UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE 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,
(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, Unit Nos. 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)	)	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
	)	August 6, 2021

EXELON'S ANSWER OPPOSING PETITION OF THE STATE OF ILLINOIS FOR LEAVE TO INTERVENE AND REQUEST FOR A HEARING

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EXELON'S ANSWER OPPOSING PETITION OF THE STATE OF ILLINOIS FOR LEAVE TO INTERVENE AND REQUEST FOR A HEARING

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309, Exelon Generation Company, LLC ("Exelon Generation"), on behalf of itself and Exelon Corporation; Exelon 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") (collectively, "Exelon") submit this Answer opposing the Petition of the State of Illinois ("State" or "Petitioner") for

Leave to Intervene and Request for a Hearing ("Petition") filed on July 12, 2021.[1] Petitioner requests a hearing and seeks to intervene in the proceeding associated with Exelon's February 25, 2021, license transfer application ("LTA" or "Application").[2] The Petition proffers three contentions. All are inadmissible.

As an initial matter, the Petition contains multiple factual and legal errors that misconstrue the content of the Application and, therefore, misinterpret the relevant NRC regulations. For example, the State mistakenly asserts that Exelon is forming a new entity to directly hold nuclear plant operating licenses. This results in the State applying the financial assurance requirements for new licensees, when this is clearly an *indirect* license transfer proceeding with no new licensees. Another example is the State mistakenly asserting that 10 C.F.R. Part 52 applies to this license transfer proceeding. But that is plainly incorrect, as this proceeding involves only facilities licensed under 10 C.F.R. Parts 50 and 72.[3] These fundamental errors, which render many of the State's claims facially meritless, are previewed separately in Section III.B. of the contention admissibility discussion below.

As to the State's contentions, Proposed Contention 1 claims that the financial projections submitted with the Application omitted operating costs and revenues for four plants in Illinois. But the State does not appear to recognize that the projections assume those plants will retire early and thus will have little or no (depending on their respective assumed early retirement

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1 People of the State of Illinois's Request for Leave to Intervene and for a Hearing Regarding Exelon Generation Company, LLC's Facility Operating License Transfer Application (July 12, 2021) (ML21193A335, Proprietary; ML21193A326, Non-Proprietary) ("Petition"). The Petition was accompanied by the Declaration of David J. Effron (July 12, 2021) (ML21193A336, Proprietary; ML21193A327, Non-Proprietary).

2 *See* Letter from J. Bradley Fewell, Exelon Generation Company, LLC, to NRC Document Control Desk, "Application for Order Approving License Transfers and Proposed Conforming License Amendments," Encl. 1 (Feb. 25, 2021) (ML21057A272, Proprietary; ML21057A273, Non-Proprietary) ("LTA" or "Application").

3 The caption to this pleading lists the docket numbers for the Facilities, none of which begins with "52."

dates) operating expenses or revenues during the relevant time period. In other words, the financial projections do not omit any required information, but rather reflect the plausible conservative assumptions described in the Application. The State also questions the assumed retirement dates and asserts that they remain uncertain. Exelon Generation acknowledges that the retirement dates for some of the units remain uncertain, but the assumptions in the application reflect the best information available at the time of submission of the LTA. Exelon Generation controls the retirement decisions, and the State does not identify any defect in those assumptions in the LTA or explain how those assumptions fail to satisfy the NRC's financial assurance requirements, which require plausible projections—not certainty as to future outcomes. The State also suggests the financial projections are deficient because they lack sufficient granular detail. But, again, that position is inconsistent with the NRC's regulatory requirements that speak directly to this issue, specifying that "summary information" is sufficient, which the Application more than exceeds. The Commission has squarely explained that petitioners seeking to challenge financial projections in license transfer proceedings "cannot insist that Applicants provide the impossible: absolutely certain predictions of future economic conditions."[4] At bottom, the State's claims are based on various mistakes of fact and law and thus fail to raise an admissible issue.

Proposed Contention 2 also is inadmissible due to similar defects. The State claims that the Application fails to provide the information required of a newly-formed entity applying for a license. But there is no newly-formed entity that is applying for a license in this proceeding. The State conflates the corporate entities discussed in the Application, confuses the entity that will continue to directly own and operate the affected Facilities, and thus fails to recognize that

[4] *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 221 (1999).

this is an *indirect* license transfer proceeding. Indeed, the regulation the State cites as the basis for this contention is related to newly-formed entities seeking to construct or operate reactors—thus, it simply is not applicable here, where Exelon Generation is already the licensed operator and the licensed owner or indirect owner of the Facilities—and will continue to be following the Spin Transaction. Proposed Contention 2 contains other arguments purporting to challenge the sensitivity analysis in the financial statements and seeks to adopt comments that another petitioner, EDF, provided in a separate state regulatory proceeding. But as detailed below, these claims likewise are factually or legally flawed and generally fail to dispute the Application on any material issue.

Proposed Contention 3 fares no better. Therein, the State seeks to challenge the discussion of decommissioning funding in the LTA, but disregards or misinterprets key statements and NRC requirements that undermine the State's claims. More specifically, the State ignores the LTA discussion confirming how Exelon Generation would resolve any decommissioning funding shortfalls that may exist for Byron Units 1 and 2 at the time of the Spin Transaction and that Exelon Generation's plans are entirely consistent with the NRC's regulatory requirements. With respect to possible early retirements in the absence of market reforms or legislative action that would enable these units to realize the value of their zero-carbon, reliable baseload generation, the State seeks to impose obligations on Exelon Generation to resolve potential shortfalls before the shortfalls actually exist. Again, no such regulatory obligations exist and, in any event, the State fails to raise any material issue.

In sum, none of the proposed contentions satisfies all six admissibility criteria in 10 C.F.R. § 2.309(f)(1). Accordingly, pursuant to 10 C.F.R. § 2.309(a), the Commission must deny the Petition.[5]

II. BACKGROUND

A. The LTA

Exelon filed the LTA on February 25, 2021, requesting certain written approvals from the NRC to support a proposed transaction in which the existing upstream owner of Exelon Generation, Exelon Corporation, will transfer its 100% ownership of Exelon Generation to a newly-created, holding company subsidiary (*i.e.,* HoldCo) that will then be spun-off to Exelon Corporation shareholders, becoming Exelon Generation's new ultimate parent company ("Spin Transaction").[6] As part of the Spin Transaction, Exelon Generation will remain the same Pennsylvania limited liability company, but will be renamed (consistent with its complete separation from Exelon Corporation).[7] The *new name* of Exelon Generation is yet to be determined, and, therefore, is described using the generic name "SpinCo."[8]

Specifically, Exelon Generation requested NRC approval of the following:

- The indirect transfer of Exelon Generation's respective ownership interests in the Facilities[9] to a newly-created holding company that will become the parent company of

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5 The State asserts standing under 10 C.F.R. § 2.309(h)(2). Exelon does not dispute this assertion.

6 *See* LTA (cover letter at 3).

7 *See id.*

8 *See id.*

9 As of the date of the LTA, Exelon Generation is the licensed operator and a full or partial direct or indirect owner of the following facilities and their corresponding Independent Spent Fuel Storage Installations ("ISFSIs"): Braidwood Station, Units 1 and 2 ("Braidwood"); Byron Station, Units 1 and 2 ("Byron"); Calvert Cliffs Nuclear Power Plant, Units 1 and 2 ("Calvert Cliffs"); Clinton Power Station, Unit 1 ("Clinton"); Dresden Nuclear Power Station, Units 1, 2, and 3 ("Dresden"); James A. Fitzpatrick Nuclear Power Plant ("FitzPatrick"); LaSalle County Station, Units 1 and 2 ("LaSalle"); Limerick Generating Station, Units 1 and 2 ("Limerick"); Nine Mile Point Nuclear Station, Units 1 and 2 ("NMP"); Peach Bottom Atomic Power Station, Units 1, 2, and 3 ("Peach Bottom"); Quad Cities Nuclear Power Station, Units 1 and 2 ("Quad Cities"); R.E. Ginna Nuclear Power Plant ("Ginna"); and Three Mile Island Nuclear Station, Unit 1 ("TMI"), a shutdown unit. Exelon Generation also is a partial direct owner, but not the licensed operator, of the following facilities and their corresponding ISFSI: Salem Generating Station, Units 1 and 2 ("Salem"). Prior to the closing of the

Exelon Generation. In the LTA, Exelon Generation stated that the name of the new holding company is yet to be determined and therefore is described using the generic name "HoldCo." Exelon Corporation will then spin-off HoldCo and its subsidiaries (including Exelon Generation/SpinCo) as a publicly-held company. At the time of the spin-off, the shareholders of HoldCo will be the same as the shareholders of Exelon Corporation. After the spin-off, HoldCo and its subsidiaries will no longer be affiliates of Exelon Corporation.

- The indirect transfers of Exelon FitzPatrick, LLC's, NMP LLC's, and Ginna LLC's respective ownership interests in FitzPatrick, NMP, and Ginna (collectively the "New York Facilities"), whereby these entities and, as applicable, parent entities, would become subsidiaries of a newly-created, wholly-owned subsidiary of SpinCo. The name of the new subsidiary is yet to be determined and therefore is described in the LTA using the generic name "New York HoldCo."

- Conforming administrative amendments to the licenses and the technical specifications for the Facilities to reflect the new names of Exelon Generation (*i.e.*, SpinCo) and Exelon FitzPatrick, LLC (its new name is yet to be determined and therefore it is described in the LTA using the generic name "New FitzPatrick, LLC") after they are spun-off from Exelon Corporation.

- Approval to replace existing master demand notes and cash pooling arrangements in which Calvert LLC, Ginna LLC, and NMP LLC (collectively, the "Constellation Subsidiary Owner LLCs," and together with Exelon FitzPatrick, LLC, the "Subsidiary Owner LLCs") participate and existing financial support arrangements among the Exelon entities with a new financial arrangement and financial support agreements consistent with NRC regulations, the new organizational structure, and conforming administrative amendments to the licenses for FitzPatrick, NMP, Ginna and Calvert Cliffs to reflect the same.

- Approval to delete conditions in the NMP, Ginna, and Calvert Cliffs licenses referencing the Constellation Energy Nuclear Group, LLC ("CENG") Board and its operating agreement, consistent with the internal reorganization described in the LTA.

- Approval to transfer the qualified trust and the non-qualified trust for FitzPatrick from Exelon Generation Consolidation, LLC (a subsidiary of Exelon Generation that will also be renamed as a result of the Spin Transaction) to New FitzPatrick, LLC.

- Approval to replace the existing Nuclear Operating Services Agreements ("NOSA") between Exelon Generation and Exelon FitzPatrick, LLC, NMP LLC, Ginna LLC, and

Spin Transaction, Exelon Generation is expected to be the direct owner and licensed operator with possession, maintenance, and decommissioning authority of the generally licensed ISFSI on the site of the former: Zion Nuclear Power Station, Units 1 and 2 ("Zion") (ISFSI only site). Collectively, these are referred to as the "Facilities."

Calvert LLC with NOSAs between SpinCo and the Subsidiary Owner LLCs that contain materially the same terms as the existing NOSAs.[10]

B. Procedural History

The NRC accepted the LTA for review on March 24, 2021.[11] On March 25, 2021, Exelon supplemented the LTA with markups of the licenses for each of the facilities, showing the proposed changes to each license.[12]

The NRC published a notice in the *Federal Register* on May 3, 2021, informing the public that it is considering the LTA for approval, providing an opportunity for the public to submit written comments on the LTA, and offering an opportunity for persons whose interests may be affected by the approval of the LTA to file (within 20 days of the notice—*i.e.*, by May 24, 2021) hearing requests and intervention petitions ("Hearing Opportunity Notice").[13] The NRC Secretary subsequently issued multiple orders extending the State's deadline until July 12, 2021.[14] The State filed its Petition on July 12, 2021.[15] Exelon timely files this Answer opposing the Petition according to the provisions of 10 C.F.R. § 2.309(i)(1).

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10 *See id.* (cover letter at 4-5).

11 *See* Email from B. Purnell, NRC, to B. Fewell, Exelon Generation Company, LLC, "Exelon Generation Company, LLC – Acceptance of License Transfer Application (EPID L-2021-LLM-0000)" (Mar. 24, 2021) (ML21084A253).

12 *See* Letter from D. Helker, Exelon Generation Company, LLC, to NRC Document Control Desk, "Supplemental Information Regarding Application for Order Approving Transfers and Proposed Conforming License Amendments," Encl. 1-15 (Mar. 25, 2021) (ML21084A165).

13 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, Unit Nos. 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; Consideration of Approval of Transfer of Licenses and Conforming Amendments, 86 Fed. Reg. 23,437 (May 3, 2021) ("Hearing Opportunity Notice").

14 NRC Secretary Order at 2 (May 24, 2021) (unpublished) (ML21144A125); NRC Secretary Order at 2 (June 14, 2021) (unpublished) (ML21165A124); NRC Secretary Order at 2 (June 22, 2021) (unpublished) (ML21173A299); NRC Secretary Order at 2 (June 29, 2021) (unpublished) (ML21180A421).

15 *See* Petition.

The Hearing Opportunity Notice also contemplated that potential parties may need access to the Sensitive Unclassified Non-Safeguards Information ("SUNSI")[16] in the LTA for contention drafting purposes. Thus, it directed those potential parties to request access from Exelon or file a motion with the Commission.[17] Exelon and the State jointly moved that Petitioner's representatives, Susan L. Satter, Christopher J. Grant, and David J. Effron be authorized to access SUNSI, and the NRC Secretary issued a Protective Order granting that request on June 9, 2021.[18] Consistent with the Protective Order, Exelon provided the State with unredacted versions of Enclosure 6A, "Projected Financial Statements for SpinCo Consolidated (Proprietary Version)"; Enclosure 10A, "Alternate Decommissioning Funding Analysis (Proprietary Version)"; and pages 1-2, 11-12, and 21 of Enclosure 8A, "Projected Financial Statements for Nuclear Fleet and Subsidiary Owner LLCs (Proprietary Version)" to the LTA.

C. Regulatory Framework for NRC License Transfers

Under Section 184 of the Atomic Energy Act of 1954, as amended ("AEA"),[19] an NRC reactor license, or any right under it, may not be "transferred, assigned[,] or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of [the] license to any person," unless the NRC first gives its written approval.[20] This statutory requirement is codified in 10 C.F.R. § 50.80 and applies to both direct and indirect license

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16 SUNSI, in this context, includes any proprietary commercial information that an applicant requests to be withheld from public disclosure.

17 *See* Hearing Opportunity Notice, 86 Fed. Reg. at 23,440.

18 NRC Secretary Order (June 9, 2021) (unpublished) (ML21160A231). *See also* NRC Secretary Order (June 29, 2021) (issuing Second Amended Protective Order). NOTE: Christopher J. Grant did not file a Non-Disclosure Declaration as required by the Protective Order and thus is not authorized to access SUNSI.

19 Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919 (1954) (codified as amended at 42 U.S.C. §§ 2011, *et seq*.).

20 *Id.* § 184 (codified as amended at 42 U.S.C. § 2234).

transfers.[21] Transferring control directly or indirectly may involve either the licensed operator or any individual licensed owner of the facility.[22] The NRC review focuses on the "potential impact on the licensee's ability both to maintain adequate technical qualifications and organizational control and authority over the facility[,] and to provide adequate funds for safe operation and decommissioning."[23]

To grant a license transfer application, the NRC must find a "reasonable assurance" of financial qualifications.[24] License transfer applicants for reactors that will be permanently shut down at the time of the transfer may rely *solely* on the adequacy of the nuclear decommissioning trusts to demonstrate reasonable assurance.[25] Longstanding Commission precedent makes clear that the reasonable assurance standard requires an applicant to demonstrate by a preponderance of the evidence that it will possess the financial qualifications to own and operate nuclear facilities; "absolute assurance" is not required.[26] The NRC interprets "reasonable assurance"

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21 *See* NRC Backgrounder, "Reactor License Transfers," at 1-2 (Jan. 2020) (ML040160803). A direct license transfer occurs when an entity seeks to transfer a license it holds to a different entity (*e.g.*, when a plant is to be sold or transferred to a new licensee in whole or part). *See id*. On the other hand and relevant to the instant Application, "[a]n indirect transfer could result from forming a new parent holding company or subsidiary having an ownership interest in a licensee, while the nuclear power plant licensee owner and/or operator remains unchanged . . . as a result of a merger or acquisition at high levels within or among corporations." *Id.* at 2.

22 *See id.* at 2. No changes in the licensed owners or the licensed operator are sought in the Application.

23 Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44,071, 44,077 (Aug. 19, 1997); 10 C.F.R. § 50.80(b)(1)(i), (c)(1); *see also* NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," Rev. 1 (Feb. 1999) (ML013330264).

24 10 C.F.R. § 50.33(f)(2).

25 *See, e.g.*, Oyster Creek License Transfer Safety Evaluation Report at 7-10 (June 20, 2019) (ML19095A457); Pilgrim License Transfer Safety Evaluation Report at 7-15 (Aug. 23, 2019) (ML19235A300).

26 *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 262 n.142 (2009); *Commonwealth Edison Co.* (Zion Station, Units 1 & 2), ALAB-616, 12 NRC 419, 421 (1980); *N. Anna Envtl. Coal. v. NRC*, 533 F.2d 655, 667-68 (D.C. Cir. 1976) (rejecting the argument that reasonable assurance requires proof beyond a reasonable doubt and noting that the licensing board equated "reasonable assurance" with the preponderance standard).

with the understanding that "some risks may be tolerated and something less than absolute protection is required."[27]

As particularly relevant here, the NRC requires applicants to submit forward-looking financial projections, such as the five-year cost and revenue projections required by 10 C.F.R. § 50.33(f)(2), that reasonably estimate future economic conditions.[28] Furthermore, the Commission has codified the level of detail required to be included in such estimates.[29] More specifically, Part 50 explains that "annual financial reports" and "summary data" are generally "sufficient for the Commission's needs."[30] Here, the financial projections in the LTA go well beyond those codified requirements and contain additional information, such as "stress case" sensitivity analyses, which provide further support demonstrating Exelon Generation's ongoing financial qualifications to assist NRC Staff in its review of the Application.[31]

The Commission accepts and finds reasonable "financial assurances based on *plausible* assumptions and forecasts, even though the possibility is not insignificant that things will turnout less favorably than expected."[32] Thus, for a contention to satisfy the requirement in 10 C.F.R. § 2.309(f)(1)(vi) to show that it raises a *material* dispute with an applicant's financial projections, the contention must do more than merely "cast[] doubt on some aspects of proposed funding plans."[33] Rather, it must provide a colorable argument that an applicant's projections are

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27 Memorandum from F. Brown, Director, Office of New Reactors to New Reactor Business Line, "Expectations for New Reactor Reviews," at 4 (Aug. 29, 2018) (ML18240A410).

28 *See Seabrook*, CLI-99-6, 49 NRC 221-22.

29 *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-78-1, 7 NRC 1, 9 (1978).

30 10 C.F.R. Part 50, app. C; *see also Seabrook*, CLI-78-1, 7 NRC at 9 (noting that the financial qualifications requirements in 10 C.F.R. § 50.33(f) are "amplified" by Appendix C).

31 *See, e.g.*, LTA, Encl. 6/6A.

32 *Seabrook*, CLI-99-6, 49 NRC at 222.

33 *Id*. at 221-22.

"*implausible*"—and those arguments must be supported by alleged facts and expert opinions, as required by 10 C.F.R. § 2.309(f)(1)(v).[34]

III. THE PETITION MUST BE DENIED BECAUSE PETITIONER HAS NOT PROPOSED AN ADMISSIBLE CONTENTION

To grant the Petition, the Commission must find that Petitioner has submitted at least one proposed contention that satisfies all six admissibility criteria in 10 C.F.R. § 2.309(f)(1). Here, Petitioner proposes three contentions. However, as detailed below, none satisfies all six contention admissibility criteria. Accordingly, each one must be rejected as inadmissible, and the Petition must be denied.

A. Contention Admissibility Standards

Petitions to intervene must "set forth with particularity" the contentions to be litigated.[35] The requirements for an admissible contention are set forth in 10 C.F.R. § 2.309(f)(1)(i)-(vi) and also described in the Hearing Opportunity Notice.[36] The Commission's contention admissibility requirements are "strict by design."[37] They seek "to ensure that NRC hearings 'serve the purpose for which they are intended: to adjudicate *genuine, substantive safety . . . issues* placed in contention by qualified intervenors.'"[38] The requirements thus reflect a "deliberate effort to prevent the major adjudicatory delays caused in the past by ill-defined or poorly-supported

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[34] *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC __, __ (Nov. 12, 2020) (slip op. at 20) ("we will admit for hearing [] only those contentions based upon adequately supported assertions that a transfer applicant's financial assumptions and forecasts are implausible or unrealistic in a way that is material to our assessment of reasonable assurance.").

[35] *PPL Susquehanna, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-15-8, 81 NRC 500, 503-04 (2015) (quoting 10 C.F.R. § 2.309(f)(1)); *Susquehanna Nuclear, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-17-4, 85 NRC 59, 74 (2017).

[36] *See* Hearing Opportunity Notice, 86 Fed. Reg. at 23,439.

[37] *Dominion Nuclear Conn., Inc*. (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

[38] *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003) (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 334 (1999)) (emphasis added) (internal citation omitted).

contentions that were admitted for hearing although 'based on little more than speculation.'"[39] To warrant an adjudicatory hearing, the NRC requires proposed contentions to have "some reasonably specific factual or legal basis."[40] The petitioner alone bears the burden to meet the standards of contention admissibility.[41]

Under 10 C.F.R. § 2.309(f)(1), a petitioner must explain the basis for each proffered contention by stating alleged facts or expert opinions that support the petitioner's position and on which the petitioner intends to rely in litigating the contention at the hearing.[42] To be admissible, the issue raised must fall within the scope of the proceeding and be material to the findings that the NRC must make with respect to the Application.[43] Contentions that challenge NRC regulations,[44] seek to impose requirements stricter than those imposed by the agency,[45] or opine on how Staff should conduct its review[46] are all outside the scope of NRC adjudicatory proceedings.

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39 *Susquehanna*, CLI-15-8, 81 NRC at 504 (quoting *Oconee*, CLI-99-11, 49 NRC at 334).

40 *Id.* (quoting *Millstone*, CLI-03-14, 58 NRC at 213).

41 *See Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 325, 329 (2015) ("[I]t is Petitioners' responsibility . . . to formulate contentions and to provide 'the necessary information to satisfy the basis requirement' for admission.") (internal citation omitted).

42 10 C.F.R. § 2.309(f)(1)(ii), (v).

43 *Id*. § 2.309(f)(1)(iii)-(iv); *Susquehanna*, CLI-17-4, 85 NRC at 74.

44 10 C.F.R. § 2.335(a).

45 *See Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), LBP-15-4, 81 NRC 156, 167 (2015); *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 315 (2012); *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 206 (2000); *Curators of the Univ. of Mo.* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 170 (1995).

46 *See, e.g.*, *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 25 (2001) (quoting *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 350 (1998), *aff'd sub nom Nat'l Whistleblower Ctr. v. NRC*, 208 F.3d 256 (D.C. Cir. 2000), *cert. denied,* 531 U.S. 1070 (2001)) ("'[I]t is the license application, not the NRC Staff review, that is at issue in our adjudications.'").

A contention also must provide sufficient information to show a genuine dispute with the applicant on a material issue of law or fact.[47] The contention must refer to the "specific portions of the Application . . . that the petitioner disputes," along with the "supporting reasons for each dispute; or, if the petitioner 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."[48] A petitioner's "misreading" or "misinterpret[ation]" of a document cannot supply the requisite "factual support" for an admissible contention.[49]

Petitioners may not incorporate by reference affidavits or voluminous documents with conclusory assertions to support a contention. In short, the Commission has refused to "sift through the parties' pleadings to uncover and resolve arguments not advanced by the litigants themselves."[50]

B. Fundamental Factual and Legal Errors in the Petition

As a preliminary matter, there are several fundamental factual and legal errors that are repeated throughout the Petition. These errors undermine the State's corresponding arguments and are representative of the reasons the Petition should be summarily rejected.

1. The State Erroneously Describes the Post-Spin Entities

One common thread throughout the Petition is the State's fundamental misunderstanding of the various corporate entities discussed in the LTA. For example, the State claims that the

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47 10 C.F.R. § 2.309(f)(1)(vi); *Susquehanna*, CLI-17-4, 85 NRC at 74.

48 *Susquehanna*, CLI-17-4, 85 NRC at 74 (citing 10 C.F.R. § 2.309(f)(1)(vi)).

49 *Interim Storage Partners LLC* (WCS Consol. Interim Storage Facility), CLI-20-14, 92 NRC __, __ (slip op. at 18-19) (Dec. 17, 2020); *see also Seabrook*, CLI-12-5, 75 NRC at 312 (noting a petitioner's "ironclad obligation" to review application materials thoroughly) (citation omitted); *Ga. Inst. of Tech.* (Ga. Tech Research Reactor), LBP-95-6, 41 NRC 281, 300 (1995) (holding that a petitioner's "imprecise reading" of a document "cannot serve to generate an issue suitable for litigation").

50 *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-02-16, 55 NRC 317, 337 (2002) (quoting *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 194 (1999)).

LTA proposes to transfer the ownership of the Facilities to "a successor to Exelon Generation, referred to as 'spinco' and 'holdco.'"[51] But that is incorrect. SpinCo and HoldCo are separate entities, not different terms for the same entity. And neither SpinCo nor HoldCo will be a "successor" to Exelon Generation.

As explained in the LTA, the generic placeholder term "SpinCo" merely refers to Exelon Generation, which will be given a new name after the Spin Transaction. For more than two decades, Exelon Generation has been—and after the Spin Transaction, will continue to be—an NRC-licensed owner and/or operator. As a threshold matter, it must be understood that Exelon Generation itself will remain the *same* Pennsylvania limited liability company as it has been for more than two decades, but will be renamed (consistent with its complete separation from Exelon Corporation). The *new name* of Exelon Generation is yet to be determined; thus, it is described in the LTA using the generic name "SpinCo." To be clear, SpinCo is Exelon Generation.

Petitioner also appears to conflate SpinCo with "HoldCo," which is a separate entity referenced in the LTA. HoldCo is a newly-created holding company. As part of an intra-corporate reorganization and following the Spin Transaction, HoldCo will sit above Exelon Generation in the corporate structure to address corporate and tax considerations. This is a common legal structure in which a C-corporation holding company is the publicly traded company, which sits above an operating company that itself has the financial responsibility for its own business operations. Exelon Generation has long independently maintained its own investment grade rating. Following the Spin Transaction, it will be SpinCo (the renamed Exelon Generation), not the holding company, that anticipates having an investment grade rating and

[51] Petition at 2.

will continue to underwrite its own business operations going forward. In addition, following the Spin Transaction, Exelon Generation renamed as SpinCo will continue to be the NRC licensed operator of the Facilities and will remain the licensed owner of the Facilities it currently owns. Notably, unlike SpinCo, HoldCo *will not* be an NRC licensee because it will neither operate nor directly own any of the Facilities. As explained in the LTA, this is an *indirect* transfer proceeding—no direct transfers of any NRC licenses are requested or contemplated in the LTA; neither the NRC-licensed owners nor the NRC-licensed operator of the Facilities will change.

In sum, the State's misunderstanding of the relevant entities undermines its purported analyses of NRC requirements, which apply differently to NRC-licensed entities, such as SpinCo, versus mere indirect owners, such as HoldCo. As further explained below, the Petition clouds this distinction; thus, at the most fundamental level, the State fails to dispute the information in the LTA on any material issue of fact or law, and its mistaken reading of the Application cannot support an admissible contention.

2. The State Erroneously Claims That 10 C.F.R. § 50.33(f)(4) Applies to This Proceeding

The NRC's regulations at 10 C.F.R. § 50.33(f) specify the information that must be included in the financial qualifications portion of a Part 50 license transfer application.[52] The regulations "distinguish between applicants which are established organizations and those which are newly-formed entities organized primarily for the purpose of engaging in the activity for which the permit is sought."[53] More specifically, as relevant here, 10 C.F.R. § 50.33(f)(2) specifies the financial qualifications information that must be submitted for established entities, not 10 C.F.R. § 50.33(f)(4), which only applies to newly-formed entities. The Commission has

[52] *See also* 10 C.F.R. § 50.80(b)(1)(i) (referencing 10 C.F.R. § 50.33).

[53] 10 C.F.R. Part 50, app. C.

explained that established plant operators are those with "a history of operating experience," whereas newly-formed entities have "little or no prior operating history."[54]

In its Petition, the State mistakenly asserts that 10 C.F.R. § 50.33(f)(4) "applies to situations like the one presented here, where the applicant is a 'newly-formed entity.'"[55] However, the State's assertion is demonstrably incorrect. That regulation applies only to "newly-formed entit[ies] organized for the primary purpose of constructing and/or operating a facility."[56] As noted above, Exelon Generation/SpinCo obviously has "a history of operating experience." Thus, it is *not* a newly-formed entity. Furthermore, HoldCo (the new entity) will merely be an indirect owner. The indirect transfer contemplated in the LTA does not seek approval for HoldCo to "construct[] and/or operate[] a facility." Contrary to the State's misunderstanding of the LTA or misapplication of the regulations (or both), the LTA does not contemplate *any* newly-formed entity "constructing and/or operating a facility." Accordingly, because 10 C.F.R. § 50.33(f)(4) does not apply here, the State's various claims that the LTA does not satisfy this inapplicable regulation are rendered meritless and irrelevant in this proceeding.[57]

3. The State Erroneously Suggests That 10 C.F.R. Part 52 Applies to This Proceeding

The Petition also contains various references to the provisions in Part 52 of the Commission's regulations. For example, the State demands that the Commission "hold a hearing under Section 52.103(b) of its rules."[58] The State also discusses requirements applicable to

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54 *Id*.

55 Petition at 4

56 10 C.F.R. § 50.33(f)(4).

57 Petition at 5, 6, 12.

58 *Id*. at 7.

applications filed "under subpart C of 10 CFR part 52."[59] However, to the extent the State suggests that Part 52 somehow applies to the instant proceeding, it provides no explanation. Nor could it, because that assertion is plainly incorrect. Part 52 applies only to early site permits, standard design certifications, combined licenses, standard design approvals, and manufacturing licenses issued under Part 52.[60] But none of the Facilities are licensed under Part 52 and Exelon Generation's LTA does not invoke Part 52. Accordingly, the State's references to Part 52 provide no basis for an admissible contention.

C. Proposed Contention 1 Is Inadmissible

Proposed Contention 1 states:

> The Applicant Fails To Provide Valid Estimates For Total Annual Operating Costs For Each Of The First Five Years Of Operation Of The Facilities To Be Transferred By Omitting Financial Information About Four Illinois Nuclear Plants, Consisting Of Eight Generating Units, In Violation Of 10 C.F.R. §50.33(F)(2). The Omission Of Substantial, Illinois Specific Information Prevents A Finding Of Reasonable Assurance Of Adequate Finances To Protect The Public Health And Safety.[61]

1. The State Has Not Identified Any Improper Omission of Operating Cost Information in the Financial Statements

At the core of Contention 1 is the State's claim that Exelon allegedly has "excluded" the estimated operating costs of Byron, Dresden, Braidwood, and LaSalle for years 2022 through 2026 from the *pro forma* financial statements in the LTA.[62] But this claim is demonstrably incorrect. Petitioner appears to have misread or misunderstood the financial statements or the NRC's financial qualification requirements or both. Regardless, Contention 1 is inadmissible.

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59 *Id*. at 21.

60 10 C.F.R. § 52.0(a).

61 Petition at 4.

62 *Id*. at 5.

As noted in the LTA, Byron and Dresden are expected to permanently cease "operations" in September and November 2021, respectively.[63] Thus, to the extent the State is claiming that operating costs for Byron and Dresden have been arbitrarily "excluded" from the *pro forma* financial statements, that claim is plainly incorrect. The operating cost information in the financial statements accurately reflects the plausible assumption that these two specific facilities will be permanently retired, and thus will not *have* any operating costs (or revenues) for years 2022 through 2026.[64]

As to Braidwood and LaSalle, the LTA explains that "absent market reform or legislative action that would enable these units to realize the value of their zero-carbon, reliable, baseload generation, they remain at risk of premature retirement."[65] Accordingly, while the *pro forma* financial statements reflect an assumption that those facilities will retire early, they otherwise *include* all operating costs (and revenues) for those facilities for the period up to their respective projected early retirement dates as assumed in the LTA.[66] Thus, the State's assertion that operating costs for Braidwood and LaSalle have been altogether "excluded" from the *pro forma* financial statements is incorrect.

Furthermore, the costs associated with maintaining and decommissioning a facility *after* it has permanently ceased power operations are considered decommissioning costs—not operating costs. The regulation cited by the State as the basis for Proposed Contention 1, namely

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63 LTA, Encl. 1 at 9; Letter from J. B. Fewell, Exelon Generation, to NRC Document Control Desk, RS-20-107, "Certification of Permanent Cessation of Power Operations for Byron Station, Units 1 and 2 (Sept. 2, 2020) (ML20246G613) ("Byron Shutdown Notice"); Letter from J. B. Fewell, Exelon Generation, to NRC Document Control Desk, RS-20-108, "Certification of Permanent Cessation of Power Operations for Dresden Nuclear Power Station, Units 2 and 3 (Sept. 2, 2020) (ML20246G627) ("Dresden Shutdown Notice").

64 *See* LTA, Encl. 6A at 3 n.7 (Proprietary).

65 *Id*., Encl. 1 at 9-10.

66 *See id*., Encl. 6A at 3 n.7 (Proprietary).

10 C.F.R. § 50.33(f)(2), does not impose requirements related to decommissioning funding assurance, which is covered by separate regulations—and separate information that has been provided in the LTA in compliance with these applicable regulations. Thus, to the extent the State's reference to costs "excluded" from the financial statements refers to post-shutdown costs, it misunderstands the LTA and misapplies the relevant NRC requirements, and therefore fails to support its contention or identify a genuine dispute with the Application.

2. The State Has Not Shown That the LTA's Assumptions Regarding Early Retirements Are "Implausible"

The State faults the LTA because it does not provide concrete projections regarding the potential early retirements of Byron, Dresden, Braidwood, and LaSalle. Specifically, the State complains that "Exelon did not expressly represent or promise that these units would close."[67] But that demand fundamentally misconstrues the NRC's financial assurance requirements. As noted above, petitioners seeking to challenge financial projections in license transfer proceedings "cannot insist that Applicants provide the impossible: absolutely certain predictions of future economic conditions."[68]

Additionally, the State notes the information provided by Exelon in the LTA that market reforms or legislative action could create circumstances in which early retirements of some or all of these facilities could be avoided, along with Exelon's view that this "would not materially adversely impact the financials and would not require additional financial support beyond what is reflected in the Application."[69] The State then argues that this view "cannot be relied upon by the Commission without the underlying financial data."[70] But the State misreads the

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67 Petition at 8.

68 *Seabrook*, CLI-99-6, 49 NRC at 221.

69 Petition at 6 (citing LTA, Encl. 1 at 10 n.12).

70 *Id*.

Application, which does not ask the Commission to "rely" on Exelon's generalized expectation; rather, it states as follows:

> To the extent such reforms or legislation are adopted, Exelon Generation will reevaluate the retirement assumptions reflected [in the LTA] and, as relevant, *provide updated financial scenarios* that assume continued operations of one or more of these units.[71]

In other words, *if* the early retirement assumptions in the LTA change based on reforms or legislation implemented prior to the NRC's approval of the LTA, then Exelon *will provide* an update with the relevant "underlying financial data." Thus, the State has not identified a genuine dispute with the LTA.

Likewise, the State's speculation that there is a "strong possibility"[72] of such reforms or legislative action fails to show any inadequacy in Exelon's use of plausible assumptions based on the actual *status quo* at the time the LTA was submitted. Exelon explicitly acknowledged the possibility of legislative action in the LTA.[73] And Exelon committed to update its conservative financial projections if that *possibility* later becomes *reality*.[74] The State fails to demonstrate (or provide any corresponding regulatory basis) that the Application is deficient in this regard.

Next, the State observed that Exelon has not yet submitted deactivation requests for Braidwood and LaSalle to the operator of the electric transmission grid and noted that the

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71 LTA, Encl. 1 at 10 n.12 (emphasis added).

72 Petition at 9.

73 LTA, Encl. 1 at 9-10. Exelon remains a proponent of Illinois' pending legislation to compensate nuclear facilities for their environmental attributes, which if timely enacted would allow all eight units to continue operations. However, such legislation remains under discussion and Exelon cannot commit to operate units that are unable to earn sufficient revenue for ongoing operations on a hope that legislation will be adopted and signed into law. Again, if legislation passes that changes the early retirement assumptions in the LTA, Exelon will submit relevant updated financial information. In that scenario, the financial wherewithal of SpinCo post-separation will only improve compared to the financial projections included with the initial LTA filing. When Exelon has more clarity on the status of Illinois legislation and the status of the eight units at issue, it will reevaluate the assumptions relied on in the LTA and, as relevant, provide appropriate updates.

74 LTA, Encl. 1 at 10 n.12.

previously-submitted deactivation requests for Byron and Dresden were still under review when the Petition was submitted.[75] To the extent the State is suggesting that this unremarkable circumstance somehow undermines the projected retirement dates conservatively assumed in the LTA for these facilities, it fails to explain how. As noted in the LTA, Exelon Generation has not selected early retirement dates for Braidwood or LaSalle;[76] as such, it would be premature to provide a deactivation notice. Moreover, PJM has since completed its analyses for Byron and Dresden, finding that the units can be deactivated as scheduled.[77] Thus, the State's observations do not undermine the early retirement assumptions in the LTA.

Furthermore, the State seeks to cast doubt on Exelon's assumptions regarding early retirements by citing to a report prepared by its governor's consultant (the "Synapse Report").[78] The State claims the Synapse Report demonstrates that legislative action is not needed for Byron, Braidwood, and LaSalle to remain "profitable."[79] Although not entirely clear, the State appears to argue that those plants will continue to operate long-term even in the *absence* of market reforms or legislative action and thus Exelon's *pro forma* financial statements must be rejected as "implausible" because they assume otherwise. But this assertion is plainly wrong.

First, Exelon Generation is committed and taking all necessary steps to retire the Byron and Dresden units this fall. It submitted its notices of permanent cessation of operations for both sites[80] and recently submitted, on July 28, 2021, the Post Shutdown Decommissioning Activities

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75 Petition at 6 (citing https://www.pjm.com/planning/services-requests/gen-deactivations).

76 LTA, Encl. 1 at 9-10, 13.

77 *See Generation Deactivations*, PJM, https://www.pjm.com/planning/services-requests/gen-deactivations.aspx (last visited Aug. 5, 2021).

78 Petition at 10-11.

79 *Id*. at 10.

80 LTA, Encl. 1, n.10; Byron Shutdown Notice; Dresden Shutdown Notice.

Reports[81] for these plants in accordance with the NRC's regulatory requirements.[82] Ultimately, one consultant's view of the profitability of Exelon Generation's nuclear units is irrelevant to the question of when and whether Exelon Generation will decide, as a business matter, to retire its nuclear units. Exelon Generation has made the determination that it can no longer continue to operate these units economically in the current wholesale markets.

Second, the State contradicts its own argument that legislative action is unnecessary. Just one page earlier in its Petition, the State touts the "strong possibility" that its duly elected officials will reach the *exact opposite* conclusion—that legislative action *is* necessary—and will thus approve such legislative action.[83] Viewed in this context, Petitioner's overemphasis on the Synapse Report does not support its contention.

Third, the State quotes the Synapse Report, which describes Exelon Generation's early retirement analysis methodology as considering operating expenses and also incorporating "an estimate of market and operating risk," and describes the method used in the Synapse Report as solely considering operating expenses and associated uncertainty.[84] But the State fails to explain why Exelon Generation's framework for valuing the costs of operating nuclear units including the market and operating risk is unreasonable or why Exelon Generation should rely on a third-party consultant's economic model for making retirement assumptions or decisions. In fact, the State provides no basis for finding that Exelon Generation's retirement decisions and retirement

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81 Letter from Patrick R. Simpson, Exelon Generation, to NRC Document Control Desk, RS-21-059, "Dresden Nuclear Power Station, Units 2 and 3 – Post-Shutdown Decommissioning Activities Report" (July 28, 2021) (ML21209A027); Letter from Patrick R. Simpson, Exelon Generation, to NRC Document Control Desk, RS-21-060, "Byron Station, Units 1 and 2 – Post-Shutdown Decommissioning Activities Report" (July 28, 2021) (ML21209A031).

82 10 C.F.R. § 50.82(a)(1)(i), (a)(4)(i).

83 Petition at 9.

84 *Id*. at 10 n.11 (quoting Synapse Report at 10).

assumptions are, in any way, unreasonable. Nor does it explain why Exelon Generation's methodology somehow yields "implausible" early retirement projections.

Ultimately, the State provides no support for any suggestion that the assumptions in the LTA that these units are at risk of premature retirement are somehow "implausible." The LTA's assumptions were based on Exelon Generation's financial assessments at the time the Application was submitted. Indeed, Exelon Generation has certified the planned shutdown of two of these plants in a regulatory filing before the NRC,[85] and has disclosed the material risk of early closure for the other two in filings before the U.S. Securities and Exchange Commission.[86] Contrary to the State's claims, the projections in the Application would be "implausible" if they *failed* to reflect the risk of early retirements. In sum, Petitioners' claims are unsupported and fail to identify a genuine dispute with the LTA on a material issue.

3. The State Has Not Identified Any Deficiency in the Level of Detail in the Financial Statements

Additionally, the State complains that the financial statements provide insufficient detail. For example, it claims that the financial statements contain only "a simple total of all revenues and costs" and do not "separately identify the costs for each of [the] operating nuclear plants."[87] The State then argues that the Commission will be unable to determine the "full cost" of operations without more granular data.[88] But these arguments are counterfactual and fail to acknowledge the relevant legal standards.

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85 *See* Byron Shutdown Notice; Dresden Shutdown Notice.

86 *See, e.g.*, Exelon Corporation, Quarterly Report (Form 10-Q) at 76 (Mar. 31, 2020), *available at* https://investors.exeloncorp.com/static-files/505a305b-0042-4260-908f-029eb6a90a52.

87 Petition at 7. The State incorrectly designated these assertions as "Confidential SUNSI." *Id*. The quantitative data in the *pro forma* financial statements is SUNSI. However, the row and column headings for that data (which the State purports to characterize) are publicly available. *See* LTA, Encls. 6 & 8.

88 Petition at 7.

First, the State's characterization of the financial statements—as containing only a "simple total" of costs and revenues—is unsupported. The financial data is broken down into three primary sections, each with dozens of separate line items and sub-headings. More specifically:

- the Projected Income Statement has 29 line items and sub-headings;[89]
- the Projected Balance Sheet has 30 line items and sub-headings;[90] and
- the Projected Statement of Cash Flows has 27 line items and sub-headings.[91]

Its argument does not support an admissible contention.[92]

Second, the State fails to identify any NRC requirement to supply more granular financial information or cross-sections of this information broken down on a per-plant or per-asset basis.[93]

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89 LTA, Encl. 6 at 1 (Net Operating Revenue; Fuel and Purchased Energy; RNF; Operating and Maintenance Expense; TOTI; EBITDA; Depreciation Expense; Total D&A; Operating EBIT; Gain/(Loss) on Disposal of Assets; Other Net; Operating (Loss) Income; Total Interest Expense; Interest Income; Interest Expense, Net; Income Before Taxes; Current Income Taxes; Deferred Taxes; Income Taxes; Income After Taxes; Earnings from Investments: Equity; Preferred Dividends; Net Income - GAAP; Minority Interests; Net Income Attributable to Membership Interests; GAAP Income/(Expense) excl. from Operating Net Income; Net Income - Operating; Shares Outstanding; EPS – Operating)

90 *Id*. (Cash and Marketable Securities; Restricted Cash; Net Accounts Receivable; Other Current Assets; Total Current Assets; Net PP&E; Deferred Tax Asset; Goodwill; Regulatory Assets; Investments: Equity Method; Investments: Cost Method; Decommissioning Trust Fund; Long-Term Notes Receivable; Pension Asset; Other Non-Current Assets; Total Assets; Notes Payable; Accounts Payable; Other Current Liabilities; Total Current Liabilities; Long-Term Debt & Capital Leases; Deferred Tax Liability; Asset Retirement Obligation; OPEB; Other Non-Current Liabilities; Total Liabilities; Minority Interest; Other Equity; Total Equity; Total Liabilities & Equity).

91 *Id*. (Net Income; Depreciation Expense; Nuclear Fuel Amortization; Amortization of Regulatory Assets; Change in Asset Retirement Obligation; Earnings from Investments: Equity; AFUDC - Debt & Equity; Change in Deferred Taxes; Change in Current Assets (excl. Cash & Marketable Securities); Change in Non-Current Assets; Change in Current Liabilities; Change in Non-Current Liabilities; Other Operating; Cash Flow from Operations; Capital Expenditures; Other Investing; Cash Flow from Investing; Change in Notes Payable; Change in Long-Term Debt & Capital Leases; Change in Common Stock (Net of Treasury); Preferred Dividends; Common Dividends; Other Financing; Cash Flow from Financing; Net (Decrease) Increase In Cash and Equivalents; Cash and Equivalents at Beginning of Year; Cash and Marketable Securities at End of Year).

92 *See ISP*, CLI-20-14, 92 NRC at __ (slip op. at 18-19) (holding that a petitioner's misreading or misunderstanding of a document cannot supply the requisite support for a contention).

93 In a separate argument earlier in the Petition, the State quotes the requirement in 10 C.F.R. § 50.33(f)(4) (which does not apply here, *see supra* Part III.B.2) to provide "estimates for total annual operating costs for each of the first five years of operation *of the facility*." Petition at 5 (emphasis in original). To the extent the State's view is that the italicized phrase imposes some obligation to provide financial data on a per-facility basis for multi-unit license transfer applications, rather than collective data focused on the financial health of

Nor does any such requirement exist. As a threshold matter, the NRC's financial qualifications review focuses on the prospective licensee *entity*, not any individual facility.[94] So, to the extent the State believes that NRC financial assurance determinations are made on a per-facility basis, it has misapplied the relevant regulatory framework. Perhaps more importantly, the State's claim disregards—and directly contradicts—the NRC's *codified requirements* describing the level of detail to be supplied in satisfaction of 10 C.F.R. § 50.33(f). Specifically, the regulations specify that "summary data" is fully sufficient to comply with 10 C.F.R. § 50.33(f).[95] To the extent the State claims the LTA somehow fails to supply "summary data," it provides no explanation or support and disregards the detailed information in the financial projections. To the extent the State demands something *more* than "summary data,"[96] its argument is an impermissible challenge to these NRC regulations and therefore is beyond the scope of this proceeding.[97]

* * *

Ultimately, Proposed Contention 1 is inadmissible because the State's misunderstanding of the LTA or misapplication of NRC regulations or both do not support an admissible contention and do not raise a genuine, material dispute with the Application, as required by 10 C.F.R. § 2.309(f)(1)(iv)-(vi).[98]

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the licensee entity, it provides no corresponding support. Nor could it, because decades of NRC precedent squarely contradicts any such assertion.

94 *See generally, e.g.*, 10 C.F.R. § 50.33(f)(2) (requiring information demonstrating the "applicant" has or will have the necessary funding to cover operating costs).

95 10 C.F.R. Part 50, app. C; *see also Seabrook*, CLI-78-1, 7 NRC at 9 (noting that the financial qualifications requirements in 10 C.F.R. § 50.33(f) are "amplified" by Appendix C).

96 *See also, e.g.*, Petition at 13 (asserting "Section 50.33(f) requires full financial information" and "the best information available about the [applicant's] financial resources").

97 10 C.F.R. § 2.335; *Seabrook*, CLI-12-5, 75 NRC at 315 ("any contention calling for requirements in excess of those imposed by our regulations" must be "reject[ed] as a collateral attack") (citing several other cases for the same proposition).

98 *See ISP*, CLI-20-14, 92 NRC at __ (slip op. at 18-19) (holding that a petitioner's misreading or misunderstanding of a document cannot supply the basis for a contention).

D. Proposed Contention 2 Is Inadmissible

Proposed Contention 2 states:

> Sufficient Information Concerning The Financial Condition All Of [*sic*] Nuclear Facilities With Licenses To Be Transferred Is Critical To Provide Reasonable Assurance Of Adequate Finances To Protect The Public Health And Safety In Light Of The To-Be-Formed Company's Loss Of The Corporate Diversification And Affiliation With Regulated, Monopoly Electric And Gas Distribution Companies.[99]

1. 50.33(f)(4)(ii) Is Inapplicable to This Proceeding

In its first sub-argument for Proposed Contention 2, the State claims Exelon has not satisfied its obligation to provide certain information required by 10 C.F.R. § 50.33(f)(4)(ii).[100] More specifically, Petitioner claims the LTA was required to, but did not, provide information regarding "stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur."[101] It also demands a hearing on the financial qualifications of the "new licensee."[102] But these claims and demands are baseless because, as detailed in Section III.B.2 above, 10 C.F.R. § 50.33(f)(4) does not apply in this proceeding. The State fundamentally misunderstands the scope of the Application. This is an *indirect* license transfer proceeding. No new entity is seeking a license to construct or operate a reactor. The Spin Transaction will not result in any changes in the licensed owners or the licensed operator of the Facilities. Thus, the State's allegation—that this inapplicable regulation has not been satisfied—is immaterial to this proceeding, and thus does not satisfy the requirement in 10 C.F.R. § 2.309(f)(1)(iv).

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99 Petition at 11.

100 *Id*. at 12.

101 *Id*. (quoting 10 C.F.R. § 50.33(f)(4)(ii)).

102 *Id*.

The same is true of the State's other assertions in this subsection. For example, the State notes that the "new corporate owner" (*i.e.*, HoldCo) would be a less diverse entity (in terms of the scope of its business operations) than Exelon Generation's current parent, Exelon Corporation.[103] And the State expresses its concern that HoldCo may not be "investment grade," and demands a hearing "after the holdco [sic] is formed" to determine whether it will be.[104] But, contrary to the State's apparent belief, the LTA does not—nor is it required to—assert that HoldCo will be investment grade. More broadly, the State fails to demonstrate why its comments about *HoldCo* are in any way material to the Staff's review of the financial qualifications of *SpinCo*—which is Exelon Generation with a new name. The Application does not—in any way—rely on HoldCo (or its credit rating) to demonstrate compliance with the NRC's financial assurance requirements.

As detailed in the LTA, these requirements are satisfied by the robust financial projections for SpinCo (*i.e.*, the renamed Exelon Generation), *not* HoldCo.[105] Exelon Generation has long independently maintained its own investment grade rating and, following the Spin Transaction, SpinCo, not the holding company, anticipates maintaining an investment grade

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103 The State also makes a brief, unexplained comment suggesting the post-Spin organization will "lose" operational support from Exelon Business Services. Petition at 13. But the State fails to elaborate on this argument, and thus it fails to support an admissible contention. And, in any event, Exelon Generation has demonstrated that the State's claim has no basis. *See* Exelon's Answer Opposing Petition of EDF Inc. for Leave to Intervene and Request for a Hearing § III.D. (July 12, 2021) (ML21193A365) ("Exelon Answer to EDF Petition") (explaining why this baseless suggestion that business services would abruptly end is counterfactual and disregards relevant information in the LTA). Exelon incorporates that discussion by reference as if fully republished here.

104 Petition at 14. *See also id*. at 17 ("The Commission should require actual investment grade certification *after the new company is established* but before approving the license transfer in order to determine that the to-be-formed company will maintain the capital and meet the financial metrics necessary to assure the continued safe operation." (emphasis in original)). As a practical matter, what the State demands is simply not possible. A credit rating agency cannot "certify" the bond rating of a new entity before it is *actually* capitalized, *e.g.*, through the transfer of assets contemplated in the Spin Transaction.

105 LTA, Encl. 1 at 9-11. *See also id.*, Encl. 1 at 11-12 (explaining that financial assurance requirements for the Subsidiary Owner LLCs are satisfied by the financial projections for those entities in conjunction with financial support agreements from SpinCo, but not relying on HoldCo for any required demonstration).

rating and will continue to underwrite its own business operations going forward. The State's various assertions regarding HoldCo's finances simply do not raise a material issue.

Likewise, to the extent the State speculates that SpinCo fails to meet the NRC's financial assurance requirements because it will no longer have access to *subsidies* from Exelon Corporation's regulated utility subsidiaries,[106] that claim is baseless for at least two reasons. First, the State fails to identify any alleged historical "subsidies," much less articulate some specific deficiency in the financial projections caused by the lack of such "subsidies," leaving its claim conspicuously devoid of support. And second, as noted in Exelon's Answer to ELPC's hearing request, the "subsidies" imagined by the State simply do not exist—and, in fact, would be illegal if they did.[107] Nothing in this unsupported argument raises a genuine dispute with the LTA.

The State makes various other claims that, even if interpreted (notwithstanding the State's erroneous conflation of the entities) as challenges to SpinCo's financial qualifications (rather than HoldCo's), still would fail to identify a material issue. For example, the State fails to explain why the "diversification" of a licensee's business operations is material to a financial qualifications finding. The NRC has repeatedly found that *single-purpose* entities can be financially qualified to hold NRC licenses, and has repeatedly rejected contentions claiming otherwise.[108] The State does not cite any law, regulation, or guidance suggesting that only "well-

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106 Petition at 13.

107 *See* Exelon's Answer Opposing the Petition of the Environmental Law & Policy Center for Leave to Intervene and Request for a Hearing § III.B.1.c. (July 30, 2021) (ML21211A593). It is curious that the State asserts or even suggests that Exelon Generation's affiliated rate-regulated utilities, including Commonwealth Edison Company in Illinois, are subsidizing Exelon Generation's merchant business given that such subsidies are expressly forbidden under Illinois law and the law of many other regulatory jurisdictions. *See, e.g.*, 83 Ill. Admin. Code § 452.125(b) ("No electric utility shall use delivery services to subsidize generation services.").

108 *See, e.g.*, *FirstEnergy Companies & TMI-2 Solutions, LLC* (Three Mile Island Nuclear Station Unit 2), CLI-21-02, 93 NRC __, __ (Jan. 15, 2021) (slip op. at 23-24) (rejecting a contention claiming single-purpose entities are inherently financially unsound and unqualified to hold an NRC license).

diversified" entities are qualified to hold an NRC license. Nor could it. No such requirement exists. And in any event, SpinCo will be far more diversified than a *single-purpose* entity.[109] In sum, the State's arguments here are immaterial, unsupported, and fail to dispute the LTA on a material issue.

Additionally, the State notes a background discussion in the LTA stating that "SpinCo, will be poised to engage in innovative business initiatives consistent with its focus on the competitive merchant generation business and the opportunities arising thereunder."[110] It then speculates that these "'innovative' and potentially untested market activities compound the uncertainty associated with this license transfer."[111] But the State fails to connect its speculative claim to a specific material issue in this proceeding or any particular dispute with the LTA. And if this statement is meant to suggest that SpinCo intends to imperil its ability to fulfill its NRC-related financial obligations, such baseless conjecture is untethered from fact or reason and cannot support an admissible contention.[112] The State should be supporting companies like Exelon Generation that are committed to innovation and advancing a clean energy future for Illinois and the U.S. more broadly, rather than making unsupported claims suggesting that innovation itself is a risk.

At bottom, the State's claim that the LTA fails to satisfy 10 C.F.R. § 50.33(f)(4)(ii) is immaterial, baseless, and unsupported, and fails to demonstrate a genuine dispute with the LTA on a material issue of fact or law.

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109 LTA, Encl. 1 at 5 (describing SpinCo's extensive non-nuclear generation and related customer-serving business operations).

110 Petition at 13 (quoting LTA, Encl. 1 at 4).

111 *Id*. at 13-14.

112 *Oyster Creek*, CLI-00-6, 51 NRC at 207 ("Absent [documentary] support, this agency has declined to assume that licensees will contravene our regulations.").

2. The State Has Not Identified Any Deficiency Related to the Sensitivity Analysis Included with the Financial Projections

As noted in the LTA, in addition to the "base case" *pro forma* financial projections, "the Applicants have also provided a sensitivity analysis that assumes a 10% reduction in the market prices for energy and capacity for the nuclear generating units."[113] The State criticizes this sensitivity analysis for failing to "apply a reduction in market prices to all generation revenues."[114] The State also notes that energy prices fell more than 10% from 2019 to 2020, largely due to lower demand from commercial customers related to COVID-19, and it cites the results of a PJM auction showing lower energy prices in the future.[115] But these claims fail to demonstrate a genuine dispute with the LTA on a material issue of fact or law for several reasons.

First, the LTA explains that, "under both the expected scenario *and* the sensitivity analysis, the projected revenues from sales of energy and capacity from the Facilities (the nuclear units) *alone*" are sufficient to cover operating costs.[116] Simply put, the nuclear units do not need to rely on revenue from SpinCo's other revenue-generating activities to demonstrate reasonable assurance. The State *does not dispute* this fact—*i.e.*, that the nuclear units can cover their own costs, even under the 10% "stress case," without *any* financial support from SpinCo's non-nuclear business activities. Nevertheless, the State performed its own sensitivity analysis assuming a 10% reduction in revenue from those *other* activities.[117] But it is unclear (and the State offers no explanation) why or how that analysis provides any relevant information that

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113 LTA, Encl. 1 at 10.

114 Petition at 16-17.

115 *Id*. at 15-16.

116 LTA, Encl. 1 at 10.

117 Petition at 15 (noting analysis of "the effect of a 10% reduction in Exelon Generation's total revenues as opposed to a 10% reduction for nuclear generating units only").

would be material to the NRC Staff's review, given that the LTA relies on revenues from the nuclear units alone to provide reasonable assurance of an adequate source of funds to meet the anticipated costs of the Facilities, whereas revenues from SpinCo's non-nuclear business activities may provide *additional* assurance, beyond that required by the regulations. At bottom, the State's alternative analysis fails to identify any material dispute with the LTA, as required by 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

Second, the State's discussion of energy prices (*e.g.*, noting that energy and capacity prices in 2020 were approximately 20% "lower" compared to 2019, and noting the results of a previous PJM auction pursuant to which prices will "drop" 64.7% on June 1, 2022) fails to identify a genuine dispute with Exelon's sensitivity analysis. That is because the "base case" financial projections in the LTA *already account* for historical pricing information and forward-looking projections: as stated in the notes to the projected financial statements, "[m]arket revenues for 2022 through 2025 were calculated using forward prices as of December 31, 2020."[118] The State fails to engage with the projected market revenue figures in the LTA, much less explain how they are somehow inaccurate or implausible such that a higher reduction percentage must be used in the sensitivity analysis.

Third, Exelon's use of a 10% reduction in the market prices for energy and capacity to further stress these market-based projections (which already account for the historical and projected energy price fluctuations referenced by the State) is fully consistent with sensitivity analyses performed by the NRC in past license transfer proceedings.[119] The State offers no

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[118] LTA, Encl. 8 at 21 n.3.

[119] *See, e.g.*, Letter from N. S. Morgan, NRC, to M. G. Korsnick and B. P. Wright, Constellation Energy Nuclear Group, "R.E. Ginna Nuclear Power Plant – Order Approving Direct Transfer of Renewed Operating License and Conforming License Amendment (TAC No. MF2588)," Encl. 3 (Safety Evaluation Report) at 13 (Mar. 25, 2014) (ADAMS Accession No. ML14106A119).

explanation as to why conducting the same type of analysis here, fully consistent with past agency practice, somehow would now be inadequate.

Ultimately, the State's claims regarding the sensitivity analysis fail to supply an adequate basis for Proposed Contention 2.[120]

3. Borrowed Comments from a State Regulatory Proceeding Fail to Identify Any Deficiency In the LTA

As explained in the LTA, Exelon is seeking NRC consent to replace the existing financial support arrangements for the Subsidiary Owner LLCs (*i.e.*, the Exelon Generation/SpinCo subsidiaries with direct ownership interests in Calvert Cliffs, NMP, Ginna, and FitzPatrick) with updated support arrangements.[121] In its Petition, the State points to comments that EDF, Inc. filed in a state regulatory proceeding noting that (1) the overall value of the updated support arrangements would be less than the existing arrangements provide, and (2) the updated support would be plant-specific rather than collective.[122] The State then demands a hearing to "investigate" these changes.[123] But, as Exelon demonstrated in response to EDF's hearing request in this proceeding, these assertions do not identify an admissible contention.[124]

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120 The State also repeats its argument that HoldCo should be required to prove its investment grade rating "after" it is formed but "before" the transfer is approved. Petition at 17. As explained in Section III.D.1, this demand is immaterial to the proceeding.

121 LTA, Encl. 1 at 11.

122 Petition at 17-18.

123 Petition at 19. The State also claims it is "unclear" whether any other plants have support agreements or parent guarantees. *Id*. at 17. To the extent it argues a hearing is needed to make this determination, its argument lacks an appropriate basis because such information is provided in the individual plant licenses, which the State can review. *Seabrook*, CLI-12-5, 75 NRC at 312 (noting a petitioner's "ironclad obligation" to review relevant documents thoroughly).

124 *See* Exelon Answer to EDF Petition § III.C. Exelon incorporates that discussion by reference as if fully republished here. *See also* Letter from D. Saia, Counsel for Exelon Generation and Exelon Corporation, to Hon. M. Phillips, Secretary to the N.Y. Pub. Serv. Comm., Case 21-E-0130 (July 23, 2021), *available at* https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={28B3F0CC-EE7C-4BFB-B973-71BBC6A5C28C}; Responsive Comments of Joint Petitioners to Clarify and Correct Record, Case 21-E-0130 (July 26, 2021), *available at* https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={98CBAF6D-97A5-4041-9AE9-A16B7CBA864E}.

In sum, the State appears to claim that *any* amount of financial support that is lower than the current amount, *per se*, is dispositive to a "reasonable assurance" finding in a license transfer proceeding.[125] But it provides no support for that extraordinary claim. Moreover, to the extent the State speculates that the amounts of the updated arrangements may be insufficient, it provides no explanation, and no factual or expert support for its conclusory claim. As explained in the LTA, the new support agreements, the amounts of which were calculated pursuant to NRC guidance based on updated financial information, would be "sufficient to cover the greater of (1) negative net income over the five-year period or (2) estimated Fixed O&M costs that might be associated with simultaneous six-month shutdowns of all units owned by a Subsidiary Owner LLC."[126] The State does not even engage with those amounts, much less offer any explanation as to why or how they allegedly are insufficient to satisfy NRC requirements.[127] As the Commission has long held, baseless claims like this are not sufficient to support an admissible contention.[128]

The State further claims that "[a] hearing is necessary to determine the status of EDF, Inc.'s interest in the nuclear facilities [and] the actual ownership structure of the to-be-formed entity."[129] But as the State squarely acknowledges, "the Application assumes that EDF, Inc. will no longer be an owner by the time the [Spin Transaction] is finalized."[130] The LTA defines the

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125 Petition at 19.

126 LTA, Encl. 1 at 11.

127 *See also, e.g.*, Exelon Answer to EDF Petition at 17 ("Petitioner offers no support for any claim that these calculations are mathematically incorrect; no explanation as to what legal or regulatory provision purportedly requires support beyond $372 million in the aggregate, as calculated per NRC guidance; and no support for its suggestion that a reduction from current support amounts, *per se*, renders the LTA somehow inadequate.").

128 *Entergy Nuclear Generation Co & Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-15, 71 NRC 479, 482 (2010) (citing Zion, CLI-99-4, 49 NRC at 194).

129 Petition at 18.

130 *Id*.

scope of the requested approval.[131] To the extent the State reads the LTA to request approval to implement some other "ownership structure," it has misread the LTA and otherwise fails to support the admissibility of a contention.[132] The State also claims there are outstanding "questions about who will ultimately be the new owner of Exelon Generation."[133] But that is plainly incorrect. The Application specifies that HoldCo "will become the parent company of Exelon Generation."[134]

Finally, the State notes that the proposed support agreements "would be limited to costs associated with ongoing operations and not cover unanticipated costs associated with decommissioning or long term spent fuel storage."[135] But the State fails to identify any allegedly unmet requirement. Indeed, it fundamentally misapprehends the purpose of the support agreements. In conjunction with projected revenues from sales of energy, capacity, and zero-emission credits, these agreements demonstrate the financial qualifications of the Subsidiary Owner LLCs to cover operating costs for FitzPatrick, NMP, Ginna, and Calvert Cliffs, in satisfaction of 10 C.F.R. § 50.33(f)(2).[136] Requirements associated with "decommissioning" and "spent fuel storage" costs are found elsewhere in NRC regulations. Yet, the State fails to identify, acknowledge, or engage with any of those requirements, much less demonstrate that they somehow remain unfulfilled here or require the provision of further financial support.

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131 *See also* Exelon Answer to EDF Petition § III.B. Exelon incorporates that discussion by reference here.

132 *ISP*, CLI-20-14, 92 NRC at __ (slip op. at 18-19); *see also Seabrook*, CLI-12-5, 75 NRC at 312 (noting a petitioner's "ironclad obligation" to review application materials thoroughly) (citation omitted); *Ga. Tech.*, LBP-95-6, 41 NRC at 300 (holding that a petitioner's "imprecise reading" of a document "cannot serve to generate an issue suitable for litigation").

133 Petition at 18.

134 LTA, Encl. 1 at 3.

135 Petition at 18-19.

136 LTA, Encl. 1 at 11-12.

Ultimately, neither the State's repetition of EDF's comments nor its confusion regarding the NRC's financial assurance framework supply a basis for Proposed Contention 2.[137]

E. Proposed Contention 3 Is Inadmissible

Proposed Contention 3 states:

> The Commission Should Require A Hearing And Full Funding Of Decommissioning Trusts Because The Admitted Decommissioning Shortfall Threatens The Proper Decommissioning Of Eight Nuclear Power Facilities And Threatens The Health And Safety Of Illinoisans.[138]

In its final contention, the State raises various claims related to decommissioning funding. However, these arguments fail to raise an admissible contention because they disregard or misinterpret the relevant information in the LTA that directly contradicts the State's claims.

First, while the State notes Exelon's observation that the decommissioning trust fund balances for Byron Units 1 and 2 as of December 30, 2020, are insufficient, on their own, to provide decommissioning funding assurance under the early shutdown scenario contemplated in the LTA, it fails to account for Exelon Generation's plans to address this issue in accordance with NRC regulatory requirements.[139] Specifically, the State expresses its concern that the transfer might occur *before* SpinCo obtains a surety bond to cover any such shortfall. But the State disregards the directly-relevant information in the LTA: "[i]f these shortfalls remain as of the *earlier* of the date the Spin Transaction closes or the permanent end of Byron Units 1 and 2 operations, then in conjunction with the Spin Transaction, SpinCo plans to provide surety bonds in the full amount(s) of the remaining shortfall(s) that, when combined with the

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137 The State also asserts that the "to-be-formed company" (*i.e.*, HoldCo) should be required to prove its ability to cover "estimated construction costs and related fuel cycle costs." Petition at 19. But HoldCo is not requesting a construction permit, so the State's demand is baseless and immaterial.

138 Petition at 20.

139 *Id*. (citing LTA, Encl. 1 at 14).

decommissioning trust funds, will provide the required decommissioning funding assurance."[140] In other words, contrary to the State's speculation, SpinCo will provide any necessary surety bond before the transfer occurs.[141]

The State appears to raise a similar claim as to Braidwood and LaSalle, asserting that the Decommissioning Funding Report shows a shortfall and arguing the transfer should not be approved until the decommissioning trusts are fully funded and a corresponding financial instrument is obtained.[142] But, as noted in the LTA, while Exelon Generation has not yet decided to shutdown Braidwood and LaSalle, absent market reforms or legislative action that would enable these units to realize the value of their zero-carbon, reliable baseload generation, these facilities remain at risk of premature retirement; and if it reaches such a decision while the LTA remains pending, Exelon will *update* the LTA accordingly,[143] including "address[ing] any decommissioning funding shortfall(s) by evaluating the alternate funding mechanisms allowed by 10 CFR 50.75(e) and guidance provided in Regulatory Guide 1.159, 'Assuring Availability of Funds for Decommissioning Nuclear Reactors,' Revision 2."[144] In other words, the LTA:

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140 LTA, Encl. 1 at 12 (emphasis added).

141 Moreover, the NRC's regulations do not require a shortfall to be covered *immediately* upon announcement of an early retirement. 10 C.F.R. § 50.82(c) ("For a facility that has permanently ceased operation before the expiration of its license, the collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each licensee."). Thus, the LTA's commitment to immediately cover the shortfall *exceeds* the applicable NRC requirement.

142 Petition at 21. As a factual matter, the State mischaracterizes the Decommissioning Funding Report. It shows that the decommissioning trusts for Braidwood and LaSalle would be fully sufficient, standing alone, to fund all decommissioning obligations under the scenario reflected in the Report (*i.e.*, continued operation until the end of their respective license terms). However, as noted in the LTA (*id*., Encl. 1 at 13-14), if those scenarios changed such that Braidwood and LaSalle shutdown before the end of their respective licensed operating lives, potential assumed decommissioning funding shortfalls may exist for certain units based on the assumed shutdown date reflected in the *alternative* decommissioning scenarios in LTA (*id*., Encl. 10). As further explained in the LTA (*id*., Encl. 1 at 14), if those alternative scenarios came to fruition, Exelon Generation (renamed as SpinCo) "would address any shortfall(s) by evaluating the alternate funding mechanisms allowed by 10 CFR 50.75(e) and guidance provided in Regulatory Guide 1.159, 'Assuring Availability of Funds for Decommissioning Nuclear Reactors,' Revision 2."

143 LTA, Encl. 1 at 10 n.12.

144 *Id*., Encl. 1 at 13-14.

- accurately reflects the fact that Exelon Generation has not submitted a notification of permanent cessation of power operations for these plants;
- establishes that Exelon Generation may submit a notification of permanent cessation of power operations for these plants in the future; and
- commits to follow all NRC requirements *if* Exelon Generation does so for either plant and *if* the revised shutdown dates result in any decommissioning funding shortfalls for such plant.

The State identifies no regulatory requirement to obtain an alternate funding instrument *before* a permanent cessation notice is filed with the NRC. Nor does any such requirement exist.[145]

Indeed, the State's demand that speculative shortfalls be affirmatively addressed now—before a shutdown decision has even been made *and* before the facts specific to that plant can be reviewed (*e.g.*, the actual trust fund balance at the time of shutdown)—directly conflicts with the applicable NRC regulation. More specifically, 10 C.F.R. § 50.82(c) specifies that, "[f]or a facility that *has* permanently ceased operation before the expiration of its license, the collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each licensee."[146] In other words, the codified requirement anticipates that the timing and method for curing a decommissioning funding shortfall caused by an early retirement (as could be the case with Braidwood and LaSalle) will be determined *after* shutdown based on the facts *specific* to that plant. The State fails to acknowledge these requirements, much less raise a genuine dispute with the Application.[147]

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145 *See also Entergy Nuclear Operations, Inc., et al.* (Indian Point Nuclear Generating Station, Units 1, 2, & 3 & ISFSI), CLI-21-01, 93 NRC __, __ (Jan. 15, 2021) (slip op. at 50) ("The NRC's rules [] do not require a license transfer applicant to prepay for decommissioning costs at the time it submits its application.").

146 Emphasis added.

147 The State also argues that the Decommissioning Funding Report "does not mention premature retirement of Dresden, Braidwood, or LaSalle." Petition at 22. As to Dresden, that claim is demonstrably untrue; the document clearly explains that, "[f]or purposes of this report, permanent termination of operations (shutdown)

The State also cites 10 C.F.R. § 50.75(f)(3), which specifies that "[e]ach power reactor licensee shall at or about 5 years prior to the projected end of operations submit a preliminary decommissioning cost estimate which includes an up-to-date assessment of the major factors that could affect the cost to decommission."[148] The State then criticizes the alternative decommissioning funding scenarios in Enclosure 10 to the LTA for Braidwood and LaSalle because they "do not identify or assess any major factors that could affect the decommissioning cost."[149] To the extent the State is claiming that Exelon Generation has not complied with 10 C.F.R. § 50.75(f)(3), that claim is factually incorrect. As noted above, although Exelon Generation has made clear that Braidwood and LaSalle are at risk of early retirement, it has not made any decisions to shutdown Braidwood and LaSalle; Exelon Generation has merely foreshadowed the likelihood of early retirements. In addition, preliminary site-specific decommissioning costs estimates for Braidwood and LaSalle were submitted to the NRC in 2006,[150] prior to the expiration of the *original* licenses for those plants.[151]

Additionally, the State criticizes the alternative decommissioning scenarios in Enclosure 10 because the "decommissioning costs are identical to the costs reported on February

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is expected on November 30, 2021." Decommissioning Funding Report, Attachs. 10 at 1 n.(d) & 11 at 1 n.(d) (as to Units 2 and 3); *see also id*., Attach. 9 at 2 (explaining that "Dresden Unit 1 has been shutdown since October 31, 1978"). And as to Braidwood and LaSalle, the State's claim, although correct, is not surprising and identifies no defect in the LTA (or the Report) because, although Exelon has noted that these plants are at risk of early retirement in the absence of legislation or reforms, has not yet decided to shutdown Braidwood and LaSalle (*see, e.g.,* LTA, Encl. 1 at 9-10, 13-14) and 10 C.F.R. § 50.75(b) does not require submission of speculative early shutdown scenarios.

148 Petition at 21-22.

149 *Id*. at 22.

150 *See* Letter from K. Ainger, Exelon, to NRC Document Control Desk, "Site-specific Decommissioning Cost Estimates" (Dec. 18, 2006) (ML063540225).

151 *See* NRC, Power Reactor Transition from Operations to Decommissioning: Lessons Learned Report at 15 (Oct. 2016) (ML16085A029) ("every licensee that has received a license renewal should have submitted its preliminary DCE [decommissioning cost estimate] [under 10 C.F.R. § 50.75(f)(3)] within 5 years of the expiration date of the *original* license." (emphasis added)).

24, 2021,"[152]—*i.e.*, in the Decommissioning Funding Report. But the costs in both the Decommissioning Funding Report and the alternative decommissioning scenarios are based on the formula amounts calculated pursuant to 10 C.F.R. § 50.75(c), which is fully compliant with the decommissioning funding reporting requirements in 10 C.F.R. § 50.75(b). The State neither claims nor demonstrates otherwise—nor could it—and thus it has not identified any deficiency.

Finally, the State appears to claim that the LTA improperly attempts to defer consideration of decommissioning funding for the Zion ISFSI until "*after* the license transfer has already take [sic] place."[153] But the State, once again, misreads the Application. The relevant discussion notes that the decommissioning funding plan for Zion was submitted to the NRC on February 8, 2019, and will be updated again on February 8, 2022, per NRC regulations at 10 C.F.R. § 72.30(b) and (c), which require triennial updates.[154] The LTA also provides an updated trust fund balance as of December 31, 2020, showing that the value of the trust fund far exceeds the estimated decommissioning costs.[155] In other words, the Application does not seek to punt the decommissioning funding review until after the transfer has occurred. It provides all required information for that review in the Application. To the extent the State is arguing that NRC regulations should require an updated cost estimate now—contrary to the requirements of 10 C.F.R. § 72.30(b) and (c)—its argument is an impermissible collateral attack on NRC regulations and is beyond the scope of this proceeding.

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152 Petition at 22.

153 *Id*. at 20 (emphasis in original).

154 LTA, Encl. 1 at 12-13.

155 *Id*.

In sum, the State's various decommissioning-related arguments fail to identify any inadequacy in the LTA, and fail to identify any basis for an admissible contention. Accordingly, Proposed Contention 3 should be denied as inadmissible.

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As established above, none of the proposed contentions satisfy all six criteria in 10 C.F.R. § 2.309(f)(1). Accordingly, none of the proposed contentions is admissible.

IV. CONCLUSION

Because the State has failed to submit at least one admissible contention, 10 C.F.R. § 2.309(a) requires that the Commission deny the Petition.

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated at Washington, D.C.
this 6th day of August, 2021

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE 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,
(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, Unit Nos. 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)	)	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
	)	August 6, 2021

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "Exelon's Answer Opposing Petition of the State of Illinois for Leave to Intervene and Request for a Hearing" was served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty

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