



**Before the United States of America's
Nuclear Regulatory Commission**

Before the Commission

**U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D.C. 20555-0001**

**Re: Three Mile Island Nuclear Station, Unit-1
Renewed Facility License No. DPR,
NRC Docket No. 50-289-LA-2**

**Subject: License Amendment Request
to Revise the License to Allow Receipt of New Fuel.**

**Eric Joseph Epstein's Request to Bar Receipt of New
Fuel to Support Potential Restart of the Facility.**

**Eric Joseph Epstein,
Three Mile Island Alert
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Dated: May 27, 2025

Nuclear Regulatory Commission
Office of the Secretary
Rulemaking and Adjudication Staff

Pursuant to the National Environmental Policy Act (“NEPA”) and the Nuclear Regulatory Commission's inherent supervisory authority to protect the integrity of its licensing and NEPA decisions, Three Mile Island Alert, extra space before comma Inc. (“TMIA”) hereby requests the Commission to suspend any processing or consideration of a planned license amendment request (“LAR”) by Constellation Energy Generation, LLC, to the existing license for the Christopher M. Crane Clean Energy Center, formerly known as Three Mile Island, Unit 1 (“TMI-1”) to allow receipt of new fuel to support potential restart of the facility.

TMIA seeks to halt a restart commitment for the purchase and fabrication of new fuel at this time. The procurement is premature, and it would comprise an irreversible and irretrievable commitment of resources and would introduce bias in favor of approval of the contemplated restart of TMI-1 before the NRC Staff has complied with the National Environmental Policy Act

obligation of environmental review and determination of whether an Environmental Impact Statement (“EIS”) is required for the proposed restart.

TMI-Alert further requests that the Commission give this request priority and consideration for the obvious reason that to authorize Constellation to commence making arrangements for the restart would turn the controversial process of restart into a merely performative mockery.

It would flagrantly violate NEPA to permit Constellation to proceed with ordering fuel for the restart of a long-shutdown nuclear power plant where there is a request for restart which has not been acted upon by the NRC Staff, particularly as to the fulfillment of the agency’s NEPA obligations.

The Commission should waylay consideration of Constellation’s fuel purchase LAR because regulatory permission would enable Constellation illegally to evade the NEPA review that the NRC must complete before the restart can proceed. The overall restart project cannot “begin or continue without prior approval of a federal agency.” *Maryland Conservation Council v. Gilchrist*, 808 F.2d 1039, 1042 (4th Cir. 1986); *Foundation on Economic Trends v. Heckler*, 756 F.2d 143, 155 (D.C. Cir. 1985). To ensure compliance with NEPA, the Commission can

properly treat Constellation's fuel acquisition as part of the regulated "federal action" activities and deny the request or suspend processing of the LAR.

In *Gilchrist*, the Fourth Circuit ruled that the district court could enjoin a county government from building a highway up to the edge of a park that had been created with federal funds, because the highway could not be completed without a NEPA review of its impacts on the park. Similarly, here, the aim of Constellation behind ordering and purchasing nuclear fuel for the restart of TMI-1 is to operate the plant under a permit granted by the NRC. Acquisition of nuclear fuel

for the restart will influence the NRC's decision-making process regarding the proposed restart by committing resources to a pre-ordained course of action before the agency has even decided whether to prepare an EIS that evaluates the impacts of that course of action or reasonable alternatives.

As the Court observed in *Gilchrist*:

It is precisely this sort of influence on federal decision-making that NEPA is designed to prevent.

Non-federal actors may not be permitted to evade NEPA by completing a project without an EIS and then presenting the responsible federal agency with a *fait accompli*.

808 F.2d at 1042.

Therefore, the Commission should enjoin Constellation

from completing the ordering of fuel and commitment of the significant cost of purchase unless and until the NRC Staff has completed its NEPA review.

NEPA requires federal agencies to examine the environmental consequences of their actions *before* taking those actions, in order to ensure “that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). The primary method by which NEPA ensures that its mandate is met is the “action-forcing” requirement for preparation of an EIS, which assesses the environmental impacts of the proposed action and weighs the costs and benefits of alternative actions. *Id.*

TMIA’s members will suffer irreparable harm as a result of the fuel acquisition because completion of a key element of the restart will present the NRC with a *fait*

accompli and foreclose consideration of alternatives and mitigative measures. *Gilchrist*, 808 F.2d at 1042. These alternatives would include the no-action alternative or a plant restart with a lower-enriched fuel mix. The latter alternative, in particular, might include modifications to the plant. By committing resources to the restart, Constellation would make alternatives less feasible or attractive.

By comparison, enjoining fuel acquisition for the TMI-1 restart, pending completion of the NRC's environmental review, would not harm Constellation unduly. Constellation will have no use for the new fuel restart operations for the entire nuclear plant is approved by the NRC. Any resulting delay is necessary for compliance with NEPA.

The purpose of NEPA is to make sure that federal agencies take environmental considerations into account before proceeding with actions that will affect the quality of the environment. The public interest would be best served by a ruling from the Commission clarifying that the environmental review for the TMI-1 restart remains incomplete, and enjoining any serious pre-construction activity by Constellation until NEPA compliance has been achieved.

Respectfully submitted,

Eric Joseph Epstein

Dated at Harrisburg, Pennsylvania

May 27, 2025

Certificate of Service

I hereby certify that copies of Eric Joseph Epstein's Request to Bar Receipt of New Fuel to Support Potential Restart of the Facility have been served upon the following persons by Electronic Information Exchange.

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Respectfully submitted,

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May 27, 2025