

## **Summary of Three Mile Island Related Issues**

### **• Clean Water Act ("CWA"), Section 401, Water Quality Certification ("WQC").**

The final rule became effective on September 11, 2020. A license modification and transfer at Three Mile Island Unit-2 should not have occurred without a documented waiver or other documentation from the Certifying Authority - either the Department of Environmental Protection ("DEP") or the Susquehanna River Basin Commission ("SRBC") - stating that Section the 401 Certification does not apply to the changes in license conditions at Three Mile Island. The rule was modified to address deficiencies in the nuclear oversight and regulatory omissions. The revised CWA rule specifically provides for state oversight as a safety valve to prevent pollution.

This rule was advertised, discussed, and publicized in full public view. Moreover, the EPA actively engaged with the SRBC's partners regarding the rule modification prior to the rule becoming effective on September 11, 2020. The rule was designed to protect citizens who live and work around nuclear power plants from radioactive discharges. The Environmental Protection Agency intended to insulate local residents from the previous negligence of nuclear licensees and regulatory bodies.

The Federal Energy Regulatory Commission the U.S. Army Corps of Engineers, and the Nuclear Regulatory Commission are partners with the Susquehanna River Basin Commission. The Corps, which is a member of the SRBC, plays a pivotal role regarding water resource allocation at nuclear plants.

TMI-Alert was hoping that the DEP and SRBC would learn from their previous mistakes. The EPA established a Certification protocol to ensure pollution does not become a routine feature of water use. 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 Department of Environmental Protection:**

The Department of Environmental Protection ("DEP") reversed its position and supported the transfer of the license from Three Mile Island Unit-2 from FirstEnergy to TMI-2 Solutions in 2021. TMI-Alert has requested a Certification Letter from the DEP regarding TMI-2's compliance with Clean Water Act, Section 401. To date, no agency including the Nuclear Regulatory Commission ("NRC") and the Susquehanna River Basin Commission ("SRBC"), have certified compliance.

On October, 19, 2021, Eric Epstein appeared before the DEP's Citizens Advisory Council ("CAC"), and addressed the Secretary and the Council relating to Three Mile Island water use issues. Mr. Epstein announced that he would follow up with pointed questions for Mr. McDonnell and the Citizens Advisory Council.

On October 20, 2021, Mr. Epstein submitted a "Request for Action on Water Use at Three Mile Island

1) I am requesting that the DEP ask Exelon and TMI-2 Solutions to provide the amount of ground water and surface water that will be required annually to complete the decontamination and decommissioning of TMI-1 and TMI-2.

2) I am requesting that the DEP petition the SRBC to adjust groundwater and surface water withdrawals at TMI-1 and TMI-2 to comport with the actual needs of Exelon and TMI-2 Solutions to complete the decontamination and decommissioning, and restore the site to Greenfield.

3) I am requesting that the DEP request the Exelon and TMI-2 Solutions provide their plans to dispose of radioactive sludge and radioactive water created during the decontamination and decommissioning of TMI-1 and TMI-2.

On December 27, 2021, Mr. Epstein sent a courtesy e-mail reminding the DEP of his previous requests, and filed formal Right to Know Requests. On January 6, 2022,, the DEP) Open Records Officer assigned the requests to four various departments, and asked for a 30 day legal delay for review.

• **Dickinson College, nTMI Archives at the Waidner-Spahr Collections:**

This is the premier archive for Three Mile Island. The site includes artifacts, memorabilia, professionally catalogued data and documents and a video museum. The project is a result of the collaboration between Dickinson archivist Martha Slotten, and TMI-Alert's Officer Manager Kay Picklering. The initial seed funding was secure from former Representative Bruce Smith. In addition the Oral Histories and Virtual Museum were coordinated by Dr. Lonna Malmsheimer.

The library is located on campus at Dickinson College, and can also be accessed remotely. The facility has been used by researcher from around the world. The library has also worked with scholars to coordinate residences during stays. Please note the library hosts a number of important collections including the Joseph Priestley Collection and the Carlisle Indian School Digital Resource.

For more information please contact James Genrencser, Archivist at [gerencse@dickinson.edu](mailto:gerencse@dickinson.edu) and 717-245-1094.

• **Exelon is now Constellation.** Exelon no longer owns or operates Three Mile Island Unit-1. "On February 24, 2021, Exelon Corporation ("Exelon") announced that it intended to transfer 100% ownership of its subsidiary, Exelon Generation, LLC ("Exelon Generation") to a newly-created subsidiary that will then be spun-off, becoming Exelon Generation's new ultimate parent company... As a result of this transaction (the "Generation Spin Transaction"), Exelon Generation and its subsidiaries will no longer be owned by Exelon. ("Re: Notification Regarding the Transfer of Exelon Generation Company, LLC, Letter from PECO to the PUC, March 26, 2021).

Pennsylvania sat out the proceeding. TMI-Alert opposed the Spin The Commonwealth of Illinois dropped out of the hearing as did the French nuclear giant - Electric de France. The Spin was, granted by the NRC without a hearing in December 2021. TMIA is the last party standing. The new Constellation will be headquartered in Baltimore, The headquarters of Exelon Generation, the power-generation unit that will become Constellation, currently is based in the Philadelphia suburbs, and that office will continue to function.

One of the main drivers of the Spin off was to Exelon's plan to shed its nuclear liabilities such as the cost of decommissioning at Three Mile Island Unit-1. The decommissioning moneys were collected from hostage rate payers. TMIA Alert petitioned the NRC on December 23, 2021. For an update on funding status The letter asked if the funding gap had grown: The "minimal" amount for decommissioning was \$1,001,152 based on 2019 dollars. In 2019, Exelon accrued \$669,617,000. On January 24, 2021, after TMI-Alert nudged the NRC on the funding gap, the following message was sent: "Sorry if this one slipped through the cracks, Eric. We're checking with the technical staff on this, as they were asked to check on this information." (Neil Sheehan, NRC Public Affairs , January 24, 2022).

Now that the Spin is complete and there are no financial parental guarantees from Exelon. It is unlikely the Constellation will make up the \$400 to \$500 million shortfall.

- **“PA Utilities Commission to Investigate Water Use at TMI”**

“A state utilities regulator will look into water usage at a Pennsylvania nuclear plant undergoing decommissioning after an environmental watchdog group sounded the alarm, according to a recent email from the regulator.

The Pennsylvania Public Utilities Commission’s bureau of investigation and enforcement will review “certain uses of water” at Three Mile Island Nuclear Generating Station’s Unit 2 reactor (TMI-2) and will determine “any appropriate action,” according to an email from the commission to nuclear watchdog Three Mile Island Alert...

If the state agency’s investigative bureau finds any action is necessary, they’ll make a recommendation to the commission’s executive body, which will decide whether to enforce it, the email said. (“Exchange Monitor,” Vol. 14 No. 29 / 07/23/2021.)

The PUC has not authorized an investigation. Right to Know Requests were file in December, 2021 and January, 2022.

- **The Susquehanna River Basin.**

The Clean Water Act, Section 401 was designed in part to protect citizens and communities who live, recreate, and work near power plants from radioactive discharges. The Environmental Protection Agency sought to insulate local residents from the previous negligence of regulatory bodies charged to protect their health and safety. Neither Exelon, FirstEnergy or TMI-2 Solutions have provided a Clean Water Act, Section 401, Water Quality Certification to either the Department of Environmental Protection and/or the Susquehanna River Basin Commission that has certified that the Three Mile Island Nuclear Generating Station to be in compliance with the Final Rule: Clean Water Act, Section 401, Certification Rule.

The Susquehanna River Basin Commission’s decision to do nothing about nuclear contamination in light of the final adoption of the Environmental Protection Agency’s (“EPA”) Clean Water Act Section, 401 Certification Rule on June 1, 2020 is disturbing, negligent, and shocking. The final rule became effective on September 11, 2020. A license modification and transfer at Three Mile Island Unit-2 should not have occurred without a documented waiver or other documentation from the Certifying Authority - either the Department of Environmental Protection (“DEP”) and/or the Susquehanna River Basin Commission - that Section 401 Certification does not apply to the changes in license conditions at Three Mile Island.

The Certification charged statewide, water quality agencies to implement the water quality certification process consistent with the text and structure of the Clean Water Act. The DEP and the NRC also remained silent. The TMI-2 license was transferred from FirstEnergy to TMI-2 Solutions, a limited liability corporation with no assets. FirstEnergy was bankrupt, and is now organized under the title, Energy Harbor.

- **TMI-2 Solutions.** This paper company is a fiction, and a wholly owned subsidiary of *EnergySolutions*, This corporate gimmick owns Three Mile Island Unit-2, and controls \$1 billion in ratepayer, generated decommissioning funds. TMI-2 Solutions is a wholly owned subsidiary of *EnergySolutions*, which in turn is a privately held company whose shares are directly owned by Rockwell Holdco, Inc. ("Rockwell").

Rockwell is 57% owned primarily by a number of affiliated passive investment funds controlled by Energy Capital Partners GP II, LP (the "Controlling Partner"): (i) Energy Capital Partners II, LP; (ii) Energy Capital Partners II-A, LP; (iii) Energy Capital Partners II-B, LP; (iv) Energy Capital Partners II-C (Direct IP), LP; and (v) Energy Capital Partners I-D, LP (collectively, the "ECP II Partnerships")...Approximately 37% of the equity in all of the ECP II Partnerships is held by Foreign Passive Investors. Approximately 28% of the equity in the TriArtisan Entities is held by Foreign Passive Investors (Application, p. 4) Foreign trustees “can make foreign investments, including investments to be maintained abroad; *provided, however*, that such authority is limited to those foreign jurisdictions in which the Trustee has selected a foreign custodian in accordance with Section 4.6 - hereof.