**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

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| Application for Indirect Transfer of Licenses<br><br>Energy*Solutions*, LLC<br><br>(Zion Nuclear Power Station, Units 1 and 2, Three Mile Island Nuclear Station, Unit 2, La Crosse Boiling Water Reactor; Radioactive Materials License, Export Licenses) | ) | Docket Nos. 50–295, 50–304, 50–320, 50–409, 72–046, 030–39013 11005620, 11005897 NRC-2021-0232<br><br>March 7, 2022 |

# APPLICANT'S ANSWER OPPOSING REQUEST FOR PUBLIC HEARING AND PETITION FOR LEAVE TO INTERVENE FILED BY ERIC JOSEPH EPSTEIN

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## I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309, Energy*Solutions*, LLC ("EnergySolutions" or "Applicant") submits this Answer Opposing Request for a Public Hearing and Petition to Intervene ("Petition") filed by Eric Joseph Epstein ("Petitioner") on February 10, 2022.[1] The Petitioner seeks to intervene in the proceeding associated with Applicant's license transfer application ("LTA" or "Application") submitted to the U.S. Nuclear Regulatory Commission ("NRC") on December 7, 2021.[2]

In the LTA, Applicant asked the NRC to consent to an indirect transfer of control of the NRC licenses held by Applicant or its subsidiaries as a result of a corporate ownership change above the Applicant. The affected licenses are Facility Operating License Nos. DPR–39 and

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1 Eric Joseph Epstein's, *Pro se*, Request for a Public Hearing and Petition to Intervene (Feb. 10, 2022) (ML22041A773).

2 EnergySolutions, LLC letter to NRC, "Application for Order Approving the Indirect Transfer of Control of Licenses," Attach. 1 (Dec. 7, 2021) (ML21344A110).

DPR–48 for Zion Nuclear Power Station ("Zion") Units 1 and 2; Possession Only License No. DPR–73 for Three Mile Island Nuclear Station Unit 2 ("TMI-2"); Possession Only License No. DPR–45 for La Crosse Boiling Water Reactor ("La Crosse"); Radioactive Materials License No. 39– 35044–01; and certain NRC Export Licenses (collectively "Licenses").

The indirect transfer of control of the Licenses will occur as a result of a Stock Purchase Agreement dated November 16, 2021 among the current principal shareholders of the Applicant's parent company Rockwell Holdco, Inc. ("Rockwell") and other investors. Rockwell is currently 58% owned and controlled by passive investment funds affiliated with Energy Capital Partners GP II, LP ("ECP"), and 40% owned by passive investment funds affiliated with TriArtisan ES Partners, LLC ("TriArtisan"). As described in the LTA, through the proposed stock purchase transaction, passive investment funds affiliated with TriArtisan will acquire majority ownership of Rockwell from ECP and governance control, but no changes are proposed in any activities under the Licenses.[3] The closing of the transaction is expected to take place at the end of the first quarter of 2022, and the Applicant respectfully requested NRC consent to the indirect transfer by the end of March 2022.

The Petition sets forth what appears to be four proposed contentions[4] purporting to challenge the LTA, but which are really focused on decommissioning funding for TMI-2—an

[3] As the LTA states, the "corporate ownership transaction will not affect the operations of the Applicant or the Licensed Subsidiaries. The Licensed Subsidiaries will maintain responsibility for all licensed activities, including responsibility under the Licenses to complete decommissioning of the facilities pursuant to NRC regulations. The transaction will not affect the technical and financial qualifications of the Licensed Subsidiaries, nor result in any impermissible foreign ownership, control or domination. Following the closing of the transaction, the same legal entities will remain the Licensees for the subject facilities and their names will not change." *Id.* at Cover Letter, 4.

[4] The Petition does not number or label the proposed contentions. For clarity in responding to Petitioner's arguments and contentions, we interpret the Petition to contain four main proposed contentions, which substantially overlap in terms of content.

issue previously and unsuccessfully raised by the Petitioner in prior NRC proceedings.[5] The Petitioner simply recycles the proposed contentions, and underlying supporting arguments, from his unsuccessful petition to intervene in the earlier TMI-2 proceeding involving the direct transfer of the facility from the original owners to TMI-2 Solutions for decommissioning.[6]

All of the proposed contentions make the general argument that TMI-2 Solutions, LLC, the licensee for TMI-2 and a wholly owned subsidiary of EnergySolutions, does not have adequate decommissioning funding assurance. The essence of the Petitioner's claims is that the decommissioning cost estimate reflected in its post-shutdown decommissioning activities report ("PSDAR") underestimates the total costs of license termination, site restoration, and spent fuel management. However, the Petitioner does not explain how these claims are relevant to the upstream corporate ownership change proposed in the LTA, which involves no changes to decommissioning funding assurance mechanisms in place for TMI-2.

The Petitioner's contentions thus fail to meet the admissibility criteria set forth in 10 C.F.R. § 2.390(f)(1), fail to dispute the LTA at issue in *this* proceeding, and are outside the scope of an indirect license transfer. For this reason, the Petition fails to offer at least one admissible contention and should be denied.

Even if the Petitioner had submitted an admissible contention—which he has not—the Petition must be rejected because Petitioner has not demonstrated standing. The Petitioner claims he is entitled to standing as an individual living in proximity to TMI-2 and that there is a presumption of injury-in-fact. However, to invoke this presumption in a license transfer proceeding, petitioners are required to affirmatively demonstrate that the *proposed transfer*—not

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5 CLI-21-2, 93 NRC __- __ (Jan. 15, 2021) (slip op. at 9-24) ("TMI-2 Order").

6 *See* Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing (Apr. 15, 2020) ("TMI-2 Petition"); and TMI-2 Order (denying TMI-2 Petition).

merely the activities *already* authorized by the existing licenses—somehow could create an "obvious potential for offsite consequences."[7] The Petitioner has not remotely done so here. As stated in the Application and by the very nature of an indirect license transfer, the proposed transaction is a corporate change and will have no impact on the ownership or decommissioning operations of the licensed sites, or on any of the on-going activities taking place under the Licenses. The Petitioner thus does not demonstrate standing to intervene as of right, nor does he meet the standard for discretionary intervention as set forth in 10 C.F.R. § 2.309(e).

Because the Petitioner has not demonstrated standing to intervene or offered any admissible contention, the Petition must be denied.

## II. PROCEDURAL HISTORY

The Applicant filed the Application on December 7, 2021. On January 21, 2022, the NRC published a notice in the *Federal Register* informing the public that it is considering the LTA for approval, providing an opportunity for the public to submit written comments on the LTA, and offering an opportunity for persons whose interests may be affected by the approval of the LTA to file, within 20 days of the notice, hearing requests and intervention petitions ("Hearing Opportunity Notice").[8] The Petitioner filed his Petition on February 10, 2022. No other person has sought to intervene in this proceeding or submitted written comments regarding the Application.

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[7] *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426 (2007) (quoting *Exelon Generation Co.* (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-05-26, 62 NRC 577, 580-81 (2005)).

[8] EnergySolutions, LLC; Consideration of Approval of Indirect Transfer of Licenses, 87 Fed. Reg. 3,372 (Jan. 21, 2022).

The Hearing Opportunity Notice also contemplated that potential parties may need access to Sensitive Unclassified Non-Safeguards Information ("SUNSI")[9] in the LTA for contention drafting purposes. It directed those potential parties to request access from the Applicant or file a motion with the Commission.[10] Applicant and the Petitioner jointly filed a motion with the Commission for entry of a protective order to govern the disclosure of, access to, and use of SUNSI on February 4, 2022.[11] The Office of the Secretary approved this motion. To date, the Petitioner has not executed the Non-Disclosure Declaration associated with the protective order. Applicant timely files this Answer opposing the Petition according to the provisions of 10 C.F.R. § 2.309(i)(1).

## III. REGULATORY FRAMEWORK

### A. Petitions to Intervene

To obtain a hearing, a petitioner must demonstrate "an interest affected by the proceeding"—that is, standing— and submit at least one admissible contention.[12]

The requirements for standing are set forth in 10 C.F.R. § 2.309(d), and the requirements for submission of an admissible contention are outlined in 10 C.F.R. § 2.309(f)(1)(i)-(vii). The regulations also contemplate "discretionary intervention," when a petitioner lacks standing as a matter of right under 10 C.F.R. § 2.309(d), providing certain factors weigh in favor of the

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9 SUNSI in this context includes any proprietary commercial information that an applicant requests to be withheld from public disclosure.

10 Hearing Opportunity Notice, 87 Fed. Reg. at 3,375.

11 Joint Motion for Entry of a Protective Order (Feb. 4, 2022) (unpublished).

12 10 C.F.R. 2.309(a); *see also State of Alaska Dep't of Transp. and Pub. Facilities*, CLI-04-26, 60 NRC 399, 405 (2004), *reconsid. denied*, CLI-04-38, 60 NRC 652 (2004).

discretionary intervention, and that at least one other petitioner has established standing and at least one contention has been admitted to initiate a hearing.[13]

While *pro se* petitioners are held to less rigid standards for pleadings, *pro se* petitioners are still expected to meet the NRC's standing and contention admissibility requirements.[14]

The legal standards for both standing and contention admissibility are discussed in more detail in Sections IV and V below.

### B. License Transfers

Under Section 184 of the Atomic Energy Act of 1954, as amended,[15] an NRC license, or any right under it, may not be "transferred, assigned[,] or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of [the] license to any person," unless the NRC first gives its consent in writing.[16] This statutory requirement is codified in 10 C.F.R. § 50.80 (and other applicable regulations) and applies to both direct and indirect license transfers. Transferring control may involve either the licensed operator or any licensed owner of the facility.[17]

Unlike a direct license transfer, which entails a change to operating or possession authority for a license and changes the license holder to a new entity, indirect license transfers

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13 10 C.F.R. § 2.309(e).

14 *See Shieldalloy Metallurgical Corp.*, CLI-99-12, 49 NRC 347, 354 (1999); *U.S. Army Installation Command* (Schofield Barracks, Oahu, Hawaii), CLI-10-20, 71 NRC 216, 238, 241 (2010), *PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 & 2), LBP-07-4, 65 NRC 281, 339 n.286 (2007).

15 Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919 (codified as amended at 42 U.S.C. §§ 2011, *et seq.*).

16 *Id.* § 184 (codified as amended at 42 U.S.C. § 2234).

17 *See* NRC Backgrounder, "Reactor License Transfers," at 1-2 (Jan. 2020) (ML040160803). An indirect license transfer takes place when there is a transfer of "control" over a license holder (*e.g.*, as a result of a merger or acquisition in the corporate chain above the licensee). A direct license transfer occurs when an entity seeks to transfer a license it holds to a different entity (*e.g.*, when a plant is to be sold or transferred to a new licensee in whole or part). *See id.*

involve corporate restructuring above the licensee, and usually—as is the case here—leaves the licensee and its licenses otherwise unchanged.[18] Before approving any license transfer, the NRC reviews, among other things, the technical and financial qualifications of the proposed transferee.[19] The transfer review focuses on the "potential impact on the licensee's ability both to maintain adequate technical qualifications and organizational control and authority over the facility[,] and to provide adequate funds for safe operation and decommissioning."[20]

To grant a license transfer application, the NRC must find "reasonable assurance" of financial qualifications.[21] Longstanding Commission precedent makes clear that the reasonable assurance standard does not require an applicant to meet an "absolute" or "beyond a reasonable doubt" standard.[22] Notably, "the mere casting of doubt" on some aspect of an applicant's financial qualifications is legally insufficient "to defeat a finding of reasonable assurance."[23] As the Petition recognizes (at page 3), with respect to *indirect* license transfers, the NRC's review standard focuses on whether the proposed transfer will have any material impact on the existing qualifications of the licensee.

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18 *Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 459-60 n.14 (1999).

19 *See* 10 C.F.R. §§ 50.80(b)(1)(i), (c)(1); *see also* NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," Rev. 1 (Feb. 1999) (ML013330264) ("NUREG-1577").

20 Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44,071, 44,077 (Aug. 19, 1997).

21 10 C.F.R. § 50.33(f)(2).

22 *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 262 n.142 (2009); *Commonwealth Edison Co.* (Zion Station, Units 1 & 2), ALAB-616, 12 NRC 419, 421 (1980); *N. Anna Envtl. Coal. v. NRC*, 533 F.2d 655, 667-68 (D.C. Cir. 1976) (rejecting the argument that reasonable assurance requires proof beyond a reasonable doubt and noting that the licensing board equated "reasonable assurance" with the preponderance standard).

23 *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 31 (2000) (citing *La. Energy Servs.* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 297 (1997); *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 222 (1999)).

The Atomic Energy Act requires that the NRC offer an opportunity for hearing on a license transfer.[24] In 1998, the NRC adopted Subpart M of 10 C.F.R. Part 2 (10 C.F.R. §§ 2.1300 to 2.1331), authorizing the use of a streamlined license transfer process with informal legislative-type hearings, rather than formal adjudicatory hearings.[25] These rules cover any direct or indirect license transfer for which NRC approval is required.

## IV. PETITIONER HAS NOT DEMONSTRATED STANDING

The Petitioner asserts that he has proximity-based standing to intervene in this proceeding and also requests that he be granted discretionary intervention under 10 C.F.R. § 2.309(e).[26] As demonstrated below, the Petitioner has not established standing to intervene in this proceeding as a matter of right under 10 C.F.R. § 2.309(d), nor has he satisfied the strict requirements for discretionary intervention. The Petitioner's failure to demonstrate standing requires that the Petition be denied.[27]

### A. Legal Standards For Standing

Under 10 C.F.R. § 2.309(d), in order to be admitted into a proceeding as a right, a petitioner must first demonstrate standing. "A petitioner's standing, or right to participate in an Commission licensing proceeding, is grounded in Section 189(a) of the Atomic Energy Act, 42

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24 Atomic Energy Act § 189(a)(1)(A) (codified as amended at 42 U.S.C. § 2239(a)(1)(A)).

25 *See* Streamlined Hearing Process for NRC Approval of License Transfers; Final Rule, 63 Fed. Reg. 66,721, 66,722 (Dec. 3, 1998) ("Subpart M Rule"); *see also* Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2,182, 2,214 (Jan. 14, 2004) (retaining streamlined process under Subpart M for license transfers without substantive changes).

26 Petition at 13, 19 (referencing 10 C.F.R. § 2.309(e) and claiming Mr. Epstein's participation would "assist in developing a sound record").

27 10 C.F.R. § 2.309(a).

U.S.C. § 2239 (a)(1)(A), which requires the NRC to provide a hearing 'upon the request of any person whose interest may be affected by the proceeding.'"[28]

Standing is not a mere legal technicality, it is in fact an essential element in determining whether there is any legitimate role for an adjudicatory body in dealing with a particular grievance.[29]

The Petitioner bears the burden to provide facts sufficient to establish standing.[30] As relevant here, the Petitioner may satisfy that burden in a number of ways, namely, by traditional standing or proximity standing, or, alternatively, through discretionary intervention allowed under 10 C.F.R. § 2.309(e). On each point, the Petitioner has failed to meet his burden.

1. Traditional Standing

Under 10 C.F.R. § 2.309(d)(1)(ii)-(iv), three factors must be considered when deciding whether to grant standing: (1) the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

To determine whether a petitioner presents a cognizable interest to intervene in a proceeding, the Commission applies contemporaneous judicial concepts of standing,[31] which provides that a petitioner must show: (1) that he has personally suffered a distinct and palpable

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28 *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawaba Nuclear Station, Units 1 & 2), LBP-02-4, 55 NRC 49, 61 (2002).

29 *Westinghouse Elec. Corp.* (Nuclear Fuel Export License for Czech Republic –Temelin Nuclear Power Plants), CLI-94-7, 39 NRC 322, 331-32 (1994).

30 *See U.S. Enrichment Corp*. (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001) (citing *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-00-5, 51 NRC 90, 98 (2000)).

31 *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-15-25, 82 NRC 389, 394 (2015) (citation omitted).

harm that constitutes injury-in-fact; (2) that the injury fairly can be traced to the challenged action; and (3) that the injury is likely to be redressed by a favorable decision.[32]

These criteria are known as injury-in-fact, causality, and redressability. Although a petitioner need not show that the injury flows directly from the challenged action, it must still show that the "chain of causation is plausible."[33] Finally, a petitioner must show that "its actual or threatened injuries can be cured by some action of the tribunal."[34]

A petitioner has an affirmative duty to demonstrate that he has standing in each proceeding in which it seeks to participate since a petitioner's status can change over time and the bases for its standing in an earlier proceeding may no longer apply.[35]

2. Proximity-Based Standing

In certain limited NRC proceedings with significant new impacts, such as an initial licensing proceeding for a new facility or a significant license amendment, a petitioner may use proximity presumptions the Commission has created to simplify standing requirements for individuals who reside within or have frequent contacts with a geographic zone of potential harm—but such proximity standing generally does not apply in proceedings with limited impacts, such as here where the indirect license transfer involves no change to decommissioning activities under the Licenses.

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32 *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Shoreham-Wading River Cent. Sch. Dist. v. NRC*, 931 F.2d 102, 105 (D.C. Cir. 1991).

33 *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994); *see also Crow Butte Res., Inc.* (In-Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 345 (2009).

34 *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-01-2, 53 NRC 9, 14 (2001).

35 *See Texas Utils. Elec. Co.* (Comanche Peak Stream Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 162-63 (1993).

In proceedings that involve new *construction or power operation* of a nuclear power plant, the zone is considered the area within a 50-mile radius of the site. In such proceedings, "proximity" standing rests on the presumption that an accident associated with the nuclear facility (*i.e.*, power reactor) could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility.[36] The Petitioner has the burden to show that the proximity presumption applies.

The NRC has held that the proximity presumption may be enough to confer standing on an individual or group in Part 50 proceedings involving reactor "construction permits, operating licenses, or *significant* license amendments thereto," such as those involving a physical expansion of the facility[37] or extended power uprates.[38] As the Commission has noted, "those cases involve[] the construction or operation of the reactor itself, with clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences."[39] To establish proximity standing, a petitioner must provide "*fact-specific standing allegations*, not conclusory assertions," as the Commission "cannot find the requisite 'interest' based on . . . general assertions of proximity."[40]

The NRC, however, applies a more stringent standard to proceedings involving approvals lacking a "clear potential for offsite consequences."[41] That includes license transfer proceedings,

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36 *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009) (citations omitted).

37 *Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989) (citations omitted) (emphasis added).

38 *See, e.g., Tenn. Valley Auth.* (Browns Ferry Nuclear Plant Units 1, 2, & 3), LBP-16-11, 84 NRC 139, 144 n.26 (2016), *aff'd on other grounds*, CLI-17-5, 85 NRC 87, 94 & 90 n. 17 (2017).

39 *St. Lucie*, CLI-89-21, 30 NRC at 329-30.

40 *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399. 410 (2007) (emphasis added).

41 *St. Lucie*, CLI-89-21, 30 NRC at 329-30.

such as here, where the Commission "determine[s] on a case-by-case basis whether the proximity presumption should apply, considering the 'obvious potential for offsite [radiological] consequences,' or lack thereof, from the application at issue, and specifically 'taking into account the nature of the proposed action and the significance of the radioactive source.'"[42]

Thus, "a petitioner cannot base his or her standing simply upon a residence or visits near the plant, unless the proposed action quite 'obvious[ly]' entails an increased potential for offsite consequences."[43] The petitioner "cannot seek to obtain standing . . . simply by . . . alleging without substantiation that the changes will lead to offsite radiological consequences."[44]

3. Discretionary Intervention

Pursuant to 10 C.F.R. § 2.309(e), the Commission may consider a request for discretionary intervention where a party lacks standing to intervene as a matter of right under 10 C.F.R. § 2.309(d)(1). Discretionary intervention, however, may be granted only "when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held."[45]

In addition to addressing the factors in 10 C.F.R. § 2.309(d)(1), a petitioner who seeks intervention as a matter of discretion (if it is determined that standing as a matter of right is not demonstrated) must specifically address in his or her initial petition the six factors set forth in

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42 *Big Rock Point ISFSI*, CLI-07-19, 65 NRC at 426 (quoting *Peach Bottom*, CLI-05-26, 62 NRC at 580-81).

43 *Commonwealth Edison Co.* (Zion Nuclear Power Station, Unit 1 & 2), CLI-99-4, 49 NRC 185, 191 (1999) (rejecting proximity presumption argument in license amendment proceeding due to plant's shutdown and defueled status) (alteration in original) (citation omitted).

44 *Id.* at 192.

45 10 C.F.R. § 2.309(e). *See also PPL Susquehanna LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), LBP-07-10, 66 NRC 1, 21 n.14 (2007) ("[D]iscretionary standing [is] only appropriate when one petitioner has been shown to have standing as of right and [there is an] admissible contention so that a hearing will be conducted.").

10 C.F.R. § 2.309(e), which the Commission will consider and balance.[46] Of the six factors, primary consideration is given to the first factor—assistance in developing a sound record.[47] The Petitioner has the burden to establish that the factors in favor of intervention outweigh those against intervention.

### B. The Petitioner Has Not Demonstrated Standing

The Petitioner has failed to demonstrate either traditional standing or proximity standing. He has failed to show an injury caused by the contemplated license transfer, and this proceeding does not permit the Petitioner to rely on proximity for standing, as the proposed indirect license transfer does not propose any material impact on the Licenses or licensed activity—including at TMI-2. Nor can the Petitioner be granted discretionary intervention, as there are no other petitioners in this proceeding. Because there are no other petitioners, discretionary intervention *per se* cannot apply. Therefore, the Petitioner has failed to demonstrate standing on multiple fronts, and the Petition must be denied.

The Petitioner claims to have standing because he lives and operates a business 12 miles from TMI-2, and because he purportedly is interested in the proposed license transfer and has sought to intervene in other proceedings related to TMI-2.[48] The Petitioner claims his "economic stake as a business owner, homeowner, and taxpayer are impacted a [sic] non-regulated

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46 Factors weighing in *favor* of allowing intervention include: (i) the extent to which the petitioner's participation would assist in developing a sound record; (ii) the nature of petitioner's property, financial or other interests in the proceeding; and (iii) the possible effect of any decision or order that may be issued in the proceeding. *See* 10 C.F.R. § 2.309(e)(1)(i)-(iii). Conversely, factors weighing *against* allowing intervention include: (i) the availability of other means whereby the petitioner's interest might be protected; (ii) the extent to which petitioner's interest will be represented by existing parties; and (iii) the extent to which petitioner's participation will inappropriately broaden the issues or delay the proceeding. *See id*. § 2.309(e)(2)(i)-(iii).

47 *See Gen. Pub. Utils. Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 160 (1996).

48 Petition at 8, 13.

amorphous company to maintain the decommissioning funds."[49] He also argues that "[a]dditional radioactive releases from dry casks, spent fuel pools, or unusual weather events, as well as converting [TMI-2] into a permanent, high-level radioactive waste site as planned by EnergySolutions . . . would be harmful to [the Petitioner's] health and financial interests."[50] Finally, the Petitioner claims, without support, that much of the community "has been exposed to radiation releases."[51] These statements constitute the totality of the Petitioner's arguments in support of his claim that he has standing.

First, the Petitioner's arguments are insufficient to establish traditional standing to intervene and demonstrate a clear misunderstanding of this license transfer proceeding. As a threshold matter, the mere fact that the Petitioner has (or has not) demonstrated standing in prior NRC proceedings is irrelevant. Indeed, the Commission *rejected* such an argument by the Petitioner in a prior proceeding, noting that "Mr. Epstein could not rely on other boards' findings of standing in the two prior proceedings concerning the Susquehanna facility."[52] The Commission reiterated that "a petitioner must make a fresh standing demonstration in *each* proceeding in which intervention is sought because a petitioner's circumstances may change from one proceeding to the next."[53]

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49 *Id.* at 13-14.

50 *Id*. at 14.

51 *Id*. at 18.

52 *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010).

53 *Id.* (emphasis in original); *see also id.* ("[T]he Board correctly found that it may focus only on the support Mr. Epstein presented with respect to *this proceeding* in ruling on his standing to intervene.") (emphasis in original).

Here, the Petitioner, who, despite being a *pro se* litigant, is familiar with the NRC's standing requirements by virtue of his involvement in prior proceedings,[54] fails to provide all the information required by 10 C.F.R. § 2.309(d). The regulation provides that a petition for leave to intervene "must" state: (1) the name, address, and telephone number of the requestor or petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (4) the possible *effect* of any decision or order that may be issued in the proceeding *on the petitioner's interest.*[55] The Petition covers (1) through (3) but fails entirely to address the fourth crucial element of Section 2.309(d).

Notably, a prior Commission decision, CLI-05-26, stemming from the Petitioner's failed attempt to intervene in a license transfer proceeding involving Peach Bottom Units 2 and 3, underscores the instant Petition's deficiencies. In *Peach Bottom*, the Commission noted that "the Petitioner must demonstrate (among other things) that the proposed [action] would injure his financial, property, or other interests." The Commission found, as it should in this case, that "the Petitioner never squarely addresses this 'injury' requirement."[56] In so doing, the Commission noted that the Petitioner's involvement in various activities related to the plant, "both personal and through organizations," does "not demonstrate injury," as a "mere intellectual or academic interest in a facility or proceeding is insufficient, in and of itself, to demonstrate standing."[57]

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54 Petition at 19 (Mr. Epstein touting his "over three decades of experience . . . intervening before . . . the Nuclear Regulatory Commission.").

55 10 C.F.R § 2.309(d) (emphasis added).

56 *Peach Bottom*, CLI-05-26, 62 NRC at 579 (citing 10 C.F.R. § 2.309(d); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996)).

57 *Id.* at 579-80; *cf. Bell Bend*, CLI-10-7, 71 NRC at 140 ("Mr. Epstein's additional claim that he is on the board of directors of two organizations with interests within 50 miles of the site is likewise insufficiently specific to articulate the requisite pattern of regular contacts with the area.") (citation omitted).

The discussion presented in the LTA, which the Petitioner's standing arguments ignore, reinforces his clear failure to identify any "obvious" potential for offsite radiological consequences or radiological injury to him *from the proposed license transfer*. Among other things, the LTA explains that "[t]his indirect transfer of control will have no material impact on the Licensed Subsidiaries and the activities conducted under the Licenses."[58] Indeed, the upstream corporate ownership change will not affect any decommissioning operations of the licensees or have any material impact on their existing technical or financial qualifications.

Second, insofar as the Petitioner seeks proximity standing by virtue of his being an "area resident," he fails to establish standing to intervene in this proceeding and clearly misunderstands the nature of the proceeding generally. This is also demonstrated by the cases the Petitioner cites to support his proximity-based standing, none of which involve the review of an indirect license transfer application.

The Applicant's proposed license transfer is an *indirect* one and does not involve transfer of either ownership or operating rights to the licensed facilities, nor does it entail any changes to the facilities or on-going decommissioning activities at the licensed sites. The Commission has consistently *not* granted proximity standing in indirect license transfer proceedings because such corporate changes do not create any obvious source of actual or potential harm.[59]

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[58] LTA at 4. "Licensed Subsidiaries" are the special purpose entities, wholly owned by Energy*Solutions*, to hold the licenses. These include Zion Solutions, LLC which holds License Nos. DPR-39 and DPR-48, TMI-2 Solutions, LLC which holds License No. DPR-73, and LaCrosse Solutions, LLC which holds License No. DPR-45.

[59] *See* CLI-22-1, __ NRC __ , __ (Feb. 14, 2022) (slip op. at 24) (ML22045A478) (stating "we do not presume standing on the basis of proximity in indirect license transfer cases that involve no change in ownership, operator, or the physical plant"); *In the Matter of El Paso Elec. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, & 3), 92 N.R.C. 225, 233 (Sept. 15, 2020); *see also In the Matter of Entergy Nuclear Operations, Inc & Entergy Nuclear Palisades, LLC* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 269 (Aug. 22, 2008) ("Palisades") (noting that the Commission has "never granted proximity-based standing to a petitioner in an indirect license transfer adjudication").

This remains true as recently as February 14, 2022 where the Commission found that the Petitioner failed to demonstrate proximity standing in Exelon Generation Company, LLC's indirect license transfer proceeding.[60] The Commission has also found no "obvious potential for offsite consequences stemming from an *indirect* license transfer, and without such potential consequences, proximity-based standing cannot be demonstrated."[61]

Finally, the Petitioner's request for discretionary intervention must be denied. The Petitioner argues that he can help develop the record due to his experience in numerous NRC proceedings at Three Mile Island.[62] Discretionary intervention, however, is permitted only where at least one petitioner has established standing and offered at least one admissible contention, such that a hearing will be held.[63] As there are no other petitioners in this proceeding, those criteria cannot be met.

Overall, the Petitioner's standing claims merely raise generalized historical concerns about the site and generalized grievances about decommissioning the facility. The Petitioner fails entirely to establish a "plausible nexus" between the *specific* license transfer at issue in this proceeding and any harm to his alleged interests.[64] He simply has not presented any information or analysis to support a conclusion that the *specific* change resulting from the proposed indirect license transfer here presents any potential for offsite consequences—much less an "obvious" one. The Petitioner's generalized grievances, which are not specifically tailored to this proceeding, have failed to demonstrate that the Petitioner has any form of standing.

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60 *Id.*

61 *Palisades*, CLI-08-19, 68 NRC at 269.

62 Petition at 19.

63 10 C.F.R. § 2.309(e); *see also Palisades*, CLI-08-19, 68 NRC at 267.

64 *Zion*, CLI-99-4, 49 NRC at 188.

## V. PETITIONER HAS NOT PROPOSED AN ADMISSIBLE CONTENTION

To grant the Petition, the Commission must find that the Petitioner has submitted at least one proposed contention that satisfies each of the six admissibility criteria in 10 C.F.R. § 2.309(f)(1). The Petitioner has not done so here. Accordingly, the Petition must be denied.

### A. Contention Admissibility Standards

Petitions to intervene must "set forth with particularity" the contentions a petitioner seeks to have litigated in a hearing.[65] The requirements for an admissible contention are set forth in 10 C.F.R. § 2.309 (f)(1)(i)-(vi) and also described in the Hearing Opportunity Notice.[66]

The Commission's contention admissibility requirements are "strict by design."[67] They seek "to ensure that NRC hearings 'serve the purpose for which they are intended: to adjudicate *genuine, substantive safety and environmental issues* placed in contention by qualified intervenors.'"[68] The requirements thus reflect a "deliberate effort to prevent the major adjudicatory delays caused in the past by ill-defined or poorly-supported contentions that were admitted for hearing although 'based on little more than speculation.'"[69] To warrant an adjudicatory hearing, the NRC requires proposed contentions to have "some reasonably specific

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65 *See PPL Susquehanna, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-15-8, 81 NRC 500, 503-04 (2015) (quoting 10 C.F.R. § 2.309(f)(1)); *Susquehanna Nuclear, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-17-4, 85 NRC 59, 74 (2017).

66 *See* Hearing Opportunity Notice, 87 Fed. Reg. at 3,374.

67 *Dominion Nuclear Conn., Inc*. (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

68 *Dominion Nuclear Conn., Inc*. (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003) (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (1999)) (emphasis added) (internal citation omitted).

69 *Susquehanna*, CLI-15-8, 81 NRC at 504 (quoting *Oconee*, CLI-99-11, 49 NRC at 334).

factual or legal basis."[70] The Petitioner alone bears the burden to meet the standards of contention admissibility.

The strict contention rule serves multiple functions, including: (1) focusing the hearing process on real disputes that can be resolved in adjudication; (2) giving all parties in the proceedings notice regarding a petitioner's grievances, as well as a good sense of the claims they will either support or oppose; and (3) ensuring that adjudicatory hearings are triggered only by petitioners able to provide minimum factual and legal foundations in support of their contentions.[71]

Under 10 C.F.R. § 2.309(f)(1), a petitioner must explain the "basis" for each proffered contention by stating alleged facts or expert opinions that support the petitioner's position and on which the petitioner intends to rely in litigating the contention.[72] To be admissible, the issue raised must (1) fall within the scope of the proceeding and (2) be material to the findings that the NRC must make with respect to the Application.[73] Contentions that challenge NRC regulations,[74] seek to impose requirements stricter than those imposed by the agency,[75] or opine on how Staff should conduct its review[76] are all outside the scope of NRC adjudicatory

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70 *Id.* (quoting *Millstone*, CLI-03-14, 58 NRC at 213).

71 *Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 273 (2006).

72 10 C.F.R. § 2.309(f)(1)(ii), (v).

73 *Id*. § 2.309(f)(1)(iii)-(iv); *Susquehanna*, CLI-17-4, 85 NRC at 74.

74 10 C.F.R. § 2.335(a).

75 *See Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), LBP-15-4, 81 NRC 156, 167 (2015); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 315 (2012); *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 206 (2000); *Curators of the Univ. of Mo.* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 170 (1995).

76 *See, e.g., Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 25 (2001) (quoting *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 350 (1998), *aff'd sub nom Nat'l Whistleblower Ctr. v. NRC*, 208 F.3d 256 (D.C. Cir. 2000), *cert.*

proceedings. A contention also must provide sufficient information to show a genuine dispute exists with the applicant on a material issue of law or fact.[77] The contention must refer to the "specific portions of the Application. . . that the petitioner disputes," along with the "supporting reasons for each dispute; or, if the petitioner believes that an application fails altogether to contain information required by law, the petitioner must identify each failure, and provide supporting reasons for the petitioner's belief."[78]

Petitioners may not incorporate by reference voluminous documents or affidavits with conclusory assertions to support a contention. As the Commission has explained:

> Commission practice is clear that a petitioner may not simply incorporate massive documents by reference as the basis for or as a statement of his contentions. . . . Such a wholesale incorporation by reference does not serve the purposes of a pleading. . . . The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may be in a haystack.[79]

In short, the Commission has refused to "sift through the parties' pleadings to uncover and resolve arguments not advanced by the litigants themselves."[80]

Here, the Petitioner seems to propose four general contentions—although it is not clear from the Petition if any of the arguments are sub-contentions or intended to stand alone. In any event, the contentions all substantially overlap with each other—challenging the sufficiency of the decommissioning funding for TMI-2—and are otherwise identical to previous unsuccessful

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*denied*, 531 U.S. 1070 (2001)) ("'[I]t is the license application, not the NRC Staff review, that is at issue in our adjudications.'").

77 10 C.F.R. § 2.309(f)(1)(vi); *Susquehanna*, CLI-17-4, 85 NRC at 74.

78 *Susquehanna*, CLI-17-4, 85 NRC at 74 (citing 10 C.F.R. § 2.309(f)(1)(vi)).

79 *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-3, 29 NRC 234, 240-41 (1989) (citations omitted).

80 *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 337 (2002) (quoting *Zion*, CLI-99-4, 49 NRC at 194).

proposed contentions submitted by the Petitioner in a previous proceeding.[81] As explained below, none of the contentions satisfy the required contention admissibility criteria. Accordingly, they all must be rejected as inadmissible.

### B. All Proposed Contentions Are Inadmissible

As stated, the Petitioner recycled the arguments and contentions from his petition to intervene in the 2020 proceeding involving the TMI-2 direct license transfer to TMI-2 Solutions from the original owners.[82] There, in its memorandum and order CLI-21-2, issued January 15, 2021, the Commission found that the Petitioner lacked standing to intervene and that the contentions were inadmissible.[83] To illustrate how Petitioner's proposed contentions here are essentially identical to his previous contentions that were ruled inadmissible, we include a table to summarize the similarities of the main proposed contentions.

| Petitioner's Proposed Contentions | Proposed Contentions Ruled Inadmissible by Commission in CLI-21-2 |
|---|---|
| TMI-2 Solutions fails to show adequate decommissioning financial assurance and/or adequate funding for spent nuclear fuel management [citations omitted] because the TMI-2 Solutions' Amended PSDAR and decommissioning cost estimate underestimates license termination, site restoration and spent fuel management costs. [Petition at 27, 33.] | TMI-2 Solutions fails to show adequate decommissioning financial assurance and/or adequate funding for spent nuclear fuel management [citations omitted] because the TMI-2 Solutions' Amended PSDAR and decommissioning cost estimate underestimates license termination, site restoration and spent fuel management costs. [Petition at 39.] |
| TMI-2 Solutions failed to account either for costs associated with repackaging spent nuclear fuel for transport or, in the event repackaging is not required, for reimbursements to DOE of monies DOE paid or will pay licensees for licensee packaging costs. [Petition at 40.] | TMI-2 Solutions failed to account either for costs associated with repackaging spent nuclear fuel for transport or, in the event repackaging is not required, for reimbursements to DOE of monies DOE paid or will pay to licensees for licensee packaging costs. [Petition at 52.] |

81 TMI-2 Order, CLI-21-2, 93 NRC at __ (slip op. at 9); Indian Point Order, CLI-21-1, 93 NRC at __-__, (slip op. at 3-4).

82 Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing (Apr. 15, 2020) ("TMI-2 Petition").

83 TMI-2 Order, CLI-21-2, 93 NRC __ (Jan. 15, 2021) (slip op. at 9). The Commission also found the contentions identical to those sponsored by different petitioners in a different proceeding—principally from New York's petition in the Indian Point license transfer proceeding filed Feb. 12, 2020.

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|---|---|
| Because the Amended PSDAR and decommissioning cost estimate fail to include disposal costs for the mixed waste products currently congealed, embedded and hidden, they underestimate waste disposal costs. [Petition at 47.] | Because the Amended PSDAR and decommissioning cost estimate fail to include disposal costs for the mixed waste products currently congealed, embedded and hidden, they underestimate waste disposal costs. [Petition at 59.] |
| The license transfer application and supporting materials fail to show TMI-2 Solutions is financially qualified within the meaning of 10 C.F.R. §§ 50.33(f), 50.40(b), 50.80(b), 50.82(a), and 72.30(b). [Petition at 56.] | The license transfer application and supporting materials fail to show TMI-2 Solutions is financially qualified within the meaning of 10 C.F.R. §§ 50.33(f), 50.40(b), 50.80(b), 50.82(a), and 72.30(b). [Petition at 68.] |

Given the obvious attempt to reargue settled issues, and the substantive overlap in the contentions, rather than demonstrate how each individual contention is inadmissible here, EnergySolutions responds to the arguments in the contentions generally, with portions of individual contentions discussed as applicable.

As the Commission recognized in CLI-21-2, the Petitioner makes two general claims: (1) that the Application does not provide adequate decommissioning financial assurance to ensure that the TMI-2 site can be decommissioned properly; and (2) that the Applicant's licensed subsidiary TMI-2 Solutions is not financially qualified. The Petitioner largely alleges that TMI-2 Solutions' PSDAR underestimates license termination, site restoration, and spent fuel management costs. To bolster these claims, the Petitioner argues that TMI-2 Solutions provided no basis for its failure to account for underestimated costs associated with potential repackaging of remaining TMI-2 damaged fuel debris for transportation. While the Commission already found Petitioner's identical contentions inadmissible in the earlier TMI-2 transfer proceeding, we focus on the proposed contentions that may be applicable here.

*1. Decommissioning Financial Assurance*

The Petitioner asserts:

> TMI-2 Solutions fails to show adequate decommissioning financial assurance and/or adequate funding for spent nuclear fuel management in violation of 10 C.F.R. §§ 50.33(f) and (k)(1), 50.40(b), 50.54(bb), 50.75(b)(1) and (e)(1)(i), 50.80(b)(1)(i), 50.82(a)(8)(vii), and 72.30(b) because the [sic] TMI-2 Solutions' Amended PSDAR and decommissioning cost estimate underestimates [sic] license termination, site restoration[,] and spent fuel management costs.[84]

Not only does this assertion refer to several requirements that are categorically inapplicable to this proceeding, but the grounds justifying the Petitioner's arguments are specific financial and technical details associated with the decommissioning of TMI-2. As noted in the introduction above, the Petitioner indiscriminately copied-and-pasted his proposed contentions from a pleading in another NRC license transfer proceeding.[85] Thus, the Petitioner's contentions fail to account for the specific facts of *this* proceeding involving the proposed change in upstream corporate ownership of Applicant. Even if the proposed contention was within the scope of this proceeding, the Petitioner fails to demonstrate a genuine dispute that the proposed indirect transfer will have some negative impact on the Applicant's or its licensed subsidiaries' technical and financial qualifications.

As support for the claim that TMI-2 Solutions does not possess sufficient resources to decommission TMI-2, the Petitioner argues that the decommissioning funds will be inadequate because TMI-2 Solutions' decommissioning cost estimate reflected in its PSDAR is deficient in four particular areas (designated as "bases" in the Petition). These deficiencies include (1) failure to account for the likelihood of greater contamination being found at the site than was estimated; (2) failure to include costs for the potential need to repackage spent fuel material for transport; (3) failure to account for costs associated with mixed waste; and (4) failure to account

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84 Petition at 27.

85 *See generally id.* (failing even to revise the copied material and incorrectly referring to the Applicant as TMI-2 Solutions).

for potential delays. These deficiencies are identical to the bases for the proposed contentions Petitioner argued in the earlier TMI-2 Petition, which the Commission evaluated in detail and found not supported and thus inadmissible.[86]

Here, as a new argument, the Petitioner challenges TMI-2 Solutions' PSDAR stating that TMI-2 Solutions predicates its financial assurance representations on a site-specific decommissioning cost estimate set forth in its PSDAR. Petitioner alleges that the PSDAR "is actually not a PSDAR but a summary of previous studies by GPU and TLG," that the PSDAR contains insufficient cost estimates,[87] and that the Applicant fails to account for the cost to remediate contamination in soil, fill, groundwater, and surrounding properties. Not only are these arguments outside of the scope of this indirect license transfer proceeding, but the LTA does not even mention the PSDAR for TMI-2—and that is because the PSDAR is not relevant to the proposed transaction. In fact, the Petitioner repeatedly cites to the previous TMI-2 direct license transfer application, which has already been approved, to make his points.[88]

To further support his overarching contention, the Petitioner argues that Applicant has not adequately estimated costs for site restoration purposes, long-term management of TMI-2 debris material and waste, and repackaging of fuel debris.[89] These claims are inapplicable and immaterial to this indirect license transfer proceeding, and identify no deficiency in, or genuine dispute with, the LTA.

The Petitioner acknowledges that the NRC's standard of review for an indirect license transfer is whether the transfer will affect the qualifications of the licensee. However, his

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86 *See generally* TMI-2 Petition; *see* TMI-2 Order at 13-22.

87 Petition at 27-29.

88 Petition at 34, 46, 50.

89 Petition at 28, 43.

arguments demonstrate a fundamental misunderstanding of that standard. As stated in the Application, the proposed indirect license transfer is a corporate ownership change and will have no material impact on the existing qualifications of EnergySolutions' Licensed Subsidiaries or any of the ongoing decommissioning operations taking place at the licensed sites.[90] It is incumbent on the Petitioner to show that the proposed transfer here would have a material adverse impact on the financial or technical qualifications of Applicant's Licensed Subsidiaries such as TMI-2 Solutions.

Challenging the sufficiency of the PSDAR does not raise a material and genuine dispute with the proposed indirect license transfer. Allegations pertaining to decommissioning cost estimates for TMI-2, nuclear decommissioning trust funds, and costs associated with repackaging spent fuel are distinctly outside the scope of this particular proceeding. Even if questioning the adequacy of Applicant's decommissioning cost estimates were within the scope, the Petitioner's arguments fail to demonstrate (with adequate support) that the cost estimates or funding mechanisms are not in compliance with applicable NRC regulations. The Petitioner's arguments are thus unsupported and do not raise a genuine issue with the Application. For this reason, the Petitioner fails to satisfy the Commission's contention admissibility criteria in 10 C.F.R. § 2.309(f)(1)(iii)-(vi), and the Petition should be rejected accordingly.

*2. Financial Qualifications*

The Petitioner challenges the Applicant's financial status, arguing:

> The license transfer application and supporting materials fail to show TMI-2 Solutions is financially qualified within the meaning of 10 C.F.R. §§ 50.33(f), 50.40(b), 50.80(b), 50.82(a), and 72.30(b).[91]

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90 LTA at 7-8.

91 *Id.* at 56.

Petitioner argues that TMI-2 Solutions is inherently financially unsound because it is a limited liability company whose sole purpose is to decommission TMI-2. He argues that "[f]inancial assurance models typically assume facility owners are revenue-generating concerns"[92] and that TMI-2 Solutions is a "fictional company".[93] The Petitioner also asserts that the limited liability corporate structure of TMI-2 Solutions "encourages riskier behavior and induces companies to underreport liabilities," which undermines the Commission's ability to evaluate TMI-2 Solutions' financial qualifications.[94] However, not only has the Commission rejected similar arguments in previous proceedings, it also rejected this exact argument in connection with the direct transfer of TMI-2.[95]

As the NRC found in CLI-21-2,[96] the types of financial assurances that the Applicant provides are all acceptable under NRC regulations to demonstrate decommissioning funding assurance or financial qualifications.[97] Yet the Petitioner calls them a metaphorical "Maginot Line," and accuses TMI-2 Solutions of playing a "nuclear parlor game" with its financial assurances.[98] In pressing this groundless argument, the Petitioner is impermissibly challenging the NRC's financial assurance regulations for decommissioning in 10 C.F.R. § 50.75, and raising issues outside the scope of this proceeding.[99] The Petitioner has not shown how the present

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92 *Id*. at 59.

93 *Id.* at 60.

94 *Id*. at 65.

95 *See* CLI-21-2 at 24-25, n. 104.

96 *Id.* Order Approving Transfer of License and Draft Conforming Amendment (Dec. 2, 2020).

97 10 C.F.R. § 50.75(e)(1)(iii); *see also Oyster Creek*, CLI-19-6, 90 NRC 465, 473 (discussing acceptable methods of demonstrating adequate financial assurance).

98 Petition at 60-61.

99 10 C.F.R. § 2.335(a).

indirect license transfer will have any material adverse effect on the decommissioning funding assurance for TMI-2.

As further bases to challenge the Applicant's financial adequacy, the Petitioner argues that TMI-2 Solutions' "over reliance on [the nuclear decommissioning trust]" to show its financial qualifications "does not meet regulatory standards" in 10 C.F.R. § 50.33(f), and that TMI-2 Solutions must show that it has "the independent financial ability" to meet its financial decommissioning obligations.[100] The Petitioner cites to "unidentified service agreements between Exelon and FirstEnergy" yet does not explain the relevance of any such agreements to its contentions. Simply put, the Petitioner seems to be trying to impose financial requirements *beyond* those in NRC's regulations, which is wholly impermissible.[101]

The Commission, moreover, already has spoken directly on this issue and explained that it does not require absolute certainty in financial projections:

> [T]he level of assurance the Commission finds it reasonable to require regarding a licensee's ability to meet financial obligations is less than the extremely high assurance the Commission requires regarding the safety of reactor design, construction, and operation. The Commission will accept financial assurances based on *plausible assumptions and forecasts*, even though the possibility is not insignificant that things will turn out less favorably than expected. Thus, *the mere casting of doubt on some aspects of proposed funding plans is not by itself sufficient to defeat a finding of reasonable assurance.*[102]

The NRC also has a rigorous and comprehensive regulatory regime to provide continual assurance that funding for decommissioning remains adequate after a plant permanently ceases

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100 Petition at 61.

101 When a contention advocates for stricter requirements than NRC's regulations impose, the Commission considers it an impermissible attack on its regulations. *See Vt. Yankee*, LBP-15-4, 81 NRC at 167; *Seabrook*, CLI-12-5, 75 NRC at 315; *Oyster Creek*, CLI-00-6, 51 NRC at 206; *TRUMP-S Project*, CLI-95-1, 41 NRC at 170.

102 *Seabrook*, CLI-99-6, 49 NRC at 221-22 (emphasis added).

operation.[103] This includes required annual reporting on the status of decommissioning funding assurance for TMI-2.[104] As the Commission has held, its strict oversight and reporting requirements in its regulations "provide reasonable assurance that adequate funds will remain to complete decommissioning by requiring [the licensee] and the Staff to monitor the projected cost of decommissioning and available funding and ensure more funding is available as needed."[105]

In summary, the contentions proposed in the Petitioner's hearing request are immaterial, unsupported, pertain to issues outside the scope of this proceeding, and do not raise a genuine dispute with the Application or demonstrate that the proposed transaction will adversely affect the Applicant's or its licensed subsidiaries' qualifications, contrary to 10 C.F.R. § 2.309(f)(1)(iii)-(vi). Therefore, the Petition should be denied as all proposed contentions are inadmissible.

## VI. CONCLUSION

The Petitioner has not demonstrated standing to intervene as required by 10 C.F.R. § 2.309(d) or met the requirements for discretionary intervention as required by 10 C.F.R. § 2.309(e). Nor has Petitioner offered at least one admissible contention, as required by 10 C.F.R. § 2.309(f)(1). Failure to demonstrate standing or contention admissibility are each fatal flaws in the Petition. Accordingly, the Commission should reject the Petition in its entirety for either or both of these reasons.

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103 *See generally* 10 C.F.R. § 50.82(a); *see also* NUREG-1577 at 5.

104 10 C.F.R. §§ 50.82(a)(8)(v) and (a)(8)(vii).

105 *Vt. Yankee*, CLI-16-17, 84 NRC at 118; *see also* Oyster Creek, CLI-19-6, 90 NRC at 476 ("If new developments point to a projected funding shortfall, the NRC requires additional financial assurance to cover the estimated cost to complete the decommissioning.") (citation omitted).

Respectfully submitted,

*Executed in Accord with 10 C.F.R. § 2.304(d)*
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Dated in Washington, DC
this 7th day of March 2022

**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

| | | |
|---|---|---|
| Application for Indirect Transfer of Licenses | ) | Docket Nos. 50–295, 50–304, |
| | ) | 50–320, 50–409, |
| Energy*Solutions*, LLC | ) | 72–046, 030–39013 |
| | ) | 11005620, 11005897 |
| (Zion Nuclear Power Station, Units 1 and 2, Three Mile Island Nuclear Station, Unit 2, La Crosse Boiling Water Reactor; Radioactive Materials License, Export License) | ) | NRC-2021-0232 |
| | ) | March 7, 2022 |

## CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "Applicant's Answer Opposing Request for Public Hearing and Petition for Leave to Intervene filed by Eric Joseph Epstein" was served through the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned docket.

*Signed (electronically) by Stephanie Fishman*
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