

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Stephen G. Burns

In the Matter of

SUSQUEHANNA NUCLEAR, LLC

(Susquehanna Steam Electric Station,
Units 1 and 2)

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

CLI-17-04

MEMORANDUM AND ORDER

This proceeding concerns the application of Susquehanna Nuclear, LLC, for NRC approval of an indirect transfer of control of its interests in the operating licenses for the Susquehanna Steam Electric Station, Units 1 and 2 (SSES), and in the general license for the station's Independent Spent Fuel Storage Installation (ISFSI). Mr. Sabatini Monatesti has requested a hearing on the license transfer application. Mr. Monatesti also requested access to sensitive, unclassified, non-safeguards information (SUNSI) withheld from the publicly available version of the application. The NRC Staff denied Mr. Monatesti's request for access to the SUNSI, and in LBP-16-12 an Atomic Safety and Licensing Board affirmed the Staff's decision.¹ Mr. Monatesti appeals the Board's decision.

¹ Letter from NRC to Sabatini Monatesti, "Request for Access to Sensitive Unclassified Non-Safeguards Information Related to the Application for Indirect Transfer of the Susquehanna Steam Electric Station" (Oct. 20, 2016) (ML16294A385) (Staff Denial); see LBP-16-12, 84 NRC __ (Nov. 21, 2016) (slip op.).

For the reasons outlined below, we affirm the Board's decision on SUNSI access. We also separately consider Mr. Monatesti's request for a hearing. Because we conclude that Mr. Monatesti has not submitted an admissible contention, we deny his hearing request and terminate this adjudicatory proceeding.

I. BACKGROUND

A. The License Transfer Application

Susquehanna Nuclear owns a ninety-percent ownership interest in SSES and is the sole operator of both units.² In an application dated June 29, 2016, Susquehanna Nuclear requested NRC approval of an indirect transfer of control of its interests in operating licenses NPF-14 and NPF-22 for SSES and in the general license for the plant's ISFSI.³ Susquehanna Nuclear submitted its request pursuant to section 184 of the Atomic Energy Act of 1954, as amended,⁴ as well as 10 C.F.R. §§ 50.80(a) and 72.50(a), all of which require prior written NRC consent for a direct or indirect license transfer. The Staff approved the license transfer on November 30, 2016, subject to certain conditions not relevant to our decision today.⁵

² See Letter from Timothy S. Rausch, Susquehanna Nuclear, to NRC Document Control Desk, Request for Order Approving Indirect Transfer of Control (June 29, 2016), at 1. The letter and its enclosures may be found at ADAMS accession nos. ML16181A415, ML16181A417, ML16181A419 (Application). Allegheny Electric Cooperative, Inc. owns the remaining ten percent interest in each unit, and is a non-operating co-licensee. See *id.* Allegheny was not involved in the requested indirect license transfer.

³ See *id.*; Susquehanna Nuclear, LLC; Susquehanna Steam Electric Station, Units 1 and 2; Consideration of Indirect License Transfer, 81 Fed. Reg. 68,462 (Oct. 4, 2016) (Hearing Notice and SUNSI Order).

⁴ See 42 U.S.C. § 2234 (providing that “[n]o license granted [under this section] shall be transferred . . . directly, or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this chapter, and shall give its consent in writing”).

⁵ See Order Approving Indirect Transfer of Facility Operating Licenses, 81 Fed. Reg. 89,514 (Dec. 12, 2016). Consistent with its safety evaluation, the Staff is expected to “promptly issue approval or denial” of license transfer requests, even if an adjudicatory proceeding is pending.

The license transfer involves Susquehanna Nuclear's ultimate parent, Talen Energy Corporation (Talen). Prior to the proposed transaction, the three portfolio companies of Riverstone Holdings, LLC (Riverstone) held, in the aggregate, 35% of the outstanding common stock of Talen, with the remaining 65% of Talen's common stock held by public shareholders.⁶ The application described a shareholder transaction through which all of the common stock of Talen would become privately owned by the three Riverstone affiliates and therefore "Susquehanna Nuclear would become indirectly controlled by Riverstone."⁷ Susquehanna Nuclear states in the application that the purpose of the shareholder transaction is "to take private the ownership of Talen" by replacing the public shareholders of Talen with the Riverstone portfolio companies which, following closing of the shareholder agreement, would own "100% of the outstanding common stock of Talen."⁸ Riverstone is described as a private investment firm focused on energy and power, and which is controlled by its two founders, both of whom are U.S. citizens.⁹ Following the Staff's approval of the license transfer, the proposed shareholder transaction closed on December 6, 2016.¹⁰

As part of its application, Susquehanna Nuclear requested that certain information in two attachments to the application, designated Attachments "3P" and "4P," be withheld from public

See 10 C.F.R. § 2.1316. We retain the authority, however, to rescind or condition an approved transfer based on the outcome of any such proceeding.

⁶ See Application at 2.

⁷ See *id.*, Cover Letter at 1.

⁸ Application at 3.

⁹ *Id.* at 2.

¹⁰ Letter from R.J. Franssen, "Susquehanna Nuclear Plant Manager, to NRC Document Control Desk, Additional Information Regarding the Shareholder Transaction" (Dec. 13, 2016), at 1 (ML16348A332).

disclosure pursuant to 10 C.F.R. § 2.390(a)(4).¹¹ Susquehanna Nuclear stated that the attachments contain confidential commercial information the public disclosure of which would “cause substantial harm to the competitive position of Susquehanna Nuclear” because the information has “significant competitive value.”¹²

Attachment 3P consists of tables with the projected net income (including estimates of revenues, expenses, and taxes) for each year from 2017 to 2021 for SSES Units 1 and 2, both individually and combined, and sensitivity cases for the income projections. Attachment 3P also provides calculations of projected six-month fixed operating costs for each unit in each of the five years, reflecting costs that would need to be met in the event of a prolonged outage in which Susquehanna Nuclear could not generate revenues. Attachment 4P outlines the capacity factor assumptions for each unit for the years 2017 through 2021.¹³

The Staff reviewed the attachments and determined that they contained proprietary commercial information.¹⁴ The Staff therefore released publicly only the redacted, non-proprietary versions of the two attachments, which Susquehanna Nuclear also had provided to the NRC. These non-proprietary versions were designated as Attachments 3NP and 4NP,

¹¹ See Application, Att. 6, Affidavit of Timothy S. Rausch (Request for Withholding) (June 29, 2016). Section 2.390(a)(4) applies to “[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential.” See also 10 C.F.R. § 2.390(b)(3)(i)-(ii).

¹² Request for Withholding at 1.

¹³ The Staff explains that the capacity factor is the ratio of the “available capacity (the amount of electrical power actually produced by a generating unit)” to the “theoretical capacity (the amount of electrical power that could have theoretically have been produced if the generating unit had operated continuously at full power).” *NRC Staff Brief in Opposition to the Appeal of LBP-16-12* (Dec. 23, 2016), at 3 n.10 (Staff Brief).

¹⁴ See Letter from Tanya E. Hood, NRC, to Timothy S. Rausch, Susquehanna Nuclear, “Request for Withholding Information from Public Disclosure for Susquehanna Steam Electric Station, Units 1 and 2” (Aug. 26, 2016) (ML16215A008).

respectively.¹⁵ The remainder of the Susquehanna Nuclear license transfer application did not contain proprietary material and therefore was made available to the public in full. Relevant here, no redactions were made to the sections addressing decommissioning funding assurance.

B. Mr. Monatesti's Request for Access to SUNSI

A request for a hearing and petition to intervene must set forth the specific contentions that the petitioner seeks to have litigated. The *Federal Register* notice of opportunity to request a hearing on the license transfer application detailed the requirements for an admissible contention. In the event that a petitioner required SUNSI to formulate a contention, the notice also included an NRC order imposing procedures for requesting access to the SUNSI. The SUNSI Order directed that requests for SUNSI access be submitted no later than ten days following the notice's publication, effectively by October 14, 2016, absent a showing of good cause. Persons seeking SUNSI access had to address why they needed the information to meaningfully participate in the adjudicatory proceeding.¹⁶ In particular, the order required a request for SUNSI to "explain why publicly available versions" of the application would be insufficient to provide the basis and specificity for a contention.¹⁷ And to assure that SUNSI would not be released to individuals who lack standing to intervene, the order directed the requester to describe the "particularized interest that could be harmed" by the licensing action at issue.¹⁸

¹⁵ The redacted versions identify all titles—including all row and column headings—in the tables contained in the attachments. They therefore identify all of the categories of financial information that Susquehanna Nuclear provided in the tables but leave blank the entries in the table cells.

¹⁶ Hearing Notice and SUNSI Order, 81 Fed. Reg. at 68,465.

¹⁷ *See id.*

¹⁸ *See id.*

By e-mail dated October 11, 2016, Mr. Monatesti submitted a letter entitled “Request for Hearing and Information – License Transfer,” in which he requested first, a hearing to challenge the proposed license transfer, and second, “access to sensitive business documents filed by Talen Energy.”¹⁹ The NRC’s Office of the Secretary acknowledged Mr. Monatesti’s SUNSI access request and informed him that the request was under review. The office additionally reminded him of requirements outlined in the notice, specifically that any hearing request would need to be filed through the NRC’s Electronic Information Exchange (EIE), that he needed to obtain a digital certificate to access the EIE, and that the deadline for filing a hearing request was October 24, 2016.²⁰ Mr. Monatesti responded in an e-mail dated October 17, 2016, indicating that he planned to request a certificate, and without elaboration additionally listing various bulleted questions, introduced only by the following statement: “I can share with you a few areas of investigation.”²¹

On October 20, 2016, the Staff denied Mr. Monatesti’s request for SUNSI on two independent grounds. First, the Staff found no reasonable basis to conclude that Mr. Monatesti

¹⁹ See Request for Hearing and Information—License Transfer (Oct. 11, 2016) (ML16312A431) (Access Request). Given the number of submissions by Mr. Monatesti, to avoid any confusion about which filing is being referenced we have taken the approach, used by the Board in LBP-16-12, to provide an ADAMS accession number as a reference for each filing. We note additionally, however, that all of Mr. Monatesti’s submissions filed prior to the establishment of the Board (as well as responses to Mr. Monatesti by the NRC’s Office of the Secretary) can be accessed together as a package attached to the referral memorandum by Secretary to the Chief Administrative Judge. See Memorandum from Annette L. Vietti-Cook, Secretary of the Commission, to E. Roy Hawken, Chief Judge, Atomic Safety and Licensing Board Panel (Oct. 25, 2016) (ML16299A438) (Referral Memorandum).

²⁰ See E-mail from Office of the Secretary (Hearing Docket) to Sabatini Monatesti (Oct. 17, 2016) (Hearing Docket E-Mail, October 17); E-mail from Office of the Secretary (Hearing Docket) to Sabatini Monatesti (Oct. 12, 2016) (Hearing Docket E-mail, October 12), both found at ML16312A432.

²¹ See E-mail from Sabatini Monatesti to NRC Hearing Docket (Oct. 17, 2016), at 1 (ML16312A432). This e-mail did not address the application or Mr. Monatesti’s SUNSI access request.

was likely to establish standing to intervene.²² The Staff stated that Mr. Monatesti appeared to rely for standing only on his assertion that he resides two miles from the facility but that under NRC case law unless an application poses an “obvious potential for offsite [radiological consequences],” mere proximity to a site is insufficient to give “rise to a presumption of standing.”²³ The Staff went on to state that “there is no obvious potential for offsite radiological consequences from the proposed . . . license transfer” and that therefore Mr. Monatesti’s “assertion of . . . proximity to the site, on its own” was insufficient.²⁴ Because he had not otherwise traced how the proposed transfer could result in an increased risk of radiological harm to him, the Staff concluded that he had not shown a likelihood of establishing standing.

Second, the Staff found that Mr. Monatesti had not established a legitimate need for the information redacted from attachments 3P and 4P. In particular, the Staff found that Mr. Monatesti’s SUNSI access request had not made “any arguments that are related to the redacted financial information.”²⁵

The Staff went on to note that while Mr. Monatesti’s SUNSI access request raised concerns about the adequacy of decommissioning funding, the decommissioning funding information in the application contained no SUNSI and no redactions. The Staff moreover stressed that according to the application the station’s “decommissioning trust funds are

²² See Staff Denial at 4-6.

²³ See *id.* at 5 (quoting *Exelon Generation Co., LLC and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 580-81 (2005)).

²⁴ See *id.* at 5-6.

²⁵ See *id.* at 6.

prepaid.”²⁶ In short, the Staff found that Mr. Monatesti had not demonstrated a need for the SUNSI financial data redacted from the license transfer application.

Mr. Monatesti appealed the Staff’s denial of his access request and a Board was established to rule on the appeal.²⁷ The Board’s decision in LBP-16-12 addresses Mr. Monatesti’s appeal and additional documents that he subsequently filed before the Board.²⁸

In LBP-16-12, the Board affirmed the Staff’s denial of SUNSI access. The Board agreed that Mr. Monatesti had not shown a need for the redacted information. In the Board’s words, Mr. Monatesti had not “connected his concerns with any specificity to the redacted information”

²⁶ See *id.*

²⁷ Establishment of Atomic Safety and Licensing Board, 81 Fed. Reg. 75,860 (Nov. 1, 2016).

²⁸ See LBP-16-12, 84 NRC at ___ (slip op. at 2, 6-7 & n.33-36). On October 24, 2016, Mr. Monatesti filed two e-mails titled as challenges to the Staff’s SUNSI access decision. See E-mail from Sabatini Monatesti to Hearing Docket, with attachment titled “Health and Safety Review – Susquehanna Site” (Oct. 24, 2016) (First October 24 E-mail) (ML16312A435); E-mail from Sabatini Monatesti to Hearing Docket (Oct. 24, 2016) (Second October 24 E-Mail) (ML16312A436)).

Mr. Monatesti filed several additional items before the Board. First, Mr. Monatesti sent an e-mail to the Board and parties, with an attached document titled “Talen Energy Corp.-Riverstone Holdings, LLC-Transfer Order 10 CFR 50.80.” See E-Mail from Sabatini Monatesti to Hearing Docket, Licensing Board, and Other Parties (Nov. 1, 2016) (November 1, 2016 E-Mail) (ML16312A437). The Board permitted Susquehanna Nuclear and the Staff to respond to this filing. See Order (On Communication Received and Providing Opportunity to Respond) (Nov. 1, 2016) (unpublished) (ML16306A452); *NRC Staff Reply to Additional Information Filed by Mr. Monatesti* (Nov. 7, 2016).

Second, Mr. Monatesti filed a letter with an attached document consisting of a table titled “Vulnerability-Threat Matrix.” See Letter from Sabatini Monatesti to the Administrative Judges (Nov. 3, 2016) (ML16308A165) (November 3 Letter). Third, Mr. Monatesti filed a letter in reply to Susquehanna Nuclear. See Letter from Sabatini Monatesti to the Administrative Judges (Nov. 4, 2016) (ML16309A341)). And fourth, Mr. Monatesti submitted an apparent reply to the Staff. See Letter from Sabatini Monatesti to Jeremy L. Wachutka, NRC, “Jeremy L. Wachutka, Counsel for NRC Staff – Reference Letter: November 21, 2016” (Nov. 21, 2016), with attachments (ML16326A359) (November 21 Letter). Because it was filed the day the Board issued its decision, the Board did not review this filing, but we considered it as part of our review.

and therefore had not “explained how the redacted information would be of use to him.”²⁹ As the Board further described, the publicly available versions of attachments 3NP and 4NP clearly identified the specific nature of any data that had been withheld, yet Mr. Monatesti had not tied his concerns to the SUNSI.³⁰ The Board moreover found that his concerns included matters beyond the scope of a license transfer proceeding.³¹ In short, the Board concluded that Mr. Monatesti had not explained why he needed the redacted information to meaningfully participate in the license transfer proceeding, and therefore had not established a “legitimate need for SUNSI.”³² The Board did not reach the question of whether Mr. Monatesti had shown a likelihood to establish standing.³³ Mr. Monatesti appeals the Board’s decision.³⁴ Both Susquehanna Nuclear and the Staff oppose the appeal.³⁵

II. DISCUSSION

This case comes to us in an unusual posture. The Staff here followed its customary procedures for SUNSI access requests, in which it makes the initial determination on information requests. We had anticipated, however, that SUNSI access requests in *license*

²⁹ LBP-16-12, 84 NRC at ___ (slip op. at 14).

³⁰ The listing for plant “expenses,” for example, included separate subcategories for items such as “taxes,” “fuel expense,” “depreciation,” and “direct O&M [operations and maintenance].” See *id.* at ___ (slip op. at 14-15) (citing Application, Att. 3NP at 1).

³¹ *Id.* at ___ (slip op. at 13-15 & n.70).

³² *Id.* at ___ (slip op. at 15).

³³ *Id.* at ___ (slip op. at 9-12).

³⁴ See *Letter of Appeal Regarding November 21, 2016 Order* (Dec. 2, 2016) (ML16337A238) (Appeal).

³⁵ See *Susquehanna Nuclear’s Brief in Opposition to Mr. Sabatini’s Appeal of Memorandum and Order (LBP-16-12) Affirming Denial of Access to SUNSI* (Dec. 27, 2016) (Susquehanna Nuclear Brief); Staff Brief.

transfer proceedings would come as an initial matter to us.³⁶ In license transfer proceedings, we traditionally act as the Presiding Officer, ruling on any hearing requests and associated filings. Delay can be avoided when we are able to consider a related SUNSI access request in the first instance. In any event, Mr. Monatesti's request has received a comprehensive review, beginning with the Staff's initial determination, followed by the Board's *de novo* review, and now our own review on appeal.

We consider the Board's decision on the access request under a *de novo* standard.³⁷ And because we normally would have conducted the initial review of the SUNSI access request, our decision today evaluates Mr. Monatesti's access request as if we had received it for review at the outset.

In license transfer proceedings, SUNSI information generally involves proprietary financial information as opposed to security-related information. Because financial information determined to be a trade secret or confidential or privileged (pursuant to 10 C.F.R. § 2.390(b)(4)) is withheld from public release based on an applicant's request, in an ordinary license transfer case the applicant itself retains the discretion to negotiate with a potential party the conditions and terms of a potential release of sensitive information, under a confidentiality or similar agreement.

Here, this case comes to us in the posture of a dispute over access to the sensitive data—where the applicant has not agreed to a release. Our role in this circumstance is to balance the applicant's interest in protecting proprietary information with the petitioner's

³⁶ See, e.g., Final Rule, Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information, 73 Fed. Reg. 12, 627, 628 & n.3 (Mar. 10, 2008).

³⁷ See *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 461 (2010).

legitimate interest in obtaining information that is necessary to allow for meaningful participation in the adjudicatory proceeding.³⁸ We therefore look to whether the petitioner has satisfied the threshold showing outlined in the SUNSI Order.

Under the SUNSI Order, requests for information must explain why the publicly available information in the application “would not be sufficient to provide the basis and specificity” for a contention challenging the application.³⁹ While this is not a demanding standard, it does require a potential party to be familiar with the application, to articulate concerns that directly relate to the application, and to explain why having access to the information redacted from the application is necessary to either formulate or buttress a contention (or otherwise determine that a contention is unwarranted). Because we allow access to SUNSI to facilitate meaningful participation in an adjudicatory proceeding, matters raised in a SUNSI request must bear on the adequacy of the license transfer application.

Before turning to Mr. Monatesti’s claims, a few comments on timeliness are in order. Both Susquehanna Nuclear and the Staff argue that Mr. Monatesti raised numerous untimely arguments before the Board and now before us.⁴⁰ We agree. The Staff set deadlines in the notice of opportunity for hearing of October 14, 2016, for a SUNSI access request and October 24, 2016, for a hearing request and petition to intervene. The SUNSI Order made clear that any access request submitted after the deadline would “not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.”⁴¹ A similar “good cause” showing requirement applied to hearing requests filed after the deadline.

³⁸ See 10 C.F.R. § 2.390(b)(2).

³⁹ See Hearing Notice and SUNSI Order, 81 Fed. Reg. at 68,465.

⁴⁰ See Susquehanna Nuclear Brief at 6-11, 18-21; Staff Brief at 11-14, 20.

⁴¹ Hearing Notice and SUNSI Order, 81 Fed. Reg. at 68,465.

Mr. Monatesti timely filed a request for SUNSI access on October 11, 2016. But in an apparent effort to supplement his request, he went on to file a number of other e-mails, letters, and documents.⁴² Many of these filings raised entirely new claims and arguments. None, however, articulated good cause for late filing. None explained, for example, why the additional arguments could not have been included in the initial October 11, 2016 access request.

And while Mr. Monatesti has stated that he had difficulties obtaining access to the NRC's electronic docketing system (the EIE), lack of access to the EIE had no bearing on his request for SUNSI. The SUNSI Order directed potential parties to submit an access request by mail or e-mail, and he properly sent his original access request to the Secretary by e-mail. Any delays in obtaining access to the NRC's EIE system did not restrict Mr. Monatesti's ability to present fully, in the original access request, his grounds for seeking the SUNSI information.⁴³ While we understand that it can be difficult for a *pro se* petitioner to learn our adjudicatory process, participation in our proceedings demands a regard for our procedural rules and standards.⁴⁴ We therefore consider new SUNSI access claims raised after October 11, 2016, to be untimely.

⁴² In contravention of our timeliness rules, filings continued through the end of last year. See, e.g., "Letter of Concern Regarding Due Process" (Dec. 30, 2016).

⁴³ Nor would preparation of an access request typically require an extensive review of materials outside of the license transfer application. After the deadlines for access requests and hearing requests had passed, Mr. Monatesti advised the Board that he needed a minimum of 90 days to review and analyze a number of items, including materials filed with the Securities and Exchange Commission and the Federal Energy Regulatory Commission. See November 1, 2016 E-Mail, attachment at 5. He also requested that the license transfer be "tabled pending detailed review of the issues and concerns raised by me and others." See *id.* at 1. While Mr. Monatesti repeats neither request on appeal, to the extent that either might be understood to be pending, we deny them as moot. See also 10 C.F.R. § 2.1327 (outlining the standards—which Mr. Monatesti's request did not address and on its face did not meet—for requests for a stay of the effectiveness of Staff action on a license transfer application).

⁴⁴ See *USEC, Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 456 (2006) ("those participating in our proceeding must be prepared to expend the necessary effort").

Notwithstanding our conclusion on timeliness, as a matter of discretion we took into account all of Mr. Monatesti's submissions, up to and including the December 30, 2016 filing. The Board in reaching its decision considered every filing before it, regardless of timeliness, and we have done the same. Even in light of all filings we reach the same conclusions. None of Mr. Monatesti's many arguments demonstrate a need for the redacted information or present a genuine, material dispute with the license transfer application. We first address in detail Mr. Monatesti's access request and then turn to his arguments on appeal.

A. October 11, 2016 Access Request

Mr. Monatesti provided two specific grounds for seeking access to "sensitive business" information.⁴⁵ First, he stated that he needed the information "to discern whether Riverstone Holdings includes provisions and capital available for decommissioning" the Susquehanna plant.⁴⁶ But as we outlined earlier and the Board described, the license transfer application sections addressing Susquehanna Nuclear's decommissioning funding contained no redactions. Mr. Monatesti therefore did not need SUNSI to challenge or otherwise address the adequacy of the decommissioning funding information.

Susquehanna Nuclear provides financial assurance for decommissioning funding through the NRC's prepayment method, pursuant to 10 C.F.R. § 50.75(e)(1)(i). The application details, without redaction, the estimated minimum required funding (pursuant to NRC regulations) for decommissioning each reactor unit and for decommissioning the ISFSI. The application also details the current credited value of the Susquehanna decommissioning

⁴⁵ Access Request at 1.

⁴⁶ *Id.*

funds.⁴⁷ Mr. Monatesti did not address or challenge any of the decommissioning funding information in the application. Nor did his request for SUNSI tie any concern about decommissioning funding to the redacted portions of the application.

As a second basis for seeking SUNSI access, Mr. Monatesti stated that he “required information regarding [Riverstone’s] continued support of Salem Township property and recreational facilities.”⁴⁸ But any question associated with economic support of property and facilities that are not part of SSES does not fall within the scope of this proceeding and is not linked to the SUNSI.

Mr. Monatesti’s October 11, 2016 filing went on to raise additional concerns. Mr. Monatesti highlighted, for example, his concern regarding “a site storage expansion plan,” a planned increase to the amount of waste stored in the Susquehanna site’s ISFSI.⁴⁹ As to this expansion, he argued generally that “there are health and safety issues outstanding.”⁵⁰ But he did not identify any relationship between this license transfer proceeding and his spent fuel storage concern. In fact, denial of the license transfer would not change any authorizations granted or requirements imposed by Susquehanna Nuclear’s existing ISFSI general license.⁵¹ Nor did these concerns demonstrate a need for the SUNSI in the license transfer application.⁵²

⁴⁷ Moreover, the license transfer did not alter the decommissioning funding arrangement. The application states that Susquehanna Nuclear’s existing decommissioning funding “remains in effect and will be unaffected” by the license transfer. See Application at 15.

⁴⁸ Access Request at 1.

⁴⁹ *Id.* at 2.

⁵⁰ *Id.*

⁵¹ *See id.* at 2.

⁵² Specifically, Mr. Monatesti seeks an NRC review and public hearing regarding spent fuel storage in the ISFSI. Mr. Monatesti’s access request and appeal before us recount that last year he raised his waste storage concern with Pennsylvania Congressman Lou Barletta; Congressman Barletta forwarded the concern to the NRC. See Access Request at 2; Appeal at

If Mr. Monatesti believes that there are ongoing violations of health and safety regulations relating to the ISFSI (or indeed any part of the SSES facility), his avenue for redress is a petition for enforcement action under 10 C.F.R. § 2.206.

As an additional matter, Mr. Monatesti stated that he would like “to know if sufficient trained work force will be available to ensure a successful transfer of responsibilities” and if “staffing adjustments exist in the planning for the transfer and subsequent operation” of the plant.⁵³ However, he did not address or challenge the license transfer application. Here, the application states that Susquehanna Nuclear will continue in its role as the licensed operator, that none of Susquehanna Nuclear’s technical qualifications will be affected, and that the SSES nuclear organization “will continue to have clear and direct lines of responsibility and authority, which will be unaffected” by the license transfer.⁵⁴ Susquehanna Nuclear states that there will be no changes made to the reactor units, to their licensing bases, or “to the day-to-day management and operations of the units.”⁵⁵ The application also states that the license transfer

4, 6; Letter from Rep. Louis J. Barletta, 11th District of Pennsylvania, to NRC, Office of Congressional Affairs (May 23, 2016) (ML16146A153). In response, NRC staff stated that the ISFSI general license allows the licensee to expand ISFSI storage at the SSES site as long as an NRC-approved cask is used and all applicable NRC regulations are followed. See Letter from Victor M. McCree, NRC, to Rep. Louis J. Barletta, U (July 28, 2016) (ML16203A200). In other words, an expansion already authorized under the terms of the ISFSI general license does not require a public hearing. Mr. Monatesti stated that he “find[s] this NRC position unacceptable,” but this claim suggests a disagreement with our regulations, not an issue redressable in this proceeding. See 10 C.F.R. § 2.335 (prohibiting challenges to NRC regulations in NRC adjudications absent a waiver); Access Request at 2.

⁵³ Access Request at 2.

⁵⁴ See *id.* at 11.

⁵⁵ See Application, Cover Letter at 1.

will not reduce any commitment made in the SSES Quality Assurance Program Description.⁵⁶ And the application states that the license transfer does not require any change to the management or staffing of the nuclear organization or its procedures.⁵⁷ Mr. Monatesti did not challenge the application or otherwise present a ground for questioning the technical qualifications of Susquehanna Nuclear, which will continue in its role as the licensed operator. Nor did his claims regarding staffing demonstrate a need for the redacted financial data.⁵⁸

Mr. Monatesti in his access request also referred generally to a “loss of \$341 Million” in 2015 by Talen, the ultimate parent of Susquehanna Nuclear, and a “continued downturn in energy prices.”⁵⁹ But he did not explain how this statement bears on the terms in Susquehanna Nuclear’s license transfer application or the SUNSI access request. The Board addressed Mr. Monatesti’s claims regarding Talen. Citing to a news article that it believed Mr. Monatesti had referenced (regarding potential cuts to Talen’s operating and capital expenditures), the Board noted that “Talen Energy has power plants in eight different states and a workforce of some 3000 employees,” and its “total operating expenses . . . were \$1.5 billion for the first six months

⁵⁶ Changes that reduce commitments made in a quality assurance program description must be submitted to the NRC and receive NRC approval prior to implementation. See 10 C.F.R. § 50.54(a)(4).

⁵⁷ See Application at 11. The application made clear, however, that if, prior to or at the closing of the transaction, there were to be a change to a manager or principal officer, Susquehanna Nuclear would notify the NRC. See Application at 5, 11. Susquehanna Nuclear did notify the NRC of specific changes to the list of principal officers and managers identified in the application. See Letter from Robert J. Franssen, Susquehanna Nuclear, to NRC Document Control Desk (Dec. 13, 2016).

⁵⁸ The Susquehanna facility remains subject to routine NRC inspection and oversight, which are available as means to verify the technical qualifications as an ongoing matter.

⁵⁹ See Access Request at 2.

of 2016.”⁶⁰ The Board concluded that Mr. Monatesti had not linked his assertions regarding Talen to an “impact to Susquehanna Nuclear” and this license transfer.⁶¹ We agree.

Mr. Monatesti does not explain, for example, how Talen’s reported loss would impact the existing decommissioning funding described in the application or the five-year income projections for the two reactor units. While, as the Board states, Mr. Monatesti “questions the financial stability of Riverstone and Talen,” this proceeding focuses on whether Susquehanna Nuclear satisfied all NRC requirements for approval of this license transfer transaction, not on Talen’s other operations.⁶²

Mr. Monatesti’s October 11, 2016 SUNSI access request, taken with his various supplemental filings, did not demonstrate a need for the SUNSI. Nor did his request proffer an admissible contention, as we outline in section III.

B. Mr. Monatesti’s Arguments on Appeal

We gave careful consideration to Mr. Monatesti’s appeal. The appeal does not, however, identify any error in the Board’s conclusions. Mr. Monatesti does not show, for example, that the Board misunderstood or overlooked claims made in his access request. Nor does he refute any of the grounds that the Board provided in LBP-16-12 for denying the access request.

⁶⁰ See LBP-12-16, 84 NRC at ___ (slip op. at 14 n.67).

⁶¹ *Id.* (citing and quoting Scott Krauss, *The Morning Call*, “Riverstone reveals plans to cut \$100M in costs at Talen Energy” (Sept. 29, 2016)). The Board additionally noted that Susquehanna Nuclear, in a reply to Mr. Monatesti, had addressed the Talen net loss in 2015 as “largely the result of non-cash goodwill and other asset impairment charges, and a one-time charge for the retirement of certain debt securities.” See *id.* (citing *Susquehanna Nuclear’s Response Opposing Mr. Sabatini Monatesti’s Challenge to the NRC’s Denial of His Request for Access to Sensitive Unclassified Non-Safeguards Information* (Nov. 3, 2016), at 16 n.13).

⁶² See LBP-12-16, 84 NRC at ___ (slip op. at 14).

On appeal, Mr. Monatesti states generally that his earlier filings have described “why the public versions of the information requested would not be sufficient to provide a sound basis for business judgment.”⁶³ But Mr. Monatesti does not demonstrate that he addressed the adequacy of the application, including why the public version was not sufficient to enable him to formulate a specific contention challenging the application. He does not show that he addressed the redactions in the application, demonstrating a legitimate need for that information to raise a meaningful challenge within the scope of this proceeding. Instead, his appeal merely lists and summarizes several of his earlier submissions to the NRC or adds new claims not previously raised.

For example, Mr. Monatesti reiterates his concern over expanded spent fuel storage at the ISFSI.⁶⁴ He calls into question the adequacy of local government emergency planning resources and the feasibility of evacuation. He repeats assertions (and lists new assertions) about various ongoing or potential business risks faced by Talen and Riverstone.⁶⁵ Regarding these business risks, Mr. Monatesti emphasizes his own analysis, an assessment of “concurrent risk” termed a “Vulnerability Threat Matrix,” from which he apparently reached the conclusion—referenced in the appeal—of an estimated “\$700 million concurrent risk impact” faced by Talen.⁶⁶ These various asserted business risks, however, were not sufficiently tied to Susquehanna Nuclear and the license transfer application.

⁶³ Appeal at 5.

⁶⁴ *Id.* at 4-6, 8.

⁶⁵ *Id.* at 5-6, 9-14.

⁶⁶ See *id.* at 6, 8, 10-11. Mr. Monatesti’s Vulnerability Threat Matrix, which he filed before the Board, is a chart depicting asserted areas of “vulnerability” and risk. See November 3 Letter. Mr. Monatesti claimed that by using his threat matrix risk model he estimates that the “average impact without a viable risk strategy [would be] \$700 Million per year.” See November 21 Letter. But as Susquehanna Nuclear argues, the “area[s] of vulnerability” outlined in the matrix are “vague,” “not specific to Susquehanna Nuclear,” and largely “raise a whole host of issues—

Mr. Monatesti also again refers to adequacy of decommissioning funding for SSES. Mr. Monatesti provides his own estimates of the decommissioning costs for the SSES units and adds that he does “not know if these numbers are included in the Riverstone Holdings 5 year projection.”⁶⁷ It is unclear here if Mr. Monatesti intended to refer to the 5-year income projection in the license transfer application (which he has not previously addressed in this proceeding). However, the 5-year income projection is a separate matter from decommissioning funding assurance.⁶⁸ And Susquehanna Nuclear’s description of financial assurance for decommissioning has always been available in full in the public version of the application.

Mr. Monatesti’s appeal contains several untimely arguments that the Board did not have the opportunity to consider as well as additional claims improperly raised for the first time on appeal before us.⁶⁹ But in any event, none of the new information alters our conclusions on Mr. Monatesti’s access request.

Both for the reasons the Board provided in LBP-16-12 and those we outline here, Mr. Monatesti did not demonstrate a legitimate need for the information redacted from the license

climate change, weather, coal, oil, transmission lines, etc.—that are completely irrelevant to the need” for SUNSI. See Susquehanna Nuclear Brief at 20.

⁶⁷ Appeal at 8.

⁶⁸ Compare, e.g., 10 C.F.R. § 50.33(f)(2) (estimates of operating costs for each of five years is part of demonstration of reasonable assurance of financial qualifications to carry out license activities), with 10 C.F.R. § 50.75 (describing requirements for showing reasonable assurance that funds will be available for the decommissioning process).

⁶⁹ Claims inappropriately raised for the first time on appeal before us include references to: an “\$879 million write off” and a potential “cascade failure”; new figures or tables on proposed investment, “day ahead” electricity prices, and “capacity prices for zones”; and three pages of bulleted assertions under the heading of “Concurrent Talen Energy Risk Examples.” See Appeal at 5-7, 10-14; see also Susquehanna Nuclear Brief at 18-21; USEC, CLI-06-9, 63 NRC at 468 n.104. Mr. Monatesti also inaccurately suggests that his original October 11, 2016 hearing request included certain claims, requests, and figures not included in that request. See Appeal at 6-7.

transfer application. He did not “connect[] his concerns with any specificity to the redacted information,” as the Board found.⁷⁰ We affirm the Board’s decision denying access to SUNSI.

III. REQUEST FOR HEARING

Mr. Monatesti’s October 11, 2016 access request also requested a hearing. In our capacity as the Presiding Officer in this license transfer proceeding, we therefore address whether Mr. Monatesti otherwise submitted an admissible contention for hearing. We conclude that neither his October 11, 2016 filing, alone or as supplemented by his subsequent filings, proffered an admissible contention.

A petition to intervene must “set forth with particularity” the contentions a petitioner seeks to have litigated in a hearing.⁷¹ Requirements for an admissible contention are found in 10 C.F.R. § 2.309(f)(i)-(vi) and were described in detail in the notice of opportunity to request a hearing.⁷² To be admissible, a contention must (among other things) fall within the scope of the proceeding and be material to the findings that the NRC must make.⁷³ A contention, therefore, must provide sufficient information to show a genuine dispute with the applicant on a material issue of law or fact. Such information must refer to the “specific portions of the application . . . that the petitioner disputes,” with the supporting reasons for each dispute; or, if the petitioner

⁷⁰ See LBP-16-12, 84 NRC at ___ (slip op. at 14); see also, e.g., *Consumers Energy Co., Nuclear Management Co., LLC, Entergy Nuclear Palisades, LLC, and Entergy Nuclear Operations, Inc.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 413, 415 (2007) (where petitioners’ concerns were explicitly tied to the redacted information that they sought).

⁷¹ 10 C.F.R. § 2.309(f); see 10 C.F.R. § 2.1300 (providing that the provisions of 10 C.F.R. Part 2, Subpart M, together with the generally applicable intervention provisions in 10 C.F.R. Part 2, Subpart C, govern adjudicatory proceedings on a license transfer application).

⁷² See Federal Register Notice, 81 Fed. Reg. at 68,464.

⁷³ 10 C.F.R. § 2.309(f)(iii)-(iv).

believes that an application fails altogether to contain information required by law, the petitioner must identify each failure, and provide supporting reasons for the petitioner's belief.⁷⁴

A petitioner who does not submit at least one contention meeting all contention requirements will not be allowed to participate as a party. Requests for hearing were due in this matter on October 24, 2016. Mr. Monatesti submitted two e-mails to the NRC on that date, but neither filing proffered a contention or otherwise addressed the contention admissibility requirements.⁷⁵ Mr. Monatesti did not submit a particularized contention or address the contention standards in any of his filings before the NRC. And for largely the same reasons already outlined in our discussion of his access request, Mr. Monatesti did not raise a genuine dispute on a material issue of law or fact with the license transfer application. He did not identify a specific portion of the license transfer application that he disputes. His claims either fall beyond the scope of this proceeding or are otherwise insufficiently tied to the license transfer application, as our previous discussion outlined. Even giving generous consideration to all of Mr. Monatesti's submissions, we do not discern an admissible contention. We therefore deny his request for hearing.⁷⁶

⁷⁴ *Id.* § 2.309(f)(vi).

⁷⁵ We additionally agree with Susquehanna Nuclear and the Staff that Mr. Monatesti did not ever properly file a hearing request, a significant procedural oversight which in itself is an independent ground for denying his request. Not only the hearing notice, but also the NRC's Office of the Secretary (via e-mail), alerted Mr. Monatesti to the need to file and serve a hearing request through the NRC's electronic filing system. See Hearing Docket E-Mail, October 17; Hearing Docket E-Mail, October 12. Even allowing for Mr. Monatesti's technical difficulties in accessing the EIE, Mr. Monatesti at no point filed a hearing request through the EIE, even after he accessed the system. Nor did he request an exemption from the electronic filing requirement, as the hearing notice allowed.

⁷⁶ We need not reach the question whether Mr. Monatesti has demonstrated standing.

IV. CONCLUSION

For the reasons set forth above, we *affirm* the Board's decision in LBP-16-12, *deny* Mr. Monatesti's request for hearing, and *terminate* this proceeding.

IT IS SO ORDERED.

For the Commission

NRC SEAL

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of March, 2017.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Susquehanna Nuclear, LLC;) Docket Nos. 50-387, 50-388
Susquehanna Steam Electric Station,) and 72-28-LT-2
)
)
Units 1 and 2)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (CLI-17-04)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-7H4
Washington, DC 20555-0001
OCAO Mail Center
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-4F00
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-14A44
Washington, DC 20555-0001
Beth Mizuno, Esq.
Cathy Scott, Esq.
Jeremy Wachutka, Esq.
Email: beth.mizuno@nrc.gov
cathy.scott@nrc.gov
jeremy.wachutka@nrc.gov

William J. Froehlich, Chair
Administrative Judge
E-mail: william.froehlich@nrc.gov

G. Paul Bollwerk, III
Administrative Judge
E-mail: paul.bollwerk@nrc.gov

Dr. Gary S. Arnold
Administrative Judge
E-mail: gary.arnold@nrc.gov

Pillsbury Winthrop Shaw Pittman LLP
2300 N Street NW
Washington, DC 20037-1122
David Lewis, Esq.
Timothy Walsh, Esq.
E-mail: david.lewis@pillsburylaw.com
timothy.walsh@pillsburylaw.com

Sabatini Monatesti
919 Belair Drive
Berwick, PA 18603
E-mail: smonatesti@verizon.net

Dated at Rockville, Maryland,
this 24th day of March, 2017

[Original signed by Herald M. Speiser _____]
Office of the Secretary of the Commission