

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

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In the Matter of  
  
SUSQUEHANNA NUCLEAR, LLC  
  
(Susquehanna Steam Electric Station, Units 1  
and 2)

Docket Nos. 50-387-LT-3,  
50-388-LT-3,  
72-28-LT-3

**CLI-23-01**

**MEMORANDUM AND ORDER**

This proceeding stems from the Application of Susquehanna Nuclear, LLC to the NRC for approval of an indirect license transfer and conforming license amendments.<sup>1</sup> The Applicants request approval of an indirect license transfer of the operating licenses for Susquehanna Steam Electric Station (SSES), Units 1 and 2, and the general license for the Susquehanna independent spent fuel storage installation (ISFSI).<sup>2</sup> The Applicants seek the transfer of the licenses, and corresponding license amendments, to reflect a corporate

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<sup>1</sup> See Letter from Brad Berryman, Susquehanna Nuclear, LLC (Susquehanna Nuclear), to NRC Document Control Desk (Sept. 29, 2022) (ADAMS accession no. ML22272A604) (Application). Susquehanna Nuclear later supplemented the Application. See Letter from Brad Berryman, Susquehanna Nuclear, to NRC Document Control Desk (Oct. 28, 2022) (ML22301A205) (Application Supplement). Susquehanna Nuclear filed the Application on behalf of itself and the unsecured creditors of Talen Energy Supply, LLC (collectively, the "Applicants"). Application at 1.

<sup>2</sup> See Application at 1.

restructuring resulting from bankruptcy proceedings of Talen Energy Supply, LLC, and certain of its subsidiaries including Susquehanna Nuclear, into a reorganized company that is not yet named (“Reorganized Talen”).<sup>3</sup> Today we consider Mr. Eric Epstein’s petition for leave to intervene and hearing request.<sup>4</sup> For the reasons described below, Mr. Epstein’s Petition does not include an admissible contention; therefore, we deny the Petition and terminate this proceeding.

## I. BACKGROUND

Susquehanna Nuclear is the licensed operator of SSES, Units 1 and 2 and the associated ISFSI. Susquehanna Nuclear is a direct, wholly owned subsidiary of Talen Energy Supply, which is in turn a direct, wholly owned subsidiary of Talen Energy Corporation, whose stock is held by affiliates of Riverstone Holdings, LLC.<sup>5</sup> On May 9, 2022, Talen Energy Supply and certain of its subsidiaries each filed a voluntary bankruptcy case under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Texas.<sup>6</sup> The debtors in the bankruptcy proceeding filed a Joint Plan of Reorganization in the Bankruptcy Court on September 9, 2022 that sets forth their intention to pursue a comprehensive restructuring.<sup>7</sup> According to Susquehanna Nuclear, after Mr. Epstein filed his Petition, the Bankruptcy Court ultimately confirmed the Joint Plan of Reorganization.<sup>8</sup>

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<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> *Eric Joseph Epstein’s Petition for Leave to Intervene and Hearing* (Nov. 25, 2022) (Petition).

<sup>5</sup> Application at 1.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Susquehanna Nuclear LLC’s Answer Opposing Eric Joseph Epstein’s Petition for Leave to Intervene and Hearing Request* (Dec. 21, 2022), at 5 (Answer) (citing *In re Talen Energy Supply, LLC, et. al, Case No. 22-90054*, Proposed Findings of Fact, Conclusions of Law, and Order Confirming Joint Chapter 11 Plan of Talen Energy Supply, LLC and its Affiliated Debtors, (Doc. No. 1745) (Bankr. S.D. Tex. Dec. 15, 2022)).

Susquehanna Nuclear notified the NRC of the bankruptcy proceeding as required by 10 C.F.R. § 50.54(cc).<sup>9</sup> The Applicants are requesting that the NRC issue an order consenting to the indirect transfer of control of the SSES and its ISFSI under Section 184 of the Atomic Energy Act of 1954,<sup>10</sup> as amended, and 10 C.F.R. §§ 50.80 and 72.50.<sup>11</sup> They are also seeking license amendments under 10 C.F.R. § 50.90 to reflect a change in the entity responsible for providing a financial support agreement to Susquehanna Nuclear.<sup>12</sup>

The Applicants expect that at the end of the restructuring, Susquehanna Nuclear will continue to be directly owned by Talen Energy Supply, which will itself be owned by Reorganized Talen.<sup>13</sup> According to the Application, Susquehanna Nuclear will remain the licensed operator of SSES and the proposed transactions do not involve any changes to the conduct of operations at SSES or the ISFSI.<sup>14</sup>

After accepting the Application for review, the NRC issued a notice of opportunity for hearing and instructions for how to request Sensitive Unclassified Non-Safeguards Information.<sup>15</sup> Mr. Epstein timely filed his Petition and proposed two contentions. Susquehanna

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<sup>9</sup> Preliminary Notification of Event or Unusual Occurrence, PNO-I-22-001, “Notification of Bankruptcy Filing by Talen Energy Supply and Susquehanna Nuclear” (May 11, 2022) (ML22131A329).

<sup>10</sup> 42 U.S.C. § 2234.

<sup>11</sup> Application, Encl. 1 at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, Encl. 1 at 2.

<sup>14</sup> Application at 3.

<sup>15</sup> Susquehanna Steam Electric Station, Units 1 and 2 and Associated Independent Spent Fuel Storage Installation; Consideration of Approval of Indirect Transfer of Licenses and Conforming Amendments, 87 Fed. Reg. 67,511 (Nov. 8, 2022) (Hearing Notice).

Nuclear filed a timely answer opposing the Petition to which Mr. Epstein filed a reply.<sup>16</sup> Below we address Mr. Epstein's contentions.<sup>17</sup>

## II. DISCUSSION

### A. Contention Admissibility Standards

To obtain a hearing, a petitioner must propose an admissible contention. Our contention admissibility standards are found in 10 C.F.R. § 2.309(f)(1)(i)-(vi). To be admissible, a contention must provide a specific statement of the issue of law or fact to be raised or controverted and provide a brief explanation of its basis.<sup>18</sup> The contention must also raise issues within the scope of the proceeding and material to the findings that the NRC must make.<sup>19</sup> And it must include a concise statement of the alleged facts or expert opinions supporting the contention and sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.<sup>20</sup> These contention admissibility requirements are intended to ensure that adjudicatory hearings are triggered only by substantive safety or environmental issues that raise a supported dispute with the application on a matter material to the NRC's decision on the challenged action.<sup>21</sup>

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<sup>16</sup> Answer; *Eric Joseph Epstein's Reply to Susquehanna Nuclear, LLC's Answer Opposing Eric Joseph Epstein's Petition for Leave to Intervene and Hearing Request* (Dec. 29, 2022) (Reply).

<sup>17</sup> Both the Petition and Answer address Mr. Epstein's standing in detail. However, because Mr. Epstein has not submitted an admissible contention, we need not address his standing. Mr. Epstein also makes several assertions about the Applicants in the Introduction portion of his Petition. Petition at 2-7. Because these assertions do not address or clearly link to the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1), we do not consider them further in this decision.

<sup>18</sup> 10 C.F.R. § 2.309(f)(1)(i)-(ii).

<sup>19</sup> *Id.* § 2.309(f)(1)(iii)-(iv).

<sup>20</sup> *Id.* § 2.309(f)(1)(v)-(vi).

<sup>21</sup> See, e.g., *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334-35 (1999) (explaining why the NRC tightened its contention admissibility standards in 1989).

**B. Contention 1: Financial Assurance Under 10 C.F.R. § 72.50**

In Contention 1, Mr. Epstein argues that the Applicants must comply with the financial assurance requirements for decommissioning in 10 C.F.R. § 72.50.<sup>22</sup> He also states that the prepayment mode of decommissioning funding is “no longer available as a stand-alone option for a bankrupt and debtor entity.”<sup>23</sup> Mr. Epstein contends that Reorganized Talen will not have adequate financial assurances to meet these requirements; therefore, the Application is deficient on its face and Reorganized Talen “must provide a supplemental ‘surety method, insurance, or other guarantee method’ outside of the new family corporate chain.”<sup>24</sup> In his Reply, Mr. Epstein claims that further funding is needed because the current funding assurance was addressed prior to deregulation of utilities in Pennsylvania.<sup>25</sup> He further argues that the decommissioning funding only meets the minimum amount required by the NRC and does not account for when “the NRC allow[s] licensees to tap into the Decommissioning Trust Fund . . . for unauthorized purposes.”<sup>26</sup>

At the outset, we note that the regulations cited by Mr. Epstein to support Contention 1 apply to specifically licensed ISFSIs—not generally licensed ISFSIs like the one at SSES. Mr. Epstein quotes from 10 C.F.R. § 72.50(b) to support Contention 1.<sup>27</sup> However, 10 C.F.R. § 72.13(c) clarifies that the only provision in section 72.50 that applies to a generally licensed

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<sup>22</sup> Petition at 26.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 27-29.

<sup>25</sup> Reply at 10.

<sup>26</sup> *Id.* at 10-11.

<sup>27</sup> Petition at 26. Mr. Epstein cites section 72.50(c), but his quoted language appears in section 72.50(b)(3).

ISFSI is section 72.50(a).<sup>28</sup> Because section 72.50(b) is not applicable here, the Applicants were not required to address its requirements. Therefore, Contention 1 does not raise an issue within the scope of this hearing or that is material to the findings that the NRC must make.<sup>29</sup>

The Applicants addressed decommissioning funding in the Application, stating that the funding is unaltered by the bankruptcy proceeding or any related transactions.<sup>30</sup> Susquehanna Nuclear currently uses the prepayment method of decommissioning funding assurance and has established a trust for its share of decommissioning.<sup>31</sup> This method of funding is one of the allowable methods under 10 C.F.R. § 50.75(e)(1).

Mr. Epstein does not contend that the Application fails to meet the requirements in section 50.75(e)(1). Instead, he states that the “prepayment mode is no longer available as a stand-alone option for a bankrupt and debtor entity.”<sup>32</sup> But Mr. Epstein provides no support for this statement. To be admissible, a contention must provide support for its claims. In his Reply, Mr. Epstein contends that the amount of funding in the Application only meets the minimum amount in the regulation and states that this will be insufficient should the NRC allow the licensees to expend some of the funds for “unauthorized purposes.”<sup>33</sup> This claim also does not raise a material dispute with the Application. Our rules do not require an applicant to provide more than the minimum amount needed to meet the regulatory requirements. And while Mr. Epstein notes examples where the NRC has allowed expenditure of decommissioning funds for

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<sup>28</sup> 10 C.F.R. § 72.13(c) (listing which sections apply to activities associated with a general license).

<sup>29</sup> *Id.* § 2.309(f)(1)(iii), (iv).

<sup>30</sup> Application, Encl. 1 at 11.

<sup>31</sup> *Id.*

<sup>32</sup> Petition at 26.

<sup>33</sup> Reply at 11.

other purposes, in each of the examples cited by Mr. Epstein the NRC reviewed the decommissioning funding assurance prior to allowing the distributions to occur.<sup>34</sup> Therefore, these expenditures were not “unauthorized” and if the Applicants request similar expenditures at SSES, the NRC would review the request before making a determination.

Finally, Mr. Epstein argues that Reorganized Talen must “provide a supplemental ‘surety method, insurance, or other guarantee method’ outside of the new family corporate chain.”<sup>35</sup> But Mr. Epstein provides no support or citation for this claim. Susquehanna Nuclear addressed its decommissioning funding assurance in the Application, and Mr. Epstein did not challenge that discussion. Therefore, this claim does not raise a dispute with the Application on a material issue of law or fact.

**C. Contention 2: Failure to Comply with Bankruptcy Review Team Compliance Mandates**

In Contention 2, Mr. Epstein cites 10 C.F.R. § 72.50 for the requirement that the control of an ISFSI shall not be transferred without the prior consent of the NRC.<sup>36</sup> As Mr. Epstein notes, the NRC will only allow a transfer after it finds that the transfer is in accordance with the Atomic Energy Act. The NRC is then required to give its consent in writing. Mr. Epstein further argues that that the “Applicant failed to comply with [the] Bankruptcy Review Team compliance mandates for a bankrupt company” and that the NRC’s Bankruptcy Review Team (BRT) review is premature because the bankruptcy proceeding is not yet complete.<sup>37</sup>

Regarding Mr. Epstein’s first point—that the Applicants must receive NRC approval before a license transfer—we agree. As Susquehanna Nuclear points out, that is the purpose of

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<sup>34</sup> See, e.g., Holtec Decommissioning International, LLC; Oyster Creek Nuclear Generating Station; Exemption; Issuance, 84 Fed. Reg. 30,247 (June 26, 2019).

<sup>35</sup> Petition at 29.

<sup>36</sup> *Id.* at 30.

<sup>37</sup> *Id.* at 30-31.

this proceeding.<sup>38</sup> The Applicants informed the NRC of the bankruptcy proceedings and applied for the NRC's approval of the indirect transfer of control of SSES and the related license amendments. As discussed in the Hearing Notice, the NRC staff must make the required findings before approving the transfer and amendments.<sup>39</sup> Because Mr. Epstein does not raise any arguments that the Application fails to meet these requirements, he has not raised a material dispute with the Application.

Mr. Epstein further argues that the Application is deficient because it does not meet BRT mandates. Mr. Epstein's reference to a BRT appears to be quoting from an NRC guidance document, NUREG-1556, vol. 15.<sup>40</sup> This guidance relates to requests involving materials license bankruptcy or change of control under 10 C.F.R. Parts 30, 31, 40, and 70.<sup>41</sup> Because NUREG-1556, vol. 15 does not provide guidance for licenses issued under 10 C.F.R. Parts 50 and 72, like the ones at issue in this proceeding, it does not appear that the NRC staff would automatically establish a BRT in this case.<sup>42</sup>

Regardless of whether the NRC staff chooses to establish a BRT in this case, the provisions in NUREG-1556, vol.15 are not requirements for the Applicants (or the NRC staff). As noted in its introduction, NUREG-1556, vol. 15 is not a substitute for regulations and the

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<sup>38</sup> Answer at 19.

<sup>39</sup> Hearing Notice, 87 Fed. Reg. at 67,512.

<sup>40</sup> "Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses" (Final Report), NUREG-1556, vol. 15, rev. 1 (June 2016) (ML16181A003) (NUREG-1556, vol. 15).

<sup>41</sup> *Id.* at 1-2 ("[This document] does not address bankruptcy or change of control for licenses issued under 10 CFR Parts 61, 72, 76, or 110.").

<sup>42</sup> While the guidance contemplates establishing a BRT for a license issued under Part 50 in "certain specific circumstances," the guidance is aimed at ensuring the safe control of nuclear materials or information that was in the possession of the bankrupt licensees. *Id.* at G-1. Because Susquehanna Nuclear is maintaining control and accountability of all nuclear material and information throughout the bankruptcy proceeding, the procedures in the BRT do not appear necessary in this case.



approaches described in it are for information only.<sup>43</sup> Therefore, there is no requirement for the Applicants to address information in NUREG-1556, vol. 15 in the Application. Further, whether the NRC staff should create a BRT is not an admissible issue for a contention because it is not within the scope of this proceeding. Contentions must focus on the application, not the NRC's review.<sup>44</sup> Therefore, Mr. Epstein's reference to the BRT does not raise an issue that is material to the findings the NRC must make in this proceeding.

### III. CONCLUSION

For the reasons discussed above, we *deny* the request for hearing and petition to intervene and *terminate* this proceeding.

IT IS SO ORDERED.



For the Commission

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Brooke P. Clark  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 17<sup>th</sup> day of March 2023.

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<sup>43</sup> *Id.* at vi.

<sup>44</sup> See, e.g., *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 237 (2008) (“[T]he focus of a hearing on a proposed licensing action is the adequacy of the application to support the licensing action, not the nature of the NRC Staff’s review.”).

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SUSQUEHANNA NUCLEAR, LLC ) Docket Nos. 50-387-LT-3  
) 50-388-LT-3  
(Susquehanna Steam Electric Station, ) 72-28-LT-3  
Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-23-01)** have been served upon the following persons by Electronic Information Exchange.

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 17<sup>th</sup> day of March 2023.