

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

E. Roy Hawkens, Chairman
Nicholas G. Trikouros
Dr. Gary S. Arnold

In the Matter of

TMI-2 SOLUTIONS, LLC

(License Amendment Request for Three
Mile Island Nuclear Station, Unit 2)

Docket No. 50-320-LA-2

ASLBP No. 23-977-02-LA-BD01

November 14, 2022

MEMORANDUM AND ORDER
(Initial Prehearing Order)

This proceeding concerns a February 19, 2021 request by TMI-2 Solutions, LLC (TMI-2 Solutions) to amend the existing Possession Only License (POL) for its Three Mile Island Nuclear Station, Unit 2 (TMI-2). The proposed license amendment request (LAR) seeks to revise the POL and the associated Technical Specifications (TS) to support the transition of TMI-2 from Post Defueled Monitoring Storage (PDMS) to that of a facility undergoing decommissioning.¹

In response to a hearing opportunity notice published in the Federal Register,² Eric Epstein filed a petition challenging the license amendment request for TMI-2 on November 3,

¹ See TMI-2 Solutions, LLC; Three Mile Island Station, Unit No. 2, 87 Fed. Reg. 51,454 (Aug. 22, 2022).

² See id.

2022.³ On November 9, 2022, this Licensing Board was established to rule on standing and contention admissibility matters and to preside at any hearing.⁴

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

I. BRIEFING SCHEDULE

Pursuant to 10 C.F.R. § 2.309(i), the answers of TMI-2 Solutions and the NRC Staff to Mr. Epstein's petition are due by Monday, November 28, 2022. Any reply to those answers is due by Monday, December 5, 2022.

II. ADMINISTRATIVE MATTERS

A. Notice of Appearance

If they have not already done so, on or before Thursday, November 17, 2022, each counsel or representative for a participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b) via the agency's E-Filing system.⁵ Each notice of appearance should include (in addition to a business address and telephone number for the counsel or representative) an email address.

B. Administrative Prescriptions for Pleadings

1. All pleadings filed after the date of this memorandum and order shall be double spaced.

³ See Petition of Eric Epstein for Leave to Intervene in TMI-2 Solutions, LLC's Amendment Proceeding and Request for a Hearing (Nov. 3, 2022). Although Mr. Epstein's petition is dated November 4, 2022, it was received through the NRC's E-Filing System on November 3, 2022.

⁴ See Establishment of Atomic Safety and Licensing Board (Nov. 9, 2022).

⁵ For assistance with the NRC's E-Filing system, a participant can contact the Electronic Filing Helpdesk by visiting its webpage (<https://www.nrc.gov/site-help/e-submittals/contact-us-eie.html>); calling (866) 672-7640 between the hours of 9:00 a.m. to 6:00 p.m. Eastern Time, Monday through Friday (excluding federal government holidays), or send an e-mail to <https://www.nrc.gov/site-help/e-submittals/contact-us-eie.html>.

2. Absent preapproval by this Board, any motion filed after the date of this memorandum and order and any related responsive pleading shall not exceed ten pages in length (including the signature page, but excluding the certificate of service and any attachments/enclosures).⁶ Any request for preapproval to exceed this page limitation requirement 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 whether the request is opposed or supported by the other participants to the proceeding;⁷ (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.

C. Replies to an Answer to a Motion

Except in instances involving a motion to file a new/amended contention, a participant to this proceeding must request permission to file a reply to an answer to a motion.⁸ 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.⁹ A request to file a reply must (1) indicate whether the

⁶ Any answer and reply associated with Mr. Epstein's petition are not subject to this page limitation.

⁷ See 10 C.F.R. § 2.323(b). Pursuant to section 2.323(b), a motion requires a certification by the moving participant, or the attorney or representative for the moving participant, that a sincere effort has been made to contact the other participants in the proceeding and resolve the matters raised by the motion, but that the movant's efforts in this regard have been unsuccessful. If the consultation mandated by section 2.323(b) is initiated within a reasonable time and the participants believe that all or part of the matter may be resolved amicably if additional time is provided for filing the motion, the participants are encouraged to file a joint motion requesting such a time extension.

⁸ See 10 C.F.R. § 2.323(c).

⁹ Although the agency's rules 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 answer it is intended to address. Cf. 10 C.F.R. § 2.309(i)(2).

request is opposed or supported by the other participants to the proceeding; and

(2) demonstrate that compelling circumstances exist for permitting the reply to be filed.¹⁰

D. Motions for Extension of Time

A motion for an extension of time 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.¹¹ A motion for extension of time must (1) indicate whether the request is opposed or supported by the other participants to this proceeding; and (2) demonstrate appropriate cause that supports permitting the extension.

E. 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 no later than the next business day after the filing of the request.

¹⁰ Section 2.323(c) indicates that “compelling circumstances” might be shown in an instance when the moving participant demonstrates that it could not reasonably have anticipated the arguments to which it seeks to reply.

¹¹ Unless some other time is specified in the agency’s rules or by the Board, in accordance with 10 C.F.R. § 2.323(a)(2), (c), motions (other than summary disposition motions) generally are due within 10 days after the occurrence or circumstance from which the motion arises, with any answer to that motion due within 10 days of service of the motion. An exception to this ten-day filing period is a motion seeking the admission of new/amended contentions. See 10 C.F.R. § 2.309(f)(2); see also id. § 2.323(a)(1) (motions for new/amended contentions not subject to section 2.323 requirements). For such a motion to be considered timely under 10 C.F.R. § 2.309(c)(1)(iii), the motion (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.

F. Attachments/Enclosures to Pleadings

For future filings, if a participant proffers a pleading that has additional documents appended to it, these items should be referred to as attachments or enclosures (not exhibits),¹² with a separate alpha or numeric designation given to each appended document (e.g., Attachment A, or 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.2 above but should be submitted via the agency's E-Filing system as part of a single electronic file consisting of the pleading, the certificate of service, and all the associated attachments or enclosures.¹³

G. 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.

¹² The label "exhibit" should 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. See 10 C.F.R. § 2.304(g).

¹³ In accordance with the agency's electronic submission guidance, multiple electronic files should be used for pleadings or submissions with attachments or enclosures only if the filing exceeds 500 megabytes in size. See Guidance for Electronic Submissions to the NRC (Revision 9), at 6 (Aug. 6, 2021), <https://www.nrc.gov/docs/ML13031A056.pdf>.

III. INITIAL PREHEARING CONFERENCE

The Board has not determined whether it will hold an initial prehearing conference to hear oral argument regarding standing or the admissibility of Mr. Epstein's proffered contentions. The Board will make that determination after the case is fully briefed. If the Board determines that an oral argument is warranted, the Board's law clerk, Emily Newman (emily.newman@nrc.gov), will coordinate scheduling with the parties.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 14, 2022

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
TMI-2 Solutions, LLC) Docket No. 50-320-LA-2
)
(License Amendment Request for Three Mile)
Island Nuclear Station, Unit 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.

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

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

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001
E. Roy Hawkens, Chairman
Nicholas G. Trikouros, Administrative Judge
Dr. Gary S. Arnold, Administrative Judge
Noel M. Johnson, Law Clerk
Emily G. Newman, Law Clerk
Alison R. Wood, Law Clerk
E-mail: Roy.Hawkens@nrc.gov
Nicholas.Trikouros@nrc.gov
Gary.Arnold@nrc.gov
Noel.Johnson@nrc.gov
Emily.Newman@nrc.gov
Alison.Wood@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-14A44
Angela B. Coggins Julie G. Ezell
Adam S. Gendelman
Catherine E. Kanatas
Mauri T. Lemoncelli
Ethan P. Licon
Joseph D. McManus
Kevin C. Roach
David E. Roth
Sherwin E. Turk
Susan H. Vrahoretis
E-mail: Angela.Coggins@nrc.gov
Julie.Ezell@nrc.gov
Adam.Gendelman@nrc.gov
Catherine.Kanatas@nrc.gov
Mauri.Lemoncelli@nrc.gov
Ethan.Licon@nrc.gov
Joseph.McManus@nrc.gov
Kevin.Roach@nrc.gov
David.Roth@nrc.gov
Sherwin.Turk@nrc.gov
Susan.Vrahoretis@nrc.gov

Counsel for TMI Solutions, LLC
Hogan Lovells US, LLP
555 13th Street, NW
Washington, DC 20004
Daniel F. Stenger
Stephanie Fishman
E-mail: daniel.stenger@hoganlovells.com
Stephanie.Fishman@hoganlovells.com

THREE MILE ISLAND NUCLEAR STATION, UNIT 2 – Docket No. 50-320-LA-2
MEMORANDUM AND ORDER (Initial Prehearing Order)

Energy Solutions, LLC
299 South Main Street, Suite 1700
Salt Lake City, UT 84111
Russ Workman, General Counsel
E-mail: rgworkman@energysolutions.com

Eric Epstein
4100 Hillsdale Road
Harrisburg, PA 17112
E-mail: epstein@efmr.org

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 14th day of November 2022