

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman  
Jeff Baran  
Annie Caputo  
David A. Wright  
Christopher T. Hanson

In the Matter of

EXELON GENERATION COMPANY, LLC

(Peach Bottom Atomic Power Station, Units 2  
and 3)

Docket Nos. 50-277-SLR  
50-278-SLR

**CLI-20-11**

**MEMORANDUM AND ORDER**

Beyond Nuclear, Inc. (Beyond Nuclear) appeals the Atomic Safety and Licensing Board's ruling on its hearing request and petition to intervene challenging the subsequent license renewal application of Exelon Generation Company, LLC for Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom).<sup>1</sup> For the reasons discussed below, we affirm the Board's decision.

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<sup>1</sup> *Beyond Nuclear's Notice of Appeal of LBP-19-05* (July 15, 2019); *Beyond Nuclear's Brief on Appeal of LBP-19-05* (July 15, 2019) (Appeal); see *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483 (2019).

## I. BACKGROUND

Exelon submitted its subsequent license renewal application for Peach Bottom Units 2 and 3 on July 10, 2018.<sup>2</sup> The Peach Bottom renewed licenses would authorize Exelon to operate the boiling water reactors, located in Delta, Pennsylvania, for an additional twenty years beyond the period specified in each of the current renewed operating licenses. The current licenses for the Peach Bottom Units expire in 2033 and 2034; an additional twenty years would extend the expiration dates to 2053 and 2054.

Following the NRC Staff's acceptance review and docketing of the Peach Bottom application, a notice of opportunity to request a hearing and petition for leave to intervene was published in the *Federal Register*.<sup>3</sup> In November 2018, Beyond Nuclear filed a hearing request and proposed two contentions.<sup>4</sup> Exelon and the Staff both opposed the hearing request.<sup>5</sup> On June 20, 2019, the Board denied Beyond Nuclear's hearing request and concluded that neither of Beyond Nuclear's contentions was admissible.<sup>6</sup>

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<sup>2</sup> See Letter from Michael Gallagher, Exelon, to NRC Document Control Desk (July 10, 2018) (ADAMS accession no. ML18193A697); Subsequent License Renewal Application, Peach Bottom Atomic Power Station Unit 2 and 3), (July 2018) (ML18193A773). The application contains an environmental report. Applicant's Environmental Report—Operating License Renewal Stage—Subsequent License Renewal (July 2018) (ML18201A219) (Environmental Report).

<sup>3</sup> See Exelon Generating Co., LLC; Peach Bottom Atomic Power Station, Units 2 and 3; License Renewal Application; Opportunity to Request a Hearing and to Petition for Leave to Intervene, 83 Fed. Reg. 45,285 (Sept. 6, 2018).

<sup>4</sup> *Beyond Nuclear Inc.'s Hearing Request and Petition to Intervene* (Nov. 19, 2018) (Petition).

<sup>5</sup> *Exelon's Answer Opposing Beyond Nuclear Inc.'s Hearing Request and Petition to Intervene* (Dec. 14, 2018) (Exelon Answer to Petition); *NRC Staff Answer to Beyond Nuclear, Inc.'s Hearing Request and Petition to Intervene* (Dec. 14, 2018) (Staff Answer to Petition).

<sup>6</sup> See LBP-19-5, 89 NRC 483. Neither Exelon nor the Staff opposed Beyond Nuclear's standing to intervene in the proceeding, and the Board found that Beyond Nuclear had demonstrated standing. See *id.* at 491.

Beyond Nuclear filed a timely appeal, seeking reversal of the Board's decision on Contention 2, which challenged the adequacy of the Exelon's environmental report.<sup>7</sup> Both Exelon and the Staff oppose Beyond Nuclear's Appeal.<sup>8</sup>

**A. LBP-19-5**

The Board evaluated Contention 2 as three separate environmental challenges and designated them as Contentions 2A, 2B, and 2C.<sup>9</sup> Beyond Nuclear, on appeal, does not object to the Board's designation of its contention as three separate contentions, and we maintain the Board's designation of those contentions here.

In Contention 2A, Beyond Nuclear asserted that Exelon's environmental report fails to address the accident risks posed by aging reactor equipment during a second license renewal term in violation of the National Environmental Policy Act (NEPA) and 10 C.F.R. § 51.53(c)(2).<sup>10</sup> Beyond Nuclear disputed Exelon's claim that the risk of operating Peach Bottom with aging equipment is a Category 1 issue that Exelon's environmental report can address by relying on

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<sup>7</sup> In Contention 1, Beyond Nuclear claimed that Exelon's aging management programs failed to account for "the declining body of external operating experience" available during the subsequent license renewal term. Petition at 1, 4-6. Beyond Nuclear did not appeal the Board's ruling on Contention 1. Appeal at 1 n.1.

<sup>8</sup> *Exelon's Brief in Opposition to Beyond Nuclear's Appeal of LBP-19-05* (Aug. 9, 2019) (Exelon Brief in Opposition); *NRC Staff Brief in Opposition to Beyond Nuclear Appeal of LBP-19-5* (Aug. 9, 2019) (Staff Brief in Opposition). Beyond Nuclear moved for leave to file a reply to Exelon's and the Staff's opposing briefs and submitted a reply brief simultaneously with its motion. *Beyond Nuclear's Motion for Leave to Reply in Part to Oppositions to Beyond Nuclear's Brief on Appeal of LBP-19-05* (Aug. 19, 2019) (Motion for Leave to Reply); *Beyond Nuclear, Inc.'s Reply Brief on Appeal of LBP-19-05* (Aug. 19, 2019). Both Exelon and the Staff oppose Beyond Nuclear's Motion for Leave to Reply. *Exelon's Answer Opposing Beyond Nuclear's Motion to File a Reply Brief* (Aug. 29, 2019); *NRC Staff Answer to Beyond Nuclear Motion for Leave to Reply* (Aug. 29, 2019). Filings not otherwise authorized by our rules are permitted only where necessity or fairness dictates. See *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2). CLI-14-3, 79 NRC 31, 35 (2014). Because Beyond Nuclear does not meet this standard, we deny its Motion for Leave to Reply.

<sup>9</sup> LBP-19-5, 89 NRC at 500.

<sup>10</sup> See Petition at 6-7; LBP-19-5, 89 NRC at 500.

the environmental findings contained in 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1 (Table B-1).<sup>11</sup> Beyond Nuclear argued that 10 C.F.R. § 51.53(c)(2) requires Exelon to address reactor aging phenomena and their effects during the subsequent renewal period.<sup>12</sup> Exelon and the Staff both asserted that the contention impermissibly challenged our regulations, since Table B-1 codifies the findings in the 2013 Generic Environmental Impact Statement (GEIS) that “the environmental impacts of design-basis accidents are of small significance for all plants.”<sup>13</sup> Moreover, Exelon and the Staff asserted that NRC regulations allow an applicant to incorporate by reference into its environmental report any information from a prior environmental report that relates to the facility or site, or any information in a final environmental document previously prepared by the Staff relating to the facility.<sup>14</sup> Exelon asserted that its environmental report incorporates by reference the discussion of design-basis accidents from the GEIS and that any challenges to the generic findings codified in the NRC rules are barred by 10 C.F.R. § 2.335.<sup>15</sup>

The Board declined to rule on the issue of the applicability of 10 C.F.R. § 51.53(c)(3) to subsequent license renewal and found that it did not need to make a determination on that issue

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<sup>11</sup> Petition at 7, 11; Petitioner Reply at 17-32. Table B-1 summarizes the Commission’s findings on NEPA issues for license renewal of nuclear power reactors and assigns each issue to a category. See 10 C.F.R. pt. 51, subpt. A, app. B, tbl. B-1 (Table B-1). For Category 1 issues, the generic analysis of the issue as specified in the table may be adopted in each plant-specific review. See Table B-1 n.2. Category 2 issues require additional plant-specific review. *Id.*

<sup>12</sup> Petition at 7, 10; Petitioner Reply at 17-32.

<sup>13</sup> Exelon Answer to Petition at 29. Staff Answer to Petition at 56-57; see “Generic Environmental Impact Statement for License Renewal of Nuclear Plants—Main Report” (Final Report), NUREG-1437, vol. 1, rev. 1 (June 2013) (ML13106A241) (GEIS).

<sup>14</sup> Exelon Answer to Petition at 29-31. Staff Answer to Petition at 56-57; see 10 C.F.R. § 51.53(a) (listing a variety of NEPA documents containing information that may be incorporated by reference in an environmental report).

<sup>15</sup> Exelon Answer to Petition at 29-30 (citing Environmental Report at 4-69, 4-70).

in order to analyze the sufficiency of Beyond Nuclear's contentions.<sup>16</sup> The Board reasoned that even if 10 C.F.R. § 51.53(c)(3) did not apply to subsequent license renewal applicants, Exelon would still be permitted to incorporate the 2013 GEIS analyses into its environmental report.<sup>17</sup> Having determined that Exelon incorporated by reference the 2013 GEIS into its environmental report, the Board concluded that, contrary to Beyond Nuclear's assertion, Exelon's environmental report did address the accident risks posed by operating aging reactor equipment for the subsequent license renewal term.<sup>18</sup>

The Board held that in light of Exelon's incorporation by reference of the 2013 GEIS analyses and the Table B-1 results concerning design-basis accidents, Beyond Nuclear failed to show a genuine dispute with Exelon's environmental report.<sup>19</sup> The Board stated that Beyond Nuclear did not explain why Exelon was not permitted to use the 2013 GEIS analysis in its application, "[a]side from its general argument that subsequent license renewal applicants cannot rely on the 2013 GEIS because it fails to 'expand the temporal scope of the environmental analysis' to subsequent license renewals."<sup>20</sup>

With respect to Contention 2B, Beyond Nuclear asserted that the environmental report failed to review and evaluate the existing body of literature concerning aging issues.<sup>21</sup> In

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<sup>16</sup> See LBP-19-5, 89 NRC at 502. In declining to make a determination as to the applicability of 10 C.F.R. § 51.53(c)(3) to subsequent license renewal, the Board acknowledged that the issue had been raised in the *Turkey Point* subsequent license renewal proceeding and had been referred to the Commission. *Id.* at 501 & n.90. See also *Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)*, LBP-19-3, 89 NRC 245, 272-73 & n.46 (2019). We issued a decision on the referred ruling earlier this year. *Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)*, CLI-20-3, 91 NRC 133 (2020).

<sup>17</sup> LBP-19-5, 89 NRC at 502.

<sup>18</sup> *Id.* at 502-03.

<sup>19</sup> *Id.* at 503 (citing 10 C.F.R. § 2.309(f)(1)(iv)).

<sup>20</sup> *Id.* at 502 (quoting Petition at 12).

<sup>21</sup> See Petition at 6-7.

support of its contention, Beyond Nuclear referred to its expert's report and referenced a five-volume report prepared by the NRC and the U.S. Department of Energy.<sup>22</sup>

In addition, Beyond Nuclear claimed that the environmental report must address the environmental implications of reactor aging issues identified by the Staff in a 2014 memorandum to the Commission.<sup>23</sup> Beyond Nuclear stated that this document characterizes certain issues that the NRC considers the most significant technical issues challenging reactor operation beyond sixty years, such as reactor pressure vessel embrittlement, irradiation-assisted stress corrosion cracking of internals, concrete structures and containment degradation, and electrical cable qualification and condition assessment.<sup>24</sup> Beyond Nuclear asserted that the environmental report should address the environmental implications of this lack of information and referenced as support 40 C.F.R. § 1502.22, the Council on Environmental Quality (CEQ) regulation pertaining to the treatment of incomplete or unavailable information in environmental impact statements.<sup>25</sup>

The Board found Contention 2B inadmissible because it did not show a genuine dispute with the applicant and did not specify any legal requirement that the environmental report

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<sup>22</sup> See *id.* at 7, 12-14; see *id.*, Attach. 4, David A. Lochbaum, Proposed Subsequent License Renewal of Peach Bottom Units 2 and 3: Exelon's Aging Management Programs Fail to Provide Adequate Measures for Consideration of Operating Experience Throughout the Period of Extended Operation (Nov. 16, 2018) (Lochbaum Report). Beyond Nuclear states that other examples of relevant studies are listed in Section 10 of the Lochbaum Report. Petition at 7.

<sup>23</sup> See Petition at 7-8, 13-14 (citing "Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal," Commission Paper SECY-14-0016 (Jan. 31, 2014) (ML14050A306) (SECY-14-0016)).

<sup>24</sup> Petition at 7-8.

<sup>25</sup> Petition at 8 (quoting 40 C.F.R. § 1502.22) ("When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking."). Beyond Nuclear also asserts that an environmental report must address the environmental implications of a lack of information. See Petition at 14 (citing *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443 (2011)).

address the reports or the issues raised by the Staff in SECY-14-0016.<sup>26</sup> The Board further found that Beyond Nuclear does not identify the specific documents in the Lochbaum Report that it contends Exelon should have addressed and does not offer any evidence that NEPA mandates such a document review.<sup>27</sup> Thus, the Board concluded that Contention 2B fails to raise an issue material to the findings the NRC must make to support the action and fails to demonstrate a genuine dispute with the application.<sup>28</sup>

In Contention 2C, Beyond Nuclear argued that the environmental report fails to address the significance of the “declining amount of external operating experience” due to the early shutdown or retirement of a significant portion of the currently operating fleet of reactors.<sup>29</sup> The Board found the premise of Contention 2C speculative and incorrect and determined that the contention was inadmissible.<sup>30</sup> It further concluded that Beyond Nuclear’s concern that the declining amount of future operating experience would significantly increase the risk of design-basis accidents was vague and speculative.<sup>31</sup> The Board also found Contention 2C deficient because it lacked sufficient support for its expert’s assertion that in the future Exelon may not be able to acquire the operating experience needed for effective management of aging

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<sup>26</sup> LBP-19-5, 89 NRC at 504.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 505 & n.107 (citing 10 C.F.R. § 2.309(f)(1)(iv), (vi)).

<sup>29</sup> Petition at 8, 14.

<sup>30</sup> LBP-19-5, 89 NRC at 505-06. The Board noted that at oral argument Beyond Nuclear conceded that there is no actual decrease in the total volume of operating experience, but rather a potential decrease in the rate of accumulation of such experience. *Id.* at 505 n.109 (citing Tr. at 18).

<sup>31</sup> *Id.* at 505-06.

equipment.<sup>32</sup> Thus, the Board concluded that Contention 2C did not show a genuine dispute with the application and lacked support.<sup>33</sup>

## **B. Referred Ruling in *Turkey Point***

In Contention 2A, Beyond Nuclear challenged Exelon’s environmental report and Exelon’s reliance on the Table B-1 generic environmental analyses for license renewal.<sup>34</sup> Beyond Nuclear argued that Exelon, as a subsequent license renewal applicant, may not rely on Table B-1 because the regulation authorizing such reliance—10 C.F.R. § 51.53(c)(3)—pertains only to initial license renew applicants.<sup>35</sup> We separately addressed the interpretation of 10 C.F.R. § 51.53(c)(3) in *Turkey Point* and determined that the regulation can apply to initial and subsequent license renewal proceedings.<sup>36</sup>

## **II. DISCUSSION**

### **A. Standard of Review**

An appeal of a decision wholly denying a request for hearing is a matter of right under 10 C.F.R. § 2.311(c).<sup>37</sup> Unless an appeal demonstrates an error of law or abuse of discretion, we generally defer to the Board on contention admissibility rulings.<sup>38</sup> But an appellant must do

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<sup>32</sup> See *id.* at 499-500. In Contention 1, the Board found the Lochbaum Report’s assertion that “[a]t some point, [o]perating [e]xperience may become insufficient to maintain effective aging management programs” to be too speculative with respect to the point in time at which the threshold would be reached and thus does not satisfy the contention admissibility requirement of 10 C.F.R. § 2.309(f)(1)(v). *Id.* (quoting Lochbaum Report at 20).

<sup>33</sup> LBP-19-5, 89 NRC at 506 & at 23 & n.114) (citing 10 C.F.R. § 2.309(f)(1)(v)-(vi)).

<sup>34</sup> See *supra* note 11 (describing the role of Table B-1 in the environmental review of license renewal applications).

<sup>35</sup> See Petition at 11.

<sup>36</sup> *Turkey Point*, CLI-20-3, 91 NRC 133.

<sup>37</sup> 10 C.F.R. § 2.311(c).

<sup>38</sup> See, e.g., *Crow Butte Resources, Inc.* (License Renewal for the *In Situ* Leach Facility, Crawford, Nebraska), CLI-19-5, 89 NRC \_\_\_, \_\_\_ (May 30, 2019) (slip. op at 10 & n.40); *Entergy*



more than recite its prior positions in a proceeding or state its general disagreement with a decision's result.<sup>39</sup> To obtain relief, an appellant must identify an error in a Board's decision.<sup>40</sup>

Moreover, we do not consider arguments raised for the first time on appeal.<sup>41</sup> The purpose of an appeal is not "to attempt to cure deficient contentions by presenting arguments and evidence never provided to the Board."<sup>42</sup> The supporting information for a contention should be submitted when the contention is filed.<sup>43</sup>

As noted above, Beyond Nuclear appeals the Board's decision not to admit Contention 2. To be admissible, a contention must satisfy the legal standards found in 10 C.F.R. § 2.309(f)(1). In particular, for each contention, the hearing request must meet the following requirements:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;

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*Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 354-55 (2015); *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 914 (2009).

<sup>39</sup> See *Florida Power & Light Co.* (Turkey Point Nuclear Generating Units 6 and 7), CLI-17-12, 86 NRC 215, 219 (2017); *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-17-4, 85 NRC 59, 72 (2017).

<sup>40</sup> See *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-07-20, 65 NRC 499, 503 (2007).

<sup>41</sup> See, e.g., *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-12-3, 75 NRC 132, 146 n.87 (2012); *Detroit Edison Co.* (Fermi Power Plant Independent Spent Fuel Storage Installation), CLI-10-3, 71 NRC 49, 51 n.7 (2010); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-4, 59 NRC 31, 44 (2004).

<sup>42</sup> *Shieldalloy*, 65 NRC at 504 (quoting *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 458 (2006)).

<sup>43</sup> *Entergy Nuclear Operations, Inc.* (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 137 n.33 (2016); *Shieldalloy*, 65 NRC at 504.

- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issue and on which the petitioner intends to rely at hearing together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue; and
- (vi) Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.<sup>44</sup>

To show that a genuine dispute exists with the applicant, a contention must include references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute.<sup>45</sup> If the petitioner believes that the application fails to contain information on a relevant matter as required by law, the contention must identify each failure and the supporting reasons for the petitioner's belief.<sup>46</sup>

## **B. Beyond Nuclear's Appeal**

### **1. Contention 2A**

We first address Beyond Nuclear's request that we remand LBP-19-5 to the Board for a ruling on whether 10 C.F.R. § 51.53(c)(3) applies to Exelon's environmental report.<sup>47</sup> As we previously stated, the Board did not rule on the applicability of section 51.53(c)(3). We note that the parties extensively briefed this matter before the Board, and the Board also conducted oral argument.<sup>48</sup> And we determined in *Turkey Point*—after considering the arguments raised in that

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<sup>44</sup> 10 C.F.R. § 2.309(f)(1)(i)-(vi).

<sup>45</sup> *Id.* § 2.309(f)(1)(vi).

<sup>46</sup> *Id.*

<sup>47</sup> See Appeal at 16.

<sup>48</sup> See Petition at 9-12; Staff Answer to Petition at 45-56; Exelon Answer to Petition at 5-7, 29-36; Petitioner Reply at 18-32; Tr. 162-77.

case and the arguments raised by the parties here—that 10 C.F.R. § 51.53(c)(3) applies to subsequent license renewal applications and that, for Category 1 issues, Table B-1 contains a generic assessment and codification of the impacts that are reasonably likely to occur during a subsequent license renewal term.<sup>49</sup> Further briefing on the issue is not necessary, as we have already addressed the issue.

The Dissent contends not only that *Turkey Point* wrongly determined that 10 C.F.R. § 51.53(c)(3) applies to subsequent license renewals—a conclusion we decline to revisit here—but also that reversal is warranted because, as Beyond Nuclear asserts, the Board improperly found that the environmental report incorporated the GEIS by reference. We adhere to our decision in *Turkey Point* for the reasons expressed in that opinion. Moreover, Beyond Nuclear’s argument overlooks the well-settled principles that challenges may not be brought for the first time on appeal and that contentions must state a specific, supported challenge to the application. The appeal fails on both counts.

Beyond Nuclear asserts that the Board erred in finding that the environmental report incorporated the 2013 GEIS analysis of design-basis accidents by reference because the standards for incorporation by reference were not met.<sup>50</sup> Exelon and the Staff argue that Beyond Nuclear raises this argument for the first time on appeal.<sup>51</sup> We agree. Indeed, the principal focus of Beyond Nuclear’s argument before the Board was that a subsequent license renewal applicant is precluded from relying on the Category 1 findings in Table B-1 due to the inapplicability of 10 C.F.R. § 51.53(c)(3) to subsequent license renewal applications and that the

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<sup>49</sup> *Turkey Point*, CLI-20-3, 91 NRC at 141-45.

<sup>50</sup> Appeal at 6-7.

<sup>51</sup> Exelon Brief in Opposition at 8-11; Staff Brief in Opposition at 12-13; see *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 640 (2004) (finding that arguments may not be raised for the first time on appeal).

scope of the GEIS is limited to the first license renewal term after the original operating license term. Exelon and the Staff, however, had argued in the alternative that the environmental report incorporated by reference the 2013 GEIS, as permitted by 10 C.F.R. § 51.53(a).<sup>52</sup> And during oral argument, the Board offered Beyond Nuclear an opportunity to respond to Exelon's incorporation by reference argument, but Beyond Nuclear made no claim that the standards for incorporation by reference were not met.<sup>53</sup> Accordingly, Beyond Nuclear's challenge to the incorporation by reference of the GEIS is not appropriately considered on appeal.<sup>54</sup>

Moreover, even were it appropriate to consider Beyond Nuclear's argument, the Board observed that in Contention 2A Beyond Nuclear only provided a "general argument that subsequent license renewal applicants cannot rely on the 2013 GEIS because it fails to 'expand the temporal scope of the environmental analysis' to subsequent license renewals."<sup>55</sup> The Board found that the GEIS discusses design-basis accidents and covers the subsequent license renewal period; therefore, there was no omission in the environmental report.<sup>56</sup> Further, the

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<sup>52</sup> Exelon Answer to Petition at 30-31, 39-40; Staff Answer to Petition at 56-57; Tr. 189-90.

<sup>53</sup> Tr. at 189-90, as revised by Order (Granting Joint Motion for Transcript Corrections), app. A, at 5 (Apr. 17, 2019).

JUDGE GIBSON: But let's go to his argument 2 which is that, okay, even if they're not covered as on the 51.53 issue. Even if we have to go back to this GEIS, they are covered - - they're adequately addressed in that GEIS and they incorporated it by reference. Now how do you respond to that, Ms. Curran?

MS. CURRAN: We respond by raising specific criticisms of a lack of certain analyses in that environmental report. There are things that we think should be included in there in their discussion of environmental impacts which are not.

*Id.* at 192.

<sup>54</sup> See *Millstone*, CLI-04-36, 60 NRC at 640.

<sup>55</sup> LBP-19-5, 89 NRC at 502 (quoting Petition at 12).

<sup>56</sup> *Id.* at 501-02.

Board found that Beyond Nuclear did not explain why the analysis in the GEIS was inadequate or inapplicable to Exelon's application as would be required for a contention challenging the adequacy of the environmental report.<sup>57</sup> Beyond Nuclear's generalized arguments do not meet our contention admissibility standards, which require "intervenors to offer specific contentions on material issues, supported by alleged facts or expert opinion."<sup>58</sup> We find no error in the Board's conclusion.

## **2. Contentions 2B and 2C**

Beyond Nuclear additionally asserts that the Board improperly applied our contention admissibility standards to Contention 2B and Contention 2C.<sup>59</sup> Specifically, Beyond Nuclear argues that it provided sufficient support to demonstrate the failure of Exelon's environmental report to consider relevant technical literature, issues raised in SECY-14-0016, and the environmental significance of the "declining body of external operating experience" due to the early shutdown of a significant number of reactors.<sup>60</sup> Beyond Nuclear asserts that it clearly identified the relevant documents and explained the relevance of their content.<sup>61</sup> Beyond Nuclear further argues that the Board disregarded relevant law by concluding that Beyond Nuclear had not specified any legal basis to require Exelon to address those documents.<sup>62</sup> Beyond Nuclear points to *Diablo Canyon*, CLI-11-11, and 40 C.F.R. § 1502.22 as support for its

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<sup>57</sup> *Id.* at 502-03.

<sup>58</sup> *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 317, 323 (2009).

<sup>59</sup> Appeal at 1, 5-6, 11-16.

<sup>60</sup> *Id.* at 5-6.

<sup>61</sup> *Id.* at 15.

<sup>62</sup> *Id.* (quoting LBP-19-5, 89 NRC at 504).

claim that the environmental report should address the degree to which a lack of information affects the environmental risk posed by extended operation.<sup>63</sup>

We find no error in the Board's application of the contention admissibility standards to Contention 2B and Contention 2C. With respect to Contention 2B, the Board found that the Lochbaum Report did not provide a basis to show a genuine dispute with the application. Beyond Nuclear has not pointed to any Board error. Beyond Nuclear does not address the Board's reliance on the Staff's and Exelon's arguments that Beyond Nuclear does not establish a connection between the documents supporting its contention and a change to the environmental consequences or impacts related to design-basis accidents.<sup>64</sup> Specifically, Beyond Nuclear did not link the "missing" information to any environmental consequences during the subsequent license renewal term.<sup>65</sup> Therefore, we do not find that the Board erred in determining that Beyond Nuclear does not demonstrate a genuine dispute with the application.<sup>66</sup>

Beyond Nuclear asserts, however, that these documents must be reviewed in the environmental report in order to comply with NEPA.<sup>67</sup> In response, Exelon argues that Beyond Nuclear did not address subsequently developed NRC guidance addressing the information and Exelon's use of aging management programs consistent with revised guidance.<sup>68</sup> Exelon

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<sup>63</sup> *Id.* at 15-16.

<sup>64</sup> See LBP-19-5, 89 NRC at 504.

<sup>65</sup> In its Petition, Beyond Nuclear asserts that "there can be no question that the accident risk posed by operating Peach Bottom is a relevant environmental consideration." Petition at 7. But Beyond Nuclear does not provide any fact or expert opinion asserting the extent of the impacts. Thus, contrary to its claim, Beyond Nuclear has not explained the relevance of the documents' contents to the environmental report. See Appeal at 15.

<sup>66</sup> See LBP-19-5, 89 NRC at 504.

<sup>67</sup> Appeal at 15-16.

<sup>68</sup> See Exelon Brief in Opposition at 16-17.

further argues that Beyond Nuclear cannot rely on the CEQ regulation as a legal basis for its contention, and that *Diablo Canyon* is inapplicable.<sup>69</sup> The Staff asserts that Beyond Nuclear's inclusion of a CEQ regulation in its contention is insufficient as a legal basis because the NRC, as an independent regulatory agency, is not bound by the CEQ NEPA regulations unless the Commission chooses to follow them.<sup>70</sup> The Staff also asserts that *Diablo Canyon* is distinguishable because in that case, the application did not consider information regarding a nearby seismic fault for a site in which seismic hazards were acknowledged to be "disproportionately dominant" risk hazards in a severe accident mitigation alternatives analysis.<sup>71</sup> Here, Beyond Nuclear does not show why the studies it cites would be material to the analysis of the environmental impacts of subsequent license renewal. Since Beyond Nuclear has not explained the relevance of the asserted missing information to design-basis accident risk or the environmental consequences of such accidents, Beyond Nuclear has not

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<sup>69</sup> See *id.* at 19-20.

<sup>70</sup> Staff Brief in Opposition at 18-19; see *Diablo Canyon*, CLI-11-11, 74 NRC at 443-44 (citing *Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), CLI-07-27, 66 NRC 215, 235-36 & n.115 (2007)). Beyond Nuclear, however, specifically cited to the CEQ regulation as "guidance." Petition at 8; Appeal at 16. The Staff also asserts that Beyond Nuclear did not explain why a regulation applicable to an agency in preparing an environmental impact statement should be interpreted as mandating what an applicant must do in preparing its environmental report. Staff Brief in Opposition at 18. But our contention admissibility requirements direct that on issues arising under NEPA, petitioners must file contentions based on an applicant's environmental report. 10 C.F.R. § 2.309(f)(2).

<sup>71</sup> See Staff Brief in Opposition at 19; Exelon Brief in Opposition at 20; *Diablo Canyon*, CLI-11-11, 74 NRC at 438, 440-41. In *Diablo Canyon*, the intervenor contended that since fire and seismic severe accident contributors identified in the severe accident mitigation alternatives analysis are "disproportionately dominant" when compared to all external events, discussion of a recently identified fault nearby should have been also included in the analysis.

shown how the CEQ regulation it cites is relevant.<sup>72</sup> Therefore, we find the Board did not err in dismissing Contention 2B for failing to raise a genuine dispute with the application.<sup>73</sup>

With respect to Contention 2C, we find that Beyond Nuclear does not identify any error in the Board's ruling. Beyond Nuclear refers to the Board's ruling and generally claims that the Board erred but does not provide a specific argument or sufficient information to support its claim. For this reason, we uphold the Board's ruling on Contention 2C. In any event, we agree with the Board that the contention lacks specificity. In Contention 2C, Beyond Nuclear only suggests that operating experience will be insufficient in the future and does not connect its asserted decrease in the rate of accumulation of operating experience to an increase in risk of design-basis accidents.<sup>74</sup> Consequently, we conclude that Beyond Nuclear has not shown an error in the Board's decision in LPB-19-5.

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<sup>72</sup> See 40 C.F.R. § 1502.22 ("When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.").

<sup>73</sup> LBP-19-5, 89 NRC at 504.

<sup>74</sup> See *id.* at 505-06. The Staff noted that operating experience will continue to accrue, and, although nuclear power plant closures could decrease the rate of accruing operating experience, the total body of operating experience will continue to grow. Staff Answer to Petition at 58.



**III. CONCLUSION**

For the reasons discussed above, we *affirm* the Board's decision in LBP-19-5.

IT IS SO ORDERED.



For the Commission

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 12<sup>th</sup> day of November 2020.

## **Commissioner Baran and Commissioner Hanson, Dissenting in Part**

We concur with the majority that there is no error in the Board's determination that Beyond Nuclear's Contention 2B and Contention 2C are inadmissible. However, we respectfully dissent from the majority's analysis of Contention 2A because we conclude that applying 10 C.F.R. § 51.53(c)(3) to subsequent license renewals is at odds with the regulation and the agency's obligations under NEPA. This legal conclusion does not reflect a policy position on the merits of subsequent license renewal or a determination that properly supported generic environmental findings cannot be applied in the subsequent license renewal context.

In Contention 2A, Beyond Nuclear argues that Exelon's reliance on the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (2013 GEIS) to address reactor aging phenomena and design-basis accidents for the subsequent license renewal time period is misplaced and depends on an incorrect reading of 10 C.F.R. § 51.53(c)(3). Beyond Nuclear further argues that this deficient analysis cannot be applied to satisfy the agency's requirement to take a "hard look" under NEPA because the 2013 GEIS did not analyze the subsequent license renewal time period. We agree. In our view, the *Turkey Point* decision cited by the majority was wrongly decided.<sup>1</sup> Contrary to the majority's assertions, the plain and unambiguous language of 10 C.F.R. § 51.53(c)(3) legally precludes its application beyond the initial license renewal period, and the GEIS did not evaluate the environmental impacts of subsequent license renewal.

Section 51.53(c)(1) applies to "[e]ach applicant for renewal of a license to operate a nuclear power plant under part 54," and section 51.53(c)(2) contains requirements for the environmental report that must be submitted by any such applicant.<sup>2</sup> By contrast, section 51.53(c)(3) narrows the scope of license renewal applicants to which it applies and speaks only

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<sup>1</sup> CLI-20-3, 91 NRC 133.

<sup>2</sup> 10 C.F.R. § 51.53(c)(1)-(2).

of “those applicants seeking an *initial* renewed license and holding an operating license, construction permit, or combined license as of June 30, 1995.”<sup>3</sup> The explicit language of the regulation states that the provisions of 51.53(c)(1) and (c)(2) apply to all license renewal applicants, including those for subsequent license renewal, while section 51.53(c)(3) applies only to initial license renewal applicants. A basic canon of statutory construction is that the express mention of one thing excludes all others. When the regulatory text of section 51.53(c)(3) specifically addresses “those applicants seeking an initial renewed license,” it is properly read as not addressing applicants seeking other license renewal terms.

Moreover, the 2013 GEIS did not analyze the environmental impacts of subsequent license renewal periods. The 2013 GEIS stated that it “documents the results of the systematic approach NRC used to evaluate the environmental consequences of renewing the licenses of commercial nuclear power plants and operating the plants for an additional 20 years beyond the current license term.”<sup>4</sup> This statement of scope said nothing about subsequent license renewal terms. Similarly, in the section “Decisions to Be Supported by the GEIS,” the 2013 GEIS focused solely on whether to renew operating licenses “for an additional 20 years.”<sup>5</sup> These are by no means the only examples leading us to conclude that agency decisionmakers did not consider the environmental impacts related to subsequent license renewal terms.<sup>6</sup>

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<sup>3</sup> *Id.* § 51.53(c)(3) (emphasis added).

<sup>4</sup> 2013 GEIS at S-4.

<sup>5</sup> *Id.* at 1-7 to 1-8.

<sup>6</sup> For example, in Appendix E—the appendix devoted to postulated accidents—the 2013 GEIS states that its scope is limited to an initial period of license renewal:

Since the NRC’s understanding of severe accident risk has evolved since issuance of the 1996 GEIS, this appendix assesses more recent information on severe accidents that might alter the conclusions in Chapter 5 of the 1996 GEIS. This revision considers how these developments would affect the conclusions in the 1996 GEIS and provides comparative data where appropriate. This revision does not attempt to provide new quantitative estimates of severe accident impacts. In addition, *the revision only covers*

We also disagree with the Board's determination that the 2013 GEIS was successfully incorporated by reference into the licensee's subsequent license renewal application. The 2013 GEIS does not address environmental impacts for the subsequent license renewal period. Therefore, incorporation by reference of the GEIS, without additional evaluation of impacts during the subsequent period of renewal, is insufficient to satisfy NEPA.

Because section 51.53(c)(3) applies only to applicants for initial license renewal and the 2013 GEIS did not actually analyze the subsequent license renewal time period, neither subsequent license renewal applicants nor the NRC Staff may exclusively rely on the GEIS and 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1 to evaluate environmental impacts of Category 1 issues. Expanding the scope of the 2013 GEIS after the fact not only violates the agency's obligations under NEPA to evaluate the impacts of its actions, but also effectively eliminates any opportunity for the public to be involved in the agency's decision-making. We would therefore hold that Beyond Nuclear identified an error of law in the Board's decision on Contention 2A, which should have been admitted as a contention of omission.

For these reasons, we would *affirm in part* and *reverse in part* the Board's decision in LBP-19-5.

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*one initial license renewal period for each plant (as did the 1996 GEIS).* Thus, the population projections, meteorology, and exposure indices used in the 1996 GEIS are assumed to remain unchanged for purposes of this analysis.

2013 GEIS at E-2 (emphasis added).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
EXELON GENERATION COMPANY, LLC ) Docket Nos. 50-277 and 50-278-SLR  
 )  
(Peach Bottom Atomic Power Station )  
Units 2 and 3)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-20-11)** have been served upon the following persons by Electronic Information Exchange.

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 12<sup>th</sup> day of November 2020.