

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

Michael M. Gibson, Chair
Nicholas G. Trikouros
Dr. Gary S. Arnold

In the Matter of:

VIRGINIA ELECTRIC AND POWER
COMPANY

(North Anna Power Station, Units 1 & 2)

Docket Nos. 50-338-SLR-2
50-339-SLR-2

ASLBP No. 24-984-02-SLR-BD01

May 21, 2024

MEMORANDUM AND ORDER

(Request to Address Contention Admissibility and Impacts of Final Rule Applying Generic Environmental Impact Statement to Subsequent License Renewal Period)

This proceeding concerns the twenty-year subsequent renewal of the licenses for North Anna Power Station, Units 1 and 2, that currently authorize Virginia Electric and Power Company (VEPCO) to operate North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia, until, respectively, April 1, 2038 and August 21, 2040. On January 8, 2024, a notice was published in the Federal Register announcing the opportunity to request a hearing on the December 2023 draft site-specific environmental impact statement for North Anna Power Station Units 1 and 2 issued by the Nuclear Regulatory Commission Staff (NRC Staff).¹ Petitioners Beyond Nuclear, Inc. (Beyond Nuclear) and the Sierra Club, Inc. (Sierra Club) filed a hearing request on March 28, 2024.² On April 3, 2024, this Licensing Board was established to rule on standing and contention admissibility matters and to preside at any hearing.³ On April

¹ See 89 Fed. Reg. 960 (Jan. 8, 2024).

² See Hearing Request and Petition to Intervene by Beyond Nuclear and the Sierra Club (Mar. 28, 2024).

³ See Establishment of Atomic Safety and Licensing Board (April 3, 2024).

15, 2024, we issued a Memorandum and Order setting this matter for oral argument on contention admissibility and establishing the information technology and other administrative matters for this oral argument.⁴ Then, on May 14, the Board granted the Petitioners' unopposed motion to postpone oral argument until Monday, June 3, 2024 at 1:00 PM ET.⁵ But the oral argument will now commence on Monday, June 3, 2024 at 10:00 AM ET because of certain new developments that are set forth immediately below.

Specifically, on May 16, 2024, the Commission adopted a final rule that will make a new generic environmental analysis applicable to both the initial license renewal (LR) and the first subsequent license renewal (SLR) for nuclear power plants (2024 Rule).⁶ This 2024 Rule is supported by a 2024 revision to the 2013 version of NUREG-1437, "Generic Environmental Impact Statement [(GEIS)] for License Renewal of Nuclear Plants."⁷ These updates will include changes to Table B-1, "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants," in appendix B to subpart A of 10 CFR part 51 (Table B-1).⁸

Of particular relevance to this proceeding, these updates to Table B-1 will now delineate 80 separate environmental topics that are to be classified either as generic (Category 1) issues or as plant-specific (Category 2) issues. Two of Petitioners' contentions appear to implicate Table B-1 Category 1 issues ("Design basis accidents" and "Severe accidents"), while the third contention appears to implicate one Table B-1 Category 2 issue ("Climate change impacts on

⁴ See Licensing Board Memorandum and Order (Scheduling Initial Prehearing Conference (amended)) (Apr. 15, 2024) (unpublished).

⁵ See Licensing Board Memorandum and Order (Granting Motion for Extension of Time and Postponing Oral Argument) (May 14, 2024) (unpublished).

⁶ See Mem. from Carrie M. Safford, Secretary, NRC, to Raymond V. Furstenau, Acting Executive Director for Operations, NRC, at 1 (May 16, 2024) ((Agencywide Documents Access and Management System (ADAMS) Accession No. ML24137A164) [hereinafter SRM].

⁷ See NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Final Report, Vol. 1 (Rev. 2 Feb. 2024) (ADAMS Accession No. ML23201A224 [hereinafter 2024 GEIS]; see also NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Final Report, Vol. 1 (Rev. 1 June 2013) (ADAMS Accession No. ML13106A241) [hereinafter 2013 GEIS].

⁸ See SRM at 1.

environmental resources”). Based on prior Commission precedent, denoting a contention as falling within either Category 1 or Category 2 can have a substantial impact on the standards that apply to the admission of the contention.

In light of these significant regulatory changes, the Board has concluded there are now several additional matters associated with the agency’s 2024 Rule and the 2024 GEIS that warrant consideration at the June 3, 2024 oral argument. Accordingly, counsel should be prepared to address the following matters in a pre-argument filing and during the oral argument on June 3, 2024.

1. Topic 1. The 2024 Rule language adopted by the Commission states that the rule will become effective 30 days after publication in the Federal Register. When is publication in the Federal Register anticipated? In this interim period after the 2024 Rule has been approved by the Commission but before it is effective, how should the Board proceed with respect to Petitioners’ contentions? The Board also notes that the deadline to comply with the 2024 Rule is one year after the 2024 Rule’s publication in the Federal Register.⁹ Is this one-year deadline of any consequence to this proceeding? Why or why not?
2. Topic 2. In evaluating the environmental impacts associated with the renewal of a license for a nuclear power plant, 10 C.F.R. § 51.95(c)(4) provides that “the NRC staff, adjudicatory officers, and [the] Commission shall integrate the conclusions in the generic environmental impact statement for issues designated as Category 1 with information developed for those Category 2 issues applicable to the plant under 10 CFR § 53.51(c)(3)(ii) and any new and significant information.” Before this Board

⁹ See SRM Encl., “Edits to the *Federal Register* notice” at 2 (May 16, 2024) (ADAMS Accession No. ML24137A219).

can consider the admissibility of Petitioners' contentions in this proceeding, must the NRC Staff first incorporate the provisions of the 2024 Rule and the 2024 GEIS into its December 2023 site-specific EIS? If so, when will the NRC Staff complete these tasks?

3. Topic 3. Previously, the Commission has held that the admissibility of Category 1 license renewal contentions is to be governed by the applicable GEIS and associated updates to Table B-1. See *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 385–87 (2012) (indicating that, notwithstanding recognized opportunity in license renewal cases to contest matters involving new and significant environmental information, challenges to Table B-1 Category 1 issues require that petitioner submit a 10 C.F.R. § 2.335(b) waiver petition). As set forth immediately below, two of the Petitioners' contentions appear to implicate Category 1 issues under the 2024 Rule.
 - a. Topic 3a. In a previous contention admissibility proceeding involving the North Anna facility, Petitioners filed both a contention and a 10 C.F.R. § 2.335(b) waiver petition challenging the applicant's Environmental Report for failing "to consider the environmental implications of an earthquake in 2011 that exceeded the design basis for" North Anna. In that proceeding, *North Anna*, LBP-21-4, 93 NRC 179, 188 (2021), a previous licensing board denied both the contention's admissibility pursuant to 10 C.F.R. § 2.309(f)(1) and the associated waiver petition. Petitioners' appeal of that licensing board's decision in LBP-21-4 was dismissed without prejudice by the Commission in *North Anna*, CLI 22-3, 95 NRC 40, 41–42, 43 (2022), and Petitioners were invited to re-file this contention and to submit any other new or amended contentions that challenged the NRC Staff's revised site-specific environmental impact statement. Nevertheless, Petitioners' Contention 1 in this proceeding appears to be substantially the same contention

that they proffered in LBP-21-4 and the just-adopted 2024 Rule will retain the 2013 GEIS's designation of "Design basis accidents" as a Table B-1 Category 1 issue during the SLR period. Accordingly, before this Board can adjudicate the admissibility of Contention 1, should Petitioners be afforded the opportunity to submit an amended contention, as appropriate, and a waiver petition under section 2.335(b), to assert this "Design-basis accident" claim once the 2024 Rule becomes effective?

- b. Topic 3b. Although CLI-22-2 and CLI-22-3 eliminated the applicability of the 2013 GEIS to Petitioners' contentions here, it is nevertheless significant that the 2024 Rule makes a change with respect to "Severe accidents." Under the 2013 GEIS, "Severe accidents" were classified as a Category 2 issue insofar as a petitioner challenged alternatives to mitigate severe accidents where the facility had not previously performed a severe accident mitigation alternatives analysis. However, it now appears that the 2024 Rule will direct that Table B-1 be updated to reclassify "Severe accidents" as a Category 1 issue. Accordingly, before this Board can adjudicate the admissibility of Contention 2, should Petitioners be afforded the opportunity to submit an amended contention, as appropriate, and a waiver petition under section 2.335(b), to assert their "Severe accident" claim once the 2024 Rule becomes effective?
4. Topic 4. The 2024 Rule creates a new Table B-1 Category 2 issue, "Climate change impacts on environmental resources" that had not previously been delineated as an environmental issue in the 2013 GEIS. With this change, does the issue raised in Contention 3 fall within this Table B-1 Category 2 issue? On the other hand, if Contention 3 does not fall within this Category 2 issue, does it fall within any other Table B-1 issue as defined under the 2024 Rule? Finally, if Contention 3 does not

fall within any Table B-1 issue at all, does the 2024 Rule affect in any other way this Board's adjudication of Contention 3 in this proceeding?

Relative to these topics, no later than Wednesday, May 29, each party shall file a Table of Legal and Factual Authorities it considers relevant to the above-listed topics. The Table should be organized so that the legal and factual authorities listed for each topic do not exceed one page, with Topics 3a and 3b having one page each.

During oral argument on June 3, the Board will first briefly confirm that Petitioners have standing. After doing so, the Board will hear presentations from the parties regarding the topics outlined above that concern the impact of the Commission's adoption of the 2024 Rule. Petitioners, followed by the NRC Staff and then VEPCO, will each be afforded 15 minutes to address the above-listed topics. Petitioners will also be afforded 5 minutes of rebuttal.

At the conclusion of oral argument on these topics, the Board will question the parties about the admissibility of Petitioners' contentions under any not yet discussed contention admissibility standards in 10 C.F.R. § 2.309(f)(1).

Finally, the Board will confer as to whether closing arguments would be beneficial for making its ruling on the matters addressed during oral argument.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 21, 2024

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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VIRGINIA ELECTRIC AND POWER COMPANY) Docket Nos. 50-338-SLR-2
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(North Anna Power Station, Units 1 and 2))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Request to Address Contention Admissibility and Impacts of Final Rule Applying Generic Environmental Impact Statement to Subsequent License Renewal Period)** have been served upon the following persons by Electronic Information Exchange.

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Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2, Docket Nos. 50-338-SLR-2 and 50-339-SLR-2)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 21st day of May 2024.