

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
AND
THE COMMISSION

In the Matter of)
Exelon Generation Company, LLC) Docket Nos. 50-277/278 SLR
Peach Bottom Atomic Power Station,) September 3, 2019
Units 2 & 3)

**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
(CORRECTED)**

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.309(c) and 2.309(f)(2), Beyond Nuclear, Inc. (“Beyond Nuclear”) hereby moves for consideration of a new contention in this proceeding for consideration by the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) of Exelon Generation Co., L.L.C.’s (“Exelon’s”) application for subsequent license renewal (“SLR”) of its operating license for the Peach Bottom Units 2 and 3 nuclear power plant.¹ In Section III below, Beyond Nuclear’s proposed Contention 3 challenges the adequacy of the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 10, Second Renewal, Regarding Subsequent License Renewal for Peach Bottom Atomic Power Station, Units 2 and 3

¹ As discussed in greater detail in Section II below, this motion is being filed before both the Atomic Safety and Licensing Board (“ASLB”) and the Commission, due to a jurisdictional question raised by the apparent incompatibility of 10 C.F.R. § 2.318(a) with the ASLB’s recent order terminating this proceeding, *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 & 3), LBP-19-05 ___ N.R.C. ___ (June 20, 2019).

(NUREG-1437, Supp. 10, Second Renewal, Draft Report for Comment) (July 2019) (“Draft GEIS Supp. 10”). As discussed in Contention 3, the Draft GEIS Supp. 10 fails to satisfy the National Environmental Policy Act (“NEPA”) or NRC implementing regulations because it lacks an adequate discussion of the environmental impacts of design basis accidents.²

II. JURISDICTION

In LBP-19-05, the ASLB denied Beyond Nuclear’s initial hearing request and terminated this proceeding. *Id.*, slip op. at 24. Thus, LBP-19-05 appears to have ended the ASLB’s jurisdiction over any new or supplemental hearing requests, including this one. However, Beyond Nuclear has appealed LBP-19-05 to the NRC Commissioners and no final decision has issued yet. Therefore, 10 C.F.R. § 2.318(a) appears to countermand the ASLB and give the Presiding Officer continuing jurisdiction to consider new contentions up until the time of a decision by the Commissioners.³ *See also USEC, Inc. (American Centrifuge Plant), Order (Regarding Jurisdiction)* (Unpublished, Oct. 20, 2005) (NRC Accession No. ML052930319). Under the circumstances, and in an abundance of caution, Beyond Nuclear has filed this motion before both the ASLB and the Commission in order to ensure that this motion is considered by the appropriate body.

² Beyond Nuclear has standing to participate in this proceeding, as established in LBP-19-05.

³ As stated in the regulation: “The presiding officer's jurisdiction in each proceeding terminates when the period within which the Commission may direct that the record be certified to it for final decision expires, when the Commission renders a final decision, or when the presiding officer withdraws from the case upon considering himself or herself disqualified, whichever is earliest.”

III. CONTENTION 3

A. Statement of Contention

The Draft GEIS Supp. 10 violates NEPA and NRC implementing regulation 10 C.F.R. § 51.71 in three significant ways:

1. The GEIS purports to rely on the Category 1 determination that design-basis accidents have no significant impacts, as set forth in Table B-1 of 10 C.F.R. Part 51, Subpart A, Appendix A. *Id.* at 4-99 (“[T]he GEIS (NRC 2013a) addresses design-basis accidents as a Category 1 issue and concludes that the environmental impacts of design-basis accidents are of SMALL significance for all nuclear power plants.”). Table B-1, however, applies only to initial license renewal and not to subsequent license renewal. *See* Section III.B.2 below. Thus, NEPA requires that the Draft GEIS Supp. 10 must present a full discussion that “considers and weighs the environmental effects” of operating Peach Bottom Units 2 and 3 for an additional twenty years. 10 C.F.R. § 51.71(d). *See also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA requires a federal agency to take a “hard look” at potential environmental consequences by preparing an EIS prior to any “major Federal action[] significantly affecting the quality of the human environment.”).
2. Because it relies on Category 1 and Table B-1, the Draft GEIS Supp. 10 does not claim to have incorporated the 1996 License Renewal GEIS and the 2013 Revised License Renewal GEIS by reference pursuant to 10 C.F.R. § 51.71(a). If the Staff intends to incorporate the 1996 and 2013 environmental analyses into Draft GEIS Supp. 10, it should explicitly make that assertion and follow NRC regulations and guidance for incorporation by reference. *See Florida Power & Light Co.* (Turkey Point Nuclear

Generating, Units 3 and 4), LBP-16-08, 83 N.R.C. 417, 432 and n. 98 (2016), *aff'd on other grounds*, CLI-16-18, 84 N.R.C. 167 (2016) (holding that to incorporate another environmental study by reference, an environmental document must (1) make specific reference to the material incorporated, (2) consider environmental changes that occurred after the incorporated study was prepared, and (3) consider the environmental effects of the specific license at issue.). *See also* 40 C.F.R. § 1502.21 (adopted in 10 C.F.R. Part 51, Subpart A, App. A § 1(b)); and NUREG-1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants (Oct. 1999)) (the Staff's own guidance for preparing environmental impact statements).

3. Appendix E of Draft GEIS Supp. 10 does contain one brief and specific discussion of the findings of the 1996 License Renewal GEIS and the 2013 Revised License Renewal GEIS in relation to Peach Bottom:

As stated in Section 5.3.2 of the 1996 GEIS, the NRC staff assessed the environmental impact from design-basis accidents in the individual plant-specific EISs at the time of the initial license application review. Since the licensee is required to maintain the plant within acceptable design and performance criteria, including during any license renewal term, the NRC staff would not expect environmental impacts to change significantly. Therefore, additional assessment of the environmental impacts from design-basis accidents is not necessary (NRC 2013a).

Id. at E-2. However, this discussion is legally deficient in the following respects:

- a. First, Draft GEIS Supp. 10 does not address significant developments that have occurred since the 2013 Revised License Renewal GEIS was issued. *Florida Power & Light Co.*, 83 N.R.C. at 432, or even claim to have surveyed the current level of knowledge regarding accident risks posed by operating nuclear reactor safety equipment beyond 60 years. The NRC has expended considerable time and resources studying the effects of long-term aging on the safety of nuclear reactor

operation, and has found significant uncertainties in current understanding of how aging may affect the safety of reactor operation in the future. Yet, the Draft GEIS Supp. 10 contains no mention of this work. Studies that should have been addressed, for example, include a five-volume report issued by the NRC in 2014, the Expanded Materials Degradation Assessment (“EMDA”). NUREG/CR-7153, ORNL/TM-2013/532, Oct. 2014) (“EMDA Report”). The EMDA Report identifies multiple examples of knowledge deficiencies regarding management of aging reactor safety equipment. *See* Section III.B.3 below for greater factual detail. Similarly, the Draft GEIS Supp. 10 fails to address the environmental implications of reactor aging issues identified by the NRC Staff in SECY-14-0016, Memorandum from Mark A. Satorius, NRC Executive Director of Operations, to NRC Commissioners, re: Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal (Jan. 31, 2014) (NRC ADAMS Accession No. ML14050A306). These issues, characterized by the Staff as “the most significant technical issues challenging [reactor] operation beyond 60 years,” include reactor pressure vessel embrittlement; irradiation-assisted stress corrosion cracking of reactor internals, concrete structures and containment degradation; and electrical cable qualification and condition assessment. *Id.*, Enclosure 1 at 2-3. As stated by senior NRC management, “it is the industry’s responsibility to resolve these and other issues to provide the technical bases to ensure safe operation beyond 60 years.” *Id.* at 3. Beyond Nuclear is aware of no determination that these issues have been resolved since publication of SECY-14-0016.

b. By stating that the NRC's regulatory requirements for safe operation under the Atomic Energy Act will ensure that no changes occur in the severity of environmental impacts of design-basis accidents at Peach Bottom Units 2 and 3, the NRC Staff confuses Atomic Energy Act compliance with NEPA compliance. It is well-established that NEPA's requirements are independent of other statutes and must be complied with "unless specifically excluded by statute or existing law makes compliance impossible." *Limerick Ecology Action v. NRC*, 869 F.2d 719, 729 (3rd Cir. 1989) (citing *Public Service Co. of New Hampshire v. NRC*, 582 F.2d 77, 81 (1st Cir. 1978)). Both the EMDA Report and SECY-14-0016 identify significant uncertainties regarding the safety of operating nuclear reactors during a second license renewal term, due to a lack of knowledge regarding the behavior of safety components that have aged more than sixty years. Any "reasonable assurance" finding made by the NRC under the Atomic Energy Act regarding the safety of operating Peach Bottom for more than sixty years "does not describe a probability of failure so low as to dismiss the potential consequences of such a failure." *State of New York v. NRC*, 681 F.3d 471, 478 (D.C. Cir. 2012). In *State of New York*, the court found that a "reasonable assurance" finding regarding the likelihood that permanent spent fuel storage will be available was "a far cry from finding the likelihood of nonavailability to be 'remote and speculative.'" *See also* 40 C.F.R. § 1502.22, which provides "guidance" to the NRC (74 NRC at 444) that "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.” Here, having identified significant and unresolved uncertainties regarding the safety of operating nuclear reactors far into the future with aging equipment, the NRC has no basis for equating a reasonable assurance finding with a finding of no significant environmental impacts.

B. Basis Statement

1. Introduction: Requirements of NEPA

NEPA implements a “broad national commitment to protecting and promoting environmental quality.” *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 87 (1998) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989) and citing 42 U.S.C. § 4331). NEPA has two key purposes: to ensure that the agency “will have available, and will carefully consider, detailed information concerning significant environmental impacts” before it makes a decision; and to guarantee that “the relevant information will be made available to the larger audience that may also play a role in the decision-making process and implementation of that decision.” *Robertson*, 490 U.S. at 349.

In fulfilling NEPA’s first purpose of evaluating the environmental impacts of its decisions, NEPA requires a federal agency to take a “hard look” at potential environmental consequences by preparing an EIS prior to any “major Federal action[] significantly affecting the quality of the human environment.” *Robertson*, 490 U.S. at 349; 42 U.S.C. § 4332(c). The “hallmarks of a ‘hard look’ are thorough investigation into environmental impacts and forthright acknowledgment of potential environmental harms.” *National Audubon Society v. Dep’t of Navy*, 422 F.3d 174, 185 (4th Cir. 2005).

In fulfilling NEPA's second purpose of public participation, the agency's environmental analysis must be published for public comment "to permit the public a role in the agency's decision-making process." *Robertson*, 490 U.S. at 349-50; *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 443 (4th Cir. 1996). NRC's Part 51 regulations also allow interested members of the public to participate in the environmental decision-making process through the NRC's hearing process. 10 C.F.R. §51.104(a).

2. NRC implementing regulations do not allow application of Category 1 determinations to subsequent license renewal applicants.

NRC regulations in 10 C.F.R. Part 51 establish parallel sets of requirements for both license applicants and the NRC Staff. This regulatory scheme must be seen as a whole because the NRC Staff bases its own environmental analyses on environmental reports prepared by license applicants. In addition, both sets of regulations rely for provisions related to license renewal on the same GEIS: the 1996 License Renewal GEIS as revised in 2013.

a. NRC's NEPA implementing regulations contain no exemptions for consideration of environmental impacts in environmental reports for subsequent license renewal applications.

10 C.F.R. § 51.53(c)(2) establishes general requirements for environmental reports by license renewal applicants. Section 51.53(c)(2) requires an operating license renewal applicant (other than an applicant for initial license renewal) to describe, *inter alia*, "the affected environment around the plant," the "environmental impacts of alternatives," and "any other matters described in § 51.45(a)." Section 51.45(a), requires, in turn, that the Environmental Report must include the following information:

Analysis. The environmental report must include an analysis that considers and balances the environmental effects of the proposed action, the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects. . . . The environmental report must also contain an analysis of the cumulative impacts of the activities to be authorized by the limited work

authorization, construction permit, or combined license in light of the preconstruction impacts described in the environmental report. . . . The analyses for environmental reports shall, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, those considerations or factors shall be discussed in qualitative terms. The environmental report should contain sufficient data to aid the Commission in its development of an independent analysis.

The NRC has no NEPA regulations that apply to subsequent license renewal applicants.

Applicants seeking an “initial renewed license,” however, may rely on 10 C.F.R. § 51.53(c)(3) to be excused from addressing “Category 1” environmental impacts in Table B-1 of 10 C.F.R. Part 51, Subpart A, Appendix A. The rationale for the Category 1 exemptions is that their environmental impacts were generically addressed in the 1996 License Renewal GEIS, as revised in 2013. Table B-1, note 1. In its Environmental Report, Exelon has disregarded the plain language of 10 C.F.R. § 51.53(c)(3) and omitted discussion of all Category 1 environmental impacts, including the environmental impacts of design-basis accidents. *Id.* By its own terms, however, Section 51.53(c)(3) applies only to applicants “seeking an *initial* renewed license” and not to applicants for subsequent license renewal like Exelon. *See also* Proposed Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 56 Fed. Reg. 47,016, 47,017 (Sept. 17, 1991) (stating that “the part 51 amendments [including 10 C.F.R. § 51.53(c)(3) and Table B-1 in Appendix B of 10 C.F.R. Part 51] apply to one renewal of the initial license for up to 20 years beyond the expiration of the initial license.”).

b. NRC’s NEPA implementing regulations contain no exemptions for consideration of environmental impacts in environmental impact statements for subsequent license renewal applications.

The NRC’s general regulations for the content of environmental impact statements prepared by the agency staff are found in 10 C.F.R. § 51.71. Requirements for environmental impact statements for license renewal are found in 10 C.F.R. § 51.71(d) and 10 C.F.R. §

51.95(c). Section 51.71(d) states that a draft supplemental environmental impact statement for license renewal “will rely on conclusions as amplified by the supporting information in the [License Renewal] GEIS for issues designated as Category 1 in appendix B to subpart A of this part.” The reference to “appendix B” is to Table B-1, which lists design-basis accidents as Category 1 environmental impacts. And Table B-1 relies in turn on the 1996 License Renewal GEIS, as revised in 2013, for its determinations regarding the insignificance of environmental impacts designated as Category 1. *See* Table B-1, note 1.

Sections 51.71(d), and § 51.95(c) were promulgated in 1996, at the same time the License Renewal GEIS was issued. There is no mention of subsequent license renewal in the proposed version of that rule (Proposed Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 56 Fed. Reg. 47,016 (Sept. 17, 1991)); in the final rule (Final Rule, Environmental Review for Renewal of Nuclear Power Plant Operating Licenses 61 Fed. Reg. 28,467 (June 5, 1996)); or in the 1996 License Renewal GEIS that supports 10 C.F.R. § 51.71(d) and the Category 1 determinations of Table B-1. To the contrary, the 1996 License Renewal GEIS describes the “proposed action” addressed by the GEIS as allowing nuclear power plants to operate “for a maximum of 20 years past the terms of their *original* 40-year operating licenses.” *Id.* at 2-28 – 2-29 (emphasis added).

Similarly, there is no mention of subsequent license renewal in the 2009 proposed amendments to the 1996 Final Rule (Proposed Amended Rule, 74 Fed. Reg. 38,117 (July 31, 2009)); or the 2013 Final Rule amending the 1996 rule (Final Amended Rule, 78 Fed. Reg. 37,312 (June 20, 2013)). Nor is there any mention of subsequent license renewal in the 2013 Revised License Renewal GEIS. Instead, the 2013 Revised License Renewal GEIS simply

“reviews and reevaluates” the findings of the 1996 License Renewal GEIS. *Id.* at 1-7.⁴ *Nowhere* does the 2013 Revised GEIS refer to a time frame totaling 80 years or a baseline of 60 years.⁵

Furthermore, in no proposed or final version of NRC regulations for the implementation of NEPA did the NRC change the language of 10 C.F.R. § 51.53(c)(3) to allow application of Category 1 environmental findings by any license renewal applicants other than “applicants seeking an initial renewed license.”

In 10 C.F.R. § 51.71(d), the NRC simply had no reason to state that the Category 1 exception applied only to initial license renewals, because neither the rule nor the underlying 1996 GEIS applied to anything *other than* initial license renewals (*i.e.*, 40 plus 20 years). The 1996 GEIS explicitly describes the “proposed action” addressed by its analysis as allowing nuclear power plants to operate “for a maximum of 20 years past the terms of their *original* 40-year operating licenses.” 1996 GEIS at 2-28–29 (emphasis added). The NRC could not allow licensees to rely upon generic review of Category 1 issues beyond the initial license renewal

⁴ For instance, the 2013 Revised GEIS asserts that the 1996 GEIS’ conclusions regarding the environmental impacts of refurbishment activities are “valid and conservative.” *Id.* at 2-3. And the 2013 Revised GEIS concludes that “[d]uring the license renewal term, commercial nuclear power plants would continue to operate in the same manner as they had during the *original* license term.” *Id.* (emphasis added)

⁵ In SECY-14-0016, the NRC Staff expressed its opinion that the 2013 Revised License Renewal GEIS is adequate to support subsequent license renewal. *Id.* at 3. But SECY-14-0016 does not state, nor does any evidence exist, that the 2013 Revised License Renewal GEIS specifically examined the environmental impacts of operating reactors for an additional twenty years beyond the initial renewed license term. The opinion of the NRC Staff is just an opinion. Unless it is published and offered for public comment, it cannot be relied upon to expand the scope of the 1996 GEIS or the 2013 Revised GEIS. *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1206 (2015) (“agencies [must] use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.”).

In any event, it is not possible to reconcile its opinion that the 2013 Revised License Renewal GEIS is adequate to support subsequent license renewal with its opinion – stated in the same memorandum – that subsequent license renewal raises technical issues that must be resolved in order to ensure safe operation. *See* Enclosure 1 at 2-3.

term, because the agency never conducted a generic environmental analysis of impacts beyond the 60-year time frame to justify it. Thus, the NRC had no reason to state that Table B-1 would apply to subsequent license renewal applications (*i.e.*, 60 plus 20 years). The NRC *did* have a reason to notify license applicants that § 51.53(c)(3) (and hence Table B-1) would only apply to the initial license renewal term, however. Having told licensees that “[n]o limit on the number of license renewals is specified” in NRC’s Part 54 regulations,⁶ the NRC reasonably clarified that the scope of its license renewal review under NEPA would be more limited in § 51.53(c)(3).

2. Factual basis

A review of the literature on aging reactors demonstrates the existence of a number of age-related issues whose implications for environmental risk should be addressed in Draft GEIS Supp. 10. For instance, the 2014 EMDA Report, prepared by the NRC and the DOE, raised concerns regarding “increased susceptibility to known degradation modes” and “new mechanisms” of degradation during reactor operation after 60 years, as follows:

Extending reactor operation to beyond 60 years will increase the demands on materials and components. While operation beyond 60 will add additional time and neutron fluence, the primary impact will be increased susceptibility to known degradation modes, although new mechanisms are possible.

For the reactor core and primary systems, several key issues have been identified. Thermomechanical considerations such as aging and fatigue must be examined. Irradiation-induced processes must also be considered for higher fluences, particularly the influence of radiation induced segregation (RIS), swelling, and/or precipitation on embrittlement. Corrosion takes many forms within the reactor core and piping systems, although irradiation assisted stress corrosion cracking (IASCC) and PWSCC [primary water stress corrosion cracking] are of high interest in extended life scenarios.

Research in these areas can build upon other ongoing programs in the light water reactor (LWR) industry as well as other reactor materials programs (such as fusion and fast reactors) to help resolve these issues for extended LWR [light water reactor] life. In the secondary systems, corrosion is extremely complex. Understanding the various modes of corrosion and identifying mitigation strategies is an important step for long-term service.

⁶ 1996 GEIS at 1-1.

For reactor pressure vessels, a number of significant issues have been identified for future research. Relatively sparse or nonexistent data at high fluences, for long radiation exposure (duration), and resulting high embrittlement create large uncertainties for embrittlement predictions. The use of test reactors at high fluxes to obtain high fluence data is not the most direct representation of the low flux conditions in RPVs. Late-blooming phases (LBPs), especially for high nickel welds, have been observed and additional experimental data are needed in the high fluence regime where they are expected. Other discussed issues include specific needs regarding application of the fracture toughness master curve, data on long term thermal aging, attenuation of embrittlement through the RPV wall, and the development of an embrittlement trend curve based on fracture toughness measurements.

Concrete structures can also suffer undesirable changes in properties with time, including adverse performance of its cement paste matrix or aggregate constituents under environmental influences (e.g., physical or chemical attack). Changes to embedded steel reinforcement as well as its interaction with concrete can also be detrimental to concrete's service life. Aging effects can be exacerbated if improper concrete specifications were used at the time of construction. A number of areas of research would help assess the long-term integrity of the reactor concrete structures.

Cable and cable insulation systems play an important role in the safety and operation of a nuclear power plant. Degradation of polymer insulation due to the combined effects of mechanical stress, elevated temperature, irradiation and high humidity environments (or complete submergence) has been observed, although there may be knowledge gaps for reactor long term operation.

EMDA Report, Vol. 1 at 3-4 (ML14279A321). The EMDA recommended further research on these issues, and there is no indication they have been resolved.

SECY-14-0016, a high-level NRC memorandum to the Commissioners, also identifies a range of unresolved issues related to the safety of operating aging reactor equipment beyond 60 years. The NRC Staff has instructed licensees that they must "resolve" issues related to reactor pressure vessel embrittlement; irradiation-assisted stress corrosion cracking of reactor internals, concrete structures and containment degradation; and electrical cable qualification and condition assessment, in order to "provide the technical bases to ensure safe operation beyond 60 years."

SECY-14-0016, Enclosure 1 at 2-3. Again, there is no indication that these issues have been

resolved. The uncertainties raised by the EMDA Report and SECY-14-0016 regarding the risks of design-basis accidents must be addressed in order to satisfy NEPA.

C. Demonstration that the Contention is Within the Scope of the Proceeding

Contention 3 is within the scope of this SLR proceeding because it raises issues of compliance with NEPA and NRC regulations for implementation of NEPA.

D. Demonstration that the Contention is Material to the Findings NRC Must Make to renew Exelon's operating license

Contention 3 is material to the findings that NRC must make in order to ensure that the NEPA review of Exelon's operating license application adequately considers the environmental impacts of operating Peach Bottom Units 2 and 3 for twenty additional years beyond its current 60-year operating license term.

E. Concise Statement of the Facts or Expert Opinion Supporting the Contention, Along with Appropriate Citations to Supporting Scientific or Factual Materials

As detailed in Section B. above (Basis Statement), Contention 3 relies on the facts and opinions stated by NRC officials in SECY-14-0016 and the EMD Report.

IV. BEYOND NUCLEAR HAS GOOD CAUSE TO FILE THIS MOTION AFTER THE INITIAL DEADLINE FOR HEARING REQUEST.

Beyond Nuclear satisfies the three requirements of 10 C.F.R. § 2.309(c)(1) for establishing good cause to submit Contention 3 after the initial November 11, 2018 deadline for filing hearing requests on Exelon's subsequent license renewal application. First, the information on which Contention 3 is based "was not previously available." 10 C.F.R. § 2.309(c)(1)(i). The NRC Staff's analysis of the environmental impacts of operating Peach Bottom Units 2 and 3 for a second license renewal term did not exist before publication of the Draft GEIS Supp. 10.

Second, the information upon which the amendment to the contentions is based is “materially different” from the information that was previously available in Exelon’s Environmental Report. 10 C.F.R. § 2.309(c)(1)(ii). Draft Supp. 10 and the Environmental Report are materially different in the respect that they rely on different regulations to justify the applicability of Table B-1; and because the Draft GEIS Supp. 10 contains a discussion of the environmental impacts of design-basis accidents that did not appear in the Environmental Report.

Finally, this motion has been submitted in a “timely fashion based on the availability of the subsequent information.” Beyond Nuclear’s counsel received an e-mail notice of the availability of Draft Supp. 10 on August 3, 2019. *See* Attachment, E-mail to Diane Curran from nrc_mail_2-1.Resource@nrc.gov re: Notice of Availability Of Draft Supplement 10, Second Renewal To The Generic Environmental Impact Statement For License Renewal of Nuclear Plants Regarding Subsequent License Renewal For Peach Bottom Atomic Power Station Units 2 and 3. (While the message itself is dated August 2, counsel for Beyond Nuclear did not receive it until August 3 as shown by the attached cover sheet.) Contention 3 is being filed within 30 days of that notice, and therefore the timing of Contention 3 is reasonable. *See, e.g., Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-07-15, 66 N.R.C. 261, 266 n.11 (2007) (finding that timeliness of contentions depends on “the facts and circumstances of each situation” and noting the general application of a 30-day period by many licensing board panels).

V. CONCLUSION

For the foregoing reasons, the ASLB or the Commission should admit Contention 3.

Respectfully submitted,

 /signed electronically by/

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