

SAFETY EVALUATION BY THE OFFICE OF  
NUCLEAR MATERIAL SAFETY AND SAFEGUARDS  
THRESHOLD DETERMINATION FOR THE CORPORATE MERGER TRANSACTION  
RESULTING IN RESTRUCTURING OF INDIRECT OWNERS OF ENERGYSOLUTIONS, LLC  
AND LICENSE NOS. DPR-39, DPR-48, DPR-73, DPR-45, AND DPR-43, AND THE GENERAL  
LICENSES FOR THE ASSOCIATED INDEPENDENT SPENT FUEL STORAGE INSTALLATIONS,  
FOR ZION NUCLEAR POWER STATION, UNITS 1 AND 2,  
THREE MILE ISLAND NUCLEAR STATION, UNIT 2,  
LA CROSSE BOILING WATER REACTOR, AND  
KEWAUNEE POWER STATION;  
RADIOACTIVE MATERIALS LICENSE NO. 39-35044-01; AND  
EXPORT LICENSES XW010/04 AND XW018/01  
DOCKET NOS. 50-295, 50-304, 72-1037, 50-320, 50-409, 72-046, 50-305, 72-64, 030-39013,  
11005620, AND 11005897

1.0 INTRODUCTION

By letter dated November 23, 2022, as supplemented by letter dated January 13, 2023 (Agencywide Documents Access and Management System Accession Nos. ML22327A244 and ML23017A206, respectively), EnergySolutions, LLC (EnergySolutions) requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission) confirm by means of a threshold determination that a merger transaction and associated restructuring involving companies upstream of Facility Operating License Nos. DPR-39 and DPR-48 for Zion Nuclear Power Station (Zion), Units 1 and 2, respectively, and the general license for the Zion independent spent fuel storage installation (ISFSI), Possession Only License No. DPR-73 for Three Mile Island Nuclear Station, Unit 2 (TMI-2), Possession Only License No. DPR-45 for La Crosse Boiling Water Reactor (La Crosse), and the general license for the La Crosse ISFSI, and Renewed Facility Operating License No. DPR-43 for Kewaunee Power Station (Kewaunee), and the general license for the Kewaunee ISFSI; Radioactive Materials License No. 39-35044-01; and Export Licenses XW010/04 and XW018/01 would not result in a transfer of control of these licenses that would require prior NRC approval. EnergySolutions' request for this threshold determination follows from requirements at Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34, "Terms and conditions of licenses," 10 CFR 50.80, "Transfer of licenses," 10 CFR 72.50, "Transfer of license," and 10 CFR 110.50, "Terms," related to the transfer of control of byproduct material licenses, production and utilization facility licenses, spent nuclear fuel and related waste storage licenses, and nuclear equipment and material export and import licenses, respectively, and reflecting the various NRC licenses held by EnergySolutions and its wholly-owned subsidiaries.

## 2.0 BACKGROUND

Wholly-owned subsidiaries of EnergySolutions hold the NRC licenses for Zion, TMI-2, La Crosse, and Kewaunee and their associated ISFSIs. EnergySolutions also holds the above-referenced NRC radioactive materials license and export licenses.

As provided by EnergySolutions in its November 23, 2022, letter, the merger transaction and associated restructuring will involve a current indirect parent above EnergySolutions, Cowen Inc. (Cowen) (publicly traded under NASDAQ Stock Exchange symbol COWN), merging with a subsidiary of the Toronto-Dominion Bank (TD) (publicly traded on the Toronto and New York Stock Exchanges under symbol TD), resulting in Cowen exiting the merger as an indirect, wholly-owned subsidiary of TD; following the transaction, Cowen will no longer exist as a publicly traded entity. The merger will involve an all-cash transaction in which a \$39 per share price for Cowen common stock will be paid, resulting in an approximately \$1.3 billion cash transaction. The NRC staff notes that on November 15, 2022, Cowan announced that a special meeting of stockholders approved the previously announced merger agreement.

EnergySolutions stated that the objective of the merger is to allow TD to accelerate its long-term U.S. growth strategy by acquiring a high-quality investment bank, and to provide Cowen's existing clients an expanded range of products and services, among other opportunities.

Two investment funds (TriArtisan ES Partners LLC (Partners I) and TriArtisan ES Partners II LP (Partners II)) indirectly own, in the aggregate, approximately 89 percent of the voting interest and 77 percent of the economic interest of EnergySolutions and hence, indirectly, the majority of voting interest and economic interest of its licensed facilities and operations. The voting interest and economic interest of the two investment funds, as well as that of their direct parent, TriArtisan ES MM LLC (ES MM LLC) (the managing member and general partner of Partners I and Partners II, respectively), will remain unchanged as a result of the merger. Cowen holds a limited indirect economic interest in Partners I and Partners II.

Pursuant to the terms of the merger agreement, 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 restructuring or disposition is to allow Cowen and TD to effectuate the merger without requiring additional approval from the NRC and other agencies by leaving EnergySolutions unaffected by the merger. As presented in its November 23, 2022, letter, EnergySolutions concluded that the resultant restructuring plan developed by the parties to the merger will not impact EnergySolutions' operations, will not result in a transfer of control of EnergySolutions' NRC licenses, and will not cause potential indirect foreign ownership, control, or domination (FOCD) issues.

## 3.0 EVALUATION

The NRC staff reviewed EnergySolutions' request for a threshold determination that the proposed merger and restructuring would not involve a direct or indirect transfer of control of NRC licenses that would require prior NRC approval pursuant to the regulations reflecting the various licenses held by EnergySolutions and its wholly-owned subsidiaries (i.e., 10 CFR 30.34, 10 CFR 50.80, 10 CFR 72.50, and 10 CFR 110.50).

The regulation at 10 CFR 30.34(b)(1) states, in part, that:

No license issued or granted pursuant to the regulations in [10 CFR part 30] and parts 31 through 36, and 39 nor any right under a license shall be transferred, assigned or in any

manner disposed of ... through transfer of control of any license to any person, unless the Commission shall ... give its consent in writing.

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

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

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

No license ... issued under [10 CFR part 72] for an ISFSI ... shall be transferred, assigned, or in any manner disposed of ... through transfer of control of the license to any person, unless the Commission gives its consent in writing.

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

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

The NRC staff also reviewed EnergySolutions' request for a threshold determination for whether the proposed merger and restructuring would implicate FOCD concerns contrary to the Atomic Energy Act of 1954, as amended (AEA), and the NRC's regulations.

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

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

The regulation at 10 CFR 50.38, "Ineligibility of certain applicants," is the regulatory provision that implements the FOCD provisions of the AEA.

The NRC staff evaluated the upstream changes resulting from the merger and restructuring above the ES MM LLC organization only, as any and all changes in voting and economic interest resulting from the merger and restructuring occur above that entity. Pre-merger and post-merger voting and economic interests above ES MM LLC can be viewed in the "Current Structure (Pre-Transaction)" and the "Anticipated Structure (Post-Transaction)" organizational charts, respectively, provided in EnergySolutions' November 23, 2022, letter.

As stated by EnergySolutions, in their current role with Cowen Investment Management LLC (CIM LLC), which currently holds 100 percent of the voting interest in and is the managing member of ES MM LC, Mr. Gerald Cromack and Mr. Rohit Manocha, both U.S. citizens, have responsibility for day-to-day operations of ES MM LLC. Prior to the merger and restructuring, these individuals also owned, in the aggregate, 64 percent of the economic interest in ES MM LLC, and were both members and officers of ES MM LLC. Additionally, ES MM LLC was the managing member and general partner of Partners I and Partners II, respectively, two investment funds that indirectly own, in the aggregate, approximately 89 percent of the voting interest and 77 percent of the economic interest of EnergySolutions. Greater than 99 percent of the economic interest in both Partners I and Partners II is owned by passive investors.

Following the merger and restructuring, Mr. Cromack's and Mr. Manocha's combined, direct voting interest in ES MM LLC will increase from 0 to 100 percent, and their combined, direct economic interest in ES MM LLC will increase from 64 to approximately 89 percent. Correspondingly, CIM LLC's voting interest in ES MM LLC will decrease from 100 to 0 percent, and its direct economic interest in ES MM LLC will decrease from 30.4 to 4.99 percent. Thus CIM LLC is relinquishing all of its indirect voting interest and substantially all of its indirect economic interest in EnergySolutions to the executives who were responsible for managing ES MM LLC before the merger and restructuring and, therefore, there is effectively no change in control.

The NRC staff evaluated the information provided in EnergySolutions' request for a threshold determination, considering the changes in voting interest and economic interest among the several individuals and entities involved in the transaction. Specifically, the staff notes:

- 1) Mr. Cromack's and Mr. Manocha's current, principal positions and responsibilities with CIM LLC;
- 2) Mr. Cromack's and Mr. Manocha's current responsibilities for day-to-day operations at ES MM LLC;
- 3) the 100 percent voting interest of ES MM LLC in Partners I and Partners II, which shall remain unchanged following the merger and restructuring; and
- 4) the post-merger, post-restructuring distribution of majority voting interest and increased economic interest in ES MM LLC to Mr. Cromack and Mr. Manocha, accompanied by divestiture of voting interest and reduction in economic interest by CIM LLC.

Based upon the pre-merger/pre-restructuring and post-merger/post-restructuring information presented by EnergySolutions, and the significant, principal roles played both before and after the merger/restructuring by Mr. Cromack and Mr. Manocha in the organizations upstream of EnergySolutions, the merger and changes in corporate structure reflect a transaction that does not appear to result in a transfer of control of NRC licenses under the NRC's regulations. Moreover, as Mr. Cromack and Mr. Manocha are U.S. citizens, the transaction does not appear to present FOCD issues.

#### 4.0 CONCLUSION

Based on the above, the NRC staff concludes that the proposed merger and restructuring will not constitute a direct or indirect transfer of control under 10 CFR 30.34, 10 CFR 50.80, 10 CFR 72.50, or 10 CFR 110.50, as applicable, of the NRC licenses held by EnergySolutions and its wholly-owned subsidiaries and that the proposed merger and restructuring will not result in FOCD issues. Therefore, prior NRC approval is not required for the merger and restructuring as described.

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Date: January 23, 2023