

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of

CONSTELLATION ENERGY GENERATION, LLC
(Christopher M. Crane Clean Energy Center)

Docket No. 50-289-LA

CLI-26-13

MEMORANDUM AND ORDER

This decision addresses the appeal by Eric Joseph Epstein (the Petitioner) of the Atomic Safety and Licensing Board's decision in LBP-26-6, in which the Board denied the Petitioner's request for a hearing in this license amendment proceeding.¹ For the reasons provided below, we affirm the Board's decision.

I. BACKGROUND

On September 26, 2019, Exelon Generation Company, LLC (Exelon), now Constellation Energy Generation, LLC (Constellation), certified removal of fuel from the reactor vessel and ceased operations at Three Mile Island Nuclear Station, Unit 1, in Dauphin County,

¹ *Constellation Energy Generation, LLC* (Christopher M. Crane Clean Energy Center) LBP-26-6, 103 NRC __ (June 29, 2026) (slip op.).

Pennsylvania, now the Christopher M. Crane Energy Center (CCEC).² In pursuit of restarting operations at the facility, Constellation submitted an exemption request in 2024 that would rescind the certifications submitted in 2019.³ Three license amendment requests (LARs) followed over the course of the next year.⁴

The NRC issued a *Federal Register* notice on February 24, 2026, providing an opportunity to request a hearing on these LARs.⁵ The Petitioner filed a timely hearing request with two contentions.⁶ The Secretary of the Commission denied the first contention as procedurally deficient and referred the second contention (Contention 2) challenging the

² See Letter from B. Ballard, NRC, to D. Rhodes, Constellation (May 13, 2025) (ADAMS accession no. ML25100A006) (issuing Amendment No. 306 to revise Renewed Facility License No. DPR-50 to reflect facility name change).

³ See Letter from D.M. Gullott, Constellation, to NRC Document Control Desk (Nov. 19, 2024) (ML24324A048) (Exemption Request).

⁴ The first LAR submitted by Constellation would restore the operating licensing basis for CCEC by revising the facility's operating license and technical specifications. See Letter from D. Moore, Constellation, to NRC Document Control Desk (July 31, 2025), Attach. 1 at 4 (ML25212A076). The second would revise and reinstate CCEC's Physical Security Plan, Training and Qualification Plan, and Safeguards Contingency Plan. See Letter from D. Moore, Constellation, to NRC Document Control Desk (Oct. 24, 2025), at 2 (ML25300A118); see also Letter from D. Moore, Constellation, to NRC Document Control Desk (Jan. 21, 2026) (ML26021A039) (updated cover letter). Finally, the third LAR would revise CCEC's Site Emergency Plan and its Emergency Action Level scheme, including reestablishing the Emergency Response Organization and updating elements of the facility's emergency preparedness. See Letter from D. Moore, Constellation, to NRC Document Control Desk (Oct. 31, 2025), Attach. 2 at 2 (ML25304A098) (October 31 LAR).

⁵ Constellation Energy Generation, LLC; Christopher M. Crane Clean Energy Center; Applications for Amendments to Renewed Facility License Involving Proposed No Significant Hazards Consideration Determination and Containing Safeguards Information and Order Imposing Procedures for Access to Safeguards Information, 91 Fed. Reg. 8910 (Feb. 24, 2026).

⁶ See *Eric Joseph Epstein's Petition to Intervene and Hearing Request* (Apr. 27, 2026) (Petition).

sufficiency of Constellation's October 31 LAR related to emergency preparedness to the Board for further proceedings.⁷

On June 29, 2026, the Board issued its decision denying the hearing request and terminated the proceeding, finding that the Petitioner established standing but did not submit an admissible contention.⁸ The Petitioner appealed the Board's decision on July 23, 2026.⁹ Constellation and the NRC Staff separately filed briefs in opposition to the Petitioner's appeal on August 17, 2026.¹⁰

II. DISCUSSION

A. Legal Standards

To be admitted for hearing, a person whose interest may be affected by a proceeding must demonstrate standing and submit an admissible contention.¹¹

Standing

We apply "contemporaneous judicial concepts of standing" in our proceedings, requiring demonstration of a "concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision, where the injury is to an interest arguably within the zone of interests protected by the governing statute."¹² In some licensing

⁷ See Order of the Secretary (May 11, 2026), at 3 (unpublished); see also Petition at 41; see also October 31 LAR, Attach. 2 at 2.

⁸ See *Crane*, LBP-26-6, 103 NRC at ___ (slip op. at 1).

⁹ *Notice of Appeal of the Order by Atomic Safety and Licensing Board Safety Panel* (July 23, 2026) (Appeal).

¹⁰ See *NRC Staff Brief in Opposition to the Eric Joseph Epstein Appeal of LBP-26-6* (Aug. 17, 2026); see also *Constellation Energy Generation LLC's Answer and Brief in Opposition to Eric Joseph Epstein's Appeal of LBP-26-6* (Aug. 17, 2026) (Constellation's Answer).

¹¹ See 10 C.F.R. § 2.309(a).

¹² See *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, 915 (2009) (internal

actions, we recognize a geographic-based shortcut, referred to as the “proximity presumption,” to evaluate standing based on whether a petitioner lives or has frequent contacts near the facility at issue in the proceeding.¹³

Contention Admissibility

The requirements for an admissible contention are set out in our regulations, and a petitioner must “set forth with particularity” the contentions that the petitioner seeks to raise and, for each contention, the petitioner must:

- (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 [that] support the requester's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requester/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/licensee on a material issue of law or fact. . . .¹⁴

quotations omitted) (citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559-61 (1992)).

¹³ See *Nuclear Development, LLC* (Bellefonte Nuclear Plant, Units 1 and 2), CLI-20-16, 92 NRC 511, 516-517 (2020) (noting applicability of the proximity presumption to significant reactor license amendment actions) (citing *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-330 (1989)); *Calvert Cliffs*, CLI-09-20, 70 NRC at 915-916 (citing *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426 (2007)).

¹⁴ See 10 C.F.R. § 2.309 (f)(1)(i)-(vi).

On appeal, we generally defer to the Board's rulings on standing and contention admissibility unless a petitioner demonstrates an error of law or abuse of discretion.¹⁵

B. Standing

The parties to this proceeding do not oppose the Petitioner's standing under the proximity presumption, and the Board confirmed standing under current Commission precedent.¹⁶ Therefore, standing is not at issue in this appeal, and we decline to address it further here.¹⁷ In any event, as the Board found, and as we confirm below, the Petitioner has not submitted an admissible contention.

C. Contention Admissibility

As framed by the Board and as reiterated in the Petitioner's appeal, Contention 2 states:

The proposed amendment would revise the CCEC Radiological Emergency Preparedness Plan and Emergency Action Level scheme to support resumption of power operations at the CCEC. However, the plan is not in compliance with federal regulations, and [is] fatally flawed for failing to [adequately] account for special needs populations. [The CCEC] has no emergency evacuation plan in place, and has historically excluded plans for special populations from pre-K kids to non-ambulatory adults. Constellation's emergency plan is in violation of Federal Regulations . . . because Pennsylvania has improperly planned for and/or left out special populations (day care centers and nursery schools). . . .¹⁸

¹⁵ See, e.g., *DTE Electric Co.* (Fermi 2), CLI-21-5, 93 NRC 131, 134 (2021).

¹⁶ See *Crane*, LBP-26-6, 103 NRC at ___ (slip op. at 6-8).

¹⁷ Constellation requests that the Commission use this case as a vehicle to change current policy and eliminate the proximity presumption for standing. See Constellation's Answer at 15-21. As we noted recently, the Commission recognizes that the "proximity presumption presents a potentially significant matter of adjudicatory policy worthy of our careful consideration." *Long Mott Energy, LLC* (Long Mott Generating Station), CLI-26-10, 104 NRC ___, ___ (Aug. 7, 2026) (slip op. at 3). The Commission is engaged in a full evaluation of its current standing jurisprudence. Therefore, we decline to rush our consideration of this issue and create new policy here.

¹⁸ See *Crane*, LBP-26-6, 103 NRC at ___ (slip op. at 8-9) (citing Petition at 41); see also Appeal at 11.

1. The Board's Contention Admissibility Ruling

In evaluating Contention 2, the Board noted at the outset that Constellation is not required to develop an offsite evacuation plan.¹⁹ The Board explained that development of offsite evacuation plans is the responsibility of state and local governments, with the Federal Emergency Management Agency (FEMA) as the primary agency responsible for assessing the adequacy of the plans.²⁰ The regulations at 10 C.F.R. § 50.47 describe the NRC's role in this process and the Board explained that the NRC is responsible for reviewing FEMA findings and determinations under § 50.47(a)(2).²¹ Further, the Board addressed the Petitioner's argument that the Staff was required to make a finding under § 50.47(a)(1) "that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency."²² The Board explained that this finding is tied to initial licensing and is not required to be made for this licensing action (i.e., an approval or denial of a LAR that proposes changes to the CCEC's Site Emergency Plan and its Emergency Action Level scheme to reflect operating conditions).²³ For these reasons, the Board concluded that Contention 2 was inadmissible as out of scope under 10 C.F.R. § 2.309(f)(1)(iii) and not material to the findings that the Staff must make to support the licensing action under § 2.309(f)(1)(iv).²⁴

The Petitioner also raised general concerns about the sufficiency of emergency planning at the facility both past and present. In assessing these concerns, the Board noted that to the extent the Petitioner seeks to argue that there are deficiencies associated with the licensing

¹⁹ See *Crane*, LBP-26-6, 103 NRC at ___ (slip op. at 9).

²⁰ See *id.*

²¹ *Id.*

²² *Id.* at ___ (slip op. at 9-10).

²³ *Id.* at ___ (slip op. at 10-11).

²⁴ *Id.* at ___ (slip op. at 10).

action at issue in this proceeding, the Petitioner did not dispute specific portions of the LAR, contrary to the requirements for admissible contentions in § 2.309(f)(1)(i) and (vi).²⁵

2. Petitioner's Arguments on Appeal

a. Required Findings under 10 C.F.R. § 50.47

On appeal, the Petitioner reasserts the argument that 10 C.F.R. § 50.47 requires the Staff to make a finding that there is “reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.”²⁶ This argument does not identify an error of law or an abuse of discretion in the Board’s decision. We find no error with the Board’s conclusion that “the NRC must conduct such a review and make such a finding only in conjunction with its review of an initial operating license.”²⁷ As outlined recently in *Palisades*, “the scope of the proceeding is defined by the licensing action requested and the findings the Staff must make in approving or denying it.”²⁸ Here, the pertinent licensing action includes the staff review and approval or denial of a LAR that updates CCEC’s Site Emergency Plan and Emergency Action Level scheme. It is not enough that the Petitioner raises concerns about emergency preparedness generally. Our contention admissibility requirements obligate the Petitioner to identify an issue material to the findings that the staff must make in its review of the

²⁵ See *id.* at ___ (slip op. at 11).

²⁶ See Appeal at 14.

²⁷ *Crane*, LBP-26-6, 103 NRC at ___ (slip op. at 10); see also 10 C.F.R. § 50.47(a)(1) (stating “[e]xcept as provided in paragraph (d) of this section, *no initial operating license for a nuclear power reactor will be issued* under this part or under part 53 of this chapter unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. *No finding under this section is necessary for issuance of a renewed nuclear power reactor operating license*”) (emphasis added).

²⁸ See *Holtec Palisades, LLC* (Palisades Nuclear Plant), CLI-26-9, 103 NRC ___, ___ (June 15, 2026) (slip op. at 11).

licensing action in question.²⁹ The development of an offsite emergency plan for a nuclear reactor, which would include evacuation plans for special populations, is not the responsibility of the licensee.³⁰ As noted above, the Board establishes this fact at the outset of its analysis in LBP-26-6.³¹ And as the Board correctly explains, “there is nothing in this LAR that requests the Staff to reconsider, or otherwise review, the offsite evacuation plans at this stage.”³²

b. Recission Argument

On appeal, the Petitioner suggests that the Board’s reasoning is flawed because “the company filed and was approved for a recission in 2019.”³³ The Petitioner has not identified an error of law or abuse of discretion. To the extent that the Petitioner claims that the 10 C.F.R. § 50.47(a)(1) finding for the facility was previously rescinded, this does not accurately reflect the

²⁹ See 10 C.F.R. § 2.309(f)(1)(iv); see also *Palisades*, CLI-26-9, 103 NRC at ___ (slip op. at 11) (explaining that the staff finding of whether the licensee could “safely repair a steam generator tube that is damaged in the tube support plate region with the proposed sleeves” did not open the scope of potential challenges to “encompass every possible safety issue related to the steam generators or resumption of operations. . .”). We note that the Petitioner’s appeal, like the Petition, contains generalized concerns about FEMA’s engagement at the site and the development of offsite emergency plans. See Appeal at 13-16. However, the Petitioner does not explain how these concerns, while related to emergency preparedness, are material to this licensing action. See 10 C.F.R. § 2.309(f)(1)(iii) and (iv).

³⁰ See 44 C.F.R. § 350.1 (stating “[t]he purpose of the regulation in this part is to establish policy and procedures for review and approval by [FEMA] of State and local emergency plans and preparedness for the offsite effects of a radiological emergency which may occur at a commercial nuclear power facility. Review and approval of these plans and preparedness involves preparation of findings and determinations of the adequacy of the plans and capabilities of State and local governments to effectively implement the plans”); see also “Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,” Final Report, NUREG-0654/FEMA-REP-1, rev. 2 (Dec. 2019) (ML19347D139) (describing responsibilities of FEMA and NRC in the evaluation of state and local government radiological emergency planning and preparedness).

³¹ See *Crane*, LBP-26-6, 103 NRC at ___ (slip op. at 9) (stating “[a]s an initial matter, we note that Constellation is not required to develop an offsite evacuation plan. Rather, state and local governments have primary responsibility for developing the offsite evacuation plans . . .”).

³² See *id.* at ___ (slip op. at 10).

³³ Appeal at 15.

licensing actions from 2019 or explain how prior exemptions somehow change the applicability of the regulatory requirements in this proceeding.³⁴ To the extent that the Petitioner is arguing that the license for the facility was rescinded in 2019 and these license amendments pertaining to the restart of the facility equate to the issuance of an initial license, this interpretation is at odds with our caselaw.³⁵ As we have consistently stated, our regulations provide that a facility operating license remains in effect during the decommissioning process “until the Commission notifie[s] the licensee in writing that the license is terminated.”³⁶

c. Claim of Deficiency or Omission

On appeal, the Petitioner’s assertions that “there are deficiencies within Constellation’s proposed amendments to the offsite evacuation plan” and that “the issues Mr. Epstein raised which are integral to an emergency plan, were completely absent from the 74-page LAR”³⁷ also do not identify an error of law or abuse of discretion in the Board’s decision. The Board did not err in concluding that petitioners are required to identify specific portions of the licensing action at issue that are deficient to meet our contention admissibility requirements.³⁸ Even in the case of a contention of omission, the Petitioner must demonstrate that there is required information

³⁴ The exemptions sought by Exelon in 2019 to permanently defuel and shutdown the facility did not include an exemption from 10 C.F.R. § 50.47(a)(1). See Letter from M. Gallagher, Exelon, to NRC Document Control Desk (July 1, 2019), at 1 (ML19182A104) (seeking exemptions from portions of 10 C.F.R. § 50.47(b), 10 C.F.R. § 50.47(c)(2), and 10 C.F.R. Part 50, Appendix E to “allow TMI to reduce emergency planning requirements consistent with the permanently defueled condition of the station”).

³⁵ See *Holtec Decommissioning International, LLC and Holtec Palisades, LLC* (Palisades Nuclear Plant), CLI-26-7, 103 NRC __, __ (June 15, 2026) (slip op. at 16) (explaining that a facility undergoing decommissioning retains the same license that it had during operations).

³⁶ *Holtec Decommissioning International, LLC* (Palisades Nuclear Plant), CLI-25-3, 101 NRC 197, 209-210 (2025); see also 10 C.F.R. § 50.51(b); Criteria to Return Retired Nuclear Power Reactors to Operations, 86 Fed. Reg. 24362, 24363 (May 6, 2021) (denying a petition for rulemaking).

³⁷ Appeal at 15.

³⁸ See *Crane*, LBP-26-6, 103 NRC at __ (slip op. at 11); 10 C.F.R. § 2.309(f)(1)(i) and (vi).

missing from the pertinent documents.³⁹ Since Constellation is not required to submit an offsite emergency plan as part of this licensing action, the Petitioner has not identified a deficiency or an omission in the LAR. Therefore, we affirm the Board's determination that Contention 2 is inadmissible.

III. CONCLUSION

For the reasons described above, we affirm the Board's decision denying the Petitioner's hearing request.

IT IS SO ORDERED.

For the Commission



JODY
MARTIN

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Jody C. Martin
Secretary of the Commission

Dated at Rockville, Maryland,
this 1st day of October 2026.

³⁹ See 10 C.F.R. § 2.309(f)(1)(vi) (stating in part "if the petitioner believes that the application fails to contain information on a relevant matter as required by law" they must include "the identification of each failure and the supporting reasons for the petitioner's belief"); *see also Tennessee Valley Authority* (Clinch River Nuclear Site Early Site Permit Application), CLI-18-5, 87 NRC 119, 122 (2018) (stating "[i]t is enough for a petitioner to identify the information that is claimed to be missing and demonstrate why that information is required").

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CONSTELLATION ENERGY GENERATION,	)	
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(Christopher M. Crane Clean Energy Center)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-26-13)** have been served upon the following by Electronic Information Exchange and by email as indicated.

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Christopher M. Crane Clean Energy Center Docket No. 50-289-LA
COMMISSION MEMORANDUM AND ORDER (CLI-26-13)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 1st day of October 2026.