

**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;	)	STN 50-456, STN 50-457,
NINE MILE POINT NUCLEAR STATION, LLC;	)	72-73, STN 50-454,
R. E. GINNA NUCLEAR POWER PLANT, LLC; and	)	STN 50-455, 72-68, 50-317,
CALVERT CLIFFS NUCLEAR POWER PLANT, LLC	)	50-318, 72-8, 50-461,
	)	72-1046, 50-10, 50-237,
(Braidwood Station, Units 1 and 2; Byron Station, Unit	)	50-249, 72-37, 50-333,
Nos. 1 and 2; Calvert Cliffs Nuclear Power Plant, Units 1	)	72-12, 50-373, 50-374,
and 2; Clinton Power Station, Unit No. 1; Dresden	)	72-70, 50-352, 50-353,
Nuclear Power Station, Units 1, 2, and 3; James A.	)	72-65, 50-220, 50-410,
FitzPatrick Nuclear Power Plant; LaSalle County Station,	)	72-1036, 50-171, 50-277,
Units 1 and 2; Limerick Generating Station, Units 1 and 2;	)	50-278, 72-29, 50-254,
Nine Mile Point Nuclear Station, Units 1 and 2; Peach	)	50-265, 72-53, 50-244,
Bottom Atomic Power Station, Units 1, 2, and 3; Quad	)	72-67, 50-272, 50-311,
Cities Nuclear Power Station, Units 1 and 2; R. E. Ginna	)	72-48, 50-289, 72-77,
Nuclear Power Plant; Salem Nuclear Generating Station,	)	50-295, 50-304, and
Unit Nos. 1 and 2; Three Mile Island Nuclear Station,	)	72-1037 -LT
Unit 1; Zion Nuclear Power Station, Units 1 and 2; and)	
Associated Independent Spent Fuel Storage Installations)	)	July 12, 2021
)	

**EXELON’S ANSWER OPPOSING PETITION OF EDF INC. FOR LEAVE TO
INTERVENE AND REQUEST FOR A HEARING**

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**EXELON’S ANSWER OPPOSING PETITION OF EDF INC. FOR LEAVE TO
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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 EDF Inc. (“Petitioner”) for Leave to Intervene and

Request for a Hearing (“Petition”) filed on June 14, 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.

Proposed Contention 1 claims that the Spin Transaction includes elements that require Petitioner’s consent and the NRC should not approve the LTA without such consents from the Petitioner, which currently is a co-owner of certain of the above-captioned Facilities. And in Proposed Contention 2, Petitioner speculates that changes to certain financial arrangements, as proposed in the LTA, may be insufficient to sustain normal operations or outages and thereby could harm those ownership interests. However, these contentions are inadmissible because they rest on a fundamental misreading of the Application. As explained below, the LTA assumes that the Spin Transaction described in the LTA would occur *after* the Petitioner has sold its interest in those Facilities. Accordingly, at the time of the Spin Transaction described in the LTA, Petitioner would not have any ownership interest in those Facilities, and as such, Proposed Contentions 1 and 2 must be rejected as inadmissible. Proposed Contention 2 also must be rejected because Petitioner provides no basis to support its claim that the financial arrangements are, in any way, insufficient under the NRC’s requirements.

Similarly, Proposed Contention 3 contains vague assertions purporting to challenge the technical and financial qualifications of Exelon. However, Petitioner fails to raise a genuine

¹ Petition of EDF Inc. for Leave to Intervene and Request for a Hearing (June 14, 2021) (ML21165A295) (“Petition”).

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 Version) (ML21057A273) (Non-Proprietary Version) (“LTA”).

dispute with the LTA because it disregards the portions of the LTA that address these issues. Thus, Proposed Contention 3 also is inadmissible.

Even if Petitioner had submitted an admissible contention—which it has not, for the reasons explained below—the Petition must be rejected because Petitioner also has not demonstrated standing. Petitioner claims standing because its property rights as a co-owner of certain of the Facilities allegedly will be harmed if the NRC approves the indirect transfer described in the LTA. But, these claims are invalid for the same reasons that Proposed Contentions 1 and 2 must be rejected: namely, the LTA assumes that Petitioner will have no ownership interests in any of the above-captioned Facilities at the time the proposed transfer occurs. Petitioner cites no other basis for standing. Accordingly, Petitioner has failed to carry its burden to demonstrate standing.

In sum, each of the proposed contentions fails to satisfy the six admissibility criteria in 10 C.F.R. § 2.309(f)(1), and Petitioner has not demonstrated standing to intervene. Accordingly, pursuant to 10 C.F.R. § 2.309(a), the Commission must deny the Petition for either or both of these reasons.

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 Exelon Corporation will transfer its 100% ownership of Exelon Generation to a newly-created subsidiary that will then be spun-off to Exelon Corporation shareholders, becoming Exelon Generation’s new ultimate parent company (“Spin Transaction”).³ As part of the Spin Transaction, Exelon Generation will remain the same

³ See *id.* (cover letter at 3).

Pennsylvania limited liability company, but will be renamed (consistent with its complete separation from Exelon Corporation).⁴ The *new name* of Exelon Generation is yet to be determined, and, therefore, is described using the generic name “SpinCo.”⁵

Specifically, Exelon Generation requested NRC approval of the following:

- The indirect transfer of Exelon Generation’s respective ownership interests in the Facilities⁶ to a newly-created holding company that will become the parent company of 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

⁴ *See id.*

⁵ *See id.* Petitioner incorrectly identifies the new “yet-to-be-formed ultimate parent company” as “SpinCo.” Petition at 9; *see also id.* at 2, 15, 17. As made clear in the LTA, however, SpinCo is Exelon Generation; the name “SpinCo” is simply a placeholder until the new corporate name for Exelon Generation is identified for use post-Spin Transaction. The newly created parent company referenced by Petitioner is referred to in the LTA as “HoldCo.”

⁶ 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 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.”

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 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 Calvert LLC with NOSAs between SpinCo and the Subsidiary Owner LLCs that contain materially the same terms as the existing NOSAs.⁷

B. Timing of the “Put” Transaction

By way of additional background, CENG indirectly owns 100% of the Constellation Subsidiary Owner LLCs. CENG is a joint venture between Exelon Generation and Petitioner. As of the date of this Answer, Exelon Generation indirectly owns 50.01% of CENG and Petitioner owns the remaining 49.99%. Exelon Generation *and* Petitioner submitted a letter to the NRC on April 24, 2020 (“Put Notice Letter”),⁸ stating that Petitioner has exercised a contractual option to sell its 49.99% interest in CENG to Exelon Generation or its subsidiaries (“Put Transaction”). Thereafter, Exelon Generation (and following the Spin Transaction, Exelon

⁷ See *id.* (cover letter at 4-5).

⁸ Letter from J. B. Fewell, Exelon Generation, and Michael Hill, EDF Inc., to NRC Document Control Desk, “Constellation Energy Nuclear Group, LLC; Notification of Change in Indirect Ownership” (Apr. 24, 2020) (ML20115E609) (“Put Notice Letter”). Although the Put Notice Letter is on Exelon Generation letterhead, it is signed by J. Bradley Fewell, Exelon Generation, and Michael Hill, EDF Inc.

Generation renamed as SpinCo) would own 100% of CENG and the Constellation Subsidiary Owner LLCs. *The LTA assumes that the Put Transaction (which does not require NRC approval)⁹ will close before the Spin Transaction occurs.¹⁰*

C. 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 On

⁹ See *id.* at 6. The parties have secured all regulatory authorizations required for the Put Transaction. The Federal Energy Regulatory Commission authorized the Put Transaction on July 30, 2020 (*Exelon Generation Company, LLC*, 172 FERC ¶ 62,055 (July 30, 2020)) and the New York Public Service Commission authorized the Put Transaction on April 15, 2021 (*Exelon Generation Company, LLC, EDF Inc., et al.*, Order Approving Transfer and Making Other Findings, Case 20-E-0371, (NY Pub. Serv. Comm., Apr. 15, 2021) (“Order Approving Put”).

¹⁰ See LTA, Encl. 1 at 6 & n.3. As noted in the Petition, all conditions precedent to closing the Put Transaction have been satisfied, except for determination of the fair market value of EDF Inc.’s interest in CENG. Petition at 5. As also noted in the Petition, the parties are currently engaged in a “baseball-style” arbitration process pursuant to which a third party will determine the fair market value of CENG. *Id.*; Order Approving Put at 5. Thereafter, “the Put Transaction closing shall occur on the tenth business day after satisfaction or waiver of all conditions precedent to the closing, as specified in the Put Agreement.” Petition at 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,

May 24, 2021, the NRC Secretary issued an order extending that deadline for three weeks, until June 14, 2021.¹⁴ Petitioner filed its Petition on June 14, 2021.¹⁵ On July 6, 2021, the NRC Secretary issued an order extending the deadline for Exelon Generation to respond to the Petition to July 12, 2021.¹⁶ Exelon Generation timely files this Answer opposing the Petition according to the provisions of 10 C.F.R. § 2.309(i)(1).

The Hearing Opportunity Notice also contemplated that potential parties may need access to the Sensitive Unclassified Non-Safeguards Information (“SUNSI”)¹⁷ 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.¹⁸ Petitioner did neither and thus is not authorized to access SUNSI in this proceeding.

D. 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

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).

¹⁵ See Petition.

¹⁶ NRC Secretary Order at 2 (July 6, 2021) (unpublished) (ML21187A285).

¹⁷ SUNSI, in this context, includes any proprietary commercial information that an applicant requests to be withheld from public disclosure.

¹⁸ See Hearing Opportunity Notice at 23,440.

¹⁹ Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919 (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 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 NDT to demonstrate reasonable assurance.²⁵ Longstanding Commission precedent makes clear that the reasonable assurance standard does not require “absolute assurance”; rather the Commission requires an applicant to demonstrate by a preponderance of the evidence that it will possess the financial qualifications to own and operate nuclear facilities.²⁶ The NRC interprets “reasonable assurance” with the understanding that “some risks may be tolerated and something less than

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.* An indirect license transfer takes place when there is a transfer of “control” of the license or of a license holder (*e.g.*, as a result of a merger or acquisition at high levels within or among corporations). *See id.*

²² *See id.* at 2.

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) (“NUREG-1577”).

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).

absolute protection is required.”²⁷ As particularly relevant here, Petitioner’s “mere casting of doubt” on Exelon Generation’s financial qualifications is legally insufficient “to defeat a finding of reasonable assurance.”²⁸

The AEA requires that the NRC offer an opportunity for hearing on a license transfer.²⁹ But Subpart M of 10 C.F.R. Part 2 (10 C.F.R. §§ 2.1300 to 2.1331) authorizes the NRC to use a streamlined license transfer process with informal legislative-type hearings, rather than formal adjudicatory hearings.³⁰ Subpart M covers direct or indirect license transfers for which NRC approval is required, including those transfers that require license amendments and those that do not.³¹ Section 2.1315 codifies the Commission’s generic determination that any conforming amendment to an operating license that only reflects the license transfer action involves a “no significant hazards consideration.”³² That same regulation provides that “[a]ny challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer.”³³

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 *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-00-13, 52 NRC 23, 31 (2000) (citing *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 222 (1999)).

²⁹ AEA § 189.a(1)(A) (codified as amended at 42 U.S.C. § 2239(a)(1)(A)) (“In any proceeding under this chapter, for . . . [any] application to transfer control, . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.”).

³⁰ See Streamlined Hearing Process for NRC Approval of License Transfers; Final Rule, 63 Fed. Reg. 66,721, 66,722 (Dec. 3, 1998) (“Subpart M Rule”); see also Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2,182, 2,214 (Jan. 14, 2004) (retaining streamlined process under Subpart M for license transfers without substantive changes).

³¹ See Subpart M Rule, 63 Fed. Reg. at 66,727.

³² 10 C.F.R. § 2.1315(a).

³³ *Id.* § 2.1315(b). 10 C.F.R. § 51.22(c)(21) also categorically excludes from environmental review “[a]pprovals of direct or indirect transfers of any license issued by [the] NRC and any associated amendments of license required to reflect the approval of a direct or indirect transfer of an NRC license.” This regulation reflects the NRC’s finding that license transfers do not “individually or cumulatively have a significant effect on the human environment.” See Subpart M Rule, 63 Fed. Reg. at 66,728.

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.³⁴ 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.³⁵ The Commission’s contention admissibility requirements are “strict by design.”³⁶ 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.’”³⁷ The requirements thus reflect a “deliberate effort to prevent the major adjudicatory delays caused in the past by ill-defined or poorly-supported contentions that were admitted for hearing although ‘based on little more than speculation.’”³⁸ To warrant an adjudicatory hearing, the NRC requires proposed contentions to have “some

³⁴ *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).

³⁵ See Hearing Opportunity Notice, 86 Fed. Reg. at 23,439.

³⁶ *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

³⁷ *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).

³⁸ *Susquehanna*, CLI-15-8, 81 NRC at 504 (quoting *Oconee*, CLI-99-11, 49 NRC at 334).

reasonably specific factual or legal basis.”³⁹ The petitioner alone bears the burden to meet the standards of contention admissibility.⁴⁰

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.⁴¹ 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.⁴² Contentions that challenge NRC regulations,⁴³ seek to impose requirements stricter than those imposed by the agency,⁴⁴ or opine on how Staff should conduct its review⁴⁵ are all outside the scope of NRC adjudicatory proceedings.

A contention also must provide sufficient information to show a genuine dispute with the applicant on a material issue of law or fact.⁴⁶ 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

³⁹ *Id.* (quoting *Millstone*, CLI-03-14, 58 NRC at 213).

⁴⁰ *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).

⁴¹ 10 C.F.R. § 2.309(f)(1)(ii), (v).

⁴² *Id.* § 2.309(f)(1)(iii)-(iv); *Susquehanna*, CLI-17-4, 85 NRC at 74.

⁴³ 10 C.F.R. § 2.335(a).

⁴⁴ *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).

⁴⁵ *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.”).

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

required by law, the petitioner must identify each failure, and provide supporting reasons for the petitioner's belief."⁴⁷ A petitioner's "misreading" or "misinterpret[ation]" of a document cannot supply the requisite "factual support" for an admissible contention.⁴⁸

Petitioners may not incorporate by reference voluminous documents or affidavits with conclusory assertions to support a contention. As the Commission explained:

Commission practice is clear that a petitioner may not simply incorporate massive documents by reference as the basis for or as a statement of his contentions. . . . Such a wholesale incorporation by reference does not serve the purposes of a pleading. . . . The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may be in a haystack.⁴⁹

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. Proposed Contention 1 Is Inadmissible

Proposed Contention 1 states:

The proposed Spin Transaction requires the consent of EDF Inc. as long as EDF Inc. holds its ownership interest in CENG. Because EDF Inc. has not provided any such consent, in accordance with 10 C.F.R. § 50.80(b)(2) the proposed license transfer approval should not be granted or made effective until after the closing the Put Transaction.⁵¹

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

⁴⁸ *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 (2012) (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").

⁴⁹ *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-3, 29 NRC 234, 240-41 (1989) (citations omitted).

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)).

⁵¹ Petition at 9.

Consistent with Petitioner’s and Exelon Generation’s April 24, 2020 Put Notice Letter to the NRC, Petitioner correctly asserts that the LTA and its financial qualification projections are “premised upon sole ownership of CENG by SpinCo following both the Put Transaction and the Spin Transaction.”⁵² And Petitioner acknowledges Exelon Generation’s explicit statement in the LTA that the Spin Transaction described therein (for which Exelon Generation is seeking NRC approval to indirectly transfer the Facility licenses) is one in which “the Put [Transaction] closes before the Spin Transaction.”⁵³ Nevertheless, Petitioner contends that the NRC should not approve the indirect transfer unless Petitioner also consents “as long as [Petitioner] holds its ownership interest in CENG.”⁵⁴ But this proposed contention does not identify a genuine dispute with the Application, which assumes the Put Transaction closes first and seeks to transfer the licenses *after* the Put Transaction closes—*i.e.*, after Petitioner *no longer has* any ownership interest in any of the Facilities.⁵⁵ Accordingly, as further explained below, Proposed Contention 1 is inadmissible because it is based on Petitioner’s misreading or misunderstanding of the LTA, and therefore is unsupported and fails to raise a genuine dispute with the Application. The core of Proposed Contention 1 is Petitioner’s mistaken belief that the NRC Staff is being asked to approve a transfer that might occur before the Put Transaction closes, when Petitioner is still a partial owner of the Constellation Subsidiary Owner LLCs. On the contrary, the LTA expressly states that “[t]he Application assumes that the Put [Transaction] will close before the Spin Transaction, and the Staff should assume the Put [Transaction] closes

⁵² *Id.* at 10. Exelon Generation set forth this structure in the LTA because it is consistent with Petitioner’s sale of its ownership interest in CENG to Exelon Generation, as Petitioner and Exelon Generation explained in the Put Notice Letter.

⁵³ *Id.* at 3 n.7.

⁵⁴ *Id.* at 9.

⁵⁵ *See supra* Section II.B.

before the Spin Transaction.”⁵⁶ That is, the LTA seeks NRC review of the Spin Transaction assuming all of Petitioner’s rights and interests in the CENG plants (*i.e.*, Calvert Cliffs, NMP, and Ginna) have been transferred to Exelon Generation or its subsidiaries (because the Put Transaction will have closed already). Once the Put has closed, Petitioner will not have any remaining ownership interests in CENG or any of the Constellation Subsidiary Owner LLCs. Petitioner tries to sidestep this explicit caveat in the LTA by (1) complaining that it does not “expressly condition” the transfer on this sequence of events and (2) stating that there can be “no guarantee” that the Put Transaction will close before the Spin Transaction.⁵⁷ But these statements disregard the plain text of the LTA, which *defines the scope of the requested approval*. Petitioner fails to explain why anything more is required.

Furthermore, instead of focusing on the LTA, Petitioner points to various statements in other fora for the proposition that Exelon *could* choose, at some later point, to seek approval to close the Spin Transaction before the Put Transaction closes. For example, Petitioner claims that Exelon Generation has “equivocated in public regulatory filings whether the Put Transaction must be completed prior to the Spin Transaction” and has, in private correspondence with Petitioner “expressly stated that the Spin Transaction will proceed whether or not the Put Transaction closes first.”⁵⁸ Petitioner relies on these statements to assert that its consent is needed here because “there can be no certainty as to when, or if, the Put Transaction will close.”⁵⁹ But these external statements do not alter the specific approval requested in the LTA.

⁵⁶ LTA Encl. 1 at 6 n.3.

⁵⁷ Petition at 3.

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 10, 12-13. *See also* Petition at 11-12 (pointing specifically to its alleged rights under the CENG Operating Agreement to prevent without EDF’s consent the termination of the Exelon Corporation Support Agreement, Exelon Corporation Guarantee, and CENG cash pool arrangement and its associated Master Demand notes, all of which Exelon has asked for NRC to consent to terminate in the LTA). However, as made clear in the LTA, Exelon’s request to terminate those arrangements is premised on Petitioner no longer holding

To be clear, Exelon Generation *could* seek, at some future time, to supplement the LTA to request approval for a modified form of the Spin Transaction in which the Put Transaction has not closed. But the *actual* LTA at issue in this proceeding makes no such request. Thus, Petitioner’s claims regarding speculative future scenarios fail to raise a genuine dispute with the LTA.

Ultimately, Proposed Contention 1 is inadmissible because it fails to demonstrate that the contention is material to the findings the NRC must make, as required by 10 C.F.R. § 2.309(f)(1)(iv), and because Petitioner’s misreading or misunderstanding of the LTA cannot support an admissible contention and fails to raise a genuine dispute with the Application, as required by 10 C.F.R. § 2.309(f)(1)(v)-(vi).⁶⁰

C. Proposed Contention 2 Is Inadmissible

Proposed Contention 2 states:

The Spin Transaction would harm EDF and potentially reduce financial support for nuclear operations and decommissioning.

More specifically, Petitioner challenges Exelon Generation’s request to replace the existing support agreement and parent guarantee issued by Exelon Corporation, providing support to the Constellation Subsidiary Owner LLCs, with updated support agreements to be issued by Exelon Generation.⁶¹ Petitioner notes that the aggregate amount of support provided to the Constellation

an ownership interest in CENG and the Constellation Subsidiary Owner LLCs. LTA, Encl. 1 at 6 (“Exelon Generation’s 100% indirect ownership interest in CENG . . . and the Constellation Subsidiary Owner LLCs eliminates the need for the CENG Board of Directors (currently comprised of five Directors appointed by CN [Constellation Nuclear, LLC, an Exelon Generation subsidiary] and five Directors appointed by EDF Inc.) and the Fourth Amended and Restated Operating Agreement between CENG and CN, CEN [CE Nuclear, LLC, also an Exelon Generation subsidiary], and EDF Inc. as Members of CENG. Accordingly, Exelon Generation and the Constellation Subsidiary Owner LLCs plan to terminate this unnecessary agreement and dissolve the CENG Board Applicants also seek the NRC’s written consent to eliminate the CENG cash pooling arrangement.”)).

⁶⁰ See *Interim Storage Partners*, CLI-20-14, 92 NRC __, __ (slip op. at 18-19) (holding that a petitioner’s misreading or misunderstanding of a document cannot supply the requisite support for a contention).

⁶¹ Petition at 15.

Subsidiary Owner LLCs will decrease from \$410 million, under the existing financial support arrangements, to \$372 million, under the updated support agreements.⁶² Petitioner seems to argue that a reduction, *per se*, renders the LTA somehow inadequate. Petitioner further claims (without factual or legal support) that the updated agreements should be disallowed because SpinCo allegedly would be a “less creditworthy counterparty,” and because this allegedly could cause harm to Petitioner’s parent, EDF International S.A.S. (which also is required to provide financial support to the Constellation Subsidiary Owner LLCs until the Put Transaction closes).⁶³ Ultimately, this proposed contention is inadmissible because Petitioner fails to identify any legal or regulatory basis for its assertions, fails to provide the requisite support for a contention, and fails to demonstrate a genuine dispute with the LTA on a material issue of law or fact.

As a preliminary matter, as explained above, the LTA only seeks approval to transfer the licenses and to replace the existing financial support terms assuming the Put Transaction has closed—*i.e.*, after Petitioner and its parent *no longer have* any ownership interest in any of the Facilities.⁶⁴ Thus, to the extent Proposed Contention 2 alleges some speculative harm to Petitioner or its parent from the NRC’s approval of the LTA, it is baseless because it relies on a mistaken reading of the LTA.

Petitioner also claims in Proposed Contention 2 that the Spin Transaction as described in the LTA “would diminish financial support for the CENG Nuclear Plants” by reducing the total amount of the financial support, as compared to what is currently required, and by imposing plant-specific caps.⁶⁵ But Petitioner fails to provide any explanation or support for its suggestion

⁶² *Id.* at 14-15.

⁶³ *Id.* at 16.

⁶⁴ *See supra* Sections II.B. and III.B.

⁶⁵ Petition at 15.

that the updated amounts are somehow inadequate to satisfy NRC requirements. In fact, Petitioner does not acknowledge, much less challenge, the regulatory basis for the updated amounts. As Exelon Generation explains in the LTA, these amounts were calculated—fully consistent with NRC guidance⁶⁶—based on “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.”⁶⁷ 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. Simply put, Petitioner offers no basis for its conclusory claims. As the Commission has long held, mere speculation, unsupported, is not sufficient to support an admissible contention.⁶⁸

Additionally, Petitioner states that “the replacement agreements would be with a less creditworthy counterparty.”⁶⁹ Initially, it must be clarified again that Petitioner incorrectly uses the term SpinCo to refer to Exelon Generation’s parent post-Spin Transaction⁷⁰ and argues that SpinCo-backed agreements are insufficient. The Petitioner has confused the legal entities. For purposes of the LTA, SpinCo *is* Exelon Generation; Exelon Generation will continue as an existing legal entity with a new name, and Exelon Generation will provide the support

⁶⁶ See NUREG-1577, Rev. 1, Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance § III.1.b (Dec. 13, 2001) (ML013330264) (updating prior Revision 1 issued February 1999).

⁶⁷ LTA at 11.

⁶⁸ *Entergy Nuclear Generation Co. and 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).

⁶⁹ Petition at 15-16.

⁷⁰ See *supra* note 5.

agreements post-Spin Transaction.⁷¹ Not only does the Petitioner confuse the entity names, its objection to the transfer of the support agreements is surprising given that Petitioner has been on notice of that transfer for many months and has raised no objections. In the Put Notice Letter submitted to the NRC more than a year ago, Exelon Generation *and* Petitioner jointly informed the NRC of Exelon Generation’s intention “to separately provide at a later date a written submission to the NRC seeking consent to transfer the support obligation from Exelon Corporation to [Exelon Generation].”⁷² As established in the LTA—and as continues to be the case—Exelon Generation anticipates an investment grade credit rating and continued access to ample liquidity.⁷³ Petitioner’s focus on Exelon Generation’s parent is, thus, misplaced and provides an independent ground to reject this contention.

Moreover, Petitioner does not identify any regulatory requirement that a particular credit rating must be sustained, so long as the rating itself remains investment grade. The reason is simple. There is none. Exelon Generation states that it is maintaining “an open dialogue with the credit rating agencies related to the Spin Transaction” and fully anticipates that SpinCo will continue to have (as Exelon Generation currently does) “investment grade credit ratings” and “access to ample liquidity, demonstrations of financial wherewithal sufficient to approve the indirect transfer requested herein.”⁷⁴ That has not changed.

Indeed, the LTA includes strong support for Exelon Generation retaining its investment grade rating. To the extent Petitioner implies that NRC regulations require a certain credit rating or something *beyond* an investment grade rating, it identifies no basis for this claim—because no

⁷¹ Exelon Generation will also be renamed upon close of the separation from Exelon Corp. LTA, Encl. 1 at 3.

⁷² Put Notice Letter, Attach. at 10 n.23.

⁷³ LTA, Encl. 1 at 9.

⁷⁴ *Id.*

such requirement exists. Accordingly, Petitioner’s claim fails to raise a genuine dispute with the Application, and the claim lacks the requisite support for an admissible contention.

In sum, Proposed Contention 2 lacks an adequate basis, lacks factual and legal support, and fails to dispute the substance of the LTA. Accordingly, it must be rejected for failing to satisfy the requirements in 10 C.F.R. §§ 2.309(f)(1)(ii), (v) and (vi).

D. Proposed Contention 3 Is Inadmissible

Proposed Contention 3 states:

The Application contains insufficient information regarding the Spin Transaction’s technical and financial implications.

In its very brief discussion of this contention (barely over 1 page), Petitioner describes its claim only in the most cursory of manners. First, Petitioner speculates (without explanation or support) that the “loss” of support services provided by Exelon Business Services Company after the transfer somehow might impact SpinCo’s “technical qualifications.”⁷⁵ And second, Petitioner claims (contrary to the plain text of the LTA) that the Application “fails to address the continuation of the existing cash pooling arrangement.”⁷⁶ As detailed below, neither of Petitioner’s vague and unsupported claims gives rise to an admissible contention.⁷⁷

First, with respect to SpinCo’s technical qualifications, Petitioner claims that the LTA provides “insufficient detail on the continuity of support services, such as information technology, cybersecurity, offsite emergency response capabilities, or physical security support,”

⁷⁵ Petition at 18.

⁷⁶ *Id.*

⁷⁷ To the extent Petitioner believes mere notice pleading is sufficient to constitute an admissible contention in an NRC proceeding, its belief is incorrect. The NRC’s requirements for contention admissibility “require petitioners to plead specific grievances, not simply to provide general ‘notice pleadings.’” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-03-17, 58 NRC 419, 428 (2003).

based on the alleged loss of support from Exelon Business Services Company.⁷⁸ But Petitioner offers no support for its dubious speculation that these services would abruptly end when the Spin Transaction closes; and in fact, the services will not end.⁷⁹ Petitioner also fails to identify any regulatory requirement to include “detailed” information regarding corporate and administrative support services in a license transfer application. Nor does any such requirement exist. Likewise, Petitioner fails to explain what level of “detail” purportedly would satisfy that unidentified requirement, or how, specifically, the LTA somehow fails to satisfy that unspecified standard. In other words, Proposed Contention 3 lacks an adequate basis, lacks a demonstration of materiality, and is supported by nothing beyond Petitioner’s own conclusory statements, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(ii), (iv), and (v).

Furthermore, this argument regarding technical qualifications fails to engage with the relevant portions of the LTA, much less raise a genuine and material dispute therewith. The Application provides ample information on the continuity of operations following the Spin Transaction. In particular, the LTA is clear that “SpinCo (the re-named Exelon Generation) will remain the licensed operator of the Facilities it currently operates,” which includes the CENG plants.⁸⁰ The LTA also explains that SpinCo “will employ Exelon Generation’s employees working at the Facilities just before the Spin Transaction. As a result, the proposed transaction will have no significant impact on staffing, management, or organization of the Facilities” and therefore will have no impact on the technical qualifications of SpinCo to operate the relevant

⁷⁸ Petition at 18.

⁷⁹ As explained in the Notes to the *pro formas*, “‘Operating and Maintenance Expenses’ in the Projected Income Statement include direct and allocated overhead, corporate governance, and oversight expenses for the nuclear fleet” (LTA, Encl. 6 at 3 ¶ 5) and “‘O&M Nuclear Direct Overhead,’ ‘O&M Nuclear Allocated,’ and ‘ExGen Overhead’ includes direct site costs that are managed by Exelon Generation’s corporate functions (e.g. insurance) and corporate governance and oversight expenses” (LTA, Encl. 8 at 21 ¶ 9).

⁸⁰ LTA, Encl. 1 at 8.

Facilities.⁸¹ Petitioner also fails to acknowledge or dispute the terms of the proposed NOSAs⁸² between SpinCo and the Constellation Subsidiary Owner LLCs, which contain “materially the same terms as the existing NOSAs,”⁸³ and clearly specify that SpinCo will “provide corporate and administrative services necessary for the operation of the Facilit[ies] as the NRC licensed operator”⁸⁴ and the notes to the *pro formas* which make clear that the financial statements include costs for corporate overhead, governance, and oversight.⁸⁵ Petitioner’s mere speculation about how and whether SpinCo will provide the administrative functions currently provided by the Exelon Business Service Company, like information technology, is not credible nor is it sufficient to support an admissible contention. Because Proposed Contention 3 disregards the relevant LTA content, it also must be rejected for failure to raise a genuine dispute, as required by 10 C.F.R. § 2.309(f)(1)(vi).

Similarly, Petitioner’s financial qualifications argument consists of only one paragraph suggesting that the LTA is insufficient, *per se*, because it “fails to *address* the continuation of the existing cash pooling arrangement.”⁸⁶ Petitioner characterizes this as a “discrepancy” between the LTA, the NRC’s 2009 approval of a previous license transfer (which imposed the requirement for a “cash pooling” arrangement among the CENG Subsidiary Owner LLCs), and the Put Notice Letter (in which Exelon Generation noted that the cash pooling arrangements would survive the closing of the Put Transaction).⁸⁷

⁸¹ *Id.*

⁸² *Id.*, Encl. 2.

⁸³ *Id.* (cover letter at 5).

⁸⁴ *Id.*, Encl. 2 at 5.

⁸⁵ *See supra* note 79.

⁸⁶ Petition at 18 (emphasis added).

⁸⁷ *Id.* at 18-19.

Notwithstanding Petitioner’s baseless claims, there is no “discrepancy” in the Application. Unquestionably, the LTA “addresses” the cash pooling arrangement, explaining that the “new support agreements will *replace* the existing financial support terms,” including the cash pooling arrangement.⁸⁸ The LTA demonstrates the adequacy of these proposed measures on the grounds that the new support agreements have been calculated pursuant to NRC guidance and, thus, fully satisfy all NRC requirements.⁸⁹ Petitioner fails to engage with or dispute any of this information, and fails to explain why anything more is required.

Additionally, Petitioner fails to identify any conflict between the Put Notice Letter and the LTA. The April 2020 Put Notice Letter stated that the cash pooling arrangement would survive the closing of the Put Transaction. That remains the case here. Following the Put Transaction, and in the period expected *before* the Spin Transaction occurs, the cash pooling arrangement would remain unchanged. However, as part of the separate—and expected subsequent—Spin Transaction, Exelon Generation has requested NRC approval to update and streamline the financial support arrangements, consistent with the transfer proposed in the LTA. Petitioner identifies no regulatory basis to suggest that this renders the LTA inadequate in any way.

Overall, this argument fails to raise an admissible contention because it lacks basis and support and fails to raise a genuine dispute with the Application, as required by 10 C.F.R. § 2.309(f)(1)(ii) and (v)-(vi). Accordingly, Proposed Contention 3 should be rejected as inadmissible.

⁸⁸ LTA at 11 (emphasis added).

⁸⁹ See LTA, Encl. 1 at 9-12; LTA Encls. 6 and 8; *see also supra* Section III.C.

IV. THE PETITION MUST BE DENIED BECAUSE PETITIONER HAS NOT DEMONSTRATED STANDING

In support of its claim that it has standing to intervene, Petitioner asserts that it has a direct and substantial financial interest in Calvert Cliffs, NMP, and Ginna because of its 49.99% ownership interests in those facilities “that is threatened by and ‘fairly traceable’ to the proposed Spin Transaction.”⁹⁰ Petitioner also argues that it has an interest in “the ongoing financial qualifications [of Exelon] to ensure the safety and financial viability of” Calvert Cliffs, NMP, and Ginna “and no adverse impact on its property interests.”⁹¹ As demonstrated below, Petitioner has not established standing to intervene in this proceeding as a matter of right under 10 C.F.R. § 2.309(d) because its claims are based solely on its existing ownership interest and a misreading of the LTA. The proposed transfer described in the LTA assumes that the Put Transaction closes before the Spin Transaction such that Petitioner would *not* have an ownership interest in Calvert Cliffs, NMP, or Ginna at the time of the Spin Transaction. Petitioner provides no other basis for standing. Accordingly, the Petition must be denied irrespective of the admissibility of any of Petitioner’s proposed contentions.⁹²

A. Legal Standards For Standing

To determine whether a petitioner presents a cognizable interest to intervene in a proceeding, the Commission applies contemporaneous judicial concepts of standing.⁹³ The

⁹⁰ LTA, Encl. 1 at 7-8.

⁹¹ *Id.* at 8.

⁹² 10 C.F.R. § 2.309(a). Alternatively, if the Commission determines that Petitioner has not proffered an admissible contention—as it should for the reasons set forth in this Answer—it need not address Petitioner’s standing to intervene in this proceeding. *See Susquehanna*, CLI-15-8, 81 NRC at 503 n.19 (“Because [the petitioner’s] contentions all fall far short of our contention admissibility standards, we need not address his standing to intervene.”).

⁹³ *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-15-25, 82 NRC 389, 394 (2015) (citation omitted).

petitioner bears the burden to provide facts sufficient to establish standing.⁹⁴ As relevant here, a petitioner may satisfy that burden by demonstrating traditional standing. This requires a showing that a person or organization has suffered or might suffer a concrete and particularized injury that is: (1) fairly traceable to the challenged action; (2) likely redressable by a favorable decision; and (3) arguably within the zone of interests protected by the governing statutes—here, the AEA.⁹⁵ These criteria are known as injury-in-fact, causality, and redressability. Although a petitioner need not show that the injury flows directly from the challenged action, it must still show that the “chain of causation is plausible.”⁹⁶ Finally, a petitioner must show that “its actual or threatened injuries can be cured by some action of the tribunal.”⁹⁷

An organization seeking to intervene in its own right must satisfy the same standing requirements as an individual.⁹⁸ To address the injury requirement, an organization such as Petitioner must show that the license transfer “would constitute ‘a threat to its organizational interests.’”⁹⁹

B. Petitioner Has Not Carried Its Burden to Demonstrate Standing

Petitioner claims to have standing “because of its direct financial interest in [Calvert Cliffs, NMP, and Ginna] and the potential impact of [Exelon Generation’s] proposed Spin

⁹⁴ See *U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001) (citing *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), CLI-00-5, 51 NRC 90, 98 (2000)).

⁹⁵ *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009).

⁹⁶ *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994); see also *Crow Butte Res., Inc.* (In-Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 345 (2009).

⁹⁷ *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-01-2, 53 NRC 9, 14 (2001).

⁹⁸ *FirstEnergy Nuclear Operating Co.* (Beaver Valley Power Station, Units 1 & 2; Davis-Besse Nuclear Power Station, Unit 1; Perry Nuclear Power Plant, Unit 1), CLI-20-5, 91 NRC 214, 219 (2020) (citing *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 411 (2007)).

⁹⁹ *Id.* at __ (slip op at 5-6) (quoting *Crow Butte Res., Inc.* (Marsland Expansion Area), CLI-14-2, 79 NRC 11, 18 (2014); *Ga. Inst. of Tech.* (Ga. Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995)). See also *Int’l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001).

Transaction on that interest.”¹⁰⁰ Petitioner claims that its financial interest as a current co-owner is “threatened” by the proposed Spin Transaction “[t]o the extent [it] would be implemented prior to closing the Put Transaction.”¹⁰¹ However, the LTA *does not* contemplate or request NRC approval to implement the Spin Transaction prior to closing the Put Transaction. As explained in detail above, Petitioner simply misreads the LTA. These mistaken claims, based on Petitioner’s objectively incorrect reading of the LTA, are insufficient to demonstrate standing here.

As discussed above in Section III.B, the LTA specifies that “[t]he Application assumes that the Put [Transaction] will close before the Spin Transaction, and the Staff should assume the Put [Transaction] closes before the Spin Transaction.”¹⁰² In other words, if the NRC approves the LTA, the transfer contemplated therein would only occur *after* Petitioner no longer has *any ownership or other financial interests* in any of the subject plants. Therefore, NRC approval of the requested transfer *could not* cause harm to Petitioner’s already-divested ownership interests in the Facilities.

Petitioner effectively concedes as much in its Petition. More specifically, Petitioner acknowledges that it would suffer no injury if “NRC approval of the proposed license transfer (or the effectiveness of the approval) were expressly conditioned upon the prior completion of the Put Transaction.”¹⁰³ Here, the scope of the Application bounds the NRC’s review. Exelon Generation has only requested NRC approval for the transfer described in the LTA (*i.e.*,

¹⁰⁰ Petition at 7.

¹⁰¹ *Id.* at 7-8.

¹⁰² LTA, Encl. 1 at 6 n.3.

¹⁰³ Petition at 13-14.

assuming the Put Transaction closes before the Spin Transaction).¹⁰⁴ Therefore, Petitioner has not identified any injury-in-fact that would accrue from the NRC's approval of the transfer, as described in the LTA; and the effect of a favorable Commission decision in Petitioner's favor could not redress such non-existent harm. As a result, Petitioner fails to demonstrate standing, and the Petition must be rejected.

V. CONCLUSION

As established above, each of the proposed contentions fails to satisfy the six admissibility criteria in 10 C.F.R. § 2.309(f)(1), and Petitioner has not demonstrated standing to intervene. Accordingly, 10 C.F.R. § 2.309(a) requires that the Commission deny the Petition for either or both of these reasons.

Respectfully submitted,

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

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Dated at Washington, D.C.
this 12th day of July, 2021

¹⁰⁴ LTA, Encl. 1 at 6 n.3.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:)	
	)	Docket Nos.:
)	
EXELON GENERATION COMPANY, LLC; EXELON	)	STN 50-456, STN 50-457,
CORPORATION; EXELON FITZPATRICK, LLC;	)	72-73, STN 50-454,
NINE MILE POINT NUCLEAR STATION, LLC;	)	STN 50-455, 72-68, 50-317,
R. E. GINNA NUCLEAR POWER PLANT, LLC; and	)	50-318, 72-8, 50-461,
CALVERT CLIFFS NUCLEAR POWER PLANT, LLC	)	72-1046, 50-10, 50-237,
	)	50-249, 72-37, 50-333,
(Braidwood Station, Units 1 and 2; Byron Station, Unit	)	72-12, 50-373, 50-374,
Nos. 1 and 2; Calvert Cliffs Nuclear Power Plant, Units 1	)	72-70, 50-352, 50-353,
and 2; Clinton Power Station, Unit No. 1; Dresden	)	72-65, 50-220, 50-410,
Nuclear Power Station, Units 1, 2, and 3; James A.	)	72-1036, 50-171, 50-277,
FitzPatrick Nuclear Power Plant; LaSalle County Station,	)	50-278, 72-29, 50-254,
Units 1 and 2; Limerick Generating Station, Units 1 and 2;	)	50-265, 72-53, 50-244,
Nine Mile Point Nuclear Station, Units 1 and 2; Peach	)	72-67, 50-272, 50-311,
Bottom Atomic Power Station, Units 1, 2, and 3; Quad	)	72-48, 50-289, 72-77,
Cities Nuclear Power Station, Units 1 and 2; R. E. Ginna	)	50-295, 50-304, and
Nuclear Power Plant; Salem Nuclear Generating Station,	)	72-1037 -LT
Unit Nos. 1 and 2; Three Mile Island Nuclear Station,)	
Unit 1; Zion Nuclear Power Station, Units 1 and 2; and	)	July 12, 2021
Associated Independent Spent Fuel Storage Installations))	

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 EDF Inc. 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 Grant W. Eskelsen
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