

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 Pilgrim Watch’s Motion to
Supplement its Motion to Intervene and Request for Hearing**

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 Pilgrim Watch’s late-filed motion to supplement its hearing request 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.

Pilgrim Watch 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. Pilgrim

¹ *Pilgrim Watch Motion to Supplement Its Motion (sic) to Intervene and Request for Hearing* (Apr. 26, 2019) (“Motion”). Attached to the Motion is Holtec International’s Press Release (Apr. 16, 2019) (“Press Release”).

Watch styles its filing as a “Motion to Supplement its Motion to Intervene and Request for Hearing.” Such a motion is not contemplated under the Commission’s procedural regulations, and Pilgrim Watch 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 Pilgrim Watch has not provided any 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, Pilgrim Watch provides little clarification. Based on Pilgrim Watch’s musing that “it is not hard to imagine significant delays in schedule” and “[d]elays cost money” (Motion at 2), Applicants assume Pilgrim Watch is attempting to amend its bases for Contention 1.² Pilgrim Watch provides no explanation how the new information would relate to Contention 2.

The procedural posture being clarified, the Commission should find that Pilgrim Watch has not met the standards for a late-filed amended contention under 10 C.F.R. § 2.309(c)(1). And, even if its 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 Pilgrim Watch’s late-filed motion to amend its contention in addition to rejecting the original contention.³

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 Pilgrim Watch’s late-filed motion to amend, Contention 1 as originally submitted should be rejected for the reasons set forth in Applicants’ Answer Opposing Pilgrim Watch Petition for Leave to Intervene and Hearing Request (Mar. 18, 2019) (“Applicants’ Answer”).

II. PILGRIM WATCH 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 N.R.C. 235, 272 (2009) (footnotes and internal quotation marks omitted).

The Commission should reject the Motion because it is untimely, and Pilgrim Watch 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 Pilgrim Watch and should thus be rejected. § 2.309(c)(1)(ii).

As a threshold matter, while Pilgrim Watch asserts that its Motion is timely and cites 10 C.F.R. § 2.309(c)(1)(iii) (Motion at 3), it fails to address the requirement in 10 C.F.R. § 2.309(c)(1)(ii) to show that the information upon which the Motion is based is materially different from information previously available. This failure alone warrants denial of the Motion.⁴

Moreover, that HDI would potentially be responsible for decommissioning multiple 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.⁵ Further, the license transfer application⁶ 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

⁴ *Florida Power & Light Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Calvert Cliffs Independent Spent Fuel Storage Installation; Nine Mile Point Nuclear Station, Units 1 and 2; R.E. Ginna Nuclear Power Plant; Turkey Point Nuclear Generating Plant, Units 3 and 4; St. Lucie Nuclear Power Plant, Units 1 and 2; Seabrook Station; Duane Arnold Energy Center), CLI-06-21, 64 N.R.C. 30, 34 (2006) (a petitioner’s “failure to comply with our pleading requirements for late filings constitutes sufficient grounds for rejecting its [petition]”).

⁵ 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/>.

⁶ 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”).

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 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 announced sale of Indian Point to Holtec for decommissioning 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 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, Pilgrim Watch 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. Pilgrim Watch’s concern that HDI’s decommissioning of multiple sites will stretch resources “too thin” (Motion at 3) could have been raised in its initial petition. It was not. In fact, nowhere in its initial petition did Pilgrim Watch raise the alleged issue of HDI decommissioning multiple sites, despite the fact the information was

publicly available before the petition was filed.⁷ Petitioners should not be permitted to raise the issue now.

Pilgrim Watch's Motion also alleges that HDI lacks decommissioning experience (Motion at 1, 3), but these allegations are not based on the announced sale of Indian Point or any other new information. Nor was there any claim in Pilgrim Watch's Petition that lack of experience would adversely affect Holtec Pilgrim's and HDI's financial qualifications.⁸ Thus, no good cause exists to inject claims regarding HDI's experience or technical qualifications as additional support for Pilgrim Watch's contentions.

Finally, Pilgrim Watch claims SNC-Lavalin's attention will be diverted by a controversy in Canada (Motion at 3), and also suggests that concern over HDI decommissioning multiple sites is magnified by its plans to build the Consolidated Interim Storage ("CIS") facility in New Mexico (*id.*). Neither of these claims is based on new information (nor is HDI the applicant to construct and operate the CIS Facility). Indeed, Pilgrim Watch claim regarding SNC-Lavalin is based on a newspaper article that predates Pilgrim Watch's Petition. *See id.* n.1.

In summary, because Pilgrim Watch has not shown that its late-filed proposal to amend its contention stems from information materially different from that previously available, the motion should be denied. Pilgrim Watch'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).

⁷ Pilgrim Watch's Petition for Leave to Intervene and Hearing Request (Feb. 20, 2019) ("Petition").

⁸ Pilgrim Watch's Petition asserted that Holtec has not decommissioned any sites as part of an argument that the generic finding of no significant hazards considerations in 10 C.F.R. § 2.1315 is inapplicable (*see* Petition at 3, 87), but nowhere in the Petition were there challenges to HDI's technical qualifications or claims that a lack of decommissioning experience would affect financial qualifications.

III. PILGRIM WATCH'S AMENDED CONTENTION IS INADMISSIBLE

Pilgrim Watch'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." Pilgrim Watch has failed to do so here, and for this reason too, its Motion should be denied.

First, Pilgrim Watch does not satisfy the contention admissibility requirements of § 2.309(f)(1) in its Motion. Pilgrim Watch's claimed concern that decommissioning multiple sites might somehow affect Pilgrim's decommissioning cost amounts to little more than vague speculation. *See, e.g.*, Motion at 2 ("We fear that they have bitten off more than they can chew . . ."); *id.* ("[I]t is not hard to imagine significant delays in schedule."). Vague speculation is not sufficient to establish a material challenge to an application. *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 N.R.C. 321, 330 (2015). "[W]e cannot admit an issue for adjudication based on mere conjecture." *Consolidated Edison Co. of New York* (Indian Point, Units 1 and 2), CLI-01-19, 54 N.R.C. 109, 140 (2001).⁹

Pilgrim Watch points to an NRC Staff Request for Additional Information ("RAI"),¹⁰ but 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

⁹ The NRC rules bar contentions where petitioners have what amounts to only generalized suspicions. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003). "Bald or conclusory allegation[s]' of a dispute with the applicant" are not enough. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 358 (2001).

¹⁰ *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). Further, on its face, the NRC Staff’s RAI raises no question regarding the sufficiency of the decommissioning funding assurance for Pilgrim.

To establish an admissible contention, a petitioner 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). While Pilgrim Watch claims that HDI’s funds “would be eaten up quickly” (Motion at 3), it does not address and therefore demonstrates no genuine material dispute with HDI’s cash flow analysis which shows that over \$200 million will remain in the nuclear decommissioning trust after the completion of partial site release, or the potential for Holtec Pilgrim to seek recovery from the Department of Energy for spent fuel management costs.¹¹ Further, Pilgrim Watch fails to discuss or dispute any of the information provided by the Applicants in their April 17, 2019 RAI Response.¹² Indeed, despite its citation to the RAI itself, Pilgrim Watch 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. 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

¹¹ See LTA, Encl. 1, Attachment D; LTA, Encl. 1 at 18.

¹² See Enclosure, Pilgrim Nuclear Power Station Response to NRC Request for Additional Information (Apr. 17, 2019) (“RAI Response”) (ADAMS Accession No. ML19109A177).

services are required for that phase of decommissioning.”¹³ Additionally, the RAI Response outlines that “[t]he HDI Site Vice President at each site will further support the corporate executive team’s oversight over HDI’s sites.” RAI Response at 2.

In spite of this, Pilgrim Watch makes the unsupported statement that decommissioning Indian Point “will further draw the resources of SNC-Lavalin and CDI away from Pilgrim.” Motion at 3. But, rather than drawing from one centralized pool of resources as Pilgrim Watch implies, Applicants have clearly laid out that each site will have its own dedicated team—an issue Petitioners 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.*¹⁴ As the RAI Response states, “[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*

¹³ Press Release at 3.

¹⁴ 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.

to expand its nuclear decommissioning business.” RAI Response at 2 (emphasis added). Pilgrim Watch does not address or dispute any of this information.

Lastly, an admissible contention must also 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. 10 C.F.R. § 2.309(f)(1)(v); *see also 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’”). Pilgrim Watch 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 stretch HDI “too thin.” Motion at 3.

In sum, Pilgrim Watch’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, contrary to 10 C.F.R. § 2.309(f)(1)(v), Pilgrim Watch 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 decommissioning Pilgrim. The supplemental information in the Motion therefore fails to satisfy the admissibility standards in 10 C.F.R. § 2.309(f)(1), and Petitioner’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 Pilgrim Watch’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 Pilgrim Watch's Motion to Supplement its Motion to Intervene and Request for Hearing 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