July 12, 2021

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.	)	July 12, 2021
TMI-2 SOLUTIONS, LLC	)	
	)	
(Three Mile Island Nuclear Station, Unit 2)	)	
	)	

TMI-2 SOLUTIONS, LLC'S ANSWER OPPOSING THREE MILE ISLAND ALERT'S PETITION FOR RECONSIDERATION OF CLI-21-08

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.345(b), TMI-2 Solutions, LLC ("TMI-2 Solutions") submits this Answer opposing the "Petition for Reconsideration" ("Petition") submitted by Three Mile Island Alert, Inc. and Eric Epstein (collectively, "TMIA") on July 1, 2021.[1] The Petition is in response to the U.S. Nuclear Regulatory Commission's ("NRC" or "Commission") June 22, 2021 dismissal[2] of TMIA's "Motion to Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC."[3]

The Petition should be dismissed because it fails to provide new evidence demonstrating a clear and material error by the Commission or other compelling circumstance, not reasonably anticipated, that would render the Commission's decision invalid. Instead, the Petition largely

[1] *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").

reiterates the same incorrect arguments regarding Section 401 of the Clean Water Act that TMIA made in its previous motion and that the Commission dismissed.

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.[4] By order dated December 2, 2020, the NRC approved the license transfer.[5] On December 18, 2020, the Applicants notified the NRC that the transaction had closed and TMI-2 Solutions had become the TMI-2 licensee.[6] The NRC issued conforming amendments to the license on the same day to reflect the completed transfer.[7]

As part of the license transfer proceeding, TMIA filed a petition to intervene and request for a hearing on April 15, 2020.[8] The NRC issued a memorandum and order on January 15, 2021 denying this petition, after finding that TMIA did not present an admissible contention.[9] The NRC terminated the proceeding in that same order. On March 15, 2021, TMIA filed its 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

[4] *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).
[6] *Notification of Closing of TMI-2 Transaction* (Dec. 18, 2020) (ADAMS Accession No. ML20353A378).
[7] *Commission Notification re Conforming Amendment* (Dec. 18, 2020) (ADAMS Accession No. ML20353A415).
[8] *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).
[9] *FirstEnergy Companies & TMI-2 Solutions, LLC* (Three Mile Island Nuclear Station Unit 2), CLI-21-02, 93 NRC__ (Jan. 15, 2021) (slip op).

"no longer retain[ed] jurisdiction to consider further adjudicatory filings."[10] Although the Commission based its decision on jurisdictional matters, it also explained that "TMIA's Motion did not address any of our requirements for reopening a closed record or for staying a license transfer."[11] On July 1, TMIA responded to this dismissal by filing a petition for reconsideration of CLI-21-08, and this answer comes in response to that petition.

III. THE PETITION FAILS TO MEET THE COMMISSION'S STANDARD FOR RECONSIDERATION

A. The Petition entirely fails to provide new, compelling evidence, not reasonably anticipated, that would render CLI-21-08 invalid.

The NRC justifiably sets a high bar to meet the requirements for a petition for reconsideration. Per 10 C.F.R. § 2.345(b), a petition for reconsideration of a final decision "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." A petition for reconsideration is also evaluated against the standard given in 10 C.F.R. § 2.323(e).[12]

The Commission applies the reconsideration standard "strictly" and does not "grant motions for reconsideration lightly."[13] The Commission does so "only if the party seeking reconsideration brings decisive new information to [the Commission's] attention or demonstrates a fundamental Commission misunderstanding of a key point."[14] In general, courts have found

[10] CLI-21-08, *supra* note 2, at 3.
[11] *Id.* at 3-4.
[12] *See* 10 C.F.R. § 2.341(d).
[13] *See Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 400-01 (2006); *see also Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 622 (2004) (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-18, 58 NRC 433 (2003) (Commission stating that it "do[es] not lightly revisit our own already-issued and well-considered decisions"), *aff'd, Connecticut Coalition Against Millstone*, No. 04-0109 (2d Cir., Oct. 14, 2004) (unpublished)).
[14] CLI-04-35, 60 NRC at 622.

that a motion for reconsideration must fail if it merely "republishes" the reasoning given in the prior petition, without adding sufficient new and persuasive substantive information that would give the tribunal reason to change its mind.[15] Reconsideration is not appropriate for rehashing prior arguments, or for presenting new arguments that *could have* been presented and heard in a prior motion.[16] The Commission has found that petitioners seeking reconsideration must demonstrate – through the use of new arguments – that the Commission has committed clear error in its prior order.[17] Simply disagreeing with the Commission's decision while relying on rejected arguments or failing to offer decisive new elements has been found insufficient to support a petition for reconsideration.[18]

TMIA's Petition patently fails to meet this high standard for reconsideration. Not only does the Petition fail to bring "decisive new information" to light, it largely fails to bring *any* new material information that was not already presented in its Abeyance Motion. Instead, the Petition copies and pastes large sections of the motion, such as discussion of an injunction from 1980 with tenuous relevance to the matter at hand.[19] TMIA also largely repeats from the Abeyance Motion a vague discussion regarding the Environmental Protection Agency's ("EPA") Section 401 Certification Final Rule, published July 13, 2020 and made effective September 11, 2020.[20] Indeed, the only arguably new information the Petition seems to point to is the dissent in CLI-21-08 on a narrow matter of whether declining to entertain motions constitutes a jurisdictional limitation in NRC jurisprudence.[21] However, pointing to the decision itself that

[15] *See Ahmed v. Ashcroft,* 388 F.3d 247, 249 (7th Cir. 2004).
[16] *See Caisse Nationale de Credit Agricole v. CBI Industries, Inc.*, 90 F.3d 1264, 1270 (7th Cir.1996).
[17] *See Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-22, 65 NRC 525, 527 (2007).
[18] *See* CLI-06-27, 64 NRC at 401, n.6; *see also* CLI-03-18, 58 NRC at 434.
[19] Petition at 7.
[20] *See* Petition at 4; *Final Rule, Clean Water Act Section 401 Certification Rule*, 85 Fed. Reg. 42,210 (July 13, 2020).
[21] Petition at 5.

TMIA seeks to have reconsidered is hardly decisive new information—and also ignores that, except for this jurisdictional point, the dissent agreed with the overall decision in CLI-21-08 to deny the motion.

In sum, the discussion in the Petition adds very little to what was provided in the initial motion and certainly fails to provide new arguments that could persuade the Commission to reconsider its previous decision. TMIA's Petition simply fails to present "compelling circumstances" based on new information that was not previously available, which would permit the granting of a petition for reconsideration. Therefore, the Petition should be denied.

B. The Petition is Time Barred.

NRC regulations at 10 C.F.R. § 2.345 apply to "final decisions" of the Commission. The Commission's final decision in the TMI-2 license transfer proceeding was CLI-21-02, issued on January 15, 2021.[22] At that point the proceeding was terminated, and if TMIA wanted to seek reconsideration of that decision it should have at a minimum filed its petition for reconsideration pursuant to Section 2.345 by January 25, 2021. But it did not. Instead, it sat on its hands and then filed its Abeyance Motion three months later, on March 15, 2021—a motion so out of step with the NRC process the Commission determined it did not even have jurisdiction to consider it.

To the extent the current Petition is not actually a petition to reconsider the more recent and narrow CLI-21-08 decision, but actually a very late-filed and repetitive petition to reconsider CLI-21-02, it must be rejected. TMIA improperly tries to portray its Petition as seeking to reconsider CLI-21-08, while rehashing old arguments about the transfer of TMI-2, but this is simply another attempt by TMIA to make an end run around the NRC's rules of practice without any basis.

[22] CLI-21-02, supra note 9.

C. The Petition's substantive arguments have already been made by TMIA and dismissed by the Commission.

Last but not least, the Petition's reiterated substantive arguments have already been dismissed by the Commission. As the Commission previously stated, the Clean Water Act regulations as implemented by the EPA provide that a Section 401 certification is required for any license or permit authorizing an activity that may result in a *new* "discharge from a point source into a water of the United States."[23] As the Commission found, the TMI-2 license transfer application "did not request any new discharges or changes to any existing discharges," and so no Section 401 certification is required under the Clean Water Act. Thus TMIA's substantive arguments have no merit.[24]

TMIA also asserts that it is "manifestly unfair an [sic] incongruent" for the NRC to impose its timelines on motions and petitions.[25] However, these timelines are fundamental to the practice of administrative law and agency decision-making, and are not substantially different than timelines used by other agencies or courts. TMIA's complaints fall flat given that its Abeyance Motion was filed exceptionally late itself—a full three months after closing of the TMI-2 license transfer and two months after termination of the proceeding.[26]

IV. CONCLUSION

The Petition must be denied, as it falls woefully short of meeting the high threshold set by the Commission to grant a petition for reconsideration. The Petition fails to demonstrate through new evidence not reasonably anticipated a "clear and material error" or other

[23] CLI-21-08, *supra* note 2, at 6 (citing 40 C.F.R. § 121.1(f)).
[24] *Id.*
[25] Petition at 6.
[26] *See Applicants' Answer Opposing Motion to Hold in Abeyance the Proposed License Transfer to TMI-2 Solutions, LLC* (Apr. 12, 2021) (ADAMS Accession No. ML21102A304) at 2.

"compelling circumstance" that would render the Commission's previous decision invalid. It is also improperly filed, and rehashes old arguments already rejected by the Commission.

Respectfully Submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)
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Dated in Washington, D.C.
this 12th day of July 2021

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	)	

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2021 copies of the above **TMI-2 Solutions LLC's Answer Opposing Three Mile Island Alert's 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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