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To whom it may concern:

Attached please find the comments of Beyond Nuclear regarding the Point Beach Subsequent License Renewal Draft Supplemental Generic Environmental Impact Statement (DSGEIS) Docket ID NRC-2020-0234.

Thank you,

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**Beyond Nuclear Comments re: Point Beach Nuclear Generating Station DSGEIS  
As Pertain to the Misuse of 10 CFR 51.53(c)(3) and Generic Approval**

To whom it may concern:

On behalf of Beyond Nuclear, please find comments regarding Docket ID NRC-2020-0234, Draft Supplemental Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 23, Second Renewal, Regarding Subsequent License Renewal for Point Beach Nuclear Plant, Units 1 and 2, Draft Report for comment (NUREG-1437), November 2021 (DSGEIS).<sup>1</sup>

Beyond Nuclear comments focus on NextEra Energy Point Beach, LLC's (NextEra) and US Nuclear Regulatory Commission (NRC) staff misinterpretation, misrepresentation and misuse of Code of Federal Regulation in the DGEIS as applied to the application for a second 20-year of operating license renewal (60- to 80-year) for the Point Beach Nuclear Power Station.

Point Beach nuclear power station is two Westinghouse Pressurized Water Reactors sited in Twin Rivers, Wisconsin on the shore of Lake Michigan. Point Beach nuclear station received its "initial" 20-year license renewal for both Unit 1 and Unit 2 on December 22, 2005. Unit 1's operating license now expires October 5, 2030 and Unit 2 on March 3, 2033.

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<sup>1</sup> Draft Supplemental Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 23, Second Renewal, Regarding Subsequent License Renewal for Point Beach Nuclear Plant, Units 1 and 2, Draft Report for comment (NUREG-1437), November 2021 (DSGEIS), <https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/supplement23-slr/index.html>

The NRC staff's preliminary decision on NextEra's Environmental Report is that the consequences of extending operations out to 80-years is not "unreasonable." The staff findings and decision are based largely on the "generic approval" of scores of environmental issues that have been determined to be so "small" and inconsequential that the NRC staff can rely on their generic approval to environmentally qualify the Point Beach nuclear power station for its second or "subsequent" license renewal without a site-specific review. The "generic" finding streamlines the evaluation process and effectively nullifies a public hearing review without waiver on significant environmental issues including the environmental consequences of a severe accident and mitigation alternatives during the second extension period.

The federal agency is seeking public comment on its proposed revised generic approval through "NUREG-1437-Draft for Comment - Generic Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 23, Second Renewal Regarding Subsequent License Renewal for Point Beach Nuclear Power Station, Units 1 and 2". (369 pp.)

### **Misuse by misinterpretation and misrepresentation of 10 CFR 51.53(c)(3)**

Beyond Nuclear has identified that the Point Beach DSGEIS contains a significant "error of law" that effectively streamlines and expedites the approval process of NextEra's Point Beach Subsequent License Renewal Request.

In particular, the DSGEIS review and analysis of severe nuclear accidents, environmental consequences and severe accident mitigation alternative are flawed by misuse through misinterpretation and misrepresentation of the plain language of NRC regulatory law. A plain reading of the Code of Federal Regulation at 10 CFR 51.53(c)(3), "*Post Construction Environmental Reports*" finds the regulation applies only to the (c) "*Operating license renewal stage*" expressly and exclusively (3) "*For those applicants seeking an initial renewed license...*" [Emphasis added]<sup>2</sup> The "*initial*" license renewal period is the 40- to 60-year operating license for which Point Beach was approved and is currently operating within. A material fact, not in question, is that NextEra is seeking a "subsequent" or second license renewal to extend Point Beach operations to 60- to 80-years.

The NRC and NextEra have made an "error of the law" by incorporating 10 CFR 51.53(c)(3) into the Point Beach DSGEIS to approve the Subsequent License Renewal for operations out to 60- to 80-years by exempting the reactor site to an updated site-specific environmental review.

Emphasis is added in the following examples of this "error of law":

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<sup>2</sup> 10 CFR 51.53(c)(3) <https://www.nrc.gov/reading-rm/doc-collections/cfr/part051/part051-0053.html>

a.) Excerpt from Point Beach DSGEIS, Part 3, Environment, Affected Environment and Environmental Consequences, Section 3.1:

*“For Category 1 issues, the NRC staff relies on the analysis in the GEIS unless otherwise noted. Table 3-1 lists the Category 1 (generic) issues that apply to Point Beach during the proposed subsequent license renewal period.”*<sup>3</sup> [Emphasis added]

b.) Excerpt from Point Beach DSGEIS, Part 3, Affected Environment and Environmental Consequences, Section 3.11.6.4, Environmental Consequences of Postulated Accidents:

*“The GEIS (NRC 2013a) evaluates the following two classes of postulated accidents as they relate to license renewal:*

- *“Design-Basis Accidents: Postulated accidents that a nuclear facility must be designed and built to withstand without loss to the systems, structures, and components necessary to ensure public health and safety.*
- *“Severe Accidents: Postulated accidents that are more severe than design-basis accidents because they could result in substantial damage to the reactor core.*

*“NextEra’s 2004 environmental report submitted as part of its initial license renewal application for Point Beach included an assessment of severe accident mitigation alternatives (SAMAs) for Point Beach (NextEra 2004). The NRC staff at that time reviewed NextEra’s 2004 analysis of SAMAs (Severe Accident Mitigation Alternatives) and documented this review in its SEIS for the initial license renewal, which the NRC published in 2005, as Supplement 23 to NUREG-1437 (NRC 2005a). Since the NRC staff has previously considered SAMAs for Point Beach, NextEra was not required to perform another SAMA analysis for its subsequent license renewal application (see 10 CFR 51.53(c)(3)(ii)(L)”).* [Emphasis added]<sup>4</sup>

c) Excerpt Point Beach DSGEIS, Part 3, Affected Environment and Environmental Consequences, Section 3.14, Evaluation of New and Significant Information:

*“As stated in Section 3.1 of this SEIS, for Category 1 (generic) issues, the NRC staff can rely on the analysis in the GEIS (NRC 2013a) unless otherwise noted. Table 3-1 lists the Category 1 issues that apply to Point Beach during the proposed subsequent license renewal period. For these issues, the NRC staff did not identify any new and significant information based on its review of the applicant’s ER, the environmental site audits, the review of available information as cited in this SEIS, or arising through the environmental scoping process, that would change the conclusions presented in the GEIS.”* [Emphasis added]<sup>5</sup>

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<sup>3</sup> DSGEIS @ p.72 of 369

<sup>4</sup> DSGEIS @ p. 222 of 369

<sup>5</sup> DSGEIS @ p. 237 of 369

d) Excerpt Point Beach DSGEIS, Appendix F.1.4 Severe Accidents and License Renewal:

*“An analysis of the severe accident mitigation alternative (SAMA) was performed for Point Beach at the time of initial license renewal (NextEra 2004). The NRC staff documented its review of this SAMA analysis in NUREG-1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 23, Regarding Point Beach, Units 1 and 2 (NRC 2005a). Per 10 CFR 51.53(c)(3)(ii)(L), an applicant is not required to provide a consideration of alternatives to mitigate severe accidents if the NRC staff has previously considered severe accident mitigation alternatives for the applicant’s plant. Instead, for its review of SAMA for the Point Beach subsequent license renewal, the NRC staff considered any new and significant information that might alter the conclusions of its review of SAMA for the Point Beach initial license renewal, as discussed below.” [Emphasis added]*<sup>6</sup>

*“The regulation at 10 CFR 51.53(c)(3)(ii)(L), states that each license renewal applicant must submit an environmental report that considers alternatives to mitigate severe accidents “if the staff has not previously considered severe accident mitigation alternatives for the applicant's plant in an environmental impact statement or related supplement or in an environmental assessment.” [Emphasis added]*<sup>7</sup>

e) Excerpt Point Beach DSGEIS, Appendix F.2, Severe Accident Mitigation Alternatives (SAMA), F.2.2, Subsequent License Renewal Application and New and Significant Information as It Relates to the Probability-Weighted Consequences of Severe Accidents:

*“The purpose of the SAMA analysis is to identify design alternatives, procedural modifications, or training activities that may further reduce the risks of severe accidents at nuclear power plants and that are also potentially cost beneficial to implement. The SAMA analysis includes the identification and evaluation of SAMAs that may reduce the radiological risk from a severe accident by preventing substantial core damage (i.e., preventing a severe accident) or by limiting releases from containment if substantial core damage occurs (i.e., mitigating the impacts of a severe accident) (NRC 2013a). The regulation at 10 CFR 51.53(c)(3)(ii)(L) states that each license renewal applicant must submit an ER that considers alternatives to mitigate severe accidents “if the staff has not previously considered severe accident mitigation alternatives for the applicant’s plant in an environmental impact statement or related supplement or in an environmental assessment.” [Emphasis added]*<sup>8</sup>

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<sup>6</sup> DSGEIS @ p. 342 of 369

<sup>7</sup> DSGEIS @ p. 342 of 369

<sup>8</sup> DSGEIS @ p. 343 of 369

f) Excerpt Point Beach DSGEIS, F.2.2, Subsequent License Renewal Application and New and Significant Information as It Relates to the Probability-Weighted Consequences of Severe Accidents”:

*“As discussed above, a license renewal application must include an ER that describes SAMAs if the NRC staff has not previously considered SAMAs for that plant in an EIS, in a related supplement to an EIS, or in an environmental assessment. As also discussed above, the NRC staff performed a site-specific analysis of Point Beach SAMAs in the SEIS for that plant’s initial license renewal (NRC 2005a). Therefore, in accordance with 10 CFR 51.53(c)(3)(ii)(L) and Table B-1 of Appendix B to Subpart A of 10 CFR Part 51, NextEra is not required to provide another SAMA analysis in its ER for the Point Beach subsequent license renewal application.”* [Emphasis added]<sup>9</sup>

g) Excerpt Point Beach DSGEIS, Appendix F.4, Environmental Impacts of Postulated Accident, Other New Information Related to NRC Efforts to Reduce Severe Accident Risk Following Publication of the 1996 GEIS

*“The Commission reaffirmed its SAMA-related conclusions in Table B-1 of Appendix B to Subpart A of 10 CFR Part 51 and 10 CFR 51.53(c)(3)(ii)(L), ‘Postconstruction environmental reports,’ in Exelon Generation Co., LLC (Limerick Generating Station, Units 1 and 2), CLI-13-07, October 31, 2013). In addition, the Commission observed that it had promulgated those regulations because it had ‘determined that one SAMA analysis would uncover most cost-beneficial measures to mitigate both risk and the effects of severe accidents, thus satisfying our obligations under NEPA [National Environmental Policy Act] (2013b).’”*

### **10 CFR 51.53(c)(3) and the Subsequent License Renewal Review Process as Identified by the Minority Dissent of NRC Commissioners Baran and Hansen**

Prior misinterpretation and misuse of 10 CFR 51.53(c)(3) is identified in Subsequent License Renewal interventions brought forward by separate challenges from Beyond Nuclear for Subsequent License Renewal Applications of Exelon Corporation’s Peach Bottom (PA) nuclear power station and Dominion Energy’s North Anna nuclear power station (VA) and where it is presently on appeal by Beyond Nuclear before the currently seated Commission. The Natural Resources Defense Council had originally raised the issue in a contention at Florida Power and Light’s Turkey Point Subsequent License Renewal Application that was similarly denied a hearing by a licensing board and a subsequent Commission Memorandum and Order. This apparent recurring “error of law” by the agency, different applicants and the NRC licensing boards can be recognized as unsettled based on a reading of the written minority dissent of two Commissioners, Commissioner Jeff Baran and Commissioner Christopher Hanson, in

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<sup>9</sup> DSGEIS @ p. 344 of 369

the Commission Memorandum and Order denying a public hearing in the Peach Bottom subsequent license renewal.<sup>10</sup>

In the prior Beyond Nuclear intervention in the Exelon Generation LLC Subsequent License Renewal of Peach Bottom Units 2 and 3, the Commission voted in the majority to dismiss all the Beyond Nuclear contentions including Contention 2A which identified the 10 CFR 51.53(c)(3) error and denied Beyond Nuclear's request for a hearing before an Atomic Safety Licensing Board.

However, in the matter of the Peach Bottom Subsequent License Renewal Application Commission decision of November 12, 2020, Commissioners Baran and Hanson's dissent argued, *"However, we respectfully dissent from the majority's analysis of Contention 2A because we conclude 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 NEPA. This legal conclusion does not reflect a policy position on the merits of subsequent license renewal or a determination that properly supported generic environmental findings cannot be applied in the subsequent license renewal context."* [Emphasis added]<sup>11</sup>

The Commissioners go on to say that *"reliance on the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (2013 GEIS) to address reactor aging phenomena and design-basis accidents for the subsequent license renewal time period is misplaced and depends on an incorrect reading of 10 C.F.R. § 51.53(c)(3)."*<sup>12</sup>

*"Beyond Nuclear further argues that this deficient analysis cannot be applied to satisfy the agency's requirement to take a 'hard look' under NEPA because the 2013 GEIS did not analyze the subsequent license renewal time period. We agree."* [Emphasis added]<sup>13</sup>

*"Contrary to the majority's assertions, the plain and unambiguous language of 10 C.F.R. § 51.53(c)(3) legally precludes its application beyond the initial license renewal period, and the GEIS did not evaluate the environmental impacts of subsequent license renewal."* [Emphasis added]<sup>14</sup>

*"Section 51.53(c)(1) applies to '[e]ach applicant for renewal of a license to operate a nuclear power plant under part 54,' and section 51.53(c)(2) contains requirements for the environmental report that must be submitted by any such applicant. By contrast, section 51.53(c)(3) narrows the scope of license renewal applicants to which it applies and speaks only of 'those applicants seeking an initial renewed license and holding an*

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<sup>10</sup> Memorandum and Order, NRC Commissioners, Peach Bottom nuclear power station, Dockets 277-SLR and 278-SLR, November 12, 2020, Commissioner Baran and Commissioner Hanson, Dissenting in Part, pp. 18-20 of 22, <https://www.nrc.gov/docs/ML2031/ML20317A110.pdf>

<sup>11</sup> Ibid, p.18 of 22

<sup>12</sup> Ibid, p.18 of 22

<sup>13</sup> Ibid, p.18 of 22

<sup>14</sup> Ibid, p.18 of 22



*operating license, construction permit, or combined license as of June 30, 1995.’ The explicit language of the regulation states that the provisions of 51.53(c)(1) and (c)(2) apply to all license renewal applicants, including those for subsequent license renewal, while section 51.53(c)(3) applies only to initial license renewal applicants.” [Emphasis added]<sup>15</sup>*

*“A basic canon of statutory construction is that the express mention of one thing excludes all others. When the regulatory text of section 51.53(c)(3) specifically addresses ‘those applicants seeking an initial renewed license,’ it is properly read as not addressing applicants seeking other license renewal terms.” [Emphasis added]<sup>16</sup>*

*“The 2013 GEIS does not address environmental impacts for the subsequent license renewal period. Therefore, incorporation by reference of the GEIS, without additional evaluation of impacts during the subsequent period of renewal, is insufficient to satisfy NEPA.” [Emphasis added]<sup>17</sup>*

*“Because section 51.53(c)(3) applies only to applicants for initial license renewal and the 2013 GEIS did not actually analyze the subsequent license renewal time period, neither subsequent license renewal applicants nor the NRC Staff may exclusively rely on the GEIS and 10 C.F.R. Part 51, Subpart A, Appendix B, Table B-1 to evaluate environmental impacts of Category 1 issues. Expanding the scope of the 2013 GEIS after the fact not only violates the agency’s obligations under NEPA to evaluate the impacts of its actions, but also effectively eliminates any opportunity for the public to be involved in the agency’s decision-making. We would therefore hold that Beyond Nuclear identified an error of law in the Board’s decision on Contention 2A, which should have been admitted as a contention of omission.” [Emphasis added]<sup>18</sup>*

In summary, “NUREG-1437-Draft for Comment - Generic Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 7, Second Renewal Regarding Subsequent License Renewal for Point Beach Units 1 and 2 is therefore similarly flawed because it fails comply with NRC regulation and NEPA law.

Sincerely,

-----signed by Paul Gunter---

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<sup>15</sup> Ibid, p.18 of 22

<sup>16</sup> Ibid, p.19 of 22

<sup>17</sup> Ibid, p.20 of 22

<sup>18</sup> Ibid, p.20 of 22