

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

COMMONWEALTH OF MASSACHUSETTS,)	
)	
<i>Petitioner,</i>)	
)	
v.)	No. 19-1198
)	
UNITED STATES NUCLEAR REGULATORY COMMISSION AND UNITED STATES OF AMERICA,)	
)	
<i>Respondents.</i>)	
)	

**NON-BINDING STATEMENT
OF ISSUES TO BE RAISED**

Pursuant to the Court’s Order of September 27, 2019, Petitioner Commonwealth of Massachusetts hereby state, without waiving the right to raise additional issues, that they intend to raise the following issues in this petition for review:

1. Whether the Nuclear Regulatory Commission’s (NRC) “Final No Significant Hazards Consideration” determination, which made the order to transfer the Pilgrim Nuclear Power Station’s license from Entergy Nuclear Generation Company and Entergy Nuclear

Operations, Inc. (collectively, Entergy) to Holtec Pilgrim, LLC and Holtec Decommissioning International, LLC (HDI) (License Transfer Approval) and the accompanying amendment to Pilgrim's license (License Amendment) immediately effective, exceeded 10 C.F.R.

§ 2.1315's scope and unlawfully deprived the Commonwealth of its right to a hearing before the NRC on the underlying merits.

2. Whether the NRC violated the National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA) by, among other things:

(a) unlawfully segmenting its review of the License Transfer Approval and License Amendment, HDI's request that the NRC exempt it from compliance with an NRC regulation that would have prohibited it from using Pilgrim's Decommissioning Trust Fund for non-decommissioning purposes (Trust Fund Exemption), and HDI's related revised PSDAR and site-specific cost estimate on which those two requests were based;

(b) failing to complete an environmental impact statement on the potential direct and indirect environmental consequences of the License Transfer Approval, License Amendment, Trust Fund

Exemption, and PSDAR and site-specific cost estimate on which those two requests were based;

(c) relying on a so-called categorical exclusion to exempt from any NEPA review the License Transfer Approval and License Amendment even though the cited NRC categorical exclusion does not apply to that action;

(d) issuing an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Trust Fund Exemption without taking the required hard look at the environmental consequences of doing so, which include, among other things, the public health, safety, and environmental risks created by a funding shortfall caused by the Trust Fund Exemption.

3. Whether the NRC's License Transfer Approval and License Amendment, which, effective immediately, transferred Pilgrim's license to new entities that do not meet the NRC's technical and financial qualification requirements and eliminated from Pilgrim's license a \$50 million contingency fund previously imposed by the NRC to cover any funding shortfall for radiologically decontaminating Pilgrim, violated the APA, the Atomic Energy Act (AEA), and the NRC's own regulations,

or are otherwise arbitrary and capricious, unsupported by substantial evidence, an abuse of discretion or not in accordance with law.

4. Whether the NRC's Trust Fund Exemption, which, effective immediately, authorized HDI to use Pilgrim's Decommissioning Trust Fund to pay for costs that the NRC's regulations expressly prohibit (i.e., non-radiological cleanup and spent fuel management costs) even though the Exemption will lead to a funding shortfall and allow HDI to convert Massachusetts electric ratepayer funds collected to ensure the complete decommissioning of Pilgrim to private profit before the plant is clean and the spent nuclear fuel removed from the site, violated the APA, the Atomic Energy Act (AEA), and the NRC's own regulations, or is otherwise arbitrary and capricious, unsupported by substantial evidence, an abuse of discretion or not in accordance with law.

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Respectfully submitted,

COMMONWEALTH OF
MASSACHUSETTS

By its attorneys,

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Dated: October 28, 2019

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Non-Binding Statement of Issues to be Raised with the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on October 28, 2019, and that all parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system.

Dated: October 28, 2019

/s/ Joseph Dorfler
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