

October 31, 2016

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO APPEAL OF NRC DENIAL OF ACCESS REQUEST

INTRODUCTION

Pursuant to the “Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information [(SUNSI)] for Contention Preparation” (SUNSI Order),<sup>1</sup> the U.S. Nuclear Regulatory Commission (NRC) staff (Staff) files this answer opposing the appeal by Sabatini Monatesti (Appeal)<sup>2</sup> of the Staff’s denial<sup>3</sup> of his request for access to SUNSI (Access Request)<sup>4</sup>

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<sup>1</sup> Susquehanna Nuclear, LLC; Susquehanna Steam Electric Station, Units 1 and 2; Consideration of Indirect License Transfer, 81 Fed. Reg. 68462, 68465-66 (Oct. 4, 2016). The NRC staff conservatively interprets Attachment 1 to the SUNSI Order, *id.* at 68466, as providing that the deadline for NRC staff answers to appeals of NRC staff determinations on SUNSI access requests is five days from the date of the appeal.

<sup>2</sup> Memorandum from Annette L. Vietti-Cook, Secretary, NRC, to E. Roy Hawken, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Appeal from a Determination of the NRC Staff to Deny a Request for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) from an Individual who has Indicated an Intent to Request a Hearing Regarding Susquehanna Nuclear, LLC’s Application for Indirect License Transfer (Docket Nos. 50-387, 50-388, and 72-28), at 15-30 (unnumbered) (Oct. 25, 2016) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16299A438) (Appeal).

<sup>3</sup> Letter from NRC to Sabatini Monatesti, Request for Access to Sensitive Unclassified Non-Safeguards Information Related to the Application for Indirect Transfer of the Susquehanna Steam Electric Station (Oct. 20, 2016) (ADAMS Accession No. ML16294A385) (Denial Letter).

<sup>4</sup> Memorandum from Annette L. Vietti-Cook, Secretary, NRC, to E. Roy Hawken, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Appeal from a Determination of the NRC Staff to Deny a Request for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) from an Individual who has Indicated an Intent to Request a Hearing Regarding Susquehanna Nuclear, LLC’s Application for Indirect License Transfer (Docket Nos. 50-387, 50-388, and 72-28), at 7-12 (unnumbered) (Oct. 25, 2016) (ADAMS Accession No. ML16299A438) (Access Request).

because the Appeal does not demonstrate that the Staff's denial was incorrectly decided under the standards set forth in the SUNSI Order. Specifically, the Appeal does not make any argument with respect to the Staff's finding that the Access Request did not demonstrate that Mr. Monatesti was likely to establish standing. For this reason alone, this Atomic Safety and Licensing Board (Board) should deny the Appeal. Additionally, neither the arguments proffered in the Access Request nor in the Appeal demonstrate that Mr. Monatesti has a legitimate need for the SUNSI because all of these arguments are unrelated to the SUNSI. Therefore, and given the time-sensitivity inherent to the 10 C.F.R. Part 2, Subpart M, procedures for hearings on license transfer applications,<sup>5</sup> this Board should expeditiously deny the Appeal.

#### BACKGROUND

On June 29, 2016, Susquehanna Nuclear, LLC (Susquehanna Nuclear), on behalf of itself and Riverstone Holdings LLC (Riverstone), submitted to the NRC an application for NRC consent to the indirect transfer of Susquehanna Nuclear's 90% interest in the licenses for the Susquehanna Steam Electric Station (SSES), Units 1 and 2, and conforming amendments (License Transfer Application).<sup>6</sup> Currently, the ultimate parent of Susquehanna Nuclear is Talen Energy Corporation (Talen Energy).<sup>7</sup> Approximately 65% of Talen Energy common stock is held by public shareholders and approximately 35% is held by portfolio companies ultimately controlled by Riverstone (*i.e.*, Raven Power Holdings, LLC (Raven), C/R Energy Jade, LLC

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<sup>5</sup> See Streamlined Hearing Process for NRC Approval of License Transfers, 63 Fed. Reg. 66721, 66721 (Dec. 3, 1998) (explaining that “[b]ecause of the need for expeditious decisionmaking from all agencies, including the Commission, for [license transfers], timely and effective resolution of requests for transfers on the part of the Commission is essential” and that, “[i]n general, license transfers do not involve any technical changes to plant operations.”). See *also id.* at 66722 (“The [Subpart M] procedures are designed to provide for public participation in the event of requests for a hearing under these provisions, while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases.”).

<sup>6</sup> Letter from Timothy S. Rausch, President and Chief Nuclear Officer, Susquehanna Nuclear, to NRC, Susquehanna Steam Electric Station, Request for Order Approving Indirect Transfer of Control (June 29, 2016) (ADAMS Accession Nos. ML16181A415, ML16181A417, ML16181A419, ML16181A420) (License Transfer Application).

<sup>7</sup> License Transfer Application at Enclosure, p. 1.

(Jade), and Sapphire Power Holdings, LLC (Sapphire)).<sup>8</sup> The License Transfer Application discusses a merger agreement by which Raven, Jade, and Sapphire would convert their existing ownership of approximately 35% of the shares of Talen Energy common stock to 100% ownership.<sup>9</sup> Since each of these portfolio companies is ultimately controlled by Riverstone, the indirect transfer would result in Riverstone becoming the new ultimate parent of Susquehanna Nuclear.<sup>10</sup>

As part of its License Transfer Application, Susquehanna Nuclear stated that Attachment 3P and Attachment 4P to the application contain confidential commercial and financial information; therefore, Susquehanna Nuclear requested that this information be withheld from public disclosure pursuant to 10 C.F.R. § 2.390 and provided non-proprietary versions of these attachments from which the confidential commercial and financial information has been redacted (*i.e.*, Attachment 3NP and Attachment 4NP).<sup>11</sup> Attachment 3 consists of tables containing, for each year from 2017 to 2021, the projected income for SSES Units 1 and 2, combined and individually, as well as sensitivity studies for each of these cases and the projected six-month fixed operating costs for each unit.<sup>12</sup> Attachment 4 consists of a table containing, for each year from 2017 to 2021, the projected capacity factor<sup>13</sup> for SSES Units 1 and 2, combined and individually.<sup>14</sup> In the non-proprietary versions of these attachments, the information in the tables is redacted (*i.e.*, the titles and column and row headings of the tables

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<sup>8</sup> *Id.* at 1-2.

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> License Transfer Application at 1.

<sup>11</sup> *Id.* at 2. The letter “P” refers to “proprietary” and the letters “NP” refer to “non-proprietary.”

<sup>12</sup> *Id.* at Enclosure, Attachment 3NP.

<sup>13</sup> “Capacity factor” and its effect on projected income is discussed in the License Transfer Application at Enclosure, p. 12-14.

<sup>14</sup> *Id.* at Enclosure, Attachment 4NP.

are visible but the individual cells of the tables are blank). Susquehanna Nuclear provided an affidavit of its President and Chief Nuclear Officer affirming that the redacted information is commercial information, the disclosure of which would adversely affect Susquehanna Nuclear; that the redacted information has been held in confidence by Susquehanna Nuclear; that Susquehanna Nuclear customarily keeps such information in confidence and there is a rational basis for holding such information in confidence; that the redacted information is not available from public sources and could not be gathered readily from other publicly available information; and that public disclosure of the redacted information would cause substantial harm to the competitive position of Susquehanna Nuclear because such information has significant commercial value to Susquehanna Nuclear.<sup>15</sup>

In an August 26, 2016 letter, the Staff stated that it had reviewed the Susquehanna Nuclear request to have the information in Attachment 3P and Attachment 4P withheld from public disclosure.<sup>16</sup> On the basis of the statements in the affidavit provided by Susquehanna Nuclear, the Staff determined that the submitted information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure.<sup>17</sup> Therefore, the Staff withheld Attachment 3P and Attachment 4P from public disclosure and, instead, made publicly available the non-proprietary versions of these documents, Attachment 3NP and Attachment 4NP.<sup>18</sup>

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<sup>15</sup> *Id.* at Enclosure, Attachment 6.

<sup>16</sup> Letter from NRC to Timothy S. Rausch, President and Chief Nuclear Officer, Susquehanna Nuclear, Request for Withholding Information from Public Disclosure for Susquehanna Steam Electric Station, Units 1 and 2 (CAC Nos. MF8056 and MF8057) (Aug. 26, 2016) (ADAMS Accession No. ML16215A008).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

On October 4, 2016, the Staff published a notice in the *Federal Register* stating that it had received and was considering approval of the License Transfer Application.<sup>19</sup> The Staff provided the location of the publicly available version of the License Transfer Application, which included only the redacted versions of Attachment 3P and Attachment 4P (*i.e.*, Attachment 3NP and Attachment 4NP).<sup>20</sup> The Staff also provided that any person who intended to participate as a party to the proceeding for the SSES license transfer by demonstrating standing and filing an admissible contention under 10 C.F.R. § 2.309 may request access to the License Transfer Application documents containing SUNSI (*i.e.*, Attachment 3P and Attachment 4P).<sup>21</sup> The deadline for requesting access to SUNSI was October 14, 2016.<sup>22</sup> Such a request had to include:

- (1) A description of the licensing action with a citation to [the] Federal Register notice;
- (2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the [licensing] action . . . ; and
- (3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in [the] adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.<sup>23</sup>

The Staff would determine within 10 days of receipt of the request whether:

- (1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in [the] NRC proceeding; and

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<sup>19</sup> 81 Fed. Reg. at 68462.

<sup>20</sup> *Id.* at 68463.

<sup>21</sup> *Id.* at 68465.

<sup>22</sup> *Id.* at 68463.

<sup>23</sup> *Id.* at 68465.

(2) The requestor has established a legitimate need for access to SUNSI.<sup>24</sup>

If the Staff determined that the requestor satisfied both of these requirements, then the Staff would notify the requestor that access had been granted and instruct the requestor on how it may obtain copies of the requested documents, including any conditions that may apply to this access.<sup>25</sup> If the Staff determined that the requestor did not satisfy both of these requirements, then the Staff would notify the requestor and briefly state the reasons for the denial of the access request.<sup>26</sup>

On October 11, 2016, Mr. Monatesti submitted a letter to the NRC requesting, in part, access to Attachment 3P and Attachment 4P.<sup>27</sup> Mr. Monatesti stated that he required access to these documents in order to “discern whether [Riverstone] includes provisions and capital available for decommissioning of the [SSES], and I require information regarding their continued support of Salem Township property and recreational facilities.”<sup>28</sup> Mr. Monatesti stated that he “also wish to know if sufficient, trained work force will be available to ensure a successful transfer of responsibilities, and if [Riverstone] staffing adjustments exist in the planning for the transfer and subsequent operation of the [SSES].”<sup>29</sup> Mr. Monatesti asserted that Talen Energy had a “2015 loss of \$341 Million” and that there was a “continued downturn in energy prices.”<sup>30</sup> Mr. Monatesti asked, “[w]ho will be responsible for decommissioning cost, i.e., Pennsylvania Power and Light, Talen Energy or [Riverstone], i.e., if the license holder goes bankrupt? Who

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Access Request at 8 (unnumbered).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 9 (unnumbered).

<sup>30</sup> *Id.*

holds the liability?”<sup>31</sup> Mr. Monatesti stated that he lives two miles from the SSES and asserted that “Talen Energy . . . [is] increasing nuclear waste storage on site” and that “there are health and safety issues outstanding” at the SSES.<sup>32</sup>

On October 17, 2016, after the October 14 deadline for the filing of access requests, Mr. Monatesti submitted an email to the NRC listing the following as “a few areas of investigation”:

- ROI and impact deal will have on the unit price for energy? Anticipated hurdle rate, and costing/pricing assumptions? Impact of continued erosion of price per unit due to the ever increasing availability of energy and decreasing cost of energy? Net present value of the investment?
- Arrangements for continued maintenance and provisioning for park areas? Investment required to meet future needs?
- Impact deal has on current and future workforce, and how it will impact health and safety?
- Expectation of new owner regards continued expansion of onsite storage? Investment required to meet future needs?
- Impact deal will have on capital improvements for the facility and eventual funding for decommissioning of Plant? Investment required to meet future needs?
- Commitment to ethical business practices?
- Evaluation of health and safety concerns in an area where population is aging and continued support of police and fire as it might relate to evacuation and emergency plans could be suspect? Investment required to meet future needs?
- Evaluation of seismic activity and its impact on current or future construction as a risk factor?
- Integrated deal provisions for study of future vulnerabilities, threats and risks? Probabilities associated with each area of vulnerability? Sensitivity model outputs and key variables associated with each area of vulnerability?<sup>33</sup>

On October 20, 2016, the Staff denied the Access Request because, based on the information provided in the Access Request, it had found that there was not a reasonable basis to believe that Mr. Monatesti was likely to establish standing to participate in the NRC

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Access Request at 10 (unnumbered).

proceeding and that Mr. Monatesti did not establish a legitimate need for access to the SUNSI.<sup>34</sup> Specifically, the Staff stated that there was not a reasonable basis to believe that Mr. Monatesti was likely to establish standing because Mr. Monatesti appeared to be relying on a presumption of standing due to the asserted proximity of his residence from the SSES, but had failed to explain an obvious potential for offsite radiological consequences from the proposed SSES indirect license transfer.<sup>35</sup> Additionally, the staff found that none of Mr. Monatesti's arguments demonstrated that he was subject to an increased risk of radiological harm that was fairly traceable to the proposed license transfer.<sup>36</sup> The Staff also stated that Mr. Monatesti had not established a legitimate need for access to the SUNSI because none of his arguments explained why the publicly available version of the License Transfer Application would be insufficient to provide the basis for his claims.<sup>37</sup> The underlying reason for both of these Staff findings was that, although Mr. Monatesti appeared to be concerned with the possibility that the licensee would not have sufficient funds to decommission the SSES and that this would result in harm to him, Mr. Monatesti never challenged the demonstration in the publicly available portion of the License Transfer Application that the SSES decommissioning trust funds were prepaid such that they would be sufficient to complete decommissioning regardless of the licensee's financial situation.<sup>38</sup>

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<sup>34</sup> Denial Letter at 1.

<sup>35</sup> *Id.* at 4-5.

<sup>36</sup> *Id.* at 5-6.

<sup>37</sup> *Id.* at 6-7.

<sup>38</sup> *Id.* at 5-7. The Staff also stated that, pursuant to the SUNSI Order, it did not consider the additional information provided in Mr. Monatesti's October 17, 2016 email because it was not accompanied by a showing of good cause for its late filing addressing why it could not have been filed earlier and that, even if the Staff had considered this additional information, it would not have changed the Staff's denial. Denial Letter at 4 n.27.



On October 24, 2016, Mr. Monatesti served via email a challenge to the Staff's denial of his Access Request.<sup>39</sup> This email stated various concerns with the License Transfer Application. First, Mr. Monatesti complained that, "[no] public hearing [has] occurred within the 10 mile Plume Exposure Zone, nor in the 50 mile Ingestion Pathway Zone . . . ."<sup>40</sup> Second, Mr. Monatesti stated that the SSES is losing, and will continue losing, money.<sup>41</sup> Third, Mr. Monatesti stated that the plans for onsite storage at the SSES go beyond a "1,900 metric ton limit . . . ."<sup>42</sup> Fourth, Mr. Monatesti stated that he "believe[s that] the decommissioning dollars allotted are inadequate . . . ."<sup>43</sup> Mr. Monatesti concluded that, "[w]ithout access to the Riverstone operating plan, investment NPV calculation, and clear recognition and resolution of the issues raised above, along with known dollar values for continued operation, the citizen is left with a lack of understanding, information, and lack of trust as to the veracity of the proposed transfer."<sup>44</sup> Mr. Monatesti attached to this email a document that he referred to as a "draft letter [dated] May 18, 2016."<sup>45</sup> This document is identical to a document submitted by Mr. Monatesti to Representative Barletta, 11th District of Pennsylvania, on May 19, 2016, and which Representative Barletta then submitted to the NRC on May 23, 2016.<sup>46</sup> The NRC responded to this letter on July 28, 2016.<sup>47</sup>

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<sup>39</sup> Appeal at 20 (unnumbered).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* See also Access Request at 10 (unnumbered) (discussing "a letter to Representative Lou Barletta, May 18").

<sup>46</sup> See Letter from Louis J. Barletta, Representative, 11th District of Pennsylvania, to NRC, Re: Sabatini Monatesti (May 23, 2016) (ADAMS Accession No. ML16146A153).

<sup>47</sup> Letter from NRC to Louis J. Barletta, Representative, 11th District of Pennsylvania (July 28, 2016) (ADAMS Accession No. ML16203A200).

On October 24, 2016, Mr. Monatesti served a second email, which stated that, “until the impact of this deal to the citizen is understood, this license transfer should be scrutinized in detail and tabled until citizen review is completed.”<sup>48</sup>

On October 25, 2016, the Secretary of the NRC, in accordance with the SUNSI Order, referred the issue of the Appeal to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel along with copies of the emails from Mr. Monatesti dated October 11, 2016, October 17, 2016, and October 24, 2016 (two emails), including attachments.<sup>49</sup>

On October 26, 2016, the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, pursuant to delegation by the Commission, established an Atomic Safety and Licensing Board to preside over Mr. Monatesti’s Appeal of the Staff’s denial of his Access Request.<sup>50</sup>

### DISCUSSION

I. The Board Should Deny the Appeal Because it Does Not Argue that the Staff’s Finding with Respect to Likely Standing was Erroneous

Pursuant to the SUNSI Order, a potential party requesting access to SUNSI must describe its “particularized interest that could be harmed by the action” and, based on this information, the Staff must determine whether “[t]here is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding . . . .”<sup>51</sup> Mr. Monatesti described his residence two miles from the SSES as his particularized interest that

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<sup>48</sup> Appeal at 28 (unnumbered).

<sup>49</sup> Memorandum from Annette L. Vietti-Cook, Secretary, NRC, to E. Roy Hawken, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Appeal from a Determination of the NRC Staff to Deny a Request for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) from an Individual who has Indicated an Intent to Request a Hearing Regarding Susquehanna Nuclear, LLC’s Application for Indirect License Transfer (Docket Nos. 50-387, 50-388, and 72-28) (Oct. 25, 2016) (ADAMS Accession No. ML16299A438) (Referral Memorandum).

<sup>50</sup> Order (Establishment of Atomic Safety and Licensing Board) (Oct. 26, 2016) (unpublished) (ADAMS Accession No. ML16300A413) (Establishment Order).

<sup>51</sup> 81 Fed. Reg. at 68465.

could be harmed by the indirect transfer of the SSES licenses.<sup>52</sup> The Staff correctly responded that, pursuant to binding Commission precedent, this argument is insufficient to demonstrate standing because proximity to an operating nuclear power plant does not give rise to a presumption of standing in an NRC proceeding for an indirect license transfer.<sup>53</sup> The Staff stated that Mr. Monatesti must, instead, demonstrate, according to contemporaneous judicial concepts of standing, an injury-in-fact fairly traceable to the indirect license transfer that falls among the general interests protected by the Atomic Energy Act and that is likely to be redressed by a favorable decision.<sup>54</sup> The Staff evaluated each of Mr. Monatesti's arguments against this standard and found that none of them met this standard.<sup>55</sup> Therefore, the Staff denied the Access Request for its failure to satisfy the standing prong of the test established in the SUNSI Order.<sup>56</sup>

The Staff's determination regarding standing considered all of the arguments in the Access Request, was fully explained, and was consistent with the governing SUNSI Order and binding Commission precedent. The Staff gave particular attention to Mr. Monatesti's argument that he could be subject to an increased risk of radiological harm that would be fairly traceable to the proposed license transfer if, because of Riverstone's ultimate ownership of the SSES licenses, the licensee would be unable to complete decommissioning of the SSES.<sup>57</sup> However,

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<sup>52</sup> Access Request at 9 (unnumbered).

<sup>53</sup> Denial Letter at 4-5 (citing *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423 (2007) (quoting *Exelon Generation Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580-81 (2005))).

<sup>54</sup> Denial Letter at 4-6 (citing *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 250 (2001) (citing *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001)); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995)).

<sup>55</sup> *Id.* at 5-6.

<sup>56</sup> *Id.* at 7.

<sup>57</sup> See Denial Letter at 5-6.

the Staff determined that this argument did not satisfy the “fairly traceable” standing requirement because the Access Request did not draw a connection between its concerns regarding asserted financial difficulties and the sufficiency of the funds to decommission the SSES.<sup>58</sup> On the contrary, in the publicly available portion of the License Transfer Application, Susquehanna Nuclear demonstrates that the existing funds in the SSES decommissioning trust funds, which are outside of Susquehanna Nuclear’s control, will be sufficient to decommission the SSES.<sup>59</sup> Based on this demonstration, regardless of the financial difficulties posited by Mr. Monatesti, there would be reasonable assurance of sufficient funds to decommission the SSES unless Susquehanna Nuclear’s calculations regarding decommissioning funding were found to be erroneous. The Access Request, however, does not refute these calculations. Therefore, the Staff was correct to determine that the Access Request does not demonstrate an injury-in-fact fairly traceable to the indirect license transfer and, as such, the Board should deny the Appeal.

The Board should also deny the Appeal as insufficient as a matter of law because it makes no argument regarding the Staff’s finding with respect to standing. The SUNSI Order provides that a potential party must demonstrate both (1) likely standing and (2) legitimate need.<sup>60</sup> The Staff found that the Access Request failed to meet both of these requirements.<sup>61</sup> Therefore, in order for the Appeal to be successful, it must challenge both the finding that the Access Request did not demonstrate likely standing and the finding that the Access Request did not demonstrate legitimate need. Mr. Monatesti, however, did not make any arguments regarding likely standing. Since Mr. Monatesti did not challenge the Staff’s finding regarding

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.* (citing License Transfer Application at Enclosure, p. 15-16 and Enclosure, Attachment 5).

<sup>60</sup> 81 Fed. Reg. at 68465.

<sup>61</sup> Denial Letter at 7.

likely standing and since a finding of likely standing is required in order to grant an Access Request, the Board should deny the Appeal as legally insufficient.

II. The Board Should Deny the Appeal Because it Does Not Demonstrate that the Staff's Finding with Respect to Legitimate Need for Access was Erroneous

Pursuant to 10 C.F.R. § 50.33(f), as part of the License Transfer Application, Susquehanna Nuclear must demonstrate that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license by submitting estimates for total annual operating costs for each of the first five years of operation of the SSES and the source(s) of funds to cover these costs.<sup>62</sup> Susquehanna Nuclear attempts to make this demonstration of financial qualification by providing Attachment 3P and Attachment 4P as part of the License Transfer Application.<sup>63</sup> Attachment 3P and Attachment 4P provide, for each year from 2017 to 2021, the projected income for SSES Units 1 and 2, combined and individually, as well as sensitivity studies for each of these cases, the projected six-month fixed operating costs for each unit, and the projected capacity factor for SSES Units 1 and 2, combined and individually.<sup>64</sup> This information is redacted as SUNSI from the publicly available versions of these attachments.

Pursuant to the SUNSI Order, a potential party requesting access to SUNSI must explain the “basis for the need for the information in order to meaningfully participate in [the] adjudicatory proceeding” and “must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.”<sup>65</sup> In this instance, the SUNSI in question is the five years of projected operating costs redacted from the License Transfer Application. Therefore, in order to access this SUNSI,

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<sup>62</sup> 10 C.F.R. § 50.33(f)(2).

<sup>63</sup> See License Transfer Application at Enclosure, p. 11-16.

<sup>64</sup> License Transfer Application at Enclosure, Attachment 3NP and Enclosure, Attachment 4NP.

<sup>65</sup> 81 Fed. Reg. at 68465.

Mr. Monatesti must explain why he needs these projected operating costs to provide the basis and specificity for his potential contentions. As explained by the Commission, a potential party may be granted access to projected operating costs that are otherwise SUNSI if the potential party asserts that it needs this information in order to submit sufficiently specific and supported contentions regarding an applicant's compliance with 10 C.F.R. § 50.33(f).<sup>66</sup>

Mr. Monatesti, however, does not satisfy the legitimate need prong of the test established in the SUNSI Order because neither his Access Request nor his Appeal explain why the SSES projected operating costs are needed to provide the basis and specificity for any of his potential contentions. All that Mr. Monatesti states with respect to his need for this SUNSI is that "I wish to receive access to sensitive business documents filed by Talen Energy to discern whether [Riverstone] includes provisions and capital available for decommissioning of the [SSES], and I require information regarding their continued support of Salem Township property and recreational facilities"<sup>67</sup> and that "I do not believe [that] the decommissioning dollars allotted are adequate . . . ."<sup>68</sup> First, there is no legitimate need for access to the SSES projected operating costs to provide the basis and specificity for a contention regarding support for Salem Township property and recreational facilities because this issue falls outside the general interests protected by the AEA and, therefore, would be inadmissible. Second, Mr. Monatesti has not demonstrated a legitimate need for access to the SSES projected operating costs to provide the basis and specificity for a potential contention regarding the sufficiency of the SSES decommissioning trust funds because he has not explained how such a contention would be related to these operating costs. The License Transfer Application provides that the

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<sup>66</sup> *South Texas Project Nuclear Operating Company* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 466 (2010) (citing *Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-8, 53 NRC 225, 227 (2001)).

<sup>67</sup> Access Request at 8 (unnumbered).

<sup>68</sup> Appeal at 20 (unnumbered).

SSES decommissioning trust funds are prepaid and that they will be sufficient to support decommissioning regardless of the licensee's financial condition.<sup>69</sup> Mr. Monatesti argues that, based on his calculations, the SSES decommissioning trust funds are not sufficient.<sup>70</sup> In essence, the potential argument here seems to be whether, consistent with 10 C.F.R. § 50.33(k)(1), Susquehanna Nuclear has "indicat[ed] how reasonable assurance will be provided that funds will be available to decommission the facility." The portion of the License Transfer Application that discusses this requirement, however, is publicly available.<sup>71</sup>

In conclusion, Mr. Monatesti raises numerous potential arguments, however, he does not explain how any of these arguments require his access to the SSES projected operating costs. Therefore, the Staff was correct to deny the Access Request for failing to satisfy the legitimate need prong of the test established in the SUNSI Order.

III. The Board Should Not Consider the Attachment to the Appeal Because it is Not Relevant and was Filed Late without Good Cause

Mr. Monatesti attached a document to his Appeal entitled, "Health and Safety review – Susquehanna Site."<sup>72</sup> The Board should not consider this document because, first, it is not responsive to the Staff's denial and, therefore, is not relevant to the issue at hand. Second, to the extent that this document may supplement Mr. Monatesti's Access Request, the Board should not consider it because it was filed late without good cause. Pursuant to the SUNSI Order, access requests submitted later than 10 days after publication of the order will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.<sup>73</sup> In this instance, though, the document submitted late by Mr.

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<sup>69</sup> See License Transfer Application at Enclosure, p. 15-16 and Enclosure, Attachment 5.

<sup>70</sup> Appeal at 20 (unnumbered).

<sup>71</sup> See License Transfer Application at Enclosure, p. 15-16 and Enclosure, Attachment 5.

<sup>72</sup> See Appeal at 15-19.

<sup>73</sup> 81 Fed. Reg. at 68465.

Monatesti is identical to a document in the NRC's records that is dated May 19, 2016.<sup>74</sup>

Therefore, there is no good cause for why this document could not have been filed earlier.

IV. The Board Should Deny the Appeal to the Extent that it is Requesting a Stay of the SSES License Transfer

On October 24, 2016, Mr. Monatesti stated in an email that, "until the impact of this deal to the citizen is understood, this license transfer should be scrutinized in detail and tabled until citizen review is completed."<sup>75</sup> To the extent that this email is requesting a stay of the SSES indirect license transfer, it should be denied. First, such a request is outside the jurisdiction of this Board, which was specifically established only to rule on the Appeal and not to hold a hearing on the SSES indirect license transfer.<sup>76</sup> Second, such a request is inconsistent with the relevant regulations, which state, at 10 C.F.R. § 2.1316(a), that "[d]uring the pendency of any [hearing on a license transfer application], consistent with the NRC staff's findings in its Safety Evaluation Report (SER), the staff is expected to promptly issue approval or denial of license transfer requests" and "[n]otice of such action shall be promptly transmitted to the presiding officer and parties to the proceeding" and, at 10 C.F.R. § 2.1327(a), that "[a]ny application for a stay of the effectiveness of the NRC staff's order on the license transfer application shall be filed with the Commission within 5 days of the issuance of the notice of staff action pursuant to [10 C.F.R.] § 2.1316(a)." Specifically, there is no pending hearing on the SSES indirect license transfer, because neither Mr. Monatesti nor any other member of the public has requested and been granted such a hearing. Finally, even if a hearing on the SSES indirect license transfer had been requested and granted and even if this Board had jurisdiction to preside over that

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<sup>74</sup> See Letter from Louis J. Barletta, Representative, 11th District of Pennsylvania, to NRC, Re: Sabatini Monatesti (May 23, 2016) (ADAMS Accession No. ML16146A153).

<sup>75</sup> Appeal at 28 (unnumbered).

<sup>76</sup> See Referral Memorandum; Establishment Order.



hearing, any request for a stay would be premature because the Staff has not yet issued a notice of staff action pursuant to 10 C.F.R. § 2.1316(a).

CONCLUSION

For the reasons stated above, the Board should deny the Appeal.

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 31st day of October, 2016

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing “NRC STAFF ANSWER TO APPEAL OF NRC DENIAL OF ACCESS REQUEST,” dated October 31, 2016, have been filed through the Electronic Information Exchange, the NRC’s E-Filing System, in the above-captioned proceeding, this 31st day of October, 2016.<sup>77</sup>

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 31st day of October, 2016

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<sup>77</sup> Staff Counsel is serving this pleading pursuant to the process provided by the “Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation.” However, the Staff is not, at this time, desiring or requesting to participate as a party in any hearing that may be held on the underlying matter of the SSES indirect license transfer.