

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:)

GPU NUCLEAR, INC.)

(Three Mile Island Nuclear Station, Unit No. 2))

) Docket Nos. 50-320-LT

) April 13, 2020
)
)
)

JOINT MOTION FOR ENTRY OF A PROTECTIVE ORDER

Pursuant to 10 C.F.R. § 2.323, GPU Nuclear, Inc. (“GPU Nuclear”), TMI-2 Solutions, LLC (“TMI-2 Solutions”), and Eric J. Epstein and Three Mile Island Alert, Inc. (collectively with Mr. Epstein “Petitioners”) hereby move that the U.S. Nuclear Regulatory Commission (“Commission”) approve an agreed-upon Protective Order. This Protective Order governs the disclosure of, access to, and use of Sensitive Unclassified Non-Safeguards Information (“SUNSI”), including documents that GPU Nuclear and TMI-2 Solutions and other participants in this proceeding claim contain proprietary trade secrets, commercial or financial information, or both. The proposed Protective Order, which includes a Non-Disclosure Declaration, is attached to this Motion.

GPU Nuclear, TMI-2 Solutions, and Petitioners have consulted pursuant to 10 C.F.R. § 2.323(b) on this Motion and the proposed Protective Order. TMI-2 Solutions and Petitioners have indicated that they support this Motion and associated proposed Protective Order.

Respectfully submitted,

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

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Counsel for GPU Nuclear, Inc.

Dated at Washington, DC
this 13th day of April 2020

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:)

GPU NUCLEAR, INC.)

(Three Mile Island Nuclear Station, Unit No. 2))

) Docket Nos. 50-320-LT

) April 15, 2020
)
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)

MEMORANDUM AND ORDER

**(Protective Order Governing the Disclosure of Sensitive
Unclassified Non-Safeguards Information)**

Upon consideration of the Motion for Entry of a Protective Order of Licensee GPU Nuclear, Inc. (“GPU Nuclear”), TMI-2 Solutions, LLC (“TMI-2 Solutions”), and Eric J. Epstein, and Three Mile Island Alert, Inc. (collectively with Mr. Epstein “Petitioners”), the Commission hereby GRANTS the motion and issues this Protective Order, the terms of which are as follows:

1. This Protective Order shall govern the access, disclosure, and use of all Sensitive Unclassified Non-Safeguards Information (“SUNSI”) in this proceeding, including SUNSI shared in this proceeding prior to issuance of this Protective Order. For the avoidance of doubt, SUNSI as used in this Protective Order includes confidential commercial information submitted to the Nuclear Regulatory Commission (“NRC”) pursuant to 10 CFR 2.390. The SUNSI that is subject to this order is business proprietary information of GPU Nuclear and its affiliates or TMI-2 Solutions and its affiliates, and is being provided to the Petitioners by GPU Nuclear, TMI-2 Solutions, or by the NRC Staff solely to facilitate the Petitioners’ request to participate in this proceeding. This Protective Order shall remain in effect until specifically amended or

terminated by the Commission, or an Atomic Safety and Licensing Board (“Board”) or Hearing Officer appointed by the Commission.

2. Persons who may receive SUNSI pursuant to this Protective Order are designated the “Authorized Recipients.” Such persons may receive SUNSI as follows:

a. Eric J. Epstein is granted access to SUNSI under this Protective Order. He shall execute, and shall file, the attached Non-Disclosure Declaration (Attachment 1) to gain access to SUNSI. An individual shall not receive access to the SUNSI until the individual executes, and the Petitioners file, the Non-Disclosure Declaration.

b. The Petitioners may seek authorization for an additional or substitute person(s) necessary for the preparation of the Petitioners’ case to receive SUNSI. Person(s) under the direct supervision of a Petitioners’ legal counsel (such legal counsel having filed a notice of appearance in the proceeding) are authorized to receive SUNSI once the individual executes, and the Petitioners file, the Non-Disclosure Declaration. For all other persons, permission may be obtained either by written agreement with GPU Nuclear and TMI-2 Solutions; or upon approval by the Commission, or a Board or Hearing Officer appointed by the Commission, of a motion requesting such authorization. The Petitioners shall file any written agreement via the Electronic Information Exchange (“EIE”) system, consistent with 10 C.F.R. § 2.305. Any additional or substitute person shall be subject to the terms of this Order and shall not receive access to the SUNSI until the individual executes, and the Petitioners file, the Non-Disclosure Declaration.

c. Petitioners’ legal counsel shall be responsible for using reasonable best efforts to ensure that persons under their supervision or control comply with this Protective Order.

3. “Authorized Holders” of SUNSI include Authorized Recipients; NRC personnel and contractors; personnel, contractors, and legal counsel of GPU Nuclear and TMI-2 Solutions and their affiliates; the Commission, or Board or Presiding Officer appointed by the Commission, and their staff; and Commission adjudicatory employees as defined by 10 C.F.R. § 2.4.

4. Other than the requirements set forth in this Protective Order for filing documents and initially providing SUNSI to the Petitioners, the terms of this Protective Order do not apply to the NRC personnel and contractors. The NRC’s use of SUNSI is governed by NRC regulations and policies as well as other applicable laws.

5. SUNSI shall not be used or reproduced by Authorized Recipients except as necessary for the conduct of this proceeding.

6. SUNSI disclosed pursuant to this Protective Order shall be treated as confidential by Authorized Recipients. SUNSI disclosed pursuant to this Protective Order shall not be disclosed in any manner to any person except (1) the Commission, the Office of the Secretary, a Board or Hearing Officer Appointed by the Commission for this proceeding, and their respective staffs; (2) the NRC Staff, its counsel, and contractors or consultants employed by the U.S. Government; and (3) those persons engaged in the conduct of this proceeding who have executed a Non-Disclosure Declaration (Attachment 1). Authorized Recipients may copy and take notes of SUNSI, but such copies and notes become SUNSI subject to the terms of this Protective Order. Authorized Recipients may generate documents containing SUNSI, but such documents are also subject to the terms of this Protective Order. Authorized Recipients shall not reveal, either during or after this proceeding, any SUNSI that is received by virtue of this proceeding as long as the information remains SUNSI.

7. Marking Documents Containing SUNSI:

a. Each document containing SUNSI shall be marked “**CONTAINS PROTECTED INFORMATION – SUBJECT TO PROTECTIVE ORDER**” in a conspicuous manner at the top of every page (including the first page or cover page and transmittal documents) and centered when feasible.

b. Electronic storage media (including, but not limited to USB sticks, removable hard drives, CD ROMs, or DVDs) containing SUNSI shall be marked “SUNSI.”

c. Authorized Recipients shall treat unmarked information that qualifies as SUNSI in accordance with the terms of this order.

8. Safeguarding SUNSI: Authorized Recipients shall take reasonable precautions to guard against unauthorized disclosure of SUNSI. Among the reasonable precautions, the following measures shall be included:

a. Each Authorized Recipient shall establish “controlled environments” in which to protect SUNSI from unauthorized access or disclosure and make use of those controlled environments. A controlled environment is any area or space with adequate physical or procedural controls to protect SUNSI from unauthorized access or disclosure. A controlled environment must satisfy the requirements in paragraphs 8.b to 8.d of this Protective Order.¹

b. Each Authorized Recipient shall reasonably ensure that unauthorized individuals cannot access, observe, or overhear SUNSI.

¹ An acceptable controlled environment must prevent unauthorized individuals from accessing, observing, or overhearing SUNSI. Thus, an Authorized Recipient should use a computer to view or process SUNSI only if the computer screen cannot be viewed by unauthorized individuals. Also, viewing or processing SUNSI on a public computer, such as those found in public libraries, would not be acceptable, because unauthorized individuals could access the computer’s memory to retrieve the SUNSI.

c. Each Authorized Recipient shall keep SUNSI under his or her direct control or store SUNSI in a secure location such as a locked filing cabinet, closet, or other storage containers so that only Authorized Holders can observe or access the SUNSI.

d. Each Authorized Recipient shall restrict access to electronic information systems containing SUNSI so that only Authorized Holders can observe or access the SUNSI. Each Authorized Recipient shall furthermore take reasonable steps to ensure that electronic information systems containing SUNSI have up to date virus and security protections.

9. SUNSI may be transmitted only to Authorized Holders and only in accordance with the following requirements:

a. SUNSI shall be electronically transmitted (such as by phone, computer, tablet, smartphone, etc.) in encrypted form.

b. SUNSI may be discussed only between or among Authorized Holders.

c. SUNSI shall not be transmitted by facsimile.

d. SUNSI may be physically transmitted only by the following means:

i. by hand delivery from an Authorized Holder to another Authorized Holder, or

ii. by U.S. mail or commercial delivery service in an opaque envelope addressed to the Authorized Holder with no external markings to indicate the presence of SUNSI.

10. Documents containing SUNSI shall be filed using the EIE system as follows:

a. The Petitioners, GPU Nuclear, and TMI-2 Solutions shall take the necessary actions to obtain a digital certificate and file documents in this proceeding using the EIE system.

b. The person filing the document shall choose the option “Non-Public Submission” to prevent the document from being filed in the public docket of the proceeding.

c. In the “Submission Comments” portion of the “Non-Public Submission” form, the filer shall include a statement that the filing contains SUNSI.

d. Only the Commission, or Board or Presiding Officer appointed by the Commission, NRC Staff counsel, GPU Nuclear’s counsel, TMI-2 Solutions’ counsel, the Petitioners’ representative, the Office of the Secretary (HearingDocket@nrc.gov), the Office of Commission Appellate Adjudication (OCAEmail@nrc.gov), and other Authorized Holders shall be “checked” as recipients on the electronic service list.

e. All non-public filings shall be accompanied by a separate, publicly filed cover letter that briefly identifies the nature of the non-public filing without including SUNSI.

11. Persons may not reveal SUNSI during any open hearing or conference session. At any open hearing or conference, any person who intends to discuss SUNSI shall notify the Commission, or Board or Presiding Officer appointed by the Commission, and the participants that such discussion will contain SUNSI prior to the statement being made. Such statements containing SUNSI may be provided only in closed session as permitted by the Commission, or Board or Presiding Officer appointed by the Commission.

12. All Authorized Recipients shall maintain a log of all copies of materials containing SUNSI within their possession or control.

13. If the Petitioners have reason to believe that SUNSI may have been lost or misplaced, or that SUNSI has otherwise become available to unauthorized persons, the Petitioners shall promptly notify the Commission, or Board or Presiding Officer appointed by the Commission, GPU Nuclear’s counsel, and TMI-2 Solutions’ counsel regarding that belief and

the reason for that belief by filing a notification through the EIE system as a non-public submission in accordance with paragraphs 10.b to 10.d of this Protective Order, without publicly filing a cover letter as would otherwise be required by paragraph 10.e of this Protective Order. If any Authorized Recipient has reason to believe that SUNSI may have been lost or misplaced, or that SUNSI has otherwise become available to unauthorized persons, that person shall promptly notify the Petitioners' representative of that belief so that the Petitioners may make the required notification.

14. If, upon receipt and review of a document containing SUNSI, Petitioners determine that such document does not appear to qualify for protection, Petitioners may file a motion with the Commission, or Board or Hearing Officer appointed by the Commission to adjudicate this proceeding, challenging such designation. The motion shall not contain any SUNSI and shall be filed as a "Public Submission" through the EIE; the challenged documents which contain SUNSI shall be filed as an "In-Camera Submission" through the EIE. In this manner, all parties and the public will know when such a motion is filed, but the SUNSI will continue to be withheld from public disclosure. Absent good cause shown, any such motion shall be filed within 30 days of receipt of the document containing SUNSI. Before presenting any such dispute to the Commission, the parties shall consult and use their best efforts to resolve it, including, but not limited to, the use of redaction. However, no party is obligated to redact documents containing SUNSI.

15. If Petitioners file a motion for disclosure under the preceding paragraph of this Protective Order, pending a ruling by the Commission, the information in question shall continue to be held in confidence as if it were SUNSI. If the Commission rules that a document does not qualify for the asserted SUNSI protection, or that, on balance, the document should be disclosed

without the restrictions of this Protective Order, then the unrestricted use of such documents may begin 15 days after the Commission's decision. If, during such time, GPU Nuclear or TMI-2 Solutions files an interlocutory appeal or request that the issue be certified to the Commission, the SUNSI restrictions previously in place for the information in question shall be extended until such time as the Commission rules on the appeal or request for certification.

16. The Commission, or Board or Presiding Officer appointed by the Commission, may alter or amend this Protective Order and resolve disputes regarding the application of its terms. The Petitioners, GPU Nuclear, TMI-2 Solutions, or NRC Staff may seek amendments to this Protective Order or the Non-Disclosure Declarations via motion (*see* 10 C.F.R. § 2.323).

17. SUNSI shall remain available to each Authorized Recipient until the Access Termination Date. The Access Termination Date is the earlier of (a) the date of an order by the Commission, or Board or Presiding Officer appointed by the Commission, rescinding the right of access granted by this Protective Order; (b) the date of an order by the Commission, or Board or Presiding Officer appointed by the Commission, terminating this proceeding for any SUNSI other than that needed to pursue or defend against an appeal of an order by the Commission, or Board or Presiding Officer appointed by the Commission; or (c) the date that an order terminating this proceeding is no longer subject to judicial review for any SUNSI that is needed to pursue or defend against an appeal of an order by the Commission, or Board or Presiding Officer appointed by the Commission.

18. Within 60 days of the Access Termination Date, Petitioners shall either destroy all materials containing SUNSI or return such materials to the participant that provided the SUNSI to the Petitioners. Each Authorized Recipient shall take those actions necessary for the Petitioners to satisfy this obligation, but Authorized Recipients may retain copies of filings,

official transcripts, exhibits, and notes that have been redacted so that only those portions not containing SUNSI remain accessible. Each Authorized Recipient shall execute the attached Termination of Possession Declaration (Attachment 2), stating that the SUNSI within his or her possession or control has been returned or destroyed. The Petitioners shall file the executed Declaration of destruction with the SECY via EIE within 60 days of the Access Termination Date and e-mail a copy of the executed Declaration(s) to counsel for GPU Nuclear and TMI-2 Solutions.

19. This Protective Order does not govern SUNSI owned by other third parties and in the possession or control of the parties (“Third-Party Protected Information”). Should any party seek access to Third-Party Protected Information of another party, then the producing party shall make reasonable efforts to obtain from the owner of the Third-Party Protected Information any necessary approvals for its release, subject to any appropriate nondisclosure provisions. If there are costs associated with acquiring the rights or approval to produce Third-Party Protected Information (e.g., copyright or subscription costs), then the producing party will inform the requesting party of the total costs involved, and the requesting party must agree to pay those costs as a condition of being supplied the Third-Party Protected Information. If the requesting party does not agree to pay these costs, then the producing party is not obligated to go through the effort of acquiring approval to produce the Third-Party Protected Information.

20. Nothing in this Protective Order shall preclude a participant to this proceeding from objecting to the use of an exhibit, testimony, or a pleading because it contains SUNSI. The Commission, or Board or Presiding Officer appointed by the Commission, may issue additional orders concerning the use of SUNSI.

21. Nothing in this Protective Order shall preclude any person from seeking public disclosure of SUNSI in accordance with NRC regulations and applicable federal law. Nothing in this Protective Order shall preclude any person from seeking through discovery in any other administrative or judicial proceeding any information protected by this Protective Order.

22. If information identified in this proceeding as SUNSI comes into the possession of or is known by any participant independently of SUNSI produced in this proceeding, and such knowledge was acquired without violation of law or other requirements applicable to such participant directing the participant to keep such information confidential, use of that document or information in this proceeding, without compliance with the terms of this Protective Order, shall not be a violation of the terms of this Protective Order. The participant asserting independent knowledge of the contents of SUNSI or independent access to such a document shall have the burden of proving that such information was independently obtained if a party asserts that disclosure of such information or document was a violation of this Protective Order.

23. Any violation of this Protective Order or of any Non-Disclosure Declaration executed hereunder may result in the imposition of sanctions as the Commission, or Board or Presiding Officer appointed by the Commission, deems appropriate.² Nothing in this Protective Order restricts or waives GPU Nuclear's, TMI-2 Solutions', or the NRC's rights to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of SUNSI.

24. The Petitioners must file executed Non-Disclosure Declarations within 2 business days after the issuance of this Protective Order. Within 3 business days after the filing of the executed Non-Disclosure Declarations, GPU Nuclear or TMI-2 Solutions shall transmit to the

² See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).

Petitioners' representative(s) by one of the methods provided in paragraph 9 an appropriately marked copy of those portions of the Application requested by Petitioners in writing.

It is so ORDERED.

For the Commission

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this __th day of April 2020

ATTACHMENT 1

NON-DISCLOSURE DECLARATION

I, Eric J. Epstein, state:

1. I have read the Commission's _____, _____ Protective Order issued in this proceeding for Three Mile Island Nuclear Station, Unit 2, 50-320-LT, and will comply in all respects with its terms and conditions regarding the Sensitive Unclassified Non-Safeguards Information (SUNSI) produced in connection therewith. I will protect and keep confidential all SUNSI including security-related and/or proprietary information in accordance with the terms of this Non-Disclosure Declaration.
2. I will not disclose SUNSI to anyone except an Authorized Holder as defined in the Protective Order. I will protect documents containing SUNSI in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents containing such SUNSI), so that the SUNSI contained therein remains at all times under the control of an Authorized Holder and is not revealed to anyone else.
3. When not under my direct control or the direct control of another Authorized Holder, I will keep and protect all documents containing SUNSI (including, without limitation, transcripts, pleadings, documents that I generate, and any notes and copies that I make) in a secure locked place such as a filing cabinet, closet, or other storage container.
4. I will restrict access to electronic information systems with SUNSI in accordance with the terms of the Protective Order.
5. I will transmit SUNSI and file documents containing SUNSI only in accordance with the terms of the Protective Order.
6. I will mark each document containing SUNSI in accordance with the terms of the Protective Order.
7. Neither during nor after this proceeding, will I publicly reveal any SUNSI that I receive by virtue of this proceeding as long as the information remains SUNSI.
8. I acknowledge that any violation of the terms of this declaration or the Commission's Protective Order, which incorporates the terms of this declaration, may result in the imposition of such sanctions on me that the Commission, or Board or Presiding Officer appointed by the Commission, may deem to be appropriate, or any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of SUNSI.

WHEREFORE, I certify under penalty of perjury that the foregoing is true and correct and do solemnly agree to protect and keep confidential such SUNSI as may be disclosed to me in this proceeding in accordance with the terms of this declaration.

Signature

Executed on:

Date

Address:

Phone number:

E-mail:

[Handwritten Signature]
4/15/20

4100 Hillsdale Road, Harrisburg, PA
17102

717-635-8615

cps@hmc.org

ATTACHMENT 2

TERMINATION OF POSSESSION DECLARATION

I, _____, state:

In accordance with Commission's _____, _____ Protective Order, I have destroyed or returned all Sensitive Unclassified Non-Safeguards Information (SUNSI) in my possession by one or more of the following methods (check all that apply):

_____ I have destroyed materials containing SUNSI in accordance with the Protective Order.

_____ I have returned SUNSI to the participant (GPU Nuclear, Inc., TMI-2 Solutions, LLC, or NRC Staff) that provided the SUNSI to the Petitioners.

_____ I have returned SUNSI to the Petitioners' representative so that he or she can destroy or return the SUNSI in accordance with the Protective Order.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Signature

Executed on: _____

Date

Address: _____

Phone number: _____

E-mail: _____

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:)	
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GPU NUCLEAR, INC.)	Docket Nos. 50-320-LT
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(Three Mile Island Nuclear Station, Unit No. 2))	April 13, 2020
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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that the foregoing “Joint Motion for Entry of a Protective Order” was served upon the Electronic Information Exchange (the NRC’s E-Filing system), in the above-captioned proceeding.

Signed (electronically) by Grant W. Eskelsen
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