

October 31, 2019

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

EXELON GENERATION COMPANY, LLC

(Peach Bottom Atomic Power Station,  
Units 2 and 3)

Docket No. 50-277-SLR  
50-278-SLR

NRC STAFF ANSWER TO  
BEYOND NUCLEAR INC.'S MOTION FOR LEAVE TO REPLY

Pursuant to 10 C.F.R. § 2.323(c), the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) hereby files its answer to Beyond Nuclear, Inc.'s motion for leave to reply<sup>1</sup> to the Staff's opposition to Beyond Nuclear's motion to reopen.<sup>2</sup> Beyond Nuclear filed its motions to support its proposed Contention 3 concerning the subsequent license renewal application submitted by Exelon Generation Company, LLC (Exelon) for Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom).

The Commission should deny Beyond Nuclear's motion because it does not meet the requirements of 10 C.F.R. § 2.323(c). Replies to answers to motions to reopen are allowed only if there are "compelling circumstances, such as where the moving party demonstrates that it

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<sup>1</sup> Beyond Nuclear, Inc's Motion for Leave to File Reply to Oppositions to Motion to Reopen the Record of Proceeding for Subsequent License Renewal of Peach Bottom Operating License (Oct. 21, 2019) (Motion for Leave to Reply).

<sup>2</sup> 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, 10-11 (Sept. 23, 2019) (Motion to Reopen).

could not reasonably have anticipated the arguments to which it seeks leave to reply.”<sup>3</sup> While Beyond Nuclear claims that it “could not have anticipated” NRC Staff interpretations that, in Beyond Nuclear’s view, are “inapplicable” to this proceeding or “inconsistent with the language” in two court decisions,<sup>4</sup> Beyond Nuclear does not state a basis for this cursory assertion or otherwise identify compelling circumstances.

Moreover, with regard to the *Union of Concerned Scientists* case,<sup>5</sup> Beyond Nuclear already articulated its interpretation of this case in its previous filing.<sup>6</sup> As an experienced litigant in NRC proceedings, Beyond Nuclear could reasonably have anticipated that the Staff might disagree with Beyond Nuclear’s interpretation of caselaw.<sup>7</sup>

Beyond Nuclear also requests permission to “address” Staff’s argument that Beyond Nuclear’s failure to file a motion to reopen on the same day as its motion to admit Contention 3 was fatal and inexcusable. In its motion for leave to reply, Beyond Nuclear seeks to “point out that the error of its counsel was excusable” and to explain that only part of the information in its motion was submitted out of time.<sup>8</sup> But Beyond Nuclear merely seeks to repeat its previous

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<sup>3</sup> 10 C.F.R. § 2.326(c); see also *Virginia Elec. and Power Co.* (North Anna Power Station, Unit 3), CLI-12-14, 75 NRC 692, 700-01 (2012) (noting that the heightened motion to reopen standard for contentions filed after a proceeding has closed does not violate Atomic Energy Act hearing rights).

<sup>4</sup> See Motion for Leave to Reply at 1-2 (referring to *Union of Concerned Scientists v. NRC*, 920 F.2d 50 (D.C. Cir. 1990) (*UCS II*); *New Jersey Environmental Federation v. NRC*, 645 F.3d 220 (3d. Cir. 2011)). Beyond Nuclear similarly claims that it could not have anticipated Exelon’s interpretation of *UCS II* or CLI-12-14. See Motion for Leave to Reply at 2.

<sup>5</sup> *UCS II*.

<sup>6</sup> See Motion to Reopen at 9-11.

<sup>7</sup> See *Tennessee Valley Authority*, (Sequoyah Nuclear Plant, Units 1 and 2), CLI-14-03, 79 NRC 31, 35 (denying motion to reply because “[a]s an experienced litigant in our proceedings, TVA should reasonably have anticipated that the Staff might challenge its interpretation of section 2.311...”); *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-15-28, 82 NRC 233, 244 (denying motion to reply because “an experienced litigator such as Entergy would surely expect the State to provide legal arguments in favor of those conditions [it favored] and to challenge Entergy’s interpretation of the case law...”).

<sup>8</sup> Motion for Leave to Reply at 2.

argument, which acknowledges that “two elements” of its motion were “not timely filed.”<sup>9</sup>

Beyond Nuclear further repeats its claim that its untimeliness is “excusable” because of lack of clarity in NRC regulations.<sup>10</sup> This request to repeat previous arguments does not identify compelling circumstances.

Because Beyond Nuclear has not shown the existence of compelling circumstances required by 10 C.F.R. § 2.323(c), the Commission should not grant Beyond Nuclear’s motion to reply.

Respectfully submitted,

**/Signed (electronically) by/**

Kayla Gamin  
Counsel for NRC Staff  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-14-A44  
Washington, DC 20555  
Telephone: (301) 287-9234  
E-mail: [Kayla.Gamin@nrc.gov](mailto:Kayla.Gamin@nrc.gov)

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

Mitzi A. Young  
Counsel for NRC Staff  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-14-A44  
Washington, DC 20555  
Telephone: (301) 287-9178  
E-mail: [Mitzi.Young@nrc.gov](mailto:Mitzi.Young@nrc.gov)

Dated at Rockville, Maryland  
this 31st day of October 2019

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<sup>9</sup> Motion to Reopen at 11. As Beyond Nuclear admitted in the Motion to Reopen, both its standing declarations and the affidavit required by 10 C.F.R. § 2.326(b) were not timely filed—contrary to its assertion in the Motion for Leave to Reply that only the standing declarations were untimely. *Compare* Motion to Reopen at 11 *with* Motion for Leave to Reply at 2.

<sup>10</sup> Motion for Leave to Reply at 11-12.

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing "NRC STAFF ANSWER TO BEYOND NUCLEAR INC.'S MOTION FOR LEAVE TO REPLY," dated October 31, 2019, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned proceeding, this 31st day of October 2019.

**/Signed (electronically) by/**

Kayla Gamin  
Counsel for NRC Staff  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-14-A44  
Washington, DC 20555  
Telephone: (301) 287-9234  
E-mail: [Kayla.Gamin@nrc.gov](mailto:Kayla.Gamin@nrc.gov)

Dated at Rockville, Maryland  
this 31st day of October 2019