

August 19, 2019

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

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

**BEYOND NUCLEAR’S MOTION FOR LEAVE TO REPLY IN PART TO  
OPPOSITIONS TO BEYOND NUCLEAR’S BRIEF ON APPEAL OF LBP-19-05**

Pursuant to 10 C.F.R. §§ 2.311 and 2.323(b), Beyond Nuclear hereby seeks leave to make a limited reply to briefs filed by Exelon Generation Co. L.L.C. (“Exelon”) and the U.S. Nuclear Regulatory Commission (“NRC”) Staff in opposition to Beyond Nuclear’s Brief on Appeal of LBP-19-05 (July 15, 2019). Exelon’s Brief in Opposition to Beyond Nuclear’s Appeal of LBP-19-05 (Aug. 9, 2019) (“Exelon Br.”); NRC Staff Brief in Opposition to Beyond Nuclear Appeal of LBP-19-5 (Aug. 9, 2019) (“NRC Staff Br.”). Exelon and the Staff make two arguments that merit the unusual step of a reply.<sup>1</sup>

First, they argue that Beyond Nuclear should be barred from challenging the Atomic Safety and Licensing Board’s (“ASLB’s”) reliance on 10 C.F.R. § 51.53(a) to reject Beyond Nuclear’s Contention 2, on the incorrect ground that Beyond Nuclear raised the issue for the first time on appeal. They also incorrectly contend that the Commission should disregard legal authorities cited by Beyond Nuclear in support of its argument. Beyond Nuclear could not have anticipated that Exelon and the Staff would ignore or mischaracterize the record made by Beyond Nuclear before the ASLB, nor

<sup>1</sup> By not seeking leave to reply to other incorrect arguments, Beyond Nuclear does not concede them.

could it have anticipated that they would make the unsupported argument that an appellant may not cite any new legal cases or regulations that were not previously identified below. If approved, this combined factual and legal error could result in the Commission's refusal to consider a key and legitimately raised legal error in this appeal. Therefore, the Commission should permit Beyond Nuclear to correct the record and point out their legal error.

Second, Exelon and the Staff confuse the legal requirements in 10 C.F.R. § 51.53(c)(3) and 10 C.F.R. § 51.53(a) for incorporation of by reference of other environmental studies into an environmental report. Section 51.53(c)(3) codifies the "Category 1" environmental findings of the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG-1437, Rev. 1 (2013)) ("License Renewal GEIS, Rev. 1") and Table B-1 of 10 C.F.R. Part 51, Subpart A, App. A and therefore excuses initial license renewal applicants from doing anything more than summarily cross-referencing those findings. But 10 C.F.R. § 51.54(a) provides no such exemption from NEPA's central requirement to discuss the environmental impacts of the proposed action, as applied to non-initial license renewal applicants in 10 C.F.R. § 51.53(c)(2). Therefore, Exelon (and any license renewal applicant other than an initial license renewal applicant) must justify incorporation by reference by describing and specifically citing the incorporated analysis, sufficiently to allow the reader to allow the reader to evaluate the adequacy of the analysis. Beyond Nuclear could not have anticipated that Exelon and the Staff would make this legal error, and therefore a reply is warranted. In addition, the issue relates to the applicability of 10 C.F.R. § 51.53(c)(3) to subsequent license renewal applications, an issue of first impression that should be fully briefed in order to allow the

Commission to make a well-informed decision regarding the application of its NEPA implementing regulations to subsequent license renewal.<sup>2</sup>

Respectfully submitted,

          /signed electronically by/            
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**CERTIFICATE OF COUNSEL PURSUANT TO 10 C.F.R. § 3.323(b)**

Pursuant to 10 C.F.R. § 2.323(b), I certify that on August 15, 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 will object to the motion. Counsel for the NRC Staff stated that the Staff will oppose the motion.

          /signed electronically by/            
Diane Curran

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<sup>2</sup> That issue is now before the Commission. *See* Friends of the Earth’s, Natural Resources Defense Council’s, and Miami Waterkeeper’s Petition for Review of the Atomic Safety and Licensing Board’s Rulings in LBP-19-3 and LBP-19-6 (Aug. 9, 2019).

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**CERTIFICATE OF SERVICE**

I certify that on August 19, 2019, I posted copies of the foregoing Beyond Nuclear, Inc.'s Motion for Leave to Reply in Part to Oppositions to Beyond Nuclear's Brief on Appeal of LBP-19-05 on the NRC's Electronic Information Exchange System.

/signed electronically by/  
Diane Curran