

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Christopher T. Hanson, Chairman
Jeff Baran
David A. Wright

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-22-04

MEMORANDUM AND ORDER

In considering the pending motions of Beyond Nuclear, Inc. for leave to file a new contention and to reopen the record, we have the opportunity to reconsider the Commission's decision in CLI-20-11, which applied the reasoning in CLI-20-3 in the *Turkey Point* proceeding to this case.¹ Today, we reversed CLI-20-3, which held that 10 C.F.R. § 51.53(c)(3) applied to a subsequent license renewal applicant's preparation of an environmental report,² and now

¹ See *Beyond Nuclear, Inc.'s Motion for Leave to File New Contention Based on Draft Supplement 10 to Generic Environmental Impact Statement for Subsequent License Renewal of Peach Bottom Operating License* (Sept. 3, 2019; corrected Sept. 5, 2019); *Beyond Nuclear, Inc.'s Motion to Reopen the Record For Purposes of Considering and Admitting a New Contention Based on Draft Supplement 10 to Generic Environmental Impact Statement For Subsequent License Renewal of Peach Bottom Operating License and Request For Consideration of Some Elements of the Motion Out of Time* (Sept. 23, 2019); CLI-20-11, 92 NRC 335 (2020); *Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)*, CLI-20-3, 91 NRC 133 (2020).

² See *Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)*, CLI-22-2, 95 NRC __ (Feb. 24, 2022) (slip op.).

reverse the portion of CLI-20-11 related to Contention 2A, in which Beyond Nuclear claimed that the environmental report failed to address accident risks posed by aging reactor equipment during a second license renewal term.

I. BACKGROUND

The Atomic Safety and Licensing Board (Board) terminated the proceeding for the subsequent license renewal application of Exelon Generation Company, LLC,³ for Peach Bottom Atomic Power Station, Units 2 and 3.⁴ Beyond Nuclear appealed, seeking reversal of the Board's decision on Contention 2, which challenged the adequacy of Exelon's environmental report.⁵ In CLI-20-11, the Commission affirmed the Board's decision and, with respect to Contention 2A, relied, in large part, on the decision in CLI-20-3.⁶ After the NRC staff (Staff) issued its draft supplement to the generic environmental impact statement for license renewal for Peach Bottom,⁷ Beyond Nuclear filed motions for leave to file a new contention and to reopen the record in the proceeding.

³ On February 1, 2022, Exelon Generation Company, LLC completed a license transfer and corporate reorganization. Peach Bottom's parent company is now Constellation Energy Generation, LLC, and it is no longer affiliated with Exelon Corporation. See *Exelon Generating Co.*, (Braidwood Station, Units 1 and 2), CLI-22-1, 95 NRC __, __ (Feb. 14, 2022) (slip op. at 3).

⁴ LBP-19-5, 89 NRC 483, 506 (2019).

⁵ CLI-20-11, 92 NRC at 336-37. The Board evaluated Contention 2 as three separate environmental challenges and designated them as Contentions 2A, 2B, and 2C. *Id.* at 337.

⁶ *Id.* at 343, 347. Commissioner Baran and Commissioner Hanson dissented with respect to Contention 2A, "conclud[ing] 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 [the National Environmental Policy Act (NEPA)]." *Id.* at 348.

⁷ "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 10, Second Renewal, Regarding the Subsequent License Renewal for Peach Bottom Atomic Power Station Units 2 and 3" (Draft Report for Comment), NUREG-1437, Supplement 10 (July 2019) (ADAMS accession no. ML19210D453).

II. DISCUSSION

In today's related decision in the *Turkey Point* proceeding, CLI-22-2, we held that 10 C.F.R. § 51.53(c)(3) only applies to an initial license renewal applicant's preparation of an environmental report and that the Generic Environmental Impact Statement for License Renewal of Nuclear Plants⁸ did not address subsequent license renewal. For the reasons explained in CLI-22-2, we conclude that the Staff did not conduct an adequate NEPA analysis before issuing Exelon licenses for the subsequent license renewal period for Peach Bottom.⁹ As we have motions pending before us and the proceeding remains open,¹⁰ we can modify, suspend, or revoke Exelon's licenses, as appropriate.¹¹

While Exelon's subsequently renewed licenses became immediately effective upon issuance,¹² the environmental analysis associated with the previous licenses analyzed the impacts of operating until 2033 and 2034 for Units 2 and 3, respectively. We conclude that it is appropriate for Exelon to maintain its current subsequently renewed licenses at this time, but with shortened terms to match the end dates of the previous licenses (i.e., August 8, 2033, and July 2, 2034, for Units 2 and 3, respectively) until completion of the NEPA analysis. Accordingly, we direct the Staff to amend the licenses to this effect.

⁸ "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (Final Report), NUREG-1437, rev. 1, vols. 1-3 (June 2013) (ML13106A241, ML13106A242, ML13106A244) (2013 GEIS).

⁹ Because the 2013 GEIS did not cover the period of subsequent license renewal, Exelon cannot solely rely on incorporation by reference of the 2013 GEIS to address Category 1 issues.

¹⁰ The hearing record, however, closed after the Board resolved Contentions 1 and 2. See *Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 700 (2012).

¹¹ *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-8-13, 67 NRC 396, 400 (2008) ("A license renewal may be set aside (or appropriately conditioned) even after it has been issued, upon subsequent administrative or judicial review.").

¹² See 10 C.F.R. § 54.31(c).

Consistent with this order, we will also separately direct the Staff to update the GEIS to cure the NEPA deficiency by addressing the subsequent license renewal period.¹³ Given the timeframe involved, we fully expect that the Staff will be able to evaluate the environmental impacts prior to Exelon entering the subsequent license renewal period.

III. CONCLUSION

For the reasons described above, we reverse the portion of CLI-20-11 related to Contention 2A. We leave the licenses in place and *direct* the Staff to modify the expiration dates for Units 2 and 3 to 2033 and 2034, respectively. We further *direct* the parties to submit their views on the practical effects of (1) the subsequent renewed licenses continuing in place and (2) the previous licenses being reinstated by **March 21, 2022**. The parties' responses are due by **March 31, 2022**. After considering briefing on the issue, we will issue a subsequent order to provide additional direction, if any, to the parties regarding the status of the licenses. We address the pending motions in a separate order issued today on the dockets of all subsequent license renewal proceedings.¹⁴

IT IS SO ORDERED.



For the Commission

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of February 2022.

¹³ We provide our direction for addressing the NEPA deficiency discussed in this order in Staff Requirements---SECY-21-0066—"Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses – Environmental Review (RIN 3150-AK32; NRC-2018-0296)" (Feb. 24, 2022) (ML22053A308).

¹⁴ *Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-22-3, 95 NRC ___ (Feb. 24, 2022) (slip op.).

Commissioner Wright, dissenting in part

I disagree with my colleagues' rationale and holding reversing our previous decision in CLI-20-3. As discussed in my partial dissent to *Turkey Point*, I continue to agree with our previous interpretation in CLI-20-3. Moreover, I view the majority's decision to reverse direction now as arbitrary, inconsistent with the NRC's Principles of Good Regulation, and contrary to the agency's goals of clear communication and transparent decision-making. This reversal, based only on information and arguments previously considered and rejected, undermines the NRC's role as an effective and credible regulator. The majority's decision makes it impossible for stakeholders to rely on our statements and positions. It also short-circuits the agency's well-established and predictable adjudicatory process.

But here, as in *Turkey Point*, while I strongly disagree with the majority's approach procedurally and substantively, I join my colleagues on the limited issue of the status of the licenses and the path forward. Given the majority's decision, I agree that an equitable and efficient solution is to leave in place the subsequently renewed licenses while the Staff works to update its environmental analysis to comply with the majority's new holding.¹ I expect that the Staff will work to update the GEIS as expeditiously as possible.

¹ This approach imposes the least impact possible on stakeholders that understandably relied on our previous statements and CLI-20-3 and appropriately places the burden of curing the purported NEPA deficiency on the agency. Leaving the licenses in place also avoids jeopardizing any safety or environmental improvements that the licensee may have put in place to comply with subsequently renewed licenses.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-22-04)** 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 24th day of February 2022.