

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Commission**

|                                    |   |                       |
|------------------------------------|---|-----------------------|
| In the Matter of                   | ) | Docket Nos. 50-498-LT |
|                                    | ) | 50-499-LT             |
| SOUTH TEXAS PROJECT, UNITS 1 AND 2 | ) | 72-1041-LT            |
|                                    | ) |                       |
| (Indirect Transfers of Licenses)   | ) | August 25, 2023       |
|                                    | ) |                       |

**CONSTELLATION’S ANSWER OPPOSING CPS ENERGY’S AND AUSTIN’S  
PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST**

**I. INTRODUCTION**

Pursuant to 10 CFR § 2.309(i)(1), Constellation Energy Generation, LLC (“Constellation”) hereby answers and opposes the Petition for Leave to Intervene and Request for Hearing (“Petition”) submitted by the City of San Antonio, Texas acting by and through the City Public Service Board of San Antonio (“CPS Energy”), a Texas municipally-owned utility, and the City of Austin, Texas, d/b/a Austin Energy (“Austin”) (collectively, “Petitioners”). The Petition lacks legal merit, mischaracterizes the key agreements, and fails to articulate an admissible contention.

Petitioners’ core argument—that STP Nuclear Operating Company (“STPNOC”) somehow did not have authority to submit an application on behalf of Constellation—is fundamentally flawed. STPNOC, as the licensed operator and pursuant to its governance—not the STP Owners Committee—has “sole” authority to submit the license transfer application (“LTA”) in furtherance of an owner licensee’s compliance with Section 184 of the Atomic Energy Act of 1954, as amended (“the Act”), 10 CFR § 50.80, and 10 CFR § 72.50. And that’s precisely what it did pursuant to its “sole” authority. Contrary to Petitioners’ assertion, and as explained in greater detail below, the STP Owners Committee has no role in this process.

Petitioners also assert that NRG South Texas does not have authority to transfer its ownership interest to Constellation, based upon purported rights of first refusal (“ROFR”) that are the subject of ongoing litigation in Texas state court. First, the questions regarding purported ROFR rights and legal authority to consummate the proposed transaction will be determined in a Texas state court proceeding brought by CPS, and this is not a subject that is properly to be brought before, or decided upon by, the NRC. Second, NRG South Texas does not propose to transfer its ownership interest to Constellation, rather it asks NRC to approve the indirect license transfers associated with NRG South Texas itself being acquired by Constellation.

Finally, Petitioners assert that the LTA is somehow fatally flawed, because Constellation proposes to establish a \$90 million funding arrangement for NRG South Texas, in place of existing \$120 million financial support agreements previously provided by NRG Energy, Inc. (“NRG”) and one of its subsidiaries. Contrary to their assertions, Petitioners have no interest in—and are, by the very terms of those agreements, explicitly excluded from being beneficiaries of—the NRG support agreements. Moreover, the proper question for the NRC staff to evaluate here is the continued financial qualifications (“FQ”) of NRG South Texas after it is acquired by Constellation. Constellation has established that following the transfer, NRG South Texas will meet the NRC’s “projected revenue covers costs” test based upon the five-year financial projections. As such, any proposed additional financial support is not material to the NRC staff’s review. Thus, Petitioners’ Contention 3 and their supplemental contention (which makes various challenges to Constellation’s calculation of the amount of the proposed \$90 million supplemental parental support) raise issues immaterial to the NRC staff’s review of the LTA.

In sum, the Petition raises issues that are not properly before the NRC, mischaracterizes the FQ issue that is properly before the NRC, and lacks merit many times over. Accordingly, Constellation requests that the Commission deny the Petition.

## **II. BACKGROUND**

On June 12, 2023, STPNOC filed an “Application for Order Approving Indirect Transfer of Control of Licenses” (“LTA”)<sup>1</sup> acting on behalf of Constellation, NRG South Texas and its parent companies (the “NRG Entities”). The LTA requests approval of the indirect transfer of control of the licenses for STP held by NRG South Texas for its 44% ownership interest in STP. The proposed indirect transfer of control would occur in connection with the proposed acquisition of NRG South Texas by Constellation through the closing of an Equity Purchase Agreement, dated May 31, 2023, that was entered into with certain of the NRG Entities. In connection with the transaction, the existing NRG South Texas limited partnership entity would be converted under Texas law into a limited liability company and renamed “Constellation South Texas, LLC” (“Constellation South Texas”),<sup>2</sup> but otherwise in all respects it would continue as the same corporate entity with its role as a “Participant” in STP and with a role in the governance of STPNOC. Constellation also proposes a \$90 million credit support arrangement to “backstop” Constellation South Texas, and the NRG Entities request that existing \$120 million Support Agreements be terminated following the proposed transfer.

NRC filed a Notice of the proposed license transfers in the *Federal Register*, which was published on July 19, 2023.<sup>3</sup> On July 31, 2023, Petitioners filed Motions seeking dismissal of the

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<sup>1</sup> ADAMS Accession No. ML23163A176.

<sup>2</sup> NRG South Texas and Constellation South Texas are used interchangeably herein, because both names refer to the same company.

<sup>3</sup> 88 FR 46192, “Consideration of Approval of Indirect Transfer of Licenses and Conforming Amendments” (July 19, 2023) (“Notice”).

LTA or a stay of the NRC’s proceedings regarding the LTA.<sup>4</sup> Constellation and NRG South Texas each submitted timely responses opposing the Petitioners’ Motions on August 4, 2023 (“Constellation Opposition” and “NRG Opposition”). STPNOC filed a timely Response to the Petitioners’ Motions on August 7, 2023 (“STPNOC Response”).

The Petitioners, Constellation and NRG South Texas also filed a Joint Motion for a Protective Order on August 4, 2023, in order to protect proprietary information provided to Petitioners by Constellation to the extent Petitioners may use this information in formulating a contention on NRG South Texas’s financial qualifications following the proposed transfer. NRC issued the requested Protective Order on August 10, 2023. On August 14, 2023, Petitioners submitted a “confidential” pleading with a supplemental contention regarding FQ issues (“Supplemental Contention”) under the terms of the August 10 Protective Order. This Answer responds to the contentions proffered by Petitioners in both their July 31 and August 14 pleadings.<sup>5</sup>

### **III. LEGAL FRAMEWORK**

#### **A. Indirect License Transfer Proceedings**

Under Section 184 of the Act, no NRC-granted license or rights thereunder “shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person” without prior written consent from the Commission.<sup>6</sup>

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<sup>4</sup> “Motion to Dismiss License Transfer Application, Immediately Stay NRC Proceedings, and Petition to Intervene City of San Antonio, Texas Acting By and Through The City Public Service Board of San Antonio and the City of Austin, Texas” (July 31, 2023) (“Motions”).

<sup>5</sup> Constellation is responding without referring to any confidential information in this Answer.

<sup>6</sup> 42 U.S.C. § 2234; see also 10 CFR §§ 50.80(a) & 72.50(a).

License transfer applications must include information that allows the NRC to understand “the identity and technical and financial qualifications of the proposed transferee.”<sup>7</sup> NRC regulations applicable to the proposed license transfers at issue in this proceeding further require that the applicant describe “the purpose for which the transfer of the license is requested, the nature of the transaction necessitating or making desirable the transfer of the license,” and “the financial assurance that will be provided for . . . decommissioning.”<sup>8</sup> The NRC also reviews license transfer applications to ensure continued compliance with relevant provisions of the Act, such as those that require that (i) a licensee may not be “owned, controlled, or dominated” by a foreign individual or entity<sup>9</sup> and (ii) certain insurance and indemnification arrangements will remain in place.<sup>10</sup> The NRC will approve a license transfer application if it determines that the “proposed transferee is qualified to be the holder of the license” and the “[t]ransfer of the license is otherwise consistent with applicable provisions of the law, regulations, and orders issued by the Commission.”<sup>11</sup>

Pursuant to its rules governing license transfer applications, the NRC “is expected to promptly issue approval or denial of license transfer requests,” notwithstanding the pendency of any hearing.<sup>12</sup> These rules further specify that the NRC’s “generally applicable intervention provisions” apply to license transfer applications.<sup>13</sup> Those generally applicable intervention provisions are found in Sections 2.309 and 2.311 of the Commission’s regulations and are discussed in greater detail below.

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<sup>7</sup> 10 CFR §§ 50.80(b)(1) & 72.50(b)(1).

<sup>8</sup> *Id.* §§ 50.80(b)(2), 72.50(b)(1) & 72.50(b)(3).

<sup>9</sup> *See* 42 U.S.C. § 2133(d); 10 CFR § 50.38.

<sup>10</sup> *See* 42 U.S.C. § 2210; 10 CFR § 50.54(w).

<sup>11</sup> 10 CFR §§ 50.80(c), 72.50(c); *see also* Notice 88 FR at 46,193 (explaining the applicability of this standard to this proceeding).

<sup>12</sup> 10 CFR § 2.1316(a).

<sup>13</sup> *Id.* § 2.1300.

## **B. Intervention and Requests for Hearings**

Section 189(a) of the Act allows for hearings upon the request of a “person whose interest may be affected by the proceeding.”<sup>14</sup> It “is well-established” that the AEA “does not provide an unqualified right to a hearing. Rather, the Commission is authorized to establish reasonable regulations on procedural matters like the filing of petitions to intervene and on the proffering of contentions.”<sup>15</sup>

Under 10 CFR § 2.309(a), the NRC will only grant a petition to intervene and request for hearing if the petitioner has both established standing pursuant to 10 CFR § 2.309(d) and proposed at least one admissible contention that meets the requirements of 10 CFR § 2.309(f). The petitioner must set forth with particularity its right to intervene and the contentions it seeks to litigate<sup>16</sup> and “[t]he burden of setting forth a clear and coherent argument for standing and intervention is on the petitioner.”<sup>17</sup>

## **IV. PETITIONERS HAVE FAILED TO ARTICULATE AN ADMISSIBLE CONTENTION**

### **A. Contention 1: STPNOC’s Agency Authority**

Petitioners’ first Contention is that a hearing should be held to determine whether STPNOC acted within the scope of its agency authority in submitting the LTA to the NRC.<sup>18</sup> This does not

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<sup>14</sup> 42 U.S.C. § 2239(a)(1)(A).

<sup>15</sup> *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041, 1045 (1983).

<sup>16</sup> *Susquehanna Nuclear, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-17-04, 85 NRC 59, 74 (2017) (quoting 10 C.F.R. § 2.309(f)) (“A petition to intervene must ‘set forth with particularity’ the contentions a petitioner seeks to have litigated in a hearing.”); *Wolf Creek Generating Station; Consideration of Approval of Transfer of License*, 81 FR 81,176-01, 81,177 (Nov. 17, 2016) (“As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding.”).

<sup>17</sup> *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-04, 49 NRC 185, 194 (1999) (“*Zion Nuclear*”); *see also Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 331 (1983) (“*Three Mile Island*”) (“The burden is on the petitioner to satisfy these requirements.”).

<sup>18</sup> Petitioners’ Motions at 21.

identify a controverted issue of law or fact as required by the Commission's contention admissibility requirements.

In submitting this Contention and its other arguments regarding STPNOC's authority, Petitioners fail to even address the "sole" authority granted to STPNOC under the STP Operating Agreement ("Operating Agreement"), but rather rely almost exclusively on purported rights of the STP Owners Committee to approve applications to the NRC under Section 9.3.6 of the Amended and Restated Participation Agreement ("Participation Agreement") and the STP Operating Agreement ("Operating Agreement").<sup>19</sup> In doing so, Petitioners misconstrue the plain language of Section 9.3.6 of the Participation Agreement and ignore the controlling terms of the Operating Agreement, which unequivocally sets forth STPNOC's authority vis-à-vis NRC licensing matters and compliance with applicable laws and regulations.<sup>20</sup>

Constellation has provided a detailed explanation regarding STPNOC's authority and the applicable provisions of the Participation Agreement and Operating Agreement in its Opposition dated August 4, 2023. Rather than repeat those arguments in detail here, Constellation highlights the following:

(1) The Participation Agreement and Operating Agreement were developed in connection with the formation of STPNOC, and these agreements include specific provisions to address the NRC staff's concerns about transferring reactor operating authority to an entity controlled by multiple owners that might disagree regarding matters that could come before the NRC. The overriding purpose of the Operating Agreement and the more specific provisions in Section 2.1 governing its operating authority were to ensure that STPNOC would always be the "sole" entity

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<sup>19</sup> See Petitioners' Exhibits A and B.

<sup>20</sup> Operating Agreement, Section 2.1.

responsible to the NRC for assuring compliance with applicable laws and regulations, especially in situations where its co-owners were in disagreement.

(2) Petitioners' assertion that Section 9.3.6 of the Participation Agreement requires Owners Committee approval for NRC applications is flawed. This Section only applies "where necessary." And, read in context, the Participation Agreement makes clear that such approval is only "necessary" when it might be necessary for the Participants to join in an application that provides for "the reliable, safe and effective operation of the South Texas Project by OpCo."<sup>21</sup> For example, the Participants "joined" in and provided information to support STPNOC's application to renew the STP operating licenses, which was submitted by STNOC on their behalf.<sup>22</sup> Stated differently, the purpose of Section 9.3.6 is to prevent owners from standing in the way of actions deemed necessary by the licensed operator for the reliable, safe, and effective operation of the plant.

(3) Section 9.3 of the Operating Agreement requires that STPNOC render assistance (as requested by an individual Participant) when necessary for it to discharge its responsibilities to regulatory authorities. Once NRG requested assistance in filing the LTA with NRC, STPNOC had a duty to assist. The Owners Committee has no role in STPNOC's providing assistance to a Participant in a regulatory proceeding.

Crucially, STPNOC agrees with all of the above. In its Response to Petitioners' Motions, STPNOC *expressly rejected* Petitioner's urged interpretation of the Participation Agreement and Operating Agreement. To the contrary, STPNOC has represented to the NRC that it had—and

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<sup>21</sup> Petitioners' argument suffers from an additional flaw. If the Owners Committee had any role, this would have required affirmative action by the Owners Committee. Pursuant to Section 9.4 of the Participation Agreement, actions by the Owners Committee require "two or more Participants having in excess of sixty percent (60%) interest," whereas Petitioners have only 56%. Therefore, even if the Owners Committee had a role in the submittal of the LTA (which it did not), the Petitioners' composition of the Owners Committee had no authority to provide direction to STPNOC regarding the filing of the LTA.

<sup>22</sup> <https://www.nrc.gov/reactors/operating/licensing/renewal/applications/south-texas-proj/south-texas-project-lra.pdf>. See Section 1.1.1 (page 1.1-2) and Section 1.1.4 (pages 1.1-4 through 1.1-13).



continues to have—the requisite authority to file the LTA and support its review.<sup>23</sup> NRC is entitled to rely upon such a representation made by its licensee.

**B. Contention 2: NRG South Texas’s Authority to Transfer Its Ownership Interests in STP**

Petitioners’ second contention is erroneous and inadmissible for many reasons—first and foremost because it mischaracterizes the request made by NRG South Texas in the LTA. Specifically, Petitioners argue that NRG South Texas does not have authority to transfer its ownership interests due to its contractual ROFR obligations under the Participation Agreement.<sup>24</sup> But, as explained above, NRG South Texas is not selling or transferring its ownership interests in the STP; NRG South Texas will own the same 44% ownership interest in the STP both before and after the proposed transaction. Instead, Constellation is purchasing an equity interest in NRG South Texas from its parent companies. The ROFR in the Participation Agreement plainly does not apply to such an upstream transfer. Moreover, these parent companies are not even parties to the Participation Agreement so the ROFR contained therein is not binding on them anyway.

In any event, the merits of the Petitioners’ alleged ROFR rights are not properly before the NRC in its review of the LTA. Rather, these rights will be determined in Texas state court proceedings where, tellingly, Petitioners filed a lawsuit in June 2023 seeking their adjudication. An NRC hearing on this contention would be both meaningless and wasteful, because the NRC lacks jurisdiction to determine the legal rights of the Participants pursuant to the Participation Agreement.

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<sup>23</sup> STPNOC Response.

<sup>24</sup> Petitioners’ Motions at 22.

**C. Contention 3: STPNOC's and NRG's Authority Regarding Parental Support Commitments**

Petitioners' third contention is that STPNOC and NRG lack the authority to seek changes to parental support commitments currently being made to NRG South Texas by its parent companies.<sup>25</sup> Petitioners claim that "the Application is deficient because Applicants do not have authority to terminate and reduce NRG's existing regulatory commitment to maintain the \$120 million support agreements under the terms set forth in the 2005 Order."<sup>26</sup> Petitioners are wrong and their complaints over the termination of the \$120 million Support Agreements are an irrelevant distraction. The actual, relevant question at issue in the LTA review is whether or not NRG South Texas will remain financially qualified following the proposed indirect license transfers. Answering this question requires the NRC to review Constellation's financial projections to determine whether or not the projected revenues cover the projected costs—the so-called "revenues cover costs" test. And on this question, the evidence is clear: Constellation South Texas plainly meets this requisite test.

The NRC's requirements for financial qualifications in 10 CFR § 50.33(f)(2) state that:

[T]he applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility.

In making the financial qualification determination under § 50.33(f)(2), the NRC staff will review the financial projections to confirm whether the revenues cover costs. Consistent with the regulation and its "Standard Review Plan,"<sup>27</sup> the NRC staff may also consider other financial

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<sup>25</sup> Petitioners' Motions at 22-25.

<sup>26</sup> Petitioners' Motions at 25.

<sup>27</sup> 10 CFR § 50.33(f); NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," at 10 (Section III.1.b)

information if the revenues do not cover costs. The Standard Review Plan provides that “[i]f an applicant **cannot** meet these [“revenues cover costs”] criteria, the reviewer will also consider other relevant financial information (i.e., information on cash or cash equivalents that would be sufficient to pay fixed operating costs during an outage of at least 6 months . . .).”<sup>28</sup> Thus, parental support to provide cash to cover 6 months of fixed operating costs is an **alternative** way to establish financial qualifications.

The Commission has made it clear that where an applicant meets the “revenues cover costs” test, any parental support proffered to meet the “alternative” source of cash test is “supplemental” and immaterial to the NRC staff’s review. In license transfers involving Oyster Creek and Vermont Yankee, Petitioners raised various questions regarding parental Support Agreements that were offered in addition to satisfying the “revenues cover costs” test. Rejecting these allegations regarding the proposed Vermont Yankee transfer, the Commission cited the prior decision involving Oyster Creek, stating:

As we have held [in *Oyster Creek*], in any event, absent a demonstrated shortfall in the revenue predictions required by 10 C.F.R. § 50.33(f), the adequacy of a corporate parent’s supplemental commitment is not material to our license transfer decision.<sup>29</sup>

Here, Constellation has offered a financial support arrangement in the amount \$90 million, which satisfies the NRC’s guidance of providing a source of cash or cash equivalents to cover fixed operating costs for six months. But, this is an **alternative** to satisfying the “revenues cover costs” test and, as such, it is a supplemental commitment. Thus, Petitioners’ assertions regarding

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<sup>28</sup> *Id.* (emphasis added).

<sup>29</sup> *Vermont Yankee Nuclear Power Corp., et al.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 177 (2000), citing *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station) CLI-00-6, 51 NRC 193, at 205 (2000).

the \$90 million in parental support are outside the scope of the LTA review in this instance, where Constellation has already met the “revenues cover costs” test.

Petitioners’ objection to the elimination of the existing \$120 million NRG Support Agreements fails for an additional reason: Petitioners have no rights or other purported interest in the NRG Support Agreements. These agreements each include a Section 6 that disclaims any such interest:

Rights of Participants and Creditors. The obligations of Parent pursuant to this Agreement are to LP only and do not run to and are not enforceable directly by STPNOC, any other Participant (as defined in the STP Participation Agreement) or any creditor of LP or other entity or person, nor shall this Agreement cause Parent to be responsible for payments of any obligation of LP to STPNOC, any Participant or any creditor or other entity or person or give rise to any recourse by STPNOC, any Participant, creditor or other entity or person to or against Parent or any of its assets or properties.<sup>30</sup>

Thus, there is no basis for establishing a hearing on Petitioners’ Contention 3.<sup>31</sup>

**D. Contention 4: Supplemental Contention Regarding Adequacy of Proposed \$90 Million in Parental Support**

Though not numbered, Petitioners offer a fourth contention that is centered around various challenges to the manner in which Constellation calculated the \$90 million that is proposed as supplemental parental support. This supplemental support was offered to satisfy NRC guidance regarding a source of funds “sufficient to pay fixed operating costs during an outage of at least 6

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<sup>30</sup> See Letter from J.W. Crenshaw to NRC, “Notice Regarding NRG Energy, Inc. Corporate Restructuring Affecting NRG South Texas LP and Request for Consent to Support Agreement Modifications,” Att. 3 (Apr. 13, 2006).

<sup>31</sup> Petitioners confusingly also suggest that it was inappropriate for NRG, as a party to the license transfer application, to seek termination of the existing Support Agreement through the license transfer process. Yet, neither the 2005 Order cited by the Petitioners, nor the Support Agreement itself, dictates any specific process through which that Support Agreement may be modified or terminated, and therefore, it is entirely appropriate to do so as part of the NRC’s review of this LTA. Following the proposed transfer, it is appropriate to relieve NRG South Texas’s former parent companies from any ongoing financial entanglement with NRG South Texas.

months.”<sup>32</sup> However, as already noted above, this guidance only applies where an applicant fails to meet the “revenues cover costs” test. Here the “revenues cover costs” test has been satisfied to establish financial qualifications, so the adequacy of the amount of funding associated with the proposed Support Agreement is immaterial. As previously determined by the Commission under analogous circumstances, Constellation’s “belt and suspenders” commitment is not material to “the license transfer decision,”<sup>33</sup> and as such, various questions raised regarding how this amount was calculated are also not material to the review of the LTA.

Even if the adequacy of the proposed Support Agreement was an appropriate issue to consider, Petitioners’ specific challenges to the calculations used by Constellation to form the basis of the \$90M amount are incorrect. Petitioners ignore the fact that Constellation calculated the amount of “fixed operating cost” using the same approach, *e.g.*, specific line items in the projected income statement, that have previously been accepted repeatedly by the NRC staff. In fact, these same line items were used in Exelon’s recent February 25, 2021 application seeking NRC approval of license transfers in connection with the “spin-off” that resulted in the current organization of Constellation.<sup>34</sup>

Petitioners’ allegation that certain costs included in STPNOC’s Business Plan (the “Business Plan”) are not captured in specific line items in Constellation’s projections<sup>35</sup> does not demonstrate a dispute on a material issue of fact that can meet the pleading requirements of 10 CFR

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<sup>32</sup> NUREG-1577, Rev. 1 at 10 (Section III.1.b).

<sup>33</sup> *Vermont Yankee*, CLI-00-20, 52 NRC at 177.

<sup>34</sup> See Letter from J.B. Fewell to NRC, “Exelon Generation Company, LLC Application for Order Approving License Transfers and Proposed Conforming License Amendments,” Enclosure 1, at 10 n.13 (Feb. 25, 2021) (ADAMS Accession No. ML21057A273); “Order Approving Transfer of Licenses,” Enclosure 1, at 12 (Nov. 16, 2021) (ADAMS Accession Nos. ML21320A352 & ML21277A192).

<sup>35</sup> See, *e.g.*, Supplemental Contention, at 6-7 (“Constellation also apparently excluded certain STPNOC costs, including the O&M expenses “Plant Investment Plan” and “24-Mo Fuel Cycle,” from its pro forma income statement. . .”).

§ 2.309. All of Petitioners' specific references to disputed matters relate to the calculation of \$90 million as the appropriate amount of supplemental support to cover "fixed operating costs" for six months. But, as already established, neither the existence of the parental support arrangement, nor the amount of the support, is material to the NRC staff's review as a matter of law, where the "revenues cover costs" test has been met.

Moreover, Petitioners admit that the Business Plan does not include line items for such items as "Property Taxes" and "Depreciation and Amortization,"<sup>36</sup> whereas the Projected Income Statement properly includes these line items. Thus, it can be expected that cost line items in the Projected Income Statement would not line up precisely with the Business Plan. For example, the Business Plan includes line items for "Capital," but there is no "Capital" line item in the Projected Income Statement. This is not a discrepancy, but rather, Capital costs are reflected in "Depreciation and Amortization" in a Projected Income Statement.

Nor do Petitioners' allegations raise any broader challenge to Constellation South Texas' financial qualifications following the acquisition. Again, the supplemental contention, on its face, only challenges the amount of the parent support commitment. Further, and most significantly, Petitioners do not raise any questions regarding or dispute in any way Constellation's projected revenues. The magnitude of those revenues, and projected pre-tax income, make any dispute over projected annual costs irrelevant to the bottom line in assessing the "revenues cover costs" test. Even if the projected costs were increased by 20%, the "revenues cover costs" test would still be met comfortably.<sup>37</sup> This makes any minor discrepancies in the cost projections immaterial.

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<sup>36</sup> Supplemental Contention, at 7.

<sup>37</sup> See LTA, Enclosure 5A.

For example, Constellation did not include costs associated with the “24-Mo Fuel Cycle” referenced by Petitioners,<sup>38</sup> because the plans for making this change had not been finalized at the time the projections were submitted to the NRC. However, this change is not material to the “revenues cover costs” test. Contrary to Petitioners’ assertions Constellation did include costs for the Plant Investment Plan.

Based upon further review of the Business Plan O&M numbers, Constellation identified a change that should be made to its projections that would increase its “O&M Non-Outage” projections by an amount that is less than \$10 million per year. Once again, however, this change will not have any material impact upon the resulting “revenues cover costs” test. Nevertheless, Constellation plans to supplement the LTA with updated projections of O&M Non-Outage to both resolve the discrepancy in how these numbers were calculated and include the 24-Mo Fuel Cycle. Also, Constellation will commit to increase the \$90 million parental support to \$95 million.

In sum, the Supplemental Contention is not admissible.

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<sup>38</sup> *Id.*


**V. CONCLUSION**

For the foregoing reasons, the NRC should deny the Motion to Dismiss and Motion for Stay.

Respectfully submitted,

*/Signed Electronically by John E. Matthews/*

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing CONSTELLATION’S ANSWER OPPOSING CPS ENERGY’S AND AUSTIN’S PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST has been served through the E-Filing system on the participants in the above-captioned proceeding this 25th day of August, 2023.

*/Signed Electronically By John E. Matthews/*

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