October 31, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

DTE ELECTRIC CO. (Fermi Nuclear Power Plant, Unit 3)	)	52-033-COL
DTE ELECTRIC CO. (Fermi Nuclear Power Plant, Unit 2)	)	50-341-LR
DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2)	)	52-018-COL 52-019-COL
ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point Nuclear Generating Units 2 and 3)	)	50-247-LR 50-286-LR
FIRSTENERGY NUCLEAR OPERATING CO. (Davis-Besse Nuclear Power Station, Unit 1)	)	50-346-LR
FLORIDA POWER & LIGHT CO. (Turkey Point Units 6 and 7)	)	52-040-COL 52-041-COL
LUMINANT GENERATION CO. LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4)	)	52-034-COL 52-035-COL
NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1)	)	50-443-LR
NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project Units 3 and 4)	)	52-012-COL 52-013-COL
PACIFIC GAS & ELECTRIC CO. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)	)	50-275-LR 50-323-LR
PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2)	)	52-029-COL 52-030-COL
STP NUCLEAR OPERATING CO. (South Texas Project, Units 1 and 2)	)	50-498-LR 50-499-LR
TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant Units 3 and 4)	)	52-014-COL 52-015-COL

TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2)	))	50-327-LR 50-328-LR
TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2)	))	50-391-OL
UNION ELECTRIC CO. (Callaway Plant, Unit 1)	))	50-483-LR
VIRGINIA ELECTRIC AND POWER CO. d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3)	)))	52-017-COL

NUCLEAR ENERGY INSTITUTE, INC.'S MOTION
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to 10 C.F.R. § 2.323, the Nuclear Energy Institute, Inc. (NEI) moves for leave to file the attached brief as *amicus curiae* addressing substantively identical petitions to suspend final licensing decisions and associated proposed contentions filed in the above-captioned proceedings in response to the Commission's Continued Storage Rule and Generic Environmental Impact Statement (GEIS).[1] According to petitioners, the Atomic Energy Act (AEA) requires that the Commission "issue predictive safety findings regarding the safety of disposing of spent nuclear fuel prior to issuing any reactor licensing decision."[2] Petitioners claim the Continued Storage Rule and GEIS fail to include these findings and therefore, the NRC cannot issue new or renewed reactor licenses. As such, petitioners ask the Commission to suspend final licensing decisions and admit their proposed contentions until the NRC issues these safety findings.

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1 *See, e.g.*, Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings (Sept. 29, 2014) (Petition); Intervenors' Motion for Leave to File a New Contention Concerning the Absence of Required Waste Confidence Safety Findings in the Combined Operating Licensing Proceeding for Fermi 3 Nuclear Power Plant (Sept. 29, 2014).

2 Petition at 7-8.

NEI believes the attached brief will complement the filings in these proceedings and assist the Commission in deciding whether to grant the suspension petition and admit the contentions. NEI is the Washington-based policy organization responsible for representing the commercial nuclear energy industry on generic regulatory, legal, and technical issues.[3] NEI is in a unique position to address the legal and policy implications presented by the suspension petition and contentions. NEI actively participated in the 2010 Waste Confidence rulemaking, intervened in the subsequent *New York v. NRC* litigation, and also actively participated in the Continued Storage rulemaking following the court's remand. Many NEI members are not parties in the above-captioned proceedings yet could be impacted adversely if the Commission departs from its longstanding position that the AEA requires no safety findings on spent fuel disposal in connection with the licensing of individual reactors. Such a departure would defeat the Continued Storage Rule's purpose of preserving "the efficiency of the NRC's licensing process."[4] Accordingly, NEI, on behalf of its members, has a clear and substantial interest in ensuring the Commission appropriately implements the Continued Storage Rule and the AEA.

Accepting the submission of NEI's perspective on the issues presented through its participation in this matter as *amicus curiae* will not prejudice or unduly burden any other participant or result in delay.[5] As an *amicus*, NEI necessarily takes these proceedings as it finds

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[3] NEI's members include all entities licensed by the NRC to operate commercial nuclear power plants, as well as nuclear plant designers, major architect-engineer firms, fuel cycle facilities, nuclear materials licensees, universities, and other organizations and entities involved in the nuclear industry.

[4] Final Rule, Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,238, 56,239 (Sept. 19, 2014).

[5] *See La. Energy Servs.* (Claiborne Enrichment Ctr.), CLI-97-4, 45 NRC 95, 96 (1997).

them and does not propose to inject any new issues into these proceedings.[6] For the foregoing reasons, NEI respectfully requests that the Commission accept its accompanying *amicus* brief.

Respectfully submitted,

Signed (electronically) by Jonathan M. Rund
Ellen C. Ginsberg
Jonathan M. Rund
Nuclear Energy Institute, Inc.
1201 F Street, N.W., Suite 1100
Washington, D.C. 20004
Phone: 202-739-8000
E-mail: ecg@nei.org
E-mail: jmr@nei.org

COUNSEL FOR THE NUCLEAR ENERGY INSTITUTE, INC.

Dated in Washington, D.C.
this 31st day of October, 2014

[6] *See Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), ALAB-862, 25 NRC 144, 150 (1987) (*amicus* participation may be appropriate at any stage because "there is no real difference between an appellate brief amicus curiae and a brief or other submission presented to a trial tribunal").

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CERTIFICATION OF CONSULTATION UNDER 10 C.F.R. § 2.323(b)

Pursuant to 10 C.F.R. § 2.323(b), I certify that I have made a sincere effort to contact other parties in the proceeding and resolve the issues raised in the motion, and that my efforts to resolve the issues have been successful. Counsel for NEI emailed all counsel and duly authorized representatives for the applicants, petitioners, and NRC Staff about the issues raised in the motion. Applicants all support NEI's motion. Diane Curran, on behalf of all petitioners, stated petitioners do not oppose NEI's motion. While the NRC Staff does not oppose the filing of the motion, it reserves the right to respond once it has an opportunity to review the motion.

Respectfully submitted,

Signed (electronically) by Jonathan M. Rund

Jonathan M. Rund
Nuclear Energy Institute, Inc.
1201 F Street, N.W., Suite 1100
Washington, D.C. 20004
Phone: 202-739-8000
E-mail: jmr@nei.org

Dated in Washington, D.C.
this 31st day of October, 2014

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AMICUS CURIAE BRIEF OF THE
NUCLEAR ENERGY INSTITUTE, INC. IN RESPONSE TO
SUSPENSION PETITIONS AND WASTE CONFIDENCE SAFETY CONTENTIONS

Ellen C. Ginsberg
Jonathan M. Rund
Nuclear Energy Institute, Inc.
1201 F Street, N.W., Suite 1100
Washington, D.C. 20004
Phone: 202-739-8000
E-mail: ecg@nei.org
E-mail: jmr@nei.org

COUNSEL FOR THE NUCLEAR
ENERGY INSTITUTE, INC.

Dated in Washington, D.C.
this 31st day of October, 2014

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I. INTRODUCTION

Petitioners have filed substantively identical petitions to suspend final licensing decisions and associated proposed contentions in response to the Commission's Continued Storage Rule and Generic Environmental Impact Statement (GEIS).[1] According to petitioners, the Atomic Energy Act (AEA) requires that the Commission "issue predictive safety findings regarding the safety of disposing of spent nuclear fuel prior to issuing any reactor licensing decision."[2] Petitioners claim the Continued Storage Rule and GEIS fail to include these findings and therefore, the NRC cannot issue new or renewed reactor licenses. As such, petitioners ask the Commission to suspend final licensing decisions and admit their proposed contentions until the NRC issues these safety findings.

The Nuclear Energy Institute, Inc. (NEI) submits this brief as *amicus curiae* because petitioners impermissibly seek to challenge generic Commission rulemaking determinations made in the Continued Storage Rule and GEIS. The Rule's purpose "is to preserve the efficiency of the NRC's licensing process."[3] Petitioners' proposal for the Commission to depart from its longstanding interpretation that the AEA requires no safety findings on spent fuel disposal in connection with the licensing of individual reactors would defeat this purpose. The

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1 *See, e.g.*, Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings (Sept. 29, 2014) (Petition); Intervenors' Motion for Leave to File a New Contention Concerning the Absence of Required Waste Confidence Safety Findings in the Combined Operating Licensing Proceeding for Fermi 3 Nuclear Power Plant (Sept. 29, 2014) (Contention). The contentions filed in these seventeen reactor-licensing proceedings are substantively identical. For simplicity, this brief cites to the contention filed in the Fermi 3 proceeding.

2 Petition at 7-8.

3 Final Rule, Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,238, 56,239 (Sept. 19, 2014) (Continued Storage Rule); *see also* NUREG-2157, Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, Vol. 1, at 1-6 (Sept. 2014) (GEIS).

Commission should not embark on this unnecessary and ill-defined path of suspending licensing decisions and adjudicating these issues on a case-by-case basis. Nothing in the AEA's plain language, the NRC's own practice, or relevant case law requires that the Commission do so. And even if the statute and precedent were not clear, the Continued Storage Rule and GEIS demonstrate the Commission did expressly set forth—and explain the basis for—the Commission's reasonable confidence that spent fuel can and will be safely disposed.

The Continued Storage Rule and GEIS are vital to the commercial nuclear energy industry because the NRC's environmental analysis and regulation on the storage of spent fuel during the continued storage period support licensing of new nuclear projects, as well as license renewals. During the two-year rulemaking effort to develop and issue the Rule and GEIS, final decisions on many licensing actions were suspended and some were substantially delayed.[4] The Commission should resume predictable and timely license reviews now that it has issued the final Rule and GEIS. Applicants should not suffer additional delays predicated on an incorrect legal premise regarding the Continued Storage Rule and GEIS. The rulemaking process provided multiple opportunities for public participation and comment, including over twenty public meetings. The arguments made by petitioners here are the same arguments they made during the rulemaking process—arguments the NRC fully addressed and dismissed in the GEIS. There is no reason to suspend decisions, admit contentions, and exacerbate licensing delays based on petitioners' attempt to reargue points the agency has already rejected. Accordingly, the Commission should deny the petition and associated contentions.

[4] *See* SECY-12-0132, Implementation of Commission Memorandum and Order CLI-12-16 Regarding Waste Confidence Decision and Rule, Enclosure (Oct. 3, 2012) (ML12276A038).

II. STATEMENT OF THE CASE

The phrase "Waste Confidence" originated in the context of a petition for rulemaking filed by the Natural Resources Defense Council (NRDC) in 1976. NRDC requested that the agency conduct a rulemaking to determine whether radioactive waste could be disposed of without "undue risk to the public health and safety" and refrain from issuing reactor licenses until "such time as this definitive finding of safety can be and is made."[5] The NRC denied the petition, stating the AEA did not obligate it to make the requested finding.[6] It concluded there was no statutory requirement to determine that spent fuel can be permanently disposed of safely before issuing a reactor operating license.[7] As a policy matter, however, the agency noted it would not continue to license reactors "if it did not have reasonable confidence that the wastes can and will in due course be disposed of safely."[8]

On judicial review in *NRDC v. NRC*, the U.S. Court of Appeals for the Second Circuit agreed with the NRC and held the AEA does not require the agency to make an "affirmative determination" that spent fuel can be permanently disposed of safely before granting a reactor license.[9] The court also addressed whether the NRC needed to suspend reactor licensing pending the availability of a waste repository. It found that Congress was aware of and "impliedly

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5 Natural Resources Defense Council, Denial of Petition for Rulemaking, 42 Fed. Reg. 34,391 (July 5, 1977) (Denial of NRDC Petition for Rulemaking).

6 *Id.*

7 *Id.* at 34,393.

8 *Id.*

9 *NRDC v. NRC*, 582 F.2d 166 (2d. Cir. 1978).

approved" the NRC's regulatory scheme, in which the safety of interim storage of spent fuel is determined separately from the safety of a permanent disposal facility.[10]

Subsequent litigation in two license amendment cases to expand spent fuel storage capacity ultimately led the NRC to promulgate its first "Waste Confidence" findings and Temporary Storage Rule. On appeal to the U.S. Court of Appeals for the D.C. Circuit in *Minnesota v. NRC*, petitioners argued "the NRC must make a determination of probability that the wastes to be generated by the plants can be safely handled and disposed of" before it could issue these license amendments allowing expanded onsite spent fuel storage capacity.[11] Petitioners claimed that NRC must hold an adjudicatory hearing to make this determination.[12] The court rejected this argument and agreed with the NRC that it may address these issues through generic determinations.[13] As a result, the court did not vacate or stay the amendments at issue. However, the court remanded the case to the NRC for further consideration because the Commission's then-ongoing Table S-3 rulemaking might be relevant to these issues.[14]

Following the remand in *Minnesota*, the NRC commenced the "Waste Confidence" proceeding.[15] As a result, the NRC issued the first Temporary Storage Rule at 10 C.F.R.

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10 *Id.* at 174.

11 *Minnesota v. NRC*, 602 F.2d 412, 416 (D.C. Cir. 1979).

12 *Id.* (emphasis added)

13 *Id.* at 419.

14 *Id.* at 418 (emphasis added).

15 Notice of Proposed Rulemaking, Storage and Disposal of Nuclear Waste, 44 Fed. Reg. 61,372 (Oct. 25, 1979).

§ 51.23,[16] which was supported by the Waste Confidence Decision.[17] Over time, NRC updated and revised the Temporary Storage Rule and Waste Confidence Decision.[18]

After the 2010 update, several states and environmental groups challenged the Rule. In 2012, the D.C. Circuit in *New York v. NRC* vacated and remanded elements of the 2010 update to the agency for further consideration under NEPA.[19] In three areas, the court held that the NRC had not satisfied its NEPA obligations: (1) assessing the environmental impacts of a hypothetical permanent federal failure to establish a high-level waste repository; (2) assessing the risks of spent fuel pool leaks; and (3) assessing the risks of spent fuel pool fires.[20] The court did *not* address any aspects of the rule under the AEA.

In response to the court's ruling, the Commission determined it would not issue licenses dependent upon the Waste Confidence Decision and Temporary Storage Rule, pending completion of action on the remanded proceeding.[21] The Commission also directed the staff to

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16 Final Rule, Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licenses, 49 Fed. Reg. 34,688 (Aug. 31, 1984) (1984 Temporary Storage Rule).

17 Final Waste Confidence Decision, 49 Fed. Reg. 34,658 (Aug. 31, 1984) (1984 Waste Confidence Decision).

18 Final Rule, Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation, 75 Fed. Reg. 81,032 (Dec. 23, 2010) (2010 Temporary Storage Rule); Update and Final Revision of Waste Confidence Decision, 75 Fed. Reg. 81,037 (Dec. 23, 2010) (2010 Waste Confidence Decision); Status Report on the Review of the Waste Confidence Decision, 64 Fed. Reg. 68,005 (Dec. 6, 1999) (1999 Waste Confidence Decision); Final Rule, Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation, 55 Fed. Reg. 38,472 (Sept. 18, 1990) (1990 Temporary Storage Rule); Review and Final Revision of Waste Confidence Decision, 55 Fed. Reg. 38,474 (Sept. 18, 1990) (1990 Waste Confidence Decision).

19 *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012).

20 *See id.* at 478-83.

21 *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 67 (2012). In the same decision, the Commission decided to hold in abeyance a number of new contentions and associated filings concerning continued storage of spent nuclear fuel beyond a reactor's licensed life for operation and prior to ultimate disposal. *Id.* at 68-69.

develop a GEIS to support an updated rule. The NRC encouraged and received wide public participation in this rulemaking.

The Commission recently approved the final Continued Storage Rule and associated GEIS. Whereas prior Waste Confidence Decisions provided an environmental assessment and finding of no significant impact, the GEIS generically and more comprehensively assesses the environmental impacts of continued storage of spent nuclear fuel. The Rule, in turn, codifies the environmental impacts reflected in the GEIS. The GEIS directly addresses the three specific deficiencies identified by the court. As a result, the Commission lifted the suspension on all final licensing decisions and dismissed (or directed the appropriate licensing boards to dismiss) the earlier proposed waste confidence contentions.[22]

After the Rule was published in the *Federal Register*, petitioners filed essentially identical petitions to suspend final licensing decisions and associated proposed contentions in seventeen reactor-licensing proceedings. Because the petitions and contentions "are inextricably linked," all filings were consolidated before the Commission.[23]

III. DISCUSSION

A. The Petition and Contentions Impermissibly Attack NRC Regulations

Commission precedent establishes that suspending licensing decisions is a "drastic action" it will not take "absent immediate threats to public health and safety, or other compelling reason."[24] Petitioners fail to point to any immediate health and safety concern, or other

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22 *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC __, slip op. at 9 (Aug. 26, 2014).

23 *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-9, 80 NRC __, slip op. at 3 (Oct. 7, 2014).

24 *Union Elec. Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 158 (2011) (internal quotation marks omitted).

compelling reason justifying such drastic action by the Commission.[25] Instead, they engage in a generic and impermissible collateral attack on the Continued Storage Rule and GEIS. In that rulemaking, petitioners (and others) argued that the AEA prohibits the NRC from issuing new and renewed licenses absent a finding on the safety of spent fuel disposal.[26] The Commission rejected these comments and explained it is unnecessary to make AEA safety findings in the context of the Continued Storage Rule, the GEIS, or reactor licensing decisions.[27] Petitioners have not addressed—much less shown—why their arguments should prevail now, when they were unpersuasive in the rulemaking.

In these adjudications, petitioners attempt to challenge this Commission rulemaking determination, arguing that "[t]he Commission's conclusion is incorrect"[28] and that moving forward with licensing decisions "violates the AEA's mandate."[29] This amounts to an

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[25] Petitioners are concerned about whether spent fuel "can be safely disposed of in a repository." Petition at 2. Given the time needed to license and develop a repository, there is no imminent threat associated with the disposal of spent fuel in a repository. *See* GEIS, Vol. 1, App. B at B-33 (finding that "the time period needed to develop a repository is approximately 25 to 35 years"). Petitioners also have failed to show that final licensing decisions would preclude fair and efficient decisionmaking. To the contrary, the Commission's policy of providing prompt, efficient, and fair resolution of adjudications demands moving forward with final licensing decisions now that the Continued Storage rulemaking is complete. *See* Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 18-24 (1998). Nor have petitioners successfully shown that the NRC must adopt a rule or policy change before issuing reactor licenses and, even if they had, any such change could be applied retroactively. *See Callaway*, CLI-11-5, 74 NRC at 166 (indicating that NRC's "well-established processes for imposing any new requirements necessary to protect public health and safety" applies even after licenses are issued).

[26] *See, e.g.*, Comments by Environmental Organizations on Draft Waste Confidence Generic Environmental Impact Statement and Proposed Waste Confidence Rule at 14-20 (Jan. 7, 2014) (ML14024A297) (Environmental Organizations Comments); GEIS, Vol. 2, App. D at D-28 to D-29, D-117 to D-118, D-416.

[27] *See, e.g.*, GEIS, Vol. 2, App. D at D-30 ("These AEA safety determinations should not be confused with environmental analysis under NEPA. While specific reasonable assurance findings were historically included in the waste confidence proceeding, those findings are not appropriate for this GEIS and are not necessary."), D-118 ("[T]he cessation of licensing . . . was considered but eliminated as an alternative . . . . [L]icensing decisions are not dependent on siting, licensing, or operation of . . . disposal sites."), D-417 ("[A] reasonable assurance finding regarding a disposal facility is not required—nor is such a determination made—in this proceeding").

[28] Contention at 5.

[29] Petition at 9.

impermissible challenge to a rulemaking-associated generic determination and an attack on the recently issued Continued Storage Rule.[30] The Commission does not permit attacks on NRC regulations in licensing proceedings, absent a proper request for a waiver of a regulation.[31] Here, petitioners have not requested a waiver, much less satisfied the stringent requirements governing such requests.[32] Accordingly, the Commission should deny the petition and contentions.[33]

B. The Atomic Energy Act Does Not Require Safety Findings on Spent Fuel Disposal Before the NRC Issues a Reactor License

Petitioners argue that the AEA's plain language, the NRC's own practice, and applicable judicial case law all support their position that the NRC must "issue predictive safety findings regarding the safety of disposing of spent nuclear fuel prior to issuing any reactor licensing decision."[34] As discussed below, the AEA requires no such finding.

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30 *See, e.g.*, *La. Energy Servs., L.P.* (Nat'l Enrichment Facility), CLI-04-35, 60 NRC 619, 623 n.18 (2004) (concurring with dismissal of contentions containing "impermissible challenges to rulemaking-associated generic determinations"); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 252 (1996) (holding that "[a]n adjudication of a single case is not the place to consider Petitioners' across-the-board challenge" to Commission generic conclusions in the decommissioning rule and GEIS).

31 *See* 10 C.F.R. § 2.335(a), (b). Because no regulation may be challenged in an adjudication, the Commission should also reject the contentions for not meeting 10 C.F.R. § 2.309(f)(1)(iii). Additionally, the Commission should reject the contentions for not satisfying Section 2.309(f)(1)(iv) because repository safety findings are immaterial to reactor licensing decisions.

32 *See Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-05-24, 62 NRC 551, 559-60 (2005).

33 The Commission should also reject the petition for not comporting with any authorized form of pleading in the Rules of Practice. For example, 10 C.F.R. § 2.342 allows a request to stay the effectiveness of a decision pending Commission appellate review. Likewise, 10 C.F.R. § 2.802(d) allows requests to suspend licensing proceedings pending a decision on a petition for rulemaking. None of these provisions is applicable here and even if they were, petitioners have not addressed the applicable factors.

34 Petition at 7-8; *see also* Contention at 5.

1. The Atomic Energy Act's Plain Language Does Not Require Repository Safety Findings for a Reactor Licensing Decision

Petitioners cite general licensing provisions in Sections 103, 161, and 182 of the AEA to support their theory that NRC must address the safety of spent fuel disposal.[35] However, nothing in these general statutory provisions requires that the NRC address the safety of spent fuel disposal in a repository when it issues a reactor license.

As an initial matter, the Commission rejected comments on the Continued Storage Rule and GEIS that presented similar AEA-based arguments.[36] As the Commission explained:

> The comments conflate reasonable assurance findings made in past waste confidence proceedings with AEA safety determinations made in the licensing process. The NRC typically refers to these safety findings as "reasonable assurance" findings (see Section 185 of the AEA), but for the purposes of this discussion they will be referred to as safety determinations that the Commission makes in licensing facilities and activities. These AEA safety determinations should not be confused with environmental analysis under NEPA. While specific reasonable assurance findings were historically included in the waste confidence proceeding, *those findings . . . are not necessary*.[37]

In specifically addressing repository safety, the Commission further stated:

> NRC regulations and Section 185 of the AEA (1954) require the NRC to make reasonable assurance findings as part of its safety review associated with licensing decisions. A future application for a spent fuel repository would be subject to a determination whether the applicant has demonstrated the requisite "reasonable assurance" as required by applicable regulations. However, *a reasonable assurance finding regarding a disposal facility is not*

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35 Contention at 6-8; Petition at 8.

36 *See, e.g.*, Natural Resources Defense Council Comments on the Draft Waste Confidence Generic Environmental Impact Statement and Waste Confidence Rulemaking at 14-16 (Dec. 20, 2013) (ML13360A270); GEIS, Vol. 2, App. D at D-28 to D-30, D-117 to D-118, D-416 to D-417.

37 GEIS, Vol. 2, App D at D-29 to D-30 (emphasis added).

> *required*—nor is such a determination made—in this proceeding. . . .[38]

Accordingly, these responses set forth the Commission's reasonable conclusion that the AEA does not require repository safety findings in a reactor licensing proceeding and "does not require the NRC to cease reactor licensing pending the resolution of repository safety issues."[39]

Contrary to petitioners' claim, this is not an unexpected or new agency position.[40] For example, in the Commission's 1977 response to the NRDC petition for rulemaking previously discussed, the Commission examined the AEA and found "no statutory requirement exists that the Commission determine the safety of ultimate high-level waste disposal activities in connection with licensing of individual reactors."[41] Notably, this Commission decision considered and rejected arguments similar to petitioners' AEA-based arguments. For example, the Commission rejected the argument that the Section 182(a) requirement for "adequate protection" in "the utilization . . . of special nuclear material" requires that the NRC "have some basis for confidence that the spent fuel can be safely disposed of when it is necessary" before issuing a reactor license.[42] In doing so, the Commission highlighted why it would be illogical to read Section 182(a) in this manner. It first observed that Section 182(a) addresses the

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38 *Id.* at D-417 (emphasis added).

39 *Id.* at D-385.

40 *See, e.g.*, Petition at 8 (claiming that "historically, the NRC interpreted the AEA to mandate such safety findings").

41 Denial of NRDC Petition for Rulemaking, 42 Fed. Reg. at 34,392.

42 Contention at 6-7. Section 182(a) states: "In connection with applications for licenses to operate . . . utilization facilities, the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required, the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization . . . of special nuclear material . . . will provide adequate protection to the health and safety of the public." 42 U.S.C. § 2232(a).

information that a reactor applicant must provide in its application, and focuses on the "specific characteristics of the facility" and the applicant's qualifications.[43] As the Commission found:

> The emphasis on information pertaining to the facility and applicant to be licensed is especially significant. No such information is required regarding high-level waste disposal facilities. Such information would be necessary were the Commission to make the detailed safety finding regarding high-level waste disposal activities requested by petitioner. Indeed, an applicant for a reactor operating license will have no responsibility for permanent disposal of high-level waste. . . . This responsibility has been assumed by the Federal government, which . . . will research, design, build and operate high-level waste disposal facilities.[44]

Accordingly, it would be irrational to read Section 182(a) as requiring an applicant for a reactor facility to provide information on the safety of a high-level waste disposal facility that it is neither proposing nor responsible for constructing or operating.

The Commission also rejected arguments similar to petitioners' claim that AEA Sections 103(d) and 161(b) require that NRC deny a license absent a repository safety finding because spent fuel "would create a permanent and uncontainable public health hazard."[45] The Commission found that these statutory finding provisions "apply specifically to the 'proposed activities' and 'activities under such licenses'" and these "activities . . . do not include the permanent disposal of high-level wastes though wastes are, in fact, generated by operation of the

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43 Denial of NRDC Petition for Rulemaking, 42 Fed. Reg. at 34,392.

44 *Id.*

45 Contention at 7-8. Sections 103(d) states that "no license may be issued . . . if, in the opinion of the Commission, issuance of a license to such person would be inimical . . . to the health and safety of the public." 42 U.S.C. § 2133(d). Section 161(b) requires that the Commission "establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material . . . the Commission may deem necessary or desirable . . . to protect health or to minimize danger to life or property." 42 U.S.C. § 2201(b).

reactor."[46] Thus, Sections 103(d) and 161(b) cannot be read to require safety findings for disposal "activities" that are not proposed or authorized by a reactor license.

2. NRC Precedent Does Not Require Safety Findings on Spent Fuel Disposal for a Reactor Licensing Decision

Petitioners argue that NRC historical practice supports their argument that the NRC must make spent fuel disposal findings before issuing a reactor license.[47] As support for this argument, petitioners cite the Commission denial of the NRDC's petition for rulemaking, prior Waste Confidence Decisions, and the agency brief in the *New York v. NRC* litigation.[48] These references do not support petitioners' argument.

Petitioners' strained reading of the Commission's denial of the NRDC's petition for rulemaking cannot be reconciled with the decision's plain language. The Commission firmly "concluded that it is not obligated to make a 'definitive' finding . . . [that] safe methods of high-level waste disposal are now available prior to the licensing of a reactor."[49] It also found that "no statutory requirement exists that the Commission determine the safety of ultimate high-level waste disposal activities in connection with licensing of individual reactors."[50]

Notwithstanding these conclusions, petitioners cite a portion of the petition for rulemaking denial indicating that the Commission "would not continue to license reactors if it did not have reasonable confidence that the wastes can and will in due course be disposed of

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46 Denial of NRDC Petition for Rulemaking, 42 Fed. Reg. at 34,391.

47 Petition at 8-9; Contention at 8-10.

48 Contention at 8-10.

49 Denial of NRDC Petition for Rulemaking, 42 Fed. Reg. at 34,391.

50 *Id.* at 34,392.

safely."[51] However, a review of the decision reveals that the Commission included this statement in a "policy considerations" discussion, separate and distinct from its conclusion that the AEA does not require repository safety findings.[52] As such, this policy statement stands apart from the Commission's definitive interpretation of the AEA's requirements.

Commission statements in later Waste Confidence Decisions also fail to support petitioners' AEA argument. For example, the inclusion of safety findings in the 1984, 1990, and 2010 Waste Confidence Decisions says nothing about whether the AEA required such findings. To the contrary, the 2010 Waste Confidence Decision confirmed that the Commission statement in NRDC was made "as a matter of policy."[53] The Commission also disagreed with comments arguing that the NRC might violate the AEA by not including well-documented repository safety findings.[54] As the Commission emphasized (and as discussed further in Section III.B.3 below), the courts have "found that the NRC was not required to make a finding under the AEA that [spent nuclear fuel] could be disposed of safely at the time a reactor license was issued."[55] The Commission also noted that the agency "will make the safety finding with respect to [spent nuclear fuel] disposal . . . in the context of a licensing proceeding for a geologic repository."[56]

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51 Contention at 8 (quoting Denial of NRDC Petition for Rulemaking, 42 Fed. Reg. at 34,393).

52 *See* Denial of NRDC Petition for Rulemaking, 42 Fed. Reg. at 34,393.

53 2010 Waste Confidence Decision, 75 Fed. Reg. at 81,038.

54 *Id.* at 81,044-45.

55 *Id.* at 81,045.

56 *Id.* at 81,045. Contrary to petitioners' claim, the Commission did not depart from this position in the Continued Storage Rule by stating "that it would make AEA safety findings in individual *reactor* licensing proceedings." Petition at 3 (citing Continued Storage Rule, 79 Fed. Reg. at 56,243-44; GEIS, Vol. 2, App. D at D-9) (emphasis added). Rather, in the context of emphasizing the separate licensing actions needed to authorize spent fuel storage and disposal, the Commission noted that "[i]ndividual licensees and applicants, including any applicant for a high-level radioactive waste repository, are required to have a license from the NRC before storing or disposing of any spent fuel." Continued Storage Rule, 79 Fed. Reg. at 56,243. In

The petitioners' reliance on the agency brief in the *New York v. NRC* litigation is likewise misplaced.[57] That brief stated "[t]he Waste Confidence decision and related environmental rule in 10 C.F.R. § 51.23(a) . . . fulfill NRC's important responsibilities under the AEA and the National Environmental Policy Act (NEPA)."[58] Nothing in this statement conflicts with NRC's longstanding view that the AEA requires no repository safety finding for the reactor licensing. At most, this statement simply recognizes that 10 C.F.R. § 51.23 plays a role in the issuance of reactor licenses—one of "NRC's important responsibilities under the AEA."[59]

3. Federal Case Law Does Not Require Safety Findings on Spent Fuel Disposal for a Reactor Licensing Decision

Petitioners claim that federal courts have construed the AEA to require that the NRC make spent fuel disposal findings before issuing a reactor license.[60] Contrary to this argument,

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this context, the Commission noted that "AEA safety determinations would be made as part of individual licensing actions." GEIS, Vol. 2, App. D at D-9.

57 *See* Contention at 8.

58 Case No. 11-1045, Brief for Respondents at 20 (Feb. 7, 2012) (ML120390426).

59 *Id.* Even if petitioners were able to identify some earlier Commission position indicating the AEA requires repository safety findings before the NRC issues a reactor license, an "initial agency interpretation is not instantly carved in stone." *Chevron v. NRDC*, 467 U.S. 837, 863-64 (1984). Rather, as long as "the agency adequately explains the reasons for a reversal of policy, change is not invalidating." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005). Here, the Continued Storage Rule and GEIS fully explain the Commission's reasonable conclusion that the AEA does not require repository safety findings in a reactor licensing proceeding. *See, e.g.*, GEIS, Vol. 2, App. D at D-29 to D-30, D-416 to D-417. Thus, even if the Continued Storage Rule and GEIS contained a change in NRC policy or interpretation, there would be nothing improper with such a change. *See, e.g.*, *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (An agency "need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one. It suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change adequately indicates."); *Verizon v. FCC*, 740 F.3d 623, 636 (D.C. Cir. 2014) ("The [Administrative Procedure Act's] requirement of reasoned decision-making ordinarily demands that an agency acknowledge and explain the reasons for a changed interpretation. But so long as an agency adequately explains the reasons for a reversal of policy, its new interpretation of a statute cannot be rejected simply because it is new.") (citations and internal quotation marks omitted); *CAN, Inc. v. NRC*, 59 F.3d 284, 291 (1st Cir. 1995) (noting that although alteration or reversal of agency policy "must be accompanied by some reasoning—some indication that the shift is rational, and therefore not arbitrary and capricious," "this is not a difficult standard to meet").

60 Petition at 9; Contention at 10-13.

the courts have not construed the AEA to require a repository safety finding but rather have concluded that the AEA requires no such finding.

In *NRDC v. NRC*, the Second Circuit decision squarely addressed this issue. The court reviewed the Commission's denial of NRDC's petition for rulemaking claiming the AEA required the agency to refrain from issuing reactor licenses until it completes a rulemaking addressing safety of spent fuel disposal.[61] The court rejected NRDC's argument and explained as follows:

> It is our conclusion that NRDC simply reads too much into the AEA. Indeed, if the [Atomic Energy Commission] had interpreted the statute to require the affirmative determination regarding permanent disposal of high-level waste sought by NRDC, no commercial production or utilization facilities would be in operation today. We are satisfied that Congress did not intend such a condition.[62]

Based on this reasoning, the court held "that NRC is not required . . . to withhold action on pending or future applications for nuclear power reactor operating licenses until it makes a determination that high-level radioactive wastes can be permanently disposed of safely."[63]

Petitioners would have the Commission turn this decision on its head by finding that the Second Circuit actually read the AEA to require repository safety findings. They contend that the court's "holding was conditioned on the NRC's promise that . . . it 'would not continue to license reactors if it did not have reasonable assurance that the wastes can and will in due course be disposed of safely.'"[64] According to petitioners, "the Second Circuit *concluded* that:"

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61 *NRDC*, 582 F.2d at 170.

62 *Id.*

63 *Id.* at 175.

64 *See* Contention at 10-11 (citing *NRDC*, 582 F.2d at 170).

> [T]he NRC's long-continued regulatory practice of issuing operating licenses, with an implied finding of reasonable assurance that safe permanent disposal of [spent reactor fuel] can be available when needed, is in accord with the intent of Congress underlying the AEA and the [Energy Reorganization Act].[65]

However, rather than presenting the court's conclusion, the cited (and misquoted) portion merely summarizes the NRC's argument and actually states:

> NRC *maintains* that *it need not do so* [*i.e.*, it need not make the AEA safety findings suggested by NRDC] and that its long-continued regulatory practice of issuing operating licenses, with an implied finding of reasonable assurance that safe permanent disposal of such wastes can be available when needed, is in accord with the intent of Congress underlying the AEA and [Energy Reorganization Act]."[66]

As the full quote reveals, the NRC took the position that it *need not* make an AEA safety finding to issue reactor licenses and the Second Circuit affirmed on this ground.[67] To be sure, the court observed NRC's statement that it "would not continue to license reactors if it did not have reasonable confidence that the wastes can and will in due course be disposed of safely."[68] But nothing in the decision suggests the court "conditioned" its holding on this statement. Rather, the court plainly held "that NRC is not required . . . to withhold action on pending or future applications for nuclear power reactor operating licenses until it makes a determination that high-level radioactive wastes can be permanently disposed of safely."[69]

The D.C. Circuit's decision in *Minnesota v. NRC* did not disturb the Second Circuit's ruling in *NRDC* and thus fails to support petitioners' argument. In that case, petitioners argued

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65 *Id.* at 10 (misquoting *NRDC*, 582 F.2d at 170) (emphasis added).

66 *NRDC*, 582 F.2d at 170.

67 *See id.* at 170-75.

68 *See id.* at 169; *see also id.* at 174 n.13.

69 *Id.* at 175.

"the NRC must make a determination of probability that the wastes to be generated by the plants can be safely handled and disposed of" before the agency could issue a license amendment allowing expanded onsite spent fuel storage capacity.[70] These petitioners claimed that NRC "erred in making its determination of reasonable probability not on the basis of evidence adduced on the record *in the adjudicatory proceedings*, but on the basis of the NRC's 'declaration of policy' in its denial of rulemaking on the NRDC petition."[71]

The D.C. Circuit "confine[d] its action" to the "rejection of certain contentions by petitioners, notably the claim of need for an adjudicatory proceeding."[72] As the court explained, it agreed with the NRC that it "may proceed in these matters by generic determinations."[73] As a result, the court did not vacate or stay the amendments at issue. But recognizing the Commission's then-ongoing Table S-3 rulemaking might be relevant to these issues, the court remanded the case to the NRC for further consideration using the "procedure . . . it may deem appropriate."[74] The court directed the NRC to consider on remand "whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-09, the expiration of the plants' operating licenses, and if not, whether there is reasonable assurance that the fuel

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70 *Minnesota*, 602 F.2d at 416.

71 *Id.* (emphasis added)

72 *Id.* at 419. Even if petitioners had identified something in *Minnesota* indicating the AEA requires a repository safety finding before the NRC issues a reactor license, Supreme Court precedent "demands that [a court] reexamine pre-*Chevron* precedents through a *Chevron* lens." *Dominion Energy Brayton Point, LLC v. Johnson*, 443 F.3d 12, 17 (1st Cir. 2006) (citing *Brand X*, 545 U.S. at 984); *see also Brand X*, 545 U.S. at 980 ("If a statute is ambiguous, and if the implementing agency's construction is reasonable, *Chevron* requires a federal court to accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation."). Applying *Chevron*, the AEA's plain terms do not require a repository safety finding before the NRC issues a reactor license. And if there were any ambiguity on this point, NRC's implementing construction of the AEA in the Continued Storage Rule and GEIS is reasonable.

73 *Minnesota*, 602 F.2d at 419.

74 *Id.*; *see also id.* at 418 ("[W]e think it appropriate in the interest of sound administration to remand to the NRC for further consideration in the light of its S-3 proceeding and analysis.").

can be *stored safely at the sites* beyond those dates."[75] Thus, the ultimate issue in *Minnesota* dealt with the safety of spent fuel storage—not disposal—and focused on whether the NRC was required to resolve these issues through adjudicatory proceedings.

Following the *Minnesota* remand, the NRC commenced the "Waste Confidence" proceeding.[76] As a result, the NRC issued the first Temporary Storage Rule,[77] which was supported by the Waste Confidence Decision.[78] Over time, the NRC updated and revised the Rule and Waste Confidence Decision.[79] The D.C. Circuit reviewed NRC's 2010 revision in *New York v. NRC*.[80] Although the court vacated and remanded elements of the 2010 Rule and Waste Confidence Decision on NEPA grounds, the court said nothing about whether the AEA requires the NRC to make a repository safety finding before it issues a reactor license.[81] Thus, nothing in *New York* (or other federal precedent) requires repository safety findings in connection with individual reactor licensing proceedings.

C. The Commission Continues to Express Reasonable Confidence That Spent Fuel Can and Will Be Safely Disposed

Petitioners claim the Continued Storage Rule and GEIS violate the AEA because "[t]he 'reasonable assurance' language that appeared in all three iterations of [Waste Confidence

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75 *Id.* at 418.

76 Notice of Proposed Rulemaking, Storage and Disposal of Nuclear Waste, 44 Fed. Reg. at 61,372.

77 1984 Temporary Storage Rule, 49 Fed. Reg. at 34,688.

78 1984 Waste Confidence Decision, 49 Fed. Reg. at 34,658.

79 2010 Temporary Storage Rule, 75 Fed. Reg. at 81,032; 2010 Waste Confidence Decision, 75 Fed. Reg. at 81,037; 1999 Waste Confidence Decision, 64 Fed. Reg. at 68,005; 1990 Temporary Storage Rule, 55 Fed. Reg. at 38,472; 1990 Waste Confidence Decision, 55 Fed. Reg. at 38,474.

80 *New York*, 681 F.3d at 471.

81 *See id.* at 476-83.

Decision] Findings 1 and 2 does not appear in the final rule or the GEIS."[82] Although the AEA requires no such findings, petitioners' position is inconsistent with the record to the extent they suggest the Commission now lacks the "confidence" or "reasonable assurance" expressed in earlier Waste Confidence Decisions.[83]

The Continued Storage Rule and GEIS demonstrate NRC's continuing confidence in the technical feasibility and availability of a repository. The Commission made clear in the Continued Storage rulemaking that it has not abandoned the views expressed previously in its Waste Confidence Decisions.[84] It explained how the GEIS now addresses the issues previously covered in Findings 1 and 2: "The issue of the technical feasibility of a geologic repository was historically addressed in Finding 1 and is now discussed in Section B.2.1 of the GEIS and the availability of a repository was addressed in Finding 2 and is now discussed in Section B.2.2."[85]

With regard to Finding 1, the Commission stated in the Statement of Considerations for the Continued Storage Rule that it "has *determined* that a repository is technically feasible."[86]

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82 Contention at 13.

83 *See id.* (suggesting the Continued Storage Rule and GEIS merely "assert, without any level of assurance, that spent fuel disposal is 'technically feasible'").

84 *See, e.g.*, GEIS, Vol. 2, App. D at D-13 ("The term 'waste confidence' has historically indicated the Commission's belief or 'confidence' that a repository would be available for the disposal of spent fuel and that spent fuel could be safely stored without significant environmental impacts until disposal. As discussed in the GEIS, the Commission continues to believe that a repository is likely to become available within 60 years of the end of a reactor's license life for operation.").

85 Continued Storage Rule, 79 Fed. Reg. at 56,244.

86 *Id.* at 56,254 (emphasis added); *see also id.* at 56,251 ("[O]ngoing research in both the United States and other countries supports a conclusion that geological disposal remains technically feasible and that acceptable sites can be identified.").

The GEIS also "*concludes* that . . . a geologic repository is technically feasible."[87] This conclusion does not differ significantly from Finding 1 in prior Waste Confidence Decisions.[88]

Likewise, with regard to Finding 2, the Commission stated that "[t]he United States national policy remains disposal of spent fuel in a geologic repository, and, as expressly stated in the GEIS, the NRC believes that the most likely scenario is that a repository will become available by the end of the short-term timeframe (60 years beyond the licensed life for operation of a reactor)."[89] The GEIS also "*concludes* that a repository is most likely to be available by the end of the short-term timeframe."[90] Again, this conclusion does not differ significantly from prior versions of Finding 2.[91]

To the extent petitioners fault the Commission for omitting the phrase "reasonable assurance" from these conclusions,[92] the "law attaches no magical significance to the incantation

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87 GEIS, Vol. 1, App. B at B-33 (emphasis added).

88 Continued Storage Rule, 75 Fed. Reg. at 81,058 ("The Commission finds reasonable assurance that safe disposal of high-level radioactive waste and spent fuel in a mined geologic repository is technically feasible."). The Commission originally reached this finding in 1984 and reaffirmed it in 1990 and 1999. *See* 1984 Waste Confidence Decision, 49 Fed. Reg. at 34,658; 1990 Waste Confidence Decision, 55 Fed. Reg. at 38,486; 1999 Waste Confidence Review, 64 Fed. Reg. at 68,006-07.

89 Continued Storage Rule, 79 Fed. Reg. at 56,254; *see also id.* at 56,251 ("[T]he NRC believes that the United States will open a repository within the short-term time frame of 60 years."). The NRC also made clear that the "removal of a timeframe from the rule language does not mean that the Commission is endorsing indefinite storage of spent fuel." *Id.* at 56,254.

90 GEIS, Vol. 2, App. B at B-27 (emphasis added).

91 2010 Waste Confidence Decision, 75 Fed. Reg. at 81,067 ("The Commission finds reasonable assurance that sufficient mined geologic repository capacity will be available to dispose of the commercial high-level radioactive waste and spent fuel generated in any reactor when necessary."); *see also* 1984 Waste Confidence Decision, 49 Fed. Reg. at 34,658; 1990 Waste Confidence Decision, 55 Fed. Reg. at 38,493; 1999 Waste Confidence Review, 64 Fed. Reg. at 68,006-07.

92 *See* Contention at 13 ("The 'reasonable assurance' language that appeared in all three iterations of Findings 1 and 2 does not appear in the final rule or the GEIS. Instead, the Continued Storage Rule and the GEIS assert, without any level of assurance, that spent fuel disposal is 'technically feasible.'").

of a special phrase."[93] Moreover, the unqualified GEIS determinations and conclusions now meet or exceed the "confidence" or "assurance" contained in prior findings. There is no significant difference to be made based only on the process in which the findings were made (*i.e.*, a NEPA review and GEIS) as opposed to some other "safety" review.

Petitioners similarly elevate form over substance by suggesting the NRC should have formalized the findings in the Continued Storage Rule rather than the GEIS. Both the Continued Storage Rule and GEIS were subject to public comment. The Rule also specifically references the GEIS.[94] Further, the Commission has never codified all of its Waste Confidence Decision findings in a rule. For example, the Commission previously only codified Finding 2 in 10 C.F.R. § 51.23 and did not include Finding 1 (and the other findings) in the Rule.[95] Accordingly, despite petitioners' argument, no meaningful distinction exists between the Commission's past and current practices.[96]

D. The NRC Need Not Prepare Additional Environmental Documentation Addressing Repository Feasibility and Capacity

Petitioners claim the NRC must prepare an additional environmental impact statement to support the AEA safety findings on repository feasibility and capacity that were allegedly

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93 *Tenn. Valley Auth.* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, & 2B), ALAB-463, 7 NRC 341, 360 (1978).

94 *See* 10 C.F.R. § 51.23(a).

95 *See, e.g.*, 1984 Temporary Storage Rule, 49 Fed. Reg. at 34,694.

96 The "NRC specifically sought public comment on this issue and decided not to address the feasibility and timing of a repository in the rule text itself." Continued Storage Rule, 79 Fed. Reg. at 56,251; *see also* GEIS, Vol. 2, App. D at D-23 ("The NRC disagrees with the recommendation that the Rule language state that the Commission has reasonable assurance that a repository can be available 'when necessary.' The NRC agrees that there is no legal requirement to include a timeframe in the Rule language."). To the extent petitioners disagree with the decision, their remedy is not to suspend licensing or litigate contentions on a case-specific basis.

omitted from the Continued Storage Rule and GEIS.[97] Because the AEA requires no such safety findings for the NRC to issue a reactor license, no further environmental review is necessary. Moreover, the Continued Storage Rule and GEIS address repository feasibility and capacity as necessary to allow the agency to meet its NEPA obligations.[98] Accordingly, there is no need for any additional NEPA documentation.

IV. CONCLUSION

The petition and contentions amount to impermissible challenges to rulemaking-associated generic determinations and an attack on the recently issued Continued Storage Rule. Petitioners' flawed reading of the AEA, NRC precedent, and federal case law fails to justify a suspension of final licensing decisions or the admission of their proposed contentions. Accordingly, the Commission should deny the petition and proposed contentions.

Respectfully submitted,

Signed (electronically) by Jonathan M. Rund
Ellen C. Ginsberg
Jonathan M. Rund
Nuclear Energy Institute, Inc.
1201 F Street, N.W., Suite 1100
Washington, D.C. 20004
Phone: 202-739-8000
E-mail: ecg@nei.org
E-mail: jmr@nei.org

COUNSEL FOR THE NUCLEAR ENERGY INSTITUTE, INC.

Dated in Washington, D.C.
this 31st day of October, 2014

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97 Contention at 13-15.

98 *See, e.g.*, GEIS, Vol. 1, App. B at B-2 to B-9. Separate regulations govern the NRC's consideration of the environmental impacts of disposal and are not at issue here. *See* 10 C.F.R. § 51.51(a). Petitioners may not attack these regulations via their petition and contentions. *See* 10 C.F.R. § 2.335(a).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

DTE ELECTRIC CO. (Fermi Nuclear Power Plant, Unit 3)	)	52-033-COL
DTE ELECTRIC CO. (Fermi Nuclear Power Plant, Unit 2)	)	50-341-LR
DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2)	)	52-018-COL 52-019-COL
ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point Nuclear Generating Units 2 and 3)	)	50-247-LR 50-286-LR
FIRSTENERGY NUCLEAR OPERATING CO. (Davis-Besse Nuclear Power Station, Unit 1)	)	50-346-LR
FLORIDA POWER & LIGHT CO. (Turkey Point Units 6 and 7)	)	52-040-COL 52-041-COL
LUMINANT GENERATION CO. LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4)	)	52-034-COL 52-035-COL
NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1)	)	50-443-LR
NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project Units 3 and 4)	)	52-012-COL 52-013-COL
PACIFIC GAS & ELECTRIC CO. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)	)	50-275-LR 50-323-LR
PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2)	)	52-029-COL 52-030-COL
STP NUCLEAR OPERATING CO. (South Texas Project, Units 1 and 2)	)	50-498-LR 50-499-LR
TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant Units 3 and 4)	)	52-014-COL 52-015-COL
TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2)	)	50-327-LR 50-328-LR
	)	

TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2)	)))	50-391-OL
UNION ELECTRIC CO. (Callaway Plant, Unit 1)	)))	50-483-LR
VIRGINIA ELECTRIC AND POWER CO. d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3)	))))	52-017-COL

NOTICES OF APPEARANCE

In accordance with 10 C.F.R. § 2.314(b), the following attorneys, admitted to practice and in good standing in the jurisdictions noted, enter appearances as counsel for the Nuclear Energy Institute, Inc.

Name:	Jonathan M. Rund
Address:	Nuclear Energy Institute, Inc. 1201 F Street, N.W., Suite 1100 Washington, D.C. 20004
E-Mail:	jmr@nei.org
Telephone Number:	(202) 739-8000
Facsimile Number:	(202) 533-0140
Admissions:	District of Columbia, Virginia

Name:	Ellen C. Ginsberg
Address:	Nuclear Energy Institute, Inc. 1201 F Street, N.W., Suite 1100 Washington, D.C. 20004
E-Mail:	ecg@nei.org
Telephone Number:	(202) 739-8000
Facsimile Number:	(202) 533-0140
Admissions:	District of Columbia, New York

Signed (electronically) by Jonathan M. Rund

Jonathan M. Rund
Nuclear Energy Institute, Inc.
1201 F Street, N.W., Suite 1100
Washington, D.C. 20004
Phone: 202-739-8000
E-mail: jmr@nei.org

Dated in Washington, D.C.
this 31st day of October, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

DTE ELECTRIC CO. (Fermi Nuclear Power Plant, Unit 3)	)	52-033-COL
DTE ELECTRIC CO. (Fermi Nuclear Power Plant, Unit 2)	)	50-341-LR
DUKE ENERGY CAROLINAS, LLC (William States Lee III Nuclear Station, Units 1 and 2)	)	52-018-COL 52-019-COL
ENTERGY NUCLEAR OPERATIONS, INC. (Indian Point Nuclear Generating Units 2 and 3)	)	50-247-LR 50-286-LR
FIRSTENERGY NUCLEAR OPERATING CO. (Davis-Besse Nuclear Power Station, Unit 1)	)	50-346-LR
FLORIDA POWER & LIGHT CO. (Turkey Point Units 6 and 7)	)	52-040-COL 52-041-COL
LUMINANT GENERATION CO. LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4)	)	52-034-COL 52-035-COL
NEXTERA ENERGY SEABROOK, LLC (Seabrook Station, Unit 1)	)	50-443-LR
NUCLEAR INNOVATION NORTH AMERICA LLC (South Texas Project Units 3 and 4)	)	52-012-COL 52-013-COL
PACIFIC GAS & ELECTRIC CO. (Diablo Canyon Nuclear Power Plant, Units 1 and 2)	)	50-275-LR 50-323-LR
PROGRESS ENERGY FLORIDA, INC. (Levy County Nuclear Power Plant, Units 1 and 2)	)	52-029-COL 52-030-COL
STP NUCLEAR OPERATING CO. (South Texas Project, Units 1 and 2)	)	50-498-LR 50-499-LR
TENNESSEE VALLEY AUTHORITY (Bellefonte Nuclear Power Plant Units 3 and 4)	)	52-014-COL 52-015-COL
TENNESSEE VALLEY AUTHORITY (Sequoyah Nuclear Plant, Units 1 and 2)	)	50-327-LR 50-328-LR
	)	

TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 2)	)))	50-391-OL
UNION ELECTRIC CO. (Callaway Plant, Unit 1)	)))	50-483-LR
VIRGINIA ELECTRIC AND POWER CO. d/b/a DOMINION VIRGINIA POWER and OLD DOMINION ELECTRIC COOPERATIVE (North Anna Power Station, Unit 3)	))))	52-017-COL

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that I electronically served via the Electronic Information Exchange (the NRC's E-Filing system) copies of the "NUCLEAR ENERGY INSTITUTE, INC.'S MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF," "CERTIFICATION OF CONSULTATION UNDER 10 C.F.R. § 2.323(b)," "AMICUS CURIAE BRIEF OF THE NUCLEAR ENERGY INSTITUTE, INC. IN RESPONSE TO SUSPENSION PETITIONS AND WASTE CONFIDENCE SAFETY CONTENTIONS," and "NOTICES OF APPEARANCE" on this 31st day of October, 2014.

Respectfully submitted,

Signed (electronically) by Jonathan M. Rund
Jonathan M. Rund
Nuclear Energy Institute, Inc.
1201 F Street, N.W., Suite 1100
Washington, D.C. 20004
Phone: 202-739-8000
E-mail: jmr@nei.org

Dated in Washington, D.C.
this 31st day of October, 2014