UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	Docket Nos.: 50-387, 50-388, and
SUSQUEHANNA NUCLEAR, LLC	)	72-28
(Susquehanna Steam Electric Station)	)	December 21, 2022

SUSQUEHANNA NUCLEAR, LLC'S ANSWER OPPOSING ERIC JOSEPH EPSTEIN'S PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309, Susquehanna Nuclear, LLC ("Susquehanna Nuclear") submits this Answer opposing the Petition for Leave to Intervene and Hearing Request ("Petition") filed by Eric J. Epstein ("Petitioner" or "Mr. Epstein") on November 28, 2022.[1] Petitioner requests a hearing and seeks to intervene in the above-captioned proceeding associated with the application ("Application") to the U.S. Nuclear Regulatory Commission ("NRC") filed by Susquehanna Nuclear on September 29, 2022, seeking an order approving the indirect transfer of control of its interests in Facility Operating License Nos. NPF-14 and NPF-22 for the Susquehanna Steam Electric Station ("SSES") Units 1 and 2, as well as the general license for the SSES Independent Spent Fuel Storage Installation ("ISFSI").[2]

As explained below, the Petition should be rejected because Petitioner has not demonstrated standing to participate in this proceeding as a matter of right. Mr. Epstein attempts

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1 Eric Joseph Epstein's Petition for Leave to Intervene and Hearing Request (Nov. 28, 2022) (ML22332A535) ("Petition").

2 *See* Letter from B. Berryman, Susquehanna Nuclear, to NRC Document Control Desk, "Susquehanna Steam Electric Station; Application for Order Approving Indirect Transfer of Control of Licenses and Approving Conforming License Amendments" (Sept. 29, 2022) (ML22272A604) (Non-Proprietary Version) ("Application").

to show standing through a Commission-created standing shortcut known as the "proximity presumption." However, as the Commission has long held—including in recent orders in which the Commission has explained this *to Mr. Epstein himself*—that shortcut is inapplicable in indirect license transfer proceedings such as this. Therefore, a petitioner must demonstrate traditional Article III standing. Mr. Epstein has not come close to doing so here. The Petition must be denied on that basis alone.

Petitioner also presents two proposed contentions, both of which are inadmissible. Proposed Contention 1 asserts that the Application does not comply with a regulation pertaining to decommissioning funding assurance for *specific*-licensed ISFSIs. As explained below, that claim is irrelevant and immaterial because the SSES ISFSI is *generally* licensed, and the regulation does not apply to the instant Application. Petitioner makes other various claims related to this contention that are wholly without merit, as explained in the discussion below. Ultimately, Proposed Contention 1 is inadmissible because these arguments fail to satisfy multiple admissibility criteria.

Proposed Contention 2 fares no better. The contention asserts that Susquehanna Nuclear has not complied with "Bankruptcy Review Team compliance mandates," but it is not clear what that means—and Petitioner makes no attempt to explain it. Petitioner cites various regulations from 10 C.F.R. Parts 30, 40, and 70, but fails to explain why they are cited. These obscure statements fail to identify any specific dispute with the Application, or otherwise satisfy any of the Commission's contention admissibility criteria. And, in any event, the cited regulations obligate licensees to obtain NRC consent before transferring control of a license and to notify the NRC of bankruptcy filings—both of which the licensee has done here. Accordingly, the Petition

must be denied for the additional reason that Petitioner failed to propose an admissible contention.

Finally, Petitioner also requests "discretionary intervention." But, that alternative pathway to participation in an evidentiary hearing is only available if some other petitioner is granted a hearing. Because no other petition has been filed here (much less, granted), this alternative path to intervention is unavailable to Petitioner. Accordingly, pursuant to 10 C.F.R. § 2.309(a), the Commission must deny the Petition.

II. BACKGROUND

A. Transfers of Control of NRC Licenses

Under Section 184 of the Atomic Energy Act of 1954, as amended ("AEA"),[3] 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 written approval.[4] This statutory requirement, and its regulatory counterpart in 10 C.F.R. § 50.80, applies to transfers that are direct (*i.e.*, to a different operator or direct owner) or indirect (*i.e.*, involving a different controlling entity upstream of a licensee).[5] The NRC applies its process under 10 C.F.R. § 50.80 for licensees emerging from bankruptcy. The NRC review focuses on the "potential impact on the licensee's ability both to maintain adequate technical qualifications and organizational

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

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

[5] *See* NRC Backgrounder, "Reactor License Transfers," at 1-2 (Jan. 2020) (ML040160803). 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*. An indirect license transfer takes place when there is a transfer of "control" of the license or of a license holder (*e.g.*, as a result of a merger or acquisition at high levels within or among corporations). *See id.*

control and authority over the facility and to provide adequate funds for safe operation and decommissioning."[6]

B. The Chapter 11 Cases

Susquehanna Nuclear is a direct, wholly-owned subsidiary of Talen Energy Supply, LLC, ("TES") which in turn is a direct, wholly-owned subsidiary of Talen Energy Corporation ("TEC"), the stock of which is currently held by affiliates of Riverstone Holdings, LLC. Commencing on May 9, 2022, TES and certain of its subsidiaries including Susquehanna Nuclear (collectively, the "Debtors") each filed a voluntary bankruptcy case (the "Chapter 11 Cases") in the United States Bankruptcy Court for the Southern District of Texas ("Bankruptcy Court"). On May 10, 2022, in accordance with 10 C.F.R. § 50.54(cc), Susquehanna Nuclear notified the NRC of the Chapter 11 Cases of TES and Susquehanna Nuclear.[7] The Debtors filed

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[6] Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44,071, 44,077 (Aug. 19, 1997) ("Deregulation Policy Statement"); 10 C.F.R. § 50.80(b)(1)(i), (c)(1); *see also* NUREG-1577, Rev. 1, Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance at 6 (Feb. 1999) (ML013330264). To grant a transfer of control, the NRC must find a "reasonable assurance" of financial qualifications. 10 C.F.R. § 50.33(f)(2). 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. *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 262-63 (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). The NRC has historically interpreted "reasonable assurance" with the understanding that "some risks may be tolerated and something less than absolute protection is required." Memorandum from F. Brown, Director, Office of New Reactors to New Reactor Business Line, "Expectations for New Reactor Reviews," at 4 (Aug. 29, 2018) (ML18240A410). "The mere casting of doubt" on some aspect of an application is legally insufficient "to defeat a finding of reasonable assurance." *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 31 (2000) (citing *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 222 (1999)).

[7] Preliminary Notification, PNO-I-22-001, "Notification of Bankruptcy Filing by Talen Energy Supply and Susquehanna Nuclear" (May 11, 2022) (ML22131A329) ("Region I received initial notification of this occurrence by telephone from the licensee and received written confirmation in a letter from the licensee on May 10, 2022."). On December 12, 2022, TEC also filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in the Bankruptcy Court, which is being jointly administered with the other pending Chapter 11 Cases. Susquehanna Nuclear notified the NRC of this additional filing on December 14, 2022. [SSES] Notification of Petition for Bankruptcy (Dec. 14, 2022) (ML22348A260) (collectively with the notification referenced in PNO-I-22-001, the "Bankruptcy Notifications").

a Joint Plan of Reorganization ("Plan") in the Bankruptcy Court on September 9, 2022, proposing a comprehensive restructuring (the "Restructuring") in which the equity of the ultimate parent of the reorganized company (which is referred to in the Application as "Reorganized Talen") will be distributed to certain creditors ("Creditors").[8] The Bankruptcy Court confirmed that Plan on December 15, 2022.[9]

C. The Application

Susquehanna Nuclear filed the Application on September 29, 2022, on behalf of itself and the Creditors (collectively, the "Applicants"), requesting certain written approvals from the NRC necessary to implement the Restructuring, including for an indirect transfer of control involving no change in the operator, no change in the direct owners, and no change in the physical plant. The Application included non-public financial information designated as Sensitive Unclassified Non-Safeguards Information ("SUNSI"). The NRC accepted the Application for review on October 20, 2022.[10] On October 29, 2022, Susquehanna Nuclear supplemented the Application with additional financial and ownership structure information.[11]

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8 As stated in the Application, Applicants expect that "Reorganized Talen" will be Reorganized TEC. This outcome has been made more likely by the fact that TEC has now filed a voluntary case under Chapter 11 of Title 11 of the United States Code.

9 *In re Talen Energy Supply, LLC, et. al*, Case No. 22-90054, Proposed Findings of Fact, Conclusions of Law, and Order Confirming Joint Chapter 11 Plan of Talen Energy Supply, LLC and its Affiliated Debtors, (Doc. No. 1745) (Bankr. S.D. Tex. Dec. 15, 2022) ("Confirmation Order") (the confirmed Plan includes TEC).

10 *See* Email from A. Klett, NRC, to K. Brown, Talen, "NRC LIC-109 Acceptance Review Results for Susquehanna License Transfer (EPID L-2022-LLM-0003)" (Oct. 20, 2022) (ML22293A088).

11 *See* Letter from B. Berryman, Susquehanna Nuclear, to NRC Document Control Desk, "Susquehanna Steam Electric Station; Application for Order Approving Indirect Transfer of Control of Licenses and Approving Conforming License Amendments—Supplemental Information" (Oct. 28, 2022) (ML22301A205) (Non-Proprietary Version).

D. The Hearing Opportunity

The AEA requires that the NRC offer an opportunity for hearing on a license transfer.[12] But Subpart M of 10 C.F.R. Part 2 (10 C.F.R. §§ 2.1300 to 2.1331) authorizes the NRC to use a streamlined license transfer process with informal legislative-type hearings, rather than formal adjudicatory hearings.[13] Subpart M covers direct or indirect license transfers for which NRC approval is required, including those transfers that require license amendments and those that do not.[14] Section 2.1315 codifies the Commission's generic determination that any conforming amendment to an operating license that only reflects the license transfer action involves a "no significant hazards consideration."[15] That same regulation provides that "[a]ny challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer."[16]

The NRC published a notice in the *Federal Register* on November 8, 2022, informing the public that it is considering the Application for approval, providing an opportunity for the public to submit written comments on the Application, and offering an opportunity for persons whose interests may be affected by the approval of the Application to file (within 20 days of the

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12 AEA § 189.a(1)(A) (codified as amended at 42 U.S.C. § 2239(a)(1)(A)) ("In any proceeding under this chapter, for the . . . application to transfer control, . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.").

13 *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).

14 *See* Subpart M Rule, 63 Fed. Reg. at 66,727.

15 10 C.F.R. § 2.1315(a).

16 *Id.* § 2.1315(b). 10 C.F.R. § 51.22(c)(21) also categorically excludes from environmental review "[a]pprovals of direct or indirect transfers of any license issued by [the] NRC and any associated amendments of license required to reflect the approval of a direct or indirect transfer of an NRC license." This regulation reflects the NRC's finding that license transfers do not "individually or cumulatively have a significant effect on the human environment." *See* Subpart M Rule, 63 Fed. Reg. at 66,728.

notice—*i.e.*, by November 28, 2022) hearing requests and intervention petitions ("Hearing Opportunity Notice").[17] The Hearing Opportunity Notice also provided potential parties an opportunity to request SUNSI access.[18] Petitioner did not request SUNSI access, but did file the instant Petition on November 28, 2022. Susquehanna Nuclear timely files this Answer thereto.[19]

E. Legal Standards for Hearing Requests, Petitions to Intervene, Standing, and Contentions

Pursuant to 10 C.F.R. § 2.309(a), a hearing request or petition to intervene may be granted only if the presiding officer determines that the petitioner: (1) has standing as a matter of right under the provisions of Section 2.309(d); *and* (2) has proposed at least one admissible contention that meets all of the requirements of Section 2.309(f).[20]

1. Standing Requirements

In some proceedings, a petitioner may rely on a Commission-created standing shortcut known as the "proximity presumption" to demonstrate standing. For example, in proceedings that involve the issuance of a construction permit or operating license for a new power reactor, the Commission has found standing based solely on a petitioner's residence within a 50-mile radius of the site.[21] But, in other cases (including license transfers), the Commission determines,

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17 Susquehanna Steam Electric Station, Units 1 and 2 and Associated Independent Spent Fuel Storage Installation; Consideration of Approval of Indirect Transfer of Licenses and Conforming Amendments, 87 Fed. Reg. 67,511 (Nov. 8, 2022) ("Hearing Opportunity Notice").

18 *See id*. at 67,513.

19 10 C.F.R. § 2.309(i)(1).

20 In some limited circumstances, a presiding officer may permit discretionary intervention by a participant that does not satisfy these requirements, pursuant to 10 C.F.R. § 2.309(e). However, "discretionary 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." *PPL Susquehanna LLC* (Susquehanna Steam Elec. Station Units 1 & 2), LBP-07-10, 66 NRC 1, 21 n.14 (2007). Petitioner requests discretionary standing here. Petition at 19-20. However, discretionary intervention is unavailable here because no other hearing requests or petitions to intervene were filed (or granted).

21 *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915-16 (2009).

"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."[22] The Commission has "consistently held that indirect license transfers involving 'no change in the operator, no change in the direct owner, and no change in the physical plant . . . create[] no obvious source of actual or potential harm.'"[23] Accordingly, in such proceedings, the "proximity presumption" is unavailable and petitioners must demonstrate traditional Article III standing.[24] This requires a showing that a petitioner has suffered or will suffer a concrete and particularized injury (injury-in-fact) that is fairly traceable to the challenged action (causality), likely redressable by a favorable decision (redressability), and arguably within the zone of interests protected by the governing statutes—here, the AEA.[25]

2. Contention Admissibility Requirements

Petitions to intervene must "set forth with particularity" the contentions to be litigated.[26] 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.[27] The Commission's contention admissibility requirements are "strict by design."[28] They seek "to ensure that NRC hearings 'serve the

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

23 *El Paso Elec. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, & 3), CLI-20-7, 92 NRC 225, 233 (2020) (quoting *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 260 (2008)).

24 *Exelon Generation Co., LLC* (Exelon Fleet), CLI-22-01, 95 NRC __, __ (Feb. 14, 2022) (slip op. at 9).

25 *Calvert Cliffs*, CLI-09-20, 70 NRC at 915.

26 *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).

27 *See* Hearing Opportunity Notice, 87 Fed. Reg. at 67,512.

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

purpose for which they are intended: to adjudicate *genuine, substantive safety . . . issues* placed in contention by qualified intervenors.'"[29] 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.'"[30] To warrant an adjudicatory hearing, the NRC requires proposed contentions to have "some reasonably specific factual or legal basis."[31] The petitioner alone bears the burden to meet the standards of contention admissibility.[32]

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 at the hearing.[33] To be admissible, the issue raised must fall within the scope of the proceeding and be material to the findings that the NRC must make with respect to the Application.[34] Contentions that challenge NRC regulations,[35] seek to impose requirements stricter than those imposed by the agency,[36] or opine

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29 *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).

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

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

32 *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) ("[I]t is Petitioners' responsibility … to formulate contentions and to provide 'the necessary information to satisfy the basis requirement' for admission") (internal citation omitted).

33 10 C.F.R. § 2.309(f)(1)(ii), (v).

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

35 10 C.F.R. § 2.335(a).

36 *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).

on how Staff should conduct its review[37] are all outside the scope of NRC adjudicatory proceedings.

A contention also must provide sufficient information to show a genuine dispute with the applicant on a material issue of law or fact.[38] 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."[39]

Petitioners may not incorporate by reference voluminous documents or affidavits with conclusory assertions to support a contention. As the Commission 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.[40]

In short, the Commission has refused to "sift through the parties' pleadings to uncover and resolve arguments not advanced by the litigants themselves."[41]

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

38 10 C.F.R. § 2.309(f)(1)(vi); *Susquehanna*, CLI-17-4, 85 NRC at 74.

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

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

41 *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 337 (2002) (quoting *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 194 (1999)).

III. THE PETITION SHOULD BE DENIED

As noted above, the Petition may be granted only if the Petitioner demonstrates standing as a matter of right and proposes an admissible contention.[42] Here, Petitioner has done neither. Accordingly, the Petition should be denied for either or both of these reasons.

A. Petitioner Has Not Demonstrated Standing

As explained below, Petitioner has not established standing to intervene in this proceeding as a matter of right under 10 C.F.R. § 2.309(d). Mr. Epstein appears to claim standing on three grounds. First, he asserts standing based on the proximity presumption.[43] Second, he suggests that standing is proper here because he has been "accorded standing in prior proceedings."[44] Finally, Mr. Epstein asserts that he has demonstrated traditional standing.[45] However, as explained below, these claims are wholly insufficient to demonstrate standing to intervene in this indirect license transfer proceeding.

1. Proximity-Based Standing Is Unavailable Here

Mr. Epstein's primary claim to standing is the proximity presumption. Although he admits residing nearly 100 miles from SSES, Petitioner states that he "regularly pierces the 50-mile proximity zone" and asserts that, as to standing, the question before the Commission "is the sufficiency of Petitioner Epstein's showing regarding his activities within such a radius of the SSES as a basis for invoking the presumption."[46] However, mere proximity to a facility is insufficient to demonstrate standing here because the proximity presumption is *unavailable* in

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42 10 C.F.R. § 2.309(a).

43 Petition at 13.

44 *Id*.

45 *Id*. at 15.

46 *Id*. at 17.

indirect license transfer proceedings.[47] The Commission has "never granted proximity-based standing to a petitioner in an indirect license transfer adjudication."[48] As the Commission recently explained:

> We have consistently held that indirect license transfers involving "no change in the operator, no change in the direct owner, and no change in the physical plant…create[] no obvious source of actual or potential harm." Consequently, we have not extended proximity standing in such cases.[49]

That is exactly the case here. The Application does not propose to change the licensed operator, any of the direct owners, or the physical plant. Accordingly, proximity-based standing is simply not available in this proceeding. And this conclusion should come as no surprise to Mr. Epstein, given that the Commission explained this proposition to him, yet again, in a separate proceeding earlier this year.[50]

2. Mr. Epstein's Involvement in Other Proceedings Is Irrelevant

Mr. Epstein appears to suggest that, because he has participated in other NRC or state-level proceedings regarding SSES in the past, he is entitled to standing here.[51] However, this assertion is irrelevant to whether he has made the requisite standing demonstration in *this* proceeding. Mr. Epstein should be well aware that these assertions are irrelevant because the Commission has previously rejected identical arguments from Mr. Epstein in other proceedings, explaining that he "could not rely on other boards' findings of standing," and instructing him on

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47 *Palo Verde*, CLI-20-7, 92 NRC at 233; *Palisades*, CLI-08-19, 68 NRC at 260.

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

49 *Palo Verde*, CLI-20-7, 92 NRC at 233 (quoting *Palisades*, CLI-08-19, 68 NRC at 260).

50 *Exelon Fleet*, CLI-22-01, 95 NRC at __ (slip op. at 9).

51 *See, e.g.*, Petition at 13 (noting he has been "accorded standing in prior proceedings"); *id*. at 15 (referencing his "numerous pleadings" before the NRC, the Pennsylvania Public Utility Commission, and the Susquehanna River Basin Commission).

the need to "make a fresh standing demonstration in *each* proceeding."[52] The same holds true here. Mr. Epstein's prior participation in past NRC adjudicatory proceedings, or state regulatory proceedings, has no bearing on whether he has standing to intervene in the instant proceeding.

3. Mr. Epstein Has Not Demonstrated Traditional Standing

Because proximity-based standing is unavailable in this proceeding, the standing inquiry reverts to a "'traditional standing' analysis of whether the petitioner has made a specific showing of injury, causation, and redressability."[53] Mr. Epstein asserts that he has made "the required showing of an injury-in-fact, causation, and redressability."[54] The singular basis he provides to support this assertion is his "more than thirty-five year commitment to attend, monitor and track the SSES."[55] However, Mr. Epstein's interest in SSES is insufficient to demonstrate traditional standing.

This, again, should come as no surprise to Mr. Epstein, given that the Commission has long held that his "general interest" (as characterized by the Commission) in matters related to a nuclear plant "do[es] not demonstrate injury."[56] The Commission has previously found that similar assertions from Mr. Epstein failed to address the requirement to show "that the proposed transfer would injure his financial, property, or other interests,"[57] and the Commission should

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52 *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138 (2010) (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). *See also Exelon Generation Co., LLC* (Three Mile Island Nuclear Station, Units 1 & 2), LBP-20-2, 91 NRC 10, 29 (2020) ("Mr. Epstein's prior participation in other NRC proceedings does not, a priori, grant him standing in this case."). Indeed, Mr. Epstein acknowledges receiving this direction in other proceedings. Petition at 16, 17, 19.

53 *Peach Bottom*, CLI-05-26, 62 NRC at 581.

54 Petition at 15.

55 *Id*. at 15.

56 *Peach Bottom*, CLI-05-26, 62 NRC at 580.

57 *Id.* at 579 (citations omitted).

reach the same conclusion here. As the Commission observed in dismissing Mr. Epstein's petition to intervene in a prior license transfer proceeding, "[i]t is well established that mere intellectual or academic interest in a facility or proceeding is insufficient" to confer standing.[58] Accordingly, Petitioner's "commitment," however earnest, is not a sufficient basis for traditional standing in this proceeding.

Finally, Mr. Epstein's vague and superficial assertions of "health and safety risks"[59] fare no better. Petitioner merely notes that he "resides downstream" from SSES,[60] and asserts that "storage of high-level radioactive waste for an indefinite period of time by a bankrupt company is a prescription for disaster."[61] As a general matter, the Application does not propose any alteration to the "period of time" that waste may be stored at SSES, let alone propose indefinite storage. And the existing licenses are time-limited—they are not "indefinite."[62] Moreover, the Application does not propose to transfer those time-limited licenses to a "bankrupt company." Rather, the transfer of control is proposed to occur in concert with the Restructuring and Susquehanna Nuclear's *emergence from* the Chapter 11 Cases, when the Debtors' financial strength will be much improved due to, among other things, reduced funded debt obligations and significant equity investment through the new money equity rights offering under the Chapter 11 Cases, and at which time no Debtor will be bankrupt.[63] Indeed, in order to confirm a bankruptcy

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58 *Id.* at 579-80 (citations omitted) ("Although these kinds of involvement demonstrate both Mr. Epstein's general interest in electric and nuclear issues and his particular interest in the Peach Bottom facility, they do not demonstrate injury.").

59 Petition at 19.

60 *Id*. at 14.

61 *Id*. at 19.

62 *See* Renewed Operating License No. NPF-14, Susquehanna Steam Electric Station, Unit 1 at 21 (ML052720300) (expiration date: July 17, 2042); Renewed Operating License No. NPF-22, Susquehanna Steam Electric Station, Unit 2 at 16 (ML093160276) (expiration date: Mar. 23, 2044).

63 Application at 3-4; Confirmation Order at 16 ("The evidentiary record demonstrates that the exit capital structure contemplated by the Plan, Plan Supplement, RSA, and Backstop Commitment Letter is reasonable

plan, the bankruptcy court must specifically find that the plan is "not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor . . . ."[64]

Simply put, Petitioner offers no plausible theory as to how his conjectured "disaster" (nor any other injury-in-fact) could result from this particular indirect transfer, which involves no change in the operator, no change in the direct owners, and no change in the physical plant.[65] Accordingly, Petitioner's vague claims do not identify any concrete and particularized injuries that would occur, or that would be likely to occur, as a result of an NRC decision to grant the Application, and Mr. Epstein has not demonstrated traditional standing here.

In sum, the Petition fails to demonstrate that Mr. Epstein will suffer a concrete and particularized injury, caused by, and redressable in, *this* indirect license transfer proceeding.

B. Petitioner Has Not Submitted an Admissible Contention

Petitioner proposed two contentions. As explained below, both are inadmissible. Petitioner also raises a variety of claims in the Introduction portion of the Petition. The discussion below explains that those claims, too, are baseless, meritless, and fail to raise an admissible contention.

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and appropriate and sufficient to fully perform all of the Debtors' obligations under the Plan, as well as all obligations of the Reorganized Debtors under all assumed agreements.").

64 11 U.S.C. § 1129(a)(11). *See also, e.g.*, *NLRB v. Bildisco*, 465 U.S. 513, 528 (1984) ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources") (citing H. R. Rep. No. 95-595, p. 220 (1977)); *In re FBI Distrib. Corp.*, 330 F.3d 36, 41 (1st Cir. 2003) ("The paramount objective of a Chapter 11 reorganization is to rehabilitate and preserve the value of the financially distressed business") (citations omitted).

65 *See also Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994) (rejecting "conjectural" or "hypothetical" claims of injury); *TMI*, LBP-20-2, 91 NRC at 26-27 (quoting *Zion*, CLI-99-4, 49 NRC at 189) (rejecting Mr. Epstein's vague "general objections" regarding insufficient decommissioning funds in another recent proceeding).

1. Contention 1 (ISFSI Decommissioning) Is Inadmissible

As formulated by Petitioner, Contention 1 asserts:

> The Applicant's Indirect License Transfer Request Fails to Fully Address 10 CFR 72.50 C [sic]: "The application shall describe the financial assurance that will be provided for the decommissioning of the facility under § 72.30."[66]

This contention is inadmissible on its face. It alleges a noncompliance with "10 CFR 72.50 C." As a point of clarification, the language quoted in the statement of the contention is found in 10 C.F.R. § 72.50(b)(3), not § 72.50(c). Regardless of which provision Petitioner intended to cite, neither 10 C.F.R. § 72.50(b) nor (c) is material to this proceeding. The ISFSI at SSES is governed by a *general* license.[67] In contrast, as specified in 10 C.F.R. § 72.13(c), the provisions in Sections 72.50(b) and (c) *do not apply* to generally licensed activities. That is the end of the inquiry. Proposed Contention 1 is therefore inadmissible because it is unsupported, immaterial, and fails to raise a genuine dispute with the application on a material issue of fact or law, as required by 10 C.F.R. § 2.309(f)(1)(iv)-(vi).

Even assuming, *arguendo*, that the Commission was required to examine Proposed Contention 1 further (and it clearly is not), none of the vague assertions in the body of the contention state an admissible claim either. As a general matter, the topic of decommissioning funding assurance is squarely addressed in the Application, which explains that Susquehanna Nuclear uses the prepayment method to satisfy the applicable requirements.[68] Under this method, "cash or liquid assets" are deposited "into an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates" in an

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66 Petition at 26.

67 *See, e.g.*, Hearing Opportunity Notice, 87 Fed. Reg. at 67,511 (noting the proposed transfer involves the "general license" for the SSES ISFSI).

68 Application, Encl. 1 at 11.

amount sufficient to pay decommissioning costs at shutdown.[69] The Application explains that the prepayment for SSES (which covers decommissioning of the reactors and the ISFSI) is in the form of a trust with a market value, as of August 31, 2022, of over $1.4 billion dollars.[70]

Petitioner asserts that "prepayment mode is no longer available as a stand-alone option for a bankrupt and debtor entity."[71] However, Petitioner provides no support for this bizarre claim. Prepayment is the "gold standard" of decommissioning funding assurance, inasmuch as the assets in the trust have already been deposited, are in an amount sufficient to pay decommissioning costs at shutdown, and are completely "outside the administrative control of the licensee and its subsidiaries or affiliates."[72] Petitioner offers no explanation as to how or why the Chapter 11 Cases would have any bearing on prepayment as a decommissioning funding option for SSES—and nothing in the Commission's regulations supports Petitioner's claim. Moreover, as noted in the Application, the status of this funding is "unaltered" by the Chapter 11 Cases. Petitioner neither acknowledges nor disputes that assertion. Nuclear decommissioning trusts are bankruptcy remote.[73] Thus, in addition to being unsupported, Petitioner's argument fails to raise a genuine dispute with the Application, contrary to 10 C.F.R. § 2.309(f)(1)(v) and (vi).

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69 10 C.F.R. § 50.75(e)(1)(i).

70 Application, Encl. 1 at 11.

71 Petition at 26.

72 10 C.F.R. § 50.75(e)(1)(i).

73 Courts interpreting section 11 U.S.C. § 541(d) have held that property held in trust established pursuant to non-bankruptcy law is not property of the debtor's estate. *See, e.g., Begier v. IRS*, 496 U.S. 53 (1990); *In re Lan Tamers, Inc.*, 329 F.3d 204 (1st Cir. 2003); *In re North American Coin & Currency, Ltd.*, 767 F.2d 1573 (9th Cir.1984); *In re LandAmerica Financial Group*, 412 B.R. 800 (Bankr. E.D. Va. 2009). *See also* Deregulation Policy Statement, 62 Fed. Reg. at 44,077 n.3 (discussing NRC experience with three Chapter 11 bankruptcies). In fact, no stakeholders in the instant Chapter 11 Cases have challenged this notion.

Petitioner then claims that Reorganized Talen is required to "provide a surety to supplement the [trust],"[74] because it is "not suited . . . to provide a guarantee."[75] Petitioner's assertion that a surety is required *in addition* to the prepaid decommissioning trust is unsupported, unexplained, and contrary to the NRC's regulations. Pursuant to 10 C.F.R. § 50.75(e)(1)(i), so long as the prepaid trust has assets "sufficient to pay decommissioning costs at the time permanent termination of operations is expected," nothing further is required. Here, the trust has sufficient assets,[76] and Petitioner does not claim or demonstrate otherwise.

Moreover, neither Reorganized Talen nor any other entity is *proposing* to provide a "guarantee" to cover decommissioning costs—because those costs have already been "prepaid." And Petitioner's generalized derision of Reorganized Talen's "suitability" is unexplained, unsupported, and counterintuitive given that "the financial strength of the reorganized Debtors (*i.e.*, following the Restructuring) will be much improved due to reduced debt obligations"—a statement from the Application that Petitioner neither acknowledges nor disputes.[77]

Ultimately, none of these baseless and illogical claims are supported, none are material, and none demonstrate any material deficiency in the Application.[78] Thus, Proposed Contention 1 should be rejected as inadmissible for failure to satisfy 10 C.F.R. § 2.309(f)(1)(iv)-(vi).

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74 Petition at 27; *see also id*. at 29.

75 *Id*. at 28. Petitioner also complaints that the terms of the "Disclosure Statement" are "Byzantine," *id*., but offers no explanation of how this allegedly demonstrates some deficiency in the Application.

76 Application, Encl. 1 at 11.

77 Application at 3-4. *See* Confirmation Order at 16 (court finding same). *See also e.g.*, *Bildisco*, 465 U.S. at 528 (noting purpose of chapter 11 reorganization); *In re FBI Distrib. Corp.*, 330 F.3d at 41 (same).

78 Petitioner also quotes the regulation at 10 C.F.R. § 72.30(g)(3), Petition at 29, but fails to explain how or why it is relevant here. In any event, as noted in 10 C.F.R. § 72.13(c), that regulation does not apply to generally licensed ISFSIs. Likewise, Petitioner states that the contention should be admitted "pursuant to 10 C.F.R. § 2.309(f)(3)." Petition at 29. However, that regulation pertains to joint designation of co-sponsored contentions and has no apparent relevance to this proceeding.

2. Contention 2 (Bankruptcy Review Team) Is Inadmissible

As formulated by Petitioner, Proposed Contention 2 quotes the regulation at 10 C.F.R. 72.50(a), requiring NRC consent to transfer an ISFSI license, and asserts that "[t]he Applicant failed to comply with Bankruptcy Review Team compliance mandates for a bankrupt company."[79] However, the meaning of this contention is indecipherable. Petitioner provides no explanation of what is meant by the term "Bankruptcy Review Team compliance mandates," and presents no discussion of how the Applicant allegedly "failed to comply" with these unidentified "mandates." Overall, this inexplicable claim fails to satisfy even one, much less all, of the contention admissibility criteria in 10 C.F.R. § 2.309(f)(1)(i)-(vi).

Petitioner references several regulations in the body of the contention—namely, 10 C.F.R. §§ 30.34(b), 40.46, and 70.36.[80] These provisions require NRC consent for transfers of control of licenses issued under Parts 30, 40, and 70, respectively. Petitioner also cites 10 C.F.R. §§ 30.34(h), 40.41(f), and 70.32(a)(9),[81] which require 10 C.F.R. Part 30, 40, and 70 licensees, respectively, to notify the NRC of bankruptcy filings. However, Petitioner fails to explain how these regulations identify a genuine dispute with the Application. Susquehanna Nuclear obviously filed the Application, seeking NRC consent for an indirect transfer of control of the subject licenses.[82] And it notified the NRC of the Chapter 11 Cases.[83] Petitioner does not claim or demonstrate any deficiency in those actions, or otherwise explain how the cited regulations are material to the Staff's review of the Application.

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79 Petition at 30.

80 *Id*. at 30.

81 *Id*. at 32.

82 *See generally* Application.

83 *See* Bankruptcy Notifications.

Likewise, Petitioner's reference to a "Bankruptcy Review Team" appears to come from a guidance document.[84] That document contains an appendix titled "NRC Procedures for Processing Bankruptcy Actions," which provides *internal* instructions on how NRC Staff generally handles materials licensee bankruptcy notifications.[85] However, that document does not articulate any "mandates" for NRC licensees. And Petitioner does not otherwise explain what the term "Bankruptcy Review Team compliance mandates" means, or how the licensee allegedly has not complied with those alleged-but-unspecified obligations.

Ultimately, this hodge-podge[86] of random citations and unexplained assertions fails to satisfy even one—much less, all—of the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). Accordingly, Proposed Contention 2 is inadmissible.

3. Petitioner's Miscellaneous Claims in the "Introduction" Section of the Petition Are Baseless, Meritless, and Do Not Amount to an Admissible Contention

The "Introduction" to the Petition presents various scattershot assertions largely related to the Chapter 11 Cases. Petitioner does not frame these claims as proposed contentions, and certainly makes no attempt to address any of the admissibility criteria in 10 C.F.R. § 2.309(f)(1). Neither the Commission nor Susquehanna Nuclear is required to sort through these claims to try and identify a contention.[87] Nevertheless, Susquehanna Nuclear briefly addresses these claims

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84 NUREG-1556, Vol. 15, Rev. 1, "Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses, Final Report," App. G (June 2016) (ML16181A003).

85 *Id*.

86 Petitioner also asserts that the Chapter 11 Cases are "frozen at the proposed 'Disclosure Statement' stage." Petition at 31. That is incorrect because, as noted above, the Bankruptcy Court confirmed the Plan on December 15, 2022. *See* Confirmation Order. That should come as no surprise to Petitioner, given that he listed the date of the confirmation hearing in the Petition. Petition at 7. Also, as with Proposed Contention 1, Petitioner states, Petition at 32, that the contention should be admitted "pursuant to 10 C.F.R. § 2.309(f)(3)," which pertains to co-sponsored contentions and has no apparent relevance here.

87 *Seabrook*, CLI-89-3, 29 NRC at 241 ("The Commission cannot be faulted for not having searched for a needle that may be in a haystack.").

below, for the sake of completeness and an accurate record. And, in any event, these claims fail to raise an admissible contention.

First, Petitioner claims that the proposed transfer will result in "significant hazards."[88] Petitioner does not explain this assertion. However, to the extent it is intended to challenge the statement in the Hearing Opportunity Notice that the proposed license amendments here (needed to conform the licenses to reflect the proposed transfer) involve "no significant hazards consideration,"[89] that challenge is impermissible. The Commission has generically determined that license amendments that merely conform a license to reflect a transfer action involve "no significant hazards consideration," and that determination is *codified* in 10 C.F.R. § 2.1315(a).[90] That regulation is not subject to challenge in this proceeding.[91]

Second, Petitioner criticizes the "organization chart" in the Application for not including "discussion" on topics such as "data mining" revenue and "debt exposure."[92] But that criticism is meritless because the information Petitioner demands is not required to be presented in an "organization chart." Relevant revenue and debt information is—as one would expect—presented in the financial statements attached to the Application. Specifically, the Pro Forma Income and Cash Flow statements are presented in the SUNSI portion of the Application,[93] to which Petitioner did not request access and therefore has no basis to dispute. Likewise, Petitioner asserts that the proposed transfer will "reduce financial security and safety margins."[94]

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88 Petition at 3.

89 Hearing Opportunity Notice, 87 Fed. Reg. at 67,512.

90 10 C.F.R. § 2.1315(a) ("Any challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer.").

91 10 C.F.R. § 2.335(a).

92 Petition at 4.

93 *See* Application at 5 (explaining that the Addenda to Exhibit D is withheld from public disclosure).

94 Petition at 3.

But, once again, Petitioner's failure to explain this baseless claim is not surprising, given that he did not review any of the "financial" information submitted with the Application.

Third, Petitioner asserts that the Disclosure Statement associated with the Chapter 11 Cases must be "revised to reflect current market conditions."[95] Petitioner derides the proposed Restructuring as a "crap shoot," and asserts that certain information in the Disclosure Statement "is no longer current or valid."[96] To be clear, the Disclosure Statement was not submitted as an attachment to the Application before the NRC. Rather, it was submitted to the Bankruptcy Court as part of the proceedings in the Chapter 11 Cases. In fact, the Disclosure Statement is meant to be the document that describes the Plan and related information to be used by the Debtors' creditors in deciding whether to approve the Plan—which they already have done here.[97] Thus, Petitioner's vague criticisms are not directly relevant here. More importantly, the authority responsible for reviewing that document (*i.e.*, the Bankruptcy Court) confirmed the Plan on December 15, 2022, after finding (among other things) that the Plan was "feasible" and was approved by the requisite creditors of the Company.[98] Petitioner does not address, and provides no basis to dispute, those separate judicial proceedings, which are beyond the scope of this proceeding.

Ultimately, even if the Commission or Susquehanna Nuclear were obligated to sift through the jumble of claims in the Introduction to the Petition to look for a possible contention

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95 *Id*. at 7.

96 *Id*. at 5-6.

97 *See* Confirmation Order.

98 *See id*.

(they are not),[99] those claims are baseless, meritless, and would fail to satisfy the admissibility criteria in 10 C.F.R. § 2.309(f)(1).

IV. CONCLUSION

As established above, Petitioner has not demonstrated standing to intervene and (even if Petitioner has standing (he does not)) has not submitted an admissible contention. Accordingly, 10 C.F.R. § 2.309(a) requires that the Commission DENY the Petition for either or both of these reasons.

Respectfully submitted,

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Dated at Washington, D.C.
this 21st day of December, 2022

[99] *Seabrook*, CLI-89-3, 29 NRC at 241 ("The Commission cannot be faulted for not having searched for a needle that may be in a haystack.").

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	Docket Nos.: 50-387,
	)	50-388, and
SUSQUEHANNA NUCLEAR, LLC	)	72-28
	)	
(Susquehanna Steam Electric Station)	)	December 21, 2022

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "SUSQUEHANNA NUCLEAR, LLC'S ANSWER OPPOSING ERIC JOSEPH EPSTEIN'S PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST" was served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty

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