



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE  
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS  
RELATED TO THE ENERGY SOLUTIONS, LLC REQUEST FOR  
INDIRECT TRANSFER OF CONTROL OF  
LICENSE NOS. DPR-39, DPR-48, DPR-73, DPR-45, AND DPR-43,  
AND THE GENERAL LICENSES FOR  
THE ASSOCIATED INDEPENDENT SPENT FUEL STORAGE INSTALLATIONS,  
FOR ZION NUCLEAR POWER STATION, UNITS 1 AND 2,  
THREE MILE ISLAND NUCLEAR STATION, UNIT 2,  
LA CROSSE BOILING WATER REACTOR, AND  
KEWAUNEE POWER STATION;  
RADIOACTIVE MATERIALS LICENSE NO. 39-35044-01; AND  
EXPORT LICENSES XW010/04 AND XW018/01  
DOCKET NOS.

50-295, 50-304, 72-1037, 50-320, 50-409, 72-046, 50-305, 72-64, 030-39013, 11005620, AND  
11005897

## 1.0 INTRODUCTION

By application dated December 7, 2021, as supplemented by letters dated March 30, 2022, and April 18, 2022 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML21344A114, ML22091A275, and ML22110A030, respectively), EnergySolutions, LLC (EnergySolutions, the Applicant), on behalf of itself and its wholly-owned subsidiaries (Licensed Subsidiaries, Licensees), requested consent from the U.S. Nuclear Regulatory Commission (NRC, the Commission) to the indirect transfer of control of Facility Operating License Nos. DPR-39 and DPR-48 for Zion Nuclear Power Station (ZNPS), Units 1 and 2, respectively, and the general license for the ZNPS independent spent fuel storage installation (ISFSI), Possession Only License No. DPR-73 for Three Mile Island Nuclear Station, Unit 2 (TMI-2), Possession Only License No. DPR-45 for La Crosse Boiling Water Reactor (LACBWR), and the general license for the LACBWR ISFSI, and Renewed Facility Operating License No. DPR-43

for Kewaunee Power Station (KPS), and the general license for the KPS ISFSI, Radioactive Materials License No. 39-35044-01, and Export Licenses XW010/04 and XW018/01 (collectively, the Licenses) to the extent that the Licenses may be held by the Applicant or the Licensed Subsidiaries at the time of the indirect transfer. The Applicant requested this licensing action pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA, the Act), and Title 10 of the *Code of Federal Regulations* (10 CFR) Section 30.34, "Terms and Conditions of Licenses," 10 CFR 50.80, "Transfer of licenses," 10 CFR 72.50, "Transfer of License," and 10 CFR 110.50, "Terms," to support a stock purchase agreement dated November 16, 2021, in which TriArtisan ES Partners II LP, established by TriArtisan ES Partners, LLC, TriArtisan ES MM LLC, and TriArtisan Capital Advisors LLC, will acquire majority ownership of Rockwell Holdco, Inc. (Rockwell), the upstream owner of the Licensed Subsidiaries.

By letter dated March 30, 2022, as supplemented by letter dated April 18, 2022, the Applicant clarified that any order approving the proposed indirect license transfer should include approval of the transfer of control of the KPS licenses even though they may not be held by *EnergySolutions'* subsidiary Kewaunee Solutions, Inc. at the time of the indirect transfer. Similarly, the Applicant clarified that any order approving the proposed indirect license transfer should include approval of the transfer of control of the ZNPS and LACBWR licenses even though they may not be held by *EnergySolutions'* subsidiaries ZionSolutions, LLC and LaCrosseSolutions, LLC, respectively, at the time of the indirect transfer. To account for the fact that these licenses may not be indirectly held by the Applicant at the time of the proposed indirect license transfer, the Applicant proposed that any order approving the indirect license transfer be subject to conditions to address these circumstances.

The NRC published its notice of consideration of approval of the application in the *Federal Register* on January 21, 2022 (87 FR 3372). The supplemental letter dated March 30, 2022, provided additional information that expanded the scope of the application as originally noticed and, therefore, the NRC published its notice of consideration of approval of the application, as supplemented, in the *Federal Register* on April 8, 2022 (87 FR 20889). The supplemental letter dated April 18, 2022, provided additional information that clarified the application and did not expand the scope of the application as noticed.

## 2.0 BACKGROUND

The Applicant's Licensed Subsidiaries currently hold the NRC licenses for ZNPS, Units 1 and 2, and the general license for the ZNPS ISFSI, TMI-2, and LACBWR, and the general license for the LACBWR ISFSI. There is a pending NRC order approving the transfer of the ZNPS licenses from the Applicant's subsidiary, ZionSolutions, LLC, to Exelon Generation Company, LLC (ADAMS Accession No. ML21229A027). There is a pending NRC order approving the transfer of the LACBWR licenses from the Applicant's subsidiary, LaCrosseSolutions, LLC, to Dairyland Power Cooperative (ADAMS Accession No. ML21228A107). There is also a pending NRC order approving the transfer of the NRC license for KPS, and the general license for the KPS ISFSI, from the indirect holder of these licenses, Dominion Nuclear Projects, Inc., to *EnergySolutions* (ADAMS Accession No. ML22014A387). The Applicant also currently holds Radioactive Materials License No. 39-35044-01 and the Applicant's wholly-owned subsidiary *EnergySolutions Services, Inc.* currently holds Export Licenses XW010/04 and XW018/01.

*EnergySolutions* is a wholly-owned subsidiary of *EnergySolutions Finance Holdings, LLC*, which is a privately held company whose shares are directly owned by *EnergySolutions, Inc.*, which in turn is a privately held company whose shares are directly owned by Rockwell. Rockwell is currently approximately 58 percent owned primarily by a number of affiliated passive investment

funds controlled by Energy Capital Partners GP II, LP: (i) Energy Capital Partners II, LP; (ii) Energy Capital Partners II-A, LP; (iii) Energy Capital Partners II-B, LP; (iv) Energy Capital Partners II-C (Direct IP), LP; and (v) Energy Capital Partners II-D, LP (collectively, the ECP II Partnerships).

The ECP II Partnerships are each controlled by Energy Capital Partners GP II, LP, a limited partnership organized under the laws of the State of Delaware, as general partner. The general partner Energy Capital Partners GP II, LP, in turn, is controlled by Energy Capital Partners II, LLC (ECP II), a limited liability company organized under the laws of the State of Delaware. For ease of reference, the ECP entities will be referred to collectively as "ECP."

Rockwell is also approximately 40 percent owned by passive investment funds controlled by TriArtisan ES Partners, LLC. TriArtisan ES Partners, LLC is in turn controlled by TriArtisan ES MM LLC, which is in turn managed by TriArtisan Capital Advisors LLC, a Delaware limited liability company based in New York, New York (collectively, TriArtisan Entities). All the TriArtisan Entities are limited liability companies organized under the laws of the State of Delaware and are controlled by two U.S. citizens.

Rockwell is also owned (approximately 2.2 percent) by the Spyder Retirement Trust and by the executive management of Rockwell (less than 1 percent). The trustee of the Spyder Retirement Trust and the executive management of Rockwell are all U.S. citizens.

According to the application, the purpose of the proposed transaction is for a passive investment fund established by the TriArtisan Entities known as TriArtisan ES Partners II LP to acquire most of the existing majority shareholder interest held by ECP, as well as most of the current TriArtisan Entities' shares. As a result, TriArtisan ES Partners II LP and the TriArtisan Entities (collectively, TriArtisan) would own an approximate 88 percent majority interest in, and have governance control over, Rockwell.

In addition to the 88 percent majority interest in Rockwell that would be held by TriArtisan, the proposed transaction would result in the following ownership:

• Passive investment funds controlled by Peterson Partners, LLC	7%
• Spyder Retirement Trust	2.1%
• Rockwell and EnergySolutions Executive Management	1.27%
• ES Management Holder LLC	0.43%
• Other Investors/Partners (in aggregate)	<1%

Additionally, in conjunction with the proposed transaction, Holding Partnership, LP will be established as a new entity above Rockwell at the closing of the transaction for the purpose of facilitating a new management incentive program. According to the application, all investment flows into this new entity that is vertically integrated above Rockwell and its subsidiaries.

Finally, according to the application, the same legal entities will remain the Licensees for the NRC licensed facilities and there will be no material impact on the Licensed Subsidiaries and the activities conducted under the Licenses. Additionally, the application states that the Licensed Subsidiaries will maintain responsibility for all licensed activities, including completing decommissioning and carrying out spent fuel management in accordance with NRC regulations, and that the proposed indirect transfer will have no material impact on the Licensees' existing technical and financial qualifications.

### 3.0 REGULATORY EVALUATION

The proposed transaction described in the application would constitute an indirect transfer of control of ownership interest in the Licenses. Generally, for indirect transfers of control of licenses, the NRC must find that the transaction will not affect the technical and financial qualifications of the holders of the licenses.

#### 3.1 Reactor Licenses

The regulation at 10 CFR 50.80(a) states, in part:

No license for a production or utilization facility ... or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the regulations at 10 CFR 50.80(b) and (c) apply. The regulation at 10 CFR 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33, "Contents of Applications; General Information," and 10 CFR 50.34, "Contents of Applications; Technical Information," with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.

The regulation at 10 CFR 50.80(c) states, in part:

[t]he Commission will approve an application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

In 10 CFR 50.33(a) through (d), the NRC requires applicants to provide information, including the name of the applicant, address of the applicant, description of the corporate structure of the applicant, citizenship of the applicant, and foreign ownership, control, or domination (FOCD) of the applicant, as applicable.

The regulation at 10 CFR 50.33(f) states, in part:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in [10 CFR] 50.21(b) or [10 CFR] 50.22, [each application shall state] information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

The regulation at 10 CFR 50.2, "Definitions," states, in part, that an electric utility means:

[A]ny entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

In 10 CFR 50.33(k)(1), the NRC requires that applicants provide the information described in 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

The regulation at 10 CFR 50.75 specifies how a licensee will provide reasonable assurance that funds will be available for the decommissioning process. Specifically, 10 CFR 50.75(b) requires that decommissioning financial assurance be provided in an amount not less than the minimum formula amount in 10 CFR 50.75(c). In 10 CFR 50.75(e), the NRC includes the methods acceptable to the agency for covering this decommissioning financial assurance amount, including using a decommissioning trust fund (DTF). Finally, 10 CFR 50.75(f) and (h) provide additional requirements for the reporting and management of DTFs.

In addition, 10 CFR 50.82(a)(8)(i) states that licensees may use DTFs if:

- (A) The withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in [10 CFR] 50.2;
- (B) The expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise and;
- (C) The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

In accordance with 10 CFR 50.2, the term "decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits: (1) release of the property for unrestricted use and termination of the license or (2) release of the property under restricted conditions and termination of the license.

In 10 CFR 50.82(a)(8)(v), the NRC also requires power reactor licensees that have permanently ceased operations to provide to the NRC annually, by March 31, a decommissioning financial assurance status report. The report must include additional financial assurance to cover any projected shortfalls.

In 10 CFR 50.54(bb), the NRC requires, in part, a licensee to submit, for NRC review and preliminary approval, the program by which the licensee intends to manage and provide funding for the management of all spent fuel at the reactor following permanent cessation of operation of the reactor until title to the spent fuel and possession of the spent fuel is transferred to the U.S. Department of Energy for its ultimate disposal in a repository. In addition, 10 CFR 50.82(a)(8)(vii) provides, in part, for the licensee's annual submittal to the NRC of a report on the status of its funding for managing spent fuel. If the funds accumulated do not cover the projected cost, a plan to obtain additional funds to cover the cost must be included.

In 10 CFR 50.34(b)(6), the NRC requires applicants to provide certain information on facility operation, including:

- (i) The applicant's organizational structure, allocations or responsibilities and authorities, and personnel qualifications requirements.
- (ii) Managerial and administrative controls to be used to assure safe operation.

In 10 CFR 50.34(b)(7), the NRC also requires applicants to provide:

The technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter.

The NRC staff applied guidance in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" (ADAMS Accession No. ML013330264), which describes the process used to evaluate the financial qualifications and methods of providing decommissioning funding assurance.

Other guidance used by the NRC staff includes NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR [Light-Water Reactor] Edition," Chapter 13, "Conduct of Operations," Section 13.1.1, Revision 6, "Management and Technical Support Organization" (ADAMS Accession No. ML15005A449), which describes the process used for the review of the corporate-level management and technical support organization of applicants. NUREG-0800, Chapter 13, Sections 13.1.2 - 13.1.3, Revision 7, "Operating Organization" (ADAMS Accession No. ML15007A296), describes the process used for the review of the operating organization of applicants, including the structure, functions, and responsibilities of the onsite organization established to safely operate and maintain the facility.

The purpose of the NRC staff's technical qualifications evaluation is to ensure that the proposed corporate management is involved with, informed of, and dedicated to the safe operation, maintenance, and decommissioning of the facility, and that adequate technical and financial resources will be provided to support these activities.

In addressing FOCD issues, Section 103d of the AEA provides, in relevant part, that no license may be issued to:

[A]ny corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The regulation at 10 CFR 50.38, "Ineligibility of certain applicants," is the regulatory provision that implements the FOCD provisions of the AEA. The NRC staff evaluates license transfer applications in a manner that is consistent with the guidance provided in the "Final Standard Review Plan on Foreign Ownership, Control, or Domination" (64 FR 52355; September 28, 1999) to determine whether the applicant will be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The NRC staff also reviews information that relates to nuclear onsite property damage insurance requirements under 10 CFR 50.54(w) and the Price-Anderson insurance and indemnity requirements under Section 170 of the AEA and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

### 3.2 General Licenses for Independent Spent Fuel Storage Installations

The regulation at 10 CFR 72.50(a) states, in part:

No license or any part included in a license issued under [10 CFR Part 72] for an ISFSI ... shall be transferred, assigned, or in any manner disposed of, either

voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

The regulation at 10 CFR 72.6(b) states:

A general license is hereby issued to receive title to and own spent fuel, high-level radioactive waste, or reactor-related GTCC [greater than Class C] waste without regard to quantity. Notwithstanding any other provision of this chapter, a general licensee under this paragraph is not authorized to acquire, deliver, receive, possess, use, or transfer spent fuel, high-level radioactive waste, or reactor-related GTCC waste except as authorized in a specific license.

The regulation at 10 CFR 72.210 states, in part:

A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50....

### 3.3 Radioactive Materials Licenses

The regulation at 10 CFR 30.34(b) states:

(1) No license issued or granted pursuant to the regulations in [10 CFR part 30] and parts 31 through 36, and 39 nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.

(2) An application for transfer of license must include:

- (i) The identity, technical and financial qualifications of the proposed transferee; and
- (ii) Financial assurance for decommissioning information required by [10 CFR] 30.35.

### 3.4 Export Licenses

The regulation at 10 CFR 110.50(d) states, in part:

A specific license may be transferred, disposed of or assigned to another person only with the approval of the Commission....

## 4.0 EVALUATION FOR REACTOR AND GENERAL ISFSI LICENSES

### 4.1 Financial Qualifications

ZNPS, TMI-2, LACBWR, and KPS are permanently shut down. As such, all of the licensed activities at these sites, and the associated ISFSIs, involve the possession of radioactive material in connection with maintaining the safe condition of the sites along with the radiological decommissioning of the sites, operational responsibilities associated with spent fuel management and the ISFSIs, and, finally, license termination. Therefore, the NRC staff's

evaluation of financial qualifications for these reactor licenses and the general licenses for the associated ISFSIs is limited to the issues of radiological decommissioning and spent fuel management.

According to the application, there are no planned changes to the existing financial qualifications arrangements for ZNPS, TMI-2, LACBWR, KPS, and the associated ISFSIs. Therefore, with respect to financial qualifications for a reactor in decommissioning, the Licensees will continue to maintain the existing DTFs and will be responsible for funding all the expenses associated with radiological decommissioning of the licensed facilities and operational costs for spent fuel management for each site. For a facility in decommissioning, a licensee is required to execute financial plans for spent fuel management under 10 CFR 50.54(bb) and report annually on the status of funding dedicated to radiological decommissioning and spent fuel management under 10 CFR 50.82(a)(8)(v)–(vii). The NRC staff reviewed the application, including the provisions of the stock purchase agreement, and found that the proposed transaction does not have an impact on the financial qualifications of the Licensees to conduct radiological decommissioning and spent fuel management at the licensed facilities.

In consideration of the foregoing, the NRC staff finds that the proposed transaction in which the indirect ownership of TriArtisan will become the majority controlling interest in Rockwell, the vertically integrated ultimate parent of the Licensees, as described in the application, would not adversely impact the financial qualifications of the Licensees. Therefore, the NRC staff concludes that the proposed indirect license transfer satisfies 10 CFR 50.80 and 10 CFR 72.50 with respect to financial qualifications for ZNPS, TMI-2, LACBWR, KPS, and the associated ISFSIs.

#### 4.2 Decommissioning Funding

Following the proposed transaction, the Licensees will continue as Rockwell subsidiaries. According to the application, at the time of the proposed indirect license transfer, the existing DTFs maintained by the Licensees for radiological decommissioning and spent fuel management at each respective facility and ISFSI will be retained by the individual Licensees.

According to 10 CFR 50.82(a)(8), licensees are required to report to the NRC annually on the status of their decommissioning funding for each reactor or part of a reactor that they own in decommissioning. The most recent financial assurance status report for ZNPS was provided to the NRC by letter dated March 28, 2022 (ADAMS Accession No. ML22091A195), for TMI-2 by letter dated March 31, 2022 (ADAMS Accession No. ML22091A273), for LACBWR by letter dated March 15, 2022 (ADAMS Accession No. ML22077A013), and for KPS by letter dated March 30, 2022 (ADAMS Accession No. ML22089A243). These submittals provide comprehensive decommissioning funding information for each of the licensed facilities.

The proposed indirect license transfer would not result in changes to the Licensees' DTFs or to the methods of providing financial assurance for radiological decommissioning and spent fuel management. Following the indirect license transfer, the individual *EnergySolutions* licensed subsidiaries' responsibilities for the facility and ISFSI, including decommissioning liability, will continue to be owned by and remain the responsibility of *EnergySolutions* and its licensed subsidiaries, but with a different, indirect owner.

The NRC staff reviewed the information provided in the decommissioning financial assurance status reports and found that the Licensees are meeting the reporting requirements related to decommissioning and spent fuel management funding, and are providing reasonable assurance

that funds are, or will be, available to decommission the facilities. This is reflected for the year 2021 in SECY-21-0108, "Summary of Staff Biennial Review and Findings of the 2021 Decommissioning Funding Status Reports from Operating and Decommissioning Power Reactor Licensees" (ADAMS Accession No. ML21285A219).

In consideration of the above, the NRC staff finds that the proposed indirect license transfer would not affect the decommissioning funding arrangements currently in place for the licensed facilities and the associated ISFSIs. The information provided in the application and in the annual decommissioning financial assurance status reports for the facilities conforms to the guidance in NUREG-1577 for the staff's review of decommissioning funding assurance. Therefore, the staff concludes that the proposed indirect license transfer satisfies 10 CFR 50.80 and 10 CFR 72.50 with respect to decommissioning funding for ZNPS, TMI-2, LACBWR, KPS, and the associated ISFSIs.

#### **4.3 Technical Qualifications**

Following the proposed indirect transfer of control of the licenses for ZNPS, TMI-2, LACBWR, KPS, and the associated ISFSIs, *EnergySolutions* and its wholly-owned licensed subsidiaries would continue to own and operate these facilities as before the transfer.

##### **4.3.1 Management and Technical Support Organization**

In accordance with NUREG-0800, Section 13.1.1, the NRC staff review of management and technical support organization for a license transfer will examine the acceptability of any changes to the technical organization or personnel qualifications proposed as a result of the license transfer. The objective of this review is to ensure that the corporate management is involved with, informed of, and dedicated to the safe design, construction, testing, and operation of the nuclear plant. The review will ensure that sufficient technical resources have been, are being, and will continue to be provided to adequately accomplish these objectives.

Section V.A., "Technical Qualifications," of the December 7, 2021, application states, in part, that:

After the closing of the transaction, the Licensed Subsidiaries will remain responsible for carrying out their responsibilities for licensed activities under the respective Licenses.... The proposed transaction is not expected to result in any material change in the corporate organization, resources and support of *EnergySolutions* for its Licensed Subsidiaries. No changes are proposed in the Licenses or associated conditions and technical specifications. Accordingly, the Applicant's Licensed Subsidiaries will remain technically qualified in compliance with the requirements of 10 CFR 50.34(a)(9) and 10 CFR 50.80.

The NRC staff reviewed the application and determined that the proposed transaction in which the indirect ownership of TriArtisan will become the majority controlling interest in Rockwell, the vertically integrated ultimate parent of the Licensees, as described in the application, would not have any impact on the management organization for ZNPS, TMI-2, LACBWR, KPS, and the associated ISFSIs. The structure and composition of the management and technical support organizations will not undergo any significant changes as a result of this transaction.

#### 4.3.2 Operating Organization

In accordance with NUREG-0800, Sections 13.1.2 - 13.1.3, the NRC review of operating organization should focus on evaluating changes to the operating organization proposed as a result of the license transfer and ensure that the proposed changes will result in an organization that will continue to meet the relevant review criteria.

Section V.A. of the December 7, 2021, application states, in part, that:

There are no planned changes in the technical organizations of the Licensed Subsidiaries, the applicable Quality Assurance (QA) programs for the respective facilities, processes and procedures, environmental protection programs, or other operations of the Licensed Subsidiaries as a result of the proposed change in upstream ownership.

The NRC staff reviewed the application and determined that the proposed transaction in which the indirect ownership of TriArtisan will become the majority controlling interest in Rockwell, the vertically integrated ultimate parent of the Licensees, as described in the application, would not have any impact on the operating organizations for ZNPS, TMI-2, LACBWR, KPS, and the associated ISFSIs.

#### 4.3.3 Technical Qualifications Conclusion

Based on the information provided in the application, the NRC staff determined that there will be no substantial change to the management, technical support, and operating organizations for ZNPS, TMI-2, LACBWR, KPS, and the associated ISFSIs affecting the technical qualifications of *EnergySolutions* and its wholly-owned licensed subsidiaries under the proposed TriArtisan transaction. Therefore, the staff concludes that *EnergySolutions* and its wholly-owned licensed subsidiaries are technically qualified to perform the activities authorized by the licenses for ZNPS, TMI-2, LACBWR, KPS, and the associated ISFSIs and the NRC's regulations and, thus, that the proposed indirect transfer of these licenses satisfies 10 CFR 50.80 and 72.50, as applicable, with respect to technical qualifications.

#### 4.4 Antitrust Review

The Act does not require or authorize antitrust reviews of post-operating license transfer applications.<sup>1</sup> The application postdates the issuance of the operating licenses for the facilities under consideration in this safety evaluation and, therefore, no antitrust review is required or authorized.

#### 4.5 Foreign Ownership, Control, or Domination

According to the application, the proposed transaction will not result in *EnergySolutions* becoming owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. The application states, in part, that:

[T]he Applicant is not owned, controlled, or dominated by a foreign entity or person, and thus will not be subject to impermissible foreign ownership, control,

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<sup>1</sup> Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999).

or domination (FOCD) within the meaning of the AEA following completion of the proposed transaction.

The application contains the names and addresses of the managing directors of the proposed majority shareholder, TriArtisan, and indicates that all are U.S. citizens. Additionally, the application identifies David Lockwood, a U.S. citizen, as the trustee for minority investor, Spyder Retirement Trust. Finally, while both TriArtisan and the remaining passive investment vehicles that constitute the total ownership of Rockwell are U.S.-established and -based corporate entities, the application does identify minority-level foreign passive investment. However, after review, the NRC staff finds that the type (passive) and level (minority) of the foreign investment do not permit control or domination over NRC licensed activities.

The NRC staff conducted an independent analysis, including open-source research and verification of the information provided in the application related to ownership of all relevant parties in the proposed indirect license transfer, and found no evidence of FOCD.

Based on its independent analysis of the information provided in the application, the NRC staff concludes that it does not know or have reason to believe that any of the parties related to the proposed indirect license transfer are owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

#### 4.6 Nuclear Insurance and Indemnity

Upon review of the requirements of the Price-Anderson Act (Section 170 of the Act) and the NRC's implementing regulations at 10 CFR Part 140, the NRC staff finds that the current indemnity agreements do not need to be modified to reflect the proposed indirect license transfer since there would be no change to the named license holders. Additionally, the financial protection currently provided by the Licensees in the form of offsite liability insurance and onsite property insurance would continue to remain in effect unchanged. The Licensees remain required to provide, maintain, and report the appropriate amount of insurance in accordance with 10 CFR 50.54(w), 10 CFR 140.11(a)(4), and 10 CFR 140.21.

#### 4.7 Summary of Evaluation for Reactor and General ISFSI Licenses

Based on its review of the information provided in the application, the NRC staff finds that *EnergySolutions* and its Licensed Subsidiaries are financially qualified to conduct the authorized activities at ZNPS, TMI-2, LACBWR, KPS, and the associated ISFSIs, have satisfied the NRC's decommissioning funding assurance requirements, have met the applicable nuclear insurance and indemnity requirements, and are not owned, controlled, or dominated by a foreign entity. The NRC staff also finds that the proposed indirect transfer of these licenses will not result in any physical changes to the facilities, any changes to the day-to-day operation of the facilities, or any substantial changes to the management, technical support, or operating organizations of the facilities; therefore, *EnergySolutions* and its Licensed Subsidiaries are technically qualified to perform the activities authorized by the licenses and the NRC's regulations.

As discussed in Section 2.0 of this safety evaluation, there are pending NRC orders approving the transfer of the ZNPS licenses from the Applicant's subsidiary, *ZionSolutions*, LLC, to Exelon Generation Company, LLC and the transfer of the LACBWR licenses from the Applicant's subsidiary, *LaCrosseSolutions*, LLC, to Dairyland Power Cooperative. There is also a pending NRC order approving the transfer of the KPS licenses from the indirect holder of these licenses, Dominion Nuclear Projects, Inc., to *EnergySolutions*. The NRC staff reviewed the Applicant's

indirect license transfer application, as supplemented, under the assumption that the transfers of the ZNPS and LACBWR licenses would not be completed prior to the proposed indirect license transfer and that the transfer of the KPS licenses would be completed prior to the proposed indirect license transfer. However, if the transfers of the ZNPS and LACBWR licenses are completed prior to the proposed indirect license transfer, then the ZNPS and LACBWR licenses cannot be indirectly transferred as part of the indirect license transfer. Similarly, if the transfer of the KPS licenses is not completed prior to the proposed indirect license transfer, then the KPS licenses cannot be indirectly transferred as part of the indirect license transfer. The NRC staff conclusions in this safety evaluation would not be affected if the ZNPS, LACBWR, and/or KPS licenses were not transferred as part of the proposed indirect license transfer. Therefore, the NRC staff finds it acceptable for the proposed indirect license transfer to occur after the transfer of the ZNPS and/or LACBWR licenses may be completed and/or before the transfer of the KPS licenses may be completed. To memorialize this, the order approving the proposed indirect license transfer will include the following conditions:

If *EnergySolutions* does not indirectly hold Facility Operating License Nos. DPR-39 and DPR-48 for ZNPS, Units 1 and 2, respectively, and the general license for the ZNPS ISFSI, at the time of the closing of the proposed indirect license transfer, then the ZNPS licenses shall not be transferred as part of the indirect license transfer.

If *EnergySolutions* does not indirectly hold Possession Only License No. DPR-45 for LACBWR, and the general license for the LACBWR ISFSI, at the time of the closing of the proposed indirect license transfer, then the LACBWR licenses shall not be transferred as part of the indirect license transfer.

If *EnergySolutions* does not indirectly hold Renewed Facility Operating License No. DPR-43 for KPS, and the general license for the KPS ISFSI, at the time of the closing of the proposed indirect license transfer, then the KPS licenses shall not be transferred as part of the indirect license transfer.

Based on the above, the NRC staff concludes that *EnergySolutions* and its Licensed Subsidiaries are qualified to hold the licenses for ZNPS, TMI-2, LACBWR, KPS, and the associated ISFSIs and that transfer of these licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

## 5.0 EVALUATION FOR RADIOACTIVE MATERIALS LICENSE

### 5.1 Introduction

*EnergySolutions* is authorized by NRC Radioactive Materials License No. 39-35044-01 for the possession and use of byproduct material for purposes of waste treatment and packaging, and site remediation activities, at temporary job sites only. The NRC staff reviewed a request for consent to an indirect transfer of this license submitted by *EnergySolutions* that would result from a stock purchase agreement among the principal shareholders of the parent company, Rockwell. As a result of the stock purchase agreement, TriArtisan would become the majority shareholder of Rockwell. *EnergySolutions* is currently a wholly-owned subsidiary of Rockwell and will remain so.

The request for consent was reviewed by the NRC staff for an indirect change in control of a 10 CFR Part 30 license using the guidance in NUREG-1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and

About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," dated June 2016 (ADAMS Accession No. ML16181A003).

## 5.2 Safety and Security Review

According to data obtained from the NRC's Web-Based Licensing System and ADAMS, *EnergySolutions* has been an NRC licensee since September 23, 2005. The NRC staff conducted a main office inspection of *EnergySolutions* in Charlotte, North Carolina, on August 3 and 13, 2021, and a site inspection of licensed activities on December 1, 2021, in Middletown, Pennsylvania. No violations were identified during either inspection.

The commitments made by *EnergySolutions* are that *EnergySolutions* (License No. 39-35044-01):

- A. will not change the organization's name listed in the NRC license or relevant contact information;
- B. will not change personnel or duties relating to the licensed program;
- C. will not change the location of licensed activities, equipment, or procedures authorized in the NRC license; and
- D. is current on the status of facilities, equipment, and radiation safety programs and will continue to maintain records relevant to licensed activities.

As a result of the stock purchase agreement, the new majority shareholder would indirectly control Radioactive Materials License No. 39-35044-01. The purpose of the review of licensees transferring control of licensed activities is for the NRC to obtain reasonable assurance that the licensed material will be used for its intended purpose and not for malevolent use. Because the new majority shareholder does not have an NRC or Agreement State license, a pre-licensing visit was performed. The pre-licensing visit was performed during a virtual meeting on January 18, 2022, with Jerry Cromak, Managing Director of TriArtisan Capital Advisors LLC and Dillon Montag, Senior Associate at TriArtisan Capital Advisors LLC. Based on the information received during that meeting, the NRC staff has reasonable assurance that the new majority shareholder would use licensed material for its intended purpose and not for malevolent use.

*EnergySolutions* is not required to have decommissioning financial assurance based on the types of activities authorized in License No. 39-35044-01.

## 5.3 Regulatory Framework

NRC Radioactive Materials License No. 39-35044-01 was issued to *EnergySolutions* under 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material." The Commission is required by 10 CFR 30.34 to determine if the proposed change of control of this license is in accordance with the provisions of the Act and to give its consent in writing. Specifically, 10 CFR 30.34(b)(1) states:

No license issued or granted pursuant to the regulations in [10 CFR part 30] and parts 31 through 36, and 39 nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.

As previously indicated, the NRC staff evaluation of the proposed indirect change of control of the license is based on guidance in NUREG-1556, Volume 15, Revision 1. As discussed in the NUREG, the NRC generally uses the term "change of control" rather than the statutory term "transfer" to describe the variety of events that could require the prior notification and written consent of the NRC. The central issue is whether the authority over the license has changed. *EnergySolutions'* request for consent describes an indirect change of control resulting from a planned sale of shares of stock among current shareholders of Rockwell, the parent company of *EnergySolutions*. After completion of the planned purchases of stock, TriArtisan would become the majority shareholder of the parent company stock and, as such, the indirect change of control requires NRC consent.

#### 5.4 Description of Transaction

The transaction is described in the *EnergySolutions* application dated December 7, 2021. After completion of the planned stock purchase agreement, *EnergySolutions* would continue as the licensee and remain in control of all licensed activities under Radioactive Materials License No. 39-35044-01. The NRC staff finds that the request for consent adequately provides a complete and clear description of the transaction and is consistent with the guidance provided in Appendix F of NUREG-1556, Volume 15, Revision 1.

#### 5.5 Transferee's Commitment to Abide by the Transferor's Commitments

The NRC staff finds that the information submitted by *EnergySolutions* sufficiently describes and documents the commitments made by *EnergySolutions* and TriArtisan and is consistent with the guidance in NUREG-1556, Volume 15, Revision 1.

#### 5.6 Conclusion

As required by 10 CFR 30.34 and Section 184 of the Act, the NRC staff has reviewed the application and finds that the proposed indirect change in control is in accordance with the Act. The staff finds that after the indirect change of control, *EnergySolutions* will remain qualified to use byproduct material for the purpose requested, and will continue to have the equipment, facilities, and procedures needed to protect public health and safety, and promotes the security of licensed material. The staff has reviewed the request for consent with regard to the proposed indirect change of control of Radioactive Materials License No. 39-35044-01 and approves the request pursuant to 10 CFR 30.34(b).

The NRC staff finds that the information submitted by *EnergySolutions* sufficiently describes and documents the transaction and the commitments made by *EnergySolutions*; documents the understanding of the license and commitments; demonstrates that personnel have the experience and training to properly implement and maintain the license and that they will maintain the existing records; and, in the future, will abide by all existing commitments to the license, consistent with the guidance in NUREG-1556, Volume 15, Revision 1. Therefore, the staff concludes that the proposed indirect change of control would not alter the previous findings, made under 10 CFR Part 30, that licensed operations will not be inimical to the common defense and security, or to the health and safety of the public.

## 6.0 EVALUATION FOR EXPORT LICENSES

In its application dated December 7, 2021, the Applicant also requested, on behalf of itself, that the NRC consent to the indirect transfer of control of Export Licenses XW010/04 and XW018/01 pursuant to 10 CFR 110.50(d). The indirect transfer of control of the Export Licenses would result from the same proposed transaction whereby TriArtisan would become a majority shareholder and would have governance control over Rockwell. After completion of the stock purchase agreement, *EnergySolutions* would continue as the licensee and would remain in control of all licensed activities under the Export Licenses. The NRC staff finds that the request for consent adequately provides a complete and clear description of the transaction.

The Applicant further stated that:

- No changes will be made to the names of the licensed organizations, their respective Federal Employment Identification Numbers, or their relevant contact or telephone information as a result of the indirect transfer of control transaction.
- No changes will be made to the personnel or duties relating to the licensed programs as a result of the transaction.
- No changes will be made to the location of licensed activities, equipment, or procedures as a result of the transaction.
- *EnergySolutions* will continue to abide by all current conditions, requirements, and commitments under the Export Licenses.

The NRC staff finds that while the proposed transaction would result in an indirect transfer of control of *EnergySolutions* and the Export Licenses held by *EnergySolutions*, it would not change the current qualifications, or operations, of *EnergySolutions* as the NRC's licensee for these Export Licenses. Further, the closing of the transaction and the indirect upstream change of control resulting therefrom are not expected to result in any change in personnel responsible for conducting licensed activities.

## 7.0 HEARING REQUESTS AND PUBLIC COMMENTS

On January 21, 2022, the NRC published a notice of consideration of approval of the application in the *Federal Register* (87 FR 3372). The supplemental letter dated March 30, 2022, provided additional information that expanded the scope of the application as originally noticed and, therefore, the NRC published a notice of consideration of approval of the application, as supplemented, in the *Federal Register* on April 8, 2022 (87 FR 20889). The supplemental letter dated April 18, 2022, provided additional information that clarified the application and did not expand the scope of the application as noticed. The notices provided an opportunity to comment, request a hearing, and petition for leave to intervene on the application.

One request for a hearing on the application was filed by Eric Epstein, on behalf of himself, on February 10, 2022 (ADAMS Accession No. ML22041A773). This hearing request is pending before the Commission; therefore, the order approving the license transfer will be conditioned as follows:

The NRC staff's approval of the license transfer is subject to the Commission's authority to rescind, modify, or condition the approved transfer based on the outcome of any post-effectiveness hearing on the license transfer application.

The NRC received no comment submissions on the license transfer application.

#### 8.0 STATE CONSULTATION

State consultation under 10 CFR 50.91(b) is not applicable to this license transfer application because it does not involve conforming amendments and no significant hazards consideration determinations.

#### 9.0 ENVIRONMENTAL CONSIDERATION

The application is for approval of an indirect transfer of licenses issued by the NRC. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the application.

#### 10.0 CONCLUSION

Based on the considerations discussed above, the Commission has concluded, after securing full information, that: (1) the proposed transferees are qualified to be the holders of the licenses and (2) transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. The Commission has also concluded that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) there is reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) the transfer will not be inimical to the common defense and security or to the health and safety of the public.

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