

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

February 19, 2020

MEMORANDUM AND ORDER

(Denying Motion for Stay and to Reply to Licensing Board Decision
and Referring Pleading to the Commission)

In a January 23, 2020 memorandum and order, this Licensing Board denied the request of pro se petitioners Eric J. Epstein and Three Mile Island Alert, Inc., (Petitioners) seeking a hearing to challenge a July 1, 2019 license amendment request by Exelon Generation Company, LLC, (Exelon) to amend the 10 C.F.R. Part 50 operating license for Three Mile Island Nuclear Station, Unit 1. See LBP-20-02, 91 NRC __, __ (slip op. at 29) (Jan. 23, 2020). In that ruling, we indicated that pursuant to 10 C.F.R. § 2.311 any appeal from that decision could be taken within 25 days after that issuance was served, see id., which under the provisions of 10 C.F.R. § 2.306(a) would have required that any appeal be lodged with the Commission on or before February 18, 2020. On February 16, 2020, however, Petitioners filed a pleading directed to this Board entitled “Motion To Stay Memorandum and Reply to Proposed Order Denying

Intervention and Petition.” See Motion To Stay Memorandum and Reply to Proposed Order Denying Intervention and Petition (Feb. 16, 2020) at 1 [hereinafter Petitioners Motion].¹

Like the heading on this filing, the content of Petitioners’ submission creates some uncertainty about that pleading’s procedural posture. Nonetheless, when considered in the context of the Board’s January 23, 2020 determination denying their hearing petition, Petitioners’ pleading appears to encompass one or more of three possible requests for relief.²

First, as the initial portion of the pleading’s heading suggests, the filing may be a request for a stay of the Board’s ruling dismissing the hearing petition. See id. While the agency’s rules of practice indicate that a request for a stay of a licensing board decision can be filed with either the board or the Commission, they also declare that such a request must be submitted within 10 days of service of the contested issuance, which in this case would have been by February 3, 2020. See 10 C.F.R. § 2.342(a). Being almost two weeks out of time without any showing of good cause for its lateness, see id. § 2.307(a), Petitioners’ stay motion must be denied.³

¹ Although the date in the caption of Petitioners’ pleading indicates the filing was made on “February 18, 2020,” the date at the bottom of the pleading’s first and last pages is “February 16, 2020,” Petitioners Motion at 1, 23, which also corresponds with the date the filing was submitted using the agency’s E-Filing system.

² Applicant Exelon and the Nuclear Regulatory Commission Staff generally would be entitled to an opportunity to answer Petitioners’ pleading and provide their views on the nature of that filing. See 10 C.F.R. § 2.323(c). In light of the clear legal basis for our rulings on the pleading’s efficacy before the Board, as outlined below, and the lack of any prejudice to Exelon and/or the Staff from those rulings, in this instance no useful purpose would be served by awaiting additional filings from these participants.

³ Petitioners’ motion also warrants dismissal as lacking a statement reflecting the outcome of consultation with the other participants to the proceeding and, as their filing may constitute a stay request, for failing to address the standards governing the issuance of a stay. See id. §§ 2.323(b), 2.342(b), (e).

A second possibility arises from the indication in the pleading's heading that it is a "reply" to the Licensing Board's January 23, 2020 determination.⁴ Petitioners Motion at 1. While the agency's rules of practice do not sanction such a reply pleading per se, they do permit a motion seeking reconsideration of a licensing board decision.⁵ See 10 C.F.R. § 2.323(e). As the rule governing such a motion makes clear, however, a reconsideration request likewise must be submitted within 10 days. See id. But once again having failed to meet the applicable deadline without a showing of good cause, see id. § 2.307(a), Petitioners' reply/reconsideration request must be denied.⁶

Finally, the Petitioners' pleading contains an extensive discussion about why they have standing to intervene and why the two contentions they proffered are admissible. See Petitioners Motion at 11–22. Standing and contention admissibility deficiencies were the bases for the Board's determination that their hearing petition could not be granted. See LBP-20-02, 91 NRC at ___–___ (slip op. at 14–29). It thus is possible that this filing constitutes their appeal from the Licensing Board's January 23, 2020 ruling denying their hearing petition. If that is the case, however, that appeal has been directed to the wrong presiding officer. Accordingly, to

⁴ Although the pleading's heading refers to the Board's January 23, 2020 decision as a "Proposed Order Denying Intervention and Petition," Petitioners Motion at 1, it is apparent that our ruling denying their hearing request and terminating the proceeding before the Board was, in fact, a final, fully effective order, see LBP-20-02, 91 NRC at ___, ___ (slip op. at 2, 29).

⁵ The agency's rules of practice also provide for a motion to reopen the closed record of a proceeding to consider additional evidence, see 10 C.F.R. § 2.326(a), which is clearly inapplicable here since no evidentiary record was created in this proceeding.

⁶ Denial of this request also is appropriate because Petitioners have failed to provide the showing of "compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid" that is necessary to support a reconsideration motion. Id. § 2.323(e).

avoid any confusion in that regard, we refer Petitioners' February 16, 2020 pleading to the Commission for whatever further action it may deem appropriate.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 19, 2020

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Denying Motion for Stay and to Reply to Licensing Board Decision and Referring Pleading to the Commission)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16B33
Washington, DC 20555-0001
ocaamail@nrc.gov

Molly R. Mattison, Law Clerk
Molly.Mattison@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16B33
Washington, DC 20555-0001
hearingdocket@nrc.gov

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-14A44
Washington, DC 20555-0001

G. Paul Bollwerk, III, Chairman
Administrative Judge
paul.bollwerk@nrc.gov

Reginald Augustus, Esq.
Tyson Campbell, Esq.
Kayla Gamin, Esq.
David E. Roth, Esq.
Brian Newell, Paralegal
reginal.augustus@nrc.gov
tyson.campbell@nrc.gov
kayla.gamin@nrc.gov
david.roth@nrc.gov
brian.newell@nrc.gov

Dr. Sue H. Abreu
Administrative Judge
sue.abreu@nrc.gov

Dr. Gary S. Arnold
Administrative Judge
gary.arnold@nrc.gov

Ian Curry, Law Clerk
ian.curry@nrc.gov

Taylor Mayhall, Law Clerk
taylor.mayhall@nrc.gov

Stephanie B. Fishman, Law Clerk
Stephanie.Fishman@nrc.gov

Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555
Tamra Domeyer, Esq.
tamra.domeyer@exeloncorp.com

THREE MILE ISLAND (Units 1 and 2) – Docket No. 50-289 and 50-320-LA
**MEMORANDUM AND ORDER (Denying Motion for Stay and to Reply to Licensing Board
Decision and Referring Pleading to the Commission)**

Counsel for Exelon Generation Company, LLC
Morgan Lewis Bockius
1000 Louisiana Street Suite 4000
Houston, TX 77002
Ryan K Lighty, Esq.
Katheryn Sutton, Esq.
ryan.lighty@morganlewis.com
kathryn.sutton@morganlewis.com

Three Mile Island Alert, Inc.
4100 Hillsdale Road
Harrisburg, PA 17112
Eric Epstein
lechambon@comcast.net

Dated at Rockville, Maryland,
this 19th day of February 2020.

[Original signed by Krupskaya T. Castellon]
Office of the Secretary of the Commission