

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Dr. Sue H. Abreu
Dr. Gary S. Arnold

In the Matter of

EXELON GENERATION COMPANY, LLC

(Three Mile Island Nuclear Station, Units 1
and 2)

Docket Nos. 50-289 and 50-320

ASLBP No. 20-962-01-LA-BD01

December 10, 2019

MEMORANDUM AND ORDER
(Initial Prehearing Order)

This proceeding concerns a July 1, 2019 application submitted by Exelon Generation Co., LLC, (Exelon) that asks the Nuclear Regulatory Commission (NRC) to amend the existing 10 C.F.R. Part 50 license for the Three Mile Island Nuclear Station, Unit 1, by revising the facility's Site Emergency Plan (SEP) and Emergency Action Level (EAL) scheme to reflect the reactor's permanently defueled condition.¹ On September 10, 2019, the NRC published a Federal Register notice of hearing opportunity regarding this application.² Petitioners Eric J. Epstein (Epstein) and Three Mile Island Alert, Inc., (TMIA) submitted a hearing request on

¹ Letter from Michael P. Gallagher, Vice President, Exelon, to NRC Document Control Desk at 1-2 (July 1, 2019) (ADAMS Accession No. ML19182A182).

² Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Consideration, 84 Fed. Reg. 47,542, 47,448-49 (Sept. 10, 2019).

November 12, 2019, with two contentions challenging the Exelon licensing request.³ By memorandum dated December 5, 2019, the Secretary of the Commission referred this petition to the Chief Administrative Judge,⁴ who, in turn, on December 9, 2019, referred the hearing petition to this Licensing Board to rule on standing and contention admissibility matters and preside at any hearing.⁵

Regarding the conduct of this proceeding, the following directives shall apply:

I. BRIEFING SCHEDULE

Acting pursuant to 10 C.F.R. § 2.309(i), the NRC staff filed its answer to the hearing petition on December 6, 2019, while Exelon filed its answer on December 9, 2019.⁶ Any reply on behalf of Mr. Epstein and/or TMIA to these answers is due on or before Monday, December 16, 2019.⁷

³ [Epstein/TMIA] Petition to Intervene and Hearing Request (Nov. 12, 2019).

⁴ Memorandum from Annette Vietti-Cook, NRC Secretary, to E. Roy Hawkens, Chief Administrative Judge (Dec. 5, 2019).

⁵ [Exelon], Establishment of Atomic Safety and Licensing Board, 84 Fed. Reg. __ (Dec. __, 2019) (ADAMS Accession No. ML19343B174).

⁶ See NRC Staff Answer to [TMIA] Petition (Dec. 6, 2019); [Exelon]'s Answer Opposing [Epstein]'s and [TMIA]'s Petition to Intervene (Dec. 9, 2019).

⁷ Although under section 2.309(i)(2) the time for filing a reply to the Staff's December 6 answer would be December 13, 2019, to permit a unified pleading or contemporaneous submissions responding to the NRC staff and Exelon answers, we will extend the time for Epstein/TMIA to reply to the staff's answer to December 16, 2019.

II. ADMINISTRATIVE MATTERS

A. Notice of Appearance

If they have not already done so, on or before Monday, December 16, 2019, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b). In each notice of appearance, besides providing a business address and telephone number, an attorney or representative should provide a facsimile number and an email address.

B. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Absent preapproval by the Board or some other Board directive, any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including the signature page, but excluding the certificate of service and any attachments/enclosures).⁸ Any request for preapproval to exceed this page limitation shall be submitted in writing no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed. The request must (1) indicate (as is the case with any motion) whether the request is opposed or supported by the other participants to the

⁸ Any answers/replies associated with the November 2019 hearing request are not subject to this page limitation. However, any subsequent motion for admission of a new or amended contention under section 2.309(f)(2) and responses/replies to such a motion are subject to this page limitation. In an instance when more than one new or amended contention is being filed in connection with information that is asserted to provide the basis for a motion to admit new or amended contentions, see infra note 13, because the page limit applies regardless of the number of contentions involved, in lieu of filing multiple separate motions of ten pages seeking the admission of each individual contention, it would be preferable to seek leave of the Board to exceed the page limit. If granted, this would permit the participant to file one timely motion that deals with all the contentions being proffered regarding the information that is asserted to trigger motion.

proceeding;⁹ (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

Except in instances involving a motion to file a new/amended contention, participants in this proceeding must request permission to file a reply to a response/answer to a motion.¹⁰ A request for Board preapproval to file a reply shall be submitted in writing no less than three business days prior to the time the reply will be filed.¹¹ A request to file a reply must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate compelling circumstances exist for permitting the reply to be filed.¹²

⁹ See 10 C.F.R. § 2.323(b). Pursuant to section 2.323(b), any motion requires a certification by the attorney or representative for the moving participant/party that a sincere effort has been made to contact the other participants/parties in the proceeding and resolve the matters raised by the motion, but that the movant's efforts in this regard have been unsuccessful. The Board notes that it is inconsistent with the dispute avoidance/resolution purposes of section 2.323(b) for counsel or the representative for the non-moving participant/party to fail to make a sincere effort to be available to consult regarding, or to fail to attempt in good faith to resolve, the factual and legal issues raised in the motion. Also, if the consultation mandated by section 2.323(b) is initiated within a reasonable time and the participants/parties believe that all or part of the matter may be resolved amicably if additional time is provided for filing the motion, the participants/parties are encouraged to file a joint motion requesting such a time extension.

¹⁰ Compare 10 C.F.R. § 2.323(c), with id. § 2.309(i)(2).

¹¹ Although the agency's rules of practice regarding motions practice do not provide for reply pleadings, the Board will presume that for a reply to be timely, it would have to be filed within seven days of the date of service of the response it is intended to address. See 10 C.F.R. § 2.309(i)(2).

¹² Section 2.323(c) indicates that "compelling circumstances" might be shown in an instance when the moving participant/party demonstrates that it could not reasonably have anticipated the arguments to which it seeks to reply. Another "compelling circumstance" may be if a participant/party files an answer supporting a motion that includes new facts or arguments.

C. Motions for Extension of Time

A motion for extension of time in this proceeding shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought.¹³ A motion for extension of time must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate appropriate cause that supports permitting the extension.

D. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be filed and served on the Board, the Office of the Secretary, and the counsel/representative for the other participants in this proceeding no later than the next business day after the filing of the request.

¹³ Unless some other time is specified in the agency's rules of practice or by the Board, in accordance with 10 C.F.R. § 2.323(a) motions generally are due within 10 days after the occurrence or circumstance from which the motion arises, with any response to that motion due within 10 days of service of the motion. The Board observes, however, relative to motions seeking the admission of new/amended contentions, see 10 C.F.R. § 2.309(f)(2), that to be considered timely under 10 C.F.R. § 2.309(c)(1)(iii), such motions (and the accompanying new/amended contention) should be filed within 30 days of the date upon which the information that is the basis of the motion becomes available to the petitioner/intervenor. Moreover, notwithstanding the provisions of section 2.309(i)(1), any answer to a motion seeking the admission of a new/amended contention shall be due within 14 days of service of the motion, and any reply to an answer is due within seven days of service of the response.

E. Attachments/Enclosures to Filings and Evidentiary Exhibits

For all future filings, if a participant files a pleading or other submission to which additional documents are appended, these items should be referred to as attachments or enclosures (not exhibits) and a separate alpha or numeric designation should be given to each appended document (e.g., Attachment A, Enclosure 1), either on the first page of the appended document or on a cover/divider sheet in front of the appended document. Attachments or enclosures to a motion and any related responsive pleadings are not subject to the page limitation set forth in section II.B.1 above, but should be submitted via the agency's E-Filing system as part of a single electronic file that consists of the pleading or other submission, the certificate of service, and all the attachments or enclosures associated with the pleading or submission. In accordance with the agency's E-Filing guidance (at page 19), multiple electronic files should be used for pleadings or submissions with attachments or enclosures only if the filing exceeds 100 megabytes in size.¹⁴

The label "exhibit" shall be reserved for use as a designation for those items that are submitted, whether by pre-filing or at the time of an evidentiary hearing, as potential materials a participant will seek to have identified for inclusion in the evidentiary record of the proceeding. Evidentiary hearing exhibits (and prefiled written testimony) shall be submitted via the agency's E-Filing system as separate electronic files. See 10 C.F.R. § 2.304(g).

F. Filing Date on Pleadings

The Board requests that the first page of each pleading submitted by a participant include the pleading's filing date in the upper right-hand corner or as part of the caption.

¹⁴ See <https://www.nrc.gov/site-help/e-submittals/adjudicatory-eie-submission-user-guide.pdf> (access link for Adjudicatory Submission User's Guide (rev. 1 Oct. 2016)).

III. Initial Prehearing Conference and Limited Appearance Statements

The Board has not yet determined whether it will hold an initial prehearing conference to hear argument regarding any disputes over standing or the admissibility of the proffered contentions or whether it intends to conduct oral limited appearance statements at some juncture.

Nevertheless, in accord with 10 C.F.R. § 2.315(a), any person not a petitioner to this proceeding that wishes to make a statement regarding the issues in the proceeding can do so in writing. Although these limited appearance statements, which will be placed in the docket of this proceeding, do not constitute testimony or evidence, they nonetheless may help the Board or the parties in their consideration of the matters of concern in this proceeding.

A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to: Office of the Secretary
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax to: (301) 415-1101 (verification (301) 415-1677)

Email to: hearingdocket@nrc.gov

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address/fax number below:

Mail to: Administrative Judge G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
Mail Stop T-3A02
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax to: (301) 415-5206 (verification (301) 415-7550)

Email to: paul.bollwerk@nrc.gov

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 10, 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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EXELON GENERATION COMPANY LLC) Docket Nos. 50-289 and 50-320-LA
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Three Mile Island Nuclear Station)
(Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Initial Prehearing Order)** have been served upon the following persons by Electronic Information Exchange.

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MEMORANDUM AND ORDER (Initial Prehearing Order)

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Dated at Rockville, Maryland,
this 10th day of December 2019

[Original signed by Herald M. Speiser]
Office of the Secretary of the Commission