

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY
COMMISSION**

BEFORE THE SECRETARY

In the Matter of)	
)	
THREE MILE ISLAND NUCLEAR)	
STATION, UNIT NO. 2;)	
CONSIDERATION OF APPROVAL OF)	Docket No. 50-320 LT
TRANSFER OF LICENSE AND)	
CONFORMING AMENDMENT)	
)	

**REPLY OF THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION TO
APPLICANTS' ANSWER OPPOSING ITS
PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR AN
EXTENSION OF TIME TO FILE A HEARING REQUEST**

Pursuant to 10 CFR § 2.309(i)(2), the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department” or “DEP”), submits this reply to the GPU Nuclear, Inc. (“GPU Nuclear”), Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company (collectively referred to as the “FirstEnergy Companies”) and the TMI-2 Solutions, LLC (“TMI-2 Solutions”) (collectively, “Applicants”) Answer filed on May 11, 2020 to the Department’s Petition for Leave to Intervene and Request for an Extension of Time to File a Hearing Request (“Petition”). The Department’s Petition was submitted in response to Applicants’ filing of an Application to transfer the Possession Only License No. DPR-73 for Three Mile Island Nuclear Station, Unit 2 (“TMI-2”) from the FirstEnergy Companies to TMI-2 Solutions (“Application”).

INTRODUCTION

The Department's Petition met the requirements of 10 CFR § 2.309 relating to petitions to intervene. In their Answer, even Applicants admit that requirements for a contention were "formulated and filed" in accordance with the rule. (Answer p. 39). The Department's limited request for an extension to file a hearing request demonstrates a measured and efficient approach. It provides all parties with official notice of the Department's concerns, provides for judicial economy by promoting discussion among the parties, and preserves the Department's rights to request a hearing if it is unable to verify after these discussions that the record in front of the Nuclear Regulatory Commission ("NRC" or Commission") is complete. Requesting a limited extension during the unprecedented global pandemic of COVID-19 while still filing a timely Petition and Public Comments on the TMI-2 Application is hardly justification for Applicants' claim that the Department should be fully able at the present time to determine whether a hearing may be necessary. (Answer pp. 38-39).

As previously stated in the Department's Petition, the Department welcomes a properly conducted and expedited cleanup and restoration of TMI-2. However, the obvious risk of a funding shortfall and the attendant significant health, safety, environmental, financial and economic risks to the Commonwealth and its citizens raise serious questions about the realization of that benefit. (Petition p. 3). The Department appreciates that Applicants are "interested and ready to engage with DEP to discuss plans for TMI-2." (Answer p. 6). However, it is paramount that a full record is developed before the Commission in order for the NRC to properly determine whether the current and proposed licensees have sufficient funds available now, and into the future, to satisfactorily decommission and restore the TMI-2 site given its unique factual history and its location in the middle of the Susquehanna River.

1) The Department's contention meets the requirements of 10 CFR § 2.309

In contrast to what Applicants claim in their Answer, the Department's contention cites to specific sections and page numbers of the Application. The Petition provides references to specific statements in the Application and points to missing information for several assumptions made by Applicants including the sufficiency of funds accruing in the nuclear decommissioning trust fund ("NDT"), what funds will be withdrawn from the NDT, whether necessary information was provided to understand how the contingency costs were estimated to verify that the estimations conform with regulatory requirements, and whether the information provided is sufficient to evaluate the validity and sufficiency of the financial guarantees made by TMI-2 Solutions. (*See generally* Petition pp. 6-10) The Department's Petition is also accompanied by the Declaration of Department Radiation Bureau Director, David J. Allard ("Declaration"). Page 6 of the Petition states "[t]he facts outlined below are confirmed by the Declaration of David J. Allard filed with this Petition." Nowhere in Applicants' Answer do they acknowledge the Declaration let alone state how the Declaration is insufficient.

DEP offered far more than a "generalized conclusory opinion that the information is 'inadequate,'" and DEP did explain why the information is insufficient, contrary to Applicants' statements on Pages 5 and 20 of their Answer. Rule 10 CFR § 2.309(f)(vi) specifically states "if the petitioner believes that the application fails to contain information on a relevant matter as required by law, [the petitioner must include] the identification of each failure and the supporting reasons for the petitioner's belief." The rules governing a contention specifically contemplate pointing out where there is missing information. As the Department explains throughout its Petition, the missing information does not allow anyone, including the NRC, to verify whether

Applicants' are meeting the requirements of the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 *et seq.* ("AEA") and the regulations promulgated by the NRC, as they claim.

Contrary to Applicants' assertions, DEP is not seeking to apply an "absolute" or "beyond a reasonable doubt" standard in this matter, nor is DEP engaging in the "mere casting of doubt" on aspects of the application. (Answer p. 14). Instead, DEP is genuinely concerned about the financial guarantees and is seeking to have the NRC require Applicants to provide reasonable financial assurances by including sufficient detail which will enable it to assess the financial guarantees beyond the conclusory assertions contained in the Application.

DEP's Petition describes how the Application is unclear identifying and describing what are the "financial assurance instruments valued at up to \$100 Million" and what "up to" means. (Petition p. 9). Also, the Department stated that there is nothing in the record that explains if the economic climate resulting from COVID-19 has affected any of these guarantees. (Petition p. 9). Applicants in their Answer do not address these points at all. They simply restate that "up to \$100 million" in guarantees provided was in its Application. (Answer p. 25).

Applicants state the Application "fully complies with the NRC requirements to provide financial assurances" and to "the extent the Department is challenging the sufficiency of the NRC regulations such a challenge is prohibited." (Answer p. 23). Applicants reiterate this point and add that they have included "all the information in the application." (Answer p. 26). This mischaracterizes the Department's argument in its Petition. The Department does not take issue with the regulations themselves. Rather, it is concerned about the dearth of information provided by the Applicants to verify that they are meeting their legal obligations. Stating that the Application "fully complies" with the regulations is not a fact, but a conclusory statement.

Applicants attempt to provide factual support for the notion that they have “fully complied” with the regulations by stating contingencies in cost estimates were evaluated by “risk modeling software to quantitatively evaluate the integrated impact of uncertainty and discrete risk events on the project objectives, baseline schedule, and costs, as well as EnergySolutions’ own significant experience decommissioning commercial and other reactor facilities -- all of which were reviewed in detail as part of the acquisition discussion between TMI-2 Solutions and First Energy Companies.” (Answer p. 28). Applicants do not identify what the “risk modeling software” is nor whether this software has ever been used previously to estimate costs in this context. Applicants admit that this analysis was done as part of “discussions” among themselves. Applicants do not state in their Answer whether the analysis they allude to has been supplied to the NRC for it to verify the assumptions made by the “risk modeling software” nor do the Applicants provide the “details” of the private discussions among the Applicants.

Furthermore, since the underlying calculations behind the assumptions are not included in the Application, Applicants are unable to address the Department’s concern on page 6 of its Petition that the new Decommissioning Cost Estimate is lower than what was previously provided to the Commission. (\$1.06 Billion in 2019 dollars versus \$1.22 Billion in 2014 dollars). Applicants correctly point out that the Department has not expressed concerns about cost estimates or the NDT fund value in the past. However, it is more than appropriate to raise these issues at this time, when a license transfer request is pending, especially considering the recent developments associated in light of (1) the creation of a new limited liability company, (2) a change in ownership, (3) a change in the decommissioning plan and timeline, (4) proposed new funding mechanisms, and (5) withdrawal for unverified expenses. (Answer p. 18 n. 95). Given the

uncertainties, the Department filed the Petition to identify its contentions and detail the specific places in the Application where information was omitted or insufficient. (*See* Petition pp. 6-10).

Applicants also provide only a conclusory retort to what funds will be withdrawn from the NDT. (Answer pp. 29-30). Applicants merely restate the legal requirement of what funds can be withdrawn and generic language in the Purchase Agreement that GPU will withdraw funds to pay unreimbursed expenses. Again, no specific information or breakdown is provided about the funds to be withdrawn.

In response to the Department's concerns that there is not enough information provided in the Application to make a determination that the trust will have sufficient funds, the Applicants generically reference the "additional financial assurance instruments described in the Application." (Answer p. 30). Again, Applicants do not cite to specific information in the Application that describes what these assurances are or even provide as much as a page number where one can review the accuracy and completeness of these "financial assurance instruments."

2) The Department's request for an extension to request a hearing provides for administrative efficiency and should be granted.

The Department is the state agency charged with administering environmental protection laws for many programs, including radiation protection. As outlined on Page 2 of the Declaration, since 2008 the Department has issued licenses and completed inspections for all forms of radioactive materials as part of a formal agreement between the Commonwealth of Pennsylvania and the NRC. The Department is certainly well versed in balancing the need for an efficient review process of an application for a variety of license transfers while also confirming that applicants have provided verification for claims made in the application materials to ensure that an approval is not just "rubber stamped."

The Department has no interest in unnecessarily delaying this license transfer application, and is committed to a prompt, yet reasoned, resolution. The Applicants, however, completely distort the Department's request for an extension to ask for hearing by referring to it as an "unbounded extension." (Answer p. 32). On page 10 of its Petition, the Department specifically asks for a precise amount of time, "one month after DEP's physical offices reopen, following the COVID-19 pandemic." Furthermore, the Department states that if it is satisfied that the record before the Commission is complete in accordance with the AEA then it will not pursue its hearing request even if an extension is granted. (Petition p. 11). Nowhere in its Petition does DEP state it is opposed to having conversations now with Applicants while its staff is teleworking to keep the process moving along. As Applicants admit in their Answer, the Department has already discussed and entered into a joint motion with Applicants to receive and review information marked as Sensitive Unclassified Non-Safeguards Information ("SUNSI"). (Answer p. 8).

At the time it filed its Petition of April 15, 2020, the Pennsylvania stay-at-home Order was set to extend through April 30, 2020. (Petition p. 13). As of the date of filing this reply, the Pennsylvania stay-at-home Order has been extended until June 5, 2020. DEP can appreciate that there is some uncertainty as to the exact date its physical office will reopen. As admitted by Applicants, the Department has made significant strides in adjusting to teleworking. Therefore, the Department amends its previous request to now request an extension of time to file a request for a hearing by August 3, 2020. Such a request would not unduly delay the Applicants' request for a decision to be reached before the end of 2020. (Applicants' cover letter p. 3).

Interestingly, Applicants acknowledge that while its staff has been working remotely DEP has still provided "detailed comments on the LTA" and "formulated and filed a petition to

intervene with a proposed contention – thereby submitting the type of information required by 10 C.F.R. § 2.309.” (Answer pp. 38-39). Applicants contradict themselves within their Answer and ultimately acknowledge that the Department “formulated and filed” a contention that meets the regulatory requirements. Furthermore, by Applicants’ own admissions in their Answer, the Department has attempted to do everything in its power to respond and to file its Petition and public comments, despite receiving notice through the March 26, 2020 *Federal Register* in the middle of the COVID-19 global pandemic.

Applicants wrongly claim that the Department’s request for an extension should be guided by 10 CFR § 2.323 Motions, and since the Department did not include a certification with its request that it consulted with all parties in its filing, its request should be denied. (Answer p. 33). However, Section 2.323(a) specifically excludes motions filed under 10 CFR 2.309(c) from the certification requirements. Section 2.309(c) outlines the requirements for filing request for a hearing and the specifications for new or amended contentions are found. Section 2.309(c) also does not require that a separate motion asking for an extension of time be filed along with the Petition. 10 CFR § 2.309(c). Furthermore, if Applicants truly believed that the Department’s request should be treated as a motion, then the Applicants would have been required to file their answer within ten days of service, as set forth in, 10 CFR § 2.323(c). Applicants did not do this. Therefore, following Applicants’ own argument and practice in this case, their objection to the request for an extension of time would have passed.

The Department’s request for an extension is also in line with 10 CFR Part 2, Subpart M and the Commission’s policy for timely and efficient license transfer proceedings. As Applicants point out on Page 35 of their Answer, 10 CFR § 2.1316 provides that NRC staff are “expected to

promptly issue approval or denial of license transfer requests. Notice of such action shall be promptly transmitted to the presiding officer and parties in the proceeding.” However,

[N]o license granted hereunder * * * shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, **after securing full information**, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing. (42 U.S.C. 2234; 10 CFR 30.34 (b), 40.46, 50.80, 72.50)

Streamlined Hearing Process for NRC Approval of License Transfers, 63 FR at 66,721-66,722 (*emphasis added*).

In contemplating a streamlined process for certain license transfers, the Commission provided examples such as a “holding company over an existing licensee, as well as direct transfers, such as transfer of the ownership and operating authority of a single or majority owner.” 63 FR at 66,722. The Commission also stated that “NRC staff review of such applications consists largely of assuring that the ultimately licensed entity has the capability to meet financial qualification and decommissioning funding aspects of NRC regulations. These financial capabilities are important over the long term, but have no direct or immediate impact on requirements for day-to-day operations at a licensed facility.” *Id.* Here, the financial capabilities are of utmost importance because the license is being transferred to a completely new and different company specifically for decommissioning activities and not day-to-day operations.

In defending the proposed streamlined process, the Commission has also stated:

[The process is] not ‘pro forma’ but in fact provide[s] ample opportunity for the parties to raise appropriate issues and build a sound evidentiary record for decision. At the same time, the Commission recognizes that issues might arise that could require additional procedures. Therefore the rule explicitly provides that the Commission may use additional procedures or even convene a formal hearing ‘on specific and substantial disputes of fact necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing.’ See § 2.1322(d).

63 FR at 66,723.

Also, the Commission described that in its rulemaking adopting the streamlined process, it was making a “generic finding” that “administrative amendments which do no more than reflect an approved transfer and do not directly affect actual operating methods and actual operation of the facility do not involve a ‘significant hazards consideration.’” 63 FR 66,728.

A license transfer to a new company to conduct the expedited cleanup and restoration of the TMI-2 site, where a historic accident took place and caused the closure of the facility, most certainly deserves far more than a “pro forma” review and the NRC should ensure that a “sound evidentiary record” is available. The TMI-2 site, which experienced the worst commercial nuclear accident in U.S. history, should not fall under the “generic finding” that there is no significant hazards consideration to be made, especially where the Department has raised a credible contention regarding the lack of specificity over financial assurances.

Applicants claim that an extension to file a hearing request is not needed because state consultation can proceed independently and in parallel with any evidentiary hearing. (Answer p. 36). However, the NRC has twice written to the Department stating that, because the license transfer application is under review, it cannot discuss specifics but only the license transfer process generally. (*See* NRC letters April 23, 2020 and May 6, 2020 attached as Exhibit A). The NRC also stated that, in the “current climate of limited travel and social interaction,” it would anticipate that any meeting would have to be conducted remotely. (May 6, 2020 letter, Exhibit A).

Applicants believe a hearing request is also not warranted because 10 CFR § 2.315(c) would allow the Department to participate at a hearing without being a party. (Answer p. 36). However, that section, which pertains to participation by a person not a party, would only allow the

Department to have one representative at the hearing and, although it allows the Department to file a petition with the Commission for review with respect to its contention, it does not guarantee appeal rights beyond the hearing since the Department would not be treated as an admitted party to the case.

CONCLUSION

The Department and the citizens of Pennsylvania have a direct and ongoing interest in all aspects of the decommissioning, flood protection, environmental monitoring, radioactive waste management, and site restoration of TMI-2. Although the Department welcomes the possibility of a properly conducted and expedited cleanup and restoration of TMI-2 (where the historic reactor core meltdown took place), it believes the current record needs to be further developed for the Commission to find, as it must, that the license transfer application would, if approved, provide “adequate protection to the health and safety of the public.” 42 U.S.C. § 2232(a). For these reasons, the Department requests that the NRC/ASLB grant the Petition to Intervene and the associated request for an extension of time to request a hearing, as amended to allow the Department until August 3, 2020 to file its request for a hearing, should the Department determine that such a hearing remains necessary.

Respectfully submitted,
Commonwealth of Pennsylvania
Department of Environmental Protection
By their attorney,

Signed (electronically) by
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Dated: May 18, 2020



SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

Exhibit A

April 23, 2020

Patrick McDonnell
Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Dear Secretary McDonnell:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of April 6, 2020, addressed to Chairman Svinicki regarding the Three Mile Island Unit 2 (TMI-2) License Transfer. Your letter expresses concern regarding the transfer. Further, a response letter dated April 13, 2020, to you from the presidents of GPU Nuclear and EnergySolutions, copying Chairman Svinicki, was also received.

Because the NRC has received requests for an adjudicatory hearing on the matter, your letter bears on what is now a contested proceeding before the Commission. For that reason, it would be inappropriate for the Commission to respond to the questions in your letter or to comment generally on the matter at this time. This is because the Commission must remain impartial during the pendency of the proceeding.

Additionally, your letter requests a briefing of your staff from the NRC staff and the applicant as well as a local PSDAR public meeting. These requests are being referred to the technical staff to provide a response.

A copy of your letter, the GPU Nuclear/EnergySolutions letter, and this response will be served on the participants in the TMI-2 license transfer proceeding.

Sincerely,

Annette L. Vietti-Cook



April 6, 2020

Kristine L. Svinicki, Chairman
U.S. Nuclear Regulatory Commission
Office of the Chairman
Mail Stop O-16 B33
Washington, D.C. 20555-0001

Re: Three Mile Island Unit 2 License Transfer

Dear Chairman Svinicki:

I am writing to you to express my serious concern regarding the proposed license transfer of the Three Mile Island Unit 2 (TMI Unit 2) nuclear power plant from GPU Nuclear Corporation to the EnergySolutions' subsidiary TMI-2 Solutions, LLC (TMI-2 Solutions).

As you are aware, in 1979, the TMI Unit 2 power reactor had the worst nuclear accident in U.S. history. The TMI Unit 2 nuclear accident resulted in damage to the majority of the reactor core, released millions of curies of radioactive noble gases into the environs, and grossly contaminated the interiors of the containment and auxiliary buildings. Because of this, we understand there are very high radiation areas within TMI Unit 2 that present a grave risk to personnel that enter. Despite the limited entries into the containment building to remove damaged nuclear fuel in the 1980s, there are vast areas in the plant with unknown radiological conditions related to the TMI Unit 2 accident. I firmly believe TMI Unit 2 is the most radiologically contaminated facility in our nation outside of the Department of Energy's weapons complex.

When it was announced that TMI Unit 1 was going to be permanently shut down, the Commonwealth's residents and the Pennsylvania Department of Environmental Protection (DEP) believed this to mean that TMI Unit 1 would enter into a SAFSTOR status for several decades and be decommissioned first. This would allow for the further decay of radioactivity within TMI Unit 2 and reduce worker exposure and possible environmental releases of radiation during clean up.

However, this understanding is no longer the case. With the announcement of GPU Nuclear Corporation planning to shed its responsibility for TMI Unit 2 to TMI-2 Solutions, we now understand that TMI-2 Solutions plans to immediately begin the decommissioning of TMI Unit 2 with the accrued \$800 million in the financial assurance fund that GPU Nuclear Corporation and the NRC currently control. This leaves us with many questions and concerns, which I outline in more detail below, about what a license transfer of TMI Unit 2 will mean for Pennsylvania, the local environment, and the communities surrounding Three Mile Island.

Secretary

Concerns with Three Mile Island Unit 2 License Transfer

Environmental & Safety Impacts

Due to the TMI Unit 2 power reactor partial meltdown, it is our understanding there are still very high radiation areas within TMI Unit 2 that would present a grave risk to any personnel that enter. Related to this understanding, I have the following questions about environmental impacts and safety associated with the decommissioning of TMI Unit 2:

- What increased environmental surveillance and pollution controls will the NRC require during clean-up of TMI Unit 2 to ensure any radiological releases are detected?
- The TMI Unit 2 facility is in the middle of the Susquehanna River, a major water supply for the region that drains into the Chesapeake Bay. What environmental and pollution controls will be put in place to ensure no contamination of this critical water source?
- What flood controls will be utilized during decommissioning to mitigate a worst-case flood scenario on the Susquehanna (e.g. a weather event similar to Hurricane Agnes in 1972 that produced 19-inches of rain in Pennsylvania)?
- Will the NRC require a local decommissioning advisory committee to be established to assure the clean-up of TMI Unit 2 is transparent to the public and local and state governments?

Cost of Clean-Up & Financial Responsibility

As noted above, GPU Nuclear Corporation and the NRC currently have \$800 million in its financial assurance fund for decommissioning TMI Unit 2. However, estimates have shown it will cost \$1.2 billion to decommission TMI Unit 2. For these reasons, I have the following questions, related to the cost and financial responsibility of cleaning up TMI Unit 2:

- Given there is a significant disparity between the estimated cost to decommission TMI Unit 2 from the amount of funds currently available, what funding source will be used to cover the deficit?
- Since the radiological conditions inside TMI Unit 2 are unknown, the actual cost to decommission it could be much higher than the current estimate of \$1.2 billion. What legal and financial assurances will be put in place to address this potential?
- Who will the NRC require to retain financial responsibility to clean-up TMI Unit 2 after the license has been transferred?

Radioactive Waste Handling

Due to the severe contamination from the partial meltdown and the unknown radioactivity levels of materials that will need to be disposed, I request to know the following information related to how the radioactive waste from TMI Unit 2 will be handled:

- Has the U.S. Department of Energy agreed to dispose of the TMI Unit 2 reactor vessel, which has a portion of the damaged nuclear fuel from the 1979 accident still fused inside?

- How will TMI-2 Solutions dispose of any contaminated lead shielding, which is now mixed waste, that may be present in TMI Unit 2?
- Are there volume and activity estimates of the Class B & C low-level radioactive waste that cannot be shipped to the EnergySolutions disposal site in Utah?
- Has the low-level radioactive waste disposal site in Texas agreed to accept the Class B & C waste?
- Is there any greater than Class C low-level radioactive waste in TMI Unit 2? If so, will that remain onsite?
- If asked by the licensee, will the NRC consider and approve very low-level radioactive waste to be disposed of in non-hazardous landfills in Pennsylvania?

Given my stated concerns, I hope you and your fellow Commissioners will thoughtfully consider the unique aspects of the severely damaged TMI Unit 2 nuclear reactor and not approve a license transfer until all parties are satisfied that the decommissioning can be done safely. Equally important, we require firm legal assurances that financial resources are available to complete decommissioning once started, including bonding between the Commonwealth and licensee. I also expect no radioactive waste from TMI Unit 2 will be left on Three Mile Island.

Additionally, I ask your executive staff and the current and proposed licensee brief my fellow local and state officials responsible for protection of the public and environment. Obviously, the current health crisis will dictate whether this meeting is in person or virtual. Furthermore, in that the licensee has recently amended the Post-Shutdown Decommissioning Activities Report (PSDAR) and has proposed a significant schedule change, the Pennsylvania DEP expects the NRC to hold a local PSDAR meeting after the COVID-19 situation has resolved so that the proposed clean-up work at TMI Unit 2 and timeline can be presented to the public, with ample opportunity for questions and discussion.

Should you or your staff have any questions regarding my stated concerns or wish to discuss them further, please feel free to contact David J. Allard, Director for Bureau of Radiation Protection, by e-mail at djallard@pa.gov or by telephone at 717.787.2480.

Sincerely,



Patrick McDonnell
Secretary

cc: David J. Allard, Director, Bureau of Radiation Protection, DEP
NRC Commissioner Jeff Baran, Washington, DC 20555-0001
NRC Commissioner Annie Caputo, Washington, DC 20555-0001
NRC Commissioner David A. Wright, Washington, DC 20555-0001
David Lew, Regional Administrator, U.S. NRC Region I,
2100 Renaissance Blvd., Ste. 100, King of Prussia, PA 19406-2713



April 13, 2020
TMI-20-013

Patrick McDonnell
Office of the Secretary
Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Dear Secretary McDonnell

We want to thank you for the clarity of the concerns and questions the Department of Environmental Protection expressed on the future of Three Mile Island Unit 2 (TMI-2) in your April 6, 2020 letter to NRC Chairman Svinicki. We felt it imperative that we (GPU Nuclear and EnergySolutions, the parent of TMI-2 Solutions) address the questions you raised regarding the status and decommissioning of TMI-2. First let me assure you that we are intensely focused on the environment as well as the health and safety of the public and our personnel at TMI-2, both now and in the future. Our decommissioning planning efforts, considering also the shutdown of Three Mile Island Unit 1 (TMI-1), have been a key focus of our activities over the last several years. During this time, we have ensured open access to information to your on-site Division of Nuclear Safety staff.

The radioactive cleanup of the accident-generated radioactive material in the 1980s resulted in approximately 99% of the nuclear fuel being taken by the U.S. Department of Energy to a dry fuel storage facility in Idaho. Over the last 30 years, the plant has been carefully monitored by GPU Nuclear, Exelon, the NRC, and with oversight through the Pennsylvania Division of Nuclear Safety. TMI-2 is in a state of Post-Defueling Monitored Storage (PDMS), designed and implemented specifically for the unique characteristics of TMI-2. There have been no incidences or even near misses of releases from the plant that in any way endangered or put the public at any risk. Having said that, we are taking the planned dismantlement of the plant and remediation of the remaining radioactive material very seriously. In May of 2019, as GPUN Chief Nuclear Officer, I personally performed my 3rd inspection of the inside of the Reactor Building and put my eyes on many of the areas of increased radioactivity. I was accompanied on this tour by a member of your DEP staff as well as a USNRC commissioner.

We believe now is the right time to complete the cleanup. GPU Nuclear carefully and thoughtfully chose EnergySolutions as a proven and leading nuclear decommissioning and waste management company to handle the remediation of TMI-2. They have successfully decommissioned sites in Illinois, Arkansas and Wisconsin and are actively working on the decommissioning of San Onofre Nuclear Generating Station in California and Fort Calhoun Station in Nebraska. They own the leading radioactive waste depository in the country and are the most experienced company in the United States at handling radioactive waste of all types.

The questions and concerns you raised are very much in the forefront of our planning efforts. We feel they are very valid points, and would like to take this opportunity to provide some additional information and renew our offer of an in-person meeting with you and your staff to field additional questions and clarifications. We realize these are challenging times for in-person meetings, but at the first opportunity, whether in-person or by teleconference, we would appreciate the opportunity to provide additional time for further understanding. The enclosure to this letter provides detailed answers to the issues raised. To ensure clarity, we restated points in your letter and provided commentary beneath it. It is difficult to anticipate further questions in this letter, but we welcome additional interaction in any area you require more detail.

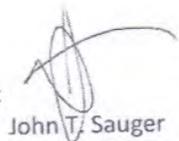
We trust these answers and commentary will provide the PA DEP with increased assurances about the efficacy of the proposed transfer of TMI-2 to TMI-2 *Solutions*. This license and ownership transfer, at the time of reductions in Exelon's workforce on the Island, will ensure a deeply experienced nuclear company to care for TMI-2. The proposed business deal described in the License Transfer Application to the USNRC provides for strong financial assurances coupled with the proven technical abilities of *EnergySolutions*. As we work through the approval process with the USNRC, we are more than willing to address additional concerns and questions by the Department of Environmental Protection in a meeting forum of your choice.

As mentioned above, we are very much interested in being able to meet with you and your staff to further the discussion on future plans for TMI-2. The planning phase will occur over the next several years so there is ample opportunity to interact, address questions and concerns, and maintain a high level of engagement with all of our stakeholders.

Please, if you have additional questions or concerns, feel free to contact Greg Halnon, President and Chief Nuclear Officer, GPU Nuclear at gshalnon@firstenergycorp.com. Your Division of Nuclear Safety staff is able to contact me on my personal devices if necessary during the COVID-19 restrictions.



Gregory H. Halnon
President, CNO
GPU Nuclear

Confirmed By: 
John T. Sauger
President, CNO
EnergySolutions

Cc (via email)

David J. Allard, Director, Bureau of Radiation Protection, DEP
Rich Janati, Chief, Division of Nuclear Safety, DEP
Kristine Svinicki, Chairman, USNRC Commission
David Lew, Regional Administrator, USNRC Region 1

**Detailed Commentary to Issues Raised by the Pennsylvania
Department of Environmental Protection**

Environmental & Safety Impacts

1. What increased environmental surveillance and pollution controls will the NRC require during the clean-up of TMI Unit 2 to ensure any radiological releases are detected?

TMI Unit 2 Technical Specification (TMI-2 TS) 6.7.4a requires a Radiological Effluent Controls Program which conforms to NRC Regulation 10 CFR 50.36a "Technical specifications on effluents from nuclear power reactors". This regulation requires that releases of radioactive materials to unrestricted areas during normal conditions, including expected occurrences, are as low as is reasonably achievable. Implementation of these controls are described in the Offsite Dose Calculation Manual and include redundant monitors on the TMI-2 ventilation exhaust as described in the Post-Defueling Monitored Storage (PDMS) Safety Analysis Report (SAR) Revision 13 Section 7.2.4.3 "Effluent Monitoring". In addition, the PDMS SAR sections 7.2.1.2 "Containment Atmospheric Breather", 7.2.1.3 "Containment Ventilation and Purge", 7.2.6.1 "Auxiliary Building Ventilation System" and 7.2.6.2 "Fuel Handling Building Ventilation System" identifies the capability to provide HEPA filtered ventilation exhaust from Three Mile Island Unit 2. Results of this monitoring are reported in the Annual Radioactive Effluent Release Report required by Technical Specification 6.8.1.2 and 10 CFR 50.36a. The most recent Annual Radioactive Effluent Release Report for TMI Unit 2 is dated April 29, 2019 and can be found on the NRC's website at ADAMS Accession Number ML19120A236.

Additionally, TMI-2 TS 6.7.4b requires a Radiological Environmental Monitoring Program which conforms to the guidance of NRC Regulation 10 CFR 50 Appendix I. This program monitors radiation and radionuclides in the environs of the plant. The program provides:

- a. Representative measurements of radioactivity in the highest potential exposure pathways; and
- b. Verification of the accuracy of the effluent modeling program and modeling of environmental exposure pathways.

Also, groundwater monitoring will continue throughout the decommissioning process to ensure that groundwater is not impacted.

Implementation of these controls for this program is also described in the Offsite Dose Calculation Manual. The most recent Radiological Environmental Monitoring Program Report for TMI Unit 2 is dated April 30, 2019 and can be found on the NRC's website at ADAMS Accession Number ML19120A231.

TMI-2 will continue to comply with all applicable NRC Technical Specification and related requirements throughout the decommissioning.

2. **The TMI Unit 2 facility is in the middle of the Susquehanna River, a major water supply for the region that drains into the Chesapeake Bay. What environmental and pollution controls will be put in place to ensure no contamination of this critical water source?**

As described in response to Question 1 above, TMI-2 TS 6.7.4a and 6.7.4b require TMI-2 to maintain a Radiological Effluent Controls Program and a Radiological Environmental Monitoring Program, which are implemented via the Offsite Dose Calculation Manual. These programs ensure monitoring of radiological release from TMI-2 and reporting via the Annual Radioactive Effluent Release Report and the Radiological Environmental Monitoring Program Report. For non-radiological contaminants NPDES Permit 0009920 controls their release. The NRC required programs and NPDES permit will remain in effect throughout decommissioning. In addition, TMI's Preparedness, Prevention and Contingency (PPC) Plan documents the pollution prevention design features of Three Mile Island Nuclear Station (TMINS) as well as the established plans and procedures that assure facility operation in compliance with the PADEP's Emergency Environmental Response Guidelines. Best management practices will be designed and implemented specific to the decommissioning activities.

3. **What flood controls will be utilized during decommissioning to mitigate a worst-case flood scenario on the Susquehanna (e.g. a weather event similar to Hurricane Agnes in 1972 that produced 19-inches of rain in Pennsylvania)?**

As described in the PDMS SAR Section 2.4, TMI is situated at an elevation that is above the peak Agnes flood elevation of 300.5 feet mean seal level (MSL) with a flow of approximately 1,000,000 cubic feet per second (cfs). In addition to the largest recorded historic flood, TMI-2 is designed to protect against a Probable Maximum Flood. The Probable Maximum Flood (PMF) at TMI-2 exceeds the Agnes flood with a flow rate of 1,625,000 cfs with a flood elevation of 308.5 ft MSL. TMI-2 is protected from this flood including any wave action by the installation of flood barriers at all external entrances to the contaminated portions of the facility. Procedures and regulatory commitments remain in effect for the installation of these flood control barriers.

The current revision of the PDMS SAR also describes a dike surrounding the TMINS. The elevation of this dike is 304 ft. MSL and thus is not protective of a PMF event. With the closure of TMI-1 this dike is no longer maintained and reference to the dike will be removed in PDMS SAR Revision 14.

Radioactive or contaminated waste temporarily stored outside for packaging into transport containers will incorporate flood protection features, such as berms, to prevent the material from being washed away during a flood or severe storm.

4. **Will the NRC require a local decommissioning advisory committee to be established to assure the clean-up of TMI Unit 2 is transparent to the public and local and state governments?**

EnergySolutions, through its subsidiary *TMI-2 Solutions*, intends to establish a Citizens Awareness Panel (CAP) after completion of the transfer of TMI-2. *EnergySolutions* is eager to engage with the state and the TMI community as it proceeds with decontamination and dismantlement of the TMI-2 site. The panel will provide a continuing opportunity for the stakeholders and public to be informed and provide feedback on the progress to decontaminate and cleanup the site for future use. *EnergySolutions* has had a very positive experience with a CAP decommissioning the two unit Zion site and will build on that experience with TMI-2. Included in our progress reports to the Zion CAP is a status of the NDT and the remaining estimated work to complete. Public participation was also welcomed and the NRC and Illinois Nuclear Safety Division attended and were periodically asked to provide their perspectives on our decommissioning progress as our regulators.

Cost of Clean-up and Financial Responsibility

1. **Given there is a significant disparity between the estimated cost to decommission TMI Unit 2 from the amount of funds currently available, what funding source will be used to cover the deficit?**

The License Transfer Application (LTA) Enclosure 7 provides a decommissioning cost estimate for TMI-2 of \$1,056,874, as well as the projected annual spending, which includes a substantial contingency. Although the current value of the TMI-2 nuclear decommissioning trust fund (NDT) is approximately \$892M, it is important to recognize that the cost estimate represents the cost to decommission the facility over many years in the future. Over time, even presuming a conservative 2% average estimate of fund growth above inflation, the current 2019 NDT can satisfy the roughly \$1.05 billion decommissioning cost estimate. The TMI-2 Post-Shutdown Decommissioning Activities Report (PSDAR) revision 3 Table 1B-3 provides a funding analysis that also demonstrates there is sufficient margin in the NDT today to complete the planned decommissioning in accordance with NRC requirements. The funding analysis uses realistic parameters and has actual project estimates based on detailed planning.

Additionally, as described in Section IV.A.3 and Enclosure 4B of the LTA, *EnergySolutions* is providing additional financial protection mechanisms to ensure there are sufficient funds available to complete the decommissioning of TMI-2 as required by NRC. This extra financial protection can amount to \$100 million at certain phases of the project, above and beyond what is projected to meet the current project expectation.

Finally, it is important to provide a high-level description of how the deal with *EnergySolutions* was constructed. The project cost estimate was developed and each major

activity was assigned a contingency risk percentage based on the confidence level it could be successfully completed within the base line-item budget costs. Additional funds were added to each activity based on this confidence level of success. After each activity was increased due to the risk of successful completion, *EnergySolutions* added another unassigned contingency of \$50M on top of all of the assigned contingencies across the project. Finally, the additional \$100M financial assurance was added to the transaction to give further assurance of adequate funds. *EnergySolutions* demonstrated the financial and technical ability to meet these and numerous other parameters of the deal structure required by FirstEnergy.

The financial assurances required by FirstEnergy during deal negotiations were based on an assumed minimum balance in the NDT of \$800M. In other words, as long as the NDT balance is above \$800M, the assurances of the \$100M financial assurance mechanisms as well as the assigned and unassigned contingencies provide for acceptable project finances built into the transaction, adequately protecting FirstEnergy companies and any downstream liabilities to the Commonwealth from potential future shortfalls.

- 2. Since the radiological conditions inside TMI-2 Unit 2 are unknown, the actual cost to decommission it could be much higher than the current estimate of \$1.2 billion. What legal and financial assurances will be put in place to address this potential?**

The radiological conditions inside TMI-2 are fairly well known and characterized. Pre-PDMS surveys have been documented and extensive analyses of radiological conditions were performed prior to the NRC approving the PDMS license amendment in 1993. Appendix H, Chapter 5 of the PDMS SAR provides a full description of the radiological conditions that existed in TMI-2 at the time it entered PDMS. Since that time natural radioactive decay has reduced these radiation and contamination levels and the amount of curies of major radioactive constituents (Cs-137 and Sr-90) contained in the plant have decayed by over 50%. Continuous monitoring over the many years since the accident has confirmed the level of radioactive decay. The PDMS SAR Appendix H, Chapter 5 Appendix 5A contemplated a 30 year PDMS period and described future clean-up operations and expected personnel radiation exposure savings.

In addition to the detailed and conservative characterizations already in place for TMI-2, recognizing that any project carries risk of overruns, as previously mentioned, additional financial assurance mechanisms required by FirstEnergy are being put in place by *EnergySolutions*, amounting to \$100 million at certain phases of the project, to help ensure overall decommissioning success.

3. Who will the NRC require to retain financial responsibility to clean-up TMI Unit 2 after the license has been transferred?

As stated on page 2 of the License Transfer Application Cover letter "TMI-2 Solutions will assume responsibility for all licensed activities at the TMI-2 site, including responsibility under the License to complete radiological decommissioning pursuant to NRC regulations".

Radioactive Waste Handling

1. Has the U.S. Department of Energy agreed to dispose of the TMI Unit 2 reactor vessel, which has a portion of the damaged nuclear fuel from the 1979 accident still fused inside?

GPU Nuclear and EnergySolutions have met with the Department of Energy regarding the status of TMI-2 waste that will be generated during the removal and recovery of the remaining damaged core material. There is conceptual agreement that DOE retains ultimate responsibility for the disposal of any high-level radioactive waste on site, including the remaining damaged core material, pursuant to the terms of the DOE Standard Contract for Disposal of Spent Nuclear Fuel and High Level Waste. Packaging and storage of this damaged core material is fundamentally similar to that for the spent fuel that TMI-1 will be storing on-site in the Independent Spent Fuel Storage Facility (ISFSI).

EnergySolutions, leveraging its past experience on large nuclear decommissioning projects, plans to minimize the overall volume of radioactive waste produced by the TMI-2 remediation. This is accomplished by separating accident-generated solid waste from the Reactor Vessel and other components containing fragmented damaged core material. When separation is not feasible, segmentation is performed to reduce the radioactive waste volume. Given this proven technique, the estimated volume of damaged core material is estimated to be contained to twelve dry cask storage canisters that will be stored in the ISFSI. Such operations are being planned and are technically feasible using already established commercial techniques and equipment.

2. How will TMI-2 Solutions [*sic*] dispose of any contaminated lead shielding, which is now mixed waste, that may be present in TMI Unit 2?

Reactor site decommissioning projects typically encounter some level of RCRA hazardous materials used throughout the facility. Some of these materials are radioactively contaminated and as a result are "mixed waste". The EnergySolutions disposal facility in Clive Utah is permitted to accept mixed waste, which is a combination of both RCRA hazardous and radioactive waste. Treatment technologies include macro encapsulation of radioactive lead solids and hazardous debris, stabilization of heavy metals, neutralization and solidification of contaminated liquids, thermal treatment of waste containing organic solvents, amalgamation of elemental mercury, and treatment of other unique waste streams.

Dealing with such wastes is neither new nor unique to TMI-2 and EnergySolutions. Proven techniques and processes are available, and staff are trained and qualified to deal with these materials in a manner that is in full compliance with applicable regulations.

3. Are there volume and activity estimates of Class B & C low-level radioactive waste that cannot be shipped to the EnergySolutions [sic] disposal site in Utah?

As described in the 2018 TMI-2 Decommissioning Cost Estimate there is an estimated 12,558 cubic feet of Class B & C waste at TMI-2. This waste is intended to be disposed of at the Waste Control Specialists (WCS) Disposal Facility in Andrews County, Texas.

4. Has the low-level radioactive waste disposal site in Texas agreed to accept the Class B & C waste?

EnergySolutions has an ongoing contractual relationship with WCS, and it regularly ships Class B & C waste to WCS for disposal.

5. Is there any greater than Class C low-level waste in TMI-2? If so, will that remain on site?

The decommissioning of TMI-2 may generate some greater than Class C (GTCC) low level waste. GTCC waste is a regulatory term, not a unique waste type. TMI-2 did not operate long enough (approximately 90 days) to produce irradiated hardware GTCC as is with most decommissioning projects. However, portions of the damaged core material at TMI-2 that have spread and contaminated components inside and outside of the reactor vessel may be classified as GTCC. The 2018 DCE estimates approximately 2530 ft³ which is similar to the volume at other decommissioning projects. One must keep in mind that much of the cleanup had already been performed in the years following the accident. This remaining waste will be stored on site in accordance with NRC Regulations contained in 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste." It is important to emphasize that every reactor decommissioning project generates some GTCC waste, and GTCC waste is routinely stored on site until the Department of Energy accepts ownership to dispose of this waste in a deep geologic repository. For example, the Crystal River Unit 3 PSDAR¹ assumes there will be 1785 ft³ of GTCC waste.

6. If asked by the licensee, will the NRC consider and approve very low-level radioactive waste to be disposed of in non-hazardous landfills in Pennsylvania?

The NRC website states: "On March 6, 2020, the NRC issued a proposed interpretation of its low-level radioactive waste disposal regulations in 10 CFR 20.2001 that would permit licensees to dispose of waste by transfer to persons who hold specific exemptions for the purpose of disposal (85 FR 13076)¹. In the proposed interpretation, the NRC would consider approval of requests for specific exemptions for the purpose of disposal if they are for the disposal of VLLW by land burial. Therefore, the NRC's intent is that this interpretive rule

¹ NRC ADAMS ML13340A009; page 30, Section 5.1.17

would allow licensees to transfer VLLW to exempt persons for the purpose of disposal by land burial. The NRC is requesting comment on this proposed interpretive rule.” The rulemaking is on-going and the DEP staff is encouraged comment as requested by the NRC. In addition, approvals granted by the NRC for disposal of VLLW at a burial site generally require such disposal to be in full compliance with any regulations and permits required by regulations administered by the host state. Therefore, this is an issue over which the Commonwealth of Pennsylvania has a certain degree of control. The important point is that TMI-2 *Solutions* will comply with all applicable state and federal regulatory requirements for disposal of all types of wastes, including VLLW.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
FirstEnergy Companies) Docket Nos. 50-320 LT
)
TMI-2 Solutions, LLC)
)
(Three Mile Island Nuclear Station,)
Unit 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **LETTER FROM COMMISSION SECRETARY ANNETTE VIETTI-COOK TO PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION SECRETARY PATRICK MCDONNELL** have been served upon the following persons by Electronic Information Exchange.

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Dated at Rockville, Maryland,
this 23rd day of April 2020.

Office of the Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 5, 2020

Patrick McDonnell, Secretary
Pennsylvania Department of Environmental
Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

SUBJECT: PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
APRIL 6, 2020, REQUEST FOR MEETINGS REGARDING PROPOSED
TRANSFER OF THREE MILE ISLAND NUCLEAR STATION, UNIT NO. 2
LICENSE

Dear Mr. McDonnell:

Thank you for your April 6, 2020, letter addressed to Chairman Svinicki. This letter supplements our April 24 response (Agencywide Document Access Management System [ADAMS] Accession Number ML20114E321) and addresses the requests your letter for the U.S. Nuclear Regulatory Commission (NRC) executive staff to brief Pennsylvania state and local officials regarding the proposed transfer of the Three Mile Island Nuclear Station, Unit No. 2 (TMI-2) license and for the NRC to hold an additional public meeting on the TMI-2 Post-Shutdown Decommissioning Activities Report (PSDAR).

Relative to the first request, it is standard practice for NRC staff to conduct government-to-government meetings with state and local officials whenever requested, to discuss NRC-regulated topics related to decommissioning facilities. In this current climate of limited travel and social interaction, we would anticipate that any such meeting would be conducted remotely. As indicated in our April 24 letter, since the license transfer application is under review, the NRC will not be able to discuss specifics of the license transfer application. The NRC staff will be able to discuss the license transfer process generically.

Relative to the second request, consistent with its regulations, the NRC held a public meeting on the TMI-2 PSDAR near the site on August 28, 2013. Although the PSDAR was subsequently updated in November 2013 and December 2015 to reflect updated cost figures and analyses, as well as revised agreements and administrative clarifications, the NRC's regulations require written notification of these updates to the NRC, with a copy to the affected State. The NRC has not conducted additional public meetings at any reactor decommissioning sites based on PSDAR updates. Additionally, since it is contingent on the completion of the proposed license transfer, the NRC staff is treating the December 2019 update to the TMI-2 PSDAR as a supplement to the license transfer application.

The NRC is not planning an additional public meeting specifically on the TMI-2 PSDAR. However, NRC staff has, upon request, attended and participated in public meetings in the vicinity of decommissioning nuclear reactors to better understand community concerns and

clarify NRC's role in the decommissioning process. NRC staff would consider participation in a public meeting in the vicinity of TMI-2, consistent with any limitations during the hearing process, as well as current travel and safety restrictions.

Please contact Doug Tift in the NRC Region I office (Doug.Tift@nrc.gov, 610-337-6918) to coordinate a government-to-government meeting. Please contact Theodore Smith (Theodore.Smith@nrc.gov, 301-415-6721) or Bruce Watson (Bruce.Watson@nrc.gov, 301-415-6221) in the Reactor Decommissioning Branch if you have any other questions.

Sincerely,

Patricia K. Holahan, Director
Division of Decommissioning, Uranium Recovery
and Waste Programs
Office of Nuclear Material Safety
and Safeguards

Docket No. 50-320

cc: D. Allard, Director
Bureau of Radiation Protection,
PADEP

SUBJECT: PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
APRIL 6, 2020, REQUEST FOR MEETINGS REGARDING PROPOSED
TRANSFER OF THREE MILE ISLAND NUCLEAR STATION UNIT NO. 2
LICENSE DATE: **May 5, 2020**

DISTRIBUTION: Ticket Number: LTR-20-0141-2DUWP

Public
DTiftt
RidsRgn1

ADAMS Accession Number: ML20115E536

***via email**

OFFICE	DUWP	DUWP	OGC	RI/RSLO	DUWP
NAME	TSmith*	BWatson*	JWachutka*	DTiftt*	PHolahan*
DATE	4/23/2020	4/23/2020	5/4/2020	5/4/2020	5/5/2020

OFFICIAL RECORD COPY

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY
COMMISSION**

BEFORE THE SECRETARY

In the Matter of)
)
)
THREE MILE ISLAND NUCLEAR)
STATION, UNIT NO. 2;)
CONSIDERATION OF APPROVAL OF) Docket No. 50-320 LT
TRANSFER OF LICENSE AND)
CONFORMING AMENDMENT)
)

CERTIFICATION OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that copies of the Commonwealth of Pennsylvania, Department of Environmental Protection's Reply to Applicants' Answer Opposing its Petition for Leave to Intervene and Request for an Extension of Time to File a Hearing Request have been served upon the Electronic Information Exchange, the NRC's e-filing system, in the above-captioned proceeding this 18th day of May 2020.

Signed (electronically) by _____
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Dated: May 18, 2020