UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of **Docket No. 50-293 & 72-1044 LT**

Entergy Corporation

Pilgrim Nuclear Power Station

License Transfer Agreement Application

PILGRIM WATCH REPLY TO APPLICANTS' ANSWER OPPOSING PILGRIM WATCH PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST

This Board now has before it, in addition to Holtec's and Entergy's License Transfer Application ("LTA", 255 pages), two petitions and requests to intervene (one by the Commonwealth of Massachusetts and the other by Pilgrim Watch) totaling about 258 pages, and the Applicants' (Holtec's and Entergy's) Answers (totaling about 150 pages) to the Commonwealth and Pilgrim Watch petitions. This reply is directed to the latter.

Holtec and Entergy agree that "HDI and Holtec Pilgrim must demonstrate in the Application that they are financially qualified…. (Answer, p. 67). But the only question now before this Board is *whether* there will be a hearing. It is *not* what the outcome of that hearing will be.

If any of the contentions raised by the Commonwealth and Pilgrim Watch is accepted, there will be a hearing. The Commonwealth has standing as a matter of law. Pilgrim Watch also has standing.

Standing

Pilgrim Watch intervened in Pilgrim's relicensing proceeding. Neither the NRC Staff nor Entergy challenged Pilgrim's standing there. In that proceeding, the ASLB found that both the Commonwealth and Pilgrim Watch had standing (LPB-06-23):

> Entergy does not challenge either the Massachusetts Attorney General's or Pilgrim Watch's standing to participate in this proceeding. The NRC Staff does not contest the standing of the Massachusetts Attorney General to intervene in this proceeding, and because Pilgrim Watch's representative, Mary Lampert, meets the longstanding "proximity presumption" principle in NRC adjudicatory proceedings the NRC Staff does not dispute that Pilgrim Watch has demonstrated representational standing.
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> We agree, based on the physical proximity of their representative to the Pilgrim Nuclear Power Station, and because the affected member has authorized the Petitioner organization to represent her in this proceeding, that the Pilgrim Watch has demonstrated representational standing to participate under AEA § 189a and the Commission's rules. Further, we find that the Massachusetts Attorney General has standing to participate in this proceeding as a representative of the State of Massachusetts as outlined by the Commission in 10 C.F.R. § 2.309(d)(2).

Entergy has changed its position on whether Pilgrim has standing; but the facts supporting Pilgrim Watch's standing have not. The Board's previous conclusion that Pilgrim Watch has standing should not change either.

Entergy and Holtec suggest that that the 50-mile "proximity presumption" should not apply here. It would have this Board overlook that the "proximity" of the Pilgrim Watch members who submitted declarations is far less than 50 miles. As the declarations say, two of those Pilgrim Watch members live about 6 miles from Pilgrim, one lives approximately 3 miles

from Pilgrim, a fourth lives approximately 7 miles from Pilgrim, and the fifth lives within the 10-mile EPZ.[1]

Entergy and Holtec also appear to suggest that Pilgrim Watch should be denied standing because Pilgrim will have closed and there is thus no "potential for offsite consequences." Not surprisingly, their opposition to Pilgrim Watch's standing never mentions, for example, the potential for spent fuel accidents until the pool has been emptied, the potential for leaking dry casks or acts of malice until whenever DOE finally removes all spent fuel from the Pilgrim site, the potential for contamination of Plymouth, Kingston and Duxbury Bays, or the potential of an inadequate clean-up. of the Pilgrim site.

Pilgrim Watch also should be granted standing because its participation may reasonably be expected to assist in developing a sound record (See, 10 C.F.R. § 2.309 (e), as Pilgrim Watch has demonstrated by its participation in numerous NRC proceedings for decades. Pilgrim Watch members are Pilgrim Station's neighbors; they can provide local insight that cannot be provided by Holtec, Entergy or other parties.

The Contentions

The substance of the Commonwealth's and Pilgrim Watch's contentions are largely the same.

1. The two "new" licensees, Holtec Pilgrim and Holtec Decommissioning International ("HDI") have *not* demonstrated the required financial assurance, e.g., that either has, or will have, sufficient funds to decommission Pilgrim.

2. The license transfer application has not included the environmental report required by NRC regulations, and has not undergone the environmental review required by the National Environmental Policy Act (NEPA).

[1] Pilgrim Watch does not understand Entergy's apparent argument that these Pilgrim Watch members are only "occasionally" near Pilgrim. All live and own property within 3-10 miles.

Not surprisingly, Entergy and Holtec say that neither contention of either Pilgrim Watch or the Commonwealth is admissible. Entergy and Holtec are wrong.

Contention 1

Pilgrim Watch's Contention 1 is:

> 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.

The factual basis for Pilgrim's Contention 1 is straightforward:

1. Holtec Pilgrim and HDI are limited liability companies. Neither has any significant asset beyond Pilgrim Decommissioning Trust Fund (DTF). PW Petition, p. 17.

2. Even if the NRC were to accept the estimates and assumptions in HDI's PSDAR and DCE, only 3.6 % of the DTF ($3.6 million) will remain after decommissioning. Enclosure D to Request for Exemption, p. E-14.

3. As shown in Pilgrim Watch's Petition, there is a significant probability, indeed it appears certain, that the total cost to decommission Pilgrim, and to operate Pilgrim until all of Pilgrim's licenses are terminated will be substantially more than the amount of money that will be available from the DTF.

Not surprisingly, Holtec and Entergy deny the third, but they do not appear to dispute either of the first two.

Money Recovered from DOE

In the LTA, Holtec and Energy were very clear – the only reasons that Holtec Pilgrim and HDI (who will be the only licensees) are financially responsible are that Holtec Pilgrim will own the DTF, and HDI will be paid from it. PW Petition, p. 17; LTA, pp, 17, 18; LTA

Enclosure 1, p. 16: "Thus, the existing decommissioning trust funds provide the appropriate basis for the financial qualifications of Holtec Pilgrim.")

Apparently recognizing that was not enough, Holtec and Entergy now argue that Holtec Pilgrim and HDI will be financially responsible because Holtec Pilgrim will have the "*ability* to seek recovery from DOE of about $500 million in spent fuel management costs" (Answer, p. 32) and "would have the *ability* (and the NRC could direct it [2]) to make additional contributions to the NDT" (Answer, p. 21, italics added; see also Answer, pp. 5, 20, 22, 37, 71). They also argue that there is no potential for a shortfall because "NRC Staff monitors the licensee's use of the decommissioning trust fund via its review of the licensee's financial assurance status reports." (Answer, p. 9, see also pp. 6-10)

Holtec and Entergy would have this Board forget that:

1. Holtec Pilgrim is not the only Holtec entity that has the "*ability* to seek recovery from DOE" and "to make additional contributions to the NDT."
2. Holtec International or some Holtec subsidiary other than Holtec Pilgrim and HDI also have the "*ability* to seek recovery from DOE," and there is nothing to prevent it from keeping any recovery as profit for itself.
3. NRC rules do not require Holtec to return spent fuel management costs recovered from DOE to the DTF.
4. If there is not enough money in the DTF, no NRC monitoring will produce more. One cannot get money out of an essentially bankrupt company any more than one can get blood out of a stone.
5. Pilgrim is not a utility that can count on ratepayers to make up any deficit.

[2] PW's understanding is that NRC does not have the authority to require that a parent company to pay for the decommissioning expenses of its subsidiary-licensee, except to the extent the parent may voluntarily provide a PCG (see Questions and Answers on Decommissioning Financial Assurance, ML111950031). Holtec admits that the NRC cannot require that money recovered from DOE placed in the DTF. (Answer, p. 21)

NRC jurisdiction extends to, and NRC regulations cover, only licensees. The only Holtec licensees will be Holtec Pilgrim and HDI. Thus, although the NRC might *ask* Holtec International, the parent company, *to agree* that every Holtec entity will put any recovery from DOE into a licensee's DTF so that the licensee would be able to pay decommissioning costs that it otherwise could not, the NRC has no authority to force it to do so. Unless Holtec International voluntarily provides a PCG (see Questions and Answers on Decommissioning Financial Assurance, ML111950031), the NRC has no authority to require it to pay for the decommissioning expenses of subsidiary limited liability companies such as Holtec Pilgrim and HDI.[3]

Holtec forgets its previous statements that it will not agree that any Holtec entity except Holtec Pilgrim and HDI will have any financial responsibility for decommissioning costs, or that Holtec will put whatever monies might be recovered from DOE into the DTF. See PW Petition, pp. 17-18 and Declaration of James B. Lampert, par. 9; and its admission that "There is "no … requirement in the NRC rules" "to commit to placing all DOE recoveries back in the NDT" (Answer, p. 21).

Holtec and Entergy say that "the NRC Staff finds that the assumption of DOE reimbursement is a reasonable source of additional funding" (Answer, p. 21). What they neglect to mention is that statement was in a Vermont Yankee decision; and that, unlike here, "NorthStar VY has committed ... to return recoveries for ISFSI expenses from DOE reimbursements to the trust fund." (ML1842/ML1842A639, p. 11; p. 15 is cited in fn. 74 of Applicants' Answer)

[3] At January 2019 NRC meetings in Plymouth, Mr. Bruce Watson and other NRC representatives also made clear that the NRC has no authority to require that spent fuel management funds recovered from the Department of Entergy be returned to the Decommissioning Trust Fund

The NRC has recognized that problems arise when, as here, Holtec Pilgrim is "organized as a separate company or subsidiary of a holding company to isolate the risks and rewards" and the parent, Holtec International is "protected by limited liability." 76 Federal Register 35517.

Pilgrim Watch respectfully suggests that Holtec cannot have it both ways. If Holtec wants to use potential recoveries from DOE to show that Holtec Pilgrim and HDI are financially responsible, then Holtec International, Holtec Pilgrim and HDI must agree that they will put all such recoveries into the DTF, and that they will make those recovered funds available to pay decommissioning costs. If, on the other hand, Holtec International will not so agree and wants to retain the ability to keep money recovered from DOE out of the hands of the licensees to increase Holtec International's own profits, then it should be held to what it said in the LTA; and this Board should not allow Holtec Pilgrim or HDI to rely on DOE money to provide the financial assurance that NRC regulations require.

It is time for Holtec to make a choice.[4]

Shortfalls in the Decommissioning Trust Fund

Holtec and Entergy agree that "the PSDAR must contain ... a site-specific cost estimate. (Answer, 7). Pilgrim Watch does not say that a decommissioning cost estimate must be precise. But for the NRC regulations and procedures to make any sense at all, a decommissioning cost estimate must be as accurate as reasonably possible and must be based on reasonable and justifiable assumptions.

These prerequisites are particularly important here. The DTF will not be sufficient. Holtec's cost estimate assumptions are unjustified and lead to unrealistically low estimated costs,

[4] Holtec and Entergy say that "nothing prevents the Staff from imposing new conditions relating to the current transfer (Answer, 64). Pilgrim Watch suggests that "nothing prevents this Board from conditioning the proposed transfer on an enforceable agreement by Holtec International, Holtec Power, Inc., Holtec Pilgrim, and HDI that all funds received by any Holtec entity from DOE will be put into the DTF.

particularly if Holtec Pilgrim and HDI incur costs that are not considered in the PSDAR or DCE. As shown in Pilgrim Watch's Petition, the available money in Pilgrim's DTF provides no basis for Holtec's and Entergy's claim that Holtec Pilgrim and HDI are financially responsible.

10 CFR. §72.30 requires Holtec to justify key assumptions contained in the PSDAR and DCE. The LTA, PSDAR and DCE do not do so; in large measure the assumptions on which HDI's cost estimates are based are not even identified.

Pilgrim Watch's petition lists 16 examples showing that Holtec's assumptions underlying the PSDAR and DCE are wrong. These assumptions will lead to costs not included in the DTF estimates and cashflow analysis; Holtec Pilgrim and HDI are not financially responsible. (Petition, pp. 20-21)

Pilgrim Watch does not disagree that a "bald assertion that a matter ought to be considered or that a factual dispute exists … is not sufficient" (*Private Fuel Storage*, LPB 98-7, quoted in Answer, p. 13, fn.17); but that is not the case here. Pilgrim Watch's Petition is not speculative. It includes detailed facts. documents and other information (Petition pp. 21-81)[5] supporting Contention 1. This is not a "fishing expedition" "where an intervenor has no facts to support its position" (Answer, p. 14).

Holtec's and Entergy's Answer effectively admits that there are disputes about material facts and issues. Stripped of adjectives and adverbs, most of Holtec's and Entergy's opposition reduces to "we hope you can't prove what you have alleged."

Holtec and Entergy would have this Board ignore that the resolution of the disputes between them and Pilgrim Watch requires a hearing. Which party will eventually prevail is

[5] In support of its Contentions, Pilgrim Watch's petition references about 60 federal, state and other reports. Many of these are cited several times in connection with various factual questions, and many themselves cite and discuss other references.

irrelevant to the issue now before this Board: Are Pilgrim Watch's contentions admissible? Pilgrim Watch submits that they are.

> All that is required for a contention to be acceptable for litigation is that it be specific and have a basis. Whether or not the contention is true is left to litigation on the merits in the licensing proceeding. *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC 546, 551 n.5 (1983)
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> What is required is "a minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate." *Gulf States Utilities Co. (River Bend Station, Unit 1*), CLI-94-10, 40 NRC 43, 51 (1994); *Connecticut Bankers Ass'n v. Bd of Governors*, 627 F2d 245 (D.C. Cir. 1980, quoted at pg. 14 of Applicant's Answer.)
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> Under the Commission's contention rule, intervenors are not asked to prove their case, or to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention, and to do so at the outset. *Louisiana Energy Services, L.P. (National Enrichment Facility),* CLI-04-35, 60 NRC 619, 623 (2004).

Pilgrim Watch respectfully suggests that, based on the record before this Board, Contention 1 is "specific and ha[s] a basis," Pilgrim Watch has made far more than "a minimal showing that material facts are in dispute," and has "provide[d] sufficient alleged factual or legal bases to support the contention." Contention 1 is admissible.

Pilgrim Watch will not here repeat everything said in its Petition to show that this contention is admissible. Applicants' Answer lists 14 "reasons for a potential shortfall" (Answer, p. 29) given by Pilgrim Watch in its petition, all of which support Contention 1 that neither Holtec Pilgrim nor HDI is financially qualified; and Applicants then spend about 30 pages trying to discredit them. In this reply, Pilgrim Watch will address the first four,[6] each of

[6] Quoting from p. 29 of the Answer: "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…."

The other 10 reasons similarly support Contention 1. The Applicants' objections to them show that there are indeed disputes of fact and law between Pilgrim Watch and the Applicants, disputes that may have to be resolved at hearing, but not at the admissibility stage.

which shows, and supports Pilgrim Watch's contention, that the DTF is insufficient and that Holtec Pilgrim and HDI are *not* financially responsible. The Applicants' argument that these "challenges to the sufficiency of financial assurance "are inadmissible because they lack an adequate basis, do not demonstrate material issues and are not supported by information demonstrating a genuine material dispute with the Application" (Answer, pp. 15-16) is simply wrong.

At the outset, Pilgrim Watch asks this Board to keep in mind that Holtec PSDAR and Decommissioning Cost Estimate provide essentially no margin for error. Holtec and Entergy say that "the cash flow analysis … shows that over $200 million will remain in the trust fund after completion of partial site release" (Answer, p. 32; see also p. 22). But the cash flow analysis also shows HDI projects spending hundreds of millions more between "partial site release" (apparently expected to be in about 2030 when the projected DTF balance will be $200.359 million). When decommissioning is complete, only $3.6 million (about one-third of one percent of the supposed current value of the DTF) will remain.

Increases in Decommissioning Costs

Pilgrim Watch's Petition says that "*decommissioning costs will increase more than inflation* "(PW Petition, p. 23, italics in petition); that Holtec "incorrectly and with no apparent basis or justification" incorrectly assumed that they would not (PW Petition, pp. 22-23), and that

> "This one fact alone demonstrates that the Decommissioning Trust Fund does not, and will not, provide any basis for Holtec's claim that 'the existing decommissioning trust funds provide the appropriate basis for the financial qualifications of Holtec Pilgrim' (LTA Enclosure 1, pg. 16)." PW Petition, p. 23.

Holtec and Entergy do not appear to dispute that HDI's cost estimates assumed, in Pilgrim Watch's view incorrectly, that decommissioning costs *will not* rise faster than general inflation.

The Applicants' Answer to Pilgrim Watch's allegations that decommissioning costs will rise raster says that the "NRC Q&A on which Pilgrim Watch relies ... does not address the escalation of a site-specific estimate" (Answer, pp. 33-34); that the Callan Associate reports reflect "changes in the scope" of decommissioning (Answer, pp. 34-35); and that the "estimate in the Application [] reflects a well-established short-term scope for DECON." (Answer, p. 35).

Even if correct, none of these refute the basic underlying facts: the NRC statement, confirmed by Callan Associates, that " decommissioning costs will (as the NRC has said) increase faster than inflation; that neither Holtec Pilgrim nor HDI has or will have access to sufficient assets, and that neither Holtec nor HDI is financially responsible or has provided the necessary financial assurance." (PW Petition, 26)

As for the Applicants' question "why long-term adjustments 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" (Answer, p. 35), Pilgrim Watch's petition provides the answer. Even over the "short term," 2019-2024, in which HDI expects to accomplish most decommissioning, the expected "more than inflation" increase in costs likely will be $95 million more than the DCE projects; and 2021-2025 "site restoration" costs likely will increase by more than $8 million. (PW Petition, p. 25). Either far exceeds the projected $3.6 million "left-over."

There are undoubtedly facts and issues that will need to be resolved at a hearing, e.g., whether the LTA can be approved even though Holtec and Entergy have not, as required by l0 C.F.R §72.30, justified its assumption that costs will not increase faster than inflation, perhaps by

how much they will increase; and whether any more-than-inflation increases will necessarily lead to the conclusion that HDI and Holtec Pilgrim have not provided the required financial assurance. But that is for hearing, not now.

The facts that Pilgrim's Petition sets forth with respect to this question (PW Petition, pp. 22-26) are sufficient to support Contention 1.

Contingency Allowance[7]

Pilgrim's Contention 1 is also supported by its showing that Holtec's Contingency Allowance does *not* provide financial assurance.

Holtec and Entergy seem to agree that "the Contingency Allowance is expected to be fully consumed [and] does not account for inflation or escalation of the price of goods and services over the course of the project" (PSDAR Sec. 4.5; PW Petition, p. 22) Their statement that "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" (Answer, p. 31) overstates.

The PSDAR admits the "Contingency Allowance… does not account for inflation or escalation of the price of goods and services;" but the Applicants' assertion that "the contingency allowance is established based on evaluation of the impact of both uncertainty and discrete risk events on cost and schedule" (Answer, 31), although perhaps literally correct, is badly misleading.

[7] Holtec's spent fuel management cost estimates are also based in its questionable assumptions that "Holtec will never have to repair or replace any failed casks or pads, and that Holtec will not need to repackage spent nuclear fuel into new containers approved by DOE for transportation. (See PW Petition, p. 27). The Answer does not appear to address Holtec's basis for making either of these assumptions. With respect to the costs of repackaging, Holtec and Entergy again fall back on the "availability" of DOE funds. See Answer, p. 55. See also Pilgrim Watch petition, pp. 30-31.

It is probably fair to understand the DCE to say that the contingency allowance is intended to cover uncertainty in the costs of the specific decommissioning activities that the PSDAR and DCE discuss, but nothing said in the PSDAR, DCE or LTA supports Applicants' new view that it covers anything else.

Pilgrim Watch submits that the only fair reading of the LTA, PSDAR and DCE is clear:

> "Holtec does not expect that any of the projected $237 million 'contingency allowance' would be available to cover decommissioning costs that will increase faster than the rate of inflation, spent fuel management costs incurred after 2062, site restoration costs resulting from the fact that the Pilgrim site is not clean, or any of the other myriad costs that Holtec's DCE and PSDAR have essentially ignored." Pilgrim Petition, p. 22.

This material disputes - what costs Holtec's contingency allowance really took into account and was intended to cover, and, more central to Contention 1, whether the projected contingency allowance provides any basis for concluding that there are sufficient funds in the DTF or that either HDI or Holtec Pilgrim is financially responsible - may have to be resolved at a hearing. They cannot be resolved at the contention admissibility stage.

Spent Fuel Storage

Holtec and Entergy say that

> 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, … the spent fuel is projected to be fully removed [from] the Pilgrim site in 2062." (Answer, p. 36).

They say also that these "assumptions are based on the current DOE strategy and described acceptance rate." *Id.*

The underlying question here appears to be whether the "DOE strategy" justifies the DCE cost estimate that provides no money for spent fuel management after 2063.

Pilgrim Watch's Petition (pp. 28-30) explains why it does not; for example:

> "the DOE strategy is simply 'a framework for moving toward a sustainable program to deploy an integrated system capable of transporting, storing, and disposing of used nuclear fuel' (DOE Strategy, p. 1). It does not even try to guess by when an interim or geologic repository might actually exist." (PW Petition, p. 28)

> "The NRC's 2014 Continued Storage Rule discussed onsite storage for 100 years, 57 years longer than Holtec presumed. Holtec's PSDAR (pp. 60-61) estimated on-going spent fuel storage costs at $ 7.2 million per year in 2018 dollars. Even if one were to assume that there would be no greater-than-inflation increase in those costs, 57 additional years of spent fuel storage would add more than $380 million to Holtec's estimated cost. These additional costs far exceed the $3.6 million leftover in the DTF according to Holtec's cost estimates."[8] (PW Petition, p. 30)

> "The unavoidable fact, that Holtec's LTA avoids, is that no one knows when there will be an interim or permanent repository for spent nuclear fuel ready and willing to accept Pilgrim's." (PW Petition, p. 29)

In short, Pilgrim Watch's Petition includes far more than "unsupported speculation that a lengthier period of storage will be required." (Answer, p. 37)

There are material facts about the costs of dry cask storage in dispute, e.g., (1) whether Holtec's assumption that DOE will remove all spent fuel by 2062 is justified; and (2) given the clear lack of anything approaching certainty as to when DOE actually will take Pilgrim's spent nuclear fuel, whether cost estimates that include absolutely no funds for storage after 2062 can provide "financial assurance."[9]

Once again, these disputes can be resolved only at a hearing. Pilgrim Watch's showing with respect to this issue supports Contention 1.

[8] If Holtec's assumed 2062 date were to slip. even one year, Holtec's projected annual cost - $7+ million" would be more than the projected $3.6 million "left over."

[9] Pilgrim Watch recognizes that the "financial assurance" aspects of the costs of indefinite spent fuel storage at Pilgrim are inexorably tied to Holtec's refusal to agree that any recovery of spent fuel management costs from DOE will be put into the Pilgrim DTF.

Unknown radiological or non-radiological contamination

Pilgrim Watch does not dispute that the LTA and PSDAR do not specifically describe the Pilgrim site as "clean" (see Answer, p. 38), but that is not relevant to the fundamental questions: Are HDI's cost estimates based on the incorrect assumption that there is "no significant contamination" (DCE, p. 11) on the Pilgrim site? Does the contrary showing at pages 30-54 of Pilgrim Watch's Petition support Pilgrim Watch's allegations that Holtec's LTA, PSDAR and DCE do *not* justify HDI's assumption that there is "no significant contamination" on the Pilgrim site (DCE, p. 22), do *not* provide a proper basis for Holtec's estimated costs, particularly the costs of site restoration, and do *not* provide a reasonable or sufficient basis for HDI's and Holtec Pilgrim's required financial assurance? Pilgrim Watch submits that they do, and that they also support the admissibility of Contention 1.

Holtec and Entergy say that Pilgrim Watch "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. (Answer, p. 38). Pilgrim Watch did not.

Rather it is Entergy and Holtec that would have this Board overlook what the LTA and PSDAR seem to make clear; Holtec prepared its PSDAR and DCE without anything approaching "extensive due diligence." Pilgrim Watch's Petition showed that Holtec's pre-filing review was far from adequate, but Pilgrim Watch could not "ignore" facts that were not there.

Pilgrim Watch will assume that, to some unknown extent, Holtec may have reviewed some 50.75(g) records and received some data and historical information from Entergy before it filed the LTA and PSDAR last November. But according to the PSDAR even Holtec recognized that what it had done was not enough to know what contamination is actually on site. Holtec

recognized that, "in the time leading up to, and immediately following, the equity/sale closure and license transfer" it had to "[r]eview … the Historical Site Assessment (HSA) to support the identification, categorization, and quantification of radiological, regulated, and hazardous wastes" (PSDAR, pp. 8-9), "[c]onduct site characterization activities so that radiological, regulated, and hazardous wastes are identified, categorized, and quantified" (PSDAR, pp. 10-11); and that it needed to identify "radiological, regulated, and hazardous wastes." (DCE, p. 14). All of this should have been done before, not after, the PSDAR and DCE were prepared

The NRC's Decommissioning Rule, 10 C.F.R. §20.151 recognizes the importance of a site assessment and an evaluation of "the magnitude and extent of radiation levels; and the concentrations of residual activity." In the Federal Register notice establishing this rule, the NRC was quite clear that "To adequately assure that a decommissioning fund will cover the costs of decommissioning, the owner of a facility must have a reasonably accurate estimate of the extent to which residual radioactivity is present at the facility, particularly in the subsurface soil and groundwater," that "soil or ground-water contamination can increase decommissioning costs" and "increase decommissioning costs above the original estimate." 76 Federal Register 33514, 33517.

The unavoidable conclusion is that, when Holtec prepared and filed its PSDAR, it had no basis to make the required "reasonably accurate estimate;" Holtec simply did not know what radiological and hazardous waste now exist on Pilgrim's site. Without knowing what contamination was actually there, Holtec did not and could not know what it would cost to remove it, and could not have prepared a "reasonably accurate" PSDAR and DCE. See Pilgrim Watch Petition, pp. 31-32.

That Holtec did not know what contamination actually exists is made even clearer by the statements in Holtec's PSDAR that it needed to provide only a "relatively small amount of the decommissioning cost … for the demolition of uncontaminated structures and restoration of the site (PSDAR, p. 62), and that the only sit restoration costs it foresaw "are those costs associated with conventional dismantling, demolition, and removal from the site of structures and systems after confirmation that radioactive contaminants have been removed." PSDAR, (p. 19).

Holtec and Entergy assert that the LTA and DCE on which Holtec "bas[ed] its estimate on site conditions [was] determined after extensive due diligence,"[10] but they do not appear to dispute what Pilgrim Watch's Petition says. Rather than disputing that potentially contaminating events described in Pilgrim Watch's petition occurred, they criticize Pilgrim Watch for not providing more information about on-site contaminants and the cost of remediation.

Pilgrim Watch agrees that the facts in Pilgrim Watch's petition are not as fulsome as Pilgrim Watch might hope. Given the lack of public information or access to the Pilgrim site, Pilgrim Watch at this point in time does not have access to all of the relevant facts (facts that are presumably known or accessible to Holtec and Entergy) showing how much of the Pilgrim site is contaminated, to what extent and by what, and should also provide a basis for properly estimating the cost of removing the contamination that actually exists. But it is equally important that facts were not considered, as they should have been, in the LTA, PSDAR and DCE either.

The LTA, PSDAR and DCE make clear that Holtec's PSDAR and DCE do not provide the "accurate decommissioning cost [that is] necessary for a safe and timely plant

[10] Pilgrim Watch leaves for hearing whether Holtec "bas[ed] its estimate on site conditions … after *extensive due diligence*."

decommissioning" (NUREG-0586, supra.); and that Holtec had no basis or justification for its assumption that there is "no significant contamination" on the Pilgrim site (DCE, p. 22).

Pilgrim Watch submits that the facts, documents and other information set forth in its Petition with respect to contamination of the Pilgrim site more than meet the standard for what is required for a contention to be admissible.[11] They are specific and have a basis (*Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC 546, 551 n.5 (1983)); they make more than "a minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate" (*Gulf States Utilities Co. (River Bend Station, Unit 1*), CLI-94-10, 40 NRC 43, 51 (1994); *Connecticut Bankers Ass'n v. Bd of Governors*, 627 F2d 245 (D.C. Cir. 1980)); and they clearly provide "sufficient alleged factual or legal bases to support the contention. (*Louisiana Energy Services, L.P. (National Enrichment Facility),* CLI-04-35, 60 NRC 619, 623 (2004)).

Pilgrim Watch obviously does not agree with Entergy's and Holtec's assertion that:

> "Pilgrim Watch's 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" (Answer, pp.40-41).

But, beyond what is said above, Pilgrim Watch will not repeat the "adequately supported" information set forth in Pilgrim Watch's Petition that is more than sufficient to satisfy the requirements of 10 CFR §2.309 and to move this proceeding to hearing.

[11] It is important to remember that the test for whether Contention 1 is admissible is not whether any single one of the bases set forth in Pilgrim Watch's petition is sufficient, but rather is whether all of them, either alone or taken together, meet the standard.

However, Pilgrim Watch will briefly address Holtec's and Entergy's statements that accuse Pilgrim Watch of "ignoring" and "challenging the NRC rules" (Answer, p. 39), and of raising matters "outside of the scope of this proceeding" (Answer, p. 40).

Pilgrim Watch is not "challenging the NRC rules" (Answer, p. 39; see also Answer, pp. 27-28, 38, 42, 47, 56). Pilgrim Watch agrees that NRC "rules require a licensee to maintain … [r]ecords of spills and other unusual occurrences," but the rules also *allow a licensee to limit* the records to "instances where [the licensee apparently concedes that] significant contamination remains or there is a reasonable likelihood that contaminants may have spread to inaccessible areas." What Pilgrim's records actually say about any of the spills, leaks, buried waste and other contaminations outlined in Pilgrim Watch's petition is unknown. Pilgrim Watch has no access to them;[12] Pilgrim Watch does not know whether NRC Staff has reviewed them.

Holtec and Entergy also say that Pilgrim's "concern" that "prior environmental impact statements" assume that the Pilgrim site is "clean" is "outside the scope of this proceeding;" and that "Pilgrim Watch's argument that Holtec must complete a 'full' site investigation prior the proposed license transfer reflects a fundamental misunderstanding of – and improper challenge to – the NRC's license termination regulations" (Answer, p.47). Once again, Holtec and Entergy are wrong.

[12] At a March 20, 2019 meeting of the Massachusetts Nuclear Decommissioning Citizens Advisory Panel, an Entergy representative was asked whether Panel members would be given access to the 50.75(g) records. The answer, that he would look into whether a Panel member could review the voluminous paper records but not take notes or copy them, and that there might also be some summaries, was not encouraging. Unfortunately, the Entergy representative was not asked to what extent Holtec had reviewed them.

At the same meeting, a Holtec representative said that any payments that it might agree to make to the Town of Plymouth would be paid out of the DTF. Payments of this type go well beyond Pilgrim's yet-unapproved request for exemption that asks permission to use the DTF to pay spent fuel management and site restoration costs.

Whether Holtec Pilgrim and HDI have *shown* the required financial assurance is *not* "outside the scope of this proceeding." At least two aspects of "prior environmental impact statements" are directly concerned with "financial assurance," i.e., whether Holtec Pilgrim and HDI have shown that the DTF has enough money.

One is whether Holtec reviewed these prior statements as part of its "extensive due diligence." Pilgrim Watch has found nothing in the LTA, PSDAR or DCE showing that they did, which necessarily leads to the conclusion that Holtec cannot rely on prior environmental impact statements to show that the LTA, PSDAR or DCE somehow provide the required "financial assurance."

A second is that, even if Pilgrim Watch were to assume *arguendo* that Holtec did review the "prior environmental impact statements," Holtec's and Entergy's assertion that only a "relatively small amount of the decommissioning cost [is needed] for the demolition of *uncontaminated* structures and restoration of the site" (PSDAR, p. 62) is not based on them. The critical question remains – Do the cost estimates in the PSDAR or DCE include what will be needed to remediate the portions of the site that are contaminated?

This Board will likely have to resolve these questions, and many other material disputes, at a hearing.

Holtec's and Entergy's contention that "Pilgrim Watch's argument that Holtec must complete a 'full' site investigation prior to the proposed license transfer' reflects a fundamental misunderstanding of – and improper challenge to – the NRC's license termination regulations" (Answer, p. 47) reflect their "fundamental misunderstanding," not Pilgrim Watch's.

Pilgrim Watch agrees that NRC regulations require a "full" site characterization before Pilgrim's licenses can be terminated; but that is for the obvious purpose of determining the

extent of residual radioactivity. The issue that Pilgrim Watch raises in Contention 1 is different; whether the requirement for "reasonably accurate" cost estimates means that Holtec's cost estimates must be based on, as Holtec put it, the identification, characterization and quantification of what contamination actually exists (See PSDAR pp. 8-11, DCE, p.14). Without HDI knowing "what contamination actually exists," the cost estimates in its PSDAR and DCE cannot be assumed to accurate, or to show that either Holtec Pilgrim or HDI is financially responsible. Pilgrim Watch's position is that Holtec should be required to prepare and file a revised PSDAR and DCE based on actual conditions. See PW Petition, pp. 32-36.

Holtec's and Entergy's assertions that requiring "further environmental review constitutes an impermissible challenge to the categorical exclusion in 10 C.F.R §51.22(c)" (Answer, p. 27); that considering the costs of a radiological accident "impermissibly challeng[es] the NRC's Continued Storage Rule" (Answer, pp, 27); and that the "possibility of non-radiological contamination is not within the NRC's jurisdiction" (Answer, p. 38) similarly are wide of the mark and provide no reason not to admit Contention 1.

10 C.F.R §51.22(c), and the NRC's Continued Storage Rule are not concerned with decommissioning cost estimates. Rather, they involve whether an environmental assessment or an environmental impact statement is required, and the long-term storage of spent nuclear fuel. Contention 1 is directed to whether Holtec Pilgrim and HDI have shown that they are financially responsible.

Whether the NRC jurisdiction includes non-radiological contamination is largely irrelevant to whether Holtec Pilgrim and HDI are financially responsible. HDI's cost estimate includes identifying and removing non-radiological hazardous waste (See PSDAR, pp. 9-11, 22;

DCE, pp. 14-15, 27).[13] If HDI and Holtec Pilgrim do what they say they will, one of these two limited liability companies will have to pay these costs. Whether the DTF has enough money to pay them is clearly part of the inquiry into whether HDI and Holtec Pilgrim have shown the required financial assurance.[14]

Contention 1 Conclusion

Pilgrim Watch's petition meets the requirements of 10 CFR §2.309. It sets forth the issues of fact and law, demonstrates that Contention 1 is within the scope of this proceeding and material to findings that must be made to approve the license transfer application, shows there are many material genuine disputes between it and the applicants, and includes over includes over 85 pages (e.g., pages 21-80, 93-94, 96-111, 123-129) setting forth facts, documents, and other information, available to it when its petition was filed, that form a basis for Contention 1. Contention 1 should be admitted.

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[13] The statement in the Applicants' Answer that "Pilgrim Watch's reference to buried material presumably refers to the disposal of slightly contaminated construction soil" is not correct. The portion of Pilgrim Watch's Petition captioned "Hazardous Waste Dumping" is directed to barrels of chemical waste drums of hazardous waste," known to the NRC and the Massachusetts Department of Public Health, (Petition, p. 52) buried at the location shown on page 53 of the Petition.

[14] A financially responsible company would do many things that Holtec Pilgrim and HDI apparently will not. It would have available the funds needed to monitor for and to deal with fires in radioactive structures and components, severe weather events and climate change (PW Petition, p.60). It would not simply rely on whatever insurance the NRC might require to pay for resulting off-site damages (Answer, pp. 52-53); and, despite scientific predictions to the contrary, a hope that climate change impacts, increased severity of storms, rising sea levels, precipitation and floods will not be a problem until decommissioning is complete and the licenses are terminated. (See Answer, pp. 53-54). Extreme weather events likely will result in delays in the work schedule, increased license termination and site restoration costs, and will lead also to increased costs for overhead and project management (Petition, p. 60).

As for Holtec's and Entergy's assertion that state regulation of radiological hazards "would represent a challenge to the NRC rules and infringe on the NRC's exclusive jurisdiction over nuclear reactors" (Answer, p. 56, see also Answer, p.57, fn 161), they overlook the fact and there is no "exclusive jurisdiction" after Pilgrim's licenses have been terminated (NRC Frequently Asked Questions About Decommissioning), and that a prudent company would consider the potential cost of making sure that the released site meets state requirements so that the site could be sold and used for other purposes.

Contention 2

Contention 2 is:

> The License Transfer and Amendment Request Does Not Include the Environmental Report Required by 10 CFR 51.53(d), and has not undergone the Environmental Policy Review Required by the National Environmental Policy Act.

Holtec's and Entergy's Answer opposing Pilgrim Watch's Petition for Leave to Intervene and Hearing Request (March 18, 2019) says that Contention 2 is not admissible because the contention "impermissibly challenges the categorical exclusion for license transfers, the Commission's Decommissioning Rule and the Continued Storage Rule, and makes allegations outside the scope of this proceeding." (Answer, pp. 60-61)

Holtec and Entergy are mistaken. Pilgrim Watch does not challenge any rule.[15] Neither Pilgrim Watch's contention and "allegations," nor the facts and other information supporting it, are outside the scope of this proceeding.

Contention 2 says that Holtec and Entergy have not either prepared and filed the environmental report required by NRC rules, or undergone the environmental review required by the National Environmental Protection Act (NEPA).

NRC rules require "each applicant for a license amendment authorizing decommissioning activities" to "submit with its application a separate document, entitled 'Supplement to Applicant's Environmental Report—Post Operating License Stage,' which will update "Applicant's Environmental Report—Operating License Stage," as appropriate, to reflect any new information or significant environmental change associated with [not specifically limited to]

[15] Holtec and Entergy correctly say that Pilgrim Watch has not asked that any rule be waived. Pilgrim Watch has no reason to do so.

the applicant's proposed decommissioning activities or with the applicant's proposed activities with respect to the planned storage of spent fuel." 10 C.F.R §§ 51.53(d). No such document was submitted by HDI with the LTA.

NEPA similarly requires an environmental assessment or impact statement if a proposed action is a major federal action, i.e., it would have "effects that *may* be major and which are potentially subject to Federal control and responsibility. 42 C.F.R §1508.18. No such assessment or impact statement has been prepared.

Pilgrim Watch's Petition meets the requirements of 10 C.F.R §2.309 for admitting Contention 2. Pilgrim Watch has made far more than the required "minimal showing that material facts are in dispute, thereby demonstrating that an 'inquiry in depth' is appropriate." *Gulf States Utilities Co. (River Bend Station, Unit 1*), CLI-94-10, 40 NRC 43, 51 (1994); *Connecticut Bankers Ass'n v. Bd of Governors*, 627 F2d 245 (D.C. Cir. 1980, quoted at pg. 14 of Applicant's Answer.)

***Pilgrim Watch Does Not Challenge Rules* 2.1315 and 51.22(c)(21)**

Holtec and Entergy seek to avoid the requirements of Rule 51.53(d) by taking refuge in the so-called "exclusionary" rules, 10 C.F.R §§ 2.1315 and 51.22(c)(21). In doing so, Holtec and Entergy mischaracterize not only Rule 51.53(d), but Rules 2.1315 and 51.22(c)(21) also. [16]

[16] Pages 61-66 of the Answer discuss the "exclusionary" rules." Holtec and Energy also says that Pilgrim challenges the Decommissioning Rule and the Continued Storage Rule, but discusses them only briefly.

With respect to the Decommissioning Rule, footnote 178 on page 67 of the Answer says that "[T]he final rule eliminates the need for an approved decommissioning plan" and that "the Staff does not formally approve a licensee's PSDAR." Pilgrim Watch discusses this issue at pages 29-30, below.

At pages 26-27, 58, and 72, which address the likely shortfall in DTF funds, the Answer says that concerns regarding environmental risk and the risks of spent fuel storage are barred by the Continued Storage Rule. Applicants confuse the potential risks of continued storage with whether the DTF is sufficient to cover HDI's costs of spent fuel storage and mitigation.

They also overlook the Federal Register Notice accompanying §§ 2.1315 and 51.22(c)(21), 63 Fed. Reg. 667821. That Notice is very clear; unless a license transfer and amendment qualify for the *limited* exclusion that Rules 2.1315 and 51.22(c)(21) create, the NRC is required to conduct hearings in connection with that license transfer application.

Holtec and Entergy' assert that 10 C.F.R §51.53(d) is not applicable because their LTA "does not seek any amendment *approving a … decommissioning plan."* (Answer, p. 61). They would have this Board overlook that Rule 51.53(d) does not apply *only* to an "applicant for an amendment *approving a … decommissioning plan*;" it *also* applies to any "applicant for a license amendment *authorizing* decommissioning activities."

HDI is such an applicant. In the LTA, HDI is asking the NRC to amend the current license to ENO to give HDI an operating license (See LTA, covering letter p. 2 (HDI will "be the licensed operator" and "will operate … Pilgrim")), and to authorize, i.e., to license, HDI to engage in decommissioning activities (LTA, cover letter, p. 2):

> HDI is a special purpose entity formed by Holtec to be *the licensed operator that will decommission nuclear power plants*, including Pilgrim. … *HDI's licensed activities will involve* possessing and disposing of radioactive material, maintaining the facility in safe condition (including storage, control, and maintenance of the spent fuel), *decommissioning and decontaminating the facility, and maintaining the ISFSI until it can be decommissioned*, each in accordance with the Licenses and the NRC regulations.

Holtec and Entergy also say that "Pilgrim Watch's argument that the categorical exemption should not apply …is equally without merit." (Answer, p. 62). But they fail to recognize that the exclusionary rules are specifically limited – Rule 2.1315 to an amendment "which *does no more than conform* the license to reflect the transfer action; and Rule 51.22(c)(21) to "amendments of license *required* to reflect the approval of a direct or indirect

transfer of an NRC license." Their apparent position that the exception provided in §§ 2.1315 and 51.22(c)(21) covers essentially any license transfer application ignores both the words of the rules and the purpose for which these rules were adopted.

The NRC found it desirable to create *limited* exclusionary rules like 2.1315 and 51.22(c)(21) to avoid being required to have a hearing when the only change a proposed license transfer sought to accomplish was reflect some corporate reorganization, i.e., "changes in ownership. or partial ownership. of facilities at a corporate level" (63 Fed. Reg. 66721), such as "indirect transfers which might entail, for example, the establishment of a holding company over an existing licensee, as well as direct transfers, such as transfer of an ownership interest held by a nonoperating, minority owner, and the complete transfer of the ownership and operating authority of a single or majority owner." (63 Fed. Reg. 66722).

The purpose of the new rules was not broadly to exempt any license amendment that sought any kind of license transfer. It was not by accident that the NRC explicitly limited the new "exclusionary rules" to "*amendments* …. *required* to reflect the … of an NRC license and "which do[] no more than conform the license to reflect the transfer action."

The license amendments that Holtec and Energy do seek do not satisfy these requirements. Holtec and Entergy seek to do far "more than conform[] the license to reflect the proposed transfer" (§2.1315), or make only amendments that are "*required* to reflect" the proposed license transfer (§51.22(c)(21)). (See Answer, p. 65). Rather their proposed amendments would delete all the provisions that were included in the current license "[f]or purposes of ensuring public health and safety" and "to assure that adequate funds will remain available in the plant's separate decommissioning funds(s)." (Proposed Amended License, Attachment A to Enclosure 1 to LTA, p. 4).

Holtec and Entergy say that these deletions should be ignored because they pertain to the 1999 sale of Pilgrim to Entergy, "do not effect or apply to the current license transfer" (Answer, p. 64) and are "related to Entergy (which is extinguishing its interests in and responsibility for Pilgrim), and that are not part of the financial assurance that Holtec Pilgrim and HDI propose." (Answer, pp. 65).

The Pilgrim decommissioning trust fund that likely was inadequate in 1999 is the same trust fund that is inadequate today. License provisions that provided more than $500 million of financial assurance were needed in 1999, and they are needed now. If these provisions are deleted as Holtec and Entergy ask them to be, "Entergy International would no longer provide this [financial]" support," (Answer, p. 65, fn.177), and Holtec has provided nothing remotely equivalent to provide financial assurance beyond the inadequate DTF.

Pilgrim Watch suggests that, if Holtec and Energy wanted to take advantage of the exclusionary rules, they could have asked that the current licenses to Entergy Nuclear Operations ("ENO") and Entergy Nuclear Generation Company ("ENGC") be amended simply to substitute HDI for ENO and Holtec Pilgrim for ENGC. Had they done so, Holtec and Entergy might have been able to show that their proposed amendments met the requirements of 51.22(c)(21) and §2.1315.

For reasons of their own, Holtec and Entergy chose not to do so. Rather, they seek to delete license provisions requiring financial support, deletions that are *not* "required to reflect the approval of a … transfer of an NRC license" (§51.22(c)(21)); and that do far "more than conform the license to reflect the transfer action." (§2.1315). Holtec and Entergy must live with the unavoidable consequence of their choice – the "exclusionary rules" do not apply to their requested license amendments.

There is another reason that the proposed license transfer does not qualify for the limited exclusion. It goes beyond the purpose of the exclusionary rules, and it is the kind of transfer that the NRC intended to "continue to be subject to the amendment processes currently in use." 63 Fed. Reg. 66728. The proposed amendments involve major changes in Pilgrim's operation. Pilgrim is not only moving from operating to generate electricity to post-shut down decommissioning operations. There is a complete change in who is responsible for any future operation. Entergy, that has operated Pilgrim (and a number of other reactors) for many years, will have no future responsibility. All future responsibility for Pilgrim's operation will rest with Holtec, a company that never either operated a reactor nor decommissioned one, and now wants to decommission at least two reactors, Pilgrim and Oyster Creek, simultaneously.[17]

[17] The chains of companies involved in the license transfer agreement are long. See LTA, pp. 1-2 and the attached organization charts. After the license transfer, Pilgrim's the licensed operator will be HDI, a newly-formed company. Pilgrim's licensed owner will be Holtec Pilgrim. Both are LLC's wholly owned by Holtec International.

Apparently Comprehensive Decommissioning International ("CDI"), another limited liability company newly-formed by Holtec "to provide an organization that performs safe and efficient decommissioning the anticipated Holtec fleet of decommissioning nuclear power plant sites" (LTA, Enclosure 1, p. 2) "will manage and perform the day-to-day activities, including decommissioning activities." (LTA cover letter, pp. 2-3). CDI is jointly owned. The majority owner of CDI is new HDI. The minority owner is Kentz USA (apparently an engineering consultant in Houston whose parent, Kentz - an engineering and construction business primarily in the oil and gas business - was acquired by SNC-Lavalin in 2014.

The LTA cover letter says that "Holtec Pilgrim and HDI "have the requisite managerial, technical and qualifications," (p. 3) but neither appears to have any decommissioning experience. Pilgrim Watch expects that Holtec will argue that although Kentz itself also does not seem to have decommissioning experience, its parent, SNC-Lavalin, does. However, to our knowledge, although SNC-Lavalin may experience in foreign countries, it has not been responsible for decommissioning any US reactor.

There are good reasons behind the requirement in 10 C.F.R § 50.33 that a "newly-formed entity" include additional information in its application for an operating license; and in appropriate circumstances for the Commission to consider the adequacy of a licensee's corporate organization, the integrity of its management, and its past performance. Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 120 (1995).

To the extent that this Board may find them relevant, Pilgrim Watch suggests that the relationships between, and prior performance of, the various Holtec and SNC-Lavalin entities can be determined only at a hearing.

In short, what Entergy and Holtec seek is the kind of license transfer that the NRC intended to "continue to be subject to the amendment processes currently in use." 63 Fed. Reg. 66728. The "exclusions" of 10 C.F.R §§ 2.1315 and 51.22(c)(21) are not applicable. HDI and Holtec Pilgrim must comply with the requirements of 10 C.F.R §§ 2.51.53(d).

"Special Circumstances"

As shown above, the Federal Register notice strongly suggests that the only circumstance that is *not* special is when a proposed license transfer *only* reflects some internal corporate reorganization, which is not the case here. Pilgrim Watch's Petition sets forth a number of additional "special circumstances" present at Pilgrim, including Pilgrim's location on Cape Cod Bay, a State Ocean Sanctuary with endangered marine mammals and birds, and on top. of the second largest Aquifer in the state; the site's topography with land slopping to the Bay so that contaminants if not identified and cleaned up will wash into the Bay (see Petition, pp. 36-37), Pilgrim's history of leaks, spills, and on-site waste burials (*Id.*, pp. 38-54); the need to do an environmental assessment of the impacts of climate change, recognizing that the region is in a rapidly changing environment where no one knows for certain how fast rising sea levels or severe weather events including storm-surges or heavy rain events will inundate Pilgrim's site; and the inadequacy of prior environmental impact statements that do not bound potential environmental impacts. (*Id.*, pp. 111-114).

Holtec and Entergy appear to recognize that even if the "exclusionary rules" are facially applicable, which they are not, "special circumstances" may nonetheless require submission of an environmental assessment or impact statement. 10 C.F.R §§ 2.51.22(b). If this Board should decide, in Pilgrim Watch's view incorrectly, that the exclusionary rules for some reason do apply, then 10 C.F.R §§ 2.51.22(b) requires the Commission, e.g., this Board, to decide yet

another issue at the hearing, whether the "special circumstances" exception to the exclusion applies.

The PSDAR

Holtec and Entergy say that Contention 2 is inadmissible because Pilgrim Watch "seek[s] to raise issues outside the scope of this proceeding and challenge[s] the NRC's decommissioning rules." (Answer, p. 66).

Their objection apparently is that "Pilgrim Watch is incorrectly attempting to conflate the Application with the PSDAR" (Answer, p. 66), and thus challenges 10 C.F.R §50.82(a) that "requires the submission of a PSDAR, [but] does not require any approval of that document," (Answer, p. 67)

That rule is not relevant here, and Pilgrim Watch does not challenge the rule. Pilgrim Watch agrees that the NRC does not "approve" a PSDAR. But Holtec and Entergy neglect to say that NRC rules are very clear that an LTA and its *proposed license transfers must be approved.*[18] Indeed, Entergy and Holtec admit that "HDI and Holtec Pilgrim must demonstrate in the Application that they are financially qualified" (*Id.*) and that "[t]he demonstration of financial qualifications and the exemption request are subject to scrutiny in this proceeding." (Answer, p. 24)

Holtec and Entergy seem also to admit that information in the PSDAR is central to license transfer application that must be "approved." For example, according to Entergy and Holtec, the PSDAR supposedly shows that "the existing decommissioning trust funds provide the appropriate basis for the financial qualifications of Holtec Pilgrim." (LTA Enclosure 1, p.

Similarly, and as discussed in connection with Contention 2, it is approval of the license transfer, not review of the PSDAR, that is a major federal action. (see, Answer, pp. 67-68)

16). They agree that "the Revised PSDAR is [not] entirely immaterial to the Application," and that it "includes the DCE upon which the cash flow analysis in the Application and exemption request are based." (Answer, p. 24)

Pilgrim Watch is not asking this Board not to approve the PSDAR. Pilgrim Watch does say that the PSDAR and DCE, along with their cost estimates and cash flow analysis, are central to the question of financial assurance. As discussed in detail above in connection with Contention 1, neither PSDAR, nor the DCE, nor the LTA that includes both the PSDAR and the DCE, supports a conclusion that either HDI or Holtec Pilgrim is financially qualified. After hearing, this Board should so conclude, and should not approve the requested license amendments and transfer.

Holtec and Entergy also say that "the PSDAR does not represent a federal action" (Answer, p. 67). But the immediately following sentence in their Answer makes clear that their requested license transfer is. They agree that "there *is* federal action 'where regulatory approval is necessary to a licensee's actions.'" (Answer, pp. 67-68). The regulatory approval that Holtec and Entergy seek here, NRC approval of the requested license transfers and issue of an operating license to HDI so that HDI can "*decommission[] and decontaminat[e] the facility, and maintain[] the ISFSI until it can be decommissioned* (LTA, cover letter, p. 2) is a "federal action." Holtec's and Entergy's statement that "the NRC has rejected the idea that review of the PSDAR 'should be defined as a major federal action under NEPA'" is simply not relevant.

Environmental Impacts

Two issues that this Board will have to decide after a hearing are whether approving the license transfer and issuing a license to HDI authorizing decommissioning is not simply a "federal action," but whether it is a "*major* federal action" under NEPA, and whether "any new information or significant environmental change associated with the applicant's proposed decommissioning activities or with the applicant's proposed activities with respect to the planned storage of spent fuel" required Holtec and Entergy to submit a "Supplement to Applicant's Environmental Report—Post Operating License Stage" with their license transfer application. (10 C.F.R. §51.53(d)).

The definition of a "major federal action" in 40 C.F.R. § 1508.18 is clear. A federal action is "major" if its "effects …*may* be major" (italics added) and it is "potentially subject to Federal control and responsibility." The effects of decommissioning and long-term spent fuel storage "may be major," otherwise the NRC would have no reason for its licensing, decommissioning and spent fuel storage rules, to say nothing of its continued inspections and oversight after a reactor stops generating electricity.

Holtec and Entergy cannot reasonably dispute that the NRC's decision whether to grant an operating license to HDI, a newly formed company that to our knowledge has never before had any such license and that will assume licensed operator responsibilities for decommissioning nuclear power plants that Holtec acquires including Pilgrim" (LTA, Enclosure 1, p. 1), is not "subject to Federal [i.e., NRC,] control and responsibility."

Pilgrim Watch agrees with Holtec's and Entergy's statement that the 1996 Decommissioning Rule "*prohibits* any major decommissioning with impacts outside existing environmental analysis." (Answer, p. 68, italics added). Holtec's and Entergy's quotation from

Vermont Yankee, CLI 16-17 makes clear that the Decommissioning Rule *does* "contemplate additional NEPA review at the PSDAR stage" if "the environmental impacts particular decommissioning activities will fall outside the previously performed analysis." (*Id.*) *Vermont Yankee* also is clear that (CLI-16-17, p, 35)

> If contemplated decommissioning activities are expected to result in environmental impacts outside the bounds of the Decommissioning GEIS (or a prior site-specific environmental review), then the licensee should apply for a license amendment and submit a supplemental environmental report as part of that application describing and evaluating the additional environmental impacts.

Pilgrim Watch submits that the facts, documents and other information set forth in Pilgrim Watch's Petition, much of which is new and significant information,[19] provide more-than-sufficient alleged factual support for Pilgrim Watch's contention that that HDI's "contemplated decommissioning activities" *are* "outside the bounds of," and *are* reasonably expected "to result in environmental impacts outside the bounds of any generic or site-specific previous analysis." (See, *Louisiana Energy Services, L.P. (National Enrichment Facility),* CLI-04-35, 60 NRC 619, 623 (2004)). The previous environmental impact statements do not "bound" the potential environmental impacts during the next more than 40 years of decommissioning. (Petition, pp. 111-114).

Holtec and Entergy advance two arguments to support their position that "Contention 2 is inadmissible." One is "because it is not supported by information demonstrating that *the Application* would result in any significant environmental impact" [20] (Answer, p. 69, italics in

[19] Pilgrim Watch's allegations are confirmed by much of the Commonwealth's Petition, particularly the new and significant information in paragraphs 9 and 10 of the Declaration of John M. Priest.

[20] Pilgrim Watch is somewhat confused by this statement. Pilgrim Watch agrees that "*the Application,"* in and of itself, would not result in any significant environmental impact or have an environmental effect.

original). The second is that "the possibility of a shortfall in decommissioning funding … is not a reasonably foreseeable consequence of the license transfer" (Answer, p.72).

Taking the latter first, both Pilgrim Watch's Petition, and the portion of this reply directed to Contention 1 demonstrate in detail that "a shortfall in decommissioning funding" is far more than a "possibility," and show that such a shortfall is clearly foreseeable. Holtec's and Entergy's statement that "Pilgrim Watch … provides no explanation why continuing recovery from DOE would not be sufficient" (Answer, p. 72, fn. 195) continues to be far wide of the mark.

Holtec and Entergy once again fall back on their argument that "additional cash flow from DOE recoveries … *could be used*" (Answer, p. 71; also see p. 72: "hundreds of millions recoverable from DOE *would be available,*" italics added). Holtec continues to ignore that it has never agreed that any "recovery from DOE" would be deposited into the DTF rather than into some Holtec "profit pocket;" and that it has refused to agree that such recoveries *will be* used or *will* be made available to pay decommissioning costs (see pp. 4-7 above). Unlike NorthStar at Vermont Yankee, Holtec has *not* "committed ... to return recoveries for ISFSI expenses from DOE reimbursements to the trust fund." (ML1842/ML1842A639, p. 11; see page 6, above)

Pilgrim Watch will not here repeat what Pilgrim Watch's Petition, and what is said about Contention 1 above, demonstrate in detail: Holtec's and Entergy's contention that "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" (Answer, p. 72) is simply not so. "A shortfall in decommissioning funding" not simply a "possibility;" it is a near certainty, far more than "reasonably foreseeable."

Pilgrim Watch is somewhat confused by Holtec's and Energy's apparent argument that "*the Application,"* apparently in and of itself alone, would not result in any significant environmental impact or have an environmental effect.

Pilgrim Watch assumes that what Holtec and Entergy intended to argue is, as they said in the preceding paragraph (Answer, p. 69), that Pilgrim Watch has not shown that potential environmental impacts during decommissioning "fall outside the bounds of prior environmental impact statements." If this is their contention, Pilgrim Watch does not agree.

Except to argue that the amount of individual contaminants are small, Applicants' Answer says little about the potential, and cumulative, environmental impacts of the extensive contamination that Pilgrim Watch's Petition discussed in detail. With respect to whether "the license transfer might lead to … environmental and economic risks" (Answer, pp. 69-70), the Answer does not mention the NRC's position that "inadequate or untimely consideration of decommissioning, specifically in the areas of planning and financial assurance, could result in significant adverse health, safety and environmental impacts" (See Pilgrim Watch Petition, p. 15).

That these potential impacts are, in large measure, a potential consequence of the inadequacy of the inadequacy of the DTF, is supported by Pilgrim Watch's Petition. The Petition also supports that they are also potential consequences, not only of HDI's planned decommissioning activities but also of what HDI apparently does not plan to do – clean up all the contamination on Pilgrim's site to a level that meets federal and state standards, of the terms of any agreement with the Commonwealth.[21]

[21] According to HDI, the only planned site restoration apparently will be "conventional dismantling, demolition and removal from the site of structures and systems." PSDAR 19.

Contention 2 Conclusion

Pilgrim Watch's petition meets the requirements of 10 CFR §2.309 for admitting Contention 2. The petition sets forth the issues of fact and law, demonstrates that Contention 2 is within the scope of this proceeding and material to findings that must be made to approve the license transfer application, shows there are many material genuine disputes between Pilgrim Watch and the Applicants, and includes over includes over 25 pages (e.g., pages 95-96, 108, 111-123 and 129) setting forth facts, documents and other information, available to Pilgrim Watch when its petition was filed, that form a basis for Contention 2.

Contention 2 should be admitted.

The Commonwealth's Contentions

Holtec and Entergy say that "Pilgrim Watch is not entitled to adopt the Commonwealth's contentions," for two reasons.

The first is that "Pilgrim Watch has filed to demonstrate standing or proffer any admissible contention of its own." Pilgrim Watch agrees that this Board has not yet decided that Pilgrim Watch has standing or that Contention 1 or Contention 2 is admissible.

The second is that Pilgrim Watch has not yet complied with 10 C.F.R. §2.309(f)(3), that in substance would require Pilgrim Watch and the Commonwealth to agree on how to proceed with admitted contentions.

If, as Pilgrim Watch expects, the Board finds that Pilgrim Watch has standing, and that Pilgrim Watch's and the Commonwealth's contentions are admissible. Pilgrim Watch and the Commonwealth will then confer and reach agreement. It would be premature for them to do so now.

Conclusion

For the reasons stated here and in Pilgrim Watch's Petition, the Board should determine that Pilgrim Watch has standing, and that Contention 1 and Contention 2 are admissible.

Respectfully submitted on April 1, 2019,

(Electronically signed)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of **Docket No. 50-293 & 72-1044 LT**
Entergy Corporation
Pilgrim Nuclear Power Station
License Transfer Agreement Application

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that copies of the above PILGRIM WATCH REPLY TO APPLICANTS' ANSWER OPPOSING PILGRIM WATCH PETITION FOR LEAVE TO INTERVENE AND HEARING REQUEST have been served upon the Electronic Information Exchange, the NRC's e-filing system, in the above-captioned proceeding, on

April 1, 2019.

Signed (electronically) by

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