May 2, 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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)	)	

Applicants' Answer Opposing the Commonwealth of Massachusetts' Motion to Supplement its Petition with New Information

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Entergy Nuclear Operations, Inc. ("ENOI"), Entergy Nuclear Generation Company ("ENGC" – to be renamed "Holtec Pilgrim"), Holtec International ("Holtec"), and Holtec Decommissioning International, LLC ("HDI"), (collectively, "Applicants") hereby answer and oppose the Commonwealth of Massachusetts' ("Commonwealth") late-filed motion to supplement its petition with new information in the Pilgrim Nuclear Power Station ("Pilgrim") license transfer proceeding.[1] The Commission should deny this motion because the new information is not materially different from information previously available, and in any event does not demonstrate any genuine material dispute with the application.

The Commonwealth seeks to supplement its original petition with additional information made public on April 16, 2019, namely, that Entergy Corporation plans to sell its subsidiaries that own the three units at the Indian Point generating station in Buchanan, New York to Holtec. The

[1] *Motion of the Commonwealth of Massachusetts to Supplement its Petition with New Information* (Apr. 24, 2019) ("Motion"). Attached to the Motion is Holtec International's Press Release (Apr. 16, 2019) ("Press Release").

Commonwealth styles its filing as a motion to "Supplement [the Commonwealth's] Petition with New Information." Such a motion is not contemplated under the Commission's procedural regulations, and the Commonwealth cites nothing authorizing it. *See* 10 C.F.R. §§ 2.309, 2.323. As such, Applicants are treating the filing as a motion for leave to file an amended contention pursuant to 10 C.F.R. § 2.309(c).

Further, as the Commonwealth has not provided an amended contention in the Motion, it does not appear it is modifying its contentions beyond their original bounds, but rather seeking to add this information as bases to support its initial contentions. As to which contention's bases this new information is intended to supplement, the Commonwealth provides little clarification. However, the gravamen of the Commonwealth's argument is that decommissioning multiple units may strain Holtec's resources in a manner not previously considered (Motion at 3), thereby exacerbating the risk of cost overruns (*id.* at 2). Because this appears focused financial concerns, Applicants assume the Commonwealth is attempting to amend its bases for Contention 1 rather than Contention 2.[2]

The procedural posture being clarified, the Commission should find that the Commonwealth has not met the standards for its late-filed amended Contention 1 under 10 C.F.R. § 2.309(c)(1). And, even if the Commonwealth's motion had met those standards, it has not met the standards for an admissible amended contention under 10 C.F.R. § 2.309(f)(1). As a result, the Commission should reject the Commonwealth's late-filed motion to amend its contention in addition to rejecting the original contention.[3]

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[2] Contention 1 primarily challenges the financial qualifications of HDI and Holtec Pilgrim, while Contention 2 argues an environmental review of the license transfer application is required.

[3] If, as Applicants show below, the Commission finds no good cause for the Commonwealth's late-filed motion to amend, Contention 1 as originally submitted should be rejected for the reasons set forth in Applicants' Answer Opposing the Commonwealth of Massachusetts' Petition for Leave to Intervene and Hearing Request (Mar. 18, 2019) ("Applicants' Answer").

II. THE COMMONWEALTH HAS FAILED TO SHOW GOOD CAUSE FOR ITS LATE FILING

The NRC does not look with favor on amended or new contentions made after the initial filing deadline. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 638 (2004). As the Commission has repeatedly stressed, "[t]here simply would be no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements and add new contentions at their convenience during the course of a proceeding based on information that could have formed the basis for a timely contention at the outset of the proceeding." *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 272 (2009) (footnotes and internal quotation marks omitted).

The Commission should reject the Commonwealth's Motion because it is untimely, and the Commonwealth has failed to demonstrate the required good cause for its untimely filing. A motion for leave to file a new or amended contention after the intervention deadline "*will not be entertained* absent a determination by the presiding officer that a participant has demonstrated good cause" for the late filing. 10 C.F.R. § 2.309(c)(1) (emphasis added). The good cause demonstration requires the petitioner to show that:

> (i) The information upon which the filing is based was not previously available;
>
> (ii) The information upon which the filing is based is materially different from information previously available; and
>
> (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(c)(1).

Here, Applicants do not dispute that the information regarding Entergy's proposed sale of Indian Point to Holtec was not previously available. However, this information is in no way

materially different from information that was previously available to the Commonwealth and should thus be rejected. § 2.309(c)(1)(ii).

The Commonwealth claims the information is material because "Holtec could become responsible for simultaneously decommissioning not two, but three nuclear power stations." Motion at 4. However, the fact that HDI would potentially be responsible for decommissioning three nuclear power stations at once was in the public record well before the filing deadline. For example, prior to the Indian Point press release, Holtec had publicly announced its proposed purchase and accelerated decommissioning of Oyster Creek, Pilgrim, Palisades, and purchase of the decommissioned site at Big Rock Point in Michigan.[4] Further, the license transfer application[5] clearly indicated that HDI, and its general contractor, CDI, would decommission multiple nuclear plants using a fleet approach. *See* LTA, Encl. 1 at 6 ("Holtec has established HDI as the entity with ultimate corporate responsibility as the decommissioning licensed operator for the successful decommissioning of *its anticipated fleet of decommissioning sites* including Pilgrim.") (emphasis added); *see also id.* at 3 ("The Figure 2 ownership structure developed by Holtec to support the intended acquisition of multiple decommissioning nuclear power plant sites is based on the typical

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[4] Press Release, Holtec International, Holtec International to Acquire Pilgrim and Palisades Sites from Entergy after their Reactors Shutdown: Proto-Prompt Decommissioning Planned for Both Sites (Aug. 1, 2018), https://holtecinternational.com/2018/08/01/holtec-international-to-acquire-pilgrim-and-palisades-sites-from-entergy-after-their-reactors-shutdown-proto-prompt-decommissioning-planned-for-both-sites/.

This announcement was also reflected in other news articles and press releases. *See, e.g.*, Press Release, Nuclear Energy Institute, Holtec to Buy Closing Reactor Sites, Accelerate Decommissioning (Aug. 1, 2018), https://www.nei.org/news/2018/holtec-buy-closing-reactors-decommissioning; World Nuclear News, Holtec Takes on Two More US Plants for Decommissioning (Aug. 1, 2018), http://world-nuclear-news.org/Articles/Holtec-takes-on-two-more-US-plants-for-decommissio; Robert Walton, Holtec to Buy Three Nuclear Plants, Greatly Accelerate Decommissioning, UTILITY DIVE (Aug. 1, 2018), https://www.utilitydive.com/news/holtec-to-buy-three-nuclear-plants-greatly-accelerate-decommissioning/529047/.

[5] 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").

organization structure for many current nuclear utility fleets."); *id.* ("CDI has been formed to provide an organization that performs safe and efficient decommissioning of the anticipated Holtec fleet of decommissioning nuclear power plant sites.").

The Commonwealth's proposed additional bases to supplement its contention is thus not "materially different" from what was previously publicly available—if anything, the information is cumulative. "Materially" in the § 2.309(c)(1) context has been interpreted as, "describ[ing] the type or degree of difference between the new information and previously available information that a petitioner must establish, and it is synonymous with, for example, 'significantly,' 'considerably,' or 'importantly.'" *Florida Power & Light Co.* (Turkey Point Units 6 and 7), LBP-17-6, 86 N.R.C. 37, 48 (2017). Where HDI was already going to be in the position of decommissioning multiple units—as the Commonwealth itself recognized in connection with Holtec's planned purchase and decommissioning of Oyster Creek—and was publicly positioned to be responsible for an "anticipated fleet of decommissioning sites," it can hardly be said that anything "significantly" or "considerably" different results from the proposed purchase and decommissioning of Indian Point.

In short, the Commonwealth has failed to distinguish how Holtec's proposed acquisition of Indian Point is materially different from Holtec's proposed decommissioning of multiple units that were previously available on the public record. The Commonwealth's concern that HDI's decommissioning of multiple sites will "strain Holtec's managerial and technical capacity . . . and thus increase the risk that Holtec will encounter costs overruns at Pilgrim" (Motion at 3) could have been raised in its initial petition. It was not,[6] and the Commonwealth has shown no good

[6] The Commonwealth of Massachusetts' Petition for Leave to Intervene and Hearing Request (Feb. 20, 2019) ("Petition") included no claim that decommissioning of multiple sites would strain HDI's managerial and technical capacity increasing the risk of cost overruns. The Petition did assert that involvement in other decommissioning

cause to inject this concern now.

Because the Commonwealth has not shown that its late-filed proposal to amend its contention stems from any materially different information, the motion should be denied. The Commonwealth's failure to meet the criteria of 10 C.F.R. § 2.309(c)(1) is sufficient grounds by itself to reject the amended contention. However, as discussed below, the amended contention also does not meet the admissibility criteria of § 2.309(f)(1).

III. THE COMMONWEALTH'S AMENDED CONTENTION IS INADMISSIBLE

The Commonwealth's proposal to amend its contentions with supplemental information also falls short of the Commission's contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). As 10 C.F.R. § 2.309(f)(4) provides, "[a] new or amended contention filed by a party or participant to the proceeding must also meet the applicable contention admissibility requirements in paragraph (f) of this section." The Commonwealth has failed to do so here, and for this reason too, its Motion should be denied.

First, the Commonwealth does not address the contention admissibility requirements of § 2.309(f)(1) in its Motion. The Commonwealth appears to point to a Staff Request for Additional Information ("RAI") as *de facto* evidence that the information is admissible.[7] However, the Commission has made clear that the existence of an RAI in and of itself is not evidence that a contention is admissible. A petitioner must independently show how an application is materially

projects would potentially draw upon the "parent company's resources" and detract from the attention needed at Pilgrim (Petition at 24), but this assertion was made as part of an argument that one cannot assume that HDI can obtain additional funds from its parent (*id.* at 23)—an argument that is irrelevant as HDI's and Holtec Pilgrim's financial qualifications do not rely on parental support. Nowhere in the Petition was there any challenge to HDI's managerial and technical capacity or any assertion that decommissioning multiple sites could result in cost overruns at Pilgrim.

[7] *See* Motion at 2 (citing Letter to P. Couture, RAI-IRAB-1, Pilgrim—Application for Order Consenting to Direct and Indirect Transfers of Control of Licenses and Approving Conforming License Amendment, at 3 (Mar. 21, 2019) (ADAMS Accession No. ML19086A349)).

deficient. *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 N.R.C. 328, 332–33, 336–37 (1999).

To establish an admissible contention, the Commonwealth must provide sufficient information to show a genuine dispute with the Applicants on a material issue of law or fact, including references to the specific portions of the application that the petitioner disputes and the supporting reasons for such dispute. 10 C.F.R. § 2.309(f)(1)(vi). The Commonwealth does not address and therefore demonstrates no genuine material dispute with the discussion of HDI's technical qualifications and management structure in the Application.[8] Further, the Commonwealth fails to discuss or dispute any of the information provided by the Applicants in their April 17, 2019 RAI Response.[9] Despite its citation to the RAI itself, the Commonwealth fails to mention or even acknowledge Applicants' RAI Response anywhere in its Motion.

In the RAI Response, the Applicants detail that each decommissioning site will have dedicated staff management teams and technical support organizations "mainly made up of experienced incumbents and supplemented *as needed* by additional Holtec and SNC-Lavlin resources." RAI Response at 1. Indeed, the press release announcing Entergy's proposed sale of Indian Point notes the same, stating, "Holtec will hire Entergy's employees at Indian Point who are employed at the site at the time of the transaction and identified by Entergy as an employee whose services are required for that phase of decommissioning."[10] Additionally, the RAI Response outlines that "[t]he HDI Site Vice President at each site will further support the corporate executive team's oversite over HDI's sites." RAI Response at 2.

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8 *See* LTA, Encl. 1 at 6-16.

9 *See* Enclosure, Pilgrim Nuclear Power Station Response to NRC Request for Additional Information (Apr. 17, 2019) ("RAI Response") (ADAMS Accession No. ML19109A177).

10 Press Release at 3.

In spite of this, the Commonwealth makes the unsupported statement that decommissioning Indian Point "will further draw the resources of SNC-Lavalin and CDI away from Pilgrim." Motion at 4. But, rather than drawing from one centralized pool of resources as the Commonwealth implies, Applicants have clearly laid out that each site will have its own dedicated team—an issue the Commonwealth failed to address. In any event, the RAI response further explains that because of its affiliation with both SNC-Lavalin and Holtec International, CDI has ready access to technical and project resources as needed if issues arise. RAI Response at 2. As both the RAI Response and the Application indicate, "SNC-Lavalin has a workforce of over 50,000, and through its subsidiary, Atkins, has substantial decommissioning expertise and experience, while Holtec International is an industry leader in spent fuel management." *Id.*[11] The Commonwealth does not address or dispute any of this information.

Rather than address Applicants' specific statements as to their management of multiple decommissioning sites, the Commonwealth makes such generic statements such as "[d]ecommissioning a single nuclear power station is a monumental task." Motion at 4. These sweeping claims are insufficient to satisfy the Commission's admissibility standards. *See U.S. Department of Energy* (High-Level Waste Repository), CLI-09-14, 69 N.R.C. 580, 588 (2009) ("[G]eneralized assertions, without specific ties to NRC regulatory requirements or safety in

[11] As the LTA states:

> Atkins, a wholly-owned subsidiary of SNC-Lavalin, is the U.K.'s largest engineering and design consultancy and one of the world's largest design firms. Atkins has been involved in nuclear clean up and decommissioning activities since the late 1980s, working with Sellafield Ltd (formerly BNFL), Magnox and UKAEA. Atkins acquired Nuclear Safety Associates in 2014, and in 2016, it acquired EnergySolutions' Projects, Products and Technology ("PP&T") division, bringing significant U.S. decommissioning expertise in both the commercial and government markets. Thus, its expertise includes the management team that led the baseline planning, license transfer, and project delivery through fuel transfer and reactor segmentation for the decommissioning of the Zion Nuclear Generating Station and managed the fleet of 22 Magnox reactors through operation and into decommissioning in the U.K. In addition, BNFL Inc., which is now owned by Atkins through its acquisition of EnergySolutions' PP&T, had a significant role in the decommissioning of Big Rock Point, including the removal of the large components and reactor vessel.

LTA, Encl. 1 at 12.

general . . . do not provide adequate support demonstrating the existence of a genuine dispute of fact or law."). 10 C.F.R. § 2.309(f)(1)(v) requires an admissible contention to include alleged facts or expert opinions that support the petitioner's position, together with references to the specific sources and documents on which the petitioner intends to rely. The Commonwealth does not provide any support—any expert opinion, reference, or other source—that would suggest that the decommissioning of Indian Point will in any way impact the estimated cost of decommissioning Pilgrim.

Finally, the Commonwealth speculates that the addition of Indian Point to Holtec's decommissioning portfolio "may critically strain Holtec's resources in a manner not previously considered." Motion at 4. Such speculation is insufficient to support an admissible contention. *See GPU Nuclear, Inc., Jersey Cent. Power & Light Co. & Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 N.R.C. 193, 210 (2000) (finding no admissible contention where the petitioner "provided no expert opinion, references, or other information supporting its assertion that [the applicant] is at risk of being 'stretched too thin'"). Moreover, the Commonwealth once again fails to address information in the Applicants' RAI Response. There, the Applicants noted that "[t]he corporate HDI and CDI executive team is structured and staffed in anticipation of supporting multiple sites' planning and decommissioning activities, *with the capacity to expand as needed, as HDI continues to expand its nuclear decommissioning business*." RAI Response at 2 (emphasis added). Thus, the RAI response ignored by the Commonwealth directly addresses the potential resource need entailed by Holtec's expansion of its decommissioning business.

In sum, the Commonwealth's concern fails to address or demonstrate any material dispute with the Application, including Applicants' RAI Response, thus failing to raise a genuine dispute

as required by 10 C.F.R. § 2.309(f)(1)(vi). In addition, the Commonwealth does not provide one whit of support to suggest that the decommissioning of Indian Point is likely to have any effect on the cost of decommissioing Pilgrim. The supplemental information in the Motion therefore fails to satisfy the admissibility standards in 10 C.F.R. § 2.309(f)(1), and the Commonwealth's contentions remain inadmissible for all of the other reasons discussed previously in Applicants' Answer.

IV. CONCLUSION

For the reasons described above, the Commission should deny the Commonwealth's motion.

Respectfully submitted,

/signed electronically by /

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicants' Answer Opposing the Commonwealth of Massachusetts' Motion to Supplement its Petition with New Information has been served through the E-Filing system on the participants in the above-captioned proceeding this 2nd day of May 2019.

/signed electronically by /
David R. Lewis