UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

SUSQUEHANNA NUCLEAR'S BRIEF IN OPPOSITION TO MR. SABATINI MONATESTI'S APPEAL OF MEMORANDUM AND ORDER (LBP-16-12) AFFIRMING DENIAL OF ACCESS TO SUNSI

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Pursuant to 10 C.F.R. § 2.311(b), Susquehanna Nuclear, LLC ("Susquehanna Nuclear") submits this brief in opposition to Mr. Sabatini Monatesti's appeal[1] of the Atomic Safety and Licensing Board's (the "Board") Memorandum and Order (LBP-16-12) affirming the denial of his request for access to sensitive unclassified non-safeguards information ("SUNSI").[2] This appeal should be denied for multiple independent reasons: (1) Mr. Monatesti has not identified any error in the Board's decision; (2) the Board correctly found that Mr. Monatesti failed to establish a legitimate need for the SUNSI—i.e., to show a need for the information in order to formulate admissible contentions; (3) Mr. Monatesti also failed to show a likelihood that he would establish standing; and (4) Mr. Monatesti failed to properly submit a hearing request, rendering any need for SUNSI moot. Each of these failures is sufficient grounds by itself to deny Mr. Monatesti's appeal and affirm the denial of access.

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[1] Letter of Appeal Regarding November 21, 2016 Order, Submitted by Sabatini Monatesti, dated December 1, 2016. While Mr. Monatesti's appeal is dated December 1, 2016, Mr. Monatesti filed a revised version on December 2, 2016, without changing the document date or certificate of service. This brief responds to the revised document that Mr. Monatesti submitted on December 2 (ADAMS Accession No. ML16337A238) (hereinafter the "Appeal").

[2] *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-16-12, N.R.C., (Nov. 21, 2016) (slip op.).

Statement of Case

Susquehanna Nuclear is licensed as the operator of, and owner of a 90% undivided interest in, the Susquehanna Steam Electric Station Units 1 and 2 ("SSES"). On June 29, 2016, Susquehanna Nuclear, on behalf of itself and Riverstone Holdings, LLC ("Riverstone"), an energy- and power-focused private investment firm, requested NRC consent to the indirect transfer of control of Susquehanna Nuclear's interests in the SSES operating licenses, as well as the general license for the SSES Independent Spent Fuel Storage Installation ("ISFSI").[3] The indirect transfer of control was associated with a transaction (the "Shareholder Transaction") in which Talen Energy Corporation ("Talen"), Susquehanna Nuclear's ultimate parent, would (and now has[4]) become wholly owned by portfolio companies of Riverstone. Application at 1.

In accordance with 10 C.F.R. § 50.80, the Application provided information showing that Susquehanna Nuclear would remain technically and financially qualified. This information included a five-year (2017-2021) projected income statement for the SSES Units (which included projected market prices), and capacity factor assumptions on which the income statement was based. Because this financial information is confidential, Susquehanna Nuclear provided proprietary versions of the income statement and capacity factor assumptions as Attachments 3P and 4P to the Application, which it requested be withheld from public disclosure under 10 C.F.R. § 2.390 (which the NRC Staff subsequently granted[5]), and non-proprietary

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[3] Application for Order Approving Indirect Transfer of Control of Facility Operating License Nos. NPF-14 and NPF-22 (June 29, 2016) (ADAMS Accession Nos. ML16181A415, ML16181A417, ML16181A419, ML16181A420) (hereinafter the "Application").

[4] The NRC approved the indirect transfer of control on November 30, 2016. Order Approving Indirect Transfer of Facility Operating Licenses Related to Susquehanna Steam Electric Station, Units 1 and 2 (Nov. 30, 2016), 81 Fed. Reg. 89,514 (Dec. 12, 2016). The Shareholder Transaction closed on December 6, 2016.

[5] Letter from NRC to Timothy Rausch, President and Chief Nuclear Officer, Susquehanna Nuclear, Request for Withholding Information from Public Disclosure for Susquehanna Steam Electric Station, Units 1 and 2 (Aug. 26, 2016) (ADAMS Accession No. ML16215A008).

versions as Attachment 3NP and 4NP, which redacted the confidential data.

In addition, the Application demonstrated that Susquehanna Nuclear is currently providing decommissioning assurance in excess of the amount required by the NRC rules through the prepayment method. *See* Application at 15–16 & Attachment 5. Attachment 5 of the Application provided the calculation of the minimum decommissioning funding amount required by the NRC rules. The Application also identified the site-specific estimate of the cost of decommissioning the SSES ISFSI. Application at 15–16. The Application then demonstrated that, when earnings are credited as permitted by the NRC rules, the credited value of the SSES decommissioning trust funds for Units 1 and 2 ($815,141,316 and $939,899,446, respectively) exceeds Susquehanna Nuclear's 90% ownership share of the NRC minimum requirement of $620,379,000 for each unit plus the estimated ISFSI decommissioning cost. *Id.* None of the information pertaining to decommissioning funding assurance (or any other part of the Application other than Attachments 3P and 4P) was redacted. It is all publicly available.

On October 4, 2016, the NRC published in the Federal Register a Notice of Opportunity for Hearing,[6] setting October 24, 2016 as the deadline for hearing requests. To facilitate compliance with the E-filing rule, the Order advised potential participants to contact the Secretary by email at hearing.docket@nrc.gov or by telephone ten days prior to the filing deadline (i.e., by October 14) to request a digital identification certificate and inform the Secretary that the participant would be submitting a petition. 81 Fed. Reg. at 68,464. In addition, because the Application contained SUNSI, the Federal Register notice included an Order Imposing Procedures for Access to [SUNSI] for Contention Preparation (the "SUNSI

[6] Application for Indirect License Transfer; Notice of Opportunity to Comment, Request a Hearing, and Petition for Leave to Intervene; Order Imposing Procedures, 81 Fed. Reg. 68,462 (Oct. 4, 2016).

Order"). *Id.* at 68,465. The SUNSI Order explained that "any potential party who believes access to SUNSI is necessary to respond to this notice may request such access" "[w]ithin 10 days after publication of this notice of hearing. . . ." *Id.* at 68,465.

In order to gain access to the SUNSI portion of the Application, the SUNSI Order stated that a potential party must request permission for such access and include in its request (1) a description of the licensing action at issue; (2) the identity of the potential party and a description of the potential party's particularized interest that could be harmed by the licensing action (in other words, the individual's basis for standing in this proceeding); and (3) the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. *Id*. at 68,465. "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." *Id.* The SUNSI Order also explained that that the NRC Staff would evaluate the request as to whether "(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and (2) The requestor has established a legitimate need for access to SUNSI." *Id.* The SUNSI Order stated that this request should be submitted by letter delivered or emailed to the Secretary and the Office of the General Counsel, and not through the E-filing system. *Id.* & n.1.

On October 11, 2016, Mr. Monatesti contacted the Office of the Secretary by email attaching a letter and inquiring how to obtain a digital certificate.[7] The header of the letter was labeled "Request for Hearing and Information – License Transfer," and the letter stated "I am requesting a hearing and digital identification certificate to enable the discussion regarding the

[7] E-Mail from Sabatini Monatesti to Hearing Docket (Oct. 11, 2016) (ADAMS Accession No. ML16312A431) (hereinafter the "Access Request").

transfer of Talen Energy's license to Riverstone Holdings." The letter also stated that "I wish to receive access to sensitive business documents filed by Talen Energy 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." The letter was not submitted through the E-filing system as would be required by the Notice of Opportunity for Hearing and NRC rules for a hearing request, but was submitted in the manner specified in the Notice for informing the Secretary of the intent to submit a petition.

On October 12, 2016, the Office of the Secretary acknowledged receipt of Mr. Monatesti's submittal, informed Mr. Monatesti that his SUNSI request was under review, provided instructions on how to obtain a digital certificate, and informed Mr. Monatesti that an electronic docket was being established "in anticipation of your filing a request for hearing."[8]

On October 13, 2016, in connection with setting up the service list for an electronic docket, the Office of the Secretary notified counsel for Susquehanna Nuclear that the NRC had received "notification that a party intends to request a hearing on the license transfers. . . ."[9] Counsel for Susquehanna Nuclear subsequently inquired of the Secretary whether there was a filing available and whether the identity of the potential participant could be disclosed. Counsel for Susquehanna Nuclear learned that there was also a request for SUNSI, but that the filings could not be released and that the Secretary's office would need to check with the participant to see if his or her identify could be disclosed.

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[8] E-Mail from Hearing Docket to Sabatini Monatesti (Oct. 12, 2016) (ADAMS Accession No. ML16312A432).

[9] E-Mail from Hearing Docket to David Lewis, Susquehanna License Transfers – Potential New Proceeding (Oct. 13, 2016).

Because Mr. Monatesti had not taken steps to obtain a digital certificate, the Office of the Secretary e-mailed him again on October 17, 2016, "to be certain that you understand any request for hearing you may wish to make in the subject proceeding must be submitted via the Electronic Information Exchange (EIE) prior to the filing deadline stated in the Federal Register Notice, which calculates to October 24, 2016."[10] The Office of the Secretary also informed Mr. Monatesti that counsel for Susquehanna Nuclear was interested in discussing the information that was being requested and inquired whether Mr. Monatesti had any objection to the disclosure of his contact information. Mr. Monatesti responded the same day, explaining that he "plan[ned] to submit request for CERT tomorrow."[11] Mr. Monatesti also indicated that he had no objection to speaking with Susquehanna Nuclear's counsel and shared a "few areas of investigation."[12]

By letter dated October 20, 2016,[13] the NRC Staff denied Mr. Monatesti's Access Request, explaining that "there is not a reasonable basis to believe that you are likely to establish standing to participate in the NRC proceeding and you have not established a legitimate need for access to the SUNSI." Letter Denial at 1. The NRC Staff did not consider Mr. Monatesti's October 17, 2016 e-mail to be part of the Access Request because it was not accompanied by any showing of good cause for a late filing as required by the SUNSI Order, but added that "even if the Staff had considered this additional information, it would not have changed the fact that your Access Request cannot be granted because it does not demonstrate that you are likely to establish standing and that you have a legitimate need for access to Attachment 3P and Attachment 4P."

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[10] E-Mail from Hearing Docket to Sabatini Monatesti (Oct. 17, 2016) (ADAMS Accession No. ML16312A432).

[11] E-Mail from Sabatini Monatesti to Hearing Docket (Oct. 17, 2016) (ADAMS Accession No. ML16312A432).

[12] *Id.* The Office of the Secretary forwarded Mr. Monatesti's October 17 response to Susquehanna Nuclear's counsel the same day. Susquehanna Nuclear did not obtain Mr. Monatesti's October 11 Access Request until it was provided as an attachment to the Letter Denial.

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

Id. at 4 n.27.

On October 24, 2016, Mr. Monatesti sent two e-mails to the NRC Chief Administrative Law Judge purporting to challenge the Letter Denial. Attached to his first e-mail was a document entitled "Health and Safety review – Susquehanna Site," which concerns the planned "extension of the nuclear waste dry storage facility" at the SSES site.[14] Later that same day, Mr. Monatesti sent a second e-mail to the NRC, which referenced a newspaper (the Morning Call) article and documents submitted to the Securities and Exchange Commission. Mr. Monatesti's e-mail stated that he "plan[ned] to review Talen Energy and Riverstone 10K Reports" and associated financial data, and stated that "this license transfer should be scrutinized in detail and tabled until citizen review is completed."[15] On October 25, 2016, the NRC Secretary referred Mr. Monatesti's challenge to the Letter Denial to the Atomic Safety and Licensing Board.

On October 31, 2016, the NRC Staff filed its Answer opposing Mr. Monatesti's appeal of its denial of his Access Request.[16] The Staff argued that Mr. Monatesti's appeal should be denied because it failed to "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." Staff Answer at 2. In addition, the Staff argued that the Board should uphold the denial of Mr. Monatesti's Access Request because 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. *Id.*

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[14] E-Mail from Sabatini Monatesti to Hearing Docket (Oct. 24, 2016) (ADAMS Accession No. ML16312A435) (hereinafter the "first October 24 e-mail").

[15] E-Mail from Sabatini Monatesti to Hearing Docket (Oct. 24, 2016) (ADAMS Accession No. ML16312A436) (hereinafter the "second October 24 e-mail"). Presumably, Mr. Monatesti is referring to Talen Energy's SEC filings, as Riverstone is not a publicly traded company that files 10K reports.

[16] NRC Staff Answer to Appeal of NRC Denial of Access Request (Oct. 31, 2016) ("Staff Answer").

On November 1, 2016, more than a week after the deadline for filing a proper hearing request and a week after the deadline for challenging the Letter Denial, Mr. Monatesti transmitted (without authorization or demonstration of good cause) another document entitled "Talen Energy Corp. – Riverstone Holdings, LLC – Transfer Order 10 CFR 50.80."[17] In essence, the document "request[ed] that action on the pending . . . indirect license transfer . . . be tabled pending detailed review of the issues and concerns raised by me and others," "request[ed] that a thorough investigation of the document presentations made by Talen Energy and Riverside [sic] Holdings be undertaken," and stated that Mr. Monatesti would "need a minimum of ninety (90) days" to complete additional review of documents related to the transaction and "report [his] findings back to the" Board. On November 1, 2016, the Board issued an Order[18] permitting the parties to respond to Mr. Monatesti's unauthorized November 1 filing by November 7, 2016.

On November 3, 2016, Susquehanna Nuclear motioned for leave to file a response to Mr. Monatesti's challenge to the Letter Denial, along with its response.[19] Susquehanna Nuclear argued that because Mr. Monatesti failed to submit a proper hearing request by the deadline,[20] he could no longer participate in any proceeding on the indirect license transfer, thus rendering moot his request for access to Susquehanna Nuclear's SUNSI. Susquehanna Nuclear Response at 1–2, 9–12. Susquehanna Nuclear also argued that Mr. Monatesti's Access Request failed to

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[17] E-Mail from Sabatini Monatesti to Hearing Docket, Licensing Board, and Other Parties (Nov. 1, 2016) (ADAMS Accession No. ML16312A437).

[18] Order (On Communication Received and Providing Opportunity to Respond) (Nov. 1, 2016).

[19] 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 Sensitive Unclassified Non-Safeguards Information (Nov. 3, 2016) and Susquehanna Nuclear's Response Opposing Mr. Sabatini Monatesti's Challenge to the NRC's Denial of His Request for Access to Sensitive Unclassified Non-Safeguards Information (Nov. 3, 2016) hereinafter the "Susquehanna Nuclear Response"). The Board granted Susquehanna Nuclear's motion. LBP-16-12, slip op. at 8 n.38.

[20] Mr. Monatesti has never filed any proper request for hearing through the NRC's adjudicatory E-filing system or served any such request on Susquehanna Nuclear.

demonstrate that he would likely have standing and show a need for the information in order to meaningfully participate in any adjudicatory proceeding (i.e., to formulate contentions). Susquehanna Nuclear Response at 2, 12–22.

As authorized by the Board, Susquehanna Nuclear also responded to Mr. Monatesti's November 1 filing. Susquehanna Nuclear argued that the November 1 filing was improper and untimely because the deadline for filing a challenge to the Letter Denial had expired on October 25. Susquehanna Nuclear Response at 22. In addition, Susquehanna Nuclear explained that the November 1 filing appeared unrelated to his Access Request, as it did not demonstrate his standing or his need to access SUNSI to formulate a contention. *Id.* at 22–23.

On November 3, 2016, Mr. Monatesti submitted, again without authorization or showing of good cause, a document entitled "Riverside Holdings, LLC Vulnerability-Threat Matrix" consisting of a cover letter and an attached table.[21] On November 4, Mr. Monatesti submitted yet another document entitled "Walsh Response – Talen Energy Corp – Riverstone Holdings, LLC – Transfer Order 10 CFR 50.80," which appears to be an unauthorized reply to the Susquehanna Nuclear Response.[22]

On November 7, 2016, as permitted by the Board, the NRC Staff submitted a reply[23] to the additional information submitted by Mr. Monatesti on November 1. The Staff replied that Mr. Monatesti's November 1 submittal was "not responsive to this matter" because it did not dispute the NRC Staff determinations that he had not demonstrated that he would likely have standing in this proceeding or that he had a legitimate need for the SUNSI in order to prepare

[21] E-Mail from Sabatini Monatesti to Licensing Board (Nov. 3, 2016) (ADAMS Accession No. ML16308A165).
[22] E-Mail from Sabatini Monatesti to Licensing Board (Nov. 4, 2016) (ADAMS Accession No. ML16309A341).
[23] NRC Staff Reply to Additional Information Filed by Mr. Monatesti (Nov. 7, 2016) (hereinafter the "Staff Reply").

contentions in any proceeding on the indirect license transfer. Staff Reply at 2. Instead, the Staff explained, Mr. Monatesti's November 1 submittal contained "an unrelated list of grievances with the proposed SSES indirect license transfer," thus rendering the submittal "outside the limited jurisdiction of [the] Board." *Id.* In addition, the Staff argued that "the Board should not consider the additional information filed by Mr. Monatesti because the procedures governing this proceeding do not provide for a reply to the Staff's answer to Mr. Monatesti's appeal" and that the Board should not consider the submittal "as a supplement to his access request or to his appeal because it was submitted after the applicable deadlines without a showing of good cause for its late filing." *Id.* The Staff also argued that "[t]his Board is not the proper forum" for Mr. Monatesti's arguments separate from appealing the denial of his access request, for which "he [was] able to, and was given ample direction on how to, submit these arguments as either part of a properly filed hearing request or as comments on the SSES indirect license transfer prior to" the applicable deadlines. *Id.* at 3. The Staff noted that Mr. Monatesti had been given "ample direction" on how to request extensions of the applicable deadlines. *Id.*

On November 21, 2016, the Board issued LBP-16-12 denying Mr. Monatesti's Access Request. In reviewing the matter *de novo*, LPB-16-12, slip op. at 9, the Board ruled that Mr. Monatesti "failed to establish a legitimate need for SUNSI." *Id.* at 12. The Board agreed with the Staff's finding that Mr. Monatesti had not demonstrated need for the information redacted from Attachments 3P and 4P in order to meaningfully participate in the license transfer proceeding because Mr. Monatesti's Access Request "does not 'make any arguments that are related to the redacted financial information.'" *Id.* at 13 (quoting Letter Denial). In particular, the Board found that, while "Mr. Monatesti questions the financial stability of Riverstone and Talen," he "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." *Id.* at 14 (footnote omitted). Because the Board affirmatively found that Mr. Monatesti had not demonstrated a legitimate need for the information, it determined that it need not rule on whether Mr. Monatesti had demonstrated that he would likely have standing. *Id.* at 12.

Hours after the Board issued its ruling on November 21, Mr. Monatesti submitted yet another document entitled "Jeremy L. Wachutka Response – Counsel for the NRC Staff – Reference Letter: November 7, 2016."[24] This submittal appears to be an unauthorized reply to the Staff's submittal of November 7.

On December 2, 2016, Mr. Monatesti submitted his revised Appeal of LBP-16-12.[25]

Standard of Review

Susquehanna Nuclear respectfully submits that an "abuse of discretion" standard should be applied to review of the Board's ruling. While the Commission applied a *de novo* standard in *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 N.R.C. 451, 461 & n.65 (2010), that case is distinguishable in that it involved an NRC Staff challenge to the release of security-related information, and the determination to release that information had not been previously reviewed. Here, Mr. Monatesti's appeal does not involve security-related information warranting heightened scrutiny, and the Board has already applied a *de novo* review of the Letter Denial. *See* LBP-16-12, slip op. at 9.

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[24] E-Mail from Sabatini Monatesti to Jeremy L. Wachutka, Counsel for NRC Staff (Nov. 21, 2016) (ADAMS Accession No. ML16326A359).

[25] Letter of Appeal. Mr. Monatesti's Appeal consists of a 15 page document including a Certificate of Service (Attachment 1), a Table of Figures (Attachment 2), and the Basis for Appeal – NRC SUNSI Denial (Attachment 3), which are paginated continuously. This Brief will refer to the pagination supplied by Mr. Monatesti. On December 15, 2016, Mr. Monatesti filed another unauthorized submittal suggesting that a decision delaying conversion of the Montour coal plant to gas-firing is somehow a RICO violation. Letter of Concern Regarding November 21, 2016 Decision, Submitted by Sabatini Monatesti (Dec. 15, 2016) (ADAMS Accession No. ML16350A196). Susquehanna Nuclear can discern no relevance of this submittal to either the Appeal or this proceeding, and will not address it further.

In *South Texas Project*, the Commission cited two *Duke Energy Corp.* decisions[26] which pertained to access to Safeguards information, and in which the Commission stated that it would review such issues "closely." CLI-10-24, 72 N.R.C. 461 n.65. In neither case did the Commission state that it would review *de novo* licensing board decisions on access to SUNSI.

The Commission in *South Texas Project* also cited *King v. U.S. Department of Justice*, 830 F.2d 210, 217 (D.C. Cir. 1987). *Id*. In *King*, the D.C. Circuit stated that, "as in all FOIA cases, the district courts are to review *de novo* all exemption claims advanced" – i.e., the agency rationale for withholding information from public disclosure. 830 F.2d at 217. But on appeal from the district court's decision reviewing agency withholding, the D.C. Circuit stated that, so long as information contained in the affidavits was full and specific enough to afford the FOIA requester a meaningful opportunity to contest them, and the district court an adequate foundation to review them, the Court would apply the "clearly erroneous" standard in evaluating the substance of the district court's decision. *Id.* at 218. In a footnote, the Court stated that this meant that the record requester must establish that the district court's decision was "either based on an error of law or a factual predicate which is clearly erroneous." *Id.* at 218 n.63.

In the present case, the Commission sits in the same review posture as the D.C. Circuit did in *King*, and the Board the same review posture as the district court. The NRC Staff denied Mr. Monatesti's request, and the Board reviewed that denial *de novo*. The *King* decision does not suggest a subsequent *de novo* review of the matter, but rather substantial deference to the Board's ruling. For these reasons, Susquehanna Nuclear respectfully submits that the Commission should apply an "abuse of discretion" standard of review to the Board's ruling.

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[26] *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-21, 60 N.R.C. 21, 27, 31 (2004); *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 N.R.C. 62, 67, 73 (2004).

Whether an abuse of discretion or *de novo* review standard applies, the Commission should affirm the Board's ruling.

Argument

I. MR. MONATESTI DOES NOT IDENTIFY ANY ERROR IN THE BOARD'S DECISION

The Commission should affirm the Board's decision because Mr. Monatesti has failed to identify any error of law or fact or procedural error or abuse of discretion by the Board. Licensing Board rulings are affirmed where the "brief on appeal points to no error of law or abuse of discretion which might serve as grounds for reversal of the Board's decision." *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-00-21, 52 N.R.C. 261, 265 (2000). A "failure to illuminate the bases" for an exception to the Board's decision is "sufficient grounds to reject it as a basis for appeal." *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-06, 39 N.R.C. 285, 297 (1994). In that decision, the Commission wrote:

> The *appellant* bears the *responsibility* of *clearly identifying* the *errors* in the decision below and ensuring that its brief contains sufficient information and cogent argument to alert the other parties and the Commission to the precise nature of and support for the appellant's claims.

Id., *citing General Public Utilities Nuclear Corp.* (Three Mile Island Nuclear Station, Unit 2), ALAB-926, 31 N.R.C. 1, 9 (1990) (emphasis added); *Wisconsin Electric Power Co.* (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 N.R.C. 277, 278 (1982).

Mr. Monatesti's Appeal does not identify any error in the Board's determination that Mr. Monatesti failed to establish a legitimate need for the SUNSI. While Mr. Monatesti's Appeal summarizes the Board's ruling (Appeal at page 4), he makes no attempt to identify any error in the Board's ruling. Instead, his Appeal repeats the litany of concerns he has raised in his

numerous email messages, including those that predate the filing of the indirect license transfer Application, and those he expressed even after the expiration of the deadline for requesting access to SUNSI. Appeal at pages 5–14. As the Commission has held, "[m]ere recitation of [intervenor's] prior position in the proceeding and its general dissatisfaction with the outcome of the proceeding is no substitute for a brief that identifies and explains the errors of the Licensing Board in the order below." *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-92-03, 35 N.R.C. 63, 67 (1992). Indeed, the Commission has found that a petitioner's failure to address a licensing board's rationale for its decision to be "fatal" to its argument on appeal. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 642-643 (2004). *See also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553 (1978) ("[I]t is still incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions.").

II. THE BOARD CORRECTLY FOUND THAT MR. MONATESTI FAILED TO DEMONSTRATE A NEED FOR THE SUNSI

The Commission should uphold the Board's ruling affirming the NRC Staff's determination that Mr. Monatesti failed to demonstrate a legitimate need for the SUNSI at issue (LBP-16-12, slip op. at 12), because that decision was clearly correct.

To demonstrate how the requested SUNSI is necessary for meaningful participation in the proceeding, the requester must provide "(1) an explanation of the importance of the requested information to the proceeding, i.e., how the information relates to the license application . . . and how it will assist the requester in seeking intervention; and (2) an explanation of why existing publicly-available versions of the application would not be sufficient." *South Texas Project*, CLI-10-24, 72 N.R.C. at 465 (footnotes omitted). In other words, a "request for SUNSI must

demonstrate how the information would assist in meeting the Commission requirements for intervention petitions, including formulation of a proposed contention." *Id.* at 467. Mr. Monatesti never addressed or met these standards.

In particular, Mr. Monatesti's Access Request failed to demonstrate how Susquehanna Nuclear's income statement was needed to assist in formulating any admissible contention. The only specific statement in the Access Request relating to the SUNSI was Mr. Monatesti's statement that:

> I wish to receive access to sensitive business documents filed by Talen Energy 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.

Access Request at1. Susquehanna Nuclear's income statement had no bearing on decommissioning funding assurance. The Application demonstrated that that the decommissioning funds for SSES are pre-paid and in excess of the funding amount required by the NRC rules, and all of the information in the Application demonstrating the sufficiency of decommissioning funding was publicly available. Application at 15–16 & Attachment 5. Mr. Monatesti's statement about support for Township property and recreational facilities were simply beyond the NRC's purview.

Mr. Monatesti's Access Request also stated that he wished to know whether a sufficient, trained workforce would be available, and if Riverstone staffing adjustments exist in the planned transfer, but he never explained why he needed access to Susquehanna Nuclear's income statement to formulate any contention on staffing. Access Request at 2. Indeed, he never addressed or questioned the statement in the Application that the Shareholder Transaction would not require any change in staffing of the nuclear organization. Application at 11.

Nor was there any other statement in the Access Request demonstrating a need for the SUNSI. Mr. Monatesti's Access Request expressed unhappiness that the NRC was not reviewing the expansion of a generally licensed ISFSI, but this statement was not only unrelated to the need for the income statement but also unrelated to the indirect transfer of control and outside the scope of the proceeding. Access Request at 2. Mr. Monatesti also referred to a loss that Talen Energy had posted in 2015 and downturn in energy prices, but he related this concern only to "[w]ho will be responsible for decommissioning cost . . . if the license holder goes bankrupt?" *Id.* As already discussed, unredacted information demonstrated that the decommissioning funding assurance required by the NRC rules was provided by prepayment. Further, Mr. Monatesti provided no indication that he questioned Susquehanna Nuclear's financial qualifications.

The NRC Staff correctly determined that Mr. Monatesti's SUNSI request "does not challenge Susquehanna Nuclear's financial qualifications or make any arguments that are related to the redacted financial information." Letter Denial at 6. The Licensing Board agreed that Mr. Monatesti "does not 'make any arguments that are related to the redacted financial information.'" LBP-16-12, slip op. at 13. The Board found that 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," and therefore found that he had failed to establish a legitimate need for SUNSI. *Id.* at 15.

In particular, the Board found that Mr. Monatesti's concern with decommissioning funding did not indicate a need for the SUNSI, as decommissioning funding assurance was being provided through prepayment in a trust segregated from the licensee's assets and outside its administrative control; and that any impact on Salem Township properties and recreational

facilities was not within the scope of the proceeding. *Id.* at 15 n.70. The Board also considered Mr. Monatesti's questioning of the financial stability of Riverstone and Talen, citing not only Mr. Monatesti's Access Request, but also his second October 24 e-mail message and his November 1 email message (despite their untimeliness), and found that Mr. Monatesti had "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." *Id.* at 14 & n.67. That deficiency continues through the current appeal.

Further, the Board examined the news article to which Mr. Monatesti referred discussing information in SEC filings concerning Riverstone's plans to cut operating expenses, capital expenditures, and corporate overhead following the closing of the Shareholder Transaction, and observed that the potential cuts in operating expenses and capital expenditures are "apparently . . . across Talen's total operating expenses, which were '$1.5 billion for the first six months of 2016'" and that "Talen Energy has power plants in eight different states and a workforce of some 3000." *Id.* The Board found that the "impact to Susquehanna Nuclear is not stated" by Mr. Monatesti. *Id.* Indeed, Mr. Monatesti referred to this article in support of his need to review publicly available 10K reports (*see* second October 24 e-mail, ¶2), and never provided any explanation why he needed to review Susquehanna Nuclear's income statement, what he thought such a review might show, and how this information would support any admissible contention.

Similarly, as the Board noted based on Susquehanna Nuclear's Response,[27] Talen's "2015 net loss was largely the result of non-cash goodwill and other asset impairment charges,

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[27] Susquehanna Nuclear Response at 16 n.13; *Talen Energy Reports 2015 Results*, TALEN ENERGY CORPORATION (Feb. 25, 2016), http://talenenergy.investorroom.com/2016-02-25-Talen-Energy-Reports-2015-Results-Announces-2016-Guidance. Talen's adjusted EBITDA (as defined on page 14 of the Application) in 2015 was in excess of $1billion. *Id.*

and a one-time charge for the retirement of certain debt securities." LBP-16-12, slip op. at 14 n.67. In any event, Mr. Monatesti never provided any connection between the loss posted in 2015 by Talen (which owns approximately 16,000 MWe of generating capacity) and the profitability of Susquehanna Nuclear or any need to review its proprietary income statement. Indeed, there is no relevance between Susquehanna Nuclear's projected income and capacity factors in the years 2017–2021, and the "loss" accrued in 2015 by Talen.

The remainder of Mr. Monatesti's claims on appeal should not be considered because they are outside the scope of this proceeding or were untimely raised. They include numerous claims that should be disregarded as improperly raised for the first time on appeal. *See, e.g.*, *USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 N.R.C. 451, 468 n.104 (2006) ("This is new evidence submitted improperly for the first time on appeal. . . ." and "This is, yet again, an improper new argument on appeal that we will not address"). Even if Mr. Monatesti's arguments are considered, they do not support any showing of a legitimate need for access to Susquehanna Nuclear's confidential financial information.

- The Appeal (at page 5) cites Mr. Monatesti's "issues and concerns" dating to April 19 and May 25, 2016. No concerns dated April 19, 2016 were submitted in support of the Access Request or before the Board. The May 25, 2016 submittal refers to the second attachment to Mr. Monatesti's first October 24 e-mail message (*supra* note 14), entitled "Health and Safety review – Susquehanna Site," relates entirely to his unhappiness with expansion of the generally licensed ISFSI, and therefore is irrelevant. The bullets on page 5 of the Appeal relating to evacuation times, the adequacy of emergency responders, whether Riverstone Holdings qualifies for a tax free distribution, and the potential for a "15,000-megawatt

failure" were not part of the May 25, 2016 letter but rather appear raised for the first time on appeal. They are therefore improper.

- The Appeal (at page 6) cites some communication with Victor McCree on spent fuel storage, but this communication was not part of the Access Request or submittals before the Board, is therefore improperly raised for the first time on appeal, and in any event relates to spent fuel storage concerns beyond the scope of the proceeding.

- The Appeal (at pages 6–7) discusses the October 11, 2016 Access Request, but improperly embellishes it with two new figures and discussion of the need for additional investment that were not part of the Access Request and are improperly raised for the first time on appeal. The ten sub-bullets on page 7 of the Appeal were also not part of the October 11, 2016 Access Request.

- The Appeal at the bottom of page 8 continuing on to page 9 refers to a response to Judge Hawkins. This presumably refers to Mr. Monatesti's November 1, 2016 email message, which was untimely and unauthorized. Further, the submittal only asserts a need to review SEC filings and materials filed with the Federal Energy Regulatory Commission in order to conduct an investigation of whether the Shareholder Transaction is "a positive one for the citizen." Thus, rather than showing any need to review the SUNSI to formulate an admissible contention, the November 1 submittal reflected Mr. Monatesti's desire to review documents that are already publicly available at other agencies in order to conduct a public interest review of the transaction.

- The Appeal (at pages 9–10) refers to a November 1 message relating to Pillsbury (i.e., Susquehanna Nuclear's Response). Susquehanna Nuclear assumes that Mr. Monatesti

intends to refer to his November 4 email. The concerns listed in the second bullet (starting on the bottom of page 9 of the Appeal) were not part of that submittal, but appear to refer to the Vulnerability Threat Matrix that Mr. Monatesti submitted on November 3. Both of these submissions were unauthorized. The two figures on page 10 were not part of any of these submittals and appear improperly raised for the first time on appeal.

- The Appeal (at pages 10–11) cites Mr. Monatesti's November 3, 2016 submittal of his "Vulnerability Threat Matrix for Assessment of Concurrent Risk." Mr. Monatesti's November 3 submittal was unauthorized and untimely, and Mr. Monatesti showed no good cause for a late submission. In any event, the November 3 submittal raises numerous issues irrelevant to a legitimate need for Susquehanna Nuclear's SUNSI. The November 3 submittal consisted of a cover letter and an attached matrix purportedly summarizing risk vulnerabilities. The one "[a]rea of vulnerability" alleged in the matrix (on the twelfth row) that appears even remotely related to nuclear power ("security and safety risks associated with nuclear generation") is vague, not specific to Susquehanna Nuclear, and in no way implicates the financial qualifications of Susquehanna Nuclear. Other references in the matrix raise a whole host of issues—climate change, weather, coal, oil, transmission lines, etc. —that are completely irrelevant to the need for Susquehanna Nuclear's confidential financial information.

- The Appeal (at page 11) includes two figures that were first submitted by Mr. Monatesti on November 21, 2016—after the Board had issued its decision. They are thus untimely and unauthorized, and also improper as not having been raised before the Board. They are also irrelevant to any alleged need for Susquehanna Nuclear's SUNSI, as these figures appear to relate Mr. Monatesti's risk vulnerability claims. The first bullet on page 11 (referring to a

concurrent risk impact of $700 million) was not part of any prior submittal and is therefore improperly raised for the first time on appeal.

- The Appeal (at pages 11–14) purports to identify "Concurrent Talen Energy Risk Examples" from the Talen 2015 10K Report and asserts that Susquehanna Nuclear's SUNSI is necessary for the citizenry to "complete[] due diligence regarding the viability of Riverstone Holdings LLC ability to mitigate risk," and that Riverstone's "inability to manage and mitigate concurrent risk destroys their ability to effectively manage the SSES license over a 20 year life span." All of these bullets are improperly raised for the first time on appeal. Moreover, many of the risk examples have no apparent relationship to Susquehanna Nuclear, and Mr. Monatesti provides no explanation how any of them demonstrate his need for Susquehanna Nuclear's confidential financial information.

For all of the foregoing reasons, the Commission should affirm the Board's determination that Mr. Monatesti failed to establish a legitimate need for the requested SUNSI.

III. MR. MONATESTI FAILED TO DEMONSTRATE THAT HE WOULD LIKELY HAVE STANDING IN THIS PROCEEDING

The Staff correctly determined that "there is not a reasonable basis to believe that [Mr. Monatesti is] likely to establish standing to participate in the NRC proceeding," Letter Denial at 1, and notwithstanding the Board's decision to not decide the question, the Commission should find that the Staff's determination was correct and affirm the denial of access on this basis.[28] Mr.

[28] A decision may be defended on any ground advanced below. *See Niagara Mohawk Power Corp*. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 N.R.C. 347, 357 (1975); *Commonwealth Edison Co*. (Byron Nuclear Power Station, Units 1 and 2), ALAB-793, 20 N.R.C. 1591, 1597 n.3 (1984); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-832, 23 N.R.C. 135, 141 (1986), *rev'd in part on other grounds*, CLI-87-12, 26 N.R.C. 383 (1987); *Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-573, 10 N.R.C. 775, 789 (1979); *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-691, 16 N.R.C. 897, 908 n.8 (1982) (*citing Black Fox*, ALAB-573, 10 N.R.C. at 789). Both the Staff and Susquehanna

Monatesti's Access Request merely asserted that he lived within 2 miles of SSES, and did not otherwise describe any "particularized interest that could be harmed by the potential licensing . . . action" as required by the Order.

The NRC Staff correctly determined that Mr. Monatesti's statement that he lives within two miles of SSES is not sufficient to demonstrate standing. Letter Denial at 5. To establish standing based on proximity, a petitioner has the burden of demonstrating that "the kind of action at issue, when considered in light of the radioactive sources at the plant, justifies a presumption that the licensing action 'could plausibly lead to the offsite release of radioactive fission products from . . . the . . . reactors.'" *Exelon Generation Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 N.R.C. 577, 581 (2005) (quoting *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), LBP-98-27, 48 N.R.C. 271, 277 (1998), *aff'd* CLI-99-4, 49 N.R.C. 185 (1999), *petition for review denied*, *Dienethal v. NRC*, 203 F.3d 52 (D.C. Cir. 2000)). Mr. Monatesti provided no demonstration that the indirect transfer of the SSES licenses could have offsite consequences, nor provided any traditional standing analysis.

Further, proximity standing has been repeatedly rejected in cases such as this where only an *indirect transfer of control* will occur. In the *Palisades* case, involving an application for indirect transfer of control resulting from a proposed spinoff of nuclear units, the Commission held that proximity alone does not establish standing. *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-08-19, 68 N.R.C. 251, 258 (2008). As the Commission explained,

> [The licensee's] proposed license transfer is an *indirect* one in that it does not involve transfer of either ownership or operating rights to the subject facilities.

Nuclear argued before the Board that the Board should uphold the Staff's determination. NRC Staff Answer at 10–13; Susquehanna Nuclear Response at 12–18.

> 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. And without such potential consequences, proximity-based standing cannot be demonstrated. Indeed, to date, *we have never granted proximity-based standing to a petitioner in an indirect license transfer*. . . . Petitioners' Group offers no reason for us to depart from this line of adjudicatory precedent. Nor can we think of any.

Id. at 269 (emphasis added). Similarly, in the *Millstone* indirect transfer case, involving the merger of a corporate parent, the Commission rejected proximity standing. *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 1, 2, and 3), CLI-00-18, 52 N.R.C. 129 (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 [the] corporate restructuring would affect petitioners' interests.

Id. at 132–133. [29]

Here, the NRC Staff correctly concluded that Mr. Monatesti's "assertion of [] proximity to the site, on its own, is not sufficient to demonstrate standing" because there "is no obvious potential for offsite radiological consequences from the proposed SSES indirect license transfer." Letter Denial at 5. As explained in the Application, Susquehanna Nuclear will continue to be the plant operator. Application at 11. The Shareholder Transaction that will result in the indirect transfer of control of the SSES licenses will not affect the technical qualifications of Susquehanna Nuclear. *Id.* 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 of the units. *Id.* (cover

[29] *See also Peach Bottom*, CLI-05-26, 62 N.R.C. at 581–82 (rejecting "proximity standing" in a proceeding involving a corporate merger and the consequent transfers of 50 percent non-operating interests in nuclear units, because the proposed license transfer "will result in no changes to the physical plant itself, its operating procedures, design basis accident analysis, management, or personnel" and as a result, the risks associated with the transfer were "*de minimis* and therefore justif[ied] no 'proximity standing' at all.").

letter). Consequently, there is no basis to use proximity to SSES as a basis for establishing standing.

Where a petitioner fails to justify a presumption of standing based on proximity by demonstrating an obvious potential for offsite consequences, the Commission's standing inquiry reverts to a "traditional standing" analysis of whether the petitioner has made a specific showing of injury, causation, and redressability. *Peach Bottom*, CLI-05-26, 62 N.R.C at 581.[30] Mr. Monatesti's Access Request did not contain any information indicating that he would incur an injury causally related to the indirect license transfer or redressable in this proceeding. Indeed, the Staff examined each of the concerns that Mr. Monatesti expressed in his Access Request and correctly found that none of them implicated a harm traceable to the proposed license transfer, or that otherwise falls within the interests protected by the Atomic Energy Act (the "AEA"). These assertions included:

- A claim regarding an increase in nuclear waste storage at SSES and alleged outstanding health and safety issues at the site, which the Staff found would exist "independent of the proposed license transfer" (Letter Denial at 5);

[30] Under the traditional analysis, a petitioner must show: (1) an actual or threatened, concrete and particularized injury that is (2) fairly traceable to the challenged action, and (3) likely to be redressed by a favorable decision. *See Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 N.R.C. 185, 195 (1998) (citing *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.), *cert. denied*, 515 U.S. 1159 (1995). For a facility with ongoing operations, a petitioner's challenge must show that the approval will cause a "'distinct new harm or threat' apart from the activities already licensed." *See Int'l Uranium (USA) Corp.* (Source Material Amendment License No. SUA-1358), CLI-01-18, 53 N.R.C. 27, 31 (2001), citing *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 N.R.C. 185, 192 (1999). The petitioner must show that the alleged injury is fairly traceable to the proposed activity. *Alaska Dep't of Transp. and Pub. Facilities* (Confirmatory Order Modifying License), CLI-04-26, 60 N.R.C. 399, 405, *reconsideration denied*, CLI-04-38, 60 N.R.C. 652 (2004); *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 71, 75 (1994). Further, the petitioner is required to show that "its actual or threatened injuries can be cured by some action of the tribunal." *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 N.R.C. 9, 14 (2001).

- Concerns regarding SSES's continued support of local property and recreational facilities, which the Staff found are not "among the general interests protected by the AEA" (*id.*);
- A concern regarding the availability of a sufficient and trained workforce to ensure a successful transfer of responsibilities, which the Staff found not fairly traceable to the proposed licensing action because the proposed indirect transfer would not require any change in the staffing levels at the plant, and which Mr. Monatesti failed to refute (*id.*); and
- A concern regarding the sufficiency of decommissioning funding, which the Staff found not traceable to the proposed license transfer, as decommissioning funding assurance has been provided by prepayment and is therefore unaffected by the proposed indirect transfer of control (*id.* at 5–6).

In sum, the Staff correctly found that Mr. Monatesti failed to demonstrate standing because none of Mr. Monatesti's assertions suggested any harm that is fairly traceable to the indirect license transfer.

None of Mr. Monatesti's challenges to the Letter Denial provided any basis to reverse the Staff's determination. In fact, the two October 24, 2016 e-mails constituting his challenge did not contain any discussion of the Staff's determination or identification of any error in the NRC Staff's analysis. Rather than identifying any error in the Staff's determination, Mr. Monatesti repeated and in some respects expanded on his concerns. In any event, none of the assertions in Mr. Monatesti's two October 24 e-mails demonstrated that Mr. Monatesti will suffer a concrete injury that is fairly traceable to the indirect transfer of control, distinct from activities already licensed, and redressable in this proceeding.

Mr. Monatesti's first October 24 e-mail attached a May 18, 2016 letter which set forth concerns that predate the Application and relate entirely to his unhappiness that storage of spent fuel in an ISFSI can be expanded under the general license in 10 C.F.R. § 72.210 without citizen input—a topic that predates the indirect transfer of control and will be unaffected by the transfer. In the body of his first October 24 e-mail, Mr. Monatesti asserted that the revenue stream for nuclear is under strain and repeated his assertions concerning his two-mile proximity to the plant, the ongoing plans to increase nuclear waste storage at SSES, alleged outstanding health and safety issues, and the sufficiency of decommissioning funding. All of these concerns appear to relate to the status quo. Mr. Monatesti did not explain how he would suffer any harm fairly traceable to indirect license transfer in these areas. Mr. Monatesti also claimed that, without 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." But Mr. Monatesti's lack of understanding and trust does not constitute a particularized and concrete injury, or one within the zone of interests protected by the Atomic Energy Act—i.e., radiological risk.

Mr. Monatesti's second October 24 e-mail refers to an article by a local reporter discussing Riverstone's post-merger strategy, and states that he will review (and needs additional time to review) 10K reports to understand how operating and capital expenditures may be cut to address the $340 million "shortfall" reported by Talen in 2015. But Mr. Monatesti's desire for more information concerning Riverstone's post-merger strategy hardly amounts to a showing of a particularized injury, such as any increased risk of radiological harm or other harm traceable to the proposed indirect license transfer.

The Board's decision to not decide the standing question was apparently based on its inability to reconcile "binding Commission precedent," which to date has never granted proximity based standing in an indirect license transfer proceeding, and Mr. Monatesti's "assertions about the potential impact on facility operations of financial considerations arising from an indirect transfer of control." LBP-16-12, slip op. at 11–12. Susquehanna Nuclear respectfully submits that the Board's statements here do not square with the Board's finding elsewhere in its decision that Mr. Monatesti failed to state "the impact to Susquehanna Nuclear" from his concerns regarding Talen's 2015 financials and Riverstone's prospective staffing and operational decisions. *Id.* at 14 n.67. Without any clear statement about the impacts to Susquehanna Nuclear, Mr. Monatesti has not sufficiently articulated any particularized injury traceable to the proposed indirect license transfer.

Finally, none of the information discussed in Mr. Monatesti's Appeal shows that he would likely have standing in this proceeding. Mr. Monatesti merely asserts that the issues he has raised demonstrate why he should have standing. Appeal at 5. Such a broad brush assertion fails to demonstrate the particularized injury, traceable to the proposed action and redressable in this proceeding, required to establish standing. *See supra* note 30.

IV. MR. MONATESTI'S SUNSI ACCESS REQUEST IS MOOT BECAUSE HE FAILED TO FILE A PROPER REQUEST FOR HEARING

The Commission should find that Mr. Monatesti's Access Request is moot because he failed to file a proper request for hearing on the Application, notwithstanding repeated guidance and instruction how to do so. As Susquehanna Nuclear argued before the Board, Susquehanna Nuclear Response at 9–12, Mr. Monatesti's failure to file a proper request for hearing has obviated any need for access to Susquehanna Nuclear's SUNSI, and the denial of access may be sustained on this basis (*see supra* note 28).

The SUNSI Order makes clear that the only reason a potential party to an adjudicatory proceeding may be permitted access to the SUNSI is for "Contention Preparation." 81 Fed. Reg. at 68,465. Nothing in the SUNSI Order relieved Mr. Monatesti of the obligation to properly file a hearing request by October 24. To the contrary, the target schedule provided at the end of the Order made it clear that 20 days after the Notice of Opportunity for Hearing was the "[d]eadline for submitting petition for intervention containing (i) Demonstration of standing, and (ii) all contentions whose formulation does not require access to SUNSI. . . ." *Id.* at 68,466. Thus, even if one assumed that Mr. Monatesti was contemplating filing contentions that required access to Susquehanna Nuclear's SUNSI (an assumption inconsistent with Mr. Monatesti's expressed concerns regarding decommissioning assurance, the expansion of the ISFSI, and continued support of Salem Township property and recreational facilities), Mr. Monatesti was still obligated to properly file and serve a hearing request through the E-filing system demonstrating his standing. Having failed to request a hearing through submission of a proper request that included, at a minimum, a demonstration of standing, Mr. Monatesti's Access Request is moot.

Mr. Monatesti's submittal on October 11 was not a proper hearing request for multiple reasons. First, despite being labeled as a hearing request, it was filed in a manner indicative of the notification required within ten days of intent to file a petition. The October 11 submittal was filed within the ten day period specified for this initial notification by the Notice of Opportunity for Hearing, and was submitted in the manner specified by the Notice (i.e. by email to hearing.docket@nrc.gov, rather than through the E-filing system as required for a hearing request). Further, the October 11 submittal did not include anything identified as a contention or providing the information required of contentions, as required by 10 C.F.R. § 2.309(f) and specified in the Notice of Opportunity for Hearing (or establish standing).

Indeed, the Office of the Secretary treated the submittal as a notification of intent to file a petition and SUNSI access request (*see supra* note 9), and explicitly informed Mr. Monatesti that "any request for hearing you may wish to make in the subject proceeding *must be submitted via the Electronic Information Exchange (EIE)* prior to the filing deadline stated in the Federal Register Notice, which calculates to October 24, 2016" (October 17 communication, *supra* note 10, emphasis added). Mr. Monatesti simply ignored this instruction (in addition to the instructions in the Notice of Opportunity for Hearing). Having been specifically advised by the Office of the Secretary of the manner in which a hearing request should be filed, Mr. Monatesti's *pro se* status provides no excuse for this failure. *Pro se* participants are "still expected to comply with [the NRC's] basic procedural rules. . . ." *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 N.R.C. 185, 201 (1998).

Nor should Mr. Monatesti's failure to properly file a hearing request be excused by his alleged difficulties with access to the electronic filing system (*see, e.g.*, Mr. Monatesti's November 4 email, *supra* note 22) because the time line that Mr. Monatesti provided indicates that his attempt to access the e-filing site and discovery that it was not compatible with his operating system occurred on October 25th, *the day after the deadline for hearing requests* (*see id.*, Attachment 2). Further, the Notice of Hearing provided clear instructions on how to file an exemption request allowing submittal of documents in paper format if good cause exists for not submitting them electronically. 81 Fed. Reg. at 68,465. Mr. Monatesti has simply ignored clearly stated instructions and procedures, and has never properly filed with the NRC, or served on Susquehanna Nuclear any hearing request.

Finally, even if Mr. Monatesti's October 11 submittal were accepted as a hearing request, it should be summarily denied. For the reasons previously discussed, it does not

establish Mr. Monatesti's standing. Further, it contains no admissible contentions. None of the concerns stated in that document meet the requirements for contentions set forth at 10 C.F.R. § 2.309(f). The concerns with decommissioning funding fail to address or dispute the information in the Application demonstrating compliance with the NRC's decommissioning funding requirements. The concern about Township properties and recreational facilities is outside the scope of the proceeding. Mr. Monatesti's desire to know whether a sufficient trained workforce will be available does not provide any basis for disputing the statement in the Application that there is no change in staffing associated with the Shareholder Transaction. The concern about expanding spent fuel storage and references to past safety concerns are outside the scope of the proceeding. Further, Mr. Monatesti's question concerning parent liability for decommissioning in a bankruptcy situation is in essence an impermissible challenge to the adequacy of NRC's decommissioning funding assurance rules in 10 C.F.R. § 50.75, and fails to demonstrate any genuine dispute.

Conclusion

For the foregoing reasons, the Commission should deny Mr. Monatesti's appeal and affirm the denial of his access to SUNSI.

Respectfully submitted,

/Signed Electronically By Timothy J. V. Walsh/

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Dated: December 27, 2016

Counsel for Susquehanna Nuclear, LLC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Susquehanna Nuclear's Brief in Opposition to Mr. Sabatini Monatesti's Appeal of Memorandum and Order (LBP-16-12) Affirming Denial of Access to SUNSI," dated December 27th, 2016, has been served through the E-Filing system on the participants in the above-captioned proceeding, this 27th day of December, 2016.

/Signed electronically by Timothy J. V. Walsh/

Timothy J. V. Walsh