

May 17, 2019

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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 Opposition to Beyond Nuclear, Inc.’s
Amended Hearing Request and Petition to Intervene**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Exelon Generation Company, LLC (“Exelon”) submits this answer opposing Beyond Nuclear, Inc.’s (“Beyond Nuclear”) May 1, 2019 late-filed motion to amend the basis of its contentions.¹ The Board should deny this motion because the new information is not materially different from information previously available and in any event does not demonstrate any genuine material dispute with the Application.²

Beyond Nuclear seeks to supplement the basis of its original contentions and introduce new claims regarding an additional document made public on March 31, 2019, namely, Ramuhalli, et al., PNNL-27120, Rev. 1, Criteria and Planning Guidance to Ex-Plant Harvesting to Support Subsequent License Renewal (ADAMS Accession No. ML19081A006) (“Ramuhalli

¹ Beyond Nuclear, Inc.’s Amended Hearing Request and Petition to Intervene (May 1, 2019) (NRC ADAMS Accession No. ML19121A453) (hereinafter, “Motion”).

² The Peach Bottom application for Subsequent License Renewal (“SLR”) is available in the NRC’s Agency-wide Documents Access and Management System (“ADAMS”) at Accession No. ML18193A689, and on the NRC’s website at <https://www.nrc.gov/reactors/operating/licensing/renewal/applications/peach-bottom-subsequent.html#application>. It includes several documents referred to collectively herein as the “Application.”

Rev. 1”). Beyond Nuclear, however, does not seek to use Ramuhalli Rev. 1 to support its hearing request, but instead complains that it is *less* supportive than the prior version – Ramuhalli, et al., PNNL-27120: “Criteria and Planning Guidance for Ex-Plant Harvesting to Support Subsequent License Renewal” (December 2017) (“Ramuhalli 2017”) – referenced by David Lochbaum in support of Beyond Nuclear’s hearing request.³ Beyond Nuclear also alleges that the Nuclear Regulatory Commission Staff (“NRC Staff”) has “watered down” the Ramuhalli report in Ramuhalli Rev. 1.

The Board should find that Beyond Nuclear has not met the standards for a late-filed amended contention under 10 C.F.R. § 2.309(c)(1). And, even if Beyond Nuclear’s motion had met those standards, it has not met the standards for an admissible amended contention under 10 C.F.R. § 2.309(f)(1). As a result, the Board should reject Beyond Nuclear’s late-filed motion to amend its contentions in addition to rejecting the original contentions.⁴

II. BEYOND NUCLEAR HAS FAILED TO SHOW GOOD CAUSE FOR ITS LATE FILING

The NRC does not look with favor on amended or new contentions made after the initial filing deadline. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 638 (2004). As the Commission has repeatedly stressed, “[t]here simply would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the

³ Beyond Nuclear Inc.’s Hearing Request and Petition to Intervene (Nov. 19, 2018), Att. 4 (“Lochbaum Report”).

⁴ If, as Exelon shows below, the Board finds no good cause for Beyond Nuclear’s late-filed motion to amend, Beyond Nuclear’s contentions as originally submitted should be rejected for the reasons set forth in Exelon’s Answer Opposing Beyond Nuclear’s Petition for Leave to Intervene and Hearing Request (Dec. 14, 2018) (“Exelon’s Answer”).

outset of the proceeding.” *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 272 (2009) (footnotes and internal quotation marks omitted).

The Board should reject Beyond Nuclear’s late-filed motion to amend its contentions because the motion is untimely, and Beyond Nuclear has failed to demonstrate the required good cause for its untimely filing. A motion for leave to file a new or amended contention after the intervention deadline “*will not be entertained* absent a determination by the presiding officer that a participant has demonstrated good cause” for the late filing. 10 C.F.R. § 2.309(c)(1) (emphasis added). The good cause demonstration requires the petitioner to show that:

- (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.

10 C.F.R. § 2.309(c)(1). In summary, the good cause demonstration requires both that the amended or new contention “must be ‘based’ on the new information,” while the new information must be “materially” or significantly different from that previously available.

Florida Power & Light Co. (Turkey Point Units 6 and 7), LBP-17-6, 86 N.R.C. 37, 47-48, nn.8, 9 (2017).

It is true that Ramuhalli Rev. 1 is a new document; however, the information in Ramuhalli Rev. 1 is not materially different from Ramuhalli 2017. As Beyond Nuclear acknowledges, “[n]one of the factual information reviewed by the researchers who prepared Ramuhalli 2017 appears to be changed in Ramuhalli Rev. 1.” Motion at 4. Further, while Beyond Nuclear focuses on changes that it alleges weakened the conclusions and recommendations of Ramuhalli 2017 (without changing the underlying facts) (Motion at 6), it

makes no showing that any of the few changes in the report alters Mr. Lochbaum's conclusions or provides additional support for Beyond Nuclear's contentions. For example, the Lochbaum Report supporting Beyond Nuclear's contentions relies on Ramuhalli 2017 to assert that harvesting components "can yield valuable insights," that aging management is complicated by a variety of factors, and to otherwise advocate for harvesting. *See* Motion at 1-3. The limited changes in Ramuhalli Rev. 1 do not alter or provide further support for these assertions.

Instead, Beyond Nuclear argues that Ramuhalli 2017 was not provisional and remains reliable. Motion at 6. This is simply additional argument that Beyond Nuclear could have made in its prior Reply⁵ or during oral argument and is therefore untimely.

Further, no party has argued that Mr. Lochbaum could not reference Ramuhalli 2017 in his report. The NRC Staff merely noted that Ramuhalli 2017 had not been endorsed by the NRC Staff and therefore could not be attributed any regulatory significance but instead represented the authors' opinion.⁶ Ramuhalli Rev. 1 is not materially different in this respect as the disclaimer following the cover page states: "The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof." Ramuhalli 2017 contained the same disclaimer.

In sum, as they do not provide any additional support for Beyond Nuclear's contentions or alter Mr. Lochbaum's report, the limited changes in Ramuhalli Rev. 1 do not appear material and therefore do not provide good cause to amend the bases for the contentions. Because the amended contention, to the extent that it overlaps the original contention, is not based on new or materially different information, the motion should be denied. As described below, Beyond

⁵ Beyond Nuclear's Reply to Exelon's and NRC Staff's Oppositions to Hearing Request and Petition to Intervene (Dec. 21, 2018) ("Beyond Nuclear Reply").

⁶ NRC Staff Answer to Beyond Nuclear, Inc.'s Hearing Request and Petition to Intervene (Dec. 14, 2018) at 41 n.177 ("NRC Staff Answer").

Nuclear's attempts to justify the introduction of Ramuhalli Rev. 1 to support new claims in the amended contention, beyond the original contention, must also be denied for failing to meet the admissibility criteria of 10 C.F.R. § 2.309(f)(1).

III. BEYOND NUCLEAR'S AMENDED CONTENTION IS INADMISSIBLE

Beyond Nuclear's motion to amend its contentions with new claims falls short of the Commission's contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). As 10 C.F.R. § 2.309(f)(4) provides, "[a] new or amended contention filed by a party or participant to the proceeding must also meet the applicable contention admissibility requirements in paragraph (f) of this section." Beyond Nuclear does not address the contention admissibility requirements of 10 C.F.R. § 2.309(f)(1) in its Motion, and its amended claims fail to meet those standards.

Beyond Nuclear's amended claims are immaterial, outside the scope of this proceeding, and fail to raise a genuine dispute with the application on a material issue of fact or law. Admissible contentions "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 359-60 (2001). In particular, this explanation must demonstrate that the contention is "material" to the NRC's findings and that a genuine dispute on a material issue of law or fact exists. 10 C.F.R. § 2.309(f)(1)(iv), (vi). The Commission has defined a "material" issue as meaning one where "resolution of the dispute *would make a difference in the outcome* of the licensing proceeding." Final Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (emphasis added). Beyond Nuclear seeks to inject three claims as additional bases for its contentions (Motion at 7-8), but none of these claims is material or demonstrates a genuine material dispute with the Application.

First, Beyond Nuclear alleges that Ramuhalli 2017 is neither incomplete nor provisional (Motion at 7), but this allegation is ultimately irrelevant to the NRC’s decision-making on the Application. As previously stated, neither the NRC Staff nor Exelon has taken the position that Lochbaum cannot cite the original Ramuhalli report.⁷ Instead, the NRC Staff merely noted that “[t]he Commission has previously held that staff working papers or position papers, drafted by NRC Staff but not endorsed by the Commission, have ‘no legal significance for any [NRC] regulatory purpose’” and therefore Ramuhalli 2017 similarly “merely represents the authors’ opinion.” NRC Staff Answer at 41, n.177 (citing *Duke Power Co. (Catawba Nuclear Station, Units 1 & 2)*, ALAB-355, 4 N.R.C. 397, 416 (1976)). Beyond Nuclear does not dispute the applicability of this precedent or explain why Ramuhalli 2017 should have any greater significance. Moreover, nowhere in the Motion is there any explanation how any differences between Ramuhalli 2017 and Ramuhalli Rev. 1 are material to whether the Application needs to define a “critical mass” of operating experience (which is the gravamen of Beyond Nuclear’s Contention 1) or have any bearing whatsoever on the environmental concerns alleged in Contention 2.

Second, Beyond Nuclear alleges that “Ramuhalli 2017 was ‘watered down’ by the NRC Staff in Rev. 1 without a technical basis, in response to industry pressure” (Motion at 7) but provides no support for this scurrilous speculation. Vague speculation is not sufficient to establish a material challenge to an application. *Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant)*, CLI-15-23, 82 N.R.C. 321, 330 (2015); *Consolidated Edison Co. of New York (Indian Point, Units 1 and 2)*, CLI-01-19, 54 N.R.C. 109, 140 (2001) (“[W]e cannot admit an issue for adjudication based on mere conjecture.”). Beyond Nuclear also fails to provide any

⁷ At the March 27, 2019 oral argument, the NRC Staff described the Ramuhalli 2017 as “pre-decisional” to explain why the report was not available on ADAMS. Tr. at 118:1-12.

factual support for this claim, as required by 10 C.F.R. 2.309(f)(1)(v). Thus, the Board should reject this assertion as both speculative and unsupported. Further, the appropriate focus of this proceeding is on the adequacy of the Application, and not on the NRC Staff's review of contractor reports. The Board has no authority to supervise or adjudicate the NRC Staff's performance of its independent duties. *See, e.g., New England Power Co. (NEP, Units 1 & 2), LBP-78-9, 7 N.R.C. 271, 278-79 (1978)* (deciding that studies and analyses preceding the final safety analysis report and environmental impact statements "are made independently by the Staff, and licensing boards have no role or authority in their preparation"); *Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-728, 17 N.R.C. 777, 807 (1983), review denied, CLI-83 32, 18 N.R.C. 1309 (1983)* (an Intervenor "may not proceed on the basis of allegations that the Staff has somehow failed in its performance").

Finally, Beyond Nuclear alleges that the inconsistencies between the conclusions and recommendations of Ramuhalli 2017 and Ramuhalli Rev. 1 underscore NEPA's requirement for a "hard look" at the environmental impacts of extending the Peach Bottom operating license (Motion at 7-8), but this claim is unfathomable. Beyond Nuclear provides no explanation how any specific changes between the reports have any bearing on the environmental review, and more specifically, on the assessed risk of design basis accidents challenged in Contention 2. Nor does Beyond Nuclear provide any factual or expert support for the significance of the changes between the reports.

In sum, Beyond Nuclear fails to address or demonstrate any material dispute with the Application, thus failing to raise a genuine dispute as required by 10 C.F.R. § 2.309(f)(1)(vi). In addition, contrary to 10 C.F.R. § 2.309(f)(1)(v), Beyond Nuclear does not provide any support to suggest that its claims of industry intervention are anything beyond mere speculation. Finally,

Beyond Nuclear fails to establish how its dispute with the NRC Staff on the changes to Ramuhalli Rev. 1 should be within the scope of this proceeding, contrary to 10 C.F.R. § 2.309(f)(1)(iii). The Motion therefore fails to satisfy the admissibility standards in 10 C.F.R. § 2.309(f)(1), and Beyond Nuclear's contentions remain inadmissible for all the other reasons discussed previously in Exelon's Answer.

IV. CONCLUSION

For all the foregoing reasons, the Board should deny Beyond Nuclear's motion.

Respectfully submitted,

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

/signed electronically by Anne Leidich/
Anne R. Leidich
PILLSBURY WINTHROP SHAW
PITTMAN LLP
1200 Seventeenth Street, NW
Washington, DC 20036
Telephone: 202-663-8707
Facsimile: 202-663-8007
Anne.leidich@pillsburylaw.com

Counsel for Exelon

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Exelon’s Opposition to Beyond Nuclear, Inc.’s Amended Hearing Request and Petition to Intervene have been served through the E-Filing system on the participants in the above-captioned proceeding this 17th day of May 2019.

/signed electronically by Anne Leidich/
Anne R. Leidich