

United States of America
Nuclear Regulatory Commission
Before the Commission

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| 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

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 they 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.

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 in March, 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)) (together with attachments and enclosures, License Transfer Application).

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. (6)

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." (7) TMIA claims that the Applicants, the NRC, the Pennsylvania Department of Environmental Protection, and the Susquehanna River Basin Commission did not comply with section 401 of the CWA with the

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).

6 CLI-21-2, 93 NRC ____ (Jan. 15, 2021) (slip op.).

7 Motion at 3.

(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. Argument.

A **Petition for Reconsideration** is equivalent to a Motion to Reconsider in the federal district courts. The decision on the reconsideration itself is the "rehearing," as no formal rehearing is conducted. In other words, the granting of a Motion provides the requested relief without further argument from the parties. (7)

Further, pursuant to 37 CFR § 42.71(d), "[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply." (8) Here, TMI-Alert concurs with Commissioner Baran. The Commission possesses the adjudutory imperative and statutory obligation to grant a Motion for Reconsideration.

7 *But see Facebook v. Rembrandt Social Media LP*, IPR2014-00415, Paper 14 at 3 (July 31, 2014) (granting rehearing on the institution of the proceeding, but denying the requested relief regarding the filing date); *Aker Biomarine AS v. Neptune Techs*, IPR2014-00003, Paper 45 at 10 (granting rehearing on denial of institution to further explain the Board's reasoning and to add additional grounds for denial).

8 37 CFR § 42.71(d).

Commissioner Baran wrote:

A finding that the Commission lacks jurisdiction to consider the motion implies that the Commission adjudicatory authority to do so. Although the Commission has established specific avenues for reopening an adjudication in regulation, I do not believe that the Commission lacks the authority to hear a Motion that does not follow the specific paths laid in the regulation. The Commission has broad authority in Atomic Energy Act adjudications. In exercising this authority, the Commission had decided that it will generally not entertain motions that do not meet the requirements established in Part 2. However, in my view, this is not a jurisdictional limitation. (9)

In addition to Mr. Baran's view refuting "jurisdictional limitations," the NRC has a responsibility to make sure that regulations, mandated by federal agencies in the licensing and relicensing of nuclear power plants, are enforced.

At this point in the Proceeding, neither the Nuclear Regulatory Commission, or the agencies charged with ensuring the compliance of the Clean Water Act ("CWA") Section 401 - the Pennsylvania Department of Environmental Protection and the Susquehanna River Basin Commission - have addressed or refuted the merit or substance of TMIA's claims that the license transfer from FirstEnergy to TMI-2 Solutions failed to comply with the CWA, Section 401. (10)

9 *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," p. 9.

10 The U.S. Environmental Protection Agency's ("EPA") Section 401 Certification Final Rule, was published July 13, 2020 and made effective September 11, 2020, or three months before the staff issued an order approving the license transfer.

Moreover, it is manifestly unfair and incongruent for the NRC to rigidly impose a timeline to constrain TMI-Alert, while at the same time, turning a blind eye for more than ninety days after the Clean Water Act was modified. The difference being that Mr. Epstein was navigating competing responses and timelessness between a federal agency - the Nuclear Regulatory Commission - and a federal compact - the Susquehanna River Basin Commission. That dynamic was outlined in TMIA's *Motion to Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC*.

FirstEnergy and TMI-2 Solutions did not file CWA, 401 compliance data. The NRC attempted to justify the licensee's silence by creating a legal juggling act. The Staff acknowledged that a "discharge is from a point source into water of the United States." (11) This discharge is applicable under the Clean Water Act. In this case the NRC argues on behalf of the Applicant, and accepts the Applicant's commitment to adhere to the noncompliant, temporary status quo from 1977. (12)

However, this is a leap in faith, belies facts on the ground, and is blind to the history of defueling Three Mile Island Unit-2. 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 NRC's decision invalid.

¹¹ *Memorandum and Order CLI-21-08: Motion to Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC*, p. 6.

¹² "The changes conform the License and technical specifications to reflect the proposed transfer of authority and responsibility for licensed activities under the License to TMI-2 Solutions. (License Transfer Application, Attachment 1 at 14.)

In this case, TMI-2 can not be decontaminated or decommissioned without removing highly-radioactive components, debris, and hardware. These systems will likely include modifications of more conventional systems using during defueling, decontamination, and decommissioning; including, but not limited to the ion exchange resins, Submerged Demineralizer Systems, and processing and disposal of water and water filters and treatment media.

These areas 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 factual errors and omissions are breathtaking in this case as a is a total lack of historical context.

The Department of Environmental Resources and Metropolitan Edison, the original licensee, negotiated a limited, “interim” Settlement on November 9, 1977 relating to the Clean Water Act. The “documentation” in this Settlement is dated and narrow, and did not provide in perpetuity environmental relief for the CWA Certifications, Section 401.

In June 1980, the Susquehanna Valley Alliance filed a Complaint and Injunction with the Middle District Court in Harrisburg, Pennsylvania against the Nuclear Regulatory Commission and Metropolitan Edison. The Injunction sought to prevent the owner and operator of Three Mile Island from dumping 700,000 gallons of radioactive water into the Susquehanna River. The Injunction was granted, and the NRC was found to be in violation of the National Environmental Policy Act.

The decontamination and decommissioning of TMI-2 can not proceed without large quantities of water. The licensee does not possess water withdrawal rights from the Susquehanna River Basin Commission, and it has no plan to dispose of the radioactive wastewater after it comes in contact with highly radioactive components and materials.

On April 2, 2021, in a letter to Mr. Epstein, the SRBC confirmed that “they would not monitor radioactive discharges directly into the river.” In addition, “The SRBC does not have a docket approval for TMI-2 [water withdrawal.” The agency stated it has “no information from the NRC at this time concerning the amount of water required for decommissioning.” (13)

IV. 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;
- 2) Certify compliance with the Clean Water Act; and,
- 3) Require the submittal and approval of a plan by the NRC for the isolation and disposal of accident-generated radioactive water.

13 Paula Ballaron, P.G, Manager, Policy Implementation & Outreach, Susquehanna River Basin Commission, April 2, 2021.

Respectfully submitted,

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

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
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Dated: July 1, 2021.