



November 23, 2022

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555-0001

10 CFR 30.34(b)
10 CFR 50.80
10 CFR 72.50
10 CFR 110.50(d)

SUBJECT: Request for Threshold Determination re:
License Nos. DPR-39 and DPR-48 (Docket Nos. 50-295, 50-304 and 72-1037) (Zion)
License No. DPR-73 (Docket No. 50-320) (TMI-2)
License No. DPR-45 (Docket No. 50-409 and 72-046) (La Crosse)
Radioactive Materials License No. 39-35044-01 (Docket Nos. 030-39013, 030-38619)
Export Licenses XW010 (Docket No. 11005620) and XW018 (Docket No. 11005897)

EnergySolutions, LLC (**EnergySolutions**) hereby requests a threshold determination by the U.S. Nuclear Regulatory Commission (NRC) that the corporate transaction described below, involving companies upstream of the indirect majority owner of EnergySolutions, does not constitute a transfer of control of the above-referenced NRC licenses (**Licenses**) requiring prior NRC consent pursuant to 10 CFR 30.34(b), 50.80, 72.50, and 110.50(d). EnergySolutions is prepared to work with the NRC staff to facilitate the review of this request and respectfully requests a threshold determination as soon as practicable and in any event within 60 days from this filing to accommodate the transaction's timeline.

I. Current Corporate Organization of EnergySolutions

EnergySolutions' current ownership structure is shown on the enclosed simplified Organizational Chart, along with the upstream companies that are the subject of the transaction described herein (**Attachment 1**).

EnergySolutions is an international nuclear services company headquartered in Salt Lake City, Utah. EnergySolutions provides a full range of nuclear decommissioning and decontamination services. Four wholly owned subsidiaries of EnergySolutions hold the NRC licenses for the above-listed nuclear power plants that are currently undergoing decommissioning. EnergySolutions also holds the above-referenced NRC export licenses and NRC radioactive materials license. EnergySolutions is an indirect wholly owned subsidiary of Rockwell Holdco, Inc. (**Rockwell**

Holdco), which is in turn a direct wholly owned subsidiary of ES Partners Holdco LP (**ES Partners Holdco**).¹

Two investment funds known as TriArtisan ES Partners LLC (**Partners I**) and TriArtisan ES Partners II LP (**Partners II**) indirectly own, in the aggregate, approximately 89% of the voting interests of EnergySolutions (77% of the economic interest), through ES Partners Holdco, Rockwell Holdco and the intermediate parent companies.² TriArtisan ES MM LLC (**ES MM LLC**) is the managing member and general partner of Partners I and Partners II, respectively. U.S. private equity firm TriArtisan Capital Advisors LLC (**TriArtisan Capital** or **TriArtisan**) also provides investment advice to Partners I, subject to the supervision of ES MM LLC. While ES MM LLC manages Partners I and Partners II and TriArtisan Capital provides investment advice to Partners I on a contractual basis, neither ES MM LLC nor TriArtisan Capital holds a material economic interest in Partners I or Partners II. Rather, the vast majority of the economic interest of Partners I and Partners II (>99%) is held by passive investors in those funds, which EnergySolutions has described in prior license transfer applications. Because ES MM LLC is the managing member and general partner of Partners I and Partners II, respectively, it controls Partners I and Partners II and, as a result, has the ability to appoint a majority of the board of managers of ES Partners Holdco, of which EnergySolutions is an indirect, wholly owned subsidiary. ES MM LLC also has a contingent economic interest in the performance of Partners I and Partners II.³

Cowen Investment Management LLC (**CIM LLC**) is the managing member of, and holds 100% of the nominal capital interest in, ES MM LLC, and is also the corporate parent of TriArtisan Capital. Although CIM LLC is the managing member of ES MM LLC, the responsibility for day-to-day operations of ES MM LLC has been effectively delegated to the co-founders of TriArtisan Capital, Mr. Gerald Cromack and Mr. Rohit Manocha.⁴ Mr. Cromack and Mr. Manocha are members and officers of ES MM LLC and are managing directors of TriArtisan Capital. Mr. Cromack sits on the board of managers of ES Partners Holdco (of which EnergySolutions is an indirect, wholly owned subsidiary), where he exercises a majority of the board's voting power.

¹ There are two intermediate parent companies above EnergySolutions, LLC – namely, EnergySolutions, Inc. and EnergySolutions Finance Holdings, LLC.

² See “Application for Order Approving Indirect Transfer of Control of Licenses,” Dec. 7, 2021 (Accession No. ML21344A109), supplemented by letters dated Mar. 30, 2022 (Accession No. ML22091A275) and Apr. 18, 2022 (Accession No. ML22110A030); and “Order Approving Indirect Transfer of Licenses,” May 3, 2022 (Accession No. ML22076A011).

³ If the funds perform well enough, ES MM LLC receives a portion of the profits distributed to investors in excess of a certain threshold. This is commonly known as a “carried interest,” and is defined by the organizational documents governing Partners I and Partners II. This contingent economic interest is an incentive for effective management of the funds; it bears no voting rights and is not an absolute right to any specific percentage of the profits of EnergySolutions or of its assets upon dissolution. TriArtisan Capital has no ownership or economic stake in Partners I or Partners II (or EnergySolutions); its investment advisory services are provided via contract on a fee-for-service basis.

⁴ Mr. Cromack and Mr. Manocha are U.S. citizens and the co-founders and managing directors of TriArtisan, as described in the prior NRC indirect license transfer application cited in footnote 2.

TriArtisan Capital is a private equity subsidiary of Cowen Inc. (**Cowen**). Cowen is a publicly traded U.S. financial services firm headquartered in New York (Nasdaq: COWN). Cowen provides investment banking, research, sales and trading, and other financial services to its clients. Cowen is not involved in the operations of *EnergySolutions* or any of the activities under the Licenses.

Cowen currently holds a limited indirect economic interest in Partners I and Partners II. Specifically, CIM LLC is entitled to an approximately 30% share of ES MM LLC's carried interests in Partners I and in Partners II, described in note 3 above. Cowen Investments II LLC (**CI II LLC**), an indirect wholly owned subsidiary of Cowen, also holds a small portion of the passive investment in Partners I and Partners II. Specifically, CI II LLC (i) holds a non-voting interest representing approximately 2.28% of Partners I's capital, and (ii) owns approximately 62.2% of ESN Co-Investment LLC (**ESN LLC**), a member-managed co-investment vehicle which in turn holds a non-voting interest representing approximately 0.68% of Partners II's capital. Collectively, the interests of CI II LLC in Partners I and of ESN LLC in Partners II represent less than 1% of ES Partners Holdco's capital.

As noted, a simplified organizational chart depicting the current corporate organizational structure of *EnergySolutions* is provided at **Attachment 1**.

II. Description of the Merger and Related Restructuring

On August 1, 2022, Cowen, the Toronto-Dominion Bank, a Canadian chartered bank (**TD**), and Crimson Holdings Acquisition Co., a Delaware corporation and an indirect wholly owned subsidiary of TD (**Merger Sub**), entered into an Agreement and Plan of Merger pursuant to which, upon the terms and subject to the conditions set forth therein, Merger Sub will be merged with and into Cowen, with Cowen surviving the merger as an indirect wholly-owned subsidiary of TD, in an all-cash transaction valued at approximately \$1.3 billion, or \$39 for each share of Cowen common stock (the **Merger**). TD is a publicly traded Canadian company headquartered in Toronto. TD is the sixth largest bank in North America by total assets (as of July 31, 2022) and serves millions of customers in the United States. The Merger and the Restructuring (as defined below) are expected to close in the first quarter of 2023, and no changes related to the upstream corporate interests in *EnergySolutions* would occur until then.

For TD, the purpose of the Merger is to accelerate its long-term U.S. growth strategy by acquiring a high-quality investment bank with complementary products and services. For Cowen, the Merger is an opportunity to better serve its existing clients through an expanded range of products and services as well as by leveraging TD's larger balance sheet and transaction banking capabilities.

Pursuant to the terms of the merger agreement in respect of the Merger, Cowen is required to use reasonable best efforts to restructure or otherwise dispose of part of its interests relating to ES MM LLC, Partners I, Partners II and, ultimately, *EnergySolutions*. The primary objective of such a restructuring or disposition is to allow Cowen and TD to consummate the Merger without being required to obtain prior approval from the NRC and other agencies by leaving *EnergySolutions'* operations unaffected by the Merger, and in particular to avoid any potential indirect foreign

ownership, control, or domination (**FOCD**) concerns on the part of the NRC or similar concerns by other applicable regulators.

The parties to the Merger have developed a restructuring plan by which Cowen would divest most of its indirect interests in *EnergySolutions* to Mr. Cromack and Mr. Manocha to be effective before or concurrently with the effectiveness of the Merger. An organizational chart illustrating the proposed ownership and control of the TriArtisan and *EnergySolutions* entities after the restructuring is attached as **Attachment 2**. Prior to (or concurrently with) closing of the Merger, the following disposition is planned (the **Restructuring**):

- CIM LLC will sever ties with TriArtisan by divesting:
 - i. CIM LLC's 100% voting interest in ES MM LLC to Mr. Cromack and Mr. Manocha in equal 50% interests;
 - ii. Substantially all of CIM LLC's approximately 30% economic interest in ES MM LLC to Mr. Cromack and Mr. Manocha in order to reduce CIM LLC's, and therefore Cowen's, economic interest in ES MM LLC to below 5%; and
 - iii. CIM LLC's 100% ownership interest in TriArtisan Capital to Mr. Cromack and Mr. Manocha in equal 50% shares.

The objective is for CIM LLC to relinquish all of its indirect voting interest and substantially all of its indirect economic interests in *EnergySolutions* to the TriArtisan executives, who are responsible for managing ES MM LLC today. This step will formally divest any CIM LLC control over Partners I and Partners II and minimize the economic interests of CIM LLC in ES MM LLC. None of the transfers in this step have any impact on the ownership chain of *EnergySolutions* below ES MM LLC. The transfers of voting interests in ES MM LLC to Mr. Cromack and Mr. Manocha are akin to an internal restructuring, whereby CIM LLC is divesting all of the rights in TriArtisan and ES MM LLC that it could have asserted to direct the business activities of *EnergySolutions* and formally vesting those rights in the individual executives who manage TriArtisan today. The potential change to the control of the Licenses held by *EnergySolutions* subsidiaries is *de minimis* because of the control currently exercised by those individuals in their role as managing directors of TriArtisan Capital and members and officers of ES MM LLC, and the absence of any other means of control exercised by CIM LLC over ES MM LLC under the current governance framework.

- The existing employment relationships of Mr. Cromack and Mr. Manocha, as well as other investment team members of TriArtisan Capital, with Cowen will be terminated. Concurrently with the termination of employment by Cowen, Mr. Cromack and Mr. Manocha will acquire membership interests in TriArtisan, from which they will receive guaranteed payments or partnership draws equivalent to their prior base salaries.

III. Threshold Determination Request

***EnergySolutions* requests an NRC threshold determination that the Merger and the Restructuring described herein do not result in a transfer of control of the Licenses requiring**

prior NRC consent pursuant to 10 CFR 30.34(b), 50.80, 72.50, and 110.50(d). This position aligns with NRC case law and precedent concerning similar transactions.

As a result of the above-described Restructuring transaction, Cowen will effectively divest its voting interests in TriArtisan Capital and ES MM LLC, and will reduce its indirect economic interests to the level of small passive investments, namely, a carried interest stake below 5% in ES MM LLC and non-voting limited partner interests that equate to less than a 1% indirect economic interest in *EnergySolutions*. The Restructuring will thus not change the current large majority (77%) economic ownership of *EnergySolutions* held, in the aggregate, by Partners I and Partners II, which will continue to be managed by ES MM LLC in the same manner as before the Restructuring. The Restructuring itself is akin to an internal restructuring whereby CIM LLC is transferring its corporate authority from the entity level to the individual executives who are employed by CIM LLC today to manage Partners I and Partners II.

A simplified organizational chart depicting the corporate organizational structure of *EnergySolutions* following the Restructuring is provided at **Attachment 2**.

Because Mr. Cromack and Mr. Manocha effectively control *EnergySolutions* today, the Restructuring and the Merger will have no material impact on Partners I and Partners II's ownership and control (through ES Partners Holdco, Rockwell Holdco and the intermediate parent companies) of *EnergySolutions*. No indirect transfer of control over the Licenses will occur in connection with the Restructuring because the TriArtisan founders will remain in control of ES MM LLC and no other transfers of control over ES MM LLC, Partners I, Partners II, ES Partners Holdco, Rockwell Holdco or the other intermediate parent companies are contemplated by the Restructuring. The Merger would thus not result in a transfer of control of the Licenses or in *EnergySolutions* becoming indirectly subject to FOCD within the meaning and Sections 103d and 104d of the Atomic Energy Act, as amended, or NRC regulations at 10 CFR 50.38.

Further, there will be no physical changes involving the Licenses and licensed facilities, and no changes in the day-to-day operations and activities under the Licenses resulting from the Merger and Restructuring. The onsite organizations under the Licenses will remain unchanged by the planned transaction, and the onsite organizational structure, including lines of authority and communication, will not be affected by the transaction.

The Merger and the Restructuring will therefore not result in a material direct or indirect transfer of ownership and control over the Licenses because Cowen will be effectively divested of any semblance of control over *EnergySolutions* and Cowen's economic interest in ES MM LLC (which represents a right to carried interest) will be less than 5%.

EnergySolutions concludes that this incremental change does not amount to a transfer of control of the Licenses, and therefore requests that the NRC issue a Threshold Determination to this effect.

IV. Requested Review Date

EnergySolutions requests confirmation from the NRC that the Merger and the Restructuring described above do not constitute a transfer of control of the Licenses, and requests this confirmation within 60 days from filing to accommodate the Merger's timeline.

There are no regulatory commitments contained in this letter. If there are any questions or if additional information is required, please contact the undersigned at 801-303-0195.

Sincerely,



Russell G. Workman
General Counsel and Corporate Secretary
EnergySolutions, LLC

Attachments:

1. Current Corporate Organization and Ownership
2. Post-Restructuring Corporate Organization and Ownership

cc:

Regional Administrator – NRC Region I
Regional Administrator – NRC Region III
U.S. NRC Project Manager – Kewaunee Power Station
U.S. NRC Project Manager – Three Mile Island Unit-2
U.S. NRC Project Manager – Zion Nuclear Power Station
U.S. NRC Project Manager – La Crosse Boiling Water Reactor

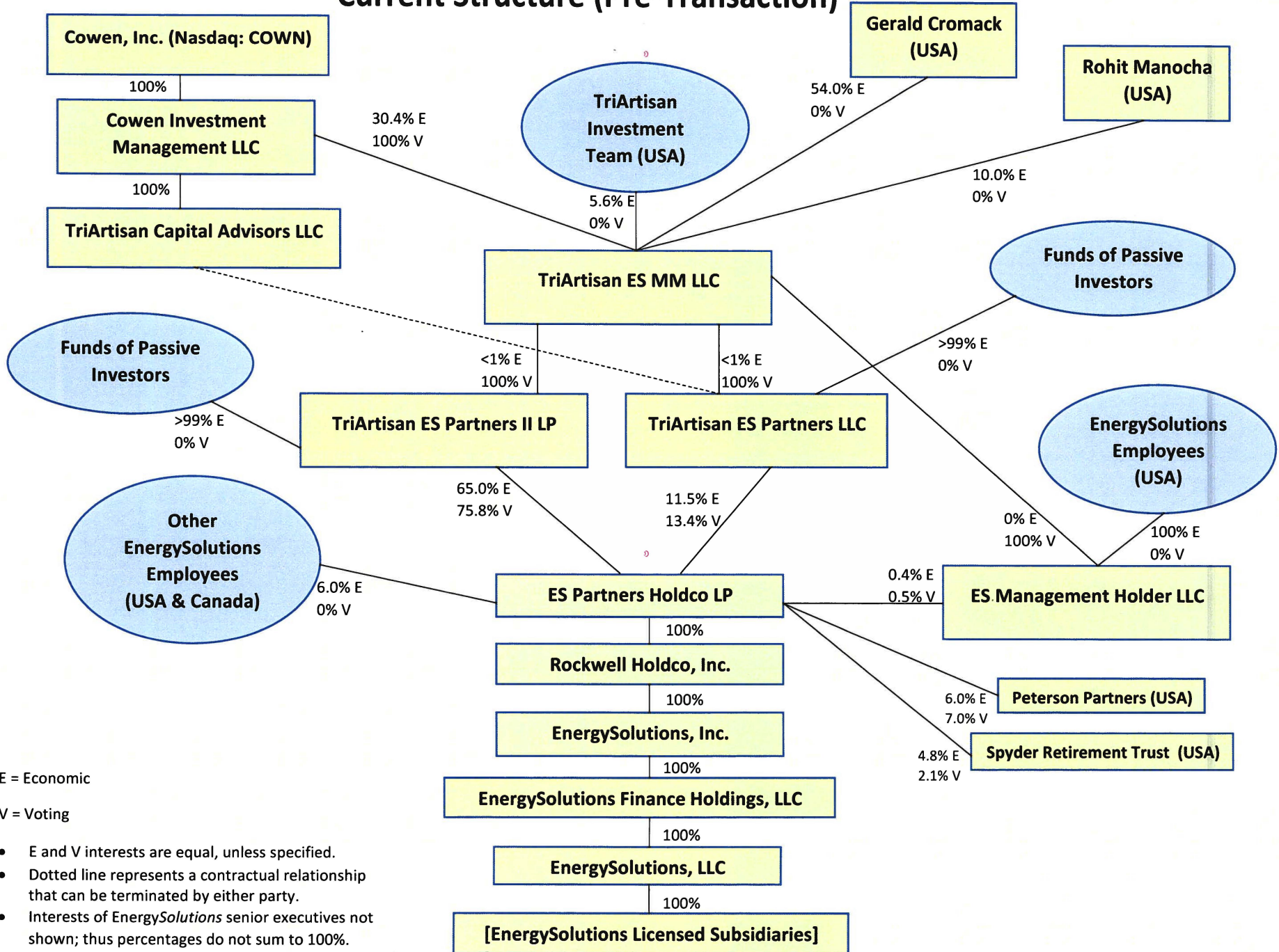
Attachment 1

Current Corporate Organization and Ownership

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Current Structure (Pre-Transaction)



E = Economic

V = Voting

- E and V interests are equal, unless specified.
- Dotted line represents a contractual relationship that can be terminated by either party.
- Interests of EnergySolutions senior executives not shown; thus percentages do not sum to 100%.

Attachment 2

Post-Restructuring Corporate Organization and Ownership

