

October 18, 2018

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	
Exelon Generation Company, LLC)	Docket Nos. 50-277-SLR
)	50-278-SLR
Peach Bottom Atomic Power Station,)	
Units 2 and 3)	

Exelon’s Answer Opposing Beyond Nuclear’s Motion for Extension

Exelon Generation Company, LCC (Exelon) hereby answers and opposes Beyond Nuclear’s Motion for Extension of Deadline for Filing Hearing Requests (Oct. 18, 2018), which seeks a two-week extension of the November 5, 2018 deadline for requests for hearing on Exelon’s application to renew the operating licenses for Peach Bottom Units 2 and 3. Beyond Nuclear asserts that this second license renewal proceeding raises unprecedented safety and environmental concerns that warrant careful and time-consuming review of a large number of documents regarding issues that are legally and technically complex against guidance that is sometimes new and untested, and that its legal/expert teams have other professional obligations. These purported grounds for an extension amount to little more than a complaint that the 60-day period established by the NRC rules for hearing requests is inadequate when an application involves a lot to review. Such claims do not establish good cause for an extension, and granting an extension on such grounds would effectively make extensions available on demand, negating the schedule discipline the NRC rules are intended to provide.

The Commission’s rules require “good cause” for an extension request. 10 C.F.R. § 2.307(a). As the Commission has explained, the Commission expects adherence to its hearing

procedures and recognizes that applicants are entitled to prompt resolution of disputes concerning their applications. *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 N.R.C. 18, 19 (1998). Accordingly, the Commission has stated that extensions should only be granted when warranted by unavoidable and extreme circumstances. *Id.* at 21. *See also Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 N.R.C. 325, 342 (1998), *petition for review denied sub nom., Nat'l Whistleblower Ctr. v. NRC*, 208 F.3d 256, 264 (D.C. Cir. 2000); *Tennessee Valley Authority* (Bellefonte Nuclear Plant, Units 1 & 2), CLI-10-26, 72 N.R.C. 474, 476 (2010). Beyond Nuclear's complaint that the application is large and complex does not meet this standard (or any other formulation of good cause).

Further, by the November 5th deadline for hearing requests, Beyond Nuclear will already have had considerably longer than 60 days to review the Peach Bottom subsequent license renewal ("SLR") application. The Peach Bottom SLR application was made publicly available in ADAMS in July (*see* ADAMS Accession No. ML18193A689). The NRC issued a press release on July 26, 2018, announcing that the application was publicly available for review on the NRC website (NRC Press Release No. 18-033), and published a notice of receipt in the Federal Register on August 1, 2018 (83 Fed. Reg. 37,529). Thus, by the November 5th deadline, Beyond Nuclear will already have had over three months to review the application and prepare its hearing request.

In addition, an SLR application is not any more technically or legally complex than an initial license renewal application. The same process and aging management issues apply. Further, the standard review plan ("NUREG-2192") and Generic Aging Lessons Learned ("GALL") Report (NUREG-2191) for SLR applications were issued over a year ago, after

considerable interaction with stakeholders and an opportunity for public comments. Moreover, as acknowledged in Beyond Nuclear’s motion, Beyond Nuclear’s counsel has been involved in the Turkey Point SLR proceeding (Motion at 2), and therefore presumably is already familiar with the regulations, guidance and issues. David Lochbaum has also been involved in the Turkey Point SLR proceeding, having provided an expert declaration in support of a hearing request in that proceeding.¹ Beyond Nuclear does not identify any specific “unprecedented safety and environmental concerns” necessitating further research or an extension.

Similarly, the claim that Beyond Nuclear’s legal/expert team have other professional obligations is insufficient grounds for an extension. Beyond Nuclear points to the Turkey Point SLR proceeding, but hearing requests in that case were filed on August 1st.² Beyond Nuclear also refers to the Holtec Centralized Interim Storage Facility (“CISF”) proceeding, but Beyond Nuclear’s motion to dismiss³ and identical hearing request⁴ in that proceeding (both raising only one legal issue and submitted under the signature of two attorneys) were filed on September 14 – over a month ago. Finally, Beyond Nuclear refers to the Interim Storage Partners CISF proceeding, but Beyond Nuclear’s motion to dismiss that proceeding was the same filing made in the Holtec CISF proceeding over a month ago.⁵ In any event, as the Commission has held, the need to draft contentions while balancing other obligations presents no special circumstances amounting to good cause for an extension. *Detroit Edison Co. (Fermi Unit 3)*, CLI-09-04, 69

¹ Declaration of David Lochbaum, Docket No. 50-250/251-SLR (July 28, 2018) (ADAMS Accession No. ML18213A436).

² *See* Southern Alliance for Clean Energy’s Request for Hearing and Petition to Intervene, Docket Nos. 50-250/251-SLR (Aug. 1, 2018) (ADAMS Accession No. ML18213A528).

³ *See* Beyond Nuclear Inc.’s Motion to Dismiss Licensing Proceedings for HI-STORE Consolidated Interim Storage Facility and WCS Consolidated Interim Storage Facility for Violation of the Nuclear Waste Policy Act, Docket Nos. 72-1051 and 72-1050 (Sep. 14, 2018) (ADAMS Accession No. ML18257A312).

⁴ Beyond Nuclear, Inc.’s Hearing Request and Petition to Intervene, Docket No. 72-1051 (Sep. 14, 2018) (ADAMS Accession No. ML18257A324).

⁵ *See supra* note 3.

N.R.C. 80, 82 (2009). “Petitioners argument that their counsel was busy working on other legal matters disregards our longstanding policy that ‘the fact that a party may have . . . other obligations . . . does not relieve that party of its hearing obligations.’” *Bellefonte*, CLI-10-26, 72 N.R.C. at 476. This is especially true where, as here, the counsel requesting the extension and supporting expert are experienced practitioners who are very familiar with NRC proceedings and presumably very used to balancing competing obligations.

For all these reasons, Beyond Nuclear’s motion for extension should be denied. Beyond Nuclear’s bald claim that the application is too large or complex to review within 60 days (putting aside the additional month the application has been available) is devoid of any specifics or bases, and if accepted would justify an extension in any proceeding. Beyond Nuclear’s claim that its legal and expert team have other obligations is similarly a claim that anyone could make and one that the Commission has rejected as a matter of policy. None of Beyond Nuclear’s claims amounts to a showing of good cause.

Respectfully submitted,

/signed electronically by David Lewis/

David R. Lewis
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 Seventeenth Street, NW
Washington, DC 20036
Telephone: 202-663-8474
Facsimile: 202-663-8007
david.lewis@pillsburylaw.com

Donald P. Ferraro
Assistant General Counsel
Exelon Generation Company, LLC
200 Exelon Way, Suite 305
Kennett Square, PA. 19348
Telephone: 610.765.5381
E-mail: Donald.Ferraro@Exeloncorp.com

Counsel for Exelon

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Exelon’s Answer Opposing Beyond Nuclear’s Motion for Extension has been served through the E-Filing system on the participants in the above-captioned proceeding this 18th day of October, 2018.

/signed electronically by David Lewis/
David R. Lewis