

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Christopher T. Hanson, Chairman
Jeff Baran
David A. Wright

In the Matter of

ENERGYSOLUTIONS, LLC

(Zion Nuclear Power Station, Units 1 and 2;
Three Mile Island Nuclear Station, Unit 2;
La Crosse Boiling Water Reactor; Kewaunee
Power Station; Radioactive Materials
License; Export Licenses)

Docket Nos. 50-295-LT, 50-304-LT,
72-1037-LT, 50-320-LT,
50-409-LT, 72-046-LT,
50-305-LT, 72-64-LT,
030-39013-LT,
11005620-LT,
11005897-LT

CLI-22-09

MEMORANDUM AND ORDER

This license transfer proceeding concerns an application filed by EnergySolutions, LLC (EnergySolutions or the Applicant) requesting the NRC to consent to an indirect transfer of control of the following licenses: (1) the facility operating licenses for Zion Nuclear Power Station (Zion), Units 1 and 2 and the general license for the Zion independent spent fuel storage installation (ISFSI); (2) the possession only license for Three Mile Island Nuclear Station, Unit 2 (TMI-2); (3) the possession only license for La Crosse Boiling Water Reactor (LA Crosse BWR) and the general license for the La Crosse BWR ISFSI; (4) the renewed facility operating license

for Kewaunee Power Station (KPS) and the general license for the KPS ISFSI; (5) NRC radioactive materials license no. 39-35044-01; and (6) export licenses XW010 and XW018.¹

The NRC staff approved the proposed indirect transfer by an order dated May 3, 2022, and the transaction closed on May 16, 2022.² NRC regulations anticipate that the Staff may complete its review of a license transfer application before an adjudicatory proceeding has concluded.³ This is because the Staff's review of the application is considered separate from the Commission's adjudicatory review. NRC agency approval of the application therefore is not final unless and until the Commission concludes the adjudicatory proceeding in the Applicant's

¹ See Zion Nuclear Power Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 2; La Crosse Boiling Water Reactor; EnergySolutions, LLC Radioactive Materials License; EnergySolutions, LLC Export Licenses; Consideration of Approval of Indirect Transfer of Licenses, 87 Fed. Reg. 3372 (Jan. 21, 2022) (Hearing Opportunity Notice); Application for Order Approving Indirect Transfer of Control of: Licenses (Application), attached (Attach. 1) to Letter from Kenneth W. Robuck, President and CEO, EnergySolutions, LLC, to NRC Document Control Desk (Dec. 7, 2021) (Application Cover Letter). The cover letter, application, and associated enclosures are available together at ADAMS accession no. ML21344A114 (package).

The Applicant supplemented the application to clarify information regarding the Zion, La Crosse BWR, and KPS facilities. See Letter from Russell G. Workman, General Counsel and Corporate Secretary, EnergySolutions, to NRC Document Control Desk (Mar. 30, 2022) (ML22091A275) (March 30, 2022 Letter); Letter from Russell G. Workman, General Counsel and Corporate Secretary, EnergySolutions, to NRC Document Control Desk (Apr. 18, 2022) (ML22110A030); see also Zion Nuclear Power Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 2; La Crosse Boiling Water Reactor; Kewaunee Power Station; EnergySolutions, LLC Radioactive Materials License; EnergySolutions, LLC Export Licenses; Consideration of Approval of Indirect Transfer of Licenses, 87 Fed. Reg. 20,889 (Apr. 8, 2022). Regarding KPS, the Applicant clarified that there was a separate pending indirect transfer of control of the licenses for KPS and the KPS ISFSI from Dominion Energy Kewaunee's (DEK) parent entity to EnergySolutions; after closing, DEK would become a wholly owned subsidiary of EnergySolutions and would change its name to Kewaunee Solutions, Inc. See March 30, 2022 Letter at 1-3.

² See Order Approving Indirect Transfers of Licenses (May 3, 2022), at 6 (ML22076A011); *Notification of Closing of Transaction Related to Indirect Transfer of Control* (May 31, 2022) (ML22151A292).

³ See 10 C.F.R. § 2.1316(a) (notwithstanding a pending adjudicatory proceeding, the Staff is expected consistent with its findings "to promptly issue approval or denial" of the application).

favor.⁴ Although applicants may act on a Staff order approving a license transfer application, we long have stated that they do so at their own risk in the event that the Commission later rules in favor of intervenors.⁵ The Staff's order approving the indirect transfer therefore explicitly remains subject to our authority to rescind, modify, or condition the transfer.

Mr. Eric Joseph Epstein filed a request for hearing and petition to intervene.⁶ For the reasons outlined below, Mr. Epstein did not submit an admissible contention for hearing. We therefore deny his petition and terminate the proceeding.

I. BACKGROUND

A. The Proposed Indirect License Transfer

Applicant *EnergySolutions* filed the license transfer application on behalf of itself and its wholly owned subsidiaries that hold the NRC licenses for Zion Units 1 and 2, TMI-2, and La Crosse BWR.⁷ The Zion Units 1 and 2, TMI-2, La Crosse BWR, and KPS power reactor units have all permanently ceased operations, and the application describes the decommissioning at the Zion and La Crosse facilities as substantially completed. Applicant *EnergySolutions* holds radioactive materials license no. 39-35044-01 for use at temporary job sites to support a variety of possible work scope activities.⁸ The Applicant's wholly owned subsidiary *EnergySolutions*

⁴ *Energy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-19-11, 90 NRC 258, 262 (2019).

⁵ See *id.* at 262-63.

⁶ See *Eric Joseph Epstein's, Pro Se, Request for a Public Hearing and Petition to Intervene* (Feb. 10, 2022) (Petition).

⁷ The application identifies *ZionSolutions, LLC*, *TMI-2 Solutions, LLC*, and *LaCrosseSolutions, LLC*, as the Applicant's wholly owned subsidiaries that, on the date of the application, held the NRC licenses for Zion Units 1 and 2, TMI-2, and La Crosse BWR, respectively. See Application at 1-3. The Applicant refers to these subsidiaries as the "Licensed Subsidiaries or Licensees." See Application Cover Letter at 1; Application at 1; see also Application at 2 n.3; March 30, 2022 Letter at 1-2 (noting pending transfer of the KPS licenses to *EnergySolutions*, after which Kewaunee Solutions would be the licensed owner and operator of KPS).

⁸ See Application at 2.

Services, Inc. holds NRC export licenses XW010 and XW018 for return of radioactive waste to Canada, and Germany, respectively.⁹

As described in the application, the proposed indirect transfer of control of the above-referenced licenses would result from a proposed stock purchase transaction involving the current principal shareholders of the Applicant's parent company, Rockwell Holdco, Inc. (Rockwell) and other investors.¹⁰ The application states that the transaction will not affect the Applicant's operations or the operations of any of the Applicant's subsidiaries that hold the respective licenses for Zion Units 1 and 2, TMI-2, and La Cross BWR.¹¹

EnergySolutions, the applicant, is a wholly owned subsidiary of EnergySolutions Finance Holdings, LLC, 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. The proposed stock purchase transaction would result in a new majority ownership of Rockwell.

⁹ *Id.*

¹⁰ The application encloses the Stock Purchase Agreement, dated November 16, 2021. Enclosure 1A is redacted for confidential commercial proprietary information. Enclosure 1B, without redactions, is withheld from the publicly available version of the license transfer application. See Application Cover Letter at 2. The hearing opportunity notice provided guidance on how to obtain the withheld sensitive unclassified non-safeguards information (SUNSI). See Hearing Opportunity Notice, 67 Fed. Reg. at 3375.

Mr. Epstein states that he executed a SUNSI agreement with EnergySolutions. See Petition at 5. The Applicant states that it and Mr. Epstein jointly filed with the Commission a motion for entry of a protective order to govern the disclosure of, access to, and use of SUNSI, and that the "Office of the Secretary approved this motion." See *Applicant's Answer Opposing Request for Public Hearing and Petition for Leave to Intervene Filed by Eric Joseph Epstein* (Mar. 7, 2022), at 5. The Applicant goes on to state that Mr. Epstein did not execute "the Non-Disclosure Declaration associated with the protective order." *Id.* We note, however, that the adjudicatory record does not contain an order issued by the Secretary approving a motion for entry of a protective order; the motion apparently was not submitted through the NRC's E-Filing system as required under 10 C.F.R. § 2.302. Nevertheless, Mr. Epstein does not claim that he was unable to obtain SUNSI information necessary to formulate his contentions.

¹¹ See Application Cover Letter at 1; Application at 4; see also March 30, 2022 Letter at 1-2 (stating that if EnergySolutions acquires the holder of the KPS license, the EnergySolutions indirect transfer would have no material impact on the technical and financial qualifications of Kewaunee Solutions).

Currently, Rockwell is approximately (1) 58% owned primarily by several affiliated passive investment funds controlled by Energy Capital Partners GP II, LP (ECP); (2) 40% owned by passive investment funds controlled by TriArtisan ES Partners, LLC; and (3) 2.2% owned by the Spyder Retirement Trust.¹²

The application describes TriArtisan ES Partners, LLC as controlled by TriArtisan ES MM LLC, which in turn is managed by TriArtisan Capital Advisors LLC (collectively, TriArtisan Entities).¹³ All of the TriArtisan Entities are limited liability companies organized under the laws of the state of Delaware and all are controlled by two United States citizens who are the managing directors of TriArtisan Capital Advisors LLC.¹⁴ Through the proposed stock purchase transaction, a passive investment fund established by the TriArtisan Entities and known as TriArtisan ES Partners II LP, a Delaware limited partnership, would acquire most of the majority shareholder interest held by passive investment funds controlled by ECP as well as most of the TriArtisan Entities' shares.¹⁵

Following the transaction, TriArtisan ES Partners II LP and the TriArtisan Entities (collectively, TriArtisan) would own about 88% of the shareholder interest in and would have governance control over Rockwell.¹⁶ ECP-related entities would retain preferred interests of about 1% of the total Rockwell equity. Other entities also would hold minority ownership interests in Rockwell, including (1) the Spyder Retirement Trust, which would hold about 2.1% of the total Rockwell equity; (2) passive investment funds controlled by Peterson Partners, LLC, which would acquire common interests of about 7.0% of the total Rockwell equity; and (3) the

¹² See Application at 2-3.

¹³ See *id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

executive management of Rockwell and EnergySolutions, which collectively could hold common interests of approximately 1.7% of the total Rockwell equity.¹⁷ The application provides further details on the proposed changes in the ownership structure and includes charts depicting the organizational structure both before and after the proposed transaction.¹⁸

In sum, the application states that the proposed transaction involves an “upstream change in ownership” that would indirectly transfer control of the licenses “from ECP to TriArtisan.”¹⁹ No license amendment has been requested because the indirect transfer would not change any of the respective facilities’ licensed owners or licensed operators (or their names). Applicant EnergySolutions also states that the indirect transfer would have no effect on its operations or on the organization or operations of its subsidiaries ZionSolutions LLC, TMI-2 Solutions, LLC, and LaCrosseSolutions, LLC, which are the respective NRC licensees for Zion Units 1 and 2, TMI-2, and La Crosse BWR.²⁰ The application further states that the proposed indirect transfer would not have any material impact on the activities conducted under these licenses or on the respective licensees’ “existing technical and financial qualifications.”²¹

Regarding technical qualifications, the application states that there are no planned changes in the technical organizations, processes, procedures, environmental protection programs, quality assurance programs, or other operations of the respective facilities’ licensees.²² Nor does the proposed indirect transfer involve any requested changes to technical specifications or license conditions. The application states that, accordingly, the respective

¹⁷ See *id.* at 3-4.

¹⁸ See *id.* at 2-4; *id.*, Encl. 2 (Simplified Pre-Closing and Post-Closing Organizational Charts).

¹⁹ See Application at 9.

²⁰ See *id.* at 1-2, 4; see also *id.* at 7-9.

²¹ *Id.* at 4.

²² *Id.* at 7.

facilities' licensees would "remain responsible for carrying out their responsibilities for licensed activities under the respective Licenses" and would "remain technically qualified."²³

The indirect transfer also does not propose changes to the "existing financial qualification arrangements . . . including for decommissioning funding assurance and spent nuclear fuel management."²⁴ The application states that the financial qualifications and decommissioning funding assurance arrangements of the facilities' licensees are based on the "existing nuclear decommissioning trust funds and performance bond(s) for the facilities, together with any additional financial assurance mechanisms that are the subject of regulatory commitments or conditions of prior license approvals."²⁵ The application further states that the proposed indirect transfer will not change the licensees' current methods of providing financial assurance and decommissioning funding and will not change any regulatory commitments or license conditions, and therefore "will not affect the existing financial assurance of the Licensed Subsidiaries," who "will remain financially qualified to continue decommissioning and spent fuel management activities under the respective Licenses."²⁶

B. Transfer of NRC Licenses: Financial Qualifications and Financial Assurance

A license granted under the Atomic Energy Act of 1954, as amended (AEA), may only be transferred if the NRC consents in writing.²⁷ The NRC will approve a license transfer application

²³ *Id.*

²⁴ *See id.*

²⁵ *See id.*

²⁶ *See id.* at 7-8; *see also* March 30, 2022 Letter at 2 (stating that the indirect license transfer would have no material impact on the technical or financial qualifications of Kewaunee Solutions).

²⁷ *See* AEA § 184, 42 U.S.C. § 2234 (providing that no license granted under the AEA "shall be transferred . . . directly or indirectly, through transfer of control of any license to any person, unless the Commission . . . shall give its consent in writing"); 10 C.F.R. §§ 50.80(a), 72.50(a) (implementing the AEA provision as to power reactor and ISFSI licenses, respectively).

if it determines that the proposed transferee is qualified to hold the license and the transfer of the license is otherwise consistent with applicable law, regulations, and orders.²⁸ Review of a license transfer application is limited to specific matters, including the technical and financial qualifications of the proposed transferee(s).²⁹ The review also ensures that, pursuant to the AEA, no license for a production and utilization facility is issued to “an alien or any 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.”³⁰

A license transfer application must provide information sufficient to demonstrate to the Commission the applicant’s financial qualification to carry out the activities for which the license is sought and must provide “reasonable assurance . . . that funds will be available to decommission the facility,” including any ISFSI facility.³¹ NRC regulations outline acceptable methods of demonstrating financial assurance of decommissioning funding.³² A licensee that has set aside prepaid decommissioning funds based on a site-specific decommissioning cost estimate may take credit for projected earnings on the account’s funds, up to a 2% annual real rate of return through the projected decommissioning period, including periods of safe storage, final dismantlement, and license termination.³³

²⁸ 10 C.F.R. § 50.80(c).

²⁹ See *id.* § 50.80(b)(1)(i) (referencing *id.* §§ 50.33, 50.34).

³⁰ See AEA § 103d, 42 U.S.C § 2133(d); see also 10 C.F.R. § 50.38 (implementing AEA prohibition).

³¹ See 10 C.F.R. §§ 50.33(f), (k)(1); 50.80(b)(1)(i); 72.30(b). Except for an electric utility, a license transfer applicant for an operating power reactor must demonstrate that it possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated operating costs for the period of the license. See *id.* § 50.33(f)(2). This demonstration is unnecessary for this application because Zion Units 1 and 2, TMI-2, La Crosse BWR, and Kewaunee Power Station have all permanently ceased reactor operations.

³² See 10 C.F.R. § 50.75(e).

³³ See *id.* § 50.75(e)(1)(i); see also *id.* § 50.82(a)(8)(vi).

The license transfer review helps to ensure that licenses are not transferred to entities that lack the necessary technical and financial means to conduct licensed activities and to complete decommissioning. But the review conducted for license transfer is not a final look at the funding adequacy. For power reactor licensees that have submitted a site-specific decommissioning cost estimate, the NRC will annually verify that licensees are maintaining adequate funding both to complete decommissioning and to cover spent fuel management costs.³⁴ NRC oversight of funding adequacy continues until all spent fuel has been removed from a site and until any “residual radioactivity has been reduced to a level that permits termination of the license.”³⁵ In short, while the NRC conducts a threshold financial review of license transfer applicants, the agency will continue to verify the adequacy of the funding to complete the applicable licensed activities.

The license transfer review assesses whether proposed transferees have the overall technical and financial qualifications to hold the subject licenses, including whether there is “reasonable assurance” that adequate decommissioning funding will be available. To be admissible, a contention cannot just question whether cost estimates can be further refined to be more accurate but must raise a material question about the overall financial qualification of the proposed transferee.

In license transfer adjudications, we long have found financial assurance to be acceptable if it is based on plausible assumptions and forecasts, even if “the possibility is not

³⁴ See, e.g., *id.* § 50.82(a)(8)(v), (vii) (requiring licensees to provide detailed status reports on decommissioning financial assurance and spent fuel management funding, respectfully).

³⁵ See *id.* § 50.82(a)(8)(v). In addition, within two years of permanently ceasing operations, licensees must provide the NRC, for the agency’s review and preliminary approval, the licensee’s program for spent fuel management, which must describe how the licensee intends to fund management of all irradiated fuel at the reactor site from the time that reactor operations cease until all fuel has been transferred to DOE. See *id.* § 50.54(bb).

insignificant that things will turn out less favorably than expected.”³⁶ We also have noted that the potential safety impacts, if any, from a shortfall in funding would not be as “direct or immediate as the safety impacts of significant technical deficiencies.”³⁷ We will admit for hearing only those “adequately supported assertions that a transfer applicant’s financial assumptions and forecasts are implausible or unrealistic in a way that is material to our assessment of reasonable assurance.”³⁸

II. DISCUSSION

A. Intervention Requirements

To intervene as a party in an NRC licensing proceeding, a petitioner must show standing to intervene and propose at least one admissible contention for hearing.³⁹ For standing, the request for hearing must address (1) the nature of the petitioner’s right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding; and (3) the possible effect that any decision or order issued in the proceeding may have on the petitioner’s interest.⁴⁰ In assessing whether a petitioner has shown standing to intervene, the Commission has long looked for guidance to judicial concepts of standing, which require a party to claim a concrete and particularized injury (actual or threatened) that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision in the proceeding.⁴¹

³⁶ *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 368 (2020) (quoting *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 222 (1999)).

³⁷ *Id.*, CLI-20-12, 92 NRC at 368 (quoting *Seabrook*, CLI-99-6, 49 NRC at 221).

³⁸ *See id.*

³⁹ *See* 10 C.F.R. § 2.309(a), (d), (f).

⁴⁰ *See id.* § 2.309(d)(1)(ii)-(iv); *see also* Hearing Opportunity Notice, 87 Fed. Reg. at 3374.

⁴¹ *See, e.g., USEC, Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311 (2005).

NRC regulations in 10 C.F.R. § 2.309(f) specify the requirements for an admissible contention. For each contention, a petitioner must explain the contention's basis and provide supporting facts or expert opinion on which the petitioner intends to rely in litigating the contention. To be admissible, a contention must fall within the scope of the proceeding and be material to the findings that the NRC must make for the proposed licensing action. The petitioner must identify the specific portions of the application that the petitioner disputes together with the supporting reasons for each dispute; or, if a petitioner claims that an application fails altogether to contain information required by law, the petitioner must identify each failure and provide supporting reasons for the petitioner's belief. These requirements help ensure that the NRC institutes adjudicatory hearings only for issues that are supported by facts or expert opinion and that identify a dispute with the application on a question material to the NRC's decision.

B. Earlier License Transfer of TMI-2 License to TMI-2 Solutions

Although the license transfer application as amended involves four facilities, Mr. Epstein's petition focuses on the TMI-2 facility. TMI-2 *Solutions* owns and operates TMI-2. The NRC approved a direct license transfer of the TMI-2 license from the FirstEnergy Companies to TMI-2 *Solutions* in December 2020 and the transfer was completed that month.⁴² Mr. Epstein petitioned to intervene to challenge the transfer of the TMI-2 license to TMI-2 *Solutions*. The earlier TMI-2 license transfer proceeding warrants some description here because Mr. Epstein's current petition (1) cites to the license transfer application and associated

⁴² See Three Mile Island Nuclear Station, Unit No. 2 – Order Approving Transfers of License from the FirstEnergy Companies to TMI-2 *Solutions*, LLC and Draft Conforming License Amendment (Dec. 2, 2020) (ML20279A366) (package) (NRC Approval of 2020 License Transfer to TMI-2 *Solutions*); Amendment No. 64 to License No. DPR-73, attached (Encl. 1) to Letter from Theodore B. Smith, NRC, to John Sauger, TMI-2 *Solutions* (Dec. 18, 2020) (ML20352A381) (Amendment No. 64). The companies collectively referred to as the FirstEnergy Companies were GPU Nuclear, Inc., Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company. See NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Cover Letter at 1.

documents in the separate earlier proceeding; and (2) repeats several arguments that he raised in the earlier proceeding—all of which we found inadmissible for lack of support or other grounds.

1. The TMI-2 Facility

TMI-2 is a permanently shutdown pressurized water reactor located on Three Mile Island in the Susquehanna River in Londonderry Township, Dauphin County, Pennsylvania. The NRC issued an operating license for TMI-2 in December 1978 and commercial operation was declared on December 30, 1978. But on March 28, 1979, an accident occurred at the unit causing severe damage to the reactor core, and the unit has not since operated. After the accident, about 99% of the spent nuclear fuel and damaged core material was removed and shipped to the U.S. Department of Energy's Idaho National Laboratory.⁴³ DOE has title to and possession of this material. Because the accident occurred within the first three months of reactor operation, no spent fuel was otherwise stored at TMI-2.⁴⁴ Following cleanup activities at TMI-2 to meet NRC criteria for safe storage, TMI-2 has been maintained since 1993 in an NRC-approved long-term storage condition known as post-defueling monitored storage.⁴⁵

Following the December 2020 license transfer, TMI-2 *Solutions* became the licensed owner holding title to and possession of any real estate encompassing the TMI-2 site; any TMI-2 improvements at the site; easements for other portions of the site; and any remaining spent nuclear fuel, damaged core material, high level waste, and Greater-Than-Class C waste

⁴³ See *FirstEnergy Companies and TMI-2 Solutions, LLC* (Three Mile Island Nuclear Station Unit 2), CLI-21-2, 93 NRC 70, 72 (2021); NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Encl. 3, Safety Evaluation at 2, 11.

⁴⁴ See NRC Approval of License Transfer to TMI-2 *Solutions*, Encl. 3, Safety Evaluation at 11.

⁴⁵ See *id.*, Encl. 1, Order Approving Transfer of License and Draft Conforming Amendment at 1-2, and Encl. 3, Safety Evaluation at 2. Three Mile Island also is the location of another pressurized water reactor, the Three Mile Island Nuclear Station, Unit 1; this proceeding does not involve the TMI-1 license.

(collectively “debris material”) that may still be within the TMI-2 facility.⁴⁶ The debris material that remains at TMI-2 “is spread throughout the reactor and auxiliary buildings, and is integrated into the equipment and materials that need to be removed as part of the traditional decommissioning process.”⁴⁷ Following the December 2020 transfer, TMI-2 *Solutions* also assumed the licensed authority to conduct, and the responsibility for, all activities under the license. Those activities include (1) maintaining and securing the site, (2) completing radiological decommissioning and terminating the license, and (3) managing any debris material until title to the material can be transferred to the Department of Energy.

2. License Transfer Proceeding for the Transfer of the License to TMI-2 Solutions

As outlined in the November 2019 application that requested NRC approval of the TMI-2 license transfer to TMI-2 *Solutions*, TMI-2 *Solutions* intends to complete the decommissioning, site restoration, and release of the site (except for any onsite waste storage facilities for debris material) by 2037, about 17 years sooner than the previous decommissioning timetable submitted to the NRC for TMI-2.⁴⁸ Based on this accelerated decommissioning schedule, the 2019 license transfer application provided a summary of updated cost estimates for radiological decommissioning, site restoration, and debris material management.⁴⁹ The then-applicants also provided further details on the significant decommissioning schedule change and related

⁴⁶ See NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Encl. 3, Safety Evaluation at 2.

⁴⁷ See “TMI-2 *Solutions* Plan for Management of Debris Material,” attached to (Attach. 1) Letter from Gerry van Noordennen, Senior Vice President Regulatory Affairs, to NRC Document Control Desk (Mar. 15, 2021), at 5 (ML21085A692) (Plan for Management of Debris Material).

⁴⁸ See Application for Order Approving License Transfer and Conforming License Amendment, attached to (Attach. 1) Letter from John Sauger, President and Chief Nuclear Officer, TMI-2 *Solutions*, and Gregory H. Halnon, President and Chief Nuclear Office, FirstEnergy Service Co., to NRC Document Control Desk (Nov. 12, 2019), at 2 (ML19325C600) (package) (2019 LTA for Transfer to TMI-2 *Solutions*).

⁴⁹ See *id.* at 9-12 and Enclosure 7 at 5-7.

updated cost estimates in a Post-Shutdown Decommissioning Activities Report (PSDAR), which they submitted in support of the application.⁵⁰

The 2019 application addressed how TMI-2 *Solutions* would provide reasonable assurance of adequate funding to pay for decommissioning and debris material management. Financial assurance would be provided primarily by the TMI-2 decommissioning trust fund, the assets of which would transfer to TMI-2 *Solutions*' nuclear decommissioning trust at closing. But additional funding valued up to a total of \$100 million would be available through other specified financial assurance methods, including a back-up & provisional nuclear decommissioning trust, an irrevocable letter of credit, and a financial support agreement offered by EnergySolutions, Inc. in support of TMI-2 *Solutions*, which would be implemented upon closing. As further financial assurance, EnergySolutions, Inc. would at closing provide a parent guarantee "to ensure the successful Decommissioning of TMI-2."⁵¹

Mr. Epstein, jointly with Three Mile Island Alert, Inc. (TMIA), filed a petition to intervene and request for a hearing challenging the license transfer to TMI-2 *Solutions*.⁵² Mr. Epstein challenged the financial qualifications of TMI-2 *Solutions* to become the licensee, including TMI-2 *Solutions*'s decommissioning funding assurance. We denied the petition for failure to raise at least one admissible contention for hearing.⁵³

⁵⁰ See *generally* Post-Shutdown Decommissioning Activities Report, Rev. 3 (December 2019), attached (Attach. 1) to Letter from Karen A. Sealy, Senior Corporate Counsel, FirstEnergy Service Co., to NRC Document Control Desk (Dec. 12, 2019) (ML20013E535) (2019 PSDAR, Rev. 3).

⁵¹ See 2019 LTA for Transfer to TMI-2 *Solutions* at 10-11; see also NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Encl. 3, Safety Evaluation at 9-10.

⁵² *Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing* (Apr. 15, 2020) (ML20106F216) (2020 Petition Challenging Transfer to TMI-2 *Solutions*).

⁵³ See TMI-2, CLI-21-2, 93 NRC 70.

After finding TMI-2 *Solutions* qualified to hold the TMI-2 license, the Staff approved the license transfer in December 2020. The Staff found reasonable assurance of adequate funding to cover the costs of decommissioning and of debris material management. The Staff's evaluation described financial assurances based on the TMI-2 decommissioning nuclear trust in conjunction with the additional financial instruments and the parent guarantee. The Staff further imposed financial license conditions requiring that (1) upon the date of closing and continuing until Phase 2 of facility decommissioning is completed, TMI-2 *Solutions* will maintain a Financial Support Agreement of up to \$100 million (implemented by Energy*Solutions* to the benefit of TMI-2 *Solutions*); and (2) at closing, Energy*Solutions*, Inc. will provide a Parent Guarantee for the payment and performance of the TMI-2 decommissioning by TMI-2 *Solutions*.⁵⁴ These two financial support license conditions "may not be voided, canceled, or modified without the prior written consent of the NRC."⁵⁵

C. Mr. Epstein's Petition Challenging the Indirect License Transfer

1. Repetition of Claims Raised in Earlier License Transfer Proceeding

In his petition, Mr. Epstein identifies two contentions, Epstein-1 and Epstein-2. These contentions repeat several arguments that Mr. Epstein raised when he challenged the transfer of the TMI-2 license to TMI-2 *Solutions*. Contentions Epstein-1 and Epstein-2 are identical,

⁵⁴ See NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Encl. 3 Safety Evaluation at 10; see also *id* at 9-11; Amendment No. 64 at 2-3 and attached Changes to Possession Only License at 3 (regarding License Conditions 2.C.(3)-(4)). As described in the 2019 application requesting NRC consent to the license transfer to TMI-2 *Solutions*, the TMI-2 decommissioning would occur in phases. The Phase 1 goals would include recovering and safely packaging debris material and reducing the overall radiological source term at TMI-2 and the TMI-2 site to levels "generally consistent with" those at the end of the operational life of a nuclear power plant that did not experience a core-melt accident. Phase 2's overall goal would be to decommission to a level that would permit the site's release for unrestricted use (with the exception of one area that would be set aside for debris material storage). See 2019 LTA for Transfer to TMI-2 *Solutions* at 10 and Encl. 7 at 1.

⁵⁵ See Amendment No. 64 at 3 and attached Changes to Possession Only License at 3 (License Condition 2.C.(5)).

respectively, to contentions Epstein-2 and Epstein-3 submitted in the earlier license transfer proceeding.⁵⁶ In these two contentions, both in the earlier proceeding and now, Mr. Epstein challenges the decommissioning funding assurance and financial qualifications of TMI-2 *Solutions*.

But unlike the previous transfer proceeding, this is not a proceeding to transfer the license to TMI-2 *Solutions*. TMI-2 *Solutions* is the licensee and will remain the NRC licensee responsible for TMI-2, regardless of NRC approval of the proposed indirect license transfer. Also, unlike in the previous license transfer proceeding, the current application does not describe any planned changes—stemming from the proposed transfer—to the TMI-2 decommissioning schedule or associated estimated decommissioning costs, or to the decommissioning funding and financial qualifications arrangements currently in place for TMI-2.

Nor does the application involve proposed changes to the license. The indirect transfer therefore will not affect the existing TMI-2 license conditions requiring that a financial support agreement and a parent guarantee be maintained as additional available funding to complete decommissioning if funding beyond the decommissioning trust fund were to prove necessary. The application affirms that no changes are proposed to the “existing financial qualification arrangements” for the respective Energy *Solutions* licensed subsidiaries, including the “existing nuclear decommissioning trust funds” and any “additional financial assurance mechanisms that are the subject of regulatory commitments or prior license transfer approvals.”⁵⁷

Nearly all underlying bases for Epstein-1 and Epstein-2 are, however, the same as the bases provided for the corresponding contentions (Epstein 2 and Epstein 3, respectively) that

⁵⁶ Compare Petition at 27, 56 (Epstein-1 and Epstein-2, respectively, in current petition), with 2020 Petition Challenging Transfer to TMI-2 *Solutions* at 9, 38 (Epstein-2 and Epstein-3, respectively, in earlier petition). In his 2020 petition, Mr. Epstein separately paginated the portion of his petition addressing contentions; for citations to that petition we use his pagination.

⁵⁷ See Application at 7.

Mr. Epstein submitted in his earlier petition challenging the financial qualifications of TMI-2 Solutions.⁵⁸ The current petition contains numerous citations to the license transfer application filed in the previous proceeding to transfer the license to TMI-2 *Solutions*. To the extent that Mr. Epstein is again challenging the earlier license transfer application and its associated documents, we addressed those challenges in CLI-21-2 and found them inadmissible.

Mr. Epstein reiterates his earlier claims challenging the decommissioning funding assurance and financial qualifications of TMI-2 *Solutions*, but without discussing what we stated when we found the same arguments inadmissible previously. He does not specify any ground for why the arguments we found inadmissible in CLI-21-2 ought to be revisited in this indirect transfer proceeding. Significantly, while Mr. Epstein repeats his earlier-raised challenges to TMI-2 *Solutions*'s financial qualifications and decommissioning funding assurance, his current petition does not specify with support how this proposed indirect license transfer would materially affect either.⁵⁹

⁵⁸ There are some minor distinctions in the underlying bases for Epstein-1 and Epstein-2 compared to the bases included with the previously filed contentions Epstein-2 and Epstein-3 in the earlier proceeding. For instance, Mr. Epstein did not include in the current petition some arguments that he raised earlier. See, e.g., 2020 Petition Challenging License Transfer to TMI-2 *Solutions* at 36 (claim relating to economic impact of COVID-19 virus). He also did not submit exhibits in support of the current petition, therefore dropping various citations to exhibits that had been referenced in his earlier petition. See, e.g., *id.* at 16-18 (citing to exhibits, compared to Petition at 34-36, where the same claims are made without citation to exhibits); see also TMI-2, CLI-21-2, 93 NRC at 81 (finding the exhibits, many of which involved the different reactor unit TMI-1, not supportive).

⁵⁹ Further, when we addressed Mr. Epstein's petition in the previous TMI-2 license transfer proceeding, we observed that many of the claims appeared "copied from" and essentially "identical to those sponsored by different petitioners" in the *Indian Point* license transfer proceeding, albeit with the facility and applicant names changed. See TMI-2, CLI-21-2, 93 NRC at 77 & n.43. We stated that where contentions appear copied from a different proceeding "it is especially important to ensure that petitioners demonstrate a genuine material dispute with the particular application in question." See *id.* at 77.

2. *Epstein-1*

Citing various NRC regulations, in *Epstein-1* Mr. Epstein claims that *TMI-2 Solutions* “fails to show adequate financial assurance and/or adequate funding for spent fuel management” because “the *TMI-2 Solutions’* Amended PSDAR and decommissioning cost estimate underestimates license termination, site restoration and spent fuel management costs.”⁶⁰

As we noted, *Epstein-1* is the same contention that was titled *Epstein-2* in the proceeding to transfer the license to *TMI-2 Solutions*. *Epstein-1* therefore raises a series of claims that we addressed in *CLI-21-2*. These include claims that cost estimates are underestimated because they do not account for (1) a likely existence of greater amounts of contamination and therefore of higher remediation costs than the current cost estimate assumes;⁶¹ (2) a need to repackage spent nuclear fuel and fuel debris material;⁶² (3) mixed waste disposal costs;⁶³ and (4) a delay in the early stage of the decommissioning process that could increase project costs over the current estimate.⁶⁴ We previously found all of these underlying claims inadmissible because they lacked factual or expert support or did not raise a genuine dispute with the application to transfer the *TMI-2* license to *TMI-2 Solutions*.⁶⁵

The arguments that Mr. Epstein repeats in this proceeding in support of *Epstein-1* do not raise a genuine material dispute with the application for the indirect license transfer. Mr. Epstein

⁶⁰ See Petition at 27.

⁶¹ See, e.g., *id.* at 28, 31-39; *TMI-2*, *CLI-21-2*, 93 NRC at 80-82. The page citations to arguments made in Mr. Epstein’s petition are not exhaustive; the petition often repeats similar claims.

⁶² See, e.g., Petition at 28, 40-43, 45-46; *TMI-2*, *CLI-21-2*, 93 NRC at 82-83.

⁶³ See, e.g., Petition at 29, 47-49; *TMI-2*, *CLI-21-2*, 93 NRC at 83-84.

⁶⁴ See, e.g., Petition at 30; 50-54; *TMI-2*, *CLI-21-2*, 93 NRC at 84-85.

⁶⁵ See *TMI-2*, *CLI-21-2*, 93 NRC at 80-88.

does not tie these claims to the proposed licensing action. In some places Mr. Epstein added the name “TriArtisan” to arguments raised previously.⁶⁶ But merely adding the name “TriArtisan” or substituting references to TMI-2 *Solutions* with TriArtisan does not render any of the earlier-raised arguments admissible in this proceeding.

TMI-2 *Solutions* already is and will remain the licensee responsible for the facility, and Mr. Epstein does not specify with support how the proposed change in the majority ownership of Rockwell would adversely and materially impact TMI-2 *Solutions*’s existing decommissioning funding and financial qualifications arrangements. The claims therefore do not raise a genuine and material dispute with the applicable NRC application and lack factual or expert support.

We will not address individually in this decision the numerous claims in the two contentions that are virtually identical to claims our decision in CLI-21-2 encompassed and found inadmissible, and that, moreover, Mr. Epstein has not tied to this proposed licensing action. Instead, we focus on the new claims that Mr. Epstein raises in his current petition.

Citing to the TMI-2 *Solutions* decommissioning funding and financial assurance status reports submitted to the NRC in March 2021, Mr. Epstein notes in Epstein-1 that the licensee reported a site-specific radiological decommissioning cost estimate of \$1,044,364,000 and reported that as of December 2021 there was \$862,549,586 in the decommissioning trust fund.⁶⁷

⁶⁶ For example, “TMI-2 *Solutions* and *TriArtisan* failed to demonstrate adequate financial assurance” and “TMI-2 *Solutions* and *TriArtisan* fail to anticipate or plan for problems associated with Phase 1.” See Petition at 30, 33 (emphasis added).

⁶⁷ See Petition at 27, 54. The cited TMI-2 *Solutions* filing includes, for the year ending December 31, 2020, both a financial assurance status report (filed pursuant to 10 C.F.R. § 50.82(a)(8)(v)) and decommissioning funding status reports (filed pursuant to 10 C.F.R. § 50.75). See Letter from Gerard P. Van Noordennen, Senior Vice President Regulatory Affairs, TMI-2 *Solutions*, to NRC Document Control Desk (Mar. 31, 2021), at 1 (ML21099A115) (2021 TMI-2 Status Reports); see also *id.*, Attach. 2 at 1 (reporting accumulated decommissioning trust funds and estimated decommissioning costs, based on a site-specific decommissioning cost estimate dated Mar. 17, 2021).

Mr. Epstein claims that the “fund is underfunded by \$181 million” and that “EnergySolutions has only pledged an additional \$100 million during the first phase” of decommissioning.⁶⁸

But the cited status reports do not support Mr. Epstein’s argument that TMI-2 *Solutions* lacks reasonable assurance of adequate funding. First, Mr. Epstein does not account for the potential interest earnings on the trust funds. The reports include a funding analysis showing projected trust fund balances, earnings, and withdrawals beginning in 2020 and extending through 2054 when final license termination is expected. The funding analysis assumes the maximum 2% annual real rate of return allowed under NRC regulations. Over the course of 34 years, the projected earnings on the trust funds add up to over \$170 million.⁶⁹

Although Mr. Epstein cites to the status reports as support for his underfunding claim, he omits any mention of the report’s funding projections. The funding analysis does not support Mr. Epstein’s claim of a \$181 million decommissioning funding shortfall. Nor does it project any funding shortfall.⁷⁰ Without more, therefore, Mr. Epstein’s references to the estimated site-specific decommissioning cost and the amount accumulated in the trust fund, as reported in the

⁶⁸ See Petition at 27.

⁶⁹ See 2021 TMI-2 Status Reports, Attach. 2 at 3-4. In the earlier TMI-2 license transfer proceeding, Mr. Epstein submitted a contention claiming that TMI-2 *Solutions* impermissibly assumed a 2% annual real rate of return on the trust funds. In CLI-21-2, we rejected his argument as an incorrect interpretation of our regulations. See *TMI-2*, CLI-21-2, 93 NRC at 78-79. Mr. Epstein no longer argues that TMI-2 *Solutions* cannot assume a 2% annual real rate of return through the decommissioning period.

⁷⁰ The funding analysis in the cited March 2021 status report does project the need for and includes approximately \$7 million in deposits to be added to the trust fund between 2038-2054 to supplement the funding for long-term debris material management. See 2021 TMI-2 Status Reports, Attach. 2 at 3. Mr. Epstein did not address the analysis. We note additionally that TMI-2 *Solutions* filed its most recent status report in March 2022; it projects a remaining balance of about \$64 million at license termination in 2055. See Decommissioning Funding Status Report—Site Specific Decommissioning Cost Estimate, at 3, Attach. 2 to Letter from Gerard van Noordennen, TMI-2 *Solutions*, to NRC Document Control Desk (Mar. 31, 2022) (ML22091A273) (2022 TMI-2 Status Reports).

March 2021 status reports, do not support his contention that TMI-2 *Solutions* lacks reasonable assurance of financial qualifications.⁷¹

Further, while Mr. Epstein notes that TMI-2 *Solutions* will also have access to up to an additional \$100 million beyond any amounts in the trust fund, he incorrectly characterizes this additional financial assurance as applicable only to the “first phase” of decommissioning.⁷² Current License Condition 2.C.(3) requires that a financial support agreement providing up to \$100 million be maintained until it has been determined that *Phase 2 of the decommissioning has been completed*.⁷³ Beyond the financial support agreement, an additional existing license condition requires Energy*Solutions*, Inc. to provide a Parent Guarantee making “the resources of Energy*Solutions* available to help ensure the successful decommissioning of TMI-2, assuring the ability of TMI-2 *Solutions* to (i) pay the costs of decommissioning the TMI-2 facility; (ii) protect the public health and safety; and (iii) meet NRC requirements.”⁷⁴ Mr. Epstein does not link the proposed indirect transfer to any material adverse effects on the adequacy of the existing financial assurance methods, which include the trust fund together with other financial instruments. In short, Mr. Epstein’s argument that the trust fund is underfunded by \$181 million

⁷¹ Mr. Epstein also refers to the Staff’s 2021 report, SECY-21-0108, “Summary of Staff Biennial Review and Findings of the 2021 Decommissioning Funding Status Reports from Operating and Decommissioning Power Reactor Licensees” (Dec. 16, 2021) (ML21285A219). See Petition at 28. In the report, the Staff concluded that for the year 2021 all NRC power reactor licensees in decommissioning were in compliance with the NRC’s decommissioning funding assurance requirements in 10 C.F.R. §§ 50.75 and 50.82. See SECY-21-0108 at 5. The Staff’s report does not lend support to Mr. Epstein’s contention.

⁷² See Petition at 27; see also *id.* at 54-55.

⁷³ See NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Encl. 3, Safety Evaluation at 10; Amendment No. 64 at 2 and attached Changes to Possession Only License at 3 (adding License Condition 2.C.(3)).

⁷⁴ See NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Encl. 3, Safety Evaluation at 10; Amendment No. 64 at 3 and attached Changes to Possession Only License at 3 (adding License Condition 2.C.(4)).

lacks factual support and does not raise a material dispute with this indirect license transfer application.⁷⁵

3. ***Epstein-2***

In Contention Epstein-2, Mr. Epstein claims that the license transfer application and supporting materials fail to show that TMI-2 *Solutions* is financially qualified.⁷⁶ We addressed the same contention (then titled Epstein-3) in CLI-21-2. Specifically, we addressed its underlying arguments, including that (1) TMI-2 *Solutions* is financially unqualified because it is a limited liability corporation; (2) investment guidelines for the decommissioning trusts encourage broad and permissive investments that could result in increased investment risk, which could in turn limit the available funding; (3) the trustee is authorized to appoint and indemnify foreign custodians as agent(s) of the trustee to custody foreign securities holdings of the trust; and (4) it is unlikely that TMI-2 *Solutions* would be able to comply with NRC regulations requiring that they

⁷⁵ Because Mr. Epstein repeats arguments that he previously submitted in the other license transfer proceeding, some of his claims are outdated. Mr. Epstein, for instance, quotes statements from documents associated with the 2019 TMI-2 license transfer application, which indicated that TMI-2 *Solutions* would submit to the NRC a long-term management plan for Debris Material. See, e.g., Petition at 28-29 & n.17; 34. While the 2019 application provided cost estimates for the recovery, packaging, and long-term storage of the debris material, none of which Mr. Epstein challenged, the application additionally stated as a regulatory commitment that TMI-2 *Solutions* would provide the NRC with a plan containing further details on debris material management. See 2019 LTA for Transfer to TMI-2 *Solutions*, Attach. 4 (List of Regulatory Commitments) at 1; see also *id.*, Application at 12 and Encl. 7 at 2. TMI-2 *Solutions* submitted its long-term storage plan to the NRC on March 15, 2021. See Plan for Management of Debris Material.

Similarly, Mr. Epstein continues to quote the 2019 license transfer application's statement that TMI-2 *Solutions* would submit to the NRC an updated PSDAR; this also was a regulatory commitment. See Petition at 46; 2019 LTA for Transfer to TMI-2 *Solutions* at 10 and Attach. 4 (List of Regulatory Commitments) at 1. TMI-2 *Solutions* submitted its revised PSDAR with updated decommissioning schedule and cost information on March 17, 2021. See Letter from Gerard van Noordennen, TMI-2 *Solutions*, to NRC Document Control Desk (Mar. 17, 2021) (with attached PSDAR, Rev. 4, and enclosures) (ML21084A229); see also 2021 TMI-2 *Solutions* Status Reports, Attach. 2 at 1-2, 4; Attach. 3 at 1 (citing to PSDAR, Rev. 4). The application for the proposed indirect license transfer does not describe any proposed change to the existing debris material management plan or current PSDAR.

⁷⁶ See Petition at 56-67.

provide additional financial assurance in the event of a projected cost overrun.⁷⁷ We found that these and all underlying arguments in the contention lacked adequate factual or legal support and failed to raise a genuine and material dispute with the application. Even though in the current contention Mr. Epstein has replaced the name TMI-2 *Solutions* with TriArtisan, his contention continues to lack support and he does not link his particular arguments to this indirect license transfer.⁷⁸ Mr. Epstein neither addresses the sufficiency of the existing financial assurances on which TMI-2 currently relies—which include the decommissioning trust fund, a financial support agreement, and a parent guarantee—nor describes how these current financial arrangements would be affected by this indirect license transfer. In sum, he does not provide a supported claim that the change in majority ownership from ECP to TriArtisan will have a material detrimental impact on licensee TMI-2 *Solutions*'s decommissioning funding assurance and financial qualifications.

⁷⁷ See *TMI-2*, CLI-21-2, 93 NRC at 86-88.

⁷⁸ In the earlier petition, for example, Mr. Epstein raised the same claims regarding investment guidelines but referred to “TMI-2 Solutions’ investment guidelines”; he now refers to “TriArtisan’s investment guidelines.” *Compare* Petition at 65 *with* 2020 Petition Challenging License Transfer to TMI-2 Solutions at 47.

As he also argued in his earlier petition, Mr. Epstein claims that the amount in the trust fund has “significantly declined.” See Petition at 66. In his current petition, Mr. Epstein adds his observation from the March 2021 status reports for TMI-2 (also cited in current Epstein-1) that the trust fund as of December 31, 2020 contained \$862,549,586. He states this represents a significant decline from a level of \$899 million on December 31, 2019, which he notes the 2019 license transfer relied on. See *id.* at 65-66. But whether trust fund withdrawals have been made or the total fund amount otherwise has fluctuated since 2019 would not by itself suggest that there is a lack of reasonable assurance of decommissioning funding. Further, the TMI-2 *Solutions* 2021 decommissioning funding status report cited by Mr. Epstein contains a funding analysis that does not project a funding shortfall. See 2021 TMI-2 Status Reports, Attach. 2 at 3. In addition, TMI-2 *Solutions*'s most current decommissioning funding status report, filed in March 2022, reports that as of December 31, 2021 the trust fund contained \$902,074,154, which exceeds the amount that Mr. Epstein states was relied on in the earlier transfer application. See 2022 TMI-2 Status Report, Attach. 2 at 1. The most recent funding analysis shows a projected ending balance of about \$64 million in 2055 at license termination. See *id.*, Attach. 2 at 3.

4. Additional Claims Raised Outside of Contentions Epstein-1 and Epstein-2

While the bulk of Mr. Epstein’s petition consists of his arguments under Epstein-1 (pp. 27-55) and Epstein-2 (pp. 56-67), Mr. Epstein also briefly lists three additional claims.⁷⁹ First, he states that the current corporate organization is unable to demonstrate that “[l]icense transfer applicants for reactors that will be permanently shut down at the time of transfer may rely *solely* on the adequacy” of the decommissioning trust fund to demonstrate reasonable assurance of decommissioning funding and that “TriArtisan Capital Advisors LLC does not possess the financial assurance to decommission” TMI-2.⁸⁰ However, as was the case in CLI-21-2, Mr. Epstein “does not cite any legal support for [his] argument that the license holder decommissioning a reactor must have some other, ongoing business concern that would generate income independent of the decommissioning trust fund.”⁸¹ In any event and as we have described, TMI-2 *Solutions* relies not only on the decommissioning trust fund but also on a financial support agreement and a parent guarantee—both required by license condition. Mr. Epstein does not provide a supported challenge to the adequacy of the total funding provided by the financial assurance methods and does not describe how this proposed indirect transfer would materially impact the adequacy of the financial assurance methods in place now.

Second, Mr. Epstein claims that because of “TriArtisan’s acquisition of a majority share of Energy*Solutions*, the owner of Three Mile Island Unit-2 may be[] controlled, or dominated by” foreign corporations.⁸² Mr. Epstein does not provide factual support for this claim. Further, the application addresses the foreign participation in passive investment funds and states that “the passive investment funds that will participate as limited partners will have no ability to exercise

⁷⁹ See Petition at 26.

⁸⁰ See *id.*

⁸¹ TMI-2, CLI-21-2, 93 NRC at 87.

⁸² Petition at 26.

control over the new TriArtisan Partners ES Partners II LP, Rockwell, EnergySolutions or its subsidiaries.”⁸³ Mr. Epstein does not challenge the description in the application regarding the inability of foreign passive investors to exercise control or domination over Rockwell, EnergySolutions, or licensee TMI-2 Solutions, or to exercise direct or indirect control over any NRC-licensed activity. Mr. Epstein provides no argument indicating how the proposed indirect transfer might violate the AEA’s prohibitions against foreign ownership, control, or domination, and the NRC’s regulation at 10 C.F.R. § 50.38, “Ineligibility of certain applicants,” which implements the AEA provisions.⁸⁴ Mr. Epstein’s argument therefore lacks support and does not raise a genuine dispute with the application.

And third, Mr. Epstein claims that the proposed indirect license transfer raises “significant safety and regulatory issues, based on TriArtisan’s complete lack of engineering, nuclear and technical skills.”⁸⁵ TriArtisan, however, is not the TMI-2 licensee and is not authorized to conduct licensed activities at TMI-2. Following the proposed transfer, current licensee TMI-2 Solutions would remain responsible for activities performed under the license. Mr. Epstein does not address the discussion of technical qualifications in the application.⁸⁶ He also does not link the proposed licensing action to any specific technical or safety concerns or to any potential adverse changes in the technical qualifications of TMI-2 Solutions. Mr. Epstein’s “technical skills” safety claim therefore neither raises a dispute with the application nor is supported by facts or expert opinion.

⁸³ See Application at 5-6.

⁸⁴ NRC staff guidance on assessing foreign ownership, control, or domination can be found in Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 Fed. Reg. 52,355 (Sept. 28, 1999).

⁸⁵ Petition at 26.

⁸⁶ See Application at 7.

On reply, Mr. Epstein does not substantively address any specific contention submitted or the Applicant's answer. He states that there is a "paucity of information contained in the filing documents."⁸⁷ Our regulations on admissible contentions require a petitioner to "include references to specific portions of the application . . . that the petitioner disputes," but the regulations also allow for contentions based on omitted information that was required to have been included in the application.⁸⁸ Specifically, if a petitioner believes that an application "fails to contain information on a relevant matter as required by law" the petitioner must identify "each failure and the supporting reasons for the petitioner's belief."⁸⁹ Mr. Epstein's petition did not identify specific items of missing information asserted, with supporting reasons, to be required in the application.

Mr. Epstein concludes his reply by stating that the "whole matter of decommissioning funding assurance is a red flag" because "the new entity will not be affiliated with a regulated utility company and is not defined by either the NRC or PUC [Public Utility Commission] as an 'electric utility.'"⁹⁰ He states that EnergySolutions is a limited liability corporation "financed by the food service, hospitality, and pool installation industries."⁹¹ NRC regulations, however, allow for applicants that are not electric utilities—and require more financial assurance information from them.⁹² Further, the NRC does not prohibit licensees from being limited liability companies

⁸⁷ See *Reply of Eric Joseph Epstein to EnergySolutions, LLC Answer Opposing the Petition of Eric Joseph Epstein for Leave to Intervene and for a Hearing* (Mar. 14, 2022), at 3 (unnumbered) (Reply).

⁸⁸ See 10 C.F.R. § 2.309(f)(vi).

⁸⁹ See *id.*

⁹⁰ Reply at 7.

⁹¹ *Id.*

⁹² See 10 C.F.R. § 50.33(f) (electric utility applicants need not demonstrate financial qualifications to carry out the activities for which the permit or license sought).

and over the past decades many licensees have been LLCs. Mr. Epstein has not offered an admissible contention linking the proposed change in majority ownership to the adequacy of TMI-2 *Solutions's* existing decommissioning funding and its other existing financial assurance methods.⁹³

III. CONCLUSION

For the reasons outlined, we *deny* Mr. Epstein's petition for intervention and request for hearing and *terminate* this proceeding.

IT IS SO ORDERED.

For the Commission



Brooke P. Clark
Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of July 2022.

⁹³ We need not address Mr. Epstein's standing to intervene given that he did not submit an admissible contention.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
EnergySolutions, LLC)
)
(Zion Nuclear Power Station, Units 1 and 2;) Docket Nos. 50-295-LT, 50-304-LT,
Three Mile Island Nuclear Station, Unit 2;) 72-1037-LT, 50-320-LT, 50-409-LT,
La Crosse Boiling Water Reactor;) 72-046-LT, 50-305-LT, 72-64-LT,
Kewaunee Power Station, Radioactive) 030-39013-LT, 11005620-LT,
Materials License, Export Licenses) and 11005897-LT

(Consideration of Approval of Indirect Transfer)
of Licenses))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-22-09)** have been served upon the following persons by Electronic Information Exchange and by electronic mail as indicated by an asterisk.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16B33
Washington, DC 20555-0001
E-mail: oca@mail.resource@nrc.gov

EnergySolutions, LLC
299 South Main Street, Suite 1700
Salt Lake City, UT 84111
Russell G. Workman
General Counsel and Secretary
E-mail: rgworkman@energysolutions.com

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16B33
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

Counsel for EnergySolutions, LLC

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-14A44
Washington, DC 20555-0001
Jessica Bielecki
Tison A. Campbell
Christina L. England
Ian G. Irving
David E. Roth
Susan H. Vrahoretis
Jeremy L. Wachutka
E-mail: Jessica.Bielecki@nrc.gov

Hogan Lovells US, LLP
555 13th St. NW
Washington, D.C. 20004
Daniel F. Stenger
E-mail: daniel.stenger@hoganlovells.com

Tison.Campbell@nrc.gov
Christina.England@nrc.gov
Ian.Irvin@nrc.gov
David.Roth@nrc.gov
Susan.Vrahoretis@nrc.gov
Jeremy.Wachutka@nrc.gov

Hogan Lovells US, LLP
611 M Street, NE
Washington, DC 20004
Stephanie Fishman
E-mail: stephanie.fishman@hoganlovells.com

EnergySolutions, LLC
COMMISSION MEMORANDUM AND ORDER (CLI-22-09)

Three Mile Island Alert, Inc.
4100 Hillsdale Road
Harrisburg, PA 17112
Eric Epstein*
E-mail: epstein@efmr.org
(Served via email.)

Dated at Rockville, Maryland,
this 15th day of July 2022.

Office of the Secretary of the Commission