not just additional evidence that merely supports one side or the other of a dispute concerning an environmental effect.¹⁴⁶ But in this case, Beyond Nuclear’s environmental concern is substantially identical to the one proffered against the ER in Contention 2, which was rejected by the Board in LBP-19-5.¹⁴⁷

Rather than raising significant new environmental information, Contention 3 is an attack on NRC regulations, which is inadmissible without the grant of a petition for waiver or exception. The Table B-1, Category 1 findings, as supported by the technical basis provided by the GEIS, indicate the impacts of design-basis accidents for all plants, including Peach Bottom, are SMALL. In the absence of a showing of special circumstances (involving plant specific information) that meets § 2.335 requirements by showing that Category 1 impact finding should be changed, Beyond Nuclear fails to satisfy the 10 C.F.R. § 2.309(f)(1)(vi) requirement to raise a genuine dispute with the applicant on a material issue of law or fact and, thus, the Contention should be rejected.¹⁴⁸

¹⁴⁴ *PFS*, 63 NRC at 28.

¹⁴⁵ See *Callaway*, CLI-11-5, 74 NRC 141, 166-67 (2011); *PFS*, 63 NRC at 350 (citing *National Committee for the New River, Inc. v. Federal Energy Reg. Comm’n*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (quoting *City of Olmsted Falls v. Fed. Aviation Admin.*, 292 F.3d 261, 274 (D.C. Cir. 2002)).

¹⁴⁶ *PFS*, 63 NRC at 28.

¹⁴⁷ See LBP-19-5, slip op. at 16-24.

¹⁴⁸ See *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), LBP-06-10, 63 NRC 314, 341 (2006); *Palisades*, LBP-15-20, 81 NRC at 850.

Beyond Nuclear asserts that the Staff's reliance on the license renewal framework to conclude that the environmental impacts of design-basis accidents at Peach Bottom will remain SMALL confuses AEA compliance with NEPA compliance.¹⁴⁹ This claim also fails to raise a genuine dispute on a material issue. While the Staff agrees that NEPA and AEA reviews are separate,¹⁵⁰ it is reasonable to examine the impacts of the proposed action in the context of design and regulatory requirements applicable to the facility. A renewed license cannot be issued unless the NRC finds there is reasonable assurance that the CLB, and any CLB changes made to comply with license renewal requirements, will be maintained.¹⁵¹ As noted in the 1996 GEIS, the ability of a plant to meet design and performance criteria must be demonstrated before the issuance of an initial license and the licensee is required to maintain these acceptable design and performance criteria, "throughout the life of the plant, including any extended-life operation."¹⁵² The 1996 GEIS concluded that because of requirements that "continuous acceptability of the consequences and aging management programs be in effect for license renewal, the environmental impacts as calculated for design-basis accidents should not differ significantly from initial licensing assessments [and thus] the environmental impacts of those accidents [are not] examined further."¹⁵³

The statement included in the Draft SEIS similarly applies a rule of reason to consider the environmental impacts of the proposed action in the context of design-basis accident

¹⁴⁹ See Contention Motion at 6.

¹⁵⁰ See *Turkey Point*, CLI-01-17, 54 NRC at 13 (noting that reliance on generic findings in Part 51 comports with NEPA).

¹⁵¹ 10 C.F.R. § 54.29(a).

¹⁵² 1996 GEIS at 5-11.

¹⁵³ *Id.* at 5-12.

performance requirements that limit offsite consequences.¹⁵⁴ The codified definition of SMALL in Table B-1 is also based upon the conclusion that the environmental impacts associated with Category 1 issues do not exceed levels permissible in NRC regulations.¹⁵⁵ Beyond Nuclear's complaint does not identify significant new information regarding environmental impacts that raises a genuine dispute that Category 1 determination is not applicable to Peach Beach Bottom. Thus, this generic concern does not raise a genuine dispute.

Contention 3 also cites *New York v. NRC*¹⁵⁶ for the proposition that a reasonable assurance finding for license renewal "does not describe a failure probability so low as to dismiss the consequences of that failure." Beyond Nuclear, however, does not explain why the prospective finding in that case, regarding the availability of a geologic repository for high-level waste, is comparable to findings necessary for the Peach Bottom license renewal. Beyond Nuclear also does not explain why the Staff's generic impact determination of SMALL for design basis accidents might equate to dismissing environmental consequences. Thus, this generalized concern also fails to raise a genuine dispute.

In addition, with respect to the need to include information about uncertainties related to the four EMDA issues, the Commission has made it clear that 40 C.F.R. § 1502.22 does not prescribe requirements for the NRC.¹⁵⁷ The Commission has removed references to the cited

¹⁵⁴ See *id.*

¹⁵⁵ See 2013 GEIS at S-6 (defining small impact as those that do not exceed permissible levels in NRC regulations): Part 51, Table B-1, note 3.

¹⁵⁶ 681 F.3d 471, 478 (D.C. Cir. 2012) (stating that the Waste Confidence Update finding of reasonable assurance that sufficient mined geologic repository capacity will be available when necessary did not describe a probability of failure so low....").

¹⁵⁷ *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443-44 (2011); *Powertech (USA), Inc.* (Dewey-Burdock *In Situ* Uranium Recovery Facility), CLI-19-09, 90 NRC__ (Sept. 26, 2019) slip op. at 18.

CEQ regulation from contentions.¹⁵⁸ Beyond Nuclear has not supported its assertion that information is incomplete or unavailable from the Draft SEIS because it has not demonstrated, via a petition for waiver, that inclusion of the information would alter the GEIS and Table B-1 finding that the impacts of design-basis accidents are SMALL. Thus Contention 3 does not raise a genuine dispute on a material issue. Consequently, Contention 3 does not satisfy the requirements of 10 C.F.R. § 2.309(f)(1)(v).¹⁵⁹

In sum, an intervention petitioner has the burden to meet the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). Beyond Nuclear fails to meet this burden because Contention 3 challenges the regulations, lacks sufficient support, and does not raise a genuine dispute on a material issue of law or fact. For these reasons, Contention 3 is inadmissible.

¹⁵⁸ See *Diablo Canyon*, CLI-11-11, 74 NRC at 444.

¹⁵⁹ *Fansteel*, CLI-03-13, 58 NRC at 203.

CONCLUSION

For the reasons set forth above, the Beyond Nuclear Contention Motion and Motion to Reopen should be denied.

Respectfully submitted,

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Executed in Accord with 10 C.F.R. § 2.304(d):

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Dated at Rockville, Maryland
this 3rd day of October 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

EXELON GENERATION COMPANY, LLC

(Peach Bottom Atomic Power Station,
Units 2 and 3)

Docket No. 50-277-SLR
50-278-SLR

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing “NRC STAFF ANSWER TO BEYOND NUCLEAR INC.’S MOTION FOR LEAVE TO FILE NEW CONTENTION BASED ON DRAFT SUPPLEMENT TO GENERIC ENVIRONMENTAL IMPACT STATEMENT; AND MOTION TO REOPEN THE RECORD AND FOR CONSIDERATION OF ARGUMENTS OUT OF TIME,” dated October 3, 2019, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding, this 3rd day of October 2019.

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 3rd day of October 2019