

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF FEDERAL AND STATE MATERIALS AND  
ENVIRONMENTAL MANAGEMENT PROGRAMS

Scott Moore, Acting Director

April 29, 2011

In the Matter of ) Docket No. 50-320)  
FIRSTENERGY NUCLEAR ) License No. DPR-73  
OPERATING COMPANY )  
Three Mile Island Nuclear Station, )  
Unit No. 2 )

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**PETITIONER'S RESPONSES TO THE DRAFT  
DIRECTOR'S DECISION UNDER 10 CFR 2.206**

**I. Introduction**

On September 30, 2010, Eric J. Epstein (“Epstein, “Mr. Epstein” or “the Petitioner”) filed a Petition pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.206. The petitioner requested that the U.S. Nuclear Regulatory Commission (“NRC” or “the Commission”) take enforcement action in the form of a Demand for Information (“DFI”) from FirstEnergy Corp. (“FE”, “FirstEnergy”, or (the licensee”) relating to inadequate financial assurance provided by the licensee for Three Mile Island Unit-2's (TMI-2's) nuclear decommissioning fund prior to the consummation of FirstEnergy's proposed merger with Allegheny Energy. (NOTE: GPU Nuclear Inc. is the license holder for TMI-2.) GPU Nuclear, Inc. submitted the 2009 Decommissioning Funding Status Report for TMI-2 on March 29, 2010 (available in NRC's Agency-wide Documents Access and Management System (ADAMS) under Accession No. ML 1009604640). As the basis for this request, the petitioner states that the current radiological decommissioning cost estimate is \$831.5 million and the current amount in the decommissioning trust fund is \$484.5 million, as of December 31, 2008.

The Petitioner established that FirstEnergy did not provide adequate financial assurance for decommissioning funding of TMI-2: (1) FirstEnergy's annual report fails to account for the special status of TMI-2, (2) the current level of the decommissioning trust fund demonstrates underfunding, and (3) underfunding could not be addressed through rate payers after decommissioning rate recovery payments from Metropolitan Edison and Pennsylvania Electric were terminated on December 31, 2010, pursuant to Pennsylvania Public Utility Commission Orders and various settlement agreements.

## **II. History**

This Petition was assigned to the NRC's Office of Federal and Environmental Management Programs ("FSME") for review. FSME convened a Petition Review Board (PRB) that met, via teleconference, with the Petitioner and licensee on October 19, 2010, to discuss the issues raised in the petition.

The NRC informed the Petitioner that his request met the criteria for accepting the petition for enforcement, pursuant to 10 CFR 2.206. By letter dated November 9, 2010, FirstEnergy Nuclear Operating Company (FENOC) transmitted information regarding the petition. However, none of the information was copied or shared with the Petitioner despite the NRC avowed goal of "openness."

Openness -Nuclear regulation is a public business, and it must be transacted publicly and candidly. The public must have the opportunity to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other governmental agencies, the licensees, and the public as well as with the international nuclear community. (1)

Moreover, the NRC failed to note that the Petition was based on the most current data and information provided by the NRC on ADAMS as of September 30, 2010.

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1 *NRC Information Digest, 2006-2007, Edition NUREG 1350, Volume 18.*

Additional information was provided by email dated February 10, 2011. The information provided by GPU Nuclear Inc. and FENOC was considered by the staff in its evaluation of the petition.

Again, none of the information was copied or shared with the Petitioner.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to GPU Nuclear Inc. for comment on April 5, 2011.

On April 17, 2011 the Petitioner requested a postponement to file reply comments. By electronic mail, on On Apr 18, 2011, at 3:26 PM, Buckley, John wrote: "Good afternoon Eric. Your email below is a sufficient request. I will be out of the office next week so please provide any comments you have on the proposed DD by close of business Friday, April 29, 2011. "

### **III. Proposed Remedies & Staff Responses:**

#### **Petitioner:**

The Petitioner seeks enforcement action in the form of a Demand for Information ("DFI") requiring FirstEnergy to provide the NRC with site-specific information and financial guarantees that demonstrate and verify the licensee has adequate funding in place to decommission and decontaminate TMI-2. The Petitioner requests specifically that the NRC demand the following information from FirstEnergy Corporation:

1. A site-specific decommissioning funding plan for; Petitioner Basis for Request. The Petitioner states that the Decommissioning Trust Fund for TMI-2 is underfunded. As of December 31, 2008, the radiological decommissioning cost estimate was \$831.5 million. However, the amount in the decommissioning trust fund was \$484.5 million. The Petitioner states the that TMI-2 decommissioning report, "is inadequate and fails to account for the special status of TMI-2" the current level of underfunding, or the fact that decommissioning rate recovery for Metropolitan Edison and Pennsylvania Electric cease per [Pennsylvania Public Utility Commission] PUC Orders on December 31, 2010."

## **NRC Staff's Response:**

The Petition was based on outdated data contained in the March 2009 report; the staff is using the data contained in the licensee's 2010 Decommissioning Funding Status Report. The Petitioner raised concerns over the decommissioning cost estimates and the decommissioning (1) (2) (3) (4) (5) (6) (7) the amount of decommissioning funds estimated to be required pursuant to 10 CFR 50.75(b) and (c); the amount accumulated to the end of the calendar year. receding the date of the report; a schedule of the annual amounts remaining to be collected; the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections; any contracts upon which the licensee is relying pursuant to paragraph (e)(1)(v) of this section; any modifications occurring to a licensee's current method of providing financial assurance since the last submitted report; and any material changes to trust agreements.

Therefore, a reactor licensee must submit annual recalculations of decommissioning cost estimates and projected available funding that will be at the time of decommissioning. GPU Nuclear submitted its annual decommissioning funding status report for TMI-2, in compliance with NRC regulations at 10 CFR 50.75(f) The licensee's most current decommissioning funding status report states: trust fund amounts that were accurate for the reporting period ending December 31, 2008. The Commission's regulations at CFR 50.75(f)(2) require that "[each power reactor licensee shall report, on a calendar-year basis, to the NRC ... at least once every 2 years ... on the status of its decommissioning funding for each reactor or part of a reactor that it owns." However, NRC regulations require that an *annual report* be submitted by a licensee for a plant that has closed before the end of its licensed life. The requirement to submit an annual decommissioning funding status report applies to TMI-2.

The information in a decommissioning funding status report must include:

- Based on the *site-specific* decommissioning cost estimate (SSCE), *Decommissioning Cost Analysis for Three Mile Island, Unit 2*, dated January 2009, the cost for the radiological decommissioning of TMI-2 is estimated to be \$836,859,007.
- As of December 31, 2009, the amount accumulated in all the external decommissioning trust funds dedicated to TMI-2, totaled \$576,826,096.
- Additionally, the annual report stated that one remaining annual collection from Metropolitan Edison and Pennsylvania Electric, in the amount of \$4,054,046, was to be deposited into the TMI-2 decommissioning trust fund in 2010. The staff evaluated the information provide in the March 29, 2010 decommissioning funding status report, to determine whether the licensee provided reasonable assurance that funds will be available for the TMI-2 decommissioning process scheduled to begin in 2034. The staff reviewed the payment schedule filed with the Licensee's *site-specific Decommissioning Cost Analysis for Three Mile Island, Unit 2*, dated January 2009. NRC regulations at 10 CFR 50.75(e)(1)(ii) provide: "A licensee that has collected funds based on a site-specific estimate under § 50.15(b)(1) of this section may take credit for projected earnings on the external sinking funds using up to a 2% annual real rate of return from the time of future funds' collection through the decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate. This includes the periods of safe storage, final dismantlement, and license termination."

The payment schedule provided in the 2009 report incorporates the licensee's use of the forecast interest rate of 4.81 %. The rate is odds with the percentage increase in the cost of living as computed by the U.S. Census Bureau. The forecast interest rate is offset by the licensee's assumption of an annual rate of inflation of 2.81 %. The staff determined that the use of the 4.81 % **forecast** interest rate and 2.81 % annual inflation rate, is in compliance with the regulations at 10 CFR 50.75(e)(1)(ii)] The staff accepts the licensee's finding of no reasonable assurance, pursuant to 10 CFR 50.75(e)(2)

The NRC reserves the right to take the following steps in order to ensure a licensee's adequate accumulation of decommissioning funds: review, as needed, the rate of accumulation of decommissioning funds; and, either independently or in cooperation with the Company and the licensee's state PUC (2) take additional **unspecified actions as appropriate** on a case- by-case basis, including modification of a licensee's schedule for the accumulation of decommissioning funds.

The staff reviewed the Petition as well as the related documentation referenced and supplied by the Petitioner and the Licensee. Based on this review, the NRC staff has determined that the licensee has met the requirement for providing decommissioning funding assurance for TMI-2 and finds that no further information is required from the licensee at this time, and that the effect of compounding interest over the period of Post Defueling Monitored Storage (**an unspecified time period**) will result in sufficient growth of the trust funds to provide reasonable assurance for estimated decommissioning costs. The staff emphasizes that the regulations at 10 CFR 50.75 provide for ongoing reanalysis of the TMI-2 decommissioning trust fund; the financial qualifications review for decommissioning funding assurance is revisited every year until the license is terminated.

If Three Mile Island, Unit 1 (TMI-1) ceases operations prior to 2034, the NRC staff would require the TMI-1 and TMI-2 licensees to provide new site-specific decommissioning cost estimates (SSCE) for both facilities. The new SSCE would be required to provide a revised timeline for conducting decommissioning activities at the two facilities, as well as, a revised plans demonstrating reasonable assurance that funds will be available for the decommissioning process, pursuant to 10 CFR 50.75(a). NRC would analyze the revised SSCEs to assess whether the licensee provided reasonable assurance.

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<sup>2</sup> The Staff's report fails to account for or the fact that decommissioning rate recovery for Metropolitan Edison and Pennsylvania Electric cease per PUC Orders on December 31, 2010. (Metropolitan Edison (Docket No. R-00974008) and Penn Electric (Docket No. R-00974009). Penn Elec's final TMI-2 collection for \$7.817 million occurred in 2009.

## **Petitioner's Reply:**

**The Staff's review is fatally flawed and based on limited assumptions, incomplete analyses and licensee driven predictions which are unverifiable and have historically proven to be grossly inaccurate. For a complete discussion of the "Petitioner's Responses and Discussion" to the Draft Director's Decision please refer to pp. 15-20.**

**In addition, please see the Petitioner's DFI, p. 2, pp. 5-6 and pp. 5-9, for a thorough analyses of TMI-2 inability to predict funding targets.**

## **2. Petitioner:**

FENOC's site-specific funding plan for the TMI-2 decommissioning trust after the rate caps expire for Metropolitan Edison and Pennsylvania Electric on December 31, 2010; Petitioner Basis for Request The Petitioner states "FirstEnergy's rate recovery opportunities in Pennsylvania are restricted after December 31, 2010. Three Mile Island Unit-2 will no longer receive rate payer funding for decommissioning after December 31, 2010, when Metropolitan Edison and Penn Elec's "rate cap" are lifted." NRC Staff Response

### **NRC Staff Response:**

The March 29, 2010 Decommissioning Funding Status Report, includes the "Schedule of Annual Amounts Remaining to be Collected as of December 31, 2009" (Schedule 1) for TMI-2. (ADAMS No. ML 100960464). In Schedule 1, the Licensee reported \$4,054,046 was to be deposited into the TMI-2 decommissioning trust fund in 2010. (ADAMS No. ML 100960464). Schedule 1 also reports that on February 19, 2010, the Jersey Central Power & Light Company filed a request with the New Jersey Board of Public Utilities to reduce the Nuclear Decommissioning Cost charge to zero by June 1, 2010. If approved, Jersey Central Power & Light Company is expected to collect \$1,206,046 in 2010 with no further deposits anticipated. (ADAMS No. ML 100960464)

Although no additional rate payer contributions to the decommissioning trust funds are contemplated at this time, this does not mean that the decommissioning trust funds will remain stagnant. The staff evaluated the projected annual earnings on the decommissioning funds, as detailed in Schedules 2 and 3 of the 2010.

Decommissioning Funding Status Report. The NRC staff found in its review of the 2010 TMI-2 Decommissioning Funding Status Report that the compounded projected earnings on the trust funds, permitted under 10 CFR 50.75(e)(1)(ii), that the Licensee provided reasonable assurance that adequate funds will be available for the decommissioning of TMI-2. The staff has determined that no further information is required at this time.

### **Petitioner's Reply:**

**The Staff's review is fatally flawed and based on limited assumptions, incomplete analyses and licensee driven predictions which are unverifiable and have historically proven to be grossly inaccurate. For a complete discussion of the "Petitioner's Responses and Discussion" to the Draft Director's Decision please refer to pp. 15-20.**

**In addition, please see the Petitioner's DFI, p. 2, pp. 5-6 and pp. 5-9, for a thorough analyses of TMI-2 inability to predict funding targets.**

### **3. Petitioner:**

FENOC's investment plan to make-up the current decommissioning shortfall; Petitioner Basis for Request The Petitioner states that FENOC's Decommissioning Trust Fun underfunded. At the time the petition was filed, the radiological decommissioning cost estimate was \$831.5 million.



## **NRC Staff Response:**

However, as of December 31, 2008 the amount in the decommissioning trust fund was \$484.5 million. NRC Staff Response As mentioned earlier, the Petition was based on outdated data contained in the March 2009 report; the staff is using the data contained in the licensee's 2010 Decommissioning Funding Status Report. The staff points out that as of December 31, 2009, the total amount accumulated in all the external decommissioning trust funds dedicated to TMI-2 is \$576,826,096.

Based on the staffs review of the March 29, 2010 submittal (ADAMS No. ML 100960464), and in accordance with NRC Regulations at 10 CFR 50.75, guidance document NUREG-1307, Rev. 14, "Report on Waste Burial Charges," and staff guidance LIC- 205, Rev. 4, "Procedures for NRC Independent Analysis of Decommissioning Funding Assurance for Operating Nuclear Power Reactors," the NRC staff has found that the licensee is providing reasonable decommissioning funding assurance. Therefore, no modification of the Licensee's schedule for the accumulation of decommissioning funds is necessary at this time. Had the Staff lacked assurance for decommissioning funding, the NRC staff would have sought further assurances from the licensee through the methods available to the licensee under 10 CFR 50.75(e)(1).

## **Petitioner's Reply:**

**The Staff's review is fatally flawed and based on limited assumptions, incomplete analyses and licensee driven predictions which are unverifiable and have historically proven to be grossly inaccurate. For a complete discussion of the "Petitioner's Responses and Discussion" to the Draft Director's Decision please refer to pp. 15-20.**

**In addition, please see the Petitioner's DFI, p. 2, pp. 5-6 and pp. 5-9, for a thorough analyses of TMI-2 inability to predict funding targets.**

#### **4. Petitioner.**

FENOC's proposed financial contribution plan to make-up the current decommissioning shortfall; Petitioner Basis for Request The petitioner raises concerns that the financial contribution plan submitted by the licensee in 2008, indicates a shortfall in the required funding amount and that adequate funds will not be available at the time of decommissioning. The Petitioner points out that in the 2009 status report, the radiological decommissioning cost estimate was \$831.5 million and the amount of funds in the decommissioning trust fund was \$484.5 million, as of December 31, 2008. The petitioner raises an additional concern that the cost to decommission TMI-2 increased by \$26.5 million in less than three years, while FENOC's decommissioning trust fund assets decreased by \$116.5 million during the same time period.

#### **NRC Staff Response:**

As was discussed above, the Staff's review of the March 29, 2010 submittal, (ADAMS No. ML 100960464) determined that no further contributions to the Licensee's external decommissioning trust funds were necessary. The staff agrees with the petitioner that market fluctuations and other site-specific factors may affect trust fund balances; for this reason the regulations at 10 CFR 50.75(f)(2) require annual submittals for TMI-2 updating and any change to the decommissioning plans, as well as any deviations experienced in decommissioning funding, shall be reviewed accordingly. Future NRC staff reviews may reveal circumstances that require the licensee to make appropriate funding changes, pursuant to 10 CFR 50.75(e)(2), so that reasonable decommissioning funding assurance will be preserved.

## **Petitioner's Reply:**

**The Staff's review is fatally flawed and based on limited assumptions, incomplete analyses and licensee driven predictions which are unverifiable and have historically proven to be grossly inaccurate. For a complete discussion of the "Petitioner's Responses and Discussion" to the Draft Director's Decision please refer to pp. 15-20.**

**In addition, please see the Petitioner's DFI, p. 2, pp. 5-6 and pp. 5-9, for a thorough analyses of TMI-2 inability to predict funding targets.**

## **5. Petitioner:**

FirstEnergy's plan to fund the decommissioning trust for TMI-2, if TMI-1 is prematurely retired; and Petitioner Basis for Request FENOC anticipates that TMI-1 will operate at least until the end of their current license.

## **NRC Staff Response:**

In the event that any of the nuclear generating stations are retired early, FENOC anticipates that funding will be adjusted to match any change in decommissioning schedule and/or cost scenario. NRC Staff Response As stated in the SSCE, FirstEnergy Corp. plans on synchronizing the decommissioning of TMI-2 with the decommissioning of TMI-1. At this time, GPU Nuclear has not declared any schedule deviations since the March 29, 2010 submittal. The NRC regulations do not require a Licensee to speculate about possible decommissioning funding alternatives. According to the SSCE, TMI-2 will remain in a state of Post-Defueling Monitored Storage until decommissioning activities begin in 2034. However, should TMI-1 cease operations prior to 2034, FirstEnergy will be required to provide a new site specific decommissioning cost estimate, subject to approval by NRC staff, addressing the revised timeline, as well as a revised plan to satisfactorily meet decommissioning funding assurance.

## **Petitioner's Reply:**

**The Staff's review is fatally flawed and based on limited assumptions, incomplete analyses and licensee driven predictions which are unverifiable and have historically proven to be grossly inaccurate. For a complete discussion of the "Petitioner's Responses and Discussion" to the Draft Director's Decision please refer to pp. 15-20.**

**In addition, please see the Petitioner's DFI, p. 2, pp. 5-6 and pp. 5-9, for a thorough analyses of TMI-2 inability to predict funding targets.**

## **6. Petitioner:**

FirstEnergy's planned timing for decommissioning TMI-2, if TMI-1 is prematurely retired. FENOC anticipates that TMI-1 will operate at least until the end of their current license. In the event that any of the nuclear generating stations are retired early, FENOC anticipates that funding will be adjusted to match any change in decommissioning schedule and/or cost scenario. NRC Staff

## **NRC Staff Response:**

Copies of all correspondence sent to Members of Congress and/or industry organizations (e.g., the Nuclear Energy Institute, the Electric Power Research Institute, the Institute for Nuclear Power Operations, Commonwealth of Pennsylvania) Department of Justice, the Securities and Exchange Commission regarding this Petition speculate about possible decommissioning funding alternatives. If GPU Nuclear changes the current decommissioning plans for TMI-2, then appropriate submittals attesting to the change will be required by the staff, pursuant to 10 CFR 50.75.

## **Petitioner's Reply:**

**The Staff's review is fatally flawed and based on limited assumptions, incomplete analyses and licensee driven predictions which are unverifiable and have historically proven to be grossly inaccurate. For a complete discussion of the "Petitioner's Responses and Discussion" to the Draft Director's Decision please refer to pp. 15-20.**

**In addition, please see the Petitioner's DFI, p. 2, pp. 5-6 and pp. 5-9, for a thorough analyses of TMI-2 inability to predict funding targets.**

## **7. Petitioner:**

Petitioner requested the NRC provide the petitioner with copies of correspondence concerning NRC's review of the petition, as well as, notice of meetings and the opportunity to participate in meeting related to the petition.

### **NRC Staff Response:**

Petitioner Requests NRC Staff Response The staff has provided the Petitioner ADAMS Accession Numbers for all documents and correspondence relevant to the review of the Petition. Petitioner was provided with notice of and an opportunity to precipitate in telephone calls between the Staff and the Licensee.

With the exception of a short conversation on February 10, 2011 between the staff and the Licensee (memorialized in ADAMS No. ML 110540341), the staff held no public or private meetings concerning this Petition. In addition, no correspondence from third-parties concerning the petition was received by the staff.

## **Petitioner's Reply:**

**The Staff's review is fatally flawed and based on limited assumptions, incomplete analyses and licensee driven predictions which are unverifiable and have historically proven to be grossly inaccurate. For a complete discussion of the "Petitioner's Responses and Discussion" to the Draft Director's Decision please refer to pp. 15-20.**

**In addition, please see the Petitioner's DFI, p. 2, pp. 5-6 and pp. 5-9, for a thorough analyses of TMI-2 inability to predict funding targets.**

## **8. Petitioner.**

Petitioner raised the concern that a proposed merger between FirstEnergy and Allegheny Energy will "place additional financial pressures on FirstEnergy's ability to satisfy its decommissioning obligations in 2036."

### **NRC Staff Response:**

NRC Staff Response In the teleconference of October 19, 2010, the staff and the Petitioner discussed the proposed merger between FirstEnergy and Allegheny Energy; the Petitioner stated he understood that FirstEnergy has not filed a formal application with the NRC for a review of the merger and that the NRC was not planning to take any action in the matter (ADAMS No. ML103120216 at 15-16). The staff's evaluation of the Licensee's decommissioning funding status report for 2010, determined there is reasonable assurance of adequate funding for the decommissioning process and the staff considers this issue to be closed.

## **Petitioner's Reply:**

**The Staff's review is fatally flawed and based on limited assumptions, incomplete analyses and licensee driven predictions which are unverifiable and have historically proven to be grossly inaccurate. For a complete discussion of the "Petitioner's Responses and Discussion" to the Draft Director's Decision please refer to pp. 15-20.**

**In addition, please see the Petitioner's DFI, p. 2, pp. 5-6 and pp. 5-9, for a thorough analyses of TMI-2 inability to predict funding targets.**

### **IV. Staff's Conclusion:**

On March 29, 2010, GPU Nuclear submitted an updated decommissioning funding status report for TMI-2, which is the latest site-specific decommissioning funding plan. The NRC staff reviewed this submission and determined that GPU Nuclear is providing adequate decommissioning funding assurance. Furthermore, in accordance with NRC Regulations at 10 CFR 50.75, and guidance documents; NUREG- 1307, Rev. 14, "Report on Waste Burial Charges," and LIC- 205, Rev. 4, "Procedures for NRC Independent Analysis of Decommissioning Funding Assurance for Operating Nuclear Power Reactors," staff has determined that GPU Nuclear is providing reasonable decommissioning funding assurance and no modification of the Licensee's schedule for the accumulation of decommissioning funds is necessary at this time.

### **V. Petitioner's Responses and Discussion to Draft Decision.**

The NRC failed to adequately assess FirstEnergy's assumptions which were blended, vague and without any form of methodological or substantive justification. The underpinnings of the Company's methodology are not empirical but an amalgam of belief systems. The NRC Failed to factor, analyze and evaluate the impact of the merger between FirstEnergy and Allegheny Power on TMI-2's ability to make-up decommissioning shortfalls.

The NRC uncritically depends on the licensee for data and failed to provide or address the historical inaccuracies and faulty assumptions associated with First Energy and GPU's decommissioning assumptions and predictions dating back to 1979. Frankly, the NRC simply ignored the TMI-2's historical predictions and trust performance, and made no attempt to "kick the tires|"and compare and contrast FirstEnergy's representations against industry benchmarks.

The NRC failure to track total trust fund performance in 2009, 2007 and 2005 allowed the Staff to miss underperforming metrics that resulted in the NRC actually placing one of FirstEnergy's units in the category of "non-electric utilities without access to nonbypassable charges." (Enclosure 1)

Based on TMI-2's track record it would be "unreasonable" to conclude anything other that FirstEnergy is unqualified to make accurate and conservative predictions. Please see discussion in the DFI, p. 2, pp. 5-6 and pp. 5-9, September 30, 2010 for a thorough analyses of TMI-2 inability to predict funding "targets".

FirstEnergy is now the parent of four Pennsylvania electric distribution companies ("EDCs"), and will be the largest utility in Pennsylvania with over two million customers. This represents 36% of total electric customers in the state with a service territory which includes 55 of the state's 67 counties. Staff did not adequately address the financial relationship between the four regulated utilities and the unregulated parent and its subsidiaries.

It is vital that FirstEnergy maintain financial stability and enjoy high credit ratings. A high credit rating equates into lower borrowing costs which in turn helps to keep rates for utility customers low and stable. A properly financially separated company will be able to be independent from the parent during a bankruptcy proceeding, maintain its own credit rating, and maintain operating reliability.



The NRC Draft Directors' Decision is deficient for the following reasons:

- The NRC and the Company ignored Securities Price Risk. In the recent past declines in the market price of debt and equity and securities resulted in the unrealized losses that have reduced asset values in FirstEnergy's nuclear decommissioning trust funds.
- FirstEnergy's access to capital markets and costs of financing are influenced by the ratings of securities. On February 11, 2010, S&P issued a report lowering FirstEnergy's and its subsidiaries credit ratings by one notch, while maintaining its stable outlook. Moody's and Fitch affirmed the ratings and stable outlook of FirstEnergy and its subsidiaries on February 11, 2010. On September 28, 2010, S&P issued a report reaffirming the ratings and stable outlook of First Energy and its subsidiaries. Fitch revised its outlook on First Energy and FES from stable to negative on December 15, 2010." (Annual Report, 2010, p. 33)
- The NRC not investigate the absence of ring-fencing controls which led to the drop in credit ratings.
- The NRC did not factor separate money pools for FE's regulated and unregulated operations, did not evaluate separate financial statements that reflect each utility's own assets and liabilities, and did not examine the impact of Metropolitan Edison, Penn Elec's or Jersey Central Power and Light's individual credit rating after the merger.
- The NRC did not examine the impact of First Energy's Off-Balance Sheet Arrangements involving nuclear assets valued at \$1.6 billion on December 31, 2010. (Annual Report, 2010, p. 37.)
- There was no discussion regarding FirstEnergy's Annual Retirement Obligations ("ARO").

The NRC did not review the Financial Accounting Standards Board (“FASB”) rule 143 and the impact of the rule on FirstEnergy and its subsidiaries legal obligations to retire long-lived assets relating to decommissioning.

There was no investigation regarding the impact of non-nuclear and pension ARO’s on Metropolitan Edison, Penn Elec’s or Jersey Central Power and Light’s ability to finance nuclear decommissioning shortfalls.

- Neither the NRC or FE account for changing utility definitions and the possibility of losing qualified status per 10 CFR 50.75(h)(2) and 10 CFR.50.75 (h) (1)
- The NRC did not examine the availability and or participation in securities lending with the plans trustee which may be collateralized by cash to make sure the trust is outside the administrative control of the licensee and its affiliates per 10 CFR 50.75(e) (1)
- The NRC failed to factor alternative decommissioning scenarios for TMI-2, assumed TMI’s decommissioning coincided with TMI-1, and presumes TMI-1’ will be decommissioned under a similar protocol although it’s owners have produced for alternative scenarios.
- The NRC did not factor escalated nominal dollar cost estimates during decommissioning activities.
- The NRC did not analyze cost factors assumptions relating to future undiscounted decommissioning costs.
- The NRC assumed that there will be no withdrawal of decommissioning funding prior to 2034 which is counter to the Commission’s recent allowance of such withdrawals per 10 CFR.50.75 (h) (1) and 10 CFR 50.75(h)(2) By letter dated February 1, 2005, Mr. James J. Byrne Vice President, TMI-2 relayed GPU Nuclear Inc.’s plans to use the decommissioning trust fund in accordance with 10 CFR 50.82(a)(8) for disposal of filters that are currently being stored at the Idaho National Engineering and Environmental Laboratory (“INEL).

The NRC did factor nor did the Company report pressures to withdraw and drawn down on principal will be further increased by the NRC recent admission of cracking at INEL of TMI-2' casks.

The concrete modules are "showing significant cracking and degradation," even though they were built in 1999 to last for 50 years, NRC said in the letter, which is dated April 7, 2011. The Department of Energy ("DOE ") has analyzed the structural integrity of the modules, which have walls two feet thick, and determined that the problem is getting progressively worse.

- The NRC mandates that the information in a decommissioning funding status report must include: (4) the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections.

The Company acknowledged: "The values of FirstEnergy's nuclear decommissioning trusts fluctuate based on market conditions", yet, the NRC uncritically accepted (Annual Report, 2010, p. 52.) Yet the NRC accepted First Energy investment rates without requesting cost escalation studies for labor, transportation, or radioactive waste isolation

The NRC did not question or analyze cost escalations estimated proffered by FirstEnergy although they are materially different than escalators for operating and non-operating reactors at Limerick and Peach Bottom (3.5%).

New Hampshire's inflation adjustment is 3.0% and escalation adjustment is 4.2% for Seabrook. And, Southern California Edison assumes a corporate escalation rate of 2.78% for San Onofre 2 and 3 and a burial cost escalation rate of 6.93% . (2)

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<sup>2</sup> SCE 10 CFR 50.75 Letter to the NRC , March 30, 2011, Docket Nos. 50-361 and 50-362)

FirstEnergy conceded “the NRC issued guidance anticipating an increase in low-level radioactive waste disposal costs associated [with]the decommissioning of FirstEnergy’s nuclear facilities. As a result, FirstEnergy ‘s decommissioning funding obligations ar expected to increase.” (Annual Report, 2010, p. 52)

FE provided no break out costs for labor, transportation, waste isolation or capital cost escalators.

## **VI. Petitioner’s Recommendations.**

NRC conclusions are incorrect, inadequate and based on fluid and flawed data provided by FirstEnergy prior to the consummation of merger.

Despite a dubious record of inaccurate predictions for three decades, in the absence of any meaningful analyses of TMI-2’s assumptions and methodologies, and lacking any substantive discussion of the impact of the merger on First Energy’s ability to satisfy decommissioning shortfalls at TMI-2, the Commission should order the staff to review FirstEnergy’s data submissions, reconsider the Petitioner's remedies, and request a Demand for Information from FirstEnergy Corporation.

Respectfully submitted,

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