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March 2, 2020

Patricia Holahan, Director
Division of Decommissioning, Uranium Recovery and Waste Programs
Nuclear Regulatory Commission

Via electronic mail: Patricia.Holahan@nrc.gov

Dear Ms. Holahan,

Representatives from New York State attended the Nuclear Regulatory Commission Financial Assurance Working Group's webinar on February 5, 2020 regarding the Working Group's findings. As an initial matter, we are very pleased to see Nuclear Regulatory Commission (NRC) staff focus on this very important issue, and we thank you for dedicating resources to the Working Group's formation and implementation.

The webinar indicated that the Working Group was formed to review the current decommissioning financial assurance processes; identify potential regulatory gaps or policy Issues; identify potential program enhancements; identify planning or resource considerations; and make recommendations.¹ Among other highly valuable topics discussed in the webinar, the presentation acknowledged that a new model of decommissioning has emerged at a number of facilities involving the transfer of the facility license from its historic operator to a new owner under an expedited theory of decommissioning, requiring establishment of financial qualifications as well as financial assurance.

In general, we support the Working Group's approach to financial assurance, and agree that in a traditional decommissioning model, with a solvent licensee who has access to additional funds when needed, current regulations, when properly enforced, provide adequate financial assurance for nuclear power plant decommissioning. The new decommissioning model, however, requires the Commission to determine not only that there is adequate decommissioning financial assurance, but that the proposed licensee is financially qualified to hold the license. The basis for these two findings is unclear in recent license transfer filings.

As such, we are compelled to disagree with one conclusion that we believe leaves both the Commission and host states exposed to liability for unremediated sites. This exposure is

¹ See presentation slides, ML20034D203.

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augmented with the newly emerging model of non-utility, limited-liability vehicles, who possess no additional source of funds for decommissioning outside of the decommissioning trust funds. The Working Group's approach has not adequately captured the risks inherent with this model or offered a clear path forward to ameliorating such risk.²

The Working Group concluded that the risk of a licensee not having adequate decommissioning resources is low because of extensive regulations; because the transfer requires NRC approval of financial resources; and because of the NRC's inspection program and Atomic Energy Act authority. As such, the Working Group summarily concluded that no regulatory gaps or policy issues have been identified. Specifically, the Working Group points to the licensee's obligation to cover any shortfalls identified in periodic reporting as a safeguard here. It is this conclusion that we question in the context of new applicants whose license transfer applications:

- (1) state conclusively that they do not intend to provide any funds beyond the decommissioning trust fund, and
- (2) provide no indication of the proposed licensee's financial capability to do so.

In recent filings in Oyster Creek, Pilgrim, and Indian Point,³ Holtec International has put forward license transfer applications in which it acknowledges that special purpose vehicles established for the sole purpose of administering trust fund dollars will have no independent source of revenue. Holtec International itself does not acknowledge any commitment to funding to the decommissioning. Instead, its decommissioning cost estimates and post shutdown decommissioning activities reports rely solely on the trust funds themselves. In at least some cases, the decommissioning cost estimates forecast that essentially all assets in the trust fund will be needed, leaving little or no margin of error for cost overruns, discovery of additional remediation needs, or regulatory changes. At the same time, Holtec is aggregating an unprecedented amount of liability in these special purpose vehicles, proposing to take on \$6 billion in decommissioning obligations in one year alone, when it has yet to decommission even one facility from beginning to end.

The Commission has acknowledged that it may not reach the parent of a licensee for any additional needed funding.⁴ Compounding this, recent bankruptcies have seen licensees actively

² While the Working Group has provided no opportunity for comment beyond the webinar, we request that these comments be considered consistent with the Commission's focus on public participation and its AEA mandate to collaborate with host states.

³ See Oyster Creek License Transfer Application (ML18243A489, Aug. 31, 2018); Pilgrim License Transfer Application (ML18320A031, Nov. 16, 2018); Indian Point License Transfer Application (Nov. 21, 2019) (ML19326B953). A similar version of these filings is anticipated at Palisades. See Holtec International, Press Release (Aug. 1, 2018), available at <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/>.

⁴ See NRC, Questions and Answers on Decommissioning Financial Assurance, SECY-11-0133, encl. 5, at 2 (Sept. 28, 2011) (ML111940157).

trying to discharge decommissioning obligations when their liabilities exceed assets.⁵ Thus, New York does not support the Working Group conclusion that no regulatory gap or policy issue exists with this model. When asked during the webinar what would happen in a bankruptcy scenario, you and your staff indicated that you would work with the courts if needed, and we note that the NRC did appear in the First Energy bankruptcy, presumably in support of the licensee meeting its decommissioning obligations. However, as you are likely aware, if the bankruptcy estate contains insufficient funds for meeting these purposes, there may be nothing the courts can do to provide additional funds for cleanup. In the context of the transfer of decommissioning obligations to special purpose vehicles with no assets beyond the decommissioning fund, as well as the risk and liability aggregating in Holtec and likely in similar licensees, this is a risk and policy gap as yet unaddressed in the Working Group's analysis.

We strongly encourage the Working Group to look again at this prong of its analysis, and to model fact patterns involving bankruptcies under this new model with options for addressing the impacts of an insolvent LLC licensee. We believe that the imposition of third-party financial assurance requirements on the front end of a licensing action involving the model described above is the only way to provide adequate protection against insolvencies that could impact roughly 30% of the nation's fleet of decommissioning reactors,⁶ a number sure to increase as it becomes known that licensees need not provide any funds of their own to take on an enterprise of this scale.

Thank you for consideration of these comments prior to your March 2020 final report, and for including this comment letter in your presentation to the Commissioners.

Sincerely,



Alyse Peterson
Senior Advisor

cc: Ted Smith, Reactor Decommissioning Branch
Doug Tiff, State Liaison Officer

⁵ See, e.g., *In the Matter of First Energy Solutions Corp.* (Index No. 18-50757, N.D. Oh., 2018).

⁶ See <https://www.nrc.gov/info-finder/decommissioning/power-reactor/>.