

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman
G. Paul Bollwerk, III
Dr. Gary S. Arnold

In the Matter of

SUSQUEHANNA NUCLEAR, LLC

(Susquehanna Steam Electric Station, Units 1
and 2)

Docket Nos. 50-387, 50-388, and 72-28

ASLBP No. 16-949-01-LT-BD01

November 21, 2016

MEMORANDUM AND ORDER
(Affirming Denial of Access to SUNSI)

On October 11, 2016, Sabatini Monatesti filed a request for a hearing and petition for leave to intervene¹ in a Nuclear Regulatory Commission (NRC) proceeding concerning an application filed by Susquehanna Nuclear, LLC (Susquehanna Nuclear) for an indirect license transfer.² In conjunction with his request, Mr. Monatesti requested access to all sensitive,

¹ Request for Hearing and Information – License Transfer (Oct. 11, 2016) (ADAMS Accession No. ML16312A431) [hereinafter Access Request]. Although Mr. Monatesti's filings are found in the agency's Electronic Hearing Docket, to avoid any uncertainty about which submissions are being referenced, we are including the ADAMS Accession Number for each, as well as the ADAMS Accession Numbers for Susquehanna Nuclear, LLC's application and the NRC Staff's pre-Board establishment submissions.

² See Letter from Timothy S. Rausch, President and Chief Nuclear Officer, Susquehanna Nuclear, to NRC Document Control Desk (June 29, 2016) (ADAMS Accession No. ML16181A415 (Susquehanna Steam Electric Station Request for Order Approving Indirect Transfer of Control PLA-7500 and enclosed Application for Order Approving Indirect Transfer of Control of Facility Operating License Nos. NPF-14 and NPF-22 with figs. 1, 2 & 3 and attachs.

unclassified, non-safeguards information (SUNSI) material in the License Transfer Application.³ On October 20, 2016, the NRC Staff denied his request for access to SUNSI, concluding that he had failed to demonstrate a reasonable basis for standing to participate in the license transfer proceeding and failed to establish a need for access to SUNSI.⁴ On October 23, 2016, Mr. Monatesti appealed the NRC Staff's denial of his request for access to SUNSI.⁵ We affirm the NRC Staff's denial.⁶

I. BACKGROUND

On June 29, 2016, Susquehanna Nuclear filed an application in accordance with 10 C.F.R. §§ 50.80 and 72.50(a) for the NRC's consent to the indirect transfer⁷ of control of Susquehanna Nuclear's interests in 10 C.F.R. Part 50 Facility Operating License Nos. NPF-14 and NPF-22 for Susquehanna Steam Electric Station, Units 1 and 2, as well as the general license for the independent spent fuel storage installation at the facility.⁸ Currently, the ultimate

1-2), ML16181A417 (attach. 3NP), ML16181A419 (attachs. 4NP & 5), ML16181A420 (attach. 6)) [hereinafter License Transfer Application].

³ Access Request at 1.

⁴ Letter from Tanya Hood, Project Manager, NRC Office of Nuclear Reactor Regulation (NRR), to Sabatini Monatesti (Oct. 20, 2016) (ADAMS Accession No. ML16294A385) [hereinafter Denial Letter].

⁵ E-Mail from Sabatini Monatesti to Tanya Hood, Project Manager, NRC NRR (Oct. 23, 2016) (ADAMS Accession No. ML16312A434) [hereinafter Appeal].

⁶ Mr. Monatesti's request for a hearing and petition to intervene remain pending before the Commission.

⁷ "Indirect transfers involve corporate restructuring or reorganizations which leave the licensee itself intact as a corporate entity" Kan. Gas & Elec. Co. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 459-60 n.14 (1999). "By contrast, a direct license transfer entails a change to operating and/or possession authority." Entergy Nuclear Operations, Inc., & Entergy Nuclear Palisades, LLC (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 255 n.3 (2008) (citing AmerGen Energy Co., LLC (Three Mile Island Nuclear Station, Unit 1), CLI-05-25, 62 NRC 572, 574 (2005)).

⁸ License Transfer Application at 1.

parent company of Susquehanna Nuclear is Talen Energy Corporation (Talen). Approximately 65 percent of Talen's stock is held by public shareholders and 35 percent is held by portfolio companies ultimately controlled by Riverstone Holdings, LLC (Riverstone).⁹ The License Transfer Application discusses a shareholder transaction in which Talen will become wholly owned by Riverstone, thus making Riverstone the new ultimate parent company of Susquehanna Nuclear.¹⁰

In accordance with the regulations and NRC Staff Guidance for license transfer applications,¹¹ Susquehanna Nuclear included in its License Transfer Application certain financial information.¹² Susquehanna Nuclear asserted, however, that Attachments 3 and 4 of the Application contained confidential commercial and financial information subject to protection from public disclosure under 10 C.F.R. § 2.390.¹³ The NRC Staff agreed and made only the non-proprietary, redacted versions of these documents publicly available.¹⁴

On October 4, 2016, a notice was published in the Federal Register that the NRC had received the License Transfer Application and was considering its approval.¹⁵ The notice, which also afforded the opportunity for any interested person to request a hearing on the application, stated that the application included SUNSI, and provided procedures for potential parties that

⁹ See id. encl., fig. 1.

¹⁰ See id. encl. at 1–2.

¹¹ See infra section III.B.

¹² See, e.g., License Transfer Application, encl. at 11–16.

¹³ License Transfer Application at 2.

¹⁴ Letter from Tanya Hood, Project Manager, NRC NRR, to Timothy S. Rausch, President and Chief Nuclear Officer, Susquehanna Nuclear at 2 (Aug. 26, 2016) (ADAMS Accession No. ML16215A008).

¹⁵ Susquehanna Nuclear, LLC; Susquehanna Steam Electric Station, Units 1 and 2; Consideration of Indirect License Transfer, 81 Fed. Reg. 68,462, 68,462 (Oct. 4, 2016).

may wish to request access to proprietary documents for contention preparation.¹⁶ Notably, the notice instructed that a potential party seeking access to SUNSI must file a request within ten days and that the request must include, inter alia:

1. “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
2. “[T]he requester’s basis for the need for the information in order to meaningfully participate in this 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.”¹⁷

As is relevant here, the notice stated that the NRC Staff would grant access to SUNSI if it determined that (1) the request demonstrates “a reasonable basis to believe the petitioner is likely to establish standing” to intervene; and (2) “[t]he requestor has established a legitimate need for access to SUNSI.”¹⁸ If the NRC Staff denied access, the notice indicated that a potential party could file an appeal within five days before the presiding officer designated for the license transfer proceeding or, if a presiding officer had not yet been appointed, before the Chief Administrative Judge.¹⁹

On October 11, 2016, Mr. Monatesti submitted a letter requesting a hearing and access to SUNSI.²⁰ Mr. Monatesti stated that he lives two miles from the facility and that he needs the documents “to discern whether Riverstone Holdings includes provisions and capital available for

¹⁶ Id. at 68,463–66. The Federal Register notice provided information on how to obtain a publicly available version of the License Transfer Application, including the redacted versions of Attachments 3 and 4. Id. at 68,463.

¹⁷ Id. at 68,465.

¹⁸ Id.

¹⁹ Id. at 68,466.

²⁰ Access Request at 1.

decommissioning” of the facility and that he required “information regarding their continued support of Salem Township property and recreational facilities.”²¹ He also wished to know “if sufficient, trained work force will be available to ensure a successful transfer of responsibilities, and if Riverstone Holdings staffing adjustments exist in the planning for the transfer and subsequent operation of the Salem Township nuclear plant.”²² Further, he raised concerns about future site spent fuel storage expansion plans, past safety performance, outstanding health and safety issues, the continued downturn in energy prices, and Talen’s “loss of \$341 [m]illion” in 2015.²³ Six days later, after the deadline for the filing of access requests, Mr. Monatesti also submitted an e-mail with additional “areas of investigation.”²⁴

²¹ Id. at 1–2.

²² Id. at 2.

²³ Id.

²⁴ E-Mail from Sabatini Monatesti to Hearing Docket at 1 (Oct. 17, 2016) (ADAMS Accession No. ML16312A432). In that e-mail, Mr. Monatesti’s concerns were presented as questions in bullet points:

- 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?

On October 20, 2016, the NRC Staff denied Mr. Monatesti's SUNSI request.²⁵ Addressing his attempt to demonstrate a reasonable basis for standing, the NRC Staff declared that Mr. Monatesti asserted proximity-based standing.²⁶ However, the NRC Staff found this to be inadequate "since there is no obvious potential for offsite radiological consequences"²⁷ from the indirect license transfer and concluded that proximity to the site "on its own, is not sufficient."²⁸ Likewise the NRC Staff concluded that the Access Request failed to demonstrate traditional standing.²⁹ The NRC Staff also concluded that Mr. Monatesti failed to show that he had a legitimate need for access to SUNSI "to meaningfully participate in the license transfer proceeding."³⁰

On October 23, 2016, Mr. Monatesti appealed the NRC Staff's determination by sending an e-mail to the NRC Staff member in NRR who issued the Staff's denial.³¹ He attached a document with additional areas of concern over increased storage of nuclear waste and stated "I will need longer than five days to review your position, the information provided, and to

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- 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?

Id.

²⁵ Denial Letter at 1. The NRC Staff also indicated it did not consider the areas of investigation in Mr. Monatesti's October 17, 2016 e-mail due to untimeliness, but stated that even had the NRC Staff considered the additional information, it would not have changed the NRC Staff's denial determination. Id. at 4 n.27.

²⁶ Id. at 4.

²⁷ Id. at 5.

²⁸ Id.

²⁹ Id. at 5–6.

³⁰ Id. at 6.

³¹ Appeal at 1–2.

prosper [sic] a proper response.”³² Mr. Monatesti then supplemented his appeal with (1) two additional e-mails sent to all parties dated October 24, 2016;³³ (2) an e-mail and an attached letter sent to all parties on November 1, 2016;³⁴ (3) a letter and attachment submitted via E-Filing on November 3, 2016;³⁵ and (4) a letter and attachment submitted via E-Filing on November 4, 2016.³⁶

On October 31, 2016, the NRC Staff replied, stating that “the Appeal does not make any argument with respect to the [NRC] Staff’s finding that the Access Request did not demonstrate that Mr. Monatesti was likely to establish standing. [And f]or this reason alone, this Atomic

³² Id. at 2; see also id. at 3–7 (document entitled Health and Safety review – Susquehanna Site).

³³ E-Mail from Sabatini Monatesti to Hearing Docket (Oct. 24, 2016) (ADAMS Accession No. ML16312A435) [hereinafter First October 24 E-Mail]; E-Mail from Sabatini Monatesti to Hearing Docket (Oct. 24, 2016) (ADAMS Accession No. ML16312A436) [hereinafter Second October 24 E-Mail]. Both e-mails questioned the financial qualifications of Talen Energy. First October 24 E-Mail at 1; Second October 24 E-Mail at 1. In the second e-mail, Mr. Monatesti stated “I plan to review Talen Energy and Riverstone 10K reports. . . . These numbers need further review, and 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.” Second October 24 E-Mail at 1.

³⁴ E-Mail from Sabatini Monatesti to Hearing Docket, Licensing Board, and Other Parties (Nov. 1, 2016) (ADAMS Accession No. ML16312A437) [hereinafter November 1 Supplement]. In the attached letter, Mr. Monatesti requested that the license transfer be tabled and “that a thorough investigation of the document presentations made by Talen Energy and Riverside [sic] Holdings be undertaken.” Id. attach. at 1, 5 (Letter from Sabatini Monatesti, President, ES Enterprises, Inc., to E. Roy Hawkens, Chief Administrative Judge (Oct. 30, 2016)). “[T]o complete an in depth review and analysis of the Securities and Exchange Filings, the review of the 10K reports from Talen Energy and Riverstone Holdings, and the materials filed with the Federal Energy Regulatory Commission,” Mr. Monatesti requested “a minimum of ninety (90) days to complete this work and report my findings back to the Atomic Safety and Licensing Board Panel.” Id. at 5.

³⁵ Letter from Sabatini Monatesti, President, ES Enterprises Inc., to E. Roy Hawkens, Chief Administrative Judge (Nov. 3, 2016) (ADAMS Accession No. ML16308A165).

³⁶ Letter from Sabatini Monatesti, President, ES Enterprises Inc., to E. Roy Hawkens, Chief Administrative Judge (Nov. 4, 2016) (ADAMS Accession No. ML16309A341). The attachment to the letter provided a timeline of Mr. Monatesti’s correspondence concerning the License Transfer Application.

Safety and Licensing Board . . . should deny the Appeal.”³⁷ Similarly, on November 3, 2016, Susquehanna Nuclear submitted a motion for leave to respond and a response opposing Mr. Monatesti’s challenge.³⁸ Susquehanna Nuclear urged the Board to affirm the NRC Staff’s denial because he (1) “did not submit any proper hearing request by the deadline in this proceeding;”³⁹ (2) failed “to demonstrate that he would likely have standing;”⁴⁰ and (3) failed “to show a need for the information.”⁴¹ Finally, Susquehanna Nuclear in its Reply, and NRC Staff in a filing dated November 7, 2016, urged that Mr. Monatesti’s filings submitted after the October 25, 2016 deadline should be disregarded as untimely and irrelevant.⁴²

On October 25, 2016, the Commission referred Mr. Monatesti’s appeal to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for appropriate action.⁴³ On November 1, 2016, this Licensing Board was established to preside over the appeal of the NRC Staff’s denial of Mr. Monatesti’s request for access to SUNSI.⁴⁴

³⁷ NRC Staff Answer to Appeal of NRC Denial of Access Request (Oct. 31, 2016) at 2 [hereinafter NRC Staff Reply].

³⁸ Susquehanna Nuclear’s Motion for Leave to Respond to Mr. Sabatini Monatesti’s Challenge to the NRC’s Denial of His Request for Access to [SUNSI] (Nov. 3, 2016); Susquehanna Nuclear’s Response Opposing Mr. Sabatini Monatesti’s Challenge to the NRC’s Denial of His Request for Access to [SUNSI] (Nov. 3, 2016) [hereinafter Susquehanna Nuclear Reply]. With this issuance, the Board grants Susquehanna Nuclear’s motion for leave to file a response.

³⁹ Susquehanna Nuclear Reply at 1–2, 9–12.

⁴⁰ Id. at 2, 12–18.

⁴¹ Id. at 2, 19–22.

⁴² Id. at 22–23; NRC Staff Reply to Additional Information Filed by Mr. Monatesti (Nov. 7, 2016) at 2.

⁴³ 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 [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 1 (Oct. 25, 2016).

⁴⁴ Susquehanna Nuclear, LLC; Establishment of Atomic Safety and Licensing Board, 81 Fed. Reg. 75,860, 75,860 (Nov. 1, 2016). As noted earlier, see supra note 6, the Board does not

II. STANDARD OF REVIEW

In adjudicating an appeal from the NRC Staff's denial of a petitioner's request for access to SUNSI, we consider whether the NRC Staff correctly applied the criteria established by the Commission in the hearing opportunity notice for this proceeding, namely (1) whether the SUNSI request demonstrates "a reasonable basis to believe the petitioner is likely to establish standing"; and (2) whether the SUNSI request demonstrates the proposed recipient has a "legitimate need" for SUNSI.⁴⁵

Our standard of review here is de novo.⁴⁶

III. ANALYSIS

The NRC Staff found that Mr. Monatesti both failed to demonstrate a reasonable basis for being likely to establish standing to intervene and that he does not have a legitimate need for SUNSI. We review each prong of the NRC Staff's analysis below. While we agree with the NRC Staff's conclusions regarding the need for SUNSI as set forth in section III.B infra, we consider the NRC Staff's analysis rejecting Mr. Monatesti's standing to be over-simplified and outline our concerns in section III.A below.

A. The Likelihood of Standing Criterion

In the Denial Letter responding to Mr. Monatesti's asserted proximity-based standing, the NRC Staff states:

whether proximity to an operating nuclear power plant gives rise to a presumption of standing in an NRC proceeding involves a case-by-case analysis considering the "obvious potential for offsite [radiological] consequences," or lack thereof, from the application at issue, and specifically "taking into account the

have jurisdiction over Mr. Monatesti's request for a hearing, which remains before the Commission. Accordingly, all concerns raised by Mr. Monatesti that do not pertain to the legality of the NRC Staff's denial of his request for access to SUNSI material are not considered by the Board as they are beyond the scope of the Board's authority.

⁴⁵ 81 Fed. Reg. at 68,465.

⁴⁶ S. Tex. Project Nuclear Operating Co. (S. Tex. Project, Units 3 and 4), LBP-09-05, 69 NRC 303, 310 (2009).

nature of the proposed action and the significance of the radioactive source.” The Commission has found that license transfers, even for operating nuclear power plants, “typically involve little if any radiological risk, as there are generally no changes to the physical plant, its operating procedures, or its design basis accident analysis.” Thus, since there is no obvious potential for offsite radiological consequences from the proposed [Susquehanna Steam Electric Station] indirect license transfer, your assertion of your proximity to the site, on its own, is not sufficient to demonstrate standing.⁴⁷

The NRC Staff correctly cites binding Commission precedent and lays out the proper framework with which to review the adequacy of proximity-based standing. The NRC Staff, however, appears to reject Mr. Monatesti’s standing solely on the grounds that it rests on proximity-based standing without providing any “case-by-case analysis” of the facts of the transfer. We question the NRC Staff’s reasoning, which seemingly leaves no possibility of proximity-based standing in indirect license transfers.

To be sure, the Commission has found proximity-based standing accrues in direct license transfer cases to individuals living within the distance that Mr. Monatesti has indicated he resides from the Susquehanna facility, i.e., two miles.⁴⁸ Moreover, while the Commission to date has “never granted proximity-based standing to a petitioner in an indirect license transfer adjudication,” it also has not ruled out the possibility of such.⁴⁹ Rather, when plead, the Commission reviews the circumstances of the indirect license transfer. For example in Palisades, the Commission noted that the

proposed license transfer is an indirect one in that it does not involve transfer of either ownership or operating rights to the subject facilities. Nor does it entail any changes in the facilities themselves or in their operation. Given these facts, we can see no “obvious potential for offsite consequences” stemming from this indirect license transfer.⁵⁰

⁴⁷ Denial Letter at 4–5 (footnotes omitted).

⁴⁸ See Exelon Generation Co., LLC (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 583 nn.28–30 (2005) (citing direct license transfer cases in which proximity standing was granted to individuals residing between 6.5 and 1 miles of a power reactor facility).

⁴⁹ Palisades, CLI-08-19, 68 NRC at 269.

⁵⁰ Id. (second emphasis added) (footnote omitted); see also AmerGen, CLI-05-25, 62 NRC at 575; Ne. Nuclear Energy Co. (Millstone Nuclear Power Station, Units No. 1, 2, & 3), CLI-00-18,

The License Transfer Application at issue here is similar to that in Palisades.

The application indicates that the indirect transfer of control

will result in no change to the role of Susquehanna Nuclear as the licensed operator of the nuclear units, no change to its technical qualifications, and no change in its ownership interest or that of Allegheny Electric Cooperative, Inc. No changes will be made to the units or their licensing bases as a result of the Shareholder Transaction or to the day-to-day management and operations of the units.⁵¹

Without more, these reasons suggest there is no “obvious potential for offsite [radiological] consequences.”⁵²

But Mr. Monatesti has referenced Talen’s “2015 loss of \$341 Million and continued downturn in energy prices,”⁵³ as well as asserted that “[t]he revenue stream for nuclear is under severe strain, energy prices are going down, maintenance costs are increasing”⁵⁴ and indicated that “Riverstone Holdings LLC plans to reduce Corporate Overhead . . . does this imply Riverstone Holding would cut staff in half?”⁵⁵ Arguably, these kinds of assertions about the potential impact on facility operations of financial considerations arising from an indirect transfer of control might provide, as financial impact-related assertions have afforded in direct license transfer cases,⁵⁶ a basis for

52 NRC 129, 132–33 (2000) (“The transfer application at issue here proposes no change in the Millstone licensees, no change in the Millstone facility, no change in its operation, no change in its personnel, and no change in its financing. It is far from obvious how NU’s corporate restructuring would affect Petitioners’ interests.”).

⁵¹ License Transfer Application at 1.

⁵² Consumers Energy Co. (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426 (2007) (quoting Peach Bottom, CLI-05-26, 62 NRC at 580–81).

⁵³ Access Request at 2.

⁵⁴ First October 24 E-Mail at 1.

⁵⁵ November 1 Supplement, attach. at 1.

⁵⁶ See supra note 48.

proximity standing in an indirect transfer of control case.⁵⁷ This is particularly relevant for a pro se intervenor who generally is given some leniency in pleading.⁵⁸

Nonetheless, whether that is the case here is a matter we need not decide because, for the reasons set forth in section III.B below, we find that Mr. Monatesti has not shown a need for the SUNSI at issue.⁵⁹

B. The Need for SUNSI Criterion

The NRC Staff concluded that Mr. Monatesti failed to establish a legitimate need for SUNSI. For the reasons explained by the NRC Staff, we agree.

As part of the License Transfer Application, in accordance with 10 C.F.R. § 50.33(f)⁶⁰ and the NRC Staff's standard review plan regarding reactor licensee financial qualifications and decommissioning funding assurance, which is applicable to direct and indirect license transfer

⁵⁷ Certainly, to the degree agency regulations and NRC Staff guidance require the submission of financial information as part of an indirect transfer of control license application, see infra notes 60–63 and accompanying text, a hearing petitioner's health, safety, and/or environmental interests that might be impacted by such financial considerations seemingly would provide a basis for standing.

⁵⁸ See, e.g., Entergy Nuclear Vt. Yankee, LLC (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 45 n.246 (declining to reject argument on procedural grounds given practice of "treating pro se litigants more leniently than litigants with counsel").

⁵⁹ Of course, as would be the case regarding his need to submit an admissible contention to obtain a hearing, the fact that Mr. Monatesti's showing regarding the "merits" of his access request is deficient does not mean that he lacks standing. Nor does a petitioner have to establish a link between the interests/injury it asserts establish its standing and the issues that it wishes to litigate relative to an application. See Strata Energy, Inc. (Ross In Situ Recovery Uranium Project), LBP-12-3, 75 NRC 164, 190 n.28 (citing cases), aff'd, CLI-12-12, 75 NRC 603 (2012).

⁶⁰ This regulation, applicable to 10 C.F.R. Part 50 operating license transfers under 10 C.F.R. § 50.80(b)(1)(i), requires that a direct or indirect transfer of control application include "information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought." 10 C.F.R. § 50.33(f).

applications,⁶¹ Susquehanna Nuclear provided two proprietary attachments: (1) a projected income statement and estimates of fixed costs for the five-year period from January 1, 2017, until December 31, 2021;⁶² and (2) the capacity factor assumptions involved in their income estimates.⁶³ Mr. Monatesti requested access to these documents

to discern whether Riverstone Holdings includes provisions and capital available for decommissioning of the Salem Township nuclear plant (aka. Susquehanna), and I require information regarding their continued support of Salem Township property and recreational facilities.

I also wish to know if sufficient, trained work force will be available to ensure a successful transfer of responsibilities, and if Riverstone Holdings staffing adjustments exist in the planning for the transfer and subsequent operation of the Salem Township nuclear plant.⁶⁴

We agree with the NRC Staff that Mr. Monatesti has not demonstrated that he “need[s] the information that is in these documents and that was redacted from Attachment 3NP and Attachment 4NP in order to meaningfully participate in the license transfer proceeding.”⁶⁵ This is especially true because his Access Request does not “make any arguments that are related to the redacted financial information.”⁶⁶

⁶¹ NRR, NRC, Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance, NUREG-1577, at 5–7 (rev. 1 Feb. 1999) (ADAMS Accession No. ML013330264).

⁶² License Transfer Application, encl., attach. 3NP (Projected Income Statement and Calculation of Six-Month Fixed Costs). As mentioned in the background section, redacted non-proprietary versions of these documents, referred to as Attachments 3NP and 4NP, are available for public review. See supra note 14 and accompanying text; see also supra note 2.

⁶³ License Transfer Application, encl., attach. 4NP (Capacity Factor Assumptions).

⁶⁴ Access Request at 1–2 (bullet formatting omitted).

⁶⁵ Denial Letter at 6.

⁶⁶ Id.

Mr. Monatesti questions the financial stability of Riverstone and Talen.⁶⁷ Mr. Monatesti, however, has not connected his concerns with any specificity to the redacted information relating to Susquehanna Nuclear and explained how the redacted information would be of use to him. While the redacted attachments did not contain figures, the headers describing the redacted information are provided. The headers for Attachment 3NP, Projected Income Statement and Calculation of Six-Month Fixed Costs, include “Assumptions,” “Revenues,” and “Expenses.”⁶⁸ Importantly, subheadings from the “Expenses” were provided: “Fuel Expense,” “Decommissioning Accretion Expenses,” “Direct [Operations and Maintenance],” “Taxes (Non

⁶⁷ See, e.g., Access Request at 2 (“I also wish to know if sufficient, trained work force will be available to ensure a successful transfer of responsibilities, and if Riverstone Holdings staffing adjustments exist in the planning for the transfer and subsequent operation of the Salem Township nuclear plant. . . . Given Talen Energy 2015 loss of \$341 Million and continued downturn in energy prices Who will be responsible . . . if the license holder goes bankrupt?”); Second October 24 E-Mail at 1 (“I plan to review Talen Energy and Riverstone 10K reports. . . . It will be very interesting to discern how Riverstone will cut operating expenditures by \$100 million per year, reduce capital expenditures by another \$50 million and in so doing erase the \$340 million shortfall reported by Talen Energy.”); November 1 Supplement, attach. at 1 (“Recent documents note that Riverside Holding LLC plans to . . . reduce Corporate Overhead (currently 400 management personnel reside in Allentown and 3,000 Technical staff are situated at plant facilities, estimate cost to Talen Energy \$300 million, does this imply Riverstone Holding would cut staff in half?)” (citing <http://www.mcall.com/business/energy>)).

In this regard, Susquehanna Nuclear in its reply to Mr. Monatesti’s appeal explained that the “2015 net loss was largely the result of non-cash goodwill and other asset impairment charges, and a one-time charge for the retirement of certain debt securities.” Susquehanna Nuclear Reply at 16 n.13. Moreover, the Board notes that the website provided by Mr. Monatesti in referencing “[r]ecent documents” refers to the Energy section of the Morning Call newspaper. Presumably Mr. Monatesti meant to cite an article published a month before his filing. See Scott Kraus, Riverstone reveals plans to cut \$100M in costs at Talen Energy, The Morning Call, Sept. 29, 2016, available at <http://www.mcall.com/business/energy/mc-talen-energy-cuts-coming-20160929-story.html>. While this article states that Riverstone asserted it “can cut [Talen Energy] operating expenditures by \$100 million a year, and capital expenditures by another \$50 million,” this apparently is across Talen’s total operating expenses, which were “\$1.5 billion for the first six months of 2016.” Id. The impact to Susquehanna Nuclear is not stated. Talen Energy has power plants in eight different states and a workforce of some 3000 employees. Id.

⁶⁸ License Transfer Application, encl., attach. 3NP, at 1.

Income), "Depreciation," and "Other Expenses."⁶⁹ Yet, Mr. Monatesti does not indicate how having the specific information set forth under these headings relative to Susquehanna Nuclear's operation of the Susquehanna facility will aid his challenge regarding the financial status of Riverstone and Talen Energy.⁷⁰

The guidance provided for obtaining access to SUNSI also states that "the request must explain why publicly available versions of the information requested would not be sufficient to provide the bases and specificity for a proffered contention."⁷¹ Mr. Monatesti's request failed to address this requirement.

Because Mr. Monatesti fails to explain why access to SUNSI redacted from Attachments 3NP and 4NP would provide the basis for a proffered contention or refute statements made in the License Transfer Application, we find that he has failed to establish a legitimate need for SUNSI.

⁶⁹ Id.

⁷⁰ At the same time, we find the other bases that Mr. Monatesti relies on to illustrate his need to access SUNSI insufficient. Decommissioning trust funds are prepaid pursuant to 10 C.F.R. § 50.75(e)(1)(i) to monetary levels required by 10 C.F.R. § 50.75(b) and (c), and also are "segregated from the licensee's assets and outside its administrative control." License Transfer Application, encl. at 15. As such, this indirect license transfer will have no bearing on those funds. And what, if any, impact this indirect license transfer might have on Salem Township property and recreational facilities is a matter that falls outside the general interests protected by the Atomic Energy Act and is not within the scope of this proceeding.

⁷¹ 81 Fed. Reg. at 68,465.

IV. CONCLUSION

For the foregoing reasons, we affirm the NRC Staff's denial of Mr. Monatesti's request for access to SUNSI.

Pursuant to 10 C.F.R. § 2.311, a litigant wishing to appeal this decision to the Commission must do so within 25 days after service of this Memorandum and Order.⁷²

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 21, 2016

⁷² See id. at 68,466.

Concurring Opinion of Judge Arnold

I agree fully with the Board decision that the Staff decision to withhold SUNSI is correct. However, I do not agree with the Board majority discussion of Mr. Monatesti's standing and the statement "we consider the NRC Staff's analysis rejecting Mr. Monatesti's standing to be oversimplified."⁷³ The Board's discussion of this issue references several statements made by Mr. Monatesti and hypothesizes that such assertions "might provide [] a basis for proximity standing in an indirect transfer of control case."⁷⁴

But Mr. Monatesti never makes any such argument. These cited statements are only statements made in an apparently random manner in his request.⁷⁵ They are not stated as a coherent argument in favor of standing. Even Mr. Monatesti's statement "I live two miles from the Salem Township plant" appears in an apparently random place in his request, and is not connected with any attempt to demonstrate standing.

While I agree that pleadings of pro se petitioners should be treated leniently, I do not believe that Boards should assemble arguments from disparate statements of the pleadings when petitioners do not first forward that argument. I believe in this case, that Mr. Monatesti makes no arguments sufficient to indicate that he is likely to establish standing, and I believe the Staff argument adequately supports their similar conclusion.

⁷³ Majority Op. at 9.

⁷⁴ Majority Op. at 11.

⁷⁵ Access Request at 2.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Affirming Denial of Access to SUNSI) (LBP-16-12)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-7H4
Washington, DC 20555-0001
OCAO Mail Center
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-4F00
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-14A44
Washington, DC 20555-0001
Beth Mizuno, Esq.
Cathy Scott, Esq.
Jeremy Wachutka, Esq.
Email: beth.mizuno@nrc.gov
cathy.scott@nrc.gov
jeremy.wachutka@nrc.gov

William J. Froehlich, Chair
Administrative Judge
E-mail: william.froehlich@nrc.gov

G. Paul Bollwerk, III
Administrative Judge
E-mail: paul.bollwerk@nrc.gov

Dr. Gary S. Arnold
Administrative Judge
E-mail: gary.arnold@nrc.gov

Alana Wase
Law Clerk
E-mail: alana.wase@nrc.gov

Pillsbury Winthrop Shaw Pittman LLP
2300 N Street NW
Washington, DC 20037-1122
David Lewis, Esq.
Timothy Walsh, Esq.
E-mail: david.lewis@pillsburylaw.com
timothy.walsh@pillsburylaw.com

Sabatini Monatesti
919 Belair Drive
Berwick, PA 18603
E-mail: smonatesti@verizon.net

[Original signed by Herald M. Speiser ____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 21st day of November, 2016