UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	Docket Nos. 50-003-LT,
ENTERGY NUCLEAR OPERATIONS, INC.,	)	50-247-LT,
ENTERGY NUCLEAR INDIAN POINT 2, LLC,	)	50-286-LT, and
ENTERGY NUCLEAR INDIAN POINT 3, LLC,	)	72-051-LT-2
HOLTEC INTERNATIONAL, and HOLTEC	)	
DECOMMISSIONING INTERNATIONAL, LLC	)	
	)	March 9, 2020
(Indian Point Nuclear Generating Unit Nos. 1, 2, and 3)	)	

APPLICANTS' ANSWER OPPOSING SAFE ENERGY RIGHTS GROUP'S LETTER REQUESTING A HEARING

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1), Entergy Nuclear Operations, Inc. ("ENOI"), Entergy Nuclear Indian Point 2, LLC ("ENIP2"), Entergy Nuclear Indian Point 3, LLC ("ENIP3"), Holtec International ("Holtec"), and Holtec Decommissioning International, LLC ("HDI") (together, "Applicants") submit this Answer opposing the letter filed by Safe Energy Rights Group, Inc. ("SEnRG") on February 11, 2020, requesting a hearing in the above-captioned proceeding ("Letter").[1] The one-page Letter contains four bullets commenting on the Post-Shutdown Decommissioning Activities Report ("PSDAR") filed by HDI,[2] but neither acknowledges nor makes any attempt to satisfy the U.S. Nuclear Regulatory Commission's

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1 Letter from C. Williams, SEnRG, to NRC, "Request for Hearing on Indian Point License Transfer, NRC-2020-0021" (dated Feb. 10, 2020; filed electronically Feb. 11, 2020) (ML20042C984).

2 *See* Letter from A. Sterdis, HDI, to NRC Document Control Desk, "Post Shutdown Decommissioning Activities Report including Site-Specific Decommissioning Cost Estimate for Indian Point Nuclear Generating Units 1, 2, and 3," Encl. (Dec. 19, 2019) (ML19354A698) ("PSDAR").

("NRC") requirements to intervene or request a hearing. To the extent the Letter is viewed as a hearing request under 10 C.F.R. § 2.309, it should be denied for failing to address or satisfy the applicable requirements.[3]

II. BACKGROUND

On November 21, 2019, Applicants filed the License Transfer Application ("LTA") that is the subject of the instant proceeding.[4] On January 23, 2020, the NRC published in the *Federal Register* a notice informing the public that it is considering the LTA for approval, providing an opportunity for the public to submit written comments on the LTA, and offering an opportunity for persons whose interests may be affected by approval of the LTA to file (within 20 days of the notice) hearing requests and intervention petitions ("Hearing Opportunity Notice").[5] SEnRG filed its Letter on February 11, 2020. To the extent the Letter is viewed as a hearing request under 10 C.F.R. § 2.309, Applicants timely file this Answer opposing it in accordance with the provisions of 10 C.F.R. § 2.309(i)(1).

A fulsome discussion of the legal and regulatory framework related to decommissioning, spent nuclear fuel management, reactor license transfers, and contention admissibility is

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[3] The Letter also fails to comply with numerous procedural requirements in the NRC's Rules of Practice and Procedure. For example, it fails to satisfy the requirements in 10 C.F.R. §§ 2.304(a), (c), and (d) relating to docket numbers, formatting, and electronic signatures. Commission regulations specify that "[a]ny document that fails to conform" to these requirements may be "refused acceptance" by the Secretary, returned to the filer without action, and excluded from the docket of the proceeding. 10 C.F.R. § 2.304(f). The filing also lacks a signed certificate of service, as required by 10 C.F.R. § 2.305(c)(4), and is not accompanied by a notice of appearance, as required by 10 C.F.R. § 2.314(b). These are additional grounds to reject the Letter.

[4] *See* NL-19-084, Letter from A. Christopher Bakken III, Entergy, to NRC Document Control Desk, "Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments" (Nov. 21, 2019) (ML19326B953) ("LTA" or "Application").

[5] Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; Consideration of Approval of Transfer of Control of Licenses and Conforming Amendments, 85 Fed. Reg. 3,947 (Jan. 23, 2020) ("Hearing Opportunity Notice").

presented in Applicants' answer to the hearing request filed by the State of New York.[6] For the sake of brevity, rather than republishing the lengthy discussion in full, Applicants incorporate it here by reference. In summary, to be granted a hearing, a requestor must both demonstrate standing under the provisions of 10 C.F.R. § 2.309(d) and propose at least one admissible contention that meets the requirements of 10 C.F.R. § 2.309(f).[7] Because SEnRG does neither, its request for a hearing must be denied.

III. THE LETTER DOES NOT DEMONSTRATE STANDING

The Atomic Energy Act allows individuals "whose interest may be affected by the proceeding" to intervene in NRC licensing proceedings.[8] The Commission has long applied judicial concepts of standing to determine whether a petitioner's interest provides a sufficient basis for intervention.[9] "Essential to establishing standing are findings of (1) injury, (2) causation, and (3) redressability."[10] Both the Hearing Opportunity Notice for this proceeding and the NRC's Rules of Practice in 10 C.F.R. Part 2 require a petitioner to set forth: (1) the nature of its right under the Atomic Energy Act to be made a party to the proceeding; (2) the nature and extent of its property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on its interest.[11] "The petitioner bears the burden to provide facts sufficient to establish standing."[12]

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6 Applicants' Answer Opposing Petition for Leave to Intervene and Hearing Request Filed by the State of New York § III (Mar. 9, 2020) ("Applicants' Answer to NYS Petition").

7 10 C.F.R. § 2.309(a).

8 42 U.S.C. § 2239(a).

9 *E.g.*, *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 30 (1998).

10 *EnergySolutions, LLC* (Radioactive Waste Import/Export Licenses), CLI-11-3, 73 NRC 613, 621 (2011).

11 Hearing Opportunity Notice, 85 Fed. Reg. at 3,949; 10 C.F.R. § 2.309(d).

12 *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC 133, 139 (2010) (citations omitted).

The Letter makes no effort to demonstrate that SEnRG has standing, either on its own behalf or that of any of its members, which alone is reason to deny its request for a hearing. As an organization, SEnRG fails to identify any property, financial, or other interests that may be affected by this proceeding.[13] And to the extent it purports to act in a representative capacity, it fails to identify any specific members, demonstrate (via affidavit) such unspecified members have authorized the organization to request a hearing on their behalf, or demonstrate that such unspecified members have standing in their own right.[14] And to the extent SEnRG purports to request a hearing "on behalf of . . . the 20 million people living and working within the 50 mile radius around Indian Point Nuclear Power Plant,"[15] its assertion is impermissible and insufficient to demonstrate standing.[16]

In sum, the Letter does not remotely demonstrate standing, as required by 10 C.F.R. §§ 2.309(a) and (d). Accordingly, SEnRG's hearing request must be denied.

IV. THE LETTER DOES NOT PRESENT AN ADMISSIBLE CONTENTION

To be granted a hearing, a petitioner also must propose at least one contention that satisfies all six admissibility criteria in 10 C.F.R. § 2.309(f)(1). To be admissible, a contention must provide a specific statement of the issue of law or fact to be raised or controverted, along

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13 *Cf., e.g.*, *Ga. Inst. of Tech.* (Ga. Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

14 *Cf., e.g.*, *id.*; *N. States Power Co.* (Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 & 2; Prairie Island Indep. Spent Fuel Storage Installation), CLI-00-14, 52 NRC 37, 47 (2000); *GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000).

15 Letter.

16 *Consumers Energy Co.* (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 411-12 (2007) (holding that petitioners may not purport to act as a "private attorney general"); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983) (holding that assertions of broad public interest are insufficient for standing); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 483-84 (1977) (holding that organizations cannot represent non-members without express prior authorization).

with a brief explanation of the basis for the contention.[17] It also must provide an affirmative demonstration that the issue raised in the contention is both within the scope of the proceeding and material to the findings the NRC must make to grant the application, and it must identify the "specific sources and documents" that allegedly support the petitioner's position.[18] Finally, a contention is inadmissible unless it also affirmatively demonstrates a genuine dispute with the application, including references to the "specific portions of the application . . . that the petitioner disputes," along with a reasoned explanation of each dispute.[19] As the Commission has explained, "[t]hese requirements are deliberately strict."[20] And if a proposed contention fails to satisfy even one of the six criteria, it "must be rejected."[21]

Fundamentally, the Letter fails to even propose any contentions. While it lists four bullets on one page purporting to describe ways in which SEnRG believes the PSDAR is "inadequate," those bullets are akin to generalized comments rather than proposed contentions because, at the most basic level, they wholly fail to address the contention admissibility criteria. For example, the Letter cites no "specific sources and documents" that allegedly support SEnRG's claims, and therefore it fails to satisfy 10 C.F.R. § 2.309(f)(1)(v). And it is silent as to any purported relationship between these comments and the legal sufficiency of the LTA, which is the subject of the instant proceeding. Therefore, the Letter also fails to demonstrate that its claims are material to, or within the scope of, the proceeding, contrary to 10 C.F.R. §§

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17 10 C.F.R. §§ 2.309(f)(1)(i)-(ii).

18 10 C.F.R. §§ 2.309(f)(1)(iii)-(v).

19 10 C.F.R. § 2.309(f)(1)(vi).

20 *USEC, Inc.* (Am. Centrifuge Plant), CLI-06-9, 63 NRC 433, 436-37 (2006).

21 *Id.*; *Ariz. Pub. Serv. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, & 3), CLI-91-12, 34 NRC 149, 155 (1991).

2.309(f)(1)(iii)-(iv). And SEnRG fails to reference any "specific portions" of the LTA, much less demonstrate affirmatively any genuine dispute therewith on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

Moreover, even the general themes mentioned in these comments fail to identify a litigable issue. For example, in its first bullet, SEnRG faults the PSDAR for not specifically mentioning or including a "plan" related to a natural gas transmission line that is buried in a bedrock trench outside the operational area of the site, and suggests HDI is "unaware of these pipelines."[22] As explained in Applicants' answer to Proposed Contention NY-2, the PSDAR is a summary-level document.[23] SEnRG identifies no requirement to include detailed engineering analyses in this document. Nor does such a requirement exist.[24] Further, HDI will fully comply with all applicable industrial safety requirements in decommissioning IPEC.[25]

The second bullet claims the PSDAR does not include a "plan" related to remediation of radioactive water beneath the site.[26] In fact, the PSDAR is replete with discussions of planned site remediation efforts, including plans to remove approximately 3.3 million cubic feet of soil,[27] and to remediate the site to applicable radiological standards.[28] Any suggestion that HDI will not comply with remediation requirements is baseless and improper.[29]

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22 Letter.

23 *See* Applicants' Answer to NYS Petition § V.D.3.

24 *See id*.

25 *See id*.

26 Letter.

27 PSDAR at 35.

28 *Id.* at 13.

29 *Id*. *See also* Applicants' Answer to NYS Petition § V.C.4.

The third bullet implies that the LTA cannot be approved unless the licensees demonstrate that they have "seed capital."[30] But this assertion is incorrect as a matter of law because the LTA, as further supported by the HDI PSDAR and Decommissioning Cost Estimate, collectively demonstrate that the robust Nuclear Decommissioning Trust funds have more than enough funding to complete decommissioning.[31]

And finally, SEnRG asserts that granting the exemption request (which HDI requested in a separate licensing action, the merits of which are not at issue in this proceeding),[32] would amount to "double payment."[33] The relationship between this criticism and the PSDAR is unclear, including what is meant by a "double payment," but in any event it certainly does not identify a deficiency in the LTA.

At bottom, the LTA and PSDAR comply with all applicable legal and regulatory requirements, and the Letter merely raises a series of immaterial, unsupported, and out-of-scope arguments that fail to dispute the LTA. Ultimately, the unsupported commentary in the Letter fails to present an admissible contention, as required by 10 C.F.R. §§ 2.309(a) and (f). Accordingly, SEnRG's hearing request must be denied for this additional reason.

V. CONCLUSION

As established above, SEnRG neither demonstrates standing nor proffers a contention that satisfies all six requirements in 10 C.F.R. § 2.309(f)(1). Therefore, the Commission should reject SEnRG's request for a hearing.

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30 Letter.

31 PSDAR at 100-105; *see also* Applicants' Answer to NYS Petition §§ VI-VI.

32 *See* Applicants' Answer to NYS Petition § V.A.

33 Letter.

Respectfully submitted,

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Dated in Washington, DC
this 9th day of March 2020

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	)	March 9, 2020
(Indian Point Nuclear Generating Unit Nos. 1, 2, and 3)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing "Applicants' Answer Opposing Safe Energy Rights Group's Letter Requesting a Hearing" was served upon the Electronic Information Exchange (the NRC's E-Filing System), in the above-captioned docket.

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