

United States of America
Nuclear Regulatory Commission

Before The Commission

In the Matter of:)
Susquehanna Nuclear, LLC) Docket Nos. : 50-387
28) 50-388
) 72-

December 29, 2022

Eric Joseph Epstein's Reply to Susquehanna
Nuclear, LLC's Answer Opposing Eric Joseph
Epstein's Petition for Leave To Intervene And
Hearing Request

Eric Joseph Epstein’s Reply to Susquehanna Nuclear, LLC’s Answer Opposing Eric Joseph Epstein’s Petition for Leave To Intervene And Hearing Request

I. Introduction.

Susquehanna Nuclear, LLC (“Susquehanna Nuclear”) submitted an Answer opposing the Petition for Leave to Intervene and Hearing Request (“Petition”) filed by Eric Joseph Epstein (“Petitioner” or “Mr. Epstein”) on November 28, 2022. (1) The Petitioner requested a hearing and seeks to intervene in the above-captioned proceeding associated with the application (“Application”) to the U.S. Nuclear Regulatory Commission (“NRC”) filed by Susquehanna Nuclear on September 29, 2022, seeking an order approving the indirect transfer of control of its interests in Facility Operating License Nos. NPF-14 and NPF-22 for the Susquehanna Steam Electric Station (“SSES”) Units 1 and 2, as well as the general license for the SSES Independent Spent Fuel Storage Installation (“ISFSI”). (2)

¹ Eric Joseph Epstein’s Petition for Leave to Intervene and Hearing Request (Nov. 28 2022) (ML22332A535) (“Petition”).

2 Letter from B. Berryman, Susquehanna Nuclear, to NRC Document Control Desk, “Susquehanna Steam Electric Station; Application for Order Approving Indirect Transfer of Control of Licenses and Approving Conforming License Amendments” (Sept. 29, 2022) (ML22272A604) (“Application”).

As explained in Eric Joseph Epstein’s Petition for Leave and Hearing Request, Mr. Epstein has demonstrated standing to participate in this Proceeding. Mr. Epstein showed standing through the “proximity presumption.” This option is available to Mr. Epstein because the licensee is proposing to surrender its license through a bankruptcy proceeding. Therefore, the licensee is seeking to separate itself from the original license in order to be afforded bankruptcy protection through a direct license transfer to a yet to be identified “Reorganized Talen.” Moreover, Mr. Epstein is the only party intimately involved in Susquehanna’s genesis from public utility “PP&L” to deregulated “PPL” to the current iteration of bankrupt Talen Energy.

The connective tissue from publicly protected utility to deflated private equity is Susquehanna’s inability to make a profit. Susquehanna is run by the same staff that have used the same failed business model to produce the same results: a bankrupt venture dependent on bailouts and subsidies to right the capsized ship. Talen belabors the paradoxical points of prior NRC rulings being precedential, except when the prior history documents disastrous business results. Mr. Epstein has witnessed the history of Susquehanna’s economic decline. Plant

economic history and past operational failures should not be dismissed because Talen is the latest iteration of a chain of business meltdowns. Talen cannot dismiss Mr. Epstein's first-hand historical knowledge of the Susquehanna Steam Electric Station, and ignore the disastrous results of the \$2.97 billion bailout for stranded nuclear costs. (3)

³ Pennsylvania Public Utility Commission, August 12, 1998.

The Petitioner has demonstrated traditional Article III standing. The definition of "work place" became nuanced during COVID, but Mr. Epstein's past, present, and future physical presence and relationship to Susquehanna are well established. Commuting 50 miles or working virtually are well established facts of life, and a staple of the NRC's workplace protocol.

The Petitioner presents two admissible contentions. Contention 1 asserts that the Application does not comply with a regulation pertaining to decommissioning funding assurance for licensed ISFSIs. Mr. Epstein's claim is relevant and material. Talen's ISFSI commitments were **pre-paid by rate payer contributions**, because the ISIFI regulation applies to the license transfer. There have been no post-deregulation contributions to the Decommissioning Trust Fund ("DTF"). Susquehanna's pre- and post-bankruptcy structures have not made and are not able to make contributions to the decommissioning trust fund. Moreover, the DTF does not reflect

current economic conditions under which Talen is operating. The ISIFI formula contains no escalators to account for 8.7% inflation rates (4), 7.8% annual Cost of Living Adjustments (5) or the bleak outlook for Susquehanna even with federal bailout monies. (6)

⁴ Social Security Administration, Pennsylvania, SSA-4926-SM2023.

⁵ Consumer Price Index, Metropolitan Philadelphia area, (1-2023).

⁶ “The primary tool used to compare the costs of different electric electricity generating technologies is the levelized cost of electricity (“LCOE”). It models the cash flows of a plant ... Thus, the LCOE calculations show that at current cost levels, nuclear power is not economically justified by the value of avoided emissions.” (“Would A Carbon Tax Rejuvenate Nuclear Energy?” Regulation/Fall 2022.

Proposed Contention 2 asserts that Susquehanna Nuclear has not complied with “Bankruptcy Review Team compliance mandates, (7) The Petitioner cites regulations obligating licensees to obtain NRC consent before transferring control of a license, and to notify the NRC of bankruptcy. “After receiving a report that a licensee has filed for bankruptcy or that an involuntary petition has been filed against it, the NRC staff must verify that all licensed material the licensee possesses is being adequately controlled.” (8) Finally, there is no evidence that the NRC’s Bankruptcy team was created, met, or issued any guidance or recommendations after the Department of Justice supplanted the NRC in the Spring of 2022. (Jonathan Grieves, Chief, Projects Branch 4 Division of Operating Reactor Safety,

Region I, June 9, 2022).

Accordingly, the Petition must be accepted for the additional reason that Petitioner proposed two admissible contentions. Finally, Petitioner also requests “discretionary intervention.” That pathway to participation in an evidentiary hearing is available if some other Petitioner is granted a hearing. No other Petition has been filed to date, but the Nuclear Regulatory Commission staff preserves that option to intervene.

7 “NRC will establish a Bankruptcy Review Team (BRT) to review and act on bankruptcy notifications when they occur. The BRT brings together the various NRC offices and is typically composed of members of the relevant licensing office staff, the Office of the General Counsel (OGC), the Office of the Controller (OC), the Office of Enforcement (OE), the Division of Industrial and Medical Nuclear Safety (IMNS), and the Division of Waste Management (DWM).” (Section 170 of the Atomic Energy Act of 1954, as amended; and 10 CFR 52.103(b), and 10 CFR 50.140 - Financial Protection Requirements and Indemnity Agreements.)

8 Consolidated Guidance About Materials Licenses, NUREG-1556 Volume 15, Rev. 1, Procedures for Processing Bankruptcy Actions, G-2.

Pursuant to 10 C.F.R. § 2.309(a), the Commission should accept the Petition.

II. Background.

A. Transfers of Control of NRC Licenses

Under Section 184 of the Atomic Energy Act of 1954,(9) an NRC license, or any right under it, may not 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 NRC first gives its written approval. This statutory requirement, and its regulatory counterpart in 10 C.F.R. § 50.80, applies to transfers that are direct (i.e., to a different operator or direct owner) or indirect (i.e., involving a different controlling entity upstream of a licensee). The NRC is reviewing an indirect license transfer from a direct offspring of Talen Energy. Either “Reorganized Talen” is a distinct and separate entity or it is the same company with a different logo. The NRC applies its process under 10 C.F.R. § 50.80 for licensees emerging from bankruptcy. The NRC review focuses on the “expected” or “potential” impact on the licensee’s ability both to maintain adequate technical qualifications and organizational control and authority over the facility and to provide adequate funds for safe operation and decommissioning.” (10) Talen’s “expectation” is far from assured, and the nuclear fallout could well lead to insolvency.

⁹ Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919 (codified as amended at 42 U.S.C. §§ 2011, *et seq.*).

10 If Talen had “adequate funds for safe operation and decommissioning” it would not have filed for bankruptcy.
B. The Chapter 11 Cases.

Susquehanna Nuclear is a direct, wholly-owned subsidiary of Talen Energy Supply, LLC, (“TES”) which in turn is a direct, wholly-owned subsidiary of Talen Energy Corporation (“TEC”),

the stock of which is the “Debtors”) each filed a voluntary bankruptcy case (currently held by affiliates of Riverstone Holdings, LLC. Commencing on May 9, 2022, TES and certain of its subsidiaries, including Susquehanna Nuclear (collectively, the “Chapter 11 Cases”), in the United States Bankruptcy Court for the Southern District of Texas (“Bankruptcy Court”). On May 10, 2022, in accordance with 10 C.F.R. § 50.54(cc), Susquehanna Nuclear notified the NRC of the Chapter 11 Cases of TES and Susquehanna Nuclear. The Debtors filed a Joint Plan of Reorganization (“Plan”) in the Bankruptcy Court on September 9, 2022, proposing a comprehensive restructuring (the “Restructuring”) in which the equity of the ultimate parent of the reorganized company (which is referred to in the Application as an undisclosed entity known as “Reorganized Talen”) will be distributed to certain creditors (“Creditors”).

Please refer to Mr. Epstein’s discussion in “Eric Joseph Epstein’s Petition for Leave to Intervene and Hearing Request” regarding “Reorganized Talen’s” business, management, and staffing plan, which is essentially identical to bankrupt Talen’s business plan. By subtracting a layer of management and adding a bitcoin mine – which halted construction in August, 2022 – old Talen has created a nuclear Frankenstein referred to as “Reorganized Talen.” This proposed economic lifeline is desperate, and is akin to asking the *Lusitania* to tow the *Titanic* to safe harbor.

The Bankruptcy Court in Texas has not been on site, (and it's unclear if the Bankruptcy Review Team has been on site), and lacks the requisite technical training to review nuclear issues. The Bankruptcy Plan is fluid, and was approved on December 15, 2022, or 40 days after Mr. Epstein was required to file a Petition before the NRC.

C. The Application.

Susquehanna Nuclear filed the Application on September 29, 2022, on behalf of itself and the Creditors (collectively, the "Applicants"), requesting certain written approvals from the NRC necessary to implement the Restructuring to avoid financial calamity. The NRC accepted the Application for review on October 20, 2022. On October 29, 2022, Susquehanna Nuclear supplemented the Application with additional financial and ownership structure information.

D. The Hearing Opportunity

The NRC published a notice in the *Federal Register* on November 8, 2022, informing the public that it is considering the Application for approval, providing an opportunity for the public to submit written comments on the Application, and offering an opportunity for persons whose interests may be **affected** by the approval of the Application to file notice.

III. The Petition Should Be Accepted.

Mr. Epstein's Petition should be granted. The Petitioner demonstrates standing, and proposes two admissible contentions. Here, the Petitioner has fulfilled both legal obligations.

A. Petitioner Has Demonstrated Standing.

Please refer to discussion in Eric Joseph Epstein's Petition.

B. The Petitioner has Submitted Two Admissible Contentions.

Proposed Contention 1 is admissible because these arguments satisfy all six components of the NRC's admissibility criteria.

This contention is admissible on its face. Radiological decommissioning funding assurance was only addressed during the period **prior to deregulation**. Talen is a product of deregulation, and has not made any contributions since acquiring Susquehanna, nor is it currently able to add additional funding to off-set costs above the level of inflation. Under the prepayment method, "cash or liquid assets" **were** deposited into an account - not from licensee assets - but from hostage PP&L ratepayers. This program is similar to government-based college tuition programs, e.g., PA 529 savings Program which makes guarantees premised on future subsidies.

The Application "expects" that the prepayment for SSES (which covers 90% decommissioning), and is **the absolute minimum** amount to complete only radiological decommissioning, will be adequate (11) This is not a guarantee, but a wishful outcome from a bankrupt

company. This **minimum amount** does not consider the current trend whereby the NRC allow licensees to tap into the Decommissioning Trust Fund (“DTF”) for unauthorized purposes, e.g., Three Mile Island Unit-2 (2015), Oyster Creek, (2018), San Onofre (2020), and Three Mile Unit-1 (2022). These extraction fees are occurring at the same time as Susquehanna’s operating parts are becoming obsolete. (12)

The Petitioner’s assertion is supported by the NRC. The indirect license transfer to *EnergySolutions* at Three Mile Island Unit-2 included an additional financial assurance of \$100 million. (LTA, “Supplemental Financial Instruments.”) Mr. Epstein requested a “guarantee” to cover decommissioning costs because only the down payment of the radiological decontamination costs have been “prepaid.” The precedent at TMI-2 - together with Susquehanna’s anemic performance - outweigh the “expected...financial strength of the reorganized Debtors” and a bitcoin mine.

11 Talen estimated the **minimum amount** needed for radiological decommissioning, but ignored the impact of draw downs from the Decommissioning Trust Fund (“DTF”). The data supplied by Talen and the Rural Electric Cooperative (“REC”) do not support the conclusion that sufficient funding is in place for decommissioning The REC’s ownership interest of the SSES constitutes almost 60% of it’s wholesale energy supply, but only 10% of the real property. This lack of diversification undermines funding, i.e., revenue sources if the Trust requires additional resources beyond “**minimal amounts**” when the plant is retired. This is exactly the place where Talen Energy finds itself as it proposed to diversify by constructing a bitcoin mine. It is unclear how the bankruptcy allows “Reorganized Talen” to fill the financial gap

if this proposed crutch is removed, and fund the entire decommissioning of Susquehanna.

Most disconcerting is that the ISFSI estimate nearly doubled from 2012 to 2015. Neither the REC or Talen has captured this trend with commensurate funding contributions. The NRC has allowed “internal estimates” to supplant the projections made by prior, independent vendors such as TLG. The REC modified their accounting protocols in 2019 for the DTF. Susquehanna’s investing protocols and fee schedules have been unilaterally liberalized by both Talen and the REC at the same time when Talen has financially disintegrated.

12 “Obsolescence and the ability to obtain qualified replacement and spare parts are primary concerns in the nuclear industry. In fact, approximately 35% of installed equipment is obsolete.” (American Nuclear Society, “Reverse Engineering/Obsolescence,” Westinghouse, December, 2022.)

The Petitioner asserts that “prepayment mode is no longer available as a stand-alone option for a bankrupt and debtor entity.” Prepayment requires only the **minimal amount** of projected radiological decommissioning costs, and does plan or save for fuel storage, Greenfield, or site restoration costs.

2. Contention 2 (Bankruptcy Review Team) is admissible as formulated by Petitioner. Proposed Contention 1 is admissible because these arguments satisfy all six components of the NRC’s admissibility criteria.

The proposed Contention 2 quotes the regulation at 10 C.F.R. 72.50(a), requiring NRC consent to transfer an ISFSI license, and asserts that “[t]he Applicant failed to comply with Bankruptcy Review Team compliance mandates for a bankrupt company.” The intent and

meaning of this provision is clear, and the Applicant can not unilaterally eliminate regulatory obligations. The “Bankruptcy Review Team compliance mandates” were promulgated by the Nuclear Regulatory Commission. Simply put, the licensee has not complied with those obligations.

IV. Conclusion.

As established in Eric Joseph Epstein’s Petition for Leave to Intervene and Hearing Request the Petitioner has demonstrated standing to intervene, and has submitted two admissible contentions. Mr. Epstein respectfully requests that the Commission accept his Petition for Leave to Intervene and Hearing Request.

December 29, 2022

Eric Joseph Epstein’s Reply to Susquehanna Nuclear, LLC’s Answer Opposing Eric Joseph Epstein’s Petition for Leave To Intervene And Hearing Request

Certificate of Service

I hereby certify that copies of Eric Joseph Epstein's Petition for Leave to Intervene and Hearing have been served upon the following persons by Electronic Information Exchange.

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

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

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001
E. Roy Hawkens, Chairman
E-mail: Roy.Hawkens@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-14A44
Susan H. Vrahoretis E-mail: Julie.Ezell@nrc.gov
Adam.Gendelman@nrc.gov Mauri.Lemoncelli@nrc.gov
Ethan.Licon@nrc.gov Kevin.Roach@nrc.gov David.Roth@nrc.gov
Sherwin.Turk@nrc.gov Susan.Vrahoretis@nrc.gov

Ryan K. Lighty, Esq.

Morgan, Lewis, & Bockius,
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Ryan.Lighty@morganlewis.com

Eric Joseph Epstein

Dated at Harrisburg, Pennsylvania
this 29th day of December, 2022