

# Letter of Concern Regarding November 21st Decision

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

## CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "Letter of Concern Regarding November 21, 2016 Decision, Submitted by Sabatini Monatesti," dated December 15, 2016, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 15<sup>th</sup> day of December, 2016.

12/15/2016

**X** Sabatini J. Monatesti

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Sabatini J. Monatesti  
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Dated at Berwick, PA  
This 15<sup>th</sup> day of December 2016

Attachment 1: Distribution List'  
Attachment 2: RICO Definition Excerpts  
Attachment 3: Published Notes

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## ATTACHMENT 1

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## Attachment 2<sup>1</sup>

### RICO Definition Extracts<sup>2</sup>

- RICO 109: The RICO statute expressly states that it is unlawful for any person to conspire to violate any of the subsections of 18 U.S.C.A. § 1962. The government need not prove that the defendant agreed with every other conspirator, knew all of the other conspirators, or had full knowledge of all the details of the conspiracy. Delano, 825 F. Supp. at 542. All that must be shown is: (1) that the defendant agreed to commit the substantive racketeering offense through agreeing to participate in two racketeering acts; (2) that he knew the general status of the conspiracy; and (3) that he knew the conspiracy extended beyond his individual role. United States v. Rastelli, 870 F. 2d 822, 828 (2d Cir.), cert. denied, 493 U.S. 982, 110 S. Ct. 515, 107 L. Ed. 2d 516 (1989).
- Prosecution: To successfully prosecute for RICO it must be shown that members of a criminal enterprise engaged in a pattern of racketeering that had an effect on interstate commerce. Those elements need to be broken down for an explanation:
  1. Criminal Enterprise – Any organization that works together over time and has an organizational structure with one or more persons making decisions for the organization. The enterprise can have either an illegal or a legal purpose.
  2. Pattern of Racketeering – The members of the organization must have engaged in ongoing illegal activity. At least two predicate crimes (explained below) must have been committed. Two separate and unrelated crimes are not considered a pattern of racketeering. There must be some kind of ongoing scheme of criminal activity.
  3. Effect on Interstate Commerce – This merely refers to anything that has any effect on commerce when that effect is not entirely limited to one state. Any economic activity of any substance normally meets the criteria.
- Predicate Crimes: RICO charges cannot be filed against people who engage in any criminal activity. The statute lists particular criminal activity. The underlying crimes that can trigger RICO charges are called predicate crimes. Some examples of the listed crimes are:
  - Money laundering
  - Extortion
  - Gambling
  - Murder
  - Bribery
  - Securities Fraud
  - Dealing in obscene material
  - Drug trafficking
  - Embezzlement

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<sup>1</sup> <https://www.justice.gov/usam/criminal-resource-manual-109-rico-charges>

<sup>2</sup> <https://www.federalcharges.com/understanding-rico-conspiracy-charges>

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## Attachment 3

### Published Notes

- June 7, 2016, Morning call, Scott Kraus: ALENTOWN — Talen Energy has determined it is cost-effective to add natural-gas-burning capability to its Montour County coal plant, even if it takes a \$70 million capital investment to convert the plant, not including the cost of extending a 15-mile natural gas pipeline to its front door. Low natural gas prices have made purely coal-burning plants such as Montour<sup>3</sup> less attractive because they are more costly to operate.
- Dec 5, 2016, Joe Sylvester: WASHINGTONVILLE<sup>4</sup> —Talen Energy Corp. is delaying modification of its coal-fired power plant into a natural gas co-firing plant while the company further evaluates the estimated \$70 million project, a company spokesman confirmed on Monday. According to the company's third quarter financial report, company officials plan to consider the Brunner Island Unit 3 modification in York County before making a decision on the Montour Steam Electric Station near Washingtonville. "There is no current timetable for completing the Montour project, and the company has excluded the estimated \$70 million capital cost from its forecasted capital expenditures," the report states.
- December 7, 2016, Morning Call, Scott Kraus: CEO Paul Farr out as Riverstone completes Talen Energy takeover<sup>5</sup>. The brief, tumultuous life of Talen Energy Corp. as a standalone public company ended Tuesday, clouding the company's future in Allentown. The power generation and marketing company — based at the Plaza at PPL Center at Ninth and Hamilton streets — began as the fourth-largest independent electricity producer in the United States when it was spun off from PPL Corp. in June 2015. It was purchased for \$1.8 billion or \$14 a share, Tuesday by Riverstone Holdings LLC, an energy-focused private equity firm in New York City that has few ties to the Lehigh Valley other than the staff it inherits from Talen. Ralph Alexander was named president and CEO of Talen, replacing Paul Farr, who came from PPL Corp. Alexander, who was on Talen's board of directors, is a Houston-based partner at Riverstone and had a 25-year career at gas and oil company BP before joining the private equity firm. Two other top Talen executives — Jeremy McGuire, chief financial officer and chief accounting officer and James Schinski, chief administrative officer — also will leave the company. Farr signed a \$21 million "golden parachute" severance agreement last year, to be triggered if he is let go after the transaction closes. McGuire's severance deal totaled \$4.7 million, while Schinski's totaled \$2.8 million, according to Securities and Exchange Commission filings.

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<sup>3</sup> <http://www.mcall.com/news/breaking/mc-talen-montour-plant-natural-gas-20160607-story.html>

<sup>4</sup> [http://www.dailyitem.com/news/local\\_news/talen-delays-montour-plant-gas-conversion/article\\_3153990b-e573-5238-b176-32b95c6a94f6.html](http://www.dailyitem.com/news/local_news/talen-delays-montour-plant-gas-conversion/article_3153990b-e573-5238-b176-32b95c6a94f6.html)

<sup>5</sup> <http://www.mcall.com/business/energy/mc-talen-riverstone-takeover-complete-20161206-story.html>

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**Introduction:** It is circumstantial; however, public documentation regarding the Riverstone Holdings LLC takeover of Talen Energy on more than one occasion indicated that no operational changes were included in the \$14 per share buy-out deal noted above and in previous posts. Yet in less than six months, within hours of the deal and license was secured, Riverstone Holdings LLC/Talen Energy removed a \$70 million capital authorization for the Montour Steam Electric Plant conversion to gas. Is this a coincidence? The Securities and Exchange Commission knew, NRC knew, the CEO knew, yet it appears that the public was misled. Is this turn of events, i.e., that which might have prompted Riverstone Holdings LLC/Talen Energy to force SUNSI security, fraudulent? Will there be other cases such as this in our near future?

The Talen Energy CEO and other members of the executive staff lost \$341 Million in 2015, Riverstone Holdings LLC experienced a \$300 Million "clawback," and the good people working at the Montour Steam Electric Station, Washingtonville, PA a 1,504 MW generating capacity plant will be facing possible unemployment. This exclusion of \$70 Million in capital investment happens even though Talen Energy told Washingtonville representatives that they would secure their future given the planned conversion. If this plant faces closure, due to increased cost of generation, the impact to institutions that depend on this source of energy as their disaster backup for power generation could be at risk.

Therefore, does the RICO act apply? Riverstone Holdings LLC/Talen Energy is an enterprise, securities exchange and commitments are involved, The CEO and his immediate staff control the capital budget, and Riverstone Holdings LLC wants to show a reasonable profit in 2016. Is this profit at the expense of their holdings? The same holdings that they claimed they would not sacrifice.

In addition, as for what we know, Farr signed a \$21 million "golden parachute" severance agreement last year, to be triggered if he is let go after the transaction closes. McGuire's severance deal totaled \$4.7 million, while Schinski's totaled \$2.8 million, according to Securities and Exchange Commission filings. Does this transaction indicate a payoff for compliance?<sup>6</sup>

**Probable Causality:** Talen CEO, CIO and CFO had prior knowledge of the capital investment portfolio; they signed their severance agreements and received money with/from Riverstone Holdings LLC with prior knowledge. In addition, they made commitments to Montour representatives that the \$70 Million was committed to Montour, and they then rescinded the investment coincident with Riverstone Holdings LLC license transfer and deal consummation. Further, the Talen executives knew that they were leaving the enterprise with about \$25 Million. It would appear, that Talen executives were aware of the Riverstone Holdings LLC intent to show a profit in 2016 through 2017, and further that Riverstone Holdings LLC intended to walk away from the Montour upgrade, most likely included in the SUNSI documents, which we were not allowed to see.

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<sup>6</sup> Georgetown University Law Center, Scholarship @ GEORGETOWN LAW, 2016, Cultures of Compliance, Donald C. Langevoort, Georgetown University Law Center, [langevdc@law.georgetown.edu](mailto:langevdc@law.georgetown.edu), <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2812&context=facpub>

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Hence, Talen Energy may have committed fraud.<sup>7</sup> Riverstone Holdings LLC may have hid the truth from the public. Talen Energy/Riverstone Holdings LLC knew the planned outcome, agreed to the outcome, exchanged money and reneged on their commitment to Montour. 1.5 megawatts of power generated is many capacity dollars to de-commit. Talen Energy/Riverstone Holdings LLC did not do this without intent.

Riverstone Holdings LLC noted in their presentation to the NRC, SEC and FERC that there were not going to be any operational changes or changes to current commitments. I believe that this is a possible misrepresentation of the facts as borne out by the recent curtailment of capital improvement to Montour.

**Conclusion:** The effect of this manipulation, to relegate Montour to possible decommissioning, thus causing loss of jobs and 1.5 megawatts of generated capacity. I believe this is a severe impact to the community of Washingtonville, and a potential loss to any institution dependent on Montour as a disaster backup source of power. Other decommissioning risks include loss of coal hedge dollars (long term commitment made to suppliers of Talen Energy), increased cost of power production (coal dependent), increased cost to consumer (higher rate per KWH during peak summer and winter demand), and continued unethical conduct by Talen Energy/Riverstone Holdings LLC executives.

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<sup>7</sup> wrongful or criminal deception intended to result in financial or personal gain, <https://www.merriam-webster.com/dictionary/fraud>