

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

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In the Matter of)	
Exelon Generation Company, LLC)	Docket Nos. 50-277/278 SLR
Peach Bottom Atomic Power Station,)	May 22, 2019
Units 2 & 3)	
)	

**BEYOND NUCLEAR, INC.’S REPLY TO EXELON’S AND
NRC STAFF’S OPPOSITIONS TO AMENDED HEARING REQUEST
AND PETITION TO INTERVENE**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(2) and the briefing schedule agreed to by the Atomic Safety and Licensing Board (“ASLB”) and the parties, Beyond Nuclear, Inc. (“Beyond Nuclear”) hereby replies to oppositions by Exelon Generation Co., L.L.C. (“Exelon”) and the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) Staff to Beyond Nuclear’s Amended Hearing Request and Petition to Intervene (May 1, 2019) (“Amended Hearing Request”). Exelon’s Opposition to Beyond Nuclear, Inc.’s Amended Hearing Request and Petition to Intervene (May 17, 2019) (“Exelon Opp.”); NRC Staff Answer to Beyond Nuclear Inc.’s Amended Hearing Request and Petition to Intervene (May 17, 2019) (“NRC Staff Opp.”). Their arguments that Beyond Nuclear’s Amended Hearing Request does not meet the NRC’s admissibility standard AND lacks good cause are without merit. Therefore, the ASLB should grant Beyond Nuclear’s request.

II. BACKGROUND

As discussed in Beyond Nuclear’s Amended Hearing Request at 6-8, the purpose of the amended contentions is to address the significance of a recently-published revision to a Pacific

Northwest National Laboratory (“PNNL”) technical report that was cited by Beyond Nuclear in support of its contentions.¹

Beyond Nuclear continues to rely on the facts and conclusions of Ramuhalli 2017 for the proposition that gaps in technical knowledge of aging mechanisms exist for Peach Bottom and other reactors, such that harvesting of decommissioning reactor components may become necessary to validate and verify Peach Bottom operational safety margins during the subsequent license renewal (“SLR”) term (Contention 1). In addition, Beyond Nuclear relies on Ramuhalli 2017 to demonstrate that harvesting of decommissioning reactor components should be considered as a reasonable alternative for addressing aging impacts under the National Environmental Policy Act (“NEPA”) (Contention 2). Beyond Nuclear now seeks to amend the basis statements for Contentions 1 and 2 to discuss the significance of Ramuhalli Rev. 1, which was not placed on ADAMS until after the March 27, 2019 oral argument regarding Beyond Nuclear’s Hearing Request.

III. DISCUSSION

A. The Proposed Amended Basis for Contentions 1 and 2 is Admissible.

Exelon argues that Beyond Nuclear fails to satisfy the NRC’s admissibility standard with respect to materiality and establishment of a “genuine dispute” with Exelon regarding its application. Exelon Opp. at 5-6 (citing 10 C.F.R. § 2.309(f)(1)(iv), (vi)). According to Exelon, neither it nor the Staff objected to Beyond Nuclear’s reliance on Ramuhalli 2017, and therefore Ramuhalli Rev. 1 is irrelevant. *Id.* But Exelon overlooks the fact that the NRC Staff established

¹ The original report is Ramuhalli, et al., PNNL-27120: “Criteria and Planning Guidance for Ex-Plant Harvesting to Support Subsequent License Renewal” (December 2017) (“Ramuhalli 2017”). The report issued in 2019 is PNNL-27120, Rev. 1, Criteria and Planning Guidance to Ex-Plant Harvesting to Support Subsequent License Renewal (March 31, 2019) (ADAMS Accession No. ML19081A006) (“Ramuhalli Rev. 1”).

the relevance of Ramuhalli Rev. 1 by referring to it in the March 27 oral argument. During the oral argument, NRC Staff counsel described Ramuhalli 2017 as a “draft” that was “pre-decisional” and “under review by the staff,” suggesting that it would be replaced by a final report. Tr. 117, 118 (Gamin). NRC Staff counsel also stated that the conclusions of Ramuhalli 2017 had “evolved” and become “finalized” in the GALL SLR Report, suggesting that the conclusions of Ramuhalli 2017 had been changed and superseded. *Id.* 117 (Gamin). Subsequently, in an April 2, 2019 letter, the Staff notified the ASLB of the issuance of Ramuhalli Rev. 1, stating that it had been referred to in the oral argument.

Thus, the Staff established the relevance of Ramuhalli Rev. 1 to Beyond Nuclear’s contentions. The Staff itself, by characterizing Ramuhalli 2017 as “a draft” and “pre-decisional,” and by suggesting that Ramuhalli 2017 had been changed and subsumed into the GALL SLR Report, also implicitly questioned and undermined the reliability of Ramuhalli 2017 to support Beyond Nuclear’s contentions. And the Staff also raised the implicit inference that the difference between the conclusions in Rev. 1 reflects a change in the opinions of the authors of Ramuhalli 2017. In fairness to Beyond Nuclear, it should be permitted to amend the contentions to address the significance of these characterizations. As discussed in Beyond Nuclear’s Amended Hearing Request, Ramuhalli Rev. 1 does not credibly undermine Beyond Nuclear’s reliance on Ramuhalli 2017.²

For its part, the Staff argues that Beyond Nuclear’s criticisms of Ramuhalli Rev. 1 are “generalized grievances” that are not specific to Peach Bottom and therefore fail to satisfy the NRC’s specificity standards. NRC Staff Opp. at 17-18. This is the same argument made by the

² By the same token, there is no merit to Exelon’s argument that Beyond Nuclear fails to demonstrate how the differences between Ramuhalli 2017 and Ramuhalli Rev. 1 are relevant to Beyond Nuclear’s contentions.

Staff in response to Beyond Nuclear's initial Hearing Request, to which Beyond Nuclear previously replied. Beyond Nuclear's Reply to Exelon's and NRC Staff's Opposition to Hearing Request and Petition to Intervene at 13 (Dec. 21, 2018). Ramuhalli 2017 supports the specific criticisms of Beyond Nuclear's expert, David A. Lochbaum, regarding the Aging Management Program for the Peach Bottom nuclear power plant.³

Finally, both Exelon and the Staff argue that Beyond Nuclear's amended basis statement is inadmissible to the extent it raises the question of whether the "watered-down" conclusions of Ramuhalli Rev. 1 were substituted for Ramuhalli 2017's more robust conclusions under duress. Exelon Opp. at 6-7, NRC Staff Opp. at 18. They argue that Beyond Nuclear's claims are speculative. But the Staff has provided further evidence to support Beyond Nuclear's concerns by citing the 2015 contract for PNNL's research and report, Interagency Agreement No. NRC-HQ-60-15-T-0023 (Award Date Sept. 4, 2015) (ML19129A329) ("NRC-PNNL Contract"). *See* NRC Staff Opp. at 5 n. 20. The NRC-PNNL Contract refers repeatedly to knowledge "gaps" about aging equipment. *See, e.g., id.* at 2, 7, 9, 13, 14, 17.

Thus, the NRC Staff originally raised a concern about knowledge gaps regarding aging equipment and sought PNNL's help to identify them and develop a strategic approach for addressing them. And, as agreed to in the NRC-PNNL Contract, Ramuhalli 2017 evaluated the nature of those "gaps" and what is needed to fill them. With the 2019 publication of Ramuhalli Rev. 1, however, the concept of knowledge "gaps," identified by the Staff in 2015 and investigated by PNNL in 2017, virtually disappeared. Instead the term "knowledge gap" was

³ The Staff also argue that Beyond Nuclear has failed to state specifically how the contention should be amended. NRC Staff Opp. at 13. This is incorrect. Beyond Nuclear specifically described the purposes for which it intended to amend the basis statements of the contentions. Amended Hearing Request at 7-8.

replaced by euphemistic phrases suggesting that while no essential information was missing, it would be nice to have an “opportunity to increase knowledge.” *See, e.g.*, Ramuhalli Rev. 1 at ii. It is entirely legitimate and reasonable to question how such a major change in the evaluation of the problem could have happened, given that the NRC Staff itself had originally identified and sought an investigation by PNNL of knowledge gaps, and given the lack of any difference between the facts underlying Ramuhalli 2017 and Ramuhalli Rev. 1.

B. Beyond Nuclear Had Good Cause to File the Amended Contentions.

Both Exelon and the Staff argue that Beyond Nuclear lacks good cause to amend Contentions 1 and 2 because there is no significant difference between Ramuhalli 2017 and Ramuhalli Rev. 1. Exelon Opp. at 3-4, NRC Staff Opp. at 12-13. The Staff is correct that the factual information in Ramuhalli Rev. 1 is not different;⁴ but as discussed above, the conclusions of the two documents are significantly different and Rev. 1 purports to supersede and significantly modify the conclusions of Ramuhalli 2017. Given that the Staff itself has raised explicit and implicit questions about the validity of Ramuhalli 2017 as a document that can be relied on by Beyond Nuclear, Beyond Nuclear has good cause to cite and address it.

⁴ It bears noting that while Ramuhalli 2017 was posted on PNNL’s website, Ramuhalli Rev. 1 has yet to be posted there. In Beyond Nuclear’s view, PNNL’s failure to post Rev. 1 raises questions about whether PNNL accepts the NRC’s characterization of the process by which both reports were prepared.

IV. CONCLUSION

For the foregoing reasons, the ASLB should admit Amended Contentions 1 and 2.

Respectfully submitted,

/signed electronically by/
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CERTIFICATE OF SERVICE

I certify that on May 22, 2019, I posted copies of the foregoing Beyond Nuclear, Inc.'s Reply to Oppositions to Amended Hearing Request and Petition to Intervene on the NRC's Electronic Information Exchange System.

/signed electronically by/
Diane Curran