LBP-20-02

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Dr. Sue H. Abreu
Dr. Gary S. Arnold

In the Matter of	Docket Nos. 50-289 and 50-320
EXELON GENERATION COMPANY, LLC	ASLBP No. 20-962-01-LA-BD01
(Three Mile Island Nuclear Station, Units 1 and 2)	January 23, 2020

MEMORANDUM AND ORDER
(Denying Intervention Petition and Terminating Proceeding)

This proceeding stems from a July 1, 2019 license amendment request (LAR) by Exelon Generation Company, LLC, (Exelon) to amend the 10 C.F.R. Part 50 operating license for Three Mile Island Nuclear Station, Unit 1 (TMI-1).[1] Pursuant to 10 C.F.R. § 50.90, in its LAR Exelon asks to revise the Three Mile Island Nuclear Station (TMI) site emergency plan and emergency action level scheme to reflect the permanently defueled condition of both reactors at the TMI facility.[2] Pending before the Licensing Board is the November 12, 2019 hearing request of

[1] See Letter from Michael P. Gallagher, Vice President, Exelon, to Nuclear Regulatory Commission (NRC) (July 1, 2019) (ADAMS Accession No. ML19182A182) [hereinafter LAR].

[2] See id. at 1–2. The LAR includes as attachments a more detailed description and evaluation of the proposed changes as well as the revised emergency plan and the emergency action levels and bases reflecting the defueled status of the two TMI reactors. See id. attach. 1 ([TMI] Description and Evaluation of Proposed Changes) [hereinafter LAR Changes Evaluation]; id. attach. 2 ([TMI] Permanently Defueled Emergency Plan (PDEP)) [hereinafter Defueled Emergency Plan]; id. attach. 3 ([Exelon TMI] Permanently Defueled Emergency Action Levels and Bases Document).

pro se petitioners Eric J. Epstein (Epstein) and Three Mile Island Alert, Inc., (TMIA) that sets forth two contentions challenging the Exelon LAR.[3] Both the NRC Staff and Exelon filed answers opposing the petition, asserting Petitioners lack standing and have failed to proffer an admissible contention.[4]

For the reasons set forth below, we conclude that Petitioners have failed to establish their standing or to proffer an admissible contention. Accordingly, we deny Petitioners' hearing request and terminate this proceeding.

I. BACKGROUND

A. The TMI Facility and the Exelon TMI-1 LAR

The LAR at issue in this proceeding would revise the operating license for TMI-1, one of two permanently shutdown reactors at the TMI facility, which is located on an island in the Susquehanna River in Londonderry Township, Pennsylvania. Originally owned by three subsidiaries of General Public Utilities Corp., later renamed GPU, Inc., (GPU) and operated by the GPU-created operating company GPU Nuclear, Inc., (GPUN) TMI-1 ownership and operating authority was transferred to AmerGen Energy Co., LLC, (AmerGen) in 1999,[5] which

[3] See [Epstein/TMIA] Petition to Intervene and Hearing Request (Nov. 12, 2019) at 28–49 [hereinafter Epstein/TMIA Petition]. Although the hearing petition is captioned "Eric J. Epstein, Chairman of [TMIA]'s Petition to Intervene and Hearing Request" and often refers to Mr. Epstein in a way that suggests he is the source of the concerns set forth in the petition, see, e.g., id. at 2 (stating "Mr. Epstein disputes"), given the petition also states that both Mr. Epstein and TMIA seek a hearing, see id. at 1, 52, we will refer to Mr. Epstein and TMIA collectively as "Petitioners."

[4] See NRC Staff Answer to [TMIA] Petition (Dec. 6, 2019) [hereinafter Staff Answer]; [Exelon]'s Answer Opposing [Epstein]'s and [TMIA]'s Petition to Intervene (Dec. 9, 2019) [hereinafter Exelon Answer].

[5] See [GPUN], et al.; [TMI-1]; Order Approving Transfer of License and Conforming Amendment, 64 Fed. Reg. 19,202, 19,203 (Apr. 19, 1999).

nearly a decade later was consolidated into Exelon.[6] The NRC issued a renewed operating license for TMI-1 to Exelon in October 2009.[7]

The other TMI unit, the Unit 2 reactor (TMI-2), is maintained by GPUN, which is now a wholly-owned subsidiary of FirstEnergy, Inc., (FirstEnergy) following a 2001 GPU/First Energy merger, albeit under a possession-only license because the TMI-2 reactor has been in the post-defueled monitored storage phase of the NRC's SAFSTOR process since 1993.[8] Through a service agreement with FirstEnergy, AmerGen-successor Exelon retains the emergency planning responsibilities for both TMI-1 and TMI-2. See LAR at 2.

On June 20, 2017, Exelon submitted a certification to the NRC conveying its decision to permanently cease operations at TMI-1 no later than September 30, 2019.[9] The LAR being challenged by Petitioners, one of several sought by Exelon in connection with the permanent shutdown of TMI-1, seeks to revise the site emergency plan and emergency action level

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[6] See In the Matter of [AmerGen]; [Exelon] ([TMI-1]); Order Approving Transfer of License and Conforming Amendment, 74 id. 127, 127 (Jan. 2, 2009).

[7] See [Exelon], [TMI-1]; Notice of Issuance of Renewed Facility Operating License No. DPR-50 for an Additional 20-Year Period, 74 id. 55,871, 55,871 (Oct. 29, 2009); see also [Exelon] ([TMI-1]), Docket No. 50-289, Renewed Facility License No. DPR-50 (Oct. 22, 2009) (ADAMS Accession No. ML052720274).

[8] See Letter from Gregory H. Halnon, President, GPUN, to NRC, attach. at 3 (Dec. 4, 2015) ([TMI-2] Post-Shutdown Decommissioning Activities Report (rev. 2 Dec. 2015)) (ADAMS Accession No. ML15338A222) [hereinafter TMI-2 PSDAR]; see also LAR at 2; Staff Answer at 3 n.11 (indicating post-defueling monitoring storage "is technically similar" to SAFSTOR).

SAFSTOR is a method of decommissioning in which a nuclear power facility is placed and maintained in a stable condition, with the fuel removed from the reactor vessel, so as to allow the facility to be safely stored and subsequently decontaminated to levels that permit release for unrestricted use. See Office of Nuclear Reactor Regulation (NRR), NRC, Staff Responses to Frequently Asked Questions Concerning Decommissioning of Nuclear Power Reactors, NUREG-1628, at 5 (June 2000) (ADAMS Accession No. ML003726190); SAFSTOR, NRC Library, Basic References, Glossary, https://www.nrc.gov/reading-rm/basic-ref/glossary/safstor.html (last visited Jan. 22, 2020).

[9] See Letter from J. Bradley Fewell, Senior Vice President and General Counsel, Exelon, to NRC at 1 (June 20, 2017) (ADAMS Accession No. ML17171A151).

scheme for the TMI site to reflect the cessation of operations and the defueling of TMI-1. See id. at 1–2.

Prior to submitting this LAR, Exelon sought and received approval for several other actions related to the permanent cessation of operations at TMI-1. On July 25, 2018, Exelon requested that the NRC revise the TMI-1 license and associated technical specifications to incorporate "Permanently Defueled Technical Specifications."[10] The Staff granted this request on August 29, 2019.[11] In addition, on April 5, 2019, Exelon submitted to the NRC the TMI-1 spent fuel management plan, site-specific decommissioning cost estimate, and post-shutdown decommissioning activities report (PSDAR).[12] Thereafter, on April 12, 2019, Exelon requested exemptions from 10 C.F.R. §§ 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv) to (1) permit the use of funds from the TMI-1 decommissioning trust fund for spent fuel management activities, in accordance with the TMI-1 site-specific decommissioning cost estimate; and (2) make those withdrawals without prior NRC notification.[13] The Staff granted the requested exemptions on October 17, 2019. See [Exelon]; [TMI-1], 84 Fed. Reg. 56,846, 56,846 (Oct. 23, 2019).

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[10] See Letter from Michael P. Gallagher, Vice President, Exelon, to NRC at 1 (July 25, 2018) (ADAMS Accession No. ML18206A545), as supplemented, Letter from Michael P. Gallagher, Vice President, Exelon, to NRC (Mar. 6, 2019) (ADAMS Accession No. ML19065A217).

[11] See Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 84 Fed. Reg. 50,078, 50,086 (Sept. 24, 2019).

[12] See Letter from Michael P. Gallagher, Vice President, Exelon, to NRC, attach. (Apr. 5, 2019 (Spent Fuel Management Plan) (ADAMS Accession Nos. ML19095A009); Letter from Michael P. Gallagher, Vice President, Exelon, to NRC, attach. 1 (Apr. 5, 2019) ([TMI-1] Site-Specific Decommissioning Cost Estimate) (ADAMS Accession No. ML19095A010); Letter from Michael P. Gallagher, Vice President, Exelon, to NRC, attach. (Apr. 5, 2019) ([TMI-1 PSDAR]) (ADAMS Accession No. ML19095A041).

[13] See Letter from Michael P. Gallagher, Vice President, Exelon, to NRC, attach. (Apr. 12, 2019) (Request for Exemption) (ADAMS Accession No. ML19102A085).

Citing the non-operational status of the TMI-1 and TMI-2 reactors, the LAR at issue here requests approval of a reduction in the scope of onsite and offsite emergency planning for the TMI facility proportional with the reduced risk Exelon claims is associated with both of the reactors in a permanently shutdown condition, i.e., in a SAFSTOR condition or with all spent fuel removed from the reactor and stored in the spent fuel pool. See LAR at 2. NRC approval of the LAR also would require favorable agency action on several exemption requests that were submitted in conjunction with the LAR. See id. In this regard, Exelon seeks exemptions from (1) certain standards found at 10 C.F.R. § 50.47(b) for onsite and offsite emergency response plans; (2) requirements in 10 C.F.R. § 50.47(c)(2) for plume exposure and ingestion pathway emergency planning zones for nuclear power plants; and (3) certain requirements in 10 C.F.R. Part 50, Appendix E, Section IV for the content of emergency plans.[14] Relative to both the LAR and associated exemption requests, Exelon declares that 488 days after permanent cessation of operations at TMI-1 (i.e., on or about January 30, 2021), the requested exemptions, the proposed permanently defueled emergency plan, which encompasses emergency planning for both TMI-1 and TMI-2, and the permanently defueled emergency action level scheme may be implemented at the site, thereby reducing the scope of emergency planning. See id.; see also LAR Changes Evaluation at 2, 5; Exemption Request Description at 3–4. The proposed permanently defueled emergency plan and the requested exemptions also state that, even with the reduction in the scope of emergency planning, (1) the classification of an emergency will be made within 30 minutes after the availability of indications to operators that an emergency

[14] See Letter from Michael P. Gallagher, Vice President, Exelon, to NRC at 1–2 (July 1, 2019) (ADAMS Accession No. ML19182A104) [hereinafter Exemption Request]. Included as attachments to the Exelon exemption request was a description of the requested exemptions and a zirconium fire thermal hydraulic analysis for a drained spent fuel pool. See id. attach. 1 ([TMI] Request for Exemptions from Portions of 10 CFR 50.74(b), 10 CFR 50.47(c)(2) and 10 CFR Part 50 Appendix E) [hereinafter Exemption Request Description]; id. attach. 2 ([TMI] Zirconium Fire Analysis for Drained Spent Fuel Pool) [hereinafter Exemption Request Zirconium Fire Analysis].

action level threshold has been breached; and (2) notification to State authorities will be made within 30 minutes after declaring an emergency.[15]

According to the LAR analysis supporting the proposed emergency planning changes for the TMI facility, the revisions are appropriate as a result of spent-fuel decay by the time the LAR and the associated exemptions would be implemented 488 days after TMI-1 reactor operations cease. At that point, no design-basis accident or reasonably conceivable beyond-design-basis accident will be expected to result in radioactive releases exceeding the Environmental Protection Agency's (EPA) protective action guidelines outside the site boundary.[16] See LAR Changes Evaluation at 2; see also Exemption Request Description at 6–7. Further, as this LAR analysis explains, at that 488-day juncture implementing the 30-minute emergency classification and notification times and the reduced scope of onsite and offsite emergency response plans will not pose any undue risk to public health and safety because of the reduced accident risk and the slow development of the remaining postulated accident scenarios.[17] See LAR Changes Evaluation at 2, 7; see also Exemption Request Description at 21–22.

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[15] See LAR Changes Evaluation at 2; Defueled Emergency Plan at 5, 12, 27, 38; Exemption Request Description at 20, 21–22 (providing for 30-minute notification for event classification and notification activities, as compared to 15-minute notification for these activities required for operating power reactors).

[16] A "design-basis accident" is "[a] postulated accident that a nuclear facility must be designed and built to withstand without loss to the systems, structures, and components necessary to ensure public health and safety." Design-basis accident, NRC Library, Basic References, Glossary, https://www.nrc.gov/reading-rm/basic-ref/glossary/design-basis-accident.html (last visited Jan. 22, 2020).

[17] In accord with Staff guidance, the accident scenario assessed by Exelon relative to reducing the scope of offsite emergency planning consistent with the requested exemptions was the length of the decay period that would be required so that the TMI-1 spent fuel in the spent-fuel pool would not reach the zirconium ignition temperature of 900° Celsius in fewer than 10 hours following a loss of cooling, assuming adiabatic heatup (i.e., a conservative approach that assumes no cooling and no heat transfer). See LAR Changes Evaluation at 4–7 (citing NSIR/DPR-ISG-02, Interim Staff Guidance, Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants at 9–10 (May 11, 2015) (ADAMS Accession No. ML14106A147)); see also Exemption Request Description at 3–4; Exemption Request Zirconium Fire Analysis at 8 (indicating 488 days is minimum decay time needed for TMI-1 fuel

On September 26, 2019, in accordance with 10 C.F.R. § 50.82(a)(1)(ii), Exelon certified to the NRC that it had permanently removed all fuel from TMI-1 and placed the fuel in the spent fuel pool.[18] Accordingly, the TMI-1 license no longer authorizes placement or retention of fuel in the reactor vessel or reactor operation. See TMI-1 Cessation Letter at 1 (citing 10 C.F.R. § 50.82(a)(2)).

B. This LAR Proceeding

On September 3, 2019, the NRC Staff issued a public hearing opportunity notice regarding the July 1, 2019 Exelon LAR, which was designated as a proposed "no significant hazards consideration" amendment pursuant to 10 C.F.R. § 50.92.[19] On November 12, 2019, Mr. Epstein and TMIA timely filed their intervention petition asserting that both have standing and have proffered two admissible contentions. See Epstein/TMIA Petition at 17–49. Contention 1 challenges the financial assurance/qualifications and character/integrity of Exelon and FirstEnergy. See id. at 24–25, 28–40. Contention 2, on the other hand, raises a National Environmental Policy Act (NEPA) issue, stating "that the LAR cannot be approved without an updated environmental report based on a thorough environmental assessment performed at the

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assembly with maximum heat load).

[18] See Letter from Michael P. Gallagher, Vice President, Exelon, to NRC at 1 (Sept. 26, 2019) (ADAMS Accession No. ML19269E480) [hereinafter TMI-1 Cessation Letter]. Based on this cessation date, implementation of the requested changes to the TMI facility emergency plan could be implemented on January 26, 2021.

[19] See Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 84 Fed. Reg. 47,542, 47,548 (Sept. 10, 2019) [hereinafter Hearing Notice]. Under the Commission's regulations in 10 C.F.R. §§ 50.91(a)(4), 50.92(c), that implement the provisions of AEA section 189a(2)(A), 42 U.S.C. § 2239(a)(2)(A), upon an NRC Staff no significant hazards consideration finding that a requested amendment to a 10 C.F.R. Part 50 reactor operating license or a 10 C.F.R. Part 52 reactor combined license would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety, the agency may make the requested amendment effective upon issuance despite the pendency of a hearing petition. See Hearing Notice, 84 Fed. Reg. at 47,543.

beginning of the decommissioning process . . . ." Id. at 25. Petitioners in their hearing request also make several other arguments not strictly tied to their contentions, including disputing the Staff's no significant hazards consideration analysis and finding and arguing the proposed offsite emergency planning "retreat to the [TMI site] fence line" embodied in the LAR "involve[s] a significant reduction in [the] margin of safety" so as to endanger nearby communities and leave them "underfunded and vulnerable." Id. at 2–3.

The Staff opposes granting the petition. While recognizing that both Mr. Epstein and TMIA established standing in some prior agency licensing proceedings, the Staff argues that "neither past findings of standing nor past denials of standing are determinative for future proceedings." Staff Answer at 13. The Staff maintains as well that Petitioners have failed to establish standing under the rubric of the proximity presumption, representational standing, or traditional standing. See id. at 12–18. Furthermore, the Staff asserts that both contentions are inadmissible for various reasons, including being beyond the scope of this proceeding and lacking materiality, and claims that the Petitioners' ancillary arguments not explicitly labeled as contentions are meritless.[20] See id. at 20–33.

Exelon likewise opposes the petition, declaring that "Petitioners fail to demonstrate standing to intervene in this proceeding, either as a matter of right or as a matter of discretion under 10 C.F.R. § 2.309(d) and § 2.309(e), respectively," maintaining that Petitioners failed to allege a particularized injury that could plausibly flow from the LAR or to explain why a hearing

[20] In connection with the scope of this proceeding, citing Honeywell Int'l (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 10 (2013), the Staff acknowledges that the relationship between Exelon's LAR and its exemption request is such that "the hearing rights associated with the July 1, 2019 LAR extend also to the July 1, 2019 exemption request, and the scope of this proceeding should be construed to include the July 1, 2019 exemption request." Staff Answer at 7; see Exelon Answer at 9–10 (indicating that both the LAR and the exemption request "are directly relevant to the proceeding"); see also Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 549–54 (2016) (finding within the scope of the proceeding an emergency planning exemption request that would be implemented by a requested license amendment to reflect reactor facility's permanently shutdown and defueled status).

on the LAR is necessary to protect Petitioners' interests. Exelon Answer at 2, 13–22. Further, Exelon argues that the petition should be rejected for failing to proffer an admissible contention and that Petitioners' attack on the Staff's proposed no significant hazards consideration finding is an impermissible challenge to NRC regulations and therefore outside the scope of this proceeding. See id. at 2, 3, 24–34.

By memorandum dated December 5, 2019, the Secretary of the Commission referred the petition to the Atomic Safety and Licensing Board Panel's Chief Administrative Judge. See Memorandum from Annette L. Vietti-Cook, NRC Secretary, to E. Roy Hawkens, Chief Administrative Judge (Dec. 5, 2019) [hereinafter SECY Referral Memorandum]. On December 9, 2019, the Chief Administrative Judge assigned the hearing request to this Licensing Board to rule initially on the standing and contention admissibility matters associated with the petition and, thereafter, preside at any hearing that might follow if the petition is granted. See [Exelon], Establishment of Atomic Safety and Licensing Board, 84 Fed. Reg. 67,969, 67,969–70 (Dec. 12, 2019). Following the receipt of the Staff and Exelon answers to the Epstein/TMIA petition, on December 10, 2019, the Board issued its initial prehearing order that, among other things, established December 16, 2019, as the date by which any petitioner could reply to the Staff and Exelon answers. See Licensing Board Memorandum and Order (Initial Prehearing Order) (Dec. 10, 2019) at 2 (unpublished). The Petitioners did not file a reply pleading by that date.[21] The Board issued a memorandum two days later indicating that,

[21] Petitioner Epstein did make an additional submission, however. In a December 26, 2019 e-mail directed to those on the proceeding's service list, he provided (1) an ADAMS link to a December 20, 2019 letter from the Federal Emergency Management Agency (FEMA) to the NRC Office of Nuclear Security and Incident Response (NSIR) commenting on a Staff draft paper to the Commission concerning the Exelon-requested exemptions from certain emergency planning requirements for the TMI facility, see Letter from Michael S. Casey, Director, FEMA Technological Hazards Division, to Kathryn M. Brock, Director, NSIR Division of Preparedness and Response (Dec. 20, 2019) (ADAMS Accession No. ML19360A127) [hereinafter FEMA Letter]; and (2) the statement "Please review FEMA letter regarding Emergency Plan Exemptions." E-mail from Eric Epstein to Hearing Docket and Service List (Dec. 26, 2019, 7:11 p.m. EST). In a December 27, 2019 order, the Board provided a schedule for Staff and

in accord with 10 C.F.R. § 2.309(j), the Board anticipated issuing a decision on the pending Epstein/TMIA hearing request by January 23, 2020. See Licensing Board Memorandum and Order (Information Regarding Schedule for Proceeding) (Dec. 18, 2019) at 2 (unpublished).

II. ANALYSIS

A. Standing

1. Standards for Establishing Standing

In an agency licensing proceeding, a hearing petition generally will be "construe[d] . . . in favor of the petitioner" as it seeks to demonstrate standing, while a pro se petitioner (such as Mr. Epstein and TMIA) will not be held "to the same 'standards of clarity and precision to which a lawyer might reasonably be expected to adhere.'"[22] At the same time, whether pro se or otherwise, the petitioner bears the burden of establishing its standing. See Turkey Point, CLI-15-25, 82 NRC at 394. To establish standing, a request for a hearing/petition for leave to intervene must include:

> (i) The name, address and telephone number of the requestor or petitioner;
> (ii) The nature of the requestor's/petitioner's right under the [AEA] to be made a party to the proceeding;
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1)(i)–(iv). Ultimately, to establish standing, the Commission "insist[s] that an intervenor have some direct interest in the outcome of a proceeding." Exelon Generation

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Exelon responses to this e-mail, see Licensing Board Memorandum and Order (Establishing Schedule for Responses to Hearing Petitioner's E-Mail) (Dec. 27, 2019) at 2 (unpublished) [hereinafter Board E-mail Order], but neither filed an answer.

[22] Fla. Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-15-25, 82 NRC 389, 394 (2015) (quoting Ga. Inst. of Tech. (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995), and Fla. Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-15-13, 81 NRC 456, 468, aff'd, CLI-15-25, 82 NRC 389, 394 (2015)).

Co., LLC (Peach Bottom Atomic Power Station, Units 2 & 3), CLI-05-26, 62 NRC 577, 579 (2005).

In practice, depending on the proceeding, a petitioner may use one of several approaches to establish standing, such as traditional judicial standing, the proximity presumption, and organizational or representational standing. Further, as Petitioners referenced in their hearing request, in some instances a licensing board may grant discretionary standing. See Epstein/TMIA Petition at 23 (citing 10 C.F.R. § 2.309(e)).

A petitioner may establish traditional standing using contemporaneous judicial standing concepts by showing an injury-in-fact within the zones of interest protected by the statutes that govern agency proceedings (e.g., the Atomic Energy Act of 1954 (AEA) and NEPA), causation, and redressability. See Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996). Specifically, the petitioner must demonstrate "a 'concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision,' where the injury is 'to an interest arguably within the zone of interests protected by the governing statute.'"[23] In addition, "a petitioner seeking to intervene in a license amendment proceeding must assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility."[24] This, in turn, requires that a petitioner must establish "a plausible nexus between the challenged license amendments and [petitioner's] asserted harm." Zion, LBP-98-27, 48 NRC at 277. Further, in making this showing

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[23] Calvert Cliffs 3 Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009) (quoting Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)).

[24] Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 188 (1999) (citations omitted), aff'g, LBP-98-27, 48 NRC 271 (1998), petition for review denied sub nom., Dienethal v. NRC, 203 F.3d 52 (D.C. Cir. 2000) (unpublished table decision); see also Fla. Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329–30 (1989) ("Absent situations involving such obvious potential for offsite consequences, a petitioner must allege some specific 'injury in fact' that will result from the action taken . . . .").

a petitioner must "indicate how the particular license amendments at issue would increase the risk of an offsite release of radioactive fission products." Zion, CLI-99-4, 49 NRC at 189.

Conversely, the proximity presumption, which has generally been applied in proceedings for reactor "construction permits, operating licenses, or significant amendments thereto such as the expansion of the capacity of a spent fuel pool," relieves a petitioner of the need to satisfy these traditional elements of standing. St. Lucie, CLI-89-21, 30 NRC at 329 (citation omitted). Rather, the proximity presumption permits a petitioner to establish standing based on proximity to the geographic zone of potential harm from a nuclear reactor. Specifically, a petitioner may use the proximity presumption if the petitioner lives,[25] has a significant property interest,[26] or otherwise has frequent contacts[27] within approximately 50 miles of a nuclear reactor. A petitioner must specify contacts with the affected area in the petition,[28] and the failure to include such crucial information constitutes grounds for denying standing.[29]

The Commission, however, does not automatically grant standing to a petitioner residing within a 50-mile radius of a reactor facility. Rather, in instances other than proceedings for the issuance or renewal of a reactor construction permit/operating license under 10 C.F.R. Part 50 or an early site permit/combined license under 10 C.F.R. Part 52, the proximity presumption is

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[25] See Calvert Cliffs, CLI-09-20, 70 NRC at 915–16; St. Lucie, CLI-89-21, 30 NRC at 329.

[26] See USEC, Inc. (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 314 (2005) (granting standing based on petitioner's holding title to house near nuclear facility).

[27] See Perry, CLI-93-21, 38 NRC at 95.

[28] See Consumers Energy Co. (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 410 (2007) (stating the Commission requires "fact-specific standing allegations, not conclusory assertions," such as "general assertions of proximity" to establish the proximity presumption); see also Peach Bottom, CLI-05-26, 62 NRC at 581.

[29] See PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010); Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

determined on a "case-by-case basis," Peach Bottom, CLI-05-26, 62 NRC at 580, considering the petitioner's location and "the nature of the proposed action and the significance of the radioactive source," id. at 580–81 (quoting Georgia Tech, CLI-95-12, 42 NRC at 116–17). Notably, in license amendment cases the proximity presumption applies "only if the challenged license amendments present an obvious potential for offsite [radiological] consequences," Zion, LBP-98-27, 48 NRC at 277 (quotation and citation omitted), which, in turn, depends on the "kind of action at issue, when considered in light of the radioactive sources at the plant," Peach Bottom, CLI-05-26, 62 NRC at 581.

Standing also can be shown by an organization such as TMIA by establishing either a cognizable injury to its organizational interests, i.e., organizational standing, or, alternatively, harm to the interests of its members, i.e., representational standing. See Strata Energy, Inc. (Ross In Situ Recovery Uranium Project), LBP-12-3, 75 NRC 164, 177, aff'd, CLI-12-12, 75 NRC 603 (2012). And to establish representational standing, an organization must demonstrate that "(1) its members would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires an individual member to participate in the organization's lawsuit." Private Fuel Storage, CLI-99-10, 49 NRC at 323 (citing Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)). Moreover, in this context, an organization must demonstrate "how at least one of its members may be affected by the licensing action, must identify the member, and must show that the organization is authorized to represent that member." Int'l Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 250 (2001).

Under the agency's rules of practice, a petitioner can request that the presiding officer consider granting discretionary standing when the petitioner cannot establish its standing as of right under one of the standards above. Such a request can be considered, however, only if another petitioner "has established standing and at least one contention has been admitted so

that a hearing will be held." 10 C.F.R. § 2.309(e). Discretionary standing thus is not an independent basis to establish standing.

Finally, a petitioner generally "must make a fresh standing demonstration in each proceeding in which intervention is sought because a petitioner's circumstances may change from one proceeding to the next,"[30] although a narrow exception may exist for a petitioner who establishes standing in one case to employ that standing determination in another proceeding that is "merely another round in a continuing controversy."[31]

With these legal precepts in mind, we turn to the question of whether Mr. Epstein and/or TMIA has demonstrated standing to intervene in this proceeding.

2. Petitioners' Standing

a. Eric J. Epstein

In seeking to establish his standing, Mr. Epstein argues that he has (1) "personal standing" as "an area resident with a vested interest in Three Mile Island dating back to 1982"; [32] (2) standing as chairman of TMIA; and (3) standing as a Board Director of the Central Dauphin School District, which is asserted to be within ten miles of the TMI facility. Epstein/TMIA Petition at 20, 27. In addition, Mr. Epstein claims that his participation in prior NRC proceedings "dating

[30] Bell Bend, CLI-10-7, 71 NRC at 138 & n.26 (citing Texas Utilities Elec. Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 162–63 (1993)) ("[T]he Board correctly concluded that Mr. Epstein could not rely on other boards' findings of standing in the two prior proceedings concerning the Susquehanna facility.").

[31] Consumers Power Co. (Midland Plant, Units 1 & 2), CLI-74-3, 7 AEC 7, 12 (1974).

[32] Mr. Epstein provides an address in the hearing petition, see Epstein/TMIA Petition at 52, but makes no specific showing regarding where he lives relative to the TMI facility, although in a 2005 proceeding he indicated that he "lives and operates a business 12 miles from the TMI nuclear facility," AmerGen Energy Co., LLC (Three Mile Island Nuclear Station, Unit 1), CLI-05-25, 62 NRC 572, 574 (2005).

back to the 1970[s]," including a TMI-1 license transfer proceeding, grants him standing in this matter.[33]

Initially, the Board notes that Mr. Epstein's prior participation in other NRC proceedings does not, a priori, grant him standing in this case. Even disregarding the fact that the prior TMI-1 proceeding concerning facility ownership cited by Mr. Epstein as establishing his right to intervene as an individual resulted in a determination that he lacked standing,[34] that license transfer proceeding clearly is distinct from this case, which involves an LAR relating to the cessation of reactor operations at TMI-1.[35] Accordingly, Mr. Epstein must to establish his standing to participate in this specific matter.

To accomplish this end, Mr. Epstein seeks to invoke the proximity presumption, see Epstein/TMIA Petition at 20, 27, but his showing in this regard is unsuccessful as well. Putting aside the question of whether his various assertions about the nature of his interests and contacts relative to the TMI facility are cognizable as "proximity" elements sufficient to establish his standing,[36] he has not made any effort in the context of this LAR proceeding to show there is an "obvious potential for offsite radiological consequences" arising from the proposed licensing action. Certainly, he has not made any attempt to distinguish this case from the previously

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[33] Epstein/TMIA Petition at 23; see id. at 18 ("The NRC has consistently found that Eric Epstein and TMI-Alert had standing in earlier NRC proceedings dating [back to] Restart of TMI-1 in 1980 through License Transfer of Unit-1 from AmerGen to Exelon in 2009.").

[34] See id. at 18 (citing TMI-1, CLI-05-25, 62 NRC at 573–74); TMI-1, CLI-05-25, 62 NRC at 574–76 (concluding Mr. Epstein lacks standing).

[35] By the same token, although Mr. Epstein references his participation as chairman of TMIA and the EFMR Monitoring Group in negotiating various agreements with TMI facility owners regarding citizen radiation monitoring and other matters, see Epstein/TMIA Petition at 19–20, he has not demonstrated these activities are connected to this LAR proceeding by identifying any harm to his interests relative to these groups.

[36] See Bell Bend, CLI-10-7, 71 NRC at 140 ("Mr. Epstein's additional claim that he is on the board of directors of two organizations with interests within 50 miles of the site is likewise insufficiently specific to articulate the requisite pattern of regular contacts with the area.").

referenced Zion proceeding. See supra note 24. There, in making a standing determination in the context of a license amendment proceeding to revise a permanently shutdown reactor facility's technical specifications regarding such items as shift staffing numbers and composition, the Commission held that "given the shutdown and defueled status of the units, the license amendments do not on their face present any 'obvious' potential of offsite radiological consequences" so as to support the invocation of the proximity presumption. Zion, CLI-99-4, 49 NRC at 191.

As was the case in Zion, both TMI-1 and TMI-2 are permanently shut down and defueled. Ninety-nine percent of the TMI-2 spent-fuel assemblies and damaged core material already have been removed from the TMI site and are being stored by the Department of Energy. See TMI-2 PSDAR at 5. Further, based on an analysis of spent-fuel decay, the TMI-1 LAR indicates that in this permanently defueled condition, 488 days after permanent shutdown and defueling the requested amendment can be implemented. According to the LAR, at that time, "the number and severity of potential radiological accidents is significantly less than when the plant is operating," such that "the offsite radiological consequences of accidents possible at TMI are substantially lower" and no design basis accident is expected that would result in offsite releases exceeding EPA's protective action guidelines. LAR Changes Evaluation at 2, 4–7; see Exemption Request Description at 2–4. Mr. Epstein has not provided a credible showing of any offsite releases in the face of this LAR analysis. Accordingly, consistent with the Commission's Zion decision, we find that Mr. Epstein has not demonstrated that the LAR, if granted, would pose any obvious potential for offsite radiological consequences at TMI and so has failed to establish proximity presumption standing.

Because the proximity presumption does not apply, our analysis turns next to a traditional standing inquiry and whether Mr. Epstein has demonstrated "an injury-in-fact associated with the challenged license amendment." Zion, CLI-99-4, 49 NRC at 188. Yet his traditional standing arguments run afoul of the same difficulties that befell him in the Peach

Bottom proceeding. Peach Bottom concerned a license transfer request pursuant to 10 C.F.R. § 50.80 in which Mr. Epstein wished to intervene due to "his particular interest in the Peach Bottom facility." Peach Bottom, CLI-05-26, 62 NRC at 580. The Commission found that Mr. Epstein failed adequately to address the standing requirement "that the proposed [licensing action] would injure his financial, property, or other interests." Id. at 579 (citing 10 C.F.R. § 2.309(d)). According to the Commission, Mr. Epstein's showing of past involvement at the facility, "both personal and through organizations," "d[id] not demonstrate injury" because a "mere intellectual or academic interest in a facility or proceeding is insufficient, in and of itself, to demonstrate standing."[37] Id. at 579, 580. For essentially the same reasons outlined in Peach Bottom, Mr. Epstein has failed to establish an injury-in-fact stemming from the LAR at issue in this proceeding.

No more successful are Mr. Epstein's standing assertions based on a purported interest in avoiding the "risk if there is a shortfall in the Decommissioning Fund that prevents the site from being fully decontaminated and restored" and a related concern about whether there is "financial assurance" that evacuation plans will be executed if required. Epstein/TMIA Petition at 21–22. These concerns amount to the type of "general objection[s]" that are not "associated

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[37] In making that finding, the Commission declared:

> Mr. Epstein never squarely addresses this ''injury'' requirement. Rather, he merely points to his involvement — both personal and through organizations — in numerous activities related to Peach Bottom. Specifically, Mr. Epstein points to his leadership roles in two citizen groups that monitor Peach Bottom and other plants for safety and radiation levels, his participation in negotiations regarding mergers of companies with a financial interest in Peach Bottom, his participation in negotiations involving the decommissioning tariff for Peach Bottom and other nuclear facilities, his roles as publisher and researcher of documents addressing nuclear and electric issues, and finally his status as an intervenor before both this Commission and the Pennsylvania Public Utility Commission on nuclear and electric issues.

Peach Bottom, CLI-05-26, 62 NRC at 579–80.

with the challenged license amendment" and so are insufficient to establish standing. Zion, CLI-99-4, 49 NRC at 188. Here, Exelon seeks to alter emergency planning measures by reducing the scope of offsite and onsite emergency planning commensurate with the permanently defueled condition of TMI-1 (as well as TMI-2). See LAR at 2. There is nothing to suggest that such a change negatively implicates decommissioning funding, countering any assertion of a particularized injury showing a "plausible nexus" to the LAR. Zion, LBP-98-27, 48 NRC at 277.

Mr. Epstein thus has failed to establish his standing as of right to intervene in the LAR proceeding.

b. Three Mile Island Alert, Inc.

Although TMIA does not claim organizational standing, TMIA does assert it is entitled to representational standing because it represents members who "live within the 10-mile geographical zone that might be affected by a release of fission products into the environment during or after decommissioning." Epstein/TMIA Petition at 20. TMIA further states that its members' interests in the LAR extend to "all aspects of TMI's radiological decommissioning, spent nuclear fuel management, and site restoration." Id. at 21 (citation omitted). Therefore, TMIA declares that it "is entitled to the presumption of injury-in-fact for persons residing within that zone." Id. at 20. In support of these claims, TMIA submitted two affidavits from members opposed to the LAR. See id., app. A (Affidavits). Both affidavits state the individuals are TMIA members who reside within ten miles of TMI, authorize TMIA to advocate on their behalf in this proceeding, and oppose the LAR. See id.

For the same reasons we rejected Mr. Epstein's claims of standing, we are unable to accept TMIA's declarations as adequate. TMIA failed to satisfy the first requirement of representational standing, namely, that "its members would otherwise have standing to sue in their own right." Private Fuel Storage, CLI-99-10, 49 NRC at 323. The affidavits fail to show any obvious potential for offsite radiological consequences, fail to allege a particularized

injury-in-fact stemming from the LAR, and otherwise fail to demonstrate "some scenario suggesting how th[is] particular [LAR] would result in a distinct new harm or threat to" these members. Zion, CLI-99-4, 49 NRC at 191–92. Because these TMIA members failed to establish standing in their own right, TMIA cannot claim representational standing on their behalf.

In sum, we conclude that neither Mr. Epstein nor TMIA established standing as of right to intervene in this proceeding. And as the only petitioners, discretionary standing under 10 C.F.R § 2.309(e) is not available here.

B. Contention Admissibility

While Petitioners' lack of standing alone requires dismissal of their petition, for the sake of completeness we also consider the admissibility of their proposed contentions.

1. Contention Admissibility Standards

The contention admissibility standards are set forth in 10 C.F.R. § 2.309(f)(1). For a proposed contention to be admitted for litigation, it must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
> (ii) Provide a brief explanation of the basis for the contention;
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;
> (vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief . . . .

10 C.F.R. § 2.309(f)(1)(i)–(vi). These six criteria aim to "focus litigation on concrete issues and result in a clearer and more focused record for decision." Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) [hereinafter 2004 Part 2 Changes]. The petitioner bears the burden to satisfy each of the criteria,[38] and a failure to comply with any of the requirements constitutes grounds for rejecting a proposed contention.[39] And with regard to a pro se petitioner such as TMIA or Mr. Epstein, while the Commission has stated that "[a] board may consider the readily apparent legal implications of a pro se petitioner's arguments, even if not expressly stated in the petition," it also has indicated that this "authority is limited in that the petitioner—not the board—must provide the information required to satisfy our contention admissibility standards." NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-18-4, 87 NRC 89, 96–97 (2018) (quotations and citations omitted).

2. Petitioners' Contentions

a. Contention 1

Petitioners' Contention 1 states:

> Exelon's LAR does not provide financial assurances. It does not demonstrate that either Exelon or FirstEnergy are fiscally responsible, or that either have access to adequate funds for decommissioning[.] Neither does the LAR address the confused management organization, or where resources will be derived to deal with environmental impacts that would place the public health, safety, and the environment at risk.

Epstein/TMIA Petition at 28. In support of this "financial assurance" contention, Petitioners argue the LAR "do[es] not ensure that adequate funds for decommissioning will be available" and "[p]rovides [n]o [a]ssurance that TMI-1 and TMI-2 [h]ave the [f]unds [n]ecessary to

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[38] See Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) ("[I]t is Petitioners' responsibility, not the Board's, to formulate contentions and to provide 'the necessary information to satisfy the basis requirement' for admission.") (quoting Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 22 (1998)).

[39] See 2004 Part 2 Changes, 69 Fed. Reg. at 2221; see also Private Fuel Storage, CLI-99-10, 49 NRC at 325.

[d]ecommission the [TMI independent spent fuel storage installation]." Id. at 33, 40. Petitioners also claim that FirstEnergy's current bankruptcy proceeding must be resolved before the NRC can approve the LAR, see id. at 16, and state that "NRC approval of the [LAR] would effectively approve the PSDAR," id. at 31. In addition, the Petitioners express concern about the use of the TMI decommissioning trust fund for spent fuel management activities and raise arguments regarding corporate management, the potential for spent fuel accidents, the challenges of high-burnup fuel, and prior radiological releases. See id. at 34–40.

As we outline below, Contention 1 is inadmissible because, at a minimum, the matters it raises are beyond the scope of this proceeding, and so this issue statement fails to fulfill the section 2.309(f)(1)(iii) element of contention admissibility.

The hearing notice generally determines the scope of the hearing and may include any health, safety or environmental issues "fairly raised" by the proposed licensing action.[40] In this instance, as the September 2019 hearing notice makes clear, the scope of the proceeding is defined by the LAR's proposal to "revise the site emergency plan and [e]mergency [a]ction [l]evel scheme for the permanently defueled condition [of TMI-1 and TMI-2]." Hearing Notice, 84 Fed. Reg. at 47,548. Contention 1 seeks to redirect the focus of this proceeding to Exelon's April 12, 2019 exemption request to use a portion of the decommissioning trust fund for spent fuel management activities,[41] which was approved by the NRC Staff on October 16, 2019.[42] The scope of this proceeding, however, is limited to the LAR- and exemption-request-identified

[40] Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-616, 12 NRC 419, 426 (1980); see Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 1), CLI-81-25, 14 NRC 616, 624 (1981) ("[T]he scope of any hearing should include the proposed [reactor decommissioning] license amendments, and any health, safety or environmental issues fairly raised by them.").

[41] See Epstein/TMIA Petition at 33 (citing id., app. B ([TMIA's] Opposition to Exelon's Request for Exemptions Relating to [TMI-1]'s Decommissioning Trust Funds)).

[42] See [Exelon]; [TMI-1]; Exemptions; Issuance, 84 Fed. Reg. 56,846 (Oct. 23, 2019).

modifications to emergency planning procedures proposed by Exelon to reflect the permanently shutdown and defueled status of TMI-1 and TMI-2.

Likewise beyond the scope of the proceeding are Petitioners' additional arguments concerning corporate structure, high-burnup fuel, potential spent-fuel accidents, and prior radiological releases, which assert generally that these matters raise decommissioning financial assurance issues. See Epstein/TMIA Petition at 34–40. None of these issues are discussed in, or are otherwise necessary components of, the LAR, as is apparent from the Exelon analysis provided in support of the LAR.[43] See LAR Changes Evaluation at 2; see also supra section I.A.

Petitioners' arguments concerning the "character and integrity" of Exelon and FirstEnergy are similarly beyond the scope of the proceeding. See Epstein/TMIA Petition at 24–25. At the outset, we emphasize that FirstEnergy is not the applicant nor is it a participant in this matter. FirstEnergy, as the corporate owner of TMI-2, entered into a service agreement with Exelon granting Exelon authority over emergency preparedness for TMI-2. See LAR at 2; LAR Changes Evaluation at 2; Defueled Emergency Plan at 1. Therefore, any references to the actions or inactions of FirstEnergy are beyond the scope of this proceeding.[44] Further regarding the "character and integrity" of Exelon, the Commission has emphasized that every agency licensing action does not "throw[] open an opportunity to engage in a free-ranging inquiry into the 'character' of the licensee." Ga. Power Co. (Vogtle Elec. Generating Plant, Units 1 & 2),

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[43] Although Petitioners do postulate various spent-fuel pool-related accidents, see Epstein/TMIA Petition at 35–37, 39, to the degree these claims might be seen as challenging the LAR's technical basis, they fail to comply with the requirements of 10 C.F.R. § 2.309(f)(1)(v), (vi), as lacking support sufficient to establish the basis for an admissible contention.

[44] Petitioners make several arguments regarding FirstEnergy, such as claiming the LAR "usurps" FirstEnergy's license. Epstein/TMIA Petition at 7. We have been presented with nothing to suggest that the LAR does any such thing. Because each reference to an issue with FirstEnergy is beyond the scope of this proceeding, it is not necessary to address each FirstEnergy-related point. See id. at 7, 9, 13, 14, 15, 16.

CLI-93-16, 38 NRC 25, 32 (1993). Instead, for such an inquiry to be warranted, there must be some "direct and obvious relationship" between the licensing action and the potential character issues.[45] Nothing referenced by Petitioners provides a reasonable basis to suggest the character and integrity of Exelon is relevant to the technical issue of the alteration of emergency plans at a permanently shutdown reactor.[46]

In addition, Petitioners have attempted to mischaracterize the LAR as a license transfer proceeding and thereby make that a basis for this contention. See Epstein/TMIA Petition at 25. The LAR, however, only seeks an alteration of post-shutdown emergency planning procedures for the TMI site. Nor is there any validity to Petitioners' assertions that the LAR would "effectively approve the PSDAR." Id. at 31. As was noted above, the NRC Staff received PSDARs for TMI-1 and TMI-2, but not as part of this LAR. See supra notes 8 & 12. Moreover, the possibility of a surrogate approval of the PSDARs through this LAR is not a matter that requires any consideration in this proceeding. While a licensee must submit a PSDAR to the NRC and cannot perform major decommissioning activities until 90 days after a PSDAR is submitted, a PSDAR is not subject to NRC approval.[47] For those reasons, Petitioners' arguments related to the TMI PSDARs are beyond the scope of this proceeding.

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[45] Exelon Generation Co., LLC (Oyster Creek Nuclear Generating Station), CLI-19-6, 89 NRC 465, 477 & n.62 (2019) (quoting Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 365–66 (2001)); Zion, CLI-99-4, 49 NRC at 189 (quoting Vogtle, CLI-93-16, 38 NRC at 32).

[46] See Zion, CLI-99-4, 49 NRC at 190 (indicating post-shutdown technical specification changes regarding technical, administrative, and crew composition changes have no bearing on overall management structure, personnel, or culture and thus do not implicate management character or integrity).

[47] See 10 C.F.R. § 50.82(a)(5). The NRC Staff does, however, inspect sites in decommissioning to ensure that decommissioning activities are conducted in accordance with applicable regulations and licensee commitments, including the PSDAR. See NRR, NRC, Inspection Manual Chapter 2561, Decommissioning Power Reactor Inspection Program at 3, 8, 9–10, 13, 15 (Mar. 6, 2018) (ADAMS Accession No. ML17348A400); see also Oyster Creek, CLI-19-6, 89 NRC at 476 (indicating that the NRC "performs onsite inspections of decommissioning activities").

In sum, Contention 1 is inadmissible because it is beyond the scope of this proceeding and so fails to fulfill the requirement of 10 C.F.R. § 2.309(f)(1)(iii).

b. Contention 2

Petitioners' Contention 2 provides:

> The License Amendment Request Does Not Include the Environmental Report Required by 10 [C.F.R. §] 51.53(d), and has Not Undergone the Environmental Review Required by the National Environmental Policy Act.

Epstein/TMIA Petition at 40. In support of this issue statement, Petitioners contend that "[e]ven if the proposed [LAR] might not have any environmental impacts, the possibility of significant environmental impacts precludes a FONSI [(i.e., finding of no significant impact)] and triggers the need for an Environmental Impact Statement." Id. at 42. As backing for this claim, Petitioners cite to NEPA, the Council on Environmental Quality's NEPA-implementation regulations at 40 C.F.R. Part 1502, and several federal cases. See id. at 40–46. Petitioners also declare that the potential for severe storms, flooding, spills into the Susquehanna River, and potential accidents warrant further NEPA analysis. See id. at 47–52.

Contention 2 is inadmissible because, at a minimum, it fails to "show that a genuine dispute exists with the [LAR] on a material issue of law or fact" and fails to "include references to specific portions of the [LAR]." 10 C.F.R. § 2.309(f)(1)(vi).

The LAR states that an environmental assessment is not required for this type of license amendment, citing 10 C.F.R. § 51.22(b). See LAR Changes Evaluation at 13. That provision of NRC's 10 C.F.R. Part 51 NEPA-implementing regulations declares that absent "special circumstances," an environmental assessment or environmental impact statement "is not required for any action within a category of actions included in the list of categorical exclusions set out in [10 C.F.R. § 51.22(c)]." 10 C.F.R. § 51.22(b). In supporting a categorical exclusion, the LAR discusses section 51.22(c)(9), see LAR Changes Evaluation at 13, which excludes license amendments from the environmental review requirement if three specified criteria are satisfied:

> (i) The amendment or exemption involves no significant hazards consideration;
> (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and
> (iii) There is no significant increase in individual or cumulative occupational radiation exposure.

10 C.F.R. § 51.22(c)(9)(i)–(iii). So too, the exemption request invokes section 51.22(c)(25) as justifying a categorical exclusion. See Exemption Request Description at 55–57. In addition to the three criteria specified above, that provision also requires that:

> (iv) There is no significant construction impact;
> (v) There is no significant increase in the potential for or consequences from radiological accidents; and
> (vi) The requirements from which an exemption is sought involve:
> . . . .
> (I) Other requirements of an administrative, managerial, or organizational nature.

10 C.F.R. § 51.22(c)(25)(iv)–(v), (vi)(I). In support of both the LAR and the exemption request, after analyzing the applicable requirements in 10 C.F.R. § 51.22(c)(9), (25), Exelon concluded that "no environmental impact statement or environmental assessment need be prepared in connection with" issuance of the LAR or the exemption proposal. LAR Changes Evaluation at 13; Exemption Request Description at 55–57; see also Staff Answer at 28–29.

NRC case law recognizes that a petitioner may challenge the invocation of a categorical exclusion either by showing "the existence of 'special circumstances'" or by showing "that the license amendment would result in increased offsite releases of effluents or increased individual or cumulative occupational radiation exposure." Entergy Nuclear Operations, Inc. (Indian Point, Unit 2), CLI-16-5, 83 NRC 131, 144 (2016). Here, Petitioners "did not avail [themselves] of these opportunities." Id. at 145. Indeed, Petitioners did not even acknowledge Exelon's analysis of the matter, thus failing to fulfill their "'ironclad obligation' to review the [LAR]

thoroughly and to base their challenges on its contents," as required by 10 C.F.R. § 2.309(f)(1)(vi).[48]

Instead, in support of Contention 2 Petitioners allege other potential environmental impacts on the TMI facility that they claim have not been assessed in prior TMI environmental impact statements. For instance, Petitioners state that "[d]ue to the topography of the [TMI] site, contaminants will leak into the Susquehanna River," and declare that the area is prone to flooding, which "can result in loss of offsite power and potential damage to nuclear generating stations," and "can facilitate the dispersion of radioactive material to the environment." Epstein/TMIA Petition at 46–48. Yet, in outlining these concerns, Petitioners fail to challenge the LAR's categorical exclusion either by seeking to establish "special circumstances" or by controverting the section 51.22(c)(9) and (25) factors as analyzed by Exelon. See Indian Point, CLI-16-5, 83 NRC at 144–45. This likewise is fatal to the admissibility of their Contention 2.

In sum, Contention 2 is inadmissible because it fails to "show that a genuine dispute exists with the [LAR] on a material issue of law or fact" and fails to "include references to specific portions of the [LAR,]" contrary to the contention pleading requirements set forth in 10 C.F.R. § 2.309(f)(1)(vi).[49]

3. Additional Arguments

Although they do not clearly fall within the ambit of either of the two proposed contentions, Petitioners made several additional arguments generally related to the TMI

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[48] NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 312 (2012) (citation omitted); see Oyster Creek, CLI-19-6, 89 NRC at 479–80 (concluding contention asserting further NEPA analysis is needed for a decommissioning-related license transfer application is inadmissible as failing to state a genuine material dispute because of petitioner's failure to address license application section referencing and relying on categorical exclusion).

[49] With respect to the various federal court cases cited by Petitioners, we agree with the NRC Staff that those authorities are not relevant to the admissibility of Contention 2. See Staff Answer at 27 & n.177.

facility.[50] While we do not require technical perfection in pleadings,[51] particularly in the case of a pro se petitioner,[52] in addressing a few of the more noteworthy arguments below we do so with the understanding that to be litigable any concerns must meet the 10 C.F.R. § 2.309(f)(1) requirements for admissible contentions.

Petitioners first assert that the permanently defueled emergency plan does not account for TMI's "unique status" as an "isolated island with limited access" that is "further exasperated by frequent ice jams"; that TMI lies in proximity to an international airport, tourist attractions, Amish communities, and child care, memory care, and non-ambulatory facilities; and that TMI historically has had issues with communication failures and blizzard-related problems. Epstein/TMIA Petition at 4, 47; id. ex. 3, at i, ii (Critique of [LAR]). But these are mere allegations for which Petitioners fail to provide support with facts or expert opinions, to say nothing of relevant regulations or case law. Consequently, these assertions are inadmissible as contention material pursuant to 10 C.F.R. § 2.309(f)(1)(v), (vi).

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[50] In this regard, relative to both contentions, Petitioners make liberal use of "cross-referencing" to point the Board toward lengthy attachments, information on internet websites, and cited (but not provided) reports that they assert will support their contentions. See, e.g., Epstein/TMIA Petition at 32, 34–35, 37, 39, 48, 50. As the Commission has recognized, directing a licensing board to an essentially undifferentiated mass of material with the claim that it contains relevant information will not fulfill the contention admissibility standards of section 2.309(f)(1). See USEC Inc. (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 457 (2006) ("It is simply insufficient, for example, for a petitioner to point to an Internet Web site or article and expect the Board on its own to discern what particular issue a petitioner is raising, including what section of the application, if any, is being challenged as deficient and why. A contention must make clear why cited references provide a basis for a contention." (footnote omitted)).

[51] See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-3, 53 NRC 84, 99 (2001) (citing Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), ALAB-549, 9 NRC 644, 649 (1979)).

[52] See Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 354 (1999).

Petitioners also dispute the NRC Staff's proposed no significant hazards consideration finding for the LAR, arguing the Staff performed a "cookie cutter" analysis that "was fatally flawed, limited in scope, and produced technically deficient conclusions." Epstein/TMIA Petition at 5, 7. Based on well-established Commission precedent,[53] however, Petitioners' assertion is beyond the scope of the proceeding, in contravention of 10 C.F.R. § 2.309(f)(1)(iii), and is an impermissible challenge to NRC regulations under the provisions of 10 C.F.R. § 2.335.

Thus, Petitioners' other arguments likewise are unavailing as admissible contentions.[54]

III. CONCLUSION

Petitioners' hearing request in this license amendment proceeding expresses many concerns about the ongoing decommissioning process for the TMI facility. Nonetheless, both the support they provide for their standing to raise those concerns and the concerns themselves

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[53] See NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), CLI-19-7, 90 NRC 1, 8–9 (2019) (declaring that petitioner's request to review a Staff no significant hazards consideration finding "is inconsistent with 10 C.F.R. § 50.58(b)(6), which states that '[n]o petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination.'"); Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), CLI-01-7, 53 NRC 113, 118 (2001) ("Our regulations provide that '[n]o petition or other request for review of or hearing on the staff's [no] significant hazards consideration determination will be entertained by the Commission.' . . . The regulations are quite clear in this regard.") (quoting 10 C.F.R. § 50.58(b)(6)); see also SECY Referral Memorandum at 1 (stating that in as much as "no petition or other request for review of or hearing on the staff's no significant hazards consideration determination will be entertained by the Commission," the referral memorandum "is not to be construed as reflecting a determination that Mr. Epstein is entitled to a review of, or hearing on, the staff's no significant hazards consideration determination.").

[54] Putting aside the issue of Mr. Epstein's procedurally problematic use of e-mail rather than the agency's E-Filing system to forward the December 20, 2019 FEMA letter for Board consideration, see Board E-mail Order at 2 n.*, we also consider beyond the scope of this proceeding his request that the Board "review" the letter. A licensing board's authority in a proceeding such as this is not to review generalized concerns raised by a petitioner, but to develop an adequate adjudicatory record regarding, and reach a considered determination about, relevant issues presented in the context of any admissible contention, which Mr. Epstein's e-mail (and its contents) clearly is not.

are wholly lacking as a basis for granting their hearing petition. Accordingly, their hearing request must be denied.

For the foregoing reasons, it is this twenty-third day of January 2020, ORDERED, that:

1. The November 12, 2019 hearing request of petitioners Eric J. Epstein and TMIA is denied and this proceeding is terminated.

2. In accordance with the provisions of 10 C.F.R. § 2.311, as this memorandum and order rules upon an intervention petition, any appeal to the Commission from this memorandum and order must be taken within 25 days after this issuance is served.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Sue H. Abreu
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 23, 2020

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
EXELON GENERATION COMPANY LLC	)	Docket Nos. 50-289 and 50-320-LA
	)	
Three Mile Island Nuclear Station	)	
(Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Denying Intervention Petition and Terminating Proceeding) (LBP-20-02)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Herald M. Speiser]
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Dated at Rockville, Maryland,
this 23rd day of January 2020.