

United States of America
Nuclear Regulatory Commission
Before the Commission

In the Matter of)	Docket No. 50-320 LT
FirstEnergy Companies)	July 1, 2021
and)	
TMI- 2 Solutions)	Three Mile Island
)	Nuclear Station, Unit-2

Commissioners:
Chairman, Christopher T. Hanson
Jeff Baran
Annie Caputo
David A. Wright

Motion to Amend the Petition for Reconsideration.

On June 22, 2021 the Nuclear Regulatory Commission (“the NRC”) issued a Memorandum and Order CLI-21-08 to address a March 15, 2021, Motion by Eric Epstein, Chairman of Three Mile Island Alert, to hold in Abeyance the license transfer of Three Mile Island Unit-2 (“TMI-2”) (1). The Commissioners believed that the NRC no longer have jurisdiction over the Motion and dismissed it.

¹ *Motion to Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC* (March 15, 2021) (Motion).-2- Nuclear Station, Unit 2 (TMI-2) from the FirstEnergy Companies to TMI-2 Solutions.

Dated: July 30, 2021

I. Background.

In November 2019, GPU Nuclear, Inc., Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company (together, the FirstEnergy Companies) and TMI-2 Solutions, LLC (TMI-2 Solutions) (together with the FirstEnergy Companies, Applicants) applied to transfer the possession-only license for Three Mile Island Nuclear Station, Unit 2 (“TMI-2”) from the FirstEnergy Companies to TMI-2 Solutions. (2) The NRC published a notice of opportunity to request a hearing on the application on March 26, 2020 (.3

Eric Epstein and Three Mile Island Alert, Inc. (together, “TMIA”) filed a petition to intervene and request for a hearing. (4) In December 2020, the Staff issued an order approving the license transfer, and, after the Applicants completed their transaction, the Staff issued a conforming license amendment. (5)

² See Letter from John Sauger, TMI-2 Solutions, LLC and Gregory H. Halnon, GPU Nuclear, Inc., to NRC Document Control Desk (Nov. 12, 2019) (ADAMS accession no. ML19325C690 (package).

³ Three Mile Island Nuclear Station, Unit No. 2; Consideration of Approval of Transfer of License and Conforming Amendment, 85 Fed. Reg. 17,102 (Mar. 26, 2020).

⁴ *Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing* (Apr. 15, 2020) (TMIA Petition).

⁵ Order Approving Transfer of License and Draft Conforming License Amendment (EA-20-136) (Dec. 2, 2020) (ML20279A366) (package); Letter from Theodore B. Smith, NRC, to John Sauger, TMI-2 Solutions, LLC (Dec. 18, 2020) (ML20352A381).

The Nuclear Regulatory Commission denied TMIA's Petition to Intervene and Request for A Hearing and terminated the proceeding in January 2021. (CLI-21-2, 93 NRC ___ (Jan. 15, 2021) (slip op.).

In its Motion, TMIA asked the Commission to hold in abeyance the license transfer until the Applicants "provide and submit proof of adherence to the Clean Water Act ("CWA"), Section 401, and receive approval from the agencies charged with its implementation." (Motion at 3.)

The Commissioners issued *Memorandum and Order CLI-21-08: Motion to Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC*, (June 22, 2021). "Additional Views of Commissioner Baran," was published on p. 9.

The Petitioners filed a Motion for Reconsideration on July 1, 2021. TMI-2 Solutions, LLC filed an Answer opposing Three Mile Island Alert's Petition for Reconsideration of CLI-21-08.

The Petitioners did not request the Commissioners Certify the Questions, instead they submitted Right to Know Requests to the Susquehanna River Basin Commission ("Susquehanna River Basin Commission") on May 28, 2021 which were docketed on the same day. These requests were copied, and sent to the parties in this proceeding as well as the Pennsylvania Department of Environmental Protection ("DEP") on May 28, 2021.

The SRBC responded on June 28, 2021:

We are in the process of assembling the documents for your records request dated May 28, 2021.

Although staff has been diligently collecting the information, it is taking a bit more time for the screening and legal review of the records than I previously anticipated. I will forward the information we've assembled on June 30, 2021.

On June 30, the Petitioners received a lengthy data drop from the Susquehanna River Basin Commission:

SRBC has set up an FTP site per your Right to Know Request (dated May 28, 2021). The breadth of your request and the underlying complexity of the issues implicated in your request led us to provide a single comprehensive response to your five inquiries. The 3 folders are labeled [sic.] Applications, Documents and Emails. In our view, this response better illustrates the dynamics of SRBC's involvement with these issues.

The data was configured in challenging formats. The Petitioner procured the services of a technology consultant, i.e., Schnitz Technology and decoded and downloaded the documents on or around July 10, 2021. Numerous e-mail communications were not dated.

II. Standard of Review

§ 2.345 Petition for Reconsideration.

(a)(1) Any petition for reconsideration of a final decision must be filed by a party within ten (10) days after the date of the decision.

The present Petition for Reconsideration.

(2) Petitions for reconsideration of Commission decisions are subject to the requirements in § 2.341(d).

The present Petition for Reconsideration meets all the requirements in § 2.341(d).

(b) A petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid. The petition must state the relief sought. Within ten (10) days after a petition for reconsideration has been served, any other party may file an answer in opposition to or in support of the petition.

III. Findings After the Filing of the Motion For Reconsideration

§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

c) Filings after the deadline; submission of hearing request, intervention petition, or motion for leave to file new or amended contentions—(1) Determination by presiding officer. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the deadline in paragraph (b) of this section will not be entertained absent a determination by the presiding officer that a participant has demonstrated good cause by showing that:

(i) The information upon which the filing is based was not previously available.

The data and information relayed to the Petitioners corroborates the allegations contained in the Petition for Reconsideration, including voluntary statements from the Applicants well after the License Transfer Application was submitted and subsequently approved by the Nuclear Regulatory Commission.

(ii) The information upon which the filing is based is materially different from information previously available.

As has been documented, this material was not answered and not provided in any of the filings submitted by Applicants or the Nuclear Regulatory Commission.

(iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

This filing was submitted within thirty days of receipt.

IV. Argument.

(i) The information upon which the filing is based was not previously available.

The data and information relayed to the Petitioners corroborates the allegations contained in the Petition for Reconsideration, including voluntary statements from the Applicants well after the License Transfer Application occurred.

Please refer to Exhibit 1 for communications between the Applicants and the SRBC after the LTA was submitted and approved by the NRC. The communications occurred on April 29, 2021 and April 30, 2021, but were not disclosed until June 30, 2021.

(ii) The information upon which the filing is based is materially different from information previously available.

As has been documented, this material was not answered or provided in any of the filings submitted by Applicants or the Nuclear Regulatory Commission.

(iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

The correspondence clearly substantiates the Petitioners' contentions relating to the decommissioning of the Three Mile Unit-2.

1) Applicants will require a minimum of 100,000 million gallons per day ("mgd") of water per day to conduct decommissioning and decontamination activities;

2) Clear and unambiguous confirmation that the Applicants do not possess groundwater and surface water contractual rights with the Susquehanna River Basin Commission.

3) A total lack of communication and coordination between Exelon and TMI-2 Solutions;

4) Complete lack of understating of the issue by the oversight agency, the SRBC, which is relying on an unsubstantiated legal conclusion by the DEP; and,

5) The Applicants acknowledged that there will be necessarily be “new discharges” as a result of the radioactive water created during the cleanup, yet there is no disposal plan for the radioactive water.

The Nuclear Regulatory Commission found that the TMI-2 license transfer application “did not request any new discharges or changes to any existing discharges,” and no Section 401 certification is required under the Clean Water Act. Thus TMIA’s substantive arguments were dismissed without the full benefit of the available facts. This is clearly not the case as attested to by the enclosed correspondence between the SRBC and TMI-2 Solutions. (Refer to Exhibit 1) Mark Camrbia explicitly states that TMI-2 Solutions, owned by a Limited liability Corporation, was planning on using groundwater from Exelon, a separate licenses at TMI-1.

TMI-2 Solutions further undermined their own argument by acknowledging TMI-2 can not be decontaminated or decommissioned without removing highly-radioactive components, debris, and hardware. The SRBC re- stated in their e-mail TMI-2 Solutions require “de-mineralizer systems,” and “dust suppression for building demolition and other decommissioning activities, including the need for demineralized water.” These uses were previously stated by the Petitioners, and ignored by the Applicants and the NRC.

The Applicants omitted or withheld this data. None of this data was recorded, reported or submitted throughout the license application process despite numerous pleading over a two year Application and

Appeal process. (6), (7), (8), (9), and (10) Moreover, the SRBC and TMI-2 Solutions through this emerging correspondence has provided “compelling circumstances” that water use permits are held by Exelon and not by TMI-2 Solutions, LLC. Most damaging is TMI-2 Solutions admission that there has been no discussion between Exelon or TMI-2 Solutions relating to “TMI-2 water needs.”

6 *Application for Order Approving License Transfer and Conforming License Amendments* (Nov. 12, 2019) (ADAMS Accession No. ML19325C600). The TMI-2 NRC License is Possession-Only License No. DPR-73. 5 *TMI-2 License Transfer Order* (Dec. 2, 2020) (ADAMS Accession No. ML20279A369).

7 *TMI-2 License Transfer Order* (Dec. 2, 2020) (ADAMS Accession No. ML20279A369).

Notification of Closing of TMI-2 Transaction (Dec. 18, 2020) (ADAMS 5 Accession No. ML20353A378). *Commission Notification re Conforming Amendment* (Dec. 18, 2020) (ADAMS Accession No. ML20353A415).

8 *FirstEnergy Companies & TMI-2 Solutions, LLC* (Three Mile Island Nuclear Station Unit 2), CLI-21- 02, 93 NRC__ (Jan. 15, 2021) (slip op).

9 *Applicants’ Answer Opposing Motion to Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC* (Apr. 12, 2021) (ADAMS Accession No. ML21102A304)..

10 *TMI-2 Solutions, LLC Answer Opposing Three Mile island Alert’s Paxton for Reconsideration, CLI-21-08.*, (July 12, 2001).

11 *Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing* (Apr. 15, 2020) (ADAMS Accession No. ML20106F216).

12 *Motion To Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC* (Mar. 15, 2021) (ADAMS Accession No. ML21075A252) (the “Abeyance Motion”).

These acknowledgments are at the crux of the Petitioner case as outlined in the *Petition for Leave to Intervene, Motion To Hold In Abeyance*, and the *Petition for Reconsideration*. (11), (12), and (13). The facts on the ground as demonstrated by the Petitioners have now been affirmed and substantiated: TMI-2 will require water for decommissioning, and requires a plan for radioactive wastewater disposal as well as a 401 certification to address “ new discharges.”

The Applicants and the NRC had every opportunity to correct, modify or update the record. Instead the Applicants, the NRC, and the SRBC chose silence. The facts discovered by the Petitioners reinforce the need for the NRC Commission to revisit the issues raised by the Petitioners. The Applicant can not avail itself to the notion that the Petitioners “reiterate the same incorrect arguments ...” (p. 2) In fact, the Applicants and the NRC are arguing *Res judicata* in reverse: They buried the facts, and now seek relief because the Petitioners have uncovered the facts that were concealed by the Applicants, the NRC and the SRBC. These facts undercut a presumptive “final judgment,” and need to be addressed, since they were ignored or sidestepped throughout this proceeding. It is unclear if the concealment was based on coordinated acts of omission or willful ignorance.

13 *Petition for Reconsideration* (Jul. 1, 2021) (ADAMS Accession No. ML21182A391). 2 *FirstEnergy Companies & TMI-2 Solutions, LLC* (Three Mile Island Nuclear Station Unit 2), CLI-21-08 (Jun. 22, 2021) (ADAMS Accession No. ML21173A147). 3 *Motion To Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC* (Mar. 15, 2021) (ADAMS Accession No. ML21075A252) (the “ Abeyance Motion”).

What is undeniable is that TMI-2 will require large quantities of water which necessarily creates radioactive wastewater that has to be isolated and disposed or “discharged” directly into the Susquehanna River. The correspondence identified that the unapproved, proposed, and nontransferable water sources would be up to 100,000 mgd from TMI-1’s Wells, A, B, and C. (Refer o Exhibit 1.)

Water withdrawals of 100,000 gallons per day (“gpd”) or more over a 30-day average from any source or combination of sources with the Basin are regulated. All water withdrawals that supply water to a regulated consumptive use are also regulated by the SRBC. (14)

The factual errors and omissions are breathtaking in this case. The Susquehanna River Basin Commission’s documents confirm that TMI-2 will require at least 100,000 mgd. This potential “new discharge” of radioactive water had not been discussed nor is there a plan to isolate the wastewater. The information in Exhibit 1 has been available to the Applicants, the NRC and the SRBC throughout the proceedings.

14 **Susquehanna Basin River Commission Regulation of Projects:**

§806.4 Projects requiring review and approval.

(iv) Any project, regardless of when initiated, involving a consumptive use of an average of 20,000 gpd or more in any 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements of paragraphs (b) or (c) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

§806.4 Projects requiring review and approval.(i) Any project initiated on or after the applicable dates specified in paragraph (a)(2)(iv) below, withdrawing a consecutive 30-day average of 100,000 gpd or more from a groundwater or surface water source, or a combination of such sources.

The decontamination and decommissioning of TMI-2 can not proceed without large quantities of water: This is now a settled matter that became evident in July, 2021. TMI-2 does not possess water withdrawal rights from the Susquehanna River Basin Commission. TMI-2 Solutions can not unilaterally poach nor can Exelon transfer water rights to a separate licensee holder. In this instance, TMI-2 Solutions is a limited liability cooperation - a corporate creation which is the antithesis of a public utility. TMI-2 Solutions has no plan to dispose of “newly created” radioactive discharges . What’s worse, the NRC and SRBC have abandoned their fiduciary and regulatory obligations embedded in the Clean Water Act, and are unconcerned about the discharge of radioactive water directly into the Susquehanna River.

V. Conclusion.

The Petition for Reconsideration should be granted and the commission must direct FirstEnergy and TMI-2 Solutions to:

1) Update and upgrade the National Environmental Policy Act at Three Mile Island. Neither party involved in the “interim settlement” exist as a regulatory agency or as a nuclear licensee; (15)

2) Certify compliance with the Clean Water Act; and,

15 Petition at 4; Final Rule, Clean Water Act Section 401 Certification Rule, 85 Fed. Reg. 42,210 (July 13, 2020). Please note that the SRBC’s Rules and Regulation were adopted *on April 1, 2018 CFR*.15

The SRBC has not amended or modified its governance to factor the Environmental Protection Agency’s (“EPA”) Section 401 Certification Final Rule, published on July 13, 2020; effective September 11, 2020.

3) Require the submittal and approval of a plan by the NRC for the isolation and disposal of accident-generated radioactive water.

Respectfully submitted,

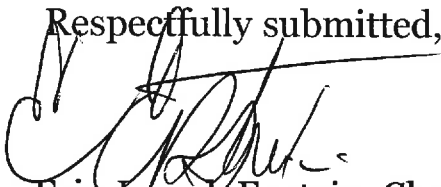
Eric Joseph Epstein, Chairman
Three Mile Island Alert, Inc.
4100 Hillsdale Road
Harrisburg, PA 17112

Enclosure: Exhibit 1.

Certificate of Service

I certify that I served through the U.S. Nuclear Regulatory Commission E-Filing system on the participants of the above-captioned proceeding.

Respectfully submitted,



Eric Joseph Epstein, Chairman
Three Mile Island Alert, Inc.
4100 Hillsdale Road
Harrisburg, PA 17112

Dated: July 30, 2021.

From: **Eric Epstein** lechambon@comcast.net
Subject: x
Date: July 30, 2021 at 3:56 PM
To: **Eric Epstein** epstein@efmr.org



Exhibit 1

Boldface Type Added

From: [Eric Epstein](#)
To: [The UPS Store 2204 Comcast](#)
Subject: Please scan; and make five color copies
Date: Wednesday, July 28, 2021 11:54:22 AM

CAUTION! This email originated from outside of the organization. Please do not open attachments or click links from an unknown or suspicious origin.

Bold face type added

FYI

Jeremy Hoffman

Manager, Compliance

From: Hewitt, Maurita <mhewitt@srbc.net>
Sent: Thursday, April 29, 2021 9:11 AM
To: Hoffman, Jeremy <jmhoffman@srbc.net>
Subject: TMI Unit 2

Jeremy,

As discussed, I called Dan Jordan Tuesday, and he put me in contact with Mark Cambra of Energy Solutions over at Unit 2. Mark is working on the decommissioning and demolition planning going on, right now. He said there is no current water use at Unit 2, but when they are ready, water will be provided by Unit 1's approved groundwater withdrawals via hydrants for dust suppression for building demolition and other decommissioning activities, including the need for demineralized water. Between Units 1 and 2, they anticipate needing less than 100,000 gpd (30-day average) from Wells A, B, and C. I explained to Mark that some of the activities at Unit 2 may need to be reviewed as part of the CU component of the project, in particular with respect to revisions to the allowable CU purposes and reasonable/foreseeable need for the withdrawals and consumptive use. Mark had a lot of questions and wanted to relay his own thoughts to Exelon's staff, particularly regarding their current consumptive use calculation methodology and his hope that Unit 2's needs wouldn't be forgotten in whatever the renewal/modification process looks like with the Commission. He isn't sure if Unit 1 and Unit 2 could be reviewed as a single entity or if Unit 1's approval covers Unit 2's needs, since Unit 1 essentially owns and operates all the water sources and would just be conveying their water to Unit 2. I told him these were all things that Project Review would be looking at.

Let me know if you need anything else on this.

Thanks,

Maurita

From: [Gavin Andrew](#)
To: [Ballaron Paula](#)

Date: Fri, 30 Apr 2021 14:45:26 -0400
Subject: RE: TMI-2

Thanks - no rush - was just cleaning up files, to do lists, etc. - and had some stuff I was going to move over ... oh, just saw your follow-up to IT .. thanks!

From: Ballaron, Paula <PBallaron@srbc.net>
Sent: Friday, April 30, 2021 2:38 PM
To: Gavin, Andrew <AGavin@srbc.net>
Subject: RE: TMI-2

Funny I haven't heard that we do- I sent the request on Monday:

New Ticket #14053 Received [RDTID=14053]

From: Gavin, Andrew <AGavin@srbc.net>
Sent: Friday, April 30, 2021 2:34 PM
To: Ballaron, Paula <PBallaron@srbc.net>
Subject: RE: TMI-2

No problem - do we have an EJ folder yet?

From: Ballaron, Paula <PBallaron@srbc.net>
Sent: Friday, April 30, 2021 11:37 AM
To: Gavin, Andrew <AGavin@srbc.net>
Subject: RE: TMI-2

thanks for the update-

From: Gavin, Andrew <AGavin@srbc.net>
Sent: Friday, April 30, 2021 11:34 AM
To: Dehoff, Andrew <ADehoff@srbc.net>; Oyler, Jason <joyler@srbc.net>; Ballaron, Paula

<PBallaron@srbc.net>; Eaby, Todd <teaby@srbc.net>; Appleby, Michael <mappleby@srbc.net>
Subject: TMI-2

Hi All-

Just to close the loop on this given discussions among several of us - Jeremy and Compliance staff were able to get a hold of the person with oversight of TMI-2 activities, Mark Cambra with Energy Solutions. Key highlights include:

· Mr. Cambra confirmed that no water has been or is presently being used for activities associated with TMI-2

· Mr. Cambra confirmed that water will eventually be needed for decommissioning/demolition activities

· Maurita informed them that they need to talk to us about future TMI-2 water needs and can't just assume use of TMI-1 sources

· Mr. Cambra said he is going to initiate water needs discussion with Exelon staff in light of our inquiry and given pending renewal discussions with Exelon concerning TMI-1 sources



So that's it for now on that front.

Thanks,
Andy

