

**NUCLEAR REGULATORY COMMISSION
ISSUANCES**

**OPINIONS AND DECISIONS OF THE
NUCLEAR REGULATORY COMMISSION
WITH SELECTED ORDERS**

July 1, 2022 – December 31, 2022

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PREFACE

This is the ninety-sixth volume of issuances (1–147) of the Nuclear Regulatory Commission and its Atomic Safety and Licensing Boards, Administrative Law Judges, and Office Directors. It covers the period from July 1, 2022, to December 31, 2022.

Atomic Safety and Licensing Boards are authorized by Section 191 of the Atomic Energy Act of 1954. These Boards, comprised of three members, conduct adjudicatory hearings on applications to construct and operate nuclear power plants and related facilities and issue initial decisions which, subject to internal review and appellate procedures, become the final Commission action with respect to those applications. Boards are drawn from the Atomic Safety and Licensing Board Panel, comprised of lawyers, nuclear physicists and engineers, environmentalists, chemists, and economists. The Atomic Energy Commission (AEC) first established Licensing Boards in 1962 and the Panel in 1967.

Between 1969 and 1990, the AEC authorized Atomic Safety and Licensing Appeal Boards to exercise the authority and perform the review functions which would otherwise have been exercised and performed by the Commission in facility licensing proceedings. In 1972, that Commission created an Appeal Panel, from which were drawn the Appeal Boards assigned to each licensing proceeding. The functions performed by both Appeal Boards and Licensing Boards were transferred from the AEC to the Nuclear Regulatory Commission by the Energy Reorganization Act of 1974. Appeal Boards represented the final level in the administrative adjudicatory process to which parties could appeal. Parties, however, were permitted to seek discretionary Commission review of certain board rulings. The Commission also could decide to review, on its own motion, various decisions or actions of Appeal Boards.

On June 29, 1990, however, the Commission voted to abolish the Atomic Safety and Licensing Appeal Panel, and the Panel ceased to exist as of June 30, 1991. Since then, the Commission itself reviews Licensing Board and other adjudicatory decisions, as a matter of discretion. *See* 56 FR 29403 (1991).

The Commission also may appoint Administrative Law Judges pursuant to the Administrative Procedure Act, who preside over proceedings as directed by the Commission.

The hardbound edition of the Nuclear Regulatory Commission Issuances is a final compilation of the monthly issuances. It includes all of the legal precedents for the agency within a six-month period. Any opinions, decisions, denials, memoranda and orders of the Commission inadvertently omitted from the monthly softbounds and any corrections submitted by the NRC legal staff to the printed softbound issuances are contained in the hardbound edition. Cross references in the text and indexes are to the NRCI page numbers which are the same as the page numbers in this publication.

Issuances are referred to as follows: Commission (CLI), Atomic Safety and Licensing Boards (LBP), Administrative Law Judges (ALJ), Directors' Decisions (DD), and Decisions on Petitions for Rulemaking (DPRM).

The summaries and headnotes preceding the opinions reported herein are not to be deemed a part of those opinions or to have any independent legal significance.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Christopher T. Hanson, Chairman
Jeff Baran
David A. Wright

In the Matter of

ENERGY NUCLEAR OPERATIONS, INC.,	Docket Nos. 50-255-LT-2
ENERGY NUCLEAR PALISADES, LLC,	50-155-LT-2
HOLTEC INTERNATIONAL, and HOLTEC	50-255-LT-2
DECOMMISSIONING INTERNATIONAL, LLC	72-007-LT, 72-043-LT-2
(Palisades Nuclear Plant and Big Rock Point Site)	July 15, 2022

In this license transfer proceeding, the Commission denies three petitions for hearing, grants one petition for hearing, and admits for hearing four limited issues from one contention. The Commission also directs the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel to appoint a single administrative judge to preside over any oral hearing and to compile and certify the hearing record.

LICENSE TRANSFERS

Under the Atomic Energy Act and the NRC's associated regulations, the NRC must provide written consent for a license transfer. The NRC will approve a license transfer application if it finds the proposed transferee to be qualified to hold the license and finds that the transfer is otherwise consistent with applicable law, regulations, and Commission orders.

FINANCIAL QUALIFICATIONS

The license transfer review is limited to specific matters, including the financial and technical qualifications of the proposed transferee. As to financial

qualifications, the applicant must provide reasonable assurance that sufficient funds will be available both to carry out applicable activities under the license and to decommission the facility, including any Independent Spent Fuel Storage Installation.

FINANCIAL ASSURANCE

NRC regulations outline various acceptable methods of providing financial assurance for decommissioning, including the prepayment method. Prepayment refers to prepaid funds deposited into an account outside of the licensee's administrative control such that the amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected.

EXEMPTIONS

A request for an exemption is not among the listed actions subject to a hearing opportunity under section 189 of the AEA. But if a license transfer application relies on and is intertwined with a requested exemption, then exemption-related issues that directly bear on whether the application should be granted fall within the scope of the license transfer proceeding.

FINANCIAL ASSURANCE

After a licensee in decommissioning has submitted its site-specific decommissioning cost estimate, it must annually continue to provide to the NRC financial assurance status reports that revisit and update the decommissioning cost projections and decommissioning funding status, and the spent fuel cost projections and spent fuel management funding status. The NRC will continue to verify annually that licensees in decommissioning maintain adequate funding to cover projected decommissioning and spent fuel management costs.

CONTENTIONS, ADMISSIBILITY

NRC regulations in 10 C.F.R. § 2.309(f) specify the contention admissibility requirements. For each contention, a petitioner must explain the contention's basis and provide supporting facts or expert opinion on which the petitioner intends to rely in litigating the contention. Each contention must also fall within the scope of the proceeding and be material to the findings that the NRC must make regarding the proposed licensing action.

FINANCIAL QUALIFICATIONS

In license transfer adjudications, the NRC has long found financial assurance to be acceptable if it is based on plausible assumptions and forecasts.

DECOMMISSIONING FUNDING

One of the key requirements to ensure that adequate funds are accumulated for decommissioning is the requirement in 10 C.F.R. § 50.75(b)(1) that an applicant for, or a holder of, an operating license under Part 50 provide a certification of decommissioning funding in an amount which may be more, but not less, than the amount stated in the NRC’s table of minimum amounts in section 50.75(c)(1), as further adjusted using a rate at least equal to that provided by the adjustment factors in section 50.75(c)(2).

CATEGORICAL EXCLUSION

The NRC has determined by rule that certain categories of licensing actions do not individually or collectively have a significant effect on the environment. A categorical exclusion reflects that the NRC has established a sufficient administrative record to show that the subject actions do not have a significant effect on the environment. Except in the case of special circumstances as determined by the Commission, no environmental assessment or environmental impact statement is required for these categories of actions. License transfer actions are among the categories of action that the NRC has categorically excluded from the need to perform additional environmental analysis.

MANAGEMENT CHARACTER

To be admissible in an adjudicatory proceeding, claims asserting corporate or management character deficiencies must have a direct and obvious link to the challenged licensing action. Asserted prior violations or historical incidents must be directly germane to a material issue within the scope of the challenged licensing action.

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MEMORANDUM AND ORDER

I. INTRODUCTION

This proceeding concerns a license transfer application involving (1) the renewed facility operating license for the Palisades Nuclear Plant (Palisades) and the general license for the Palisades Independent Spent Fuel Storage Installation (ISFSI); and (2) the facility operating license for Big Rock Point and the general license for the Big Rock Point ISFSI. Entergy Nuclear Operations, Inc. (ENOI), Entergy Nuclear Palisades, LLC (ENP), Holtec International, and Holtec Decommissioning International, LLC (HDI) (collectively, the applicants) seek NRC consent to the indirect transfer of control of the licenses to Holtec International and to the transfer of operating authority to HDI to conduct licensed activities at the sites.¹ They also seek NRC approval of conforming administrative license amendments to reflect the requested transfers.²

In December 2021, the NRC staff issued an order approving both the transfer of the licenses and draft conforming license amendments.³ Concurrently, the staff also approved a related regulatory exemption requested by HDI in support of the license transfer application; the approved exemption “would only apply to HDI if and when the proposed license transfer transaction is consummated.”⁴ NRC regulations anticipate that the staff may complete its review of a license transfer application before an adjudicatory proceeding (if applicable) has concluded. The staff is expected, consistent with its findings in its Safety Evaluation Report (SER), “to promptly issue approval or denial of license transfer requests”—notwithstanding a pending adjudicatory hearing.⁵ But while the staff’s review and the Commission’s adjudicatory review may overlap, they are separate reviews, and both must be completed and satisfied before a license transfer approval can be considered final. The application “will lack the agency’s

¹ See Palisades Nuclear Plant and Big Rock Point Plant Consideration of Approval of Transfer of Control of Licenses and Conforming Amendments, 86 Fed. Reg. 8225 (Feb. 4, 2021) (Hearing Opportunity Notice); Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments, at 1 (Application), attached (Encl. 1) to Letter from A. Christopher Bakken III, President and Chief Executive Officer, Entergy, to NRC Document Control Desk (Dec. 23, 2020) (Application Cover Letter). The cover letter, application, and associated enclosures are available together at ADAMS accession no. ML20358A075.

² See Application at 1, and Attachments A and B to the Application (identifying proposed changes to the Palisades and Big Rock Point licenses, respectively); Application Cover Letter at 1-2.

³ Order Approving Transfer of Licenses and Draft Conforming Administrative Amendments (Dec. 13, 2021) (ML21292A146) (Order). The license amendments would be “issued and made effective at the time the proposed transfer actions are completed.” *Id.* at 6.

⁴ Exemption (Dec. 13, 2021) (ML21286A506), at 2.

⁵ See 10 C.F.R. § 2.1316(a).

final approval until and unless the Commission concludes the adjudication in the Applicant’s favor.”⁶ While license transfer applicants may act in reliance on a staff order approving an application, we long have emphasized that applicants do so at their own risk should the “Commission later determine[] that the intervenors have raised valid objections to the license transfer application.”⁷ The staff’s order approving the license transfer therefore explicitly remains subject to our authority “to rescind, modify, or condition the approved transfer” based on the outcome of this adjudicatory proceeding.⁸

We received a petition for leave to intervene and request for a hearing from the following petitioners: (1) the Michigan Attorney General; (2) Beyond Nuclear, Michigan Safe Energy Future, and Don’t Waste Michigan (collectively, Joint Petitioners); (3) the Environmental Law & Policy Center (ELPC); and (4) Mr. Mark Muhich.⁹ For the reasons outlined below, we grant the Michigan Attorney General’s request for an adjudicatory hearing and admit limited issues pertaining to the Attorney General’s challenge to the proposed transferees’ financial qualifications. We deny Joint Petitioners’, ELPC’s, and Mr. Muhich’s petitions for hearing.

II. BACKGROUND

A. The Proposed License Transfer

Palisades Nuclear Plant is a single unit pressurized water reactor located in Covert, Michigan.¹⁰ An ISFSI licensed generally under 10 C.F.R. Part 50 is

⁶ See *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-19-11, 90 NRC 258, 262 (2019) (quoting *Vermont Yankee Nuclear Power Corp. and AmerGen Vermont, LLC* (Vermont Yankee Nuclear Power Station), CLI-00-17, 52 NRC 79, 83 (2000)).

⁷ See *id.* (quoting *Vermont Yankee*, CLI-00-17, 52 NRC at 83; see also *Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 286 n.1 (2000) (noting that notwithstanding the staff’s orders approving the license transfers and the applicants’ completion of the sale, the Commission could modify the license or “disapprove the transfers and require the Applicants to return the plant ownership to the *status quo ante*”). The license transfer transaction closed on June 29, 2022. See *Notification* (June 29, 2022).

⁸ See Order at 6.

⁹ See Petition of the Michigan Attorney General for Leave to Intervene and for a Hearing (Feb. 24, 2021) (AG Petition); Petition of Beyond Nuclear, Michigan Safe Energy Future and Don’t Waste Michigan for Leave to Intervene, and Request for an Adjudicatory Hearing (Feb. 24, 2021) (Joint Petitioners Petition); The Environmental Law & Policy Center Petition to Intervene and Hearing Request (Feb. 24, 2021) (ELPC Petition); Petition of Mark Muhich for Leave to Intervene and for a Hearing Regarding Transfer of NRC Operating License and Decommissioning of Palisades Nuclear Plant, Covert MI (Feb. 7, 2021) (Muhich Petition).

¹⁰ Palisades permanently ceased operations in May 2022.

located on the Palisades site.¹¹ Big Rock Point is located in Charlevoix County, Michigan, about 11 miles west of Petoskey. The Big Rock Point nuclear power plant was a boiling water reactor that permanently shut down power operations on August 29, 1997, and has since been dismantled and decommissioned. All spent nuclear fuel at Big Rock Point has been transferred to a generally licensed ISFSI that remains on the site. Except for the land associated with the ISFSI installation and a surrounding parcel of non-impacted land of approximately 75 acres, the NRC in 2007 released the Big Rock Point site for unrestricted use and removed the released portions of the site from the Part 50 license.¹²

ENP is the licensed owner of both Palisades and Big Rock Point.¹³ Under the proposed license transfers, the indirect control of Palisades and Big Rock Point would transfer to Holtec International under the terms of a Membership Interest Purchase and Sale Agreement. Just prior to the proposed transaction, Entergy would transfer all of the assets and liabilities of ENP to a new entity that would become Holtec Palisades, LLC (Holtec Palisades).¹⁴ Upon the closing of the proposed license transfers, Holtec Palisades would be the new licensed owner of Palisades and Big Rock Point. Except for a few excluded assets, Holtec Palisades would own all assets and real estate associated with Palisades and Big Rock Point, including the Palisades nuclear decommissioning trust, and it would hold title to the spent nuclear fuel at both sites.¹⁵

Holtec Palisades would have the rights and obligations under the Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste (Standard Contract); the previous owners of Palisades and Big Rock Point in 1983 entered into the Standard Contract with the United States of America, as represented by the U.S. Department of Energy (DOE).¹⁶ Through litigation or settlement, Holtec Palisades expects to recover from DOE the spent nuclear fuel management costs that it would incur due to DOE's breach of its contractual obligation to accept and dispose of the Palisades and Big Rock

¹¹ See 10 C.F.R. § 72.210 (general license authorizing the storage of spent fuel at an ISFSI located at a power reactor site licensed under part 50 or part 52).

¹² See Letter from Keith I. McConnell, NRC, to Kurt M. Haas, Big Rock Restoration Project (Jan. 8, 2007), at 1 (ML063410361).

¹³ Because the license transfers lack final approval, we refer in this decision to the license transfers as they were described and proposed in the application.

¹⁴ See Application Cover Letter at 2. As detailed further in the application, Nuclear Asset Management Company, LLC (NAMCo), a wholly owned subsidiary of Holtec International, would acquire the equity interests in either the new entity Holtec Palisades or in the parent company owner of Holtec Palisades; in either case, NAMCo ultimately would become the direct parent company of Holtec Palisades. See *id.*; Application at 1. A redacted version of the purchase and sale agreement is included in the application in Attachment C.

¹⁵ See Application at 2 & n.1.

¹⁶ *Id.* at 20.

Point spent nuclear fuel. Under the proposed transfer, Holtec Palisades would be responsible for the costs of possessing, maintaining, and decommissioning the two sites, including all spent fuel management costs.

ENOI is the licensed operator of Palisades and Big Rock Point. Pursuant to the proposed transfer, operating authority to conduct licensed activities at Palisades and Big Rock Point would transfer from ENOI to HDI, an indirect wholly owned subsidiary of Holtec International. Holtec International created HDI to assume the licensed operator responsibilities and to decommission Holtec-owned nuclear power plants.¹⁷ In its application, HDI stated that it intended to contract with Comprehensive Decommissioning International, LLC (CDI) to perform the day-to-day activities at Palisades and Big Rock Point, including spent fuel management and decommissioning activities.¹⁸ In a supplement to the application submitted in January 2022, HDI informed the NRC that HDI no longer plans to contract with CDI to serve as the decommissioning general contractor for Palisades.¹⁹ In lieu of this arrangement, HDI “is absorbing CDI’s resources and will directly employ site personnel to perform the scope of work previously planned to be executed by CDI.”²⁰

Under the terms of the purchase and sale agreement, the proposed transfer would not close until after ENOI has docketed its certifications of permanent cessation of operations and of permanent removal of fuel from the Palisades reactor vessel.²¹ Because the proposed transfers would only occur after the Palisades reactor has permanently ceased operations, the transferred licenses would not authorize power reactor operations. Authorized activities would include possessing, maintaining, decontaminating, and decommissioning the sites, including managing the spent fuel until all fuel has been transported offsite for disposal.

In parallel with the license transfer application, HDI separately submitted to the NRC a Post-Shutdown Decommissioning Activities Report (PSDAR) outlining the planned activities and schedule for decommissioning the Palisades Nuclear Plant.²² The PSDAR includes a site-specific decommissioning cost es-

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 2. Holtec International (through its subsidiary HDI), and SNC-Lavalin Group (through its subsidiary Kentz USA, Inc.), formed CDI to serve as the decommissioning general contractor for Holtec-owned nuclear power plants. *Id.*; Application Cover Letter at 2-3.

¹⁹ Notice to the Commission (Jan. 21, 2022), Attach., “Supplement to Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments,” at 1-4 (ML22021B670) (Application Supplement).

²⁰ Application Supplement at 2.

²¹ Application Cover Letter at 2.

²² “Palisades Nuclear Plant Post-Shutdown Decommissioning Activities Report,” attached to Let-
(Continued)

timate for Palisades.²³ HDI also indicates a project goal to complete decommissioning and final license termination within approximately 20 years following the license transfers and sale closure.²⁴

After sale closure, HDI expects within three years to complete the transfer of all Palisades spent nuclear fuel into long-term dry fuel storage at the ISFSI.²⁵ Once all spent fuel has been placed in dry storage, HDI plans to place the plant into a safe dormant condition from 2025 through November 2035, after which HDI would begin to dismantle and decontaminate the reactor plant structures and systems.²⁶ Following all radiological decommissioning and non-radiological site restoration (including of the ISFSI), HDI expects final license termination and release of the Palisades site for unrestricted use by the end of 2041.²⁷

B. Financial Qualifications for License Transfer and the License Transfer Application

No license granted under the Atomic Energy Act (AEA) may be transferred unless the NRC consents in writing.²⁸ The NRC will approve a license transfer application if it determines that the proposed transferee is qualified to hold the license and that the transfer of the license is otherwise consistent with applicable law, regulations, and orders.²⁹ The NRC review of a license transfer application is limited to specific matters and is largely focused on the proposed transferee's financial and technical qualifications.³⁰

ter from Andrea L. Sterdis, HDI, to NRC Document Control Desk (Dec. 23, 2020) (ML20358A232) (PSDAR). Prior to or within 2 years following permanent cessation of operations, a licensee must submit a PSDAR to the NRC, with a copy to the affected state(s). *See* 10 C.F.R. § 50.82(a)(4)(i). HDI's PSDAR for Palisades would become effective only upon sale closure and transfer of the licenses. *See* Application Cover Letter at 3. To the extent that information in the PSDAR bears on the staff's review of the license transfer application (e.g., cost estimates and related decommissioning schedule relevant to HDI's financial qualifications), the NRC staff considers the PSDAR a supplement to the application. *See* Hearing Opportunity Notice, 86 Fed. Reg. at 8226.

²³ *See* "Palisades Nuclear Plant Site-Specific Decommissioning Cost Estimate" (DCE), attached (Encl. 1) to PSDAR. NRC regulations require a licensee to include in the PSDAR a site-specific decommissioning cost estimate. 10 C.F.R. § 50.82(a)(4)(i).

²⁴ PSDAR at 1.

²⁵ *Id.* at 2.

²⁶ *See id.* at 2, 15; Application, Attach. E, "Schedule & Financial Information for Decommissioning," at 2.

²⁷ *See* PSDAR at 3, 14-15; Application Cover Letter at 3.

²⁸ *See* AEA § 184, 42 U.S.C. § 2234; *see also* 10 C.F.R. §§ 50.80(a), 72.50(a) (implementing the AEA requirement as to power reactor and ISFSI licenses, respectively).

²⁹ 10 C.F.R. § 50.80(c).

³⁰ *See id.* § 50.80(b)(1)(i) (referencing 10 C.F.R. §§ 50.33, 50.34).

The application must contain sufficient information to demonstrate that the applicant has the financial qualifications to carry out the activities for which the license is sought.³¹ The application also must provide reasonable assurance that funds will be available to decommission the facility, including any ISFSI.³² NRC regulations outline various acceptable methods of providing financial assurance of decommissioning funding.³³

HDI, the proposed new operator, bases its financial qualifications on that of the proposed new owner, Holtec Palisades. The application states that Holtec Palisades will commit, under a Decommissioning Operator Services Agreement with HDI, to fund without limit all of HDI's costs to conduct activities under the Palisades and Big Rock Point licenses, including all decommissioning and spent fuel management costs.³⁴

Holtec Palisades in turn bases its financial assurance of adequate decommissioning funding on the prepayment method.³⁵ Prepayment refers to prepaid funds deposited in a segregated account outside of the licensee's administrative control in an amount "sufficient to pay decommissioning costs at the time permanent termination of operations is expected."³⁶ Holtec Palisades would own the assets in the Palisades nuclear decommissioning trust upon closure of the sale and transfer of the licenses. The application states that the Palisades nuclear decommissioning trust will be sufficient to pay for all Palisades site radiological decommissioning costs, including ISFSI decommissioning.

HDI estimates that the cost of radiological decommissioning for Palisades (including the ISFSI) will be \$443,215,000.³⁷ The application states that the decommissioning trust fund contained approximately \$552 million as of December 2, 2020, and that at least this amount would remain in the trust fund at closing.³⁸ The application therefore states that Holtec Palisades satisfies the requirement to show financial assurance of decommissioning funding based on

³¹ See *id.* § 50.33(f). Because the proposed transfer would not occur prior to permanent cessation of reactor operations at Palisades, the applicants need not demonstrate reasonable assurance of obtaining the funds necessary to cover estimated power reactor operations. See *id.* § 50.33(f)(2).

³² See *id.* §§ 50.33(k)(1), 50.80(b)(1)(i), 72.30(b).

³³ See *id.* §§ 50.75(e)(1) (reactor decommissioning), 72.30(e) (ISFSI decommissioning).

³⁴ See Application at 19. A copy of the form of the operator services agreement is enclosed in Attachment F of the application. We refer to the proposed transferees, Holtec Palisades (name of the owner following the proposed transfer) and HDI together as Holtec.

³⁵ *Id.* at 18.

³⁶ See 10 C.F.R. § 50.75(e)(1)(i).

³⁷ See Application, Attach. E at 2-3. HDI's cost estimates referenced in this decision are in 2020 dollars.

³⁸ See Application at 18.

the decommissioning trust and use of the prepayment method of financial assurance.³⁹

NRC regulations allow a licensee that has prepaid decommissioning funds based on a site-specific decommissioning cost estimate to take credit for projected earnings on the prepaid account's funds — up to a 2% annual real rate of return, through the decommissioning period, including periods of safe storage, final dismantlement, and license termination.⁴⁰ Taking credit for a 2% annual real rate of earnings on the trust fund, HDI projects that the decommissioning trust fund will be sufficient to cover not only decommissioning but also spent fuel management and non-radiological site restoration expenses at Palisades.

For spent fuel management, HDI estimates total costs at Palisades will be about \$166 million, and it plans “to fund all spent fuel management costs following license transfer” with the decommissioning trust.⁴¹ The application states that the projected sufficiency of the Palisades trust provides funding assurance for spent fuel management.⁴² In support, the application includes a cash flow analysis for the years 2022 through 2041, the year Holtec expects final license termination to occur.⁴³

The cash flow analysis begins with the December 2, 2020 trust fund value of approximately \$552 million, which Holtec states is a conservative assumption for the fund's opening value at post-sale closure. The analysis also assumes HDI's estimated costs for decommissioning (\$443,215,000), spent fuel management (\$166,122,000), and site restoration (\$34,679,000). For each year, the analysis identifies the projected (1) trust fund withdrawals for radiological decommissioning, spent fuel management, and site restoration costs; (2) trust fund interest earnings based on a 2% annual real rate of return; and (3) year-end trust fund balance. The analysis projects a trust fund balance of \$19,799,000 remaining at license termination in 2041.

The application states that this projected adequacy of the Palisades trust fund provides reasonable assurance of decommissioning and spent fuel management funding. The application moreover states that if additional funding were to be necessary to cover the decommissioning and spent fuel management costs, “[r]eimbursement of spent fuel management expenses by DOE, which is not credited in the cash flow analysis . . . would provide a substantial source of additional funds that could be used” to adjust funding.⁴⁴

³⁹ *Id.* at 17-18.

⁴⁰ *See* 10 C.F.R. §§ 50.75(e)(1)(i), 50.82(a)(8)(vi).

⁴¹ *See* Application at 19 and Attach. E at 2.

⁴² *See id.* at 19.

⁴³ *See id.*, Attach. E at 5, “Palisades Nuclear Generating Station Decommissioning Cash Flow Analysis” (Cash Flow Analysis).

⁴⁴ *See* Application at 18.

Based on the cash flow analysis projections, Holtec also expects to use the trust fund to pay for the approximately \$35 million in estimated site restoration costs.⁴⁵ Site restoration involves the non-radiological clean up of sites; it also would include any radiological decontamination beyond NRC-mandated standards. Activities that “do not involve the removal of residual radioactivity necessary to terminate the NRC license are outside the scope of NRC regulation.”⁴⁶ Site restoration is a state-regulated activity, governed by non-NRC federal standards. The NRC’s license transfer regulations do not require an applicant to demonstrate financial qualifications to cover site restoration costs. Site restoration costs nonetheless are relevant to this proceeding because Holtec intends to pay for those costs with the Palisades decommissioning trust, on which Holtec relies for its showing of financial qualifications.

1. Exemption Request

The applicants acknowledge that to use the decommissioning trust for purposes other than radiological decommissioning would require an exemption from 10 C.F.R. § 50.82(a)(8)(i)(A). Section 50.82(a)(8)(i)(A) allows withdrawals from the trust fund to pay expenses for “legitimate decommissioning activities,” consistent with the NRC’s definition of decommissioning.⁴⁷ Spent fuel management and non-radiological site restoration activities do not fall within the NRC’s definition of decommissioning.⁴⁸

Therefore, concurrent with the application, HDI submitted a request for exemptions to allow it to use the trust fund for spent fuel management and site restoration expenses at Palisades.⁴⁹ The request includes and relies on the same cash flow analysis provided in the license transfer application.⁵⁰ HDI states that the analysis demonstrates that the trust fund “contains more than adequate funds

⁴⁵ *See id.*

⁴⁶ *See* “Standard Format and Content of Decommissioning Cost Estimates for Nuclear Power Reactors,” Regulatory Guide 1.202 (Feb. 2005), at 2 (ML050230008) (Reg. Guide 1.202).

⁴⁷ *See* 10 C.F.R. § 50.82(a)(8)(i)(A) (referencing the NRC’s definition of decommissioning in § 50.2).

⁴⁸ As defined in 10 C.F.R. § 50.2, to decommission means “to remove a facility or site safely from service and reduce residual radioactivity to a level that permits — (1) Release of the property for unrestricted use and termination of the license; or (2) Release of the property under restricted conditions and termination of the license.”

⁴⁹ *See* “Palisades Nuclear Plant HDI Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)” (Exemption Request), enclosed with Letter from Andrea Sterdis, HDI, to NRC Document Control Desk (Dec. 23, 2020) (Exemption Request Cover Letter). The exemption request and cover letter are available together at ML20358A239.

⁵⁰ *See* Exemption Request at 13, tbl.1.

to cover the estimated radiological decommissioning costs, as well as spent fuel management and site restoration costs for Palisades.”⁵¹

A request for an exemption is not among the listed actions subject to a hearing opportunity under section 189 of the AEA.⁵² But when a requested exemption raises questions that are material to a proposed licensing action — directly bears on whether the proposed action should be granted — a petitioner in an adjudicatory proceeding on the licensing action may raise arguments relating to the exemption request.⁵³ Holtec relies on the requested exemption from section 50.82(a)(8)(i)(A) for its demonstration of financial qualifications; therefore the exemption request and license transfer application are intertwined. To the extent that the proposed exemptions bear on Holtec’s showing of financial qualifications for the license transfer, arguments relating to the requested exemptions fall within the scope of this proceeding.⁵⁴

2. *Big Rock Point*

The application also addresses Holtec’s financial qualifications to fund activities at Big Rock Point. The estimated cost to decommission the Big Rock Point ISFSI is \$2,659,000.⁵⁵ Holtec states that it will provide financial assurance for decommissioning by the prepayment method and will meet the Part 72 requirements for decommissioning funding.⁵⁶

Based on ENOI’s actual current operating costs, Holtec estimates the annual cost of operating the Big Rock Point ISFSI to be \$2,681,000 (in 2020 dollars).⁵⁷ Holtec intends to provide a dedicated fund that will continually contain one year’s worth of estimated operating costs for the ISFSI. The application further states that Holtec will provide a parent support agreement to continually maintain the dedicated fund with one year’s worth of estimated operating costs. The

⁵¹ *Id.* at 2. In its request, HDI also seeks an exemption from 10 C.F.R. § 50.75(h)(1)(iv), which, with a few exceptions, similarly limits withdrawals from the decommissioning trust fund to decommissioning expenses.

⁵² See AEA § 189(a)(1)(A), 42 U.S.C. § 2239(a)(1)(A).

⁵³ See *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 549 (2016) (citing *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 467 (2001)).

⁵⁴ In two other recent proceedings involving similar exemptions, we likewise found that arguments addressing the potential impact of the exemption on the applicants’ financial qualifications fell within the scope of the license transfer proceeding. See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 16 (2021); *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 362 (2020).

⁵⁵ See Application, Attach. E at 7.

⁵⁶ Application at 19 (referencing 10 C.F.R. § 72.30(b), (c), (e)).

⁵⁷ Application, Attach. E at 8.

dedicated fund and associated parent support agreement would be established at or before closing and provided to the NRC.⁵⁸ Based on these assurances, which are described as a regulatory commitment, the application states that Holtec Palisades will be financially qualified to be the owner of Big Rock Point.⁵⁹ The application states that HDI will be financially qualified to be the licensed operator at Big Rock Point because Holtec Palisades — under the terms of its operating agreement with HDI — “will be required to pay for” HDI’s costs of operation at Palisades and Big Rock Point.⁶⁰

C. NRC’s Oversight of the Financial Capability of Licensees in Decommissioning

The license transfer proceeding provides a threshold screening of applicants’ overall technical and financial qualifications to become the holders of specific licenses. The review helps ensure that a license is not transferred to an entity lacking the financial capability to carry out the necessary activities under the license. But the NRC’s oversight of financial capability to decommission and manage spent fuel does not end with the license transfer review. All licensees in decommissioning must show annually that they continue to have adequate funding for decommissioning and spent fuel management. As we stated recently in *Pilgrim*, the NRC assesses license transfer applicants’ financial qualifications in light of the multiple regulatory requirements designed to ensure that funding remains sufficient until no longer needed.⁶¹ The NRC will continue to verify annually that licensees in decommissioning maintain adequate funding to cover both spent fuel management and decommissioning.

For instance, a licensee that has submitted a site-specific decommissioning cost estimate must annually provide a decommissioning funding status report. The report must include information current through the end of the previous calendar year, covering (1) the amount spent on decommissioning, both cumulatively and over the previous calendar year; (2) the difference between the predicted and actual costs for the work performed the previous year; (3) the remaining balance in the trust fund; and (4) an estimate of the costs projected to complete the decommissioning.⁶² If the remaining decommissioning funds, together with the projected earnings on those funds (calculated at no greater than a 2% real rate of return), and any additional amount provided by another

⁵⁸ Application at 19.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See *Pilgrim*, CLI-20-12, 92 NRC at 360.

⁶² See 10 C.F.R. § 50.82(a)(8)(v).

financial assurance method, are not sufficient to cover the estimated cost to complete decommissioning, the licensee must include in the status report additional financial assurance to cover the estimated remaining costs.⁶³

Similar status reports monitor licensees' spent fuel management funding.⁶⁴ If the available spent fuel management funding is insufficient to cover the projected costs, the report must include a plan to obtain the additional funds to cover the costs.⁶⁵ In sum, while the license transfer financial qualification review constitutes an important screening review of an applicant's qualifications to hold an NRC license, a licensee in decommissioning must continue to show every year that adequate funding for decommissioning and spent fuel management activities remains. This NRC monitoring of financial capability continues until all spent fuel has been removed from the site and the license has been terminated.

III. DISCUSSION

A. Intervention Requirements

To gain admission as a party in an NRC licensing proceeding, a petitioner must show standing and propose at least one admissible contention.⁶⁶ For standing, the request for hearing must address (1) the nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect that any decision or order issued in the proceeding may have on the petitioner's interest.⁶⁷ In evaluating whether a petitioner has established standing, the Commission has long looked for guidance to judicial concepts of standing, which require a party to claim a concrete and particularized injury (actual or threatened) that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision in the proceeding.⁶⁸

⁶³ *Id.* § 50.82(a)(8)(vi).

⁶⁴ *See id.* § 50.82(a)(8)(vii)(A)-(B).

⁶⁵ *See id.* § 50.82(a)(8)(vii)(C). Beyond the annual status reports, other NRC requirements also help to ensure that decommissioning funding remains adequate. For example, before it can perform any decommissioning activity that would significantly increase the decommissioning cost beyond that estimated in its site-specific decommissioning estimate, a licensee must first notify the NRC, with a copy to the affected state(s). *See id.* § 50.82(a)(7).

⁶⁶ *Id.* § 2.309(a), (d), (f).

⁶⁷ *See id.* § 2.309(d)(1)(ii)-(iv); *see also* Hearing Opportunity Notice, 86 Fed. Reg. at 8227.

⁶⁸ *See, e.g., USEC, Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311 (2005); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 188 (1999); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995).

An organization that seeks to establish representational standing must demonstrate how at least one of its members may be affected by the challenged licensing action and would have standing in his or her own right.⁶⁹ The organization must identify that member by name and address, and must demonstrate, preferably by affidavit, that the organization is authorized to request a hearing on behalf of that member.⁷⁰

NRC regulations in 10 C.F.R. § 2.309(f) specify the contention admissibility requirements. For each contention, a petitioner must explain the contention's basis and provide supporting facts or expert opinion on which the petitioner intends to rely in litigating the contention. To be admissible, a contention must fall within the scope of the proceeding and be material to the findings that the NRC must make for the proposed licensing action. The petitioner must identify the specific portions of the application that the petitioner disputes along with the supporting reasons for each dispute; or, if a petitioner claims that an application fails altogether to contain information required by law, the petitioner must identify each failure and provide supporting reasons for the petitioner's belief. These requirements help ensure that the NRC institutes adjudicatory hearings only for issues that are supported by facts or expert opinion and that identify a dispute with the application on a question material to the NRC's decision.

B. Accuracy of Cost Estimates

Petitioners in this proceeding raise numerous challenges to the applicants' site-specific cost estimates for Palisades. Several factors guide our consideration of these challenges. First, as we recently stated, at this early stage in the decommissioning process cost estimates are necessarily uncertain.⁷¹ And for Palisades, not only has decommissioning not yet begun, but Holtec plans to begin major decommissioning activities in November 2035, following a decade of dormancy. We anticipate that some of the current itemized costs for decommissioning work projected for the years 2036 and beyond may be updated. NRC guidance on site-specific decommissioning cost estimates indeed instructs licensees to update their site-specific decommissioning estimates at least every five years, and more frequently if new information warrants.⁷²

⁶⁹ See, e.g., *Vermont Yankee Nuclear Power Corp. and AmerGen Vermont, LLC* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000).

⁷⁰ See, e.g., *id.*

⁷¹ See *Pilgrim*, CLI-20-12, 92 NRC at 367.

⁷² See "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," Regulatory Guide 1.159, rev. 2 (Oct. 2011), at 12 (ML112160012) (Reg. Guide 1.159) (the site-specific de-

(Continued)

Further, in license transfer adjudications we long have found financial assurance to be acceptable if it is based on plausible assumptions and forecasts, even if “the possibility is not insignificant that things will turn out less favorably than expected.”⁷³ We recognize that where much uncertainty still exists for financial predictions, a range of potential differing estimates and outcomes may be plausible, although some may be notably more or less conservative than others. For a demonstration of reasonable assurance of financial qualification, we do not demand the most conservative forecasts but will accept plausible forecasts.

We also have emphasized that the cash flow analysis in a license transfer application reflects a “snapshot in time.”⁷⁴ Actual rates of return on the decommissioning trust fund are going to fluctuate above or below the projected, regulation-based annual real rate of 2%. Cost expectations may need to be refined as spent fuel management and decommissioning activities progress and actual costs, site conditions, and effectiveness of decommissioning strategies become better known. The funding picture may change, but that is why the NRC continues to oversee the status of licensees’ funding until license termination.

Given the uncertainty of long-term cost predictions, the expectation that some estimated costs and gains may be under- or overestimated, and the NRC’s continued monitoring of the financial status of licensees in decommissioning, it is not the purpose of the license transfer proceeding to investigate and approve each of the numerous line-items of a site-specific decommissioning cost estimate. And it will always be possible to suggest additional reasonable costs that could have been included in these estimates. The question is not whether cost estimates can be refined to be more accurate and comprehensive, but whether a material question has been raised about the overall financial qualification of the applicant. We therefore will admit for hearing only those “adequately supported assertions that a transfer applicant’s financial assumptions and forecasts are implausible or unrealistic in a way that is material to our assessment of reasonable assurance.”⁷⁵

C. Michigan Attorney General Petition to Intervene and Request for a Hearing

Both Palisades and Big Rock Point are located within the boundaries of the state of Michigan. Under our regulations, therefore, the Attorney General of

commissioning cost estimate should be periodically reviewed and adjusted during both operation and storage periods, no less frequently than once every five years).

⁷³ See *Pilgrim*, CLI-20-12, 92 NRC at 368 (quoting *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 222 (1999)).

⁷⁴ See *id.* at 367.

⁷⁵ *Id.* at 368.

Michigan need not make any further demonstration of standing to intervene, which is uncontested.⁷⁶ The Attorney General proffers two contentions challenging the application. In the first contention, the Attorney General challenges cost estimates and other assumptions underlying the applicants' financial qualifications. In the second contention, the Attorney General claims that Holtec impermissibly assumes that it will receive an exemption. We admit four issues raised in Contention MI-1. We admit the Attorney General's challenge to (1) the applicants' estimated 11-year timeframe for the removal by DOE of all of the spent fuel at Palisades; (2) the reasonableness of the site-specific decommissioning cost estimate falling well below the minimum formula amount; (3) the 12% contingency allowance allocated to the radiological decommissioning, spent fuel management, and site restoration cost estimates; and (4) the applicants' description of their planned means to adjust funding if necessary to complete decommissioning and terminate the license.

1. Michigan Attorney General's Contention MI-1

In Contention MI-1, the Attorney General argues that Holtec failed to show financial qualification for the license transfers because it did not provide adequate decommissioning financial assurance and adequate funding for spent fuel management.⁷⁷ The Attorney General asserts that implausible assumptions underlie Holtec's cost estimates, and therefore that the "estimated costs understate what will be the actual decommissioning costs"; the decommissioning cost estimate is "unreasonably low"; and Holtec failed to demonstrate that it has sufficient funding to use the trust fund for purposes other than decommissioning.⁷⁸

As a core concern, the Attorney General questions whether HDI and Holtec Palisades, "limited liability entities . . . with no outside source of revenue," would be able cover a potential funding shortfall.⁷⁹ More specifically, the Attorney General claims that the application fails to demonstrate that Holtec and its associated limited liability companies are "corporate entities with access to the financial resources necessary to procure additional financial assurance, if needed" — a demonstration that the Attorney General asserts must be made "now — not at some indeterminate point in the future when exemptions have been granted and the trusts run short of funds."⁸⁰

⁷⁶ See 10 C.F.R. § 2.309(h); Applicants' Answer Opposing the Michigan Attorney General's Petition for Leave to Intervene and Request for a Hearing (Mar. 22, 2021), at 4 (Applicants Answer to AG); AG Petition at 4-8.

⁷⁷ See AG Petition at 9.

⁷⁸ See *id.* at 11-12.

⁷⁹ See *id.* at 10.

⁸⁰ See *id.* at 11.

The Attorney General states that because Holtec's decommissioning financial assurance representations rely on Holtec's site-specific cost estimates for decommissioning, spent fuel management, and site restoration, the accuracy of these cost estimates directly bears on whether Holtec Palisades and HDI are financially qualified to decommission Palisades. The Attorney General in Contention MI-1 challenges these cost estimates.

a. Earlier Site-Specific Decommissioning Cost Analysis for Palisades

To support the claim that HDI's overall cost estimates are implausible and therefore unreasonable, the Attorney General offers a cost comparison to a previous site-specific decommissioning cost analysis for Palisades. TLG Services, Inc., a company that provides financial decommissioning services, prepared the earlier cost study dated March 2004 for previous Palisades licensees Nuclear Management Company, LLC, and Consumers Energy Company. Consumers Energy submitted the 2004 cost study to the Michigan Public Service Commission to support an application for an adjustment of ratepayer surcharges for decommissioning costs.⁸¹ The Attorney General notes that Nuclear Management Company also provided the 2004 cost estimate conclusions to the NRC in 2006 as the preliminary decommissioning cost estimate for Palisades.⁸² The Attorney General states that the HDI estimates assume a 10-year dormancy period while the TLG estimates assume a SAFSTOR decommissioning method using a 12.5-year storage period. The 2004 study provides cost estimates in 2003 dollars.

⁸¹ See AG Petition at 13 n.32 (citing In the Matter of the Application of Consumers Energy Company for Adjustment of Its Surcharges for Nuclear Power Plant Decommissioning for the Palisades Nuclear Plant, Michigan Public Service Commission, Case No. U-14150, Hearing Date Mar. 15, 2005, Ex. A-1, Settlement Agreement, available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t000000w61yAAA>, with the following cited attachments: (1) Ex. A-2, Consumers Energy Company 2004 Report on the Adequacy of the Existing Provision for Nuclear Plant Decommissioning (Mar. 2004) (MPSC Case, Ex. A-2, Consumers Energy Company 2004 Report to MPSC); and (2) App. B to Consumers Energy Company 2004 Report to MPSC, TLG's Site-Specific Decommissioning Cost Study Executive Summary and Table 3 (Mar. 2004) (MPSC Case, TLG Services 2004 Cost Study Excerpts)).

⁸² See AG Petition at 14 n.36 (citing Letter from Edward J. Weinkam, Nuclear Management Company, LLC, to NRC Document Control Desk, "Irradiated Fuel Management Plan and Preliminary Decommissioning Cost Estimates for Palisades Nuclear Plant" (Apr. 21, 2006) (Palisades IFMP and PDCE) (ML061140185)). The NRC requires power reactor licensees to submit a preliminary decommissioning cost estimate about five years prior to permanent cessation of operations. See 10 C.F.R. § 50.75(f)(3). Following NRC approval of the Palisades operating license renewal application, Nuclear Management Company withdrew the preliminary decommissioning cost estimate as no longer required. See Letter from Edward J. Weinkam, Nuclear Management Company, LLC, to NRC Document Control Desk (Feb. 7, 2007) (ML070390046).

The Attorney General contrasts the earlier-projected costs (in 2003 dollars) of approximately \$584.1 million for license termination, \$297.9 million for spent fuel management, and \$78.3 million for site restoration, with HDI's lower projected costs (in 2020 dollars) of approximately \$443.2 million for license termination, \$166.1 million for spent fuel management, and \$34.6 million for site restoration. If escalated to 2020 dollars, the Attorney General claims that the TLG Services 2004 estimates would be about \$821.6 million for license termination, \$419.0 million for spent fuel management, and \$110.1 million for site restoration.⁸³ Compared to the earlier cost estimates, the Attorney General claims that HDI's estimates reflect a 52% reduction in the projected overall costs for Palisades.

Further, the Attorney General claims that no explanation has been provided to support this cost reduction, and that HDI's cost estimate lacks "sufficient detail . . . for an independent analysis of any factors that could support this 52% reduction in estimated costs."⁸⁴ The Attorney General acknowledges one obvious difference between the two cost analyses: HDI estimates \$34.6 million for low-level radioactive waste disposal, while the 2004 study estimated \$61.3 million in 2003 dollars (\$86.2 million in 2020 dollars) for low-level waste disposal.⁸⁵ But the Attorney General states that this \$54.6 million difference (in 2020 dollars) in the low-level waste burial costs does not explain the \$378 million total decrease in estimated license termination costs (in 2020 dollars) between the two cost studies.

The applicants respond that new methodologies developed since the earlier 2004 study have improved efficiencies, reduced labor, and reduced the volume of low-level waste requiring disposal. They state that such changes "would undermine a direct comparison between new and old decommissioning cost estimates and render it a long and ultimately fruitless effort."⁸⁶ They also state that the storage period in the 2004 estimate is slightly longer, and "assumed that spent fuel would remain in the pools for an eight-year cooling period, resulting in considerably greater cost during the dormancy period."⁸⁷ The applicants further state that the low-level waste disposal market has changed, and further, that HDI entered into a fleetwide contract with Waste Control Specialists, LLC, for disposal of low-level radioactive waste at the WCS facility in Andrews County, Texas, which started operating in 2012. They also state that they incorporated subcontractor estimates for reactor segmentation and waste removal. And they

⁸³ See AG Petition at 13 & n.32 (using the Consumers Price Index for All Urban Consumers, which the Attorney General states averaged just over 2% a year from 2003 to 2020).

⁸⁴ See *id.* at 13.

⁸⁵ See AG Petition, Attach., "Declaration of Nicholas J. Capik," at 5 n.4 (Capik Decl.).

⁸⁶ See Applicants Answer to AG at 22.

⁸⁷ *Id.*

state that their cost estimates are based on a “fleet model providing greater efficiency, shared experience, and shared corporate support.”⁸⁸

Although not recent, the 2004 study is a decommissioning cost study for Palisades, and we are not aware of a more recent site-specific cost estimate that was provided to the NRC. We also note that HDI in its cost estimate states that for reactor structures, small components, and equipment such as piping, pumps, and tanks, it calculated the decommissioning work durations and cost based on a “review of previous Palisades decommissioning cost analyses” together with other factors.⁸⁹ The 2004 study therefore at a minimum provides a Palisades-based data point for comparison on costs and provides facility-specific information.

But while we find the 2004 study relevant, the Attorney General’s focus on the two studies’ different bottom-line cost conclusions does not by itself raise a genuine dispute with the application. First, HDI had no obligation in the application or the cost estimate to compare its results with the 2004 study or to address differences. And how the Michigan Public Service Commission may have considered or used the 2004 study results is a state matter that does not bear on this license transfer. Second, the Attorney General provides us with no basis to assume that the earlier study, although seventeen years old, reflects a more reliable decommissioning estimate for today than HDI’s current estimate. And with one exception addressed further below, the Attorney General does not use the specific cost information in the 2004 study to challenge the reasonableness of specific underlying costs in the HDI decommissioning cost estimate. It was the Attorney General’s burden as a petitioner to review the earlier study to identify any items that may support a factual and material dispute with HDI’s cost estimates.

We also are not persuaded that information in the two studies is insufficient to allow for some understanding of how the cost estimates differ. The Attorney General already identified the differences between the studies in the low-level waste disposal costs. But other notable differences also are apparent. For example, a higher contingency allowance included in the 2004 study accounts for some of that study’s higher overall decommissioning costs.⁹⁰ And estimated labor costs for radiological decommissioning also differ markedly; the Attorney General does not challenge HDI’s estimated labor requirements and estimated

⁸⁸ *Id.*

⁸⁹ *See* DCE at 38. HDI does not identify the earlier cost estimate that it used.

⁹⁰ The 2004 study allocated 20.37% for contingency. *See* Palisades IFMP and PDCE, Encl. 2 at 2. This percentage reflects approximately \$118 million of the \$584 million radiological decommissioning cost estimate in 2003 dollars (about \$167 million out of \$822 million in 2020 dollars), compared to HDI’s 12% contingency allowance, which reflects about \$53 million out of HDI’s decommissioning cost estimate of \$443 million (in 2020 dollars).

labor costs.⁹¹ Further, the projected spent fuel management expenses in the earlier study extended over an approximately 37-year period following cessation of operations, while HDI's cash flow analysis covers about twenty years of spent fuel management costs, with all fuel removed by 2041.⁹² These are all evident cost-related differences between the studies.⁹³

To the extent that HDI's cost estimate may be missing details necessary for the Attorney General to meaningfully assess the HDI estimate, it was the Attorney General's burden to identify any necessary missing information. And the pertinent question ultimately is not why HDI's cost estimate is less but whether the estimate is reasonable. The Attorney General's comparison of the two studies' respective overall cost conclusions does not, without more, raise a supported, genuine material dispute with the Palisades application.

(1) ISFSI Operating Costs

The Attorney General raises one particularized cost comparison from the 2004 study to challenge HDI's estimated annual spent fuel management operating costs for the years 2027-29. The Attorney General notes that the 2004 study described an approximately \$6 million a year average annual cost for post-decommissioning ISFSI operations; according to the Attorney General, this annual amount in 2020 dollars would be \$8.44 million. The Attorney General goes on to argue that an \$8.44 million annual ISFSI operating cost is significantly greater than HDI's estimated annual spent fuel management cost of \$1.7 million for the years 2027-29. The Attorney General questions only HDI's estimated spent fuel management costs for those three years, which the Attorney General claims are "comparable" to the 2004 study's post-ISFSI decommissioning period; HDI's schedule and cash flow analysis project no major additional spent

⁹¹ Compare DCE at 34-35 (projected decommissioning labor cost of about \$182 million in 2020 dollars) with MPSC Case, TLG Services 2004 Cost Study Excerpts, Section 3 at 2, tbl. 3.2 (projected radiological decommissioning labor cost of \$294 million, in 2003 dollars). The 2004 study also identified additional labor costs of \$121 million for spent fuel management and of \$39 million for site restoration. See MPSC Case, TLG Services 2004 Cost Study Excerpts, Section 3 at 3-4, tbls. 3.3 & 3.4, respectively.

⁹² Compare DCE at 46 with MPSC Case, TLG Services 2004 Cost Study Excerpts, Section 3 at 3, tbl. 3.3.

⁹³ We note also that the full 2004 TLG cost study is available on our public ADAMS electronic database. See Letter from Edward J. Weinkam, Nuclear Management Company, LLC, to NRC Document Control Desk (Oct. 10, 2006), Encl. 2, "Decommissioning Cost Study for the Palisades Nuclear Plant," Prepared by TLG Services, Inc. (Mar. 2004) (Full TLG Services 2004 Cost Study) (ML062840446).

fuel management activities (such as transferring fuel from wet-to-dry storage or transferring fuel from dry storage to DOE) to occur during the years 2027-29.⁹⁴

The Attorney General argues that HDI's estimated \$1.7 million spent fuel management cost for each of the three years during 2027-29 is 80% less than the annual post-decommissioning ISFSI operating costs identified in the 2004 study, and that no explanation is provided for this difference. Additionally, the Attorney General compares HDI's \$1.7 million estimated cost to the actual annual cost for maintaining the Big Rock ISFSI, which the application notes was \$2.63 million in 2019.⁹⁵ The Attorney General argues that HDI provided no explanation for why its estimated cost for maintaining the Palisades ISFSI during the years 2027-29 would be "35% less than the actual [Big Rock Point] cost" for ISFSI maintenance.⁹⁶

This comparison of spent fuel management costs also lacks adequate support and does not raise a material dispute for hearing. First, HDI had no obligation in the application to compare its estimates to the 2004 cost study and provide an analysis or explanation of cost differences. Second, the applicants provide an unchallenged explanation for why their estimated spent fuel management costs during the dormancy years 2027-29 are not directly comparable to post-decommissioning ISFSI operating costs and the current operating costs at Big Rock.

The applicants state that both the Big Rock ISFSI current operating costs and the 2004 cost study's estimated \$6 million post-decommissioning ISFSI operating costs address *total* operating costs for a "standalone ISFSI."⁹⁷ In contrast, during the years 2027-29 of HDI's projected dormancy period, the Palisades ISFSI will not be a standalone ISFSI because the reactor will not have been decommissioned. The applicants state that for the years 2027-29 HDI allocated the Palisades site infrastructure costs (e.g., security, site upkeep, insurance, taxes) proportionately between the license termination cost category and the spent fuel management category. They state that the referenced 2004 study's spent fuel management costs reflect a *post-decommissioning* period in which *all* infrastructure costs are assigned to a standalone ISFSI facility, and that likewise, at Big Rock all infrastructure costs are assigned to the standalone ISFSI.⁹⁸

On reply, the Attorney General neither addressed this explanation, nor provided any other ground to question the adequacy of \$1.7 million for the annual

⁹⁴ See AG Petition at 14-15 (citing DCE at 46).

⁹⁵ See Capik Decl. at 6 (citing LTA, Attach. E at 8).

⁹⁶ See AG Petition at 15.

⁹⁷ See Applicants Answer to AG at 23-24.

⁹⁸ See *id.* at 24 & n.103 (addressing Table 5-1 in the cost estimate, which estimates overall facility annual costs (reactor and ISFSI costs together) of about \$6.3 million for each of the dormancy years 2027-29).

spent fuel management cost for the years 2027-29. The Attorney General did not provide sufficient factual basis for its claim that HDI's estimated spent fuel management costs for the dormancy years 2027-29 are directly comparable to the post-decommissioning costs in the 2004 study or to the current Big Rock standalone ISFSI operating costs. Further, the Attorney General does not describe why the asserted underestimated spent fuel management costs for those three years in the dormancy period would materially call into question Holtec's overall financial qualification. Based on the information before us, the Attorney General has not established a supported, material dispute with the application on the adequacy of the \$1.7 million estimate.

b. Spent Fuel Management Assumptions for Transfer of All Spent Fuel Off of the Site

(1) Assumed Start Date

The Attorney General challenges spent fuel management assumptions on which HDI's cost estimates are based. The Attorney General first contests HDI's assumption that DOE will begin to pick up spent fuel from Palisades in 2030. Specifically, the Attorney General states that DOE is not currently working on a pilot interim storage facility and that DOE operation of such an interim facility is linked under the Nuclear Waste Policy Act to construction of a repository.⁹⁹ While there still is uncertainty regarding when DOE might begin to pick up spent fuel from nuclear power reactor sites, in two recent decisions we have accepted a 2030 start date as plausible.¹⁰⁰ As we stated in the *Pilgrim* proceeding, "there have been corporate and legislative initiatives aimed at providing interim storage options," and the NRC has received two separate applications for privately owned interim storage facilities.¹⁰¹ Recently, the NRC completed its review and issued a license for one of these facilities.¹⁰² While

⁹⁹ See AG Petition at 16 & nn.45-46.

¹⁰⁰ See *Indian Point*, CLI-21-1, 93 NRC at 29.

¹⁰¹ See *Pilgrim*, CLI-20-12, 92 NRC at 374 (citing 2018 Congressional Research Service report on civilian nuclear waste disposal); see also Congressional Research Service, "Civilian Nuclear Waste Disposal" (Sept. 14, 2020), at 3 (noting latest legislative initiatives to "authorize DOE to enter into contracts with nonfederal interim storage facilities").

¹⁰² See *Interim Storage Partners, LLC; WCS Consolidated Interim Storage Facility; Issuance of Materials License and Record of Decision*, 86 Fed. Reg. 51,926 (Sept. 17, 2021). The SER acknowledges, "Before commencing construction, operation, and receipt of licensed material at the WCS [facility], the applicant stated that it expects to enter into a contract(s) with the DOE or other entities that may hold title to the spent fuel and that will provide the funding for facility construction, operation, and decommissioning, including any fees paid to hosting public entities." See "Final Safety

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the other application is still under review, we accept as plausible that by 2030 a storage facility will be available to receive the Palisades spent fuel.

(2) Projected Length of Time for Transferring All Spent Fuel Off-Site

The Attorney General also challenges the application’s projected timeframe of approximately eleven years for DOE to remove all spent fuel from the Palisades site.¹⁰³ We conclude that the Attorney General raises an admissible issue for hearing.

HDI assumes that DOE will begin accepting the Palisades spent fuel in 2030 and will complete the transfer of all fuel off the Palisades site by the end of 2040. HDI states that for planning purposes, “the fuel removal assumed in this estimate is based upon DOE acceptance of fuel according to the ‘Oldest Fuel First’ priority ranking.”¹⁰⁴ HDI also states that Holtec Palisades will seek the most expeditious means of removing fuel from the site “based on shutdown reactor priority and other contract provisions.”¹⁰⁵

The DOE Standard Contract for spent fuel disposal establishes fuel acceptance procedures, including a spent fuel acceptance priority ranking, or queue. Except as otherwise provided for under the contract, the Standard Contract bases the priority of fuel acceptance on the age of the spent nuclear fuel, as calculated from the date of permanent discharge from the nuclear power reactor.¹⁰⁶ This priority ranking is commonly called “Oldest Fuel First.”

The Attorney General disputes as unreasonably short HDI’s projected 11-year spent fuel removal period and claims that this acceptance period results in significantly understated spent fuel management costs. The Attorney General bases this argument on the Standard Contract’s oldest fuel first acceptance priority, together with a spent fuel acceptance rate or schedule that has been upheld by courts in litigation relating to DOE’s partial breach of the Standard Contract.¹⁰⁷

Evaluation Report for the WCS Consolidated Interim Storage Facility” (Sept. 13, 2021), at 11-2 to 11-3 (ML21188A101); *see also* Applicants’ Answer to AG at 25 (arguing that, even if necessary legislative changes to allow DOE to take title to the spent fuel were not enacted, DOE could pay for the interim storage or Holtec Palisades could seek to recover the costs of the interim storage from DOE); *Holtec International* (HI-STORE Consolidated Interim Storage Facility), CLI-20-4, 91 NRC 167, 176 (2020) (the “NWPA does not prohibit a nuclear power plant licensee from transferring spent nuclear fuel to another private entity”).

¹⁰³ *See* AG Petition at 15-18; Capik Decl. at 6-8.

¹⁰⁴ *See* DCE at 22.

¹⁰⁵ *See id.*

¹⁰⁶ *See* Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste, 10 C.F.R. § 961.11 (text of the contract) (Standard Contract), art. VI.B.1 (Acceptance Priority Ranking).

¹⁰⁷ *See* AG Petition at 17 & n.47 (citing U.S. Department of Energy, Office of Civilian Radioactive

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The Attorney General claims that the DOE acceptance schedule provides for 18,600 metric tons of uranium to be accepted in the first ten years of repository operation, followed by a DOE annual acceptance rate of 3,000 metric tons of uranium. Based on these rates, and given the total spent fuel amount projected to be covered by the Standard Contract, the Attorney General argues that “the last of Palisades spent fuel will not be removed for about 34 years after DOE acceptance commences.”¹⁰⁸

Using HDI’s spent fuel transfer start date of 2030, the Attorney General argues that DOE would not accept the last of the Palisades fuel until about 2064, reflecting a 34-year fuel transfer period, ending decades after HDI predicts. As further support, the Attorney General states that the prior Palisades licensee, Consumers Energy Company, supported its 2003 ratemaking submittals before the Michigan Public Service Commission with a “nearly identical acceptance period of 35 years.”¹⁰⁹ The Preliminary Decommissioning Cost Estimate for Palisades that Consumers Energy Company filed with the NRC in 2006 likewise projected the same 35-year fuel transfer period (2013-48), given both “DOE’s generator/allocation/receipt schedules” based on the oldest fuel first priority ranking and “an anticipated rate of transfer.”¹¹⁰

The Attorney General acknowledges that the Standard Contract has two provisions that potentially could be used to accelerate the acceptance of spent fuel by changing a specific site’s position in the queue, but claims that there is no basis to assume that these alternative provisions can be utilized, or that these provisions would be available without a significant cost.¹¹¹ The Attorney General

Waste Management, DOE/RW-0146, “Annual Capacity Report” (June 1987)). While the Standard Contract specifies the priority for ranking the order of spent fuel acceptance, it does not specify a particular *rate* of spent nuclear fuel acceptance. The Standard Contract instead required DOE to issue annual reports on acceptance priority rankings for receipt of fuel and annual reports on receiving capacity, including capacity information for the first ten years following projected commencement of operations of the initial DOE facility. *See* Standard Contract, art. IV.B.5. In litigation to assess damages for DOE’s partial breach of contract, courts have used DOE’s 1987 Annual Capacity Report to determine how quickly the plaintiff utility or owner would have been able to have had all spent fuel removed but for DOE’s partial breach of contract. *See, e.g., Pac. Gas and Elec. Co. v. United States*, 536 F.3d 1282, 1291-92 (Fed. Cir. 2008).

¹⁰⁸ *See* AG Petition at 17 & n.48; Capik Decl. at 7 n.18 (specifying underlying assumptions).

¹⁰⁹ *See* AG Petition at 17 (citing MPSC Case, Ex. A-2, Consumers Energy Company 2004 Report to MPSC at 18 (projecting a fuel transfer period spanning years 2013-2048)); *see also* Palisades IFMP and PDCE, Encl. 1 at 1-2.

¹¹⁰ *See* Full TLG Services 2004 Cost Study, Section 1 at 5; *see also id.*, Section 2 at 10 and Section 3 at 10; Palisades IFMP and PDCE, Encl. 1 at 1-2. Both the Consumers Energy Company ratemaking submittals and the Preliminary Decommissioning Cost Estimate for Palisades used the 2004 TLG Services cost analysis.

¹¹¹ *See* Capik Decl. at 7-8 & n.20. One, under Article VI.B.1(b) (“Acceptance Procedures”), DOE
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claims, therefore, that HDI failed to address or otherwise account for the substantial uncertainty associated with HDI's accelerated fuel acceptance schedule of 11 years.

Based on HDI's projected timeframe for DOE removing all Palisades spent fuel by the end of 2040, HDI's cash flow analysis depicts no additional spent fuel management costs following the year 2040. The analysis projects ISFSI decommissioning and license termination to occur in 2041. HDI's estimated total spent fuel management costs of \$166,122,000 relies on the assumed spent fuel acceptance schedule. By not accounting for many additional years of spent fuel management costs until DOE is able to remove all of the fuel, the Attorney General claims that HDI significantly underestimates spent fuel management costs.

In their answer, the applicants argue that the two Standard Contract provisions potentially could be used to accelerate the fuel acceptance rate. Citing several court decisions, the applicants state that the Federal Circuit has upheld the use of the Standard Contract's provision allowing potential exchanges of fuel acceptance schedules.¹¹² These decisions held that it could be assumed that, absent DOE's partial breach of contract, there would have been a market for exchanges, wherein utilities/owners would have negotiated and paid for an exchange of fuel acceptance schedules to move up in line and accelerate the transfer of their spent fuel.

But the applicants leave unaddressed the Attorney General's argument that such exchanges, should they be an option in the future, likely would entail a significant price. And the applicants' own cited case supports the Attorney General's position that potential exchanges of delivery schedules would entail a cost — “[b]uyers would only have induced sellers to part with their allocations by offering to share the benefits of such a bargain.”¹¹³ The applicants also note the Standard Contract's provision that DOE could choose to accord priority to shutdown reactors.¹¹⁴ But the applicants' general references to these two Standard Contract provisions do not by themselves answer the Attorney General's chal-

could accord acceptance priority to permanently shutdown reactors. Two, under Article V.E (“Exchanges”), a party to a Standard Contract could exchange approved delivery commitment schedules with other parties to other contracts with DOE for spent fuel disposal (provided that DOE has the right in its sole discretion to approve or disapprove any such exchanges).

¹¹² Applicants Answer to AG at 26 & n.117 (citing court decisions relating to damages for DOE breach).

¹¹³ See *Dairyland Power Coop. v. United States*, 645 F.3d 1363, 1372 (Fed. Cir. 2011) (citation omitted). The circuit court affirmed the lower court's discounting of \$16.5 million from the plaintiffs' damages award, to account for what plaintiff Dairyland, a shutdown reactor with a small amount of spent nuclear fuel, would have paid in bargaining for acceptance allocation exchanges to move its 38 tons of spent nuclear fuel to the front of the DOE queue.

¹¹⁴ See Applicants Answer to AG at 26.

lenge to the plausibility of the specific 11-year schedule on which the applicants rely. The applicants have not described how they applied their assumptions to reach their 11-year schedule.

The Attorney General's claim raises a supported, genuine dispute with the application on a material issue. Relying on alleged facts and supported by expert opinion, the Attorney General challenges what it calls a "shortened 11-year acceptance period."¹¹⁵ As the Attorney General noted, based on both the oldest fuel first priority ranking and an anticipated rate of fuel transfer, Consumers Energy projected that it would take about 35 years to complete the transfer of all fuel from the site.¹¹⁶ The Attorney General's expert also calculated a similar 34-year schedule based on HDI's 2030 start date, DOE's oldest fuel first priority ranking, and a specified spent fuel acceptance rate. And we note that current licensee ENOI similarly projects that it will take about 34 years to complete the transfer of fuel off of the site based on DOE's oldest fuel first priority ranking and assuming "a maximum rate of transfer of 3,000 metric tons of uranium/year."¹¹⁷ Yet beyond general references to possibilities under the Standard Contract for accelerating fuel acceptance dates, neither the Palisades site-specific decommissioning cost estimate nor the applicants' answer clearly explains how HDI determined that 11 years constitutes a plausible schedule for removal of all of the Palisades spent fuel.

At the hearing, Holtec should clarify how it determined that 11 years constitutes a plausible transfer schedule. If HDI's schedule departs from the commonly applied maximum transfer rate of 3,000 metric tons of uranium/year, then Holtec should describe the spent fuel transfer rate that it used, and why it determined that a faster rate is plausible.¹¹⁸ If Holtec bases its schedule on the

¹¹⁵ See AG Petition at 18.

¹¹⁶ See *id.* at 17 & n.49 (citing MPSC Case, Ex-A2, Consumers Energy Company 2004 Report to MPSC at 18); see also Full TLG Services 2004 Cost Study, Section 1 at 5.

¹¹⁷ See Letter from Philip L. Couture, ENOI, to NRC Document Control Desk (Dec. 17, 2018) (ML18351A478), Encl. 2, "10 CFR 72.30 ISFSI Decommissioning Funding Plan, Palisades Nuclear Plant," at 2-4 (citing "Acceptance Priority Ranking & Annual Capacity Report," DOE/RW-0567 (July 2004)). ENOI bases its schedule on the same HDI expectation that Palisades will permanently cease operations in spring 2022, and on spent fuel transfers beginning in 2032 (only two years later than HDI), but it projects that the spent fuel will be fully removed from the Palisades site only in 2066. See *id.*

¹¹⁸ The applicants claim that it is "also plausible (*though not assumed in HDI's analysis*) that DOE will accept fuel more rapidly than contemplated in litigation over the Standard Contract." See Applicants Answer to AG at 26 (emphasis added). The statement suggests that HDI based its 11-year transfer schedule on a rate of spent fuel transfer similar to that used by the Attorney General and by ENOI (e.g., assuming a maximum rate of 3,000 metric tons of uranium/year). If HDI used the same rate of transfer, it should clarify the specific underlying assumptions relied on for projecting the faster 11-year schedule.

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commonly applied spent fuel transfer rate, then it should nonetheless explain how it reached the 11-year transfer accelerated schedule.

As a final matter, the applicants argue that even if they were to incur spent fuel management costs beyond 2040, the impact on their “overall cost estimate would be minimal” because if they incur more spent fuel management costs than they are currently projecting then “those costs would be recovered from DOE.”¹¹⁹ The applicants therefore argue that the Attorney General has not set forth with particularity any reason why the applicants’ “overall . . . spent fuel cost analysis” is implausible in any material way.¹²⁰

But the Attorney General argues that there is a genuine issue regarding whether “the impact on overall cost estimates would be minimal,” and also that “there is no commitment by Holtec to use any costs recovered from DOE.”¹²¹ We agree. Based on the application, the NRC must be able to find adequate financial qualifications and reasonable assurance of decommissioning funding. If cost estimates on which the application relies for necessary findings are implausible, or if further inquiry is necessary to assess their adequacy, that is a matter warranting resolution in this license transfer proceeding.

Here, the Attorney General provides a supported claim challenging HDI’s projected spent fuel transfer schedule. Whether HDI’s projected transfer schedule appears plausible directly bears on whether the estimated costs for spent fuel management are reasonable or understated. If the latter, then the financial assurance specified in the application may be insufficient to support the application. In that event, some commitment regarding the DOE recoveries or other form of additional financial assurance may be warranted for this proposed license transfer. The Attorney General’s dispute with the application on this point is therefore admissible.

c. Comparison of the Radiological Decommissioning Cost to the NRC’s Minimum Formula

The Attorney General also claims that the HDI decommissioning cost estimate is unreasonable because the estimate falls below the NRC’s decommis-

The applicants also argue that the fuel transfer rate assumed in the Standard Contract is outdated. They argue that the allocation rate adopted by the Federal Circuit that is based on DOE’s 1987 Annual Capacity Report “does not necessarily represent a likely DOE acceptance rate in today’s world, with consolidated interim storage facilities on the horizon and advancements in technology.” *See id.* To the extent that HDI either applied a faster spent fuel transfer rate or claims a faster rate to be plausible, HDI can provide further support for use of a faster transfer rate in the hearing.

¹¹⁹ *See* Applicants Answer to AG at 27.

¹²⁰ *See id.*

¹²¹ *See* AG Reply at 14.

sioning cost minimum formula amount calculated for the Palisades site. The comparison is relevant. As we outline further below, current NRC guidance calls for comparing the site-specific decommissioning cost estimate provided in a PSDAR to the minimum formula amount. Where the cost estimate falls below the minimum formula amount, the guidance calls for an explanation or further inquiry. We conclude that the Attorney General sufficiently raises a material dispute over the overall adequacy and acceptability of HDI's site-specific cost estimate because it falls significantly below the minimum formula amount.

(1) The Minimum Formula Regulations in 10 C.F.R. § 50.75(b)-(c)

One of the NRC's key requirements to ensure that adequate funds are accumulated for decommissioning is the requirement in 10 C.F.R. § 50.75(b)(1) that an applicant for, or a holder of, an operating license under Part 50 provide a certification of decommissioning funding "in an amount which may be more, but not less, than the amount" stated in the NRC's table of minimum amounts in section 50.75(c)(1), as further adjusted using a rate at least equal to that provided by the adjustment factors in section 50.75(c)(2). In establishing the minimum formula requirement, the NRC sought a method with clear criteria that would both provide reasonable assurance of decommissioning funding while also minimizing licensee and NRC administrative effort.¹²² The prescribed amount calculated with the minimum formula was never intended to "represent the actual cost of decommissioning for specific reactors but rather is a reference level established to assure that licensees demonstrate adequate financial responsibility that the bulk of the funds necessary for a safe decommissioning are being considered and planned for early in facility life."¹²³ In issuing the regulation, the NRC made clear that licensees alternatively could certify their decommissioning funding to an amount based on a site-specific cost estimate, but only "if it exceeded the prescribed amount, which would be acting as a threshold review level."¹²⁴

¹²² See General Requirements for Decommissioning Nuclear Reactors, Final Rule, 53 Fed. Reg. 24,018, 24,030-31 (June 27, 1988).

¹²³ *Id.*

¹²⁴ See *id.* In later years, the Commission declined to revise section 50.75(b) to permit licensees of operating reactors to certify the decommissioning funding amount to a site-specific decommissioning cost estimate that was lower than the minimum formula amount. See, e.g., Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, Final Rule, 63 Fed. Reg. 50,465, 50,468-69 (Sept. 22, 1998) ("[T]he Commission has decided to defer allowing site-specific estimates that are lower than the amounts specified in 10 CFR 50.75(c) until additional decommissioning data are obtained."); Decommissioning Trust Provisions, Final Rule, 67 Fed. Reg. 78,332, 78,343 (Dec. 24, 2002) ("The Commission's position remains that the site-specific estimates may be used as a basis for a funding plan if the amount to be provided is . . . at least equal to that stated in

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About a decade ago, the NRC staff re-evaluated the adequacy of the minimum formula, based in part on a 2011 draft study by Pacific Northwest National Laboratory (PNNL) that re-assessed the formula and its technical basis.¹²⁵ The staff concluded that the prescribed formula level continued to ensure that the “bulk of the funds” necessary for decommissioning were considered and planned for early in facility life.¹²⁶ The staff further stated that “[a]pplying the results of the PNNL study, the minimum formula represents the low end of the range of decommissioning costs,” which the staff found “acceptable because raising the minimum could result in requiring some licensees to provide financial assurance greater than the funds needed to decommission.”¹²⁷ The staff chose not to revise the formula in 2013, concluding that it “successfully establishes a common minimum standard measurement, or reference level, to which each licensee must accumulate committed financial resources during the life of the operating license.”¹²⁸

(2) Attorney General’s Comparison of HDI Estimate to Minimum Formula

HDI’s estimated site-specific radiological decommissioning cost of \$443 million is lower than the calculated minimum formula amount for Palisades. The application states that the minimum formula amount is \$484.7 million, as calculated by ENOI in its 2020 decommissioning funding status report; ENOI has since updated the formula amount for Palisades to \$503.75 million in its 2022 status report.¹²⁹

In Contention MI-1, the Attorney General claims that the decommissioning cost estimate is unreasonable because it falls under the minimum formula amount — specifically, that HDI’s estimate is “substantially smaller” than the minimum formula standard, which in turn the Attorney General argues historically “has understated actual license termination costs by 16% to 42%.”¹³⁰ The

paragraph (c)(2) of . . . [§ 50.75]. The Commission does not intend to allow use of site-specific amounts lower than the formula values.”).

¹²⁵ See “Assessment of the Adequacy of the 10 CFR 50.75(c) Minimum Decommissioning Fund Formula,” Draft (Nov. 2011) (ML13063A190) (PNNL Draft Report).

¹²⁶ See “Staff Findings on the Table of Minimum Amounts Required to Demonstrate Decommissioning Funding Assurance,” Commission Paper SECY-13-0066 (June 20, 2013), at 6 (ML13127A-234) (SECY-13-0066). As described in the staff’s paper, PNNL proposed a revised minimum formula with new weighting of the adjustment factors and a new base year (2010 instead of 1986). However, the staff concluded that revising the formula was unnecessary. See *id.* at 5-7.

¹²⁷ See *id.* at 6-7.

¹²⁸ See *id.* at 7.

¹²⁹ Application at 18 n.1; Letter from Phil Couture, ENOI, to NRC Document Control Desk, Decommissioning Funding Status Report (Mar. 28, 2022), Encl. 2, “ENOI Calculation of Minimum Amount — Palisades” (ML22087A500) (ENOI 2022 Status Report).

¹³⁰ See AG Petition at 18-19.

Attorney General states that there have been multiple completed decommissioning projects (e.g., Yankee Rowe, Haddam Neck, and Maine Yankee) where the actual decommissioning cost proved to be up to 42% more than minimum formula amount, and the formula is only intended to capture the bulk of costs. The Attorney General also cites to a 2012 report by the United States Government Accountability Office that compared the minimum formula amount for twelve reactors and concluded that the NRC formula “captured 57 to 91 percent of estimated site-specific cost for nine reactors,” and that site-specific estimates were as much as \$362 million more than the formula amount.¹³¹ The Attorney General additionally argues that HDI has not “yet completed, nor made substantial progress towards completing” any of its planned decommissioning projects, and that therefore while HDI’s intended fleetwide approach “could offer efficiencies, any such cost savings has yet to be realized.”¹³² The Attorney General therefore argues that “[a]bsent additional support,” HDI’s projected radiological decommissioning cost estimate is unreasonable because it “not only understates the generic formula but also actual historical experience” given that the minimum formula has understated actual license termination costs.¹³³

The applicants dismiss the Attorney General’s use of the minimum formula as a benchmark for assessing the overall plausibility of the HDI decommissioning cost estimate. They argue that the Attorney General provided “no reason to believe that a general estimate” is “objectively better than HDI’s estimate.”¹³⁴ They also state that the Attorney General neither addressed nor disputed their explanation in the application for why the cost estimate is below the minimum formula amount, including their explanation that the formula amount, “developed nearly forty years ago[,] is a general level of adequate financial responsibility early in life.”¹³⁵

The application states that the section 50.75(b) requirement that decommissioning financial assurance at least meet the minimum formula will not apply to Holtec by the time of the planned transfer transaction’s closing. It further states that by that time decommissioning trust funds will have been expended for “certain decommissioning planning and initial decommissioning activities,” and that “at that juncture” decommissioning funding will be governed by section

¹³¹ See *id.* at 19 n.55 (citing GAO-12-258, Report to the Honorable Edward J. Markey, House of Representatives, “NRC’s Oversight of Nuclear Power Reactors’ Decommissioning Funding Could Be Further Strengthened” (Apr. 2012), at 13-14), available at <https://www.gao.gov/products/gao-12-258>. For 3 of the 12 reactors analyzed, the GAO report found that the minimum formula captured from 101 to 103% of the site-specific estimated cost. See GAO-12-258, at 13-14.

¹³² See AG Petition at 20.

¹³³ See *id.*

¹³⁴ See Applicants Answer to AG at 29.

¹³⁵ See *id.* at 28.

50.82.¹³⁶ It goes on to state that section 50.82 will require annual decommissioning funding reports describing “the declining site-specific decommissioning cost to complete decommissioning as decommissioning work is completed,” but “includes no provision requiring the site-specific cost estimate to equal or exceed the generic formula amount.”¹³⁷

(3) Analysis of Arguments

First, contrary to the applicants’ suggestion, the minimum formula has relevance beyond merely establishing a decommissioning funding floor early in reactor life. Although Palisades permanently ceased operations in May 2022, ENOI relies today on the minimum formula amount as its required minimum decommissioning funding assurance amount.¹³⁸ Under the proposed transfer, therefore, the minimum amount of funding required for radiological decommissioning would decline to the amount of HDI’s decommissioning cost estimate, which is approximately \$60 million lower than the most recent minimum formula calculation for Palisades. This is a material consideration given that the applicants are relying on this decommissioning cost estimate for their related exemption request to use the trust fund amounts in excess of the estimate to fund spent fuel management costs and non-radiological site restoration costs, and HDI’s projected remaining funding at license termination is about \$19 million.¹³⁹

Further, current NRC guidance on site-specific decommissioning cost estimates calls for a comparison of the estimate to the minimum formula, and this guidance expressly applies to the site-specific cost estimates submitted under the decommissioning regulations in section 50.82 (e.g., with a PSDAR under section 50.82(a)(4)(i), or within two years of cessation of operations under section 50.82(a)(8)(iii)). For example, the staff’s standard review plan for decommissioning cost estimates for nuclear power reactors specifies that if the site-specific estimate is less than the minimum formula amount and “adequate justification is not provided,” then the staff is to seek additional information from the licensee “to resolve the deficiency.”¹⁴⁰ The guidance goes on to state that if “adequate

¹³⁶ See Application at 18-19 n.1.

¹³⁷ See *id.*

¹³⁸ See ENOI 2021 Status Report at Encls. 5, 6.

¹³⁹ See Application, Attach. E at 5 (Cash Flow Analysis).

¹⁴⁰ See “Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors” (Final Report), NUREG-1713 (Dec. 2004), at 21 (SRP for Decommissioning Cost Estimates, NUREG-1713) (ML043510113); see also *id.* at 37; “Procedures for NRC’s Independent Analysis of Decommissioning Funding Assurance for Operating Nuclear Power Reactors and Power Reactors in Decommissioning,” NRR Office Instruction, LIC-205, rev. 6 (Apr. 3, 2017), § 4.4.4 at 14 (ML17075A095).

justification is not provided” then the site-specific cost estimate “shall be considered deficient.”¹⁴¹

While NRC guidance documents do not impose requirements, the minimum formula amount remains a benchmark to assess the acceptability of a site-specific decommissioning cost estimate that is submitted with a PSDAR or within two years of permanent cessation of operations. And while the guidance does not state that the cost estimate provided under section 50.82 cannot fall below the minimum formula, it indicates that a cost estimate falling below the formula amount warrants explanation. Whether a site-specific cost estimate meets the minimum formula amount therefore bears on whether a site-specific estimate is acceptable. Here, as the Attorney General argues, HDI’s estimated radiological decommissioning cost estimate is at least 9% lower than the minimum formula amount.¹⁴²

The applicants state that the application provides a discussion explaining why the site-specific decommissioning cost estimate falls below the formula amount. The referenced discussion states that HDI’s cost estimate is significantly more reliable and more precise because it “reflects an actual, detailed estimate of decommissioning costs,” as opposed to the minimum formula amount, which is based on generic inputs.¹⁴³ The discussion also states that HDI’s cost estimate is based on “Palisades-specific plant data and historical information, actual site conditions, regulatory requirements applicable to Palisades, basis of estimate assumptions, low-level radioactive waste disposal standards, and available pricing data.”¹⁴⁴ The applicants therefore argue that although the estimate is lower than the formula, HDI’s reliance on the site-specific estimate in the license transfer application is justified.

However, a site-specific decommissioning cost estimate should by definition always be based on site-specific conditions and factors.¹⁴⁵ Moreover, the NRC expects every site-specific decommissioning cost estimate to be a detailed and

¹⁴¹ See SRP for Decommissioning Cost Estimates, NUREG-1713 at 37.

¹⁴² See AG Petition at 19. The difference between the estimated cost of \$443 million and the 2022 minimum formula amount of \$503.75 million is approximately \$60 million, which is almost 12% of the minimum formula amount. The Attorney General additionally suggests that for a proper comparison of a site-specific decommissioning cost estimate to the minimum formula any costs allocated strictly to ISFSI decommissioning need to be subtracted first from the overall cost estimate. See AG Petition at 19 n. 54. We need not and do not reach the Attorney General’s suggestions regarding whether any costs ought to be subtracted from HDI’s radiological decommissioning cost estimate before comparing the estimate to the minimum formula amount.

¹⁴³ See LTA at 18 n.1.

¹⁴⁴ See *id.*

¹⁴⁵ The purpose of the cost estimate is to “provide the NRC with a detailed assessment that incorporates the cost impact of site specific factors.” See Standard Review Plan for Decommissioning Reactors at 21; see also *id.* at 20.

significantly more accurate and more reliable estimate than the minimum formula amount. Any licensee or applicant therefore could make a similar broad assertion regarding the factors on which their site-specific cost estimate is based. Yet, the referenced discussion in the application does not contain a substantive summary or explanation of how these identified factors (e.g., Palisades-specific plant data, historical information, actual site conditions, regulatory requirements applicable to Palisades) may have contributed to the HDI estimate falling below the minimum formula amount or any citation or link to portions of the cost estimate that might elaborate more substantively on these factors.

In short, the stated explanation is that the site-specific estimate is more reliable than the minimum formula because it is a site-specific estimate. Such an explanation effectively renders meaningless the NRC guidance on site-specific decommissioning cost estimates, which calls for an “adequate justification” if a site-specific cost estimate falls below the formula. While, as the applicants claim, the Attorney General did not specifically contest these particular statements said to justify HDI’s lower decommissioning cost amount, on their face the referenced statements do not provide substantive information.¹⁴⁶ The explanation provided does not directly address and describe why the cost estimate falls approximately \$60 million lower than the minimum formula amount which, as the Attorney General claims, is intended as a tool to help ensure that a licensee’s financial assurance will capture the “bulk,” not the entirety, of the funding that will be necessary to complete decommissioning.¹⁴⁷

This issue also raises an underlying threshold legal question: does the minimum formula regulation in section 50.75(b) require the application to provide decommissioning financial assurance at least to the level of the minimum formula amount. The application states that, by the time of the projected license transfer closing, decommissioning funding will be governed by section 50.82, which does not contain a requirement that decommissioning funding meet or exceed the minimum formula level.¹⁴⁸ The regulations themselves leave unclear exactly when the section 50.75(b)-(c) minimum formula amount floor for decommissioning funding assurance may cease to apply. Further, the NRC staff in an inter-office Working Group final report acknowledged that the regulations are unclear regarding the applicability of the decommissioning financial assurance floor to licenses of reactors transitioning into decommissioning or that have permanently ceased operations.¹⁴⁹ While the Attorney General does not argue

¹⁴⁶ The Attorney General’s reply calls the applicants’ justification for its lower cost estimate “hardly a sufficient explanation.” See AG Reply at 16.

¹⁴⁷ See *id.*

¹⁴⁸ See Application at 18 n.1.

¹⁴⁹ See “Reactor Decommissioning Financial Assurance Working Group Final Report” (Apr. 29, 2020), at 20-21 (ML20121A188).

that under the regulations the decommissioning funding assurance must meet the minimum formula level, the issue is closely related to the Attorney General's cost comparison. The applicability of the regulation therefore may bear on our resolution of the Attorney General's minimum formula-based claims. We therefore also direct the parties and invite the staff to address in their submissions to the Presiding Officer, as part of the hearing record, their views on the applicability of the section 50.75(b) minimum funding requirement to this application.¹⁵⁰

We conclude that the Attorney General has raised a sufficient dispute over whether a site-specific decommissioning cost estimate that falls well below the minimum formula amount reflects a plausible decommissioning cost estimate. For the hearing, the applicants should provide a more detailed or substantive explanation of the primary reasons that the cost estimate falls significantly below the formula amount.¹⁵¹

d. Contingency Funding

The Attorney General additionally challenges the 12% level of contingency allowance incorporated into the Palisades decommissioning, spent fuel management, and site restoration cost estimates. The claims are sufficiently supported and raise a genuine material dispute with the application. We therefore admit the contingency allowance dispute for hearing.

As HDI describes in its cost estimate, any project has "inherent uncertainty in the estimated quantities, unit rates, productivity, pricing, and schedule durations."¹⁵² Site-specific decommissioning cost estimates submitted to the NRC therefore include an amount added under the title of "contingency" to cover unknown costs. The identified contingency value, expressed as a percentage,

¹⁵⁰ Although the staff typically is a non-party in license transfer adjudications, NRC case precedent has included inviting the staff as a non-party to submit a brief with its views on particular questions pertaining to a license transfer application. *See Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant, Indian Point, Unit 3), CLI-01-14, 53 NRC 488, 559-60 (2001).

¹⁵¹ While not in the applicants' referenced justification for the lower cost estimate, in their answer the applicants provide as an example HDI's fleet-wide waste disposal contract with Waste Control Specialists. The applicants therefore can address the significance of the cost savings associated with the contract.

We note additionally that elsewhere in the application the applicants state they benchmarked their cost estimate against "similar estimates of dismantlement, demolition and waste management activities for other HDI decommissioning projects." *See LTA*, Attach. E at 2. Additional information regarding this benchmarking may be helpful to determine the plausibility of the applicants' site-specific decommissioning cost estimate.

¹⁵² DCE at 40.

reflects the percentage of the overall final cost estimate that was added as a margin to cover unknown costs.

Based on NRC guidance regarding ISFSI decommissioning cost estimates, Holtec applied a contingency factor of 25% to its decommissioning cost estimates for the Palisades and Big Rock ISFSIs.¹⁵³ But for its other estimated costs for Palisades — radiological decommissioning (other than ISFSI), spent fuel management, and site restoration — Holtec applied a 12% contingency factor. The application states that the 12% level of contingency for Palisades will “reasonably bound the universe of risks that are appropriate to be taken into account at the estimate phase (considering industry practice, accepted NRC methodology, and the information that is available today).”¹⁵⁴

Supported by a declarant, the Attorney General challenges the 12% level of contingency as inadequate. The Attorney General first argues that no support is provided for the conclusion that a 12% level of contingency will “reasonably bound the universe of risks that *should* be taken into account.”¹⁵⁵ The Attorney General also argues that the 12% level is unprecedented and inconsistent with industry norms. As examples of industry norms, the Attorney General notes contingency allowances applied in other site-specific decommissioning cost estimates that have been submitted to the NRC; the cited allowances ranged from 16.33% to 18.2%.¹⁵⁶ The Attorney General additionally notes HDI’s own site-specific decommissioning cost estimates for the *Oyster Creek*, *Pilgrim*, and *Indian Point* license transfer applications, which included contingency allowances of 15%, 17%, and 18%, respectively. The Attorney General acknowledges, but describes as an “outlier,” one other relatively lower contingency allowance of 12.9%, applied to a decommissioning cost estimate for Three Mile Island.¹⁵⁷ Further, the Attorney General claims that if HDI’s contingency allowance were increased to be “consistent with recent industry norms,” the increased overall costs would exceed the projected available funding for decommissioning, resulting in a shortfall.¹⁵⁸

¹⁵³ See DCE at 23 (Palisades ISFSI) (citing “Consolidated Decommissioning Guidance, Financial Assurance, Recordkeeping, and Timeliness” (Final Report), NUREG-1757, vol. 3, rev. 1 (Feb. 2012) (ML12048A683) (Consolidated Decommissioning Guidance)); see also Application, Attach. E at 7 (“Big Rock ISFSI”).

¹⁵⁴ See DCE at 41.

¹⁵⁵ See Capik Decl. at 9.

¹⁵⁶ See AG Petition at 21 n.60 (citing site-specific cost estimates for Crystal River Nuclear Generating Station Unit 2 (May 2018) (18.2% contingency); Fort Calhoun Station (Feb. 2017) (16.33% contingency); Monticello Nuclear Generating Plant (Oct. 2014) (16.94% contingency)).

¹⁵⁷ See *id.*

¹⁵⁸ See AG Petition at 21; Capik Decl. at 10. Specifically, Mr. Capik claims, as an example, that

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NRC regulations do not address the content of the power reactor site-specific decommissioning cost estimate.¹⁵⁹ The NRC therefore does not mandate the use of a particular level of contingency allowance for the site-specific decommissioning cost estimate. NRC guidance provides that a cost category of contingency should be separately identified in the decommissioning cost estimate as an “allowance for unexpected costs.”¹⁶⁰ Guidance further provides that the cost estimate should describe “how the contingency costs are calculated.”¹⁶¹ We expect that a reasonable estimate for decommissioning costs will include a percentage or other allowance that is allocated for contingency. But while the evaluation criteria applicable to the ISFSI decommissioning cost estimate specifies that a contingency factor of at least 25% be applied to the sum of all estimated decommissioning costs, for reactor decommissioning cost estimates the NRC has not provided any guidance on calculating or assessing a contingency allowance.¹⁶²

We have in recent adjudications rejected other challenges to contingency levels where petitioners had not identified a material supported dispute with the reasonableness of the levels applied, and the levels on their face did not appear disproportionately low.¹⁶³ Here, the Attorney General, supported by a declarant, claims that the challenged level is both unsupported and inconsistent with industry norms for such analyses, and that if the level were increased to be consistent with industry norms the projected available funding for decommissioning would be exceeded.¹⁶⁴

The applicants state that the 12% contingency allowance is “within less than a percent of the 12.9% allowance used” for the Three Mile Island Unit 1 cost estimate.¹⁶⁵ They otherwise do not identify any similar examples of contingency

if a 17.15% value (the average of the contingency values applied in the Crystal River, Fort Calhoun, and Monticello estimates) were used as the contingency value for Palisades, the cost estimate would increase by \$29 million. He states that if an 18% contingency level (such as that applied in the Indian Point estimate) were applied to the Palisades estimates, the overall estimated costs would increase by \$34 million.

¹⁵⁹ For ISFSI decommissioning, NRC regulations require an “adequate contingency factor,” and further require that the decommissioning cost estimate reflect the cost of an “independent contractor” performing all decommissioning activities. See 10 C.F.R. § 72.30(b)(2).

¹⁶⁰ See Reg. Guide 1.202 at 10; Reg Guide 1.159 at 11.

¹⁶¹ See SRP for Decommissioning Cost Estimates, NUREG-1713, at 27.

¹⁶² See Consolidated Decommissioning Guidance at 4-11.

¹⁶³ See *Pilgrim*, CLI-20-12, 92 NRC at 369-70.

¹⁶⁴ See Capik Decl. at 9. The professional experience summary for the declarant states that Mr. Capik’s work has included evaluating decommissioning cost estimates for a state utility commission, performing cost estimates for commercial and governmental nuclear facilities, and developing a technical and financial model for estimating the costs for decommissioning nuclear reactors.

¹⁶⁵ See Applicants Answer to AG at 29 (citing *Indian Point*, CLI-21-1, 93 NRC at 22). The

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allowances added to reactor decommissioning cost estimates, whether submitted to the NRC or used elsewhere. They also do not discuss any of the specific assumptions underlying the 12% level or otherwise explain how they concluded that this level is adequate for the Palisades project.

The applicants instead argue that HDI justified the 12% level in the cost estimate, and that the Attorney General failed to challenge HDI's analysis. In support, the applicants quote the cost estimate: "Based on an evaluation of estimate uncertainty and discrete risk events, combined with experience gained through decommissioning efforts at Oyster Creek and Pilgrim, newly formed waste contracts, and contingency allowances used for other decommissioning projects, a Contingency Allowance of 12 percent was determined to reasonably bound the universe of risks that are appropriate to be taken into account."¹⁶⁶

However, these generalities do not clarify how HDI derived its specific contingency level. The Attorney General specifically challenges as unsupported the conclusion that the allowance of 12% will reasonably bound the universe of risks that should be taken into account. We agree with the Attorney General that neither the applicants' answer nor the contingency analysis identifies support for the 12% level. The applicants' general references, for example, to HDI's evaluation of estimate uncertainty identify neither any of the uncertainties considered nor any uncertainty values or allowances assigned. HDI's analysis does not describe "how contingency costs are calculated"—an expectation set out in NRC guidance.¹⁶⁷ While these are not NRC requirements, the conclusions in the analysis are subject to challenge. And here the Attorney General disputes the 12% level as inadequate, asserting that it is both comparatively lower than industry norms and unsupported.

The challenged conclusion also states that the 12% level was determined to be reasonably bounding "considering industry practice, accepted NRC methodology, and the information that is available today."¹⁶⁸ Yet, the Attorney General

applicants rely on a statement in our *Indian Point* decision, which referred to a "range" of allowances commonly added to site-specific decommissioning cost estimates. We did not mean, however, that the lowest contingency allowance cited, the 12.9% allowance for TMI Unit 1, represents an industry standard level. We note, moreover, that the TMI Unit 1 site-specific decommissioning cost estimate explains how the 12.9% contingency allowance was derived. See *Three Mile Island Unit 1 Site Specific Decommissioning Cost Estimate* (April 2019), at 6-7 (ML19095A010). The applicants' reliance on the single allowance example of 12.9% does not dispute the Attorney General's argument regarding whether the Palisades analysis is consistent with industry norms.

¹⁶⁶ See Applicants Answer to AG at 29-30 (citing DCE at 41).

¹⁶⁷ NRC guidance also states that a site-specific decommissioning cost estimate may summarize the results of cost analyses "with the underlying detail submitted as supplementary information." See SRP for Decommissioning Cost Estimates at 20. HDI did not provide underlying detail either in the analysis or separately.

¹⁶⁸ See DCE at 41.

argues that the 12% allocated is not consistent with industry norms, and the analysis does not describe what industry practice or NRC methodology was used in reaching the 12% result. In short, there is no way to meaningfully assess why HDI concluded that the 12% level is appropriate for Palisades.

Nevertheless, the precise question — in a license transfer proceeding — ultimately is not whether HDI’s contingency allowance for Palisades is relatively lower than those of other analyses. The material issue is whether the 12% contingency level is unreasonably low or inadequate for the Palisades project and could jeopardize the overall available funding for decommissioning and spent fuel management. We will not admit for hearing an issue that is not material to a decision on the application.

The applicants state that the Attorney General did not explain how it reached its estimate that using an average 17.15% contingency level instead of 12% would add about \$29 million to the Palisades cost estimate. The applicants also argue that the Attorney General failed to address why additional funding assurance is needed or material “or whether accounting for additional contingency expenditures at various points in the project would jeopardize the \$20 million surplus projected at license termination.”¹⁶⁹ They note that they will need to submit annual financial assurance status reports to the NRC, and state that the estimated \$160 million in spent fuel management costs will provide a “revenue stream from DOE recoveries [that] would easily allow a \$29 million adjustment in funding assurance if it were necessary.”¹⁷⁰

We conclude that the disputed contingency analysis level is material. The application and associated exemption request rely on the decommissioning and spent fuel management estimates. A contingency factor is a “nearly universal element in all large-scale construction and demolition projects.”¹⁷¹ And we expect that a plausible decommissioning cost estimate will include an adequate contingency allowance. The contingency allowance is intended to cover “unforeseeable events that are almost certain to occur in decommissioning, based on industry experience.”¹⁷² Funds allocated for contingency typically have been “expected to be fully expended.”¹⁷³ These are funds to cover costs considered inevitable in a large project (e.g., weather delays, equipment breakage). Contingency funds therefore are “an integral part of the total cost to complete the

¹⁶⁹ See Applicants Answer to AG at 30.

¹⁷⁰ See *id.*

¹⁷¹ See, e.g., ENOI Site-Specific Decommissioning Cost Estimate for Pilgrim Nuclear Station, at xii (ENOI 2018 Site-Specific DCE for Pilgrim Nuclear Station), attached to ENOI Post-Shutdown Decommissioning Activities Report for Pilgrim Nuclear Station (Nov. 2018) (ML18320A034).

¹⁷² See *id.*; see also *id.* § 3.3.1 at 3.

¹⁷³ See *id.* at xii.

decommissioning process.”¹⁷⁴ They have not been intended as surplus funds for possible but speculative events but instead funding necessary to cover expected costs.¹⁷⁵ Applying an adequate contingency allowance to baseline costs therefore helps both to minimize the risk of a funding shortfall and to mitigate the severity of any potential funding shortfalls.

The Attorney General argues that HDI provided no support for its conclusion that 12% reflects an adequate contingency level. The Attorney General showed that the total available funding as projected in the cash flow analysis — on which this application relies — could fall short of the projected costs if certain higher levels of contingency were applied.¹⁷⁶ And the Attorney General’s petition also argues that HDI has not provided adequate support for its assertion that DOE recoveries or other additional funding will still be available in sufficient

¹⁷⁴ See *id.* § 3.3.1 at 4. HDI’s contingency analysis may be different than those the NRC typically receives because it encompasses risk events that “may or may not occur,” including not only potential events that may increase costs but also potential events or opportunities that may offset costs. See DCE at 41. The 12% allowance is said to account for both additional costs “expected to be incurred” and potential discrete risk events that may or may not occur and which would either “negatively” or “positively” impact the project objectives. See *id.*

The dispute we admit centers on whether the 12% contingency level reflects an adequate contingency level for the Palisades project. At the hearing stage for the merits inquiry, the applicants should provide a substantive description in their briefing materials of how they arrived at the 12% allowance level, including if appropriate, their estimate uncertainty evaluation model and discrete risk analysis, and as appropriate any other main factors and values underlying the allowance level. The applicants may also address relevant norms and standards for contingency allowances applied to reactor decommissioning cost estimates prepared at a similar decommissioning project stage. The Attorney General will be permitted to file an answer to the applicants’ brief. We note, additionally, that the NRC has not required site-specific decommissioning cost estimates to encompass funding for highly uncertain costs. An acceptable contingency allowance therefore would not need to include highly uncertain costs.

¹⁷⁵ There are, in addition, potential but highly uncertain events or circumstances that may occur and increase costs. For such highly uncertain potential costs, we rely on the licensees’ annual funding status reports to identify unanticipated additional costs and if necessary to adjust funding. Similarly, cost judgments that may have been reasonable earlier may need to be readjusted later with real-time information. The annual review process serves to monitor such expenditures and funding adequacy. The annual funding review process, however, is not intended as a substitute for providing reasonable estimates of *expected* project costs in the site-specific decommissioning cost estimate. An adequate contingency analysis should encompass costs considered historically inevitable and therefore expected.

¹⁷⁶ To show that the contingency allowance dispute is material, the Attorney General’s declarant provided examples of what he asserted would be the increase in estimated costs if the 12% contingency level were replaced with higher levels consistent with what he argues are “industry norms.” See Capik Decl. at 10. While the applicants argue that his calculations should have been better explained, we conclude that for contention admissibility purposes he provided sufficient support to show, based on the cash flow analysis, that the relatively higher contingency levels could result in a funding shortfall.

amounts to allow HDI to adjust funding if necessary.¹⁷⁷ The 12% contingency level bears on all of the estimates relied on in the application because it is applied across the board to the decommissioning, spent fuel management, and site restoration cost estimates. And the purpose of the contingency allowance is to help offset the risk of funding shortfalls — a purpose wholly in line with that of the financial qualifications review. On estimated project costs of \$644 million, the current projected available funding remaining in 2041 is less than \$20 million; therefore, even a small increase in the percentage of contingency expenditures could exceed the available funding. We find that the Attorney General raised a material dispute with the application regarding the adequacy of the allowance level and we admit the dispute for hearing.

e. Radioactive Waste Volumes and Waste Shipments

(1) Waste Volumes

HDI estimates that the total amount of low-level radioactive waste (Classes A, B, and C) will be about 92 million pounds.¹⁷⁸ The Attorney General contends that this is a significantly smaller amount than that associated with “actual decommissioning projects.”¹⁷⁹ The Attorney General identifies two completed decommissioning projects, Maine Yankee and Haddam Neck, which the Attorney General states generated 246 and 265 million pounds, respectively, of low-level radioactive waste. The Attorney General states that both projects involved pressurized water reactors of the same type as Palisades, and that Maine Yankee had about the same generating capacity as Palisades, while Haddam Neck was smaller.

The Attorney General claims that understating the low-level radioactive waste volumes could lead to substantially higher costs than those currently estimated in the site-specific cost estimate. Based on what the Attorney General claims is HDI’s average disposal cost, the Attorney General argues that if the current estimated waste volume were increased from HDI’s estimated 92 million pounds to the 246 million pounds of low-level waste removed from Maine Yankee, the estimated disposal costs would increase by \$57.0 million, which is a greater value than the amount added to the HDI cost estimate for contingency. Additionally, the Attorney General claims that the cost estimate contains no detail to allow for an evaluation of the assumptions underlying the total waste volume “or why the

¹⁷⁷ See AG Petition 34-35.

¹⁷⁸ See DCE at 36. The projected waste volume in cubic feet is about 1.129 million.

¹⁷⁹ AG Petition at 22.

total waste volume would deviate so significantly from past decommissioning projects.”¹⁸⁰

The Attorney General’s comparison to two different decommissioning projects does not raise a genuine dispute with the application. First, the decommissioning of Both Haddam Neck and Maine Yankee are known for having involved unusually large amounts of low-level waste.¹⁸¹ That the Maine Yankee and Haddam Neck reactors were pressurized reactors of similar capacity does not suggest that the low-level waste volumes generated during their decommissioning (completed in 2005 and 2007, respectively) would be representative of the amount of low-level radioactive waste at Palisades or at any other facility. The Attorney General provided no basis to suggest that these two examples reflect a norm for decommissioning projects, or that these unusually large low-level waste amounts or anything approaching them should be expected at Palisades. Nor is a license transfer applicant or licensee required to compare its own site-specific estimated low-level waste volumes to those of other projects. The Attorney General also did not identify what nature of detail she claims should have been provided.

Further, none of the claims that the Attorney General raises suggests that 92 million pounds is either a relatively small volume of low-level waste for a nuclear power reactor generally, or, more significantly, an implausibly small amount for Palisades. The application states that HDI “used ENOI estimates of

¹⁸⁰ *See id.* at 22.

¹⁸¹ *See* PNNL Draft Report at 5-6, Figure 5.2 (in comparison with several actual and estimated low-level waste volumes for various plants, the Haddam Neck and Maine Yankee waste volumes are “off the scale”); *see also* Applicants Answer to AG at 31-32. As highlighted by PNNL’s draft study reassessing the adequacy of the minimum formula, the Haddam Neck and Maine Yankee decommissionings generated notably large quantities of waste. *See* PNNL Draft Report at 4-16; 4-54, 4-122. The Haddam Neck licensee committed to meet the state’s more restrictive radiological standards, and because the groundwater beneath the site was classified for residential use, the licensee also committed to meet the Environmental Protection Agency’s (EPA) maximum contaminant levels for drinking water of 4 mrem/yr groundwater dose; soils not meeting the applicable requirements were removed as radioactive waste. *See id.* at 4-13 to 4-14; *see also id.* at 4-20. Consequently, “the volume of LLW generated at [Haddam Neck] included a significant quantity of contaminated soil that had to be removed to meet the EPA” drinking water standards. *See id.* at 4-122. Even so, the “majority of the [low-level waste] was demolition debris having very low activity, much of which was shipped to waste processors for treatment and/or disposal at controlled landfills near Memphis and Oak Ridge, Tennessee, at lower cost than shipment to and disposal at the Clive, Utah, disposal facility.” *See id.* at 4-21.

Also relevant, the subsurface monitoring and records requirements that the NRC established in 10 C.F.R. § 20.1501(a)-(b), as part of the Decommissioning Planning Rule issued in 2011, renders much less likely that a licensee today would discover a significant amount of previously unknown soil contamination. *See* Decommissioning Planning, Final Rule, 76 Fed. Reg. 35,512, 35,514 (June 17, 2011). In any event, the Attorney General does not provide an adequate link between Palisades and the low-level waste volumes from these two decommissioning projects.

the type and quantity of waste as a reference condition and increased specific waste streams to reflect the HDI decommissioning approach.”¹⁸² The Attorney General does not claim that HDI’s estimated low-level waste quantities are uncharacteristically low projections.¹⁸³

While the Attorney General is correct that a petitioner need not prove their case at this stage, it is the petitioner’s burden to provide the information necessary to satisfy the contention admissibility requirements and to demonstrate a genuine dispute with the application.¹⁸⁴ The Attorney General’s arguments challenging the estimated volume of low-level waste do not establish a supported genuine dispute with the application.

(2) Transportation of Radioactive Waste

The Attorney General also raises a transportation-related claim regarding radioactive waste. Citing to the PSDAR, the Attorney General notes HDI’s intent to transport Class A low-level radioactive waste and certain other waste using a combination of truck and rail.¹⁸⁵ Because there is no active rail at Palisades, the PSDAR also states that a truck will be used to deliver the waste to a transload facility. HDI further states that it might elect to ship large plant components by barge.

The Attorney General argues that if trucks are used to transport the decommissioning waste, Michigan residents are likely to be harmed by noise, dust, traffic, pollution emissions, damaged infrastructure, and an increased potential for accidents. The Attorney General observes that the NRC’s Generic Environmental Impact Statement for Decommissioning evaluated the environmental impacts of truck shipments. The Attorney General argues, however, that the GEIS describes the expected number of truck shipments during decommissioning to average “much less than one per day,” while the Attorney General concludes that, based on the HDI’s estimated low-level waste volumes, the Palisades waste volume “could result in over 1.8 shipments per day on average.”¹⁸⁶ Noting that

¹⁸² See Application, Attach. E at 2.

¹⁸³ Site-specific decommissioning cost estimates submitted to the NRC routinely provide projected low-level radioactive waste quantities. See, e.g., ENOI 2018 Site-Specific DCE for Pilgrim Nuclear Station, Section 5, at 5 (tbl.5.1, Decommissioning Waste Summary).

¹⁸⁴ See, e.g., *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 NRC 39, 41 (1999); see also *Interim Storage Partners, LLC* (WCS Consolidated Interim Storage Facility), CLI-20-14, 92 NRC 463, 486 (2020) (“[I]t is the petitioner’s burden to explain why a contention should be admitted.”).

¹⁸⁵ See AG Petition at 22-23 (citing PSDAR at 11).

¹⁸⁶ See *id.* at 23 & n.65 (citing “Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, Supplement 1 Regarding the Decommissioning of Nuclear Power Reactors” (Final

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10 C.F.R. § 50.82(a)(6)(ii) prohibits licensees from performing decommissioning activities that result in significant environmental impacts that have not been previously reviewed, the Attorney General argues that the PSDAR does not explain how the truck shipments of waste “will not result in changes to local traffic or damage local infrastructure” and that the license transfer application does not address how the planned Palisades activities will conform to the GEIS.¹⁸⁷

The Attorney General’s claims fall beyond the scope of this proceeding. The proceeding is focused on the transfer of the Palisades and Big Rock licenses: whether the proposed transferees have shown that they are qualified technically and financially to hold the Palisades and Big Rock licenses.¹⁸⁸ The proceeding’s limited scope does not encompass a review of the potential environmental impacts of HDI’s planned decommissioning activities. While select parts of a PSDAR are necessarily relevant to license transfer because they directly relate to financial and technical qualifications, most topics addressed in a PSDAR do not fall within the license transfer review.¹⁸⁹ The environmental impacts of decommissioning do not fall within the scope of a license transfer proceeding.

In addition, the NRC has determined by rule that certain categories of licensing actions do not individually or collectively have a significant effect on the environment. Except in the case of special circumstances as determined by the Commission, no environmental assessment or environmental impact statement is required for these categories of licensing actions, which are categorically excluded from the need to prepare an NRC analysis under the National Environmental Policy Act (NEPA). License transfer actions are among the categories of action that the NRC has categorically excluded from the need to perform addi-

Report), NUREG-0586, Supplement 1, vols. 1-2 (Nov. 2002) (ML023470304) (Decommissioning GEIS).

¹⁸⁷ See AG Petition at 23.

¹⁸⁸ See 10 C.F.R. § 50.80(b) (addressing what information a license transfer application must contain).

¹⁸⁹ The PSDAR provides a general overview for the public and for the NRC of the licensee’s proposed decommissioning activities. See Decommissioning of Nuclear Power Reactors, Final Rule, 61 Fed. Reg. 39,278, 39,281 (July 29, 1996) (Decommissioning Rule). It also informs the NRC staff of the licensee’s decommissioning schedule, enabling the staff to plan for inspections and decommissioning oversight activities. The NRC will provide public notice of a PSDAR and an opportunity for public comment, and it will hold a public meeting on a PSDAR. But a PSDAR does not require NRC approval. This is because a PSDAR does not authorize a licensee to perform any decommissioning activity that is not already permitted under the license or any activity that would result in significant environmental impacts not already reviewed. A licensee that has submitted certifications of permanent cessation of operations and permanent removal of fuel therefore may begin to perform major decommissioning activities consistent with its PSDAR ninety days after the NRC has received the PSDAR. See 10 C.F.R. § 50.82(a)(5).

tional environmental analysis.¹⁹⁰ Consequently, unless we determine that special circumstances are present, an environmental assessment or environmental impact statement is not required for an NRC approval of direct or indirect license transfers.

The Palisades license transfer application states that the proposed transfer falls within the categorical exclusion regulation.¹⁹¹ The Attorney General's petition does not address the categorical exclusion for license transfers. To the extent that the Attorney General is claiming that additional environmental analysis of the potential impacts of truck shipments of waste is necessary for approval of this license transfer application, such a claim impermissibly challenges the categorical exclusion regulation.

The Attorney General on reply seeks to recast the radioactive waste shipment claims as within the scope of this proceeding by describing them as relating to adequate financial assurance to conduct decommissioning in a safe and timely manner.¹⁹² But it is "well established in NRC proceedings that a reply cannot expand the scope of the arguments set forth in the original hearing request."¹⁹³ The transportation arguments raised in the petition expressly challenged the adequacy of environmental analyses, not any financial assurance information. Nor do the reply's new general statements about financial assurance raise a genuine and material dispute for hearing.

f. Unaddressed Risks

(1) Delay

The Attorney General argues that there are at least seven ways that HDI may encounter significant, unaccounted for, cost overruns that could lead to a shortfall in funding. The Attorney General first argues that there likely will be delays in the Palisades work schedule, leading to increased costs for overhead and project management. The Attorney General claims that the "risk of delay in the decommissioning schedule exists in all decommissioning projects for reasons including identifying unknown conditions requiring expanding the

¹⁹⁰ See 10 C.F.R. § 51.22(c)(21). A categorical exclusion reflects that the NRC has established a sufficient administrative record to show that the subject actions do not have a significant effect on the environment, either individually or cumulatively. See *Categorical Exclusions from Environmental Review*, Final Rule, 75 Fed. Reg. 20,248, 20,251 (Apr. 19, 2010).

¹⁹¹ See Application at 21.

¹⁹² See AG Reply at 22 (claiming that petition's arguments on waste shipments are factual disputes that could "significantly impact the decommissioning cost estimates").

¹⁹³ See *Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 731-32 (2006).

scope of planned activities or creating the need for additional activities.”¹⁹⁴ Such delays, the Attorney General claims, would both directly increase decommissioning costs and increase the costs of overhead and project management. The Attorney General additionally states that HDI identified a delay in the Pilgrim decommissioning schedule, which lengthened the schedule by 2.5 to 3 years.

These arguments regarding delay essentially fall within two categories: delays of a nature common to all decommissioning projects and that therefore are expected to occur and delays due to unanticipated circumstances that significantly expand or change the scope of the project. As to the former, the contingency allowance that is customarily added to the site-specific decommissioning cost estimates is intended to account for those additional costs considered “historically inevitable over the duration of a job of this magnitude,” such as from weather delays and tool breakages, among others.¹⁹⁵ The allowance added to the Palisades site-specific decommissioning cost estimate therefore should reasonably encompass such events, which although they cannot be predicted individually are common eventualities expected to occur. And we have admitted for hearing the Attorney General’s challenge to the sufficiency of the Palisades contingency allowance. This proceeding therefore will include taking a closer look at the overall adequacy of the 12% contingency allowance level to cover generally the typical and expected occurrences that add to project costs.

As to potential delays due to HDI “identifying unknown conditions” that will require “expanding the scope of planned activities,” it has been neither required nor customary for NRC site-specific decommissioning cost estimates to provide additional margins for uncertain events that would significantly expand or change the planned scope of the decommissioning project.¹⁹⁶ Rather than require cost estimates to provide for numerous potential but uncertain events, we rely on our monitoring of each licensee’s decommissioning and spent fuel management funding to require adjustments to funding if and when needed. Once a licensee has submitted to the NRC a site-specific decommissioning cost estimate, it must annually provide both a decommissioning funding and a spent fuel management funding status report. The decommissioning report includes specific information on how much money was spent the previous calendar year

¹⁹⁴ See AG Petition at 24; see also Capik Decl. at 11-12.

¹⁹⁵ See, e.g., ENOI 2018 Site-Specific DCE for Pilgrim Nuclear Station, Section 3.3.1 at 3; Full TLG Services 2004 Cost Study, Section 3 at 3.

¹⁹⁶ See, e.g., ENOI 2018 Site-Specific DCE for Pilgrim Nuclear Station, Section 3 at 5-6 (where contingency analysis states that “revisions or updates” of the cost estimate will be made to account for changes in project work scope due to events such as the discovery of unexpected levels of contaminants, contamination in places not previously expected, variations in plant inventory or configuration not indicated by as-built drawings, changes in site release criteria, policy decisions altering national commitments including the start and rate of acceptance of spent fuel by the DOE).

on decommissioning, whether and to what degree the previously estimated costs deviated from the actual costs spent on work performed, and the estimated remaining costs to complete the decommissioning.

Any circumstance — whether delay-related or not — that results in a significant, unanticipated cost would need to be reported in the yearly decommissioning funding and financial assurance status reports, which are publicly available. NRC guidance on adjusting cost estimates also directs licensees to update decommissioning cost estimates annually for inflation, and “as appropriate” for status changes, including “updated information about the facility conditions, such as larger levels of contamination than anticipated; updated waste disposal conditions; updated residual radioactivity limits.”¹⁹⁷

To date licensees typically have included an allowance in the site-specific cost estimates to cover the uncertainties associated with common, expected contingencies given the project’s scope; additional significant costs, if any, for activities that significantly alter or expand the project’s scope would need to be reported in the annual financial assurance status reports, with any associated adjustment to financial assurance, if necessary, provided accordingly in the report.¹⁹⁸ Licensees also must notify the NRC and the affected State in writing before making any significant schedule change from those schedules and actions described in the PSDAR, including changes that significantly increase cost.¹⁹⁹

That HDI changed its decommissioning schedule for Pilgrim does not mean the same will occur at Palisades, and in any event, the two last decommissioning funding status reports for Pilgrim do not indicate a projected shortfall in funding.²⁰⁰ The Attorney General’s claim that the schedule delay at Pilgrim resulted in overhead and project management cost increases that “can be estimated to be as much as \$100 million” is unsupported and does not raise a genuine dispute with the Palisades application.²⁰¹

The Attorney General’s various claims of potential delays in work schedule leading to increased costs do not identify a material deficiency in the application. That there can be delays in any decommissioning project does not raise a supported and genuine material dispute with this application. As we noted, the

¹⁹⁷ See Regulatory Guide 1.159 at 12.

¹⁹⁸ See 10 C.F.R. § 50.82(a)(8)(v) (if financial assurance methods being relied on will not cover the estimated cost of decommissioning completion, the financial assurance status report “must include additional financial assurance to cover” the cost).

¹⁹⁹ *Id.* § 50.82(a)(7).

²⁰⁰ See *e.g.*, Letter from Andrea L. Sterdis, HDI, to NRC Document Control Desk (Mar. 31, 2021) (ML21090A336), Encl. 2, “Annual Decommissioning Funding Spent Fuel Management and Financial Assurance and Spent Fuel Management Status and Financial Assurance Report,” tbl.2 at 7. HDI’s last two status reports cover both the Pilgrim and Oyster Creek decommissioning projects and the associated trust funds.

²⁰¹ See AG Petition at 25.

contingency allowance customarily has covered the sort of delays inevitable in decommissioning projects, and the Attorney General will have the opportunity to litigate whether the contingency allowance is adequate. To the extent that the Attorney General claims that there may be substantial unanticipated cost increases from substantial delays, the claims are speculative or otherwise unsupported, or they demand a level of conservatism of these estimates that we do not require or expect. The Attorney General's arguments regarding potential delays do not raise a genuine material dispute for hearing.

(2) Possibility of Discovering Unknown Contamination; Risk of Radiological Incident

We similarly find that the Attorney General's argument that "there is the possibility of discovering previously unknown radiological or non-radiological contamination" does not raise a supported material issue.²⁰² As the Attorney General recognizes, "the common application of contingency in [NRC] cost estimates is for uncertainty associated with known scope," not "changes in work scope such as additional work required to deal with unexpected contamination."²⁰³ If previously unknown radiological contamination is discovered and the newly-discovered contamination would result in significant additional expenditures to clean up, the estimated additional costs would need to be included in the annual decommissioning status funding report and the site-specific decommissioning cost estimate adjusted as appropriate.

The Attorney General also does not identify any reason to expect that significant unknown contamination likely would be discovered at the Palisades site. HDI states that it reviewed the Palisades records of spills and other unusual occurrences involving the spread of contamination, which are records that licensees must maintain under 10 C.F.R. § 50.75(g). It states that the events involving the spread of contamination in and around the facility are well documented and "the fate and transport of contaminants are generally understood."²⁰⁴ And we expect that the likelihood of a licensee in decommissioning discovering significant amounts of previously unknown contamination has decreased substantially due to the requirements of the Decommissioning Planning rule. The rule requires licensees to conduct subsurface radiological surveys to evaluate concentrations or quantities of residual radioactivity, and it requires them to maintain the survey results as records important to decommissioning.²⁰⁵

The Attorney General also claims that the application and PSDAR do not identify "specific plans" for performing site characterization activities to iden-

²⁰² See *id.* at 26.

²⁰³ See *id.* at 27.

²⁰⁴ See DCE at 21.

²⁰⁵ See 10 C.F.R. § 20.1501(a)-(b).

tify, categorize, and quantify radiological and non-radiological contamination.²⁰⁶ But by rule the NRC only requires a full site characterization to be submitted with a license termination plan, which must be submitted at least two years before the date of license termination and which also must include an updated site-specific decommissioning cost estimate. For Palisades, the current schedule projects the license termination plan to be submitted in early 2037.²⁰⁷ Approval of the license termination plan requires a license amendment and therefore would be subject to an opportunity for hearing. And while the PSDAR and the application need not describe specific plans for a site characterization, the PSDAR and cost estimate nevertheless indicate the general project stages or timetables in which HDI intends to perform site characterization activities.²⁰⁸

The Attorney General next argues that there is a risk of a radiological incident at the site, such as during the transfer of spent fuel into dry casks. The Attorney General claims that such an incident “could greatly increase the costs of decommissioning,” as well as cause delay that would impact project management and overhead costs.²⁰⁹ For the reasons already described, we do not require the site-specific cost estimate to include estimated costs or allowances to cover highly uncertain contingencies such as substantial delay caused by a potential significant accident event. Such events, if they were to occur and if they added significantly to costs, would need to be reflected in revised cost estimates and the annual decommissioning funding status report.²¹⁰

(3) State Standards for Site Restoration

The Attorney General additionally challenges HDI’s estimated cost of site restoration, which is \$34,679,000. The NRC does not regulate site restoration. Site restoration also does not fall within the NRC’s definition of decommissioning in 10 C.F.R. § 50.2, and therefore under NRC regulations the decommission-

²⁰⁶ See AG Petition at 26.

²⁰⁷ See DCE at 45; see also 10 C.F.R. § 50.82(a)(9)(ii)(A), (F).

²⁰⁸ For example, the PSDAR states that site-wide characterization activities to identify, categorize, and quantify radiological, regulated, and hazardous waste will begin in Period 1 (Pre-Decommissioning Planning and Preparation Activities) with surveys to establish contamination and radiation levels, but will not be completed until Period 4 (Dismantlement). See PSDAR at 8-9. As the Attorney General notes, “some characterization cannot be completed until some amount of dismantlement is performed.” See AG Petition at 27. The Palisades master summary schedule projects site characterization to be performed during the demolition/dismantlement period and completed in 2036, the first year following the end of the dormancy period. See DCE at 45.

²⁰⁹ AG Petition at 27.

²¹⁰ Further, to the extent that a radiological incident event might cause damage to onsite property, the application specifies that Holtec Palisades, as a regulatory commitment, will obtain onsite property damage insurance, and will provide proof that the coverage will be in place on the effective date of the license transfers. See Application at 20.

ing trust fund cannot be used to pay for site restoration expenses. The estimated cost of site restoration falls within the scope of this proceeding, however, because HDI also seeks an exemption allowing it to use the decommissioning trust fund for site restoration activities. HDI intends to begin site restoration activities only after the dormancy period. Site restoration would be performed concurrently with radiological decommissioning activities, starting in late 2035 and extending through 2041, the year HDI expects the license to be terminated.²¹¹

The Attorney General argues that either state requirements “beyond those assumed by HDI” or unanticipated site conditions “could require greater expenditures” for site restoration.²¹² Because site restoration will be performed in parallel with license termination, the Attorney General argues that Michigan site restoration requirements beyond those assumed in the estimated costs would reduce the funds available for radiological decontamination and license termination. The Attorney General further argues that the application and PSDAR do not identify the requirements for site restoration that were assumed to apply, and that there is no provision for contingency or allowances to account for any state requirements beyond those assumed for the estimates. And the Attorney General notes that in the 2004 cost study for Palisades the site restoration costs were estimated to be \$78.3 million in 2003 dollars (an amount which the Attorney General claims in 2020 dollars would be \$110.1 million).

In short, the Attorney General argues that increased site restoration costs due to state requirements could impact whether funding remains adequate to cover all license termination and spent fuel management activities. But to litigate a claim about potential additional costs due to state standards, it was incumbent upon the Attorney General to identify the state standards of concern. The PSDAR identifies the categories of wastes and some of the specific contaminants to be removed during the site restoration process, including asbestos, lead in paint, hazardous waste, and universal waste.²¹³ The cost estimate also states that approximately \$9 million of estimated costs are for cleaning up asbestos.²¹⁴ Mixed wastes also are noted, and HDI states that they are to be managed according to

²¹¹ See DCE at 46, tbl.5-1 (Cash Flow Analysis).

²¹² See AG Petition at 25.

²¹³ See PSDAR at 9 (citing Environmental Protection Agency’s definition of universal waste at 40 C.F.R. § 273.9). Universal wastes addressed by Environmental Protection Agency regulations include batteries, pesticides, mercury-containing equipment, and lamps, and the PSDAR notes that states may have “corollary regulations” governing these materials, as well as corollary regulations for “additional materials.” See *id.* at n.1; see also, *e.g.*, DCE at 14, 21, 29-30.

²¹⁴ See DCE at 26, tbl. 3-1. HDI lists the asbestos removal cost under license termination costs. There often is some overlap between the site restoration and license termination cost categories. If it is necessary, for instance, to remove asbestos or lead to access radiological contamination, or vice versa, removal costs might be allocated to one or the other category or divided between the two as appropriate.

“applicable federal and state regulations,” and identifies three potential vendors that may be utilized.²¹⁵

But the Attorney General does not address any specific part of the application, the PSDAR, or the cost estimate. Nor does the Attorney General identify any contaminant or waste category that the Attorney General claims may be especially difficult and costly to remediate to applicable state standards. The petition therefore has no discussion of any contaminants or state standards that the Attorney General claims may materially drive up site restoration costs. Consequently, we find insufficient the Attorney General’s suggestion that more detail was necessary to formulate an argument on state standards that may impact site restoration costs.

The Attorney General also refers to the 2004 Palisades cost estimate, which estimated a notably larger cost for site restoration (\$78.3 million in 2003 dollars). But while the full 2004 study is available publicly and provides a detailed, line-item cost breakdown of costs, including costs allocated to site restoration, the Attorney General neither addresses any contents of the study to challenge HDI’s site restoration estimate nor otherwise links the 2004 study to her argument that state law standards beyond those assumed in the current estimate could increase costs.²¹⁶ HDI had no obligation in the application to compare its estimate to another licensee’s estimate.

The Attorney General’s claims of unspecified state requirements that could require greater expenditures for site restoration do not raise a supported genuine dispute with the application and we therefore find them inadmissible.

(4) Repackaging of Spent Nuclear Fuel and Other DOE-Related Claims

The Attorney General raises the potential for additional costs relating to spent nuclear fuel repackaging for transportation by DOE. First, the Attorney General argues that while HDI’s decommissioning costs appear based on an assumption that DOE will accept the current, “as-packaged canisters for dry storage and will not require repackaging for transportation,” absent a change to the Standard Contract HDI would need to repackage the spent nuclear fuel into non-canistered DOE casks prior to transportation.²¹⁷ The Attorney General states that in litigation to recover damages for DOE’s partial breach of contract, Entergy and other licensees have argued that DOE has the authority to mandate licensees to repackage their spent fuel into DOE-approved transportation casks, and that DOE has stated that without an amendment to the Standard Contract it will not accept canistered fuel for transportation.

²¹⁵ See *id.* at 24.

²¹⁶ See Full TLG Services 2004 Cost Study, Appendix C (“Detailed Cost Analysis”) at 1-16.

²¹⁷ See AG Petition at 28.

The Attorney General also claims that repackaging costs could be significant, particularly because the repackaging would occur “after the spent fuel pool has been decommissioned.”²¹⁸ The Attorney General states that without the spent fuel pool, repackaging might first involve transporting the fuel to another plant site, or building an onsite dry transfer station — actions that could lead to cost overruns on the order of hundreds of millions of dollars, as indicated by a Government Accountability Office estimate of \$150 to \$450 million for construction of a fuel transfer station.²¹⁹ In short, the Attorney General claims that there is no indication that the cost estimate accounts for the “operating costs to remove the fuel from the current casks and then to package that fuel into DOE provided transportation casks.”²²⁰

The applicants, however, identify nearly \$39 million allocated for the “transfer of fuel and/or nuclear material away from the ISFSI,” which they state includes the estimated costs to “repackage in transportation casks.”²²¹ In her reply, the Attorney General does not specifically address the line-item estimate for spent fuel transfer or its adequacy. Instead, the Attorney General maintains that HDI has not accounted for the cost of removing spent fuel from the existing “as-packaged canisters for dry storage,” and that the application and decommissioning cost estimate “assume that DOE will not require repackaging for transportation.”²²²

While the precise scope of actions covered by HDI’s line-item cost are not clear, the Attorney General’s repackaging claims are insufficient to show a material dispute with the application. First, except for raising the possibility of a need to build a fuel transfer station, the Attorney General never suggested how much it may cost to remove fuel from existing canisters and repackage it into DOE-provided transportation casks. The applicants highlighted that the cost estimate includes an estimated \$39 million for fuel transfer costs, including the repackaging or loading of fuel into transportation casks. But while the Attorney General states that canister removal costs are not considered, the Attorney General does not suggest how much such costs might be. The Attorney General does not address the adequacy of the allocated \$39 million to cover transferring fuel from the ISFSI to DOE-supplied transportation.

A license transfer proceeding is not intended to be a line-item by line-item refinement of a decommissioning cost estimate. If a petitioner claims that a specific cost was overlooked, its materiality must be supported. The Attorney

²¹⁸ *See id.* at 29.

²¹⁹ *See id.* at 29 & n.70 (citing November 2009 GAO report on nuclear waste management challenges and costs for Yucca Mountain Repository).

²²⁰ *See id.* at 29.

²²¹ Applicants Answer to AG at 40.

²²² *See* AG Reply at 28.

General does not provide us a basis for concluding that the potential additional costs of first removing the current spent fuel canisters prior to loading the spent fuel into DOE casks may be a material additional expense that may call into question the applicants' financial qualifications to hold the licenses.

The only argument contained in the petition and reply related to the asserted cost of repackaging fuel is that there could be cost overruns "on the order of hundreds of millions of dollars."²²³ But this claim rests on an estimated cost to construct an onsite dry transfer station, which in turn is based on the Attorney General's assumption that "repackaging . . . would occur after the Palisades spent fuel pool has been decommissioned."²²⁴ Yet dismantlement of the spent fuel pool is not planned until after the dormancy period when major decommissioning activities begin.²²⁵

Second, whether DOE ultimately will only accept bare, uncanistered spent nuclear fuel in DOE transportation casks, or will also accept fuel packaged in some types of canisters is not yet known.²²⁶ The Attorney General states that its fuel repackaging claim is not a technical argument over whether a transportation "cask can physically accept the loaded canisters," but is instead based on interpretations of contractual obligations under the Standard Contract reached in decisions awarding damages for spent fuel management expenses due to DOE's contract breach. But these decisions do not establish how DOE ultimately will perform in transporting the fuel, and the Attorney General recognizes that DOE has not determined how it will transport the fuel (e.g., "if . . . DOE were to mandate fuel repackaging").²²⁷

²²³ See AG Petition at 29; Capik Decl. at 16; AG Reply at 28.

²²⁴ See Capik Decl. at 16.

²²⁵ See PSDAR at 10 (fuel pool drainage, decontamination, liner removal, and dismantlement to occur "[f]ollowing the dormancy period"); DCE at 10, 45 (dormancy period ends at end of 2035); DCE at 22 (DOE scheduled to begin removing fuel in 2030).

²²⁶ Canisters are steel containers for the spent nuclear fuel assemblies. Some canisters are designed only for storage, and others, such as dual-purpose canisters, are designed for storage and transportation. Regardless of design, the NRC must approve canisters for transportation (or grant an exemption from NRC transportation regulations). See 10 C.F.R. pt. 71 (requirements for packaging and transportation of radioactive material). Canisters may be used in combination with storage casks and transportation casks, and the Attorney General's issue goes to whether DOE will ultimately accept already-canned spent nuclear fuel for loading into DOE transportation casks.

²²⁷ See Capik Decl. at 16 (emphasis added). In the case cited by the Attorney General, the court assessed damages for a licensee's costs to load fuel into storage canisters and storage casks. Except for the partial breach of contract, the licensee would have loaded the spent fuel directly into DOE transportation casks and would not have needed to load fuel into storage canisters and casks. Although the government represented that the Standard Contract could be modified and therefore "these storage casks may be deemed suitable for transportation," the court would not preclude awarding damages on "a set of facts that may come into being in the future." See *System Fuels, Inc. v. United States*, 818 F.3d 1302, 1307 (Fed. Cir. 2016).

We have stated, moreover, that because future spent fuel packaging requirements for DOE transportation remain highly uncertain we find it premature at this time to assume, for purposes of decommissioning funding requirements, what types of canisters that DOE may or may not accept for transportation.²²⁸ In NRC practice we have not required site-specific decommissioning cost estimates to include specified funding for removal of current canisters and “will not presume, as a reason to deny a license transfer, that DOE will likely succeed in requiring licensees to bear additional fuel-packaging expenses.”²²⁹ What DOE ultimately determines will have broad application to many licensees. If additional financial needs relating to spent fuel transportation become clearer, the NRC can to the extent necessary require adjustments to decommissioning funding.

(a) *Transportation of Storage-Only Fuel Canisters*

Relatedly, the Attorney General raises as an additional potential cost the need to reload the spent fuel in 18 VSC-24 storage casks that are licensed to store but not licensed to transport spent fuel. The Attorney General notes that work has been performed to pursue NRC approval of the casks for transportation but that the licensing effort was not completed. The Attorney General therefore argues that either the spent fuel from these 18 canisters “must be reloaded into licensed transportable canisters or additional work must be performed to license these canisters for transportation (assuming that this licensing is even feasible).”²³⁰

The applicants do not dispute that these canisters are not currently licensed for transportation but they state that the costs of repackaging the VSC-24 casks in transportation casks are addressed by the \$39 million line-item cost estimate allocated to transfer of fuel away from the ISFSI.²³¹ The Attorney General argues that this estimate addresses only the “costs . . . to move those as-loaded canisters to a DOE cask,” and not the costs to first unload the fuel from existing canisters and move the fuel to a DOE cask.²³² The Attorney General disputes whether applicants provided evidence that they have sufficient funds to cover all the costs involved with repackaging the VSC-24 casks.²³³

But again, the Attorney General provides no supporting information on whether and to what extent the highlighted \$39 million allocated for fuel transfer away from the ISFSI may be insufficient. In neither the petition nor the reply

²²⁸ See *Indian Point*, CLI-21-1, 93 NRC at 31.

²²⁹ See *Pilgrim*, CLI-20-12, 92 NRC at 373.

²³⁰ See AG Petition at 31-32.

²³¹ See Applicants Answer to AG at 42.

²³² See AG Reply at 30.

²³³ See *id.*

is there any estimated cost for the reloading of the spent fuel from the VSC-24 canisters into transportable canisters. And even after the applicants highlighted the line-item cost intended to cover repackaging into DOE casks, a cost category intended to cover “transfers of fuel assemblies” into the DOE transfer casks, the Attorney General did not address the adequacy of the \$39 million fuel transfer estimate regarding what potential amount of *additional* costs (e.g., for the unloading of fuel) that the Attorney General claims is not accounted for in that estimate. Challenges to the site-specific cost estimate must be supported and identify a material cost omission or material understatement that may impact the overall financial qualifications of the applicants; these claims do not.²³⁴

(b) *DOE Seeking to Recover Earlier Packaging Costs*

We also find inadmissible the Attorney General’s additional argument that if DOE accepts and removes spent fuel without requiring prior repackaging it might seek to recover all or some of its past payments for the original packaging of the fuel into storage canisters and storage casks.²³⁵ We have no basis to presume that DOE would be likely either to assert or to prevail on a claim to recover damages previously awarded to licensees due to DOE’s partial breach of contract. The Attorney General replies that “this issue ties in” with its repackaging claim and is “related to the inherent uncertainty created by the process.”²³⁶

Again, we do not expect license transfer applicants to commit funding to cover the costs of speculative scenarios.²³⁷ For such highly uncertain contingencies we have the ability to address any major new exigencies through the annual respective financial status reviews of decommissioning and spent fuel management funding. These are national policy questions with broad application to NRC nuclear power reactor licensees. And for the license transfer proceeding, we have said that we “see no reason to require that a transfer ap-

²³⁴ In addition, as the Attorney General notes, whether repackaging will be required is yet uncertain; there remains the potential that the canisters may ultimately be licensed for transportation or an exemption under Part 71 obtained. *See* AG Petition at 31. Further, the Attorney General acknowledges that DOE would be liable for reimbursing Holtec for the costs to repackage the VSC-24 casks. While the Attorney General argues that DOE reimbursements would not “completely” mitigate the potential additional expense because there are cashflow and timing issues and the applicants have not committed to use DOE recoveries, the hearing granted in this decision at any rate will address Holtec’s means to adjust funding, as addressed further below. *See id.* at 30-31.

²³⁵ *See* Capik Decl. at 16-17.

²³⁶ AG Reply Brief at 29.

²³⁷ *See* AG Petition at 30 (emphasis added) (“If DOE pursues such recovery *and* is successful, this *could* lead to significant [costs]”); *see also Indian Point*, CLI-21-1, 93 NRC at 32 (finding no reason to presume that “DOE will identify a valid contractual claim, pursue that claim, and succeed in requiring licensees to bear additional packaging-related costs,” and further noting that such an issue is not appropriate for resolution in an NRC adjudicatory hearing).

plicant's cost estimate be more detailed, more certain, or more conservative than the site-specific estimate submitted by a current licensee."²³⁸ The Attorney General's uncertain scenarios do not call into material question the adequacy of the applicants' financial qualifications demonstration for this license transfer.

(c) *Indefinite Storage*

As an additional DOE-related potential cost overrun, the Attorney General argues that DOE may fail to remove all spent fuel by the end of 2040, and therefore Holtec may need to repackage the spent fuel one or more times as a required maintenance activity. The Attorney General claims that if DOE does not pick up the fuel by the end of 2040, Holtec will begin to incur significant and ongoing cost overruns that "could go on for many decades if not indefinitely."²³⁹ In such an indefinite storage scenario, the Attorney General also claims that with no spent fuel pool remaining onsite there would need to be a new dry fuel transfer station to transfer spent fuel into new dry casks every 100 years. The Attorney General argues that it is unknown how Holtec would provide for the possible contingency of indefinite onsite storage, including transferring fuel into new dry casks every 100 years.

There will be uncertainties until we know more about actual DOE timetables and requirements. But that indefinite storage is possible does not make it likely, and the NRC's GEIS for the Continued Storage Rule also supports as a reasonable conclusion that a geological repository will become available.²⁴⁰ Interim storage options also plausibly may become available in the shorter term, particularly given that the NRC has recently approved an application for an interim storage facility and is actively reviewing another.

In issuing the Continued Storage Rule, the NRC stated that the agency will "continue to monitor changes in national policy and developments in spent fuel storage and disposal technology."²⁴¹ If future developments warrant, licensees could be required to "amend their licenses, which would be accompanied by site-specific safety and environmental reviews."²⁴² At this time, however, we

²³⁸ *Pilgrim*, CLI-20-12, 92 NRC at 367; *see also Indian Point*, CLI-21-1, 93 NRC at 9-10.

²³⁹ *See Capik Decl.* at 17.

²⁴⁰ *See Pilgrim*, CLI-20-12, 92 NRC at 373 (citing the Continued Storage GEIS and describing GEIS's conclusion that safe storage of spent fuel in a geologic repository is technically feasible using currently available technology, with no major breakthrough in science or technology needed, and that "25 to 35 years [is] a reasonable period for repository development"); Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (Final Report), NUREG-2157, vol. 1 (Sept. 2014), app. B, at B-2, B-8 to B-9 (ML14196A105).

²⁴¹ *See Continued Storage of Spent Nuclear Fuel*, Final Rule, 79 Fed. Reg. 56,238, 56,246 (Sept. 19, 2014).

²⁴² *See id.*

decline to require license transfer applicants (or current licensees) to predict how the cost of an indefinite storage of spent fuel would be borne if indefinite storage were to be necessary.²⁴³ For all these reasons the Attorney General's assertions of "no certainty" that DOE will have removed all fuel by 2040 and of "the possible contingency" of indefinite onsite storage are not sufficient to raise a material question with the application.²⁴⁴ That HDI's decommissioning cost estimate (like all others) does not include additional funding for the still uncertain prospect of indefinite storage does not present a material issue in this license transfer proceeding.

g. Trust Fund Growth Rate Assumptions

The Attorney General challenges HDI's assumption of a 2% real rate of growth (actual return minus inflation) on the decommissioning trust fund. The Attorney General claims that during reactor operation decommissioning trust funds often are invested in a manner that would make "the two percent real growth assumption permitted by the NRC reasonable," but that "continued growth on a year-by-year basis is not a certainty."²⁴⁵ The Attorney General states that the Palisades trust fund during certain periods of operation grew at a smaller rate than 2% or experienced losses. A 2% real rate of return assumption "is even less reasonable" after permanent shutdown, the Attorney General claims, because decommissioning trust funds then are invested more conservatively than during operation.²⁴⁶

The Attorney General does not argue that the NRC's regulations allowing for a 2% real rate of growth do not apply to the applicants or were improperly applied by them. On the contrary, the Attorney General states that HDI assumed the 2% real rate of growth "consistent with the upper limit allowed by NRC regulations."²⁴⁷ The Attorney General argues that given how decommissioning trust funds have been invested following permanent shutdown, the 2% real rate of return is an unrealistic assumption for HDI to make in its analysis.²⁴⁸

²⁴³ Additional costs for any additional years of spent fuel management handling beyond a licensee's original projections would need to be managed through changes to the spent fuel management plan and associated funding and would be monitored through our annual oversight of the status of spent fuel management funding. The year-to-year expenses for spent fuel management are relatively stable and predictable.

²⁴⁴ AG Petition at 30-31.

²⁴⁵ *Id.* at 32.

²⁴⁶ *Id.* at 33.

²⁴⁷ *See id.* at 32; *see also* 10 C.F.R. §§ 50.75(e)(1)(i), 50.82(a)(8)(vi).

²⁴⁸ *See* AG Reply at 32.

But these claims effectively — and impermissibly — challenge our regulations allowing licensees to take credit for up to a 2% real rate of return; the regulations do not exclude or otherwise limit licensees of permanently shut-down reactors. Absent a waiver, NRC regulations cannot be challenged in an adjudicatory proceeding.²⁴⁹ In allowing licensees to assume the 2% real rate of return, the NRC considered various factors and eventualities, including that actual rates could prove to be lower. The NRC stated that if “rates turn out to be lower . . . 10 C.F.R. 50.82 already provides that licensees are to adjust decommissioning funds during safe storage to reflect changes in cost estimates,” and that “reporting requirements will allow the licensees’ decommissioning funds to be monitored by the Commission.”²⁵⁰ Similarly, here if during the dormancy period the levels of funding do not adhere to HDI’s projections, whether due to underestimated costs or lower rates of returns, HDI would need to adjust its funding.

h. Inability to Provide Additional Financial Assurance

As the last issue in Contention MI-1, the Attorney General challenges the adequacy of Holtec’s assertion in the application that it has the means to adjust both cost estimates and associated funding levels over the dormancy period to ensure that the necessary funding will be available at the time of decommissioning. We admit this claim for hearing.

HDI projects major decommissioning activities to begin in December 2035, following the dormancy period, with final license termination scheduled to occur at the end of 2041.²⁵¹ Under NRC regulations, for decommissioning activities that “delay completion of decommissioning by including a period of storage or surveillance,” the licensee must provide a means of adjusting cost estimates and of adjusting the “associated funding levels over the storage or surveillance period.”²⁵² To address this requirement, the application states that should there be a need to adjust the available funding then “[r]eimbursement of spent fuel management expenses by DOE, which is not credited in the cash flow analysis . . . would provide a substantial source of additional funds that could be used to provide such adjustment if necessary.”²⁵³ The Attorney General challenges this assertion as insufficiently supported.

²⁴⁹ See 10 C.F.R. § 2.335(a) (prohibiting challenges to regulations in adjudicatory proceedings unless a rule waiver was sought and granted). The Attorney General did not seek a waiver.

²⁵⁰ See Financial Assurance Requirements for Decommissioning Nuclear Reactors, Proposed Rule, 62 Fed. Reg. 47,588, 47,600 (Sept. 10, 1997).

²⁵¹ See DCE at 45.

²⁵² See 10 C.F.R. § 50.82(a)(8)(iv).

²⁵³ See Application at 18.

The Attorney General claims that no analysis supports the statement that DOE reimbursements would be available as a substantial source of additional funds if such funding were needed to offset a substantial cost overrun in decommissioning, and that no commitment has been made to retain any potential DOE reimbursement for this purpose.²⁵⁴ The Attorney General further argues that following the dormancy period, “the expected DOE recovery would largely be limited to the on-going costs of spent fuel management,” and that consequently, even if these later recoveries from DOE were retained to buttress the trust fund they “would not offset any substantial overrun in decommissioning costs.”²⁵⁵ The Attorney General does not question that Holtec will be able to recover from DOE “the bulk of” the spent fuel management costs incurred.²⁵⁶ Rather, the Attorney General calls “[t]iming” the “big issue with regard to this item”—whether “funds recovered from DOE in years past” would still be available to adjust funding later in the event of a shortfall.²⁵⁷ The Attorney General argues that reliance on the DOE recoveries to adjust funding “only makes sense if those funds are escrowed for such a purpose,” and that the “[a]pplication repeatedly wants to rely on those funds to demonstrate assurance but steadfastly refuses to

²⁵⁴ The Attorney General challenges both (1) the cost estimate’s general statement that an “alternate funding mechanism allowed by 10 CFR 50.75(e)” will be put into place if the trust fund proves insufficient, and (2) the application’s more specific assertion that DOE reimbursements “would provide a substantial source of additional funds” that could be used to adjust funding if needed. See AG Petition at 34-35 (citing DCE at 44 and also directly challenging the application’s assertion that DOE reimbursements will provide the means to adjust funding); see also *id.* at 37-38 (citing Application at 18).

²⁵⁵ See *id.* at 35. Specifically, the Attorney General claims that the total DOE recovery during license termination activities from 2036 through 2040 would only be about \$8.5 million, which the Attorney General argues would only “offset continuing ISFSI operating and maintenance costs.” See AG Petition at 35 (describing reasoning behind calculation). The Applicants contest the \$8.5 million estimate as a “fanciful claim,” lacking “reasonable support.” See Applicants’ Answer to AG at 46. They claim that between the years 2036 through 2040 approximately \$25 million in spent fuel management costs will be incurred, about \$17 million more than the Attorney General suggests; the additional amount over \$8.5 million would account for the costs of loading the DOE-supplied transportation casks — the recovery of which the Attorney General views as uncertain but the applicants call “plausible.” See *id.*

The applicants also note that Holtec Palisades can seek DOE recovery for spent fuel management claims incurred over “a considerably longer time period,” amounting to a total of about \$160 million. See *id.* In admitting the Attorney General’s issue regarding the ability to provide additional funding, we do not rely on the estimated amount of \$8.5 million as the amount that might be recovered from DOE during the decommissioning years 2036-40. We make no assumptions about the specific timing and associated specific amounts of potential DOE recoveries.

²⁵⁶ See AG Petition at 39.

²⁵⁷ See AG Reply at 34.

commit to retain those funds for this purpose.”²⁵⁸ The Attorney General further argues that to accept without more “Holtec’s often repeated statement in its Answer that it will have the funds, if necessary, . . . would eviscerate the need for any detail in a license transfer application.”²⁵⁹

The applicants state that they have provided their cash flow analysis reflecting the annual spent fuel management costs that Holtec Palisades may seek to recover from DOE, which total up to \$160 million. They argue that the Attorney General ignores “the approximately \$140 million in spent fuel management costs incurred” before decommissioning begins in 2036, including “\$94 million incurred prior to the dormancy period.”²⁶⁰ They claim the Attorney General provides no explanation why this amount would not be recoverable. Further, they note that in NRC status reports they will need to specify how much was spent the previous year on decommissioning activities and the difference between the estimated and actual costs for the prior year, and therefore the NRC can track whether decommissioning costs are exceeding predictions.

We admit this issue. First, as the applicants correctly note, the NRC has no requirement that prevents an applicant from relying on a single funding source. And for its cash flow analysis, HDI relies only on the projected sufficiency of the Palisades decommissioning trust fund to cover decommissioning, spent fuel management, and site restoration costs.

But the applicants also state that while the cash flow analysis conservatively only credits the trust fund, any suggestion by the Attorney General that the application relies on only the trust fund “mischaracterizes” the application.²⁶¹ The applicants highlight that the Palisades application “explicitly states” that DOE reimbursements of spent fuel management expenses “would provide a substantial source of additional funds” in case an adjustment to funding were needed.²⁶² And the Attorney General is challenging whether the application sufficiently ex-

²⁵⁸ *Id.* Noting that one option in the event of a funding shortfall is to stop decommissioning and return the facility to a long-term storage condition to allow trust funds to grow, the Attorney General additionally argues that the projected growth rate (which the Attorney General claims would be about \$600,000 a year) would not provide any certainty that there would be sufficient time within the NRC’s 60-year time limit for decommissioning for the fund to grow sufficiently to offset potential cost overruns. *See* AG Petition at 35. The applicants answer that if the dormancy period were extended by 40 years, allowing decommissioning to be completed in 60 years, the net added growth in the trust fund would be over \$36 million. *See* Applicants Answer to AG at 46. This is a separate issue, however, than whether reimbursements from DOE would provide the means to adjust decommissioning funding, and neither the application nor the cost estimate discuss or rely on extending the dormancy period.

²⁵⁹ *See* AG Reply at 36-37.

²⁶⁰ *See* Applicants Answer to AG at 46.

²⁶¹ *See* Applicants Answer to AG at 19-20.

²⁶² *See id.* at 44.

plains or supports this explicit assertion that DOE recoveries would be available as a substantial source of funding if needed to adjust the funding in the trust fund.²⁶³

The applicants leave unaddressed the Attorney General’s core concern, which relates to timing. Although the petition questions whether some projected spent fuel management costs are recoverable (e.g., the costs of loading DOE-supplied casks), the Attorney General does not question that substantial funds may be recovered from DOE. The Attorney General questions whether funds obtained “from DOE in years past”— in the earlier project stages — will still be available at the time of decommissioning if substantial cost overruns occur.²⁶⁴ Because most of the recoveries from DOE might be obtained well before the decommissioning stage, the Attorney General challenges the application’s assertion that DOE recoveries will be available as a substantial source of additional funding if needed for decommissioning.

Decommissioning is projected to occur primarily between the years 2036 and 2041. Yet as the applicants themselves emphasize, HDI projects most spent fuel management costs will be incurred before the dormancy period even begins, during a three-year period beginning soon after the proposed license transfer. From 2023 through 2025, HDI projects to incur nearly \$94 million in spent fuel management costs.²⁶⁵ The next few years, 2026 through 2029, reflect relatively low annual projected spent fuel management costs (\$1.7 to \$2.1 million) during the early dormancy period. Based on DOE beginning to pick up spent fuel in 2030, the projected spent fuel management costs increase somewhat in the latter dormancy years of 2030 through 2035 (\$7.4 million in 2030, then \$6.5 million annually between 2031 and 2035) because the costs would then include additional projected costs of loading DOE-supplied transportation casks.

To what extent potential DOE recoveries that Holtec Palisades may receive for the bulk of the expected spent fuel management expenses may still be available at the time of decommissioning, if needed to buttress funding, is unclear from the application and cost estimate. While the applicants repeatedly stress that a total of up to \$160 million may be sought from DOE, the Attorney General questions how much of this amount would remain available if needed for decommissioning. The Attorney General further argues that potential DOE recoveries that may be obtained during the later stages of the Palisades project, such as after the dormancy period, may be insufficient in overall amounts to offset a significant shortfall in decommissioning funding.

Moreover, while the applicants emphasize that they must file annual status

²⁶³ See AG Petition at 34-35.

²⁶⁴ See AG Reply at 34.

²⁶⁵ See DCE at 36, tbl.5-1.

reports on decommissioning funding, these status reports will not address the recoveries. They will not indicate how much funding Holtec Palisades may have recovered or whether some, all, or none of the funds recovered remain available to adjust funding. And if there are unanticipated decommissioning costs that will not be known until decommissioning is underway, status reports submitted in the years prior to the start of the major decommissioning activities may not capture such costs either.

Recent license transfer adjudications involved a decommissioning schedule without a dormancy period.²⁶⁶ Where decommissioning is projected to begin soon, and to be completed within several years, actual decommissioning costs also will be known relatively soon. And once decommissioning is completed, there no longer remains uncertainty over potential unexpected decommissioning costs, unanticipated investment downturns, or other factors that can affect the adequacy of the trust fund for completing decommissioning. For decommissioning that includes a period of storage or surveillance, section 51.82(a)(8)(iv) requires licensees to provide a means of adjusting the decommissioning funding over the storage or surveillance period. NRC guidance instructs the staff to determine “whether the means described by the licensee provides adequate assurance that funds will be available for decommissioning activities *at the time they are needed.*”²⁶⁷

The applicants claim that “perhaps . . . [the] Michigan AG is demanding an analysis of whether spent fuel management costs will be recovered through litigation against DOE.”²⁶⁸ But that is not the analysis or explanation sought. The Attorney General seeks further information on whether and to what extent recoveries that may be obtained through litigation against DOE will remain available to provide the means of adjusting funding. The applicants also claim that the Commission “has made it clear” that whether spent fuel management costs will be recovered is not appropriate for resolution in an adjudicatory proceeding.²⁶⁹ But what we stated is that we cannot in an adjudicatory proceeding resolve the factual question whether DOE will mandate fuel repackaging and how such costs might be borne.

The applicants state that the application provides “multiple layers of financial assurance,” including: (1) “the ability of Holtec Palisades to provide additional

²⁶⁶ These concerned the Vermont Yankee Nuclear Power Station, Oyster Creek Nuclear Generating Station, Pilgrim Nuclear Power Station, and Indian Point Nuclear Generating Station.

²⁶⁷ SRP for Decommissioning Cost Estimates, NUREG-1713 at 15 (emphasis added); *see also id.* at 20; “Decommissioning of Nuclear Power Reactors,” Regulatory Guide 1.184, rev. 1 (Oct. 2013) at 13; “Standard Format and Content for Post-Shutdown Decommissioning Activities Report,” Regulatory Guide 1.185, rev. 1 (June 2013), at 8 (Reg. Guide 1.185).

²⁶⁸ Applicants Answer to AG at 45.

²⁶⁹ *See id.* (citing *Indian Point*, CLI-21-1, 93 NRC at 32; *Pilgrim*, CLI-20-12, 92 NRC at 372).

funding assurance through recoveries from DOE of spent fuel management expenses estimated at \$160 million” and (2) the related “commitment by Holtec Palisades to adjust funding, including providing an alternative funding mechanism if necessary, if annual review of funding assurances indicates a shortfall.”²⁷⁰ Here, the Attorney General challenges the support provided to demonstrate the ability to provide sufficient additional funding through DOE recoveries or other alternate funding mechanism. Based on the reasons described, we find that this claim raises an admissible dispute with the application regarding a material fact.

For the hearing, the applicants should describe how they will ensure that sufficient additional funding will be available to use at the time of decommissioning if additional funding proves necessary to complete decommissioning. To the extent that the applicants intend to rely on DOE-related recoveries as a primary source of additional funding, the applicants should, as appropriate, describe (1) whether any applicable DOE-related settlement agreement is in place; (2) the timetable on which the applicants would expect to file its DOE-related claims (including the respective estimated amounts in damages reasonably expected to be obtained); and (3) approximately when and in what estimated amounts the DOE recoveries can reasonably be expected to be paid. The applicants should outline how they will ensure that sufficient DOE-related recoveries or other funding (if applicable) will be available as a means to augment funding if necessary to complete decommissioning. The Attorney General will be able to provide a response. The parties should also address whether any license conditions are warranted.

2. Michigan Attorney General’s Contention MI-2

Contention MI-2 focuses on the requested exemption from 10 C.F.R. § 50.82(a)(8)(i)(A) to permit Holtec to make withdrawals from the decommissioning trust fund to pay for spent fuel management and site restoration activities. The Attorney General argues that because Holtec’s financial qualifications demonstration and associated cash flow analysis rely on the requested exemption being granted, unless and until the exemption is granted: (1) Holtec’s cost analysis is speculative and unreliable, and (2) Holtec must establish that it is financially qualified by “independent means,” apart from the decommissioning trust fund, to pay for its “non-decommissioning commitments.”²⁷¹ The Attorney General claims that Holtec failed to show that it is financially qualified to hold the Palisades license under 10 C.F.R. § 50.33(f), and failed to show that it has adequate funding to satisfy the applicable requirements because neither

²⁷⁰ Applicants Answer to AG at 18.

²⁷¹ AG Petition at 36, 38.

the application nor the cost estimate indicate how Holtec would fund “these non-decommissioning commitments without recourse” to the trust fund.²⁷²

The contention is inadmissible. Where a license transfer application relies on an exemption, the NRC reviews the license transfer application and exemption request in tandem. If issued, an exemption would not be effective until issuance of a conforming license amendment reflecting the proposed new licensees. Likewise, an order approving the proposed license transfer would not be issued unless the requested exemption were approved, either prior to or simultaneously with, the license transfer approval. The two separate requests must be considered together because of their intertwined nature. If the financial qualifications showing — which relies on the exemption — is found deficient, either the license transfer application and related exemption request will both be denied, or one or both will be conditioned as necessary to allow for approval of both.

Just as the NRC in reviewing the license transfer review will assume that the plant will be shut down permanently by the time of the license transfer approval, the NRC will consider the requested exemption as part of the financial qualifications review. There also is no prohibition on considering two interdependent requests together. To the extent that the Attorney General argues that the HDI cost analyses for the license transfer are speculative or unreliable because they rely on an exemption that at the time of the application had not yet been issued, the claim does not identify a genuine dispute with the application and is not admissible.

We similarly find inadmissible the Attorney General’s claim that insofar as Holtec proposes to spend decommissioning trust fund monies on costs that are not decommissioning costs Holtec violates the NRC’s requirement in section 50.82(a)(8)(i)(A) that withdrawals be only for legitimate decommissioning activities.²⁷³ The application nowhere proposes unauthorized trust fund withdrawals. If the NRC finds that the exemption should not be issued, then Holtec cannot make the withdrawals. It is undisputed that Holtec may not withdraw decommissioning trust funds for non-decommissioning purposes without an exemption.

Finally, the Attorney General claims that if the NRC grants the requested exemption allowing withdrawals for spent fuel management but does not require Holtec to replenish the trust fund, then DOE recoveries would be a “profit wind-fall realized by HDI before it has satisfied the entirety of its decommissioning and site restoration obligations.”²⁷⁴ The Attorney General seeks the NRC, if it approves the license transfer application, to require Holtec either to return DOE

²⁷² See *id.* at 38 (citing regulations).

²⁷³ See *id.* at 39.

²⁷⁴ See *id.*

recoveries to the trust fund or to a supplemental trust that could be used in what the Attorney General calls “the likely event of an unanticipated cost overrun.”²⁷⁵ The Attorney General argues that such a condition placed on the requested exemption or license transfer is necessary given the Attorney General’s arguments indicating the “significantly underestimated cost estimates and below industry standard contingencies in its application.”²⁷⁶

Here, the proposed transferees must demonstrate adequate financial qualifications and reasonable assurance of decommissioning funding. If the application does not show that they are financially qualified to be the holders of the licenses, then the transfers and exemption will not be upheld unless appropriately conditioned, or unless the licensee supplements the application with additional financial assurance that the NRC finds acceptable to demonstrate financial qualification and reasonable assurance of decommissioning funding. Whether and to what extent the transfer transaction may be profitable is not a matter that the NRC regulates. Contention MI-2 does not raise an admissible issue for hearing.

D. Joint Petitioners Petition to Intervene and Request for a Hearing

Joint Petitioners proffer three contentions. In Contention 1, Joint Petitioners raise various environmental concerns stemming from changes in environmental conditions affecting the Palisades site, the consequences of historical events associated with Palisades operations, and challenges relating to spent fuel storage and repackaging.²⁷⁷ In Contention 2, Joint Petitioners claim that Holtec International, SNC-Lavalin, HDI, and CDI lack the requisite corporate character, corporate culture, and corporate ethics to conduct licensed activities at Palisades.²⁷⁸ In Contention 3, Joint Petitioners challenge Holtec’s exemption request and raise concerns about HDI’s site-specific decommissioning cost estimate, in particular the costs associated with storing and repackaging spent fuel.²⁷⁹ Because we find that none of Joint Petitioners’ contentions are admissible, we need not reach the question of whether they have demonstrated standing to intervene in this proceeding.

²⁷⁵ *See id.* at 40.

²⁷⁶ *See* AG Reply at 36.

²⁷⁷ Joint Petitioners Petition at 19-41.

²⁷⁸ *Id.* at 41-44.

²⁷⁹ *Id.* at 44-52. The applicants oppose the petition. Applicants’ Answer Opposing Beyond Nuclear et al.’s Petition to Intervene and Hearing Request (Mar. 22, 2021) (Applicants Answer to Joint Petitioners); *see* Reply of Beyond Nuclear, Michigan Safe Energy Future and Don’t Waste Michigan in Support of Petition for Leave to Intervene, and Request for an Adjudicatory Hearing (Mar. 29, 2021) (Joint Petitioners Reply).

1. Joint Petitioners' Contention 1

Joint Petitioners claim that changes in land use, the effects of historical site events, and inadequacies in the 2006 supplemental environmental impact statement for Palisades comprise new information which requires additional supplementation under NEPA.²⁸⁰ As part of this contention, Joint Petitioners raise concerns about changes in Lake Michigan's water levels; the disposal of the four Palisades steam generators; historical overflows of the Palisades cooling towers; the scope of potential tritium contamination at the Palisades site; the seismic qualifications of the existing dry cask storage pads; "greater than Class C" (GTCC) waste; repackaging of waste for disposal by DOE, including challenges posed by VSC-24 casks in general and a specific faulty VSC-24 cask; and high-burnup fuel.²⁸¹ Joint Petitioners state that these concerns, as well as "insufficiencies" in the 2006 Palisades Supplemental Environmental Impact Statements (SEIS), warrant a supplemental NEPA analysis for Palisades. They argue that their environmental claims are brought within the scope of this proceeding by HDI's inclusion of a discussion of environmental impacts in its PSDAR.²⁸² We find that none of Joint Petitioners' environmental concerns presents an admissible issue in this proceeding.

a. NEPA Supplementation Claims and Challenge to Categorical Exclusion

As we stated above, the NRC has determined that license transfer applications as a general rule do not significantly affect the environment.²⁸³ This is because a license transfer does not permit the new licensee to operate the facility in a different manner than was previously authorized under the existing license. Therefore, the NRC has found that absent special circumstances, a license transfer will not present environmental impacts different from those already considered in relevant generic or site-specific NEPA analyses. Accordingly, under 10 C.F.R. § 51.22(c)(21), the NRC has categorically excluded license transfer actions from the need for further environmental analysis.²⁸⁴

In their reply brief, Joint Petitioners acknowledge for the first time that the NRC has determined that license transfer applications are categorically excluded from an environmental review but challenge the application of the categorical exclusion. They argue that the categorical exclusion cannot be deemed to apply

²⁸⁰ Joint Petitioners Petition at 19.

²⁸¹ *Id.* at 19-41.

²⁸² *Id.* at 20-21.

²⁸³ See Streamlined Hearing Process for NRC Approval of License Transfers; Final Rule, 63 Fed. Reg. 66,721, 66,728 (Dec. 3, 1998) (License Transfer Rule).

²⁸⁴ *Pilgrim*, CLI-20-12, 92 NRC at 387-88.

to this license transfer proceeding until the NRC “addresses [Joint] Petitioners’ assertions of special circumstances making the exclusion inapplicable here.”²⁸⁵ In effect, Joint Petitioners argue that, because they have identified various environmental concerns that they argue are not bounded by prior generic or site-specific environmental impact statements and unanalyzed in the PSDAR, these concerns are “special circumstances” that call into question the applicability of the categorical exclusion, and the NRC must address each of these environmental concerns in its decision on the license transfer application before making a determination that the categorical exclusion applies.²⁸⁶

This argument — raised for the first time on reply — is untimely. While a reply brief may appropriately expand upon the arguments raised in the original petition to address arguments raised in an applicant’s answer, it is not an opportunity for a petitioner to recast or “reinvigorate” their contention with new arguments that expand the scope of the contention as originally pled.²⁸⁷ Allowing new claims to be added to a reply “not only would defeat the contention-filing deadline but would unfairly deprive the other participants of an opportunity to rebut the new claims.”²⁸⁸ Joint Petitioners did not acknowledge or challenge the categorical exclusion in their petition or argue that the environmental concerns they raise in Contention 1 amount to “special circumstances” precluding the application of the categorical exclusion in this proceeding. While Joint Petitioners argue that they were not placed on notice that a categorical exclusion may be applicable to this licensing action because the staff “did not use the words ‘categorical exclusion’” in the hearing opportunity notice, the license transfer application identifies the categorical exclusion and explains why it is applicable to this licensing action.²⁸⁹ Although the NRC is ultimately responsible for satisfying the requirements of NEPA, our rules of practice require petitioners to base their contentions on the application or other information available at the time of the petition.²⁹⁰

²⁸⁵ Joint Petitioners Reply at 12 (citing 10 C.F.R. § 51.22(b)).

²⁸⁶ *See id.* at 10-13.

²⁸⁷ *See DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146 (2015); *Palisades*, CLI-06-17, 63 NRC at 732; *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004).

²⁸⁸ *Palisades*, CLI-06-17, 63 NRC at 731-32.

²⁸⁹ Joint Petitioners Reply at 13 (citing Hearing Opportunity Notice); *see* Application at 21. To the extent that Joint Petitioners also claim that the staff has not made findings necessary to foreclose consideration of significant hazards, we note that our rules preclude any petition or other request challenging the staff’s no significant hazards consideration determination in an adjudicatory proceeding. 10 C.F.R. § 50.58(b)(6); *see also* Joint Petitioners Reply at 13 (citing Hearing Opportunity Notice, 86 Fed. Reg. at 8226); *DTE Electric Co.* (Fermi 2), CLI-21-5, 93 NRC 131, 135 (2021).

²⁹⁰ *See* 10 C.F.R. § 2.309(f)(1)(vi), (f)(2).

Nevertheless, even if this argument were timely, we do not find it persuasive. Section 51.22(b) simply allows an interested person to request that the Commission make the determination that special circumstances exist that warrant an exception to the categorical exclusion. This provision does not mean that at the request of a petitioner, the NRC must consider the categorical exclusion inapplicable until it has addressed the merits of the petitioner's environmental concerns and determined whether each of them amounts to "special circumstances." Such an interpretation would circumvent the purpose of the regulation.²⁹¹ The "reasoned explanation" for the categorical exclusion's applicability to this license transfer proceeding is the codified regulatory presumption of its applicability to license transfer actions in general, which is based upon an administrative record supporting the NRC's determination that this class of licensing actions does not have a significant effect on the environment, either individually or cumulatively.²⁹²

Further, largely because Joint Petitioners did not address the categorical exclusion in their petition, they have not explained how any of the environmental concerns that they raise constitute special circumstances that should render the categorical exclusion inapplicable for this license transfer proceeding. Their petition focuses on the NEPA supplementation standards in 10 C.F.R. §§ 51.72(a) and 51.92(a), which provide that the NRC must prepare a supplemental environmental impact statement if there are "substantial changes in the proposed action that are relevant to environmental concerns" or "new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."²⁹³ While Joint Petitioners emphasize the "new and significant" information aspect of this provision, they overlook the

²⁹¹ See *Pilgrim*, CLI-20-12, 92 NRC at 391.

²⁹² See Joint Petitioners' Reply at 12-13; Categorical Exclusions from Environmental Review, Final Rule, 75 Fed. Reg. 20,248, 20,251 (Apr. 19, 2010); License Transfer Rule at 66,728. Joint Petitioners' reliance on *Pai'ina Hawaii* does not support a different outcome. See Joint Petitioners Reply at 12 (citing *Pai'ina Hawaii, LLC*, LBP-06-4, 63 NRC 99, 108-112 & n.36 (2006)). In *Pai'ina Hawaii*, the licensing board found that the petitioners raised a timely legal contention that satisfied the NRC's contention admissibility requirements. Here, Joint Petitioners did not raise a timely legal argument challenging the categorical exclusion and, as we discuss below, have not otherwise raised an admissible issue in Contention 1. In addition, the legal dispute found admissible by the licensing board in *Pai'ina Hawaii* was centered on the specific categorical exclusion for irradiators, and the board's determination was informed by the regulatory history of that specific provision and of section 51.22(b) as it concerned alternative siting locations for irradiators. See *Pai'ina Hawaii*, LBP-06-4, 63 NRC at 108-12. Joint Petitioners have not explained how the considerations underpinning the licensing board's findings in that case are present here.

²⁹³ 10 C.F.R. §§ 51.72(a)(1)-(2), 51.92(a)(1)-(2); see Joint Petitioners Petition at 21; Joint Petitioners Reply at 9.

regulations' essential requirement that any new and significant information must be directly related to the proposed action or its impacts.²⁹⁴

We see no basis warranting departure from the categorical exclusion for license transfers in this proceeding. Joint Petitioners have not pointed to information in the license transfer application that suggests its approval by the NRC would authorize a substantive change in any licensed activities that have been previously subjected to NEPA review.²⁹⁵ Further, under our regulations, a licensee may not perform any decommissioning activity that would result in significant environmental impacts not previously reviewed.²⁹⁶ Therefore, we find inadmissible Joint Petitioners' claim that NEPA supplementation is required to address environmental changes and unevaluated environmental impacts from operational and planned decommissioning activities at Palisades.²⁹⁷

b. Claims Relating to the PSDAR

Several of Joint Petitioners' environmental concerns challenge the adequacy of the environmental impacts discussion in the PSDAR. Specifically, Joint Petitioners argue that the PSDAR does not adequately address the environmental impacts of transporting steam generators by barge during the decommissioning process; the scope of potential contamination from historic tritium leaks; the potential effects of earthquakes on the Palisades ISFSI concrete pads; and the "environmental effects from the unrealistic [spent nuclear fuel] transport dates, . . . the harsh realities that high burnup fuel . . . may not be movable until near the end of the century[,] . . . [or] repackaging of all [spent nuclear fuel] at Palisades . . . for purposes of transport to a permanent repository."²⁹⁸

Joint Petitioners assert that their concerns fall within the scope of this proceeding because the PSDAR must include "a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements."²⁹⁹ As clarified in their reply brief, Joint Pe-

²⁹⁴ See Joint Petitioners Petition at 21; Joint Petitioners Reply at 9.

²⁹⁵ See *Indian Point*, CLI-21-1, 93 NRC at 46 (license transfers are categorically excluded because they generally do not permit transferees to operate a facility in a different manner than previously permitted and therefore do not present environmental impacts different from those already considered in relevant NEPA analyses).

²⁹⁶ 10 C.F.R. § 50.82(a)(6)(ii).

²⁹⁷ Joint Petitioners have not sought or obtained a waiver of 10 C.F.R. § 51.22(c)(21). See 10 C.F.R. § 2.335(a), (b); *Curators of the University of Missouri* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 125 n.70 (1995).

²⁹⁸ See Joint Petitioners Petition at 23, 25, 29-32, 36, 39, 41.

²⁹⁹ *Id.* at 20-21 (quoting 10 C.F.R. § 50.82(a)(4)(i)).

tioners' arguments concerning the PSDAR appear to be based on an understanding that the PSDAR is a binding plan approved by the NRC in connection with the federal action approving the license transfer application and that formal NRC approval will be required should the proposed transferees wish to engage in any decommissioning activity that is inconsistent with the actions and schedules described in the PSDAR.³⁰⁰ However, this view misstates the scope of this proceeding and the role of the PSDAR in the staff's review of the license transfer application.

The NRC requires a licensee to submit a PSDAR before or within two years following permanent cessation of operations. However, the PSDAR does not amend the license. While the staff reviews the PSDAR, it does not formally approve the PSDAR, even when the PSDAR contains information in support of a license transfer application.³⁰¹ This is because the PSDAR itself does not authorize a licensee to perform any decommissioning activity that is not already permitted under the license or that would result in significant environmental impacts not already reviewed.³⁰² Instead, the purpose of the PSDAR is to provide "a general overview for the public and the NRC of the licensee's proposed decommissioning activities."³⁰³ The PSDAR consists of a description of the licensee's planned decommissioning activities, a schedule for their accomplishment, a site-specific decommissioning cost estimate, and "the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements."³⁰⁴

³⁰⁰ See Joint Petitioners Reply at 1-5.

³⁰¹ See *Pilgrim*, CLI-20-12, 92 NRC at 383-84, 390; see also *Indian Point*, CLI-21-1, 93 NRC at 48; *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-17, 84 NRC 99, 126 n.130 (2016). Although Joint Petitioners are correct that section 50.82(a)(7) requires a licensee to notify the NRC before performing any decommissioning activity or making any significant schedule change inconsistent with those described in the PSDAR, this notice requirement does not mean that the PSDAR is a "binding plan . . . require[ing] formal action [from the NRC] in order for Holtec to deviate from it." Joint Petitioners Reply at 3-4. The licensee can still perform these activities if they are otherwise permissible under section 50.59. See 10 C.F.R. § 50.82(a)(7).

³⁰² See 10 C.F.R. § 50.82(a)(6)(ii). Similarly, the license transfer, if approved, would not authorize the proposed transferees to perform any activity not already authorized under the licenses. See License Transfer Rule at 66,728; see also *Indian Point*, CLI-21-1, 93 NRC at 46; *Pilgrim*, CLI-20-12, 92 NRC at 387.

³⁰³ Decommissioning Rule at 39,281. The NRC provides notice and an opportunity to comment and holds a public meeting upon receipt of the PSDAR, but our regulations do not provide a hearing opportunity on it. 10 C.F.R. § 50.82(a)(4)(ii).

³⁰⁴ 10 C.F.R. § 50.82(a)(4)(i). If the licensee contemplates performing decommissioning activities that are expected to result in environmental impacts that are not bounded by relevant generic or site-

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The NRC does not require a license transfer applicant for a reactor entering decommissioning to submit a complete PSDAR as part of the license transfer application. However, as explained above, a license transfer application must demonstrate that the proposed transferee is financially and technically qualified to undertake the activities authorized by the existing license. In cases such as this one, where the transfer is contingent upon the permanent shutdown of reactor operations, the activities authorized under the license are principally those related to decommissioning and spent fuel management. And ultimately, the license holder for such a reactor must comply with our regulatory requirement to submit a PSDAR before or within two years following cessation of operations. Therefore, it is not uncommon for the license transfer applicant to submit a PSDAR in conjunction with the application to inform the findings the NRC must make with respect to the applicant's technical and financial qualifications.

The submission of a PSDAR in conjunction with a license transfer application does not, however, transform the staff's review of that PSDAR into a major federal action requiring independent NEPA review.³⁰⁵ As we have emphasized recently in similar proceedings, only certain information contained in the PSDAR falls within the scope of a license transfer proceeding.³⁰⁶ In a license transfer proceeding, the staff reviews the PSDAR only to determine whether the proposed transferees are financially and technically qualified to hold the license and conduct the activities authorized under the license; accordingly, the information that is material to the staff's review principally consists of the site-specific decommissioning cost estimate and the associated decommissioning schedule. In contrast, the environmental impacts discussion in the PSDAR is not material to the staff's review because the environmental impacts of planned decommissioning activities do not bear directly on the financial or technical qualifications findings of the proposed transferees.³⁰⁷ Thus, we have previously

specific environmental impact statements, the licensee would need to submit a license amendment request along with a supplemental environmental report that describes and evaluates the additional environmental impacts. *See* Decommissioning Rule at 39,286; Decommissioning GEIS at 1-11, 2-3. In evaluating such a license amendment request, the staff would prepare an environmental assessment or environmental impact statement, as appropriate. *See id.* at 2-3; *see also Vermont Yankee*, CLI-16-17, 84 NRC at 123-24. In addition, such a request would be subject to an opportunity for a hearing. *See Pilgrim*, CLI-20-12, 92 NRC at 385.

³⁰⁵ *See Vermont Yankee*, CLI-16-17, 84 NRC at 125-27.

³⁰⁶ *See Indian Point*, CLI-21-1, 93 NRC at 50; *Pilgrim*, CLI-20-12, 92 NRC at 390-91.

³⁰⁷ *See Pilgrim*, CLI-20-12, 92 NRC at 390-91; *see also Indian Point*, CLI-21-1, 93 NRC at 57. The NRC evaluated the potential environmental impacts of decommissioning nuclear power reactors in the Decommissioning GEIS. The Decommissioning GEIS, which evaluates the potential impacts associated with the SAFSTOR, DECON, and a combination of those decommissioning approaches, "reflects the NRC's determination that decommissioning is not itself a major federal action" and

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found that purely environmental claims challenging the adequacy of the PSDAR fall outside the scope of the license transfer proceeding.³⁰⁸

We find no basis in Contention 1 to depart from this approach. Joint Petitioners' arguments concerning the adequacy of the PSDAR's evaluation of certain environmental impacts do not raise a justiciable issue within the scope of this proceeding because they have not shown that these environmental matters are material to the staff's evaluation of the proposed transferees' financial or technical qualifications. In addition, Joint Petitioners have not shown how their concerns regarding the environmental impacts of spent fuel storage, repackaging, and disposal are relevant to the PSDAR, which is required to address only the environmental impacts associated with "site-specific decommissioning activities."³⁰⁹

Consistent with the approach prescribed in our regulations, the Palisades PSDAR describes the anticipated environmental impacts associated with planned site-specific decommissioning activities and concludes that these impacts fall within the analyses performed in relevant prior generic and site-specific environmental impact statements.³¹⁰ By rule, the PSDAR cannot authorize any decommissioning activities that would result in environmental impacts in excess of those previously determined.³¹¹ Although the environmental impacts discussion in the PSDAR is not within the scope of this license transfer proceeding, it is subject to the staff's oversight.³¹² Therefore, to the extent that Joint Petitioners have grounds to believe that the environmental impacts of planned decommis-

"serves 'to establish an envelope of environmental impacts associated with decommissioning activities.'" See *Vermont Yankee*, CLI-16-17, 84 NRC at 123 (quoting Decommissioning GEIS at 1-1).

³⁰⁸ See, e.g., *Indian Point*, CLI-21-1, 93 NRC at 50, 57; *Pilgrim*, CLI-20-12, 92 NRC at 385-86, 391; *Exelon Generation Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-19-6, 89 NRC 465, 480 (2019).

³⁰⁹ 10 C.F.R. § 50.82(a)(4)(i); see Joint Petitioners Petition at 32-41; Joint Petitioners Reply at 7-8; see also *Pilgrim*, CLI-20-12, 92 NRC at 386 n.180. Some of Joint Petitioners' spent fuel management claims in this contention provide support for the issues they raise in Contention 3, which challenges HDI's exemption request. See Joint Petitioners Petition at 49-50. To the extent that these concerns provide support for Joint Petitioners' within-scope challenges to the exemption request, we address them in our discussion of Contention 3. However, their claims that the PSDAR fails to adequately consider the environmental impacts of these issues are beyond the scope of this license transfer proceeding.

³¹⁰ See PSDAR §§ 5.1 to 5.5 (concluding that environmental impacts are bounded by the Decommissioning GEIS, the 2006 Palisades SEIS, and other site-specific environmental impact statements previously prepared in relation to the licensing of Palisades).

³¹¹ See 10 C.F.R. § 50.82(a)(6)(ii).

³¹² See *id.* § 50.82(a)(4)(i) (requiring a licensee to submit a PSDAR to the NRC prior to or within two years following permanent cessation of operations); Reg. Guide 1.185 at 10 (stating that the staff may find a PSDAR deficient if it proposes activities "that would result in a significant detrimental impact to the environment that is not bounded by the current environmental impact statements").

sioning and spent fuel management activities would exceed those previously reviewed, their recourse is a petition for enforcement action under 10 C.F.R. § 2.206 to address a potential violation of our rules in connection with the representations made in the PSDAR.³¹³

c. Remaining Environmental Claims

Joint Petitioners' remaining claims in Contention 1 are also not admissible. First, to the extent that Joint Petitioners suggest that the ISFSI decommissioning funding plan submitted by ENOI in 2018 and the 2006 Palisades SEIS do not adequately describe certain environmental information, they have not raised a concern within the scope of this proceeding.³¹⁴ Second, Joint Petitioners' claim that a site characterization is required to evaluate groundwater contamination from cooling tower overflows and tritium leaks does not raise an issue within the scope of this proceeding or identify a material dispute with the application, because a full site characterization is not required at this stage.³¹⁵ Joint Petitioners also claim that there is a discrepancy between the PSDAR and ENOI's ISFSI decommissioning funding report regarding the number of canisters required for the storage of GTCC, and that this discrepancy would have financial implications for the transport and disposal of GTCC waste.³¹⁶ However, Joint Petitioners neither address the decommissioning cost estimate in this claim, nor explain the "major cost differences" they anticipate would have a material impact on the overall financial qualifications of the applicants.³¹⁷ Finally, Joint Petitioners' claim that the 2030 date for commencement of nuclear fuel removal is "fantastical, based on laws . . . and facilities that don't exist or will not be brought online within the timeline [HDI] postulate[s]," does not establish a gen-

³¹³ See 10 C.F.R. § 2.206; see also *Indian Point*, CLI-21-1, 93 NRC at 49; *Pilgrim*, CLI-20-12, 92 NRC at 390.

³¹⁴ See Joint Petitioners Petition at 19-20, 23, 25, 29, 32, 35-36, 39, 41; 10 C.F.R. § 2.309(f)(1)(iii) (contention must raise issues within the scope of the proceeding).

³¹⁵ See 10 C.F.R. § 50.82(a)(9)(ii)(A); Joint Petitioners Petition at 24-29.

³¹⁶ See Joint Petitioners Petition at 32.

³¹⁷ *Id.* In addition, the ENOI decommissioning information on which Joint Petitioners rely pertains to ENOI's plans for decommissioning Indian Point, not Palisades. See Joint Petitioners Petition at 32 (citing Letter from Philip L. Couture, Entergy Nuclear Operations, Inc., to NRC Document Control Desk (Dec. 17, 2018) (ML18351A478)). Joint Petitioners cite the 39th page of 70 pages in the combined PDF, which is Encl. 3B, "10 CFR 72.30 ISFSI Decommissioning Funding Plan — Indian Point Nuclear Generating Station, Unit 3," at 4. ENOI's decommissioning funding plan for Palisades projected an estimated five GTCC canisters on the ISFSI storage pads after shutdown, not six. See *id.*, Encl. 2, "10 CFR 72.30 ISFSI Decommissioning Funding Plan — Palisades Nuclear Plant, at 4."

uine dispute with the application.³¹⁸ For the reasons we have explained above, we accept as plausible HDI's expectation that by 2030 a storage facility will be available to receive the Palisades spent fuel.³¹⁹

In conclusion, we find that the categorical exclusion applies to this license transfer and its conforming amendments and accordingly that no independent NEPA analysis is required for the license transfer. We note, however, that the environmental effects of the exemptions requested in conjunction with the license transfer application was fully considered in an environmental assessment prepared by the staff.³²⁰ This environmental review considered the information in the environmental assessment provided by HDI in support of its exemption request, an analysis that Joint Petitioners have not challenged.³²¹ Because Joint Petitioners' environmental claims do not identify a deficiency in the application on a matter material to the staff's license transfer decision, we find Contention 1 inadmissible.

2. *Joint Petitioners' Contention 2*

In Contention 2, Joint Petitioners express concerns about the corporate character, culture, and ethics of Holtec International, SNC-Lavalin, HDI, and CDI. Based on these concerns, Joint Petitioners question the qualifications of these companies to undertake activities relating to the decommissioning of Palisades and the storage, transportation, and disposal of spent nuclear fuel from Palisades and Big Rock Point.³²² In support of this contention, Joint Petitioners rely upon Exhibit A, attached to their petition, which catalogues "numerous civil and criminal wrongs" that Joint Petitioners urge the NRC consider in its review of the license transfer application.³²³

We will consider claims of deficient character or integrity admissible in an adjudicatory proceeding in special circumstances, but we have imposed strict limits on such claims to ensure that the "hearing process does not become a forum to litigate historical events that have no direct bearing on the challenged li-

³¹⁸ See Joint Petitioners Petition at 37; see also *id.* at 3.

³¹⁹ Joint Petitioners suggest that the application inconsistently represents the date for commencement of spent fuel removal as 2030 or 2041. See *id.* at 33, 37. The application states that NRC license termination is expected to occur in 2041, and therefore 2041 represents the date by which spent fuel would need to be removed from the site, not the date of initiation of spent fuel removal. See, e.g., PSDAR at 3.

³²⁰ See Holtec Decommissioning International, LLC, Palisades Nuclear Plant; Environmental Assessment and Finding of No Significant Impact; Issuance, 86 Fed. Reg. 67,503 (Nov. 26, 2021).

³²¹ See Exemption Request at 8-10.

³²² Joint Petitioners Petition at 41-42, 44.

³²³ *Id.* at 44.

censing action.”³²⁴ To be admissible, the alleged deficiency or misconduct “must have some direct and obvious relationship between the character issues and the licensing action in dispute.”³²⁵ To that end, claims regarding prior violations or past events raised in an adjudicatory proceeding should be “directly germane to the challenged licensing action.”³²⁶ We have historically found that contentions based upon the past activities of a licensee’s parent corporation do not rise to this standard because such activities generally do not bear directly upon the character or conduct of those responsible for conducting licensed activities in compliance with NRC requirements.³²⁷

As noted above, HDI is an indirect wholly owned subsidiary of Holtec International, created to assume the licensed operator responsibilities and decommissioning Holtec-owned nuclear power plants. CDI is jointly owned by Holtec and SNC-Lavalin through their subsidiaries HDI and Kentz USA, Inc., respectively, but as stated in a supplement to the application, CDI will no longer be contracted by HDI to serve as decommissioning general contractor for Palisades.³²⁸ Joint Petitioners claim that over two decades Holtec International and SNC-Lavalin “have been debarred, seen their officers and employees convicted of bribery for contracts in multiple countries, generated illegal campaign contributions, and other civil and criminal wrongdoing, such as suspected money laundering, financial manipulation and human trafficking”³²⁹ In Exhibit A to their petition, Joint Petitioners expound upon this claim by listing several examples of past incidents involving Holtec and SNC-Lavalin.³³⁰

However, Joint Petitioners have not linked their concerns about the character and integrity of Holtec International and SNC-Lavalin to a material issue within the scope of the licensing action at issue in this proceeding. While Holtec International is an applicant, SNC-Lavalin is not. Joint Petitioners provide us with no basis to conclude that SNC-Lavalin personnel associated with any past wrongdoing in other projects in other countries will play a role in the management and decommissioning of either Palisades or Big Rock Point. In addition, if the license transfer is granted, neither Holtec International nor SNC-Lavalin would have any responsibility for the direct oversight and control of licensed activities at Palisades or Big Rock Point. Joint Petitioners have not pointed to

³²⁴ *Indian Point*, CLI-21-1, 93 NRC at 50.

³²⁵ *Oyster Creek*, CLI-19-6, 89 NRC at 477.

³²⁶ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 366-67 (2001).

³²⁷ See *Indian Point*, CLI-21-1, 93 NRC at 50-51; *Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant), CLI-00-22, 52 NRC 266, 311-12 (2000).

³²⁸ See Application Supplement at 1-2.

³²⁹ Joint Petitioners Petition at 42.

³³⁰ See *id.*, Ex. A, at 1-6.

a connection between the individuals involved in the incidents they cite and the companies that would become the licensed owner or operator of the Palisades and Big Rock Point facilities — Holtec Palisades and HDI, respectively.³³¹ Nor have Joint Petitioners otherwise identified wrongdoing on the part of any officers or directors of Entergy Nuclear Palisades (which would become Holtec Palisades) or HDI. In short, Joint Petitioners have not established a “direct and obvious” relationship between their claims of wrongdoing on the part of Holtec International and SNC-Lavalin and this license transfer proceeding.

Joint Petitioners also suggest that Holtec International is unqualified to hold the Palisades license because of prior NRC enforcement history. Joint Petitioners identify two prior NRC enforcement actions, only one of which cited a violation against Holtec International.³³² That case arose from Holtec’s incorrect determination that it could change the design of one of its spent fuel canisters under 10 C.F.R. § 72.48(c) without first obtaining NRC approval.³³³ The staff identified the violation during a routine inspection in 2018. The staff gave credit to Holtec for “the absence of recent escalated enforcement action” against it, as well as for “Holtec’s prompt and comprehensive correction of the violation,” and did not assess any monetary penalty against the company.³³⁴ In the second case, the staff issued a notice of violation to Southern California Edison Company for failing to timely report a spent fuel canister-loading problem at San Onofre Nuclear Generating Station (SONGS).³³⁵ Joint Petitioners do not draw a connection between the events involved in this enforcement action and Holtec International, other than noting that Holtec is contracted to transfer spent fuel into dry storage at SONGS and a Holtec canister was involved in the cited incident.³³⁶ We find no basis in the record of these enforcement actions to conclude that either Holtec International or the proposed license holders lack the requisite corporate character, culture, or ethics to undertake the decommissioning of Palisades or hold the Palisades license.³³⁷

³³¹ See *Millstone*, CLI-01-24, 54 NRC at 366 (citing *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111 (1995)) (“[W]e found character allegations directly pertinent when . . . the allegations specifically concerned the current director of the facility, and the current organizational structure of the facility, and were supported by expert witnesses alleged to have knowledge of the current management.”).

³³² See Joint Petitioners Petition, Ex. A at 7.

³³³ See Letter from George Wilson, NRC, to K.P. Singh, Holtec International (Apr. 24, 2019), at 2-3 (ML19072A128); see also *Indian Point*, CLI-21-1, 93 NRC at 51-52.

³³⁴ *Id.*

³³⁵ See Letter from Troy W. Pruett, NRC, to Doug Bauder, Southern California Edison Company (Dec. 19, 2018), Encl. 2 at 16-17 (ML18341A172).

³³⁶ See Joint Petitioners Petition, Ex. A at 7.

³³⁷ See *id.* at 41-42; cf. *Indian Point*, CLI-21-1, 93 NRC at 51-53 (finding that the same cited en-

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In addition, we find that Joint Petitioners have not established a “direct and obvious” relationship between their remaining concerns and the character or qualifications of the proposed transferees. Much of Joint Petitioners’ support for this contention draws upon examples of issues specific to the *Indian Point* license transfer application and proceeding, and Joint Petitioners do not draw a direct link between those matters and the qualifications of the proposed transferees in this proceeding.³³⁸ Joint Petitioners also seek to support their contention by citing concerns that Holtec and HDI have sought exemptions in other proceedings, listing examples of exemptions sought by Holtec or HDI from emergency planning requirements and insurance requirements, and to allow the use of decommissioning trust fund money for spent fuel management costs, among others.³³⁹ But Joint Petitioners do not explain how requesting an exemption from a regulatory requirement — an option expressly provided for under our regulations — indicates a deficit of character or qualifications on the part of Holtec or the proposed license transferees in this case.

Likewise, Joint Petitioners’ allusions to criticism of Holtec’s nuclear industry reputation and other lines of business, “elusive” corporate organizational structures, and workforce issues, do not directly challenge the application and offer insufficient factual evidence to establish that the proposed transferees lack the requisite qualifications to undertake decommissioning of Palisades.³⁴⁰ As we have stated before, “[a]bsent strong support for a claim that difficulties at other plants run by a corporate parent will affect the plant(s) at issue before the Commission, we are unwilling to use our hearing process as a forum for a wide-ranging inquiry into the corporate parent’s general activities across the country.”³⁴¹ Finally, Joint Petitioners express concern that Holtec lacks experience decommissioning reactors and plans to engage in a “cookie cutter” approach to decommissioning multiple reactors, stating that “[i]t is very unclear that Holtec has the required resources to take on such a task,” leading to significantly increased decommissioning costs.³⁴² However, these statements do not directly call into question the character or qualifications of the proposed license transferees in this proceeding.

In summary, we do not find that the examples Joint Petitioners raise indicate that the proposed transferees lack the requisite character or qualifications to re-

forcement actions did not establish that Holtec International or proposed license transferees “lacked candor or willingness to comply with NRC requirements”).

³³⁸ See Joint Petitioners’ Petition, Ex. A, at 13-14, 17, 18-21, 24.

³³⁹ See *id.*, Ex. A, at 7, 13, 14-17.

³⁴⁰ See *id.*, Ex. A, at 8, 10-14, 17-18, 21-25.

³⁴¹ *FitzPatrick*, CLI-00-22, 52 NRC at 312.

³⁴² Joint Petitioners Petition, Ex. A, at 8, 18.

ceive the Palisades license or safely decommission the Palisades site. Therefore, we find Joint Petitioners' Contention 2 inadmissible.

3. *Joint Petitioners' Contention 3*

In Contention 3, Joint Petitioners assert that HDI's request for an exemption from 10 C.F.R. § 50.82(a)(8)(i)(A) should be denied, arguing that the exemption is both legally and factually unsupported and that HDI has not demonstrated that special circumstances are present.³⁴³ Allowing HDI to withdraw nearly \$200 million from the decommissioning trust fund for spent fuel management and site restoration costs could jeopardize public health and safety, Joint Petitioners claim, by "leav[ing] fewer resources to accomplish a possibly dangerous decommissioning campaign," and would furthermore not be beneficial to the public or the environment.³⁴⁴ Supported by a declarant, Joint Petitioners' core challenge to the exemption request is that HDI has underestimated the costs of spent fuel management, particularly the costs of repackaging the spent nuclear fuel contained in VSC-24 storage casks and the costs associated with potential delays in transferring high-burnup fuel from the spent fuel pool to the Palisades ISFSI and from the ISFSI to DOE for disposal.³⁴⁵

An exemption request is not among the listed actions subject to a hearing opportunity under section 189 of the AEA, but where, as here, the exemption request is intertwined with and integral to a license transfer application, arguments relating to the exemption request fall within the scope of this proceeding.³⁴⁶ Accordingly, in this proceeding and in similar recent decisions, we have found arguments raising concerns about how a requested exemption from section 50.82(a)(8)(i)(A) may materially affect a license transfer applicant's showing of financial qualifications to be within the scope of the proceeding.³⁴⁷ Here, however, Joint Petitioners go further, challenging the substance of the exemption request and arguing that the exemption itself should be denied.³⁴⁸

The substance of an exemption request may be challenged if the exemption request and the related licensing action "overlap to the point that they are, in essence, two parts of the same action," a determination that we make on a case-by-case basis, taking into account the unique facts and circumstances of each

³⁴³ *Id.* at 44-45, 50-51 (citing 10 C.F.R. § 50.12(a)(2)).

³⁴⁴ *Id.* at 51.

³⁴⁵ *See id.* at 49-51. As noted above, these casks are licensed to store, but not transport, spent nuclear fuel.

³⁴⁶ *See Private Fuel Storage*, CLI-01-12, 53 NRC at 465-67, 476; *see also Vermont Yankee*, CLI-16-12, 83 NRC at 549, 553.

³⁴⁷ *See, e.g., Indian Point*, CLI-21-1, 93 NRC at 15-16; *Pilgrim*, CLI-20-12, 92 NRC at 362.

³⁴⁸ *See* Joint Petitioners Petition at 44-45, 50-51.

case.³⁴⁹ In this case, as discussed above, HDI's exemption request is sufficiently interrelated with the license transfer application that a challenge to the substance of the exemption request falls within the scope of this proceeding. However, we find that Joint Petitioners have not raised a supported dispute on a material issue with the exemption request.

a. Repackaging of Storage-Only Fuel Canisters

Joint Petitioners claim that the cost to repackage the eighteen VSC-24 casks at Palisades would range from \$17.3 to \$37.6 million, adding “as much as another 30% to the spent nuclear fuel management costs estimated by Holtec.”³⁵⁰ In response, the applicants assert that the costs of repackaging the VSC-24 casks for transport are encompassed by the \$39 million line-item cost estimate allocated to transfer of fuel away from the ISFSI, and they argue that Joint Petitioners have not addressed this cost estimate or called into question its sufficiency.³⁵¹ In their reply, Joint Petitioners do not address the applicants' claims regarding the \$39 million line-item cost estimate but maintain that repackaging of spent fuel is not mentioned in the PSDAR.³⁵² They assert that the repackaging of the 432 assemblies in the eighteen VSC-24 casks “is on a scale that has yet to be undertaken in the United States” and, given the lack of industry experience with such an effort, “cost projections contain elements of speculation that cannot be penciled [a]way.”³⁵³

These claims are insufficient to show a material dispute with the exemption request. While Joint Petitioners claim that the costs of repackaging the VSC-24

³⁴⁹ See *Vermont Yankee*, CLI-16-12, 83 NRC at 553; see also *Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 10 (2013) (stating that “[a]n exemption standing alone does not give rise to an opportunity for hearing, . . . [b]ut 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”); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 96 (2000) (inquiring whether an exemption, “regardless of its label,” could “constitute[] an action for which a hearing is required . . . [because it] is in effect” an action covered by hearing rights under the AEA); *United States Department of Energy* (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 421 (1982) (recognizing a “statutory right to a hearing on the granting of an exemption” where the exemption is “part of a proceeding” for an action covered by hearing rights under the AEA).

³⁵⁰ Joint Petitioners Petition at 49; *id.*, Ex. B, at 3.

³⁵¹ See Applicants Answer to Joint Petitioners at 19; see also Applicants Answer to AG at 42. The applicants state that the line item described as “Transfer of fuel and/or other nuclear material away from the ISFSI” covers the transfer of fuel assemblies into transfer casks. See Applicants Answer to Joint Petitioners at 19 & n.76.

³⁵² Joint Petitioners Reply at 14.

³⁵³ Joint Petitioners Reply, Ex. B, Response of Robert Alvarez (Mar. 29, 2021), at 4 (unnumbered) (Alvarez Decl.); see Joint Petitioners Reply at 16-17.

casks would exceed HDI's estimated spent fuel management costs by as much as 30%, they do not explain how they arrived at this conclusion.³⁵⁴ HDI estimated that the total spent fuel management costs for Palisades would amount to approximately \$166 million; a 30% increase over this amount would reflect an additional \$50 million in spent fuel management costs, an amount that is not supported by the information in Joint Petitioners' pleadings or their expert's declarations, which specifies additional costs between \$17.3 and \$37.6 million.³⁵⁵ Moreover, Joint Petitioners have not challenged the applicants' statement that the cost of repackaging VSC-24 casks for transport is accounted for in their \$39 million line-item cost estimate for fuel transfer. Nor have they addressed how, in light of the wide range of their own cost estimate, \$39 million would be insufficient to cover the repackaging of VSC-24 casks. Therefore, we find that Joint Petitioners have not raised a material dispute with the exemption request.³⁵⁶

Finally, we find that Joint Petitioners' suggestion that there may be additional costs associated with safely repackaging "defective Cask No. 4," a VSC-24 cask with weld defects detected in 1994, does not present an admissible issue.³⁵⁷ Joint Petitioners claim that they do not know whether Cask No. 4 has been unloaded, but they state that "there is the troubling conundrum of unloading and repackaging the [spent nuclear fuel]" from the cask "without causing a serious radiological accident."³⁵⁸ Joint Petitioners do not point to information suggesting that the costs of repackaging this cask would have a material impact on a matter related to the exemption. For example, they do not suggest that the costs of repackaging Cask No. 4 are not accounted for in HDI's spent fuel management cost estimate or that any additional costs required for repackaging the cask would

³⁵⁴ See Joint Petitioners Petition at 49; *id.*, Ex. B, Report of Robert Alvarez, at 3 (Alvarez Report).

³⁵⁵ In their reply, Joint Petitioners raise an additional potential cost, stating that "the estimated cost of managing low-level radioactive waste from removing spent fuel to new canisters is estimated by the DOE at \$9,500 per assembly and could be more than the cost to load the assembly in any canister." Alvarez Decl. at 4 (unnumbered) (citing U.S. Department of Energy, Office of Nuclear Energy, "Standardized Transportation, Aging, and Disposal (STAD) Canister Design, Presentation to the Nuclear Waste Technical Review Board" (Jun. 24, 2015), <https://www.nwtrb.gov/docs/default-source/meetings/2015/june/jarrell.pdf>). Because this claim was not raised in Joint Petitioners' initial filings, it is untimely. Even if we were to find it timely, we do not find that it establishes the admissibility of this contention, because Joint Petitioners do not explain whether and to what extent the decommissioning cost estimate fails to account for these costs. For example, they do not challenge the adequacy of the \$39 million line item in this regard, nor do they point to any other deficiency in the decommissioning cost estimate to account for such costs.

³⁵⁶ For the same reasons, we find inadmissible Joint Petitioners' related claim in Contention 1 that the PSDAR does not account for the possibility that repackaging will be required. See Joint Petitioners Petition at 35. In addition, as we noted above, it remains uncertain whether DOE will require repackaging of these canisters.

³⁵⁷ See Joint Petitioners Petition at 37-39, 50.

³⁵⁸ *Id.* at 39, 50; see also Joint Petitioners Reply at 17.

reduce the decommissioning trust fund to a level that could adversely impact the proposed transferees' ability to safely decommission Palisades. Accordingly, this concern does not raise a genuine dispute with the exemption request.

b. Spent Fuel Management Costs

Joint Petitioners argue that HDI understates the cost of spent fuel management at Palisades and Big Rock Point by as much as 25%. Specifically, drawing upon industry data in a GAO report, Joint Petitioners estimate that the costs of Holtec canisters for the remaining spent fuel, the activities and equipment necessary to transfer the spent fuel from the spent fuel pool to dry cask storage, the ISFSI storage pad, and fifteen years of annual maintenance and operation costs, could total \$176.8 million.³⁵⁹ They conclude, “the potential costs for repackaging the VSC-24 and Holtec cask emplacement and storage for 40% of the total number of [spent nuclear fuel] assemblies at Palisade[s] and Big Rock Point come to as much as \$206.8 million.”³⁶⁰

First, Joint Petitioners address the expenses of transferring the remaining Palisades fuel assemblies from the spent fuel pool and storing them in the ISFSI, arguing that these expenses “may be significant” and higher than estimated by HDI.³⁶¹ They assert that the cost of the planned 20 Holtec HI-STORM FW casks needed to receive the remaining Palisades spent fuel could be as high as \$30 million for the casks alone, based on GAO data reflecting the typical cost of a transfer cask as ranging between \$1.5 million and \$3 million per cask.³⁶² The applicants respond that the decommissioning cost estimate includes approximately \$35 million for these casks in the line item for “Containers.”³⁶³ Joint Petitioners do not directly address this cost estimate or the applicants’ statement that the cost estimate includes more funding for these casks than Joint Petitioners claim could be required. Therefore, we find that this concern does not identify a material dispute with the exemption request.

Second, Joint Petitioners assert that the costs associated with “activities and equipment necessary to transfer [spent nuclear fuel] from wet to dry storage”

³⁵⁹ Joint Petitioners Petition at 50; *id.*, Ex. B, Alvarez Report, at 4.

³⁶⁰ Joint Petitioners Petition at 50; *see id.*, Ex. B, Alvarez Report, at 4.

³⁶¹ Joint Petitioners Petition at 49-50; *see also id.*, Ex. B, Alvarez Report, at 3.

³⁶² *See* Joint Petitioners Petition, Ex. B, Alvarez Report, at 4 (citing U.S. Government Accountability Office, GAO-15-141, “Spent Fuel Management: Outreach Needed to Help Gain Public Acceptance for Federal Activities that Address Liability” (Oct. 2014), 17 tbl.2, “Typical Costs Associated with Transferring Spent Nuclear Fuel in Canisters from Wet to Dry Storage”) (GAO Report).

³⁶³ Applicants Answer to Joint Petitioners at 21 & n.86.

may be as high as \$42.8 million, based on the GAO information.³⁶⁴ Joint Petitioners do not explain how this figure was derived from the information in the GAO report. The GAO table describes a range of typical costs for “[d]esign, licensing, and construction” of \$5.5 million to \$42 million.³⁶⁵ Excluding the costs of transfer casks and annual maintenance and operation costs, which Joint Petitioners break out into distinct estimates and we address elsewhere in our evaluation of this contention, other relevant costs in the GAO table include labor costs of \$150,000 to \$550,000, a description of \$1 million to \$1.5 million for a “[c]rawler-type transporter,” and various ranges of expenses for vertical storage casks and horizontal storage modules.³⁶⁶ While the GAO table is broadly cited as support for Joint Petitioners’ ultimate estimate for activities and equipment related to transfer of spent fuel from wet-to-dry storage, none of these categories are specifically identified as forming the basis for the \$42.8 million estimate developed by Joint Petitioners.³⁶⁷

The applicants contend that in order to reach such a high estimate of these costs, Joint Petitioners must have drawn from the high end of the ranges described in the GAO table and included in the estimate the initial costs of designing, licensing, and constructing the ISFSI.³⁶⁸ They argue that Joint Petitioners’ estimate is not a true reflection of the costs associated with spent fuel management because the Palisades ISFSI is already constructed and paid for, and the proposed transferees would not bear those costs after closing on the purchase and sale agreement.³⁶⁹ Acknowledging that the potential expansion of the eastern ISFSI pad at Palisades would involve additional expenditures, the applicants state that the decommissioning cost estimate allocates \$14.5 million for that expansion, which falls within the GAO’s range of typical costs for ISFSI design, licensing, and construction.³⁷⁰ They also argue that Joint Petitioners have not justified including in their estimate the one-time costs of loading and transport equipment that are already in use at Palisades. Further, the applicants note that the decommissioning cost estimate includes \$57 million for spent fuel management between 2022-2025, the period that includes the activities of preparing for and conducting fuel movement from the spent fuel pool to an onsite dry

³⁶⁴ Joint Petitioners Petition at 50; *id.*, Ex. B, Alvarez Report, at 4.

³⁶⁵ GAO Report at 17 tbl.2; Joint Petitioners Petition, Ex. B, Alvarez Report, at 4.

³⁶⁶ GAO Report at 17 tbl.2; Joint Petitioners Petition, Ex. B, Alvarez Report, at 4.

³⁶⁷ *See* Joint Petitioners Petition at 50; *id.*, Ex. B, Alvarez Report, at 4.

³⁶⁸ *See* Applicants Answer to Joint Petitioners at 21-22.

³⁶⁹ *See id.* at 22. For example, \$6.5 million of Joint Petitioners’ \$176.8 million cost estimate appears to be allocated to the need for a “storage pad.” *See* Joint Petitioners Petition, Ex. B, Alvarez Report, at 4.

³⁷⁰ *See id.*; GAO Report at 17 tbl.2 (describing typical costs as ranging from \$5.5 million to \$42 million).

storage facility.³⁷¹ Because Joint Petitioners do not dispute that the funds in this category cover the “activities and equipment necessary to transfer [spent nuclear fuel] from wet to dry storage” or explain why the specific estimate provided by the applicants is insufficient, particularly given Joint Petitioners’ lower estimate of \$42.8 million for such activities, this claim does not identify a supported material dispute with the exemption request.³⁷²

Finally, Joint Petitioners claim that operation and maintenance costs for the Palisades ISFSI could be as high as \$6.5 million per year, based on the high end estimate in the GAO table’s range of potential costs for operating a permanently shutdown reactor site.³⁷³ Arguing that Joint Petitioners have not explained why \$6.5 million is representative of the Palisades site configuration, where HDI plans to maintain site infrastructure including “the main plant protected area that encompasses one of the ISFSI pads,” the applicants counter that site-wide operating and maintenance costs at Palisades — best illustrated in the years 2027 to 2029, the dormancy period in which no other major cost drivers are reflected in the annualized cash flows — are estimated in the decommissioning cost estimate to amount to \$6.3 million. This amount falls within the \$2.5 million to \$6.5 million range described in the GAO table as typical costs for “[a]nnual operations.”³⁷⁴ The portion of this sum allocated specifically to spent fuel management during this period is \$1.7 million, which falls below the range in the GAO table.³⁷⁵ However, in their reply, Joint Petitioners do not address the applicants’ explanation for their allocation of operating and maintenance costs or provide any other ground to question HDI’s estimate. Therefore, this claim does not raise a material dispute with the exemption request.

³⁷¹ Applicants Answer to Joint Petitioners at 22-23; DCE at 13-14 & 46 tbl.5-1. This figure does not include the funds apportioned to the cost of the Holtec HI-STORM FW containers that will receive the spent fuel from the spent fuel pool. The applicants state that “\$57 million comes from the sum of spent fuel costs shown for 2023-2025 (\$92.8 million), less the cost of Holtec containers (\$35.6 million).” Applicants Answer to Joint Petitioners at 23 & n.92 (citing DCE at 46 tbl.5-1).

³⁷² Joint Petitioners Petition, Ex. B, Alvarez Report, at 4.

³⁷³ See *id.* at 50; *id.*, Ex. B, Alvarez Report, at 4; GAO Report at 17 tbl.2.

³⁷⁴ See Applicants Answer to Joint Petitioners at 24; Joint Petitioners Petition, Ex. B, Alvarez Report, at 4; GAO Report at 17 tbl.2. The applicants derived the \$6.3 million figure by adding the \$4.6 million allocated to radiological decommissioning and \$1.7 million allocated to spent fuel management for these three years. *Id.* at 24 n.95 (citing DCE at 45 tbl.5-1). The applicants state that maintenance and operations costs during this period “primarily fall in the Program Management category (e.g., security, taxes, insurance, site upkeep, regulatory compliance programs, and licensing/engineering/home office costs),” and are incurred on a site-wide basis and allocated to spent fuel management and radiological decommissioning proportionately. *Id.* at 24-25 (citing DCE at 31 tbl.3-2; PSDAR at 13).

³⁷⁵ See DCE at 45 fig.5-1; Joint Petitioners Petition, Ex. B, Alvarez Report, at 4; GAO Report at 17 tbl.2.

Because we find that Joint Petitioners have not established that any element of their proposed alternative cost estimate raises a supported, material dispute with HDI's cost estimate for spent fuel management, we find that Joint Petitioners' overall conclusion that the total costs of spent fuel management could amount to \$176.8 million does not raise a genuine dispute with HDI's estimate for spent fuel management costs. Likewise, having previously found that their claim regarding the cost of repackaging VSC-24 casks similarly does not raise a genuine supported dispute with the exemption request, we find their claim that the total potential costs of repackaging VSC-24 casks and spent fuel management for 40% of the assemblies at Palisades and Big Rock Point could amount to \$206.8 million is insufficiently supported to call into question the plausibility of HDI's estimate of spent fuel management costs. Joint Petitioners do not explain how they arrive at the \$206.8 million figure or to what extent costs relating to Big Rock Point factor into this estimate. HDI's exemption request pertains only to Palisades. Therefore, we find that Joint Petitioners' challenges to the exemption based on the cost of spent fuel management are inadmissible.

c. Cooling Time Implications of High-Burnup Fuel

Joint Petitioners also claim that the presence of high-burnup fuel at Palisades raises questions about HDI's assumed cooling time for spent nuclear fuel in the spent fuel pool and HDI's assumptions about the timeframe for transferring all spent fuel from the Palisades site. Joint Petitioners estimate that approximately 20% of spent nuclear fuel at Palisades was high-burnup by 2013, and they assert that the remaining fuel discharged since then is mostly high-burnup.³⁷⁶ The applicants argue that Joint Petitioners provide no citation for their estimate of the amount of high-burnup fuel present in the Palisades spent fuel pool or ISFSI.³⁷⁷ The applicants do not themselves offer any clarification regarding the actual amount of high-burnup fuel present at Palisades, nor do they assert that Joint Petitioners' estimate of the amount of high-burnup fuel at Palisades is incorrect. While there appears to be a legitimate dispute regarding the amount of high-

³⁷⁶ Joint Petitioners Petition, Ex. B, Alvarez Report, at 4.

³⁷⁷ See Applicants Answer to Joint Petitioners at 25 n.101. On reply, Joint Petitioners provide the references for the data on which they relied for their estimate of the amount of high-burnup fuel at Palisades. Alvarez Decl. at 2-3 (unnumbered). The applicants move to strike this information as untimely, a characterization Joint Petitioners dispute. See Applicants' Motion to Strike Portions of Beyond Nuclear et al.'s Reply and Second Declaration of Robert Alvarez (Apr. 5, 2021), at 5 (Applicants Motion to Strike Reply); Reply of Beyond Nuclear, Michigan Safe Energy Future and Don't Waste Michigan in Opposition to Applicants' "Motion to Strike Portions of Beyond Nuclear et al.'s Reply and Second Declaration of Robert Alvarez" (Apr. 14, 2021), at 10-15 (Joint Petitioners Response to Motion to Strike Reply). Because our decision does not rely on the additional information provided in Joint Petitioners' reply, we need not resolve this dispute.

burnup fuel present in the Palisades spent fuel pool and ISFSI, ultimately, this dispute is not material to our decision on the admissibility of Joint Petitioners' contention. Even taking as true Joint Petitioners' assumption that the majority of fuel in the spent fuel pool is high-burnup and the amount of high-burnup fuel in the ISFSI is greater than 20%, we find that Joint Petitioners still have not shown that this concern raises a supported genuine dispute on a material issue associated with the exemption request.

(1) Timeframe for Transfer of High-Burnup Fuel into Dry Cask Storage

Joint Petitioners raise the potential for significant costs relating to the transfer of high-burnup spent nuclear fuel from the Palisades spent fuel pool to the ISFSI.³⁷⁸ The decommissioning cost estimate projects that the remaining Palisades spent fuel will be removed from the spent fuel pool to a dedicated ISFSI by 2025, or over a period of three years, assuming a 2022 start date.³⁷⁹ Relying exclusively on a 2013 Sandia National Laboratories presentation on cooling times for the storage and transportation of spent nuclear fuel, Joint Petitioners claim that the minimum cooling time required before high-burnup fuel at Palisades can be transferred from the spent fuel pool into dry cask storage is twenty-five to thirty years, suggesting that they view the application's estimated completion date of 2025 as speculative.³⁸⁰

Addressing this claim in their answer, the applicants note that Joint Petitioners' twenty-five to thirty-year minimum cooling presumption is taken from a chart in the presentation under the heading "Cooling Times Derived from Cask Certificates of Compliance," which plots the upper and lower ranges for minimum cooling times before storage or transport based on fuel burnup.³⁸¹ The applicants point out that this chart does not appear to support Joint Petitioners' proposition, as it actually reflects that the minimum cooling time required for high-burnup fuel could be as low as approximately three to five years.³⁸² The

³⁷⁸ See Joint Petitioners Petition, Ex. B, Alvarez Report, at 3-4.

³⁷⁹ DCE at 29 tbl.3-1, 45 fig.5-1.

³⁸⁰ See Joint Petitioners Petition at 40; *id.*, Ex. B, Alvarez Report, at 4-5 (citing U.S. Department of Energy, Sandia National Laboratories, "Cooling Times for Storage and Transportation of Spent Nuclear Fuel" (Feb. 25, 2013), <https://www.osti.gov/servlets/purl/1145261>) (Sandia Presentation).

³⁸¹ See Applicants Answer to Joint Petitioners at 24-25 (citing Sandia Presentation at 4).

³⁸² See *id.* at 25; Sandia Presentation at 4. Assemblies with burnup of 45,000 MWd/MTU (45 GWd/MTU) or greater are considered high-burnup fuel. See Applicants Answer to Joint Petitioners at 25 (citing "Backgrounder on High Burnup Spent Nuclear Fuel" (Sept. 2018) (ML18270A110)); see also Continued Storage GEIS, Appendix I, at I-1. The applicants also note that other slides in the presentation state that transfer from pool to cask within five years is possible under certain conditions, such as with smaller cask sizes. See Applicants Answer to Joint Petitioners at 24-25 (citing Sandia Presentation at 2).

Sandia Laboratories presentation derives these data from cask certificates of compliance.³⁸³ The applicants explain that Holtec's HI-STORM FW dry cask system will be used to store the remaining Palisades fuel, a fact reflected in the decommissioning cost estimate.³⁸⁴ Within these casks, the fuel will be placed in MPC-37 canisters.³⁸⁵ The applicants claim that in accordance with the formula in the HI-STORM FW certificate of compliance for calculating burnup and cooling time limits for fuel assemblies, fuel assemblies loaded into the MPC-37 canister with a burnup of 45 GWd/MTU would have a minimum cooling time of 1.88 years.³⁸⁶

On reply, Joint Petitioners do not dispute the applicants' characterization of the information in the Sandia Laboratories presentation, and they acknowledge that the Sandia Laboratories presentation states that minimum cooling times under five years for high-burnup fuels is possible for smaller cask sizes.³⁸⁷ Appearing to abandon their claim that the cooling times for high-burnup fuel before emplacement range between a minimum of twenty-five and thirty years, Joint Petitioners argue more broadly that cooling times for high-burnup fuel will increase with increasing burnup and that high-burnup fuels loaded into very large sized casks "may require decades of aging in pools."³⁸⁸ Joint Petitioners further state that high-burnup fuel that is preferentially loaded into multi-purpose canister casks "can be far greater than [five] years."³⁸⁹ By themselves, these statements do not raise a material dispute with the exemption request because their claims are consistent with the information in the presentation that describes a range of minimum cooling times of between approximately three and thirty years for high-burnup fuels.³⁹⁰

Joint Petitioners' support for this concern lacks a connection between the cooling time possibilities they raise and the assumptions underlying HDI's planned schedule for wet-to-dry fuel transfer in this proceeding; and, ultimately, the cost implications that any change in this would have on the decision whether to grant the exemption request. Joint Petitioners have not directly challenged the applicants' explanation that the minimum cooling time for spent fuel with a burnup of 45 GWd/MTU loaded into the HI-STORM FW casks and MPC-37

³⁸³ See Sandia Presentation at 3-4.

³⁸⁴ Applicants Answer to Joint Petitioners at 25 (citing DCE at 22).

³⁸⁵ See *id.*; DCE at 22.

³⁸⁶ Applicants Answer to Joint Petitioners at 25 (citing Certificate of Compliance No. 1032, Amend. No. 5 (Jun. 11, 2020), app. B, at 2-26 to 2-34, 2-43 (ML20163A705)).

³⁸⁷ See Alvarez Decl. at 1 (unnumbered).

³⁸⁸ *Id.* at 1 (unnumbered) (quoting Sandia Presentation at 2).

³⁸⁹ *Id.* at 2 (unnumbered) (citing Sandia Presentation at 6).

³⁹⁰ See Sandia Presentation at 4.

canisters falls within the three-year period projected by HDI.³⁹¹ In their reply, Joint Petitioners assert that the HI-STORM 100 cask is not considered a small cask, implying that the minimum cooling time for the remaining Palisades spent fuel may be on the order of decades.³⁹² Leaving aside the question of whether this argument was properly raised in the first instance on reply, it does not identify a dispute with the application or the applicants' explanation because the remaining Palisades fuel will be loaded into a different cask — the HI-STORM FW.³⁹³ Joint Petitioners do not explain how their claims regarding the HI-STORM 100 cask are relevant to the HI-STORM FW cask in use at Palisades.

Given that Joint Petitioners have not raised a specific dispute with the relevant information provided by the applicants, we find that Joint Petitioners have not provided sufficient information to suggest that HDI's projected timeframe for transferring the remaining spent fuel at Palisades into dry cask storage is implausible. Moreover, because they have not addressed how the impacts of high-burnup fuel on HDI's assumed timeframe for wet-to-dry fuel transfer would affect the cost estimate for spent fuel management, they have not established the materiality of this concern to the considerations involved in the decision to grant or deny the exemption request. Therefore, we find that this concern does not identify a supported material dispute with the exemption request.

(2) Timeframe for Transfer of High-Burnup Fuel Away from Site

Joint Petitioners next suggest that the application's projection for removal of spent nuclear fuel from the Palisades ISFSI may be speculative because of the presence of high-burnup fuel.³⁹⁴ Quoting a Nuclear Waste Technical Review Board report, Joint Petitioners observe that the nuclear industry is trending toward storing higher-burnup fuel in larger dry storage casks and canisters, and DOE has estimated that "if no repackaging occurs, some of the largest [spent nuclear fuel] canisters storing the hottest [spent nuclear fuel] would not be cool

³⁹¹ See Applicants Answer to Joint Petitioners at 25 & nn.102-03; Alvarez Decl. at 2-3 (unnumbered). Joint Petitioners' statement that the cooling times for high-burnup fuel "can be far greater than [five] years" for fuel placed preferentially into multi-purpose canisters does relate to the application, considering that the MPC-37 canisters loaded in the HI-STORM FW system are multi-purpose canisters. However, their argument that these cooling times could be far greater than five years brings us no closer to an understanding of where in the range of minimum cooling time possibilities the Palisades spent fuel is more likely to fall; it neither excludes a cooling time of less than five years, nor provides evidence that the cooling time would be closer to their high end estimate of thirty years.

³⁹² See Alvarez Decl. at 1 (unnumbered).

³⁹³ See Applicants Answer to Joint Petitioners at 25; DCE at 22. In their petition, Joint Petitioners did not relate their argument about high-burnup fuel cooling times to a specific cask system. See generally Joint Petitioners Petition, Ex. B, Alvarez Report.

³⁹⁴ See Joint Petitioners Petition, Ex. B, Alvarez Report at 4-5.

enough to meet the transportation requirements until approximately 2100.”³⁹⁵ If, on the other hand, the spent fuel is repackaged from these large casks and canisters into smaller standardized canisters, Joint Petitioners note that DOE has estimated that it “could remove [spent nuclear fuel] from all nuclear power plant sites by approximately 2070.”³⁹⁶ In response, the applicants state that HDI’s decommissioning cost estimate assumes that repackaging for transportation will occur.³⁹⁷ They further assert that neither Joint Petitioners, nor the report on which they rely, suggest that the “Palisades fuel assemblies cannot be repackaged into transportation casks or otherwise approved for transport in time to remove all fuel by the end of 2040.”³⁹⁸

This concern does not raise a supported dispute with the exemption request. In their petition, Joint Petitioners do not address the decommissioning cost estimate’s assumptions about spent fuel repackaging or explain why HDI’s projected timeframe for removal of spent fuel from the Palisades ISFSI is implausible. As the applicants point out, the decommissioning cost estimate assumes that repackaging could be required in order to transport spent fuel from the ISFSI for disposal. The estimated 2070 date by which DOE projects it could remove repackaged spent fuel from all nuclear reactor sites in the country is not clearly incompatible with HDI’s estimated 2040 date for removal of all spent fuel from only the Palisades site.³⁹⁹ Moreover, the DOE estimate relies on an assumption that all spent nuclear fuel would be repackaged from large casks and canisters into smaller standardized canisters.⁴⁰⁰ As we have previously noted, future spent fuel packaging requirements for DOE transportation remain highly uncertain; therefore, the DOE estimate does not clearly support a direct challenge to the decommissioning cost estimate’s projected date for completion of spent fuel removal.⁴⁰¹

³⁹⁵ *Id.*, Ex. B, Alvarez Report, at 5 (quoting U.S. Nuclear Waste Technical Review Board, “Preparing for Nuclear Waste Transportation: Technical Issues That Need to Be Addressed in Preparing for a Nationwide Effort to Transport Spent Nuclear Fuel and High-Level Radioactive Waste” (Sept. 2019), at 77, https://www.nwtrb.gov/docs/default-source/reports/nwtrb-nuclearwastetransport_508.pdf?sfvrsn=6) (NWTRB Report). The NWTRB Report quoted by Joint Petitioners states that DOE examined industry trends between 2004 and 2013.

³⁹⁶ *Id.*, Ex. B, Alvarez Report, at 5 (quoting NWTRB Report at 77).

³⁹⁷ See Applicants Answer to Joint Petitioners at 26.

³⁹⁸ *Id.*

³⁹⁹ See DCE at 3 (“The HDI schedule assumes that spent fuel . . . [is] removed from the site by 2040.”).

⁴⁰⁰ See NWTRB Report at 77.

⁴⁰¹ See *Indian Point*, CLI-21-1, 93 NRC at 31. Joint Petitioners appear to acknowledge this uncertainty, pointing to ENOI’s explanation in the 2018 ISFSI decommissioning funding plan that its assumed start date for DOE’s acceptance of fuel from Palisades “are for budgeting purposes

(Continued)

Further, Joint Petitioners have not explained how this concern is material to the findings the NRC must make on the exemption request. In their petition, Joint Petitioners do not connect their concern about the impacts of high-burnup fuel on the timeframe for spent fuel removal to the costs of spent fuel management described in the decommissioning cost estimate or cash flow analysis. In their reply, Joint Petitioners assert that HDI will incur additional specified expenses for maintaining and operating the Palisades ISFSI if all spent fuel is not removed by 2041.⁴⁰² Because they have not raised an adequately supported challenge to the plausibility of HDI's projected date, however, this argument does not support admission of this contention.⁴⁰³

While we do not find Joint Petitioners' concern admissible, we note that in this decision we separately admit for hearing an issue related to the plausibility of HDI's projected eleven-year timeframe for the transfer of all spent fuel from the Palisades site. Further, as we have explained above, the NRC's review of the adequacy of decommissioning and spent fuel management funding is not a one-time look, but part of an ongoing oversight process that spans the decommissioning process and continues through license termination. If any significant unanticipated decommissioning or spent fuel management costs arise, whether resulting from a schedule delay or otherwise, the licensee will be required to report these costs in its annual status reports, as well as provide any necessary adjustments to cover the shortfall.⁴⁰⁴

only, and do not represent any conclusion by the licensee about how the DOE will actually perform in the future." *See* Joint Petitioners Petition, Ex. B, Alvarez Report, at 4 (quoting "10 CFR 72.30 ISFSI Decommissioning Funding Plan — Palisades Nuclear Plant," attached (Encl. 2) to Letter from Philip L. Couture, Manager, Fleet Licensing Programs, Entergy Nuclear Operations, Inc., to NRC Document Control Desk (Dec. 17, 2018) (ML18351A478)). Although Joint Petitioners cite ENOI's explanation to support their case that the projected date for removal for spent fuel from Palisades "has strong elements of speculation," it is undisputed that many aspects of DOE's future performance of its obligations under the Standard Contract are uncertain, particularly as to whether and how DOE will require repackaging of canistered fuel. Therefore, we decline to find that a decommissioning cost estimate is implausible because it makes reasonable assumptions about DOE's future expectations for receiving spent nuclear fuel. For the same reason, we find that Joint Petitioners have not raised an admissible issue concerning the PSDAR's assumptions about future DOE repackaging requirements. *See id.* at 32-37.

⁴⁰² *See* Alvarez Decl. at 4 (unnumbered).

⁴⁰³ This argument is also untimely, as it was raised for the first time on reply. Joint Petitioners did not identify these costs in their petition or specify how a delay in the spent fuel transfer schedule would affect HDI's estimate of spent fuel management costs. The report from which Joint Petitioners derived its cost estimate information was also not referenced in Joint Petitioners' petition. *See Louisiana Energy Services* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004) (our rules "do not allow [the use of] reply briefs to provide, for the first time, the necessary threshold support for contentions").

⁴⁰⁴ *See* 10 C.F.R. § 50.82(a)(8)(vi) (licensee must include in report additional financial assurance

(Continued)

d. Remaining Miscellaneous Claims

In Contention 3, Joint Petitioners also express generalized concerns about a previous licensee's withdrawal of funds from the Palisades decommissioning trust fund in 2006, as well as the potential radiological impacts of unloading and repackaging fuel from Cask No. 4, transporting steam generators by barge, and the seismic qualifications of the dry cask storage pads.⁴⁰⁵ These claims do not directly address the information in the exemption request or decommissioning cost estimate. Therefore, we find them inadmissible. We also find inadmissible various arguments raised at the beginning of their petition about HDI's waste volume and cost estimates, project delays attributable to HDI's other decommissioning obligations, and HDI's reliance on the nuclear decommissioning trust fund.⁴⁰⁶ These arguments are not further developed in a contention and do not identify a supported dispute on an issue material to the application.

4. Applicants' Motions to Strike Portions of Joint Petitioners' Reply and to Strike Subsequent Responses to Applicants' Motion

Following submission of Joint Petitioners' reply, the applicants moved to strike portions of the reply for impermissibly adding new arguments and evidentiary materials not raised in their initial petition.⁴⁰⁷ The applicants request that if we decline to strike these portions of Joint Petitioners' reply, they be granted an opportunity to respond to arguments and materials identified in their motion.⁴⁰⁸ Joint Petitioners, supported by Mr. Muhich, filed a response opposing the applicants' motion, arguing that the information the applicants seek to have stricken was timely and properly responsive to arguments raised by the applicants in their answer.⁴⁰⁹ In response, the applicants filed a further motion requesting that we strike Joint Petitioners' and Mr. Muhich's responses to the applicants' initial motion, arguing that both responses were filed late. The applicants argue that Joint Petitioners' and Mr. Muhich's responses, filed nine and ten days after the applicants' motion, respectively, were filed outside the five-day timeframe provided for such responses under our subpart M procedures in

to cover any shortfall in estimated cost to complete decommissioning); *id.* § 50.82(a)(8)(vii)(C) (licensee must include in report a plan to obtain additional funds to cover any shortfall in projected cost to manage irradiated fuel until fuel is transferred to DOE).

⁴⁰⁵ See Joint Petitioners Petition at 49-50; *see also* Joint Petitioners Reply at 14.

⁴⁰⁶ See Joint Petitioners Petition at 3-4.

⁴⁰⁷ Applicants Motion to Strike Reply.

⁴⁰⁸ *Id.* at 8.

⁴⁰⁹ Joint Petitioners Response to Motion to Strike Reply at 3-16; M. Muhich Submission Opposing Holtec Motion to Strike (Apr. 15, 2021).

10 C.F.R. § 2.1325(b).⁴¹⁰ Joint Petitioners and Mr. Muhich each filed a response in opposition to the applicants' subsequent motion.⁴¹¹ Joint Petitioners argue that the procedures of subpart M do not apply at the intervention stage of the proceeding, when we have not yet determined whether to grant a hearing request, and accordingly section 2.323(c) governs the timeframe for filing motions and responses.⁴¹²

Because we find that Joint Petitioners have not submitted an admissible contention, we deny the applicants' motion to strike portions of Joint Petitioners' reply. Further, because we find that the record provides a sufficient basis to support our decision, we deny the applicants' request for additional briefing to respond to the specified arguments and materials raised by Joint Petitioners in their reply. Having denied the applicants' motion to strike, we also deny as moot the applicants' further motion to strike Joint Petitioners' and Mr. Muhich's responses to their initial motion. Accordingly, in denying the applicants' motions, we need not — and do not — reach a determination on the competing arguments concerning the timeliness of the petitioners' responses to the applicants' first motion to strike.

E. ELPC Petition to Intervene and Request for a Hearing

ELPC proffers four contentions. In Contention 1, ELPC challenges HDI's reliance in its demonstration of financial qualifications on obtaining exemptions to allow it to use the decommissioning trust fund for spent fuel management and site restoration expenses at Palisades.⁴¹³ In Contention 2, ELPC asserts that HDI improperly takes credit for a 2% annual real rate of return on the decommissioning trust funds in its site-specific decommissioning cost estimate.⁴¹⁴ In Contention 3, ELPC claims that the license transfer application is deficient because HDI relies solely on the decommissioning trust fund to demonstrate its financial qualifications to hold the Palisades license. ELPC also requests that certain information redacted from the purchase and sale agreement between En-

⁴¹⁰ Applicants' Motion to Strike Late Responses (Apr. 16, 2021), at 1-2 (citing 10 C.F.R. § 2.1325(b)). Because the fifth day after April 5, 2021 — the date applicants filed their motion — fell on a Saturday, the applicants assert that the petitioners' responses were due no later than April 12, 2021. *Id.* at 1 (citing 10 C.F.R. § 2.306(a)).

⁴¹¹ Memorandum of Beyond Nuclear, Michigan Safe Energy Future and Don't Waste Michigan in Opposition to Applicant's Motion to Strike Late Responses (Apr. 16, 2021) (Joint Petitioners Response to Motion to Strike Late Responses); [Mr. Muhich's] Memorandum to Oppose Applicants' Motion to Strike Late Responses (filed Apr. 19, 2021).

⁴¹² Joint Petitioners Response to Motion to Strike Late Responses at 2-4. Section 2.323(c) provides that answers to motions may be filed within ten days after service of the motion.

⁴¹³ See ELPC Petition at 8-11.

⁴¹⁴ See *id.* at 11-14.

tergy and Holtec be made publicly available.⁴¹⁵ Finally, in Contention 4, ELPC moves to adopt and incorporate by reference the contentions proffered by Joint Petitioners.

We find that none of ELPC's contentions are admissible. Accordingly, we need not decide whether ELPC has established standing to participate in this proceeding.

1. ELPC's Contention 1

As explained above, the NRC's rules allow a licensee to withdraw funds from a decommissioning trust only for decommissioning activities, and HDI seeks an exemption from these rules that would allow it to use approximately \$166 million of the trust fund for spent fuel management costs and approximately \$35 million for site restoration costs.⁴¹⁶ Raising similar arguments to those in the Attorney General's Contention MI-2, ELPC challenges the sufficiency of HDI's financial qualifications, arguing that the application's decommissioning financial assurance showing is deficient under 10 C.F.R. §§ 50.54(bb) and 72.30(b) because it improperly relies on an assumption that the NRC will grant the requested exemption. ELPC states that while Holtec and HDI may be able to demonstrate after initiation of the decommissioning process that withdrawals from the trust fund for spent fuel management and site restoration costs are appropriate, "they should not be allowed to use that assumption as a basis for demonstrating that they can meet Commission financial assurance requirements now, when decommissioning has not even begun."⁴¹⁷ Further, ELPC argues, "[w]ithout the exemption, the Holtec Companies have not offered assurances that they can meet their financial responsibilities under the permit."⁴¹⁸

HDI's demonstration of financial qualifications for the license transfer relies on the requested exemption. As explained above, we find that arguments relating to the exemption request's bearing on Holtec's demonstration of qualifications to hold the Palisades and Big Rock Point licenses fall within the scope of this proceeding. Nevertheless, as we found with respect to the Attorney General's Contention MI-2, ELPC's argument that HDI cannot rely on a prospective exemption to demonstrate its financial qualifications for the license transfer does not raise a genuine dispute with the license transfer application or the exemption request. We have explained above our determination that "financial assurance

⁴¹⁵ See *id.* at 14-18.

⁴¹⁶ Exemption Request at 2, 13 tbl.1 (requesting exemptions from 10 C.F.R. §§ 50.82(a)(8)(i)(A), 50.75(h)(1)(iv)).

⁴¹⁷ ELPC Petition at 10.

⁴¹⁸ *Id.*

will be acceptable ‘if it is based on plausible assumptions and forecasts.’”⁴¹⁹ As ELPC observes in its petition, the staff has authorized exemptions under similar circumstances as presented here.⁴²⁰ Therefore, we do not find that HDI’s reliance on obtaining an exemption to support its financial assurance calculations is an implausible assumption.

ELPC asserts that Holtec, the parent company of HDI, has relied on similar exemptions in license transfer applications for other facilities but does not explain how this information is material to the present license transfer application or exemption request.⁴²¹ For example, ELPC does not describe how Holtec’s reliance on such exemptions in other license transfer proceedings renders implausible HDI’s expectation that an exemption will be granted in this case, or how Holtec’s ability to draw from the decommissioning trust fund for other authorized purposes in its other decommissioning projects calls into question the financial qualifications of the proposed transferees to perform licensed activities at Palisades or Big Rock Point. Nor are we persuaded by ELPC’s argument that the existence of two federal court cases regarding Holtec’s reliance on such exemptions calls into question the plausibility of the applicants’ reliance on obtaining the exemption in its financial qualifications demonstration.⁴²² The existence of an unresolved legal dispute is not predictive of a specific outcome and, moreover, the two petitions cited by ELPC in support of this premise have been withdrawn.⁴²³

We also find that ELPC does not raise a genuine dispute with HDI’s decommissioning cost estimate, which ELPC does not directly challenge. Rather, ELPC broadly asserts that the NRC should be wary of granting the requested exemption because unforeseen costs could occur early in the decommissioning

⁴¹⁹ *Indian Point*, CLI-21-1, 93 NRC at 16 (quoting *Seabrook*, CLI-99-6, 49 NRC at 222).

⁴²⁰ See ELPC Petition at 10; see also Exemption Request at 8 (referencing similar exemptions granted by the NRC); *Indian Point*, CLI-21-1, 93 NRC at 16-17 & n.82 (noting that the NRC has previously granted five similar exemption requests).

⁴²¹ See ELPC Petition at 10.

⁴²² See *id.* at 10 & n.40 (citing two petitions for review in the U.S. Court of Appeals for the District of Columbia Circuit concerning similar exemptions granted by the NRC in the *Indian Point* and *Pilgrim* license transfer proceedings).

⁴²³ See Applicants Reply to ELPC Petition at 8 n.29; Press Release, New York State Office of the Attorney General, Attorney General Games Applauds Finalization of Plan to Dismantle and Cleanup Indian Point (May 19, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-applauds-finalization-plan-dismantle-and-cleanup-indian>. We also decline ELPC’s suggestion that the existence of such disputes should cause the NRC to reconsider granting such exemption requests or that the NRC should impose requirements comparable to those included in a settlement agreement between the State of Massachusetts and Holtec in the *Pilgrim* proceeding. The financial qualifications of a prospective transferee is a fact-specific determination. The NRC considers each application for a license transfer and exemption request on a case-by-case basis and reviews such requests in accordance with applicable regulations and guidance.

process that could significantly impact the availability of funds for later decommissioning activities. For example, ELPC argues, if the estimated costs of license termination in 2024 were to double, and HDI was using the decommissioning trust fund to also pay for spent fuel management and site restoration costs, the trust fund balance would be depleted in 2040.⁴²⁴ However, ELPC does not provide support for its supposition that decommissioning costs could double in 2024 or any other year.⁴²⁵ Moreover, as discussed above, our regulatory framework requires a licensee in decommissioning to demonstrate adequate funding for decommissioning and spent fuel management activities. For example, HDI would be required to provide to the NRC an annual decommissioning financial assurance status report, which the NRC would use to monitor withdrawals from the trust fund.⁴²⁶ On a yearly basis, HDI would be required to update the decommissioning cost estimate in its annual status report to reflect the difference between the estimated and actual costs for activities performed using decommissioning trust funds.⁴²⁷ If unforeseen events threatened HDI's ability to complete decommissioning, HDI would be required in its annual status report to provide additional financial assurance to cover the remaining costs.⁴²⁸ In addition, HDI would be prohibited from making any trust fund withdrawals that would inhibit its ability to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to fully decommission the site.⁴²⁹

ELPC does not raise a supported, genuine material dispute with the applicants' reliance on a prospective exemption in its demonstration of financial qualifications. Therefore, we find this contention inadmissible.

2. *ELPC's Contention 2*

ELPC claims that the application and PSDAR are deficient because HDI improperly takes credit for a 2% annual real rate of return on the decommissioning trust funds.⁴³⁰ Our regulations allow a licensee that has prepaid decommissioning funds based on a site-specific decommissioning cost estimate to take credit for projected earnings on the prepaid account's funds up to a 2% annual real rate

⁴²⁴ ELPC Petition at 9-10.

⁴²⁵ See 10 C.F.R. § 2.309(f)(1)(v) (petitioner must provide a concise statement of facts or expert opinion which support petitioner's position). Moreover, HDI does not propose to withdraw funds for site restoration activities until 2035. See DCE at 46 tbl.5-1.

⁴²⁶ See 10 C.F.R. § 50.82(a)(8)(v).

⁴²⁷ See *id.* § 50.82(a)(8)(v)(B).

⁴²⁸ See *id.* § 50.82(a)(8)(vi).

⁴²⁹ See *id.* § 50.82(a)(8)(i)(C).

⁴³⁰ ELPC Petition at 11.

of return through the decommissioning period.⁴³¹ HDI's projection, based on a 2% annual real rate of return on the decommissioning trust fund, is that the fund will be sufficient to cover not only decommissioning but also spent fuel management and non-radiological site restoration expenses at Palisades.

While ELPC accepts that our regulations permit licensees using the prepayment method based on site-specific estimates to assume an annual real rate of return of up to 2% on the projected trust fund earnings, ELPC asserts that this regulation is inapplicable in this case because HDI "is not proposing the SAFSTOR method" of decommissioning.⁴³² In short, ELPC's position is that 10 C.F.R. § 50.75(e)(1)(i) is properly read as permitting only licensees proposing a SAFSTOR method of decommissioning to take advantage of the 2% annual real rate of return assumption in its cash flow analysis.⁴³³

On the basis of this interpretation, ELPC requests that we revisit our finding in *Indian Point* that section 50.75(e)(1) does not limit the use of the 2% real rate of return rate to licensees proposing a method, such as SAFSTOR, involving an extended storage period.⁴³⁴ In the *Indian Point* proceeding, the applicant provided a site-specific estimate of decommissioning costs based on a DECON model which included a period of deferred dismantlement, which we found sufficient to satisfy the requirement of section 50.75(e)(1) that the site-specific estimate be "based on a period of safe storage that is specifically described in the estimate."⁴³⁵

For the reasons described in detail in our evaluation of New York's similar concern in *Indian Point*, we decline to revisit our prior decision and adopt ELPC's interpretation of section 50.75(e)(1).⁴³⁶ Here, HDI's site-specific decommissioning cost estimate specifically identifies and accounts for a ten-year dormancy period, beginning in 2025 and ending in 2035, in which "the plant will be maintained in a compliant and safe state" and during which no decommissioning activities will take place.⁴³⁷ This comports with the plain language of section 50.75(e)(1)(i), which provides that the 2% real rate of return credit

⁴³¹ See 10 C.F.R. §§ 50.75(e)(1)(i), 50.82(a)(8)(vi).

⁴³² ELPC Petition at 12.

⁴³³ *Id.* at 14; The Environmental Law & Policy Center's Reply to Applicants' Answer (Mar. 29, 2021), at 9-10 (ELPC Reply).

⁴³⁴ See ELPC Petition at 12-14; *Indian Point*, CLI-21-1, 93 NRC at 12-14.

⁴³⁵ See *Indian Point*, CLI-21-1, 93 NRC at 14.

⁴³⁶ See *id.* at 12-14. ELPC argues that HDI's cash flow analysis "appears to design the rate of decommissioning around the amount of time necessary for trust fund earnings to supplement the beginning trust fund balance," which ELPC concludes "raises significant red flags" about our decision in *Indian Point*. ELPC Petition at 13. However, ELPC does not point to evidence that HDI violated any regulatory requirement in developing its projected decommissioning timeframe and cash flow analysis.

⁴³⁷ PSDAR at 12; DCE at 45 fig.5-1, 46 tbl.5-1.

is available for a site-specific estimate based on “a period of safe storage.” The regulation does not require any particular period of safe storage, only that the cost estimate be based on a period of safe storage specifically described in the decommissioning cost estimate.⁴³⁸ While HDI does not specifically identify its decommissioning approach as either the DECON or SAFSTOR method, ELPC has not pointed to any requirement that it do so.⁴³⁹

We find this contention inadmissible because it does not raise a genuine dispute with the application and, to the extent that it challenges our settled interpretation of section 50.75(e)(1), does not raise a concern within the scope of this proceeding.⁴⁴⁰

3. *ELPC’s Contention 3*

ELPC asserts that Holtec Palisades has not shown that it is financially qualified to hold the Palisades license because its showing of financial qualifications is based solely on the strength of Holtec’s financial projections for the funds in the decommissioning trust fund.⁴⁴¹ Referring to arguments raised in its Contentions 1 and 2, ELPC claims that Holtec Palisades cannot assume a 2% real rate of return on the projected trust fund earnings or rely on a prospective exemption allowing use of the trust funds for spent fuel management and site restoration.⁴⁴² Consequently, ELPC argues, the decommissioning trust fund alone is insufficient to show that Holtec currently possesses or has reasonable assurance of obtaining the funding necessary to carry out decommissioning at Palisades.

These arguments do not support admission of this contention. As we found above, ELPC has not identified sufficient grounds for calling into question HDI’s reliance on a prospective exemption as part of the proposed transferees’ financial qualifications showing or its assumption of a 2% real rate of return on the projected earnings in the decommissioning trust fund. ELPC has not identified an NRC requirement that prevents an applicant from relying on a single source of

⁴³⁸ *FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 79 (2021).

⁴³⁹ See ELPC Reply at 10; *Three Mile Island*, CLI-21-2, 93 NRC at 79. Although the License Renewal GEIS discusses decommissioning models that are generally acceptable to the NRC, the GEIS does not foreclose the proposed use of variants of these models, or different models entirely. *Indian Point*, CLI-21-1, 93 NRC at 14; see ELPC Reply at 9 (citing “Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Main Report,” NUREG-1437, vol. 1 at § 7.2.2 (May 1996), available at <https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/index.html>).

⁴⁴⁰ See 10 C.F.R. § 2.309(f)(1)(iii), (vi). ELPC did not seek a waiver to challenge sections 50.75(e)(1)(i) and 50.82(a)(8)(vi) in this proceeding. See *id.* § 2.335(a), (b).

⁴⁴¹ ELPC Petition at 14-18.

⁴⁴² *Id.* at 17.

funding in order to establish its financial qualifications to conduct the activities authorized by the license.⁴⁴³ Likewise, ELPC has not identified a requirement that prohibits the use of the decommissioning trust fund as that source of funding where, as here, power reactor operations will have permanently ceased prior to the proposed license transfer, and the activities authorized under the transferred license will be limited to those related to decommissioning the site and managing the spent fuel.

ELPC also argues that Holtec Palisades's reliance on the decommissioning trust fund alone — without parent company financing, revenue from electric generation, or ratepayer funding — is inadequate evidence of its financial qualifications because decommissioning financial assurance is “not meant to be the primary means of showing financial viability,” but rather, “a *second line* of defense, if the financial operations of the licensee are insufficient . . . to ensure that sufficient funds are available to carry out decommissioning.”⁴⁴⁴ The language ELPC relies upon is not relevant in this case, however, because it concerns “licensees with ongoing operations that might provide funding for, or divert funding from, decommissioning activities.”⁴⁴⁵ Here, the license transfer will not be effectuated until after the Palisades reactor has permanently ceased operations.⁴⁴⁶ As we explained recently in *Indian Point*, 10 C.F.R. § 50.75 specifies the methods acceptable to the NRC for providing financial assurance for decommissioning activities, and neither this nor any other of our regulations requires a licensee at the decommissioning stage to supplement its financial assurance method with a showing that its operations will generate additional funding.⁴⁴⁷

Next, ELPC argues that “[t]he structure of the license transfer creates a shield for the corporate parent, Holtec, to avoid financial risk and legal liability from the proposed decommissioning liability.”⁴⁴⁸ “Because the Commission cannot

⁴⁴³ See *Indian Point*, CLI-21-1, 93 NRC at 38, 44.

⁴⁴⁴ ELPC Petition at 16 (citing “Options to Evaluate Requests to Use Discounted Parent Company Guarantees to Assure Funding of Decommissioning Costs for Power Reactors,” Commission Paper SECY-11-0133 (Sept. 28, 2011), at 1 (ML111940011 (package)) (emphasis added by ELPC) (internal quotations omitted)). The quoted language actually appears on the first page of Enclosure 5 to SECY-11-0133, “Questions and Answers on Decommissioning Financial Assurance,” which itself quotes “Financial Assurance Requirements for Decommissioning Nuclear Power Reactors; Final Rule,” 63 Fed. Reg. 50,465, 50,474 (Sept. 22, 1998).

⁴⁴⁵ *Indian Point*, CLI-21-1, 93 NRC at 39.

⁴⁴⁶ Application Cover Letter at 2; Applicants Answer to ELPC at 11-12.

⁴⁴⁷ See *Indian Point*, CLI-21-1, 93 NRC at 39; 10 C.F.R. § 50.75; see also *Three Mile Island*, CLI-21-2, 93 NRC at 87 (petitioner did not identify a legal requirement that the license holder of a decommissioning reactor “have some other, ongoing business concern that would generate income independent of the decommissioning trust fund”).

⁴⁴⁸ ELPC Petition at 16.

shift unmet decommissioning liabilities to a corporate parent,” ELPC asserts, “the decommissioning fund must cover all costs related to the Palisades Nuclear Plant, predicted or unforeseen.”⁴⁴⁹ This argument does not raise a genuine dispute with the application. First, in recognition of the limitations in the NRC’s authority to compel a parent company to pay for the decommissioning costs of its subsidiary, the NRC requires that the proposed licensee itself provide reasonable assurance that funds will be available to decommission the facility using a method acceptable to the NRC.⁴⁵⁰ The application explains that Holtec Palisades, as the proposed licensed owner of the Palisades site, would be responsible for funding the costs of decommissioning, spent fuel management, and site restoration, and that HDI, as the proposed licensed operator, would base its financial qualifications on that of Holtec Palisades.⁴⁵¹ ELPC does not identify how the corporate structure of the proposed transferees fails to meet NRC requirements. While ELPC claims that the applicants have not offered sufficient financial data on Holtec Palisades to enable an assessment of whether Holtec Palisades would be able to address cost overruns or meet its obligations toward HDI, ELPC has not explained how the information presented in the application is insufficient for this purpose.

Second, the application acknowledges that, because Holtec Palisades expects to rely on the decommissioning trust fund to cover the costs of all decommissioning and spent fuel management activities at Palisades, the funds in the trust account must be sufficient to provide for those costs. While ELPC asserts that the trust fund must cover all “predicted or unforeseen” costs, ELPC does not explain in what regard HDI’s site-specific decommissioning cost estimate fails to account for either predicted or unforeseen costs.⁴⁵² ELPC broadly asserts that Holtec has understated the costs of decommissioning, pointing to “other parties’ contentions” as the sole support for this claim.⁴⁵³ However, ELPC does not specify the costs that have been understated or identify the specific expert or evidentiary support presented by other petitioners that supports this claim. Moreover, our rules and practice make clear that we will not accept the wholesale incorporation by reference of large documents as the basis for a contention.⁴⁵⁴ In

⁴⁴⁹ *Id.*

⁴⁵⁰ See 10 C.F.R. § 50.75(a), (e)(1); *id.* § 72.30(e).

⁴⁵¹ Application at 4, 7, 19.

⁴⁵² See ELPC Petition at 16.

⁴⁵³ *Id.* at 17.

⁴⁵⁴ See 10 C.F.R. § 2.309(f)(1)(v) (petitioner must provide a concise statement of the facts or expert opinion supporting its argument along with references to the specific sources and documents on which it relies); see, e.g., *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989) (“[W]holesale incorporation by reference does not serve the

(Continued)

addition, we will not credit as evidentiary support a petitioner's reliance on the arguments and evidence of another party without first finding that the petitioner has submitted an admissible contention of its own.⁴⁵⁵ Therefore, we do not find that ELPC's broad reliance on the substance of other petitioners' contentions is sufficient to support its claim. For a similar reason, we do not find that ELPC's argument that the existence of contentions regarding the adequacy of Holtec's site characterization and contingency allowance in the *Indian Point* proceeding supports admission of this contention.⁴⁵⁶

ELPC also argues that it cannot conduct any further analysis of Holtec's financial qualifications because Holtec has not provided a disclosure schedule related to the purchase and sale agreement between Entergy and Holtec. ELPC also requests that certain information redacted from the purchase and sale agreement be made publicly available.⁴⁵⁷ However, ELPC has not explained how the disclosure agreement it seeks is material to the review of the applicants' financial qualifications. Further, ELPC could have used the process provided in the hearing opportunity notice to request access to the redacted information it seeks, but it did not do so.⁴⁵⁸

Because ELPC has not identified any requirement that prohibits the use of the decommissioning trust fund as the sole source of decommissioning funding or raised a supported, material dispute with the application's reliance on the decommissioning trust fund alone to demonstrate the proposed transferees' financial qualifications, we do not find this contention admissible. Nevertheless, we note that we are admitting for hearing portions of the Attorney General's Contention MI-1 that raise questions about the proposed transferees' contingency allowance and reliance on DOE recoveries as a source of additional funding if needed for decommissioning.⁴⁵⁹

purposes of a pleading. . . . The Commission expects parties to bear their burden and to clearly identify the matters on which they intended to rely with reference to a specific point.”)

⁴⁵⁵ See *Pilgrim*, CLI-20-12, 92 NRC at 366.

⁴⁵⁶ See ELPC Petition at 17-18 (citing petitions to intervene filed by the State of New York and the Town of Cortlandt, Village of Buchanan, and Hendrick Hudson School District in the *Indian Point* proceeding). The contentions to which ELPC alludes were not admitted in that proceeding. See *Indian Point*, CLI-21-1, 93 NRC at 18-23.

⁴⁵⁷ ELPC Petition at 18.

⁴⁵⁸ See Hearing Opportunity Notice, 86 Fed. Reg. at 8228.

⁴⁵⁹ Joint Petitioners and ELPC each move to adopt and incorporate by reference all contentions filed by the other petitioner, claiming that both petitioners “share many of the same issues and concerns about the proposed license transfers under consideration in this proceeding.” Joint Petitioners Petition at 52; ELPC Petition at 18-19. However, in *Pilgrim*, we held that in order for a petitioner to adopt the contention, argument, or evidentiary support of another petitioner, the petitioner must first be admitted to the proceeding as a party by demonstrating standing and submitting at least one

(Continued)

F. Mr. Mark Muhich's Petition to Intervene and Request for a Hearing

Mr. Muhich filed a petition to intervene and request for hearing along with several claims. While Mr. Muhich did not follow the NRC's electronic filing regulations and originally filed his petition on www.regulations.gov, the NRC placed his submittal on the adjudicatory docket of this proceeding and we review his petition below.⁴⁶⁰

Mr. Muhich's claims do not address any specific part of the application or the contention admissibility standards so we find that none meet our contention admissibility requirements. For instance, Mr. Muhich argues that the NRC must prepare a supplemental environmental impact statement prior to a decision on the license transfer, and he raises numerous environmental claims under NEPA. But he does not acknowledge or address the NRC's categorical exclusion regulation for license transfers, which the application notes and relies on. His NEPA arguments therefore fall beyond the scope of this proceeding. Mr. Muhich also claims that Holtec and its associates have "involvement in questionable or even criminal business practices."⁴⁶¹ He does not link these claims to this license transfer action.⁴⁶² Mr. Muhich also argues that under 10 C.F.R. § 72.30(b)(2)(ii), HDI must submit "[c]ontingency [f]actor calculations."⁴⁶³ This regulation requires an adequate contingency factor to be applied to the estimated ISFSI decommissioning cost. HDI has allotted a 25% contingency allowance to the ISFSI decommissioning costs. Mr. Muhich does not address the application's discussion of contingency, and therefore does not raise a genuine dispute with the application about the contingency allowance.

Mr. Muhich's petition additionally raises numerous other claims and requests, which we do not address individually here, but we note that none address the application and its discussion of financial qualifications. Because none raise a

admissible contention of its own. CLI-20-12, 92 NRC at 365-66. Because we find that neither Joint Petitioners nor ELPC have submitted an admissible contention, we deny each petitioner's request to incorporate by reference and adopt the other's contentions. Finally, ELPC characterized its motion as Contention 4 of its petition to intervene. *See* ELPC Petition at 18-19. Because Contention 4 does not otherwise identify a supported, material dispute with the license transfer application, we find it inadmissible.

⁴⁶⁰ *See* Order of the Secretary (Mar. 29, 2021) (unpublished). Mr. Muhich also did not demonstrate his standing to intervene. He does not state how close he resides to Palisades; how frequently he may visit the area; how the harms he fears will occur due to the proposed transfer; and how he might suffer harm from the proposed action. In short, he did not describe how he would suffer concrete and particularized injury that is fairly traceable to, and redressable by, this license transfer action.

⁴⁶¹ *See* Muhich Petition. at 5-6 (unnumbered).

⁴⁶² *See, e.g., Indian Point*, CLI-21-1, 93 NRC at 50-53; *Pilgrim*, CLI-20-12, 92 NRC at 394-97.

⁴⁶³ *See* Muhich Petition at 5.

supported, genuine material dispute with the application on a matter material to the license transfer decision, the petition does not present an admissible contention for hearing.⁴⁶⁴

G. Procedural Issues Associated with Subpart M Proceeding

We designate the Chief Administrative Judge to appoint, within the next five business days, a single administrative judge to serve as the Presiding Officer for this proceeding, for the purposes of compiling the hearing record, ruling on motions related to developing the factual record, presiding at any oral hearing, and certifying the completed hearing record to us.⁴⁶⁵ Should questions on the scope of the delegated authorities or other matter arise, the Presiding Officer may certify questions or refer rulings to us.⁴⁶⁶ The jurisdiction of the Presiding Officer will end on the certification of the hearing record to us. Thereafter, we will issue a decision on the certified record.⁴⁶⁷

Under our rules, the staff is not required to participate as a party in a license transfer adjudication. Nonetheless, the staff will offer into evidence its safety evaluation of the license transfer application and will provide one or more sponsoring witnesses.⁴⁶⁸

Section 2.1308 specifies an oral hearing for license transfer proceedings, unless, within fifteen days from the order granting the hearing, the parties unanimously move for a hearing consisting of written comments.⁴⁶⁹ Once the nature of the hearing is established, Subpart M and our Model Milestones provide a default schedule for the remainder of the proceeding, subject to modification

⁴⁶⁴ See also Rebuttal to Holtec et al (Applicants) Answer to Mark Muhich's Request for Public Hearing (Apr. 26, 2021). After the NRC placed Mr. Muhich's petition on the adjudicatory docket and granted Mr. Muhich access to electronic hearing docket, Mr. Muhich filed numerous articles and other items on the docket. He did not address the NRC regulations under 10 C.F.R. § 2.309(c) for submissions filed after the petition deadline. We consider all these submissions improperly filed. Nevertheless, these materials do not give rise to an admissible contention; Mr. Muhich did not address the contention admissibility standards. See, e.g., *Pilgrim Nuclear Waste to be Moved to Higher Ground*, Cape Cod Times (ML21090A341); Figure 2, from "Increases in Great Lake Winds and Extreme Events Facilitate Interbasin Coupling and Reduce Water Quality in Lake Erie" (ML21090A092); Settlement Agreement Between Commonwealth of Massachusetts and Holtec (ML21096A083); Memorandum of Understanding (Re: Proposed Sale of Vermont Yankee) (ML21098A256).

⁴⁶⁵ See 10 C.F.R. §§ 2.1319(a) (the Commission may designate "one or more Commissioners, or any other person permitted by law" to preside at a hearing); 2.1320 (responsibilities and authority of Presiding Officer in the oral hearing).

⁴⁶⁶ See *id.* § 2.1320(b)(1).

⁴⁶⁷ See *id.* § 2.1320(b)(3).

⁴⁶⁸ See *id.* § 2.1316(b).

⁴⁶⁹ See *id.* § 2.1308.

by the Presiding Officer; we encourage the Presiding Officer to adhere to these milestones to the extent practicable.⁴⁷⁰ Pursuant to the Model Milestones, we direct the Presiding Officer to certify the hearing record to us within twenty-five days of the conclusion of the hearing. If circumstances warrant expanding this period, we direct the Presiding Officer to notify us promptly of the reasons for the delay and to provide us with the Presiding Officer's anticipated new schedule.

IV. CONCLUSION

For the reasons outlined, we

- (1) *grant* the Michigan Attorney General's request for hearing and petition to intervene;
- (2) *admit for hearing* the specified portions of Michigan Attorney General's Contention MI-1.

Scope of Hearing

The hearing will be limited to the following four challenges to the application, as summarized below and as addressed in more detail in the applicable sections of this decision:

- (a) The projected length of time for transfer of all spent fuel off of the Palisades site.⁴⁷¹

The applicants should address how they determined that the estimated 11-year spent fuel transfer period constitutes a plausible timeframe for removal of all Palisades spent fuel. In their description, the applicants should clarify the assumptions on which they relied, including what fuel acceptance priority and fuel allocation or transfer rate they assumed for their schedule.

In assessing financial qualifications for a license transfer we accept plausible forecasts. The parties' arguments therefore should address whether the estimated 11-year period reflects a plausible timeframe to complete the fuel transfer.

- (b) Reasonableness of the site-specific decommissioning cost estimate falling below the minimum formula amount:

⁴⁷⁰ *Id.* pt. 2, app. B, pt. III (Model Milestones for a Hearing on a Transfer of a License Conducted Under 10 C.F.R. Part 2, Subpart M).

⁴⁷¹ *See supra* Section III.C.1.b.(2).

The applicants should provide a detailed explanation of the primary reasons that the cost estimate falls significantly below the minimum formula amount. We also direct the parties and invite the staff to address whether the minimum formula regulation in section 50.75(b) applies to this application.

(c) Adequacy of contingency funding:⁴⁷²

The applicants should explain how they calculated and derived the 12% level applied for contingency and concluded that this amount for contingency is reasonably adequate for Palisades. The parties should address relevant industry norms, practices, and standards for the contingency amount added to reactor decommissioning cost estimates at a similar project stage.

The parties should address whether the 12% level of funding added reflects a plausible amount of funding for covering the contingency costs reasonably expected to be incurred at Palisades.

(d) Ability to provide additional financial assurance as a means to adjust funding:⁴⁷³

The applicants should describe how they will ensure that sufficient additional funding will be available as a means to adjust funding if needed. As part of their description, the applicants should address the issues described at the end of Section III.C.1.h. The parties additionally should address whether license conditions or other forms of assurances are warranted.

- (3) *deny* Joint Petitioners' request for hearing and petition to intervene;
- (4) *deny* ELPC's request for hearing and petition to intervene;
- (5) *deny* Mr. Mark Muhich's request for hearing and petition to intervene;
- (6) *dismiss* as moot the Applicants' motion to strike portions of Joint Petitioners' reply;
- (7) *dismiss* as moot the Applicants' motion to strike Joint Petitioners' and Mr. Muhich's answers to the Applicants' motion to strike;
- (8) *direct* the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel to

⁴⁷² See *supra* Section III.C.1.d.

⁴⁷³ See *supra* Section III.C.1.h.

Appoint a single administrative judge within the next five (5) business days to serve as the Presiding Officer to take all necessary actions to compile, complete, and certify the hearing record, including presiding over any oral hearing.

- (9) *direct* each party to state, within the next fifteen (15) days, whether it prefers an oral hearing or a hearing consisting of written comments.
- (10) *direct* the Presiding Officer to certify the hearing record to us within twenty-five (25) days of the conclusion of a hearing.

IT IS SO ORDERED.

For the Commission

Brooke P. Clark
Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of July 2022.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Christopher T. Hanson, Chairman
Jeff Baran
David A. Wright

In the Matter of

Docket Nos. 50-295-LT, 50-304-LT, 72-1037-LT,
50-320-LT,
50-409-LT, 72-046-LT,
50-305-LT, 72-64-LT,
030-39013-LT,
11005620-LT, 11005897-LT

ENERGYSOLUTIONS, LLC
(Zion Nuclear Power Station,
Units 1 and 2; Three Mile Island
Nuclear Station, Unit 2;
La Crosse Boiling Water Reactor;
Kewaunee Power Station;
Radioactive Materials License;
Export Licenses)

July 15, 2022

In this license transfer proceeding, the Commission denies a petition for a hearing and request for intervention because it did not include an admissible contention.

LICENSE TRANSFERS

A license granted under the Atomic Energy Act may only be transferred if the NRC consents in writing. The NRC will approve a license transfer application if it determines that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable law, regulations, and Commission orders.

FINANCIAL QUALIFICATIONS

A license transfer applicant must provide information sufficient to demonstrate financial qualifications to carry out the activities for which the license is sought. The applicant must also provide reasonable assurance that adequate funds will be available to decommission the facility, including any Independent Spent Fuel Storage Installation.

LICENSE TRANSFERS

To be admissible for hearing, a contention cannot merely question whether cost estimates can be further refined to be more accurate but must raise a material question about the overall financial qualifications of the proposed transferee.

LICENSE TRANSFERS

In license transfer adjudications, the NRC has long found an applicant's demonstration of financial assurance to be acceptable if it is based on plausible assumptions and forecasts.

CONTENTIONS, ADMISSIBILITY

NRC regulations in 10 C.F.R. § 2.309(f) specify the requirements for an admissible contention. The contention requirements help ensure that the NRC institutes adjudicatory hearings only for issues that are supported by facts or expert opinion and that identify a dispute with the application on a question material to the NRC's decision.

CONTENTIONS, ADMISSIBILITY

Our regulations on admissible contentions require a petitioner to include references to specific portions of the application that the petitioner disputes. The regulations also allow for contentions based on omitted information that was required to have been included in the application. If a petitioner believes that an application fails to contain information on a relevant matter as required by law, the petitioner must identify each failure, along with the supporting reasons for the petitioner's belief.

MEMORANDUM AND ORDER

This license transfer proceeding concerns an application filed by *EnergySolutions, LLC* (*EnergySolutions* or the Applicant) requesting the NRC to consent to an indirect transfer of control of the following licenses: (1) the facility operating licenses for Zion Nuclear Power Station (Zion), Units 1 and 2 and the general license for the Zion independent spent fuel storage installation (ISFSI); (2) the possession only license for Three Mile Island Nuclear Station, Unit 2 (TMI-2); (3) the possession only license for La Crosse Boiling Water Reactor (LA Crosse BWR) and the general license for the La Crosse BWR ISFSI; (4) the renewed facility operating license for Kewaunee Power Station (KPS) and the general license for the KPS ISFSI; (5) NRC radioactive materials license no. 39-35044-01; and (6) export licenses XW010 and XW018.¹

The NRC staff approved the proposed indirect transfer by an order dated May 3, 2022, and the transaction closed on May 16, 2022.² NRC regulations anticipate that the Staff may complete its review of a license transfer application before an adjudicatory proceeding has concluded.³ This is because the Staff's review of the application is considered separate from the Commission's adju-

¹ See Zion Nuclear Power Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 2; La Crosse Boiling Water Reactor; *EnergySolutions, LLC* Radioactive Materials License; *EnergySolutions, LLC* Export Licenses; Consideration of Approval of Indirect Transfer of Licenses, 87 Fed. Reg. 3372 (Jan. 21, 2022) (Hearing Opportunity Notice); Application for Order Approving Indirect Transfer of Control of: Licenses (Application), attached (Attach. 1) to Letter from Kenneth W. Robuck, President and CEO, *EnergySolutions, LLC*, to NRC Document Control Desk (Dec. 7, 2021) (Application Cover Letter). The cover letter, application, and associated enclosures are available together at ADAMS accession no. ML21344A114 (package).

The Applicant supplemented the application to clarify information regarding the Zion, La Crosse BWR, and KPS facilities. See Letter from Russell G. Workman, General Counsel and Corporate Secretary, *EnergySolutions*, to NRC Document Control Desk (Mar. 30, 2022) (ML22091A275) (March 30, 2022 Letter); Letter from Russell G. Workman, General Counsel and Corporate Secretary, *EnergySolutions*, to NRC Document Control Desk (Apr. 18, 2022) (ML22110A030); see also Zion Nuclear Power Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 2; La Crosse Boiling Water Reactor; Kewaunee Power Station; *EnergySolutions, LLC* Radioactive Materials License; *EnergySolutions, LLC* Export Licenses; Consideration of Approval of Indirect Transfer of Licenses, 87 Fed. Reg. 20,889 (Apr. 8, 2022). Regarding KPS, the Applicant clarified that there was a separate pending indirect transfer of control of the licenses for KPS and the KPS ISFSI from Dominion Energy Kewaunee's (DEK) parent entity to *EnergySolutions*; after closing, DEK would become a wholly owned subsidiary of *EnergySolutions* and would change its name to Kewaunee Solutions, Inc. See March 30, 2022 Letter at 1-3.

² See Order Approving Indirect Transfers of Licenses (May 3, 2022), at 6 (ML22076A011); Notification of Closing of Transaction Related to Indirect Transfer of Control (May 31, 2022) (ML22151A292).

³ See 10 C.F.R. § 2.1316(a) (notwithstanding a pending adjudicatory proceeding, the Staff is expected consistent with its findings "to promptly issue approval or denial" of the application).

dicatory review. NRC agency approval of the application therefore is not final unless and until the Commission concludes the adjudicatory proceeding in the Applicant's favor.⁴ Although applicants may act on a Staff order approving a license transfer application, we long have stated that they do so at their own risk in the event that the Commission later rules in favor of intervenors.⁵ The Staff's order approving the indirect transfer therefore explicitly remains subject to our authority to rescind, modify, or condition the transfer.

Mr. Eric Joseph Epstein filed a request for hearing and petition to intervene.⁶ For the reasons outlined below, Mr. Epstein did not submit an admissible contention for hearing. We therefore deny his petition and terminate the proceeding.

I. BACKGROUND

A. The Proposed Indirect License Transfer

Applicant *EnergySolutions* filed the license transfer application on behalf of itself and its wholly owned subsidiaries that hold the NRC licenses for Zion Units 1 and 2, TMI-2, and La Crosse BWR.⁷ The Zion Units 1 and 2, TMI-2, La Crosse BWR, and KPS power reactor units have all permanently ceased operations, and the application describes the decommissioning at the Zion and La Crosse facilities as substantially completed. Applicant *EnergySolutions* holds radioactive materials license no. 39-35044-01 for use at temporary job sites to support a variety of possible work scope activities.⁸ The Applicant's wholly owned subsidiary *EnergySolutions Services, Inc.* holds NRC export licenses XW010 and XW018 for return of radioactive waste to Canada and Germany, respectively.⁹

As described in the application, the proposed indirect transfer of control of the above-referenced licenses would result from a proposed stock purchase

⁴ *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-19-11, 90 NRC 258, 262 (2019).

⁵ *See id.* at 262-63.

⁶ *See* Eric Joseph Epstein's, Pro Se, Request for a Public Hearing and Petition to Intervene (Feb. 10, 2022) (Petition).

⁷ The application identifies *ZionSolutions, LLC*, *TMI-2 Solutions, LLC*, and *LaCrosseSolutions, LLC*, as the Applicant's wholly owned subsidiaries that, on the date of the application, held the NRC licenses for Zion Units 1 and 2, TMI-2, and La Crosse BWR, respectively. *See* Application at 1-3. The Applicant refers to these subsidiaries as the "Licensed Subsidiaries or Licensees." *See* Application Cover Letter at 1; Application at 1; *see also* Application at 2 n.3; March 30, 2022 Letter at 1-2 (noting pending transfer of the KPS licenses to *EnergySolutions*, after which Kewaunee Solutions would be the licensed owner and operator of KPS).

⁸ *See* Application at 2.

⁹ *Id.*

transaction involving the current principal shareholders of the Applicant's parent company, Rockwell Holdco, Inc. (Rockwell) and other investors.¹⁰ The application states that the transaction will not affect the Applicant's operations or the operations of any of the Applicant's subsidiaries that hold the respective licenses for Zion Units 1 and 2, TMI-2, and La Cross BWR.¹¹

EnergySolutions, the applicant, is a wholly owned subsidiary of EnergySolutions Finance Holdings, LLC, 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. The proposed stock purchase transaction would result in a new majority ownership of Rockwell. Currently, Rockwell is approximately (1) 58% owned primarily by several affiliated passive investment funds controlled by Energy Capital Partners GP II, LP (ECP); (2) 40% owned by passive investment funds controlled by TriArtisan ES Partners, LLC; and (3) 2.2% owned by the Spyder Retirement Trust.¹²

The application describes TriArtisan ES Partners, LLC as controlled by TriArtisan ES MM LLC, which in turn is managed by TriArtisan Capital Advisors LLC (collectively, TriArtisan Entities).¹³ All of the TriArtisan Entities are limited liability companies organized under the laws of the state of Delaware and all are controlled by two United States citizens who are the managing directors of TriArtisan Capital Advisors LLC.¹⁴ Through the proposed stock purchase

¹⁰The application encloses the Stock Purchase Agreement, dated November 16, 2021. Enclosure 1A is redacted for confidential commercial proprietary information. Enclosure 1B, without redactions, is withheld from the publicly available version of the license transfer application. See Application Cover Letter at 2. The hearing opportunity notice provided guidance on how to obtain the withheld sensitive unclassified non-safeguards information (SUNSI). See Hearing Opportunity Notice, 67 Fed. Reg. at 3375.

Mr. Epstein states that he executed a SUNSI agreement with EnergySolutions. See Petition at 5. The Applicant states that it and Mr. Epstein jointly filed with the Commission a motion for entry of a protective order to govern the disclosure of, access to, and use of SUNSI, and that the "Office of the Secretary approved this motion." See Applicant's Answer Opposing Request for Public Hearing and Petition for Leave to Intervene Filed by Eric Joseph Epstein (Mar. 7, 2022), at 5. The Applicant goes on to state that Mr. Epstein did not execute "the Non-Disclosure Declaration associated with the protective order." *Id.* We note, however, that the adjudicatory record does not contain an order issued by the Secretary approving a motion for entry of a protective order; the motion apparently was not submitted through the NRC's E-Filing system as required under 10 C.F.R. § 2.302. Nevertheless, Mr. Epstein does not claim that he was unable to obtain SUNSI information necessary to formulate his contentions.

¹¹See Application Cover Letter at 1; Application at 4; see also March 30, 2022 Letter at 1-2 (stating that if EnergySolutions acquires the holder of the KPS license, the EnergySolutions indirect transfer would have no material impact on the technical and financial qualifications of Kewaunee Solutions).

¹²See Application at 2-3.

¹³See *id.* at 3.

¹⁴*Id.*

transaction, a passive investment fund established by the TriArtisan Entities and known as TriArtisan ES Partners II LP, a Delaware limited partnership, would acquire most of the majority shareholder interest held by passive investment funds controlled by ECP as well as most of the TriArtisan Entities' shares.¹⁵

Following the transaction, TriArtisan ES Partners II LP and the TriArtisan Entities (collectively, TriArtisan) would own about 88% of the shareholder interest in and would have governance control over Rockwell.¹⁶ ECP-related entities would retain preferred interests of about 1% of the total Rockwell equity. Other entities also would hold minority ownership interests in Rockwell, including (1) the Spyder Retirement Trust, which would hold about 2.1% of the total Rockwell equity; (2) passive investment funds controlled by Peterson Partners, LLC, which would acquire common interests of about 7.0% of the total Rockwell equity; and (3) the executive management of Rockwell and EnergySolutions, which collectively could hold common interests of approximately 1.7% of the total Rockwell equity.¹⁷ The application provides further details on the proposed changes in the ownership structure and includes charts depicting the organizational structure both before and after the proposed transaction.¹⁸

In sum, the application states that the proposed transaction involves an "upstream change in ownership" that would indirectly transfer control of the licenses "from ECP to TriArtisan."¹⁹ No license amendment has been requested because the indirect transfer would not change any of the respective facilities' licensed owners or licensed operators (or their names). Applicant EnergySolutions also states that the indirect transfer would have no effect on its operations or on the organization or operations of its subsidiaries ZionSolutions LLC, TMI-2 Solutions, LLC, and LaCrosseSolutions, LLC, which are the respective NRC licensees for Zion Units 1 and 2, TMI-2, and La Crosse BWR.²⁰ The application further states that the proposed indirect transfer would not have any material impact on the activities conducted under these licenses or on the respective licensees' "existing technical and financial qualifications."²¹

Regarding technical qualifications, the application states that there are no planned changes in the technical organizations, processes, procedures, environmental protection programs, quality assurance programs, or other operations of the respective facilities' licensees.²² Nor does the proposed indirect transfer

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See id.* at 3-4.

¹⁸ *See id.* at 2-4; *id.*, Encl. 2 (Simplified Pre-Closing and Post-Closing Organizational Charts).

¹⁹ *See* Application at 9.

²⁰ *See id.* at 1-2, 4; *see also id.* at 7-9.

²¹ *Id.* at 4.

²² *Id.* at 7.

involve any requested changes to technical specifications or license conditions. The application states that, accordingly, the respective facilities' licensees would "remain responsible for carrying out their responsibilities for licensed activities under the respective Licenses" and would "remain technically qualified."²³

The indirect transfer also does not propose changes to the "existing financial qualification arrangements . . . including for decommissioning funding assurance and spent nuclear fuel management."²⁴ The application states that the financial qualifications and decommissioning funding assurance arrangements of the facilities' licensees are 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 approvals."²⁵ The application further states that the proposed indirect transfer will not change the licensees' current methods of providing financial assurance and decommissioning funding and will not change any regulatory commitments or license conditions, and therefore "will not affect the existing financial assurance of the Licensed Subsidiaries," who "will remain financially qualified to continue decommissioning and spent fuel management activities under the respective Licenses."²⁶

B. Transfer of NRC Licenses: Financial Qualifications and Financial Assurance

A license granted under the Atomic Energy Act of 1954, as amended (AEA), may only be transferred if the NRC consents in writing.²⁷ The NRC will approve a license transfer application if it determines that the proposed transferee is qualified to hold the license and the transfer of the license is otherwise consistent with applicable law, regulations, and orders.²⁸ Review of a license transfer application is limited to specific matters, including the technical and financial qualifications of the proposed transferee(s).²⁹ The review also ensures that, pursuant to the AEA, no license for a production and utilization facility is issued

²³ *Id.*

²⁴ *See id.*

²⁵ *See id.*

²⁶ *See id.* at 7-8; *see also* March 30, 2022 Letter at 2 (stating that the indirect license transfer would have no material impact on the technical or financial qualifications of Kewaunee Solutions).

²⁷ *See* AEA § 184, 42 U.S.C. § 2234 (providing that no license granted under the AEA "shall be transferred . . . directly or indirectly, through transfer of control of any license to any person, unless the Commission . . . shall give its consent in writing"); 10 C.F.R. §§ 50.80(a), 72.50(a) (implementing the AEA provision as to power reactor and ISFSI licenses, respectively).

²⁸ 10 C.F.R. § 50.80(c).

²⁹ *See id.* § 50.80(b)(1)(i) (referencing *id.* §§ 50.33, 50.34).

to “an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.”³⁰

A license transfer application must provide information sufficient to demonstrate to the Commission the applicant’s financial qualification to carry out the activities for which the license is sought and must provide “reasonable assurance . . . that funds will be available to decommission the facility,” including any ISFSI facility.³¹ NRC regulations outline acceptable methods of demonstrating financial assurance of decommissioning funding.³² A licensee that has set aside prepaid decommissioning funds based on a site-specific decommissioning cost estimate may take credit for projected earnings on the account’s funds, up to a 2% annual real rate of return through the projected decommissioning period, including periods of safe storage, final dismantlement, and license termination.³³

The license transfer review helps to ensure that licenses are not transferred to entities that lack the necessary technical and financial means to conduct licensed activities and to complete decommissioning. But the review conducted for license transfer is not a final look at the funding adequacy. For power reactor licensees that have submitted a site-specific decommissioning cost estimate, the NRC will annually verify that licensees are maintaining adequate funding both to complete decommissioning and to cover spent fuel management costs.³⁴ NRC oversight of funding adequacy continues until all spent fuel has been removed from a site and until any “residual radioactivity has been reduced to a level that permits termination of the license.”³⁵ In short, while the NRC conducts a threshold financial review of license transfer applicants, the agency will continue to verify the adequacy of the funding to complete the applicable licensed activities.

³⁰ See AEA § 103d, 42 U.S.C § 2133(d); see also 10 C.F.R. § 50.38 (implementing AEA prohibition).

³¹ See 10 C.F.R. §§ 50.33(f), (k)(1); 50.80(b)(1)(i); 72.30(b). Except for an electric utility, a license transfer applicant for an operating power reactor must demonstrate that it possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated operating costs for the period of the license. See *id.* § 50.33(f)(2). This demonstration is unnecessary for this application because Zion Units 1 and 2, TMI-2, La Crosse BWR, and Kewaunee Power Station have all permanently ceased reactor operations.

³² See 10 C.F.R. § 50.75(e).

³³ See *id.* § 50.75(e)(1)(i); see also *id.* § 50.82(a)(8)(vi).

³⁴ See, e.g., *id.* § 50.82(a)(8)(v), (vii) (requiring licensees to provide detailed status reports on decommissioning financial assurance and spent fuel management funding, respectfully).

³⁵ See *id.* § 50.82(a)(8)(v). In addition, within two years of permanently ceasing operations, licensees must provide the NRC, for the agency’s review and preliminary approval, the licensee’s program for spent fuel management, which must describe how the licensee intends to fund management of all irradiated fuel at the reactor site from the time that reactor operations cease until all fuel has been transferred to DOE. See *id.* § 50.54(bb).

The license transfer review assesses whether proposed transferees have the overall technical and financial qualifications to hold the subject licenses, including whether there is “reasonable assurance” that adequate decommissioning funding will be available. To be admissible, a contention cannot just question whether cost estimates can be further refined to be more accurate but must raise a material question about the overall financial qualification of the proposed transferee.

In license transfer adjudications, we long have found financial assurance to be acceptable if it is based on plausible assumptions and forecasts, even if “the possibility is not insignificant that things will turn out less favorably than expected.”³⁶ We also have noted that the potential safety impacts, if any, from a shortfall in funding would not be as “direct or immediate as the safety impacts of significant technical deficiencies.”³⁷ We will admit for hearing only those “adequately supported assertions that a transfer applicant’s financial assumptions and forecasts are implausible or unrealistic in a way that is material to our assessment of reasonable assurance.”³⁸

II. DISCUSSION

A. Intervention Requirements

To intervene as a party in an NRC licensing proceeding, a petitioner must show standing to intervene and propose at least one admissible contention for hearing.³⁹ For standing, the request for hearing must address (1) the nature of the petitioner’s right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding; and (3) the possible effect that any decision or order issued in the proceeding may have on the petitioner’s interest.⁴⁰ In assessing whether a petitioner has shown standing to intervene, the Commission has long looked for guidance to judicial concepts of standing, which require a party to claim a concrete and particularized injury (actual or threatened) that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision in the proceeding.⁴¹

³⁶ *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 368 (2020) (quoting *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 222 (1999)).

³⁷ *Id.*, CLI-20-12, 92 NRC at 368 (quoting *Seabrook*, CLI-99-6, 49 NRC at 221).

³⁸ *See id.*

³⁹ *See* 10 C.F.R. § 2.309(a), (d), (f).

⁴⁰ *See id.* § 2.309(d)(1)(ii)-(iv); *see also* Hearing Opportunity Notice, 87 Fed. Reg. at 3374.

⁴¹ *See, e.g., USEC, Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311 (2005).

NRC regulations in 10 C.F.R. § 2.309(f) specify the requirements for an admissible contention. For each contention, a petitioner must explain the contention's basis and provide supporting facts or expert opinion on which the petitioner intends to rely in litigating the contention. To be admissible, a contention must fall within the scope of the proceeding and be material to the findings that the NRC must make for the proposed licensing action. The petitioner must identify the specific portions of the application that the petitioner disputes together with the supporting reasons for each dispute; or, if a petitioner claims that an application fails altogether to contain information required by law, the petitioner must identify each failure and provide supporting reasons for the petitioner's belief. These requirements help ensure that the NRC institutes adjudicatory hearings only for issues that are supported by facts or expert opinion and that identify a dispute with the application on a question material to the NRC's decision.

B. Earlier License Transfer of TMI-2 License to TMI-2 Solutions

Although the license transfer application as amended involves four facilities, Mr. Epstein's petition focuses on the TMI-2 facility. TMI-2 Solutions owns and operates TMI-2. The NRC approved a direct license transfer of the TMI-2 license from the FirstEnergy Companies to TMI-2 Solutions in December 2020 and the transfer was completed that month.⁴² Mr. Epstein petitioned to intervene to challenge the transfer of the TMI-2 license to TMI-2 Solutions. The earlier TMI-2 license transfer proceeding warrants some description here because Mr. Epstein's current petition (1) cites to the license transfer application and associated documents in the separate earlier proceeding; and (2) repeats several arguments that he raised in the earlier proceeding — all of which we found inadmissible for lack of support or other grounds.

1. The TMI-2 Facility

TMI-2 is a permanently shutdown pressurized water reactor located on Three

⁴² See Three Mile Island Nuclear Station, Unit No. 2 — Order Approving Transfers of License from the FirstEnergy Companies to TMI-2 Solutions, LLC and Draft Conforming License Amendment (Dec. 2, 2020) (ML20279A366) (package) (NRC Approval of 2020 License Transfer to TMI-2 Solutions); Amendment No. 64 to License No. DPR-73, attached (Encl. 1) to Letter from Theodore B. Smith, NRC, to John Sauger, TMI-2 Solutions (Dec. 18, 2020) (ML20352A381) (Amendment No. 64). The companies collectively referred to as the FirstEnergy Companies were GPU Nuclear, Inc., Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company. See NRC Approval of 2020 License Transfer to TMI-2 Solutions, Cover Letter at 1.

Mile Island in the Susquehanna River in Londonderry Township, Dauphin County, Pennsylvania. The NRC issued an operating license for TMI-2 in December 1978 and commercial operation was declared on December 30, 1978. But on March 28, 1979, an accident occurred at the unit causing severe damage to the reactor core, and the unit has not since operated. After the accident, about 99% of the spent nuclear fuel and damaged core material was removed and shipped to the U.S. Department of Energy's Idaho National Laboratory.⁴³ DOE has title to and possession of this material. Because the accident occurred within the first three months of reactor operation, no spent fuel was otherwise stored at TMI-2.⁴⁴ Following cleanup activities at TMI-2 to meet NRC criteria for safe storage, TMI-2 has been maintained since 1993 in an NRC-approved long-term storage condition known as post-defueling monitored storage.⁴⁵

Following the December 2020 license transfer, TMI-2 *Solutions* became the licensed owner holding title to and possession of any real estate encompassing the TMI-2 site; any TMI-2 improvements at the site; easements for other portions of the site; and any remaining spent nuclear fuel, damaged core material, high level waste, and Greater-Than-Class C waste (collectively "debris material") that may still be within the TMI-2 facility.⁴⁶ The debris material that remains at TMI-2 "is spread throughout the reactor and auxiliary buildings, and is integrated into the equipment and materials that need to be removed as part of the traditional decommissioning process."⁴⁷ Following the December 2020 transfer, TMI-2 *Solutions* also assumed the licensed authority to conduct, and the responsibility for, all activities under the license. Those activities include (1) maintaining and securing the site, (2) completing radiological decommissioning and terminating the license, and (3) managing any debris material until title to the material can be transferred to the Department of Energy.

⁴³ See *FirstEnergy Companies and TMI-2 Solutions, LLC* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 72 (2021); NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Encl. 3, Safety Evaluation at 2, 11.

⁴⁴ See NRC Approval of License Transfer to TMI-2 *Solutions*, Encl. 3, Safety Evaluation at 11.

⁴⁵ See *id.*, Encl. 1, Order Approving Transfer of License and Draft Conforming Amendment at 1-2, and Encl. 3, Safety Evaluation at 2. Three Mile Island also is the location of another pressurized water reactor, the Three Mile Island Nuclear Station, Unit 1; this proceeding does not involve the TMI-1 license.

⁴⁶ See NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Encl. 3, Safety Evaluation at 2.

⁴⁷ See "TMI-2 *Solutions* Plan for Management of Debris Material," attached to (Attach. 1) Letter from Gerry van Noordennen, Senior Vice President Regulatory Affairs, to NRC Document Control Desk (Mar. 15, 2021), at 5 (ML21085A692) (Plan for Management of Debris Material).

2. *License Transfer Proceeding for the Transfer of the License to TMI-2 Solutions*

As outlined in the November 2019 application that requested NRC approval of the TMI-2 license transfer to TMI-2 *Solutions*, TMI-2 *Solutions* intends to complete the decommissioning, site restoration, and release of the site (except for any onsite waste storage facilities for debris material) by 2037, about 17 years sooner than the previous decommissioning timetable submitted to the NRC for TMI-2.⁴⁸ Based on this accelerated decommissioning schedule, the 2019 license transfer application provided a summary of updated cost estimates for radiological decommissioning, site restoration, and debris material management.⁴⁹ The then-applicants also provided further details on the significant decommissioning schedule change and related updated cost estimates in a Post-Shutdown Decommissioning Activities Report (PSDAR), which they submitted in support of the application.⁵⁰

The 2019 application addressed how TMI-2 *Solutions* would provide reasonable assurance of adequate funding to pay for decommissioning and debris material management. Financial assurance would be provided primarily by the TMI-2 decommissioning trust fund, the assets of which would transfer to TMI-2 *Solutions*' nuclear decommissioning trust at closing. But additional funding valued up to a total of \$100 million would be available through other specified financial assurance methods, including a back-up and provisional nuclear decommissioning trust, an irrevocable letter of credit, and a financial support agreement offered by EnergySolutions, Inc. in support of TMI-2 *Solutions*, which would be implemented upon closing. As further financial assurance, EnergySolutions, Inc. would at closing provide a parent guarantee "to ensure the successful Decommissioning of TMI-2."⁵¹

Mr. Epstein, jointly with Three Mile Island Alert, Inc. (TMIA), filed a petition to intervene and request for a hearing challenging the license transfer to

⁴⁸ See Application for Order Approving License Transfer and Conforming License Amendment, attached to (Attach. 1) Letter from John Sauger, President and Chief Nuclear Officer, TMI-2 *Solutions*, and Gregory H. Halnon, President and Chief Nuclear Office, FirstEnergy Service Co., to NRC Document Control Desk (Nov. 12, 2019), at 2 (ML19325C600) (package) (2019 LTA for Transfer to TMI-2 *Solutions*).

⁴⁹ See *id.* at 9-12 and Enclosure 7 at 5-7.

⁵⁰ See generally Post-Shutdown Decommissioning Activities Report, Rev. 3 (December 2019), attached (Attach. 1) to Letter from Karen A. Sealy, Senior Corporate Counsel, FirstEnergy Service Co., to NRC Document Control Desk (Dec. 12, 2019) (ML20013E535) (2019 PSDAR, Rev. 3).

⁵¹ See 2019 LTA for Transfer to TMI-2 *Solutions* at 10-11; see also NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Encl. 3, Safety Evaluation at 9-10.

TMI-2 *Solutions*.⁵² Mr. Epstein challenged the financial qualifications of TMI-2 *Solutions* to become the licensee, including TMI-2 *Solutions*'s decommissioning funding assurance. We denied the petition for failure to raise at least one admissible contention for hearing.⁵³

After finding TMI-2 *Solutions* qualified to hold the TMI-2 license, the Staff approved the license transfer in December 2020. The Staff found reasonable assurance of adequate funding to cover the costs of decommissioning and of debris material management. The Staff's evaluation described financial assurances based on the TMI-2 decommissioning nuclear trust in conjunction with the additional financial instruments and the parent guarantee. The Staff further imposed financial license conditions requiring that (1) upon the date of closing and continuing until Phase 2 of facility decommissioning is completed, TMI-2 *Solutions* will maintain a Financial Support Agreement of up to \$100 million (implemented by EnergySolutions to the benefit of TMI-2 *Solutions*); and (2) at closing, EnergySolutions, Inc. will provide a Parent Guarantee for the payment and performance of the TMI-2 decommissioning by TMI-2 *Solutions*.⁵⁴ These two financial support license conditions "may not be voided, canceled, or modified without the prior written consent of the NRC."⁵⁵

C. Mr. Epstein's Petition Challenging the Indirect License Transfer

1. Repetition of Claims Raised in Earlier License Transfer Proceeding

In his petition, Mr. Epstein identifies two contentions, Epstein-1 and Epstein-2. These contentions repeat several arguments that Mr. Epstein raised when he challenged the transfer of the TMI-2 license to TMI-2 *Solutions*. Contentions Epstein-1 and Epstein-2 are identical, respectively, to contentions Epstein-2 and

⁵² Petition of Eric Joseph Epstein and Three Mile Island Alert, Inc. for Leave to Intervene and for a Hearing (Apr. 15, 2020) (ML20106F216) (2020 Petition Challenging Transfer to TMI-2 *Solutions*).

⁵³ See TMI-2, CLI-21-2, 93 NRC 70.

⁵⁴ See NRC Approval of 2020 License Transfer to TMI-2 *Solutions*, Encl. 3 Safety Evaluation at 10; see also *id.* at 9-11; Amendment No. 64 at 2-3 and attached Changes to Possession Only License at 3 (regarding License Conditions 2.C.(3)-(4)). As described in the 2019 application requesting NRC consent to the license transfer to TMI-2 *Solutions*, the TMI-2 decommissioning would occur in phases. The Phase 1 goals would include recovering and safely packaging debris material and reducing the overall radiological source term at TMI-2 and the TMI-2 site to levels "generally consistent with" those at the end of the operational life of a nuclear power plant that did not experience a core-melt accident. Phase 2's overall goal would be to decommission to a level that would permit the site's release for unrestricted use (with the exception of one area that would be set aside for debris material storage). See 2019 LTA for Transfer to TMI-2 *Solutions* at 10 and Encl. 7 at 1.

⁵⁵ See Amendment No. 64 at 3 and attached Changes to Possession Only License at 3 (License Condition 2.C.(5)).

Epstein-3 submitted in the earlier license transfer proceeding.⁵⁶ In these two contentions, both in the earlier proceeding and now, Mr. Epstein challenges the decommissioning funding assurance and financial qualifications of TMI-2 *Solutions*.

But unlike the previous transfer proceeding, this is not a proceeding to transfer the license to TMI-2 *Solutions*. TMI-2 *Solutions* is the licensee and will remain the NRC licensee responsible for TMI-2, regardless of NRC approval of the proposed indirect license transfer. Also, unlike in the previous license transfer proceeding, the current application does not describe any planned changes — stemming from the proposed transfer — to the TMI-2 decommissioning schedule or associated estimated decommissioning costs, or to the decommissioning funding and financial qualifications arrangements currently in place for TMI-2.

Nor does the application involve proposed changes to the license. The indirect transfer therefore will not affect the existing TMI-2 license conditions requiring that a financial support agreement and a parent guarantee be maintained as additional available funding to complete decommissioning if funding beyond the decommissioning trust fund were to prove necessary. The application affirms that no changes are proposed to the “existing financial qualification arrangements” for the respective EnergySolutions licensed subsidiaries, including the “existing nuclear decommissioning trust funds” and any “additional financial assurance mechanisms that are the subject of regulatory commitments or prior license transfer approvals.”⁵⁷

Nearly all underlying bases for Epstein-1 and Epstein-2 are, however, the same as the bases provided for the corresponding contentions (Epstein-2 and Epstein-3, respectively) that Mr. Epstein submitted in his earlier petition challenging the financial qualifications of TMI-2 *Solutions*.⁵⁸ The current petition contains numerous citations to the license transfer application filed in the previous proceeding to transfer the license to TMI-2 *Solutions*. To the extent that

⁵⁶ Compare Petition at 27, 56 (Epstein-1 and Epstein-2, respectively, in current petition), with 2020 Petition Challenging Transfer to TMI-2 *Solutions* at 9, 38 (Epstein-2 and Epstein-3, respectively, in earlier petition). In his 2020 petition, Mr. Epstein separately paginated the portion of his petition addressing contentions; for citations to that petition we use his pagination.

⁵⁷ See Application at 7.

⁵⁸ There are some minor distinctions in the underlying bases for Epstein-1 and Epstein-2 compared to the bases included with the previously filed contentions Epstein-2 and Epstein-3 in the earlier proceeding. For instance, Mr. Epstein did not include in the current petition some arguments that he raised earlier. See, e.g., 2020 Petition Challenging License Transfer to TMI-2 *Solutions* at 36 (claim relating to economic impact of COVID-19 virus). He also did not submit exhibits in support of the current petition, therefore dropping various citations to exhibits that had been referenced in his earlier petition. See, e.g., *id.* at 16-18 (citing to exhibits, compared to Petition at 34-36, where the same claims are made without citation to exhibits); see also TMI-2, CLI-21-2, 93 NRC at 81 (finding the exhibits, many of which involved the different reactor unit TMI-1, not supportive).

Mr. Epstein is again challenging the earlier license transfer application and its associated documents, we addressed those challenges in CLI-21-2 and found them inadmissible.

Mr. Epstein reiterates his earlier claims challenging the decommissioning funding assurance and financial qualifications of TMI-2 *Solutions*, but without discussing what we stated when we found the same arguments inadmissible previously. He does not specify any ground for why the arguments we found inadmissible in CLI-21-2 ought to be revisited in this indirect transfer proceeding. Significantly, while Mr. Epstein repeats his earlier-raised challenges to TMI-2 *Solutions*'s financial qualifications and decommissioning funding assurance, his current petition does not specify with support how this proposed indirect license transfer would materially affect either.⁵⁹

2. *Epstein-1*

Citing various NRC regulations, in Epstein-1 Mr. Epstein claims that TMI-2 *Solutions* “fails to show adequate financial assurance and/or adequate funding for spent fuel management” because “the TMI-2 *Solutions*' Amended PSDAR and decommissioning cost estimate underestimates license termination, site restoration and spent fuel management costs.”⁶⁰

As we noted, Epstein-1 is the same contention that was titled Epstein-2 in the proceeding to transfer the license to TMI-2 Solutions. Epstein-1 therefore raises a series of claims that we addressed in CLI-21-2. These include claims that cost estimates are underestimated because they do not account for (1) a likely existence of greater amounts of contamination and therefore of higher remediation costs than the current cost estimate assumes;⁶¹ (2) a need to repackage spent nuclear fuel and fuel debris material;⁶² (3) mixed waste disposal costs;⁶³ and (4) a delay in the early stage of the decommissioning process that could increase project costs over the current estimate.⁶⁴ We previously found all of these un-

⁵⁹ Further, when we addressed Mr. Epstein's petition in the previous TMI-2 license transfer proceeding, we observed that many of the claims appeared “copied from” and essentially “identical to those sponsored by different petitioners” in the *Indian Point* license transfer proceeding, albeit with the facility and applicant names changed. See *TMI-2*, CLI-21-2, 93 NRC at 77 & n.43. We stated that where contentions appear copied from a different proceeding “it is especially important to ensure that petitioners demonstrate a genuine material dispute with the particular application in question.” See *id.* at 77.

⁶⁰ See Petition at 27.

⁶¹ See, e.g., *id.* at 28, 31-39; *TMI-2*, CLI-21-2, 93 NRC at 80-82. The page citations to arguments made in Mr. Epstein's petition are not exhaustive; the petition often repeats similar claims.

⁶² See, e.g., Petition at 28, 40-43, 45-46; *TMI-2*, CLI-21-2, 93 NRC at 82-83.

⁶³ See, e.g., Petition at 29, 47-49; *TMI-2*, CLI-21-2, 93 NRC at 83-84.

⁶⁴ See, e.g., Petition at 30, 50-54; *TMI-2*, CLI-21-2, 93 NRC at 84-85.

derlying claims inadmissible because they lacked factual or expert support or did not raise a genuine dispute with the application to transfer the TMI-2 license to TMI-2 *Solutions*.⁶⁵

The arguments that Mr. Epstein repeats in this proceeding in support of Epstein-1 do not raise a genuine material dispute with the application for the indirect license transfer. Mr. Epstein does not tie these claims to the proposed licensing action. In some places Mr. Epstein added the name “TriArtisan” to arguments raised previously.⁶⁶ But merely adding the name “TriArtisan” or substituting references to TMI-2 *Solutions* with TriArtisan does not render any of the earlier-raised arguments admissible in this proceeding.

TMI-2 *Solutions* already is and will remain the licensee responsible for the facility, and Mr. Epstein does not specify with support how the proposed change in the majority ownership of Rockwell would adversely and materially impact TMI-2 *Solutions*’s existing decommissioning funding and financial qualifications arrangements. The claims therefore do not raise a genuine and material dispute with the applicable NRC application and lack factual or expert support.

We will not address individually in this decision the numerous claims in the two contentions that are virtually identical to claims our decision in CLI-21-2 encompassed and found inadmissible, and that, moreover, Mr. Epstein has not tied to this proposed licensing action. Instead, we focus on the new claims that Mr. Epstein raises in his current petition.

Citing to the TMI-2 *Solutions* decommissioning funding and financial assurance status reports submitted to the NRC in March 2021, Mr. Epstein notes in Epstein-1 that the licensee reported a site-specific radiological decommissioning cost estimate of \$1,044,364,000 and reported that as of December 2021 there was \$862,549,586 in the decommissioning trust fund.⁶⁷ Mr. Epstein claims that the “fund is underfunded by \$181 million” and that “EnergySolutions has only pledged an additional \$100 million during the first phase” of decommissioning.⁶⁸

But the cited status reports do not support Mr. Epstein’s argument that TMI-2 *Solutions* lacks reasonable assurance of adequate funding. First, Mr. Epstein

⁶⁵ See TMI-2, CLI-21-2, 93 NRC at 80-88.

⁶⁶ For example, “TMI-2 *Solutions* and *TriArtisan* failed to demonstrate adequate financial assurance” and “TMI-2 *Solutions* and *TriArtisan* fail to anticipate or plan for problems associated with Phase 1.” See Petition at 30, 33 (emphasis added).

⁶⁷ See Petition at 27, 54. The cited TMI-2 *Solutions* filing includes, for the year ending December 31, 2020, both a financial assurance status report (filed pursuant to 10 C.F.R. § 50.82(a)(8)(v)) and decommissioning funding status reports (filed pursuant to 10 C.F.R. § 50.75). See Letter from Gerard P. Van Noordennen, Senior Vice President Regulatory Affairs, TMI-2 *Solutions*, to NRC Document Control Desk (Mar. 31, 2021), at 1 (ML21099A115) (2021 TMI-2 Status Reports); see also *id.*, Attach. 2 at 1 (reporting accumulated decommissioning trust funds and estimated decommissioning costs, based on a site-specific decommissioning cost estimate dated Mar. 17, 2021).

⁶⁸ See Petition at 27.

does not account for the potential interest earnings on the trust funds. The reports include a funding analysis showing projected trust fund balances, earnings, and withdrawals beginning in 2020 and extending through 2054 when final license termination is expected. The funding analysis assumes the maximum 2% annual real rate of return allowed under NRC regulations. Over the course of 34 years, the projected earnings on the trust funds add up to over \$170 million.⁶⁹

Although Mr. Epstein cites to the status reports as support for his underfunding claim, he omits any mention of the report's funding projections. The funding analysis does not support Mr. Epstein's claim of a \$181 million decommissioning funding shortfall. Nor does it project any funding shortfall.⁷⁰ Without more, therefore, Mr. Epstein's references to the estimated site-specific decommissioning cost and the amount accumulated in the trust fund, as reported in the March 2021 status reports, do not support his contention that TMI-2 *Solutions* lacks reasonable assurance of financial qualifications.⁷¹

Further, while Mr. Epstein notes that TMI-2 *Solutions* will also have access to up to an additional \$100 million beyond any amounts in the trust fund, he incorrectly characterizes this additional financial assurance as applicable only to the "first phase" of decommissioning.⁷² Current License Condition 2.C.(3) requires that a financial support agreement providing up to \$100 million be maintained until it has been determined that *Phase 2 of the decommissioning has*

⁶⁹ See 2021 TMI-2 Status Reports, Attach. 2 at 3-4. In the earlier TMI-2 license transfer proceeding, Mr. Epstein submitted a contention claiming that TMI-2 *Solutions* impermissibly assumed a 2% annual real rate of return on the trust funds. In CLI-21-2, we rejected his argument as an incorrect interpretation of our regulations. See TMI-2, CLI-21-2, 93 NRC at 78-79. Mr. Epstein no longer argues that TMI-2 *Solutions* cannot assume a 2% annual real rate of return through the decommissioning period.

⁷⁰ The funding analysis in the cited March 2021 status report does project the need for and includes approximately \$7 million in deposits to be added to the trust fund between 2038-2054 to supplement the funding for long-term debris material management. See 2021 TMI-2 Status Reports, Attach. 2 at 3. Mr. Epstein did not address the analysis. We note additionally that TMI-2 *Solutions* filed its most recent status report in March 2022; it projects a remaining balance of about \$64 million at license termination in 2055. See Decommissioning Funding Status Report — Site Specific Decommissioning Cost Estimate, at 3, Attach. 2 to Letter from Gerard van Noordennen, TMI-2 *Solutions*, to NRC Document Control Desk (Mar. 31, 2022) (ML22091A273) (2022 TMI-2 Status Reports).

⁷¹ Mr. Epstein also refers to the Staff's 2021 report, SECY-21-0108, "Summary of Staff Biennial Review and Findings of the 2021 Decommissioning Funding Status Reports from Operating and Decommissioning Power Reactor Licensees" (Dec. 16, 2021) (ML21285A219). See Petition at 28. In the report, the Staff concluded that for the year 2021 all NRC power reactor licensees in decommissioning were in compliance with the NRC's decommissioning funding assurance requirements in 10 C.F.R. §§ 50.75 and 50.82. See SECY-21-0108 at 5. The Staff's report does not lend support to Mr. Epstein's contention.

⁷² See Petition at 27; see also *id.* at 54-55.

*been completed.*⁷³ Beyond the financial support agreement, an additional existing license condition requires EnergySolutions, Inc. to provide a Parent Guarantee making “the resources of EnergySolutions available to help ensure the successful decommissioning of TMI-2, assuring the ability of TMI-2 Solutions to (i) pay the costs of decommissioning the TMI-2 facility; (ii) protect the public health and safety; and (iii) meet NRC requirements.”⁷⁴ Mr. Epstein does not link the proposed indirect transfer to any material adverse effects on the adequacy of the existing financial assurance methods, which include the trust fund together with other financial instruments. In short, Mr. Epstein’s argument that the trust fund is underfunded by \$181 million lacks factual support and does not raise a material dispute with this indirect license transfer application.⁷⁵

3. *Epstein-2*

In Contention Epstein-2, Mr. Epstein claims that the license transfer application and supporting materials fail to show that TMI-2 Solutions is financially

⁷³ See NRC Approval of 2020 License Transfer to TMI-2 Solutions, Encl. 3, Safety Evaluation at 10; Amendment No. 64 at 2 and attached Changes to Possession Only License at 3 (adding License Condition 2.C.(3)).

⁷⁴ See NRC Approval of 2020 License Transfer to TMI-2 Solutions, Encl. 3, Safety Evaluation at 10; Amendment No. 64 at 3 and attached Changes to Possession Only License at 3 (adding License Condition 2.C.(4)).

⁷⁵ Because Mr. Epstein repeats arguments that he previously submitted in the other license transfer proceeding, some of his claims are outdated. Mr. Epstein, for instance, quotes statements from documents associated with the 2019 TMI-2 license transfer application, which indicated that TMI-2 Solutions would submit to the NRC a long-term management plan for Debris Material. See, e.g., Petition at 28-29 & n.17; 34. While the 2019 application provided cost estimates for the recovery, packaging, and long-term storage of the debris material, none of which Mr. Epstein challenged, the application additionally stated as a regulatory commitment that TMI-2 Solutions would provide the NRC with a plan containing further details on debris material management. See 2019 LTA for Transfer to TMI-2 Solutions, Attach. 4 (List of Regulatory Commitments) at 1; see also *id.*, Application at 12 and Encl. 7 at 2. TMI-2 Solutions submitted its long-term storage plan to the NRC on March 15, 2021. See Plan for Management of Debris Material.

Similarly, Mr. Epstein continues to quote the 2019 license transfer application’s statement that TMI-2 Solutions would submit to the NRC an updated PSDAR; this also was a regulatory commitment. See Petition at 46; 2019 LTA for Transfer to TMI-2 Solutions at 10 and Attach. 4 (List of Regulatory Commitments) at 1. TMI-2 Solutions submitted its revised PSDAR with updated decommissioning schedule and cost information on March 17, 2021. See Letter from Gerard van Noordennen, TMI-2 Solutions, to NRC Document Control Desk (Mar. 17, 2021) (with attached PSDAR, Rev. 4, and enclosures) (ML21084A229); see also 2021 TMI-2 Solutions Status Reports, Attach. 2 at 1-2, 4; Attach. 3 at 1 (citing to PSDAR, Rev. 4). The application for the proposed indirect license transfer does not describe any proposed change to the existing debris material management plan or current PSDAR.

qualified.⁷⁶ We addressed the same contention (then titled Epstein-3) in CLI-21-2. Specifically, we addressed its underlying arguments, including that (1) TMI-2 *Solutions* is financially unqualified because it is a limited liability corporation; (2) investment guidelines for the decommissioning trusts encourage broad and permissive investments that could result in increased investment risk, which could in turn limit the available funding; (3) the trustee is authorized to appoint and indemnify foreign custodians as agent(s) of the trustee to custody foreign securities holdings of the trust; and (4) it is unlikely that TMI-2 *Solutions* would be able to comply with NRC regulations requiring that they provide additional financial assurance in the event of a projected cost overrun.⁷⁷ We found that these and all underlying arguments in the contention lacked adequate factual or legal support and failed to raise a genuine and material dispute with the application. Even though in the current contention Mr. Epstein has replaced the name TMI-2 *Solutions* with TriArtisan, his contention continues to lack support and he does not link his particular arguments to this indirect license transfer.⁷⁸ Mr. Epstein neither addresses the sufficiency of the existing financial assurances on which TMI-2 currently relies — which include the decommissioning trust fund, a financial support agreement, and a parent guarantee — nor describes how these current financial arrangements would be affected by this indirect license transfer. In sum, he does not provide a supported claim that the change in majority ownership from ECP to TriArtisan will have a material detrimental

⁷⁶ See Petition at 56-67.

⁷⁷ See TMI-2, CLI-21-2, 93 NRC at 86-88.

⁷⁸ In the earlier petition, for example, Mr. Epstein raised the same claims regarding investment guidelines but referred to “TMI-2 Solutions’ investment guidelines”; he now refers to “TriArtisan’s investment guidelines.” Compare Petition at 65 with 2020 Petition Challenging License Transfer to TMI-2 Solutions at 47.

As he also argued in his earlier petition, Mr. Epstein claims that the amount in the trust fund has “significantly declined.” See Petition at 66. In his current petition, Mr. Epstein adds his observation from the March 2021 status reports for TMI-2 (also cited in current Epstein-1) that the trust fund as of December 31, 2020 contained \$862,549,586. He states this represents a significant decline from a level of \$899 million on December 31, 2019, which he notes the 2019 license transfer relied on. See *id.* at 65-66. But whether trust fund withdrawals have been made or the total fund amount otherwise has fluctuated since 2019 would not by itself suggest that there is a lack of reasonable assurance of decommissioning funding. Further, the TMI-2 *Solutions* 2021 decommissioning funding status report cited by Mr. Epstein contains a funding analysis that does not project a funding shortfall. See 2021 TMI-2 Status Reports, Attach. 2 at 3. In addition, TMI-2 *Solutions*’s most current decommissioning funding status report, filed in March 2022, reports that as of December 31, 2021 the trust fund contained \$902,074,154, which exceeds the amount that Mr. Epstein states was relied on in the earlier transfer application. See 2022 TMI-2 Status Report, Attach. 2 at 1. The most recent funding analysis shows a projected ending balance of about \$64 million in 2055 at license termination. See *id.*, Attach. 2 at 3.

impact on licensee TMI-2 *Solutions*'s decommissioning funding assurance and financial qualifications.

4. Additional Claims Raised Outside of Contentions Epstein-1 and Epstein-2

While the bulk of Mr. Epstein's petition consists of his arguments under Epstein-1 (pp. 27-55) and Epstein-2 (pp. 56-67), Mr. Epstein also briefly lists three additional claims.⁷⁹ First, he states that the current corporate organization is unable to demonstrate that "[l]icense transfer applicants for reactors that will be permanently shut down at the time of transfer may rely *solely* on the adequacy" of the decommissioning trust fund to demonstrate reasonable assurance of decommissioning funding and that "TriArtisan Capital Advisors LLC does not possess the financial assurance to decommission" TMI-2.⁸⁰ However, as was the case in CLI-21-2, Mr. Epstein "does not cite any legal support for [his] argument that the license holder decommissioning a reactor must have some other, ongoing business concern that would generate income independent of the decommissioning trust fund."⁸¹ In any event and as we have described, TMI-2 *Solutions* relies not only on the decommissioning trust fund but also on a financial support agreement and a parent guarantee — both required by license condition. Mr. Epstein does not provide a supported challenge to the adequacy of the total funding provided by the financial assurance methods and does not describe how this proposed indirect transfer would materially impact the adequacy of the financial assurance methods in place now.

Second, Mr. Epstein claims that because of "TriArtisan's acquisition of a majority share of EnergySolutions, the owner of Three Mile Island Unit-2 may be[] controlled, or dominated by" foreign corporations.⁸² Mr. Epstein does not provide factual support for this claim. Further, the application addresses the foreign participation in passive investment funds and states that "the passive investment funds that will participate as limited partners will have no ability to exercise control over the new TriArtisan Partners ES Partners II LP, Rockwell, EnergySolutions or its subsidiaries."⁸³ Mr. Epstein does not challenge the description in the application regarding the inability of foreign passive investors to exercise control or domination over Rockwell, EnergySolutions, or licensee TMI-2 *Solutions*, or to exercise direct or indirect control over any NRC-licensed

⁷⁹ See Petition at 26.

⁸⁰ See *id.*

⁸¹ TMI-2, CLI-21-2, 93 NRC at 87.

⁸² Petition at 26.

⁸³ See Application at 5-6.

activity. Mr. Epstein provides no argument indicating how the proposed indirect transfer might violate the AEA's prohibitions against foreign ownership, control, or domination, and the NRC's regulation at 10 C.F.R. § 50.38, "Ineligibility of certain applicants," which implements the AEA provisions.⁸⁴ Mr. Epstein's argument therefore lacks support and does not raise a genuine dispute with the application.

And third, Mr. Epstein claims that the proposed indirect license transfer raises "significant safety and regulatory issues, based on TriArtisan's complete lack of engineering, nuclear and technical skills."⁸⁵ TriArtisan, however, is not the TMI-2 licensee and is not authorized to conduct licensed activities at TMI-2. Following the proposed transfer, current licensee TMI-2 *Solutions* would remain responsible for activities performed under the license. Mr. Epstein does not address the discussion of technical qualifications in the application.⁸⁶ He also does not link the proposed licensing action to any specific technical or safety concerns or to any potential adverse changes in the technical qualifications of TMI-2 *Solutions*. Mr. Epstein's "technical skills" safety claim therefore neither raises a dispute with the application nor is supported by facts or expert opinion.

On reply, Mr. Epstein does not substantively address any specific contention submitted or the Applicant's answer. He states that there is a "paucity of information contained in the filing documents."⁸⁷ Our regulations on admissible contentions require a petitioner to "include references to specific portions of the application . . . that the petitioner disputes," but the regulations also allow for contentions based on omitted information that was required to have been included in the application.⁸⁸ Specifically, if a petitioner believes that an application "fails to contain information on a relevant matter as required by law" the petitioner must identify "each failure and the supporting reasons for the petitioner's belief."⁸⁹ Mr. Epstein's petition did not identify specific items of missing information asserted, with supporting reasons, to be required in the application.

Mr. Epstein concludes his reply by stating that the "whole matter of decommissioning funding assurance is a red flag" because "the new entity will

⁸⁴ NRC staff guidance on assessing foreign ownership, control, or domination can be found in Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 Fed. Reg. 52,355 (Sept. 28, 1999).

⁸⁵ Petition at 26.

⁸⁶ See Application at 7.

⁸⁷ See Reply of Eric Joseph Epstein to EnergySolutions, LLC Answer Opposing the Petition of Eric Joseph Epstein for Leave to Intervene and for a Hearing (Mar. 14, 2022), at 3 (unnumbered) (Reply).

⁸⁸ See 10 C.F.R. § 2.309(f)(1)(vi).

⁸⁹ See *id.*

not be affiliated with a regulated utility company and is not defined by either the NRC or PUC [Public Utility Commission] as an ‘electric utility.’”⁹⁰ He states that EnergySolutions is a limited liability corporation “financed by the food service, hospitality, and pool installation industries.”⁹¹ NRC regulations, however, allow for applicants that are not electric utilities — and require more financial assurance information from them.⁹² Further, the NRC does not prohibit licensees from being limited liability companies and over the past decades many licensees have been LLCs. Mr. Epstein has not offered an admissible contention linking the proposed change in majority ownership to the adequacy of TMI-2 Solutions’s existing decommissioning funding and its other existing financial assurance methods.⁹³

III. CONCLUSION

For the reasons outlined, we *deny* Mr. Epstein’s petition for intervention and request for hearing and *terminate* this proceeding.

IT IS SO ORDERED.

For the Commission

Brooke P. Clark
Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of July 2022.

⁹⁰ Reply at 7.

⁹¹ *Id.*

⁹² See 10 C.F.R. § 50.33(f) (electric utility applicants need not demonstrate financial qualifications to carry out the activities for which the permit or license sought).

⁹³ We need not address Mr. Epstein’s standing to intervene given that he did not submit an admissible contention.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chair
William J. Froehlich
Dr. Sue H. Abreu

In the Matter of

Docket No. 70-143-LA
(ASLBP No. 22-977-01-LA-BD01)

NUCLEAR FUEL SERVICES, INC.
(License Amendment Application)

October 19, 2022

In this proceeding concerning a license amendment application by BWXT Nuclear Fuel Services, Inc. (NFS) for its Erwin, Tennessee nuclear fuel fabrication facility, in denying the appeal of potential party Park Overall from the NRC Staff's rejection of her request to access nonpublic Sensitive Unclassified Non-Safeguards Information (SUNSI) associated with the NFS application for the purpose of hearing petition preparation, the Licensing Board concludes that Ms. Overall failed to establish the requisite "need" for access to the SUNSI material at issue.

**ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC
INFORMATION (REQUESTING ACCESS FOR CONTENTION
PREPARATION)**

When the NRC Staff agrees with the applicant that the license application material in question should not be released to the public, potential hearing parties are then given the opportunity to request access to that nonpublic information for the purpose of preparing a hearing request challenging the license application.

RULES OF PRACTICE: STANDARD OF REVIEW

A licensing board undertakes a de novo review of a potential party's appeal of the NRC Staff's denial of the potential party's request for access to license application-associated SUNSI materials. *See Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-16-12, 84 NRC 148, 158 (2016), *aff'd*, CLI-17-4, 85 NRC 59 (2017).

ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC INFORMATION (STANDARD FOR REQUESTING ACCESS FOR CONTENTION PREPARATION)

The Commission's standard governing a potential party's ability to obtain access to license application-associated SUNSI materials looks to whether the requestor can (1) demonstrate there is a reasonable basis to believe that as the potential party they are likely to establish standing to participate in the licensing proceeding at issue; and (2) establish a legitimate need for access to any SUNSI documentation. *See Nuclear Fuel Services, Inc.*, 87 Fed. Reg. 53,507, 53,510 (Aug. 31, 2022).

ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC INFORMATION (DEMONSTRATING POTENTIAL PARTY IS LIKELY TO ESTABLISH STANDING)

RULES OF PRACTICE: STANDING TO INTERVENE (REQUIREMENT FOR INDEPENDENT PRESIDING OFFICER DETERMINATION)

In establishing party status for an intervenor submitting a hearing petition, it is generally recognized that, regardless of concessions by other litigants, a licensing board has an independent responsibility to assess whether a petitioner has established its standing to intervene. *See* 10 C.F.R. § 2.309(d)(2); *see also Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 491 (2019), *aff'd on other grounds*, CLI-20-11, 92 NRC 335 (2020). It is not clear if the same precept applies in a nonpublic information access proceeding to a licensing board determination about whether a potential party is likely to establish standing.

RULES OF PRACTICE: STANDING (INJURY IN FACT)

Under agency caselaw the degree to which a potential party's residence and other activities in the vicinity of a nuclear fuel fabrication facility will be suf-

ficient to establish their standing will depend on whether they are able to show specific impacts to them from the activity proposed in the license amendment application at issue. See *Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-04-5, 59 NRC 186, 189-98 (concluding that while sufficiently particularized showings about impacts of proposed licensing action had not been made to establish standing of petitioners residing at between 2 and 20 miles from the NFS facility, adequate showing was made establishing standing for an individual who resided 1 mile from the facility and drove directly by the facility 5 days a week), *aff'd*, CLI-04-13, 59 NRC 244 (2004).

ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC INFORMATION (ESTABLISHING NEED FOR ACCESS TO NONPUBLIC INFORMATION)

Regarding the second “need” criterion, a potential party is required to “explain how the requested SUNSI is necessary for meaningful participation in the proceeding” by including

- (1) an explanation of the importance of the requested information to the proceeding, i.e., how the information relates to the license application or to NRC requirements or guidance, and how it will assist the requester in seeking intervention; and (2) an explanation of why existing publicly available versions of the application would not be sufficient.

South Texas Project Nuclear Operating Co. (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 465 (2010) (footnotes omitted).

ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC INFORMATION (ESTABLISHING NEED FOR ACCESS TO NONPUBLIC INFORMATION)

According to the Commission, “whether a request for SUNSI sufficiently demonstrates a ‘need’ for the information will depend on the particular facts and circumstances presented.” *South Texas*, CLI-10-24, 72 NRC at 465-66.

ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC INFORMATION (ESTABLISHING NEED FOR ACCESS TO NONPUBLIC INFORMATION)

Like a contention submitted in support of a hearing request, a request for access to SUNSI material must describe those aspects of the proposed license application (or any associated NRC requirements or guidance) to which the

SUNSI material bears a relationship and must further explain how providing such material will assist a potential party in challenging that license application.

ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC INFORMATION (ESTABLISHING NEED FOR ACCESS TO NONPUBLIC INFORMATION)

RULES OF PRACTICE: CONTENTIONS (ADMISSIBILITY)

As the Commission has observed, the showing of “need” to gain access to SUNSI material is not to be “conflated with the [10 C.F.R. § 2.309(f)] contention admissibility standards.” *See South Texas*, CLI-10-24, 72 NRC at 467. Nonetheless, as is the case with the SUNSI access “need” showing, the section 2.309(f) criteria governing the admissibility of any contention filed in support of a hearing petition call for a focus on the license application at issue. *See* 10 C.F.R. § 2.309(f)(1)(vi) (directing that in providing sufficient information to establish that a genuine dispute exists with the applicant/licensee on a material issue of law or fact, a hearing petition contention must (1) reference specific portions of the application that the petitioner disputes and supporting reasons for each dispute; or (2) identify failures in the application to contain information on a relevant matter as required by law); *see also Susquehanna*, CLI-17-4, 85 NRC at 74 (identifying deficiencies in contention pleading to include failure to identify a specific portion of the application disputed).

ADJUDICATORY PROCEEDINGS: SCOPE OF REVIEW

In a licensing proceeding, the applicant’s license application, not the adequacy of the agency’s actions, is the focus of the proceeding. *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (indicating that in a licensing proceeding, with the exception of certain NEPA issues, the applicant’s license application is in issue, not the adequacy of the NRC Staff’s review of the application), *review denied*, CLI-83-32, 18 NRC 1309 (1983).

ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC INFORMATION (SCOPE OF ACCESS REQUEST)

RULES OF PRACTICE: CONTENTIONS (SCOPE)

As is the case with a proffered contention, a SUNSI access request is not an appropriate vehicle for questioning the NRC Staff’s past regulatory efforts

nor is it an opportunity to raise generic grievances about how the licensee has historically operated under its NRC license.

**RULES OF PRACTICE: INSTITUTION OF PROCEEDING
(REQUEST UNDER 10 C.F.R. § 2.206)**

Questions about the appropriateness of a licensee's past (or current) operational activities are more appropriately interposed in the context of a 10 C.F.R. § 2.206 petition requesting that the NRC Staff take some type of regulatory action (including modifying, suspending, or revoking the license) with respect to such licensee activities.

**ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC
INFORMATION (ESTABLISHING NEED FOR ACCESS TO
NONPUBLIC INFORMATION)**

The problem with the argument that a potential party cannot demonstrate a need for nonpublic information without seeing the material is that it essentially negates the role assigned to a presiding officer in assessing a SUNSI access request, which is to "balance the applicant's interest in protecting [SUNSI] information with the petitioner's legitimate interest in obtaining information that is necessary to allow for meaningful participation in the adjudicatory proceeding," *Susquehanna*, CLI-17-4, 85 NRC at 67, in favor of a potential party.

**ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC
INFORMATION (ESTABLISHING NEED FOR ACCESS TO
NONPUBLIC INFORMATION)**

As the "need" criterion has been articulated by the Commission, it cannot be the case that simply pleading "I don't know what's there until I see it" is enough to gain access to the SUNSI material. Rather, as the Commission has made clear,

[w]hile this is not a demanding standard, it does require a potential party to be familiar with the application, to articulate concerns that directly relate to the application, and to explain why having access to the information redacted from the application is necessary to either formulate or buttress a contention (or otherwise determine that a contention is unwarranted).

Id.

ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC INFORMATION (ESTABLISHING NEED FOR ACCESS TO NONPUBLIC INFORMATION)

The Commission's SUNSI access criteria for materials associated with a license application obligate a potential party, including a self-represented litigant, to (1) review the information to which the potential party did have access, including the redacted supplemental environmental report; and (2) reference specific information from the license amendment's publicly available documents in articulating their concerns directly relating to the application and explaining what nonpublic material they need to assist in formulating, for a hearing request, sufficiently detailed contentions regarding those concerns. This is an endeavor a potential party has to undertake to provide a sufficient showing that it did indeed have the requisite "need" for the SUNSI material associated with a license application. *See South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), LBP-09-5, 69 NRC 303, 313 (2009) (observing that difficulty in making requisite "need" showing because of lack of access to SUNSI information does not absolve requestor of at least endeavoring to address the "need" criterion since a contrary conclusion would improperly convert the SUNSI disclosure process into procedure in which broad, nonspecific, and speculative assertions of "need" would mandate wholesale SUNSI release).

ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC INFORMATION (PLEADING BY SELF-REPRESENTED/PRO SE LITIGANTS)

RULES OF PRACTICE: PLEADING BY SELF-REPRESENTED/PRO SE LITIGANTS

Under long-established Commission practice, in assessing the submissions of a self-represented/pro se litigant, the litigant is entitled to some leniency in pleading. *See Susquehanna*, LBP-16-12, 84 NRC at 160 (citing *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 45 n.246 (2010)). Such leniency does not, however, provide a licensing board with the latitude to grant SUNSI access based on pleadings that are facially deficient.

ADJUDICATORY PROCEEDINGS: ACCESS TO NONPUBLIC INFORMATION (FILING OF REPLY TO NRC STAFF RESPONSE TO ACCESS REQUEST)

Absent a motion for leave to file, a potential party's additional pleading in

reply to an NRC Staff response was not contemplated by the procedures governing a SUNSI access request. *See* Licensing Board Memorandum and Order (Regarding Additional Filing by Park Overall) (Oct. 5, 2022) at 1-2 (unpublished).

RULES OF PRACTICE: EXTENSIONS OF TIME (FILING EXCEPTIONS)

Some federal agencies do not include weekends and holidays in computing the filing date for pleadings due within a relatively short time. *See* 47 C.F.R. § 1.4(g) (indicating that in determining due date for Federal Communications Commission filings, weekends and holidays are not counted if the filing period is fewer than seven days). NRC's rules of practice contain no such exclusion, however. *See* 10 C.F.R. § 2.306(b) (outlining exceptions that add time to a prescribed filing period, which do not include a short filing period).

RULES OF PRACTICE: EXTENSIONS OF TIME

If a participant in an NRC adjudicatory proceeding wants additional time to make a filing beyond what is prescribed by rule or order, that participant should submit a motion for an extension of time to the applicable presiding officer. *See* 10 C.F.R. § 2.307(a).

MEMORANDUM AND ORDER
(Ruling on Appeal from NRC Staff's Denial of Request
for Access to Nonpublic Information)

Not infrequently, a license application submitted to the U.S. Nuclear Regulatory Commission (NRC) will contain information that the applicant wants excluded from public release because of confidentiality concerns. When the NRC Staff agrees with the applicant that the material in question should not be released to the public, potential hearing parties are then given the opportunity to request access to that nonpublic information for the purpose of preparing a hearing request challenging the license application. Such a request is the focus of the proceeding now before this Licensing Board.

On November 18, 2021, BWXT Nuclear Fuel Services, Inc. (NFS) submitted a request to amend the existing 10 C.F.R. Part 70 license for its Erwin, Tennessee nuclear fuel fabrication facility to perform new processes associated with

uranium purification and conversion to uranium metal.¹ The November 2021 application, as supplemented on February 24, 2022, includes several supporting documents, eight of which have been withheld from public release pursuant to 10 C.F.R. § 2.390 on the basis that they contain Sensitive Unclassified Non-Safeguards Information (SUNSI).²

Pending before this Licensing Board is a September 28, 2022 motion by Park Overall, a self-represented potential party to the NFS license amendment application proceeding. In her motion Ms. Overall seeks the reversal of the NRC Staff's September 21, 2022 denial of her request, submitted on September 12 and modified on September 14, that she be provided with access to all nonpublic information associated with the NFS application.³ In a reply pleading dated October 3, 2022, the NRC Staff asserts that the Board should reject Ms. Overall's SUNSI access appeal.⁴

For the reasons set forth below, we deny Ms. Overall's appeal as we conclude that her SUNSI access request fails to meet the established Commission standard governing a potential party's access to nonpublic information.

I. BACKGROUND

¹ See Letter from Tim Knowles, Director, Safety and Safeguards, NFS, to Director, Office of Nuclear Material Safety and Safeguards (NMSS), NRC at portable document format (PDF) 1-2 (Nov. 18, 2021) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21327A099) [hereinafter NFS License Amendment Application]. In several instances in this ruling in which a cited document has no marked pagination, the citation is to the document's pagination as it resides as a PDF file in the agency's ADAMS document management system or the associated Electronic Hearing Docket.

² See *id.* at PDF 2-3, 5-6; Letter from Tim Knowles, Director, Safety and Safeguards, NFS, to Director, NMSS, NRC at PDF 1-2 (Feb. 24, 2022) (ADAMS Accession No. ML22066B004) [hereinafter NFS License Amendment Application Supp. 1]; Letter from Tim Knowles, Director, Safety and Safeguards, NFS, to Director, NMSS, NRC at PDF 1-2 (Feb. 24, 2022) (ADAMS Accession No. ML22069A315) [hereinafter NFS License Amendment Application Supp. 2].

³ See Letter from Park Overall to E. Roy Hawkens, Chief Administrative Judge at 1 (Sept. 28, 2022) [hereinafter SUNSI Access Denial Appeal]; see also Letter from James R. Downs, Senior Project Manager, NMSS, to Park Overall (Sept. 21, 2022) [hereinafter Staff SUNSI Access Denial]; *id.*, encl. 1 (Letter from Park Overall to Office of the Secretary & Office of the General Counsel, NRC (Sept. 14, 2022) (with redactions)) [hereinafter Initial SUNSI Access Request]. Although Ms. Overall submitted her initial SUNSI access request on September 12, because it contained personally identifiable information (PII), on September 14 she resubmitted the request with the PII redacted. See Staff SUNSI Access Denial at 1 n.1. In this decision, we reference the publicly available redacted version of her SUNSI access request.

⁴ See NRC Staff Reply to Appeal of Denial of SUNSI Access Request (Oct. 3, 2022) at 1 [hereinafter Staff SUNSI Access Appeal Denial Reply]. We note that this Staff pleading was provided without pagination, which is generally disfavored for pleadings and other participant-drafted litigation submissions.

A. NFS License Amendment Application

As noted previously, in a November 18, 2021 letter to the agency, NFS requested an amendment to its existing 10 C.F.R. Part 70 special nuclear materials license, SNM-124. *See* NFS License Amendment Application at PDF 1. If granted, the amendment would allow uranium purification and conversion services to be conducted at its Erwin, Tennessee nuclear fuel fabrication facility. *See id.* at PDF 5. According to the NFS application, the license amendment request stems from a contract awarded to NFS by the U.S. Department of Energy’s National Nuclear Security Administration for the “U-Metal Project.” *Id.* at PDF 1. That contract, the amendment application indicates, is intended to bridge the gap between the shutdown of the Oak Ridge, Tennessee facility’s Y-12 legacy uranium processing equipment and the transition to a new facility that uses new electrorefining technology to purify high-enriched uranium metal. *See id.* at PDF 1-2.

As the application reflects, in accordance with 10 C.F.R. § 70.72(c), NFS is required to seek agency approval of the changes necessary to implement the new U-Metal process, including addressing the baseline design criteria set forth in 10 C.F.R. § 70.64. *See id.* at PDF 4-5. To address these regulatory requirements, attached to the NFS application are (1) a proposed update to the general process description in Chapter 1 of NFS material license SNM-124 that accounts for U-Metal operations; (2) a proposed integrated safety analysis summary for the U-Metal Project; (3) a proposed updated emergency plan that addresses two new emergency scenarios; (4) a proposed supplemental environmental report evaluating the environmental impacts associated with the addition of the U-Metal Project; and (5) an estimate of the decommissioning costs related to the U-Metal process. *See id.* at PDF 2-3. Of these attachments, NFS identified its proposed integrated safety analysis summary (attachment 2) and proposed updated emergency plan (attachment 3) as containing sensitive information, its proposed decommissioning cost estimate (attachment 5) as containing proprietary information, and all three of these documents and its proposed supplemental environmental report (attachment 4) as containing “trade secrets or commercial information” such that they should remain nonpublic per 10 C.F.R. § 2.390(a). *See id.* at PDF 5; *id.*, aff. ¶¶ A-B (Aff. of Tim Knowles, Director, Safety and Safeguards, NFS (Nov. 18, 2021)).

On January 22, 2022, the NRC Staff sent NFS a request for supplemental information (RSI) regarding fire safety, material control and accounting of special nuclear material, financial assurance relative to the proposed NFS decommissioning funding plan and cost estimate, and structural and natural phenomena hazards analyzes for certain components of the proposed integrated safety assessment summary, along with a request for a version of the proposed supple-

mental environmental report that could be made available to the public.⁵ NFS answered this request in a February 24, 2022 letter that included an attached RSI response, described by NFS as containing sensitive information meriting non-public treatment, along with a separate enclosure consisting of a public version of the supplemental environmental report.⁶ Further, on that date NFS provided a separate letter with three additional enclosures supporting its license amendment application, including a seismic evaluation of the NFS facility, a seismic evaluation of NFS facility equipment, and a revised high-enriched uranium metal production facility Building 301 integrated safety assessment summary.⁷ *See* NFS License Amendment Application Supp. 2 at PDF 2. NFS also requested that these three documents be treated as nonpublic under 10 C.F.R. § 2.390 as containing sensitive information. *See id.* at PDF 1; *id.*, aff. ¶¶ A-B (Aff. of Tim Knowles, Director, Safety and Safeguards, NFS (Feb. 24, 2022)).

On March 25, 2022, the NRC Staff informed NFS that it had the information necessary to accept the NFS license amendment application and proceed with its detailed licensing review.⁸ Just over a month later, on April 28, 2022, the NRC Staff issued a request for additional information (RAI) seeking material it deemed necessary to complete its detailed environmental review.⁹ NFS's

⁵ *See* Letter from James R. Downs, Senior Project Manager, NMSS, NRC, to Tim Knowles, Director, Safety and Safeguards, NFS, encl. at 1-5 (Jan. 22, 2022) (RSI), Enterprise Project Identification Number: L-2021-LLA-0213) (ADAMS Accession No. ML22014A421).

⁶ *See* NFS License Amendment Application Supp. 1 at PDF 1; *id.*, encl. (NFS, Supplemental Environmental Report for Amendment of Special Nuclear Material License No. SNM-124 (Nov. 2021)) (ADAMS Accession No. ML22066B005).

⁷ These three nonpublic enclosures, along with the four nonpublic documents submitted in support of the November 21, 2021 license amendment application and the February 24, 2022 nonpublic NFS RSI response, are denominated in the Commission's August 31, 2022 hearing opportunity notice for the NFS license amendment application, along with their ADAMS accession numbers. *See* Nuclear Fuel Services, Inc., 87 Fed. Reg. 53,507, 53,508-09 (Aug. 31, 2022).

⁸ *See* Letter from James R. Downs, Senior Project Manager, NMSS, NRC, to Timothy Knowles, Director, Safety and Safeguards, NFS at 1 (Mar. 25, 2022) (ADAMS Accession No. ML22080A238).

⁹ *See* Letter from Jill S. Caverly, Senior Project Manager, NMSS, NRC, to Timothy Knowles, Director, Safety and Safeguards, NFS at 1 (Apr. 28, 2022) (ADAMS Accession No. ML22111A281). In conjunction with the Staff's detailed environmental review, its publicly available RAIs sought additional environmental impact information regarding 36 subject matter areas, including federal, state, and local regulatory requirements, permits, and authorizations; new facility construction; gaseous and liquid effluents associated with the U-Metal Project; any changes or additions to the NFS facility's radiological surveillance program; the decommissioning timeframe for the proposed action; potential land use impacts, including construction vehicle and non-paved area impacts; visual and scenic resource impacts; and impacts from the U-Metal Project associated with meteorology, climatology, air quality, noise, geology and soils, surface water and ground water resources, terrestrial and aquatic ecological resources, threatened and endangered species, historic and cultural resources, socioeconomic factors, public and occupational health, transportation, environmental justice, waste

(Continued)

June 30, 2022 RAI response, which did not identify any of the information provided as containing nonpublic trade secrets or commercial information, is fully available to the public without restriction or redaction.¹⁰

B. Ms. Overall's SUNSI Access Request

On April 27, 2022, one day prior to issuing its RAIs to NFS regarding its environmental review, the NRC Staff published a notice in the *Federal Register* indicating it had received the November 2021 NFS license amendment application.¹¹ Further, in accordance with Atomic Energy Act § 189a, 42 U.S.C. § 2239(a), the Staff's notice indicated that any person whose interest might be affected by the application could file a hearing request and petition for leave to intervene challenging that application within 60 days. *See* 87 Fed. Reg. at 25,055. On June 10, 2022, the Erwin Citizens Awareness Network, Inc. (ECAN), submitted a request for a three-month extension of this filing deadline, citing hardships related to the ongoing COVID-19 pandemic and lack of broadband Internet access, which the Secretary of the Commission granted in part in a June 24, 2022 order that extended the hearing petition filing deadline until July 27, 2022.¹² This was followed by a second ECAN extension request, dated July 26, 2022, seeking an additional three months within which to file a hearing petition.¹³ In an August 8, 2022 order, the Secretary noted that the deadline for filing a hearing petition challenging the NFS application would be governed by a new hearing opportunity notice that the NRC Staff had advised was needed to outline the procedures by which a potential party could seek access to NFS SUNSI documents provided in support of the license amendment application. *See* Commission Order at 1-2.

The NRC then published a hearing opportunity notice in the *Federal Register* on August 31, 2022, that, among other things, set an October 31, 2022 deadline for any hearing requests challenging the November 2021 NFS license amendment application, and incorporated an order setting forth the procedures by which a potential party could seek access to SUNSI documents provided in

management; and the cumulative impacts of the U-Metal Project. *See id.*, encl. at 1-6 ([RAIs] for the Development of the Environmental Assessment for the [NFS] License Amendment Request to SNM-124 Authorizing Uranium Purification and Conversion Services (U-Metal Project)).

¹⁰ *See* Letter from Tim Knowles, Director, Safety and Safeguards, NFS, to Director, NMSS, NRC at 1 (Jun. 30, 2022) (ADAMS Accession No. ML22193A034).

¹¹ *See* Nuclear Fuel Services, Inc., 87 Fed. Reg. 25,054, 25,054 (Apr. 27, 2022).

¹² *See* Commission Order (June 24, 2022) at PDF 1 & n.1 (unpublished).

¹³ *See* Commission Order, attach. (Aug. 8, 2022) (unpublished) (Letter from Linda Cataldo Modica, President, ECAN, to Rochelle C. Bovol, Acting Secretary, Office of the Secretary (SECY), NRC (July 26, 2022)) [hereinafter Commission Order].

support of the NFS license amendment application. *See* 87 Fed. Reg. at 53,510-11.

Ms. Overall filed an initial, and then a redacted, request for access to all SUNSI documents regarding the NFS amendment application on September 12 and 14, 2022, respectively. *See supra* note 3. In her access request, Ms. Overall asserted the SUNSI materials were needed for two reasons. First, she maintained that because “the NRC has the Ketterer Report which ECAN commissioned,” she “would be very interested in what the NRC is willing to share with me.” Initial SUNSI Access Request at 3. Second, Ms. Overall requested she be given access to SUNSI materials because she maintains they will help her understand “the real purpose and function of the NRC” given that “[t]he NRC pulled out of the study by the National Academy of Sciences [(NAS)]” regarding the NFS facility, the result of which was that “no such studies have been done in this country to my knowledge.” *Id.*

On September 21, 2022, the NRC Staff denied Ms. Overall’s SUNSI request. *See* Staff SUNSI Access Denial at 1. Referencing the two criteria for obtaining SUNSI material — likelihood of establishing standing and legitimate need for SUNSI access — set forth in the Commission’s hearing opportunity notice, the NRC Staff acknowledged that, based on the representations in her SUNSI access request, there was a reasonable basis for concluding that Ms. Overall could establish standing to intervene in an adjudicatory proceeding regarding the efficacy of the NFS amendment application. *See id.* Nonetheless, the NRC Staff claimed that Ms. Overall had not met the second element of the standard because she failed to provide a sufficient basis to demonstrate that as a potential party she has “a legitimate need for access to SUNSI in this proceeding.” *Id.* at 2.

On September 28, 2022, Ms. Overall appealed the NRC Staff’s SUNSI access determination, which the Commission referred to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for appropriate action.¹⁴ On September 30, 2022, this Licensing Board was established to preside over Ms. Overall’s appeal.¹⁵ On October 3, 2022, the NRC Staff filed a reply to her appeal, stating that “[a]lthough [Ms. Overall] may meet the standing criterion, she does not meet the ‘need’ criterion Therefore, her appeal . . . should be denied.” Staff SUNSI Access Appeal Denial Reply at PDF 5.

¹⁴ *See* SUNSI Access Denial Appeal at 1; E-mail from Clara (Rica) Sola, SECY, NRC, to E. Roy Hawkins, Chief Administrative Judge (Sept. 28, 2022, 3:02 p.m. EDT).

¹⁵ *See* Nuclear Fuel Services, Inc.: Establishment of Atomic Safety and Licensing Board, 87 Fed. Reg. 60,420 (Oct. 5, 2022).

II. DISCUSSION

In undertaking our de novo review of Ms. Overall's appeal,¹⁶ as noted in Section I.B above, the Commission's standard governing a potential party's ability to obtain access to license application-associated SUNSI materials looks to whether the requestor can (1) demonstrate there is a reasonable basis to believe that as the potential party they are likely to establish standing to participate in the licensing proceeding at issue; and (2) establish a legitimate need for access to any SUNSI documentation. 87 Fed. Reg. at 53,510. For the purpose of litigating Ms. Overall's access request, the NRC Staff does not contest whether Ms. Overall or Sandra Miller, who also was identified as a potential party in Ms. Overall's initial SUNSI access request, would fulfill the standing portion of this two-part inquiry. See Staff SUNSI Access Appeal Denial Reply at PDF 2 n.7. For our part, we conclude that, in the context of this SUNSI access request proceeding,¹⁷ we need not determine whether the NRC Staff's concession on this standing factor was appropriate because we find that the second element — i.e., whether there has been a sufficient showing of a legitimate need for SUNSI material associated with the NFS license amendment application — has not been met.¹⁸

As the Commission has emphasized regarding this second criterion, a potential party is required to “explain how the requested SUNSI is necessary for meaningful participation in the proceeding” by including

¹⁶ See *Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-16-12, 84 NRC 148, 158 (2016), *aff'd*, CLI-17-4, 85 NRC 59 (2017).

¹⁷ In establishing party status for an intervenor submitting a hearing petition, it is generally recognized that, regardless of concessions by other litigants, a licensing board has an independent responsibility to assess whether a petitioner has established its standing to intervene. See 10 C.F.R. § 2.309(d)(2); see also *Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 491 (2019), *aff'd on other grounds*, CLI-20-11, 92 NRC 335 (2020). It is not clear if the same precept applies in this proceeding to a Board determination about whether a potential party is likely to establish standing.

¹⁸ In connection with the standing of potential parties Overall and Miller, based on the information supplied in the initial access request, they appear to reside within 20 miles of the NFS Erwin facility. See Initial SUNSI Access Request at 2. Should either Ms. Overall, Ms. Miller, or both decide to submit an intervention petition regarding the pending NFS license amendment application, under agency caselaw the degree to which their residence and other activities in the vicinity of the NFS facility will be sufficient to establish their standing will depend on whether they are able to show specific impacts to them from the activity proposed in the license amendment application at issue. See *Nuclear Fuel Servs., Inc.* (Erwin, Tennessee), LBP-04-5, 59 NRC 186, 189-98 (concluding that while sufficiently particularized showings about impacts of proposed licensing action had not been made to establish standing of petitioners residing at between 2 and 20 miles from the NFS facility, adequate showing was made establishing standing for an individual who resided 1 mile from the facility and drove directly by the facility 5 days a week), *aff'd*, CLI-04-13, 59 NRC 244 (2004).

(1) an explanation of the importance of the requested information to the proceeding, i.e., how the information relates to the license application or to NRC requirements or guidance, and how it will assist the requester in seeking intervention; and (2) an explanation of why existing publicly available versions of the application would not be sufficient.¹⁹

Further, according to the Commission, “whether a request for SUNSI sufficiently demonstrates a ‘need’ for the information will depend on the particular facts and circumstances presented.” *South Texas*, CLI-10-24, 72 NRC at 465-66.

Ms. Overall has taken two different approaches in trying to show that providing her with access to SUNSI material would be appropriate under this standard. In the first instance, as embodied in her initial SUNSI access request, indicating that she would “require all of the SUNSI involved with this action at NFS,” she further explained that this information was needed because “the NRC has the Ketterer Report which ECAN commissioned. . . . We did not get this study from the [Department of Energy] or the NRC. We did it. Therefore, I would be very interested in what the NRC is willing to share with me.” Initial SUNSI Access Request at 2, 3. Further, she stated that she is making her SUNSI access request because

[t]he NRC pulled out of the study by the [NAS], which, Ms. Linda Modica, had so graciously gotten for the people here. We were one of the chosen facilities. Only 5 were chosen. Germany and France have studies around nuclear facilities that match ours. We find it disturbing no such studies have been done in this country to my knowledge. None. Except for ours. The Ketterer Report. And The Cancer Study by ECAN which the ladies commissioned. Therefore, I would be very interested in seeing the SUNSI documents so as to help me understand the real purpose and function of the NRC. We were under the impression it was to protect the Public Health and Safety.

Id. at 3.

As a basis for seeking SUNSI materials associated with the NFS license amendment application, this approach has two significant deficiencies. First, as the NRC Staff points out, Ms. Overall’s concerns relate to past agency action, with which she seemingly disagrees, in connection with studies of radiation levels around the NFS facility, rather than asserting the SUNSI materials are necessary for her to plead material elements of her opposition to the matter to which those SUNSI documents correlate, i.e., the pending NFS amendment

¹⁹ *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 465 (2010) (footnotes omitted).

application.²⁰ See Staff SUNSI Access Request Denial at 2. This misplaced focus does nothing to establish the requisite “need” for the SUNSI materials at issue. Like a contention submitted in support of a hearing request,²¹ a request for access to SUNSI material must describe those aspects of the proposed license

²⁰ Ms. Overall references the November 2010 Ketterer report prepared by University of Northern Arizona professor Michael E. Ketterer, which provides an analysis of the results of isotopic studies in the vicinity of the NFS facility in an effort to evaluate the extent of offsite dispersion of uranium and related contaminants. See Michael E. Ketterer, Interim Report: Results of Isotopic Studies of Uranium in Environmental Samples from the Vicinity of the [NFS] Facility, Erwin, TN at 1 (Nov. 11, 2010), <https://www.nrc.gov/reading-rm/doc-collections/commission/slides/2011/20110527/ketterer-ureport-20110527.pdf>.

This report, along with a slide presentation prepared by the Northeast Tennessee Regional Health Office providing 1990-2006 cancer incidence and mortality data in Unicoi County, Tennessee, where the NFS facility is located, was presented by Linda Modica to the Commission for its consideration in the context of a May 2011 briefing on the results of the NRC Staff’s Agency Action Review Meeting (AARM), which is intended to review and coordinate agency actions regarding reactor and materials licensees. See Commission Meeting: Briefing on the Results of the [AARM], <https://www.nrc.gov/reading-rm/doc-collections/commission/slides/2011/20110527/index.html>; see also (E-Mail from Linda Cataldo Modica, Chair, Fuel Facilities Working Group, Sierra Club, to Annette L. Vietti-Cook, Secretary of the Commission, NRC (May 25, 2011, 2:44 a.m. EDT), <https://www.nrc.gov/reading-rm/doc-collections/commission/slides/2011/20110527/linda-email-20110527.pdf>; La’Shan D. Taylor, Unicoi County Cancer Information (undated), <https://www.nrc.gov/reading-rm/doc-collections/commission/slides/2011/20110527/unicoi-cc-info-20110527.pdf>.

Also associated with past agency activities is the NAS pilot study referred to by Ms. Overall, which purportedly was to assess cancer risks in populations near United States nuclear facilities, including the NFS facility, and was discontinued by the agency in 2015 based on a determination “that continuing the work was impractical, given the significant amount of time and resources needed and the agency’s current budget constraints.” Press Release, Off. of Pub. Affairs, NRC, NRC Ends Work on [NAS] Cancer Risk Pilot Study (Sept. 8, 2015) (ADAMS Accession No. ML15251A111).

Another document attached to Ms. Overall’s initial SUNSI access request is the May 2008 U.S. Department of Health and Human Services (HHS) Agency for Toxic Substances and Disease Registry (ATSDR), which she explained “says there could be a pathway to humans.” Initial SUNSI Access Request at 4; see *id.* attach. (Public Health Service, HHS, Public Health Assessment for [NFS], Erwin, Unicoi County, Tennessee, EPA Facility ID: TND003095635 (May 29, 2007)) [hereinafter ATSDR]. This study was referenced previously in an August 7, 2008 ECAN letter to the Commission as support for ECAN’s assertion that additional NRC scrutiny and action concerning NFS facility operations was required. See [Executive Director for Operations (EDO)] Principal Correspondence Control Cover Sheet, EDO Control: G20080570, unnumbered attach. 4, at 1 (Aug. 26, 2008) (Letter from Members of ECAN to Gregory Jaczko, Chairman, NRC (Aug. 7, 2008)) (ADAMS Accession No. ML082400107). While the ATSDR report noted that under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, ATSDR activities were statutorily precluded from evaluating radioactive materials released from the NFS site, the study did consider non-radioactive contaminants and concluded that “although some exposure might be occurring as a result of site conditions via the atmospheric exposure pathways, exposures are not at levels likely to cause adverse health.” ATSDR at 25.

²¹ As the Commission has observed, the showing of “need” to gain access to SUNSI material is not
(Continued)

application (or any associated NRC requirements or guidance) to which the SUNSI material bears a relationship and must further explain how providing such material will assist a potential party in challenging that license application. Additionally, Ms. Overall's emphasis on purported agency action (or inaction) runs counter to the well-recognized tenet that in a licensing proceeding, the applicant's license application, not the adequacy of the agency's actions, is the focus of the proceeding.²² As is the case with a proffered contention, a SUNSI access request is not an appropriate vehicle for questioning the NRC Staff's past regulatory efforts nor is it an opportunity to raise generic grievances about how the licensee has historically operated under its NRC license.²³

Ms. Overall's second line of argument is framed in her appeal from the NRC Staff's denial of her SUNSI access request and invokes what she maintains is her basic inability to address the Commission-established "need" requirement. She asserts that because the NFS SUNSI materials relevant to the license amendment process have been withheld from public view, she cannot know what is in the NFS SUNSI documents to begin with. She thus contends as follows:

NRC's reasoning is circular. The Federal Register announcement shows that four of the five SUNSI documents were submitted by NFS as attachments to its application. They have not been rejected or excluded by NRC. The fifth SUNSI document was supplied to NRC at NRC's request. By definition, therefore, these documents relate to the license application or to NRC requirements or guidance. In response to the criterion that I must show "how it will assist the requester in seeking intervention," I can only pose the question: How can I possibly demonstrate that without seeing the documents themselves? As to the remaining requirement, to explain why existing publicly available versions of the application would not

to be "conflated with the [10 C.F.R. § 2.309(f)] contention admissibility standards." *See South Texas*, CLI-10-24, 72 NRC at 467. Nonetheless, as is the case with the SUNSI access "need" showing, the section 2.309(f) criteria governing the admissibility of any contention filed in support of a hearing petition call for a focus on the license application at issue. *See* 10 C.F.R. § 2.309(f)(1)(vi) (directing that in providing sufficient information to establish that a genuine dispute exists with the applicant/licensee on a material issue of law or fact, a hearing petition contention must (1) reference specific portions of the application that the petitioner disputes and supporting reasons for each dispute; or (2) identify failures in the application to contain information on a relevant matter as required by law); *see also Susquehanna*, CLI-17-4, 85 NRC at 74 (identifying deficiencies in contention pleading to include failure to identify a specific portion of the application disputed).

²² *See Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (indicating that in a licensing proceeding, with the exception of certain NEPA issues, the applicant's license application is in issue, not the adequacy of the NRC Staff's review of the application), *review denied*, CLI-83-32, 18 NRC 1309 (1983).

²³ Instead, questions about the appropriateness of a licensee's past (or current) operational activities are more appropriately interposed in the context of 10 C.F.R. § 2.206 petition requesting that the NRC Staff take some type of regulatory action (including modifying, suspending, or revoking the license) with respect to such licensee activities.

be sufficient, I again note that apparently the publicly available versions are not regarded by NFS or NRC as being sufficient for their purposes; therefore, the publicly available versions could not be sufficient for me to be able to participate meaningfully in this proceeding. In summary, NRC wants to keep me in the dark about basic information that NRC itself is considering.

SUNSI Access Denial Appeal at PDF 1-2.

The problem with this argument is that it essentially negates the role assigned to a presiding officer in assessing a SUNSI access request, which is to “balance the applicant’s interest in protecting [SUNSI] information with the petitioner’s legitimate interest in obtaining information that is necessary to allow for meaningful participation in the adjudicatory proceeding,” *Susquehanna*, CLI-17-4, 85 NRC at 67, in favor of a potential party. As the “need” criterion has been articulated by the Commission, it cannot be the case that simply pleading “I don’t know what’s there until I see it” is enough to gain access to the SUNSI material. Rather, as the Commission has made clear,

[w]hile this is not a demanding standard, it does require a potential party to be familiar with the application, to articulate concerns that directly relate to the application, and to explain why having access to the information redacted from the application is necessary to either formulate or buttress a contention (or otherwise determine that a contention is unwarranted).

Id.

Consequently, the Commission’s SUNSI access criteria for materials associated with a license application obligate a potential party, including a self-represented litigant such as Ms. Overall,²⁴ to (1) review the information to which the potential party did have access, including the redacted supplemental environmental report; and (2) reference specific information from the license amendment’s publicly available documents in articulating their concerns directly relating to the application and explaining what nonpublic material they need to assist in formulating, for a hearing request, sufficiently detailed contentions re-

²⁴In her initial SUNSI access request, Ms. Overall stated that “I am also inquiring as to how my environmental attorney, David Bullock, can legally access redacted material re: this action?” Initial SUNSI Access Request at 1. While this might indicate that if a hearing petition challenge to the NFS license amendment application is filed, Ms. Overall (or an organization seeking to intervene as representing her interests) will have counsel, for the purpose of Ms. Overall’s SUNSI access request and her subsequent access denial appeal, we consider her to be a self-represented/pro se litigant. As such, under long-established Commission practice, in assessing her submissions, she is entitled to some leniency in pleading. See *Susquehanna*, LBP-16-12, 84 NRC at 160 (citing *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 45 n.246 (2010)). Such leniency does not, however, provide a licensing board with the latitude to grant SUNSI access based on pleadings that are facially deficient, as is the case in this instance.

garding those concerns. This is an endeavor Ms. Overall had to undertake to provide a sufficient showing that she did indeed have the requisite “need” for the SUNSI material associated with the NFS amendment application.²⁵ In this instance, however, based on what Ms. Overall presented both in her initial access request to the NRC Staff and in her access denial appeal before this Board, she has failed to make the requisite showing.²⁶

²⁵ See *South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), LBP-09-5, 69 NRC 303, 313 (2009) (observing that difficulty in making requisite “need” showing because of lack of access to SUNSI information does not absolve requestor of at least endeavoring to address the “need” criterion since contrary conclusion would improperly convert SUNSI disclosure process into procedure in which broad, nonspecific, and speculative assertions of “need” would mandate wholesale SUNSI release).

²⁶ We note as well that on October 5, 2022, Ms. Overall submitted a response to the Staff’s October 3 reply to her SUNSI access denial appeal, stating that because the SUNSI material was submitted by NFS to support its amendment application and apparently was accepted by the NRC as suitable for that purpose, she likewise needs to review the SUNSI material, along with the publicly available information regarding the NFS application, to determine on what basis to challenge the application. See Letter from Park Overall to E. Roy Hawken, Chief Administrative Judge at 1 (Oct. 5, 2022) [hereinafter Overall Response Letter]. Although we observed in a memorandum and order issued that same date that, absent a motion for leave to file, Ms. Overall’s additional pleading was not contemplated by the procedures governing a SUNSI access request, see Licensing Board Memorandum and Order (Regarding Additional Filing by Park Overall) (Oct. 5, 2022) at 1-2 (unpublished), relative to the substance of her argument, for the same reasons stated above, we find it fails to establish the requisite “need” for the SUNSI materials at issue.

We also find misplaced her defense in that letter of the timeliness of her September 28 SUNSI access appeal from the NRC Staff’s September 21 access denial. See Overall Response Letter at 1. Ms. Overall’s response apparently was triggered by a Staff reference in its October 3 reply to her SUNSI access appeal about the purported untimeliness of that filing. See Staff SUNSI Access Appeal Denial Reply at PDF 2 n.8. In her letter, Ms. Overall acknowledges that the Commission-directed schedule governing filings in this SUNSI access proceeding indicated she had five days to submit her appeal following the Staff’s issuance of its denial. See Overall Response Letter at 1. Nonetheless, highlighting that two of those days were during a weekend, she asserted that “[n]ormal procedures in case of such short deadlines call for the exclusion of weekend days and holidays,” such that her appeal was not due on September 26, 2022, but instead two days later. *Id.*

Some federal agencies do not include weekends and holidays in computing the filing date for pleadings due within a relatively short time. See 47 C.F.R. § 1.4(g) (indicating that in determining due date for Federal Communications Commission filings, weekends and holidays are not counted if the filing period is fewer than seven days). NRC’s rules of practice contain no such exclusion, however. See 10 C.F.R. § 2.306(b) (outlining exceptions that add time to a prescribed filing period, which do not include a short filing period).

For its part, the Staff did not claim the apparent untimeliness of her SUNSI access appeal was a basis for denying her appeal, see Staff SUNSI Access Appeal Denial Reply at PDF 1 n.3, and we likewise do not rely on that purported deficiency as grounds for rejecting her appeal. Nevertheless, if a participant in an NRC adjudicatory proceeding wants additional time to make a filing beyond what is prescribed by rule or order, that participant should submit a motion for an extension of time to the applicable presiding officer. See 10 C.F.R. § 2.307(a).

III. CONCLUSION

Although Ms. Overall obviously has strong reservations about the operation of the NFS facility generally, that is not grounds for obtaining the SUNSI documents NFS submitted in support of its November 2021 license amendment application associated with the U-Metal Project. Accordingly, for the reasons set forth in Section II above, we conclude that Ms. Overall has failed to articulate the requisite “need” for access to this SUNSI material, and so we uphold the NRC Staff’s determination denying her SUNSI access request.

For the foregoing reasons, it is this nineteenth day of October 2022, ORDERED, that:

1. Relative to the September 28, 2022 appeal of Park Overall requesting reversal of the NRC Staff’s September 21, 2022 rejection of her September 12, 2022 SUNSI access request, the NRC Staff’s denial of Ms. Overall’s SUNSI access request is *affirmed*.

2. Pursuant to 10 C.F.R. § 2.311(a)(3), (b), any appeal to the Commission from this memorandum and order must be filed within twenty-five (25) days after service of this issuance.

THE ATOMIC SAFETY AND
LICENSING BOARD

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

William J. Froehlich
ADMINISTRATIVE JUDGE

Dr. Sue H. Abreu
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 19, 2022

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11005897-LT; CLI-22-9, 96 NRC 107 (2022)

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HOLTEC DECOMMISSIONING INTERNATIONAL, LLC
LICENSE TRANSFER; MEMORANDUM AND ORDER; Docket Nos. 72-007-LT, 72-043-LT-2;
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HOLTEC INTERNATIONAL
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NUCLEAR FUEL SERVICES, INC.
MATERIALS LICENSE AMENDMENT; MEMORANDUM AND ORDER (Ruling on Appeal from
NRC Staff's Denial of Request for Access to Nonpublic Information); Docket No. 70-143-LA (ASLBP
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- Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 96 (2000)
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- Dairyland Power Coop. v. United States*, 645 F.3d 1363, 1372 (Fed. Cir. 2011)
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- Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 366-67 (2001)
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- DTE Electric Co.* (Fermi 2), CLI-21-5, 93 NRC 131, 135 (2021)
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- DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146 (2015)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 9-10 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 15-16 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 16 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 16-17 & n.82 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 29 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 31 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 32 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 38, 44 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 39 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 46 (2021)
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- do not present environmental impacts different from those already considered in relevant NEPA analyses; CLI-22-8, 96 NRC 1, 71 n.295 (2022)
- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 48 (2021)
NRC Staff reviews a PSDAR, but does not formally approve it, even when the PSDAR contains information in support of a license transfer application; CLI-22-8, 96 NRC 1, 72 (2022)
- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 49, 50 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 50 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 50-53 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 57 (2021)
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- Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI), CLI-21-1, 93 NRC 1, 87 (2021)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-19-11, 90 NRC 258, 262 (2019)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 360 (2020)
NRC assesses license transfer applicants' financial qualifications in light of multiple regulatory requirements designed to ensure that funding remains sufficient until no longer needed; CLI-22-8, 96 NRC 1, 15 (2022)
- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 362 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 366 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 367 (2020)
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- early in decommissioning process, cost estimates are necessarily uncertain; CLI-22-8, 96 NRC 1, 18 (2022)
- transfer applicant's decommissioning cost estimate is not required to be more detailed, more certain, or more conservative than the site-specific estimate submitted by a current licensee; CLI-22-8, 96 NRC 1, 57-58 (2022)
- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 368 (2020)
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- potential safety impacts, if any, from a shortfall in funding would not be as direct or immediate as the safety impacts of significant technical deficiencies; CLI-22-9, 96 NRC 107, 115 (2022)
- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 369-70 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 372 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 373 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 383-84, 387 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 383-84, 390 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 385 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 385-86, 391 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 387-88 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 390 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 390-91 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 391 (2020)
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- Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-20-12, 92 NRC 351, 394-97 (2020)
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- Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 45 n.246 (2010)
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- Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 549 (2016)
requested exemption that raises questions material to a proposed licensing action that directly bears on whether the proposed action should be granted may be challenged by petitioner in the proceeding; CLI-22-8, 96 NRC 1, 14 (2022)
- Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 549, 553 (2016)
exemption request is not among listed actions subject to a hearing opportunity under AEA section 189 except when the exemption request is intertwined with and integral to a license transfer application; CLI-22-8, 96 NRC 1, 80 (2022)
- Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 553 (2016)
exemption request may be challenged if it and the related licensing action overlap to the point that they are, in essence, two parts of the same action; CLI-22-8, 96 NRC 1, 81 (2022)
- Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-17, 84 NRC 99, 123 (2016)
decommissioning GEIS reflects NRC's determination that decommissioning is not itself a major federal action and serves to establish an envelope of environmental impacts associated with decommissioning activities; CLI-22-8, 96 NRC 1, 73-74 n.307 (2022)
- Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-17, 84 NRC 99, 123-24 n.130 (2016)
in evaluating a license amendment request, NRC Staff would prepare an environmental assessment or environmental impact statement, as appropriate; CLI-22-8, 96 NRC 1, 73 n.304 (2022)
- Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-17, 84 NRC 99, 125-27 (2016)
submission of a PSDAR in conjunction with a license transfer application does not transform NRC Staff's review of that PSDAR into a major federal action requiring independent NEPA review; CLI-22-8, 96 NRC 1, 73 (2022)

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- Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-16-17, 84 NRC 99, 126 n.130 (2016)
NRC Staff reviews a PSDAR, but does not formally approve it, even when the PSDAR contains information in support of a license transfer application; CLI-22-8, 96 NRC 1, 72 (2022)
- Exelon Generation Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-19-6, 89 NRC 465, 477 (2019)
alleged character deficiency or misconduct must have some direct and obvious relationship between the character issues and the licensing action in dispute; CLI-22-8, 96 NRC 1, 77 (2022)
- Exelon Generation Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-19-6, 89 NRC 465, 480 (2019)
purely environmental claims challenging adequacy of the PSDAR fall outside the scope of the license transfer proceeding; CLI-22-8, 96 NRC 1, 74 (2022)
there is no requirement that licensee specifically identify its decommissioning approach as either the DECON or SAFSTOR method; CLI-22-8, 96 NRC 1, 98 (2022)
- Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-19-5, 89 NRC 483, 491 (2019), *aff'd on other grounds*, CLI-20-11, 92 NRC 335 (2020)
regardless of concessions by other litigants, licensing board has an independent responsibility to assess whether petitioner has established its standing to intervene; LBP-22-2, 96 NRC 129, 141 n.17 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70 (2021)
challenge to financial qualifications of license transferee denied for failure to raise at least one admissible contention; CLI-22-9, 96 NRC 107, 119 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 72 (2021)
after the accident, about 99% of the spent nuclear fuel and damaged core material was removed and shipped to the U.S. Department of Energy's Idaho National Laboratory; CLI-22-9, 96 NRC 107, 117 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 77 (2021)
where contentions appear copied from a different proceeding it is especially important to ensure that petitioners demonstrate a genuine material dispute with the particular application in question; CLI-22-9, 96 NRC 107, 121 n.59 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 78-79 (2021)
contention claiming that an assumed 2% annual real rate of return on decommissioning trust funds was impermissible was rejected as an incorrect interpretation of NRC regulations; CLI-22-9, 96 NRC 107, 123 n.69 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 79 (2021)
section 50.75(e)(1)(i) does not require any particular period of safe storage, only that the cost estimate be based on a period of safe storage specifically described in the decommissioning cost estimate; CLI-22-8, 96 NRC 1, 97-98 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 80-82 (2021)
claims that cost estimates are underestimated because they do not account for a likely existence of greater amounts of contamination and therefore of higher remediation costs than the current cost estimate assumes are inadmissible; CLI-22-9, 96 NRC 107, 121 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 80-88 (2021)
claims about potential for increased decommissioning costs are inadmissible because they lack factual or expert support or do not raise a genuine dispute with the application to transfer the license; CLI-22-9, 96 NRC 107, 121-22 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 81 (2021)
exhibits involving a different reactor unit were not supportive of contention; CLI-22-9, 96 NRC 107, 120 n.58 (2022)

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- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 82-83 (2021)
claims that mixed waste disposal costs could increase project costs over the current estimate lack support; CLI-22-9, 96 NRC 107, 121 (2022)
claims that spent nuclear fuel and fuel debris material need to be repackaged which could increase project costs over the current estimate lack support; CLI-22-9, 96 NRC 107, 121 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 84-85 (2021)
claim that delay in the early stage of the decommissioning process that could increase project costs over the current estimate lacks support; CLI-22-9, 96 NRC 107, 121 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 86-88 (2021)
claims that license transfer application and supporting materials fail to show that transferee is financially qualified is inadmissible; CLI-22-9, 96 NRC 107, 125 (2022)
- FirstEnergy Companies and TMI-2 Solutions, Inc.* (Three Mile Island Nuclear Station, Unit 2), CLI-21-2, 93 NRC 70, 87 (2021)
argument that the license holder decommissioning a reactor must have some other, ongoing business concern that would generate income independent of the decommissioning trust fund is inadmissible; CLI-22-9, 96 NRC 107, 126 (2022)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111 (1995)
character allegations are directly pertinent when allegations specifically concern the current director and current organizational structure of the facility and are supported by expert witnesses alleged to have knowledge of the current management; CLI-22-8, 96 NRC 1, 78 n.331 (2022)
- Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995)
petitioner must claim a concrete and particularized injury (actual or threatened) that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision in the proceeding; CLI-22-8, 96 NRC 1, 16 (2022)
- Holtec International* (HI-STORE Consolidated Interim Storage Facility), CLI-20-4, 91 NRC 167, 176 (2020)
NWSA does not prohibit a nuclear power plant licensee from transferring spent nuclear fuel to another private entity; CLI-22-8, 96 NRC 1, 26 n.102 (2022)
- Honeywell International, Inc.* (Metropolis Works Uranium Conversion Facility), CLI-13-1, 77 NRC 1, 10 (2013)
exemption request may be challenged if it and the related licensing action overlap to the point that they are, in essence, two parts of the same action; CLI-22-8, 96 NRC 1, 81 n.349 (2022)
- Interim Storage Partners, LLC* (WCS Consolidated Interim Storage Facility), CLI-20-14, 92 NRC 463, 486 (2020)
it is petitioner's burden to explain why a contention should be admitted; CLI-22-8, 96 NRC 1, 45 (2022)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC 223, 224-25 (2004)
reply brief may appropriately expand on arguments raised in the original petition to address arguments raised in an applicant's answer, but may not recast or reinvigorate a contention with new arguments that expand the scope of the contention as originally pled; CLI-22-8, 96 NRC 1, 69 (2022)
- Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 623 (2004)
NRC rules do not allow use of reply briefs to provide, for the first time, the necessary threshold support for contentions; CLI-22-8, 96 NRC 1, 91 n.403 (2022)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 221 (1999)
potential safety impacts, if any, from a shortfall in funding would not be as direct or immediate as the safety impacts of significant technical deficiencies; CLI-22-9, 96 NRC 107, 115 (2022)
- North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 222 (1999)
financial assurance in license transfer adjudications is acceptable if it is based on plausible assumptions and forecasts, even if the possibility is not insignificant that things will turn out less favorably than expected; CLI-22-8, 96 NRC 1, 18, 94-95 (2022); CLI-22-9, 96 NRC 107, 115 (2022)

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- Nuclear Fuel Services, Inc.* (Erwin, Tennessee), LBP-04-5, 59 NRC 186, 189-98, *aff'd*, CLI-04-13, 59 NRC 244 (2004)
adequate showing was made to establish standing of individual who resided 1 mile from the facility and drove directly by the facility 5 days a week; LBP-22-2, 96 NRC 129, 141 n.18 (2022)
- Nuclear Management Co., LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 731-32 (2006)
allowing new claims to be added to a reply not only would defeat the contention-filing deadline but would unfairly deprive other participants of an opportunity to rebut the new claims; CLI-22-8, 96 NRC 1, 69 (2022)
reply brief cannot expand the scope of the arguments set forth in the original hearing request; CLI-22-8, 96 NRC 1, 47 (2022)
reply brief may appropriately expand on arguments raised in the original petition to address arguments raised in an applicant's answer, but may not recast or reinvigorate a contention with new arguments that expand the scope of the contention as originally pled; CLI-22-8, 96 NRC 1, 69 (2022)
- Pac. Gas and Elec. Co. v. United States*, 536 F.3d 1282, 1291-92 (Fed. Cir. 2008)
to assess damages for DOE's partial breach of contract, courts have used DOE's 1987 Annual Capacity Report to determine how quickly the plaintiff utility or owner would have been able to have had all spent fuel removed but for DOE's partial breach of contract; CLI-22-8, 96 NRC 1, 27 n.107 (2022)
- Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807, *review denied*, CLI-83-32, 18 NRC 1309 (1983)
except certain NEPA issues, applicant's license application is in issue, not the adequacy of NRC Staff's review of the application; LBP-22-2, 96 NRC 129, 144 n.22 (2022)
- Pai'ina Hawaii, LLC*, LBP-06-4, 63 NRC 99, 108-112 & n.36 (2006)
contention challenging categorical exclusion concerning alternative siting locations for irradiators was admissible; CLI-22-8, 96 NRC 1, 70 n.292 (2022)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 286 n.1 (2000)
notwithstanding NRC Staff's orders approving license transfers and applicants' completion of the sale, the Commission could modify the license or disapprove the transfers and require applicants to return the plant ownership to the status quo ante; CLI-22-8, 96 NRC 1, 7 n.7 (2022)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 311-12 (2000)
contentions based on past activities of a licensee's parent corporation are not germane because such activities generally do not bear directly upon the character or conduct of those responsible for conducting licensed activities in compliance with NRC requirements; CLI-22-8, 96 NRC 1, 77 (2022)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 312 (2000)
absent strong support for a claim that difficulties at other plants run by a corporate parent will affect plant(s) at issue before the Commission, it is unwilling to use its hearing process as a forum for a wide-ranging inquiry into the corporate parent's general activities across the country; CLI-22-8, 96 NRC 1, 79 (2022)
- Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-01-14, 53 NRC 488, 559-60 (2001)
NRC Staff may be invited as a non-party to submit a brief with its views on particular questions pertaining to a license transfer application; CLI-22-8, 96 NRC 1, 37 n.150 (2022)
- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 465-67, 476 (2001)
exemption request is not among listed actions subject to a hearing opportunity under AEA section 189 except when the exemption request is intertwined with and integral to a license transfer application; CLI-22-8, 96 NRC 1, 80 (2022)

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- Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 467 (2001)
requested exemption that raises questions material to a proposed licensing action that directly bears on whether the proposed action should be granted may be challenged by petitioner in the proceeding; CLI-22-8, 96 NRC 1, 14 (2022)
- Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989)
wholesale incorporation by reference does not serve the purposes of a pleading; CLI-22-8, 96 NRC 1, 100-01 n.454 (2022)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 465 (2010)
potential party is required to explain how requested SUNSI is necessary for meaningful participation in the proceeding; LBP-22-2, 96 NRC 129, 141-42 (2022)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 465-66 (2010)
whether a request for SUNSI sufficiently demonstrates a need for the information will depend on the particular facts and circumstances presented; LBP-22-2, 96 NRC 129, 142 (2022)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), CLI-10-24, 72 NRC 451, 467 (2010)
showing of need to gain access to SUNSI material is not to be conflated with contention admissibility standards; LBP-22-2, 96 NRC 129, 143-44 n.21143-44 n.21 (2022)
- South Texas Project Nuclear Operating Co.* (South Texas Project, Units 3 and 4), LBP-09-5, 69 NRC 303, 313 (2009)
difficulty in making requisite need showing because of lack of access to SUNSI information does not absolve requestor of at least endeavoring to address the need criterion; LBP-22-2, 96 NRC 129, 146 n.25 (2022)
- Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-17-4, 85 NRC 59, 67 (2017)
presiding officer in assessing a SUNSI access request, must balance applicant's interest in protecting SUNSI information with petitioner's legitimate interest in obtaining information that is necessary to allow for meaningful participation in the proceeding; LBP-22-2, 96 NRC 129, 145 (2022)
- Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-17-4, 85 NRC 59, 74 (2017)
deficiencies in contention pleading include failure to identify a specific portion of the application disputed; LBP-22-2, 96 NRC 129, 144 n.21 (2022)
- Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-16-12, 84 NRC 148, 158 (2016), *aff'd*, CLI-17-4, 85 NRC 59 (2017)
licensing board undertakes a de novo review of a potential party's appeal of NRC Staff's denial of request for access to license application-associated SUNSI materials; LBP-22-2, 96 NRC 129, 141 (2022)
- Susquehanna Nuclear, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-16-12, 84 NRC 148, 160 (2016), *aff'd*, CLI-17-4, 85 NRC 59 (2017)
self-represented/pro se litigant is entitled to some leniency in pleading; LBP-22-2, 96 NRC 129, 145 n.24 (2022)
- System Fuels, Inc. v. United States*, 818 F.3d 1302, 1307 (Fed. Cir. 2016)
court would not preclude awarding damages on a set of facts that may come into being in the future; CLI-22-8, 96 NRC 1, 55 n.227 (2022)
- United States Department of Energy* (Clinch River Breeder Reactor Plant), CLI-82-23, 16 NRC 412, 421 (1982)
exemption request may be challenged if it and the related licensing action overlap to the point that they are, in essence, two parts of the same action; CLI-22-8, 96 NRC 1, 81 n.349 (2022)
- USEC Inc.* (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311 (2005)
Commission has long looked for guidance to judicial concepts of standing; CLI-22-9, 96 NRC 107, 115 (2022)

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petitioner must claim a concrete and particularized injury (actual or threatened) that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision in the proceeding;
CLI-22-8, 96 NRC 1, 16 (2022); CLI-22-9, 96 NRC 107, 115 (2022)

Vermont Yankee Nuclear Power Corp. and AmerGen Vermont, LLC (Vermont Yankee Nuclear Power Station), CLI-00-17, 52 NRC 79, 83 (2000)

applicants may act in reliance on a staff order approving an application at their own risk should the Commission later determine that the intervenors have raised valid objections to the license transfer application; CLI-22-8, 96 NRC 1, 7 (2022)

license transfer application will lack the agency's final approval until and unless the Commission concludes the adjudication in applicant's favor; CLI-22-8, 96 NRC 1, 6-7 (2022)

Vermont Yankee Nuclear Power Corp. and AmerGen Vermont, LLC (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 163 (2000)

organization seeking representational standing must demonstrate how at least one of its members may be affected by the challenged licensing action and would have standing in his or her own right;
CLI-22-8, 96 NRC 1, 17 (2022)

organization seeking representational standing must identify member by name and address and demonstrate, preferably by affidavit, that the organization is authorized to request a hearing on behalf of that member; CLI-22-8, 96 NRC 1, 17 (2022)

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- 10 C.F.R. 2.206
petition for enforcement action is used to address a potential violation of NRC rules in connection with representations made in a PSDAR; CLI-22-8, 96 NRC 1, 75 (2022)
petitioners' recourse to address environmental impacts of planned decommissioning and spent fuel management activities that would exceed those previously reviewed is a petition for enforcement action; CLI-22-8, 96 NRC 1, 74-75 (2022)
questions about appropriateness of licensee's past (or current) operational activities are more appropriately interposed in the context of petition for enforcement action; LBP-22-2, 96 NRC 129, 144 n.23 (2022)
- 10 C.F.R. 2.306(b)
exceptions are outlined that add time to a prescribed filing period, which do not include a short filing period; LBP-22-2, 96 NRC 129, 146 n.25 (2022)
- 10 C.F.R. 2.307(a)
participant in an NRC proceeding who wants additional time to make a filing beyond what is prescribed by rule or order should submit a motion for an extension of time to the applicable presiding officer; LBP-22-2, 96 NRC 129, 146 n.25 (2022)
- 10 C.F.R. 2.309(a), (d)
intervention petitioner must show standing and propose at least one admissible contention; CLI-22-8, 96 NRC 1, 16 (2022); CLI-22-9, 96 NRC 107, 115 (2022)
- 10 C.F.R. 2.309(d)(1)(ii)-(iv)
intervention petitioner must address the nature of its right under the AEA to be made a party, nature and extent of its property, financial, or other interest, and possible effect that any decision or order issued may have on petitioner's interest; CLI-22-8, 96 NRC 1, 16 (2022); CLI-22-9, 96 NRC 107, 115 (2022)
- 10 C.F.R. 2.309(d)(2)
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- 10 C.F.R. 2.309(f)
contention admissibility requires petitioner to explain the contention's basis and provide supporting facts or expert opinion on which petitioner intends to rely; CLI-22-8, 96 NRC 1, 17 (2022)
contention admission requirements help ensure that NRC institutes adjudicatory hearings only for issues that are supported by facts or expert opinion and that identify a dispute with the application on a question material to the NRC's decision; CLI-22-8, 96 NRC 1, 17 (2022)
contention must fall within the scope of the proceeding and be material to the findings that NRC must make for the proposed licensing action; CLI-22-8, 96 NRC 1, 17 (2022)
intervention petitioner must show standing and propose at least one admissible contention; CLI-22-8, 96 NRC 1, 16 (2022); CLI-22-9, 96 NRC 107, 115 (2022)
petitioner must identify specific disputed portions of the application along with supporting reasons for each dispute; CLI-22-8, 96 NRC 1, 17 (2022); CLI-22-8, 96 NRC 1, 17 (2022)
requirements for an admissible contention are specified; CLI-22-9, 96 NRC 107, 115 (2022)
showing of need to gain access to SUNSI material is not to be conflated with contention admissibility standards; LBP-22-2, 96 NRC 129, 143-44 n.21 (2022)
- 10 C.F.R. 2.309(f)(1)(iii)
contention is inadmissible because it does not raise a genuine dispute with the application and, to the extent that it challenges settled interpretation of section 50.75(e)(1), does not raise a concern within the scope of license transfer proceeding; CLI-22-8, 96 NRC 1, 98 (2022)

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- contention must raise issues within the scope of the proceeding; CLI-22-8, 96 NRC 1, 75 (2022)
- 10 C.F.R. 2.309(f)(1)(v)
petitioner must provide a concise statement of facts or expert opinion that support its position; CLI-22-8, 96 NRC 1, 96 (2022)
wholesale incorporation by reference of large documents as the basis for a contention is unacceptable; CLI-22-8, 96 NRC 1, 100 n.454 (2022)
- 10 C.F.R. 2.309(f)(1)(vi)
admissibility criteria for any contention filed in support of a hearing petition calls for a focus on the license application at issue; LBP-22-2, 96 NRC 129, 144 n.21 (2022)
contention is inadmissible because it does not raise a genuine dispute with the application and, to the extent that it challenges settled interpretation of section 50.75(e)(1), does not raise a concern within the scope of license transfer proceeding; CLI-22-8, 96 NRC 1, 98 (2022)
petitioner must include references to specific portions of the application that petitioner disputes or indicate information that was required to have been included in the application was omitted; CLI-22-9, 96 NRC 107, 127 (2022)
petitioners must base their contentions on the application or other information available at the time of the petition; CLI-22-8, 96 NRC 1, 69 (2022)
- 10 C.F.R. 2.309(f)(2)
petitioners must base their contentions on the application or other information available at the time of the petition; CLI-22-8, 96 NRC 1, 69 (2022)
- 10 C.F.R. 2.309(h)
state attorney general need not make any further demonstration of standing to intervene for facilities within his/her state; CLI-22-8, 96 NRC 1, 18-19 (2022)
- 10 C.F.R. 2.335(a), (b)
challenge to sections 50.75(e)(1)(i) and 50.82(a)(8)(vi) requires that petitioner seek a waiver of these regulations; CLI-22-8, 96 NRC 1, 98 (2022)
challenges to regulations in adjudicatory proceedings are prohibited absent grant of a rule waiver; CLI-22-8, 96 NRC 1, 60 n.249 (2022)
claim that NEPA supplementation is required to address environmental changes and unevaluated environmental impacts from operational and planned decommissioning activities is inadmissible absent a waiver of 10 C.F.R. 51.22(c)(21); CLI-22-8, 96 NRC 1, 71 n.297 (2022)
- 10 C.F.R. 2.390
supporting documents may be withheld from public release if they contain Sensitive Unclassified Non-Safeguards Information; LBP-22-2, 96 NRC 129, 136 (2022)
- 10 C.F.R. 2.390(a)
license amendment applicant must identify documents containing proprietary information such as trade secrets or commercial information that should remain nonpublic; LBP-22-2, 96 NRC 129, 137 (2022)
- 10 C.F.R. 2.1308
oral hearing is specified for license transfer proceedings, unless, within 15 days from the order granting the hearing, the parties unanimously move for a hearing consisting of written comments; CLI-22-8, 96 NRC 1, 103 (2022)
- 10 C.F.R. 2.1316(a)
NRC Staff is expected, consistent with its findings in its Safety Evaluation Report, to promptly issue approval or denial of license transfer requests notwithstanding a pending adjudicatory hearing; CLI-22-8, 96 NRC 1, 6 (2022)
NRC Staff may complete its review of a license transfer application before an adjudicatory proceeding has concluded; CLI-22-9, 96 NRC 107, 109 (2022)
- 10 C.F.R. 2.1316(b)
NRC Staff is not required to participate as a party in a license transfer adjudication but may do so; CLI-22-8, 96 NRC 1, 103 (2022)
- 10 C.F.R. 2.1319(a)
Commission may designate one or more Commissioners, or any other person permitted by law to preside at a hearing; CLI-22-8, 96 NRC 1, 103 (2022)

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- 10 C.F.R. 2.1320
responsibilities and authority of Presiding Officer in the oral hearing are provided; CLI-22-8, 96 NRC 1, 103 (2022)
- 10 C.F.R. 2.1320(b)(1)
should questions on the scope of the delegated authorities or other matter arise, the Presiding Officer may certify questions or refer rulings to the Commission; CLI-22-8, 96 NRC 1, 103 (2022)
- 10 C.F.R. 2.1320(b)(3)
jurisdiction of the Presiding Officer ends on the certification of the hearing record to the Commission; CLI-22-8, 96 NRC 1, 103 (2022)
- 10 C.F.R. 20.1501(a)-(b)
licensees must conduct subsurface radiological surveys to evaluate concentrations or quantities of residual radioactivity and must maintain the survey results as records important to decommissioning; CLI-22-8, 96 NRC 1, 50 (2022)
subsurface monitoring and records requirements as part of the Decommissioning Planning Rule render much less likely that a licensee today would discover a significant amount of previously unknown soil contamination; CLI-22-8, 96 NRC 1, 44 n.181 (2022)
- 10 C.F.R. 50.2
site restoration does not fall within NRC's definition of decommissioning; CLI-22-8, 96 NRC 1, 51-52 (2022)
spent fuel management and non-radiological site restoration activities do not fall within NRC's definition of decommissioning; CLI-22-8, 96 NRC 1, 13 (2022)
withdrawals from the decommissioning trust fund to pay expenses for legitimate decommissioning activities is consistent with NRC's definition of decommissioning; CLI-22-8, 96 NRC 1, 13 n.48 (2022)
- 10 C.F.R. 50.33
NRC review of a license transfer application is limited to specific matters and is largely focused on the proposed transferee's financial and technical qualifications; CLI-22-8, 96 NRC 1, 10 (2022); CLI-22-9, 96 NRC 107, 113 (2022)
- 10 C.F.R. 50.33(f)
contention that license transfer applicant failed to show how non-decommissioning commitments would be funded without recourse to the trust fund is inadmissible; CLI-22-8, 96 NRC 1, 65 (2022)
electric utility applicants need not demonstrate financial qualifications to carry out the activities for which the permit or license sought; CLI-22-9, 96 NRC 107, 128 n.92 (2022)
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- 10 C.F.R. 50.33(f)(2)
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if proposed license transfer would not occur prior to permanent cessation of reactor operations, applicants need not demonstrate reasonable assurance of obtaining the funds necessary to cover estimated power reactor operations; CLI-22-8, 96 NRC 1, 11 n.31 (2022)
- 10 C.F.R. 50.33(k)(1)
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- 10 C.F.R. 50.34
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- 10 C.F.R. 50.38
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- 10 C.F.R. 50.54(bb)
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- 10 C.F.R. 50.58(b)(6)
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- 10 C.F.R. 50.75
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- 10 C.F.R. 50.75(a)
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- 10 C.F.R. 50.75(b)(1)
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- 10 C.F.R. 50.75(c)(1)
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- 10 C.F.R. 50.75(e)
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- 10 C.F.R. 50.75(e)(1)
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- 10 C.F.R. 50.75(e)(1)(i)
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- 10 C.F.R. 50.75(g)
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- 10 C.F.R. 50.75(h)(1)(iv)
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- 10 C.F.R. 50.80(a)
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- 10 C.F.R. 50.80(b)
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- 10 C.F.R. 50.80(c)
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to hold the license and that the transfer is otherwise consistent with applicable law, regulations, and
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- 10 C.F.R. 50.82
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- 10 C.F.R. 50.82(a)(4)(i)
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guidance on comparison of decommissioning cost estimates to the minimum formula expressly applies to
site-specific cost estimates with a PSDAR; CLI-22-8, 96 NRC 1, 34 (2022)
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decommissioning cost estimate; CLI-22-8, 96 NRC 1, 10 n.23 (2022)
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Post-Shutdown Decommissioning Activities Report to NRC, with a copy to the affected state(s);
CLI-22-8, 96 NRC 1, 10 n.22 (2022)
PSDAR is required to address only environmental impacts associated with site-specific decommissioning
activities; CLI-22-8, 96 NRC 1, 74 (2022)
PSDAR must provide reasons for concluding that environmental impacts associated with site-specific
decommissioning activities will be bounded by appropriate previously issued environmental impact
statements; CLI-22-8, 96 NRC 1, 71 (2022)
required content of PSDAR is discussed; CLI-22-8, 96 NRC 1, 72 (2022)
- 10 C.F.R. 50.82(a)(4)(ii)
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PSDAR, but does not provide a hearing opportunity on it; CLI-22-8, 96 NRC 1, 72 n.303 (2022)
- 10 C.F.R. 50.82(a)(5)
licensee that has submitted certifications of permanent cessation of operations and permanent removal of
fuel may begin to perform major decommissioning activities consistent with its PSDAR 90 days after
NRC has received the PSDAR; CLI-22-8, 96 NRC 1, 46 n.189 (2022)
- 10 C.F.R. 50.82(a)(6)(ii)
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impacts not previously reviewed; CLI-22-8, 96 NRC 1, 45-46, 71 (2022)
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excess of those previously determined; CLI-22-8, 96 NRC 1, 72 n.302, 74 (2022)
- 10 C.F.R. 50.82(a)(7)
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- licensee must notify NRC before performing any decommissioning activity or making any significant schedule change inconsistent with those described in the PSDAR; CLI-22-8, 96 NRC 1, 72 n.301 (2022)
- licensees must notify NRC and the affected State in writing before making any significant schedule change from schedules and actions described in the PSDAR, including changes that significantly increase cost; CLI-22-8, 96 NRC 1, 16 n.65, 49 (2022)
- 10 C.F.R. 50.82(a)(8)(i)(A)
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- contention challenging requested exemption to permit withdrawals from the decommissioning trust fund to pay for spent fuel management and site restoration activities is inadmissible; CLI-22-8, 96 NRC 1, 65 (2022)
- licensee may not withdraw decommissioning trust funds for non-decommissioning purposes without an exemption; CLI-22-8, 96 NRC 1, 13, 66 (2022)
- spent fuel management and non-radiological site restoration activities do not fall within NRC's definition of decommissioning; CLI-22-8, 96 NRC 1, 14 (2022)
- withdrawals from the decommissioning trust fund to pay expenses for legitimate decommissioning activities is consistent with NRC's definition of decommissioning; CLI-22-8, 96 NRC 1, 13 (2022)
- 10 C.F.R. 50.82(a)(8)(i)(C)
licensee is prohibited from making any trust fund withdrawals that would inhibit its ability to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to fully decommission the site; CLI-22-8, 96 NRC 1, 96 (2022)
- 10 C.F.R. 50.82(a)(8)(iii)
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- 10 C.F.R. 50.82(a)(8)(iv)
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- 10 C.F.R. 50.82(a)(8)(v)
if financial assurance methods being relied on will not cover estimated cost of decommissioning completion, the financial assurance status report must include additional financial assurance to cover the cost; CLI-22-8, 96 NRC 1, 49 n.198 (2022)
- licensee that has submitted a site-specific decommissioning cost estimate must annually provide a decommissioning funding status report; CLI-22-8, 96 NRC 1, 15 (2022)
- licensees must provide detailed status reports on decommissioning financial assurance and spent fuel management funding; CLI-22-9, 96 NRC 107, 114 (2022)
- NRC oversight of funding adequacy continues until all spent fuel has been removed from a site and until any residual radioactivity has been reduced to a level that permits termination of the license; CLI-22-9, 96 NRC 107, 114 (2022)
- NRC uses licensee's annual decommissioning financial assurance status report to monitor withdrawals from the trust fund; CLI-22-8, 96 NRC 1, 96 (2022)
- 10 C.F.R. 50.82(a)(8)(v)(B)
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- 10 C.F.R. 50.82(a)(8)(vi)
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- if remaining decommissioning funds are not sufficient to cover the estimated cost to complete decommissioning, licensee must include in the status report additional financial assurance to cover the estimated remaining costs; CLI-22-8, 96 NRC 1, 15-16, 91-92 n.402, 96 (2022)
- licensee that has prepaid decommissioning funds based on a site-specific decommissioning cost estimate may take credit for projected earnings on the prepaid account's funds up to a 2% annual real rate of

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- return, through the decommissioning period, including periods of safe storage, final dismantlement, and license termination; CLI-22-8, 96 NRC 1, 12, 96-97 (2022); CLI-22-9, 96 NRC 107, 114 (2022)
- 10 C.F.R. 50.82(a)(8)(vii)
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- 10 C.F.R. 50.82(a)(8)(vii)(A)-(B)
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- 10 C.F.R. 50.82(a)(8)(vii)(C)
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- 10 C.F.R. 50.82(a)(9)(ii)(A)
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- 10 C.F.R. 50.82(a)(9)(ii)(A), (F)
full site characterization must be submitted with a license termination plan at least 2 years before the date of license termination and also must include an updated site-specific decommissioning cost estimate; CLI-22-8, 96 NRC 1, 51 (2022)
- 10 C.F.R. 51.22(b)
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- 10 C.F.R. 51.22(c)(21)
claim that NEPA supplementation is required to address environmental changes and unevaluated environmental impacts from operational and planned decommissioning activities is inadmissible absent a waiver of this regulation; CLI-22-8, 96 NRC 1, 71 n.297 (2022)
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- 10 C.F.R. 51.72(a)(1)-(2)
NRC must prepare a supplemental environmental impact statement if there are substantial changes in the proposed action that are relevant to environmental concerns; CLI-22-8, 96 NRC 1, 70 (2022)
- 10 C.F.R. 51.82(a)(8)(iv)
for decommissioning that includes a period of storage or surveillance, licensees must provide a means of adjusting the decommissioning funding over the storage or surveillance period; CLI-22-8, 96 NRC 1, 64 (2022)
- 10 C.F.R. 51.92(a)(1)-(2)
NRC must prepare a supplemental environmental impact statement if there are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; CLI-22-8, 96 NRC 1, 70 (2022)
- 10 C.F.R. 70.64, 70.72(c)
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- 10 C.F.R. Part 71
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- 10 C.F.R. 72.30(b)
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- 10 C.F.R. 72.30(b)(2)
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- 10 C.F.R. 72.30(b)(2)(ii)
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- 10 C.F.R. 72.30(e)
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- 10 C.F.R. 72.48(c)
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- 10 C.F.R. 72.50(a)
no license granted under the Atomic Energy Act may be transferred unless NRC consents in writing; CLI-22-8, 96 NRC 1, 10 (2022); CLI-22-9, 96 NRC 107, 113 n.27 (2022)
- 10 C.F.R. 961.11
DOE Standard Contract for spent fuel disposal establishes fuel acceptance procedures, including spent fuel acceptance priority based on oldest fuel first; CLI-22-8, 96 NRC 1, 26 (2022)
- 40 C.F.R. 273.9
universal wastes addressed by Environmental Protection Agency regulations include batteries, pesticides, mercury-containing equipment, and lamps; CLI-22-8, 96 NRC 1, 52 n.213 (2022)
- 47 C.F.R. 1.4(g)
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no license for a production and utilization facility will be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; CLI-22-9, 96 NRC 107, 113-14 (2022)

Atomic Energy Act, 184, 42 U.S.C. § 2234
no license granted under the AEA may be transferred unless NRC consents in writing; CLI-22-8, 96 NRC 1, 10 (2022); CLI-22-9, 96 NRC 107, 113 n.27 (2022)

Atomic Energy Act, 189a, 42 U.S.C. § 2239(a)
any person whose interest may be affected by a materials license amendment application can file a hearing request and petition for leave to intervene challenging that application within 60 days; LBP-22-2, 96 NRC 129, 139 (2022)

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licensing board undertakes a de novo review of a potential party's appeal of NRC Staff's denial of request for access to license application-associated SUNSI materials; LBP-22-2, 96 NRC 129 (2022)

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licensing board undertakes a de novo review of a potential party's appeal of NRC Staff's denial of request for access to license application-associated SUNSI materials; LBP-22-2, 96 NRC 129 (2022)

APPROVAL OF LICENSE

applicants may act in reliance on a Staff order approving an application at their own risk should the Commission later determine that the intervenors have raised valid objections to the license transfer application; CLI-22-8, 96 NRC 1 (2022)

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NRC staff is expected, consistent with its findings in its Safety Evaluation Report, to promptly issue approval or denial of license transfer requests notwithstanding a pending adjudicatory hearing; CLI-22-8, 96 NRC 1 (2022)

NRC will approve a license transfer application if it determines that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable law, regulations, and orders; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

ATOMIC ENERGY ACT

any person whose interest might be affected by a materials license amendment application can file a hearing request and petition for leave to intervene challenging that application within 60 days; LBP-22-2, 96 NRC 129 (2022)

license granted under the AEA may only be transferred if NRC consents in writing; CLI-22-9, 96 NRC 107 (2022)

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to assess damages for DOE's partial breach of contract, courts have used DOE's 1987 Annual Capacity Report to determine how quickly the plaintiff utility or owner would have been able to have had all spent fuel removed but for DOE's partial breach of contract; CLI-22-8, 96 NRC 1 (2022)

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interested person may request that NRC make the determination that special circumstances exist that warrant an exception to the categorical exclusion; CLI-22-8, 96 NRC 1 (2022)

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NRC has established a sufficient administrative record to show that the subject actions do not have a significant effect on the environment, either individually or cumulatively; CLI-22-8, 96 NRC 1 (2022)

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operating license applicant or license holder under Part 50 must provide a certification of decommissioning funding in an amount not less than the minimum amounts in section 50.75(c)(1); CLI-22-8, 96 NRC 1 (2022)

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to assess damages for DOE's partial breach of contract, courts have used DOE's 1987 Annual Capacity Report to determine how quickly the plaintiff utility or owner would have been able to have had all spent fuel removed but for DOE's partial breach of contract; CLI-22-8, 96 NRC 1 (2022)

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alleged character deficiency or misconduct must have some direct and obvious relationship between the character issues and the licensing action in dispute; CLI-22-8, 96 NRC 1 (2022)

argument that application's decommissioning financial assurance showing is deficient because it improperly relies on an assumption that NRC will grant the requested exemption is inadmissible; CLI-22-8, 96 NRC 1 (2022)

argument that the license holder decommissioning a reactor must have some other, ongoing business concern that would generate income independent of the decommissioning trust fund is inadmissible; CLI-22-9, 96 NRC 107 (2022)

arguments addressing potential impact of exemption on applicants' financial qualifications fall within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

challenge to contingency allowance of 12% allocated to the radiological decommissioning, spent fuel management, and site restoration cost estimates is admissible; CLI-22-8, 96 NRC 1 (2022)

challenge to license transfer applicants' estimated 11-year timeframe for removal by DOE of all of the spent fuel is admissible; CLI-22-8, 96 NRC 1 (2022)

challenge to reasonableness of site-specific decommissioning cost estimate falling well below the minimum formula amount is admissible; CLI-22-8, 96 NRC 1 (2022)

challenges to contingency levels where petitioners had not identified a material supported dispute with the reasonableness of the levels applied and the levels on their face did not appear disproportionately low have been rejected; CLI-22-8, 96 NRC 1 (2022)

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character allegations are directly pertinent when the allegations specifically concern the current director and current organizational structure of the facility, and are supported by expert witnesses alleged to have knowledge of the current management; CLI-22-8, 96 NRC 1 (2022)

claim that a site characterization is required to evaluate groundwater contamination from cooling tower overflows and tritium leaks does not raise an issue within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

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Commission will not credit as evidentiary support a petitioner's reliance on the arguments and evidence of another party without first finding that the petitioner has submitted an admissible contention of its own; CLI-22-8, 96 NRC 1 (2022)

concerns about how a requested exemption from 10 C.F.R. 50.82(a)(8)(i)(A) may materially affect a license transfer applicant's showing of financial qualifications is within the scope of the proceeding; CLI-22-8, 96 NRC 1 (2022)

contention challenging requested exemption to permit withdrawals from the decommissioning trust fund to pay for spent fuel management and site restoration activities is inadmissible; CLI-22-8, 96 NRC 1 (2022)

contention must fall within the scope of the proceeding and be material to the findings that the NRC must make for the proposed licensing action; CLI-22-8, 96 NRC 1 (2022)

contention that challenges settled interpretation of section 50.75(e)(1) does not raise a concern within the scope of license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

contention that license transfer applicant failed to show how non-decommissioning commitments would be funded without recourse to the trust fund is inadmissible; CLI-22-8, 96 NRC 1 (2022)

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environmental impacts of decommissioning do not fall within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

except certain NEPA issues, applicant's license application is in issue, not the adequacy of NRC Staff's review of the application; LBP-22-2, 96 NRC 129 (2022)

exemption request may be challenged if it and the related licensing action overlap to the point that they are, in essence, two parts of the same action; CLI-22-8, 96 NRC 1 (2022)

exhibits involving a different reactor unit were not supportive of the contention; CLI-22-9, 96 NRC 107 (2022)

if petitioner claims that an application fails altogether to contain information required by law, petitioner must identify each failure and provide supporting reasons for petitioner's belief; CLI-22-8, 96 NRC 1 (2022)

it is petitioner's burden to explain why a contention should be admitted; CLI-22-8, 96 NRC 1 (2022)

no petition or other request may challenge NRC Staff's no significant hazards consideration determination in an adjudicatory proceeding; CLI-22-8, 96 NRC 1 (2022)

only adequately supported assertions that a transfer applicant's financial assumptions and forecasts are implausible or unrealistic in a way that is material to assessment of reasonable assurance are admissible; CLI-22-8, 96 NRC 1 (2022)

only certain information contained in the PSDAR falls within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

only those adequately supported assertions that a transfer applicant's financial assumptions and forecasts are implausible or unrealistic in a way that is material to assessment of reasonable assurance will be admitted; CLI-22-9, 96 NRC 107 (2022)

past activities of a licensee's parent corporation are not germane because such activities generally do not bear directly upon the character or conduct of those responsible for conducting licensed activities in compliance with NRC requirements; CLI-22-8, 96 NRC 1 (2022)

petitioner fails to link licensee character claims to the license transfer action; CLI-22-8, 96 NRC 1 (2022)

petitioner has the burden to provide information necessary to satisfy contention admissibility requirements and demonstrate a genuine dispute with the application; CLI-22-8, 96 NRC 1 (2022)

petitioner must explain the contention's basis and provide supporting facts or expert opinion on which petitioner intends to rely; CLI-22-8, 96 NRC 1 (2022)

petitioner must identify specific disputed portions of the application along with supporting reasons for each dispute; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

petitioner must raise issues within the scope of the proceeding; CLI-22-8, 96 NRC 1 (2022)

petitioners must base their contentions on the application or other information available at the time of the petition; CLI-22-8, 96 NRC 1 (2022)

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purely environmental claims challenging adequacy of the PSDAR fall outside the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

questions about appropriateness of licensee's past (or current) operational activities are more appropriately interposed in the context of petition for enforcement action; LBP-22-2, 96 NRC 129 (2022)

requirements for an admissible contention are specified in 10 C.F.R. 2.309(f); CLI-22-9, 96 NRC 107 (2022)

showing of need to gain access to SUNSI material is not to be conflated with contention admissibility standards; LBP-22-2, 96 NRC 129 (2022)

where contentions appear copied from a different proceeding, it is especially important to ensure that petitioners demonstrate a genuine material dispute with the particular application in question; CLI-22-9, 96 NRC 107 (2022)

whether spent fuel management costs will be recovered is not appropriate for resolution in a license transfer adjudicatory proceeding; CLI-22-8, 96 NRC 1 (2022)

wholesale incorporation by reference of large documents as the basis for a contention is unacceptable; CLI-22-8, 96 NRC 1 (2022)

CONTRACTORS

for ISFSI decommissioning, NRC requires an adequate contingency factor and that the decommissioning cost estimate reflect the cost of an independent contractor performing all decommissioning activities; CLI-22-8, 96 NRC 1 (2022)

CONTRACTS

DOE Standard Contract for spent fuel disposal establishes fuel acceptance procedures, including spent fuel acceptance priority based on oldest fuel first; CLI-22-8, 96 NRC 1 (2022)

See also Breach of Contract

COSTS

potential exchanges of spent fuel delivery schedules would entail a cost to buyers to induce sellers to part with their allocations by offering to share benefits of such a bargain; CLI-22-8, 96 NRC 1 (2022)

whether spent fuel management costs will be recovered is not appropriate for resolution in a license transfer adjudicatory proceeding; CLI-22-8, 96 NRC 1 (2022)

See also Decommissioning Costs

DAMAGES

See Compensatory Damages

DEADLINES

exceptions are outlined that add time to a prescribed filing period, which do not include a short filing period; LBP-22-2, 96 NRC 129 (2022)

some federal agencies do not include weekends and holidays in computing the filing date for pleadings due within a relatively short time; LBP-22-2, 96 NRC 129 (2022)

DECOMMISSIONING

claim that delay in the early stage of the decommissioning process that could increase project costs over the current estimate lacks support; CLI-22-9, 96 NRC 107 (2022)

environmental impacts of decommissioning do not fall within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

GEIS reflects NRC's determination that decommissioning is not itself a major federal action and serves to establish an envelope of environmental impacts associated with decommissioning activities; CLI-22-8, 96 NRC 1 (2022)

if financial assurance methods being relied on will not cover estimated cost of decommissioning completion, the financial assurance status report must include additional financial assurance to cover the cost; CLI-22-8, 96 NRC 1 (2022)

license renewal GEIS discusses decommissioning models that are generally acceptable to NRC, but does not foreclose proposed use of variants of these models, or different models entirely; CLI-22-8, 96 NRC 1 (2022)

licensee is not required to specifically identify its decommissioning approach as either the DECON or SAFSTOR method; CLI-22-8, 96 NRC 1 (2022)

licensee that has submitted certifications of permanent cessation of operations and permanent removal of fuel may begin to perform major decommissioning activities consistent with its PSDAR 90 days after NRC has received the PSDAR; CLI-22-8, 96 NRC 1 (2022)

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licensees are prohibited from performing decommissioning activities that result in significant environmental impacts that have not been previously reviewed; CLI-22-8, 96 NRC 1 (2022)

licensees must notify NRC and the affected State in writing before making any significant schedule change from schedules and actions described in the PSDAR, including changes that significantly increase cost; CLI-22-8, 96 NRC 1 (2022)

petitioners' recourse to address environmental impacts of planned decommissioning and spent fuel management activities that would exceed those previously reviewed, is a petition for enforcement action; CLI-22-8, 96 NRC 1 (2022)

site restoration does not fall within the NRC's definition of decommissioning; CLI-22-8, 96 NRC 1 (2022)

spent fuel management and non-radiological site restoration activities do not fall within NRC's definition of decommissioning; CLI-22-8, 96 NRC 1 (2022)

DECOMMISSIONING COSTS

adequate contingency factor must be applied to the estimated ISFSI decommissioning cost; CLI-22-8, 96 NRC 1 (2022)

applicant's site-specific estimate of decommissioning costs based on a DECON model that included a period of deferred dismantlement was sufficient to satisfy requirements; CLI-22-8, 96 NRC 1 (2022)

before it can perform any decommissioning activity that would significantly increase cost beyond that estimated in its site-specific estimate, licensee must first notify NRC, with a copy to the affected state(s); CLI-22-8, 96 NRC 1 (2022)

challenge to reasonableness of site-specific decommissioning cost estimate falling well below the minimum formula amount is admissible; CLI-22-8, 96 NRC 1 (2022)

challenges to contingency levels where petitioners had not identified a material supported dispute with the reasonableness of the levels applied and the levels on their face did not appear disproportionately low have been rejected; CLI-22-8, 96 NRC 1 (2022)

claims that cost estimates are underestimated because they do not account for a likely existence of greater amounts of contamination and therefore of higher remediation costs than the current cost estimate assumes are inadmissible; CLI-22-9, 96 NRC 107 (2022)

claims that mixed waste disposal costs could increase project costs over the current estimate lack support; CLI-22-9, 96 NRC 107 (2022)

early in decommissioning process, cost estimates are necessarily uncertain; CLI-22-8, 96 NRC 1 (2022)

for ISFSI decommissioning, NRC requires an adequate contingency factor and that the decommissioning cost estimate reflect the cost of an independent contractor performing all decommissioning activities; CLI-22-8, 96 NRC 1 (2022)

guidance on comparison of estimates to the minimum formula expressly applies to site-specific cost estimates submitted under decommissioning regulations; CLI-22-8, 96 NRC 1 (2022)

if adequate justification for site-specific estimate less than the minimum formula amount is not provided, then that cost estimate shall be considered deficient; CLI-22-8, 96 NRC 1 (2022)

if site-specific estimate is less than the minimum formula amount and adequate justification is not provided, then Staff is to seek additional information from licensee to resolve the deficiency; CLI-22-8, 96 NRC 1 (2022)

licensee is to include in the Post-Shutdown Decommissioning Activities Report a site-specific decommissioning cost estimate; CLI-22-8, 96 NRC 1 (2022)

licensee that has submitted a site-specific decommissioning cost estimate must annually provide a decommissioning funding status report; CLI-22-8, 96 NRC 1 (2022)

site-specific estimates may be used as a basis for a funding plan if the amount to be provided is at least equal to that stated in 10 C.F.R. 50.75(c)(1); CLI-22-8, 96 NRC 1 (2022)

subsurface monitoring and records requirements as part of the Decommissioning Planning Rule renders much less likely that a licensee today would discover a significant amount of previously unknown soil contamination; CLI-22-8, 96 NRC 1 (2022)

there is no reason to presume that DOE will identify a valid contractual claim, pursue that claim, and succeed in requiring licensees to bear additional packaging-related costs; CLI-22-8, 96 NRC 1 (2022)

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DECOMMISSIONING FUND DISBURSEMENTS

contention challenging requested exemption to permit withdrawals from the decommissioning trust fund to pay for spent fuel management and site restoration activities is inadmissible; CLI-22-8, 96 NRC 1 (2022)

license transfer applicant seeks exemption regarding withdrawals from the decommissioning trust fund; CLI-22-8, 96 NRC 1 (2022)

NRC uses licensee's annual decommissioning financial assurance status report to monitor withdrawals from the trust fund; CLI-22-8, 96 NRC 1 (2022)

use of decommissioning trust for purposes other than radiological decommissioning would require an exemption; CLI-22-8, 96 NRC 1 (2022)

withdrawals from the decommissioning trust fund to pay expenses for legitimate decommissioning activities is consistent with the NRC's definition of decommissioning; CLI-22-8, 96 NRC 1 (2022)

DECOMMISSIONING FUNDING

2% real rate of growth in decommissioning trust is consistent with the upper limit allowed by NRC; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

acceptable methods of demonstrating financial assurance of decommissioning funding are outlined in 10 C.F.R. 50.75(e); CLI-22-9, 96 NRC 107 (2022)

contention that license transfer applicant failed to show how non-decommissioning commitments would be funded without recourse to the trust fund is inadmissible; CLI-22-8, 96 NRC 1 (2022)

financial assurance in license transfer adjudications is acceptable if it is based on plausible assumptions and forecasts, even if the possibility is not insignificant that things will turn out less favorably than expected; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

if remaining decommissioning funds are not sufficient to cover the estimated cost to complete decommissioning, licensee must include in the status report additional financial assurance to cover the estimated remaining costs; CLI-22-8, 96 NRC 1 (2022)

it is premature to assume, for purposes of decommissioning funding requirements, what types of canisters that DOE may or may not accept for transportation; CLI-22-8, 96 NRC 1 (2022)

license transfer applicants are not expected to commit funding to cover the costs of speculative scenarios; CLI-22-8, 96 NRC 1 (2022)

license transfer application must provide reasonable assurance that funds will be available to decommission the facility, including any ISFSI; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

licensee must describe how it will fund management of all irradiated fuel at the reactor site from the time that reactor operations cease until all fuel has been transferred to DOE; CLI-22-9, 96 NRC 107 (2022)

licensees are to adjust decommissioning funds during safe storage to reflect changes in cost estimates, and reporting requirements allow licensees' decommissioning funds to be monitored by NRC; CLI-22-8, 96 NRC 1 (2022)

licensees must provide detailed status reports on decommissioning financial assurance and spent fuel management funding; CLI-22-9, 96 NRC 107 (2022)

operating license applicant or license holder under Part 50 must provide a certification of decommissioning funding in an amount not less than the minimum amounts in section 50.75(c)(1); CLI-22-8, 96 NRC 1 (2022)

potential safety impacts, if any, from a shortfall in funding would not be as direct or immediate as the safety impacts of significant technical deficiencies; CLI-22-9, 96 NRC 107 (2022)

site-specific decommissioning cost estimates are not required to include specified funding for removal of current canisters and is not a reason to deny a license transfer; CLI-22-8, 96 NRC 1 (2022)

site-specific estimates may be used as a basis for a funding plan if the amount to be provided is at least equal to that stated in 10 C.F.R. 50.75(c)(1); CLI-22-8, 96 NRC 1 (2022)

transfer applicant's decommissioning cost estimate is not required to be more detailed, more certain, or more conservative than the site-specific estimate submitted by a current licensee; CLI-22-8, 96 NRC 1 (2022)

DECOMMISSIONING FUNDING PLANS

acceptable methods of providing financial assurance of reactor decommissioning funding are provided; CLI-22-8, 96 NRC 1 (2022)

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licensee that has prepaid decommissioning funds based on a site-specific decommissioning cost estimate may take credit for projected earnings on the prepaid account's funds up to a 2% annual real rate of return, through the decommissioning period, including periods of safe storage, final dismantlement, and license termination; CLI-22-8, 96 NRC 1 (2022)

prepayment method of adequate decommissioning funding refers to prepaid funds deposited in a segregated account outside of the licensee's administrative control in an amount sufficient to pay decommissioning costs at the time of permanent termination of operations; CLI-22-8, 96 NRC 1 (2022)

DEFICIENCIES

if adequate justification for site-specific decommissioning cost estimate less than the minimum formula amount is not provided, then that cost estimate shall be considered deficient; CLI-22-8, 96 NRC 1 (2022)

DEFINITIONS

site restoration does not fall within the NRC's definition of decommissioning; CLI-22-8, 96 NRC 1 (2022)

spent fuel management and non-radiological site restoration activities do not fall within NRC's definition of decommissioning; CLI-22-8, 96 NRC 1 (2022)

DELAY

claim that delay in the early stage of the decommissioning process that could increase project costs over the current estimate lacks support; CLI-22-9, 96 NRC 107 (2022)

DENIAL OF LICENSE

notwithstanding Staff's orders approving license transfers and applicants' completion of the sale, the Commission could modify the license or disapprove the transfers and require applicants to return the plant ownership to the status quo ante; CLI-22-8, 96 NRC 1 (2022)

DEPARTMENT OF ENERGY

Commission has accepted a 2030 start date as plausible when DOE might begin to pick up spent fuel from nuclear power reactor sites; CLI-22-8, 96 NRC 1 (2022)

DOE Standard Contract for spent fuel disposal establishes fuel acceptance procedures, including spent fuel acceptance priority based on oldest fuel first; CLI-22-8, 96 NRC 1 (2022)

there is no reason to presume that DOE will identify a valid contractual claim, pursue that claim, and succeed in requiring licensees to bear additional packaging-related costs; CLI-22-8, 96 NRC 1 (2022)
to assess damages for DOE's partial breach of contract, courts have used DOE's 1987 Annual Capacity Report to determine how quickly the plaintiff utility or owner would have been able to have had all spent fuel removed but for DOE's partial breach of contract; CLI-22-8, 96 NRC 1 (2022)

DISCLOSURE

difficulty in making requisite need showing because of lack of access to SUNSI information does not absolve requestor of at least endeavoring to address the need criterion; LBP-22-2, 96 NRC 129 (2022)

presiding officer in assessing a SUNSI access request, must balance applicant's interest in protecting SUNSI information with petitioner's legitimate interest in obtaining information that is necessary to allow for meaningful participation in the proceeding; LBP-22-2, 96 NRC 129 (2022)

supporting documents may be withheld from public release if they contain Sensitive Unclassified Non-Safeguards Information; LBP-22-2, 96 NRC 129 (2022)

whether a request for SUNSI sufficiently demonstrates a need for the information will depend on the particular facts and circumstances presented; LBP-22-2, 96 NRC 129 (2022)

ELECTRIC UTILITY

utility applicant need not demonstrate financial qualifications to carry out the activities for which the permit or license sought; CLI-22-9, 96 NRC 107 (2022)

ENFORCEMENT ACTIONS

petitioners' recourse to address environmental impacts of planned decommissioning and spent fuel management activities that would exceed those previously reviewed, is a petition for enforcement action; CLI-22-8, 96 NRC 1 (2022)

ENVIRONMENTAL ANALYSIS

license transfer actions are among categories of action categorically excluded from the need to perform additional environmental analysis; CLI-22-8, 96 NRC 1 (2022)

SUBJECT INDEX

ENVIRONMENTAL EFFECTS

license transfer actions do not have a significant effect on the environment, either individually or cumulatively; CLI-22-8, 96 NRC 1 (2022)

petitioners' recourse to address environmental impacts of planned decommissioning and spent fuel management activities that would exceed those previously reviewed, is a petition for enforcement action; CLI-22-8, 96 NRC 1 (2022)

PSDAR must provide reasons for concluding that environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements; CLI-22-8, 96 NRC 1 (2022)

such impacts of decommissioning do not fall within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

ENVIRONMENTAL IMPACT STATEMENT

See Generic Environmental Impact Statement; Supplemental Environmental Impact Statement

ENVIRONMENTAL REVIEW

in evaluating a license amendment request, NRC Staff would prepare an environmental assessment or environmental impact statement, as appropriate; CLI-22-8, 96 NRC 1 (2022)

submission of a PSDAR in conjunction with a license transfer application does not transform NRC Staff's review of that PSDAR into a major federal action requiring independent NEPA review; CLI-22-8, 96 NRC 1 (2022)

EVIDENCE

Commission will not credit as evidentiary support a petitioner's reliance on the arguments and evidence of another party without first finding that the petitioner has submitted an admissible contention of its own; CLI-22-8, 96 NRC 1 (2022)

EXCEPTIONS

interested person may request that NRC make the determination that special circumstances exist that warrant an exception to the categorical exclusion; CLI-22-8, 96 NRC 1 (2022)

EXEMPTIONS

argument that application's decommissioning financial assurance showing is deficient because it improperly relies on an assumption that NRC will grant the requested exemption in inadmissible; CLI-22-8, 96 NRC 1 (2022)

arguments addressing potential impact of exemption on applicants' financial qualifications fall within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

license applicant seeks exemption regarding withdrawals from the decommissioning trust fund; CLI-22-8, 96 NRC 1 (2022)

request for exemption from regulations is not among the listed actions subject to a hearing opportunity; CLI-22-8, 96 NRC 1 (2022)

requested exemption that raises questions material to a proposed licensing action that directly bears on whether the proposed action should be granted may be challenged by petitioner in the proceeding; CLI-22-8, 96 NRC 1 (2022)

use of decommissioning trust for purposes other than radiological decommissioning would require an exemption; CLI-22-8, 96 NRC 1 (2022)

EXTENSION OF TIME

exceptions are outlined that add time to a prescribed filing period, which do not include a short filing period; LBP-22-2, 96 NRC 129 (2022)

participant in an NRC proceeding who wants additional time to make a filing beyond what is prescribed by rule or order should submit a motion for an extension of time to the applicable presiding officer; LBP-22-2, 96 NRC 129 (2022)

FILINGS

exceptions are outlined that add time to a prescribed filing period, which do not include a short filing period; LBP-22-2, 96 NRC 129 (2022)

some federal agencies do not include weekends and holidays in computing the filing date for pleadings due within a relatively short time; LBP-22-2, 96 NRC 129 (2022)

FINALITY

NRC agency approval of a license transfer application is not final unless and until the Commission concludes the adjudicatory proceeding in applicant's favor; CLI-22-9, 96 NRC 107 (2022)

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FINANCIAL ASSURANCE

acceptable methods of demonstrating financial assurance of decommissioning funding are outlined in 10 C.F.R. 50.75(e); CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

argument that the license holder decommissioning a reactor must have some other, ongoing business concern that would generate income independent of the decommissioning trust fund is inadmissible; CLI-22-9, 96 NRC 107 (2022)

cash flow analysis in a license transfer application reflects a snapshot in time; CLI-22-8, 96 NRC 1 (2022)

challenge to contingency allowance of 12% allocated to the radiological decommissioning, spent fuel management, and site restoration cost estimates is admissible; CLI-22-8, 96 NRC 1 (2022)

except for an electric utility, a license transfer applicant for an operating power reactor must demonstrate that it possesses or has reasonable assurance of obtaining funds necessary to cover estimated operating costs for the period of the license; CLI-22-9, 96 NRC 107 (2022)

financial assurance in license transfer adjudications is acceptable if it is based on plausible assumptions and forecasts, even if the possibility is not insignificant that things will turn out less favorably than expected; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

if proposed license transfer would not occur prior to permanent cessation of reactor operations, applicants need not demonstrate reasonable assurance of obtaining the funds necessary to cover estimated power reactor operations; CLI-22-8, 96 NRC 1 (2022)

if remaining decommissioning funds are not sufficient to cover the estimated cost to complete decommissioning, licensee must include in the status report additional financial assurance to cover the estimated remaining costs; CLI-22-8, 96 NRC 1 (2022); CLI-22-8, 96 NRC 1 (2022)

license transfer application must provide reasonable assurance that funds will be available to decommission the facility, including any ISFSI; CLI-22-8, 96 NRC 1 (2022)

licensee is not required at the decommissioning stage to supplement its financial assurance method with a showing that its operations will generate additional funding; CLI-22-8, 96 NRC 1 (2022)

only adequately supported assertions that a transfer applicant's financial assumptions and forecasts are implausible or unrealistic in a way that is material to assessment of reasonable assurance are admissible; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

FINANCIAL QUALIFICATIONS

applicant may rely on a single source of funding in order to establish its financial qualifications to conduct the activities authorized by the license; CLI-22-8, 96 NRC 1 (2022)

argument that application's decommissioning financial assurance showing is deficient because it improperly relies on an assumption that NRC will grant the requested exemption is inadmissible; CLI-22-8, 96 NRC 1 (2022)

arguments addressing potential impact of exemption on applicants' financial qualifications fall within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

concerns about how a requested exemption from 10 C.F.R. 50.82(a)(8)(i)(A) may materially affect a license transfer applicant's showing of financial qualifications is within the scope of the proceeding; CLI-22-8, 96 NRC 1 (2022)

electric utility applicants need not demonstrate financial qualifications to carry out the activities for which the permit or license sought; CLI-22-9, 96 NRC 107 (2022)

license transfer application must contain sufficient information to demonstrate that the applicant has the financial qualifications to carry out the activities for which the license is sought; CLI-22-8, 96 NRC 1 (2022)

license transfer application must demonstrate applicant's financial qualifications and provide reasonable assurance that decommissioning funds will be available; CLI-22-9, 96 NRC 107 (2022)

NRC does not prohibit licensees from being limited liability companies; CLI-22-9, 96 NRC 107 (2022)

NRC will approve a license transfer application if it determines that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable law, regulations, and orders; CLI-22-8, 96 NRC 1 (2022)

review of a license transfer application is limited to specific matters, including technical and financial qualifications of proposed transferee(s); CLI-22-9, 96 NRC 107 (2022)

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FINANCIAL QUALIFICATIONS REVIEW

NRC assesses license transfer applicants' financial qualifications in light of multiple regulatory requirements designed to ensure that funding remains sufficient until no longer needed; CLI-22-8, 96 NRC 1 (2022)

NRC review of a license transfer application is limited to specific matters and is largely focused on the proposed transferee's financial and technical qualifications; CLI-22-8, 96 NRC 1 (2022)

FOREIGN OWNERSHIP

no license for a production and utilization facility will be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; CLI-22-9, 96 NRC 107 (2022)

FUEL FABRICATION

licensee must seek agency approval for changes necessary to implement new U-Metal process, including addressing baseline design criteria; LBP-22-2, 96 NRC 129 (2022)

GENERIC ENVIRONMENTAL IMPACT STATEMENT

decommissioning GEIS reflects NRC's determination that decommissioning is not itself a major federal action and serves to establish an envelope of environmental impacts associated with decommissioning activities; CLI-22-8, 96 NRC 1 (2022)

license renewal GEIS discusses decommissioning models that are generally acceptable to NRC, but does not foreclose proposed use of variants of these models, or different models entirely; CLI-22-8, 96 NRC 1 (2022)

GEOLOGIC REPOSITORIES

safe storage of spent fuel is technically feasible using currently available technology, with no major breakthrough in science or technology needed, and 25 to 35 years is a reasonable period for repository development; CLI-22-8, 96 NRC 1 (2022)

GROUNDWATER CONTAMINATION

claim that a site characterization is required to evaluate groundwater contamination from cooling tower overflows and tritium leaks does not raise an issue within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

HAZARDOUS WASTE

universal wastes addressed by Environmental Protection Agency regulations include batteries, pesticides, mercury-containing equipment, and lamps; CLI-22-8, 96 NRC 1 (2022)

HEARING PROCEDURES

oral hearing is specified for license transfer proceedings, unless, within 15 days from the order granting the hearing, the parties unanimously move for a hearing consisting of written comments; CLI-22-8, 96 NRC 1 (2022)

See also Rules of Practice

HEARING RIGHTS

any person whose interest might be affected by a materials license amendment application can file a hearing request and petition for leave to intervene challenging that application within 60 days; LBP-22-2, 96 NRC 129 (2022)

exemption request is not among the listed actions subject to a hearing opportunity; CLI-22-8, 96 NRC 1 (2022)

license amendment request is subject to an opportunity for a hearing; CLI-22-8, 96 NRC 1 (2022)

NRC provides notice and opportunity to comment and holds a public meeting upon receipt of the PSDAR, but does not provide a hearing opportunity on it; CLI-22-8, 96 NRC 1 (2022)

requested exemption that raises questions material to a proposed licensing action that directly bears on whether the proposed action should be granted may be challenged by petitioner in the proceeding; CLI-22-8, 96 NRC 1 (2022)

HIGH-BURNUP FUEL

timeframe for transfer of high-burnup fuel away from site is discussed; CLI-22-8, 96 NRC 1 (2022)

INCORPORATION BY REFERENCE

wholesale incorporation by reference of large documents as the basis for a contention is unacceptable; CLI-22-8, 96 NRC 1 (2022)

SUBJECT INDEX

INDEPENDENT SPENT FUEL STORAGE INSTALLATION

adequate contingency factor must be applied to the estimated ISFSI decommissioning cost; CLI-22-8, 96 NRC 1 (2022)

for decommissioning, NRC requires that the decommissioning cost estimate reflect the cost of an independent contractor performing all decommissioning activities; CLI-22-8, 96 NRC 1 (2022)

license transfer application must provide reasonable assurance that funds will be available to decommission the facility, including any ISFSI; CLI-22-8, 96 NRC 1 (2022)

INTERVENTION

petitioner must show standing and propose at least one admissible contention; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

LICENSE AMENDMENTS

in evaluating a license amendment request, NRC Staff would prepare an environmental assessment or environmental impact statement, as appropriate; CLI-22-8, 96 NRC 1 (2022)

license amendment request is subject to an opportunity for a hearing; CLI-22-8, 96 NRC 1 (2022)

LICENSE APPLICATIONS

except certain NEPA issues, applicant's license application is in issue, not the adequacy of NRC Staff's review of the application; LBP-22-2, 96 NRC 129 (2022)

See also License Transfer Applications; Materials License Amendment Applications

LICENSE CONDITIONS

notwithstanding NRC Staff's orders approving license transfers and applicants' completion of the sale, the Commission could modify the license or disapprove the transfers and require applicants to return the plant ownership to the status quo ante; CLI-22-8, 96 NRC 1 (2022)

LICENSE TERMINATION PLANS

full site characterization must be submitted with the plan at least 2 years before the date of license termination and also must include an updated site-specific decommissioning cost estimate; CLI-22-8, 96 NRC 1 (2022)

LICENSE TRANSFER APPLICATIONS

applicant must demonstrate its financial qualifications and provide reasonable assurance that decommissioning funds will be available; CLI-22-9, 96 NRC 107 (2022)

applicant seeks exemption regarding withdrawals from the decommissioning trust fund; CLI-22-8, 96 NRC 1 (2022)

applicants may act in reliance on a Staff order approving an application at their own risk should the Commission later determine that the intervenors have raised valid objections to the license transfer application; CLI-22-8, 96 NRC 1 (2022)

application must contain sufficient information to demonstrate that applicant has the financial qualifications to carry out the activities for which the license is sought; CLI-22-8, 96 NRC 1 (2022)

application must provide reasonable assurance that funds will be available to decommission the facility, including any ISFSI; CLI-22-8, 96 NRC 1 (2022)

application will lack the agency's final approval until and unless the Commission concludes the adjudication in applicant's favor; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

cash flow analysis in a license transfer application reflects a snapshot in time; CLI-22-8, 96 NRC 1 (2022)

except for an electric utility, a license transfer applicant for an operating power reactor must demonstrate that it possesses or has reasonable assurance of obtaining funds necessary to cover estimated operating costs for the period of the license; CLI-22-9, 96 NRC 107 (2022)

if proposed transfer would not occur prior to permanent cessation of reactor operations, applicants need not demonstrate reasonable assurance of obtaining the funds necessary to cover estimated power reactor operations; CLI-22-8, 96 NRC 1 (2022)

information that an application must contain is addressed in 10 C.F.R. § 50.80(b); CLI-22-8, 96 NRC 1 (2022)

license granted under the Atomic Energy Act may only be transferred if NRC consents in writing; CLI-22-9, 96 NRC 107 (2022)

NRC assesses license transfer applicants' financial qualifications in light of multiple regulatory requirements designed to ensure that funding remains sufficient until no longer needed; CLI-22-8, 96 NRC 1 (2022)

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- NRC review of a license transfer application is limited to specific matters and is largely focused on the proposed transferee's financial and technical qualifications; CLI-22-8, 96 NRC 1 (2022)
- NRC Staff is expected, consistent with its findings in its Safety Evaluation Report, to promptly issue approval or denial of license transfer requests notwithstanding a pending adjudicatory hearing; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)
- NRC will approve a license transfer application if it determines that the proposed transferee is qualified to hold the license and the transfer of the license is otherwise consistent with applicable law, regulations, and orders; CLI-22-9, 96 NRC 107 (2022)
- LICENSE TRANSFER PROCEEDINGS**
- arguments addressing potential impact of exemption on applicants' financial qualifications fall within the scope of the proceedings; CLI-22-8, 96 NRC 1 (2022)
- challenge to contingency allowance of 12% allocated to the radiological decommissioning, spent fuel management, and site restoration cost estimates is admissible; CLI-22-8, 96 NRC 1 (2022)
- challenge to license transfer applicants' estimated 11-year timeframe for removal by DOE of all of the spent fuel is admissible; CLI-22-8, 96 NRC 1 (2022)
- challenge to reasonableness of site-specific decommissioning cost estimate falling well below the minimum formula amount is admissible; CLI-22-8, 96 NRC 1 (2022)
- claim that a site characterization is required to evaluate groundwater contamination from cooling tower overflows and tritium leaks does not raise an issue within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)
- concerns about how a requested exemption from 10 C.F.R. 50.82(a)(8)(i)(A) may materially affect a license transfer applicant's showing of financial qualifications is within the scope of the proceeding; CLI-22-8, 96 NRC 1 (2022)
- contention that challenges settled interpretation of section 50.75(e)(1) does not raise a concern within the scope of license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)
- environmental impacts of decommissioning do not fall within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)
- financial assurance in license transfer adjudications is acceptable if it is based on plausible assumptions and forecasts, even if the possibility is not insignificant that things will turn out less favorably than expected; CLI-22-8, 96 NRC 1 (2022)
- NRC Staff may be invited as a non-party to submit a brief with its views on particular questions pertaining to a license transfer application; CLI-22-8, 96 NRC 1 (2022)
- only adequately supported assertions that a transfer applicant's financial assumptions and forecasts are implausible or unrealistic in a way that is material to assessment of reasonable assurance are admissible; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)
- only certain information contained in the PSDAR falls within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)
- oral hearing is specified for license transfer proceedings, unless, within 15 days from the order granting the hearing, the parties unanimously move for a hearing consisting of written comments; CLI-22-8, 96 NRC 1 (2022)
- purely environmental claims challenging adequacy of the PSDAR fall outside the scope of the license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)
- requested exemption that raises questions material to a proposed licensing action that directly bears on whether the proposed action should be granted may be challenged by intervention petitioner; CLI-22-8, 96 NRC 1 (2022)
- whether spent fuel management costs will be recovered is not appropriate for resolution in a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)
- LICENSE TRANSFERS**
- applicants are not expected to commit funding to cover the costs of speculative scenarios; CLI-22-8, 96 NRC 1 (2022)
- applicant's decommissioning cost estimate is not required to be more detailed, more certain, or more conservative than the site-specific estimate submitted by a current licensee; CLI-22-8, 96 NRC 1 (2022)
- license transfer actions are among categories of action categorically excluded from the need to perform additional environmental analysis; CLI-22-8, 96 NRC 1 (2022)

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- no license granted under the Atomic Energy Act may be transferred unless NRC consents in writing; CLI-22-8, 96 NRC 1 (2022)
- NRC will approve a license transfer application if it determines that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable law, regulations, and orders; CLI-22-8, 96 NRC 1 (2022)
- review of a license transfer application is limited to specific matters, including technical and financial qualifications of proposed transferee(s); CLI-22-9, 96 NRC 107 (2022)
- site-specific decommissioning cost estimates are not required to include specified funding for removal of current canisters and is not a reason to deny a license transfer; CLI-22-8, 96 NRC 1 (2022)
- transfer actions do not have a significant effect on the environment, either individually or cumulatively; CLI-22-8, 96 NRC 1 (2022)
- transferees may not operate a facility in a different manner than previously permitted and therefore do not present environmental impacts different from those already considered in relevant NEPA analyses; CLI-22-8, 96 NRC 1 (2022)
- LICENSING BOARDS, AUTHORITY**
- regardless of concessions by other litigants, board has an independent responsibility to assess whether petitioner has established its standing to intervene; LBP-22-2, 96 NRC 129 (2022)
- LIMITED LIABILITY COMPANIES**
- NRC does not prohibit LLCs from being licensees; CLI-22-9, 96 NRC 107 (2022)
- MANAGEMENT CHARACTER AND COMPETENCE**
- alleged character deficiency or misconduct must have some direct and obvious relationship between the character issues and the licensing action in dispute; CLI-22-8, 96 NRC 1 (2022)
- character allegations are directly pertinent when the allegations specifically concern the current director of a facility, and the current organizational structure of the facility, and are supported by expert witnesses alleged to have knowledge of the current management; CLI-22-8, 96 NRC 1 (2022)
- claims of deficient character or integrity are admissible in an adjudicatory proceeding in special circumstances, but strict limits on such claims are imposed; CLI-22-8, 96 NRC 1 (2022)
- questions about appropriateness of licensee's past (or current) operational activities are more appropriately interposed in the context of petition for enforcement action; LBP-22-2, 96 NRC 129 (2022)
- MATERIALS LICENSE AMENDMENT APPLICATIONS**
- any person whose interest might be affected by a license amendment application can file a hearing request and petition for leave to intervene challenging that application within 60 days; LBP-22-2, 96 NRC 129 (2022)
- license amendment applicant must identify documents containing proprietary information such as trade secrets or commercial information that should remain nonpublic; LBP-22-2, 96 NRC 129 (2022)
- MATERIALS LICENSE AMENDMENT PROCEEDINGS**
- adequate showing was made to establish standing of individual who resided 1 mile from the facility and drove directly by the facility 5 days a week; LBP-22-2, 96 NRC 129 (2022)
- MATERIALS LICENSE AMENDMENTS**
- licensee must seek agency approval for changes necessary to implement new U-Metal process, including addressing baseline design criteria; LBP-22-2, 96 NRC 129 (2022)
- MIXED WASTES**
- claims that mixed waste disposal costs could increase project costs over the current estimate lack support; CLI-22-9, 96 NRC 107 (2022)
- MODELS/MODELING**
- license renewal GEIS discusses decommissioning models that are generally acceptable to NRC, but does not foreclose proposed use of variants of these models, or different models entirely; CLI-22-8, 96 NRC 1 (2022)
- NO SIGNIFICANT HAZARDS DETERMINATION**
- no petition or other request may challenge NRC Staff's determination in an adjudicatory proceeding; CLI-22-8, 96 NRC 1 (2022)
- NONPARTIES**
- NRC Staff may be invited as a nonparty to submit a brief with its views on particular questions pertaining to a license transfer application; CLI-22-8, 96 NRC 1 (2022)

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NOTICE AND COMMENT

NRC provides notice and opportunity to comment and holds a public meeting upon receipt of the PSDAR, but does not provide a hearing opportunity on it; CLI-22-8, 96 NRC 1 (2022)

NOTIFICATION

prior to or within 2 years following permanent cessation of operations, licensee must submit a Post-Shutdown Decommissioning Activities Report to NRC, with a copy to the affected state(s); CLI-22-8, 96 NRC 1 (2022)

NRC STAFF

Staff may be invited as a nonparty to submit a brief with its views on particular questions pertaining to a license transfer application; CLI-22-8, 96 NRC 1 (2022)

NRC STAFF REVIEW

except certain NEPA issues, applicant's license application is in issue, not adequacy of NRC Staff's review of the application; LBP-22-2, 96 NRC 129 (2022)

in evaluating a license amendment request, Staff would prepare an environmental assessment or environmental impact statement, as appropriate; CLI-22-8, 96 NRC 1 (2022)

Staff may complete its review of a license transfer application before an adjudicatory proceeding has concluded; CLI-22-9, 96 NRC 107 (2022)

Staff reviews a post-shutdown decommissioning activities report, but does not formally approve it; CLI-22-8, 96 NRC 1 (2022)

submission of a PSDAR in conjunction with a license transfer application does not transform NRC Staff's review of that PSDAR into a major federal action requiring independent NEPA review; CLI-22-8, 96 NRC 1 (2022)

NUCLEAR REGULATORY COMMISSION, AUTHORITY

Commission may designate one or more Commissioners, or any other person permitted by law to preside at a hearing; CLI-22-8, 96 NRC 1 (2022)

notwithstanding NRC Staff's orders approving license transfers and applicants' completion of the sale, the Commission could modify the license or disapprove the transfers and require applicants to return the plant ownership to the status quo ante; CLI-22-8, 96 NRC 1 (2022)

NUCLEAR WASTE POLICY ACT

NWPA does not prohibit a nuclear power plant licensee from transferring spent nuclear fuel to another private entity; CLI-22-8, 96 NRC 1 (2022)

PENDENCY OF PROCEEDINGS

applicants may act in reliance on a Staff order approving an application at their own risk should the Commission later determine that the intervenors have raised valid objections to the license transfer application; CLI-22-8, 96 NRC 1 (2022)

NRC staff is expected, consistent with its findings in its Safety Evaluation Report, to promptly issue approval or denial of license transfer requests notwithstanding a pending adjudicatory hearing; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

PLEADINGS

self-represented/pro se litigant is entitled to some leniency in pleading; LBP-22-2, 96 NRC 129 (2022)

POST-SHUTDOWN DECOMMISSIONING ACTIVITIES REPORT

guidance on comparison of decommissioning cost estimates to the minimum formula expressly applies to site-specific cost estimates with a PSDAR; CLI-22-8, 96 NRC 1 (2022)

licensee is to include in the PSDAR a site-specific decommissioning cost estimate; CLI-22-8, 96 NRC 1 (2022)

NRC provides notice and opportunity to comment and holds a public meeting upon receipt of the PSDAR, but does not provide a hearing opportunity on it; CLI-22-8, 96 NRC 1 (2022)

NRC staff reviews a PSDAR, but does not formally approve it; CLI-22-8, 96 NRC 1 (2022)

only certain information contained in the PSDAR falls within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)

petition for enforcement action is used to address a potential violation of NRC rules in connection with representations made in a PSDAR; CLI-22-8, 96 NRC 1 (2022)

prior to or within 2 years following permanent cessation of operations, licensee must submit a PSDAR to NRC, with a copy to the affected state(s); CLI-22-8, 96 NRC 1 (2022)

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- PSDAR itself does not authorize licensee to perform any decommissioning activity that is not already permitted under the license; CLI-22-8, 96 NRC 1 (2022)
- PSDAR must provide reasons for concluding that environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements; CLI-22-8, 96 NRC 1 (2022)
- required content of PSDAR is discussed; CLI-22-8, 96 NRC 1 (2022)
- submission of a PSDAR in conjunction with a license transfer application does not transform NRC Staff's review of that PSDAR into a major federal action requiring independent NEPA review; CLI-22-8, 96 NRC 1 (2022)
- PRESIDING OFFICER**
- Commission may designate one or more Commissioners, or any other person permitted by law, to preside at a hearing; CLI-22-8, 96 NRC 1 (2022)
- PRESIDING OFFICER, AUTHORITY**
- responsibilities and authority of Presiding Officer in the oral hearing are provided; CLI-22-8, 96 NRC 1 (2022)
- should questions on the scope of the delegated authorities or other matter arise, the Presiding Officer may certify questions or refer rulings to the Commission; CLI-22-8, 96 NRC 1 (2022)
- PRESIDING OFFICER, JURISDICTION**
- jurisdiction of the Presiding Officer ends on the certification of the hearing record to the Commission; CLI-22-8, 96 NRC 1 (2022)
- PRO SE LITIGANTS**
- self-represented/pro se litigant is entitled to some leniency in pleading; LBP-22-2, 96 NRC 129 (2022)
- PROPRIETARY INFORMATION**
- license amendment applicant must identify documents containing proprietary information such as trade secrets or commercial information that should remain nonpublic; LBP-22-2, 96 NRC 129 (2022)
- PROXIMITY PRESUMPTION**
- adequate showing was made to establish standing of individual who resided 1 mile from the facility and drove directly by the facility 5 days a week; LBP-22-2, 96 NRC 129 (2022)
- RADIOLOGICAL CONTAMINATION**
- records of spills and other unusual occurrences involving spread of contamination are records that licensees must maintain; CLI-22-8, 96 NRC 1 (2022)
- subsurface monitoring and records requirements as part of the Decommissioning Planning Rule render much less likely that a licensee today would discover a significant amount of previously unknown soil contamination; CLI-22-8, 96 NRC 1 (2022)
- See also Groundwater Contamination
- RADIOLOGICAL MONITORING**
- licensees must conduct subsurface radiological surveys to evaluate concentrations or quantities of residual radioactivity and must maintain the survey results as records important to decommissioning; CLI-22-8, 96 NRC 1 (2022)
- RECORDKEEPING**
- licensees must conduct subsurface radiological surveys to evaluate concentrations or quantities of residual radioactivity and must maintain the survey results as records important to decommissioning; CLI-22-8, 96 NRC 1 (2022)
- records of spills and other unusual occurrences involving spread of contamination are records that licensees must maintain; CLI-22-8, 96 NRC 1 (2022)
- REFERRAL OF RULING**
- should questions on the scope of the delegated authorities or other matter arise, the Presiding Officer may certify questions or refer rulings to the Commission; CLI-22-8, 96 NRC 1 (2022)
- REGULATORY OVERSIGHT PROCESS**
- NRC oversight of funding adequacy continues until all spent fuel has been removed from a site and until any residual radioactivity has been reduced to a level that permits termination of the license; CLI-22-9, 96 NRC 107 (2022)

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REPLY BRIEFS

- allowing new claims to be added to a reply not only would defeat the contention-filing deadline but would unfairly deprive other participants of an opportunity to rebut the new claims; CLI-22-8, 96 NRC 1 (2022)
- argument raised for the first time on reply is untimely; CLI-22-8, 96 NRC 1 (2022)
- petitioner cannot expand the scope of the arguments set forth in the original hearing request; CLI-22-8, 96 NRC 1 (2022)
- petitioner may appropriately expand on arguments raised in the original petition to address arguments raised in applicant's answer, but may not recast or reinvigorate a contention with new arguments that expand the scope of the contention as originally pled; CLI-22-8, 96 NRC 1 (2022)

REPORTING REQUIREMENTS

- before it can perform any decommissioning activity that would significantly increase cost beyond that estimated in its site-specific estimate, licensee must first notify NRC, with a copy to the affected state(s); CLI-22-8, 96 NRC 1 (2022)
- licensee that has submitted a site-specific decommissioning cost estimate must annually provide a decommissioning funding status report; CLI-22-8, 96 NRC 1 (2022)
- licensees must notify NRC and the affected State in writing before making any significant schedule change from schedules and actions described in the PSDAR, including changes that significantly increase cost; CLI-22-8, 96 NRC 1 (2022)
- licensees must provide detailed status reports on decommissioning financial assurance and spent fuel management funding; CLI-22-9, 96 NRC 107 (2022)
- status reports are required to monitor licensees' spent fuel management funding; CLI-22-8, 96 NRC 1 (2022)

REPROCESSING OF RADIOACTIVE MATERIALS

- licensee must seek agency approval for changes necessary to implement new U-Metal process, including addressing the baseline design criteria; LBP-22-2, 96 NRC 129 (2022)

REQUEST FOR ACTION

- questions about appropriateness of licensee's past (or current) operational activities are more appropriately interposed in the context of petition for enforcement action; LBP-22-2, 96 NRC 129 (2022)

REVIEW

- licensing board undertakes a de novo review of a potential party's appeal of NRC Staff's denial of request for access to license application-associated SUNSI materials; LBP-22-2, 96 NRC 129 (2022)
- See also Environmental Review; Financial Qualifications Review; NRC Staff Review

RISKS

- applicants may act in reliance on a Staff order approving an application at their own risk should the Commission later determine that the intervenors have raised valid objections to the license transfer application; CLI-22-8, 96 NRC 1 (2022)

RULES OF PRACTICE

- admissibility criteria for any contention filed in support of a hearing petition calls for a focus on the license application at issue; LBP-22-2, 96 NRC 129 (2022)
- contention admissibility requires petitioner to explain the contention's basis and provide supporting facts or expert opinion on which petitioner intends to rely; CLI-22-8, 96 NRC 1 (2022)
- contention admission requirements help ensure that NRC institutes adjudicatory hearings only for issues that are supported by facts or expert opinion and that identify a dispute with the application on a question material to the NRC's decision; CLI-22-8, 96 NRC 1 (2022)
- contention must fall within the scope of the proceeding and be material to the findings that the NRC must make for the proposed licensing action; CLI-22-8, 96 NRC 1 (2022)
- for standing, intervention petitioner must address the nature of its right under the AEA to be made a party, nature and extent of its property, financial, or other interest, and possible effect that any decision or order issued may have on petitioner's interest; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)
- if petitioner claims that an application fails altogether to contain information required by law, petitioner must identify each failure and provide supporting reasons for petitioner's belief; CLI-22-8, 96 NRC 1 (2022)

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- intervention petitioner must show standing and propose at least one admissible contention; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)
- petitioner must identify specific disputed portions of the application along with supporting reasons for each dispute; CLI-22-8, 96 NRC 1 (2022)
- regardless of concessions by other litigants, licensing board has an independent responsibility to assess whether petitioner has established its standing to intervene; LBP-22-2, 96 NRC 129 (2022)
- requirements for an admissible contention are specified in 10 C.F.R. 2.309(f); CLI-22-9, 96 NRC 107 (2022)
- supporting documents may be withheld from public release if they contain Sensitive Unclassified Non-Safeguards Information; LBP-22-2, 96 NRC 129 (2022)
- wholesale incorporation by reference of large documents as the basis for a contention is unacceptable; CLI-22-8, 96 NRC 1 (2022)
- SAFETY ISSUES**
- potential safety impacts, if any, from a shortfall in funding would not be as direct or immediate as the safety impacts of significant technical deficiencies; CLI-22-9, 96 NRC 107 (2022)
- SCHEDULING**
- licensees must notify NRC and the affected State in writing before making any significant change from schedules and actions described in the PSDAR, including changes that significantly increase cost; CLI-22-8, 96 NRC 1 (2022)
- SENSITIVE UNCLASSIFIED NONSAFEGUARDS INFORMATION**
- access request fails to meet established NRC standard governing a potential party's access to nonpublic information; LBP-22-2, 96 NRC 129 (2022)
- difficulty in making requisite need showing because of lack of access to SUNSI information does not absolve requestor of at least endeavoring to address the need criterion; LBP-22-2, 96 NRC 129 (2022)
- licensing board undertakes a de novo review of a potential party's appeal of NRC Staff's denial of request for access to license application-associated SUNSI materials; LBP-22-2, 96 NRC 129 (2022)
- potential party is required to explain how requested SUNSI is necessary for meaningful participation in the proceeding; LBP-22-2, 96 NRC 129 (2022)
- presiding officer in assessing a SUNSI access request, must balance applicant's interest in protecting SUNSI information with petitioner's legitimate interest in obtaining information that is necessary to allow for meaningful participation in the proceeding; LBP-22-2, 96 NRC 129 (2022)
- showing of need to gain access to SUNSI material is not to be conflated with contention admissibility standards; LBP-22-2, 96 NRC 129 (2022)
- supporting documents may be withheld from public release if they contain SUNSI; LBP-22-2, 96 NRC 129 (2022)
- whether a request for SUNSI sufficiently demonstrates a need for the information will depend on the particular facts and circumstances presented; LBP-22-2, 96 NRC 129 (2022)
- SHUTDOWN**
- if proposed license transfer would not occur prior to permanent cessation of reactor operations, applicants need not demonstrate reasonable assurance of obtaining the funds necessary to cover estimated power reactor operations; CLI-22-8, 96 NRC 1 (2022)
- prior to or within 2 years following permanent cessation of operations, licensee must submit a Post-Shutdown Decommissioning Activities Report to NRC, with a copy to the affected state(s); CLI-22-8, 96 NRC 1 (2022)
- SITE CHARACTERIZATION**
- claim that a site characterization is required to evaluate groundwater contamination from cooling tower overflows and tritium leaks does not raise an issue within the scope of a license transfer proceeding; CLI-22-8, 96 NRC 1 (2022)
- full site characterization must be submitted with a license termination plan at least 2 years before the date of license termination and also must include an updated site-specific decommissioning cost estimate; CLI-22-8, 96 NRC 1 (2022)
- SITE RESTORATION**
- contention challenging requested exemption to permit withdrawals from the decommissioning trust fund to pay for spent fuel management and site restoration activities is inadmissible; CLI-22-8, 96 NRC 1 (2022)

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non-radiological activities do not fall within NRC's definition of decommissioning; CLI-22-8, 96 NRC 1 (2022)

NRC's definition of decommissioning does not encompass site restoration; CLI-22-8, 96 NRC 1 (2022)

SPECIAL CIRCUMSTANCES

interested person may request that NRC make the determination that special circumstances exist that warrant an exception to the categorical exclusion; CLI-22-8, 96 NRC 1 (2022)

SPENT FUEL MANAGEMENT

challenge to license transfer applicants' estimated 11-year timeframe for removal by DOE of all of the spent fuel is admissible; CLI-22-8, 96 NRC 1 (2022)

claims that spent nuclear fuel and fuel debris material need to be repackaged which could increase project costs over the current estimate lack support; CLI-22-9, 96 NRC 107 (2022)

Commission has accepted a 2030 start date as plausible when DOE might begin to pick up spent fuel from nuclear power reactor sites; CLI-22-8, 96 NRC 1 (2022)

contention challenging requested exemption to permit withdrawals from the decommissioning trust fund to pay for spent fuel management and site restoration activities is inadmissible; CLI-22-8, 96 NRC 1 (2022)

DOE Standard Contract for spent fuel disposal establishes fuel acceptance procedures, including spent fuel acceptance priority based on oldest fuel first; CLI-22-8, 96 NRC 1 (2022)

licensee must describe how it will fund management of all irradiated fuel at the reactor site from the time that reactor operations cease until all fuel has been transferred to DOE; CLI-22-9, 96 NRC 107 (2022)

licensees must provide detailed status reports on decommissioning financial assurance and spent fuel management funding; CLI-22-9, 96 NRC 107 (2022)

NWPA does not prohibit a nuclear power plant licensee from transferring spent nuclear fuel to another private entity; CLI-22-8, 96 NRC 1 (2022)

petitioners' recourse to address environmental impacts of planned decommissioning and spent fuel management activities that would exceed those previously reviewed is a petition for enforcement action; CLI-22-8, 96 NRC 1 (2022)

potential exchanges of spent fuel delivery schedules would entail a cost to buyers to induce sellers to part with their allocations by offering to share benefits of such a bargain; CLI-22-8, 96 NRC 1 (2022)

site-specific decommissioning cost estimates are not required to include specified funding for removal of current canisters and is not a reason to deny a license transfer; CLI-22-8, 96 NRC 1 (2022)

spent fuel management activities do not fall within NRC's definition of decommissioning; CLI-22-8, 96 NRC 1 (2022)

status reports are required to monitor licensees' spent fuel management funding; CLI-22-8, 96 NRC 1 (2022)

timeframe for transfer of high-burnup fuel away from site is discussed; CLI-22-8, 96 NRC 1 (2022)

whether spent fuel management costs will be recovered is not appropriate for resolution in a license transfer adjudicatory proceeding; CLI-22-8, 96 NRC 1 (2022)

within 2 years of permanently ceasing operations, licensees must provide NRC with licensee's program for spent fuel management; CLI-22-9, 96 NRC 107 (2022)

SPENT FUEL STORAGE

licensees are to adjust decommissioning funds during safe storage to reflect changes in cost estimates and reporting requirements allow licensees' decommissioning funds to be monitored by NRC; CLI-22-8, 96 NRC 1 (2022)

safe storage of spent fuel in a geologic repository is technically feasible using currently available technology, with no major breakthrough in science or technology needed, and 25 to 35 years is a reasonable period for repository development; CLI-22-8, 96 NRC 1 (2022)

section 50.75(e)(1)(i) does not require any particular period of safe storage; CLI-22-8, 96 NRC 1 (2022)

SPENT FUEL STORAGE CASKS

licensee cannot change the design of spent fuel canisters without first obtaining NRC approval; CLI-22-8, 96 NRC 1 (2022)

there is no reason to presume that DOE will identify a valid contractual claim, pursue that claim, and succeed in requiring licensees to bear additional packaging-related costs; CLI-22-8, 96 NRC 1 (2022)

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STANDING TO INTERVENE

adequate showing was made to establish standing of individual who resided 1 mile from the facility and drove directly by the facility 5 days a week; LBP-22-2, 96 NRC 129 (2022)

Commission looks for guidance to judicial concepts of standing; CLI-22-9, 96 NRC 107 (2022)

for standing, intervention petitioner must address the nature of its right under the AEA to be made a party, nature and extent of its property, financial, or other interest, and possible effect that any decision or order issued may have on petitioner's interest; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

petitioner must claim a concrete and particularized injury (actual or threatened) that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision in the proceeding; CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

regardless of concessions by other litigants, licensing board has an independent responsibility to assess whether petitioner has established its standing to intervene; LBP-22-2, 96 NRC 129 (2022)

state Attorney General need not make any further demonstration of standing to intervene for facilities within his/her state; CLI-22-8, 96 NRC 1 (2022)

STANDING TO INTERVENE, ORGANIZATIONAL

organization seeking representational standing must demonstrate how at least one of its members may be affected by the challenged licensing action and would have standing in his or her own right; CLI-22-8, 96 NRC 1 (2022)

STANDING TO INTERVENE, REPRESENTATIONAL

organization seeking representational standing must demonstrate how at least one of its members may be affected by the challenged licensing action and would have standing in his or her own right; CLI-22-8, 96 NRC 1 (2022)

organization seeking representational standing must identify member by name and address and demonstrate, preferably by affidavit, that the organization is authorized to request a hearing on behalf of that member; CLI-22-8, 96 NRC 1 (2022)

STATE GOVERNMENT

state attorney general need not make any further demonstration of standing to intervene for facilities within his/her state; CLI-22-8, 96 NRC 1 (2022)

STORAGE CANISTERS

it is premature to assume, for purposes of decommissioning funding requirements, what types of canisters that DOE may or may not accept for transportation; CLI-22-8, 96 NRC 1 (2022)

NRC must approve canisters for transportation or grant an exemption from NRC transportation regulations; CLI-22-8, 96 NRC 1 (2022)

SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

NRC must prepare an SEIS if there are substantial changes in the proposed action that are relevant to environmental concerns; CLI-22-8, 96 NRC 1 (2022)

TECHNICAL QUALIFICATIONS

review of a license transfer application is limited to specific matters, including technical and financial qualifications of proposed transferee(s); CLI-22-9, 96 NRC 107 (2022)

THREE MILE ISLAND ACCIDENT

after the accident, about 99% of the spent nuclear fuel and damaged core material was removed and shipped to the U.S. Department of Energy's Idaho National Laboratory; CLI-22-9, 96 NRC 107 (2022)

TRANSPORTATION OF SPENT FUEL

it is premature to assume, for purposes of decommissioning funding requirements, what types of canisters that DOE may or may not accept for transportation; CLI-22-8, 96 NRC 1 (2022)

NRC must approve canisters for transportation or grant an exemption from NRC transportation regulations; CLI-22-8, 96 NRC 1 (2022)

UNCERTAINTIES

early in decommissioning process, cost estimates are necessarily uncertain; CLI-22-8, 96 NRC 1 (2022)

URANIUM

licensee must seek agency approval for changes necessary to implement new U-Metal process, including addressing the baseline design criteria; LBP-22-2, 96 NRC 129 (2022)

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WAIVER OF RULE

challenges to regulations in adjudicatory proceedings are prohibited absent grant of a rule waiver;
CLI-22-8, 96 NRC 1 (2022)

WRITTEN CONSENT

no license granted under the Atomic Energy Act may be transferred unless NRC consents in writing;
CLI-22-8, 96 NRC 1 (2022); CLI-22-9, 96 NRC 107 (2022)

FACILITY INDEX

BIG ROCK POINT SITE; Docket Nos. 50-155-LT-2, 72-043-LT-2
LICENSE TRANSFER; July 15, 2022; MEMORANDUM AND ORDER; CLI-22-8, 96 NRC 1 (2022)
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