

March 21, 2022

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of	)	
	)	
Constellation Energy Generation, LLC	)	Docket Nos. 50-277-SLR
(f/k/a Exelon Generation Company, LLC)	)	50-278-SLR
	)	
Peach Bottom Atomic Power Station,	)	
Units 2 and 3	)	

**Response to Commission Request for Views in CLI-22-04**

As directed by the Nuclear Regulatory Commission’s (“Commission” or “NRC”) Memorandum and Order, CLI-22-04 (Feb. 24, 2022) (“CLI-22-04”), Constellation Energy Generation, LLC (“Constellation,” formerly known as Exelon Generation Company, LLC) hereby submits its views on the practical effects of (1) the subsequent renewed licenses for the Peach Bottom Atomic Power Station (“Peach Bottom”), Units 2 and 3 continuing in place and (2) the previous licenses being reinstated. Currently, CLI-22-04 directs the NRC Staff to modify the expiration dates in the subsequent renewed licenses for Peach Bottom Units 2 and 3 to 2033 and 2034, respectively, while the NRC Staff remedies a perceived, and yet to be determined, procedural or substantive deficiency in the National Environmental Policy Act (“NEPA”) analysis that supported subsequent license renewal.<sup>1</sup> In Constellation’s Petition for Partial

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<sup>1</sup> CLI-22-04, slip op. at 3. There is nothing in the record of this proceeding establishing that the environmental effects of Category 1 issues evaluated in NUREG-1437, Revision 1, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (June 2013) (“2013 GEIS”) will not be the same in a second period of extended operation as in the first. In fact, the Commission acknowledged in CLI-22-02 that the Staff may have intended the 2013 GEIS to address subsequent license renewal. CLI-22-02, slip op. at 10. Further, both Constellation and the NRC Staff considered whether there was any new and significant information affecting the applicability of the Category 1 findings to Peach Bottom. Consequently, when the NRC Staff performs its revision to the 2013 GEIS, it may well be the case that all the analyses of Category 1 issues in the 2013 GEIS are found to be applicable to Peach Bottom in the second period of extended operation.

Reconsideration of CLI-22-04 (March 7, 2022) (“Petition for Reconsideration”), Constellation has requested that the NRC maintain the Peach Bottom subsequent renewed licenses in place without modifying the expiration dates.

As explained in Constellation’s Petition for Reconsideration, maintaining the subsequent renewed licenses without amending the expiration dates is the only alternative that would minimize disruptive effects while the NRC Staff reviews and updates the 2013 GEIS and “then take[s] appropriate action with respect to the pending subsequent license renewal applications” as directed by the Commission.<sup>2</sup> Keeping the subsequent renewed licenses without modification would allow the Staff to address the issue of the 2013 GEIS’ applicability to subsequent license renewal prior to Peach Bottom’s period of subsequent extended operation without any of the adverse impacts of the other alternatives described below. Indeed, maintaining the status quo is ideal as the NEPA issues will almost certainly be resolved before the subsequent period of extended operation commences.<sup>3</sup> And modifying the expiration dates in the Peach Bottom licenses would serve no purpose, because Constellation has the right under the Administrative Procedure Act to continue to operate Peach Bottom Units 2 and 3 until its subsequent license renewal application has been finally determined.<sup>4</sup>

At the highest level, modifying the expiration dates in the subsequent renewed licenses or revoking those licenses would have disruptive effects beyond the impact on Peach Bottom and other subsequent license renewals. A Commission decision that any immediately effective license must be revoked, or its terms extinguished, whenever the Commission finds a potential

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<sup>2</sup> Memorandum and Order, CLI-22-03 (Feb. 24, 2022), slip op. at 3.

<sup>3</sup> As explained in CLI-22-04, the Commission expects “that the Staff will be able to evaluate the environmental impacts [and cure the NEPA deficiency] prior to [Constellation] entering the subsequent license renewal period.” CLI-22-04, slip op. at 4.

<sup>4</sup> 5 U.S.C. § 558(c).

substantive or procedural NEPA deficiency on review (even if that deficiency can be remedied before any associated environmental effects occur) would be a precedent creating wide-ranging regulatory uncertainty and instability. It would undermine not only the value of immediately effective licenses but also the use of generic environmental impact statements (“GEIS”), such as the one being developed to support the licensing of advanced reactors.<sup>5</sup> Companies that rely on this GEIS in obtaining an immediately effective license would face increased and unnecessary risk in proceeding with licensed activities, as any GEIS deficiency subsequently perceived by the Commission on administrative review of the licensing decision would bring construction activities to a halt, regardless of whether the perceived GEIS deficiency implicated any near-term environmental effects. This could delay or deter the development of advanced reactors (or other new nuclear capacity), which would be particularly unfortunate given the nation’s urgent need to address the climate crisis and energy security.

Consequently, any decision on remedying a perceived NEPA issue must be based on reasoned consideration of the standards in *Oglala-Sioux Tribe v. NRC*, 896 F.3d 520 (D.C. Cir. 2018) and *Allied-Signal, Inc. v. NRC*, 988 F.2d 146 (D.C. Cir. 1993); and revocation of licenses or modification of their terms (such as license expiration dates as the Commission has directed here) should not occur when there is ample time to correct the NEPA deficiency before any environmental effects occur. *See Oglala-Sioux Tribe*, 896 F.3d at 538 (declining to revoke a license when no harm would occur from leaving the license in place “for now”). Here, there is more than a decade before the subsequent period of extended operation commences and any related environmental effects will occur, and thus ample time to correct any perceived substantive or procedural deficiency in the NEPA review without any harm to the environment.

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<sup>5</sup> SECY-21-0098, Advanced Reactor Generic Environmental Impact Statement (Nov. 29, 2021) (ADAMS Accession No. ML21222A044).

Keeping the Peach Bottom subsequent renewed licenses while amending the expiration dates will also have disruptive effects specific to the units. Amending the expiration dates creates confusion (and misleads the public and other stakeholders) regarding Constellation’s statutory right and authority to operate those units under the timely renewal provision in the Administrative Procedure Act while the Staff is performing additional environmental review, regardless of whether that review and any further hearings are completed by 2033-2034.<sup>6</sup> As reflected in the attached Declaration of Bryan J. Michels, other potential disruptive effects would include, but are not limited to: (i) accelerated depreciation expense (estimated to be tens of millions of dollars per year for Constellation’s 50% share of Peach Bottom), affecting the income statement for the parent company, (ii) an increase in the asset retirement obligation (“ARO”) attributable to the change in license expiration dates, which results in a larger liability on the balance sheet (estimated to range from tens of millions to over a hundred million dollars for Constellation’s 50% share of Peach Bottom), and (iii) delays in beneficial capital projects that can no longer be justified when licensed plant life is shortened and the resultant impact on union labor that performs these capital projects in Pennsylvania. In addition, the increase in the ARO may well have a real impact on consumers, as the ratepayers of PECO Electric Company would likely experience an increase in their continued decommissioning funding obligations associated with PECO’s prior 50% ownership in Peach Bottom.

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<sup>6</sup> See, e.g., Robert Bryce, Forbes “NRC Rescinds License Extensions, Creates More Uncertainty For Investment In Nuclear Sector” (Feb. 28, 2022) (“[G]iving a license extension and then a couple of years later snatching it back on what appears to be little more than a whim - adds yet more uncertainty to an industry that desperately needs stability and a clear regulatory framework.”); The Guggenheim Daily Transmission, Power & Utilities (Mar. 1, 2022) (“The truncating of two existing SLRs and overturning of the prior framework is somewhat perplexing, with the Chair himself noting that it was not a ‘light’ decision. We do not see this as a technical issue – but rather a legal one, with extensions still possible after the current expirations. Stay tuned.”); Vertical Research Partners, Utilities & Power (Feb. 27, 2022) (“The NRC directed staff to change the Peach Bottom license expiration dates back to 2033 and 2034 until completion of further NEPA analysis. How this plays out remains unclear, although shortening the licenses, even temporarily, could require re-working depreciation schedules and trigger non-cash charges.”).

Reinstating the previous Peach Bottom licenses (i.e., revoking the subsequent renewed licenses) could have even more of a disruptive effect than keeping the subsequent renewed licenses while amending the expiration dates. Reinstating the prior licenses would have all of the same deleterious impacts as maintaining the subsequent licenses with modified expiration dates, including complicating the application of the timely renewal standard and potentially causing financial impacts for the licensee and the ratepayers. In addition to those impacts, reinstating the prior licenses would also eliminate the license conditions that were imposed as part of subsequent license renewal, which adopt the Updated Final Safety Analysis Report (“UFSAR”) Supplement developed for subsequent license renewal and require compliance with the subsequent license renewal commitments (including enhancement to aging management programs) that must be completed prior to the second period of extended operation.<sup>7</sup> This would create a situation where Peach Bottom would be authorized to continue to operate in the subsequent period of extended operation under the timely renewal provisions but would no longer be required to comply with the commitments to effectively manage aging effects during such extended operation.

Indeed, each of the forty-four aging management programs and fifty commitments in the aging management program would have to be individually evaluated by the program owner. If any changes were made to the program based solely on subsequent license renewal, then they would be removed. This could have a significant near-term impact, as some of the subsequent license renewal commitments that would no longer be required by license condition and might be eliminated start 10 years prior to the second period of extended operation (i.e., August 2033 and

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<sup>7</sup> Peach Bottom Atomic Power Station, Unit 2 – Subsequent Renewed Facility Operating License (ADAMS Accession No. ML052720266), License Condition 2.C(19); Peach Bottom Atomic Power Station, Unit 3 – Subsequent Renewed Facility Operating License (ADAMS Accession No. ML052720269), License Condition 2.C(19).

July 2034, for Units 2 and 3). These commitments include License Renewal Commitments No. 21 (implementation of a new One-Time Inspection program), 22 (implementation of a new program to monitor Selective Leeching), 28 (implementation of an enhanced program to managing the aging of Buried and Underground Piping and Tanks, including piping inspections and repairs), and 29 (implementation of a new program to manage aging of Internal Coatings/Linings for In-Scope Piping, Piping Components, Heat Exchangers, and Tanks).<sup>8</sup>

Based on the evaluation of these aging management programs and commitments, implementing documents and procedures would have to be revised using the appropriate change procedure.

Finally, there have been eleven amendments to each of the Peach Bottom subsequent renewed licenses.<sup>9</sup> These include the conforming amendments made to reflect the transfer of control of the licenses resulting from the spin-off of Exelon Generation Company, so the previous licenses do not refer to the currently named licensees. As all of these amendments are not in the previous licenses (as they post-date issuance of subsequent renewed licenses), the previous licenses would need to be further amended. It is unclear what the procedure would be to incorporate these license amendments (i.e., whether new license amendment proceedings with notices and opportunities for hearing would be needed).

For all these reasons, the least disruptive alternative is for the Commission maintain the subsequent renewed licenses for Peach Bottom Units 2 and 3 without altering the expiration dates of those licenses. Maintaining the subsequent renewed licenses unchanged promotes regulatory stability, avoids a change that serves no current purpose (as no environmental impacts

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<sup>8</sup> Peach Bottom Atomic Power Station– Subsequent License Renewal Application, Final Safety Analysis Report Supplement (ADAMS Accession No. ML18193A773), A-101–102, A-104–106. *See also* Peach Bottom Atomic Power Station – Updated Final Safety Analysis Report, Appendix R Second License Renewal Aging Management UFSAR Supplement, R-104–105, R-107–109.

<sup>9</sup> Amendments 331 through 341 to the Unit 2 license, and Amendments 334 through 344 to the Unit 3 license.

associated with subsequent license renewal will occur for over a decade), avoids creating confusion regarding Constellation's statutory right under the timely renewal provision of the Administrative Procedures Act, maintains desirable subsequent license renewal conditions and commitments (including those supporting any extended operations under the timely renewal doctrine), and avoids potential unnecessary financial impacts, as well as avoiding reviews of UFSAR changes and further license amendments if the previous licenses were reinstated.

Respectfully submitted,

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March 21, 2022

Counsel for Constellation

March 21, 2022

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(formerly known as Exelon Generation	)	
Company, LLC)	)	50-278-SLR
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Peach Bottom Atomic Power Station,	)	
Units 2 and 3	)	

**Declaration of Bryan J. Michels**

I, Bryan Michels, do hereby state as follows:

I am the Director of Accounting Policy and External Financial Reporting at Constellation Energy Generation, LLC (“Constellation”). I have spent the past 18 years in the energy industry, all with Constellation (formerly Exelon Generation Company, LLC) supporting the unregulated generation business in varying capacities and positions of increasing responsibility. I currently serve as the Assistant Controller for Constellation with direct oversight responsibilities over external financial reporting and technical accounting matters. Prior to the separation of Constellation from Exelon, I directly supported the nuclear business for six years as a Director of Accounting, which included, among other responsibilities, assessment of the depreciable useful life of nuclear assets along with criteria for capitalization, oversight of the accounting for our nuclear asset retirement obligations and the associated nuclear decommissioning trust funds, in addition to the ongoing contractual relationship with ComEd and PECO ratepayers associated with the future decommissioning for certain of our nuclear units. I hold a Bachelor of Science in Accounting from the University of Delaware and a Master of Science in Taxation and Financial

Planning from Widener University. I am a licensed Certified Public Accountant in the Commonwealth of Pennsylvania and the State of Delaware. I am providing this declaration in support of Constellation's Response to Commission Request for Views in CLI-22-04. I have personal knowledge of the matters stated herein.

Amending the expiration dates in the subsequent renewed licenses for the Peach Bottom Atomic Power Station, Units 2 and 3, could have a number of potential disruptive financial effects, including but not limited to: (i) accelerated depreciation expense (estimated to be tens of millions of dollars per year for Constellation's 50% share of Peach Bottom), affecting the income statement for the parent company, (ii) an increase in the asset retirement obligation ("ARO") attributable to the change in license expiration dates, which results in a larger liability on the balance sheet (estimated to range from tens of millions to over a hundred million dollars for Constellation's 50% share of Peach Bottom), and (iii) delays in beneficial capital projects that can no longer be justified when licensed plant life is shortened and the resultant impact on union labor that performs these capital projects in Pennsylvania. In addition, the increase in the ARO may well have a real impact on consumers, as the ratepayers of PECO Electric Company would likely experience an increase in their continued decommissioning funding obligations associated with PECO's prior 50% ownership in Peach Bottom.

Reinstating the previous Peach Bottom licenses (revoking the subsequent renewed licenses) could have the same deleterious financial impacts as maintaining the subsequent licenses with modified expiration dates.

I declare under penalty of perjury that the statements above are true and correct to the best of my knowledge and belief.

/Executed in Accord with 10 C.F.R. § 2.304(d)/  
Bryan J. Michels  
Constellation Energy Generation  
200 Exelon Way  
Kennett Square, Pennsylvania 19348

Dated this 21<sup>st</sup> day of March, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Response to Commission Request for Views in CLI-22-04, and attached Declaration of Bryan J. Michels, have been served through the E-Filing system on the participants in the above-captioned proceeding this 21<sup>st</sup> day of March, 2022.

/signed electronically by Anne Leidich/  
Anne Leidich