

March 31, 2022

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

CONSTELLATION ENERGY GENERATION
LLC (F/K/A EXELON GENERATION
COMPANY, LLC)

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

Docket Nos. 50-277-SLR
50-278-SLR

NRC STAFF'S RESPONSE TO VIEWS ON PRACTICAL EFFECTS

INTRODUCTION

Pursuant to the Commission's direction in CLI-22-4,¹ the NRC Staff hereby provides its response to the views of Beyond Nuclear, Inc.² and the views of Constellation Energy Generation, LLC (Constellation)³ concerning the practical effects of (1) the subsequent renewed licenses continuing in place and (2) the previous renewed licenses being reinstated.

DISCUSSION

Beyond Nuclear asserts that if Constellation's subsequent renewed licenses remain in place, it signals that the NEPA process will not result in any meaningful insights or changes, and therefore weighs in favor of vacating the extended license in its entirety, and restoring the initial

¹ *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-22-4, 95 NRC ___ (Feb. 24, 2022) (ADAMS accession no. ML22055A557).

² Beyond Nuclear's Response to Constellation Energy Generation, LLC's Petition for Partial Reconsideration of CLI-22-04 and Beyond Nuclear's Views in Response to CLI-22-04 (Mar. 17, 2022) (ML22076A089) (Beyond Nuclear's Views).

³ Constellation's Response to Commission Request for Views in CLI-22-04 (Mar. 21, 2022) (ML22080A250) (Constellation's Views).

renewed licenses.⁴ However, the Commission has already determined that under some circumstances it may allow a license to remain in place while the agency cures a National Environmental Policy Act (NEPA) deficiency.⁵ With respect to the Peach Bottom subsequent renewed licenses, the Commission has stated its expectation that there is sufficient time to cure the NEPA deficiency.⁶

Beyond Nuclear also argues, in part, that it would not be “appropriate for the Commission to reinstate all of the now-outdated safety programs that applied to the initial license renewal term.”⁷ Instead, Beyond Nuclear asserts that “[h]aving completed a safety review and offered a hearing on Constellation’s revised Aging Management Plan (“AMP”), the Commission may declare that Constellation’s initial renewed license has effectively been amended, with the required procedures for fairness and due process, to incorporate the revised AMP.”⁸ Beyond Nuclear’s argument that the Commission may *sua sponte* convert a license renewal proceeding into a license amendment proceeding while still respecting the required procedures and due process⁹ lacks merit. As the Commission noted in *Oyster Creek*, a license

⁴ Beyond Nuclear’s Views at 14. Beyond Nuclear also asserts that the NRC suppressed evidence (the Ramuhalli report). *Id.* at 12. This claim is baseless, as reflected by the recitation of the record Beyond Nuclear itself provides. *See id.* at 4. In any case, Beyond Nuclear used the Ramuhalli report (original and as revised) as part of Beyond Nuclear’s hearing request, which was denied by the Atomic Safety and Licensing Board in *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483 (2019) (ML19171A159); *aff’d*, *Peach Bottom*, CLI-20-11, 92 NRC 335 (2020); *rev’d on other grounds*, *Peach Bottom*, CLI-22-4, 95 NRC __.

⁵ *Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), CLI-19-1, 89 NRC 1, 6 (2019) (stating in part “Until Powertech can lawfully use its NRC license, the risk of harm occurring to any Tribal cultural resources that is traceable to the identified NEPA deficiency will remain hypothetical. ... Continuing to leave Powertech’s license in place for now thus appears to us to be the approach most consistent with the court’s opinion.”). Notably the Commission did “not attempt here to set forth a comprehensive formula for addressing any future circumstances in which significant NEPA deficiencies are found through our hearing process after staff issuance of a license under 10 C.F.R. § 2.1202(a).” *Powertech*, CLI-19-1, 89 NRC at 10–11.

⁶ *Peach Bottom*, CLI-22-4, 95 NRC at __ (slip op. at 4).

⁷ Beyond Nuclear’s Views at 10–11, 14–16.

⁸ *Id.* at 15.

⁹ Beyond Nuclear’s Views at 15 (asserting this would be consistent with *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 400 (2008)).

renewal may be set aside (or appropriately conditioned) even after it has been issued, upon subsequent administrative or judicial review.¹⁰ If a renewed license is subsequently set aside, the operating license previously in effect will be reinstated.¹¹ The Commission never intended 10 C.F.R. § 54.31(c) to suggest that if a renewed license were somehow set aside upon appeal, the licensee could not continue operating under its previous operating license.¹² *Oyster Creek* does not hold that the Commission can convert a proceeding involving the review of an application for a subsequent renewed license into a proceeding concerning the sufficiency of the current license.¹³ Instead, the process for raising concerns about the sufficiency of the current license is the 10 C.F.R. § 2.206 process; license renewal applications are licensing actions and are not considered under 10 C.F.R. § 2.206.¹⁴ If Beyond Nuclear believes that either Peach Bottom unit would not be safe to operate under the reinstated renewed licenses, then Beyond Nuclear may request action under 10 C.F.R. § 2.206.¹⁵

In contrast, Constellation argues that reinstating the previous Peach Bottom licenses would eliminate the subsequent license renewal license conditions that, among other things, require compliance with enhanced aging management programs, with the result being that the licensee would not be required to comply with those programs.¹⁶ Constellation further asserts that “each of the forty-four aging management programs and fifty commitments in the aging

¹⁰ *Oyster Creek*, CLI-08-13, 67 NRC at 400.

¹¹ 10 C.F.R. § 54.31(c). The regulation states in part that the license “previously in effect will be reinstated unless its term has expired and the renewal application was not filed in a timely manner,” but those factors are not relevant here because, as the Commission noted in *Peach Bottom*, CLI-22-4, 95 NRC at ___ (slip op. at 3), the previous Unit 2 and Unit 3 licenses expire on August 8, 2033, and July 2, 2034, respectively.

¹² Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,964 (Dec. 13, 1991).

¹³ *Oyster Creek* concerned a motion for the Commission to refrain from making a final decision on the issuance of a renewed license. *Oyster Creek*, CLI-08-13, 67 NRC 396.

¹⁴ *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant, Unit 1), DD-07-3, 65 NRC 643, 644 (2007).

¹⁵ See *Nextera Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-19-7, 90 NRC 1, 3 (2019).

¹⁶ Constellation's Views at 5.

management program would have to be individually evaluated[,]" and those based solely on subsequent license renewal would be removed.¹⁷ Constellation argues that reinstating the superseded initial renewed licenses "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."¹⁸ Constellation states that it is not clear how to restore or address changes to the licensing basis if the previous licenses were reinstated.¹⁹ The Staff agrees that the previous superseded licenses did not require (and, if reinstated, would not require) the licensee to implement the new and enhanced programs developed for subsequent renewal.²⁰ The Staff also agrees that reconciling the licensing basis under a reinstated license would be complex.²¹

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 6.

²⁰ NRC Staff Views on the Practical Effects of (1) The Subsequent Renewed Licenses Continuing In Place and (2) The Previous Licenses Being Reinstated, at 8 (Mar 21, 2022) (ML22080A274).

²¹ *Id.* at 9–10.

CONCLUSION

The Staff notes that Beyond Nuclear and Constellation appear to agree that the enhanced subsequent license renewal aging management programs are preferable to the previous programs required by the superseded initial renewed licenses but disagree as to how to retain them. The Staff's view is that maintaining the subsequent renewed licenses is the simplest, most efficient way to continue requiring those enhanced aging management programs found desirable by both Beyond Nuclear²² and Constellation.

/Signed (electronically) by/

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²² The Staff understands that maintaining the subsequent renewed licenses is not what Beyond Nuclear advocates. See Beyond Nuclear's Views at 16.

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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'S RESPONSE TO VIEWS ON PRACTICAL EFFECTS," dated March 31, 2022, have been served upon the Electronic Information Exchange (the NRC's E-Filing System), in the captioned proceeding, this 31st day of March 2022.

/Signed (electronically) by/

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Dated this 31st day of March 2022