

ATTACHMENT 1

**APPLICATION FOR ORDER APPROVING INDIRECT TRANSFER OF
CONTROL OF LICENSES**

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ENCLOSURES

Enclosure 1A **Stock Purchase Agreement (Proprietary) w/o certain attachments**

Enclosure 1B **Stock Purchase Agreement (Non-Proprietary) w/o certain attachments**

Enclosure 2 **Simplified Pre-Closing and Post-Closing Organizational Charts**

Enclosure 3 **10 CFR 2.390 Affidavit**

I. INTRODUCTION

In accordance with Section 184 of the Atomic Energy Act, 10 CFR 30.34(b), 10 CFR 50.80, 10 CFR 72.50, and 10 CFR 110.50(d), *EnergySolutions*, LLC (*EnergySolutions* or the Applicant), on behalf of itself and its wholly owned subsidiaries that hold the referenced licenses (Licensed Subsidiaries or Licensees) described in subsection A below, hereby submits this application (the Application) requesting that the U.S. Nuclear Regulatory Commission (NRC) consent to an indirect transfer of control of the following licenses: NRC License Nos. DPR-39 and DPR-48 for Zion Units 1 and 2, DPR-73 for Three Mile Island Unit 2, and DPR-45 for La Crosse Boiling Water Reactor, as well as the general licenses for the on-site independent spent fuel storage installations (ISFSIs) at Zion and La Crosse that are regulated under 10 CFR 72.210; NRC Radioactive Materials License No. 39-35044-01; and Export Licenses XW010 and XW018 (collectively, the Licenses). The indirect transfer of the Licenses will result from a stock purchase transaction involving the current principal shareholders of the corporate parent company of the Applicant and other investors.

A. Description of the Licensed Subsidiaries

The Applicant's Licensed Subsidiaries currently hold the NRC licenses for three nuclear power facilities that are currently undergoing decommissioning:

- Zion Nuclear Power Station (ZNPS) Units 1 and 2 are located in Zion, Illinois. Both Units 1 and 2 were permanently shut down on February 13, 1998. On September 1, 2010, the facility licenses were transferred from Exelon Generation to *ZionSolutions*, LLC, a wholly-owned special purpose subsidiary under the Applicant, for the purpose of decommissioning the site. Facility Operating License Nos. DPR-39 and DPR-48 for ZNPS Units 1 and 2, respectively, and the general license for the ZNPS ISFSI, are currently held by *ZionSolutions*, LLC. Decommissioning of the units is substantially complete. By order dated November 26, 2019, the NRC approved the transfer of the ZNPS licenses from *ZionSolutions* back to Exelon Generation. Completion of the transfer of the ZNPS licenses is pending NRC determinations regarding the release of land for unrestricted use.²
- Three Mile Island Unit 2 (TMI-2) is located near Middletown, Pennsylvania. TMI-2 experienced a core damage accident on March 28, 1979. The reactor was placed in a safe and stable storage condition known as "post-defueling monitored storage," and its nuclear fuel was removed by the Department of Energy to a storage facility at Idaho National Laboratory. The license currently authorizes the possession of by-product and special nuclear material remaining at the reactor. The TMI-2 facility and site is owned and operated by *TMI-2 Solutions*, LLC, a wholly-owned special purpose subsidiary under the Applicant, for the purpose of decommissioning.

² Should the transfer of the ZNPS licenses back to Exelon Generation (or its renamed successor) occur prior to the closing of the proposed indirect transfer that is the subject of this Application, the Applicant will promptly supplement this Application to reflect that change.

- The La Crosse Boiling Water Reactor site (LACBWR) is located on the east bank of the Mississippi River in Vernon County, Wisconsin. LACBWR had a 50 MW electrical output, and was initially owned and operated by Dairyland Power Cooperative (DPC). Decommissioning of LACBWR is substantially complete and a generally licensed ISFSI remains onsite. The licensee is currently LaCrosseSolutions, LLC, a wholly-owned special purpose subsidiary under the Applicant, after the operating authority under the license was acquired from DPC in 2016.³

The Applicant also holds one NRC radioactive materials license:

- Radioactive Materials License No. 39-35044-01 (Docket Nos. 030-39013, 030-38619) for use at temporary job sites to support a variety of possible work scope activities at those sites.

The Applicant's wholly owned subsidiary EnergySolutions Services, Inc. holds two NRC export licenses:

- Export License XW010 (Docket No. 11005620) for return of radioactive waste to Canada.
- Export License XW018 (Docket No. 11005897) for return of radioactive waste to Germany.

II. DESCRIPTION OF TRANSACTION

A. Current Ownership

The Applicant EnergySolutions is a wholly-owned subsidiary of EnergySolutions Finance Holdings, LLC, which is a privately held company whose shares are directly owned by EnergySolutions, Inc., which in turn is a privately held company whose shares are directly owned by Rockwell Holdco, Inc. (Rockwell).

Rockwell is currently approximately 58% owned primarily by a number of affiliated passive investment funds controlled by Energy Capital Partners GP II, LP: (i) Energy Capital Partners II, LP; (ii) Energy Capital Partners II-A, LP; (iii) Energy Capital Partners II-B, LP; (iv) Energy Capital Partners II-C (Direct IP), LP; and (v) Energy Capital Partners II-D, LP (collectively, the ECP II Partnerships).

The ECP II Partnerships are each controlled by Energy Capital Partners GP II, LP, a limited partnership organized under the laws of the State of Delaware, as general partner. The general

³ EnergySolutions is in the process of seeking NRC consent to a transfer of control of the licenses for the shutdown Kewaunee Power Station (KPS) and associated ISFSI. EnergySolutions and Dominion Energy Kewaunee (DEK) submitted a license transfer application to the NRC on May 10, 2021, and that application is pending. Once the KPS transaction is complete, the license for KPS will be controlled by the Applicant through a wholly owned subsidiary as described in the May 10, 2021 application. Should the KPS transfer be completed prior to the NRC's action on this proposed indirect transfer, Applicant will promptly supplement this application to reflect that change.

partner Energy Capital Partners GP II, LP, in turn, is controlled by Energy Capital Partners II, LLC (ECP II), a limited liability company organized under the laws of the State of Delaware. For ease of reference, the ECP entities will be referred to collectively as “ECP.”

Rockwell is also approximately 40% owned by passive investment funds controlled by TriArtisan ES Partners, LLC. TriArtisan ES Partners, LLC is in turn controlled by TriArtisan ES MM LLC, which is in turn managed by TriArtisan Capital Advisors LLC, a Delaware limited liability company based in New York, New York (collectively, TriArtisan Entities). All the TriArtisan Entities are limited liability companies organized under the laws of the State of Delaware and are controlled by two U.S. Citizens, Gerald Cromack and Rohit Manocha, who are the co-founders and managing directors of TriArtisan Capital Advisors LLC.

Rockwell is also owned (approximately 2.2%) by the Spyder Retirement Trust, for which David Lockwood is the trustee,⁴ and by the executive management of Rockwell (less than 1%). Mr. Lockwood and the executive management of Rockwell are all U.S. citizens.

B. Proposed New Ownership Structure

The indirect transfer arises from a Stock Purchase Agreement (SPA), dated November 16, 2021 (Enclosure 1). Pursuant to the SPA, a passive investment fund established by the TriArtisan Entities known as TriArtisan ES Partners II LP, a Delaware limited partnership, will acquire most of the existing majority shareholder interest held by ECP, as well as most of the current TriArtisan Entities’ shares. As a result of the transaction, TriArtisan ES Partners II LP and the TriArtisan Entities (collectively, TriArtisan) will own a majority shareholder interest of approximately 88%, and will have governance control over Rockwell. ECP will retain preferred interests of approximately one (1)% of the total Rockwell equity.⁵ TriArtisan and all other equityholders will hold their interests through a new parent company entity to be established above Rockwell, herein called Holding Partnership, LP, as described further below.

Minority ownership interests in excess of two (2)% will be held by the following:

- Passive investment funds controlled by Peterson Partners, LLC, a Delaware limited liability company, will acquire common interests of approximately 7.0% of the total Rockwell equity. Passive investment funds controlled by Peterson Partners, LLC will indirectly hold additional interests of approximately 13.2% of the total Rockwell equity through TriArtisan ES Partners II LP.
- Spyder Retirement Trust will hold common interests of approximately 2.1% of the total Rockwell equity.

Executive management of Rockwell and *EnergySolutions* will also collectively hold common interests of approximately 1.7% of the total Rockwell equity. A portion of this interest (approximately 0.43% of the total Rockwell equity) will be held by *EnergySolutions*

⁴ Mr. Lockwood is the former Chairman and Chief Executive Officer of *EnergySolutions* and is a former member of the U.S. Secretary of Energy’s Advisory Board.

⁵ Under certain circumstances, ECP could possess a preferred stock interest of more than 1% of total Rockwell equity after the transfer, but even in these cases, ECP’s interest is expected to be in the range of 6.0% to 6.5%. The Applicant will notify the NRC if this percentage increases substantially.

management employees through a new entity called ES Management Holder LLC, a Delaware limited liability company formed for the purpose of the new management incentive program, but without any corporate management or operational function. TriArtisan ES MM LLC will be the manager of ES Management Holder LLC.

In conjunction with the transaction, Holding Partnership, LP, a Delaware limited partnership, will be established as a new parent entity above Rockwell for the purpose of facilitating a new management incentive program for the period following the closing. The parties will set up Holding Partnership, LP in connection with closing of the transaction. This corporate modification is solely for the purpose of the new management incentive program. TriArtisan and the other investors will hold their interests through Holding Partnership, LP, but as set forth in section 7.08(i) of the Stock Purchase Agreement in Enclosure 1, it is the intent of the parties to the transaction that the investors' rights and obligations will remain the same in all material respects as they otherwise would under the current company structure.

Enclosure 2 provides organizational charts depicting the ownership structure before and after the closing of the transaction.

Following the closing of the transaction, the same legal entities will remain the Licensees for the NRC licensed facilities described above, and their names will not change. Thus, no license amendments are proposed for this indirect license transfer.

III. STATEMENT OF PURPOSE OF TRANSFER

The indirect transfer of control to TriArtisan is an upstream corporate ownership change between the two existing principal shareholders of the Applicant's parent company, Rockwell. The overall purpose and effect of the transaction is to provide an overall positive benefit for the Applicant that will help ensure continued successful operations, including timely and efficient decommissioning activities at each NRC licensed facility. This indirect transfer of control will have no material impact on the Licensed Subsidiaries and the activities conducted under the Licenses.

Applicant's Licensed Subsidiaries will maintain responsibility for all licensed activities at the facilities, including the responsibility to complete decommissioning and carry out spent nuclear fuel management in accordance with NRC regulations. This upstream corporate ownership change will not affect the organizations or operations of the Licensed Subsidiaries, nor will it have any material impact on their existing technical and financial qualifications as discussed below.

IV. GENERAL CORPORATE INFORMATION

The following section provides general corporate information on the Applicants. Full corporate names are used below when useful for clarity.

A. General Corporate Information and Description of Business

The Applicant *EnergySolutions* is an experienced nuclear reactor decommissioning vendor and low-level radioactive waste processing and disposal company. *EnergySolutions* and its affiliates specialize in providing high-level and low-level waste management, spent fuel handling and

transportation, and complex decontamination and decommissioning services, including the decommissioning of both government facilities and commercial nuclear power generation facilities. Other services provided by *EnergySolutions* and its affiliates include the packaging, transportation, storage, and disposal of radioactive waste at its disposal facility in Clive, Utah. Through its affiliates, *EnergySolutions* recently completed the decommissioning of the Southwest Experimental Fast Oxide Reactor in Arkansas and is currently decommissioning Zion, LACBWR, and TMI-2. The decommissioning of TMI-2 in particular is a technically complex project which represents an important milestone for the nuclear industry. *EnergySolutions* is also engaged in decommissioning the San Onofre Nuclear Generating Station (SONGS) in California, the Fort Calhoun Nuclear Generating Station in Nebraska, and the NS Savannah, the world's first nuclear-powered merchant ship.

B. No Foreign Ownership, Control, or Domination

Consistent with the requirements of Sections 103d and 104d of the Atomic Energy Act of 1954 (AEA) and NRC regulations at 10 CFR 50.38, the Applicant is not owned, controlled, or dominated by a foreign entity or person, and thus will not be subject to impermissible foreign ownership, control, or domination (FOCD) within the meaning of the AEA following completion of the proposed transaction.

Following the closing of the proposed transaction, approximately 26.8% of the equity of the current TriArtisan Entities and the new TriArtisan ES Partners II LP is expected to be held by passive investors who are foreign persons or entities (referred to here as "Foreign Passive Investors").⁶ This includes the participation by a passive investment fund that will provide approximately \$125 million in funding as a limited partner in TriArtisan ES Partners II LP, a Delaware limited partnership. The passive investment fund will be a Delaware limited partnership, with a general partner organized under the laws of the Cayman Islands but which will not have any appreciable equity interest. This also includes additional Foreign Passive Investors that are also expected to invest as limited partners through TriArtisan ES Partners II LP, but together their investment is expected to be less than \$6 million, or less than 1% of the total Rockwell equity.⁷

As shown in Enclosure 2, the general partner of TriArtisan ES Partners II LP will be the existing TriArtisan ES MM LLC, a Delaware limited liability company. This general partner will have control over the new TriArtisan ES Partners II LP. As a result, the passive investment funds that will participate as limited partners will have no ability to exercise control over the new TriArtisan ES Partners II LP, Rockwell, *EnergySolutions* or its subsidiaries.⁸

⁶ The NRC approved the transfer of TMI-2 to an *EnergySolutions* affiliate under similar circumstances concerning indirect ownership by Foreign Passive Investors. See Safety Evaluation Report, Transfer of Three Mile Island, Unit 2 to TMI-2 Solutions, LLC (Nov. 30, 2020) (Accession No. ML20279A373).

⁷ A co-investor, investing through the fund Peterson ES Coinvest, LLC, is investing \$4.2 million (of the \$75 million total Peterson ES Coinvest investment). Peterson ES Coinvest, LLC will be investing through TriArtisan ES Partners II LP. While this co-investor's entity is a Cayman Islands corporation, all of its investors and directors are U.S. residents and/or U.S. citizens.

⁸ The NRC has previously approved private equity fund arrangements where Foreign Passive Investors would own up to 55% of the economic interests in a company that indirectly owned the licensee for operating reactors, under circumstances where the general partner of the parent company was controlled by U.S. private equity entities and U.S. citizens. See "Safety Evaluation by

As noted above, passive investment funds controlled by Peterson Partners, LLC will acquire a direct interest of approximately 7.0% in Rockwell through Holding Partnership, LP. Peterson Partners, LLC is a Delaware limited liability company based in Salt Lake City, Utah. The passive investment funds controlled by Peterson Partners, LLC with direct interests in Rockwell are not foreign persons or entities. As noted in footnote 7, a passive investment fund controlled by Peterson Partners, LLC and holding an indirect interest in Rockwell through TriArtisan ES Partners II LP is a Foreign Passive Investor, but it will have no ability to exercise control over TriArtisan ES Partners II LP. Such Foreign Passive Investor composes approximately 6% of Peterson Partners, LLC's total indirect investment.

Minority interests in Rockwell through Holding Partnership, LP will also be owned by the Spyder Retirement Trust (approximately 2.1%), for which Mr. David Lockwood is the trustee, as well as executive management of Rockwell and EnergySolutions (approximately 1.7%). Mr. Lockwood and the executive management of Rockwell and EnergySolutions are all U.S. citizens.

Accordingly, any Foreign Passive Investors will have no ability to exercise control or domination over the operations of Rockwell, EnergySolutions, or any of the Licensed Subsidiaries, nor any ability to exercise direct or indirect control over any NRC-licensed activity. Based on the absence of active foreign ownership, TriArtisan's majority shareholder ownership of the Applicant's parent company will be in compliance with the FOCD provisions at Sections 103d and 104d of the AEA and NRC regulations at 10 CFR 50.38. The Applicant and its Licensed Subsidiaries will not be owned, controlled or dominated by any foreign person or entity as such terms are interpreted and applied by the NRC, pursuant to these same AEA and NRC provisions, as applicable to 10 CFR Part 50 licensees.

EnergySolutions' wholly owned subsidiaries EnergySolutions Services, Inc. and Hittman Transport Services, Inc. hold facility security clearances with the Department of Energy (DOE), which requires that DOE evaluate whether EnergySolutions and its affiliates are in compliance with the applicable foreign ownership, control or influence (FOCI) requirements and whether any potential FOCI is adequately negated. DOE implements U.S. government policy regarding FOCI in accordance with Chapter 2, Section 3 of the "National Industrial Security Program Operating Manual" or NISPOM, DoD 5220.22-M (Change 1, dated May 18, 2016), and EnergySolutions and its affiliates have ongoing reporting obligations regarding their "Certificate Pertaining to Foreign Interests," Standard Form 328, required in connection with maintaining the security clearances. EnergySolutions expects to continue to maintain the security clearances following the proposed transaction, and will therefore continue to require that DOE (and as applicable NRC) find that it is not subject to FOCI or that any potential FOCI is adequately negated.

C. No Agency

The Applicant EnergySolutions is not acting as the agent or representative of another person in the proposed transfer of control of the Licenses. The Applicant's Licensed Subsidiaries are the entities with possession and responsibility for management and decommissioning of the licensed facilities, and the Licensees will act for themselves and on behalf of their corporate parent, EnergySolutions.

the Office of Nuclear Reactor Regulation Regarding Acquisition of TXU Corp. by Texas Energy Future Holdings Limited Partnership" (Sep. 10, 2007), at pp. 10-12 (Accession No. ML072220130).

V. TECHNICAL AND FINANCIAL QUALIFICATIONS; OTHER CONSIDERATIONS

The proposed indirect license transfer will have no material impact on the technical and financial qualifications of EnergySolutions' Licensed Subsidiaries.

A. Technical Qualifications

After the closing of the transaction, the Licensed Subsidiaries will remain responsible for carrying out their responsibilities for licensed activities under the respective Licenses. EnergySolutions has more than 25 years of experience in the nuclear decommissioning and waste management industry, including: complex D&D projects of nuclear reactors and highly radioactive nuclear facilities (both commercial and government-owned); management of low-level radioactive waste, high-level radioactive waste, and spent fuel (including handling and transportation); and solving difficult technical challenges such as treatment of radioactive waste. EnergySolutions and its affiliates have demonstrated the ability to achieve and sustain performance improvement in decommissioning operations, transportation, and disposal, and the ability to manage nuclear facilities reliably and safely.

There are no planned changes in the technical organizations of the Licensed Subsidiaries, the applicable Quality Assurance (QA) programs for the respective facilities, processes and procedures, environmental protection programs, or other operations of the Licensed Subsidiaries as a result of the proposed change in upstream ownership. The proposed transaction is not expected to result in any material change in the corporate organization, resources and support of EnergySolutions for its Licensed Subsidiaries. No changes are proposed in the Licenses or associated conditions and technical specifications. Accordingly, the Applicant's Licensed Subsidiaries will remain technically qualified in compliance with the requirements of 10 CFR 50.34(a)(9) and 10 CFR 50.80.

B. Financial Qualifications

Similarly, there are no planned changes in the existing financial qualification arrangements for the Applicant's Licensed Subsidiaries, including for decommissioning funding assurance and spent nuclear fuel management and funding. For each Licensed Subsidiary, financial qualifications, including funding for decommissioning and spent nuclear fuel management, is based on the existing nuclear decommissioning trust funds and performance bond(s) for the facilities, together with any additional financial assurance mechanisms that are the subject of regulatory commitments or conditions of prior license transfer approvals. No changes are proposed to the financial assurances for the Licensed Subsidiaries.

Specifically, there are no modifications being made to the Licensed Subsidiaries' current method of providing financial assurance, and the Licensed Subsidiaries will continue to have access to financial resources required to (i) decommission the facilities under the present schedules and (ii) manage any remaining spent fuel located at the respective sites until acceptance by DOE, in compliance with NRC regulations, including 10 CFR 50.33(f), 50.33(k), 50.54(bb), 50.75, and 50.82(a). The proposed indirect license transfer will not affect the existing financial assurance of the Licensed Subsidiaries. The proposed transaction, in fact, is expected to provide an overall positive benefit to the financial outlook of EnergySolutions.

There are also no planned changes in the existing nuclear insurance for the facilities as applicable under 10 CFR Part 140 for nuclear liability insurance and the associated NRC indemnity agreement, as well as 10 CFR 50.54(w) for onsite nuclear property damage insurance.

Accordingly, the Licensed Subsidiaries under EnergySolutions will remain financially qualified to continue decommissioning and spent fuel management activities under the respective Licenses.

C. NUREG-1556, Vol. 15, Considerations for Radioactive Materials Licenses and Export Licenses

As noted above, the Applicant holds one NRC radioactive materials license:

- Radioactive Materials License No. 39-35044-01 (Docket Nos. 030-39013, 030-38619) for use at temporary job sites to support a variety of possible work scope activities at those sites.

The Applicant's wholly owned subsidiary EnergySolutions Services, Inc. holds two NRC export licenses:

- Export License XW010 (Docket No. 11005620) for return of radioactive waste to Canada.
- Export License XW018 (Docket No. 11005897) for return of radioactive waste to Germany.

NRC guidance on changes of control for such licenses is contained in Chapter 5 (Change of Control) and Appendix E (Information Needed for Transfer of Control Application) of NUREG-1556, Vol. 15, Rev. 1, *Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses*. In addition to the full description of the transaction and information about the Applicant's corporate organization and ownership presented above, the following information is provided consistent with the guidance in NUREG-1556, Vol. 15, Rev. 1, and 10 CFR 30.34(b) and 110.50(d), for the NRC radioactive materials license and export licenses covered by this Application:

- No changes will be made to the names of the licensed organizations, their respective Federal Employment Identification Numbers (FEIN), or their relevant contact or telephone information as a result of this indirect transfer of control transaction.
- No changes will be made to the personnel or duties relating to the licensed programs as a result of the transaction.
- No changes will be made to the location of licensed activities, equipment, or procedures as a result of the transaction.
- The status of the facilities, equipment, and radiation safety programs as they relate to the radioactive materials license will not change in connection with the transaction. There is no known contamination. All calibrations, leak tests, area surveys, wipe tests, training, quality control, and related records are current. Such records will remain with the relevant Licensees.

- No changes will be made to any decommissioning funding plans as a result of the transaction.
- The relevant Licensees will continue to abide by all current conditions, requirements, and commitments under the Licenses.

D. Environmental Considerations

This Application is exempt from environmental review because it falls within the categorical exclusion appearing at 10 CFR 51.22(c)(21), “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” for which neither an Environmental Assessment nor an Environmental Impact Statement is required under the National Environmental Policy Act (NEPA).

E. Other Regulatory Approvals

The Applicant and its subsidiaries hold a number of radioactive materials licenses issued by state regulatory authorities in South Carolina, Tennessee and Utah pursuant to NRC's Agreement State program. The Applicant and its subsidiaries will submit notices or applications, as appropriate, to regulatory authorities in each of these states describing the proposed transaction. The Applicant will keep the NRC informed of the status of any required approvals from the other regulatory authorities.

VI. CONCLUSION AND SCHEDULE

In summary, the proposed indirect transfer of control of the Licenses from ECP to TriArtisan through the upstream change in ownership will be consistent with the requirements of the Atomic Energy Act, NRC regulations, and applicable regulatory guidance and commitments. Upon completion of the indirect transfer, the Licensed Subsidiaries will remain holders of their respective Licenses and will retain responsibility for all existing licensed activities, and the Application is categorically excluded under NEPA. The indirect transfer will not be inimical to the common defense and security, and will not make the Applicant or its Licensed Subsidiaries subject to impermissible foreign ownership, control, or domination. The Applicant therefore requests that the NRC consent to the indirect transfer in accordance with 10 CFR 50.80 and 10 CFR 72.50.

The parties would like to close this investment transaction as soon as possible. The closing of the transaction is expected to take place at the end of the first quarter of 2022. Accordingly, the Applicant respectfully requests the NRC's review and written consent to the proposed indirect transfer by March 31, 2022 or sooner if possible.