



November 30, 2018

10 CFR 50.12

10 CFR 50.82(a)(8)(i)(A)

10 CFR 50.75(h)(1)(iv)

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, DC 20555-0001

Oyster Creek Nuclear Generating Station  
Renewed Facility Operating License No. DPR-16  
NRC Docket Nos. 50-219 and 72-15

Subject: Request for Exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)

- References:
- [1] Letter from Pamela B. Cowan, (Holtec Decommissioning International) to U.S. Nuclear Regulatory Commission – “Notification of Revised Post Shutdown Decommissioning Activities Report and Revised Site-Specific Decommissioning Cost Estimate for Oyster Creek Nuclear Generating Station,” dated September 28, 2018, (ADAMS Accession No. ML18275A116).
  - [2] Letter from Michael P. Gallagher, (Exelon Generation Company, LLC) to U.S. Nuclear Regulatory Commission – “Certification of Permanent Removal of Fuel from the Reactor Vessel for Oyster Creek Generating Station,” dated September 25, 2018, (ADAMS Accession No. ML18268A258).
  - [3] Letter from J. Bradley Fewell, (Exelon Generation Company, LLC) to U.S. Nuclear Regulatory Commission – “Application for Order Approving Direct Transfer of Renewed Facility Operating License and General License and Proposed Conforming License Amendment Oyster Creek Nuclear Generating Station,” dated August 31, 2018, (ADAMS Accession No. ML18141A775).
  - [4] Letter from Michael P. Gallagher, (Exelon Generation Company, LLC) to U.S. Nuclear Regulatory Commission – “Oyster Creek Nuclear Generating Station-Post-Shutdown Decommissioning Activities Report,” dated May 21, 2018 (ADAMS Accession No. ML18141A775).
  - [5] Letter from Michael P. Gallagher, (Exelon Generation Company, LLC) to U.S. Nuclear Regulatory Commission – “Update to Spent Fuel Management Plan for Oyster Creek Nuclear Generating Station,” dated May 21, 2018, (ADAMS Accession No. ML18141A486).
  - [6] Letter John G. Lamb, Senior Project Manager, Special Projects and Process Branch, (U.S. Nuclear Regulatory Commission) to Bryan C. Hanson, Senior Vice President, (Exelon Generation Company, LLC – “Oyster Creek Nuclear

Generating Station—Safety Evaluation RE: Update to Spent Fuel Management Plan,” dated September 28, 2018, (ADAMS Accession No. ML18226A330).

- [7] Letter from Michael P. Gallagher, (Exelon Generation Company, LLC) to U.S. Nuclear Regulatory Commission – “Request for Exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv),” dated March 22, 2018, (ADAMS Accession No. ML18081A201).
- [8] Letter John G. Lamb, Senior Project Manager, Special Projects and Process Branch, (U.S. Nuclear Regulatory Commission) to Bryan C. Hanson, Senior Vice President, (Exelon Generation Company, LLC, – “Oyster Creek Nuclear Generating Station – Exemptions from the Requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv),” dated September 19, 2018, (ADAMS Accession No. ML18227A025).

Pursuant to 10 CFR 50.12, “Specific exemptions,” Holtec Decommissioning International, LLC (HDI) requests an exemption from 10 CFR 50.82(a)(8)(i)(A) for Oyster Creek Nuclear Generating Station (OCNGS) to allow use of a portion of the funds from the OCNGS Nuclear Decommissioning Trust (NDT) for the management of spent fuel and site restoration activities, based on the HDI revised OCNGS Post-Shutdown Decommissioning Activities Report (PSDAR) (hereafter referred to as DECON PSDAR) (Reference 1).

HDI also requests, pursuant to 10 CFR 50.12, an exemption from 10 CFR 50.75(h)(1)(iv) to allow OCNGS NDT disbursements for spent fuel management and site restoration costs to be made without prior notice, similar to withdrawals in accordance with 10 CFR 50.82(a)(8).

Exelon Generation Company, LLC (Exelon Generation) permanently ceased power operations at OCNGS on September 17, 2018 and on September 25, 2018, Exelon Generation certified by letter to the U.S. Nuclear Regulatory Commission (NRC) that per 10 CFR 50.82(a)(1)(ii) it had permanently removed all fuel from the OCNGS reactor vessel (Reference 2).

On August 31, 2018, Exelon Generation and Holtec submitted a License Transfer Application (LTA) requesting NRC approval to transfer the OCNGS Renewed Facility Operating License and the General License for the OCNGS Independent Spent Fuel Storage Installation (ISFSI) to Oyster Creek Environmental Protection, LLC (OCEP), as the licensed owner and to HDI, as the licensed operator (Reference 3). The LTA requests that the license transfer be approved to support an asset sale and license transfer of OCNGS to HDI in July 2019. OCEP is a special purpose entity formed by Holtec to own OCNGS and HDI is a special purpose entity formed by Holtec to operate, maintain and decommission the Holtec fleet of permanently shutdown nuclear power plants including OCNGS.

On May 21, 2018, Exelon Generation submitted a Post-Shutdown Decommissioning Activities Report (Reference 4) that indicated Exelon Generation had selected the SAFSTOR method for decommissioning. Exelon Generation also submitted an Update to the Spent Fuel Management Plan (SFMP) for OCNGS on May 21, 2018 (Reference 5) which was subsequently approved by NRC (Reference 6). On September 28, 2018, HDI submitted a revised DECON PSDAR (Reference 1) documenting the plan to initiate prompt decommissioning of OCNGS following asset sale closure and license transfer. The DECON PSDAR

includes a revised site-specific Decommissioning Cost Estimate (DECON DCE) that provides the estimated costs to complete radiological decommissioning of the site using the DECON method, safeguard the spent fuel until it can be transferred to the Department of Energy (DOE) and restore the impacted area of the site. The cost estimates for maintaining the spent fuel until DOE removal included in the HDI DECON DCE are aligned with the spent fuel management schedule assumptions defined in the NRC-approved Exelon Generation Updated SFMP (References 5 and 6).

Previously, on March 22, 2018, Exelon Generation submitted to the NRC a “Request for Exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)” (Reference 7) to allow OCNGS to use a portion of the OCNGS NDT funds for spent fuel management and site restoration activities, based on the OCNGS SAFSTOR decommissioning cost estimate (Reference 4). The Exelon Generation exemption request demonstrated that the OCNGS NDT contains more than adequate funds to cover not only the estimated costs of radiological decommissioning, but also the estimated costs for spent fuel management and site restoration activities for the SAFSTOR method for decommissioning. The Exelon Generation exemption request has been approved by the NRC (Reference 8).

To address the DECON method for decommissioning described in the LTA, HDI is submitting the enclosed exemption request to demonstrate that an exemption is warranted to allow withdrawals for payment of spent fuel management and site restoration costs as described in the DECON PSDAR. The enclosed exemption request is based on HDI’s analysis of the expected radiological decommissioning costs, spent fuel management costs, and site restoration costs. The HDI exemption would apply only if the NRC approves the license transfer to HDI for accelerated decommissioning.

Table 1 in the enclosed exemption request is reproduced from the DECON DCE included in Reference 1 and includes the annual cash flows required for decommissioning OCNGS using the DECON method. Table 1 demonstrates that the OCNGS NDT contains the amount needed to cover the estimated costs of radiological decommissioning, spent fuel management, and site restoration activities. However, 10 CFR 50.82(a)(8)(i)(A) states that NDTs “may be used by licensees if ... [t]he withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in § 50.2.”

10 CFR 50.75(h)(1)(iv) similarly requires that trust agreements restrict disbursements (other than for ordinary administrative and other incidental expenses of the fund) and requires a 30-day advance notification to the NRC prior to making disbursements for expenses not covered under Section 50.82(a)(8). The NRC does not construe the 10 CFR 50.2 definition of “decommission” as including activities associated with spent fuel management or site restoration. Therefore, exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) are needed to allow HDI to use the OCNGS NDT for spent fuel management and site restoration activities.

The requested exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) are permissible under 10 CFR 50.12 because they are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. In addition, application of the regulations in this particular circumstance is not necessary to achieve the underlying purpose of the rule. Table 1 of the enclosed exemption request identifies the estimated annual expenditures for radiological decommissioning, spent fuel management, and site restoration activities. Table 1 demonstrates that the OCNGS NDT contains more than adequate funds to cover not only the estimated costs of radiological decommissioning, but also the estimated costs for spent fuel management and site restoration activities.



Therefore, application of the restrictions in 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is not necessary to ensure adequate funding for radiological decommissioning of OCNGS. Additionally, the annual reporting requirements in 10 CFR 50.82(a)(8)(v) and (vii) will allow for continual NRC oversight of the status of the OCNGS NDT.

HDI recognizes that if this exemption request is approved, amendments to the nuclear decommissioning trust agreements for OCNGS will be necessary, and that prior notice of the amendments is required by 10 CFR 50.75(h)(1)(iii).

HDI requests approval of this exemption request by May 1, 2019. The expedited request for approval is intended to allow for planning spent fuel management activities to support prompt decommissioning of OCNGS using the DECON method. This will result in the most efficient decommissioning process, which will preserve the OCNGS NDT and maintain the most funding assurance margin.

Exelon Generation has reviewed the contents of this letter and is aligned.

This letter contains no new regulatory commitments.

If you have any questions concerning this submittal, please contact Andrea Sterdis at (724) 493-1833 or [a.sterdis@cdi-decom.com](mailto:a.sterdis@cdi-decom.com).

Respectfully,

A handwritten signature in black ink, appearing to read "Pamela B. Cowan".

Pamela B. Cowan  
Sr. Vice President & Chief Operating Officer  
Holtec Decommissioning International, LLC

Enclosure: Request for Exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)

cc: w/Enclosure  
Regional Administrator - NRC Region I  
NRC Senior Resident Inspector - Oyster Creek Nuclear Generating Station  
NRC Project Manager, NRR - Oyster Creek Nuclear Generating Station  
Director, Bureau of Nuclear Engineering - New Jersey Department of Environmental Protection  
Mayor of Lacey Township, Forked River, NJ

**Enclosure**

**Oyster Creek Nuclear Generating Station**

**HDI Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and  
10 CFR 50.75(h)(1)(iv)**

## 1. SPECIFIC EXEMPTION REQUESTS

Pursuant to 10 CFR 50.12, "Specific exemptions," HDI requests an exemption from 10 CFR 50.82(a)(8)(i)(A) for Oyster Creek Nuclear Generating Station (OCNGS) to allow use of a portion of the funds from the OCNGS Nuclear Decommissioning Trust (NDT) for the management of spent fuel and site restoration activities, based on the HDI revised OCNGS Post-Shutdown Decommissioning Activities Report (PSDAR) (hereafter referred to as DECON PSDAR) (Reference 1). HDI also requests, pursuant to 10 CFR 50.12, an exemption from 10 CFR 50.75(h)(1)(iv) to allow OCNGS NDT disbursements for spent fuel management and site restoration costs to be made without prior notice, similar to withdrawals in accordance with 10 CFR 50.82(a)(8).

10 CFR 50.82 (a)(8)(i)(A), "Termination of license," states the following:

Decommissioning trust funds may be used by licensees if-- (A) The withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2.

10 CFR 50.75 (h)(1)(iv), "Reporting and recordkeeping for decommissioning planning," states, in part:

Except for withdrawals being made under § 50.82(a)(8) or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment.

10 CFR 50.75 (h)(1)(iv) also states, in part:

Disbursements or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under paragraph (e) of this section until final decommissioning has been completed. After decommissioning has begun and withdrawals from the decommissioning fund are made under 10 CFR 50.82(a)(8), no further notification need be made to the NRC.

10 CFR 50.2, "Definitions," contains the following definition of "decommission:"

... to remove a facility or site safely from service and reduce residual radioactivity to a level that permits - (1) Release of the property for unrestricted use and termination of the license; or (2) Release of the property under restricted conditions and termination of the license.

The annual cash flow from the DECON DCE is reproduced in Table 1. Table 1 demonstrates that the OCNGS NDT contains more than adequate funds to cover the estimated radiological decommissioning costs, as well as spent fuel management and site restoration costs. However, 10 CFR 50.82(a)(8)(i)(A) states that NDTs may be used by licensees if the withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2. Similarly, 10 CFR 50.75(h)(1)(iv) requires that trust agreements provide that disbursements (other than for ordinary administrative and other incidental expenses of the fund) are restricted to decommissioning expenses until final decommissioning is completed. The U.S. Nuclear Regulatory Commission (NRC) construes the definition of "decommission" in 10 CFR 50.2 as including those costs associated with radiological decommissioning activities to achieve license termination and does not include costs for those activities associated with spent fuel management or site restoration.

10 CFR 50.75(h)(1)(iv) further provides that, except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative and other incidental expenses, no disbursement may be made from the NDT without written notice to the NRC at least 30 working days in advance. Because disbursements for spent fuel management and site restoration activities would not be made under 10 CFR 50.82(a)(8), this provision would require advance notice to the NRC prior to any such disbursement.

Based on the above, HDI has concluded that 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would prohibit the use of the NDT for activities related to spent fuel management and site restoration prior to the completion of radiological decommissioning. Funding of spent fuel management activities from the NDT is needed to implement the HDI prompt decommissioning plan for OCNGS employing the DECON method.

Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) are requested to allow HDI to withdraw and use funds from the NDT for costs associated with spent fuel management and site restoration activities. The exemptions would cover all costs associated with spent fuel management and site restoration activities at OCNGS. These exemptions would not present an undue risk to the public health and safety or prevent decommissioning from being completed as planned since the OCNGS NDT contains adequate funds to complete radiological decommissioning as well as spent fuel management activities and site restoration activities.

## **2. BACKGROUND**

The OCNGS site is a single unit facility located near the Atlantic Ocean within the State of New Jersey. The facility site, approximately 152 acres, is in Lacey Township, Ocean County. The OCNGS facility employs a General Electric boiling water reactor nuclear steam supply system licensed to generate 1930 megawatts-thermal.

On August 31, 2018, Exelon Generation Company, LLC (Exelon Generation) and Holtec submitted a License Transfer Application (LTA) requesting NRC approval to transfer the OCNGS Renewed Facility Operating License and the General License for the OCNGS Independent Spent Fuel Storage Installation (ISFSI) to Oyster Creek Environmental Protection, LLC (OCEP), as the licensed owner and to Holtec Decommissioning International, LLC (HDI), as the licensed operator (hereafter referred to as HDI) (Reference 2). The LTA requests that the license transfer be approved to support an asset sale and license transfer of OCNGS to HDI in July 2019.

Enclosure

Request for Exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)

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Exelon Generation Company, LLC (Exelon Generation) permanently ceased power operations at OCNGS on September 17, 2018 and on September 25, 2018, Exelon Generation certified by letter to the NRC that per 10 CFR 50.82(a)(1)(ii) it had permanently removed all fuel from the OCNGS reactor vessel (Reference 3).

On May 21, 2018, Exelon Generation submitted a Post-Shutdown Decommissioning Activities Report (Reference 4) that indicated that Exelon Generation had selected the SAFSTOR method for decommissioning. Exelon Generation also submitted an Update to the Spent Fuel Management Plan (SFMP) for OCNGS on May 21, 2018 (Reference 5) which was subsequently approved by NRC (Reference 6).

On September 28, 2018, HDI submitted a revised Post-Shutdown Decommissioning Activities Report (DECON PSDAR) for OCNGS, including a revised site-specific Decommissioning Cost Estimate (DECON DCE) (Reference 1). The HDI DECON DCE includes the costs associated with License Termination in addition to costs associated with Spent Fuel Management and Site Restoration. License Termination are those costs associated with the collective work required to plan, mobilize and execute the removal of the radioactive contamination from the site, consistent with the definition of decommissioning per 10 CFR 50.2. Spent Fuel Management costs are those costs to manage spent fuel from asset sale and license transfer until ultimate transfer to the Department of Energy (DOE). The cost estimates for maintaining the spent fuel until DOE removal included in the HDI DECON DCE are aligned with the spent fuel management schedule assumptions defined in the NRC-approved Exelon Generation Updated SFMP (References 5 and 6). Site Restoration costs are those costs associated with conventional dismantling, demolition, and removal from the site of structures and systems after confirmation that radioactive contaminants have been removed.

Previously, on March 22, 2018, Exelon Generation submitted to the NRC a “Request for Exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)” (Reference 7) to allow use of a portion of the OCNGS NDT for spent fuel management and site restoration activities, based on the OCNGS SAFSTOR decommissioning cost estimate (Reference 4). The Exelon Generation exemption request demonstrated that the OCNGS NDT contains more than adequate funds to cover the estimated costs of radiological decommissioning, spent fuel management and site restoration activities for the SAFSTOR method for decommissioning. The Exelon Generation exemption request has been approved by the NRC (Reference 8).

To address the DECON method for decommissioning described in the LTA, HDI is submitting this exemption request to demonstrate that an exemption is warranted to allow withdrawals from the OCNGS NDT for payment of spent fuel management and site restoration costs as described in the DECON PSDAR. The exemption request is based on HDI’s analysis of the expected radiological decommissioning costs, spent fuel management costs, and site restoration costs. The HDI exemption would apply only if the NRC approves the license transfer to HDI for accelerated decommissioning, and the license transfer and asset sale closure are executed.

### **3. BASIS FOR EXEMPTION REQUEST**

Following the asset sale closure and transfer of the OCNGS renewed facility operating license to HDI, decommissioning activities will proceed using the DECON method. The DECON PSDAR and DCE (Reference 1) estimates the cost of HDI DECON radiological decommissioning, spent fuel management, and site restoration efforts.

Table 1 of this enclosure reflects the projected annual cash flows for site radiological decommissioning (license termination costs), spent fuel management, independent spent fuel storage installation (ISFSI) radiological decommissioning, and site restoration (non-radiological decommissioning). The costs in Table 1 reflect the current situation at OCNGS as follows:

1. Following the asset sale and transfer of the OCNGS renewed facility operating license, HDI will initiate decommissioning activities using the DECON method.
2. Spent fuel management costs start in 2019. Spent fuel management costs will only be reimbursed from the OCNGS NDT if this exemption request is approved.

The annual cash flow analysis contained in Table 1 of this enclosure conservatively assumes all expenses in a year are incurred at the beginning of year (i.e., beginning of year convention) during the decommissioning period. A 2% annual real rate of return on the OCNGS NDT as allowed by 10 CFR 50.75(e)(1)(i) is used in the analysis. Additionally, contributions to the OCNGS NDT and cost escalation are both assumed to be zero in the Table 1 analysis.

Prior to the transfer to OCEP and HDI, Exelon Generation will make withdrawals from the NDT to pay for Exelon Generation's accrued but unpaid decommissioning expenses, including decommissioning planning and other decommissioning activities. The 2019 beginning of year (BOY) Trust Fund Value (analysis starting trust fund balance) in Table 1 of this enclosure is the fund amount expected at asset sale closure as described in the Asset Purchase and Sales Agreement (PSA) for the transfer of the NDT funds from Exelon Generation to OCEP as the licensed owner. This value is exclusive of approximately \$94 million expected to be withdrawn from the NDT by Exelon for reimbursement of license termination expensed incurred prior to the asset sale and license transfer.

Spent fuel management costs are included in Table 1 of this enclosure. Spent fuel will be initially stored in the spent fuel pool until it is transferred to dry storage at the onsite ISFSI where it will remain stored until such time that it can be transferred to a DOE facility. Consequently, the estimate includes costs for ISFSI planning, construction, operation and decommissioning, in addition to procurement of dry storage canisters, loading and movement of canisters and transfer of spent fuel to the DOE.

Table 1 of this enclosure demonstrates that the OCNGS NDT exceeds the amount required to complete radiological decommissioning of the site using the DECON method, in addition to management of spent nuclear fuel and restoration of the site. At the end of the decommissioning project, an estimated \$10 million will remain in the OCNGS NDT.

#### **4. ADJUSTING COST ESTIMATES AND FUNDING LEVELS**

Pursuant to the annual reporting requirements in 10 CFR 50.82(a)(8)(v) - (vii), HDI will prepare and submit an annual report of the estimated costs to complete decommissioning and manage irradiated fuel, in addition to reporting the status of the OCNGS NDT and the funding status for managing irradiated fuel. The DECON DCE, adjusted for inflation in accordance with applicable regulatory requirements, will be used to demonstrate funding assurance. If the remaining funds plus earnings do not cover the estimated cost to complete the decommissioning, the financial assurance status report will include additional financial assurance to cover the estimated cost of completion. If the accumulated funds for irradiated fuel management do not cover the projected cost, a plan to obtain additional funds to cover the cost will be included in the funding status report.

## **5. JUSTIFICATION FOR EXEMPTIONS AND SPECIAL CIRCUMSTANCES**

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of Part 50 which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. 10 CFR 50.12 also states that the Commission will not consider granting an exemption unless special circumstances are present. As discussed below, this exemption request satisfies the provisions of Section 50.12.

### **5.1 Exemptions**

#### **A. The exemptions are authorized by law**

The proposed exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would allow use of a portion of the OCNGS NDT for spent fuel management and site restoration activities, consistent with the DECON DCE. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The proposed exemptions would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. The NRC has granted exemptions to other licensees to use NDTs for spent fuel management and site restoration (see Section 6.0 of this enclosure). Therefore, the exemptions are authorized by law.

#### **B. The exemptions will not present an undue risk to public health and safety**

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is to provide reasonable assurance that adequate funds will be available for decommissioning of power reactors within 60 years of cessation of operations. Based on the DECON DCE and the cash flow analysis provided in Table 1, use of a portion of the funds in the OCNGS NDT for spent fuel management and site restoration activities will not adversely impact the ability to terminate the OCNGS license (i.e., complete radiological decommissioning) within 60 years. Furthermore, an exemption from 10 CFR 50.75(h)(1)(iv) to allow withdrawals from the OCNGS NDT to cover expenses for spent fuel management and site restoration efforts without prior written notification to the NRC will not affect the sufficiency of funds in the OCNGS NDT to accomplish radiological decommissioning of the site. Additionally, the annual reporting requirements in 10 CFR 50.82(a)(8)(v) and (vii) will allow for continual NRC oversight of the status of the OCNGS NDT.

Based on the above, no new accident precursors are created by using the trust fund in the proposed manner. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, the exemptions will not present an undue risk to the public health and safety.

**C. The exemptions are consistent with the common defense and security**

The proposed exemptions would allow use of a portion of OCNGS NDT for spent fuel management and site restoration efforts, consistent with the DECON DCE. Spent fuel management and site restoration activities are an integral part of the planned OCNGS decommissioning process and will not adversely affect the ability to physically secure the site or protect special nuclear material. This change to enable the use of a portion of the funds in the OCNGS NDT for spent fuel management and site restoration activities will not alter the scope or availability of sufficient funding for the OCNGS security program. Therefore, the proposed exemptions are consistent with the common defense and security.

## **5.2 Special Circumstances**

Pursuant to 10 CFR 50.12(a)(2), the NRC will not consider granting an exemption to its regulations unless special circumstances are present. HDI has determined that special circumstances are present as discussed below.

**A. Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. (10 CFR 50.12(a)(2)(ii))**

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is to provide reasonable assurance that adequate funds will be available for decommissioning of power reactors within 60 years of cessation of operations. Strict application of the rule would prohibit withdrawal of funds from the OCNGS NDT for activities associated with spent fuel management and site restoration activities until final radiological decommissioning at OCNGS has been completed. However, Table 1 (as discussed above) demonstrates that adequate funds are available in the OCNGS NDT to complete radiological decommissioning, spent fuel management, and site restoration activities. The cash flow analysis projects that the balance in the OCNGS NDT will be \$10 million at the end of the decommissioning project in 2035 (using a 0.0% escalation rate and a 2.0% annual fund growth rate on remaining funds).

The 30-day notification provision in 10 CFR 50.75(h)(1)(iv) was not intended to duplicate other reporting requirements that would exist after a plant commences decommissioning. The underlying purpose of notifying the NRC prior to withdrawal of funds from the OCNGS NDT is to provide the NRC an opportunity to intervene, when deemed necessary, if the withdrawals are for expenses other than those authorized by 10 CFR 50.75(h)(1)(iv) and 10 CFR 50.82(a)(8) that could result in insufficient funds in the OCNGS NDT to accomplish radiological decommissioning of the site.

A comment, received during the rulemaking for the Decommissioning Trust Fund Provisions in 10 CFR 50.75(h)(1)(iv), noted that licensees that have complied with the requirements of 10 CFR 50.82(a)(4) regarding submittal of a Post-Shutdown Decommissioning Activities Report (PSDAR) and control disbursements in accordance with the provisions of 10 CFR 50.82(a)(6), (a)(7) and (a)(8) should be exempt from further restrictions on disbursements (Reference 9). The NRC agreed with the comment, because requiring notification in such circumstances would not provide any additional

assurance that funding is available and would duplicate notification requirements in 10 CFR 50.82. If the NRC grants the requested exemption allowing the use of a portion of the funds in the OCNGS NDT for spent fuel management and site restoration activities, the same consideration would justify dispensing with the 30-day notification requirement as well. Table 1 identifies the estimated annual expenditures, and the annual reporting requirements in 10 CFR 50.82(a)(8)(v) and (vii) will allow continual NRC oversight of the status of the OCNGS NDT. Applying the 30-day advance notification requirement in 10 CFR 50.75(h)(1)(iv) to disbursements for spent management and site restoration activities would duplicate these other reporting requirements and is not necessary to achieve the underlying purposes of the rule.

Therefore, since the underlying purposes of the rules would be achieved by allowing the use of the OCNGS NDT to fund the activities as discussed in the DECON DCE, the special circumstances of 10 CFR 50.12(a)(2)(ii) are present.

**B. Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. (10 CFR 50.12(a)(2)(iii))**

The NRC did not intend to prevent the use of these funds solely because they are commingled, and to do so would create an unnecessary financial burden without any corresponding safety benefit. The NRC does not preclude use of funds from the OCNGS NDT in excess of those needed for radiological decommissioning for other purposes, such as spent fuel management and site restoration efforts. The NRC has stated that funding for spent fuel management and site restoration activities may be commingled in the decommissioning trust provided the licensee is able to identify and account for the radiological decommissioning funds separately from the funds set aside for spent fuel management and site restoration activities (see NRC Regulatory Issue Summary 2001-07, Revision 1, "10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning" dated January 8, 2009 (Reference 10), and Regulatory Guide 1.184, Revision 1, "Decommissioning of Nuclear Power Reactors," (Reference 11)). The adequacy of the OCNGS NDT to cover the cost of activities associated with decommissioning, the spent fuel management activities, and the site restoration activities is supported by the cash flow analysis in Table 1. The amount of funds required for radiological decommissioning, spent fuel management, and site restoration activities will be identified and accounted for in the annual report required by 10 CFR 50.75(f) and 10 CFR 50.82(a)(8).

If the OCNGS NDT cannot be used for spent fuel management and site restoration activities, then HDI would be forced to provide additional funding that would not be recoverable from the trust fund until the OCNGS operating license is terminated. To prevent access to the excess funds in the trust would impose an unnecessary and undue burden in excess of that contemplated when the regulation was adopted without any corresponding safety benefit.

Therefore, compliance with the rule would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated and the special circumstances of 10 CFR 50.12(a)(2)(iii) are present.

## 6. PRECEDENT

The exemption request for 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is consistent with exemption requests that recently have been issued by the NRC for other nuclear power reactor facilities beginning decommissioning. Specifically, the NRC granted similar exemptions to Entergy Nuclear Operations, Inc., for Vermont Yankee (Reference 12); to Duke Energy Florida, Inc. for Crystal River Unit 3 (Reference 13); and to Dominion Energy Kewaunee, Inc. for KPS (Reference 14).

## 7. ENVIRONMENTAL ASSESSMENT

### A. Environmental Considerations

Pursuant to 10 CFR 51.21, the following environmental considerations are provided.

#### 1. Description of the Action

HDI requests exemptions from the requirements set forth in 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv). Specifically, the requested exemptions would allow HDI to use funds from the OCNGS NDT for spent fuel management and site restoration activities that are not associated with radiological decommissioning and would exempt HDI from meeting the requirement for prior notification to the NRC for these activities.

#### 2. Need for the Action

An exemption is needed to allow HDI to access NDT funds, in excess of those funds needed for radiological decommissioning, to fund spent fuel management and site restoration activities, in order to avoid an unnecessary financial burden. As required by 10 CFR 50.82(a)(8)(i)(A), NDT funds may be used by a licensee if the withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2. This definition addresses radiological decommissioning and does not include activities associated with spent fuel management or site restoration. Therefore, HDI needs an exemption from 10 CFR 50.82(a)(8)(i)(A) to allow the use of NDT funds for spent fuel management and site restoration activities.

The requirements of 10 CFR 50.75(h)(1)(iv) further provide that, except for decommissioning withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs and other incidental expenses of the trust, no disbursement may be made from the trust until written notice of the intention to make a disbursement has been given to the NRC at least 30 working days in advance of the intended disbursement. Therefore, an exemption from 10 CFR 50.75(h)(1)(iv) is needed to allow HDI to use funds from the trust for spent fuel management and site restoration activities without prior NRC notification.

#### 3. Environmental Impacts of the Action

The proposed action involves an exemption from requirements that are of a financial or administrative nature and that do not have an impact on the environment. There is no decrease in safety associated with the use of the NDT to fund activities associated with spent fuel management and site restoration.

Following license transfer and sale closure HDI is required to maintain a comprehensive, regulation-based decommissioning funding oversight program to provide reasonable assurance that sufficient funding will be available for the radiological decommissioning of OCNGS. After the DECON DCE as required by 10 CFR 50.82(a)(8)(iii) is submitted, and until completing its final radiation survey and demonstrating that residual radioactivity has been reduced to a level that permits termination of its license as required by 10 CFR 50.82(a)(11), financial assurance status reports must be submitted to the NRC annually as required by 10 CFR 50.82(a)(8)(v). The report must include, among other things, amounts spent on decommissioning, the remaining trust fund balance, and estimated costs to complete radiological decommissioning. If the remaining NDT balance, plus earnings on such funds calculated at not greater than a 2 percent real rate of return, plus any other financial assurance methods being relied upon, does not cover the estimated costs to complete radiological decommissioning, 10 CFR 50.82(a)(8)(vi) requires that additional financial assurance to cover the estimated costs to complete radiological decommissioning must be provided. These annual reports provide a means for the NRC to monitor the adequacy of the funding available for the radiological decommissioning of OCNGS notwithstanding the exemption allowing HDI to use funds for spent fuel management and site restoration activities from the trust fund.

The proposed action will not significantly increase the probability or consequences of radiological accidents; nor will it have any direct radiological impacts. There will be no change to the types or amounts of radiological effluents that may be released, and therefore, no change in occupational or public radiation exposure from the proposed action. The exemption also will not introduce any materials or chemicals into the plant that could affect the characteristics or types of effluents released offsite. In addition, the method of operation of waste processing systems will not be affected by the exemption. The proposed exemption will not result in changes to the design basis requirements of structures, systems, and components (SSCs) that function to limit or monitor the release of effluents. The SSCs associated with limiting the release of effluents will continue to be able to perform their functions. Moreover, no changes would be made to plant buildings or the site property from the proposed changes. Accordingly, there are not significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed change would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of non-radiological effluents and no changes to the plant's National Pollutant Discharge Elimination System permit would be needed. In addition, there would be no noticeable effect on socioeconomic conditions in the region, no environment justice impacts, no air quality impacts, and no impacts to historic and cultural resources from the proposed change. Therefore, there are no significant non-radiological environment impacts associated with the proposed action.

Accordingly, HDI concludes that there are no significant environmental impacts associated with the proposed action.

4. Environmental Impacts of the Alternatives to the Action.

As an alternative to the action, the NRC staff could deny HDI's exemption requests. Denial of the exemption requests would result in OCEP using funds from the trust only for radiological decommissioning and not also for spent fuel management or site restoration activities as described in the exemption request. The environmental impacts of this alternative would be substantively the same as the environmental impacts for granting the exemption requests because there are no potential incremental environmental impacts as a result of granting the exemption requests. Therefore, the environmental impacts of the alternative to the action would be the same as those already considered by the previous environmental analyses.

5. Alternative Use of Resources

The requested action only involves a change in the source of funds allowed for managing spent fuel and restoring the site, and therefore, does not involve the use of any different resources than those previously considered.

**B. Analysis**

The request for exemption from 10 CFR 50.82(a)(8)(i)(A) to allow use of NDT funds for spent fuel management and site restoration activities and 10 CFR 50.75(h)(1)(iv) to exempt HDI from meeting the requirement for prior notification to the NRC for these activities to have no adverse impact to the environment. Approval of the exemption request would allow OCEP and HDI access to excess funds in the NDT, based on projected trust fund growth and estimated expenditures, while continuing to demonstrate reasonable assurance of available trust funds to complete radiological decommissioning. The proposed action would not result in an adverse impact to the environment, unexpected expenditures, or other uncertainties or risks.

Because the proposed exemption requests relate solely to the source of funding for spent fuel management and site restoration activities, they do not result in there no longer being reasonable assurance of sufficient trust funds to complete radiological decommissioning of the OCNGS site and do not significantly affect any of the decommissioning activities or processes previously reviewed. On this basis, the proposed exemptions will not have a significant effect on the quality of the human environment.

As a result of the environmental considerations discussed above, HDI concludes that the proposed exemption requests are in the public interest in that they allow HDI and OCEP to avoid unnecessary and undue costs to cover these expenses from other sources, with no potential incremental environmental impacts.

The proposed exemptions do not require any additional Federal permits, licenses, approvals or other entitlements.

## **8. NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION**

HDI has evaluated the proposed exemptions to determine whether or not a significant hazards consideration is involved by focusing on the three standards set forth in 10 CFR 50.92 as discussed below:

### **A. Do the proposed exemptions involve a significant increase in the probability or consequences of an accident previously evaluated?**

The proposed exemptions would allow the withdrawal of funds from the OCNGS NDT to conduct activities associated with spent fuel management and site restoration activities in accordance with the DECON DCE. The proposed exemptions have no effect on plant structures, systems, and components (SSCs) and no effect on the capability of any plant SSC to perform its design function. The proposed exemptions would not increase the likelihood of the malfunction of any plant SSC. The proposed exemptions would have no effect on any of the previously evaluated accidents in the OCNGS Updated Final Safety Analysis Report. Use of funds in the OCNGS NDT as allowed under the exemptions will not affect the probability of occurrence of any previously analyzed accident. The proposed exemptions do not change the requirements pertaining to spent fuel management.

Therefore, the proposed exemptions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

### **B. Do the proposed exemptions create the possibility of a new or different kind of accident from any accident previously evaluated?**

The proposed exemptions do not involve a physical alteration of the plant. No new or different type of equipment will be installed and there are no physical modifications to existing equipment associated with the proposed exemption. Similarly, the proposed exemptions will not physically change any SSCs involved in the mitigation of any accidents. Thus, no new initiators or precursors of a new or different kind of accident are created. Furthermore, the proposed exemptions do not create the possibility of a new accident as a result of new failure modes associated with any equipment or personnel failures. No changes are being made to parameters within which the plant is normally operated, or in the setpoints which initiate protective or mitigative actions, and no new failure modes are being introduced.

Therefore, the proposed exemptions do not create the possibility of a new or different kind of accident from any accident previously evaluated.

### **C. Do the proposed exemptions involve a significant reduction in a margin of safety?**

The proposed exemptions do not alter the design basis or any safety limits for the plant. The proposed exemptions do not impact station operation or any plant SSC that is relied upon for accident mitigation.

Therefore, the proposed exemptions do not involve a significant reduction in a margin of safety.

Based on the above, the proposed exemptions present no significant hazards consideration, and, accordingly, a finding of "no significant hazards consideration" is justified.

## **9. CONCLUSION**

Pursuant to the provisions of 10 CFR 50.12, HDI is requesting a permanent exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) for OCNGS. The proposed exemptions would allow HDI, assuming license transfer and asset sale closure, to use the OCNGS decommissioning trust fund for the full scope of activities described in the decommissioning cost estimate, including the management of spent fuel and site restoration and to make such disbursements in the same manner as withdrawals for radiological decommissioning.

Granting these exemptions will be consistent with the purposes underlying NRC decommissioning regulations as the exemptions: (1) would not foreclose release of the site for possible unrestricted use; (2) would not result in significant environmental impacts not previously reviewed by the NRC; and (3) would not undermine the existing and continuing reasonable assurance that adequate funds will be available for decommissioning.

Based on the considerations discussed above, the requested exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. In addition, special circumstances are present as set forth in 10 CFR 50.12(a)(2)(ii) and (iii).

## **10. REFERENCES:**

1. Letter from Pamela B. Cowan, (Holtec Decommissioning International) to U.S. Nuclear Regulatory Commission – "Notification of Revised Post Shutdown Decommissioning Activities Report and Revised Site-Specific Decommissioning Cost Estimate for Oyster Creek Nuclear Generating Station," dated September 28, 2018, (ADAMS Accession No. ML18275A116).
2. Letter from J. Bradley Fewell, (Exelon Generation Company, LLC) to U.S. Nuclear Regulatory Commission – "Application for Order Approving Direct Transfer of Renewed Facility Operating License and General License and Proposed Conforming License Amendment Oyster Creek Nuclear Generating Station," dated August 31, 2018, (ADAMS Accession No. ML18141A775).
3. Letter from Michael P. Gallagher, (Exelon Generation Company, LLC) to U.S. Nuclear Regulatory Commission – "Certification of Permanent Removal of Fuel from the Reactor Vessel for Oyster Creek Generating Station," dated September 25, 2018, (ADAMS Accession No. ML18268A258).
4. Letter from Michael P. Gallagher, (Exelon Generation Company, LLC) to U.S. Nuclear Regulatory Commission – "Oyster Creek Nuclear Generating Station Post-Shutdown Decommissioning Activities Report," dated May 21, 2018 (ADAMS Accession No. ML18141A775).
5. Letter from Michael P. Gallagher, (Exelon Generation Company, LLC) to U.S. Nuclear Regulatory Commission "Update to Spent Fuel Management Plan for Oyster Creek Nuclear Generating Station," dated May 21, 2018, (ADAMS Accession No. ML18141A486).

6. Letter John G. Lamb, Senior Project Manager, Special Projects and Process Branch, (U.S. Nuclear Regulatory Commission) to Bryan C. Hanson, Senior Vice President, (Exelon Generation Company, LLC, "Oyster Creek Nuclear Generating Station—Safety Evaluation RE: Update to Spent Fuel Management Plan," dated September 28, 2018, (ADAMS Accession No. ML18226A330).
7. Letter from Michael P. Gallagher, (Exelon Generation Company, LLC) to U.S. Nuclear Regulatory Commission – "Request for Exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)," dated March 22, 2018, (ADAMS Accession No. ML18081A201).
8. Letter John G. Lamb, Senior Project Manager, Special Projects and Process Branch, (U.S. Nuclear Regulatory Commission) to Bryan C. Hanson, Senior Vice President, (Exelon Generation Company, LLC, "Oyster Creek Nuclear Generating Station—Exemptions from the Requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv)," dated September 19, 2018, (ADAMS Accession No. ML18227A025).
9. Federal Register Notice, 67 FR 78332, Decommissioning Trust Provisions, dated December 24, 2002.
10. NRC Regulatory Issue Summary 2001-07, Revision 1, "10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning," dated January 8, 2009, (ADAMS Accession No. ML083440158).
11. Regulatory Guide 1.184, Revision 1, "Decommissioning of Nuclear Power Reactors," dated October 2013, (ADAMS Accession No. ML13144A840).
12. Letter from U.S. Nuclear Regulatory Commission to Entergy Nuclear Operations, Inc.; "Vermont Yankee Nuclear Power Station, Exemptions from the Requirements of 10 CFR Part 50, Sections 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv) (TAC NO. MF5575)," dated June 17, 2015, (ADAMS Accession No. ML15128A219).
13. Letter from U.S. Nuclear Regulatory Commission to Duke Energy Florida, Inc.; Crystal River Unit 3 Nuclear Generating Plant; "Exemptions from the Requirements of 10 CFR Part 50, Sections 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv) (TAC NO. MF3875)," dated January 26, 2015, (ADAMS Accession No. ML14247A545).
14. Letter from U.S. Nuclear Regulatory Commission to Dominion Energy Kewaunee, Inc.; Kewaunee Power Station, "Exemptions from the Requirements of 10 CFR Part 50, Sections 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv) (TAC NO. MF1438)," dated May 21, 2014, (ADAMS Accession No. ML13337A287).

**Table 1**

**Annual DECON Decommissioning Fund Cash Flow for Oyster Creek Nuclear Generating Station**

<b>Oyster Creek Nuclear Generating Station - DECON Method</b>								
Annual Cash Flow in Millions of 2018 Dollars								
No DOE Reimbursement of Spent Fuel Management Costs								
Year	License Termination Cost	Spent Fuel Management Cost	Site Restoration Cost	Total Costs	Beginning of Year NDT Balance <sup>1</sup>	Withdrawals	NDT Earnings <sup>2</sup>	Year Ending NDT Balance <sup>3</sup>
2019	95	2	3	99	848	(99)	5	754
2020	89	64	17	170	754	(170)	8	592
2021	76	4	7	87	592	(87)	7	512
2022	81	12		93	512	(93)	6	425
2023	121	16		136	425	(136)	4	293
2024	134	3	13	150	293	(150)	2	145
2025	10	9	1	20	145	(20)	2	127
2026		8		8	127	(8)	2	121
2027		8		8	121	(8)	2	115
2028		8		8	115	(8)	2	108
2029		8		8	108	(8)	1	102
2030		8		8	102	(8)	1	96
2031		8		8	96	(8)	1	89
2032		8		8	89	(8)	1	83
2033	9	27		35	83	(35)	1	48
2034	2	27		29	48	(29)		20
2035	1	8	1	10	20	(10)		10
<b>Total<sup>4</sup></b>	<b>618</b>	<b>225</b>	<b>41</b>	<b>884</b>		<b>(884)</b>	<b>46</b>	

<sup>1</sup> The 2019 Beginning of Year NDT balance reflects the fund value post-closure of the asset sale. The value used includes deductions for the estimated Exelon pre-closure costs of approximately \$94 million. The 2019 costs include HDI estimated pre-closure and post closure costs.

<sup>2</sup> NDT earnings reflect an assumed 2% Real Rate of Return (RRR)

<sup>3</sup> The Year Ending NDT Balance is net of taxes

<sup>4</sup> Columns may not add due to rounding