

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of Exelon Generation Company, LLC Peach Bottom Atomic Power Station, Units 2 & 3	) ) ) ) ) ) )	Docket Nos. 50-277/278 SLR
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**CORRECTED BEYOND NUCLEAR’S MOTION FOR RECONSIDERATION  
REGARDING LOCATION OF ORAL ARGUMENT OR, IN THE  
ALTERNATIVE, MOTION TO WEBCAST THE ORAL ARGUMENT**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. §§ 2.323(a), (b), and (e), Beyond Nuclear, Inc. (“Beyond Nuclear”) hereby requests the Atomic Licensing Board (“ASLB”) to reconsider its February 28, 2019 Order establishing the U.S. Nuclear Regulatory Commission (“NRC”) Headquarters as the location for an oral argument in this subsequent license renewal (“SLR”) proceeding regarding Beyond Nuclear’s standing and the admissibility of its two contentions. In the alternative, Beyond Nuclear requests the ASLB to provide for webcasting of the oral argument from NRC Headquarters.

**II. FACTUAL BACKGROUND**

On January 3, 2019, Joseph McManus, law clerk to the ASLB, consulted the parties by e-mail regarding their availability for an oral argument and their collective preference for the location. The parties could not agree on a location, and therefore responded as follows:

All of the participants prefer an in-person argument. Beyond Nuclear prefers that the argument be held in the vicinity of the plant. Exelon prefers that the argument

be held in the Rockville, as all counsel for the participants are located in the DC area, but can accommodate whatever location is selected. The NRC Staff expresses no preference regarding the location of the conference.

E-mail from David Lewis, counsel to Exelon, to Joseph McManus (Jan. 7, 2019).

On February 28, 2019, the ASLB issued an Order (Scheduling Oral Argument), stating that it will conduct an oral argument on March 27, 2019, in the ASLBP hearing room at NRC Headquarters in Rockville, Maryland. The purpose of the oral argument is to “obtain the necessary factual and legal information” regarding Beyond Nuclear’s standing and the admissibility of Beyond Nuclear’s contentions. *Id.*, slip op. at 3. The oral argument is scheduled to begin at 9 a.m. and finish by 5 p.m. *Id.*

On March 5, 2019, undersigned counsel for Beyond Nuclear wrote to Mr. McManus, expressing hope that the ASLB would webcast the oral argument. Mr. McManus responded that the ASLB had “no plans to webcast the March 27 oral argument” but “does plan to offer a call-in line (listen-only) for interested members of the public to hear the argument in real time.”

### **III. ARGUMENT**

Beyond Nuclear respectfully requests the ASLB to reconsider the aspects of its February 28 Order which (a) establish NRC Headquarters as the location of the oral argument and (b) provide a telephone call-in line as the only means by which members of the public who are unable to travel to Rockville can participate. In support of its motion, Beyond Nuclear states the following:

1. This proceeding involves a new and unprecedented safety and environmental question for nuclear reactor regulation: whether the NRC should approve twenty years of additional operation for Peach Bottom, taking its operating life to 80

years. Only one other SLR application is pending before the NRC (Turkey Point Units 3 and 4). The significant safety and environmental issues posed by Beyond Nuclear's hearing request warrant the provision of a forum for oral argument that is reasonably accessible to the affected members of the public who live near the Peach Bottom nuclear reactors.

2. Press coverage is important to broaden public understanding of the issues in this proceeding. The eastern Pennsylvania press has been covering the proceeding and is likely to be particularly interested in the SLR argument, given that it will be held the day before the 40<sup>th</sup> anniversary of the Three Mile Island nuclear power plant accident (March 28, 1979).<sup>1</sup>
3. The ASLB's decision to hold the oral argument at NRC Headquarters, with only a telephone call-in line for observation by people who cannot attend, will discourage rather than maximize public and press attendance, because:
  - a. The drive from the Peach Bottom area to NRC headquarters takes approximately two hours, and no direct public transportation is available. Thus, traveling from the Peach Bottom area to NRC Headquarters will be inconvenient for affected members of the public.
  - b. A telephone call-in line is not conducive to effective monitoring of conversations for any length of time, because it can be very difficult to identify voices without visual cues. Nonverbal gestures that often convey

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<sup>1</sup> The following are recent examples of press articles:  
<https://www.philly.com/business/energy/aging-nuclear-power-plants-safe-three-mile-island-peach-bottom-us-future-20190228.html> (Philadelphia Inquirer); and  
<https://www.yorkdispatch.com/story/news/2019/03/05/activists-challenge-license-extension-peach-bottom-nuclear-plant/3060252002/> (York Dispatch).

additional meaning or emphasis are also lost when they cannot be observed visually.

4. Substantial precedent has been established for holding the oral argument in the Peach Bottom vicinity. A review of the NRC's electronic hearing docket shows that oral arguments were held near the subject nuclear power plants in ten out of twelve license renewal cases (including the Turkey Point SLR case and eleven initial license renewal cases) involving circumstances where Licensing Board members considered oral argument necessary for the purpose of evaluating standing and/or contention admissibility.<sup>2</sup> In only two of the twelve cases, oral

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<sup>2</sup> See *Florida Power and Light Co.* (Turkey Point Units 3 and 4), Unpublished Order (Scheduling Oral Argument) (Oct. 9, 2013) (SLR proceeding); *Exelon Generation Co., L.L.C.* (Limerick Generating Station, Units 1 and 2), Unpublished Notice and Order (Scheduling Oral Argument) (Jan. 31, 2012); *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 2 and 3), Unpublished Order (Scheduling Oral Argument on the Admissibility of Contentions) (Feb. 29, 2008); *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), Unpublished Order and Notice (Regarding Oral Argument and Limited Appearance Statement Sessions) (June 21, 2006); *NextEra Seabrook, L.L.C.* (Seabrook Station, Unit 1), Unpublished Order (Setting First Prehearing Conference) (Nov. 5, 2010); *Entergy Nuclear Vermont Yankee, L.L.C. and Energy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), Unpublished Order (Tentatively Scheduling Oral Argument) (June 20, 2006); *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), Unpublished Notice and Order (Scheduling Oral Argument) (Feb. 1, 2011); *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), Unpublished Notice and Order (Scheduling Oral Argument) (Oct. 7, 2014); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 2 and 2), Unpublished Memorandum and Order (Setting Oral Argument) (May 5, 2010); *Union Electric Co.* (Callaway Plant, Unit 1), Unpublished Memorandum and Order (Scheduling Initial Prehearing Conference; Opportunity for Limited Appearance Statements) (May 11, 2012).

In two additional cases, the NRC dispensed with oral argument entirely, apparently because it was not considered necessary to a decision on the hearing requests. See, e.g., *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2), LBP-13-8, 78 NRC 1 (2013); *Amergen Energy Co., L.L.C.* (License Renewal for Oyster Creek Nuclear Generating Station), Unpublished Memorandum (Notice of Expected Date for Decision) (Feb. 2, 2006).

- argument was held at NRC Headquarters with a telephone call-in line.<sup>3</sup> Thus, a significant majority of the Licensing Boards who considered oral argument necessary to decide on hearing requests held the oral argument in the area of the nuclear plant.
5. Public attendance by affected members of the public and the press would likely be greatest if the oral argument were held in the most accessible location, *i.e.*, the Peach Bottom area.
  6. In the alternative, webcasting would constitute an acceptable substitute for holding the oral argument in the Peach Bottom area, because it would allow members of the public and the press to both watch and listen to the proceeding, without having to travel to NRC Headquarters. For most observers, it would be substantially easier to follow conversations between the Board and parties by watching and listening than by listening alone via a telephone call-in line. A webcast of the proceeding would also increase access by allowing people to watch the video at another time than the exact time of the oral argument.
  7. Finally, Beyond Nuclear's counsel has participated in other webcast proceedings conducted in the ASLB hearing room over the past decade or so since webcasting was introduced at the NRC. Therefore it is reasonable to presume that webcasting continues to be feasible, if not improved.

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<sup>3</sup> See *Entergy Operations, Inc.* (River Bend Station, Unit 1), Unpublished Notice and Order (Scheduling and Providing Instructions for Oral Argument) (Nov. 13, 2017); *South Texas Nuclear Operating Co.* (South Texas Project, Units 1 and 2), Unpublished Order (Scheduling Oral Argument) (May 23, 2011).

#### **IV. COMPELLING CIRCUMSTANCES**

Beyond Nuclear respectfully submits that this motion raises “compelling circumstances” as required by 10 C.F.R. § 2.323(e) in two key respects. First, the ASLB previously requested the parties to state a collective position on the issue of location, which they were unable to do. The Board’s February 28 Order granted Exelon’s preference over Beyond Nuclear’s preference, without explaining the basis for the choice or soliciting further input. Beyond Nuclear now reasonably seeks to explain its reasons for seeking to either hold the oral argument in the Peach Bottom area or webcast it.

Second, Beyond Nuclear seeks to advocate webcasting as an alternative that was not previously considered by the ASLB. While Beyond Nuclear continues to prefer the Peach Bottom area as the best location for the oral argument, webcasting it from NRC Headquarters would be an acceptable substitute.

Finally, compelling circumstances exist because – as discussed above -- this is only the second SLR case to come before the NRC, and raises significant safety and environmental concerns. In addition, nuclear safety issues are currently a significant subject of public interest in the state of Pennsylvania as the Three Mile Island accident anniversary approaches. Therefore, it is in the public interest to provide effective means for observation of the oral argument by the affected public and the press.

## V. CONCLUSION

For the foregoing reasons, the ASLB should grant Beyond Nuclear's motion and hold the oral argument near the Peach Bottom nuclear power plant. In the alternative, the ASLB should provide for webcasting of the oral argument from the NRC's Rockville Headquarters.

Respectfully submitted,

\_\_\_\_\_/signed electronically by/\_\_\_\_

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March 6, 2019

### **CERTIFICATE OF COUNSEL**

Pursuant to 10 C.F.R. § 2.323(b), I certify that on March 5, 2019, I consulted counsel for Exelon and the NRC Staff in a sincere effort to resolve the issues raised by this motion. Counsel for Exelon stated that: "Exelon does not support a motion to hold the oral argument in the vicinity of Peach Bottom, as holding it in Rockville is more convenient to the Board and all counsel, is already scheduled and reflects the Board's preference, but Exelon has no objection to it being webcast." Counsel for the NRC Staff stated that: "The NRC staff does not object to the motion to either hold the oral argument in the Peach Bottom area or webcast the oral argument."

\_\_\_\_\_[Signed electronically by]\_\_\_\_

Diane Curran

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**CERTIFICATE OF SERVICE**

I certify that on March 6, 2019, I posted copies of the foregoing BEYOND NUCLEAR'S MOTION FOR RECONSIDERATION REGARDING LOCATION OF ORAL ARGUMENT OR, IN THE ALTERNATIVE, MOTION TO WEBCAST THE ORAL ARGUMENT on the NRC's Electronic Information Exchange System.

/signed electronically by/  
Diane Curran