

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Christopher T. Hanson, Chairman
Jeff Baran
David A. Wright

In the Matter of

FIRSTENERGY COMPANIES
and
TMI-2 SOLUTIONS, LLC

(Three Mile Island Nuclear Station
Unit 2)

Docket No. 50-320-LT

CLI-21-10

MEMORANDUM AND ORDER

Today we address a Petition for Reconsideration of our decision in CLI-21-8, and a Motion to Amend the Petition, both filed by Eric Epstein, Chairman of Three Mile Island Alert (TMIA).¹ For the reasons discussed below, we find that the Petition does not meet the standards for a petition for reconsideration, and we therefore deny it.

In CLI-21-8, we denied TMIA's motion to hold the Three Mile Island Nuclear Station, Unit 2 (TMI-2) license transfer in abeyance, and found that we no longer had jurisdiction over the adjudicatory proceeding and that TMIA's motion did not meet our requirements for

¹ *Petition for Reconsideration* (July 1, 2021) (Petition); *Motion to Amend the Petition for Reconsideration* (July 30, 2021) (Motion to Amend). TMI-2 Solutions, LLC, opposed both. *TMI-2 Solutions, LLC's Answer Opposing Three Mile Island Alert's Petition for Reconsideration of CLI-21-08* (July 12, 2021); *TMI-2 Solutions, LLC's Answer Opposing Three Mile Island Alert's Motion to Amend the Petition for Reconsideration of CLI-21-08* (Aug. 9, 2021) (TMI-2 Solutions Answer to Motion to Amend).

reopening a closed record or for staying the license transfer.² We also found that this license transfer did not require a new certification under section 401 of the Clean Water Act (CWA).³

TMIA asks us to reconsider our decision in CLI-21-8. Our rules of practice governing petitions for reconsideration are found in 10 C.F.R. §§ 2.323(e), 2.345, and 2.341(d). A petition for reconsideration may not be filed except upon leave of the adjudicatory body that rendered the decision.⁴ The petition 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.”⁵ Such a petition should be based on an “elaboration of an argument already made, an overlooked controlling decision or principle of law, or a factual clarification.”⁶ “It should not simply reargue matters which we have already considered but rejected.”⁷

TMIA does not raise a compelling circumstance for us to reconsider our decision in CLI-21-8. TMIA argues that the NRC and Applicants⁸ did not comply with the CWA with regards to this license transfer, an argument that we explicitly considered and found unavailing in

² CLI-21-8, 93 NRC __, __ (June 22, 2021) (slip op at 3-5).

³ *Id.* at __ (slip op. at 6).

⁴ See 10 C.F.R. § 2.323(e).

⁵ *Id.* § 2.345(b).

⁶ *Virginia Electric and Power Co.* (North Anna Power Station, Unit 3), CLI-12-17, 76 NRC 207, 209-10 (2012) (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403, 410 (2005)).

⁷ *Id.* at 210 (citing *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-18, 58 NRC 433, 434 (2003)).

⁸ The Applicants in this proceeding are GPU Nuclear, Inc., Metropolitan Edison Company, Jersey Central Power & Light Company, Pennsylvania Electric Company, and TMI-2 Solutions, LLC.

CLI-21-8.⁹ In CLI-21-8 we held that “[b]ecause this license transfer does not authorize an activity that could result in a new discharge, the CWA does not require a certification under section 401.”¹⁰ While TMIA raises generalized concerns that more water will be used during the decommissioning process, it does not refute with any specificity our holding on the CWA or demonstrate error in our prior decision.¹¹ In its Motion to Amend, TMIA points to emails it received from the Susquehanna River Basin Commission in a records request as further support for its arguments.¹² However, as noted by TMI-2-Solutions, the attached emails do not appear to support the arguments in the Motion to Amend.¹³ The emails state that “water will be provided by Unit 1’s approved groundwater withdrawals” and that the anticipated use is “less than 100,000” gallons per day.¹⁴ There is no indication that there will be a new discharge.

TMIA also supports its Petition by pointing to Commissioner Baran’s Additional Views, in which he disagreed with the jurisdictional holding in CLI-21-8.¹⁵ While Commissioner Baran

⁹ CLI-21-8, 93 NRC at ___ (slip op. at 5-6).

¹⁰ *Id.* at ___ (slip op. at 6).

¹¹ Petition at 7. TMIA states that “[t]hese 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.” *Id.* But this statement alone, with no support, does not show an error in our reasoning in CLI-21-8. *See North Anna*, CLI-12-17, 76 NRC at 210 (finding that reiterating an argument without new reasoning or support does not make a compelling case for reconsideration).

¹² Motion to Amend at 7-12, Attach. 1. On August 26, 2021, TMIA submitted additional emails and other records obtained from the Susquehanna River Basin Commission but provided no accompanying motion or explanation of these filings. These filings do not provide a basis to grant TMIA’s petition for reconsideration.

¹³ TMI-2 Solutions Answer to Motion to Amend at 4-6. We also agree with TMI-2 Solutions that the Motion to Amend suffers from several other defects. *Id.* at 1-6 (noting that this type of motion is not provided for in the Commission’s regulations, the Motion to Amend exceeds the page limits, and TMIA did not consult with the other parties).

¹⁴ Motion to Amend at Attach. 1.

¹⁵ Petition at 4-5.

disagreed with the jurisdictional findings in that case, he agreed with the majority's position that the abeyance motion should be denied.¹⁶ In CLI-21-8 the entire Commission found that "[o]ur rules do not allow for a motion to hold a closed proceeding in abeyance" and found that TMIA's motion failed to meet the standards for a motion to reopen the record or to stay the license transfer.¹⁷ TMIA does not address or show error in this reasoning.

Because TMIA has not shown any compelling circumstance that would render our decision in CLI-21-8 invalid, it has not met the requirements for a petition for reconsideration. The Petition is therefore denied.

IT IS SO ORDERED.

For the Commission



Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 31st day of August 2021.

¹⁶ CLI-21-8, 93 NRC at ___ (slip op. at 8). Notably, Commissioner Baran joined the rest of the Commission in the conclusion that section 401 of the CWA does not require a new certification for this license transfer because it does not authorize an activity that could result in a new discharge.

¹⁷ *Id.* at ___ (slip op. at 5).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Commission Memorandum and Order (CLI-21-10)** have been served upon the following persons by Electronic Information Exchange.

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Three Mile Island Nuclear Station, Unit 2, Docket No. 50-320 LT
Commission Memorandum and Order (CLI-21-10)

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Dated at Rockville, Maryland,
this 31st day of August 2021.

Office of the Secretary of the Commission