March 18, 2019

**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**

Before the Commission

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Entergy Nuclear Operations, Inc, | ) | |
| Entergy Nuclear Generation Company, | ) | Docket Nos. 50-293-LT |
| Holtec International, and | ) | 72-1044-LT |
| Holtec Decommissioning International, LLC | ) | |
| | ) | |
| (Pilgrim Nuclear Power Station) | ) | |

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**Applicants' Answer Opposing Pilgrim Watch**
**Petition for Leave to Intervene and Hearing Request**

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## I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Entergy Nuclear Operations, Inc. ("ENOI"), Entergy Nuclear Generation Company ("ENGC"), Holtec International ("Holtec"), and Holtec Decommissioning International, LLC ("HDI") (collectively, "Applicants") hereby answer and oppose the Pilgrim Watch Petition for Leave to Intervene and Hearing Request (Feb. 20, 2019) ("Petition" or "Pet.") in the Pilgrim Nuclear Power Station ("Pilgrim") license transfer proceeding. The license transfer proceeding involves a transfer of ENOI's operating authority to HDI, and the indirect transfer of control of the licenses occurring as a result of Holtec's acquisition of the equity interests in ENGC, which will be renamed Holtec Pilgrim, after Pilgrim permanently ceases operation and is permanently defueled. The Petition should be denied because Pilgrim Watch ("Petitioner") has failed to propose any admissible contention or demonstrate its standing.

The Commission's regulations and case law clearly set forth the requirements that a petitioner must satisfy in order to propose an admissible contention. Petitioner bears the burden of pleading contentions that meet the Commission's heightened threshold for the admission of

contentions. In its Petition, Pilgrim Watch proposes two contentions, but neither meet this standard.

Pilgrim Watch's first contention alleges that the license transfer application does not show that either HDI or Holtec Pilgrim is financially responsible or has access to adequate funds for decommissioning Pilgrim. Pilgrim Watch speculates regarding various possibilities that could affect HDI's decommissioning cost estimate for Pilgrim, but provides no expert opinion supporting its claims, or any information demonstrating a genuine material dispute with the application. In particular, Pilgrim Watch does not address or provide any basis to dispute the efficacy of the Commission's rigorous decommissioning oversight rules, which require annual reporting and, as needed, adjustment to funding for decommissioning and spent fuel management, as well as further review of funding assurance when a full site characterization is submitted as part of the license termination plan. Pilgrim Watch also fails to address or dispute the substantial conservatism in the financial analysis in the application, in that the cash flow analysis does not credit recovery of spent fuel costs from the U.S. Department of Energy ("DOE"), which will provide considerable additional cash flow over the life of the project and ample means to adjust funding assurance if needed. Nor does Pilgrim Watch demonstrate that there is any realistic possibility of a shortfall preventing completion of decommissioning, as the transferred fund will contain over $1 billion, and upon completion of decommissioning (and site restoration) of all portions of the site other than the independent spent fuel storage installation ("ISFSI") is still projected to contain over $200 million without any credit for further DOE recoveries.

Further, Pilgrim Watch's Contention 1 includes numerous claims that impermissibly challenge the Nuclear Regulatory Commission's ("NRC") rules and raise issues outside the

scope of the proceeding. These include challenges to the adequacy of HDI's post-shutdown decommissioning activities report ("PSDAR"), the categorical exclusion applicable to license transfer applications, the Continued Storage Rule, and the certification of the HI-STORM Canister Storage System. Further, Pilgrim Watch's contention is replete with inaccurate, misleading and unsupported assertions.

Pilgrim Watch's second contention argues that an environmental review of the license transfer application is required. This contention impermissibly challenges the NRC's rule categorically excluding license transfers from environmental review. It also seeks to conflate the license transfer application with HDI's PSDAR and, contradicting Commission precedent, to treat HDI's PSDAR as a major federal action requiring approval and environmental review. In addition, it provides no basis to suggest that the license transfer application would result in any significant environmental impact.

As demonstrated in Section VI of this Answer, Pilgrim Watch 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, Pilgrim Watch 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 Pilgrim Watch's Petition in its entirety.

## II. BACKGROUND

On November 16, 2018, Applicants submitted an application requesting that the Commission approve the direct transfer of ENOI's operating authority (*i.e.*, authority to conduct licensed activities) under the Pilgrim Renewed Facility Operating License No. DPR-35 and the general license for the Pilgrim ISFSI to HDI, and the indirect transfer of control of the licenses to

Holtec.[1] Applicants also requested that the NRC approve conforming amendments to the Operating License to reflect this transfer.

The transfer is sought as part of a transaction in which Holtec, through a wholly-owned subsidiary, Nuclear Asset Management Company, LLC, will acquire the equity interests in ENGC (the licensed owner of Pilgrim), which will then be renamed Holtec Pilgrim, LLC ("Holtec Pilgrim"). At the same time, ENOI's operating authority will be transferred to HDI, a wholly-owned subsidiary of Holtec formed to decommission nuclear plants.

The Application provides the information required by 10 C.F.R. § 50.80, including a demonstration of HDI's and Holtec Pilgrim's technical and financial qualifications. Because the license transfers will occur after Pilgrim has permanently ceased operation and has been permanently defueled, the demonstration of financial qualifications is based on funding assurance for decommissioning and spent fuel management, using the prepayment method.[2] As stated in the Application, under the terms of the Equity Purchase and Sale Agreement ("EPSA") included in the Application, the after-tax market value of Pilgrim's Nuclear Decommissioning Trust ("NDT") must be no less than $1.03 billion at closing (subject to an adjustment that will not impact Holtec Pilgrim's or HDI's financial qualifications, as discussed in the Application).[3]

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1 *Application for Order Consenting to Direct and Indirect Transfers of Control of Licenses and approving Conforming License Amendment, and Request for Exemption from 10 CFR 50.82(a)(8)(i)(A), Pilgrim Nuclear Power Station*, Docket Nos. 50-293 & 72-1044, Renewed License No. DPR-35 (Nov. 16, 2018) (ADAMS Accession No. ML18320A031) ("Application" or "LTA").

2 10 C.F.R. § 50.75(e)(1)(i) defines prepayment as follows:

> Prepayment is the deposit made preceding the start of operation *or the transfer of a license under § 50.80* into an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates of cash or liquid assets *such that the amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected*. Prepayment may be in the form of a trust, escrow account, or Government fund with payment by, certificate of deposit, deposit of government or other securities or other method acceptable to the NRC.

Emphasis added.

3 LTA at 3, and Encl. 1 at 17.

The Application provides a cash flow analysis demonstrating that this very substantial amount – over a billion dollars – in Pilgrim's NDT will be sufficient to cover the estimated cost of decommissioning and spent fuel management, as well as site restoration.[4] Because of the reliance on Pilgrim's NDT, the Application seeks an exemption to allow the NDT to be used for spent fuel management and site restoration costs.[5] As stated in the Application, the cash flow analysis upon which financial qualifications and the exemption request are based is conservative, because it does not take credit for any proceeds that Holtec Pilgrim will recover from DOE through litigation or settlement of its claims for the spent fuel management costs it will incur as a result of the DOE's breach of its obligations to dispose of Pilgrim's spent nuclear fuel.[6]

On November 16, 2018, HDI also separately submitted a DECON Post-Shutdown Decommissioning Activities Report (hereinafter referred to as the "Revised PSDAR"),[7] which includes HDI's site-specific decommissioning cost estimate ("DCE").[8] This Revised PSDAR is contingent upon NRC approval of the licenses, completion of transfers of the licenses and the sale closure.[9] The Revised PSDAR and DCE explain that HDI's cost estimate is based on information compiled during an extensive due diligence period, including plant data and historical information obtained from Entergy,[10] and includes a 17 percent contingency

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4 LTA, Encl. 1, Att. D (5th and 6th unnumbered pages).

5 LTA, Encl. 2.

6 LTA, Encl. 1 at 18.

7 Letter from P. Cowan, HDI, to NRC, Notification of Revised Post-Shutdown Decommissioning Activities Report and Revised Site-Specific Decommissioning Cost Estimate for Pilgrim Nuclear Power Station (Nov. 16, 2018) (ADAMS Accession No. ML18320A040) ("Revised PSDAR").

8 Revised PSDAR, Encl. 1 (hereinafter cited as the "DCE"). The DCE is also summarized in the Application. *See* LTA, Encl. 1, Att. D (3rd and 4th unnumbered pages).

9 *Id.* at 2. Entergy has also submitted a PSDAR, which would remain operative if the license transfer does not occur. *See infra* note 97.

10 Revised PSDAR at 18; DCE at 7.

allowance[11] (amounting to approximately $165 million in contingency in the DCE on which the cash flow analysis is based) .

On January 31, 2019, the NRC published a notice in the Federal Register regarding the Application.[12] In the Notice, the Commission provided an opportunity to any person whose interest may be affected, within 20 days of the Notice, to request a hearing and file a petition for leave to intervene in the direct transfer proceeding. The Notice states that any such petitions should be filed in accordance with the Commission's Agency Rules of Practice and Procedure set forth in 10 C.F.R. Part 2 and lays out the standards for pleading admissible contentions and establishing standing.

## III. REGULATORY FRAMEWORK

### 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.[13] NRC regulations require that applicants and licensees provide reasonable assurance that funds will be available for the decommissioning process.[14] The primary methods of providing financial assurance for decommissioning permitted by the NRC are through (1)

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[11] DCE at 41.

[12] Pilgrim Nuclear Power Station; Consideration of Approval of Transfer of License and Conforming Amendment, 84 Fed. Reg. 816 (Jan. 31, 2019) ("Notice").

[13] 10 C.F.R. § 50.2.

[14] 10 C.F.R. § 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.

prepayment; (2) an external sinking fund; (3) a surety, insurance, or other guarantee; or (4) a combination of these or equivalent mechanisms.[15]

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.[16] 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.[17] NRC regulations require a licensee to submit a PSDAR prior to or within two years following the permanent cessation of operations.[18] The PSDAR must contain a description of the planned decommissioning activities along with a schedule for their accomplishment, a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously-issued environmental impact statements, and a site-specific decommissioning cost estimate, including the projected cost of managing irradiated fuel.[19] The Staff notices its receipt of the PSDAR, makes the PSDAR available for public comment, and holds a public meeting on its contents.[20]

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15 10 C.F.R. § 50.75(e)(1)(i)-(iii), (vi).

16 *See generally* 10 C.F.R. § 50.82(a).

17 10 C.F.R. § 50.82(a)(1)(i)-(ii).

18 10 C.F.R. § 50.82(a)(4)(i).

19 *Id.*

20 10 C.F.R. § 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* Regulatory Guide 1.185, Rev. 1, Standard Format and Content for Post-Shutdown Decommissioning Activities Report (June 2013) at 4 (ADAMS Accession No. ML13140A038). As discussed further below, the PSDAR process does not give rise to a hearing opportunity.

The PSDAR serves to inform the public and NRC Staff of the licensee's proposed activities,[21] but approval is not required under the NRC rules.

Thus, absent any objections from the NRC Staff, the licensee may commence "major decommissioning activities" ninety (90) days after the Staff receives the PSDAR.[22] Under NRC regulations, 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.[23]

Once a licensee submits its decommissioning cost estimate, it generally is allowed access to the balance of the NDT fund monies for the remaining decommissioning activities with "broad flexibility."[24] However, the use of the NDT fund is limited in three important respects. 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.[25] 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.[26] Finally, the withdrawals must not inhibit the ability of the licensee to complete funding of any

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[21] 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.*

[22] 10 C.F.R. § 50.82(a)(5). A "major decommissioning activity" for a nuclear power plant such as Pilgrim 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]." 10 C.F.R. § 50.2.

[23] 10 C.F.R. § 50.82(a)(6).

[24] *See* 1996 Decommissioning Rule, 61 Fed. Reg. at 39,285.

[25] 10 C.F.R. § 50.82(a)(8)(i)(A).

[26] 10 C.F.R. § 50.82(a)(8)(i)(B).

shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.[27]

Additionally, the NRC Staff monitors the licensee's use of the decommissioning trust fund via its review of the licensee's annual financial assurance status reports.[28] Those annual 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.[29] 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.[30] The annual reports must also include the status of funding to manage spent fuel, including the amount of funds available, the projected cost of managing spent fuel until it is removed by the DOE and, if there is a funding shortfall, a plan to obtain additional funds to cover the cost.[31]

Unless otherwise authorized, the site must be decommissioned within sixty (60) years.[32] 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.[33] The LTP must include (a) a site characterization; (b) identification of remaining dismantlement activities; (c) plans for site remediation; (d) detailed plans for the final radiation survey; (e) description of the end use of the

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[27] 10 C.F.R. § 50.82(a)(8)(i)(C).

[28] 10 C.F.R. § 50.82(a)(8)(v).

[29] 10 C.F.R. § 50.82(a)(8)(v)(A)-(B).

[30] 10 C.F.R. § 50.82(a)(8)(vi). The determination whether a shortfall exists takes into account a two (2) percent annual real rate of return.

[31] 10 C.F.R. § 50.82(a)(8)(vii).

[32] 10 C.F.R. § 50.82(a)(3).

[33] 10 C.F.R. § 50.82(a)(9)(i).

site, if restricted; (f) an updated site-specific estimate of remaining decommissioning costs; (g) a supplement to the environmental report describing any new information or significant environmental change associated with the licensee's proposed termination activities; and (h) identification of parts, if any, of the facility or site that were released for use before approval of the license termination plan.

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.[34] The NRC will also prepare an environmental assessment or supplemental environmental impacts statement, as appropriate, to update prior environmental documentation prepared for compliance with the National Environmental Policy Act ("NEPA").[35] 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.[36]

### B. NRC Reactor License Transfer Requirements

Under Section 184 of the Atomic Energy Act, an NRC 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.[37] This statutory requirement is codified in 10

[34] 10 C.F.R. § 50.82(a)(9)(iii).
[35] 10 C.F.R. § 51.95(d).
[36] 10 C.F.R. § 50.82(a)(10), (11).
[37] 42 U.S.C. § 2234.

C.F.R. § 50.80 and applies to both direct and indirect license transfers.[38] A transfer of control may involve either the licensed operator or any individual licensed owner of the facility.[39] Before approving a license transfer, the NRC reviews, among other things, the technical and financial qualifications of the proposed transferee.[40] 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.[41]

Section 189(a) of the Atomic Energy Act requires that the NRC offer an opportunity for hearing on a license transfer.[42] In 1998, the NRC adopted Subpart M of 10 C.F.R. Part 2 authorizing the use of a streamlined license transfer process with informal legislative-type hearings, rather than formal adjudicatory hearings.[43] These 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.[44] Section 2.1315 codifies the Commission's generic determination that any conforming amendment to an operating license that only reflects the

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[38] *See* NRC Backgrounder, "Reactor License Transfers," at 1-2 (Apr. 2016) (ADAMS Accession No. 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). 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. *Id.*

[39] *See id.* at 1.

[40] *See* 10 C.F.R. §§ 50.80(b)(1), (c)(1); *see also* NUREG-1577, Rev. 1, Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (Dec. 2001) (ADAMS Accession No. ML013330264).

[41] *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).

[42] 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.").

[43] *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).

[44] *See* Subpart M Rule, 63 Fed. Reg. at 66,727.

license transfer action involves a "no significant hazards consideration."[45] 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."[46]

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 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.[47]

## IV. CONTENTION ADMISSIBILITY STANDARDS

All contentions must meet the admissibility standards set forth in 10 C.F.R. § 2.309(f)(1). Specifically, contentions must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
>
> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

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[45] 10 C.F.R. § 2.1315(a).

[46] 10 C.F.R. § 2.1315(b).

[47] *See* Subpart M Rule, 63 Fed. Reg. at 66,728.

> (vi) In a proceeding other than one under 10 CFR 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. §§ 2.309(f)(1)(i)-(vi). These standards are enforced rigorously. "If any one . . . is not met, a contention must be rejected."[48]

A Presiding Officer may not overlook a deficiency in a contention or assume the existence of missing information.[49] Under these standards, a petitioner "is obligated to provide the [technical] analyses and expert opinion showing why its bases support its contention."[50] Where a petitioner has failed to do so, the Presiding Officer "may not make factual inferences on [the] petitioner's behalf."[51]

Further, admissible contentions "must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application]."[52] In particular, this explanation must demonstrate that the contention is "material" to the NRC's findings and that a genuine dispute on

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[48] *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 N.R.C. 149, 155 (1991) (citation omitted); *USEC, Inc.* (American Centrifuge Plant), CLI-06-9, 63 N.R.C. 433, 437 (2006) ("These requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements." (footnotes omitted)).

[49] *See, e.g.*, *Palo Verde,* CLI-91-12, 34 N.R.C. at 155; *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 N.R.C. 235, 260 (2009) (noting that the contention admissibility rules "require the petitioner (*not the board*) to supply all of the required elements for a valid intervention petition" (emphasis added) (footnote omitted)).

[50] *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 N.R.C. 281, 305, *vacated in part and remanded on other grounds*, CLI-95-10, 42 N.R.C. 1, *aff'd in part*, CLI-95-12, 42 N.R.C. 111 (1995).

[51] *Id*. (citing *Palo Verde*, CLI-91-12, 34 N.R.C. 149). *See also Private Fuel Storage*, *L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 180 (1998) (explaining that a "bald assertion that a matter ought to be considered or that a factual dispute exists . . . is not sufficient;" rather, "a petitioner must provide documents or other factual information or expert opinion" "to show why the proffered bases support [a] contention" (citations omitted)).

[52] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 359-60 (2001).

a material issue of law or fact exists. 10 C.F.R. § 2.309(f)(1)(iv), (vi). The Commission has defined a "material" issue as meaning one where "resolution of the dispute *would make a difference in the outcome* of the licensing proceeding."[53]

As the Commission has observed, this threshold requirement is consistent with judicial decisions, such as *Connecticut Bankers Ass'n v. Bd. of Governors*, 627 F.2d 245 (D.C. Cir. 1980), which held that:

> [A] protestant does not become entitled to an evidentiary hearing merely on request, or on a bald or conclusory allegation that . . . a dispute exists. The protestant must make a minimal showing that material facts are in dispute, thereby demonstrating that "an 'inquiry in depth' is appropriate."[54]

A contention, therefore, is not to be admitted "where an intervenor has no facts to support its position and where the intervenor contemplates using discovery or cross-examination as a fishing expedition which might produce relevant supporting facts."[55] As the Commission has emphasized, the NRC rules bar contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation.[56]

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[53] Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, Final Rule, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (emphasis added).

[54] *Id.* at 33,171 (quoting *Conn. Bankers Ass'n*, 627 F.2d at 251). *See also Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-14, 48 N.R.C. 39, 41, *motion to vacate denied*, CLI-98-15, 48 N.R.C. 45, 56 (1998) ("It is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions.").

[55] 54 Fed. Reg. at 33,171. *See also Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 N.R.C. 460, 468 (1982), *vacated in part on other grounds*, CLI-83-19, 17 N.R.C. 1041 (1983) ("[A]n intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable [the petitioner] to uncover any information that could serve as the foundation for a specific contention. Stated otherwise, neither Section 189a of the [Atomic Energy] Act nor Section 2.714 [now 2.309] of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff.").

[56] *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003).

Rather, NRC's pleading standards require a petitioner to read the pertinent portions of the license application, state the applicant's position and the petitioner's opposing view, and explain why it has a disagreement with the applicant.[57] If the petitioner does not believe these materials address a relevant issue, the petitioner is "to explain why the application is deficient."[58] A contention that does not directly controvert a position taken by the applicant in the license application is subject to dismissal.[59] Furthermore, "an allegation that some aspect of a license application is 'inadequate' or 'unacceptable' does not give rise to a genuine dispute unless it is supported by facts and a reasoned statement of why the application is unacceptable in some material respect."[60]

## V. PILGRIM WATCH HAS FAILED TO PUT FORTH AN ADMISSIBLE CONTENTION.

### A. Pilgrim Watch's Contention 1 Is Inadmissible

Pilgrim Watch's first contention, which alleges that the Application does not provide the required financial assurance (Pet. at 14),[61] is inadmissible for multiple reasons. Pilgrim Watch's challenges to the sufficiency of financial assurance are inadmissible because they lack an

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[57] 54 Fed. Reg. at 33,170-71; *Millstone*, CLI-01-24, 54 N.R.C. at 358.

[58] 54 Fed. Reg. at 33,170. *See also Palo Verde*, CLI-91-12, 34 N.R.C. at 156.

[59] *See Texas Util. Elec. Co*. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 N.R.C. 370, 384 (1992), *vacated as moot and appeal dismissed*, CLI-93-10, 37 N.R.C. 192, *stay denied*, CLI-93-11, 37 N.R.C. 251 (1993).

[60] *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 N.R.C. 257, 358 (2005) (citing *Florida Power & Light Co*. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 N.R.C. 509, 521 & n.12 (1990)).

[61] Pilgrim Watch's Contention 1 states in full:

> The Applicant's LTA does not provide the required financial assurance. It does not show that either HDI or Holtec Pilgrim is financially responsible, or that either has or has access to adequate funds for decommissioning. Neither does the LTA provide any reasonable assurance that Holtec Pilgrim and HDI have, or will have, the financial resources required to deal with environmental impacts that would place the public health, safety, and the environment at risk.

Pet. at 14. The claim that the Application does not show that HDI or Holtec Pilgrim is financially responsible is presumably an allegation that they are not financially qualified. Pilgrim Watch does not provide any information or explanation why HDI and Holtec Pilgrim, as the licensees, would not be responsible for decommissioning.

adequate basis, do not demonstrate material issues, and are not supported by information demonstrating a genuine material dispute with the Application. Further, Pilgrim Watch's attempt to include challenges to the Revised PSDAR in Contention 1 are impermissible challenges to the NRC rules and are beyond the scope of this proceeding, as are certain other allegations made by Pilgrim Watch.

In particular, Contention 1 appears predicated on Pilgrim Watch's incorrect view that the level of financial assurance must address myriad speculative costs that the DCE allegedly ignores (Pet. at 22) and "guarantee that decommissioning costs will be paid" (*id*. at 18). The Commission has spoken directly to this issue, and explained that it does not require absolute certainty in licensees' financial projections:

> [T]he level of assurance the Commission finds it reasonable to require regarding a licensee's ability to meet financial obligations is less than the extremely high assurance the Commission requires regarding the safety of reactor design, construction, and operation. *The Commission will accept financial assurances based on plausible assumptions and forecasts, even though the possibility is not insignificant that things will turn out less favorably than expected*. Thus, the *casting of doubt on some aspects of proposed funding plans is not by itself sufficient to defeat a finding of reasonable assurance*.[62]

Rather than requiring absolute financial assurance for every speculative contingency, the Commission has established a comprehensive and rigorous regulatory regime that provides continuous reasonable assurance that funding will remain adequate after a plant permanently ceases operation. This regime includes required annual reporting on the adequacy of decommissioning funding assurance, and adjustment if necessary, and restrictions on withdrawals from decommissioning trust funds to ensure the ability to fund a shortfall will not be inhibited. Pilgrim Watch fails to address or dispute the adequacy of this regulatory regime, and

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[62] *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 N.R.C. 201, 221-22 (1999) (emphasis added).

thus its speculation regarding unforeseen expenses raises no genuine material dispute with the Application.

In addition, Pilgrim Watch's contention appears to rest fundamentally on the assertion that the DCE provides no margin, because only $3 million will remain after decommissioning and the entire contingency allowance in the DCE is expected to be expended. Pet. at 16-17. This assertion too simply ignores and fails to dispute ample information in the Application demonstrating Holtec Pilgrim's ability to adjust financial assurance if needed.

### 1. Pilgrim Watch Fails to Address or Dispute the Funding Adjustment Process and Conservatism Discussed in the Application

First, Pilgrim Watch's Contention 1 is inadmissible because it neither addresses nor disputes the adequacy of the NRC processes described in the Application for annual review and where necessary adjustment of the funding assurance, as well as the further review of funding assurance at the LTP stage, and the reasonable funding assurance that this regulatory regime provides, given the substantial conservatism in cash flow analysis identified in the Application. The Application clearly states:

> 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 PNPS 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.*[63]

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[63] LTA, Encl. 2 at E-4 (emphasis added). The DCE similarly states:

> In accordance with 10 CFR 50.82(a)(8)(v), decommissioning funding assurance will be reviewed and reported to the NRC annually until residual radioactivity has been reduced to a level that permits

In addition, the NRC's rules prohibit withdrawals from the NDT if they would inhibit the ability to complete funding of any shortfalls needed to ensure the availability of funds to ultimately release the site and terminate the license.[64]

As the Commission has held, the strict regime of oversight, reporting, and adjustment of funding assurance when necessary, along with restrictions on fund withdrawals, provides reasonable assurance that funding will remain adequate, notwithstanding an exemption allowing a decommissioning trust to be used for spent fuel management and site restoration:

> [E]ven after the Staff granted the exemption, the regulations still prohibit [the licensee] from making a withdrawal that would "inhibit its ability to complete funding of any shortfalls in the decommissioning trust," require [the licensee] to submit an annual financial assurance report, and require [the licensee] to provide additional funds if the report reveals insufficient funds to complete decommissioning. Therefore, the applicable regulations provide reasonable assurance that adequate funds will remain to complete decommissioning by requiring [the licensee] and the Staff to monitor the projected cost of decommissioning and available funding and ensure more funding is available as needed.[65]

The Commission similarly observed that a licensee is required to submit to the Staff annual reports regarding the status of its funding for irradiated fuel management, including a plan to obtain additional funds to cover any expected shortfalls.[66]

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> termination of the licenses. The latest site-specific DCE adjusted for inflation, in accordance with applicable regulatory requirements, will be used to demonstrate funding assurance. In addition, actual radiological and spent fuel management expenses will be included in the annual report in accordance with applicable regulatory requirements. If the funding assurance demonstration shows the NDT is not sufficient, then an alternate funding mechanism allowed by 10 CFR 50.75(e) and the guidance provided in Regulatory Guide 1.159 (Reference 12) will be put in place.

DCE at 44. *See also id.* at 48.

64 10 C.F.R. § 50.82(a)(8)(i)(C).

65 *See Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-16-17, 84 N.R.C. 99, 118 (2016) (footnote omitted).

66 *Id.* at 105 n.13 (citing 10 C.F.R. § 50.82(a)(8)(vi)).

The comprehensive review performed when the LTP is submitted provides further assurance of adequate funding. As the Commission explained in the 1996 Decommissioning Rule,

> The site characterization, description of the remaining dismantlement activities and plans for site remediation are necessary for the NRC to be sure that the licensee will have adequate funds to complete decommissioning and that the appropriate actions will be completed by the licensee to ensure that the public health and safety will be protected.[67]

The Commission reviews this information at the LTP stage including "the licensee's plans for assuring that adequate funds will be available for final site release,"[68] provides an opportunity both for public comment and for hearings, and approves the LTP only upon a determination that the remainder of decommissioning activities will be performed in accordance with the NRC rules, will not be inimical to the public health and safety, and will not have a significant effect on the quality of the environment.[69] For Pilgrim, the LTP will be submitted at least two years before the expected date for partial site release,[70] with partial site release expected to be completed by 2026.[71] Pilgrim Watch does not address any of these mechanisms for assuring that funding remains adequate.

Second, Pilgrim Watch does not provide any genuine basis to dispute information in the Application showing that HDI and Holtec Pilgrim have substantial means to provide additional financial assurance. In this regard, Pilgrim Watch does not meaningfully address or provide any basis to dispute the significant conservatism in the financial (cash flow) analyses demonstrating

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67 1996 Decommissioning Rule, 61 Fed. Reg. at 39,289.

68 *Id.*

69 10 C.F.R. § 50.82(a)(10).

70 Revised PSDAR at 5, 14, 35.

71 *Id.* at 35.

the ability of Holtec Pilgrim and HDI to fund decommissioning, spent fuel management and site restoration costs. As the Application states, "the annualized cash flows are conservative in that they do not take credit for any proceeds Holtec Pilgrim expects to recover from DOE through litigation or settlement of its claims for the spent fuel management costs it will incur as a result of the DOE's breach of its obligations to dispose of Pilgrim's spent nuclear fuel."[72] Indeed, the cash flow analysis in the Application shows that there is over $500 million that HDI estimates it will incur for spent fuel management,[73] recovery of which Holtec Pilgrim can seek from DOE. As the NRC Staff recently observed in approving the license transfer application for Vermont Yankee,

> [T]he NRC staff finds that the assumption of DOE reimbursement is a reasonable source of additional funding. In recent years DOE reimbursements have become more consistent and predictable despite the longevity of the litigation process and complexity of DOE standard settlement agreements.[74]

Thus, the additional funds that Holtec Pilgrim will receive through recovery of spent fuel management costs provide hundreds of millions of dollars of additional cash flow that could be used to provide additional assurance if necessary. Pilgrim Watch does not dispute this source of additional funds or its adequacy, and thus fails demonstrate any genuine material dispute with the financial qualifications of Holtec Pilgrim and HDI described in the Application.

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72 LTA, Encl. 1 at 18.

73 LTA, Encl. 1, Att. D (5th and 6th unnumbered pages) (Pilgrim Nuclear Power Station Decommissioning Cash Flow Analysis).

74 Safety Evaluation by the Office of Nuclear Reactor Regulation and Officer of Nuclear Material Safety and Safeguards Related to Request for Direct and Indirect Transfers of Control of Renewed Facility Operating License No. DPR-23 and the General License for the Independent Spent Fuel Storage Installation from Entergy Nuclear Operations, Inc. and Entergy Nuclear Vermont Yankee, LLC to NorthStar Vermont Yankee, LLC and NorthStar Nuclear Decommissioning Company, LLC, Vermont Yankee Nuclear Power Station (Oct. 11, 2018) at 15 (ADAMS Accession No. ML18242A639).

Pilgrim Watch does argue, incorrectly and without any basis, that the NRC has consistently rejected licensee attempts to use such potential future recoveries from DOE to show financial assurance. Pet. at 18. Pilgrim Watch ignores the approved reliance on DOE recoveries in the recent Vermont Yankee license transfer proceeding,[75] as well as other precedent.[76] More importantly, Pilgrim Watch does not identify any provision in the NRC rules that would prevent reliance on DOE recoveries, or any other authority supporting its assertion. Thus, this argument provides no basis to question the conservatism of the cash flow analysis or the financial qualifications of Holtec Pilgrim and HDI.

Similarly, Pilgrim Watch's complaint that Holtec Pilgrim has not agreed to put its recoveries from DOE back in the NDT (Pet. at 18) does not raise any material issue or demonstrate any genuine material dispute with the Application, because the NRC's decommissioning funding assurance rules require *annual* reporting of the status of funding, and adjustment where necessary.[77] Thus, if there were a shortfall in any year, Holtec Pilgrim would have the ability (and NRC could direct it) to make additional contributions to the NDT or provide one of the other acceptable means of providing funding assurance (such as a providing a surety bond or parent guarantee); and the continuing, long-term recovery of spent fuel costs would provide an available source. There is simply no need at this juncture to commit to placing all DOE recoveries back in the NDT (and Pilgrim Watch provides no explanation why this would be necessary), and no such requirement in the NRC rules.

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[75] *Id.*

[76] *See, e.g.,* Letter from K. Feintuch to C. Costanzo, "Safety Evaluation Re: Spent Fuel Management Program and Decommissioning Cost Estimate," Safety Evaluation at 4 (Mar. 29, 2010) (ADAMS Accession No. ML100770505).

[77] 10 C.F.R. § 50.82(a)(8)(v)(A)-(B).

Further, because the decommissioning, restoration and release of all portions of the site other than the ISFSI ("partial site release") will be completed expeditiously by 2026 under the DECON method selected by HDI – and the LTP submitted at least two years earlier will contain the site characterization, plans for the remaining work and final survey, and the updated cost estimate – any need for additional funding to complete decommissioning will be known soon. Therefore, any need for funds from continuing DOE recoveries for that purpose will also be known soon and can be addressed by Holtec Pilgrim and the NRC as necessary. Even upon completion of partial site release, leaving only the ISFSI to be decommissioned, the cash flow analysis in the Application shows about $277 million in estimated spent fuel costs (from 2026 through 2063), recovery of which from DOE would provide a continuing source of funds if there were a need to adjust funding assurance. In short, Pilgrim Watch provides no basis to question the ability of Holtec Pilgrim and HDI to adjust funding if necessary and does not raise any genuine dispute with the demonstration of financial qualifications in the Application.

Moreover, even without credit for DOE recoveries, the cash flow analysis shows over $200 million remaining in the fund in 2026,[78] after partial site release, belying Pilgrim Watch's claim that there is no margin to complete the decommissioning work set forth in the PSDAR and Application. Pet. at 16-17.

Pilgrim Watch's failure to meaningfully address the existing funding adjustment process and demonstrate any genuine material dispute with the conservatism identified and relied upon in the Application (*i.e.,* the expected recovery of spent fuel management costs not credited in the cash flow analysis) is sufficient grounds by itself to dismiss all of the allegations in Contention 1. Nevertheless, as discussed below, all of Pilgrim Watch's claims purportedly in support of

[78] *See* LTA, Encl. 1, Att. D (5th and 6th unnumbered pages) (Pilgrim Nuclear Power Station Decommissioning Cash Flow Analysis).

Contention 1 also lack adequate support, fail to raise any genuine material dispute with the Application, are outside the scope of this proceeding, or impermissibly challenge NRC rules.

### 2. Pilgrim Watch's Challenges to the PSDAR Are Impermissible Challenges to the NRC Rules, Outside the Scope of the Proceeding, and Irrelevant to the Contention

Pilgrim Watch makes several claims regarding the adequacy of the Revised PSDAR that are outside the scope of the proceeding and impermissible challenges to the NRC rules. These include claims that the Revised PSDAR is intertwined with the Application and relies on outdated information in prior environmental impact statements (Pet. at 18), that neither the costs nor economic impacts are bounded by those prior environmental impact statements (*id.* at 19), and that "NRC approval of the license transfer and amendment request would effectively approve the PSDAR and its financial and environmental analyses and assurance" (*id.*). As a threshold matter, because the Contention challenges financial qualifications, the claims that activities described in the Revised PSDAR are not bounded by prior environmental impact statements, and that the approval of the Application would approve the Revised PSDAR, are irrelevant to the Contention.

Moreover, Pilgrim Watch misunderstands the purpose of a PSDAR, which is "to provide a general overview for the public and the NRC of the licensee's proposed decommissioning activities until [two] years before termination of the license."[79] As the Commission explained in CLI-16-17, NRC regulations provide an opportunity for public comment when a licensee submits its PSDAR.[80] However, "the PSDAR does not amend the license" or otherwise require NRC Staff approval, and consequently "[NRC] regulations do not provide a hearing opportunity

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[79] 1996 Decommissioning Rule, 61 Fed. Reg. at 39,281.

[80] *Vermont Yankee*, CLI-16-17, 84 N.R.C. at 104, 124.

on it."[81] Thus, to the extent that Pilgrim Watch seeks to contest the contents of the Revised PSDAR in this license transfer proceeding, it inappropriately challenges NRC regulations and raises issues outside the scope of the proceeding.[82] Any concerns related to the Revised PSDAR should be presented via the applicable NRC processes, including the PSDAR-specific public comment process and the rulemaking process.

This does not mean that the Revised PSDAR is entirely immaterial to the Application. The Revised PSDAR includes the DCE upon which the cash flow analysis in the Application and exemption request are based, along with the description of the decommissioning activities and schedule that HDI will undertake. The demonstration of financial qualifications and the exemption request presented in the Application are subject to scrutiny in this proceeding, informed by the Revised PSDAR. But nothing in the Application requests or requires the NRC to "approve" the Revised PSDAR or broadens the scope of the issues in this proceeding. The activities in the Revised PSDAR are activities that the NRC rules already allow. HDI and Holtec Pilgrim must demonstrate their financial qualifications to perform these permissible activities, but whether the Revised PSDAR involves a safety hazard, meets requirements, or demonstrates that decommissioning activities are bounded by prior environmental impact statements is beyond the scope of this proceeding.

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[81] *Id.* at 116 n.68, 124 (citing 10 C.F.R. § 50.82(a)(4)(ii); see 42 U.S.C. § 2239). In the 1996 rulemaking that expanded opportunities for public participation in the decommissioning process, the Commission explicitly 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." 1996 Decommissioning Rule, 61 Fed. Reg. at 39,284. It explained that "[a] more formal public participation process is appropriate at the termination stage of decommissioning." *Id.* At the license termination stage, the licensee must submit a license amendment request in order to terminate its license. *Id.* That request provides an opportunity for a hearing on the license termination plan. *Id.* at 39,284, 39,286.

[82] *See* 10 C.F.R. §§ 2.309(f)(1)(iii), 2.335(a).

For these reasons, Pilgrim Watch's claims relating to the discussion of environmental impacts in the PSDAR are outside the scope of the proceeding (in addition to being irrelevant to the financial qualifications challenged by Contention 1). These include (1) Pilgrim Watch's claim that prior environmental impact statements incorrectly assumed that the Pilgrim site is "clean" and therefore do not bound current conditions (Pet. at 33-34, 36, 40, 95, 121);[83] (2) Pilgrim Watch's claim that the discussion of radiological impacts in the Revised PSDAR is

[83] Pilgrim Watch's allegations regarding the Revised PSDAR reflect a profound misunderstanding of the environmental analysis required in it. 10 C.F.R. § 50.82(a)(4)(i) requires the PSDAR to include the reasons for concluding that the environmental impacts *associated with site-specific decommissioning activities* will be bounded by appropriate previously-issued environmental impact statements. This provision requires a demonstration that the impacts of particular activities (such as reactor vessel segmentation) are bounded by prior environmental impact statements. It does not require that a PSDAR demonstrate radiological effects following license termination will be bounded. This is evident from the scope of the GEIS on Decommissioning of Nuclear Facilities, which excludes radiological impacts following license termination. NUREG-0586, *Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: Supplement 1, Regarding the Decommissioning of Nuclear Power Reactors* (Nov. 2002) at 1-6 ("NUREG-0586, Supp. 1"). Here, Pilgrim Watch's main environmental complaint appears to be a concern that contamination *may still exist after completion of decommissioning,* thus somehow exceeding the bounds of prior environmental impact statements. This concern does not relate to the impacts of performing particular decommissioning activities, but rather to the impacts following license termination. Those impacts will be considered when the LTP is submitted, including in the environmental review required at that time. *See* NUREG-0586, Supp. 1, App. O at O-127 to O-128 (stating that issues such as the amount and location of buried waste, the completeness of decommissioning records, groundwater contamination that can remain after license termination "are addressed in detail during the licensee's site-specific, license termination plan review."). Indeed, it should be noted that when the 1996 Decommissioning Rule was promulgated, the radiological criteria for site release had not yet been established or analyzed in any generic environmental impact statement. The site release criteria were established later (*see* Radiological Criteria for License Termination, Final Rule, 62 Fed. Reg. 39,058 (July 21, 1997)) and addressed in NUREG-1496, Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities (July 1997). Consequently, the 1996 Decommissioning Rule could not have intended that a PSDAR demonstrate that residual levels of radioactivity following license termination would be bounded by previous environmental impacts, because such impacts had not yet been assessed. A contrary interpretation would therefore have prohibited all decommissioning activities.

Further, to the extent that Pilgrim Watch's concern is that prior environmental impact statements do address the potential that non-radiological contamination at Pilgrim might be unknown and therefore not remediated, its concern is unrelated to decommissioning activities as defined by the NRC. The NRC's definition of decommissioning does not include site restoration. *See, e.g.,* Regulatory Guide 1.202, Standard Format and Content of Decommissioning Cost Estimates for Nuclear Power Reactors (Feb. 2005) ("Reg. Guide 1.202") at 2 ("The NRC's definition of decommissioning does not include other activities related to facility deactivation and site closure, including . . . demolition of decontaminated structures, and/or site restoration activities after residual radioactivity has been removed. . . ."); *see also* 10 C.F.R. § 50.75 n.1. Thus, NUREG-0586 excludes site restoration activities from its scope. *See* NUREG-0586, Supp. 1 at 1-6.

based on outdated risk coefficients (Pet. at 54);[84] (3) Pilgrim Watch's concern with assumptions on socioeconomic costs in the Revised PSDAR (Pet. at 56);[85] (4) Pilgrim Watch's concern with the discussion of environmental justice in the Revised PSDAR (Pet. at 65);[86] and (5) Pilgrim

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[84] Pilgrim Watch's caption for this claim states that "Holtec's cost estimates incorrectly assume radiological occupational and public dose based on outdated documents" (Pet. at 54), but Pilgrim Watch's discussion of this issue refers only to the Revised PSDAR and does not mention the cost estimates or provide any explanation how radiological and occupational dose estimates would have any bearing on the cost estimates. *See* Pet. at 54-55.

Even if the Revised PSDAR were within the scope of this proceeding, which it is not, Pilgrim Watch's claim regarding risk coefficients raises no genuine issue with the Revised PSDAR, because NUREG-0586 used risk coefficients from the BEIR V report, which Pilgrim Watch does not address or dispute. *See* NUREG-0586, Supp. 1, App. G, at G-4, G-8. Further, Pilgrim Watch's assertion that the 2002 GEIS used outdated ICRP risk coefficients ignores the 2013 GEIS on license renewal (NUREG-1437, Rev. 1, Final Generic Environmental Impact Statement for License Renewal of Nuclear Plants (June 2013), which both includes an analysis of decommissioning impacts (*id.* § 4.12.2) and discusses current risk coefficients (*id.* at D-34 to D-37). That discussion shows only a difference of approximately 20 percent in the fatal cancer risk coefficient based on the ICRP recommendation and the BEIR VII report, which is within the margin of uncertainty associated with these estimates. *Id.* at D-37.

[85] Pilgrim Watch's caption for this claim states that "Holtec's cost estimates incorrectly assumed incorrect socioeconomics (sic) costs of decommissioning" (Pet. at 56), but Pilgrim Watch's discussion of this issue refers to the Revised PSDAR only and does not mention the cost estimates or provide any explanation how environmental analysis of socioeconomics would have any bearing on the cost estimates. *See* Pet. at 56-57.

Even if the PSDAR were within the scope of this proceeding, Pilgrim Watch's claim regarding socioeconomic costs raises no genuine dispute. Pilgrim Watch bases its concern predominantly on a 2015 study of the impact of Pilgrim's closure. This study relates to the impact of Entergy's decision to permanently cease operation of Pilgrim, which has already been made, requires no NRC approval, and is not a proposed action. It does not relate to the impacts of decommissioning activities that follow permanent cessation of operation. *See* NUREG-0586, Supp. 1 at 1-3 ("Impacts related to the decision to permanently cease operations are outside the scope of this Supplement. This includes impacts that result directly and immediately from the act of permanently ceasing operations, regardless of when or why the decision was made.").

[86] Pilgrim Watch's caption for this claim states that "Holtec's DCE fails to consider the likely adverse health impacts expected in special pathway receptor populations and for that matter in the general public" (Pet. at 65), but Pilgrim Watch does not mention the cost estimates or provide any explanation how radiological and occupational dose estimates would have any bearing on the cost estimates. *See* Pet. at 65. Pilgrim Watch incorrectly cites "LTA, 5.1.13 (Environmental Justice)" (*id.*), but there is no such section or discussion of environmental justice in the LTA. Instead, this is a reference to the Revised PSDAR.

Even if the Revised PSDAR were within the scope of this proceeding, which it is not, Pilgrim Watch's claim regarding environmental justice raises no genuine dispute. Pilgrim Watch challenges the Revised PSDAR's discussion of NUREG-1437, Supplement 29, Generic Impact Statement for License Renewal of Nuclear Plants, Regarding Pilgrim Nuclear Station (July 2007) ("NUREG-1437, Supp. 29") which found no disproportionately high and adverse impact would be expected in special pathway receptor populations. Pet. at 65, 109. Pilgrim Watch bases this challenge solely on the statement in the NRC's Groundwater at Nuclear Plants Task Force's 2006 report that "under the existing regulatory requirements, the potential exists for unplanned and unmonitored releases of radioactivity to migrate offsite into the public domain undetected." *See id.* The 2006 report predates the SEIS and therefore obviously does not represent any new information. In any event, the Task Force report's conclusion in 2006 that there was a "potential" for an unmonitored release based on the *then* "existing regulatory requirements" is irrelevant, because it says nothing about whether such a potential continues to exist after the NRC promulgation of the Decommissioning Planning Rule specifically to address this concern. Nor does Pilgrim Watch identify any special pathway receptor populations that might be affected or demonstrate that

Watch's concern with the conclusion in the Revised PSDAR that the impacts of radiological accidents are small and bounded by previous environmental impact statements (Pet. at 66).[87]

Moreover, each of these claims that further environmental review is required constitutes an impermissible challenge to the categorical exclusion in 10 C.F.R. § 51.22(c)(21). Pilgrim Watch has not submitted any petition for waiver of this rule, and therefore its claims are barred by 10 C.F.R. § 2.335(a), which provides that except pursuant to a petition for waiver meeting specified standards, "no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities, source material, special nuclear material, or byproduct material, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part." Pilgrim Watch has not submitted any petition for waiver or addressed the standards for a waiver request.

Further, Pilgrim Watch's concerns regarding the radiological accidents, all of which relate to spent fuel storage, impermissibly challenge the NRC's Continued Storage Rule, at 10 C.F.R. § 51.23. The Continued Storage Rule provides that "[t]he Commission has generically determined that the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor are those impacts identified in NUREG–2157, 'Generic

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releases during decommissioning would in any way approach the releases from plant operations that were previously analyzed.

[87] Pilgrim Watch's caption for this claim states that "Holtec's costs (sic) estimates ignore the costs of mitigating radiological accident(s)" (Pet. at 66), but Pilgrim Watch's discussion of this issue is focused almost exclusively on Revised PSDAR and prior environmental impact statements.

Even if the Revised PSDAR were within the scope of this proceeding, Pilgrim Watch's claims regarding radiological accidents raise no genuine dispute. All of Pilgrim Watch's concerns pertaining to radiological accidents appear to pertain to risk from spent fuel storage. *See* Pet. at 66-80. Spent fuel storage is not within the Commission's definition of decommissioning. *See, e.g.,* Reg. Guide 1.202 at 2 ("The NRC's definition of decommissioning does not include other activities related to facility deactivation and site closure, including operation of the spent fuel storage pool, construction and/or operation of an independent spent fuel storage installation. . . ."); *see also* 10 C.F.R. § 50.75 n.1. Therefore, accidents from spent fuel storage are not "environmental impacts associated with site-specific *decommissioning activities*" that must be discussed in a PSDAR pursuant to 10 C.F.R. § 50.82(a)(4)(i). *See also* NUREG-0586, Supp. 1 at 1-6, excluding spent fuel management activities from the scope of its environmental review.

Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel.'" Because Pilgrim Watch has not submitted any waiver petition, its challenge to the Continued Storage Rule is barred.[88]

Pilgrim Watch's claims regarding spent fuel storage accidents also include statements challenging the safety of dry cask storage of high-burnup spent nuclear fuel ("HBF"). Pet. at 77-78. The NRC has certified the safety of the HI-STORM 100 Canister Storage System to store spent fuel, including HBF.[89] Therefore, challenges to the safety and adequacy of the HI-STORM 100 Canister Storage System, which have been resolved by rule, are impermissible under 10 C.F.R. § 2.335 and beyond the scope of this proceeding.

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[88] Pilgrim Watch's claims regarding spent fuel storage accidents include numerous claims regarding the impacts of a terrorist attack. Pet. at 67, 70, 71-76, 80, 111-12, 114-18, 120, 122. The Commission has held that NEPA demands no terrorism inquiry. *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 N.R.C. 124, 126 (2007). Nevertheless, NUREG-2157 includes a discussion of the impacts of a terrorist attack. NUREG-2157, § 4.19.

[89] 10 C.F.R. § 72.214. *See also* Certificate of Compliance No. 1014, Amendment 12 (Jan. 29, 2019) (ADAMS Accession No. ML18355A378); Final Safety Evaluation Report, Docket No. 72-1014, Holtec International HI-STORM 100 Multipurpose Canister Storage System, Certificate of Compliance No. 1014, Amendment 12 (Nov. 28, 2018) at 6 (ADAMS Accession No. ML18355A383) ("HI-STORM 100 SE"); List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision, Direct Final Rule, 67 Fed. Reg. 14,627 (Mar. 27, 2002) (amendment allowing storage of HBF).

Pilgrim Watch refers to the potential for salt induced stress corrosion cracking of casks. Pet. at 77. The potential for chloride induced stress corrosion cracking ("CISCC") was reviewed as part of the certification for the HI-STORM 100 system. HI-STORM 100 SE at 26. Pilgrim Watch also alleges, inaccurately, that "no current technology exists to inspect, repair, or replace cracked canisters." Pet. at 77. Pilgrim Watch refers to a statement by Holtec's CEO, Dr. Kris Singh (Pet. at 77) but the video cited (Pet. at 77 n. 83) is not a video of Dr. Singh. Presumably, Pilgrim Watch intended to refer to the video at https://www.youtube.com/watch?v=euaFZt0YPi4. In this video, Dr. Singh expresses his opinion that it is impractical to repair a canister, but he makes no statement that canisters cannot be inspected or repackaged (or even that a repair is impossible). Further, as Dr. Singh explains in this video, in the most unlikely circumstance that a canister were to develop a leak, the canister could be easily isolated in a cask providing a further confinement boundary, which would be a more pragmatic solution than a repair. *See id.*

### 3. Pilgrim Watch's Additional Allegations Regarding the Adequacy of the Decommissioning Fund Are Speculative and Conclusory, Unsupported by Any Expert Opinion, and Unsupported by Any Adequate Basis or Information Demonstrating a Genuine Material Dispute with the Application.

The remainder of Pilgrim Watch's allegations in Contention 1 all represent conclusory and unsupported speculation that the funds in the NDT may be insufficient if any of "multitudinous additional costs" are incurred. Pet. at 20. According to Pilgrim Watch, the reasons for a potential shortfall include (1) the alleged inadequacy of the contingency allowance, (2) the possibility that decommissioning costs might rise faster than inflation, (3) the possibility that DOE might fail to remove all spent fuel by 2063, (4) the possibility that unknown radiological or non-radiological contamination might be discovered, (5) costs of managing low-level radioactive waste, (6) the possibility of fires in systems, structures and components containing radioactive and hazardous materials, (7) the possibility of costs resulting from climate change, (8) the possibility that DOE might require repackaging of spent nuclear fuel into new containers, (9) the possibility of delays in work schedule leading to increased cost, (10) the possibility of costs of from pending state-law requirements, (11) the possibility that the NRC might not grant the exemption to use the NDT for spent fuel management and site restoration, (12) the possibility that other exemption requests might not be transferrable, (13) the possibility of a radiological accident at the site, and (14) the baseless claim that no funding assurance is provided for decommissioning the ISFSI. *Id.* at. 20-21.

None of these claims is sufficiently supported, particularly when viewed through the lens of the Commission's strict contention admissibility criteria. Most of these claims just represent Pilgrim Watch's unsupported opinion – no opinion from any expert supports the assertions. Further, a petitioner must explain the significance of any factual information upon which it

relies, particularly as it relates to the application in question.[90] Pilgrim Watch misses the mark in this respect too. Specifically, Pilgrim Watch fails to explain *how* the alleged sources of potential cost overruns apply specifically to Pilgrim, how they are unaccounted for in the DCE, and why they could result in a significant shortfall in decommissioning funding, especially in light of the comprehensive NRC oversight, which includes requirements for annual review and adjustment, if necessary, of funding assurance, and prohibits withdrawals from nuclear decommissioning funds that would inhibit the ability of the licensee to complete funding of shortfalls necessary to ensure the availability of funds to release the site. Almost all of the postulated sources of potential cost overruns cited by Pilgrim Watch could apply to any decommissioning power reactor. Nor, as already discussed, do they provide any demonstration that Holtec Pilgrim could not adjust funding if necessary.

a. Pilgrim Watch's Concern with the Contingency Allowance Raises No Genuine Material Dispute or Admissible Issue

The DCE includes a 17 percent contingency allowance that has been added to the license termination (radiological decommissioning), site restoration and spent fuel management cost estimates (with the exception of the cost estimate for ISFSI decommissioning, to which a 25% contingency allowance is added).[91] This amounts to approximately $165 million in contingency. Therefore, in addition to the substantial conservatism provided by not crediting any DOE recoveries in the cash flow analysis, there is also considerable conservatism in the DCE. The large contingency allowance was developed rigorously, as described in the DCE, to address both uncertainty in

[90] *See Fansteel, Inc.* (Muskogee, Okla., Site), CLI-03-13, 58 N.R.C. 195, 204 (2003) (rejecting a contention regarding decommissioning funding assurance where petitioner relied on its brief reference to applicant's "Disclosure Statement and Reorganization Plan" without explaining how that document undermined the applicant's assurance of funding).

[91] DCE at 41.

estimates (such as uncertainty in site conditions, complexity of the project, and pricing), as well as the risk of discrete events.[92]

Likely recognizing that this large contingency belies Pilgrim Watch's concerns with uncertainties, Pilgrim Watch attempts to discount it, but its claim raises no genuine dispute with the adequacy of or conservatism in the DCE. Pilgrim Watch alleges that because the contingency allowance is expected to be fully consumed, none of the contingency allowance would be available to cover "any of the . . . myriad costs that Holtec's DCE and PSDAR have essentially ignored." Pet. at 22.[93] The DCE, however, clearly states that the contingency allowance is established based on evaluation of the impact of both uncertainty and discrete risk events on cost and schedule, to quantify schedule and cost reserves.[94] The statement that the contingency allowance is expected to be fully consumed[95] simply means that some of these uncertainties will probably materialize and therefore the projected expenditures in the DCE (and cash flow analysis) include an appropriate level of contingency to take such unforeseen impacts on cost and schedule into account. It does not mean that they are unaccounted for. Pilgrim Watch seems to be criticizing the DCE failing to recognize that additional costs will arise, and then criticizing the DCE for including a contingency allowance that does just that. Further, the assumption that the contingency allowance will be expended is very common and included in numerous

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92 *Id.* at 39-41.

93 Pilgrim Watch alleges that 10 C.F.R. § 72.30(b)(2)(ii) requires that "a decommissioning plan must contain … [a]n adequate contingency factor" (Pet. at 21), but that rule applies only to the decommissioning cost estimate for the ISFSI. As stated in the DCE, the decommissioning cost estimate for the ISFSI includes a 25% contingency allowance. DCE at 25, 41. Pilgrim Watch does not provide any information indicating that this added contingency allowance for ISFSI decommissioning is inadequate.

94 DCE at 36, 39. Estimate uncertainties takes into account factors such as uncertainty in expected site conditions, stakeholder/regulatory requirements, complexity, productivity, pricing, and similar factors. *Id.* at 40.

95 DCE at 41.

decommissioning cost estimates provided to the NRC,[96] including Entergy's SAFSTOR-based DCE.[97]

Moreover, Pilgrim Watch fails to demonstrate that its concern with the amount of the contingency allowance is in any way material to the adequacy of the NDT to fund completion of decommissioning. As previously stated, the cash flow analysis in the Application shows that over $200 million will remain in the trust after completion of partial site release (*i.e.,* after decommissioning all of the site other than the ISFSI). Further, it bears repeating that Pilgrim Watch ignores the much greater conservatism identified in the Application, consisting of Holtec Pilgrim's ability to seek recovery from DOE of about $500 million in spent fuel management costs.[98] Consequently, because Pilgrim Watch does not address or dispute this conservatism identified in the Application, Pilgrim Watch fails to demonstrate that its concern with the contingency allowance is in any way material.

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[96] *See, e.g.*, Updated Site-Specific Decommissioning Cost Estimate for the Crystal River Unit 3 Nuclear Generating Plant (May 2018) at xi (ADAMS Accession No. ML18178A181); Fort Calhoun Station, Site Specific Decommissioning Cost Estimate (Feb. 2017) at xii (ADAMS Accession No. ML17089A759); Decommissioning Cost Analysis for the Oyster Creek Nuclear Generating Station (March 2016) at xii (ADAMS Accession No. ML16090A067); Vermont Yankee Nuclear Power Station, Site Specific Decommissioning Cost Estimate (Dec. 2014) at xii (ADAMS Accession No. ML14357A110); Decommissioning Cost Analysis for Three Mile Island Unit 2 (Dec. 2014) at x (ADAMS Accession No. ML15086A337); Decommissioning Cost Analysis for the Zion Nuclear Power Station (Feb. 2007) at x (ADAMS Accession No. ML090750564); Millstone Nuclear Power Station Unit No. 1 Irradiated Fuel Management Plan and Site-Specific Decommissioning Cost Estimate (July 17, 2000), Attachment 2 at viii (ADAMS Accession No. ML003733809); Decommissioning Cost Study for the Humboldt Bay Power Plant Unit 3, 2006 SAFSTOR (Feb. 2002) at ix (ADAMS Accession No. ML041240049).

[97] Pilgrim Nuclear Power Station, Post-Shutdown Decommissioning Activities Report Prepared on Behalf of Entergy Nuclear Generation Company by TLG Services (Nov. 2018), Att. 1 (PNPS Site-Specific Decommissioning Cost Estimate) (ADAMS Accession No. ML18320A034) ("Contingency funds are expected to be fully expended throughout the program. As such, the inclusion of contingency is necessary to provide assurance that sufficient funding will be available to accomplish the intended tasks.").

[98] LTA, Encl. 1 at 18.

b. Pilgrim Watch's Concern with the Possibility of Cost Escalation Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch's speculation that decommissioning costs might escalate faster than inflation (Pet. at 22-26) lacks any basis applicable to the Application and is not supported by information demonstrating any genuine material dispute with the Application. Pilgrim Watch provides no expert opinion supporting its speculation, but instead relies solely on two sources: a previous NRC question and answer ("Q&A") on decommissioning financial assurance, and two reports by Callan Associates. Neither of these sources is material to the DCE or the cash flow analysis in the Application.

The NRC Q&A[99] on which Pilgrim Watch relies (Pet. at 23) discusses the escalation of the NRC formula amounts, based on NUREG-1307.[100] It does not address the escalation of a site-specific estimate. Further, it discusses escalation using the NUREG-1307 values over a 20-year period.[101] It does not address the amount by which a site-specific estimate would change over a shorter DECON period (such as the 6-year DECON period on which the cost-estimate in the Application is based). More importantly, this Q&A is entirely irrelevant to a cost estimate that is based on actual pricing information. For example, the greatest source of escalation in the NUREG-1307 formulas has been waste burial costs.[102] Here, the Application clearly states that "Disposal facilities were selected, and pricing was confirmed."[103] Pilgrim Watch provides no explanation why a cost estimate where all of the site other than the ISFSI will be

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[99] Pilgrim Watch provides no citation, but the Q&A may be found in SECY-11-0133, Encl. 5 (ADAMS Accession No. ML111950031).

[100] *Id.* at 7 (Q&A 20).

[101] *Id.*

[102] Draft Pacific Northwest National Laboratory Study, Assessment of the Adequacy of the 10 CFR 50.75(c) Minimum Decommissioning Fund Formula (Nov. 2011) at 1-3 (ADAMS Accession No. ML13063A190).

[103] LTA, Encl. 1, Att. D (2nd unnumbered page); DCE at 26. The DCE also includes consideration of cost and pricing information for a well-defined work scope by a specialty contractor. DCE at 37.

decommissioned within six years, and where pricing for items such as waste disposal and work by specialty contractors has been confirmed, would be subject to any significant escalation. Further, as previously discussed, Pilgrim Watch does not explain why its concerns are material in light of the Commission's annual funding reporting and adjustment requirements, and the availability of a substantial additional cash flow from DOE recoveries of costs if an adjustment is necessary.

Similarly, the Callan reports do not support Pilgrim Watch's concern. Pilgrim Watch refers to Callan's 2015 report as reflecting a 60% increase since 2008, which Pilgrim Watch describes as an annual rate of about 6%. Pet. at 24 (citing page 3 of Callan's 2015 report). Pilgrim Watch conveniently omits mentioning that this is not a matter of simple cost escalation as the report explains that "[p]art of the increase is the result of a greater use of site-specific estimates that include costs, such as spent fuel management and site restoration, which go beyond the NRC scope of decommissioning."[104] Because the reported increase reflects changes in the scope – namely the greater use of site-specific estimates that include costs such as spent fuel management and site restoration, in contrast to earlier estimates that were limited to license termination costs – this observed increase in reported estimates cannot be applied to the DCE or the cash flow analysis in the Application. The same is true regarding Pilgrim Watch's reference to Callan's 2018 report as showing an 80% increase from 2008 through 2017. Pet. at 24. As this includes all but one year of the period examined in the 2015 report and reflects only a 1% total increase in the three years after the period in the 2015 report, the overall increase (and Pilgrim Watch's calculation of the annual rate) again reflects significant changes in the scope of the 2015

[104] Callan Investments Institute, 2015 Nuclear Decommissioning Funding Study, at 3, available at https://www.callan.com/wp-content/uploads/2017/01/Callan-2015-Nuclear-Decommissioning-Funding-Study.pdf.

reported estimates resulting from adding spent fuel management and site restoration to their scope. Nor can one tell whether the estimates that Callan examined are for DECON or SAFSTOR or some combination of the two.[105]

Moreover, as with the NRC Q&A, Pilgrim Watch provides no explanation why long-term adjustments in cost estimates for work often in the distant future would have any bearing on the estimate in the Application which reflects a well-established short-term scope for DECON, particularly one that reflects confirmed pricing for waste disposal and other work scope. And again, Pilgrim Watch does not explain why its concerns are material in light of the Commission's annual funding reporting and adjustment requirements, and the availability of a substantial additional cash flow from DOE recoveries if an adjustment is necessary. In this respect, Pilgrim Watch argues that if spent fuel management costs were to escalate by 4 percent over inflation, the cost would increase by a large amount. Pet. at 25. But spent fuel management does not involve increases in waste disposal costs or significant energy costs similar to those applicable to decommissioning costs, so there is no apparent basis for Pilgrim Watch's extrapolation. In any event, if spent fuel management costs escalate, so will DOE recoveries. In sum, Pilgrim Watch demonstrates no genuine dispute with the estimates in the Application or with Holtec Pilgrim's ability to make adjustments to funding assurance if necessary.

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[105] Indeed, Pilgrim Watch notes that there was a decrease in estimated cost in 2017 attributable to a number of reactors deciding to decommission rapidly after shutdown (*i.e.*, pursue DECON) rather than waiting until the end of the 60-year decommissioning period (*i.e.*, SAFSTOR). Pet. at 24 n.12. This suggests that many of the site-specific estimates that Callan examined were for SAFSTOR, and thus reflected a long decommissioning period. Pilgrim Watch asserts without any support: "This decrease is an overall number; and it does not reflect any decrease in a reactor's site-specific decommissioning costs." *Id.* To the contrary, it reflects substantial changes in the method of decommissioning on which examined estimates were based, and the obvious reduction in estimates that occurs when an estimate based on SAFSTOR is changed to one based on DECON, eliminating a long period of storage.

c. Pilgrim Watch's Concern with the Assumed Schedule for Removal of Spent Fuel Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch's claims regarding the possibility that DOE might fail to remove all spent nuclear fuel by 2062 (Pet. 26-31) raise no genuine material dispute with the Application. Pilgrim Watch alleges that "there is no reasonable basis for Holtec's assumption that 'DOE will commence acceptance of PNPS's spent fuel in 2030.'" Pet. at 27. This allegation ignores the explanation and justification in the DCE.

> HDI assumes a spent fuel management plan for the Pilgrim spent fuel that is based on the assumption that DOE will commence acceptance of PNPS's spent fuel in 2030 and, assuming a maximum rate of transfer described in the DOE Acceptance Priority Ranking & Annual Capacity Report (Reference 10), the spent fuel is projected to be fully removed [from] the Pilgrim site in 2062, consistent with the current DOE spent fuel management and acceptance strategy (References 9 and 10).[106]

Thus, HDI's assumptions are based on the current DOE strategy and described acceptance rate. Consistent with the DOE strategy, the projection does not depend on a final repository,[107] but rather assumes that DOE could commence acceptance after a fuel storage facility begins operation.[108]

Pilgrim Watch argues that the DOE strategy is nothing more than a plan and requires various governmental approvals (Pet. at 28-30), but it provides no expert opinion or other supporting information indicating that DOE's strategy will not be achieved or that reliance on DOE's strategy is unreasonable. Further, as previously discussed, the NRC does not require

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[106] DCE at 24. Reference 9 is U.S. DOE, Strategy for the Management and Disposal of Used Nuclear Fuel and High Level Radioactive Waste (Jan. 2013). *See* DCE at 52. Reference 10 is U.S. DOE/Office of Civilian Radioactive Waste Management, Acceptance Priority Ranking & Annual Capacity Report, DOE/RW-0567 (July 2004). *See id.*

[107] DCE at 43.

[108] DCE at 24.

such absolute certainty in a licensee's financial projections but instead accepts financial assurance as providing requisite reasonable assurance when based on plausible assumptions and forecasts.[109] Consequently, Pilgrim Watch's unsupported speculation that a lengthier period of storage will be required provides no basis to challenge HDI's and Holtec Pilgrim's funding plan.

Pilgrim Watch also asserts that nuclear waste may be stored at Pilgrim indefinitely and refers to the Continued Storage Rule (Pet. at 30), but the analysis of environmental impacts codified in the Continued Storage Rule, bounding all scenarios to address the requirements of the National Environmental Policy Act, is distinct from and irrelevant to the DCE and cash flow analysis required to determine whether Holtec Pilgrim and HDI meet the financial assurance requirements under the NRC regulations and the Atomic Energy Act. Moreover, responding to the same argument in CLI-16-17, the Commission stated that "with regard to the fuel-costs claim, while the Continued Storage generic environmental impact statement acknowledges for purposes of NEPA that fuel could remain on site indefinitely, it finds the short-term period of storage most likely."[110]

Here, the DCE and cash flow analysis are based on the best information available from DOE regarding its strategy. Pilgrim Watch's unsupported attempts to cast doubt on the DCE's reasonable and plausible assumptions provide an insufficient basis to challenge the reasonable assurance provided by Holtec Pilgrim's and HDI's financial projections. In any event, Pilgrim Watch does not demonstrate that its concern is material, as any further delay in DOE acceptance would result in liability of and recovery from DOE of the added costs of spent fuel storage.

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[109] *Seabrook Station*, CLI-99-6, 49 N.R.C. at 221-22.

[110] *Vermont Yankee*, CLI-16-17, 84 N.R.C. at 118 (footnote omitted).

d. Pilgrim Watch's Concern with the Possibility of Unknown Radiological or Non-Radiological Contamination Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch contends that Holtec's cost estimates are based on the incorrect assumption that the Pilgrim site is essentially "clean" (Pet. at 31), but Pilgrim Watch does not identify any statement in the Application or Revised PSDAR describing the site as clean or basing the DCE on this assumption. Pilgrim Watch has simply invented and is taking issue with its own characterization, and in so doing, fails to address or demonstrate any genuine dispute with the Application.

As a threshold matter, the possibility of non-radiological contamination is not within the NRC's jurisdiction. Nor is it material to the adequacy of the nuclear decommissioning fund. The NRC rules at 10 C.F.R. §§ 50.82(a)(8)(i)(B) and (C) prohibit withdrawals from a nuclear decommissioning trust that would reduce the value of the trust below the amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise, or that would inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license. Therefore, the possibility that some unforeseen site restoration costs might arise could not affect the adequacy of the nuclear decommissioning trust to fund the completion of decommissioning.

Regarding the possibility of unknown radiological contamination, much of Pilgrim Watch's concern appears to be that a complete site characterization has not been performed (Pet. at 31-33), but this concern ignores information in the Application and DCE indicating that the HDI used plant data and historical information, thus basing its estimate on site conditions

determined after extensive due diligence.[111] Further, Pilgrim Watch fails to explain why the NRC's record-keeping, monitoring and reporting requirements are insufficient (and to the extent Pilgrim Watch is suggesting that they are not, Pilgrim Watch appears to be impermissibly challenging the NRC rules). Those rules require a licensee to maintain:

> Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when significant contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.[112]

This provision in the NRC rules is specifically intended to prevent incomplete knowledge that might result in underestimation of decommissioning costs.[113] Pilgrim Watch also ignores the NRC's Decommissioning Planning Rule, which requires *inter alia* licensees to conduct surveys of areas, including the subsurface, that are reasonable to evaluate concentrations or quantities of residual radioactivity, and to maintain the records from surveys describing the location and amount of subsurface residual radioactivity identified at the site with the records important to decommissioning required by 10 C.F.R. § 50.75(g).[114] This rule is intended to ensure that a licensee has a reasonably accurate estimate of the extent to which residual radioactivity is present at the facility, particularly in the subsurface soil and groundwater, to improve decommissioning planning and adequately ensure that a decommissioning fund will cover the costs of decommissioning.[115]

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[111] LTA, Encl. 1, Att. D (2nd unnumbered page); DCE at 7, 36-37, 48. *See also* Revised PSDAR at 18.

[112] 10 C.F.R. § 50.75(g)(1).

[113] General Requirements for Decommissioning Nuclear Facilities, Final Rule, 53 Fed. Reg. 24,018, 24,026 (June 27, 1988).

[114] 10 C.F.R. § 20.1501.

[115] Decommissioning Planning; Final Rule, 76 Fed. Reg. 35,512, 35,514 (June 17, 2011) ("Decommissioning Planning Rule"). "The purpose of this final rule is to improve decommissioning planning and thereby reduce the

Further, even before the NRC's Decommissioning Planning Rule was promulgated, Pilgrim was monitoring groundwater pursuant to an industry Ground Water Protection Initiative. Currently, a total of 23 wells are being sampled on a routine basis, as reported in Pilgrim's most recent Annual Radioactive Effluent Release Report.[116]

Pilgrim Watch fails to address or provide any genuine dispute with the adequacy of this information readily available on the docket. While Pilgrim Watch suggests that reports under the Radiological Environmental Monitoring Program and Groundwater Initiative are unreliable (Pet. at 50), it bases this conclusory assertion solely on the 2006 recommendations of NRC's Liquid Radioactive Release Lessons Learned Task Force that the NRC should require adequate assurance that leaks and spills will be detected before radionuclides migrate offsite via an unmonitored pathway. As the recommendations of this Task Force led to the NRC's Decommissioning Planning Rule requiring subsurface monitoring,[117] the 2006 Task Force report does not raise any genuine dispute with current monitoring, reporting and recordkeeping.

As previously discussed, much of Pilgrim Watch's concern that the site is being characterized as "clean" (a characterization not found in the Application or Revised PSDAR) focuses on whether prior environmental impact statements make this assumption and therefore fail to bound the impacts of decommissioning Pilgrim. *See* Pet. at 33, 34, 36. As previously discussed, this concern is outside the scope of this proceeding.[118] To the extent Pilgrim Watch is claiming that the DCE may be inaccurate based on actual conditions at Pilgrim, Pilgrim Watch's

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likelihood that a site will become a legacy site . . .", *i.e.*, "a facility that is decommissioning and has an owner that cannot complete the decommissioning work for technical or financial reasons." *Id.* at 35,516.

[116] Annual Radioactive Effluent Release Report for January 1 through December 31, 2017 (May 15, 2018), Appendix B (Results of Onsite Groundwater Monitoring Program) at 69 (ADAMS Accession No. ML18141A428).

[117] Decommissioning Planning Rule, 76 Fed. Reg. at 35,513.

[118] *See supra* note 83, and discussion on pages 23-25.

claims are conclusory and inadequately supported, failing to address or dispute the existing, docketed information on current subsurface conditions and for this reason failing to demonstrate any genuine material dispute with the Application. As previously noted, a petitioner has a strict obligation to examine the publicly-available documentary material pertaining to the facility to ascertain whether there is a basis for its contentions.[119]

Pilgrim Watch alleges that the actual cost of decommissioning the site "will be more, probably far more than Holtec has estimated" (Pet. at 35), but its Petition does not support this bald speculation. Pilgrim Watch asserts (without citation or other support) that previously undiscovered strontium-90 doubled the cost of decommissioning Connecticut Yankee, and Maine Yankee encountered pockets of highly-contaminated groundwater leading to cost increases. *Id.* But these decommissioning projects preceded both the subsurface monitoring now required by the Decommissioning Planning Rule and the industry's groundwater protection initiative. Consequently, Pilgrim Watch does not explain why this prior experience is material. Nor does Pilgrim Watch make any effort to compare the DCE against the cost of completed decommissioning projects. In this regard, the DCE states that the Pilgrim "decommissioning cost estimate for license termination, spent fuel management and site restoration activities [was compared] to costs from similar activities from seven decommissioned BWR nuclear power plants."[120] Pilgrim Watch does not address and provides no basis to dispute this benchmarking.[121]

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[119] *See supra* note 55.

[120] DCE at 37.

[121] Pilgrim Watch alleges that other plants have ended up costing much more than what was estimated and refers to Diablo Canyon and San Onofre. Pet. at 35. San Onofre has not completed decommissioning, and decommissioning of Diablo Canyon has not yet begun. Pilgrim Watch cites the Summary Table in SECY-13-0105 (Pet. at 35 n.21). That table shows that the site-specific estimates for Diablo Canyon and San Onofre are greater than the formula amounts. SECY-13-0105, Summary Findings Resulting from the Staff Review of the

Indeed, Pilgrim Watch provides no concrete and site-specific information indicating that Applicants have overlooked significant sources of radiological or non-radiological contamination at the Pilgrim site. Nor, as discussed below, has Pilgrim Watch shown that there is any onsite contamination that would cause site remediation and restoration costs to exceed the DCE.

Pilgrim Watch states that "over the years, Pilgrim has buried contaminated materials on site and has had many leaks and releases," and that "[d]ue to these leaks, many lethal radionuclides, including for example tritium, manganese54, cesium-137, Sr-90, I-131, cobalt-60, and neptunium were found in the surface water, groundwater, and soils at Pilgrim at levels exceeding 'background' levels." Pet. at 36 (footnote omitted). Pilgrim Watch's reference to buried material presumably refers to the disposal of slightly contaminated construction soil, that, discussed in Appendix C of the Annual Radioactive Effluent Release Report, was approved by the NRC pursuant to 10 C.F.R. § 20.302 and would contribute a dose of less than 0.01 mrem per year.[122] Thus, the burial is clearly known and clearly insignificant, and Pilgrim Watch provides no information to the contrary. Pilgrim Watch provides no basis for its claim that there have been many leaks or that they resulted in anything "lethal" or even significant. Pilgrim Watch's Petition does refer to a few known releases, as discussed below, but provides no expert opinion, sources, or other references showing that they would affect the DCE or are otherwise material.

Pilgrim Watch states that neptunium releases into Cape Cod Bay were reported by Stuart Shalat (*id.* n.24) but does not provide any affidavit or reference to support this claim. Further,

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2013 Decommissioning Funding Status Reports for Operating Power Reactor Licensees (Oct. 2, 2013), Summary Table (ADAMS Accession No. ML13266A084). It does not show that actual decommissioning costs were more than site-specific cost estimates. Further, Pilgrim Watch provides no explanation why the estimates for large, multi-unit pressurized water reactors in California (owned by public utilities subjected to added California public utility commission requirements) are material to a much smaller, single unit boiling water reactor in Massachusetts.

[122] *See supra* note 116.

Pilgrim Watch provides no explanation of the levels or significance of these alleged releases, how they relate to residual radioactivity at the site, or other information explaining how they would affect DCE.

Pilgrim Watch alleges that Pilgrim's 1982 Annual Radiological Environmental Report indicates "considerable offsite contamination" and argues that "if there was offsite contamination, the only reasonable assumption is that there was onsite contamination also." Pet. at 39. Pilgrim Watch points to two measurements of cesium-137 in vegetation samples, which Pilgrim Watch characterizes as 1,000,000 times in excess of the concentrations expected. *Id.* at 40. In fact, what the 1982 Annual Report states is:

> The absence of Cs-134 at both these locations and the fact that the measures Cs-137 concentrations are greater than 1,000,000 times what would be expected at these locations based on releases from PNPS-1 *strongly indicates that fallout, not PNPS-1, is the primary source of this Cs-137*. Therefore, it is extremely unlikely that there was any environmental impact on vegetation due to the operation of PNPS-1.[123]

Pilgrim Watch does not provide any information disputing this conclusion and thus fails to support its baseless claim.

Pilgrim Watch states that NRC inspection reports in 1982 confirm the release of resin, but Pilgrim Watch does not provide these reports or explain the significance of the release. Pilgrim Watch provides no expert opinion or other references or sources that would show that this occurrence would have any material effect on the DCE.

Pilgrim Watch states that in January 1988, a 5,000 cubic yard pile of dirt containing cesium-134, cesium-137, and cobalt-60 was found in a parking lot near the reactor. Pet. at 41. Pilgrim Watch bases this statement on a Boston Globe article (*id.*), a link to which is provided in note 30 to Pilgrim Watch Exhibit 4. Pilgrim Watch does not provide any information relating to

[123] Pilgrim Watch Ex. 2 at 3-80.

the levels or significance of the radioactivity. In fact, the Boston Globe article indicates that they were "completely inconsequential" and "within federally accepted standards" and reported that the NRC "ha[d] no safety concern."[124]

Pilgrim Watch alleges that Pilgrim's Groundwater Program has shown significant radioactive contamination (tritium, cesium-137, cobalt-60, manganese-54) in Pilgrim's soil. Pet. at 44. Pilgrim Watch refers to contamination resulting from separation of an underground line leading to the discharge canal (the neutralization sump discharge line) discovered in 2013, and refers to a number of reports of Pilgrim's monitoring that are provided to the Massachusetts Department of Public Health and made publicly available. *See* Pet. at 45-46, nn. 40-46.[125] Rather than indicating that contamination is unknown, these reports in fact show how thoroughly the release has been monitored. Further, these monitoring reports show that the level of radionuclides in soil samples near where the line separated have trended downwards. By May 2015, manganese-54 and cobalt-60 were not detected above reporting levels in any of the ten soil borings. Cesium-137 was detected in the vicinity of the catch basis at concentrations ranging from non-detectable to 2,400 piCi/kg. In additional analyses for hard-to-detect radionuclides including iron-55, nicket-63, and strontium-90, no hard-to-detect radionuclides were detected above the reporting levels.[126]

Pilgrim Watch does not provide any information demonstrating that the reported levels of Cs-137 would have any effect on the DCE. One comparison that could be made is with the

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[124] Pilgrim Watch Ex. 4, n.30 (https://jonesriver.org/getfile/ccbw/2012/06/1988.01.21._BG_RadioactiveDirtPile.pdf).

[125] All of the reports are available at https://www.mass.gov/lists/environmental-monitoring-data-for-tritium-in-groundwater-at-pilgrim-nuclear-power-station.

[126] Pilgrim Nuclear Power Station (PNPS): Tritium in Groundwater Monitoring Wells**:** PNPS Updates as of May 12, 2015 at 5, available at https://www.mass.gov/files/documents/2016/07/nr/pnps-update-05-12-15.pdf.

conservative soil surface screening value that may be used under NRC guidance to demonstrate compliance with the NRC's site release criteria.[127] The soil surface screening value for Cs-137 is 11 pCi/g[128] (corresponding to 11,000 pCi/kg), nearly five times greater than the most recent concentration reported at Pilgrim.[129] While the applicability of the screening values will depend on site conditions, such as location and distribution of radionuclides or other factors that might necessitate site-specific modeling, this comparison nevertheless highlights the fact that Pilgrim Watch has provided no expert opinion, reference, or other source that would explain why any of the reported data would require remediation of a magnitude that would demonstrate a genuine material dispute with the DCE.

Pilgrim Watch's discussion of tritium levels in groundwater similarly fails to demonstrate any genuine material dispute with the DCE or the cash flow analysis in the Application. Pilgrim Watch correctly observes that by January 2014, after the separation of the neutralization sump discharge line, measurements of tritium reached as high as 70,000 pCi/L. Pet. at 45.[130] Pilgrim Watch fails to mention that within two weeks, the levels of tritium had declined to about 2,500

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[127] NUREG-1757, Consolidated Decommissioning Guidance, Vo1. 2, Characterization, Survey and Determination of Radiological Criteria (Rev. 1, Sept. 2006), Appendix H (Criteria for Conducting Screening Modeling Evaluations) (ADAMS Accession No. ML063000252). Oddly, Pilgrim Watch compares the concentrations of radionuclides in *soil* with the MCLs for radionuclides *in drinking water*. *See* Pet. at 47. Pilgrim Watch provides no explanation why the MCLs should apply or are in any way meaningfully compared with soil concentrations. Obviously, the ingestion pathway and therefore dose consequences are very different.

[128] *Id.*, App. H at H-8 (Table H-2).

[129] The conservative soil surface screening level for Co-60 is 3.8 pCi/g (3,800 pCi/kg) (*id.*), which is also greater than the 1,150 pCi/kg that Pilgrim Watch identifies as being measured shortly after the discharge line separated. *See* Pet. at 45.

[130] Pilgrim Nuclear Power Station (PNPS): Tritium in Groundwater Monitoring Wells, PNPS Updates as of February 7, 2014 at 4 (MW219 Results), available at https://www.mass.gov/files/documents/2016/07/vv/pnps-update-02-07-14.pdf.

piCi/L,[131] – well below the safe drinking water standard.[132] Nor does Pilgrim Watch identify any current measurement of tritium that would affect Pilgrim's ability to meet the NRC's site release criteria or affect the DCE. As reflected in the most recent Annual Radioactive Effluent Release Report, all measurements in 2017 were below the MCL.[133] Further, the MCL corresponds to a 4-millirem standard,[134] far below the 25-millirem standard for unrestricted release established in the NRC rules.[135] In short, Pilgrim Watch's statements and the reports it cites establish (1) that there is a wealth of groundwater monitoring data, and (2) there is no identified current condition that would materially affect the DCE and the cash flow analysis in the Application.[136]

In short, there is no basis to assume that radiological contamination has been "overlooked" as Pilgrim Watch claims (Pet. at 35, 40). Similarly, because Pilgrim Watch has not

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[131] *Id.*

[132] The EPA's safe drinking water standard for tritium is a 20,000 pCi/l maximum contaminant level ("MCL") that would produce a total body or organ dose of 4 millirem/year. *See* Interim Primary Drinking Water Regulations, 41 Fed. Reg. 28,402, 28,404 (July 9, 1976).

[133] Annual Radioactive Effluent Release Report for January 1 through December 31, 2017, *supra* note 116, at Appendix B. The report showed concentrations of tritium detected in the onsite wells in 2017 ranging from non-detectable at less than 229 pCi/L, up to a maximum concentration of 6,030 pCi/L (*id.* at 70) – well below the drinking water standard. Further, as stated in the Annual Radioactive Effluent Release Report, there was no indication of any plant-related radioactivity in the groundwater samples, other than tritium. *Id*. at 69. Hard-to-detect radionuclides were non-detectable in all of the wells sampled and analyzed during 2017. *Id. See also* Mass. Department of Public Health, Pilgrim Nuclear Power Station Tritium Groundwater Investigation Update (May 1, 2018) (summarizing tritium measurements), available at https://www.mass.gov/files/documents/2018/11/30/pnps-may-1-2018-update.pdf.

In 2018, a leak occurred in a feedwater check valve, and migrated into groundwater through the seismic gap between the reactor building and turbine building, resulting in elevated levels of tritium in one of the monitoring wells reaching about twice the MCL. The leak was identified and repaired, and the levels of tritium in the monitoring well have returned to concentrations that are a fraction of the MCL. This will be reflected in the Annual Radioactive Effluent Release Report for January 1 through December 31, 2018, expected to be submitted to the NRC in May.

[134] *See supra* note 132.

[135] 10 C.F.R. § 20.1402.

[136] For example, the monitoring reports show that a monitoring well in the vicinity of a 1988 spill to which Pilgrim Watch also refers (Pet. at 46) continues to be sampled weekly. Pilgrim Nuclear Power Station (PNPS): Tritium in Groundwater Monitoring Wells PNPS Updates as of March 15, 2013, at 2-3, available at https://www.mass.gov/files/documents/2016/07/wk/pnps-update-3-15-13.pdf. Pilgrim Watch has all of this data available to it but makes no showing that the site conditions in the vicinity of the 1998 spill are unknown or significant.

"shown how the identified contaminants will elevate decommissioning costs," it has not demonstrated that the cash flow analysis in the Application is based on "unreasonable assumptions."[137] Further, Pilgrim Watch has provided no explanation why the records required by 10 C.F.R. § 50.75(g), including the results of subsurface monitoring at Pilgrim, should be assumed to be inaccurate, and thus no basis supporting its claim that a site characterization is required now.

Moreover, Pilgrim Watch's argument that Holtec must complete a "full" site investigation and characterization prior to the proposed license transfer reflects a fundamental misunderstanding of—and improper challenge to—the NRC's license termination regulations. Those regulations require that the LTP, to be submitted at least two years before the scheduled termination of the license, 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.[138] This is precisely the type of information that Pilgrim Watch (wrongly) claims is required now.

Pilgrim Watch makes a few claims regarding non-radiological concerns, but these claims too fail to demonstrate any genuine material dispute with the Application. As previously stated, site restoration costs are beyond NRC's jurisdiction, and immaterial because of the NRC rules prohibiting any withdrawal from the NDT that would inhibit the ability of the licensee to complete funding of any shortfall needed to release the site and terminate the license. Further,

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[137] *Vermont Yankee*, CLI-16-17, 84 N.R.C. at 118-19.

[138] 10 C.F.R. § 50.82(a)(9)(i)-(ii). *See also* NUREG-1700, Rev. 2, Standard Review Plan for Evaluating Nuclear Power Reactor License Termination Plans (Apr. 2018); NUREG-1757, Rev. 1, Consolidated Decommissioning Guidance, Vol, 2, Characterization, Survey, and Determination of Radiological Criteria (Sept. 2006); Regulatory Guide 1.179, Rev. 1, Standard Format and Content of License Termination Plans for Nuclear Power Reactors (June 2011).

none of Pilgrim Watch's non-radiological concerns demonstrates any genuine dispute with the estimated site restoration costs in the DCE.

First, Pilgrim Watch suggests that the estimate for site restoration is a relatively small amount that may be limited to demolishing structures after radioactive contamination has been removed. Pet. at 34. Pilgrim Watch takes statements in the Revised PSDAR out of context. The DCE clearly indicates that it includes both demolition of uncontaminated structures *and restoration of the site*.[139] Further, Pilgrim Watch also fails to address or dispute the description of the decommissioning activities described in the Revised PSDAR, which include removal of asbestos containing material, hazardous, and universal waste.[140] And while the cost of site restoration is "relatively small" compared to the total cost estimate of $1.134 billion, or compared to the costs of radiological decommissioning and spent fuel management," Pilgrim Watch does not dispute that the estimate includes over $40 million in site restoration costs.[141] Pilgrim Watch provides no information that would indicate that this cost estimate is unreasonable. While it alleges that the discovery of PCB-contaminated materials at Yankee Rowe increased cleanup costs, Pilgrim Watch makes no effort to quantify this impact or demonstrate a potential for a material impact at Pilgrim. In this regard, as previously stated, the DCE states that it was benchmarked against similar activities from seven decommissioned BWR nuclear power plants.[142] In contrast, Pilgrim Watch provides no information indicating that HDI's estimate of site restoration costs is out of line with experience at other plants.

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[139] DCE at 48.
[140] Revised PSDAR at 11.
[141] DCE at 33.
[142] DCE at 37.

Pilgrim Watch also refers to sampling that was conducted for pollutants in several electrical vaults (Pet. at 49), as discussed in the Fact Sheet supporting EPA's 2016 Draft Authorization to Discharge under the National Pollution Discharge Elimination System. [143] These vaults were sampled because stormwater is periodically pumped to stormwater outfalls which discharge to Cape Cod Bay.[144] Pilgrim Watch does not explain why pollutants in water discharged to Cape Cod Bay, as permitted by the NPDES permit,[145] have any bearing on site restoration costs.

Finally, Pilgrim Watch claims without basis that "[n]umerous sources have reported that drums of hazardous waste were buried on the Pilgrim site in the 1980s and/or 1990s" and that "[b]arrels of chemical waste were reportedly shipped from New Jersey were (sic) buried along Power House Road (Pilgrim's access road) and then over-planted with evergreen trees." Pet. at 52. Pilgrim Watch cites a paper authored by the Jones River Watershed Association (an organization that participated with Pilgrim Watch in opposing Pilgrim license renewal). *Id.*, n.55. That paper does not refer to or identify "numerous sources," but instead cites a Pilgrim Coalition (a network of organizations that include Pilgrim Watch and the Jones River Water Association) newsletter. Pet., Ex. 4 at 34. That newsletter in turn does not refer to any barrels of waste from New Jersey buried along Power House Road or drums of hazardous waste. Instead, it merely includes a statement by one member of the Pilgrim Coalition that "I tried to uncover chemical waste that was buried near the plant but Edison had too many friends in high places for

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[143] Fact Sheet MA0003557, Draft National Pollutant Discharge Elimination System (NPDES) Permit to Discharge to Waters of the United States Pursuant to the Clean Water Act (CW) ("NPDES Fact Sheet"), available at https://www.epa.gov/sites/production/files/2016-05/documents/draftma0003557permit.pdf.

[144] *Id.*, NPDES Fact Sheet at 30.

[145] As the NPDES Fact Sheet states, "[a]lthough some of the parameter values were above water quality criteria levels, this does not take into account the dilution that would be present when these discharges mix with the cooling water flows and other stormwater flows as they get discharged to Cape Cod Bay." *Id.*

us to get anywhere despite having plenty of evidence."[146] Pilgrim Watch does not identify any evidence supporting this allegation, or any explanation or reason to believe that hazardous waste from New Jersey was sent to and buried at Pilgrim.[147]

It also bears repeating that recovery of spent fuel management costs from DOE provides a substantial additional cash flow that would allow Holtec Pilgrim to adjust funding assurance if necessary. Consequently, for that reason too, none of these concerns is material or raise a genuine dispute with the Application.

e. Pilgrim Watch's Concern with Costs of Managing Low-Level Radioactive Waste Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch incorrectly alleges that Holtec's cost estimate ignores the cost of managing low-level radioactive waste ("radwaste"). Pet. at 58. As reflected in the Application,

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[146] *See* October 2013 Pilgrim Coalition Newsletter (statement by W. Bramhall), available at http://archive.constantcontact.com/fs159/1109945140723/archive/1115182751860.html (cited in fn. 93 of Pilgrim Watch Ex. 4).

[147] Pilgrim Watch also claims that "*[t]his contamination* was the subject of public comments to the NRC in 2007" and refers to the NRC's 2007 environmental impact statement on Pilgrim license renewal (Pet. at 53), but this reference does not support Pilgrim Watch's claim. The comment to which Pilgrim Watch refers stated:

> The staff did not provide information about buried wastes on site - where they were located; how deep they were buried; packaging; chemical and radioactive composition of waste. We know for example that when Pilgrim blew its filters in 1982, there was considerable contamination. During the clean up, waste was buried on the property. Neighbors and passer-bys on Rocky Hill Road observed the operation - NRC and Entergy's staff are aware, too. The public, NRC officials and Entergy staff also are well aware of burials off the Access Road.

NUREG-1437, Supp. 29, Supplemental Environmental Impact Statement Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 29 Regarding Pilgrim Nuclear Power Station (July 2007) at A-185. This comment does not establish that any hazardous waste was buried. In response to this comment, the NRC stated:

> As part of the environmental site audit for license renewal the staff typically reviews records and reports of spills or other occurrences involving the spread of hazardous contaminants as it relates to human health and water use and quality-groundwater. During its review, the staff did not identify any new and significant information within these records that may call the Category 1 issues of human health and water use and quality-groundwater into question. Nevertheless, the requirements for keeping these records and retention programs, 10 CFR 50.75(g)(1), are to ensure that these types of areas will be identified during plant decommissioning. In addition, these regulations provide assurance that any contamination will be appropriately remediated during site decommissioning.

*Id.* at A-185 to A-186. Pilgrim Watch misleadingly characterizes the NRC's response as "not[ing] burials of hazardous waste." Pet. at 89, 104. Such repeated mischaracterizations provide no basis for a contention.

Revised PSDAR, and DCE, the DCE includes $152 million for disposal from license termination activities (*i.e.*, radwaste).[148] Pilgrim Watch does not address or provide any information disputing this estimate and therefore fails to present any genuine dispute with the Application.

Pilgrim Watch provides a figure showing waste storage containers at the site, but acknowledges that containers are almost all empty (Pet. at 58), so the relevance of this figure is not apparent. Pilgrim Watch suggests that greater-than-class-C ("GTCC") waste may be stored in these containers (*id.*), but the Revised PSDAR clearly indicates that GTCC waste will be stored in the ISFSI until it is transferred to DOE,[149] and the cost of managing this waste is clearly included in the DCE.[150] In short, Pilgrim Watch does not provide any information indicating that GTCC waste has been ignored or its cost underestimated.

Pilgrim Watch also alleges, inaccurately and without any reasonable basis or support, that "LLRW waste will remain on the Pilgrim site, like the high-level radioactive waste, until an offsite repository accepts Pilgrim's LLRW," adding that "Massachusetts does not belong to any compacts." Pet. at 59. Pilgrim Watch does not identify any difficulty in disposing of Class A waste, which is routinely disposed of at the disposal site in Clive, Utah without the need for any Compact Commission approval. Indeed, the DCE indicates that Pilgrim has "life-of-the-plant" agreements for disposal of radwaste,[151] which Pilgrim Watch fails to address or dispute. Pilgrim Watch quotes the Revised PSDAR's statement that the Texas Compact Commission's approval will be sought to dispose of Class B and C waste at Waste Control Specialists' facility in Texas (Pet. at 59, again not disputing the Application), and asserts that acceptance may be more

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[148] LTA, Encl. 1, Att. D (3rd unnumbered page); Revised PSDAR at 19 (Table 4-1); DCE at 8.

[149] *See, e.g.*, Revised PSDAR at 12, 14-15; DCE at 22.

[150] DCE at 28 (Table 3-1).

[151] DCE at 26.

expensive and not guaranteed for non-compact members. *Id.* Pilgrim Watch does not make any attempt to quantify the alleged greater expense or demonstrate its materiality, and does not provide any expert opinion, alleged facts, reference, or other source in any way suggesting that the cost of disposing of Class B and C waste has been underestimated. Moreover, Pilgrim Watch ignores the statement in the DCE that "Holtec currently holds a contract with WCS that permits disposal of radioactive waste from any decommissioning project in the United States,"[152] and the statements that in preparing the DCE, "[d]isposal facilities were selected, and pricing was confirmed."[153] Similarly, Pilgrim Watch does not identify any difficulty that existing licensees, including those outside the Texas Compact, have experienced in gaining approval from the Texas Compact Commission to import Class B and C waste for disposal at the WCS disposal facility in Andrews, Texas, or provide any support whatsoever for its allegation that acceptance might not be timely. In short, Pilgrim Watch's concerns regarding disposal of radwaste are entirely speculative and unsupported.

f. Pilgrim Watch's Concern with the Possibility of Fires in Systems, Structures and Components Containing Radioactive and Hazardous Materials Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch asserts, without one whit of support, that there is a serious concern about fire protection for the structures, systems, and components containing radioactive and hazardous materials in storage (Pet. at 59) and that fires would increase mixed waste and cost (*id.*). Pilgrim Watch does not provide any expert opinion supporting these claims, any references or other sources on which it intends to rely in support of this claim, or any other information demonstrating a genuine material dispute with the Application. Pilgrim Watch's concern is

[152] DCE at 27.

[153] LTA, Encl. 1, Att. D (2nd unnumbered page); DCE at 26.

based on nothing more than unsupported speculation that fire protection might be inadequate and the consequences might be significant. Pilgrim Watch ignores the statement in the Revised PSDAR that plant deactivation activities will include removing combustibles and chemicals to permit fire protection system modifications.[154] Because any fire protection system modifications are predicated on removing combustibles and chemicals, Pilgrim Watch's concern lacks any basis and fails to demonstrate any genuine material dispute with the Application. Further, as reflected in the Application, HDI and Holtec Pilgrim will carry onsite property damage and offsite nuclear liability insurance meeting the coverage amounts required by the NRC.[155] Pilgrim Watch provides no explanation why this coverage would be insufficient in the unlikely event that a fire were somehow to occur.

g. Pilgrim Watch's Concern with the Possibility of Costs Resulting from Climate Change Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch alleges that HDI's decommissioning cost estimate fails to consider likely costs resulting from climate change (Pet. at 60), but Pilgrim Watch provides no expert opinion that would be necessary to support any assertion that added costs are "likely" or material. Pilgrim Watch merely refers to some reports, but none of those reports provide any indication that climate change would adversely affect the decommissioning of Pilgrim during the time frame contemplated.[156]

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[154] Revised PSDAR at 10.

[155] *See* LTA, Encl. 1 at 19.

[156] Documents cited by petitioners should be examined to confirm that they support a proposed contention. *See Vermont Yankee Nuclear Power Corp*. (Vermont Yankee Nuclear Power Station), ALAB-919, 30 N.R.C. 29, 48 (1989*), vacated in part on other grounds and remanded*, CLI-90-04, 31 N.R.C. 333 (1990). A petitioner's documents may be examined both for statements that support and oppose its position. *See Virginia Elec. and Power Co.* (North Anna Power Station, Unit 3), LBP-08-15, 68 N.R.C. 294, 334 n.207 (2008).

In particular, Pilgrim Watch cites and attaches a critique of Entergy's flood hazard evaluation report by Coastal Risk Consulting (CRC) (*see* Pet. at 60 n.62 & Ex. 5), but makes no attempt to explain how this report relates to any impact on decommissioning. Nor is any such impact apparent. The CRC report is focused on the effect of climate change over a 50-year period and indicates under worst case predictions barely over a half-foot rise in sea level by 2025 (*see* Pilgrim Watch Ex. 5 at 15), by which time all portions of the site other than the ISFSI would be decommissioned. Pilgrim Watch does not explain how this relatively small sea-level rise under worst-case conditions would have any impact on decommissioning costs during the next 6 years when all of the site other than the ISFSI will be decommissioned.

Nor does the CRC report indicate any impact on the ISFSI. As Pilgrim Watch acknowledges (Pet. at 72),[157] the ISFSI is being relocated to higher ground. The CRC report does not include any projection that would indicate that the ISFSI would be impacted by sea level rise or climate change. Nor does Pilgrim Watch offer any explanation of how the ISFSI would be affected.

In the same vein, Pilgrim Watch refers to a National Geographic article that Pilgrim Watch claims identified Pilgrim as among 13 reactors impacted by sea level rise. Pet. at 60 n. 64. That article identifies 4 sites (not including Pilgrim) as vulnerable to storm surge by 2050 (therefore having no relevance to the near-term decommissioning of Pilgrim) and identifies Pilgrim as being at risk only if there *is a 4° C increase in average global temperature.*

Finally, Pilgrim Watch cites the UN Intergovernmental Panel on Climate Change (IPCC) 2018 Report as showing that sea levels will rise more rapidly and severe storms will occur more frequently (Pet. at 60 & n.63), but provides no explanation how this general statement applies to

[157] *See also* DCE at 25; Transcript of Public Meeting on Pilgrim Post-Shutdown Decommissioning Activities Report (Jan. 15, 2018) at 19, 54 (ADAMS Accession No. ML19031C835).

the Pilgrim site or how the projections would impact Pilgrim decommissioning costs. In sum, Pilgrim provides no basis, expert opinion, references or other sources, or other supporting information even remotely demonstrating that climate changes will affect the DCE.

h. Pilgrim Watch's Concern with the Possibility that DOE May Require Repackaging of Spent Fuel Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch's reference to the possibility that DOE may require repackaging of spent nuclear fuel into new DOE-approved transportation containers does not raise any genuine dispute with the adequacy of the funding for spent fuel management. Pilgrim Watch does not dispute that Pilgrim's spent fuel is being transferred into multi-purpose canisters ("MPCs") suitable for onsite storage, transportation, and disposal. Nor does it provide any information indicating any likelihood that DOE would require the industry to repackage spent fuel. Pilgrim Watch does not provide any information indicating that DOE intends to require packaging of the MPCs used in the HI-STORM 100 canister storage system at Pilgrim. More importantly, Pilgrim Watch does not address or evaluate the Federal Government's liability, even if repackaging were required.[158] Nor, as previously discussed, does Pilgrim Watch explain why the over $500 million in other spent fuel management expenses that Holtec Pilgrim could seek to recover from DOE (and which recovery is not credited in the cash flow analysis) does not provide an adequate source of additional funds if such an unexpected expense occurred.

i. Pilgrim Watch's Concern with the Possibility of Work Delays Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch asserts, without any support, that cleaning up unknown radiological or non-radiological contamination will delay the work schedule escalating costs. Pet. at 63.

[158] Because DOE's breach necessitated moving spent fuel into dry cask storage, DOE would also be liable for any costs of removing spent fuel from dry cask storage, if repackaging were necessary. Further, if repackaging were required, DOE would be responsible under the Standard Contract for providing the new cask or canister.

Pilgrim Watch provides no support or basis for this speculation and demonstrates no genuine material dispute with the Application. Similarly, Pilgrim Watch's entirely unsupported and bald assertion that "[t]here inevitably will be other delays" (*id.*) fails to satisfy the Commission's strict standards for contentions or demonstrate any genuine material dispute. Finally, Pilgrim Watch's assertion that "HDI is new to decommissioning" (*id.*) ignores the substantial information in the Application demonstrating HDI's qualifications, including the considerable experience of its team and general contractor with decommissioning and spent fuel management.[159] By failing to address or dispute this information, Pilgrim Watch fails to present any genuine material dispute with the Application.

j. Pilgrim Watch's Concern with the Possibility of Costs from Pending State-Law Requirements Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch's assertion that there are pending State laws and regulations that would result in additional costs to Holtec (Pet. at 63) fails to raise any genuine material dispute with the Application. First, Pilgrim Watch provides nothing more than speculation that any of these proposals will be put into effect or apply to HDI and Holtec Pilgrim. Moreover, each of the proposals would represent a challenge to the NRC rules and infringe on the NRC's exclusive jurisdiction over reactors under the Atomic Energy Act. While Holtec Pilgrim could agree voluntarily to perform decommissioning to a 10-millirem release standard and apply a 4-millirem groundwater standard (as some other licensees have done without any significant impact on decommissioning cost), rather than applying the 25-millirem standard established in the NRC rules,[160] Pilgrim Watch identifies no legal theory or basis as to why such requirements could be

[159] LTA, Encl. 1 at 6-13 and Att. C.

[160] 10 C.F.R. § 20.1402.

imposed by the State without Holtec Pilgrim's agreement. Holtec Pilgrim would also have the option to cancel the proposed transaction, depriving the State and local community of the substantial benefits of its accelerated decommissioning plan, if the State imposed such standards unilaterally.[161] Moreover, Pilgrim Watch provides no information quantifying any added cost of compliance, even if these standards were adopted, or any other showing that they would materially affect decommissioning cost.

k. Pilgrim Watch's Concern with the Possibility that the NRC May Not Grant the Exemption Request Regarding Use of the NDT Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch asserts, confusingly, that the decommissioning cost estimate fails to consider funds that would not be available if the NRC does not grant Holtec's exemption request to use the NDT for spent fuel management costs and site remediation. Pet. at 64. This assertion fails to address or dispute the Application. The Application demonstrating funding assurance is based on and includes this exemption request. In effect, Pilgrim Watch appears to be arguing that the Application is inadequate because it does not address some completely different proposal for funding assurance, and Pilgrim Watch thus fails to address and dispute the actual proposal in

[161] The Atomic Energy Act preempts state regulation of radiological hazards, except to the extent that the Commission has entered into an agreement with the State pursuant to Section 274 of the Atomic Energy Act discontinuing and thus allowing the State to assume certain authority. *Illinois v. Kerr-McGee Chemical Corp.*, 677 F.2d 571, 580-81 (7th Cir. 1982). Section 274 requires the NRC retain its authority with respect to regulation of the construction and operation of nuclear power plants. 42 U.S.C. 2021(c). Thus, the federal government has exclusive authority under the doctrine of pre-emption to regulate the construction and operation of nuclear power plants, which necessarily includes regulation of the levels of radioactive effluents discharged from the plant. *Northern States Power Co. v. Minnesota*, 447 F.2d, 1143, 1154 (8th Cir. 1971), *aff'd*, 495 U.S. 1035 (1972). Further, there is no distinction between the NRC's exclusive jurisdiction at an operating facility versus its jurisdiction at a decommissioned one. *Missouri v. Westinghouse Elec., LLC*, 487 F. Supp. 2d 1076 (E.D. Mo. 2007). *See also Maine Yankee Atomic Power Co. v. Bonsey*, 107 F.2d 47, 51 (D. Me. 2000) ("It is readily apparent . . . that the [State's] authority to regulate Maine Yankee's decommissioning activities is preempted"). Indeed, decommissioning is the process leading up to termination of the 10 C.F.R. Part 50 license, and the NRC rules are intended to provide finality to the site release. *See* 10 C.F.R. § 20.1401(c) ("After a site has been decommissioned and the license terminated in accordance with the criteria in this subpart, or after part of a facility or site has been released for unrestricted use in accordance with § 50.83 of this chapter and in accordance with the criteria in this subpart, the Commission will require additional cleanup only, if based on new information, *it determines that the criteria of this subpart were not met* and residual radioactivity remaining at the site could result in significant threat to public health and safety." (emphasis added)).

the Application. Moreover, if the exemption request is not granted, the Application either would have to be revised or it would be withdrawn or rejected. Thus, the possibility that the NRC might not approve the Application raises no genuine safety concern or material issue requiring litigation.

l. Pilgrim Watch's Concern with the Possibility that Other Exemption Requests Might Not Be Transferable Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch's assertion that some other exemptions might not be transferable (*id.*) similarly fails to raise any admissible issue. Pilgrim Watch does not identify any exemption that it claims would not be transferable, and does not provide any expert or other support for this assertion. Its vague reference to other exemptions does not satisfy the Commission's requirement that contentions be set forth with particularity[162] and include specific statements of the issues.[163] Nor does Pilgrim Watch's vague allegation satisfy the requirements to provide a basis for contention, to provide alleged facts or expert support together with references to specific sources and documents on which Pilgrim intends to rely, and to provide sufficient information to demonstrate a genuine material dispute with the Application.

m. Pilgrim Watch's Concern with the Possibility of a Radiological Accident Raises No Genuine Material Dispute or Admissible Issue

Pilgrim Watch's concern with the possibility of a radiological accident relates primarily to the assessment of environmental impacts in the PSDAR, which as discussed earlier is outside the scope of this proceeding and, as the concerns relate to spent fuel storage accidents, an impermissible challenge to the Continued Storage Rule.[164] To the extent that Pilgrim Watch is also claiming that funds for mitigation of a spent fuel accident must be included in the DCE (Pet.

[162] 10 C.F.R. § 2.309(f)(1).

[163] 10 C.F.R. § 2.309(f)(1)(i).

[164] *See supra* note 87, and discussion on pages 27-28.

at 80), its concern has no basis and fails to demonstrate any genuine dispute with the Application. As reflected in the Application, HDI and Holtec Pilgrim will carry onsite property damage and offsite nuclear liability insurance meeting the coverage amounts required by the NRC.[165] Pilgrim Watch provides no explanation why this coverage would be insufficient.

n. Pilgrim Watch's Allegation that No Funding Assurance Is Provided for the ISFSI Is Baseless and Unsupported, and Fails to Demonstrate Any Genuine Dispute with the Application

Pilgrim Watch's inaccurate assertion that the cost estimate and cash flow analysis does not include the costs of decommissioning the ISFSI (Pet. at 81) is entirely unsupported and ignores clear information in the Application (as well as the Revised PSDAR and DCE) to the contrary. The Application clearly states that the funding analysis "include[es] the eventual costs of decommissioning the ISFSI."[166] The DCE provides a considerable description of ISFSI decommissioning[167] in the section of the DCE entitled "Site-Specific Matters Considered in the DCE."[168] Table 3-1 of the DCE, which identifies decommissioning activities and costs by period, shows that Period 5 includes costs for "Decommissioning of the ISFSI."[169] And the cash flow analysis in the Application and in the DCE includes nearly $14 million in license termination costs from 2060 through 2063 (pertaining to the portion of the site still remaining under the license at that juncture, which is the ISFSI).[170]

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[165] *See* LTA, Encl. 1 at 19.

[166] LTA, Encl. 1 at 17.

[167] DCE at 25-26.

[168] *See id.* at 20.

[169] *Id.* at 28-30.

[170] LTA, Encl.1, Att. D (5th & 6th unnumbered pages) (Pilgrim Nuclear Power Station Decommissioning Cash Flow Analysis); DCE at 46-47.

Pilgrim Watch does not address or dispute any of this information in the Application. Instead, it simply seizes on the fact that Period 5 is called Ongoing ISFSI Operations. *See* Pet. at 81. Pilgrim Watch fails to mention that the description of the Period 5 activities includes decommissioning of the ISFSI.[171]

Pilgrim Watch also states that Holtec incorrectly assumes with no apparent basis that there will be no contamination or activation of the ISFSI pads. Pet. at 80 (citing DCE at 25). Pilgrim Watch's claim is misleading. As the DCE explains (and Pilgrim Watch leaves out), the canisters are stored in overpack assemblies, and the cost estimate assumes that some of the inner steel liners and concrete overpacks will contain low levels of neutron-induced residual radioactivity.[172] Pilgrim Watch provides no explanation why any activation or contamination of the underlying pads would be expected, given that the canisters are stored in steel-lined concrete overpacks (in addition to being designed to maintain their integrity under rigorous design basis conditions). It does not provide any expert support, or any other source or reference providing any basis for disputing the assumptions in the DCE.

In sum, none of Pilgrim Watch's claims demonstrate the existence of a genuine material dispute with the DCE or cash flow analysis in the Application. For all the above reasons, Contention 1 should be rejected.

### B. Pilgrim Watch Contention 2 Is Inadmissible

Pilgrim Watch's Contention 2, which argues that an environmental report for this Application is required under 10 C.F.R. § 51.53(d) and that NEPA requires an environmental review (Pet. at 82), is inadmissible. Contention 2 impermissibly challenges the categorical

[171] Revised PSDAR at 15; DCE at 16.

[172] DCE at 25.

exclusion for license transfers, the Commission's Decommissioning Rule, and the Continued Storage Rule, and makes allegations outside the scope of this proceeding. In addition, Contention 2 lacks expert and factual support, and fails to raise any genuine dispute with the Application.

### 1. Contention 2 Should Be Denied for Improperly Challenging the NRC's Categorical Exemption for License Transfers

Contention 2 should be denied for impermissibly challenging the NRC's rule at 10 C.F.R. § 51.22(c)(21), which categorically excludes from environmental review "[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." Pilgrim Watch's challenge to this rule is barred by 10 C.F.R. § 2.335, absent approval of a properly-supported waiver petition, which Pilgrim Watch has not submitted (nor could Pilgrim Watch demonstrate that special circumstances with respect to this proceeding are such that application of the regulation would not serve the purposes for which the rule was adopted, as a waiver petition must demonstrate). Pilgrim Watch makes various arguments seeking to avoid this result, including arguments that other NRC rules require environmental review, but none of the arguments alters the obvious conclusion that Pilgrim Watch is challenging the NRC rules.

First, Pilgrim Watch's argument that 10 C.F.R. § 51.53(d) requires an ER (Pet. at 85) is meritless, as that provision does not apply to a license transfer. Pilgrim Watch argues that this provision applies to an applicant for an amendment approving a *license termination or decommissioning plan.* Pet. at 85. The Application does not seek any amendment approving a license termination or decommissioning plan.

Nor is there any merit to Pilgrim Watch's argument that an environmental impact statement is required by 10 C.F.R. § 51.20 because the "'license pursuant to part 72 of this

chapter' would then be 'for storage of spent fuel in an independent spent fuel storage installation (ISFSI) at a site not occupied by a nuclear power reactor.'" Pet. at 85. The provision to which Pilgrim Watch is referring applies by its express terms to issuance of Part 72 license for an away-from-reactor ISFSI and has no bearing on the Application. *See* 10 C.F.R. § 51.20(b)(13). The Application does not seek *issuance* of a Part 72 license. Further, the ISFSI at Pilgrim is not a specifically-licensed away-from-reactor storage facility, but rather is already authorized under the general license in 10 C.F.R. § 72.210 applicable to ISFSIs at power reactor sites.

Pilgrim Watch's arguments that the categorical exclusion should not apply (Pet. at 90) are equally without merit. First, Pilgrim Watch's argument that the categorical exclusion does not apply "upon the request of any interested person" (Pet. at 90) is baseless. Pilgrim Watch states that 10 C.F.R. § 51.22(b) "could not be clearer" in providing that "'[a]n environmental impact statement is not required' '*[e]xcept . . . upon the request of an interested person*.'" Pet. at 90 (emphasis in original). Pilgrim Watch omits pertinent words in and mischaracterizes the rule, which states:

> Except in special circumstances, *as determined by the Commission* upon its own initiative or upon request of any interested person, an environmental assessment or an environmental impact statement is not required for any action within a category of actions included in the list of categorical exclusions set out in paragraph (c) of this section.[173]

Therefore, the categorical exclusion does not become inapplicable simply because Pilgrim Watch wants it to be.

Further, Pilgrim Watch has put forth no support for the argument that any of the allegations on pages 88-89 of its Petition constitute "special circumstances" that would justify a Commission determination that environmental review is required. *See* Pet. at 90. Pilgrim Watch

[173] 10 C.F.R. § 51.22(b) (emphasis added).

does not explain how any of these allegations relate or would cause a significant environmental effect to arise from the license transfer proceeding. Nor has Pilgrim Watch otherwise justified applying the "special circumstances" test to the alleged issues, aside from summarily asserting that the allegations are "special circumstances."

Pilgrim Watch's further argument that 10 C.F.R. § 2.1315 does not apply (Pet. at 87) is not only without merit but also irrelevant to the contention that environmental review is required. Pilgrim Watch argues that the generic determination (of no significant hazards consideration) in 10 C.F.R. § 2.1315 is inapplicable because the Application includes license amendments that Pilgrim Watch claims do more than conform the license to reflect the proposed transfer. *Id.* at 87-88. Pilgrim Watch refers to deletion of conditions requiring decommissioning funding assurance of $396 million, a provisional trust in the amount of $70 million, and access to a contingency fund of no less than $50 million. *Id.* at 88. Pilgrim Watch also claims that the Application deletes the requirement that the decommissioning trust agreement prohibit investments in the Pilgrim Owner's parent company (*id.*), but this claim is inaccurate and ignores clear information in the Application to the contrary.[174]

As a threshold matter, the applicability of the generic finding of no significant hazards consideration in 10 C.F.R. § 2.1315 is irrelevant to Pilgrim's Watch's contention that Applicants must provide an environmental report and that NEPA requires an environmental impact statement. The generic finding of no significant hazards consideration determines whether license amendments may be issued in advance of a hearing and does not govern the environmental review. In any event, as discussed below, none of Pilgrim Watch's claims invalidate a finding of no significant hazards consideration.

[174] See LTA, Encl. 1, Att. A, at 5 (retaining License Condition 3.J(5).

The license condition that required decommissioning funding assurance of $396 million applied by its express terms to the assurance that Entergy Nuclear was required to provide "upon the transfer of the Pilgrim licenses to Entergy Nuclear"[175] – *i.e.*, when Entergy purchased Pilgrim from Boston Edison in 1999. On its face, this condition does not reflect or apply to the current license transfer, and its deletion is therefore proposed to conform the license to the current transfer. (Nothing prevents the Staff from imposing new conditions relating to the current transfer.)

The license condition that required a $70 million provisional trust similarly related to the 1999 license transfer and is deleted as having no applicability to the current transfer. Moreover, that condition too has no current effect. That license condition required Entergy Nuclear to maintain the $70 million provisional trust "in conformance with the representations in the application for approval of the [1999] transfer." As explained in the NRC safety evaluation pertaining to the 1999 transfer, the provisional trust was set up to allow provision of a refund to Boston Edison if certain adverse tax consequences were to occur, with any remaining funds in the provisional trust to be transferred to the regular decommissioning trust by the end of 2002.[176]

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[175] *See id.*, Encl. 1, Att. A, at 4 (License Condition 3.J(1)). Indeed, because this condition only specified the amount of decommissioning funding that Entergy Nuclear was required to provide "upon [the 1999] transfer of the Pilgrim Licenses to Entergy Nuclear," its deletion is immaterial.

[176] Safety Evaluation by the Office of Nuclear Reactor Regulation, Proposed Transfer of Operating License and Materials License for Pilgrim Nuclear Power Station to Energy Nuclear Generation Company (Apr. 29, 1999) at 11-12 (ADAMS Accession No. ML011910099).

> The Purchase and Sale Agreement provides for the decommissioning trust funds to be transferred at the time of closing through the transfer of two separate decommissioning trusts a regular Decommissioning Trust and, if necessary, a Provisional Trust. In its January 28, 1999, letter to the NRC, Entergy Nuclear stated that the purpose of the Provisional Trust is to set aside a portion of the pre-paid decommissioning amount that is subject to be refunded by Entergy Nuclear to Boston Edison should changes in the tax qualification of the fund occur after closing. The applicants stated that a favorable change in the tax qualification status would increase the after-tax earnings rate on the fund, thereby reducing the required initial prepayment. The applicant stated that if there are no intervening favorable changes in the tax law, rule or regulation prior to closing, then the amount of funds in the Provisional Trust will be $70 million. If there are intervening changes, either before closing or between closing and December 31, 2002, then the amount in the Provisional Trust will be reduced in accordance with Schedule 5.21 of the Purchase and Sale

Finally, the condition regarding the $50 million contingency fund is related to and confirms a support agreement that was provided when Entergy purchased Pilgrim from Boston Edison in 1999.[177] The requested amendment deleting this license condition (part of Condition 3.J) merely conforms the license to reflect the proposed transfer, because Holtec Pilgrim and HDI are basing their financial qualifications on the adequacy of the NDT and are not relying on any parent support agreement or any other form of supplemental financial assurance to support their financial qualifications. In short, these are administrative amendments deleting certain license conditions that related to Entergy (which is extinguishing its interests in and responsibility for Pilgrim), and that are not part of the financial assurances that Holtec Pilgrim and HDI propose.

Pilgrim Watch also argues that several claims in its Contention 1 make the generic finding of no significant hazards consideration 10 C.F.R. § 2.1315 inapplicable (Pet. at 88-89), but this argument simply represents an impermissible challenge to 10 C.F.R. § 2.1315, which is barred by 10 C.F.R. § 2.335. Pilgrim Watch has not submitted any petition for waiver of the NRC rules. Further, as discussed in the previous response to Contention 1 above, none of those claims raise a genuine material dispute with the Application. Further, none these allegations

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> Agreement and the reduction will be rebated to Boston Edison in accordance with the terms of the Provisional Trust. Any reduction will be accomplished in a manner consistent with the Atomic Energy Act of 1954, as amended, IRS requirements, and any other applicable law. The Purchase and Sale Agreement provides that in no event shall the amount in the trusts available to decommission Pilgrim fall below the NRC required minimum. *After December 31, 2002, all funds remaining in the Provisional Trust will be transferred to the regular Decommissioning Trust and Boston Edison shall have no further claim to those funds.*

*Id.* (emphasis added)

[177] As reflected in the NRC's safety evaluation approving the transfer of the Boston Edison's licenses to Entergy, Entergy International entered into an Inter-Company Credit Agreement with Entergy Nuclear, which obligates Entergy International to advance funds to ENGC in an aggregate amount not to exceed $50 million for the purpose of providing financial assurance of sufficient funds for operation and maintenance of Pilgrim. *Id.* at 4, 9. Obviously, given the proposed sale of Entergy's interests in Pilgrim, and transfer of control of the Pilgrim licenses to Holtec, Entergy International would no longer provide this support.

would justify waiving the categorical exclusion. None of these allegations (items a through i on pages 88-89 of the Petition) relate to whether the *conforming license amendments* involve any significant hazards considerations, which is the sole focus of 10 C.F.R. § 2.1315.

Because Pilgrim Watch has failed to provide a basis to overturn the categorical exclusion, all of its additional allegations in Contention 2 are barred. Pilgrim Watch's general NEPA arguments are particularly irrelevant. If Pilgrim Watch believed that the categorical exclusion should not apply, then it should have sought a waiver in this case. Pilgrim Watch has not submitted a petition for waiver, nor could it demonstrate that the special circumstances with respect to this proceeding are such that application of the rule would not serve the purposes for which the rule was adopted.

**2. Pilgrim Watch's Allegations Regarding the PSDAR Are Outside the Scope of this Proceeding and Impermissibly Challenge NRC Rules**

In addition to representing an impermissible challenge to the categorical exclusion, Pilgrim Watch's allegations in Contention 2 are also inadmissible because they seek to raise issues outside the scope of this proceeding and challenge the NRC's decommissioning rules. In this regard, Pilgrim Watch is incorrectly attempting to conflate the Application with the PSDAR, and to treat the Application as approving the PSDAR or approving decommissioning.

Citing *Citizens Network, Inc. v. NRC*, Pilgrim Watch asserts that "'[p]ermitting [Holtec] to decommission the facility' requires NEPA review." Pet. at 82, *citing Citizens Awareness Network, Inc. v. Nuclear Regulatory Comm'n*, 59 F.3d 284, 293 (1st Cir. 1995). And as previously discussed, in Contention 1, Pilgrim Watch asserts that "NRC approval of the license transfer and amendment request would effectively approve the PSDAR and its financial and environmental analyses and assurance." Pet. at 19. In addition, Pilgrim Watch asserts that "[a]pproval of Holtec's proposal as a whole would constitute a major federal action. Pet. at 82.

Pilgrim Watch also seeks to challenge the statement in the Revised PSDAR that environmental impacts associated with planned PNPS site-specific decommissioning activities are less than and bounded by the previously-issued environmental impact statements. Pet. at 91. None of Pilgrim Watch's assertions is correct or supportable.

As previously discussed, Pilgrim Watch's argument that the PSDAR is being approved lacks any basis and represents a challenge to the NRC rules. 10 C.F.R. § 50.82(a)(4), which requires the submission of a PSDAR, does not require any approval of that document.[178] Further, as the Commission has stated, the PSDAR does not amend the license, and as such the licensee is not required to submit a corresponding environmental report.[179] After a plant permanently ceases operation and is permanently defueled, and ninety days after the PSDAR is submitted, the NRC rules allow a licensee to perform major decommissioning activities without any further approval.[180] Thus, the activities that HDI and Holtec Pilgrim plan to take, as described in the Revised PSDAR, are activities that the NRC rules allow. HDI and Holtec Pilgrim must demonstrate in the Application that they are financially qualified to perform these activities, but they neither need nor are requesting any approval of the decommissioning activities.

In the same vein, the PSDAR does not represent a federal action. As Pilgrim Watch notes in its Petition, there is federal action "where regulatory approval is necessary to a

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[178] *See also* 1996 Decommissioning Rule, 61 Fed. Reg. at 39,281 ("The purpose of the PSDAR is to provide a general overview for the public and the NRC of the licensee's proposed decommissioning activities until 2 years before termination of the license. The PSDAR is part of the mechanism for informing and being responsive to the public prior to significant decommissioning activities taking place. It also serves to inform and alert the NRC staff to the schedule of license activities for inspection and planning purposes and for decisions regarding NRC oversight activities. . . . [T]he final rule eliminates the need for an approved decommissioning plan . . ."); *Vermont Yankee*, CLI-16-17, 84 N.R.C. at 126 n.130 ("the Staff does not formally approve a licensee's PSDAR").

[179] *Vermont Yankee*, CLI-16-17, 84 N.R.C. at 124.

[180] *See* 10 C.F.R. § 50.82(a)(5).

licensee's actions." *See* Pet. at 83 (citing 40 C.F.R. § 1508.18). The approval of a license transfer application does not require NRC approval over any decommissioning activities. Moreover, if Pilgrim Watch's argument were accepted, all license transfers would require a full NEPA analysis, as the financial qualifications of transferees always relate to the transferee's ability to fund subsequent, projected licensed activities (such as plant operations).

Additionally, the caselaw that Pilgrim Watch cites for the proposition that decommissioning activities require a NEPA analysis is no longer applicable. The Commission has previously determined that *Citizens Awareness Network, Inc. v. Nuclear Regulatory Comm'n*, 59 F.3d 284, 293 (1st Cir. 1995), has been rendered obsolete by the more recent 1996 Decommissioning Rule. Since the 1996 Rule prohibits any major decommissioning with impacts outside existing environmental analysis, the NRC has rejected the idea that review of the PSDAR "should be defined as a major federal action under NEPA."[181] The Commission has also rejected the argument that, under *Ramsey v. Kantor* cited by Pilgrim Watch (Pet. at 83), the NRC Staff's review of a PSDAR renders it a major federal action.[182]

Moreover, as the Commission has explained:

> In promulgating the Final Decommissioning Rule, 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. Unless the environmental impacts of *particular decommissioning activities* will fall outside the previously performed analysis, the rule does not contemplate additional NEPA analysis at the PSDAR stage.[183]

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[181] *See Vermont Yankee*, CLI-16-17, 84 N.R.C. at 126.

[182] *Id.* at 126-127.

[183] *Id.* at 126 (footnote omitted).

Yet, contrary to this clear precedent, Pilgrim Watch alleges that the Commission's rules amount to "skirt[ing] NEPA or other statutory commands" (Pet. at 82), in a clear challenge to the NRC rules.

Even if the environmental impacts of the decommissioning activities described in the Revised PSDAR were within the scope of this proceeding (which they are not), Pilgrim Watch does not demonstrate that environmental impacts from any "*particular decommissioning activities*"[184] at Pilgrim fall outside the bounds of prior environmental impact statements. Pilgrim Watch merely states, in a vague and conclusory manner, that the conclusion in the PSDAR that impacts are bounded is "wrong," apparently because all of the "'previously issued environmental impact statements' were inadequate." Pet. at 91. Even if the Revised PSDAR were within the scope of this proceeding, such a vague and conclusory assertion would raise no genuine dispute with its conclusions.[185]

### 3. Pilgrim Watch Does Not Demonstrate that the Application Will Result in Any Significant Environmental Impact

Even if it were not barred by the categorical exclusion, Contention 2 is inadmissible because it is not supported by information demonstrating that *the Application* would result in any significant environmental impact. Although Pilgrim Watch never provides any clear or concise explanation why it believes that the Application could have an environmental impact – which in itself warrants rejection of Contention 2 – one might glean that Pilgrim Watch's concern is that the license transfer might lead to a funding shortfall,[186] with associated environmental and

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[184] *Id*. (emphasis added).

[185] As previously discussed, Pilgrim Watch's Contention 1 includes a number of claims challenging the discussion of environmental impacts in the Revised PSDAR. As previously discussed, none of those claims raises any genuine dispute with the Revised PSDAR. *See supra* notes 83, 84, 85, 86, 87.

[186] *See* Pet. at 92 ("a shortfall in decommissioning funding would place the public health, safety and the environment at risk"). Indeed, most of the concerns raised in Contention 1 relate to the possibility that costs could be higher than estimated.

economic effects. As previously discussed, Pilgrim Watch ignores the NRC's oversight of the use of the NDT (which includes annual reporting and funding adjustment requirements), as well as the provisions in the NRC's rules that prohibit withdrawals that would inhibit the ability of the licensee to complete the funding of any shortfalls or inhibit the completion of decommissioning.[187] "[T]he NRC does not presume that a licensee will violate agency regulations wherever the opportunity arises."[188] Pilgrim Watch also ignores the information in the Application demonstrating Holtec Pilgrim's ability to adjust funding, if needed.

Furthermore, Pilgrim Watch's concern is based on the incorrect premise that the mere possibility of a problem or an environmental effect requires an environmental impact statement. *See* Pet. at 83-84. Pilgrim Watch cites *Ramsey v, Kantor*, 96 F.3d 434, 445 (9th Cir. 1996), 42 U.S.C. § 4332(2)(C), and *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998). *Id.* None of these citations supports this premise. As the Commission has held, NEPA is governed by a rule of reason and does not extend to all conceivable consequences of agency decisions.[189] Instead, NEPA requires only a discussion of "reasonably foreseeable" impacts and not "remote and speculative" scenarios.[190]

As discussed in detail above in Section V.A.1, Pilgrim Watch does not establish how the NDT would become underfunded, given the substantial protections in place in the NRC's

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[187] *See* 10 C.F.R. § 50.82(a)(8)(i)(C).

[188] *Private Fuel Storage, L.L.C.* (Indep. Spent Fuel Storage Installation), CLI-01-9, 53 N.R.C. 232, 235 (2001). *See also GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 207 (2000) ("NIRS also fails to offer documentary support for its argument that AmerGen is likely to violate our safety regulations. Absent such support, this agency has declined to assume that licensees will contravene our regulations.").

[189] *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-02-25, 56 N.R.C. 340, 347 (2002). As the Commission observed, CEQ regulations require an EIS to direct effects, which are those which are caused by the action and occur at the same time and place, and indirect effects, which are caused by the action and are later in time or farther removed in distance, but still reasonably foreseeable. *Id*. at 348, citing 10 C.F.R. § 1508.8.

[190] *Id.* at 348-49.

decommissioning funding rules and Holtec Pilgrim's ability to adjust decommissioning funding as needed. As detailed in the Application "financial assurance status reports must be submitted to the NRC annually" throughout decommissioning.[191]

> 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 PNPS notwithstanding the exemption allowing HDI to use funds for spent fuel management and site restoration activities from the trust fund.[192]

The Application shows that over $500 million of the projected expenditure from the NDT is for spent fuel management costs, recovery of which from DOE provides a substantial additional cash flow.[193] Pilgrim Watch does not address this significant conservatism identified in the Application, and does not provide any reasonable explanation why this additional cash flow would not be available if needed.

Nor is there any basis for a concern that DOE recoveries might not be available, leading to a shortfall in funds for site decommissioning and restoration. Under HDI's schedule for decommissioning, decommissioning and restoration of the site (other than the ISFSI) will be completed in 2026, at which time over $200 million will still remain in the fund[194] without any credit for DOE recoveries, and the additional cash flow from DOE recoveries (that could be used to adjust funding if necessary) will continue for many years thereafter. For this reason, the

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[191] LTA, Encl. 2 at E-7.

[192] *Id.* at E-7 – E-8 (emphasis added).

[193] *See supra* at Section V.A.1.

[194] LTA, Encl. 1, Att. D (5th and 6th unnumbered pages) (Pilgrim Nuclear Power Station Decommissioning Cash Flow Analysis).

possibility that there could be some radiological or non-radiological contamination that might increase costs does not call into question HDI and Holtec Pilgrim's ability to complete decommissioning and site restoration, and therefore does not support any concern that there might a shortfall somehow affecting the environment.[195]

Consequently, the possibility of a shortfall in decommissioning funding preventing completion of decommissioning or spent fuel management is not a reasonably foreseeable consequence of the license transfer. On the contrary, it is a remote and speculative claim that presupposes that (1) the determination of adequate funding that the NRC must make in order to approve the Application and exemption is incorrect, (2) the continuing funding assurance required by the comprehensive NRC's rules and oversight is inadequate, (3) none of the hundreds of millions recoverable from DOE would be available to provide additional funding assurance if needed, and (4) HDI and Holtec Pilgrim would violate their licenses and the NRC rules by failing to provide funding assurance and complete licensed activities.

For all of these reasons, Contention 2 should be rejected.

### C. Pilgrim Watch Should Not Be Permitted to Adopt the Commonwealth's Contentions

Pilgrim Watch seeks to adopt and incorporate the Commonwealth's contentions, together with all of the supporting bases and evidence. Pet. at 130-131. Pilgrim Watch is not entitled to adopt the Commonwealth's contentions, because Pilgrim Watch has failed to demonstrate standing or proffer any admissible contention of its own. As the Commission has held, "we

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[195] To the extent that Pilgrim Watch might be claiming that there could be a shortfall in funding for spent fuel management, it provides no explanation why continuing recovery from DOE would not be sufficient. If a longer period of spent fuel management is required than is projected in the DCE, DOE would be liable for the increased cost. Further, any concerns regarding the environmental risks from spent fuel management are barred by the Continued Storage Rule, which codifies NUREG-2157, "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel."

would not accept incorporation by reference of another petitioner's issues in an instance where the petitioner has not independently established compliance with our requirements for admission as a party in its own pleadings by submitting at least one admissible issue of its own."[196]

In addition, Pilgrim Watch has not complied with 10 C.F.R. § 2.309(f)(3), which requires a petitioner seeking to adopt another sponsoring petitioner's contention to either agree that the sponsoring petitioner shall act as the representative with respect to that contention or jointly designate with the sponsoring petitioner a representative who shall have the authority to act for the petitioners with respect to the contention. As Pilgrim Watch has not done so, its attempt to adopt the Commonwealth's contentions is contrary to the NRC rules.

Further, to the extent that Pilgrim Watch may be attempting to incorporate "all of Attorney General's supporting bases and evidence" in support of Pilgrim Watch's own contentions, such an attempt would clearly violate NRC practice and should be rejected.

> Commission practice is clear that a petitioner may not simply incorporate massive documents by reference as the basis for or a statement of his contentions. . . . Such a wholesale incorporation by reference does not serve the purposes of a pleading. . . . The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may be in a haystack.[197]

## VI. PILGRIM WATCH HAS NOT DEMONSTRATED STANDING TO INTERVENE AS A MATTER OF RIGHT OR AS A MATTER OF DISCRETION

If the Commission determines that Pilgrim Watch has not proffered an admissible contention, then it need not address the question of Pilgrim Watch's standing to intervene in this

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[196] *Consol. Edison Co.* (Indian Point, Units 1 and 2), CLI-01-19, 54 N.R.C. 109, 132-133 (2001).

[197] *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-03, 29 N.R.C. 234, 240–41 (1989) (citations omitted).

proceeding.[198] As explained below, Pilgrim Watch, 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).

### A. Applicable NRC Legal Standards and Precedent

To demonstrate that it has standing pursuant to 10 C.F.R. § 2.309(d), Pilgrim Watch 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.[199] 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.[200] These concepts, as well as 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."[201] 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.[202] These criteria are commonly referred to as injury-in-fact,

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[198] *See PPL Susquehanna, LLC* (Susquehanna Steam Electric Station, Units 1 and 2), CLI-15-8, 81 N.R.C. 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.").

[199] 10 C.F.R. § 2.309(d)(l)(ii)-(iv).

[200] *See Exelon Generation Co., LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 N.R.C. 577, 579-83 (2005).

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

[202] *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 N.R.C. 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)).

causality, and redressability, respectively. The asserted injury must be "distinct and palpable, particular and concrete, as opposed to being conjectural or hypothetical."[203] Also, "when future harm is asserted, it must be 'threatened,' 'certainly impending,' and 'real and immediate.'"[204] 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."[205] Finally, a petitioner must show that "its actual or threatened injuries can be cured by some action of the tribunal."[206]

### 2. Representational Standing Organizations

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 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.[207] 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.[208]

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[203] *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-98-6, 47 N.R.C. 116, 117-18 (1998) (citing *Steel Co. v. Citizens for a Better Env't*, 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 N.R.C. 64, 72 (1994)).

[204] *Int'l Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-15, 53 N.R.C. 344, 349 (2001), *aff'd*, CLI-01-18, 54 N.R.C. 27 (2001) (citations omitted).

[205] *Sequoyah Fuels*, CLI-94-12, 40 N.R.C. at 75. *See also Crow Butte Res., Inc.* (In-Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 N.R.C. 331, 345 (2009).

[206] *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 N.R.C. 9, 14 (2001).

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

[208] *Duquesne Light Co.* (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 N.R.C. 393, 411 (1984).

### 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.[209] "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.[210] 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.[211]

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."[212] Such proceedings include license transfer cases, where the Commission "determine[s] on a case-by-case basis whether the proximity presumption should apply, considering 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.'"[213]

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[209] *Peach Bottom*, CLI-05-26, 62 N.R.C. at 580.

[210] *Id.* (citations omitted).

[211] *Fla. Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 N.R.C. 325, 329 (1989) (citations omitted).

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

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

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."[214] Conversely, the NRC has denied proximity-based standing where contact has been limited to "mere occasional trips to areas located close to reactors."[215] 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."[216]

**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.[217] 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 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.[218] Of the six factors,

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[214] *Consumers Energy* Co. (Big Rock Point Independent Spent Fuel Storage Installation), CLI-07-21, 65 N.R.C. 519, 523-524 (2007) (internal quotation marks and citations omitted) (emphasis in original).

[215] *Id.* at 520 (citation omitted).

[216] *Palisades*, CLI-07-18, 65 N.R.C. at 410 (emphasis added).

[217] 10 C.F.R. § 2.309(e). *See also PPL Susquehanna LLC*, (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 N.R.C. 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.").

[218] 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;

primary consideration is given to the first factor—assistance in developing a sound record.[219] The petitioner has the burden to establish that the factors in favor of intervention outweigh those against intervention.[220]

### B. Pilgrim Watch Has Not Established Standing to Intervene as a Matter of Right Under Section 2.309(d)

Pilgrim Watch requests that it be admitted as a party to this proceeding as an advocate for affected representative members; *i.e.*, it asserts representational standing to intervene. *See* Pet. at 6-9. Pilgrim Watch, however, does not make the requisite demonstrations to support either form of standing.

As a threshold matter, the physical proximity of Pilgrim Watch's 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."[221] Here, given the shutdown and defueled status of Pilgrim at the time of the license transfer, the proposed

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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).

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

[220] *See Nuclear Eng'g Co. Inc.* (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 N.R.C. 737, 744 (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").

[221] *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 N.R.C. 185, 191 (1999) (citing *St. Lucie*, CLI-89-21, 30 N.R.C. at 329-30) (internal quotation marks omitted). *See also Peach Bottom*, CLI-05-26, 62 N.R.C. 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).

license transfers and conforming license amendment do not "on their face present any 'obvious' potential of offsite radiological consequences."[222] At the time of the license transfer, the primary significant nuclear activities ongoing at Pilgrim will be the storage and handling of spent fuel bundles in the spent fuel pool and the transfer of spent fuel assemblies to dry cask storage. Because the reactor will not operate again, the scope of activities at the plant—and in turn, the risk of an offsite radiological release—will be greatly reduced. As a result, "the spectrum of accidents and events that remain credible is significantly reduced," and it is incumbent upon Pilgrim Watch 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]."[223] It is also up to Pilgrim Watch to show that "its actual or threatened injuries can be cured by some action of the tribunal" on the license transfer.[224]

Applicants respectfully assert that they have failed to do so here. In support of its claim of standing, Pilgrim Watch asserts that it "had standing in an earlier NRC [license renewal] proceeding." Pet. at 6. Pilgrim Watch further states that it has numerous members that reside in the immediate vicinity of Pilgrim with interests that may be affected by the proceeding. *Id.* at 6. Pilgrim Watch also references the five declarations attached to the Petition. *Id.* at 7 (citing Exhibit 1 to the Petition).

As an initial matter, standing in an earlier proceeding does not automatically convey standing rights in a subsequent proceeding. Longstanding Commission precedent holds that "a

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[222] *Zion*, CLI-99-4, 49 N.R.C. at 191.

[223] *Id.* 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 Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 N.R.C. 235, 246 (1996).

[224] *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 N.R.C. 9, 14 (2001).

prospective petitioner has an affirmative duty to demonstrate that it has standing in each proceeding in which it seeks to participate since a petitioner's status can change over time and the bases or its standing in an earlier proceeding may no longer obtain."[225] Pilgrim Watch is required to demonstrate that it has standing in this proceeding, regardless of its ability to obtain standing in prior proceedings.

Pilgrim Watch's claim of representational standing fails because Pilgrim Watch'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.[226] For example, Pilgrim Watch member Mary Lampert, who claims to live approximately six miles from the site, speculates that if the "press later reports that there is runoff into the Bay or that the licensee is cutting corners" it would devalue her property.[227] Ms. Lampert further claims that her grandchildren visit the area and she "want[s] to assure that they are safe" and she purchases local

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[225] *Texas Util. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 N.R.C. 156, 162-63 (1993) (emphasis omitted). *See also PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 N.R.C. 133, 138 (2010) ("[O]ur case law is clear that a petitioner must make a fresh standing demonstration in *each* proceeding in which intervention is sought because a petitioner's circumstances may change from one proceeding to the next." (citing *Comanche Peak*) (emphasis in original)).

[226] Applicants recognize that past petitioners have established standing to intervene in proceedings to challenge the adequacy of facility decommissioning activities by alleging injuries that are not dissimilar to certain injuries alleged by Pilgrim Watch's members here. *See*, *e.g.*, *Yankee*, CLI-96-7, 43 N.R.C. at 247-48; *Sequoyah Fuels*, CLI-94-12, 40 N.R.C. 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. Neither of these proceedings involved a license transfer application, which here proposes no physical changes to Pilgrim and the ISFSI or operational changes. *See* Notice, 84 Fed. Reg. at 817.

[227] Ms. Lampert Decl. at 133 (Ex. 1 to Petition). Pilgrim Watch's members each assert the risk of diminished property values as a basis for standing. This alleged economic harm is insufficient, by itself, to support a claim of standing. *See Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 N.R.C. 1, 9 (1998) ("The fact that economic interest or motivation is involved will not preclude standing, but the petitioner must also be threatened by environmental harm."). *See also Int'l Uranium (USA) Corp.* (Receipt of Material from Tonawanda, New York), CLI-98-23, 48 N.R.C. 259, 265 (1998) ("[I]t has long been our practice as an agency to reject standing for petitioners asserting a bare economic injury, unlinked to any radiological harm.").

shellfish that she "want[s] to believe [] is safe."[228] These statements do not amount to any actual or threatened, concrete and particularized injuries. Ms. Lampert claims that Holtec "will run short of money and abandon the site."[229] Such unsubstantiated and conclusory assertions are insufficient to establish standing to intervene and trigger an adjudicatory hearing. Ms. Lampert fails to explain her concerns are plausibly linked to the proposed license transfers, which, while transferring licensed authority to HDI, 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. Moreover, while Ms. Lampert claims that "[Pilgrim Watch] will be able to present evidence showing the need for NRC to require modifying the proposed license transfer to address the concerns raised,"[230] she does not specify how her concerns regarding decommissioning could be redressed in the scope of a license transfer proceeding. If the tribunal were to deny the license transfer, then the site would still be decommissioned (more slowly through SAFSTOR) and there would be no change in the radiological risk profile, except that the plant would be at the site even longer and most of the radiological decommissioning and restoration would not occur until after the dormancy period.

Pilgrim Watch member James Lampert similarly relies on unsupported, speculative statements in alleging threatened injury from the proposed license transfers. Mr. Lampert, who states that he resides approximately six miles from Pilgrim, asserts that public perception of Holtec "not completely and properly decommission[ing]" Pilgrim would reduce the value of his house and property.[231] He further claims that he wants to be "assured" that the beaches and bays

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[228] *Id.*

[229] *Id.*

[230] *Id.*

[231] Mr. Lampert Decl. at 135 (Ex. 1 to Petition).

are safe and free from radiological run-off and he speculates that "Holtec International will run short of money and abandon the site."[232] Again, such unsubstantiated and conclusory assertions are insufficient to establish standing to intervene and trigger an adjudicatory hearing. Moreover, Mr. Lampert fails to link his claims to the proposed license transfers, which do not confer any decommissioning authority beyond that already existing under the NRC rules.

The third Pilgrim Watch member, Molly Bartlett, relies on assertions that are substantially the same as those of Mr. and Ms. Lampert. Ms. Bartlett states that she resides approximately 3 miles from Pilgrim and also asserts that later press reports of runoff or the licensee cutting corners would devalue her property.[233] Ms. Bartlett also asserts that she enjoys the environment and local fish and produce--though she does not assert any potential for harm to the environment, fish, or produce--and she speculates that "Holtec International will run short of money and abandon the site."[234] These statements also fail to establish a plausible chain of causation relative to the proposed action.[235] Indeed, the alleged harms derive solely from the *assumption* that Applicants "will later cut corners" and "abandon the site" that there will be too little money to decommission or that something may cause "runoff."[236] Ms. Bartlett provides no evidence or other factual support for her underlying assumptions, which are entirely unfounded, and provides no link between these concerns (related to decommissioning actions at the site) and the instant licensing action.

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[232] *Id.* at 136.

[233] Bartlett Decl. at 138 (Ex. 1 to Petition).

[234] *Id.*

[235] *See Peach Bottom*, CLI-05-26, 62 N.R.C. 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.").

[236] Bartlett Decl. at 138 (Ex. 1 to Petition).

The fourth Pilgrim Watch member, Rebecca Chin, lives within the Emergency Planning Zone for Pilgrim, and makes precisely the same claims as Ms. Bartlett.[237] These claims are insufficient to establish standing for the same reasons noted above.

The fifth and final declaration of a Pilgrim Watch member, David O'Connell, states that he lives approximately 7 miles from the Plymouth Nuclear Power Station (presumably Pilgrim). Mr. O'Connell expresses concerns about "ocean currents [that] are swift and far reaching" were "a fault [to] develop in the waste containment system which causes a flow of contaminated material into Cape Cod Bay."[238] Mr. O'Connell then asks if there will be "enough funding to cover the cost of the possible degradation or some natural occurrence (sea rise for example) that compromises the waste containment system."[239] Mr. O'Connell also provides no evidence or other factual support for his concerns, which are entirely unfounded, and provides no link between these concerns (related to decommissioning) and the instant licensing action.

In conclusion, Pilgrim Watch has failed to establish representational standing, due in large part to the inability of 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 the offsite release of radiological contamination in the ocean or for HDI to later cut corners and abandon the site. They have not shown a realistic threat of a direct injury from any contamination to members of Pilgrim Watch. As noted in the Application, the proposed transfers are intended to place licensed responsibility in an organization (HDI) that will promptly decommission the Pilgrim site. In actuality, the proposed transaction will benefit local citizens, because it will facilitate the

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[237] Chin Decl. at 140 (Ex. 1 to Petition).

[238] O'Connell Decl. at 142 (Ex. 1 to Petition).

[239] *Id.*.

decommissioning of Pilgrim and the release of all portions of the site other than the ISFSI on an accelerated schedule.

In contrast, if the Application were denied, Entergy would implement the SAFSTOR method of decommissioning, deferring most radiological decommissioning until after a dormancy period. Whatever concerns Pilgrim Watch's members may have concerning runoff and the impact of the site on their property values would still exist, and indeed, would persist for a longer period. Further, to the extent that they are alleging that they would be injured if decommissioning is not completed, their concerns are hypothetical and conjectural, presupposing that HDI and Holtec Pilgrim would at some point in the future violate NRC's rules requiring adequate funding and completion of decommissioning. Such speculative concerns do not suffice, as the alleged injury is not "certainly impending," and "real and immediate." Consequently, none of the alleged injuries is concrete, fairly traceable to the license transfer, or likely to be redressed by a favorable decision.

### C. Pilgrim Watch Has Not Demonstrated a Sufficient Basis for Granting Discretionary Intervention Under Section 2.309(e)

Pilgrim Watch's alternative request for discretionary intervention under 10 C.F.R. § 2.309(e) is procedurally and factually deficient. As an initial matter, Pilgrim Watch 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, Pilgrim Watch states only that: (1) its participation reasonably may be expected to assist in developing a sound record in light of its participation in numerous NRC adjudicatory proceedings dating back to the 1980s (e.g., Pilgrim's recent license renewal proceeding, and (2) Pilgrim Watch members are "neighbors"

and can provide "local insight" that cannot be provided by the Applicants or other potential parties. Pet. at 8-9.

Pilgrim Watch has provided no specific and compelling reasons as to why an exceptional grant of discretionary intervention would be warranted in this license transfer proceeding. Pilgrim Watch'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.[240] Pilgrim Watch addresses none of the considerations that NRC tribunals typically have considered as potential 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.[241]

Vague and conclusory assertions of the type proffered by Pilgrim Watch are not sufficient to discharge a petitioner's burden under 10 C.F.R. § 2.309(e).[242] Pilgrim Watch's clear failure to allege any particularized and material deficiencies in the Application, particularly

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[240] *Nuclear Eng'g Co.*, ALAB-473, 7 N.R.C. at 745 (1978).

[241] *See Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-81-1, 13 N.R.C. 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 N.R.C. 12, 16-17 (1990), *aff'd*, ALAB-952, 33 N.R.C. 521, 532 (1991).

[242] 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 Commonwealth of Massachusetts. Although Applicants did not oppose the Commonwealth's standing, they are opposing the admission of its proposed contentions.

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, Pilgrim Watch has been given the opportunity to provide comments on the decommissioning activities and schedules described in the Revised PSDAR.

## VII. CONCLUSION

For the foregoing reasons, the Commission should determine that Pilgrim Watch has failed to put forward an admissible contention or establish standing and should therefore deny Pilgrim Watch's Petition.

Respectfully submitted,

*/Signed electronically by David R. Lewis /*


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March 18, 2019

**UNITED STATES OF AMERICA**
**NUCLEAR REGULATORY COMMISSION**

Before the Commission

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| In the Matter of | ) | | |
| | ) | | |
| Entergy Nuclear Operations, Inc, | ) | | |
| Entergy Nuclear Generation Company, | ) | Docket Nos. | 50-293-LT |
| Holtec International, and | ) | | 72-1044-LT |
| Holtec Decommissioning International, LLC | ) | | |
| | ) | | |
| (Pilgrim Nuclear Power Station) | ) | | |

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicants' Answer Opposing Pilgrim Watch Petition for Leave to Intervene and Hearing Request has been served through the E-Filing system on the participants in the above-captioned proceeding this 18th day of March, 2019.

/signed electronically by David R. Lewis/
David R. Lewis