

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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| In the Matter of |) | |
| |) | |
| Entergy Nuclear Operations, Inc. |) | |
| |) | |
| Application for Order Consenting to |) | Docket No. 50-255 |
| Transfers of Control of Licenses and |) | |
| Approving Conforming License |) | NRC-2021-0036 |
| Amendments |) | February 24, 2021 |

THE ENVIRONMENTAL LAW & POLICY CENTER
PETITION TO INTERVENE AND HEARING REQUEST

On December 23, 2020, Licensee Entergy Nuclear Operations, Inc. (“ENOI”) filed on behalf of itself and operating subsidiary Entergy Nuclear Palisades, LLC (“ENP”), Holtec International (“Holtec”), and Holtec Decommissioning International, LLC (“HDI”) an application with the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) for transfer of licenses of two of ENOI’s nuclear units—Rock Point and Palisades Nuclear Plant—and their associated Independent Spent Fuel Storage Installations (“ISFSI”) licenses.¹ Along with a request for conforming amendments to the licenses, the Application asks for a transfer of ENOI’s operating authority to HDI.² The transaction transfers will create the new entity, Holtec Palisades, LLC, and the Nuclear Asset Management Company, LLC (“NAMCo”), a wholly-owned Holtec subsidiary, will act as Holtec Palisades’s parent company.³

¹ Application for Order Consenting to Transfer of Control of Licenses and Approving Conforming License Amendments [hereinafter “Application”], Dkt. Nos. 50-155, 50-255, 72-007, 72-043, Accession No. ML20358A075 (Dec. 23, 2020), published at 86 Fed. Reg. 8225.
² *Id.* at 1.
³ *Id.*

The Application proposes a dramatic acceleration of the decommissioning timeline. Under a possible SAFSTOR approach, which would provide additional time for meeting financial assurance requirements, decommissioning would be complete in 2082.⁴ Holtec now estimates a 2041 completion of all radiological decommissioning and restoration under a DECON approach, allowing for a release for unrestricted use.⁵ The estimated cost of radiological decommissioning is \$443,215 million.⁶ Spent Fuel Management is estimated at \$166,122 million and Site Restoration at a conservative \$34,679 million.⁷ The Application’s provided Cash Flow Analysis is designed to illustrate how the current \$552,049 million decommissioning trust fund balance—intended for radiological decommissioning only⁸—could be used to meet all three obligations, provided expenditures and growth assumptions hold.⁹

The permit transfer will occur only after ENOI permanently removes fuel from the Palisades reactor and docketing of permanent cessation of operations.¹⁰ HDI’s licensed activities will be exclusively focused on decommissioning, storing, and disposing of radioactive materials, and maintaining ISFSIs.¹¹ The Application explains that another Holtec subsidiary, Comprehensive Decommissioning International, LLC (“CDI”), will conduct the day-to-day decommissioning activities.¹²

⁴ Entergy, Palisades and Big Rock Point: NRC License Transfer Application Pre-Submittal Meeting at 9 (Dec. 8, 2020); Application at 3.

⁵ Application at 3.

⁶ Application Attachment E, Schedule & Financial Information for Decommissioning, Application for Order Consenting to Transfer of Control of Licenses and Approving Conforming License Amendments [hereinafter “Application Attachment E”] at 3, Dkt. Nos. 50-155, 50-255, 72-007, 72-043, Accession No. ML20358A075 (Dec. 23, 2020).

⁷ *Id.*

⁸ *See* 10 C.F.R. § 50.82(a) (identifying permissible uses of decommissioning trust funds as “legitimate decommissioning activities consistent with the definition of decommissioning in § 50.2”); *see also* 10 C.F.R. § 50.2 (defining “decommission” as “remov[ing] a facility or site safely from service and reduc[ing] residual radioactivity” such that property can be released and the license terminated).

⁹ *See* Application Attachment E at 5.

¹⁰ Application at 3.

¹¹ *Id.* at 11, 15.

¹² *Id.* at 2

The Applicants must demonstrate that Holtec and HDI are “qualified to be the holder[s] of the license[s]” and that the license transfers are “consistent with applicable provisions of law, regulations and orders issued by the Commission.”¹³ The requirements for original applicants seeking an operating license are also applicable in a license transfer proceeding.¹⁴ Under 10 C.F.R. § 50.33(f)(2), a non-electric utility applicant or transferee such as Holtec or HDI must offer a reasonable assurance of obtaining the funds necessary to cover the plant’s estimated operating costs. The Commission has broad discretion to request “additional or more detailed information respecting [the proposed licensee’s] financial arrangements and status of funds . . . This may include information regarding a licensee’s ability to continue the conduct of the activities authorized by the license and to decommission the facility.”¹⁵

As an environmental organization deeply concerned with licensees meeting their decommissioning obligations, the Environmental Law & Policy Center (“ELPC”) does not believe that the Holtec Companies have the necessary financial qualifications for the Commission to approve the requested transfer. ELPC and its impacted members are concerned that because the Holtec Companies lack the needed financial qualifications and financial assurances for a permit, an insufficient decommissioning process will occur. ELPC timely files this Petition to Intervene and Request for a Hearing under Subpart M, 10 C.F.R. § 2.1300 *et seq.* The Licensing Board should grant ELPC’s Petition and Request because ELPC has standing and has proposed four admissible contentions that meet the requirements of 10 CFR § 2.309(f).

¹³ 10 C.F.R. § 50.80.

¹⁴ *See generally Pac. Gas & Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2)*, CLI-02-16, 55 NRC 317, 340 (2002)

¹⁵ 10 C.F.R. § 50.33(f)(5).

A. ELPC Has Standing to Intervene in This License Transfer Proceeding

Under the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 *et seq.*, the Commission must allow individuals “whose interest may be affected by the proceeding” to intervene in NRC licensing proceedings.¹⁶ Petitioners may demonstrate that they have met standing requirements through traditional standing, representational standing based on standing of one or more members, or under the Commission’s proximity presumptions for those within a “geographic zone of potential harm.”¹⁷ A petitioner relying on traditional standing—either for itself or in establishing the standing of one or more of its members—must (1) allege an injury in fact that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision.¹⁸ The Commission construes the petition in favor of finding that the petitioner has standing.¹⁹ With respect to injury in fact, the petitioner need show only that the chain of causation is plausible.²⁰

ELPC is a non-profit, public interest environmental legal advocacy and eco-business innovation organization working throughout the Midwest states to improve environmental quality and protect natural resources on behalf of our organization, members and clients. ELPC works to avoid risks and injuries to public health, clean water, clean air and landscapes in ways that are good for the environment and good for the economy. ELPC has been engaged in both nuclear power plant safety and nuclear plant economic issues in many cases over the past 25 years.

¹⁶ 42 U.S.C. § 2239(a).

¹⁷ *In re Interim Storage Partners LLC (WCS Consolidated Interim Storage Facility)*, 90 N.R.C. 31, 47–48 (Aug. 23, 2019).

¹⁸ *In re Fla. Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4)*, 82 N.R.C. 389, 394 (Dec. 17, 2015).

¹⁹ *In re Georgia Inst. of Tech. (Georgia Tech Research Reactor)*, 42 N.R.C. 111, 115 (Oct. 12, 1995) (citing *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995)).

²⁰ *Sequoyah Fuels Corp. (Gore, Oklahoma Site)*, CLI-94-12, 40 NRC 64, 75 (1994) (citing *Nat’l Wildlife Fed. v. Hodel*, 839 F.2d 694, 705 (D.C. Cir. 1992)).

The Commission has a statutory obligation to protect public health, safety, and the environment through the careful review of applicants' financial assurances.²¹ The Commission issued its financial assurance requirements based on the knowledge that “[i]nadequate or untimely consideration of decommissioning, specifically in the areas of planning and financial assurance, could result in significant adverse health, safety and environmental impacts.”²² Although not complete protection, regulations address some of these concerns by mandating that licensees “use methods which provide reasonable assurance that, at the time of termination of operations, adequate funds are available so that decommissioning can be carried out in a safe and timely manner and that lack of funds does not result in delays that may cause potential health and safety problems.”²³ The Commission has described financial assurances as “provid[ing] a second line of defense” against the possibility that “the financial operations of the licensee are insufficient, by themselves, to ensure that sufficient funds are available to carry out decommissioning.”²⁴ In sum, “[a]ssuring adequate funds for a reactor owner to meet its decommissioning obligations is part of the bedrock on which NRC has built its judgment of reasonable assurance of adequate protection for the public health and safety and protection of the environment.”²⁵

The declarations of ELPC members Jody G. Flynn and Charles M. Brand are attached to this petition to support ELPC's standing. The declarants live or have property interests near the

²¹ Under both the Atomic Energy Act and the Energy Reorganization Act, “the NRC has determined that there is a significant radiation hazard associated with nondecommissioned nuclear reactors.” *General Requirements for Decommissioning Nuclear Facilities*, 53 Fed. Reg. 24018, 24019 (June 27, 1988). Based on those statutes, the Commission has promulgated its decommissioning regulations.

²² *Id.* at 24033.

²³ *Id.*

²⁴ *Financial Assurance Requirements for Decommissioning Nuclear Power Reactors*, 63 Fed. Reg. 50465, 50473 (Sept. 22, 1998).

²⁵ *In re Entergy Nuclear Vermont Yankee, LLC*, Dkt. No. 50-271-LA-3, LBP15-24, at 22 (Aug. 31, 2015) (citation omitted), *vacated as moot*, CLI-16-8, 93 N.R.C. 463 (June 2, 2016) (quoting State of Vermont's Petition for Leave to Intervene and Hearing Request at 1 (Apr. 20, 2015)) (alteration in original).

Palisades facilities. These members who reside for significant portions of the year less than a mile from the Palisades facilities in Michigan suffer an injury in fact in the form of increased radiological risk as a result of the proposed licensees' failure to establish appropriate financial qualifications. Should the Commission approve the Application without a thorough review of and hearing on the Holtec Companies' financial qualifications, there is a significant risk that there will not be adequate funds for decommissioning, endangering these ELPC members. This injury is traceable to the challenged action, because a license transfer from ENOI to Holtec and HDI, which have already proposed using decommissioning trust funds for site restoration and conducting decommissioning on an accelerated timeline such that funds may fall below NRC requirements, increases radiological health risks.

The rejection of the Application would redress injuries because it would prevent the transfer of licenses to an entity that proposes quickly draining the radiological decommissioning trust funds and spending those funds, in part, on non-radiological cleanup such as site restoration. Site Restoration efforts are also important, but the funding set aside in decommissioning trust funds was intended to ensure that enough money would be available to address radiological decommissioning. The Commission can achieve its commitment of ensuring adequate decommissioning funds by stopping operators from pursuing such a rapid decommissioning with uncertain and potentially insufficient financing. ELPC's members' injuries would be redressed if the Commission required the Holtec Companies to provide additional evidence of their financial qualifications, including financial assurances that site restoration will not deplete the decommissioning trust fund, and if the Commission were to require Holtec to secure alternative sources of funding for ISFSI management and site restoration.

ELPC has established representational standing. The interests ELPC seeks to protect are germane to its own purpose. ELPC has at least one member who qualifies for standing in his or her own right. ELPC's membership expects that the organization will request hearings on important safety issues, and neither the claim asserted nor the relief requested requires an individual member's participation in the legal action. Central to ELPC's organizational purpose are efforts to reduce risk to the environment and to public health. Insufficient decommissioning or unsafe operation as a result of inadequate financial assurances or qualifications present risks to the environment that ELPC regularly acts to reduce. The proposed license transfer raises significant health, safety, environmental, and financial concerns for ELPC and its members that ELPC seeks to mitigate through participation in a public hearing. ELPC has members who qualify for standing, and their participation is not required in this action.

In the alternative, ELPC should be granted standing to intervene because its participation may reasonably be expected to assist in developing a sound record.²⁶ ELPC's participation will assist in developing a sound record because ELPC has experience working on Michigan energy issues and cases related to the financial issues surrounding site restoration and reclamation at nuclear power plants. ELPC's members have significant property and health interests in the proceeding. If the requested license transfer is granted, ELPC and its members' interests in the proceeding will be adversely impacted because there will be increased risk of radiological harm from the Palisades nuclear facilities. There are no other means by which ELPC and its members' interests will be protected.

²⁶ 10 C.F.R. § 2.309(e) (allowing for discretionary intervention)

B. ELPC Presents Four Admissible Contentions

Contention 1: Holtec’s Decommissioning Financial Assurance Is Deficient Under 10 C.F.R. §§ 50.54(bb) and 72.30(b) Because It Relies on Receiving a Regulatory Exemption Authorizing It to Use Decommissioning Trust Monies for Site Restoration and Spent Fuel Management and Shows No Other Source of Funding for Those Costs.

In reviewing a proposed license transfer, the Commission must determine that the licensee has shown that they have the financial ability to “carry out, in accordance with [Commission regulations], the activities for which the permit or license is sought.”²⁷ Proposed licensees “must provide reasonable assurance that sufficient funds will be available to decommission the facility,”²⁸ and the Commission may approve a financial assurance only “if it is based on plausible assumptions and forecasts.”²⁹ Commission regulations explain that to “decommission” is “to remove a facility or site safely from service and reduce residual radioactivity to a level that permits . . . [r]elease of the property for unrestricted use and termination of the [NRC] license.”³⁰ Site restoration and spent fuel management are not included in decommissioning activities.³¹

Commission rules prohibit licensees from using decommissioning trust funds for site restoration and spent fuel management without first applying for and receiving approval from the Commission.³² HDI has applied for, but not yet received, exemptions from 10 C.F.R. §§ 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv), which would allow it “to use a portion of Palisades Nuclear Decommissioning Trust fund . . . for the management of Palisades spent fuel

²⁷ 10 C.F.R. § 50.33(f); *see id.* § 50.80(b)(1)(i).

²⁸ *In re Exelon Generation Co. (Oyster Creek Nuclear Generating Station)*, 89 N.R.C. 465, 471 (June 18, 2019).

²⁹ *North Atlantic Energy Service Corp. (Seabrook Station, Unit 1)*, CLI-99-6, 49 NRC 201, 222 (Mar. 5, 1999).

³⁰ 10 C.F.R. § 50.2

³¹ *See General Requirements for Decommissioning Nuclear Facilities*, 53 Fed. Reg. 24018, 24019 (June 27, 1988); *see also* 10 C.F.R. § 50.82(a)(8)(i)(A).

³² 10 C.F.R. §§ 50.2, 50.82(a)(8)(i)(A).

management and site restoration activities” without prior notice to the Commission.³³ However, the Holtec Companies and the Application’s Post-Shutdown Decommissioning Activities Report (“PSDAR”) assume that HDI will receive an exemption from the Commission under 10 C.F.R. § 50.82(a)(8)(i)(A) to use the decommissioning trust funds for purposes other than radiological decommissioning.³⁴ HDI estimates that it will cost approximately \$644 million in 2020 to complete the Palisades decommissioning, securely store spent fuel, and restore the impacted site.³⁵ Based on the requested exemption, the entirety of that funding must come from the decommissioning trust fund.³⁶ The Applicants assert that the exemptions are permissible “because they are authorized by law [and] will not present an undue risk to the public health and safety.”³⁷

The Commission should base its determination of whether the Holtec Companies’ financial assurance complies with 10 C.F.R. §§ 50.54(bb) and 72.30(b) on the Holtec Companies’ ability to meet requirements if the exemption is not granted. Section 50.82 allows licensees to use decommissioning funds only for legitimate decommissioning expenses that do not reduce the decommissioning trust fund below a level needed to address unforeseen costs or shortfalls.³⁸ The Commission should be especially wary of granting an exemption in situations where, as here, unforeseen costs that occur early in the decommissioning process could significantly impact the availability of funds late in the process. For example, if spent fuel

³³ Request for Exemptions from 10 C.F.R. 50.82(a)(8)(i)(A) and 10 C.F.R. § 50.75(h)(1)(iv), Dkt. Nos. 50-225, 72-007 (Dec. 23, 2020).

³⁴ Request for Exemptions from 10 C.F.R. 50.82(a)(8)(i)(A) and 10 C.F.R. § 50.75(h)(1)(iv) [hereinafter “Exemption Request”], Dkt. Nos. 50-225, 72-007, ML20358A075 (Dec. 23, 2020).

³⁵ Post Shutdown Decommissioning Activities Report [hereinafter “PSDAR”] at 16, Dkt. Nos. 50-255, 72-007, ML20358A232 (Dec. 23, 2020).

³⁶ *Id.*; Palisades Site-Specific Decommissioning Cost Estimate at 7, 17, 46, Dkt. Nos. 50-255, 72-007, ML20358A232 (Dec. 23, 2020).

³⁷ Request for Exemptions at 2.

³⁸ 10 C.F.R. 50.82(a)(8)(i).

management and site restoration costs are both withdrawn from the decommissioning trust fund, but the estimated costs of license termination in one year—such as 2024—were to double, the trust fund balance would go into the negative in 2040, before decommissioning was complete. While the Holtec Companies may, at some point in the decommissioning process, be in a position to demonstrate that withdrawals from the decommissioning trust fund for site restoration and spent fuel management are appropriate, they should not be allowed to use that assumption as a basis for demonstrating that they can meet Commission financial assurance requirements now, when decommissioning has not even begun. Without the exemption, the Holtec Companies have not offered assurances that they can meet their financial responsibilities under the permit.

The Commission should take special note that the Holtec Companies have relied on such assumed regulatory exemptions in applications for other license transfers, asserting their financial assurances are sufficient because they will be able to use money already set aside in the radiological decommissioning trust fund for non-radiological decommissioning.³⁹ Although the Commission previously granted Holtec a transfer application with a similar assumption, the ongoing litigation surrounding Holtec’s strategy demonstrates that there is significant debate about whether Holtec’s assumptions about decommissioning trust funds are plausible and if the Commission should allow such exemptions.⁴⁰

The business model that the Holtec Companies propose inserts risk into a financial mechanism that was designed to mitigate and contain risk. The outcome of other license transfer cases in which the Holtec Companies have been involved demonstrate that there are other, more reasonable mechanisms to manage trust fund balances. For example, the State of Massachusetts

³⁹ See, e.g., *In re Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI)*, Dkt. No. 50-003-L5-3.

⁴⁰ See Petition for Review, *New York v. U.S. Nuclear Reg. Comm’n*, Case No. 21-1037 (Jan. 22, 2021); Petition for Review, *Massachusetts v. U.S. Nuclear Reg. Comm’n*, Case No. 20-1019 (Sept. 25, 2019).

recently reached a settlement with Holtec related to the Pilgrim Nuclear Power Station that requires Holtec to hold a minimum balance in the decommissioning trust fund and setting aside funding for decommissioning that the decommissioning fund does not cover.⁴¹ A similar approach to the exemption request could, and should, be taken here. Because the Commission has regulatory flexibility in assessing Holtec’s exemptions request, Holtec should not be permitted to rely on assumed exemptions to establish financial assurances before the Commission makes an independent evaluation of the exemptions request.

Contention 2: The Application and PSDAR Are Deficient Under 10 C.F.R. §§ 50.75(b)(1) and (e)(1)(i) Because They Improperly Assume a 2% Rate of Return.

The Atomic Energy Act requires that licensees establish their financial qualification to hold a license for a nuclear facility.⁴² Federal regulations have interpreted this command to mean that applicants must show financial means to comply with all licensed activities, including having “reasonable assurance that funds will be available for the decommissioning process.”⁴³ Proposed licensees may demonstrate their funding through the prepayment method, and Commission regulations require that a proposed licensee that chooses to prepay its decommissioning obligations—as is the case here—must have segregated those funds in an amount “sufficient to pay decommissioning costs at the time permanent termination of operation is expected.”⁴⁴ The Commission allows licensees using the prepayment method based on site-specific estimates to “take credit for projected earnings on the prepaid decommissioning trust funds, using up to a 2 percent annual real rate of return from the time of the future funds’

⁴¹ Settlement Agreement Between the Commonwealth of Massachusetts and Holtec Pilgrim, LLC and Holtec Decommissioning International, LLC Regarding the Pilgrim Nuclear Power Station, Plymouth, Massachusetts (June 16, 2020), <https://www.mass.gov/doc/pilgrim-settlement-agreement/download>.

⁴² 42 U.S.C. § 2232(a).

⁴³ 10 C.F.R. § 50.75(a).

⁴⁴ *Id.* § 50.75(e)(1)(i).

collection through the projected decommissioning period” so long as the licensee bases its estimate “on a period of safe storage that is specifically described in the estimate.”⁴⁵

The Application asserts that the Holtec Companies have provided the “reasonable assurance that sufficient funds will be available to decommission” the Palisades facility based on a site-specific decommissioning cost estimate. The Application relies on the prepayment method for decommissioning funding, which requires a separate pool of funds in an amount “sufficient to pay decommissioning costs at the time permanent termination of operations is expected.”⁴⁶ Holtec does not claim that the current decommissioning trust fund will cover all decommissioning costs, but instead claims that it may take advantage of section 50.75(e)(1)(i)’s instruction that licensees using prepayment may include in their funding estimate a two percent annual real rate of return.⁴⁷ However, this allowance requires that the applicant have a specific plan for safe storage.⁴⁸ As the Holtec Companies are not proposing the SAFSTOR method, they cannot take advantage of the two percent rate of return.

The Commission’s rejection of the State of New York’s similar argument in Entergy’s Indian Point transfer application should not dictate its ruling here. In that case, New York argued that Holtec Companies seeking operating permits for the Indian Point Nuclear Generating Station could not take advantage of the two percent rate of return on the decommissioning trust fund because the Companies were using the DECON model for decommissioning. The Commission rejected New York’s contention, finding that the state had not raised a genuine dispute with the application because the license renewal at issue in that case “state[d] explicitly that the model

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*; *see* PSDAR at 46, n.3.

⁴⁸ 10 C.F.R. § 50.75(e)(1)(i).

includes a ‘period of safe storage,’” even if it did not use the SAFSTOR model.⁴⁹ The Commission read section 50.75(e)(1) expansively to conclude that it “does not limit use of the 2% return rate to licensees proposing an extended storage period.”⁵⁰ The Commission explained that so long as there is some period of safe storage and a site-specific decommissioning estimate, the applicant could use the two percent rate of return.⁵¹

The Commission should revisit this logic, especially given the rapid decommissioning that the Holtec Companies propose. The PSDAR’s Palisades decommissioning schedule shows a ten-year dormancy period, which will involve storing radiological material onsite.⁵² Despite the brevity of this dormancy period, the Holtec Companies’ cost estimates rely on the two percent rate of return allowed for safe storage under 50.75(e)(1). An interpretation that permits such short periods to count as “safe storage” periods would allow virtually all decommissioning methods—SAFSTOR as well as DECON—to use the two percent rate of return even if the safe storage period is so brief as to realistically not create the type of growth necessary to increase the funding in a depleted decommissioning trust fund.

The Cash Flow Analysis presented by the Holtec Companies raises significant red flags about the Commission’s decision in Indian Point, as the Analysis appears to design the rate of decommissioning around the amount of time necessary for trust fund earnings to supplement the beginning trust fund balance.⁵³ The Cash Flow Analysis suggests that the Holtec Companies have reversed the regulatory language’s logic: The regulation was not intended to incentivize licensees to plan decommissioning based on projected earnings, or to delay decommissioning if

⁴⁹ Memorandum and Order at 13, *In re Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI)*, Dkt. Nos. 50-0003, 50-247, 50-286, 72-51 (Jan. 15, 2021).

⁵⁰ *Id.* at 14

⁵¹ *Id.*

⁵² PSDAR at 9, 44.

⁵³ Application Attachment E at 5.

real returns were lower than the expected two percent. The allowance of the two percent return is a regulatory acknowledgement that over the very long term, an average rate of return can be predicted. It is not an acknowledgement that over a short period of time—here, less than a decade—volatility can be assumed away in favor of an expectation of the long-term average real rate of return.

The most logical reading of the regulatory requirements is that the two percent rate of return is permissible *only* for SAFSTOR decommissioning. Under SAFSTOR, plants use “extended safe storage” to manage spent fuel.⁵⁴ DECON, in contrast, involves licensees rapidly decommissioning the site, which may involve some period of storage.⁵⁵ While a literal reading of the regulatory language “does not require that the licensee keep the facility in safe storage for any particular period of time,”⁵⁶ limiting the use of two percent growth to SAFSTOR applicants would align regulatory interpretation with the common sense understanding that trust fund growth depends on lengthy periods of “safe storage” exclusive to the SAFSTOR model.

Contention 3: The Application Is Deficient Because Holtec Offers Only the Decommissioning Trust Fund to Support Its Financial Qualifications.

As discussed above, the Atomic Energy Act and the Commission’s implementing regulations require applicants to show financial qualification to hold an NRC license.⁵⁷ This requirement extends to applications for license transfers. Under 10 C.F.R. § 50.80, the Commission must determine “(1) [t]hat the proposed transferee is qualified to be the holder of the license; and (2) [t]hat the transfer of the license is otherwise consistent with applicable

⁵⁴ Revised Analyses of Decommissioning for the Reference Pressured Water Reactor Power Station, Effects of Current Regulatory and Other Considerations on the Financial Assurance Requirements of the Decommissioning Rule and on Estimates of Occupational Radiation Exposure, NUREG/CR-5884 (Nov. 1995), at 1.2 (ML14008A187).

⁵⁵ *Id.*

⁵⁶ *In re FirstEnergy Companies & TMI-2 Sols., LLC (Three Mile Island Nuclear Station Unit 2)*, Dkt. No. 50-320, 2021 WL 194893, at *5 (Jan. 15, 2021).

⁵⁷ 42 U.S.C. § 2232(a); 10 C.F.R. §§ 50.33(f), 50.40(b), 50(b)(1)(i).

provisions of law, regulations, and [Commission] orders,” including whether the Applicant is financially qualified.⁵⁸ To establish its financial qualification, the applicant must offer reasonable assurances that the transferee will have the necessary funds to safely operate and decommission the nuclear power plant.⁵⁹

The Applicants assert that “Holtec Palisades and HDI have the requisite managerial, technical, and financial qualifications to be the licensees for Palisades and Big Rock Point” and that Holtec Palisades—a company that does not yet exist—“will provide reasonable assurance of funding for decommissioning of the facilities, spent fuel management, and ISFSI decommissioning.”⁶⁰ While the yet-to-be-formed Holtec Palisades has no outside source of revenue, the Application states that the entity is financially qualified based on the existence of the Palisades nuclear trust fund that will transfer to Holtec Palisades on the closing date.⁶¹ The Application states that the decommissioning trust fund alone is sufficient to demonstrate Holtec Palisades’ financial qualifications because its activities under the licenses will be limited to decommissioning, maintenance, and possession of Palisades.⁶² The Application offers no other source of decommissioning funds or evidence of financial qualification for Holtec Palisades.

A Commission order allowing the decommissioning trust fund to be the exclusive evidence of the Holtec Companies’ financial qualification for the operating license—and the exclusive source for decommissioning funds—would undermine the purpose of the Atomic Energy Act’s requirement that licensees actually demonstrate that they have a strong enough balance sheet to manage the enormous financial responsibility of decommissioning a nuclear

⁵⁸ 10 C.F.R. § 50.80(c)(1)–(2).

⁵⁹ *Id.* §§ 50.80(b), 50.33(f)(2).

⁶⁰ Letter to NRC, Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments (Palisades Nuclear Plant and Big Rock Point), Docket Nos. 50-255, 72-007, 50-155, 72-043 (Dec. 23, 2020).

⁶¹ Application at 17.

⁶² *Id.*

power plant. As discussed above, the Commission has explained that the risk of a financially unqualified licensee is significant: “inadequate or untimely consideration of decommissioning, specifically in the areas of planning and financial assurance, could result in significant adverse health, safety, and environmental impacts.”⁶³ Financial assurances for decommissioning are not meant to be the primary means of showing financial viability, but are rather are meant “to provide a second line of defense, if the financial operations of the licensee are insufficient, by themselves to ensure that sufficient funds are available to carry out decommissioning.”⁶⁴

Here, the Holtec Companies ask the Commission to place financial responsibility for decommissioning with a company whose only line of defense is an inherited trust fund. Rather than a “second line,” the decommissioning trust fund is, according to the Application, the only financial means that Holtec Palisades will have to operate and decommission the Palisades nuclear plant. If the Commission approves the license transfer, the Holtec Companies will have only the decommissioning trust fund—not parent company financing, revenue from electric generation, or ratepayer funding—to safely and adequately decommission the Palisades nuclear plant. The structure of the license transfer creates a shield for the corporate parent, Holtec, to avoid financial risk and legal liability from the proposed decommissioning liability. Because the Commission cannot shift unmet decommissioning liabilities to a corporate parent, the decommissioning fund must cover all costs related to the Palisades nuclear plant, predicted or unforeseen.⁶⁵ Moreover, the Applicants have not offered sufficient financial data on Holtec Palisades for the petitioners to determine whether the entity would have the financial ability to

⁶³ NRC, Questions and Answers on Decommissioning Financial Assurance at 1, ML111940157

⁶⁴ NRC, Questions and Answers on Decommissioning Financial Assurance at 1, ML111940157 (emphasis added).

⁶⁵ See NRC, Questions and Answers on Decommissioning Financial Assurance, ML111940157, SECY-11-0133, enc. 5 at 2 (Sept. 28, 2011).

address project cost overruns and meet its obligations under its decommissioning operator services agreement with HDI.

The Application instead predicates the license transfer on the strength of the Holtec Companies' financial projections for the decommissioning trust fund. As explained in ELPC's second contention, the fact that the Holtec LLCs propose using the DECON approach for decommissioning eliminates their ability to rely upon a two percent annual growth. They must show that they have the requisite decommissioning funding now. ELPC refers to other parties' contentions in this proceeding explaining how Holtec has understated decommissioning costs. Because the Holtec Companies can provide no financial assurances outside of the decommissioning trust funds, the potential for inadequate decommissioning resulting from underestimation of the costs of decommissioning is high. If the Holtec Companies' cost estimates are too low, as other petitioners' contentions suggest, there is no second line of defense to cover the shortfall.

This is not the first time such a concern has been raised about Holtec. In the recent Indian Point Nuclear Generating Station permit transfer proceeding, for example, the State of New York's contentions discussed how the Holtec Companies had failed to "address[] the likely need for additional, expensive remediation of radiological and non-radiological hazardous substances contamination in the soils, fil, groundwater, and bedrock beneath and surrounding the plant's built infrastructure."⁶⁶ New York also explained how HDI's contingency allowance "fail[ed] to account for the likelihood that it will encounter out-of-scope issues including, for instance, the discovery of additional contaminants and/or contaminants in unexpected volumes."⁶⁷ Local

⁶⁶ Petition of the State of New York for Leave to Intervene and For a Hearing at 19, *In re Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI)*, Dkt. Nos. 50-0003, 50-247, 50-286, 72-51, ML20043E118 (Feb. 12, 2020).

⁶⁷ *Id.* at 20.

petitioners in that case proffered similar contentions, pointing out that HDI assumed the entire contingency allowance would be consumed and failed to offer an adequate explanation of how it reached that figure.⁶⁸ Given the frequency of these arguments raised against Holtec Companies, ELPC urges the Commission to carefully consider the financial qualifications of the proposed licensees and the financial projections they rely upon.

Furthermore, without the Holtec Companies' disclosure of more financial information, the financial analysis becomes more difficult. ELPC cannot conduct further analysis of Holtec's financial qualifications because it has not provided a Disclosure Schedule related to a purchase and sale agreement ("PSA") that forms the basis of the transfer of the nuclear facilities from Entergy to Holtec.⁶⁹ The Applicants also redact from the PSA a number of provisions that would be included in a disclosure schedule, including portions describing decommissioning trust funds, financial statements, undisclosed liabilities, and preclosing decommissioning planning. As a result, petitioners lack information about the pertinent environmental disclosures, material agreements, or legal proceedings. ELPC requests that this information be made public.

Contention 4: ELPC Adopts Don't Waste Michigan, Beyond Nuclear, and Michigan Safe Energy Future's Contentions.

Pursuant to 10 C.F.R. § 2.309(f)(3), Joint Petitioners move to adopt all contentions filed by Don't Waste Michigan, Beyond Nuclear, and Michigan Safe Energy Future (collectively, the "Michigan Environmental Groups") in this proceeding and to re-allege them as their own as if written herein. ELPC and the Michigan Environmental Groups share many of the same issues

⁶⁸ Town of Cortlandt, Village of Buchanan, and Herndrick Hudson School District's Petition for Leave to Intervene and Hearing Request, *In re Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Station, Units 1, 2, and 3 and ISFSI)*, Dkt. Nos. 50-0003, 50-247, 50-286, 72-51, ML20043F054 (Feb. 12, 2020). (Feb. 12, 2020).

⁶⁹ See Application Attachment C, Membership Interest Purchase and Sale Agreement, and First and Second Amendments to Membership Interest Purchase and Sale Agreement, Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments (Palisades Nuclear Plant and Big Rock Point), Docket Nos. 50-255, 72-007, 50-155, 72-043 (Dec. 23, 2020).

and concerns about the proposed license transfers under consideration in this proceeding. The Commission can best serve the interest in judicial economy by permitting ELPC to adopt the Michigan Environmental Groups' contentions instead of reiterating them in its petition. ELPC agrees that the Michigan Environmental Groups are the primary representatives with respect to their contentions, but reserves the right to raise those contentions at a later time.

Such adoption of another party's contentions is permitted under Commission precedent. In a 2001 Indian Point license transfer proceeding, the Town of Cortland and Citizens Awareness Network independently intervened and sought to adopt each other's contentions.⁷⁰ The Commission approved the request, concluding that the Board may provisionally permit petitioners to adopt each other's contentions in a proceeding so long as both petitioners have independently met the Commission's requirements for participation.⁷¹ The Commission should grant similar permission here and allow ELPC to adopt the Michigan Environmental Groups' contentions.

C. Conclusion

ELPC has standing to intervene and participate in a hearing and has timely filed its petition. The Application has failed to demonstrate that Holtec and HDI are qualified to hold the licenses and that the transfer is consistent with applicable law and regulations. Holtec and HDI fail to demonstrate the necessary financial qualifications to safely decommission and restore the nuclear sites. Before approving any license transfer, the Commission should require Holtec and HDI to provide additional financial assurances outside of the decommissioning trust fund to provide an important safety backstop in the decommissioning process.

⁷⁰ See *Consol. Edison Co. (Indian Point, Units 1 and 2)*, CLI-01-19, 54 NRC 109, 131-33 (2001)

⁷¹ *Id.* at 132.

DATED: February 24, 2021

Respectfully submitted,

/Signed (electronically) by/

Margrethe Kearney
Counsel for ELPC
Environmental Law & Policy Center
35 E. Wacker Drive, Ste. 1600
Chicago, IL 60601
(312) 673-6500
mkearney@elpc.org

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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|--------------------------------------|---|-------------------|
| _____ |) | |
| In the Matter of |) | |
| |) | |
| Entergy Nuclear Operations, Inc. |) | |
| |) | |
| Application for Order Consenting to |) | Docket No. 50-255 |
| Transfers of Control of Licenses and |) | |
| Approving Conforming License |) | NRC-2021-0036 |
| Amendments |) | February 24, 2021 |
| _____ |) | |

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing PETITION TO INTERVENE AND HEARING REQUEST OF THE ENVIRONMENTAL LAW & POLICY CENTER dated February 24, 2021 has been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 24th day of February, 2021.

Respectfully submitted,

/Signed (electronically) by/

Margrethe Kearney
Counsel for ELPC
Environmental Law & Policy Center
35 E. Wacker Drive, Ste. 1600
Chicago, IL 60601
(312) 673-6500
mkearney@elpc.org