UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Christopher T. Hanson, Chairman
Jeff Baran
David A. Wright

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| In the Matter of<br><br>EXELON GENERATION COMPANY, LLC; EXELON CORPORATION; EXELON FITZPATRICK, LLC; NINE MILE POINT NUCLEAR STATION, LLC; R.E. GINNA NUCLEAR POWER PLANT, LLC; and CALVERT CLIFFS NUCLEAR POWER PLANT, LLC<br><br>(Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Clinton Power Station, Unit 1; Dresden Nuclear Power Station, Units 1, 2, and 3; James A. FitzPatrick Nuclear Power Plant; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Nine Mile Point Nuclear Station, Units 1 and 2; Peach Bottom Atomic Power Station, Units 1, 2, and 3; Quad Cities Nuclear Power Station, Units 1 and 2; R. E. Ginna Nuclear Power Plant; Salem Nuclear Generating Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 1; Zion Nuclear Power Station, Units 1 and 2; and the Associated Independent Spent Fuel Storage Installations) | Docket Nos. STN 50-456, STN 50-457, 72-73, STN 50-454, STN 50-455, 72-68, 50-317, 50-318, 72-8, 50-461, 72-1046, 50-10, 50-237, 50-249, 72-37, 50-333, 72-12, 50-373, 50-374, 72-70, 50-352, 50-353, 72-65, 50-220, 50-410, 72-1036, 50-171, 50-277, 50-278, 72-29, 50-254, 50-265, 72-53, 50-244, 72-67, 50-272, 50-311, 72-48, 50-289, 72-77, 50-295, 50-304, and 72-1037 -LT |

**CLI-22-01**

**MEMORANDUM AND ORDER**

In this proceeding, Exelon Corporation; Exelon Generation Company, LLC (Exelon Generation); Exelon Fitzpatrick, LLC (Fitzpatrick LLC); Nine Mile Point Nuclear Station, LLC (NMP LLC); R.E. Ginna Nuclear Power Plant, LLC (Ginna LLC); and Calvert Cliffs Nuclear Power Plant, LLC (Calvert LLC) (together, “Exelon” or “applicants”) seek approval to transfer the

ultimate ownership of the above-captioned facilities to a newly created holding company, as described below.[1] Two petitioners, the Environmental Law and Policy Center ("ELPC"), and Eric Joseph Epstein and Three Mile Island Alert, Inc. (together, "TMIA") have sought to intervene and requested a hearing.[2] The People of the State of Illinois and EDF Inc. also initially filed petitions to intervene, which they have since withdrawn.[3]

## I. BACKGROUND

Exelon Generation is the licensed operator and a full or partial direct or indirect owner of twenty-one active nuclear units and three decommissioning reactors.[4] According to the

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[1] *See* Letter from J. Bradley Fewell, Exelon Generation, to NRC Document Control Desk, "Application for Order Approving License Transfers and Proposed Conforming License Amendments" (Feb. 25, 2021) (ADAMS Accession No. ML21057A271 (package)) (Application); Letter from David P. Helker, Exelon Generation, to Document Control Desk, "Supplemental Information Regarding Application for Order Approving Transfers and Proposed Conforming License Amendments" (Mar. 25, 2021) (ML21084A165) (March 2021 Supplemental Application); Letter from Glen T. Kaegi, Exelon Generation, to NRC Document Control Desk, "Update to Application for Order Approving License Transfers and Proposed Conforming License Amendments" (Sept. 29, 2021) (ML21272A276 (package)) (September 2021 Update to Application).

[2] *See Environmental Law & Policy Center's Petition to Intervene and Hearing Request* (June 23, 2021) (ELPC Petition); *Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing* (June 14, 2021) (TMIA Petition).

[3] *Notice of Withdrawal of the People of the State of Illinois's Hearing Request and Petition for Leave to Intervene* (Nov. 24, 2021); *EDF Inc.'s Notice of Withdrawal of EDF Inc.'s Petition for Leave to Intervene and Hearing Request* (Aug. 9, 2021).

[4] Application, Encl. 1 at 2-3, 8. The Exelon Generation operated facilities are Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Clinton Power Station, Unit 1; Dresden Nuclear Power Station, Units 2 and 3; James A. Fitzpatrick Nuclear Power Plant; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Nine Mile Point Nuclear Station, Units 1 and 2; Peach Bottom Atomic Power Station, Units 2 and 3; Quad Cities Nuclear Power Station, Units 1 and 2; and R.E. Ginna Nuclear Power Plant. Exelon Generation is also the decommissioning operator and a full or partial direct owner of 3 shut down units: Three Mile Island Unit 1, Dresden Unit 1, and Peach Bottom Unit 1. The application explains that Exelon Generation is expected to become the licensee for the Zion ISFSI-only site. *Id*. at 8. The application also explains that Exelon Generation owns Fitzpatrick, Calvert Cliffs, Nine Mile Point and Ginna indirectly through subsidiaries. *Id*. at 6-7.

application, Exelon Generation owns approximately 31,300 megawatts of generation, with 18,800 megawatts from nuclear and the remainder from natural gas, oil and renewable generation.[5] Four other entities listed as applicants, Ginna LLC, Calvert LLC, NMP LLC, and Fitzpatrick LLC, are subsidiaries of Exelon Generation and are, respectively, the owner licensees for Ginna, Calvert Cliffs, Nine Mile Point and Fitzpatrick nuclear plants.[6] Exelon Corporation is the ultimate parent company of the other applicants.[7]

**A. Corporate Restructuring**

According to the application, Exelon Corporation is "currently comprised of two distinct businesses: a rate-regulated, traditional utility business and a competitive business composed of merchant nuclear and non-nuclear generation facilities."[8] Exelon Corporation intends to sever these two businesses and seeks NRC approval to transfer the ownership of its subsidiary Exelon Generation to a new entity that will have no affiliation with Exelon Corporation. Exelon Corporation will retain ownership of its rate-regulated utilities.

The proposed transaction would involve an indirect license transfer.[9] Exelon Corporation proposes to transfer its 100% ownership of Exelon Generation to a newly created

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[5] *Id.* at 5.

[6] *Id*. at 6. NMP LLC owns 100% of Nine Mile Point Unit 1 and 82% of NMP Unit 2.

[7] The NRC Staff completed its review and approved the transfer on November 16, 2021. *See* Exelon Generation Company, LLC – Approval of Indirect Transfer of Licenses and Draft Conforming License Amendments (Nov. 16, 2021) (ML21277A245 (package)). The order approving the transfer specifies that the Staff's approval of the transfer "is subject to the Commission's authority to rescind, modify, or condition the approved transfer based on the outcome of any post-effectiveness hearing on the license transfer application." *Id*., Encl. 1, Order Approving Indirect Transfer of Licenses and Draft Conforming License Amendments, at 9.

[8] Application, Encl. 1 at 4.

[9] ''Indirect transfers involve corporate restructuring or reorganizations that leave the licensee itself intact as a corporate entity and therefore involve no application for a new operating license.'' *Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 459-60 n.14 (1999). A direct license transfer occurs when there will be a change in

entity referred to in the application by the placeholder name “HoldCo.” HoldCo would then be spun off from Exelon Corporation by distributing its shares pro rata to Exelon Corporation’s existing shareholders. According to the application, Exelon Generation would remain the same Pennsylvania limited liability company as today, but it would be renamed (referred to in the application by the placeholder name “SpinCo”) and would become the wholly owned subsidiary of HoldCo.[10] Neither HoldCo nor SpinCo would be affiliated with Exelon Corporation any longer. The proposed transaction became effective on February 1, 2022.[11]

In its application as originally filed, Exelon stated that four plants (consisting of eight units), all located in Illinois, would shut down in the near term. The original application provided financial projections for the years 2022 through 2026 which “conservatively assume[d]” that all four plants would shut down as anticipated and would therefore neither generate revenue nor incur operating expenses after the projected dates of closure.[12] That information changed after the State of Illinois enacted legislation to subsidize three of the plants—Byron, Dresden, and

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either possession or operating authority. *See, e.g.*, *Vermont Yankee Nuclear Power Corp. and AmerGen Vermont, LLC* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 161 (2000) (direct license transfer where application sought to transfer of both ownership and operation of the facility). *See also AmerGen Energy Co., LLC* (Three Mile Island Nuclear Station, Unit 1), CLI-05-25, 62 NRC 572, 574 (2005) (‘‘Because the Applicant did not propose to change either operating or possession authority, there [was] no direct license transfer.’’).

[10] Application, Encl. 1 at 2-3.

[11] *See* Notification (Feb. 1, 2022). On February 1, 2022, Exelon Corporation transferred its 100 percent ownership of Exelon Generation Company, LLC (EGC) to a newly created subsidiary (Constellation Energy Corporation) that was spun off to Exelon Corporation shareholders and became EGC’s new ultimate parent company. The Staff issued conforming license amendments the same day. Constellation Energy Corporation, EGC (reorganized and renamed as Constellation Energy Generation, LLC), and its subsidiaries are no longer affiliated with Exelon Corporation.

[12] Application, Encl. 1 at 9-10.

Braidwood—to keep them open.[13] A fourth plant—LaSalle Station—will not receive subsidies, but Exelon Generation has committed to operate it through May 31, 2027.[14] Exelon therefore updated its application and financial projections in September, 2021, to reflect that all four plants will continue to operate during the next five years.[15]

**B. Financial Assurance for Operating Expenses**

Under the Atomic Energy Act of 1954, as amended, and our associated regulations, no power reactor or ISFSI license can be transferred without the NRC's prior written consent.[16] A license transfer application must include the same information concerning the applicant's financial qualifications to operate the plant as required for an initial application.[17] The NRC will approve the license transfer if it finds both the proposed transferee qualified to hold the license and the transfer otherwise consistent with applicable law, regulations, and Commission orders.[18] NRC regulations require that, except where the applicant is an electric utility, license applicants

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[13] *See* September 2021 Update to Application, at 4-5; *see also* Letter from J. Bradley Fewell, Exelon Generation, to NRC Document Control Desk, "Withdrawal of Certification of Permanent Cessation of Power Operations for Byron Station, Units 1 and 2, and Previously Submitted Licensing Actions in Support of Decommissioning" (Sept. 15, 2021) (ML21258A276); Letter from J. Bradley Fewell, Exelon Generation, to NRC Document Control Desk, "Withdrawal of Certification of Permanent Cessation of Power Operations for Dresden Nuclear Station, Units 2 and 3, and Previously Submitted Licensing Actions in Support of Decommissioning" (Sept. 15, 2021) (ML21258A281).

[14] September 2021 Update to Application at 5.

[15] *Id*.

[16] *See* Atomic Energy Act § 184, 42 U.S.C. § 2234 (providing that "[n]o license granted [under the Atomic Energy Act] shall be transferred . . . directly or indirectly, through transfer of control of any license to any person, unless the Commission shall . . . give its consent in writing"); *see also* 10 C.F.R. §§ 50.80(a), 72.50(a) (implementing this provision with respect to power reactor and ISFSI licenses).

[17] 10 C.F.R. §§ 50.80(b)(1)(i).

[18] *Id.* § 50.80(c).

must demonstrate their financial qualifications to safely operate the plant.[19] To establish this, an applicant must submit estimates for its total annual operating costs for each of the first five years of operation, as well as the source of funds to cover these costs.[20] Although five-year projections are required, they are not necessarily sufficient to provide reasonable assurance of an applicant's financial qualifications.[21]

In such cases we accept financial assurances "based on plausible assumptions and forecasts, even though the possibility is not insignificant that things will turn out less favorably than expected."[22] That is, the level of financial assurance required for license transferees is not equivalent to the "extremely high assurance" required for the safety of reactor design, construction and operation.[23] Moreover, an applicant is not required to provide "absolutely certain predictions of future economic conditions."[24] The application and the September 2021 update to the application include financial projections for the first five years after the spin transaction (2022 through 2026) for SpinCo as a whole and for each of the subsidiary owner LLCs.[25]

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[19] *See id.* § 50.33(f).

[20] *Id.* § 50.33(f)(2).

[21] *See North Atlantic Energy Service Corp*. (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 220 (1999).

[22] *FirstEnergy Companies and TMI-2 Solutions, LLC* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 76 (2021) (citing *Seabrook*, CLI-99-6, 49 NRC at 222).

[23] *Id*. at 75-76.

[24] *Seabrook*, 49 NRC at 221.

[25] *See* September 2021 Update to Application, Encl. 1A (non-public); Application, Encl. 8.

**C. Decommissioning Funding Assurance**

Exelon Generation currently maintains external decommissioning trust funds for all units it directly owns through its direct wholly owned subsidiary, Exelon Generation Consolidation, LLC.[26] Exelon Generation Consolidation, LLC will be renamed following the spin transaction.[27]

Separately from its license transfer application, Exelon submitted a decommissioning funding status report in February 2021 for all units.[28] In its decommissioning funding status report, Exelon provided cost estimates based on the NRC formula cost amount calculated in accordance with 10 C.F.R. § 50.75(c) or using a site-specific estimate based on a period of safe storage.[29] Exelon stated that the financial assurance that had been provided—that is, the amount of money in the trust fund, plus the 2% annual real rate of return allowed by 10 C.F.R. § 50.75(e)(1)(i)—would meet the estimated decommissioning costs for all units except Byron.[30] But in its updated application, Exelon explains that because Byron will no longer retire early, Exelon does not project a decommissioning funding shortfall for any units.[31] Exelon provided

[26] Application, Encl. 1 at 12. The decommissioning funds for Fitzpatrick are held separately. *See id*. at 13. None of the proposed contentions at issue in this decision directly relates to Fitzpatrick.

[27] *Id.* at 13.

[28] *See* Letter from Patrick R. Simpson to NRC Document Control Desk, "Report on Status of Decommissioning Funding for Reactors and Independent Spent Fuel Storage Installations" (Feb. 24, 2021) (ML21055A776).

[29] *Id.* at 2-3.

[30] *Id.* at 3, Attach. 4. Exelon explained that because of its decision to retire Byron early, it had not completed a site-specific decommissioning cost estimate and the amount in the trust fund did not meet the NRC formula. *Id.* at 3.

[31] September 2021 Update to Application at 7-8.

updated reports on the status of decommissioning funding for Byron and Dresden on September 28, 2021.[32]

## II. DISCUSSION

### A. Requirements for Hearing and Intervention

#### *1. Standing*

To intervene in an NRC licensing proceeding, a petitioner must demonstrate standing.[33] To show standing, a petitioner must show an actual or threatened "concrete and particularized injury" to an interest within the "zone of interests" protected by the Atomic Energy Act.[34] The petitioner must show that the threatened injury would be caused by the proposed licensing action and is capable of being redressed by a favorable decision.[35] In the case of organizational petitioners such as ELPC and TMIA, the organization can demonstrate standing as a representative of its members.[36] To do so, the organization must show that one of its members has standing, must identify that member by name and address, and must show, preferably by affidavit, that the organization is authorized to request a hearing on behalf of that member.[37] The organization must show its member's standing by demonstrating that they may suffer an actual or threatened "concrete and particularized injury" to an interest within the "zone of

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[32] Letter from Patrick R. Simpson to NRC Document Control Desk, "Updated Report on Status of Decommissioning Funding for Reactors and Independent Spent Fuel Storage Installations for Byron Station and Dresden Nuclear Power Station" (Sept. 28, 2021) (ML21271A113).

[33] 10 C.F.R. § 2.309(d).

[34] *See, e.g.*, *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 10 (2021).

[35] *Id*.

[36] *See GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000) (and authority cited therein).

[37] *Id.* at 202.

interests" protected by the Atomic Energy Act, which would be caused by the proposed licensing action, and which is capable of being redressed by a favorable decision.[38]

In some proceedings, such as those involving issuance of a construction permit or an operating license, we use a "proximity presumption" which grants that persons living in proximity to a reactor could be harmed by changes to the owners, operators, or physical plant.[39] But in an indirect license transfer proceeding, which involves no direct changes to the licensed owner or operator or to the operation or physical plant, we do not employ this presumption.[40] Instead, we require that the petitioner explain how the licensing action will harm its members or its interests.[41]

***2. Contention Admissibility***

To obtain a hearing, a petitioner must raise an admissible contention. NRC regulations specify that for each contention, the petitioner must explain the issue it seeks to litigate, provide supporting facts or expert opinion on which the petitioner intends to rely in litigating the contention, and refer to the specific sources or documents on which it intends to rely.[42] To be admissible, a contention must fall within the scope of the proceeding and be material to the findings that the NRC must make for the proposed licensing action.[43] The petitioner must identify the specific portions of the application that the petitioner disputes, or, if the petitioner

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[38] *See id.* at 202-03; 10 C.F.R. § 2.309(d).

[39] *See, e.g.*, *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 138-39 (2010).

[40] *El Paso Electric Co*. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-20-7, 92 NRC 225, 233 (2020); *Entergy Nuclear Operations, Inc*. (Palisades Nuclear Plant), CLI-08-19, 68 NRC 251, 260 (2008).

[41] *See Palo Verde*, 92 NRC at 233.

[42] 10 C.F.R. § 2.309(f)(1)(ii), (v).

[43] *Id.* § 2.309(f)(1)(iii), (iv).

asserts that an application omits information required by law, the petitioner must identify each failure and provide supporting reasons for the petitioner's belief.[44] 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.[45]

**B. Environmental Law and Policy Center**

***1. ELPC's Standing***

ELPC bases its standing on the interests of its member, Robert L. Vogl, who lives within ten miles of Byron Generating Station in Oregon, Illinois.[46] His declaration states that he is concerned that the transfer of ownership will remove the "backstop" for decommissioning funding that Exelon Corporation's parent guarantees provides. He also expresses concern that there will not be sufficient funds for decommissioning, which could prolong the process or lead to inadequate cleanup, which in turn could contaminate surrounding property.[47]

Exelon disputes ELPC's standing.[48] It argues that ELPC cannot demonstrate proximity-based standing through its member, Mr. Vogl, because the proposed action involves "no change in the operator, no change in the direct owner, and no change in the physical plant."[49] Exelon

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[44] *Id.* § 2.309(f)(1)(vi).

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

[46] *See* ELPC Petition, Attach., Standing Declaration of Robert L. Vogl (May 24, 2021) (Vogl Decl.); *The Environmental Law & Policy Center's Reply to Applicants' Answer* (Aug. 6, 2021), at 14-16 (ELPC Reply).

[47] *See* Vogl Decl. at 2-3 (unnumbered).

[48] *Exelon's Answer Opposing the Petition of the Environmental Law & Policy Center for Leave to Intervene and for a Hearing* (July 30, 2021), at 37-40 (Exelon Answer to ELPC).

[49] *Id.* at 36 (quoting *Palo Verde*, CLI-20-7, 92 NRC at 233).

further argues that Mr. Vogl has not demonstrated traditional standing because his argument that he "somehow could be harmed if the decommissioning trust fund become underfunded" is too speculative to establish a concrete harm.[50]

We do not agree that Mr. Vogl has impermissibly relied on simple "proximity" standing, however. Almost any theory of traditional standing in one of our proceedings would require that the petitioner show that he lives, frequents, or owns property near the facility. Mr. Vogl has set forth a theory by which he could be harmed should the proposed license transfer cause decommissioning funds to run short.[51] We have long held that concerns regarding funding shortfalls can in some circumstances provide the basis for a showing of harm because NRC regulations "recognize that underfunding can affect plant safety."[52]

Exelon explains in the updated application that it no longer expects a decommissioning funding shortfall because Byron will not shut down in the short term.[53] And ELPC did not update its pleadings to account for these changed circumstances. But because, as described below, we find that ELPC's contentions are not admissible, we decline to rule on ELPC's standing.

***2. ELPC Contentions***

*a. ELPC Contention 1: Failure to Meet Financial Qualification Requirements*

ELPC claims that the application does not show that SpinCo can meet the financial qualification requirements of 10 C.F.R. § 50.33(f)(2) (reasonable assurance of adequate funds to operate the facilities) and (f)(5) (reasonable assurance of adequate funds to decommission the facilities). ELPC argues generally that the application is not based on "plausible

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[50] *Id.* at 38-39.

[51] *See, e.g.*, *Oyster Creek*, CLI-00-6, 51 NRC at 202-03.

[52] *See Gulf States Utilities Co*. (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 48 (1994).

[53] September 2021 Update to Application at 7.

assumptions" regarding SpinCo's financial forecasts and that ELPC need only present plausible scenarios undermining Exelon's forecasts to raise a contention. ELPC then provides several reasons why the spun-off companies would be underfunded, and it offers the declaration of Peter Bradford, a former NRC Commissioner, as expert support.[54] ELPC first argues that the application groundlessly assumes that HoldCo and SpinCo will achieve and maintain an investment grade credit rating after the transaction has taken place, and it questions the reliability of the application's financial projections for SpinCo.[55] Next, ELPC claims that the application fails to account for "key future liabilities" including (1) the cumulative impact of early retirement of the majority of the nuclear plants in their fleet, (2) the obligation to refund pre-1983 funds collected from ratepayers for spent fuel storage, (3) the potential for "tier-two" payments to Nuclear Electric Insurance Limited, and (4) the impact of non-radiological decommissioning costs on SpinCo's financial viability.[56] It also argues that Exelon Corporation's regulated utilities currently provide financial support for Exelon Generation's nuclear fleet, which will be lost following the spin transaction.[57]

**(1) PLAUSIBLE ASSUMPTIONS**

ELPC argues that the application does not include "plausible assumptions or forecasts" and that to raise a genuine dispute with the application it should only need to raise a plausible scenario which would undermine Exelon's financial projections. Quoting our decision in the *Oyster Creek* license transfer proceeding, ELPC argues that "[a]n applicant's mere proffering of 5-year cost and revenue projections will not be sufficient in the face of plausible and adequately

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[54] *See* ELPC Petition, Attach., Declaration of Peter A. Bradford (June 23, 2021) (Bradford Decl.).

[55] *See* ELPC Petition at 14-15.

[56] *Id.* at 13.

[57] *Id.* at 15-16.

supported claims that those projections are inaccurate or otherwise do not provide adequate assurance of financial qualifications."[58] ELPC therefore reasons that it needs only to supply a "plausible" argument undermining Exelon's cost and revenue projections to raise an admissible contention.[59]

In *Oyster Creek,* however, we did not hold that a petitioner merely needs to posit a plausible scenario to raise an admissible contention—we found that the petitioner would need to support that scenario factually. In *Oyster Creek* we found that the petitioners had not adequately supported their claims because they offered no expert or documentary evidence.[60] We also explicitly rejected the *Oyster Creek* petitioners' arguments suggesting that a license transferee should not be able to rely solely on operating revenue to meet costs—a theory that ELPC urges in support of its own contention.[61] We will therefore examine each of ELPC's individual arguments to determine whether they are not only plausible but adequately supported in law and fact.[62]

**(2) INVESTMENT-GRADE RATING**

ELPC challenges the application's assumption that SpinCo will maintain an "investment-grade rating," noting that S&P Global ratings downgraded Exelon Generation to BBB- following the spin-off announcement.[63] ELPC notes that Nuclear Electric Insurance Limited requires

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[58] ELPC Reply at 9 (citing *Oyster Creek*, CLI-00-6, 51 NRC at 207).

[59] *Id.* at 9.

[60] *Oyster Creek*, CLI-00-6, 51 NRC at 207.

[61] *Id*.

[62] *See* 10 C.F.R. § 2.309(f)(1)(vi).

[63] ELPC Petition at 15 (citing *S&P Downgrades Exelon Generation to BBB- Following Spinoff Announcement*, S&P Global (Feb. 25, 2021), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/s-p-downgrades-exelon-generation-to-bbb-following-spinoff-announcement-62859923).

members to maintain investment grade ratings or provide some other means of financial assurance that each member is able to pay retrospective premiums.[64]

Exelon responds that SpinCo is the same entity as Exelon Generation, only with a new name.[65] Exelon points out that the new entity, HoldCo, is not an applicant, and the application makes no representations about HoldCo's credit rating.[66] In addition, Exelon observes that a "BBB-" rating is still considered investment-grade.[67]

We find that this portion of the contention is unsupported and does not raise a genuine dispute with the application. ELPC does not provide a basis to undermine Exelon's premise that SpinCo will remain investment grade, show that the application inaccurately represented SpinCo's financial situation, or demonstrate that SpinCo must maintain a grade higher than "BBB-" to be considered financially sound.

**(3) EARLY RETIREMENT**

ELPC argues that the application does not adequately address the possibility that early reactor retirement could adversely affect SpinCo's financial stability.[68] ELPC argues that the loss of revenues from reactors that are shut down prematurely will weaken SpinCo's strength overall.

Exelon's updated application and decision to continue operations at the four Illinois plants largely renders ELPC's claim moot. But to the extent that this claim has not been mooted, ELPC does not provide sufficient support for this argument. ELPC states that Exelon

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[64] *Id.* at 20.

[65] Exelon Answer to ELPC at 14.

[66] *Id.* at 15-16.

[67] *Id.* at 16 n.66.

[68] ELPC Petition at 17-18.

has failed to account for the "cumulative impact [that] early retirement of the majority of the nuclear plants in their fleet" will have on its ability to meet operating costs. However, Exelon accounted for these retirements in its financial projections, and those eight units did not represent a "majority" of the twenty-one operating nuclear units Exelon has in its fleet. In addition, ELPC has not provided support for its argument that other plants in Exelon's fleet are likely to shut down in the next five years. ELPC's expert, Mr. Bradford, does not discuss early shutdown of any reactors other than those acknowledged by Exelon itself in its now-superseded application.[69] We therefore dismiss this portion of the contention as unsupported.

**(4) PRE-1983 SPENT FUEL STORAGE FEES**

ELPC argues that the application does not account for pre-1983 spent nuclear fuel (SNF) disposal fees that Exelon's predecessor collected from Illinois ratepayers and never transferred to the U.S. Department of Energy (DOE).[70] ELPC states that before the Nuclear Waste Policy Act of 1982 made spent fuel disposal a federal responsibility, Exelon's predecessor in interest in Illinois (Commonwealth Edison, or ComEd) collected spent fuel fees from ratepayers.[71] The money collected, plus interest, must be turned over to the DOE when a permanent repository becomes available. ELPC argues that the application fails to account for how SpinCo will meet this obligation or "what may happen if [it is] not met."[72]

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[69] In support of its proposed Contention 2, ELPC cites an article that states generally that some nuclear plants may face early retirement depending on the price of energy and the availability of subsidies designed to keep zero carbon emitting energy sources open. *US Nuclear Power Plant Retirement Risk Fluctuates with Policy, Power Prices*, S&P Global (May 3, 2021), https://www.spglobal.com/platts/en/market-insights/latest-news/electric-power/050321-feature-us-nuclear-powerplant-retirement-risk-fluctuates-with-policy-power-prices. We do not find that this article provides substantive support for the claim that the subject nuclear facilities will prematurely shut down.

[70] ELPC Petition at 18-19; Bradford Decl. at 14-15.

[71] ELPC Petition at 18-19.

[72] *Id.* at 19.

According to Exelon's 2020 annual report to the U.S. Securities and Exchange Commission (SEC), ComEd was to pay DOE a $277 million one-time fee for the pre-1983 nuclear generation, which ComEd chose to defer until "just prior to the first delivery of SNF to the DOE."[73] Similarly, the prior owner of Exelon's FitzPatrick plant deferred payment in the amount of $34 million until DOE is ready to take the fuel.[74] Exelon's annual report acknowledges that with interest, this liability amounts to $1.208 billion.[75]

Exelon states that the liability for spent fuel fees, plus interest, is reflected in enclosure 6A submitted as part of the license transfer application, included in the figure listed as "other non-current liabilities."[76] Although the total for non-current liabilities listed in Enclosure 6A is considered proprietary information, we observe that is greater than the $1.208 billion that Exelon acknowledges is due to DOE in its 10-K. Exelon also points out that the application explicitly states that there will be no change to the standard contracts for disposal of SNF with DOE except for the new names of the parties.[77] Therefore, Exelon argues, there is no need for a hearing to determine "who will be responsible for this payment," because that information is clearly stated in the application.[78]

We agree with Exelon that this part of the contention fails to dispute information in the application because the application discloses the liability and discusses who will pay it. In

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[73] Exelon Corporation, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, Form 10-K, (2020), at 187, 342 (Exelon 10-K), https://www.sec.gov/ix?doc=/Archives/edgar/data/1109357/000110935721000022/exc-20201231.htm.

[74] *Id.* at 342.

[75] *Id.*

[76] Exelon Answer to ELPC at 23; *see* Application, Encl. 6A at 2.

[77] Exelon Answer to ELPC at 23-24; Application, Encl. 1 at 14.

[78] Exelon Answer to ELPC at 23-24.

addition, ELPC has not provided support for its assertion that SpinCo will be unable to pay this liability when it comes due.[79] We therefore dismiss this portion of the contention.

**(5) POTENTIAL LIABILITY FOR NUCLEAR ACCIDENT UNDER PRICE-ANDERSON ACT**

ELPC also claims that the application should account for the possibility of a major nuclear accident in the United States.[80] ELPC explains that under the Price-Anderson Act, each nuclear reactor must carry insurance to cover damages in an accident, currently in the amount of $450 million.[81] Mr. Bradford asserts that should the damages exceed $450 million, every reactor over 100MW could be assessed up to $137 million in "retrospective" insurance premiums to cover the excess damages in case of a nuclear accident anywhere in the United States.[82] According to Mr. Bradford, Exelon's eighteen reactors could potentially be assessed "about $2.5 billion" over a period of six or seven years.[83] ELPC claims that the application does not account for this potential liability and does not specify whether SpinCo or HoldCo will assume this obligation.[84]

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[79] Mr. Bradford asserts that if spent fuel disposal fees are not turned over to DOE, the affected licensees may not be able to remove spent fuel from the sites of their closed plants and thereby not be able to fully decommission them. *See* Bradford Decl. at 15. For support, Mr. Bradford discusses a 1990 DOE Inspector General Report, which indicated that eleven out of seventeen utilities that had deferred payment were of "uncertain financial condition," thereby jeopardizing $2 billion in unpaid fees and a 1991 General Accounting Office report on the same subject. *Id*. (citing General Accounting Office, "Nuclear Waste: Changes Needed in DOE User-Fee Assessments" (May 8, 1991), at 9, https://www.gao.gov/assets/t-rced-91-52.pdf). Mr. Bradford's statement and the GAO report do not indicate that Exelon or its predecessors, specifically, were or would be unable to pay this liability.

[80] *See* ELPC Petition at 20-21.

[81] *Id.* at 20.

[82] *Id.*; Bradford Decl. at 15-16.

[83] Bradford Decl. at 16.

[84] ELPC Petition at 20-21.

Exelon argues that a hearing is unnecessary because it is clear in the application—as well as under NRC regulations—that the licensee is responsible for the premiums.[85] Exelon additionally points out that its annual report discloses a maximum liability of $252 million—the same amount claimed by Mr. Bradford, for retrospective premiums.[86] Moreover, it argues that Exelon Generation now provides an annual proof of guarantee of payment, such as a surety bond or letter of credit, as our regulations require, and will continue to do so after the name change to SpinCo.[87] Exelon argues that ELPC has shown no reason why the applicants need to provide more.

We find no litigable issue in this claim. The application has accounted for the potential liability in its financial disclosures. Further, our regulations provide that SpinCo is responsible for paying the premiums and that it must provide proof of its ability to do so annually. ELPC does not point to a requirement for the application to do more.

**(6) NON-RADIOLOGICAL DECOMMISSIONING COSTS**

ELPC argues that although the NRC does not require financial assurances for non-radiological decommissioning costs, the potential existence of non-radiological cleanup obligations does affect SpinCo's and HoldCo's financial qualifications to hold the operating licenses.[88] Mr. Bradford asserts that the owner of the shutdown Vermont Yankee plant is required to maintain a $60 million site restoration fund in addition to the decommissioning trust fund.[89] According to Mr. Bradford, if "Illinois, New York, Pennsylvania, Maryland, and New

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[85] Exelon Answer to ELPC at 25; Application, Encl. 1 at 15; 10 C.F.R. § 140.11.

[86] Exelon Answer to ELPC at 25; Exelon 10-K at 340.

[87] Exelon Answer to ELPC at 25-26; 10 C.F.R. § 140.21.

[88] ELPC Petition at 21.

[89] Bradford Decl. at 12.

Jersey nonradiological restoration funds are similar the total obligation on the SpinCo reactors could approach $1 billion."[90]

Exelon responds that this argument is "counterintuitive" because a theoretical non-radiological decommissioning cost would necessarily be incurred after a reactor ceases operation, and therefore would have no impact on that reactor's ability to meet operating costs.[91] But here Exelon's application provides fleet-wide operating costs and revenue projections, not reactor-specific projections. That is, we agree with ELPC it is possible that in the future, one of its reactors could incur non-radiological decommissioning costs, which would in turn impact SpinCo's ability to meet the expenses of the reactors still operating.

However, we find ELPC's claim to be unsupported and too speculative to form the basis of a contention. ELPC has not offered a basis to conclude that any of Exelon's reactors are currently required by their host state to maintain a fund to cover non-radiological decommissioning costs. Nor has ELPC offered specific information to demonstrate that any of the reactors would be required to set aside funds to cover this type of cost. The mere possibility that such costs will be incurred in the future somewhere across Exelon's nuclear fleet is not sufficient to raise an admissible contention in this proceeding.

**(7) LOSS OF PARENTAL SUPPORT FROM EXELON CORPORATION**

ELPC claims that Exelon Corporation's "regulated utility divisions provide reliable financial support to the nuclear fleet," which will be withdrawn as a result of the spin transaction.[92] ELPC's expert, Mr. Bradford, argues that the spin transaction represents a step in a "decades-long" transition from the "full protection afforded by the vertically integrated

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[90] *Id*.

[91] Exelon Answer to ELPC at 26.

[92] ELPC Petition at 15-16.

monopoly structure to a lesser degree of protection."[93] According to Mr. Bradford, the spin transaction would lead to "the elimination of any credible financial guarantee or assurance at all through an ownership structure (HoldCo and SpinCo) that provides insufficient diversity of assets or financial backing to meet significant and growing liabilities."[94]

Exelon responds that this argument misstates Exelon Corporation's corporate structure. It states that its rate-regulated utility subsidiaries are separate legal entities, whose rates charged to customers do not include any costs related to operating the nuclear generating assets.[95] Therefore, the utility subsidiaries currently do not provide financial support to the nuclear fleet. In addition, Federal Energy Regulatory Commission and state law rules prohibit regulated utilities from subsidizing affiliates in the manner ELPC claims.[96]

In reply, ELPC argues that it does not claim that Exelon Corporation's utilities directly subsidize the nuclear facilities, but they strengthen Exelon Corporation's financial position by providing a diversity of assets.[97] ELPC asserts that Exelon Corporation "could provide parental guarantees and other financial support that a new holding company simply cannot."[98]

ELPC does not question the financial projections in the application, which show that SpinCo expects that operating revenues will meet operating costs within its nuclear fleet, without any reliance on parental support.[99] Moreover, ELPC does not claim that Exelon

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[93] Bradford Decl. at 6.

[94] *Id*. at 7.

[95] Exelon Answer to ELPC at 18.

[96] *See id.* at 18-19 (citing 18 C.F.R. § 35.44; 83 Ill. Admin. Code 452.125(b)).

[97] ELPC Reply at 8.

[98] *Id.*

[99] *See generally*, Application, Encl. 6A; September 2021 Update to Application, Encl. 1A; 10 C.F.R. § 50.33(f)(2).

Generation has ever relied on financial support from Exelon Corporation, directly or indirectly. Further, there is no regulatory requirement that a licensee have diversified assets, and we recently rejected a contention that argued that a limited liability corporation is inherently financially unsound.[100] Therefore, ELPC has not raised a material issue with the application and we dismiss this claim.

Because we find that none of the portions of Contention 1 are admissible, we dismiss ELPC Contention 1.

*b. ELPC Contention 2: Failure to Provide Reasonable Assurance of Adequate Decommissioning Funds*

ELPC argues in Contention 2 that the application does not provide reasonable assurance of sufficient funds for decommissioning "in light of significant projected early retirements."[101] ELPC asserts that a hearing should determine "which and how many of Exelon's nuclear plants are slated for early retirement, and require a full financial analysis of the impact of those early retirements on decommissioning trust fund balances," before the license transfer can be approved.[102] It argues that although Exelon has acknowledged that early retirements could lead to decommissioning funding shortfalls, the Application does not explain how those shortfalls will be made up.[103] ELPC argues that unless Exelon "compellingly demonstrates" that SpinCo will be able to meet the decommissioning financial qualification, then

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[100] *Three Mile Island*, CLI-21-2, 93 NRC at 86-87.

[101] ELPC Petition at 23.

[102] *Id.* at 26.

[103] *Id.* at 17 (citing Exelon Corp. et al., SEC Quarterly Report, Form 10-Q (Mar. 31, 2021), at 154, https://www.sec.gov/ix?doc=/Archives/edgar/data/1109357/000110935721000050/exc-20210331.htm (10-Q)). The 10-Q provides an estimate that Exelon Generation could be required to provide up to $55 million in financial assurances. 10-Q at 154.

the Commission should require Exelon Generation to provide additional financial assurances now, before the license transfer is approved.[104]

ELPC did not amend this contention following Exelon's announcement that the four plants previously slated for early retirement would remain in operation, and therefore its claims are largely moot. We will, however, consider the remainder of its claims.

First, ELPC argues generally that the application does not explain how SpinCo or HoldCo could provide the necessary financial guarantees to comply with 10 C.F.R. § 50.75 if the decommissioning trust fund is not adequate to cover costs.[105] It claims that the application is "devoid of any reasoned explanation" of how SpinCo or HoldCo could make up a potential deficiency.[106]

Exelon argues that this claim is "patently incorrect" because it ignores the application section titled "Decommissioning Funding Assurance," which incorporates by reference Exelon's recent decommissioning funding report.[107] Specifically, the application explains that SpinCo will provide surety bonds for the full amount if there is any shortfall.[108]

ELPC additionally argues, supported by Mr. Bradford's Declaration, that decommissioning costs are increasing faster than the growth rate allowed for in NRC regulations.[109] Citing a study by the Callan Institute, Mr. Bradford states that decommissioning

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[104] ELPC Petition at 25-26.

[105] *Id.* at 24.

[106] *Id.* at 25.

[107] Exelon Answer to ELPC at 29.

[108] *Id.* at 32 (citing Application, Encl. 1 at 12). In its reply brief, ELPC questions whether Exelon provides anything beyond "their own optimistic projections" that SpinCo will have the means to provide surety bonds to cover shortfalls for Byron Units 1 and 2. ELPC Reply at 13. Byron's continued operation renders this argument moot.

[109] ELPC Petition at 18; Bradford Decl. at 12.

costs increased at a compound annual rate of "about 6%" between 2008 and 2018.[110] Mr. Bradford states that this rate of escalation is higher than that assumed in NRC regulations. He also states that credible independent entities indicate that "there may be decommissioning-related costs beyond those" contemplated by NRC regulations and that the regulations "may omit some significant cost elements."[111]

Exelon argues that ELPC's claim concerning rising costs is both unsupported and essentially amounts to an impermissible challenge to the regulations that set the minimum formula for decommissioning funding.[112]

We find ELPC's claim that the NRC's decommissioning funding formula is set too low is a challenge to NRC regulations and may not form the basis of an admissible contention, absent a waiver. Moreover, many of Mr. Bradford's statements concerning decommissioning costs appear to be founded on the presumption that the four facilities previously slated for early retirement will close early, which is no longer accurate given Exelon's update to its application. Therefore, ELPC Contention 2 is inadmissible because it does not raise a material dispute with the application.

**C. Eric Joseph Epstein and Three Mile Island Alert**

***1. Standing***

Eric Joseph Epstein asserts standing as an individual living and working near Three Mile Island, as a business owner and taxpayer, as the spokesperson for Three Mile Island Alert, Inc.

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[110] Bradford Decl. at 12 (citing CALLAN INSTITUTE, 2019 Nuclear Decommissioning Study 9, https://decommissioningcollaborative.org/wp-content/uploads/2020/07/Callan-2019-NDT-Study.pdf).

[111] *Id.*

[112] Exelon Answer to ELPC at 21; *see* 10 C.F.R. § 2.335 (prohibiting attacks on Commission regulations unless a waiver is granted upon a showing that "special circumstances" exist such that application of the rule would not serve the purpose for which the rule was enacted).

and the coordinator of EFMR Monitoring Group, and as a member of the local school board.[113] He additionally asserts standing as a signatory of a negotiated settlement agreement—filed before the Pennsylvania Public Utility Commission in 2000—over the merger and corporate restructuring that led to the creation of Exelon.[114] Three Mile Island Alert asserts standing through its member, Mr. Epstein.[115] The applicants dispute Mr. Epstein's and Three Mile Island Alert's claims of standing.[116]

Mr. Epstein lives and works in Harrisburg, Pennsylvania, which he states is within "close proximity" to Three Mile Island, Unit 1 (TMI-1).[117] TMI-1 permanently shut down in 2019. Mr. Epstein has also participated in litigation related to Peach Bottom Atomic Power Station.[118] He argues that his residence within a fifty-mile radius of TMI-1 is sufficient to confer standing under the "proximity presumption."[119] But as we describe above, we do not presume standing on the basis of proximity in indirect license transfer cases that involve no change in ownership, operator, or the physical plant.[120]

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[113] *See Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing* (June 14, 2021), at 19, 23-25 (TMIA Petition). Among other things, EFMR Monitoring Group "monitors radiation levels at Three Mile Island." *Id*. at 25.

[114] *Id.* at 21, 23, 31-32. *See* Letter from Paul R. Bonney, PECO Energy, to James J. McNulty, Pennsylvania Public Utility Commission (Mar. 24, 2000), https://www.puc.pa.gov/pcdocs/1241558.pdf (regarding the application of PECO Company for approval of a plan of corporate restructuring and enclosing Joint Petition for Settlement, docket number A-110550F0147) (Negotiated Settlement).

[115] *See* TMIA Petition at 33-34.

[116] *Exelon's Answer Opposing the Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing* (July 12, 2021), at 26-32 (Exelon Answer to TMIA).

[117] TMIA Petition at 23.

[118] *See id.* at 30.

[119] *Id*. at 28.

[120] *See Palo Verde*, CLI-20-7, 92 NRC at 233; *Palisades*, CLI-08-19, 68 NRC at 260.

Many of Mr. Epstein's additional statements in support of his standing—such as his interest as a school board member and as spokesperson for EFMR Monitoring Group—do not explain how these interests will or could be harmed by the proposed licensing action. Mr. Epstein describes his interest in the safe operation and decommissioning of Three Mile Island and Peach Bottom as a resident and active member of the community near the plants. But these interests do not give rise to standing unless Mr. Epstein shows that this licensing action could jeopardize those interests.[121] And although the petition refers to harm from "converting the Peach Bottom Atomic Power Stations and Three Mile Island into high-level radioactive waste sites on the Susquehanna River" or underfunding their decommissioning, it does not explain how the proposed license transfer would lead to such harm.[122] Without connecting the licensing action at issue in this proceeding with these purported harms, Mr. Epstein does not satisfy our standing requirements.

We further reject Mr. Epstein's claims of standing as a taxpayer and ratepayer. Commission caselaw has long held that such claims do not confer standing because the injury is not within the zone of interests of the Atomic Energy Act of 1954.[123] Courts have also

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[121] *See Commonwealth Edison Co*. (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188, 190-91 (1999) (denying standing where petitioner failed to show how license amendments could lead to radiological harm); *see also Exelon Generation Co., LLC* (Three Mile Island Nuclear Station, Units 1 and 2), LBP-20-2, 91 NRC 10, 31 (2020), *aff'd* CLI-20-10, 92 NRC 327 (2020) (denying standing where Mr. Epstein did not show injury in fact stemming from a proposed license amendment altering emergency planning requirements in light of facility having permanently ceased operations).

[122] TMIA Petition at 24; *see also id*. at 36-37.

[123] *See Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI–76–27, 4 NRC 610, 614 (1976) (ratepayer standing); *Kansas Gas and Electric Co. and Kansas City Power and Light Co.* (Wolf Creek Generating Station, Unit 1), ALAB–424, 6 NRC 122, 128 n.7 (1977) (ratepayer standing); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB–413, 5 NRC 1418, 1421 (1977) (taxpayer standing).

rejected such claims as a basis for standing because the injury is not "concrete and particularized."[124]

We find that Mr. Epstein has not established standing by virtue of his rights under the 2000 negotiated settlement. Mr. Epstein asserts that the license transfer will "unilaterally abrogate" the terms of that settlement.[125] TMIA reasserts its claims relating to the settlement in Contention 1 and expands on them in Contention 2. However, Mr. Epstein has not shown that the proposed license transfer could affect his rights under that settlement—as explained below, the settlement is not connected with this proceeding. Therefore, we find that he has not shown standing by virtue of being a party to that settlement.

Finally, we deny Mr. Epstein's request for discretionary intervention to assist in the development of a sound record.[126] Mr. Epstein argues that he can help develop the record due to his experience in proceedings involving Three Mile Island Nuclear Generating Station, Peach Bottom Atomic Power Station, and Susquehanna Steam Electric Station.[127] Discretionary intervention is allowed only where at least one petitioner has established standing and offered an admissible contention, such that a hearing will be held.[128] In this case, we have found that ELPC has not offered an admissible contention, and, as explained below, neither has TMIA.

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[124] *See Hein v. Freedom from Religion Foundation, Inc.*, 551 U.S. 587, 599 (2007) ("We have *consistently* held that [taxpayer] interest is too generalized and attenuated to support Article III standing." (emphasis added)).

[125] TMIA Petition at 45, 48-49.

[126] *Id.* at 30; *see also* 10 C.F.R. § 2.309(e) (discretionary intervention).

[127] TMIA Petition at 30.

[128] 10 C.F.R. § 2.309(e); *see also Palisades*, CLI-08-19, 68 NRC at 267.

TMIA asserts standing through one of its members, specifically Mr. Epstein.[129] Because Mr. Epstein has not established standing, we find that TMIA has likewise failed to establish standing in this proceeding.

***2. TMIA Contentions***

We also find that Mr. Epstein and TMIA have not offered an admissible contention in this proceeding.

*a. TMIA Contention 1: Transfer Would Allow Non-Regulated Entity to Collect a Tariff from Pennsylvania Ratepayers*

In Contention 1, TMIA argues that the proposed license transfer would violate Pennsylvania law by allowing an entity that is not a rate-regulated utility to collect a tariff to support decommissioning of the Limerick, Peach Bottom, and Salem plants.[130] TMIA argues that the transfer would violate Pennsylvania's Electric Competition Act of 1996.[131] According to TMIA, the transaction would violate the Nuclear Decommissioning Cost Adjustment (NDCA) clause of the Pennsylvania public utility code, which allows PECO Energy to collect tariffs for the costs of decommissioning nuclear generation that PECO Energy owned as of December 31, 1999 (which includes Peach Bottom, Limerick, and Salem).[132] PECO is a regulated utility company owned by Exelon Corporation, which will remain a regulated utility and subsidiary of Exelon Corporation following the spin transaction.

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[129] TMIA Petition at 34.

[130] *Id.* at 43-44.

[131] *See id.* at 44.

[132] *See id.* at 45*; see also* Electricity Generation Customer Choice and Competition Act, 66 PA. CONS. STAT. § 2804(4)(iii)(F) (2019). As of December 31, 1999, PECO owned 100% interest in Limerick Units 1 and 2 and Peach Bottom Unit 1, 42.49% interest in Peach Bottom Units 2 and 3, and 42.59% interest in Salem Units 1 and 2.

TMIA's concern is that the license transfer would allow SpinCo to collect tariffs directly from ratepayers to support the nuclear decommissioning of Salem, Peach Bottom, and Limerick.[133] We find the contention inadmissible because it is factually unsupported and does not demonstrate a genuine dispute with the license application.

The provision of Pennsylvania law that TMIA claims would be violated by the transaction (the NDCA) provides an exception to statutory caps on electric utility rates where an increase is needed to cover PECO's historic decommissioning liability:

> [An exception to electric rate caps may be approved where t]he electric distribution utility seeks to increase its allowance for nuclear decommissioning costs to reflect new information not available at the time the utility's existing rates were determined, and such costs are not recoverable in the competitive generation market and are not covered in the competitive transition charge or intangible transition charge, and such costs would not allow the utility to earn a fair rate of return.[134]

As an initial matter, the NRC is not the forum in which to challenge a claimed violation of Pennsylvania law.[135] But even so, TMIA does not explain how the proposed license transfer violates the laws surrounding the utility's collection of tariffs from Pennsylvania ratepayers. TMIA states that the "proposed license transfer application is silent on rate payer collections for non-regulated licensees"[136] and that the application creates "a vehicle for a non-regulated entity

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[133] TMIA Petition at 43-44.

[134] Electricity Generation Customer Choice and Competition Act, 66 PA. CONS. STAT. § 2804(4)(iii)(F) (2019).

[135] *See, e.g.*, *PPL Susquehanna* LLC (Susquehanna Steam Electric Station, Units 1 and 2), CLI-07-25, 66 NRC 101, 104-05 (2007) (affirming Board's rejection of contention related to water use limits within the jurisdiction of other regulatory bodies); *Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 140 (2001) (rejecting contention whether indemnity agreement is legal under New York law); *Hydro Resources. Inc*. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 120-21 (1998) (finding inadmissible the issue whether a license complies with local permitting requirements).

[136] TMIA Petition at 43.

to collect tariffs from hostage rate-payers."[137] But these statements do not provide a basis for TMIA's concerns, and TMIA does not point to anything in the license transfer application that would alter the decommissioning funding mechanism for the former PECO Energy nuclear facilities.[138]

According to Exelon Generation, for the past twenty years PECO Energy Company has collected funds from ratepayers to cover its legacy decommissioning obligations, and PECO Energy has transferred those funds to Exelon Generation (a non-utility) for deposit into the appropriate nuclear decommissioning trusts.[139] This arrangement would not be changed by the license transfer (aside from the change in Exelon Generation's name).

TMIA also claims that the proposed license transfer would violate a recent update to the PECO's electric service tariff known as supplement 48.[140] TMIA fails to explain and support this claim, however, and the adjustment does not appear to relate to PECO Energy's legacy nuclear decommissioning obligations.[141] Rather, Supplement 48 revises a "distribution system improvement charge" meant to "recover the reasonable and prudent costs incurred to repair, improve, or replace" various electric distribution fixtures.[142] TMIA does not explain how this regulatory update relates to the license transfer application.

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[137] *Id.* at 47.

[138] TMIA also alludes to the Negotiated Settlement in Contention 1, but it does not explain how the license transfer would violate its terms. *See id.* at 45.

[139] Exelon Answer to TMIA at 18. PECO Energy is a subsidiary of Exelon Corporation and is a rate-regulated utility. Therefore, it will not be part of the businesses that will be spun off to create SpinCo.

[140] *See* TMIA Petition at 46-47; *see also* PECO Energy Company, Electric Service Tariff, Supplement No. 48 to ELECTRIC PA P.U.C. NO. 6 (Mar. 15, 2021) (Tariff Supp. 48), https://www.peco.com/SiteCollectionDocuments/ElectricDSICEffApril12021.pdf.

[141] *See* TMIA Petition at 46-47.

[142] *See* Tariff Supp. 48, page 4 of pdf.

TMIA Contention 1 therefore does not raise a genuine, material dispute with the application and is not admissible.

*b. TMIA Contention 2: License Transfer Would Violate the Negotiated Settlement*

In Contention 2, TMIA argues that the license transfer would violate the terms of the negotiated settlement relating to PECO Energy's 2000 corporate restructuring which resulted in the creation of Exelon Corporation.[143] TMIA claims that the negotiated settlement "contractually stipulates PECO's payment for: [(]1) $50 million of the [net] after-tax amount; and (2) Five percent of the net after-tax amount of released funds for nuclear decommissioning costs."[144]

However, TMIA does not explain how the negotiated settlement is relevant to this proceeding.[145] PECO Energy is not a license applicant or a licensee, and it is therefore not clear how the terms of its agreement with Mr. Epstein would be enforceable here.

The negotiated settlement provided, among other things, that PECO Energy would not try to recover through Pennsylvania retail electric distribution rates the costs associated with the ownership and operation of any nuclear generating plants that it did not hold as of December 31, 1999.[146] But under the settlement, PECO Energy can recover funds to cover its share of decommissioning costs for generation owned prior to that date.[147]

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[143] *See* Negotiated Settlement at 4. n.4.

[144] TMIA Petition at 49.

[145] *See* Exelon Answer to TMIA at 19.

[146] Negotiated Settlement at 10-11.

[147] *Id.* at 10-11.

TMIA's claim does not establish a link to the sufficiency of decommissioning trust funds. Although TMIA does not cite the page or paragraph in the negotiated settlement, the $50 million and five percent figures are mentioned twice in the settlement. At one point, the negotiated settlement provides that:

> if the actual expenditures necessary to accomplish the full decommissioning of PECO's Pre-Existing Nuclear Interests are less than the full balance of PECO's Pre-Existing Nuclear Interest Funds, PECO is entitled to obtain release of such funds for the purpose of sharing the amount between customers and shareholders. In the event of such release, PECO will be permitted to retain for its own benefit: (1) the first $50.0 million of the net after tax released amount and (2) 5.0% of the remaining net after-tax released amount.[148]

But elsewhere the settlement provides that if PECO ever seeks to increase its annual nuclear decommissioning expense allowance above $29.162 million annual accrual level, it agrees, under certain circumstances, to "voluntarily forgo recovery" of $50 million and five percent of any additional increase above the $29.162 million annual accrual.[149] TMIA's precise claim is not clear, but TMIA does not show how the terms of the negotiated settlement are material to any issue the Commission must decide in approving this transfer.

TMIA argues that the "the applicant must demonstrate compliance" with the provisions of the negotiated settlement in order to demonstrate the ability to fund the decommissioning of Limerick, Peach Bottom, and Salem.[150] We do not agree. The provisions in the negotiated settlement mentioning the $50 million and five percent figures do not appear to relate to whether the proposed license transferees will have sufficient funds to decommission the plants. Rather, they contemplate how money would be refunded to ratepayers and shareholders if the actual

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[148] Negotiated Settlement at 12, *see also id*., app. A at 2 (unnumbered).

[149] *Id.* at 11.

[150] TMIA Petition at 49.

cost of decommissioning turns out to be less than the amount collected. That is not relevant to whether decommissioning funds will be sufficient, which is the NRC's concern.

Therefore, TMIA does not show how the cited provision is material to any issue we need to decide in this proceeding, and it does not demonstrate a genuine dispute with the application. We find that TMIA Contention 2 is not admissible.

Having found that TMIA has not established standing in this proceeding and has not proposed an admissible contention, we dismiss its petition to intervene.

## III. CONCLUSION

For the reasons described above, we *deny* ELPC's and TMIA's hearing requests and petitions to intervene.

IT IS SO ORDERED.

For the Commission

Annette L. Vietti-Cook

Digitally signed by Annette L. Vietti-Cook
Date: 2022.02.14 13:50:09 -05'00'

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 14th day of February 2022.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | Docket Nos.: |
| | ) | |
| EXELON GENERATION COMPANY, LLC; EXELON CORPORATION; EXELON FITZPATRICK, LLC; NINE MILE POINT NUCLEAR STATION, LLC; R. E. GINNA NUCLEAR POWER PLANT, LLC; and CALVERT CLIFFS NUCLEAR POWER PLANT, LLC | ) | STN 50-456, STN 50-457, 72-73, STN 50-454, STN 50-455, 72-68, 50-317 50-318, 72-8, 50-461, 72-1046, 50-10, 50-237, 50-249, 72-37, 50-333, 72-12 |
| (Braidwood Station, Units 1 and 2, Byron Station, Unit Nos. 1 and 2; Calvert Cliffs Nuclear Power Plant Units 1 and 2; Clinton Power Station, Unit No.1; Dresden Nuclear Power Station, Units 1, 2, and 3; James A. FitzPatrick Nuclear Power Plant; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Nine Mile Point Nuclear Station, Units 1 and 2; Peach Bottom Atomic Power Station, Units 1, 2, and 3; Quad Cities Nuclear Power Station, Units 1 and 2; R. E. Ginna Nuclear Power Plant; Salem Nuclear Generating Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 1; Zion Nuclear Power Station, Units 1 and 2; and Associated Independent Spent Fuel Storage Installations) | ) | 50-373, 50-374, 72-70, 50-352, 50-353, 72-65, 50-220, 50-410, 72-1036, 50-171, 50-277, 50-278 72-29, 50-254, 50-265, 72-53, 50-244, 72-67, 50-272, 50-311, 72-48, 50-289, 72-77, 50-295 50-304, and 72-1037 - LT |
| (Consideration of Approval of Transfer of Licenses and Conforming Amendments) | ) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-22-01)** 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 14th day of February 2022