

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:)

VIRGINIA ELECTRIC AND POWER COMPANY)
and OLD DOMINION ELECTRIC COOPERATIVE)

(North Anna Power Station, Units 1 and 2))
_____)

) Docket Nos. 50-338-SLR and
) 50-339-SLR

) November 30, 2020

**APPLICANTS’ ANSWER OPPOSING BEYOND NUCLEAR’S, SIERRA CLUB’S, AND
ALLIANCE FOR A PROGRESSIVE VIRGINIA’S MOTION FOR EXTENSION OF
DEADLINE FOR FILING HEARING REQUESTS**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), Virginia Electric and Power Company on behalf of itself and Old Dominion Electric Cooperative (collectively, “Applicants”) submit this Answer in opposition to Beyond Nuclear’s, the Sierra Club’s, and Alliance for a Progressive Virginia’s (collectively, “Petitioners”) motion to extend the deadline for filing hearing requests in the above-captioned proceeding (“Motion”).¹ As explained in the Notice of Hearing Opportunity for Applicants’ Subsequent License Renewal Application (“SLRA”) for North Anna Power Station Units 1 and 2, hearing requests and petitions to intervene are currently due on December 14, 2020.² The Motion seeks a 32-day extension – until January 15, 2021 – to file hearing requests and petitions to intervene.

¹ Partially Unopposed Motion by [Petitioners] for Extension of Deadline for Filing Hearing Requests (Nov. 23, 2020) (ML20328A278) (“Motion”). Petitioners’ description of the Motion as being “partially unopposed” refers to Staff’s position as noted in the Certificate of Consultation. *See id.* at 6.

² *See* Virginia Electric and Power Company; North Anna Power Station, Units 1 and 2; Subsequent License Renewal Application; Opportunity to Request a Hearing and to Petition for Leave to Intervene, 85 Fed. Reg. 65438 (Oct. 15, 2020) (“Notice of Hearing Opportunity”).

As discussed further below, Petitioners have not satisfied the “good cause” requirement for their request. If granted, the extension would provide Petitioners a total of 127 days since the SLRA became publicly available in which to file a hearing request. That is more than twice the 60-day period specified in NRC regulations.³ Petitioners claim more time is needed due to the length of the SLRA, their desire to review documents outside the scope of this proceeding, and other general inconveniences such as Petitioners’ counsel’s workload and last week’s Thanksgiving holiday.

As explained below, none of these present the “unavoidable and extreme” circumstances needed to justify Petitioners’ adjudicatory extension request. Moreover, Petitioners appear to challenge this legal standard itself and the generic suitability of the NRC’s 60-day review period—both of which are codified in NRC regulations and not subject to challenge here. Accordingly the Commission should deny the Motion.

II. PETITIONERS FAIL TO ESTABLISH GOOD CAUSE

10 C.F.R. § 2.307(a) allows extensions upon a demonstration of “good cause.” The Commission has explained that, in the context of adjudicatory filings, “good cause” requires a showing of “unavoidable and extreme circumstances.”⁴ No such circumstances are present here.

³ See 10 C.F.R. § 2.309(b)(3)(i).

⁴ See, e.g., *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998); *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 342 (1998), *petition for review denied sub nom., Nat’l Whistleblower Ctr. v. NRC*, 208 F.3d 256, 264 (D.C. Cir. 2000) (holding that “the Commission did not abuse its discretion in adopting the ‘unavoidable and extreme circumstances’ test” to give content to the “good cause” standard in ruling on extension requests). See also *Tenn. Valley Auth.* (Bellefonte Nuclear Plant, Units 1 & 2), CLI-10-26, 72 NRC 474, 476 (2010) (applying the “unavoidable and extreme circumstances” standard to a petitioner’s appeal of a Licensing Board decision denying intervention); *In re Bjella*, 806 F.2d 211, 216 (10th Cir. 1986) (en banc) (“There is no significant distinction between a showing of good cause and a showing of unusual or extreme circumstances.”).

A. The Unremarkable Length of the SLRA is Consistent with Other SLRAs and Does Not Constitute an “Unavoidable and Extreme” Circumstance

Petitioners assert that the “sheer volume” of the approximately-3,000 page SLRA justifies their request for an extension of time to file a hearing request.⁵ However, there is nothing unique about the length (or content) of the North Anna SLRA. The SLRAs for Surry Power Station Units 1 & 2,⁶ Peach Bottom Atomic Power Station Units 2 & 3,⁷ and Turkey Point Nuclear Plant Units 3 & 4,⁸ contained 2,983 pages, 2,607 pages, and 3,634 pages, respectively. Clearly, the “volume” of the North Anna SLRA is quite average, and does not itself constitute an “unavoidable and extreme” circumstance.

Furthermore, given their involvement in prior SLRA proceedings, Beyond Nuclear and Petitioners’ experienced nuclear counsel should be well aware of the “volume” of material in a typical SLRA.⁹ Notwithstanding this awareness, Petitioners chose not to review the SLRA when it first became available to the public on September 10, 2020.¹⁰ By their own admission, Petitioners “waited until October 15 to begin their [] review.”¹¹ In other words, Petitioners *opted* to wait 35 days, but now want 32 of those days back. This is a textbook example of an “avoidable” circumstance, and certainly does not justify the requested extension.

⁵ Motion at 1-2.

⁶ See Surry Power Station, Units 1 & 2 – Submittal of Application for Subsequent Renewed Operating Licenses (ML18291A842).

⁷ See Peach Bottom Atomic Power Station, Units 2 & 3 – Application for Subsequent Renewed Operating Licenses (ML18193A689).

⁸ See Turkey Point Units 3 & 4 – Submittal of Subsequent License Renewal Application, Rev. 1 (ML18113A132).

⁹ Petitioners’ counsel in this proceeding also represented Beyond Nuclear when it petitioned to intervene in the Peach Bottom SLRA proceeding, and represented different petitioners in the Turkey Point SLRA proceeding.

¹⁰ See Virginia Electric and Power Company; North Anna Power Station, Units 1 and 2; Subsequent License Renewal Application; Receipt, 85 Fed. Reg. 59,334, 59,334 (Sept. 21, 2020) (“The subsequent license renewal application referenced in this document became available on September 10, 2020.”).

¹¹ Motion at 2 n.2 (noting that Petitioners chose to wait until October 15 “[c]onsistent with the Staff’s schedule” because the Staff “did not make a determination that the application was complete enough to warrant substantive review until [issuing the] Hearing Notice.”).

B. Petitioners’ Desire to Review Other Information That Is Not Part of the SLRA Does Not Constitute an “Unavoidable and Extreme” Circumstance

Petitioners also claim that they require additional time to review information beyond the SLRA, including NRC guidance documents, historical information about North Anna, a recently-issued Commission ruling in another proceeding, and other documents related to a Freedom of Information Act (“FOIA”) request. However, Petitioners fail to explain why any of these present circumstances that are somehow “unavoidable and extreme.”

First, Petitioners argue that the SLRA “raises significant, complex and unprecedented safety and environmental issues” that they can only address after reviewing “a large set of NRC and industry documents . . . that have been developed over several decades.”¹² Petitioners identify these “significant and complex” issues as including “the adequacy of proposed measures for assessing and monitoring the condition of safety equipment,” the “safety and environmental implications of operating aging reactor equipment,” and the “significance of [Applicants’] environmental impact analysis of the 2011 Fukushima Daichii nuclear disaster.”¹³ However, these topics largely seem related to the adequacy of North Anna’s current licensing basis (“CLB”), which is squarely beyond the scope of this proceeding. As the Commission has explained, it is “inappropriate or unnecessary ‘to throw open the full gamut of provisions in a plant’s current licensing basis’ for re-analysis during license renewal.”¹⁴ But even if these topics are not limited to the CLB, Petitioners concede that the unnamed NRC and industry guidance they wish to review has been available across “several decades,”¹⁵ and, therefore, contradict

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *See, e.g., Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 & 3), LBP-19-5, 89 NRC 483, 493 (2019) (quoting *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 9-10 (2001)).

¹⁵ Motion at 2.

Petitioners unsupported assertion that there is anything “unprecedented” about the North Anna SLRA.

Second, Petitioners assert that the requested extension is warranted because the NRC only recently ruled on an appeal in a separate proceeding, and Petitioners will need “additional time to review that decision and determine how it will affect the concerns they will raise in this proceeding.”¹⁶ However, the referenced ruling was issued on November 12, 2020, and Petitioners will have had more than a month to review it before the December 14, 2020 filing deadline. They provide no explanation for why even more time is necessary to review a 17-page order from an entirely separate proceeding. This omitted explanation is particularly conspicuous given that both Beyond Nuclear and Petitioners’ counsel were involved in that separate proceeding and presumably are already very familiar with the issues raised therein.¹⁷ Ultimately, this cannot reasonably be viewed as an “unavoidable and extreme circumstance” warranting an extension.

Third, Petitioners claim additional time is needed to review three slide decks (none of which mention North Anna or the instant SLRA) recently released pursuant to a 2018 FOIA request. The referenced documents, however, were provided to Petitioners on October 30, 2020; *i.e.*, 45 days before the December 14, 2020 filing deadline. Petitioners provide no explanation for why they require an additional 32 days (77 days total) to review the materials that collectively total fewer than 35 pages.¹⁸

¹⁶ *Id.* at 3 (citing *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-20-11, 92 NRC __ (Nov. 12, 2020) (slip op.).

¹⁷ Moreover, a key finding in that ruling—pertaining to the interpretation of 10 C.F.R. § 51.53(c)(3)—was previously addressed in a separate Commission ruling issued several months ago. *See Peach Bottom*, CLI-20-11, 92 NRC __, __ & n.36 (slip op. at 8 & n.36) (citing *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 & 4), CLI-20-3, 91 NRC 133 (2020)).

¹⁸ *See Motion*, Attachs. B-D. Petitioners also assert that a 32-day extension is warranted because the NRC may release additional information at “the end of March, 2021.” *Id.* at 4 n.7. However, this argument is

Ultimately, none of these claims is reasonably viewed as an “unavoidable and extreme circumstance” warranting the requested extension.¹⁹

C. Neither a One-Day Holiday, Nor Counsel’s Workload, Nor the Now-Routine Practice of Remote Work, Constitutes an “Unavoidable and Extreme” Circumstance

Petitioners raise several other arguments regarding the Thanksgiving holiday, competing workload priorities of their counsel,²⁰ and the COVID-19 pandemic as purported justifications for their extension request.²¹ These circumstances are again insufficient to demonstrate “unavoidable and extreme circumstances.”

First, Petitioners do not explain how the presence of a one-day holiday – Thanksgiving – during the 60-day hearing opportunity period creates an “unavoidable and extreme” barrier to filing.²² Generally speaking, the NRC already has considered the impact of holidays on adjudicatory filings and declined to codify an across-the-board extension where a holiday falls *near* a deadline.²³ Petitioners’ generalized observation that Thanksgiving falls more than two

illogical because, even if the Motion were granted, the filing deadline would be two months before that time.

¹⁹ Of note, NRC regulations already permit Petitioners to review information received after a deadline has passed and submit supplemental filings. *See, e.g.*, 10 C.F.R. § 2.309(c).

²⁰ *See* Motion at 5 (noting that the “current timeframe for preparing a hearing request includes the Thanksgiving holiday, in which Petitioners and their counsel have made plans to spend time with family” and “Petitioners’ counsel is balancing the North Anna intervention with professional obligations in other cases.”).

²¹ *Id.* (noting that the “ongoing Covid-19 pandemic adds additional time burdens and restrictions on Petitioners and their counsel, including limitations imposed by having to work from home or restrict office hours.”).

²² Furthermore, Petitioners’ logic presents a slippery slope by suggesting that a multi-day extension is justified any time a holiday falls within an adjudicatory filing period, effectively barring any adjudicatory deadlines in the last two months of the year. This would be an unreasonable result and a significant impediment to the “efficiency” prong of the NRC’s “Principles of Good Regulation.” *See* Values, NRC, <https://www.nrc.gov/about-nrc/values.html>.

²³ *See* 10 C.F.R. § 2.306(a) (allowing parties to file pleadings on the next business day when a filing deadline falls on a holiday). For example, Petitioners’ decision to file its Motion on the Monday before Thanksgiving does not toll Applicants’ answer deadline.

weeks before the filing deadline here offers no reason to rethink the Commission’s approach. At bottom, a one-day holiday does not justify a 32-day extension.

Second, Petitioners’ counsel’s competing workload obligations should not affect the schedule. The Commission has long recognized that “multiple simultaneous proceedings” can place burdens on parties and their counsel, but it has explicitly declined to “postpone cases for many weeks or months simply because going forward will prove difficult for litigants or their lawyers.”²⁴ The routine burdens associated with voluntary participation in adjudicatory proceedings are an unavoidable reality for all involved participants and do not establish good cause for extension requests absent some unavoidable or extreme circumstance, which Petitioners have not identified here.²⁵

Third, although Applicants recognize the impact of the COVID-19 pandemic, the reality is that the Commission, NRC Staff, licensees and interested members of the public have generally been able to adjust to, and make accommodations for, working remotely with limited access to a physical office.²⁶ Given the ongoing nature of the pandemic, making accommodations to ensure compliance with professional schedules, including filing deadlines, is not an unreasonable expectation. Moreover, although Petitioners offer general statements about the pandemic, they fail to identify any specific impediment to their review of the SLRA (which has been available electronically for nearly three months), much less some impediment that

²⁴ *Consolidated Edison Co. of NY* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 229-30 (2001).

²⁵ *See Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393, 400 (2001) (noting that the cost and inconvenience of litigation is not relevant to consideration of a motion to suspend a proceeding).

²⁶ Of note, Applicants successfully completed and submitted the SLRA during the pandemic and navigated through the accompanying restrictions, which Petitioners now allege to be an impediment to review. Likewise, the NRC was able to conduct its acceptance review under such restrictions.

would rise to the level of “unavoidable and extreme circumstances” warranting a 32-day extension.

D. Petitioners’ Impermissible Challenges to NRC Regulations Fail to Satisfy the “Unavoidable and Extreme” Circumstance Standard

Petitioners generically assert that the 92-day hearing opportunity period they seek is necessary, *per se*, for the instant proceeding to be “efficient and effective” and for the public to have a “meaningful opportunity” to participate.²⁷ This argument impermissibly challenges the NRC’s codified conclusion in 10 C.F.R. § 2.309(b)(3)(i) that 60 days provides sufficient time to file hearing requests (absent demonstration of some “unavoidable and extreme” circumstance, as required by 10 C.F.R. § 2.307).²⁸ Absent a waiver from the Commission, which Petitioners neither requested nor obtained here, arguments such as this one that challenge NRC regulations are outside the scope of NRC adjudicatory proceedings.²⁹

Petitioners also observe that Applicants submitted the SLRA “well in advance of the expiration dates” for the existing licenses and assert that the extension should be granted because it “will not cause significant harm” to Applicants.³⁰ As a general matter, Petitioners’ assertion overlooks the significant implications associated with unnecessary delays in license application reviews.³¹ More importantly, Petitioners cite no legal authority for the proposition that the

²⁷ Motion at 5.

²⁸ Indeed, when it extended the review period from 45 to 60 days, the Commission noted that 60 days “will provide more than ample time for a potential requestor/intervenor to review the application, prepare a filing on standing, and develop proposed contentions and references to materials in support of the contentions” because most “major licensing actions for nuclear facilities (where the scope of the application is most likely to require significant review time in order to prepare a request for hearing/petition to intervene) entail pre-application filings which are docketed and are available to the public, and pre-application meetings between the applicant and the NRC staff which are open for observation to the public.” Changes to Adjudicatory Process; Nuclear Regulatory Commission; Final Rule, 69 Fed. Reg. 2182, 2199 (Jan. 14, 2004).

²⁹ 10 C.F.R. § 2.335.

³⁰ Motion at 5.

³¹ Any significant delays to the commencement of hearing-related matters would have adverse financial impacts on Applicants through increased staffing, contractor and legal costs caused by a prolonged

Motion must be granted unless the Applicant demonstrates “significant harm.” Nor is there any such authority. As discussed above, the “good cause” standard codified in 10 C.F.R. § 2.307 places the burden on the *Petitioners* to demonstrate “unavoidable and extreme circumstances” to justify their request for an extension. To the extent *Petitioners* seek to shift the burden to the Applicant, their argument is impermissible and outside the scope of this proceeding per 10 C.F.R. § 2.335.

III. CONCLUSION

The Commission has long demonstrated its commitment to efficiency in license renewal proceedings without the need for deadline extensions.³² This proceeding is no different. As established above, *Petitioners* have not demonstrated good cause for a 32-day extension of the filing deadline. Therefore, the Commission should deny the Motion.

application review, and contested hearing schedule. Additionally, early resolution of contested issues (not the convenience of the litigants) is in the public interest. See *Potomac Elec. Power Co.* (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-277, 1 NRC 539, 550-52 (1975).

³² *Cf. Nat’l Whistleblower Ctr.*, 208 F.3d at 264 (“The NRC has expressed a clear and reasonable goal of expediting nuclear power plant license renewal proceedings, both to accommodate the large number of cases to be heard and to ensure fair processes for applicants and would-be intervenors alike.”).

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, DC
this 30th day of November 2020

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BEFORE THE COMMISSION

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VIRGINIA ELECTRIC AND POWER COMPANY)	Docket Nos. 50-338-SLR and
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(North Anna Power Station, Units 1 and 2))	November 30, 2020
)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing “Applicants’ Answer Opposing Beyond Nuclear’s, Sierra Club’s, and Alliance for a Progressive Virginia’s Motion for Extension of Deadline for Filing Hearing Requests” was served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty
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