LBP-23-04

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

E. Roy Hawkens, Chair
Nicholas G. Trikouros
Dr. Gary S. Arnold

In the Matter of TMI-2 SOLUTIONS, LLC (License Amendment Request for Three Mile Island Nuclear Station, Unit 2)	Docket No. 50-320-LA-2 ASLBP No. 23-977-02-LA-BD01 March 1, 2023

MEMORANDUM AND ORDER
(Denying Eric Epstein's (1) Petition to Intervene and Hearing Request; and (2) Motion for Leave to File New Contentions)

Pending before this Licensing Board is a challenge by Eric Epstein to a February 19, 2021 request by TMI-2 Solutions, LLC to amend its possession only license for Three Mile Island Nuclear Station, Unit 2.[1] More precisely, we are considering (1) Mr. Epstein's petition to intervene;[2] and (2) his motion for leave to file new contentions.[3]

[1] See TMI-2 Solutions, LLC, License Amendment Request — Three Mile Island, Unit 2, Decommissioning Technical Specifications, Attach. 1 (Feb. 19, 2021) (ADAMS Accession No. ML21057A046) [hereinafter LAR].

[2] See Eric Joseph Epstein's Petition for Leave to Intervene and Hearing Request (dated Nov. 4, 2022) (filed Nov. 3, 2022) [hereinafter Petition].

[3] See Petitioner Eric Epstein's Motion for Leave to File New Contentions (Jan. 18, 2023) [hereinafter Motion].

As discussed below, we deny Mr. Epstein's petition to intervene because we conclude he lacks standing and fails to proffer an admissible contention. Because Mr. Epstein lacks standing, we deny his motion to file new contentions.

I. BACKGROUND

This proceeding concerns a challenge to a license amendment request (LAR) submitted by TMI-2 Solutions, LLC (TMI-2 Solutions) for Three Mile Island Nuclear Station, Unit 2 (TMI-2). TMI-2 is a defueled, non-operational, pressurized water reactor located in Dauphin County, Pennsylvania.[4]

TMI-2 has not been operational since 1979, when it experienced an accident that caused severe damage to its reactor core.[5] As a result of this accident, small quantities of spent nuclear fuel, damaged core material, and high-level waste — known as "debris material," see 87 Fed. Reg. at 51,454 n.1 — were transported into the reactor coolant system, the reactor building, and the auxiliary and fuel handling buildings. After the accident, TMI-2 underwent site cleanup to remove debris material from systems and structures.[6]

In 1990, TMI-2 was defueled, resulting in the removal of approximately 99% of the fuel load, which was shipped to the U.S. Department of Energy's Idaho National Laboratory. See

[4] See TMI-2 Solutions, LLC; [TMI-2], 87 Fed. Reg. 51,454, 51,455 (Aug. 22, 2022).

[5] See Backgrounder on the Three Mile Island Accident, https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/3mile-isle.html (last updated Nov. 15, 2022). Much of the factual background we describe above in text can also be found in the Commission's recent decision in Energy Solutions, LLC, (Zion Nuclear Power Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 2; et al.), CLI-22-9, 96 NRC 107, 116-19 (2022).

[6] See NUREG-0683, Programmatic Environmental Impact Statement Related to Decontamination and Disposal of Radioactive Wastes Resulting from March 28, 1979 Accident [TMI-2], Final Supplement Dealing with Post-Defueling Monitored Storage and Subsequent Cleanup, Supplement No. 3 (Aug. 1989) (ADAMS Accession No. ML20247F778); see also TMI-2 Cleanup Program, Post-Defueling Monitored Storage (Dec. 1986) (ADAMS Accession No. ML20214S448).

LAR, Attach. 1 at 2.[7] The remaining 1% of the fuel load at TMI-2 (i.e., debris material) is dispersed in the form of dust-like sediment at the bottom of the plant, hardened material on components, and films on piping, tanks, and other components. See LAR, Attach. 5 at 5–6.

In 1993, the Nuclear Regulatory Commission (NRC) Staff issued a license amendment converting TMI-2's operating license to a possession only license (POL).[8] That same year, TMI-2 entered the NRC-approved safe storage condition known as Post-Defueling Monitored Storage (PDMS) that, the NRC Staff found, established an inherently stable and safe condition of the facility such that there was no risk to public health and safety.[9]

In 2021, the POL for TMI-2 was transferred to TMI-2 Solutions to decommission the facility. See FirstEnergy Companies and TMI-2 Solutions, LLC (Three Mile Island Nuclear Station Unit 2), CLI-21-02, 93 NRC 70 (2021). Decommissioning includes removing the remaining debris material, decontaminating the structures, and dismantling the remaining equipment and facilities. See LAR, Attach. 1 at 1–2. TMI-2 Solutions plans to complete decommissioning activities and release the site by 2037, except for an area set aside, as may be required, for the storage of residual debris material. See 87 Fed. Reg. at 51,455.

In February 2021, TMI-2 Solutions filed the LAR at issue in this proceeding. See supra note 1. The LAR seeks to revise the TMI-2 POL and associated technical specifications (TS) by deleting requirements that no longer reflect the plant's current conditions and that are no longer applicable to a facility in decommissioning. See LAR, Attach. 1 at 1; 87 Fed. Reg. at 51,455.

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[7] See also SECY-93-238, [TMI-2] Possession Only License Amendment, at 2 (Aug. 24, 1993) (ADAMS Accession No. ML12257A733); Letter from Gregory H. Halnon, President and Chief Nuclear Officer, GPU Nuclear, Inc., to NRC Document Control Desk, Attach. 1 at 3 (Dec. 12, 2019) (ADAMS Accession No. ML20013E535) [hereinafter PSDAR Rev. 3].

[8] See [TMI-2 POL], Amendment No. 45, License No. DPR-73 (Sept. 14, 1933) (ADAMS Accession No. ML20029E535).

[9] See PSDAR Rev. 3 at 1; [TMI-2 POL] No. DPR-73, Docket No. 50-320, Update 10 of the [PDMS] Safety Analysis Report (Aug. 23, 2013) (ADAMS Accession No. ML13238A221).

The LAR also seeks to modify the existing license to enable the transition of TMI-2 from a PDMS stage to a decommissioning stage in support of Phase 1b and Phase 2 decommissioning activities.[10] Finally, the LAR states that the proposed amendments meet the regulatory criteria for a categorical exclusion, which exempts the agency (and, hence, the licensee) from conducting an environmental review. See LAR, Attach. 1 at 76–77.

On August 22, 2022, the NRC Staff published a Federal Register Notice that described TMI-2 Solutions' LAR, discussed the Staff's proposal to determine the LAR involves "no significant hazards consideration" in accordance with 10 C.F.R. § 50.92(c), and informed the public of the opportunity to petition to intervene and request a hearing. See 87 Fed. Reg. at 51,454.

On November 3, 2022, Mr. Epstein filed a timely petition to intervene. See supra note 2.[11] His pro se petition proffers two related contentions asserting that the LAR should be denied because it fails to consider the potential harm to the surrounding area, including harm from re-criticality, that may result from airplane crashes, explosions, fires, or terrorist attacks. See Petition at 22, 28.

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[10] See 87 Fed. Reg. at 51,455. TMI-2 decommissioning will occur in three phases. Phase 1a (which is not the subject of this LAR) consists of decommissioning preparation, which includes, for example, procurement of decommissioning materials and the installation of temporary infrastructure. See LAR, Attach. 1 at 2. Phase 1b consists of debris material recovery and source term reduction, which include the recovery, packaging, and storing of debris material and the reduction of the overall radiological source term at TMI-2 to levels that are consistent with a typical nuclear reactor at the end of its operational life. See id. Phase 2 consists of decommissioning and dismantling the site to a level that permits site release, except for an area potentially set aside for storage of debris material at the onsite Independent Spent Fuel Storage Installation. See id. Phase 3 (which is also not the subject of this LAR) involves debris material management, license termination, and site restoration. See id.

[11] Although Mr. Epstein's petition is dated November 4, 2022, see Petition at 1, it was received through the NRC's E-Filing System on November 3, 2022. Mr. Epstein previously had received a two-week extension of time for the filing of his petition, from October 21, 2022, to November 4, 2022. See Order of the Secretary of the Commission, Extending Deadline to Request for Hearing (Oct. 20, 2022).

On November 28, 2022, TMI-2 Solutions and the NRC Staff filed answers opposing Mr. Epstein's petition, arguing that he lacked standing and failed to proffer an admissible contention.[12]

On December 6, 2022, Mr. Epstein — still appearing pro se — filed an untimely reply averring that, contrary to the views of TMI-2 Solutions and the NRC Staff, he has standing and his two contentions are admissible.[13]

On January 18, 2023, Mr. Epstein, now represented by counsel,[14] filed a motion for leave to file new contentions. See supra note 3.[15]

On January 19, 2023, this Board held oral argument on standing and contention admissibility. See Official Transcript of Proceedings, [NRC], TMI-2 Solutions, [LLC], Docket No. 50-320-LA-2 (Jan. 19, 2023) [hereinafter Tr.]. Mr. Epstein was represented by counsel at the argument. See Tr. at 2.

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[12] See TMI-2 Solutions' Answer Opposing Petition for Leave to Intervene and Hearing Request Filed by Eric Joseph Epstein (Nov. 28, 2022) [hereinafter TMI-2 Solutions' Answer]; NRC Staff Answer to Eric Joseph Epstein's Petition for Leave to Intervene and Hearing Request (Nov. 28, 2022) [hereinafter NRC Staff's Answer].

[13] See Reply of Eric Joseph Epstein to TMI-2 Solutions, LLC and the [NRC's] Answer Opposing the Petition of Eric Joseph Epstein for Leave to Intervene and for a Hearing (Dec. 6, 2022) [hereinafter Reply]. Mr. Epstein's reply was due by December 5, 2022. See Licensing Board Memorandum and Order (Initial Prehearing Order) at 2 (Nov. 14, 2022) (unpublished). Because neither TMI-2 Solutions nor the NRC Staff timely moved to strike the untimely reply, and in consideration of Mr. Epstein's pro se status at the time he filed his reply, we will exercise our discretion to consider it in our standing and contention admissibility analyses.

[14] Mr. Epstein's counsel entered an appearance on January 10, 2023. See Motion at 4.

[15] On February 13, 2023, TMI-2 Solutions and the NRC Staff filed answers opposing Mr. Epstein's motion. See TMI-2 Solutions' Answer Opposing Petitioner's Motion to File New Contentions (Feb. 13, 2023) [hereinafter TMI-2 Solutions' Answer to Motion]; NRC Staff Answer to Petitioner Eric Epstein's Motion for Leave to File New Contentions (Feb. 13, 2023) [hereinafter NRC Staff's Answer to Motion]. On February 21, 2023, Mr. Epstein filed a reply. See Petitioner Eric Epstein's Reply Brief in Support of Motion for Leave to File New Contentions (Feb. 21, 2023).

II. ANALYSIS

A petitioner seeking to intervene in a licensing proceeding must (1) demonstrate standing pursuant to 10 C.F.R. § 2.309(d); and (2) proffer a contention that satisfies the admissibility criteria in 10 C.F.R. § 2.309(f). See 10 C.F.R. § 2.309(a). As discussed infra Parts II.A and II.B, we conclude that Mr. Epstein fails to satisfy either requirement, and we therefore deny his petition. Because Mr. Epstein lacks standing, we deny his motion for leave to file new contentions. See infra Part II.C.

A. Standing

1. Standards for Establishing Standing

Pursuant to the NRC's regulatory standing requirements, a petitioner's hearing request must include:

> (i) The name, address and telephone number of the requestor or petitioner;
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> (ii) The nature of the requestor's/petitioner's right under the [Atomic Energy Act] to be made a party to the proceeding;
>
> (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
>
> (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

10 C.F.R. § 2.309(d)(1)(i)–(iv).

In determining whether a petitioner has satisfied the above standing requirements, the Commission applies contemporaneous judicial concepts of standing. See Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). These concepts require a petitioner to allege "(1) an actual or threatened, concrete and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the Atomic Energy Act (or other applicable statute, such as the National Environmental Policy Act), and (4) is likely to be redressed by a favorable decision." Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001). The

requirement that an alleged injury or threat of injury be concrete and particularized necessarily means that it must not be "conjectural" or "hypothetical." Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). Further, a determination that an alleged injury is fairly traceable to the challenged action requires a petitioner to show that "the chain of causation is plausible." Id. at 75. Relatedly, in a license amendment proceeding, the petitioner cannot obtain standing by simply alleging, without substantiation, that the proposed amendments will result in offsite radiological harm, see Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI-99-04, 49 NRC 185, 192 (1999); rather, the petitioner must specify "how the particular license amendments at issue would increase the risk of an offsite release of radioactive fission products." Id. at 189 (emphasis omitted).

As an alternative to applying traditional judicial concepts of standing, the Commission has, in a limited category of proceedings, recognized a "'proximity presumption' in favor of standing for persons who [reside or] have 'frequent contacts' within a 50-mile radius of a nuclear power plant." PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-07, 71 NRC 133, 138 (2010). The Commission has explained that this presumption "rests on our finding, in construction permit and operating license cases, that persons living within the roughly 50-mile radius of the facility face a realistic threat of harm if a release from the facility of radioactive material were to occur." Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 917 (2009) (internal quotation marks omitted).[16]

But aside from reactor licensing proceedings involving construction permits and operating licenses, the applicability of the proximity presumption is determined on a "case-by-case basis." Exelon Generation Co., LLC and PSEG Nuclear, LLC (Peach Bottom Atomic

[16] The 50-mile proximity presumption "is simply a shortcut for determining standing in certain cases." Calvert Cliffs, CLI-09-20, 70 NRC at 917. This shortcut satisfies contemporaneous judicial concepts of standing and promotes efficiency in the adjudicatory process. See id.

Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580 (2005). In making this case-specific determination, the pertinent question is "whether the kind of action at issue, when considered in light of the radioactive sources at the plant, justifies a presumption that the licensing action could plausibly lead to the offsite release of radioactive fission products . . . ." Id. at 581 (internal quotation marks omitted). The petitioner must show that the particular licensing action raises an "obvious potential for offsite consequences." Id. (internal quotation marks omitted).

Finally, when conducting its standing analysis, a licensing board must be mindful to "construe the [intervention] petition in favor of the petitioner." Georgia Tech, CLI-95-12, 42 NRC at 115. Additionally, a pro se petitioner's pleadings will not be held "to the same standards of clarity and precision to which a lawyer might reasonably be expected to adhere." Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-15-25, 82 NRC 389, 394 (2015) (internal quotation marks omitted). Whether pro se or not, however, the petitioner bears the burden to set forth a coherent argument supported by plausible facts sufficient to establish standing. See id.[17]

2. Mr. Epstein Fails to Establish Standing

Mr. Epstein claims he has established standing under (1) the proximity presumption; and (2) traditional judicial concepts. See Petition at 9–15.[18] In support of this claim, he states he

[17] A licensing board need not accept assertions from a petitioner that are conclusory, conjectural, or otherwise untenable. See Consumers Energy Co., Nuclear Management Co., LLC, Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 410 (2007); Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI-00-05, 51 NRC 90, 98 (2000). Rather, a licensing board shall, where appropriate, "weigh the information provided" to determine whether a standing element is satisfied. Bell Bend, CLI-10-07, 71 NRC at 139.

[18] Mr. Epstein also asserts he should be granted discretionary intervention pursuant to 10 C.F.R. § 2.309(e). See Petition at 16. We summarily reject that assertion. Although discretionary intervention may be granted in limited circumstances when a petitioner has failed to demonstrate standing as a matter of right, a request for such intervention will not be considered unless another petitioner "has established standing and at least one admissible contention has been admitted so that a hearing will be held." 10 C.F.R. § 2.309(e). Because Mr. Epstein is the sole petitioner here, this threshold requirement has not been satisfied and,

lives within twelve miles of TMI-2 and that his personal and professional activities bring him within five miles of the facility on a regular basis. See id. at 11. He asserts that granting the LAR will revise the license conditions in ways that will adversely impact his health and safety. See id. at 10, 11, 15.

In response, TMI-2 Solutions and the NRC Staff argue that Mr. Epstein fails to establish standing under either the proximity presumption or traditional judicial concepts. See TMI-2 Solutions' Answer at 13–17; NRC Staff's Answer at 10–14. We agree.

a. Mr. Epstein Fails to Establish Proximity Standing

At the outset, we observe that Mr. Epstein misapprehends the proximity presumption rule. He argues that he is entitled to rely on that rule in this reactor licensing case because he resides and has frequent contacts within a 50-mile radius of TMI-2. See Petition at 13, 15. Contrary to Mr. Epstein's understanding, the 50-mile presumption applies only in reactor licensing proceedings that are akin to construction permits and operating licenses, where the Commission has found that petitioners face a realistic threat of harm if a release of radioactive material were to occur. See Calvert Cliffs, CLI-09-20, 70 NRC at 917. This license amendment proceeding involving a permanently shut down and defueled reactor is not analogous to such cases. See Zion, CLI-99-4, 49 NRC at 191 ("[G]iven the shutdown and defueled status of the units, the license amendments do not on their face present any 'obvious' potential of offsite radiological consequences.").

Accordingly, if Mr. Epstein wishes to invoke proximity standing, he must show that this particular LAR, when considered in light of the radioactive sources at TMI-2, justifies a presumption that the licensing action could plausibly lead to the release of radioactive fission

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accordingly, Mr. Epstein is not eligible to seek discretionary intervention. See Exelon Generation Co., LLC; Exelon Corp.; et al. (Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; et al.), CLI-22-01, 95 NRC 1, 21 (2022) (denying Mr. Epstein's request for discretionary intervention for the same reason).

products with an obvious potential for offsite consequences that will adversely affect him. See Peach Bottom, CLI-05-26, 62 NRC at 580, 581. Mr. Epstein fails to make this showing.

Without identifying the specific license amendments that he deems objectionable, Mr. Epstein asserts that granting the LAR will (1) dismantle the safety-in-depth protocol; (2) weaken the design and management of equipment; (3) delete and modify the TS for PDMS, surveillance requirements, and administrative controls, as well as several license conditions; and (4) permit the storage of high-level radioactive waste at the site for an indefinite period. See Petition at 10, 11, 15. These changes, he claims, will expose him to harmful radiological exposure. See id. at 10, 11.

Mr. Epstein's claim is unacceptably conclusory and conjectural. It was incumbent on him to demonstrate some plausible chain of causation specifying how these particular license amendments have an obvious potential to cause offsite radiological consequences. See Zion, CLI-99-04, 49 NRC at 192. Mr. Epstein simply provides a list of general objections and then asserts, without explanation or support, that the LAR, if granted, would result in offsite radiological exposure. See Petition at 10, 11, 15. That is not sufficient. As the Commission held in the Zion decision, "[a] petitioner cannot seek to obtain [proximity] standing in a license amendment proceeding simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences." Zion, CLI-99-04, 49 NRC at 192.

The Commission's decision in Zion also provides compelling fact-specific support for rejecting Mr. Epstein's assertion of proximity standing. In Zion, as here, a petitioner sought to invoke proximity standing to challenge the LAR for a permanently shut down and defueled reactor.[19] See Zion, CLI-99-04, 49 NRC at 187. There, as here, the LAR sought to make

[19] In the instant case, 99% of the fuel load has been removed from the TMI-2 site and is being stored in Idaho by the U.S. Department of Energy. See LAR, Attach. 1 at 2.

technical and administrative changes to the license that would reflect the plant's shutdown and defueled condition.[20] See id. at 190. In declining to recognize proximity standing in Zion, the Commission stated that "given the shutdown and defueled status of [this facility], the license amendments do not on their face present any obvious potential for offsite radiological consequences." Id. at 191 (internal quotation marks omitted). That rationale applies with equal force here and supports our rejection of proximity standing.[21] Accord Exelon Generation Co., LLC (Three Mile Island Nuclear Station, Units 1 and 2), LBP-20-02, 91 NRC 10, 30, aff'd on other grounds, CLI-20-10, 92 NRC 327 (2020).

b. Mr. Epstein Fails to Satisfy Traditional Concepts of Standing

Having concluded that Mr. Epstein fails to establish proximity standing, our "standing inquiry reverts to a 'traditional standing' analysis . . . ." Peach Bottom, CLI-05-26, 62 NRC at 581. As discussed supra Part II.A.1, the traditional standing analysis includes a causation component that, in the instant case, requires Mr. Epstein to show how the alleged injury (offsite radiological release) is fairly traceable to the LAR. More specifically, Mr. Epstein has the burden of demonstrating a plausible chain of causation specifying "how the particular license amendments at issue would increase the risk of an offsite release of radioactive fission products." Zion, CLI-99-04, 49 NRC at 189; accord International Uranium (USA) Corp. (White

[20] Here, the proposed license amendments include the following changes: (1) eliminate TS that are no longer applicable based on the current plant radiological conditions and updated safe fuel mass limits; (2) delete or modify licensing requirements consistent with 10 C.F.R § 50.36 to enable TMI-2 to transition from a PDMS condition to that of a facility undergoing decommissioning; and (3) relocate administrative controls to the Decommissioning Quality Assurance Program and subsequently control them in accordance with 10 C.F.R. § 50.54(a) pursuant to the criteria in 10 C.F.R. § 50.36. See 87 Fed. Reg. at 51,455.

[21] The decision in Zion appears to be an a fortiori case for rejecting proximity standing here. There, the Commission denied proximity standing to a petitioner who claimed that (1) his residence was within 8½ miles of the plant; and (2) his activities took him to within 1 mile of the plant. See Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), LBP-98-27, 48 NRC 271, 273–74 (1998), aff'd, CLI-99-04, 49 NRC at 191–93. In contrast, Mr. Epstein's argument for proximity standing is based on his claim that (1) he lives within 12 miles of TMI-2; and (2) his activities bring him within 5 miles of the plant. See Petition at 11.

Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 251 (2001) (stating that a petitioner must show "the amendment will cause a distinct new harm or threat apart from the activities already licensed" to satisfy the causation component in a license amendment proceeding) (internal quotation marks omitted). Mr. Epstein fails to satisfy that burden.

As discussed above in our proximity standing analysis, Mr. Epstein's unsubstantiated assertions that several license amendment provisions will cause him harm do not satisfy the causation component of standing because they fail to provide a plausible chain of causation specifying how the challenged provisions would increase the risk of an offsite release of radioactive fission products. See Zion, CLI-99-04, 49 NRC at 192.[22]

Mr. Epstein nonetheless attempts to bolster his standing argument by emphasizing his interest in and knowledge about TMI-2, as reflected in (1) his participation in NRC proceedings concerning the cleanup, defueling, and decommissioning of TMI-2; and (2) his experience as a publisher and researcher of documents addressing nuclear issues. See Petition at 14. His participation in this LAR proceeding, he asserts, "would add insight, institutional memory, and perspective." Id. However, Mr. Epstein's interest and expertise are irrelevant to the standing analysis. As the Commission explained in the Peach Bottom license transfer proceeding when it held that Mr. Epstein's mere interest in the Peach Bottom facility did not confer standing:

> Although these kinds of involvement demonstrate both Mr. Epstein's general interest in electric and nuclear issues and his particular interest in the Peach Bottom facility, they do not demonstrate injury. It is well established that mere intellectual or academic interest in a facility or proceeding is insufficient, in and of itself, to demonstrate standing.

Peach Bottom, CLI-05-26, 62 NRC at 580; accord Sierra Club v. Morton, 405 U.S. 727, 739 (1972).

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[22] Although Mr. Epstein asserts that the proposed LAR "weakens cleanup by deleting and modifying TS for PDMS, surveillance requirements, and administrative controls," Petition at 15, this conclusory assertion fails to explain how these deletions and modifications would weaken the cleanup or otherwise cause him an injury-in-fact.

Mr. Epstein also cites several studies that examine how the 1979 accident at TMI-2 has affected the health of nearby residents. See Petition at 14 n.10. According to Mr. Epstein, these studies support a conclusion that nearby residents inevitably "will be exposed to radiation." Id. at 13. These backward-looking studies, however, are irrelevant to the forward-looking standing analysis, which requires Mr. Epstein to show "how these particular license amendments would result in a distinct new harm or threat to him." Zion, CLI-99-04, 49 NRC at 192.

Finally, in an effort to support standing, Mr. Epstein suggests that a triggering event — i.e., an airplane crash, explosion, fire, or terrorist attack — might cause re-criticality of the residual fuel debris material that may result in an offsite radiological release. See, e.g., Petition at 10. He asserts that the "lack of real time emergency preparedness, fire protection, and radiation monitoring programs" will render him vulnerable to radiological harm. Id. But Mr. Epstein fails to show that the proposed LAR will affect emergency preparedness, fire protection, or radiation monitoring programs in a manner that would expose him to radiological harm.[23] Nor does he show how the proposed LAR would increase the possibility of re-criticality. This failure to show a plausible chain of causation between the LAR and a particularized injury is fatal to Mr. Epstein's effort to establish standing. See Sequoyah Fuels Corp. and General Atomics, CLI-94-12, 40 NRC at 75.[24]

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[23] As previously mentioned, supra note 20, the challenged LAR proposes to remove or revise certain license conditions and TS requirements to reflect current plant conditions at TMI-2 and to support decommissioning.

[24] Because Mr. Epstein fails to provide a plausible causative link between the challenged LAR and his asserted injury, he has not demonstrated that denying the LAR, the only remedy he seeks, would prevent that injury. He thus also fails to satisfy the redressability component of standing. See Zion, CLI-99-04, 49 NRC at 196 (finding petitioner's redressability argument unpersuasive because "[d]enial of the current license amendments, the only remedy [petitioner seeks], would do nothing to [redress the alleged injury]").

B. Contention Admissibility

Although Mr. Epstein's failure to establish standing suffices to deny his petition, for the sake of completeness we also consider the admissibility of his two contentions. As discussed below, we conclude that neither contention is admissible, which serves as an alternative ground for denying his petition.

1. Contention Admissibility Standards

To be admissible, a timely-filed contention must satisfy each of the following regulatory criteria:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide a concise statement of the alleged facts or expert opinions which support the [petitioner's] position on the issue . . . , together with references to the specific sources and documents on which the [petitioner] intends to rely to support its position on the issue; [and]
>
> (vi) [P]rovide sufficient information to show that a genuine dispute exists with the [applicant] on a material issue of law or fact. This information must include references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief . . . .

10 C.F.R. § 2.309(f)(1)(i)–(vi).

The Commission's contention admissibility standard is "strict by design," AmerGen Energy Co. (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118 (2006) (quotation marks omitted), and failure to comply with any admissibility requirement "renders a contention inadmissible." Entergy Nuclear Operations, Inc. (Indian Point, Unit 2), CLI-16-05, 83 NRC 131, 136 (2016). As the Commission has observed, this agency's stringent contention

admissibility rule "properly reserve[s] our hearing process for genuine, material controversies between knowledgeable litigants." FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-08, 75 NRC 393, 396 (2012) (internal quotation marks omitted).

Although pro se litigants are not held to the "standards of clarity and precision to which a lawyer might reasonably be expected to adhere," they are held to the same specificity standards. Pub. Serv. Elec. & Gas Co. (Salem Nuclear Generating Station, Units 1 & 2), ALAB-136, 6 AEC 487, 489 (1973). Thus, contentions cannot be based on speculation; they must have "some reasonably specific factual or legal basis." Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), CLI-15-20, 82 NRC 211, 221 (2015). Moreover, a contention that simply references documents without clearly identifying or summarizing portions of the documents that are being relied upon is inadequate. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-89-03, 29 NRC 234, 240–41 (1989). Likewise inadequate are "generalized assertions, without specific ties to NRC regulatory requirements . . . [because they] do not provide adequate support demonstrating the existence of a genuine dispute of fact or law." U.S. Department of Energy (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 588 (2009).

2. Mr. Epstein Fails to Proffer an Admissible Contention

Mr. Epstein proffers two contentions. Contention 1 asserts that the LAR improperly "fails to consider the potential harm to the surrounding area from airplane crashes, explosions and fires or terrorist attacks." Petition at 22. Contention 2 is nearly identical to Contention 1, the only difference being that it expressly includes a re-criticality component, asserting that the LAR improperly "fails to consider the potential harm to the surrounding area from re-criticality due to airplane crashes, explosions and fires or terrorist attack." Id. at 28.

Although Contention 1 does not expressly mention re-criticality, Mr. Epstein relies on the alleged possibility of re-criticality as a basis for that contention, asserting that "reasonably foreseeable environmental harm could result [due to] re-criticality from an airline crash,

explosion, fire or terrorist attack." Petition at 22; see also id. at 23. Hence, Contention 1, like Contention 2, includes a re-criticality component.[25] Given the similarity between the two contentions, we will analyze them together.

Both contentions are contentions of omission,[26] alleging that the LAR violates the National Environmental Policy Act (NEPA) because it improperly fails to consider the potential harm, including harm from re-criticality, that may result from four triggering events — i.e., airplane crashes, explosions, fires, or terrorist attacks. See Petition at 22, 28. Mr. Epstein claims that the LAR fails to consider this potential harm "[d]espite TMI's history of fires, security vulnerabilities, and proximity to an international airport . . . ." Id. at 22; see also id. at 28. This failure, contends Mr. Epstein, "violates NEPA's requirement that environmental decisions must contain an evaluation of those aspects of a proposed action that will affect the quality of the human environment 'in a significant manner or to a significant extent not already considered.'" Id. at 22, 28 (quoting Marsh v. Or. Nat. Res. Council, 490 U.S. 360, 374 (1989)).[27]

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[25] See Tr. at 18 (Mr. Epstein's counsel affirms that it is petitioner's "position in both contentions that NEPA requires the analysis for airplane accidents, fires, explosions, [and] terrorist attacks which could result in re-criticality.").

[26] A contention of omission is one alleging that licensing documents failed to address a topic that, as a matter of law, was required to be discussed. See Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 6 and 7), LBP-11-06, 73 NRC 149, 200 n.53 (2011); see also Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 382–83 (2002).

[27] Although Mr. Epstein asserts in passing that the LAR also violates the Atomic Energy Act because it "fails to . . . ensure safe operation during back end of nuclear power production," Petition at 22, the gravamen of his argument is that the LAR violates NEPA because it fails to consider specified environmental impacts associated with the proposed amendments. See id. at 22, 25, 27, 28, 32, 34. We will therefore analyze his contentions as environmental challenges under NEPA. See DTE Elec. Co. (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146 n.53 (2015) (stating that "contentions must be pled with sufficient specificity to put opposing parties on notice of which claims they will actually have to defend").

Even if we were to view Mr. Epstein's contentions as safety challenges, we would reject them as inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(ii), (v), (vi) because he fails to (1) link the LAR to any specific, non-speculative safety concern; or (2) provide an explanation, together with references to relevant supporting sources, sufficient to show that a genuine dispute exists

TMI-2 Solutions and the NRC Staff argue that Mr. Epstein's contentions fail to satisfy the admissibility criteria in 10 C.F.R. § 2.309(f)(1). See TMI-2 Solutions' Answer at 19–25; NRC Staff's Answer at 20–24. For the following reasons, we agree.

a. The Contentions Are Not Admissible Because Mr. Epstein Fails to Address the Categorical Exclusion Discussion in the LAR

Mr. Epstein is correct that the LAR does not include a NEPA analysis regarding the potential environmental harm to the surrounding area, including harm from re-criticality, that may result from airplane crashes, explosions, fires, or terrorist attacks. See Petition at 22, 28. But he fails to acknowledge, much less challenge, the discussion in the LAR where TMI-2 Solutions concludes the proposed amendments meet the regulatory criteria for a categorical exclusion from environmental review. See LAR, Attach. 1 at 76–77. In rendering its conclusion, TMI-2 Solutions determined that the proposed amendments (1) involve no significant hazards consideration; (2) will cause no significant change in the types, or significant increase in the amounts, of any effluents that may be released offsite; and (3) will cause no significant increase in individual or cumulative occupational radiation exposure. See id. at 76 (applying the categorical exclusion criteria in 10 C.F.R. § 51.22(c)(9)(i)–(iii)). TMI-2 Solutions thus concluded that, "[p]ursuant to 10 C.F.R. § 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the proposed amendment." Id. at 77.[28] If Mr. Epstein wished to challenge that conclusion, it was incumbent on him to address the analysis in

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with the LAR on a material issue of law or fact. See Fermi, CLI-15-18, 82 NRC at 146 n.53 (explaining that the "lenient treatment generally accorded to pro se litigants has limits," and "[a] contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirements for the admission of contentions") (citations omitted).

[28] TMI-2 Solutions' analyses in the LAR, including its categorical exclusion determination, will be assessed by the NRC Staff incident to its review of the LAR. See NRC Staff's Answer at 21 n.127; Tr. at 70.

the LAR and to show, with specificity, why the categorical exclusion does not apply.[29] This he failed to do. Accordingly, his contentions are not admissible pursuant to 10 C.F.R. § 2.309(f)(1)(vi) because they fail to show a genuine dispute with the LAR on a material issue of law or fact.[30]

The Commission's recent decision in Three Mile Island compels this result. As relevant here, the petitioners in that case proffered a contention arguing that the LAR did not satisfy NEPA because it failed to include an adequate environmental review. See Exelon Generation Co, LLC (Three Mile Island Nuclear Station, Units 1 and 2), CLI-20-10, 92 NRC 327, 331 (2020). There, as here, the licensee included a categorial exclusion analysis in the LAR and determined that no additional environmental review was necessary. See id. There, as here, the petitioners failed to address the licensee's categorical exclusion analysis, see id. at 331–32, "thus failing to fulfill their ironclad obligation to review the [LAR] thoroughly and to base their challenges on its contents, as required by 10 C.F.R. § 2.309(f)(1)(vi)." Three Mile Island, LBP-20-02, 91 NRC at 38 (internal quotation marks omitted). The licensing board therefore rejected the contention pursuant to section 2.309(f)(1)(vi) for failing to raise a genuine dispute with the LAR. See id. On appeal, the Commission affirmed the licensing board's rationale and holding.

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[29] See Entergy Nuclear Operations, Inc. (Indian Point, Unit 2), LBP-15-26, 82 NRC 163, 181 (2015) (explaining that an applicant's categorical exclusion determination can be challenged by, inter alia, affirmatively showing the existence of "special circumstances" pursuant to section 51.22(b) that would justify excepting the proposed license amendment from the categorical exclusion); accord Pa'ina Hawaii, LLC, LBP-06-04, 63 NRC 99, 112–13 (2006).

[30] We acknowledge that Mr. Epstein asserts the TMI-2 site is "unique [because, for example,] the community has already been exposed to radiation releases from meltdown." Petition at 18. But his pleadings fail to argue, or even suggest, that TMI-2's alleged "uniqueness," Reply at 3 (unnumbered), equates to "special circumstances" that justify excepting the LAR from a categorical exclusion. See supra note 29. Simply stated, Mr. Epstein's pleadings, fairly read, give no inkling that he is challenging TMI-2 Solutions' categorical exclusion analysis. For that reason, we cannot credit his counsel's assertion that Mr. Epstein's pleadings "impl[y] an exception to categorical exclusion." Tr. at 20. A pro se petitioner may be entitled to greater leeway when a tribunal construes his pleadings, but those pleadings must meet some minimum threshold in providing respondents with notice of what is at issue. See Fermi, CLI-15-18, 82 NRC at 146 n.53.

See CLI-20-10, 92 NRC at 332. The Commission's decision is on all fours with this case and mandates that we reject Mr. Epstein's contentions pursuant to section 2.309(f)(1)(vi).[31]

b. Alternative Reasons Why The Contentions Are Inadmissible

Even assuming, for the sake of argument, that the Commission's decision in Three Mile Island did not compel us to reject Mr. Epstein's contentions, we would find them inadmissible for the following alternative reasons.

First, both contentions assert that the LAR improperly fails to consider the potential harm that might result if a triggering event — i.e., a terrorist attack, an explosion, a fire, or an airplane crash — were to cause re-criticality. See Petition at 22, 28. This argument ignores the LAR's conclusion that re-criticality is not possible under any circumstance. See LAR, Attach. 1 at 62, 68, 69, 74; LAR, Attach. 5 at 5. TMI-2 is a defueled facility and 99% of the fuel has been removed from the site. See LAR, Attach. 5 at 5. The LAR estimates that the remaining 1% of debris material consists of 1097 kilograms (kg) of residual uranium dioxide (UO_2), with the bulk residing in the lower head of the reactor vessel. See id. at 5–6.[32] Applying "conservatively estimated masses" coupled with a "conservative approach to adequately represent the inherent characteristics of the remaining fuel," id. at 31, the LAR concludes that criticality is not possible:

> Even if the expected remaining fissile mass throughout the building (1097 kg UO_2), including hold up in all piping and cubicles, were to be brought together, a criticality is not feasible. [Even if ideal conditions for criticality were to occur], it would require fissile mass in excess of that analyzed, which is greater than what is anticipated, in addition to a greatly reduced impurity concentration to present a criticality hazard.

[31] Mr. Epstein was a petitioner in the above-cited Three Mile Island case. He thus had notice that his failure to address the categorical exclusion discussion in TMI-2 Solutions' LAR would render his contentions inadmissible.

[32] The debris material is "in the form of finely divided, small particle-size sediment material; re-solidified material either tightly adherent to components or in areas inaccessible to defueling; and adherent films on surfaces contained within piping, tanks, and other components." LAR, Attach. 5 at 5.

Id.[33] Because Mr. Epstein fails to address the calculations and conservatisms embodied in the LAR's criticality analysis, his contentions regarding the possibility of re-criticality must be rejected for failure to show a genuine dispute with the LAR on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(vi).[34]

The component of Mr. Epstein's contentions alleging that the LAR improperly fails to consider the potential harm to the surrounding area due to a terrorist attack and resultant explosion, see Petition at 22, 28, is also inadmissible for an alternative reason.[35] In support of that aspect of his contentions, Mr. Epstein cites to the decision by the U.S. Court of Appeals for

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[33] The NRC Staff's review of TMI-2 Solutions' criticality discussion in the LAR will include "independent analysis and calculations." Tr. at 76.

[34] According to Mr. Epstein, Drs. Rasmussen and Kaku have postulated scenarios about the possibility of re-criticality at TMI-2. See Petition at 23, 29; see also Reply at 4–6 (unnumbered); id. encl. 1. However, neither individual examined the LAR, see Tr. at 32–33, much less endeavored to rebut the LAR's analyses regarding the amount of uranium remaining at the site or the conclusion that re-criticality is impossible. Accordingly, Mr. Epstein's reference to the notional scenarios postulated by these individuals fails to establish a genuine dispute with the LAR. See USEC Inc. (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) ("[A]n expert opinion that merely states a conclusion . . . without providing a reasoned basis or explanation for that conclusion is inadequate [to support a contention] because it deprives the Board of the ability to make the necessary, reflective assessment of the opinion . . . .") (internal quotation marks omitted).

Nor do Mr. Epstein's references to various studies and NRC Staff Requests for Additional Information (RAIs) strengthen his admissibility argument. See, e.g., Petition at 23–25, 27, 31. By failing to explain how these documents controvert any specific portion of the LAR or otherwise support his claims, Mr. Epstein fails to establish a genuine dispute of law or fact. See American Centrifuge Plant, CLI-06-10, 63 NRC at 457 ("It is simply insufficient, for example, for a petitioner to point to [a study] and expect the Board on its own to discern what particular issue a petitioner is raising, including what section of the application . . . is being challenged as deficient and why."); PPL Susquehanna, LLC (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-08, 81 NRC 500, 506 n.47 (2015) ("Petitioners must do more than rest on the mere existence of RAIs as a basis for their contention. Issuance of an RAI does not alone establish deficiencies in the application, or that the NRC Staff will go on to find any of the Applicant's clarifications, justifications, or other responses to be unsatisfactory.") (citations and internal quotation marks omitted).

[35] Mr. Epstein fails to specify how an explosion would occur at TMI-2 in its defueled, non-operational status. We will therefore analyze the explosion component as occurring incident to a terrorist attack.

the Ninth Circuit in San Luis Obispo Mothers for Peace v. NRC, 449 F.3d 1016 (9th Cir. 2006), where the court held that NEPA required the NRC Staff's environmental review to consider the likely consequences of a potential terrorist attack against a spent fuel storage facility on the Diablo Canyon reactor site in California. See Petition at 25, 27, 33, 34. Although the Commission did, of course, comply with the Ninth Circuit's decision in the Diablo Canyon proceeding itself, for licensing matters in other circuits the Commission adheres to its longstanding view (which has been affirmed by the U.S. Court of Appeals for the Third Circuit) that NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. See AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-07-08, 65 NRC 124, 126, 129 (2007), aff'd, N.J Dep't of Env't Prot. v. NRC, 561 F.3d 132 (3rd Cir. 2009).[36] Mr. Epstein's contrary argument ignores controlling case law, is beyond the scope of this proceeding, and fails to raise a genuine dispute with the LAR on a material issue of law or fact. See 10 C.F.R. § 2.309(f)(1)(iii), (vi).

The aspect of Mr. Epstein's contentions alleging that the LAR improperly fails to consider the potential harm from an airplane crash is likewise inadmissible for an alternative reason. The Supreme Court has made clear that "NEPA requires a reasonably close causal relationship between the environmental effect and the [proposed action]." Dep't of Transp. v. Pub. Citizen, 541 U.S. 752, 767 (2004) (internal quotation marks omitted); accord, e.g., N.J Dep't of Env't Prot., 561 F.3d at 136. Although Mr. Epstein states that TMI-2 is located near an international airport, see Petition at 22, 28, he has not shown that there is a "reasonably close causal relationship" between the LAR and the environmental effects of an airplane crash, nor does he show that any aspect of the LAR would increase the risk of an offsite release of radioactivity in the event of an airplane crash. Accordingly, that component of his contentions fails to raise a

[36] TMI-2 is located within the jurisdiction of the U.S. Court of Appeals for the Third Circuit.

genuine dispute with the LAR on a material issue of law or fact, as is required by section 2.309(f)(1)(vi).[37]

Finally, Mr. Epstein asserts that the LAR improperly fails to consider the potential harm from fires. See Petition at 22, 28. He is wrong as a factual matter. The LAR examines multiple scenarios involving fires at the TMI-2 site, including (1) the impact of a reactor building fire, see LAR, Attach. 1 at 3–4; (2) the impact of various fires outside the reactor building, see id. at 5; and (3) the impact of a fire involving ion-exchange resins. See id. at 5–7; see also 87 Fed. Reg. at 51,456, 51,457 (discussing TMI-2 Solutions' radiological analysis of reactor building fire). Because the LAR addresses the topic that Mr. Epstein contends was improperly omitted, that aspect of his contentions is inadmissible for failing to raise a genuine dispute, as is required by section 2.309(f)(1)(vi). See supra note 26; Tr. at 79.[38]

C. Mr. Epstein's Motion to File New Contentions is Denied Because He Lacks Standing

On the eve of oral argument for standing and contention admissibility, Mr. Epstein — now represented by counsel, see supra note 14 — filed a motion for leave to file two new contentions. See supra note 3. The crux of the new contentions is that (1) the LAR improperly fails to consider water-use restrictions that recently were imposed on TMI, Unit 1, and that may diminish water availability at TMI-2; and (2) this possible diminishment casts doubt on the LAR's clean-up plan and the conclusion that criticality is not possible. See Motion at 3. Because the deadline for filing contentions lapsed in November 2022, see supra note 11, Mr. Epstein argues

[37] This rationale also provides an additional ground for rejecting Mr. Epstein's assertion that the LAR improperly fails to consider the potential harm from an explosion. See Petition at 22, 28.

[38] The fire scenarios examined in the LAR were analyzed in the context of considering the safety impact of plausible accidents. For example, as TMI-2 Solutions explained in its response to an RAI: "The most limiting scenario, Reactor Building fire, is not based on any specific event. Its main purpose is to demonstrate that even if [high efficiency particulate air] filtration was bypassed, the event would not exceed 100 mrem to the maximally-exposed individual . . . ." [TMI-2 Solutions, LAR] — [TMI-2], Decommissioning [TS], Response to Questions, Attach. 1 (May 16, 2022) (ADAMS Accession No. ML22138A285).

that he satisfies the good cause standard in 10 C.F.R. § 2.309(c) for filing contentions after the time for submitting a hearing petition has expired. See Motion at 4.[39]

TMI-2 Solutions and the NRC Staff argue that Mr. Epstein's motion should be denied because he fails to satisfy the good cause standard, his newly proffered contentions are not admissible, and he lacks standing in any event. See TMI-2 Solutions' Answer to Motion at 3–13; NRC Staff's Answer to Motion at 4–11.

We need not resolve the existence of good cause or the admissibility of the new contentions because, as shown supra Part II.A, Mr. Epstein lacks standing. His failure to demonstrate standing is fatal to his effort to intervene in this proceeding and mandates that we deny his motion to file new contentions.

Perhaps recognizing the inadequacy of the standing argument advanced in his pro se petition, Mr. Epstein's motion seeks leave to file two new documents — i.e., settlement agreements executed by Mr. Epstein in 1992 and 1999 — to strengthen his claim of standing. See Motion at 5; id. at Exhibits 3, 4. Mr. Epstein claims that he could not locate these documents when he filed his pro se pleadings, but "after [he] engaged [the law firm of] Bernabei & Kabat, his counsel subsequently located them." Id. at 5. Both settlement agreements were signed by licensees, and one agreement was signed by the NRC Staff, see id., and they allegedly "acknowledge [Mr. Epstein's] special interest in overseeing [TMI-2]." Id. Mr. Epstein argues that these documents demonstrate his standing pursuant to the principle that "'pro se petitioners are held to less rigid pleading standards so that parties with a clear — but imperfectly

[39] As relevant here, section 2.309(c) states that a licensing board will not entertain requests for leave to file new contentions after the deadline for submitting a hearing petition has passed unless a litigant demonstrates good cause by showing the following: "(i) The information upon which the filing is based was not previously available; (ii) The information . . . is materially different from information previously available; and (iii) The filing has been submitted in a timely fashion . . . ." 10 C.F.R. § 2.309(c)(1)(i)–(iii).

stated — interest in the proceeding are not excluded.'" Id. (quoting NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), LBP-17-07, 86 NRC 59, 77 (2017)).

Although Mr. Epstein avers that he was unable to locate the settlement agreements when he filed his pro se pleadings,[40] he was — in our view — required to at least mention them. Having failed to do so, he is foreclosed from relying on them in the first instance at this late date. The principle that a licensing board should be lenient in construing a pro se petitioner's pleadings does not give Mr. Epstein license to disregard procedural rules that are applicable to all parties and designed to promote fair and efficient adjudication. See Turkey Point, CLI-15-25, 82 NRC at 397 n.53 ("[A]lthough we afford some leniency to pro se petitioners, . . . we expect [them] to fulfill the obligations imposed by our rules."); accord Southern Nuclear Operating Co., Inc. (Vogtle Electric Generating Plant, Unit 3), CLI-20-06, 91 NRC 225, 230 (2020).

Even were we to grant Mr. Epstein's untimely request to file these documents, however, our conclusion that he lacks standing would remain unchanged. As discussed supra Part II.A.1, to demonstrate standing, a petitioner bears the burden to set forth a coherent argument establishing, at an irreducible minimum, the following three elements: injury, causation, and redressability. Although Mr. Epstein purportedly has a "special interest in overseeing [TMI-2]," Motion at 5, he has not shown how that interest might be injured by the LAR and, accordingly, he has not demonstrated standing. See Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976). As the Commission has held, "[i]t is well established that mere intellectual or academic interest in a facility or proceeding is insufficient, in and of itself, to demonstrate standing." Peach Bottom, CLI-05-26, 62 NRC at 580;[41] see also Sierra Club v. Morton, 405 U.S. at 739 ("[A] mere 'interest in a problem,' no

[40] But see TMI-2 Solutions' Answer to Motion at 12 n.39 (stating that "upon receipt of [Mr. Epstein's] Motion, TMI-2 Solutions readily located both settlement agreements on the Internet and the NRC's Agencywide Documents Access and Management System").

[41] Mr. Epstein was the petitioner in the Peach Bottom proceeding to whom the Commission applied this well-established principle.

matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the [Administrative Procedure Act]."); supra Part II.A.2.b.[42]

III. CONCLUSION

For the foregoing reasons, we (1) deny Mr. Epstein's petition to intervene; (2) deny Mr. Epstein's motion to file new contentions; and (3) terminate this proceeding.

Pursuant to 10 C.F.R. § 2.311, any appeal to the Commission from this Memorandum and Order must be filed within 25 days after service of this issuance.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

E. Roy Hawkens, Chair
ADMINISTRATIVE JUDGE

/RA/

Nicholas G. Trikouros
ADMINISTRATIVE JUDGE

/RA/

Dr. Gary S. Arnold
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 1, 2023

[42] Mr. Epstein's longstanding interest in TMI-2 is evidenced by his extensive participation in matters relating to TMI-2's clean-up, defueling, and decommissioning. See Petition at 11–12, 14. Our conclusion that he does not meet the requirements for a hearing on this LAR does not preclude him from continuing to evince that interest by, e.g., participating in public meetings, serving on citizen advisory groups, or filing requests for a licensing action. See 10 C.F.R. § 2.206(a).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
TMI-2 Solutions, LLC	)	Docket No. 50-320-LA-2
	)	
(License Amendment Request for Three Mile Island Nuclear Station, Unit 2)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM and ORDER (Denying Eric Epstein's (1) Petition to Intervene and Hearing Request; and (2) Motion for Leave to File New Contentions) (LBP-23-04)** 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
Nicholas G. Trikouros, Administrative Judge
Dr. Gary S. Arnold, Administrative Judge
Noel M. Johnson, Law Clerk
Emily G. Newman, Law Clerk
Alison R. Wood, Law Clerk
E-mail: Roy.Hawkens@nrc.gov
Nicholas.Trikouros@nrc.goc
Gary.Arnold@nrc.goc
Noel.Johnson@nrc.gov
Emily.Newman@nrc.gov
Alison.Wood@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-14A44
Washington, DC 20555-0001
Angela B. Coggins
Julie G. Ezell
Adam S. Gendelman
Travis C. Jones
Catherine E. Kanatas
Mauri T. Lemoncelli
Ethan P. Licon
Joseph D. McManus
Kevin C. Roach
David E. Roth
Susan H. Vrahoretis
E-mail: Angela.Coggins@nrc.gov
Julie.Ezell@nrc.gov
Adam.Gendelman@nrc.gov
Travis.Jones@nrc.gov.
Catherine.Kanatas@nrc.gov
Mauri.Lemoncelli@nrc.gov
Ethan.Licon@nrc.gov
Joseph.McManus@nrc.gov
Kevin.Roach@nrc.gov
David.Roth@nrc.gov
Susan.Vrahoretis@nrc.gov

Counsel for TMI Solutions, LLC
Hogan Lovells US, LLP
555 13th Street, NW
Washington, DC 20004
Daniel F. Stenger
Stephanie Fishman
E-mail: daniel.stenger@hoganlovells.com
Stephanie.Fishman@hoganlovells.com

Energy Solutions, LLC
299 South Main Street, Suite 1700
Salt Lake City, UT 84111
Russ Workman, General Counsel
E-mail: rgworkman@enrgysolutions.com

Eric Epstein
4100 Hillsdale Road
Harrisburg, PA 17112
E-mail: epstein@efmr.org

Clara I. Sola
Digitally signed by Clara I. Sola
Date: 2023.03.01 16:15:58 -05'00'

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 1st day of March 2023