

November 7, 2016

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SUSQUEHANNA NUCLEAR, LLC)	Docket Nos. 50-387, 50-388, 72-28-LT-2
)	
(Susquehanna Steam Electric Station,)	
Units 1 and 2))	

NRC STAFF REPLY TO ADDITIONAL INFORMATION FILED BY MR. MONATESTI

Pursuant to the Atomic Safety and Licensing Board (Board) order dated November 1, 2016,¹ the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) files this reply to the additional information submitted by Mr. Sabatini Monatesti on November 1, 2016.²

As this Board acknowledged in its November 1, 2016 order,³ it was specifically established to rule on Mr. Monatesti's appeal⁴ of the Staff's denial⁵ of his request for access to

¹ Order (On Communication Received and Providing Opportunity to Respond) (Nov. 1, 2016) (unpublished) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16306A452).

² See *id.* at Attachment. Mr. Monatesti subsequently filed this additional information through the NRC's E-filing system (EIE). See Letter from Sabatini Monatesti to E. Roy Hawken, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Talen Energy Corp. - Riverstone Holdings, LLC - Transfer Order 10 CFR 50.80 (dated Oct. 30, 2016, filed via EIE on Nov. 2, 2016) (ADAMS Accession No. ML16307A112) (Additional Information).

³ Order (On Communication Received and Providing Opportunity to Respond) (stating that the Board was "assigned to preside over an appeal from the NRC Staff's denial of a request for access to sensitive unclassified non-safeguards information").

⁴ Memorandum from Annette L. Vietti-Cook, Secretary, NRC, to E. Roy Hawken, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Appeal from a Determination of the NRC Staff to Deny a Request for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) from an Individual who has Indicated an Intent to Request a Hearing Regarding Susquehanna Nuclear, LLC's Application for Indirect License Transfer (Docket Nos. 50-387, 50-388, and 72-28), at 15-30 (unnumbered) (Oct. 25, 2016) (ADAMS Accession No. ML16299A438) (Referral Memorandum).

⁵ Letter from NRC to Sabatini Monatesti, Request for Access to Sensitive Unclassified Non-Safeguards Information Related to the Application for Indirect Transfer of the Susquehanna Steam Electric Station (Oct. 20, 2016) (ADAMS Accession No. ML16294A385) (Denial Letter).

sensitive unclassified non-safeguards information (SUNSI)⁶ in the Susquehanna Steam Electric Station, Units 1 and 2 (SSES) indirect license transfer application.⁷ The additional information filed by Mr. Monatesti, however, is not responsive to this matter. Mr. Monatesti's access request was denied because, contrary to the applicable requirements,⁸ it did not explain why Mr. Monatesti was likely to have standing in any proceeding on the SSES indirect license transfer and it did not explain why Mr. Monatesti legitimately needed the SUNSI in order to provide the basis and specificity for contentions in any proceeding on the SSES indirect license transfer.⁹ In his additional filing, though, Mr. Monatesti does not dispute these findings or discuss his standing or how the requested SUNSI is related to any potential contention. Instead, Mr. Monatesti recites an unrelated list of grievances with the proposed SSES indirect license transfer. Therefore, the arguments in Mr. Monatesti's additional filing are outside the limited jurisdiction of this Board and, thus, the Board should not consider them.

Furthermore, the Board should not consider the additional information filed by Mr. Monatesti because the procedures governing this proceeding do not provide for a reply to the Staff's answer to Mr. Monatesti's appeal.¹⁰ Additionally, the Board should not consider Mr. Monatesti's filing as a supplement to his access request or to his appeal because it was submitted after the applicable deadlines without a showing of good cause for its late filing.¹¹

⁶ Referral Memorandum at 7-12 (unnumbered).

⁷ See Order (Establishment of Atomic Safety and Licensing Board) (Oct. 26, 2016) (unpublished) (ADAMS Accession No. ML16300A413) (Establishment Order) ("[N]otice is hereby given that an Atomic Safety and Licensing Board . . . is being established to preside over an appeal from the NRC Staff's denial of a request for access to sensitive unclassified non-safeguards information . . .").

⁸ See Susquehanna Nuclear, LLC; Susquehanna Steam Electric Station, Units 1 and 2; Consideration of Indirect License Transfer, 81 Fed. Reg. 68462, 68465-66 (Oct. 4, 2016).

⁹ Denial Letter at 7.

¹⁰ 81 Fed. Reg. at 68466.

¹¹ *Id.* at 68465-66 (providing that requests for access to SUNSI submitted later than 10 days after the publication of the notice of hearing and opportunity to petition for leave to intervene and appeals of denials of access requests submitted later than 5 days after the receipt of the denial will not be

Finally, to the extent that Mr. Monatesti is making arguments separate from appealing the denial of his access request,¹² he had been able to, and was given ample direction on how to, submit these arguments as either part of a properly filed hearing request or as comments on the SSES indirect license transfer prior to the respective October 24, 2016 and November 3, 2016 deadlines for these actions.¹³ To the extent that Mr. Monatesti is requesting an extension of the deadlines for these actions,¹⁴ he was given ample direction on how to do this as well.¹⁵ This Board is not the proper forum for these arguments and Mr. Monatesti had notice of this situation.

considered “absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier”).

¹² See Additional Information at 5 (“I am requesting that a thorough investigation . . . be undertaken” and “I look forward to the Atomic Safety and Licensing Board Panel’s review of my issues and concerns and in the final analysis you are supportive of my request.”). See also Letter from Sabatini Monatesti to E. Roy Hawkins, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Walsh Response - Talen Energy Corp. - Riverstone Holdings, LLC - Transfer Order 10 CFR 50.80, at 4 (Nov. 4, 2016) (ADAMS Accession No. ML16309A341) (Walsh Response) (arguing that Mr. Monatesti had requested a hearing on October 11, 2016, that the Office of the Secretary had acknowledged this request on October 11, 2016, and that this Board had been established to address a hearing request on October 25, 2016).

¹³ See 81 Fed. Reg. at 68463-65 (explaining how to submit comments and hearing requests); Referral Memorandum at 10-11 (unnumbered) (“I want to be certain that you understand any request for hearing you may wish to make in the subject proceeding must be submitted via the Electronic Information Exchange (EIE) prior to the filing deadline stated in the Federal Register Notice, which calculates to October 24, 2016.”).

¹⁴ See Additional Information at 5 (stating that Mr. Monatesti needs “additional time”).

¹⁵ 81 Fed. Reg. at 68464 (explaining that hearing requests “filed after the 20-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii)”).

For the reasons stated above, the Board should not consider the additional information filed by Mr. Monatesti.¹⁶

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 7th day of November, 2016

¹⁶ Mr. Monatesti made two additional out-of-process filings on November 3, 2016 and November 4, 2016. Letter from Sabatini Monatesti to E. Roy Hawken, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Talen Energy – Riverside Holdings, LLC Vulnerability-Threat Matrix (Nov. 3, 2016) (ADAMS Accession No. ML16308A165); Walsh Response. For the same reasons provided by the Staff in this pleading, the Board should also not consider these filings.

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF REPLY TO ADDITIONAL INFORMATION FILED BY MR. MONATESTI," dated November 7, 2016, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 7th day of November, 2016.

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 7th day of November, 2016