

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION**

In the Matter of	)	
	)	
GPU NUCLEAR, INC.	)	
METROPOLITAN EDISON CO.	)	Docket No. 50-320-LT
JERSEY CENTRAL POWER & LIGHT CO.	)	
PENNSYLVANIA ELECTRIC CO.	)	August 9, 2021
TMI-2 SOLUTIONS, LLC	)	
	)	
(Three Mile Island Nuclear Station, Unit 2)	)	
	)	

**TMI-2 SOLUTIONS, LLC’S ANSWER OPPOSING THREE MILE ISLAND ALERT’S  
MOTION TO AMEND THE PETITION FOR RECONSIDERATION OF CLI-21-08**

**I. INTRODUCTION**

TMI-2 Solutions, LLC (“TMI-2 Solutions”) hereby submits this Answer opposing the “Motion to Amend the Petition for Reconsideration” (“Motion”) submitted by Three Mile Island Alert, Inc. and Eric Epstein (collectively, “TMIA”) on July 30, 2021.<sup>1</sup> The Motion seeks to amend TMIA’s “Petition for Reconsideration”, which was filed on July 1, 2021.<sup>2</sup> These follow the Commission’s June 22, 2021 dismissal<sup>3</sup> of TMIA’s “Motion to Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC.”<sup>4</sup> The Motion represents yet another improper gambit by TMIA that ignores the defined procedures of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) to indefinitely delay the proceedings at the expense of the Commission’s and Commission Staff’s time and resources.

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<sup>1</sup> *Motion to Amend the Petition for Reconsideration* (Jul. 30, 2021) (ADAMS Accession No. ML21211A592).

<sup>2</sup> *Petition for Reconsideration* (Jul. 1, 2021) (ADAMS Accession No. ML21182A391).

<sup>3</sup> *FirstEnergy Companies & TMI-2 Solutions, LLC* (Three Mile Island Nuclear Station Unit 2), CLI-21-08 (Jun. 22, 2021) (ADAMS Accession No. ML21173A147).

<sup>4</sup> *Motion To Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC* (Mar. 15, 2021) (ADAMS Accession No. ML21075A252) (the “Abeyance Motion”).

The Motion should be dismissed for any number of procedural and substantive reasons, including that NRC regulations do not permit a motion to amend a petition for reconsideration, the Motion exceeds the designated page limit, TMIA failed to consult on the Motion, and substantively, the merits of the arguments presented by the Motion are insufficient and often incorrect or misleading.

## **II. ABBREVIATED BACKGROUND AND PROCEDURAL HISTORY**

On November 12, 2019, TMI-2 Solutions, together with GPU Nuclear, Inc., Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company (the “FirstEnergy Companies”, and collectively with TMI-2 Solutions, the “Applicants”), submitted a license transfer application related to the acquisition of Three Mile Island Nuclear Station, Unit 2 (“TMI-2”) by TMI-2 Solutions from the FirstEnergy Companies.<sup>5</sup> By order dated December 2, 2020, the NRC approved the license transfer.<sup>6</sup> As part of the license transfer proceeding, TMIA filed a petition to intervene and request for a hearing, which on January 15, the Commission denied.<sup>7</sup>

On March 15, 2021, long after closing of the license transfer, TMIA filed the Abeyance Motion, which was dismissed by the Commission on June 22 because, among multiple reasons, the Commission had previously issued its final adjudicatory decision on the matter and “no longer retain[ed] jurisdiction to consider further adjudicatory filings.”<sup>8</sup> On July 1, TMIA responded to this dismissal by filing a petition for reconsideration of CLI-21-08, which TMI-2 Solutions

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<sup>5</sup> *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.

<sup>6</sup> *TMI-2 License Transfer Order* (Dec. 2, 2020) (ADAMS Accession No. ML20279A369).

<sup>7</sup> *FirstEnergy Companies & TMI-2 Solutions, LLC* (Three Mile Island Nuclear Station Unit 2), CLI-21-02, 93 NRC\_\_ (Jan. 15, 2021) (slip op).

<sup>8</sup> CLI-21-08, *supra* note 3, at 3.

answered on July 12, 2021.<sup>9</sup> The Commission has not had an opportunity to respond to the Petition for Reconsideration before TMIA filed its Motion at issue here.

**III. THE MOTION IS DETACHED FROM THE COMMISSION’S PROCEDURAL RULES AND LACKS SUBSTANTIVE MERIT**

**A. Commission rules and regulations do not generally permit a motion to amend a petition for reconsideration.**

The Motion at hand has been submitted with no known basis in Commission regulations that would allow for an amended petition for reconsideration, particularly on such flimsy grounds. Petitions for reconsideration must be based on errors and issues in the decision itself, and are not grounds for introduction of new facts.<sup>10</sup> The Commission has previously found that petitioners seeking reconsideration must demonstrate – through the use of new *arguments* (not simply new *supporting facts*) – that the Commission committed clear error in its prior order.<sup>11</sup> As discussed in TMI-2 Solutions’ July 12th Answer to TMIA’s Petition for Reconsideration, the reconsideration standard is justifiably a very high bar to meet.<sup>12</sup>

Petitions for reconsideration must also be filed within 10 days of the action for which reconsideration is requested.<sup>13</sup> The current Motion performs an end run around this clear and basic requirement by being filed an additional four weeks after the initial Petition for Reconsideration.

**B. The Motion exceeds the regulatory limit of 10 pages.**

Pursuant to 10 C.F.R. § 2.323(e), a motion for reconsideration is limited to 10 pages. The Motion is now a total of nearly 13 pages, without accounting for the exhibit tacked on at the end.

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<sup>9</sup> *TMI-2 Solutions, LLC’s Answer Opposing Three Mile Island Alert’s Petition for Reconsideration of CLI-21-08* (Jul. 12, 2021) (ADAMS Accession No. ML21193A357).

<sup>10</sup> Pursuant to NRC regulations at 10 C.F.R. § 2.345(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.”

<sup>11</sup> *See Consumers Energy Co. (Palisades Nuclear Plant), CLI-07-22, 65 NRC 525, 527 (2007).*

<sup>12</sup> *See Answer Opposing Petition for Reconsideration, supra* note 9, at 3.

<sup>13</sup> 10 C.F.R. § 2.345(a)(1).

Although this failure by itself may seem somewhat insignificant, coupled with various obvious procedural violations from TMIA throughout this proceeding, it lends further evidence that TMIA has shown a pattern of indifference towards Commission regulations as well as the Commission's time, that is troubling and that the Commission should address in its response.

**C. TMIA failed to consult TMI-2 Solutions before filing the Motion.**

Yet another show of indifference towards Commission procedure is evidenced by TMIA's failure to make any effort to consult with TMI-2 Solutions before filing the Motion. Pursuant to 10 C.F.R. § 2.323(b), "[a] motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful." Neither TMI-2 Solutions nor its counsel is aware of any effort by TMIA to consult prior to filing the Motion. Given this failure, TMIA's Motion is of course missing the required certification. These failures alone should be sufficient for the Commission to dismiss the Motion.

**D. The Motion's substantive arguments are framed entirely around two sets of emails that provide very little new information.**

As explained in TMI-2 Solutions' July 12th Answer to TMIA's Petition for Reconsideration, TMIA's initial Petition for Reconsideration entirely fails to meet the Commission's strict standard for such a petition, by not only failing to provide the requisite "decisive new information" not previously identified in its Abeyance Motion, but by failing to provide any new material information whatsoever.<sup>14</sup> TMIA's Motion merely adds insubstantial pages to its Petition for Reconsideration, which itself reiterated largely the same arguments

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<sup>14</sup> See Answer Opposing Petition for Reconsideration, *supra* note 9, at 4.

regarding Section 401 of the Clean Water Act that TMIA made in its Abeyance Motion from March 15 that were dismissed outright by the Commission.

In the Motion, TMIA adds a section to its Petition for Reconsideration that attempts to show “good cause” for the Motion under the rules of 10 C.F.R. § 2.309(c).<sup>15</sup> However, it is unclear if this would even apply to a motion to amend a petition for reconsideration. If the Commission determines that it does apply, it fails to meet the three necessary showings for “good cause” (any one of which is enough to reject the Motion),<sup>16</sup> particularly considering the information is not “materially different” from that previously available (and as discussed above, is untimely).

More specifically, TMIA primarily argues that the new email chain “corroborates the allegations” in TMIA’s initial Petition for Reconsideration.<sup>17</sup> These “allegations” are not entirely clear, but seem to include that the Commission, Commission Staff, and Applicants have deliberately and materially refused to comply with requirements related to Section 401 of the Clean Water Act (such as 18 C.F.R. § 806.4).<sup>18</sup> However, the emails in Exhibit 1 of the Motion in fact contradict the claims made by TMIA. One important example of these contradictions is where TMIA states that the emails “confirm that TMI-2 will require at least 100,000 mgd [sic]” of water withdrawals.<sup>19</sup> This is directly contradicted by the ‘proof’ provided by TMIA in its email between Susquehanna River Basin Commission (“SRBC”) officials, which actually clarifies that it is

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<sup>15</sup> Motion at 5-6.

<sup>16</sup> Under 10 C.F.R. § 2.309(c), out-of-time motions for leave to file new or amended contentions will not be entertained without a determination by the presiding officer that a participant demonstrated “good cause” by showing the following:

- (1) The information upon which the filing is based was not previously available;
- (2) The information upon which the filing is based is materially different from information previously available; and
- (3) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

<sup>17</sup> Motion at 6.

<sup>18</sup> See Petition for Reconsideration, *supra* note 2, at 5.

<sup>19</sup> Motion at 11.

expected that *less than* 100,000 gallons per day (“gpd”) of water would be needed by both TMI Units 1 and 2.<sup>20</sup> This directly undercuts TMIA’s already unsupported claim of there being some sort of regulatory violation based on water discharges or withdrawals, and yet is just one example of multiple material errors in TMIA’s submission. And of course, TMIA in its Motion still fails to significantly address the more fundamental errors with its filings, such as the lack of NRC jurisdiction.

#### IV. CONCLUSION

The Motion must be denied on procedural and substantive grounds, as explained above. It should also be noted that responding to these frequent, improper motions incurs significant legal costs on the parties and takes attention away from the actual work at hand of decommissioning TMI-2 – and the historic achievement that would be for the public and local community. It also interferes with the SRBC’s performance of their regulatory responsibilities. We would encourage the Commission to inform TMIA of its reasonable requirements associated with public participation and discourage TMIA from continuing to blatantly ignore those requirements.

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<sup>20</sup> Motion at 17 (Exhibit 1).

Respectfully Submitted,

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

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Dated in Washington, D.C.  
this 9th day of August 2021

August 9, 2021

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(Three Mile Island Nuclear Generating Station Unit 2)	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on August 9, 2021 copies of the above **TMI-2 Solutions, LLC's Answer Opposing Three Mile Island Alert's Motion to Amend the Petition for Reconsideration of CLI-21-08** have been served through the U.S. Nuclear Regulatory Commission E-Filing system on the participants of the above-captioned proceeding.

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