UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket No. 50-271-LT-2
ENTERGY NUCLEAR VERMONT YANKEE, LLC, ENTERGY NUCLEAR OPERATIONS, INC. and NORTHSTAR NUCLEAR DECOMMISSIONING COMPANY, LLC	)	July 24, 2017
(Vermont Yankee Nuclear Power Station)	)	

APPLICANTS' ANSWER OPPOSING NEW ENGLAND COALITION'S REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

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I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Entergy Nuclear Operations, Inc. ("ENOI" or "Entergy"), on behalf of itself and Entergy Nuclear Vermont Yankee, LLC ("ENVY"), and NorthStar Nuclear Decommissioning Company, LLC ("NorthStar NDC") (together, "Applicants") submit this Answer opposing the Request for Hearing and Petition for Leave to Intervene filed by New England Coalition ("NEC" or "Petitioner") on June 27, 2017.[1] Petitioner seeks to intervene in the proceeding associated with the Applicants' February 9, 2017, license transfer application ("LTA" or "Application").[2] In the LTA, Applicants have requested that the U.S. Nuclear

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1 *New England Coalition's Request for Hearing and Petition for Leave to Intervene* (June 27, 2017) (ADAMS accession no. ML17191B489) ("Petition"). The Petition includes four declarations, attached as Exhibits 1 through 4, that are proffered to support NEC's claim of standing to intervene in this proceeding. *See* Declaration of Clay Turnbull, Clerk of the Corporation New England Coalition (June 21, 2017) (Ex. 1) (ML17178A463) ("Turnbull Decl."); Declaration of Lorie Cartwright (June 20, 2017) (Ex. 2) (ML17178A464) ("Cartwright Decl."); Declaration of Greg Urban (June 21, 2017) (Ex. 3) (ML17178A465) ("Urban Decl."); Declaration of David L. Deen (Ex. 4) (ML17178A466) ("Deen Decl."). The Petition is timely filed because NEC requested and received a two-week extension to file an intervention petition. *See* Order of Secretary of the Commission (June 13, 2017) (ML17164A358).

2 *See* BVY 17-005, Letter from A. Christopher Bakken III, President and Chief Executive Officer, Entergy, to NRC Document Control Desk, Application for Order Consenting to Direct and Indirect Transfers of Control of Licenses and Approving Conforming License Amendment and Notification of Amendment to Decommissioning Trust Agreement (Feb. 9, 2017) (ML17045A140) ("LTA" or "Application").

Regulatory Commission ("NRC") consent to direct and indirect transfers of control of ENOI's and ENVY's Renewed Facility Operating License No. DPR-28 for the Vermont Yankee Nuclear Power Station ("VYNPS" or "Vermont Yankee"), as well as the general license for the Vermont Yankee Independent Spent Fuel Storage Installation ("ISFSI"). They further have requested that the NRC approve a conforming administrative amendment to the facility license to reflect the proposed direct transfer of the license from ENOI to NorthStar NDC as well as a planned name change for ENVY from ENVY to "NorthStar Vermont Yankee, LLC" ("NorthStar VY").

In its Petition, NEC proffers two proposed contentions. Contention 1 alleges that the LTA is incomplete because it does not include an environmental report ("ER") that addresses the nature and extent of alleged radiological contamination at Vermont Yankee.[3] NEC claims that the proposed license transfers and accompanying administrative amendments should not be exempt from environmental review pursuant to the categorical exclusion codified in 10 C.F.R. § 51.22(c)(21).[4] It further contends that the "proposed prompt decommissioning under new ownership is tantamount to a license amendment that involves environmental considerations,"[5] and that NRC approval of the LTA would constitute a "*de facto* unconditional approval of an untested method of managing decommissioning under new and unanalyzed circumstances."[6]

Contention 2 asserts that because NorthStar NDC allegedly has not performed an adequate site-specific radiological site survey to realistically estimate soil and concrete remediation costs, it cannot provide reasonable assurance that it has adequate financial resources to own and operate Vermont Yankee for the purpose of decommissioning and fuel storage.[7] The thrust of NEC's contention is that long half-life and hard-to-detect radioactive materials "are expected to be found"

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3 Petition at 8.

4 *Id.* at 8-9.

5 *Id.* at 9.

6 *Id.* at 11.

7 *Id.* at 13.

in soils and groundwater at the VYNPS site, and that such contamination "could greatly increase the costs of decommissioning and site restoration."[8]

The Commission has stated that its "strict contention rule is designed to avoid resource-intensive hearings where petitioners have not provided sufficient support for their technical claims, and do not demonstrate a potential to meaningfully participate and inform a hearing."[9] Such is the case here. As demonstrated in Section IV of this Answer, both of NEC's proposed contentions are inadmissible under 10 C.F.R. § 2.309(f)(1). Contention 1 inappropriately challenges the NRC's no significant hazards consideration determination for the proposed action, the categorical exclusion in 10 C.F.R. § 51.22(c)(21), and generic decommissioning environmental impact findings made by the Commission via rulemaking. Accordingly, Contention 1 raises issues that are not within the scope of this proceeding or material to the NRC Staff's findings on the LTA, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(iii) and (iv).

Contention 1 also lacks adequate support and fails to identify a genuine dispute with the LTA on a material issue of fact or law, as required by 10 C.F.R. § 2.309(f)(1)(v) and (vi). NEC provides no factual support for its claims that the proposed license transfers are "extraordinary" and thus warrant different treatment under NRC regulations, or that Applicants have proposed unproven methods for managing decommissioning at VYNPS.[10] In making these unfounded claims, NEC ignores both relevant regulatory precedent involving analogous license transfers for the defueled Zion and La Crosse facilities as well as the contents of the Application. Moreover, there is nothing untested about the decommissioning approach proposed by Applicants with regard to either the specific methods to be used to dismantle and decontaminate VYNPS, or the fiscal/project management methods to be applied to manage decommissioning costs and schedule.

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8 *Id* at 15.

9 *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 416 (2012).

10 Petition at 10, 11.

Contention 2 should be rejected as inadmissible under 10 C.F.R. § 2.309(f)(1)(v) and (vi) because it patently lacks factual support and fails to controvert any portion of the Application, including the specific measures Applicants have proposed to ensure the availability of adequate decommissioning funds during the decommissioning period. Notably, the very documents NEC cites in ostensible support of its contention contradict its claims that Applicants lack an adequate understanding of soil and groundwater contamination at the VYNPS site, or that "late-discovered" radiological contamination is likely and will greatly escalate decommissioning costs.

As demonstrated in Section V, NEC also fails to demonstrate standing to intervene in this proceeding either as a matter of right or as a matter of discretion under 10 C.F.R. § 2.309(d) and (e), respectively. In short, NEC does not allege any concrete and particularized injury involving radiological or environmental harm that plausibly flows from the proposed action. Nor does it fully and adequately address the discretionary intervention factors in section 2.309(e).

Accordingly, the Commission should deny NEC's Petition in its entirety.

II. PROCEDURAL HISTORY

On February 9, 2017, Applicants filed the aforementioned LTA, which seeks NRC approval of the direct transfer of the VYNPS operating license, a conforming amendment to that license, and the indirect transfer of control of the current licensed owner of VYNPS.[11] The LTA and associated administrative license amendment request seek to effectuate the transfer of the NRC-licensed possession, maintenance, and decommissioning authorities for VYNPS so that NorthStar NDC may undertake expedited decommissioning of the Vermont Yankee site.[12]

By letter dated April 6, 2017, the NRC Staff notified the Applicants that the Staff had completed its acceptance review of the LTA and concluded that it provides sufficiently detailed technical information to enable the Staff to perform its detailed technical review and ultimately

[11] *See* LTA, Transmittal Letter at 1-2.

[12] *See id.* at 1.

issue a decision on the acceptability of the Application.[13] Subsequently, on May 24, 2017, the NRC published in the *Federal Register* a notice informing the public that it is considering the LTA for approval, announcing the Staff's planned participation in a May 25, 2017 public meeting of the Vermont Nuclear Decommissioning Citizens Advisory Panel in Brattleboro, VT; seeking oral and written comments on the LTA; and offering an opportunity for potentially affected persons to file, within 20 days of the notice, hearing requests and intervention petitions.[14]

On June 9, NEC sought a two-week extension of time to file a request for hearing and petition for leave to intervene.[15] The Applicants opposed that extension on the grounds that NEC had not demonstrated good cause for the extension, as required by 10 C.F.R. § 2.307, and had failed to consult with Applicants, as required by 10 C.F.R. § 2.323(b).[16] The Secretary of the Commission nevertheless granted the requested extension by its Order dated June 13, 2017.

In the interim, on June 13, 2017, the State of Vermont ("Vermont") filed a request for hearing and petition to intervene in which it proffered two contentions.[17] The Applicants timely filed an answer opposing Vermont's petition in its entirety on July 10, 2017.[18] Vermont filed its reply to that answer one week later.[19]

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13 *See* Letter from Jack D. Parrott, Senior Project Manager, NRC, to A. Christopher Bakken, III, President and Chief Executive Officer, Entergy, Vermont Yankee Nuclear Power Station – Acceptance Review of the Entergy and NorthStar License Transfer Application and Associated Conforming Administrative License Amendments (CAC No. L53175) (Apr. 6, 2017) (ML17094A848).

14 Vermont Yankee Nuclear Power Station; Entergy Nuclear Operations, Inc.; Consideration of Approval of Transfer of License and Conforming Amendment, 82 Fed. Reg. 23,845 (May 24, 2017) ("Hearing Notice").

15 Letter from Raymond Shadis, New England Coalition, to Annette L. Vietti-Cook, Secretary, NRC (June 9, 2017) (ML17160A447).

16 *Applicants' Response to New England Coalition's Request for Extension* (June 12, 2017) (ML17163A288).

17 *State of Vermont's Petition for Leave to Intervene and Hearing Request* (June 13, 2017) (ML17164A419) ("Vermont Petition").

18 *Applicants' Answer Opposing June 13, 2017 Petition for Leave to Intervene and Hearing Request Filed by the State of Vermont* (July 10, 2017) (ML17191B489) ("Applicant's Answer to Vermont Petition").

19 *State of Vermont's Reply in Support of the State's Petition for Leave to Intervene and Hearing Request* (July 17, 2017) (ML17198G975).

NEC filed the instant Petition on June 27, 2017. As noted above, NEC proffered two contentions and also stated that it "adopts in full measure" the two contentions submitted by Vermont and that, if necessary, it will sponsor those contentions in lieu of Vermont.[20]

Entergy timely files this Answer opposing the Petition in accordance with the provisions of 10 C.F.R. § 2.309(i)(1).

III. BACKGROUND

Before addressing NEC's Petition, Applicants provide a brief overview of Commission regulations governing reactor decommissioning and decommissioning financial assurance, the NRC's license transfer requirements, and the LTA underlying this proceeding.[21]

A. NRC Decommissioning and Related Financial Assurance Requirements

Under NRC regulations, decommissioning a nuclear reactor means to safely remove the facility from service, reduce residual radioactivity to a level that allows releasing the property for unrestricted use (or restricted use subject to conditions, not proposed here), and terminate the license.[22] NRC regulations require that applicants and licensees provide reasonable assurance that

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[20] Petition at 17. NEC's request to adopt Vermont's two proposed contentions is procedurally deficient because 10 C.F.R. § 2.309(f)(3) requires that a petitioner seeking to adopt the contention of another petitioner "either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention." NEC has not complied with that requirement. In addition, a petitioner must first demonstrate that it has standing to intervene and proffer its own *admissible* contention before it can adopt the contention of another petitioner. *See Consolidated Edison Co. of N.Y. & Entergy Nuclear Indian Point 2 LLC & Entergy Nuclear Operations, Inc,* (Indian Point, Units 1 & 2), CLI-01-19, 54 NRC 109, 133 (2001) (stating that the Commission does "not accept incorporation by reference of another petitioner's issues in an instance where the petitioner has not independently established compliance with [NRC] requirements for admission as a party in its own pleadings by submitting at least one admissible issue of its own"). *See also id.* at 132 ("But if the primary sponsor of an issue later withdraws from this proceeding, the remaining sponsor must then demonstrate to the Presiding Officer its *independent ability* to litigate this issue.") (emphasis added).

[21] Applicants' July 10, 2017 Answer to the State of Vermont's intervention petition provides a historical overview of decommissioning funding and spent fuel management activities at VYNPS, including related litigation before the NRC. *See* Applicants' Answer to Vermont Petition at 8-18.

[22] 10 C.F.R. § 50.2.

funds will be available for the decommissioning process.[23] The primary methods of providing financial assurance for decommissioning permitted by the NRC are through (1) prepayment; (2) an external sinking fund; (3) a surety, insurance, or other guarantee; or (4) a combination of these or equivalent mechanisms.[24]

Once a licensee decides to cease operations permanently, NRC regulations impose additional requirements that govern three sequential phases for decommissioning activities: (1) initial activities; (2) major decommissioning and storage activities; and (3) license termination activities.[25] The decommissioning process begins when a licensee certifies to the NRC Staff that it has permanently ceased operations and it has permanently removed fuel from the reactor vessel.[26] NRC regulations require a licensee to submit a post-shutdown decommissioning activities report ("PSDAR") prior to or within two years following the permanent cessation of operations.[27] The Staff notices its receipt of the PSDAR, makes the PSDAR available for public comment, and holds a public meeting on its contents.[28] The PSDAR serves to inform the public and NRC Staff of the licensee's proposed activities,[29] but approval is not required under the NRC rules.

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23 *Id.* § 50.75(a). The NRC requires nuclear power plant licensees to report to the agency the status of their decommissioning funds at least once every two (2) years, annually within five (5) years of the planned shutdown, and annually once the plant ceases operation. 10 C.F.R. § 50.75(f)(2).

24 *Id.* § 50.75(e)(1)(i)-(iii), (vi).

25 *See generally id.* § 50.82(a).

26 *Id.* § 50.82(a)(1)(i)-(ii).

27 *Id.* § 50.82(a)(4)(i).

28 *Id.* § 50.82(a)(4)(ii). The Staff presents comments received at the public meeting held on the PSDAR and makes available to the public a written transcript of the meeting. *See* "Standard Format and Content for Post-Shutdown Decommissioning Activities Report," Regulatory Guide 1.185, Rev. 1 at 4 (June 2013) (ML13140A038). As discussed further below, the PSDAR process does not give rise to a hearing opportunity.

29 Decommissioning of Nuclear Power Reactors, Final Rule, 61 Fed. Reg. 39,278, 39,281 (July 29, 1996) ("1996 Decommissioning Rule"). In establishing the current process governing decommissioning, the NRC "eliminate[d] the need for an approved decommissioning plan before major decommissioning activities can be performed." *Id.*

Thus, absent any objections from the NRC Staff, the licensee may commence "major decommissioning activities" ninety (90) days after the Staff receives the PSDAR.[30] A licensee may not perform decommissioning activities that would foreclose the release of the site for possible unrestricted use, result in significant environmental impacts not previously reviewed, or result in the lack of reasonable assurance that adequate funds will be available for decommissioning.[31]

The PSDAR must include a site-specific decommissioning cost estimate.[32] Once a licensee submits its decommissioning cost estimate, it generally is allowed access to the balance of the nuclear decommissioning trust ("NDT") fund monies for the remaining decommissioning activities with "broad flexibility,"[33] but is still subject to three key limitations.[34] The Staff monitors the licensee's use of the decommissioning trust fund via its review of the licensee's annual financial assurance status reports.[35] Those reports must include, among other information, the amount spent on decommissioning activities, the amount remaining in the fund, and an updated estimate of the costs required to complete decommissioning.[36] If the licensee or NRC identifies a shortfall between the remaining funds and the updated cost to complete decommissioning (as a result of these annual status reports or otherwise), then the licensee must provide additional financial assurance.[37]

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30 10 C.F.R. § 50.82(a)(5). A "major decommissioning activity" for a nuclear power plant such as Vermont Yankee is defined as "any activity that results in permanent removal of major radioactive components, permanently modifies the structure of the containment, or results in dismantling components for shipment containing greater than class C waste in accordance with [10 C.F.R. § 61.55]." *Id.* § 50.2.

31 *Id.* § 50.82(a)(6).

32 *Id.* § 50.82(a)(4)(i).

33 *See* 1996 Decommissioning Rule, 61 Fed. Reg. at 39,285.

34 First, withdrawals from the fund must be for expenses for "legitimate decommissioning activities" consistent with the definition of decommissioning in 10 C.F.R. § 50.2. 10 C.F.R. § 50.82(a)(8)(i)(A). Second, the expenditure must not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise. *Id.* § 50.82(a)(8)(i)(B). Finally, the withdrawals must not inhibit the ability of the licensee to complete funding of any shortfalls in the NDT needed to ensure the availability of funds to ultimately release the site and terminate the license. *Id.* § 50.82(a)(8)(i)(C).

35 *Id.* § 50.82(a)(8)(v).

36 *Id.* § 50.82(a)(8)(v)(A)-(B).

37 *Id.* § 50.82(a)(8)(vi). The determination as to whether a shortfall exists takes into account a two (2) percent annual real rate of return.

Unless otherwise authorized, the site must be decommissioned within sixty (60) years.[38] The licensee remains subject to NRC oversight until decommissioning is completed and the license is terminated. The licensee must submit a license termination plan ("LTP") at least two (2) years before the planned license termination date.[39] The NRC, in turn, must notice receipt of the LTP in the *Federal Register*, make the plan available to the public for comment, schedule a public meeting near the facility to discuss the plan's contents, and offer an opportunity for a public hearing on the license amendment associated with the LTP.[40] The Commission may not approve the LTP (via license amendment) and terminate the license until it makes the findings set forth in 10 C.F.R. § 50.82(a)(10) and (a)(11), respectively.[41]

B. NRC Reactor License Transfer Requirements

Under AEA Section 184, an NRC reactor license, or any right thereunder, may not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the NRC first gives its consent in writing.[42] This statutory requirement is codified in 10 C.F.R. § 50.80 and applies to both direct and indirect license transfers.[43] A transfer of control may involve either the licensed operator or any individual licensed owner of the facility.[44] Before approving a license transfer, the NRC reviews, among other things, the technical and financial qualifications of the proposed transferee.[45]

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38 *Id.* § 50.82(a)(3).

39 *Id.* § 50.82(a)(9)(i).

40 *Id.* § 50.82(a)(9)(iii).

41 *Id.* § 50.82(a)(10), (11).

42 42 U.S.C. § 2234.

43 *See* NRC Backgrounder, "Reactor License Transfers," at 1-2 (Apr. 2016) (ML040160803). A direct license transfer occurs when an entity seeks to transfer a license it holds to a different entity (*e.g.*, when a plant is to be sold or transferred to a new licensee in whole or part). *See id*. An indirect license transfer takes place when there is a transfer of "control" of the license or of a license holder (*e.g.*, as a result of a merger or acquisition at high levels within or among corporations. *See id.*

44 *See id.* at 1.

45 *See* 10 C.F.R. §§ 50.80(b)(1), (c)(1); *see also* "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," NUREG-1577, Revision 1 (1999) (ML013330264).

The transfer review, in other words, focuses on the potential impact on the licensee's ability both to maintain adequate technical qualifications and organizational control and authority over the facility, and to provide adequate funds for safe operation and decommissioning.[46]

Section 189.a of the AEA requires that the NRC offer an opportunity for hearing on a license transfer.[47] In 1998, the NRC adopted Subpart M of 10 C.F.R. Part 2 (10 C.F.R. §§ 2.1300 to 2.1331) authorizing the use of a streamlined license transfer process with informal legislative-type hearings, rather than formal adjudicatory hearings.[48] Those rules cover any direct or indirect license transfer for which NRC approval is required, including those transfers that require license amendments and those that do not.[49] Section 2.1315 codifies the Commission's generic determination that any conforming amendment to an operating license that only reflects the license transfer action involves a "no significant hazards consideration."[50] That same regulation expressly provides that "[a]ny challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer."[51]

As part of the same rulemaking to streamline license transfer proceedings, the Commission also promulgated 10 C.F.R. § 51.22(c)(21). That regulation categorically excludes from environmental review "approvals of direct and indirect transfers of any license issued by the NRC and any associated amendments of license required to reflect the approval of a direct or indirect

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46 *See* Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, 62 Fed. Reg. 44,071, 44,077 (Aug. 19, 1997).

47 42 U.S.C. § 2239(a)(1)(A) ("[I]n any proceeding under this Act, for . . . application to transfer control, . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.").

48 *See* Streamlined Hearing Process for NRC Approval of License Transfers; Final Rule, 63 Fed. Reg. 66,721, 66,722 (Dec. 3, 1998) ("Subpart M Rule"); *see also* Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2182, 2214 (Jan. 14, 2004) (retaining streamlined process for license transfers without substantive changes).

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

50 10 C.F.R. § 2.1315(a).

51 *Id* § 2.1315(b).

transfer of an NRC license," and the regulation reflects the NRC's finding that this category of action does not individually or cumulatively have a significant effect on the human environment.[52]

C. The Current License Transfer Application

As submitted on February 9, 2017, the LTA seeks NRC approval of the direct transfer of the Vermont Yankee facility operating license and the general license for the Vermont Yankee ISFSI from ENOI, the current licensed operator, to NorthStar NDC, a wholly-owned subsidiary of NorthStar Group Services, Inc. ("NorthStar").[53] As a result of the proposed transaction, NorthStar NDC will assume licensed responsibility for Vermont Yankee through a direct transfer of ENOI's responsibility for licensed activities at the plant to NorthStar NDC.[54] NorthStar VY (the renamed ENVY, as discussed below) will enter into an operating agreement with NorthStar NDC,[55] under which NorthStar NDC will act as NorthStar VY's agent, and NorthStar VY will pay for NorthStar NDC's costs of operation, including all decommissioning costs.[56]

The LTA also seeks NRC consent to the indirect transfer of control of ENVY, the current licensed owner of Vermont Yankee, from ENVY's Entergy parent companies to NorthStar Decommissioning Holdings, LLC and its parents, NorthStar, LVI Parent Corp. and NorthStar Group Holdings, LLC.[57] Subject to NRC approval, NorthStar Decommissioning Holdings, LLC will acquire 100% of the membership interests in ENVY pursuant to the terms of a Membership Interest Purchase and Sale Agreement ("MIPA").[58] As such, indirect control of ENVY will be transferred from ENVY's current Entergy parent companies to NorthStar Decommissioning

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52 *See* Subpart M Rule, 63 Fed. Reg. at 66,728 (Dec. 3, 1998).

53 LTA, attach. 1 at 1.

54 *Id.* at 2.

55 *Id.*

56 *Id.*

57 *Id.*

58 *Id.* A redacted (*i.e.*, non-proprietary) version of the MIPA, suitable for public disclosure, is provided as Enclosure 1 to the LTA. *See* LTA, attach. 1, encl. 1.

Holdings, LLC and its parents NorthStar, LVI and Holdings.[59] ENVY will immediately change its name to NorthStar VY, but the same legal entity will continue to exist and will remain the licensed owner of Vermont Yankee that is responsible for decommissioning the facility before and after the proposed transfer.[60]

Under the terms of the proposed transaction, ENVY would make reasonable efforts to accelerate the transfer of spent fuel to dry cask storage by two years ahead of its original plan and complete fuel transfer before the closing of the transaction at the end of 2018.[61] Assuming that the transfer to dry storage proceeds as planned, NorthStar NDC would become responsible for an ISFSI that contains all of the VYNPS spent fuel.[62] NorthStar NDC then would begin decommissioning activities promptly and would plan to complete radiological decommissioning and restoration of the non-ISFSI portions of the VY site by the end of 2030—approximately 40 years sooner than described in the 2014 PSDAR, which assumed use of the SAFSTOR method.[63] Consistent with representations contained in the LTA, on April 6, 2017, NorthStar submitted prospectively a Revised PSDAR "to notify the NRC of changes in the actions and schedules previously described in the PSDAR for VYNPS submitted on December 19, 2014."[64] As described in the Revised PSDAR

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59 LTA, attach. 1 at 2.

60 *Id.* NorthStar VY will continue to own VYNPS as well as its associated assets and real estate, including its nuclear decommissioning trust fund, title to spent nuclear fuel, and rights pursuant to the terms of its Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with the DOE. Certain off-site assets and real estate of ENVY (*e.g.*, administrative offices, off-site training facilities) are excluded. *Id.* at 2-3.

61 *Id.* at 4.

62 *Id.*

63 *Id.* In December 2014, Entergy submitted an update to the Vermont Yankee IFMP and the Vermont Yankee PSDAR with the site-specific decommissioning cost estimate. *See* BVY 14-078, Letter from Christopher J. Wamser, Entergy, to NRC Document Control Desk, Post Shutdown Decommissioning Activities Report (Dec. 19, 2014) ("Vermont Yankee PSDAR") (ML14357A110). Among other things, the PSDAR explained that Entergy planned to use the NRC-authorized "SAFSTOR" decommissioning approach under which the facility is placed in a safe and stable condition and maintained in that state to allow levels of radioactivity to decrease through radioactive decay, followed by decontamination and dismantlement. *Id.*, attach. at 4.

64 Letter from Scott E. State, NorthStar Group Services, Inc., to NRC Document Control Desk and Director of the Office of Nuclear Reactor Regulation, Revised Post-Shutdown Decommissioning Activities Report, Vermont Yankee Nuclear Power Station, Docket Nos. 50-271 and 72-59, License No. DPR-28, encl. at 4 (Apr. 6, 2017) (ML17096A394) ("Revised PSDAR").

(which would apply only if the NRC approves NorthStar VY and NorthStar NDC as the VYNPS licensee), NorthStar VY has selected the DECON method, with decontamination and dismantlement activities commencing promptly after completion of the transfer of spent fuel to dry cask storage.[65] The LTA provides detailed information regarding the financial qualifications of NorthStar VY and NorthStar NDC, and the required financial assurance for decommissioning and funding plan for spent fuel management.[66] The LTA describes the planned use of performance-bonded, fixed-price/fixed-rate contracts, and the planned use of a pay-item disbursement approach with milestones that require work progress and actual performance before funds will be withdrawn from the NDT, reasonably assuring the sufficiency of the NDT to complete decommissioning.[67] The LTA limits NDT withdrawals for spent fuel management to $20 million in revolving funds, replenished from recoveries from the DOE.[68] It also describes the $125 million parent Support Agreement that NorthStar will enter into, providing additional financial support for VYNPS decommissioning and spent fuel management.[69] In addition, the LTA submittal contains proposed administrative amendments to the VYNPS operating license and certain proposed amendments to the decommissioning trust agreement.[70]

IV. NEC's PROPOSED CONTENTIONS ARE INADMISSIBLE

A. Governing Legal Standards for Contention Admissibility

Petitions to intervene must "set forth with particularity" the contentions a petitioner seeks to have litigated in a hearing.[71] The requirements for an admissible contention are set forth in

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65 *Id.* at 6.

66 *See* LTA, attach. 1 at 4-7, 18-23.

67 *See id.* at 5-6, 21-23.

68 *See id.* at 6, 19-20, 25.

69 *See id.* at 6, 22, 25. *See also id.*, encl. 6 (Form of Support Agreement NorthStar Group Services, Inc. and NorthStar Vermont Yankee, LLC).

70 *See* LTA, attach. 2 (Renewed Facility Operating License (Changes)).

71 *PPL Susquehanna, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-15-8, 81 NRC 500, 503-04 (2015) (quoting 10 C.F.R. § 2.309(f)(1)).

10 C.F.R. § 2.309(f)(1)(i)-(vi) and also described in the Hearing Notice.[72] The Commission's contention admissibility requirements are "strict by design."[73] They seek "to ensure that NRC hearings 'serve the purpose for which they are intended: to adjudicate *genuine, substantive safety and environmental* issues placed in contention by qualified intervenors.'"[74] The requirements thus reflect a deliberate effort to prevent the major adjudicatory delays caused in the past by ill-defined or poorly-supported contentions that were admitted for hearing although "based on little more than speculation."[75] To warrant an adjudicatory hearing, proposed contentions thus must have "some reasonably specific factual or legal basis."[76]

Under 10 C.F.R. § 2.309(f)(1), a petitioner must explain the basis for each proffered contention by stating alleged facts or expert opinions that support the petitioner's position and on which the petitioner intends to rely in litigating the contention at hearing.[77] To be admissible, the issue raised must fall within the scope of the proceeding and be material to the findings that the NRC must make with respect to the application.[78] A contention, therefore, must provide sufficient information to show a genuine dispute with the applicant on a material issue of law or fact.[79] The contention must refer to the specific portions of the application that the petitioner disputes along with the supporting reasons for each dispute; or, if the petitioner believes that an application fails

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72 *See* Hearing Notice, 82 Fed. Reg. at 23,847-48; *Susquehanna Nuclear, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-17-4, 85 NRC __, __ (Mar. 24, 2017) (slip op. at 20).

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

74 *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 213 (2003) (quoting *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 & 3), CLI-99-11, 49 NRC 328, 334 (1999)) (emphasis added).

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

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

77 10 C.F.R. § 2.309(f)(1)(ii), (v).

78 *Id.* § 2.309(f)(1)(iii)-(iv); *Susquehanna*, CLI-17-4, 85 NRC at __ (slip op. at 20).

79 10 C.F.R. § 2.309(f)(1)(vi); *Susquehanna*, CLI-17-4, 85 NRC at __ (slip op. at 20).

altogether to contain information required by law, the petitioner must identify each failure and provide supporting reasons for the petitioner's belief.[80]

B. Proposed Contention 1 Is Inadmissible Because It Fails to the Meet the Requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi)

In Contention 1, NEC contends that the LTA should be rejected as incomplete because it does not include an ER or comparable environmental impact assessment.[81] It asserts that an ER is necessary because the LTA purportedly is not a "stand-alone" license transfer request.[82] Instead, NEC claims, the LTA seeks the NRC's "*de facto* unconditional approval of an untested method of managing decommissioning under new and unanalyzed circumstances" that is "tantamount to a license amendment that involves environmental considerations."[83] NEC claims that it should be permitted to litigate its decommissioning-related concerns now because any future hearing opportunity (namely that associated with the license termination process) will be "worthless."[84] Contention 1 fails satisfy the NRC's contention admissibility criteria for the reasons set forth below.

1. Proposed Contention 1 Raises Issues That Are Neither Within the Scope of This Proceeding Nor Material to the NRC Staff's Required Findings

a. The Generic Determinations Codified in 10 C.F.R. §§ 2.1315 and 51.22(c)(21) Clearly Apply to the Proposed License Transfers and Conforming License Amendment

Contention 1 must be rejected because it raises an issue that falls outside the scope of this proceeding and is not material to the findings the NRC must make to support the action giving rise

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80 10 C.F.R. § 2.309(f)(1)(vi); *Susquehanna*, CLI-17-4, 85 NRC at __ (slip op. at 20-21).

81 Petition at 8.

82 *Id.*

83 *Id.* at 9, 11.

84 *Id.* at 13. NEC's characterization of future hearing opportunities as "worthless" is one of several pejorative comments made by NEC regarding the NRC Staff and the NRC's regulatory process. For example, NEC also accuses the Staff of taking a "tunnel-vision approach" to the LTA, "plopping actions that are no longer bounded by 10 CFR 2.1305 [sic] into the 'generically-excluded' category," and lacking an "inquiring attitude." Petition at 9, 10. As the Commission has noted, "the use of intemperate and disrespectful rhetoric . . . has no place in filings before the Commission or its Boards" and "will not be tolerated." *Nuclear Mgmt. Co., LLC* (Monticello Nuclear Generating Plant), CLI-06-6, 63 NRC 161, 164 n.18 (2006) (citations omitted). *See also* 10 C.F.R. § 2.314(a), (c). Insofar as NEC has concerns about the adequacy of the NRC's licensing or hearing processes, the proper forum for conveying those concerns is the rulemaking process.

to this proceeding.[85] As described above, the instant action involves proposed direct and indirect license transfers and a conforming *administrative* license amendment. Applicants have requested that the NRC amend the facility license to reflect the proposed direct transfer of the license from ENOI to NorthStar NDC as well as a planned name change for ENVY from ENVY to NorthStar VY.[86] The generic determinations codified in 10 C.F.R. § 2.1315 thus fully apply to the requested amendment, and any challenge to the license amendment sought by Entergy "is limited to the question of whether the license amendment accurately reflects the [proposed] transfer."[87] Also, section 2.1315(a) provides that such conforming amendments to reactor and ISFSI facility licenses "involve[] respectively, 'no significant hazards consideration,' or 'no genuine issue as to whether the health and safety of the public will be significantly affected.'"[88]

Furthermore, the proposed action is exempt from environmental review under Part 51 because it falls within the categorical exclusion in 10 C.F.R. § 51.22(c)(21), which applies to "[a]pprovals of direct or indirect transfers of any license issued by NRC and any associated amendments of license required to reflect the approval of a direct or indirect transfer of an NRC license."[89] By definition, the proposed action belongs to a category of actions that the Commission, through rulemaking, has found does "not individually or cumulatively have a significant effect on the human environment."[90] Therefore, the preparation of an ER or EIS is, by rule, not required.

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85 10 C.F.R. § 2.309(f)(1)(iii), (iv).

86 LTA, attach. 1 at 1. The amendment includes conforming changes to license transfer conditions in the license, making those conditions applicable to NorthStar VY and NorthStar NDC.

87 10 C.F.R. § 2.1315(b). *See also* Subpart M Rule, 63 Fed. Reg. at 66,727-28 ("Substantive issues regarding requests for a hearing on the appropriateness of the transfer itself may only be considered using the procedures in this rule. The Commission has previously noted that issuance of such an administrative amendment, following the review and approval of the transfer itself, 'presents no safety questions and clearly involves no significant hazards considerations.'") (citation omitted).

88 10 C.F.R. § 2.1315(a).

89 10 C.F.R. § 51.22(c)(21).

90 *Id.* § 51.22(a).

NEC claims that it is not seeking to controvert NRC regulations, but instead is "taking strong exception to the NRC Staff's interpretation of its applicability in this extraordinary instance."[91] There is, however, no such distinction in this case. The LTA and Hearing Notice make clear that the proposed license amendment is strictly administrative in nature, such that the provisions of 10 C.F.R. §§ 2.1315 and 51.22(c)(21) clearly apply to the proposed license transfers and conforming license amendment.[92] The Hearing Notice accordingly states that the requested license amendment is "for *administrative* purposes to reflect the proposed transfer,"[93] and that the proposed license transfers and license amendment are categorically excluded from Part 51's environmental assessment requirements.[94] Contrary to NEC's claim, the NRC's application of sections 2.1315 and 51.22(c)(21) to the Applicants' proposed actions is entirely correct.

b. Contrary to NEC's Claim, the Proposed Action Is Not "Extraordinary" So As to Warrant Different Treatment Under Applicable NRC Regulations

NEC fails to explain how the proposed license transfers and license amendment are "extraordinary."[95] Nuclear power plant license transfers and associated conforming amendments are common, are subject to long-standing NRC requirements, and are reviewed by the NRC Staff against those requirements using well-established agency guidance. Indeed, the VYNPS license previously was transferred to Entergy and administratively amended to reflect that transfer.[96]

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91 Petition at 10.

92 *See* LTA, attach. 1 at 1, 7 & attach 2; Hearing Notice, 82 Fed. Reg. at 23,845. *See also* Applicants' Answer to Vermont Petition at 21-24.

93 Hearing Notice, 82 Fed. Reg. at 23,845 (emphasis added).

94 *Id.*at 23,847.

95 Petition at 10.

96 Specifically, on May 17, 2002, the NRC issued an Order approving the transfer of the VYNPS operating license from Vermont Yankee Nuclear Power Corporation ("VYNPC"), a rate-regulated utility, to ENVY and ENOI. *See* Letter from Robert M. Pulsifer, NRC, to Ross P. Barkhurst and Michael R. Kansler, Entergy, Order Approving Transfer of License for Vermont Yankee Nuclear Power Station from Vermont Yankee Nuclear Power Corporation to Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., and Approving Conforming Amendment (May 17, 2002) (ML020390198); *see also* Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Order Approving Transfer of License and Conforming Amendment, 67 Fed. Reg. 36,269 (May 23, 2002).

Transfers of decommissioning reactor licenses to facilitate expedited decommissioning are not unprecedented or otherwise extraordinary. In fact, the NRC has approved two such transfers in recent years. In both cases, the Staff found that the transferees had demonstrated, among other things, that they were financially and technically qualified to hold the possession-only licenses for the reactors in question, and reasonable assurance that adequate funds would be available to decommission the facilities in accordance with NRC requirements.

In January 2008, Exelon Generation Company, LLC ("Exelon") requested NRC approval of the transfer of the possession license, management authorities, and decommissioning trust fund for Zion Nuclear Power Station, Units 1 and 2 ("Zion"), which were permanently shut down in 1998, to Zion*Solutions*, a subsidiary of Energy*Solutions* LLC that was formed specifically for the purpose of decommissioning the Zion site.[97] The application requested that the NRC consent to the direct transfer of Exelon's 100% ownership interest in Zion (with the exception of title to the real estate encompassing the Zion site, ownership of the spent nuclear fuel and the greater than Class C radioactive waste, and certain other improvements) and the facility licenses to Zion*Solutions*. The purpose of the direct transfer of the licenses was to permit the accelerated radiological decommissioning of Zion and the environmental remediation of the Zion site by Zion*Solutions*.[98]

In connection with this transaction, Zion*Solutions* submitted to the NRC in March 2008 an updated PSDAR that provided significant decommissioning schedule changes (including a shift from SAFSTOR to DECON) and revised cost estimates for reactor decommissioning and dismantlement and spent fuel management.[99] The updated PSDAR stated:

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97 Letter from Thomas S. O'Neill, Exelon Generation Company, LLC, and Val J. Christian , *Zion*Solutions, LLC, to NRC Document Control Desk, Application for License Transfers and Conforming Administrative License Amendments (Jan. 25, 2008) (ML080310521) ("2008 Zion LTA").

98 *Id.*, attach. 1 at 3-4.

99 Letter from Patrick Daly, Zion*Solutions*, to NRC Document Control Desk, Notification of "Amended Post-Shutdown Decommissioning Activities Report" (PSDAR) for Zion Nuclear Power Station, Units 1 and 2 in

> SAFSTOR has been utilized to date as the decommissioning approach since the permanent shutdown and defueling of Zion Units 1 and 2, with preparations for decontamination and dismantlement deferred until the license expiration date for Zion Unit 2, November 14, 2013. *The new EnergySolutions plan is to* ***shift to the DECON decommissioning method, accelerate the decommissioning schedule****, and begin preparation for decommissioning at the time of the approval of the transfer of the Licenses* to [Zion*Solutions*], which is assumed to occur in late 2008. In addition to accelerating decommissioning, the revised schedule incorporates the movement of the spent fuel and GTCC waste to an ISFSI constructed at [Zion] where they will remain safely stored until they are shipped to an Exelon facility or transferred to the DOE for permanent disposal.[100]

By Order dated May 4, 2009, the NRC approved the transfer of control of Zion from Exelon to Zion*Solutions*.[101] Notably, in its supporting safety evaluation, the Staff stated that the requested conforming amendments to the Zion licenses involved no physical or operating changes to the facility or any safety question, and that the conforming amendments were administrative in nature because only reflected the transfer action.[102] It further concluded that the proposed direct license transfers and conforming amendments were categorically excluded from environmental review under 10 C.F.R. § 51.22(c)(21), and that pursuant to 10 C.F.R. § 51.22(b), the NRC did not need to prepare an EIS or EA in approving the transfer application.[103]

On October 8, 2015, Dairyland Power Cooperative ("DPC") and LaCrosse*Solutions*, LLC submitted an application seeking NRC consent for the direct transfer of DPC's possession-only

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Accordance with 10 CFR 50.82(a)(7) (Mar. 18, 2008) (ML080840398). Commonwealth Edison Company submitted the original PSDAR for Zion on February 14, 2000.

100 *Id.*, attach. at 16 (emphasis added).

101 *See* Letter from John B. Hickman, NRC, to John A. Christian, President, Zion*Solutions*, LLC, and Commercial Services, Energy*Solutions*, LLC, Order Approving Transfer of Licenses and Conforming Amendments Relating to Zion Nuclear Power Station, Units 1 and 2 (May 4, 2009) (ML082840443).

102 *Id.*, encl. 4 at 12. At the time of the May 4, 2009, Order, the NRC Staff found that the financial qualifications of Zion*Solutions* to perform its obligations under the Licenses had been demonstrated by: (1) the availability to Zion*Solutions* of the Qualified and Non-Qualified NDT funds to pay for the radiological decommissioning of the Zion; (2) the executed guaranty by Energy*Solutions*, LLC of the performance by Zion*Solutions* of its obligations to decommission Zion and the executed guaranty of the obligations of Energy*Solutions*, LLC by Energy*Solutions*, Inc.; (3) the provision of additional financial assurance in the form of a $200 million irrevocable letter of credit; and (4) the disposal capacity easement assuring the availability of disposal capacity at the Clive, Utah disposal facility. *See id.* at 3-4, 8-9.

103 *Id.* at 12.

license for the La Crosse Boiling Water Reactor ("La Crosse").[104] Specifically, the applicants requested that the NRC consent to the transfer of DPC's licensed possession, maintenance and decommissioning authorities to LaCrosse*Solutions* in order to implement expedited decommissioning at La Crosse, which permanently ceased operations on April 30, 1987, and which completed reactor defueling on June 11, 1987. They also requested approval of a conforming amendment to the license pursuant to 10 C.F.R. §§ 50.80 and 50.90.

The NRC approved the proposed direct transfer of the La Crosse facility license and conforming license amendment by Order dated May 20, 2016, finding that the applicants had demonstrated compliance with the NRC's license transfer requirements.[105] Although LaCrosse*Solutions* had not submitted an amended PSDAR at the time, it committed to do so within two years of the La Crosse license transfer in order to provide a description of its planned decommissioning activities and schedule an updated decommissioning cost estimate. As in the Zion case, the Staff concluded that the proposed conforming license amendment involved no safety questions and was administrative in nature, and that the proposed license transfer and amendment were categorically excluded from environmental review pursuant to 10 C.F.R. § 51.22(c)(21).[106]

The VYNPS license transfers and conforming license amendment proposed by Applicants are analogous to those approved by the NRC Staff with respect to the Zion and La Crosse license transfers. Thus, there is no merit to NEC's claims that the instant proposed action is somehow extraordinary, or that the Staff has taken a "tunnel vision approach to the application."[107] Nor is

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104 *See* Letter from Barbara A. Nick, President and CEO, Dairyland Power Cooperative and Russell G. Workman, General Counsel, Energy*Solutions*, to NRC Document Control Desk, Application for Order Approving License Transfer and Conforming Administrative License Amendments (Oct. 8, 2015) (ML15307A310).

105 *See* Letter from Marlayna Vaaler, NRC, to Barbara A. Nick, President and CEO, Dairyland Power Cooperative , Order Approving Transfer of the License for the La Crosse Boiling Water Reactor from the Dairyland Power Cooperative to LaCrosse*Solutions*, LLC and Conforming Administrative License Amendment (May 20, 2016) (ML16123A055).

106 *Id.*, encl. 3 at 11 (ML16123A074).

107 Petition at 10.

there any factual or legal basis for NEC's arguments that the provisions of sections 2.1315 and 51.22(c)(21) should be applied differently in this case.[108] In short, by asserting that the proposed action involves significant hazards considerations and requires the preparation of an ER by the Applicants and an EA or EIS by the Staff, NEC does in fact inappropriately challenge 10 C.F.R. §§ 2.1315 and 51.22(c)(21).[109] Absent a waiver granted pursuant to the procedures set forth in section 2.335(b), no rule or regulation of the Commission is subject to attack in any adjudicatory proceeding.[110] NEC has not sought and obtained such a waiver in this proceeding. Nor has it alleged, with specific reference to 10 C.F.R. § 51.22(b), that "special circumstances" exist that would justify excepting the proposed license transfers and conforming license amendment from the categorical exclusion of 10 C.F.R. § 51.22(c)(21).[111] Thus, the issues raised in Contention 1 are not within the scope of the proceeding or material to the Staff's findings on the proposed action.

c. NRC Regulations Do Not Deprive NEC of a Meaningful Hearing Opportunity, Particularly With Respect to the Proposed Action

In Contention 1, NEC makes another process-related argument that also falls outside the scope of this proceeding, fails to raise a material issue for hearing, and impermissibly challenges the NRC's rules. Namely, NEC contends that because no hearing opportunity is offered in connection with the PSDAR, any future hearing opportunity at the license termination state is "worthless," because "any contentions related to waste and material handling, excavation, soil and concrete remediation, etc." will have been rendered moot by that time.[112] As NEC implicitly acknowledges,

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108 *See id.* at 9-10.

109 *See Vt. Yankee Nuclear Power Corp.* (Vt. Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 167 (2000) ("Nor has [the petitioner] reconciled its demand for a NEPA [National Environmental Policy Act] review with our rules' 'categorical exclusion' of license transfers from NEPA requirements. *See* 10 C.F.R. § 51.22(a)(21).").

110 10 C.F.R. § 2.335(a).

111 Section 51.22(b) provides, in pertinent part, that an environmental review need not be performed for any action that falls within the list of categorical exclusions, "[e]xcept in special circumstances, as determined by the Commission upon its own initiative or upon request of any interested person." 10 C.F.R. § 51.22(b).

112 Petition at 12-13. In making this argument, NEC loses sight of the fact that the proposed action subject to challenge involves the proposed transfer of the VYNPS facility licenses and a conforming amendment—not the

however, this argument is a collateral attack on 10 C.F.R. § 50.82, as promulgated by the Commission in the 1996. In that rulemaking, the Commission eliminated the requirement that a licensee have an approved decommissioning plan prior to commencing major decommissioning activities.[113] It also rejected the idea of a hearing and intervention opportunity at the PSDAR review stage because "initial decommissioning activities (dismantlement) are not significantly different from routine operational activities . . . [and] do not present significant safety issues for which an NRC decision would be warranted."[114] It explained that "[a] more formal public participation process is appropriate at the termination stage of decommissioning," at which time the licensee must submit a license amendment request in order to terminate its license.[115] That request provides an opportunity for a hearing on the license termination plan.[116]

Importantly, the 1996 Decommissioning Rule still allowed opportunities for public participation by requiring that: (1) licensees not begin major decommissioning activities until after they have submitted the PSDAR;[117] (2) the PSDAR be made available to the public for written

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Revised PSDAR. The fact that NEC has been given the opportunity to challenge the actual contents of the LTA, and has simply failed to do so, does not mean that its AEA hearing rights have been curtailed or violated. Indeed, most of NEC's arguments are, at best, only tangentially related to the principal areas of inquiry in this proceeding; *i.e.*, the financial and technical qualifications of the transferees and decommissioning financial assurance.

113 *See* 1996 Decommissioning Rule, 61 Fed. Reg. at 39,279, 39,292 ("The changes adopted in the rulemaking primarily provide additional flexibility to licensees that reduces burden without reducing safety by allowing licensees to undertake the majority of decommissioning activities without first obtaining NRC approval.").

114 *Id.* at 39,284. In developing the 1996 Decommissioning Rule, the Commission determined that decommissioning activities could be safely conducted under the current license conditions and restrictions, and that a detailed decommissioning plan requiring NRC review and approval would be redundant to the activities already authorized by the Commission in the facility license. *Id.* at 39,282. Any actions outside the license would require the licensee to request a license amendment and to justify the why the change was safe. *Id.* at 39,283. From an environmental perspective, "the NRC specifically considered and rejected the idea that review of the PSDAR should be defined as a major federal action under NEPA because environmental analysis of activities to be performed under the PSDAR will necessarily have been performed in accordance with prior site-specific or generic analysis." *Entergy Nuclear Vt. Yankee, LLC, & Entergy Nuclear Operations, Inc.* (Vt. Yankee Nuclear Power Station), CLI-16-17, 84 NRC __, __ (Oct. 27, 2016) (slip op. at 35) (citing 1996 Decommissioning Rule, 61 Fed. Reg. at 39,279, 39,283, 39,286).

115 1996 Decommissioning Rule, 61 Fed. Reg. at 39,284.

116 *Id.* at 39,284, 39,286.

117 Although the NRC does not formally approve the PSDAR, 10 C.F.R. § 50.82 requires that licensees provide written notification to the NRC for decommissioning activities that are inconsistent with those described in the PSDAR, including significant changes in decommissioning costs. 10 C.F.R. § 50.82(a)(7).

comment and subject to discussion in a public meeting; and (3) licensees submit a license termination plan that must be approved by the NRC via a license amendment (for which an hearing opportunity is available).[118] As the Commission noted, this procedural framework assures that affected or interested citizens "will be provided with information regarding the licensee's planned decommissioning activities, have an opportunity to ask questions regarding those activities at a public meeting early in the process, and have timely input into the decision to release the site."[119]

As the Commission further explained in the 1996 Decommissioning Rule, 10 C.F.R. § 50.82 assures continuing compliance with AEA and NEPA requirements by prohibiting licensees from performing any decommissioning activities that foreclose release of the site for possible unrestricted use, result in significant environmental impacts not previously reviewed, or result in there no longer being reasonable assurance that adequate funds will be available for decommissioning.[120] The requirement that licensees notify the NRC in writing of intended decommissioning activities that are inconsistent with the PSDAR ensures that, after submittal and public comment on the PSDAR, any changes to the planned decommissioning activities continue to be enveloped by previous environmental reviews.[121] The 1996 Decommissioning Rule's extension of certain technical requirements to cover decommissioning activities (*e.g.*, §§ 50.36, 50.36a, 50.36b, and Appendix I regarding technical specifications for surveillance requirements, administrative controls, control of effluents, and conditions to protect the environment) ensures continued assurance that the public health, safety, and the environment are adequately protected.[122] In short, NRC rules ensure that the

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118 1996 Decommissioning Rule, 61 Fed. Reg. at 39,286.

119 *Id.*

120 *Id.* at 39,283.

121 *Id.* at 39,286. The licensee would need to appropriately address any activities not meeting the environmental criteria. *Id.* At the license termination stage, any activities in the license termination plan that do not meet the environmental criteria must be approved by the NRC via a license amendment process that includes applicable hearing rights under Part 2 and the preparation of environmental assessments. *Id.*

122 *Id.* at 39,283.

environmental impacts of the types of activities cited by NEC—waste and material handling, excavation, soil and concrete remediation—remain bounded by previous environmental and safety reviews or are appropriately analyzed before the licensee undertakes such activities.

2. Proposed Contention 1 Lacks Adequate Support and Fails to Raise a Genuine Dispute with the Application on a Material Issue of Fact or Law

Proposed Contention 1 also is inadmissible because it lacks adequate support and fails to raise any particularized challenge to the application, contrary to the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi).[123] As stated in Contention 1, NEC's concerns appear to stem primarily from the fact that a new entity, NorthStar NDC, will assume responsibility for decommissioning VYNPS (if the license transfer is approved), and will conduct decontamination and dismantlement according to an accelerated schedule using the DECON (not SAFSTOR) method. Also, NEC vaguely alleges that NorthStar NDC intends to use "an untested method of managing decommissioning under new and unanalyzed circumstances."[124] The gist of NEC's stated concerns is that Applicants' purportedly untested decommissioning approach will prove unsuccessful and result in unanticipated environmental impacts. However, NEC fails to provide any credible support for its purely speculative claims or to identify a specific, material deficiency in the Application.

First, the proposed transfer of a permanently-defueled reactor to an appropriate (*i.e.*, financially and technically qualified) entity such as NorthStar NDC for the purpose of performing expedited facility decommissioning is not unprecedented.[125] The NRC-approved Zion and La Crosse license transfers discussed above provide directly relevant precedent and confirm the

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123 *U.S. Dep't of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 587 (2009).

124 Petition at 11.

125 As stated in the LTA, the proposed transaction, if approved, will place licensed responsibility in an organization (NorthStar NDC) that is focused on radiological decommissioning. LTA, attach. 1 at 9. NorthStar is an industry leader in the decommissioning of large-scale industrial and commercial complexes, including nuclear facilities in the U.S. and abroad. *Id.* In addition, NorthStar will draw upon the experience of its parent company and contract with its strategic partners, AREVA, Burns & McDonnell, and Waste Control Specialists, to take advantage of their expertise, decommissioning experience, and knowledge of best practices. *Id.*

viability of the actions described in the LTA and Revised PSDAR. Applicants are not breaking new ground, as NEC incorrectly suggests.

Second, there is nothing "untested" or "unanalyzed" about the decommissioning approach proposed by Applicants relative to either (1) the specific methods to be used to dismantle and decontaminate VYNPS, or (2) the fiscal/project management methods to be applied to manage decommissioning costs and schedule. With regard to the former, Applicants stated in the LTA that they would submit an updated PSDAR describing NorthStar NDC's plans for accelerated decommissioning following the proposed transfers of the VYNPS Part 50 and 72 licenses.[126] The Revised PSDAR, which was submitted on April 6, 2017, states that decommissioning activities will be performed in accordance with written, reviewed, and approved site procedures, as amended for NorthStar VY to begin decommissioning.[127] The Revised PSDAR further states that:

> Radiological and environmental programs will be maintained throughout the decommissioning process to ensure occupational, public health and safety, and environmental compliance with all applicable laws and regulations. Radiological programs will be conducted in accordance with the facility's revised Technical Specifications, Operating License, Defueled Safety Analysis Report (DSAR), Radiological Environmental Monitoring Program, and the Offsite Dose Calculation Manual, as amended for NorthStar VY to begin decommissioning. Non-radiological Environmental Programs will be conducted in accordance with applicable requirements and permits.[128]

It also indicates that there are "no identified or anticipated decommissioning activities that are unique to the VYNPS site."[129] NEC presents no information to support a different conclusion.

In a related vein, the Revised PSDAR states the environmental impacts associated with planned VYNPS site-specific decommissioning activities are less than and bounded by the impacts addressed by previously issued EISs—*i.e.*, the NRC's generic environmental impact statement

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126 *Id.* at 4, 26.

127 Revised PSDAR at 8.

128 *Id.* at 9.

129 *Id.* at 8-9.

("GEIS") for reactor decommissioning and the VYNPS-specific supplement to the NRC's GEIS for license renewal (referred to as the "SEIS").[130] As noted therein: (1) the postulated impacts associated with the decommissioning method chosen, DECON, already have been considered in the SEIS and GEIS; (2) there are no unique aspects of VYNPS or of the decommissioning techniques to be used that would invalidate the conclusions reached in the SEIS and GEIS; and (3) the methods assumed to be employed to dismantle and decontaminate VYNPS are standard construction-based techniques fully considered in the SEIS and GEIS.[131] NEC provides no specific facts to support its claims in Contention 1 that the environmental impacts of the proposed decommissioning activities will "exceed[] the limits for NRC's categorical exclusions," or that such impacts have not undergone a "hard look" by the NRC Staff as required by NEPA and Part 51.[132]

Contention 1 also takes aim, albeit in perfunctory fashion, at the feasibility of Applicants' proposed methods for ensuring the availability of adequate decommissioning funds (in part, by assuring that actual decommissioning costs are commensurate with estimated costs) and adherence to the proposed decommissioning schedule. NEC asserts that "the use of hundreds of Balkanized fixed price contracts under NorthStar's fixed-price arrangement" is new and untested on the scale of the VYNPS decommissioning project.[133] It further claims that "multiple fixed price contracts are inherently difficult to supervise and qualitatively evaluate," and create "a disincentive

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130 *Id.* at 18. *See also* "Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, Supplement 1 Regarding the Decommissioning of Nuclear Power Reactors" (Final Report), NUREG-0586, Supp. 1, vols. 1-2 (Nov. 2002) (ML023470304, ML023470323, ML023500187, ML023500211, ML023500223) ("Decommissioning GEIS") (supplementing the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, published in 1988); "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Vermont Yankee Nuclear Power Station" (Final Report), NUREG-1437, Supp. 30, vols. 1-2 (Aug. 2007) (ML072050012, ML072050013) ("License Renewal SEIS").

131 Revised PSDAR at 18.

132 Petition at 8, 10.

133 *Id.* at 11.

to care and attention to detail."[134] But NEC again fails to provide any support for its claims and overlooks the relevant portions of the Application.

As described in the LTA, the Applicants' decommissioning cost estimates rely upon costs generated by either affiliates of NorthStar NDC or NorthStar's partners, and ultimately will be specified in fixed-price or fixed-rate contracts that will be entered into and bonded.[135] Those contractors, including any affiliate, will be *required* to post performance bonds (or insurance, where appropriate) issued by Treasury-rated surety companies to guarantee the performance of the tasks that assure the work is performed at the specified costs.[136] Additionally, NorthStar NDC's contract terms, whether with an affiliate, partner or other, will specify a "pay-item disbursement approach" with milestones that require work progress and actual performance before funds will be withdrawn from the trust fund to pay for the work.[137] Under this pay-item disbursement approach, the NDT funds will be adequate to cover costs, because NorthStar VY and its contractors performing work have agreed to cap the cost for each pay-item while ensuring completion of each pay-item's scope of work through performance bonds or insurance (and ultimately NorthStar's $125 million financial support commitment).[138] This includes work performed by NorthStar, whether by NorthStar NDC or an affiliate, as well as work performed by the various team partners (*i.e.*, AREVA, Burns & McDonnell and WCS or their affiliates) whose technical qualifications are described in the LTA.[139]

The use of bonded fixed-price/fixed-rate contracts and a pay-item disbursement approach with specific milestones are not unique to the VYNPS decommissioning project; indeed, they are well-established and proven methods that are commonly applied in large-scale decommissioning or

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134 *Id.* at 12.

135 LTA, attach. 1 at 21.

136 *Id.*

137 *Id.*

138 *Id.*

139 *Id.*

site remediation projects at both nuclear and non-nuclear facilities. Contrary to NEC's claim, the contract and payment methods identified by the Applicants provide readily verifiable (and legally enforceable) performance metrics and significant incentives for adhering to project budgets and schedule milestones. In any event, NEC does not why explain why Applicants' proposed methods are unacceptable vis-à-vis the NRC's financial qualifications or decommissioning financial assurance requirements, or how their use could compromise the sufficiency of the NDT funds.

NEC raises one additional concern related to NorthStar's proposed assumption of licensed responsibility for decommissioning VYNPS. It alleges that NorthStar NDC lacks a quality assurance ("QA") program for the VYNPS decommissioning project, contrary to the requirements of 10 C.F.R. § 50.54(a).[140] NEC bases this claim on an excerpt from an April 26, 2017 NorthStar interrogatory response in the Vermont Public Service Board proceeding on the proposed transfer of ownership of VYNPS.[141] However, nothing in the statement quoted by NEC is "disturbing" or "possibly illegal,"[142] or otherwise indicative of any present or future noncompliance with applicable NRC requirements. In fact, the LTA—which NEC again ignores—disproves this claim. It states:

> Upon consummation of the transfer, *NorthStar NDC will assume authority and responsibility for the functions necessary to fulfill the quality assurance ("QA") requirements* of the Defueled Technical Specifications and as specified for VY in the VY Quality Assurance Program Manual, Rev. 5 (or subsequent revision). NorthStar NDC will assume all of the current functions of the existing QA organization, although NorthStar NDC may contract with qualified vendors for certain QA oversight and inspection functions. NorthStar NDC does not anticipate any changes to the existing QA program for VY beyond conforming changes consistent with the license transfer, but any changes that do occur will be made in accordance with 10 CFR 50.54(a).[143]

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140 *See* Petition at 12.

141 *See id.* The interrogatory response, as quoted by NEC, states: "NorthStar has adopted the VY site's QA/QC program [] that is currently under revision for ISFSI only operations [QA/QC only for security and safeguards]. After closing of the transaction, task-specific QA/QC programs may be developed to support specific activities."

142 Petition at 12.

143 LTA, attach. 1 at 26-27 (emphasis added). *See also id.* at 13 ("NorthStar employees and contractors will not be employed without being qualified for their positions in accordance with the applicable VY Technical Specifications and Quality Assurance Program Manual requirements. NorthStar will also adopt the existing [QA],

Thus, the LTA makes clear that NorthStar NDC's decommissioning activities (including those performed by contractors) will be subject to an NRC-approved QA program, as applicable, and that any changes to that program which NorthStar NDC determines to be necessary will be made in accordance with the requirements in 10 C.F.R. § 50.54(a). Thus, NEC's QA-related claim lacks factual support and fails to controvert the pertinent section of the Application.

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In summary, Proposed Contention 1 raises issues that are not within the scope of this proceeding or material to the Staff's findings, fails to raise a genuine dispute on a material issue of fact or law, and lacks adequate factual or legal support. Therefore, it is inadmissible under 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

C. Proposed Contention 2 Is Inadmissible Because It Fails to the Meet the Requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi)

In Contention 2, NEC alleges that NorthStar NDC has not provided reasonable assurance that adequate funds will be available for radiological decommissioning at Vermont Yankee because it has not performed an adequate site-specific radiological site survey.[144] As support for this contention, NEC asserts that Applicants: (1) have relied entirely on a 2014 Site Assessment Study that that is "unsupported by any field sampling and sample analysis;"[145] (2) have not adequately

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emergency preparedness, and training procedures and establish these functions at VY using NorthStar project personnel that will include existing VY personnel, as well as contractors.").

144 Petition at 13. For reasons discussed below, NEC has failed to provide adequate factual support for its claim that Applicants lack a "radiological site survey" adequate to determine realistic remediation cost estimates. Indeed, available information indicates the opposite. In any case, NEC also overlooks the fact that the NRC's license termination regulations require that the license termination plan to be submitted at least two years prior to the license termination date include, among other things, a site characterization, site remediation plans, detailed plans for the final radiation survey, and an updated site-specific estimate of remaining decommissioning costs. Insofar as it suggests that Applicants must provide this information now, it inappropriately challenges NRC regulations. *See* 10 C.F.R. § 2.335(a).

145 Petition at 13. *See also* "Vermont Yankee Site Assessment Study," prepared by Entergy Nuclear Vermont Yankee (Oct. 2014), *available at* http://vydecommissioning.com/wp-content/uploads/2014/10/Final-VY-SAS.pdf ("2014 Site Assessment Study"). In December 2013, several Vermont state agencies and ENVY negotiated a settlement

considered radiological emergencies resulting from fires involving radioactive and other contaminated materials;[146] and (3) have not accounted for strontium-90 and other long half-life or hard-to-detect radioactive materials that are "expected" to be found in soils and groundwater at the VYNPS site, and which "could greatly increase" decommissioning costs.[147]

1. NEC's Claim That Applicants Have Relied Inappropriately on the 2014 Site Assessment Study to Estimate Decommission Costs Lacks Factual Support and Fails to Raise a Genuine Material Dispute

The central premise of Contention 2 is that in developing the decommissioning cost estimates summarized in the LTA, Applicants relied exclusively on a 2014 Site Assessment Study that, according to NEC, has "no place in the NRC regulatory scheme" and is unsupported by field sampling data.[148] This premise is based on an April 26, 2017 NorthStar response to an information request filed in the above-referenced proceeding before the Vermont Public Service Board. NEC focuses, in particular, on the statement that "NorthStar's due diligence consisted of reviewing the Site Assessment Study."[149] From this statement—which was made in another (non-NRC) proceeding for a different purpose—NEC infers that the radiological decommissioning cost estimates presented in the LTA are based on insufficient site-specific data.

NEC's argument is factually incorrect in two major respects. First, Applicants did not rely solely on the 2014 Site Assessment Study. As the LTA states:

> In preparing these [decommissioning cost] estimates, NorthStar has considered the records required by 10 CFR 50.75(g), groundwater monitoring

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agreement that, among other things, included commitments by ENVY that VYNPS would cease operations by the end of 2014 and that ENVY would prepare the now-completed 2014 Site Assessment Study.

146 *See* Petition at 14.

147 *Id.* at 15

148 *Id.* at 13.

149 *Id.* (quoting Scott State, Answer ANR: NS.1-3, Vermont Public Service Board Docket 8880, Joint Petitioner's Responses to ANR's First Set of Information Requests, April 26, 2017). NEC ignores the earlier part of the very same response that questioned what "NorthStar relied upon to reach the conclusion that the information on radiological and non-radiological conditions at the site are 'sufficient,'" to which NorthStar answered "[t]he Radiological & Non-Radiological HSAs, included in the Site Assessment Study, General Area Radiological Surveys, and Groundwater Results."

> data including the information described in the PSDAR, the results of a 2014 Site Assessment study, and other information characterizing the site, all of which supports the ability to complete decommissioning of the site for unrestricted release within the cost estimates and schedule.[150]

Thus, in developing the current VYNPS decommissioning cost estimates, Applicants relied on multiple sources of relevant technical data and information, not solely on the 2014 Site Assessment Study as NEC incorrectly claims in its Petition.

Second, NEC's characterization of the 2014 Site Assessment Study is inaccurate. Contrary to NEC's claims, that document reflects consideration of site-specific environmental monitoring or field data. For example, the 2014 Site Assessment Study states that it considered the results of the initial Radiological Historical Site Assessment ("HSA"), which ENVY prepared in accordance with NRC guidance (NUREG-1575) to document historic radioactive material spills and leaks at VYNPS and assess their impact on the environment.[151] The current Radiological HSA results are based on a review of historical information required to be maintained by the NRC, a review of condition reports, and interviews with current and former employees.[152] The Radiological HSA identified 72 areas as potentially impacted by radioactive material, none of which is considered to pose a major challenge to the decommissioning project.[153]

The 2014 Site Assessment Study reflects consideration of historical field sample data from various plant systems and site areas.[154] It also notes that ENVY maintains an extensive

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150 LTA, attach. 1 at 20.

151 *See* 2014 Site Assessment Study at 9.

152 *See id.*

153 *See id.*

154 For example, the 2014 Site Assessment Study refers to the following sampling activities: (1) historic sampling of the site Storm Drain System (which collected surface water runoff from paved areas and building roofs in the Protected Area and the Owner Controlled Area, the results of which indicate that contamination levels are a fraction of the NRC screening level Derived Concentration Guideline Levels ("DCGLs") (*id.* at 10); (2) collection of samples in 1987 in the Radwaste Building (*id.* at 10); (3) soil samples collected adjacent to the northeast side of the RadWaste Building in 1987, 1988, and 1999 to assess the extent of contamination caused by the build-up of low level radioactivity associated with activities to package expended resin for transport to a disposal facility (*id.* at 10-11); (4) soil samples taken to verify the successful removal of a pile of contaminated sand-blasting media

groundwater monitoring system and describes the various groundwater monitoring programs that have been implemented at VYNPS, including NEI 07-07 Groundwater Protection Initiative Program, the Radiological Environmental Monitoring Program ("REMP"), and groundwater monitoring to meet permit requirements for the septic tank sludge and septic leach field permits.[155] Groundwater sampling performed under these programs has included: (1) routine sampling of 30 monitoring wells installed as part of Entergy's response to NEI 07-07; (2) sampling of two on-site potable water wells producing drinking water from the bedrock aquifer west of the Protected Area and sampling of a third well (the Southwest Well) that taps into the bedrock aquifer but is no longer used as a potable water well; (3) quarterly sampling of four shallow wells located adjacent to the South Land Application Area for gross beta activity, gamma-emitting radionuclides and tritium; (4) semi-annual sampling of 21 shallow monitoring wells that are distributed within six septic leach field areas located in various parts of the plant; and (5) sampling of the septic system effluent from the three systems within the Protected Area for biological and radioactive constituents.[156]

The 2014 Site Assessment Study states that groundwater monitoring results indicate that known contamination events have not created any immediate threat to public health or the environment.[157] As noted below, recent site-specific data obtained from environmental monitoring and sampling programs required by VYNPS Technical Specifications and reported to NRC confirm this fact and contradict NEC's claims that additional contamination is likely to be discovered.

In view of the above, NEC's statements concerning the 2014 Site Assessment Study are factually unsupported and fail to raise any material dispute regarding NorthStar's ability to

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discovered in 1983 (*id.* at 11); and (5) sampling of the North and South Application Fields where plant septage contained Co-60 and Cs-137 has been spread, as authorized by the NRC under 10 C.F.R. § 20.302 (now 10 C.F.R. § 20.2002) (*id.* at 11-12).

155 *See* 2014 Site Assessment Study at 21.

156 *See id.* at 21-22.

157 *See id.* at 20.

complete decommissioning of the site for unrestricted release consistent with the cost estimates and schedule described in the LTA and Revised PSDAR.

2. NEC's Statements Regarding Fire-Related Radiological Emergencies Lack Factual Support and Fail to Raise a Genuine Material Dispute

NEC asserts that the 2014 Site Assessment Study and Vermont Yankee PSDARs fail to address the possibility of fires involving "potential masses of contaminated material susceptible to ignition [that] might accumulate during decommissioning."[158] It is unclear how this issue relates to the contents of the LTA or the findings that the NRC Staff must make in reaching a decision on the Application.[159] For example, NEC makes no attempt to establish a nexus between its fire-related concerns and the technical or financial qualifications of NorthStar NDC or the adequacy of Vermont Yankee decommissioning funding. As such, its argument clearly fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

NEC also fails to provide sufficient information to support its claims. Instead, it merely avers that "there is a serious concern about fire protection for the structures, systems, and components containing radioactive materials in storage."[160] It also alludes to the "anecdotal" experience of the Petition's "preparer" at Maine Yankee, where "a dryer full of contaminated cleaning rags" supposedly caught fire during decommissioning.[161] Such claims are unsubstantiated and provide no basis for concluding that NorthStar NDC will not maintain and/or implement appropriate measures for protecting radioactive materials from potential fire-induced releases during the decommissioning and spent fuel transfer processes.

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158 Petition at 14.

159 *See U.S. Dep't of Energy*, CLI-09-14, 69 NRC at 587 ("[I]t is unclear to us how this assertion, even assuming its accuracy, articulates a particularized challenge to the application.").

160 Petition at 14.

161 *Id.*

3. NEC's Claims Regarding "Expected" Groundwater Contamination Lack Factual Support and Fail to Raise a Genuine Material Dispute

NEC asserts that the presence of strontium-90 or other long-lived radionuclides such as carbon-14, nickel-63, and cesium-137 in the soil and groundwater at VYNPS is likely and could greatly increase decommissioning costs.[162] It claims that VYNPS has a locally-reported "history of 'hot particles' in storm drains."[163] NEC further asserts that the discovery of radionuclides during decommissioning "is far from unusual and perhaps closer to ubiquitous," as purportedly evidenced by the detection of such radionuclides at Maine Yankee and Connecticut Yankee during the decommissioning of those plants.[164] Finally, NEC posits that "[c]osts of late-discovered radio-contamination can exceed NorthStar's reserves," especially given that VYNPS is a merchant plant rather than a rate-based plant (a fact that will remain true independent of the LTA).[165]

NEC's arguments concerning the possible presence of groundwater contamination at VYNPS and its postulated impact on decommissioning costs fail to support the admission of Contention 2 for the same reasons discussed above. Section 2.309(f)(1)(v) explicitly requires a petitioner to provide facts or expert opinions together with references to the specific sources and documents on which the petitioner relies to support its position on the issue. NEC has not met its burden here, particularly with respect to its claims that extensive groundwater contamination at VYNPS is likely and could greatly increase decommissioning and site restoration costs.

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162 *Id.* at 15.

163 *Id.*

164 *Id.* at 16.

165 *Id.* at 16-17. Many current licensed owners/operators of nuclear power plants—including the current VYNPS owner and operator—are owned by merchant companies that do not have access to a guaranteed rate base. This fact has not proven to be an obstacle to their ability to demonstrate compliance with the NRC financial qualifications and decommissioning funding assurance requirements.

For the most part, NRC relies on bald assertions or conjectural statements, in direct contravention of the Commission's strict contention pleading requirements.[166] For example, it provides no site-specific information (*e.g.*, groundwater monitoring data) to support its claims that radionuclides such as carbon-14 or nickel-63 are "likely" to be present in site groundwater at levels that could cause actual decommissioning costs to exceed decommissioning cost estimates. Nor does NEC explain how the purported detection of certain radionuclides at Connecticut Yankee and Maine Yankee—plants with different operating histories—are relevant to groundwater conditions at Vermont Yankee. Thus, NEC's allegations regarding the "likely" presence of certain radionuclides in VYNPS groundwater and their impact on decommissioning costs are pure speculation.

To the extent NEC provides any citations in its Petition, the referenced documents fail to support (and, indeed, even undermine) its claims.[167] Notably, NEC cites a February 9, 2015 news release issued by the Vermont Department of Health ("VDH") reporting the detection of strontium-90 in samples of ground water tested by that agency in August 2014 from monitoring wells within the boundaries of VYNPS.[168] NEC fails to mention that the news release states that the level of strontium-90 detected at VYNPS was well below the drinking water standards set by the Environmental Protection Agency ("EPA"), and that "[t]he water is not available for consumption, the levels detected are well below the EPA's safe drinking water threshold, and there is no

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166 *See U.S. Dep't of Energy*, CLI-09-14, 69 NRC at 588 (noting that generalized assertions, without specific ties to NRC regulatory requirements, do not provide adequate support demonstrating the existence of a genuine dispute of fact or law with an application).

167 It is well-established that any supporting material provided by a petitioner, including those portions thereof not relied upon, is subject to licensing board scrutiny, "both for what it does and does not show." *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90, *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). The presiding officer thus will examine documents to confirm that they support the proposed contentions. *See Vt. Yankee Nuclear Power Corp.* (Vt. Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), *vacated in part on other grounds and remanded*, CLI-90-4, 31 NRC 333 (1990). A petitioner's imprecise or incomplete reading of a document cannot be the basis for a litigable contention. *Ga. Inst. of Tech.* (Ga. Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300, *aff'd*, CLI-95-12, 42 NRC 111 (1995).

168 Petition at 14 (citing VDH Communications Office, *Strontium-90 Detected in Ground Water Monitoring Wells at Vermont Yankee* (Feb. 9, 2015), *available at* http://www.healthvermont.gov/sites/default/files/documents/2016/11/Strontium-90%20Detected%20in%20Ground%20Water%20Monitoring%20Wells%20at%20Vermont%20Yankee.pdf ("Feb. 9, 2015 VDH News Release").

immediate risk to health."[169] The news release further notes that strontium-90 "is found in low levels all around the world" and that "the specific source of the [strontium-90] is unclear."[170] NEC fails to explain how the detection of very low levels of strontium-90 several years ago demonstrates any likelihood of increased decommissioning costs, much less shortfalls in NDT funds.[171]

NEC also cites a VDH webpage discussing Entergy's detection of tritium in samples taken in November 2009 from an onsite groundwater monitoring well.[172] As the VDH website indicates, Entergy, with oversight from the NRC, conducted an investigation to identify the source of the tritium and magnitude of the contamination.[173] Notably, one of the documents cited by NEC in its Petition—the 2014 Site Assessment Study—summarizes the results of that investigation.

> Tritium is the only plant-generated radionuclide detected in groundwater at the site. A comprehensive hydro-geologic investigation of the site completed in 2010 found tritium in shallow groundwater extending approximately 400 feet down-gradient from the source at the AOG [Augmented Off-Gas] Building pipe chase to the Connecticut River. The width of the tritium plume increases from approximately 100 feet at the source area to approximately 300 feet along the bank of the river. Tritium concentrations in the shallow sand aquifer have rapidly decreased at the source area from approximately 2,500,000 picoCuries per liter (pCi/L) in February 2010 when the leak was terminated to less than 2,000 pCi/L in April 2010. For comparison purposes, the EPA Drinking Water Standard limit for tritium is 20,000 pCi/L. Similar attenuation has also occurred within the shallow plume down-gradient of the source, as the center of the residual contaminant mass migrates to the east. Attenuation is occurring at a

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169 Feb. 9, 2015 VDH News Release at 1. The highest concentration of strontium-90 measured in the samples was 3.5 picocuries per liter (pCi/l). *Id.* The EPA's safe drinking water standard for strontium is an 8 pCi/l concentration limit that would produce a total body or organ dose of 4 millirem/year. *See* Promulgation of Regulations on Radionuclides, 41 Fed. Reg. 28,402, 28,404 (July 9, 1976). Thus, the measured levels are more than an order of magnitude below the NRC's 25 millirem/year radiological criterion for unrestricted release. 10 C.F.R. § 20.1402.

170 Feb. 9, 2015 VDH News Release at 1.

171 Indeed, in CLI-16-17, the Commission rejected a similar argument by the State of Vermont—which also relied on the February 9, 2015 news release—finding that it had not "shown how the identified contaminants will elevate decommissioning costs." *Vt. Yankee*, CLI-16-17, 84 NRC at __ (slip op. at 24).

172 Petition at 14.

173 *See* VDH webpage, "Tritium Contamination at VT Yankee 2010-12," *available at* http://www.healthvermont.gov/response/environmental/tritium-contamination-vt-yankee-2010-12) (last reviewed March 31, 2017).

> slower rate in a deeper silt sand aquifer and an intervening silt aquitard where the hydraulic conductivities and related seepage rates are lower.[174]

Thus, one of NEC's own supporting references clearly indicates that the tritium contamination discovered in 2010 has been fully investigated, is well understood, and poses no threat to public health or the environment. This fact is further reflected in a March 11, 2011 NRC Director's Decision issued in response to NEC's § 2.206 petition concerning the 2010 AOG Building pipe leakage event. That decision (DD-11-3) states that "Entergy has identified the source of the leak and stopped it, and has reduced the onsite contamination by pumping out contaminated groundwater and removing about 150 cubic feet of contaminated soil," and that "[t]he NRC's inspections confirm that no federal regulatory limits have been exceeded, and the public health and safety remain unaffected."[175] Thus, by logical extension, this known contamination event poses no risk of unexpected increases in decommissioning costs.[176]

The 2014 Site Assessment Study further states that with one exception, no tritium, gamma-emitting or hard-to-detect radionuclides have been identified in groundwater from any wells in other areas of the plant, including the drinking water wells located west of the Turbine Building, the REMP wells, and the wells in the six septic system leach field areas.[177] This fact, again drawn

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[174] 2014 Site Assessment Study at 20. As described in another section of the 2014 Site Assessment Study, the tritium contamination was due to a pipe leak. Specifically, soil outside of a pipe trench in the vicinity of the AOG Building became contaminated due to a pipe leak identified in January 2010. The area between the Maintenance Shop and the AOG Building was excavated and the leak was stopped. Entergy removed approximately 85 cubic yards of soil as part of the remediation. It isolated and abandoned the two drain lines that were leaking following the installation of new lines. Entergy backfilled the excavated area with flowable concrete material and clean soil from an offsite source. *See* 2014 Site Assessment Study at 11.

[175] *Entergy Nuclear Vt. Yankee, LLC, & Entergy Nuclear Operations, Inc.* (Vt. Yankee Nuclear Power Station), DD-11-3, 73 NRC 375, 384 (2011). DD-11-3 provides a detailed summary of the pipe leakage event, actions taken by Entergy and the NRC Staff in response to that event, and the bases for the NRC Staff's conclusion that no federal regulatory limits have been exceeded, and the public health and safety remain unaffected. *See id.* at 380-84.

[176] *See id.* at 384 (". . . NRC inspections indicate that this soil poses no threat to public health and safety. Areas of remaining minor contamination are expected to be evaluated and, as appropriate, remediated during plant decommissioning. The NRC's experience with decommissioned nuclear plants such as Maine Yankee, Haddam Neck, and Yankee Rowe indicates that these areas can be successfully remediated during decommissioning.").

[177] *See* 2014 Site Assessment Study at 20. The one exception was the Construction Office Building ("COB") well located at the northeast corner of the COB and within the area of the tritium plume. The COB well was one of four drinking water supply wells for the plant that produce water from the bedrock aquifer. Low levels

from one of NEC's proffered references, undermines its claim that other long-lived or hard-to-detect radionuclides are likely to be detected in groundwater at the VYNPS site.

NEC, in short, has failed to meet its burden under 10 C.F.R. § 2.309(f)(1)(v) to provide an adequate basis for its proposed contention. That burden includes the need "to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable [NEC] to uncover any information that could serve as the foundation for a specific contention."[178] Notably, NEC has made no effort to examine, among other things, the Annual Radiological Environmental Operating Reports and the Annual Radioactive Effluent Release Reports submitted by Entergy in accordance with VYNPS Technical Specifications. The most recent of those reports, which were submitted to the NRC in May 2017 and summarize radiological environmental monitoring data and related analyses for the calendar year 2016, further refute NEC's claims concerning potential groundwater contamination that could elevate decommissioning costs.[179] For example, the 2016 Annual Radioactive Effluent Release Report states that other than tritium, "[n]o other plant-related radionuclides were detected in ground water," and that of 30 groundwater monitoring wells sampled, only six wells had detectable tritium activity in 2016, and all of those activities were well below the EPA limit of 20,000 pCi/L for drinking water.[180]

(approximately 2,000 pCi/L) of tritium were detected in the COB well during the investigation of the leak from the AOG Building pipe chase. However, that detection was attributed to the sampling method that purged water from the well before sampling and induced the migration of tritium contaminated shallow groundwater into the well. The COB well was conservatively removed from service as a drinking water source, and no samples identified tritium contamination while the well was in service. The COB well has been permanently abandoned and, following a grab sample test of the deep bedrock aquifer that showed tritium levels below minimum detectable levels, was filled with a cement grout. *See id.*

178 *Duke Power Co.* (Catawba Nuclear Station, Units 1 & 2), ALAB-687, 16 NRC 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 NRC 1041 (1983).

179 *See* BVY 17-016, Letter from Coley C. Chappell, Entergy Nuclear Vermont Yankee, LLC, to NRC Document Control Desk, 2016 Annual Radiological Environmental Operating Report – Vermont Yankee Nuclear Power Station (May 11, 2017) (ML17135A292); BVY 17-017, Letter from Coley C. Chappell, Entergy Nuclear Vermont Yankee, LLC, to NRC Document Control Desk, 2016 Radioactive Effluent Release Report – Vermont Yankee Nuclear Power Station (May 11, 2017) (ML17138A005).

180 Vermont Yankee Radiological Effluent Release Report for 2016, App. A at A-4 (Enclosure to BVY 17-017).

In view of the above, NEC clearly also has not met its "ironclad obligation to review the Application thoroughly and to base [its] challenges on its contents."[181] Significantly, NEC fails to cite and dispute the adequacy of any specific portion of the Application, including the specific measures that Applicants have proposed to ensure that availability of adequate NDT funds throughout the decommissioning period. For example, NEC does not directly contest use of the prepayment method, the adequacy of the cash flow analysis and site-specific cost estimates, or the acceptability of the pay-item disbursement approach, performance bonds, and parental support agreement described in the LTA. Instead, it speculates that "out-of-the-blue" cost increases caused by (unsubstantiated) radiological contamination "can exceed NorthStar's reserves."[182] Such bare assertions and speculation are insufficient to support the admission of a proposed contention.

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In summary, Proposed Contention 2 lacks adequate support and fails to raise a genuine dispute with the Application on a material issue of fact or law, and lacks adequate factual or legal support. Therefore, it is inadmissible under 10 C.F.R. § 2.309(f)(1)(v) and (vi).

V. NEC HAS NOT DEMONSTRATED STANDING TO INTERVENE AS A MATTER OF RIGHT OR AS A MATTER OF DISCRETION

If the Commission determines that NEC has not proffered an admissible contention—as it should for the reasons set forth above—then it need not address the question of NEC's standing to intervene in this proceeding.[183] As explained below, NEC, in any case, also has not established standing to intervene in this proceeding as a matter of right under 10 C.F.R. § 2.309(d). Nor has it shown that it is entitled to discretionary intervention under 10 C.F.R. § 2.309(e).

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181 *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 312 (2012) (internal quotation marks and citation omitted).

182 Petition at 16.

183 *See PPL Susquehanna, LLC* (Susquehanna Steam Elec. Station, Units 1 & 2), CLI-15-8, 81 NRC 500, 503 n.19 (2015) ("Because [the petitioner's] contentions all fall far short of our contention admissibility standards, we need not address his standing to intervene.").

A. Applicable NRC Legal Standards and Precedent

To demonstrate that it has standing pursuant to 10 C.F.R. § 2.309(d), NEC must address: (1) the nature of its right under the AEA to be made a party to the proceeding; (2) the nature and extent of its property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on its interest.[184] Thus, it must show either that it satisfies the traditional elements of standing, or that it has presumptive standing based on geographic proximity to the proposed facility.[185] These concepts, as well as organizational standing and representational standing, are discussed below.

1. Traditional Standing

To determine whether a petitioner's interest provides a sufficient basis for intervention, "the Commission has long looked for guidance to current judicial concepts of standing."[186] To demonstrate standing, a petitioner must show: (1) an actual or threatened, concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision.[187] These criteria are commonly referred to as injury-in-fact, causality, and redressability, respectively. The asserted injury must be "distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical."[188] Also, "when future harm is asserted, it must be 'threatened,' 'certainly impending,' and 'real and immediate.'"[189]

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184 10 C.F.R. § 2.309(d)(l).

185 *See Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 579-83 (2005).

186 *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, N.M.), CLI-98-11, 48 NRC 1, 5-6 (1998), *aff'd sub nom. Envirocare of Utah, Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999) (citations omitted).

187 *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-04 (1998); *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1998)).

188 *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 117 (1998) (citing *Steel Co. v. Citizens for a Better Environment*, 118 S. Ct. 1003, 1016 (1998); *Warth v. Seldin*, 422 U.S. 490, 501, 508, 509 (1975); *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994)).

189 *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-15, 53 NRC 344, 349 (2001), *aff'd*, CLI-01-18, 54 NRC 27 (2001) (citations omitted).

Although a petitioner is not required to show that the injury flows directly from the challenged action, it must nonetheless show that the "chain of causation is plausible."[190] Finally, a petitioner must show that "its actual or threatened injuries can be cured by some action of the tribunal."[191]

2. Standing of Organizations

a. Standing of an Organization in its Own Right

An organization that wishes to intervene in a proceeding may do so either in its own right (by demonstrating injury to its organizational interests), or in a representative capacity (by demonstrating harm to the interests of its members).[192] To intervene in its own right, an organization, like an individual petitioner, must allege that it will suffer an immediate or threatened injury to its organizational interests that can be fairly traced to the proposed action and be redressed by a favorable decision.[193] The Commission considers an organization, like an individual, as a "person" (as that term is defined in 10 C.F.R. § 2.4, and as the Commission has used it in making standing determinations under 10 C.F.R. § 2.309).[194] Accordingly, a petitioner must show a "risk of 'discrete institutional injury *to itself*, other than the general environmental and policy interests of the sort [NRC tribunals] repeatedly have found insufficient for organizational standing.'"[195]

b. Representational Standing

To invoke representational standing, an organization must: (1) show that at least one of its members has standing in his or her own right (*i.e.*, by demonstrating geographic proximity in cases where the presumption applies, or by demonstrating injury-in-fact within the zone of protected

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190 *Sequoyah Fuels*, CLI-94-12, 40 NRC at 75. *See also Crow Butte Res., Inc.* (Crow Butte II) (In-Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 345 (2009).

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

192 *Yankee*, CLI-98-21, 48 NRC at 195 (citing *Ga. Inst. of Tech*. (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 115 (1995)).

193 *See Georgia Tech*, CLI-95-12, 42 NRC at 115.

194 *Consumers Energy Co.* (Palisades Nuclear Power Plant), CLI-07-18, 65 NRC 399, 411 (2007).

195 *Id.* at 411-12 (quoting *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001)) (emphasis in original).

interests, causation, and redressability), (2) identify that member by name and address, and (3) show—preferably by affidavit—that the organization is authorized by that member to request a hearing on behalf of the member.[196] Where the affidavit of the member is devoid of any statement that he or she wants and has authorized the organization to represent his or her interests, the presiding officer should not infer such authorization.[197]

3. Standing Based on Geographic Proximity

Under NRC case law, a petitioner may, in some instances, be presumed to have fulfilled the judicial standards for standing based on his or her geographic proximity to a facility or source of radioactivity.[198] "Proximity" standing rests on the presumption that an accident associated with the nuclear facility could adversely affect the health and safety of people working or living offsite but within a certain distance of that facility.[199] The NRC has held that the proximity presumption may be sufficient to confer standing on an individual or group in proceedings conducted pursuant to Part 50 for reactor construction permits, operating licenses, or significant license amendments.[200]

Although the NRC has applied a presumption of standing in initial reactor operating license proceedings for individuals who live within 50 miles of a plant, it has held that a more stringent standard applies to proceedings involving approvals lacking a "clear potential for offsite consequences."[201] Such proceedings include license transfer cases, where the Commission "determine[s] on a case-by-case basis whether the proximity presumption should apply, considering

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196 *See, e.g.*, *N. States Power Co.* (Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 & 2; Prairie Island Independent Spent Fuel Storage Installation), CLI-00-14, 52 NRC 37, 47 (2000); *GPU Nuclear Inc*. (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000).

197 *Duquesne Light Co.* (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 411 (1984).

198 *Peach Bottom*, CLI-05-26, 62 NRC at 580.

199 *Id.* (citations omitted).

200 *Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (citations omitted).

201 *Id.* at 329-30; *see also Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99 (1985), *aff'd on other grounds*, ALAB-816, 22 NRC 461 (1985) (residence 43 miles from the plant is inadequate for standing with respect to a spent fuel pool expansion).

the 'obvious potential for offsite [radiological] consequences,' or lack thereof, from the application at issue, and specifically 'taking into account the nature of the proposed action and the significance of the radioactive source.'"[202]

NRC tribunals have "recognized proximity standing at such close distances where a petitioner *frequently* engages in *substantial* business and related activities in the vicinity of the facility, engages in normal everyday activities in the vicinity, has regular and frequent contacts in an area near a license facility, or otherwise has visits of a length and nature showing an ongoing connection and presence."[203] Conversely, the NRC has denied proximity-based standing where contact has been limited to "mere occasional trips to areas located close to reactors."[204] Furthermore, to establish proximity standing, a petitioner must provide "*fact-specific standing allegations*, not conclusory assertions," as the Commission "cannot find the requisite 'interest' based on . . . general assertions of proximity."[205]

4. Discretionary Intervention

Pursuant to 10 C.F.R. § 2.309(e), the Commission may consider a request for discretionary intervention where a party lacks standing to intervene as a matter of right under 10 C.F.R. § 2.309(d)(1). However, discretionary intervention may be granted only when at least one petitioner has established standing and at least one contention has been admitted for hearing.[206] In addition to addressing the factors in 10 C.F.R. § 2.309(d)(1), a petitioner who seeks intervention as a matter of discretion (if it is determined that standing as a matter of right is not demonstrated) must

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202 *Consumers Energy Co.* (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-19, 65 NRC 423, 426 (2007) (quoting *Peach Bottom*, CLI-05-26, 62 NRC at 580-81).

203 *Consumers Energy Co.* (Big Rock Point), CLI-07-21, 65 NRC 519, 523-524 (2007) (internal quotation marks and citations omitted) (emphasis in original).

204 *Id.* (citation omitted).

205 *Palisades*, CLI-07-18, 65 NRC at 410 (emphasis added).

206 10 C.F.R. § 2.309(e). *See also PPL Susquehanna LLC*, (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 21 n.14 (2007) ("[D]iscretionary standing [is] only appropriate when one petitioner has been shown to have standing as of right and an admissible contention so that a hearing will be conducted.").

specifically address in its initial petition the six factors set forth in 10 C.F.R. § 2.309(e), which the Commission will consider and balance.[207] Of the six factors, primary consideration is given to the first factor—assistance in developing a sound record.[208] The petitioner has the burden to establish that the factors in favor of intervention outweigh those against intervention.[209]

B. NEC Has Not Established Standing to Intervene As of Right Under Section 2.309(d)

NEC requests that it be admitted as a party to this proceeding both in its own right as an affected organization and as an advocate for affected representative members; *i.e.*, it asserts both organizational and representational standing to intervene.[210] NEC, however, does not make the requisite demonstrations to support either form of standing.

As a threshold matter, the physical proximity of NEC's offices or any of its members' residences or business places does not by itself establish proximity-based injury. As stated above, even in a license transfer or amendment proceeding involving an *operating* reactor, a petitioner cannot base his or her standing simply upon a residence or visits near the plant, unless the proposed action "quite obvious[ly] entails an increased potential for offsite consequences."[211] Here, given the

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207 Factors weighing in *favor* of allowing intervention include (i) the extent to which its participation would assist in developing a sound record; (ii) the nature of petitioner's property, financial or other interests in the proceeding; and (iii) the possible effect of any decision or order that may be issued in the proceeding. *See* 10 C.F.R. § 2.309(e)(1)(i)-(iii). Conversely, factors weighing *against* allowing intervention include (i) the availability of other means whereby the petitioner's interest might be protected; (ii) the extent to which petitioner's interest will be represented by existing parties; and (iii) the extent to which petitioner's participation will inappropriately broaden the issues or delay the proceeding. *See* 10 C.F.R. § 2.309(e)(2)(i)-(iii).

208 *See Portland Gen. Elec. Co.* (Pebble Springs Nuclear Power Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976); *see also Pub. Utils. Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 160 (1996).

209 *See Nuclear Eng'g Co. Inc.* (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 745 (1978) (requiring potential discretionary intervenor to show "that it is both willing and able to make a valuable contribution to the full airing of the issues . . . in this proceeding").

210 *See* Petition at 4-7.

211 *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999) (citing *St. Lucie*, CLI-89-21, 30 NRC at 329-30) (internal quotation marks omitted). *See also Peach Bottom*, CLI-05-26, 62 NRC at 580-81 (explaining how the Commission considers proximity-based standing in license transfer cases, and stating that "[i]f the petitioner fails to show that a particular licensing action raises an *obvious potential for offsite consequences*, then our standing inquiry reverts to a traditional standing analysis of whether the petitioner has made a specific showing of injury, causation and redressability") (emphasis in original).

shutdown and defueled status of VYNPS, the proposed licensed transfers and conforming license amendment do not "on their face present any 'obvious' potential of offsite radiological consequences."[212] At this juncture, the only significant nuclear activities ongoing at VYNPS are the storage and handling of spent fuel bundles in the spent fuel pool and the transfer of spent fuel assemblies to dry cask storage (which Entergy is endeavoring to complete prior to the license transfer). Because the reactor will not operate again, the scope of activities at the plant—and in turn, the risk of an offsite radiological release—has been greatly reduced, as evidenced by the NRC's issuance of certain emergency planning-related exemptions to Entergy.[213] As a result, "the spectrum of accidents and events that remain credible is significantly reduced," and it is incumbent upon NEC and its members to provide "some 'plausible chain of causation,' some scenario suggesting how these particular license [transfers and] amendments would result in a distinct new harm or threat to [them]."[214]

Applicants respectfully assert that NEC and its members have failed to do so here. In support of its claim of organizational standing, NEC asserts that its "purpose has been, and remains, to oppose nuclear hazards and advocate for sustainable energy alternatives to nuclear power."[215] It further states that it has numerous members that reside in the immediate vicinity of VYNPS and

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212 *Zion*, CLI-99-4, 49 NRC at 191. *See also* 1996 Decommissioning Rule, 61 Fed. Reg. at 39,278-79 (explaining why the degree of regulatory oversight required for a nuclear power reactor during its decommissioning stage is considerably less than that required for the facility during its operating stage).

213 *See, e.g.*, Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station, 80 Fed. Reg. 78,776, 78,777 (Dec. 17, 2015) (granting requested exemptions that "eliminate the requirements to maintain formal offsite radiological emergency plans and reduce the scope of the onsite [emergency planning] activities at [VYNPS] *based on the reduced risks of accidents that could result in an offsite radiological release at the decommissioning nuclear power reactor*") (emphasis added).

214 *Zion*, CLI-99-4, 49 NRC at 192. The Commission has specifically noted that "the radiological effects of decommissioning a power plant are far less than those associated with the operation of a plant," and that "[a]s a result, the decommissioning activities have considerably less potential to impact public health and safety." *Yankee*, CLI-96-7, 43 NRC at 246.

215 Petition at 4.

throughout New England with concrete and particularized interests that will be directly affected by this proceeding.[216] NEC also references the four declarations attached to the Petition.[217]

As relevant to the issue of organizational standing, Mr. Clay Turnbull, the Clerk of NEC Corporation, states in his declaration that NEC's offices are located within 10 miles of VYNPS; contain records, material archives, and a technical book collection; and serve as a meeting place and operations center for NEC.[218] He further states that NEC is concerned that the proposed license transfers will lead to failed stewardship and decommissioning of VYNPS, possibly including "radiological contamination resulting from rainwater and groundwater leaching [out] of disturbed, but un-remediated soil" in a manner that "could increase both the risk and the harmful consequences of one or more offsite radiological releases."[219] Mr. Turnbull claims that such a release would impact "the value and quality of the organization's tenure in the community and interfere with its rightful ability to conduct operations in an uninterrupted and undisturbed manner."[220]

NEC fails to establish organizational standing because it does not actually allege a discrete institutional injury that is concrete and particularized, involves radiological or environmental harm, *and* plausibly stems from the challenged action (*i.e.*, approval of the proposed license transfers and conforming license amendment). It does not explain how the *postulated* leaching of radiological contamination from "disturbed" soils at VYNPS during decommissioning poses a real and immediate harm to NEC's property located ten miles away, the organization's "tenure in the community," or its ability to conduct day-to-day operations. NEC also does not explain how the alleged harms are plausibly linked to the proposed action, which, as stated in the LTA, "does not

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216 *Id.* at 5.

217 *Id.* at 4-5 (citing Exhibits 1-4 to the Petition).

218 Turnbull Decl. at 1 (Ex. 1 to Petition).

219 *Id.* at 1-2.

220 *Id.* at 2.

involve any change in the design or licensing basis, plant configuration, the status of [VYNPS], or the requirements of the facility license."[221] Indeed, although the proposed license transfers are necessary to allow NorthStar NDC to assume licensed responsibility to possess, maintain and decommission VYNPS, they do not authorize NorthStar NDC to engage in activities that are not already permitted under the current licenses and the 10 C.F.R. § 50.59 process. In addition, even if the proposed transfers are approved, NorthStar cannot commence expedited decommissioning activities until the Staff completes certain actions related to the Revised PSDAR, including the solicitation and consideration of stakeholder comments on that document.[222] The NRC Staff participated in a public meeting hosted by the Vermont Nuclear Decommissioning Citizens Advisory Panel on May 25, 2017 and invited oral or written comments on the revised PSDAR.[223]

NEC's claim of representational standing also fails because NEC's members rely on unsupported, conclusory assertions of injury, and fail to establish a plausible nexus between the alleged harms and the proposed license transfers.[224] For example, NEC member Lorie Cartwright, who claims to live within ten miles of the site, vaguely alludes to unidentified "negative effects" that the proposed license transfers "may" have on decommissioning quality, the environment, the

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221 LTA, attach. 1 at 28.

222 In accordance with 10 C.F.R. § 50.82, the NRC is required to notice the PSDAR in the *Federal Register* and make it available for public comment. In addition, the staff is required to hold a public meeting in the vicinity of the site. Although NRC regulations do not require that the NRC Staff approve the licensee's PSDAR, the Staff does review the PSDAR's content against the requirements in 10 C.F.R. 50.82(a)(4)(i) and guidance and acceptance criteria in RG 1.202, "Standard Format and Content of Decommissioning Cost Estimates for Nuclear Power Reactors" (Feb. 2005) (ML050230008), and NUREG-1713, "Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors" (Dec. 2004) (ML043510113), as they pertain to the estimate of expected costs contained in the PSDAR. The NRC staff also issues a PSDAR closeout letter that addresses, at a high level, any stakeholder comments received.

223 Hearing Notice, 82 Fed. Reg. at 23,847.

224 Applicants recognize that past petitioners have established standing to intervene in proceedings to challenge the adequacy of facility decommissioning activities (including the decommissioning of Yankee Rowe) by alleging injuries that are not dissimilar to certain injuries alleged by NEC's members here. *See*, *e.g.*, *Yankee*, CLI-96-7, 43 at 247-48; *Sequoyah Fuels*, CLI-94-12, 40 NRC at 71-75. However, those proceedings are procedurally and/or factually distinguishable. For example, *Yankee Rowe* predated the NRC's implementation of the 1996 Decommissioning Rule and involved the issuance of an order approving the licensee's decommissioning plan and related amendments to the facility Final Safety Analysis Report. The *Sequoyah Fuels* stemmed from an NRC enforcement order related to financial assurance for decommissioning an NRC materials licensee's site.

local economy or property values, and her family's long-term health and safety.[225] Without any factual basis (and none is found in the Petition itself), Ms. Cartwright claims that NorthStar proposes prompt decommissioning "on a very tight budget" and lacks the financial resources to match the potential liabilities of a "failed and abandoned decommissioning effort" that purportedly would result in "an orphan toxic and radiological waste site."[226] Such unsubstantiated and conclusory assertions are insufficient to establish standing to intervene and to trigger a hearing.

NEC member Greg Urban similarly relies on unsupported, speculative statements in alleging threatened injury from the proposed license transfers. Mr. Urban, who states that he resides less than five miles from VYNPS, asserts that a "rushed" and "botched" decommissioning "driven by cost-savings and performed by new owner with inadequate assets" creates the potential for the accidental spread of contamination.[227] Such accidental radiological releases, he further claims, could devalue his property, pose a contamination risk to local water and food supplies, and affect his recreational use and enjoyment of the Connecticut River.[228] Even assuming *arguendo* that the harms alleged by Mr. Urban are "real and immediate"—which they are not—Mr. Urban fails to explain how they are plausibly linked to the proposed license transfers, which, while transferring licensed authority to NorthStar NDC, do not authorize it to perform any decommissioning activities that the current licensed operator could not already perform under 10 C.F.R. § 50.59.

In a fourth and final declaration NEC member and Vermont state legislator David Deen states that he lives within 25 miles of VYNPS and owns a fly-fishing guide business.[229] According to Mr. Deen, "[if] I am not guiding or legislating I am likely to be out fishing on the [Connecticut]

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225 Cartwright Decl. at 1 (Ex. 2 to Petition).

226 *Id.*

227 Urban Decl. at 1 (Ex. 3 to Petition).

228 *Id.*

229 Deen Decl. at 1 (Ex. 4 to Petition).

River, including the segments downstream from Vermont Yankee."[230] Mr. Deen asserts that because "radiological site contamination appears to be a decommissioning cost driver, a non-conservative cost assumption by NorthStar could result in a failed decommissioning" that adversely affects the environment, regional planning, his ability to protect the waters of the State of Vermont, and his ability to earn part of his living as a fishing guide.[231] Mr. Deen's statements also fail to establish a plausible chain of causation relative to the proposed action.[232] Indeed, the alleged harms derive solely from the baseless *assumption* that Applicants have relied on a "slap dash site assessment" in assessing the extent of radiological contamination at VYNPS and estimating decontamination and decommissioning costs.[233] Mr. Deen provides no evidence or other factual support for this underlying assumption, which, for reasons fully explained in response to NEC proposed Contention 2, is entirely unfounded.

In conclusion, NEC has failed to establish either organizational or representational standing, due in large part to the inability of it and its members to identify real and immediate injuries in fact that are plausibly linked to the proposed license transfers. Indeed, they simply postulate, without any demonstrable factual basis, that the proposed license transfers will lead to "failed" or "botched" decommissioning of VYNPS and the offsite release of radiological contamination. They have not shown a realistic threat of a direct injury from any contamination at VYNPS. As noted in the LTA, the proposed transfers are intended to place licensed responsibility in an organization (NorthStar NDC) that is focused on radiological decommissioning and that has extensive experience in conducting environmental remediation activities. In actuality, the proposed transaction will benefit

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230 *Id.*

231 *Id.*at 1-2.

232 *See Peach Bottom*, CLI-05-26, 62 NRC at 581 ("The initial question we need to address is whether the kind of action at issue, when considered in light of the radioactive sources at the plant, justifies a presumption that the licensing action could plausibly lead to the offsite release of radioactive fission products from the reactors.").

233 *Id.* at 1.

Vermont citizens, because it will facilitate the decommissioning of VYNPS and the release of all portions of the site other than the ISFSI on an accelerated schedule. As reflected in the LTA, NorthStar NDC (and its affiliates or strategic partners) has robust technical qualifications and will have even greater financial support than the current (pre-transfer) licensee due the availability of the $125 million parent support agreement.

C. NEC Has Not Demonstrated A Sufficient Basis for Granting Discretionary Intervention Under Section 2.309(e)

NEC's alternative request for discretionary intervention under 10 C.F.R. § 2.309(e) is procedurally and factually deficient. As an initial matter, NEC fails to address each of the six factors or criteria enumerated in section 2.309(e), much less show that a balancing of those factors militates in favor of the Commission's exceptional granting of discretionary intervention status. In support of its request, NEC states only that: (1) its participation reasonably may be expected to assist in developing a sound record in light of its previous participation in NRC adjudicatory proceedings (*e.g.*, VYNPS-related license renewal and power uprate proceedings); (2) the organization is very well versed in the field of nuclear energy and safety; (3) its interests include both its own interests and those of the broader public; and (4) NEC can provide "local insight" that cannot be provided by the Applicants or other potential parties.[234]

NEC has provided no specific and compelling reasons as to why an exceptional grant of discretionary intervention would be warranted in this license transfer proceeding. NEC's statements are vague and unparticularized; indeed, they could be made by any similarly situated petitioner. Furthermore, the burden of convincing the Commission that a petitioner can make a valuable contribution to the agency's decision-making process lies with the petitioner.[235] NEC addresses none of the considerations that NRC tribunals typically have considered as potential

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[234] Petition at 5.

[235] *See Nuclear Eng'g Co.*, ALAB-473, 7 NRC at 745.

indicia of a petitioner's ability to contribute to development of a sound record. Such considerations include a petitioner's showing of significant ability to contribute on substantial issues of law or fact that will not be otherwise properly raised or presented; the specificity of such ability to contribute on those substantial issues of law or fact; justification of time spent on considering the substantial issues of law or fact; the ability to provide additional testimony, particular expertise, or expert assistance; and specialized education or pertinent experience.[236]

Vague and conclusory assertions of the type proffered by NEC are not sufficient to discharge a petitioner's burden under 10 C.F.R. § 2.309(e).[237] NEC's clear failure to allege any particularized and material deficiencies in the LTA, particularly with respect to the technical and financial qualifications of the proposed transferees or decommissioning financial assurance, belie its claim that it can be expected to contribute on substantial issues of law or fact. Finally, in accordance with NRC regulations, NEC has been given the opportunity to provide comments on the decommissioning activities and schedules described in the Revised PSDAR.

VI. CONCLUSION

As demonstrated above, NEC has not proffered a contention that satisfies the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). It also has not demonstrated standing to intervene in this proceeding either as a matter of right or as a matter of discretion under 10 C.F.R. § 2.309(d) and (e). Therefore, the Commission should reject NEC's Petition in its entirety.

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236 *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 NRC 27, 33 (1981) (and cases cited therein); *see also Fla. Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-24, 32 NRC 12, 16-17 (1990), *aff'd*, ALAB-952, 33 NRC 521, 532 (1991).

237 As noted above, discretionary intervention may be granted only when at least one petitioner has established standing and at least one contention has been admitted in the proceeding so that a hearing will be held. *See* 10 C.F.R. § 2.309(e). Here, the only other petitioner is the State of Vermont, which filed a petition intervene and hearing request on June 13, 2017. Although Applicants did not oppose Vermont's standing, they opposed the admission of its two proposed contentions.

Respectfully submitted,

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

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Dated in Washington, DC
this 24th day of July 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Docket No. 50-271-LT-2
ENTERGY NUCLEAR VERMONT YANKEE, LLC AND ENTERGY NUCLEAR OPERATIONS, INC. and NORTHSTAR NUCLEAR DECOMMISSIONING COMPANY LLC	)	July 24, 2017
(Vermont Yankee Nuclear Power Station)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "Applicants' Answer Opposing New England Coalition's Request for Hearing and Petition for Leave to Intervene" was served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned docket.

Signed (electronically) by Martin J. O'Neill

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