https://www.nrc.gov/docs/ML2530/ML25304A098.pdf

United States of America
Nuclear Regulatory Commission
Before the Atomic and Safety Licensing Board.

April 27, 2026

In the Matter of		
Constellation Energy Generation, LLC	**:**	
Christopher M. Crane Clean Energy	**:**	**Nuclear Reactor Commission**
Center; Applications for Amendments	**:**	**Docket No. 50–289; 2026–0397**
to Renewed Facility License Involving	**:**	
Proposed No Significant Hazards	**:**	
Consideration Determination and	**:**	
Containing Safeguards Information:		
and Order Imposing Procedures for	**:**	
Access to Safeguards Information	**:**	

Eric Joseph Epstein's Petition to Intervene and Hearing Request.

Pursuant to 10 C.F.R. § 2.309(i) 1, Eric Joseph Epstein, ("Epstein," "Epstein," Mr. Epstein," or the "Petitioner") files this Petition to Intervene and Hearing Request ("Petition"). The petitioner seeks to intervene in the proceeding and submit contentions pursuant to 10 C.F.R. § 50.90, that the U.S. Nuclear Regulatory Commission ("NRC" or the "Commission") amend Renewed Facility License Number DPR-50 or Three Mile Island Nuclear Station, Unit 1 ("Crane" or TMI-1") renamed the Constellation Energy Generation, LLC, Christopher M. Crane Clean Energy Center. Constellation's Applications for Amendments to a Renewed Facility License Involving,

This petition fully satisfies the procedural and substantive requirements for

admissibility under 10 CFR § 2.309, including both the standing requirements of § 2.309(d) and the contention admissibility standards of § 2.309(f)(1). It identifies a "fairly traceable" event that is "likely to be redressed" by a favorable decision, thereby meeting Article III standing criteria. Petitioner Eric Jospeh Epstein also independently satisfies NRC standing requirements under § 2.309(d) based on proximity, personal interest, and the credible threat of radiological harm, consistent with prior ASL&B determinations in similar nuclear licensing proceedings. A more detailed analysis of standing is provided later in this petition.

This petition presents a specific and focused contentions that lies squarely within the scope of Holtec's pending License Amendment Request ("LAR"). NRC's decision whether to approve the LAR, is supported by documented facts and regulatory history, and presents a genuine dispute on a material issue of law and fact.

The actions requested—admission of this contention, rejection or conditional approval of the LAR, and enforcement of applicable NRC licensing procedures—fall clearly within the Atomic Safety and Licensing Board's jurisdiction under 10 CFR § 2.309 and established Commission precedent. A more detailed roadmap demonstrating compliance with each element of § 2.309(f)(1) is provided later in this petition. Accordingly, this petition is fully admissible and should be accepted for adjudication.

I. Factual Introduction.

The United States Nuclear Regulatory Commission ("NRC" and "the Commission") received and is considering issuance of three amendments to Renewed Facility License ("RFL") No. DPR-50 for the Christopher M. Crane Clean Energy Center ("CCEC"), which were requested by Constellation Energy Generation, LLC ("CEG", collectively "Constellation") to support the potential reauthorization of power operations at the CCEC. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration ("NSHC"). (1)

Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would

not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is included in the amendment requests as referenced in the table in this notice.

CEG is seeking to return CCEC to power operations and has submitted several requests for NRC approval to support allowing the resumption of power operations through April 19, 2034, the previous expiration date of the plant's license. These requests include three LARs, which are the subject of this notice, and an exemption request. Consistent with the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations, the NRC is not publishing a notice of opportunity for hearing on the exemption request. (2)

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1 Application Amendments to Renewed Facility Operating License, Nuclear Regulatory Commission, February 24, 2026 [Docket No. 50-289; NRC-2026-0397.]

2 Please refer to the discussion on the “The History and Ownership of Three Mile Island.” (Pages, 9-12)

Constellation has submitted to the NRC three “Applications for Amendments to Renewed Facility Operating License” (“LAR” or “License Amendment Request”) respecting the Christopher Crane Clean Energy System (“Crane” or “Three Mile Island Unit-1 (“TMI-1”)). Those license amendment requests were to revise the license and technical specifications to support resumption of power operation, to revise the Three Mile Island Emergency plan to support resumption of power operations; and to revise the CCEC Physical Security Plan for Three Mile Island Unit-1 and Unit-2 to support resumption of power operations at the CCE. The plant has only operated as “Three Miles Island.”

Prior amendments prohibit operation of the TMI-1 reactor or placement of fuel into reactor vessel. Absent an exemption from the requirements of § 50.82, Constellation’s plan to restart Three Mile Island Unit-1. (Refer to discussion on pp. 42-44.)

The exemption Constellation seeks, pursuant to 10 C.F.R. § 50.12, is governed by explicit requirements. The District of Columbia Circuit has limited the granting of exemptions to "exigent circumstances": Section 50.12 provides a mechanism for obtaining an exemption from the procedures incorporated in section 50.10, but one that may be invoked only in extraordinary circumstances. The Commission has made clear that section 50.12 is available "only in the presence of exigent circumstances, such as emergency situations in which time is of the essence and relief from the Licensing Board is impossible or highly unlikely." Citing Washington Public Power Supply System, NRC 719, 723 (1977)]. NRDC v. NRC, 695 F.2d 623 (D.C. Cir. 1982).

The Commission has similarly emphasized that § 50.12 exemptions are to be granted sparingly and only in cases of undue hardship. 39 Fed. 2 Letter, "Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the the Reactor Vessel," June 13, 2022, ADAMS ML22164A067. Reg. 14,506, 14,507 (1974).

Constellation bears a substantial burden to justify its request for an exemption. The three license amendments requested by Constellation must comply with the requirements considerations which govern the issuance of an initial license. The Atomic Energy Act requires that an initial license for a nuclear plant must ensure that the plant will follow safety standards to protect health and to minimize danger to life or property.

(a) the processes to be performed, the operating procedures, the facility and equipment, the specifications, or the proposals, in regard to any of the foregoing collectively provide reasonable assurance that the applicant will comply with the

regulations in this chapter…and that the health and safety of the public will not be endangered:

(b) the applicant is technically and financially qualified to engage in the proposed activities in accordance with the regulations; and,

(c) the issuance of a license will not, in the opinion of the Commission, be inimical
to the common defense and security or to the health and safety of the public. 10 C.F.R. § 50.40.

Section 189 of the Atomic Energy Act (AEA) of 1954, as amended, provides a right to request a hearing "[i]n any proceeding under this Act, for the granting, suspending, revoking, or amending of **any license** or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees …" (AEA § 189(a)(1)(A), 42 U.S.C. § 2239(a)(1)(A).)

As a general matter, exemption requests do not give rise to a hearing opportunity. (3) But the Commission has held that when an exemption request is inextricably intertwined with a licensing action triggering the opportunity to request a hearing, the hearing may encompass the exemption request as well. (4)

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3 *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000) ("In short, there is no right to request a hearing in this case because the action involves an exemption from NRC regulations and not one of those actions for which section 189a of the AEA provides a right to request a hearing.").

4 *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 553 (2016); *Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 10 (2013) ("An exemption standing alone does not give rise to an opportunity for hearing under our rules. But when a licensee requests an exemption in a related license amendment application, we consider the hearing rights on the amendment application to encompass the exemption request as

well." (internal citations omitted)); *see Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage
Installation), CLI-01-12, 53 NRC 459, 470 (2001) ("Where the exemption … is a direct part of an initial licensing or licensing amendment action, there is a potential that an interested party could raise an admissible contention on the exemption, triggering a right to a hearing under the AEA.").

Constellation's License Amendment Requests for Three Mile Island Unit-1, under the agency's procedures, (5) provide Mr. Epstein the opportunity to petition to intervene a request a hearing, and challenge the requested exemptions requested. (6)

The National Environmental Policy Act NEPA "declares a broad national commitment to protecting and promoting environmental quality." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989) (citing 42 U.S.C. § 4331). NEPA's "sweeping policy goals" are "realized through a set of 'action-forcing' procedures that require agencies to take a 'hard look' at environmental consequences" and "provide for the broad dissemination of environmental information." *Id.* at 350 (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)).

Thus, NEPA requires agencies to prepare an environmental impact statement ("EIS") for every "major [f]ederal action" significantly affecting the environment. *Id.* at 348-49 (citing 42 U.S.C. § 4332). "**Major federal actions" include NRC's issuance or re-issuance of reactor licenses.** *New York v. Nuclear Regulatory Comm'n,* 681 F.3d 471, 476 (D.C. Cir. 2012) 5(citing *New York v. U.S. Nuclear Regulatory Com'n,* 589 F.3d 551, 553 (2d Cir. 2009)).

Constellation and the Commission must also satisfy the requirements of the National Environmental Policy Act, set forth in Part 51 of the NRC regulations. Pursuant to 10 C.F.R. § 51.53, an environmental report is required for an operating license or the renewal of an operating license. Regarding Constellation's proposal to restart Three Mile Island Unit-1, Constellation has not submitted an environmental
report.

5 "[T]he Staff considers climate change to be within the scope of the NEPA environmental review for 'major licensing actions,' a term that the Staff concludes would apply to the restart and resumption of operations at Palisades." NRC Staff Answer, p..78

5 NRC's obligations under NEPA are "independent" of its Atomic Energy Act-based obligations, and nothing in the Atomic Energy Act precludes or limits NEPA. *Limerick Ecology Action*, 869 F.2d at 729-31. *See also Fla. Power & Light,* 54 N.R.C. at 13.

In the Palisades case, "the NRC Staff itself has referred to the Holtec exemption request as a "major licensing action." The Staff then asserts that "[b]ecause license amendments are typically used to change the authorities and requirements for a reactor in decommissioning, the amendment process may be used to restore those authorities so long as the amendment standards in 10 C.F.R. § 50.92(a) are met." The Petitioner agrees that the standards of 10 C.F.R. § 50.92(a) must be met. According to § 50.92(a). The Staff presents comments received at the public meeting held on the PSDAR and makes available to the public a written transcript of the meeting. *See* NRC, Regulatory Guide 1.185, "Standard Format and Content for Post-Shutdown Decommissioning Activities Report," Rev. 1 at 4 (June 2013) (ML13140A038) ("RG 1.185").

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The NRC has determined that it will only prepare an environmental assessment ("EA) and not an environmental impact statement. The facts presented below demonstrate that Eric Joseph Epstein has standing to pursue contentions against Constellation's request for license amendments. As he details below, the Petitioner contends that the requested license amendments must not be granted because they violate the Atomic Energy Act, the National Environmental Policy Act and NRC regulations.

II. Notice of Consideration of Issuance of Amendments to Renewed Facility License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

The Commission has made a proposed determination that the three LARs listed in tabular form in this notice involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Normally the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of

these license amendments before expiration of the 60-day period provided that its final
determination is that the amendment involves no significant hazards consideration. In
addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in prevention of resumption of operation of the facility.

If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the Federal Register. If the Commission makes a final no significant hazards consideration determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take this action on any amendment request before 60 days have elapsed will occur very infrequently.

The NRC is considering issuance of amendments to RFL No. DPR-50 for the CCEC that were requested by CEG, to support reauthorization of power operations at
the CCEC. Before any issuance of the proposed license amendments, the NRC will need to make the findings required by the Act and the NRC's regulations. Pursuant to Section 189a of the Act, the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

The NRC staff notes that, although a categorical exclusion applies, the NRC staff is not relying on a categorical exclusion for these actions. The NRC staff will complete an environmental review of the potential
environmental impacts of the proposed Federal actions related to reauthorizing power
operations at the CCEC, which include the three LARs, and will document its findings in accordance with the National Environmental Policy Act of 1969, as

amended (“NEPA”), and the NRC’s regulations in 10 CFR part 51, “Environmental Protection Regulations for (5) Domestic Licensing and Related Regulatory Functions.”

The NRC staff will prepare an environmental assessment that will be used to determine whether an environmental impact statement is necessary or whether a finding of no significant impact is warranted to satisfy the NRC’s NEPA obligations. A draft environmental assessment and draft finding of no significant impact, provided that a determination of no significant impact is reached, will be issued for public comment. The U.S. Department of Energy, Office of Energy Dominance Financing will serve as a cooperating agency on the NRC’s environmental review.

III. The Application to Revise Renewed Facility License and Permanently Defueled Technical Specifications to Support Resumption of Power Operations was filed on July 31, 2025 (ADAMS Accession No. ML25212A076. Location in Application of NSHC Pages 46-49 of Attachment 1.)

Descriptions of License Amendment Requests.

The proposed amendment would revise the renewed facility license and Appendix A, Permanently Defueled Technical Specifications, to support resumption of power operations at the CCEC.

The application for proposed changes to Christopher M. Crane Clean Energy Center Site Emergency Plan and Emergency Action Level (“EAL”) Scheme for an Operating Facility the Application was filed on October 31, 2025 (ADAMS Accession No. ML25304A097 (package) (Location in Application of NSHC, Pages 69-71 of Attachment 2 (ML25304A098). These changes impact both Three Mile Island-1
and Three Mile Island-2.

The proposed amendment would revise the CCEC Radiological Emergency Preparedness Plan and Emergency Action Level scheme to support resumption of power operations at the CCEC. Proposed Determination NSHC.

The proposed Changes to Christopher M. Crane Clean Energy Center Security Plan, Training and Qualifications. (The Application date was on October 24, 2025, and the
Supplement was filed on January 21, 2026. (ADAMS Accession Nos. ML25300A118; ML26021A039. Location in Application of NSHC Pages 3-4 of ML26021A039.)

The proposed amendment would revise the CCEC Physical Security Plan to support resumption of power operations at the CCEC and cover Three Mile Island Uni1 and Unit 2. Proposed Determination NSHC.

IV. Factual Background.

A brief overview of the TMI site's history and ownership will provide context for the history of Three Mile Island ("TMI"). As part of this clarification, Eric Joseph Epstein, Pro se summarizes the NRC regulatory approvals Exelon sought in connection with the permanent shutdown and defueling of TMI-1.

A. Ownership History of TMI.

The TMI site includes two defueled power reactors, TMI-1 and TMI-2. It is located on the Susquehanna River, about 12 miles southeast of Harrisburg and less than three miles from Middletown. The site is in Londonderry Township, Dauphin County, about 2.5 miles from the southern tip of Dauphin County,

where the County is coterminous with Lancaster County and Goldsboro, York County

1. **TMI-1.**

In July 1998, AmerGen and the GPU subsidiaries, together with PECO Energy Company ("PECO") (formerly the Philadelphia Electric Company) and British Energy, Inc. (then joint owners of AmerGen), announced the sale of TMI-1 from GPUN to AmerGen at a cost of $99 million including the fuel. At the time, GPUN and the plant owners (Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company) held the TMI-1 operating license.

In December 1998, AmerGen and GPUN requested NRC approval of the transfer of the TMI-1 operating license to AmerGen. The Commission approved the transfer in April 1999. In 2000, Unicom Corporation, the parent company of Commonwealth Edison Company, and PECO merged to form a new company, Exelon Corporation. As a result, that same year, AmerGen filed two license transfer applications with the NRC, which the Commission approved in October, 2019.

AmerGen, Exelon and the Constellation provided oversight, staffing, and emergency planning to TMI-2 while the plant was mothballed in Post-Defueling Monitored Storage ("PDMS"). TMI-2 was issued a Possession Only License ("POL") in 1993.

AmerGen, a limited liability company with foreign ownership interests, was formed to acquire and operate three nuclear power plants in the United States including Clinton in Harp Township, Illinois, Oyster Creek in "Lacey Township News Jersey," and Three Mile Island in Londonderry Township. Pennsylvania with a combined 2,500 Megawatts. PECO and British Energy, Inc. (a wholly owned subsidiary of British Energy, PLC) each owned a 50 percent interest in AmerGen before it became a wholly owned subsidiary of Exelon Generation Company, LLC.

On September 11, 2003, Florida Power & Light announced a sales agreement to buy British Energy's 50% share of TMI- 1.

The license authorized GPUN to maintain and operate the facility and the other co-owners to possess but not operate TMI-1. *See* GPU Nuclear, Inc., et al.;,Three Mile Island, Unit No. 1, Order Approving Transfer of License and Conforming Amendment, 64 Fed. Reg. 19,202 (Apr. 19, 1999) and December 2000, respectively. Those approvals allowed the transfer of PECO's 50 percent interest in AmerGen to Exelon Generation, a subsidiary of Exelon Corporation.

On December 22, 2003, Exelon Generation purchased 100% of the stock of British Energy US Holdings, Inc. ("BE Holdings"), which indirectly owned 50% of AmerGen. BE Holdings was formerly owned by British Energy, PLC, a foreign corporation. Exelon Generation thus assumed 100% ownership of AmerGen. AmerGen remained the licensed operator for TMI-1.

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On June 20, 2008, AmerGen and Exelon Generation sought NRC approval of the transfer of the TMI-1 operating license held by AmerGen to Exelon Generation. The NRC approved the transfer of license and ownership of TMI-1 to Exelon Generation on December 23, 2008. The transfer was opposed by the Petitioner, Eric Joseph Epstein.

On January 8, 2009, the nuclear generation assets held by AmerGen were integrated into Exelon Generation, and the AmerGen legal entity was dissolved. Thus, when the NRC issued the renewed operating license for TMI-1 in October 2009, it issued that license to Exelon Generation.

Exelon no longer owns or operates Three Mile Island Unit-1. On February 24, 2021, Exelon Corporation announced that it intended to transfer 100% ownership of its subsidiary, Exelon Generation, LLC to a newly-created subsidiary that was spun-off, becoming Exelon Generation's new ultimate parent company. As a result of this transaction (the "Generation Spin Transaction"), Exelon Generation and its subsidiaries are now owned by Constellation.

2. TMI-2.

General Public Utilities Corporation, later renamed GPU, Inc. ("GPU"), originally built TMI-1 and TMI-2. TMI-1 commenced operations in 1974 followed byTMI-2 in December, 1978. TMI-1 and TMI-2 were built for and owned by three GPU subsidiaries, Metropolitan Edison Company (50%), the Pennsylvania Electric Company (25%), and Jersey Central Power & Light Company (25%). Both plants cost a combined $1.1 billion and were funded by Pennsylvania and New Jersey rate payers. No dividends were issued for seven years after the core melt accident.

Metropolitan Edison Company, a GPU subsidiary, operated the plants until the melt down in March, 1979. GPU was a holding company for Jersey Central & Light, Penn Elec and Metropolitan Edison. Met Ed was he operating company and transferred operating authority for these plants and the Oyster Creek Nuclear Generating Station to GPU Nuclear Corporation, later renamed GPU Nuclear, Inc. ("GPUN").

On March 28, 1979, a loss-of-coolant accident began at 4:00 a.m. The plant had been operating for four months. The accident was attributable to human and mechanical failures resulting in the partial meltdown and permanent shutdown of TMI-2 and temporary shutdown of TMI-1 until October 4, 1985. The TMI-2 licensee was prevented from undertaking a prompt decontamination and defueling activities due to insolvency and the lack of a decommissioning.

Defueling of the reactor stalled in 1993. Approximately 99% of the TMI-2 spent fuel assemblies and damaged core material have been removed from the TMl-2 reactor, and are being stored at the U.S. Department of Energy's Idaho National Laboratory. The Department of Energy issued a Notice of Deviation relating for leaking cannister swhich began in 2011 and has not been contained.

In 1981 Three Mile Island Unit-2 was provided $987 million to defuel the melted core. The plan was organized by former Governor Thornburgh. Most of the fuel was removed andshipped to Idaho, but Unit-2 remains a high-level, radioactive waste site

Three Mile Island Unit-2 was transferred from GPU to a subsidiary of Energy*Solutions* known as TMI-2 Solutions, LLC. The agreement also contemplates applications to the NRC and the New Jersey Board of Public Utilities
for approval of the transfer, followed by decommissioning of TMI-2. *See EnergySolutions Subsidiary Signs Contract to Acquire Three Mile Island Unit-2 Nuclear Power Plant*, ENERGYSOLUTIONS, https://www.energysolutions.com.

On November 12, 2019, TMI-2 Solutions, LLC and the aforementioned FirstEnergy companies submitted a license transfer application to the NRC (ML19325C600), requesting that the NRC consent to the transfer of the Possession Only License No. DPR-73 for TMI-2 from the FirstEnergy companies to TMI-2 Solutions, LLC. (In the Matter of GPU Nuclear, Inc., Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company"

In 1999, ownership of and operating authority for TMI-1 were transferred to AmerGen Energy Company, LLC ("AmerGen") which later was consolidated into Exelon Generation. As part of the sale of TMI-1, GPUN entered into a service agreement with AmerGen (now Exelon Generation, as discussed below). Under that agreement, Exelon Generation provides services, materials, and equipment that are required to maintain TMl-2 in PDMS status, including maintenance, surveillance

testing, and implementation of the activities required in the Safety Analysis Report, Technical Specifications, and the GPU Nuclear PDMS Quality Assurance Plan.

In 2001, GPU merged with FirstEnergy Corporation ("FirstEnergy"). The NRC approved the indirect transfer of control of the TMI-2 license to FirstEnergy. (3) GPUN, now a wholly-owned subsidiary of FirstEnergy, retained the license for TMl-2.

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3 Letter from Gregory H. Halnon, GPU Nuclear, Inc., to NRC, "Three Mile Island Nuclear Station, Unit 2 – Revision to Post-Shutdown Decommissioning Activities Report," att. at 3-5 (Dec. 4, 2015) (ML15338A222) ("TMI-2 PSDAR"); NRC, Three Mile Island Nuclear Station, Unit No. 2 Possession Only License, Docket No. 50-320 (Sept. 1993) (ADAMS Legacy No. 9405190046).

GPU Nuclear, Inc., et al.; Three Mile Island, Unit No. 1; Order Approving Transfer of License and Conforming Amendment, 64 Fed. Reg. 19,202 (Apr. 19, 1999).

3. Procedural history.

The Three Mile Island Emergency Plan for Post-Shutdown and Permanently Defueled Condition (March 19, 2018) (ML18078A578) greatly reduced the plant's emergency planning to skeletal levels. Exelon Generation supplemented this license amendment request via letters submitted to the NRC on August 13, 2018 (ML18225A180) and November 20, 2018 (ML18324A404).

Three Mile Island unsuccessfully challenged the elimination of Three Mile Island emergency plan.

4. Economic conditions.

On June 20, 2017, Exelon Generation submitted to the NRC a certification in accordance with 10 C.F.R. § 50.82(a)(1)(i), conveying its decision to permanently cease operations at TMI-1 no later than September 30, 2019. As summarized below, Exelon Generation's decision to 21 22 23 24 25. AmerGen Energy Company, LLC (Three Mile Island Nuclear Station, Unit 1); Order Approving Application Regarding Proposed Corporate Restructuring, 65 Fed. Reg. 61,195 (Oct. 16, 2000); AmerGen Energy Company, LLC (Three Mile Island Nuclear Station, Unit 1); Order Approving Application Regarding Transfer of Interest in AmerGen Energy Company, LLC and Conforming Amendment, 65 Fed. Reg. 83,104 (Dec. 29, 2000).

Given that Exelon Generation, through its rights under the AmerGen Limited Liability Company Agreement, already effectively controlled AmerGen prior to its acquisition of BE Holdings, the NRC Staff determined that the acquisition did
not result in any transfer of control of the license under 10 C.F.R. § 50.80 despite foreign ownership concerns. The NRC Staff approved certain Conforming Amendments that changed the operating license to reflect the new Exelon Generation ownership structure of AmerGen and standby fund arrangement. *See* In the Matter of AmerGen Energy Company, LLC; Exelon Generation Company, LLC (Three Mile Island Nuclear Station, Unit 1); Order Approving Transfer of License and Conforming Amendment, 74 Fed. Reg. 127 (Jan. 2, 2009). (4)

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4 Letter from J. Bradley Fewell, Exelon Generation to NRC, "Certification of Permanent Cessation of Power Operations for Three Mile Island Nuclear Station, Unit 1" (June 20, 2017) (ML17171A151). The permanent shut down and defueling of TMI-1 has prompted it to seek multiple related approvals from the NRC. This proceeding stems specifically from one of those actions—Exelon Generation's July 1, 2019, request to amend the TMI-1 license to revise the SEP and EAL scheme to reflect the permanent cessation of operation and permanent defueling of the TMl-1 reactor.

The Three Mile Island Emergency Plan for Post-Shutdown and Permanently Defueled Condition" was submitted on March, 19, 2018. (ML18078A578). Exelon Generation supplemented this license amendment request via letters submitted to the NRC on August 13, 2018 (ML18225A180) and November 20, 2018 (ML18324A404).

By application dated July 25, 2018, as supplemented on March 6, 2019, Exelon Generation requested that the NRC revise the TMl-1 license and the associated Technical Specifications to Permanently Defueled Technical Specifications, consistent with the planned permanent cessation of reactor operation and permanent defueling of the reactor. The NRC granted the requested license amendment and Technical Specifications changes on August 29, 2019.

In anticipation of the permanent shutdown and defueling of TMI-1, and via three separate letters, all dated April 5, 2019, Exelon Generation submitted to the NRC correspondence on the TMI-1 spent fuel management plan ("SFMP"), site-specific decommissioning cost estimate ("DCE"), and post- shutdown decommissioning activities report ("PSDAR"). Next, by letter dated April 12, 2019, Exelon Generation requested exemptions from 10 C.F.R. §§ 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv), respectively, to:

(1) permit the use of funds from the TMI-1 Decommissioning Trust Fund ("DTF") for spent fuel management activities, in accordance with the TMI-1 site-specific DCE; and

(2) make those withdrawals without prior NRC notification. The NRC acquiesced Constellation's demands (Letter from Michael P. Gallagher, Exelon Generation, to NRC, "License Amendment Request – Proposed Defueled Technical Specifications and Revised License Conditions for Permanently Defueled Condition" (July 25, 2018) (ML18206A545) as supplemented by letter dated March 6, 2019 (ML19065A217)).

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 84 Fed. Reg. 50,078, 50,086 (Sept. 24, 2019) (providing notice of

license amendment issued on August 29, 2019, as available under ADAMS Accession No. ML19211D317).
Exelon Generation's SFMP, DCE, and PSDAR for TMI-1 are available at ADAMS Accession Nos. ML19095A009, ML19095A010, and ML19095A041, respectively. Constellation requested exemptions on October 16, 2019, about three weeks after Exelon Generation certified to the NRC that it had permanently ceased operation of TMI-1 and defueled the reactor.

6. Decommissioning Trust Fund.

The PSDAR includes a description of the planned decommissioning activities, a proposed schedule for their accomplishment, the expected decommissioning and spent fuel management costs, and an evaluation that provides the basis for Exelon Generation's conclusion that the environmental impacts
associated with site-specific decommissioning activities at TMI-1 will be bounded by appropriate, previously-issued generic and plant-specific environmental impact statements. Neither the safety nor the environmental aspects of the PSDAR are within the scope of this proceeding. *See* Letter from Michael P. Gallagher, Exelon Generation, to NRC, "Request for Exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)" (Apr. 12, 2019) (ML19102A085) ("April 12, 2019 Exemption Request").

There was no site-specific study conducted at Three Mile Island Unit 1 nor were the impacts of climate change examined. In addition, Constellation illegally raided the DTF to pay for the construction of the Independent Spent Fuel Storage Facility ("ISIFI"). Constellation deliberately postponed the construction of the ISIFI to avoid the costs of transferring spent fuel to dry cask storage.

Exelon applied and the NRC allowed a gross deviation from the Nuclear Decommissioning Trust Fund ("NDT"). However, the use of the NDT fund is limited in three important respects. First, withdrawals from the fund must be

"for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in [10 C.F.R.] § 50.2" or "for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses)." (10 C.F.R. § 50.82(a)(8)(i)(A); *id*. § 50.75(h)(2). Second, the expenditure must not reduce the value of the NDT "below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise." (§ 50.82(a)(8)(i)(B).

Finally, the withdrawals must not "inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license." (§ 50.82(a)(8)(i)(C).)

7. Site-specific deficiencies.

On April 18, 2019, in response to Exelon Generation's license amendment application dated March 19, 2018, the NRC approved certain changes to the TMI SEP to support the planned permanent cessation of operation and permanent defueling at the TMl-1 reactor. TMI-1 could not compete in a deregulated market and lost $300 million over eight years. Specifically, the NRC-approved changes authorize Exelon Generation to revise the SEP emergency response organization on-shift and augmented staffing, commensurate with the reduced spectrum of credible accidents for a permanently shut down and defueled nuclear power reactor facility. (5)

On July 1, 2019, Exelon Generation made two submittals to the NRC that are directly relevant to this proceeding. First, pursuant to 10 C.F.R. § 50.90, Exelon Generation submitted the LAR, requesting that the NRC amend the TMI-1 license to revise the SEP and EAL scheme to support the permanent cessation of power operations and removal of fuel from the reactor vessel of TMl-1. The LAR includes the proposed TMI Permanently Defueled Emergency Plan ("PDEP") and the Permanently Defueled EAL scheme for NRC review and approval. The proposed Exelon Generation Company LLC; Three Mile Island Nuclear Station Unit 1; Exemptions; issuance, 84 Fed. Reg. 56,846 (Oct. 23, 2019) (providing notice of NRC's issuance of exemptions on October 16, 2019, as available under ADAMS Accession No. ML19259A175).

As the Staff noted in its April 18, 2019, approval letter, in accordance with the Possession-Only License No. DPR-73 Post-Defueling Monitored Storage Safety Analysis Report for TMI-2, the emergency plan for TMI-1 is considered to encompass TMI-2. Exelon Generation maintains the emergency planning responsibilities for
TMl-2 through the service agreement with FirstEnergy. The proposed PDEP also encompasses both TMI-1 and TMI-2, and the pending July 1, 2019 LAR does not impact or otherwise alter Exelon Generation's responsibility to abide by and maintain that service agreement. (6)

The sum result was that there is no emergency plan for Three Mile Island.

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5 Letter from Michael P. Gallagher, Exelon Generation to the NRC, "License Amendment Request – Proposed Changes to the Three Accession No. ML19065A114)".

6 Exelon developed the PDEP using guidance contained in Attachment 1 ("Staff Guidance for Evaluating Permanently Defueled Emergency Plans") to NSIR/DPR-ISG-02, Interim Staff Guidance, "Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants" (May 11, 2015) (ML14106A057).

LAR, 1 at 7.

Experience should drive current planning. On March 30, 1979, Governor Thornburgh ordered a precautionary evacuation that targeted 5,000 pregnant women and pre- school children. Chaos ensued. Over 144,000 people left the area during the “shadow evacuation.” (A shadow evacuation refers to the voluntary, unofficial departure of residents from areas not under mandatory evacuation orders during a disaster).

In 2003 Exelon abandoned Three Mile Island’s dedicated Emergency Operations Facility, and relocated the operation 60 miles away in Coatesville. Evacuation planning was further undermined by the Valentine’s Day disaster in 2007. Routes were closed for several days. Interstate-78 was closed between the I-81 split in Lebanon County to Allentown, about 50 miles. Some drivers were stuck for up to 24 hours between February 14 and February 16. Parts of Interstates 80 and 81 also were closed, stranding more motorists. The National Guard was called in to deliver food, water, coffee, blankets, fuel and baby supplies to stranded motorists.

In November 2009, then-Pennsylvania Governor Ed Rendell expressed severe frustration with Exelon Corp. regarding a five-hour delay in reporting a radiation leak at the Three Mile Island nuclear power plant. Rendell deemed the delayed notification of state officials "totally unacceptable," highlighting a recurring issue of poor communication and transparency between plant operators and government authorities.

In 2020 the Nuclear Regulatory Commission rejected a petition by Three Mile Island Alert (“TMIA”) challenging Exelon’s request to revise its site emergency plan for the closed Three Mile Island nuclear power plant in Pennsylvania. Exelon submitted a request to the NRC to amend its TMI-1 license to reflect the reduced risks of the defueled reactor, which was permanently shut down in September, 2019. The group was requesting a more robust emergency plan instead of the approved skeletal protocol.

Constellation states that classification of an emergency declaration will be made within 30 minutes after the availability of indications to operators that an

EAL threshold has been reached, and notification to State authorities will be made within 30 minutes after declaring an emergency. The pause could be fatal and delay the implementation of a plan where readiness and timelines are essential components.

The July 1, 2019, Exemption Request contains an analysis that demonstrates that 488 days after permanent cessation of power operations, the spent fuel stored in the spent fuel pool will have decayed to the extent that the requested exemptions, proposed PDEP, and Permanently Defueled EAL scheme may be implemented at the TMI site.

The proposed PDEP and Permanently Defueled EAL scheme requested in the LAR are predicated on NRC approval of separate requests for exemptions from certain standards in 10 C.F.R. § 50.47(b) for onsite and offsite emergency response plans for nuclear power reactors,, requirements in 10 C.F.R. § 50.47(c)(2) for plume exposure and ingestion pathway emergency planning zones ("EPZs") for nuclear power plants, and certain requirements in 10 C.F.R. Part 50, Appendix E, Section IV for the content of emergency plans. Thus, in a second filing also dated July 1, 2019, Exelon Generation requested the necessary exemptions pursuant to 10 C.F.R. § 50.12.37.

There have been no off-site emergency plans or radiation monitors in place since 2019. The NRC and Constellation lack a historic perspective of emergency planning at Three Mile Island. As explained in the LAR, Exelon Generation's analyses of the potential radiological impact of accidents 488 days after the plant is permanently shut down indicate that no design basis accident or reasonably conceivable beyond design basis accident will be expected to result in radioactive releases. Mr. Epstein disputed those claims, and requested an examination of the impact of airplane crash at the spent fuel storage site or a fire in the Independent Isolation Storage Facility ("ISIFI") in a License Amendment Request for Three Mile Island Unit-2. (7)

Given the length of time required for the adiabatic heat-up to occur, there is not enough time to respond to any safety or security threat or a partial drain down event that might cause such an occurrence because there are no radiation

or temperature monitors in the ISIFI and there is no ability to remediate or retrieve damaged casks. (8)

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7 TMI-2 Solutions, LLC seeks to amend the license and associated technical specifications for Three Mile Island Nuclear Station, Unit 2 to support the facility's transition from post defueled monitoring storage to decommissioning. In response to a notice filed in the Federal Register. (87 FR 51,454 (Aug. 22, 2022), Eric Epstein filed a hearing request on November 3, 2022. Nuclear Regulatory Commission, Docket No. 50-320-LA-2; ASLBP No. 23-977-02-LA-BD01.)

8 On April 7, 2011 the NRC issued a report to the U.S. Department of Energy reported problems with the deterioration of the concrete at the horizontal storage modules. Three Mile Island Unit 2 Independent Spent Fuel Storage Installation is in Idaho. The modules were constructed in 1999 and were designed for a 50-year service life. However, the NRC report noted, and the DOE agreed, that the modules were displaying significant cracking in nearly all of the 30 units. The DOE has begun restoration efforts. The modules are located at the Idaho National Laboratory site that has been licensed by the NRC to maintain the spent fuel of the crippled TMI unit 2 reactor.

This conclusion is incorrect and assumes all the nuclear moons will align. The function of time is impaired by the absence of monitoring and lack of staffing.
With the exception of compensatory fire watches. Environmental Protection Agency (“EPA”) Protective Action Guidelines (“PAGs”) can be beyond the site boundary. The analysis naively posits that a 30-minute notification time and reduced scope of offsite and onsite emergency response plans can be implemented without undue risk to public health and safety. This situation is a canard.

On September 26, 2019, in accordance with 10 C.F.R. § 50.82(a)(1)(ii), Exelon Generation certified to the NRC that, as of September 26, 2019, it had permanently removed all fuel from the TMI-1 reactor vessel and placed the fuel

in the spent fuel pool. Thus, in accordance with10 C.F.R. § 50.82(a)(2), the TMI-1 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. The fuel was transferred to an ISIFI constructed by raiding the decommissioning Trust Fund ("DTF"). (9) The 700 metric tons of highly radioactive waste is located atop a parking lot in a flood zone.

The NRC permitted the licensee to use the TMI-1 trust fund for spent fuel management and site restoration activities, rather than its statutory purpose: radiological decontamination. The NRC granted exemptions allowing withdrawals for these activities without prior notice, and despite a challenge by TMI-Alert about the legality of the maneuver.

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9 The NRC does not construe the 10 CFR 50.2 definition of "decommissioning" to include activities associated with spent fuel management. This is black letter federal law that Exelon acknowledges, and has made provisions for in their 2017 Annual Report, p. 110, and 2018 Annual Report, p. 85.

V. The Petitioner Has Demonstrated Standing to Intervene as a Matter of Right and As a Matter of Discretion.

Petitioner Epstein asserts he has standing to intervene as an individual in this proceeding. The Petitioner also should be granted discretionary intervention under 10 C.F.R. § 2.309(e). As demonstrated below, Mr. Epstein has standing to intervene in this proceeding as a matter of right under 10 C.F.R. § 2.309(d).

A. Legal Standards for Standing.

To determine whether a petitioner has a sufficient interest to intervene in a proceeding, the Commission applies contemporaneous judicial concepts of standing. The petitioner bears the burden to provide facts sufficient to establish standing. As relevant here, a petitioner may satisfy that burden in one of three ways. The Petitioner asserts the ability to "assist in developing a sound record") Alternatively, if the Board determines that Petitioners have proffered an admissible contention—as it should for the reasons set forth below—then it needs to address Petitioners' standing to intervene in this proceeding.

Pursuant to the Atomic Energy Act, the Commission must grant a hearing in a
licensing proceeding "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." U.S.C. §2239(a)(1)(A). To support the request, a petitioner must provide the Commission with information regarding" (1) the nature of the petitioner's right under the governing statutes to be made a party, (2) the nature of the petitioner's property, financial, or other interest in the proceeding, (3) the possible effect of any decision or order on the petitioner's interest. (Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), 60 N.R.C. 548, 552 (2004) (citing 10 C.F.R. § 2.309(d)(1).

"The NRC generally uses judicial concepts of standing in interpreting this regulation." Entergy Nuclear Vermont Yankee, 60 N.R.C. at 552. Thus, a petitioner may intervene if it can specify facts showing "that (1) it has suffered or will suffer a distinct and palpable harm constituting injury-in-fact within the zone of interests arguably protected by the governing statutes, (2) the injury is fairly traceable to the action being challenged, and (3) the injury will likely be redressed by a favorable determination.

In determining whether a petitioner has met the requirements for establishing standing, the Commission "construe[s] the petition in favor of the petitioner." A petitioner for leave to intervene must, of course, show the potential for injury-in-fact to its interests before intervention can be granted.

The pleading requirements of 10 C.F.R. § 2.309(f)(1) do not encompass the overly
burdensome standards. The standards are not meant to be insurmountable. *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), 49 NRC 328, 335 (1999) (explaining that the rule should not be used as a "fortress to deny intervention") (internal quotation marks and citation omitted); see *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant and Big Rock Point Site), 96 NRC 1, 104-05 (2022) (admitting for hearing portions of a contention that raised a genuine material dispute with the application). The rule serves to assess the scope, materiality, and support provided for a proposed contention, to ensure that the hearing process is "properly reserve[d] . . . for genuine, material controversies between knowledgeable litigants." *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), 75 NRC 393, 396 (2012) (internal quotation marks omitted).

The Petitioner bases his claims to standing on the facts that the restoration of Three Mile Island Unit-1 to power generation is analogous to licensing a new nuclear power plant, and that the longstanding NRC policy is to readily recognize the legal standing of persons who live, work and/or recreate within 50 miles of a power plant in the present generation of light water reactors based on the inherent dangerousness of commercial nuclear power. (Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station), LBP-06-7, 63 NRC 188, 195, (2006). Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 146, aff'd, CLI-01-17, 54 NRC 3 (2001). (Refer to discussion on Exemptions from pages
31 – 33)

A petitioner can base his or her standing upon a combination of residence or visits near the plant and a showing that the proposed action entails an increased potential for offsite consequences. Commonwealth Edison Co. (Zion

Nuclear Power Station, Units 1 & 2), CLI-99-4, 49 NRC 185, 191 (1999); Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-08-18, 68 NRC 533, 541 (2008).

The petitioner may be accorded standing. He resides close enough to a planned project so that there is reasonable apprehension of injury. Mr. Epstein explains, he suffers or will be under threat of suffering), concrete and particularized injuries from the restored operations of Three Mile Island Unit-1 if the exemption sought by Constellation is granted. If the exemption is denied, the potential threats or actual harms from Crane will not occur. TMI-1 may not resume operations without a license from the Commission, which by statute also has the power to order mitigation arrangements. (U.S.C. § 2133(a).)

In addition, the Petitioner has expressed basis for standing that fall within the zone of interests protected by the Atomic Energy Act and the National Environmental Policy Act and their respective implementing regulations, which are pertinent to this proceeding, even if the Commission decides to grant the requested categorical exclusion. (See, e.g., Ouachita Watch League v. Jacobs, 463 F.3d 1163, 1173 (11th Cir. 2006) (“[S]ince the injury alleged is environmental, it falls within the zone of interests protected by NEPA…”); Sabine River Auth. v. U.S. Dep't of Interior, 951 F.2d 669, 675 (5th Cir. 1992) (plaintiffs' concerns about impacts on water quality and quantity fell within NEPA's zone of interests).

The Petitioner has standing to intervene in his own right, having met the requirements for injury-in-fact, causation, and redressability. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 572 n.7 (1992) (“[P]rocedural rights are special: The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy.”
”) (internal quotations omitted); see also Duke Energy Corp. (McGuire, Units 1 and 2; Catawba, Units 1 and 2) CLI-02-17, 56 NRC 1, 10 (2002) (emphasizing NEPA

's goal to "ensure that the agency does not act upon incomplete information, only to regret its decision after it is too late to correct.")

1. Discretionary Intervention.

Discretionary intervention may be granted when the petitioner has established standing and at least one contention has been admitted for hearing. In addition to addressing the factors in 10 C.F.R. § 2.309(d)(1), a petitioner who seeks intervention as a matter of discretion (if it is determined that standing as a matter of right is not demonstrated) must specifically address in his or her initial petition the six factors set forth in 10 C.F.R. § 2. that the chain of causation is plausible." (10) Finally, a petitioner must show that "its actual or threatened injuries can be cured by some action of the tribunal." (11)

Pursuant to 10 C.F.R. § 2.309(e), the Commission may consider a request for discretionary intervention where a party lacks standing to intervene as a matter of right under 275 276 277 *St. Lucie*, 309(e). The NRC requires a potential discretionary intervenor to show "that it is both willing and able to make a valuable contribution to the full airing of the issues . . . in this proceeding". *Nuclear Eng'g Co., Inc.* (Sheffield, Ill., Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC AT 744

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10 *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).

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

Factors weighing in *favor* of allowing intervention include: (i) the extent to which the petitioner's participation would assist in developing a sound record, (ii) the nature of petitioner's property, financial or other interests in the proceeding, and (iii) the possible effect of any decision or order that may be issued in the proceeding. 10 C.F.R. § 2.309(e)(1)(i)-(iii). Conversely, factors weighing *against* allowing intervention include: (i) the availability of other means whereby the petitioner's interest might be protected; (ii) the extent to which the petitioner's interest will be represented by existing parties, and (iii)

the extent to which petitioner’s participation will inappropriately broaden the issues or delay the proceeding. § 2.309(e)(2)(i)-(iii).

Factors Weighing in Favor.

1.Record Development. How the petitioner's participation aids in building a sound record. Please refer to discussion on page 28-31

2.Nature of Interest. The specific property, financial, or other interest held by the petitioner. Please refer to discussion on pages 28-31.

3. Potential Impact: How the final decision may affect the petitioner's interest. Please refer to discussion on pages 29-3.

Factors Weighing Against.

4. Alternative Means: Whether other avenues exist to protect the petitioner's interest. None. The ASL&B and the Nuclear Regulatory Commission are the governing bodies.

5. Representation by Parties. The extent to which existing parties already represent the petitioner's interests. There are no other parties in the hearing other than Constellation and the Nuclear Regulatory Commission.

6. Procedural Impact: The potential for the petitioner to cause delays or inappropriately broaden the scope of the proceedings. No , Constellation and he Nuclear Regulatory Commission have instituted an expedited review process at the behest of Constellation.

2. Proximity-Based Standing.

Second, in certain NRC proceedings, a petitioner may take advantage of proximity presumptions the Commission has created to simplify standing requirements for individuals who reside within, or have frequent contacts with, a geographic zone of potential harm. In proceedings that involve *construction or operation* of a nuclear power plant, the zone is deemed to be the area within a 50-mile radius of the site. In such proceedings, "proximity" standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility.

The NRC has held that the proximity presumption may be sufficient to confer standing on an individual or group in Part 50 proceedings involving reactor "construction permits, operating licenses, or significant license amendments thereto such as the expansion of the capacity of a spent fuel pool." As the Commission has noted, "those cases involve the construction or operation of the reactor itself, with clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences." To establish proximity standing, a 54 56 *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009). (*Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989)).

The Petitioner must provide "fact-specific standing allegations, not conclusory assertions," as the Commission "cannot find the requisite 'interest' based on . . . general assertions of proximity." Importantly, however, the Commission has held that in a license amendment case such as this one, "a petitioner cannot base his or her standing simply upon a residence or visits near the plant, unless the proposed action quite 'obvious[ly]' entails an increased potential for offsite consequences."59 In such a case, "[w]hether and at what distance a petitioner can be presumed to be affected must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source." In other words, a petitioner seeking to intervene in a license amendment proceeding

must assert a specific injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility." The petitioner "cannot seek to obtain standing . . . simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences."

Mr. Epstein Has Established Standing to Intervene as of Right.

Mr. Epstein has "personal standing" to intervene because he is an area resident who has lived and worked his entire life in the area around Three Mile Island.

(1) The name, address, and telephone number of the requestor or petitioner;
Eric Joseph Epstein,
4100 Hillsdale Road,
Harrisburg, Pa 17112.
Telephone number 717-635-8615.

(2) The nature of the petitioner's right under the Act to be made a party to the proceeding;
• Proximity Based Standing,
• Standing as a Right.

(3) The nature and extent of the petitioner's property, financial, or other interest in the proceeding. The nature of the petitioner's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding. Under the Atomic Energy Act (AEA), the right of an intervener is a statutory right to participate as a party in licensing or enforcement proceedings. This right is primarily grounded in Section 189a of the Act, which mandates that the NRC grant a hearing to any person whose interest may be affected by certain agency actions.

• Epstein is a school board director responsible for emergency planning for the eighth largest school district in Pennsylvania;

https://www.cdschools.org

• Mr. Epstein is Secretary of the Dauphin County General Authority.

https://www.dauphincountygeneralauthority.org

• The Petitioner is a member of the Lower Paxton Planning Commission.

https://www.lowerpaxton-pa.gov/578/Planning-Commission

(4) The possible effect of any decision or order that may be entered in the proceeding on the petitioner's interest.

Key Standing Criteria (10 CFR 2.309):

- **Injury in Fact:** The petitioner must show they will suffer an actual or imminent, concrete, and particularized injury. This cannot be a general grievance.

The proposed LAR' to modify the operating licensee fail to adequately prepare or protect parents, staff and students in the Central Dauphin School District. The District is responsible for emergency planning, transportation and the welfare of 14,317 students including charter, parochial and private schools. In the event of another accident or nuclear meltdown, the proposed plan is deficient because it excludes day care and nursery school students.

- **Interest Affected:** The petitioner's interest must be within the zone of interests protected by the Atomic Energy Act ("AEA") or the National Environmental Policy Act. Please refer to discussion on pages 28-31.

- **Causal Connection:** A direct link must exist between the injury and the proposed action (e.g., granting a license amendment).

  Maintaining Three Mile Island in decommissioning status would protect the community from harmful radiation releases associated with nuclear power production. Rejecting the LARs reduce the need to pre-K, nursery school and special needs populations in harms during a nuclear evacuation,

- **Redressability:** It must be likely that a favorable decision (e.g., denying the license) will address the injury.

  Maintaining Three Mile Island in decommissioning status would protect the community from harmful radiation releases associated with nuclear power production, minimize the need for offsite emergency plans for school children including pre-school and nursery school children.

- **Proximity/Residence:** Residents or individuals living near a facility (often within a 50-mile radius) usually have a presumptive standing to intervene, especially in reactor construction or operation cases.

  The petitioner lives 12 miles from the plant and works three miles from Three Mile Island. This is a presumptive reactor construction and/or operation case.

- **Contention Admissibility:** Standing is not enough; at least one specific "contention" (a technical or legal dispute) must be admitted for the petitioner to participate.

A petition for leave to intervene must show the potential for injury-in-fact to its interests before intervention can be granted. (*Nuclear Eng'g Co., Inc.* Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), NRC 737, 743 (1978). The Petitioner need not establish that injury will inevitably result from the proposed action to show an injury-in-fact, but only that it may be injured in fact by the proposed action. *Gulf States Utils. Co., et al.* Section 189(a) of the Atomic Energy Act, 42 U.S.C. § 2239, provides: In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction

permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award, or royalties under section 153, 157, 186c., or Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding.

To carry out the provisions of that statute, the NRC has adopted a regulation,
10 C.F.R. § 2.309, regarding hearing requests and petitions to intervene. The regulation authorizes any person whose interest may be affected by a proceeding to intervene in the proceeding. That is the basis on which this Petition is presented.

A Petitioner seeking to intervene in a license amendment proceeding "must assert a specific injury-in-fact associated with the challenged license amendment, not simply a general objection to the [action]." (12) The Petitioner "cannot seek to obtain standing…simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences." (13)

"The NRC generally uses judicial concepts of standing in interpreting this regulation." *Entergy Nuclear Vermont Yankee*, 60 N.R.C. at 552. Thus, a Petitioner may intervene if it can specify facts showing "that (1) it has suffered or will suffer a distinct and palpable harm constituting injury-in-fact within the zone of interests arguably protected by the governing statutes, (2) the injury is fairly traceable to the action being challenged, and (3) the injury will likely be redressed by a favorable determination."

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12 *Zion*, CLI-99-4, 49 NRC at 188; an*d St. Lucie*, CLI-89-21, 30 NRC at 329- 330 ("Absent situations involving such obvious potential for offsite consequences, a Petitioner must allege some specific 'injury in fact' that will result from the action taken").

13 *Commonwealth Edison Co.* (Zion Nuclear Power Station, Unit 1 & 2), CLI-99-4, 49 NRC 185, 191, 192 (1999) 13552-553. In determining whether a Petitioner

has met the requirements for establishing standing, the Commission "construe[s] the petition in favor of the Petitioner." *Id*. at 553.

Petitioner's narrative for standing.

The Petitioner will demonstrate below that he has standing to participate in the hearing process to challenge Constellation's proposed exemption st Christopher Crane Clean Energy Center. Constellation's proposal must be rejected by the NRC.

Eric Joseph Epstein is a resident of Lower Paxton Township, Pennsylvania, and lives and orks in "close proximity to the Three Mile Island Nuclear Generating Station.
Mr. Epstein has attended school, worked, and raised a family in the Harrisburg area since 1966.

Mr. Epstein's personal and professional activities are located within three to 12 miles from Three Mile Island. Epstein's personal health and well -being is affected if the LARs are approved

Mr. Epstein's connection to the community and Three Mile Island predates the Accident. He was born and raised in the area, and attended parochial and public schools ten miles from the plant when it was being built. Later, he became the president of Historic B'Nai Jacob Synagogue in Middletown.

As an adult, Mr. Epstein monitored the cleanup, and was an active participant in the NRC's TMI Advisory Panel. Epstein has a vested interest in making sure the TMI-2 decommissioning fund is adequate to complete a full and complete decommissioning. TMI-2 is the site of a defueling process that was brought to an abrupt halt in 1993 despite public opposition as evidenced at the Nuclear Regulatory Commission's TMI Advisory Panel meetings.

Mr. Epstein has served as the Chairperson and Spokesperson for Three Mile Island Alert from 1984 through 2022. TMIA monitors Peach Bottom, Susquehanna, and Three Mile Island nuclear generating stations.

Mr. Epstein was also the Coordinator of the EFMR Monitoring group, a nonpartisan community-based organization established in 1992. EFMR monitored radiation levels at Three Mile Island, invested in community development, and sponsored remote robotics research.

In September, 1992 GPU and the NRC agreed to a negotiated settlement on the Post-Defueling Monitored Storage ("PDMS") of TMI-2 with Eric Epstein. The Agreement stipulated GPU Nuclear will provide equipment and resources to independently monitor radioactive levels at TMI-2; $700,000 for remote robotics research to assist in the cleanup and minimize worker exposure; and, guarantees that TMI-2 will never operate or serve as a radioactive waste repository.

EFMR has also undertaken educational activities relating to energy production in Pennsylvania. The group-initiated advocacy actions on behalf of the safety of nuclear plant neighbors, including the evacuation of day care centers in emergency preparedness plans. EFMR distributed 30,000 potassium iodide pills to the general public after 9/11. The group has also intervened at the Pennsylvania Public Utility Commission to protect the economic interests of Pennsylvania rate payers.

EFMR has worked with Carnegie-Mellon University, Dickinson College, Exelon, the Environmental Protection Agency, GPU Nuclear, Los Alamos National Laboratories (SWOOPE Program), the Nuclear Regulatory Commission, Peach Bottom REMP Program, Pennsylvania Center for Environmental Education, and the University of Tennessee, as well as other national and international organizations.

Eric Epstein is a school board director for the Central Dauphin School District. He has four to six meetings a month at the Administration Building. The Administration Building is 11 miles from TMI. The Central Dauphin School District is the eighth largest school district in the Commonwealth of Pennsylvania. The enrollment is 12,oo6 students. However, for evacuation

planning which includes charter, public and private school, the District must plan for 14,217 students.

Central Dauphin is the largest of the 10 school districts located in the county. Encompassing an area of 118.2 square miles, the district is comprised of three boroughs (Dauphin, Paxtang and Penbrook) and four townships (Lower Paxton, Middle Paxton, Swatara and West Hanover). Students attend one of thirteen elementary schools, four middle schools and two high schools, and are transported from urban, suburban, and rural areas. The District is opening three full- day kindergarten centers in August, 2026.

All 19 buildings located within with the school district were evacuated on March 30, 1979. The Central Dauphin School District is responsible for the following schools within ten miles of Three Mile Island: Chambers Hill Elementary School (236), Lawnton Elementary School (296), Paxtang Elementary School (276), Rutherford Elementary School (431), Southside Elementary (536), Swatara Middle High School (576), and Tri-Community Elementary School (456). Also, Town and Country Day School and St. Catherine Laboure School.

Mr. Epstein teaches Holocaust Studies at Penn State Harrisburg located in Middletown or less than three miles from the nuclear plant.

The Petitioner attends the TMI-2 Advisory Panel Meetings in Middletown. Mr. Epstein meets monthly with the General Authority at Dauphin Highland in Swatara Township which is eight miles from the plant. The Petitioner is a member of Lower Paxton Planning Commission. The Commission meets monthly at the Township Building which is also 11 miles from Three Mile Island.

Mr. Epstein opposes granting Constellation’s LAR because of concerns over safety, and the potential for significant damage to public health including school

students under his charge. Mr. Epstein is also responsible for golfers on Dauphin Highlands. There are approximately 50,000 rounds played a year.

Southern Lower Paxton is within the 10-mile Emergency Planning Zone. The Township is included in discussions regarding the TMI area, as some of its southwestern census-designated places ("CDPs") fall within the 10-mile radius from the Susquehanna River plant. This area is zoned Business Campus, General Industrial, and Residential, and plays a major role in the Township's growth projections. The area is part of the 83 corridor which will be used for evacuation. This area hosts 2,807 students – predominantly elementary kids – who will need to be evacuated.

Pre-K and nursery schools have no plan, routes or transportation. In addition, the company has not accounted for the Amish Mennonites in Northern Lancaster County. Sirens have been replaced with digital communications. There is no way to communicate with these populations since they shun telephones.

There are no plans in place to evacuate the Hershey Chocolate Factory (1,100 employees), the Hershey Medical Center (12,400 staff members), and Hershey Park which is the most traveled amusement park in North America, i.e., 3 million visitors annually. The ten -mile evacuation zone contains numerous retirement homes and over 1,000 non-ambulatory residents, e.g., the Ecumenical Retirement Center (Paxtang), Frye Village (Middletown), the Leader Center for Active Life (Hershey), the Middletown Home and the Oakhill Village (Middletown.)

Mr. Epstein's arguments in support of standing to intervene as an individual
have been made. The Petitioner is eligible for standing as a Right and Based on Proximity. Mr. Epstein also qualifies for Discretionary standing. Mr. Epstein's arguments are sufficient to establish standing to intervene in this license. Mr. Epstein explains, he may suffer (or will be under threat of suffering) concrete and particularized injuries from the restored operations of Three Mile Island Unit-1 if the exemption sought by Constellation is granted.

If the exemption is denied, the potential threats or actual harms from Crane will not occur. TMI-1 may not resume operations without a license from the Commission, which by statute also has the power to order mitigation arrangements. (U.S.C. § 2133(a).)

Mr. Epstein will suffer (or will be under threat of suffering) concrete and particularized injuries from the restored operations of Three Mile Island Unit-1 if the exemption and License Amendment Requests sought by Constellation are granted. If the exemptions and LARs are denied, the potential threats or actual harms from Crane will not occur. TMI-1 may not resume operations without a license from the Commission, which by statute also has the power to order mitigation arrangements. (U.S.C. § 2133(a).)

Petitioner's Contentions Are Admissible.

A. Governing Legal Standards for Contention Admissibility.

Under 10 C.F.R. § 2.309(f)(1), a hearing request "must set forth with particularity the
contentions sought to be raised." That regulation further requires that each contention:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted;
(ii) Provide a brief explanation of the basis for the contention;
(iii) Demonstrate that the issue raised is within the scope of the proceeding;
(iv) Demonstrate that the issue raised is material to the findings the NRC must make to
support the action that is involved in the proceeding;
(v) Provide a concise statement of the alleged facts or expert opinions supporting the petitioner's position.
(vi) Provide sufficient information to show a genuine dispute exists with the applicant on a material issue of law or fact.

Key Requirements for Admissibility.

- **Support:** Contentions must be supported by documents, data, or expert opinions, not just mere speculation.
- **Specificity:** General, vague, or unsupported allegations will be rejected.
- **Impact:** The issue must be significant enough that it could change the outcome of the proceeding.

B. Provide a concise statement of the alleged facts or expert opinions, including references to the specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely; and provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

Failure to comply with any one of these six admissibility requirements is grounds for rejecting a proposed contention. These requirements are "strict by design." The six criteria serve to "focus litigation on concrete issues and result in a clearer and more focused record for (v) (vi) 99 100 101 102 *Cf. Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Unit No. 3 & James A. Fitzpatrick Nuclear Plant), LBP-16-14, 84 NRC 444, 451 (2016).

Thus, where a petitioner neglects to provide the requisite support for its contentions, the Board may not cure the deficiency by supplying the information that is lacking or making factual assumptions that favor the petitioner to fill the gap. Although "[a] board may consider the readily apparent legal implications of a *pro se* petitioner's arguments, even if not expressly stated in the petition, that "authority is limited in that the petitioner—not the board—must provide the information required to satisfy [the] contention admissibility standards."

1. **Proposed Contention 1 Is Admissible Because It Meets the Requirements. 10 C.F.R. § 2.309(f)(1)(iii)-(vi).**

   A. Constellation seeks a one-time rescission of the 10 CFR 50.82(a)(1) certifications that required permanent cessation of operations. This exemption, along with Licensing Amendment Requests, are required to allow the reactor to load fuel and return to operation. This regulatory pathway is not sanctioned by NRC regulations.

The Petitioner's Contention 1 alleges as follows: Both Constellation and NRC staff have admitted that "NRC regulations do not prescribe a specific regulatory path for reinstating operational authority." (13) Constellation presented a Trojan horse scheme to attempt to use existing regulations to restore TMI's operating license. Central to this plan is a one-time rescission of the 10 CFR 50.82(a)(1) certifications that required permanent cessation of operations. This exemption,

along with Licensing Amendment Requests, is required to allow the reactor to load fuel and return to operation.

There is no basis in fact or law supporting this exemption, nor is there any legal or factual basis for the LAR to revise the license and technical specifications to support resumption of power operations at Crane Clean Energy Center. Constellation and the NRC must comply with National Environmental Policy Act ("NEPA") and await approval of the Clean Water Act, Section 401 application.

Constellation is seeking to return Three Mile Island Unit-1 to power operations and has submitted several requests for NRC approval to support allowing the resumption of power operations through April 19, 2034, the previous expiration date of the plant's license. These requests include three LARs, which are the subject of this notice, and an exemption request. Consistent with the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations, the NRC is not publishing a notice of opportunity for hearing on the exemption request.

NRC has allowed hearings on exemption requests that make up the "required elements" of a parallel licensing action, such that the proposed exemption "directly bears on whether the proposed action should be granted." Put another way, when NRC's review of a licensing action necessarily involves consideration of the same subject matter as its review of an exemption request, Section 189a of the Atomic Energy Act does not remove the exemption request from scope of matters that may be adjudicated on the licensing. This situation most often presents itself when an exemption request is bundled with a licensing action, such that the applicant cannot meet the criteria for approval of the licensing action without receiving approval of the related exemption.

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13 Holtec letter to NRC, Regulatory Path to Reauthorize Power Operations at the Palisades Nuclear Plant, March 13, 2023 (ML23072A404.)

The Exemption Request and the LARs are both aimed at the same ultimate objective - authorizing the restart. This does not mean that NRC's approval of the LARs is dependent on its parallel review of the Exemption Request. Put differently, just because both the exemption and the amendments may ultimately be required to resume power operations does not mean that the two are co-dependent in a manner that scopes the Exemption Request into the

Section 189a hearing process. They are separate approvals on parallel tracks, just like the license transfer application that is also not within the scope of this proceeding. Whether NRC grants the exemption from 10 CFR 50.82(a)(2) to allow application to rescind the certifications of shutdown and defueling will not affect the criteria against which the LARs are judged.

The exemption request and LARs submitted by Constellation were not a valid application of the existing regulations. The exemption request was so closely intertwined with the license amendment requests that it must be included
as a contention in this proceeding. It is significant that in the Palisade's proceeding, Holtec agreed with the Petitioners that the exemption request is not within the scope of this proceeding.

Holtec pointed out, "Congress intentionally limited the opportunity for a hearing to certain designated agency actions—agency actions that do not include exemptions." (14) Holtec's Answer elaborated:

NRC has allowed hearings on exemption requests that make up the "required elements" of a parallel licensing action, such that the proposed exemption "directly bears on whether the proposed action should be granted." Put another way, when NRC's review of a licensing action necessarily involves consideration of the same subject matter as its review of an exemption request, Section 189a of the
Atomic Energy Act does not remove the exemption request from scope of matters that may be adjudicated on the licensing action. This situation most often presents itself when an exemption request which is bundled with a licensing action, such that the applicant cannot meet the criteria for approval of the licensing action without receiving approval of the related exemption. (15)

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14 Holtec letter to NRC, Regulatory Path to Reauthorize Power Operations at the Palisades Nuclear Plant, March 13, 2023 (ML23072A404.

15 Holtec Answer, p. 39, citing *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), 51 N.R.C. 91, 96 (1999).

Holtec's Answer went on to state:

> NRC has allowed hearings on exemption requests that make up the "required elements" of a parallel licensing action, such that the proposed exemption "directly bears on whether the proposed action should be granted." Put another way, when NRC's review of a licensing action necessarily involves consideration of the same subject matter as its review of an exemption request, Section 189a of the Atomic Energy Act does not remove the exemption request from scope of matters that may be adjudicated on the licensing action. This situation most often presents itself when an exemption request is bundled with a licensing action, such that the applicant cannot meet the criteria for approval of the licensing action without receiving approval of the related exemption.

This situation most often presents itself when an exemption request is bundled
with a licensing action, such that the applicant cannot meet the criteria for approval of the licensing action without receiving approval of the related exemption. In the Palisades proceeding, Holtec correctly concluded:

> But the fact that the Exemption Request and the LARs are both aimed at the same ultimate objective - authorizing the restart - does not mean that NRC's approval of the LARs is dependent on its parallel review of the Exemption Request. Put differently, just because both the exemption and the amendments may ultimately be required to resume power operations does not mean that the two are co-dependent in a manner that scopes the Exemption Request into the Section 189a hearing process. They are separate approvals on parallel tracks,
> just like the license transfer application that is also not within the scope of this proceeding. Whether NRC grants the exemption from 10 CFR 50.82(a)(2)
> to allow application to rescind the certifications of shutdown and defueling will not affect the criteria against which the LARs are judged. (16)

16 Holtec Answer, Pages 44-45

B. The Exemption Is Within Scope of this Proceeding.

The District of Columbia Circuit has limited the granting of exemptions to "exigent circumstances": Section 50.12 provides a mechanism for obtaining an exemption from the procedures incorporated in section 50.10, but one that may be invoked only in extraordinary circumstances. The Commission has made clear that section 50.12 is available "only in the presence of exigent circumstances, such as emergency situations in which time is of the essence and relief from the Licensing Board is impossible or highly unlikely." [citing *Washington Public Power Supply System*, 5 NRC 719, 723 (1977)]. *NRDC v. NRC*, 695 F.2d 623 (D.C. Cir. 1982). The Commission has similarly emphasized that § 50.12 exemptions are to be granted sparingly and only in cases of undue hardship. Fed. Reg. 14,506, 14,507 (1974). So Holtec bears an extremely heavy burden to justify its request for an exemption.

It is clear that exemptions are meant to apply, *ad hoc*, to specific situations in specific cases, much like a variance in zoning cases. The abuse of the exemption procedure, as demonstrated here by Holtec and the NRC Staff, is not being narrowly invoked just for Palisades, but is being directly replicated in efforts to restart the reactors at Duane Arnold and Three Mile Island and 13 Letter, "Certifications of Permanent Cessation of Power Operations and

Permanent Removal of Fuel from the Reactor Vessel," June 13, 2022, (ML22164A067). Duane Arnold.14

This "exemption" is actually a new policy, not an exemption. Indeed, the exemption provision is an unofficial rulemaking procedure, albeit one that bypasses the formal rulemaking requirements of 10 C.F.R. §§ 2.800 *et seq.* That is clearly not the purpose of an exemption. Exemptions under § 50.12 must first be authorized by law.
Constellation proposes to change a presently unusable operating license into a fully functional operating license, through an exemption and several LARs. Notably. The NRC Staff referred to the Holtec exemption request as a "major licensing action."

> In determining whether an amendment to a license, construction permit, or early site permit will be issued to the applicant, the Commission will be guided by the
> considerations which govern the issuance of initial licenses, construction permits, or early site permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued before the issuance of the amendment to the license… (18)

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17 Palisades, Notice of Appeal, April 5, 2025. (Pages 23-24).

18 Palisades, Notice of Appeal, April 5, 2025. (Page, 24).

Alterations of the type that require a construction permit are those that involve substantial changes that, in effect, introduce significant new issues relating to the nature and function of the facility. See *Portland General Electric Co.* (Trojan Nuclear Plant), 6 NRC 1179, 1183 (1977). To trigger the need for a construction permit, the change must "essentially [render] major portions of the original safety analysis for the facility inapplicable to the modified facility." See *Id.*; *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), 53 NRC 370, 391-92 (2001).

C. Proposed Contention 2 Raises Issues That Are Within the Scope of This Proceeding and Are Material to the NRC Staff's Required Findings.

D. Proposed Contention 2 Provides Adequate Support and Raise a Genuine Dispute with the Application on a Material Issue of Fact or Law

Proposed Contention 1 is admissible because it raises issues that are within the scope of this proceeding and material to the Staff's required findings on the exemption and LARs, is supported by factual and legal support, and establishes a genuine material dispute.

Proposed Contention 1 also admissible because it raises issues particularized challenges to the LARs, consistent the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi). The core issue relates to the decoupling of the LAR request from the exemption request.

E. Proposed Contention 1 Is Admissible Because It Meets the Requirements of 10 C.F.R. § 2.309(f)(1)(iii), (v), and (vi).

Proposed Contention 1 argues that the exemption request and bundled requests License Amendment requests are mutually exclusive. (10 C.F.R. § 2.309(f)(1)(vi) states that a contention "must include references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute"). "In particular, "a petitioner may either show the existence of 'special circumstances' or show that the license amendment would result in increased offsite releases of effluents or increased individual or cumulative occupational radiation exposure."

In the Palisades case, "the NRC Staff itself has referred to the Holtec exemption request as a "major licensing action." The Staff then asserts that "[b]ecause license amendments are typically used to change the authorities and requirements for a reactor in decommissioning, the amendment process may be used to restore those authorities so long as the amendment standards in 10 C.F.R. § 50.92(a) are met." The petitioners agree that the standards of 10 C.F.R. § 50.92(a) must be met.

Constellation and the Commission must also satisfy the requirements of the National Environmental Policy Act, set forth in Part 51 of the NRC regulations. Pursuant to 10 C.F.R. § 51.53, an environmental report is required for an operating license or the renewal of an operating license. Regarding Constellation's proposal to restart Three Mile Island Unit-1, Constellation has not submitted an environmental
report.

The Petitioner provides credible factual support for any claim—express or implicit—that special circumstances warrant the preparation of an EA or EIS.

Pursuant to the National Environmental Policy Act ("NEPA") and the Nuclear Regulatory Commission's supervisory authority to protect the integrity of its licensing and NEPA decisions. Mr. Epstein hereby requests the Commission to suspend any processing or consideration of a planned license amendment request by Constellation Energy Generation, LLC, to the existing license for the Christopher M. Crane Clean Energy Center, formerly known as Three Mile Island, Unit 1 to allow receipt of new fuel to support potential restart of the facility.

On June 10, 2025 Mr. Eric Joseph Epstein, on behalf of Three Mile Island Alert, has submitted a request to the NRC, citing the National Environmental Policy Act and the Commission's "inherent supervisory authority to protect the integrity of its licensing and NEPA decisions." The request asks the Commission to "suspend any processing or consideration of a planned license amendment request" by Constellation Energy Generation, LLC "to allow receipt of new fuel to support potential restart" of the Christopher M. Crane Clean Energy Center, formerly Three Mile Island, Unit-1.
In summary, Mr. Epstein asserts that CEG intends to seek an exemption and license amendments that would enable CEG to acquire nuclear fuel in advance of obtaining the NRC's authorization to restart operation of the reactor, and that the Commission should "enjoin" CEG from doing so because it would "comprise an irreversible and irretrievable commitment of resources" that would prejudice the NRC's NEPA review. (18)

On February 11, 2026, NRC spokesperson Scott Burnell provided an update to Mr. Epstein: "The NRC continues reviewing Constellation's amendment request to possess new fuel, the current goal for reaching a decision is July of this year. Constellation would be prohibited from loading fuel into the CCEC reactor until the agency reached a decision on the full restart request bundle and the plant went on to successfully meet all technical specifications required for fuel loading."

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18 Order on June 10, 2025, Re: Eric Joseph Epstein's Request to Bar Receipt of New Fuel to Support Potential Restart of the Constellation Clean Energy Center Facility (May 27, 2025) (ADAMS accession no. ML25147A024).

Mr. Epstein seeks to halt a restart commitment for the purchase and fabrication of new fuel at this time because it would comprise an irreversible and irretrievable commitment of resources and would introduce bias in favor of approval of the contemplated restart of TMI-1 before the NRC Staff has complied with the National Environmental Policy Act obligation of environmental review and determination of whether an Environmental Impact Statement ("EIS") is required for the proposed restart.

The NRC acted in a timely manner and gave consideration for the obvious reason that to authorize Constellation to commence making arrangements for the restart would undermine the legal process of restart into a merely performative mockery. It would flagrantly violate NEPA to permit Constellation to proceed with ordering fuel for the restart of a long-shutdown nuclear power plant where there is a request for restart which has not been acted upon by the NRC Staff, particularly as to the fulfillment of the agency's NEPA obligations.

The Commission should waylay consideration of Constellation's fuel purchase LAR because regulatory permission would enable Constellation illegally to evade the NEPA review that the NRC must complete before the restart can proceed. The overall restart project cannot "begin or continue without prior approval of a federal agency." *Maryland Conservation Council v. Gilchrist*, 808 F.2d 1039, 1042 (4th Cir. 1986); *Foundation on Economic Trends v. Heckler,* 756 F.2d 143, 155 (D.C. Cir. 1985). To ensure compliance with NEPA, the Commission

can properly treat Constellation's fuel acquisition as part of the regulated "federal action" activities and deny the request or suspend processing of the LAR.

In *Gilchrist*, the Fourth Circuit ruled that the district court could enjoin a county government from building a highway up to the edge of a park that had been created with federal funds, because the highway could not be completed without a NEPA review of its impacts on the park. Similarly, here, the aim of Constellation behind ordering and purchasing nuclear fuel for the restart of TMI-1 is to operate the plant under a permit granted by the NRC. Acquisition of nuclear fuel for the restart will influence the NRC's decision-making process regarding the proposed restart by committing resources to a pre-ordained course of action before the agency has even decided whether to prepare an EIS that evaluates the impacts of that course of action or reasonable alternatives.

As the Court observed in *Gilchrist*:

> It is precisely this sort of influence on federal decision-making that NEPA is designed to prevent. Non-federal actors may not be permitted to evade NEPA by completing a project without an EIS and then presenting the responsible federal agency with a *fait accompli.*

808 F.2d at 1042. Therefore, the Commission should enjoin Constellation from completing the ordering of fuel and commitment of the significant cost of purchase unless and until the NRC Staff has completed its NEPA review.

NEPA requires federal agencies to examine the environmental consequences of their actions *before* taking those actions, in order to ensure "that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). The primary method by which NEPA ensures that its mandate is met is the "action-forcing" requirement for preparation of an EIS, which assesses the environmental impacts of the proposed action and weighs the costs and benefits of alternative actions.

Mr. Epstein will suffer irreparable harm as a result of the fuel

acquisition because completion of a key element of the restart will present the NRC with a *fait accompli* and foreclose consideration of alternatives and mitigative measures. *Gilchrist*, 808 F.2d at 1042. These alternatives would include the no-action alternative or a plant restart with a lower-enriched fuel mix. The latter alternative, in particular, might include modifications to the plant. By committing resources to the restart, Constellation would make alternatives less feasible or attractive.

By comparison, enjoining fuel acquisition for the TMI-1 restart, pending completion of the NRC's environmental review, would not harm Constellation since the reactor restart was postponed. PJM Interconnection has told the company that the former Three Mile Island nuclear power plant in Pennsylvania likely will not connect to the grid until 2031, four years later than planned.

Constellation will have no use for the new fuel until restart operations for the entire nuclear plant is approved by the NRC. Any resulting delay is necessary for compliance with NEPA.

The purpose of NEPA is to make sure that federal agencies take environmental considerations into account before proceeding with actions that will affect the quality of the environment. The public interest would be best served by a ruling from the Commission clarifying that the environmental review for the TMI-1 restart remains incomplete, and enjoining any serious pre-construction activity by Constellation until NEPA compliance has been achieved.

The Petitioner has established standing and that Contention 1 should be admitted for hearing. Constellation is trying to maneuver around NEPA and NRC regulations. Based on the facts and the requirements of NRC regulations, the Petitioner’s Contention 1 must be admitted for hearing.

A. Proposed Contention 2 Raises Issues That Are Within the Scope of This Proceeding and Are Material to the NRC Staff’s Required Findings. Proposed Contention 2 Provides Adequate Support and Raise a Genuine

Dispute with the Application on a Material Issue of Fact or Law.

The proposed changes to Christopher M. Crane Clean Energy Center Site Emergency Plan and Emergency Action Level ("EAL") and Scheme for an Operating Facility Application Was Filed on October 31, 2025 (ADAMS Accession No. ML25304A097 (package).

The revised conceptual changes in the proposed LARs relating to emergency planning impact both Three Mile Island-1 and Three Mile Island-2. The proposed amendment would revise the CCEC Radiological Emergency Preparedness Plan and Emergency Action Level scheme to support resumption of power operations at the CCEC.

However, the plan is not in compliance with federal regulations, and fatally flawed for failing to adequately account for special needs' populations.

Three Mile Island has no emergency evacuation plan in place, and has historically excluded plans for special populations from pre-K kids to non-ambulatory adults. Constellation's emergency plan is in violation of Federal Regulations (10 CFR 50.47; 10 CFR 50.54; 10 CFR Part 50 Appendix E; 44 CFR 350) because Pennsylvania has improperly planned for and/or left out special populations (day care centers and nursery schools) from their Radiological

B. Proposed Contention 2 Provides Adequate Support and Raise a Genuine Dispute with the Application on a Material Issue of Fact or Law.

Proposed Contention1 argues that the exemption request and bundled request License Amendment request are mutually exclusive. 10 C.F.R. § 2.309(f)(1)(vi) states that a contention "must include references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute"). In particular, "a petitioner may either show the existence of 'special circumstances' or show that the license amendment would result in increased offsite releases of effluents or increased individual or cumulative occupational radiation exposure."

Proposed Contention 2 is admissible because it raises issues that are within the scope of this proceeding and material to the Staff's required findings on the exemption and LARs, is supported by factual and legal support, and establishes a genuine material dispute Proposed Contention 2 also admissible because it raises issues particularized challenge to the LARs, consistent the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi). The core issue relates to the decoupling of the LAR request from the exemption request.

C. Proposed Contention 2 Is Admissible Because It Meets the Requirements of 10 C.F.R. § 2.309(f)(1)(iii), (v), and (vi).

In December 1979, the President directed the Federal Emergency Management Agency (FEMA), to lead state and local emergency planning and preparedness activities with respect to jurisdictions in proximity to nuclear reactors. FEMA has responsibilities under Executive Order 12148, issued on July 15, 1979, to establish federal policies and to coordinate civil emergency planning within emergency preparedness programs. Consequently, FEMA is the lead authority concerning the direction, recommendations, and determinations with regard to offsite state and local government radiological emergency planning efforts necessary for the public health and safety. FEMA sends its findings to the NRC for final determinations. FEMA implemented Executive Order 12148 in its regulations outlined in 44 CFR Part 350. Within the framework of authority created by Executive Order 12148, FEMA entered into a Memorandum of Understanding (MOU) (58 FR 47966, September 9, 1993) with the NRC to provide

acceptance criteria for and determinations as to whether state and local government emergency plans are adequate and capable of being implemented to ensure public health and safety. FEMA's regulations were further amplified by FEMA Guidance Memorandum (GM) EV-2, “Protective Actions for School Children” and FEMA-REP-14, “Radiological Emergency Preparedness Exercise Manual.”

The Commission's emergency planning regulations for nuclear power reactors are contained in 10 CFR Part 50, specifically § 50.33(g), 50.47, 50.54 and Appendix E. As stated in 10 CFR 50.47(a)(1), in order to issue an initial operating license, the NRC must make a finding “that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency” to protect the public health and safety. An acceptable way of meeting the NRC's emergency planning requirements is contained in Regulatory Guide (RG) 1.101, Rev. 4, “Emergency Planning and Preparedness for Nuclear Power Reactors” (ADAMS Accession No. ML032020276). This guidance document endorses NUREG-0654/FEMA-REP-1, Rev. 1, “Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants” (ML040420012; Addenda: ML021050240), an NRC and FEMA joint guidance document intended to provide nuclear facility operators and federal, state, and local government agencies with acceptance criteria and guidance on the creation and review of radiological emergency plans. Together, RG 1.101, Rev. 4, and NUREG-0654, Rev. 1, provide guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the Commission's regulations for emergency response plans and preparedness at nuclear power reactors.

These Federal Regulations state the following:

The Requirements to provide “reasonable assurance that adequate protective measures can be taken” are listed here:

10 CFR 50.47 Emergency plans.

(a)(1) Except as provided in paragraph (d) of this section, no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. No finding under this section is necessary for issuance of a renewed nuclear power reactor operating license.

> The NRC will base its finding on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented, and on the NRC assessment as to whether the applicant's on-site emergency plans are adequate and whether there is reasonable assurance that they can be implemented. A FEMA finding will primarily be based on a review of the plans. Any other information already available to FEMA may be considered in assessing whether there is reasonable assurance that the plans can be implemented. In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability.

1. **The following Guidance Documents and General Memorandums listed under the authority of these Federal Regulations require planning for "those persons whose mobility may be impaired due to such factors as institutional or other confinement" can be found in these documents: NUREG0654r1/FEMA REP-1 "Criteria for Preparation and Evaluation of Radiological Emergency**

2. Response Plans and Preparedness in Support of Nuclear Power Plants; and

FEMA-REP-14 "Radiological Emergency Preparedness Exercise Manual"; and
FEMA GM 24 "Radiological Emergency Preparedness for Handicapped Persons"
GM EV-2 "Protective Actions for School Children."

As outlined in these documents the following groups must be included:
Public and private schools; and
Public and private day care centers, nursery schools; and
Nursing homes; and

Group homes for the physically or mentally challenged; and
Correctional facilities

3. **The organizations responsible for providing "adequate protective measures" are defined as the "Appropriate State, Local and Federal Agencies" are listed here and include:**

10 CFR Part 50 Appendix E Emergency Planning and Preparedness for Production and Utilization Facilities

The applicant's emergency plans shall contain, but not necessarily be limited to, information needed to demonstrate compliance with the elements set forth below, i.e., organization for coping with radiation emergencies, assessment action, activation of emergency organization, notification procedures, emergency facilities and equipment, training, maintaining emergency preparedness, and recovery. In addition, the emergency response plans submitted by an applicant for a nuclear power reactor operating license shall contain information needed to demonstrate compliance with the standards described in § 50.47(b), and they will be evaluated against those standards. The nuclear power reactor operating license applicant shall also provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations.

Constellation's LAR requests are in an inappropriate gateway for restarting Three Mile Island. The Company is in rush to get the plant licensed, yet slow walk creating and get an approval for a robust emergency plan that includes all the mandatory elements listed above. These components are not variables and are required under federal law.

A. Organization.

The organization for coping with radiological emergencies shall be described, including definition of authorities, responsibilities, and duties of

individuals assigned to the licensee's emergency organization and the means for notification of such individuals in the event of an emergency.

Specifically, the following shall be included:

7. Identification of, and assistance expected with emergencies,
8. Identification of the State and/or local officials at appropriate State, local, and Federal agencies with responsibilities for planning.

Emergency plans for all nuclear power reactors are required under Part 50, as amplified by NUREG-0654/FEMA-REP-1 and applicable FEMA guidance documents, to have specific provisions for all “special facility populations,” which refers not only to pre-schools, nursery schools, and daycare centers, but all kindergarten through twelfth grade (K-12) students, nursing homes, group homes for physically or mentally challenged individuals and those who are mobility challenged, as well as those in correctional facilities. FEMA GM 24, “Radiological Emergency Preparedness for Handicapped Persons,” dated April 5, 1984, and GM EV-2, “Protective Actions for School Children,” dated November 13, 1986, provide further guidance.

These specific plans shall, at a minimum contain

- Identify the population of such facilities;
- Determine and provide protective actions for these populations;
- Establish and maintain notification methods for these facilities; and
- Determine and provide for transportation and relocation.

The “concrete” harm and “particularized” injuries are not abstract hypotheticals. The Petitioner is a school board director for the Central Dauphin School District. He has four to six meetings a month at the Administration Building. The Administration Building is 11 miles from TMI. The Central Dauphin School District is the eighth largest school district in the Commonwealth of Pennsylvania. The enrollment is 12,oo6 students. However, for evacuation planning which includes charter, public and private school, the District must plan for 14,217 students.

Central Dauphin is the largest of the 10 school districts located in the county. Encompassing an area of 118.2 square miles, the district is comprised of three boroughs (Dauphin, Paxtang and Penbrook) and four townships (Lower Paxton, Middle Paxton, Swatara and West Hanover). Students attend one of thirteen elementary schools, four middle schools and two high schools, and are transported from urban, suburban, and rural areas. The District is opening three full- day kindergarten centers in Augus, 2026.

All 19 buildings located within with the school district were evacuated on March 30, 1979. The Central Dauphin School District is responsible for the following schools within ten miles of Three Mile Island: Chambers Hill Elementary School (236), Lawnton Elementary School (296), Paxtang Elementary School (276), Rutherford Elementary School (431), Southside Elementary (536), Swatara Middle High School (576), and Tri-Community Elementary School (456). Also,Town and Country Day School and St. Catherine Laboure School.

Constellation does not possess an evacuation plan, and has not addressed the minimum four components required by the federal government. Constellation anticipates that the Emergency Preparedness program will be ready for NRC review no later than 1st Quarter 2027. Therefore, there is no hardship to delaying approval until Crane is compliant with state and federal regulations.

Enjoining the LARs for the TMI-1 restart, pending completion of the FEMA, PEMA, and review, would not harm Constellation since the reactor restart was postponed. PJM Interconnection has told the company that the former Three Mile Island nuclear power plant in Pennsylvania likely will not connect to the grid until 2031, four years later than planned.

Mr. Epstein explains, he and students under his charge, will suffer (or will be under threat of suffering) concrete and particularized injuries from the restored operations of Three Mile Island Unit-1 if the exemption sought by Constellation is granted. If the exemption is denied, the potential threats or actual harms from Crane will not occur. TMI-1 may not resume operations

without a license from the Commission, which by statute also has the power to order mitigation arrangements. (U.S.C. § 2133(a).)

The Petitioner has established standing and that Contention 2 should be admitted for hearing. Constellation is trying to maneuver around NEPA and NRC regulations. Based on the facts and the requirements of NRC regulations, the Petitioner's Contention 2 must be admitted

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Conclusion.

The pleading requirements of 10 C.F.R. § 2.309(f)(1) do not encompass the overly
burdensome standards, and are not meant to be used as a "fortress to deny intervention," *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), 49 NRC 328, 335 (1999), yet here, once again, they were. The Petitioner provided the requisite
"reasonably specific factual or legal basis." *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear PowerStation), NRC 211, 221 (2015). "The Petitioner has proffer[ed] at least some minimal factual
and legal foundation in support of his contentions." *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), 49 NRC 328, 334 (1999).

Respectfully submitted

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Certification of Service.

Pursuant to 10 CFR § 2.305, I hereby certify that a copy of the foregoing Eric Joseph Epstein's Petition to Intervene and Supporting Contentions was deposited in the Electronic Information Exchange (NRC Filing System) in the captioned proceeding this 25th day of April, 2025, and that according to the protocols of the EIE they were served upon all parties registered with the system.

April 27, 2026